

APPOINTING AN ALTERNATE

Sections 3.5 and 3.6 of the Institute and the Association's joint publication, Professional Rules and Practice Guidelines, recommend that a member who is a sole practitioner should make suitable arrangements to ensure that his practice can continue to be carried on in the event of his illness, temporary or permanent incapacity, or death.

The accompanying draft provides a specimen form of agreement for use by a member of The Chartered Institute of Taxation or The Association of Taxation Technicians who wishes to appoint an alternate to act in relation to the member's practice in the events envisaged by those Sections. It should be read in the light of the following notes.

The draft has been kept as short and simple as is consistent with its objective. It is designed to provide a framework which members can use when appointing an alternate. However, there will often be matters which should be included in the agreement. Noted below are a number of such matters that members may wish to consider.

Any member wishing to appoint an alternate is advised to consult his or her solicitor about completing the documentation. The draft agreement may be found helpful by the lawyer instructed, but should be carefully adapted to meet the specific needs of the particular member.

When appointing an alternate, in addition to entering into an agreement, a member should execute an enduring power of attorney in favour of the alternate, to clothe the alternate with the necessary authority to act in the event of the incapacity of the member.

Further, the member is also recommended to make a will, or add a codicil to an existing will, appointing the alternate as special executor to act in relation to the practice.

If the member is licensed under the Financial Services Act to carry on investment business, the agreement will need to be adapted to cover this element.

An alternate does not have to be a member of the Institute or the Association. However, when considering whom to appoint the member should consider carefully whether the individual selected has, either himself or with assistance of his or her firm, adequate resources to carry on the member's practice, particularly as the need to put the agreement into effect may arise suddenly.

It is advisable for the member to discuss with his or her insurers any relevant issues which may arise under the member's professional indemnity and other insurance cover, should the alternate need to take over the running of the practice.

Advance arrangements should be made to enable the alternate to operate the member's bank accounts should occasion arise; this may sometimes be covered in the event of incapacity by the enduring power of attorney, but only if that power becomes activated. The position which would arise if the member dies should also be considered.

Separate arrangements should be made for any trusteeships or executorships held by the member. Legal advice should be taken in relation to any there may be.

The agreement does not provide for the possibility of a sale of the practice to the alternate or to a third party while the alternate is acting. A member entering into an arrangement with an alternate should give careful consideration to this, and to the inclusion of appropriate provisions in the agreement if this is desired.

If a member wishes to appoint two alternates, either jointly or in succession, the draft will need considerable amendment. Again, legal advice should be taken.

Both the member and the alternate should consider their respective liability to clients.

A member seeking further help with the appointment, or the selection, of an alternate should contact the Membership Department of the Institute or the Association.

SPECIMEN DRAFT

THIS AGREEMENT is made the _____ day of _____ 20____ BETWEEN:

1. of ("the Practitioner") and
2. of ("the Alternate")

WHEREAS:

- (1) The Practitioner carries on practice as a tax adviser at ("the Practice") under the style " ".
- (2) The Practitioner wishes to provide for the conduct of his practice in the event of his death or incapacity and for that purpose has entered into his Agreement [and has executed an enduring power of attorney and has appointed the Alternate as his special executor in his will].
- (3) The Alternate has agreed to act in such event as alternate for the Practitioner.

NOW IT IS AGREED as follows:

1. If the Practitioner dies or becomes incapable through mental or physical incapacity from carrying on the Practice the Alternate agrees to act as alternate of the Practitioner and to carry on the Practice upon the terms of this agreement.
2. While acting as alternate the Alternate shall be entitled to reimbursement of all his expenses reasonably incurred in carrying on the Practice and to [either the following fees] [or reasonable remuneration for the time incurred by the Alternate, his partners and staff in carrying on the Practice].
3. The Alternate will account to the Practice for all fees, commissions and profits received as a result of his acting for any client of the Practitioner, whether in respect of instructions received before or after the Alternate begins to act.
4. The Alternate shall have authority to the following on behalf of the Practitioner:
 - 4.1. Employ the staff reasonably necessary to carry on the Practice
 - 4.2. Operate the Practice bank accounts;
 - 4.3. Sign letters, reports and other documents in the name of the Practice;
 - 4.4. All such other acts and things as are reasonably necessary to carry on the Practice in accordance with the terms of this agreement.
5. While carrying on the Practice as alternate of the Practitioner the Alternate will:
 - 5.1. carry on the Practice with reasonable diligence in the Practice name in a proper and professional manner and take all reasonable steps to preserve and enhance its goodwill;
 - 5.2. in all matters relating to the Practice comply with the Professional Rules and Practice Guidelines of The Chartered Institute of Taxation and The Association of Taxation Technicians (of which the Practitioner is a member) for the time being in force;
 - 5.3. so far as he can reasonably do so, fulfil all the contractual obligations of the Practitioner in relation to the Practice.
 - 5.4. maintain adequate records of the Practice and all financial transactions relating to it;
 - 5.5. out of Practice funds maintain all the existing insurance of the Practice and pay all the professional fees of the Practitioner
6. The Alternate will keep confidential all information he receives relating to the Practice as a result of his acting as the Practitioner's alternate.
7. The Practitioner (or his estate) will indemnify the Alternate against all damages, claims, losses and liability incurred by the Alternate, his partners or staff, in connection with carrying on the Practice unless arising as a result of the default or negligence of the Alternate, his partners or staff.
8. This agreement may be terminated by either party giving to the other at least three months' notice in writing.
9. This agreement shall be governed by and construed in accordance with English law.

Signed by)
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in the presence of:
Signed by)
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in the presence of: