

Executive Summary of the Investigation Report on the Monitoring of Charitable Fund-Raising Activities

Background

Fund-raising for charity is part of Hong Kong's way of life. In view of the considerable amount of money involved in fund-raising activities, there has been community concern from time to time over whether such activities are properly run and the donations responsibly used. For public interest, The Ombudsman decided in March 2002 to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397 into the monitoring of charitable fund-raising activities.

The Investigation

2. This direct investigation examines the mechanism for monitoring charitable fund-raising activities by Social Welfare Department (SWD) and Television and Entertainment Licensing Authority (TELA), assesses the adequacy and effectiveness of such mechanism and the need for improvement.

Charitable Institutions

3. Under section 88 of the Inland Revenue Ordinance, Cap. 112, the Inland Revenue Department grants tax exemption to charitable institutions or trust of a public character. Some of these charities are established by legislation: for instance, the Tung Wah Group of Hospitals (Cap. 1051) and Po Leung Kuk (Cap. 1040). Subject to their own legislation, these charitable institutions have to account for the use of all their proceeds. There are some non-governmental organisations that are subvented by the Government to provide services for our community.

4. Apart from those statutory bodies and non-governmental organisations receiving subventions from the Government, most of the charitable organisations are allowed to operate autonomously under their governing bodies according to their own rules and regulations.

Mechanism for Monitoring

5. On grounds of public order, for an activity to be held in a public place (mainly flag days and general charitable fund-raising¹), a **public subscription permit** from SWD must first be obtained under section 4(17)(i) of the Summary Offences Ordinance, Cap. 228. On the other hand, for fund-raising through lotteries², a **licence** is required from TELA in accordance with section 22(1)(a)(i) of the Gambling Ordinance, Cap. 148.

6. However, Government control does not cover all charitable fund-raising activities. For instance, activities such as charity auctions, balls, concerts, dinners, walks, film premiere, shows in mass media, request for donations by mail, advertisements or phone-in arrangements,

¹ "General charitable fund-raising" includes charity sale of badges, tokens or similar articles; door to door donations, especially in public housing estates; setting up donation boxes in stationed counter; charity ride; and passing of offering bags.

² "Lottery" is defined in the Gambling Ordinance to include a raffle, a sweepstake, tse fa (字花), hung piu (紅票), po piu (舖票) and any game / scheme that involves guessing the results of future events and distributing prizes by chance.

which involve appeal to the public, do not require permit or licence.

Limitations of the Laws

7. The requirement for public subscription permit in the Summary Offences Ordinance aims to control nuisance or to maintain order from charitable fund-raising in public places while the purpose of the Gambling Ordinance is to restrict gambling activities.

8. Both SWD and TELA require from applicants, as a condition for approval, audited accounts of the fund-raising event. Both departments rely on these audited accounts to guard against unscrupulous use of the proceeds raised through these fund-raising activities.

9. In imposing requirements for accounting and transparency on permit or licence applicants, both departments consider themselves to have the authority to do so. However, SWD and TELA cannot impose conditions *ad infinitum* when issuing public subscription permits and lottery licences. Moreover, these administrative conditions are confined only to the specified fund-raising activities, the operations of the organisation, other than those from SWD/TELA approved activities, fall outside the control mechanism of both departments.

Observations and Opinions

Inconsistent and Incomplete Control

10. Government monitoring of charities ranges from stringent statutory overall control to limited scrutiny of specified activities only or even total lack of scrutiny. For those established and governed by their own legislation, control is clear and comprehensive. Some non-governmental organisations receiving subvention are regulated by their respective Bureau/department. Contrary to popular perception, most other charitable organisations operate autonomously. So long as they do not raise funds in public places or run activities with an element of chance, they are not subject to any Government control over the amount of charitable donations received or the disposal of such funds.

11. For the many charitable organisations which do organise fund-raising activities under permit and sell lottery tickets from time to time on licence, Government monitoring is still limited only to the proceeds raised through those specific activities. Both SWD and TELA display a commendable sense of duty in exercising control over the use of proceeds from fund-raising activities insofar as their respective legislation permits. However, such scrutiny can only be partial and limited.

Insufficient Transparency and Accountability

12. Some in our community expect Government to monitor each and every fund-raising activity to prevent malpractices : this is not realistic. Another body of community opinion suggests total non-intervention by Government: donors' pick the beneficiaries of their choice and rely on the reputation of the charities concerned. This involves a risk of unscrupulous or fraudulent fund-raisers passing off as established and responsible charities. Since charities not conducting lotteries or other fund-raising activities in public places are not required to account for the use of their proceeds, donors have difficulty knowing how their chosen charities operate and

whether their contributions have been used for the purposes “advertised”.

13. Given the world trend to self-regulate and Government's policy to reduce public expenditure, it would be unrealistic to expect Government to allocate additional manpower resources to assume a more proactive role in the supervision of charitable organisations. However, total disengagement would not be in the public interest.

14. We accept that ultimately individual donors decide for themselves whether and what charitable causes and which charitable organisation they wish to support. We believe that a case could be made for dispensing with the current fragmented attempt at supervision by the Government and to replace it by a voluntary regime of public disclosure. The objective of the new regime is to facilitate the dissemination of essential information about the management, operation and financial accountability of charities, so that the donating public will be able to make informed decisions on what worthwhile charities they wish to support.

15. Conceptually, this regime can consist simply of an office acting as depository of, and making available at reasonable times for public inspection, documents filed by charitable organisations on a voluntary basis. For public information, it may annually display prominently *in situ* a list of those organisations which have complied with the requirements for public inspection.

16. While we see room for improvement in the current regime of supervision over charities, we recognize that it is essentially a policy matter whether and in what form improvement should be pursued. Our observations aim to generate discussion in the public arena and deliberation with Government.

Conclusions

17. On the basis of our investigation, this Office has come to the following conclusions -

- (a) existing Government control of charitable fund-raising is confined to activities and not the organisations, and even then, to mainly flag days and lotteries only;
- (b) control does not cover all charitable bodies or even all charitable fund-raising activities;
- (c) Government monitoring of charities is partial and patchy, fragmented and ineffective; and
- (d) the present legislative provisions cannot effectively safeguard the public against unscrupulous or irresponsible fund-raisers.

Recommendations

18. The Ombudsman has made recommendations as follows –

For SWD and TELA

Short to Medium Term

Code of Practice

- (i) to draw up a Code of Practice on good administration and management for reference of charities by requiring them, *inter alia*, to prepare annual reports, maintain responsible accounts and make available financial records for public inspection and Government scrutiny on fund-raising appeals;
- (ii) to publish the Code of Practice for community information to facilitate identification of responsible and reputable fund-raising organisations;
- (iii) in the light of (i) and (ii), to review the need or otherwise for imposing conditions on public subscription permit and lottery licence applicants;

Enhance Transparency and Accountability

- (iv) SWD to consider maintaining, for public inspection, a central register of charities which comply with the requirements under the above Code of Practice;
- (v) to display *in situ* annually the names of the charities above for general information as a guide to their bona fides;
- (vi) to introduce a scheme for monitoring the bona fides of those charities seeking to be placed on the central register at (iv), e.g. through complaints;

For the Administration

Longer Term

- (vii) to review the adequacy and appropriateness of the present Government policy and practices on monitoring charities in general and their fund-raising activities in particular;
- (viii) to consider the pros and cons of :
 - fuller Government control of charities by means of registration; and
 - reliance on charities self-regulating in line with world trend; and
- (ix) to consider mechanism for deterring abuse and penalties for

such acts.

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