

甚麼是持久授權書？

根據香港法例第 501 章《持久授權書條例》，持久授權書容許授權人（即打算將其權力授予其他人的人）在精神上有能力行事時，委任受權人，以便在授權人日後變得精神上無行為能力時，受權人可照顧其財務事項。

一般授權書在授權人變為精神上無行為能力時，便會失去效力，但持久授權書在授權人喪失精神行為能力後，將會「持久」地有效，並賦予權力予受權人，繼續處理授權人的財政事務。現今香港社會人口急劇老化，癡呆（失智）症個案漸多，持久授權書尤其重要。

持久授權書的主要優點

香港法律改革委員會於 2008 年發表的《持久授權書報告書》指出，持久授權書有以下主要優點：

- 容許個人選擇誰人（可多於一人）會在他/她變為無能力照顧自己的事務時，代他/她這樣做；
- 避免為委任另一人照顧個人事務而展開昂貴和可能擾人的法庭程序；
- 有效率及具成本效益地管理個人財產；
- 免卻家人管理其事務時，可能要面對極大的困難和煩惱。

註冊持久授權書

如受權人相信授權人精神上無能力行事或正變為精神上無能力行事，必須盡快把有關持久授權書拿到高等法院註冊。授權人或受權人亦可以在授權人簽立持久授權書之後，即其仍然在精神上有能力行事之時，先行申請註冊該持久授權書。

註冊持久授權書，是法例規定與持久授權書有關的最後一個正式程序。在完成註冊程序前，受權人會被禁止處理授權人的資產。

註冊制度由香港高等法院司法常務官管理，以確保法院備存一份載有所有持久授權書的註冊紀錄冊，並容許任何人可查閱任何持久授權書，並藉以監控受權人的行為。

撤銷持久授權

授權人可在下列情況下，撤銷持久授權書：

- 授權人在其精神上有行為能力時；或
- 如授權人於變為精神上無能力行事後得以痊癒，向法院申請撤銷該項授權，並獲法院作出命令確認該項撤銷。

下列情況亦可致使持久授權書自動撤銷：

- 受權人被頒令破產或死亡；
- 授權人被頒令破產或死亡；
- 法院發現持久授權書存在缺陷，或受權人違反其責任行事，命令撤銷持久授權或將受權人免任；或
- 受託監管人依據《精神健康條例》（香港法例第 136 章）第 II 部獲得委任。

填寫持久授權書表格

表格

持久授權書必須採用《持久授權書（訂明格式）規例》（香港法例第 501A 章）附表所載的訂明表格。

- 表格 1 適用於指定一名受權人；
- 表格 2 適用於指定多於一名受權人。

請注意：填寫表格前，應該細閱表格的「使用本表格須知」說明資料。

授權人

授權人必須：

- 在持久授權書內，明確指明受權人有權處理的具體事宜、資產或財務事項；
- 在一名註冊醫生和一名香港律師面前簽署持久授權書。

授權人可以：

- ✓ 選擇委任多位受權人，讓受權人可以互相幫助或監察對方。授權人必須選擇該等受權人獲委任為「共同行事」或「共同和各別行事」；
- ✓ 在持久授權書內，隨意對受權人的權限，附加任何限制；
- ✓ 選擇持久授權書於某較後的指定日期或指定事件發生之時生效；
- ✓ 指明受權人到高等法院申請註冊持久授權書之前，須通知（1）自己；（2）任何沒有參與註冊申請持久授權書的受權人；或（3）最多兩名其他人。

