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Resilient nations.*

Handbook of Charity Law of the People's Republic of China



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Handbook of Charity Law of the People's Republic of China

Foreword

The vision of global sustainable development encourages solutions through broad partnerships, bringing together governments, the private sector, NGOs, and foundations for greater sustainable impact. In addition, the revival and proliferation of philanthropic activity in China is supporting the growing sustainable development trend with much needed resources and inspiration.

In 2015, the world committed to the 2030 Agenda for Sustainable Development. China has become a champion of the Sustainable Development Goals (SDGs) and is increasingly aware of the importance of philanthropy for achieving the SDGs. In this regard China has directed efforts towards poverty reduction, equity, and governance in partnership with UNDP.

China's Charity Law went into force on September 1, 2016, thereby laying out the legal foundation for the development of the philanthropy sector. The Law is designed "to develop a philanthropic industry, nurture a philanthropic culture, responsibly regulate charitable ventures, protect the legitimate interests and rights of charitable organizations, donors, volunteers, beneficiaries, and other participants, contribute to social progress, and share development outcomes." Although the Charity Law is the first necessary step for the creation of a supportive legal environment for philanthropy in China, there are still many challenges in need of addressing.

The "China Charity Law Handbook", initiated by the United Nations Development Programme (UNDP) China, is a comprehensive analysis of the Law with the primary aim to provide guidance on its application. The Handbook provides practical insights and takeaways to assist field practitioners, guide the charitable work of both international and domestic organizations, offer materials for academic research, and provide evidence and advice for policy makers. We hope this Handbook can serve as a comprehensive source of reference material to expand awareness about the economic value of charity and promote its role in China's ongoing development, contributing to the achievement of the SDGs.

China has demonstrated its intention to support the fulfillment of the SDGs both domestically and globally. This Handbook can help ensure the Charity Law contributes to the development of meaningful philanthropy in China, shaping the sector to be a key player in achieving the 2030 Agenda for Sustainable Development.

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Scope of the Handbook

The Charity Law of the People's Republic of China ("Charity Law") came into force on September 1, 2016. It introduces a new legal framework for the philanthropy industry in China and refines the administrative role of the government in holding accountable the charitable organizations operating therein.

This Handbook introduces the full scope of the Charity Law (including the industry and legislative background before the Law came into force). It presents the central idea of each chapter and analyzes the prevailing issues against related legislation. The appendix provides a practical guide inclusive of a toolkit (including the model text of relevant contracts and project documents) for reference.

Chapter I Industry Background

1 General Composition of China's Charity Industry

1.1 Development Overview of China's Charity Industry at Present

Ten Years of Rapid Development in China's Charity Industry

Over the past 10 years, a series of natural disasters caused the introduction of Western notions of charity to China. This began a gradual development of civic awareness in China, facilitated by both the government and the Chinese public nationwide, culminating in the modern charity industry system prevalent in the country today. Social organizations, both domestic and foreign, have been founded at increasingly frequent rates and the public is showing a growing affinity for charity work. The approach to charity in China can be summarized in the following proverb: "Give a man a fish and you feed him for a day; teach a man to fish and you feed him for a lifetime."

2008 has come to be known as the "first year of charity" and was an important watershed for China's charity industry development. Influenced by the Wenchuan Earthquake and Beijing Olympics, 14.72 million people became volunteers in 2008; this number has since had an annual growth rate of 31.8%. Also in 2008, China received goods and funds from both domestic and international sources totaling RMB 107 billion, 3.5 times that received in 2007; RMB 37.1 billion were raised from public welfare funds and lotteries, an increase of 4.2% compared to 2007¹.

Appearance of a Social Charity Credibility Crisis

As China's charity industry has grown, reputable social organizations and philanthropically-minded public figures have emerged. While these organizations and public figures have done much to create a positive face for China's charity ecosystem, negative examples have also emerged to taint and complicate these encouraging developments. Some involved individuals; others included large foundations. Taken together, they created a crisis of confidence in China's charity industry. Up until that time, many social organizations had weak internal governance mechanisms and were light on information disclosure. After this experience, the charity industry began working to restore its credibility.

In an effort to restore such credibility, legislators have been attempting to responsibly regulate the charity industry as it continues to develop.

1. Yang Tuanet et al.: *China's Charity Development Report (2009)*, Social Sciences Academic Press, Edition of 2009, Page 21-22

The Legalization of the Charity Industry Begins to Emerge

At the 2011 National People's Congress, there were strong calls to legalize China's charity industry. Local governments – such as those of Jiangsu, Hunan, Beijing, Guangdong, and Shanghai – introduced regulations doing just that, inspired by the formula: “From limitation and control to encouragement and support to non-profit organizations.” In Guangdong Province, for example, Shenzhen One Foundation was founded in 2011 and successfully began raising funds from the general public, thus relieving its dependence upon the Red Cross Society of China. In addition, the registration threshold for social organizations was lowered and the registration procedures were simplified². The government changed its approach to managing social organizations from one of control to one of support.

On September 1, 2016, the Charity Law was officially put into force. It worked to regularize China's charity industry and acted as a springboard for discussing how best to undertake charitable activities in China. The Law also raised issues about concepts in need of definition, such as “charitable fund-raising”, “charitable trusts”, and “information disclosure”.

According to the Ministry of Civil Affairs' 2016 statistical bulletin of social service development, as of the end of 2016, 29,000 social donation workstations and 8,966 charity supermarkets were established throughout the country; RMB 82.7 billion in donations were received throughout the year (a 26.4% over 2015); 11,658,000 people benefited from the funds received; 9,310,000 people offered 25,226,000 hours of volunteer services in social service fields; the number of social organizations throughout the country reached 702,000 (a 6.0% increase over 2015); 7,637,000 people were employed in charity industry-related positions (a 3.9% increase over 2015); and RMB 78.6 billion in other social donations were received. As expected, the legalization of the charity industry bolstered its development (within a regulated framework) and encouraged people nationwide to get involved in charitable activities.

1.2 Composition of China's Charity Industry

a). Social Organizations

China's social organizations include foundations, social groups, and social service organizations, and are important forces in China's charity industry. Social service organizations were previously known as private non-enterprise units; after the promulgation of the Charity Law, such units were renamed as social service organizations³. Foundations are financial groups formed based on certain property and public interest relations. Social groups are a kind of membership

2. Zhu Jianguang: *Credibility, Innovation and Transformation of Programs for Public Good*; editor-in chief Zhu Jianguang: *China's Charity Development Report 92011*, Social Sciences Academic Press, Edition of 2012, Page 15

3. Supporting provisions (like *Measures for Classification Permit Registration of Private Schools of Shanghai City*) changed the entities originally intending to engage in profit-making business but registered as private non-enterprise units due to the limitation of provisions at the time, like schools running with social forces, into those registered for business.

organization formed based on the social relations of people. Private non-enterprise units (social service organizations) refer to various privately established social agencies; they differ from social groups and foundations in that they are a kind of entity directly providing various social services⁴.

Social organizations fill vacancies and remedy deficiencies in public fields by integrating and mobilizing social resources and by providing social services. Currently, China's social organizations cover many fields, including poverty alleviation, assisting the elderly and orphaned, caring for the sick, helping the disabled, natural disaster relief, science education, and the protection of culture, health, sports, and the environment.

It is important to note that in the Charity Law, charitable organizations are taken as subjects to be regulated. According to Article 8 of the Charity Law, charitable organizations refer to "legally established non-profit organizations that meet the requirements specified in this Law and aim to carry out charitable activities in society"; "a charitable organization can adopt the forms of a foundation, social group, or social service organization". Under the framework of the Charity Law, charitable organizations have identifiers. All foundations, social groups, and social service organizations established before the promulgation of the Charity Law can be recognized as charitable organizations only after application. As some of the particulars of the Charity Law are still being worked out, many social organizations have taken a wait-and-see attitude regarding whether to apply for charitable organization status.

b). Volunteers and Volunteer Service

According to the Volunteer Service Regulations implemented on December 1, 2017, volunteer service refers to "public service provided by volunteers, volunteer service organizations and other organizations voluntarily and free of charge to the society or others".

China's Volunteer Service Development Index Report 2016 shows that, at present, China's volunteer service has three major features. First, per capita volunteer service time and the professional volunteer service rate have increased substantially. Second, based on a regional comparison, Beijing and the provinces in East China have a higher volunteer service development index than other places. Third, the state has increased the amount of inputs for volunteer service information collection⁵.

Currently, the resource registration system has been adopted for volunteers in China. Volunteers may register their identity information, service skills, service time, contact information, and other basic personal information through the volunteer service information system developed by the Ministry of Civil Affairs of the State Council. They may also register via volunteer service organizations.

4. Wang Ming: *Outline of Social Organizations*, Social Sciences Academic Press, Edition of 2013, Page 17

5. Zhai Yan et al.: *China's Volunteer Service Development Report of 2016*, Yang Tuan et al.: *China's Charity Development Report (2017)*, Social Sciences Academic Press, Edition of 2017, Page 47

According to the information published at the 7th Meeting of the First Council of the China Volunteer Service Federation, as of December 17, 2017, the number of people registered in the national volunteer service system exceeded 67.2 million. There were more than 410,000 registered volunteer service organizations, 1.03 billion volunteer service items issued, and 810 million hours of recorded volunteer service time⁶.

However substantial these numbers are, China's volunteer service is still lagging behind many other countries regarding volunteer population, participation rate, and service time. According to the Donation Index of the CAF World Giving Index 2017⁷, out of 139 countries, China's volunteer service time ranked 134th. Volunteer service has historical, religious and cultural motivations in most developed countries. However, China is in the process of social transformation and as such will need time to inculcate the values and cultural norms needed to continue to support the development of a public spirit of charity. It will take time for volunteer service to become a regular public activity.

c). Charitable Donations, Charitable Fund-Raising

According to the provisions of the Charity Law, "charitable donations" refer to the voluntary, non-compensated donation of property by natural persons, legal persons, or organizations for charitable purposes; "charitable fund-raising" includes public fund-raising activities directed at society as a whole, as well as targeted fund-raising activities directed at specific recipients.

China's Charitable Donations Report of 2016, issued by the China Volunteer Service Federation, shows that China's social donations focus primarily on the fields of education, medical health, poverty alleviation, and development. Corporate donations, representing the majority of total donations, account for 65.2%, while individual donations represent 21.09%. For an idea of the scale of some individual donations, 35 of China's most prominent philanthropists donated more than RMB 100 million each. However, it is China's common people that are the core of the individual donation total, having reached RMB 9 billion in 2016, up from RMB 7.5 billion in 2015, an increase of about 20%. Considering donors' age, the generation born after the 1980s donated the most of any generation, accounting for more than 45% of the total received; they were followed the generation born after the 1990s and then the generation born after 1970s, the former having more donations per capita, while the latter had a higher donation amount per donation received. Concerning the donation channel, mobile terminals have become the most popular, with the amount of donations by mobile phone accounting for more than 70% of the total received. Regionally, Guangdong, Beijing, Jiangsu, Zhejiang, and Shanghai have the most donors and the highest donation amounts⁸.

6. Song Yan: *China's Volunteers Registered in Real Name Reach 67.2 Million*, Xinhua News, [December 18, 2017] http://www.gov.cn/xinwen/2017-12/18/content_5248174.htm final access: January 18, 2018

7. CAF Publications, *CAF World Giving Index 2017*, https://www.cafonline.org/docs/default-source/about-us-publications/cafworldgivingindex2017_2167a_web_210917.pdf?sfvrsn=ed1dac40_10, final access: March 19, 2018

8. *China's Charitable Donations Report of 2016 published in Beijing*, China Charity Federation, [November 2, 2017], <http://www.charityalliance.org.cn/indexnews/10361.jhtml>, final access: March 18, 2018

Important to note is that China now has stricter restrictions on social organizations' fund-raising behavior. It is stipulated in the Charity Law that only those charitable organizations with the requisite public fund-raising qualifications are allowed to undertake such activity. Moreover, with new fund-raising methods being afforded by the Internet, China has developed a charity information platform whereby all relevant inputs shall but published, as designated by the Ministry of Civil Affairs of the State Council. Currently, there are 21 online platforms approved for fund-raising⁹.

2 Characteristics and Future Development Trends of China's Charity Industry

2.1 Characteristics of China's Charity Industry

a). *Historical Background of China's Charity Industry*

The idea of charity has a long history in Chinese thought. China's ancient philosophers and schools of thought all had their own views on what charity is and what it means in practice. Their views laid the philosophical basis for the development of today's modern charity industry. For example, the Confucian school promoted the idea of "benevolence and humanity"; the Taoist school advocated "treating others kindly, regardless of reciprocity"; the Mohist school emphasized "universal love" and "indiscriminate love"; and the Buddhist school believed in "karma" and "infinite compassion and mercy".

In ancient China, the relief systems for famine, poverty, the sick, the elderly, and the young were managed primarily by the government. During the Zhou Dynasty, policies for elderly care, poverty alleviation, and assistance to the orphaned, young, sick, and disabled were common. During the Song Dynasty, a social relief system was developed, as well as a clan-based folk relief organization named Yizhuang. This organization provided assistance to those in the clan suffering from poverty, who shared the same family name. During the Ming and Qing dynasties, there was both an official system of charitable activities, as well as a flourishing of charity-focused folk associations¹⁰.

The charity industry in ancient China, with its various dimensions and approaches to providing relief, cultivated a strong sense of responsibility among the people of that time. This awareness of the importance of charity laid the social and cultural foundations for the establishment of China's modern charity industry.

9. Notice of Ministry of Civil Affairs on Appointing the First Group of Internet-based Donation Information Platforms of Charitable Organizations <http://www.mca.gov.cn/article/zwgk/tzl/201608/20160800001648.shtml>, final access: March 18, 2018
10. Wang Weiping et al.: *Outline History of Charity of China*, China Labor and Social Security Press, Edition of 2011, Page 9-30.

b). Characteristics of China's Modern Charity Industry

Today's charity industry in China inherited the philanthropic spirit of its ancient cultures. With the rapid development of China's economy in recent years, brought about in large part by market forces, demand for social services has increased to ensure everyone has the opportunity to participate in the country's growth and modernization. In response to this, a number of public service figures and social organizations have emerged, devoting themselves to charity activities such as donating money and property and participating in volunteer activities.

According to the viewpoint of scholar Zheng Gongcheng¹¹, the modern charity industry in China has six basic characteristics. First, it is comprised of kind-hearted people, moral exemplars who can and do act as inspirations for others to support the development of a charitable culture. Second, the existence of disparities in living standards is the basis for those with means to assist those who are less fortunate or without access to equal opportunities. Third, charity can and will supplement and complement economic developments, which do not always affect or benefit everyone in the same measure or at the same time. Fourth, non-governmental private organizations, working in the social service sector, are the main drivers in the development of China's charity industry. Fifth, donors select approved charity projects to support, in exchange for assurance that their donations are being used responsibly by the recipient. Sixth, there is a trend toward universal participation, where all members of society recognize and understand their responsibilities to assist those in need. Such participation is important because social organizations are dependent upon a sustainable flow of donations.

2.2 Developmental Trends in China's Charity Industry

a). Legal Developments in China's Charity Industry

Legal developments within China's charity industry have provided unprecedented opportunities for charitable activities to flourish.

After the promulgation of the Charity Law, China's Civil Affairs Administration Department released its Social Group Registration Management Regulations (revised exposure draft), Social Service Agency Registration Management Regulations (Interim Regulations for Private Non-enterprise Unit Registration Management) (revised exposure draft), and Foundation Management Regulations (revised exposure draft) to solicit opinions from society for the construction of a social organization registration management system.

Although new regulations for the aforementioned organizations have not yet been promulgated, the Ministry of Civil Affairs has published more than 10 departmental regulations and normative documents, including the Measures for the Accreditation of Charitable Organizations, Administrative Measures for Charitable Organizations' Public Fundraising, Measures for

11. ZhengGongcheng: *Modern Charity Career and Its Development in China*

Administration of Public Fundraising Platform Services, Notice on Record Filing for Charitable Trusts, and the Announcement on Appointing the First Group of Online Information Platforms of Charitable Organizations. After the official promulgation of the Charity Law, supporting regulations such as the Guidelines on Application for Charitable Organization Recognition, Guidelines on Charitable Organization's Application for Obtaining the Qualifications for Raising Donations from the Public, and Notice on Synchronized Development of Party Construction Work of Social Organizations upon Their Establishment and Registration were published.

Additionally, in the General Provisions of the Civil Law, implemented on October 1, 2017, the classification system of profit-making corporate entities, non-profit corporate entities, and special legal persons was determined. It is stipulated therein that "non-profit corporate entities include public institutions, social groups, foundations, and social service organizations, etc." Other entities in the charity field have laws, such as the Law of the Red Cross Society of China and the Law on Development of Activities within the Territory of China of Overseas Non-governmental Organizations.

b). Diversified Development of Social Organizations

First, the talent cultivation system within the charity field has been developed to provide support to social organizations¹². The Middle and Long-term Planning on Construction of Social Work Professionals (2011-2020) specified that, with the professionalization of social work personnel, social work service talents, social work management skills, social work education, and research capabilities are the three key areas to cultivate as China looks to develop its social work industry. There has been progress in the teaching of charity in China's higher education, for example in the Public Charity Talents Program and Public Charity EMPA at Beijing Normal University. Additionally, many public interest training projects, aimed at improving social organizations' professional abilities, have integrated international experience and provided capacity building for social work organizers and practitioners.

Second, the charity industry platform is intended to create solidarity and opportunities for experience sharing amongst social organizations. For example, there are different industry exchange activities, such as the Shenzhen Charity Conference, China Private Foundation Forum, and Shanghai Philanthropy Partnership Day. Social organizations can use these occasions to exchange with and learn from their peers in the industry and share resources with each other.

Third, cross-regional cooperation has become a model for development. The government, foundations, enterprises, and other social organizations are increasing their cooperation and thereby forming a dynamic public welfare ecosystem. With the development of the Internet and related information technology, opportunities have emerged for social organizations to participate in development work. Social organizations can and do use new media to conduct

12. Chief editor Wang Zhenyao: *Modern Charity and Social Service—Development Report of China's Programs for Public Good of 2012*, Social Sciences Academic Press, Edition of 2013, Page 105-131

promotional activities, in view of improving their social recognition. They also disclose information regarding their operations and financial management via the internet, in order to build trust amongst their stakeholders. More importantly, new online donation systems have increased the ability for such organizations to fund-raise, thus increasing their ability to create impact.

Fourth, China's social organizations have started "going out". For example, the China International Communication and Promotion Association of Social Organizations, China Foundation for Poverty Alleviation, China Youth Development Foundation, and Global Commons Institute have all developed assistance programs overseas. Currently, China's social organizations take part in a variety of international activities, such as holding cooperation and exchange conferences (e.g. C20 2016 China), carrying out public welfare activities (e.g. post-disaster community reconstruction in Nepal and "Marching Towards Brightness" in five countries along the Mekong River), and setting up overseas offices (e.g. the Amity Foundation Ethiopia Office and China Foundation for Poverty Alleviation Myanmar Office).

c). Mass Development Through the Participation of All People

With the media regularly reporting on China's charitable activities, the public has been increasingly exposed to the value of it.

Major web portals have set up professional public welfare channels or websites to cover charity-related news, philanthropic figures, charity-based initiatives, and commentary on the development of charity ecosystems. Many celebrities, using the media and their public influence, have advocated for an increase in charitable giving across society, to the extent possible. Creative models, bringing together the best of technology and culture, have provided new ways for the public to participate in China's growing charity industry.

September 9 is China Giving Day. It is an annual charity activity initiated by the Tencent Charity Foundation, along with hundreds of public service organizations, well-known enterprises, celebrities, and sympathetic media outlets. This event dovetails with China Charity Day, celebrated annually on September 5, a day supported by the State and managed by the Cyberspace-based Social Work Bureau of the Cyberspace Administration of China.

During China Giving Day, there are specially designed subway trains, HSR tickets, courses, and social good fairs on display to spread the spirit of charity. In 2017, 12.68 million people took part in the activities on Tencent Charity Foundation's platform; approximately RMB 0.83 billion was donated, with Tencent and the caring enterprise partners contributing some RMB 0.3 billion and RMB 0.177 billion, respectively. The total donation amount exceeded RMB 1.3 billion¹³.

13. Guo Shiyu: 12.68 million people participate in 3 of 99 Public Welfare Days, Xinhuanet, http://www.xinhuanet.com/gongyi/2017-09/11/c_129701313.htm, final access: March 18, 2018

Through a variety of channels, the public in China can consume charity-related news, learn about public interest projects, track relevant charitable organizations, and take part in charitable activities. They can also find inspiration through new models such as “MicroCharity” and get involved by way of volunteering. Awareness about the importance of charity is growing and lending itself to the full participation of the Chinese public in such activities.

3 Characteristics of Social Organizations in China

3.1 Non-profit Social Organizations

Non-profit

The non-profit characteristics of China’s social organizations are codified in law. For example, it is stipulated in the Interim Regulations of Private Non-enterprise Unit Registration Management that “private non-enterprise units are social organizations working on non-profit social service activities”¹⁴; it is stated in the Social Group Registration Management Regulations that “social groups are non-profit social organizations formed by Chinese citizens voluntarily to develop activities according to their Articles of Association for the purpose of realizing the common will of members”¹⁵; a final example is in the Foundation Management Regulations, where it is declared that “foundations are non-profit corporate entities established according to the provisions of Regulations to use the properties donated by natural persons, corporate entities or other organizations for the purpose of programs for public interest”¹⁶. Moreover, the non-profit attributes of charitable organizations are also emphasized in the Charity Law. For example, in Article 52 it says, “the financial assets of charitable organizations can only be used for charitable purposes in accordance with the Articles of Association and the donation agreement and must not be distributed among the founders, donors or members of the organization”. This indicates that social organizations have a non-profit distribution restriction mechanism, and organizational members – directors, managers and employees – shall not benefit from the organization’s property and operation.

Social Attributes of Charity Property

A social organization’s property is public and can only be used for activities in line with the mission of the organization. Moreover, any remaining property after termination and deregistration shall not be transferred to private persons, including donors. According to the Charity Law, a charitable organization’s remaining property after liquidation shall be transferred to other charities with the same or similar purpose according to their Articles of Association or taken care of according to the

14. Article 2 of Interim Regulations of Private Non-enterprise Unit Registration Management

15. Article 2 of Social Group Registration Management Regulations

16. Article 2 of Foundation Management Regulations

discretion of the Civil Affairs Department. If donated property remains after the completion of a charity project, and a course of action is not stipulated in the donation scheme or agreement, it shall be used for other charity projects with the same or similar purpose and made public to the society.

Non-profit ≠ Non-profitable

Many people have a cognitive bias toward non-profit social organizations, holding that non-profit social organizations differ from for-profit enterprises in that they should provide free services and not receive remuneration. This is not the case. Social organizations accept donations, raise donations, apply for funding, and collect membership fees from society. They also consume public welfare human resources (e.g. volunteers) to cover the costs of their operation and development. These resources are all for the public welfare. In their operation, social organizations can certainly learn from commercial operating models how to preserve and increase the values of their assets and become financially self-sufficient. In order to sustainably create value for society, all such organizations must use economic resources to fulfil their social goals; it would be inappropriate to view the generation of economic benefits by non-profit organizations as anathema to their mission.

Non-profit Contradiction

In practice, social organizations, especially social service organizations, view profit-making as critical to the success of their operations, exposing the contradiction between the nature of non-profit business models and the practices of for-profit enterprises. Taking private education institutions as an example, they were only allowed to operate as non-profit businesses¹⁷. However, this prohibited them from realizing a return on investment, an expectation they had when the institution was founded. Many social service organizations in the education space registered with the Civil Affairs Department and adopted a commercial operating model. This allowed them to scale and maximize profits unscrupulously, sometimes even earning them “under the table”. In the Non-governmental Education Promotion Law (before its revision), the non-profit character of non-governmental education institutions was treated ambiguously¹⁸, stipulating that “as to the non-governmental schools, after deduction of school-running costs, reservation of development funds, and withdrawal of other necessary expenses as per the related national provisions, their contributors can obtain a reasonable return from the surplus.” Management confusion within the non-governmental education field reflects deficiencies in the design of related regulations, in particular regarding the definition of “non-profit” and the effectiveness of the supporting provisions. The newly revised Non-governmental Education Promotion Law specifies that non-governmental schools are to be classified into profit-making and non-profit categories and that

17. Article 6 of Regulations on School Running by Non-governmental Sectors (invalid)

18. Wei Jianguo, Legal Definition of “No-profit” Connotation and Its Importance to Non-government Funded Education –from introduction of the Charity Law to modification of Non-governmental Education Promotion Law.

the operators of non-profit schools shall not obtain any earnings from the school's operation.

Additionally, tax policies for social service organizations (private non-enterprise units) are different from those for foundations and social groups, the fact that they are all non-profit organizations notwithstanding (please refer to Section 2.4 of Chapter 11 for details). This is a challenge for founders of non-profit social organizations who have profit-making business units for purposes of financially supporting their activities. Moreover, no tax exemption or deduction can compensate for depriving charity properties of the ability to be fully used for charitable purposes.

In fact, profit-making institutions and non-profit social organizations can and should coexist in the social public service field. Non-restricted modes, such as the utilization of policy guides and market mechanisms, provide more space for social organizations to develop. For example, in the USA¹⁹ and Hong Kong²⁰, charitable organizations are to carry out their activities according to the relevant tax policy. Although those engaging in charity activities are not always non-profit institutions, if they are they need to pay taxes accordingly.

Considering China's present situation, there are a number of developments necessary to mention. First, for profit-making institutions and social organizations in the same field, it is important to make clear their different operating models and approaches to registration management; Second, complementarity between non-profit organizations and for-profit institutions can be achieved by way of preferential policies for the former and policy guidance for the latter. Moreover, there is the practice of sharing and integrating resources amongst them.

3.2 Dual Structure of Civil Social Organizations and Government Organized Social Organizations

Administrative Dependency of Social Organizations

Currently, China's social organizations are restricted by administrative concerns. First, many of them are either divided from the government internally or directly "organized by the government" itself (i.e. government organized, non-governmental organization "GONGO")²¹. These organizations are born out of governmental agencies, lack independence and autonomy, and are operated and organized bureaucratically. Second, the government has strict supervision and management over social organizations. The registration management system, as part of the general system governing social organization management, is relevant at the stage that determines which organizations are under direct registration management and which are under

19. Article 501C3 of Internal Revenue Code (26 U.S.C. § 501C3: An organization established fully for the purpose of charity may apply for tax remission.

20. (Chapter 112) Article 88 of Tax Regulations: Any industry or business of which the profit is purely used for the purpose of charity and the organizational tenet to follow is also for the purpose of charity shall be exempted from tax.

21. Wu, Fengshi. 2003. "Environmental GONGO Autonomy: Unintended Consequences of State Strategies in China." *The Good Society*. 12 (1): Pages 35-45

dual management. Many social organizations receive their income from government allocations and subsidies. This indicates that they lack sustainable operating income²² and reinforces their dependency on the government. Third, the senior management positions of social organizations are often occupied by retired cadres²³, given their governmental affiliation and ability to obtain resources.

Administrative dependence causes a lack of transparency in the decision-making process and management of social organizations. Additionally, social organizations with ties to the government occupy the majority of the available resources, creating a monopoly in the market. However, due to such dependence, non-governmental social organizations find it hard to realize their desired social impact²⁴.

“De-administration” Trend Amongst Social Organizations

Recently, social organizations have accelerated the process of de-administration, intending to dilute their link with the government. For example, the General Office of the CPC Central Committee and General Office of the State Council jointly issued their Overall Scheme on Disconnecting the Industry Associations and Chambers of Commerce from Administrative Organizations (Scheme) in 2015. In China, many industry associations and chambers of commerce serve as assistants to the government in their management of particular industries, some of which transitioned from administrative departments to independent associations during the reformation of the government. Moreover, many officials in such associations have administrative positions. It is specified in the Scheme that in-service and retired public functionaries shall not hold office or take a part-time job in industry associations or chambers of commerce. In the financial industry, for example, industry associations and chambers of commerce shall implement the accounting system specific to non-governmental non-profit organizations; this is intended to organize their accounts separately and allow them to conduct their accounting independently. Moreover, since 2018, all appropriations for industry associations and chambers of commerce have been cancelled. The process of de-administration for social organizations will be both challenging and gradual.

22. Deng Guosheng, *Preliminary Analysis on China's NGO Questionnaire Survey*; chief editor Wang Ming, *China's NGO Research 2001—with individual cases as center*, NGO Institute of Tsinghua University, 2001

23. Li Li, Chen Xiufeng *Analysis of Characteristics of Official Foundation System in China and the Realistic Choice of Its Reform—from the Perspective of System Migration and Routine Relying*, *China Non-profit Review*, Issue 1 of 2009

24. C. Hsu. “Beyond Civil Society: An Organizational Perspective on State-NGO Relations in the People's Republic of China”. *Journal of Civil Society*, 2010, 6 (3), 259-277.

Chapter II Legislative Background of Charity Law

The legislation process of the Charity Law can be dated back to September 2005, when the Ministry of Civil Affairs proposed the Law on the Promotion of Charity Causes to the National People's Congress and Legal Affairs Office of the State Council. In the beginning of 2007, the Ministry of Civil Affairs announced that the Charity Law had been incorporated into the legislation plan of the National People's Congress. In 2008, the legislation program of the Charity Law appeared in the first category of legislative programming of the Standing Committee of the 11th National People's Congress. After developing the legislation, the Charity Law (Draft) was submitted to the National People's Congress for deliberation. On March 16, 2016, the Fourth Session of the 12th National People's Congress deliberated and passed the Charity Law, deciding to implement it formally on September 1, 2016.

The Charity Law includes general provisions, charitable organizations, charitable fund-raising, charitable donations, charitable trusts, charitable assets, charitable services, information disclosure, promotional measures, supervision and administration, legal liability, and supplementary provisions, totaling 12 chapters and 120 articles. On the basis of past experience, the Charity Law addresses problems which have been highlighted in the charity industry in years past and regulates against the continuation of such problems in the future.

This chapter intends to constructively examine China's charity legal system as it existed prior to the promulgation of the Charity Law, and reveal the relevant legislative background for the promulgation of it. The problems which arose in the charity industry application process in China under the aforementioned system will also be discussed.

1 Historical Background

Over the course of history, charitable causes in China were jointly fostered and promoted by the government, religion, and folk capitals.

As early as the pre-Qin period, a governor at the time realized the necessity of charity and began to provide relief to the elderly, women, and children. Although this did not prove an effective long-term social relief mechanism, it laid the foundation for the national idea that "those who are widowers, widows, orphans, childless, disabled and suffer from diseases all can be raised"²⁵. In the Tang and Song dynasties, with the emergence of Buddhism, charitable relief conducted by religion was gradually recognized by the government and common society. Charitable organizations

25. Zhao Qian, *Yi Jianjun: Development Course and Characteristics of Charitable Organizations in Ancient China*, Xiangchao, Issue 6 of 2007, Page 19

managed by temples accepted, for the most part, those who were orphans, old, poor, and suffering from illness. Their operational expenses were covered by donations from devotees and the daily affairs were managed by the temple monks²⁶. In the Ming and Qing dynasties, with the development of the social economy, charitable organizations in folk capitals gradually replaced the relief provided by religion and the government; social organizations established in folk capitals included medical bureaus, relief halls, shelters, and foundling hospitals. They appeared in many places, had a wider reach than official organizations at the time, and enjoyed strong financial support²⁷. However, even in the period during which folk capitals and religion were thriving, the centralized government was still dominant. Even in the late Qing Dynasty, when the management power of the central government became weak, the folk charity system was still prevalent; it was during this time that the so-called “official” running of charities appeared. The operation of such charities in folk capitals became a unique phenomenon in China at the end of the Qing Dynasty and the beginning of the Republic of China²⁸.

At the beginning of the founding of the People’s Republic of China, the government advocated the arrangement of social organizations for purposes of serving the public welfare. However, the scope of these organizations was limited²⁹. In 1981, the China Children and Teenagers Foundation, China’s first public welfare foundation, was established. It was founded for the purpose of developing the welfare of and educational causes for children and teenagers. Since the 1980s, the China Children and Teenagers Foundation has carried out a host of well-known public welfare projects, such as the “Spring Buds Program”, the “Peace Program”, and the Hope Project; by this point, the influence of charitable organizations had been spread throughout society. With the promulgation of the Foundation Management Measures (September 1988) and the Regulations on Administration of Registration of Social Groups (October 1989), charitable organizations have been on a positive developmental trajectory. On February 24, 1994, Sun Yuemu published an editorial on the Rectification of Names for Charity in the People’s Daily and was given a voice by the mainstream media, which reoriented public thought in all circles of society toward charity³⁰. Over the next five years, 172 social organizations appeared nationwide, with the social influence of the charity industry and social organization expanding consistently. However, some organizations, while bearing the title of a folk charity, were still official charitable organizations, established by and relying on the government. Their responsible persons and staff were taken directly from the ranks of government and they were operated similar to the government³¹.

26. Zhou Qiuguang, Zeng Guilin: *Brief History of Charity of China*, People’s Publishing House, Edition of 2006, Pages 94-95.

27. XueJianwen: *Migration and Role of Folk Charity Relief Cause in Ancient China*, *Journal of Shanxi University (Philosophy and Social Science)*, May 2013, Page 96

28. Wu Tao: *Community and Local Society in the South Yangtze River Region in the Qing Dynasty*, April 2001, Page 191

29. Tian Kai, *Organization Externality: Running of Organization under Non-coordinated Restriction- A Theoretical Framework of Researching the Relation between Charitable Organization of China and Government*, *Social Science Research*, Issue 4 of 2004, Page 64

30. Sun Yuemu, *Rectification of Name for Charity*, *People’s Daily*, February 24, 1994

31. Zhou Qiuguang, Zeng Guilin: *Brief History of Charity of China*, People’s Publishing House, Edition of 2006, Pages 94-95.

In the 21st century, social groups, foundations, and private non-enterprise units have been active in various social efforts, including environmental protection, poverty reduction development, the protection of the rights and interests of women and children, educational support, public health, social benefit, and labor employment, with their popularity extending from urban to rural communities and gradually to online virtual spaces. These communities provide help for various social groups and use innovative donation methods and welfare programs, such as WeChat sports donation groups³² and Alipay's "love" donation³³. With the broadening reach of charitable organizations, the expansion of charity coverage, and the increase of practitioners and volunteers, the early laws and regulations of the industry have been unable to meet the current demand for charitable organizations. Official forces have been unable to popularize the demand for charitable activity and the industry is now in urgent need of support by new laws and regulations.

The rapid development of charitable organizations brings with it challenges and opportunities. There are frequent occurrences of charitable organizations being operated in a sub-standard manner. Examples include mismanaging finances, publishing false facts, and betraying public trust. Financial mismanagement in the charity industry has seen an increase in public dissatisfaction. It has resulted in a decline in total money donations due to a growing lack of trust in charitable organizations³⁴. Society demands a reform of the regulatory system, calling for an improvement in the way charitable organizations are managed.

2 China's Charity Legal System before the Promulgation of the Charity Law

Before the promulgation of the Charity Law, China's charity legal system was largely composed of mutually independent laws and regulations and grouped into four main legal systems. These include a systems of laws, including the Foundation Management Regulations, Provisional Regulations for Registration and Management of Private Non-enterprise Units, and Regulations on Administration of Registration of Social Groups; the charity tax law system is composed of the Income Tax Law of the People's Republic of China; the charitable donations law system is composed of the Public Welfare Donation Law of the People's Republic of China and the Management Measures for Disaster Relief Donation; and the supervision and management law system is constituted by a series of regulations such as the Measures for Evaluation and Management of Social Organizations.

32. A donation activity was jointly launched by "WeChat Sports" and "Tencent Public Welfare" on the WeChat platform. People could calculate their daily steps with the small programs in the WeChat platform. When the steps reached 10,000, the donation could be launched, and the Tencent Fund would match the corresponding amount according to the number of steps decided to be donated by each user.

33. The certified organization could publish the donation information through the "Alipay" network platform and Alipay users could donate money by clicking the link.

34. The Charitable Donations Report of China in 2012 showed that the total donation amount in 2011 and 2012 had declined.

2.1 Organizational Law System

Before the promulgation of the Charity Law, in order to both establish a code of conduct between social organizations and regulate their organizational structure, the government established a series of laws and regulations. These included both general laws like the General Provisions of Civil Laws and specialized laws and regulations, such as the Red Cross Law of the People's Republic of China, as well as the means of registration for different private non-enterprise units. The former stipulates the establishment conditions, organizational structures, internal management, rights and obligations, and other important issues of social organizations; the latter stipulates the establishment and organization of a specific type of social organization. Relative to more general laws and regulations, these provisions play an important role in the treatment of specialized matters.

On October 1, 2017, before the implementation of the General Provisions of Civil Law, the General Principles of Civil Law stipulated that the establishment of social groups by “government authorities, business institutions and social group legal persons” must ensure their legal personhood³⁵. The classification and definition of social groups in the General Principles of Civil Law were too broad and generalized, meaning that the regulation of codes of conduct and the management of social organizations were imposed on such specialized laws and regulations.

Before the promulgation of the Charity Law, there was a lack of legislation about codes of conduct and the management of social organizations. The most well-known regulations at the time—i.e. the Foundation Management Regulations, the Regulations on Administration of Registration of Social Groups, and the Provisional Regulations for Registration and Management of Private Non-enterprise Units—were all specialized regulations promulgated by the State Council, which stipulated the establishment, registration, change, and termination conditions of foundations, social groups, and private non-enterprise units. They made clear the organizational type, capacity, and behavior of each. These three types of social organizations are among the most prevalent in China.

There are not many regulations in China for private non-enterprise units. The Provisional Regulations for Registration and Management of Private Non-enterprise Units, promulgated in 1998, is classified into six chapters: general provisions, jurisdiction, registration, supervision and management, penalty, and supplementary provisions. These stressed the regulation of registration procedures, dissolution conditions, supervision and management of private non-enterprise units, and other rights and obligations linked to the administration of government. There were

35. Section III of General Principles of Civil Law of the People's Republic of China, “Government authorities, business institutions and social group legal persons” Article 50: “The government authorities with independent funds shall obtain legal person qualification from the date of establishment. The business institutions and social groups with legal personhood, if not needing to handle legal person registration, shall obtain legal person qualification from the date of establishment; if it is needed to handle legal person registration, the legal person qualification shall be obtained upon approval of registration.”

no specific requirements for internal governance, organizational settings, codes of conduct, the business scope, or the financial management of private non-enterprise units. According to Article 4³⁶ of the Provisional Measures for Private Non-enterprise Units, such units cover a wide range of industries, including but not limited to education, health, culture, science and technology, sports, labor, and legal services. The private non-enterprise units in various sectors of society and industry are to be registered with different governmental authorities and governed by the relevant administrative authority; if the organization of private non-enterprise units is stipulated in law, it is evidence that the laws are redundant. Therefore, the Ministry of Civil Affairs has different registration requirements and management provisions for private non-enterprise units in different industries, such as the Provisional Measures for Registration Review and the Management of Education Private Non-enterprise Units and the Provision Measures for Registration Review and Management of Cultural Private Non-enterprise Units. The Ministry established the Provisional Measures for the Name Management of Private Non-enterprise Units and the Provisional Measures for the Registration of Private Non-enterprise Units to detail the organizational setting, business scope, and internal governance of such organizations.

In 2004, the Ministry of Civil Affairs published its Foundation Management Regulations and abolished the Foundation Management Measures published and implemented by the State Council in 1988, thus setting up a new legal framework for the development of the modern foundation. In 1988, the charity industry in China was still in its infancy, and the promulgation of the Foundation Management Measures played a key role in its development since, evidenced by the number of foundation registered in China from 1987 (0) to 1988 (11) to 1989 (54)³⁷. Foundations were rare in China before 1988, and the lack of practical experience made the 14-article Foundation Management Measures an advanced legislation. To avoid stifling the development of foundations, only their administration was regulated, which referred to their establishment, change, and supervisory procedures. Basic behavioral regulations, the financial review of foundations, and the manner in which foundations accepted foreign donations were also regulated. By 2004, the total number of foundations registered in China approached nearly 5000³⁸, and the code of conduct and registration standards could not meet their development

36. Article 4 of the Provisional Measures for Private Non-enterprise Units, the opening of private non-enterprise units shall be registered according to the following industries (businesses): (1) Educational causes, such as private kindergartens, private primary schools, middle schools, schools, colleges, universities, private professional continuing education, private training (cramming) schools or centers; (2) Health causes, such as private clinics, hospitals, private rehabilitation, health care, health, nursing homes; (3) Cultural causes, such as private art performance groups, cultural clubs (activity centers), libraries, museums, galleries, celebrity memorial halls, art collection museums, and art academies etc.; (4) Scientific and technological causes, such as private scientific research institutes (institutions, centers), private scientific and technological communication or popularization centers, scientific service centers, technical estimation institutes; (5) Sports causes, such as private sports clubs, private stadiums, playgrounds, associations, and schools; (6) Labor cause, such as private occupational training schools or centers, private employment agencies; (7) Civil affairs causes, such as private welfare houses, nursing homes, geracomium, senior apartment, private marriage agency, private community service center (stations); (8) Social intermediary services, such as private evaluation consulting service centers (institutions), private information consulting investigation centers (institutions), private talents exchange centers; (9) Legal service industry (10) Others

37. Data source: foundation center network <http://data.foundationcenter.org.cn/foundation.html>

38. Data source: foundation center network <http://data.foundationcenter.org.cn/foundation.html>

and expanding business scope. Corresponding management issues attracted the attention of authorities, leading to the publication of the Foundation Management Regulations. Considering the range of activities and broad business scope of foundations run on financial subsidies, in addition to the basic legal provisions—e.g. establishment, change, dissolution mechanism, organizational structure, supervision and management—foundation management regulations advocated strongly for financial management³⁹. They also regulated how foundations are to accept donations, provide funds externally, distribute management expenses, use property, and conduct accounting.

Compared with the Regulations on the Administration of the Registration of Social Groups, the Charity Law refined the registration and filing system of social groups and strengthened the supervision of social groups.

2.2 Charity Tax Law System

The role of the charity tax law system is to encourage people from society to participate in charitable causes through preferential policies, the advocacy of charitable causes, and the reduction of financial burdens on social organizations and donors, thereby freeing them to focus on their objective to serve their target populations⁴⁰. The charity tax law system can be divided into a public welfare donation tax preference system and a non-profit enterprise business income tax preference system.

Many of the assets of social organizations in China come from charitable donations incentivized through tax preferences. The charity tax law system, consisting of laws such as the Law of the People's Republic of China on Public Welfare Causes, the Corporate Income Tax Law, and the Individual Income Tax Law, aims to establish a series of preferential policies for charitable donations. Individual Income Tax Law and Corporate Income Tax Law respectively stipulate about the public welfare donation expenditure tax of enterprises and individuals: "the part of the individual income for donations to educational causes and other public welfare causes shall be deducted from the taxable income in accordance with the relevant provisions of the State Council."⁴¹; and "the public welfare donation expenditure incurred by enterprises, if within 12% of the annual total profit, is permitted to be deducted when calculating the taxable income; if more than 12% of the annual total profit, it is permitted to be deducted when calculating the taxable income within three years after carry-over."⁴² Chapter 4 of Law of the People's Republic of China on Public-Welfare Cause Donation describes the preferential measures for donations and the natural persons and individual businesses who enjoy the individual income tax preferences for their

39. Chapter V of Foundation Management Regulations, "Management and Use of Property".

40. Edited by Yang Tuanzhu, *Charity Bluebook: Report on Charity Development of China (2014)*, Social Sciences Academic Press, May 2014, Page 35

41. Article 6 of Individual Income Tax Law of the People's Republic of China

42. Article 9 of Corporate Income Tax Law of the People's Republic of China

donations to the public welfare⁴³. The donations of overseas organizations qualify for an import tax and import VAT preference⁴⁴. Various ministries and departments of the State Council, especially the Ministry of Finance and the State Tax Administration, carry out public welfare donation tax preference policies through the establishment of departmental regulations. The Notice on Issues of Income Policy of Public Welfare Donation Enterprises makes clear the tax preference of equity donations. The Notice on Relevant Issues of Tax Reduction and Exemption for Imported Charitable Donations Materials of Social Groups and Foundations presents the procedures for reducing and exempting imported charitable donation material.

Tax preferences for non-profit enterprises allows more of their income to be used for charity. According to the Corporate Income Tax Law, “the income of non-profit organizations meeting the conditions” shall be tax-free income⁴⁵. Concerning such conditions⁴⁶, the Rules for Implementation of Corporate Income Tax makes clear the tax-exemption income range of non-profit organizations⁴⁷, i.e. except as otherwise stipulated by the financial and tax departments of the State Council, income obtained by non-profit organizations shall not be included in the tax-exemption scope. The Notice on Issues of Tax-exemption Income for Non-profit Organization Enterprises further limits the scope of tax-exempt income for non-profit organizations (e.g. the donation of other units or individuals, other government subsidies except for tax-exempted financial allocations, membership fees, and non-taxed income and bank deposit yields from tax-exempt income)⁴⁸. In short, tax-exempt income from non-profit organizations is limited to donation income, the government’s financial allocation income, and their yields.

With the further refining of laws and regulations, the tax-exemption range of non-profit organizations is gradually narrowing; the procedure for the application of tax exemption by non-profit organizations has been released. The Notice on Relevant Adjustment Matters of

43. Article 25 of Law of the People’s Republic of China on Public Welfare Cause Donation

44. Article 26 of Law of the People’s Republic of China on Public Welfare Cause Donation

45. Article 26 of Law of the People’s Republic of China on Public Welfare Cause Donation

46. Article 84 of Implementation Regulations of Corporate Income Tax of the People’s Republic of China, “The non-profit organizations meeting the conditions referred to in Clause 26(4) of Corporate Income Tax Law shall mean the following organizations meeting the conditions: (1) Perform the formalities for registration of non-profit organizations; (2) Engage in public welfare or non-profit activities; (3) The incomes obtained, except for the reasonable expenditure related to the organization, are all used for registration approval or the public welfare or non-profit cause in the Articles of Association; (4) The property and its yields are not used for distribution; (5) According to the registration approval or provisions of the Articles of Association, the remaining property of the organization after cancellation is used for public welfare or non-profit purposes, or re-donated by the registration authority to a purpose similar to the organization’s; (6) The investors do not reserve or enjoy any property right for the property invested; (7) The salary and welfare expenditure of the staff shall be controlled within the proportion specified, and the property of the organization shall not be distributed in a disguised form. The management measures of non-profit organizations stipulated in the clause above shall be established by the financial and tax authorities of the State Council together with relevant departments of the State Council.”

47. Article 85 of Implementation Regulations for Corporate Income Tax Law of the People’s Republic of China, “the income of the non-profit organizations meeting the condition referred to in Clause 26(4) of Corporate Income Tax Law does not include the income obtained by the non-profit organizations in engagement of profitable activities, except as otherwise stipulated by the financial and tax competent departments of the State Council.”

48. Article 1 of Notice of the Ministry of Finance and State Tax Administration on Issues of Income Tax-exempted Income for Non-profit Organization Enterprises

Confirmation and Approval of the Pre-tax Deduction Qualifications for Public Welfare Donations reforms the application for the pre-tax deduction qualifications, exempts application reports, and makes clear the confirmation procedures for obtaining such qualifications. However, until the promulgation of the Charity Law, there had been no change in the procedure for non-profit enterprises to qualify for tax exemption.

2.3 Charitable Donation Law System

The charitable donation law system is divided into two parts: the legal regulations for targeted donations and the system regulations for public fund-raising. Before the promulgation of the Charity Law, China had no independent laws or regulations for public fund-raising. Most of the laws and regulations— e.g. the Law of the People’s Republic of China on Public Welfare Donation, Measures for the Management of Disaster Relief Donation, and Provisional Measures for the Management and Use of Bills in Public Welfare Donation—were aimed at targeted donations.

The Law of the People’s Republic of China on Public Welfare Donations was passed by the National People’s Congress and issued for implementation in 1999. The Law on Public Welfare Donations regulates the fund-raising channels and methods of social organizations, makes clear the legal relations between donors and charitable organizations, and specifies the management and use of donations, the reception of donations, and donated property, as well as other relevant legal liabilities⁴⁹. However, there is a lack of regulations on public donations in the Law on Public Welfare Donations, which has not been modified since its issuing. At the beginning of 2008, southern China suffered from a major snow emergency and growing social donations for relief attracted the attention of the government. To ensure the legal rights and obligations of both donors and recipients and to regulate public fund-raising, the Ministry of Civil Affairs issued its Measures for the Management of Disaster-relief Donation in April 2008. Chapter 2 of these Measures states that, “organizations engaged in fund-raising” that have a “mission of disaster relief” may carry out disaster-relief collection activities. Moreover, the “civil affairs authority of the State Council” may carry out nationwide disaster-relief donation activities. Upon approval of the people’s government, the Civil Affairs Department may carry out disaster relief donations within its administrative region⁵⁰. The Measures for the Management of Disaster-Relief Donations specify the range of governmental organization and states that, while the government is allowed to organize and carry out disaster relief fund-raising, it also must regulate social organizations doing the same. Only public donations intended for disaster relief can be used to carry out disaster relief, however much this may limit the role played by social organizations in this area⁵¹.

49. Zhang Lei, Wang Haidong, “Brief Discussion on Charity Legislation of China, Chinese Merchants, Page 64.

50. Article 8 of Measures for Management of Disaster Relief Donation

51. Article 10 of Management Measures for Disaster Relief Management

The Interim Measures on the Administration of Invoices for Donations for Public Welfare, promulgated by the Ministry of Finance in 2011, corresponded to laws like the Measures for Management of Disaster Relief Donation, which were used to regulate public welfare donations. The use and popularization of donation receipts regulated the account inflow and outflow of public welfare donors and disclosed the financial purpose and source of public donations. At the beginning of 2016, for the promulgation of the Charity Law, and considering the fact that it requires that charitable organizations which accept donations issue donation receipts under the supervision of their finance departments, the Ministry of Finance and the Ministry of Civil Affairs jointly issued their Notice on Further Making Clear Relevant Issues of Receiving Public Welfare Donation Bills by Public Welfare Social Organizations. This Notice made clear the conditions, procedures, and regulations concerning the application for donation bills by social organizations.

2.4 Supervision and Management Law System

According to current laws and regulations, the supervision of social organizations includes two parts: administrative supervision and social supervision. Administrative supervision is the direct supervision of social organizations by a registration authority or professional supervisory unit; social supervision, on the other hand, is achieved mainly by social organizations' actively disclosing information to the public.

The dual management system involves a registration authority and a professional supervisory unit, jointly supervising a system which includes all social organizations in China. Under this system, the social organization registration authority of the Civil Affairs Department has legal power to supervise and manage social organizations. At the same time, the administrative department or government-authorized unit related to the business of social organizations shall form a professional supervisory unit for them. The function of the professional supervisory unit is jointly granted by the Interim Provisions on the Registration and Administration of Private Non-enterprise Units, Regulations on the Administration of Foundations, and Regulations on the Administration and Registration of Social Groups issued by the Ministry of Civil Affairs.

The supervisory duties of governmental departments are performed by the registration and management authority of the Civil Affairs Department and other competent business units. These duties include annual inspection, evaluation, spot checking, and record filing. The Measures for the Annual Inspection of Foundations issued by the Ministry of Affairs refine the relevant measures for the annual inspection of foundations. These include stating the approach of the registration and management authority in carrying out annual inspections and enforcing administrative penalties on foundations who fail or refuse to perform them. The Measures for the Evaluation and Management of Social Organizations authorize Civil Affairs Departments to organize an evaluation committee to check the basic conditions, work performance, evaluation (only for social groups and foundations), business activities (for private non-enterprise units), integrity (private non-enterprise units), and evaluation (private non-enterprise units) of social groups, foundations, and private non-enterprise units. According to the Provisions for Administrative Penalty Procedures

of Social Organization Registration and Management Authority issued by the Ministry of Civil Affairs in 2012, the social organization registration authority has the right to file a case against and investigate the illegal behaviors of social organizations. In cases where illegal behaviors are found, the registration authority has the right to impose administrative penalties. It should be noted that, although social organizations in China are under dual management, supervision and management is still delegated to the registration authority and Civil Affairs Department.

The most important principle of social supervision is information disclosure. The Red Cross Law of the People's Republic of China, promulgated in 1993, opened the door to information disclosure for social organizations; subsequent social organization legislation specified an information disclosure obligation for social organizations. Thus, the legal sphere of social information disclosure took shape. Coming into force in 2006, the Measures for the Information Disclosure of Foundations gave substance to the legal regulation of social organizations. The Chinese government aids and guides social organizations in information disclosure through various regulations. During the Wenchuan Earthquake in 2008, the Ministry of Civil Affairs issued its Measures for Information Disclosure and the Management and Use of Disaster Relief Materials for the Wenchuan Earthquake, proposing specialized requirements for information disclosure and obliging social organizations to disclose information on the management and use of earthquake relief materials. In 2001, the Ministry of Civil Affairs promulgated its Guidelines for the Information Disclosure of Public Welfare Charitable Donations, thereby regulating the content of information disclosure and determining its time limit and method of publication.

As the first step in detailing the information disclosure legal system of social organizations in China, the Measures for Information Disclosure of Foundations are divided into regular information disclosure and temporary information disclosure, and specify the time limit, content, and method of publication. Regular information disclosure denotes when foundations submit their annual accounting and work report to the registration and management authority before March 31 every year; within 30 days after review, the obligor managing such disclosure shall announce the full text and abstract of the report through the designated media⁵². Temporary information disclosure, on the other hand, denotes the means by which public fund-raising foundations, the obligor responsible for information disclosure, shall publish their income and cost expenditures from public fund-raising activities. They are also responsible, at the conclusion of such activities, for disclosing the total income and describing the use of the amounts collected⁵³. A foundation, when disclosing information, shall announce the type of public welfare funding projects it is engaged in and reveal its application review procedures⁵⁴. The regular disclosure of information is beneficial to all of society, in that it helps supervise of the daily operations of social organizations. The disclosure of temporary information helps maintain the rights and interests of donors, prevents affiliated transactions, and supervises social organizations so that they spend their funds responsibly.

52. Article 5 of Measures for Information Disclosure of Foundation

53. Article 6 of Measures for Information Disclosure of Foundation

54. Article 7 of Measures for Information Disclosure of Foundation

The Guidelines for the Information Disclosure of Public Welfare Charitable Donations propose “information disclosure as the standard organizational practice, with non-disclosure only being allowed in special cases”, to urge social organizations toward embracing such disclosure as the means for efficient social supervision⁵⁵. Society should be made aware of the operations of social organizations. Information pertaining to the application of charitable funds should be equally transparent by online or offline means—e.g. institutional publications, official websites, and public welfare charity project reports—so as to effectively supervise social organizations while guaranteeing the interests of donors.

The four major legal systems above have been gradually established over the course of the development of social organizations in China, as a response to the problem of a lack of consciousness about charity. One example is that many laws and regulations have a relatively low legislative hierarchy, being simply departmental regulations issued by the Ministry of Civil Affairs, Ministry of Finance, and other ministries and commissions under the State Council. However, these do not directly regulate the problems occurring in the charity industry. In addition, over the past 20 years, while private forces in China have been prosperous, existing laws and regulations have been unable to regulate social groups, foundations, private non-enterprise units, and charity trusts, nor preserve their social value. Moreover, online charity and other new phenomena also require legislation. Demand from society and the charity industry for an effective charity law system is rising. It is against this background that the Charity Law and its supporting legal systems were born.

3 Challenges Faced by China’s Charity Legal System

3.1 Unclear Definition

Before the promulgation of the Charity Law, the Law of the People's Republic of China on Donation for Public Welfare defined the social organizations working on public charity as “public welfare social groups”. It described them as “social groups, such as foundations and charitable organizations, which are established for the purpose of serving the public good”⁵⁶. The concept of “public welfare social groups” has been used in many related laws and regulations, including the Regulations on the Implementation of Enterprise Income Tax Law⁵⁷. It’s worth noting that before the promulgation of the Charity Law, the term “charitable organization” didn’t have a defined legal identity. In the abovementioned laws and regulations, social organizations were taken as a larger concept inclusive of foundations and charitable organizations, and regarded as equal to public welfare social groups, despite the fact that the Regulations on the Registration and Administration of Social Groups stipulates that a social group is merely a form of social organization. Charitable

55. Article 9 of Guideline for Information Disclosure of Charitable Donations

56. Article 10 of Law of the People's Republic of China on Donation for Public Welfare

57. Article 51 of Regulations on the Implementation of Enterprise Income Tax Law: “the foundations, charitable organizations, and other social groups satisfying the 9 provisions given in Article 52 hereof”

organizations were viewed as subordinate to public welfare social groups. Though, all social groups, save foundations, were to “aim to develop programs for the public good”.

The Enterprise Income Tax Law of the People’s Republic of China and Law of the People’s Republic of China on Donations for Public Welfare both give confused definitions of “charitable organization” and “social group”, hence local laws without a clear example to follow. In the Regulations on Charity Promotion of Jiangsu Province, “charitable organization” is taken as a new kind of social organization type, as stipulated in Article 9: “citizens, legal persons, and other organizations may apply for establishing charitable organizations according to the law”. A charitable organization’s governance structure, property management, information disclosure and other basic content are additionally stipulated. The Regulations on Charity Promotion of Ningbo City imitated the provisions of Jiangsu Province. In the Regulations on Charity Promotion of the Ningxia Hui Autonomous Region, “charitable organizations” are defined as non-profit social organizations possessing independent legal qualifications and working to develop programs for the public good; it includes social groups, foundations, and private non-enterprise units.

“Charitable organizations” have different definitions in different regions. Even within the concept of “charitable organizations”, the legal definition of “charity” is not clear. Due to the presently-lacking legal definition of charitable, many private non-enterprise units and social groups cannot sufficiently develop effectively or enjoy preferential measures, even though they are essentially charitable organizations.

