



# Guidelines on Continuity of Practice

The Institute of Chartered Accountant of Trinidad and Tobago (ICATT) sets out the eligibility criteria for obtaining Auditing and Practising Certificates and detail the continuing obligations placed on certificate holders. The continuity of practice requirements are contained in Practising regulations 12.1 to 12.3 of the Rules and Regulation 2017.

***This guide has no regulatory status and is issued for guidance purposes only and in the event of any conflict between the content of this guideline and the Institute of Chartered Accountants of Trinidad and Tobago's ("the Institute") Rules and Regulations, the latter shall always take precedence. Accordingly, this guideline should not be regarded as a substitute for familiarizing yourself with the Institute's Rules and Regulations.***

## INTRODUCTION

ICATT requires all practitioners and regulated firms to make arrangements so that the professional needs of their clients will be dealt with if the practitioner dies or becomes incapacitated through illness. It is mandatory that a written agreement be made, and this may be inspected by ICATT or its delegate.

### HOLDERS OF PRACTISING CERTIFICATES

A sole practitioner must enter into an agreement with a practising accountant or a firm (whether incorporated or in the form of a partnership) of practising accountants whose practice is based in the same country. (Practitioners can appoint more than one continuity provider.) Practitioners must ensure that their continuity nominees hold the same levels of authorisations as they do.

For those in partnership, the arrangement may be made either within the partnership agreement or by entering into an agreement with another firm. An incorporated firm must make provision for continuity either within its articles of association or by entering into an agreement with another firm. The same considerations with respect to authorisations, as detailed above for sole practitioners, apply to firms. Where a member practices in more than one country, they must make separate continuity arrangements in each of those countries.

### HOLDERS OF INSOLVENCY LICENCES

A sole practitioner insolvency licence holder must make their continuity arrangements by entering into an agreement with another sole practitioner or firm based in the same country. At least one of the partners in the nominated firm must be a licensed insolvency practitioner.

For those in partnership, the arrangement may be made within the partnership agreement, providing the partnership contains at least one other licensed insolvency practitioner, or by entering into an agreement with another firm of practising accountants containing at least one licensed insolvency practitioner. An incorporated firm must make provision for continuity either within its articles of association, providing the firm contains at least one other licensed insolvency practitioner, or by entering into an agreement with another firm containing at least one licensed insolvency practitioner.

### SELECTING A CONTINUITY NOMINEE

When choosing a sole practitioner or firm with which to enter into a continuity agreement, a practitioner should try to find a compatible practice where procedures, fee structures and the work types undertaken are of a similar nature. Practical considerations such as location, staff availability, technical skills and client characteristics should also be taken into consideration. It is essential that firms appointed as continuity nominees are made aware of the practices and procedures of the firms with which they have entered into continuity agreements so that, in the event that a nominee is called upon to act, the firm will be more effective in its role at an earlier stage. It is recommended that practitioners and their nominees meet, not only when first setting up the agreement, but also at periodic intervals (for example, as part of firms' internal annual reviews) to exchange information about the practices.

Practitioners are recommended to review their continuity arrangements over time to consider if they continue to be appropriate. For example, a firm which has expanded its business, or which has developed particular specialisms, may, on reflection, determine that it would be prudent to seek continuity with another firm which has greater capacity or which has similar specialist abilities.

## **MAKING A WILL**

Every practitioner is strongly recommended to make a will and appoint executors who will be able to administer the estate. It may be advantageous if one of the executors is professionally qualified. Executors of an estate can act at once to protect a practice. If, however, a practitioner should die intestate, the administrators will have no authority to act until they have obtained a Grant of Letters of Administration. The resulting delay may lead to the practitioner's affairs, and those of their clients, not being properly controlled and managed. Practitioners are recommended to inform their executors and family of the existence and purpose of their continuity agreement, and to inform them of the location in which the agreement is stored. In the event of a practitioner's death or incapacity, the personal representatives will be able to locate the document quickly and, having read it, will be able to identify the wishes of the practitioner with respect to their practice.

