



Dialogue Session Proposed Amendments to the Charities Act

Charities Unit
28 August 2017

Programme

Time	Activity				
6.00pm	Registration				
6.45pm	Opening Address by COC				
6.55pm	<table border="1"> <tr> <td rowspan="3">Presentation on Proposed Amendments</td> <td> <ul style="list-style-type: none"> • Part (A) Removal and disqualification regime (s.25 and s.27) • Dialogue to hear feedback </td> </tr> <tr> <td> <ul style="list-style-type: none"> • Part (B) - COC's statutory powers • Dialogue to hear feedback </td> </tr> <tr> <td> <ul style="list-style-type: none"> • Part (C) - Clarifying provisions and administrative amendments • Dialogue to hear feedback </td> </tr> </table>	Presentation on Proposed Amendments	<ul style="list-style-type: none"> • Part (A) Removal and disqualification regime (s.25 and s.27) • Dialogue to hear feedback 	<ul style="list-style-type: none"> • Part (B) - COC's statutory powers • Dialogue to hear feedback 	<ul style="list-style-type: none"> • Part (C) - Clarifying provisions and administrative amendments • Dialogue to hear feedback
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8.30pm	End of Dialogue Session				

Objectives of Proposed Amendments

- Enhance the regulatory framework to **increase** the **accountability** of charities and fund-raisers in Singapore.
- **Afford stronger regulatory powers** to the Commissioner of Charities (“the COC”) in the discharge of his duties so as to maintain public trust and confidence in the charity sector, including fund-raising appeals for charitable, benevolent or philanthropic purposes.

PROPOSED AMENDMENTS

PART (A) - REMOVAL AND DISQUALIFICATION REGIME (S.25 AND S.27)

Proposed Amendments to the Act

(A) Proposed amendments related to removal of a charity's related persons* and disqualification regime (s.25 and s.27)

- i. Strengthen and update the disqualification regime
- ii. Strengthen and update the provisions for removal of a charity's related persons
- iii. Clarify the effect of removals and disqualifications under the Act
- iv. Clarify offence provisions for persons acting whilst disqualified

**Charity's related persons refers to the trustee, governing board member, officer, agent or employee of the charity*

A(i) Strengthen and update the disqualification regime (s.27)

Persons disqualified from being governing board members, etc., of a charity

27.—(1) Subject to the provisions of this section, a person shall be disqualified from being a governing board member or key officer of a charity or a trustee for a charity if —

- (a) he has been convicted, whether in Singapore or elsewhere, of any offence involving dishonesty or deception;
- (b) he has been adjudged bankrupt, and has not been discharged;
- (c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (d) he has been removed from the office of governing board member or key officer of a charity or trustee for a charity by an order made by the Commissioner under section 25(1)(i) or by the High Court on the ground of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (e) he is subject to a disqualification order under section 148, 149 or 154 of the Companies Act (Cap. 50).

A(i) Strengthen and update the disqualification regime (s.27)

1
Disqualify persons convicted of offences involving **terrorism, terrorism financing or money laundering.**

2
Clarify that conviction for an offence involving dishonesty would include **fraud, corruption, bribery and deception.**

3
Disqualify persons who have been **removed as an officer, agent, or employee** of a charity pursuant to **section 25(1)(i)** or by the High Court.

4
Prevent disqualified persons from being a key officer or governing board member in an **entity that is a governing board member or member** of a charity.

5
Clarify that the disqualification stands only when the ground for disqualification exists.
E.g. criminal conviction ground for disqualification **will not apply to spent convictions** or if the person is **granted a pardon** for the offence.

Spent convictions:

- Applicable for minor offences
- Criteria:
 - five-year crime free period
 - sentence imposed was not more than three months' imprisonment or \$2,000 in fines

A(ii) Strengthen and update the provisions for removal of a charity's related persons (s.25)

Power to act for protection of charities

25.— (4) The Commissioner may remove a governing board member or key officer by order made of his own motion where the governing board member or key officer —

- (a) has been convicted of an offence involving dishonesty, fraud or moral turpitude;
- (b) is a bankrupt;
- (c) is a corporation in liquidation;
- (d) lacks capacity (within the meaning of the Mental Capacity Act 2008) to exercise his functions as governing board member or key officer;
- (e) has not acted, and will not declare his willingness or unwillingness to act; or
- (f) is outside Singapore or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.

