THE PARALEGAL DESK

Mental capacity and guardianship — the Board, the committee of the estate and the EPA

A printable reference pack for Hong Kong paralegals and legal executives.

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1. Mental capacity and guardianship

Reference edition, fees checked to 14 November 2026. Educational material only, not legal advice. Fees, time limits and practice directions change: verify against the current ordinance, practice direction or registry guidance before relying on anything in this pack for a live matter.

Mental capacity and guardianship

MENTAL CAPACITY AND GUARDIANSHIP

This page is the map before the forms: which body decides what, what each order actually authorises, what it costs, and the deadlines that send applications back. The enduring power of attorney is covered in full on the wills and trusts page; here it is shown in its place beside guardianship and the committee. Probate takes over after death, where none of these powers survives.

1 Three routes, and they do different things

When an adult loses the capacity to make decisions, Hong Kong offers three quite separate mechanisms, and the commonest mistake on a file is to reach for the wrong one. A **guardianship order** deals with the person — where they live, who sees them, what treatment they accept. A **committee of the estate** deals with the money. An **enduring power of attorney** deals with the money too, but only because the person chose their attorney in advance and put it in writing while they still could.

Which route covers what

Route	What it covers	Who decides	How long it lasts	Cost
Guardianship order Cap 136 Part IVB	Personal welfare: residence, being conveyed there, attendance for treatment, occupation or training, access, consent to ordinary medical or dental treatment, and a capped monthly sum from the person's savings	The Guardianship Board, after a hearing	First order up to **1 year**; renewals up to **3 years**	No Board fee; the applicant pays the doctors
Committee of the estate Cap 136 Part II	Property and financial affairs: collecting income, paying bills, investing, selling property with the court's authority, running a business, even executing a will	The Court of First Instance	Until discharged by the court	Court fee, plus the committee's costs and any security ordered
Enduring power of attorney Cap 501	Property and financial affairs only, and only to the extent the donor gave it	The donor, in advance; the attorney acts later	Until the donor's death or revocation	**HK$440** to register

They can run together. A guardian may be deciding where a parent lives while an attorney under an EPA pays the care home, and the committee route is unnecessary if the EPA is wide enough. What none of them can do is make a will for the person — only the court can do that, under Part II.

THE PRACTICAL ORDER OF QUESTIONS

Is there a registered EPA? If yes, the money is dealt with — read the power and check its limits before doing anything else. If no, does the money actually need managing, or is the real problem welfare? Welfare needs the Guardianship Board; money needs the court. Applying to the wrong one costs months, and the Board will say so at the hearing.

2 Who counts as mentally incapacitated

The Ordinance does not work from a diagnosis. It works from **mental disorder or mental handicap** producing an inability to make the decisions in question. A person with dementia may be perfectly able to decide where to live and quite unable to manage a share portfolio; a person with a learning disability may be the reverse. Capacity is decision-specific, and each route asks its own question.

The test each route applies

Route	The question asked	Who answers it
Guardianship	Is the person 18 or over, mentally incapacitated, and incapable of making decisions about health, welfare or finance — with no feasible alternative to guardianship?	The Guardianship Board, on medical and social evidence
Committee of the estate	Is the person incapable, by reason of mental incapacity, of managing and administering their property and affairs (s 11(1))?	The Court of First Instance
Consent to treatment	Is the person incapable of understanding the general nature and effect of this treatment (s 59ZB(2))?	The doctor, and the guardian or the court
EPA	Was the donor capable when the instrument was signed, and has it been registered since the donor became incapable?	The doctor who signs the certificate, then the Registrar

Two boundaries matter. **Guardianship is for adults**: the Board's jurisdiction begins at 18, and a person under 18 is dealt with under the guardianship of a parent or the court's wardship jurisdiction, not Part IVB. And **detention in a mental hospital is a different Part**: Part III governs admission, detention and treatment of patients, with the Mental Health Review Tribunal under Part IVA reviewing detention. A guardianship order is not a detention order, and a detention order is not a welfare regime.

3 Who may apply, and the 14-day rule

An application for guardianship is made to the Guardianship Board on **Form 1**. Four categories of person may apply (s 59N(1)): a **relative** of the person, a **social worker**, a **registered medical practitioner**, or a **public officer in the Social Welfare Department**. "Relative" is defined in s 2 of the Ordinance, and the applicant must state the relationship on the form.

