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**Meeting of Panel on Welfare Services  
on 11 June 2007**

**Background brief prepared by the Legislative Council Secretariat**

**Monitoring of charitable fund-raising activities**

**Purpose**

This paper sets out the mechanism for the monitoring of charitable fund-raising activities, and summarises the deliberations of the Panel on Welfare Services on the subject.

**Existing regulatory regime**

2. While there is at present no specific legislation on the control of the charitable fund-raising activities, the Director of Social Welfare issues Public Subscription Permit 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. The Commissioner for Television and Entertainment Licensing issues Lottery Licence under section 22 of the Gambling Ordinance (Cap. 148) for the conduct and sale of lotteries. Under section 88 of the Inland Revenue Ordinance (Cap. 112), the Inland Revenue Department (IRD) grants tax exemption to charitable institutions or trusts of a public character.

3. The scope of control of the permits and licences mentioned above does not cover charitable fund-raising activities appealing to the public for donations in various other forms (e.g. charity auctions, film premieres, concerts, shows, balls, dinners, walks, appeals through telephone call/internet/letter/mass media/advertisement) or conducted in places other than those specified in Cap. 148 and Cap. 228. The amount of donations and the disposal of such funds are not subject to any statutory or administrative control.

4. If there are allegations concerning breach of law in the conduct of flag-selling, fund-raising or lottery activities, the Social Welfare Department (SWD) or the Television and Entertainment Licensing Authority (TELA) will normally refer such cases to the Police for follow-up.

### **Enhanced monitoring mechanism for charitable fund-raising**

#### The Ombudsman's direct investigation

5. In February 2003, the Ombudsman published the results of her direct investigation into the mechanism for monitoring charitable fund-raising activities. The report recommended, in short to medium term, drawing up a code of practice and setting up a voluntary registration system. It also called upon the Administration to review in the longer term the adequacy and appropriateness of the Government policy and practice for monitoring Charities in general and their fund-raising activities in particular.

#### Reference Guide on Best Practices for Charitable Fund-raising Activities

6. SWD carried out a public consultation exercise between 19 August and 30 September 2003 to gauge the views of the Charities and the general public on the drawing up of a proposed Reference Guide on Best Practices for Charitable Fund-raising Activities (Reference Guide) and a public register of Charities which pledged to adopt the Reference Guide on a voluntary basis. The Reference Guide would include best practices in the areas of donors' rights, fund-raising practices and accounting/auditing requirements to meet standards of transparency and public accountability.

7. Upon completion of the public consultation, the Administration proposed to promulgate the Reference Guide for voluntary compliance by Charities. The Charities which voluntarily adopted the Reference Guide might flexibly adhere to all or only part of the Reference Guide. The public was encouraged to use the Reference Guide as a reference against which the performance of a Charity in fund-raising could be measured. Donors or prospective donors having questions or concern on compliance with the Reference Guide might contact the Charity which organised the activities.

### **Deliberations by the Panel on Welfare Services**

8. The Panel on Welfare Services was briefed on the Administration's plan to enhance the monitoring of charitable fund-raising activities at the meeting on 19 July 2004.

### Public register of Charities

9. While expressing support for drawing up a Reference Guide, Dr Hon LAW Chi-kwong and Hon LEUNG Yiu-chung held the view that a compulsory registration system should be put in place to deter fraudulent organisations from soliciting donations from the public and ensure the donations were used for the purposes for which they were given.

10. The Administration explained that if a compulsory registration system was introduced, stringent vetting and review procedures would have to be put in place and this would have considerable resource implications. Furthermore, the procedures and the need to ensure cost recovery for such a system might stifle the fund-raising activities of Charities, in particular small-scale Charities. The Administration considered that with the promulgation of the Reference Guide, the public could better gauge the practice of a Charity in fund-raising when deciding whether or not to donate to the charity. The Administration advised that a review would be conducted one year after the promulgation of the Reference Guide to ascertain its progress and to consider the need for revisiting the proposal of a public register.

### Monitoring charitable fund-raising activities

11. Given that compliance with the Reference Guide was voluntary, members were concerned about the measures to help the public identify fraudulent fund-raising activities.

12. The Administration advised that all fund-raising activities approved by SWD and TELA were publicised via the media or uploaded onto the respective web pages of the departments. A list of the tax-exempt charitable organisations was published in the Gazette and was also available on IRD's website. IRD would review the charitable organisations periodically to ensure that only those entities recognised as charitable organisations under IRO would be granted tax exemption. After the promulgation of the Reference Guide, education and publicity campaigns would be conducted to raise public awareness on the contents of the Reference Guide. In addition, efforts would be stepped up to remind the public to seek assistance from SWD or the Police if they came across dubious Charities.

13. Members expressed concern about the lack of measures to monitor fund-raising by mail, having regard to the rampant solicitation of donations by mail. They requested the Administration to consider amending Cap. 228 to cover fund-raising by mail. This would enable the public to identify, through the permit number printed in the appeal letters, whether the organisation soliciting the money was a bona-fide non-profit-making charitable organisation.

14. While the Administration agreed to consider the above suggestion, it pointed out that there would be practical difficulties. For example, it would be difficult to control a body outside Hong Kong which appealed to the public for donations by mail.

15. Mr LEUNG Yiu-chung queried the measures taken to ensure compliance with the requirement of limiting the fund-raising costs to not more than 10% of the gross proceeds, as specified in the Reference Guide, which was aimed at deterring the Charity from over spending on its operating expenses.

16. The Administration advised that having regards to the views received during the public consultation and the varied circumstances faced by individual Charities, an across-the-board ceiling on the administrative costs incurred as a percentage of the donation proceeds would not be specified in the finalised Guidance Notes. Instead, Charities would be encouraged to disclose for donors' reference a general return on investment ratio of their activities and the return and expenses figures in connection with their audited accounts. Such information would serve as a basis for the public to consider whether any future fund-raising activities should be supported.

#### Consideration factors for approving applications for organising fund-raising activities

17. The Administration advised that an applicant organisation must be a bona-fide charitable or non-profit-making institution exempted from tax under section 88 of Cap. 112. SWD must be satisfied with the integrity, management ability and track record of the applicant, as well as the need and purpose for organising the proposed fund-raising activity. The successful applicant was also required to produce an audited account by a Certified Public Accountant within 90 days after the fund-raising event, and publish the statements in one local English Language newspaper if the monies donated were to be spent outside Hong Kong.

18. Any non-compliance with the approving conditions and the adoption of unscrupulous practices in the course of fund-raising would be taken into account when assessing the applicant organisation's future applications for fund-raising activities.

#### Latest development

19. The Reference Guide which contains 21 best practices has been promulgated in November 2004 together with the updated Guidance Note on Internal Financial Controls for Charitable Fund-raising Activities (Guidance Note). The Guidance Note sets out advice in respect of the safe custody of cash, proper documentation of income and expenditure generated from charitable fund-raising activities, etc.

20. At the Panel meeting on 12 February 2007, members expressed concern on the malpractice of some charitable fund-raising activities, which had an adverse impact on the fund-raising activities organised by bona-fide welfare non-governmental organisations. Some members also considered that the requirements for registration as charitable organisations under section 88 of Cap. 112 were too relaxed.

21. The Administration will brief the Panel on the monitoring of charitable fund-raising activities at the meeting on 11 June 2007.

### **Relevant papers**

22. Members are invited to access LegCo's website at <http://www.legco.gov.hk> to view the minutes and relevant paper of the meetings of the Panel on Welfare Services held on 19 July 2004 and 12 February 2007.

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