

For discussion on
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LEGISLATIVE COUNCIL PANEL ON WELFARE SERVICES
CHARITABLE FUND-RAISING ACTIVITIES

PURPOSE

This paper briefs Members on the existing framework for the monitoring of charitable fund-raising activities.

BACKGROUND

2. Genuine fund-raising activities are an important income source to support the services and various worthy objects of our charities. In this regard, it is incumbent on the Administration to strike a balance between facilitating charitable fund-raising activities and safeguarding the interests of the donors on the one hand, while not creating too much nuisance and inconvenience to the general public on the other. We also attach great importance to enhancing the transparency and accountability of charitable fund-raising activities so that the public can make an informed choice, while not stifling these activities by imposing onerous and, possibly, costly administrative requirements on the fund-raisers. Regulatory and

administrative measures under the purview of different Government bureaux / departments are in place to achieve these principles.

EXISTING REGULATORY REGIME

Charitable Institutions or Trusts of a Public Character

3. Under section 88 of the Inland Revenue Ordinance (IRO) (Cap 112), a charitable institution or trust of a public character is exempt from tax chargeable under this Ordinance. Any institution or trust can apply to the Inland Revenue Department (IRD) for recognition of its charitable status under this section. Government departments including the Social Welfare Department (SWD) take this tax-exempt status into account when considering various applications involving fund-raising activities.

4. To qualify for tax exemption, the object or objects for which the institution or trust is formed must be exclusively charitable and of a public character. IRD also considers whether the activities of the institution or trust are compatible with its charitable objects.

5. The tax-exempt status of each recognised charitable institution or trust is subject to regular reviews by IRD to ensure that its objects remain charitable and its activities are compatible with its objects. Any adverse information about a recognised charitable organisation will also trigger off a specific review by IRD against the concerned organisation. IRD will

ask the organisation under review to submit documents, including its annual reports and financial statements, for scrutiny. A charity can only maintain its tax-exempt status if its activities are carried out directly to further its charitable objects or are entirely ancillary to the achievement of those objects.

6. There is no specific legislation to control charitable fund-raising activities.

Public Subscription Permits

7. At present, the Director of Social Welfare (DSW) issues Public Subscription Permits (PSPs) under section 4(17)(i) of the Summary Offences Ordinance (Cap 228) for any collection of money or sale or exchange for donation of badges, tokens or similar articles for charitable purposes in public places.

8. In exercising the statutory power to grant a permit, DSW will examine the background of the applicant, including whether the applicant organisation or the beneficiary organisation is a recognised charitable institution or trust of a public character under section 88 of IRO, the purpose of the event, and whether consent from the relevant venue management has been obtained, as appropriate. He also imposes conditions in the permit specifying a number of accounting and transparency requirements. These include audit of the accounts by a qualified accountant with a certified copy of the accounts forwarded to

DSW within a specified period and publication of the accounts in at least one local Chinese language newspaper and one local English language newspaper, if the monies collected are to be spent outside Hong Kong. Any previous non-compliance with PSP conditions would be taken into consideration in assessing future applications of the concerned organisation.

9. Each PSP issued by DSW is copied to the Police, the authority to enforce relevant laws dealing with nuisance, fraud or other illegal activities. The number of complaints referred to the Police by SWD in the past three years for breach of PSP conditions / not having obtained PSPs from SWD is as follows:

Calendar Year	No. of PSPs issued	No. of complaints referred to the Police	No. of warning letters issued by the Police	No. of prosecutions with eventual conviction
2004	567	15	1	0
2005	669	31	6	0
2006	648	49	5	2

10. It is important to note that, for most of the complaints received, the organisations have actually obtained PSPs or proper approval / licences from relevant authorities. These include the Temporary Hawker Licences from the Food and Environmental Hygiene Department for charity sale of commodities and the lottery licences from the Commissioner for Television and Entertainment Licensing (CTEL) for selling of lottery tickets. Rather, the complaints were mainly related to apparent minor

breaches of permit / licence conditions. For example:

- (a) soliciting donations with mobile money collection boxes while against approval for collection of donations at stationed counters;
- (b) mobile solicitations beyond the approval locations; and
- (c) using or appearing to be using an unapproved method to collect / solicit donations.