## **DRAFTING A CONTINUITY AGREEMENT**

ICATT requires all continuity agreements and management agreements to be evidenced in writing. Any agreement drawn up must comply with the current ICATT Regulations. Members should note that an exchange of letters between practitioners would meet ICATT's requirements. Such letters should be on the respective practitioners' headed business stationery and signed by the practitioners. The following notes have been prepared to assist members in drafting their own continuity agreements. The text comments upon those matters which members must include within their continuity agreements and also suggests further matters that practitioners may wish to consider.

## **MATTERS THAT MUST BE DEALT WITH BY THE CONTINUITY AGREEMENT**

The continuity agreement must include clauses that deal with the following matters:

- *the precise nature of the legal relationship between the practitioner and the continuity nominee*
- *the circumstances which will cause the management arrangement under the continuity agreement to commence operating*
- *a statement of the maximum duration of the management of the practice under the continuity agreement*
- *provisions for the review of the arrangements should circumstances warrant an extension of time*
- *the continuity nominee's obligations*
- *the continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operating bank accounts*
- *the basis on which the continuity nominee will be remunerated*
- *the letter to be sent to clients in the event of the practitioner's death or incapacity.*

## **CIRCUMSTANCES THAT WILL CAUSE THE MANAGEMENT ARRANGEMENT UNDER THE CONTINUITY AGREEMENT TO COMMENCE**

The practitioner and nominee are recommended to discuss, agree and document a set of procedures that are to be implemented in the event of the practitioner's incapacity or death. Frequently, the continuity agreement has to be actioned at a time of great personal stress and general confusion. The practitioner's personal representatives are likely to find a structured, agreed set of procedures, and a record of the practitioner's wishes with respect to their practice, of great assistance at such a difficult time.

It will not always be possible for the practitioner to notify the nominee in person that the continuity arrangement should be activated. Parties may wish to identify a number of persons (eg. practitioner, spouse, executors, personal representatives, attorney-at-law, etc) within the agreement who may deliver documents and notices to the nominee. Parties to the agreement are recommended to discuss and agree what, if any, proof they require of incapacity or death. For example, in the event of incapacity, the delivery to the nominee by the practitioner/representatives of a medical certificate from a properly qualified medical practitioner may be thought necessary. The parties may also agree that certain matters should be confirmed by the medical practitioner – for example, that in the medical practitioner's opinion, the practitioner is physically and/or mentally unfit, through illness, accident or otherwise, effectively to manage their practice and, in the said medical practitioner's opinion, is likely to be so incapacitated for a period of not less than 'x' weeks. If the practitioner should die, then matters may be more complex than when the practitioner is incapacitated. The nominee should take care that persons instructing the nominee to act have the necessary authority to give such instructions. For example, in the event that a practitioner dies having made a will, the executors can act at once in the interest of the estate and the practice.

However, if the practitioner dies intestate, no action can be taken by the administrators until such time as a Grant of Letters of Administration has been obtained. The management arrangements under the continuity agreement cannot be activated until the administrators have authority to act. As discussed earlier, every practitioner is strongly recommended to make a will and appoint executors who will be able to administer the estate.

It is recommended that the continuity agreement is drafted such that it is able to deal with the situation where the practitioner is initially incapacitated, but subsequently dies. The nominee should receive notification of the practitioner's death. Parties may agree that, having commenced acting on the basis that the practitioner is incapacitated, the nominee should continue to act without further notice being served on them. The personal representatives or executors may be deemed to have taken over as the primary contact point for the nominee. However, great care must be exercised in the event of the practitioner dying intestate, as the nominee and the practitioner's representatives will, once again, have no authority to act until a Grant of Letters of Administration is obtained. In such a circumstance the nominee and the practitioner's representatives should seek their own independent legal advice on how to proceed. It is likely that initial information about a practitioner's incapacity or death, and the request for the nominee to manage the practice, may be passed on verbally. However, it is recommended that the notification and request for the management period to commence are confirmed in writing. The form of notice to be served on the nominee should be agreed by the parties. For example, a letter issued by the practitioner/representatives, accompanied by the proofs specified in the continuity agreement, may be deemed sufficient. It may be considered unreasonable to notify a nominee one day that they are to commence the management of a practice the very next day. The nominee is likely to have certain practical arrangements to make concerning their own practice, such as the rescheduling of work and informing their own professional indemnity insurance (PII) providers of the circumstances. Thus, parties may wish to consider agreeing a notice period of a specified number of days (e.g. seven days) from receiving notice of the practitioner's incapacity or death, after which the nominee will take up management of the practice.

