

Procedural Guidelines

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PROCEDURAL GUIDELINES

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Disclaimer

All contents in this document are for general information only. No information constitutes any legal or specialist advice. Information in this document is not intended to be relied upon by readers in the making of decisions in any particular case. Readers should consider seeking independent legal advice. All information and definitions in this Guidelines shall be subject to the provisions of the Mental Health Ordinance (Cap. 136) or other applicable legislation. In the case of any inconsistency with the ordinances, the ordinances shall prevail.

CHAPTER 1 – BACKGROUND

1. This document, known as the Procedural Guidelines (“PG”), is a practical document aimed to familiarize users with the operations of the Guardianship Board. It has no legal effect. It shall not fetter the decision of the Board which would be made independently in respect of specific cases.
2. The Guardianship Board (“Board”) is formed under the Mental Health Ordinance (Cap.136) (“MHO”). Part IVB of the MHO provides the powers and the mechanism under which the Board may hear guardianship applications, grant Guardianship Orders and periodically review Guardianship Orders that have been granted.
3. A Guardianship order (“Order” or “GO”) applies to mentally incapacitated persons who are aged 18 years or above and are incapable of making decisions for themselves concerning their health, welfare or finance, and where there is no feasible alternative other than to receive them into guardianship. The mentally incapacitated persons are referred to as “MIP” or “Subject”.
4. The Board has previously issued leaflets relating to its procedures and policies. Of those leaflets, the Medical Guidelines (“MG”) and the Financial Reporting Guidelines (“FRG”) replaced Leaflets 12, 13 and 15 respectively.
5. The PG replaces the remainder of the old leaflets and Practice Notes which shall immediately cease to have effect. To avoid confusion, the new information sheets used together with the PG are called Pamphlets. Please access the Pamphlets and the Practice Notes via the QR codes set out in Appendix 4 and Appendix 5 respectively.
6. All other information provided by the Board in its website should be read in conjunction with the PG and other new information provided by the Board from time to time.
7. Unless otherwise stated, all references to section numbers are to provisions of the MHO or its subsidiary legislation. In case of ambiguity or inconsistency, the provisions of the MHO or its subsidiary legislation shall prevail.

CHAPTER 2 – GUARDIANSHIP APPLICATIONS

A. Overview of Guardianship Applications

1. The Board may give the guardian legal powers authorized by the MHO to make important decisions relating to personal circumstances of a mentally incapacitated person such as the Subject’s place of residence, medical or dental treatment and the use of the Subject’s bank savings. Orders are made after a full hearing is conducted by the Board, having considered the views of the Director of Social Welfare (section 59P) in the form of social enquiry reports and the representations of persons significant to the Subject.
2. Orders are made under section 59O and may involve one or more of the following powers under section 59R(3):
 - (a) to require the Subject to reside at a specific place;
 - (b) to convey the Subject to a specific place and use reasonable force for the purpose;
 - (c) to require the Subject to attend at a place and time for medical or dental treatment, special treatment, occupation, education or training;
 - (d) to consent to medical or dental treatment (other than special treatment) if the Subject is incapable of understanding the general nature and effect of the treatment;
 - (e) to require access to the Subject to be given to any registered medical practitioner, approved social worker or other person specified in the Orders;
 - (f) to hold, receive or pay a specified monthly sum for the maintenance or other benefit of the Subject.
3. Regarding the last power in sub-paragraph 2(f) above, the monthly sum refers to the amount specified in section 44B(8) by reference to the latest median monthly employment earnings of employed persons in the Quarterly Report on General Household Survey published by the Census and Statistics Department, and applies to the bank savings of the Subject. The applicable figure is published in the Board’s website from time to time under the What’s New section.
4. The following persons may make applications for guardianship (section 59N):
 - ✧ a relative of the Subject (stating their relationship);
 - ✧ a social worker;
 - ✧ a registered medical practitioner; or
 - ✧ a public officer in the Social Welfare Department.

Applicants can propose themselves or another person to act as the guardian of the Subject. The definition of a “relative” is found in the section 2 of the MHO.

B. Qualifications of Guardians

5. The qualifications of a guardian are set out in section 59S. A guardian must be an individual person and there is no system for joint or co-guardianship in Hong Kong.

6. Under section 59S, a guardian must satisfy the specified criteria in order to ensure the Board that he/she is suitable -
 - (a) who is 18 years old or above;
 - (b) who is willing and able to act as a guardian;
 - (c) who is capable of taking care of the Subject;
 - (d) whose personality is generally compatible with the Subject;
 - (e) whose interests, especially of a financial nature, do not conflict with the Subject;
 - (f) who promotes the interests of the Subject (including overriding the Subject's views and wishes where the appointed guardian considers this is in the Subject's interests);
 - (g) who respects the views and wishes of the Subject, if they can be ascertained; and
 - (h) who has given written consent to be a guardian.
7. The applicant can propose himself/herself or any other person or the Director of Social Welfare as the guardian. If no appropriate person available can be found to act as the private guardian and the Board considers that the Subject should be received into guardianship, the Director of Social Welfare will be appointed as the public guardian.
8. The proposed guardian needs to give written consent in Part II and III of Form 1. If there is a subsequent change of the proposed guardian after the application is made, the new proposed guardian is required to submit a revision of the relevant parts of Form 1.
9. The proposed guardian (other than the Director of Social Welfare) must be able to satisfy the requirements under section 3 of the Mental Health (Guardianship) Regulations (Cap.136D) ("Regulations"), regarding the duties of private guardians.
10. Prior to appointment, the proposed guardian is required to provide a written undertaking in a form prescribed by the Board that he/she understood and accepted all matters in connection with being appointed as a guardian.
11. As the proposed guardian must show that he/she is able to perform the duties required and be personally available to attend to the needs of the Subject, a person who ordinarily resides outside Hong Kong or needs to travel frequently is generally considered not suitable.
12. The Board shall be cautious about applications for reimbursement of expenses. Proposed guardians who make substantial claims for reimbursement of expenses notwithstanding the limited financial resources of the Subject may be seen as having a financial conflict of interest with the Subject. Please refer to Practice Note No.1/2010.

