

APPOINTING AN ALTERNATE

Professional Rules and Practice Guidelines of the CIOT and ATT recommend that a member who is a sole practitioner should make suitable arrangements to ensure that their practice can continue to be carried on in the event of their illness, temporary or permanent incapacity, or death.

A specimen form of agreement for use by a member of the CIOT or ATT who wishes to appoint an alternate to act in relation to the member's practice in the events envisaged above is attached as Appendix 1. The specimen agreement has been kept short and simple and is designed to provide a framework which members can use when appointing an alternate. However, it should be read in the light of the following notes:

- 1. Legal advice** - Any member wishing to appoint an alternate is advised to consult their solicitor about completing the documentation. The specimen agreement may be helpful to the lawyer instructed, but it should be carefully adapted to meet the specific needs of the individual member. The arrangements must be legally effective. If an alternate acts without effective legal authority, they may become personally liable to legal action by other parties. Both the member and the alternate should consider their respective liability to clients.
- 2. Power of Attorney** - 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, so that the alternate has the necessary authority to act in the event of the incapacity of the member.
- 3. Engagement Letters** – engagement letters should refer to the possibility of the appointment of an alternate by the member in the event of their illness, or temporary or permanent incapacity.
- 4. Will** - 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. Executors of an estate can act at once to protect a practice so it would be advantageous if one of the executors is professionally qualified.
- 5. Insurance** - It is advisable for the member to discuss with their insurers any relevant issues which may arise under the member's professional indemnity and other insurance cover (such as buildings insurance), should the alternate need to take over the running of the practice. The fact that the member is incapacitated or has died, and that an alternate has stepped in to manage the practitioner's affairs would normally be a notifiable event under the member's PII contract so responsibility for notifying the PII provider should be noted. It is also advisable to include in the agreement that the alternate will comply with the terms of the alternate's insurance. The alternate should also inform their own insurers that they are to manage another person's practice.
- 6. Investment advice work** - If the member is licensed under the Financial Services & Markets Act to carry on investment business, the agreement will need to be adapted to cover this element. The alternate must hold at least the equivalent authorisation from the FCA.
- 7. Capability** - An alternate does not have to be a member of the CIOT or ATT. However, the alternate needs to remain able and competent to undertake the work that needs to be carried out and have expertise in the same areas of work as the member. Also, when thinking about who to appoint, the member should consider carefully whether the individual

selected has, either themselves or with assistance of their firm, adequate resources to carry on the member's practice, particularly as the need to put the agreement into effect may arise suddenly. In addition, the member may want termination provisions in their agreement, for example, to allow for the appointment of a replacement alternate if the original ceases to be qualified to act as one.

- 8. Remuneration** - Both parties should agree the terms on which the alternate will be remunerated. For example, paid on a monthly basis, in arrears, at an agreed rate. Whilst the alternate can charge for their services they should not seek to abuse their position. A member should consider how they will fund the alternate's fees during a period of incapacity and should consider this when deciding on the level of critical illness insurance cover required.
- 9. AML** – All aspects of the Money Laundering Regulations must be fully complied with. In the event of an alternate taking over a member's practice, it would be helpful if instructions were left by the member as to who their AML supervisory body is so that the alternate can inform them of the change in circumstances.
- 10. Bank Accounts** - Advance arrangements should be made to enable the alternate to operate the member's bank accounts so that they are able to pay business expenses, wages, etc. (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). It is sensible to cover procedures in respect of bank accounts, who can have access to them, the ability to open or close accounts, etc. in the agreement as well as any requirements from the relevant bank in respect of authority/proof it would expect before an alternate could operate the practice's bank accounts.
- 11. Trusteeships** - 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.
- 12. Sale of the practice** - 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 or needs to be protected against. Where the alternate agrees to buy the practice, it is recommended that the parties to the sale be independently advised.
- 13. More than one alternate** - 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.

PRACTICAL POINTS

- 1. Let others know**- it is not enough that you know what your continuity plans are as in the event of an emergency, it will be others that will be dealing with your affairs. Tell family and executors what your arrangements are and keep a copy of your agreement with your will or somewhere that it can quickly be found in your office should the need arise. Also ensure that up-to-date details of the relevant insurance policies, including policy names, numbers, insurers' telephone numbers and addresses are readily accessible. It is also essential that alternates are made aware of the practices and procedures of the member's firm so that, in the event that they are called upon to act, they will be more effective in their role at an earlier stage.

2. **Records** - keep full and clear records in relation to the work being performed for clients and the practice's affairs so that it is easier for an alternate to know what is going on and continue with the work.
3. **Letter to clients** - draft a letter that should be sent to clients in the event of your incapacity or death informing them of arrangements in place and consider how the alternate should be described in the practice's letters, for example, as Interim Manager.
4. **Review**- review your continuity arrangements on an annual basis to consider if they continue to be appropriate and periodically meet with your alternate to discuss information about your practice. If you have expanded your business or changed specialisms, it may be appropriate to change the alternate to a firm with similar capacity and abilities.
5. **Location**- for the convenience of your clients, a comparable practice operating in or close to the same area should be sought. The [Find a CTA¹](#) and [Find an ATT²](#) tools can be useful to find local practices which you could approach to agree alternate arrangements.

¹ <http://core.tax.org.uk/>

² <http://core.att.org.uk/>

Appendix 1 - APPOINTING AN ALTERNATE - SPECIMEN DRAFT AGREEMENT

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:

in the presence of:

Signed by:

in the presence of