#### **MAXIMUM DURATION OF THE MANAGEMENT OF THE PRACTICE UNDER THE CONTINUITY AGREEMENT, AND PROVISIONS FOR THE REVIEW OF THE ARRANGEMENTS**

It is neither practical nor desirable that the management period, once commenced, should continue indefinitely. Parties to the agreement should decide upon a fixed term for the agreement (eg six months), after which the agreement will terminate. In case circumstances warrant an extension of time, ICATT requires members' continuity agreements to include provisions that will permit the management period to be extended. ICATT does not specify the circumstances that would lead to an extension of the management period. The parties to the agreement/representatives must examine the circumstances that face them at a particular time, and decide if an extension of the management period is appropriate. For example, the original agreement may have stated that the management period was to continue for a period of six months from commencement. However, a sale of the practice to a third party may be timed to take place in the seventh month after the management period commenced. In such a situation, the parties/representatives may agree that it is appropriate to extend the agreement until the date of sale. It is not desirable that an agreement is repeatedly extended by incremental amounts. Such a situation could be detrimental to the interests of the clients and to the practitioner's estate. It is generally advisable to include provisions within an agreement which permit terms and conditions (not just the duration of the management period) to be varied from time to time. Any variation of the management agreement must be by mutual consent. It is advisable that any variation of the agreement, including the extension of the management period beyond the original time limit, be evidenced in writing. The document should be signed by both the nominee and the practitioner/representatives.

#### **THE CONTINUITY NOMINEE'S OBLIGATIONS**

The continuity agreement must contain a clear statement of the obligations that are to be placed upon the nominee and the practitioner and the practitioner's representative(s). ICATT does not specify matters that should be included under this heading. The following represents a selection, and not an exhaustive listing, of matters that parties to the agreement may wish to consider.

### ***Standard of Management***

When managing any practice during the management period, an ICATT member will be expected to apply ICATT's rules and regulations to the work they perform. ICATT's Fundamental Principles require members to carry out their professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of them as members. It is desirable that the nominee allocate staff to deal with the work arising from the management agreement, paying proper regard to their competence and expertise. Parties should consider if they wish to include specific clauses in their agreement about such matters. Where a continuity agreement is made with a practitioner who is not an ICATT member, it may be advisable to specify which professional body's rules are to be applied by the nominee. Such a clause will be of particular importance where the nominee is regulated by a professional body other than ICATT, and where ICATT's rules conflict with the rules of the other body. In such a circumstance, the practitioner may wish for the nominee to give an undertaking that they will abide by ICATT's rules in respect of any matter or aspect of the practice the nominee manages under the agreement.

### ***Taxes and VAT***

Taxes and VAT in respect of the practice will continue to arise during the management period. It is not desirable for such matters to be left to accumulate, and await the return to work of the practitioner. Parties to the agreement are recommended to discuss and agree the allocation of responsibility for compiling the necessary information, submitting such returns as are necessary and dealing with matters arising.

### ***Holding meetings at the practitioner's business premises***

The nominee should, wherever possible, interview clients and staff at the incapacitated/deceased member's business premises. This is important as a means of seeking to preserve the practice. Parties may wish to include clauses within their agreement which deal with this issue.

### ***Notification to insurers***

The fact that a practitioner is incapacitated or has died, and that another person has stepped in to manage the practitioner's affairs is normally a notifiable event under a practitioner's PII contract. Responsibility for notifying the PII provider should be clearly allocated. It may be appropriate to set time limits within which the notification should take place. It may be advisable to include clauses in the agreement which note the nominee's agreement to abide by the terms of the practitioner's insurance in respect of the managed practice and to take all reasonable steps to provide information requested by the practitioner's insurance company. In addition to PII, consideration should be given to maintaining insurance cover for property (buildings and contents) occupied, owned or used by the practice. However, if the nominee is to maintain adequate insurance cover for the assets of the practice, it is essential that the practitioner maintains sufficient up-to-date details of the relevant insurance policies, including policy names, numbers, insurers' telephone numbers and addresses. Such readily accessible details will assist the nominee to complete any obligations placed on them in respect of insurance. The nominee should also inform their own insurers that they are to manage another person's practice.

