

Fact Sheet On Mental Capacity (Amendment) Bill 2016

The Mental Capacity (Amendment) Bill 2016 was passed in Parliament today to better protect the mentally incapacitated.

Mental Capacity Act (MCA)

The Mental Capacity Act (MCA) was first passed in 2008. It introduced the Lasting Power of Attorney (LPA) so individuals can appoint a “donee” to make decisions on their behalf should they lose mental capacity. For those who have lost mental capacity but have no LPA, the MCA allows someone - such as a family member or friend - to apply to Court to be their deputy to make decisions on their behalf.

Key amendments to the MCA

The key amendments to the MCA include:

- Introduction of Professional Donees and Deputies**
The Bill introduces “professional donees” and “professional deputies”, and creates a registration framework for professional deputies.

There will be a small and increasing number of elderly singles or childless elderly couples, who may not have family members or close friends to rely on to be their proxy decision-makers. Hence, we are introducing ‘professional donees’ and ‘professional deputies’ to address this emerging trend.

The Bill sets the stage for MSF to consult stakeholders extensively to develop the registration framework. At this stage, the definitions and preliminary features of the framework are as follows:

	Professional Deputies	Professional Donees
Definitions	<p>a. A professional deputy is someone who provides deputyship services for remuneration.</p> <p>b. He must be registered with the Public Guardian (PG).</p>	<p>a. A professional donee is someone who provides doneeship services for remuneration.</p> <p>b. He must not be related to the person for whom he is appointed for.</p>

	<p>c. He must not be related to the person for whom he is appointed to act for.</p>	
<p>Preliminary Features</p>	<p>d. We envisage that professional deputies would include licensed trust companies, and professionals such as lawyers and accountants.</p> <p>e. PG may cancel the registration if certain events occur such as if they become bankrupts.</p>	<p>c. There will be no registration framework for professional donees. Unlike deputies, who are appointed by the Court after the individual has lost mental capacity, donees are chosen by the individual himself when he still has capacity.</p> <p>d. But as a safeguard, the Bill limits professional donees to only two groups:</p> <ul style="list-style-type: none"> • Registered professional deputies with the PG • Prescribed classes of persons such as licensed trust companies, which can already act as donees and deputies under MCA today. Licensed trust companies are regulated by MAS under the Trust Companies Act.

- **Better Protection from Abuse by Donees or Deputies**

With the amendments, the Court may now revoke donees' or deputies' powers if there is a significant risk of abuse or exploitation of authority by donees or

deputies, e.g. when the donee or deputy is convicted of an offence involving dishonesty or fraud against some other person, and not just the donor.

The Bill will also allow the Court to suspend powers of a donee or deputy, in the absence of any prior application. This is to preserve the donor's assets while investigations are ongoing.

- **Improve commercial certainty in the use of LPAs**

The Bill will extend protection to donees and third parties who had entered into a transaction without knowing that the LPA had been revoked or suspended. This will provide commercial certainty for subsequent transactions involving the donor's assets in such scenarios.

- **Improve the operations of the Public Guardian's office.**

The Bill will improve operations of the PG's Office to better serve the public. A consultation with the public was conducted on the proposed amendments to the MCA. There was general support from members of the public as well as organisations such as those in the legal, banking, insurance, medical and social service sectors who shared their views during the three week period.

Please refer to Annexes A and B for the glossary of terms and accompanying illustrations.

ANNEX A

GLOSSARY OF TERMS

Donor: The person, at least 21 years of age, who makes a Lasting Power of Attorney, appointing donee(s) to make decisions about his personal welfare and/or property & affairs in the event he loses mental capacity in the future.

Donee: Donees are appointed by donors to make decisions about the donor's personal welfare and/or property & affairs in the event the donor loses mental capacity.

Professional Donee: Similar to a donee, a professional donee is appointed by an individual with mental capacity; however, they are allowed to provide doneeship services to the donors for remuneration. They must be unrelated to the donor.

Lasting Power of Attorney (LPA): A legal document that allows a donor to voluntarily appoint one or more donees to make decisions and act on his behalf should he lose the capacity to make his own decisions.

Deputy: A deputy is appointed by the court to make certain decisions on behalf of a person who lacks mental capacity when the person has no donee to decide on his behalf in respect of those decisions. A deputy can be an individual, or a licensed trust company for property & affairs matters.

Professional Deputy: Similar to a deputy, a professional deputy is appointed by the Court for the same purpose, but is allowed to provide deputyship services for remuneration. They must be unrelated to the person whom they are appointed to act for.

Personal welfare: Personal welfare decisions are lifestyle-related decisions that donees and deputies may be authorised to make on behalf of the mentally incapacitated individual concerned. Such decisions may include where the mentally incapacitated individual is to live and health care decisions (if this power is expressly given).

Property & affairs: Property & affairs decisions are decisions about property and financial matters that donees and deputies may be authorised to make on behalf of the mentally incapacitated individual concerned. Such decisions include whether property belonging to the mentally incapacitated individual should be sold and how his assets are to be used in his best interests.

Revocation (of an LPA): When an LPA is revoked, it means that the donee appointed by it is no longer authorised to act on behalf of the donor.

Suspension (of donee's powers): When a donee's powers are suspended through an interim order, the donee is temporarily unable to act on behalf of the donor in specific matters, while the Court is deliberating a pending Court application. The Amendment Bill will further allow the Court to temporarily suspend a donee's powers in certain cases, while investigations are ongoing, if there is significant risk of dissipation of the donor's assets by the donee.

Certificate issuer: A certificate issuer is an individual who is authorised by law to certify that, when an LPA was made: (i) the donor understood the LPA and its scope; (ii) the donor was not induced by fraud or undue pressure to create the LPA; and (iii) there is nothing else that would prevent the LPA from being created. Currently, registered psychiatrists, medical practitioners accredited by the Office of the Public Guardian, and practising lawyers can be certificate issuers.

Public Guardian (PG): The Public Guardian carries out various functions towards enabling and protecting persons who lack capacity. These functions include:

- Setting up and maintaining a register of Lasting Power of Attorney and a register of court orders that appoint deputies;
- Supervising deputies;
- Receiving reports from donees and deputies; and
- Investigating any alleged violation of any provision in the Mental Capacity Act, including complaints about the way in which donees and deputies are exercising their powers.

Mental incapacity: An individual lacks mental capacity in relation to a matter if, at the material time, he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. An individual is unable to make a decision for himself if he is unable to: (i) understand the information relevant to the decision; (ii) retain that information; (iii)

use or weigh that information as part of the decision-making process; or (iv) communicate his decision (whether by talking, using sign language or any any other means).