

FAQs on Court Orders Issued Pursuant to Part V - General Powers of Court and Appointment of Deputies of the Mental Capacity Act (Cap 177A)

WHAT YOU SHOULD KNOW: COURT ORDERS ISSUED PURSUANT TO PART V OF THE MENTAL CAPACITY ACT

This set of FAQs will provide guidance on how Banks will process and administer instructions provided by the Deputy(ies) of Bank customers, who have been appointed by a Court Order issued pursuant to Part V of the Mental Capacity Act (Cap 177A) (“MCA”). Certain administrative processes adopted by Banks in Singapore will also be outlined. Please note that these are FAQs only and each Bank may deviate from the individual responses provided for the respective FAQs, depending on the circumstances.

A. Key basics of Part V – General Powers of Court and Appointment of Deputies of the MCA

1. What is Part V of the MCA?

If a person (“P”) lacks capacity in relation to a matter or matters concerning P’s personal welfare, or P’s property and affairs, the court may:

- a. make orders to decide on the matter(s) on P’s behalf, or alternatively,
- b. appoint a person (a “Deputy(ies)”) to act in either or both of these broad areas of personal welfare and property & affairs matters

Please find below the following links to the Office of the Public Guardian and Family Justice Courts websites for more information:

- Code of Practice – Mental Capacity Act (Cap. 177A):
<https://www.publicguardian.gov.sg/opg/Documents/CSC.MSF.OPGWebsite/Documents/CodeOfPractice.pdf>
- Appointing a Deputy(ies):
<https://www.familyjusticecourts.gov.sg/Common/Pages/AppointingaDeputy.aspx>
- Family Justice Courts Prescribed Forms:
<https://www.familyjusticecourts.gov.sg/QuickLink/Pages/Forms.aspx>

2. What is the Court-appointed Deputy(ies)?

The Deputy(ies) is/are appointed by the Court to make certain decisions on behalf of a person who lacks mental capacity when the person has not made a Lasting Power of Attorney (LPA) and has no Donee to decide on his/her behalf in respect of personal welfare and property & affairs matters.

3. Roles and responsibilities of Court-appointed Deputy(ies)?

Court-appointed Deputy(ies) take actions and make decisions in accordance with the authority given under the Court Order appointing them.

The Deputy(ies) should ensure that they act within their mandate. The Bank does not monitor the Deputy(ies)'s exercise of power. (For more information, please refer to Section C below).

4. What kinds of Court Order will the Banks accept?

Banks will only accept Court Orders granting the Deputy(ies) powers to manage:

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

Banks will not accept Court Orders which only grant the Deputy(ies) powers to manage P's personal welfare.

B. Documents required from the Deputy(ies)

1. What is required of the Deputy(ies) to start administering P's property and affairs at a Bank?

The Deputy(ies) must be physically present at the Bank's branch and present the originals and/or Certified-True-Copy of the following documents:

- (a) Court Order issued pursuant to Part V of the MCA; and
- (b) P's and Deputy(ies)' original identity document(s).

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

C. Processing of Deputy(ies) instructions

1. If there is more than one Deputy being appointed in the Court Order, how would the Bank process instructions?

If a court order states that the Deputies are to act:

a. Jointly

This means that joint instruction must be given by the Deputies on P's bank account. No single Deputy's instruction can be accepted.

b. Jointly and severally

This means that the Deputies can give their instructions to the bank singly or jointly on P's bank account. Both the single or joint instructions are valid and binding on both Deputies.

c. Unstated

If the court order does not specify whether the Deputies are to act jointly or singly, the law assumes they are to act jointly.

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

If a Bank receives conflicting instructions from Deputies (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 Deputies to the Office of the Public Guardian for investigation.

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

3. Will the Bank monitor compliance with the Court Orders by the Deputy(ies)?

The Bank will not monitor any restrictions placed on the Deputy(ies) under the Court Order issued pursuant to the MCA and shall not be liable for any loss resulting from Deputies acting in breach of their authority under the relevant Court Order. The Deputies shall be fully and solely responsible for complying with all the powers, duties and responsibilities in accordance with the terms set out in the relevant Court Orders, including as to the opening, closure, withdrawal of monies and operation of any bank accounts operated by the Deputies.

Under the Code of Practice issued by the Office of the Public Guardian and the MCA, Deputy(ies) is/are responsible for ensuring that they act within authority and in accordance with the Court Order.

4. Will the Bank monitor and check on P's mental capacity to confirm whether he/she has lost mental capacity?

The Bank will not conduct checks on P's mental capacity subsequent to the production of the most current Court Order that it has received on file.

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

In order to allow P to regain control over his/her bank accounts and investments, the Bank will require P to present documentary discharge of the existing Court Order or such other documents evidencing P has recovered from lost of mental capacity.

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

6. If the Bank is notified that P has passed away, will the Bank continue to take instructions from the Deputy(ies)?

An appointment of Deputy(ies) is automatically terminated once P passes away. The Bank will no longer take instructions from the Deputy(ies) as his/her/their status as Deputy(ies) would have ceased. Banks may require documents evidencing the death of P.

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

8. Does a Court Order issued pursuant to Part V of the MCA have a fixed term of duration?

MCA Court Orders are typically issued for an unspecified term of duration, until such further application by the Deputy(ies) or P himself/herself. Banks are sometimes presented with valid Court Orders several years after their issue date to enable:

- a. Court-appointed Deputy(ies) to commence a new relationship with the Bank, by opening an account in P's name with Bank A after years of a prior banking relationship with another bank, Bank B;
- b. To deposit cheques payable to P over time; or
- c. Broadly, for any changes to P's needs over time.

9. Does a Bank that has acquired actual notice of restrictions imposed on Deputy(ies) owe a duty of care to P?

Some Court Orders issued pursuant to the MCA contain restrictions imposed on the Deputy(ies). For example, no withdrawals exceeding \$300 each month.

While a Bank is taken to have notice of such restrictions, there is no duty of care imposed on Banks to administer or monitor these restrictions. For instance, P may have multiple bank accounts across more than one Bank and the Deputy(ies) may approach different branches of the same Bank to transact in accordance with the Court Order. It would not be practicable nor reasonable for Banks to administer or monitor such restrictions.

Deputy(ies) is/are responsible for ensuring that they act within authority and in accordance to the restrictions set out in the Court Order.

10. Is a Bank required or even permitted to open any other Bank accounts other than ordinary banking accounts in P's name upon instructions from the Deputy(ies)?

The Bank is guided by the terms of the MCA Court Order. In some cases, the MCA Court Order requires the Deputy(ies) to open a "Trust Account" for P.

D. Effect of a Court Order Appointing Deputy(ies) on Banking facilities

1. Upon the issue of a Court Order, will there be any impact on the terms and conditions governing the P's account and/or investments?

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

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

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

For multiple Deputies 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 P's credit/debit cards?

Banks may cancel all credit/debit cards issued in P'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 P's investments with the Bank?

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