### ***Maintenance of books and records***

Part of the proper management of a practice is the maintenance of its books and records. Responsibility for the maintenance of such records should be allocated, and it may be advisable to include specific clauses that note the nominee's agreement to maintain the practice records.

It should be noted, however, that the nominee will only be fully able to discharge their duties in respect of such matters if the practitioner has adequate, established systems in place and books and records which are reasonably up to date. Incomplete or inadequate recording of matters by the practitioner may lead to delays as the nominee seeks to bring records up to date. Practitioners should consider if they require their nominees to give undertakings with respect to office systems. For example, in a practice that is highly computerised, an important part of practice security will be the taking of regular back-ups and the storing of these in secure conditions. It may be advisable for the agreement to include specific undertakings with respect to specialist systems and security. This is of particular importance where insurance cover is only effective if certain procedures and security conditions are complied with. The practitioner or their representatives are likely to want to monitor the management of the practice. It may be advisable to include specific clauses that permit the representatives to have reasonable access to the practice records (eg at any time during normal working hours).

### **Membership of ICATT**

Even though a practitioner is not able to manage their practice because of incapacity, they will continue to hold an auditing/practising certificate, etc. The annual fees for certificates and ICATT membership subscriptions will continue to fall due for payment. The practitioner may wish to include a clause requiring the nominee to arrange for all fees etc to be paid as they fall due so that the practice continues to hold valid authorisations for the work it undertakes.

### **Confidentiality**

It may be appropriate to include a clause in the agreement by which the nominee acknowledges the confidential nature of the affairs of the practice, its client list and all matters concerning the affairs of the clients, and agrees not to divulge information without receiving the proper authority.

### **THE CONTINUITY NOMINEE'S POWERS**

The continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operation of bank accounts will be facilitated if the nominee's powers under the agreement are clearly stated. It is recommended that the parties agree the procedures to be followed for the nominee to obtain any relevant permission or permissions.

### **Authority, consent and instruction**

The parties should consider if different levels of permission and authority are required in the event of incapacity or death. For example, a practitioner may be incapacitated and, in consequence, be unable to attend and manage their practice on a daily basis. However, the practitioner may still be capable of taking decisions about the practice's affairs and those of the clients. In such a situation, it may be appropriate for the nominee to visit the practitioner on a regular, agreed basis to obtain the practitioner's consent to actions, signature to documents, etc. If the practitioner's incapacity renders them unable to make decisions, etc or if the practitioner has died, the nominee may be required to approach the representatives of the practitioner when the nominee requires instructions, consent or authorisation. It is recommended that the agreement provide for those times when the representatives of the practitioner cannot reach a unanimous decision within a reasonable time of the nominee's request. On such an occasion it may be appropriate to permit the nominee to accept the majority view. Where the representatives do not reach a decision, or fail to notify the nominee of a decision, it may be appropriate to permit the nominee, after a reasonable period of time, to act without the requested authority, consent or instructions. In such an event, it should probably be required that the nominee shall use their best endeavours and judgement to act in the best interests of the practice.

### **Administration of the practice**

It is recommended that the parties discuss and agree how sundry administrative matters are to be dealt with and what powers the nominee will have in respect of these. For example, if the practice is an ICATT Approved Employer, ICATT must be informed of a continuity agreement being activated so that it can assess if the arrangements for students and members employed by the practice continue to be satisfactory.