A(ii) Strengthen and update the provisions for removal of a charity's related persons (s.25)

- 1 Introduce a new ground for removal to allow COC to **remove person who, despite being disqualified, acts as a governing board member or key officer of a charity.**
- 2 Make clear that the criminal conviction ground for removal will **not apply to spent convictions** or if the person is **granted a pardon** for the offence.
- 3 Provide that the COC **can still make a removal order** under sections 25(1) or 25(4) of the Act **even though the concerned person has resigned** from the charity.

A(iii) Clarify effect of removals and disqualifications

Removal after inquiry instituted on a charity [s. 25(1)]	Discretionary removal under specified grounds [s. 25(4)]	Disqualification under specified grounds [amended s. 27(1) and (4)]	
Capacities removed/ disqualified from			
 Trustee Governing board member Officer Employee Agent	 Governing board member Key Officer	(A) In the Charity Governing board member Key Officer Trustee	(B) In entity that is a governing board member or member of a Charity Governing board member Key Officer
Effect: Permanently barred from which capacity/entity?			
 Specific capacity Specific charity	 Both capacities Specific charity	 All capacities Any charity	 Both capacities Any entity that is a governing board member or member of a charity

A(iv) Clarify offence provisions for persons acting whilst disqualified

Current

- Currently, a person is guilty of an offence if the person continues to act as a governing board member or key officer of a charity or trustee for a charity whilst disqualified.

Proposed Amendments

- Provide that a person is **guilty of an offence** if the person acts in **any capacity** in question **whilst disqualified from that capacity** (including in any of the expanded capacities).
 - E.g. a person is guilty of an offence if he acts whilst disqualified from being:
 - a governing board member of a charity; or
 - a key officer of a company that is a governing board member of a charity.

QUESTIONS & ANSWERS

PART (A) - REMOVAL AND DISQUALIFICATION REGIME (S.25 AND S.27)

PROPOSED AMENDMENTS

PART (B) – COC'S STATUTORY POWERS

Proposed Amendments to the Act

(B) Proposed amendments related to COC's statutory powers

- | | |
|------|---|
| i. | Empower COC to extend the suspension period of a charity's related persons |
| ii. | Empower COC to suspend improper fund-raising appeals pending the completion of investigations |
| iii. | Enhance COC's powers to call for documents and information |

B(i) Empower COC to extend suspension period of a charity's related persons

Current

- After an inquiry has been instituted, if COC is satisfied that there is a need to protect the charity etc., he may suspend, with the consent of the Attorney-General ("AG") the charity's related persons from the exercise of their office or employment for a maximum of 12 months.
- Current cap has proven to be too short.

Proposed Amendments

- Allow the COC to **extend**, with the consent of the AG, the suspension period **beyond 12 months**, provided that the entire period of suspension is **capped at 2 years**.
- Aligned with the powers in the UK Charities Act.

B(ii) Empower COC to suspend improper fund-raising appeals pending the completion of investigations

Current

- COC can prohibit, stop or restrict a fund-raising appeal such as when it is found to be improperly administered.
- Such prohibition or restriction orders can only be issued after the completion of an investigation into the fund-raising appeal.
- Investigations may take some time and in the meantime, donating public is exposed to risks.

Proposed Amendments

- Allow the COC to **suspend** any fund-raising appeal (pending completion of investigations), if he has **reason to suspect**, for example, that the appeal is **not being properly conducted**. The entire period of suspension is **capped at 2 years**.

B(iii) Enhance COC's powers to call for documents and information

Current

- COC can order any person to furnish him with any information or document in his possession or control relating to any charity or fund-raising appeal.
- It is unclear whether COC currently has the power to require documents to be furnished on an on-going basis. A new order may need to be issued each time new information/documents are required (e.g. monthly bank statements).

Proposed Amendments

- **Allow** the COC to order a person to **furnish information and documents** that are not only already in his knowledge, custody or control, but also those which come into his knowledge, custody or control at a **future point in time**, within a specified period **not exceeding 2 years after the order is made**.

QUESTIONS & ANSWERS

PART (B) – COC'S STATUTORY POWERS

PROPOSED AMENDMENTS

PART (C) - CLARIFYING PROVISIONS AND ADMINISTRATIVE AMENDMENTS

Proposed Amendments to the Act

(C) Clarifying provisions and administrative amendments

- i. Clarify the type of penalties that may be imposed for contraventions of IPC Regulations
- ii. Prescribe enabling provisions to mandate electronic filing of charities' annual submissions
- iii. Clarify obligations of charities/board members and introduce offences in relation to accounts, reports and submissions
- iv. Clarify the definition of "fund-raising appeal" in the Act
- v. Technical/Miscellaneous amendments

C(i) Clarify type of penalties that may be imposed for contraventions of IPC Regulations

Current

- Different penalties are imposed on IPCs and non-IPC charities for similar offences:
 - Contravention of the IPC Regulations (other than wrongful issuance of tax deduction receipts) attracts a financial penalty of \$100.
 - No criminal penalty is imposed.

