

立法會
Legislative Council

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**Paper for the House Committee meeting
on 26 April 2002**

**Report of the Subcommittee on
the Resolution of the Board of Directors of the Po Leung Kuk**

Purpose

This paper reports on the deliberations of the Subcommittee on the Resolution of the Board of Directors of the Po Leung Kuk (L.N. 36 of 2002).

Background

2. The Po Leung Kuk (PLK) was established in 1878 under the Po Leung Kuk Incorporation Ordinance, which was repealed and replaced by the Po Leung Kuk Ordinance (Cap. 1040) in 1973. PLK provides a wide range of social services and its recurrent expenditure in 2001-02 was around \$1.6 billion.

3. On 28 February 2002, the Board of Directors of PLK resolved to add the following to its objects in the Schedule of the Ordinance -

"(ea) to undertake charitable work outside Hong Kong with the prior approval of the Secretary for Home Affairs".

4. The resolution was published in the Gazette on 15 March 2002 and came into effect on the same date.

Views of the House Committee

5. At the House Committee meeting on 22 March 2002, Members expressed concern about the policy that charitable organisations which received public funds or donations, such as PLK, could undertake charitable work outside Hong Kong.

6. At the request of Members, the Chairman of the House Committee wrote to the Secretary for Home Affairs (SHA) requesting PLK not to undertake charitable work outside Hong Kong pending scrutiny by the Council. In his reply dated 4 April 2002, SHA advised that he had notified PLK that he would not give approval for any proposed charitable work outside Hong Kong until the Council had concluded its scrutiny of the Resolution. SHA also conveyed the message that PLK had undertaken not to initiate any charitable activity outside Hong Kong pending the Council's scrutiny of the Resolution.

The Subcommittee

7. At the House Committee meeting on 22 March 2002, Members agreed to form a subcommittee to examine the Resolution.

8. Chaired by Hon Margaret NG, the Subcommittee has held one meeting to discuss with the Administration and PLK. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

Background for making the Resolution

9. The Subcommittee has enquired about the background for the Board of Directors of PLK to make the Resolution. The Administration and PLK have explained that a series of major natural disasters in the Mainland in late 1990s (e.g. the earthquake in Hu Pei Province in 1997 and floods along the Yangtze River in 1998) has prompted discussions in PLK about the provision of assistance to the needy elsewhere, particularly the Mainland. Although the existing provisions in the Ordinance do not limit the powers of PLK to undertake charitable work only in Hong Kong, it is unclear from the objects as stipulated in the Schedule to the Ordinance whether PLK is empowered to carry out charitable work outside Hong Kong. To remove any doubt in this respect, the Administration and PLK consider that legislative amendment is necessary.

10. The Administration has pointed out that there is a similar provision in section 1(i) in the First Schedule to the Tung Wah Group of Hospitals Ordinance (Cap. 1051) providing that it can "undertake charitable work among Chinese outside Hong Kong with the approval of the Secretary for Home Affairs." In response to members' enquiry, the Administration has advised that a more appropriate version without reference to "among Chinese" is adopted by PLK, as the ethnic background of beneficiaries is not normally a consideration in the charitable work undertaken outside Hong Kong.

Considerations for granting approval for PLK to undertake charitable work outside Hong Kong

Criteria for SHA to grant approval

11. The Subcommittee has sought clarification on the considerations which SHA will take into account in granting approval for PLK to undertake charitable work outside Hong Kong. The Administration has responded that SHA would have regard to the following principles when considering whether approval should be granted -

- (a) the charitable work to be undertaken by PLK outside Hong Kong should have the general support of the Hong Kong community;
- (b) where funds are raised by PLK for charitable work outside Hong Kong, people donating money should be clearly informed of the purpose of the fund-raising activity beforehand; and
- (c) the existing funds of PLK should not be used to finance charitable work outside Hong Kong unless explicit permission has been given by the people who donated the money in the first place.

Community support

12. A member has asked how SHA will assess community support for the charitable work to be undertaken by PLK outside Hong Kong. The Administration has advised that Home Affairs Bureau has a system for monitoring public views through residents' groups, Area Committees and other district organisations. Where necessary, Home Affairs Bureau will solicit views through the 18 District Councils before taking a decision.

Sources of financing

13. Members have expressed much concern about the sources of finance for the charitable work to be carried out outside Hong Kong. They have asked whether PLK will use existing funds, such as general donations received from members of the public, to finance such charitable work. Some members have pointed out that although SHA will require PLK to obtain the explicit permission of donors for transferring their donations to finance charitable work outside Hong Kong, this may not always be possible, e.g. when the identity of the donor is not known.

