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**MENTAL CAPACITY ACT
(CHAPTER 177A)**

**MENTAL CAPACITY
(REGISTRATION OF PROFESSIONAL DEPUTIES)
REGULATIONS 2018**

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred by section 46 of the Mental Capacity Act, the Minister for Social and Family Development makes the following Regulations:

Citation and commencement

1. These Regulations are the Mental Capacity (Registration of Professional Deputies) Regulations 2018 and come into operation on 1 September 2018.

Definitions

2. In these Regulations, unless the context otherwise requires —
“care facility” means —

(a) any day centre or home for the disabled or the aged; or

(b) any welfare, nursing, rehabilitation or convalescent home;

“disciplinary proceedings” means any inquiry, investigation or other proceedings of a disciplinary nature that may be taken by a professional body under any written law against a member of a profession for any alleged professional misconduct;

“eligible professional” means —

- (a) an advocate and solicitor of the Supreme Court who has in force a practising certificate under the Legal Profession Act (Cap. 161);
- (b) a public accountant who has in force a certificate of registration under the Accountants Act (Cap. 2);
- (c) a chartered accountant registered under the Singapore Accountancy Commission Act (Cap. 294B);
- (d) a fully registered medical practitioner who has in force a practising certificate under the Medical Registration Act (Cap. 174);
- (e) an allied health professional with full registration in a prescribed allied health profession and who has in force a practising certificate under the Allied Health Professions Act (Cap. 6B);
- (f) a registered nurse who has in force a practising certificate under the Nurses and Midwives Act (Cap. 209); or
- (g) a social worker or social service practitioner who is registered with the Social Work Accreditation and Advisory Board;

“P” has the meaning given by section 11(1) or 20(1) of the Act;

“Public Guardian’s website” means the website of the Public Guardian at <http://www.publicguardian.gov.sg>;

“specified offence” means any of the following offences:

- (a) criminal misappropriation, criminal breach of trust, cheating, theft or extortion or any other offence involving fraud or dishonesty;
- (b) any offence specified in Chapter VIII, XIV or XVI of the Penal Code (Cap. 224);
- (c) any offence specified in Part III of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184), or in the Public Order Act (Cap. 257A).

Application for registration as professional deputy

3.—(1) An application for registration as a professional deputy must —

- (a) be in such form and manner as specified on the Public Guardian’s website;
- (b) be accompanied by the appropriate fee specified in the Mental Capacity (Public Guardian Fees) Regulations 2010 (G.N. No. S 106/2010);
- (c) be accompanied by such documents and information as specified on the Public Guardian’s website; and
- (d) where the application is made during the currency of an existing registration, be made not later than 2 months before the expiry of the existing registration.

(2) The Public Guardian may refuse an application that is incomplete or not made in compliance with paragraph (1).

Criteria for registration of individual as professional deputy

4. For the purposes of section 25A(2) of the Act, the Public Guardian may register an individual as a professional deputy if the Public Guardian is satisfied —

- (a) that the individual is a citizen or permanent resident of Singapore;
- (b) that the individual has attained 21 years of age;

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- (c) that the individual is an eligible professional —
- (i) who has practised in his or her profession for a continuous period of at least 5 years immediately before the date of the individual’s application; or
 - (ii) who is or has been appointed as a deputy by the court under section 20(2) of the Act, or has represented (as an advocate and solicitor of the Supreme Court) another individual in relation to that individual’s application for appointment as a deputy under section 20(2) of the Act;
- (d) that the individual intends to provide the services of a professional deputy in the course of his or her employment, or as part of the practice of his or her profession;
- (e) that the individual is not a bankrupt or discharged bankrupt, and does not have any pending bankruptcy proceedings against him or her;
- (f) that the individual has a credit rating of “BB” and above from the Credit Bureau (Singapore) Pte Ltd (or any equivalent rating however renamed by the Credit Bureau (Singapore) Pte Ltd);
- (g) that the individual has completed and passed (whether before, on or after 1 September 2018, but not more than 6 months before the date of the individual’s application) the following training courses conducted by any person appointed by the Public Guardian:
- (i) for every individual — any training course relating to the general duties and responsibilities of a professional deputy;
 - (ii) for an individual who intends to register as a professional deputy who may make decisions on P’s personal welfare — any training course relating to the making of such decisions;
 - (iii) for an individual who intends to register as a professional deputy who may make decisions on

P's property and affairs — any training course relating to the making of such decisions;

