Hong Kong

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Company Limited by Guarantee, Trust, Society

Five main social issues addressed by these organizations: Primary and High School Education, Arts and Culture, Health and Medical Research, Youth and Family, Human Rights

Average time established by law to register a philanthropic organization: 0-30 days

12 days for Society and 4 days for Company Limited by Guarantee, according to 2016 media report

Average cost for registering a philanthropic organization: US $2,000

If the registration takes the form of a "society", it costs very little. To register a Company Limited by Guarantee, fees range from US $20 to US $131 depending on the number of members. The costs of forming a "company limited by guarantee" or "charitable trust" may increase substantially as they might require the assistance of an attorney.

Government levels primarily regulating the incorporation of philanthropic organizations: Other: Hong Kong has only one level, i.e., the Special Administrative Region government

Philanthropic Environment Scores:

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<th>Year</th>
<th>Ease of Operating</th>
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<td>2018</td>
<td>4.8</td>
<td>4.3</td>
<td>5.0</td>
<td>3.0</td>
<td>4.0</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

There is no comprehensive ordinance or statute that applies to POs in Hong Kong (Bethke, 2016, p.26). The major relevant laws include the Companies Ordinance, the Societies Ordinance, and the Registered Trustees Incorporation Ordinance. A PO can be formed as a society, a company limited by guarantee, a trust, or a statutory body established under a specific ordinance.

The CIVICUS Civil Society Index Report (2006) of Hong Kong showed that most respondents judged the registration process to be quick, simple, inexpensive, fairly applied and consistent. It is only recently that some political groups have begun to encounter problems in registration or opening a bank account. Recently, a Hong Kong activist accused the HSBC Bank of “political censorship” after its branches refused to open an account for his new political party (The Guardian, 2016).

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

Once registered, POs in Hong Kong are relatively free to conduct their businesses. Legal restrictions on internal governance are minimal. There is no interference with communication with other local or overseas POs. Although no scandal has happened in recent years, both scholars and practitioners admit that charitable organizations in Hong Kong lack any comprehensive monitoring and supervision system (Bethke, 2016). Chan & Lam (2015) report that the two major sources of funding for social welfare NGOs in Hong Kong are the Social Welfare Department and the Lotteries Fund, which indicates that POs in Hong Kong rely on substantial government funding. Despite heavy reliance on government funding, most chief executives of social service agencies (88.3%) found that they operated autonomously and were free from government intervention (Serving Alone: The Social Service Sector in Hong Kong by Centre for Civil Society and Governance of HKU, 2009: 35).

Requirements in financial reporting, particularly on public fundraising and lotteries, are reasonable. POs registered as incorporated companies are required to report basic facts through an annual report, while societies are not required to submit annual financial report to the authorities. Charities exempted from tax under Section 88 of the Inland Revenue Ordinance are subject to periodic review. However, there are no statutory provisions that oblige charities to submit annual reports or financial reviews to a supervisory body (Bethke, 2016). In fact, this lack of fiscal regulations has raised concerns about the levels of transparency and accountability of philanthropic organizations in Hong Kong.
Question 3: To what extent is there government discretion in shutting down POs?

POs are free to terminate their own activities. Involuntary termination by the authorities is rare. Since the supervision by the government is minimal, many "dead" POs go unnoticed.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Once a PO is recognized by the Inland Revenue Department (IRD) as a charitable organization, both the PO and its donors will receive tax-exempt status. Any interested individual can check the list of charitable institutions and public trusts that are exempt from tax under section 88 of the Inland Revenue Ordinance on the IRD website (http://www.ird.gov.hk/eng/tax/ach_index.htm). According to sections 16D and 26C of the Inland Revenue Ordinance, individual and business donors can claim deductions for approved charitable donation of up to 35 percent of the individual's or business’s assessable income or profits in the year during which the donations were made.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

The definition of "charitable organization" as defined by the Inland Revenue Department is somewhat restrictive. POs working in the areas of education, religion, culture, etc. have no problem obtaining tax-exempt status, but it is more difficult for human rights groups or advocacy groups for democracy. Examples of other charities’ mission focus that have not been granted exempt status include: attainment of a political objective; promotion of the benefits of the founders or subscribers; provision of a playing field, recreation ground or scholarship fund for employees of a particular company or industry; encouragement of a particular sport such as angling or cricket (http://www.ird.gov.hk/eng/tax/ach_tgc.htm).

To be qualified as a charity under Section 88 of Inland Revenue Ordinance, a PO must be established for a charitable purpose, such as relief of poverty, advancement of education, advancement of religion, or any other purpose beneficial to the Hong Kong community. Charitable purpose refers also to a public purpose; therefore, charitable organizations must not be established to benefit specific individuals. Charities must have a governing instrument in the form of a trust, society, company or statutory body established by the Hong Kong legislature. The law also grants exceptional exemptions to some ad hoc committees established for charitable purposes.
Established organizations seeking exempt status must apply to the Inland Revenue Department, including an application letter, certificate or registration, bylaws, list of activities carried out in the last 12 months and financial status. If the organization is not yet established, only a draft of the bylaws and the list of activities is required. Tax exemption is only granted to charities (national or foreign) subject to the jurisdiction of the Hong Kong courts.

