

# CONTINUITY OF PRACTICE REQUIREMENTS

The Chartered Certified Accountants' Global Practising Regulations 2003 (GPRs) set out the eligibility criteria for obtaining ACCA certificates and licences and detail the continuing obligations placed on certificate/licence holders. The continuity of practice requirements are contained in GPR 11, and the corresponding Annexes to the GPRs, and in section 3.19 of the Code of Ethics and Conduct.

This factsheet has no regulatory status. It is issued for guidance purposes only, and in the event of any conflict between the content of this factsheet and the content of the ACCA Rulebook, the latter shall at all times take precedence. Therefore, this factsheet should not be regarded by a member as a substitute for familiarising himself or herself with the appropriate regulations or, where necessary, obtaining specific advice concerning a specific situation.

## INTRODUCTION

ACCA requires all practitioners and regulated firms to make arrangements so that the professional needs of their clients will be dealt with if the practitioner dies or becomes incapacitated through illness. It is mandatory that a written agreement be made, and this may be inspected by ACCA.

## HOLDERS OF PRACTISING CERTIFICATES

A sole practitioner must enter into an agreement with a practising accountant or a firm (whether incorporated or in the form of a partnership) of practising accountants whose practice is based in the same country. (Practitioners can appoint more than one continuity provider.) Practitioners must ensure that their continuity nominees hold the same levels of authorisations as they do. In the UK/Irish context, a sole practitioner who is a registered auditor should ensure that his/her continuity nominee holds this status.

For those in partnership, the arrangement may be made either within the partnership agreement or by entering into an agreement with another firm. An incorporated firm must make provision for continuity either within its articles of association or by entering into an agreement with another firm. The same considerations with respect to authorisations, as detailed above for sole practitioners, apply to firms. Where a member practises in more than one country, he/she must make separate continuity arrangements in each of those countries.

## HOLDERS OF UK INSOLVENCY LICENCES

A sole practitioner insolvency licence holder must make his/her continuity arrangements by entering into an agreement with another sole practitioner or firm of practising accountants based in the same country. At least one of the partners in the nominated firm must be a licensed insolvency practitioner.

For those in partnership, the arrangement may be made within the partnership agreement, providing the partnership contains at least one other licensed insolvency practitioner, or by entering into an agreement with another firm of practising accountants containing at least one licensed insolvency practitioner. An incorporated firm must make provision for continuity either

within its articles of association, providing the firm contains at least one other licensed insolvency practitioner, or by entering into an agreement with another firm containing at least one licensed insolvency practitioner.

## FIRMS UNDERTAKING INVESTMENT BUSINESS

A sole practitioner's firm in the UK carrying out exempt regulated activities must make continuity arrangements with another firm. A continuity arrangement with another ACCA regulated firm will be sufficient in all cases. Where the continuity arrangement is made with a firm regulated by another DPB, firms must ensure that the continuity nominee is able to conduct investment business work.

Partnerships and incorporated firms eligible to conduct exempt regulated activities may make continuity arrangements within the partnership agreement/articles of association or with another firm that is eligible to conduct exempt regulated activities.

Where a sole practitioner, partnership or incorporated firm is authorised by the FSA to conduct regulated activities, the continuity nominee must hold at least the equivalent authorisation from the FSA.

Firms holding investment business certificates (Ireland) must make arrangements either in the partnership agreement/articles of association or with another firm authorised under the Investment Intermediaries Act.

## SELECTING A CONTINUITY NOMINEE

When choosing a sole practitioner or firm with which to enter into a continuity agreement, practitioners should try to find a compatible practice where procedures, fee structures and the work types undertaken are of a similar nature. Practical considerations such as geographic location, staff availability, technical skills and client characteristics should also be taken into consideration.

Practitioners should note that it is essential that the firm (or firms) appointed as the continuity nominee (or nominees) is/are made aware of the practices and procedures of the firm in question so that, in the event that the nominee is called upon to act, the firm will be more effective in its role at an earlier stage. It is recommended that practitioners and nominees meet, not only when first setting up the agreement, but also at periodic intervals (for example, as part of a firm's internal annual review) to exchange information about the practice.

Practitioners are recommended to review their continuity arrangements over time to consider if they continue to be appropriate. For example, a firm which has expanded its business, or which has developed particular specialisms, may, on reflection, determine that it would be prudent to seek continuity with another firm which has greater capacity or which has similar specialist abilities.

#### **MAKING A WILL**

Every practitioner is strongly recommended to make a will and appoint executors who will be able to administer the estate. It may be advantageous if one of the executors is professionally qualified. Executors of an estate can act at once to protect a practice. If, however, a practitioner should die intestate, his/her administrators will have no authority to act until they have obtained a Grant of Letters of Administration. The resulting delay may lead to the practitioner's affairs, and those of his/her clients, not being properly controlled and managed. Practitioners are recommended to inform their executor(s) and family of the existence and purpose of their continuity agreement and to inform them of the location in which the agreement is stored. In the event of a practitioner's death or incapacity, the family/personal representatives will be able to locate the document quickly and, having read it, will be able to identify the wishes of the practitioner with respect to his/her practice.

