



**Public Consultation on
Monitoring Charitable Fund-raising Activities**

**Social Welfare Department
August 2003**



The Proposed Reference Guide for Charities on Best Practices for Fund-raising Activities and Public Register

Purpose

The Government is now conducting public consultation on a new proposed mechanism to help monitor charitable fund-raising.

Background

2. Under Section 88 of the Inland Revenue Ordinance, Cap.112, the Inland Revenue Department grants tax exemption to charitable institutions or trusts of a public character. While there is no legislation specifically to control charitable fund-raising activities, on public order ground the Director of Social Welfare issues permits under Section 4(17)(i) of the Summary Offences Ordinance for any collection of money or sale or exchange for donation of badges, tokens or similar articles for charitable purposes in public places. The Commissioner for Television and Entertainment Licensing issues licences under the Gambling Ordinance for the conduct and sale of lotteries.

3. The scope of control of the permits and licences mentioned above does not cover charitable fund-raising activities appealing to the public for donations in various other forms (e.g. balls, concerts, dinners, walks, premieres, shows, appeals by mail/phone/advertisement/mass media, etc) or conducted in places otherwise than those specified in the Ordinances.

4. There have been occasional calls from the public, the Director of Audit, the Ombudsman and the LegCo Members for greater transparency and accountability with regard to the raising and disposal of funds for charitable purposes.

5. One suggestion expressed over the years is to require Government to monitor each and every fund-raising activity to prevent malpractices by way of,



for example, expanding the scope of the aforementioned Permit to cover all fund-raising activities. This is however unrealistic. Not only would this incur substantial manpower and resources for the Government, it would entail additional administrative costs and onerous bureaucratic requirements on the fund-raisers, which may in turn stifle any goodwill to raise funds in support of a worthy cause. In view of the large number of organisations and the extensive activities involved, the effectiveness of a comprehensive control system is doubtful.

6. 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 however does not address the complaint of organisations with doubtful identity or status appealing to the public for funding support as donors have little ready means to verify the identity of the organisations. It might also be detrimental to the less well-known charities as in the absence of a system of verification, donors may tend to support the larger charities.

Proposal

7. After careful consideration of the relevant factors and to strike the proper balance, the Government considers it desirable to enhance administrative measures to work out a voluntary system on a self-regulatory basis. The system aims to enable donors to make an informed choice when making donations or to check about the identity or status of the fund-raising body when in doubt. This approach has been endorsed by the Social Welfare Advisory Committee and is consistent with the Ombudsman's recommendations published in February 2003.

8. The Social Welfare Department (SWD) has been tasked to work out and administer the proposed system which is now outlined in the Enclosure, acting on the advice of the Lotteries Fund Advisory Committee. In summary, a Reference Guide for Charities on Best Practices for Fund-raising Activities (the Reference Guide) would be drawn up. The Reference Guide will include best practices in the areas of donors' rights, fund-raising practices and accounting/



auditing requirements to meet standards of transparency and public accountability. Charities which *voluntarily* undertake to comply with the provisions of the Reference Guide may apply to have their names included in a Public Register maintained by SWD, which would be posted on the SWD website for information of the general public. Given the voluntary nature of the system, SWD would not seek to enforce the provisions in the Reference Guide in each and every charity on the Public Register. Instead, SWD would consider complaints against Charities on the Public Register of contravening the Reference Guide. Where a complaint is substantiated, SWD may consider removing that charity's name from the Register.

9. Compared to an expanded statutory licensing and control scheme, which carries the implications of creating an onerous burden on the charities and the licensing authority and runs the risk of stifling such non-government initiatives to support the community, the proposed approach is preferred, at least for an initial period. This is regarded as a gradual and progressive approach to address public concern. The mounting of a public register that is readily accessible for charities meeting the same benchmark standards and practices would be part of a worthwhile educational process; donors should try to get to know the charity that they intend to support. The advantages of inclusion onto the public register may not be fully appreciated by well-established charities that are already household names. However, for smaller charities doing very good work, the public register would provide them with a means to assure the public that they are adopting good practices to ensure the proper use of funds raised, to attract potential donors and to gain their trust. As a corollary, non-compliance with the Reference Guide leading to the possibility of removal from the public register is considered an effective sanction.

