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28 December 2015

Family Development Group  
Ministry of Social and Family Development  
20 Lengkok Bahru #04-02  
Singapore 159053

**BY EMAIL & POST**  
**(consultations@msf.gov.sg)**

Dear Sirs

**Public Consultation Paper on the Draft Mental Capacity (Amendment) Bill 2015**

1 We refer to the Public Consultation Paper on the draft Mental Capacity (Amendment) Bill 2015.

2 The draft Bill was referred to our practice committees for views and the same are set out in Annex A. We would be grateful if these views are taken into consideration.

3 Thank you.

Yours faithfully

K Gopalan  
Director, Representation and Law Reform

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**ANNEX A –  
COMMITTEES' VIEWS ON THE DRAFT MENTAL CAPACITY  
(AMENDMENT) BILL 2015**

## **COMMITTEES' VIEWS ON THE DRAFT MENTAL CAPACITY (AMENDMENT) BILL 2015**

### **A Professional Donees/Deputies**

1 The Civil Practice Committee ("CPC") and the Probate Practice and Succession Planning Committee ("PPSPC") generally agrees with the proposed amendments to the Mental Capacity Act ("MCA"). The CPC is of the view that there is a need for professional donees or deputies as there are people who either have no relatives or have no relative that they would like to appoint as their donee or deputy. The PPSPC is of the view that this is a welcome addition to the Singapore landscape to care for the mentally incapacitated persons.

2 The CPC raised a concern that there could be unscrupulous professional donee or deputy who could defraud the person that they are taking care of and flee with his or her money. Therefore, the CPC proposed that a person would need 2 professional donees or deputies to safeguard the interests of the person, regardless of the increase in costs.

3 The PPSPC also supports the clarification that (with the introduction of professional donees and professional deputies) donees and deputies are to act "without remuneration". This will avert in the future cases where [as has happened in the UK and there are many reported cases by the England and Wales Court of Protection ("EWCOP") of such cases] donees and deputies, who are the next-of-kin or other close family members of the donor or the patient charge to the funds and estate of the donor / patient huge amounts for their so-called care and the amounts are so egregious that the Public Guardian had to step in to apply to the EWCOP remove the greedy donees / deputies.

### **B Lasting Power of Attorney**

4 The CPC noted that the current Form 1 of the Lasting Power of Attorney ("Form 1") gives certain discretionary powers to the donee, such as giving or refusing consent to carry out or continuing medical treatment on the donor, making gifts of cash to others etc. As professional donees are not relatives or friends of donors, the CPC suggests that the existing Form 1 be revised to curtail such discretionary powers and the donor should indicate, where possible, what he/she wants, and a different Form 1 should be created for professional donees.

5 The PPSPC also hoped that when there is another opportunity to review the MCA, more safeguards can be built into the criteria of when a person is deemed to lack mental capacity (Section 13(10) of the MCA) as this may be quite easily circumvented and abused. It was raised that there could be situation where a dishonest donee could team up with a registered medical practitioner who is willing to issue the necessary medical certificate to confirm that the donor is lacking in mental capacity (or perhaps for the donee to forge such a certificate) and the donee will be able to realise and gain access to the donor's property and affairs. It is anticipated that if this situation occurs, the confidence of the public in making Lasting Power of Attorney could be seriously undermined.