

CODE OF PRACTICE
Mental Capacity Act (Chapter 177A)
Professional Deputies and Donees

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I. Introduction

This guide is for eligible individuals who are within the prescribed classes of professionals under the Mental Capacity (Registration of Professional Donees) Regulations 2018 (“the Regulations”). You must attend and pass the training course by a person appointed by the Public Guardian, to prepare you for your role as professional deputies and/or donees.

As a professional deputy and/or donee you are entitled to be paid for your professional services. In making decisions on behalf of your clients who lack capacity to make decisions for themselves, you must ensure that the decisions made are reasonable, prudent and in your client’s best interests.

If you are faced with difficult or complicated decisions involving financial matters, medical treatment or personal welfare matters, we recommend that you seek independent advice from professionals with the relevant expertise.

The information found in this guide is not intended to be legal advice and is not meant to be a substitute for professional advice in real life cases. The scenarios and examples in this guide are also for illustration only. The characters and situations used are fictitious and are not in any way to be taken as precedents for decisions that need to be made in similar situations. They are also not indicative of how a court would decide any particular case as that would depend on the actual facts of each case before the court, which may include relevant facts that are not considered in the examples.

Finally, while the Office of the Public Guardian (OPG) may have information relevant to your practice as a professional deputy and/or donee, we cannot give legal, financial, medical or other professional advice. For that, you may wish to speak with a solicitor, accountant, doctor or other relevant professional.

II. Registration of Professional Deputies

Important points to note:

- You must meet the registration criteria set out in the Regulations before you apply for registration.
- You have attended and passed the prescribed training course relating to the general duties and responsibilities of a professional deputy and any one or both of the following modules: (i) training course relating to personal welfare matters and (ii) training course relating to property and affairs matters. You must be certified for the decision-making area(s) which you wish to act in. You had passed this course not later than 6 months prior to your application for registration as a professional deputy.
- Upon successful registration as professional deputy, you must continue to meet the registration criteria and the Public Guardian's terms and conditions during the 2-year term of your registration. Failure to comply may lead to a cancellation by the Public Guardian of your registration before the expiry of the 2-year term.
- The validity period of each registration is 2 years and you should apply to be registered again before the expiry of your original registration. OPG will send you reminders 2 months prior to the expiry of your original registration. You must ensure that you have a valid and subsisting registration in order to continue acting for your clients for remuneration.
- The Public Guardian may impose terms and conditions of registration and these will be specified on the website of the Office of the Public Guardian.
- The Public Guardian does not have the discretion to waive any of the registration criteria.
- If you are successfully registered with the Public Guardian, you may then be appointed as a professional donee under a Lasting Power of Attorney and/or a professional deputy by the courts for remuneration.
- If the Public Guardian refuses to register you or cancels your registration as a Professional Deputy, you may make representations to PG within 14 days of the date of the notice of refusal/cancellation for a reconsideration of the matter. (A copy of the form for representations can be found on OPG's website).

- If you wish to appeal against PG's decision to refuse or cancel your registration as a Professional Deputy, you may make an appeal to the Minister for Family and Social Development. (A copy of the form for appeal can be found on OPG's website).

III. Applying to Court for a deputyship appointment

In preparing your application to court, you should ensure you have the documents and information relating to P set out in the checklist below:

S/N	Description	Requirements
1.	Medical report on your client's mental incapacity	Medical report must be current and shall not be made more than 6 months before the date of the application (see para. 54(9)(c) of the Family Justice Courts Practice Directions).
2.	Schedule of P's Assets and Liabilities (with supporting documents e.g. bank statements, CPF statements, CDP statements, insurance policies and related documents, title searches, tenancy or lease agreements, statements of accounts, loan agreements, IOUs, memos, correspondences etc)	Include best possible estimates and values of all assets and liabilities known to you as the prospective deputy at time of application to court.
3.	P-Focused Plan (with supporting documents e.g. medical / health reports, social worker's report etc)	Identify the type of care plan you as the prospective deputy have identified to meet P's needs, depending on whether P is living in the community or in an institution (e.g. nursing home).
4.	Proposed charges for professional fees for current and future work in management of P's matters	Work out the reasonable amount of fees that you as the prospective deputy propose to charge P for services to be rendered based on P's needs.