10. As the Reference Guide would play a crucial role in the proposed mechanism, its provisions should be able to address the concerns of the public on proper fund-raising behaviours and yet should also be practicable for charities to adopt. Views on the Reference Guide are therefore being sought from the stakeholders.



Advice sought

11. Comments from the charities or the general public on these proposals are welcomed. Please send your views and comments by letter or e-mail to SWD at the following address on or before **30 September 2003**—

30/F Wu Chung House
Lotteries Fund Projects Section
Social Welfare Department
213 Queen's Road East
Wanchai
Hong Kong

Enquiry telephone number : 2832 4376

E-mail address : grlfp@swd.gov.hk

Social Welfare Department
August 2003



Enclosure

Proposed Mechanism of the Public Register System

Preamble

1. The Lotteries Fund Advisory Committee (LFAC) will work out and administer a Reference Guide for charitable fund-raising. Charities* which voluntarily undertake to adopt the Guide will be included in a public register maintained by Social Welfare Department (SWD) upon application. While SWD will not enforce or monitor the Guide implementation, a charity which no longer adopts the Guide, loses its charity status or found to be non-compliant with the Guide (upon investigation by SWD on receipt of complaints) will be removed from the register. The register will be uploaded to the SWD website for public inspection to assist the public to make informed choices of donation.

LFAC

2. LFAC, comprising representatives of charities, community leaders and District Council Members, would advise the Director of Social Welfare (DSW) on charitable fund-raising issues, assist her to draw up and update the Reference Guide as and when necessary and review the operation of the public register. Specifically, LFAC will advise DSW on –
 - (a) the preparation and updating of a Reference Guide for charitable fund-raising; and



- (b) the adjudication of complaints relating to the Guide viz. whether certain specific action conducted by a charity contravenes the Guide.

*Note: charities or charitable organisations are normally defined as those tax-exempted institutions covered under Section 88 of the Inland Revenue Ordinance.

The Reference Guide for Charities on Best Practices for Fund-raising Activities
(Reference Guide)

3. The Reference Guide is at Annex, covering Donors' Rights, Fund-raising Practices and Financial Accountability.
4. The Reference Guide will be drawn up in consultation with, amongst others, the charities, the Hong Kong Society of Accountants and ICAC Corruption Prevention and will be circulated widely for public consultation before finalization.
5. The Guide will be widely publicized and will be uploaded to SWD's website. It will be refined and updated by LFAC with experiences gained.
6. SWD or LFAC will not monitor or enforce adherence of the Guide. However upon receipt of complaints against certain action of a charity which is on SWD's Public Register being deviated from the Guide, LFAC will adjudicate whether the complaint is valid after studying information available to it. If a



complaint could be established, after the adjudication of LFAC, the details of the complaint, the replies from the charities as well as the result of adjudication would be posted to SWD's website.

Public Register

7. SWD will set up and maintain a Public Register of NGOs which have adopted the Reference Guide voluntarily. This may be proved by the charity's governing board passing a formal resolution to do so. The Register will include also the contact detail (e.g. address, telephone number, web-site and e-mail address) of the charities. It will be updated periodically upon confirmation by the charities of their continued charity status (under Section 88 of the Inland Revenue Ordinance) and their continued adoption of the Guide. LFAC may advise DSW to consider removing the name of the charity from the register temporarily or permanently if the charity is found to have contravened the Guide. The name of a charity may also be removed from the Register if DSW, in consultation with LFAC, is not satisfied that it is a suitable organisation to have its name appear on the public register e.g. if the charity has been convicted of some criminal offences. The Register will also be posted to SWD's website.
8. The Public Register would assist prospective donors to make informed choices of donation. In this connection, it would also serve as a platform for charities to let prospective donors to be aware of their objects and activities through the linkages to the charities provided.



Possibilities for further consideration

9. When the system is on firm footing, SWD may consider according priorities to charities on the register in processing applications for Public Subscription Permits for flag days or other fund-raising activities issued under S.4(17)(i) of the Summary Offences Ordinance. Eventually, SWD may make the adoption of the Guide an eligibility criterion of applications for all Public Subscription Permits.



