REGULATING THE ADMINISTRATION OF CHARITABLE TRUSTS IN MALAYSIA

By:

Muhammad Syafiq Bin Khairul Anwar (2014196557)
Bredlan Ericson Fred (2014745629)
Muhammad Aiman Bin Mohammad Puzi (2014525573)

Submitted in partial fulfilment for the degree of Bachelor of Laws (Hons)

Universiti Teknologi MARA
Faculty of Law

July 2017

The students/authors confirm that the work submitted is their own and appropriate credit has been given where references has been made to the work of others.
ACKNOWLEDGEMENT

The completion of this undertaking would not have been possible without the generous support that we have received from the people around us. It is this very support that assisted us in enduring the hardships that inevitably come hand in hand with the process of finishing a thesis of this scale.

We would like to give special thanks to our adviser, Mr John Chuah Chong Oon, for his endless patience and guidance throughout the entire semester. If it were not for him, the completion of this research paper entitled ‘Regulating the Administration of Charitable Trusts in Malaysia’ would not have been possible. His tireless energy and constant presence have been a pivotal driving force in ensuring that our research paper would be in optimal shape for submission. His keen eye for detail has also contributed massively to the outcome of this thesis.

We also would like to extend our gratitude to our respective family members and friends for their unending stream of motivation that has sustained us throughout the completion of this research. With their reassurance and emotional support, we managed to carry out this task with a calm mind.

Last but not least, we would like to thank God Almighty for without His blessings, we would not have gained the strength and resolve required to endure the challenging process that lies in the writing of this thesis.
ABSTRACT

The aim of this research is to ascertain the administration of the charitable trust and its problems in Malaysia. The research methodology employed is doctrinal in nature. A comparative study is also conducted with the charitable trust law of several other countries which are the United Kingdom, Australia, New Zealand and Singapore. The findings of the objectives reveal that the Malaysian local legislation namely the Trustee Act 1949 fails to properly cater for the needs of the administration of charitable trust in Malaysia in four particular aspects. Firstly, is on the issue of registration of a charitable trust. There is no mandatory registration of the charitable trust in Malaysia to ensure transparency and accountability via the monitoring of the respective trustees and charitable bodies. As such it is expeditious that mandatory registration of the charitable trust be provided in Malaysia to ensure its proper administration. Secondly, there is no regulatory bodies to monitor the administration of the charitable trust as we find in other countries. We suggest that the Trustees Act 1949 provides for the setting up a regulatory body who can take charge of charitable trusts in Malaysia. Thirdly, as far as the fundraising of charitable trust is concern, the local laws are arguably insufficient to protect the fund collected for the charitable trust. We are of the opinion that the regulations provided under the Code for Fundraising Practice 2012 of England and Wales be adopted to regulate against any fraud pertaining to collection of fund via the charitable trust in Malaysia.
TABLE OF CONTENTS

Acknowledgement                                  ii
Abstract                                          iii
Table of Contents                                 iv
List of Statutes                                  vii

CHAPTER ONE:  INTRODUCTION

1.0  Background of Research                      2
1.1  Research Problem                            4
1.2  Research Questions                          6
1.3  Research Objectives                         6
1.4  Significance of Research                    7
1.5  Scope and Limitations of Research           7
1.6  Research Methodology                        8

CHAPTER TWO:  LITERATURE REVIEW

2.1  Various definitions of the charitable trust 10
2.2  Regulatory bodies governing the charitable trust 11
2.3  Registration of the charitable trust         12
2.4  Fundraising activities by the charitable trust 14
2.5  Exemption of tax                            15

CHAPTER THREE:  RESEARCH FINDINGS

3.0  Introduction                                18
3.1  United Kingdom – England and Wales          18
     3.1.1  Registration of the charitable trust    18
     3.1.2  Tax concessions for charitable trust in United Kingdom 20
     3.1.3  The establishment of the Charities Commissions for England and Wales 20
3.1.4 Regulation for fundraising by the charitable trust

3.2 Australia
   3.2.1 Registration of the charitable trust in Australia
   3.2.2 Tax concessions of the charitable trust in Australia
   3.2.3 The Role of the Australia Charities and Non-For-Profit Commission (ACNC)
   3.2.4 Limitations of the Australia Charities and Non-For-Profit Commission (ACNC)
   3.2.5 Charitable Fundraising in Australia

3.3 New Zealand
   3.3.1 Registration of the charitable trust in New Zealand
   3.3.2 Eligibility to be registered charitable trust
   3.3.3 Benefits from register with the Charities Services
   3.3.4 Administration of the charitable trust in New Zealand
   3.3.5 Limitations to the power conferred on Charities Services
   3.3.6 Fundraising activities in New Zealand

3.4 Singapore
   3.4.1 Registration of the charitable trust
   3.4.2 Administration of the charitable trust by the Commissioner of Charities and the Charity Council
   3.4.3 Charitable Fundraising in Singapore

3.5 Analysis on the Findings
   3.5.1 Registration of the charitable trust
   3.5.2 The establishment of regulatory bodies for administration of the charitable trust
   3.5.3 Tax concessions for the charitable trust
   3.5.4 Charitable trust fundraising
CHAPTER FOUR: RECOMMENDATIONS

4.0 Introduction 42

4.1 Registration of the charitable trusts 42

4.2 The establishment of a regulatory body for the administration of charitable trust in Malaysia 44

4.3 Tax concessions for charitable trusts 46

4.4 Fundraising activities by charitable trusts 47

Bibliography 49

Appendices

Appendix 1: Model Trust Deed for a charitable trust

Appendix 2: Australia Charities and Non-For-Profit Commission (ACNC) Application Guide

Appendix 3: Registration of charitable trust in New Zealand
LIST OF STATUTES

AUSTRALIA
Australia Charities and Non-for-profit Commission Act 2012 (No. 168)
Charities Act 2013 (Act No. 100 of 2013)
Corporations Act 2001 (Act No. 50 of 2001)

INTERNATIONAL TREATIES
The Hague Convention on the Law Applicable to Trust and their Recognition

MALAYSIA
Charitable Trusts Ordinance of Sarawak 1994 (Chapter 7)
Companies Act 2016 (Act 777)
Government Proceedings Act 1956 (Act 359)
House to House and Street Collections Act 1947 (Act 200)
Income Tax Act 1967 (Act 53)
Societies Act 1966 (Act 335)
Trustee Act 1949 (Act 208)

NEW ZEALAND
Charitable Trusts Act 1957 (No. 18)
Charities Amendment Act 2012 (No. 2)
Charities Act 2005 (No. 39)
Companies Act 1993 (No. 105)
Incorporated Societies Act 1908 (No. 212)

SINGAPORE
Charities Act 1982 (repealed)
Charities Act 1994 (Revised Edition 2007) (Chapter 37)
House to House and Street Collections Act 1947 (Chapter 128)
Societies Act 1985 (Chapter 311)
Trustees Act 1967 (Chapter 337)

UNITED KINGDOM
Charities Act 2011 (Chapter 25)
Charitable Trusts Act 1853 (repealed)
Charities Act 1992 (Chapter 41)
Code of Fundraising Practice 2012
House to House Collections Act 1939 (Chapter 44)
Income Tax Act 2007 (Chapter 3)
Statute of Charitable Uses 1601 (repealed)
CHAPTER ONE: INTRODUCTION
1.0 BACKGROUND OF RESEARCH

The definition of trust had been provided under Article 2 of The Hague Convention on the Law Applicable to Trusts and Their Recognition as “the legal relationships created, whether inter vivos or on death by the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose”.¹ Charitable trusts is created for charitable purposes that will benefit the public at large. Under the common law, charitable trusts must fall within these ambit of charitable purposes which are for the relief of poverty, the advancement of education, the advancement of religion and for other purposes beneficial to the community.² The charitable trust is arguably one of the alternative giving device that may improve the country’s social welfare.³

In Malaysia, the primary sources of the law of charitable trusts are the local legislation and cases derived from the commonwealth and United States jurisdictions are admissible. In the court, those sources of law become the ultimate reference by the court in solving charitable trust litigations since there is no governing legislation in matter of charitable trust. The absence of a specific governing legislation on the charitable trust within our country creates problems when it comes to the administration of charitable trust.

Charitable trust upon registration with the Commissions of Companies Malaysia and Registrar of Society as incorporation procedure is bound to any legislation to ensure the effective use of the charitable funds. The only enforcement of law left is the Trustee Act 1949 which only regulates the administration of the trust. Therefore, such absence of a regulatory body to monitor and supervise the charitable trust may probably expose the beneficiaries to the vulnerability of mismanagement of trust funds and the commission of fraud.

Fundraising which is defined as an act of seeking the financial support for charities usually had been used as a method in obtaining public funds for the charitable trust. In Malaysia, fundraising activities are governed under the House to House and

---

² Commissioners of Income Tax v Pemsel [1891] A.C. 531.
Street Collections Act 1947 which regulates public collections law. However, there are no guidelines provided therein for the fundraising by the charitable trust. In respect of tax privilege, the charitable trust may apply for tax exemption as provided under Income Tax Act 1967. The rationale for granting such privilege to charitable trust is that there is sufficient benefit to the public at large for the charitable trust continues to exist.
1.1 RESEARCH PROBLEM

The major problem associated with the charitable trusts in Malaysia is there is no proper regulatory body established under the law to oversee the administration of charitable trusts. A specific regulatory body is needed for the purpose of facilitating the administration of charitable trust which may involve a huge amount of public fund. Thus, the absence of such regulatory bodies constitutes a current shortcoming under Malaysian trust law.

