

# MONITORING OF CHARITABLE FUND-RAISING ACTIVITIES

## Executive Summary

1. Fund-raising is an activity carried out by many charities and it often takes the charities into direct contact and dealings with members of the public. Currently, there is no legislation enacted specifically to control charitable fund-raising activities. The Government's regulation of certain charitable fund-raising activities is incidental to the legislation that controls nuisances committed in public places, gambling and hawking. Under the legislation, permits or licences are required for conducting charitable fund-raising activities in public places such as flag days and on-street charity sales, or involving sale of raffle tickets (hereinafter collectively referred to as "regulated charitable fund-raising activities"), which are granted by the relevant licensing departments, namely the Social Welfare Department (SWD), the Home Affairs Department (HAD) or the Food and Environmental Hygiene Department (FEHD). Additionally, the Lands Department (Lands D) grants approval for temporary occupation of unleased land for conducting fund-raising activities. However, other forms of fund-raising activities (such as charity auctions, balls, concerts, dinners, or requests for donations by mail or through advertisements) do not require a permit or a licence. Nevertheless, the funds raised by charities are significant and increasing in recent years. Proceeds raised from regulated charitable fund-raising activities approved by the SWD and the HAD totalled \$282 million in 2014-15, whereas charitable donations allowed for tax deduction under the Inland Revenue Ordinance (IRO — Cap. 112) reached \$11.84 billion for the year of assessment 2014-15. While charities are granted access to public areas to raise funds for their charity work, an effective monitoring framework has an important role to play in enhancing the governance standards of charities and ensuring that they uphold accountability and transparency for the donations they received. The Audit Commission (Audit) has recently conducted a review on the Government's monitoring of charitable fund-raising activities with a view to identifying areas for improvement.

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### **Government's efforts to promote transparency and accountability of charitable fund-raising activities**

2. *Voluntary system to enhance transparency and accountability.* In response to the recommendation on implementing a scheme of control over fund-raising activities raised in the Director of Audit's Report of October 1997 and the Report of the Public Accounts Committee of 1998, the Government decided in September 2002 that administrative controls should be strengthened with a view to enhancing transparency and accountability of fund-raising activities to enable donors to make an informed choice when making donations. In 2004, the SWD promulgated a guide on the best practices for charitable fund-raising activities (Reference Guide) and updated the 1998 guidance note on internal financial controls for charitable fund-raising activities for voluntary adoption by charities (paras. 2.4 to 2.6).

3. *Need to further promote the recognition and voluntary adoption of best practices.* Since the promulgation of the Reference Guide in 2004, 400 (94%) of the 426 respondents to surveys of 961 charitable organisations conducted by the SWD indicated that they would adopt the Guide. Audit's sample check of 40 tax-exempt charities suggested that there was a high correlation between those charities which had indicated adoption of the Reference Guide and the publication of their financial information on their websites (paras. 2.7, 2.9 and 2.10). Accordingly, there is a need to further promote the recognition and voluntary adoption of best practices for organising charitable fund-raising activities, particularly in light of the following developments:

- (a) *Rapidly expanding charity sector.* The number of tax-exempt charities under the IRO had doubled from 4,435 in March 2006 to 8,923 in September 2016. The charitable donations allowed for tax deduction had more than doubled during the period for the years of assessment from 2005-06 to 2014-15 (para. 2.11); and
- (b) *Other forms of fund-raising activities not subject to Government's monitoring.* Appeals for donations through the Internet and face-to-face solicitation of regular donations in public places are examples of other fund-raising activities not subject to the Government's monitoring. In 2016, 194 (77%) of 252 multi-district applications to the Lands D for temporary occupation of unleased land were for conducting face-to-face solicitation of regular donations in public places by means of signing

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direct debit authorisation forms. Among the 18 applicants involved in these 194 applications, only 6 (33%) had adopted the Reference Guide. In April 2016, a Legislative Council Member expressed the view that such mode of fund-raising involving a large sum of money had become a trend and the Government should study ways to regulate these activities (paras. 2.12 and 2.13).