Proposed Amendments

- Clarify the type of penalties that may be imposed:
 - **Align with non-IPC charities** - criminal convictions for offences (max. \$10,000 fine or 3 years imprisonment).
 - **Retain existing financial penalty** - wrongful issuance of tax deduction receipts (i.e. financial penalty of the higher of \$100 or 0.4 X total value of donations which ought not to be allowed a deduction under section 37(3) of the Income Tax Act).

C(ii) Prescribe enabling provisions to mandate electronic filing of charities' annual submissions

Proposed Amendments

- Introduce a **new Part IVA** to set out the functions of the **Electronic Transactions Service**, the transactions that can be carried out, and other matters relating to the Service.
- Provide for regulations to be made to:
 - **mandate the filing** of annual submissions **via electronic means**.
 - **allow regulatory submissions** by charities **to other relevant authorities** (e.g. ACRA, ROS) to be **treated as submissions to the COC**.
- Provide **immunity** to the Government and its employees should errors **arise from malfunction** of the electronic service, so long as they have acted in good faith and with reasonable care.

Consideration

- Most charities are already submitting through the Charity Portal. In line with efforts to promote transparency.
- Similar provisions in ACRA Act and Companies Act.

C(iii) Clarify obligations and introduce offences in relation to accounts, reports and submissions

Proposed Amendments

- Clarify that **obligation to file annual reports** (including financial statements) with the COC **applies only to registered charities and exempt charities**.
- Require all charities to **preserve their annual reports for at least 5 years**.
- Clarify governing board members' **duties to preserve accounting records, financial statements and annual reports** when the charity ceases to exist.
- Make it an **offence** for persons if they **fail to preserve** accounting records, financial statements and annual reports for at least 5 years.
 - Clarify that there does not have to be persistent default before an offence is committed.
 - Currently, there are only offence provisions for persons in persistent default in relation to the requirement to file annual reports or to allow for public inspection of annual reports.

C(iv) Clarify the definition of “fund-raising appeal”

Proposed Amendments

- Clarify that a “fund-raising appeal” is **not restricted to appeals to or receipts from only members of the public**.

Amended definition

“fund-raising appeal” means —

- (a) any appeal by any person, whether made expressly or impliedly, for money or other property (whether as consideration or otherwise) that is made in association with a representation that the whole or any part of the money or property, or proceeds or returns from the money or property, will be applied for charitable, benevolent or philanthropic purposes; or
 - (b) a receipt by any person of any money or other property (whether as consideration or otherwise) that is given in whole or in part for any charitable, benevolent or philanthropic purposes.
- Allows for a broader interpretation of the definition such that the duties and obligations of a fund-raiser prescribed under the relevant Regulations will apply.

C(v) Technical/miscellaneous amendments

Proposed Amendments

- Update and clarify the **definition of “key officer”**.
 - To expand the context in which the definition can be applied, i.e. charities; entity that is a governing board member or member of a charity.
 - To include individuals who have control over any aspect of the charity/entity.

- **Remove the prescribed list of IPCs** in the Act and clarify the definition of IPC.
 - A registered charity or an exempt charity in Singapore that is approved as an IPC by the Minister, COC or any SA on the application of the charity, or which is deemed as an IPC under any written law.

- Update section 43 of the Act which sets out provisions concerning **service of documents** under the Act.
 - Sets out specific procedures for service of documents on individuals and the different types of entities (e.g. companies, partnerships).

C(v) Technical/miscellaneous amendments

Proposed Amendments

- Update section 44 and introduce new section 44A which concerns **offences by corporations, unincorporated associations or partnerships**.

- **Replace “Statement of Accounts”** in the Act and Regulations, where applicable with **“Financial Statements”**.

QUESTIONS & ANSWERS

PART (C) - CLARIFYING PROVISIONS AND ADMINISTRATIVE AMENDMENTS

Public Consultation

- Closes on **11 September 2017**.
- Consultation material published on Charity Portal (www.charities.gov.sg).
- Written comments and feedback can be submitted via:
 - Email: MCCY_Charities@mccy.gov.sg
 - Post: Office of the Commissioner of Charities
Ministry of Culture, Community and Youth
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THANK YOU

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