

**Legislative Council
Bills Committee on Guardianship of Minors (Amendment) Bill 2011**

**Administration's Response to Issues Raised by Members
at the Bills Committee Meeting held on 6 July 2011**

Standard form for appointment of guardians

The Guardianship of Minors (Amendment) Bill 2011 (the Bill) aims to implement the recommendations of the Report on Guardianship of Children (the Report) published by the Law Reform Commission of Hong Kong. The Report reviewed and made recommendations on the appointment, removal and powers of guardians appointed under the Guardianship of Minors (the Ordinance) (Cap. 13) to act after the appointing parent dies. One of the recommendations of the Report is that, as an administrative measure to facilitate parents in making guardianship arrangements for their children in the event of their deaths, a standard form for appointing guardians should be produced and made available for use by the public. The standard form is not part of the Ordinance or its subsidiary legislation.

At the meeting of the Bills Committee on the Bill held on 6 July 2011, Members requested the Administration to provide a draft of the standard form. The first working draft of the standard form is at **Annex**.

The draft form at **Annex** seeks to facilitate discussion at the meeting of the Bills Committee and is subject to further amendments and refinements. When the form is published for public use after the commencement of the Bill, an explanatory pamphlet will also be produced and attached to the form to explain in more detail the mechanism for guardian appointment and the roles and responsibilities of guardians etc..

**Labour and Welfare Bureau
July 2011**

Appointment of Guardian¹

Under the Guardianship of Minors Ordinance (Cap.13)

In accordance with sections 6(1) and 6(2) of the Guardianship of Minors Ordinance (Cap. 13),

whereas *I/We²
of³,
holder of *Hong Kong Identity Card /⁴
numbered:

*is/are the *parents/guardians of
.....⁵
holder of *Hong Kong Identity Card / Hong Kong Certificate of
Birth/⁶
numbered:

* Please delete as appropriate

¹ One form for making guardian appointment for one minor only.
² Name(s) of person(s) making the appointment.
³ Address(es) of the person(s) making the appointment.
⁴ Identity document(s) of the person(s) making the appointment, if not Hong Kong Identity Card.
⁵ Name of the minor for whom the guardian appointment is made vide this form.
⁶ Identity document of the minor, if not Hong Kong Identity Card and Hong Kong Certificate of Birth.

*I/We hereby appoint⁷
of⁸,
holder of *Hong Kong Identity Card /⁹
numbered:
to act as guardian of the minor stated above upon my/our death¹⁰.

*I/We *have / have not previously made other appointments for the same minor listed above.

*My/our intention of making this appointment is to –
(please tick one of the following)

- revoke an earlier such appointment (including one made in an unrevoked will) made by *me/us in respect of the same minor listed above.
- appoint additional guardian(s) for the same minor listed above.

* Please delete as appropriate

⁷ Name(s) of the appointed person(s).
⁸ Address(es) of the appointed person(s).
⁹ Identity document(s) of the appointed person(s), if not Hong Kong Identity Card.
¹⁰ Please refer to section 7 of the Guardianship of Minors Ordinance for when and how the guardianship will take effect after the death of the appointing parent(s)/guardian(s).

*I/We hereby declare that –

- the above appointment is made in the best interest of the minor listed above; and
- in making the appointment, *I/we have taken into account the wishes of the minor listed above as far as practicable having regard to the minor's age and understanding.

Signed

Dated

* Please delete as appropriate

In the presence of –

First witness

Name:

Type and number of identity document: Hong Kong Identity Card / other identity document (please specify:

Number:

Signed

Dated

Second witness

Name:

Type and number of identity document: Hong Kong Identity Card / other identity document (please specify:

Number:

Signed

Dated

The appointment was

signed by¹¹, personally

signed by¹² at the direction of¹³

* Please delete as appropriate

¹¹ Name(s) of the person(s) making the appointment.

¹² Name(s) of the person(s) signing the appointment on behalf of the person(s) making the appointment.

¹³ Name(s) of the person(s) making the appointment.

Acceptance of appointment

*I/We 14
of 15,
holder of *Hong Kong Identity Card / 16
numbered:

hereby declare that *I/we accept the appointment made by

..... 17
in accordance with sections 6(1) and 6(2) of the Guardianship of Minors
Ordinance (Cap. 13) to be the guardian(s)
of 18

Signed

Dated

* Please delete as appropriate

-
- 14 Name(s) of the appointed persons.
15 Address(es) of the appointed persons.
16 Identity document(s) of the appointed person(s), if not Hong Kong Identity
Card.
17 Name(s) of the person(s) making the appointment.
18 Name of the minor for whom the appointment is made vide this form.

