

SCHEDULE

ENDURING POWER OF ATTORNEY

**Part A**

**About using this form**

(Explanatory information referred to in section 2(1)(a)(ii))

1. You may choose one attorney or more than one. If you choose one attorney then you must omit or delete everything between and including the pair of square brackets in section A of Part B. If you choose more than one, you must decide whether they are able to act –

- jointly (that is, they must all act together and cannot act separately); or
- jointly and severally (that is, they can all act together but they can also act separately if they wish).

In section A of Part B, show what you have decided by omitting or deleting one of the alternatives.

2. To give a valid enduring power, you must not give your attorney(s) a general power in relation to all your property and financial affairs. You must either specify the matters in which he is given authority to act, with reference to the list set out in section 5(3) of the Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg.) or the particular property or financial affairs in respect of which he is given authority to act. Failure to do so would mean that the instrument you are about to execute would not take effect as an enduring power of attorney which continues even if you become mentally incapable.

3. You may include any restrictions you like on the powers granted to your attorney. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your attorney(s) may do. Any restrictions you choose must be written or typed in section B of Part B.

4. If you are a trustee, you should seek legal advice if you want your attorney(s) to act as a trustee on your behalf.

5. Unless you put in a restriction preventing it, your attorney(s) will be able to use any of your money or property to make any provision which you yourself might be expected to make for their own needs or the needs of other people. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

6. Your attorney(s) can recover the out-of-pocket expenses of acting as your attorney(s). If your attorney(s) is or are professional people, for example, solicitor(s) or accountant(s), he or they may be able to charge for his or their professional services as well. You may wish to provide expressly for remuneration of your attorney(s) (although if they are trustees they may not be allowed to accept it).

7. If your attorney(s) has or have reason to believe that you are or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the Registrar of the High Court for registration of this power.

8. You may nominate yourself, any attorney who does not join in the application for registration of the enduring power of attorney and a maximum of 2 other persons to be notified by your attorney(s) before he or they applies or apply to the Registrar of High Court for registration of this power. If you do not make such a nomination, you must make a statement to that effect in this power. If you make such a nomination, the failure (for whatever reason) by your attorney(s) to notify any person so nominated has the following effect –

- it does not preclude the registration of this power;

- this power is not invalidated by reason of that failure;
- in any legal proceedings relating to this power, where it considers it appropriate the court may draw an adverse inference from such failure.

9. This instrument must be signed by you or by another under your direction in the presence of a solicitor and a registered medical practitioner who must certify as to your mental capacity, and by your attorney(s) in the presence of a witness. The person who signs under your direction must not be your attorney, the solicitor who gives the certificate under section 5(2)(d) of the Enduring Powers of Attorney Ordinance (Cap. 501) or the medical practitioner who gives the certificate under section 5(2)(e) of that Ordinance or the spouse of the attorney, the solicitor or the medical practitioner.

10. This is a simplified explanation of what the Enduring Powers of Attorney Ordinance (Cap. 501) and the Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg.) say. If you need more guidance, you or your advisers will need to look at that Ordinance and that Regulation.

**Note to attorney(s)**

You should note the legal effect (outlined in paragraph 8 above) of any failure on your part to notify the person(s) nominated by the donor in this power.

**Note to donor**

Some of these explanatory notes may not apply to the form you are using if it has already been adapted to suit your particular requirements.

**Part B**

**To be completed by the "donor" (the person appointing the attorney(s))**

**Don't sign this form unless you understand what it means**

**Please read the notes in the margin which follow and which are part of the form itself.**

**Section A of Part B**

Donor's name and address.

Donor's date of birth.

(See paragraph 1 of Part A). If you are appointing only one attorney you should omit or delete everything between and including the square brackets.

I, _____
of _____
born on _____
appoint _____
of _____

If appointing more than 2 attorneys please give the additional name(s) (that is, of the attorney(s) after the first 2 attorneys) either here or on an attached sheet.

Omit or delete the one which does not apply (see paragraph 1 of Part A).

List either the matters in which you would like to authorize your attorney(s) to act (see paragraph 2 of Part A) or specify the particular property or financial affairs in respect of which he or they is or are given authority to act. If you do not specify the property and affairs to be covered in your authorization, omit or delete these words (see paragraph 2 of Part A).

- [and \_\_\_\_\_  
of \_\_\_\_\_

- jointly
- jointly and severally]

to be my attorney(s) for the purpose of the Enduring Powers of Attorney Ordinance (Cap. 501) with authority to do the following on my behalf:

in relation to the following property and affairs:

**Part B: continued**

**Please read the notes in the margin which follow and which are part of the form itself.**

**Section B of Part B**

If there are restrictions or conditions, insert them here; if not, omit or delete these words if you wish (see paragraph 3 of Part A).

- subject to the following restrictions and conditions:

[Subsidiary]

You may nominate yourself, any attorney(s) who does or do not join in the application for registration and a maximum of 2 other persons to be notified by your attorney(s) before he or they applies or apply for the registration of this power.

This applies only where you appoint more than one attorney.

If you do not make such a nomination, you must make a statement to the effect that you do not propose to make such a nomination. Omit or delete the one which does not apply (see paragraph 8 of Part A).

If this form is being signed under your direction –

- the person signing must not be an attorney, the solicitor or the registered medical practitioner who gives the certificate under section 5(2)(d) and (e) of the Enduring Powers of Attorney Ordinance (Cap. 501), or the spouse of the attorney, solicitor or medical practitioner.

I intend that this power shall continue even if I become mentally incapable

- I hereby nominate the following person(s) to be notified by my attorney(s) before he or they applies or apply for registration of this power.

Myself  
(Address)

Full name and address of attorneys

(Only any attorney(s) who does or do not join in the application for registration need be notified)

Full name and address of other nominee(s)

- I do not propose to nominate any person to be notified by my attorney(s) before he or they applies or apply for registration of this power.

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

- You must add a statement that this form has been signed under your direction.

Your signature.

Date.

This power must be signed by you or under your direction in the presence of a solicitor and a registered medical practitioner who must both be present at the same time. Neither of them must be your attorney, the spouse of the attorney or be related by blood or marriage to you or to the attorney. The solicitor and the registered medical practitioner must each give a certificate as required by section 5(2)(d) and (e) of the Enduring Powers of Attorney Ordinance (Cap. 501) respectively.

Signed by me as a deed .....

and delivered on .....

in the presence of .....

Full name and address of solicitor

Certificate by solicitor

In the presence of .....

Full name and address of registered medical practitioner

Certificate by registered medical practitioner

**Part C: to be completed by the attorney(s)**

- Note: 1. This form may be adapted to provide for execution by a corporation.
2. If there is more than one attorney, additional sheets in the form as shown below must be added to this Part.

**Please read the notes in the margin which follow and which are part of the form itself.**

Do not sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

I understand that I have a duty to apply to the Registrar of the High Court for the registration of this form under the Enduring Powers of Attorney Ordinance (Cap. 501) when the donor is or is becoming mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor as provided in section 8(3) and (4) of that Ordinance and also my duties and liabilities under section 12 of that Ordinance

I am not a minor

Signature of attorney.

Signed by me as a deed .....

Date.

and delivered on .....

Signature of witness.

in the presence of .....

The attorney must sign this form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of the other.

Full name of witness .....

Address of witness .....

.....  
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