What Form 1 asks for, and the two time limits built into it

Requirement	Detail	Time limit
The applicant has seen the person	Personally, not through a file. The date is stated on the form and must be true	Within **14 days** before the date of the application
Two medical reports	One by an **approved doctor** — a psychiatrist with special experience in the diagnosis or treatment of mental disorder, or in assessing mental handicap — and one by any registered medical practitioner. Different forms for each, and the applicant must not be the reporting doctor	Application must reach the Board within **14 days of the last medical examination**
Proposed guardian's consent	Parts II and III of Form 1, signed by the proposed guardian, who must be 18 or over and must give a written undertaking	With the application
Reasons	Why guardianship is needed, and why nothing less will do	With the application
Fee	The Board charges nothing. The applicant pays whatever the two doctors charge for their reports	—

The 14-day rules are the ones that send applications back. A form that arrives on day 15 is not a defective application to be cured — it is not a valid application at all, and the Board will return it. If the person was seen 20 days ago, see them again before filing.

Form 1 — application for a guardianship order	Specimen · example only
Form	Form 1 — application for guardianship under Part IVB of the Mental Health Ordinance. Completed in English on the prescribed form; the Chinese version is equally valid, and the two are not mixed
Applicant	CHAN Wai Ming, Michael — son of the person concerned · HKID A123456(7) · address and telephone as stated · aged 52
Relationship	Son. Stated in terms, because the applicant must fall within s 59N(1) — a relative, a social worker, a registered medical practitioner or a public officer of the Social Welfare Department
Person concerned	CHAN Kwok On, Peter — aged 84 · HKID B765432(1) · usually resident at Flat 8B, Kam Wah Court, 22 Castle Peak Road, Yuen Long · now in a convalescent home in Tuen Mun after a fall
Last seen by the applicant	**9 June 2027** — four days before the application is signed. It must be within 14 days, and the date must be the date he actually visited
Medical reports enclosed	Report of Dr YIP, approved doctor (psychiatrist), examination 2 June 2027 · report of Dr LO, registered medical practitioner, examination 7 June 2027 · **application filed 13 June 2027**, within the 14 days from the last examination on 7 June, which ran to 21 June
Diagnosis and capacity	Moderate-to-severe dementia; unable to understand the nature of residential care, unable to manage his bank accounts, unable to weigh up treatment options
Proposed guardian	The applicant himself. Part III signed by him consenting to act; written undertaking to the Board signed and filed
Powers sought	Residence at a specified care home · conveyance there with reasonable force if necessary · attendance for medical treatment · consent to ordinary medical and dental treatment · access for the applicant and the case social worker · a monthly sum of HK$9,000 from his savings for his maintenance
Alternative to guardianship considered	No registered EPA · family unable to agree on care · bank unwilling to act on an informal family arrangement · day-to-day care package tried and broke down
What happens next	Board Secretariat checks the form, sends copies to the person concerned and the Social Welfare Department, and the social enquiry begins
Fee	**Nil** to the Board. The two medical reports are privately charged

Two 14-day limits, not one: the applicant must have seen the person within 14 days before applying, and the application must reach the Board within 14 days of the last medical examination · one report must be by an approved doctor · the applicant cannot be either reporting doctor · a form that misses a limit is returned, not corrected

