

Review on the Chinese Temples Ordinance Public Consultation Document

Purpose

This paper outlines the outcome of the review on the Chinese Temples Ordinance (the “Ordinance”) (Cap. 153) and the proposed amendments to the Ordinance by the Home Affairs Bureau (HAB) and the Chinese Temples Committee (the “CTC”).

Background

2. The Ordinance was enacted in 1928 (background information of the Ordinance is at **Annex I**) against rampant activities of deceitful pseudo-religious establishments. In view of this, the Government enacted the Ordinance to suppress and prevent any mismanagement of Chinese temples and abuses of their funds. Some provisions in the Ordinance appear to be outdated in the present day context (see paragraph 4 below). The Government also considers that there is various legislation providing protection and remedies against frauds or abuses of funds by temples. Therefore, after a comprehensive review on the Ordinance, the Government and the CTC recommend a number of amendments to the Ordinance with a view to better serving prevailing social needs having regard to present circumstances.

Recommendations

3. Upon the comprehensive review, we recommend the following amendments to the Ordinance-

- (a) removing the outdated restrictions imposed on Chinese temples, including the provisions requiring all Chinese temples to be registered, the revenues and properties of all Chinese temples to be under the absolute control of the CTC, and any person who possesses or controls the property of any Chinese temple to transfer such property to the Secretary for Home Affairs Incorporated (the “SHAI”);

- (b) establishing a more reasonable regulatory regime for Chinese temples by-
 - (i) replacing the mandatory registration requirement with a voluntary registration scheme; and
 - (ii) providing the Secretary for Home Affairs (SHA) with power to participate in any legal proceedings against mismanagement of Chinese temples or abuses of temples' funds so as to safeguard public interest;
- (c) establishing the CTC as a body corporate, stipulating in the law its powers and functions, and optimising its operational procedures; and
- (d) merging the existing Chinese Temples Fund (the "CTF") and the General Chinese Charities Fund (the "GCCF") into a single Chinese Temples Charities Fund (the "CTCF") to be continued to be managed by the CTC with a broader scope to provide grants to meet the needs of the relevant services of the community.

Justifications

Removing the outdated restrictions imposed on Chinese temples

4. At present, the Ordinance requires that all Chinese temples must be established or maintained in complete and separate buildings used solely for the purpose of such temples (section 4). It also stipulates that all Chinese temples must be registered with the SHA in accordance with the Ordinance (section 5) and that no person is allowed to take part in the establishment of any unlawful Chinese temple (section 6). It also provides that "the revenues, funds, investments and properties of all Chinese temples shall be under the absolute control of the CTC" (section 7(1)); that the CTC has the power to require a person who possesses or controls the property of any Chinese temple to transfer such property to the SHAI (section 7(6)); that the CTC has the power to close any temple that falls into disuse (section 12); and that the SHA can authorise any person to enter and search any Chinese temple that may have breached

the Ordinance (section 14). Contravention of the said provisions of the Ordinance shall be liable to a fine of \$1,000 on summary conviction. (Please refer to **Annex I** for details.)

5. Comparing with the societal developments in the 1920s, members of the public are now much more aware of the risks associated with “pseudo-religious establishments”. At the same time, there is now various legislation¹ providing protection and remedies against frauds, malpractices and misuses of funds, as well as environmental and safety problems that are associated with organisations. These legal provisions are also applicable to the operation of Chinese temples as well as other religious bodies.

6. There were a number of cases of disputes over the ownership and revenues of Chinese temples, in which the affected parties opted to resolve the disputes through legal proceedings (for example, legal proceedings initiated under various legislation stated in footnote 1) and follow the ruling of the Court. If the CTC handles or follows up on the disputes (for example, to request a Chinese temple to transfer its property to the SHAI) with the powers conferred by the current Ordinance mentioned in paragraph 4 above, it may arouse public concern over the protection of property rights. As there are already other legislation and legal proceedings in place to protect the public, any attempts to enforce the provisions in the Ordinance that the absolute control over the properties of Chinese temples must rest with a committee appointed by the Government (see paragraph 4 above) will become unjustified, and render the provisions are rendered outdated.