The second problem is there is no specific legislation that requires the charitable trusts to be registered in Malaysia. There is no requirement for the trustee to register the trust under any legal body for the recognition of the charities. In the case of mismanagement of a charitable trust fund, the only avenue available is to bring the case to the court with the consent of Attorney-General as referred under section 9 of the Government Proceedings Act 1956. Most other countries have specific regulation for the registration of the charitable trust with a regulatory body that will supervise the administration of charitable trust. For instance, in United Kingdom, the trustees have the duty to register the trusts with the Charity Commissions acting as a regulatory body governing the administration of the charitable trust. Hence, the absence of regulation to register the charitable trust and the absence of supervisory body governing over the matters may cause the beneficiaries to be vulnerable to mismanagement of the charitable trust funds.

Furthermore, the absence of regulation for the charitable trust can lead to the commission of fraud especially when it involves fund-raising activities. The only law in Malaysia governing the solicitation of funds is the House to House and Street Collections Act 1947 whereby any solicitation for donation must get a permit from the licensee officer which is the Chief Police Officer. However, there is no guideline stipulated under any law on how to raise the funds from the public. This is because a mere issuance of license by police without supervising the fund-raising is insufficient

5 Charities Act 2011, s 35.
6 Note 4.
7 Attorney General v Mathieson (1907) 2 Ch. 383.
8 House to House and Street Collections Act 1947, s 4(1).
to cater the commission of fraud by those who executed the funds. Therefore, the commission of fraud may occur if the charitable trusts are unregistered. Equally important, when the fund-raising or donation activities are made via online, this will also inevitably transpire the issue of fraud.9 When the funds are gathered via Internet, fraud is highly to happen as compared to conventional way of fund-raising.10 The advance modus operandi is used by the syndicate to induce and solicit a large amount of public monies because more Malaysian nowadays is using the Internet especially for online banking.11 This may encourage the illegal syndicate to further unlawfully solicit the funds.12 Furthermore, under the House to House and Street Collections Act 1947, there is no rules and regulations to supervise and administer the solicitation of funds through the Internet.

The third problem is the Malaysian Trustee Act 1949 which does not have any provisions governing charitable trusts pertaining to its proper administration thereof. The Trustee Act 1949 only governs the executorship and administration of the office of trustee but no regulation for trustees of a charitable trust.13 This implies that the coverage of the Trustee Act 1949 is not wide enough.

9 Note 4.
10 Note 4.
12 Note 4.
1.2 RESEARCH QUESTIONS

1. What are the legal problems associated with the administration of charitable trusts in Malaysia?
2. What are the legal safeguards that can be implemented in Malaysia to ensure the proper administration of charitable trusts?

1.3 RESEARCH OBJECTIVES

The aim of this research is to ascertain the correct law in the administration of the charitable trust in Malaysia. In order to fulfil the aims, the objectives are as follows:

1. To identify the correct law which can safeguard the interest of beneficiaries under charitable trusts in Malaysia.
2. To suggest recommendations in the Trustee Act 1949 which could protect the interest of beneficiaries under charitable trusts in Malaysia.
1.4 SIGNIFICANCE OF RESEARCH

The significance of the research revolves around contributing to the legal literature of trust law in Malaysia. To the researcher knowledge, there is a dearth of research in the area of charitable trust and it follows that our research may spark of a host of further research in this area of law. It is a basis of which further research can be built upon. Lastly, the research arguably fills in an important area in the Malaysian Trustee Act 1949 to further improve our statutory law in trust. On a socio legal basis, the research sheds light to some salient principles of law which are not previously known to the legal fraternity.

1.5 SCOPE AND LIMITATIONS

The study was conducted for the purpose of comparing the existing laws governing on charitable trust in Malaysia with the selected foreign jurisdictions such as United Kingdom, Australia, New Zealand and Singapore. The selection of those jurisdictions as a comparison was made on the basis that they have adopted the common law principles similar to Malaysia and also due to their progressive development of laws governing on charitable trust. There are three inevitable limitations that we faced in conducting the research. The first limitation is a short period of time where the study had to be done within three months. As due to time constraint, the area of the research has to be narrowed down in order to accomplish the research within stipulated time and it also limits the researchers to have a full-scale research. The second limitation to the research is monetary constraint. There is no fund provided for the researchers to conduct the research or self-financing can limit the implementation of the research. The third limitation is the availability of material for reference. There is insufficient reference and sources as the research is done through sources which is available at the Library of Tun Abdul Razak 2, Universiti Teknologi MARA and browse through the internet.
1.6 RESEARCH METHODOLOGY

In view of the fact that the research objective focuses on identifying the correct law pertaining to the administration of charitable trust in Malaysia by studying the law of other countries (United Kingdom, New Zealand, Australia and Singapore), it is thus submitted that the doctrinal study is suited for this research. According to Anwarul Yaqin (2007), he describes the doctrinal research as a library based research because all the materials needed from primary and secondary sources of law can be obtained in libraries, archives and online databases.\textsuperscript{14} Schneider & Teitelbaum (2006) maintains that the doctrinal research involves the development of legal doctrines via statutory and case study.\textsuperscript{15} Furthermore, there is no need for us to do any interviews or surveys because this research is a pure legal study which has little socio legal implications to the public. The only implication is pertaining to the legal right of the parties involved in a charitable trust. Hence, empirical research is not employed because this research does not deal with law relating to pure social problems, issues or question.\textsuperscript{16}

In conducting this legal research, research method that will be employed by the researchers is comparative studies by comparing and contrasting the development of charitable trust in Malaysia with other countries. Anwarul Yaqin (2007) states that comparative studies involve the study of some problems in one legal system and make a comparison with other legal systems for the purpose of improving the law in order to make it more effective and efficient.\textsuperscript{17}

\textsuperscript{14} Anwarul Yaqin, \textit{Legal Research and Writing} (Malayan Law Journal, 2008) at 10.
\textsuperscript{15} The theoretical research entails systematic explanation of the way legal institutions work and of the principles that should animate the law and why it should act in a particular way. Thus the theoretical research has little relevance to the study of ascertaining the correct law for certainty of subject matter. See Carl, E. Schneider, & Lee, E. Teitelbaum, “Life’s Golden Tree: Empirical Scholarship and American Law” in \textit{Utah Law Review} (University of Utah, 2006) at 53.
\textsuperscript{16} Note 14.
\textsuperscript{17} Note 14 at 20.
CHAPTER TWO: LITERATURE REVIEW
2.0 LITERATURE REVIEW

2.1 Various Definition of charitable trust

Wan & Andrews (2005) states that charitable trust has not been statutorily defined in the context of West Malaysia.\(^\text{18}\) Hence according to the author, the Preamble to the English Statute of Charitable Uses 1601 can be referred to provide a useful reference point as to what amount to charitable trust in law. Haley & McMurtry (2011) states that charitable trust is different from private trust because charitable trust are purpose trusts.\(^\text{19}\) Ascertaintable beneficiaries is not required in charitable trust because Attorney-General is the one who enforces the trust. Secondly, the object of charitable trusts need not be certain. The principle provides that as long as the object is exclusively charitable, the trust is valid. Thirdly, charitable trust is not subject to the rule against perpetuity. Nevertheless, private trusts and charitable trusts have something in common in which they may be created inter vivos or by will and the rules of certainty of intention and certainty of subject matter are applicable to them.

George (2001) has proposed that a uniform definition is needed for classification of the charitable trust in Malaysia.\(^\text{20}\) This is due to the facts that the establishment of charitable trusts that is derived from both Suruhanjaya Syarikat Malaysia and Registrar of Society is not in harmony. The practice of classifying the objectives of charitable bodies made by those institutions are different with the classifications under the Pemsel’s heads. Vaughan (2016) states that there is a reformation of regulation of charity in Australia, the definition of charitable purpose has been included in the Charities Act 2013.\(^\text{21}\) It signifies that there is the specific definition under Australia law of charities. The Charities Act 2011 in United Kingdom provides that the Charity Commissions is responsible to ascertain whether the charitable trust is beneficial to the public. Charities Act 2011 also provides the enumeration of charitable purposes which proves the significance of development under United Kingdom charitable trusts.\(^\text{22}\)

\(^{18}\) Wan Azlan Ahmad, & Paul Linus Andrews, *Equity and trusts in Malaysia* (Selangor: Sweet & Maxwell Asia, 2005) at 103.

\(^{19}\) Micheal Haley, & Lara McMurty, *Equity and Trusts* (Sweet & Maxwell, 2011) at 198.

\(^{20}\) Note 4 at 22.


\(^{22}\) Alison MacLennan, *Running a Charity*, 3rd ed (Jordan Publishing Limited, 2008) at 1.
Meanwhile, the position in Singapore is slightly different although that the Republic has enacted the specific statute governing the charitable trusts. The principle is charitable trust cannot be charitable unless established for ‘exclusively charitable purposes’ in accordance to the law of Singapore. Ter (1985) states that this connotation means that the court of Singapore may depart from common law cases depending on local circumstances. To summarize, those are the assertions connoting the development in defining the charitable trusts according to respective countries.

2.2 Regulatory body governing the charitable trusts

The establishment of central bodies to regulate the administration of charitable trusts is crucial to protect the interest of beneficiaries and to prevent the commission of fraud. As for now, in Malaysia there is no central administrative bodies which supervising the charitable trusts as compared to the other jurisdictions. George (2001) had proposed for Malaysia to set up a specific commission to govern the matter relating to charitable trust. This specific commission will create the underlying basis of the charities law and provides a definite framework for charitable trusts in Malaysia. Dhillon et al., (2011) states there is a major difference between Malaysia and United Kingdom in terms of the availability of a regulatory body supervise the charitable trust. The United Kingdom had set up the Charity Commissions for England and Wales, whereas Malaysia has no central register for charities. Picarda (1977) further states that in the United Kingdom, the Charity Commissions is in charge of the administration of charitable trust. The Charity Commissions is formally set up under Charitable Trusts Act 1853 and is currently governed under Charities Act 2011. The position in Australia is similar to United Kingdom whereby Vaughan (2016) stated that an independent supervisory body is required to administer the charitable trust. Thus, steps have been taken with the establishment of the Australian Charities and Non-for-profit Commission. The Republic of Singapore is far more advanced in the

23 Charities Act 1982, s 2.
25 Note 4 at 22.
26 Ibid.
27 Note 13.
28 Hubert Picarda, The Law and Practice Relating to Charities, 1st ed (Bloomsbury Professional, 2014) at 434.
29 Ibid.
regulation of the charitable trust as exemplified by their Charities Act 1982. Ter (1985) states the Charities Act 1982 was introduced for the registration of charitable trust to the Commissioner of Charities and the applicability of the cy-pres doctrine. The Charities Act 1982 was derived from the English Charities Act 1960 but with some amendments. In general, the charitable sector in Singapore consists of double-tier which are charities and Institutions of a Public Character.

