

Form 1 (for the appointment of only one attorney)

Part A

1. Appointment of an attorney by the donor

1. Appointment of attorney by donor

I, *[your name here]*.....,
holder of *[your identification document here]*.....,
of *[your address here]*.....

appoint *[your attorney's name here]*.....
holder of *[identification document here]*.....,
of *[your attorney's address here]*.....

.....
to be my attorney under the Enduring Powers of Attorney
Ordinance (Cap. 501).

An attorney **must**:

- ✓ have attained the age of 18 years;
- ✓ not be bankrupt; and
- ✓ be mentally capable or
- ✓ a trust corporation can be the attorney

An attorney **cannot** be:

- ✗ the registered medical practitioner or the solicitor witnessing the EPA;
- ✗ the spouse of the registered medical practitioner or the solicitor; or
- ✗ a person related by blood or marriage to the registered medical practitioner or the solicitor.

2. The Attorney's authority

Before making an EPA, a donor should consider the following matters carefully and seriously:

- the value of the donor's assets,
- the variety of the donor's assets, e.g. how much of them are in cash, real property, shares in private companies, shares in publicly listed companies, bonds, antiques, jewellery, vehicles, yachts, etc.;
- how the donor wants the attorney to manage these assets in case of the donor's mental incapacity, e.g. to sell part of them, to maintain them to generate rental income or interest, to use part of them for the donor's daily living, to give part of them as gifts to designated person(s), etc.; and
- whether or not the attorney has to seek professional advice (e.g. for legal or financial aspects) if he/she intends to enter into a transaction the value of which exceeds a specified amount.

The donor **must**:

✓ specify what the attorney's authority is in dealing with the donor's particular property or financial affairs. For example, the donor may decide to give his/her attorney only power over a particular bank account, or a particular piece of property.

The donor **most not**:

✗ give his/her attorney a general authority over the donor's property and financial affairs: **otherwise, the EPA will not be valid.**

2. Attorney's authority

[You must specify what you authorize your attorney to do. You cannot give a general authority over all your property and financial affairs. **If you do, your EPA will not be valid.** You can **either** specify at subparagraph (1) what you authorize your attorney to do by ticking any or all of the appropriate boxes, **or** tick no box, in which case you must list at subparagraph (2) the particular property or financial affairs for which you have given your attorney authority to act. If you have ticked any or all the boxes at subparagraph (1), you may still list at subparagraph (2) any particular property or financial affairs in relation to which you have given your attorney authority to act. You must not make no ticks at subparagraph (1) **and** list no property at subparagraph (2).]

(1) My attorney has authority to act on my behalf:

- (a) to collect any income due to me;
- (b) to collect any capital due to me;
- (c) to sell any of my movable property;
- (d) to sell, lease or surrender my home or any of immovable property;
- (e) to spend any of my income;
- (f) to spend any of my capital.

(2) My attorney has authority to act on my behalf in respect of the following property or financial affairs:

[If you want your attorney to act for you only in relation to some of your property or financial affairs, you must list them here.]

.....

.....

.....

.....

The donor can either:

(1)
Specify in (1) what to authorize the attorney to do by ticking any or all of the appropriate boxes;
or

(2)
tick no box in (1), but list in (2) the particular property or financial affairs for which the attorney is to be given authority to act; or

(1) + (2) tick any or all the boxes in (1), and list in (2) any particular property or financial affairs in relation to which the attorney is to be given authority to act.

The donor **must not tick no box and list nothing regarding the particular property or financial affairs for which the attorneys to be given authority to act; otherwise, the EPA **will not be valid.**

3. Restrictions on attorney

The donor may place any restrictions he/she likes on the authority the donor gives to his/her attorney in the EPA.

3. Restrictions on attorney

This enduring power of attorney is subject to the following conditions and restrictions: *[If you want to put conditions or restrictions on the way your attorney exercises any powers, you must list them here. For example, you may include a restriction that your attorney must not act on your behalf until your attorney has reason to believe that you are becoming mentally incapable. If you do not want to impose any conditions or restrictions, you must delete this paragraph.]*

.....
.....
.....

