

The Status and Challenges of Adult Guardianship Notarial Acts in China

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I . Reasons for the Increase in Guardianship Notarial Acts

1. Personal wealth increase

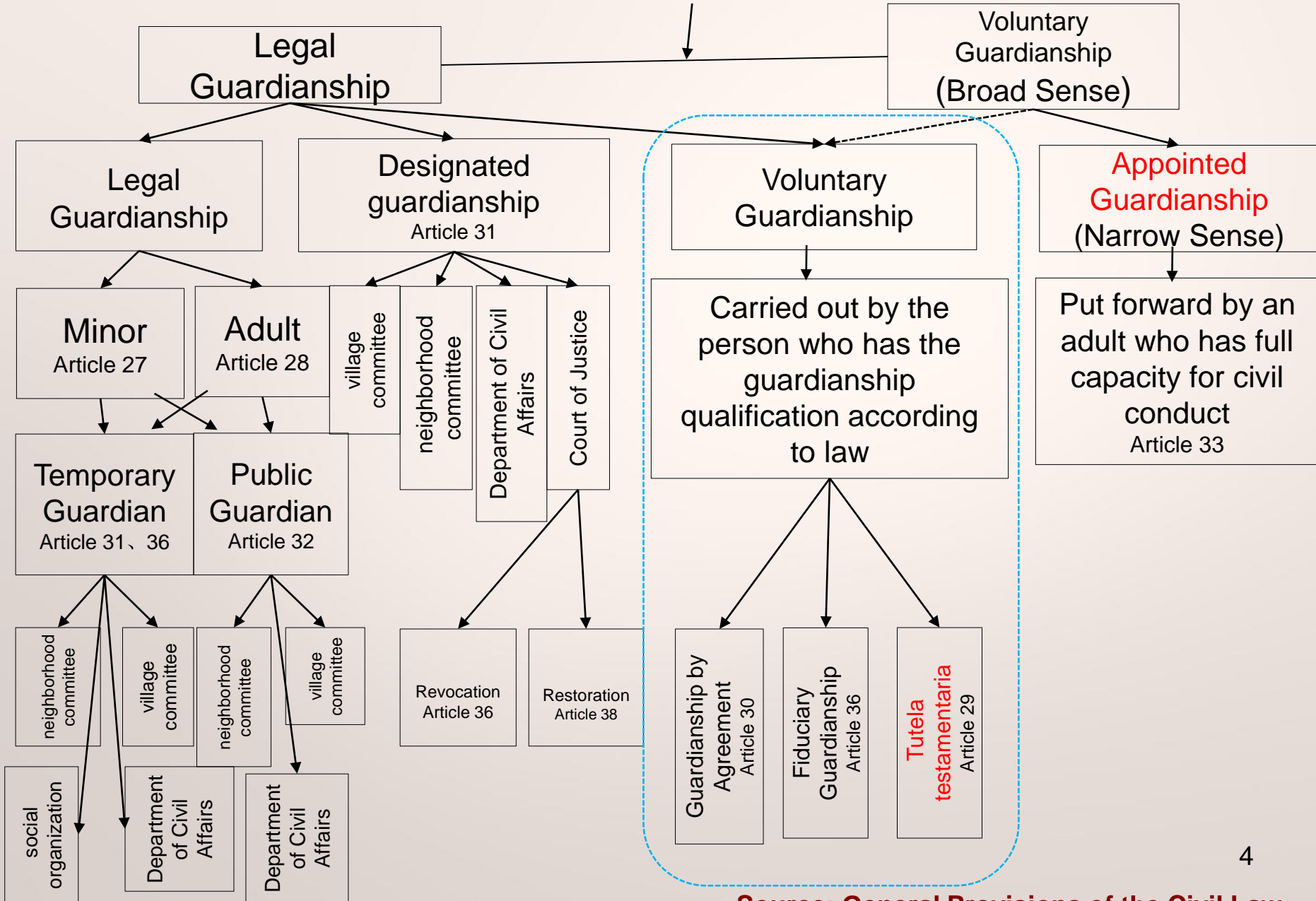
2. Aging population

3. The transition from direct government intervention to respect for personal choice

II. Legal Basis of Guardianship Notarial Acts

- ✓ ***General Principles of the Civil***
- ✓ ***General Provisions of the Civil Law, effective since October 1, 2017***
- ✓ ***The Law on the Protection of Minors***
- ✓ ***The Law on the Protection of the Rights and Interests of the Elderly***
- ✓ ***The Law on the Protection of the Rights and Interests of Disabled Persons***
- ✓ ***The Civil Procedure Law***
- ✓ ***The Notarization Law***
- ✓ **Relevant judicial interpretations of the Supreme People's Court**
- ✓ **Relevant administrative regulations / directives issued by the Ministry of Justice**

Guardianship



III. Types of Guardianship Notarial Acts

Legal Guardianship — Includes guardianships designated by a guardianship authority.

