

The Charities sub-committee of the Law Reform Commission released a consultation paper today (16 June 2011) proposing that a wide ranging regulatory regime for charities should be introduced in Hong Kong and that a charity commission should be set up as the regulatory body for charities.

The paper points out that the need for greater monitoring of charitable organisations has been widely discussed by the community in recent years, and it has become a matter of major public interest that a system should be put in place to both regulate charities and enhance their transparency.

At present, there is no comprehensive legal framework for regulating charities in Hong Kong. An entity recognised by the Inland Revenue Department as a charitable institution or trust of a public character is entitled to tax exemption, but there is limited statutory definition of what constitutes a "charity" and the department is not responsible for registering charities or for monitoring their conduct. There is also only limited oversight under the current system, and many charitable organisations are under no statutory requirement to submit annual reports or accounts.

The chairman of the Charities sub-committee, Mr Bernard Charnwut Chan, said that it is important to have an effective regulatory regime for charities in Hong Kong, both to build public trust and confidence and to promote good governance and management practice within charitable organisations. He said that the sub-committee had been mindful throughout its deliberations of the need, on the one hand, to ensure the effective, fair and proportionate regulation of charities, while on the other, to maintain as far as possible the independence and autonomy of the vibrant charity sector.

As one of its key proposals, the sub-committee recommends that there should be a clear statutory definition of what constitutes a charitable purpose, and recommends a number of specific heads to be included within this statutory definition.

Another major recommendation is that a charity commission should be established in Hong Kong as the regulatory body for charities. This proposed charity commission should be vested with various functions and powers to perform its duties, such as the power to maintain and administer a register of charities, to monitor compliance by charities with their legal obligations and to vet applications for approval in relation to fundraising activities.

The sub-committee recommends that charity trustees of a registered charity should be subject to certain duties, such as the duty to declare any conflicts of interest and personal interests and to keep proper accounting records of the charity which are sufficient to explain all the charity's transactions. These records should be retained for at least seven years. Registered charitable organisations should be required to file an annual activity report and financial statements with the proposed charity commission and these should be accessible to the public.

The sub-committee further recommends that the proposed charity commission should be vested with powers to investigate any alleged mismanagement and

misconduct of a charitable organisation with regard to its charitable objects. The charity commission should be vested with powers relating to enforcement and remedies in cases of non-compliance by charities with their legal obligations under charity law, such as the power to de-register a charity from the register of charities. To protect the property of charities in cases of misconduct or mismanagement in the administration of charities, the charity commission should have the power to appoint additional trustees or directors of the charity and suspend or remove trustees, directors or officers of the charity.

In terms of the regulation of fundraising activities, the sub-committee recommends that:

- (1) the proposed charity commission should be the regulatory body to process and grant all permits and licences necessary for charitable fundraising, and to monitor the use of funds raised by such activities;
- (2) in order to provide this *"one-stop shop"* service, the charity commission should be vested with the powers and duties currently exercised by the Social Welfare Department, the Food and Environmental Hygiene Department and the Television and Entertainment Licensing Authority in relation to authorising charity fundraising activities in public places and those involving lotteries; and
- (3) the charity commission should be responsible for enabling public access to information relating to fundraising activities and for providing an enquiry response service to the public.

The sub-committee emphasises that the recommendations in the consultation paper are intended to facilitate discussion and do not necessarily represent the sub-committee's final conclusions.

Mr Chan said that the sub-committee would welcome views, comments and suggestions on any issues discussed in the consultation paper, and in particular on the list of questions set out in the "Invitation to comment" section. The consultation period will last until 16 September 2011.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The consultation paper can also be accessed on the Commission's website at www.hkreform.gov.hk.

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