For example:

“The attorney must not act on the donor’s behalf until he/she has reason to believe that the donor is becoming mentally incapable.”

Or

“The attorney must not enter into a contract without first seeking legal advice if its value exceeds a specified amount.”

** If the donor does not want to impose any conditions or restrictions, the paragraph **must be deleted**. The donor **cannot** simply leave this paragraph blank.

Unless the donor includes a restriction preventing it, his/her attorney will be able to:

- use any of the donor’s money or property to make any provision which the donor might be expected to make himself/herself for the needs of the attorney or the needs of other persons;
- use the donor’s money to make gifts, but only for reasonable amounts in relation to the value of the money and property.

4. Notification of named persons

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*[If you do not want anyone (including yourself) to be notified of the application for the registration of this EPA, you must delete subparagraphs (1) **and** (2).]*

(1) My attorney must notify me before applying for the registration of this enduring power of attorney. *[If you do not want to be notified, you must delete this subparagraph.]*

The donor can nominate person(s) to be notified by the attorney **before** applying to the Registrar of the High Court for the registration of the EPA. The named person(s)

(1) The donor himself/herself;

(2) My attorney must notify the following persons before applying for the registration of this enduring power of attorney. *[Fill in the names and addresses of up to 2 persons (other than yourself) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

Up to 2 other persons.

Name:
Address:
Name:
Address:

If the donor does not want anyone to be notified, he/she **must delete the respective paragraphs. The donor **cannot** simply leave the paragraphs blank.

If the attorney does not notify the donor or the persons named, that does not prevent the registration of the EPA or make it invalid. However, in any legal proceedings relating to the EPA the court may, if it considers it appropriate, draw an adverse inference from the attorney's failure to notify the named person(s).

5. Commencement of the EPA

A donor has the option of having the EPA take effect:

- on the date it is signed before the solicitor; or
- on a later specified date; or
- upon the occurrence of a later event.

If the donor does not specify a date for an EPA's commencement or an event to trigger its commencement, the EPA will commence upon its execution, that is, when it is duly signed before a solicitor. It is therefore essential for the donor to be fully aware of his/her choice for the time of commencement of the EPA.

5. Commencement of EPA

[This EPA takes effect on the date it is signed before the solicitor in paragraph 7 or 8 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect
on
..... (insert a later date or event).

For example:

“This EPA takes effect when the attorney reasonably believes that I am mentally incapable or am becoming mentally incapable.”

Or

“This EPA takes effect when I am diagnosed by a registered medical practitioner to have shown signs of mental incapacity.”
Or *“This EPA takes effect when I am diagnosed by a registered medical practitioner to be suffering from dementia, Alzheimer’s disease or any form of mental incapacity.”*

****If the donor wishes the EPA to take effect on the date it is signed before the solicitor, the sentence with the asterisk (*) must be deleted.**

6. Power to continue

Section 4(1) of the Enduring Powers of Attorney Ordinance (Cap.501 of the Laws of Hong Kong) states that: “*where an individual creates an enduring power, the power is not revoked by reason of any subsequent mental incapacity of the donor*”. That is to say, the power given to the attorney is going to “endure” despite the mental incapacity of the donor.

7. Signatures

A donor **must** sign the EPA before a registered medical practitioner **and** a solicitor. The registered medical practitioner has to verify and be satisfied that the donor is mentally capable. The solicitor has to verify that the donor appears to be mentally capable.

7. Signatures

Signed by me as a deed *[sign here]*
on [date]

in the presence of [name and address of registered
medical practitioner]
.....
.....

Signed by me as a deed *[sign here]*
on [date]

in the presence of [name and address of solicitor].....
.....
.....

The EPA must be signed by the donor either:

- ✓ in the presence of both the solicitor and the registered medical practitioner at the same time; or
- ✓ in the presence of the solicitor only at any time not more than 28 days after is the donor has already signed it in the presence of the registered medical practitioner.

