



**The Institute of
Chartered Accountants
in Australia**

Guidance on Incapacity or Death of a Sole Practitioner

Prepared for

**The Institute of Chartered Accountants
in Australia**

By

Phillips Fox Lawyers

CONTENTS

- GUIDANCE:** **A. Recommended Arrangements**
 B. Investment Business Considerations
- APPENDIX 1:** **Guidance Notes for Power of Attorney**
- APPENDIX 2:** **Provisions for Appointment of a Special Executor
 in a Will.**

IMPORTANT NOTICE

This Guidance has been prepared by Phillips Fox Lawyers in consultation with the Institute and issued in April 1999 for the information of members of the Institute of Chartered Accountants in Australia only. The Appendices to the Guidance may need to be changed to meet the individual circumstances of a sole practitioner. If in doubt you should seek legal advice.

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Guidance on Incapacity or Death of a Sole Practitioner

A. Recommended Arrangements

1. Arrangements Needed

This guidance has been prepared to assist sole practitioners in choosing a substitute practitioner (the Alternate) for the continuity of their practice in the event of their future incapacity or death. It allows sole practitioners to determine for themselves, while competent, who will manage their practice and affairs in the event they are unable to do so.

The Institute suggests the following arrangement:

- (i) the appointment of an Alternate as an attorney under the protected power of attorney (known as an enduring power of attorney) to enable that person to act during the sole practitioner's lifetime in the event of the practitioner's physical or mental incapacity; and
- (ii) the appointment of an Alternate as a special executor under the sole practitioner's Will to attend to the affairs of the practice until it is sold, transferred or otherwise disposed of.

2. Guidance

This guidance is divided into two parts.

A. Recommended Arrangements generally address the appointment of an attorney and an executor to meet the requirements of most sole practitioners.

B. Investment Business Considerations provides additional guidance to those sole practitioners who are licensed as investment advisers or dealers or authorised representatives of licensed advisers.

Although there are other ways to nominate an Alternate, the method in this guidance has been suggested by the Institute's legal advisers.

Members should consult their own legal adviser if they wish to make specific arrangements beyond the scope of those described.

Generally, sole practitioners would not have to appoint Alternates to act in their place in relation to trusts and settlements of which they are trustees because each trust instrument should contain provisions which deal with the incapacity of its trustees. However, each trust or settlement instrument should be examined to ascertain whether arrangements need to be made to delegate member's functions and responsibilities as trustee in the event of incapacity. It will be more usual for a new trustee to be appointed on the member's incapacity.

If in doubt, the sole practitioner should seek legal advice.

3. Enduring Power of Attorney

Unlike the ordinary power of attorney, the enduring power of attorney remains valid despite mental incapacity of the sole practitioner.

A power of attorney is revoked upon death. A practitioner should therefore appoint an executor as well as an attorney.

A sole practitioner may change the Alternate at any time prior to incapacity or after recovery by revoking the enduring power of attorney. A Court may revoke an enduring power of attorney in the case of incompetence, fraud or other serious wrongdoing by the attorney.

Where a practitioner has specific requirements in relation to the continuity of the practice, independent legal advice should be obtained.

4. Appointment of Attorney

The sole practitioner should appoint the Alternate to act during any period of incapacity, whether physical or mental, occurring in the sole practitioner's lifetime, using the form of the enduring power of attorney set out in Appendix 1. (Being the enduring power of attorney applicable in the member's state of residence).

The person appointed as the attorney must be a member holding a current Certificate of Public Practice and be subject to the same duties, responsibilities and obligations as the sole practitioner.

Certain provisions in the attached enduring power of attorney are square bracketed to indicate that they are optional or only relevant in certain circumstances. For example:

- an agreed scale of remuneration may be inserted in paragraph 1(d) of the Schedule of Limitations and Conditions, which is attached to the enduring power of attorney; and
- the time limits in the Schedule of Limitations and Conditions may be amended.