C. Guardianship Orders

13. Orders will be issued by the Board in writing to the parties stating the decision of the Board. An Order appointing a guardian shall state that the Subject has been received into guardianship and set out the terms of the guardianship.
14. Orders granted for the first time will not exceed one year and will usually be reviewed before their expiry. If the Orders are not reviewed or varied upon their expiry, they will

continue in force until the review hearing of the Board.

15. Orders are issued by the Board accompanied by reasons which are set out in a separate Reasons for Order (together, the “Order and Reasons”). These Orders and Reasons are provided to the applicant, the Director of Social Welfare, the Subject (at its stated address) and the guardian (if not the applicant) and other added parties. Where the Order involves mobilizing bank accounts, disclosure to the relevant banks would be made. The documents issued by the Board must be treated with confidentiality by all the recipients (e.g. bank staff, doctors and care home staff, etc.) bearing in mind the privacy of the parties.

D. Withdrawal of Applications

16. An applicant wishing to withdraw the application should do so in writing and will be requested to complete and submit Form 13 (Request to Withdraw Application) to the Board. The Applicant may do so at any time before the hearing or raise it at the hearing.
17. The determination of withdrawal request is made by the Board as required by section 22 of the Mental Health Guardianship Board Rules (Cap. 136E) (“Rules”). The Board will hear every withdrawal application and determine whether to approve the withdrawal or proceed to receive the Subject into guardianship despite the withdrawal request. The latter situation is rare but not impossible.
18. Applications should not be made lightly. Once a lodged application is accepted, the social investigation under the MHO is required to be completed in the interests of protecting the person for whom the application had been made and be satisfied as to the need for guardianship or not. Applicants are expected to be co-operative in the investigation even though they had eventually indicated their wish to withdraw, as they themselves had made the applications in the first place stating there was a need for guardianship. The SER writer will discuss with the applicant the reasons for the withdrawal request, conduct an appropriate level of investigation and give a recommendation to the Board to support the withdrawal if it is justifiable.

E. Limits on Managing the Subject’s Finance

19. The guardian’s power is limited to allowing access to the Subject’s bank savings. The maximum monthly sum that could be authorized by the Board is limited to a figure determined by reference to the Quarterly Report on General Household Survey. Such money could be spent only for the maintenance or other benefit of the Subjects dependents or relatives.

20. Sometimes applicants expect a guardian to have certain powers that may exceed the powers given under Part IVB of the MHO, such as the power to renewing terms of time deposits, withdrawing mandatory provident fund balances, handling insurance policies, applying for grant of probate or seeking work injury or accident compensations, etc. Applicants and families should check carefully and consult with advisers, where possible, so as to avoid spending unnecessary effort to pursue an application that would not address their needs.

F. Road Map

21. After ascertaining that guardianship could address their relevant needs, applicants should then prepare themselves to submit applications according to the relevant requirements. What follows is a step-by-step guide to making a guardianship application to the Board.
22. Please read this with the Road Map for Guardianship Applications in Appendix 1 and the Notes on Completing Form 1 in Appendix 2.

STEP 1: Submitting the application

Application form

23. An applicant who wishes to take out an application for a grant of guardianship must complete an application in the prescribed form, i.e. Form 1 of the MHO (“Form 1”). Blank forms may be downloaded from the Board’s website or collected from our offices.
24. The MHO requires that the applicant must submit the application within the period of 14 days immediately after he has personally seen the person concerned.
25. Applications must be supported by two medical reports by registered medical practitioners in the prescribed form issued by the Board. The application must reach the Board within 14 days of the last medical examination of the Subject for it to be considered valid. One of the medical reports must be made by an Approved Doctor but it need not be the last medical examination. If the application is not considered valid, it will be returned to the applicant by the Board Secretariat. The case will not be processed until a valid application is received pursuant to MHO.
26. The days are calculated by reference to **calendar days**, which means that public holidays or unexpected leave days must be included. Secretariat staff has no power under MHO to grant extensions or accept late submissions. Therefore, applicants are encouraged to include sufficient buffer days to avoid missing the deadlines and having to re-arrange the medical examinations and reports required.
27. For the convenience of applicants, the Board has introduced an **Online Calculator** to assist the public to check whether their calculation of dates follows the requirement. Users may check the Online Calculator on our website or visit our offices to make enquiries.

Medical reports

28. The law requires that two medical reports **must** be enclosed with the application form (i.e. Form 1). One of the medical reports must be prepared by an Approved Doctor having special experience in the diagnosis or treatment of mental disorder, assessment or determination of mental handicap (qualified psychiatrist). If the applicant is a medical doctor, it shall not be appropriate for him/her to provide the medical report to support the application in respect of the same case.
29. The forms for the two types of medical reports are different. It is important that the correct one is used by the relevant doctor:
 - ✧ Approved Doctor's Report for a Guardianship Application
 - ✧ Registered Medical Practitioner's Report for a Guardianship Application
30. The list of Approved Doctors may be obtained from the Board or downloaded from our website.
31. Secretariat staff cannot provide any recommendation or information about medical professionals who may provide medical reports or the levels of charges which may be involved. Although the Board does not charge any fee for accepting applications, applicants are responsible to pay for the charges for obtaining the medical reports, if any.
32. As regards the date of the first medical report, there is no fixed date but it is possible for the Board to question its validity if the time gap with the second medical report is too long or if the medical situation is uncertain, and request for a further medical examination to be made before the Guardianship Hearing is scheduled to be heard.
33. No legal representation is required for submitting applications to the Board and for attendance at hearings. If the applicant wishes to engage legal representative for submitting an application, the legal representative shall provide a written document to the Board evidencing the engagement of the legal representative to act on the applicant's behalf. In such cases the Board Secretary will liaise with the legal representatives instead of the applicant directly. The applicant remains responsible for responding to all the enquiries of the Board or the Director of Social Welfare made in respect of the application.
34. Please also refer to the Board's Medical Guidelines available from our website.

STEP 2: Processing of the application

35. Once Form 1 is properly accepted, the Guardianship Application will be processed by the Board Secretariat. It is the responsibility of the applicant, to ensure that Form 1 and the medical reports contain all the required information for the application to proceed.
36. Once the application is accepted by the Board Secretary, a copy of the completed Form 1 and the medical reports in respect of the Subject will be sent to the Subject's last known address and to the Social Welfare Department for the next step to proceed.

37. Applicants will receive an acknowledgment letter informing them that the Board Secretariat has accepted the Guardianship Application and it is being processed.