7. In the light of the above, we propose removing the provisions mentioned in paragraph 4 above (i.e. sections 4, 5, 6, 7(1), 7(6)-(11), 12 and 14 of the Ordinance) and giving consideration to the introduction of other measures in order to assist members of the public in safeguarding

¹ For example, the Theft Ordinance (Cap. 210) covers fraudulent or deceitful solicitation of money. If the case concerns contention over the temples involving charitable interest or significant public interest, the Secretary for Justice (the “SJ”) might perform his roles as the protector of public charities and amicus curiae to safeguard public interest. Besides, various pollution control and building/fire safety legislation guards against environmental pollution and structural safety problems caused by the operation of Chinese temples, and Government land leases govern the permitted land use. In addition, provision of columbaria facilities by Chinese temples will be regulated by the Private Columbaria Bill upon its enactment by the Legislative Council.

their personal interests and public interest through other prevailing legislation (see footnote 1).

Replacing the mandatory registration requirement with a voluntary registration scheme

8. While the mandatory requirement under the Ordinance that Chinese temples must be registered with SHA is proposed to be removed, the CTC will implement a voluntary registration scheme for Chinese temples. An applicant should submit to the CTC information on the purpose of establishing the temple, the god(s) to be worshipped, major events involved, its owner(s) and administrator(s), its assets donated by the public and the uses of such donations. The full list of temples registered with the CTC will be published on the CTC's website, and the major information of the registered temples in respect of the above areas will also be released for public access and inspection. In case there are major changes to the information submitted, the registered temples are required to report the changes to the CTC. The CTC will also require the registered temples to update their information regularly to maintain the status of the registration. In addition, the CTC will conduct random checks on the information submitted by the registered temples, and in case of any false claims or concealment, the CTC may consider cancelling the registration.

9. It is considered that the above practice has the following merits:

- (a) **To the public:** The above-mentioned information will serve as useful reference for the public in considering whether to make donation to Chinese temples. In addition, if a member of the public suspects that properties (especially public donations) involving public interest are abused, the information will allow the public, the Police and SHA (as mentioned in paragraph 11 below) to deal with the matter through legal means as necessary. Higher transparency will also support other existing legal protections, allowing the public and the Government to deal with any disputes over property rights through existing legal proceedings, so as to protect individual and public rights.

- (b) **To the Chinese temples:** The proposed registration scheme is voluntary in nature, aiming at enhancing the transparency of the management of temples, including the use of public donations; it will not affect religious freedom. In view of public concerns over the transparency of charity donations in recent years, Chinese temples can gain public confidence through the registration scheme. Furthermore, the CTC has been providing grants through the Funds mentioned in paragraph 14 below, and Chinese temples may apply for grants to carry out maintenance for the buildings/heritage or customary ceremonies. In processing such applications, the CTC will take into full consideration the historical merits of the temple, its experience in organising relevant events, and whether it has a proven track record in managing public donations, etc. The information provided and updated regularly by those Chinese temples taking part in the proposed voluntary registration scheme will allow the CTC to better understand the temple's situation in the aforementioned areas and thus consider its application for grants according to the existing mechanism.

We will liaise with the relevant religious bodies and explain to them the advantages and arrangements of the voluntary registration scheme to secure their support and encourage their affiliated temples to take part in the scheme, thereby enhancing the transparency of temples management.

Providing SHA with power to participate in legal proceedings involving any mismanagement and abuse of public assets of Chinese temples

10. Under the existing legal regime, abuse or embezzlement of temple's funds may constitute a criminal offence. If there is sufficient evidence after investigation by the Police, prosecution may be instituted by the Department of Justice. Besides, the affected parties may settle the dispute through civil proceedings.