#### **DRAFTING A CONTINUITY AGREEMENT**

ACCA requires all continuity agreements and management agreements to be evidenced in writing. Any agreement drawn up must comply with the current ACCA Regulations. Members should note that an exchange of letters between practitioners would meet ACCA's requirements. Such letters should be on the respective practitioners' headed business stationery and signed by the practitioners.

The following notes have been prepared to assist members in drafting their own continuity agreements. The text comments upon those matters which members must include within their continuity agreements and also suggests further matters that practitioners may wish to consider.

#### **MATTERS THAT MUST BE DEALT WITH BY THE CONTINUITY AGREEMENT**

The continuity agreement must include clauses that deal with the following matters:

- the precise nature of the legal relationship between the practitioner and the continuity nominee
- the circumstances which will cause the management arrangement under the continuity agreement to commence operating
- a statement of the maximum duration of the management of the practice under the continuity agreement
- provisions for the review of the arrangements, should circumstances warrant an extension of time
- the continuity nominee's obligations
- the continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operating bank accounts
- the basis on which the continuity nominee will be remunerated
- the letter to be sent to clients in the event of the practitioner's death or incapacity.

#### **LEGAL RELATIONSHIP BETWEEN THE PRINCIPAL AND THE CONTINUITY NOMINEE**

The nature of the legal relationship between the practitioner and the continuity nominee should be clear to anyone reading the agreement. Continuity arrangements can be incorporated into a partnership agreement or into the articles of association of a company. However, where the parties have no intention of forming a partnership, etc it may be advisable to include a clause that specifically states that the parties have no intention of a partnership, etc being formed as a result of the continuity agreement.

#### **CIRCUMSTANCES THAT WILL CAUSE THE MANAGEMENT ARRANGEMENT UNDER THE CONTINUITY AGREEMENT TO COMMENCE**

The practitioner and nominee are recommended to discuss, agree and document a set of procedures that are to be implemented in the event of the practitioner's incapacity or death. Frequently, the continuity agreement has to be actioned at a time of great personal stress and general confusion. The practitioner's family and/or personal representatives are likely to find a structured, agreed set of procedures, and a record of the practitioner's wishes with respect to his/her practice, of great assistance at such a difficult time.

It will not always be possible for the practitioner to notify the nominee in person that the continuity arrangement should be activated. Parties may wish to identify a number of persons (eg practitioner, spouse, executor(s), personal representative(s), solicitor, etc) within the agreement who may deliver documents and notices to the nominee.

Parties to the agreement are recommended to discuss and agree what, if any, proof they require of incapacity or death. For example, in the event of incapacity, the delivery to the nominee by the practitioner/representative of a medical certificate from a properly qualified medical practitioner may be thought necessary. The parties may also agree that certain matters should be confirmed by the medical practitioner – for example, that in the medical practitioner's opinion the practitioner is physically and/or mentally unfit, through illness, accident or otherwise, effectively to manage his/her practice and, in the said medical practitioner's opinion, is likely to be so incapacitated for a period of not less than 'x' weeks.

If the practitioner should die, then matters may be more complex than when the practitioner is incapacitated. The nominee should take care that persons instructing him/her to act have the necessary authority to give such instructions. For example, in the event that a practitioner dies having made a will, his/her executor(s) can act at once in the interest of the estate and the practice. However, if the practitioner dies intestate, no action can be taken by his/her administrators until such time as a Grant of Letters of Administration has been obtained. The management arrangements under the continuity agreement cannot be activated until the administrators have authority to act.

As discussed earlier in this section, every practitioner is strongly recommended to make a will and appoint executors who will be able to administer the estate.

It is recommended that the continuity agreement is drafted such that it is able to deal with the situation where the practitioner is initially incapacitated, but subsequently dies. The nominee should receive notification of the practitioner's death. Parties may agree that, having commenced acting on the basis that the practitioner is incapacitated, the nominee should continue to act without further notice being served on him/her. The personal representative(s)/executor(s) can be deemed to have taken over as the primary contact point for the nominee. However, great care must be exercised in the event of the practitioner dying intestate, as the nominee and the practitioner's representatives will, once again, have no authority to act until a Grant of Letters of Administration is obtained. In such a circumstance the nominee and the practitioner's representative(s) should seek their own independent legal advice on how to proceed.

It is likely that initial information about a practitioner's incapacity or death, and the request for the nominee to manage the practice, may be passed on in person or by telephone. However, it is recommended that the notification and request for the management period to commence are confirmed in writing. The form of notice to be served on the nominee should be agreed by the parties. For example, a letter issued by the practitioner/representative, accompanied by the proofs specified in the continuity agreement, may be deemed sufficient.

