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## No. S 122

### CHARITIES ACT (CHAPTER 37)

#### CHARITIES (INSTITUTIONS OF A PUBLIC CHARACTER) (AMENDMENT) REGULATIONS 2019

In exercise of the powers conferred by section 40C of the Charities Act, the Minister for Culture, Community and Youth makes the following Regulations:

#### **Citation and commencement**

1. These Regulations are the Charities (Institutions of a Public Character) (Amendment) Regulations 2019 and come into operation on 1 March 2019.

#### **Amendment of regulation 2**

2. Regulation 2 of the Charities (Institutions of a Public Character) Regulations (Rg 5) (called in these Regulations the principal Regulations) is amended by inserting, immediately before the definition of “applicant”, the following definition:

““applicable condition”, in relation to an institution or a fund (including an institution of a public character), means a condition for approval under regulation 3, but excludes any condition that is waived under regulation 5A in relation to that institution or fund;”.

#### **Amendment of regulation 3**

3. Regulation 3 of the principal Regulations is amended —

(a) by deleting sub-paragraph (a) of paragraph (1) and substituting the following sub-paragraph:

“(a) it is a registered charity or an exempt charity in Singapore;”;

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(b) by deleting sub-paragraph (e) of paragraph (1) and substituting the following sub-paragraphs:

“(e) its governing board satisfies the independence requirement in paragraph (4);

(ea) at least half of its governing board members are Singapore citizens;”;

(c) by deleting sub-paragraphs (g) and (h) of paragraph (1) and substituting the following sub-paragraphs:

“(g) the appointment of its auditor is approved by the Sector Administrator;

(h) the approval of the institution or fund as an institution of a public character is not contrary to the public interest.”;

(d) by deleting paragraphs (2) to (5) and substituting the following paragraphs:

“(4) For the purposes of paragraph (1)(e), the independence requirement is that at least half of the governing board members of the applicant must not be —

(a) an employee of the applicant;

(b) related to any individual or entity (except the Government) that established the applicant, or be such an individual or entity;

(c) related to any individual who is involved in the general control and management of the administration of any entity (except the Government) that established the applicant; or

(d) one of a number of governing board members of the applicant who are related (directly or indirectly) to each other and who collectively constitute at least half of

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the total number of governing board members of the applicant.

(5) For the purposes of paragraph (4), an individual (called in this paragraph the first individual) is related to another individual if the other individual is the first individual's —

- (a) child or grandchild;
  - (b) sibling;
  - (c) parent or grandparent;
  - (d) spouse; or
  - (e) spouse's parent or sibling.”;
- (e) by deleting the words “an institution” in paragraph (6) and substituting the words “an entity that established the applicant”;
- (f) by deleting the words “the institution” wherever they appear in paragraph (6)(a) to (d) and substituting in each case the words “the entity”;
- (g) by deleting the words “paragraph (1)(e)(ii)” in paragraph (7) and substituting the words “paragraph (1)(ea)”;
- (h) by inserting, immediately after paragraph (7), the following illustration:

*“Illustration*

The governing board of an applicant consists of *A*, *B*, *C* and *D* and 3 other members. *A* is *B*'s spouse. *C* is *D*'s spouse. *A* and *C* are siblings. *B* and *D* are regarded to be indirectly related through *A* and *C*. It follows that the independence requirement in regulation 3(4) is not satisfied because more than half of the total number of governing board members of the applicant are individuals to whom regulation 3(4)(d) applies.”.

#### **Amendment of regulation 4**

4. Regulation 4 of the principal Regulations is amended by deleting paragraphs (2) and (3) and substituting the following paragraphs:

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“(2) Despite the applicant satisfying all of the applicable conditions in regulation 3, the Sector Administrator may refuse to approve an application under this regulation, taking into account any other consideration the Sector Administrator thinks fit, which may include the following:

- (a) the applicant has at any time failed to comply with the Act or any regulations made under the Act (whether or not as a registered charity or an exempt charity);
- (b) there is or has been any mismanagement, misconduct, incompetence or negligence in the administration of the applicant;
- (c) an audit report on the applicant has been qualified in any way, and whether appropriate action has been taken to address the concerns raised;
- (d) whether the persons who are to perform the functions of governing board members of the applicant are likely to act independently and exercise proper control and management of the applicant as an institution of a public character;
- (e) whether the governing instruments and policies and plans of the applicant are likely to ensure proper control and management of the administration of the applicant as an institution of a public character;
- (f) whether the activities planned by the applicant are likely to further the charitable purposes of the applicant as an institution of a public character.