IV. Best practices for a Professional Deputy

1. Get to know P and identify how you can assist P as a Professional Deputy

- (i) Find out where P is currently residing and visit P. Plan ahead before visiting P to ensure that the day and time of visit is best for P (i.e. P is in an optimized state, not ill or under medication which may affect his mental state and P's care givers are available and on hand to assist during the interview including to clarify, explain and translate for P).
- (ii) As far as possible (to the degree that P's incapacity allows), interview P to obtain a profile of P and P's past and present feelings, wishes, beliefs, values, interests, lifestyle and habits. (Use appropriate ways to communicate with P, for example, speaking in P's preferred language or through a translator or care giver.)
- (iii) Interview P's care givers in the community and other professionals involved in the care of P to obtain a comprehensive profile of P including:
 - a. P's personal particulars such as full name, age, marital status, family background, work history, medical history and social history (including friends whom P has associated or associates with). (The professional must take copies of all available supporting documents which reflect P's personal particulars e.g. NRIC / birth certificate, marriage certificate, family tree, CPF and income tax statements etc).
 - b. P's possible past and present feelings, wishes, beliefs, values, interests, lifestyle and habits;
 - c. P's current needs (i.e. daily living, medical, care giving and other needs) and past and present expenditure. (The professional must take copies of all available supporting documents e.g. receipts, invoices, statements of account and other records).
 - d. P's past decisions made (including gifting and whether P has made a will) and the reasons for any decision.

Mdm Fung's story

Mdm Fung is an elderly lady with no spouse or children. She lives alone in a terrace house and had been assessed several years ago to be suffering from early onset dementia. Based on an alert by Mdm Fung's neighbours, social services recently visited her at home and found that she did not have electricity and access to food. She was also found to be in poor physical health. Social workers tried to locate her next of kin to be her proxy decision makers but to no avail. As Mrs Fung owns the house she lives in, she is not eligible for financial assistance. However, the social workers provide her with food rations.

In this situation, it would be in Mdm Fung's best interest to live in a habitable environment where she gets access to water, food and health care. You can seek to be appointed as Mdm Fung's professional deputy with authority to decide on a P-focused plan for her and to unlock or monetize her assets for her care needs. You may wish to consider visiting Mdm Fung at her home accompanied by one of the social workers whom Mdm Fung is familiar with to gain an understanding of Mdm Fung's living situation and needs. You should consult the social workers, neighbours and doctor(s) to obtain a profile of Mdm Fung and her personal circumstances.

2. Check and understand your court order

Court orders are different and vary for each deputyship depending on P's needs and assets to be managed. If you are being represented in the application to court for deputyship appointment, you will receive the draft court order from your lawyer. Make sure you understand the exact areas of authority it covers. Read through the draft court order carefully to check for errors such as spelling errors or wrong bank account numbers and clarify any queries you may have with the court or your counsel.

3. Letting others know of your appointment

You should inform relevant individuals and organizations of your appointment as a Deputy. Some examples of individuals or organizations are:

- Hospitals or nursing homes;
- Government agencies for social support schemes and services, housing benefits, tax rebates etc;
- Banks, insurance companies and other financial institutions where P has an account or policy;
- Solicitor who holds P's Will and/or property deeds.

When transacting with third parties, you will be asked to produce a Certified True Copy of the sealed order of court reflecting your appointment.

4. Secure your client's assets and set up separate accounts

Once you have access to P's accounts and know his/her sources of income and assets, you must prepare a full inventory of P's assets as well as make a list of existing liabilities (you may wish to create a spreadsheet). Pay any outstanding bills and cancel any payments if they no longer apply.

The court order should also include directions for you to set up a separate account for P to manage P's financial matters. Once this account has been set up, you may wish

to arrange GIRO payments / direct debits to make it easier to manage P's regular payments.

5. Write and submit your deputy report to the OPG

The court order will contain directions for you to submit a deputy report annually to the OPG. The sample deputy report form can be downloaded from OPG's website.

