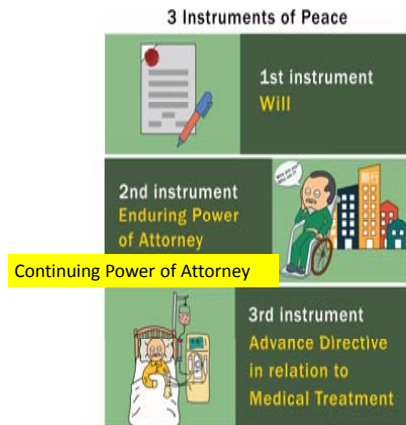


**What the DoJ consultation paper on CPA proposes for proxy decision in personal care and healthcare**

Angelina Luk  
Solicitor, Notary Public

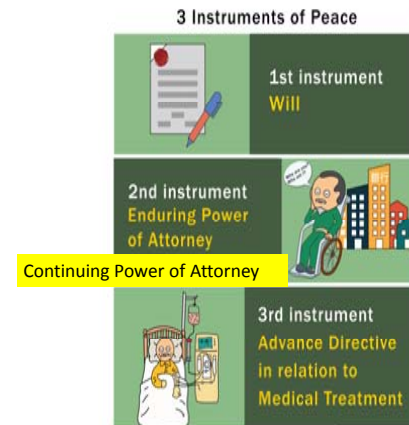


**Legal documents to give Peace of Mind by providing for the contingencies of**

Death Will

Mental incapacity EPA → CPA

Terminal illness AD



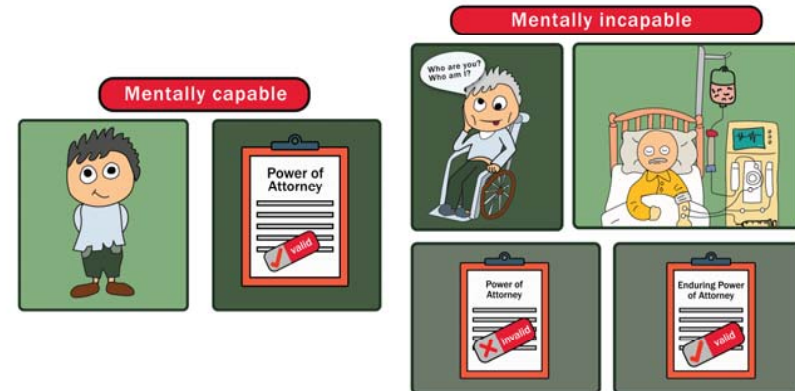
### Government Press Release

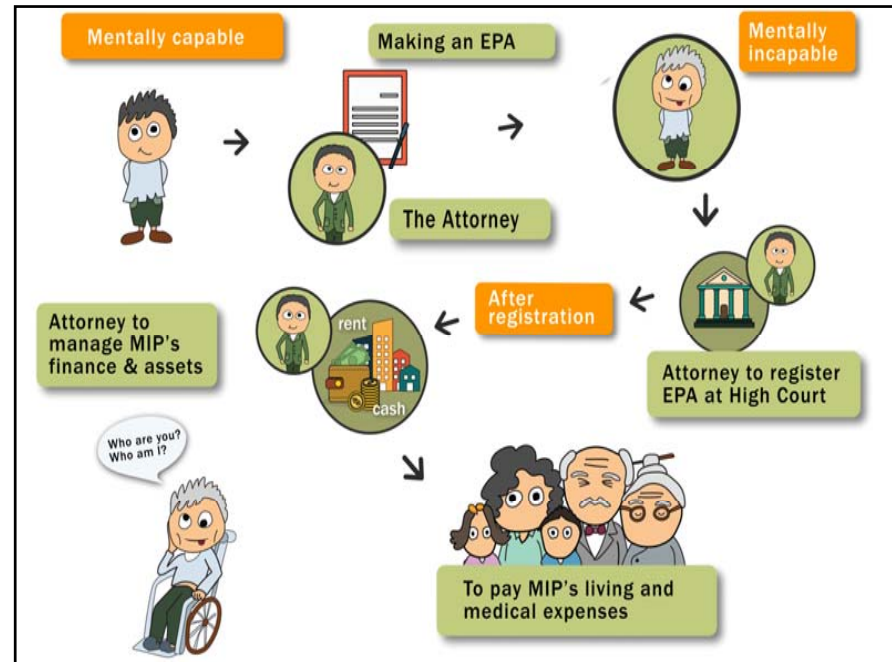
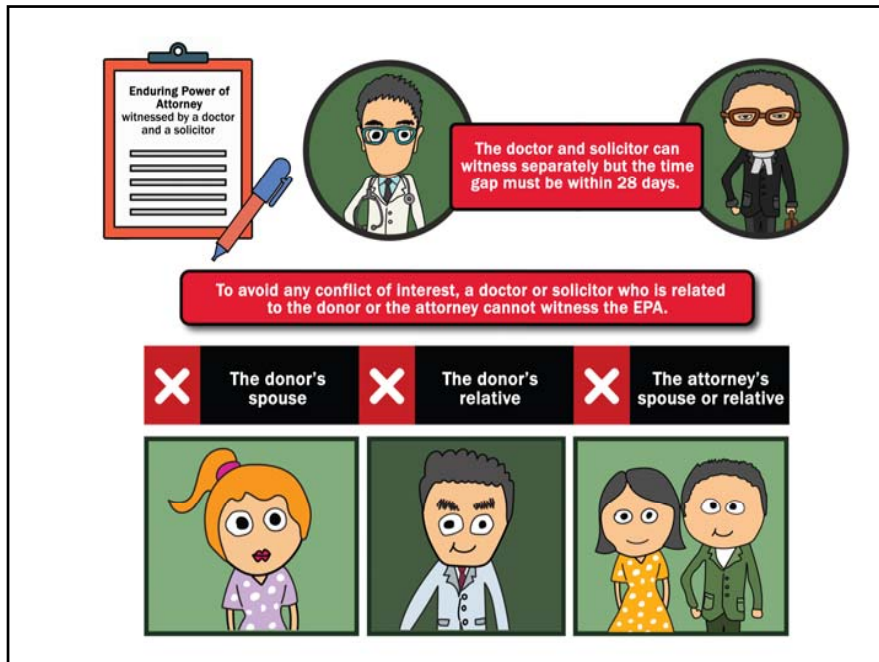
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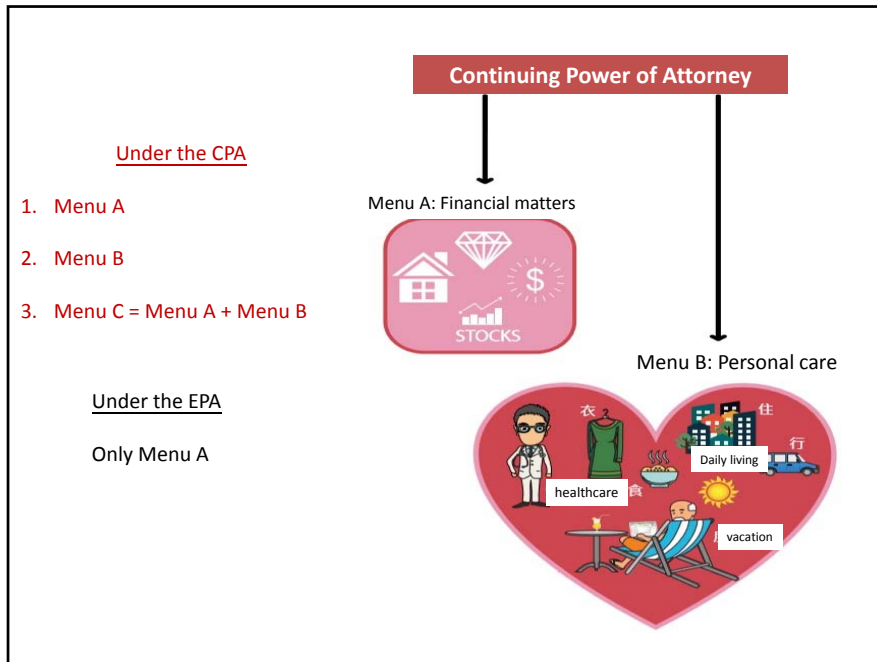
Consultation period on proposed legislation on continuing powers of attorney extended to April 28

- “an EPA is a legal instrument which **allows** its donor (i.e. the person who gives a power of attorney in favour of someone), while he or she is still mentally capable, to appoint attorney(s) to take care of the donor's affairs in the event that he or she subsequently becomes mentally incapacitated.
- At present, the powers which may be delegated under an EPA in Hong Kong are limited to decisions in relation to the property and financial affairs of the donor.
- The Law Reform Commission of Hong Kong (LRC) published the report on "Enduring Powers of Attorney: Personal Care" (**2011 Report**) in July 2011. The report recommended the extension of the scope of an EPA to cover also decisions on a donor's personal care. Subsequently, the DoJ established an inter-departmental working group (IWG) to study the 2011 Report.
- the DoJ has prepared the proposed **Continuing Powers of Attorney Bill** (the Bill) with a view to **implementing** the relevant recommendations in **the 2011 Report**.
- the new Continuing Powers of Attorney Ordinance will be enacted to **replace** the existing EPA scheme.
- Under the Bill, the donor confers on the attorney authority to act for (including making decisions for) the donor on any matters relating to the personal care, and property or financial affairs, of the donor.”

