
Charity Governance in Hong Kong

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Introduction

Charities recognised by the Inland Revenue Department (the “**IRD**”) are exempted from tax. The IRD, however, merely reviews and monitors the tax-exempt statuses of charities and maintains a list of tax-exempt charities. It is not a charities regulator and Hong Kong lags behind other common law jurisdictions such as England and Wales and Singapore in this regard.

In light of the current framework, the Hong Kong Social Welfare Department (the “**SWD**”) issued a non-binding guideline on charitable fund-raising (the “**Guideline**”)¹. Charities are encouraged to comply with the Guideline on a voluntary basis to enhance accountability and transparency and to best prepare for when Hong Kong finally introduces binding charities governance regulations, which could codify the Guideline.

This note summarises the main features of the Guideline.

I. Fundraising Practices of Charitable Organisation

Before engaging in a fund-raising activity, charities should ensure that they have secured the required permit/licence for the fund raising from the relevant authority and comply with its terms. For example, flag selling is a common type of fund raising activity in Hong Kong and a charity should apply for, and be allocated, flag days by the SWD prior to engaging in flag selling.

Fundraising Marketing

All marketing and advertising materials must be truthful and accurately describe the charity’s background, its charitable objects, activities and the intended use of solicited funds against its charitable objects. Fund-raising communications should not contain material omission, exaggeration of fact, misleading photograph, nor any other information that would create a false impression or misunderstanding or mislead third parties in any way. Charities should also respect prospective and existing donors’ privacy and should limit the frequency of their solicitation via any means to an acceptable level.

Fundraisers Remuneration

Charities in Hong Kong may engage voluntary and/or paid fundraisers for the solicitation of donations. Paid fundraisers should be remunerated by a salary or retainer rather than by fees or commissions based on the number of donors secured or the amount of funds raised.

Successful fund raising should be built upon the reputation of the charity, its long standing relationship with donors and the appeal of its charitable causes. Charities should avoid a conflict of interest between any of its fund raising activities and its directors and staff. It should disclose any actual, potential or perceived conflict of interest to its prospective and existing donors. Charities should remunerate fund-raising agents/professionals with fees independent of the fund-raising outcome to maintain the integrity of charities as perceived by the public.

Safeguarding Fundraising Proceeds

Charities should have guidelines and measures in place to ensure good custody of fund-raising tools, such as donation boxes, flag bags and lottery tickets. For example, donation boxes should be serial-numbered, with security safeguards and with the name of the charitable organisation imprinted. Independent persons or volunteers should be appointed to witness the opening of donation boxes and the amount of cash donations should be recorded. In the event that any fund-raising tool is lost, the charity should timely report to the police and the relevant authority from which it received permit/licence for the activity.

¹ Hong Kong Social Welfare Department, “Good Practice Guide on Charitable Fund-raising” (August 2018). Available at: https://www.gov.hk/en/theme/fundraising/docs/good_practice_guide.pdf

Handling of Donor's Information

The handling of donor's personal data poses data privacy issues to charities in respect to its collection, accuracy, use, retention, security access and correction. Particular attention should be given to the donor's list which contains the donor's personal information such as their name and contact details. The *Personal Data (Privacy) Ordinance* (Cap. 486 of the Laws of Hong Kong) shall be complied with if the charity transfers or discloses donors' information to third parties. Charities shall not sell their donor's list in any circumstances. The governing board of the charity should beware of its continuous duty of confidentiality after the professional relationship with a prospective or existing donor has ended.

II. Financial Accountability of Charitable Organisation in Hong Kong

A charities' financial affairs should be conducted in a manner consistent with the applicable legal and professional requirements. The governing board of a charity must make sure that the accounts are properly maintained. It also has a duty to ensure that the charity remains committed to its charitable mission. The charity should not donate money or other resources or use funds for activities which depart from or contravene its own charitable objects or from the specific project for which the donor donated. The charity should have in place a policy to handle surplus funds raised for a specific project or funds that has not been used for a specific project and should make such policy clear to its prospective donors in fund raising appeals.

Financial Reporting of Charities

Financial statements should provide information and breakdown on income and disbursement of any kind to enable prospective and existing donors to make informed decisions. The following information should be disclosed:

- (i) The total amount of donations raised (with or without public appeal);
- (ii) The total expenses from fund-raising events (such as salaries, allowances and expenses);
- (iii) The total administrative expenditures of the fund-raising activities (including gifts to other charities);
- (iv) Governmental grants and contributions (to be accounted for separately from other donations);
and
- (v) Ratio of costs to total revenue.

Separate financial statements should be prepared for well-defined and high value projects or for projects involving public appeal within ninety days of completion of the project or on an annual basis if the project lasts for more than a year. These financial statements should preferably, in addition to the details set out above, include how the proceeds from the project are used.

III. Donor's rights of Hong Kong Charitable Organisation

All donors shall be issued with an official receipt for the amount donated. The governing board of a charity shall have the liberty to set the minimum amount for the automatic issuance of receipt on a donation. Receipt for any donation of an amount less than the minimum amount will only be given upon request. Where an appeal is made for funds for general use towards the attainment of the charity's objects, it is good practice to illustrate with examples of the charity's work to achieve its objectives.

Prospective and existing donors are entitled to examine the following information in relation to the charity's operations:

- (i). The charity's constitutional documents, such as articles of association and club rules;
- (ii). The charity's most recent annual report, audited financial statements and charitable service record;
- (iii). Documents confirming the charity's tax-exempt status under section 88 of the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong);
- (iv). A list of the names of members of the charity's current governing board(s);
- (v). Non-financial information regarding the use of donations, including details or a summary of projects/activities organised or services delivered to meet its charitable objectives and any relevant details (such as performance achievements of the stated objectives); and
- (vi). A "Donor Charter" that informs prospective and existing donors of its policy on donation solicitation and acceptance of donations, as well as donor's rights.

Charities are obliged to reply promptly to requests for the above information. By disclosing the above information to prospective and existing donors, the transparency of charities and the public's understanding and confidence in them will be enhanced.

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This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.