In New Zealand, in order to improve accountability in charitable trusts, the major fund-raising bodies, the Philanthropy New Zealand was formed which set up by the Working Party. Newell (2007) states that self-regulation or formal donor protection systems can be used as alternatives to improve accountability of charitable trust. Poirier (2013) states that there are three options in order to reform the regulation of the charitable trust in New Zealand which includes the legislative list approach, the restatement charitable purpose based on the Preamble under the Statute of Elizabeth I and the non-profit regulatory approach. The statute established the New Zealand Charity Commission which is governed via the Charities Act 2005. Nonetheless, the New Zealand Charity Commission later was abolished through the Charities Amendment Act (No 2) 2012 and has been replaced by an institution called Charities Services which administered under the Department of Internal Affairs of New Zealand. The function of Charities Services includes to determine the charitable status in accordance with Charities Act 2005.

2.3 Registration of charitable trust

The Trustee Act 1949 focuses only on matters of trust, executorship and administrator of the office of trustee. There is no provision stipulated under the statute concerning on the charitable trust or duties of charity trustees. Although there is no equivalent charity legislation in Malaysia, the state of Sarawak had their own state legislation

Note 24 at 192.
33 Poirier, D., Charity Law in New Zealand (Department of Internal Affairs New Zealand, 2013) at 372.
34 Note 21 at 243.
35 Note 13 at 2.
called as Charitable Trusts Ordinance 1994 which deals with the administration of the charitable trusts in the state.\textsuperscript{36} George (2001) states that the charitable trust in Malaysia are constituted in various ways and their constitution also varies.\textsuperscript{37} She argues that the establishment of charitable trusts can be divided into three distinct platforms which are statutory charities, charitable companies and charitable societies.\textsuperscript{38}

In regulating a charitable trust, it is important for charities to be registered on the basis of transparency. George (2001) states that the beneficiaries will be vulnerable because in Malaysia there is no requirement to register the trust deed.\textsuperscript{39} Such argument is also agreed by other authors that the beneficiaries will be affected as there is no registration of the charitable trust is required (Dhillon, et al., 2011).\textsuperscript{40} The position is differed in United Kingdom where since 1961, there was a central register of charities that enabled the information of the charities to be accessed and made available to public (Picarda, 1977).\textsuperscript{41} Vaughan (2016) explains on the important of centralized register of charities which he states that the government will immediately be aware if charities have failed to file their requisite reports and concurrently enabled the public to access the information of the charitable entities.\textsuperscript{42} He argues that this is an effective method to strike a balance between accountability and over-regulations.\textsuperscript{43} Cordery & Baskerville (2007) argues that registration is insufficient to achieve public assurance and suggested that continuous monitoring and advice are needed to cater such problem.\textsuperscript{44} Vincent (2015) provides that unregistered charitable trust will jeopardise the survival of charitable body because only through registration will make them receive benefits.\textsuperscript{45} Therefore, this connotes the effectiveness of registering the charitable trust for the purpose of transparency and accountability.

\begin{thebibliography}{99}
\bibitem{36} Note 24 at 192.
\bibitem{37} Note 4 at 22.
\bibitem{38} Ibid at 3.
\bibitem{39} Ibid at 9.
\bibitem{40} Note 13 at 4.
\bibitem{41} Note 28 at 445.
\bibitem{42} Note 21 at 236-237.
\bibitem{43} Ibid.
\end{thebibliography}
2.4 Fundraising activities by charitable bodies

The law in respect of fundraising of the charitable trust is also significant to be analysed in order to prevent the commission of fraud for charitable trust. In Malaysia, the solicitation of funds is governed under the House to House and Street Collections Act 1947 that requires the issuance of police permits and Societies Act 1966 that imposed obligation to the charitable societies to fulfil certain requirements under the Societies Act 1966.\(^{46}\) The law is only governed the charitable societies but not the other charitable bodies. In United Kingdom, Warburton & Morris (1995) states that as the number of endowment has decreased, fund-raising has become an important activity for the charitable bodies to participate in generating their source of income.\(^{47}\) The Charity Commission for England and Wales had complaints about dubious fund-raising techniques in which the Commissions has no power to regulate fund-raising law.\(^{48}\) This is due to the fact that their powers and duties to regulate charitable trust are only restricted to the funds that already in the hands of charity.\(^{49}\) Hence, the solution taken by United Kingdom to this problem is the appointment of professional fundraisers that are regulated under the Charities Act 2011 and the establishment of the Institute of Charity Fund-Raising Managers whereby the charities body is only required to appoint the fundraisers that certified by the Institution.\(^{50}\) Vaughan (2016) comments that the public must be protected from fundraising activities which are misleading.\(^{51}\) The Australian Parliament, in responding to this predicament had passed a charitable fundraising law in each state jurisdiction in which requiring charities to have license from the relevant state government in order to engage with such activities.\(^{52}\) Thus, prevention of fraud involving the fundraising activities is important in order to ensure trustworthiness of the charitable bodies.

\(^{46}\) Note 4.
\(^{47}\) Warburton, J., & Morris, D., *Tudor on Charities*, 8\(^{th}\) ed (Sweet & Maxwell, 1995) at 263.
\(^{49}\) Charities Act 1960 (repealed).
\(^{50}\) Note 47.
\(^{51}\) Note 21.
\(^{52}\) Ibid.
2.5 Exemption of Tax

The issue that significance to the charitable trusts is the exemption of tax. If the charitable bodies fulfil the requirement of charitable purpose, the relief of tax will be granted by the government.\(^{53}\) The main issue associated with the exemption of tax is pertaining to the legitimacy of charity involvement in business activities. Breed (2009) states that the arguments relating to the issue is for the complete separation between charitable trust and business.\(^{54}\) The contention is that the charity which is engaged with business has enjoyed an unfair advantage because of the tax exemptions afforded to charitable trust.\(^{55}\) The position in Malaysia is the income of any institution or organisation which is not operated or conducted primarily for profit and are approved for the purposes of section 44(6) of Income Tax Act 1967, will enjoy the relief of tax. The exemption of tax for the matters relating to non-for-profit organisation is governed under Part IX entitled “Exemptions, Remission and Other Relief” under the Income Tax Act 1967. In granting the relief, the Malaysia Department of Inland Revenue will stipulate certain conditions that the organisations need to comply in order to qualify for tax exemption.\(^{56}\)

Meanwhile in United Kingdom, all charities are also entitled to relief of taxation by virtue of Part 10 of Income Tax Act 2007, except certain specific reliefs from Value Added Tax.\(^{57}\) Warburton & Morris (1995) states that the existence of tax relief will affect the status of the charitable trust in two ways. Firstly, the Inland Revenue are far more likely to endorse application from charitable trust than those beneficiaries under a will. Secondly, the Charity Commissions and the Inland Revenue will work together at the initial stage of registration.\(^{58}\) Compared to Malaysia, the exemption of tax will only be granted if it fulfils the charitable purpose which approved by the Director General of Income Tax of Malaysia.\(^{59}\) McGregor (2002) states that the

---

\(^{53}\) Income Tax Act 1967, s 44(6).


\(^{55}\) Ibid.

\(^{56}\) Note 4 at 20.

\(^{57}\) Note 47 at 282.

\(^{58}\) Ibid.

\(^{59}\) Note 4 at 20.
charitable bodies which have been endorsed by the Australia Taxation Office are not required to file any income tax returns and there will be no relief granted if there is a commercial activity which is not incidental to charitable purpose. The problems in granting the relief of tax in Malaysia is that the classification of charitable purpose of certain charitable bodies when made by the Director General of Income Tax is not the same as the common law position.

Taken as a whole, there is a need to regulate charitable trusts in Malaysia because the current regulating laws are proven to be less practicable and effective as compared to other jurisdictions. The laws can be said to be archaic as for the past fifty years passing of Trustee Act 1961, there has been no amendment made involving charitable trusts, thus certain measures need to be taken in order to cater the problems.

---


61 Note 4 at 20.
3.0 INTRODUCTION

The findings of the objectives of this research and its ensuing significances are discussed in this chapter. Under the first objective of this research, the charitable trusts laws of United Kingdom, Australia, New Zealand and Singapore will be scrutinised in order to identify the correct law which can safeguard the interest of beneficiaries under charitable trusts in Malaysia. The research findings will be categorized into four main areas, namely the registration of the charitable trust, the establishment of the regulatory bodies in governing the regulation of charitable trusts, tax concessions and fundraising activities by the charitable trust. This will be followed by an analysis based on the findings.

