

政府總部
民政事務局

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APPENDIX 14

**GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU**

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16 June 2017

Mr Anthony CHU
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

Dear Mr Chu,

Public Accounts Committee

**Consideration of Chapter 2 of the Director of Audit's Report No. 68
(the Audit Report)**

Monitoring of charitable fund-raising activities

In response to your letter dated 9 June 2017, I would like to provide the requested information below:

(c) The recommendations made by the Law Reform Commission (LRC) in its Report on Charities involve the duties of a number of Government bureaux and departments (B/Ds). The Home Affairs Bureau (HAB) has been assigned to co-ordinate inputs from relevant B/Ds to produce a response to LRC's recommendations for the Government's overall consideration. A chronology of the work done is at the **Annex**.

(d, e(iii))

Paragraph 6.2 in Chapter 2 of the Audit Report summarises four major deficiencies as regards the existing regulatory framework of

charities mentioned by the LRC, namely the out-dated definition of a charity; lack of a coherent system for the registration of charities; inconsistent standards or requirements on governance, accounting and reporting by charities; and limited control of charitable fund-raising activities.

To address these deficiencies, the LRC has made a number of recommendations which mainly include providing a statutory definition of “charitable organisations”; establishing and maintaining a register of charitable organisations by a single bureau or department; delegating the same bureau or department to be responsible for co-ordinating the work of regulating charitable organisations and charitable fund-raising activities which are now under the purview of different B/Ds; and enhancing some administrative measures on regulating and monitoring charitable fund-raising activities.

According to LRC’s original proposal, a single authority (for example, an independent charity commission) should be established to co-ordinate the regulation of charitable organisations, develop a registration system and implement the above measures. However, as pointed out by the LRC in its Report, the findings of the public consultation revealed that no consensus in the community had been reached on the establishment of a single authority. Many charitable organisations even objected to the proposal. In this regard, the LRC suggested that an independent charity commission should not be set up at this stage, and instead a register of charitable organisations be established and maintained by a single government department.

As mentioned in the Paper (R68/2/GEN9) submitted earlier on by the HAB, it would be a highly complicated issue for the existing government B/Ds to implement the measure of requiring charitable organisations to register in the absence of a new independent regulatory authority. Views and feedback of the public and various stakeholders should be taken into account. The measure also involves a considerable amount of integration work on, among others, policy co-ordination, resources allocation and even structural re-organisation.

Following the release of the LRC Report in December 2013, the HAB wrote to the relevant B/Ds on 20 January 2014, asking them

***Note by Clerk, PAC:** *Please see Appendix 15 of this Report for R68/2/GEN9.*

to consider the LRC's proposals. Later on 11 August 2015, a co-ordination meeting was convened to discuss with relevant B/Ds the approach to and the framework for regulation as proposed in the LRC Report. The HAB is now consolidating the views (including those further comments received after the co-ordination meeting) from relevant B/Ds for submission to the Government for overall consideration.

(a, b, e(i), e(ii), f, h)

Regarding the various administrative measures proposed by the LRC to enhance the regulation and monitoring of charitable fund-raising activities, the HAB will convene another meeting at the end of June and co-ordinate the departments concerned to further explore the feasibility of the measures. Those departments include the Efficiency Unit, the Food and Environmental Hygiene Department, the Home Affairs Department, the Lands Department, the Office of the Government Chief Information Officer and the Social Welfare Department (SWD). We shall examine how the regulation of fund-raising activities for charitable causes can be strengthened and the transparency of public fund-raising activities be enhanced under the existing mechanism. Apart from taking into account the recommendations from the LRC, we will make reference to the suggestions in the Audit Report for monitoring charitable fund-raising activities and the views of the Public Accounts Committee (PAC), which include:

Licence or Permit Application

- (1) to co-ordinate relevant B/Ds and examine the common requirements of the licences and permits, and explore the possibility of providing a one-stop service to facilitate licence applications for on-street fund-raising activities (i.e. Recommendation 9 in the LRC Report and paragraph 5.14(e) in Chapter 2 of the Audit Report);

Monitoring the approved charitable fund-raising activities held in public area

- (2) to study the feasibility of issuing the same badge to approved charitable fund-raising activities held in public area, so as to help the public identify whether the activities

have been issued with relevant permits or licences (recommendation of a PAC member);

- (3) to co-ordinate enforcement efforts on charitable fund-raising activities held in public places (i.e. the recommendation in paragraph 3.25(c) of Chapter 2 of the Audit Report);