STEP 3: Social Enquiry

38. Under the MHO, an officer of the Social Welfare Department shall prepare a Social Enquiry Report (“SER”) not later than four weeks from the date of the application relating to the Subject’s view and wishes, with an assessment on the Subject’s family background, social and financial situation for the Board’s consideration before the Board determines the application.
39. After accepting the Application, the Board will notify the Social Welfare Department of the application received, after which a social worker (“SER writer”) will be assigned by the Department to follow up the case and interview the applicant, the Subject, relatives and friends of the Subject and relevant institution staff, as the SER writer may see fit, to obtain an understanding of matters concerning the Subject as well as the suitability of the proposed guardian. The SER writer shall seek information and make investigation on the matters relating to the Subject and will then make a recommendation to the Board regarding the application.
40. As the SER must be produced not later than 4 weeks of the application for guardianship, the timing of the investigation is very tight. The applicant and relevant persons being interviewed or contacted are encouraged to co-operate with the SER writer and to produce documents and information required (such as bank passbooks, bank account statements or identity documents) to facilitate the process so that all relevant material and information regarding the Subject are made available to the Board for its consideration of what are in the Subject’s best interests. The SER writer is expected to duly record his/her findings and observations in an impartial manner, including to reflect whether someone is co-operative or not.
41. If any information requested by the SER writer is unavailable or withheld and such information is considered material, the SER writer may request the Board to issue summonses to banks or other persons to compel the provision of specific information about the Subject. The information obtained will be assessed by the Board at the hearing.
42. Applicants and other persons involved with the Subject may provide information to the SER writer as they wish at any time and they must take the initiative to alert the SER writer if there are relevant circumstances that they would like to be considered before the Board.

STEP 4: Arranging a hearing date

43. At least 14 days in advance, the parties to the hearing will be notified of the date, time and place of the hearing, that is: -
- ✧ the alleged mentally incapacitated person stated in the application (i.e. the Subject);
 - ✧ the applicant;
 - ✧ the Director of Social Welfare.

44. Notice will also be given to: -
- ✧ the proposed guardian;
 - ✧ one or more family members or friends that the Board thinks should attend as witnesses;
 - ✧ witnesses such as doctors, social workers, care home staff or other professionals.
45. The Board may also invite specific persons to attend. If any such persons without justifiable reason fail to attend the hearing, the Board has power to proceed with a determination in the absence of those persons if there are sufficient grounds to do so to avoid any delay in making a determination. As efforts would have been made by the Board staff to check the parties' availability before a date is fixed, the Board will not be inclined to reschedule a hearing without good grounds.
46. The venue of the hearing is usually at the Board's hearing centre with the address provided in the notice of hearing.
47. The normal processing time for an application, from the date of receipt of a duly completed Form 1 to the actual hearing, may take from 4 to 9 months, depending on the complexities of the case and the caseload of the Board during that period.

STEP 5: Update of information before the hearing

48. In order to provide updated information to the Board, a supplementary report will be submitted by the SER writer to the Board 1 clear working day before the hearing. The supplementary report is also available to the parties. Applicants and other persons may also provide information to the SER writer for consideration to be included in the supplementary report in the same way as they could do for the SER.
49. Any information and representations provided directly to the Board by any party will be passed on to the SER writer for inclusion in the supplementary reports and may also be provided to the other parties for their comments as the SER writer may see fit and/or as directed by the Board.
50. Board members may conduct a visit to the Subject and interview the Subject as the circumstances may require.
51. The supplementary reports are treated as part of the complete process of making the Social Enquiry Report as required by section 59P.

STEP 6: The hearing

52. The Board may require persons attending the hearing to take oaths or affirmations before giving evidence in the hearing.
53. After hearing the representations and considering the reports and relevant information, the Board will decide on the following major questions:

- ✧ whether there are other less restrictive or intrusive means to assist the Subject;
- ✧ whether the appointment of a guardian is appropriate and meets the criteria and principles of the law;
- ✧ who the guardian should be;
- ✧ what powers the guardian will have; and
- ✧ the length and other terms and conditions of the Order.

Step 7: Granting of a Guardianship Order

54. By the end of the hearing, the Chairperson or the presiding member may announce the Board's decision as to whether an Order will be made or reserve the Board's decision until the written decision is issued.

CHAPTER 3 - DUTIES AND POWERS OF A GUARDIAN

A. Private Guardians and Public Guardians

1. Under section 59S of the MHO, the Board may appoint an appropriate person to act as the guardian of the Subject. Such a person is commonly known as the private guardian. If there is no suitable person that can be found and the Subject should be received into guardianship, the Director of Social Welfare may be appointed (public guardian). A delegated officer of the Social Welfare Department will perform the functions and powers of the public guardian.

B. Duties of Private Guardian

2. The guardian has responsibilities which are set out in the MHO and its subsidiary legislation. A guardian has to make decisions, such as on issues of accommodation, medical and finance, on behalf of the Subject in accordance with the power(s) conferred to him/her in the Order, with an aim to promote and protect the Subject's interests.
3. A private guardian must perform duties as required by section 3 of the Regulations.
4. According to section 9 of the Regulations, if the guardian without reasonable excuse contravenes or fails to comply with the duties listed in the Regulations, he/she commits an offence and is liable to a fine at level 1 and to imprisonment for 3 months.
5. A private guardian is also expected to perform certain responsibilities, including but not limited to, informing the hospital of the Subject's guardianship status upon hospital admission and to report any death of the Subject to the Coroner via the Commissioner of Police. The proposed guardian must undertake in writing that he/she is aware of and will fulfill the responsibilities.
6. The guardian must comply with all the standard conditions and special conditions set out in the Order.
7. Private guardians are required to comply with the reporting requirements as set out in the Financial Reporting Guidelines of the Board (FRG) and to follow the additional advice or instructions of the Director of Social Welfare or his/her delegate in relation to complying with the requirements. Guardians hold the Subject's money on trust and have fiduciary relationship towards the Subject. Guardians who are appointees are expected to observe the same principles in using the welfare money of the Subject. If guardians perform poorly and get themselves into a situation of conflict with the Subject, they may be replaced either before or at the expiry of an Order.
8. Guardians must also familiarize themselves with the Medical Guidelines (MG) of the Board and Part IVC of the MHO to understand the applicable provisions relating to the exercise of medical consent.