**THE REFERENCE GUIDE FOR
CHARITIES ON BEST PRACTICES FOR
FUND-RAISING ACTIVITIES**

Introduction

1. This draft document is being developed by the Social Welfare Department (SWD) for consultation purpose. The aim of the future finalized document is mainly to provide a set of benchmarks for the charities* that solicit and receive donors' financial support to assure donors of their integrity and accountability.
2. Charities that adopt this Reference Guide commit to fund-raising practices that respect donors' rights to truthful information and to privacy. They also commit to manage responsibly the funds that donors entrust to them, and to report their financial affairs accurately and completely.
3. Donors or prospective donors who have questions or concern about fund-raising activities should contact the charity on whose behalf the funds are being solicited. Charities that adopt the Reference Guide are committed to deal with such queries promptly and fairly. SWD also provides information and receives complaints about charities which appear on its Public Register (see paragraph 5 below) of contravening the Reference Guide.
4. In order to be recognized by the SWD as having adopted this Reference Guide, a charity's governing board must pass the following motion as a formal resolution:

*Note: charities or charitable organisations are normally defined as those tax-exempted institutions covered under Section 88 of the Inland Revenue Ordinance.



“[Name of charity] hereby adopts the HKSAR Social Welfare Department’s Reference Guide for Charities on Best Practices for Fund-raising Activities as its policy. In so doing, members of the governing board commit to being responsible custodians of donated funds, to exercise due care concerning the governance of fundraising and financial reporting, and to ensure to the best of their ability that the organisation adheres to the provisions of the Reference Guide. It is hereby confirmed that each member of the governing board has received a copy of the Reference Guide and that a copy will also be provided to each person who subsequently joins the governing board.”

5. Charities that adopt the Reference Guide may, subject to successful application, be added to SWD’s Public Register. Details of the application procedures and the registration form could be found at (website address) or by contacting (details).

A. Donors’ Rights

1. All donors (individuals, corporations, and foundations) are entitled to receive an official receipt for the amount of the donation. The charity’s governing board may establish a minimum amount for the automatic issuance of receipts, in which case smaller donations will be receipted only upon request. The level of this minimum amount should be made known to donors and prospective donors.
2. All fund-raising solicitations by or on behalf of the charity will disclose the charity’s name and the purpose for which funds are requested. Printed solicitations (however transmitted) will also include its address or other contact information.
3. Donors and prospective donors are entitled to the following (or an opportunity to examine the following), promptly upon request:
 - (a) the relevant part of the charity’s governing documents which detail its objects and purposes;



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- (b) the charity's most recent annual report and financial statements as approved by the governing board;
 - (c) the charity's confirmation whether it is a tax-exempt charity under Section 88 of the IRO and, if so, the effective date of exemption;
 - (d) a list of the names of the members of the charity's current governing board; and
 - (e) a copy of the latest edition of this Reference Guide (which may be downloaded from SWD's website).

The charity should provide the above in Chinese or English.

- 4. Donors and prospective donors are entitled to know, upon request, whether an individual soliciting funds on behalf of the charity is a volunteer, an employee, or a hired solicitor.
- 5. Donors will be encouraged to seek independent advice if the charity has any reason to believe that a proposed donation might significantly affect the donor's financial position, or relationship with other family members.
- 6. Donors' requests to remain anonymous will be respected.
- 7. The privacy of donors will be respected. Any donor records that are maintained by the charity will be kept confidential to the greatest extent possible. Donors have the right to see their own donor record, and to challenge its accuracy.
- 8. If the charity exchanges, rents, or otherwise shares its fundraising list with other organisations, this must be done with the prior explicit consent of the donors and a donor's subsequent request to be excluded from the list will be honoured at the earliest possible opportunity.
- 9. Donors and prospective donors will be treated with respect. Every effort will be made to honour their requests to :
 - (a) limit the frequency of solicitations;



- (b) not be solicited by telephone or other technology; or
 - (c) receive printed material concerning the charity.
10. The charity will respond promptly to a complaint by a donor or prospective donor about any matter that is addressed in this Reference Guide. A designated staff member or volunteer will attempt to satisfy the complainant's concerns in the first instance. A complainant who remains dissatisfied will be informed that he/she may appeal in writing to the charity's governing board or its designate, and will be advised in writing of the disposition of the appeal. A complainant who is still dissatisfied will be informed that he/she may notify SWD in writing if the charity is currently listed on SWD's Public Register.