Voluntary guardianship

Carried out by the person who has the guardianship qualification according to law

An adult appointing a guardian for himself

Guardianship by Agreement
Fiduciary Guardianship
Tutela Testamentaria

— Appointed guardianship

IV. Types of Notarial Documents

Guardian Qualification Certificate

—Legal Guardianship; Designated Guardianship; Appointed Guardianship

Confirmation Certificate of Guardian's Declaration of Intention

—Guardianship by Agreement; Fiduciary Guardianship

Passive Certification

— Tutela Testamentaria; Appointed Guardianship

V. Adult Appointed Guardianship

1. Appointed Guardianship covering elderly over 60 years of age since 2015 has expanded its legislative reach to all adults over the age of 18 since 15 March 2017.
2. There have been some cases in the capital cities of seven provinces (Heilongjiang, Shandong, Jiangsu, Zhejiang, Guangdong, Fujian, Sichuan). Needs arise rapidly in first-tier cities such as Beijing, Shanghai and Shenzhen.
3. The Appointed Guardianship system is stipulated only in the Shanghai local regulations for the protection of the elderly. Shanghai has the largest number of adult guardianship cases in China .

VI. The Status Analysis of Adult Appointed Guardianship

——Take 30 samples from Shanghai City

1. Sources

Media advocacy, neighborhood committees, public welfare organizations (cognitive care, hospice care, pension organizations), lawyers,

The daily public cases of notary, especially probates and inheritance notarization are the main source of cases.



2. Reasons for Establishing Adults Appointed Guardianship

24 cases of pension, 2 cases of marriage litigation, 2 cases of children's future security and 2 cases of commercial investment. Of these, pension accounts for 80%.

3. The Content of Appointed Guardianship

Personal care, medical treatment (palliative care, hospice care), property supervision, judicial litigation and funeral.

28 cases of general guardianship and 2 cases of partial guardianship.

4. Age of Establishing Persons

Aged from 22 to 97, 80% of which are over 60.

Elderly without support, elderly living alone, elderly left behind from relocation, elderly with deceased children and families with children who have intellectual disabilities most urgently need to apply for Appointed Guardianships.

5. Fiduciary Guardian

Children, close relatives, friends, social workers. No social organizations. Only a few of them have successor guardian.

11 cases of children's relationship, 10 cases of close relatives, 2 cases of social work relations and 7 cases of friend relations. Among these, 5 cases have more than 2 Fiduciary Guardians.

6. Supervisor—— only 3 cases

7. Compensation—— 4 cases involves compensation

8. Types of Property Guardianship—— Mostly houses. A few are deposits and shares.

9. Effectiveness—— Immediately; effective after the loss of capacity; partial immediate; partial auxiliary condition.

VII. The Function of Notarial Acts in Appointed Guardianship

Communication
Service
Certification
Supervision

Consultation and Communication

Document Drafting

The disposition of the property of the ward must be made in the form of notarial documents

Supervision of the use of fund acquired from disposition.