C. Guardianship Review

9. Guardians may apply for a review of the Order under the MHO with the aim of varying or revoking the order. Other persons may also do so. Please go to Chapter 4 for more information.

D. Relinquish the Guardian's Functions

10. If guardians desire to relinquish their functions as guardian, they may give notice in writing to the Board on such intention under section 59T(1)(b). Under such circumstances, the functions of guardian will be transferred to the Director of Social Welfare until a review by the Board. For better planning and transition to cater to the Subject's needs, guardians should first reveal their intentions to the case officer of the Social Welfare Department and discuss a solution.
11. Sections 59T(1)(a) and 59T(2) govern situations where the transfer of the guardianship to the Director of Social Welfare is required in the meantime because of the death or illness of the guardian.

CHAPTER 4 –REVIEW OF GUARDIANSHIP ORDERS

A. Overview of Guardianship Reviews

1. There are generally four types of reviews:
 - (a) Mandatory (or automatic) review prior to expiry of Order;
 - (b) Review initiated by a person other than the Board;
 - (c) Review initiated by the Board; and
 - (d) Reviews related to transfer of guardianship under section 59T.
2. After the review process has been initiated and/or accepted by the Board Secretariat, the procedures for all types of review are similar. The major differences of the types of reviews are briefly explained as follows.

B. Mandatory (or automatic) review prior to expiry of the Guardianship Order

3. Under section 59R, the duration of the first Order shall not exceed 1 year and the duration of subsequent orders shall not exceed 3 years. Therefore, the review of Orders takes place in cycles and is an important aspect of the daily work of the Board.
4. Upon the Board receiving the Progress Social Enquiry Report (“PSER”) from the Director of Social Welfare, the Board Secretary will schedule a review hearing and notify the parties of the review hearing date of an Order.
5. If for any reason the review hearing cannot take place before an Order expires, the Order will be automatically extended until the Board determines the case after a hearing. In other words, an Order will not expire by itself before its outcome is determined at a review hearing by the Board.

C. Review initiated by a person other than the Board

6. The Board is required to review an order at any time prior to the expiry of an Order at the request of any of the following persons: -
 - (a) the MIP who is the subject of the Order (“Subject”);
 - (b) the guardian;
 - (c) the Director of Social Welfare;
 - (d) any other person (including a relative of the Subject) who, in the opinion of the Board, has a genuine interest in the Subject’s welfare.
7. The applicant, including the Director of Social Welfare, should fill out Form 2. Review applicants can get Form 2 from the Secretariat or download it from the Board’s website.
8. After a valid review application has been received, the Board Secretary will send the notice of the review to the applicant, the Subject, the guardian and the Director of Social Welfare. This type of review is described as an early review.

9. The Board will request the Director of Social Welfare to prepare a PSER. The report normally takes 6 to 8 weeks to prepare. No hearing will be scheduled until the report is available.
10. When the hearing can be fixed, the Board Secretary will notify the applicant, the Subject, the guardian, any added party to the proceedings and the Director of Social Welfare of the date, time and venue of the hearing. Under section 23 of the Rules, 14 days' notice must be given, but the parties may consent to a shorter time. Other significant persons who are not parties to the Order may approach the Board Secretary to make a request if they wish to attend the hearing.

D. Review initiated by the Board

11. The Board may, of its own initiative, and in accordance with such procedures as it thinks fit, review an Order at any time prior to its expiry under section 59U(1).
12. The Board will request the Director of Social Welfare to produce a PSER in anticipation of a hearing and then send a notice of its intended review and the hearing date to the parties stated in the Order to be reviewed.
13. If, during a review hearing brought under section 59U(2), the Board finds that it wishes to revoke the Order as guardianship was no longer required and the Order had not expired, the Board may invoke section 59U(1) to revoke the Order immediately.

E. Review related to transfer of guardianship under section 59T

14. If section 59T is triggered, the guardian's power will vest in the Director of Social Welfare upon the death of guardians or the receipt of notice from guardians wishing to relinquish their functions, subject to the Board's subsequent review of the Order. The Director of Social Welfare will inform the Board and an early review will be initiated by the submission of a Form 2.
15. The Board will ask for a PSER to be produced before the relevant hearing and notify the parties of the date of the hearing. The hearing will proceed and an Order made, if any, in the same way as other types of reviews.

F. Different types of Orders

16. The Board may renew or vary the Order upon review. If the Board decides not to renew or vary the Order, the current Order is either revoked immediately or allowed to run its course until the expiry date. The Board's review orders are generally described under the following categories. These descriptions have an operational purpose only:
 - (a) Order for Renewal and Variation;
 - (b) Order (No Further Action);
 - (c) Order (Revocation).

G. A Review is not an Appeal

17. When the Board conducts a review, it does not re-examine the original decision. However, when hearing a review, the Board will, as it sees fit, consider the history of the case and all materials available to it from the beginning of the application to the current date, in order to determine whether it shall renew, vary or discharge the Order.

H. The Progress Social Enquiry Report

18. The Progress SER (PSER) is used for review of guardianship orders. The PSER describes the key information relevant for the Board's consideration and sets out the current personal information of the Subject, accommodation, family and social support, health and finance and other relevant details as may be required.
19. If a private guardian is appointed, the performance of the private guardian constitutes a key aspect of the report. The financial reports required to be prepared under the Board's Financial Reporting Guidelines are examined, and an assessment made as to whether they are satisfactory or not, which will affect the suitability of the guardian to continue.
20. The PSER also makes a recommendation on whether the Order should be renewed, varied, revoked or otherwise.
21. Parties wishing to provide information to the Board for a review should first contact the PSER writer or the delegated guardian and suggest that the information be included in the PSER. Information sent directly to the Board will usually be forwarded to the PSER writer for feedback and supplement in the PSER, to be assessed as a whole by the Board at the hearing. The Board Secretariat will not separately respond to the providers of such information.