3.1 UNITED KINGDOM – ENGLAND AND WALES

The governing statute for charitable trust in England and Wales is the Charities Act 2011. The regulatory body that is responsible for registering and supervising the charitable trust in England and Wales is the Charity Commissions.62

3.1.1 Registration of charitable trust

Every charitable trust must be registered in the register with the Charity Commissions.63 The registration must contain the names of charitable bodies and other particulars as required by the Charity Commissions such as address, contact person, the name of trustee.64 The registration information is subject to public inspection which was made available at the official website of the Charity Commissions.65 The trustee of charitable trust has the duty to register with the Charity Commissions by submitting all the relevant documents including trust deed and will.66 Failure to do so will render the trustee in breach his legal obligation.67

For charitable trusts to be qualified to be registered with the Charity Commissions, the requirements must be fulfilled as follows. Firstly, the trust must

62 Note 5, s 13(1).
63 Ibid, s 29(1).
64 Ibid, s 29(2).
65 Ibid, s 38(1).
66 Ibid, s 35(1).
67 Ibid, s 41.
fulfil all the criteria of charitable purposes. Secondly, the charitable trust must fulfil the public benefit requirement. The Charity Commissions has provided guidelines that the public benefit requirement has two aspects. The first aspect is ‘benefit aspect’ in which the purposes must be beneficial to the public. The benefit must not bring any detriment or harm to the people, property or the environment.

The second aspect is ‘public’ where the purpose of charitable trust must be beneficial to the public in general. The charitable purposes must satisfy both the benefit and the public aspects. All the eligibility to register will be ascertained by the Charity Commissions after the application has been submitted. After application has been approved by the Charity Commissions, the settlor has to write a governing document in the form of trust deed or wills for the charitable trust (see Appendix 1). The governing document is a rulebook which sets out a charitable trust in the form of writing. Once the Charity Commissions have accepted the proposed charitable trust for registration, a registration number will be allocated to the charitable bodies. The number must be recorded for future reference and inquiry for the purpose of tax concessions.

The advantage is the registration of charitable trust provides conclusive proof that charitable trust is legally a charity and has complied with the legal obligation. This provides assurance that there is a degree of supervision by the Charity Commissions applicable to the charitable trust, hence instils public confidence.

---

68 Ibid, s 3(1).
69 Ibid, s 4(1).
71 The personal benefit is ‘incidental’ where after having regard both to its nature and to its amount, it is a necessary result or by-product of carrying out the purpose.
73 Ibid.
75 Ibid.
76 Note 22 at 13.
3.1.2 Tax Concession for charitable trust in England and Wales

The Office of Her Majesty’s Revenue and Customs is one of the stakeholders in the registration of charitable trust in relation of the tax concessions.\textsuperscript{77} After submitting the application of registering a charitable trust, the Charity Commissions will need to consult the Financial Intermediaries and Claims Office under the Office of Her Majesty’s Revenue and Customs in the matters relating to granting of the tax concessions. The charitable trust that registered with the Charity Commissions can enjoy tax concessions.\textsuperscript{78} The needs for consultation with the Financial Intermediaries and Claims Office when granting the tax concessions indicate the limitation power of the Charity Commissions.\textsuperscript{79}

3.1.3 The Establishment of Charity Commissions for England and Wales

The Charity Commissions is an independent registrar and regulator of charities law in England and Wales.\textsuperscript{80} The Charity Commissions is a Non-Ministerial (Government) Department in which it is not subject to Ministerial direction or control in the exercise of any of its functions and duties.\textsuperscript{81} According to section 13(1) of the Charities Act 2011, the structure of the Charity Commissions is that of a body corporate.

The Charity Commissions have six general functions.\textsuperscript{82} Firstly, to determine whether institutions are or are not charities. Secondly, to encourage and facilitate the better administration of charitable trust. Thirdly, to identify and investigate apparent misconduct or mismanagement in the administration of charities. Fourthly, to determine whether public collections certificates should be issued and remain in force relating to public charitable collections. Fifthly, to obtain, evaluate, and disseminate information pertaining to the performance of any Commission’s functions and meeting of its objectives. Lastly, to give information, advice, making proposals to any Minister of Crown on matters relating to any of the Commissions’ functions or meeting of its objectives. Despite all the general functions in which it is acting as a regulator, the

\textsuperscript{77} Ibid.
\textsuperscript{78} Ibid at 29.
\textsuperscript{79} Ibid at 13.
\textsuperscript{81} Note; s 13(4).
\textsuperscript{82} Ibid, s15(1).
Charity Commissions are not permitted to interfere with the administration of the charitable trust by the trustee.

The constitution of the Charity Commissions is set out in Schedule 1 of the Charities Act 2011. This provides for an appointment of the Chief Commissions selected by the Minister together with minimum of four other members but not exceed eight members acting as the member of the Charity Commissions. Two of them must be a lawyer and others will be a relevant expertise and practitioner of the charitable law. Among the significant power vested upon the Charity Commissions is to act for the protection of charitable trust. Such power includes power to act when there is mismanagement in the administration of a charitable trust fund and power to remove trustee where it is expedient to do so.83

One of the limitation of the Charity Commissions is the decisions made by the Charity Commissions is not conclusive and can be appealed by the beneficiaries. The review of the Charity Commissions’ decision can be initiate by the disputant with the consent from Attorney General, acting as parens patriae.84 The appeal can be made to Charity Tribunal and the decision of the tribunal can be referred to the court.

3.1.4 Regulation for Fundraising by the charitable trust in United Kingdom

Fundraising in United Kingdom is regulated through a self-regulated system. This means the charitable sector will raise the fund itself rather than being regulated by statutory or government regulation. There is a standard code known as the Code of Fundraising Practice 2012 that need to be followed by the fundraisers. The fundraisers must aware about the guidelines provided and sets up the best practice standards regarding the charitable fundraising.

The regulations of fundraising under the Code of Fundraising Practice 2012 are as follows. In requesting the donations, the organisation must use the donor

---

83 Ibid, s 76.
84 Lindsay Driscoll, “England and Wales: Pemens plus” in McGregor Lowndes, Myles, & O'Halloran, Kerry, eds, Modernising Charity Law: Recent Developments, Future Directions (Cheltenham: Edward Elgar Publishing, 2010) at 54; Parens patriae means the principle where the authority acting as the legal protector of the public that unable to protect themselves.
information in any type of publicity in compliance with the confidentiality right under data protection law. The charitable bodies are allowed under the Charities Act 1992 to obtain the court order preventing unauthorized individual to fundraising on its behalf. In accepting or refusing donation, the trustees must act in their best interest of the charitable trust. When offering any benefit, rewards, or incentive to the donor, the fundraising organisation must ensure that the benefits are appropriate and proportionate to the size of the gift. Next, the returning policy for the donation is that the fundraiser must not refund the donation unless the Charity Commissions said otherwise.

The first method of charitable fundraising under the House to House Collections Act 1939 is through the public collection. The regulation for public collection covers the collection of cash, goods whether carry out in public places, from house to house or a private property. The second method of collection is through appeals which involves the use of static collecting boxes, either by floor standing or on counters in shops, hotels, hospitals, reception areas. However, this static collection method is governed under the Code for Fundraising Practice 2012 and not under the House to House Collections Act 1939. The fundraising activities are not under the Charity Commissions responsibility because such activities are governed under the jurisdictions of Fundraising Regulator.

3.2 AUSTRALIA

3.2.1 Registration of Charitable Trust in Australia

In Australia the mode of registration of not-for-profit entities will be registered by Australian Charities and Not-for-profit Commission (ACNC) in accordance with the Australian Charities and Not-for-profit Commission Act 2012 by using the definition of charity and charitable purposes under the Charities Act 2013. The registration is a

---

85 Among the rule is the fundraising organisation carrying out collection must comply with the relevant licensing/permission procedures as stipulated under section 1(1) of the House to House Collections Act 1939.
86 Code for Fundraising Practice.
prerequisite for the said entity to access certain Commonwealth tax concessions\textsuperscript{88} and also is a prerequisite for other exemptions, benefits and concessions provided under Australian laws.\textsuperscript{89} The charitable trust must be registered with the Australian Charities and Not-for-profits Commission before they can be endorsed by the Australian Taxation Office (ATO) to receive charity tax concessions.\textsuperscript{90} Hence, charity registration is important in order to ensure that only the worthy charity organizations will receive particular concessions.\textsuperscript{91}

In order to be qualified to be registered as a charitable trust with the Australian Charities and Not-for-profit Commission, the charitable bodies must show that it is a ‘charity’.\textsuperscript{92} Firstly, the charitable bodies must be not-for-profit entity.\textsuperscript{93} Secondly, it charitable purposes are for the public benefit.\textsuperscript{94} Thirdly, it must not have any disqualifying purposes.\textsuperscript{95} Fourthly, it must not be an individual, political party or government entity.\textsuperscript{96}

The registration with Australian Charities and Not-for-profit Commission is as showed in the application guide. (see Appendix 2)

\textbf{3.2.2 Tax Concessions of Charitable Trust in Australia}

Once registered, the charitable bodies can apply for charity tax concessions such as income tax exemption or goods and services tax concessions as a charity from the Australian Taxation Office (ATO).\textsuperscript{97} Furthermore, they can also apply for additional tax benefits as a public benevolent institution (PBI), health promotion charity (HPC) or charity for the advancement of religion.\textsuperscript{98} Moreover, charitable companies limited by guarantee registered under Corporation Act 2001 and also registered with the Australian Charities and Not-for-profit Commission, are not required to prepare a

\begin{itemize}
\item \textsuperscript{88} Australian Charities and Not-for-profits Commission Act 2012 (Cth), ss 15-5(3), 20-5(2).
\item \textsuperscript{89} Ibid, ss 15-5(4), 20-5(3).
\item \textsuperscript{91} Note 21.
\item \textsuperscript{92} Note 90.
\item \textsuperscript{93} Note 88, ss 25-5(3)(a).
\item \textsuperscript{94} Charities Act 2013, ss 6(1)(a), 12(1).
\item \textsuperscript{95} Note 88, ss 6(3)(d).
\item \textsuperscript{96} Note 94, ss 5(d).
\item \textsuperscript{97} Note 90.
\item \textsuperscript{98} Ibid.
\end{itemize}
directors’ report. This may reduce the cost of an audit of a charity because the auditor is not needed to review the directors’ report to check for inconsistencies with the audited financial report.