4. ***Room for improvement in promoting best practices for organising charitable fund-raising activities.*** From 2004 to September 2016, the SWD reached out to 961 charitable organisations (which were PSP applicants or SWD subvented organisations) in promoting adoption of the Reference Guide. Given that there were 8,923 tax-exempt charities as at September 2016, the SWD may seek the assistance of relevant bureaux/departments (B/Ds) for the purpose of achieving wider promotion and recognition of the best practices for fund-raising. Audit also found that: (a) the SWD had not conducted any review on the effectiveness of the Reference Guide after the last review in September 2006; (b) the Government had not launched any large-scale promotional programmes of the Reference Guide after it was updated in December 2014; and (c) more guidance on other forms of fund-raising activities should be incorporated in the publications of best practices in light of the increased use of on-street face-to-face solicitation of regular donations and social media on the Internet for fund-raising (paras. 2.14 and 2.15).

5. ***Low usage of the one-stop finder.*** In July 2012, a one-stop finder on charitable fund-raising activities approved by the three licensing departments was launched on the government portal “GovHK” to provide easy and convenient access to such information. Audit found that the usage of the one-stop finder (i.e. the average daily hit rates) had decreased by 77% from 275 in 2012-13 (from July 2012) to 62 in 2016-17 (up to October 2016). The three licensing departments need to consider stepping up or renewing their publicity efforts to raise the public awareness of the service (paras. 2.16 to 2.18).

### **Administration of public subscription permits for charitable fund-raising activities**

6. The Summary Offences Ordinance (Cap. 228) consolidates the law relating to summary offences including nuisances committed in public places. To regulate against nuisances committed in public places, the SWD issues public subscription permits (PSPs) for flag days and general charitable fund-raising

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activities in public places under section 4(17)(i) of the Ordinance. In 2015-16, the SWD issued 120 PSPs for flag days and 365 PSPs for general charitable fund-raising activities, and the gross proceeds raised amounted to \$119 million and \$69 million respectively (para. 3.2).

7. ***Need to issue guidelines on the scope of PSP.*** Given the wide varieties of fund-raising activities and the changes in their modes of collection of donations, the SWD has from time to time sought the Department of Justice's advice on whether a particular PSP application based on its individual circumstances is under the scope of the Summary Offences Ordinance. Drawing on this experience, the SWD should explore the feasibility of issuing more guidelines to facilitate charitable organisations in determining the relevance of PSP to their activities before filing their applications (paras. 3.8 and 3.10).

8. ***Compliance with permit conditions.*** Permittees' compliance with the permit conditions is important to ensure the proper conduct and accountability of charitable fund-raising activities (para. 3.11). Audit has found the following areas for improvement:

- (a) ***Delays in submission of audited reports.*** To enhance transparency and accountability of the funds raised, permittees are required to submit audited reports of fund-raising activities within 90 days of the last event day. This enables the public to make an informed choice when making donations. Of the 1,497 audited reports due for submission by 325 permittees from April 2012 to September 2016, 15 (1%) were outstanding as of September 2016, of which 6 were long overdue (ranging from 216 to 429 days, averaging 342 days). For the 1,482 submitted audited reports, 658 (44% of 1,482) were late reports, including 76 (12% of 658) which were late for more than 3 months. Moreover, 13 of the 325 permittees failed to submit the audited reports on time repeatedly, i.e. for two to four times (para. 3.12);
- (b) ***Fund-raising by organisations on the withholding list.*** As part of the SWD's monitoring mechanism, permittees which fail to submit audited reports after the issue of written reminders/warnings will be put on a withholding list so that the processing of their new PSP applications will be withheld. As of September 2016, there were 8 organisations on the withholding list. Audit found that 7 of them had continued to raise funds

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on their websites and through other activities outside the SWD's purview. To enable the public to make an informed choice when making donations, the SWD needs to consider publicising information on serious or repeated non-compliance with PSP conditions after warnings (paras. 3.5 and 3.13); and