Consider the following example:

Ms Audrey's story

As a court-appointed Professional Deputy for her client (P)'s 'Personal Welfare' and 'Property & Affairs' matters, Ms Audrey's followed the P-focused plans, and kept in regular contact with P's caregiver and visited P once a month. As this was her first appointment as a professional deputy, she checked with OPG on what should be included in her first annual deputy report.

Based on the template report made provided by OPG, Ms Audrey kept clear file notes of her monthly visits with P and made a record of P's circumstances and any changes to P's needs. As P regularly consulted a geriatrician for health checks, P also made sure to obtain the latest memos from P's geriatrician on P's health status. She also filed away all relevant documents relating to her management of P's financial matters such as receipts, invoices, account statements and correspondence conscientiously.

When the time came for submission of her first annual deputy report to OPG, Ms Audrey was able to do so promptly and easily.

In this case, the professional deputy made it a point to check with OPG at the start of the deputyship to ascertain what is required to be included in the annual deputy report to OPG. She was able to submit her first annual deputy report to OPG within the stipulated timeframe. Failure to comply with the Court's directions for submission of deputy reports to the Public Guardian amounts to a breach of the terms of the court order and you may be liable for contempt of court proceedings. If found guilty of contempt, you could be fined up to \$2,000 or be imprisoned for a term not exceeding 6 months or both¹.

6. Act in P's best interests

A professional deputy must always act in P's best interests. This means you must make decisions for P's benefit and not for anyone else.

In working out P's best interests, bear in mind:

- His past and present wishes

¹ Section 11(2) of the Family Justice Act 2014

- His beliefs and values
- The views of family members, parents and carers
- Whether P might regain mental capacity and if you can delay the decision until then

Mr Ong's story

Mr Ong is critically ill and requires round the clock supervision by medical staff. He lives alone but is currently hospitalised. He has a distant niece who prefers not to make decisions on his behalf as she is not close to him and does not want to deal with Mr Ong's 'girlfriend'. His girlfriend who claims to be staying with him insists that he be discharged from the hospital and that she will take care of him, despite the doctors' advice. Mr Ong's niece agrees for him to have a professional deputy appointed by the court to manage his affairs and so that she

Before applying to the Court to be appointed as Mr Ong's Professional Deputy, a P-focused plan for P's best interests and based his needs must be worked out. To complete the plan, information must be gathered from the relevant parties, including P's niece, 'girlfriend' and medical professionals.

7. Keep a record of your decisions and transactions made on behalf of P

It is your duty to keep a file record of the decisions and transactions made on P's behalf along with supporting documents (i.e. receipts, bank statements, invoices and correspondence where possible). The file records must be clear, complete, contemporaneous and regularly updated. If you consulted other people about a decision, make a note of the discussion and keep a file record. You will need to include these records when you submit your deputy report to the OPG.

To consider the following example:

Ms Audrey's story (continued)

A few months prior to her 2nd annual report submission, Audrey met with a personal family crisis and had to request her successor deputy to take over her role in the interim.

As a result of Audrey's good record-keeping, the successor deputy was able to submit the 2nd annual report to OPG without needing to request an extension of time. More importantly, the successor deputy was able to effectively take over the management of P's affairs in the interim without affecting the standard of care for P.

It is thus very important that you as a professional deputy keep clear and contemporaneous file records of decision and transactions. This will allow for a smooth handover of cases to the

successor deputy such that the successor deputy is in a position to properly carry on with the management of P's matters. This is important to ensure continuity in the care P. The successor deputy was also able to submit the 2nd annual report to OPG on time.

8. Avoiding or managing conflict of interest

A professional deputy must avoid placing himself in a situation of conflict of interest and self-dealing, or the appearance of conflict of interest and self-dealing when addressing the needs of P.

For example, a professional deputy who prefers the settlement of his/her last unpaid deputyship bill over P's nursing home fees may be acting in conflict with P's interests.