Form 13 — request to withdraw a guardianship application Specimen · example only	
Form	Form 13 · Request to withdraw a guardianship application
Specified under	Rule 22 of the Mental Health Guardianship Board Rules (Cap 136E): the application may be withdrawn **at any time** at the applicant's request, provided the request is **in writing** and **the Board agrees**
Who files it	The **applicant** — here CHAN Wai Ming, Michael, who filed Form 1 on 13 June 2027 for his father. The proposed guardian, the social worker and the Director of Social Welfare are parties and are told of the withdrawal (r 22(2)), but they cannot withdraw someone else's application
Stage	After Form 1 was accepted and the social enquiry begun, and **before the hearing**. No guardianship order has been made, so there is nothing to review — this is the application that goes, not an order
What changed	CHAN Kwok On, Peter completed six weeks of rehabilitation after the fall and was assessed as able to return home with a live-in carer. The family agreed a care plan on 12 August 2027, the bank agreed to a third-party mandate for the carer's wages, and the day-to-day decisions that prompted the application are now being made
The request	A signed written request dated **18 August 2027**, identifying the application by the Board's case reference, stating that the applicant wishes to withdraw it, and setting out briefly why — the change in circumstances, the care plan, and the family's agreement. The reasons are not a formality: the Board reads them before deciding whether to agree
The Board's decision	The Board **agreed to the withdrawal on 25 August 2027**, and the secretary informed the parties under r 22(2). No order was made and the social enquiry was not carried further
What the Board weighs	Whether the person still needs the protection of an order notwithstanding the applicant's change of heart. A withdrawal that leaves an incapacitated adult with no lawful decision-maker, or that looks like a family settling a dispute by walking away, is not automatically agreed — the Board can refuse and list the case
Effect	The application ends. There is no order, no guardian and no supervision. The person concerned remains exactly as they were before Form 1 was filed
Starting again	A fresh **Form 1**, with a fresh visit within 14 days and **two fresh medical reports** — the earlier reports will not carry a later application, and the two 14-day limits run again from the new dates
What it does not do	It does not end an order that has already been made. Once a guardianship order is in force, the routes out are a review on Form 2, expiry, or the guardian's written notice under s 59T(1)(b) — not Form 13
Fee	**None** — the Board charges nothing for an application, a withdrawal or a hearing
The trap	A letter saying "we no longer wish to proceed" is not a withdrawal until the Board agrees. Until it does, the case remains listed, the parties remain on notice, and a hearing date can still be issued — so the file is not closed on the day the letter is sent

No fee · in writing, at any time before or at the hearing · the Board must agree, and can refuse · the secretary then informs the parties · withdrawal ends the application, never an order already made · a later application starts again with a fresh Form 1 and two fresh reports

4 The medical evidence

Two reports, two different forms, and the Board will not process the application without both. The **Approved Doctor's Report** comes from a psychiatrist on the Board's approved list; the **Registered Medical Practitioner's Report** can come from the family doctor, the hospital team or a private practitioner. There is no fixed interval between the two examinations, but a long gap invites the Board to ask for a fresh examination before the hearing, which delays everything.

WHAT THE REPORTS MUST ACTUALLY SAY

Not just the diagnosis. The Board needs the doctor to address capacity for the decisions in question — residence, financial management, treatment — and to say what the person can still do. A report that says "dementia, unable to manage affairs" without more tells the Board nothing it cannot read in the discharge summary, and it is the commonest reason a hearing goes badly.

Neither report binds the Board. The Board may hear from the doctors at the hearing, may require a further examination, and may reach its own view. That is why the reports should be treated as evidence, not as a gateway that guarantees an order.

5 The social enquiry and the hearing

Once a valid application is accepted, the Board sends a copy to the person concerned and to the Social Welfare Department. A social worker is assigned and prepares a **Social Enquiry Report** under s 59P — not later than **four weeks** from the date of the application. The report covers the person's views and wishes, family background, social and financial situation, and the suitability of the proposed guardian. It ends with a recommendation, and the Board reads it closely.

The timetable, as the Board runs it

Step	What happens	Timing
1	Form 1 and the two medical reports reach the Board and are checked by the Secretariat	Within 14 days of the last examination
2	Copies go to the person concerned and to the Social Welfare Department; the applicant is acknowledged	On acceptance
3	Social Enquiry Report prepared — interview with the applicant, the person, relatives, care home staff; bank statements and identity documents produced	**Within 4 weeks** of the application
4	Notice of hearing to the person concerned, the applicant and the Director of Social Welfare; other witnesses invited	At least **14 days** before the hearing
5	Supplementary report from the social worker	1 clear working day before the hearing
6	Hearing before at least three Board members; evidence on oath or affirmation; the person concerned is invited and may be interviewed in advance	The hearing itself, usually 20 to 45 minutes
7	Order and Reasons issued in writing to the parties, with a copy to the guardian and, where bank accounts are involved, disclosure to the banks	After the hearing

Ordinary processing time, from a valid Form 1 to the hearing, is **four to nine months**. That is the single most important thing to tell a family at the first meeting. Beds do not wait nine months, which is why the emergency route exists for the narrow cases that justify it.