- (c) ***Need to take concerted actions on repeated "no-show" cases.*** Use of public places (especially those with high pedestrian flow) for charitable fund-raising activities was in high demand. Audit sample check revealed that in 2016, the Lands D had rejected applications for 1,059 (50%) of 2,109 locations for fund-raising purposes. The SWD's random on-site inspections on general charitable fund-raising activities from June 2015 to September 2016 revealed no fund-raising activities in 30 (50%) of 60 inspections, i.e. the "no-show" cases. Inspections conducted by the FEHD on on-street selling activities for fund-raising purposes also found "no-show" cases in 59% of 2,128 inspections. The high percentage of "no-show" cases indicates an ineffective use of public resources as other charities are deprived of the opportunity to use the places. Among the SWD's inspected cases, 7 organisations had been repeatedly found not carrying out any fund-raising activities during the time of inspections. The SWD needs to liaise with the FEHD and the Lands D on the feasibility of sharing enforcement information and taking concerted actions on repeated "no-show" cases without valid reasons (paras. 3.14 and 5.11).
9. ***Monitoring of charitable fund-raising activities under PSPs.*** Audit has found the following areas for improvement in monitoring fund-raising activities:
- (a) ***High administration costs in some fund-raising activities.*** At present, the SWD imposes a permit condition that the fund-raising expenses of flag days should not exceed 10% of the gross proceeds, but not for general charitable fund-raising activities. Audit found that from 2012-13 to 2015-16, the overall percentages of expenses to gross proceeds of such fund-raising activities ranged from 22% to 30%. According to the SWD, it might not be practical to set an across-the-board ceiling for all general charitable fund-raising activities given the diversity of their nature and mode of operation, and the absence of a commonly agreed definition of "administration costs" of a fund-raising activity. However, the feasibility of defining the term "administration costs" with a view to setting an

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expenses ceiling as a PSP condition for on-street general charitable fund-raising activities which are similar in nature to flag days should be explored (paras. 3.17, 3.19 and 3.21); and

- (b) *Limitations of audited reports of PSP fund-raising activities.* Currently, the SWD does not specify whether accounts for PSP fund-raising activities should be prepared on a cash basis or an accrual basis. As accrued expenses could not be reflected in the accounts prepared on a cash basis, there could be an understatement of expenses, as evidenced by a case noted by Audit. Moreover, as permittees' auditors are not required to verify compliance with the permit condition of depositing the net proceeds into a bank account within 90 days from the last day of the event concerned, there is no assurance on compliance with this permit condition (para. 3.23).

### **Administration of lottery licences for charitable fund-raising activities**

10. The Gambling Ordinance (Cap. 148) is the law relating to gambling, betting, gaming, gambling establishments and lotteries. Under the Ordinance, anyone who wishes to conduct a lottery event has to apply for a lottery licence from the Office of the Licensing Authority of the HAD. Lottery licences for charitable fund-raising are issued to bona-fide organisations to conduct lottery ticket sales for raising funds to meet the organisations' operating expenses and/or for making donations to tax-exempt charities. In 2015-16, the HAD granted 60 lottery licences which raised gross proceeds of \$88 million (para. 4.2).

11. *Inadequate follow-up on late submission of required documents.* Upon completion of a lottery event, the licensee is required under the licence conditions to submit to the HAD documents such as lottery accounts and lottery results within the stipulated time. Audit examined 263 lottery licences granted from 2012-13 to 2015-16 and found that there were delays in submitting the lottery accounts for 120 (46%) licences. The delays were over three months in 17 (14%) cases, up to 746 days in one case. For 10 lottery accounts which had been overdue for over 180 days, reminders/warning letters had not been issued to the licensees concerned within the HAD's stipulated time. While the HAD's computer system had records of the submission due dates, it could not generate exception reports to facilitate

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HAD staff in following up the outstanding cases in a timely manner (paras. 4.4, 4.6, 4.8 and 4.10).

12. *Need to ensure the use of proceeds is accounted for in submitted financial statements.* As a licence condition, if the net proceeds of the lottery are used for meeting the expenditure of the licensee, a copy of the audited annual financial statements of the licensee, which should show the income and expenditure of the lottery and the whereabouts of the net proceeds should be submitted to the HAD within one year. Audit sample checked 30 licences and found that in 6 (20%) cases, the submitted statements did not show separately the income and expenditure of their lottery events nor the use of net proceeds, but HAD staff accepted the licensees' explanation that they had been subsumed under other income and expenditure items in the submitted statements. The HAD needs to provide more guidance to licensees and ensure their compliance with the relevant licence condition on showing separately the income and expenditure of the lottery and the whereabouts of the net proceeds (para. 4.11).

