


Guardianship by Country: Resource for Second World Congress on Adult Guardianship

	<p>Country: China Population: 1.37 billion Number of people under Adult Guardian/Guardianship: Statistics not available</p>
<p>Relevant legislation</p> <p>General Principles of Civil Law; Opinions of the Supreme People’s Court on Several Issues concerning the Implementation of the General Principles of Civil Law (Trial Implementation); Protection of Disabled Persons Law; Protection of Rights and Interests of the Elderly Law; Mental Health Law (draft)</p>	
<p>Key terminology</p> <p>Adult guardianship (<i>chengnianren jianhu</i> 成年人监护), civil capacity (<i>minshi xingwei nengli</i> 民事行为能力), mental illness (<i>jingshenbing</i> 精神病), dementia (<i>chidaizheng</i> 痴呆症), elderly (<i>laoren</i> 老人).</p>	
<p>What types of guardianship exist? (personal welfare/financial affairs)</p> <p>Adult guardians act in all areas (personal welfare as well as financial affairs) of the lives of the adults under guardianship.</p>	
<p>Aside from personal appointments, who has the power to appoint an adult guardian?</p> <p>There is no personal appointment. The law automatically designates (in the following order) the spouse, parents, adult children and other close relatives as guardian where the situation calling for adult guardianship arises. Appointment by the court or the local neighbourhood or village committee may be involved in case of dispute.</p>	
<p>What criteria do the court need to consider when deciding the need for a guardian?</p> <p>As mentioned above, the law designates certain persons to automatically become guardians. The court is thus not involved in appointing guardians.</p>	
<p>What is the potential duration of an order?</p> <p>The guardianship relationship arises as a result of an automatic legal designation and normally lasts until the death of the ward.</p>	
<p>Can a person under guardianship seek review of a guardian’s appointment and/or a guardian’s decisions?</p> <p>There is no specific procedure dedicated to review a guardian’s appointment and/or the guardian’s decisions by the person under guardianship.</p> <p>A person under guardianship can seek alteration of guardianship with the voluntary assistance of their unit or local committee or other persons eligible to be their guardian. Where the situation calling for guardianship no longer exists, the person may apply directly to the court to terminate the guardianship relationship.</p> <p>A person under guardianship has no power to initiate a review of the guardian’s decision</p>	

unless the guardian acts in breach of his duties or liabilities. Even in this case, the person would usually have to seek the assistance of the other eligible guardian candidates to file a complaint to the court.

Who can be appointed as guardian? (eg family members, private guardian, private body, public body)

Spouse, parents, adult children, near relatives, closely connected relative or friend willing to bear the responsibility of guardianship, the unit to which the ward belongs, the neighbourhood or village committee in his place of residence, or the civil affairs department.

What are the responsibilities of an adult guardian? (eg what principles or guidelines must they comply with)

The general principle is that a guardian shall fulfil his duty as guardian and protect the person, property and other lawful rights and interests of his ward. He shall not handle the property of his ward unless it is in the latter's interests.

Specifically, guardians are responsible for protecting the personal health of his ward; taking care of the wellbeing of the ward; managing and protecting the property of his ward; acting as the agent of his ward to conduct civil activities; taking charge of and educating the ward; and acting as agent of his ward to file litigation in case the legal rights and interests of his ward are infringed upon or the ward has any dispute with any other person. The law does not expressly stipulate principles against which a guardian must act, although a best interests principle can be implied.

How are adult guardians monitored and/or supported? (eg overseeing body, support for volunteer guardians)

Other persons eligible to become the individual's guardian (namely, other family members of the ward, his unit or local committee, or friend) may file complaints to the court. Apart from this, there is no system for monitoring or supporting adult guardians.

Does an existing enduring Power of Attorney (personal welfare/financial) remove the need for guardianship when capacity is lost?

Enduring or lasting powers of attorney are not recognised in Chinese law.

What costs are associated with guardianship and who pays? (eg application costs, court costs, yearly service fees)

As a general principle, court fees are borne by the parties involved. But cases involving adjudication of a person's capacity for civil conduct or alteration of guardianship are tried by special procedures, which do not impose case-handling fees. There is no statutory provision for remuneration of guardians.

Additional comments (Interesting elements of your country's system than are not covered above)