3.2.3 The Role of Australian Charities and Not-For-Profit Commission (ACNC)

The powers of Australian Charities and Not-for-profit Commission are derived from the Australian Charities and Not-for-profits Commission Act 2012 and Charities Act 2013. The functions of Australian Charities and Not-for-profit Commission are as followed. Firstly, to determine the status of charity and to register qualified entities. Secondly, to give guidance and education to the registered charities in complying and comprehending the Australian Charities and Not-for-profit Commission Act 2012. Thirdly, to monitoring and enforcing function in order to ensure the registered charities will comply in situation where education is insufficient. Fourthly, to maintain public register that contains information on registered charities. Lastly, it has obligation to cooperate with other regulators and government agencies in order to minimize regulatory duplication.

The Australian Charities and Not-for-profit Commission has the power to inquiry and investigate when a charity has not met Australian Charities and Not-for-profit Commission requirements to keep appropriate records and when a charity has used funds or assets for non-charitable purposes, such as for the private benefit of its members, or these have been stolen. Furthermore, the Australian Charities and Not-for-profit Commission can also investigate matters in respect of fraud or criminal activities of a charity and when a charity has failed to ensure that its responsible persons (committee or board members, or trustees) are suitable and not disqualified. In general, the Australian Charities and Not-for-profit Commission will only act on concerns where there is a serious risk to public trust and confidence in the sector and

Note 87.
Note 90.
Ibid.
Note 88, s 15-5(2).
Ibid, ss 15-5(2)(b), 110-10(1).
Ibid, pt 2-2.
Ibid, s 15-10(f).
Note 90.
they relate to a charity's compliance with requirements of the Australian Charities and Not-for-profit Commission Act 2012.\textsuperscript{108}

3.2.4 Limitations of power: Australian Charities and Not-For-Profit Commission

The Australian Charities and Not-for-profit Commission does not have the power to inquiry or investigate where the concern is not in its area of regulatory responsibility. For instance, fundraising activities are not under the Australian Charities and Not-for-profit Commission responsibility because these activities are regulated by the state and territory law and Australian Charities and Not-for-profit Commission’s ambit would not include fundraising as specifically stated by the previous government.\textsuperscript{109}

3.2.5 Charitable Trust Fundraising in Australia

There is an inconsistent fundraising legislation in respect of charitable trust fundraising in Australia due to duplicate regulation.\textsuperscript{110} Since there is a policy to protect the public from misleading fundraising activities, the legislature has passed charitable fundraising laws in every state jurisdiction.\textsuperscript{111} Owing to this, charities are required to have a licence from the relevant state government in order to engage in such activities.\textsuperscript{112}

The state fundraising statutes still define “charity” differently despite the introduction of the Charities Act 2013, which has given a more uniform definition of charitable purposes across Commonwealth legislation.\textsuperscript{113} For instance, South Australian legislation provides specific requirements to constitute a charity whereas the Australian Capital Territory legislation only defines it as including “any benevolent, philanthropic or patriotic purpose.”\textsuperscript{114} Therefore, there is no uniformity when it comes to the area of regulation for charities across the state jurisdiction.\textsuperscript{115}

Moreover, the federal Charities Act 2013 is used by the Australian Charities and Not-for-profit Commission to make its determinations in registering charities but the

\begin{footnotes}
\item[108] Ibid.
\item[109] Note 21 at 235.
\item[110] Ibid at 232.
\item[111] Ibid.
\item[112] Ibid.
\item[113] Ibid at 233.
\item[114] Ibid.
\item[115] Ibid.
\end{footnotes}
state requirements are different.\textsuperscript{116} For instance, an organization would not be found as a charity by the Australian Charities and Not-for-profit Commission but still be subject to the state charitable fundraising legislation.\textsuperscript{117} In addition, it would also be unnecessarily to apply for state fundraising licence when the organization has been given charitable status by the Australian Charities and Not-for-profit Commission.\textsuperscript{118} This problem will force the charities organizations to perform exhaustive research as to their obligations and eventually will stretch their resources.\textsuperscript{119} Furthermore, charities organization with multiple state branches will face problems due to inconsistent state legislative requirements and regulatory inconsistency.\textsuperscript{120}

\textbf{3.3 NEW ZEALAND}

Charitable entities are the organisations that perform charitable activities or exist entirely for charitable purposes. At present in New Zealand, there are a number of different legally recognised forms of charitable entities which their establishments were for charitable purpose, namely an incorporated society, a trust, a charitable trust board, or a company.\textsuperscript{121} As an entity which provides a benefit to the public, the legislation requires such entity to register with the Charities Services. Charities Services is a regulatory body formed under the Department of Internal Affairs to oversee and regulate the registration of charitable trust in New Zealand.\textsuperscript{122} Meanwhile, in respect of incorporated charitable trusts, the registration is the process that establishes such a trust as a corporate body.\textsuperscript{123} A charitable entity can be incorporated

\begin{itemize}
\item \textsuperscript{116} Ibid.
\item \textsuperscript{117} Ibid.
\item \textsuperscript{118} Ibid.
\item \textsuperscript{119} Ibid.
\item \textsuperscript{120} Ibid.
\item \textsuperscript{121} Charities Act 2005, s 4.
\item \textsuperscript{123} Ibid, chapter 9.
\end{itemize}
under the Charitable Trusts Act 1957, Companies Act 1993 and the Incorporated Societies Act 1908.¹²⁴

### 3.3.1 Registration of charitable trust in New Zealand

In New Zealand, the registration to operate as a charitable entity is governed by Charities Act 2005. The statute provides the requirement for the societies, institutions, and board of trustees to be registered as charitable entities under the Charities Services. In order to register as a charitable entity, an application form must be submitted to the Charities Services together with some accompanying documents which provide detailed information on the charitable purpose, funding sources, activities and benefits of the charitable trust.¹²⁵ An officer certification form needs to be completed for each officer of the charitable entity. Officers in this circumstance are all the trustees of the trust if a charitable entity is a trust.¹²⁶ The Charities Services will review the application, looking closely at the rules document, the purposes and activities of the entity to ensure that the entity had met requirements to be defined as a registered charitable entity. The decision on the registration, however, is decided by the Charities Registration Board, an independent body.¹²⁷ Once the registration is completed, the details of the charitable entity will be made available to the public via Charities Register.¹²⁸

### 3.3.2 Eligibility to be a registered charitable trust

Nonetheless, there are two criteria that needed to be conformed in furtherance to qualify for an entity to be registered as a charitable entity.¹²⁹ Section 13 of the Charities Act 2005 sets out the conditions for an entity to be recognized as a ‘charitable entity’, such as it must be established and maintained exclusively for charitable purposes, and

---

¹²⁶ Note 1.
¹²⁸ Note 121, s 24.
¹²⁹ Ibid. s 13.
all of its ‘officers’ must be qualified under the Act. An officer is disqualified in the event if the officer is an undischarged bankrupt, or convicted of a dishonesty offence within the last seven years. Next, the second criteria is the entity must have a charitable purpose. Charitable purpose has been defined under Section 5 of the Charities Act 2005 which includes for the relief of poverty, the advancement of education or religion, and any other matters beneficial to the community. In some cases, a specific Act of Parliament will state that the purposes of a particular entity are charitable. Section 61A of the Charitable Trust Act 1957 maintains that it is charitable to provide facilities for recreation or other leisure time occupations which is beneficial to the public and for the interest of social welfare.

In Re Greenpeace of New Zealand Incorporated, the case illustrated a complete deviation from continued adherence of common law doctrine of charitable purpose which is against the recognition of political purpose in charitable trust. Greenpeace of New Zealand Incorporated is an incorporated society which sought registration as a “charitable entity” under Part 2 of the Charities Act 2005. The registration, however, had been refused on a view that the objects contained a political purpose which constituting non-charitable purpose. In the Supreme Court, the appeal was allowed by against the Court of Appeal’s determination which had affirmed the common law doctrine that a political purpose cannot be a charitable purpose. In the justification, the majority opined that the blanket exclusion of political purposes was no longer deemed as necessary.

3.3.3 Benefit from the registration with Charities Services

There are several advantages that a charitable entity will attain by the said registration. Firstly, the main consequence of the registration will be that a charitable entity would be exempted on its income and it is easier for the entity to apply and receive public funding. A charitable entity needs to be registered under the Charities Services in order

---

130 Ibid. s 16.
133 Ibid.
134 Ibid.
to receive the ‘charitable status’ which is requisite for tax exempt purposes.\footnote{135} Charitable entities which operate without a constitution or trust deed would be liable for taxes as a result of the non-compliance of the requirement to be a registered charitable entity as provided above.\footnote{136}

Secondly, the registration also acts as the evidence of its charitable status. A registered charitable entity will entitle for the registration number in which can be displayed on promotional and identification material to the potential donors or funders.

Thirdly, the registration also enables the supporters and funders to find detailed information about the charitable entity on the Charities Register. Fourthly, the registration is also important to ensure a greater public confidence toward the registered charitable entity. A registered charitable entity would probably enjoy the greater public trust and confidence due to the fact that the information about its activities and the utilization of resources are made available to the public via the Charities Register. And lastly, the registration is also essential to encourage and promote the effective use of charitable resources. Through the registration, all the registered charitable entities are subject to certain guidelines and requirements in their dealing with charitable trusts.