14. The Administration has responded that it is legally in order for PLK to transfer donations it received before the coming into effect of the Resolution, to

finance its charitable work outside Hong Kong after the Resolution has come into effect. However, to address members' concerns, representative of PLK has undertaken that PLK will not divert any existing funds or donations to support charitable work outside Hong Kong. PLK has also undertaken that only funds received after the effective date of the Resolution specifically in answer to PLK's appeal for donations for charitable work outside Hong Kong will be so used. A letter dated 12 April 2002 from the Chairman of the Board of Directors of PLK providing such undertakings is in **Appendix II**.

Accounting arrangement

15. The Administration has confirmed that donations to PLK are not held on trust, and are all held under PLK's name in its accounts. However, a specific account will be opened for donations received by PLK for a specific project, and that the accounting requirements under section 7 of the Po Leung Kuk Ordinance will apply to charitable work undertaken by PLK outside Hong Kong. Moreover, the directors of PLK will be indemnified by PLK under section 8 of the Ordinance against any liability for any charitable work undertaken outside Hong Kong.

16. A member has raised concern about the policy as to whether a charitable organisation receiving public funds or donations, such as PLK, can deploy its existing staff to provide support (such as training) for the charitable work undertaken outside Hong Kong. The member has reservations about diverting such staff resources, which are funded by government subvention or general donations received in Hong Kong, to support charitable work undertaken outside Hong Kong.

17. The Administration has responded that there is at present no policy prohibiting charitable institutions to deploy their existing staff to undertake charitable work outside Hong Kong. However, charitable institutions have safeguards and procedures to ensure that funds for different projects are properly accounted for. In the case of PLK, it will be required to maintain separate accounts for the donations and expenses in connection with the charitable work outside Hong Kong.

18. The representative of PLK has also advised that government subvention to PLK is provided for specific purposes, such as the operation of old age homes, and there is no question that such resources can be diverted to other purposes. As regards the general administrative staff, their salaries are met by donations from the directors of PLK and income from PLK's investments.

Exemption under section 88 of the Inland Revenue Ordinance (Cap. 112)

19. Some members have raised concern about whether the Resolution will affect PLK's status as a charitable institution under section 88 of the Inland

Revenue Ordinance (Cap.112). A member has also asked whether donations to PLK for charitable work outside Hong Kong will still be counted for tax exemption purpose.

20. The Administration has advised that generally speaking, charitable institutions exempted under section 88 of Cap.112 may undertake charitable work for the purposes of relief of poverty and advancement of education or religion outside Hong Kong, so long as a substantial part of its charitable work is still within the territory. The Resolution of PLK therefore will not by itself affect PLK's status as a charitable institution under section 88 of Cap. 112. As regards the donations to PLK, the Administration advises that so long as PLK remains a charitable institution under section 88 of Cap.112, it will continue to be exempted from tax, and donors may claim a tax allowance for the donations they made to PLK.

Effective date of subsidiary legislation

21. The Chairman has reminded the Administration to avoid putting a piece of subsidiary legislation into operation before the expiry of the scrutiny period by LegCo.

Recommendations

22. The Subcommittee does not raise objection to the Resolution, and has not proposed any amendment.

Advice sought

23. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on
the Resolution of the Board of Directors of the Po Leung Kuk**

Membership list

Chairman Hon Margaret NG

Members Hon HUI Cheung-ching, JP
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP

(Total : 8 Members)

Clerk Mrs Constance LI

Legal Adviser Miss Kitty CHENG

Date 9 April 2002

PLK Ref:12/04/02-17(CEO)

Appendix II
12 April 2002

Mrs. Constance Li
Clerk to Subcommittee
Legislative Council Secretariat
LegCo Building, 8 Jackson Road
HONG KONG GOVERNMENT

Dear Constance,

Subcommittee on
the Resolution of the Board of Directors of the Po Leung Kuk

I understand that at the Subcommittee meeting on 9 April 2002, some Honourable Members were concerned whether donations made to us before the Resolution would be diverted to support charitable work outside Hong Kong. Mr. K.K. Wong, our Chief Executive Officer, representing us assured that this would not happen. I write to confirm his assurance.

Notwithstanding the publication of the Resolution in the Gazette on March 15 2002, we have no immediate plan to undertake any charitable work outside Hong Kong. The reason is simply that there is no pressing need to do so. As assured by Mr. Wong, only funds received after the Resolution specifically in answer to our appeal for donation for charitable work outside Hong Kong will be so used.

You may wish to assure the Honourable Members that we are committed to serving the Hong Kong community. This remains our primary objective. Extending our charitable work outside Hong Kong will only be on occasions for specific projects where the Secretary for Hong Affairs so approved.

Your sincerely,

Mrs Veronica W.C.Li
Chairman

c.c. Mr. Kevin Yeung, Prin. Asst. Secretary for Home Affairs(4), Hong Affairs Bureau

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(來函請寄主席收 Please address all communications to the Chairman)