13. *Need to facilitate public access to the lottery accounts.* The HAD publishes on its website a list of lottery accounts submitted by licensees. However, the HAD's requirements for the public to inspect the lottery accounts in the HAD's office physically and not allowing making copies of the accounts do not facilitate access and are not conducive to achieving the Government's objective of enhancing transparency and accountability of fund-raising activities. Moreover, while the HAD encourages lottery organisers to publish lottery accounts on their websites, Audit survey of the websites of 10 lottery organisers revealed that none of them had done so. The HAD needs to take measures to facilitate public access to the lottery accounts (paras. 4.12 and 4.13).

### **Administration of temporary hawker licences for fund-raising activities involving on-street selling**

14. Since the early 1970's, the Government has stopped issuing new hawker licences under normal circumstances. Under the Hawker Regulation (Cap. 132AI), the FEHD issues temporary hawker licences to facilitate charities or other non-profit-making organisations for conducting on-street selling of commodities in raising funds and to regulate such hawking activities in public streets to ensure that they are conducted in a hygienic manner and will not cause nuisances. A

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tax-exempt charity which has obtained a PSP from the SWD for a fund-raising activity may apply for a waiver from obtaining a temporary hawker licence. In 2015-16, the FEHD issued 88 temporary hawker licences and granted 44 waivers. Aiming to enhance transparency and accountability of fund-raising activities, safeguard the proper use of donations, prevent abuse of temporary hawker licences and achieve a fair distribution of public resources among the fund-raising organisations, the FEHD introduced in 2012 a number of new administrative measures (such as limiting the number of licences granted to each fund-raising organisation and requiring organisations issued with more than 12 licences within 12 months to submit an audited account of the fund-raising activities for each and every licence subsequently issued) (paras. 5.2 to 5.5).

15. ***Different administrative/licensing requirements between the FEHD and other licensing departments.*** Comparing the administrative/licensing requirements of the FEHD with those of the other two licensing departments, Audit has found the following differences:

- (a) ***Custody of monies received.*** The FEHD has not required licensees to put in place safeguards to ensure the safe custody of the monies received during fund-raising activities for charitable purposes (para. 5.7(a));
- (b) ***Accounts for fund-raising activities.*** The FEHD has only required organisations granted with more than 12 licences within 12 months to submit audited accounts for the 13th licence onwards. In this connection, Audit noted that in one case, although 16 temporary hawker licences had been issued to an organisation within 12 months, the concerned organisation had not submitted the audited accounts for the last 4 licences issued and the FEHD had not taken any follow-up action (paras. 5.7(b) and 5.8(a)); and
- (c) ***Purpose of fund-raising and use of donations.*** The FEHD has not required licensees to inform donors or prospective donors about the purpose of fund-raising and to properly account for the use of donations (para. 5.7(c)).

16. ***Deficiencies in inspections.*** The FEHD conducts inspections at least twice a day to check licensees' compliance with licence conditions and on a daily basis to detect any irregularities for on-street selling activities covered by waivers.



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Audit examination of inspection records from April 2014 to December 2016 revealed that of the 2,508 required inspections, 139 (6%) inspections had not been conducted and the records of 241 (10%) inspections were either missing or inadequate to show whether inspections had been conducted (paras. 5.9 and 5.10).

17. ***Lack of one-stop service.*** Owing to the lack of one-stop service, an organisation may need to seek approvals from different departments (the FEHD, the SWD and the Lands D) for the same charitable fund-raising activity involving on-street selling, resulting in duplication of regulatory efforts and extra workload and inconvenience to charitable organisations. Some organisations might have breached the relevant legislation for not having sought all the required approvals. For example, of 42 PSPs issued by the SWD from January to September 2016 involving selling activities in public streets, 15 (36%) permittees had not applied to the FEHD for waivers. There is a need for the three departments to consider providing a one-stop service to streamline the processing and approvals of such activities (paras. 5.12 and 5.13).