Such a phenomenon is made clear in the preliminary chapters of the Charity Law. According to the Charity Law, “charitable organizations” are defined as non-profit organizations “aimed at developing charity activities in society”⁵⁸. The vague concepts of “social groups” and “public welfare social groups” are eliminated, and instead foundations, social groups, and social service organizations (i.e. private non-enterprise units) are all placed under the larger concept of “charitable organizations”. The notion of charity organization is thus made concrete. However, “charity”, “public welfare”, and “non-profit” are still too vaguely defined, and need further legal clarification.

3.2 Legal System Regarding Charitable Fund-raising

In China’s charity legal system, few laws and regulations relate to charitable fund-raising. With the recent popularization of online donations, the Internet has become the main means for donations from the general public via Sina Weibo, Alibaba, and WeChat. Online fund-raising has broken through the geographical limitations of traditional fund-raising⁵⁹. It provides donors with a convenient channel to donate. From 2011 to 2013, donations obtained via “Alibaba charity baby”

58. Article 8 of Charity Law of the People’s Republic of China

59. Many places specify that the donation shall not exceed their administrative areas, such as Regulations on Promotion of Charity Cause in Ningbo, Regulations on Promotion of Charity Cause in Jiangsu and Regulations on Donation Collection of Shanghai

reached 0.37 billion; online donations comprised one-tenth of the total. Moreover, over 16 million people donated through the Tencent online platform⁶⁰.

However, only those social organizations with public fund-raising qualifications can raise donations from the general public, and such organizations are few. Many network platforms initiating projects don't actually possess such qualifications, and also lack effective information disclosure channels. Always a legal grey area, provisions for online public fund-raising have had virtually no representation in state laws or regulatory venues, thereby causing issues such as charity fraud. Thus, while laws and regulations give the appearance of strict management, online fund-raising is in practice governed inadequately.

Next-generation online fund-raising platforms are classified into two types: (1) Online fund-raising platforms initiated by enterprises like Sina Weibo, Tencent and Alibaba; (2) Joint donation websites established by social organizations such as Lianquan, the Shanghai United Foundation, and the Guangzhou Charity Association. These social organizations set up network platforms to serve other social organizations, but do not withdraw any expenses from the raised money⁶¹. The second kind of online fund-raising platform is dominated by foundations and social organizations with public fund-raising qualifications; online fund-raising has changed the traditional fund-raising form, as it employs the Internet and online payment means. Although it is not essentially different from traditional fund-raising, the volume of people involved in online charity has made the requirement for information disclosure much more important. The former kind of online fund-raising has become the focus of the Charity Law.

Feedback for online fund-raising is given in Article 23 (3) of the Charity Law, stipulating that, "charitable organizations using the internet to carry out public fund-raising shall publish their information on the charity information platforms agreed-upon or designated by the Civil Affairs Department and use their own website to publish as well." In the Measures for the Service Management of Public Fund-raising Platforms, "public fund-raising platforms" are defined as "the service platforms of broadcast, television, newspaper, and network service providers and telecom operators serving charitable organizations to develop public fund-raising activities or release information related to fund-raising."⁶² According to the above interpretation, "developing public fund-raising activities" and "releasing fund-raising information" are different. "Developing public fund-raising activities" refers to conducting fund-raising via online fund-raising platforms, while "releasing fund-raising information" refers to disclosing the information to the public. Thus, according to Article 23 of the Charity Law, only charitable organizations are required to disclose information on the websites stipulated by the Civil Affairs Ministry of the State Council after the

60. Jin Jinping: *Legal provisions on online fund-raising after implementation of the Charity Law*, *Journal of Fudan University (Social Science Edition)*, Issue 4 of 2017, Page 162.

61. Jin Jinping: *Legal provisions on online fund-raising after implementation of the Charity Law*, *Journal of Fudan University (Social Science Edition)*, Issue 4 of 2017, Page 162.

62. Article 2 of *Measures for Service Management of Public fund-raising Platforms*

completion of online fund-raising activities. Charitable organizations utilizing online fund-raising activities are free from stipulation.

3.3 Charity Incentive Mechanisms Are Not Widespread

As mentioned above, charity incentives are realized via reductions in and exemptions from taxes. China has formed a set of tax relief mechanisms for donors and donation receiving organizations; however, social organizations and donors cannot enjoy such tax relief incentives.

Only those donating to social organizations with pre-tax deduction qualifications can enjoy the privilege of tax exemption on donations. The obtaining of such pre-tax deduction is specified in the Regulations on the Administration of Foundations. Public fund-raising foundations shall have their expenditures used for the public welfare projects stipulated in their Articles of Association, using no less than 70% of their total revenue from the last year. Non-public foundations shall have their expenditures used for the public welfare projects stipulated in their Articles of Association, using no less than 8% of their fund balances of the last year. For other organizations, the method for obtaining pre-tax deduction qualifications is stipulated in Article 52 (1)~(8) of the Regulations on the Implementation of the Enterprise Income Tax Law. In addition, in the Notice on Related Problems of the Pre-tax Deduction of Public Welfare Donations, the Civil Affairs Ministry requires that, "a public welfare social group legally registered with the Civil Affairs Ministry for more than three years must have net assets no less than the registered active amount, have passed annual inspection for two continuous years before application, and have a social organization evaluation registration at or above 3A (inclusive of 3A); annual expenditures used for public benefit activities must be no less than 70% (70% included) for the three years before application, but at or over 50% of the annual total expenditures". Only by meeting these requirements can a public welfare social group receive pre-tax deduction qualifications. Thus, only foundations and social groups are entitled to apply for pre-tax deduction qualifications. Private non-enterprise units are not included.

In practice, the enforcing authorities tend to adopt a strict interpretation to the law. Therefore, very few private non-enterprise units cannot receive pre-tax deduction qualifications. Therefore, compared with foundations or social groups, private non-enterprise units have disadvantages in their incentives for social donations.

According to the Charity Law, although private non-enterprise units are allowed to receive charitable organization identification, the tax problems remaining from years past have not been clearly revised, nor has there been substantial improvement to the preferential tax policy.

3.4 Supervision and Management System of Social Organizations

As mentioned above, the supervision and management of social organizations can be classified into active supervision by administrative departments and collective supervision by social forces.

As to the active supervision by administrative departments, the dual management system has existed for a long time and has played an important role in the development of China's social organizations. However, under the dual management system, it is not easy for social organizations to obtain registration. As there is an increasing demand for social organizations throughout society, there are calls for simplified legislation and a more direct registration system for social organizations⁶³. On the other hand, although the registration authorities of social organizations have legal survey and law enforcement power, they have rarely exercised their supervisory powers. Professional supervisory units are the ones to frequently supervise and manage social organizations. This results in a conspicuous pattern. The registration authority has power but cannot implement it, while the professional supervisory unit knows well the daily operation of social organizations but has no right to enforce the law—this dynamic further hinders the government's effective supervision of social organizations⁶⁴.

Before the promulgation of the Charity Law, some regions already tried to break through the limitations of the regulations on the dual management system, and preliminary attempts to use the direct registration system were made. It's stipulated by the government of Guangdong Province that, except for specialized fields and provisions, "professional supervisory units" were to be renamed "professional guidance units" and would not take part in the direct supervision of social organizations⁶⁵. Shenzhen City stipulates that public welfare organizations may be registered directly⁶⁶. In 2013, at the second plenary session of the 18th CPC Central Committee, social organization management system reform was discussed. Four kinds of social organizations were enabled to be registered directly. Subsequently, a direct registration system for public welfare organizations was established in Shanghai⁶⁷, Zhejiang⁶⁸, and other provinces and cities, so that the social organizations there could apply to the Civil Affairs Department for supervision. The Civil Affairs Department, as a supervision and management authority, is the proper depository of law enforcement powers, and is responsible for the operation of the social organizations under its jurisdiction. The functions which were originally separated are now integrated, so as to make the effective supervision of social organizations possible⁶⁹.

Information disclosure is the precondition for the effective supervision of social organizations. According to the Research Report on the Transparent Development of Non-governmental Public

63. Yang Sibin: "Concept Definition, Institutional Innovation and Implementation Prospect of Charitable Organizations", *Journal of Hebei University (philosophical and social sciences)*, September 2016, Issue 5, Page 18.

64. Liu Peifeng, "Several Thoughts on Supervision System of Non-profit Organizations"; Chen Jinluo, Liu Peifeng: *Supervision of Non-profit Organizations in the Transitional Society*, Social Sciences Academic Press, first print on January 2010, Page 73.

65. Article 2 (1) of *Implementation Opinions of the People's Government of Guangdong Province on Promoting the Sound Development of Charity Career*

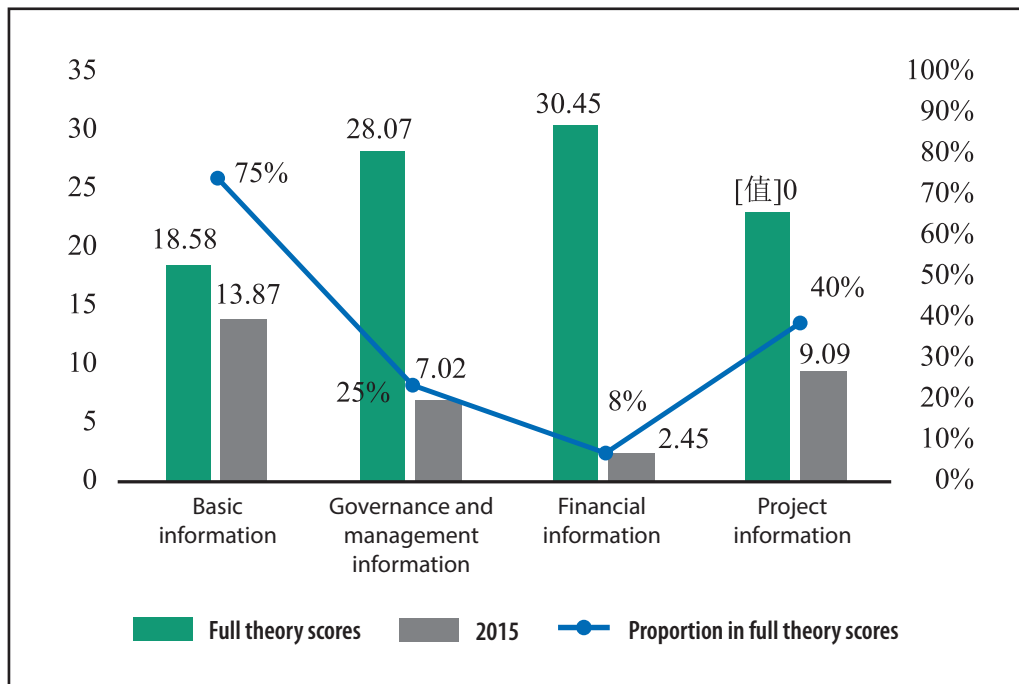
66. Article 50 of *Social Construction Promotion Regulations of Shenzhen Special Economic Zone*

67. *Implementation Opinions of the People's Government of Shanghai City on Promoting the Sound Development of Charity Career*

68. Article 1 of *Notice of Zhejiang Provincial Department of Civil Affairs on Developing the Direct Registration Work of Four Kinds of Social Organizations*

69. Yang Sibin, Li Peiyao: "Concept Definition, Institutional Innovation and Implementation Prospect of Charitable Organizations", *Journal of Hebei University (philosophical and social sciences)*, Issue 9 of 2016, Page 18.

Welfare Organizations of China in 2015⁷⁰, the basic information disclosure systems of China's social organizations are barely satisfactory, reaching only 13.87 (a full mark being 18.58). Both governance and management and financial and project information disclosure require substantial improvement.



Information disclosure conditions of various indexes of charitable organizations in 2015⁷¹

The information disclosure of social organizations is unsatisfactory. On the one hand, the legal basis for approaching relief is lacking, and on the other, the information platform is lacking. Before the promulgation of the Charity Law, although related laws and regulations like the Guidelines for Public Welfare Charitable Donations Information Disclosure provided some guiding principles, neither the content of nor channels for information disclosure were stipulated or standardized. Related punitive measures were also conspicuously absent. As of the official promulgation of the Charity Law, although regional information disclosure platforms for social organizations were established in some areas, 71% of provinces and cities didn't establish provincial-level informational platforms. They also lacked a national information disclosure platform for social organizations⁷². Due to the lack of information disclosure channels, social organizations wanting to publicly disclose this kind of information had no way to do so. Moreover, the desire for a new

70. Research Report on Transparency Development of Non-Governmental Public Welfare Organizations of China (2015) [EB/OL]. <http://www.chinagti.org/2015report.pdf>

71. Research Report on Transparency Development of Non-governmental Public Welfare Organizations of China (2015) [EB/OL]. <http://www.chinagti.org/2015report.pdf>

72. He Huabin: "Current Situation and Problem Research of Legislation on Information Disclosure of Charitable Organizations Under the Background of the Charity Law", Issue 1 of 2017 of Chinese Public Administration, Page 39.

approach to relief further aggravated the inertia of social organizations' information disclosure systems, finally triggering their near-total breakdown.

The legal basis for approaching relief (in terms of information disclosure) is stipulated in the Charity Law. The requirement for information disclosure via a "unified information platform" was also promoted, with a suggestion to design an industry-wide information sharing platform for China's social welfare organizations. After the promulgation of the Charity Law, China has indeed gradually established information sharing platforms for charitable organizations. The perfection of these information disclosure channels will help all sectors of society supervise social organizations.

Apart from the abovementioned two supervision methods, Article 19 of the Charity Law requires that the charity industry establish an industry association to strengthen industry self-regulation on the basis of social and administrative supervision, and encourage self-governance in order to build a three-in-one supervision and management system.

3.5 Charitable Trusts and Charitable Services—Legislation Challenges in the New Era

Outside the existing legal system, the development of the charity industry has brought new challenges to legislation. In view of the rapid development of foundations, the topics of charitable trust, preservation, and appreciation have been raised, given that the original legislation cannot satisfy the demands of today's charitable services.

Charitable trusts and the preservation of the value of social organizations are brand new topics in China. However, they are already developed in countries where the charity industry is relatively mature. According to the Blue Book of Charity, China's Charity Development Report, issued by Chinese Academy of Social Sciences in 2016, stated that there were 4,871 foundations in China at the end of 2015, including 1,547 fund-raising foundations and 3,324 private fund-raising foundations, with total donations reaching 0.1 billion⁷³. Different foundations had various ways of accepting donations, including stock rights, immovable properties, and intellectual property rights. This caused foundations to renew their methods for managing and using donations. China discovered this tendency in 2001. The concept of "charitable trust" was introduced in the Trust Law published in 2001, which was at the time expected to provide a new path for social organizations, especially foundations, to manage and use their properties. However, the development of charitable trusts has been stagnant for years, and very few institutions have implemented them⁷⁴. After the promulgation of the Charity Law, the trust system has been further elaborated upon and grouped with the larger concept of "public welfare trust". This specified that the charitable trust founding procedures were determined, the supervision authority appointed, the information

73. Yang Tuan: *Blue Book of Charity: China's Charity Development Report (2016)*, Social Sciences Academic Press, first edition of June 2016.

74. Wang Yuguo: "Development and Business Model of Charitable Trust in China", *Observation and Thinking*, Issue of 2017, Page 65.

disclosure mechanism designed, and the supervisor chosen. Charitable trusts thus became a concrete reality in China.

Before the promulgation of the Charity Law, China's legislation on charity services was limited to the Volunteer Service Regulations. In fact, the scope of the charity service industry has gone so far beyond mere volunteer service that the redistribution of charitable resources is no longer only realized through volunteer service operations. The government's purchasing of services, community medical services, a community sports center, and a vocational training center are all examples of the redistribution of charitable resources—evidence that although the charity service industry is not free, it is a force for good. The Charity Law has not yet regulated the related volunteer service industry, given that further planning is needed.

Mass participation is needed in charity service provisions. Dependence on volunteers is ultimately insufficient. Professionals engaging in charitable causes are the driving forces in the charity service industry. In charity-related laws and regulations, voluntary unpaid service is only stipulated in Article 2 of the Volunteer Service Regulations, while paid charity service and classified charity service lack corresponding regulations. The relationship between charitable organizations and their employees and volunteers is not clearly defined, which causes a vague delegation of responsibility and difficulties dealing with behavioral infringements and the occasional claim for compensation. The Charity Law has been relatively clear on the institutional framework for volunteer service, requiring a unified information database for the registration of volunteers⁷⁵, and specifying the problem of liability fixation in the event of infringement. However, regulations on the protection of the rights and interests of volunteers and labor relations between employees and social organizations are still lacking.

4 Further Developing China's Charity Law

After the promulgation of the Charity Law, the civil affairs administration department released its Regulations on the Administration of Registration of Social Groups (Draft for comment), Social Service Organization Registration Management Regulations (Interim Regulations on the Registration and Administration of Private Non-enterprise Units) (revised exposure draft), and Foundation Management Regulations (revised exposure draft) to solicit opinions from society for the purpose of constructing a registration management system for social organizations.

Although the abovementioned regulations have not yet been promulgated, to guarantee the effective implementation of the Charity Law, the Ministry of Civil Affairs has published more than 10 departmental regulations and normative documents, including Charitable Organization Identification Measures, Management Measures for Raising Donations from the Public, Measures for the Service Management of Platforms for Raising Donations from the Public, Notice on the Work on Charitable Trust Registration, and the Announcement on Appointing the First Group of

75. Article 65 of Charity Law of the People's Republic of China

Internet-based Information Platforms for Charitable Organizations. After the official promulgation of the Charity Law, supporting regulations such as the Guidelines on the Application for Charitable Organization Recognition, Guidelines on Charitable Organization's Application for Obtaining the Qualifications for Raising Donations from the Public, and Notice on the Synchronized Development of Party Construction Work of Social Organizations upon Their Establishment and Registration will be published.

In addition, the General Rules of the Civil Law, implemented on October 1, 2017, determine the classification system of profit-making corporate entities, non-profit corporate entities, and special legal persons. It also defines public institutions, social groups, foundations, and social service organizations as non-profit corporate entities.

To summarize, after the promulgation of the Charity Law, China now views charitable organizations as more important than ever and has established a legal system to support their further development.

Chapter III Charitable Organizations and Activities

1 Charitable Organizations ABC

1.1 Charitable Organization – A New Attribute Instead of a New Organizational Type

Before the Charity Law, China had a legal definition of the organizations conducting charitable activities. In the Law of the People's Republic of China on Donations for Public Welfare (“Public Welfare Donations Law”), these organizations are defined as public welfare social groups and public welfare non-profit public institutions⁷⁶. Public welfare social groups include foundations, charitable organizations, and other social groups aimed at developing programs for public good; public welfare non-profit public institutions include educational institutions, scientific research institutes, medical and health care institutions, public cultural organizations, public sports organizations, and social welfare institutions. These organizations are non-profit and are engaged in the field of public welfare. It is thus clear that the public welfare social groups mentioned in the Public Welfare Donations Law are a large concept, including social groups in both a narrower sense (social groups as defined in the Regulations on the Registration Administration of Social Groups promulgated in 1998) and as foundations and private non-enterprise units. Afterwards, in the Decision of Several Problems on Building a Harmonious Socialist Society, passed at the sixth plenary session of the 16th National Congress of CPC in 2006, the concept of social organizations we are now familiar with was put forward for the first time, replacing the old concept of “non-governmental organization”. In the documents issued by the civil affairs department, social organizations are classified into three types: foundations, social groups, and private non-enterprise units.

After the promulgation of the Charity Law, the question of whether charity organizations were a new type of social organization unto themselves aroused much conversation among those in the charity industry.

According to Article 8 of the Charity Law, charitable organizations refer to legally established, non-profit organizations that aim to carry out charitable activities in society. Charitable organizations include foundations, social groups, social service organizations, and other entities. Thus, it can be seen that foundations, social groups, and social service organizations are types—or organizational forms—of charitable organizations. A charitable organization is not an entirely new kind of organizational form in itself.

⁷⁶ Law of the People's Republic of China on Public Welfare Donation, Standing Committee of the National People's Congress, June 28, 1999

According to Article 10 of the Measures for Recognition of Charitable Organizations, the term “charitable organization” is a designation achieved by complying with the institutional registration requirements of the three types of social organizations. Although scholars have pointed out that an enterprise may become an organizational form of charity, it does not happen in practice and also faces legal problems in theory. According to the provisions of the Charity Law, charitable organizations must be non-profit organizations; according to the provisions of the General Provisions of Civil Law, a business entity is a for-profit entity, and is therefore denied the charitable organization designation.

According to lawmakers’ comments on the Charity Law, charitable organizations are the principle drivers of the charity industry and the foundation of its existence and development. With this in mind, the development and perfection of China’s charity industry depends on the emergence of professional and specialized charitable organizations. The establishment and development of such organizations is encouraged, and their internal management and behavior is also standardized so as to promote the sound development of the charity industry at large.

1.2 Organizational Types of Charitable Organizations

Before promulgation of the Charity Law, China already had “three major regulations” in the legislation of social organizations (namely, Regulations on the Registration Administration of Social Groups [published in 1998 and revised in 2016], the Interim Regulations on Registration Administration of Private Non-enterprise Units [1998], and Regulations on the Management of Foundations [2004]).

According to the Charity Law, the term “private non-enterprise units” has been replaced by “social service organizations”. According to the Interim Regulations on the Registration Administration of Private Non-enterprise Units, “private non-enterprise units” refer to public institutions, social groups, and other social organizations established with the use of non-state-owned assets for purposes of engaging in non-profit social service activities. The concept “social service organizations” refers to social service institutions other than social groups and foundations. It is worth mentioning that, after the Charity Law, many private non-enterprise units have wondered if they are now officially known as social service organizations—in fact, they are not; the official renaming of “private non-enterprise units” to “social service organizations” will take effect after the revision of the Interim Regulations on Registration Administration of Private Non-Enterprise Units is promulgated.

Before the revision of the Non-state Education Promotion Law (hereinafter referred to as the old Education Promotion Law) in 2016, the founding of for-profit non-government educational institutions was not allowed. Article 66 of the law stipulates that “the administrative measures for operational non-governmental training institutions registered with industrial and commercial administrative departments shall be stipulated additionally by the State Council.” It is yet to be seen if the State Council will undergo any such additional stipulation of provisions. Some private

educational training institutions, originally intended to be developed for-profit, were at first registered as private non-enterprise units, with profits distributed by a variety of discreet means. According to the provisions of the Interim Regulations on Registration Management of Private Non-enterprise Units, private non-enterprise units are non-profit organizations; however, the existence of “profit-making” units has damaged the integrity of the non-profit status of all non-profit non-enterprise units. After implementation of the Charity Law, the old Non-state Promotion Law was also revised correspondingly, in which a distinction was made between profit-making and non-profit institutions; for-profit, non-state-run schools were required to be registered with the administrative department for industry and commerce. After the new Non-state Education Promotion Law takes effect, some profit-making private non-enterprise units will be legally registered and run as taxable companies again; meanwhile, non-profit private non-enterprise units will be recognized as charitable organizations and enjoy tax benefits according to the related tax policies. Supporting provisions from different provinces are either in the draft process or are already promulgated, such as the Measures for Classified Registration Administration of Non-State-Run Schools.

1.3 Newly Established Organization Recognition and Existing Organization Recognition Are Two Basic Forms of Recognition Attribute Confirmation of Charitable Organizations

According to the provisions of the “three major regulations” on the administration of social organizations in China, a charitable organization can be established only after both the approval of the business supervisory unit and registration with the Civil Affairs Department. According to Article 10 of the Charity Law, the establishment of charitable organizations follows a direct registration system—however, it is a mixed registration system in practice. In other words, a charitable organization under dual management still needs to receive prior-approval from its relevant professional supervisory unit. The Article states that, “...those establishing a charitable organization shall apply for registration with the civil affairs department of a people’s government at the county level or above. The civil affairs department shall issue a decision within 30 days of receiving the application; organizations meeting the requirements stipulated by this law shall have their registration approved, and the decision shall be publicly announced; registration shall be withheld from organizations that do not meet the requirements stipulated by this law and the reasons explained in writing.” In addition, it’s also stipulated in this Article that, “non-profit organizations such as foundations, social groups, and social service organizations that were established before the publication of the Charity Law may apply for identification as a charitable organization with the civil affairs department with which they registered.” Non-profit organizations established before the promulgation of the Charity Law will not be automatically qualified for charitable status, but will rather need to apply for such a qualification. Those confirmed by the Civil Affairs Department to have satisfied all conditions can then be recognized as charitable organizations.

For social organizations that were registered before the Charity Law took effect (not before its promulgation, because between the promulgation of the Charity Law and its actual effective date, social organizations in the process of registration could not register as charitable organizations), they may obtain the attribute of charitable organization status by way of recognition by the Civil Affairs Department.

As for social organizations established after the effective date of the Charity Law, but which were not registered as charitable organizations during the registration period—will they be able to be recognized as charitable organizations at some point in the future?

In the draft of the Measures for Recognition of Charitable Organizations⁷⁷ (“Measures for Recognition”), there is a provision which indicates that foundations should, within one year from the date when the Measures are implemented, go to the Civil Affairs Department where they were previously registered for reissue of the registration certificate indicating their charitable organization status). This so-called recognition work is primarily targeted at social groups and social service organizations. If either of these two kinds of organizations were registered before the promulgation of the Charity Law, they shall apply for recognition as charitable organizations within five years of the date when the Measures are implemented; social groups and social service organizations not registered as charitable organizations after the implementation of the Charity Law shall not apply for recognition as a charitable organization again. Although foundations are not explicitly distinguished from the two other kinds of social organizations, in the final version of the Measures for Recognition, foundations will possess the attribute of charitable organization status in practice. Therefore, newly registered public welfare charity foundations must now, according to the regulations of the Civil Affairs Department, be registered as charitable organizations. Moreover, inventory foundations are also encouraged to actively apply for such recognition. This is consistent with the requirement of foundations to work for charitable causes, a clause stipulated in the existing Foundation Management Regulations⁷⁸. When social groups and social service organizations apply for registration as charitable organizations, registration authorities and competent business departments hold them to stricter examinations.

As of January 22, 2018, among 3,406 charitable organizations, there were 2,612 foundations and 794 social groups and social service organizations.

77. Ministry of Civil Affairs, released on August 31, 2016, and effective on September 1, 2016

78. State Council, released on March 8, 2004, effective on June 1, 2004

Establishment	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
	<ul style="list-style-type: none"> ▶ Combination⁷⁹ of direct registration⁸⁰ⁱ and dual managementⁱⁱ 	<ul style="list-style-type: none"> ▶ Combination⁸¹ of direct registration⁸² and dual management 	<ul style="list-style-type: none"> ▶ Combination⁸³ of direct registration⁸⁴ and dual management 	<ul style="list-style-type: none"> ▶ For applications for charitable organization recognition, there are additional material requirements on the basis of the establishment of social groups⁸⁵ 	None
Accepting Donations	<ul style="list-style-type: none"> ▶ Able to accept donations⁸⁶ ▶ Able to apply for donation receipts⁸⁷ⁱⁱⁱ ▶ Currently very difficult to apply for pre-tax deductions for public welfare donations^{88iv} 	<ul style="list-style-type: none"> ▶ Able to accept donations⁸⁹ ▶ Able to apply for donation receipts⁹⁰ ▶ Able to apply for pre-tax deductions for public welfare donations⁹¹ 	<ul style="list-style-type: none"> ▶ Able to accept donated property⁹² ▶ Able to apply for donation receipts⁹³ ▶ Able to apply for pre-tax deductions for public welfare donations⁹⁴ 	<ul style="list-style-type: none"> ▶ It is legally obligatory (i.e. not optional) to issue donation bills while accepting donations⁹⁵ 	<ul style="list-style-type: none"> ▶ Advantages of donation receipts (social service organizations only)

79. Article 5 and Article 6 of Interim Regulations for Private Non-enterprise Unit Registration Management

80. Article 5 of Opinions on Reforming the Management System of Social Organizations to Promote Their Sound and Orderly Development

81. Article 6 and Article 7 of Foundation Management Regulations

82. Article 5 of Opinions on Reforming the Management System of Social Organizations to Promote Their Sound and Orderly Development

83. Article 6 and Article 9 of Social Group Registration Management Regulations

84. Article 5 of Opinions on Reforming the Management System of Social Organizations to Promote Their Sound and Orderly Development

85. Article 10 of the Charity Law; Article 3 and Article 7 of Measures for Recognition of Charitable Organizations

86. Article 9 of Law of the People's Republic of China on Public Welfare Donation

87. Article 2 of Interim Measures for Use Management of Public Welfare Donation Bills; Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation Receipts (C.Z. [2016] No.7)

88. Article 4 of Notice of Ministry of Finance, State Administration of Taxation, and Ministry of Civil Affairs on Related Problems of Pre-tax Deduction of Public Welfare, C.S. [2008] No. 160 Donations

89. Article 9 of Law of the People's Republic of China on Public Welfare Donation; Several Provisions on Standardizing the Foundation's Behaviors (trial implementation)

90. Article 2 of Interim Measures for Use Management of Public Welfare Donation Receipts; Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation Receipts (C.Z. [2016] No.7)

91. Article 4 of Notice of Ministry of Finance, State Administration of Taxation, and Ministry of Civil Affairs on Related Problems of Pre-tax Deduction of Public Welfare, C.S. [2008] No.160

92. Article 9 of Law of the People's Republic of China on Public Welfare Donation; Several Provisions on Standardizing the Foundation's Behaviors (trial implementation)

93. Article 2 of Interim Measures for Use Management of Public Welfare Donation Receipts; Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation Receipts (C.Z. [2016] No.7)

94. Article 4 of Notice of Ministry of Finance, State Administration of Taxation, and Ministry of Civil Affairs on Related Problems of Pre-tax Deduction of Public Welfare, C.S. [2008] No.160

95. Article 38 of the Charity Law

	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
				<p>▶ Public welfare marketing should have a corresponding donation agreement, and it should be made public⁹⁶</p> <p>Public welfare marketing refers to the organizer of operational activities vowing to use earnings for the purposes of charity in whole or in part.</p>	<p>According to Article 38 and Article 40 of the Charity Law, it is a legal obligation for charitable organizations to issue donation receipts after accepting donations.</p> <p>Currently, it is difficult for social service organizations to apply for donation receipts. However, the possibility that social service organizations with charitable status may enjoy advantages over non-charitable social service organizations in the future cannot be excluded.</p> <p>▶ If the donations of charitable organizations are promised openly and agreed in writing to be used for the purpose of small scale charity, they shall not be withdrawn in principle.⁹⁷</p>

96. Article 37 of the Charity Law

97. Article 41 of the Charity Law

	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
Tax Administration	<ul style="list-style-type: none"> ▶ Possible to apply for the income tax exemption⁹⁸ ▶ very difficult to obtain the pre-tax deduction for public welfare donations ▶ Possible to apply for donation receipts⁹⁹ 	<ul style="list-style-type: none"> ▶ Able to apply for the income tax exemption¹⁰⁰ ▶ Able to obtain the pre-tax deduction for public welfare donations ▶ Able to apply for donation receipts¹⁰¹ 	<ul style="list-style-type: none"> ▶ Possible to apply for the income tax exemption¹⁰² ▶ Able to obtain the pre-tax deduction for public welfare donations¹⁰³ ▶ Able to apply for donation receipts¹⁰⁴ 	None	<p>Charity has a narrow sense and broad sense: Charity in the narrow sense is traditional charity, or small-scale charity, which mainly refers to poverty alleviation, help for the needy, and disaster relief.</p> <ul style="list-style-type: none"> ▶ The social service organizations and social groups recognized as charitable organizations enjoy a higher tax preference than social service organizations and social groups which are not charitable organizations according to the letter of the Charity Law. <p>However, separate provisions for the tax preference of charitable organizations have not been introduced.</p>

98. Notice on Related Problems of Recognition of Tax-exempt Qualification of Non-profit Organizations (C.S. [2014] No.3

99. Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation receipts (C.Z. [2016] No.7)

100. Notice on Related Problems of Recognition of Tax-exempt Qualification of Non-profit Organizations (C.S. [2014] No.3

101. Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation receipts (C.Z. [2016] No.7)

102. Notice on Related Problems of Recognition of Tax-exempt Qualification of Non-profit Organizations (C.S. [2014] No.3

103. Notice of Ministry of Finance, State Administration of Taxation, and Ministry of Civil Affairs on Related Problems of Pre-tax Deduction of Public Welfare (C.S. [2008] No.160)

104. Notice of Ministry of Finance and Ministry of Civil Affairs on Further Specifying the Related Problems of Public Welfare Social Organizations' Applying for Public Welfare Donation receipts (C.Z. [2016] No.7)

Fund-raising	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
	<ul style="list-style-type: none"> ▶ No public fundraising is allowed 	<ul style="list-style-type: none"> ▶ Public foundations can do public fund-raising¹⁰⁵ ▶ Existing non-public foundations and newly established foundations without the certification qualifying them for public fund-raising shall not conduct it 	<ul style="list-style-type: none"> ▶ No public fundraising is allowed 	<ul style="list-style-type: none"> ▶ The qualification application for public fund-raising has higher requirements for the improvement of internal governance¹⁰⁶ ▶ The four legal forms for public fund-raising are limited¹⁰⁷ ▶ Except for public collections to prevent emergencies, donation plans shall be filed in advance for public fund-raising¹⁰⁸ ▶ Charitable organizations qualified for public fund-raising shall conduct it actively; if they do not carry out public collection activities for six consecutive months, they will be flagged for abnormal activities.¹⁰⁹ 	<ul style="list-style-type: none"> ▶ All charitable organizations meeting the relevant conditions can conduct public fund-raising (for social service organizations and social groups, the advantage is more significant)¹¹⁰ <p>Public fundraising will not be exclusively conducted by public foundations any longer. The original non-public foundations, social groups, and private non-enterprise units (social service institutions) can apply for the qualification certification for public collection when all conditions are met and their status as charitable organizations is recognized.</p> <ul style="list-style-type: none"> ▶ Individuals or organizations without the qualification for public collection can cooperate with the charitable organizations who have.¹¹¹

105. Article 3 of Foundation Management Regulations

106. Article 5 of Administrative Measures for Fund-raising of Charitable Organizations from the General Public

107. Article 23 of the Charity Law

108. Article 24 of the Charity Law; Article 10–12 of Administrative Measures for Fund-raising of Charitable Organizations from the General Public

109. Article 22 of the Charity Law; Article 5. 6 of Administrative Measures for Fund-raising of Charitable Organizations from the General Public

110. Article 21 of Charity Law

111. Article 26 of the Charity Law; Article 17 of Administrative Measures for Fund-raising of Charitable Organizations from the General Public

Activity Expenditures and Administration Expenses	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
	<p>No special requirements</p>	<ul style="list-style-type: none"> ▶ Requirement for the expenditure of public welfare^{112vii} ▶ Requirement for management expenses^{113viii} <p>Foundations have always been regulated strictly and there are corresponding provisions for their expenditures and management expenses. Particularly, the provisions on "70%" of public welfare expenditures and "10%" and "8%" of management expenses of non-public foundations are strictly executed by the Civil Affairs Department.</p>	<p>No special requirements</p>	<ul style="list-style-type: none"> ▶ More rigorous definitions and provisions for the expenditure of charitable activities¹¹⁴ (the requirements are higher for social groups and social service organizations) <p>The Provisions on Annual Expenditures and Administration Expenses for Charitable Organizations to Carry Out Charitable Activities have more specific provisions for the annual expenditures and management expenses from charitable activities, but a narrow definition of the expenditures of charitable activities (stricter for charitable organizations).</p>	<ul style="list-style-type: none"> ▶ "Three-year carryover" is specified.¹¹⁵ ▶ Some exemptions are given to charitable organizations with low annual management expenses.¹¹⁶ ▶ Some adjustment plans are given to charitable organizations for whom annual management expenses are not commensurate with their provisions.¹¹⁷

112. Article 29 of Foundation Management Regulations

113. Article 29 of Foundation Management Regulations

114. Article 60 of the Charity Law

115. Article 10 of Provisions on Annual Expenditures and Administration Expenses for Charitable Organizations to Develop Charity Activities

116. Article 11 of Provisions on Annual Expenditures and Administration Expenses for Charitable Organizations to Develop Charity Activities

117. Article 12 of Provisions on Annual Expenditures and Administration Expenses for Charitable Organizations to Develop Charity Activities

	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
Internal Governance	<ul style="list-style-type: none"> ▶ The power organ of social service organizations is the board of directors. ▶ Affiliation - no relevant provisions 	<ul style="list-style-type: none"> ▶ The power authority of a foundation is the board of directors. ▶ In case of a connection between the director's individual benefit and the foundation's benefit, the director shall not participate in the foundation's decision making; directors, supervisors, and their immediate relatives shall not have a transactional relationship with the foundation. 	<p>The power organ of social groups is the general assembly of members (member representatives).</p> <p>Affiliation - no relevant provisions</p>	<ul style="list-style-type: none"> ▶ More rigorous limitation on affiliation <p>Article 14 of the Charity Law specifies, "founders, major donors and management staff of a charitable organization must not abuse their connections to harm the interests of the organization, the interests of the beneficiaries, or social public interests. Where the founders, major donors and management staff of a charitable organization are involved in a business transaction with that organization, they shall not participate in the decision-making of the charitable organization concerning that transaction and the circumstances of the transaction shall be made public."</p>	
Financial Management	<ul style="list-style-type: none"> ▶ Accounting Policy for Private Non-profit Organizations shall apply 	<ul style="list-style-type: none"> ▶ Accounting Policy for Private Non-profit Organizations shall apply ▶ Obligation to report the approval of the legal financial accounting report¹¹⁸ 	<ul style="list-style-type: none"> ▶ Accounting Policy for Private Non-profit Organizations shall apply 	<ul style="list-style-type: none"> ▶ A unified accounting system¹¹⁹ shall be implemented ▶ Obligations to report the approval of the legal annual work report and financial accounting report¹²⁰ 	

118. Article 36 of Foundation Management Regulations

119. Article 12 (2) of the Charity Law

120. Article 72 (2) of the Charity Law

Information Disclosure	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
	<p>There is no express legal requirement for information disclosure</p> <p>▲ There is no express legal requirement for information disclosure¹²⁵</p>	<p>▲ The principle for legal information disclosure includes truthfulness, accuracy, and integrity</p> <p>▲ Express obligation of information disclosure¹²¹ and information disclosure content¹²² (including information disclosure to beneficiaries¹²³)</p> <p>▲ There are more rigorous requirements for public foundations, including the activity plan and implementation condition of public foundations</p> <p>▲ Special requirements for public foundations¹²⁴</p>		<p>▲ Information disclosure principles include truthfulness, integrity, time lines¹²⁶</p> <p>▲ Requirements for the content of information disclosure¹²⁷</p> <p>▲ Requirements for information disclosure to donors¹²⁸ and beneficiaries¹²⁹</p> <p>▲ Requirements for information disclosure to charity trusts¹³⁰</p> <p>▲ Requirements for the information disclosure of Internet fund-raising¹³¹</p> <p>(Overall, the requirements for social groups and social service institutions are increased)</p>	N/A

121. Article 30 of Foundation Management Regulations

122. Article 4 and Article 5 of Measures for Information Disclosure of Foundations

123. Article 7 of Measures for Information Disclosure of Foundations

124. Article 25 (2) of Foundation Management Regulations

125. Article 29 (3) of Social Group Registration Management Regulations

126. Article 71 (2) of the Charity Law

127. Article 72 of the Charity Law

128. Article 74 of the Charity Law

129. Article 72 of the Charity Law and Article 71 of the Charity Law

130. Article 69 (3) of the Charity Law; Article 71 of the Charity Law; Article 73 of the Charity Law and Article 75 of the Charity Law

131. Article 16 of Administrative Measures for fund-raising of Charitable Organizations

Administrative Supervision and Management	Social Service Organizations (private non-enterprise units)	Foundations	Social groups	New Requirements for Charitable Organizations	Advantages of Charitable Organizations
	<ul style="list-style-type: none"> ▶ A general description of the duties for pre-event, in-event, and post-event management, supervision, and inspection, as well as the penalty rights of the registration authorities¹³² ▶ A general description of pre-event prior-approval and the post-event supervision and management¹³³ of professional supervisory units^x ▶ A fundamental social public welfare supervision¹³⁴ 	<ul style="list-style-type: none"> ▶ A general description of the duties of pre-event, in-event, and post-event management, supervision, and inspection, as well as the penalty rights of registration authorities¹³⁵ ▶ A general description of pre-event prior-approval and the post-event supervision and management of professional supervisory units¹³⁶ ▶ Requirement of information disclosure¹³⁷ to meet the standard of social supervision 	<ul style="list-style-type: none"> ▶ A general description of the duties of pre-event, in-event, and post-event management, supervision, and inspection, as well as the penalty rights of registration authorities¹³⁸ ▶ A general description of pre-event prior-approval and the post-event supervision and management of professional supervisory units¹³⁹ ▶ Basic social public welfare supervision¹⁴⁰ 	<ul style="list-style-type: none"> ▶ More specific administrative measures from administrative authorities¹⁴¹ 	<ul style="list-style-type: none"> ▶ Annual inspection is changed to an annual report system¹⁴²

132. Article 19 of *Interim Regulations for Private Non-enterprise Unit Registration Management*
133. Article 20 of *Interim Regulations for Private Non-enterprise Unit Registration Management*
134. Article 23 (3) of *Interim Regulations for Private Non-enterprise Unit Registration Management*
135. Article 34 of *Foundation Management Regulations*
136. Article 35 of *Foundation Management Regulations*
137. Article 38 and Article 39 of *Foundation Management Regulations*
138. Article 24 of *Social Group Registration Management Regulations*
139. Article 25 of *Social Group Registration Management Regulations*
140. Article 26 (3) of *Social Group Registration Management Regulations*
141. Article 93 of the *Charity Law*
142. Article 13 of the *Charity Law*

It is clear from the table above that for foundations, the new charitable organization status requirements have not changed much in terms of the number of such requirements. The approach was more to refine and clarify them on the basis of the original standards. Although the advantages are not too significant, those which are not deemed as charitable organizations might encounter a barrier in the process of carrying out their previous charitable activities. For newly established foundations, the pronouncement of the administrative authorities effectively deems them charitable organizations.

The advantage for social service institutions and social groups lies in the fact that they can both obtain the qualification for public fundraising and enjoy a higher tax preference than they had as charitable organizations. That said, the policies implemented for the tax preference of charitable organizations are not clear. The new requirements have increased substantially and in various aspects, including in the areas of information disclosure, internal governance, public expenditure, and the management of expenses. This will increase compliance burdens for social service organizations and social groups after they achieve recognition as charitable organizations.

Chapter IV Internal Governance

1 Internal Governance of Charitable Organizations ABC

1.1 Articles of Association for Charitable Organizations

Articles of Association are to charitable organizations what constitutions are to countries. Together, they comprise the most important document for a charitable organization and form the basis for its internal governance. Moreover, such Articles provide essential content for operational decision-making.

The Charity Law has two requirements regarding Articles of Association¹⁴³: First, no Article should violate relevant laws or regulations; otherwise, it is invalid. Second, they must contain important items, such as the charity's organizational type, purpose, and scope of activities, along with its structure, duties, and internal mechanisms for the supervision of its bodies in charge of decision-making and execution.

The range of organizational types include foundations, social service organizations, and social organizations. Given this, charitable organizations of different organizational types have distinct name registration rules, property sources and requirements, internal governance structures, and business scopes. The table below presents the differences in the specific requirements for three separate organizational types.

Organizational Type	Articles of Association	Legal Basis
Social Organizations	<ol style="list-style-type: none">(1) Name and domicile;(2) Purpose, scope of business and location of activity;(3) Membership and members' rights and obligations;(4) Democratic organizational and management systems and procedures for forming the executing agency;(5) The qualifications for the person in charge and the procedures for selection and removal;(6) Principles of asset management and use;(7) Procedures for modifying the Articles of Association;(8) Termination procedures and disposal of assets after termination;(9) Other matters that should be prescribed by the Articles of Association.	Article 14 of the Regulation on Registration and Administration of Social Organizations

143. Article 11 of the Charity Law

Organizational Type	Articles of Association	Legal Basis
Foundations	(1) Name and domicile; (2) Purpose and scope of public welfare activities; (3) The amount of the original fund; (4) The composition, mandates and rules of procedure of the board of directors, and the qualifications, selection, and term of office of the directors; (5) Duties of the legal representative; (6) Duties, qualifications, selection, and term of office of the supervisors; (7) The preparation and review of financial accounting reports; (8) Rules on assets management and use; (9) Conditions and procedures for termination and post-termination asset disposal.	Article 10 of the Regulation on Foundation Administration
Private Non-enterprise Units	(1) Name and domicile; (2) Purpose and scope of business; (3) Organizational and management system; (4) Procedures for the selection or removal of legal representatives or persons in charge; (5) Principles of asset management and use; (6) Procedures for modifying the Articles of Association; (7) Termination procedures and post-termination asset disposal; (8) Other matters that should be prescribed by the Articles of Association.	Article 10 of the Interim Regulations on Registration Administration of Private Non-enterprise Units

1.2 Internal Governance Structure of Charitable Organizations

Charitable organizations shall establish an institutional governance structure characterized by independence, a clear division of powers and responsibilities, coordinated operation, and effective checks and balances based on their Articles of Association. Article 12 of the Charity Law states: “Charitable organizations shall establish sound internal governance structures and clarify the delineation of authority and responsibility for decision-making, implementation and supervision, and carry out charitable activities on the basis of relevant laws, regulations and its Articles of Association.”

Under the current legal framework, charitable organizations of different types have unique internal governance structures.

Organizational Type	Governance Structure	Legal Basis
Social Organizations	Decision-making body: members' meetingxi /member representatives' meeting Executive body: board of directors	Article 14 of the Regulation on Registration and Administration of Social Organizations
Foundations	Decision-making body: board of directors Supervising body: Supervisors/ Board of Supervisors	Chapter 3 Organizational Structure of the Regulation on Foundation Administration
Social Service Organizations ¹⁴⁴	Decision-making body: board of directors Supervising body: supervisors/ board of supervisors	Chapter 4 Organizational Structure, the Regulation on Registration and Administration of Social Service Organizations (Amendment Draft of the Interim Regulations on Registration Administration of Private Non-enterprise Organizations for Soliciting Opinions)

1.3 The Accounting System of Charitable Organizations

Article 12 (2) of the Charity Law states: "Charitable organizations shall implement the unified national accounting system, conduct accounting in accordance with the law, establish a sound accounting supervision system, and accept the supervision and management of relevant government authorities."

In August 2004, the Ministry of Finance issued its Accounting Regulation for Non-governmental Non-profit Organizations, effective January 1, 2005. This promulgation differs from the accounting regulation for ordinary enterprises, administrative bodies, and government-sponsored institutions.

It applies to compliant non-governmental non-profit organizations established lawfully within the boundary of the People's Republic of China. Such organizations include social organizations, foundations, private non-enterprise organizations, Buddhist temples, Taoist temples, mosques, and churches. Private non-profit organizations should have the following three features:

- 1) Its mission and purpose are not for profit;
- 2) Its resource providers do not seek economic returns from the resources invested;
- 3) Its resource providers do not enjoy ownership of the organizations they provide resources to.

144. The Interim Regulations on Registration Administration of Private Non-enterprise Organizations issued in 1998 does not specifically provide the internal governance structure of private non-enterprise organizations. It only outlines that "...should establish organizational management system; selection and removal procedures of the legal representative or head of the organization". This part is supplemented by the provisions in the Regulation on Registration and Administration of Social Service Organizations (Amendment Draft of the Interim Regulations on Registration Administration of Private Non-enterprise Organizations for Soliciting Opinions).

According to these provisions, charitable organizations under the Charity Law must also comply with the Accounting Regulation for Non-governmental Non-profit Organizations.

1.4 Charitable Organizations Are Barred from Using Their Affiliations to Impair the Interests of the Organization Itself, its Beneficiaries, or the General Public

Article 14 (1) of the Charity Law states: “Founders, major donors and management staff of a charitable organization shall not abuse their association to harm the interests of the organization or any donor or social public interests.”

Affiliated transactions can improve transactional efficiency and reduce communication costs. But they can also be used subversively to transmit interests. Charitable organizations’ properties have public property features. Hence, it is necessary to limit their capacity for affiliated transactions. Important to note is that the Charity Law does not itself limit affiliated transactions, but only hedges against them being used in such a way that the interests of the organization, its beneficiaries, and the public are harmed.

The Charity Law does not explicitly provide a definition of affiliated parties. The Regulation on Registration and Administration of Social Service Organizations (The Amendment Draft Soliciting Opinions) and the Regulation on Foundation Administration (The Amendment Draft Soliciting Opinions) define “affiliated parties” as follows:

Article 61 of the Regulation on Registration and Administration of Social Service Organizations (The Amendment Draft Soliciting Opinions)	The affiliated parties designated in this Regulation refer to organizations or individuals who control (or are controlled by) and influence (or are influenced by) directors, supervisors, and heads of organizations, which may result in the transfer of the interests of social service organizations.
Article 79 of the Regulation on Foundation Administration (The Amendment Draft Soliciting Opinions)	The affiliation designated in this Regulation refers to relations between the foundation and its founder, the companies or organizations the directors work for and the foundation, invested parties, and other individuals or organizations who may jointly control (or be jointly controlled by) or materially influence (or be influenced by) the foundation.

The Charity Law has specified the decision avoidance and information disclosure system for affiliated transactions: “Where the founders, major donors, and management staff of a charitable organization are involved in a business transaction with the organization, they shall not participate in the decision-making of the organization.”¹⁴⁵ When the founders, major donors and management staff of a charitable organization plan to trade under the mantle of the organization, they must not participate directly in the decision-making related to the trade itself, so as to avoid damaging the interests of other decision-makers. Moreover, the Charity Law requires that affiliated transactions must be made public. This also shows how high the requirement of the law is concerning affiliated transactions, in the name of protecting public property and interests.

145. Article 14 of the Charity Law

1.5 Who Must Not Act as the Head of a Charitable Organization

The head of a charitable organization should be determined through normative procedures by its decision-making bodies according to its Articles of Association. The head of a charitable organization can include the following positions: director, deputy director, and the secretary-general for foundations; president (director), vice president (deputy director), and secretary-general for social organizations; directors, deputy directors, and administrative heads (director-in-charge, chairman, president, etc.) for social service organizations.

The Charity Law has exclusive provisions concerning the qualifications of such a head. A person in any of the following circumstances shall not serve as the head of a charitable organization¹⁴⁶:

- 1) Having little to no capacity for civil conduct;
- 2) Having been charged with a criminal offense less than five years before the appointment as head;
- 3) Having served as the head of an organization which had its registration license revoked or was banned from operation less than five years before the new appointment as head;
- 4) Other circumstances provided by relevant laws and administrative regulations.

The first three points are easy to understand. For the fourth point, however, we have identified the following circumstances in which a person is ineligible to be the head of a charitable organization:

- ▶ According to Article 23 (1) of the Regulation on Foundation Management, "The position of Chairman, Vice-Chairman, and Secretary-General of the Foundation shall not be held by current state functionary. The legal representative of the Foundation shall not serve as a legal representative of other organizations."
- ▶ According to Article 14 (2) of Regulation on Registration of Social Organizations, "A legal representative of a social organization shall not serve as the legal representative of other social organizations."
- ▶ According to the Opinions on Reforming Social Organization Management Systems and Promoting Healthy and Orderly Development of Social Organizations, issued by the General Office of the CPC Central Committee and the General Office of the State Council, strict implementation of the Notice on Government Bodies Not Assuming Leading Positions in Social Organizations and Notice on Regulating (Partially) Retired Officials Assuming Leading Positions in Social Organizations is required. Civil servants shall be strictly regulated in their serving as the head of social organizations. A review of the process used in their selection is to be held periodically to ensure civil servants are elected to such posts responsibly; though

146. Article 16 of the Charity Law

they are not to serve in more than one social organization at a time. A civil servant serving in a social organization shall not concurrently serve as the head of a foundation or social service organizations. Any civil servant who violates such restrictions shall resign from his or her post or resign from the social organization altogether within six months after the violation.

2 Practical Guide

2.1 Use of Model Articles of Association

In practice, and in line with the Charity Law and the three major regulations affecting it, civil affairs authorities have developed model Articles of Association for foundations, social organizations, social service organizations, and charitable organizations. For purposes of developing or revising such Articles, an organization can inquire on the official website of the local Administration Bureau of NGOs (in Beijing, Shanghai, Shenzhen, etc.) or at any local social organization authority for relevant information¹⁴⁷.

For reference, please refer to Appendix 1-TK1-7- for model Articles of Association and its interpretation of various social organizations under the Ministry of Civil Affairs and Shanghai Municipality.

It should be noted that there are major event reporting clauses in the model Articles provided by the Shanghai Community Administration, whereby organizations are required to file and report their compliance with the Charity Law and the requirements of registration authorities. These reporting requirements are made according to the Guidelines for Shanghai Social Organizations to Report Major Events, issued in April 2014 by the Shanghai Municipal Civil Affairs Bureau and the Shanghai Community Administration. Major events include conferences, changes in key responsible persons, international activities, and major public incidents or emergencies. As required by the Guidelines, major conferences or international activities shall be reported to the relevant registration or industry authorities (competent business authorities) 20 working days in advance; other activities shall be promptly reported afterwards.

2.2 Approval of Articles of Association

During the period in which regulations were being revised, some social organizations were found non-compliant, having failed to go through the necessary legal procedures or file for official record. According to the three major regulations, to revise their regulations sufficiently, foundations, social service organizations, and social organizations must file with the relevant registration authorities or competent professional supervisory units for approval and official record. Failure

147. Official Website of Shanghai Administration Bureau of NGOs <http://stj.sh.gov.cn/node2/node3/n4/n81/n86/index.html>
Accessed on May 5, 2018

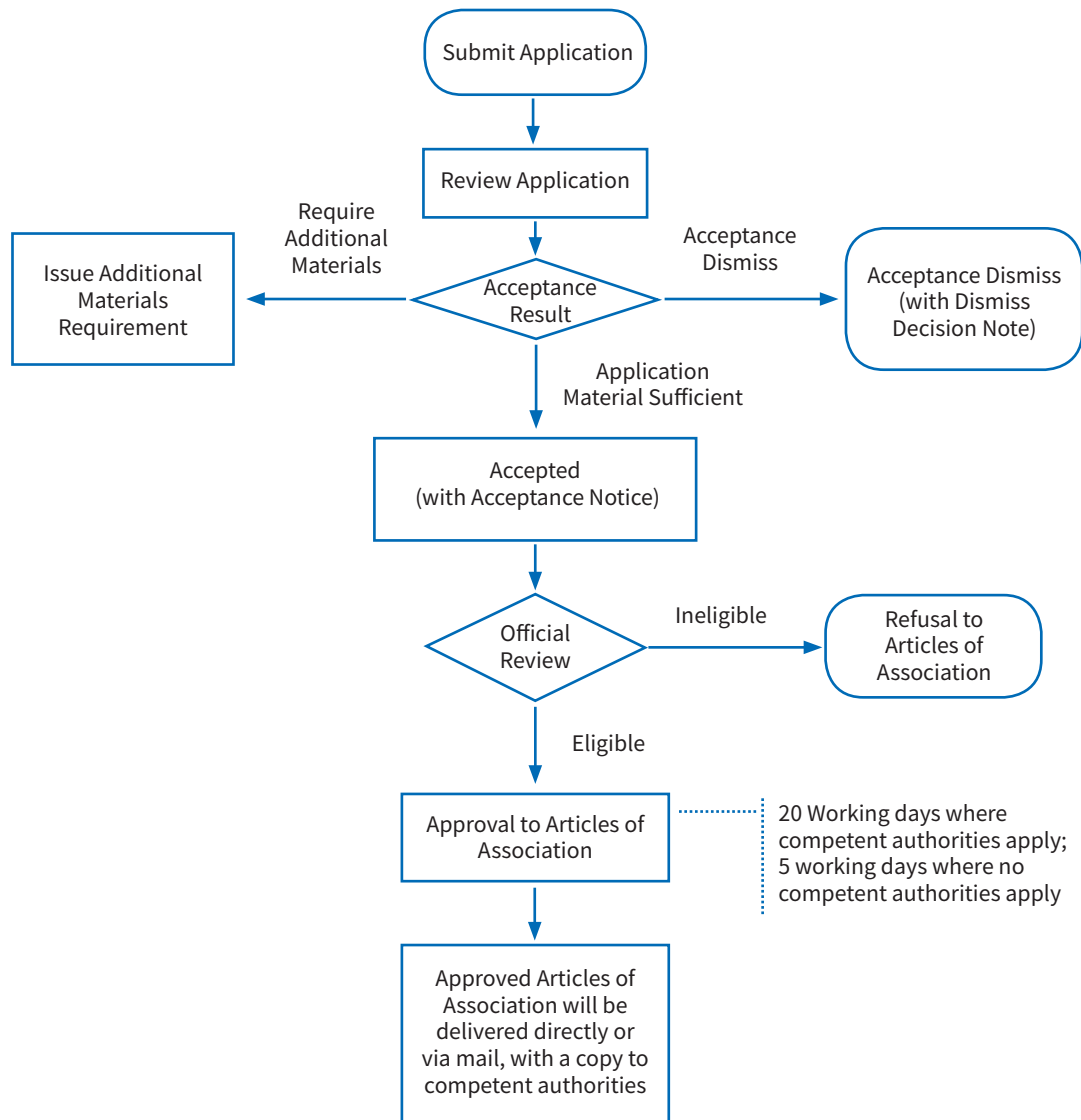
to comply with such legal procedures will result in rejection of the revised regulations, which will subsequently invalidate the carrying out of subsequent activities¹⁴⁸.