### Why is a PA not good enough?







**CPA Bill**  
**3. Nature of continuing power**

(1) A person (donor) who is not mentally incapable may, by giving a continuing power, confer on another person (attorney) authority to act for the donor in relation to any or all of the following—

- (a) the donor’s **personal care** matters;
- (b) the donor’s financial matters.

...

(5) Also, the **attorney may act** for the donor in relation to any of the donor’s **personal care** matters **only if** the attorney believes on reasonable grounds that the **donor is mentally incapable** of acting on his or her own in relation to those matters

## CPA Bill

2. Interpretation

- **personal care matters** (個人照護事宜), in relation to an individual, **means matters concerning the welfare**, other than the financial matters, of the individual;

## CPA Bill

6. Personal care matters on which attorney may act

Subject to section 5, the **personal care matters** on which the attorney for a continuing power may act for the donor **include** the following—

- (a) where the donor lives;
- (b) whom the donor lives with;
- (c) the donor's daily dress and diet;
- (d) what education or training the donor undertakes;
- (e) whether, and if so where and how, the donor works;
- (f) whether the donor applies for a licence or permit;
- (g) whether, and if so where, the donor goes on holiday;
- ...

## CPA Bill

**6. Personal care matters on which attorney may act**

Subject to section 5, the **personal care matters** on which the attorney for a continuing power may act for the donor **include** the following—

- ...
- (h) whether to refuse any specific individual to have access to, or contact with, the donor;
- (i) legal matters relating to the donor's personal care;
- (j) matters relating to the donor's **healthcare**, including the following for the purpose of providing healthcare to the donor—
  - (i) access to the donor's health record;
  - (ii) sharing the record (or any part of it) with a person (other than the donor);
  - (iii) giving consent to a person (other than the donor) to have access to the record and to further share the record with another person;
- (k) whether to consent to a forensic examination of the donor.

## CPA Bill

**2. Interpretation**

**healthcare** (醫護服務), in relation to an individual, **means** an activity performed for the individual for—

- (a) assessing, recording, maintaining or improving the individual's health;
- (b) diagnosing the individual's illness or disability; or
- (c) treating the individual's illness or disability, or suspected illness or disability

CPA Bill  
5.Restrictions on  
decisions in relation to personal care matters

(1) The **attorney** for a continuing power in relation to a personal care matter **may not** make a decision to do any of the following—

- (a) to remove non-regenerative tissue or any organ from the donor while the donor is alive— (i) for transplanting into another person; or (ii) for any purpose that is not in the donor’s best interests;
- (b) to sterilize the donor if the donor is, or is reasonably likely to be, fertile;
- (c) to place the donor in a mental hospital (as defined by section 2(1) of the Mental Health Ordinance) for treatment of mental disorder against the donor’s will;
- (d) to give, refuse or withdraw any **life-sustaining treatment** for the donor;
- ...

CPA Bill  
5.Restrictions on  
decisions in relation to personal care matters

(1) The attorney for a continuing power in relation to a personal care matter may not make a decision to do any of the following—

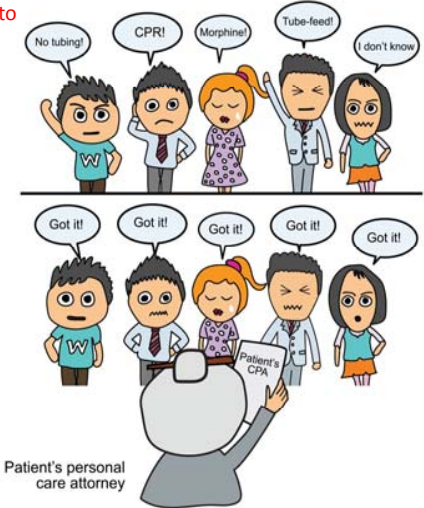
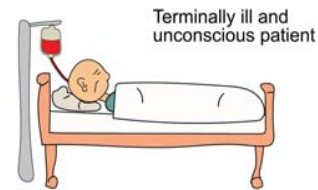
- ...
- (e) to make, vary or revoke an advance directive for the donor;
- (f) to make the donor participate in any medical research or experimental healthcare;
- (g) to make the donor take any electroconvulsive therapy or psychiatric surgery;
- (h) to make the donor take any reproductive technology procedure (as defined by section 2(1) of the Human Reproductive Technology Ordinance (Cap. 561));
- (i) to make the donor take any healthcare or medical procedure that is prohibited by the laws of Hong Kong;
- (j) to make the donor take a type or form of healthcare as may be prescribed for the purpose of this section.

