

FOUNDATION FOR LAW AND INTERNATIONAL AFFAIRS



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**COMMENTS OF THE FOUNDATION FOR LAW AND INTERNATIONAL AFFAIRS ON
THE PEOPLE'S REPUBLIC OF CHINA CHARITY LAW (DRAFT)**

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The Foundation for Law and International Affairs (“FLIA”) welcomes the opportunity to comment on the draft of the People's Republic of China Charity Law (“Draft Law”). FLIA is an independent, nonpartisan, nonprofit organization mandated to promote academic and public discourse at the intersection of law and international affairs. The mission of FLIA is to facilitate international scholarly activities, conduct high quality, independent research and policy analysis, engage in public education and awareness-building programs, as well as amplify the voice of the rising generation.

Our comments are focused on a reading of the Draft Law for:

- (1) coherence and for conformity to the Chinese Communist Party Basic Line;
- (2) an internal coherence of the Draft Law, and the Draft Law's coherence with the domestic regulatory framework on civil society organizations;
- (3) general observations about legislative technique.

We believe that the Draft Law offers several possibilities to encourage a greater transparency and accountability of foreign as well as domestic NGOs, and improve the contribution of the civil society sector to local and global good governance. Some of these possibilities have been correctly identified but, other possibilities deserve a closer consideration. Corruption protection, the voluntary nature of service on charitable organizations, the role of foreign NGOs, Chinese civil society's role in promoting global good governance are some of the areas that we have identified as deserving further attention.

We have attached Professor Larry Catá Backer's general comments, and a table of technical comments on the Draft Law. We hope our comments will be useful to the Central Committee of the Chinese Communist Party, the National People's Congress, domestic and international donors and practitioners, and the scholarly community. We stand ready to further exchange views with relevant authorities on how to best regulate the charity sector.

Sincerely,

Foundation for Law and International Affairs

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Comments to the Charity Undertakings Law of the PRC (Draft)

中华人民共和国慈善事业法（草案）

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The Charity Law (Draft) overall presents an important advance in Chinese rule of law. It is an important measure dealing with an issue tied closely to the direction and shape of socialist modernization, and as such, touches on sensitive matters requiring leadership from the Communist Party, especially as the CCP “unswervingly encourages, supports and guides the development of the non-public sector” (CCP General Program (GP) §14). My comments are focused on a reading of the draft Charity Undertakings Law both for coherence and for conformity to the Chinese Communist Party Basic Line. “The general starting point and criterion for judging all the Party's work should be how it benefits development of the productive forces in China's socialist society, adds to the overall strength of socialist China and improves the people's living standards” (GP §9). In those respects I respectfully offer the following comments:

Chapter 1

1. It might be useful to align the focus of Sections 1 and 3. Section 1 touches on the legislative *purpose*, which include developing the productive forces (GP §9) represented by charity, the protection of charities and their stakeholders, and the promotion of social harmony. Chapter 3 *defines* charity to include a broader scope of activity—enhancing sports, culture, education, environment, etc. One might read Section 1 as touching only on the laudable goals of building a harmonious socialist society (GP §17). Yet Section 3 also speaks to developing an advanced socialist culture (GP §16); environmental protection (GP §18); and in “taking economic development as the central task making all other work subordinate to and serve this central task. The Party must lose no time in speeding up development (...) through science and education, the strategy of strengthening the nation with trained personnel and the strategy of sustainable development” (GP § 11). It might be useful to align the two sections to better reflect the CCP’s basic line for developing China’s productive forces through charitable efforts and in the definition of charity.

2. Section 4 correctly situates charity within social morals, the legal rights of others and the focus on public benefit. To the extent that the intent is to restrict profit, then the provision makes sense. And, indeed, that should be the interpretation reading sections 4 and 9 together. But that applies to the institution, not the individual. The provisions of Chapter 7 appear to make that clear (§§ 63-68). But it may be too broadly rendered when it also suggests that people who devote themselves entirely to charity should do so without payment. To the extent it suggests that people work without pay, that itself might suggest a contradiction with the CCP’s basic line on worker dignity and the avoidance of exploitation. More importantly, if only voluntary and part time efforts are permitted for individuals, without pay, then the utility of charity as an important means of developing mass

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culture, the development of harmonious society, and worker training, may be adversely affected to no good end. It might be worth permitting individuals who labor for charities to receive a fair wage.

3. Section 5 is a very useful provision. It is to be hoped that such planning will be undertaken strictly to advance the CCP's Basic Line. It might be useful, in that respect, to consider the development of a reporting mechanism so that these plans might be reviewed and approved by the appropriate level of government. In that respect Section 6 quite correctly emphasizes the need for coordination, but might also benefit by including an assessment obligation as well.

Chapter 2

4. Section 9 provides a valuable framework for managing charities. It is not clear, however, whether charities may acquire the necessary funds or property from individuals or organizations outside of China, and if so, the extent to which such contributions will be examined by the authorities.

5. Section 10 provides a reasonable approach to registration. Two additional considerations might be made: first, should a national registry of charitable organizations be maintained? Second, should an organization be given a chance to correct errors and omissions and apply again should its registration be rejected? With respect to the first, a national registry might be useful to reduce fraud and corruption, an important element of the Basic Line (GP §23). With respect to the second, the right to reapply is implicit but not explicit and it might help lower level governments better understand the law if this was made clearer.

6. Sections 11-16 appear sound. One might consider a few points. First, it is assumed but never stated, that the General Assembly has the responsibility for ensuring assessment and improvement of charities, but their power to make that happen are unspecified in Section 11. Perhaps requiring the Board of directors to submit annual detailed reports of activities to the General Assembly (and to the government at the level of charity registration) might make accountability stronger and reduce the temptations of corruption. Moreover, it is not clear what the relationship is between donors (§15) and the General Assembly (§12).

7. Section 17 is important and necessary if foreign NGO work is to be aligned with the overall obligation to adhere to the CCP basic line, develop productive forces and ensure the path forward through socialist modernization of economy, politics, culture, society and environment. It is not clear, though it might be assumed, that a foreign NGO need only establish a local organ within China to meet the requirements of Section 17. That is, once Chinese citizens establish a charity under Section 10, that organization can be affiliated with the foreign NGO, receive funds and other materials from the foreign NGO and adhere to the foreign NGOs basic line. This appears a necessary reading of §§10, 17 and 20. If that is the case, then Section 18 suggests the limits of foreign NGO influence—which is no different than the ordinary requirements applicable to Chinese charities. That is, Foreign NGOs will be treated the same as Chinese charities and subject to the same rules and the same limitations. That is sound policy and accords with the CCP Basic Line (§ 17, 25). It is also central to the CCP's Basic Line or reform and opening up (“the basic state policy of opening up and assimilate and exploit the achievements of all other cultures” (GP §13)).

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Chapter 3

8. The provisions on charitable donations are laudable and well written. However, they appear to emphasize collection mechanisms more effective in traditional systems and less useful in the great cities of modern China. It might be useful to permit, and regulate, new internet based collections.

9. There is no reason to limit the collection of charitable contributions from within China. Certainly Chinese charities ought to have the authority to make appeals for donations in other countries. While it is to be expected that such donations would be carefully regulated, and that one would expect such appeals and the property collected to be effected in a wholly transparent manner, there is no reason otherwise to restrict. This is especially the case where overseas Chinese communities might be donors.

Chapter 5

10. Anti corruption protections must be at the heart of the Charities Law (GP §26). For this reason Section 48 is most welcome. However, it might be useful to elaborate on the nature of corruption and corruption activities for those entrusted with the objectives, work and property of charities. It is not merely a matter of conflict of interest, as Section 48 covers. It is also a matter of duty—here the duty to ensure that all charitable decisions are made solely to advance the objectives of the charity, inline with the overall objectives of socialist modernization, and that the directors of the charity can transparently demonstrate compliance with this duty. That touches on all aspects of the operation of the charity, as well as on the nature of the relationships among the members of the ruling councils of the charity itself. It is not clear that the Charity Law sufficiently deals with the issue of corruption in this respect.