A sole practitioner should delete those paragraphs not relevant to his/her circumstances. Provisions in square brackets and marked with an asterisk are only relevant in respect of sole practitioners authorised to conduct investment business and should be deleted where not applicable.

The requirements of the enduring powers of attorney are complex and sole practitioners should consult a solicitor if any other provisions in the suggested form of the enduring power of attorney set out in Appendix 1, do not appear to appropriately address their particular requirements and circumstances.

In accordance with the Institute's recommendations in APS10 "Trust Accounts", a sole practitioner may delegate authority to withdraw money from a practice trust account, but the delegation should be in writing and to two of the persons specified in APS10. If a trust account is maintained, the sole practitioner will need to appoint a second person as Delegate to jointly sign trust account cheques with the attorney. The enduring power of attorney attached provides for the appointment of a delegate for this purpose.

The enduring power of attorney appoints the Alternate to carry on the sole practitioner's business as attorney during any period of incapacity, whether mental or physical.

As the requirement to register a power of attorney varies from state to state, it is advisable to register the enduring power of attorney in every case.

The member can register the Deed at the Land Titles Office in each state and details of the power of attorney will be entered in the General Register of Deeds.

5. Appointing the Alternate

The sole practitioner may either choose to appoint an Alternate to act as their attorney or executor or both.

A person can agree to be appointed as an Alternate and continue the appointment only if the person is a member of the Institute of Chartered Accountants of Australia and holds a Certificate of Public Practice.

An Alternate who ceases to be eligible to take up the appointment, should notify the sole practitioner. If the Alternate is unable to act, the sole practitioner should appoint a replacement as soon as is reasonably practicable. For the particular situation of investment business, see *B. Investment Business Considerations*.

6. Types of Alternates

The Institute does not object, in principle, to arrangements between two sole practitioners, whether reciprocal or otherwise, for the appointment of each other as an Alternate. However, many sole practitioners (and small partnerships) could find that the work involved in running another going concern would impose too great a strain on their existing resources or the timing when they are under pressure or are simply not available.

It may be preferable for a sole practitioner to seriously consider a partner in a firm which has adequate resources to undertake the appointment as a proposed Alternate.

7. Appointment of Executor

The sole practitioner should also make a Will and provide the Alternate with a copy (or at least a copy of those parts of the Will which relate to the role of the Alternate as the sole practitioner's special executor). Appendix 2 contains Provisions for Appointment of a Special Executor for inclusion in a Will, but not a complete Will. Members will need to prepare a Will to also take account of their own personal circumstances. The Will can appoint both an executor and a special executor. A special executor would normally be the Alternate appointed to carry on the practice of the sole practitioner. The executor is responsible for the administration of the rest of the estate.

It is possible to appoint the same person as executor and special executor, however the proposed provision presumes that the business affairs will be dealt with separately by the Alternate acting as special executor.

The value of the practice of a sole practitioner will be an asset (or liability) of the estate of the sole practitioner.

Estate accounts must be kept. For some period of time after the death of the practitioner, the estate accounts may include the accounts of the practice. It would be desirable, however, to separate these from other estate income and expenditure items as soon as possible.

An executor can be remunerated in two ways, either by claiming commission or by a legacy.

(a) Commission

In passing the accounts of the estate of the deceased practitioner, the Court may allow a percentage commission to be paid to the executor. The commission is a percentage of the income and/or capital collected by the executor. Note that this is discretionary.

If the executor does not apply for commission, the executor is entitled to be reimbursed for his or her charges and disbursements at the rate determined by the Court.

The executor is entitled to have his or her work as an accountant taken into consideration in the fixing of commission. If an executor claims commission the estate accounts will be checked by the Accountants Registrar at the Court. The Registrar will review and can modify the fees and expenses of the executor.

The professionally qualified executor is likely to be asked by the Court to prepare accounts even if he or she does not intend to claim commission.

(b) Legacy

It is presumed that a legacy given to an executor is given to the executor in that role.