9. Take on caseload that you can handle

You should be realistic in taking up cases, bearing in mind that you have no control over when an LPA doneeship case may be activated (this depends on when your client loses mental capacity). You should ensure that you have sufficient time and resources to manage all your cases. In the event you will be temporarily absent, you must ensure that your successor deputy / replacement donee has sufficient capacity and resources to take on your cases in the interim.

10. Obtain professional indemnity insurance coverage

You are encouraged to obtain professional indemnity insurance coverage especially if you are seeking to manage some or all of P's property and financial matters. The purpose of the coverage is to protect P's assets if you fail to perform your deputyship duties.

11. Successor Deputies

To ensure continuity in the care and management of P's affairs, if you are seeking to be appointed by the court as a professional deputy for a client, you must name at least 1 successor deputy in your application. The successor deputy must be a qualified professional deputy currently registered with OPG, and consent to the proposed appointment.

In the court application, you as the prospective deputy must include specific prayers such that the successor deputy will have the authority to (i) act in relation to specific matters during your temporary absence e.g. authority to consent to medical treatment and to operate P's bank account and (ii) act as a permanent replacement for you in the event you are ineligible or unable to carry on performing the role.

For interim cover

In the event that you as the appointed professional deputy are required to take a temporary leave of absence (e.g. vacation leave, medical leave, maternity leave), you must (i) notify OPG of the reasons for and period of absence in the prescribed form and (ii) provide a letter of authority to the successor deputy to enable the successor deputy to act in your stead during the stipulated interim period. The form of notice and template letter of authority can be found on OPG's website.

With the signed letter of authority from you as the appointed professional deputy and the sealed order of court with express powers granted to the successor deputy to act in the interim, the successor deputy should be able to take the necessary steps to act for and on behalf of P, including transacting with third party agencies.

For permanent replacement

In the event that the successor deputy is taking over from you because you wish to cancel your registration, step down or you become permanently unable to act (e.g. due to loss of mental capacity, disability or death) or are disqualified from acting, the successor deputy must apply to court to confirm his/her deputyship appointment. In the said application, he must name his own successor deputy.

It is contemplated that there may be a transitional period between the time you as the original appointed professional deputy cease to act and the issuance of the court order appointing the successor deputy as the new deputy. The successor deputy shall have the authority to act in the transitional period similar to the situation where he provides interim cover for your temporary absence.

As a professional deputy, you must also ensure that your internal office processes and standard operating procedures cater for a situation where you are unable to continue acting for P due to an unplanned or emergency hospitalization or temporary or permanent disability. As a best practice, you should put in place a system for OPG and the successor deputy to be notified of such a situation to ensure continuity in the care and management of P.

V. Best practices for a professional donee

1. Agree with the donor on a care plan and assets to be managed at the start

When agreeing to act as a professional donee in a Lasting Power of Attorney (LPA), it is best for you to reach a mutual understanding and agreement on a care plan for the donor, and the management of his assets in the event that he loses mental capacity.

2. Agree with the donor on your professional fees

As a best practice, you should develop for the donor's agreement, a fee schedule for the contemplated work to be done in managing his affairs and assets in the event he loses mental capacity.

3. Keep a record of your decisions and transactions made on behalf of the donor

It is your duty to keep a file record of the decisions and transactions made on the donor's behalf along with supporting documents (i.e. receipts, bank statements, invoices and correspondence where possible). The file records must be clear, complete, contemporaneous and regularly updated. If you consulted other people about a decision, make a note of the discussion and keep a file record.

4. Prior to activation of LPA

Keep in regular contact with the donor to stay updated on his circumstances, including his mental health status. It is also good practice to make the arrangements with the donor on how the relevant persons/ organisation (e.g. healthcare institutions) can contact you to inform you in the event that he loses mental capacity.

5. After LPA has been activated

In the event you suspect or have been informed that the donor lacks mental capacity, please ensure that he is formally assessed by a qualified medical practitioner and obtain a copy of the medical assessment report. A standard medical assessment report is available for download from OPG's website and is available at Appendix A.

Once it is medically confirmed that the donor has lost mental capacity, you must inform the OPG when your powers under the LPA are have been activated as a result. You will

be required to render a report (see Appendix B) of your management of your client's matters within 2 months of activation of your LPA powers.