Enhancing the transparency of charitable fund-raising activities

- (4) to explore the possibility of uploading financial reports or income and expenditure accounts relating to the approved charitable fund-raising activities onto “GovHK” upon completion of those activities or providing relevant hyperlinks on department websites for public scrutiny (i.e. recommendations in paragraphs 3.25(h) and 4.14(d) of Chapter 2 of the Audit Report);
- (5) to explore the possibility of upgrading the functions of the one-stop finder for charitable fund-raising activities currently performed on “GovHK” and enhancing the services of the existing 1823 Hotline to facilitate the search by the public for information on approved charitable fund-raising activities, as well as to respond to any public enquiries and complaints relating charitable fund-raising activities (i.e. Recommendation 10 in the LRC Report and the recommendation in paragraph 2.19(a)(iv) of Chapter 2 of the Audit Report);

Promoting the code of good practice

- (6) to conduct a review on the existing Reference Guide on Best Practices for Charitable Fund-raising Activities (the Guide) issued by the SWD to see if the Guide can be made applicable to more types of different charitable fund-raising activities, including the three types of activities that require a permit or a licence, as well as other new modes of fund-raising (i.e. Recommendation 12 in the LRC Report and the recommendation in paragraph 2.19(a)(iii) of Chapter 2 of the Audit Report); and
- (7) if it is shown in the findings that the Guide is applicable to

or can be amended to apply to more types of different charitable fund-raising activities, we will consider launching relevant promotional programmes to encourage charitable organisations to organise activities with reference to the best practices for charitable fund-raising activities. We will also step up promotion efforts in the community so that the public may refer to the Guide on these best practices to make easy assessment of the performance of charitable organisations in those activities and to have a better understanding of the rights and interests of donors (i.e. Recommendation 13 in the LRC Report and the recommendations in paragraphs 2.19(a)(i) and (ii) of Chapter 2 of the Audit Report).

After the meeting, the HAB will report to the PAC the outcome of the discussion and the relevant follow-up arrangements.

- (g) Regarding the legal advice of the Department of Justice on the “cy-près doctrine”, the HAB will give a reply separately.

Yours sincerely,

A handwritten signature in black ink that reads "Grace". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

(Grace LI)

for Secretary for Home Affairs

c.c.:

Director of Social Welfare

Director of Home Affairs

Director of Food and Environmental Hygiene

Director of Lands

Secretary for Financial Services and the Treasury

Director of Audit

Annex

Chronology of the co-ordination work of the Home Affairs Bureau on the views from relevant bureaux and departments in response to recommendations made by the Law Reform Commission (LRC)

Date	Main task	Related document(s)
9.2007	The LRC commenced a study on the issue of charities	
17.5.2012	The then Chief Secretary for Administration designated the Home Affairs Bureau (HAB) as the responsible bureau for co-ordinating inputs from relevant bureaux/departments (B/Ds) to produce a response to LRC's recommendations for the Government's overall consideration	Paragraph 6.5 in Chapter 2 of the Audit Report
12.2013	Publication of the LRC Report on Charities	R68/2/INFO6
20.1.2014	The HAB wrote to eight relevant bureaux and the Efficiency Unit (EU), asking them to consider the recommendations made by the LRC	Paragraph 6.8(a) in Chapter 2 of the Audit Report
mid-2014	Written comments from nine bureaux (Constitutional and Mainland Affairs Bureau, Education Bureau, Environment Bureau, Financial Services and the Treasury Bureau (FSTB), Food and Health Bureau, HAB, Labour and Welfare Bureau (LWB), Development Bureau and Security Bureau) and eight departments (Agriculture, Fisheries and Conservation Department, Companies Registry, Efficiency Unit, Food and Environmental Hygiene Department (FEHD), Home Affairs Department (HAD), Hong Kong Police Force (HKPF), Inland Revenue Department and Social Welfare Department (SWD)) were received. Interviews with individual B/Ds were arranged for further understanding	Views of various B/Ds are concluded on pages 25 to 43 of R68/2/GEN1
26.6.2015	B/Ds were invited to attend an inter-departmental meeting and comment on a discussion note prepared by the HAB	Appendix A

