

SETTING UP A CHARITY: PROCEDURE, SIMILARITIES & DIFFERENCES IN SINGAPORE & HONG KONG

The legal systems of Singapore and Hong Kong stem from English common law. The basic principles of charity for both countries are almost identical in that, for an institution to be characterized as a charity, its purpose must be exclusively charitable under the law. It must be for one of the following four purposes: (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion; or (4) other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads.

In Singapore, under head (4), the specifically spelt out purposes include: the advancement of health; the advancement of citizenship or community development; the advancement of arts, heritage or science; the advancement of environmental protection or improvement; the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages; the advancement of animal welfare; and the advancement of sport, where the sport advances health through physical skill and exertion.

In the decision of the High Court of Hong Kong - *Hong Kong & Shanghai Bank and Another v. The Incorporated Trustees of the Islamic Community Fund of Hong Kong and Others* [1984] HKCFI 197, the list of charitable objectives recognised by the court for head (4) include: promotion of health; provision of recreational facilities; municipal betterment and relief of the tax and rating burden; gifts for the benefit of a locality; certain patriotic purposes; protection of life and property; social rehabilitation; protection of animals; and other miscellaneous objects that are beneficial to the community.

Despite the similarities in classifications, the two jurisdictions differ in some practical aspects which philanthropists who intend to set up a charity in each country may wish to note. This article highlights these notable aspects, including (1) tax incentives; and (2) the distributions of donated funds outside of the countries.

Structure of a charity

Singapore

A Singapore charity must be established by a written governing instrument and may adopt the following structures:

- (a) a society registered under the Societies Act (Cap. 311);
- (b) a public company limited by guarantee registered with the Accounting and Corporate Regulatory Authority of Singapore under the Companies Act (Cap. 50); and
- (c) a trust under a trust deed.

Hong Kong

A Hong Kong charity must also be established by a written governing instrument and structures may adopt the following:

- (a) a trust;
- (b) a society established under the Societies Ordinance (Cap. 151); and
- (c) a company incorporated under the Companies Ordinance (Cap. 32).

In both countries, it is also possible for a charity to be established by local legislation.

Tax Incentives

Charity's Perspective

Singapore

In Singapore, the governing law on tax exemption entitlement is section 13(1)(zm) of the Income Tax Act (Cap. 134). With effect from the Year of Assessment 2008, registered charities receive automatic income tax exemption on all their revenue and property tax exemption on premises used exclusively for charitable purposes. There is no need for a registered charity to file income tax returns.

Hong Kong

In Hong Kong, the governing law for entitlement to tax exemption is section 88 of the Inland Revenue Ordinance (Cap. 112) whereby any charitable institution or trust of a public character is exempt from tax generally, with some qualification in the case of profit revenue from a trade or business.

Where a charitable institution or trust of a public character carries on a trade or business, the profits derived from such trade or business shall be exempt from any profit tax only if such profits:-

- (1) are applied solely for charitable purposes;
- (2) are not expended substantially outside Hong Kong; and
- (3) either (a) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or (b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

Condition (2) above may pose a difficulty to some being a restriction on the distribution of donated funds outside of Hong Kong.

Tax exemption will only be available to charities whose governing law is Hong Kong law, and overseas charities deemed to be established in Hong Kong by:-

- (a) section 4 of the Societies Ordinance (Cap. 151) as a society; and
- (b) Part XI, Companies Ordinance (Cap. 32) as a company incorporated outside Hong Kong.

In addition to tax exemption, charities are also exempted from obtaining the business registration certificate which would otherwise be required of all entities carrying on business in Hong Kong.

Donor's Perspective - Tax Deduction on Donations

Singapore

Donations by a taxpayer to any Institution of Public Character ("IPC") are double tax deductible and for the period 1 January 2009 to 31 December 2009, the tax deduction was increased from 2 to 2.5 times the value of the donation. To encourage greater charitable giving in Singapore, the Singapore Government has extended the tax deduction of 2.5 times for another year for donations made during the period from 1 January 2010 to 31 December 2010. However, not every charity is an IPC and not every IPC is a charity, so only the following two categories of donation are tax deductible:

- (a) a donation to a charity which is also registered as an IPC, and
- (b) a donation to an IPC, even if it is not a charity.

Hong Kong

Individual and business donors who are chargeable to salaries tax, personal assessment or profits tax can claim deduction for the aggregate of approved charitable donation up

to 35% of the assessable income or profits, as the case may be, in the basis period of a year of assessment. Such aggregate must not be less than HK\$100. "Approved charitable donation" means a donation of money to any charitable institution or trust of a public character, which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), or to the Government, for charitable purposes.

Registration

Singapore

In Singapore, a charity must apply for registration with the Registrar of Charities within three months after its establishment and any failure to do so will be an offence under the Charities Act (Cap. 37). The Charities (Registration of Charities) Regulations provide that the following conditions for charity registration must be met:

- (a) the purposes/objects of the institution must be exclusively charitable and be clearly and concisely stated;
- (b) the institution must have at least 3 trustees, of whom at least two must be Singapore citizens or permanent residents; and
- (c) the purposes/objects of the institution must be beneficial wholly or substantially to the community in Singapore.

Hong Kong

In Hong Kong, there is no mandatory registration system for charities, but an application for tax exemption should be sent to the Commissioner of Inland Revenue, Hong Kong in order for the charity to be entitled to exemption from tax. The position in Hong Kong is the same as that in Singapore before 1 March 2007 when it was made mandatory in Singapore to apply to register a charity. Tax exemption status of charities is subject to review by the Inland Revenue Department by way of inspection of accounts, annual reports or other documents. A list of charitable institutions and trusts of a public character which are exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) is available on the Internet from www.ird.gov.hk/eng/pdf/e_s88list_emb.pdf.

Governing authority of a registered charity

Singapore

The governing authority of a registered charity in Singapore is the Commissioner of Charities, who is assisted by five sector administrators, namely the Ministry of Education; Ministry of Health; Ministry of Information; Communications and the Arts; and People's Association and Singapore Sports Council to oversee the charities in their respective sectors.

Additional factors that will be taken into

consideration by the Commissioner of Charities when assessing charity registration applications are:

- (a) Whether the institution is related to any other institution which has been removed from the Charity register or refused registration as a charity;
- (b) Whether the charity trustees are capable of proper administration of the institution;
- (c) Whether sufficient policies and plans are in place to ensure proper administration of the institution; and
- (d) Whether the activities planned by the institution are sufficient to further the charitable purposes of the institution.

Hong Kong

In Hong Kong, there is no equivalent of the Commissioner of Charities and the monitoring of charities by the Hong Kong government is minimal. The Inland Revenue Department is not responsible for monitoring the conduct of charities, but it will, from time to time, call for accounts, annual reports or other documents to review whether their charitable status is justified. It is therefore essential that a charity should maintain good management and good accounting practice. A practical guide on good governance is available on the Internet from www.icac.org.hk/filemanager/en/Content_1031/fund_raising.pdf.

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