11. To strengthen the protection of public interest, we suggest that a

provision should be added to the Ordinance, in which SHA will be empowered to be a party to the legal proceedings involving Chinese temples to defend the interest of the general public where necessary and justified. For example, regarding disputes between individuals over properties controlled by temples or any possible improper use of public assets, SHA may join as a party in the civil proceedings on justifiable cases with reasonable evidence, where public interest is at stake, to protect the relevant public interest. We believe that providing SHA with power to take action when public interest is at stake where necessary and justified will provide an additional safeguard on top of the existing legislation mentioned above and the role of the SJ as the protector of charities. Similar to the voluntary registration scheme, this additional safeguard will help enhance the existing system in protecting the public interest.

Establishing the CTC as a body corporate and stipulating its powers and functions in the Ordinance to enhance its operational procedures

12. With the above proposals, the CTC will continue to exercise other existing functions in addition to the implementation of the proposed voluntary registration scheme. We propose establishing the CTC as a body corporate under the Ordinance, and specify its statutory rights and functions in the provisions. The functions of CTC include managing Chinese temples which are owned or held by SHAI as trustee (there are totally 63 such temples at present) and their funds, providing advice and support for enhancing the management of Chinese temples (including the administration of any registration scheme for Chinese temples) and managing the proposed CTCF, etc. In addition, we also propose amending the Ordinance to increase the number of CTC members to be appointed by the Chief Executive from six to ten, and introducing other amendments to enhance the operations (see **Annex II** for details).

Merging the CTF with the GCCF to form the CTCF with a broader scope to provide grants to meet the needs in the community

13. To facilitate more efficient management and increase the flexibility in the use of the fund, we propose merging the CTF with the GCCF into a single fund (see **Annex II** for details of the two funds), namely, the CTCF,

which will be continued to be managed by the CTC. The current requirement that the accounts and statements of accounts shall be audited by an auditor and tabled at the Legislative Council (the “LegCo”) will be maintained to ensure proper supervision and transparency in relation to the operation of the funds.

14. Section 9(1)(b) of the Ordinance stipulates that the GCCF can be used “for the purposes of any Chinese charity in Hong Kong”. One of the primary purposes of the GCCF is to support charitable work in Hong Kong, and to tie in with the advocacy of social inclusion and equal opportunities, we consider that the restrictions on the use of funds to only “Chinese charity” should be removed so that the CTC can support those charitable activities with beneficiaries not restricted to Chinese only. We therefore propose that the merged CTCF can be used for any charitable activities in Hong Kong, be it for Chinese or non-Chinese. Moreover, to enable the CTC to make better use of the proposed CTCF, we propose broadening the scope of the fund from the current “due observance of the customary ceremonies” (section 8(1)) to “due observance and promotion of customary ceremonies and culture of Chinese temples”, thus facilitating the CTC to extend enhanced support to schools and other organisations in the promotion of traditional culture.

Advice Sought

15. In respect of the amendments proposed above, the HAB and the CTC will conduct a public consultation for two months to be ended on 12 May 2015. After considering the views and comments put forward by the public, the HAB and the CTC will draft a detailed proposal and follow up on the relevant legislation drafting work, with a view to submitting an amendment bill to the LegCo in its next term.

16. Members of the public are invited to give their comments on the issues and proposals set out in the consultation document, as well as other suggestions on how other provisions of the Ordinance could be enhanced. Comments can be submitted in writing to HAB/CTC on or before 12 May 2015 by writing through any of the following channels:

Mail Address: Chinese Temples Committee
34/F, Wu Chung House, 213 Queen's Road East
Wanchai, Hong Kong
Fax Number: 3718 6800
Email Address: consultation_cto@ctc.org.hk
Website: <http://www.ctc.org.hk/consultation>

**Home Affairs Bureau
Chinese Temples Committee
March 2015**

A Brief Introduction to the Chinese Temples Ordinance

Key Provisions of the Existing Ordinance

Provisions on temple regulation

The Ordinance defines “Chinese temples” as including, but not limited to, “all Miu (廟, temples), Tsz (寺, Buddhist monasteries), Kun and To Yuen (觀及道院, Taoist monasteries) and Om (庵, nunneries)” (section 2) ¹. Provisions regulating Chinese temples include: Chinese temples can only be established or maintained in complete and separate buildings used solely for the purpose of such temples (section 4(1)) but exemption may be granted by the CTC (section 4(2)).