Chapter 7

11. The voluntary nature of participation in charitable work (§§63-68) appears to take a traditional approach to the enterprise of providing charitable services to the masses. It is not clear that this narrow position fully embraces the CCP Basic Line of opening up and emancipation of the mind (GP §13). I have suggested that such an approach might hamper the full development of productive forces and thus create a contradiction with the core objectives of socialist modernization. This is particularly true with respect to the building of socialist harmonious society, socialist culture and socialist ecological leadership, all key elements of the CCP Basic Line. It is true that under traditional models, charity was thought to be an addition to the main work of individuals in contributing to society. But that ancient view fails to consider the importance of the *work of charity*, and the necessity of investing societal productive forces to produce substantial improvements to the lives of people who might then be better positioned to more vigorously contribute to the construction of a socialist market economy (GP §14; through training, socialization, and education), socialist culture (GP §16 to “raise the ideological and moral standards and scientific and educational levels of the entire nation so as to provide a powerful ideological guarantee”); socialist harmonious society (GP §17 to “to create a situation in which all people do their best, find their proper places in society and live together in harmony”); and socialist ecological advancement (GP §18 “that leads to increased production, affluence and a good ecosystem”). It is useful, then, to consider permitting

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charities to hire and retain staff to further consolidate, improve and carry out their work. Indeed, it would seem that Section 11 of the Charities Law would itself require charities to press this point to improve their governance structures and the efficiency of their operations.

Chapter 8

12. Chapter 8 is an important element of the Charities Law and is well written and comprehensive. But it lacks an important connection between the obligations of charities to disclose, and the obligations of local governments to make those disclosures public. Moreover, the Charities law does not impose local governments any obligations with respect to the good order of their management of charities, and no way for the masses to communicate with local officials respecting the work of charities. “The Party follows the mass line in its work, doing everything for the masses, relying on them in every task, carrying out the principle of “from the masses, to the masses,” and translating its correct views into action by the masses of their own accord” (GP §26). It is not clear how the Charity Law fully further develops and applies the mass line obligations to the operation of charities and to the responsibility of state organs in this critical arena. There might be room for improvement here. And that improvement itself can contribute both to socialist rule of law and democracy (GP §15 “effective measures to protect the people's right to manage state and social affairs as well as economic and cultural programs”). Local officials should be required to listen to the people in judging the effectiveness of charities and in considering proper management off charitable affairs. It ought to consider whether its own approach to charity disclosure is appropriate in light of mass opinion, appropriately translated as is its responsibility within the mass line itself. This is especially important with respect to statistical information (§70) and the content of disclosure (§71). It is not clear that there is a reason to withhold that information, restricting public reporting to those items listed in Section 72.

13. Section 78 on confidential information is important and correct. But in it lies a contradiction that the Charities Law does not yet overcome. That contradiction lies in the ability to use the broad categories identified in Section 78 as a *way to enhance the ability of officials to engage in corrupt activities with impunity*. That itself would constitute a severe breach of the CCP Basic Line, and should not be left unresolved without very good reason. Some facility must be created to ensure that Section 78 is not abused by corrupt officials. This would be especially important where corrupt officials might use their positions to operate through charities in ways that would hide their own bad actions. Tigers catch their prey under cover of darkness; they should not be allowed to feed with impunity on the donations intended to improve society. Senior officials should carefully consider the discretion built into Section 78 and build a cage of regulation around the discretion that they have provided—a discretion large enough so that any tiger can escape, and open enough so that even flies find its rules easy to avoid.

Chapter 9

14. These provisions are useful. But it might be worth considering that local officials may delay their duties. That delay could seriously impede the implementation of the law and the useful operation of charitable activities. Government officials who delay without cause ought to be subject to swift CCP discipline. Others ought to be disciplined appropriately and charities should be given

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the power to seek registration from a higher level of government where the failures of a lower level make registration, or operation, impossible.

15. Section 90 and 91 are laudable and reflect well on government. But again, they might create an opportunity for corruption. Especially when combined with the secrecy rules of Section 78, Sections 90 and 91 can provide a large space where corrupt officials might operate with impunity. It is especially with respect to the entanglements of government officials, money and charities, that transparency must be much fuller. Alternatively, in such cases (Section 90 or 91 transactions)—local officials must be required to fully report on their activities to the next higher level of government—and to do so within a short period of time after they have engaged in such activity. In addition, the CCP disciplinary organs should be made aware and monitor such activities. It is only in this way that the state can truly achieve the excellent objectives of Section 92 (cultivation of charity culture).

Chapter 10

16. Section 100 achieves the objective of ensuring that localities can adjust their regulations to local conditions. But the central authorities ought to be able to review and assess local deviations. A central data bank of local regulations should be maintained by central authorities, at a minimum. And the central authorities ought to make inspection tours of local operations periodically. This is especially important with respect to the powers exercised under Section 101. The central government retains its responsibilities to ensure the development of socialist rule of law. And that responsibility might require as well substantial oversight and assessment of local government behavior in light of their own legal responsibilities under the Charity Law. The Charity Law already has a model for this sort of oversight—Section 109 speaks to supervision by umbrella organizations. The same might be extended to the oversight of central authorities.

17. Section 112 provides a useful means of helping fight corruption—either by charities or by local officials. But it might be useful to consider the mechanics of public reporting. Might it be more efficient to centralize the collection of such complaints at the provincial level so that the more sophisticated machinery of the provinces might serve as a more efficient point for local discipline? Perhaps a better coordination of Sections 78, 90-92 and 112 would produce a more efficient system against corruption.

Technical Comments on the Charity Law (Draft)

Prepared by Jędrzej Górski, Zhu Shaoming, Flora Sapio

Article	FLIA Comment
Chapter 1. General Provisions	
<p data-bbox="172 658 798 869">第一条 为了发展慈善事业，弘扬慈善文化，规范慈善行为，保护慈善组织、捐赠人、志愿者、受益人等合法权益，促进社会进步，制定本法。</p> <p data-bbox="172 918 798 1137">Article 1. This law is drafted so as to develop the charity field, to promote a culture of charity, to regulate charitable activities; to protect the legal rights and interests of charitable organizations, their donors, volunteers, and beneficiaries; and to promote social progress.</p>	<p data-bbox="817 649 1436 1052">The CCP, the State Council and the Ministry of Civil Affairs have acknowledged that the charity field plays a role in promoting domestic and global economic development, which in turn drives social progress. While the economic growth generated by charitable activities is still small, if compared to the economic growth generated by charities in Europe, Australia, and the United States, the growth of the charity sector is driven by demands that arise from Chinese society.</p> <p data-bbox="817 1088 1436 1308">Charitable organizations cannot exist without the contributions of their donors, and charities exist to serve the needs of their beneficiaries. The Charity Law should reflect these realities. Therefore, it is suggested that article 1 be amended as follows:</p> <p data-bbox="817 1357 1436 1568">第一条 为了促进社会进步，发展慈善事业，弘扬慈善文化，规范慈善行为，保护捐赠人、志愿者、受益人、慈善组织等合法权益，制定本法。</p> <p data-bbox="817 1617 1436 1872">Article 1. This law is drafted so as to promote social progress, develop the charity field, promote a culture of charity, regulate charitable activities; to protect the legal rights and interests of the beneficiaries of charitable activities, of volunteers, donors as well as of charitable organizations.</p>

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第二条 自然人、法人或者其他组织开展慈善活动以及与慈善有关的活动，适用本法。其他法律有特别规定的，依照其规定。

Article 2: This law applies to natural persons, legal persons or other organizations carrying out charitable activities or activities related to charities. Where other laws have special provisions, follow those provisions.

第三条 本法所称慈善活动，是指自然人、法人或者其他组织以捐赠财产或者提供志愿服务等方式，自愿开展的下列非营利活动：

- (一) 扶贫济困、扶助老幼病残等困难群体；
- (二) 救助自然灾害等突发事件造成的损害；
- (三) 促进教育、科学、文化、卫生、体育等事业的发展；
- (四) 防治污染和其他公害，保护和改善环境；
- (五) 符合社会公共利益的其他活动。

Article 3: "Charitable activity" as used in this law indicates initiation of the following non-profit activities on a voluntary basis by natural persons, legal persons or other organizations through means such as donating property or providing volunteer services:

- (1) poverty relief and helping the elderly, young, disabled or other disadvantaged groups;
- (2) relief from damage caused by natural disasters and other emergencies;
- (3) promotion of the development of areas such as education, science, culture, health, and sports;

This article provides a functional definition of who can engage in charitable activities. This definition is much broader than the definition provided by article 11. Article 11 limits legal persons to "social organization such as foundations, social groups (□□□□), or social service organizations". If interpreted restrictively article 11 would exclude "other organizations" such as Party and state organs, because article 11 contains a closed catalogue of the forms charitable organizations can take.

