

General Circular:	22/2018 [GC 22_2018]
To:	ALL MEMBERS OF THE INSTITUTE
Date:	13 November 2018
Subject:	Continuity of Practice

This Circular is issued pursuant to **paragraph 18 of the Regulation 1.201 “Practising the accounting profession” of the ICPAC Member’s Handbook**. The Members Handbook is readily available on ICPAC’s website.

The purpose of this circular is to provide guidance and raise awareness to the holders of practicing certificates and practicing firms on the necessity to have in place a continuity agreement. It envisages to provide a clearer explanation of what continuity of practice is, why it is needed and to underpin its importance. The circular also gives a list of steps to follow, which are neither absolute nor exhaustive. Together with the circular, a specimen agreement is given as a general suggestion for convenience purposes. It is duly noted that it is the responsibility of each Practitioner to consult his/her lawyer upon drafting and before signing the continuity agreement.

The guidance is a living document and may need to be updated from time to time.

What is a Continuity Agreement?

All holders of practicing certificates must ensure continuity of client service, in the event of death or incapacity. The same applies to a firm in the event of the dissolution, winding-up or liquidation of the firm or the death or incapacity of an individual holder of a practicing certificate who is a partner, director or shareholder of the firm.

Although it is not required by Law, the **Continuity of Practice agreement (“CoP”)** is a very useful element which aims at securing the smooth continuation of the operation of a firm in the unfortunate event when something renders the directors/partners incapacitated either for a short or a long period, in order to protect the clients, the staff, the proprietors’ assets (especially in cases of sole practitioners) and the public interest in general.

Such agreements/arrangements may be done within a firm (provided that there are more than one partners/directors and are stipulated in the partnership agreement or in the Memorandum or Articles of Association) or with a third party (mainly for sole practitioners). Hence, the holder of a practicing certificate or a firm (“Appointer”) is encouraged to enter into a written agreement with another practicing accountant or

firm (the “Nominee(s)”), so that the latter will be responsible for the former’s practice in the circumstances outlined above.

Selecting the appropriate Nominee

The Appointer shall choose the most appropriate Nominee to carry out the practice. Key areas to consider about the Nominee include:

- Be a member of and a licensed person by ICPAC
- The Nominee must possess the same type of practicing certificates as the Appointer
- Have enough resources to carry out the practice
- Location or proximity to the firm
- Familiarity with the type of work and client characteristics
- Professional competence

It is noted that ICPAC cannot accept as Nominee any entity not licensed by the Institute, primarily for monitoring purposes (eg in the cases of Administrative service Providers).

Other responsibilities of the Appointer

- Appointing a representative to notify the Nominee in the event of death or incapacity
- Maintaining appropriate records in respect to the practice to enable the Nominee to manage the practice if needed

Drafting the Continuity Agreement

The agreement should include the following clauses as a minimum:

- The responsibilities of the Appointer and the Nominee
- The circumstances which will put the agreement into force
- Duration of the continuity agreement and conditions for extension
- Entitlement of the Nominee to operate the practice such as accessing the Appointer’s records, recruiting new staff, dismissing existing staff, management of bank accounts, tax and any other administrative matters
- Remuneration of the work that will be undertaken by the Nominee and the reimbursement of any expenses incurred by the Nominee while handling the Appointer’s practice
- The letter to be sent to the current clients of the Appointer in the event of death or incapacity requesting written approval of their consent with the arrangement

If the Event occurs, the Nominee must:

- Notify ICPAC about the appointer's firm's position. In case where the agreement is more than one year, ICPAC should be notified on an annual basis
- Inform the clients and other parties of the Appointer of the temporary change of management
- Carry on the practice of the appointer in good faith for the period agreed
- Keep all records of the practice of the appointer up to date
- Comply with the IESBA Code of Ethics for Professional Accountants (IESBA Code of Ethics) as amended from time to time
- Consider conflicts of interests with own clients
- Upon termination/lapse of the agreement, the nominee must give away the practice as per the terms and conditions agreed and help where needed to ensure satisfactory handover

Other important matters

- The Appointer should reflect on assigning more than one Nominee, where deemed necessary. In such circumstances, the Appointer should clearly specify the duties of each Nominee.
- The Appointer and Nominee should meet from time to time to ensure that the Nominee remains eligible to take on the practice if necessary
- The Appointer should choose a representative (family, executor or lawyer) if the Appointer is a practitioner and a liquidator if the practice is a partnership or a company)
- Both parties should agree on a notice period of a specified number of days whereby the Nominee will commence the work of the practice of the Appointer
- The Nominee should follow the terms of the practitioner's insurance in relation to the managed practice and to provide any information required by the practitioner's insurance company
- Professional Indemnity Insurance (PII) cover for the practice should meet the requirements specified in the [Member's Handbook of ICPAC](#). Also, the Nominee should inform the Professional Indemnity Insurers about his/her identity
- All questions arising between the Parties should be directed to ICPAC. Any claims or dispute should be dealt through between the Parties or by a person appointed by the Parties

Compliance with ICPAC's requirements

ICPAC performs inspections on continuity agreements. It is mandatory for the members in practice to provide all relevant information to ICPAC upon:

- **initial application for a practicing certificate, and**
- **renewal of practicing license** (see form [here](#)),

and avail a copy of the agreement during the onsite Audit Monitoring and Anti- Money Laundering (AML)/Rules and Regulations visits to the Practice Reviewers.

Specimen of a Continuity of Practice Agreement

For the purpose to facilitate members in drafting a CoP agreement, ICPAC provides a specimen of a continuity of practice agreement between an Appointer, who is a sole practitioner, and a Nominee, who is a sole practitioner or firm (see attached document). Relevant adjustments should be made to the suggested specimen in case the Appointer is a firm. The specimen is given only as an illustration and each practitioner or firm should consult their lawyer before finalizing one.

Should there are any enquiries, please contact ICPAC offices for more information.