Following investigation by the Police, most of the complaints were not substantiated. In the last three years, only two cases were prosecuted with eventual conviction.

Lotteries

11. CTEL is empowered by the Gambling Ordinance (Cap 148) and the Gambling Regulations to grant lottery licences. Lottery licences, with maximum validity of eight weeks, are issued to bona fide non-profit making organisations to conduct sale of lottery tickets for the purpose of fund-raising, in order to meet the organisations' operating expenses and/or to donate to charities.

12. When processing an application for lottery licence, the Television and Entertainment Licensing Authority (TELA) will examine if the applicant and/or the beneficiary organisation is a non-profit making organisation, or a charitable institution or trust of a public character exempted from tax under section 88 of IRO, as well as the purpose of the event, the estimated amount and intended use of the lottery proceeds.

13. The applicant is required to follow a set of pre-licensing conditions to ensure that the lottery is run in a prescribed and controlled manner and not for an individual's private gain. These conditions include: no cash prizes; no part of the proceeds of the lottery should be appropriated for private gains; and the lottery tickets must include details of the lottery such as the intended use of the lottery proceeds, serial numbers, lottery licence number, the price at which the tickets are sold, the number, nature and value of the main prizes, and the date on and manner in which the draw results will be published.

14. Within ten days from the date of the draw, the licence-holder is required to publish the draw results in at least one local Chinese language newspaper and one local English language newspaper. Within 90 days from the date of the draw, the licence-holder is required to submit an income and expenditure statement together with a written report by a qualified accountant certifying that the income and expenditure statement is properly prepared. If the whole or part of the net proceeds of the lottery is donated to charitable organisation(s), official receipt from the beneficiary organisation(s) should be attached to the income and expenditure statement. At the end of the financial year, the licence-holder is required to submit an audited annual financial statement showing the income and expenditure of the lottery to TELA. Non-compliance would be taken into consideration when assessing future applications.

15. To enhance transparency, the income and expenditure statement and the related written report from the qualified accountant are open for

inspection by members of the public at the Licensing Section of TELA.

16. In the past, complaints received by TELA were mainly related to apparent minor breaches of licensing conditions, such as selling tickets in locations or on a day not appearing on the approved list, not displaying the names of the concerned organisations, etc. In such cases, TELA will contact the licence-holders immediately to rectify the situation and issue written warnings to the organisers to avoid similar breaches in future.

ADMINISTRATIVE MEASURES

17. Apart from the regulatory framework, there are also various administrative measures to enhance the transparency and accountability of charitable fund-raisers, to ensure that public charitable fund-raising activities are subject to adequate monitoring and are conducted in a co-ordinated manner. These measures are set out in the following paragraphs.

Inter-departmental Co-ordination in the Vetting of Applications for Public Charitable Fund-raising Activities

18. For maintenance of public order, SWD examines, before issuing a PSP, whether consent from the relevant venue management authorities has been obtained. For fund-raising activities on public streets, approval from the Director of Lands is required. SWD will only approve those

locations which the Director of Lands has no objection for temporary occupation by the organisation. In considering application for temporary occupation of government land, the Director of Lands normally will not approve more than one organisation to conduct fund-raising activities at the same location at the same time. The Director of Lands will also seek the views of the Commissioner of Police, the Commissioner for Transport and the Director of Highways where necessary.

19. Holders of lottery licences who intend to sell lottery tickets on public streets are required to submit in writing the proposed date, time and locations to TELA for approval. TELA will then forward the application to the Lands Department, the Transport Department, the Police, the Highways Department, SWD and Home Affairs Department to obtain their comments on land use commitments, pedestrian and traffic flows, law and order, road works, whether other funding raising activities are being organised in the vicinity, etc., before making a decision. TELA will send the approved list to the Police for law enforcement purposes.