First, Article 3 says that charitable activities should be "non-profit activities" carried out on a voluntary basis. It is not clear whether the concept of "non-profit" activities is limited to non-business activities, or whether it also includes non-profit, business economic activities conducted to achieve the goals listed under article 3, paragraphs 1 to 5.

We believe that non-profit, business economic activities are coherent with the intent and goals of the Charity Law. Given that the Charity Law has introduced the concept of "big charity", we suggest that "charitable activity" under article 3 be interpreted as including both non-profit non-business as well as non-profit business economic activities, as long as they contribute to achieving the goals set by the Charity Law.

Second, there are definite logical links among the activities listed under article 3. Poverty relief, helping the elderly, disaster relief, pollution control are four different ways in which the goals of health, education and more generally speaking the public interest can be served. Also, the possibility that rapid economic and social development, **globalization** and climate change **may result in additional needs not yet envisaged by the Draft Law should be taken into account.** For instance, it may be specified that the activities listed under paragraph (5) include the **activities**

- (4) prevention and control of pollution and other public harms, and protection and improvement of the environment;
- (5) other activities consistent with the societal public interests

of Chinese charities abroad.

Third, supporting the poor and disaster relief have been the focus of charitable activities in China for decades. Therefore, that Article 3 lists the relief of the old, the disabled, young people, the poor, disasters and other similar activities suits the reality of China. Meanwhile, the third category reflects the developmental tendency of international charitable activities. However, the scope of article 3 is still very narrow. For example, some disadvantaged groups, such as drug addicts who need professional help from charities, are not included under Article 3. Article 3 doesn't include religious charitable activities either, which might cause some conflicts with the current practice and laws. According to the "Measures for the Supervision and Administration of Financial Affairs of Religious Premises", donations from individuals and domestic and foreign organizations, as well as charities and other social services income are lawful revenue of the religious organizations and are under the protection of law. (The Measures for the Supervision and Administration of Financial Affairs of Religious Premises (for Trial Implementation), which were adopted at the executive meeting of the State Administration for Religious Affairs on January 7, 2010. They were promulgated and went into force as of March 1, 2010.)

Fourth, Paragraph (5) is a catch-all provision that makes one think of the Pemsel case (1891, Great Britain). Under Pemsel, charity had four purposes: poverty relief, advancing education, advancing religion and advancing other charitable purposes. Perhaps, it may be useful to include the advancement of civil society as the fourth purpose of the Charity Law. Also it should be specified whether the logic behind article 3 paragraph 5 is similar to the logic of the Pemsel case, or it is different.

第四条 自然人、法人或者其他组织开展慈善活动，应当遵循合法、自愿、诚信、非营利的原则，不得违背社会公德，不得损害社会公共利益和他人合法权益

Article 4: Natural persons, legal persons, or other organizations carrying out charitable activities shall follow the principles of lawfulness, voluntariness, integrity, and non-compensation; and must not violate social morals, and must not harm the societal public interest or the lawful rights and interests of others.

The first sentence of Article 4 lists the principles that natural persons, legal persons and other organizations carrying out charitable activities should follow. These principles are: lawfulness, voluntariness, integrity and non-compensation.

The rationale behind the inclusion of the principle of lawfulness in article 4 could well be the need to regulate the activities of charitable organizations, in order to avoid the occurrence of fraud. Enhancing trust in the activities of charitable organizations is clearly part of the legislative intent behind the Charity law. Accordingly, articles 72 to 80 have set measures allowing charitable organizations to earn trust among donors, the public, and the government.

These measures aim at enhancing the transparency of charitable organizations, as well as their responsibility to the public and the government. Publicity of information is an established principle of Chinese law. It was set by the CCP General Office Opinion on Further Advancing Government Openness (关于进一步推行政务公开的意见 - 中办发[2005]12号).

A broader principle of responsibility towards society is part of Chinese culture: historically, charitable activities at various stages of the history of China were motivated by the realization that one ought to give back to society what it has taken from it. The idea to share one's wealth and give back to society are one of the possible ways to promote the values of equality (平等) and justice (公正). Contravening one's responsibility towards society would be contravening one's moral duties. The second part of article 4 specifies that the activities of charitable organizations should not contravene social morals.

To give more teeth to this provision, it is

	<p>suggested that the principle of publicity of information (信息公开), and the duty of responsibility towards society be included in the first part of article 4. These principles, as they are embodied in Chinese law, and interpreted in those ways coherent with the Chinese context, will be binding on both Chinese, and foreign charitable organizations.</p>
	<p>It is suggested that a programmatic norm be added after Article 5 and before Article 6, to allow the creation of a national agency or a task force responsible for guiding, managing and supervising the activities of Chinese NGOs abroad. The conditions may not yet allow for the creation of such an agency. But, the fact that at the moment the global activities of China's non-profit sector are managed and supervised by a variety of domestic actors points to the need for a rationalization and perhaps a centralization of relevant mechanisms.</p>
<p>第四条 自然人、法人或者其他组织开展慈善活动，应当遵循合法、自愿、诚信、非营利的原则，不得违背社会公德，不得损害社会公共利益和他人合法权益</p> <p>Article 4: Natural persons, legal persons, or other organizations carrying out charitable activities shall follow the principles of lawfulness, voluntariness, integrity, and non-compensation; and must not violate social morals, and must not harm the societal public interest or the lawful rights and interests of others.</p> <p>第六条 国务院民政部门主管全国慈善工</p>	<p>Article 4 states the principles of charitable activities. However, the principle of non-compensation perhaps does not entirely conform with the meaning of non-profit. If charitable activities are not allowed to receive any reasonable payment for personnel and other operational and administrative costs, it would be very difficult for charities to survive, especially under the strict conditions this Law has set on fundraising.</p> <p>Article 6 is consistent with existing practice,</p>

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作，县级以上地方各级人民政府民政部门主管本行政区域慈善工作。

县级以上人民政府有关部门依法按照各自职责做好相关慈善工作。

Article 6: The civil affairs department under the State Council oversees charity work nationwide; civil affairs departments of the people's governments at or above the county level oversee the charity work within their respective administrative jurisdictions.

The relevant departments of people's governments at the county level or above do work on charities well in accordance with their own duties.

Article 7: March 5 of every year is "China Charity Day".

in that it places charitable work under the oversight of the Ministry of Civil Affairs. Over the medium or long term, however, as **Chinese charities are becoming more active globally**, and providing charitable services both in China and abroad, the need to harmonize the competences among the various government departments responsible for, respectively, overseeing charities, leading China's foreign policy, coordinating the activities of NGOs may emerge. The Charity Law should specify whether the Ministry of Civil Affairs' oversight applies to domestic activities of Chinese NGOs, or to their global activities as well.

It is suggested that article 7 be moved after Article 114 and before Article 115, as its rationale is more compatible with the concept of "Supplementary Provisions" than with the idea of general provisions.

Chapter 2. Charitable organizations

Comments on the spirit of Chapter 2

First, an earlier "draft for soliciting comments" of the Charity Law contained provisions on the internal governance structure of charities, which are absent from the current draft. These provisions met the requirements of modern corporate governance and the Company Law of the PRC

Second, the same draft contained an article whereby foreign NGOs were not allowed to carry out charitable activities in China by donating property and providing voluntary service unless they cooperated with charities registered in China. This article did not clarify the ways and requirements of cooperation. Therefore, we agree to its deletion from the current legislative draft.