It is likely to be unreasonable to expect a nominee to be notified one day that he/she is to commence the management of a practice the very next day. The nominee is likely to have certain practical arrangements to make concerning their own practice, such as the rescheduling of work and informing their own professional indemnity insurance (PII) providers of the circumstances. Thus, parties may wish to consider agreeing a notice period of a specified number of days (eg seven days) from receiving notice of the practitioner's incapacity or death, after which the nominee will take up management of the practice.

#### **MAXIMUM DURATION OF THE MANAGEMENT OF THE PRACTICE UNDER THE CONTINUITY AGREEMENT, AND PROVISIONS FOR THE REVIEW OF THE ARRANGEMENTS**

It is neither practical nor desirable that the management period, once commenced, should continue indefinitely. Parties to the agreement should decide upon a fixed term for the agreement (eg six months), after which the agreement will terminate. In case circumstances warrant an extension of time, ACCA requires members' continuity agreements to include provisions that will permit the management period to be extended. ACCA does not specify the circumstances that would lead to an extension of the management period.

The parties to the agreement/representatives must examine the circumstances that face them at a particular time, and decide if an extension of the management period is appropriate. For example, the original agreement may have stated that the management period was to continue for a period of six months from commencement. However, a sale of the practice to a third party may be timed to take place in the seventh month after the management period commenced. In such a situation, the parties/representatives may agree that it is appropriate to extend the agreement until the date of sale.

It is not desirable that an agreement is repeatedly extended by incremental amounts. Such an outcome could be detrimental to the interests of the clients and to the practitioner's estate. It is generally advisable to include provisions within an agreement which permit terms and conditions (not just the duration of the management period) to be varied from time to time.

Any variation of the management agreement must be by mutual consent. It is advisable that any variation of the agreement, including the extension of the management period beyond the original time limit, be evidenced in writing. The document should be signed by both the nominee and the practitioner/representative.

#### **THE CONTINUITY NOMINEE'S OBLIGATIONS**

The continuity agreement must contain a clear statement of the obligations that are to be placed upon the nominee and the practitioner and his/her representatives. ACCA does not specify matters that should be included under this heading. The following represent a selection, and not an exhaustive listing, of matters that parties to the agreement may wish to consider.

#### **STANDARD OF MANAGEMENT**

When managing a practice during the management period, an ACCA member will be expected to apply ACCA's rules and regulations to the work they perform. ACCA's Fundamental Principles, amongst other things, require members to carry out their professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of them as members. It is desirable that the nominee allocate staff to deal with the work arising from the management agreement, paying proper regard to their competence and expertise. Parties should consider if they wish to include specific clauses in their agreement about such matters.

Where a continuity agreement is made with a practitioner who is not an ACCA member, it may be advisable to specify which professional body's rules are to be applied by the nominee. Such a clause will be of particular importance where the nominee is regulated by a professional body other than ACCA, and where ACCA's rules conflict with the rules of the other body. In such a circumstance, the practitioner may wish for the nominee to give an undertaking that he/she will abide by ACCA's rules in all issues relating to any matter or aspect of the practice he/she manages under the agreement.

#### **TAXES AND VAT**

Taxes and VAT in respect of the practice will continue to arise during the management period. It is not desirable for such matters to be left to accumulate, and await the return to work of the practitioner. Parties to the agreement are recommended to discuss and agree the allocation of responsibility for compiling the necessary information, submitting such returns as are necessary and dealing with matters arising, such as the payment of taxes or the lodging of appeals, etc.

#### **HOLDING MEETINGS AT THE PRACTITIONER'S BUSINESS PREMISES**

The nominee should, wherever possible, interview clients and staff at the incapacitated/deceased member's business premises. This is important as a means of seeking to preserve the practice. Parties may wish to include clauses within their agreement which deal with this issue.

## **NOTIFICATION TO ACCA**

ACCA's GPRs require ACCA to be notified in the event that a continuity agreement has been activated. Parties are advised to agree who will notify ACCA of such an event, what information they will provide to ACCA, and at what stage such notification must be sent to ACCA.

## **NOTIFICATION TO INSURERS**

The fact that a practitioner is incapacitated or has died, and that another person has stepped in to manage the practice is normally a notifiable event under a practitioner's PII contract. Responsibility for notifying the PII provider should be clearly allocated. It may be appropriate to set time limits within which the notification should take place. It may be advisable to include clauses in the agreement which note the nominee's agreement to abide by the terms of the practitioner's insurance in respect of the managed practice and to take all reasonable steps to provide information requested by the practitioner's insurance company.

In addition to PII, consideration should be given to maintaining insurance cover for property (buildings and contents) occupied, owned or used by the practice. However, if the nominee is to maintain adequate insurance cover for the assets of the practice, it is essential that the practitioner maintains sufficient up-to-date details of the relevant insurance policies, including policy names, numbers, insurers' telephone numbers and addresses. Such readily accessible details will assist the nominee to complete any obligations placed on him/her in respect of insurance.