Guardianship order — the terms, as issued Specimen · example only	
Case	Guardianship Board case no. GB 2027/0412 · hearing 3 November 2027 · panel of three members
Person concerned	CHAN Kwok On, Peter — date of birth 14 March 1943
Order	That the person concerned be received into guardianship, and that CHAN Wai Ming, Michael be appointed guardian
Powers conferred	(a) require residence at Greenvale Care Home, Tuen Mun · (b) convey him there, using reasonable force if necessary · (c) require attendance for medical and dental treatment · (d) consent to medical or dental treatment **other than special treatment**, where he cannot understand the general nature and effect · (e) require access to be given to the guardian and the case social worker · (f) hold, receive or pay a monthly sum of **HK$9,000** for his maintenance
What is not in the order	No power to sell or charge his flat · no power to close or transfer bank accounts · no power to make a will · no power over investments · no power to consent to special treatment
Duration	Up to **one year** from the date of the order — the first order cannot exceed that, however long the condition is expected to last
Reasons	Issued separately, and served with the order on the applicant, the person concerned, the Director of Social Welfare and the guardian
Review	Before expiry. If the review hearing cannot be held before the expiry date, the order continues until the Board determines the review
Fee	Nil

An order is specific: read the powers granted, because anything not granted is not there · the monthly sum is capped by reference to the latest median monthly employment earnings, so the figure moves with the published statistics · the order is served on the banks where it authorises the monthly sum

6 What a guardian can and cannot do

The guardian's powers come from the order, not from the status. Section 59R(3) lists the six powers the Board may confer, and the order will tick only those the evidence supports.

The six powers under s 59R(3)

Power	What it means in practice	The limit
(a) Residence	Require the person to live at a specified place — a care home, a relative's flat, a hospital step-down unit	The address must be specified; a general power to "decide residence" is not the same thing
(b) Conveyance	Take the person there, using reasonable force if necessary	Reasonable force only, and only to give effect to (a)
(c) Attendance	Require attendance at a place and time for medical or dental treatment, special treatment, occupation, education or training	Attendance, not consent; consent is a separate power
(d) Consent to treatment	Consent to medical or dental treatment where the person cannot understand its general nature and effect	**Not special treatment** — that needs the court under Part IVC
(e) Access	Require that a named doctor, approved social worker or other person be allowed to see the person	Named persons only
(f) Money for maintenance	Hold, receive or pay a specified monthly sum from the person's savings for their maintenance or benefit	A monthly figure fixed in the order, capped by reference to median monthly employment earnings; it is not a power to manage the estate

THE LIMIT FAMILIES ALWAYS HIT

A guardian cannot sell the flat, close the bank accounts, cash in the investments, deal with the MPF, pursue an insurance claim or apply for probate. Those are property and affairs, and they belong to the committee route or to an EPA. The Board's own guidance says plainly that applicants often expect powers the Ordinance does not give. Say this at the first meeting, not at the hearing.

The guardian is not a decision-maker in place of the person. Section 59S(3) requires the guardian to promote the person's interests — including overriding their views where the guardian considers that is in their interests — while respecting those views and wishes so far as they can be ascertained, and to comply with any directions of the Board.

7 One year, then three, and the review in between

The first guardianship order lasts **no more than one year** (s 59R(1)(a)). A renewed or further renewed order lasts **no more than three years** (s 59R(1)(b)). The Board reviews orders in cycles, and the review is not a formality: the guardian's performance is examined, including the financial reports the Board requires.

Reviews and directions

What you want	Form	Who may ask	Timing
Review of an order before expiry	**Form 2**	The person concerned, the guardian, the Director of Social Welfare, or anyone else the Board considers has a genuine interest in the person's welfare	Any time before expiry; a progress report normally takes 6 to 8 weeks
Directions on how a power is exercised	**Form 3**	The guardian, or a party to the proceedings	Rarely needed; most issues are resolved with the case social worker and ratified at the next review
Withdraw the application	**Form 13**	The applicant, in writing	At any time, before or at the hearing — but only if the Board agrees (r 22, Cap 136E)
Appeal on a question of law	Notice of appeal to the Court of First Instance	Any party	**28 days** after the Order and Reasons are sent; later needs leave

Two things about expiry. First, if the review hearing cannot be held before the order expires, the order **continues in force** until the Board determines the review — it does not lapse on the date printed on it. Second, a guardian who wants to stop acting gives written notice to the Board under s 59T(1)(b), and the functions pass to the Director of Social Welfare until the Board reviews the case. A guardian cannot simply stop.