CPA Bill  
5. Restrictions on decisions in relation to personal care matters

- **life-sustaining treatment** (續命治療), in relation to an individual, **means** a treatment which, in the view of a person providing healthcare for the individual, is necessary to sustain the individual's life.

Because of the CPA Bill restriction, this scenario will **NOT** happen:

The attorney may **NOT** make a decision to give, refuse or withdraw any life-sustaining treatment for the donor.





## CPA Bill

19. Acts in best interests of donor

In performing the duties under section 18, an attorney must—

- (a) act in the donor's best interests, having regard so far as practicable to **the donor's wishes and feelings that are ascertainable**; and
- (b) consult, if practicable and appropriate, the views of—
  - (i) any person named by the donor as a person to be consulted on matters arising in relation to the continuing power; and
  - (ii) any person caring for, or interested in the welfare of, the donor.

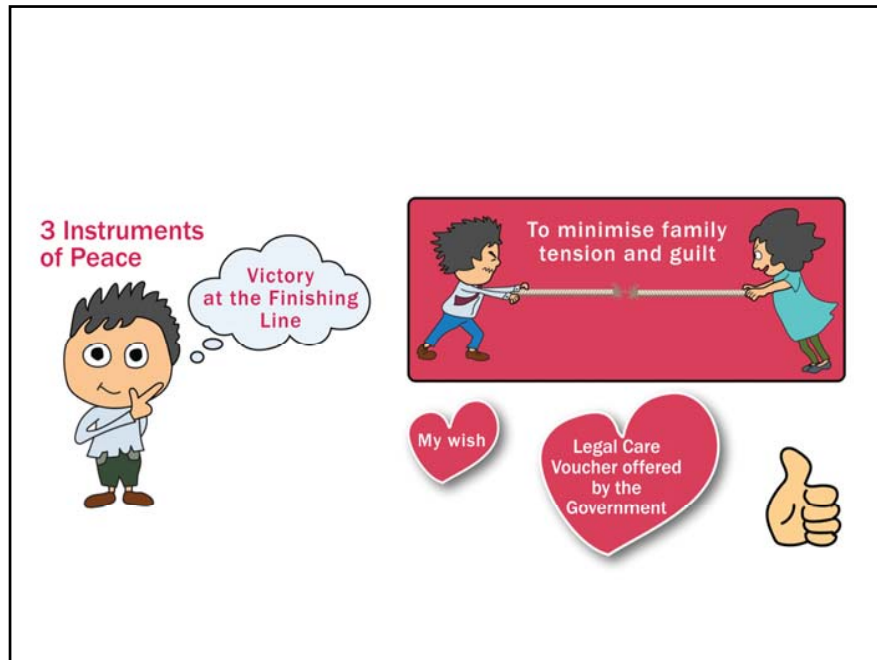
The donor's wishes after he/she becomes MIP (change of character)???

## 32. Commencement of continuing power for personal care matters

(1) If a continuing power confers on an attorney authority to act for the donor only in relation to the donor's personal care matters, the continuing power **commences when both** of the following events **happen**—

- (a) the donor has become **mentally incapable** of making decisions about those matters;
- (b) the instrument creating the continuing power is **registered** under section 37.

(2) The date of **the later of the 2 events** under subsection (1) is regarded as the **commencement date** of the continuing power.



Before taking the matter forward, DoJ would like to seek in particular the views of the legal, healthcare and welfare sectors, professional bodies and other interested parties on the proposed Bill outlined above.

Please address your views or comments on the proposed Bill to the following on or before 28 April 2018:

Mr Bernard Yue

Senior Government Counsel

Legal Policy Division

Department of Justice

5/F, East Wing, Justice Place,

18 Lower Albert Road,

Central, Hong Kong

Fax: 3918 4799

Email: [cpa@doj.gov.hk](mailto:cpa@doj.gov.hk)

## Instrument of peace

Lord, make me an instrument of Your peace.  
Where there is hatred, let me sow love;  
where there is injury, pardon;  
where there is doubt, faith;  
where there is despair, hope;  
where there is darkness, light;  
where there is sadness, joy.

St Francis of Assisi