Explanatory Notes

- These notes only serve as a general reference for those who wish to appoint guardian under the Guardianship of Minor Ordinance (the Ordinance)(Cap. 13). The person(s) making the appointment, the witnesses of the appointment and the appointed person(s) are strongly advised to refer to the Ordinance, in particular Part III which concerns the appointment, removal and powers of guardians.

Appointment of guardians under the Ordinance

- The appointment of a guardian is to ensure that someone takes legal responsibility for your children / children for whom you are acting as guardian and who are under the age of 18 when you die. In making the appointment, it is important to consider beforehand the relationship your child or children has/have with the person(s) whom you intend to appoint as the guardian(s) and your child or children's views on the person(s)' appointment as far as practicable.
- According to sections 6(1) and 6(2) of the Ordinance, a parent of a minor or a guardian of a minor may appoint any person to be a guardian of the minor after that parent dies.
- According to sections 6(7) of the Ordinance, an appointment of guardian under the Ordinance may be made by two or more persons acting jointly.

Points to note when making the guardian appointment

- According to sections 6(3) of the Ordinance, the appointment form must be dated and—
 - (a) signed either by the person(s) making the appointment or by another person at the direction, and in the presence, of the person(s) making the appointment; and
 - (b) attested by two witnesses.
- According to section 6(6) of the Ordinance, an appointment made by parents/guardians under the Ordinance has no effect unless the

appointed person(s) accept(s) the office either expressly or impliedly by conduct. The appointing person is thus strongly advised to have the appointment form signed by the appointed person(s) as an indication of his/their acceptance of the appointment.

- According to section 6(5) of the Ordinance, in appointing a guardian of a minor, a parent or guardian of the minor must take into account the wishes of the minor as far as practicable having regard to the minor's age and understanding.

When and how guardianship takes effect

- According to section 7 of the Ordinance, a person appointed by a parent or guardian as the guardian of a minor under the Ordinance automatically assumes guardianship over the minor on the death of the appointing parent or appointing guardian (as the case may be) if –
 - (a) the appointing parent or appointing guardian has a custody order over the minor immediately before he or she dies; or
 - (b) the appointing parent or appointing guardian lived with the minor immediately before dying and the minor does not have any surviving parent or surviving guardian when the appointing parent or appointing guardian dies.
- In other cases, the person appointed as the guardian of the minor under the Ordinance may, after the appointing parent or appointing guardian dies, apply to the court to assume guardianship over the minor and the court may order the person –
 - (a) to act jointly with the surviving parent or surviving guardian;
 - (b) to act as the guardian of the minor after the minor no longer has any parent or guardian;
 - (c) to act as the guardian of the minor at a time, or after the occurrence of an event, specified by the court;
 - (d) to be removed as a guardian; or

- (e) to act as the guardian of the minor to the exclusion of the surviving parent or surviving guardian.

Revocation of guardian appointment

- An appointment of guardian under the Ordinance revokes an earlier such appointment made by the same person in respect of the same minor, unless it is clear that the purpose of the later appointment is to appoint an additional guardian.
- An appointment under the Ordinance (including one made in an unrevoked will) is revoked if the person who made the appointment revokes it by a written and dated document that is –
 - (a) signed either by the person who made the appointment or by another person, at the direction, and in the presence, of the person who made the appointment; and
 - (b) attested by two witnesses.
- An appointment under the Ordinance (other than one made in a will) is revoked if, with the intention of revoking the appointment, the person who made it—
 - (a) destroys the document by which it was made; or
 - (b) instructs any other person to destroy the document in the person's presence.
- If an appointment under the Ordinance is made by two or more persons acting jointly –
 - (a) the appointment may be revoked by any of them; and
 - (b) the person who revokes the appointment must notify all other persons who jointly made the appointment of the revocation.

Termination of guardian appointment

- The guardian appointment made by parent or guardian under the Ordinance terminates when –
 - (a) the child concerned attains the age of eighteen years;
 - (b) the child concerned dies;
 - (c) the guardian dies; or
 - (d) the guardian is removed by the court.

- The guardian appointed by parent or guardian under the Ordinance may be removed by the court in its discretion on being satisfied that it is for the welfare of the minor to do so.

Guardian to have parental rights

- A person appointed as the guardian of a minor has, on assuming guardianship, parental rights with respect to the minor.