CHAPTER 5 – APPLICATION PROCEDURE FOR AN EMERGENCY GUARDIANSHIP ORDER

A. Overview of Emergency Guardianship

1. The Board has power to urgently protect the Subject against abuse or harm under section 59Q for making an Emergency Guardianship Order (“EGO” or EGOs in plural form) where it has reason to believe that:
 - (a) the person concerned is in danger, or is being, or likely to be, maltreated or exploited;
 - (b) the person concerned is incapable of making reasonable decisions in relation to his/her personal circumstances; and
 - (c) it is necessary to make immediate provision to protect him/her.
2. Accordingly, EGOs are effective for intervention in situations such as abuse or exploitation of persons suspected of being mentally incapacitated of a physical, psychological or financial nature, or where there is self-neglect arising from mental incapacity requiring immediate provision.
3. Because of the urgency of the application, there may not be sufficient time to fully assess the suitability of a proposed private guardian. Therefore, it is most likely than not that the Director of Social Welfare will be the emergency guardian pending the hearing of a full application under section 59O.

B. Application Procedures

4. Applications of EGOs must be made by first or simultaneously **submitting a Form 1** together with a designated form for emergency applications (**Form 4**). The applicant must set out the grounds and submit both forms with supporting documents to the Board.
5. Form 4 should be completed setting out the reasons for the application, if possible, with a case summary and supporting documents. The application must show that there is a real emergency for an emergency hearing to be scheduled. Applications are considered duly lodged only after the Board Secretary has checked them and acknowledged their acceptance to the applicants concerned.
6. If the application is not made by the Director of Social Welfare, the Board Secretary will inform the Director of Social Welfare and request it to provide a report or comment on the application.
7. If on the face of the available information suggests abuse or neglect and requires immediate intervention and there appears to be no alternative to manage the situation, an urgent hearing will be scheduled as soon as possible.
8. The Board may proceed to conduct a hearing for an EGO under any application made under Form 1, without having received an application under Form 4, but such situations are very rare.

9. Where the Director of Social Welfare has opined that a given situation did not require immediate intervention and the Board does not think otherwise, the applications under section 59N and section 59Q would likely be consolidated and determined at the same hearing by the Board.
10. For assistance in determining whether any given situation is an emergency, Board Secretariat staff will be available to answer general enquiries from the public. Proposed applicants are encouraged to first consult social workers of the Social Welfare Department or the Hospital Authority who can assist them in understanding the requirements and bringing such applications where they are warranted.

C. The Hearing for an Emergency Guardianship Order

11. In the case of EGOs, the Subject may be received into guardianship before the statutory social enquiry process, which normally takes one month, is completed. Therefore, the power must be used very sparingly. EGOs are extremely rare also because the applicable situations stated in section 59Q are limited.
12. If there are other ways to address the immediate risks, an EGO is not required. This approach protects the Subject's interests and ensures that in most cases heard, a full investigation of the Subject's situation would be available to the Board before it makes a decision.
13. If an EGO is granted, the Secretariat will immediately request for a full SER under section 59N and fix another date to hear the corresponding guardianship application, as the maximum duration of an EGO is only three months. The subsequent hearing under section 59N may be heard by the same or a differently constituted panel.

CHAPTER 6 – GUARDIANSHIP DIRECTIONS

1. Under section 59K(1)(d), the Board may give directions to guardians as to the nature and extent of Orders including directions as to the exercise, extent and duration of any particular powers and duties of those guardians.
2. An application for Guardianship Directions should be made through Form 3. Further provisions can be found in Part IV of the Rules. Specific applications for Guardianship Directions under Form 3 are rare. Most issues facing guardians between Board hearings could be resolved with the assistance of the relevant case social workers and the agreed solutions could be reviewed and ratified by the Board at the subsequent review hearings.

CHAPTER 7 – MISCELLANEOUS ISSUES

A. Appeals from Board Decisions

1. Parties may also bring appeals to the Court of First Instance under section 59W of the MHO from any decision of the Board on a question of law. Such an appeal must be made within 28 days after the day on which the relevant Order and Reasons are sent by the Board to the person. Leave of the Court will otherwise be required.

B. Witness Summons

2. Under section 59L, the Board may, under the hand of the Chairperson, summon any witness and require the production of any document, record or thing which is relevant to its proceedings. Any failure to comply with the summons may constitute an offence.

C. Board has power to call for information and reports

3. Under section 18 of the Rules, the Board has power to call for further information and reports either before or during any hearing and give directions as to the manner in which the persons by whom such material is to be furnished. The directions may be given generally or specifically for each case in question. Section 7, 10 and 13 of the Rules shall apply to such information or reports as the case may require.

D. Information provided to the Board

4. For ensuring due process, information provided to the Board by any party for a guardianship case is generally discloseable to all the parties of the proceedings or other relevant persons. Where the Board has not made a non-disclosure order, such information is discloseable without the knowledge or consent of the provider.
5. Where the Board or the Board Secretary directs any party to person to produce information and records, the directions must be followed, otherwise the Board may refuse to accept such information or documents as evidence.
6. Non-disclosure requests will be determined at the Board hearing and are rarely granted. Please refer to Practice Note No. 2/2025 for relevant requirements.
7. Production of media files is governed by Practice Note No. 3/2025. Failure to comply with the requirements may result in the Board refusing to consider or accept the information as evidence.

E. Protection of privacy at hearings

8. Except in so far as the Board may direct, information about proceedings before the Board and the names of any persons concerned in the proceedings shall not be made public in

any case where the proceedings were conducted wholly or partly in the absence of the public. The Board has never authorized any disclosure to the public of its decisions under this power.

9. Recordings and transcripts of recordings are not to be released the parties of proceedings unless there are justifiable reasons. Determination of this question shall be made by the Board.
10. Due to the unique nature and facts of cases, it is sometimes difficult to protect privacy of individuals and families simply by masking their names. Accordingly, the Board would prepare case summaries with generic information instead of publishing redacted decisions of hearings. To preserve cases' anonymity, certain key information of cases may be omitted from the summaries published.
11. The case summaries give examples of the Board's work and decisions for the purposes of informing the public. None of the Board's decisions shall constitute precedents for future cases, as each application and review hearing is determined based on a particular case's unique factual circumstances.
12. The Board may, from time to time, issue or revise the Practice Notes governing the conduct of hearings and operations. The Practice Notes do not fetter the decision of Board which would be made independently in respect of specific cases.