Form 2 — application for review of a guardianship order Specimen · example only	
Form	Form 2 — application for review of a guardianship order
Applicant	CHAN Wai Ming, Michael — the guardian appointed on 3 November 2027
Order under review	GB 2027/0412, made 3 November 2027, expiring 2 November 2028
Grounds	The person concerned has settled at Greenvale but now needs a place in a dementia unit in Kowloon to be near his daughter; the monthly sum of HK$9,000 no longer covers the fees, which have risen to HK$13,500
Variation sought	Residence changed to the new unit · monthly sum increased to HK$12,500
What the Board will do	Ask the Director of Social Welfare for a Progress Social Enquiry Report, then list a review hearing on at least 14 days' notice
Timing	The progress report normally takes 6 to 8 weeks; no hearing is fixed until it is available
Fee	Nil
Common mistake	Applying for a review to fix a problem that is really a property problem — a bigger monthly sum is the only money power the Board has. Selling the flat still needs the court, or an EPA

Nil fee · the review can be brought by the person, the guardian, the Director of Social Welfare or anyone with a genuine interest · the Board may renew, vary or revoke · an order does not lapse while a review is pending

8 Emergency guardianship

Section 59Q lets the Board make an **emergency guardianship order** where it has reason to believe that the person is in danger, or is being or is likely to be maltreated or exploited, that they cannot make reasonable decisions about their own circumstances, and that immediate provision is necessary to protect them. It is used for abuse, exploitation — including financial exploitation — and self-neglect.

Emergency route, against the ordinary route

	Emergency order (s 59Q)	Ordinary order (s 59O)
Forms	**Form 4**, with Form 1 filed first or at the same time	Form 1 alone
Evidence	Grounds, case summary and supporting documents showing a real emergency	Two medical reports, social enquiry report, hearing
Guardian	Usually the Director of Social Welfare, because there is no time to assess a private guardian	Private guardian where suitable, otherwise the Director
Duration	**Not more than 3 months**	Up to 1 year, then up to 3 years
Then what	The full application is heard, on a full social enquiry report	Review before expiry
How common	Rare — the statutory conditions are narrow and the Board uses the power sparingly	The ordinary case

Form 4 — emergency guardianship application Specimen · example only	
Form	Form 4 — application for an emergency guardianship order, with Form 1 filed at the same time
Applicant	LEE Suk Yee, social worker, Tung Chung family service centre — a social worker within s 59N(1)
Person concerned	WONG Kam Fai — aged 79, living alone, advanced dementia
The emergency	A neighbour has taken control of his bank card and withdrawn HK$180,000 over six weeks; the flat has no electricity, food in the fridge is spoiled, and he has refused admission to hospital twice
The three statutory grounds	In danger and being exploited · incapable of making reasonable decisions about his circumstances · immediate provision necessary to protect him
Documents	Case summary · bank statements · photographs · medical report from the attending doctor · police report reference
Guardian sought	The Director of Social Welfare as emergency guardian, pending a full application
Hearing	Urgent hearing listed as soon as the Board can sit; the Director of Social Welfare is asked for a report if not the applicant
Duration if granted	**Three months at most**, during which the full social enquiry report is prepared and the ordinary application heard
Fee	Nil

Form 4 never stands alone — Form 1 goes with it · three months is the ceiling, not a target · the emergency order protects while the ordinary application is prepared · financial exploitation is squarely within the section

9 The committee of the estate

Where the problem is money, not welfare, the route is Part II of the Ordinance and the court. If the Court of First Instance is satisfied that a person is incapable, by reason of mental incapacity, of managing and administering their property and affairs, it may appoint a **committee of the estate** (s 11(1)). The Official Solicitor may be appointed, and the court may order remuneration out of the estate and require the committee to give security.

The committee is not a free hand. It does what the court orders or authorises it to do under ss 10A and 10B (s 11(2)), and Order 30, rules 5 to 7 of the Rules of the High Court — the receivership rules — apply to it as if it were a receiver (s 11(3)). The court's powers under s 10B are wide: control and management of property, sale and exchange, charging, acquisition, settlement and gifts, the execution of a will, carrying on a business, dissolving a partnership, conducting litigation, and exercising powers the person held as trustee.