Parties should discuss and agree the basis for charging clients during the management period, and how work in progress is to be dealt with. It may be advisable to obtain undertakings from the nominee to charge clients of the practice in accordance with the fee structure that is in place at the date of the commencement of the management period, unless agreed otherwise with the practitioner/representatives. Such a requirement assumes that the practice does, in fact, have set procedures for establishing fees (eg fixed quote fees, charging actual time spent on jobs, etc). In the absence of any set system, the nominee will have to determine a fee. Where the nominee has a scale of charging which is significantly different from that of the practitioner, or has a different approach to such matters as writing off work in progress, this could lead to disputes on the part of clients and the practitioner/representatives.

It may be advisable to address the issue of credit control. Where there are established procedures for chasing outstanding debts, the parties may agree that the nominee will continue to apply such procedures during any management period. However, where there are no set procedures or principles which can be applied, the nominee will have to decide how to proceed and, as noted earlier, if the nominee's approach to such matters differs significantly from that of the practitioner, this could be a cause of dispute. Practices frequently enter into credit agreements, etc for office machinery, vehicle leasing, etc. It may be advisable



to include clauses which set a limit on the level of credit to which the nominee can commit the practice without seeking specific permission from the practitioner/representatives. The practitioner may wish to consider drawing up a power of attorney in favour of the nominee. Thought should be given to what powers are to be afforded to the nominee and if any matters should be specifically excluded from the power of attorney. The events required to take place and proofs to be obtained for a power of attorney to become valid and enforceable should be determined. The power of attorney, depending on how it is drawn up, could give the nominee the authority to sign any document for the purposes of the continuity of the firm. Where the nominee signs on behalf of the firm, it should be clear that the nominee does so in the capacity of agent. Legal advice should always be sought when drawing up a power of attorney.

### **Engagement and dismissal of staff**

Parties should consider including clauses that deal with the employment of temporary and full-time staff. It may be considered appropriate to specify the types of qualification and training that certain grades of staff are expected to have. If the practitioner wishes to retain final authority over the employment and dismissal of staff, it will probably be advisable to include clauses that require the nominee to obtain permission from the practitioner/representatives. Additionally, it may be advisable to require the nominee to obtain the consent of the practitioner/representatives to the terms and conditions of employment or dismissal.

### **Operation of bank accounts**

The nominee will need to be able to pay bills, expenses, wages, etc as they fall due if they are to manage the practice and enable it to continue. The nominee must have access to practice money – either directly or through the practitioner/representatives – to pay legitimate calls on the practice. It would be unreasonable to expect the nominee to pay the normal business expenses, wages, etc from their personal funds or those of their own practice. It is advisable that procedures in respect of bank accounts, and who may have access to them, their management, the ability to open or close accounts, etc are addressed by the agreement. It is advisable that the relevant bank is consulted to identify the authorities and proofs it would require for the nominee and/or the representatives to operate the practice's bank accounts.

In the event of the practitioner's death, the personal representatives of the practitioner should act to make suitable banking arrangements, pending probate of the will or the Grant of Letters of Administration. It will be of assistance to the executors/administrators if there are clear instructions within the continuity agreement with respect to the setting up of new accounts, obtaining overdrafts until Grant of Probate/Letters of Administration, and the nominee's ability to access the practice's bank accounts.

For the avoidance of doubt, the practitioner may wish to include an undertaking that the nominee will keep the practice's money and financial affairs separate from the nominee's own business and personal affairs.

### **THE BASIS ON WHICH THE NOMINEE WILL BE REMUNERATED**

The parties should agree the terms on which the nominee will be remunerated. For example, it may be agreed that the nominee will be paid on a monthly basis, in arrears, at an agreed rate. Parties to the agreement may wish to agree a scale of fees, or a formula for the calculation of the remuneration payable to the nominee for the management of the practice. It is reasonable for the nominee to expect to be refunded for expenses they incur in the course of managing the practice. It may be advisable to include a clause about such matters. The parties may agree that the nominee will produce, upon request, original receipts, etc as evidence of expenditure reasonably incurred.