1) Materials List (for private, non-enterprise organizations in Shanghai, as an example):

NO.	Application Materials	Requirements
1	Revision Description for revising Articles of Association	The Revision Description shall include content and reasons for the revision, signed by the relevant legal representative and stamped with an official seal.
2	Resolution to revise Articles of Association of the decision-making body	The decision shall be made in compliance with the rules of procedure provided in the Articles of Association. It shall be officially made after discussion by the board of directors, signed by the directors thereafter, and stamped with an official seal.
3	Revised Articles of Association	It shall include the names and locations, purpose and scope of the business, organizational and administrative rules, procedures for the appointment or removal of legal representatives or responsible persons, principles for management and the use of assets, procedures for revising the Articles of Association, termination procedures, the disposal of assets after termination, and other matters required by the Articles. One format is the Model Articles of Association for Private Non-enterprise Organizations in Shanghai.
4	Reviewing form for Articles of Association	It shall comply with all procedural rules and legal requirements and shall not violate national laws or regulations. Approval by way of an official stamp by competent business authorities is needed for Private Non-enterprise Organizations under a dual administration model.

148. Official Website of Beijing Administration Bureau of NGOs <http://www.bjmzj.gov.cn/news/root/cjwtd/2011-10/101239.shtml>
Accessed on Feb. 13 2018

2) Procedure for Filing Articles of Association for Official Record (for private non-enterprise organizations in Shanghai, as an example):



2.3 Governance Suggestions for Decision-Making Bodies

Many small to medium-sized charitable organizations lack governance experience in their decision-making body. In this regard, the following suggestions are offered for consideration:

- 1) Decision-maker selection.** In line with the different development stages of charitable organizations, decision-makers should be properly selected to ensure the effectiveness of the decision-making body.
- 2) Proper training.** The “professional training” of decision-makers is highly recommended, including clarification of relevant laws and Articles of Association, and a clear description of each organization’s duties, rights, and obligations.

3) Meetings. The meetings of a decision-making body must be held in compliance with relevant laws, regulations, and organizational rules (no less than twice a year) to reinforce the body's role in internal governance.

4) Rule by rules. Charitable organizations that have passed the start-up period and transitioned into the growth period must strengthen their rules and regulations for internal governance (in addition to the Articles of Association, there must be rules for the board of directors, supervisors [supervisory board], financial management, affiliated transaction, information disclosure, archiving, etc.) and control, and standardize relevant processes to ensure effective implementation.

5) Supervision. Decision-making bodies and supervisors should have full oversight over the operation of their organizations and staff, including assessing the performance of the executive head (secretary general or director) and regularly analyzing the budget.

Here are a number of areas that require internal rules and regulations:

- | | |
|------------------------------------|---|
| 1) Board of Directors | 12) Seal and Certificate Management |
| 2) Supervisory Board (Supervisors) | 13) CPC Party Building |
| 3) Personnel Management | 14) Integrity and Self-discipline |
| 4) Asset Management | 15) Staff Manual |
| 5) Financial Management | 16) Volunteers Management |
| 6) Donation Invoice Management | 18) Affiliate Transactions |
| 7) Special Fund | 19) Asset Preservation and Appreciation |
| 8) Project Management | 20) Trade Secret Management |
| 9) Major Event Reporting | 21) Copyright Management |
| 10) Information Disclosure | 22) Trademark Management |
| 11) Archive | |

2.4 Distinguishing Key Concepts in Accounting Regulation for Non-Governmental Non-profit Organizations

a). Income Accounting

Income refers to the inflow of economic benefits or service potential derived from the business activities of non-governmental non-profit organizations. It results in an increase in net assets. According to different sources, income is divided into donations, membership fees, service revenue, government subsidies, investment earnings, commodity sales, and others.

- 1) Donations refer to income earned by accepting donations from other entities or individuals.
- 2) Membership fees refer to fees collected by members of a non-governmental non-profit organization according to its Articles of Association.

- 3) Service revenue refers to income obtained by providing services to clients in accordance with the Articles of Association, including tuition fees, medical fees, and training charges.
- 4) Government subsidies refer to income derived from receiving government grants or subsidies from government agencies.
- 5) Commodity sales refer to revenue generated from the sale of goods (such as publications, medicine, etc.).
- 6) Investment earnings refer to net gains and losses from outward investments.

If non-governmental non-profit organizations have income from major business activities other than the above-mentioned sources, these should also be accounted for.

- 7) Examples of such income sources include the disposal of fixed assets and intangible assets.

Labor donations shall not be counted as accounting items proper, but should be disclosed in the notes of accounting statements.

According to the regulations above, the following classifications can be made:¹⁴⁹

By Source	By Restrictions in Use		By Type	
	Restricted Income	Non-Restricted Income	Trade Income	Non-trade Income
Donation Income	√	√		√
Membership Fees Income	√	√		√
Service Income		√	√	
Product Sales Income		√	√	
Government Subsidy Income	√	√	√	√
Investment Income		√	√	
Other Income		√	√	

b). How Should Non-Monetary Income Be Accounted For?

According to Article 18 of the Law on Donations for Public Welfare, if a non-monetary donation is accepted by a public interest organization, an invoice shall be issued commensurate with the fair value of the donation.

- 1) Where a donor provides invoices, declaration forms or other credentials, they shall be used as the basis for confirming the book value of the donation; if the donor fails to provide credentials, other means of confirmation shall be used.

¹⁴⁹ Excerpt from *Enyou Detailan. Introduction to Accounting for Non-governmental Non-profit Organizations*, Page 45

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- 2) Where the credentials of the donation provided by the donor significantly differs from its fair value, the fair value shall be used.
 - 3) Where a donor donates fixed assets, equities, intangible assets, relics, or cultural assets, an assessment of these assets by a qualified third-party shall be used in determining the book value. If it is impossible to assess or confirm a value, the donation shall not be accounted as donation income, but registered separately.
 - 4) Where a donor donates equities of a non-public company, the book value shall be used; where a donor donates equities of a listed company, the fair value of the stock on the day of donation shall be used.

Chapter V Charitable Fund-raising

1 Charitable Fund-raising ABC

1.1 Charitable Fund-raising Does Not Mean Public Fund-raising

According to Article 21 of the Charity Law, fund-raising refers to the collection of financial assets by charitable organizations, including both public fund-raising and targeted fund-raising.

Charitable organizations may carry out targeted fund-raising as of their date of registration. Those intending to carry out public fund-raising activities need to acquire the qualifications to do so. Article 22 of the Charity Law states that charitable organizations that have been legally registered for two years may apply for a public fund-raising certificate with the Civil Affairs Department with which they registered. As an exception, however, Civil Affairs Departments may issue public fund-raising certificates directly to foundations and social organizations.

Prior to the enactment of the Charity Law, there were six local regulations¹⁵⁰ covering public fund-raising, broadly defined. For example, Article 3 of the Shanghai Fund Raising Regulations states that public fund-raising refers to “the funding contribution solicitation to the public for the public welfare purpose”; Article 2 of the Guangzhou Fund Raising Regulations provides that “the Regulations are applicable to open public fund-raising to the public by the charitable organizations in its municipal administrative region to be used for public welfare undertaking and the relevant administration activities”.

Therefore, after the enactment of the Charity Law, we must distinguish between what fund-raising means legalistically (public fund-raising, to be used for the public welfare, and targeted fund-raising, to be used for a specific purpose) and how it is understood societally or colloquially (general fund-raising from the public).

1.2 Distinguishing between Personal Help-seeking and Fund-raising

Personal help-seeking is not within the purview of the Charity Law, given that the essential feature of personal help-seeking is “self-interest”. To be covered by the Charity Law, an activity must be related to the “public-interest”.

The Charity Law states that “organizations or individuals that do not have a public fund-raising certificate cannot carry out public fund-raising activities”, which implies that personal help-seeking is forbidden by law. However, although personal help-seeking (including begging, making a living

150. Including Measures of Jiangsu Province on Permits of Charitable Fund-raising, Hunan Fund-raising Regulations, Regulations of Ningbo on Promotion of Charitable Undertakings and Guangzhou Fund-raising Regulations, Shanghai Fund-raising Regulations and Regulations of Shantou Economic Special Region on Fund-raising etc.

by performance, etc.) is not charitable activity as such, it is not forbidden. It would be impossible to forbid individuals from seeking help from the public.

It is important to note that “it is illegal for individuals to carry out public fund-raising”. This is because personal help-seeking is not public fund-raising, legally speaking.

On August 30, 2016, to coordinate with the enactment of the Charity Law, the Ministry of Civil Affairs, State Administration of Radio, Film, and Television, Ministry of Information and Technology, and the Cyberspace Administration of China jointly issued their Measures on Administration of Public Fund-raising Platform Services. The Measures have distinguished charitable fund-raising from personal help-seeking, stating that “whenever the individuals release help-seeking information by radio, television, newspaper and network service providers, telecommunication operator for solving its own or family difficulties, the radio, television, newspaper, network service provider, telecommunication operator shall mark the risk prevention notice to the public in the prominent position and notify that the information is not for charitable public fund-raising and the publisher shall be liable for its truthfulness.”

The aforementioned provision also indicates that on the legal public fundraising platform, there is fund-raising information released by charitable organizations as well as personal help-seeking information released by individuals. Public fundraising and personal help-seeking are different in terms of their obligations. The information released by charitable organizations usually has the organization as its supervising party.

1.3 Public Donations Shall Not Be Solicited Without Public Fundraising Qualifications

The Charity Law requires charitable organizations to obtain public fundraising qualifications. Article 22 states that “where the organization meets the requirements of having a sound internal management system and is operating according to the rule, the Civil Affairs Department shall issue the public fund-raising certificate; where the requirements are not met, the Civil Affairs Department shall not issue the public fund-raising certificate and the reasons shall be explained in writing.”

Measures on Administration of Public Fund-raising by Charitable Organizations released by Ministry of Civil Affairs (effective as of September, 1 2016) defined the threshold for charitable organizations to obtain public fund-raising qualifications in detail. “Organizations that have been legally registered and recognized for two years may apply for a public fund-raising certificate after meeting the following conditions:

- (1) Set up an internal governance structure based on the relevant laws and regulations, as well as the Articles of Association. The council could then make a decision about whether the executive person’s qualifications meet the relevant regulations, and also if all the members are performing their duties in good faith;

- (2) No more than one-third of the board members are serving in the same or affiliated organizations and none of them are close relatives;
- (3) No more than one-third of the board members are non-local citizens; the organization's legal representative shall be a local citizen;
- (4) The secretary-general is full-time. The chairman of the board cannot serve concurrently as the secretary-general. There are full-time workers liable for the activities of their organization;
- (5) Charitable organizations registered with the Civil Affairs Department of the people's government above the provincial level should have their board of supervisors consisting of more than three supervisors;
- (6) They are registered for taxation and performed tax payment liabilities;
- (7) They participated in the social organization rating with a rating of 3A or above;
- (8) They have not been enlisted in the abnormal catalogue at the time of application;
- (9) No administrative penalties due to the violation of relevant laws or regulations have been imposed within two years of an organization's application for public-fundraising qualifications."

1.4 Organizations and Individuals Without Public Fund-raising Qualifications May Adopt the Form of Cooperative Fund-raising

According to the Charity Law, organizations and individuals without public fund-raising qualifications have no right to solicit funds from the public; however, Article 26 states describes the cooperative fund-raising model for organizations and individuals without such qualifications and offers a channel for them to participate in public fund-raising. Article 26 states that "organizations or individuals that do not have a public fund-raising certificate may cooperate with charitable organizations that have a public fund-raising certificate. The charitable organization shall carry out the public fund-raising and manage the donations collected."

1.5 Public Fund-raising Information on the Internet Shall Be Released in the Platform Designated by the Ministry of Civil Affairs

According to Article 27 of the Charity Law, radio broadcasters, television stations, newspapers and journals, as well as internet service providers and telecommunication operators shall inspect and verify the registration certificates and public fund-raising certificates of charitable organizations using their platforms. This assumes that public media platforms will supervise the activity of such organizations using the Internet for fund-raising.

On December 18, 2014, the Guiding Opinions of the State Council on the Promotion of Sound Development of Charitable Undertaking, released by the State Council, provides that radio

broadcasters, television stations, newspapers and journals, as well as internet service providers and telecommunication operators shall inspect and verify the legality of fund-raising activities organized by charitable organizations using their platforms. This process includes verifying registration certificates and fund-raising qualification certificates. In other words, two years prior to the enactment of the Charity Law, the State Council detailed the supervisory duties for those managing public media platforms.

After the enactment of the Charity Law, a series of regulations relating to public fund-raising through public media platforms have been promulgated:

- ▶ Measures on Administration of Public Fund-raising Platform Service (effective as of September 1, 2016)
- ▶ Basic Technology Regulations on Internet Public Fund-raising Information Platform of Charitable Organizations (effective as of August 1, 2017)
- ▶ Basic Administration Regulations on Internet Public Fund-raising Information Platform of Charitable Organizations (effective as of August 1, 2017)

2 Practical Guide

2.1 Do All Fund-raising Activities Directed at Specific Targets by Charitable Organizations Fall Under the Category of Targeted Fund-raising?

According to the Charity Law, charitable organizations engaged in targeted fund-raising activities shall specify the scope of their targets, such as the initiators, members of the board, and members of the group. The article states that the meaning of public fund-raising is the same as the public fund-raising definition provided in the Regulations on the Administration of Foundations, but the scope of targeted fund-raising is narrower than the definition of non-public fund-raising. Targeted fund-raising organized by charitable organizations is only to be carried out among the initiators, members of the board, and members of the group. At present, even though there is no official written document to interpret the concept of targeted fund-raising, the Ministry of Civil Affairs has provided one, however narrow it may be.

There are different opinions in academic circles on this subject. Some believe that the scope of targeted fund-raising is not limited to the kind of targets listed above, and thus might include other considerations, such as the interests of entities or individuals looking to engage in charity. An example of such an entity would be the working unit of an individual initiator or an entity transacting frequently with charitable organizations¹⁵¹.

151. *Interpretations on Charity Law of the People's Republic of China* edited by Kan Ke, P87, Law Press 2016

Article 29 of the Charity Law states that targeted fund-raising shall not use the methods stipulated in Article 23. The purpose of this provision is to prevent public fund-raising from being conducted under the guise of targeted fund-raising.

The form of public fund-raising as described in Article 23 of the Charity Law is shown in the following table:

No.	Type	Specific Form
1	Field fund-raising	Setting up a collection box for donations in a local public space.
2		Organizing local charitable performances, competitions, sales, exhibitions, auctions and gala dinners for the public.
3	Fund-raising through public media	Radio, television, newspaper and journals, and the Internet.
4	Other means	Other public fund-raising methods.

According to the Interpretation of the Ministry of Civil Affairs, the form of public fund-raising above cannot be adopted and used for targeted fund-raising.

Nevertheless, based on alternative interpretations, the forms of public fund-raising presented in Article 23 must have indefinite targets. Thus, such forms must not be adopted for targeted fund-raising. In practice, the forms of public fund-raising used by charitable organizations, such as sales, exhibitions, auctions, and gala dinners, may also be adopted for use in targeted fund-raising, insofar as it has a specific target. Only public sales, exhibitions, auctions, and gala dinners can be regarded as public fund-raising.

Charitable organizations should thus limit their use of targeted fund-raising, based on the Opinion from the Ministry of Civil Affairs and prior to the promulgation of further official policies.

2.2 Besides Identifying Specific Targets, What Should Targeted Fund-raising Pay Attention To?

According to Articles 28 (2) and 74 of the Charity Law, targeted fund-raising must meet the following requirements:

1. Charitable organizations should state clearly the purpose of their fund-raising to their prospective donors. A fund-raising purpose refers to the objective of fund-raising. Purposes may vary so long as they fall within the scope of charitable activities as defined in Article 3 of the Charity Law (such as the promotion of education in rural areas and environmental protection).
2. Charitable organizations shall disclose how they will use the funds received from donors. Examples include paying the life allowance of teachers in rural areas or providing financial support to charities engaged in environmental protection. The difference between the purpose of fund-raising and the use of the funds raised is that the purpose is more general, whereas the use is more specific.

3. When carrying out targeted fund-raising activities, charitable organizations have information disclosure duties. These include notifying donors before beginning fund-raising, stating explicitly the fund-raising purpose, describing how funds and property will be used, indicating the start and end date of fund-raising campaigns, describing the method for accepting donations, and providing all relevant contact information. After the completion of fund-raising activities, organizations shall disclose to their donors the details of their campaigns. This includes details about the amount of money and property raised. The administration and use of funds and property include management fees, value maintenance and appreciation, project implementation costs, descriptions of project implementation progress, and whether donated property is being used according to relevant regulations or the donation agreement.

2.3 Are There Different Timing Requirements for Each Type of Social Organization to Apply for Public Fund-raising Certificates? How to Apply for Public Fund-raising Certificates?

Based on the Charity Law and the Measures on Administration of Public Fund-raising by Charitable Organizations, there are different provisions on the timing for different types of charitable organizations to apply for public fund-raising certificates. Please refer to the following table for details:

No.	Types of Charitable Organizations	Requirements on Application Time
1	Non-public foundations and social groups with pre-tax deduction qualifications for public welfare donations prior to the enactment of the Charity Law.	Charitable organizations that have been legally registered for two years may apply for a public fund-raising certificate.
2	Other social groups and social service organizations (i.e. private non-enterprise units) except type 1.	Charitable organizations that have been legally registered for two years may apply for a public fund-raising certificate.
3	Public foundations registered before the Charity Law.	There is no timing requirement (apply for a public fund-raising certificate with the Civil Affairs Department with which they registered).

Based on the Charity Law, charitable organizations falling into type 1 and type 2 shall submit to the relevant Civil Affairs Department the following materials when applying for public fund-raising certificates:

- (1) Application, including a statement and written warranty in conformity with the conditions as provided in Article 5 of the Charity Law;
- (2) A financial audit report going back two years issued by a certified accountant, including a special audit on the expenditures and annual management fees from charity activities;
- (3) Meeting minutes from board of director's meetings;

Charitable organizations with a professional supervisory unit shall submit certifying materials approved by a business authority entity.

Charitable organizations with a rating of 4A or above are exempted from submitting materials as provided in items 2 and 3.

2.4 What Requirements Should Charitable Organizations Follow While Carrying Out Public Fund-raising Activities?

According to Articles 24 and 25, charitable organizations should pay attention to the following requirements while carrying out public fund-raising activities:

First, a fund-raising proposal shall be drafted when carrying out public fund-raising. The proposal must include the goals, duration and location of fund-raising activities, the name and office address of the person-in-charge, the method of receiving donations, as well as bank details, a list of beneficiaries, the use of assets collected, the cost of fund-raising activities, and method of dealing with excess funds.

Second, the fund-raising proposal shall be recorded with the Civil Affairs Department with which the organization registered before fund-raising activities are carried out. They shall use the national charity information platform organized by the Social Organization Administration Bureau of the Ministry of Civil Affairs - "Charity China" Internet.

Third, information disclosure (including the site to be used) shall be performed while carrying out public fund-raising activities. The Charity Law states that "when carrying out public fund-raising activities, information such as the name of the organization carrying out the activity, the public fund-raising certificate, the fund-raising proposal, the contact information, and the means of inquiry for further information regarding the activity shall be displayed in a prominent place at the site of the activity or on the medium used for fund-raising."

2.5 What Institutions May Apply to be Operators of Public Fund-Raising Information Platforms on the Internet?

According to the Circular of the General Office of the Ministry of Civil Affairs on Selecting the Second Group of Internet Public Fund-raising Information Platforms for Charitable Organizations (No. 2 (2018) Letter of General Office of Ministry of Civil Affairs), released on Jan. 4, 2018, operators applying to manage Internet-based public fund-raising information platforms shall meet the following conditions:

	Abstract	Content
1	Requirements on influence or representation	The platform and its operator must have influence or be representative in the Internet industry or public welfare charity field.
2	Credit information records show it is an independent legal person	The platform operator must be an independent legal person without a dishonest record on "Credit China", or any other enterprise credit information system; also, the platform operator must not have committed any violations or crimes. If the platform operator is a social organization, there is no administrative fine imposed by the registration authority within 3 years.
3	Have ICP certificate or ICP record filing	The platform operator must have the relevant Internet information service certificate. Among these, the enterprise shall obtain a Permit of the People's Republic of China for the Operation of a Value-Added Telecommunication Business (ICP Certificate) approved and issued by the Telecommunication Management Authority within the specified term. The subject name on the ICP certificate must be consistent with that of the platform. Non-profit legal persons, such as public institutions and social organizations, shall file for a non-operative Internet information service record and obtain an ICP filing number and electronic certificate. During the specified term, the subject name on the ICP certificate must be consistent with that of the platform.
4	Conformity with the Basic Technical Specifications of Online Fund-raising Platforms for Charitable Organizations	The technical level of the platform must meet the basic requirements outlined in Part 4 of the Basic Technical Specifications of Online Fund-raising Platforms for Charitable Organizations and ensure a high level of Internet responsiveness and risk prevention. Security protection for the system shall be no less than grade 3, as described in the Measures on the Administration of Information Security Grading Protection. The operator must obtain the certifying documents available at any relevant authority or professional testing institution.
5	Simulated page must meet the test requirements	The platform should make their simulated page available for remote access, such as fund-raising information release, inquiry, and management (access by testing address - no official online external operation and no online payment function is required); to meet such testing requirements, technology such as computers, iPads, and cell phone terminals may be used.

At present, there are 12 online public fund-raising information platforms for charitable organizations in the first grouping:

No.	Name of Platform	Operator
1	"Tencent Charity" online fund-raising platform	Tencent Charity Foundation
2	Taobao	Zhejiang Taobao Network Co., Ltd.
3	Ant Financial Public Welfare Platform	Zhejiang Ant Financial Service Group Co., Ltd.
4	Sina-Weibo (Wei public welfare)	Beijing Weimeng Chuangke Internet Technology Co., Ltd.
5	Easy Financing	Beijing Easy Financing Internet Technology Co., Ltd.
6	JD Public Welfare	Chinabank Payments (Beijing) Science and Technology Co., Ltd.

No.	Name of Platform	Operator
7	Beijing Enjiu Non-profit Organization Development Research Center	Foundation Central Network
8	Baidu Charity Fund-raising Platform	Baidu Online Internet Technology (Beijing) Co., Ltd.
9	Gongyibao	Beijing Goupu Juyi Science and Technology Co., Ltd.
10	Xinhua Public Welfare Service Platform	Xinhua Net Co., Ltd.
11	Lianquan Net	Shanghai Lianquan Public Welfare Foundation
12	Guangzhou Charity Association Charity Information Platform	Guangzhou Charity Association

On April 19, 2018, the appraisal committee created the Social Organization Management Authority of the Ministry of Civil Affairs and proposed a second group of online public fund-raising information platforms, listed as follows. The deadline for the announcement shall be April 25, 2018:

No.	Name of platform	Operator
1	Meituan Public Welfare	Beijing Sankuai Cloud Computation Co., Ltd.
2	Didi Public Welfare	Beijing Xiaoju Science and Technology Co., Ltd.
3	Shanyuan Public Welfare	Beijing Shanyuan Public Welfare Foundation (sponsored and promoted by Bank of China)
4	Rong e Gou Public Welfare	Industry and Commerce Bank of China Co., Ltd. Science and Technology Co., Ltd.
5	Shuidi Public Welfare	Beijing Shuidi Hubao Co., Ltd.
6	Suning Public Welfare	Jiangsu Suning E-commerce Co., Ltd.
7	Bangbang Public Welfare	China Siyuan Foundation for Poverty Alleviation
8	Yeepay Public Welfare	Yeepay Co., Ltd.
9	China Network for Poverty Alleviation	Beijing Bangyiba Network Science and Technology Co., Ltd. (under the guidance of the Poverty Alleviation Office of State Council)

There are in total 21 online fund-raising information platforms as designated by Ministry of Civil Affairs.

2.6 Could Apportionment Be Made While Carrying out Fund-Raising Activities?

Article 32 of the Charity Law stipulates that those carrying out fund-raising activities are not permitted to engage in apportionment, nor can they obstruct public order, corporate production or the lives of the people.

This is not the first provision concerning apportionment. Article 4 of Law of Donation for Public Welfare provides that “Donations should be made on a voluntary and non-reimbursable basis. Any

forced apportionment or any covert act of apportion will be prohibited, and no one may engage in profit-making activities of any kind under the guise of charity.”

2.7 How to Deal with Acts That Obtain Financial Assets by Fraudulent Means in the Name of Charity?

Article 37 of the Charity Law stipulates that it is forbidden for any organization or individual to obtain financial assets and carry out fund-raising activities by fraudulent means (e.g. posing as a charitable organization). Obtaining financial assets by fraudulent means in the name of charity is in violation of the Law on Public Security Administration Punishments. Such behavior may warrant a criminal arrest according to the Criminal Law. The law enforcement authority for illegal acts is public security authority, rather than a Civil Affairs Department.

Article 107 states that, “public security authorities shall investigate and punish natural persons, legal persons or other organizations who illegally gain assets in the name of charity or disguised as charitable organizations”.

The Law on Public Security Administration states that anyone who obtains private or public property by fraudulent means shall be detained for more than 5 days but less than 10 days and fined less than RMB 500; if the case is serious, the person shall be detained for more than 10 days but less than 15 days and fined less than RMB 1,000.

Article 266 of the Criminal Law states that, “whoever swindles public or private money or property, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is greater, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; for the greatest offences, he shall be sentenced to fixed-term imprisonment of not less than 10 years to life imprisonment and shall also be fined or required to confiscate property.

Obtaining financial assets by fraudulent means in the name of charity applies to the legal provision above.

Concerning criminal liabilities, the Interpretation of Supreme People’s Court and Supreme People’s Procuratorate on Several Issues Concerning Specific Law Applications to Fraudulent Criminal Cases (effective as of April 8, 2011) states that:

“Anyone swindles public or private money or property worthy of over RMB 3,000 to RMB 10,000; RMB 30,000, RMB 100,000, and RMB 500,000, correspond to the three degrees of offences stated in Article 266 of Criminal Law”.

Violations of this sort are to be punished in accordance with Article 266 of Criminal Law

- ▶ Swindling funds and property for disaster relief, emergency rescue, flood prevention and control, support to disabled servicemen and families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief, and medical services;
- ▶ Swindling in the name of fund-raising for disaster relief.

2.8 What Legal Liabilities Should Be Assumed in the Case of Carrying Out Fund-raising Activities Illegally?

Article 101 of the Charity Law states that if any of the following situations occur in the process of fund-raising, the Civil Affairs Department shall give warning and/or order cessation of fund-raising activities. Unlawfully solicited assets shall be returned to the donor. Where there is difficulty in returning them, the Civil Affairs Department shall seize and transfer them to other charitable organizations and may impose a fine of between RMB 20,000 and 200,000 on the relevant organization or persons:

- (1) Conducting public fund-raising by organizations and individuals without public fund-raising qualifications;
- (2) Using false information or other methods to trick or coax fund-raising targets into making donations;
- (3) Overtly or covertly engaging in forcible apportionment;
- (4) Causing obstruction to the public order, corporate production or the lives of residents.

In accordance with Article 101 of the Charity Law, if radio broadcasters, television stations, newspapers, journals, network service providers, or telecommunications operators do not fulfill their verification duties (including verification of the registration certificates and public fund-raising certificates of charitable organizations), their respective managing departments shall give a warning and order deadlines for amendments. If no amendments are made by the deadline, a notice of criticism shall be issued and circulated.

Chapter VI Charitable Donations

1 Charitable Donations ABC

1.1 The Charitable, Voluntary, and Not-for-profit Nature of Charitable Donations

Article 34 of the Charity Law stipulates that, “charitable donations refer to the voluntary, non-compensated donation of property by natural persons, legal persons, or other organizations for charitable purposes.”

Accordingly, charitable donation have the following legal characteristics:

First, charitable donations serve charitable purposes. Article 3 of the Charity Law stipulates that, “charitable activities refer to the following public interest activities voluntarily carried out by natural persons, legal persons, and other organizations through the donation of property, the provision of services, or other means:

- (1) Helping the poor and the needy;
- (2) Assisting the elderly, orphans, the ill, the disabled, and providing special care;
- (3) Alleviating losses incurred by natural disasters, accidents, public health incidents, and other emergencies;
- (4) Promoting the development of education, science, culture, health, sports, and other causes;
- (5) Preventing and alleviating pollution and other public hazards, as well as protecting and improving the environment;
- (6) Other public welfare activities prescribed in the law.”

Donations made to conduct the abovementioned activities are all for charitable purposes. Donations for other purposes are not subject to the Charity Law. This difference will be elaborated in the next section.

Second, charitable donation are made voluntarily. It is the right of the donor to decide whether to donate, what and how much to donate, the means and duration of the donation, and to which charitable organization to give. For example, corporations can make adjustments on their equity donations when taking into account the stability of the stock price of a holding company, investor confidence, and capital controls. They can donate several times over multiple years rather than in a lump sum, and in the case that the voting right is separated from the holding right, they can choose to donate the non-voting stock and keep the voting-stock.

The Law of the People's Republic of China on Donations for Public Welfare, implemented on September 1, 1999, stipulates in Article 4 that, "donations shall be made voluntarily and not-for-profit. No forced or disguised apportionment is allowed for donations, and it is prohibited to carry out for-profit activities in the name of charity." Currently, most of the social organizations in China are supervised by administrative authorities. These authorities prohibit by law the apportionment of donations by way of administrative orders to individuals, units, or organizations.

Charitable organizations shall respect their donors' will and provide them sufficient flexibility in their giving.

Third, non-compensated charitable donations are a form of civil gift giving. This means that when a donor grants their property to a recipient, the recipient does not need to pay the corresponding fee for the property received. While some corporations make authentic donations to charity, others are merely investing in their public image—thinly-veiled commercial promotion with compensated sponsorships which do not qualify as charitable donations. Some may even receive commissions from recipients, a practice that runs against the non-profit spirit and is not allowed by law.

1.2 The Difference between Charitable Donations and Civil Gift Giving

Charitable donations fall under the category of civil gift giving, but are a special kind of it. The civil gift contract has five characteristics. First, the grant contract is a consensual one, formed as long as the parties concerned have a unanimous declaration of intention and it does not depend on the delivery of the donor's property. Second, the donor shall grant to the recipient their own property free of charge. Third, the grant contract is a property-transfer contract. Fourth, the grant contract is a unilateral contract; that said, a gift contract is not necessarily without any conditions or obligations, only that such obligations need not be delivered reciprocally against the grant. Thus, the donor in a grant contract does not have the right of simultaneous performance in the same way as the parties in a bilateral contract do. Fifth, the gift contract is an informal contract and does not require a written or otherwise special form. According to the Contract Law, a gift contract can be made in oral or written forms.

Charitable donations differ in the following aspects:

First, charitable donations serve the kind of charitable purposes found in Article 3 of the Charity Law. For example, during the LUO Er event in Shenzhen in November and December of 2016¹⁵², the reward given for LUO Er's article, Stop! LUO Yixiao, was over RMB 2,000,000. This reward is not a charitable donation, but rather as a kind of civil gift, as the donor was not giving to an unspecified target (as stipulated in Article 3 of the Charity Law), but rather to a specific one.

152. Please refer to <https://baike.so.com/doc/486141-24842308.html> for the whole LUO Er event (latest login on April 14, 2018 15:40)

Second, in addition to the donor and recipient, donations also involve a beneficiary, as all donations are a contract relation formed for the public welfare. The recipient is usually the beneficiary in civil gift giving activities, but they are not the ultimate beneficiary for donations.

Third, laws such as the Law on Donations for Public Welfare and the Charity Law apply first to charitable donations. If there is no provision in such laws, the Contract Law will apply. Civil gift giving shall only apply to the Contract Law.

1.3 Charitable Donations Can be Demanded for Specific Purposes

Charitable donations, as a special form of civil gift giving, also apply to the Contract Law if there is no special provision. The Contract Law stipulates the right for donors to rescind donations at will in Article 186 (1): “a donor can revoke the grant before the right to the property is transferred.” However, the Contract Law also stipulates that donors cannot revoke such gift contracts when they are related to causes such as disaster or poverty relief or are notarized grant contracts.

As charitable donations are meant to serve the public welfare, stricter stipulations for donors are necessary. Based on the Contract Law, the Charity Law outlines donor obligations under two important circumstances. The first is when a donor publicly promises to donate via media channels such as television, newspapers, magazines, and the Internet. The second is when property is used for causes such as poverty relief, financial aid, elderly support, orphan rescue, illness compensation, aid for the disabled, preferential treatment for entitled groups, and aid for emergencies like natural disasters, accidents, public health crises. In these circumstances, charitable organizations may claim for delivery if the property is not received by the date specified in the donation agreement.

Charitable donations are characterized by their voluntary nature. If the economic situation of a donor deteriorates after they publicly promise to donate or enter into a written agreement, requiring the performance of the donation would only worsen the situation and go against the voluntary character of charitable work. In such circumstances, the donor should be released from their obligations. Thus, the Charity Law stipulates that “if the economic situation of the donor deteriorates significantly after they publicly promise to donate or sign an donation agreement, after reporting to the local civil affairs authority and explaining the situation to the public, the donor may be released from their donation obligations.”

The Contract Law also has a similar stipulation, stating that “if a donor's economic situation has deteriorated significantly, thereby seriously impacting their professional or family life, they may be released from their donation obligations.” In order to preserve the integrity of charitable activities, the Charity Law requires donors to report to the local civil affairs authority at which the public promise was made or the donation agreement signed and explain the situation to the public. This is to subject donors to the supervision of both the government and the public.

1.4 Charity Donor's Conditional Rescission Right

There are different views on whether donors have the right to rescind property in the event of a breach of contract.

Some think that the donor has rescission rights.

According to Article ¹⁹² of the Contract Law, donors may rescind donations if the recipient fails to perform their obligations as stipulated in the gift contract. According to Article 58 of the Contract Law, "after the contract is invalid or rescinded, all property obtained under the contract shall be returned; if the property cannot be returned or a return is unnecessary, compensation shall be made at a fair price. The party at fault shall compensate the other party's loss. In a case where both parties are at fault, each party shall bear its corresponding liability." On this basis, if a recipient fails to perform their contractual obligations, donors may rescind their donations.

According to Article 42 (2) of the Charity Law, if recipient organizations misuse donated property in violation of their donation agreement, donors are entitled to request correction; donors may also report or complain to the Civil Affairs Department or bring forth prosecution to the people's court.

The abovementioned provisions emphasize that donors may resort to a administrative as well as a judicial remedy. It also secures a donor's rights, including the right of rescission. Thus, barring any legal prohibitions, donors have the right to rescission under the Contract Law.

Others think that donors do not have rescission rights.

While the Charity Law does not explicitly grant donors rescission rights, Article 28 of the Law on Donations for Public Welfare stipulates that if recipients change the nature or use of donated property without the consent of the donor, the people's government shall order a correction and issue a warning. If the recipient refuses to correct the error, after seeking the donor's consent, the people's government shall turn over the property to a public welfare organization with a similar purpose, or to a non-profit institution of welfare management. Thus, charitable donations and civil gifts are legally different. If a recipient violates a donation agreement, the donor can only choose between an administrative or judicial remedy (granted by the Charity Law and the Law on Donations for Public Welfare), but cannot request the return of their property. The purpose and use of donated property cannot be changed.

During the donation contract dispute between the United Moms Charity Association and the Lijiang Moms Charity Association from 2000 to 2002, the Yunnan High People's Court held that the Lijiang Intermediate People's Court failed to award the return of property based on the donor's right of rescission. The High Court thus ruled that the Lijiang Moms Charity Association return RMB 907,890 to the United Moms Charity Association, funds which were not used according to the latter's will.

Although there is no explicit judicial or legislative interpretation at present, the former application seems the most just.

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2.1 Are There Any Special Requirements for Charitable Organizations to Receive Donations?

In addition to other legal requirements, charitable organizations must pay attention to the compliance demands in the Charity Law concerning the reception of donations:

No.	Title	Compliance requirement
1	Legal property	The property donated should be legal property which the donor is entitled to dispose.
2	Donation receipt	The charitable organization shall issue a donation receipt under the supervision of the finance department to the donor after reception of their property.
3	Written donation agreement	The charitable organization shall sign a written donation agreement with the donor per the donor's request.
4	Interested party	When the donor and organization specify the use of the donated property, they shall not designate any interested parties (for example, those related the donor) as the beneficiary.
5	Tobacco products	No organization or individual is allowed to make use of charitable donations to promote tobacco products, nor are they allowed to promote legally forbidden products under the mantle of charitable donations.

It is necessary to explain what constitutes an interested party and define who a beneficiary is. An interested party is defined by the relationship between donor and beneficiary. For example, the close relatives of individual donors and employers and the affiliate organizations of corporate givers all fall into the definition of an interested party. The law does not allow such parties to be beneficiaries because it compromises the purpose of charity as such—it is tantamount to turning public welfare into private interest, and gives all the tax benefits to the donor, who isn't supposed to receive them.

2.2 How Can Charitable Organizations Sign Donation Agreements in Order to Protect Their Legitimate Rights and Interests?

Please refer to the template in Appendix 1-TK-8 Donation Agreement-Money/Property

2.3 What Should Corporations Pay Attention to When Making Donations?

According to the Notice by the Ministry of Finance on Improving the Financial Management of Corporate External Donations, promulgated in 2003, corporations have a lot to remain aware of. Although these are not Charity Law provisions per se, they are nonetheless very important. Below we chose some of the most frequent violations:

No.	Title	Compliance requirement
1	Voluntary and non-compensated	After making external donations, corporations should not require recipients to provide favors in financing, market access, or administrative license, a practice which would lead to unfair competition in the market.
2	Property prohibited for donation	The following kinds of property are not allowed to be donated externally: major fixed assets for corporate production and operation, equity (equity prohibitions have been abolished in the new regulations) obligations, national special reserves, state financial allocations, entrusted property, property with security interests, property with unclear ownership, and commodities that have been contaminated, damaged, expired, or scrapped.
3	Beneficiary cannot be interested party	The beneficiary of a corporate donation should be an organization outside of the corporation itself, disadvantaged groups, or individuals in society. Corporate donations shall not be made to its own employees or entities that have control over, or are in financial or operational relationships with, the donor.
4	Sponsorship fee is not donation	Sponsorship expenses incurred for promoting a corporation's public image and products shall be managed as advertisement fees.
5	Comply to the internal management procedure	For major external donations, state-owned and state-controlled enterprises shall submit a donation proposal to the employee representatives' congress for deliberation. They should also report to the state-owned capital holders for recording. Corporations shall act in accordance with the relevant provisions of the Company Law and the company's articles of incorporation.

It is recommended that every corporation regulate its external corporate donations responsibly so as to avoid any violation of laws or regulations.

Chapter VII Charitable Assets

1 About Charitable Assets

1.1 The Legal Nature and Financial Sources of Charitable Assets

The assets of charitable organizations differ from those of corporate legal persons in two fundamental ways. First, they fall under the legal persons of a charitable organization. Second, and for the following reasons, they're considered public:

	Assets of Corporate Legal Person	Assets of Charitable Organization
Source of Initial Funds	Shareholder's investment	Founder's donation and grant
Purpose	Profit-driven	Non-profit; public welfare
Profit Distribution	Distributable	Non-Distributable
Use	No limit	For charitable purposes according to the Articles of Association and the donation agreement
Right of Shareholder and Founder	Equity (shareholders' rights to economic benefits from the company and participation in its operation and management based on the shareholder's qualifications)	Do not reserve or enjoy any property rights

According to the Charity Law, the financial sources of a charitable organization's assets are the following:

- (1) Initial funds donated or provided by the founders;
- (2) Assets collected from fund-raising;
- (3) Other legal assets.

The "other" assets referenced in item (3) include:

- (1) Income gained from the government's purchase of services or from government funding;
- (2) Operational income, including maintenance and incremental income, interest income, and charity service income;
- (3) Other legal income (e.g. income from membership fees and commissions in cases where charitable organizations serve as trustees of funds).

1.2 Standards for the Annual Expenses and Management Fees of Charitable Organizations

According to Article 62 of the Accounting Rules for Non-governmental Non-profit Organizations, “fees” refer to economic interests deprived from a non-governmental non-profit organization’s net assets or outflow of services during regular business activities. Such fees can be divided into business activity costs, management fees, fund-raising fees, and others.

According to the above accounting system, management fees refer to the various costs incurred by non-governmental non-profit organizations in managing business activities. Such fees include the expenditures of the board of directors (or similar governing body), remuneration, bonuses, welfare, housing funds, housing subsidies, social security costs for administrative staff, salaries and subsidies for retirees, office rentals and associated costs, utilities, postal and telephone charges, property management fees, travel expenses, depreciation costs, repair fees, rental expenses, amortization expenses for intangible assets, loss of assets, asset inventory losses, losses due to asset impairment, losses due to estimated liabilities, fees for agencies, and assets to be repaid.

To specify the annual expenses and management fees needed for charitable organizations to improve and regulate their use of charitable property, the Ministry of Civil Affairs, Ministry of Finance, and State Administration of Taxation of the State Council formulated and promulgated their Regulations on the Annual Expenditures and Administrative Fees for Charitable Organizations to Carry Out Charitable Activities in 2016.

Charitable expenditures and management fees are as follows:

Category	Provisions
Charitable Activity Expenditures	<ol style="list-style-type: none">(1) Money and/or property given to the beneficiary or organizations for distribution to the beneficiary;(2) Remuneration given to staff responsible for implementing charitable services and projects, costs for the housing equipment, and supplies;(3) The costs for travel, transportation, traffic, conferences, audits, and evaluations for managing charity projects.
Management Fees	<ol style="list-style-type: none">(1) Working expenses of decision-making bodies like the board of directors;(2) Remuneration, bonus funds, housing funds, housing subsidies, and social security costs for administrative staff;(3) Costs for offices, utilities, postal and telephone charges, property management fees, travel expenses, depreciation costs, repair fees, rental expenses, amortization expenses for intangible assets, asset inventory loss, losses due to asset impairment, losses due to estimated liabilities, and fees for agencies.

Category	Provisions
Distribution in Each Activity	If certain expenses, business activities, or management activities cannot be classified properly, such expenses will be distributed to each activity accordingly. Charity-related, business-related, and management-related costs and fees are to be calculated separately.

The provisions concerning management fees in the Charity Law system do not include remuneration costs for staff running projects. In other words, the remuneration for staff assisting in charitable activities should be calculated as charity activity costs, whereas the remuneration of staff in other functions should be calculated as other business activity costs. Charitable organizations are in some ways granted more space to operate, without needing to worry much about their annual management fees exceeding their staff remunerations.

The Charity Law uses different standards for managing annual expenses and management fees for each kind of charitable organization. It is flexible in allowing donors to specify, in their donation agreements, the ratio of charitable activity expenditures to a given project's management fees.

1.3 Use of a Charitable Organization's Assets

According to Article 52 of the Charity Law, it is important for charitable organizations to note the following concerning their assets:

- (1) They shall be used in accordance with the Articles of Association;
- (2) They shall be used in accordance with the donation agreement;
- (3) They can only be used for charitable purposes;
- (4) They shall not be distributed;
- (5) Financial assets shall not be distributed privately, misappropriated, withheld, or embezzled.

If a charitable organization wishes to change the use of their assets, below is the procedure for doing so:

- (1) For assets gathered from public fund-raising, if a charitable organization needs to change the use of its donated property as specified by their fund-raising proposal, they shall report to the Civil Affairs Department to record it;
- (2) For other donated assets, if a charitable organization needs to change the purpose of its donated property as specified in their donation agreement, they shall seek the donor's consent.

1.4 Disposal of Remaining Property

There are two issues which must be addressed regarding the disposal of leftover property. The first is how to deal with donated property after a project is terminated. The second is how to deal with remaining property when a charitable organization is liquidated.

- (1) Upon the termination of a charitable project, any remaining donated property shall be disposed of in accordance with the fund-raising proposal or the donation agreement; where relevant provisions are not specified in the fund-raising proposal or donation agreement, charitable organizations shall use their remaining property in a charity project with a similar purpose and make a public announcement about it (Article 57 of the Charity Law).
- (2) After the liquidation of a charitable organization, any remaining property shall be transferred to a charitable organization with a similar purpose according to their Articles of Association; if it is not provided for in the Articles of Association, the Civil Affairs Department shall transfer the property to the charitable organization with a similar aim and announce this transfer to the public (Article 18 (3) of the Charity Law).

1.5 Preserving the Value of a Charitable Organization

One way for a charitable organization to increase its income is to invest its property. According to data from the China Foundation Centre, the income from investments by Tsinghua University Education Foundation in 2015 reached as high as RMB 357,090,000.

The Charity Law sets up two principles for charitable organizations to maintain and increase property values. One is to engage in “legitimate, safe and effective” investments. The second is to ensure “all income from investments shall be used for the purpose of charity”. That said, the Charity Law does not elaborate on what exactly constitutes legitimate, safe, and effective investments. Moreover, the Charity Law has two prohibitions. The first forbids assets provided by governments or received under a donation agreement from being invested. The second restricts the person-in-charge of a charitable organization from working part-time with or receiving remunerations from the enterprises in which their organization is invested.

In December 2017, the Ministry of Civil Affairs published its Interim Management Measures for the Investment Activity of Value Preservation of the Assets of Charitable Organizations (Draft for Comment), which regulated the principles, range, model, conditions, decision making procedures, risk control, supervision, and management of charitable organizations in their carrying out of investment activity. The value of these Measures is reflected in the idea that the safety of an asset is more important than the income from an investment.

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2.1 Operational Expenditures and Management Fees of Charitable Organizations

Concerning the different scales and organizational forms of charitable organizations, the Regulations on the Annual Expenditures and Management Fees for Charitable Organizations to Carry Out Charitable Activities has defined four types of annual costs for foundations, social bodies, and social service institutions, each with different public fund-raising qualifications:

Organization Form	Standard		The Ratio of Charitable Activity Expenditures to net assets by end of last year	Management fees/total expenditures
Foundations with Charitable Organization Attribute	With public fund-raising qualification		≥70% (total income of last year or average income of the past three years)	≤10%
	Without public fund-raising qualifications (net assets by the end of last year or average net asset X by the end of the past three years)	X ≥ 60 million	≥6%	≤12%
		8 million ≤ X < 60 million	≥6%	≤13%
		4 million ≤ X < 8 million	≥7%	≤15%
	X < 4 million	≥8%	≤20%	
Social Bodies with the Nature of Charitable Organizations	With public fund-raising qualifications		≥70% (total income of last year or average income of the past three years)	≤13%
	Without public fund-raising qualifications (net assets by the end of last year or average net asset X by the end of the past three years)	X ≥ 10 million	≥6%	≤13%
		5 million ≤ X < 10 million	≥7%	≤14%
		1 million ≤ X < 5 million	≥8%	≤15%
	X < 1 million	X ≥ 8% and (total income of last year or average income of the past three years) ≥ 50%	≤20%	
Annual management fees < 200 K				Need not apply the above provisions to management fees

Due to the difficulties involved in meeting the annual management fee requirements, there are three circumstances which require both timely reporting to department administrations and full public disclosure:

- (1) A charitable organization has not yet been registered or certified for a full year, nor has carried out charitable activities to full capacity;
- (2) A charitable organization's depreciation costs, amortization expenses for intangible assets, asset inventory loss, and losses due to increasing asset value impairment;
- (3) A charitable organization's losses due to a sudden increase in liabilities.

2.2 What to Do and Not Do to Preserve and Increase the Value of an Organization's Assets

Concerning the method for preserving and increasing the value of a charitable organizations' assets, the Charity Law only prescribes so-called "legitimate, safe and effective"¹⁵³ investments, without elaborating on the details of what that means. The (Trial) Provisions on Regulating the Behavior of Foundations draws on the provisions concerning value preservation (e.g. the assets for investment are limited to non-restrictive assets and restrictive assets which do not require allocation during investment). Foundations shall entrust banks or other financial institutions with managing their investments.

In December 2017, the Ministry of Civil Affairs promulgated their Interim Measures for the Investment Activity of Value Preservation of the Assets of Charitable Organizations (Draft for Comment), which describes three investment methods beside liquid savings and equity donations¹⁵⁴:

Investment Method	Requirement	Explanation
To buy finance products, bonds, and trust products directly	1. The finance products are limited to those with the lowest level of independent risk rating, i.e. Level 1 or 2	Since there are no uniform standards for risk ratings for financial products, each bank has adopted different rating symbols, i.e. R1 to R5, No. 1 to 5, and the Chinese characters from One to Five, all of which indicate that banks have five levels of risk ratings arranged from low to high.
	2. Bonds are limited to national debt and other government bonds, open bank bonds, AAA corporate (company) bonds, and financial bonds as assessed by credit rating agencies; investment in green bonds is encouraged.	Green bonds refer to any bond instruments that use the yields exclusively to finance eligible green projects or to refinance said projects.

153. Article 54 of the Charity Law

154. The Interim Measures for the Management of charitable organization's Value Maintenance and Increment Investment was not officially promulgated by the time this chapter was drafted. Thus, this chapter is based on the version for public review and is only for reference and not for practical guidance.

Investment Method	Requirement	Explanation
	3. Trust products are limited to the fund trust plan and the single fund trust plan specially designed and issued for charitable organizations. The credit rating shall not be lower than A or shall be equivalent to A by domestic credit rating agencies.	According to the use of trust assets, trusts may be divided into financing trusts and investment trusts. Unlike investment trusts which are in equity relationships with the demand parties, financing trusts generate debt and creditor relationships and their risk is relatively low.
To entrust professional investment management institutions to manage and operate assets	<p>1. Financial institutions registered in China and approved by the financial supervision and administration authority under the State Council, with corresponding business qualifications;</p> <p>2. The net assets of such financial institutions are not less than 50% of paid-in capital;</p> <p>3. Such financial institutions have more than 3 years of experience in investment management in China and a reputation for stable investment performance. They cannot have any major violations in the past three years.</p>	
To carry out equity investment related to the purpose and business scope of the charitable organization	Charitable organizations are not allowed to carry out equity investments which have nothing to do with their purpose or business scope.	

The Interim Measures for the Investment Activity of Value Preservation of the Assets of Charitable Organization (Draft for Comment) prohibits 12 investments activities:

- (1) Savings in non-bank financial institutions;
- (2) Direct investment in secondary market stocks;
- (3) Investment in personal insurance products;
- (4) Investment in futures, options, forwards, swaps, and other financial derivative products, except for purposes of hedging against risk;
- (5) Investments without stable cash flow return expectations or value-added assets;
- (6) Direct loans to individuals or enterprises not related to the purpose of the charitable organization or the activities that are specified in its business scope;
- (7) Unlawful guarantees, mortgages, and use of financial assets for pledges unrelated to the purpose of the activities specified in the organization's business scope;

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- (8) Convert into equity or sell the financial assets of a charitable organization at a low price that is self-evidently unfair;
 - (9) Investment in high-pollution projects that do not comply with national industrial policies;
 - (10) Investments that may impose unlimited liabilities on the charitable organization;
 - (11) Investments that may damage its credibility;
 - (12) Participation in other activities prohibited by national laws and regulations such as illegal fund-raising.

As charitable organizations differ in form, scale, and management capacity, the same investment may have different effects from one to another. For this reason, the Interim Measures for the Investment Activity of Value Preservation of the Assets of Charitable Organizations (Draft for Comment) stresses the importance of establishing internal systems for investment accountability purposes. The creation of an asset management system that matches investment activities, makes clear investment decision making procedures, decentralizes power, authorization, isolation, and avoidance systems, and subjects them to societal supervision is also required.

Charitable organizations' investments should focus on preventing concentrated risk. When investing in equity and fixed income assets, the amount of a single investment project should not exceed 30% of the organization's total assets. The standards for major investments should be specified explicitly in the Articles of Association. Apart from liquid savings, major investments include those of a single type or with an individual investment management agency which comprise over 5% of an organization's total assets, and those making up less than 5% of the total assets but which generate significant impact on the organization.

Chapter VIII Charitable Services

1 Charitable Services ABC

1.1 Charitable Services Are Not Necessarily Provided for Free

There are two main steps in operating a charitable activity. The first is to mobilize resources in the form of donations and fund-raising; the second is the redistribution of charitable resources, derived from the rendering of charity-related services.

Charitable services refer to uncompensated volunteer services and other non-profit services given to society for charitable purposes. They are provided by charitable or other organizations or individuals, according to Article 61 (1) in the Charity Law. Charitable services are classified into free services, voluntary services, and other non-profit services; however, the Law stops short of specifying what exactly the “other non-profit services” are.

According to Article 2 of the Regulations on Volunteer Services¹⁵⁵, volunteer services are public welfare services that volunteers, volunteer service organizations, and other organizations provide to the public free of charge and for the sake of the public good. Three basic features characterize “uncompensated volunteer services” as set out in the Charity Law. The Law describes charitable services in an eight-chapter article, with seven of those chapters focusing on the institutional framework for uncompensated volunteer services. The law provides rules concerning volunteer recruitment and registration, management and training, voluntary service records, and the issuance of certificates for volunteer work. It also guarantees personal safety and protects the legitimate rights and interests of both charitable organizations and volunteers.

Uncompensated volunteer services are the most common charitable activity. In addition to uncompensated volunteer services, compensated non-profit services are also a common form of charitable service.

Non-profit services refer to services that charitable and other organizations and individuals provide not-for-profit. Considering that charitable services are provided at a cost, organizations and individuals who provide such services should be allowed to charge beneficiaries low service fees, the surplus of which must be reused for a charitable purpose if they are to maintain their “non-profit” status. For example, a social service agency that provides professional rehabilitation training and counseling for autistic children and their families raises funds through service charges and social donations. The income is used to pay wages and salaries, welfare expenses, and other agency-related expenditures. The surplus and its yield are not distributed. The agency not only

¹⁵⁵ *Regulations on Volunteer Services, which was issued by the State Council on August 22, 2017 and came into force on December 1, 2017*

enables autistic children to receive professional treatment, but also helps relieve the burden on their families. The agency's services allow it to stay afloat without needing to rely on fund-raising or social donations, thus ensuring financial sustainability.

1.2 Charitable Services Should Adopt Standardized Management

Charitable services cover a wide range of fields, such as education, science and technology, culture, health, sports, and environmental protection. Some services are so specialized that providers must be highly skilled and comply with relevant standards set by the State or industry organizations.

When carrying out charitable services involving specialized skills, such as medical rehabilitation and educational training, standards and procedures established by the State or an industry organization shall be followed, according to Article 63 (1) in the Charity Law. China is seeing a growing number of social service organizations in increasingly diversified and specialized fields. Their service quality, however, varies greatly, especially in fields such as medical rehabilitation, education and educational training, and disabled care, where mistakes can cause irreparable harm. For this reason, it is necessary to develop and implement national or industry-wide standards for all such professional services. For example, charitable services should be required to comply with all relevant national and industry standards in the carrying out of their work. This is to ensure providers, personnel, and venues provide beneficiaries with fully compliant services.

When charitable organizations recruit volunteers to carry out services that require specialized skills, they shall provide relevant training for volunteers, according to Article 63 (2) in the Charity Law. Moreover, Article 67 stipulates that volunteers participating in charitable services shall be subject to the management of the responsible charitable organization and accept necessary training. When arranging volunteers to render professional services, charitable organizations shall regard recruited volunteers as having responsibilities similar to those of their own staff. This demands that volunteers either have professional skills or are willing to participate in training activities to ensure that high-quality services are delivered.

1.3 Volunteers' Participation in Voluntary Services Should Be Regulated

Articles 62-68 of the Charity Law provide rules for the recruitment and registration of volunteers and their participation in charitable services. In recruiting volunteers, charitable organizations shall disclose relevant information and conduct real-name registration. Specifically, they shall publicly disclose all information related to their charitable services and inform volunteers of any risks they might encounter during their service time. Organizations must register the real names of their volunteers, record the amount of time they volunteered, and perform an appraisal of the volunteers' services. For the real-name registration of volunteers, Article 19 of the Regulations on Volunteer Services stipulates that volunteers' personal information, voluntary services, training, commendations and rewards, and appraisal shall be recorded in a designated voluntary service

information system. In terms of volunteer management, charitable organizations should arrange services appropriate to the physical conditions and professional expertise of their volunteers. Meanwhile, volunteers should be given professional training as needed, in order to improve their service skills. Unfortunately, there have been many incidents involving volunteer injuries during the provision of services. To better protect the personal safety of volunteers, Article 68 of the Charity Law stipulates that charitable organizations shall provide volunteers with safe working conditions and protect their legal rights and interests. Before charitable organizations arrange for volunteers to participate in charitable services where personal injuries might occur, they shall purchase personal injury insurance on their behalf.

1.4 Charitable Organizations Shall Bear Strict Liability for Charitable Services^{xii}

According to Article 106 of the Charity Law, when beneficiaries or third parties suffer harm caused by the negligence of charitable organizations or volunteers while performing services, the organization bears responsibility for damages. When harm is intentionally caused by volunteers, the charitable organization under which they are volunteering may seek damages from them. When volunteers suffer harm caused by the negligence of charitable organizations during the provision of services, the organization bears responsibility for all damages. Finally, when harm is caused by *force majeure*, the charitable organization shall give appropriate subsidies. Tort liability shall be assumed both externally and internally when beneficiaries or third parties suffer damages in the carrying out of services. That means a charitable organization shall bear strict liability externally and share responsibility with the volunteer concerned, the latter being based on fault liability^{xiii} and supplemented by fair liability^{xiv}.

a) Liability for Harm Caused by the Acts of Charitable Organizations or Volunteers to Beneficiaries or Third Parties

There are two circumstances where charitable services cause damage to beneficiaries or third parties:

(1) A charitable organization shall assume tort liability when its legal representative, responsible person or employee (full-time or contracted) causes damages to a beneficiary or third party during the performance of their duties. This liability stems from the principle of strict liability on the employer's part in China's tort liability system. Article 34 (1) of the Tort Liability Law¹⁵⁶ states that if an employee causes damages to another in the carrying out of a work task, the employing organization shall bear tort liability. Article 8 of the Supreme People's Court's Interpretation on the Application of the Law on the Trial of Cases on Compensation for Personal Injury¹⁵⁷ stipulates that

156. Tort Liability Law of the People's Republic of China, which was adopted at the 12th Meeting of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on December 26, 2009 and came into force on July 1, 2010.