(3) An approval if granted by the Sector Administrator is valid for such period, not exceeding 2 years, as may be specified in the approval.”.

### **Amendment of regulation 5**

5. Regulation 5 of the principal Regulations is amended —

- (a) by deleting the words “institution or fund may apply for” in paragraph (1) and substituting the words “institution of a public character may apply for its”; and

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(b) by deleting paragraphs (3) and (4) and substituting the following paragraphs:

“(3) In deciding whether to approve an application under this regulation, the Sector Administrator may take into account any consideration the Sector Administrator thinks fit, which may include any of the following:

- (a) whether the institution of a public character meets the applicable conditions;
- (b) whether the institution of a public character has at any time failed to comply with the Act or any regulations made under the Act (whether or not as an institution of a public character, a registered charity or an exempt charity);
- (c) any of the considerations mentioned in regulation 4(2)(b) to (f);
- (d) the amount of tax deductible donations received during the current period of approval;
- (e) the activity level of the institution of a public character during the current period of approval.

(4) An approval under this regulation is valid for such period, not exceeding 5 years, as may be specified in the approval.”.

### **New regulation 5A**

6. The principal Regulations are amended by inserting, immediately after regulation 5, the following regulation:

#### **“Continued compliance with, and waiver of, conditions**

**5A.—**(1) An institution of a public character must satisfy the conditions in regulation 3 throughout its period of approval.

(2) The Minister may, on the application of an institution or a fund (that is applying for approval as an institution of a public character) or of an institution of a public character, waive any condition in regulation 3(1)(c) or (ea), or both, as the case may be.

(3) The Commissioner may, on the application of an institution or a fund (that is applying for approval as an institution of a public character) or of an institution of a public character, waive the condition in regulation 3(1)(e).”.

### **Amendment of regulation 6**

7. Regulation 6 of the principal Regulations is amended —

(a) by deleting the word “withdraw” in paragraph (1) and substituting the word “revoke”;

(b) by deleting paragraphs (2) and (3) and substituting the following paragraphs:

“(2) The Sector Administrator may suspend (for such period, not exceeding 2 years, as the Sector Administrator may specify), or revoke, the approval of an institution of a public character if it appears to the Sector Administrator that —

(a) the institution of a public character has failed to comply (whether or not as an institution of a public character, a registered charity or an exempt charity) with the Act or any regulations made under the Act at any time during its period of approval;

(b) there is or has been any mismanagement, misconduct, incompetence or negligence in the administration of the institution of a public character; or

(c) such action is necessary or desirable in the public interest.

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(3) Where the approval of an institution of a public character has been suspended or revoked under this regulation —

- (a) any donation made to the institution of a public character during the period of the suspension, or after the revocation, does not qualify as a tax deductible donation;
- (b) the Sector Administrator must take reasonable steps to inform the general public of the suspension or revocation, and of the matter specified in sub-paragraph (a); and
- (c) any donation made to the institution of a public character, during the period of the suspension or after revocation, but before the general public has been informed of the suspension or revocation by the Sector Administrator, must (on the donor's request) be refunded to the donor without any deduction.”; and

(c) by deleting the word “withdrawal” in the regulation heading and substituting the word “revocation”.

#### **Amendment of regulation 7**

8. Regulation 7 of the principal Regulations is amended by deleting paragraph (2).

#### **Amendment of regulation 8**

9. Regulation 8 of the principal Regulations is amended —

(a) by deleting sub-paragraph (c) of paragraph (1) and substituting the following sub-paragraph:

“(c) all information relating to every donor is kept confidential, and is not disclosed to any other person except as authorised by or

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under any law or with the consent of the donor; and”; and

(b) by deleting sub-paragraphs (a), (b) and (c) of paragraph (2) and substituting the following sub-paragraphs:

“(a) the commercial fund-raiser must pay directly to the institution of a public character the whole amount of donations collected for the institution of a public character, without any deduction or set-off; and

(b) the institution of a public character must not allow the commercial fund-raiser to deduct, from any donations collected for the institution of a public character, any payment due to the commercial fund-raiser from the institution of a public character.”.