The registration however is not mandatory as a charitable trust may function without registering with Charities Services. Unregistered charitable trust shall not qualify for the tax-exempt status or be able to recognize itself as a registered charitable entity.\footnote{137} Furthermore, unregistered charitable trust will also not be able to provide a tax deduction to donors.\footnote{138}

3.3.4 Administration of charitable trust in New Zealand

The administration of charitable trust, the Charities Services comes into picture as the regulatory body that administers and monitors the conduct of the registered charitable entities. The Charities Services which has been instituted under the Department of


\footnote{137}{Note, ss37, 38.}

\footnote{138}{Ibid.}
Internal Affairs, is the main regulatory body that is established under Charities Act 2005 in order to promote public trust and confidence in the charitable sector and to encourage the effective use of charitable resources.

The Charities Services has a duty in maintaining the Charities Register which currently contains information about 27,000 registered charitable trusts in New Zealand.\(^{139}\) The Charities Register also works as the database or public record of registered charitable trusts as provided under Charities Act 2005.\(^{140}\) In the event when there is any change to the charitable trust such as contact details of the officers, appointment or retirement officers, or any changes to the constitution, those changes must be updated with the Charities Services in order to provide an up-to-date information to the public.

Moreover, the Charities Services also responsible to review the annual return and financial statement of all the registered charitable entities.\(^ {141}\) According to the new accounting standards set up by the External Reporting Board (XRB), all registered entities have to present their annual financial statements to the Charities Services as the effect of the registration.\(^ {142}\)

Apart from that, in order to encourage good governance and management practices, the Charities Services had also provided educational support, advice and materials to registered charitable entities.\(^ {143}\) The Charities Services will also work with the Department of Internal Affairs’ nationwide team of Community Operations Advisors and the other government agencies, such as the Inland Revenue for the purpose of providing tax exemption status to the registered charitable entities.\(^ {144}\) In addition, the body also publishes relevant data and research in order to build understanding, trust and confidence in the charitable sector.\(^ {145}\)

---

139 Note 33 at 75.
140 It summarises each charity’s purposes, activities, sector and includes their annual return. Annual return in this context is a yearly report which details on a charitable entity’s income, expenditure and activities.
141 Note, ss 42(2)(b), 42A and 42B.
144 Ibid.
145 Ibid.
3.3.5 Limitations to the power conferred on Charities Services

There are, however, some limitations in the power of the Charities Services as the main regulator and administrator of charitable trust. Firstly, in the event where the officer of charitable entities is disqualified by one of the factors set out in the Section 13 of the Charities Act 2005, the Charities Registration Board has the power to overrule the conditions provided under the provision. In other words, this may raise an issue of accountability to be a trustee of a charitable trust.

At present, there is no requirement either from legislation or from Charities Services for the financial statements of a charitable entity to be audited or reviewed. The primary reason for this is that there has been no mandatory requirement for the financial statement to be audited or reviewed.

3.3.6 Fundraising activities in New Zealand

With regards of the fundraising matter, a charitable trust need to be a registered in order to conduct fundraising in public place. Fundraising in this context includes donations, collections or subscriptions. For donation, the tax exemption privileges are not only entitled for the registered charitable entities for their charitable works as the privileges also cover the donors. Therefore, it is important for charitable entities to register with the Charities Services as the registration provides huge advantage to the entities as well as the donors. All registered charitable entities mostly are eligible for the donee status, which is being administered by Inland Revenue. The donors may ask the donees to present their donees status number or their registration number with Charities Services in order to ascertain on the status the entities whether it is registered or otherwise.

---

146 Note 121, s 14.
147 Ibid.
148 Ibid.
150 Ibid.
In New Zealand, the most common methods of raising funds can be seen in the form of the use of third-party fundraisers as well as the professional fundraisers.\textsuperscript{151} The charitable entities may choose to undertake fundraising activities by recruiting employees or volunteers to raise funds.\textsuperscript{152} Furthermore, the fundraising activities in New Zealand may also be implemented through the face-to-face fundraising, street appeal fundraising, advertisements and electronic fundraising.\textsuperscript{153}

Generally, there are two private bodies which provide a regulatory framework for the fundraising activities in New Zealand, namely the Public Fundraising Regulatory Association (PFRA) and Fundraising Institute of New Zealand (FINZ). Those private bodies play an important role in setting up a professional and ethical standards for fundraising activities as well as encouraging the development of philanthropy and also to provide an advocacy voice for the charitable sector in New Zealand.

\section*{3.4 SINGAPORE}

The regulation for administration of the charitable trust in Singapore is governed under the Charities Act 1994 (Revised Edition 2007).\textsuperscript{154}

\subsection*{3.4.1 Registration of charitable trust in Singapore}

For the purpose of registration, the Charities (Registration of Charities) Regulation 2007 (Revised Edition 2008) was introduced as a subsidiary regulation under the power conferred via Charities Act 1994 (Revised Edition 2007). Every charity is obliged to register except for exempt charities and those excepted by regulations made under the Charities Act 1994 (Revised Edition 2007).\textsuperscript{155} These two categories may register voluntarily.\textsuperscript{156} It is the duty of the trustees to apply for registration and the application must be accompanied by copies of the trust or particulars thereof and such

\begin{flushleft}
\textsuperscript{151} "Information Disclosure Regulations for Third-party Fundraisers Making Requests for Charitable Purposes in New Zealand" (Ministry of Business, Innovation and Employment, 2015), p 10-16.
\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} Chapter 37.
\textsuperscript{155} Charities (Registration of Charities) Regulations, SL178/2007. Regulation 2.
\textsuperscript{156} Ibid. regulation 4
\end{flushleft}
other documents or other information as the Commissioner may require. Where a registered charity ceases to exist or if there is any change in its trusts or in its particulars entered in the register, it is the duty of charity trustee to notify the Commissioner of any such change and to furnish him with copies of new or altered trusts.

There are two stages involved in the registration of charitable trust in Singapore. Firstly, the organization must be set up using an existing legal form. This legal form for charity law is governed by the Societies Act 1985. Secondly, after the underlying organization has been set up, it is mandatory for the organization’s governing board members to register the organization as charity unless it is an exempt charity. Failure to register the charitable trust will amount to a criminal offence.

The charitable bodies may apply to be registered by submitting the application to the Sector Administrator under Commissioner of Charities. Under Section 5(6)(a) of the Charities Act 1994 (Revised Edition 2007), any organization in Singapore operating for exclusively charitable purposes is required to apply for charity registration with the Commissioner of Charities within 3 months of the organization’s establishment. The charitable bodies is registrable under the Charities Act 1994 (Revised Edition 2007) if its objects are exclusively charitable according to the law of Singapore. Where the main objects are charitable, the inclusion of incidental non-charitable powers or the accrual to beneficiaries or incidental non-charitable benefits will not affect the charitable character of the institution and it is accordingly exclusively charitable. This must be distinguished from a trust which falls within section 67 of the Trustee Act 1967 whose non-charitable objects are not merely incidental but are themselves independent objects of the trust. Therefore, although

---

158 Ibid, s 5(3).
161 ‘Exempt charity’ is the following institutions, (a) any university or educational institution, hospital or religious body established by an Act of Parliament; and (b) any other institution which the Minister by order declares to be an exempt charity for the purposes of this Act.
162 Note 166, s. (5)(6).
163 Note 164, regulation 4.
164 Guidance on Regulation of Qualifying Grantmakers, Commissioner of Charities’ Office.
165 Ibid, regulation 3.
166 Note 24 at 192.
167 Ibid.
validated by section 67, it is not exclusively charitable and they cannot be registered.\textsuperscript{168} Otherwise registration is conclusively presumed that the trust is charitable at the time it is on the register.\textsuperscript{169}

Among the effect of unregistered charitable trust is it will be difficult for charitable bodies to engage in any meaningful and sustainable activities.\textsuperscript{170} For example, it is important to consider that only legal entities can enter contractual agreements such as leases and purchasing contracts. If charitable bodies is not a registered, the trustee may have to accept contractual obligations or liabilities in their personal capacities.\textsuperscript{171} Without a registered charitable bodies, it will be almost impossible for such bodies to raise funds from non-members and such bodies would not be able to claim tax exemptions on the funds raised.\textsuperscript{172} Whereas registration will bring about a sense of clarity and formality in which working with an established set of legally binding rules will provides clarity to those within the charities and to stakeholders outside the charitable bodies.\textsuperscript{173} Further, a registered charitable trust is a criteria which most donors use to evaluate requests for funds in which the charitable bodies is publicly accountable once it is registered and thereby establishes a sense of trust.\textsuperscript{174}

\textbf{3.4.2 Administration of the Charitable Trust by the Commissioner of Charities and the Charity Council}

The Commissioner of Charities is appointed under the Charities Act 1994 (Revised Edition 2007) to promote the effective use of the charity resources by encouraging better methods of administration, by giving charities trustee information and by investigating and checking abuses.\textsuperscript{175} The general object is to promote the work of any charity in accordance with its objects but the Commissioner of Charities must not take

\textsuperscript{168} Ibid at 193.
\textsuperscript{169} Ibid.
\textsuperscript{170} “Setting Up a Non-Profit Entity in Singapore – Part 1”, <https://www.guidemesingapore.com/incorporation/other/non-profit-entity-part1> accessed on 13 May 2017
\textsuperscript{171} Ibid.
\textsuperscript{172} Ibid.
\textsuperscript{173} Ibid.
\textsuperscript{174} Ibid.
\textsuperscript{175} Note 24 at 192.
part in the administration of any charity. The Commissioner of Charities must make a yearly report to Minister and is ultimately answerable to Parliament. The objectives of the Commissioner of Charities are, firstly, to maintain public trust and confidence over the charity. Secondly, to promote compliance by governing board members and key officers with their legal obligations in exercising control and management of the administration of their charities. Thirdly, to promote the effective use of charitable resources and to enhance the accountability of charities to donors, beneficiaries and public.