157. Interpretation of the Supreme People's Court of Several Issues Concerning the Application of the Law on the Trial of Cases on Compensation for Personal Injury, which was adopted at the 129th Meeting of the Judicial Committee of the Supreme People's Court on December 4, 2003 and came into force on May 1, 2004.

when a legal representative, responsible person, or employee of a legal person or organization causes injury to another in the performance of duties, the legal person or organization shall bear civil liabilities. Article 9 of the Interpretation states that when an employee causes injury to another when carrying out an employment activity, the employer shall bear compensation liabilities. If an employee, intentionally or negligently, causes injury, the employee shall bear joint compensation liabilities along with the employer. A charitable organization may, when bearing joint compensation liability, claim compensation from its employee. The above legal provision and judicial interpretation impose liability without fault upon the employer. The legal representative, responsible person, or employee of a charitable organization shall carry out their work by following the instructions of the organization. Thus, a charitable organization cannot exempt itself from liability merely by proving that it has fulfilled its corresponding obligations in selection or supervision. This safeguards the rights and interests of beneficiaries and incentivizes charitable organizations to strengthen employee management.

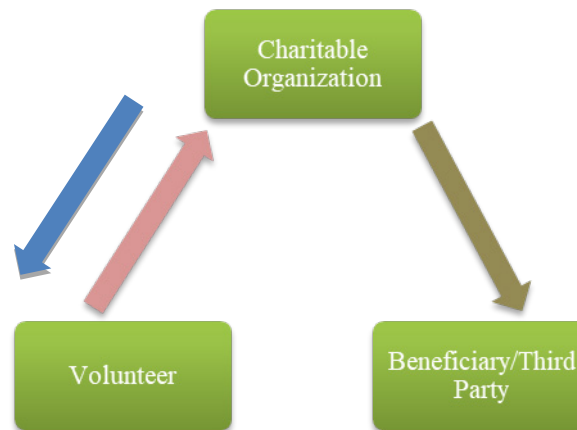
(2) A charitable organization shall bear tort liability when a volunteer causes damages to a beneficiary or third party during the rendering of services. Volunteers are not employees of charitable organizations, which means the organizations do not need to pay them for their services. That said, volunteers can sign volunteer agreements with organizations to define their rights and obligations, service time, and the duties of both parties. Volunteers should abide by the management and arrangements of the charitable organizations the wish to serve, receive training when needed, and provide services according to the organization's instructions. Thus, charitable organizations shall bear tort liability for damages caused to beneficiaries or third parties when volunteers perform voluntary services. If volunteers are exempt from liability, however, this may prevent them from acting cautiously in their carrying out of services, and potentially increase the burden on the organization. To hedge against this, the Charity Law grants charitable organizations the right to claim compensation from volunteers who have, intentionally or negligently, caused damages.

b) Liability for Damage Suffered by Volunteers Participating in Charitable Services

According to Article 106 of the Charity Law, when volunteers suffer harm caused by the negligence of charitable organizations, the organization shall bear compensation liabilities. Participants in voluntary service activities include charitable organizations, volunteers, beneficiaries, and third parties. If a beneficiary or third party infringes upon the legitimate rights and interests of a volunteer, and the charitable organization is not at fault, the volunteer in question may request that the beneficiary or third party assume the liability for compensation. In this case, the charitable organization shall not be liable for the infringement. Thus, the key consideration is how to determine if a charitable organization is not at fault. To protect volunteers' personal and material safety, the Charity Law requires charitable organizations to inform volunteers of potential risks during recruitment and only arrange work appropriate to the physical conditions, education level, and skills of each volunteer. If a charitable organization arranges for volunteers to participate in charitable services where personal injury might occur, the organization shall purchase

appropriate personal injury insurance for them. If a charitable organization fails to perform the aforementioned legal obligations, it may be considered at fault.

The Charity Law explicitly requires charitable organizations to give subsidies (not compensation) to volunteers when the damages suffered were caused *force majeure*¹⁵⁸. As volunteers provide uncompensated public welfare services, charitable organizations shall, for the sake of social equity and if financially feasible, compensate for losses that volunteers suffer; this despite the lack of financial liability on the part of the charitable organization and the damage suffered having been caused *force majeure*.



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2.1 Compliance Risk Points from Charitable Services

Charitable services are classified by resource into independent charitable services and undertaken charitable services. These two charitable services are different in terms of where and how they are accessed and rendered. Their potential compliance risk points are analyzed below based on the timeline of service provision.

158. According to Article 180 of the General Rules of the Civil Law, “*force majeure*” means an unforeseeable, unavoidable, and unconquerable situation.

	Preliminary Communication	Signing of a Written Agreement	Provision of Charitable Services	Conclusion of Charitable Services
Independent Charitable Service	<ol style="list-style-type: none"> 1. Discuss service fees (if any); 2. Specify the service content and payment method; 3. Avoid delivering core service content or core product information before signing a written contract; 4. Sign a confidentiality agreement before signing a formal contract as needed. 	<ol style="list-style-type: none"> 1. Stipulate contract terms concerning the rights and obligations of both parties, liability for breach of contract, and jurisdiction for dispute resolution between the service provider and service recipient; 2. Avoid using highly specialized terminology or vague industry-specific expressions in specifying the content of services or products to be delivered, because this will cause the buyer and seller to have different expectations for the delivery of products or services. 	<ol style="list-style-type: none"> 1. Provide charitable services as agreed and collect/pay service fees (if any); 2. Use communication methods agreed upon in the contract for all communications during the performance of the contract; 3. Add stipulations in writing, such as adjustments to products or services and changes in delivery time. 	<ol style="list-style-type: none"> 1. Settle service fees; 2. Ensure that the acceptance of deliverables is documented.
Undertaken Charitable Service	<ol style="list-style-type: none"> 1. Register to bid; 2. Estimate the project fund, cycle, and content; 3. Ensure that there is sufficient communication between project personnel and financial personnel during budgeting; 4. Avoid including items that are uncertain or whose expenses cannot be reflected in the accounts of the project content. 	<ol style="list-style-type: none"> 1. Confirm core provisions of significant interest, as a format contract template is usually provided; 2. Identify items that may have significant risks; 3. Ensure that a time limit is set for assessment or acceptance if such is a precondition for the payment. 	<ol style="list-style-type: none"> 1. Carry out the project as planned and report how money was spent and how well the project went in the view of its sponsors; 2. Perform interim project assessment in accordance with sponsors' criteria. 	<ol style="list-style-type: none"> 1. Arrange for project closing and perform final assessment; 2. Check how money was spent; 3. Make public how the services were performed and their results, insofar as no privacy concerns are breached.

2.2 Volunteer Compliance Management Process

The rights and obligations stipulated by the Charity Law and Regulations on Volunteer Services for charitable organizations and volunteers are specified below based on the time from volunteer recruitment to the conclusion of voluntary services.

	1. Recruitment	2. Contract Signing	3. Preparation	4. Participation in Voluntary Services	5. Conclusion of Voluntary Services
Charitable Organization	<ul style="list-style-type: none"> Publicly announce all information related to charitable services and inform volunteers of any risks they might encounter during the provision of services; Define the eligibility conditions of volunteers; Remember not to replace employee recruitment with volunteer recruitment. 	<ul style="list-style-type: none"> Clearly define the rights and obligations of both parties and stipulate the content, methods, time, location, working conditions, and safety measures of voluntary services; Purchase appropriate personal accidental injury insurance as needed. 	<ul style="list-style-type: none"> Register the real name of each volunteer; Carry out necessary training activities; Only arrange charitable services appropriate to the age, education level, skills, and physical condition of each volunteer; Do not collect remuneration from the recipients of voluntary services. 	<ul style="list-style-type: none"> Truthfully record volunteers' basic personal information, voluntary services, training, commendations and rewards, appraisal, and other information in a voluntary service information system in accordance with universal standards. 	<ul style="list-style-type: none"> Respect the personal dignity of volunteers and do not make public or otherwise disclose information related to volunteers without their consent. Issue truthful certificates of voluntary work free of charge upon request.
Volunteer	<ul style="list-style-type: none"> Register basic personal information such as identity information, service skills, service time, and contact information with the voluntary service information system prior to recruitment. 	<ul style="list-style-type: none"> Never sign a volunteer service agreement with a charitable organization if you think you are its employee; Clearly define the rights and obligations of both parties and stipulate the content, methods, time, location, working conditions, and safety measures of voluntary services; Purchase appropriate personal injury insurance as needed. 	<ul style="list-style-type: none"> Fully understand the content of activities arranged and the nature of the work assigned by a charitable organization; Respect management and undergo training as needed. 	<ul style="list-style-type: none"> Respect management and provide voluntary services as agreed; Promptly inform voluntary service organizations or the recipients of voluntary services if the provision of such services becomes impossible or untenable; Do not collect remuneration from the recipients of voluntary services. 	<ul style="list-style-type: none"> Ask charitable organizations to issue certificates of voluntary work free of charge.

2.3 Files Frequently Used for Volunteer Management

a) Certificate of Voluntary Service

志愿服务记录证明
(Certificate of Voluntary Service)

编号 (No.):

志愿者信息 (Information of Volunteer)	姓名 (Name)			
	志愿者编号 (Volunteer No.)			
	身份证件类型 (Type of ID)	内地居民 身份证	证件号码 (ID No.)	
志愿服务时间 (Volunteer Service Time)	7.5 小时			
志愿服务内容 (Volunteer Service Content)				
其他需要说明的 事项 (Other Information)	是否有附件? 是 <input type="checkbox"/> 否 <input type="checkbox"/> (With Attachment or Not? Yes <input type="checkbox"/> No <input type="checkbox"/>			
单位负责人 (Signed by):				

注: 1.证明单位有志愿服务标识的,可置于证明右上角。
2.其他需要说明的事项可填写志愿者参加的志愿服务活动,相关培训及获得表彰奖励等信息。

经办人 (Handled by): _____
联系电话 (Contact Phone Number): _____

2017年02月26日

b) Voluntary Service Information Form (template)

The Voluntary Service Information Form (template) can be found in Appendix 1 - TK 10.

c) Voluntary Service Agreement (template)

The Voluntary Service Agreement (template) can be found in Appendix 1 - TK 11.

Chapter IX Charitable Trusts

1 Charitable Trusts ABC

1.1 Charitable Trusts - A Type of Trust

The Trust Law was released in 2001, prior to the promulgation of the Charity Law. It was intended to deal with “public trust^{xvii}” cases, discussion of which formed the substance of Chapter 6 of the Trust Law. However, since its conception in 2001, until at the least the promulgation of the Charity Law, there have been relatively few such cases. There are two main reasons why. One is that a competent authority had not been confirmed¹⁵⁹, thus making the process of registering public trusts too vague. The other concerned taxes, given that no tax information is stipulated in the Trust Law. These reasons (especially the first one) explain why the past 15 years only saw the creation of a few public trusts.

In Chapter 5, “charitable trusts” as described in the Charity Law are defined, their legal status clarified, and their various models described. Following the promulgation of the Charity Law, the Circular of the Ministry of Civil Affairs and the China Banking Regulatory Commission on Work Related to the Recording of Charitable Trusts (hereinafter referred to as “Circular on the Recording of Charitable Trusts”) were released on August 25, 2016. A little less than a year later, on July 26, 2016, the China Banking Regulatory Commission (CBRC) and the Ministry of Civil Affairs jointly issued their Administrative Measures for Charitable Trusts. These documents helped establish a regulatory system for charitable trusts in China.

(1) Relationship between Charitable Trusts and Public Trusts

A public trust is a trust established for the public interest, according to Article 60 of the Trust Law. Charitable trusts are a way of acting for the public good through trusts.

Article 44 of the Charity Law states that charitable trusts are public trusts in that they involve trustors^{xvii} entrusting their assets to a trustee^{xviii} for charitable purposes. The trustee, in accordance with the wishes of the trustor, manages the use of assets in the carrying out of charitable activities.

According to the definitions of “public trust” in the Trust Law and “charitable trust” in the Charity Law, the two concepts are substantially the same. The Charity Law only adds that charitable trusts belong to the category of public trusts. The Charity Law states it shall defer to relevant provisions

159. The Trust Law stipulates that “The establishment of a public trust and the appointment of trustees shall be subject to the approval of the regulatory agency of relevant public undertakings (hereinafter referred to as regulatory agency of public undertakings). One must not conduct activities in the name of public trust without the approval of the regulatory agency of public undertakings.” However, no document has explained the “regulatory agency of public undertakings”.

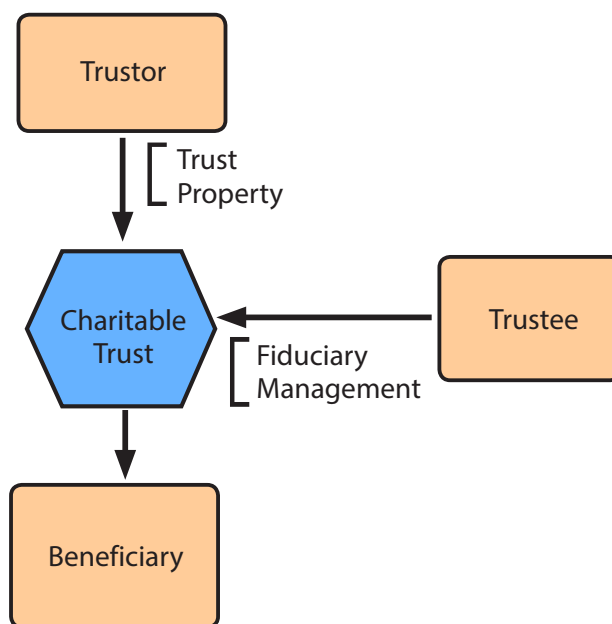
of the Trust Law wherever matters concerning charitable trusts are not covered adequately. The equivocation of charitable trusts with public trusts helps link the Charity Law with the Trust Law and clarify the two concepts.

Concerning the design of the law, charitable trusts in the Charity Law are more specific and operable compared with those in the Trust Law. For example, establishing charitable trusts no longer requires the appointment of supervisors, thus simplifying the process of information disclosure. The Circular on the Recording of Charitable Trusts and the Administrative Measures for Charitable Trusts have clarified both the charitable trust establishment process and the approach to the management of charitable trusts by trustees.

Thus, this Handbook does not differentiate between public trusts and charitable trusts. Unless otherwise specified, the description of charitable trusts is also applicable to public trusts.

(2) Concept of Charitable Trusts

According to provisions of the Trust Law¹⁶⁰, trust refers to an act in which the trustor, based on confidence in the trustee, entrusts certain property rights to the trustee to manage in accordance with the intentions of the trustor and needs of the beneficiaries^{xix}. The general structure of a charitable trust is shown below:



The Trust Law covers civil trusts, business trusts, and public trusts. Business trusts have flourished since the release of the Trust Law. Trust companies mainly use trusts for purposes of assembling fund trust plans. The CBSC issued its Administrative Measures for Trust Companies' Trust Plans of Assembled Funds in 2009, making trust plans an important financial product.

160. Article 2 of the Trust Law

Trusts can be classified into public trusts and private trusts, based on whether they are for the benefit of specific individuals. General trust plans and testamentary trusts for children and families belong to private trusts.

Article 44 of the Charity Law stipulates that, “charitable trusts referred to in the law are public trusts and refer to trustors lawfully entrusting their assets to a trustee for charitable purposes and the trustee, in accordance with the wishes of the trustors, managing and disposing of the assets in its own name for the trustors to carry out charitable activities.” The qualities of charitable trusts that distinguish them from private trusts are as follows:

a. Established for a Charitable Purpose

According to the relevant provision in the Charity Law¹⁶¹, a charitable purpose refers to public interest activities voluntarily carried out by natural persons, legal persons or organizations through the donation of property, the provision of services, or other means:

- (1) Helping the poor and needy;
- (2) Assisting the elderly, orphaned, sick, and disabled, and providing special care;
- (3) Alleviating losses incurred by natural disasters, accidents, public health incidents, and other emergencies;
- (4) Promoting the development of education, science, culture, health, sports, and other causes;
- (5) Preventing and alleviating pollution and other public hazards, and protecting and improving the natural environment;
- (6) Other public welfare activities as prescribed in the Charity Law.

Article 7 of the Administrative Measures for Charitable Trusts reinforces this point, that a charitable trust shall be established for legit purposes. Trusts established for the purpose of carrying out charitable activities are to be categorized as charitable trusts.

Thus, the setting up of charitable trusts for the purpose of serving public interests is their most important feature. The term “public interest” differs from “private interest” in that it refers to the interests of non-specific groups. As charitable trusts are established for charitable purposes, trust assets and the proceeds thereof must be used for charitable purposes.

b. Beneficiaries of Charitable Trusts Must be Non-specific

Non-specific beneficiaries are another important feature of charitable trusts, a quality that differentiates them from other trusts. Charitable trust contracts only stipulate the qualifications

161. Article 3 of the Charity Law

and scope of the beneficiaries, while the beneficiaries themselves shall be determined by the trustee. In this way, all such trusts will operate effectively.

c. All Assets and Proceeds of Charitable Trusts Must be Used for Charitable Purposes

Although self-evident, it is important that charitable trusts be used for the purpose they were created. The Trust Law also states that “the property of a public trust and its proceeds must not be used for non-public purposes”.

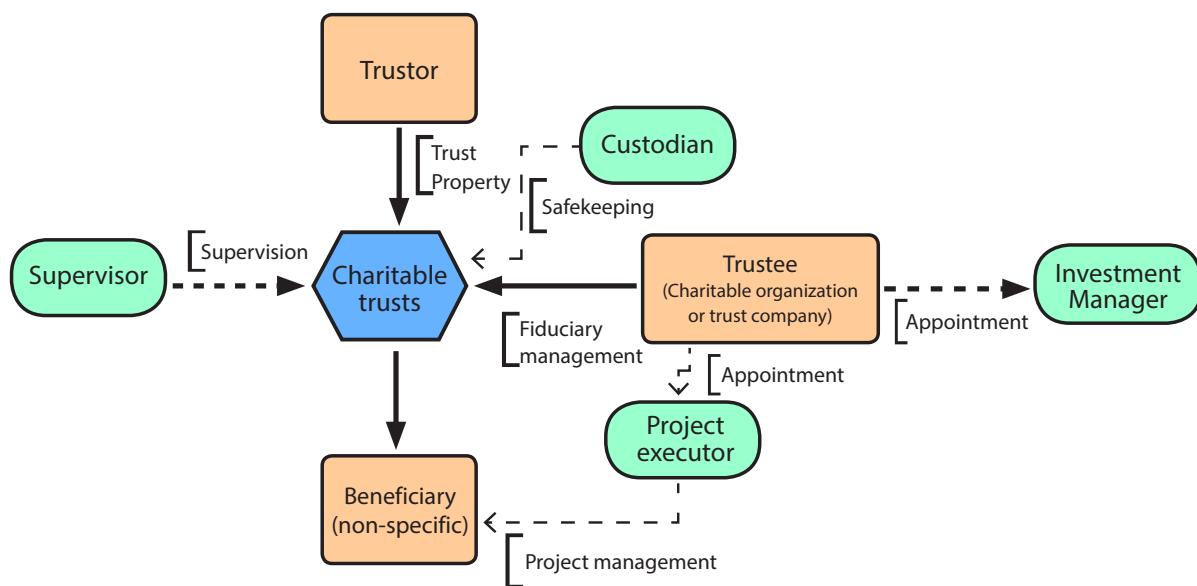
d. The Trustee Must be Specified

The Charity Law clearly stipulates that the trustee of a charitable trust can only be a charitable organization or trust company. There are no restrictions on who can serve as trustees in civil trusts; however, in commercial trusts, they are limited to trust companies. Due to the particularities of charitable trusts, trustees can be charitable organizations or trust companies. Currently, charitable organizations and trust companies oftentimes work together for the best interests of the charitable trusts they are charged with managing.

1.2 Operation of a Charitable Trust

(1) Composition of a Charitable Trust

Charitable trusts are comprised of trustors, trustees, and beneficiaries. They sometimes also include supervisors, custodians, public welfare project executors, investment managers, and other related parties.



Remarks: A solid arrow standards for a mandatory participant while a dotted arrow indicates a possible related party.

a. Trustor of a Charitable Trust

The trustor of a charitable trust shall be a natural or legal person with full civil capacity, or a legally established organization, according to the Administrative Measures for Charitable Trusts. Neither the Charity Law nor the Administrative Measures for Charitable Trusts, however, imposes limits on the number of trustors or the amount of trust property.

[Statutory rights of a trustor] According to provisions of the Charity Law and the Administrative Measures for Charitable Trusts, the statutory rights of a trustor include:

- i. Selection of a trustee. The trustee of a charitable trust may be a trusted charitable organization or trust company confirmed by the trustor;
- ii. Changing of a trustee. If the trustee of a charitable trust violates their fiduciary duty, or is incapable of performing their duties (for example, due to the trustee disbanding, losing their legal qualifications, being lawfully revoked, or declaring bankruptcy), the trustor may change the trustee;
- iii. Remain informed about their trust. The trustee of a charitable trust shall, in accordance with trust documents and upon request, report to the trustor in a timely manner the status of the trust and how the trust's property is being managed and used;
- iv. Selection of a trust supervisor. The trustor of a charitable trust may choose a trust supervisor. Any such supervisor must report to the trustor as needed;
- v. Confidentiality. The personal details, such as the name, designation, address, and contact method, of a trustor shall not be made public if the trustor does not consent to its disclosure.

[Statutory obligations of the trustor] According to provisions of the Charity Law and the Administrative Measures for Charitable Trusts, the statutory obligations of the trustor include:

- ▶ Guarantee that the sources of its entrusted property are compliant. Institutional trustors shall entrust trust property only with the approval of a relevant authority and with the assurance that their property was obtained lawfully. Individual trustors shall ensure the legality of the sources of their entrusted trust property.
- ▶ Transfer the ownership of trust property to the trustee in accordance with a trust contract. Such contracts are necessary for the operation of a trust;
- ▶ Never use their association to harm the interests of charitable trusts or public interests. Relevant transactions shall be made public and the trustor is not to designate as a beneficiary any whose interests are related to the trustor or trustee.

In addition to the above statutory rights and obligations, the trustor of a charitable trust may specify other rights and obligations as needed in the trust contract.

b. Trustee of a Charitable Trust

Trustees play an important role in charitable trusts. A trustee can only be a charitable organization or trust company. The former is a legal person registered or recognized as a charitable organization in accordance with the provisions of the Charity Law and the Measures for the Accreditation of Charitable Organizations. The latter is a professional financial institution that is approved by the CBRC and currently working with trusts.

[Difference between charitable organizations and trust companies] Charitable organizations and trust companies differ from each other in their role as trustees:

- ▶ As mentioned above, these two types of institutions are legal persons with different legal standing;
- ▶ They are managed by different regulators. If a trust company acts as the trustee of a charitable trust, it is supervised by the Civil Affairs Department and the CBRC. If a charitable organization acts as the trustee of a charitable trust, it is likewise supervised by the Civil Affairs Department, but under a different division;
- ▶ Both have their own advantages. Charitable organizations are superior in the implementation of charitable projects and accruing social influence, while trust companies perform better in asset management. Therefore, trust companies are usually employed as investment managers for charitable trusts, whereas charitable organizations typically serve as trustees. Non-profit organizations are generally employed as project executors in situations where trust companies are serving as trustees.

[Rights of a trustee] The quintessential right of a trustee is the ownership of trust property, transferred to them by the trustee. Neither the Charity Law nor the Administrative Measures for Charitable Trusts explicitly state that trustees can obtain trust management fees; however, in practice trust management fees are usually specified in trust contracts.

[Obligations of a trustee] According to the Charity Law and the Administrative Measures for Charitable Trusts, the statutory obligations of the trustee include:

- ▶ Applying for the recording of charitable trusts. The trustee shall, within seven days from the date of signing a charitable trust document, report to the Civil Affairs Department of the people's government at or above the county level where the trustee resides for recording;
- ▶ Fulfill all trustee-related duties. Trustees, in managing the property of charitable trusts, shall carry out their responsibilities honestly and in alignment with the purpose of the trust. They shall manage trust property in accordance with the stipulations of the trust contract and implement agreed-upon trust property management methods. Trustees shall handle all trust affairs in-person. However, if there are extraordinary circumstances or if allowances are made in the trust contract, a trustee may entrust others to handle such affairs on their behalf.

- ▶ Be faithful. The trustee of a charitable trust shall be loyal to the trustor's requirements and carry out their duties in the trust's best interest. The Administrative Measures for Charitable Trusts stipulates that trustees must not take advantage of trust property (e.g. by using it to generate profits for themselves); they are, however, allowed to obtain remuneration as applicable. The property of a charitable trust differs from the property owned by a trustee (inherent property), who shall not seek to possess it as such. Trustees may not conduct transactions that involve inherent property or the property of the trust they are managing, nor can they facilitate transactions involving the trust property assets of different trustors. The only exception is in circumstances when trust documents prescribe otherwise or the trustor approves such transactions insofar as they are made at fair market prices.
- ▶ Manage trust property. A trustee must separately manage and record both charitable trust property and their own inherent property. They shall also separately manage the property of different charitable trusts by keeping separate accounts. For money trusts, commercial banks should be employed as custodians, and special accounts should be opened for charitable trust funds. For non-money trusts, concerned parties may ask third-parties to keep trust property;
- ▶ Information disclosure. The trustee of a charitable trust is obligated to disclose all necessary information to the trustor, beneficiaries, trust supervisor (if applicable), Civil Affairs Department, and the public;
- ▶ Liquidation. When a charitable trust terminates, the trustee is obliged to oversee the trust's liquidation and issue a liquidation report.

[Joint trustee] There is no provision on the number of trustees for charitable trusts in the Charity Law. The Trust Law, however, stipulates that "if there are more than two trustees for the same trust, they are joint trustees. The joint trustees shall handle trust affairs together, but if trust documents prescribe that some specific affairs shall be handled by the trustees separately, those provisions shall be followed." The Administrative Measures for Charitable Trusts states the obligation of joint trustees to record their trust as follows: "Where the same charitable trust has two or more trustees, the trustor shall ask one of the trustees that are primarily responsible for the management of the trust to undergo recording formalities under the chapter. The Civil Affairs Department where the recording formalities are undergone shall share the recorded information with the Civil Affairs Departments of the people's governments at or above the county level in the places where other trustees are located."

c. Non-specific Beneficiaries of Charitable Trusts

A beneficiary may be a natural person, a legal person or organization. As mentioned above, the biggest difference between charitable trusts and other trusts concerns the uncertainty of beneficiaries. The Administrative Measures for Charitable Trusts stipulates that a trustor must not designate as a beneficiary any whose interests are related to the trustor or trustee.

Since beneficiaries are non-specific, their rights cannot be protected by trust contracts. The Charity Law and the Administrative Measures for Charitable Trusts prescribe the rights and interests of beneficiaries:

- ▶ Allow the appointment of a supervisor to protect the rights and interests of beneficiaries: “The trust supervisor oversees acts of the trustee, safeguarding the rights and interests of the trustor and beneficiaries in accordance with the law.”
- ▶ Require the incorporation of beneficiaries in trust documents to include “the scope of beneficiaries and procedures and methods for selecting beneficiaries” and the “ways and methods by which beneficiaries obtain trust proceeds.”
- ▶ Allow changes to the beneficiaries only with agreement from the original trustor or through trust documents. The scope of beneficiaries and the procedures and methods for selecting beneficiaries may be changed only as agreed in trust documents or with the consent of the original trustor.

d. Optional Appointment of Charitable Trust Supervisors

Article 64 of the Trust Law stipulates that there shall be trust supervisors for public trusts. Article 49 (1) of the Charity Law provides that trustors of charitable trusts may appoint trust supervisors as needed. The Charity Law makes the appointment of a trust supervisor no longer a mandatory requirement.

[Duties of supervisors] According to the Administrative Measures for Charitable Trusts, a supervisor oversees the behavior of a trust’s trustee to safeguard the rights and interests of the trustor and its beneficiaries. If supervisors discover that trustees have violated their obligations or are having difficulty performing their duties, they shall report such situations to the trustor, who can choose to take legal action as deemed necessary.

In addition to the statutory duties of supervisors, the parties to a charitable trust may agree on other supervisory powers in trust documents.

e. Banks as Custodians of Trust Property

Since the property of a charitable trust needs to be separated from the trustee’s inherent property, the Administrative Measures for Charitable Trusts specifies that “a certificate on the opening of a special fund account for a charitable trust and a funds custody agreement of a commercial bank (except for non-money trusts)” should be submitted for recording. Therefore, if a trust’s property is money, a special fund account shall be opened at the bank serving as the trust’s custodian. If such property is not money, a bank shall act as a general custodian and create an account to ensure the trust property’s independence.

f. Professional Charitable Trust Investment Manager

The investment manager of a charitable trust is usually a financial institution with asset management capabilities. An investment manager invests the trust's property or offers advice on how to do so according to the trust documents. If a trust company acts as the trustee, it is not necessary to hire an investment manager. If a charitable organization with insufficient investment experience acts as the trustee, an investment manager can be hired to help preserve and increase the value of trust property.

g. Non-profit Organizations as Project Executors of Charitable Trusts

The project executor of a charitable trust is oftentimes a professional non-profit organization responsible for designing and implementing public welfare projects or offering advice on the implementation.

(2) Establishment, Management, and Operation of a Charitable Trust

a. Establishment of a Charitable Trust

The establishment of a charitable trust requires qualified trust parties, a charitable purpose, lawful sources of trust property, written trust documents, and a lawful recording. The process of establishing a charitable trust includes the initiation of charitable trusts, conclusion of charitable trust contracts, transfer of trust property ownership, and the trust's recording.

[Elements of charitable trust documents] Charitable trusts may be established through trust contracts, wills, or other written documents prescribed by laws and administrative regulations. The Administrative Measures for Charitable Trusts and the Circular on the Recording of Charitable Trusts stipulate the content of a trust document: (1) The name of the charitable trust; (2) The purpose of the charitable trust; (3) The names, designations, and domiciles of the trustor and the trustee, along with the name, designation, and domicile of the supervisor, if any; (4) The scope of beneficiaries and the procedures and methods for their selection; (5) The scope, type, status, and management methods of trust property; (6) The proportion or amount of annual expenses; (7) The content and method of information disclosure; (8) The form and means in which beneficiaries obtain the trust's interests; (9) The rates and methods for the collection of trust compensation¹⁶².

[Recording of a charitable trust] The Charity Law stipulates that "the trustee shall, within seven days from the date of signing a charitable trust document, report to the Civil Affairs Department of the people's government at or above the county level where the trustee resides for recording. Those who fail to submit relevant documents to the Civil Affairs Department for recording shall not enjoy any tax preferences." According to statements in the Charity Law, the recording of

162. The elements of a charitable trust set out in the Administrative Measures for Charitable Trusts and the Circular on the Recording of Charitable Trusts are basically the same. This manual uses expressions in the Administrative Measures for Charitable Trusts.

charitable trusts is a condition for enjoying tax preferences. Charitable trusts do not have to be recorded, but tax preferences are unavailable if they are not recorded. The recording of charitable trusts should be a requirement for establishing and standardizing them, according to statements in the Administrative Measures for Charitable Trusts.

[Regulation on the recording of charitable trusts] The Administrative Measures for Charitable Trusts specifies the departments responsible for recording. When a trust company serves as the trustee, the Civil Affairs Department in the city of registration shall be responsible for recording. When a charitable organization serves as the trustee, the Civil Affairs Department that approved its registration and accredited it shall be responsible for recording.

b. Changes in a Charitable Trust

Changes in charitable trusts include the changing of trustees and changing of a trust's terms.

The Trust Law stipulates that "the regulatory agency of public undertakings shall change the trustee if the trustee of a public trust violates trust obligations or does not have the capacity to perform its duties". That means the law authorizes the regulatory agency to change the trustee. The Charity Law, however, states that "where the trustee of a charitable trust violates trust obligations or has difficulty performing its duties, the trustor may change the trustee. Within seven days of the change, the trustee shall report the change to the Civil Affairs Department where the trust was originally recorded to make a new record." The Charity Law grants the trustor the right to change the trustee. The Administrative Measures for Charitable Trusts further describes the circumstances in which the trustee can be changed: "Where the trustee of a charitable trust violates its duties set out in trust documents or disbands unlawfully, loses legal qualifications, is revoked or declared bankrupt (or there are other circumstances where the trustee finds it hard to perform its duties), the trustor may change the trustee."

The trustor and trustee may agree to change the terms of trust contracts. In addition, the following items may be changed in accordance with the stipulations of the trust documents or with the consent of the original trustor: (1) Adding trustors; (2) Adding trust property; (3) Changing the scope of trust beneficiaries and the procedures and methods for their selection; (4) Other circumstances required by the Ministry of Civil Affairs and the Banking Supervision Institution of the State Council. Changes shall be reported to the Civil Affairs Department where the trust was originally recorded.

c. Termination of a Charitable Trust

[Causes for termination of a charitable trust] A charitable trust shall terminate under one of the following circumstances: (1) One of the causes prescribed in the trust documents is fulfilled; (2) The trust violates its original purpose; (3) The purpose of the trust has been fulfilled and there is no more reason for it existing; (4) The parties of the trust agree to do so after negotiation; (5) The trust is withdrawn; (6) The trust is rescinded.

[Notice on the termination of a charitable trust] When a charitable trust terminates, the trustee shall prepare a liquidation report and submit it to the Civil Affairs Department where the trust was recorded within 30 days. After submission, the trustee shall make a public announcement. If a trust supervisor is being used, a liquidation report shall be approved by the supervisor in advance.

[Principle of similar purposes] If no person or non-specific public entity has the right to own a trust's property when it is terminated, the trustee shall continue to use such property in accordance with its original purpose or transfer the property to another trust or organization with a similar purpose. This behavior requires the approval of the Civil Affairs Department where the charitable trust was recorded.

1.3 Current Tax Policy for Charitable Trusts

China's lacks a tax system for trusts. The Trust Law, Administrative Measures for Trust and Investment Companies, and Interim Measures for the Management of Money of Trust and Investment Companies contain no provisions on trust taxes. The Charity Law and the Administrative Measures for Charitable Trusts likewise have not made any specific tax provisions for charitable trusts. Thus, there are really no legal provisions on tax policies for charitable trusts. Moreover, charitable trusts are neither legal persons nor organizations as such. Under the current tax system, charitable trusts are not subject to taxation and are simply considered accounting subjects.

Concerning tax incentives, the Charity Law stipulates that charitable trusts shall be entitled to tax preferences. The Charity Law prescribes that "the trustee shall, within seven days from the date of signing a charitable trust document, report to the Civil Affairs Department of the people's government at or above the county level where the trustee resides for recording. Those who fail to submit relevant documents for recording shall not enjoy any tax preferences." The "Promotion Measures" chapter in the Charity Law stipulates that, "where natural persons, legal persons and other organizations donate property for use in charitable activities, they receive tax benefits in accordance with the law."

The tax system of charitable trusts primarily involves the establishment, continuation, and termination of trusts.

a. Establishment of a Trust

When a trustor transfers property to a trustee for use in charity work, a charitable trust has been established. In the establishment of a trust, the plan of a business trust does not involve taxes, such as the capital gains tax. In charitable trusts, trustors donate property for charitable purposes, and so should be entitled to tax preferences in accordance with provisions of the Charity Law. That means trust property can be "tax deductible". No corresponding tax incentives are provided in the existing tax policy.

b. Continuation of a Trust

During the continuation of a trust, the trustee manages property in accordance with the corresponding trust contract and legal provisions, in order to preserve and increase its value. Income from the investment of such property is not subject to taxation, given that neither trust plans nor charitable trusts are subject to tax payments. When investing in trust property as part of a trust plan or charitable trust, the trustee shall pay value-added tax and income tax. The method of payment is based on the type of investment and the relevant taxation regulations.

During project execution, when trust property is allocated to beneficiaries or non-profit organizations, tax incentives are not put in place for recipients, despite regulations to the contrary in the Charity Law. Thus, if institutional beneficiaries are entitled to tax exemptions targeted at non-profit organizations, their donation income is subject to tax incentives and can thus be exempted from paying corporate income taxes. Institutional beneficiaries that do not qualify for tax exemptions targeted at non-profit organizations should pay corporate income tax. For individual beneficiaries, the trustee shall withhold and pay personal income taxes.

c. Termination of a Trust

After the termination of a charitable trust, the trustee may continue to use the trust's property for its original purpose or transfer the trust property to another trust or organization with a similar purpose, pending approval from the Civil Affairs Department where the trust was recorded¹⁶³. This section also deals with the collection of income tax from beneficiaries, which is consistent with the implementation of the charitable trust project described above. Therefore, this will not be repeated in the manual.

2 Practical Guide

2.1 Advantages and Disadvantages of Charitable Organizations and Trust Companies as Trustees

	Charitable Organization as the Trustee	Trust Company as the Trustee
Establishment	The Civil Affairs Department which approved its registration and accredited it shall be responsible for recording	The Civil Affairs Department in the city of the trust's registration shall be responsible for recording
Project Operation	Experienced in the operation of charitable projects	Inexperienced in the operation of charitable projects
Overall Strength of the Institution That Operates a Trust Business	Weak and lacks the experience and talent needed to operate a trust business	Strong

163. Article 43 of the Administrative Measures for Charitable Trusts

	Charitable Organization as the Trustee	Trust Company as the Trustee
Brand and Credibility	High credibility with strong influence as a charitable brand	Low credibility and low social recognition (Trust companies are for-profit organizations, so their ability to run charitable trusts is questionable)
Clients	Limited clients, mainly from the charity sector	Many clients who have high demand for charity
Asset Management Capability	Inexperienced in preserving and increasing the value of assets	Strong asset management capabilities; has ability to increase the value of charitable trust property
Tax	No preferential tax policy in place; despite the policy problems regarding tax incentives for charitable trusts, foundations and civil society groups that meet relevant conditions among charitable organizations are still entitled to tax deductions for charitable donations, while charitable organizations as trustees are more likely to enjoy tax incentives	No preferential tax policy in place; the trustors and donors of charitable trusts cannot enjoy the same tax benefits as donors of non-profit organizations, since preferential tax policies for charitable trusts have not been put in place

2.2 Comparison Between Charitable Trusts, Foundations, and Special Funds

A trustor can contribute to the public welfare by establishing charitable trusts, foundations, or special funds. These three ways of doing charity work are compared as follows:

	Foundation	Special Fund	Charitable Trust
Establishment Method	Established through complicated procedures with the approval of the Civil Affairs Department ¹⁶⁴ and the registration authority	Signing of a special fund establishment agreement with a foundation	Recording by the Civil Affairs Department ¹⁶⁵ . The recording system is adopted for the establishment of charitable trusts
Start-up Capital	The minimum start-up capital for a national public-raising foundation, local public-raising foundation, and private foundation is RMB 8 million, RMB 4 million, and RMB 2 million respectively ¹⁶⁶	Specific regulations of the foundation shall apply	There is no limit on the size of a trust or the amount of trust property

164. Articles 6, 7, 8, and 9 of the Regulations for the Management of Foundations

165. Article 45 of the Charity Law

166. Article 8 of the Regulations for the Management of Foundations

	Foundation	Special Fund	Charitable Trust
Supervision Mechanism	<ul style="list-style-type: none"> ▶ Civil Affairs Department and professional supervisory unit (in the case of dual management) ▶ Information disclosure and annual reporting 	<ul style="list-style-type: none"> ▶ Donors ▶ Civil Affairs Department ▶ Foundation that set up the special fund ▶ Other supervision mechanisms as stipulated in a special fund establishment agreement 	<ul style="list-style-type: none"> ▶ Trustor ▶ Trust company as the trustee: Civil Affairs Department in the city of the registration location and the CBRC ▶ Charitable organization as the trustee: Civil Affairs Department which approved its registration and accredited it, and the trust supervisor (if needed) ▶ Information disclosure
Donated Property Account Management	A foundation has only one bank account and its funds are differentiated based on the range of charitable projects and special funds	A special fund does not have a separate account, and its income and expenses should be fully included in the account of the foundation that it belongs to	For money trusts, a commercial bank should be employed as a custodian; for non-money trusts, a third party should be asked for safekeeping ¹⁶⁷
Preservation and Increase of Donated Property	<ol style="list-style-type: none"> 1) Legitimate process (council resolution + report on important matters) 2) Government-funded property and property that is not allowed for investment in a donation agreement shall not be used for investment; 3) Responsible persons and staff may not work part-time for or receive remuneration from companies in which charitable organizations invest 	The value of a special fund shall be preserved and increased in accordance with the legal provisions on foundations, the foundation's rules, and the special fund establishment agreement	Applicable to low-risk assets such as bank deposits, government bonds, central bank bills, financial bonds, and money market funds, unless otherwise agreed by the trustors or trust companies ¹⁶⁸
Taxes in Donated Property Management	Income from investment is subject to income tax	Taxes from special funds are handled by foundations	Trust plans are contractual products and unincorporated organizations do not need to pay income tax

167. Article 28 of the Administrative Measures for Charitable Trusts

168. Article 30 of the Administrative Measures for Charitable Trusts

	Foundation	Special Fund	Charitable Trust
Donation Receipts	Donation receipts can be issued after being claimed	Donation receipts are issued by foundations	Donation receipts cannot be issued directly; foundations often help charitable trusts issue donation receipts designed for public welfare undertakings
Operating Costs	High operating costs; high housing and human costs ¹⁶⁹ , in which human costs are a major contributor to operating costs.	Low operating costs	Low operating costs; for a charitable trust, its trustee's management fees and supervisor's remuneration shall not exceed eight one-thousandths of the total amount of charitable trust property each year ¹⁷⁰ .
Restrictions on Spending and Costs	The salaries and benefits of staff and the administrative expenses of a foundation shall not exceed 10% of the total expenditure of the current year ¹⁷¹ ; other spending and costs shall comply with the Regulations on Annual Expenditures and Administrative Expenses of Charitable Organizations in Carrying Out Charitable Activities	The spending and costs generally do not exceed 10% of the total annual expenditure of a special fund according to a special fund establishment agreement	No restrictions
Minimum Amount for Operation	The Civil Affairs Department requires that the net assets of a foundation at the end of the year should not be less than its registered capital	This is generally stipulated by the internal rules of a foundation and a special fund establishment agreement	There are no relevant provisions
Donors' Control	Donors can serve as members of the council and responsible persons in a foundation, thereby controlling the foundation to some degree.	The rights of the sponsors of special funds are specified in a special fund establishment agreement; sponsors, along with foundations, determine the development direction and public welfare projects of special funds	As trustors of a charitable trust, donors have the right to choose the trustee, change the rights of the trustee, remain informed about the operation of the trust, choose a trust supervisor, and obtain the reports by supervisors on the progress of charitable activities.

169. Article 8 of the Charity Law

170. Article 3 of the Circular on Encouraging Trust Companies to Conduct Public Trust Business to Support Post-disaster Reconstruction (2008)

171. Article 29 of the Regulations for the Management of Foundations

Chapter X Information Disclosure

1 Information Disclosure ABC

1.1 Systems for Gathering and Releasing Charity Information

Article 69 (1) of the Charity Law stipulates that government bodies at or above the county level shall establish a system for collecting and releasing charity information. The Civil Affairs Departments of such governments shall disclose charity informationxx to the public in a timely manner by way of a unified information platform, as well as provide charity information release services for free. Charitable organizations and the trustees of charitable trusts shall release reliable charity information on the platform stipulated above. The article confirms that these governments are responsible for collecting and releasing charity information. All duties shall be performed by the corresponding Civil Affairs Department, who will also, along with charitable organizations and the trustees of charitable trusts, release charity information.

Systems for gathering and releasing charity information involve coordination among Civil Affairs Departments, statistical departments, and other relevant government departments. These systems not only help regulate and guide information disclosure by charitable organizations, but also ensure their transparency. Once the systems for collecting and releasing charity information are in place, Civil Affairs Departments will begin building the platform needed to publish charity information. They have already built information disclosure platforms with different functions to make charity information and statistics public. Unfortunately, these platforms release scattered information and cannot ensure the integrity, professionalism, authoritativeness, nor timeliness of the released information. Thus, it is necessary to build a single, combined information disclosure platform to allow the public to more easily search for charity information, and to enable governments to collect and analyze data, conduct investigations, and develop charity sector policies. On September 4, 2017, “Charity China” (cszg365.com), a nationwide charity information disclosure platform, was officially launched. This platform was built by the Ministry of Civil Affairs. It reflects the requirement in the Charity Law that participants in charitable activities, charitable organizations, and the trustees of charitable trusts disclose charity information to the public.

1.2 Information Disclosure Obligation of Civil Affairs Departments and Other Relevant Departments

a) The Charity Law Requires Civil Affairs Departments and Other Departments to Publicize Charity Information.

According to Article 70 of the Charity Law, Civil Affairs Departments and other relevant governmental departments shall ensure the timely publication of the following charity information:

- (1) Registration information of charitable organizations;
- (2) Records of charitable trusts;
- (3) The list of charitable organizations with public fund-raising qualifications;
- (4) The list of charitable organizations qualified to receive pre-tax deduction receipts for their public interest donations;
- (5) Details of preferential tax rates, financial aid, subsidies and other promotional measures for charitable activities;
- (6) Information regarding purchasing services from charitable organizations;
- (7) Result of any inspections or evaluations of charitable organizations or trusts;
- (8) Result of any commendations or penalties of charitable organizations or other organizations and individuals;
- (9) Any other information required by other laws and regulations.

The above charity information is important to the management and supervision of charitable activities. In addition, Civil Affairs Departments are obliged to make a public announcement if they revoke the registration certificates of charitable organizations due to violations. To urge such Departments and others to perform their supervisory duties, Article 108 of the Charity Law stipulates that if they or other departmental staff fail to disclose the required information, they will be ordered to make corrections or be punished in accordance with the Civil Servant Law.

b) The Regulations on the Disclosure of Government Information¹⁷² Stipulate That Government Departments Shall Fulfill the Obligation of Information Disclosure.

Charity information is considered government information if relevant governmental departments prepare or obtain it during the performance of their duties and record it accordingly. Based on the Regulations on the Disclosure of Government Information, such information—e.g. basic information about charitable organizations and data on charitable activities—should be made public. Civil Affairs Departments are departments for the registration, accreditation, and supervision of charitable organizations and the recording of charitable trusts and public donation projects. Therefore, such departments are responsible for publicizing relevant charity information. In addition to these departments, those managing matters concerning finance, tax, and statistics also have access to charity information and must publicize charity information within the scope of their respective duties.

172. Regulations on the Disclosure of Government Information, which was adopted at the 165th executive meeting of the State Council on January 17, 2007 and which came into force on May 1, 2008.

c) Rules on the Disclosure of Credit Information of Social Organizations.

According to Article 6 of the Administrative Measures for Credit Information of Social Organizations¹⁷³, the credit information of social organizations includes information on organization details, annual reports, administrative inspections, administrative penalties, and more. The details of an organization include its registration, accreditation, approval, and recording. Annual report information is the annual work report that a social organization prepares and makes public. Administrative inspection information refers to information that Civil Affairs Departments and other relevant government departments develop when inspecting and supervising social organizations. Administrative punishment information includes the types and results of administrative penalties imposed on social organizations, records of illegal acts, the basis for and time of punishments, and the information of departments that impose administrative punishments. Other forms of information not mentioned include the assessment levels and validity periods of social organizations, commendations and rewards obtained from relevant government departments, matters regarding the undertaking of government procurement services or other entrusted services, qualifications for the collection of public donations, tax deductions for charitable donations, and other information related to the credit of social organizations. The above social organization credit information is collected and recorded into social organization information management systems by Civil Affairs Departments, which compile lists of social organizations involved in abnormal activities and which have violated laws and broken trust.

To expedite the establishment of a credit system in the charity sector, 40 government departments and public institutions, including the National Development and Reform Commission (NDRC), People's Bank of China, Ministry of Civil Affairs, and Central Civilization Office, signed the Memorandum of Cooperation on Encouraging Faithful Acts and Punishing Unfaithful Acts Jointly for Entities Receiving Charitable Donations¹⁷⁴ on February 11, 2018. The Memorandum explicitly requires all parties to provide lists of entities to be encouraged and rewarded for their faithful acts and lists of those to be punished for their unfaithful acts. They must also update their information in accordance with relevant provisions and release it on "Credit China" (creditchina.gov.cn), "Charity China" (cszg365.com), National Enterprise Credit Information Publicity System (gsxt.gov.cn), and the portal website of the Ministry of Civil Affairs. The following types of charity participants are entitled to joint incentives: charitable organizations that have been registered or accredited by a Civil Affairs Department and are rated 4A or above, and donors (natural persons, legal persons, and unincorporated organizations) with good donation track records who have made exceptional contributions to poverty alleviation. Charity participants subject to joint punishment are natural persons, legal persons, and unincorporated organizations that have committed dishonest acts.

173. Regulation on Social Organization Credit Information Management, which was adopted at the ministerial affairs meeting of the Ministry of Civil Affairs on January 12, 2018 and entered into force on January 24, 2018.

174. Memorandum of Cooperation on Encouraging Faithful Acts and Punishing Unfaithful Acts Jointly for Entities Receiving Charitable Donations, released on February 11, 2018 and which took effect on the same day.

These include: (1) Charitable organizations added by Civil Affairs Departments to lists of social organizations that have seriously violated laws and broken trust; (2) Legal representatives and persons directly in charge of the aforementioned organizations; (3) Donors who are dishonest in their donation activities and who have been held accountable by the people's courts; (4) Beneficiaries who are dishonest in accepting donations from charitable organizations and who have been held accountable by the people's courts.

1.3 Information Disclosure Obligation of Charitable Organizations and Trustees of Charitable Trusts

a. General Information That Charitable Organizations Make Public

According to Article 72 of the Charity Law, charitable organizations shall publicly disclose their Articles of Association, information about the members of decision-making parties, implementation and oversight bodies, annual work reports, financial accounting reports, and other information that the Civil Affairs Department under the State Council requires. This kind of information is called "general information", as it must be made public by all charitable organizations. The Measures for Information Disclosure by Charitable Organizations (Draft for Soliciting Opinions) detail the disclosure of general information and put emphasis on the information disclosure obligations of charitable organizations. For example, Article 4 of the Draft for Soliciting Opinions stipulates that charitable organizations shall disclose information about their founders, major donors, institutional directors, managerial personnel, investees, and other individuals or organizations with control over them on information disclosure platforms within 30 days of it becoming available. While the Charity Law does present a general description of the obligations of charitable organizations to disclose general information, it also omits many of the specific provisions governing this legal area. To ensure the implementation of relevant legal provisions, it is necessary to develop administrative measures for information disclosure by charitable organizations. In preparing the Draft for Soliciting Opinions, stricter requirements for information disclosure by charitable organizations are more likely to increase the burden on them.

b. Disclosure of Information to Specific Individuals or Entities

Charitable organizations may disclose information in the following circumstances: 1) When charitable organizations carry out targeted donations, the organizations shall inform donors of their management and use in a timely manner. Though Article 74 of the Charity Law does not specify how or when charitable organizations should make such notifications, those organizing targeted donations shall maintain effective communication with donors to ensure effectiveness; 2) Charitable organizations should inform beneficiaries of funding standards, work processes, and work regulations. As this kind of information is closely related to the interests of beneficiaries, Article 75 of the Charity Law grants beneficiaries the right to know about it. Therefore, charitable organizations shall not decline to disclose or hide such information.

c. Information Disclosure by Charitable Organizations Qualified for Public Fund-raising

According to Article 73 (1) of the Charity Law, charitable organizations qualified for public fund-raising shall make public information about donations and the implementation of charitable projects. When public donations last for more than six months, information about donations should be publicized at least once every three months, and all relevant information shall be disclosed within three months after the donations have ceased. When charitable projects last for more than six months, information about the implementation of the projects shall be publicized at least once every three months, and all information about the implementation and use of donations shall be disclosed within three months after the projects are concluded.

When charitable organizations carry out public fund-raising through the Internet, they shall publish their fund-raising information on the information disclosure platform required by the Ministry of Civil Affairs, or on a designated charity information disclosure platform. The unified information disclosure platform required by the Ministry of Civil Affairs refers to a special donation information disclosure platform, not the "unified information platform" mentioned in Article 69 of the Charity Law. In addition, charitable organizations are allowed to use their own web portals, official micro-blogs, official WeChat accounts, mobile clients, and other network platforms to publish fund-raising information, according to Article 16 of the Administrative Measures for Public Donations by Charitable Organizations.

2 Practical Guide

According to the Charity Law, different entities have varied information disclosure obligations, as detailed in the table below:

Entity	Target	Content to Be Disclosed	Channel
Charitable Organization Without Qualifications for Public Fund-raising	Donors in targeted fund-raising	Information about targeted fund-raising and the management and use of donations.	Self-built official website or offline notification.
	Beneficiary	Information such as funding standards, work processes, and work regulations.	Self-built official website or offline notification.
	The public	(1) Articles of Association and information about the members of decision-making parties, as well as implementation and oversight bodies; (2) Annual work report and financial accounting report; (3) Significant changes to the aforesaid information.	Unified information disclosure platform required by the local government, "Charity China" (cszg365.com), and self-built official websites.

Entity	Target	Content to Be Disclosed	Channel
Charitable Organization with Qualification for Public Fund-raising	Donors in targeted fund-raising	Information about targeted fund-raising and the management and use of donations.	Self-built official website or offline notification.
	Beneficiary	Information such as funding standards, work processes, and work regulations.	Self-built official website or offline notification.
	The public	(1) Articles of Association and information about the members of decision-making parties, as well as implementation and oversight bodies; (2) Annual work report and financial accounting report; (3) Significant changes to the aforesaid information; (4) Information about fund-raising and the implementation of charitable projects.	Unified information disclosure platform required by the local government, "Charity China" (cszg365.com), internet public donation information platforms, and self-built official websites.
Civil Affairs Department and Other Relevant Departments	The public	(1) Registration of charitable organizations; (2) Record of charitable trusts; (3) A list of charitable organizations qualified for the collection of public donations; (4) A list of charitable organizations qualified to issue tax deduction receipts for public welfare donations; (5) Measures for promoting charitable activities, such as tax preferences and subsidies; (6) Information on the purchase of services from charitable organizations; (7) Result of investigations into and the assessment of charitable organizations and trusts; (8) Commendations and punishments of charitable organizations, other organizations, and individuals; (9) Other information that should be disclosed as prescribed by laws and regulations.	"Charity China" (cszg365.com) and unified information disclosure platforms required by Civil Affairs Departments at all levels.

Below is a comparison of different information disclosure requirements for charitable organizations and foundations, social service organizations, and civil society groups that do not have the attributes of a charitable organization.

Entity	Content to Be Disclosed	Relevant Legal Provisions
Charitable Organization	<p>(1) Articles of Association and information about the members of decision-making parties, as well as implementation and oversight bodies;</p> <p>(2) Annual work report and financial accounting report;</p> <p>(3) Significant changes to the aforesaid information;</p> <p>(4) Information about targeted fund-raising and the management and use of donations;</p> <p>(5) Information such as funding standards, work processes, and work regulations;</p> <p>(6) Information about fund-raising and the implementation of charitable projects (for charitable organizations qualified for public fund-raising).</p>	Articles 72, 73, 74, and 75 of the Charity Law
Foundation That Does Not Have Attributes of a Charitable Organization	<p>(1) Annual work report and financial accounting report;</p> <p>(2) Information on public welfare funding projects, including types, applications, assessment procedures, and the assessment results of public welfare projects; this also includes assessment results (if any) concerning the use of funds after the conclusion of the projects;</p>	Articles 4, 7, and 12 of the Foundation Information Disclosure Methods ¹⁷⁵
	<p>(3) Information such as the establishment and termination of a special fund, management framework, and personnel information, all of which should be disclosed promptly in accordance with relevant laws and regulations;</p>	Article 4 of the Circular of the Ministry of Civil Affairs on Further Strengthening the Management of Special Funds of Foundations ¹⁷⁶
	<p>(4) Detailed information about the income and expenditures of public donations received in the case of emergencies, such as natural disasters, which should be published on an organization's official website and in other media. Such information includes: donation income, donations directly used by recipients, and direct operating expenses related to public welfare projects. If a staff's remuneration, benefits, and administrative expenses are itemized under donated income, such information shall also be published. Where public welfare projects last for more than three months, relevant information should be publicized once every three months and all relevant items shall be disclosed after the projects are concluded;</p>	Items 3, 6, and 7 of Article 3 of Several Provisions on Regulating Actions of Foundations (for Trial Implementation) ¹⁷⁷

175. *Foundation Information Disclosure Methods*, which was released by the Ministry of Civil Affairs on January 12, 2006 and which became effective on the same day.

176. *Circular of the Ministry of Civil Affairs on Further Strengthening the Management of Special Funds of Foundations*, which was released by the Ministry of Civil Affairs and became effective on December 24, 2015.

177. *Several Provisions on Regulating Actions of Foundations (for Trial Implementation)*, which were issued by the Ministry of Civil Affairs on July 10, 2012 and took effect on the same day.

Entity	Content to Be Disclosed	Relevant Legal Provisions
	<p>(5) A foundation should make public the following information: 1) Founders; 2) Major donors; 3) Institutional directors; 4) Investees of the foundation; 5) Individuals or organizations that have control over foundations; 6) Transactions between the foundation and the aforesaid individuals or organizations;</p> <p>(6) Internal rules of the foundation, which shall be made public on the media designated by the registration authority, a self-built website, or other media easily accessible to the public.</p>	
Social Service Agency That Does Not Have Attributes of Charitable Organizations	(1) Information about the acceptance and use of donations and subsidies, which should be made public;	Article 22 of the Interim Regulations on Registration Administration of Private Non-enterprise Units
	<p>(2) Registration certificate, organization code certificate, and other information such as the Articles of Association (or their summary), service items, and fee standards, which should be made public by hanging them on walls at a conspicuous location in the domicile (or service site);</p> <p>(3) Annual work report, which shall be made public on the website (media) designated by the registration and administration authority.</p>	Item 3 of Article 2 of the Opinions of the Ministry of Civil Affairs on Deepening Information Disclosure and Commitment Service Activities of Private Non-enterprise Units ¹⁷⁸
Civil Society Group That Does Not Have Attributes of Charitable Organizations	<p>(1) Information about the acceptance and use of donations and subsidies, which should be reported to the relevant professional supervisory unit and made public promptly;</p> <p>(2) Report on the previous year's work, which shall be submitted to a professional supervisory unit prior to March 31 each year; the report also needs preliminary approval from a professional supervisory unit, which can be obtained by submitting the report to one prior to May 31 for annual inspection.</p>	Articles 26 and 28 of the Administrative Regulations on the Registration of Social Organizations

178. *Opinions of the Ministry of Civil Affairs on Deepening Information Disclosure and Commitment Service Activities of Private Non-enterprise Units*, which was released by the Ministry of Civil Affairs on September 30, 2007 and became effective on the same day.

