A Need for Enduring Power of Attorney in Malaysia

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Malaysia faces an ageing population that would have an impact on the socio-economic dynamics of the nation. This would require special consideration to enable the adoption of effective mechanisms to deal with the special issues that accompany the ageing. One of the issues being the subject of this paper is the ability of the elderly to delegate a valid power of attorney that survives and endures the incapacity of the donor elderly. Currently, the Malaysian Power of Attorney Act 1949 (Act 454) requires an ordinary power of attorney that does not survive the incapacity of the donor. The attorney would risk legal liabilities if they knowingly continue to operate under an invalid power of attorney. The need for enduring power of attorney is pressing given that the elderly incapacity is the only situation the donor elderly would seek to address and would want the delegated attorney to continue to act in the eventuality of the elderly's incapacity. It also prioritises the issue of caring for the aged elderly. Further, the scope of the current power of attorney is limited to financial matters. It needs also to be able to address non-financial aspects. In this regard, the lacuna or gaps in the existing legislation as stated above are examined by reference to statutes and case-law. Lessons from other jurisdictions are drawn upon to highlight the ways forward where changes in the law is required in order to facilitate and protect the interest not only of