

STATEMENT 1.304
GENERAL GUIDANCE
ARRANGEMENTS TO COVER THE INCAPACITY
OR DEATH OF A SOLE PRACTITIONER

(Revised October 2001; revised September 2004 (name change))

The continuing incapacity or the death of a member who is a sole practitioner (or who is a member of a member practice whose other partners/directors will shortly retire without replacement) raises a number of problems. The following guidance is intended to be of assistance to those concerned in identifying the solutions to the problems which will inevitably arise in the event of their incapacity or death so that appropriate arrangements may be made in good time to overcome or reduce any difficulties or inconvenience for their clients and to their own practice. It is hoped that the guidance may also be of assistance to a member's personal representatives or any other persons who may be concerned.

General considerations

1. Unless appropriate arrangements have been made, the interruption of services resulting from continuing incapacity or death of a sole practitioner will cause considerable difficulty and inconvenience to his clients, diminish the value of the practice and may even lead to its disintegration.
2. It is therefore appropriate for a sole practitioner to make arrangements so as to enable the practice to be carried on with a minimum of dislocation in the event of his incapacity or death. Such arrangements would provide, so far as possible, for the practice to be continued as a going concern until such time as the sole practitioner recovers or he or his representatives decide to dispose of the practice.
3. An arrangement may be made with another member practice. Although this arrangement may take the form of an agreement to manage, an arrangement for the sale of the practice on a predetermined basis may in many cases be more satisfactory.
4. When such arrangements are under consideration, the compatibility of the respective practices, especially in relation to audit procedures, fee structure and the general state of the work in both offices, would need to be borne in mind.
5. Members are recommended to ensure that their executors and family will be aware, in the event of death or incapacity, of the arrangements made for the management of the practice.

Audit engagements

6. The provisions of the Hong Kong Institute of Certified Public Accountants' (HKICPA) Statement 1.207 'Changes in a professional appointment' are applicable whether or not the incapacity of the auditor is the circumstance which gives rise to the client's intention to appoint a different auditor.
7. As a general rule the incapacitated member remains the duly appointed auditor and can only be removed in accordance with the appropriate statutory procedure. If the incapacity continues for a sufficiently long period it could be argued that the contract for the appointment of the incapacitated member becomes frustrated and a vacancy then occurs. On the other hand, the death of a sole practitioner who is the duly appointed auditor automatically gives rise to a vacancy. It may be helpful if those responsible for the appointment of auditors are informed of the nature of the arrangements which have been made for continuity of service.

Management considerations

8. The arrangements suggested in paragraph 3 above would preferably be expressed as a written agreement. Drafts of specimen agreements may be obtained from the HKICPA's Membership section for reference. Sample I provides for a mutual arrangement between two sole practitioners, and sample II provides for an arrangement between a sole practitioner and a firm. Members are strongly advised to seek legal advice when drawing up such an agreement.
9. The terms of an agreement will depend upon the circumstances but it is desirable that the following matters are covered:

- a. the legal relationship between the member who is to act in the practice ('the managing accountant') and the principal;
 - b. the commencement of the management arrangement and the maximum duration of the management of the practice without review, and the provision for a review of the arrangements should the circumstances warrant an extension of time;
 - c. the general nature of the obligations to be assumed by the managing accountant;
 - d. the powers of the managing accountant, e.g. to engage and dismiss staff and to operate the bank accounts;
 - e. the basis of remuneration of the managing accountant;
 - f. the form of the letter to be sent to clients;
 - g. the notification of the appointment to the HKICPA.
10. It is desirable that powers would be conferred upon the managing accountant to sign auditors' reports on financial statements, letters, etc., in the name of the practice.

Ethical considerations

11. The member who acts as the managing accountant of the practice of the deceased or incapacitated sole practitioner must not seek any personal advantage from the arrangement other than proper remuneration for the services he renders. A member acting as a managing accountant who accepted, on his own behalf or that of his firm, during the period of his management and for a reasonable period thereafter, the instructions of a client of the managed practice without the prior agreement of the incapacitated member or his personal representatives could render himself liable to a complaint.
12. It is also desirable that the practice would continue to be carried on from the principal's premises. Accordingly, it would not normally be appropriate for interviews with clients and staff to take place at the office of the managing accountant.
13. It is not improper and may indeed be appropriate for the member who acts as the managing accountant to agree to acquire the practice from the incapacitated member or his personal representatives (as the case may be), though the personal representatives would normally need to be independently advised.