What the committee can do, and what needs a further order

Act	Authority
Collect income, pay bills, maintain the person and the family	Within the management powers the court confers (s 12)
Invest and manage movable property	Within the management powers, subject to the order
Let immovable property	Only for a term **not exceeding 3 years** (s 12 proviso)
Sell or mortgage the flat or any part of the estate	**Not** under s 12 — a specific order under s 10B(1)(b) is needed
Execute a will for the person	Only under s 10B(1)(e), and only where the court believes the person cannot make a valid will; never while the person is a minor (s 10B(4))
Carry on the person's business, dissolve a partnership, conduct litigation	Specific authority under s 10B(1)(f), (g) and (i)
Execute deeds and instruments in the person's name	s 17 — the committee may execute instruments under the court's order

The court may also act in an emergency (s 10D) and may make orders to preserve interests in the property (s 10E). An application is made to the Court of First Instance, supported by medical evidence and usually by evidence of the assets and the proposed committee; the originating process attracts the ordinary High Court fee of **HK$1,045**, and the committee's costs come out of the estate unless the court orders otherwise.

Part II application — originating summons for a committee of the estate **Specimen · example only**

Court	In the High Court of the Hong Kong Special Administrative Region, Court of First Instance
Nature of proceedings	Originating summons under Part II of the Mental Health Ordinance (Cap 136)
Applicant	FONG Mei Lin, daughter of the person concerned, of 18 Clear Water Bay Road, Kowloon
Person concerned	FONG Chun Keung — aged 81, in a nursing home since a stroke in March 2027, unable to manage his affairs
Relief sought	(1) A declaration that the person concerned is incapable, by reason of mental incapacity, of managing and administering his property and affairs · (2) appointment of the applicant as committee of the estate · (3) authority to sell the flat at 5/F, 22 Portland Street, Mong Kok, and to apply the proceeds to his care · (4) authority to deal with the bank accounts and the share portfolio · (5) directions on remuneration and security
Evidence in support	Two medical reports · nursing home records · schedule of assets and liabilities · bank statements · title documents · the applicant's affidavit of suitability and her consent to act
Why the court and not the Board	The welfare questions are settled — the nursing home placement is agreed and there is no dispute about access. What is needed is power to sell the flat and run the portfolio, and the Board has no such power
Fee	High Court originating process — **HK$1,045**
Supervision afterwards	Order 30 rules 5 to 7 apply: accounts, enquiries and directions as for a receiver; the court may require security and may remove the committee

Part II is property, Part IVB is welfare · the court, not the Board, authorises a sale · Order 30 applies to the committee as to a receiver · the same person may be guardian and committee, but the two appointments come from different bodies

Committee's first-year account — what the court expects to see Specimen · example only

Estate of FONG Chun Keung · committee's statement for the year ended 30 June 2028

Item	Amount	Authority
Opening balance — bank accounts and cash	1,240,000	Order of 12 August 2027
Rent received, Mong Kok flat, to completion of sale	96,000	Management powers, s 12
Sale of Mong Kok flat — net proceeds	4,180,000	Specific order under s 10B(1)(b), 3 January 2028
Nursing home fees	(312,000)	Maintenance of the person
Medical and therapy costs	(48,600)	Maintenance
Committee's costs and disbursements	(86,000)	As ordered; taxed if not agreed
Closing balance — deposit account and cash	5,069,400	—
Not done, because no authority: no gift to the grandchildren, no loan to the applicant, no change to the will, no sale of the shares beyond the rebalancing authorised in the order		

Every movement is tied to an authority · the sale needed its own order · costs come out of the estate only as the court allows · a committee that acts outside the order is exposed personally, which is why the account is drafted this way

10 Consent to treatment

Treatment sits in Part IVC, which applies to a person of 18 or over who is incapable of understanding the general nature and effect of the treatment in question (s 59ZB). Two principles run through it: the person must not be deprived of treatment merely because they cannot consent to it, and any treatment must be in their **best interests**.

Who consents to what

Treatment	Who may consent	Notes
Ordinary medical or dental treatment	The guardian, where the order confers the power under s 59R(3)(d); otherwise the court	Only where the person cannot understand the general nature and effect of the treatment
Special treatment	The **court**, under Part IVC	The guardian's power under s 59R(3)(d) expressly excludes it
Treatment of mental disorder in a mental hospital	Outside Part IVC	Part III governs it, with the Mental Health Review Tribunal under Part IVA
Treatment under a supervision and treatment order	Outside Part IVC	Part IIIB governs it
Routine care, hygiene, comfort	The day-to-day carer	Not "treatment" in the statutory sense; the general law of necessity still applies

An EPA is no help here at all. It covers property and financial affairs, and it cannot authorise treatment, admission to a home or any welfare decision. A family that signs an EPA believing it covers "everything" discovers the gap at the hospital admissions desk.