授權人不可以：

- ✗ 概括地給予受權人權力；
 - ✗ 留空表格內列明必須填寫或必須刪除的段落；
- **否則持久授權書將會無效。

受權人

受權人必須是：

- ✓ 年滿 18 歲的個人；
 - ✓ 沒有破產；及
 - ✓ 精神上有能力行事。
- 專業信託法團可以成為受權人。

受權人不可以是：

- ✗ 見證簽署持久授權書的註冊醫生或律師；
- ✗ 該註冊醫生或律師的配偶；或
- ✗ 與該註冊醫生或律師有血緣或姻親關係的人。

** 受權人必須在見證人在場下簽署持久授權書。

見證人不得是：

- ✗ 授權人；或
- ✗ 其他受權人。

見證簽署持久授權書

授權人必須在一名註冊醫生和一名香港律師面前簽署持久授權書，持久授權書方為簽立。

授權人可以：

- ✓ 在註冊醫生面前簽署的同時，在律師面前簽署該持久授權書；或
- ✓ 先在註冊醫生面前簽署持久授權書，並由翌日起計的28天內，再在律師面前簽署該持久授權書。

註冊醫生必須：

- ✓ 核證及信納授權人在精神上有能力行事。

**有關核證可由「註冊醫生」作出，不一定是精神科醫生或腦科醫生等專科醫生。

律師必須：

- ✓ 核證授權人看似是精神上有能力行事。

**如果授權人聘請律師純粹見證其簽署持久授權書，該名律師並沒有責任就該持久授權書提供法律意見。

見證簽署持久授權書的註冊醫生或律師不可以是：

- ✗ 受權人；
- ✗ 受權人的配偶；
- ✗ 與授權人有血緣或姻親關係的人；或
- ✗ 與受權人有血緣或姻親關係的人。

**假若授權人因身體狀況無能力簽署持久授權書，可指示其他人在授權人、註冊醫生及律師面前，代為簽署持久授權書。

代簽者不可以是：

- ✗ 受權人；
- ✗ 受權人的配偶；
- ✗ 見證簽署持久授權書的註冊醫生或律師；或
- ✗ 見證簽署持久授權書的註冊醫生或律師的配偶。

如欲了解更多有關持久授權書的相關法例及資訊，請瀏覽律政司雙語法例資訊系統

www.legislation.gov.hk/chi/index.htm

或香港大學社區法網www.clic.org.hk/tc的相關主題（有關內容由律政司贊助）。

請注意：在簽立持久授權書前，請先諮詢執業律師。

持久授權書 一般資料



What is an Enduring Power of Attorney?

According to the Enduring Powers of Attorney Ordinance (Cap.501 of the Laws of Hong Kong), an enduring power of attorney (EPA) allows its donor (the person who wishes to give his/her power of attorney to someone), while he/she is still mentally capable, to appoint an attorney(s) to take care of the donor's financial matters in the event that he/she subsequently becomes mentally incapacitated.

While a general power of attorney will cease to be effective if one becomes mentally incapacitated, an EPA will “endure” the donor's mental incapacity and give the attorney the power to continue the donor's financial affairs despite such incapacity. In light of the growing population of the elderly and an increasing number of cases of dementia in Hong Kong, the EPA is of special significance.

Key advantages of an EPA

The Law Reform Commission of Hong Kong published a Report on Enduring Powers of Attorney in 2008 and identified the key advantages of an EPA:

- it allows an individual to choose the person or persons who will look after the individual's affairs if he/she becomes incapable of doing so;
- it avoids expensive and potentially distressing court proceedings for the appointment of another person to look after the individual's affairs;
- it provides an efficient and cost-effective way of administering the individual's property;
- it eases the difficulties and distress that may otherwise be suffered by the donor's family in managing the donor's affairs.

Registration of the EPA

If the attorney has reasons to believe that the donor is or is becoming mentally incapable he/she must, as soon as practicable, bring the EPA to the High Court for registration. The attorney or the donor may also apply for the registration of the EPA soon after executing an EPA, that is, while the donor is still mentally sound.

The registration of the EPA is the final formal procedure in relation to an EPA as required by the law. An attorney would be effectively barred from dealing with the donor's assets before the registration process is completed.

The registration system is administered by the Registrar of the High Court of Hong Kong. The system will ensure that a register of every EPA in force will be kept with the Court, which in turn will allow any person to inspect any EPA and thus be able to monitor an attorney's activity.

Revocation

A donor can revoke an EPA:

- when the donor is mentally capable; or
- if the donor recovers from his/her mental incapacity, makes an application to the Court for the revocation and the Court makes an order confirming the revocation.

An EPA can be revoked automatically:

- on the bankruptcy or death of the attorney(s);
- on the bankruptcy or death of the donor;
- if the Court finds an EPA defective, or when it finds the attorney acting in breach of his/her duties, it may make an order to revoke an EPA or to remove the attorney; or
- on the appointment of a committee under Part II of the Mental Health Ordinance (Cap.136 of the Laws of Hong Kong).

