



JURISDICTIONAL REFERENCE GUIDE

Jurisdiction:	FRANCE
Name of Lasting Power:	<i>Mandat de Protection Futur</i>
Legislation creating the Power:	Law of 5 March 2007 (Loi n° 2007-308)
Weblink for legislation:	http://www.legifrance.gouv.fr
Healthcare decisions:	Included in the <i>Mandat</i>
Weblink for Guardianship Office:	http://www.justice.gouv.fr/justice-civile-11861/tutelles-12182/

Are issues relating to persons who lack capacity dealt with in a special Court or as part of the general Court system?

The *Tribunal d' Instance*, the lower civil court system, has jurisdiction, within which a *Juge des Tutelles* has special competence.

Can an adult delegate authority to make decisions on their behalf using a Power of Attorney, to operate if they lose capacity in the future?

Yes, since 2009 an adult (or in some cases a minor) with mental capacity can make a *mandat de protection future* (MPF). The *mandataire* must fulfil set criteria to be eligible for appointment and cannot be the donor's doctor but can be his *notaire*, subject to the document itself being drawn up by a second *notaire*. Prescribed companies can be appointed as *mandataires* and more than one *mandataire* may be appointed, though it must be specified whether decisions are to be made on a joint or a joint and several basis. It is also possible to make provision for replacement *mandataires de second rang*. Note that married persons may have already delegated authority via a French matrimonial contract, which takes priority, but the MPF can be drafted to take this into account. The MPF can be drawn up without a *notaire* but is then subject to limitations. If drawn up by a *notaire*, the *mandataire* can be given powers to carry out all acts on behalf of the *mandant* without court authorisation, except gifts.

What happens where an individual loses capacity but has not executed a valid Power of Attorney covering this situation?

There are three options, all of which involve court proceedings and set up court appointed structures. First, the *curatelle*, under which a third party is enabled jointly to assist the patient with decisions. Second, the *tutelle*, which is for more serious cases where the patient is unable to express his wishes. Note that if a *curatelle* has already been set up, it is possible for the *curateur* and the patient jointly to create an MPF. Lastly, the *sauvegarde de justice*, under which the court appoints a *mandataire* to act on a short term basis, normally to implement urgent assistance.

How is capacity assessed?

A medical certificate must be produced, either prior to the use of an MPF, or before the appointment of a *curateur/tuteur*, and must come from an officially approved doctor. The assessment is based on lack of capacity to manage assets without assistance and the certificate must be certified by the *Greffe de Tribunal d'Instance*.



Will a Power of Attorney executed outside France which delegates authority to make decisions on behalf of an individual who lacks capacity be recognised in France?

The Hague Convention of 13 January 2000 on the International Protection of Adults entered into force on January 1st, 2009, following France's ratification of the Convention in 2008. The Convention stipulates the international law rules on the protection of incapable adults and determines the country of applicable law for incapable adults who are connected to more than one country. The basic rule under the Convention is that the law of the country where the incapable person habitually resides will prevail.

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