F. Complaints

13. If you are one of the parties in a guardianship application or review, you may raise an appeal of the Board's decision to the High Court regarding any question of law.
14. For enquiries and suggestions on the Board's operations relating to guardianship applications and reviews, you may contact the Board through the following means:

by post or in person to Guardianship Board Office: Unit 807, 8/F, Hong Kong Pacific Centre, 28 Hankow Road, Tsim Sha Tsui, Kowloon,

or

by email to: gbenquiry@adultguardianship.org.hk,

or

by telephone enquiry to: (852) 2369 1999.

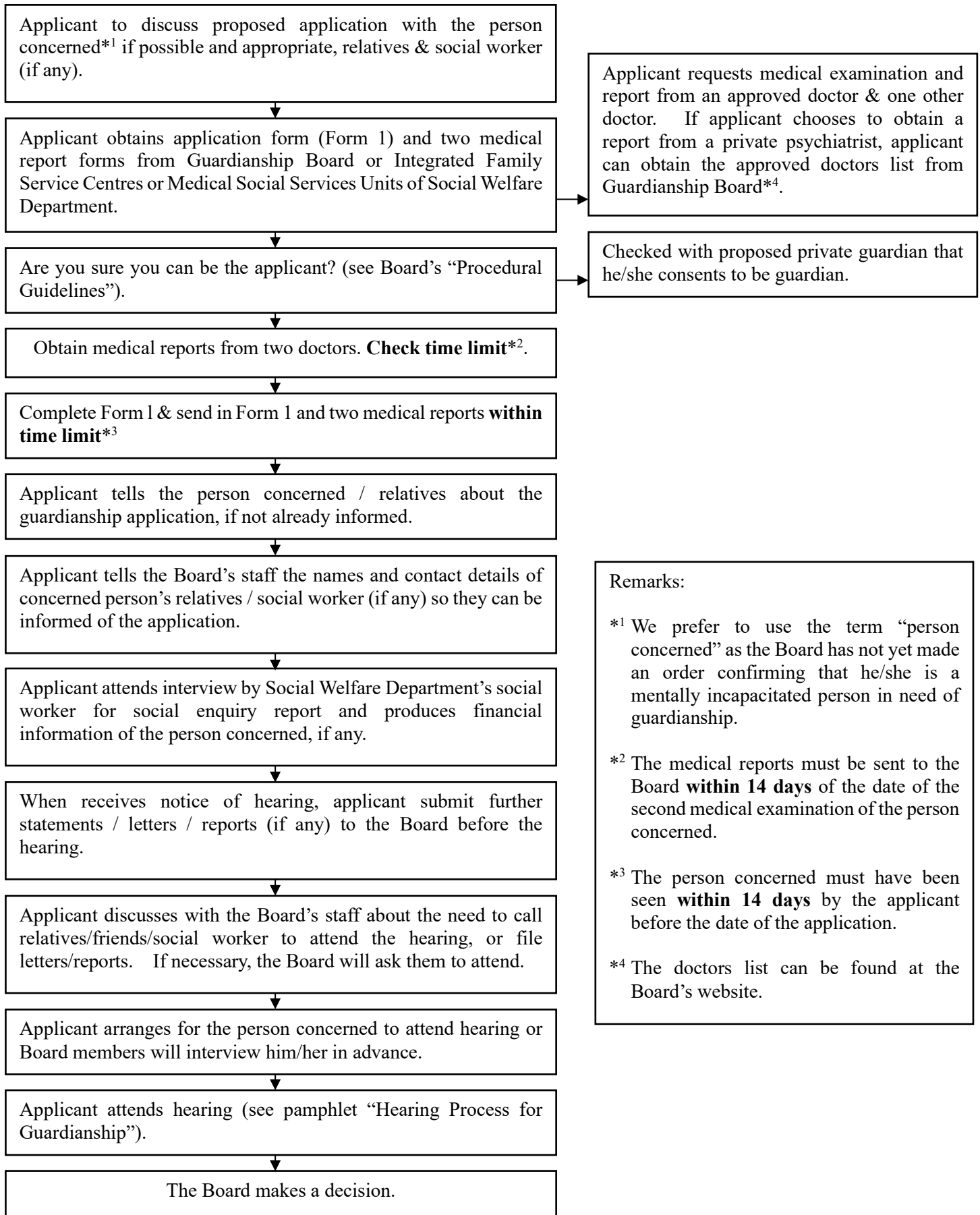
G. Observation of Office Rules

15. All visitors to the Board, including parties to proceedings, must observe and comply with the Rules for Users of Guardianship Board Premises (Office Rules) issued from time to time, which are accessible on the Board's website and available for collection.

~~~ END ~~~

**Road Map for Guardianship Applications**

**Appendix 1**



**Notes on Completing the Form 1****Appendix 2**

1. Please read the following information and ensure that the submitted forms are complete to avoid delay in making the application.
2. Form 1 may be completed in English or Chinese using the corresponding prescribed form.
3. The form may be completed by type-writing or hand-writing, but it must be legible. In the case of hand-writing, please use permanent BLACK or BLUE ink. Illegible forms will be returned to the applicant.
4. All relevant questions in the form must be answered with complete information, and the form must be signed and dated by the applicant.
5. If there is any missing information, the form will be returned to the applicant for rectification. The Board Secretary shall decide whether the form is duly completed in order for the application to be treated as valid. The date of the application determined by the Board Secretary is final.
6. Please read the Notice on Collection of Personal Data (Appendix 7 of Procedural Guidelines) before you complete this form.
7. The form and all the information included and attached to it will be provided to the Social Welfare Department for the purpose of conducting the Social Enquiry Report and for handling the case.
8. For ease of reference, the numbering of the notes below is identical with the numbering of the blanks to be filled out as appearing in the application form.

**Part I**

- (1)-(4) Put in the personal details of the applicant, the **identity card number**, and the name in **both English and Chinese** should be included. Both the applicant and the proposed guardian must be 18 years old or above.
- (5)-(8) Please cross out this section if the applicant is **NOT** the Director of Social Welfare.
- (9)-(11) Please put in the personal details of the person whom you believe to be in need of a guardian (the mentally incapacitated person), the **identity card number**, and the name in **both English and Chinese** should be included.
- (12) The mentally incapacitated person must be 18 years old or above. Please state the **age** on the provided space and cross out “OR” and its following sentence. If the age is unknown, please cross out “OR” and the previous sentence.





- (13) **The applicant must complete this sentence.** If you are not the medical doctor or the Director of Social Welfare, you can bring an application only if you are a “**relative**”. “Relationship” means your relationship with the Subject. Please refer to section 2 of the MHO for a definition of “relative”.
- (14) Please put in the full name of a relative who has consented to your application and the relationship involved.
- (15) **The applicant must answer this question.** The applicant must state the last date on which the Subject was seen by the applicant. Please answer truthfully and it must be within 14 days before the application date.
- (16) Please cross out this section if the mentally incapacitated person is not detained under the Mental Health Ordinance.
- (17) Please cross out this section if the Mental Health Review Tribunal has not made a recommendation concerning the mentally incapacitated person.
- (18) The applicant must give some reasons to support the application for guardianship. Please state the reasons in the space provided or in a separate sheet to be attached to the application.
- (19) Please put in the name of proposed guardian. If the applicant proposes to be the guardian, please **repeat the full name again** under this section. If the applicant proposes **another person** to be the guardian, then please include the name **in both English and Chinese**. Please also refer to Part II of the form.
- (20)-(27) The **two** medical reports **MUST** be sent with the application form to the Guardianship Board **within 14 days of the date of the last medical examination**. Please note the effective date is the date of examination by the said doctor.

One of the medical reports **MUST** be prepared by an approved doctor, who has special experience in the diagnosis or treatment of mental disorder, or special experience in the assessment or determination of mental handicap (s.2(2) of Mental Health Ordinance).

Please include the full names, titles and addresses of the registered medical practitioners and the length of period of their knowledge of the mentally incapacitated person. The information must correspond to the information stated in their medical reports.

- (28)-(29) You **MUST** sign your name here and write down the submission date.

**Part II**

- (30)-(33) Part II **MUST** be completed where the applicant is proposing himself/herself or a person other than the Director of Social Welfare to be the guardian. Put in details of the proposed guardian and the full name of the guardian **in both English and Chinese**.