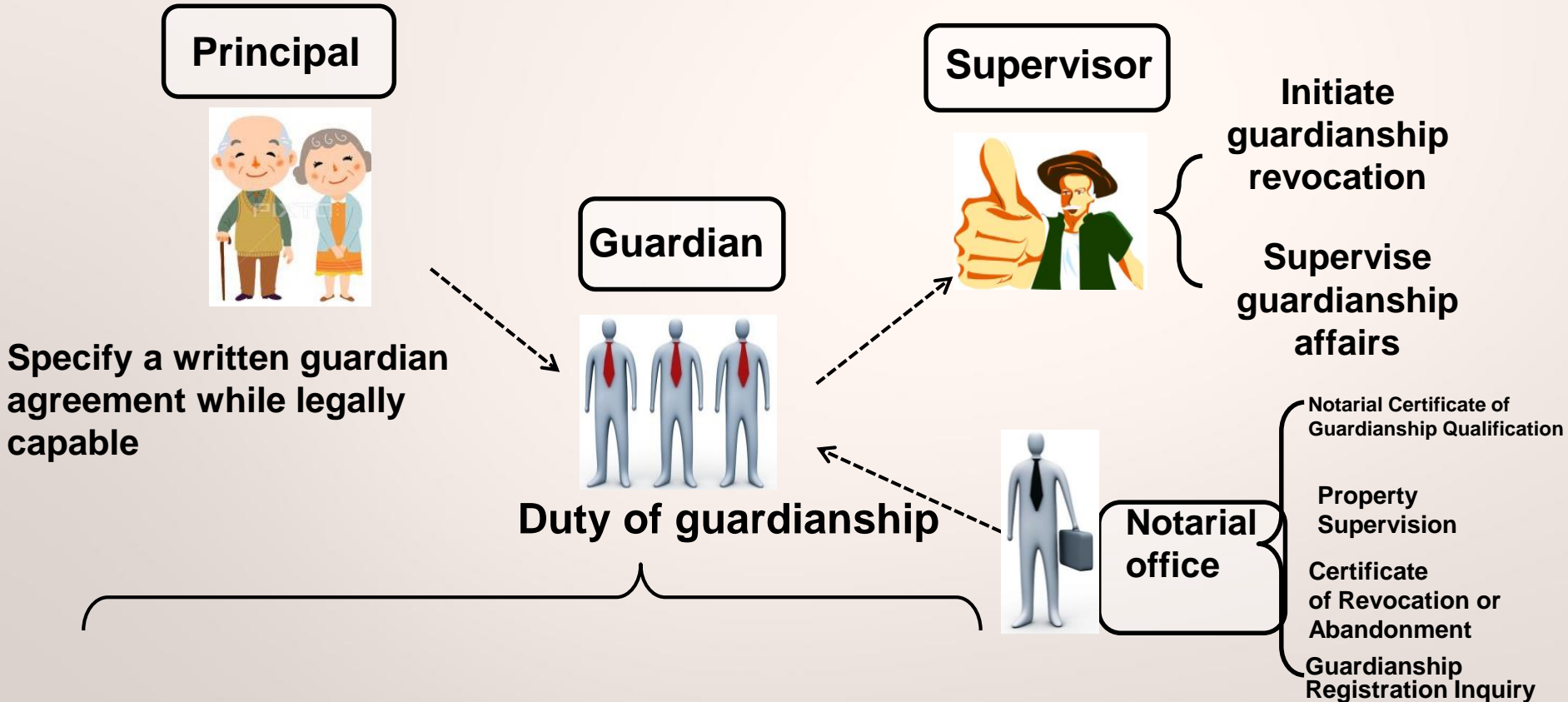
Issuing a Qualification for Guardianship

Notarial Documents for Abandonment or Revocation

Publication of Guardianship Status

- China Notary institutes a code of impartiality. A Notary may not act as a Fiduciary Guardian. The Notary Office, however, can perform the function of the supervisor
- Proof Supervision—The notary office shall assume the function of a judge in non-contentious procedures.

Adult Appointed Guardianship



Personal Care; Medical Treatment; Property Management; Upholding rights and Interest; Funeral

VIII. Challenges of Appointed Guardianship

1. **Low awareness in society.** Some people think that the last will and testament are equivalent to guardianship;
2. Most people are willing to be caretakers rather than guardians; afraid of taking on **extra responsibilities**;
3. The degree of support from **judicial cases** in appointed guardianship cases is unclear;

4. The existing processes and standards for loss of capacity are **administratively tedious**;
5. There are no proven public guardians and public supervisors. Corresponding qualification system is lacking;
6. When appointed guardianship is revoked, abandoned or lost, the **legal provisions** for transitioning to Legal Guardianship are not clear.

IX. Improvements and Vision

- 1. Establish and train professional public guardians.**
- 2. Establish a list of hospitals and doctors to certify loss of capacity.**
- 3. Introduce standardized format for appointed guardianship authorization.**
- 4. Establish a platform for the registration of appointed guardianship, and render the platform accessible to courts, civil administration organizations, village (neighbourhood) committees and social organizations.**
- 5. Amend legal provisions.**