Conduct and Monitoring of Public Charitable Fund-raising Activities

20. To ascertain whether a certain public charitable fund-raising activity has been properly licensed, the public can check out the list of charitable fund-raising activities issued with PSPs uploaded on the homepages of SWD and the Electronic Service Delivery. Members of the public may also make enquires through the hotlines of SWD. Monthly posters showing the list of flag day organisers are also displayed at all

district offices of SWD, Public Enquiry Service Counters of HAD and Wellcome supermarkets.

21. Similarly, a list of organisations issued with a licence to conduct lotteries, together with information regarding the approved licensed dates and locations for selling lottery tickets in public streets, is available on TELA's homepage.

22. Apart from conditions for transparency and accountability mentioned above, there are also a number of requirements imposed under a PSP which are pertinent to the conduct of the fund-raising activities. For example, PSP holders are required to display prominently the PSPs at the place where the fund-raising event is held and they are only allowed to collect donations by the method approved. They should not cause annoyance or obstruction in public places and should act in accordance with the advice given by police officers at the scene, or by the management authority of the venues concerned. They are also required to arrange sufficient publicity for the fund-raising activities so that the general public will be aware of the organising body and the purpose of the fund-raising.

Reference Guide on Best Practices for Charitable Fund-raising Activities and Guidance Notes on Internal Financial Controls for Charitable Fund-raising Activities

23. Since 2004, the SWD has also introduced a Reference Guide on Best Practices for Charitable Fund-raising Activities. The Reference

Guide outlines suggested best practices in areas of the donors' rights, fund-raising practices, financial accountability, etc. It encourages the charities to disclose their financial information and to minimise the fund-raising costs. It also serves as a reference for the public in gauging the practice of a charity on fund-raising. The Reference Guide has been publicised through the media and uploaded on the SWD's website. It has also been promoted through various channels.

24. As at December 2006, a total of 265 organisations have reported their voluntary adoption of the Reference Guide. SWD has reviewed the implementation of the Reference Guide through a survey on charities which have adopted the Reference Guide. The majority of the feedback received revealed that the Reference Guide has been very effective in enhancing the transparency and accountability of fund-raising activities and the charities support the existing self-regulatory system through the Reference Guide.

25. SWD has also published a set of Guidance Notes on Internal Financial Controls for Charitable Fund-raising Activities for reference of the charities since 1998. With the assistance of the Hong Kong Institute of Certified Public Accountants and the Independent Commission Against Corruption, the guidance notes include advice on basic controls to ensure that income and expenditure generated from charitable fund-raising activities are properly documented and that such income is spent for the designated purpose.

Reference Guide on the Organisation of Lottery Activities

26. A Reference Guide on the Organisation of Lottery Activities detailing all the licensing conditions as required by law and the administrative requirement as stipulated by CTEL is available on the TELA homepage. Hard copies are also available at the Licensing Section of TELA.

THE WAY FORWARD

27. Hong Kong is a caring society and the community is supportive of charitable causes. The Administration strives to provide a friendly environment with administrative procedures kept to a minimum to facilitate the charities to mobilise community resources for their fund-raising activities. The Administration needs to strike a balance to ensure that such activities would not pose too much inconvenience and nuisance to the public, and that the interests of the donors are safeguarded. We also take the combat of fraudulent fund-raising activities seriously. These activities undermine the trust between bona fide charitable organisations and donors.

28. The Administration considers that the existing regulatory regime and administrative measures are effective and proportional for monitoring charitable fund-raising activities. Various measures are in place to coordinate and monitor the conduct of charitable fund-raising activities in

public places. The number of convicted cases of fraudulent fund-raising activities remains insignificant, so is the number of cases involving non-compliance of permit / licence conditions. In recent years, additional administrative measures have been introduced to improve the transparency and accountability of charities and their fund-raising activities. We are also stepping up efforts to educate the public to be smart donors. The Administration will continue to put such measures under review to improve the transparency and accountability of the system and facilitate the conduct of bona fide fund-raising activities.

ADVICE SOUGHT

29. Members are invited to note the content of the paper.

Health, Welfare and Food Bureau
Financial Services and the Treasury Bureau
Social Welfare Department
Television and Entertainment Licensing Authority
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