Chapter XI Tax Benefits

1 Tax Policies for Charitable Organizations

1.1 Tax Benefits for Charitable Organizations

In accordance with Article 79 of the Charity Law, the income of a charitable organization is eligible for tax benefits. For qualified non-profit organizations, their income (excluding operating income) is tax exempt, according to the Law on Enterprise Income Tax and the Regulations on the Implementation of Law on Enterprise Income Tax.

Based on regulations issued by the state tax department and taxation authorities, the income of charitable organizations shall be subject to two procedures for tax exemption:

First, the charitable organization has to obtain the qualification for tax exemption as a non-profit organization.

Second, the income of the charitable organization has to have been identified as tax-exempt income.

The Circular on Relevant Issues concerning Administration of Identification of Tax-free Qualifications of Non-profit Organizations issued by the Ministry of Finance and the State Administration of Taxation (No. 13 [2018] of Finance and Tax) has provided the specific conditions for obtaining tax-free qualifications for non-profit organizations.

Based on No. 13 (2018) of Finance and Tax, charitable organizations that have obtained tax-free qualifications shall go through the tax exemption formalities with the relevant taxation authority, according to the Measures for the Handling of Matters concerning Preferential Enterprise Income Tax Policies (2015). Qualified non-profit organizations shall be filed on record. After filing, charitable organizations may be exempted from the enterprise income tax while declaring enterprise income, hence such income being exempt.

(1) Charitable Organizations Are Eligible for Non-Profit Organization Tax Exemptions

A. Non-profit Tax Exemption Qualifications

In accordance with the Regulations for the Implementation of the Enterprise Income Tax Law and No. 13 of Finance and Tax (2018)¹⁷⁹, non-profit organizations shall meet the following conditions for obtaining tax exemption qualification:

¹⁷⁹. Article 84 of Regulations for the Implementation of the Enterprise Income Tax Law, Article 1 of No. 13 (2018) of Finance and Tax

- vi. The charitable organization must be established or registered in accordance with relevant national laws and regulations;
- vii. Engaged in public welfare or non-profit activities;
- viii. Income generated after expenditures shall be used for approved public welfare or non-profit projects as provided in the Articles of Association;
- ix. The property and interest accrued shall not be used for distribution;
- x. As approved during registration or prescribed in its by-law, after the organization is de-registered, any remaining assets shall be used for charitable or non-profit purposes or donated through registration authorities to other organizations that have the same nature as those of the de-registered organization; a public announcement will follow;
- xi. The donors shall not retain or enjoy any right of the assets donated to the organization. The donor means any legal person, natural person, or other organization except the people's government and its departments;
- xii. Expenditures on salaries and welfare for staff shall be controlled within the prescribed percentage. The organization shall not distribute its assets in any disguised form; the average salaries for the staff may not exceed twice the average salaries of organizations with the same nature or in the same industry in the region at or above the district or county level where the tax was registered previously;
- xiii. The taxable income obtained, along with the relevant costs, expenses, and losses shall be calculated respectively against the tax-exempted income.

B. Charitable organizations meeting the requirements above shall submit all relevant materials to the taxation authority to apply for tax-exemption qualifications¹⁸⁰.

C. Term: The valid term for non-profit organizations qualified for tax preference shall be five years. Charitable organizations shall apply for review within three months prior to expiration. The qualification of any charitable organization that fails to file the review application or fails to pass the review for tax-exemption benefits shall become null and void automatically after expiration¹⁸¹.

D. Review: When any relevant department finds that a non-profit organization enjoying tax benefits fails to satisfy the tax exemption conditions as provided in the Circular, the department shall propose to the finance and taxation authorities responsible for checking and approving the tax-exemption qualifications to make a review. Any charitable organization that fails to pass the review will not be eligible for tax benefits that year.

180. Article 2 of No. 13 (2018) of Finance and Tax

181. Article 3 of No. 13 (2018) of Finance and Tax

E. Circumstances for cancelling the tax-exemption qualifications of non-profit organizations¹⁸²

Based on Article 1 of No. 13 (2018) of Finance and Tax, any non-profit organization enjoying tax benefits shall be revoked of its qualification for any of the following reasons:

- i. The registration authority finds during the subsequent administration that the non-profit organization failed to meet the relevant laws, regulations and national policies;
- ii. The non-profit organization provides false information during its application for identification;
- iii. The tax credit is rated class C or D by the taxation authority;
- iv. The non-profit organization transfers, conceals, or distributes its properties in disguised form by related or non-related transactions and service activities;
- v. The non-profit organization has been listed as an illegal or dishonest organization by the registration authority;
- vi. The non-profit organization is engaged in illegal political activities.

The finance and taxation authorities will not accept the application of any non-profit organization being deprived of tax benefit qualifications due to the circumstances above within one year of the revocation. The finance and taxation authorities will no longer accept the identification application of any non-profit organization being deprived of tax benefit qualification due to the circumstances as described in item 6 (vi.) above.

Any non-profit organization being deprived of tax benefit qualifications shall pay tax liabilities; any such organization that fails to pay taxes shall be recovered by the taxation authority from the year when the organization had been deprived of their qualifications.

(2) Treatment of the Tax-Exempted Income of Charitable Organizations

A. What revenue shall be regarded as tax-exempted income?

In accordance with the Circular on Enterprise Income Tax Exempted Revenue of Non-profit Organizations, issued by the Ministry of Finance and the State Administration of Taxation (No. 122 (2009) of Finance and Tax), the following revenue shall be regarded as tax-exempted income:

- i. Income from the receipt of donations by other companies or individuals;
- ii. Any income from government subsidies besides tax-free income, excluding the income gained from services purchased by the government;

¹⁸². Article 6 of No. 13 (2018) of Finance and Tax

- iii. Membership fees charged subject to the regulations of civil affairs and financial departments above the provincial level (the funds and membership fees charged by social organizations and social service organizations have no such tax-exempted status)
- iv. Tax-free income and the income from the interest accrued on bank deposits;
- v. Any other revenue provided by the Ministry of Finance and the State Administration of Taxation.

For charitable organizations, the main tax-exempted income is donation revenue and membership fees (the latter pertaining only to social organizations).

B. Specific process for tax-exempted income declaration

In accordance with the Measures for the Handling of Matters concerning Preferential Enterprise Income Tax Policies, any enterprise that has income during the year shall submit the Record-Filing Table on Preferential Items on Enterprise Income Tax (Record-Filing Table) to the taxation authority; in addition, the Record-Filing Table, as well as any documents on the qualifications of non-profit organizations or relevant certifications (subject to the Measures for the Handling of Matters concerning Preferential Enterprise Income Tax Policies) must be submitted.

Record-filing date: Charitable organization shall file no later than the declaration of their final settlement and payment of annual taxes. Relevant items shall enjoy the preference declared at the time of prepayment.

Reserved materials for review: In accordance with Measures for the Handling of Matters concerning Preferential Enterprise Income Tax Policies, charitable organizations shall properly keep the following materials for review:

- i. Valid identification of the qualifications of the charitable organization or any other relevant certificates;
- ii. The examination conclusions issued by the registration authority on the final year of settlement and payment (newly incorporated non-profit organizations are not required to submit);
- iii. The statement on the separate calculations of taxable and tax-free income and their respective costs, expenses, and losses;
- iv. Statement on obtaining tax-exempted income.

The term for keeping materials for review shall be 10 years after enjoying the preferential items, while the term for keeping preferential items when there is a difference between the taxation regulations and the accounting treatment shall be 10 years.

As for the donation revenue, charitable organizations shall issue donation receipts. When any charitable organization has no donation receipts or fails to issue donation receipts, the taxation authority will not likely regard such income as donation income.

1.2 Tax Benefits for Donors

In accordance with Article 80 of the Charity Law, natural persons, legal persons, or other organizations that donate property for charitable activities are eligible for tax benefits. After the enactment of the Charity Law, the original provisions are to be followed since there are no new tax benefits for donors; therefore, the following will serve mainly to introduce the existing policies on tax benefits granted to donors.

Articles 24 and 25 of the Law on the Donations for Public Welfare state that companies and other enterprises that have donated assets to public welfare projects may enjoy preferential treatment concerning enterprise income tax. Natural persons as well as individual businesses that have donated assets to public welfare projects can enjoy preferential treatment concerning personal income tax. The specific regulations shall be represented in the relevant existing tax laws.

Article 9 of the Enterprise Income Tax Law provides that “expenditures in the form of charitable donations and gifts within 12% of the gross annual profit by an enterprise may be deducted when computing the taxable amount of income. The expenditures of an enterprise exceeding 12% of its gross annual profit may be deducted within three years after carrying forward.” Article 51 of the Regulations for the Implementation of the Enterprise Income Tax Law states that charitable donation expenditures shall refer, as stated in Article 9 of the Corporate Income Tax Law, to donations made by an enterprise for charity, which must be in accordance with the Law of the People's Republic of China on Donation for Charitable Projects.

Article 6 (2) of the Individual Income Tax Law provides that “the taxes on donations to educational and other public projects by individuals shall be deducted from the taxable income subject to the relevant regulations of State Council.” Article 24 of Regulations for the Implementation of the Individual Income Tax Law states, in reference to Article 6 (2) of the Tax Law, that “individual income donated to educational and other public welfare projects” refers to donations by individuals to those and other areas suffering from serious natural disasters or poverty. The portion of donations not in excess of 30% of the amount of taxable income declared may be deducted from the donor’s amount of taxable income.

Based on these laws, for a donation to receive tax benefits, it shall be given to a social organization. In other words, the method is to first obtain “the qualifications for pre-tax deductions on public donations” (tax credit qualifications) by the social organization. Then enterprises or individuals shall obtain tax benefits due for donations with tax credit qualifications.

In accordance with Article 52 of the Regulations for the Implementation of the Enterprise Income Tax Law, charitable organizations, as stated in Article 51 of the Implementation Regulations, refer

to social organizations such as foundations. It also refers to organizations that fulfil all of the following conditions:

- (1) It was established with the status of a legal person;
- (2) It has a public welfare and non-profit purpose;
- (3) The assets and appreciation are owned by the legal person;
- (4) Earnings and surplus from operations are utilized for projects in line with the objectives of the legal person;
- (5) Upon termination, any assets remaining shall not belong to any individual or profit-making organization;
- (6) It is not engaged in activities that are not related to the objective of the organization;
- (7) It possesses a financial and accounting system;
- (8) Donors are not involved in the distribution of the organization's properties;
- (9) Other conditions jointly prescribed by the finance and tax departments of the State Council and the registration department of the Ministry of Civil Affairs of the State Council.

In accordance with the Regulations for the Implementation of the Enterprise Income Tax Law, the Circular on Relevant Issues concerning Pre-tax Deductions for Public Donations (issued by the Ministry of Finance, the State Administration of Taxation, and the Ministry of Civil Affairs [No. 166 [2018] of Finance and Tax]), the Supplemental Circular on Relevant Issues concerning Pre-tax Deductions for Public Donations (issued by the Ministry of Finance, State Administration of Taxation, and Ministry of Civil Affairs [No. 45 [2018] of Finance and Tax]), the Circular on Relevant Adjustment Issues concerning Qualification Determination and Approval on Pre-tax Deductions for Public Donations (issued by the Ministry of Finance and the State Administration of Taxation and Ministry of Civil Affairs [No. 41 {2015}]) of Finance and Tax, the specific requirements and procedures for applying for tax-credit qualifications are described.

(1) Public Welfare Organizations (i.e. the subjects applying for tax credit qualifications)

Based on No. 166 (2018) of Finance and Tax, "public welfare organizations" for enterprise donations and "social groups" for individual donations refer to organizations such as foundations or charitable organizations registered by the civil affairs authority which meet the following conditions:

- (I) Satisfying the conditions as provided in Article 52 (Items [1] to [8]) of the Regulations for the Implementation of the Enterprise Income Tax Law;

- (II) No administrative fine has been imposed within three years of application;
- (III) The foundation has been registered with the Civil Affairs Department for three or more years, has passed the annual examinations for two successive years prior to application or has passed the latest annual examination with a rating at or above 3A. The foundation has been registered with the Civil Affairs Department for less than three years but more than one year, and has passed the latest annual examination with a rating at or above 3A. The foundation has been registered with the Civil Affairs Department for less than one year and meets the conditions of items (I) and (II) in this article.
- (IV) Public welfare organizations (excluding foundations) registered with the Civil Affairs Department for more than three years, with net assets being no less than the registered amount on activity funds; they must also have passed the annual examination for two successive years prior to application or passed the latest annual examination with a rating at or above 3A. Public welfare organizations whose expenditure on public welfare activities is equal to or less than 70% of the gross revenue for three successive years prior to the application and whose expenditure on public welfare activities in the current year is equal to or greater than 50% of their total expenditures.

The aforementioned annual examination refers to the Civil Affairs Department's annual review of foundations and public welfare organizations (excluding foundations) and draws conclusions from the data. The rating level of social organizations at or above 3A refers to the stipulation that social organizations shall be rated at 3A, 4A, and 5A during their assessments.

Based on the aforementioned regulations, only qualifying foundations and social organizations have the right to apply for pre-tax deduction qualifications; additionally, the rating level of social organizations and the result of the annual examination shall be the guiding reference for grading pre-tax deduction qualifications. Private non-enterprise units shall not be eligible for such application.

(2) Application Process¹⁸³

No. 141 (2015) of Finance and Tax cancelled the procedure on report submissions for tax-credit qualification applications, as provided in No. 160 (2008); instead, the finance authority, taxation authority, and Civil Affairs Department shall confirm the pre-tax deduction qualifications and announce the name list in the form of an announcement. The specific procedure on determining tax-credit qualification shall be as follows:

- (I) Social organizations established by the Ministry of Civil Affairs shall be jointly confirmed by the Ministry of Civil Affairs, Ministry of Finance, and State Administration of Taxation at the time of registration; social organizations that conform with public social welfare association conditions

183. Article 1 and Article 2 of No. 141 (2015) of Finance and Tax

shall be determined to be qualified for the pre-tax deduction benefits by the announcement of the Ministry of Civil Affairs with the Ministry of Finance and the State Administration of Taxation.

- (II) Social organizations established by the Ministry of Civil Affairs and already in operation shall have their public welfare donation pre-tax deduction qualifications determined by an announcement by the Ministry of Civil Affairs, Ministry of Finance and State Administration of Taxation and the results of their annual examination and assessment.
- (III) Social organizations registered with the Civil Affairs Department at or under the provincial level shall be subject to Items (I) and (II) in this article.

Based on the regulations above, the finance authority, in cooperation with the state taxation authority and the Civil Affairs Department, jointly confirmed and released an announcement (instead of creating an application form) on tax credit qualifications for charitable organizations. Some areas may require social organizations to submit the relevant materials found in No. 160 (2008) of Finance and Tax.

(3) Term

The finance authority, in cooperation with the state taxation authority and Civil Affairs Department, shall release an announcement on tax credit qualifications each year.

Public welfare organizations with pre-tax deduction qualifications shall be confirmed in the name list jointly released by Ministry of Finance, State Administration of Tax, and Ministry of Civil Affairs, as well as their counterparts in each province, autonomous region, and city. The name list shall include social welfare organizations that continue to be eligible for pre-tax deduction qualifications and all social organizations that are newly eligible for such qualifications¹⁸⁴.

(4) Conditions of Tax Credit Disqualification¹⁸⁵

Based on No.160 (2008) of Finance and Tax, public welfare organizations in any of the following circumstances shall be disqualified for pre-tax deductions:

- a. Failure to pass the annual examination or with a rating lower than 3A in the latest social organization assessment;
- b. Falsifying the application for pre-tax deduction qualifications;
- c. Committing, being complicit in, and/or facilitating tax evasion;

184. Article 3 of No. 141 (2015) of Finance and Tax

185. Article 10 of No. 160 (2008) of Finance and Tax

d. Committing activities which violate the Articles of Association, or accepting and using donations in a way other than that provided in the Articles of Association;

e. Being subject to administrative punishment.

Public welfare organizations disqualified for pre-tax deductions may not apply again for one year (if in violation of (a) above); they may not apply for pre-tax deduction for three years (if in violation of (b), (c), (d), and (e) above).

In the circumstances as stated in (c) and (d), donation income and other revenue shall be subject to additional enterprise income tax requirements.

(5) Process for Enterprises and Individuals to Enjoy Tax Benefits for Donations

Concerning the public welfare donation expenditures of public welfare organizations, enterprises and individuals shall provide the receipts printed by the financial department at or above the provincial level and sealed by the institution accepting the donation, or the receipt slip of the General Payment on Non-tax Income also sealed by the institution accepting the donation—such public welfare donation expenditures shall be deducted before tax¹⁸⁶.

The taxation authorities shall go through the list of names jointly released by the financial department, taxation authority, and Civil Affairs Department. Wherever public welfare organizations accepting donations are on the list, their public welfare donation expenditures may be deducted before tax.

Donations to charitable organizations by enterprises or individuals may enjoy tax benefits only after satisfying two conditions. First, a charitable organization must be eligible for a tax credit. Second, an enterprise or individual must have public welfare donation receipts with the seal of the organizations they donated to.

The amount of donations that may be deducted before tax is determined by computing the enterprise income tax at the time of the final settlement and payment by the enterprise. The enterprise income tax may be computed by year and repaid by month or quarter. Individuals enjoying the tax benefits for donations are limited only to deductions for current taxable income. The amount of donations is the current taxable income whenever the tax declaration was made. Where there is a balance after the current deduction, it may not be carried forward to other taxable income or the taxable income for subsequent tax declaration periods, nor can it be used for recovering the taxable income for prior tax declaration periods¹⁸⁷. The time to pay the

186. Article 5 of No. 45 (2010) of Finance and Tax, among these, General Payment on Non-tax Income refers to the payment instrument issued to the taxpayer by the public welfare social organization that carries out the reform on the systems of government for non-taxable income payment and collection by performing the governmental functions while collecting or charging non-taxable income.

187. Reply by State Administration of Taxation on Application for Refunding Individual Income Tax Paid after Individual Donation (Letter of State Taxation [2014] No. 865).

individual income tax and the individual tax rate may be different depending on the amount of taxable income. For instance, the individual income tax for salaries may be paid by month and calculated at the progressive tax rate. The occasional individual income shall still pay the income tax.

(6) Computing the Tax Benefits Enjoyed by Enterprises and Individuals for Donations

In accordance with the Enterprise Income Tax Law and the Individual Income Tax Law, expenditures in the form of charitable donations and gifts within 12% of the gross annual profit of an enterprise may be deducted when computing taxable income. Charitable expenditures and gifts within 30% of the income tax payable by an individual may be deducted when computing taxable income.

The Circular on Relevant Policies concerning Pre-tax Carrying Forward and Deduction of Enterprise Income Taxes for Public-welfare Donations (No. 15 [2018] of Finance and Tax), issued on Feb. 11, 2018, defined the Enterprise Income Law and Regulations for the Implementation of the Enterprise Income Tax Law and stated that expenditures in the form of charitable donations and gifts within 12% of the gross annual profit of an enterprise are able to be deducted when computing taxable income. Expenditures exceeding 12% of the gross annual profit of an enterprise may be deducted within three years after carrying forward. In accordance with the Regulations for the Implementation of the Enterprise Income Tax Law, the formula to calculate the enterprise income tax payable is: $\text{income tax payable} = \text{total annual revenue} - \text{untaxed income} - \text{income exempted tax} - \text{deductions} - \text{prior year deficiency to be compensated}$. Expenditure in the form of charitable donations and gifts within 12% of the gross annual profit may be deducted, and the expenditure exceeding 12% of the gross annual profit of an enterprise may be deducted within three years after carrying forward. For example: a company's total profit in 2018 is RMB 1,000,000; it donated RMB 100,000 to a charitable organization with pre-tax deduction qualifications (less than 12% of RMB 1,000,000) and obtained the donation receipts. The company may deduct RMB 100,000 while calculating their enterprise income tax payable. If the company donated RMB 200,000 to a charitable organization with pre-tax deduction qualifications (more than 12% of RMB 1,000,000) and obtained donation receipts, a company may deduct RMB 800,000 after deducting RMB 120,000.

Charitable expenditures and gifts within 30% of the income tax payable by an individual may be deducted when computing the taxable amount of income.

The formula to calculate the individual income tax is: $\text{individual income tax} = \text{income tax payable} \times \text{the relevant tax rate}$. However, as there is a different tax rate for each person, the deduction of individual income tax is rather complicated. The formula to calculate the deduction for personal donation expenditures is: $\text{individual income tax} = (\text{income tax payable} - \text{donation expenditure}) \times \text{the relevant tax rate}$. For this formula, the donation expenditure should not be higher than 30% of the income tax payable. At present, there is no provision on carrying forward.

However, in the Circular of Ministry of Finance and State Administration of Taxation on Income Tax Policies for Donations to Eight Units including the China Aging Development Foundation, issued by the Ministry of Finance and State Administration of Taxation, expenditures by social entities for donations given to the China Aging Development Foundation, Chinese Language and Culture Education Foundation of China, China Greening Foundation, China Women's Development Foundation, China Youth-care Foundation, China Biodiversity Conservation Foundation, China Children and the Teenagers Fund, and China Guangcai Promotion Fund, shall be deducted before paying enterprise income taxes and individual income taxes. The Ministry of Finance and the State Administration of Taxation stated that the donations of an enterprise or individual may be deducted before paying enterprise income taxes and individual income taxes.

1.3 Donation Receipts

Donation receipts play a very important role in the tax exemption and tax credit qualification of non-profit charitable institutions and organizations. The Interim Measures on the Administration of Use of Receipts on Donation to Public Welfare Projects, issued in 2010, established the norm of using donation receipts for public welfare projects. The people's government and its departments, public-welfare institutions, public-welfare social groups, and other public-welfare organizations shall accept and use donations and property for disaster relief, poverty relief, support and assistance for the physically disabled, educational, scientific, cultural, and sport-related projects, environmental protection, public health-related projects, and social public facility construction. This work is tracked by the provision of donation receipts for public welfare projects to natural persons, legal persons, and other donating organizations. The issuance of such provisions enables social organizations to use them to manage their work. The Administration on the Use of the Invoice of Donations for Public Welfare promotes the sound development of social public welfare projects.

However, there are still practical difficulties for social organizations applying for such invoices. Some social organizations accepting donations are unable to apply for the invoice. At present, public welfare organizations, (according to No. 160 (2008) of Finance and Tax, and social organizations with pre-tax deduction qualifications may apply for the invoice; nevertheless, such organizations are only a small percentage of the total. As for the other public welfare organizations, since there is a clear definition concerning the scope of the receipts, a large number of private non-enterprise units and social organizations are unable to accept and issue them. Such organizations are the majority among the total amount in China¹⁸⁸.

The Circular from the Ministry of Finance and Ministry of Civil Affairs on Further Clarifying the Relevant Issues on the Application of Public-welfare Social Organizations for Invoice of

188. Portal website of Ministry of Civil Affairs: Important Measures on Solving "Last 'Last Mile' Issue for the Social Organizations to Receive Donation- Interpretation to Circular of Ministry of Finance and Ministry of Civil Affairs on Further Clarifying Relevant Issues on Public Welfare Social Organizations Applying for Donation Receipts on Public Welfare Undertakings" <http://www.mca.gov.cn/article/zwgk/mzyw/201603/20160300880805.shtml>.

Donation for Public Welfare (No. 7 (2016) of Finance and Tax), has defined that only social groups, foundations and private non-enterprise units (public welfare organizations) applying for donation receipts may apply for an invoice for donations to the relevant financial department, in accordance with the Interim Measures on the Administration of Use of Invoice of Donation for Public Welfare.

(1) Applying Subjects

No. 7 (2016) of Finance and Tax states that private non-enterprise units, social groups, and foundations may apply for donation receipts.

(2) Application Process¹⁸⁹

For first-time applicants for an invoice for donations, public welfare organizations shall apply for the Financial Instrument Application (Purchase) Certificate and submit the application letter, registration certificate issued by Ministry of Civil Affairs, original and duplicate copies of the certificate of the organizational code, Articles of Association (clearly stating the content of public welfare projects), and any other materials as requested by the financial department. The financial department shall, in accordance with the Measures on Administration of Financial Receipts and Interim Measures on the Administration of Use of Receipts on Donation to Public Welfare projects, conduct a review of application materials submitted by public welfare organizations, approve the applications in conformity with the administration of donation receipts of public welfare projects, handle the Financial Instrument Application (Purchase) Certificate, and issue the donation receipts accordingly.

Whenever reissuing donation receipts, public welfare organizations shall show the Financial Instrument Application (Purchase) Certificate and submit previous copies of the invoice for donations, including the number of copies, starting and ending number, number of used copies, number of cancelled copies, charging amount, and instrument stubs. The financial department shall, after verifying and approving the content, check and cancel the instrument stub and continue to issue the invoice.

Based on these regulations, the financial department shall be liable for reviewing the Financial Instrument Application (Purchase) Certificate and issuing donation receipts. The applicant is required to submit an application letter, registration certificate issued by the Ministry of Civil Affairs, all original and duplicate copies of the certificate of the organizational code, and the Articles of Association. Public welfare organizations and foundations are to directly submit the abovementioned materials to the financial department and receive donation receipts; however, as the relevant provisions on private non-enterprise units have not been implemented for very long, pre-examination is required in many regions.

189. Article 2 of No. 7 (2016) of Finance

1.4 Tax Benefits for the Beneficiaries of Charitable Donations

In accordance with Article 81 of the Charity Law, beneficiaries receiving charitable donations are eligible for tax benefits. Moreover, Articles 4 and 5 of the Individual Income Tax Law provide that individual income tax on the income of the disabled, the unsupported, and the aged may be reduced. Article 26 of Regulations on Fund Administration states that beneficiaries may enjoy preferential taxation treatment.

The foregoing provisions are only applicable to certain groups but have nonetheless confirmed that the beneficiaries of charitable activities are eligible for tax benefits.

The operational norms of charitable service objects and the tax benefits for beneficiaries are represented in the donation of funds and properties accepted by companies and individuals through charitable organizations in disaster areas (which are exempted from income tax for post-disaster recovery). This was the case after the Wenchuan earthquake, the Yushu earthquake, the Quzhou mud slides, and the Lushan earthquake. Please refer to the Circular on Issues on Relevant Tax Revenue Policies on Supporting Wenchuan's Recovery and Reconstruction after Earthquake (No. 104 (2018) of Finance and Tax) for the relevant laws and regulations. However, except for the foregoing regulations, there are no other regulations on the tax benefits for the beneficiaries; therefore, the other organizations are still required to pay enterprise income tax (except those organizations enjoying tax exemption qualifications and other tax benefits). Individuals receiving donations are required to withhold the individual income tax paid by the donors.

2 Practical Guide

2.1 Non-Profit Organizations Obtaining Tax Exemption Qualification and Tax Exemption Filing Record

(1) Charitable organizations satisfying the Regulations for the Implementation of the Enterprise Income Tax Law and No. 13 (2018) of Finance and Tax should prepare to submit the following materials:

- a. The application report (generally, the taxation authority in each province or city shall provide the application table as a template);
- b. The Articles of Association of the charitable organization;
- c. A copy of the non-profit organization's registration certificate;
- d. Details on funding sources and utilization, public welfare activities, and non-profit seeking activities in the prior year;

- e. Specific reporting on the salaries and wages of the prior year, including any remuneration, the overall average salaries and wages of staff, proportion of salaries and welfare in total expenditure, information on salaries and wages on key employees (at least including the top ten earning employees);
- f. The financial statements and audit report for the prior accounting year verified by a qualified intermediary agency;
- g. Materials on the development of the non-profit undertakings of public institutions, social groups, foundations, social service institutions, religious institutions and religious colleges in conformity with the relevant laws, regulations, and national policies in the prior year;
- h. Any other materials as required by the financial department and taxation authority.

The prior No. 13 (2014) of Finance and Tax did not require newly incorporated charitable organizations to submit these materials. Newly incorporated charitable organizations are unable to submit all materials during the first year; therefore, different places have adopted different methods. Among these, Beijing requires that such newly incorporated charitable organizations apply in the following year. In accordance with the Finance Bureau of Beijing Municipality, State Taxation Bureau of Beijing Municipality, Local Taxation Bureau of Beijing Municipality Forwarding Circular of Ministry of Finance, and State Administration of Taxation on Administration of Tax-exemption Qualification Identification of Non-profit Organizations (No. 446 [2014] of Beijing Finance and Tax), newly incorporated charitable organizations meeting tax-exemption qualification conditions may file an application in the year subsequent to the year of incorporation.

In Shanghai, the capital verification report on registered capital can be used instead of materials that cannot be applied during the first year. In accordance with the Finance Bureau of Shanghai Municipality, State Taxation Bureau of Shanghai Municipality, Local Taxation Bureau of Shanghai Municipality Forwarding Circular of Ministry of Finance, and State Administration of Taxation on Administration of Tax-Exemption Qualification Identification of Non-Profit Organizations (No. 472 (2014) of Shanghai Finance and Tax), newly incorporated charitable organizations that are unable to submit the required materials in the first year¹⁹⁰ may submit a capital verification report on the initial funds.

Nevertheless, No. 13 (2018) of Finance and Tax has expressly provided how the newly incorporated charitable organizations shall submit materials. Non-profit organizations newly incorporated or registered are required to submit materials as provided in items (a) through (c) and materials concerning the year of application as provided in items (d) and (e); however, they are not required to provide the materials as provided in items (f) and (g). Therefore, the organizations shall, on the

190. Corresponding to No. 13 (2018) of Finance and Tax, they are materials in (d), (f) (g), and (e), the newly added materials provided in No. 13 (2018) of Finance and Tax.

completion of incorporation, communicate with the financial department to learn the relevant local regulations.

(2) Applying Department

Based on No. 13 (2018) of Finance and Tax, the applying department shall be classified into the following categories based on the different registry of charitable organizations: (1) Non-profit organizations incorporated or registered with the approval of the registration authority at or above the provincial level shall file the tax exemption qualification application to the local provincial taxation authority after meeting the relevant conditions; (2) Non-profit organizations incorporated or registered with the approval of the registration authority at or above the municipal (district) or county level shall file the tax exemption qualification application to the local taxation authority.

Similarly, Beijing has provided that charitable organizations submit the application materials for tax exemption qualifications to the state taxation authority and local taxation authority to which their enterprise income tax should be paid. To be specific, “the non-profit organizations established or incorporated by the registration authority at the municipal level and whose enterprise income tax is imposed by the state taxation authority, should file their tax exemption qualification applications with the State Taxation Bureau of Beijing Municipality; where the enterprise income tax is imposed by the local taxation authority, non-profit organizations should file their tax exemption qualification applications with the Local Taxation Bureau of Beijing Municipality. Non-profit organizations established or incorporated by the registration authority at the district (county) level and with the enterprise income tax imposed by the state taxation authority at the district (county) level, should file their tax exemption qualification applications with the state taxation authority at the district (county) level; where the enterprise income tax is imposed by the local taxation authority, non-profit organizations should file their tax exemption qualification applications to the local taxation bureau at the district (county) level.”

Based on No. 472 (2014) of the Shanghai Finance and Tax, in Shanghai, all charitable organizations are required to submit the materials to their taxation authority to distinguish “the charitable organizations incorporated or registered with the approval of the registration authority at or above the municipal level” from “the charitable organizations incorporated or registered with the approval of the registration authority at or above the district (county) level”. However, the examination and approval process for charitable organizations above the municipal level is as follows: “after being verified by the competent taxation authority, the units meeting the tax exemption qualifications for non-profit organizations after preliminary examination shall report to the municipal state taxation bureau and local taxation bureau in writing, after which the municipal taxation bureau and municipal financial bureau shall perform their verification and confirmation”; the examination and approval process for charitable organizations at the district or county level is as follows: “after the taxation authority has performed its examination with the financial bureau at the district or county level, the financial bureau shall report their findings to the competent taxation authority. The competent taxation authority and the financial bureau at the district or

county level shall copy the approved name list to the municipal taxation bureau and municipal financial bureau.”

(3) Term

The tax benefit qualifications for non-profit organizations shall be valid for five years. Charitable organizations shall file the review application within six months after expiration. If any charitable organization fails to file the review application or fails to pass the review, its qualification for tax benefits shall become null and void automatically.

In accordance with the Measures for the Handling of Matters Concerning Preferential Enterprise Income Tax Policies, where there is exempted income in the current year, the relevant organization shall submit a filing form for Enterprise Income Tax Preferences (filing form) to the taxation authority and submit the relevant materials.

The materials required to be submitted include a filing form and the qualification identification receipts of non-profit organizations or any relevant certificates.

Time for filing: Charitable organizations are required to file no later than their annual final settlement and payment; preferential items shall be subject to the tax benefit at the time of advance payment.

Materials reserved for examination: In accordance with Measures for the Handling of the Matters Concerning Preferential Enterprise Income Tax Policies, charitable organizations shall keep the following materials reserved for examination:

- a. Qualification receipts of non-profit organizations or other relevant certificates;
- b. The examination conclusions issued by the registration authority on the year of final settlement and payment (newly incorporated non-profit organizations are not required to submit);
- c. A statement on the separate calculation of taxable and tax-free income and their respective costs, expenses, and losses.
- d. Statement on obtaining the tax-exempted income.

The term for keeping materials for review shall be 10 years after enjoying the preferential items; and the term for keeping the preferential items where there is difference between the taxation regulations and the accounting treatment shall be 10 years.

Charitable organizations shall issue donation receipts for donation revenue. If a charitable organization has no donation receipts or fails to issue donation receipts, the taxation authority will not likely regard such income as donation income.

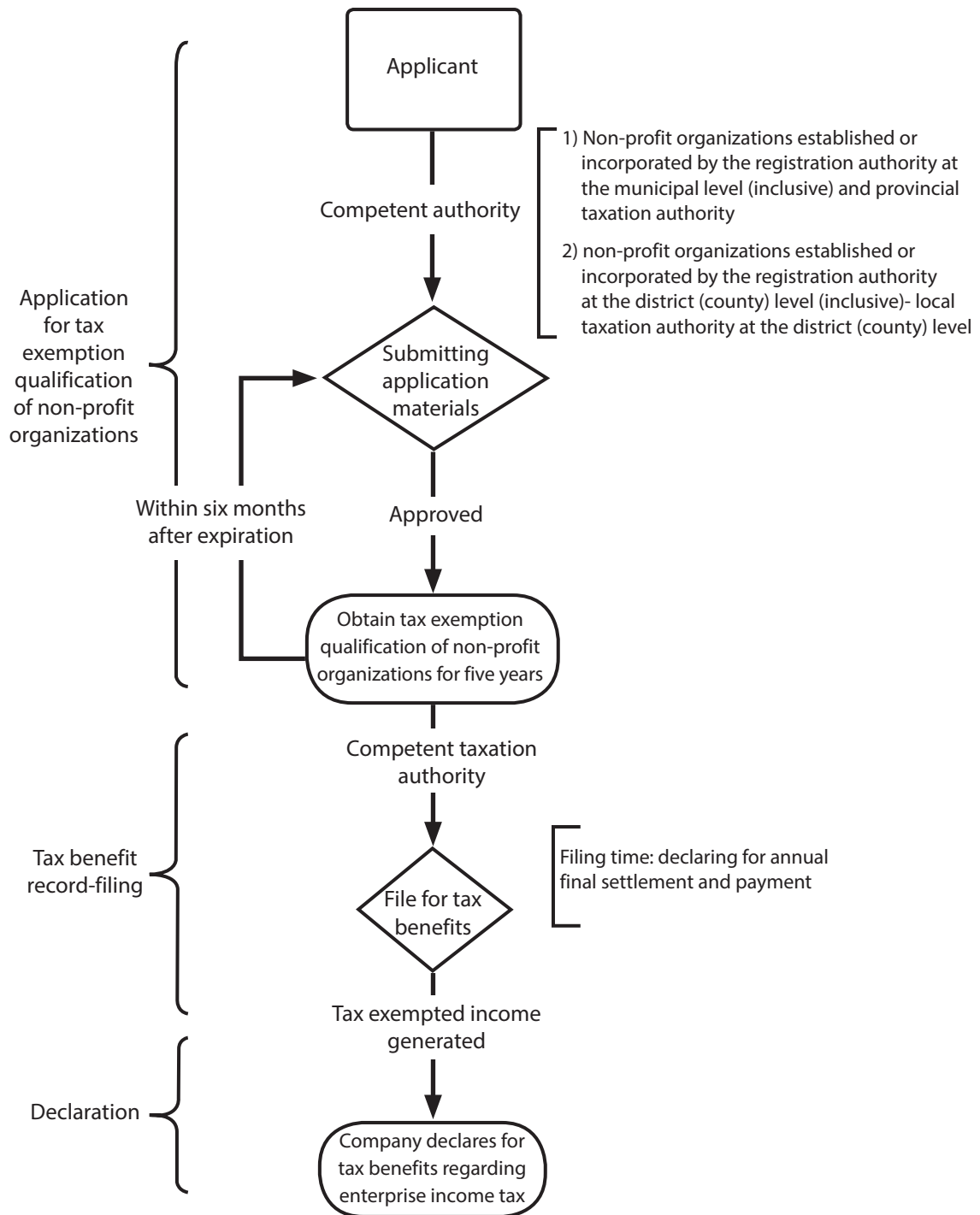
(4) Generation of Tax-exempted Income

In accordance with the Circular on Enterprise Income Tax Exempted Revenue of Non-profit Organizations issued by the Ministry of Finance and State Administration of Taxation (No. 122 [2009] of Finance and Tax), the following revenue sources shall be regarded as tax-exempted income:

- a. Income for the receipt of donations by other companies or individuals;
- b. Any other income from government subsidies besides tax-free income, excluding any income from services purchased by the government;
- c. Membership fees charged subject to the regulations of the Civil Affairs Department and financial departments above the provincial level (the membership fees and funds charged by social organization and social service organizations have no such tax-exempted income)
- d. Tax-free income and income from the interest accrued on bank deposits;
- e. Any other revenue provided by the Ministry of Finance and the State Administration of Taxation.

For charitable organizations, the main tax-exemptions will be for donation revenue and the membership fees of social organizations.

It is necessary to declare enterprise income taxes in cases where tax-exempted income is generated while paying the enterprise income tax.



2.2 Application for Qualification for Pre-tax Deduction of Public Welfare Donation (hereinafter referred to as “tax credit qualification”) and Pre-tax Deduction

(1) Public Welfare Organizations (i.e. the subjects applying for tax credit qualifications)

Based on No. 166 (2018) of Finance and Tax, “public welfare social organizations” for enterprise donations and “social groups” for individual donations refer to public welfare organizations such as foundations or charitable organizations registered with the civil affairs authorities who meet the following conditions in accordance with the Regulations on Fund Administration and Regulations for Registration and Management of Social Association as released by the State Council:

- (I) Satisfying the conditions as provided in Article 52 Item (1) to (8) of Regulations for the Implementation of the Enterprise Income Tax Law;
- (II) No administrative fine has been imposed within three years prior to application;
- (III) Foundations registered by the Civil Affairs Department for three or more years shall have passed their annual examinations for two successive years prior to application or will have passed the latest annual examination with a rating at or above 3A. Foundations registered with the Civil Affairs Department for less than three years but more than one year shall have passed the latest annual examination and must be rated at or above 3A. Foundations registered with the Civil Affairs Department for less than one year shall meet the conditions of items (I) and (II) in this article.
- (IV) Public welfare organizations (excluding foundations) shall be registered in the Civil Affairs Department for more than three years, have their net assets no less than the registered amount on activity funds, have passed the annual examinations for two successive years prior to application or have passed the latest annual examination with a rating at or above 3A during. Public welfare organization’s expenditure on public welfare activities must be equal to or less than 70% of their total gross avenue for three successive years prior to the application, and such expenditures in the current year must be equal to or more than 50% of the total expenditure.

Passing the annual examination refers to the Civil Affairs Department’s examination of foundations and other public welfare organizations and their drawing positive conclusions from this annual review. The rating level of social organizations at or above 3A is part of the 3A, 4A, and 5A rating system used during social organization assessments.

Only foundations and social groups that have met the requisite conditions have the right to apply for pre-tax deduction qualifications. The rating level of social organizations and the result of their annual examination is the most important reference for grading pre-tax deduction qualifications.

(2) Application Process

The specific procedure for tax credit qualifications is as follows:

- (I) The social organizations established by the Ministry of Civil Affairs shall be jointly confirmed by the Ministry of Civil Affairs, Ministry of Finance, and State Administration of Taxation at the time of registration; as for social organizations in conformity with the public welfare association conditions, the Ministry of Civil Affairs, Ministry of Finance, and State Administration of Taxation shall release a joint announcement affirming their pre-tax deduction qualifications.
- (II) As for those social organizations established by the Ministry of Civil Affairs and already in operation, the Ministry of Civil Affairs, Ministry of Finance, and State Administration of Taxation shall release a joint announcement affirming their pre-tax deduction qualifications based on the public welfare activities conducted by social organizations and their annual examination and assessment.
- (III) Social organizations registered with the Civil Affairs Department at or under the provincial level shall be subject to items 1 (I) and 2 (II) in this article.

Based on the regulations above, the finance authority, in cooperation with the state taxation authority and Civil Affairs Department, shall announce the tax credit qualifications for charitable organizations instead of drafting a physical application. In practice, some areas may require social organizations to submit materials in accordance with No. 160 (2008) of Finance and Tax.

(3) Announcement

The financial department, state taxation authority, and Civil Affairs Department shall announce on the tax credit qualifications for the current year.

(4) Conditions for Tax Credit Disqualification

Based on No. 160 (2008) of Finance and Tax, all public welfare organizations in any of the following circumstances shall be disqualified for pre-tax deductions:

- a. Failure to pass the annual examination or having a rating lower than 3A in the latest social organization assessment;
- b. Falsifying the application for pre-tax deduction qualifications.
- c. Committing tax evasion or helping others commit tax evasion;
- d. Committing activities in violation of the Articles of Association, or using an accepted donation for purposes other than those provided in the Articles of Association;
- e. Being subject to administration punishment.

The public welfare social organizations disqualified for pre-tax deductions may not apply for pre-tax deduction qualifications within one year if they fall into any of the circumstances stated in (a), and may not apply for pre-tax deduction qualifications within three years in cases where they fall into the circumstances stated in (b), (c), (d), and (e).

In circumstances (c) and (d), donation income and other revenue shall be subject to additional enterprise income taxes.

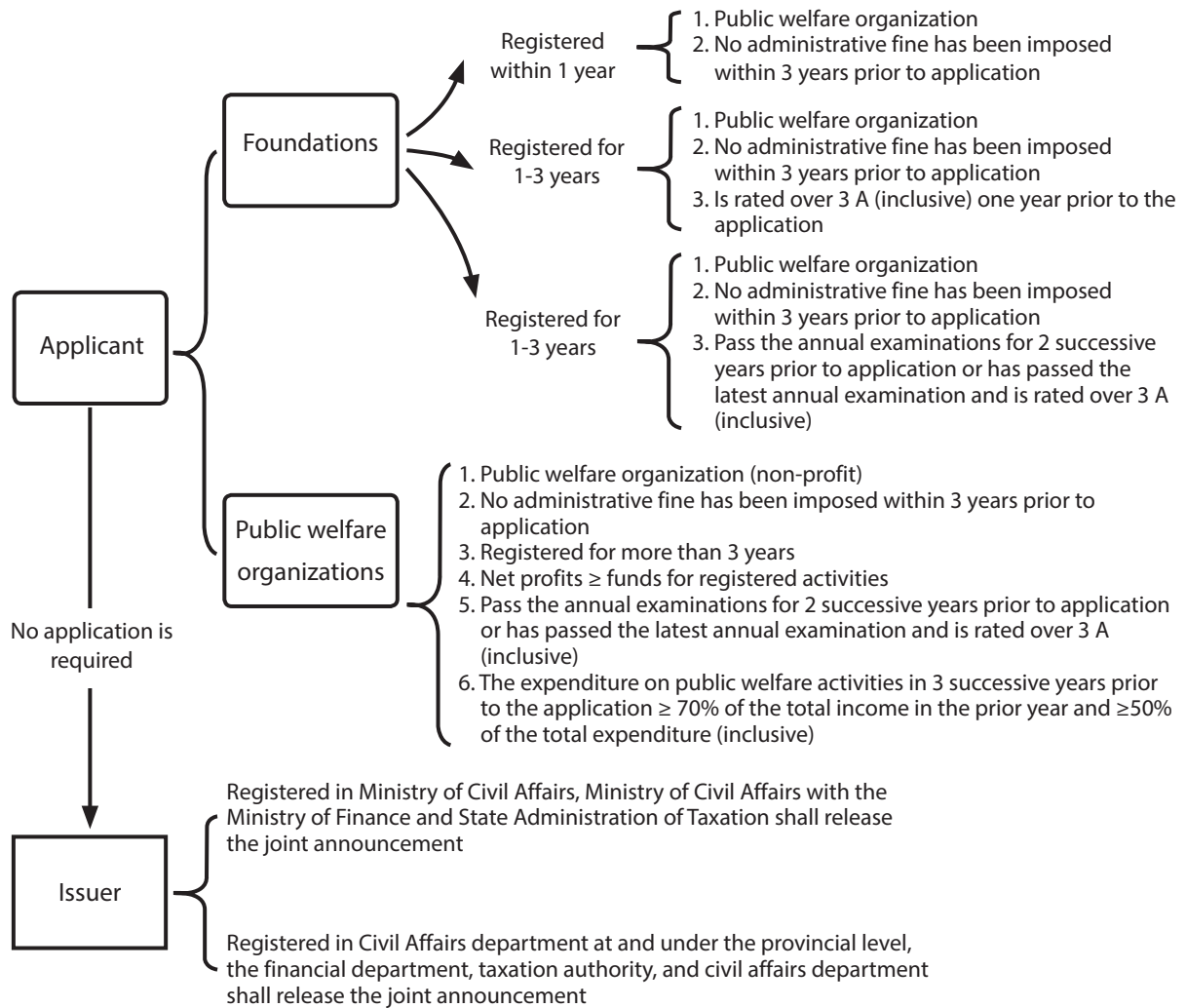
(5) Process for the Enterprises and Individuals Enjoying Tax Benefits for Donation

As for public welfare donation expenditures going to public welfare organizations, the enterprises or individuals incurring them shall provide public welfare donation receipts printed by the financial department at or above the provincial level and sealed by the institution accepting the donation, or the receipt slip of the General Payment on Non-tax Income sealed by the institution accepting donations. Such public welfare donation expenditures shall be deducted before tax.

As for public welfare donation expenditures related to public welfare organizations, the taxation authority shall go through the name list released by the financial department, taxation authority, and Civil Affairs Department. Where public welfare organizations accepting donation are in the list, the donation expenditures incurred by the enterprise or individuals may be deducted before tax.

Therefore, donations to charitable organizations by enterprises or individuals may enjoy tax benefits only after satisfying two conditions: the charitable organization must be eligible for tax credits and the enterprise or individual must have public welfare donation receipts with the seal of the charitable organization.

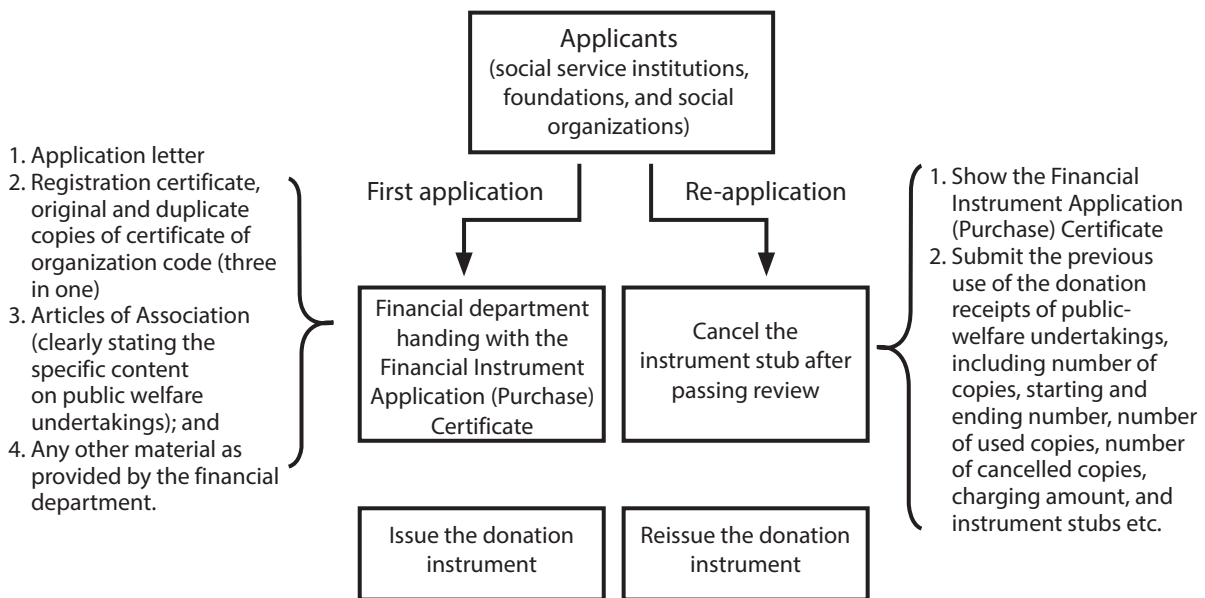
At the same time, in accordance with Enterprise Income Tax Law and Individual Income Tax Law, expenditures in the form of charitable donations and gifts within 12% of the gross annual profit of an enterprise may be deducted when computing the taxable amount of income. Charitable and gift expenditures within 30% of the income tax payable by an individual may be deducted when computing the taxable amount of income. It was agreed in the Circular of the Ministry of Finance and the State Administration of Taxation on Income Tax Policies for Donation to Eight Units including the China Aging Development Foundation, by the Ministry of Finance and the State Administration of Taxation, that expenditures incurred by social entities such as enterprises, public institutions, and individuals for donations to the China Aging Development Foundation, Chinese Language and Culture Education Foundation of China, China Greening Foundation, China Women's Development Foundation, China Youth-Care Foundation, China Biodiversity Conservation Foundation, China Children and Teenagers Fund, and China Guangcai Promotion Fund shall be deducted before paying the enterprise and individual income tax. The Ministry of Finance and the State Administration of Taxation clarified that donations by an enterprise or individual shall be deducted before paying the enterprise income tax and individual income tax.



2.3 Donation Receipts

Application process: While applying for an invoice for donations to public welfare projects for the first time, public welfare organizations shall first apply for the Financial Instrument Application (Purchase) Certificate and submit the application letter, registration certificate issued by Ministry of Civil Affairs, original and duplicate of copies of the certificate of the organizational code, Articles of Association (clearly stating the content on public welfare projects), and any other materials as requested by the finance department. The finance department shall, in accordance with the Measures on Administration of Financial Receipts and Interim Measures on the Administration of Use of Receipts on Donation to Public Welfare Projects, conduct a strict review and verification of the application materials submitted by public welfare organizations, approve the applications in conformity with the Administration of Donation Receipts for Public Welfare Projects, handle the Financial Instrument Application (Purchase) Certificate, and issue donation receipts.

Whenever reissuing the donation receipts of public welfare projects, public welfare organizations shall show the Financial Instrument Application (Purchase) Certificate and submit any existing invoices for donations to public welfare projects, including the number of copies, starting and ending number, number of used copies, number of cancelled copies, charging amount, and instrument stubs. The financial department shall, after verifying and approving the foregoing content, check and cancel the instrument stub and continue to issue the invoice accordingly.



2.4 Specific Calculation of the Tax Benefits Enjoyed by Enterprises and Individuals After Donation

(I) Calculation of the Tax Benefits Enjoyed by Enterprises for Donation

A company donated to a public welfare foundation in May 2017 and the donation was to be used for supporting the disabled; said foundation obtained pre-tax deduction qualifications in 2017 and issued a donation instrument to a company. The company is a general taxpayer and its accounting profit in 2017 was RMB 10 million without any other tax adjustment. Therefore, the company's taxable income before the deduction of the donation in 2017 was RMB 10 million + the amount of the donation (taxable income = total annual income – tax free income – tax exempted income – various deductions – prior year deficiency).

a. A Company Donated RMB 2,000,000

A company's public welfare donation before deducting tax in 2017 equaled RMB 10,000,000 \times 12% = RMB 1,200,000. The company's public welfare donation in 2017 was RMB 2,000,000, more than RMB 1,200,000. Therefore, only RMB 1,200,000 could be deducted. The company's enterprise income tax payable in 2017 equaled RMB 1,080,000 \times 25% = RMB 2,520,000 .

The RMB 800,000 not deducted may be deducted from the taxable income in 2019, 2020, and 2021.

b. A Company Donated RMB 1,000,000

A company's public welfare donation before deducting tax in 2017 equaled 10,000,000 \times 12% = RMB 1,200,000. The company's public welfare donation in 2017 was RMB 1,000,000, less than RMB 1,200,000. Therefore, the total amount of donation could be deducted. A company's enterprise income tax payable in 2017 = RMB 1,000,000 \times 25% = RMB 2,500,000.

(II) Calculation of the Tax Benefits Enjoyed by Individuals for Donation

Mr. Wang donated to a public welfare foundation in March 2017 supporting the disabled. The foundation obtained pre-tax deduction qualifications in 2017 and issued the donation instrument to Mr. Wang. Mr. Wang's salary in March 2017 (after paying the social insurance) was RMB 12,000 with revenue from writing reaching RMB 3,000.

Mr. Wang's income tax payable for his salary before donation should = (12000-3500) \times 25%-1005 = RMB 1,120, while the income tax payable for the revenue from writing should = 3000 \times (1-20%) \times 20% \times (1-30%) = RMB 336.

a. Mr. Wang Donated RMB 2,000 From His Salary

The deduction limit for salary income tax should be (12000-3500) \times 30% = RMB 2,550; Mr. Wang donated RMB 2,000 less than the deduction limit for income tax; therefore, the donation should be deducted.

Thus, Mr. Wang's income tax payable for his salary = (12000-3500-2000) \times 20%-555 = RMB 745.

b. Mr. Wang Donated RMB 4,000 From His Salary

The deduction limit for salary income tax should = (12000-3500) \times 30% = RMB 2,550; Mr. Wang donated RMB 4,000, more than the deduction limit; therefore, only RMB 2,550 can be deducted, and the remaining RMB 1,450 may not be deducted from the income tax payable for revenue from writing, nor used for deducting the income tax payable for his salary in any month other than March 2017 (prior to February 2017 and subsequent to April 2017).

Therefore, Mr. Wang's income tax payable for his salary = (12000-3500-2550) \times 20%-555 = RMB 635.

c. Mr. Wang Donated RMB 2,000 in Revenue from Writing

The deduction limit for income tax regarding revenue from writing (and related sources of income) should be $3000 \times (1-20\%) = \text{RMB } 720$; Mr. Wang donated RMB 2,000, more than the deduction limit; therefore, only RMB 720 can be deducted. The remaining RMB 1,280 may not be carried forward to any other taxable income such as his salary, deducted from the taxable income for the subsequent tax declaring period, or deducted retrospectively from the taxable income of the previous tax period.

Therefore, Mr. Wang's income tax payable for his salary = $[3000 \times (1-20\%)-720] \times 20\% \times (1-30\%) = \text{RMB } 235.2$.

Chapter XII Supervision and Administration

1 Supervision and Administration of Charitable Organizations ABC

1.1 The Civil Affairs Department is Responsible for Supervising Charitable Activities.

Prior to the promulgation of the Charity Law, there was no law on the supervision and administration of social organizations in China. The Civil Affairs Departments only had three regulations and some departmental and local regulations to supervise and administrate social organizations. Although subsequent laws didn't generate negative impact, in the sense of disrupting such authorities from carrying out their supervisory and administrative duties competently, they still required updating. There are two issues. First, a poor legal basis for enforcement led to an absence of supervision. Second, local governments have different attitudes towards the supervision of social organizations. Moreover, their approach to supervision affected each industry differently, even if they are located within the same administrative area, thereby causing an imbalance in the way social organizations have developed.

Article 6 and Chapter 10 of the Charity Law confirm that Civil Affairs Departments are the authority governing charity work. They define the rights and obligations of charitable organizations for purposes of law enforcement, as well as supervise based on territory (territoriality principle) and the "combination of supervisory units and relevant departments".

The territoriality principle states that Civil Affairs Departments shall supervise charity activities within their jurisdictions, as well as supervise the charitable organizations registered therein¹⁹¹.

The "combination of supervisory units and relevant departments" is a supervisory approach that involves multiple areas, industries and functional departments. Its complexity requires the supervision structure to include not only the Civil Affairs Department, but also other functional departments for the implementation of the Charity Law. For instance, the taxation authority shall make investigations and punish any charitable organization that obtained tax benefits by falsification, whereas the trust supervision and administration agency shall supervise and monitor charitable trusts for compliance.

191. *The people's government above the county level refers to the people's government of province, autonomous region, municipality directly under the Central Government, autonomous prefecture, city, county and autonomous county with districts, and city without districts and district directly under city.*

1.2 The Charity Law Refined Existing Regulations on the Administrative Supervision of Social Organizations

The Charity Law has not only normalized information disclosure, strengthened the internal governance of charitable organizations, and regulated property administration and the operation of charitable organizations, but also constructed supervisory systems for administration, industrial self-governance and social oversight. The most progress has been made in the area of administrative supervision. Chapter 10 of the Charity Law defines the duties of supervision departments in charge of overseeing charity activities: “Civil Affairs Departments of the people’s government at the county level or above shall carry out the management and supervision of charitable activities and provide guidance and supervision to charity industry organizations.” This is the general provision concerning the duties of Civil Affairs Departments as well as the specific regulation concerning their operational procedures.