The nominee should also inform his/her own insurers that he/she is to manage another person's practice.

## **MAINTENANCE OF BOOKS AND RECORDS**

Part of the proper management of a practice is the maintenance of its books and records. Responsibility for the maintenance of such records should be allocated, and it may be advisable to include specific clauses that note the nominee's agreement to maintain the practice records.

It should be noted, however, that the nominee will only be fully able to discharge his/her duties in respect of such matters if the practitioner has adequate, established systems in place and books and records which are reasonably up to date. Incomplete or inadequate recording of matters by the practitioner may lead to delays as the nominee seeks to bring records up to date and to a reasonable state of completeness.

Practitioners should consider if they require their nominees to give undertakings with respect to office systems. For example, in a practice that is highly computerised, an important part of practice security will be the taking of regular back-ups and the storing of these in secure conditions. It may be advisable for the agreement to include specific undertakings with respect to specialist systems and security. This is of particular importance where insurance cover is only effective if certain procedures and security conditions are complied with.

The practitioner or his/her representatives are likely to want to monitor the management of the practice. It may be advisable to include specific clauses that permit the representatives to have reasonable access to the practice records (eg at any time during normal working hours).

## **MEMBERSHIP OF ACCA**

Even though a practitioner is not able to manage his/her practice because of incapacity, he/she will continue to hold a practising certificate, etc. The annual fees for certificates, licences and ACCA membership subscriptions will continue to fall due for payment. The practitioner may wish to include a clause requiring the nominee to arrange for all fees etc to be paid as they fall due so that the practice continues to hold valid authorisations for the work it undertakes.

## **CONFIDENTIALITY**

It may be appropriate to include a clause in the agreement by which the nominee acknowledges the confidential nature of the affairs of the practice, its client list and all matters concerning the affairs of the clients, and agrees not to divulge information without proper authority being given to him/her.

## **THE CONTINUITY NOMINEE'S POWERS**

The continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operation of bank accounts will be facilitated if the nominee's powers under the agreement are clearly stated. It is recommended that the parties agree the procedures to be followed for the nominee to obtain the relevant permission or permissions.

## **AUTHORITY, CONSENT AND INSTRUCTION**

The parties should consider if different levels of permission and authority are required in the event of incapacity or death. For example, a practitioner may be incapacitated and, in consequence, be unable to attend and manage his/her practice on a daily basis. However, he/she may still be capable of taking decisions about the practice's affairs and those of his/her clients. In such a situation, it may be appropriate for the nominee to visit the practitioner on a regular, agreed basis to obtain the practitioner's consent to actions, signature to documents, etc.

If the practitioner's incapacity renders him/her unable to make decisions, etc or if the practitioner has died, the nominee may be required to approach the representatives of the practitioner when he/she requires instructions, consent or authorisation. It is recommended that the agreement provide for those times when the representatives of the practitioner cannot reach a unanimous decision within a reasonable time of the nominee's request. On such an occasion it may be appropriate to permit the nominee to accept the majority view. Where the representatives do not reach a decision, or fail to notify the nominee of a decision, it may be appropriate to permit the nominee, after a reasonable period of time, to act without the requested authority, consent or instructions. In such an event, it should probably be required that the nominee shall use his/her best endeavours and judgement to act in the best interests of the practice.

## **ADMINISTRATION OF THE PRACTICE**

It is recommended that the parties discuss and agree how sundry administrative matters are to be dealt with and what powers the nominee will have in respect of these. For example, if the practice is an ACCA Approved Employer, ACCA's Training and Promotions Department must be informed of a continuity agreement being activated so that it can assess if the arrangements for students and members employed by the practice continue to be satisfactory.

Parties should discuss and agree the basis for charging clients during the management period, and how work in progress is to be dealt with. It may be advisable to obtain undertakings from the nominee to charge clients of the practice in accordance with the fee structure that is in place at the date of the commencement of the management period, unless agreed otherwise with the practitioner/representatives. Such a requirement assumes that the practice does, in fact, have set procedures for establishing fees (eg fixed quote fees, charging actual time spent on jobs, etc). In the absence of any set system, the nominee will have to determine a fee. Where the nominee has a scale of charging which is significantly different from that of the practitioner, or has a different approach to such matters as writing off work in progress, this could lead to disputes on the part of clients and the practitioner/representatives.

It may be advisable to address the issue of credit control. Where there are established procedures for chasing outstanding debts, the parties may agree that the nominee will continue to apply such procedures during any management period. However, where there are no set procedures or principles which can be applied, the nominee will have to decide how to proceed and, as noted earlier, if the nominee's approach to such matters differs significantly from that of the practitioner, this could be a cause of dispute.

