

GUIDE ON VOLUNTEER BEHAVIOR HONG KONG 2020

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HandsOn
HONG KONG

**STEPHENSON
HARWOOD**

罗夏信律师事务所

FOREWORD

HandsOn Hong Kong is pleased to provide this Sector Guide regarding volunteer behavior, screening of volunteers and NGO liability. As a nonprofit organization empowering people to volunteer with a range of service users, ensuring the protection of all involved is of the utmost importance to us.

HandsOn volunteers are required to read and agree to a Code of Conduct that outlines expected behavior prior to joining a service activity. We hope this guide, along with our sample Code of Conduct, will help other nonprofit organizations navigate their own management of volunteers.

We are grateful to the team at Stephenson Harwood for developing the content for both the guide and Code of Conduct and to TrustLaw for enabling this project and connecting us together.

The HandsOn Hong Kong Team

01

What liabilities can non-profit organizations or charities (“NGOs”) have in relation to volunteer behavior?

Although NGOs are not liable for the behavior of volunteers in Hong Kong, we recommend our NGO partners to exercise common sense and should, whenever possible, provide relevant briefing or guidelines to volunteers to ensure that they behave appropriately.

What duty of care do NGOs have to their beneficiaries (especially children and vulnerable persons)?

There are no duties of care specifically imposed on NGOs in their capacity as NGOs. NGOs are however subject to a general duty of care under common law which means they are required to provide a reasonable standard of care while performing any acts which could foreseeably harm others. For example, volunteers who distribute hot meals to beneficiaries should be provided with gloves. NGOs should also ensure the safety of the premises especially when the beneficiaries of volunteer services are children or vulnerable persons. For example, sharp edges and corners should be covered with protectors, safety measures should be taken to prevent children from falling from windows and balconies, and dangerous equipment such as scissors should first be deemed suitable for children.

02

03

Is it legally permissible under Hong Kong law to conduct a criminal record check on a volunteer (as opposed to an employee)?

Under Hong Kong law, there is nothing legally preventing NGOs from conducting a criminal record check on a volunteer. However, there is no public channel for NGOs to do so. The Hong Kong Police Force maintains a database on criminal conviction records. Members of the public can use this database to enquire about their own criminal conviction record. NGOs could theoretically engage private investigation companies to conduct searches of individuals but a NGO itself cannot conduct such a search. The Hong Kong Police Force has implemented the Sexual Conviction Record Check (“SCRC”) to enhance protection of children, and mentally incapacitated persons (“MIPs”). However, the SCRC cannot be utilized by volunteers or NGOs engaging volunteers. A SCRC can only be conducted by prospective employees including staff directly employed by schools, staff deployed to work in schools by outsourced service providers and self-employed persons providing service to schools) seeking child or MIP-related work in an organisation or enterprise. We recommend our NGO partners to consider the following actions:

- (a) When hiring employees to undertake work that requires frequent contact with children or MIPs, you may request potential employees to undertake a SCRC and employment should only be offered conditional upon a clear SCRC.
- (b) To request existing employees whose work is related to children or MIPs to undertake a SCRC. If any employee refuses to complete a check you should consider transferring them to another type of work.

Is it legally permissible to conduct other screenings on volunteers?

04

Conducting screening on volunteers is a form of personal data collection. Under Hong Kong's Personal Data (Privacy) Ordinance ("PDPO"), personal data is any recorded information (including an expression of opinion) relating to a living individual from which his/her identity can be directly or indirectly ascertained. For example, names, addresses, telephone numbers, identity card numbers, dates of birth, occupations, medical records, financial information, etc. Therefore, NGOs will be subject to PDPO when collecting personal data from volunteers. We recommend our NGO partners to consider carefully the types of personal data that are necessary for conducting screening on the volunteers and should not collect more personal data than necessary.

05

Is consent to screening required from the volunteer?

On or before collecting personal data from the volunteer, NGOs must inform the volunteer of the following:

- (a) the purpose for which the data is to be used;
- (b) the classes of persons to whom the data may be transferred;
- (c) whether it is obligatory or voluntary for the volunteer to supply the data;
- (d) the consequences arising if the volunteer fails to supply the data; and
- (e) that the volunteer has the right to request access to and correction of the data.

In order to comply with the above requirement, we recommend our NGO partners to provide a personal information collection statement ("PICS") and privacy policy statement ("PPS") to the volunteers when collecting personal data from them. When preparing the PICS and PPS, NGO partners should refer to the Guidance Note published by the Office of the Privacy Commissioner for Personal Data, Hong Kong:

https://www.pcpd.org.hk/english/publications/files/GN_picspps_e.pdf.

How long should records be stored and how often should screening checks be renewed?

06

There is no legal requirement for NGOs to keep records of or renew screening checks on the volunteers. However, we recommend our NGO partners to handle and store volunteers' personal data with care. Under the PDPO, volunteers have the right to access and correct their personal data. We recommend our NGO partners to have a system in place to deal with volunteer's request which has to be complied with within 40 calendar days. If you no longer hold the requested data, you are still required to inform the requestor in writing stating the reason within the same time limit.

07

Are there other steps that NGOs can take to limit their liability and protect their beneficiaries?

In order to ensure that volunteers are aware of behavior expectations when they carry out volunteer work related to children or vulnerable people, we recommend that our NGO partners consider (i) requiring volunteers to agree to a code of conduct and (ii) elicit positive confirmation from volunteers that they have not been convicted of a child or sexual related crime, before allowing the volunteers to participate in the volunteering activities.

HandsOn Hong Kong requires all volunteers to review and agree to a Volunteer Policy (found at www.handsonhongkong.org/about-membership) which outlines the organization's approach to data usage, privacy, liability and volunteer participation requirements. Volunteers are also required to review and agree to a Code of Conduct (found at www.handsonhongkong.org/code-of-conduct) as part of the registration process. The Code aims to provide guidance to volunteers in the context of their service to members of the community.

Full details of Stephenson Harwood and or/its affiliated undertakings can be found at www.shlegal.com/legal-notices. Information contained in this Guide is current as at the date of first publication and is for general information only. Stephenson Harwood has assisted HandsOn HK to prepare this guide. The content of this Guide is not legal advice.

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