2. All Chinese temples must be registered with the SHA (section 5), and that no person shall take any part in the establishment or maintenance of any Chinese temple established or maintained contrary to the Ordinance (section 6). The CTC has “absolute control” over “the revenues, funds, investments and properties of all Chinese temples” (section 7(1)). For effective control, the CTC may require any person possessing or controlling the property of any Chinese temple “to transfer or assign any such property to the SHAI (section 7(6)). The CTC may also, upon completing the established procedures of hearing views and issuing a notification, close temples which fall into disuse (section 12). Any person who contravenes the Ordinance shall be liable on summary conviction to a fine of \$1,000.

¹ Under the Ordinance “Chinese temples” is broadly defined as:

- (a) all Miu (廟, temples), Tsz (寺, Buddhist monasteries), Kun and To Yuen (觀及道院, Taoist monasteries) and Om (庵, nunneries); and
- (b) every place where -
 - (i) in accordance with the religious principles governing Miu, Tsz, Kun, To Yuen or Om, worship of gods or communication with spirits or fortune-telling is practiced or is intended to be practiced; and where
 - (ii) fees, payments or rewards of any kind whatsoever are charged to or are accepted from any member of the public for the purpose of worship or communication with spirits or fortune-telling or any similar purpose, or in return for joss candles or incense sticks, or on any other account whatsoever.

3. In addition, under the Ordinance, any person authorised in writing by the SHA may enter and search any place which such person may have reason to suspect to be or to contain a Chinese temple which is being or has been established or is being maintained, contrary to the Ordinance, or enter and search any registered Chinese temples in or in respect of which such person may have reason to suspect that the Ordinance is being or has been contravened, and seize and detain any books or documents and anything which may appear to be evidence of any contravention of the Ordinance (section 14).

Provisions on the CTC and its funds

4. The CTC, established under section 7(1) and (2) of the Ordinance, is chaired by SHA and comprises the chairman for the time being of the Board of Directors of the Tung Wah Group of Hospitals (TWGHs) (or a director of the Board he nominated) and six other non-official members appointed by the Chief Executive. At present, the main responsibilities of the CTC are to manage the temples owned by SHAI (i.e. temples standing on lands vested in SHAI as the owner) and the revenues generated by these temples.

5. There are currently about 600 Chinese temples in Hong Kong, of which about 350 have been registered with the CTC in accordance with the Ordinance. The registered temples can be broadly classified into the following three categories:

(a) Temples directly managed by the CTC

There are totally 25 temples (e.g. the Che Kung Temple in Sha Tin, the Lin Fa Kung in Tai Hang, the Hau Wong Temple on Junction Road, Kowloon, etc.) currently under the direct administration of the CTC, whose properties are vested in SHAI and revenues are transferred to the CTF. Every now and then, the CTC transfers part of the accumulated surplus of the CTF (i.e. after paying fees for customary ceremonies and maintenance of temple buildings) to the GCCF.

(b) Temples managed by organisations under delegated authority from the CTC

In exercise of its power under section 11 of the Ordinance, the CTC has delegated the administration of 19 temples (all standing on lands held by SHAI) to various organisations, including the TWGHs, Sik Sik Yuen (charitable organisation managing the Wong Tai Sin Temple) and some kaifong welfare associations. The delegates are allowed to keep and use the revenues of the temples in the manner stipulated in the relevant delegation agreements/contracts.

(c) Other registered temples

The rest of the registered temples (around 300) are managed by individuals or other organisations such as religious organisations (e.g. Po Lin Monastery) and the Sz Chuk of the temples. Most of them are owned by individual organisations but 19 of them are properties of the SHAI. The revenues of these temples are managed by the respective temples themselves.