The Charity Law gives Civil Affairs Departments the right to hold accountable charitable organizations suspected of violating the provisions of the Law¹⁹². These rights include:

- ▶ Carrying out inspections of charitable organizations’ domiciles or activity sites;
- ▶ Requesting clarification from charitable organizations and access to relevant materials;
- ▶ Investigating work units and individuals involved in the supervision and management of charitable organizations;
- ▶ Inquiring into the financial accounts of charitable organizations with the approval of the people’s government;
- ▶ Carrying out any other measures provided for by laws and administrative regulations.

Moreover, the Charity Law also grants Civil Affairs Departments the ability to examine and investigate charitable organizations. Article 94 of the Charity Law states that: “Where the Civil Affairs Departments of the people’s government at or above the county level undertake an investigation of a charitable organization or related work unit and individuals, there shall be two or more inspectors or investigators and they shall produce legitimate certificates and inspection or investigation notices.”

The Charity Law provides clarity on relevant legal liabilities. For example, to punish an organization means to give warning or impose deadlines for operational or ethical amendments. If such warnings are not heeded or such amendments are not made, Civil Affairs Departments reserve the right to require the closing down of an organization and the revocation of their registration certificate. If charitable organizations are found to have unlawful gains, such gains will be confiscated and those involved fined between RMB 20,000 and 200,000. Administrative

¹⁹². Article 93 of the Charity Law

punishments include warnings, property confiscation, and the restriction of operational capacity. The Charity Law provides a much needed update to existing laws on the subject of administrative punishment.

Below is a detailing of each administrative punishment outlined in the Charity Law.

1.3 Charity Industry Organization – Introducing a Self-governance Supervision Model

Industry organization refers to a private and non-profit social group organized by citizens, legal persons, or any other organization. It is based on the common benefit of those involved.

Article 19 of the Charity Law states that charitable organizations may legally establish industry organizations. Industry organizations reflect the needs of a profession, promote professional exchange, strengthen professional self-governance, raise the credibility of the charity sector and promote the development of charitable causes. At the same time, Article 96 states that, “charity industry organizations shall establish and improve the charitable industry standards and strengthen the self-governance of charitable industry.”

An industry organization is a non-governmental social group with independent and autonomous management, but which is usually linked to a charitable organization. Such organizations serve as a bridge between charitable organizations and governments, coordinating and promoting their cooperation. They also specify industrial standards and strategies for effective self-governance.

An Internet search yielded no more than 40 industry organizations across China. Among these, the China-Charity Alliance, Shenzhen Charity Alliance, Shaanxi Charity Alliance, Chengdu Public-welfare Charity Alliance and Guangzhou Public-welfare Charity Alliance are the most influential. In short, this sector is just beginning to develop.

1.4 Credit System Construction and Credit Information Disclosure

The Charity Law emphasizes that Civil Affairs Departments are liable for recording the credits of charitable organizations and their responsible persons and setting up credit recording systems and norms.

Another responsibility of Civil Affairs Departments is the disclosing of credit records to the public for supervision. Civil Affairs Departments may also record credit for use in social supervision.

Finally, they may cooperate with third-party professional assessment agencies to set up assessment mechanisms. This is to supplement the current assessment system.

In January 2018, the Measures on Administration of Credit Information of Social Organizations was released requiring that the nation’s credit information registration authority compile and make public lists for organizations conducting abnormal operations, failing to perform their requisite

duties, and breaking the law. This is to strengthen the supervision of social organization's credit information.

The Ministry of Civil Affairs imposed administrative punishment upon a particular social organization for three months starting from February 2018. The punishment required that they cease operations, based on that they were found to be incompliant and flagged on one of the lists described above. Based on the Measures on Administration, the registration authority of social organizations may require relevant departments to take the following measures on punishment:

- (1) List the organization needing extra supervision;
- (2) Withhold subsidies;
- (3) Remove ability to purchase services from these social organizations;
- (4) Withhold public recognition;
- (5) Exemplify them as a warning to others;
- (6) Carry out the punishment measures in the signed joint punishment memorandum.

1.5 Social Supervision

Charitable activities involve all aspects of society, including donors, charitable organizations, volunteers, and beneficiaries. Charitable activities and organizations, including the public credit of charitable trusts, are related to the development of the charity industry. Thus, social supervision has become an essential part of the construction of the supervision system¹⁹³.

There are three aspects to the regulations on social supervision in the Charity Law¹⁹⁴:

- (1) Encourage units and individuals. If a work unit or an individual discovers that a charitable organization or trustee has broken the law, they may complain or report their concern to other departments or to a charity industry organization.
- (2) Set up a reporting and compliance mechanism. If a work unit or an individual discovers that a charitable organization or trustee has broken the law, they may complain or report their concern to the Civil Affairs Department, other relevant departments or to a charity industry organization. By way of such a mechanism, a link may be drawn between administrative supervision, social supervision, and self-governance.

193. Zheng Gongcheng, *Interpretation to and Application of Charity Law of the People's Republic of China*, People's Publishing House, 2016 P 276

194. Article 97 of the Charity Law

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- (3) Leverage the role of the media and public opinion in supervision. The public may expose fraudulent behavior and help bring the perpetrators to justice by way of news articles, blogging, forum discussions, and social media.

1.6 Liquidation of Charitable Organizations

The conditions and procedures for the termination of a fund and the disposal of property thereafter is spelled out in the Regulations on Funds. Different from traditional companies, social organizations are required to use the sampling text provided by the government at the time of incorporation. They also mustn't have autonomy concerning the terms and conditions of the Articles of Association. Based on the sampling text of the Articles of Association released by the Ministry of Civil Affairs (please refer to Appendix 1-TK2), the termination of a foundation shall be approved by the board of directors through voting. A foundation may be terminated in any of the following three circumstances: (1) The purpose is achieved; (2) The foundation is unable to continue working for the public welfare; and (3) The foundation is split up or merged. Promoters may add other circumstances as needed in the Articles of Association. It is more or less the same for private non-enterprise units and social groups. The termination of a private non-enterprise unit requires approval from the board of directors, whereas the termination of a social group requires a resolution passed by a member meeting.

Article 18 of the Charity Law has improved the exit mechanism for social organizations. It stipulates that the decision-making body of a charitable organization shall establish a team for liquidation within 30 days, starting from the date when the circumstances for termination emerged. If the organization does not establish such a team or if the team does not fulfill its duties, the Civil Affairs Department may apply to a people's court to form a team out of the available personnel.

Article 17 of the Charity Law, compared with the sampling text, adds two circumstances that would warrant the termination of a charitable organization. One is the failure of an organization to engage in charitable activities for two consecutive years; the other is an organization being deregistered or having its registration certificate withdrawn.

Regarding the first circumstance, there is a similar provision in the Legal Person Law of Japan, which states that termination can occur if a corporate legal person remains dormant too long. It is required to report to the registry within two months. Failure to do so will result in the organization dissolving.

Concerning the second circumstance, a charitable organization that has violated laws or administrative regulations, and which has been subsequently deregistered or had its certificate withdrawn, shall be terminated. In accordance with Article 103, fraudulent claims for tax benefits shall be dealt with and prosecuted by taxation agencies. In serious cases, the Civil Affairs Departments shall legally revoke an organization's registration certificate and make a public announcement.

There is an important difference between an organization's registration being revoked and its registration certificate being withdrawn. Having a registration certificate withdrawn is a kind of administrative punishment. Article 8 of the Law on Administrative Penalty stipulates the types of administrative penalties: disciplinary warnings, fines, confiscation of illegal gains, confiscation of unlawful property, suspension of business operations, temporary suspension or rescission of permits or licenses, administrative detention, among others. When a registration certificate is withdrawn, the organization's license is rescinded, a class five administrative punishment.

According to Article 69 of the Law on Administrative Permissions, the administrative organ which decides administrative permissions may also, based on the request of an interested person or by using its own discretion, revoke them. There are five situations where such revocation may occur: (1) When staff members abuse their power or neglect their duties; (2) When the decision to approve permissions disregards statutory functions and powers; (3) When statutory procedures are contravened; (4) When the applicant for permissions proves not to be qualified and thus fails to meet the statutory requirements; and (5) Other cases where administrative permissions may be revoked. If a person obtains administrative permissions by means of deception or bribery, it shall be revoked. Thus, the deregistration of a charitable organization happens when the administrative organ revokes or cancels the administrative permissions as provided in the Law on Administrative Permissions.

Based on existing laws and regulations, the circumstances by which a social organization's registration certificate may be revoked¹⁹⁵ include:

Circumstances to Revoke a Registration Certificate	Applicable social Organizations
(1) Failure to conduct activities in accordance with the purpose and scope of public welfare activities provided for in the Articles of Association;	Foundations, private non-enterprise units and social groups
(2) Practice fraud when preparing accounting certificates, registering accounting records, or preparing financial accounting reports;	Foundations
(3) Failure to go through alteration registration procedures;	Foundations, private non-enterprise units and social groups
(4) Failure to fulfill the required expenditure amount for public benefit work;	Foundations
(5) Failure to take an annual examination or failure to qualify;	Foundations
(6) Failure to disclose any information, or the disclosure of fraudulent information;	Foundations
(7) Alter or lease/lend the registration certificate or alter or lease/lend the seal;	Private non-enterprise units and social groups

195. The original text of Regulations on Fund Administration, Regulations on Administration of Social Groups and Interim Regulations on Registration Administration of Private Non-enterprise Units is "registration revocation"; however the author believes that the legislative intention should be revocation of registration certificate in combination with the Charity Law and Law on Administrative Permission.

Circumstances to Revoke a Registration Certificate	Applicable social Organizations
(8) Refuse or fail to be supervised;	Private non-enterprise units and social groups
(9) Illegally incorporate or set up branches;	Private non-enterprise units and social groups
(10) Engage in for-profit business activities;	Private non-enterprise units and social groups
(11) Embezzle, privately divide or appropriate institutional assets;	Private non-enterprise units and social groups
(12) Charge for expenses, raise funds, or accept and use donation and funds against relevant regulations.	Private non-enterprise units and social groups

2 Practical Guide

This section shall sort out the provisions in the Charity Law regarding administrative punishments. The tables are divided into the chapter and article, specific violations, subjects liable for legal liabilities, relevant legal provisions, and administrative punishments for violations.

Chapter & Article	Specific Violations	Subjects Liable for Legal Liabilities	Relevant Legal Provisions	Administrative Punishment for Violations
Regulate the internal governance of charitable organizations	Failure to carry out the activities subject to the charity's purpose.	Charitable organizations	Article 98 & 100 of the Charity Law	The Civil Affairs Department shall impose deadlines for amendments; upon a failure to make amendments by the deadline, the Civil Affairs Department shall revoke registration certificates and make a public announcement; If charitable organizations have unlawful gains, the Civil Affairs Department shall confiscate them and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
	Accept donations in a way that violates laws and regulations or social morality; or violate laws concerning the treatment of beneficiaries		Article 98, 100 & 15 of the Charity Law	
	Engaging in or sponsoring activities that endanger state security or public interests		Article 104 & 15 of the Charity Law	
	Loss of charitable property by violating provisions on affiliated transactions in the Charity Law		Article 99 & 100 of the Charity Law	
				It shall be investigated and dealt with by the relevant authorities. The Civil Affairs Department shall revoke the organization's registration certificate and make a public announcement.
				The Civil Affairs Department shall give warning and impose deadlines for amendments; upon a failure to make amendments by the deadline, a deadline to cease operations and make corrections shall be imposed; if within a year of disposition a violation occurs again, or if there are other serious situations, the Civil Affairs Department shall revoke the registration certificate and make a public announcement.

Chapter & Article	Specific Violations	Subjects Liable for Legal Liabilities	Relevant Legal Provisions	Administrative Punishment for Violations
				If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
Charitable fund-raising ¹⁹⁶	Conducting public fund-raising by organizations and individuals without public fundraising qualifications;	Charitable organizations or the other organizations or individuals	Article 101 & 23 of the Charity Law	The Civil Affairs Department shall give warnings and order cessation of fund-raising activities; unlawfully solicited assts will be returned to the donor, and where there is difficulty in returning them, they shall be seized and transferred to other charitable organizations; a fine may also be imposed between RMB 20,000 and 200,000.
	Using false information or other methods to trick or coax fund-raising targets into making donations	Charitable organizations	Article 101 & 31 of the Charity Law	
	Overtly or covertly engaging in the apportionment of units or individuals		Article 101 & 32 of the Charity Law	
	Causing obstruction to the public order, corporate production or the lives of residents		Article 101 & 23 of the Charity Law	
	Failure to file the charitable plan	Charitable organizations	Article 99, 100 & 24 of the Charity Law	The Civil Affairs Department shall give warning and impose deadlines for amendments; upon a failure to make amendments by the deadline, a deadline to cease operations and make corrections shall be imposed; if within a year of disposition, a violation occurs again, or if there are other serious situations, the Civil Affairs Department shall revoke the registration certificate and make a public announcement. If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
	Unauthorized change in the use of donated property		Article 99, 100 & 39 of the Charity Law	

196. It might violate charitable fund raising and charitable donation; thus it is listed in two items.

Chapter & Article	Specific Violations	Subjects Liable for Legal Liabilities	Relevant Legal Provisions	Administrative Punishment for Violations
	Failure to issue donors public interest donation receipts, or failure to promptly and actively giving feedback to donors		Article 102, 38 & 42 of the Charity Law	The Civil Affairs Department may issue warnings and order amendments; if such amendments are not made, the organization may need to cease activities.
Charitable trust	The trust's property and proceeds are being used for non-charitable purposes	Trustee of charitable trust	Article 105 of the Charity Law	The Civil Affairs Department shall give warnings and impose deadlines for amendments.
	The operation and financial status of the trust are not reported to the Civil Affairs Department or otherwise publicly disclosed		Article 105 of the Charity Law	If charitable organizations have unlawful gains, it shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
Charitable properties	Investing property that shouldn't be used for investment purposes	Charitable organizations	Article 99, 100 & 54 of the Charity Law	The Civil Affairs Department shall give warning and impose deadlines for amendments; upon a failure to make amendments by the deadline, a deadline to cease operations and make corrections shall be imposed; if within a year of disposition, a violation occurs again, or if there are other serious situations, the Civil Affairs Department shall revoke the registration certificate and make a public announcement.
	Violating the annual expenditure or management cost amounts for charitable activities stipulated in Article 60 of the Charity Law		Article 99, 100 & 60 of the Charity Law	If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
	Privately distributing, embezzling, intercepting, or misappropriating charitable assets		Article 98 & 100 of the Charity Law	The Civil Affairs Department shall impose deadlines for amendments; upon a failure to make amendments by the deadline, an organization's registration certificate will be revoked and a public announcement made; If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge fined between RMB 20,000 and 200,000.

Chapter & Article	Specific Violations	Subjects Liable for Legal Liabilities	Relevant Legal Provisions	Administrative Punishment for Violations
Charitable services	Failure to issue proof of volunteer service records	Charitable organizations	Article 102 & 65 of the Charity Law	The Civil Affairs Department may give warnings and order amendments; if such amendments are not made, the organization may need to cease activities.
	Leaking private information about donors, volunteers or beneficiaries		Article 99 & 100 of the Charity Law	The Civil Affairs Department shall give warning and impose deadlines for amendments; upon a failure to make amendments by the deadline, a deadline to cease operations and make corrections shall be imposed; if within a year of disposition, a violation occurs again, or if there are other serious situations, the Civil Affairs Department shall revoke the registration certificate and make a public announcement.
Information disclosure	Not producing and delivering annual work reports or financial reports	Charitable organizations	Article 99, 100 & 13 of the Charity Law	If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
	Not carrying out information disclosure obligations		Article 99, 100 & 69~75 of the Charity Law	
	Leaking private information about donors, volunteers, or beneficiaries, as well as the names, titles, addresses and contact methods for donors and principals of charitable trustees who do not consent to it being disclosed		Article 99, 100 & 76 of the Charity Law	
Promotion measures	Fraudulent claims for tax benefits	Charitable organizations	Article 103 of the Charity Law	It shall be dealt with and prosecuted by taxation agencies. In serious cases, the Civil Affairs Department shall revoke its registration certificate and make a public announcement
Others	Disclosing state secrets or commercial secrets	Charitable organizations	Article 99 & 100 of the Charity Law	The organization shall be punished in accordance with relevant laws. If within a year of disposition a violation occurs again, or if there are other serious situations, the organization's registration certificate shall be revoked and a public announcement made. If charitable organizations have unlawful gains, they shall be confiscated and the directors and other personnel who are directly in charge shall be fined between RMB 20,000 and 200,000.
	Illegally gain assets in the name of charity or disguised as charitable organizations	Natural person, legal person or other organizations	Article 107 of the Charity Law, Law of Public Security Administration, and Criminal Law	The public security authorities shall make investigation and impose punishment

Chapter & Article	Specific Violations	Subjects Liable for Legal Liabilities	Relevant Legal Provisions	Administrative Punishment for Violations
	Violations of the provisions of this law constitute a public security administration violation	Natural person, legal person or other organizations	Article 109 of the Charity Law, Law of Public Security Administration, and Criminal Law	The public security departments shall give public security administrative sanctions in accordance with the law; if a crime is committed, criminal charges shall be pursued.
	Failure to fulfil their verification duties stipulated in Article 27 of the Charity Law	Radio broadcasters, television stations, newspapers and journals, and network service providers or telecommunications operators	Article 101 & 27 of the Charity Law	Their supervisory departments shall give a warning and order deadlines for amendment; upon a failure to make amendments by the deadline, a notice of criticism shall be issued and circulated.

Appendix 1 – Practical Toolkit:

TK1 - Model Text of the Articles of Incorporation of Foundations in Shanghai – Charitable Organizations

Model Text of the Articles of Incorporation of Foundations

(Charitable Organizations)

Shanghai Administration Bureau of Social Organizations

December 2017

Instructions

I. The Model Text of Articles of Incorporation is formulated in accordance with the Charity Law of the People's Republic of China, the Regulations on the Administration of Foundations, as well as other laws, regulations, rules, and policies.

II. The Model Text of Articles of Incorporation is intended to provide a model for foundations (charitable organizations) to formulate articles of incorporation. Foundations (charitable organizations) shall formulate articles of incorporation which include all the contents of the Model Text of Articles of Incorporation and may make appropriate supplements and refinements to the contents according to the actual situation.

III. The text in [] is a mandatory requirement, while the text in () is an optional item.

Articles of Incorporation of ×××××××××× (Full Name of Foundation)

Chapter I General

Article 1 The name of the Foundation is _____ Foundation.

[The name of the Foundation shall comply with the Provisions on the Administration of Foundation Names.]

Article 2 The Foundation is a charitable organization engaging in public welfare and non-profit activities, which mainly carries out activities in _____ District, Shanghai Municipality (**The district shall be specified for registration in a district**).

Article 3 The purpose of the Foundation is: _____.

[The purpose shall be consistent with the relevant provisions of the Charity Law of the People's Republic of China.]

Article 4 The charitable activities carried out by the Foundation shall abide by the principles of being lawful, voluntary, honest, and non-profit, and must not violate social morality, or endanger national security, harm social public interests or the lawful rights and interests of other persons.

Article 5 Where the Foundation conducts public fund-raising, it shall obtain the qualification for public fund-raising according to law and shall abide by the relevant provisions of the Charity Law and the Administrative Measures for Public fund-raising by Charitable Organizations.

Article 6 The original fund of the Foundation is RMB_____, which is derived from_____ and the donated properties are all legal.

Article 7 The registration authority of the Foundation is _____; the industrial supervisory unit is _____. (**Statement for direct registration**)

The registration authority of the Foundation is _____; the professional supervisory unit is _____. (**Statement for dual management**)

Article 8 The domicile of the Foundation is: _____.

Chapter II Scope of Business

Article 9 The scope of business of the Foundation is: _____
_____.

[It must be specific, clear, and limited to 60 words.]

Specifically:

(1) _____ ;

(2) _____ ;

(3) _____ ;

.....

The Foundation shall carry out charitable activities in strict accordance with the approved Articles of Incorporation, without exceeding the scope of business as stipulated in the Articles of Incorporation, as well as in compliance with the principles of openness and transparency.

Article 10 The Foundation shall engage in the following charitable activities:

(1) Helping the poor and the needy;

(2) Assisting the elderly, orphans, the ill, the disabled, and providing special care;

(3) Alleviating losses incurred by natural disasters, accidents, public health incidents, and other emergencies;

(4) Promoting the development of education, science, culture, health, sports, and other causes;

(5) Preventing and alleviating pollution and other public hazards and protecting and improving the ecological environment;

(6) Other public welfare activities in accordance with the Charity Law, specifically: _____ .

(Optional)

Article 11 The Foundation shall carry out charitable trust business in accordance with the relevant provisions of both the Charity Law and the Trust Law of the People's Republic of China.

Article 12 The Foundation shall carry out charitable activities in accordance with the relevant provisions of the Charity Law and other relevant laws and regulations.

Chapter III Organizational Structure and Person in Charge

Article 13 The Foundation shall establish a board of directors, which is composed of directors.

The directors of the Foundation shall serve –year terms. A director may serve consecutive terms if re-elected upon expiration of the term of office thereof.

[The number of the directors of the Foundation shall not be less than 5 and more than 25, and an odd number is appropriate. Each term of office of the directors shall not exceed 5 years.]

Article 14 Qualifications of directors:

- (1) The directors shall have full capacity for civil conduct;
- (2) The directors shall be diligent, honest and trustworthy;
- (3) _____;

.....

(Optional: The Foundation may make refinements or supplements according to actual conditions:

1. The directors shall be enthusiastic about the public welfare undertakings carried out by the Foundation;
2. The directors shall have the work history and work experiences that are aligned with the business;
3. The directors shall be able to work with due diligence, ensuring that the donated property is used in accordance with the wishes of the donors and the public welfare purpose of the Foundation, as well as guarantee the safety and preservation and increase of values of the property of the Foundation;
4. The directors shall be honest in performing their official duties and act fairly.

Article 15 The appointment and removal of directors:

- (1) The first directors shall be nominated respectively by the major donors and initiators and shall be determined through consultation with the registration authority; **(Statement for direct registration)**

The first directors shall be nominated respectively and determined upon consultation by the professional supervisory unit, major donors, and initiators; **(Statement for dual management)**

(2) When the board of directors is re-elected, the board of directors, major donors, and the registration authority shall nominate candidates upon joint consultation and establish a leading group for re-election to organize all candidates to jointly elect a new board of directors; **(Statement for direct registration)**

When the board of directors is re-elected, the professional supervisory unit, the board of directors and major donors shall nominate candidates upon joint consultation and establish a leading group for re-election to organize all candidates to jointly elect a new board of directors; **(Statement for dual management)**

(3) The board of directors shall consult with the registration authority to supplement or remove directors, which shall be approved by the board of directors; **(Statement for direct registration)**

The addition or removal of directors shall be approved by the board of directors and reported to the professional supervisory unit for review and approval; **(Statement for dual management)**

(4) The number of directors who come from the same organization and affiliated organizations shall not exceed one third **(Statement for foundations with public fund-raising qualifications)**

The total number of directors as near relatives shall not exceed one third of all the directors; **(Statement for foundations without public fund-raising qualifications)**

(5) The number of directors who are not residents in mainland China shall not exceed one third; **(Statement for foundations with public fund-raising qualifications)**

(6) Directors' near relatives shall not serve on the board simultaneously; **(Statement for foundations with public fund-raising qualifications)**

(7) The election and removal of the directors shall be reported to the registration authority for the record.

Article 16 Rights and obligations of directors:

(1) _____;

(2) _____;

(3) _____;

.....

(Optional: The Foundation may make refinements or supplements according to actual conditions:

1. The right to vote and to be elected;

2. The right to criticize, to make suggestions, and to supervise;

3. To participate in the management of the internal affairs of the Foundation;
4. To actively participate in and support various public welfare activities of the Foundation;
5. To observe the Articles of Incorporation of the Foundation and maintain the legal rights and interests of the Foundation;
6. To implement the purpose of the Foundation, execute the resolutions of the Foundation, and complete the tasks assigned by the Foundation.)

Article 17 The decision-making body of the Foundation is the board of directors, which exercises the following powers:

- (1) To formulate and amend the Articles of Incorporation;
- (2) To elect and remove the chairman of the board, the vice-chairman of the board, and the secretary general;
- (3) To decide on plans for major business activities, including plans for fund-raising, management, and use;
- (4) To examine and approve the annual estimate and final accounting of revenues and expenditures;
- (5) To formulate internal management systems;
- (6) To decide to establish administrative offices, branch offices, and representative offices;
- (7) To decide on the appointment and removal of the vice secretary general and persons in charges of various offices nominated by the secretary general;
- (8) To listen to and review the work reports of the secretary general, and examine the work of the secretary general;
- (9) To decide on the division, merger, or termination of the Foundation;
- (10) To decide on other major issues.

The board of directors shall meet _____ [at least twice] a year. The board meetings shall be convened and presided over by the chairman of the board.

A board meeting shall be held upon the proposal of one third of the directors. If the chairman of the board cannot or does not convene the meeting, the proposing directors may elect the convener.

Where a board meeting is to be held, the chairman or convener must notify all directors and supervisors 5 working days in advance.

Article 19 The board of directors shall meet only if more than two thirds of the directors are present. Any resolution of the board shall be approved by more than half of the directors present to be valid.

Resolutions with respect to the following important matters shall be subject to vote by the directors present and approved by more than two thirds to be valid:

- (1) Amendments to the Articles of Incorporation;
- (2) Election or removal of the chairman of the board, vice-chairman of the board, or the secretary general;
- (3) Significant solicitation of donations or investment activities as stipulated in the Articles of Incorporation;
- (4) Division or merger of the Foundation;

.....

A major investment plan shall be approved by more than two thirds of the members of the decision-making body.

Article 20 Meetings of the board of directors shall produce minutes. Where a resolution is formed, it shall be checked, approved, and signed by the directors present. If the resolutions of the board violate laws, regulations, or the Articles of Incorporation, resulting in losses to the Foundation, the directors engaging in the resolutions shall bear the responsibility. However, if a director is proved to vote against the resolutions, which is recorded in the minutes, the director may be exempted from liability.

Article 21 The Foundation shall establish a board of supervisors, which is composed of ____ [more than 3] supervisors. The term of office of the supervisors is the same as that of the directors, and a supervisor may serve consecutive terms upon expiration of the term of office thereof. The board of supervisors has one chairman, who is elected or removed by the board of supervisors.

Article 22 The directors, close relatives of the directors, and financial staff of the Foundation shall not serve concurrently as supervisors.

Article 23 The appointment and removal of supervisors:

- (1) The supervisors are selected by major donors;

(2) The supervisors are selected by the industrial supervisory unit according to the needs of work;
(Statement for direct registration)

The supervisors are selected by the professional supervisory unit according to the needs of work;
(Statement for dual management)

(3) The supervisors are selected by the registration authority according to the needs of work;

(4) The change of supervisors is based on the appointment procedures.

Article 24 Rights and obligations of supervisors:

The supervisors examine the financial and accounting materials of the Foundation in accordance with the procedures as stipulated in the Articles of Incorporation and supervise the compliance of the board of supervisors with laws and the Articles of Incorporation.

The supervisors attend the meetings of the board of directors, have the right to bring inquiries and suggestions to the board of directors, and shall report to the registration authority, industrial supervisory unit, and tax and accounting departments. **(Statement for direct registration)**

The supervisors attend the meetings of the board of directors, have the right to bring inquiries and suggestions to the board of directors, and shall report to the registration authority, professional supervisory unit, and tax and accounting departments. **(Statement for dual management)**

The supervisors shall abide by relevant laws and regulations and the Articles of Incorporation of the Foundation, as well as faithfully perform their duties.

Article 25 The number of directors receiving remuneration from the Foundation shall not exceed one third of the total number of the directors. Supervisors and part-time directors serving in the Foundation shall not receive remuneration from the Foundation.

The person in charge and staff of the Foundation shall not work part-time in or receive remuneration from enterprises invested by the Foundation.

Article 26 The directors of the Foundation shall not engage in the decision-making of relevant matters where their personal interests are related with the interests of the Foundation. Directors, supervisors and their close relatives shall not have any transaction activities with the Foundation.

Article 27 The board of directors shall have the chairman, vice-chairman and secretary general, who shall be elected from the directors.

Article 28 The chairman, vice-chairman, and secretary general of the board of directors of the Foundation must meet the following conditions:

(1) Having a relatively great influence in the business area of the Foundation;

- (2) Not exceeding 70 years of age at maximum, and the secretary general shall work full-time;
- (3) Being healthy and able to maintain normal work.

Article 29 Persons shall not serve as the chairman, vice-chairman, or secretary general of the board of directors of the Foundation if:

- (1) They are current public servants;
- (2) They were sentenced to public surveillance, detention, or a set term of imprisonment for committing a crime and not more than 5 years have elapsed since the date of the expiration of the enforcement period;
- (3) They are being or were deprived of political rights for committing a crime;
- (4) They ever served as chairman, vice-chairman, or secretary general of a foundation whose registration was cancelled for illegal activities and were personally responsible for the illegal activities thereof, and not more than 5 years have elapsed since the date of cancellation;
- (5) They have no capacity for civil conduct or limited capacity for civil conduct;
- (6) They served as the person in charge of an organization that had its registration certificate withdrawn or was banned, and not more than 5 years have elapsed since the date of withdrawal or banning;
- (7) They fail to meet other conditions as stipulated by laws and administrative regulations.

Article 30 The chairman, vice-chairman, and secretary general of the board of directors of the Foundation shall serve for a term of _____ years and for no more than two consecutive terms. If special circumstances require an extra term upon expiration of two consecutive terms, it shall be adopted by the board of directors through special procedures and approved by the registration authority. The chairman and secretary general shall not be concurrently held by the same person. **(Statement for direct registration)**

The chairman, vice-chairman, and secretary general of the board of directors of the Foundation shall serve for a term of _____ years and for no more than two consecutive terms. If special circumstances require re-election upon expiration of two consecutive terms, it shall be adopted by the board of directors through special procedures, reported to the professional supervisory unit for approval and approved by the registration authority. The chairman and secretary general shall not be concurrently held by the same person. **(Statement for dual management)**

Article 31 The chairman of the board of directors of the Foundation is the legal representative thereof. The legal representative of the Foundation shall not concurrently serve as the legal representative of any other organization.

The legal representative of the Foundation shall be a resident of mainland China.

During the term of office of the legal representative of the Foundation, where the Foundation violates the Regulations on the Administration of Foundations and the Articles of Incorporation, the legal representative shall bear the relevant responsibilities. Where the legal representative neglects the duty thereof, which leads to illegal acts on the part of the Foundation or property losses to the Foundation, the legal representative shall bear personal responsibility.

Article 32 The chairman of the board of directors of the Foundation shall exercise the following powers:

- (1) To convene and preside over board meetings;
- (2) To examine the implementation of the resolutions of the board of directors;
- (3) To sign important documents on behalf of the Foundation;

.....

The vice-chairman and secretary general of the Foundation shall work under the leadership of the chairman, and the secretary general exercises the following powers:

- (1) _____;
- (2) _____;
- (3) _____;

.....

[The other powers of the chairman and the powers of the secretary general may be determined from the following options. The powers of the chairman and the secretary general shall not overlap. The Foundation may make refinements or supplements according to the actual situation:

1. To preside over the daily work, and organize the implementation of the resolutions of the board of directors;
2. To organize and implement the annual plan for public welfare activities of the Foundation;
3. To formulate the plans for fund raising, management and use;
4. To formulate the internal management rules and regulations of the Foundation and report them to the board of directors for approval;
5. To coordinate the work of various agencies;

6. To propose the appointment or dismissal of the secretary general and the financial officer, which shall be decided by the board of directors;
 7. To propose the appointment or dismissal of the main person in charge of each agency, which shall be decided by the board of directors;
 8. To decide on the appointment or dismissal of the full-time staff in each agency;
 9. Other powers given by the Articles of Incorporation and the board of directors;
-]

Chapter IV Management and Utilization of Assets

Article 33 The charitable assets of the Foundation come from:

- (1) Initial funds donated or funded by the initiators;
- (2) _____;
- (3) _____;

.....

(Optional: fund-raising income; voluntary donations from natural persons, legal persons or other organizations; investment income; other legal income, etc.)

Article 34 The Foundation shall solicit donations and accept donations in accordance with laws and regulations and the purpose and business scope of public benefit activities provided for in the Articles of Incorporation.

Article 35 If the Foundation accepts donations, it shall issue to the donors a donation receipt uniformly printed by or printed under the supervision of the finance departments. Donation receipts shall specify the donor, the type and quantity of the donations, the name of the Foundation, the name of the person responsible, the date of the receipt, etc. In the case of donors wishing to remain anonymous or waive the donation receipt, the Foundation shall record the relevant information.

The Foundation shall sign a written donation agreement with the donor if the donor requests. The written donation agreement shall include the name of the donor and the Foundation, type, quantity, quality, purpose and delivery time of the donated property, etc.

When agreeing on the purpose and beneficiaries of donated properties, donors and the Foundation must not appoint interested parties from the donor's side to act as beneficiaries.

Article 36 The Foundation may adopt the following methods for public fund-raising:

- (1) Setting up a collection box for donations in a local public space;
- (2) Organizing local charitable performances, competitions, sales, exhibitions, auctions, and gala dinners directed to the public;
- (3) Publishing fund-raising information through local media such as radio, television, newspapers and journals, and the Internet;
- (4) Other public fund-raising methods.

Where the Foundation carries out public fund-raising activities according to the methods set out by provisions (1) and (2) of this Article, they shall do so within the area (of ___ District) of this Municipality. Where there is a necessity to carry out public fund-raising activities outside the area (of ___ District) of this Municipality, they shall be recorded with the local civil affairs department above the county level, and a fund-raising plan, a copy of the qualification certificate for public fund-raising, and a statement of the necessity to carry out local public fund-raising activities must be submitted.

If the Foundation carries out public fund-raising activities through the Internet, it shall publish the relevant information on the charity information platform unified or designated by the civil affairs department of the State Council, and may simultaneously use the website, official Weibo, official WeChat, mobile clients and other network platforms registered in the name of the Foundation to publish public fund-raising information.

(Statement for foundations with public fund-raising qualifications)

Article 37 The Foundation shall draft a fund-raising proposal when carrying out public fund-raising.

The proposal shall include, among other things, the goals, duration and location of the fund-raising activities, the name and office address of the person in charge, the method of receiving donations, as well as bank details, beneficiaries, use of assets collected, cost of fund-raising activities, and methods of dealing with excess funds.

The fund-raising proposal shall be recorded with the registration authority 10 days before the fund-raising activity. **(Statement for direct registration)**

The fund-raising proposal shall be recorded with the professional supervisory unit and the registration authority 10 days before the fund-raising activity. **(Statement for dual management)**

(Statement for foundations with public fund-raising qualifications)

Article 38 If the Foundation carries out public fund-raising activities, information such as the name of the organization carrying out the activity, the public fund-raising certificate, the fund-raising proposal, the contact information and the means of inquiry for further information regarding the activity shall be displayed in a prominent place at the site of the activity or on the medium used for fund-raising.

If the Foundation cooperates with organizations or individuals that do not have a public fund-raising certificate to carry out public fund-raising activities, they shall sign a written agreement in accordance with the law to use the name of the Foundation to carry out public fund-raising activities; all proceeds of the fund-raising activities shall be included in the account of the Foundation. The Foundation shall conduct unified financial accounting and management and assume legal responsibilities.

When the Foundation establishes charitable projects for emergency relief and carries out public fund-raising activities, it shall adhere to the principles of openness, fairness and justice, reasonably determine the standards for assistance, supervise beneficiaries to cherish charitable support, and rationally use donated assets in accordance with the provisions of the donation proposal.

When the Foundation carries out public fund-raising activities, it shall respect and safeguard the legal rights and interests of the fund-raising targets, protect their rights to be informed, and shall not deceive or mislead the targets into donating.

When the Foundation carries out public fund-raising activities, it is not permitted to engage in forcible apportionment or covert forced apportionment and must not obstruct public order, corporate production or the lives of the people.

(Statement for foundations with public fund-raising qualifications)

The Foundation shall carry out targeted fund-raising activities directed at specific targets such as the initiators and directors and provide information on matters such as the purpose of the fund-raising and the use of the raised funds and items.

(Statement for foundations without public fund-raising qualifications)

Article 39 The properties and other income of the Foundation are protected by law and shall not be illicitly distributed, seized or embezzled among any units or individuals.

(1) The contributors to the Foundation shall not retain or enjoy any property rights over the properties contributed to the Foundation.

(2) The income obtained by the Foundation shall be used for the charitable causes approved at registration or stipulated in the Articles of Incorporation, except for the reasonable expenses related to the Foundation.

(3) The properties and the yields thereof of the Foundation shall not be used for distribution, except for reasonable wages and salaries.

(4) The Foundation shall keep separate accounts for the taxable income obtained and its related costs, expenses, and losses and the tax-exempt income and its related costs, expenses and losses.

Article 40 The Foundation shall use its properties in accordance with the purposes and business scope of public benefit activities provided for in the Articles of Incorporation thereof, or in case of the donation whose specific way of utilization is specified in the donation agreement, in accordance with the provisions in the donation agreement.

Where donated materials are unable to be used in compliance with the purposes, the Foundation may auction or sell off them according to law, and the income thereof shall be subject to the purposes of donation.

The Foundation shall strengthen the management of the raised properties and use them in accordance with laws and regulations, the Articles of Incorporation and the donation proposal. If it is really necessary to change the use of the donated properties as stipulated in the donation proposal, the Foundation shall hold a board meeting for deliberation, report it to the registration authority for the record, and make it known to the public. The Foundation shall organize fund-raising and accept donations in accordance with laws and regulations, as well as in compliance with the purposes and business scope of public benefit activities provided for in the Articles of Incorporation. **(Statement for foundations with public fund-raising qualifications)**

Article 41 The assets of the Foundation are mainly used to:

(1)_____;

(2)_____;

(3)_____;

.....

Article 42 The major fund-raising and investment activities of the Foundation refer to:

(1)_____;

(2)_____;

(3)_____;

.....

Article 43 The Foundation shall realize the preservation and increase of the value of funds on the principles of safety and efficiency according to law.

Article 44 Annual expenditures for charitable causes by the Foundation shall be no less than 70% of the total revenue of the last year or 70% of the average revenue of the past three years, and the annual management fee shall not exceed 10% of annual expenditures. Where annual management fees cannot meet the previous provisions due to special circumstances, the Foundation shall file with the registration authority and explain the situation publicly.

If the expenditure and management costs of an individual charitable donation activity are specified in the donation agreement, then the agreement shall be followed, but its annual expenditures for charitable causes and annual management fees shall not violate the criteria mentioned above. The Foundation shall organize fund-raising and accept donations in accordance with laws and regulations, as well as in compliance with the purposes and business scope of public benefit activities provided for in the Articles of Incorporation. **(Statement for foundations with public fund-raising qualifications)**

The percentage of annual expenditures for charitable causes and annual management fees by the Foundation shall follow the criteria of the relevant provisions. **(Statement for foundations without public fund-raising qualifications)**

The average salary and wage of the staff of the Foundation shall not exceed twice the per capita wage of the place where the tax registration is conducted in the previous year. Staff welfare shall be implemented in accordance with the relevant provisions of the State.

Article 45 The Foundation shall, in implementing public benefit financial support programmes, make a public notice of the types thereof and the procedures for application and appraisal.

Article 46 The Foundation shall rationally design charitable projects, comply with the purposes of the Foundation and relevant provisions of the Articles of Incorporation, optimize implementation processes, lower operating costs, and improve efficiency in the use of charitable assets.

(1) The Foundation shall establish a sound decision-making implementation and supervision mechanism for charity projects; it will also establish scientific, standardized, and effective requirements for the establishment, review, implementation, control, evaluation, and feedback of charity projects, and set up project management agencies with staff to exercise project management duties.

(2) The Foundation shall adhere to an open, fair, and impartial process when determining the beneficiaries of charitable services.

(3) The Foundation shall not choose any interested party of the administrative staff as beneficiaries.

Article 47 The Foundation shall, in carrying out major charity projects, hold a board meeting and obtain the approval of more than two thirds of the directors present.

The major charity projects of a Foundation include:

- (1) Annual charity project plans;
- (2) Charity projects exceeding RMB_____;

.....

Before the Foundation carries out major charity projects, it shall promptly report to the industrial supervisory unit. **(Statement for direct registration)**

Before the Foundation carries out major charity projects, it shall promptly report to the professional supervisory unit. **(Statement for dual management)**

The project funds shall be used strictly in accordance with the national financial and accounting systems, and for a fixed purpose as provided in the donation agreement.

The management and use of funds for charity projects shall consciously accept the supervision of financial departments, auditing agencies, competent authorities of industry, registration authorities, and the general public, earnestly abide by the obligation of information disclosure, and accept social supervision.

Article 48 The Foundation shall strengthen the management of project files, preserve the complete information of charity projects, and establish thorough archives for charitable projects.

Article 49 Donors have the right to inquire about and photocopy relevant information on the management and use of their donated properties. The Foundation shall take the initiative to provide relevant updates to donors in a timely manner.

If the Foundation misuses donated properties in violation of the donation agreement, donors have the right to request correction; donors may report or complain to the civil affairs department or bring a prosecution to the people's court if the Foundation refuses to correct.

Article 50 The Foundation may sign an agreement with an aided person to agree on the method of funding, the amount of funding, and the purpose and use of funds.

The Foundation has the right to supervise the use of funding. If the aided person fails to use the funding as agreed in the agreement or otherwise violates the agreement, the Foundation has the right to cancel the funding agreement.

Article 51 The Foundation shall implement the national unified accounting system, conduct accounting in accordance with the law, and establish a sound internal accounting supervision system, in order to ensure that the accounting information is legal, truthful, accurate, and complete.

The Foundation shall accept tax supervision and accounting supervision by the competent tax and accounting departments according to law.

Article 52 The Foundation shall have full-time staff and accountants with professional qualifications in line with the activities of the Foundation. Accountants shall not concurrently serve as cashiers. Where accountants are transferred to other posts or leave the Foundation, they must complete the hand-over procedures with successors.

Article 53 The Foundation defines the business and fiscal year as January 1 to December 31. Before March 31 each year, the Board of Directors shall examine and approve the following matters:

- (1) The business report and final accounting of revenues and expenditures of the previous year;
- (2) The business plan and budget for revenues and expenditures of the current year;
- (3) Property inventory [donor list and related materials of the current year].

Article 54 The Foundation shall conduct a financial audit for a change to the board of directors, change of its legal representative, and liquidation.

Chapter V Reporting on Major Matters and Information Disclosure

Article 55 The Foundation shall fulfil its reporting obligations in accordance with the Charity Law and the relevant requirements and guidelines of the registration authority on reporting on major matters.

Article 56 The Foundation shall fulfil the obligation of information disclosure in accordance with the Charity Law and the relevant requirements of the registration authority on information disclosure.

Chapter VI Termination and Disposal of Residual Properties

Article 57 The Foundation shall be terminated if:

- (1) The circumstances for termination as set out in the Articles of Incorporation are met;
- (2) Termination is required due to division or merger;
- (3) It has not engaged in charitable activities for two consecutive years;
- (4) It is deregistered or has its registration certificate withdrawn according to law;
- (5) Other conditions set out by laws and administrative regulations under which it shall terminate are met.

The board of directors shall establish a team for liquidation within 30 days, starting from the date when the circumstances for termination appear. If the Foundation does not establish such a team or if the team does not fulfil its duties, the registration authority may apply to a people's court to assign relevant personnel to form a team and to conduct the liquidation.

Article 58 The termination of the Foundation shall be reported to the registration authority for review and approval within 15 days after approved by the board of directors. **(Statement for direct registration)**

The termination of the Foundation shall be reported to the registration authority for applying for deregistration within 15 days after reporting to the professional supervisory unit for review and approval within 15 days after being approved by the board of directors. **(Statement for dual management)**

Article 59 Before the Foundation goes through de-registration procedures, it shall establish a liquidation group under the guidance of the registration authority to complete the liquidation work. **(Statement for direct registration)**

Before the Foundation goes through deregistration procedures, it shall establish a liquidation group under the guidance of the professional supervisory unit to complete the liquidation work. **(Statement for dual management)**

The residual properties of the Foundation after liquidation shall, under the supervision of the registration authority, be transferred to charitable organizations with the same or similar aim for the purpose of charitable causes in accordance with the relevant laws, regulations, rules, policies and the Articles of Incorporation.

In the event of absence of relevant provisions in the relevant laws, regulations, rules, policies, and the Articles of Incorporation, the registration authority shall organize donations to charitable organizations with the same or similar purpose, and make an announcement to the public.

The Foundation shall apply to the registration authority for deregistration within 15 days from the date of the completion of liquidation; no activities other than liquidation shall be carried out during the period of liquidation.

Article 60 The Foundation shall terminate upon the date when the registration authority issues the deregistration certificate.

Chapter VII Amendment of the Articles of Incorporation

Article 61 The amendment of the Articles of Incorporation shall be reported to the registration authority for approval within 30 days after the approval of the board of directors. **(Statement for direct registration)**

The amendment of the Articles of Incorporation shall be reported to the professional supervisory unit for approval within 30 days after the approval of the board of directors, and then reported to the registration authority for approval. (Statement for dual management)

Chapter VIII Supplementary Provisions

Article 62 The Articles of Incorporation shall be adopted at the meeting of the _____ board of directors on dd/mm/yy.

Article 63 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 64 The Articles of Incorporation shall take effect as of the date when they are adopted by the board of directors after the approval of the registration authority.

Article 65 Where the Articles of Incorporation are inconsistent with national laws, regulations, rules and policies, national laws, regulations, rules and policies shall prevail.

×× Foundation (Name and Signature)

[The draft articles of incorporate formulated when the Foundation appl-ies for registration shall be signed by all directors in lieu of the seal]

TK2 - Model Text of Articles of Incorporation of Non-Public Foundations Issued by the Ministry of Civil Affairs

Model Text of Articles of Incorporation of Non-Public Foundations

Chapter I General

Article 1 The Name of the Foundation is:_____Foundation.

[The name of the Foundation shall comply with the Provisions on the Administration of Foundation Names.]

Article 2 The Foundation is a non-public foundation, which has been founded by _____.

Article 3 The purpose and mission of the Foundation are: _____.

Article 4 The amount of the initial fund of the Foundation is RMB_____, which is derived from the donation of _____.

Article 5 The registration authority of the Foundation is_____, while the professional supervisory unit is _____.

Article 6 The domicile of the Foundation is _____.

Chapter II Scope of Business

Article 7 The scope of business of the public benefit activities of the Foundation is: [must be specific and clear]

(1) _____;

(2) _____;

(3) _____;

.....

Chapter III Organizational Structure

Article 8 The board of directors of the Foundation shall be composed of___directors. The directors shall serve___-year terms. A director may serve consecutive terms if re-elected upon expiration of

the term of office thereof. [The number of the directors shall not be less than 5 and more than 25. It can be a specific number or a range. Each term of office of the directors shall not exceed 5 years.]

Article 9 The directors of the Foundation shall meet the following conditions: [The first three are mandatory, and the others are optional]

- (1) Adhering to the Constitution, laws and regulations, and upholding the Articles of Incorporation of the Foundation;
 - (2) Being enthusiastic about public welfare undertakings and willing to serve the Foundation;
 - (3) Having full capacity for civil conduct;
 - (4) Having work experience in the field of _____, with a good personal reputation;
 - (5) Having a strong awareness of public welfare responsibilities and being able to adopt an impartial, fair, and open process to participate in decision-making independently, objectively, and cautiously;
 - (6) Having strong decision-making and interpersonal communication ability;
 - (7) Contributing to the planning, donation, and management of the Foundation;
-]

Persons shall not serve as a director of the Foundation if: [The following items are all optional]

- (1) They were sentenced to a set term of imprisonment or above for intentionally committing a crime and not more than ____ years have elapsed since the date of the expiration of the enforcement period;
 - (2) They ever served as director, supervisor or senior manager of an organization which has been bankrupt and liquidated and was personally responsible for the bankruptcy of the organization, and not more than ____ years have elapsed since the date of the completion of bankruptcy and liquidation of the organization;
 - (3) They ever served as legal representative of an organization which has been cancelled or dissolved and were personally responsible for the cancellation or dissolution, and not more than ____ years have elapsed since the date of the cancellation or dissolution of the organization;
 - (4) They are over _____ years old;
-

Article 10 The directors shall be appointed and removed in accordance with the following procedures:

- (1) The first directors shall be nominated by major donors, initiators, and professional supervisory unit, and elected upon joint consultation;
- (2) When the board of directors is re-elected, the board of directors shall nominate the candidates for the new board of directors and the professional supervisory unit shall organize all the candidates to jointly elect the new board of directors;
- (3) The removal and addition of directors shall be determined by the board of directors after the approval of the professional supervisory unit;
- (4) The result of the election and removal of directors shall be reported to the registration authority for the record;
- (5) Close relatives shall not concurrently serve on the board of directors.

Article 11 The directors of the Foundation have the following rights:

- (1) To attend board meetings and exercise voting rights;
- (2) To propose to convene a board meeting;
- (3) The right to obtain the information and materials related to the Foundation in order to perform duties;
- (4) The right to address inquiries at board meetings;
-
- () Other rights given by relevant laws, regulations, and the Articles of Incorporation.

Article 12 The directors shall abide by the provisions of laws, regulations and the Articles of Incorporation, faithfully perform their duties and safeguard the interests of the Foundation. Where their interests conflict with the interests of the Foundation, they shall act in the best interests of the Foundation and ensure that:

- (1) They will exercise their rights within the scope of their duties, without exceeding their authority;
- (2) They will not use the duties of the directors to seek benefits for themselves or any other persons;
- (3) They will not engage in activities that damage the interests of the Foundation;
- (4) Without the consent of the board of directors, they will not disclose the confidential information concerning the Foundation obtained during their term of office, unless otherwise provided for by laws and regulations.

Article 13 The directors shall perform the following duties:

- (1) To exercise the rights granted by the Foundation with caution, conscientiousness, and diligence, so as to ensure that the behaviours of the Foundation comply with the provisions of laws, regulations and the Articles of Incorporation;
 - (2) To carefully read various financial reports of the Foundation and keep abreast of the management activities of the Foundation;
 - (3) To exercise the powers legally granted in person and independently, and not to be manipulated by others; not to delegate their powers to others without the approval of the Articles of Incorporation or the consent of the board of directors;
 - (4) To solicit opinions from relevant professionals when deciding on major issues;
 - (5) To accept the legal supervision and reasonable suggestions for performing their duties from the supervisors;
-

Article 14 The directors may resign before the expiration of their term of office. The directors shall submit a written resignation report to the board of directors.

Article 15 The decision-making body of the Foundation is the board of directors. The board of directors exercises the following powers:

- (1) To formulate and amend the Articles of Incorporation;
- (2) To elect and remove the directors, the chairman of the board of directors, the vice-chairman, and secretary general;
- (3) To decide on the plans for major business activities, including the plans for raising, managing, and using funds;
- (4) To examine and approve the annual estimate and final accounting of revenues and expenditures;
- (5) To formulate internal management systems;
- (6) To decide on the establishment of agencies and entities;
- (7) To decide on the appointment of the deputy secretary general and the persons in charge of various agencies nominated by _____;
- (8) To listen to and deliberate on the work reports made by _____ and check the work done by _____;

(9) To decide on the division, merger, or termination of the Foundation;

(10) To decide on other major issues.

Article 16 The board of directors shall meet ____ [at least twice] a year. The board meetings shall be convened and presided over by the chairman of the board.

A board meeting shall be held upon the proposal of one third of the directors. If the chairman of the board cannot convene the meeting, the proposing directors may elect the convener.

Where a board meeting is to be held, the chairman or convener must notify all directors and supervisors ____ days in advance and deliver the meeting materials to all attendees ____ days in advance. The meeting materials shall at least specify the date, place, duration and topics of the meeting.

Article 17 The board of directors shall meet only if more than two thirds of the directors are present. Any resolution of the board shall be approved by more than half of the directors present to be valid.

Resolutions with respect to the following important matters shall be subject to vote by the directors present and approved by more than two thirds to be valid:

(1) Amendments to the Articles of Incorporation;

(2) Election or removal of the chairman of the board, vice-chairman of the board, or the secretary general;

(3) Significant investment activities as stipulated in the Articles of Incorporation;

(4) Division, merger, or termination of the Foundation;

(5) Other matters deemed important by the board of directors;

.....

Article 18 Each director shall have one vote at board meetings. Any director failing to attend for any reason shall entrust another person in writing. The power of attorney shall specify the scope of authority. Each entrusted person shall only accept the entrustment of one director every time.

The director who does not attend the board meetings in person for _____ times or cumulatively for _____ times shall be deemed to have resigned automatically from the date when the last meeting that the director does not attend is closed.

In exceptional circumstances, board meetings may be held by means of communications equipment. However, board meetings not held by means of communications equipment shall be held at least once a year.

In case of a board meeting held by means of communications equipment, the resolutions of the board of directors may be voted by means of communications equipment, i.e., voted by signing the resolutions sent by mail or fax by the directors. In case of voting by means of communications equipment, the following conditions must be met:

- (1) Written ballots are sent to each director with the right to vote on the matters to be voted;
- (2) Written ballots shall specify in detail the matters to be voted;
- (3) Written ballots shall specify the deadline;
- (4) Written ballots shall specify the minimum quorum and the minimum percentage for adoption required for the voting by means of communications equipment, which shall not be lower than those as provided in Article 17 of the Articles of Incorporation.

The voting by means of communications equipment shall be subject to the deadline specified in written ballots. The directors who do not express their opinions at the end of the last working day within the prescribed time limit shall be deemed to disagree. The prescribed time limit shall be calculated from the date on which the written ballots are sent, which shall not be less than five working days and not more than ten working days.

Article 19 Meetings of the board shall produce minutes. Where a resolution is formed, a written resolution shall be produced on the spot and shall be checked and signed by the directors present. The minutes and resolutions of the board meetings shall be kept for _____ [no less than 10] years. Within 15 working days after the meeting of the board of directors is held, a copy of the meeting resolutions shall be reported to the professional supervisory unit for the record.

If the resolutions of the board violate laws, regulations, or the Articles of Incorporation, resulting in losses to the Foundation, the directors engaging in the resolutions shall bear the responsibility. However, if a director is proved to vote against the resolutions, which is recorded in the minutes, the director may be exempted from liability.

Article 20 The Foundation shall have _____ supervisors. The term of office of the supervisors is the same as that of the directors, and a supervisor may serve consecutive terms upon expiration of the term of office thereof [In the event of more than three supervisors, the board of supervisors may be established].

Article 21 The directors, close relatives of the directors, financial staff of the Foundation, and _____ shall not serve concurrently as supervisors.

Article 22 The appointment and removal of supervisors:

- (1) The supervisors are selected by major donors and the professional supervisory unit;
- (2) The supervisors are selected by the registration authority according to the needs;

(3) The change of supervisors is based on the appointment procedures.

Article 23 The supervisors (or board of supervisors) shall abide by relevant laws and regulations and the Articles of Incorporation of the Foundation, as well as independently and faithfully exercise the following powers:

(1) To inspect various types of archives, financial and accounting materials and other documents of the Foundation, check the source and use of the funds of the Foundation, investigate the business and financial status of the Foundation as required, and supervise the compliance with laws and regulations by the board of directors;

(2) To attend the meetings of the board of directors, bring inquiries and suggestions to the board of directors, and report to the registration authority, professional supervisory unit, and tax and accounting departments;

(3) To supervise the duty behaviours of the directors, financial executives and_____, and propose the removal or dismissal of the directors, secretary general, and financial executives who violate laws, administrative regulations, the Articles of Incorporation, or the resolutions of the board of directors;

(4) In the event of behaviours of the director, financial executives, or_____which damage the interests of the Foundation, to require them to make corrections;

.....

() Other rights granted by the board of directors;

Article 24 The number of directors receiving remuneration from the Foundation shall not exceed_____ [one third at maximum] of the total number of the directors. Supervisors and part-time directors serving in the Foundation shall not receive remuneration from the Foundation.

Article 25 The directors of the Foundation shall not engage in the decision-making on relevant matters where their personal interests are related to the interests of the Foundation.

Article 26 Persons shall not serve as the chairman, vice-chairman, or secretary general of the board of directors of the Foundation if:

(1) They are public servants;

(2) They are over 70 years of age;

(3) They were sentenced to public surveillance, detention, or a set term of imprisonment for committing a crime and not more than 5 years have elapsed since the date of the expiration of the enforcement period;

(4) They are being or were deprived of political rights for committing a crime;

(5) They ever served as chairman, vice-chairman, or secretary general of a foundation whose registration was cancelled for illegal activities and were personally responsible for the illegal activities thereof, and not more than 5 years have elapsed since the date of cancellation.

.....

Article 27 The chairman, vice-chairman, and secretary general of the board of directors of the Foundation shall serve for a term of ____years [5 years at maximum] and for no more than two consecutive terms. If special circumstances require an extra term upon expiration of two consecutive terms, the decision shall be made by the board of directors through special procedures, reported to the professional supervisory unit for approval, and approved by the registration authority.

Article 28 Residents from Hong Kong, Macau, Taiwan, and foreigners serving as the vice-chairman or secretary general of the Foundation shall stay in mainland China for no less than 3 months a year. [This Article applies to foundations whose vice-chairman or secretary general is not a resident of mainland China.]

Article 29 The chairman of the board of directors of the Foundation is the legal representative thereof. The legal representative of the Foundation shall not concurrently serve as the legal representative of any other organization.

The legal representative of the Foundation shall be a resident of mainland China.

During the term of office of the legal representative of the Foundation, where the Foundation violates the Regulations on the Administration of Foundations and the Articles of Incorporation, the legal representative shall bear the relevant responsibilities. Where the legal representative neglects the duty thereof, which leads to illegal acts on the part of the Foundation or property losses to the Foundation, the legal representative shall bear personal responsibility.