Where a legacy is given to a person in his or her role as executor, it is presumed to have been given as a complete recompense for the pains and trouble in the carrying out of his or her duties, unless there are some sufficient circumstances arising on the face of the Will to rebut the presumption, and to show that this was not the intention of the testator.

8. Indemnity Insurance

The sole practitioner must ensure that:

- (a) professional indemnity insurance arrangements provide cover which extends to any conduct of the practice by the Alternate during any period of incapacity;
- (b) any terms or conditions which are imposed by their insurer as a condition to such extension are complied with; and
- (c) the Alternate is notified of any steps which the Alternate is required to take in relation to such insurance, upon assuming responsibility for the conduct of the sole practitioner's practice.

The Alternate should ensure that professional indemnity insurance cover provided to their sole practice or firm extends to acting as an Alternate, whether as a sole practitioner's attorney or special executor.

9. Conducting the Sole Practitioner's Business

During the period of incapacity (as specified in the enduring power of attorney) or following the sole practitioner's death, the Alternate must conduct the business in accordance with the following guidelines:

- (a) the Alternate must immediately, on assuming responsibility for the sole practitioner's business, take all reasonable steps to ascertain the current clients of the sole practitioner and should send each of them a notice substantially in the following form:

“(1) [Statement of the sole practitioner's death or incapacity.]

(2) I have therefore assumed responsibility for the practice of [] [as executor/attorney] [while he/she is incapacitated], and will conduct his/her practice [as executor] [as attorney] on his/her behalf on the same terms as he/she has provided business to you under the [letter/agreement] dated [].

(3) Kindly acknowledge that you agree to this arrangement by signing and returning the enclosed copy of this letter.”

If any client advises the Alternate that they do not want their affairs to be dealt with by the Alternate, the Alternate must comply with any instructions the client may give in relation to the transfer of any documents held by the practice to another firm or otherwise.

- (b) The sole practitioner's practice must continue under its existing name and title. All business letters or other communications issued by the Alternate must bear in a prominent position the following words:

“The practice of [name of sole practitioner] who [has died] [is presently incapacitated] is temporarily being carried on by [name of the Alternate], [appointed under an enduring power of attorney dated ##1], [special executor under the will of [name of sole practitioner]].”

- (c) A suitable execution clause for the Alternate when executing deeds on behalf of the sole practitioner, is: “Signed, sealed & delivered by [name of sole practitioner] by his or her [duly appointed [attorney]/[executor] [name of Alternate] [pursuant to a power of attorney dated [date].”
- (d) The Alternate must act in the best interests of clients and carry on the practice in a proper and professional manner, with reasonable diligence and take all reasonable steps to preserve the goodwill of the business.
- (e) If the Alternate becomes aware of any act or default of the sole practitioner committed before the date of incapacity or death, the Alternate must use all reasonable endeavours to correct the situation and notify insurers of the situation.
- (f) Except where necessary, meetings with clients or other persons relating to the business should be conducted in the offices of the sole practitioner.
- (g) The Alternate must keep up to date:

- (i) all the records of the practice for which the Alternate assumed responsibility in existence at the date of incapacity or death;
 - (ii) all records necessary to calculate expenses incurred in conducting the practice and any remuneration and/or expenses due to the Alternate.
- (h) The Alternate shall conduct a compliance review of the sole practitioner's business at the time responsibility is assumed for the practice to ensure that all statutory and other requirements have been complied with.

The Alternate must endeavour to ensure that:

- (i) the sole practitioner's certificate of public practice and membership of the Institute do not lapse while incapacitated;
 - (ii) any contractual or other arrangement entered into by the sole practitioner shall continue to have effect despite the assumption of the responsibility for the conduct of the practice by the Alternate. The Alternate should also assess whether those arrangements are in the best interests of the sole practitioner or his estate.
- (i) Where the Alternate finds that, upon assuming responsibility for the business of the sole practitioner, the interests of the Alternate's clients conflict with those of clients of the sole practitioner, the Alternate must comply with section 220 of APES 110 of the Institute's Code of Ethics for Professional Accountants. This means that, in relation to the sole practitioner's practice, clients of the Alternate should not be preferred over those of the sole practitioner.
- (j) Where the special executor assumes responsibility for the conduct of the practice on the death of the sole practitioner, the special executor must open fresh books of account immediately upon taking over the conduct of the practice and keep them up to date until the practice is disposed of or his/her responsibilities come to an end.
- (k) Immediately after the death of the sole practitioner or, if later, on assuming the conduct of the practice, the special executor must open new practice bank accounts and client trust bank accounts at the practice's bank. All receipts and payments of the practice must be made through these accounts pending the grant of probate or letters of administration, as the case may be.
- (l) For the particular situation of investment business, see also paragraph B2.

10. Records

The sole practitioner must maintain adequate records in relation to his or her existing accountancy practice in an up-to-date form to enable the Alternate to undertake his/her duties.

11. Personal Records

The sole practitioner should:

- (a) maintain a record of the names and addresses of all of his/her relatives who need to be notified of registration of a power of attorney, and maintain a record of the executors under his/her Will.
- (b) maintain a record of the location of his/her Will and power of attorney.

The sole practitioner should either give copies of these records to the Alternate or inform the Alternate where these records can be located.

12. Registration and Notification

The Alternate should register the enduring power of attorney. This should be done as a matter of urgency if the Alternate has reason to believe that the sole practitioner is or is becoming mentally incapable. The power of the attorney to execute deeds on behalf of the sole practitioner may be suspended if the deed is not registered.

The enduring power states that:

“This power will only operate during any period (“Period of Incapacity”) in which, as a result of mental or physical incapacity, certified in writing by a qualified medical practitioner, whether through illness, accident or otherwise (other than death), the Donor is unable or is likely to be unable to conduct the practice for a period of at least [1month].”

As soon as the Alternate has assumed responsibility for the conduct of the sole practitioner’s practice (whether because of the incapacity or death of the sole practitioner), the Alternate must notify:

- (a) the Institute, in the event of the sole practitioner’s death;
- (b) the insurers under the sole practitioner’s professional indemnity policy and, if necessary, under the policy of the Alternate’s practice. The Alternate must ensure that, during any period of incapacity, he or she takes all steps which are required to secure the continuance of the sole practitioner’s policy. Where the sole practitioner has died, the Alternate must immediately notify the insurers under the sole practitioner’s policy and take necessary steps to comply with all conditions imposed to secure the extension of that policy to cover the conduct of the sole practitioner’s business by the Alternate (if this is permitted under the terms of that policy);
- (c) the clients of the sole practitioner and all other persons concerned with the administration of the practice.

13. Sale of Practice

If the sole practitioner or personal representative of the sole practitioner have agreed to sell the practice to another party, the Alternate shall take all reasonable steps to facilitate the transfer in accordance with the terms of the agreement.

14. Statutory Appointments

(a) Audit

The Corporations Law allows a firm or an individual to act as an auditor of a company. In the case of a sole practitioner the individual practitioner will be appointed as auditor of a company. The individual appointee must oversee and sign off the audit. It is not permissible for another person who has not been appointed to sign an audit report.

There may be a situation where the sole practitioner has become physically (but not mentally) ill, and has completed the audit work save for the final review and signing of the audit report. In this instance an alternate who had been properly appointed by a power of attorney could, if satisfied with the audit work, carry out the review in consultation with the practitioner and sign the report on the authority of the practitioner. Temporary incapacity, mental or physical, would not necessarily determine the appointment. In this situation the alternate (or sole practitioner where appropriate) should seek legal advice on the specific circumstances.

Where a sole practitioner who is an auditor dies or is mentally incapable the audit appointment will be determined and it is not possible for an alternate to sign off an audit on their behalf.

(b) Trustee in Bankruptcy/Liquidator

A sole practitioner who acts as trustee in bankruptcy or liquidator will be appointed in a personal capacity. In the event of incapacity or death of the appointee a new appointee will need to be appointed. If an appointee dies, the appointment is automatically vacated. Specific procedures apply when appointing a new appointee.