### Law Reform Commission Report on Charities

18. According to the Law Reform Commission (LRC) Report, there are deficiencies in the existing regulatory framework of charities, including inconsistent standards or requirements on governance, accounting and reporting by charities and limited control of charitable fund-raising activities. The LRC made 18 recommendations to improve the transparency and accountability of charities, which included, among others, imposing certain filing requirements in applications for charitable fund-raising licences or permits, setting up centralised telephone hotline for public enquiries and complaints in relation to charitable fund-raising activities, requiring charitable organisations to display their registration numbers during charitable fund-raising activities, and engaging in more public education on matters relating to charitable fund-raising activities (paras. 6.2 and 6.3).

19. ***Slow progress in responding to the LRC's recommendations.*** According to the Government's guidelines, a detailed public response to the LRC's recommendations should be provided within 12 months of its publication. However, for three years since the issue of the LRC Report in December 2013, the Home Affairs Bureau (HAB) had reported that it was still coordinating comments from relevant B/Ds for consideration of the way forward. Audit found that there were inadequacies in the internal consultation, e.g. while B/Ds' feedback had been

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received in April 2014, the HAB only consolidated the views into a preliminary assessment paper in June 2015 and convened two inter-departmental meetings in mid-August 2015 and October 2016. The HAB needs to: (a) expedite the consultation with relevant B/Ds with a view to formulating a response to all the recommendations of the LRC Report; and (b) take into account areas for improvement identified in this Audit Report which are complementary to the LRC's recommendations in considering the way forward in formulating a response (paras. 6.4 and 6.6 to 6.10).

### **Audit recommendations**

20. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that:**

- (a) **the Director of Social Welfare, the Director of Home Affairs and the Director of Food and Environmental Hygiene should:**
  - (i) **step up promotion efforts to encourage more charitable organisations in adopting the best practices for organising charitable fund-raising activities (para. 2.19(a)(ii)); and**
  - (ii) **incorporate more guidance on other forms of fund-raising activities in the publications of best practices for organising charitable fund-raising activities (para. 2.19(a)(iii));**
  
- (b) **the Director of Social Welfare should:**
  - (i) **explore the feasibility of issuing more guidelines on the scope of the PSP for reference by applicants (para. 3.25(a));**
  - (ii) **step up enforcement actions on cases of repeated non-compliance with the permit conditions on submission of audited reports (para. 3.25(b));**
  - (iii) **in collaboration with the Director of Food and Environmental Hygiene and the Director of Lands, explore the feasibility of**

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sharing enforcement information on charitable fund-raising activities held in public places and taking concerted actions on repeated “no-show” cases without valid reasons (para. 3.25(c)); and

- (iv) explore the feasibility of defining the term “administration costs” with a view to setting an expenses ceiling for on-street general charitable fund-raising activities which are similar in nature to flag days (para. 3.25(e));

(c) the Director of Home Affairs should:

- (i) step up monitoring of licensees’ compliance with the lottery licence conditions, and consider taking suitable measures to deter cases of repeated late submission of documents (para. 4.14(a));
- (ii) provide more guidance to licensees and ensure their compliance with the condition that the use of net proceeds is accounted for in the financial statements (para. 4.14(c)); and
- (iii) take measures to facilitate public access to the lottery accounts (para. 4.14(d));

(d) the Director of Food and Environmental Hygiene should:

- (i) consider improving the administrative measures for monitoring on-street selling activities for charitable fund-raising purposes (para. 5.14(a));
- (ii) take measures to ensure that inspections on compliance with the licence conditions are carried out in accordance with laid-down guidelines (para. 5.14(d)(i)); and
- (iii) work in collaboration with the Director of Social Welfare and the Director of Lands to consider providing a one-stop service to streamline the processing and approvals of fund-raising activities involving on-street selling (para. 5.14(e)(ii)); and

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- (e) **the Secretary for Home Affairs should expedite the consultation with relevant B/Ds with a view to formulating a response to all the recommendations of the LRC Report for the Government's consideration (para. 6.11(a)).**

### **Response from the Government**

- 21. The Government generally agrees with the audit recommendations.