Article 30 The chairman of the board of directors of the Foundation shall exercise the following powers [The first three items are mandatory, while the others are optional]:

- (1) To convene and preside over board meetings;
- (2) To examine the implementation of the resolutions of the board of directors;
- (3) To sign important documents on behalf of the Foundation;
- (4) To suggest the candidate for the secretary general;

.....

() Other powers granted by the Article of Incorporation and the board of directors.

The vice-chairman and secretary general of the Foundation shall work under the leadership of the chairman; the vice-chairman assists the chairman in exercising the powers thereof, and the secretary general exercises the following powers:

(1)_____;

(2)_____;

(3)_____;

.....

() Other powers granted by the Article of Incorporation and the board of directors.

[The other powers of the chairman and the powers of the secretary general may be determined from the following options. The powers of the chairman and the secretary general shall not overlap. The Foundation may make refinements or supplements according to the actual situation:

1. To preside over the daily work and organize the implementation of the resolutions of the board of directors;

2. To organize and implement the annual plan for public welfare activities of the Foundation;

3. To formulate the plans for fund-raising, management, and use;

4. To formulate the internal management rules and regulations of the Foundation and report them to the board of directors for approval;

5. To coordinate the work of various agencies;

6. To propose the appointment or dismissal of the secretary general and the financial officer, which shall be decided by the board of directors;

7. To propose the appointment or dismissal of the main person in charge of each agency, which shall be decided by the board of directors;

8. To decide on the appointment or dismissal of the full-time staff in each agency;

.....]

Article 31 Where the directors and persons in charge violate the provisions of laws, regulations, and the Articles of Incorporation when performing their duties, which cause losses to the Foundation, they shall assume the compensation liability. However, if they do not receive remuneration from the Foundation, they may be exempted from liability for damages caused by negligence.

Chapter IV Management and Use of Assets

Article 32 The incomes of the Foundation come from:

- (1) Voluntary donations from natural persons, legal persons or other organizations;
- (2) Government funding;
- (3) Investment income;
- (4) Interest income;
- (5) Other legal incomes.

The Foundation does not carry out public fund-raising, including: not organizing local charitable performances, competitions, sales, exhibitions directed to the public; not setting up a collection box for donations in a local public space; not publishing fund-raising advertisements or information through local media; and not carrying out other similar activities.

Article 33 The properties and other income of the Foundation are protected by law and shall not be illicitly distributed, seized, or embezzled by any units or individuals.

Article 34 The Foundation shall use its properties in accordance with the purposes and business scope of public benefit activities provided for in the Articles of Incorporation thereof, or in case of the donation whose specific way of utilization is specified in the donation agreement, in accordance with the provisions in the donation agreement.

Where donated materials are unable to be used in compliance with the purposes, the Foundation may auction or sell them off according to law, and the income thereof shall be subject to the purposes of donation.

Article 35 The major investment activities of the Foundation refer to:

- (1) The annual investment plan;
- (2) Investment activities which amount to more than _____% [no more than 10%] of the fund balance at the end of the previous year;

.....

Article 36 The Foundation shall realize the preservation and increase of the value of funds on the principles of safety and efficiency according to law. The Foundation shall not carry out investment activities against the will of donors.

Article 37 The directors, supervisors and their close relatives shall not have any transaction activities with the Foundation.

Article 38 Annual expenditures for public welfare causes by the Foundation shall be no less than ____% [8% at minimum] of the fund balance at the end of the previous year.

Expenditures on staff salary and welfare and administrative outlay of the Foundation shall not exceed ____% [10% at maximum] of the total expenditures in the current year.

Article 39 The Foundation shall, in implementing public benefit financial support programmes, make a public notice of the types thereof and the procedures for application and appraisal.

Article 40 Donors have the right to inquire about relevant information on the management and use of their donated properties, as well as make suggestions, while the Foundation shall respond truthfully in a timely manner.

If the Foundation misuses donated properties in violation of the donation agreement, donors have the right to require the Foundation to abide by the donation agreement or apply to the people's court for revoking the donation and cancelling the donation agreement.

Article 41 The Foundation may sign an agreement with an aided person to agree on the method of funding, the amount of funding, and the purpose and use of funds.

The Foundation has the right to supervise the use of funding. If the aided person fails to use the funding as agreed in the agreement or otherwise violates the agreement, the Foundation has the right to cancel the funding agreement.

Article 42 The Foundation shall implement the national unified accounting system, conduct accounting in accordance with the law, and establish a sound internal accounting supervision system, in order to ensure that the accounting information is legal, truthful, accurate, and complete.

The Foundation shall accept tax supervision and accounting supervision by the competent tax and accounting departments according to law.

Article 43 The Foundation shall hire persons with professional qualifications to serve as accountants. Accountants shall not concurrently serve as cashiers. Where accountants are transferred to another post or leaves the Foundation, they must complete the hand-over procedures with successors.

Article 44 The Foundation determines January 1 to December 31 each year as the business and fiscal year. Before March 31 each year, the board of directors shall examine and approve the following matters and report to the professional supervisory unit for review:

- (1) The business report and final accounting of revenues and expenditures of the previous year;
- (2) The work plan and budget for revenues and expenditures of the current year; an annual work plan shall include the name, implementation place, budget, implementation unit, etc. of the public welfare activities to be held in the current year;

Article 45 The Foundation shall submit financial reports audited by certified public accountants for annual inspection, a change of the board of directors, a change of its legal representative, and liquidation.

Article 46 The Foundation shall accept the annual inspection organized by the registration authority in accordance with the Regulations on the Administration of Foundations.

Article 47 When passing the annual inspection of the registration authority, the Foundation shall publish the annual work report on the media designated by the registration authority and accept the inquiry and supervision of the public.

Chapter V Termination and Disposal of Residual Properties

Article 48 The Foundation shall be terminated if:

- (1) It has fulfilled the purpose as provided in the Articles of Incorporation;
- (2) It is unable to continue public welfare activities in accordance with the purpose as provided in the Articles of Incorporation;
- (3) Termination is required due to division or merger;

.....

Article 49 The termination of the Foundation shall be reported to the professional supervisory unit for review and approval within 15 days after approval by the board of directors, and shall be reported to the registration authority for applying for deregistration within 15 days after the review and approval of the professional supervisory unit.

Article 50 Before the Foundation goes through deregistration procedures, it shall establish a liquidation group to complete the liquidation work under the guidance of the registration authority and the professional supervisory unit.

The Foundation shall apply to the registration authority for deregistration within 15 days from the date of the completion of liquidation; no activities other than liquidation shall be carried out during the period of liquidation.

Article 51 The residual properties of the Foundation after cancellation shall, under the supervision of the registration authority and the professional supervisory unit, be used for the public welfare purpose in the following ways:

(1)_____;

(2)_____;

(3)_____;

.....

In the event of failure to dispose in the ways as mentioned above, the registration authority shall organize donations to public welfare organizations with the same or similar purpose as the Foundation and make a public announcement to that effect.

Chapter VI Amendment of the Articles of Incorporation

Article 52 The amendment of the Articles of Incorporation shall be reported to the professional supervisory unit for approval within 15 days after the approval of the board of directors, and then reported to the registration authority for approval.

Chapter VII Supplementary Provisions

Article 53 The Articles of Incorporation shall be adopted at the meeting of the_____ board of directors on mm/dd/yy.

Article 54 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 55 The Articles of Incorporation shall take effect as of the date of approval of the registration authority.

**TK3 - Model Text of the Articles of Incorporation of Private Non-enterprise Units
in Shanghai – Charitable Organizations**

**Model Text of the Articles of Incorporation of Private
Non-Enterprise Units**

(Charitable Organizations)

Shanghai Administration Bureau of Social Organizations

October, 2016

Instructions

I. The Model Text of Articles of Incorporation is formulated in accordance with the Charity Law of the People's Republic of China, the Interim Regulations on Registration Administration of Private Non-enterprise Units, as well as other laws, regulations, rules, and policies.

II. The Model Text of Articles of Incorporation is intended to provide a model for private non-enterprise units (charitable organizations) to formulate articles of incorporation. Private non-enterprise units (charitable organizations) shall formulate articles of incorporation which include all the contents of the Model Text of Articles of Incorporation and may make appropriate supplements and refinements to the contents according to the actual situation.

III. The text in [] is a mandatory requirement, while the text in () is an optional item.

Articles of Incorporation of ×××××××××× (Full Name of the Unit)

Chapter I General

Article 1 The name of the Unit is _____ (Full Name) _____.

[The name shall be subject to approval]

Article 2 The Unit is a charitable organization voluntarily founded with the use of non-state-owned assets which engages in non-profit public service activities.

Article 3 The purpose of the Unit is: _____.

[The purpose shall be consistent with the relevant provisions of the Charity Law of the People's Republic of China.]

Article 4 The charitable activities carried out by the Unit shall abide by the principles of being lawful, voluntary, honest and non-profit, and must not violate social morality, or endanger national security or harm social public interests or the lawful rights and interests of other persons.

Article 5 Where the Unit conducts public fund-raising, it shall obtain the qualification for public fund-raising according to law and shall abide by the relevant provisions of the Charity Law and the Administrative Measures for Public fund-raising by Charitable Organizations.

Article 6 Where the Unit carries out charitable activities, it shall respect the personal dignity of beneficiaries and volunteers and shall not infringe the privacy thereof. Meanwhile, it shall abide by the provisions of the Charity Law and other relevant laws and regulations.

Article 7 The registration authority of the Unit is [Full Name] ; the industrial supervisory unit is [Full Name] (It can be determined in accordance with the principles of clarity and focus on the main business) . The Unit accepts the supervision and management of the registration unit, the industrial supervisory unit and other functional departments. **(Statement for direct registration)**

The registration authority of the Unit is [Full Name] ; the professional supervisory unit is [Full Name] . The Unit accepts the supervision and management of the registration authority, the professional supervisory unit and other functional departments. **(Statement for dual management)**

Article 8 The domicile of the Unit is: _____.

[e.g.: Room xx, No xx, xx Lane, xx Road, xx District (County), Shanghai]

Chapter II Initiator, Initial Fund and Scope of Business

Article 9 The Initiator of the Unit is: _____ (Full Name of All Initiators) _____.

Article 10 The initial fund of the Unit is: RMB _____.

Initiator: _____, Capital Contribution: _____.

[The initial fund shall be consistent with the provisions of relevant laws and regulations; where there are several initiators, the capital contribution of each initiator shall be respectively specified, which shall be subject to the legal and valid capital verification report.]

Article 11 Rights and Obligations of the Initiator:

- (1) To nominate candidates for the first directors or supervisors;
- (2) Not to withdraw the contribution after registration;
- (3) Not to retain or enjoy any property right to the contributed properties and not to ask for any returns.

Article 12 The scope of business of the Unit is:

[Description of the scope of business: projects subject to approval shall be reported to the relevant departments for approval before application for registration in accordance with laws, administrative regulations, and decisions of the State Council, and then registered in accordance with the statements in the approval documents and certificates; the scope of business of projects not subject to approval shall be specified in accordance with laws, administrative regulations, decisions of the State Council, the Industrial Classification of National Economies, the Classification and Code of Subjects, etc. The description of the scope of business shall be registered in accordance with the contents as approved by the registration authority, which is limited to 60 words.]

Specifically:

(1) _____;

(2) _____;

(3) _____;

.....

[The description of the scope of business shall be specific and clear and shall not exceed the summarized content.]

Article 13 The Unit mainly carries out activities in Shanghai in accordance with relevant provisions of the State and the approved scope of business.

Article 14 The Unit engages in the following charitable activities:

- (1) Helping the poor and the needy;
- (2) Assisting the elderly, orphans, the ill, the disabled, and providing special care;
- (3) Alleviating losses incurred by natural disasters, accidents, public health incidents and other emergencies;
- (4) Promoting the development of education, science, culture, health, sports and other causes;
- (5) Preventing and alleviating pollution and other public hazards, protecting and improving the ecological environment;
- (6) Other public welfare activities in accordance with the Charity Law, specifically: _____.

(Optional)

Article 15 The Unit shall carry out charitable trust business in accordance with the relevant provisions of the Charity Law and the Trust Law of the People's Republic of China.

Chapter III Organizational and Management System

Article 16 The Unit shall formulate deliberation procedures and rules in accordance with the principles of fairness, justice, and democracy.

Article 17 The Unit shall establish a board of directors, which is composed of _____ directors.

The directors serve _____-year terms. A director may serve consecutive terms if re-elected upon expiration of the term of office thereof.

[The number of the directors shall not be less than 5 and more than 25, and an odd number is appropriate. Each term of office of the directors shall not exceed 4 years.]

Article 18 Qualifications of directors:

- (1) The director shall adhere to the lines, guidelines, and policies of the Party;
- (2) The directors shall have full capacity for civil conduct;

.....

(Optional: The Private Non-enterprise Unit may make refinements or supplements according to actual conditions:

1. The directors shall have a relatively large influence and good reputation in the business area of the Unit;
2. The directors are generally not over 70 years old, are in good health, and can maintain normal work;
3. The directors are enthusiastic about the work of the Unit and have sufficient working time;
4. The directors shall agree to the purpose, development direction, and corporate culture of the Unit, and have public spirit;
5. The directors shall not be current public servants;
6. The directors shall be honest and trustworthy, ready to make contributions and work with diligence;

.....

Article 19 The appointment and removal of directors:

- (1) The first directors shall be nominated and determined through consultation by the initiators;
- (2) When the board of directors is re-elected, the current board of directors shall nominate and elect new directors;
- (3) The addition or removal of directors shall be approved by the board of directors;
- (4) The election and removal of the directors shall be reported to the registration authority for the record.

Article 20 The decision-making body of the Unit is the board of directors, which exercises the following powers:

- (1) To formulate and amend the Articles of Incorporation;
- (2) To elect and remove the chairman and vice-chairman of the board;

[The major initiator shall act as the first person in charge]

- (3) To hire or dismiss the executives of the Unit and the deputy executives and financial officers nominated thereby;

[The executives are the persons in charge of daily work hired by the board of directors, who may be described in accordance with the actual situations of private non-enterprise unit as: Dean, President, Head, Director, Curator, Secretary-general, etc.]

- (4) To listen to and deliberate on the work reports by the executives and check their work;
- (5) To decide on plans for major business activities;
- (6) To examine and approve the annual estimate and final accounting of revenues and expenditures;
- (7) To decide on the plans for increasing the initial capital
- (8) To decide on the change, division, merger, termination or liquidation of the Unit;
- (9) To decide on the establishment of internal agencies;
- (10) To formulate internal management systems;
- (11) To check and approve the salaries and welfare of the staff;
- (12) To decide on other major issues.

Article 21 The board of directors shall meet [at least twice] a year. The board meetings shall be convened and presided over by the chairman of the board.

A board meeting shall be held upon the proposal of one third of the directors. If the chairman of the board cannot or does not convene the meeting, the proposing directors may elect the convener.

Article 22 Where a board meeting is to be held, the chairman or convener must notify all directors and supervisors 5 days in advance.

Article 23 The board of directors shall meet only if more than two thirds of the directors are present. Each director shall have 1 vote. Any resolution of the board shall be approved by more than half of the directors present to be valid.

Resolutions with respect to the following important matters shall be subject to vote by the directors present and approved by more than two thirds to be valid:

- (1) Formulation and amendment of the Articles of Incorporation;
- (2) Election or removal of the chairman or vice-chairman of the board;
- (3) Change of the initial capital;

(4) Division or merger of the Unit;

.....

Article 24 Meetings of the board shall produce minutes. Where a resolution is formed, the resolution shall be produced on the spot and shall be checked, approved, and signed by the directors present. If the resolutions of the board violate laws, regulations, rules, or the Articles of Incorporation, resulting in losses to the Unit, the directors engaging in the resolutions shall bear the responsibility. However, if a director is proved to vote against the resolutions, which is recorded in the minutes, the director may be exempted from liability.

The minutes and resolutions of the board meetings shall be kept in the archives by the archive management staff of the Unit.

Article 25 The board of directors shall have 1 chairman and vice-chairman (**determined according to the situation of the Unit**).

Article 26 The chairman of the board of directors shall exercise the following powers:

- (1) To convene and preside over board meetings;
- (2) To examine the implementation of the resolutions of the board of directors;
- (3) Other powers as provided in laws, regulations, rules and the Articles of Incorporation of the Unit.

The vice-chairman assists the chairman. Where the chairman is unable to exercise the powers as mentioned above, the chairman shall designate a vice-chairman to exercise the powers on behalf thereof.

Article 27 The executives of the Unit shall work full-time. The executives shall be responsible to the board of directors and exercise the following powers:

- (1) To preside over the daily work of the Unit and organize the implementation of the resolutions of the board of directors;
- (2) To organize the implementation of the annual plan for business activities of the Unit;
- (3) To draft the plans for annual estimate and final accounting of revenues and expenditures of the Unit;
- (4) To draft the plans for establishment of internal agencies of the Unit and coordinate the activities of internal agencies;
- (5) To draft internal management systems;

(6) To submit the appointment or removal of deputy executives or financial officers to the board of directors for decision;

(7) To decide on the appointment or removal of the persons in charge of various internal agencies and full-time staff;

(8) Other powers granted by the Articles of Incorporation and the board of directors.

The executives of the Unit shall attend board meetings. **(Where the executive is a director, the provision does not apply.)**

Article 28 Persons shall not serve as the chairman, vice-chairman, or executive of the Unit if:

(1) They were sentenced to public surveillance, detention, or a set term of imprisonment for committing a crime and not more than 5 years have elapsed since the date of the expiration of the enforcement period;

(2) They are being or were deprived of political rights for committing a crime;

(3) They ever served as the person in charge of a social organization whose registration was cancelled for illegal activities and were personally responsible for the illegal activities thereof, and not more than 5 years have elapsed since the date of cancellation;

(4) They have no capacity for civil conduct or limited capacity for civil conduct;

(5) They served as the person in charge of an organization that had its registration certificate withdrawn or was banned, and not more than 5 years have elapsed since the date of withdrawal or ban;

(6) They fail to meet other conditions as stipulated by laws, regulations and rules.

Article 29 The Legal Representative of the Unit is _____. The Legal Representative shall be a resident of mainland China.

The Chairman or Legal Representative of the Unit shall not serve as the Executive.

[The specific title shall be specified. For example, the Legal Representative of the Unit shall be the Chairman, Vice-chairman, Executive, etc., and shall be a member of the board of directors. Where there are more than 2 vice-chairmen, the Executive Vice-chairman shall be determined.]

Article 30 The Unit shall establish a board of directors (or supervisors), which is composed of _____ supervisors. **(The board of supervisors shall have one chairman)**

The term of office of the supervisors shall be _____ years, and a supervisor may serve consecutive terms upon expiration of the term of office thereof.

[The number of the members of the board of supervisors shall be no less than 3, and 1 chairman of the board of supervisors shall be elected. Private non-enterprise units with less number of staff are not required to establish a board of directors, but shall have one to two supervisors]

Article 31 The supervisors shall be elected from the candidates nominated by the initiators, staff, or relevant units.

[Staff representatives from among the supervisors shall be democratically elected by the staff of the Unit. Relevant units mainly refer to the industrial supervisory unit and other functional departments. There shall be at least one supervisor who is not an initiator.]

The directors, their close relatives, and Executive and financial staff of the Unit shall not serve concurrently as supervisors.

Article 32 Rights and obligations of the board of directors (or supervisors):

- (1) To attend the meetings of the board of directors;
- (2) To examine the financial and accounting materials of the Unit;
- (3) To supervise the compliance of the board of directors and the Executive with laws, regulations, rules, and the Articles of Incorporation.
- (4) To bring inquiries and suggestions to the board of directors and the Executive in the event of being aware of any problems and report the situation to the registration authority and relevant functional departments.

.....,

Article 33 Each supervisor shall enjoy one vote at the meetings of the board of supervisors. The resolutions of the board of supervisors shall be approved by more than half of all supervisors to be valid.

[This Article does not apply to units which have supervisors but do not establish a board of supervisors.]

Article 34 The directors and Executive shall not engage in the decision-making of relevant matters where their personal interests are related with the interests of the Unit.

The directors, supervisors, executives, and their close relatives shall not have any transaction activities with the Unit.

Chapter IV Management and Utilization of Assets

Article 35 The financial resources of the Unit:

- (1) Initial fund;
- (2) Government funding;
- (3) Income from carrying out service activities within the scope of business;
- (4) Interests;
- (5) Donations from all sectors of society;
- (6) Other legal incomes.

Article 36 The initiators shall contribute to the initial fund of the Unit and may make further contributions as required by the operation and development.

Article 37 The assets of the Unit are protected by law and shall not be illicitly distributed, seized or embezzled by any units or individuals.

The assets of the Unit shall be used for the development of the scope of business and undertakings as provided in the Articles of Incorporation. Except for reasonable expenditures, the properties and the yields of the Unit shall not be used for distribution, and the appreciation shall not be used as dividends. The remaining properties after the cancellation shall be used for public benefit or non-profit charitable purpose.

Article 38 The income from social services provided by the Unit shall be used for the public welfare or non-profit charitable undertakings as approved at registration or stipulated in the Articles of Incorporation, except for reasonable wages and salaries, welfare expenditures, and reasonable expenditures related to the Unit.

Article 39 The charges for social service activities carried out by the Unit shall follow the standards approved by price departments. The Unit shall keep separate accounts for the taxable income obtained and its related costs, expenses, and losses and the tax-exempt income and its related costs, expenses, and losses.

Article 40 The Unit shall carry out targeted fund-raising activities directed at specific targets such as the initiators and directors and provide information on matters such as the purpose of the fund-raising and the use of the raised funds and items.

Article 41 If the Unit accepts donations, it shall issue to the donors a donation receipt uniformly printed by or printed under the supervision of the finance departments. Donation receipts shall specify the donor, the type and quantity of the donations, the name of the Unit, the name of the person responsible, the date of the receipt, etc. In the case of donors wishing to remain anonymous or waive the donation receipt, the Unit shall record the relevant information.

The Unit shall sign a written donation agreement with the donor if the donor requests so. The written donation agreement shall include the name of the donor and the Unit, the type, quantity, quality, purpose and delivery time of the donated property, etc.

Where a donation agreement is concluded when the Unit accepts donations, the Unit shall, within the scope of business thereof, use donated materials in accordance with the purposes and ways as agreed in the donation agreement. Where donated materials are unable to be used in compliance with the purposes, the Unit may auction or sell them off, and the income thereof shall be subject to the purposes of donation.

When agreeing on the purpose and beneficiaries of donated properties, donors and the Unit must not appoint interested parties from the donor's side to act as beneficiaries.

Article 42 Donors have the right to inquire about relevant information on the management and use of their donated properties, as well as make suggestions, while the Unit shall respond truthfully in a timely manner.

Donors have the right to inquire about and photocopy relevant information on the management and use of their donated properties. The Unit shall take the initiative to provide relevant updates to donors in a timely manner.

If the Unit misuses donated properties in violation of the donation agreement, donors have the right to request correction; donors may report or complain to the civil affairs department or bring prosecution to the people's court if the Unit refuses to correct.

Article 43 The Foundation shall, in implementing charitable financial support programs, make a public notice of the types thereof and the procedures for application and appraisal.

Article 44 The Unit shall rationally design charitable projects, comply with the purposes of the Unit and relevant provisions of the Articles of Incorporation, optimize implementation processes, lower operating costs, and improve efficiency in the use of charitable assets.

(1) The Unit shall establish a sound decision-making, implementation, and supervision mechanism for charity projects; it shall establish scientific, standardized and effective requirements for the establishment, review, implementation, control, evaluation, and feedback of charity projects; and it shall set up project management agencies with staff to exercise project management duties.

(2) The Unit shall adhere to an open, fair and impartial process when determining the beneficiaries of charitable services.

(3) The Unit shall not choose any interested party of the administrative staff as beneficiaries.

Article 45 The Foundation shall, in carrying out major charity projects, hold a board meeting and obtain the approval of more than two thirds of the directors present.

The major charity projects of the Unit include:

- (1) Annual charity project plan;
- (2) Charity projects exceeding RMB_____;

.....

Before the Unit carries out major charity projects, it shall promptly report to the industrial supervisory unit. **(Statement for direct registration)**

Before the Unit carries out major charity projects, it shall promptly report to the professional supervisory unit. **(Statement for dual management)**

The project funds shall be used strictly in accordance with the national financial and accounting systems, and for a fixed purpose as provided in the donation agreement.

The management and use of funds for charity projects shall consciously accept the supervision of financial departments, auditing agencies, competent authorities of industry, registration authorities, and the general public, earnestly abide by the obligation of information disclosure, and accept social supervision.

Article 46 The Unit shall strengthen the management of project files, preserve the complete information of charity projects, and establish thorough archives for charity projects.

Article 47 Donors have the right to inquire about and photocopy relevant information on the management and use of their donated properties. The Unit shall take the initiative to provide relevant updates to donors in a timely manner.

If the Unit misuses donated properties in violation of the donation agreement, donors have the right to request correction; donors may report or complain to the civil affairs department or bring a prosecution to the people's court if the Foundation refuses to correct.

Article 48 The Unit may sign an agreement with an aided person to agree on the method of funding, the amount of funding, and the purpose and use of funds.

The Unit has the right to supervise the use of funding. If the aided person fails to use the funding as agreed upon or otherwise violates the agreement, the Unit has the right to cancel the funding agreement.

Article 49 The Unit shall implement the Accounting System for Non-governmental Non-profit Organizations, conduct independent accounting in accordance with the law, and establish a sound internal accounting supervision system, in order to ensure that the accounting information is legal, truthful, accurate and complete.

The Unit shall have accountants with professional qualifications. Accountants shall not concurrently serve as cashiers. Where accountants are transferred to another post or leave the Unit, they must complete the hand-over procedures with successors.

The Unit shall accept tax supervision and accounting supervision by the competent tax and accounting departments according to law.

Article 50 The percentage of the expenditures for charitable undertakings and annual management expenses as provided in the Articles of Incorporation shall follow the standards of relevant provisions.

The average salary and wage of the staff of the Unit shall not exceed twice the per capita wage of the place where the tax registration was conducted in the previous year. Staff welfare shall be implemented in accordance with the relevant provisions of the State.

Article 51 The Unit shall conduct a financial audit for change of the board of directors, change of its legal representative and liquidation.

Chapter V Employment Systems

Article 52 The directors and supervisors who do not establish labour relations with the Unit shall not receive remuneration from the Unit.

Article 53 The employment and social insurance systems of the Unit shall be implemented in accordance with laws, regulations, and relevant provisions of administrative departments of human resources and social security.

Chapter VI Reporting on Major Matters and Information Disclosure

Article 54 The Unit shall fulfil its reporting obligations in accordance with the Charity Law and the relevant requirements and guidelines of the registration authority on reporting on major matters.

Article 55 The Unit shall fulfil the obligation of information disclosure in accordance with the Charity Law and the relevant requirements of the registration authority on information disclosure.

Chapter VII Termination and Disposal of Residual Properties

Article 56 The Unit shall be terminated if:

- (1) The circumstances for termination as set out in the Articles of Incorporation are met;
- (2) Termination is required due to division or merger;
- (3) It has not engaged in charitable activities for two consecutive years;

(4) It is deregistered or has its registration certificate withdrawn according to law;

(5) Other conditions set out by laws and administrative regulations under which it shall terminate are met;

.....

Article 57 The termination of the Unit shall be reported to the industrial supervisory unit for approval within 15 days after the approval of the board of directors, and a liquidation team shall be established under the guidance of the competent department of industry and relevant departments to settle the creditor's rights and debts, dispose the remaining assets, and complete the liquidation. During the period of liquidation, activities other than liquidation shall not be carried out. **(Statement for direct registration)**

The termination of the Unit shall be reported to the professional supervisory unit for approval within 15 days after the approval of the board of directors, and a liquidation team shall be established under the guidance of the professional supervisory unit and relevant departments to settle the creditor's rights and debts, dispose the remaining assets, and complete the liquidation. During the period of liquidation, activities other than liquidation shall not be carried out. **(Statement for dual management)**

Article 58 The liquidation team shall generally be composed of the Legal Representative of the Unit or the relevant responsible person determined by the board of directors, the representatives of the creditors, and the representatives of the professional supervisory unit. Domestic certified public accountants and lawyers can be employed to participate as needed. The liquidation expenses and remunerations of the members of the liquidation team shall be paid in priority from the remaining assets of the Unit.

During the period of liquidation, the liquidation team participates in civil litigation activities on behalf of the Unit. After the liquidation is completed, the liquidation team shall submit the liquidation report to the former board of directors for review and approval, and report to the industrial supervisory unit for review and approval. **(Statement for direct registration)**

During the period of liquidation, the liquidation team participates in civil litigation activities on behalf of the Unit. After the liquidation is completed, the liquidation team shall submit the liquidation report to the former board of directors for review and approval, and report to the professional supervisory unit for review and approval. **(Statement for dual management)**

Article 59 The board of directors shall establish a team for liquidation within 30 days, starting from the date when the circumstances for termination appear, make a public announcement. If the Unit does not establish such a team or if the team does not fulfil its duties, the registration authority may apply to a people's court to assign relevant personnel to form a team and to conduct the liquidation.

Article 60 The order of liquidation:

(1) To refund the service charges that shall be refunded;

[They mainly refer to the service charges that have been collected but for which services cannot continue due to cancellation, but do not include the contributions of the initiators and the social donations that have been accepted.]

(2) To pay the salaries of the staff of the Unit, social insurances, etc.;

(3) To repay the debts of the Unit;

(4) To carry out final audit;

(5) To dispose remaining assets;

(6) To formulate liquidation reports.

Article 61 No activities other than liquidation shall be carried out by the Unit during the liquidation. In the event of civil litigations, the liquidation team shall participate on behalf of the Unit.

Article 62 Disposal of remaining assets:

(1) To pay in priority liquidation expenses and the remunerations of the members of the liquidation team;

(2) To go through tax cancellation and bank account closure procedures and settle tax payments and interests;

(3) To transfer the remaining assets of the Unit after liquidation, under the supervision of the registration authority, to charitable organizations with the same or similar purposes for charitable undertakings in accordance with the Articles of Incorporation.

In the absence of any provisions in the Articles of Incorporation, the registration authority shall donate them to charitable organizations with the same or similar purposes and make a public announcement.

Article 63 The Legal Representative or person in charge of the Unit shall go through deregistration procedures with the registration authority within 15 days after the completion of the liquidation.

Article 64 The Unit shall terminate upon the date when the registration authority issues the deregistration certificate.

Chapter VIII Supplementary Provisions

Article 65 The Articles of Incorporation shall be adopted at the meeting of the _____ board of directors on mm/dd/yy.

Article 66 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 67 The amendment of the Articles of Incorporation shall be reported to the registration authority for approval within 30 days after the approval of the board of directors. **(Statement for direct registration)**

The amendment of the Articles of Incorporation shall be reported to the professional supervisory unit for approval within 15 days after the approval of the board of directors, and then reported to the registration authority for approval within 30 days after the approval of the professional supervisory unit. **(Statement for dual management)**

Article 68 The Articles of Incorporation shall take effect as of the date when they are adopted by the board of directors, after the approval of the registration authority.

Article 69 Where the Articles of Incorporation are inconsistent with national laws, regulations, rules and policies, national laws, regulations, rules and policies shall prevail.

×× Unit (Name and Signature)

[The draft Articles of Incorporation formulated when the Unit applies for registration shall be signed by all directors in lieu of the seal]

TK4 - Model Text of Articles of Incorporation of Private Non-enterprise Units Issued by the Ministry of Civil Affairs

Model Text of Articles of Incorporation of Private Non-enterprise Units

Chapter I General

Article 1 The name of the Unit is_____.

[The name shall comply with the provisions of the Interim Regulations on Registration Administration of Private Non-enterprise Units and the Interim Provisions on Administration of Names of Private Non-enterprise Units]

Article 2 The nature of the Unit is_____.

[Specify: a social organization voluntarily founded mainly by using non-state-owned assets to engage in non-profit social service activities]

Article 3 The purpose of the Unit is_____.

[Specify: to comply with the Constitution, laws, regulations and national policies, observe social morality, and the establishment purpose of the Unit]

Article 4 The registration authority of the Unit is_____; the professional supervisory unit of the Unit is_____.

Article 5 The domicile of the Unit is_____.

[e.g.: xx City (District or County), xx Province (Autonomous Region or Municipality)]

Article 6 Where the provisions of the Articles of Incorporation are inconsistent with laws, regulations and rules, laws, regulations and rules shall prevail.

Chapter II Initiators, Initial Fund, and Scope of Business

Article 7 The initiators of the Unit are_____.

The initiators enjoy the following rights:

(1) To know the state of operation and financial conditions of the Unit;

(2) To nominate candidates for directors and supervisors;

(3) To consult the minutes of the board of directors and the financial and accounting reports of the Unit;

.....

Article 8 The initial fund of the Unit is: RMB____; initiator:____, amount: RMB____.

[The initial fund shall comply with the provisions of relevant laws and regulations; where there are several initiators, the capital contributions of each initiator shall be respectively specified.]

Article 9 The scope of business of the Unit:

(1)_____;

(2)_____;

(3)_____;

.....

[It must be specific, clear, and consistent with the scope of business confirmed by the professional supervisory unit.]

Chapter III Organizational and Management Systems

Article 10 The Unit shall establish a board of directors, which is composed of____directors. The board of directors is the decision-making body of the Unit.

Directors shall be elected by the initiators (including contributors), staff representatives (elected by all staff), and relevant units (competent business authorities).

The directors serve____-year terms. A director may serve consecutive terms if re-elected upon expiration of the term of office thereof.

[The number of the directors shall not be less than 3 and more than 25; the term of office of directors is 3 or 4 years; the relevant units mainly refer to the competent business authorities]

Article 11 The board of directors exercises the right to decide on the following matters:

(1) Amendment of the Articles of Incorporation;

(2) Business activity plans;

(3) Annual estimate and final accounting of revenues and expenditures;

- (4) Plans to increase the initial fund;
- (5) The division, merger, or termination of the Unit;
- (6) Appointment or removal of the Dean (or President, Head, Director, etc.) of the Unit and the Deputy Dean (or Deputy President, Deputy Head, Deputy Director, etc.) and financial officer of the Unit whose appointment or removal is proposed thereby;
- (7) Dismissal and addition of directors;
- (8) Establishment of internal agencies;
- (9) Formulation of internal management systems;
- (10) Salaries of the staff;

.....

Article 12 The board of directors shall meet _____ [at least twice] a year. The board of directors shall convene when:

- (1) The Chairman of the board of directors considers necessary;
- (2) More than one third of the directors make a joint proposal.

Article 13 The board of directors shall have one chairman and one or two vice-chairmen. The chairman and vice-chairman shall be elected or dismissed by more than half of all directors at board meeting.

Article 14 The vice-chairman shall assist the chairman. Where the chairman is unable to exercise the powers, the chairman shall designate a vice-chairman to exercise the powers on their behalf.

Article 15 To convene a board meeting, the time, place and content of the meeting shall be disclosed to all directors 10 days before the meeting. If the directors cannot attend for any reason, they may entrust other directors in writing to attend on their behalf. The power of attorney must specify the scope of authority.

Article 16 The board of directors shall meet only if more than half of the directors are present. Each director shall enjoy one vote at the meetings of the board of directors. The resolutions of the board of directors shall be approved by more than half of all directors to be valid.

The resolutions for the following important matters shall be approved by more than two thirds of all directors to be valid:

- (1) Amendment of the Articles of Incorporation;

(2) The division, merger, or termination of the Unit;

.....

Article 17 Meetings of the board shall produce minutes. Where a resolution is formed, the resolution shall be produced on the spot and shall be checked, approved and signed by the directors present. If the resolutions of the board violate laws, regulations, rules, or the Articles of Incorporation, resulting in losses to the Unit, the directors engaged in the resolutions shall bear the responsibility. However, if a director is proved to vote against the resolutions, which is recorded in the minutes, the director may be exempted from liability.

The minutes of the board meetings shall be kept in the archives by the person designated by the Unit.

Article 18 The chairman of the board of directors shall exercise the following powers:

- (1) To convene and preside over board meetings;
- (2) To examine the implementation of the resolutions of the board of directors;
- (3) Other powers as provided in laws, regulations, and the Articles of Incorporation of the Unit.

Article 19 The Dean (or President, Head, Director, etc.) of the Unit shall be responsible to the board of directors and exercise the following powers:

- (1) To preside over the daily work of the Unit and organize the implementation of the resolutions of the board of directors;
- (2) To organize the implementation of the annual plan for business activities of the Unit;
- (3) To draft the plans for establishment of internal agencies of the Unit;
- (4) To draft internal management systems;
- (5) To submit the appointment or removal of deputy executives or financial officers;
- (6) To decide on the appointment or removal of the persons in charge of various internal agencies;

.....

The Dean (or President, Head, Director, etc.) of the Unit shall attend the board meetings.

Article 20 The Unit shall establish a board of supervisors, which is composed of ____supervisors.

The term of office of the supervisors shall be the same as that of the directors. A supervisor may serve consecutive terms upon expiration of the term of office thereof.

[The number of the members of the board of supervisors shall be no less than 3, and 1 convener shall be elected. Private non-enterprise units with smaller numbers of staff are not required to establish a board of supervisors, but shall have one to two supervisors]

Article 21 Supervisors shall be elected from among the initiators (including contributors), staff of the Unit, or personnel recommended by relevant units. The staff representatives in the board of supervisors shall be democratically elected by the staff of the Unit.

The directors, Dean (or President, Head, Director, etc.), and financial officers of the Unit shall not concurrently serve as supervisors.

[Relevant units mainly refer to competent business authorities]

Article 22 The board of supervisors or supervisors shall exercise the following powers:

- (1) To examine the financial affairs of the Unit;
- (2) To supervise the violation of laws, regulations or Articles of Incorporation by the directors or Dean (or President, Head, Director, etc.) of the Unit;
- (3) In the event of the behaviours of the directors or Dean (or President, Head, Director, etc.) of the Unit which damage the interests of the Unit, to ask them to make corrections;

.....

Supervisors shall attend the meetings of the board of directors.

Article 23 Each supervisor shall enjoy one vote at the meetings of the board of supervisors. The resolutions of the board of supervisors shall be approved by more than half of all supervisors to be valid.

Chapter IV Legal Representative

Article 24 The Legal Representative of the Unit is _____.

[The Legal Representative is the chairman of the board of directors or the Dean (or President, Head, Director, etc.)]

Article 25 Persons shall not serve as the Legal Representative of the Unit if:

- (1) They have limited or no capacity for civil conduct;
- (2) They are undergoing criminal punishments or criminal compulsory measures;
- (3) They are wanted by public security organs or national security organs;

(4) They were sentenced to punishments for committing a crime and not more than 3 years have elapsed since the date of the expiration of the enforcement period; or they were deprived of political rights for committing a crime and not more than 5 years have elapsed since the date of the expiration of the enforcement period;

(5) They ever served as legal representative of a private non-enterprise unit whose registration was cancelled for illegal activities, and not more than 3 years have elapsed since the date of cancellation;

(6) They are not a resident of mainland China;

(7) They fail to meet other conditions as stipulated by laws and regulations.

Chapter V Management and Utilization of Assets and Employment Systems

Article 26 The financial resources of the Unit:

(1) Initial fund;

(2) Government funding;

(3) Incomes from carrying out service activities within the scope of business;

(4) Interests;

(5) Donations;

(6) Other legal incomes.

Article 27 The assets of the Unit shall be used for the development of the scope of business and undertakings as provided in the Articles of Incorporation. The surplus shall not be used as dividends.

Article 28 The Unit shall implement the accounting systems of the State, conduct accounting in accordance with the law, and establish a sound internal accounting supervision system, in order to ensure that the accounting information is legal, truthful, accurate, and complete.

The Unit shall accept tax supervision and accounting supervision by the competent tax and accounting departments according to law.

Article 29 The Unit shall have accountants with professional qualifications. Accountants shall not concurrently serve as cashiers. Where accountants are transferred to another post or leave the Unit, they must complete the hand-over procedures with successors.

Article 30 The Unit shall conduct a financial audit for change of the board of directors or change of its legal representative.

Article 31 The Unit shall accept the annual examination of the registration authority in accordance with the provisions of the Interim Regulations on Registration Administration of Private Non-Enterprise Units.

Article 32 The employment and social insurance systems of the Unit shall be implemented in accordance with laws, regulations and relevant provisions of administrative departments of human resources and social security.

Chapter VI Amendment of Articles of Incorporation

Article 33 The amendment of the Articles of Incorporation shall be reported to the professional supervisory unit for approval within 15 days after the approval of the board of directors, and then reported to the registration authority for approval within 30 days after the approval of the professional supervisory unit.

[The Articles of Incorporation of private schools shall be reported to the registration authority for the record.]

Chapter VII Termination and Disposal of Residual Properties

Article 34 The Unit shall be terminated if:

- (1) The purposes as set out in the Articles of Incorporation are met;
- (2) It is unable to continue to carry out activities in accordance with the purposes as set out in the Articles of Incorporation;
- (3) Termination is required due to division or merger;
- (4) The Unit is dissolved by itself;

.....

Article 35 The termination of the Unit shall be reported to the professional supervisory unit for approval within 15 days after the approval of the board of directors.

Article 36 Before the Unit goes through deregistration procedures, a liquidation team shall be established under the guidance of the registration authority, professional supervisory unit, and relevant departments to settle the creditor's rights and debts, dispose of the remaining assets, and complete the liquidation.

The remaining assets shall be disposed in accordance with the provisions of laws and regulations. During the period of liquidation, activities other than liquidation shall not be carried out.

The Unit shall go through deregistration procedures with the registration authority within 15 days from the date of liquidation.

Article 37 The Unit shall terminate upon the date when the registration authority issues the deregistration certificate.

Chapter VIII Supplementary Provisions

Article 38 The Articles of Incorporation shall be adopted at the meeting of the board of directors on mm/dd/yy.

Article 39 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 40 The Articles of Incorporation shall take effect as of the date of approval of the registration authority.

[The Articles of Incorporation of private schools shall be reported to the registration authority for the record]

**TK5 - Model Text of the Articles of Incorporation of Social Organizations in
Shanghai – Charitable Organizations**

**Model Text of the Articles of Incorporation of
Social Groups**

(Charitable Organizations)

Shanghai Administration Bureau of Social Organizations

October 2016

Instructions

I. The Model Text of Articles of Incorporation is formulated in accordance with the Charity Law of the People's Republic of China, the Regulations on Registration Administration of Social Groups, as well as other laws, regulations, rules, and policies.

II. The Model Text of Articles of Incorporation is intended to provide a model for social groups (charitable organizations) to formulate articles of incorporation. Social groups (charitable organizations) shall formulate articles of incorporation which include all the contents of the Model Text of Articles of Incorporation and may make appropriate supplements and refinements to the contents according to the actual situation.

III. The text in [] is a mandatory requirement, while the text in () is an optional item.

Articles of Incorporation of ×××××××××× (Full Name of the Unit)

Chapter I General

Article 1 The name of the Group is_____. (The English name of the Group is_____, the abbreviation of which is_____.)

[The name of a Social Group shall be consistent with the purpose, scope of business, distribution of members and activity areas thereof, which is successively composed of three aspects: the name of the administrative area, reflection of the scope of business, and identification of the nature of the Social Group.]

Article 2 The Group is a_____ (academic, joint, or professional) Social Group voluntarily formed by_____ in this City, which is a charitable organization.

Article 3 The purpose of the Group is: _____ .

[The purpose shall be consistent with the actual situation, fully reflect the purpose of establishing the social group, be consistent with the internal meaning of the name of the social group, and comply with the relevant provisions of the Charity Law of the People's Republic of China.]

Article 4 The Group shall obtain the qualifications for public fund-raising according to law and abide by the relevant provisions of the Charity Law and the Administrative Measures for Public fund-raising of Charitable Organizations to carry out public fund-raising activities.

Article 5 Where the Group carries out charitable activities, it shall respect the personal dignity of beneficiaries and volunteers and shall not infringe the privacy thereof. Meanwhile, it shall abide by the provisions of the Charity Law and other laws and regulations.

Article 6 The registration authority of the Group is___ [Full Name]___; the industrial supervisory unit is___ [Full Name] (It can be determined in accordance with the principles of clarity and focus on the main business)_____. The Group accepts the supervision, management and business guidance of the registration authority and the industrial supervisory unit. **(Statement for direct registration)**

The registration authority of the Group is___ [Full Name]_____; the professional supervisory unit is___ [Full Name]_____. The Group accepts the supervision and management of the registration authority, the professional supervisory unit and other functional departments. **(Statement for dual management)**

Article 7 The domicile and activity area of the Group is in Shanghai.

[e.g.: for a social group registered in a district (county), it must be specified that the domicile is in xx District (County), Shanghai.]

Chapter II Task and Scope of Business and Principles of Activity

Article 8 The task of the Group is:

(1) _____;

(2) _____;

(3) _____;

.....

[The task is the specific matter that the social group undertakes to achieve its purpose. The content shall be specific, clear, and in line with the nature and characteristics of the social group.]

Article 9 The scope of business of the Group is: _____.

[The scope of business is a summary of the tasks of the social groups. The content shall be concise, and the words plus the punctuation shall not exceed 60 words.]

Article 10 The Group engages in the following charitable activities:

(1) Helping the poor and the needy;

(2) Assisting the elderly, orphans, the ill, the disabled, and providing special care;

(3) Alleviating losses incurred by natural disasters, accidents, public health incidents, and other emergencies;

(4) Promoting the development of education, science, culture, health, sports, and other causes;

(5) Preventing and alleviating pollution and other public hazards, protecting and improving the ecological environment;

(6) Other public welfare activities in accordance with the Charity Law, specifically: _____.

(Optional)

Article 11 The activity principles of the Group:

(1) The Group shall, in carrying out charitable activities, follow the principles of legality, voluntariness, integrity, and non-profitability, shall not violate social morality, endanger national security, or harm public interests and the legitimate rights and interests of others, and shall carry

out public welfare or non-profit charitable activities in accordance with the approved Articles of Incorporation.

(2) The Group shall run in a democratic manner, implement a system of democratic centralism, establish democratic decision-making, democratic election, and democratic management systems, make decisions on the election of the leading agency and other major issues through group discussion, and make decisions based on the principles of the minority subordinate to the majority;

(3) When the Group conducts activities, it shall be honest, trustworthy, fair and impartial, and shall not practise fraud or damage the interests of the State, its members and individuals;

(4) The Group shall run independently, with independent work, self-employed personnel, and self-raised funds.

Article 12 The Group shall carry out charitable trust business in accordance with the relevant provisions of the Charity Law and the Trust Law of the People's Republic of China.

Chapter III Members

Article 13 The Group consists of _____ (individual members, unit members, or individual members and unit members).

Article 14 Whoever applies to join the Group shall meet the following conditions:

- (1) Joining the Group voluntarily;
- (2) Admitting the Articles of Incorporation of the Group;
- (3) _____;

.....

[Social groups shall determine the conditions of unit members and individual members concretely and explicitly. The profession or business that the members undertake must be related to the business scope of the social groups.]

Article 15 Procedures for members to join the Group:

- (1) Submitting an application for joining the Group;
- (2) After review and approval by the board of directors (or the Secretariat authorized by the board of directors), issuing relevant certificates.

[The board of directors or the secretariat authorized by the board of directors provides an alternative to the other and cannot be written in parallel.]

Article 16 Members have the following rights:

- (1) The right to vote and to be elected to the Group;
- (2) The right to participate in the activities of the Group;
- (3) The right to obtain the priority to be served by the Group;
- (4) The right to consult the Articles of Incorporation, rules and regulations, register of members, register of directors, register of standing director, meeting minutes, meeting resolutions, meeting summaries, and financial audit reports;
- (5) The right to submit proposals, make suggestions, and supervise;
- (6) The right to join the Group on a voluntary basis and withdraw from the Group with freedom;
- ()
- () Other rights as stipulated by laws, regulations, rules and the Articles of Incorporation of the Group.

[Other rights may be determined voluntarily, but must comply with relevant laws, regulations, rules and policies.]

Article 17 Members shall fulfil the following obligations:

- (1) To comply with the Articles of Incorporation of the Group;
- (2) To implement the resolutions of the Group;
- (3) To safeguard the lawful rights and interests of the Group;
- (4) To complete the work assigned by the Group;
- (5) To report to the Group and provide relevant information;
- (6) To pay membership dues as required;
- ()
- () Other obligations as stipulated by laws, regulations, rules, and the Articles of Incorporation of the Group.

[Other obligations may be determined voluntarily, but must comply with relevant laws, regulations, rules, and policies.]

Article 18 The members shall submit a written letter to the Group and return the relevant certificates to withdraw from the Group.

Members who do not pay dues or do not participate in the activities of the Group for no reason for _____ years (the specific number is to be decided by the social group) shall be deemed as automatically withdrawn if confirmed by the board of directors. The Group cancels their membership.

Article 19 Any member who seriously violates national laws, regulations, rules, or the Articles of Incorporation of the Group shall, after approval by more than two thirds of the directors present at the board meeting, have their membership cancelled, which shall be publicized.

If the member is dissatisfied with the cancellation by the board of directors, he or she may file a complaint and the board of directors will reply. If necessary, the complaint will be submitted to the member (or member representative) assembly for review before the reply.

Article 20 The Group shall establish a complete register and credit archives of members, and make timely adjustments based on changes.

Chapter IV Organizational Structure and Persons in Charge

Article 21 The highest authority of the Group is the Member (or Member Representative) Assembly.

Article 22 The persons in charge of the Group refer to the President (or Chairman), Vice President (or Vice-chairman), and Secretary General.

The persons in charge of the Group shall abide by the provisions of laws, regulations, rules, and the Articles of Incorporation, faithfully perform their duties, safeguard the rights and interests of the Group, and abide by the following codes of conduct:

- (1) They will exercise their rights within the scope of their duties, without exceeding their authority;
- (2) They will not use the duties to seek benefits for themselves or any other persons;
- (3) They will not engage in activities that damage the interests of the Group;

Article 23 The member (member representative) assembly shall serve a term of _____ years, and a meeting shall be held for change upon the expiration of the term of office thereof. In case of special circumstances, the board of directors may decide to hold a meeting at any time. If it is necessary to postpone the change due to special circumstances, it shall be voted by the board of directors and reported to the registration authority for approval. The maximum period for a deferral shall be no more than one year.

[If the number of members exceeds 300, a certain percentage of members may be elected to form a member representative assembly to exercise the powers on behalf of the member assembly. Member

representatives shall be elected in a democratic manner, and the specific methods and quota allocation shall be decided by the board of directors. The number of member representatives shall generally be between 5% and 30% of the total number of members, and the minimum number of member representatives shall be no less than 50. The term of the member (or member representative) assembly may be determined voluntarily but shall be no more than four years at maximum.]

Article 24 The member (member representative) assembly shall convene at least once a year. The member (member representative) assembly shall meet only if more than two thirds of the members (member representatives) are present, and its resolution must be approved by more than half of the members (member representatives) present to be valid. The resolutions for termination shall be approved by more than half of the members (member representatives) actually present to be valid. The resolutions for major issues and formulation and amendment of the Articles of the Group shall be approved by more than two thirds of the members (member representatives) present to be valid.

Upon the proposal of more than half of the directors or more than one fifth of the members, an interim member (member representative) assembly may be held. If the President (or Chairman) cannot or does not convene a meeting, the proposing directors or members may elect the convener. When an interim member (member representative) assembly is held, the President (or Chairman) or convener must notify all members (member representatives) of the topics for discussion 5 days in advance.

Members (member representatives) may entrust other members (member representatives) as agents to attend the meeting. The agents shall present the power of attorney and exercise voting rights within the scope of authorization.

Article 25 The member (member representative) assembly shall exercise the following powers:

- (1) To formulate and amend the Articles of Incorporation;
- (2) To formulate and revise the standards for membership fees;
- (3) To formulate and revise the election methods for persons in charge, directors, standing directors and supervisors;

[For the appointment of the Secretary General, the persons in charge is described as the President (Chairman) and Vice President (Vice-chairman)]

- (4) To elect or remove directors and supervisors;
- (5) To review the work reports and financial reports of the board of directors;
- (6) To review the work reports of the board of supervisors (supervisors);

(7) To change or withdraw inappropriate decisions of the board of directors (**standing board of directors**);

(8) To decide on major issues, such as the change of the name and termination;

()

() To decide on other major issues.

[Social groups can determine other authorities by themselves, but they must comply with relevant laws, regulations, rules, and policies. If the persons in charge and standing directors of the Group are directly elected and dismissed by the member assembly or member representative assembly, it shall be specified in this Article and Article 28(6) will not contain a statement.]

Article 26 The Group shall establish a board of directors, which is composed of the directors elected by the member (member representative) assembly. The board of directors is the executive body of the Group and is responsible for leading the Group in its daily work and is responsible to the member (member representative) assembly.

The board of directors shall serve a term of years [4 years at maximum and shall be the same as the term of the member (member representative) assembly], and the member (member representative) assembly shall be held for election upon expiration of the term of office thereof. If it is necessary to postpone the election due to special circumstances, it shall be approved by the board of directors of the Group and reported to the registration authority for approval. The maximum period for a deferral shall be no more than one year. Directors can be re-elected upon expiration of the term of office.

[The number of directors must not be less than 7 but not more than one third of the total number of members and shall be an odd number. If a member representative assembly is established, the number of directors shall not exceed one third of the number of member representatives and shall be an odd number.]

Article 27 The board of directors shall exercise the following powers:

(1) To implement the resolutions of the member (member representative) assembly;

(2) To convene the member (member representative) assembly and submit work reports and financial reports to the assembly;

(3) To draft the articles of incorporation, standards for membership fees, and methods for the election of directors, standing directors, and persons in charge, and report them to the member (member representative) assembly for approval;

(4) To decide on the establishment, change, or cancellation of administrative offices, branch offices, representative offices and entity agencies, and file or apply for registration with the registration authority according to law;

- (5) To decide on the removal of members;
- (6) To elect or remove the persons in charge or standing directors of the Group;
- (7) To decide on the appointment and removal of the Deputy Secretary General and the persons in charge of various agencies;
- (8) To decide on the appointment or dismissal of the staff of each agency;
- (9) To lead various agencies in their work;
- (10) To formulate internal management systems;
- (11) To listen to and examine the work reports of the Secretary General and check the work of the Secretary General;
- ()
- () To decide on charitable projects and other major issues.

[Social groups can determine other authorities by themselves, but they must comply with relevant laws, regulations, rules, and policies. If the Secretary General thereof is appointed and dismissed by the board of directors, the “persons in charge” in Paragraph 3 of this Article shall be named the President (or Chairman) and Vice President (or Vice-chairman); Paragraph 6 shall be stated as “To elect or remove the President (or Chairman) and Vice President (or Vice-chairman) of the Group; Paragraph 7 shall be stated as “To decide on the appointment and removal of the Secretary General, Deputy Secretary General and the persons in charge of various agencies”.]

Article 28 The board of directors shall convene ____ [at least twice] each year, and may convene at any time due to special circumstances.

The meetings of the board of directors shall be convened and presided over by the President (or Chairman). A board meeting shall be held upon the proposal of more than one third of the directors. If the President (or Chairman) cannot or does not convene, the proposing directors may elect the convener. When a meeting of the board of directors is to be held, the President (or Chairman) or convener must notify all directors of the topics for discussion 5 days in advance.

Board meetings shall be attended by the directors in person. If the directors cannot attend for any reason, they may entrust other directors in writing to attend the meeting. The power of attorney shall specify the matters to be authorized.

The board shall meet only if more than two-thirds of the directors are present. The resolutions thereof must be approved by more than two thirds of the directors present to be valid.

The addition of directors shall be subject to election by the member (member representative) assembly. In special circumstances, the election may be made by the board of directors, but the elected directors must be confirmed by the next member (member representative) assembly.

The Secretary General attends meetings of the board of directors. [\[This paragraph applies to the appointment of the Secretary General.\]](#)

Article 29 The Group shall establish a standing board of directors, the members of which shall be elected from the directors. The standing board of directors shall exercise the powers in Items 1, 3, 4, 5, 7, 8, 9, 10, and 11 of Article 27 of the Articles of Incorporation when the board of directors is not in session; the Group shall be accountable to the board of directors.

[\[If the number of the members of the board of directors exceeds 30, a standing board of directors may be established. The number of standing directors shall be not less than five, but generally not more than one-third of the total number of directors, and shall be an odd number. If there are fewer members, the standing board of directors is not required to be established, and there is no need to draft Articles 29 and 30.\]](#)

Article 30 The meetings of the standing board of directors shall be convened and presided over by the President (or Chairman). A standing board meeting shall be held upon the proposal of more than one-third of the standing directors. If the President (or Chairman) cannot convene, the proposing standing directors may elect the convener. When a meeting of the standing board of directors is to be held, the President (or Chairman) or convener must notify all directors of the topics for discussion 5 days in advance.

The meetings of the standing board of directors shall be attended by the standing directors in person. If the standing directors cannot attend for any reason, they may entrust other standing directors in writing to attend the meeting. The power of attorney shall specify the matters to be authorized.

The standing board of directors shall meet only if more than two-thirds of the standing directors are present. The resolutions thereof must be approved by more than two-thirds of the standing directors present to be valid.

The standing board of directors shall convene at least once every half year and may convene at any time due to special circumstances.

The addition of standing directors shall be subject to election by the board of directors. In special circumstances, the election may be made by the standing board of directors, but the elected standing directors must be confirmed by the next board of directors. The additional standing directors shall be elected from the directors.

The Secretary General attends meetings of the standing board of directors. [\[This paragraph applies to the appointment of the Secretary General.\]](#)

Article 31 The voting of the member (member representative) assembly and the board of directors (the standing board of directors) shall be conducted in a democratic manner. The election of directors, standing directors, persons in charge, and the establishment or revision of the standards for membership fees shall be conducted by secret ballot. [If the Secretary General is appointed and removed by the board of directors, the persons in charge in this Article shall be described as President (or Chairman) and Vice President (Vice-chairman).]

The above meeting shall produce minutes. Where a resolution is formed, resolutions and minutes shall be produced. The resolutions of the board of directors (standing board of directors) shall be reviewed and signed by the directors (standing directors) present on the spot.