The procedures vary depending on the nature of the administration. An alternate or other 'substitute' is not automatically entitled to act in place of the sole practitioner. The appointment may need to be sanctioned by the Court, creditors or relevant committee. In certain circumstances it may be possible for an alternate to deal with a sole practitioner's resignation or vacation of office particularly as the representative of the sole practitioner's estate. If presented with these circumstances the alternate should seek legal advice.

(c) Tax Agent

Where a sole practitioner acts as a tax agent there may be other employees in the firm who can continue to act as tax agent for clients during the period of incapacity. Where a partnership or company is registered as a tax agent the person specified in the application for registration, as the nominee of the partnership, is registered as the nominee of the tax agent. Tax agents can register partners and employees as their nominees. Once registered, nominees will need to notify the Tax Agents Board of any changes to nominees. If the alternate is a registered tax agent they can sign off in their own capacity.

B. INVESTMENT BUSINESS CONSIDERATIONS

1. Arrangements Needed

The clients of sole practitioners who are authorised to carry on investment business may have investment commitments which the practitioner's incapacity or death could affect. Although there is no statutory requirement for these practitioners to make alternative arrangements in the event of their incapacity or death it is advisable for them to do so.

In choosing an Alternate for a practice which carries on investment business, the sole practitioner should choose an Alternate who is licensed by the Australian Securities and Investment Commission ("ASIC") to carry on the investment business. The particular licence held by the Alternate must be substantially to the authority that was held by the sole practitioner.

A person can only agree to be appointed as an Alternate for a sole practitioner who provides investment services in the following circumstances:

- (a) Where the person is a member of the Institute of Chartered Accountants in Australia, holds a current Certificate of Public Practice and is licensed or authorised by the ASIC to carry on investment business.
- (b) Where the licence or authority of the person is not subject to any conditions or restrictions which prevent the carrying on of investment business.

In selecting an Alternate, the sole practitioner should select someone who has similar competence in those areas of investment business which the sole practitioner provides services. If the sole practitioner conducts investment business of a specialised nature, an Alternate who has specific expertise or competence in these areas, should be selected.

The Alternate must notify the sole practitioner if there is a change in circumstances which will mean that the Alternate is unable to act and the sole practitioner should appoint a replacement as soon as is reasonably possible.

If a sole practitioner holds a personal appointment (for example, as a trustee or personal representative), the sole practitioner should check where the original personal appointment permits the Alternate to act for the practitioner. Sole practitioners should seek legal advice where doubt exists.

2. Conducting the Business of a Sole Practitioner authorised to carry on Investment Business

In addition to the guidelines set out in Section A, the following guidelines apply to sole practitioners authorised to carry on investment business:

- (a) The Alternate must comply with the requirements for giving investment advice set out in Corporations Law, the Corporations Regulations and any releases or policy statements issued by the ASIC. For example, you will need to give an Advisory Services Guideline to all clients of the sole practitioner in the form prescribed by the ASIC.

- (b) All business documents issued by the Alternate must bear, in a prominent position, a statement that the Alternate's own sole practice or firm is licensed by the ASIC to conduct investment business.
- (c) If the Alternate becomes aware of any breach of the Corporations Law, Corporations Regulations or releases of the ASIC, committed by the sole practitioner before the date of incapacity, he/she must use all reasonable endeavours to remedy the breaches.
- (d) The Alternate must maintain the investment business records of the sole practitioner in the manner required by the Corporations Law and the ASIC.
- (e) The Alternate must submit to the ASIC all records or other returns required to be submitted by the sole practitioner during the period when conducting the practice.
- (f) The Alternate must try to ensure that the sole practitioner's licences to conduct investment business do not lapse during the period of incapacity.
- (g) The Alternate needs to be aware of the requirements of Section 849 of the Corporations Law which requires that the client must be told if the Alternate's pecuniary or other interest may reasonably be expected to influence an investment recommendation.