Practices frequently enter into credit agreements, etc for office machinery, vehicle leasing, etc. It may be advisable to include clauses which set a limit on the level of credit to which the nominee can commit the practice without seeking specific permission from the practitioner/representatives. The practitioner may wish to consider drawing up a power of attorney in favour of the nominee. Thought should be given to what powers are to be afforded to the nominee and if any matters should be specifically excluded from the power of attorney. The events required to take place and proofs to be obtained for a power of attorney to become valid and enforceable should be determined. The power of attorney, depending on how it is drawn up, could give the nominee the authority to sign any document for the purposes of the continuity of the firm. Where the nominee signs on behalf of the firm, it should be clear that he/she does so in the capacity of agent. Legal advice should always be sought when drawing up a power of attorney.

#### **ENGAGEMENT AND DISMISSAL OF STAFF**

Parties should consider including clauses that deal with the employment of temporary and full-time staff. It may be considered appropriate to specify the types of qualification and training that certain grades of staff are expected to have. If the practitioner wishes to retain final authority over the employment and dismissal of staff, it will probably be advisable to include clauses that require the nominee to obtain permission from the practitioner/representatives. Additionally, it may be advisable to require the nominee to obtain the consent of the practitioner/representatives to the terms and conditions of employment or dismissal.

#### **OPERATION OF BANK ACCOUNTS**

The nominee will need to be able to pay bills, expenses, wages, etc as they fall due if he/she is to manage the practice and enable it to continue. The nominee must have access to practice money (either directly or through the practitioner/representatives) to pay legitimate calls on the practice.

It would be unreasonable to expect the nominee to pay the normal business expenses, wages, etc from his/her personal funds or those of his/her practice. It is advisable that procedures in respect of bank accounts, and who may have access to them, their management, the ability to open or close accounts, etc are addressed by the agreement. It is advisable that the relevant bank is consulted to identify the authorities and proofs it would require for the nominee and/or the representatives to operate the practice's bank accounts.

In the event of the practitioner's death, the personal representatives of the practitioner should act to make suitable banking arrangements, pending probate of the will or the Grant of Letters of Administration. It will be of assistance to the executors/administrators if there are clear instructions within the continuity agreement with respect to the setting up of new accounts, obtaining overdrafts until Grant of Probate/Letters of Administration, etc, and the nominee's ability to access the practice's bank accounts.

For the avoidance of doubt, the practitioner may wish to include an undertaking that the nominee will keep the practice's money and financial affairs separate from the nominee's own business and personal affairs.

#### **THE BASIS ON WHICH THE NOMINEES WILL BE REMUNERATED**

The parties should agree the terms on which the nominee will be remunerated. For example, it may be agreed that the nominee will be paid on a monthly basis, in arrears, at a rate agreed by the parties/representatives. Parties to the agreement may wish to agree a scale of fees, or a formula for the calculation of the remuneration payable to the nominee for the management of the practice.

It is reasonable for the nominee to expect to be refunded for expenses incurred by him/her in the course of managing the practice. It may be advisable to include a clause about such matters. The parties may agree that the nominee will produce, upon request, original receipts, etc as evidence of expenditure reasonably incurred.

#### **LETTER TO BE SENT TO CLIENTS IN THE EVENT OF THE PRACTITIONER'S INCAPACITY OR DEATH**

Clients should be informed of the arrangements in place for the continuance of service to them. It may be advisable to draft proforma letters to be sent to clients, and to set time limits for such letters to be despatched, eg within 14 days of the management period commencing and at the end of every six month period from the date of commencement.

The name of the nominee should be disclosed on the professional stationery of the practice as soon as possible after the commencement of the management period, eg:

'David J Smith FCCA  
Chartered Certified Accountants

Manager: Henry R Jones FCCA  
Chartered Certified Accountant'

Or

'Manager: Davies and Jones  
Chartered Certified Accountants'

## **ADDITIONAL MATTERS WHICH PRACTITIONERS MAY WISH TO INCLUDE IN THEIR CONTINUITY AGREEMENTS**

The matters to be included from the following headings will be for discussion and agreement by the parties to the continuity agreement.

### **CHANGE OF NAME AND ADDRESS OF THE PARTIES**

It is important that parties to the agreement are clearly identifiable both at the time the continuity agreement is drawn up and also over the life of the agreement. It is suggested that parties to the agreement require each to inform the other of any name changes or changes of address, both business and residential. Such changes should be notified to the relevant parties within a reasonable time. The purpose of this is to keep parties fully informed at all times, so that if the agreement needs to be actioned, parties can be contacted speedily.

### **DEFINITION OF TERMS**

It is important that parties to the continuity agreement are able to understand the terms used in the agreement and interpret them in the same way. It may aid understanding if terms used are defined within the agreement. For example, where notice periods are specified in terms of days, the parties need to be clear what is meant (eg business days or all days from Monday to Sunday).

