

## Avoiding legal pitfalls in charitable giving in Singapore

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Charities in Singapore attracted approximately S\$2.9 billion in donations in 2016; however donations only account for 17.3% of the charity sector's 2016 annual receipts of S\$16.6 billion, which includes government grants, donations, as well as fees and charges. With those statistics in mind, there is room for more to be done in charitable giving, particularly for those who view philanthropy as a viable way to give back to society. To ensure that the beneficiaries fully benefit from charitable giving, careful planning is required.

A charitable donor may need to consider what causes to support, who to donate to, perform due diligence on how charitable organisations utilise their resources, and understand the organisations' governance policies and transparency practices. Apart from that, there are also legal issues and tax considerations which a donor should take into account, so as to avoid unwanted surprises.

Some people prefer to make donations during their lifetime; some prefer for their donations to take effect only upon their passing. The latter is normally effected through a will, and are otherwise known as testamentary gifts. Much thought must be given when planning for charitable donations as testamentary gifts. Mistakes could frustrate the testator's charitable giving intentions and may be difficult to rectify after the testator has passed away. Some examples of common pitfalls include:

### Gaps in the gift

While many people make donations of a specific amount to a charitable organisation, an issue could potentially arise when a specific purpose or designated use is attached to the donation. This is fine if the specific purpose or designated use specified in the will is aligned with the charitable organisation's mission and charitable objects, to which a charity is bound by. However, if there is a mismatch between the designated use of the fund and the charity's mission or charitable objects, the gap could potentially render the gift to fail. The potential consequence is that the gift may fall into the residuary estate or into intestacy, depending on the wording within the will. Therefore, if a donor wishes to attach a specific purpose or designated use to charitable donations made through a will, much thought should be given to whether it is in line with the charity's mission and charitable objects, while noting that these could change with time, whereas a will takes effect upon the passing of the testator.

### Funds for non-charitable purposes

Save for very limited exceptions, Singapore law generally does not recognise funds being held for the benefit of purposes (as opposed to, persons), unless they are for charitable purposes. Singapore law recognises four main heads of charitable purposes: (1) the relief of poverty, (2) the advancement of education, (3) the advancement of religion, and (4) other purposes beneficial to the community not falling under the preceding heads. The fourth category has been developed to include the following:

- the promotion of health;
- the advancement of citizenship or community development;
- the advancement of arts, heritage or science;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
- the advancement of animal welfare; and
- the advancement of sport, where the sport promotes health through physical skill and exertion.

Where a will specifies that funds be held for purposes that are not recognised as charitable purposes under the law, the gift in the will may fail or be void for uncertainty.

#### Lack of proper governance and succession mechanism

Even if a gift of a sum to be held for charitable purposes is properly drafted, a large sum held for charitable purposes requires proper governance in the long run, that is ideally built-in with a more comprehensive design of governance, management and succession mechanism. Depending on the desire of the donor and the intricacies of the proposed mechanics, a testamentary gift may not be as suitable as doing philanthropic planning during the donor's lifetime. Lifetime philanthropic planning options include collaborating with a regulated donor-advised fund/grantmaker or setting up a regulated charitable purpose trust/foundation, with the latter requiring high level of commitment and long-term sustainability planning.

Less of a legal consideration than an emotional one, testamentary gifting is effected through a will, which only takes effect upon one's passing. Often, a person's passing is a significant event for his or her family. To avoid family members from being surprised at large gifts bequeathed to charities, at a more practical level, where desirable, some testators may get 'emotional sign-offs' from family members in their lifetime.

#### Not qualifying for tax deductions

Charitable giving is not necessarily motivated by tax benefits. However, to encourage charitable giving in Singapore, deduction for tax purposes is granted in respect of two times (or as announced in Budget 2018, 2.5 times up till 31 December 2021) the amount of donations to an Institution of a Public Character (IPC). IPCs are enhanced status charities which are regulated by the Commissioner of Charities and/or the relevant Sector Administrator. In order to enjoy the deduction for tax purposes, it is essential that the donations to IPCs are outright gifts. A donation given in return for benefits of commercial value may not be regarded as an outright gift and consequently may not qualify for deductions.

While the primary idea behind charitable giving is the desire to do good, navigating through the legal pitfalls that could arise should be on the mind of those wishing to make donations, especially so for testamentary gifts. Potential donors should take heed of the legal considerations to ensure that donations, in their totality, are given to the causes and organisations they have in mind.


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