



## **Law Reform Commission Report on Enduring Powers of Attorney**

The Law Society welcomes the recommendations made by the Law Reform Commissions in its report on enduring powers of attorney published on 26 March 2008.

The Law Society believes that the abolition of the requirement of a medical witness to an enduring power of attorney (“EPA”) and the introduction of a simplified version of the existing statutory form of EPA would encourage wider use of the EPAs in Hong Kong.

As a witness to the execution of an EPA, a solicitor must first satisfy himself that his client is mentally competent to make his decision to execute the EPA by which he delegates decisions as regards to his property and financial affairs to his attorney and that it will continue to take effect after he becomes incapable. This is no different from when a solicitor attests the signature of any other document, including wills.

The Commission also recommended that the Law Society issue a practice direction to its members that where a solicitor has grounds for doubting the mental competence of his client to execute an EPA, the solicitor must obtain an assessment of his client’s mental capacity from a medical practitioner before the EPA is executed. The Law Society will consider issuing a practice direction when the necessary changes to the legislation are effected.

While the Law Society notes that the Commission does not accept its earlier recommendation to extend the scope of the EPA to include decisions as to the donor’s personal or health care, it whole heartedly supports the Law Reform Commission’s recommendations and urges a change of the law to implement such recommendations without delay.

**The Law Society of Hong Kong**

**28 March 2008**