

SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE DRAFT CHARITIES (AMENDMENT) BILL 2017 AND RESPONSES

S/N	Proposed Amendment	Feedback received	Key considerations
1	<p>Amend the definition of “key officer” in the Charities Act (“the Act”) to:</p> <p>(a) apply in relation to</p> <ul style="list-style-type: none"> (i) charities; (ii) persons that are members of the governing boards of charities; and (iii) persons that are members of charities; and <p>(b) include, amongst others, individuals, whether acting alone or together with any person, who have general control and management over any one aspect (such as financial) of the administration of the charity or person, or over any department or division of the charity or person.</p>	<p>In the case of a large charity, there may be many departments or divisions within the charity. Would the heads of these departments or divisions then be deemed as “key officers” under the revised definition?</p> <hr/> <p>Will members of a charity fall under the definition of “key officer” given that, generally, the members vote at general meetings on key matters pertaining to the charity? i.e. are members seen as individuals acting together to exert control over the charity?</p> <hr/> <p>How will the proposed amendments affect organisations that employ ex-offenders?</p>	<p>This amendment will enable the Commissioner of Charities, for example, to remove persons in positions of power within a charity if there is found to be abuse, such as in the case of mismanagement of finances.</p> <p>These positions include the Executive Director, Chief Executive and Chief Financial Controller (or equivalent) who have general control and management of all or any aspect (including the financial aspect) of the administration of a charity.</p> <p>Hence, employees (e.g. clerks) and members of a charity who do not hold positions of general control and management will not be considered as “key officers”.</p> <p>With the proposed amendments to the Act, ex-offenders whose criminal records have been spent will not be disqualified from being key officers of charities. Similarly, the Commissioner will not remove a person under section 25(4) of the Act based on the person’s conviction for an offence if the record of the conviction has been spent.</p>

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			<p>We will review the proposed definition to clarify the individuals who are intended to be deemed as “key officers” in light of the concerns raised.</p>
2	<p>Strengthen and update the disqualification and removal regime.</p>	<p>Persons who have been convicted of relevant offences and disqualified under the Act from holding key positions in relation to a charity should be permanently barred from returning to the charity.</p> <p>Such persons should be prevented from either directly or indirectly managing the affairs of any charity, such as through family members who may be holding key positions in a charity.</p> <p>The Commissioner should also consider permanently barring family members of such persons from holding any roles in any charity.</p>	<p>A person who is disqualified under the Act as a result of being convicted of a relevant offence will be barred from holding key positions in relation to any charity as long as the grounds for disqualification exist.</p> <p>The disqualification will be permanent when a person is convicted of a serious offence that cannot be spent (i.e. the person was imprisoned for more than 3 months, or fined more than \$2,000), or so long as the person has not been granted a free pardon for the offence.</p> <p>The Act serves to prevent <u>any</u> unfit person (be it a family member of a disqualified person or otherwise) from taking on key positions in a charity.</p> <p>One of the proposed amendments in relation to the disqualification regime is to expand the list of capacities in which disqualified persons cannot act. Hence, a disqualified person will also be prevented from indirectly managing the affairs of a charity, such as through another entity.</p>

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		<p>The proposed sections 25(4)(b) and (d) concern removal of a governing board member or key officer of a charity on grounds of conviction of an offence involving moral turpitude and lack of capacity, respectively. Persons removed under those sections should not only be disqualified from acting in the capacity of any governing board member or key officer of that charity from which he was removed (per the proposed section 27(5)), but should also be disqualified from holding key positions in relation to any charity (i.e. the positions/ capacities referred to in the proposed section 27(6)).</p>	<p>Under section 25(4), the Commissioner has the discretion to remove a governing board member or key officer to protect a charity.</p> <p>The proposed scope of disqualification is sufficient, given that a removal by the Commissioner under section 25(4) is a carefully deliberated decision, based on the facts and circumstances of the case, which is specific to the concerned charity. A removal under section 25(4) should therefore not automatically prohibit the removed person from serving in key positions in relation to other charities.</p>
3	<p>Introduce a new section 27(5) to clarify the effect of a removal under section 25(4) of the Act.</p>	<p>We suggest to include a provision to ensure that in relation to a removal on grounds of conviction of an offence involving moral turpitude (under the proposed section 25(4)(b)), there is no resulting disqualification under the proposed section 27(5) if the conviction is spent or the person is pardoned.</p>	<p>Under section 25(4), the Commissioner has the discretion to remove a governing board member or key officer when any of the specified grounds for removal exist, such as when the person has been convicted of an offence involving moral turpitude.</p> <p>As moral turpitude involves a wide array of offences, each case will be assessed on its own set of facts and circumstances before the Commissioner decides whether to exercise his powers under section 25(4).</p> <p>For instance, there may be greater cause for the Commissioner to remove a board member from his position in a youth charity and who</p>

