

THE CHARITIES ACT OVERVIEW OF KEY 2018 AMENDMENTS

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Contents

- **Background – Key Principles of the Charities Act and 2018 Amendments**
 - **Part 1 – Disqualifications and Removals of persons involved in a Charity**
 - **Part 2 – Regulating Fund-Raising Activities**
 - **Part 3 – Enhanced Regulatory Powers of the COC**

Background - Charities Act and Charities Act Amendment 2018

Charities Act 2018 Amendments

Key Objectives of the 2018 Amendments

Better protect charities and donors by:

1. **Strengthening the governance, accountability and transparency** of charities and fund-raisers in Singapore.
2. **Enhancing the regulatory powers** of the Commissioner of Charities (“COC”) as to maintain a high level of public trust and confidence in the charity sector.

Charities Act 2018 Amendments

4 KEY POINTS CHARITIES SHOULD KNOW

2 ENHANCED SAFEGUARDS FOR PUBLIC TRUST

- The COC can suspend for up to 2 years:
 - i. Unfit individuals from a charity, with the consent of the Attorney-General, following an inquiry.
 - ii. Improper fund-raising appeals pending the completion of investigations.



4 ELECTRONIC FILING OF ANNUAL SUBMISSIONS

- Regulations will be made to require charities to file annual submissions and applications via the Charity Portal.



1 BETTER PROTECTION FOR CHARITIES

- New criteria for disqualification:
 - i. Convictions for terrorism, terrorism financing or money laundering offences.
 - ii. Removal by the COC from any capacity following an inquiry.
- Disqualified person cannot hold a key position in another entity which is a member or board member of a charity.
- A person will not be disqualified or removed due to a spent conviction.



3 CLARIFIED "FUND-RAISING APPEAL" DEFINITION

- All charitable fund-raising appeals in Singapore, whether online or offline, for local or foreign purposes, are regulated.



Note: The amendment in point 3 will be brought into effect from 2H 2019. All other amendments are effective.

Charities Act 2018 Amendments

Overview of the 2018 Amendments

- A. Updated provisions for disqualifications, removals and suspension of office holders in a charity
- B. Strengthen regulatory regime for Fund-Raising Activities
- C. Enhanced Regulatory Powers of the Commissioner

Part 1 – Disqualifications and Removals relating to Key Office Holders in a Charity

Part 1 – Key Officers

Widening the definition of key officers

Pre-2018 Amendments	Post-2018 Amendments
<p>“key officer” means an officer of a charity, whether or not an employee of the charity, having the general control and management of the administration of the charity, and includes any person, by whatever name called, who exercises such general control and management;</p>	<p>“key officer”, in relation to —(a) a charity; (b) a person that is a governing board member of a charity; or (c) a person that is a member of a charity,</p> <p>means an individual who, whether or not an employee of the charity or person (as the case may be) and by whatever name called, and whether acting alone or together with any other person —</p> <ul style="list-style-type: none">(i) has general control and management of all or any aspect (including the financial aspect) of the administration of the charity or person; or(ii) provides advice to the charity or person on the control and management mentioned in paragraph (i), other than as a professional engaged or retained pursuant to a contract for service to provide such advice in that professional capacity;

Part 1 – Key Officers

Examples of ‘key officer’ (non-exhaustive)



Executive Director / Chief Executive Officer (or equivalent)



Chief Financial Controller (or equivalent)



Advisor to senior management of the charity

Note: Employees such as clerks and members of a charity who do not hold positions of general control and management are not considered as ‘key officers’

Part 1 – Disqualifications and Removals

- **Disqualifications** – Section 27(1) - a person shall be disqualified from being a governing board member, key officer or trustee (amongst others) for any charity if:
 - the person is convicted, whether in Singapore or in any other country or territory, of any offence involving —
 - Dishonesty (including **fraud, corruption, bribery and deception**); or
 - **Terrorism, terrorism financing or money laundering**

Part 1 – Disqualifications and Removals

- **Disqualifications** – Section 27(1) - a person shall be disqualified from being a governing board member, key officer or trustee for any charity if:
 - The person becomes an undischarged bankrupt;
 - The person makes a composition or arrangement with, or grants a trust deed for, the person's creditors and has not been discharged in respect of it
 - The person becomes subject to any disqualification under section 149, 149A or 154 of the Companies Act (Cap. 50).

Note: The disqualification stands only when the ground for disqualification exists.
E.g. disqualification will not apply to spent convictions or if the person is granted a pardon for the offence.