11 The EPA beside guardianship

An enduring power of attorney under Cap 501 is made while the donor has capacity, and survives the donor's later incapacity. It covers **property and financial affairs only**. It must be registered with the Registrar when the donor becomes incapable, nothing may be done under it before registration, and registration costs **HK$440**. The donor signs before a registered medical practitioner and a solicitor — together, or the solicitor within 28 days after the doctor — and both witnesses complete their certificates.

EPA, guardianship and committee side by side

	EPA	Guardianship	Committee of the estate
Made or imposed	Made by the donor in advance	Imposed by the Board	Imposed by the court
Covers	Property and financial affairs, as the donor specified	Personal welfare, and a capped monthly sum	Property and financial affairs
Can consent to treatment	No	Yes, ordinary treatment only, if the order says so	No
Can sell the flat	Yes, if the power allows it	No	Only with a specific court order
Supervision	Registration; no ongoing court supervision	Board reviews at least every 3 years, financial reporting in between	Court supervision as for a receiver
Cost	HK$440 to register, plus the solicitor's and doctor's fees	No Board fee; medical reports and the applicant's time	Court fee, committee's costs, security
Speed	Immediate, once registered	Four to nine months	Months, depending on the evidence and the court's list
Ends	On the donor's death or revocation	On expiry without renewal, or revocation	On discharge by the court

Registered EPA — what it does, and where it stops Specimen · example only	
Instrument	Enduring power of attorney under Cap 501, in Form 1, executed 14 October 2024
Donor	FONG Chun Keung — then 78, with capacity, living independently
Attorney	FONG Mei Lin, daughter — sole attorney, with a replacement named
Powers given	All his property and financial affairs: bank accounts, the Mong Kok flat, the share portfolio, tax and insurance, and the conduct of any claim
Registration	Application made 2 April 2027, after the stroke; registered 19 May 2027; fee **HK$440**
What the attorney may now do	Operate the accounts, pay the nursing home, sell or let the flat if the power permits, manage the portfolio, deal with the IRD
What the attorney may not do	Consent to medical or dental treatment · decide where he lives · authorise access · make a will for him · make gifts beyond what the power allows · act before registration
What still needs the Board	Residence, access, attendance for treatment and ordinary medical consent — none of which the EPA touches
What no longer needs the court	A committee of the estate. The registered EPA does the property work, so the Part II application is unnecessary unless the power is too narrow or the attorney will not act

Property only · registration is the switch that makes it usable · HK$440 · an EPA and a guardianship order run side by side, and a family often needs both · if the attorney dies, cannot act or refuses, the property problem goes back to the court

12 Fees and deadlines

Money

Item	Fee
Guardianship application — Form 1, review, directions, emergency	**No Board fee**
Two medical reports for a guardianship application	Charged by the doctors; the applicant pays
Part II application to the Court of First Instance	**HK$1,045** originating process
Committee's remuneration and security	As the court orders, out of the estate
EPA registration	**HK$440**
Search of a court file · copy per page	HK$18 · HK$4

Time

Step	Limit
Applicant must have seen the person before applying	**Within 14 days**
Application and both medical reports to reach the Board	**Within 14 days** of the last medical examination
Social Enquiry Report	**4 weeks** from the application
Notice of hearing	At least **14 days**
Supplementary report	**1 clear working day** before the hearing
Valid application to hearing	**4 to 9 months** in practice
First guardianship order	Up to **1 year**
Renewed order	Up to **3 years**
Emergency guardianship order	**3 months** at most
Progress report for a review	**6 to 8 weeks**
Appeal to the Court of First Instance on a question of law	**28 days** from the Order and Reasons
EPA registration	As soon as practicable after the donor becomes incapable; nothing may be done before it
EPA witnesses	Doctor and solicitor together, or the solicitor within **28 days** after the doctor