Filling in the prescribed form of EPA

Prescribed form

For an EPA to have legal effect, it must be made out in the “prescribed form”. “Prescribed form” means the Form(s) set out in the Schedules to the Enduring Powers of Attorney (Prescribed Form) Regulation (Cap.501A of the Laws of Hong Kong).

- Form 1 is to be used when the donor intends to appoint only one attorney;
- Form 2 is to be used when the donor intends to appoint more than one attorney.

Note: Please read the section “Information you must read” in the form carefully and thoroughly before you complete the form.

The donor

The donor must:

- ✓ specify what the attorney's authority is in dealing with the donor's particular property or financial affairs;
- ✓ sign the EPA before a registered medical practitioner and a solicitor.

The donor may:

- ✓ appoint more than one attorney so that the attorneys may assist or monitor each other. The donor must choose whether his/her attorneys are to act “jointly” or “jointly and severally”;
- ✓ place any restrictions on the authority the donor gives to his/her attorney(s) in the EPA;
- ✓ specify a date for an EPA's commencement or an event to trigger its commencement;
- ✓ nominate person(s) to be notified by the attorney before applying to the Registrar of the High Court for the registration of the EPA. The named person(s) can be: (1) the donor himself/herself; (2) any attorneys not joining in the application; or (3) up to two other persons.

The donor must not:

- ✗ give his/her attorney a general authority over the donor's property and financial affairs;
- ✗ leave the paragraphs of the prescribed form blank where they must be filled in or deleted;

** otherwise the EPA will not be valid.

The attorney(s)

The attorney(s) must:

- ✓ have attained the age of 18 years;
- ✓ not be bankrupt; and
- ✓ be mentally capable.

A trust corporation can be the attorney.

The attorney(s) cannot be:

- ✗ the registered medical practitioner or the solicitor witnessing the EPA;
- ✗ the spouse of the registered medical practitioner or the solicitor; or
- ✗ a person related by blood or marriage to the registered medical practitioner or the solicitor.

**The attorney(s) must sign the EPA in the presence of a witness(es).

The witness(es) must not be:

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

Certification of the EPA

To execute an EPA, a donor must sign the EPA before a registered medical practitioner and a solicitor.

The donor may sign the EPA:

- ✓ in the presence of both the solicitor and the registered medical practitioner at the same time; or
- ✓ in the presence of the solicitor only at any time not more than 28 days after the donor has already signed it in the presence of the registered medical practitioner.

The registered medical practitioner must:

- ✓ verify and satisfy that the donor is mentally capable.

**A “registered medical practitioner” does not necessarily have to be a specialist such as a psychiatrist or neurologist.

The solicitor must:

- ✓ certify that the donor appears to be mentally capable.

**If the donor finds a solicitor merely to witness the execution of the EPA, this solicitor does not have the duty to give legal advice regarding the EPA.

The registered medical practitioner or the solicitor witnessing the EPA cannot be:

- ✗ the attorney(s);
- ✗ the spouses of the attorney(s);
- ✗ any person related by blood or marriage to the donor; or
- ✗ any person related by blood or marriage to the attorney(s).

**If the donor is physically incapable of signing, he/she may instruct other person to sign the EPA on his/her behalf. That person must sign the EPA under the direction and in the presence of the donor, also in the presence of a registered medical practitioner and a solicitor.

The person signing on the donor’s behalf cannot be:

- ✗ the attorney(s);
- ✗ the spouses of the attorney(s);
- ✗ the registered medical practitioner or the solicitor witnessing the EPA; or
- ✗ the spouse of the registered medical practitioner or the solicitor.

If you want to obtain more information, or understand the law in relation to an Enduring Power of Attorney, please visit the Bilingual Laws Information System of the Department of Justice at www.legislation.gov.hk/eng/index.htm, or the Community Legal Information Centre (CLIC) of The University of Hong Kong website at www.clc.org.hk/en, which contains materials on EPA prepared by CLIC under the sponsorship of the Department of Justice.

Note: Please consult a practising solicitor prior to executing an EPA.

Enduring Powers of Attorney

General Information