第八条 本法所称慈善组织，是指依法登

First, in interpreting article 8, it would be useful to introduce a distinction between the goals of charitable activities, and the concrete objects of their operations. It is true that the

<p>记，以开展慈善活动为宗旨的非营利组织。</p> <p>Article 8: "Charitable organizations" as used in this Law refers to lawfully registered non-profit organizations whose main purpose is carrying out charitable activities.</p>	<p>main purpose of non-profit organizations is carrying out charitable activities. However, it is also true that for-profit businesses can spend some of their surplus on charitable activities, without being a charity.</p> <p>For instance, a bakery or any other small business can invest some of the revenue from the sale of cakes on baking free bread for the needy. In various European countries, this is an established charitable practice that takes place outside of the state regulation. Please compare this article with article 40.</p> <p>Second, Article 8 does not offer a clear definition of charities, and it doesn't clarify whether registered NGOs should register again as a charities.</p>
<p>第九条 慈善组织应当符合下列条件：</p> <p>(一) 以开展慈善活动为宗旨；</p> <p>(二) 不以营利为目的；</p> <p>(三) 有自己的名称和住所；</p> <p>(四) 有组织章程；</p> <p>(五) 有必要的财产；</p> <p>(六) 有符合条件的组织机构和负责人；</p> <p>(七) 法律、行政法规规定的其他条件。</p> <p>Article 9: Charitable organizations shall comply with the following requirements:</p> <p>(1) Have carrying out charitable activities as its main purpose;</p> <p>(2) not have a profit-making purpose;</p> <p>(3) Have its own name and location;</p> <p>(4) Have an organizational charter;</p> <p>(5) Have necessary assets;</p> <p>(6) Have institutional framework and responsible parties meeting requirements;</p> <p>(7) other requirements provided for by laws and administrative regulations.</p>	<p>Paragraph (1) could benefit from introducing a distinction between the purpose of an organization, i.e. for-profit or not-for-profit, where charitable purposes are one of many possible not-for-profit purposes, and the activities of an organization. The relative lack of distinction between purpose and activities (or objects) of an organization is a feature of U.S. legislation. Reference to the German Company Law may be useful to make a neater distinction between the concept of purpose and activity of organizations, and avoid repeating the mistake existent in U.S. legislation.</p> <p>At a first reading, paragraph (4) prompts the question of what type of legal entities charitable organizations are. Article 11 answers this question therefore, for the sake of clarity it is suggested that article 11 be moved between articles 8 and 9.</p> <p>Paragraph (5) does not set any minimum capital requirements. Setting a minimum capital requirement is a possibility, as proved by the experience of some Eastern European states. In Poland, for instance, foundations running not-for-profit activities have a minimum capital requirement of EUR</p>

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第十条 设立慈善组织，应当向县级以上人民政府民政部门申请登记。符合本法规定条件的，民政部门应当自受理申请之日起三十日内作出准予登记的决定；不符合本法规定条件的，不予登记，并书面说明理由。

已经设立的社会组织，符合慈善组织条件的，可以向原登记的民政部门申请变更登记为慈善组织，民政部门应当自受理申请之日起二十日内作出准予变更登记的决定。

Article 10: Establishment of charitable organizations shall be by application for registration to the civil affairs department of a people's government at the county level or above. Where the requirements provided by this law are met, civil affairs departments shall issue a decision to authorize registration within 30 days of receiving the application; where the requirements of this law are not met, registration is not provided and the reason is explained in writing.

Already established social organizations that meet the requirements for charitable organizations may apply to the civil affairs department that they registered with to modify the registration to that of a charitable

2,500,000. However, we believe that this requirement is not suitable for China's conditions. The legal philosophy behind the registration system is that if the law doesn't offer you a nature or status, then you don't have it and you are not allowed to do certain things, and if capital requirements are introduced, this will be true particularly of smaller charities. As a required condition, "have necessary assets" may benefit larger charities, while setting too high a threshold for individuals, corporations and other organizations who wish to set up, and develop charities.

First, it should be seen whether the National People's Congress wishes legislation to be retroactive. If this provision of the Charity Law is going to be retroactive, then there will be no transition period.

Second, this is an intertemporal provision and therefore it would be more logical to place it in Chapter 11 among other Supplementary Provisions.

Third, this paragraph allows already existing civil society organizations to register as charities, provided they meet the requirements set by article 9. One should consider whether "already established" means "already registered", or rather whether article 9 allows non-registered CSOs to register or change their registration status *ex-post*. From the rest of paragraph 2, it is clear that the possibility to change registration status includes only NGOs that are already registered at civil affairs departments. However, the use of more generic wording as 设立 can give rise to interpretive controversies. Therefore, it is suggested that the first sentence of article 10, paragraph 2 be amended as follows: 已经依法设立的

<p>organizations, and the civil affairs department shall make a decision on modification of the registration within 20 days of accepting the application.</p>	
<p>第十一条 慈善组织可以采取基金会、社会团体、社会服务机构等社会组织形式。</p> <p>Article 11: Charitable organizations may adopt models of social organization such as foundations, social groups (社会团体), or social service organizations.</p>	<p>First, please see our comments on article 2. There is a contradiction between article 2 and article 11.</p> <p>Second, Article 11 lists some of the organizational models charitable organizations may adopt. Foundations, social groups, and social service establishments however are only three of the possible forms a charitable organization may take. The growth of global NGOs, China's growing involvement in international disaster relief operations, and its role as an emerging international donor underscore the need to allow the existence of organizational formats compatible with all of these activities. Entities which are a conglomerate of social, not-for-profit enterprises exist already – CANGO is the most obvious example. CANGO may be qualified as an association of NGOs but, it operates in ways very similar to a corporation that controls other corporations active in various sectors.</p>
<p>第十二条 慈善组织的章程，应当载明下列事项：</p> <p>(一) 名称和住所；</p> <p>(二) 组织形式；</p> <p>(三) 设立宗旨及业务范围；</p> <p>(四) 财产来源及构成；</p> <p>(五) 决策、执行机构的组成及职责；</p> <p>(六) 内部监督机制；</p>	<p>In light of article 78 of this Law we suggest that the adoption of a code of ethical conduct and its disclosure to the public be made mandatory for all charities, Chinese as well as foreign.</p> <p>If the organizational models allowed under paragraph (2) are the same as allowed under article 11 then this should be specified. Otherwise, paragraph (2) can be understood as allowing charitable organizations' chart to contain organizational models other than those of foundations, social groups, or social services organizations.</p>

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- (七) 财产管理使用制度;
- (八) 项目管理制度;
- (九) 终止条件及终止后财产的处理;
- (十) 其他重要事项。

Article 12: Charitable organizations' charters shall contain the following:

- (1) name and location;
- (2) Organizational model;
- (3) the purpose of establishment and scope of operations;
- (4) Asset sources and composition;
- (5) the composition and duties of the decision-making and implementation bodies;
- (6) internal oversight mechanisms;
- (7) asset management and utilization systems;
- (8) project management systems;
- (9) conditions for termination and disposition of assets after termination;
- (10) other important matters.

第十三条 慈善组织应当根据法律、行政法规以及章程的规定，建立健全内部治理结构，明确决策、执行、监督等方面的职责权限。

慈善组织应当执行国家统一的会计制度，依法进行会计核算，建立健全会计监督制度，并接受政府有关部门监督管理。

Article 13: Charitable organizations shall establish sound internal governance structures, with clearly [defined] areas of responsibility for strategy, implementation and supervision etc., pursuant to the provisions of laws, administrative rules and regulations and the

Paragraph (3) introduces a distinction between the goal of a charity's operation and its purpose. This is a very good distinction, in light of our comments on articles 2 and 11.

Paragraph (5) seems to be redundant. The composition and the duties of the decision-making and implementation organs should be governed by legislation on foundations, social groups and social service organizations because, we can imagine that each one of these entities may have a different kind of decision-making and implementation bodies. Likewise, if charitable organizations are distinct from foundations, social groups and social service organizations, then the Charity Law should at least designate their decision-making and implementation bodies.

The same observations can be made about paragraph (6)

It is not clear to what laws “the provision of laws, administrative rules and regulations” refer. This article can be interpreted as allowing the application of the Corporate Law by analogy.

<p>charter.</p> <p>第十四条 慈善组织的财产包括:</p> <p>(一) 创始财产;</p> <p>(二) 捐赠财产;</p> <p>(三) 其他合法财产。</p> <p>Article 14: The assets of charitable organizations include:</p> <p>(1) Start-up assets;</p> <p>(2) Donations;</p> <p>(3) Other lawful assets.</p>	<p>We urge the National People's Congress to provide a more precise definition of what can or cannot be included in the category of “start-up assets” under paragraph (1).</p> <p>Paragraph (3) should specify whether the lawful assets of charities include sources of income only, or also investment means.</p>
<p>第十六条 慈善组织对募集的财产，应当登记造册，妥善保管，专款专用。</p> <p>捐赠人捐赠的实物不易储存、运输或者难以直接用于慈善目的的，慈善组织可以依法拍卖或者变卖，所得收入扣除成本等必要费用后，应当全部用于约定的捐赠目的。</p> <p>Article 16: Charitable organizations shall create records for registration and conduct proper management of raised assets, and shall earmark funds for specified purposes,.</p> <p>Donors' donated materials that are not easy to store, transport or are difficult to use for charitable purposes, may be auction or sold in accordance with the law by the charity organizations, and the proceeds after deducting costs and other necessary expenses, shall be used exclusively for the purpose of the donation</p>	<p>There is a somewhat weak logical link between paragraph (1) and paragraph (2) of article 16.</p> <p>Paragraph (2) could become a distinct article, or placed among the supplementary provisions.</p>

