

Press release

LCQ4: Regulation of charitable institutions

Wednesday, June 1, 2011

Following is a question by the Hon Cheung Kwok-che and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 1):

Question:

It has been reported that the number of tax-exempt charities and fund-raising activities on the streets has continued to increase in recent years, the practices of quite a number of charities in soliciting donations are controversial and they even manage their finances in a black box. It has also been reported that it is rather easy for institutions to apply for tax exemption or raising funds on the streets, e.g. at present, any institution of a charitable nature can apply to the Inland Revenue Department (IRD) for tax exemption so long as it meets the requirements under section 88 of the Inland Revenue Ordinance; and institutions intending to organise fund-raising activities on the streets are only required to apply for the relevant permits or licences from the government departments concerned. In this connection, will the Government inform this Council:

(a) given that at present, when vetting tax exemption applications from charitable institutions or trust bodies, IRD ascertains whether they are of charitable nature on the basis of documentary proof submitted by them, whether it has reviewed the effectiveness of the aforesaid mechanism; whether it had refused to approve such applications in the past three years; if it had, of the details; whether the government departments responsible for approving applications for fund-raising activities on the streets will monitor or inspect the conduct of such fund-raising activities after granting approval to the applications; if they will, of the details; if not, the reasons for that; whether various government departments will co-ordinate or exchange information of the applicants so as to prevent institutions which violated the relevant regulations from submitting applications again;

(b) whether there is legislation in place at present to regulate online fund-raising activities; if there is, of the details; if not, the reasons for that, and whether it will study introducing legislation to regulate such activities in the future; and

(c) given that the Law Reform Commission of Hong Kong has finalised the consultation document concerning the legal and regulatory framework for charitable organisations in Hong Kong, when the Government will publish the document and implement the recommendations therein; of the short-term measures put in place by the Government at the present stage to step up regulation of such organisations and fund-raising activities on the streets?

Reply:

President,

My reply to the three parts of the question is set out below, which has incorporated replies from the Social Welfare Department (SWD), the Television and Entertainment Licensing Authority (TELA) and the Food and Environmental Hygiene Department (FEHD).

Currently, there is no statutory definition of what constitutes a charity or a charitable purpose, nor is there a single piece of legislation which governs charities in Hong Kong and the use of donations. A charity can be established in different forms, including a trust body, a society established under the Societies Ordinance, a corporate registered under the Companies Ordinance, an organisation established under a statute, etc.

According to section 88 of the Inland Revenue Ordinance, charitable institutions or trusts of a public character are exempted from tax. If such organisations wish to enjoy tax exemption according to the relevant provision, they have to submit applications to the Commissioner of Inland Revenue together with copies of relevant certificates of registration, the instruments and rules governing their activities (e.g. the Memorandum and Articles of Association, the Trust Deed, or the Constitution) and the lists of activities carried out in the past year and/or to be carried out in the coming year, so as to demonstrate that the applicants' objects are charitable and their activities are compatible with their objects.

In processing tax exemption applications of charitable institutions, the Inland Revenue Department (IRD) has all along made reference to the case law in the common law. In brief, tax-exempt charitable institutions must be of a public character and established solely for charitable purposes recognised by the law. According to case law, charitable purposes include (a) relief of poverty; (b) advancement of education; (c) advancement of religion; and (d) other purposes of charitable nature that are beneficial to the community. IRD has all along adopted the above criteria in processing tax exemption applications of charitable institutions and finds them effective. If the objects stated in the governing instruments of the relevant organisations are not purely charitable in accordance with the above-mentioned charitable purposes, or the planned activities of the organisations are not compatible with their objects, the relevant applications for tax exemption will be returned to the applicants. Some of the applicants may re-submit their applications after making appropriate amendments. IRD does not have statistics on the number of rejected applications for tax exemption from charitable bodies.

As regards the regulation of on-street fund-raising activities, it straddles across several government departments, including TELA, FEHD and SWD. These departments implement monitoring measures on the fund-raising activities under their respective purview to avoid and combat fraudulent fund-raising activities.