### **LETTER TO BE SENT TO CLIENTS IN THE EVENT OF THE PRACTITIONER'S INCAPACITY OR DEATH**

Clients should be informed of the arrangements in place for the continuance of service to them. It may be advisable to draft proforma letters to be sent to clients, and to set time limits for such letters to be despatched, eg within 14 days of the management period commencing and at the end of every six month period from the date of commencement. The name of the nominee should be disclosed on the professional stationery of the practice as soon as possible after the commencement of the management period, eg:

**'David J Smith CA  
Institute of Chartered Accountants  
of Trinidad and Tobago  
Manager: Henry R Jones CA  
Chartered Accountant'**

**OR**

**'David J Smith CA  
Institute of Chartered Accountants  
of Trinidad and Tobago  
Manager: Davies and Jones  
Chartered Accountants'**

## **ADDITIONAL MATTERS WHICH PRACTITIONERS MAY WISH TO INCLUDE IN THEIR CONTINUITY ARRANGEMENTS**

The matters to be included from the following headings will be for discussion and agreement by the parties to the continuity agreement.

**Change of name and address of the parties** It is important that parties to the agreement are clearly identifiable both at the time the continuity agreement is drawn up and over the life of the agreement. It is suggested that parties to the agreement require each to inform the other of any name changes or changes of address, either business or residential. Such changes should be notified to the relevant party within a reasonable time. The purpose of this is to keep the parties fully informed at all times, so that if the agreement needs to be actioned, the relevant parties can be contacted without delay.

## **DEFINITION OF TERMS**

It is important that parties to the continuity agreement are able to understand the terms used in the agreement and interpret them in the same way. It may aid understanding if terms used are defined within the agreement. For example, where notice periods are specified in terms of days, the parties need to be clear what is meant (eg business days or all days from Monday to Sunday).

### ***Termination of the agreement***

Practitioners may wish to give consideration to including clauses with respect to terminating the agreement in different situations. For example, prior to a management period commencing, a nominee may decide to retire. As a result of this decision, the nominee will wish to give up their responsibilities under the agreement. Where a management period has not yet commenced, a simple requirement to give written notice (eg one month's notice) may be an acceptable way of terminating the agreement. The period of notice should be agreed by the parties. Where one of the parties breaches the terms of the agreement, matters are likely to be more complicated. If the nominee breaches the terms of the agreement, the practitioner, or the representatives, may wish either to have the breach remedied or to terminate the agreement. A breach may arise as a result of the nominee ceasing to hold the required authorisations, such as ceasing to have statutory auditor status, or by the nominee being adjudged bankrupt or entering into a voluntary arrangement with creditors, or by being convicted of an offence of dishonesty. On the termination of the agreement, the nominee should cease to be held out as an agent of the practice. It may be advisable to include clauses that provide undertakings by the nominee that, on termination of the agreement, they will return all books and papers, etc and facilitate the smooth transition of practice matters that have been under their control.

### ***Sale of the practice***

It is suggested that practitioners give consideration to what will happen to their practices in the event of their long-term incapacity or their death. In many instances the nominee may be willing to buy the practice, and practitioners may wish to provide for such an outcome within the agreement. Practitioners may wish to include clauses which specify how the sale of the practice is to be conducted, how the sale price is to be calculated, etc. It may be advisable to include a clause that records the fact that the decision to sell will remain at the discretion of the practitioner/representatives. Where the nominee agrees to buy the practice, it is recommended that the parties to the sale be independently advised.

### ***Restrictive covenants***

Practitioners may wish to give consideration to including undertakings on the part of the nominee that, on the termination of the management of the practice for whatever reason, the nominee will not solicit, nor cause another party to solicit, any of the practice's clients (whether that person was a client prior to the commencement of the management period or became a client during that period) for a period of time (say, not less than two years) running from the date of expiry or termination of the agreement.

### ***Exclusive jurisdiction and governing law***

For the avoidance of doubt, it may be advisable to specify which law is to be applicable to the agreement. Members should note that, due to its generality, this commentary cannot, and is not intended to, cater for each member's particular circumstances.

## **MODEL AGREEMENTS**

To further assist sole practitioners to make continuity arrangements, ICATT has produced two model agreements which are reproduced as appendices to this section. However, members are strongly recommended to seek independent legal advice when drawing up a continuity agreement. The agreement will be legally enforceable upon the parties. It is, therefore, important that all parties are clear in their understanding of their responsibilities under the agreement, and that the document records accurately all matters agreed by the parties.