3. Sale of Practice

If the sole practitioner or his/her personal representatives have agreed to sell the practice to another party, the Alternate, in addition to taking all reasonable steps to facilitate the transfer in accordance with the terms of sale, shall also:

- (a) check whether there are any requirements to notify the ASIC; and
- (b) find out whether the purchaser is licensed to conduct investment business and, if not, whether they intend to obtain a licence. Where the purchaser is not authorised to conduct investment business (or does not intend to obtain a licence) the Alternate should take all reasonable steps to notify the investment business clients of the practice and to assist them in making other arrangements.

APPENDIX 1

GUIDANCE NOTES FOR POWER OF ATTORNEY

ENDURING POWER OF ATTORNEY

About using this form

1. The prescribed form of power of attorney varies from state to state. The guidance attaches the prescribed forms for each state. You should choose the state relevant to your practice. If you have any doubt about the relevant form to choose you should seek legal advice.
2. You must choose one attorney and also appoint another person to delegate your authority to withdraw money from the trust accounts of the practice as specified in APS 10. This may be either a solicitor, a bank manager, an employee of the practice, a member of the Institute of Chartered Accountants ("the Institute"), a member of CPA Australia. The role of the second person (the "Delegate") is therefore limited to operating the practice trust accounts.
3. If you give your attorney general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.
4. If you do not want your attorney to have such wide powers, you can restrict the power of attorney by including restrictions. For example, you can include a restriction that:
 - (a) your attorney must not act on your behalf until they have reason to believe that you have become mentally incapable of managing your affairs; or
 - (b) sets out exactly what your attorney may do.Any restriction you choose must be included under the Schedule of Limitations and Conditions.
5. If you are a trustee (a co-ownership of a home involves a trusteeship), you should seek legal advice if you want your attorney to act as a trustee on your behalf.
6. Unless you put in a restriction preventing it, your attorney will be able to use your money or property to make any provision which you yourself might be expected to make for their own needs or the needs of other people. Your attorney will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.
7. Your attorney can recover the out-of-pocket expenses of acting as your attorney. If your attorney is a professional person, for example, a solicitor or an accountant, he/she may be able to charge for his professional services as well. You may wish to provide expressly for the remuneration of your attorney.
8. If your attorney has reason to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney should register this power at the Land Titles Office in the General Register of Deeds.

9. This is a simplified explanation of what the relevant legislation says. If you need more guidance, you or your advisers will need to look at the relevant Act and Regulations itself.
10. Note to Attorney: After the power has been registered, you should notify the Land Titles Office if the Donor dies.
11. Note to Donor: some of these explanatory notes may not apply to the form you are using if it has already been adapted to suit your particular requirements.

YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE YOU BECOME INCAPACITATED.

Power of Attorney Forms are available from the following state websites:

NSW: Power of Attorney, New South Wales - www.lawaccess.nsw.gov.au

SA: Power of Attorney, South Australia - www.service.sa.gov.au

VIC: Power of Attorney, Victoria - www.justice.vic.gov.au

QLD: Power of Attorney, Queensland - www.justice.qld.gov.au

NT: Power of Attorney, Northern Territory - www.nt.gov.au/justice

TAS: Power of Attorney, Tasmania - www.publicguardian.tas.gov.au

ACT: Power of Attorney, Australian Capital Territory - www.oca.act.gov.au

WA: Power of Attorney, Western Australia - www.justice.wa.gov.au

APPENDIX 2

GUIDANCE NOTES FOR WILL PROVISIONS

PROVISIONS FOR APPOINTMENT OF A SPECIAL EXECUTOR

About using the provisions

1. This Appendix contains provisions for inclusion in a Will. They are not a complete will.
2. The sole practitioner should make a Will and provide the Alternate with a copy or at least a copy of those parts of the Will which relate to the role of the Alternate as the sole practitioner's special executor.
3. The provisions allow for the appointment of a special executor to carry on and sell the practice of the deceased practitioner. Members will need to prepare a Will to also take account of their own personal circumstances.
4. The Will can appoint both an executor and a special executor. A special executor would normally be the Alternate appointed to carry on the practice of the sole practitioner. The executor is responsible for the administration of the rest of the estate.
5. It is possible to appoint the same person as executor and special executor, however the proposed provision presumes that the business affairs will be dealt with separately by the Alternate acting as special executor.
6. This is a simplified guide. If you need more guidance, you should consult your legal adviser.