Under the Gambling Ordinance (Cap 148), an organisation must submit prior application to TELA for a lottery licence and obtain permission from TELA for the sale of lottery tickets on public streets. In considering such applications, TELA would make reference to the applicants' previous records of activities or charity work as well as their financial statements. TELA may consider declining applications made by organisations which have previously breached the licence conditions. TELA also requires the licence holder to prominently display the name of the organisation during the sale of lottery tickets on public streets and the person-in-charge at each sale location is required to keep a copy of the licence and the letter of permission by the Commissioner for Television and Entertainment Licensing for inspection by the public as necessary. The public may also check on the website of TELA the list of organisations issued with lottery licences and the places and dates of approved lottery activities.

For the sale of goods in public places for raising funds, charitable bodies have to obtain temporary hawker licences (THLs) from the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap 132). FEHD would not consider any applications for commercial or profit-making purposes. Upon receipt of applications, FEHD would consult relevant departments. THLs would only be granted if the relevant departments do not raise any objection. FEHD's main responsibility for THLs is to monitor the relevant hawking activities and environmental hygiene issues. The district Hawker Control Teams of FEHD conduct sector patrols on the streets every day and inspect fund-raising hawking stalls with THLs to ensure that the licensees conduct the relevant activities in accordance with the Hawker Regulation (Cap 132AI) and the licensing conditions. If issues under the purview of other government departments are identified, the Hawker Control Teams will refer the cases to the relevant departments for follow-up action. FEHD would continue to communicate with the relevant departments in the processing of applications for THLs by charitable organisations under the current licensing mechanism.

Besides, organisations have to apply for Public Subscription Permits (PSPs) from the Director of Social Welfare under the Summary Offences Ordinance (Cap 228) for any collection of money or sale or exchange for donation of badges, tokens or similar articles for charitable purposes in public places. Fund-raising organisations are required to submit an audited report of their activities to SWD within 90 days upon completion of the activities. The audited report should state, among others, the purpose as well as the income and expenditure of the fund-raising activities, etc. If any organisation is found to have seriously breached the PSP conditions or been involved in illegal acts in the past, SWD will not approve the PSP application of that organisation. Moreover, SWD will inform the relevant departments, including the Police, the Lands Department and FEHD, regarding the rejected applications.

The Lotteries Fund Advisory Committee completed a review on the monitoring of public charitable fund-raising activities under the purview of SWD in May this year and recommended the implementation of a series of administrative measures. The measures aim to address nuisance possibly caused by public fund-raising activities and increase the transparency of these activities. They include requiring organisations to publicise the audited report of their fund-raising activities within 90 days upon completion of the activities through their websites, annual reports, newsletters or special circulars to members and to retain relevant documents for public inspection. Moreover, the boundary of moving-around solicitation on public streets will be restricted to 10 metres measured from the rim of the stationed counter set up with the donation box while the maximum number of fund-raisers at each approved location/boundary on public streets will be eight. Each staff member or fund-raiser is also required to wear an identification tag printed with the name, logo (if applicable) and telephone number of the organisation, etc. Having consulted relevant non-governmental organisations and government departments, SWD will implement the new administrative measures in August this year to strengthen its monitoring work.

Hong Kong is a caring society and the community is supportive of charitable causes. The Administration strives to provide a friendly environment with administrative procedures kept to a minimum to facilitate charitable organisations to mobilise community resources for their fund-raising activities. At the same time, the Administration needs to ensure that such activities do not cause nuisance or inconvenience to the public, and that the interests of the donors are safeguarded. We also combat fraudulent fund-raising activities vigorously.

The Charities Sub-committee of the Law Reform Commission of Hong Kong (the Commission) is expected to issue its consultation paper on Charities in mid-June this year for three-month public consultation on the legal and regulatory framework relating to charities in Hong Kong. After the consultation, the Commission will consider public views received and prepare a final report. The Administration will keep in view the progress of the review and its recommendations.

Ends