13 What goes wrong

- **Filing after the 14 days.** The sighting and the last medical examination each carry a 14-day limit. Miss either and the form comes back — it is not a defect to be corrected by affidavit.
- **One medical report.** Two are required, and one must be by an approved doctor. A report from the treating geriatrician alone will not do.
- **The applicant being one of the reporting doctors.** The Board's guidance is explicit: a medical applicant should not provide a report in the same case.
- **Expecting the guardian to sell the flat.** The Board has no power to authorise it. That is a committee application, or an EPA.
- **Expecting the guardian to close the bank accounts.** The monthly sum under s 59R(3)(f) is a maintenance allowance, capped by reference to published earnings statistics. It is not estate management.
- **Treating the order as indefinite.** The first order is a year at most. Diarise the review, and the progress report six to eight weeks before it.
- **Assuming the order lapses on its expiry date.** If the review is not heard in time it continues until the Board determines the review — but that is not a reason to let the review drift.
- **Using an EPA for welfare.** It cannot authorise residence, access or treatment. Families discover this at the hospital, which is the worst place to discover it.
- **Acting under an unregistered EPA.** Nothing may be done until it is registered. A bank that acts on it before registration is acting without authority.
- **Applying for a committee when an EPA covers the assets.** The court route costs money and time; if the power is wide enough and the attorney will act, use it.
- **Forgetting who is a party.** The person concerned, the applicant and the Director of Social Welfare are parties. Not telling a sibling about the hearing does not make them a non-party; it just makes the hearing harder.
- **Treating the social enquiry as the applicant's adversary.** The report goes to the Board whichever way it reads. Cooperation, documents and a truthful account of the family history produce a better report than managing the social worker.

14 Checklist

Opening a mental capacity file

Check	Why
Is there a registered EPA?	If yes, read it before anything else — it may deal with the money entirely
Is the problem welfare, money, or both?	Welfare goes to the Board, money to the court or the attorney
Is the person 18 or over?	Part IVB begins at 18; below that, a different jurisdiction applies
Who may apply?	Relative, social worker, registered medical practitioner, or Social Welfare Department officer
When was the person last seen?	Must be within 14 days of the application
Are both medical reports in hand, one by an approved doctor?	And dated within 14 days of filing
Has the proposed guardian signed Parts II and III and the undertaking?	No consent, no appointment
Which powers are actually needed?	Ask for the six in s 59R(3) only where the evidence supports them
Is there a property problem the Board cannot solve?	Plan the Part II application at the same time, not after
Is there an emergency?	Form 4 with Form 1, and expect the Director of Social Welfare as guardian
Is treatment being proposed?	Ordinary treatment: the guardian, if empowered. Special treatment: the court
Is the review diarised?	One year for the first order; the progress report six to eight weeks before

15 Sources

- Mental Health Ordinance (Cap 136): Part II (ss 7, 10, 10A to 10E, 11, 12, 17 — management of property and affairs, committees of the estate); Part III (reception, detention and treatment); Part IIIA (guardianship of persons concerned in criminal proceedings, ss 44A and 44B); Part IVA (Mental Health Review Tribunal); Part IVB (ss 59M to 59W — guardianship, emergency orders, guardians, review, appeal); Part IVC (medical and dental treatment, ss 59ZA to 59ZI).
- Mental Health (Guardianship) Regulations (Cap 136D): duties of private guardians, and the offence for contravention.
- Mental Health Guardianship Board Rules (Cap 136E): procedure, withdrawal, notice of hearing, directions.
- Guardianship Board, *Procedural Guidelines* (6 March 2025): application route, Forms 1 to 4 and 13, the 14-day limits, the social enquiry, the hearing, review, emergency applications, appeal.
- Guardianship Board, *Medical Guidelines* and the Financial Reporting Guidelines for guardians.
- Enduring Powers of Attorney Ordinance (Cap 501), ss 2, 4, 5, 8 and 9; Enduring Powers of Attorney (Prescribed Form) Regulations (Cap 501A); Enduring Powers of Attorney Ordinance (Cap 4E) for registration; Companies Registry fee under Cap 4D — HK$440.
- Rules of the High Court (Cap 4A), Order 30, rules 5 to 7 (receivers), applied to a committee of the estate by s 11(3).
- Social Welfare Department, guardianship for mentally incapacitated persons — application route and enquiry line.

Figures checked 18 November 2026. The Guardianship Board charges nothing for an application; the costs that matter are the medical reports and, on the property side, the court fee and the committee's own costs. The monthly sum a guardian may handle is not a fixed figure — it moves with the published earnings statistics, and the current figure is published by the Board.