### **TERMINATION OF THE AGREEMENT**

Practitioners may wish to give consideration to including clauses with respect to terminating the agreement in different situations. For example, prior to a management period commencing, a nominee may decide to retire. As a result of this decision, he/she will wish to give up his/her responsibilities under the agreement. Where a management period has not yet commenced, a simple requirement to give written notice (eg one month's notice) may be an acceptable way of terminating the agreement. The period of notice should be agreed by the parties.

Where one of the parties breaches the terms of the agreement, matters are likely to be more complicated. If the nominee breaches the terms of the agreement, the practitioner (or the representatives) may wish either to have the breach remedied or to terminate the agreement. A breach may arise as a result of the nominee ceasing to hold the required authorisations, such as ceasing to have registered auditor status, or by his/her being adjudged bankrupt or entering into a voluntary arrangement with his/her creditors, or by being convicted of an offence of dishonesty.

On the termination of the agreement, the nominee should cease to hold him/herself out as an agent of the practice. It may be advisable to include clauses that provide undertakings by the nominee that, on termination of the agreement, he/she will return all books and papers, etc and facilitate the smooth transition of practice matters that have been under his/her control.

### **SALE OF THE PRACTICE**

It is suggested that practitioners give consideration to what will happen to their practices in the event of their long-term incapacity or death.

In many instances the nominee may be willing to buy the practice, and practitioners may wish to provide for such an outcome within the agreement. Practitioners may wish to include clauses which specify how the sale of the practice is to be conducted, how the sale price is to be calculated, etc. It may be advisable to include a clause which records the fact that the decision to sell will remain at the discretion of the practitioner/representatives. Where the nominee agrees to buy the practice, it is advisable for the parties to the sale to be independently advised.

### **RESTRICTIVE COVENANTS**

Practitioners may wish to give consideration to including undertakings on the part of the nominee that he/she, on the termination of the management of the practice for whatever reason, will not solicit, or cause another party to solicit, any of the practice's clients (whether that person was a client prior to the commencement of the management period or became a client during that period) for a period of time (say, not less than two years running from the date of expiry or termination of the agreement).

### **EXCLUSIVE JURISDICTION AND GOVERNING LAW**

For the avoidance of doubt, it may be advisable to specify which law is to be applicable to the agreement.

Members should note that, due to its generality, this commentary cannot, and is not intended to, cater for each member's particular circumstances.

### **MODEL AGREEMENTS**

To further assist sole practitioners to make continuity arrangements, ACCA has produced two model agreements which are reproduced as appendices to this section. Further copies are available from professional standards at ACCA, and they can also be found on ACCA's website at [www.accaglobal.com/members/professionalstandards](http://www.accaglobal.com/members/professionalstandards)

The model agreements detail items that practitioners may wish to consider using as the basis of their own continuity agreements. It is stressed that those members choosing to use the model agreements should tailor them to their own particular set of circumstances. Wholesale copying of the agreements is strongly discouraged.

Members are strongly recommended to seek independent legal advice when drawing up a continuity agreement. The agreement will be legally enforceable upon the parties. It is, therefore, important that all parties are clear in their understanding of their responsibilities under the agreement, and that the document records accurately all matters agreed by the parties.

### **FURTHER INFORMATION**

Further information is available from the ACCA website at [www.accaglobal.com](http://www.accaglobal.com), or by telephoning the Advisory Services Helpline in your region.

## APPENDIX 1

### Model Agreement Between a Sole Practitioner and a Firm to Ensure Continuance of the Sole Practitioner's Practice 1984 The Association of Chartered Certified Accountants

(Members are advised to consult a solicitor before entering into an agreement of this nature.)

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, BETWEEN  
of \_\_\_\_\_ (hereinafter called 'X') of the one part and  
of \_\_\_\_\_ (hereinafter called 'the firm') of the other part WHEREAS X is a Chartered Certified  
Accountant in sole practice under the name of \_\_\_\_\_ AND WHEREAS X desires to ensure  
that his practice continues in the event of his death or continuing incapacity on the terms and conditions hereinafter contained.

Whereby it is agreed as follows:

- 1 In this agreement unless subject or content otherwise requires:
  - a 'the Association' means the Association of Chartered Certified Accountants.
  - b 'representative(s)' means in the case of X – his wife Mrs X, his solicitor Mr \_\_\_\_\_, his doctor Dr \_\_\_\_\_, the executors or any two such persons.
  - c 'continuing incapacity' means in relation to X that he has a written medical certificate from a properly qualified medical practitioner stating that he is unfit through illness, accident or otherwise from effectively carrying on his practice and is likely to be so incapacitated for a period of not less than \_\_\_\_\_ weeks.
  - d 'personal representative' means the persons named as executors in relation to the will of X or in the case of intestacy the persons who apply for the grant of letters of administration of his estate.
- 2 In the event of the continuing incapacity of X, the firm shall, when requested to do so in writing by X or his representative(s), and on receipt of a medical certificate, manage the practice on the following terms and conditions:
  - a The firm shall carry on the practice under its existing name in a manner befitting to the profession and shall take all reasonable steps to preserve the goodwill of the practice.
  - b The firm shall be entitled with the consent of X or his representative(s) (which shall not unreasonably be withheld) to:
    - i operate the bank accounts of the practice.
    - ii employ staff, whether his own or otherwise, to assist with the running of the practice.
    - iii sign letters and other documents in the name of X.
  - c Meetings with clients and others relating to the practice shall not normally take place at the office of the firm.
  - d The firm shall:
    - i inform the Association of the firm's position with regard to the practice of X.
    - ii inform the insurers of X's professional indemnity policy of the arrangement and obtain any extra cover necessary for the firm and other employees on behalf of X.
    - iii notify the clients of the practice and other parties concerned that the firm will be managing the practice temporarily.
  - e The firm shall keep all books of accounts and other records of the practice up to date.
  - f The firm shall be remunerated for the work carried out from the practice at a rate agreeable to both parties. Also the firm shall be reimbursed for any expenses reasonably incurred while managing the practice.
  - g Should the subscription of X become due, the firm shall inform the Secretary of the Association of the arrangements and renew X's subscription.
  - h X or his representative(s) may terminate the agreement by giving the firm \_\_\_\_\_ months notice in writing provided that the period of management shall not exceed a period of \_\_\_\_\_ months unless the firm otherwise agrees.
  - i On the termination of its management the firm shall hand over the practice to X or his representative(s) or to any other person as directed and shall give all the necessary assistance to make the handover satisfactory.
  - j Should the agreement terminate in accordance with Sub-clause (h) above and the firm has not been instructed by X or his representative(s) to whom the practice should be handed over, the firm shall report this matter to the Association and shall not then be held responsible for any liability resulting from the termination of the agreement.
- 3 In the event of the death of X the firm shall when requested to do so in writing by the personal representatives of X manage the practice on the following terms and conditions:
  - a The firm shall carry on the practice under the existing name.
  - b The firm shall inform the Association of this agreement and shall place its name as manager on the letter heading of the practice and shall arrange that there is uninterrupted professional indemnity insurance cover and other necessary insurances.
  - c The personal representatives shall immediately authorise the firm to open and operate the necessary accounts in the name of the practice at its existing bank to enable the clients' business to continue and salaries and expenses to be paid pending the grant of probate of the Will of the deceased party or the grant of letters of administration.
  - d The personal representatives shall make an arrangement with the bank for temporary overdrafts to enable the bank accounts to operate and for the overdraft to be repaid out of X's estate when probate or letters of administration have been granted.
  - e Prior to the grant of probate or letters of administration being granted all moneys received by the practice shall be paid into the new accounts.
  - f As soon as probate or letters of administration are granted the personal representatives shall register the same with the bank instructing that the accounts be placed under the firm's control and that bank charges or interest be debited to the office account.
  - g Sub-clauses (a), (b)(ii) and (iii), (c), (d), (e), (f), (h), (i) and (j) of Clause 2 above shall apply to this clause save with the substitution of the words 'personal representative(s)' for 'representative(s)'.

h In the event of the period of management continuing for more than one year the firm shall report annually to the Association.  
i The firm may acquire X's practice if it so wishes as long as the personal representatives are independently advised on the transaction.

4 All questions or differences whatsoever arising between the parties or their respective representatives touching this agreement shall in the first instance be referred to Professional Standards.

5 This agreement may be terminated before Clause 2 or 3 comes into operation by either party giving three months' notice in writing to the other party.

AS WITNESS

the hands of the parties the day and year first before written etc.

## APPENDIX 2

### Model Agreement Between Two Sole Practitioners to Ensure Continuance of their Practices 1984

#### The Association of Chartered Certified Accountants

(Members are advised to consult a solicitor before entering into an agreement of this nature.)

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, BETWEEN  
of \_\_\_\_\_ (hereinafter called 'X') of the one part and  
of \_\_\_\_\_ (hereinafter called 'the firm') of the other part WHEREAS X is a Chartered Certified  
Accountant in sole practice under the name of \_\_\_\_\_ AND WHEREAS X desires to ensure  
that his practice continues in the event of his death or continuing incapacity on the terms and conditions hereinafter contained.