- (h) that the individual —
- (i) has not had a judgment entered against the individual (whether before, on or after 1 September 2018); and
 - (ii) does not have a claim made against the individual (whether before, on or after 1 September 2018),
in any civil proceedings (whether in Singapore or elsewhere) involving any allegation of deceit, fraud or fraudulent misrepresentation, breach of fiduciary duty or breach of trust, on the part of that individual;
- (i) that the individual has not been convicted (whether before, on or after 1 September 2018) of a specified offence, or an offence under a law of a foreign territory similar to a specified offence (called in this paragraph a similar foreign offence), and does not have any pending criminal proceedings against him or her in respect of the specified offence or similar foreign offence;
- (j) that the individual is not subject to any disciplinary proceedings by the professional body applicable to his or her profession, and does not have any finding of professional misconduct made against him or her (whether before, on or after 1 September 2018) by that professional body;
- (k) that the court has not (whether before, on or after 1 September 2018) made any of the following orders in relation to the individual:
- (i) (because of the circumstances mentioned in section 17(3)(a) or (b) of the Act as in force immediately before 1 September 2018, or section 17(3)(a) or (b)(ii) or (iii) of the Act as in force on or after that date) an order under section 17(4) of the Act directing that an instrument purporting to create a lasting power of attorney not be

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- registered, or revoking the instrument or lasting power of attorney, as it relates to that individual;
- (ii) an order revoking the individual's appointment as a deputy under section 20(8)(a) or (b) of the Act as in force immediately before 1 September 2018, or section 20(8)(b) or (c) of the Act as in force on or after that date;
 - (iii) an order suspending all or any of the individual's powers as a donee or deputy under section 36A of the Act; and
- (l) that the individual is fit to be registered as a professional deputy after taking into account the individual's compliance history with requirements by or under the Act or regulations made under the Act.

Criteria for registration of non-individual as professional deputy

5. For the purposes of section 25A(2) of the Act, the Public Guardian may register a person (not being an individual) as a professional deputy to exercise powers with respect to P's property and affairs if, and only if, the Public Guardian is satisfied —

- (a) that the person is a licensed trust company within the meaning of section 2 of the Trust Companies Act (Cap. 336);
- (b) that the court has not (whether before, on or after 1 September 2018) made any of the following orders in relation to the person:
 - (i) because of the circumstances mentioned in section 17(3)(a) or (b) of the Act, an order under section 17(4) of the Act directing that an instrument purporting to create a lasting power of attorney not be registered, or revoking the instrument or lasting power of attorney, as it relates to that person;
 - (ii) an order revoking the person's appointment as a deputy under section 20(8)(a), (b) or (c) of the Act;

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- (iii) an order suspending all or any of the person's powers as a donee or deputy under section 36A of the Act; and
 - (c) that the person is fit to be registered as a professional deputy after taking into account the person's compliance history with requirements by or under the Act or regulations made under the Act.

Validity of registration

6. Any registration under section 25A of the Act is valid for 2 years unless it is earlier cancelled at the professional deputy's request or in accordance with these Regulations.

Events for cancellation of registration

7. For the purposes of section 25A(4) of the Act, the Public Guardian may cancel a person's registration as a professional deputy upon the occurrence of one or more of the following events:

- (a) the person no longer satisfies any of the criteria for registration prescribed in regulation 4 or 5;
- (b) the person has failed to comply with any of the terms and conditions of registration specified by the Public Guardian;
- (c) the person is, in the opinion of the Public Guardian, otherwise no longer a fit and proper person to act as a professional deputy.

Procedure for cancelling registration

8.—(1) For the purposes of section 25A(6) of the Act, the prescribed period is 14 days.

(2) The representations by a professional deputy after receiving a notice under section 25A(5) of the Act must be made in such form and manner as specified on the Public Guardian's website.

(3) For the purposes of section 25A(8) of the Act, the prescribed period is 30 days.

(4) If the Public Guardian decides to cancel the registration of a professional deputy, the information under section 25A(8) of the Act must specify the effective date of the cancellation.

Procedure for appeal to Minister

9.—(1) For the purposes of section 25A(9) of the Act, the prescribed period is 21 days after the date that the person is notified of the Public Guardian’s refusal to register the person as a professional deputy, or the effective date of the cancellation of the registration, as the case may be.

(2) The appeal to the Minister must be made in such form and manner as specified on the Public Guardian’s website.

Notification of persons on cancellation of registration

10. For the purposes of section 25A(10) of the Act, where a person’s registration as a professional deputy is cancelled, the Public Guardian must notify the following persons of the cancellation within 21 days after the effective date of the cancellation:

- (a) where the person was appointed as a donee under a lasting power of attorney, any other donee or replacement donee specified in the lasting power of attorney;
- (b) where the person was appointed as a deputy by the court, any other deputy or successor deputy appointed by the court for any P for whom that person was appointed as a deputy;
- (c) in relation to P for whom the person was appointed, any director, manager, or any other similar officer responsible for the management, of a care facility that P is cared for or resides in.

Made on 31 August 2018.

CHEW HOCK YONG
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Ministry of Social and Family
Development,
Singapore.*

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