Part 1 – Disqualifications and Removals

- **Disqualifications** – Section 27(6) – a person shall be disqualified from being a governing board member, key officer or trustee (amongst others) for any charity if:
 - The person is removed **from any capacity*** by the COC or the High Court; and
 - The removal is or would have been on the ground of any misconduct or mismanagement in the administration of the charity —
 - for which the person was responsible
 - to which the person was privy; or
 - which the conduct of the person contributed to or facilitated.

Part 1 – Disqualifications and Removals

Power to act for protection of charities

- **Removals by the COC - Section 25(1) –**
 - Where, at any time after the Commissioner has instituted an inquiry under section 8 with respect to any charity, he is satisfied —
 - (a) that there is or has been misconduct or mismanagement in the charity; and
 - (b) that it is necessary or desirable to protect the property of the charity;

The COC may, with the consent of the AG, remove any trustee, governing board member, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or management or has by his conduct contributed to it or facilitated it.

Part 1 – Disqualifications and Removals

- **Removals by the COC** - Section 25(4) – The Commissioner may remove a governing board member or key officer of a charity where the member or officer:
 - has been convicted of an offence involving moral turpitude, whether in Singapore or in any other country and the **conviction is not spent**
 - **acts as a governing board member or key officer of the charity despite being disqualified**
 - is a corporation in liquidation
 - lacks capacity (within the meaning of the Mental Capacity Act 2008) to exercise his functions as governing board member or key officer
 - has not acted, and will not declare his willingness or unwillingness to act; or
 - is outside Singapore or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity

Part 1 – Disqualifications and Removals

Disqualifications and Removals by the COC

- What does “spent” mean?
 - Applicable for minor offences
 - Criteria:
 - five-year crime free period
 - sentence imposed was not more than three months’ imprisonment or \$2,000 in fines

Section 2(4) – a person’s conviction is treated as ‘spent’:

- if the criminal record under the Registration of Criminals Act (Cap. 268) of the person’s conviction becomes spent under Part IIA of that Act;
- if the person has received a free pardon for the offence; or
- in the case of a conviction by a court of a country or territory outside Singapore, if circumstances in that country or territory similar to paragraph (a) or (b) occur.

Part 1 – Disqualifications and Removals

- **Effect of Removals by the COC – Section 27(6), (7) and (8)**
 - The removal is permanent.
 - A person who is removed from a charity by the COC under section 25(1)(i) (i.e. removal after inquiry, on the grounds of misconduct/ mismanagement) is permanently barred from returning to that charity in the position from which he was removed, and is also automatically disqualified from holding key positions in any charity.
 - A governing board member or a key officer of a charity who is removed by the COC under section 25(4) (i.e. removal under specific circumstances) is automatically disqualified from acting as any governing board member and any key officer of that charity permanently.

Part 2 – Regulating Fund-Raising Activities

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- Section 39(1) – “Fund-raising appeal” means:
 - an appeal by any person, whether made expressly or impliedly, for money or other property (whether as consideration or otherwise) that is made in association with a representation that the whole or any part of the money or property, or proceeds or returns from the money or property, will be applied for any charitable, benevolent or philanthropic purpose; or
 - the receipt by any person of any money or other property (whether as consideration or otherwise) that is given in whole or in part for any charitable, benevolent or philanthropic purpose;



Part 2 – Regulating Fund-Raising Activities

- Section 39B(1) – COC can **prohibit** or **restrict** fund-raising appeal if he is satisfied that:
 - that any fund-raising appeal conducted by the charity or person has not been conducted in good faith for charitable, benevolent or philanthropic purposes;
 - that any of the persons who have conducted a fund-raising appeal, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fund-raising appeal for charitable, benevolent or philanthropic purposes;
 - that any fund-raising appeal has been improperly administered;
 - that, in connection with any fund-raising appeal conducted, the provisions of this Act or the regulations or the conditions imposed by the Commissioner were not complied with by any person conducting or participating in the appeal; or
 - that, in the public interest, the fund-raising appeal should not be conducted.

Part 2 – Regulating Fund-Raising Activities

- Section 39B(1A) – COC can **suspend** the conduct of any fund-raising appeal if the COC has **reason to suspect** that the aforementioned circumstances apply to the fund raising appeal.

Part 3 – Enhanced Regulatory Powers of COC

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- **Power of Suspension Pending Decision on Removal**
 - Section 25(2) – where the COC has instituted an inquiry with respect to any charity, and if COC is satisfied that there is a need to act to protect the property of the charity etc., the COC may, with the consent of the Attorney-General, suspend any trustee, governing board member, officer, agent or employee of a charity from the exercise of his office or employment pending consideration being given to his removal.
 - Section 25(9A) - Suspension can last up to 24 months

thankyou