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			<p>has frequent interactions with the youth, should he be convicted of having sex with a minor under 18. It may also be prudent to ensure that the individual remains permanently disqualified from being a board member of the charity even though the offence may subsequently be spent.</p> <p>A removal by the Commissioner under section 25(4) is a carefully deliberated decision which is specific to the concerned charity. It does not prohibit the removed individual from serving in key positions in other charities.</p>
4	<p>Amend the definition of “fund-raising appeal” to clarify that a “fund-raising appeal”:</p> <p>(a) is not restricted to appeals to or receipts from members of the public only; and</p> <p>(b) includes appeals targeted at a confined group of persons.</p>	<p>Unsolicited donations and appeals made to qualifying grant-making philanthropic organisations registered under the Income Tax Act should not fall within the scope of the regulation. Both these activities are not intuitively understood as “fund-raising appeals” and should not be regulated as such.</p> <p>Unsolicited donations would have been voluntarily made by the donor without any intervention on the part of the donee.</p> <p>We do not think that “appeals” made by any person to a qualifying grant-making philanthropic organisation should be regulated as such a grant-making</p>	<p>We would like to keep the expression “fund-raising appeal” as broadly defined, to include appeals in any form for charitable, benevolent or philanthropic purposes, for the following reasons:</p> <p>(a) fund-raisers will be obliged to abide by the basic requirements in the <u>regulations</u> (link to the regulations), such as the duty to disclose accurate information to donors; and use donations in accordance with the intended purposes. This serves to enhance the transparency of such fund-raising appeals.</p>

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		<p>philanthropic organisation typically receives requests or “appeals” for grants or assistance.</p> <p>Further, the mischief that the proposed amendments seek to prevent is not present as grant-making philanthropic organisations will have the internal processes required to screen out un-meritorious “appeals”.</p>	<p>(b) where there is misconduct in any fund-raising activity, we will have the power to take enforcement action, for example, by issuing a prohibition or restriction order in respect of that activity.</p> <p>We would also like to include unsolicited donations and appeals to grant-making philanthropic organisations in the regulatory framework for fund-raising.</p> <p>While such organisations may have internal processes for screening illegitimate fund-raising appeals, legislating this adds another layer of protection. It is reasonable to expect the recipients of such funds to abide by the basic duties and obligations to donors as mentioned in (a) above.</p> <p>We also cannot rule out the possibility of misconduct in such scenarios.</p> <p>To clarify, the requirement to apply for a permit from the Commissioner to conduct or participate in any fund-raising appeal (i.e. under section 39A(1) of the Act) does not apply in the case of unsolicited donations, e.g. a charity that receives donations for a foreign charitable purpose without having solicited for it, need not apply for a permit from the</p>

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			<p>Commissioner in respect of the donations received.</p> <p>We will address the concerns raised in the review of our fund-raising regulations by making clear which requirements will not apply to unsolicited donations.</p>
		<p>It is not entirely clear what “a confined group of persons” means and whether the proposed amendment is intended to regulate private fund-raising activities.</p>	<p>It is our intent for the expression “fund-raising appeal” to include private fund-raising activities, such as appeals conducted within schools, associations and religious organisations.</p> <p>It is important for the Commissioner to be able to stop improper fund-raising activities if necessary.</p> <p>We will be reviewing our fund-raising regulations to make clear which requirements will not apply to small fund-raising efforts.</p>
		<p>It appears that an appeal for funds to an individual will also fall within the proposed amendment.</p>	
		<p>If the “confined group of persons” comprises solely the fund-raiser’s personal friends, it is difficult to see why the law has to intervene in regulating private decisions to donate funds.</p>	
		<p>We request for the Commissioner to consider the impact upon educational establishments where fund-raising often takes place on an ad hoc or informal basis within the school community (a confined group), and the impact that the proposed amendments may have on the regulatory requirements applicable to such institutions.</p>	

