

LRC releases report on charities

The following is issued on behalf of the Law Reform Commission:

The Law Reform Commission (LRC) released a report today (December 6) proposing that all charitable organisations should be subject to the requirement of registration. The proposal was put forward after careful and thorough consideration of the responses to the Charities Sub-committee consultation paper.

The LRC recommends that the list of registered charitable organisations should be established and maintained by a government bureau/department to be determined by the Administration and that this list should be available for public inspection.

At present, there is no formal, established registration system for charitable organisations in Hong Kong and no specific government authority has overall responsibility in this area. The lists of charities, such as the list of charities exempted from tax under section 88 of the Inland Revenue Ordinance (Cap 112), is not a comprehensive and conclusive list of all the charities in Hong Kong and it is not compulsory for charities to have their names placed on this list. With the lack of a comprehensive and conclusive list of charities, members of the public are unable to ascertain the charitable status of an organisation in all cases. This situation has given rise to growing concern, given both the large number of organisations involved and the enormous amounts of money collected. With the general support from the public, the LRC proposes that all charitable organisations which (1) solicit donation of cash or its equivalent from the public and/or (2) have sought tax exemption should be subject to the requirement of registration.

The Chairman of the Charities Sub-committee, Mr Bernard

Charnwut Chan, said that given the feedback from the public during the consultation, and the many concerns expressed by stakeholders, the LRC considers that it would be prudent not to recommend the setting up of a charity commission at this time due to the apparent lack of consensus among the public on this issue. The LRC believes that the community needs more time to discuss the concept of a charity commission, particularly in light of the polarised views generated from the consultation exercise.

In the interim period, the LRC feels that its objectives could be best achieved by the implementation of the expedient administrative measures recommended in this report, as these measures would improve the transparency and accountability of charities and thus provide better safeguards to the public.

The LRC however suggests that it should be a long-term goal for the Administration to set up a charity commission upon review of the impact and effect of the implementation of the recommendations made in this Report.

As one of its key recommendations, the LRC 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. After considering public responses, "the advancement of human rights, conflict resolution or reconciliation" is included in one of the heads of statutory definition of charitable purpose.

For the purpose of improving the existing framework for governance, accounting and reporting by charities, the LRC has made a number of recommendations in this area.

The LRC recommends that a set of specifically formulated financial reporting standards should be adopted for charities in Hong Kong. The Administration should work with the professional accounting body/bodies to formulate this

standard.

The LRC recommends that filing requirements should be imposed by government bureaus/departments on charitable organisations in their applications for charitable fundraising licences or permits.

The Administration should ensure that tax-exempt charities make information about their operations available to the public by publishing certain documents, such as their financial statements and activities' reports, on their websites.

In terms of enforcement action for non-compliance with filing and disclosure requirements, the LRC recommends that the Administration should designate a government bureau or department to be responsible for enforcement action in cases of non-compliance with the filing and disclosure requirements recommended in the report that should apply to charitable organisations.

Another major area covered in this report is charitable fundraising. The LRC recommends that a standardised application form setting out some common basic requirements should be adopted for approval in respect of different types of charitable fundraising licence or permit applications. Such standardised permit conditions would include the requirements for the disclosure of matters, such as the objective of the charitable fundraising, the use of the funds collected, and the charity's accounts for the most recent accounting year.

The LRC recommends that for all forms of charitable fundraising activities, the registration number of any charitable organisation involved in the activities should be prominently displayed on any related documents, or displayed on any means through which appeals for charitable donations are made (such as solicitation leaflets). For charitable

fundraising activities via the Internet or other electronic means, the registration number of any charitable organisation involved in the activities should be prominently displayed on the webpage or message transmitted by electronic means through which appeals for charitable donations are made. For charitable fundraising activities involving face-to-face solicitation of pledges from donors for regular donations, the registration number of any charitable organisation involved in the activities should be prominently displayed on any related documents through which solicitation for regular charitable donations is made and in booths or counters set up for such purpose.

Furthermore, the LRC suggests that co-ordinated effort by government bureaus or departments should be made by setting up a platform of co-ordination in dealing with applications for charitable fundraising licences among the different departments responsible for the licensing of charitable fundraising activities.

For the purpose of facilitating good practice, the LRC considers that instead of imposing a set of mandatory codes of practice, non-statutory codes of good practice would have a positive effect on the maintenance of standards and discipline among charities. The LRC recommends that charitable organisations should be encouraged to work with institutions/organisations to facilitate good practice and to improve co-operation between charitable organisations and the Government. Good practice guidelines should be issued by a co-ordinating government bureau or department in relation to aspects of the protection and respect of donors' rights and privacy, the contracting of services of professional fundraisers and the recruitment of elderly, the disadvantaged and disabled persons in soliciting donations on the street.

The LRC believes that public scrutiny is an effective monitor against the impropriety of fundraising activities. It is important that the Government should take on a leading

role through public education to enhance public awareness of charitable organisations and their operations, as well as the rights and duties of donors. The LRC therefore recommends that the Administration, through the co-ordinated efforts of government bureaus and departments, should engage in more public education on how to become a smart donor and on matters relating to charitable fundraising activities. Such efforts should be synchronised among these government bureaus and departments. Furthermore, the function of the Government's existing 1823 Call Centre, being a centralised hotline, should be enhanced, or a new telephone hotline should be set up, for answering public enquiries and receiving complaints in relation to charitable fundraising activities.

Copies of the report are available on request from the Secretariat of the Law Reform Commission at 20/F, Harcourt House, 39 Gloucester Road, Wan Chai, Hong Kong. The report can also be accessed on the website of the LRC at www.hkreform.gov.hk.

Ends/Friday, December 6, 2013