

## Frequently Asked Questions on Lasting Power of Attorney Procedures

### WHAT YOU SHOULD KNOW: LASTING POWER OF ATTORNEY

This guide will provide guidance on how Banks will process and administer instructions provided by Bank customers to their Donees under the Lasting Power of Attorney (“LPA”). Certain administrative processes adopted by Banks in Singapore will also be outlined. Please note that these are guidelines only and each Bank may deviate from these guidelines depending on the circumstances.

#### A. Key basics of the LPA

##### 1. What is the LPA?

The LPA is a legal document which allows a person who is at least 21 years of age (called a ‘Donor’), to voluntarily appoint one or more persons (called ‘Donee(s)’) to make decisions and act on his/her behalf should he/she lose his/her mental capacity one day.

Donees can be appointed to act in either or both of the two broad areas of personal welfare and property & affairs matters.

Please find below the following links to OPG website for more information:

- LPA registration: <https://www.publicguardian.gov.sg/opg/Pages/The-LPA-How-Can-I-Make-a-Lasting-Power-of-Attorney.aspx>
- How to use the LPA: <https://www.publicguardian.gov.sg/opg/Pages/The-LPA-Using-a-Lasting-Power-of-Attorney.aspx>
- List of revoked and suspended LPAs: <https://www.publicguardian.gov.sg/opg/pages/Resource-Revoked-and-Suspended-LPAs.aspx>

##### 2. What is the difference between a personal welfare Donee and a property & affairs Donee?

- Personal welfare Donee:** Only authorised to make decisions about the Donor’s personal matters, including where the Donor should live, day-to-day care decisions and personal correspondence etc.
- Property & affairs Donee:** Only authorised to operate the Donor’s bank accounts and investments, property, purchasing a vehicle or other equipment the donor needs etc.

### **3. What kinds of LPA will Banks accept?**

Banks will only accept LPAs granting the Donee powers to manage:

- (a) the Donor's property & affairs; or
- (b) the Donor's property & affairs and personal welfare.

Banks will not accept LPAs which only grants the Donee powers to make decisions on the Donor's personal welfare.

### **4. Where the Donor maintains a Sole Proprietorship account with the Bank, does the Donee have the right to manage the Sole Proprietorship account on behalf of the Donor?**

Yes, unless the Donor has restricted the powers of the Donee on property & affairs matters through conditions and exclusions. In such a situation, the Donee should ensure that he/she acts within his mandate. The Bank is unable to control or monitor the Donee's exercise of powers (For more information, please see question C3 below).

## **B. Documents required from a Donee**

### **1. What is required of the Donee to start administering the Donor's property and affairs at a Bank?**

The Donee(s) must be physically present at the Bank's branch and present the **originals** of the following documents:

- (a) Donor's LPA or a certified true copy of the LPA from the Office of the Public Guardian (in the absence of the original copy);
- (b) Donor's and Donee(s)' original identity document(s); and
- (c) Donor's medical report certifying the Donor's mental incapacity (For more information, please see question B2 below). The medical report must be dated after the date of LPA registration.

The above list is not exhaustive, and Banks may require the Donee(s) to provide further documents for clarification purposes in certain situations.

## 2. Are there any requirements for medical reports?

Yes, please see the requirements below:

### Requirements for medical reports issued in Singapore:

- a) The medical report must be issued by a certified medical practitioner registered with the Singapore Medical Council.
- b) If handwritten, the medical report must be legible.
- c) The Donor's medical report must clearly state:
  - o Doctor's opinion on the Donor's mental capacity - Banks may reject medical reports that only provide medical jargon.
  - o Whether the Donor's mental incapacity is or is not permanent.

### Requirements for medical reports issued outside of Singapore:

- a) Where the medical report is in a language other than English, it must be translated into English by a certified translator.
- b) If handwritten, the medical report must be legible.
- c) The Donor's medical report must clearly state:
  - o Doctor's opinion on the Donor's mental capacity - Banks may reject medical reports that only provide medical jargon.
  - o Whether the Donor's mental incapacity is or is not permanent.

Banks shall act in good faith that all medical reports or certificates and translations presented are authentic and shall not be liable for any loss resulting from the Donee(s) acting in breach of his/her/their authority under the LPA.