As a best practice, you may also wish to inform OPG if you are planning to undertake significant transactions on behalf of your client such as:

- Buying and selling of property;
- Opening and closing of bank accounts
- Significant withdrawals of the donor's monies in bank accounts and his Central Provident Fund accounts.
- Changing of nursing homes and care placements; and
- Consenting to major medical treatments.

6. Encourage the donor to appoint a replacement donee

As a best practice, you should encourage the donor to appoint a replacement donee to act in your place in the event that you are permanently ineligible or unable to act after the LPA has been activated.

In the event that you wish to cancel your registration, step down or become permanently unable to act or is disqualified from acting, the replacement donee will step in and must inform the Public Guardian that he will be taking over the role.

Professional Donees must also ensure that their internal office processes and standard operating procedures cater for a situation where the Professional Donees are unable to continue acting for P due to an unplanned or emergency hospitalization or temporary or permanent disability. As a best practice, the Professional Donee should put in place a system for OPG and the Replacement Donee to be notified of such a situation to ensure continuity in the care and management of P.

VI. Professional fees and other costs

The following are the relevant factors to be considered in determining whether your fees as a professional deputy or donee are reasonable:

S/N	Factors	Remarks
1.	You can only charge for work which he has been given the authority to carry out under the court order or LPA respectively.	For example, a PA deputy can only charge for PA work.
2.	Costs must be reasonable and proportionate to the total value of P's assets.	Professional costs should not result in a serious depletion of P's assets.
3.	<p>Your charge out rate or fixed costs should be commensurate with the amount, complexity and type of work done and your own experience. For example:</p> <ul style="list-style-type: none"> (i) General management of P's person and estate; (ii) Specialised management (i.e. high level complex decisions based on your particular expertise); (iii) Work should be done by the appropriate fee earner or delegated to junior associate, administrative or clerical staff or employee. 	You should clearly describe the type of work expected to be done (in your estimate submitted to court) and post-court order, in your annual reporting, give a breakdown with supporting documents for past work done.
4.	You must satisfy the Court that you are acting accordingly in consideration of P's best interests and that your services are necessary and beneficial to P.	If P's affairs are sufficiently well organised and unlikely to undergo significant new developments, you may wish to consider whether it is necessary to carry on with your role or instead, to set up a trust for P and step down thereafter.
5.	Any changes to P's circumstances during the year that may impact on your fees and time costs e.g. changes to P's financial, living or care arrangements, may be taken into account.	You should inform the Court of such changes and if these changes will result in higher costs being incurred over and above the submitted estimate (e.g. variance of 20%). The Court may re-assess

S/N	Factors	Remarks
		your fees based on your explanation.
6.	For existing cases, Court may consider previous management costs which you had billed for in respect of the same P.	You should charge the same fees for the same type of work done in the past.
7.	Industry benchmarks	You will be measured against other professionals having the same skills and expertise.

VII. When does a professional deputyship or doneeship end?

Your deputyship ends when one of the following events occur:

- (i) **P regains mental capacity.** If this happens, please seek a mental status assessment by a qualified medical practitioner and inform the OPG and the court.
- (ii) **You decide to step down** (i.e. discharge yourself from managing P's matters or cease your professional practice). You must apply to court for your successor or another deputy to take over and render a final report to OPG before you can step down.
- (iii) **P passes away.** You must inform the OPG. OPG may require a final statement of accounts up to P's date of death.
- (iv) **You become ineligible or unable to continue to act** (i.e. being struck off the register of professional deputies, loss of mental capacity or death). Your firm / organization or executor should inform the OPG, the court and the successor deputy. The successor should apply for a court order to take over the role or the court may direct for another deputy to take over if the successor deputy is unavailable.

List of templates, forms and notices on OPG's website

The following information can be accessed on OPG's website and the relevant forms are available for download for use by the professional deputy in the course of his work:

S/N	Item
1.	Application form for registration as a professional deputy
2.	List of documents and information which should accompany application for registration
3.	List of Public Guardian's Terms & Conditions for continued registration