

Appointment of Guardian(s)

Parents and guardians, as care-givers of children, should make thoughtful arrangements for their children in the unfortunate event of their death. The appointment of guardians should be in children's best interests. The Guardianship of Minors Ordinance (Cap. 13) governs court proceedings relating to the custody and upbringing of children, as well as the appointment and removal of guardians. The Government has amended the relevant legislation in accordance to the recommendations made by the Law Reform Commission of Hong Kong. The Guardianship of Minors (Amendment) Ordinance 2012 (the Amendment Ordinance) has come into operation on 13 April 2012.

To facilitate parents (and also guardians) in appointing guardians for children, a standard appointment form with explanatory notes is enclosed. Parents or guardians who wish to make guardian appointments may, upon referring to the relevant provisions of the Guardianship of Minors Ordinance, fill in and sign the appointment form, with their signatures attested by two witnesses. The form should also be signed by the proposed guardian as an indication of his / her acceptance of office as the guardian.

Labour and Welfare Bureau
Hong Kong Special Administrative Region Government
April 2012

**Appointment of Guardian
under the Guardianship of Minors Ordinance (Cap. 13)**

I. Appointment of Guardian¹

In accordance with section 6(1) or 6(2) of the Guardianship of Minors Ordinance (Cap. 13), whereas I/we..... ²
of ³ ,
holder of *Hong Kong Identity Card / other identity document (please specify:) Number:
*am/are the *parent(s)/guardian(s) of..... ⁴
holder of *Hong Kong Identity Card / Hong Kong Certificate of Birth / other identity document (please specify:.....) Number:
*I/We hereby appoint..... ⁵
of ⁶
holder of *Hong Kong Identity Card / other identity document (please specify:) Number:
to act as guardian of the minor stated above upon my/our death ⁷ .

(Please tick as appropriate)

- *I/We have not previously made other appointments for the same minor listed above.
- *I/We have previously made other appointment(s) for the same minor listed above. *My/our intention of making this appointment is to –
 - 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)

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 Name of the minor for whom the guardian appointment is made vide this form.
⁵ Name(s) of the appointed person(s).
⁶ Address(es) of the appointed person(s).
⁷ 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 interests of the minor listed above; and
- in making the appointment, *I/we have taken into account the views of the minor listed above as far as practicable having regard to the minor’s age and understanding.

The appointment was (please tick as appropriate) –

signed by the person(s) making the appointment personally.

Signature: Date:.....

signed by.....⁸,
holder of *Hong Kong Identity Card / other identity document
(please specify:) Number:
at the direction and in the presence of the person(s) making the appointment.

Signature: Date:.....

II. Witness

In the presence of –

First witness

Name:

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

Signature: Date:.....

Second witness

Name:

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

Signature: Date:.....

(* Please delete as appropriate

⁸ Name(s) of the person(s) signing the appointment on behalf of the person(s) making the appointment.

III. Acceptance of Appointment

*I/We.....⁹
of¹⁰,
.....
holder of *Hong Kong Identity Card / other identity document (please specify:
.....) Number:

hereby declare that *I/we accept the appointment made by
.....¹¹
holder of *Hong Kong Identity Card / other identity document (please specify:
.....) Number:
in accordance with section 6(1) or 6(2) of the Guardianship of Minors Ordinance
(Cap. 13) to be the guardian(s) of¹²,
holder of *Hong Kong Identity Card / Hong Kong Certificate of Birth / other
identity document (please specify:)
Number:

Signature: Date:.....

() Please delete as appropriate*

⁹ Name(s) of the appointed persons.

¹⁰ Address(es) of the appointed persons.

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

¹² 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 Minors 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 child / child for whom you are acting as guardian and who is under the age of 18 when you die. In making the appointment, it is important to consider beforehand the relationship your child has with the person whom you intend to appoint as the guardian(s) and your child's views on the person's appointment as far as practicable.
- According to section 6(1) or 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 section 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 section 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/her 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 is required to take into account the views 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 irrespective of whether anyone else has a custody order over the minor at that time; 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 (including one made in a will) 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 a 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 in the best interests of the minor to do so.

Guardian to have parental rights and authority

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