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Notification No. B 11 — The Mental Capacity (Amendment) Bill is published for general information. It was introduced in Parliament on 6 March 2024.

Mental Capacity (Amendment) Bill

Bill No. 11/2024.

Read the first time on 6 March 2024.

A BILL

i n t i t u l e d

An Act to amend the Mental Capacity Act 2008.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Mental Capacity (Amendment) Act 2024 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 11

2. In the Mental Capacity Act 2008, in section 11(3), replace “An” with “Subject to section 12B, an”.

New section 12B

3. In the Mental Capacity Act 2008, after section 12A, insert —

“Validation

12B.—(1) Despite anything in section 12A(1), an instrument conferring authority of the kind mentioned in section 11(1) that is in the form of an electronic record in the electronic transaction system is not invalid as a deed by reason only that the electronic record does not state on its face that it is intended to be a deed in accordance with section 12A(1)(a), if —

(a) the instrument was made using the electronic transaction system in compliance with section 12A (except subsection (1)(a) of that section); and

(b) the instrument was made between 14 November 2022 and 4 January 2024 (both dates inclusive).

(2) Despite anything in this Act, a lasting power of attorney is not invalidly created under section 11(2) by reason only that the instrument which purports to create the lasting power of attorney is an instrument mentioned in subsection (1).

(3) No legal proceedings may be instituted on or after 6 March 2024 in any court in respect of the validity of a lasting power of attorney mentioned in subsection (2) by reason of the instrument which purports to create the lasting power of attorney not being made in accordance with section 12A(1)(a).

(4) Subsections (1), (2) and (3) do not affect the power of the court under section 17 to determine whether one or more of the

requirements for the creation of a lasting power of attorney (not being a requirement under section 12A(1)(a)) have been met.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Mental Capacity Act 2008 to insert a new section 12B to provide that an instrument in the form of an electronic record conferring authority of the kind mentioned in section 11(1) is not invalid as a deed and not invalidly created as a lasting power of attorney by reason only that the instrument does not comply with section 12A(1)(a), if certain conditions are satisfied.

Clause 1 relates to the short title and commencement.

Clause 2 makes a related amendment to section 11(3) arising from the new section 12B inserted by clause 3.

Clause 3 inserts a new section 12B.

Under the new section 12B(1), an instrument that confers authority of the kind mentioned in section 11(1) that is in the form of an electronic record in the electronic transaction system is not invalid as a deed by reason only that the electronic record does not state on its face that it is intended to be a deed in accordance with section 12A(1)(a), if —

- (a) the instrument was made using the electronic transaction system in compliance with section 12A (except subsection (1)(a) of that section); and
- (b) the instrument was made between 14 November 2022 and 4 January 2024 (both dates inclusive).

Under the new section 12B(2), a lasting power of attorney is not invalidly created under section 11(2) by reason only that the instrument which purports to create the lasting power of attorney is an instrument mentioned in the new section 12B(1).

Under the new section 12B(3), no legal proceedings may be instituted on or after 6 March 2024 (which is the date of introduction of the Bill) in any court in respect of the validity of a lasting power of attorney mentioned in the new section 12B(2) by reason of the instrument which purports to create the lasting power of attorney not being made in accordance with section 12A(1)(a).

Under the new section 12B(4), the new section 12B(1), (2) and (3) does not affect the power of the court under section 17 to determine whether one or more of

the requirements for the creation of a lasting power of attorney (not being a requirement under section 12A(1)(a)) have been met.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