Whereby it is agreed as follows:

- 1 In this agreement unless subject or content otherwise requires:
  - a 'the Association' means the Association of Chartered Certified Accountants.
  - b 'representative(s)' means in the case of X – his wife Mrs X, his solicitor Mr \_\_\_\_\_, his doctor Dr \_\_\_\_\_, the executors appointed by his Will Messrs. \_\_\_\_\_, or any two such persons.
  - c 'representative(s)' means in the case of Y – his wife Mrs Y, his solicitor Mr \_\_\_\_\_, his doctor Dr \_\_\_\_\_, the executors appointed by his Will Messrs. \_\_\_\_\_, or any two such persons.
  - d 'continuing incapacity' means in relation to X or Y that X or Y has a written medical certificate from a properly qualified medical practitioner stating that he is unfit through illness, accident or otherwise from effectively carrying on his practice and is likely to be so incapacitated for a period of not less than \_\_\_\_\_ weeks.
  - e 'personal representative' means the persons named as executors in relation to the will of X or Y or, in the case of intestacy, the persons who apply for the grant of letters of administration of his estate.
- 2 In the event of the continuing incapacity of either party (hereinafter called the 'incapacitated party') the other party (hereinafter called the 'managing party') shall, when requested to do so in writing by the incapacitated party or his representative(s), and on receipt of a medical certificate, manage the practice on the following terms and conditions:
  - a The managing party shall carry on the practice under its existing name in a manner befitting to the profession and shall take all reasonable steps to preserve the goodwill of the practice.
  - b The managing party shall be entitled with the consent of the incapacitated party or his representative(s) (which shall not unreasonably be withheld) to:
    - i operate the bank accounts of the practice.
    - ii employ staff, whether his own or otherwise, to assist with the running of the practice.
    - iii sign letters and other documents in the name of the incapacitated party.
  - c Meetings with clients and others relating to the practice shall not normally take place at the office of the managing party.
  - d The managing party shall:
    - i inform the Association of his position with regard to the practice of the incapacitated party.
    - ii inform the insurers of the incapacitated party's professional indemnity policy of the arrangement and obtain any extra cover necessary for himself and other employees on behalf of the incapacitated party.
    - iii notify the clients of the practice and other parties concerned that he will be managing the practice temporarily.
  - e The managing party shall keep all books of accounts and other records of the practice up to date.
  - f The managing party shall be remunerated for the work carried out from the practice at a rate agreeable to both parties. Also the managing party shall be reimbursed for any expenses reasonably incurred while managing the practice.
  - g Should the subscription of the incapacitated party become due, the managing party shall inform the Secretary of the Association of the arrangements and renew the subscription of the incapacitated party.
  - h The incapacitated party or his representative(s) may terminate the agreement by giving the managing party \_\_\_\_\_ months notice in writing provided that the period of management shall not exceed a period of \_\_\_\_\_ months unless the managing party otherwise agrees.
  - i On the termination of its management the managing party shall hand over the practice to the incapacitated party or his representative(s) or to any other person as directed and shall give all the necessary assistance to make the handover satisfactory.
  - j Should the agreement terminate in accordance with Sub-clause (h) above and the managing party has not been instructed by the incapacitated party or his representative(s) to whom the practice should be handed over, the managing party shall report this matter to the Association and shall not then be held responsible for any liability resulting from the termination of the agreement.
- 3 In the event of the death of either party (hereinafter called the 'deceased party') the other party (hereinafter called the 'surviving party') shall when requested to do so in writing by the personal representatives of the deceased party manage the practice on the following terms and conditions:
  - a The surviving party shall carry on the practice under the existing name.
  - b The surviving party shall inform the Association of this agreement and shall place his name as manager on the letter heading of the practice and shall arrange that there is uninterrupted professional indemnity insurance cover and other necessary insurances.
  - c The personal representatives shall immediately authorise the surviving party to open and operate the necessary accounts in the name of the practice at his existing bank to enable the clients' business to continue and salaries and expenses to be paid pending the grant of probate of the Will of the deceased party or the grant of letters of administration.

- d The personal representatives shall make an arrangement with the bank for temporary overdrafts to enable the bank accounts to operate and for the overdraft to be repaid out of the deceased party's estate when probate or letters of administration have been granted.
  - e Prior to the grant of probate or letters of administration being granted all moneys received by the practice shall be paid into the new accounts.
  - f As soon as probate or letters of administration are granted the personal representative(s) shall register the same with the bank instructing that the accounts be placed under the surviving party's control and that bank charges or interest be debited to the office accounts.
  - g Sub-clauses (a), (b)(ii) and (iii), (c), (d), (e), (f), (h), (i) and (j) of Clause 2 above shall apply to this clause save with the substitution of the words 'personal representative(s)' for 'representative(s)'.  
h In the event of the period of management continuing for more than one year the surviving party shall report annually to the Association.
  - i The surviving party may acquire the deceased party's practice if he so wishes as long as the personal representatives are independently advised on the transaction.
- 4 All questions or differences whatsoever arising between the parties or their respective representative(s) touching this agreement shall in the first instance be referred to Professional Standards.
- 5 This agreement may be terminated before Clause 2 or 3 comes into operation by either party giving three months' notice in writing to the other party.

AS WITNESS

the hands of the parties the day and year first before written etc.