



Civic Party Position Paper

In response to the Law Reform Commission Charitable Subcommittee consultation on Charities

On setting up a charity commission

The consultation had left out on the explanation of the formation of the charity commission. Yet, the committee has recommended not only to give this unknown commission the power to appoint additional trustee or directors of the charity; suspend or remove trustees, directors or officers of the charity, and taken over the property of charities in an official custodian. This power that given to the unknown method of formation charity commission has too much power to interfere in the normal running of any charity it deems to be mismanaged. (Recommendation 12)

Furthermore, the committee has recommended that the charity commission formed by unknown method, to have residual power to refuse to register organization as charities in certain cases, even where the organization has met the charity test. This residue power of the charity commission seems to be more like a dictatorship that refuse registration of charity that the commission "dislike" for whatever reason. This would be unreasonable and unjustified to have let any charitable organizations regulator to have this kind of power. (Recommendation 19)

Therefore, we strongly oppose in setting up a charity commission in this current situation.

On broadening of the definition of charities

The inclusion of promotion of human rights as part of charitable purposes is important, as it has been the case in many other countries cited by the committee.

The promotion of human rights as in English 2006 Act Section 2(2) and in Scottish 2005 Act 2. It is puzzling why promotion of human rights is being singled out for further discussion and not initially included in the Commission recommendations. (Recommendation 2)

On charities participation of political activities

Many charitable organizations which advocate for a fairer society or advocate for law reform to better protect the vulnerable groups would not help but participate in political activities.



As the committee has stated in paragraph 5.109, "an activity aimed at ensuring that an existing law is observed would fall under "campaigning", while an activity to preserve an existing piece of legislation, where a charity opposes its being repealed or amended, would fall under "political activity". By this type of definition, any organization that participate in abolition of slavery, or repeal law for racial segregation would not be eligible to be registered as charity in Hong Kong. We would recommend that the committee follows a more flexible approach as in "Aid/Watch Incorporated v Commissioner of Taxation".

We recommend to remove the word "solely" for charitable purpose and taken all the core purposes of the formation of charity as the whole. If the main purpose is for any charity is clearly fall within charity test, then the charitable status of this organization should remain intact.

The transparency of how charitable donation is being spent

While we understand the important of transparency of how donation is being spent, it should not be overly cumbersome for small charitable organizations as to add too much administration work for small organization that might have few or no staff at all.

The government has given tax payer money as donation for China's earthquake disaster relief. Yet very little reporting has done to how the billions of dollars is being spent.

We recommend allowing exemption for charitable organizations that have less than \$50,000 donation a year. (Paragraph 7.33) We also followed the line of the ombudsman 2003 recommendation to allow charitable organizations to self-regulate and leave it to the donors to give freely to the more transparent organizations.

On the public access to information on registered charitable organizations

After viewing the possibility of over-regulation of charitable organizations that might discourage the civil participations of people in helping to improve our society, we recommend to allow the different methods of registration as charitable organizations to remain unchanged.

As for the public access, as most charitable organizations that apply for tax exemption have to register under the IRD, we recommend to have a searchable website that allow the public to search for the forms submitted by the charitable organizations to the IRD. We could draw from experience on California, having a single standardized form filled by charitable organizations and place on a state run website sot that donors could easily access to their information.

On fundraising

The committee has singled out professional fundraisers as if it is a form of concerns for the public. It is up to the charitable organizations themselves to see if hiring professional fundraisers would benefit to the organizations or not. Compare to the professional fundraisers, the televised charitable shows might have a comparable higher cost in term of the fundraising budgets. We are just wondering why such expenditure for fundraising didn't get as much attention of the committee.



We have no strong recommendation for charities to review its fundraising budgets.

What the commission has missed

The committee did not address to the public concerns on charitable activities that might be deceiving in nature. Most of these activities are not done by any registered charitable organization, and the existing charitable organizations should not be suffered by some con men tricking the public.

A more thoughtful regulation should be taken place in regulating online fundraising activities and other fake fundraising.