

Form of enduring power of attorney
(for appointment of more than one attorney)

Form 2

Information you must read

1. This form is a legal document that allows you to create an enduring power of attorney (*EPA*). An EPA enables you to authorize another person to act on your behalf in relation to your property and financial affairs. You must use this form if you intend to appoint more than one person to act on your behalf. If you become mentally incapable, the persons you have appointed (*your attorneys*) will be able to make decisions for you after they have registered this form with the Registrar of the High Court.
2. **Paragraph 2 of Part A:** You must decide whether your attorneys are to act —
 - (a) jointly (that is, they must all act together and cannot act separately); or
 - (b) jointly and severally (that is, they can all act together but they can also act separately if they wish).
3. You must indicate your decision at paragraph 2 of Part A. You should note that if your attorneys are to act jointly, on the bankruptcy or death of any one of them this power of attorney becomes revoked under law.
4. You must complete Part A.
5. **Paragraph 1 of Part A:** You must include the names and addresses of the persons you wish to appoint as your attorneys at paragraph 1 of Part A. The persons you appoint as your attorneys must be over 18 years of age and must not be bankrupt or mentally incapable. Your attorneys do not have to be solicitors. Your attorneys must complete Part B and each of them must sign this form in the presence of a witness.
6. **Paragraph 3 of Part A:** You cannot give your attorneys a general authority over all your property and financial affairs. If you do, your EPA will not be valid. Instead, you must specify at paragraph 3 of Part A what you authorize your attorneys to do with your property and financial affairs, or the particular property or financial affairs for which you have given your attorneys authority to act. For example, you may decide to give your attorneys authority only for a particular bank account, or a particular piece of property.
7. **Paragraph 4 of Part A:** You may include any restrictions you like on the authority you give to your attorneys. 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, or that your attorneys must not enter into a contract ~~without first~~

seeking legal advice if its value exceeds a specified amount. You should set out these restrictions at paragraph 4 of Part A.

8. Unless you include a restriction preventing it, your attorneys will be able to use any of your money or property to make any provision which you might be expected to make yourself for the needs of your attorneys or the needs of other persons. Your attorneys will be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.
9. Your attorneys may recover out-of-pocket expenses for acting as your attorneys. If any of your attorneys is a professional person, such as an accountant or a solicitor, that attorney may charge for any professional services provided when acting as your attorney.
10. If your attorneys have reason to believe that you are, or are becoming, mentally incapable of managing your affairs, they must apply to the Registrar of the High Court to register this EPA. Registration will allow your attorneys to make decisions for you after you have become mentally incapable.
11. **Paragraph 5 of Part A:** If you would like to be notified before your attorneys apply to the Registrar of the High Court to register this EPA, or if you would like other persons to be notified, you must include the names and addresses of the persons to be notified at paragraph 5 of Part A. If you have decided that your attorneys may act separately, you may also nominate any of your attorneys not joining in the application to be notified. You can include up to 2 persons to be notified in addition to yourself and any attorney not joining in the application. If your attorneys do not notify you or the persons you have nominated, that does not prevent the registration of your 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 failure to notify you or the nominated persons.
12. **Paragraphs 8, 10 and 11 of Part A:** You must sign this form at paragraph 8 of Part A and fill in the names and addresses of the registered medical practitioner and the solicitor who are present when you sign. If you do not sign in the presence of both the registered medical practitioner and the solicitor at the same time, you must sign the form in the presence of the solicitor no later than 28 days after the date on which you sign in the presence of the registered medical practitioner. The registered medical practitioner and the solicitor will need to complete the certificates at paragraphs 10 and 11 of Part A respectively to certify that you are mentally capable when you sign this form.
13. **Paragraph 9 of Part A:** If you are physically incapable of signing this form yourself, you can direct someone else to sign on your behalf. In this case, paragraph 9 of Part A must be completed and that person must sign at that paragraph in your presence and in the presence of the registered medical practitioner and the solicitor. The person signing on your behalf must not be one of your attorneys, the spouse of any one of your attorneys,

the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor.

14. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap. 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 6 of Part A.

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(for appointment of more than one attorney)

Part A

[This Part must be completed by the person appointing the attorneys (the donor), except for paragraphs 10 and 11, which must be completed by a registered medical practitioner and a solicitor respectively. You should read the explanatory information given under the heading "Information you must read" before you fill it in. Do not sign this form unless you understand what it means.]

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).

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.

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, 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.]*

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.]*

5. Notification of named persons

[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).]

(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.]*

(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.]*

(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.]*

Name: _____

Address: _____

Name: _____

Address: _____

6. Commencement of 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).

7. Power to continue

I intend this enduring power of attorney to continue even if I become mentally incapable.

8. 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]* _____

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]* _____

10. Certificate by registered medical practitioner

I certify that:

- (a) I am satisfied that the donor is mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* _____

_____ on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by registered medical practitioner _____
on *[date]* _____

11. Certificate by solicitor

I certify that:

- (a) the donor appears to be mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) his form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* _____

_____ on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by solicitor _____
on *[date]* _____

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 our 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]* _____

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