### **Amendment of regulation 9**

**10.** Regulation 9 of the principal Regulations is amended —

(a) by deleting paragraphs (1) and (2) and substituting the following paragraph:

“(1) An institution of a public character must not issue any tax deduction receipt for any donation that is not a tax deductible donation.”;

(b) by inserting the word “and” at the end of paragraph (3)(b);

(c) by deleting the word “; and” at the end of paragraph (3)(c) and substituting a full-stop;

(d) by deleting sub-paragraph (d) of paragraph (3);

(e) by deleting paragraphs (4) and (5); and

(f) by deleting paragraphs (7) and (8) and substituting the following paragraph:

“(7) An institution or a fund must not issue any tax deduction receipt —

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- (a) after its approval as an institution of a public character has expired;
  - (b) during the period of suspension of its approval as an institution of a public character under regulation 6; or
  - (c) after its approval as an institution of a public character has been revoked under regulation 6.”.

### **Amendment of regulation 10**

**11.** Regulation 10 of the principal Regulations is amended by deleting paragraph (1) and substituting the following paragraph:

“(1) An institution of a public character must maintain a record showing the particulars of every tax deductible donation received by it.”.

### **Amendment of regulation 11**

**12.** Regulation 11 of the principal Regulations is amended —

- (a) by deleting paragraphs (4) and (5) and substituting the following paragraphs:

“(4) Where no purpose mentioned in paragraph (2) or (3) has been specified or communicated (as the case may be), the donation may be used to fund any activity carried out by the institution of a public character.

(5) Despite paragraphs (2), (3) and (4), the institution of a public character may use a donation for a purpose or activity only if —

- (a) the purpose or activity is within the objectives of the institution of a public character under its governing instruments; and
- (b) where a tax deduction receipt has been issued in respect of the donation, the

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donation satisfies the requirements of section 37(3C) of the Income Tax Act.”;

- (b) by deleting the words “referred to in paragraphs (2) to (5)” in paragraph (6) and substituting the words “mentioned in paragraph (2), (3) or (4)”;
- (c) by deleting the words “paragraphs (2) to (6)” in paragraph (7) and substituting the words “paragraphs (2) to (5)”;
- (d) by inserting, immediately after the word “donor” in paragraph (7)(a), the words “within 4 years after the receipt of the donation”.

### **Amendment of regulation 12**

**13.** Regulation 12 of the principal Regulations is amended —

- (a) by inserting the word “and” at the end of paragraph (1)(b);
- (b) by deleting sub-paragraph (c) of paragraph (1); and
- (c) by deleting paragraph (2).

### **Amendment of regulation 14**

**14.** The principal Regulations are amended by renumbering regulation 14 as paragraph (1) of that regulation, and by inserting immediately thereafter the following paragraph:

“(2) The total gross receipts mentioned in paragraph (1) exclude any money or other property given to the institution of a public character other than in response to an appeal mentioned in paragraph (a) of the definition of “fund-raising appeal” in section 39(1) of the Act.”.

### **Amendment of regulation 15**

**15.** Regulation 15(1) of the principal Regulations is amended by deleting the word “relevant” wherever it appears.

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**New regulation 15A**

16. The principal Regulations are amended by inserting, immediately after regulation 15, the following regulation:

**“Directions by Sector Administrator in relation to receipts from fund-raising appeal**

**15A.**—(1) Paragraph (2) applies where a Sector Administrator is satisfied that any of the following circumstances has arisen in respect of a fund-raising appeal for an institution of a public character:

- (a) the fund-raising appeal has not been conducted in good faith for charitable, benevolent or philanthropic purposes;
- (b) the fund-raising appeal has been improperly administered;
- (c) any provision of the Act or any regulations made under the Act or any condition imposed by the Commissioner, in connection with the fund-raising appeal, was not complied with by the institution of a public character or any person conducting the fund-raising appeal for the institution of a public character;
- (d) any proceeds from the fund-raising appeal have not been disbursed within the timeframe under the written agreement, required by regulation 14 of the Charities (Fund-raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012 (G.N. No. S 530/2012), between the institution of a public character and the person conducting the fund-raising appeal for the institution of a public character;
- (e) it is desirable in the public interest on any other ground to give directions under paragraph (2).