Whereas the Commissioner of Charities general functions are firstly in respect to the determination of charitable bodies. Secondly, to encourage and facilitate better administration of charities. Thirdly, to identify and investigate apparent misconduct or mismanagement in the administration of charities. Fourthly, to take remedial or protective action in connection with misconduct or mismanagement in the administration of charities. Fifthly, to obtain, evaluate and disseminate information in connection with the performance of any of the Commissioner’s functions or meeting any of the Commissioner’s objectives. Sixthly, to give information or advice, or make proposals, to the Minister on matters relating to any of the Commissioner’s functions or meeting any of the Commissioner’s objectives.

Besides the Commissioners of Charity, the Charity Council was also established under the Charities Act 1994 (Revised Edition 2007). The Council’s objectives are firstly to act as promoter, by promoting good governance, standards and best practice in the charity sectors. Secondly, to act as enabler, by helping build the capabilities of charities and enable them to comply with regulatory requirements and be more accountable to the public. Thirdly, to act as adviser, by advising the Commissioner of Charities on key regulatory issues and proposals that help broad ranging impact on the charity sector.

---

176 Ibid.
177 Note 166, s 4(3).
178 Ibid, s 4(1).
179 Ibid, s 4(2).
180 Ibid, s 4B(1).
The main functions of the Commissioner of Charities are to maintain the register of the charity. The Commissioner of Charities also confer the power to institute inquiry to charitable bodies as stated under section 8(1) of Charities Act 1994 (Revised Edition 2007). Besides, the Commissioner of Charities also has concurrent jurisdiction to the High Court is certain aspect as provided under section 24(1) of Charities Act 1994 (Revised Edition 2007). The Commissioner of Charities also has power to act in protection of the charities. Nevertheless, it must be with the consent from Attorney-General before any action can be taken by the Commissioner of Charities.

Among the limitation of Commissioner of Charities is relating to exemption of tax. The exemption of tax for charitable trust must be refer to the Comptroller of Income Tax as referred under section 3(1) of Income Tax Act 1947 (Revised 2014). Under section 13U of Income Tax 1947, the approved non-for-profit organization is exempt from the tax. The approval of non-for-profit organization for relief of tax is in the hand of the person appointed by the Minister.

3.4.3 Charitable Fundraising in Singapore

The charitable fundraising in Singapore is governed by House to House and Street Collections Act 1947. Under this Act, the permit of House to House and Street Collection is required in order for someone to solicit collection of money or property by means of appealing to the public, visits from house to house and street solicitation or other places. However, there are some types of collections which are not required to have such permit. These exceptions are private collection between friends and relatives as well as solicitation by a full or associate member of the National Council.

---

181 Ibid, s 5(1).
182 Ibid, s 25(1).
183 Ibid.
184 Chapter 134.
185 Income Tax 1947, s 13U(2).
187 Ibid.
of Social Service or the Community Chest.\textsuperscript{188} This permit can be applied through the websites of Singapore Police Force and National Council of Social Service.\textsuperscript{189}

There are some regulations that must be complied with by the charitable organizations in certain situations in order to conduct charitable fundraising.\textsuperscript{190} Firstly, anyone who wishes to conduct fundraising activities with charitable organizations must have written agreement with the latter.\textsuperscript{191} Secondly, when a commercial fundraiser is promoting a fundraising appeal for a charitable organization, the donations received must be given to the latter directly and any reimbursement or payment to the former must be made separately by the latter.\textsuperscript{192} Thirdly, the charitable organizations have the duty to provide accurate information of such activities which is not misleading to the donors or to the general public.\textsuperscript{193} Fourthly, the donations received by the said organizations must be used in accordance to the intention of the donors and if such intention is not specified, proper communication regarding the purpose of donation must be made to the donors during solicitation.\textsuperscript{194} Furthermore, if the donation cannot be utilized, the donation received must be refund or can be used for other purposes as approved by the Commissioner of Charities.\textsuperscript{195} Fifthly, the charitable organizations have the duty to maintain a proper accounting record of fundraising activities for a minimum period of 5 years and the duty to disclose the donations received in their financial statements.

\textbf{3.5 ANALYSIS ON THE FINDINGS ABOVE}

As a result from the findings above, several conclusions can be drawn on which countries administration of charitable trusts is the most preferred. In the area of registration of charitable trust, establishment of regulatory bodies for administration of the charitable trust and tax concessions as well as charitable fundraisings, none of

\begin{flushleft}
\textsuperscript{188} Ibid.
\textsuperscript{189} Ibid.
\textsuperscript{190} Note 195.
\textsuperscript{191} Ibid.
\textsuperscript{192} Ibid.
\textsuperscript{193} Ibid.
\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid.
\end{flushleft}
these are regulated in Malaysia. Our purpose is to highlight after making comparison on the most effective mode of administration of charitable trust in Malaysia.

3.5.1 Registration of the charitable trust.

In respect to the duty to register the charitable trust, we can see that there is leniency in the New Zealand approach that requires the settlor, trustee and other representatives from the charitable bodies to register the trust. However, in Singapore and United Kingdom, only the trustee can register the charitable trust. In United Kingdom, charitable trust which is below £5000 is not required to register. This may narrow down the scope of registration via the implementation of income limitation in regard to the amount of donations received. The approaches taken by New Zealand and United Kingdom are arguably the preferred choice because it may reduce the rigidity and to promote simple registration.

3.5.2 Establishment of regulatory bodies for administration of the charitable trust.

All the countries in the research have established their own regulatory body in supervising and monitoring the administration of charitable trust. In United Kingdom and Australia, the regulatory body is Commissions of Charities and Australian Charities and Not-for-profit Commission respectively. These regulatory bodies are statutory independent bodies created under Charities Act 2011 and Australian Charities and Not-for-profit Commission Act 2012 correspondingly. Meanwhile, in New Zealand and Singapore, the regulatory body is Charities Services and Commission of Charities respectively. However, unlike United Kingdom and Australia, their regulatory body is under the government department. Therefore, we are on the opinion that the best model of regulatory bodies would be that of United Kingdom and Australia. This is necessarily to ensure the regulatory body is free from any influence of the government and politics.

Most of the regulatory bodies have the power to investigate and to institute inquiry to the charitable trust in certain areas of concern as well as administrative power. However, we are on the opinion that quasi-judicial power of the United Kingdom and Singapore’s regulatory bodies such as determining the doctrine of cy-
pres is not needed in order to preserve the inherent power of the judiciary in Malaysia. Therefore, in our opinion, the approach taken by the New Zealand and Australia is arguably the best.

In respect of the limitation of the regulatory bodies, we are on the opinion that the decision made by the regulatory bodies should not be conclusive and can be appealed to the court in order to prevent arbitrariness. This approach is taken by all the respective regulatory bodies in the United Kingdom, New Zealand, Australia and Singapore.

3.5.3 Tax concessions of charitable trust.

We are on the opinion that in order for a charitable trust to enjoy tax concessions, registration of a charitable trust with a regulatory body is a must. Hence, by registering with the regulatory body, the relevant taxation office will only then endorse the application of the charitable trust to access such benefits. This method will prevent some institutions to set up a sham charitable body in order to evade tax. This approach of granting tax concession through registration is adopted by New Zealand and Australia.

3.5.4 Charitable trust fundraising

In respect of charitable fundraising, the approach taken by Singapore is similar to Malaysia in which the only governing law is the House to House and Street Collections Act 1947. However, the United Kingdom has taken a different approach whereby the fundraising law was imposed with self-regulation. The charitable fundraising is required to follow specific guidelines which is the Code for Fundraising Practice 2012 that is maintained by the Fundraising Regulator of England and Wales. In our opinion, it is arguably better for the charitable fundraising to be self-regulated as what has been done by the United Kingdom with the imposition of guidelines such as Code for Fundraising Practice 2012 that need to be followed. In term of granting of license, the approach taken by New Zealand is different as the registered charitable trust will automatically be granted the license for public collections. Meanwhile, the granting of public collections license or permits in United Kingdom and Singapore remain under the jurisdictions of the police. We are on the opinion that the approach of the New
Zealand is arguably should be followed to simplify the procedure in applying the license. Although leniency is significantly needed, monitoring by the regulatory body is arguably needed to ensure the effective use of charitable trust funds.
CHAPTER FOUR: RECOMMENDATIONS
4.0 INTRODUCTION

The scope of this chapter which cover four aspects of the findings in Chapter 3 namely registration of the charitable trusts, a regulatory body to administer the charitable trust, tax concessions and fundraising activities by the charitable trusts. the recommendations below are for the purpose of regulating of the administration of charitable trust in Malaysia.

4.1 Registration of the charitable trusts

The findings of the objectives of the research suggest that Malaysian law as embodied in the Trustee Act 1949 has to be amended in the aspect of registration of the charitable trust. The setting up a regulatory body to administer the said trust is needed to cater for the fundraising activities of the charitable trust.

As for registration of the charitable trust in Malaysia we recommend that the Trustee Act 1949 to be amended so that the trustee of charitable trust can register the trust with an appropriate regulatory body governing such matters. The registration of charitable trust will ensure the proper administration thereof and thus will safeguards the interest of the beneficiaries. From the comparative analysis on Chapter 3, we hereby conclude the following recommendations in respect of the requirement to register the charitable trust in Malaysia.

The registration of charitable trust in Malaysia should be mandatory by following the concept of registration in United Kingdom and Singapore. This is needed to promote accountability when managing the trust funds, thus monitoring and supervision via registration. Furthermore, valuable information can be collected for the purpose of recording all the available and existing charitable trust in Malaysia in order to know the exact value of the trust funds.

In respect of the burden of duty to register, we recommend that the trustees, settlors or representatives of the charitable trust are to be responsible to register the charitable trust. This is following the approach taken by the New Zealand under the Charities Act 2005. Furthermore, we would like to suggest that the Trustee Act 1949 to be amended by allowing the trustee to delegate the duty of registering the charitable
trust to the settlor or any representatives from the charitable body. This leniency is needed to ensure that any rigidity in registration can be reduced to encourage registration through simple process of registration.