If the proposed guardian is the Director of Social Welfare, please cross out Part II and Part III.

**Part III**

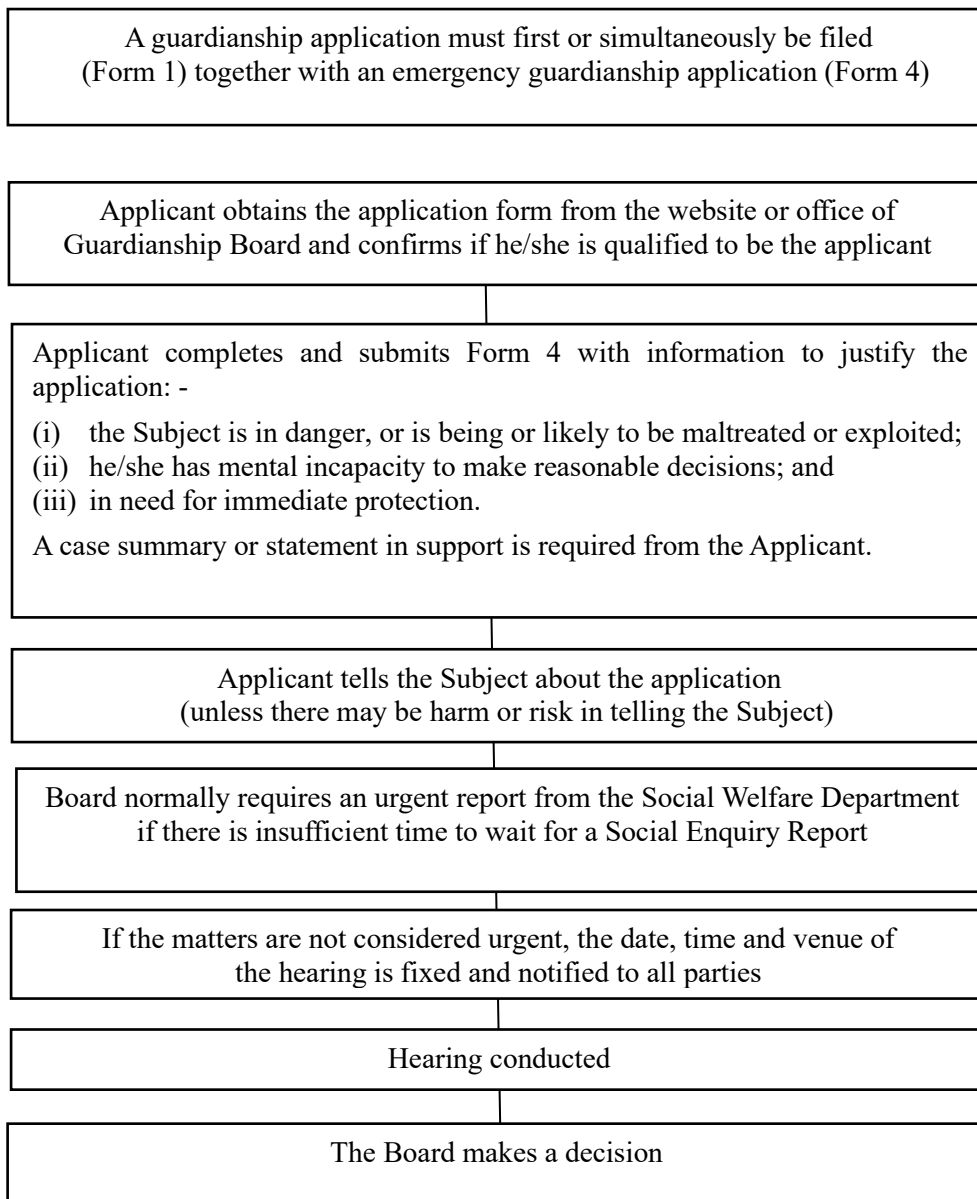
- (34) Part III is only completed where the applicant is not applying for the Director of Social Welfare to be the guardian. This section containing the declaration of the guardian must be completed and signed by the proposed guardian.

Write down the full name of the mentally incapacitated person (“Subject”).

- (35) “Relationship” means the relationship between the proposed guardian and the Subject. See item (13) above.
- (36)-(37) The **proposed guardian** must sign here to give **written consent** to act as the guardian and write down the date.

Road Map for an Emergency Guardianship Application

Appendix 3



**Pamphlets****Appendix 4**

Readers can access them by visiting the Board’s website page “Publications”.

1. Overview of Guardianship
2. How to manage the financial needs of the MIP
3. Road Map and Steps in Submitting Guardianship Applications
4. Hearing Process for Guardianship Applications
5. Application Procedure and Road Map for an Emergency Guardianship Order
6. Review of Guardianship Orders and Directions
7. Notice on Collection of Personal Data

**Practice Notes****Appendix 5**

Readers can access them by visiting the Board’s website page “Publications”.

1. Claims for Disbursements at a hearing  
P.N. No. 1/2010
2. Handling Request from Providers for Keeping Information Confidential  
P.N. No. 2/2025
3. Guide on Submission of Media Files  
P.N. No. 3/2025

**Glossary**
**Appendix 6**

The following abbreviations are used throughout this document. The following chart helps readers to refer to the abbreviations and their full forms and definitions quickly and they serve no other purpose.

| <b>Abbreviation</b> | <b>Full Form / Definition</b>                                                                                                                                                                                           |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Approved Doctor     | A psychiatrist with requisite experience whose qualification is recognized by the Board in providing relevant medical opinions and whose name is on the list of approved doctors compiled under section 2(2) of the MHO |
| DSW                 | Director of Social Welfare                                                                                                                                                                                              |
| DSWI                | Director of Social Welfare Incorporated                                                                                                                                                                                 |
| EGO                 | Emergency Guardianship Order                                                                                                                                                                                            |
| Form 1              | The application form for guardianship applications made under the MHO                                                                                                                                                   |
| Form 2              | The application form for review of guardianship orders made under the MHO                                                                                                                                               |
| Form 3              | The application form for seeking directions of the Board under the MHO                                                                                                                                                  |
| Form 4              | The application form for emergency guardianship applications issued and required by the Board                                                                                                                           |
| Form 13             | The application for voluntary withdrawal of guardianship applications issued and required by the Board                                                                                                                  |
| FRG                 | Financial Reporting Guidelines of the Board                                                                                                                                                                             |
| GO or Order         | Guardianship Order                                                                                                                                                                                                      |
| MG                  | Medical Guidelines of the Board                                                                                                                                                                                         |
| MHO                 | Mental Health Ordinance                                                                                                                                                                                                 |
| MIP                 | Mentally incapacitated person, defined under the MHO                                                                                                                                                                    |