(2) The Sector Administrator mentioned in paragraph (1) may give all or any of the following directions:

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- (a) to the institution of a public character —
- (i) to refund all or any part of the receipts from the fund-raising appeal to all or any of the donors; or
  - (ii) to use all or any part of the receipts from the fund-raising appeal for such other charitable purpose as may be approved by the Sector Administrator;
- (b) to any person conducting the fund-raising appeal for the institution of a public character — to refund all or any part of the receipts from the fund-raising appeal to all or any of the donors.

(3) An institution of a public character must comply with any direction issued to it under paragraph (2)(a).

(4) A person conducting the fund-raising appeal for the institution of a public character must comply with any direction issued to that person under paragraph (2)(b).”.

### **Amendment of regulation 16**

17. Regulation 16 of the principal Regulations is amended —

- (a) by inserting, immediately after the words “institution of a public character” in paragraphs (1)(a) and (e), the words “for that financial year”;
- (b) by inserting, immediately after the words “financial statements” in paragraph (1)(b), the words “for that financial year”;
- (c) by inserting, immediately after the word “moneys” in paragraph (1)(c), the words “during that financial year”; and
- (d) by deleting paragraphs (2) and (3) and substituting the following paragraphs:

“(2) An institution of a public character must on or before 31 January of each year —

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- (a) give to the Comptroller of Income Tax, in a form specified by the Comptroller, the details of all tax deductible donations for which the institution has issued tax deductible receipts in the preceding year; and
  - (b) give to the Sector Administrator, in a form specified by the Commissioner, the institution's annual return of donations received in the preceding year.

(3) Paragraph (2)(b) requires an institution of a public character to give an annual return of donations received in or after 2019 only if the Sector Administrator asks for that return.”.

#### **Amendment of regulation 17**

**18.** Regulation 17 of the principal Regulations is amended —

- (a) by deleting the word “who” in paragraph (3) and substituting the words “, being a public accountant, whose appointment”;
- (b) by deleting paragraphs (5) and (6); and
- (c) by deleting the word “auditing” wherever it appears in paragraph (7).

#### **Amendment of regulation 19**

**19.** Regulation 19 of the principal Regulations is amended by deleting the words “financial accounts” and substituting the words “financial statements”.

#### **Amendment of regulation 20**

**20.** Regulation 20 of the principal Regulations is amended —

- (a) by deleting the word “trustees” in paragraph (3)(b) and substituting the words “governing board members”; and
- (b) by deleting paragraph (5).

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**New Part VI**

**21.** The principal Regulations are amended by inserting, immediately after regulation 20, the following Part:

“PART VI

OFFENCES AND FINANCIAL PENALTIES

**Offences**

**21.** A person who contravenes any requirement of regulation 7, 8, 10, 11 (except paragraph (8)), 12, 15(1), 15A(3) or (4), 16(1)(c) or (2)(b), 17(3), (4) or (7) or 20(3) shall be guilty of an offence and shall be liable on conviction —

- (a) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both; and
- (b) in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues after conviction.

**Financial penalty**

**22.** A person who contravenes regulation 9(1) or (7) shall be liable to pay to the Commissioner a financial penalty of the higher of the following amounts:

- (a) \$100;
- (b) the amount ascertained by the formula  $0.4 \times$  the total value of the donations (as determined under section 37(3) of the Income Tax Act) which ought not to be allowed a deduction under section 37(3) of the Income Tax Act by reason of the contravention, if any.”.

*[G.N. Nos. S 735/2010; S 488/2011]*

Made on 20 February 2019.

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Ministry of Culture,  
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Singapore.*

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(To be presented to Parliament under section 48(4) of the Charities Act).