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<p>agreement.</p> <p>第十七条 慈善组织应当按照章程规定的慈善宗旨开展慈善活动。</p> <p>慈善组织开展慈善活动支出的比例以及管理成本的标准，捐赠协议有约定的，按照其约定；捐赠协议未约定的，依照国务院民政部门的有关规定。</p> <p>Article 17: Charitable organizations shall carry out charitable activities in accordance with charitable purpose set forth in the charter.</p> <p>Where donation agreements stipulate the proportion of expenditures that charitable organizations will spend on charitable activities as well as standards for management costs, follow those stipulations; where there are no stipulations in the donation agreement, follow the relevant provisions of the department of civil affairs under the state council.</p> <p>第二十条 慈善组织不得从事、资助危害国家安全和公共利益的活动，不得接受附加违反法律法规条件的赠与。</p> <p>Article 20: Charitable organizations must not engage in or fund activities that endanger national security or social public interests, and must not accept gifts that have conditions attached which violate laws and regulations.</p>	<p>Article 17, paragraph (2) sets forth important rules about the ration between incoming and outcoming donations. These rules are important to ensure greater accountability of charities. However, the National People's Congress may wish to consider that, in other jurisdictions, the percentage of donations that can be used to cover administrative costs is decided by a central authority, and that charitable organizations are ranked by rating agencies.</p> <p>The definition of social public interest is very broad, and such broadness is necessary to include different kinds of legitimate interests, which do not yet exist but may emerge as a result of China's economic and social development. For instance, we can imagine that the interests of victims of paedophily, domestic violence, or of persons having a non-mainstream sexual orientation could be components of the social public interest that should not be harmed.</p>
<p>第二十三条 慈善组织终止，应当进行清算。慈善组织决策机构应当在民政部门公告</p>	<p>First, this is a welcome change from the Anglo-Saxon Cypres Doctrine, where the allocation of assets of liquidated entities is to be decided by the court. It is also a much more</p>

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其业务活动终止后三十日内成立清算组进行清算。不成立清算组或者清算组不履行职责的，民政部门可以申请人民法院指定有关人员组成清算组进行清算。

清算后的剩余财产，由民政部门主持转赠给宗旨相同或者相近的慈善组织，并向社会公告。

Article 23: A liquidation shall be conducted of terminated charitable organizations.

The decision-making body of a charitable organization shall establish a liquidation team to conduct liquidation 30 days after the civil affairs department announces the termination of its services and activities. Where a liquidation team is not formed or it does not carry out its responsibilities, the civil affairs departments may ask the people's courts to appoint relevant personnel to form a liquidation team and to conduct liquidation.

After liquidation, as presided over by civil affairs departments, the residual assets are transferred to charitable organizations with the same or similar purposes, which shall be announced to the public.

第二十四条 慈善组织可以依法成立行业组织。

慈善行业组织应当反映行业诉求，推动行业交流，加强行业自律，提高慈善行业公信力，促进慈善事业发展。

Article 24: Charitable organizations can establish industry organizations according to law.

market-friendly provision.

Second, given that charities are legally distinct from companies (公司), it is not clear whether relevant provisions of the Charity Law apply to charitable groups, or whether termination, and liquidation teams should be further regulated by the Ministry of Civil Affairs.

First, as industry organizations can and often do have a for-profit motive, it is not clear whether industry associations are coherent with the charitable activities as they are defined under article 3.

Second, charitable activities are **trans-local and trans-national**. Creating organizations responsible for a single industry may slow down the development of the charity sector. If the rationale of this provision is introducing a tighter supervision on charitable activities, then it is suggested that a central body responsible for the coordination and management of trans-

Charity industry organizations shall reflect the demands of the industry, push for industry-wide communication, improve the credibility of the industry, and promote the development of charities.

local and trans-national activities be established.

Chapter 3. Charitable Fundraising

Comments on the spirit of Chapter 3

According to Chapter 3, charitable collections may be conducted in public, or they may be non-public, or “co-operative”, that is be conducted within a community organization or a work unit. Public collections are conducted by charities, which have been legally registered for more than two years, operate correctly, are well-managed and did not receive any administrative penalty. Private collections are conducted by legally registered charities. Under an earlier draft for soliciting comments, a third kind of charitable collection could be conducted by qualified charities and organizations or individuals, provided charities stipulated a contract with them.

In the past, news media, enterprises and public institutions were among the entities that could collect charitable donations. An earlier draft for soliciting comments stated that organizations or individuals, such as the news media, enterprises and public institutions, which did not comply with the conditions of public collections, could not conduct public collections on their own. Under this draft, it was not clear whether these entities could raise funds privately. Therefore, we welcome its deletion from the current draft version of the Charity Law.

第二十六条 慈善组织自登记之日起可以向特定对象进行非公开募捐。

依法登记满两年、运作规范的慈善组织，可以向原登记的民政部门申请公开募捐资格证书。民政部门经审查，没有发现其受到本法规定行政处罚的，应当发给公开募捐资格证书。

法律、行政法规规定自登记之日起可以公开募捐的慈善组织，由民政部门发给公开募捐资格证书。

Article 26: Charitable organizations may begin

This provision has been criticized as being extremely restrictive. We believe that it is coherent with the need to better regulate and manage the charity sector, yet very difficult to enforce and perhaps unfair to newly established charities.

First, NGOs that are registered under existing regulations can circumvent this provision either by using article 31, a very good and flexible provision, or by counting the years of operation under previous regulations, change their legal status and apply for registration from the day when the law will go into effect.

Second, newly established charities would have to wait two years before they can conduct public fundraising, while charities that under article 114 are already established but not yet

conducting non-public fundraising of specified targets from the day on which they are registered.

Charitable organizations that have been lawfully registered for two years and have regular activities may apply to the civil affairs department at which they registered for a public fundraising certificate. Where upon review, civil affairs departments have not discovered the receipt of any administrative punishments provided for by this Law, they shall issue a public fundraising qualification certificate.

第二十七条 慈善组织开展公开募捐，应当在其登记的民政部门行政管理区域内进行，但捐赠人的捐赠行为不受地域限制。

公开募捐可以采取下列方式：

- (一) 在当地公共场所设置募捐箱；
- (二) 在当地举办义演、义赛、义卖、义展、义拍、慈善晚会等；
- (三) 通过当地广播、电视、报刊等媒体发布募捐信息；
- (四) 其他公开募捐方式。

Article 27: Charitable organizations carrying out public fundraising shall do so within the administrative region administered by the civil affairs departments with whom they have registered, but there is no geographic limitation

registered can raise funds among the public without being registered or having the fundraising certificate either. In any case, article 31 can be used to circumvent these limitations.

Third, this article does not allow individuals to raise funds for charitable purposes. The legislative purpose of the Charity Law is, among others, protecting lawful collection, and determining the nature of the collected property under a personal account. However there are many individuals who request donations, or collect money through social media, to help relatives who, for instance, may suffer from illnesses, or be among the victims of natural disasters. We believe that, in these cases, disputes between donors and donees could be solved according to the civil code. In any case, not allowing individuals to conduct fundraising perhaps does not help to achieve the purpose of the Charity law, protecting the legal rights and interests of charities, donors, volunteers and beneficiaries.

Article 27 can limit the growth of the charity sector, because it sets a geographical limitation on public fundraising that is out of tune with the reality of the charity sector in China. The difficulties posed by the geographic limitation on public fundraising are in part solved by article 28 yet an element of contradiction between article 27 and 28 remains.

First, we imagine that most in order to circumvent the limitations introduced by article 27, charities will either avoid to register and operate under article 114, or else they will apply for registration at the provincial level.