Other proposed amendments to the Ordinance

Establishing the CTC as a body corporate and stipulating its powers and functions in the Ordinance

To provide the CTC with greater autonomy in its operation and greater powers to manage the funds and investment, we propose establishing the CTC as a body corporate under the Ordinance and vesting in it the necessary powers and functions, including:

- (a) to manage Chinese temples which are owned by SHAI or held by SHAI as trustee, including their funds. The CTC has been managing (or has appointed agents to manage) these temples under SHAI's delegated authority. We propose providing the CTC with such statutory powers and functions in the Ordinance. Specifically, the CTC (or its authorised persons) will represent SHAI to collect revenues from its temples and credit the money into the CTC's fund, pay for the operation costs of the CTC, maintain the temples under its auspices, make appropriate investments, etc.;
- (b) to acquire land and properties, engage in investment activities, construct buildings or properties, etc., where necessary and justified;
- (c) to provide advice and support for enhancing the management of Chinese temples, including the administration of any registration scheme of Chinese temples, and to advise SHA on the need to exercise his power to protect public interest against abusive uses of temple's funds and/or mismanagement of Chinese temples; and
- (d) to manage the proposed CTCF.

In general, the CTC will have the capacity of a legal entity to engage in any actions that are consistent with its functions specified in the Ordinance.

2. We further propose updating the provisions regarding the CTC's composition, work procedures and related matters. At present, under the Ordinance, the CTC can only make decisions at a meeting. This has presented difficulty when urgent decisions are required, e.g. in buying and selling shares promptly to take account of the changing market conditions. Accordingly, we propose that the CTC be allowed to (i) make decisions by circulation of papers; (ii) delegate its powers to the sub-committees; and (iii) formulate a standing order to govern its meeting procedures and other specified matters.

3. We propose increasing the number of CTC members to be appointed by the Chief Executive from six to ten (section 7(2)(d)) to ensure that the CTC has a good mix of professional expertise and religious representation. To allow more flexibility in performing CTC's functions, we propose that when SHA cannot personally chair a meeting for any reasons, he may authorise his representative to take his place.

Merging the CTF with the GCCF to form a single CTCF with a broader scope to provide grants to meet the service needs of the community

4. We propose merging the CTF¹ with the GCCF² to form the CTCF, with a view to improving the management efficiency and allowing more flexibility in using funds. After merging, the CTCF will be managed by the CTC. The current requirements that the accounts and statements of accounts shall be audited by an auditor and tabled at the LegCo will be maintained for the sake of proper supervision and transparency.

5. We consider that the restrictions on the use of funds for "Chinese charity" should be removed so that the CTC can support charitable

¹ The CTF is set up under the Chinese Temples Fund Regulations, which is a piece of subsidiary legislation of the Ordinance. It consists of the revenues of all Chinese temples (other than those specified in the Schedule to the Ordinance) and donations and voluntary contributions to the temples. In accordance with section 8 of the Ordinance, the revenues of all Chinese temples shall be applied in the first instance to the due observance of the customary ceremonies and the maintenance of temple buildings and temple properties, and any surplus may be transferred to the General Chinese Charities Fund referred to in section 9 of the Ordinance.

² The GCCF is set up under the General Chinese Charities Fund Direction (which is also a piece of subsidiary legislation of the Ordinance) and can be applied to the pay of the necessary staff and other expenses incurred by the CTC in the exercise of its powers under the Ordinance and for the purposes of any Chinese charity in Hong Kong.

activities with non-Chinese as beneficiaries. We therefore propose allowing the merged CTCF to be used in any charitable activities in Hong Kong, be it for Chinese or non-Chinese. Moreover, to enable the CTC to make good use of the merged CTCF, we propose broadening the scope for receipt of grant from the current “due observance of the customary ceremonies” (section 8(1)) to “due observance and promotion of customary ceremonies and culture of Chinese temples”, thus facilitating the enhanced support from the CTC to schools and other organisations in the promotion of traditional culture.