

SIGN OF THE TIMES: NON-GOVERNMENT ORGANIZATIONS (NGOS) RETHINK INTERNAL PRACTICES & PROTECTIONS

A new day is dawning for NGOs and charitable organisations across Asia. From headline-making allegations of financial mismanagement against Hong Kong welfare organizations to defamation accusations against Singapore social clubs, NGOs and charitable organisations are finding their activities under the microscope as never before. This marks a sea change in a region that has traditionally left these organisations – referred herein collectively as “NGOs” – loosely regulated.

The number of NGOs in Asia is growing rapidly year to year, and with increasing numbers and visibility has come increased media scrutiny. We’ve seen it reported in a myriad of media outlets: an NGO’s CFO circumvents controls and skims funds, or the COO embezzles using a fraudulent vendor account. In cases like this, every member of a NGO’s board can quickly find themselves under investigation, in court, even criminally charged. When an NGO renders professional services, whether legal, financial or medical, the NGO and its board can face claims alleging negligence in the provision of these services. In Asia, like elsewhere in the world, the #metoo movement is elevating awareness of employment practices and the potential for more claims arising from workplace harassment or discrimination.

In Hong Kong the media constantly shines a spotlight on potential misdeeds of NGOs, reporting extensively on alleged regulatory shortfalls, overreach of welfare groups and “runaway pay” for NGO managers. Hong Kong has even been cited as a potential “paradise for charity fraudsters” by Forbes. And the misdeeds of one NGO can affect other NGOs. A survey by the National Volunteer and Philanthropy Centre in Singapore showed that every NGO scandal is followed by a drop in donations, not just for the NGO involved but for the charitable sector as a whole.

Even if an NGO has done nothing wrong and allegations are ultimately unfounded, claims of misdeeds or mismanagement can cause irreparable damage to an organization’s greatest asset, its reputation. When public trust in charitable organisations dips significantly due to a single scandal, the result can be lost funding or organisations may be forced to shut their doors altogether.

INCREASING REGULATION

One common response to the media focus on NGO misdeeds is a call for increasing regulation and governance requirements.

In Singapore, changes to the Charities Act passed in 2018, giving the Commissioner of Charities far-reaching powers to suspend fundraising campaigns if charities lie about beneficiary circumstances or about how donations will be used. Other changes include new requirements to file annual reports and retain accounting records for at least five years regardless of the size of the NGO. The amended Singapore Charities Act even put NGOs’ potential use as a terrorism financing vehicle into focus, potentially vaulting the scrutiny of even local NGOs to the international stage.

From 2007 – 2013, the Law Reform Commission of Hong Kong reviewed the regulatory framework for NGOs, spurred by a lack of central regulation and a perceived lack of transparency surrounding NGOs in Hong Kong. The resulting report has not yet resulted in concrete regulatory changes. However, the scrutiny of NGOs continues and media outlets and legislators are constantly calling for further examination of NGO regulation.

This may be just the beginning of new accountability coming to NGOs. Increased concerns around data protection, medical malpractice in social services and regulatory changes are just a few of the uncertainties that loom large.

CORPORATE GOVERNANCE

As NGOs around the region grow in size, scope and complexity, exposures are growing too. They encounter new, cross-border jurisdictional and regulatory issues that can be difficult to track, manage and address without formal corporate governance structures in place.

In the past, many NGOs have not had the resources or perceived need to dedicate to corporate compliance. They have been focused on their mission -- not necessarily issues like corporate governance, tax compliance, employment practices, and the security and integrity of internal processes. However, increased media and government scrutiny – and the potential for increasingly formalized regulation of NGOs – is forcing NGOs to realize they can no longer afford to overlook these issues.

Amid heightened claims, many NGOs are now making time to assess and shore up internal governance practices to mitigate exposure to claims. They are instilling controls and procedures for everything from handling of charitable contributions and protocols for committee meetings, to proper hiring, terminating and employment practices. Internal education and training is also becoming a priority. Entire practice groups of third party consultants are now being dedicated to review financial records and implement controls for NGOs.

NGOs large and small will no longer be able to ignore the compliance aspects of running an NGO. Gerard Ee, chair of the Singapore Charity Council has stated, “Good governance holds the key to sustainability and growth of the charity sector . . . charities must proactively put in the time and effort to achieve and maintain a well-governed organisation.”

THE RISING ROLE OF INSURANCE

Even stellar internal practices cannot fully insulate NGOs from claims. Claims can be expensive, distracting and stretch over years. Fees for legal defense alone can reach millions of dollars, let alone potential settlements and judgments. In one widely covered case, a religious organization whose leaders were ultimately charged with fraud tallied legal fees estimated at more than S\$10 million – making it the most expensive NGO criminal trial ever in Singapore.

The cost of liability and defense is difficult to predict, and insurance to protect the NGO and its individual officers and directors in claims is increasingly viewed as a logical piece of a sound corporate governance and risk management framework. Indeed, given the trends around NGO scrutiny and regulation in Asia, insurers have been introducing and enhancing insurance offerings to specifically address the needs of the region’s NGOs. With a robust internal governance and risk management framework which includes tailored insurance protection, NGOs can ensure that their good work can continue, unhindered by intensified scrutiny and costly claims.

Edwin Sim

*Vice President,
Executive & Professional Lines, Asia*
+65 6675 1508
edwin.sim@bhspecialty.com

Nero Shiu

*Assistant Vice President,
Executive & Professional Lines, Asia*
+852 3729 1363
nero.shiu@bhspecialty.com

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