Considerations relating to continuing incapacity

The general position

14. Unless and until the practice is disposed of and appropriate notice given to clients, the incapacitated practitioner continues as owner of the practice and has the overall responsibility for the action of the managing accountant. It is therefore important that the professional indemnity and other insurances are renewed as necessary and that cover continues in the new circumstances.
15. It is also desirable, especially if the incapacity is likely to be of long duration, that clients are advised of the arrangements made for the continuation of the practice. Indeed it may be desirable for a sole practitioner, on entering into an arrangement of the kind outlined in this Statement, to inform his clients, as appropriate, of the arrangements made for the continuity of attention to their affairs.

The description of the practice

16. No changes in the name of the practice, the letter-heading or in any registration under the Business Registration Ordinance are considered necessary.

Letter-heading

17. The name of the managing accountant would need to be disclosed on the letter-heading etc., it being made clear that he acts as such and not as a principal. For example, if A.B. a sole practitioner practising under his own name, is incapacitated, and his practice is managed by Mr. X.Y., Certified Public Accountant (Practising) or, alternatively, by X.Y. & Co., Certified Public Accountants (Practising), the following heading might be appropriate:

A.B., Certified Public Accountant (Practising)
Manager: X.Y., Certified Public Accountant (Practising)
or
A.B., Certified Public Accountant (Practising)
Manager: X.Y. & Co., Certified Public Accountants (Practising)

Considerations relating to death

The general position

18. A sole practitioner's practice vests on death in his personal representatives, i.e. in the executors appointed by his will or in the case of his intestacy, in those who apply for and are granted letters of administration of his estate.
19. For the practice to continue, all the personal representatives so appointed must be professionally qualified, holding practising certificates, as they are governed by and must comply with sections 29(1) and 42(1) of the Professional Accountants Ordinance. It is recognised that the appointment of personal representatives, all of whom are professionally qualified, may not always be feasible. The HKICPA has sought legal advice and has been advised that it is possible for a sole practitioner to appoint by will two different executors, one of whom is professionally qualified and whose responsibilities are limited to the administration and carrying on of the practice and the other to deal with the remainder of his estate. Members are advised to consult their legal advisers in drafting the will.
20. Other alternative arrangements may be in the form of a sale of the practice on a predetermined basis or some form of back-up services with another practising member or member practice who would offer services to all the deceased practitioner's clients.
21. The following paragraphs apply to situations where professionally qualified personal representatives are appointed and the practice is continued for a certain period of time pending disposal.

The description of the practice

22. Where, in the opinion of the Council, the arrangements made for the management (e.g. the appointment of a practising member to manage the practice pending its sale) are satisfactory, approval will normally be granted under By-law 29A of the Professional Accountants By-laws for the continued use of the firm name and the style 'Certified Public Accountant(s) (Practising)'.

Letter-heading

23. It is appropriate for the name of the practice (whether or not this is the same as the name of the deceased member) to continue at the top of the letter-heading etc., though the words 'The personal representatives of' would need to be prefixed to the name of the member. The name of the managing accountant must also be disclosed, it being made clear that he acts as such and not as a principal.

Business registration

24. Whether or not the deceased sole practitioner carried on his practice in his own name, the accession of the personal representatives is a circumstance which requires notification to the Commissioner of Inland Revenue under the Business Registration Ordinance.

Insurance

25. It will be necessary for the insurers to be advised of the death of the policyholder and of the arrangements made for the continuation of the practice. This is particularly important in the case of professional indemnity insurance in order to ensure that the personal representatives and/or the managing accountant are properly insured. It is important to all concerned that there would be no interruption in cover and that claims which related to the period of management fall within the scope of the policy even though they do not come to light - and hence cannot be notified to the insurers - until later.