

Family offices news: Reform of Hong Kong's Charities Law?

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PHILANTHROPY

The Hong Kong Law Reform Commission has recently set up a committee to consider the possible reform of Hong Kong's charity law. Hong Kong has a well established tradition of philanthropy.

Hong Kong does not have a statutory regulator for the charity sector (like the Charity Commission in England). Formal recognition of charitable status is obtained through registration with the Inland Revenue Department under the provisions of the Inland Revenue Ordinance. If there are serious concerns about the administration of a Hong Kong charity then the Secretary for Justice as protector of charity may of his own motion bring the matter before the Court. The High Court exercises the same supervisory jurisdiction over charitable trusts as it does over ordinary non-charitable trusts.

The law relating to charities in Hong Kong is based upon English common law dating back more than 400 years to the enactment of the Statute of Elizabeth in 1601 and to the Pemsel case of 1891 in which the House of Lords identified the following four heads of charity:

- Relief of poverty
- Advance of education
- Advancement of religion; and
- Other purposes beneficial to the community

Hong Kong's emerging status as a philanthropic and charitable centre means that there is an increasing need to codify the key features of a charity and to clarify the law in relation to particular charitable purposes.

England has recently undergone a similar reform in relation to its charity law and section 2 of the Charities Act 2006 has replaced the four heads of charity with 13 new heads. The new 'heads of charity' reflect the development of the case law in this area and expressly recognise the importance society attaches to activities such as the advancement of arts, culture, heritage and science and the advancement of environmental protection. The Act does however retain the flexibility to class as charitable any other purpose that might be regarded as beneficial to society.

The Law Commission is expected to give consideration to the purposes which it regards as beneficial to society and may recommend extending and clarifying the law in this regard. It is expected that the Law Reform Commission will publish a consultation paper on Hong Kong's charity law later this year and it is hoped that the proposals will help develop its law in a way suited to its unique brand of charitable giving.