B. Fund-raising Practices

1. Fund-raising solicitations on behalf of the charity will:
- (a) be truthful;
 - (b) accurately describe the charity's activities and the intended use of donated funds; and
 - (c) respect the dignity and privacy of those who benefit from the charity's activities.
2. The charity will ensure the volunteers, employees and hired solicitors who solicit or receive funds on behalf of the charity shall:
- (a) adhere to the provisions of this Reference Guide;
 - (b) act with fairness, integrity, and in accordance with all applicable laws, permit/licence conditions, rules, regulations, guidelines, etc.;
 - (c) adhere to the provisions of applicable professional codes of ethics, standard of practice, etc.;



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- (d) cease immediately solicitation of a prospective donor who identifies the solicitation as harassment or undue pressure;
 - (e) disclose immediately to the charity any actual or apparent conflict of interest; and
 - (f) not accept donations for purposes that are inconsistent with the charity's objects or mission.
3. The charity shall respond promptly to a donor's request to amend the donor's standing donation instruction.
 4. Paid fund-raisers, whether staff or consultants, will be compensated by a salary, retainer or fee, and will not be paid finders' fees, commissions or other payments based on the number of gifts received or the value of funds raised. Compensation policies for fund-raisers, including performance-based compensation practices (such as salary increases or bonuses) will be consistent with the charity's policies and practices that apply to non-fundraising personnel.
 5. The charity will not sell its donor list. If applicable, any rental, exchange or other sharing of the charity's donor list will exclude the names of donors who have so requested (as provided in section A8 above). If a list of the charity's donors is exchanged, rented or otherwise shared with another organisation, such sharing will be for a specified period of time and a specified purpose.
 6. The charity's governing board will be informed at least annually of the number, type and disposition of complaints received from donors or prospective donors about matters that are addressed in this Reference Guide.

C. Financial Accountability

1. The charity's financial affairs will be conducted in a responsible manner, consistent with the applicable legal requirements and relevant ethical or professional obligations.
2. All donations will be used to support the charity's objects, as detailed in its governing documents.



3. All restricted or designated donations will be used for the purposes for which they are given. If necessary due to program or organizational changes, alternative uses will be discussed where possible with the donor or the donor's legal designate. If the donor is deceased or legally incompetent and the charity is unable to contact a legal designate, the donation will be used in a manner that is as consistent as possible with the donors' original intent.
4. Annual financial reports will be factual and accurate in all material respects and externally audited, disclosing:
 - (a) the total amount of fund-raising revenues (receipted and non-receipted);
 - (b) the total amount of fund-raising expenses (including salaries and overhead costs)
 - (c) the total amount of expenditures on charitable activities (including gifts to other charities);
 - (d) identify government grants and contributions separately from other donations;
 - (e) be prepared in accordance with generally accepted accounting principles and standards established by the Hong Kong Society of Accountants, in all material respects; and
 - (f) should identify the revenue generated from individual event/drive involving an appeal to the public.
5. Separate externally audited financial statements should be prepared for individual events or drives which involve appeal to the public (in public place, through broadcast, on the internet, on newspapers/magazines or other publications, etc.) within ninety days of the completion of the event/drive and annually (if that event/drive lasts for over one year). The statements should be factual and accurate in all material respects, disclosing-



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- (a) the total amount of fund-raising revenue (receipted or non-receipted);
 - (b) the total amount of fund-raising expenses (including salaries and overhead costs);
 - (c) the whereto of the net proceeds, and when the whole or part of these proceeds would be transferred to the revenues of the charity, they should be accounted for in its annual statements (see C4(f) above); and
 - (d) be prepared in accordance with generally accepted accounting principles and standards established by the Hong Kong Society of Accountants, in all material aspects
 6. No more will be spent on administration and fund-raising than is required to ensure effective management and resource development. For an individual event/drive involving appeal to the public, the expenses should not account for more than 10% of the gross proceeds.
 7. The cost-effectiveness of the charity's fund-raising program will be reviewed regularly by the governing board.