(Note: in this case the form must be signed and witnessed by the medical practitioner before it is signed again in the presence of the solicitor)

**An EPA is executed only when the donor signs it in the presence of a solicitor. It means that if there is a time gap between the signing in the presence of the medical practitioner and the signing in the presence of the solicitor, the EPA is not valid during this time gap.

The registered medical practitioner or the solicitor witnessing the EPA cannot be:

- ✗ the attorney;
- ✗ the spouse of the attorney;
- ✗ any person related by blood or marriage to the donor; or
- ✗ any person related by blood or marriage to the attorney.

8.

Section 5(2)(b) of the *Enduring Powers of Attorney Ordinance* (Cap.501 of the Laws of Hong Kong) caters for the scenario where a donor is mentally capable but physically incapable of signing: “if the donor is physically incapable of signing, any other person, not being the attorney, the spouse of the attorney, the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor, may sign the instrument on behalf of the donor in the presence, and under the direction, of the donor.”

8. [If you are physically incapable of signing this form and you direct someone else to sign on your behalf, that person must sign here and paragraph 7 must be deleted.]

This enduring power of attorney has been signed by
[name of person signing on your behalf]
holder of [identification document here]
of [address of person signing on your behalf]
under the direction and in the presence of the donor.

Signed as a deed [signature of person signing on your behalf]
.....
on [date]
in the presence of the donor and [name and address of registered medical practitioner]
.....
.....

Signed as a deed [signature of person signing on your behalf]
.....
on [date]
in the presence of the donor and [name and address of solicitor]
.....
.....

The person signing on behalf of the donor **cannot** be:

- ✘ the attorney;
- ✘ the spouse of the attorney;
- ✘ the registered medical practitioner or the solicitor witnessing the EPA; or
- ✘ the spouse of the registered medical practitioner or the solicitor.

** The person signing on behalf of the donor must sign under the direction and in the presence of the donor. He/she must also sign in the presence of a registered medical practitioner or a solicitor.

9. Certification by a registered medical practitioner

Section 5(2)(e) of the *Enduring Powers of Attorney Ordinance* (Cap.501 of the Laws of Hong Kong) specifies that the registered medical practitioner has to be “*satisfied that the donor was mentally capable*” when signing the EPA. This certification by a registered medical practitioner would also serve to minimize the chance of future challenges to an EPA on the grounds that the donor was already mental incapacitated at the time of executing the EPA.

One should note that this certification is to be given by a “registered medical practitioner”, but that medical practitioner does not necessarily have to be a specialist such as a psychiatrist or neurologist.

10. Certification by a solicitor

Section 5(2)(d) of the *Enduring Powers of Attorney Ordinance* (Cap.501 of the Laws of Hong Kong) provides that the solicitor has to certify that “*the donor appeared to be mentally capable*”.

“Solicitor”, according to section 3 of the *Interpretation and General Clauses Ordinance* (Cap.1 of the Laws of Hong Kong), means “*a person admitted before the Court of First Instance to practise as a solicitor*”. Hence, as only a solicitor admitted (allowed to practice) in Hong Kong fits this criterion; the donor cannot sign the EPA before a barrister or a solicitor from another country.

** If the donor finds a solicitor merely to witness the execution of the EPA, this solicitor **does not** have the duty to give legal advice regarding the EPA.

Given that the legal consequences of an EPA can be very significant, it is suggested that a donor should engage a solicitor from the moment that he/she first ponders upon the idea of making an EPA, so that the solicitor can give proper legal guidance and advice throughout the entire process.

Part B (must be completed by the attorney)

Part B

[This Part must be completed by the attorney.]

1. I understand that I have a duty to apply to the Registrar of the High Court to register this form under the Enduring Powers of Attorney Ordinance (Cap. 501) when the donor is, or is becoming, mentally incapable.
2. 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.

3. Signed by me as a deed *[signature of attorney]*
on *[date]*
in the presence of *[signature and name and address of witness, who must not be the donor]*
.....

The attorney must sign the EPA in the presence of a witness.

The witness must sign the EPA and provide his/her full name and address in the EPA.

** The witness **must not** be the donor.