| Monthly sum         | The maximum amount that a guardian may mobilize from the Subject's bank account(s) on a monthly basis, which will be specified in the Guardianship Order                                                                |
| Order or GO         | Guardianship Order                                                                                                                                                                                                      |

|                     |                                                                                                                    |
|---------------------|--------------------------------------------------------------------------------------------------------------------|
| Order and Reasons   | The Board's Guardianship Order and Reasons for the Order for a guardianship case.                                  |
| QR code             | Quick Response code, a two-dimensional matrix barcode which leads the reader to the target document                |
| Part II application | An application to the Court of First Instance of Hong Kong SAR under Part II of the MHO                            |
| Parties             | The Subject, Applicant and the Director of Social Welfare, and other parties added to the proceedings by the Board |
| PG                  | Procedural Guidelines of the Board                                                                                 |
| PSER                | Progress Social Enquiry Report                                                                                     |
| Regulations         | Mental Health (Guardianship) Regulations                                                                           |
| Rules               | Mental Health Guardianship Board Rules                                                                             |
| SER                 | Social Enquiry Report                                                                                              |
| Subject             | This term is used alternatively with MIP, as required by the context                                               |

**Notice on Collection of Personal Data  
under the Personal Data (Privacy) Ordinance Cap. 486**

Please read this notice before you provide any personal data to the Guardianship Board.

**Purpose of Collection**

1. The Guardianship Board is a statutory body established under the Mental Health Ordinance (Cap. 136). You will be asked by our staff members to provide personal data or to obtain such data from an appropriate third party. The data supplied by you will be used by the Guardianship Board to discharge our statutory duties and to provide an appropriate service, which includes monitoring and review of our service, and conducting surveys, education, and requiring statistics.

**Classes of Transferees**

2. The personal data you provide will be made available to persons working in the Secretariat of the Guardianship Board and panel members of the Guardianship Board for the purposes mentioned in paragraph 1, or directly related purposes, and then only on a need-to-know basis. Apart from this, they may only be disclosed to the relevant parties listed below for the purposes listed in paragraph 1: -
  - (a) appropriate persons in the Guardianship Board Office or other relevant offices of the Social Welfare Department, Hospital Authority, relevant government bureaus/departments, statutory bodies such as Equal Opportunities Commission, legal advisers, banks, or non-government organizations, but only if they are involved in the assessment of, or provision of service/assistance to you; or
  - (b) where you have given consent to such disclosure; or
  - (c) where such disclosure is authorized or required by law.

**Example:** The Guardianship Board cannot process an application for a Guardianship Order without two medical reports on the mentally incapacitated person. This may involve liaison with the Hospital Authority or private doctors. The Guardianship Board is authorized by law to request a Social Enquiry Report from the Social Welfare Department on a mentally incapacitated person. This will include information collected from the relatives of the mentally incapacitated person and the proposed guardian.

**Access to Personal Data**

3. Apart from exemptions provided under the Personal Data (Privacy) Ordinance, you have a right of access to and correction of personal data held on you. Your right of access includes the right to obtain a copy of your personal data subject to payment of a fee. Applications for access to and correction of data should be made either on an application form or by a letter. Application forms are available at the Guardianship Board Secretariat's office.



**Exemption from access to personal data**

4. The Guardianship Board is exempt from the requirement to allow you access to personal data relating to your physical or mental health, if by doing so it would be likely to cause serious harm to your physical or mental health or the physical or mental health of others.

**Enquiries, access to and correction of personal data**

5. If you have enquiries concerning your application for assistance/service or if there are changes in the data you provide, please contact us.
6. Requests for access to personal data collected by us and correction of data obtained from a data access request should be addressed to:

Post title: Secretary to the Board

Address: Unit 807, Hong Kong Pacific Centre, 28 Hankow Road, Tsimshatsui, Kowloon.

Tel No.: 2369 1999

Fax No.: 2739 7171

Email: [gbenquiry@adultguardianship.org.hk](mailto:gbenquiry@adultguardianship.org.hk)