Date	Main task	Related document(s)
20.7.2015	The date and time of the first cross-departmental meeting were confirmed	Appendix B
11.8.2015	The first inter-departmental meeting was held	For the attendance list, please see page 7 of R68/2/GEN1 For the discussion note, please see pages 9 to 43 of R68/2/GEN1
24.8.2015	An email was sent to the B/Ds present at the meeting, inviting submission of supplementary information and further comments on the issues discussed at the first inter-departmental meeting	Pages 45 to 55 of R68/2/GEN1
2.10.2015	The LWB submitted further comments on the issues discussed at the first inter-departmental meeting	Pages 57 to 68 of R68/2/GEN1
19.9.2016	Relevant departments (FEHD, HAD and SWD) were invited to attend a meeting to discuss the formulation of measures to enhance the transparency of charitable fund-raising activities	Pages 104 to 106 of R68/2/GEN1
21.9.2016	The date and time of the second inter-departmental meeting were confirmed	Pages 103 to 104 of R68/2/GEN1
22.9.2016	An email was sent to the Department of Justice (DoJ) for advice on matters ranging from the feasibility of LRC's recommendation on introducing legislation similar to the English statutory model of the "cy-près doctrine" to the relationship between the doctrine and DoJ's role as the protector of charities	Appendix C
29.9.2016	The Audit Commission wrote to brief the HAB on the scope of value for money audits (yet no specific items provided) and to seek the co-operation of the Bureau	Appendix D

Date	Main task	Related document(s)
30.9.2016	An email reminder was sent to B/Ds, asking them to submit further comments on the issues discussed at the first inter-departmental meeting	Pages 69 to 70 of R68/2/GEN1
4.10.2016	The second inter-departmental meeting was held	For the attendance list, please see page 99 of R68/2/GEN1
5.10.2016	An email was sent to the FEHD, the HAD and the SWD setting out the gist of discussion at the second inter-departmental meeting and the follow-up actions agreed	Pages 101 to 103 of R68/2/GEN1
5.10.2016	An email was sent to the EU to explore the feasibility of strengthening the 1823 services	Pages 107 to 108 of R68/2/GEN1
11.10.2016	The EU confirmed that it had no further comments on the issues discussed at the first inter-departmental meeting	Pages 69 to 70 of R68/2/GEN1
11.10.2016	The EU gave a reply on the feasibility of strengthening the 1823 services	Page 107 of R68/2/GEN1
18.10.2016	The HKPF confirmed that it had no further comments on the issues discussed at the first inter-departmental meeting	Page 71 of R68/2/GEN1
10.2016	A preliminary discussion with the Office of the Government Chief Information Officer on the feasibility of strengthening the operation of the GovHK platform	No official written records but mentioned on page 119 of R68/2/GEN1
31.10.2016	HAD provided views on measures to enhance the transparency of charitable fund-raising activities	Pages 112 to 113 of R68/2/GEN1P
31.10.2016	HAD confirmed that it had no further comments on the issues discussed at the first inter-departmental meeting for the time being	Page 72 of R68/2/GEN1
1.11.2016	The HAB met with the Audit Commission to discuss the specific scope of the value for money audit and the provision of written records necessary for auditing	No official written records

Date	Main task	Related document(s)
2.11.2016	The SWD made comments on measures to enhance the transparency of charitable fund-raising activities	Pages 114 to 116 of R68/2/GEN1
16.11.2016	The FEHD made comments on measures to enhance the transparency of charitable fund-raising activities	Pages 109 to 111 of R68/2/GEN1
22.12.2016	The FSTB submitted further comments on issues discussed at the first inter-departmental meeting	Pages 73 to 87 of R68/2/GEN1
5.1.2017	The DoJ made a reply about the LRC's recommendation on the "cy-près doctrine"	
14.2.2017	An email summarising comments on measures to enhance the transparency of charitable fund-raising activities and recommending follow-up actions was sent to the FEHD, the HAD and the SWD	Pages 117 to 121 of R68/2/GEN1
3.3.2017	The SWD made further comments on measures to enhance the transparency of charitable fund-raising activities	Pages 117 to 121 of R68/2/GEN1
9.3.2017	An email was sent to the SWD to clarify the points made by the SWD and to invite the FEHD and the HAD to make further comments	Pages 122 to 123 of R68/2/GEN1
15.3.2017	The HAD made further comments on measures to enhance the transparency of charitable fund-raising activities	Pages 122 to 128 of R68/2/GEN1
9.5.2017	The FEHD made further comments on measures to enhance the transparency of charitable fund-raising activities	Pages 129 to 135 of R68/2/GEN1
9.5.2017	The FEHD submitted further comments, in response to the recent legal advice they have sought, on issues discussed at the first inter-departmental meeting	Pages 88 to 98 of R68/2/GEN1

***Note by Clerk, PAC:** *All related documents not attached.*