Second, in the event of natural disasters of proportions comparable of those of the Wenchuan earthquake, it may be difficult for both donors and local governments to coordinate their efforts across provinces. **The question of what role, if any, foreign citizens can play in donating to Chinese charitable organizations remains.**

<p>on donors' donations.</p> <p>Public fundraising may adopt the following means:</p> <p>(1) Set up donation boxes in local public places;</p> <p>(2) Hold local charity events such as charity performances, charity competitions, charity exhibitions, charity auctions, and charity galas;</p> <p>(3) Publish fundraising information through media such as local radio, television, and press;</p>	
<p>第二十八条 具有公开募捐资格的慈善组织，可以通过互联网开展募捐。</p> <p>在省级以上民政部门登记的慈善组织，可以通过其网站或者其他网站开展募捐。在设区的市和县级民政部门登记的慈善组织，可以在其登记的民政部门建立或者指定的慈善信息平台开展互联网募捐</p> <p>Article 28: Charitable organizations eligible for public fundraising can conduct fundraising on the Internet.</p> <p>Charitable organization that have registered at civil affairs departments at or above the provincial level can conduct fundraising through the websites of said departments or through other websites. Charitable organizations that have registered at the civil affairs departments of cities with districts or at the county level can conduct Internet fundraising on the charity information platforms designated or established by the civil affairs departments at which they have registered.</p>	<p>Online transactions and information are more and more important to citizens' daily lives, and work. Therefore, more detailed provisions should be made to regulate public fundraising via the internet.</p>

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<p>第三十三条 城乡社区组织、单位可以在本社区、单位内部开展募捐活动。</p> <p>Article 33: Urban and rural community organizations and work units can conduct fundraising activities within their own organizations and work units.</p>	<p>Can these entities conduct fundraising without being registered as charitable organizations? Please see the comments to article 8.</p>
<p>Chapter 4. Charitable Donations</p>	
<p>第三十七条 本法所称慈善捐赠，是指自然人、法人或者其他组织基于慈善目的，自愿、无偿赠与财产的活动。</p> <p>Article 37: "Charitable donations" as used in this Law refers to the activities of voluntary or gratis donations of assets by natural persons, legal persons, and other organization based on charitable purposes.</p>	<p>We suggest that the revenues of 'charitable sales' be included under the category of charitable donations, as the exchange of products of insignificant value as pens, badges and so no is not a for-profit activity.</p>
<p>第三十八条 捐赠人可以通过慈善组织捐赠，也可以直接向受益人捐赠。</p> <p>捐赠人捐赠的财产应当是其有权处分的合法财产。慈善捐赠财产包括资金、实物、有价证券、股权、知识产权收益等有形或者无形财产。</p> <p>Article 38: Donors can donate through charitable organizations and can also donate directly to beneficiaries.</p> <p>Assets donated by donors shall be lawful assets for which they have the right to dispose of. Charitable donations of property, include tangible and intangible assets such as funds, physical goods, marketable securities, equities,</p>	<p>Does article 38 allow one or more individuals, or one or more organizations, to raise funds among the public? In other words, does article 38 create a right to raise or a right to receive charitable donations without a certificate?</p> <p>Assets donated by donors can and should include also intellectual property products, which are donated to the public by their creators or inventors. In fact, intellectual property is mentioned in article 87 of the Draft. It inclusion under article 38 would increase the internal coherence of the Charity Law.</p>

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and including intellectual property income.

第三十九条 捐赠人捐赠的实物应当具有使用价值，符合安全、卫生等标准。

捐赠人捐赠本企业产品的，应当提供产品合格证书或者质量检验证书。

Article 39:The material objects donated by donors shall have value in use, and shall comply with safety, health and other requirements.

Where the donor donates a product of its own enterprise, it shall provide a certificate of product approval or product quality inspection certificate.

第四十一条 慈善组织接受捐赠，应当向捐赠人开具由财政部门统一监（印）制的公益事业捐赠票据。捐赠票据应当载明捐赠人、捐赠财产的种类及数量、慈善组织名称和经办人姓名、票据日期等。捐赠人匿名或者放弃接受捐赠票据，慈善组织应当做好相关记录。

Article 41:Charitable organizations accepting donations shall issue to the donors public welfare donation receipts uniformly printed by or under the supervision of treasury departments. Donation receipts shall state clearly the donor, the types and amount of assets donated, the name of the charitable organization, the name of the responsible person, the date of the receipt, and other information. Where the donors are anonymous or decline to accept the donations receipts, charitable organization shall keep

We believe that article 39 is redundant, and suggest its deletion, as relevant provisions have been already set by the legislation on product safety.

We understand that the intent of article 41 is making each and every donation trackable. Therefore, we ask whether:

First, this provision applies to charitable sales as well.

Second, whether it applies to donations made through donation boxes. What happens if a donor drops an anonymous check of 10,000 RMB in a donation box?

relevant records.

第四十二条 慈善组织接受数额较大的捐赠，应当与捐赠人签订书面捐赠协议，但捐赠人表示不签订的除外。

慈善组织接受数额较小的捐赠，捐赠人要求签订书面捐赠协议的，慈善组织应当与捐赠人签订书面捐赠协议。

书面捐赠协议包括捐赠人和慈善组织名称、捐赠财产的种类、数量、质量、用途、交付时间等内容。

Article 42: Where a charitable organization receives a comparatively large donation, it shall sign a written donor agreement with the donor, except where donors state that they won't sign.

Where a charitable organization receives a comparatively small donation, and the donor requests a written donor agreement, the charitable organization shall enter into a written agreement with the donor.

第四十四条 捐赠人应当履行捐赠义务。捐赠人违反捐赠协议逾期未交付捐赠财产，有下列情形之一的，慈善组织或者其他接受捐赠的人可以要求交付；捐赠人拒不交付的，可以依法向人民法院申请支付令或者起诉：

(一) 捐赠财产用于本法第三条第一项、第二项规定的慈善活动，并订立书面捐赠协议；

We believe that a threshold should be set, or that at least an explanation of what “comparatively” means should be provided.

There is a conflict between article 44 and the Civil Code. Under the Civil Code, avoiding liability under unilaterally beneficial contracts is possible, while under article 44 it is not.

The second paragraph of this article refers to a more general matter already regulated by the Civil Code.

(二) 捐赠人通过广播、电视、报刊、互联网等方式公开承诺捐赠。

捐赠人订立书面捐赠协议或者公开承诺捐赠后经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行捐赠义务。

Article 44: Donors shall fulfill their obligations to donate. Where, in breach of the donation agreement, donors fail to deliver donated assets exceeding the time limit, and where one of the following circumstances exists, charitable organizations or other persons accepting the donations can request delivery; where the donors refuse to deliver, [charitable organizations and other persons accepting donations] can apply to the people's courts for orders of payment or sue.

Where the financial situation of a donor considerably deteriorates after the donor has entered into a written donor agreement or has publicly promised to donate, so as to gravely affect its production or management or his/her family life, the donor is released from fulfilling the duty to donate.

Chapter 5. Charitable Services

第五十七条 本法所称慈善服务，是指慈善组织以及其他组织或者个人基于慈善目的，向他人或者社会提供的非营利服务。

Article 57: "Charitable services" as used in this Law refer to the non-profit services provided to others or to the society by charitable organizations and other organization or individuals based on charitable purposes.

First, we suggest that article 57 be moved between article 3 and article 4.

Second, it could be specified whether "non-profit services" means gratuitous, or it means activities that yields a margin that does not aim at making profits.

<p>第五十八条 慈善组织开展慈善服务，可以自己提供，也可以委托有服务专长的其他组织或者招募志愿者提供。</p> <p>Article 58: Charitable services carried out by charitable organizations may be provided themselves, or may also be entrusted to another organization with service expertise, or may recruit volunteers to provide them.</p>	<p>Article 58 is clearly modelled after American legislation. It allows for the contracting out of charitable activities to other organizations, therefore we ask:</p> <p>First, whether the organizations charitable activities are entrusted to should be registered as charities, NGOs, or foundations given that they are providing a charitable service.</p> <p>Second, whether the organizations charitable activities are entrusted to should provide their service expertise for a profit, or not-for-profit. In the first case, the spirit of the Charity Law would be betrayed.</p>
<p>第六十五条 慈善组织可以招募志愿者参与慈善服务。招募志愿者，应当公示与慈善服务有关全部信息，告知志愿服务过程中可能发生的风险。</p> <p>慈善组织根据需要可以与志愿者签订协议，明确双方权利义务，约定志愿服务的内容、方式和时间等。</p> <p>Article 65: Charitable organizations may recruit volunteers to participate in charitable services. Recruitment of volunteers shall publicly announce all information related to the charitable service, and inform volunteers of risks that might occur in the course of volunteer service.</p> <p>Charitable organizations may sign agreements with volunteers as needed, clarifying the rights and obligations of both parties, stipulating the content, method, and time of volunteer service.</p> <p>第六十九条 慈善组织应当为志愿者开展慈善服务提供必要条件，保障志愿者的合法权益。</p> <p>慈善组织安排志愿者参与可能发生人身危险的慈善服务前，应当为志愿者购买相应的人</p>	<p>The rationale behind articles 65 to 69 is very good but, there should be a unified regulation governing volunteers' work in China, including their unified registration, the protection of their rights and interests, their obligations, rewards, and legal responsibilities.</p> <p>Under the Charity Law and current policies, the protection of volunteers is not mandatory. We suggest that the protection of volunteers be made mandatory, to better help the development of the charitable sector.</p>