PROVISIONS FOR APPOINTMENT OF A SPECIAL EXECUTOR IN A WILL

1. Definitions

- (a) **“Executor”** means any person or persons appointed under this Will as executor, other than as the Special Executor.
- (b) **“Practice”** means my practice as an accountant which is carried on under the name of [].
- (c) **“Special Executor”** means the person appointed under this Will to carry on my Practice and who is a member of the Institute of Chartered Accounts in Australia and holds a current Certificate of Public Practice.

2. Appointment of Special Executor

- (a) **I APPOINT** [] as my Special Executor.
- (b) If [] dies before me or is unable or unwilling to act as Special Executor then I appoint [] as my substituted Special Executor.

3. Powers of Special Executor

The Special Executor has the power to carry on my Practice between the date of my death and until the Practice is sold, wound up or transferred to the person or persons entitled under this Will, by the Special Executor. This includes, but is not limited to, the power to:

- (a) carry on the Practice free from any control or interference of any person or persons beneficially entitled under this Will;
- (b) use the assets of my estate to carry on the Practice;
- (c) use the income or capital of the Practice to carry on the Practice;
- (d) borrow money against the security of my estate to carry on the Practice;
- (e) borrow money on the income and capital of the Practice to carry on the Practice;
- (f) employ any staff reasonably necessary to carry on the Practice;
- (g) open and operate the bank accounts for the Practice;
- (h) sign letters, reports and all other documents or deeds in my name (where so permitted by law);
- (i) bring any action, suit or other proceedings to compel payment of debts owing to the Practice;

- (j) execute any document or do any act which in the absolute discretion of the Special Executor relates to the proper carrying on of the Practice;
- (k) do all that is necessary to fulfil the requirements of a dealer or investment adviser under the Corporations Law, Corporations Regulations and any releases, policy statements and regulations of the Australian and Securities and Investment Commission; [Investment business only]
- (l) include on all business letters and other correspondence a notice to the effect that the Special Executor is carrying on the business as special executor under the Will.

4. Compliance Provisions

The Special Executor shall carry on the Practice in compliance with:

- (a) the Institute of Chartered Accountants in Australia's Charter, By Laws and Regulations including the Code of Ethics for Professional Accountants and Guidance Notes issued from time to time.
- (b) the requirements of the Corporations Law, Corporations Regulations and the Australian and Securities and Investment Commission.
- (c) Accounting and Auditing Standards.

5. Indemnification of the Special Executor

The Special Executor in relation the carrying on of the Practice:

- (a) is not liable for any loss, damage or liability incurred in the proper course of carrying on the Practice; and
- (b) is entitled to be indemnified out of my estate for any loss, damage or liability incurred in the course of carrying on the Practice, other than loss, damage or liability incurred:
 - (i) as a result of the negligence or default of the Special Executor; or
 - (ii) in breach of the Institute of Chartered Accountants in Australia's Charter, By Laws and Regulations including the Code of Ethics for Professional Accountants; or
 - (iii) in breach of the requirements of the Corporations Law, Corporations Regulations and the Australian and Securities and Investment Commission; or
 - (iv) in breach of Accounting and Auditing Standards.

6. Sale of Business

- (a) The Special Executor has the power to sell the Practice, with the consent of the Executor, on such terms as the Special Executor thinks fit.
- (b) The Special Executor, with the consent of the Executor, may purchase the Practice provided that, prior to the purchase, an appropriate independent professional valuation is obtained by the beneficiaries.