

Form 2 (for appointment of more than one attorney)

Part A

1. Appointment of multiple attorneys by the donor

The donor may appoint more than one attorney so that the attorneys may assist or monitor each other.

1. Appointment of attorneys by donor

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

(a) [your attorney's name
here],
holder of [identification document here],
of [your attorney's address here]

and

(b) [your attorney's name here],
holder of [identification document here],
of [your attorney's address here]

[If you appoint more than 2 attorneys, please add additional
subparagraph(s) similar to subparagraphs (a) and (b).]

to be my attorneys 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 an 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.

**If the donor appoints more than two attorneys, he/she may add additional subparagraph(s).

2. Whether attorneys must act “jointly” or “jointly and severally”

The donor may appoint more than one attorney so that the attorneys may assist or monitor each other. The donor is free to do so as long as the attorneys are appointed to act “jointly” or “jointly and severally”.

The differences between “jointly” and “jointly and severally”:

Jointly	Jointly and severally
The attorneys have to act together and cannot act separately.	The attorneys can act together but also separately if they wish.
A decision made by any one of the attorneys alone will not be valid.	Any one of the attorneys will be able to make a decision.
The attorneys have to make decisions in respect of the donor's assets on agreed terms.	The attorneys do not have to make decisions in respect of the donor's assets on agreed terms.
Less flexibility for any one attorney to exercise his/her power, but can prevent one attorney from abusing his/her power.	More flexibility for any one attorney to exercise his/her power, but easier for one attorney to abuse his/her power.
On the bankruptcy or death of any one of the attorneys, the power of attorney becomes revoked under the law.	On the bankruptcy or death of any one of the attorneys, the other attorney(s) may still execute the enduring power of attorney.

2. Whether attorneys must act jointly

*[You must decide whether your attorneys are to act (a) jointly; **or** (b) jointly and severally. See paragraph 3 under the heading “Information you must read” and delete either (a) or (b) from the statement below. **If you do not, your EPA will not be valid.**]*

My attorneys appointed under paragraph 1 are to act —

(a) jointly.

or

(b) jointly and severally.

The donor **must** choose whether his/her attorneys are to act:

(a) jointly; or

(b) jointly and severally.

****The donor must delete the inappropriate option; otherwise, the EPA **will not be valid.****

3. The Attorneys' 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 attorneys 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 attorneys have to seek professional advice (e.g. for legal or financial aspects) if they intend to enter into a transaction the value of which exceeds a specified amount.

The donor **must**:

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

The donor **must not**:

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

3. **Attorneys' authority**

*[You must specify what you authorize your attorneys to do. You cannot give a general authority over all your property and financial affairs. **If you do so, your EPA will not be valid.** You can **either** specify at subparagraph (1) what you authorize your attorneys 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 attorneys 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 attorneys authority to act. You must not make no ticks at subparagraph (1) **and** list no property at subparagraph (2).]*

(1) My attorneys have 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 my immovable property;
- (e) to spend any of my income;
- (f) to spend any of my capital.

(2) My attorneys have authority to act on my behalf in respect of the following property or financial affairs: *[if you want your attorneys 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 attorneys 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 attorneys are 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 attorneys are 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.**

4. Restrictions on attorneys

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

4. Restrictions on attorneys

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 attorneys exercise any powers, you must list them here. For example, you may include a restriction that your attorneys must not act on your behalf until they have 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 attorneys must not act on the donor's behalf until they have reason to believe that the donor is becoming mentally incapable.”

Or

“The attorneys 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 attorneys 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 attorneys 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.

5. 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), (2) and (3).]

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) can be:

(1) My attorneys 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.]*

→ (1) The donor himself / herself;

(2) Any attorney applying for the registration of this enduring power of attorney must, before the application is made, notify any attorney not joining in the application. *[If you decide that your attorneys may act separately and you do not require any attorney applying for the registration of this EPA to notify any attorney not joining in the application, you must delete this subparagraph.]*

→ (2) any attorneys not joining in the application; or

(3) My attorneys 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 or any of your attorneys) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

→ (3) up to two 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 an 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).

6. 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.

6. Commencement of the EPA

[This EPA takes effect on the date it is signed before the solicitor in paragraph 8 or 9 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 attorneys reasonably believe 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.

7. 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.

8. Signatures

A donor **must** sign the EPA before a registered medical practitioner **and** a solicitor. The registered medical practitioner has to verify that he/she are satisfied that the donor is mentally capable at the time of signing. The solicitor has to verify that the donor appears to be mentally capable.

8. Signatures

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

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

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

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 attorneys;
- ✗ the spouses of the attorneys;
- ✗ any person related by blood or marriage to the donor; or
- ✗ any person related by blood or marriage to the attorneys.

9.

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”.

9. [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 8 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 attorneys;
- ✗ the spouses 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.

10. 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.

11. 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 attorneys)

Part B

[This Part must be completed by the attorneys. If you decide that your attorneys may act separately, then at least one of the attorneys appointed must sign this form for it to take effect as an EPA. An attorney will have the functions of an attorney under this EPA only if that attorney has signed this form.]

1. We understand that we 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. We also understand our 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 as a deed ---
 (a) by *[signature and name of attorney]*
 on *[date]*
 in the presence of *[signature and name and address of witness, who must not be the donor or another attorney of the donor]*

 and
 (b) by *[signature and name of attorney]*
 on *[date]*
 in the presence of *[signature and name and address of witness, who must not be the donor or another attorney of the donor]*

→ The attorneys must sign the EPA in the presence of a witness(es).

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

** The witness(es) **must not** be:

- ✗ the donor; or
- ✗ other attorney(s).

[If you appoint more than 2 attorneys, please add additional subparagraph(s) similar to subparagraphs (a) and (b).]