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Panel on Welfare Services

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 24 August 2011**

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 ("the Panel") on the subject.

Existing regulatory regime

2. At present, there is no statutory definition of what constitutes a charity or a charitable purpose, and no specific legislation on the control of the charitable fund-raising activities.
3. Under section 88 of the Inland Revenue Ordinance (Cap. 112) ("IRO"), the Inland Revenue Department ("IRD") grants tax exemption to charitable institutions or trusts of a public character.
4. As regards the regulation of on-street fund-raising activities, the Director of Social Welfare 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. Under section 22 of the Gambling Ordinance (Cap. 148), an organisation must submit prior application to the Commissioner for Television and Entertainment Licensing for a Lottery Licence for the conduct and sale of lottery tickets on public streets. Charitable bodies conducting sale of goods in public places for raising funds have to obtain temporary hawker licences from the

Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132), and the Food and Environmental Hygiene Department would not consider any applications for commercial or profit-making purposes.

5. According to the Administration, 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

6. 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

7. 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.

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

Public register of Charities

9. At its meeting on 19 July 2004, the Panel was briefed on the Administration's plan to enhance the monitoring of charitable fund-raising activities. While expressing support for drawing up a Reference Guide, some members 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 that 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 of 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. According to the Administration, all fund-raising activities approved by SWD and TELA were publicised via the media or uploaded onto the respective websites of the departments. An applicant organisation must be a bona fide charitable or non-profit-making institution exempted from tax under section 88 of IRO. 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. 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. Furthermore, 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. Concern was also raised about 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 regard 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 Note. 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.

Inter-departmental co-ordination in the vetting of applications for charitable fund-raising activities

17. At the Panel meeting on 11 June 2007, members expressed concern about the increasing on-street charitable fund-raising activities. Members noted with concern that applications for different types of charitable fund-raising activities were subject to the approval of different departments, i.e. SWD would only approve those locations which the Director of Lands had no objection for temporary occupation by the organisation; in considering the application, the Director of Lands would also seek the views of the Commissioner of Police, the Commissioner for Transport and the Director of Highways where necessary. Members urged the Administration to further strengthen inter-departmental co-ordination in the vetting of applications so that there would not be too many fund-raising activities taking place at the same location concurrently.

18. To safeguard public interests, members took the view that the Administration should step up measures, such as conducting surprise checks on the spot by the enforcement departments/authorities, to ensure that organisations carrying out charitable fund-raising activities on streets were bona fide charitable organisations. Members were concerned that any institution or trust could apply to IRD for recognition of its charitable status under section 88 of IRO. Members considered that a review should be conducted with a view to bringing the monitoring of public charitable fund-raising activities under a designated department. In addition, the Administration should enhance the transparency and accountability of such activities, in particular to check whether the income generated was spent for the designated purpose. To this end, consideration could be given to making the requirements under the Reference Guide and Guide Note mandatory.

19. Members noted the Administration's explanation that to qualify for tax exemption for the purpose of section 88 of IRO, IRD would assess whether the objects for which the institution/trust was formed were exclusively charitable and of a public character, and whether the activities of the institution/trust were compatible with its charitable objects. While there was no statutory definition of the term "charitable", the law defining the legal attributes of a charity was based upon case law developed through court decisions. These included relief of poverty, advancement of

education, advancement of religion, etc. At the request of members, the Administration had provided a list of 1 125 charitable organisations that had been granted tax exemption status under section 88 of IRO from 1 June 2004 to 31 May 2007.

20. To facilitate identification of bona fide fund-raising activities, the Administration advised that PSPs were issued to properly licensed charitable fund-raising activities. Potential donors could request the fund-raising organisation to produce PSPs for verification. Members of the public could also check out the list of charitable fund-raising activities issued with PSPs uploaded on the homepages of SWD and the Electronic Service Delivery or make enquiries through SWD hotlines, and report to the Police when they had doubts about the legality of the fund-raising activities.

Consultation Paper on Charities

21. In June 2007, the Chief Justice and the Secretary for Justice asked the Law Reform Commission ("LRC") to review the law and regulatory framework relating to charities in Hong Kong and to make such recommendations for reform as might be considered appropriate. In September 2007, a sub-committee was appointed to review the subject. The Charities Sub-committee issued the Consultation Paper on Charities in mid-June 2011 and staged a three-month public consultation until mid-September 2011 to elicit public response and comment on its preliminary recommendations. LRC will collect public views for the drafting of the final report. The Consultation Paper and the Executive Summary are available at LRC's website:

http://www.hkreform.gov.hk/en/docs/charities_e.pdf and
http://www.hkreform.gov.hk/en/docs/charities_se.pdf.

Relevant papers

22. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on monitoring of charitable fund-raising activities

Committee	Date of meeting	Paper
Panel on Welfare Services	19 July 2004 (Item IV)	Agenda Minutes
Panel on Welfare Services	11 June 2007 (Item V)	Agenda Minutes CB(2)472/07-08(01)
Legislative Council	1 June 2011	Official Record of Proceedings Pages 52 - 65

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