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<p>身意外伤害保险。</p> <p>Article 69:Charitable organizations shall provide volunteers with necessary capacity to carry out the charitable services, and safeguard volunteers' lawful rights and interests.</p> <p>Before charitable organizations arrange for volunteers to participate in charitable service where personal injury might occur, they shall purchase accidental personal injury insurance for the volunteers.</p>	
<p>第七十一条 县级以上人民政府民政等有关部门应当建立协调机制，提供需求信息和便利条件，引导和支持慈善组织以及其他组织或者个人有序开展慈善服务。</p> <p>Article 71:People's governments at the county level or above and relevant departments shall establish coordination mechanisms providing necessary information and convenience, guiding and supporting the charitable organizations and other organizations and individuals to orderly carry out charitable services.</p>	<p>This is a very good provision, and we suggest that the powers of these coordination mechanisms include the management and coordination of trans-local, trans-provincial, and trans-national activities of Chinese and foreign charities.</p>
<p>Chapter 7. Information Openness.</p>	
<p>第七十三条 县级以上人民政府建立健全慈善信息统计和发布制度。</p> <p>国务院民政部门应当建立统一的慈善信息系统。县级以上人民政府民政部门应当建立或者指定慈善信息平台，及时向社会公开慈善信息，并免费提供慈善信息发布服务。</p> <p>慈善组织和慈善信托的受托人应当在前款规定的平台发布慈善信息，并对信息的真实性</p>	<p>First, this provision is very good and extremely modern.</p> <p>Second, the creation of two distinct information systems that is a unified charity information system managed by the Ministry of Civil Affairs, and information systems created by local civil affairs departments is likely to hold back the development of the charity sector. In an information economy, a timely sharing of data is crucial. Therefore we suggest that either:</p> <p>a) information on all charitable organizations,</p>

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Article 73: People's governments at or above the county level establish and improve the gathering and release system of charity information.

The civil affairs department of the State Council shall establish a unified charity information system. The civil affairs departments of the people's governments at or above the county level shall establish or designate charity information platforms, timely release charity information to the public, and provide charity information release services for free.

Charitable organizations and the trustees of charitable trusts shall release charity information on the platforms stipulated by the preceding paragraph, and shall be responsible for the authenticity of the information.

第七十四条 县级以上人民政府民政等有关部门应当及时向社会公开下列慈善信息：

- (一) 慈善组织登记事项；
- (二) 慈善信托备案事项；
- (三) 具有公开募捐资格的慈善组织名单；
- (四) 具有公益性捐赠税前扣除资格的慈善组织名单；
- (五) 对慈善活动的税收优惠、资助补贴等促进措施；
- (六) 向慈善组织购买服务的信息；

Chinese and foreign, be released at the central level.

or

b) central, provincial, and county-level databases are linked at the stage of their design and programming already, rather than after they have been programmed and launched. We understand that some provinces may face economic difficulties in setting up their information systems, therefore we also suggest that the Central Government allocates special funds to the poorer provinces.

Third, it is not clear what penalties, if any, charitable organizations that refuse to share information or that share false or misleading information would face. Therefore we suggest that a reference to article 104 of the Draft be made.

It is not clear for how long the information listed under article 74 should remain public.

(七) 对慈善组织、慈善信托开展检查、评估的结果;

(八) 对慈善组织或者其他组织和个人表彰、处罚结果;

(九) 法律、法规规定应当公开的其他信息。

Article 74:The civil affairs departments and other relevant departments of the people's governments at or above the county level shall timely disclose to the public the following charity information:

- (1) the registration of charitable organizations;
- (2) charitable trusts filing matters;
- (3) the list of charitable organizations with public fundraising credentials;
- (4) the list of charitable organizations qualified to tax deductions for public interest donations;
- (5) Measures for promoting charitable activities such as preferential tax treatment and funding subsidies;
- (6) Information on purchasing of services from charitable organizations;
- (7) Outcomes of investigations into charitable organizations and charitable trusts;
- (8) The outcome of commendations and punishments of charitable organizations, other organizations and individuals;
- (9) Other information that laws and regulations provide shall be disclosed.

第七十五条 慈善组织应当每年向社会公开下列信息:

(一) 组织章程、统一社会信用代码、登记证书号码等登记信息;

(二) 决策、执行、监督机构成员信息;

We suggest that information about:

- a) **all members** of charitable organizations
- b) their affiliation to **Chinese or to foreign** legal persons

Be included within the scope or information to be disclosed, to allow Chinese and foreign citizens who live in China to have more elements to judge the trustworthiness of

<p>(三) 年度工作报告, 包括经审计的财务会计报告、年度开展募捐以及接受捐赠情况、开展慈善项目情况;</p> <p>(四) 国务院民政部门要求公开的其他信息。</p> <p>上述信息有重大变更的, 慈善组织应当及时向社会公开。</p> <p>Article 75:Charitable organizations shall annually disclose to the public the following information:</p> <p>(1) The organization charter, and registration information such as the unified social credit code and the number of the registration certificate;</p> <p>(2) Information on the members of their decision-making, implementation, and supervision bodies;</p> <p>(3) Annual work report, including audited financial accounting report, annual situations of conducting fundraisings, accepting donations, and the situations of carrying out charity programs.</p> <p>(4) Other information required to be disclosed by the civil affairs department of the State Council.</p> <p>Where they are major changes to the information abovementioned, charitable organization shall timely disclose them to the public.</p>	<p>charities.</p>
<p>第七十九条 城乡社区组织、单位在内部开展慈善募捐, 应当在本社区、单位内部及时公开款物募集和使用情况。</p> <p>Article 79:Where urban and rural community organizations or work units conduct internal charitable fundraisings, the raised funds and</p>	<p>We suggest that urban and rural community organizations and work units be allowed to conduct trans-local, and trans-provincial activities within their objective capacity, as well as building networks with other charitable entities.</p>

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<p>materials and the situations of usage shall be timely made public inside their own communities or work units.</p>	
<p>Chapter 8. Promotions Measures</p>	
<p>第八十一条 县级以上人民政府应当根据本法和当地经济社会发展情况，制定促进慈善事业发展规划、政策和措施。</p> <p>县级以上人民政府及其有关部门应当在各自职责范围内，向慈善组织、慈善信托受托人等提供慈善需求信息，为慈善活动提供指导和帮助。</p> <p>Article 81:The people's governments at or above the county level shall, in accordance with this Law and local economic and social development statuses, formulate plans, policies and measures to promote of the development of charities.</p> <p>People's government at or above the county level and the relevant departments thereof shall, within their own duties, provide charity demand information to charitable organizations or the trustees of charitable trusts, and provide guidance and help to charitable activities.</p>	<p>In the spirit of public participation (公众参与), we suggest that beneficiaries be allowed to provide charity demands information either to people's governments, other relevant organs, or to charitable organizations themselves.</p>
<p>第八十三条 慈善组织及其取得的收入依法享受税收优惠。</p> <p>Article 83:Charitable organizations and the income thereof enjoy tax benefits according to law.</p>	<p>One of the most important reasons why an organization may choose to register as a charity is the possibility to enjoy tax benefits. However, the Tax Law does not automatically grant tax exemptions to charitable organizations. The Notice of the Ministry of Finance and the State Administration of Taxation on Issues concerning the Administration of Tax Exempt Eligibility of Non-profit Organizations (2014) states the conditions of tax exemption. If an organization is registered as a public charity, does it still have to apply for tax exempt status according to the Notice? The Draft doesn't seem to offer</p>

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<p>第八十八条 慈善组织开展扶贫、济困、助残、养老、救孤需要慈善服务设施用地的，可以依法使用国有划拨土地或者农村集体建设用地。慈善服务设施用地非经法定程序不得改变用途。</p> <p>Article 88:Where charitable organizations carrying out poverty relief, financial assistance, assistance for the disabled, eldercare, or aid for orphans require land for charitable service facilities, they may use state-owned allocated land or rural collective construction land. The use of land for charitable services must not be altered except through legally prescribed procedures.</p>	<p>real tax benefits to charities.</p> <p>We understand that state-owned land and rural collective construction land are an extremely valuable resource, and its use should be carefully managed and controlled.</p> <p>However, other charitable organizations – such as those conducting not-for-profit waste treatment, providing drug and/or alcohol rehabilitation services etc., may need to use land too. Therefore we suggest that the scope of subjects entitled to use state-owned or collective land be broadened to include all charities that have an objective need to use land.</p>
<p>Chapter 9. Supervision and Management</p>	
<p>第一百零一条 县级以上人民政府民政部门应当建立慈善组织及其负责人信用记录制度，并向社会公布。</p> <p>民政部门应当建立慈善组织评估制度。鼓励和支持第三方机构对慈善组织进行评估，并向社会公布评估结果。</p> <p>Article 101:The civil affairs departments of county level people's governments and above shall establish credit records systems for charitable organizations and their responsible persons, and shall make these public.</p> <p>Civil affairs departments shall establish charitable organizations evaluation systems. Third-party institutions are encouraged and supported to conduct evaluations of charitable organizations and to release the evaluation</p>	<p>We ask whether article 101 provides the only legislative basis for the existence of “rating agencies”, as we believe that third-party institutions, and evaluation systems, can be established independently of article 101 of the Draft.</p>

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results to the public.

