

**Hong Kong Geriatrics Society Response to Law Reform Commission
Consultation Paper on Enduring Power of Attorney
June 2007**

The Hong Kong Geriatrics Society writes in response to the Consultation Paper on Enduring Powers of Attorney (EPA) released by the Law Reform Commission of Hong Kong in April, 2007.

Founded in 1981, the Hong Kong Geriatrics Society is the only local professional society of doctors practicing geriatric medicine. All hospital consultant geriatricians and professors in Geriatric Medicine are regular members of our Society. There are up to now 180 members with 42 associate members in the Hong Kong Geriatrics Society. Geriatricians are responsible for the management of acute and chronic illness, severe disability and terminal conditions in elderly people.

Our response stated in the following paragraphs will generally focus on the specific questions set out on page 39 of the Consultation Paper.

It is our opinion that the existing witness requirements for executing an EPA should be relaxed.

Medical witness for the purpose of certifying mental competence at the time of executing an EPA should not be removed. The onset of diseases, ill-health, physical and mental disabilities can often be the catalyst for an individual to consider the use of EPA whereby he is able to delegate legal authority to another. He may be bordering on mental incapacity or at least at some risk of incompetence by virtue of health reasons. The medical doctor would be the best person, under the above circumstances, to assess the mental competence of the donor of EPA. In fact, during our day-to-day practice, doctors are often requested by bankers, insurers and solicitors to certify mental competence for their clients when in doubt. The medical witness requirement can minimize subsequent disputes as to whether the individual at the time of executing an EPA has the necessary decision-making capacity.

Another argument for preserving medical witness requirement is to be understood under the premise that personal care will be included in the scope of EPA. An EPA will most often apply where the donor is an elderly person and has gradually lost capacity to make decision for himself. His attending doctor has a strong role in giving advice regarding the foreseeable level of personal care required in the future. An

analogy can be drawn in respect to the proposed Model Form for Advance Directive where medical witness plays an important part in explaining to the person making the advance directive health care issues relevant to his decision making. The same rationale underpins our support for retaining existing medical witness requirement. Notwithstanding our view to retain medical witness requirement for executing an EPA, we do not think that the medical witness should necessarily sign at the same time as the solicitor witness. As to the maximum period allowable between the time the medical witness signs and the time the donor and the solicitor sign, we propose 28 days.

The Hong Kong Geriatrics Society supports the concept of EPA and encourages its widespread use. Greater publicity should be given to the concept of EPA. The Consultation Paper postulated that the low take-up rate of EPA was attributed to, inter alia, the unduly onerous requirement that a solicitor and a doctor be present together at the time the EPA is signed. However we believe that the lack of public awareness and understanding of the concept within community is the main substantial factor.

The form at Annex B should be adopted. As we contemplate that most individuals would like EPA to take effect only at the time the donor became mentally incapable, such an option restricting the powers granted to the attorney should be specifically articulated under point 5 'About Using this Form' Annex B, page 47 of the Consultation Paper.

Promoting personal autonomy is in line with the belief and value of the Hong Kong Geriatrics Society. The right of an individual to appoint an attorney should, in principle, be upheld to the extent that decisions in relation to personal care matters can also be included within the ambit of EPA. Yet, personal care matters are more directly related to the individual's welfare and often have public resources implications. Hence we think that the attorney should be subject to a review mechanism whereby an interested party can appeal to the court or a tribunal on the basis that the attorney, in exercising his powers, is acting against the best interests of the individual concerned or public interests at large. The attorney should abide by the notion that whoever is given power must also be made accountable and responsible.