In order to benefit from exemptions, charity organizations must be registered with the Welfare Department of Hong Kong and be listed in the Charitable Donations and Tax-Exempt Charities of the Inland Revenue Department.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 5.0

Cross-border charitable donations are treated equally with local donations as long as the POs are locally registered. People will not receive tax exemption if they send their donations directly to an overseas PO. International POs such as Oxfam, World Vision, Save the Children and others, register their chapters in Hong Kong and solicit local donations to support their work in other parts of the world. Donors have no problem getting tax exemptions and can send their money overseas without additional costs.

A Tax Guide for Charitable Institutions and Trusts of a Public Character, prepared by the Inland Revenue Department, provides guidelines for international POs and POs working with international causes. For organizations with purposes under the categories of poverty relief, advancement of education, or advancement of religion, overseas activities are still considered tax-exempt. POs registered to benefit the community only receive tax incentive when the benefit refers to the Hong Kong community.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 5.0

Cross-border charitable donations can be received without additional cost. But like local donations, any substantial transactions is reviewed and screened by banks due to anti-money laundering regulations. Banks require certain details regarding the parties involved, and some human rights groups find this uncomfortable as they are keen to protect their donors’ identity.
IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

The Hong Kong government treats POs both as friends and as foes. For POs working in the areas of education, social service and health, the government treat them like service agents and even as partners, in many cases providing them with substantial funding support. However, the government does not appreciate the role of POs as change agents or advocates. Although the Hong Kong government relies on POs for the delivery of many public services, these organizations are not sufficiently involved in (or have the necessary spaces to influence) policy-making and budgetary processes. Advocacy groups defending the environment, labor and human rights, and democracy have increasingly tense relationships with the government. The Umbrella Movement, an occupation calling for universal suffrage that emerged in late 2014, indicates how unsatisfactory the political environment is.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

The Hong Kong government promotes philanthropic values and encourages donations to POs in education, social service, health and so on. In fact, a very high percentage of social services in Hong Kong (education, health, and housing) are offered via philanthropic organizations that are largely subsidized by the government. However, at the same time, government deters people from donating money to some human rights groups, such as those related to the Umbrella Movement, by claiming that donations are coming from “overseas enemies” (citing sources from hackers reported by pro-Beijing newspapers). Some donors to pro-democracy movements worry that their privacy cannot be protected.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

The philanthropic culture in Hong Kong is well nurtured by the voluntary services organized by schools and community groups. There are “flag-selling” traditions arranged by government in every corner of society (flag selling refers to a means of organized fundraising of Hong Kong charities that is approved by the government). POs must apply for the permit from the Department of Social Welfare prior to selling flags on the street. In recent years, although people have replaced the
traditional flags with stickers that donors can wear to show support, people still call these fundraising days “Flag Day”.

Public trust for POs is high, as reports of corruption in the sector are not frequent. However, increasingly aggressive fundraising activities on the street by some professional fundraisers has raised concerns in the philanthropic community.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Philanthropy in Hong Kong is well developed and benefits from an enabling legal framework, substantial funding from the government (providing more than 60 percent of revenue of social service agencies) and staffed with professional social workers. Though most advocacy groups do not receive funds from the government, they are free to solicit donations from the public and overseas. Service POs do not work together very frequently but advocacy groups (which alone are relatively weak and less professionalized) very often form coalitions to push for change.

The Hong Kong Council of Social Services serves as a federation of service POs in Hong Kong providing training, research and policy advocacy. Some well-off individual donors are very generous in supporting schools and hospitals. Foundations strategically working for the long-term social and cultural development in Hong Kong are uncommon.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The Umbrella Movement/Occupy Central: The Umbrella Movement is a political movement that ran from September to December 2014 to advocate for electoral reform. Protestors used umbrellas to defend themselves. “Occupy Central” was an alternative term to describe the movement.

- Social Enterprise Summit (http://ses.org.hk/): The Social Enterprise Summit of Hong Kong aims to advocate for social innovation and entrepreneurship. It has become a major cross-sector platform for social reformers, community members, and government officials. It is an important annual event for POs in Hong Kong.

Future development trends in the philanthropic landscape

More and more discussion on social innovation— including social enterprise, B-corps, the sharing economy and others—is taking place in Hong Kong as many people find the philanthropic sector too established and less adaptive to a changing environment. The new government vows to involve more POs in their policy making and implementation processes. However, without democracy, many people doubt that the government will be serious in partnering with advocacy POs, particularly in recognizing their role as agents of change and policy-making partners.
Three key recommendations to improve the environment for philanthropy

- Public participation: Involve more POs and citizens in policy-making and budgetary processes. The government should be more transparent in releasing information through its e-platform to enhance public deliberation.

- Democracy: Implement universal suffrage so that the government can become more accountable.

- Social Innovation: Create an enabling environment (including training, funding for start-ups, and policy on public procurement) to facilitate the development of social enterprises, B-corps and the sharing economy.