In addition, we suggest that the eligibility of registering the charitable trust should be imposed. Firstly, the charitable purposes must be constituted accordance to the law of Malaysia. Secondly, there must be sufficient public benefit and eligibility to register will only be applied to charitable trust constituted in West Malaysia only. The reason is because both States in East Malaysia have their own law governing the charitable trust. Nevertheless, charitable trust formed in Sabah and Sarawak may register with their respective laws but still can enjoy tax concession available in the East Malaysian law without registering with the national register.

In term of mode of registration of charitable trust, the approach taken by United Kingdom is also expeditious as stated under the Charities Act 2011. This is because the procedure is less complicated as it reduces the red tapes. The process of registration should entail as followed. Firstly, the founder must set up the charitable trust and to ensure all the requirements are to be fulfilled. Secondly, the trust instrument in the form of a trust deed is mandatory whereby the trust deed may include all the relevant information regarding the administration of the charitable trust (See Appendix 1). Thus, we recommend that by registering the charitable trust with the national register, only then can tax concessions be applied. This approach is taken by all the selected countries in the comparative analysis and it is ideal approach for Malaysia to follow accordingly. This is because to ensure that only the reliable charitable bodies certified by the regulatory body can enjoy such benefit.

We recommend that the requirement to register the charitable trust is to be incorporated under Trustee Act 1949 in which there must be specific provisions governing the trustee. All the relevant powers conferred upon the trustee under the Trustee Act 1949 are still applicable as provided and the powers of the court as provided under Part V of the Trustee Act 1949 may still be applied for the purpose of the charitable trust.

The eligibility and procedure of registering the charitable trust may also be incorporated under the Trustee Act 1949. In term of tax concessions by the charitable trust, we are in the opinion that the amendment may have to be made under Part X of the Income Tax Act 1967 to include such recommendation whereby only registered charitable trust may enjoy tax exemptions.

4.2 The establishment of a regulatory body for the administration of charitable trusts

As for setting of a regulatory body we are of the opinion that the regulatory body for charitable trust in Malaysia should arguably follow the structure of Charity Commissions in United Kingdom which is a corporate body. The regulatory body will have Commission’s members appointed by the Minister and having their own Executive Management. The said body shall be answerable only to the government. The suitable model available in term of administrative structure is the Suruhanjaya Syarikat Malaysia (SSM) on the reason that the body carries the same function as the Registrar of the Companies which is supervising the regulation of the companies law in Malaysia via Companies Act 2016. Thus, we are in the opinion that these similar functions carried out by the Suruhanjaya Syarikat Malaysia may be followed when establishing a regulatory body governing the charitable trust in Malaysia. We suggest that the said body is called ‘Lembaga Amanah Kebajikan Malaysia’. The used of the name ‘Lembaga’ connotes a corporate body, ‘Amanah Kebajikan’ means the charitable trust and, ‘Malaysia’ implying the application of the regulatory body in a Federal level.

The functions are adopted from United Kingdom and Singapore Charity Commissions which arguably should be followed by Lembaga Amanah Kebajikan Malaysia. Amongst the functions of Lembaga Amanah Kebajikan Malaysia are as followed. Firstly, Lembaga Amanah Kebajikan Malaysia should have function to determine the status of charitable trust when application to register is submitted to them. Lembaga Amanah Kebajikan Malaysia must determine the status of charitable trust based on the law of Malaysia and under the eligibility requirement as stated before. Secondly, Lembaga Amanah Kebajikan Malaysia should encourage and facilitate the better administration of charitable trust. As the only regulatory body
supervised the charitable trust, Lembaga Amanah Kebajikan Malaysia should encourage the trustee and assist them in order to ensure the better administration of the trust funds. Thirdly, Lembaga Amanah Kebajikan Malaysia should identify and investigate apparent misconduct or mismanagement in the administration of charitable trust. Lembaga Amanah Kebajikan Malaysia should investigate if there is mismanagement of the trust funds to protect the beneficiaries. Fourthly, Lembaga Amanah Kebajikan Malaysia should obtain, evaluate and disseminate information pertaining to the performance of any Commission’s functions to the government and the public. Lembaga Amanah Kebajikan Malaysia is answerable to the government, hence they need to submit a report relating to their performance in monitoring the charitable trust in Malaysia.

We recommend that the members of Lembaga Amanah Kebajikan Malaysia which will be appointed by the Minister should be constituted by the person who have a legal background pertaining to the law of trust. The members of the said regulatory body may also be constituted by the person who contributed and have experience in the development of the country’s social welfare. He or she may have expertise and determination to encourage the public to institute a proper administration of the charitable trust that will help to build better social welfare in the country.

In order to fulfil its functions, Lembaga Amanah Kebajikan Malaysia must be conferred certain powers to regulate the charitable trust. We recommend the regulatory body’s main duty is to maintain a national register for charitable trust. This duty is required so that the public can refer to the registered charitable trust and would facilitate the trustee to attract prospective beneficiaries. The system of register can be in the form of computerize system and subject to the inquiries of the public. It is better for the register to be made available online as what United Kingdom has done in which the information is kept under the online database so that the public can have access about the information.

Lembaga Amanah Kebajikan Malaysia may have an information powers in relating to acquire the relevant information of the charitable bodies. The power is needed for the regulatory body to effectively carry out their duty to maintain a register with and adequate information and fulfil their supervisory function. Thirdly, Lembaga
Amanah Kebajikan Malaysia may have an administrative power such as to advice the trustee of charitable trust. The regulatory body should advice the trustees in the matters relating to administration of trust funds if requested to do so in order to facilitate the better administration of the charitable trust. Fourthly, Lembaga Amanah Kebajikan Malaysia should have power to act for the protection of the charitable trust by investigating any misconduct of charitable funds in which the regulatory body may have a power to remove any trustee that liable if it is expedient to do so. Lembaga Amanah Kebajikan Malaysia may act on behalf of the beneficiaries to bring the case to the court in the case if the mismanagement of the fund is occurred with the intervention of the Attorney-General.

Despite above all the power conferred to the regulatory body, certain limitation must be imposed to. Firstly, we recommend that the decision of Lembaga Amanah Kebajikan Malaysia relating to the approval or rejection of the application of the charitable trust in the national register must be made not conclusive. The trustee may bring the case to the court to challenged such decision.

Establishing a regulatory body requires a new law to be passed by Parliament of Malaysia. In regulating the law relating to the administration of the charitable trust, Lembaga Amanah Kebajikan Malaysia may do so via the subsidiary legislation, which the power to regulate such law may be vested upon by the Parliament in the Trustee Act 1949. We also recommend for Lembaga Amanah Kebajikan Malaysia to administer the charitable trust based on the Trustee Act 1949 which the requirement for registration of the charitable trust has been incorporated.

4.3 Tax concessions for charitable trusts

The charitable trust that registered will enjoy exemption of tax. The granting of such relief must be consulted to the Department of Inland Revenue (LHDN). This is to ensure the reliability of the information such as financial standings of the trustee and the account of such trust funds, in which the consultation with the Department of Inland Revenue is necessary.
4.4 Fundraising activities by charitable trusts

The law regulating the fundraising in Malaysia is the House to House and Street Collections Act 1947. Under section 4(1) of the House to House and Street Collections Act 1947, the licensee officer is given a power to grant license to any person who desire to promote collections. The licensee officer here is the Chief Police Officer in charge of the police within the area and he have a full discretion in granting or rejecting of the license. Moreover, in term of regulations, the Minister has power to impose such law regarding the street collections as specified under section 5(1) of the House to House and Street Collections Act 1947. In our opinion, the current law is sufficient but lacking in respect of enforcement. Further, the regulations prescribe under section 5(1) of the House to House and Street Collections Act 1947 is only cover the law in respect of procedure in acquiring of license but not in term of guidelines to fundraising. Hence, the proper guidelines to fundraising is needed to ensure the effective use of trust fund.

From the comparative analysis on Chapter 3, we hereby conclude the following recommendations in respect of the fundraising law in Malaysia. In our opinion, the proper guidelines provided by the United Kingdom is arguably should be adopted in Malaysia. Such guidelines under the Code of Fundraising Practice provides comprehensive procedures of street collections practice and thus should be followed accordingly by Malaysia. The approach taken by the Commissioner of Charity in Singapore in incorporating guidelines for the charitable trust to fundraising under the House to House and Street Collections Act 1947 should arguably be followed. In our opinion, the proper guidelines to fundraising are needed to ensure the street collections done by the charitable bodies is doing in a proper manner.

In our opinion, the House to House and Street Collections Act 1947 in Malaysia need to be amended to include the proper guidelines for charitable trust to fundraising by incorporate the suggested guidelines as referred under the Code for Fundraising Practice of the United Kingdom. We recommend for the Minister as the power conferred under section 5(1) of the House to House and Street Collections Act 1947 may include such proper guidelines to regulate fundraising practice by charitable bodies to be included under the same provision by following the Singapore House to House and Street Collections Act 1947. In our opinion, the Lembaga Amanah
Kebajikan Malaysia may be vested the power to monitor the guidelines under the House to House and Street Collections Act 1947 in order to ensure that all the registered charitable trust is following the guidelines accordingly. This may invite public confidence over the administration of the charitable trust in respect of fundraising.
BIBLIOGRAPHY

Books
Poirier, D., *Charity Law in New Zealand*. (Department of Internal Affairs New Zealand 2013).

Journal Articles
Cordery, Carolyn J., & Basekerville-Molley, Rachel F, “Charity Financial Reporting Regulation: A Comarison of the United Kingdom and Her Former Colony” in *Working*


**Internet Resources**

“Apply for registration”, Charities Services, New Zealand Government  


“Court jurisdiction, trading trusts and other issues: Review of the law of trusts


Theses


Parliamentary Reports