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		<p>The proposed amendment to the definition will impose the requirements under Part VIII of the Act and the obligations under the regulations on private fund-raising activities. This can have a dampening effect on philanthropic activities in Singapore.</p> <p>We suggest that specific safe harbour provisions be included in the Act, in order to carve out and clarify that certain types of fund-raising appeals, such as private fund-raising events, are exempted from specific requirements under the Act (e.g. permit requirement). The Commissioner will nonetheless maintain the regulatory powers under section 39B of the Act.</p>	
		<p>It is unclear from the proposed amendment whether a permit is required for private fund-raising activities (whether for local or foreign charitable purposes).</p>	<p>Fund-raising appeals for local charitable purposes do not require a permit from the Commissioner.</p> <p>However, a person who wishes to conduct a fund-raising appeal for foreign charitable purposes (be it where funds are raised privately or otherwise) must first <u>apply for a fund-raising permit</u> (link to the permit requirement in the regulations) from us.</p> <p>In addition, at least 80% of the funds raised for foreign charitable purposes must go towards charitable purposes in Singapore. This 80:20</p>
		<p>The proposed changes suggest the following implications on charities and organisations conducting fund-raising for foreign charitable purposes:</p> <p>(a) any fund-raising that is conducted for overseas programmes will need a permit from the Commissioner, including where funds are privately received.</p>	

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		<p>(b) the 80:20 Rule applies unless the Commissioner decides to relax it.</p> <p>(c) other administrative and regulatory requirements pertaining to the permit will apply.</p> <p>The implications of the proposed amendments will hamper organisations' overseas operations. Even if the 80:20 Rule is relaxed on a discretionary basis, it would increase the administrative burden on such organisations as they would have to continually apply for permits and waivers of the 80:20 Rule.</p> <p>We request that the Commissioner considers the following:</p> <p>(a) to exempt all private fund-raising appeals from the 80:20 rule;</p> <p>(b) allow charities which commit to no public fund-raising to be exempted from the permit requirement or at least have a standing permit; and</p> <p>(c) waive the requirement of separately auditing the accounts of each appeal and instead, the accounts of the charity, including the appeals, will be audited at the end of its financial year.</p>	<p>Rule still applies, unless the Commissioner otherwise allows, such as in respect of private fund-raising appeals.</p> <p>We note the concerns raised on the administrative burden. The Commissioner will work with permit applicants on a case-by-case basis to facilitate their work.</p> <p>We will also be reviewing the fund-raising regulations in relation to the regulatory framework for fund-raising appeals conducted in Singapore.</p>

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		<p>Although the definition of “fund-raising appeals” covers appeals conducted online, the regulation of online fund-raising could be strengthened.</p> <p>Firstly, we suggest that there should be clarification on the nexus with Singapore which is required to bring an online fund-raising appeal within the scope of regulation.</p> <p>Secondly, we suggest that it should be studied whether the regulatory powers of the Commissioner (and other authorities) are sufficient to effectively police appeals which may reach (and even specifically) target a Singapore audience without being “conducted” from within Singapore.</p>	<p>We are reviewing the fund-raising regulations, with the aim of strengthening the regulatory framework for fund-raising appeals, including those conducted online.</p>
5	Empower the Commissioner to suspend improper fund-raising appeals, for up to 2 years, pending the completion of investigations into such fund-raising appeals.	Is the suspension period of 2 years too long? It can mean the drying up of an organisation’s donors and supporters, and services to the beneficiaries may be disrupted. A charity may not be able to recover after a 2-year fund-raising suspension.	<p>The proposed amendment enables the Commissioner to issue a suspension order for a <u>maximum</u> of 2 years.</p> <p>The actual suspension in respect of a particular fund-raising appeal may be for a shorter period.</p> <p>It also does not prohibit the organisation from conducting fund-raising appeals for other charitable purposes.</p>

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			<p>We will also work closely with the governing board of the charity to ensure that its operations will continue while investigations are ongoing.</p>
6	<p>Clarify and enhance the Commissioner’s power to call for documents and information.</p> <p>This includes allowing the Commissioner to request information or documents that come into a person’s possession within a specified period not exceeding 2 years after the order is made.</p>	<p>The proposed maximum period of “2 years after the order is made” is excessive. We suggest that the maximum period of 2 years be shortened to 6 months.</p> <p>Additionally, there are no restrictions on how widely the Commissioner can phrase an order requesting the furnishing of information and documents.</p> <p>In cases where ongoing specific documents, such as monthly bank statements, are required to be provided, we suggest that the Commissioner should only be able to require a person to provide such documents over a fixed period of time (possibly up to 2 years), subject to safeguards that require the Commissioner to specify the exact document that needs to be furnished.</p>	<p>The expanded powers will be invoked only when there is a need to do so, such as when a charity is under investigation (or for a period of time after the investigation has closed) and we require the charity’s monthly bank statements to be submitted to us for monitoring in the interim.</p> <p>Depending on the facts of each case, the Commissioner will determine the actual period to be specified in each order.</p> <p>The type of documents and/or information needed will also vary according to the case. The Commissioner will specify such requirements on a case-by-case basis.</p>