

Governance and Regulation of Charities: International and Comparative Perspectives

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Rethinking state regulation of charities in Hong Kong

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Understanding charities regulation

Different models of state-charities engagement

1. Complementary (co-operation)
2. Supplementary (cooption)
3. Adversarial (challenge)

Different regulatory regimes



(See Breen et al, *Regulatory Waves* (2017); Young, *Nonprofit and Voluntary Sector Quarterly* 1999)

State regulation: rebuilding trust and legitimacy

Problems with charity law regime in Hong Kong:

1. no single piece of legislation governing charities
2. no single entity governing charities

Law Reform Commission recommendations 2011



Rethinking state regulation

Importance of good charity governance in face of Asian and global financial crises and COVID-19

vs

prevailing political reality in HK: increasing influence and control by mainland Chinese government after social unrest in 2019.

Is state regulation the best approach to charity law reforms in Hong Kong?

1. Historical: Evolution of local charity landscape
2. Political: Recent developments in Hong Kong and China
3. Environmental: Overseas experience



HONG KONG

Covid-19: Hong Kong's homeless population grows as charities close community services

by RHODA KWAN 12:51, 17 AUGUST 2020



HONG KONG

Covid-19: Hong Kong food charity struggles to assist needy as partners suspend donations

by RHODA KWAN 17:45, 6 AUGUST 2020

Historical: Evolution of local charity landscape

Long history of charitable activities in Hong Kong dating back to the colonial Hong Kong period

Government as financier of the charitable sector

- government provides basic facilitative rules (eg minimal formalities for setting up a charity; financial privileges to incentivise giving)
- but otherwise laissez faire approach

Complementary/supplementary model of state-charities engagement

- charities as partners/supplements to the government

Perceived restrictions arising from the *Pemsel* categorization

- but growth and diversification of charities in the past decades



Political: Recent developments in HK and China

Growing mutual distrust between government and charities

- Threat of strong government regulation
- Eg amended Inland Revenue guidelines for charities in Hong Kong: a charity must act lawfully and has duty to safeguard national security (cf Apple Daily Charitable Foundation)

HONG KONG

Rights NGO Amnesty International to close its Hong Kong offices citing security law

by TOM GRUNDY 14:12, 25 OCTOBER 2021



HONG KONG

Foundation linked to Apple Daily removed from charities list as Hong Kong announces 'national security' exclusion

by CANDICE CHAU 13:15, 14 SEPTEMBER 2021

Political: Recent developments in HK and China

Charity Law of China 2016

- First comprehensive statute dedicated to the regulation of the charitable sector.
- Allows direct registration of charitable organisations and public fundraising 2 years after registration.
- But: political role of the Law in controlling charities.

Environmental: Overseas experience

International 'wave' of regulation

Cf English Charity Commission

- *The Independent Schools Council v The Charity Commission* [2011] UKUT 421

Self-regulation as a coping mechanism?

Risk of strong state regulation vs Preserve public confidence

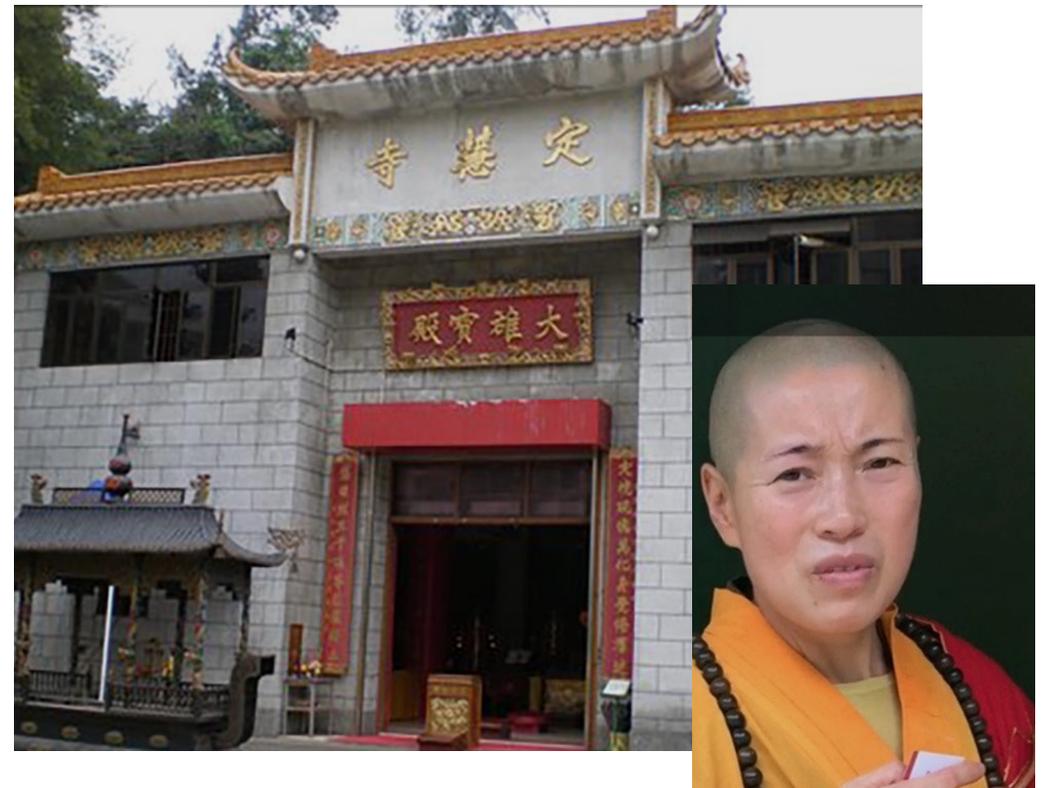
→ Enhancing transparency and accountability in charitable incomes



Transparency and accountability

Charitable fundraising

- misuse of donations
- unsatisfactory record-keeping
- administrative cost of fundraising



The *Ting Wai Monastery* Case (2018)

Transparency and accountability

Commercialisation of charities

- The Anglican Church case (2016):
joint venture with a property
developer to redevelop orphanage into
luxury residential apartments.



Deerhill Bay in *Hong Kong Sheng Kung Hui v Commissioner of Inland Revenue* (2016)

Conclusion

1. Historical, political and environmental factors influence the interplay between state and self-regulatory regimes.
2. In Hong Kong, a moderate and cautious approach with enhanced self-regulation is the best compromise in light of the historical laissez-faire approach of the government, the current political situation and the regulatory experience of other jurisdictions.
3. Self-regulatory initiatives are imminent to enhance financial accountability of charities.