Donees are strongly encouraged to provide the medical report in the recommended medical report template for LPA transactions. Please click here for a copy of this template <https://www.publicguardian.gov.sg/opg/pages/Forms.aspx>.

## 3. What is the validity period for medical reports or certificates?

There is no validity period for medical reports in which a Donor's mental capacity diagnosis clearly states that his/her condition is permanent.

Where a Donor's mental capacity diagnosis in the medical report clearly states that his/her condition is not permanent, the date of the medical report cannot be more than 6 months old at the time of presentment to the Bank.

### **C. Processing of Donee instructions**

#### **1. If there is more than one Donee, how would the Bank process instructions?**

If the LPA states that the Donees are to act:

##### **a. Jointly**

This means that the Donees have to act together and cannot act separately.

##### **b. Jointly and severally**

This means that the Donees can take the decision together or separately. Both types of decisions are valid and binding on both Donees.

##### **c. Unstated**

If the Donor does not specify how his/her Donees are to act, the law assumes they are to act jointly.

#### **2. If there is more than one Donee and there are conflicting instructions, whose instructions will be taken?**

If a Bank receives conflicting instructions from Donees (whether acting jointly or jointly and severally) and it has not executed such instructions, the Bank reserves the right to decline proceeding with all instructions. The Bank will refer the Donees to the Office of the Public Guardian for investigation.

Where Donees are acting jointly and severally and a Bank has acted on the instructions of one Donee, it shall not be liable in the event that it subsequently receives conflicting instructions from the other Donee(s).

#### **3. Will the Bank monitor the Donee's/Donees' transactions to ensure that they comply with their duties?**

The Bank will not monitor any restrictions placed on the Donee(s) under the LPA or the Mental Capacity Act and shall not be liable for any loss resulting from Donee(s) acting in breach of their authority under the LPA.

Under the Code of Practice issued by the Office of the Public Guardian and the Mental Capacity Act, Donees are responsible for ensuring that they act within authority and in accordance with the LPA.

**4. Will the Bank monitor and check on the Donor's mental capacity to confirm whether he/she is still mentally incapacitated?**

The Bank will not conduct checks on the Donor's mental capacity subsequent to the use of the LPA.

If a Donor wishes to regain control of his/her bank accounts and investments, he/she must inform the Bank and to present an original Donor's medical report certifying that the Donor has recovered his/her mental capacity.

**5. If a Donor has regained mental capacity, can he/she immediately start operating his/her own account?**

In order to allow the Donor to regain control over his/her bank accounts and investments, the Bank will require the Donor to present an original Donor's medical report certifying that the Donor has recovered his/her mental capacity. The date of the medical report cannot be more than 6 months old at the time of presentment to the Bank.

As the security of a customer's account is important to Banks, the Bank may still decline the Donor's instructions if they have reason to suspect the Donor's mental capacity and his/her ability to make financial decisions.

**6. If the Bank is notified that a Donor has passed away, will the Bank continue to take instructions from the Donee(s)?**

The LPA is automatically terminated once the Donor passes away. The Bank will no longer take instructions from the Donee(s) as his/her/their status as Donee(s) would have ceased. Banks may require documents evidencing the death of the Donor.

The Donee(s) is/are responsible to cease performing transactions on behalf of the Donor and notify the Bank that his/her/their powers are revoked.

**D. Effect of an active LPA on Bank facilities**

**1. Upon use of the LPA, will there be any impact on the terms and conditions governing the Donor's account and/or investments?**

All terms and conditions governing the Donor's accounts and investments will continue to apply.

**2. Will the Bank issue an ATM card or allow the Donee(s) access to internet Banking or mobile Banking services?**

This will depend on each Bank's system requirements and capabilities.

For multiple Donees that are acting jointly, ATM cards will not be issued and access to internet and mobile Banking will not be granted.

**3. What will happen to a Donor's credit/debit cards?**

Banks may cancel all credit/debit cards issued in the Donor's name, in accordance with their internal policies.

For multiple Deputies that are acting jointly, credit/debit cards will not be issued.

**4. What will happen to a Donor's investments with the Bank?**

Depending on the nature of the investment product, Banks will generally allow the redemption or sale of the Donor's investments but may restrict purchases of new investments, in accordance with their internal policies.