Chapter 10. Legal Responsibility

第一百零四条 慈善组织有下列情形之一的，由民政部门予以警告、责令改正，或者限期停止活动；情节严重的，吊销登记证书：

- （一）未按照慈善宗旨和业务范围开展慈善活动；
- （二）违反信息公开义务或者公开的信息不真实；
- （三）未按照规定进行年度报告；
- （四）泄露捐赠人、志愿者、受益人个人隐私。

Article 104: Where charitable organizations have any of the following situations, the civil affairs departments give a warning and order corrections or temporarily suspend activities; and where circumstances are serious, revoke registration documents:

- (1) not carrying out charitable activities in accordance with the charitable purpose and scope of operations;
- (2) violations of information disclosure obligations or disclosing untrue information;
- (3) not conducting an annual report in accordance with provisions;
- (4) Leaking donors', volunteers', or beneficiaries' private information.

According to article 22 paragraph (3), charitable organizations can be terminated if they do not engage in charitable activities for three consecutive years. This article, at paragraph (1) stipulates that charitable organizations that do not carry out charitable activities in accordance with charitable purposes, and with their scope of operations shall incur penalties.

The wording of article 22 paragraph (3) and paragraph (1) of this article, if read together, pose an interpretive difficulty:

does “not engage in charitable activity” mean that the charity does not operate? Does it mean that the charity carries out non-charitable activities?

If articles 104 paragraph (1) and 22 paragraph (3) are interpreted in the second sense, then the goal of article 104 is undermined. One could argue that charitable organizations can carry out activities not related to their purpose and/or scope of operation for three years, without undergoing a temporary suspension of their activities, or without having to comply with correction orders issued by civil affairs departments.

第一百零五条 慈善组织有下列情形之一的，由民政部门予以警告、责令改正，或者限期停止活动；情节严重的，吊销登记证书；有违法所得的，由民政部门予以收缴，转赠给宗旨相同或者相近的慈善组织，并可以对直接负责的主管人员和其他直接责任人员处一万元以上十万元以下罚款；构成犯罪的，依法追究刑事责任：

- (一) 私分、挪用或者侵占慈善财产；
- (二) 违反本法第十九条规定造成慈善财产损失；
- (三) 擅自改变捐赠财产用途；
- (四) 将不得用于投资的财产用于投资；
- (五) 接受附加违反法律法规条件的赠与。

Article 105: Where charitable organizations have any of the following situations, the civil affairs departments give a warning and order corrections or temporarily suspend activities; and where circumstances are serious, revoke registration documents. Where there are unlawful gains, the civil affairs departments collect them and transfer them to charitable organizations with the same or similar purpose, and may also fine the persons who are directly in charge and other directly responsible personnel between 10,000 and 100,000 yuan; and where a crime is constituted, pursue criminal responsibility in accordance with law:

- (1) Secretly dividing, embezzling or misappropriating charity assets;
- (2) Violating article 19 of this law, causing losses of charitable assets;
- (3) changing the use of donated property of one's own accord;
- (4) Using assets that must not be used for investment for investments;

The proposed range of fines may not be sufficient to **deter large domestic, foreign, or transnational charities and their personnel** from the conducts listed under paragraphs (1) to (5). Therefore, we suggest that fine be levied in proportion of the total amount of unlawful gains. A fine of 50 per cent of the total amount of unlawful gains may be considered.

The same suggestion is made for article 106, and article 110 paragraph (1).

<p>(5) Accepting gifts with attached conditions that violate laws and regulations.</p> <p>第一百零七条 慈善组织不依法向捐赠人出具公益事业捐赠票据、不依法出具志愿服务记录证明或者不依法答复捐赠人对其捐赠财产使用信息查询要求的，由民政部门予以警告，责令改正。</p> <p>Article 107: Where charitable organizations fail to issue donors with a public welfare donation receipt in accordance with law, fail to issue a record showing volunteer service in accordance with law or do not respond to donors' inquiries regarding the use of their donated assets, the civil affairs departments give a warning and order corrections.</p>	<p>If the goal of the Charity Law is to make each and every donation traceable, then penalties for the act of failing to issue donors with a public welfare donations receipt should be made steeper. A warning and an order to correct such behavior are unlikely to deter charities from committing or reiterating the act of failing to issue public welfare donations. Fines amounting to 100% of the amount of the donations hidden may be a better deterrent.</p>
<p>第一百一十条 慈善信托有下列情形之一的，由民政部门予以警告，责令停止违法行为，有违法所得的，由民政部门予以收缴，转赠给宗旨相同或者相近的慈善组织或者其他慈善信托，并可以对直接负责的主管人员和其他直接责任人员处一万元以上五万元以下罚款：</p> <p>(一) 将信托财产及其收益用于非慈善目的；</p> <p>(二) 未按照规定将信托事务处理情况及财</p>	<p>This is a matter that should be regulated by the civil code. Besides, there is a visible Anglo-American influence that may not be in accord with the reality of China's legal system. We wonder whether this article truly plays a role in the Draft, and therefore we believe its deletion may be considered.</p>

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务状况向民政部门报告或者未向社会公开。

Article 111:Where in the course of charitable service beneficiaries or third parties suffer harms caused by the negligence of charitable organizations or volunteers, the charitable organizations bear responsibility for compensation in accordance with law; and where the harm is intentionally caused by a volunteer or their gross negligence, the charitable organizations may seek compensation from them.

Where in the course of participating in charitable service volunteers suffer harms caused by the negligence of charitable organizations, the charitable organizations bear responsibility for compensation in accordance with law; and where the harm is caused by force majeure, the charitable organizations shall give appropriate subsidies.

第一百一十三条 对慈善活动负有监督管理职责的县级以上人民政府有关部门及其工作人员有下列情形之一的，由上级机关或者监察机关责令改正；应当给予处分的，由任免机关或者监察机关对直接负责的主管人员和其他直接责任人员依法给予处分；构成犯罪的，依法追究刑事责任：

- （一）违反信息公开义务；
- （二）摊派或者变相摊派捐赠任务，强行指定志愿者、慈善组织提供服务；
- （三）不履行监督管理职责；
- （四）违法实施行政强制措施和行政处罚；
- （五）私分、挪用或者侵占慈善财产；

This is a very good provision, that will most likely avoid that local governments and organs act against the goals of the Charity Law.

(六) 其他滥用职权、玩忽职守、徇私舞弊行为。

Article 113: Where relevant departments of people's governments at the county level or above that have responsibility for oversight of charitable activities have any of the following situations, the relevant departments at the level above or the supervisory organ order corrections; where a punishment should be given, the organ for hiring and terminations, or the supervisory organ, gives sanctions in accordance with law to the persons who are directly in charge and other directly responsible personnel; where a crime is constituted, pursue criminal responsibility in accordance with law:

(1) Violations of information disclosure obligations;

(2) Giving quotas or indirect quotas for fundraising tasks, forcibly appointing volunteers or charitable organizations to provide sources;

(3) Not performing oversight and management duties;

(4) Unlawfully implementing administrative compulsory measures or administrative punishments;

(5) privately dividing, embezzling or misappropriating, charitable property;

(6) Other abuses of professional powers, dereliction of duties, or improper conduct for personal gain.

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