Article 32 The persons in charge and supervisors of the Group shall meet the following requirements:

- (1) Adhering to the lines, guidelines and policies of the Party, and abiding by the laws and regulations of the State;
- (2) Having a relatively large influence and good reputation in the business area of the Group;
- (3) Generally not exceeding 70 years of age;
- (4) Being healthy and able to maintain normal work;
- (5) Never having been deprived of political rights;
- (6) Having full capacity for civil conduct;
- ()

Article 33 The President (or Chairman) of the Group shall be the legal representative. The legal representative of the Group shall not concurrently serve as the legal representative of other social groups. The legal representative shall be a resident of mainland China.

If the legal representative needs to make a decision but cannot perform duties due to special reasons, the board of directors shall make a decision based on the principle of the minority subordinate to the majority and form a resolution.

The President (or Chairman) or legal representative shall not concurrently serve as Secretary General.

[The legal representative is generally assumed by the President (or Chairman). If the Vice President (or Vice-chairman) serves as the legal representative in special circumstance, it shall be stated in this Article and reported to the registration authority for approval.]

Article 34 Persons shall not serve as the persons in charge of the Group if:

(1) They were sentenced to public surveillance, detention, or a set term of imprisonment for committing a crime and not more than 5 years have elapsed since the date of the expiration of the enforcement period;

(2) They are being or were deprived of political rights for committing a crime;

(3) They ever served as the person in charge of a social group whose registration was cancelled for illegal activities and was personally responsible for the illegal activities thereof, and not more than 3 years have elapsed since the date of cancellation;

(4) They have no or limited capacity for civil conduct;

(5) They served as the person in charge of an organization that had its registration certificate withdrawn or was banned, and not more than 1 year has elapsed since the date of withdrawal or banning;

(6) They fail to meet other conditions as stipulated by laws and administrative regulations.

Article 35 The term of office of the legal representative of the Group shall be the same as that of the board of directors, and the legal representative generally shall not serve more than two consecutive terms. If special circumstances require an extra term upon expiration of the term of office thereof, the decision shall be approved by the board of directors and reported to the registration authority for approval.

Article 36 The President (or Chairman) of the Group shall exercise the following powers:

(1) To preside over the member (member representative) assembly, and to convene and preside over the board of directors (standing board of directors);

(2) To check the implementation of the resolutions of each meeting;

(3) To lead the board of directors (standing board of directors) in the work;

(4) To sign important documents on behalf of the Group;

()

() Other powers as stipulated in the Articles of the Group.

[Item 4 in this Article is the power of the legal representative of the social group. If the legal representative of the social group is not served by the president (or chairman), then Item 4 in this Article is removed, and a separate item shall be added for the power of the legal representative.]

Article 37 The Secretary General of the Group generally works full-time. The Secretary General works under the leadership of the board of directors and exercises the following powers:

- (1) To preside over administrative offices to carry out daily work and organize the implementation of annual work plans;
- (2) To coordinate the work of branch offices and representative offices;
- (3) To formulate internal management rules and regulations and report them to the board of directors for approval;
- (4) To propose to the board of directors the appointment and removal of the deputy secretary general and heads of agencies;
- (5) To propose to the board of directors the appointment and removal of the staff of each agency;
- (6) To report work to the President (or Chairman) and the board of directors;
- (7) To handle other daily affairs.

Article 38 The board of directors shall set up an administrative body such as a secretariat (or administrative office, finance department, external liaison department, etc.) to handle the daily affairs of the Group.

The Secretary General shall be responsible for the daily work of the secretariat.

The establishment of an administrative body must be approved by the board of directors and reported to the registration authority for the record.

The full-time staff of the Group shall participate in the job training organized by the registration authority or the industrial supervisory unit, familiarize themselves with and understand the laws, regulations, and policies related to social groups, and strive to improve their business capabilities. **(Statement for direct registration)**

The full-time staff of the Group shall participate in the job training organized by the registration authority or the professional supervisory unit, familiarize themselves with and understand the laws, regulations, and policies related to social groups, and strive to improve their business capabilities. **(Statement for dual management)**

[Where there is no administrative body, there is no need to draw up this clause.]

Article 39 The Group shall set up branch offices and representative offices according to the needs of the work, which shall work under the leadership of the Group.

[Branch offices are generally called branches, professional committees, working committees, or special fund management committees; representative offices are generally called offices, representative offices, or liaison offices.]

[Where there is no branch office or representative office, there is no need to draw up this clause.]

Article 40 The Group shall establish a board of supervisors. The board of supervisors is composed of ____ supervisors and has one chairman. The chairman of the board of supervisors is elected or dismissed by the board of supervisors. The persons in charge, directors, and financial officers of the Group shall not concurrently serve as supervisors. The term of the board of supervisors is the same as that of the board of directors, and supervisors can be re-elected upon expiration of the term of office thereof.

[Where there are less than 3 supervisors, a board of supervisors is not required, but the term, requirements, rights, and obligations of the supervisors shall be specified.]

Article 41 Rights and obligations of the board of supervisors:

- (1) To report work to the member (member representative) assembly;
- (2) To supervise the election and removal of the members of the (member representative) assembly and board of directors; and to supervise the implementation of the board of directors and standing board of directors of the resolutions of the member (member representative) assembly;
- (3) To inspect the financial and accounting data of the Group, and report to the registration authority and competent tax and accounting departments;
- (4) To attend meetings of the board of directors and standing board of directors, and have the right to bring inquiries and suggestions to the board of directors and standing board of directors;
- (5) To supervise the compliance of the board of directors and standing board of directors with laws and the Articles of Incorporation. In the event of the business activities carried out by the President (or Chairman), Vice President (or Vice-chairman), standing directors, directors and Secretary General which damage the interests of the Group, to ask them to make corrections and report to the member (member representative) assembly or relevant government departments if necessary.

The board of supervisors (supervisors) shall abide by the relevant laws and regulations and the Articles of Incorporation of the Group, accept the leadership of the member (member representative) assembly, and earnestly perform duties.

Chapter V Management and Use of Assets

Article 42 The income of the Group comes from:

- (1) _____;

(2) _____;

(3) _____;

.....

(e.g.: membership fees charged according to the standards for membership fees adopted by the member (member representative) assembly; voluntary donations from natural persons, legal persons, or other organizations; government funding; income from activities or services carried out within the approved scope of business; interests; other legal income, etc.)

Article 43 The income of the Group and the use thereof shall be published to the member (member representative) assembly and accept the supervision and examination thereof.

Article 44 The Group shall accept donations in accordance with laws and regulations and the purpose and business scope of the public benefit activities provided for in the Articles of Incorporation.

Article 45 If the Group accepts donations, it shall issue to the donors a donation receipt uniformly printed by or printed under the supervision of the finance departments. Donation receipts shall specify the donor, the type and quantity of the donations, the name of the Group, the name of the person responsible, the date of the receipt, etc. In the case of donors wishing to remain anonymous or waive the donation receipt, the Group shall record the relevant information.

The Group shall sign a written donation agreement with the donor if the donor requests so. The written donation agreement shall include the name of the donor and the Group, the type, quantity, quality, purpose, and delivery time of the donated property.

When agreeing on the purpose and beneficiaries of donated properties, donors and the Group must not appoint interested parties from the donor's side to act as beneficiaries.

When accepting overseas donations and funding, the Group shall report the acceptance of the donations and funding and the use thereof to the registration authority and industrial supervisory unit. **(Statement for direct registration).**

When accepting overseas donations and funding, the Group shall report the acceptance of the donations and funding and the use thereof to the registration authority and professional supervisory unit. **(Statement for dual management).**

Article 46 Donors have the right to inquire about and photocopy relevant information on the management and use of their donated properties. The Group shall take the initiative to provide relevant updates to donors in a timely manner.

If the Group misuses donated properties in violation of the donation agreement, donors have the right to request correction; donors may report or complain to the civil affairs department or bring prosecution to the people's court if the Group refuses to correct.

Article 47 The Group may sign an agreement with an aided person to agree on the method of funding, the amount of funding, and the purpose and use of funds.

The Group has the right to supervise the use of funding. If the aided person fails to use the funding as agreed in the agreement or otherwise violates the agreement, the Group has the right to cancel the funding agreement.

Article 48 When the Group carries out fund-raising activities, it shall announce to the public the detailed plan for the charitable activities to be carried out and the use of the funds thereafter. Significant fund-raising activities shall be reported to the registration authority for the record.
(Statement for foundations with public fund-raising qualifications)

Article 49 The Group shall carry out public fund-raising activities in accordance with the provisions of relevant laws, regulations, and rules of the State.

If the Group carries out public fund-raising activities through the Internet, it shall publish the relevant information on the charity information platform unified or designated by the civil affairs department of the State Council and may simultaneously publish public fund-raising information on the website of the Group.

(Statement for foundations with public fund-raising qualifications)

Article 50 The Group shall draft a fund-raising proposal when carrying out public fund-raising.

The proposal shall include, among other things, the goals, duration and location of the fund-raising activities, the name and office address of the person in charge, the method of receiving donations, as well as bank details, beneficiaries, use of assets collected, cost of fund-raising activities, and methods of dealing with excess funds.

The fund-raising proposal shall be recorded with the registration authority before the fund-raising activity.

(Statement for foundations with public fund-raising qualifications)

Article 51 If the Group carries out public fund-raising activities, information such as the name of the organization carrying out the activity, the public fund-raising certificate, the fund-raising proposal, the contact information and the means of inquiry for further information regarding the activity shall be displayed in a prominent place at the site of the activity or on the medium used for fund-raising.

When the Group carries out public fund-raising activities, it shall respect and safeguard the legal rights and interests of the fund-raising targets, protect their rights to be informed, and shall not deceive or mislead the targets into donating by means of fabricated stories, etc.

When the Group carries out public fund-raising activities, it is not permitted to engage in forcible or covert forced apportionment and must not obstruct public order, corporate production, or the lives of the people.

(Statement for foundations with public fund-raising qualifications)

The Foundation shall carry out targeted fund-raising activities directed at specific targets such as the initiators, directors and members, and provide information on matters such as the purpose of the fund-raising and the use of the raised funds and items.

(Statement for foundations without public fund-raising qualifications)

Article 52 The Group shall rationally design charitable projects, comply with the purposes of the Group and relevant provisions of the Articles of Incorporation, optimize implementation processes, lower operating costs, and improve efficiency in the use of charitable assets.

(1) The Group shall establish a sound decision-making, along with implementation and supervision mechanisms for charity projects; establish scientific, standardized and effective requirements for the establishment, review, implementation, control, evaluation, and feedback of charity projects; and set up project management agencies with staff to exercise project management duties.

(2) The Group shall adhere to an open, fair, and impartial process when determining the beneficiaries of charitable services.

(3) The Group shall not choose any interested party of the administrative staff as beneficiaries.

Article 53 The Group shall, in carrying out major charity projects, hold a board meeting and obtain the approval of more than two thirds of the directors present.

The major charity projects of the Group include:

- (1) Annual charity project plan;
- (2) Charity projects exceeding RMB_____;

.....

Before the Group carries out major charity projects, it shall promptly report to the industrial supervisory unit. **(Statement for direct registration)**

Before the Group carries out major charity projects, it shall promptly report to the professional supervisory unit. **(Statement for dual management)**

The project funds shall be used strictly in accordance with the national financial and accounting systems, and for a fixed purpose as provided in the donation agreement.

The management and use of funds for charity projects shall consciously accept the supervision of financial departments, auditing agencies, competent authorities of industry, registration authorities, and the general public, earnestly abide by the obligation of information disclosure, and accept social supervision. **(Statement for direct registration)**

The management and use of funds for charity projects shall consciously accept the supervision of financial departments, auditing agencies, competent business authorities, registration authorities and the general public, earnestly abide by the obligation of information disclosure, and accept social supervision. **(Statement for dual management)**

Article 54 The Group shall strengthen the management of project files, preserve the complete information of charity projects, and establish thorough archives for charity projects.

Article 55 The income obtained by the Group shall be used for the public welfare or non-profit charitable causes approved at registration or stipulated in the Articles of Incorporation, and shall not be distributed among the members, except for reasonable expenses related to the Group. The Group shall keep separate accounts for the taxable income obtained and its related costs, expenses and losses, and the tax-exempt income and its related costs, expenses and losses.

Article 56 The properties and the yields thereof of the Group shall not be used for distribution, except for reasonable wages and salaries.

Annual expenditures for charitable causes by the Group shall be no less than 70% of the total revenue of the last year. **(Statement for social groups with public fund-raising qualifications)**

Annual expenditures for charitable causes and annual management fees of the Group shall follow the standards of the relevant provisions. **(Statement for social groups without public fund-raising qualifications)**

The average salary and wage of the staff of the Group shall not exceed twice the per capita wage of the place where the tax registration is conducted in the previous year. Staff welfare shall be implemented in accordance with relevant provisions of the State. In specific cases, the board of directors (standing board of directors) shall make payments from the income of the Group in accordance with relevant national policies.

The persons in charge and staff of the Group shall not work part-time in or receive remuneration from enterprises invested in by the Group.

The directors and Secretary General of the Group shall not engage in the decision-making processes for relevant matters where their personal interests are related with the interests of the Group. Directors, supervisors, the Secretary General, and their close relatives shall not have any transactions with the Group.

Article 57 The properties of the Group shall not be illicitly distributed, seized, or embezzled by any units or individuals.

The contributors to the Group shall not retain or enjoy any property rights over the properties contributed to the Group.

Article 58 The Group shall implement the Accounting System for Non-governmental Non-profit Organizations, conduct accounting in accordance with the law, and establish a sound internal accounting supervision system, in order to ensure that the accounting information is legal, truthful, accurate, and complete.

The Group shall use the receipts for social groups as provided by the State.

The Group shall accept tax supervision and accounting supervision by the competent tax and accounting departments according to law.

Article 59 The Group shall have accountants with professional qualifications. Accountants shall not concurrently serve as cashiers. Where accountants are transferred to another post or leave the Foundation, they must complete the hand-over procedures with successors.

Article 60 The Group determines January 1 to December 31 each year as the business and fiscal year. Before March 31 each year, the board of directors shall examine and approve the following matters:

- (1) The business report and final accounting of revenues and expenditures of the previous year;
- (2) The business plan and budget for revenues and expenditures of the current year;
- (3) Property inventory.

Article 61 The Group shall conduct a financial audit for a change to the board of directors and a change of its legal representative, and submit the audit report to the registration authority. The Group shall conduct a financial audit for close of business before cancellation and liquidation.

Chapter VI Reporting on Major Matters and Information Disclosure

Article 62 The Group shall fulfil its reporting obligations in accordance with the Charity Law and the relevant requirements and guidelines of the registration authority on reporting on major matters.

Article 63 The Group shall fulfil the obligation of information disclosure in accordance with the Charity Law and the relevant requirements of the registration authority on information disclosure.

Chapter VII Termination and Disposal of Residual Properties

Article 64 The Group shall be terminated if:

- (1) The circumstances for termination as set out in the Articles of Incorporation are met;
- (2) Termination is required due to division or merger;
- (3) It has not engaged in charitable activities for two consecutive years;
- (4) It is deregistered or has its registration certificate withdrawn according to law;
- (5) Other conditions set out by laws and administrative regulations under which it shall terminate are met.

The board of directors shall establish a team for liquidation within 30 days, starting from the date when the circumstances for termination appear. If the Group does not establish such a team or if the team does not fulfil its duties, the registration authority may apply to a people's court to assign relevant personnel to form a team and to conduct the liquidation.

Article 65 The termination of the Group shall be proposed by the board of directors and reported to the registration authority within 15 days after being approved by vote of the member (member representative) assembly. **(Statement for direct registration)**

The termination of the Group shall be proposed by the board of directors and reported to the registration authority within 15 days after reporting to the professional supervisory unit for review and approval within 15 days after being approved by vote of the member (member representative) assembly. **(Statement for dual management)**

Article 66 Before the termination of the Group, it shall establish a liquidation group under the guidance of the registration authority, industrial supervisory unit, and other relevant departments to settle the creditor's rights and debts and deal with any remaining matters. **(Statement for direct registration)**

Before the termination of the Group, it shall establish a liquidation group under the guidance of the registration authority, professional supervisory unit and other relevant departments to settle the creditor's rights and debts and deal with remaining matters. **(Statement for dual management)**

The residual properties of the Group after liquidation shall, under the supervision of the registration authority, be transferred to charitable organizations with the same or similar aims for the purpose of charitable causes in accordance with the Articles of Incorporation.

In the event of the absence of relevant provisions in the Articles of Incorporation, the registration authority shall organize donations to charitable organizations with the same or similar purpose and make an announcement to the public.

Article 67 No activities other than liquidation shall be carried out during the period of liquidation; the Group shall submit the deregistration application and liquidation reports signed by the legal representative and apply to the registration authority for deregistration within 15 days from the date of the completion of liquidation. The Group shall terminate when deregistration completes.

Chapter VIII Supplementary Provisions

Article 68 The Articles of Incorporation shall be adopted at the meeting of the _____ member (member representative) assembly on mm/dd/yy.

Article 69 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 70 The amendment of the Articles of Incorporation shall be reported to the member (member representative) assembly for deliberation and approval after the approval of the board of directors, and then reported to the registration authority for approval within 30 days thereafter. **(Statement for direct registration)**

The amendment of the Articles of Incorporation shall be reported to the member (member representative) assembly for deliberation and approval after the approval of the board of directors, to the professional supervisory unit for approval within 15 days thereafter, and then to the registration authority for approval within 15 days. **(Statement for dual management)**

Article 71 The Articles of Incorporation shall take effect as of the date when they are adopted by the member (member representative) assembly after the approval of the registration authority.

Article 72 Where the Articles of Incorporation are inconsistent with national laws, regulations, rules, and policies, those national laws, regulations, rules and policies shall prevail.

TK6 - Model Text of Articles of Incorporation of Social Groups Issued by the Ministry of Civil Affairs

Model Text of Articles of Incorporation of Social Groups

Chapter I General

Article 1 The name of the Group is _____ (including the English name and the abbreviation thereof)

Article 2 The Group is a _____ national non-profit social group voluntarily formed by _____. (the persons or units forming the Group must be specified; also, the nature of the Group: academic, joint, professional or industrial)

Article 3 The purpose of the Group is: _____ .

The Group shall abide by the Constitution, laws, regulations and national policies, and observe social morality.

Article 4 The Group shall accept the business guidance, supervision, and management of the professional supervisory unit and the administrative authority for the registration of social groups.

Article 5 The domicile of the Group is in _____. (e.g.: X City, X Province)

Chapter II Scope of Business

Article 6 The scope of business of the Group is: (must be specific and clear):

(1) _____;

(2) _____;

(3) _____;

(4) _____;

(5) _____;

(6) _____;

(7) _____;

(8) _____;

() _____;

Chapter III Members

Article 7 The Group consists of _____ (individual members, unit members).

Article 8 Whoever is applying to join the Group shall meet the following conditions:

- (1) uphold the Articles of Incorporation of the Group;
- (2) Must be willing to join the Group;
- (3) have a certain influence in the business (industrial or academic) area of the Group;
- () _____.

Article 9 Procedures for members to join the Group:

- (1) Submitting an application for joining the Group;
- (2) Upon review and approval by the board of directors (or standing board of directors);
- () _____;
- () Being issued a membership card by the board of directors or the body designated by the board of directors.

Article 10 Members have the following rights:

- (1) The right to vote and to be elected to the Group;
- (2) The right to participate in the activities of the Group;
- (3) The right to obtain the priority to be served by the Group;
- (4) The right to submit proposals, make suggestions, and conduct supervision of the work of the Group;
- () _____;
- () The right to join the Group on a voluntary basis and withdraw from the Group with freedom;

Article 11 Members shall fulfil the following obligations:

- (1) To comply with the Articles of Incorporation of the Group and implement the resolutions of the Group;
- (2) To safeguard the lawful rights and interests of the Group;
- (3) To complete the work assigned by the Group;

- (4) To pay membership dues as required;
- (5) To report to the Group and provide relevant information;
- ()

Article 12 To withdraw from the Group, members shall submit a written letter to the Group and return the relevant membership cards. Members who do not pay dues or do not participate in the activities of the Group for 1 year shall be deemed automatically withdrawn.

Article 13 Any member who seriously violates the Articles of Incorporation shall have their membership cancelled after approval by the board of directors or standing board of directors.

Chapter IV Organizational Structure and Election or Removal of Persons in Charge

Article 14 The highest authority of the Group is the Member (or Member Representative) Assembly, which shall exercise the following powers:

- (1) To formulate and amend the Articles of Incorporation;
- (2) To elect and remove the directors;
- (3) To review the work reports and financial reports of the board of directors;
- (4) To formulate and revise the standards for membership fees;
- (5) To decide on termination;
- ()
- () To decide on other major issues.

Article 15 The member (member representative) assembly shall meet only if more than two thirds of the members (member representatives) are present, and its resolution must be approved by more than half of the members (member representatives) present to be valid.

Article 16 The member (member representative) assembly shall serve a term of years (5 years at maximum). Where an extra term is required ahead of or behind schedule due to special circumstances, it must be approved by the board of directors and submitted to the professional supervisory unit for examination and to the registration authority for approval. A deferral shall not exceed 1 year at maximum.

Article 17 The board of directors is the executive body of the member (member representative) assembly, leading the Group in its daily work when the member (member representative) assembly is not in session, and responsible to the member (member representative) assembly.

Article 18 The board of directors shall exercise the following powers:

- (1) To implement the resolutions of the member (member representative) assembly;
- (2) To elect and remove the Chairman (President), Vice-chairman (Vice President), Secretary General and standing directors;
- (3) To prepare for and convene the member (member representative) assembly;
- (4) To submit work reports and financial reports to the member (member representative) assembly;
- (5) To decide on the absorption and removal of members;
- (6) To decide on the establishment, change, or cancellation of administrative offices, branch offices, representative offices and entity agencies;
- (7) To decide on the appointment and removal of the Deputy Secretary General and the persons in charge of various agencies;
- (8) To lead various agencies in their work;
- (9) To formulate internal management systems;
- () _____;
- () To decide other major issues.

Article 19 The board shall meet only if more than two thirds of the directors are present. The resolutions thereof must be approved by more than two thirds of the directors present to be valid.

Article 20 The board of directors shall meet at least once a year. In special circumstances, the board of directors may meet by means of communications equipment.

Article 21 The Group shall establish a standing board of directors (when there is a large number of directors), which shall be elected by the board of directors. The standing board of directors shall exercise the powers in Items 1, 3, 5, 6, 7, 8, and 9 of Article 18 of the Articles of Incorporation when the board of directors is not in session and shall be responsible to the board of directors. The number of standing directors shall not exceed one-third of the directors.

Article 22 The standing board shall meet only if more than two-thirds of the standing directors are present. The resolutions thereof must be approved by more than two-thirds of the standing directors present to be valid.

Article 23 The standing board of directors shall meet at least once every half year. In special circumstances, the standing board of directors may meet by means of communications equipment.

Article 24 The Chairman (President), Vice-chairman (Vice President), and Secretary General of the Group shall meet the following requirements:

- (1) Adhering to the lines, guidelines and policies of the Party, with good political standing;
- (2) Having a relatively large influence in the business area of the Group;
- (3) Not exceeding 70 years of age, and full-time job for Secretary General;
- (4) Being healthy and able to maintain normal work;
- (5) Never being deprived of political rights;
- (6) Having full capacity for civil conduct;
- ()

Article 25 If the Chairman (President), Vice-chairman (Vice President), and Secretary General of the Group exceed the maximum age for holding the post, they can hold the post only if the situation is approved by the board of directors and then reported to both the professional supervisory unit for examination and to the administrative authority for registration for approval.

Article 26 The Chairman (President), Vice-chairman (Vice President), and Secretary General of the Group shall serve a term of _____ years and shall serve for no more than two consecutive terms. Where the term of office is required to be extended due to special circumstances, it shall be approved by more than two-thirds of the members (or member representatives) and then reported to the professional supervisory unit for examination and to the administrative authority for registration of social groups for approval.

Article 27 The Chairman (or President) shall be the legal representative of the Group.

In special circumstances, upon the authorization of the Chairman (or President) and the approval of the board of directors, the Vice-Chairman (or Vice President) or Secretary General may serve as the legal representative after reporting to the professional supervisory unit for examination and to the administrative authority for registration of social groups for approval.

The legal representative shall sign relevant papers on behalf of the Group.

The legal representative of the Group shall not concurrently serve as the legal representative of other organizations.

Article 28 The Chairman (or President) of the Group shall exercise the following powers:

- (1) To convene and preside over the board of directors (or standing board of directors);

(2) To check the implementation of the resolutions of the member (member representative) assembly and board of directors (or standing board of directors);

()

Article 29 The Secretary General of the Group shall exercise the following powers:

(1) To preside over administrative offices to carry out daily work and organize the implementation of annual work plans;

(2) To coordinate the work of branch offices, representative offices, and entities;

(3) To propose to the board of directors or standing board of directors the candidates for the deputy secretary general and heads of agencies;

(4) To decide on the appointment of full-time staff of branch offices, representative offices, and entities;

()

() To handle other daily affairs.

Chapter V Management and Utilization of Assets

Article 30 The financial resources of the Group:

(1) Membership fees;

(2) Donations;

(3) Government funding;

(4) Incomes from carrying out activities and services within the approved scope of business;

(5) Interests;

()

() Other legal incomes.

Article 31 The Group shall charge membership fees in accordance with relevant national provisions.

Article 32 The assets of the Group shall be used for the development of the scope of business and undertakings as provided in the Articles of Incorporation and shall not be distributed among the members.

Article 33 The Group shall establish strict financial control systems to ensure that the accounting information is legal, truthful, accurate, and complete.

Article 34 The Group shall have accountants with professional qualifications. Accountants shall not concurrently serve as cashiers. Accountants shall conduct financial accounting and accounting supervision. Where accountants are transferred to another post or leave the Group, they must complete the hand-over procedures with successors.

Article 35 The Group shall carry out asset management in strict compliance with national financial management systems and accept the supervision of the member (or member representative) assembly and financial departments. Where the assets come from state funding or social donations or funding, the Group shall accept the supervision of the auditing organs and make public relevant information in a proper manner.

Article 36 The Group shall accept a financial audit from the administrative authority for registration of social groups and professional supervisory unit for a change to the board of directors or change of its legal representative.

Article 37 The properties of the Group shall not be illicitly distributed, seized, or embezzled by any units or individuals.

Article 38 The salaries, insurance, and welfare of the full-time staff of the Group shall follow relevant national provisions on public institutions.

Chapter VI Amendment of Articles of Incorporation

Article 39 The amendment of the Articles of Incorporation shall be reported to the member (or member representative) assembly for deliberation after approval of the board of directors.

Article 40 The amendment of the Articles of Incorporation shall be reported to the professional supervisory unit for review within 15 days after approval of the member (or member representative) assembly, and then reported to the administrative authority for registration of social groups for approval.

Chapter VII Termination and Disposal of Residual Properties

Article 41 Where the Group is required to be cancelled if the purposes as set out in the Articles of Incorporation are met, the Group is dissolved by itself, or termination is required due to division or merger, the board of directors or standing board of directors shall file a proposal of termination.

Article 42 The termination proposal of the Group shall be reported to the professional supervisory unit for approval after the approval of the member (or member representative) assembly.

Article 43 Before the termination of the Group, a liquidation team shall be established under the guidance of the professional supervisory unit and relevant departments to settle the creditor's rights and debts and dispose the remaining assets. During the liquidation period, activities other than liquidation shall not be carried out.

Article 44 The Group shall terminate upon the date when the administrative authority for registration of social groups completes deregistration procedures.

Article 45 The remaining assets after termination of the Group shall, under the supervision of the professional supervisory unit and administrative authority for registration of social group, be used for the development of undertakings related to the purpose of the Group in accordance with relevant national provisions.

Chapter VIII Supplementary Provisions

Article 46 The Articles of Incorporation shall be adopted at the meeting of the member (or member representative) assembly on mm/dd/yy.

Article 47 The right to interpret the Articles of Incorporation belongs to the board of directors.

Article 48 The Articles of Incorporation shall take effect as of the date of approval of the administrative authority for registration of social groups.

TK7 - Donation Agreement – Donation of Money/Donation of Items

Donation Agreement – Donation of Money

The Donation Agreement (the “Agreement”) is entered into by and between the following parties in _____ on mm/dd/yy:

Party A:

Unified Social Credit Code:

Address:

Tel.:

Party B:

Unified Social Credit Code:

Address:

Tel.:

Note 1: Where the donor is an individual, the “Unified Social Credit Code” shall be replaced by “ID Card No.”

Party A and Party B, on the basis of equality, voluntariness, and consensus, enter into the following agreement in accordance with the Charity Law of the People’s Republic of China, the Welfare Donation Law of the People’s Republic of China, and other relevant laws and regulations:

Article 1 Information of Donated Properties

Party A shall donate RMB _____ (in words: _____) and deliver the donated fund to Party B within _____ working days (before mm/dd/yy) after the Agreement takes effect.

Article 2 Delivery of Donated Properties

The donated properties shall be delivered by bank transfer. The account information of Party B is as follows:

Account Name	
Bank of Deposit	
Account No.	

In case of sudden natural disasters or other applications for temporary emergency assistance in civil affairs areas, both parties shall change the remittance time upon amicable negotiation.

Article 3 Purpose of Donated Properties

The donated properties shall be used for _____ _____.

Note 2: In the event of non-targeted donation, write “the management and implementation of the public welfare activities within the business scope of Party B”; in the event of targeted donation, write the name of specific project, plan name, or other donation fields.

Article 4 Party B shall use donated properties strictly in accordance with the Agreement, and shall not change the purpose of donated properties without authorization; if it is necessary to change the purpose of donated properties due to special circumstances, Party B shall obtain prior written consent of Party A.

Article 5 Party A shall ensure that the donated properties are legitimate incomes, and that Party A has the right to dispose of the donated properties.

Note 3: Charitable organizations shall require donors to have full rights to dispose of donated properties.

Article 6 Party A has the right to inquire about the use and management of the donated properties, and Party B shall, in accordance with the request of Party A, give feedback on the use and management of the donated properties.

Article 7 Party B shall, within [X] working days after receiving the donated properties, issue a legal and valid donation receipt to Party A.

Note 4: When charitable organizations accept donations, they shall issue donation receipts in accordance with the law.

Article 8 For any dispute arising out of or in connection with the Agreement, the parties shall settle it through amicable negotiation. If the negotiation fails, the parties shall file a lawsuit with the people’s court where the Party A is located.

Article 9 The parties can modify and supplement the Agreement through a written agreement. The amendments and/or supplemental agreements between the parties to the Agreement are an integral part of the Agreement and have the same legal effect as the Agreement.

Article 10 The Agreement shall be made in duplicate, and Party A and Party B shall each hold one copy with the same legal effect. The Agreement shall take effect upon the signature and seal of the parties.

(There is no text below. It is a signature page.)

Party A (Seal):

Legal Representative or Authorized Representative (Signature):

Date:

Party B (Seal):

Legal Representative or Authorized Representative (Signature):

Date:

Donation Agreement – Donation of Items

The Donation Agreement (the “Agreement”) is entered into by and between the following parties in _____ on mm/dd/yy:

Party A:

Unified Social Credit Code:

Address:

Tel.:

Party B:

Unified Social Credit Code:

Address:

Tel.:

Party A and Party B, on the basis of equality, voluntariness and consensus, enter into the following agreement in accordance with the Charity Law of the People’s Republic of China, the Welfare Donation Law of the People’s Republic of China, and other relevant laws and regulations:

Article 1 Information of Donated Properties

Party A shall donate _____ (“donated properties”) and deliver the donated properties to Party B within _____ working days (before mm/dd/yy) after the Agreement takes effect.

Article 2 Details of Donated Properties:

No.	Name of Item	Brand and Model	Unit	Quantity	Unit Price	Amount	Remarks
Book Value	In Words:		(In Figures: RMB		Yuan)		

Note: Charitable organizations shall list the details of the donated properties.

If the abovementioned donated properties are products produced by Party A, Party A shall provide Party B with product quality certificates or product qualification certificates.

Party A shall provide Party B with proofs such as invoices and declaration forms. Party B shall use the relevant proofs as the basis for confirming the book value and issuing the donation receipts. If Party A cannot provide the proofs, Party A shall provide Party B with other proofs for confirming the donated properties as the basis for confirming the book value and issuing the donation receipts.

Where Party A donates fixed assets, equities, intangible assets, cultural relics, and cultural assets, the assessment of third-party organizations with legal qualifications shall be used as the basis for recognizing the book value.

Article 3 Delivery of Donated Properties

- Receiving Unit: [X]
- Receiving Address: [X]
- Recipient: [X]
- Tel.: [X]
- Receiving Time: [X]
- The freight and insurance expenses shall be paid by Party A.

In case of sudden natural disasters or other applications for temporary emergency assistance in civil affairs areas, both parties shall change the remittance time upon amicable negotiation.

Article 4 Purpose of Donated Properties

The donated properties shall be used for _____ [X] _____.

Article 5 Party B shall use the donated properties strictly in accordance with the Agreement, and shall not change the purpose of the donated properties without authorization; if it is necessary to change the purpose of the donated properties due to special circumstances, Party B shall obtain prior written consent of Party A.

Article 6 Party A shall ensure that the donated properties are legitimate incomes, and that Party A has the right to dispose of the donated properties.

Article 7 Party A has the right to inquire about the use and management of the donated properties; and Party B shall, in accordance with the request of Party A, give feedback on the use and management of the donated properties.

Article 8 Party B shall, within three working days after receiving the donated properties, issue a legal and valid donation receipt to Party A and properly keep the donated properties.

Article 9 For any dispute arising out of or in connection with the Agreement, the parties shall settle it through amicable negotiation. If the negotiation fails, the parties shall file a lawsuit with the people's court where Party A is located.

Article 10 The parties can modify and supplement the Agreement through a written agreement. The amendments and/or supplemental agreements between the parties to the Agreement are an integral part of the Agreement and have the same legal effect as the Agreement.

Article 11 The Agreement shall be made in duplicate, and Party A and Party B shall each hold one copy with the same legal effect. The Agreement shall take effect upon the signature and seal of the parties.

(There is no text below. It is a signature page.)

Party A (Seal):

Legal Representative or Authorized Representative (Signature):

Date:

Party B (Seal):

Legal Representative or Authorized Representative (Signature):

Date:

TK8 - Model Agreement for Government Procurement of Services

Contract for Government Procurement of Services

Party A: _____ (Buyer)

Address: _____

Party B: _____ (Service Provider)

Address: _____

In order to strengthen the management of government procurement of services and improve the social and operational benefits of purchase of public services through public financial funds, Party A and Party B, based on the principles of equality, mutual benefits and good faith, reach the following agreement in accordance with the relevant provisions of the Government Procurement Law and the Contract Law of the People's Republic of China.

I. Content of Service Project

Project Name: _____ (the "Project")

Project Description: _____

Service Location: _____

Service Period: from mm/dd/yy to mm/dd/yy

II. Amount of Service Fees

The total amount of the service fees of the Project is RMB _____ Yuan (in words). Refer to the attachment for the detailed fees: _____.

III. Payment Method

1. Party A shall make contract payments in accordance with the [x] method below:

(1) One-off Payment

Party A shall make a one-off payment within [x] working days after the agreement takes effect.

(2) Payment in installments

- (a) Payment of ____% of the total amount within [x] working days after the agreement takes effect, i.e. RMB_____ (in words);
- (b) Payment of ____% of the total amount within [x] working days after passing the mid-term assessment, i.e. RMB_____ (in words);
- (c) Payment of ____% of the total amount within [x] working days after passing the acceptance check, i.e. RMB_____ (in words);

Note by ForNGO: The parties may adjust the payment method for service fees according to actual needs. Under normal circumstances, payment in installments is adopted when the government purchases services from social organizations. Payments are made after stage-by-stage assessment to ensure that the quality of services meets the requirements. The more common payment ratio is 50% for the down payment, 30% for the medium payment, and 20% for the final payment.

2. Party A shall make payments to Party B by means of bank transfer according to the period as agreed above. The bank account information of Party B is as follows:

Account No.: _____

Account Name: _____

Bank of Deposit: _____

IV. Standards for Project Operation

Party B shall carry out the project operation in accordance with the contents of [x] and the standard requirements of work, fulfill the promise, be honest and trustworthy, and ensure quality. Refer to the attachment for the specific content:_____.

Note by ForNGO: Social organizations undertaking government procurement projects usually submit project application forms or project plans and other materials as required, including specific project implementation plans, budgets, and targets. The project information needs to be included in the contract as one of the attachments as a reference standard for the provision of services.

V. Acceptance of Service Projects

1. Party A or other agencies entrusted by Party A shall promptly check and accept the services provided by Party B. During the acceptance, Party B shall send personnel to participate and jointly confirm the acceptance results. Refer to the attachment for acceptance procedures and standards:_____.

Note by ForNGO: The government may entrust professional third-party assessment agencies to participate in the inspection and acceptance according to needs.

VI. Rights and Obligations of Party A

1. Party A shall timely pay project funds to Party B as agreed in the contract and provide necessary support for Party B to implement the Project.

2. Party A shall have the right to know and review the use of project funds, to inspect the implementation of the Project during its implementation, and to carry out inspection and acceptance after the completion of the Project.

3. Where Party B fails to implement the Project in accordance with the contract, Party A may terminate, reduce, or recover project funds.

4. Others:_____

VII. Rights and Obligations of Party B

1. Party B shall implement the funded project strictly in accordance with the contract and have the right to receive project funds; without written consent, Party B shall not transfer the Project to other organizations and individuals.

2. Party B shall conduct regular self-evaluation during project implementation, and timely submit project execution reports and financial reports to Party A as required.

3. During the implementation of the Project, Party B shall accept the supervision of Party A over the funded project, consciously accept the inspection of the financial and auditing departments, and provide other relevant information.

4. Others:_____

VIII. Confidentiality

1. No party shall disclose, in whole or in part, the information obtained as a result of conclusion and performance of the contract in connection with the other party or the Project (including but not limited to relevant project data, information of service objects, etc.) to any third party in any

way, or use it for other purposes not related to the contract, except as otherwise provided in laws and regulations.

2. After the termination of the contract, this Article shall still have legal effect.

IX. Intellectual Property Rights

The copyrights, patents, trademarks, and any other ownerships or rights of the project documents and achievements in the contract (including but not limited to courseware, manuals, photos, etc.) are owned by Party B. Party A has the right to use the above project documents and achievements for free for non-commercial purposes.

Note by ForNGO: It is necessary for the government and social organizations to agree on the ownership and use of the intellectual property rights of project outputs, such as photos, manuals, etc. The above clause is relatively common, i.e., the service provider owns the relevant intellectual property rights, while the government has the right to use them for free. In addition, the government and social organizations can also choose joint ownership, joint use or other methods.

X. Force Majeure

1. Force majeure includes any unforeseen, unavoidable, and insurmountable objective conditions which have or may have a material adverse effect on the performance of the contract, including but not limited to: major changes in national policies and regulations, financial crises, earthquakes, floods, infectious diseases, international sanctions, and wars.

2. In the event of a force majeure event, the parties shall immediately negotiate with each other in order to find a fair solution and shall make every reasonable effort to minimize the consequences of the force majeure event. Otherwise, the party which does not make reasonable effects shall undertake corresponding compensation liability to the other party for the extended loss. If the occurrence or consequence of a force majeure event has caused significant obstacles to the Project and the parties fail to find a suitable solution, either party may notify the other party in writing to terminate the contract.

XI. Liability for Breach of Contract

During the performance of the contract, the parties shall compensate for the loss to the other party due to breach of contract or gross negligence. If any party breaches the contract, the observing party has the right to request the defaulting party to continue to perform the contract in accordance with the contract; but if one party seriously breaches the contract to the extent that it is unable to perform or meaningless to continue to perform the contract, the observing party has the right to terminate the contract.

XII. Dispute Settlement

Any dispute between Party A and Party B in the performance of the contract shall be settled through amicable negotiation. Where the negotiation fails, either party may file a lawsuit with the people's court with jurisdiction.

Note by ForNGO: The court with jurisdiction includes the court at the place where the contract was signed, the court at the place of service, the court at the place of the plaintiff or defendant, etc. In practice, the government and social organizations will also agree that when a dispute arises, it will be referred to the relevant department (such as the Bureau of Social Organizations) for mediation.

XIII. Miscellaneous

1. The matters not covered in the contract shall be negotiated by both parties and supplemented in writing as an attachment to the contract, which shall have the same legal effect as the contract.
2. The attachment to the contract: _____ . The attachment is an integral part of the contract.
3. The contract shall be made in duplicate, with Party A and Party B both holding one copy. The contract shall take effect upon the signature and seal of the parties.

Party A (Seal): _____ Party B (Seal): _____

Representative (Signature): _____ Representative (Signature): _____

Date: _____ Date: _____

TK9 - Information Form for Voluntary Service (Template + Instructions)

Information Form for Voluntary Service (Template)

Name		Gender		Nationality		(Photo)
Former Name		Education		Ethnicity		
Date of Birth		Political Status		ID Card No.		
Home Address				Zip Code		
Registered Residence		Tel.			E-mail	
Name of Emergency Contact		Relation with Emergency Contact		Tel. of Emergency Contact		
Work Unit and Post						
Other Social Posts						
Voluntary Service Experience						
Duration	Organization and Region			Content of Voluntary Service		

Service Skills	<input type="checkbox"/> Professional Publicity <input type="checkbox"/> Art Show <input type="checkbox"/> Art Design <input type="checkbox"/> Professional Aid for the Aged <input type="checkbox"/> Children's Education <input type="checkbox"/> Life Care <input type="checkbox"/> Hospice Care <input type="checkbox"/> Professional Aid for the Disabled <input type="checkbox"/> Tour Guide <input type="checkbox"/> Special Education <input type="checkbox"/> Minority Languages <input type="checkbox"/> Professional Translation <input type="checkbox"/> Community Convenience <input type="checkbox"/> Nutrition and Health Care <input type="checkbox"/> Medical Diagnosis and Treatment <input type="checkbox"/> Mental Intervention <input type="checkbox"/> Drug Control and Prevention of AIDS <input type="checkbox"/> Skill Training <input type="checkbox"/> Water and Soil Conservation <input type="checkbox"/> Animal Protection <input type="checkbox"/> Plant Protection <input type="checkbox"/> Resource Utilization <input type="checkbox"/> Legal Aid <input type="checkbox"/> Community Correction <input type="checkbox"/> Traffic Guidance <input type="checkbox"/> Competition and Conference Service <input type="checkbox"/> Communication Guarantee <input type="checkbox"/> Emergency Rescue <input type="checkbox"/> Professional Search and Rescue <input type="checkbox"/> Photography and Video Recording <input type="checkbox"/> Text Compilation <input type="checkbox"/> Survey and Statistics <input type="checkbox"/> Human Resources and Security <input type="checkbox"/> Organization and Planning <input type="checkbox"/> Others		
Training in the Organization			
Service in the Organization	Content	Time	Place
Confirmed by the organizer of voluntary service:			
Signature of the person in charge:			
Note: The organizer of voluntary service shall affix the seal thereof for confirmation, while the signature shall be that of the instructor or the person in charge of the activity.			

TK10 - Voluntary Service Agreement (Template + Instructions)

Voluntary Service Agreement

Party A:

Address:

Contact Person:

Contact Information:

Party B (Volunteer):

Nationality:

Date of Birth:

Gender:

Ethnicity:

Occupation:

ID Card/Passport No.:

Mobile No.:

Fixed-line Tel.:

Work Unit:

Mailing Address (Zip Code):

Permanent Residence Address (Zip Code):

Emergency Contact:

Tel.:

Whereas Party A agrees to the voluntary service provided by Party B as a volunteer of [X] project and Party B is willing to provide voluntary service activities without remuneration as a volunteer, the parties hereby enter into the following agreement upon negotiation.

Note 1 by ForNGO: In general, the organizer of volunteer services and volunteers shall sign a Voluntary Service Agreement to determine the rights and obligations of both parties, voluntary service hours, content, and subsidies of volunteers.

Article 1 Content of Voluntary Services

1.1 Period of voluntary services: from mm/dd/yy to mm/dd/yy. Voluntary service hours: [X].

1.2 Upon the consent of Party A, Party B promises to provide the following voluntary services:

a) _____ [X] _____ ;

b) _____ [X] _____ ;

c) _____ [X] _____ ;

Article 2 Service Subsidies and Risk Prevention Measures for Volunteers

2.1 Transportation and Food Subsidies: During the term of the Agreement, Party A shall provide Party B with RMB [X] / (day/hour) as voluntary service subsidies, which shall be paid monthly before the [X] day of each month.

Note 2 by ForNGO: Volunteers who provide voluntary services can be provided with volunteer subsidies. Voluntary service subsidies can also be delivered in cash, but written materials such as a receipt are required.

2.2 All subsidies shall be paid to the following account of Party B by means of bank transfer:

Account Holder: _____ [X] _____

Bank of Deposit: _____ [X] _____

Account No.: _____ [X] _____

Article 3 Rights and Obligations of Party A

3.1 Rights

3.1.1 Party A shall have the right to examine Party B's qualifications, service capability, and suitability for engaging in voluntary activities at Party A in accordance with its own needs and selection criteria;

3.1.2 Party A shall have the right to request Party B to provide true personal identification documents, certificates, academic records, expertise, and other personal information documents, and certificates to prove the service capability and level of Party B;

3.1.3 Party A shall have the right to conduct a unified registration of volunteer information for Party B according to its own management requirements, and require Party B to provide appropriate cooperation;

3.1.4 Party A shall have the right to assign and manage Party B according to plans and activity arrangement;

3.1.5 Party A shall have the right to formulate a financial plan based on its own situation and provide Party B with voluntary service subsidies during the service period;

3.1.6 Party A shall have the right to evaluate the service of Party B based on its service status. If the capability and service of Party B fail to reach the standard of Party A, Party A shall have the right to persuade Party B to quit and terminate voluntary services; where the behaviours of Party B seriously violate the reputation and interests of Party A and Party B is obviously not suitable to be a volunteer of Party A, Party A shall have the right to remove Party B.

Note 3 by ForNGO: The organizer of voluntary services can evaluate the participation of volunteers in voluntary service activities according to the actual situation. This gives Party A the right to remove volunteers who violate the discipline.

3.2 Obligations

3.2.1 Party A shall be obliged to conduct registration of volunteer information for Party B upon the request thereof, as well as inform Party B of the true, accurate, and complete information such as the background and goals related to the voluntary service content and the possible risks of engaging in voluntary service activities;

Note 4 by ForNGO: As a voluntary service organizer, Party A shall be obliged to register volunteers on the voluntary service website (<http://www.chinavolunteer.cn/>), thoroughly record the services of volunteers, and provide voluntary service certificates at the request of Party B. The voluntary service certificate can be obtained from the voluntary service website.

3.2.2 Party A shall be obliged to provide relevant working conditions for Party B to engage in voluntary services within the scope of voluntary services as stipulated in the Agreement;

3.2.3 Party A shall be obliged to do its best to protect Party B's personal safety and personal dignity when Party B engages in voluntary service activities, and purchase personal accident insurance for Party B according to actual needs;

3.2.4 Party A shall be obliged to provide Party B with necessary guidance and assist Party B in a timely manner in solving the objective difficulties encountered in voluntary service activities;

3.2.5 Party A shall be obliged to provide Party B with a voluntary service record for free and strictly according to the facts at the request of Party B;

3.2.6 Party A shall be obliged to keep the personal information of Party B confidential. Without Party B's consent, it shall not be made public or provided to a third party.

Article 4 Rights and Obligations of Party B

4.1 Rights

4.1.1 Party B shall have the right to understand the current needs of voluntary services and to request assistance for solving practical problems and difficulties encountered in voluntary service activities.

4.2 Obligations

4.2.1 Party B shall be obliged to cooperate with Party A's qualification examination and ability testing for voluntary services;

4.2.2 Party B shall be obliged to comply with the agreement, perform voluntary service commitments, participate in voluntary service activities in accordance with Party A's unified requirements and norms, and provide Party A with professional and qualified voluntary services;

4.2.3 Party B shall be obliged to comply with Party A's relevant rules and regulations, as well as accept Party A's unified management, arrangement, and deployment based on voluntary services and activities;

4.2.4 Party B shall be obliged to treat the voluntary service activities participated in with sincerity and complete the promised voluntary service work continuously during the service period;

4.2.5 Party B shall not infringe upon the legitimate rights and interests of third parties in voluntary activities, shall consciously safeguard the reputation of Party A, volunteers, and voluntary service activities participated thereby, and shall not do anything contrary to this;

4.2.6 Party B shall be obliged to maintain the strictest confidentiality in respect to Party A's confidential information (including but not limited to all materials related to Party A's business and clients, employee compensation and benefits, or other personal data). Without the written consent of the other party, neither party may copy, publish, or disclose to third parties any confidential information of the other party.

Article 5 Protection of Intellectual Property Rights

5.1 All copyrights of documents, drawings, etc. written, drafted and designed by Party B for Party A's related activities shall be owned by Party A. Party A shall have the right to use the aforementioned documents, drawings, etc. for other related matters; without Party A's permission, Party B shall not use the aforementioned documents, drawings, and any materials provided by Party A to Party B for matters not related to Party A.

Note 5 by ForNGO: For the works created by volunteers, considering the public welfare purpose, the intellectual property rights of such works are hereby agreed to be owned by Party A. However, Party A is obliged to maintain Party B's right of authorship.

5.2 Party B shall ensure that no claim will be brought against Party A by any third party in connection with copyrights, trademarks, or other intellectual property rights as a result of the adoption of Party B's voluntary services. If such claims occur, Party B shall make full compensation to the claimant (or directly to Party A at the request of Party A) within three working days after Party A issues a written notice.

Article 6 Non-Employee Nature

Party B is a volunteer who provides voluntary services to Party A, and Party A provides transportation and food subsidies to Party B. Party B is not an employee of Party A in any form. Party B's social insurance and other expenses shall be borne by Party B.

Article 7 Force Majeure and Exclusion of Liability

7.1 In the voluntary activities organized and arranged by Party B as a volunteer for Party A, Party B shall provide voluntary services in accordance with the unified requirements of Party A under normal circumstances. Where it is unable to continue to perform or completely perform the Agreement due to earthquakes, typhoons, floods, snowstorms, plagues, political turmoil, riots, wars, and other force majeure events that cannot be foreseen and whose occurrence and consequences cannot be avoided or overcome, the Agreement shall terminate.

7.2 Based on the quality requirements on voluntary service and the actual needs of service objects, where Party A determines that the voluntary services of Party B are not required in accordance with the unified deployment and the feedback from service objects, Party A shall send a written notice to Party B at least [X] working days in advance. The Agreement shall immediately terminate and Party A shall not be liable for breach of contract; but Party A shall promptly settle for Party B the voluntary service subsidies payable to Party B, which shall be settled on the actual days of voluntary services of the month.

Note 6 by ForNGO: According to Party A's evaluation of the services of Party B and the feedback from the service objects, this Articles gives Party A the right to terminate the Agreement at any time.

Article 8 Change of Agreement

During the performance of the Agreement, Party A and Party B can agree on the adjustment and change of the content, period, and mode of voluntary services, which shall be confirmed by a

written supplemental agreement. The supplemental agreement shall have the same legal effect as the Agreement.

Article 9 Dissolution and Termination of Agreement

9.1 During the performance of the Agreement, Party A and Party B may agree on the dissolution of the Agreement.

9.2 If Party B has any of the following circumstances, Party A has the right to unilaterally dissolve the Agreement at any time, without it constituting breach of contract; even if damage is caused to Party B due to the dissolution of the Agreement, Party A is not required to provide Party B with any form of compensation:

9.2.1 Party B violates the Agreement or Party A's relevant rules and regulations, causing reputation and economic losses to Party A;

9.2.2 Party B carries out any profit-making activities in the name of voluntary services for the purpose of seeking benefits for Party B or others;

9.2.3 [X].

Note 7 by ForNGO: The parties may agree on the circumstances where the Agreement may be dissolved according to the actual situation.

9.3 During the performance of the Agreement, where it is unable to perform the original agreement due to major changes in the objective conditions at the time of entering into the Agreement or the changes in the legal policies based on which the Agreement is concluded, and the parties fail to reach a change agreement through negotiation, the parties may agree on the dissolution of the Agreement.

Article 10 Liability for Breach of Contract

10.1 Where Party B violates the provisions of the Agreement, or changes any provision of the Agreement without authorization during the performance hereof, Party B will constitute a breach of contract, and shall bear the liability for breach of contract to Party A.

10.2 Where either party violates any provision hereunder, which results in any claim, litigation, or arbitration of any third party against the observing party, or any economic loss, direct or indirect, to the observing party, the observing party has the right to require the defaulting party to take adequate and appropriate measures to compensate the observing party for any losses incurred thereby.

Article 11 Dispute Settlement

For any dispute arising out of or in connection with the Agreement, the parties shall settle it through amicable negotiation. If the negotiation fails, the parties shall file a lawsuit with the people's court where Party A is located.

Article 12 Validity of Agreement

12.1 The Agreement shall be made in duplicate, and Party A and Party B shall each hold one copy with the same legal effect.

12.2 The Agreement shall be valid from the date of signature and seal of the parties to the expiration of the service period as agreed herein.

Party A:

Legal Representative/Authorized Representative:

(Seal)

Date

Party B:

(Signature)

Date

Appendix 2 – Index of Definitions

- i. Direct Registration** - In order to reform the original “dual management” system, in March 2013, the Plan for Institutional Reform and Functional Transformation of the State Council approved at the First Session of the 12th National People’s Congress confirmed the policies for direct registration of the four types of social organizations. In accordance with this plan, the focus will be placed on the development of social organizations engaging in the fields of industry, science and technology, public welfare, and urban and rural community service. The establishment of these social organizations shall be directly applied to the civil affairs departments for registration in accordance with the law, and no longer requires the review and approval of competent business authorities.
- ii. Dual Management** - A social organization registration and management system as stipulated in the Regulations on Registration Administration of Social Organizations, the Interim Regulations on Registration Administration of Private Non-enterprise Units and the Regulations on the Administration of Foundations. According to this type of management system, when social organizations, private non-enterprise units and foundations are registered for establishment, not only the registration management of the civil affairs departments is required, but the prior examination and approval of the competent business authorities shall be obtained before that.
- iii. Donation Receipts** - According to the Tentative Administrative Measures for Use of Donation Receipts for Public Welfare Undertakings issued by the Ministry of Finance on July 2, 2011, The term “donation receipts for public welfare undertakings” (hereinafter referred to as the “donation receipts”) shall refer to receipts issued to natural persons, legal persons and other organizations providing donations by the people’s governments at all levels and their departments, public welfare entities, public welfare social bodies and other public welfare bodies (hereinafter referred to as the “public welfare units”) according to the principles of free will and non-compensation when legally accepting and using for public welfare undertakings donated properties.
- iv. Pre-tax Deduction Qualifications of Public Welfare Donations** - According to the relevant regulations of the Ministry of Finance, foundations and public welfare social organizations that meet the prescribed conditions may apply for pre-tax deduction qualifications of public welfare donations according to the procedures. According to the Enterprise Income Tax Law and the Individual Income Tax Law, enterprises or individuals may conduct pre-tax deductions for donations to public welfare undertakings through foundations or public welfare social organizations with pre-tax deduction qualifications of public welfare donations. Among them, where enterprises make donations to public welfare undertakings through the aforesaid foundations or public welfare social organizations with pre-tax deduction qualifications of public welfare donations, the donations within 12% of the total annual profit may be deducted

from the taxable incomes. The list of foundations and public welfare social organizations with pre-tax deduction qualifications of public welfare donations shall be annually published jointly by the Ministry of Finance, the State Administration of Taxation and the Ministry of Civil Affairs, as well as the departments of finance, tax and civil affairs of provinces, autonomous regions, municipalities directly under the Central Government, and cities with independent planning status.

- v. Income tax exemption qualifications** - i.e., “tax exemption qualifications of non-profit organizations”, shall refer to a kind of management means adopted by tax authorities to ensure that non-profit organizations enjoy the preferential tax policy of exemption of income tax as stipulated in Article 26 of the Enterprise Income Tax Law. Non-profit organizations meeting the prescribed conditions may apply for tax exemption qualifications to the local tax authorities. The financial and tax departments shall, in accordance with their respective administrative powers, jointly review and confirm the tax exemption qualifications of non-profit organizations and publish them on a regular basis. According to the Circular on Issues Concerning Tax-Exempt Income of Non-profit Organizations issued by the Ministry of Finance and the State Administration of Taxation, after obtaining the tax exemption qualifications, the following income obtained by a non-profit organization shall be tax-exempt income: (1) income from accepting the donations of other units or individuals; (2) income from government subsidies other than the financial allocations stipulated in Article 7 of the Enterprise Income Tax Law of the People’s Republic of China, excluding income from government procurement of services; (3) membership fees charged according to the provisions of civil affairs and finance departments at or above the provincial level; (4) Interest income from bank deposits that are non-taxable income and tax-exempt income; (5) other income stipulated by the Ministry of Finance and the State Administration of Taxation.
- vi. Public fund-raising** - the activities of charitable organizations to raise properties for charitable purposes including public fund-raising directed at the public and targeted fund-raising directed at specific targets. Therefore, charitable public fund-raising refers to the activities of charitable organizations that raise properties from the public for charitable purposes, which corresponds to the concept of targeted fund-raising. Charitable organizations may start targeted fund-raising from the date of registration; if charitable organizations conduct public fund-raising, they shall obtain public fund-raising qualifications.
- vii. Public Welfare Expenditures** - Public welfare expenditures shall refer to all expenses incurred by the Foundation in undertaking public welfare undertakings, including the expenses of public welfare funding projects, the costs of executing public welfare funding projects, and the fees for organizing fund-raising, but excluding the salary and welfare expenses of the full-time staff of the Foundation and administrative office expenses. In practice, some expenditures such as travel expenses and human resources expenses for carrying out the project shall be counted as public welfare expenditures. The reasonable cost of carrying out public welfare projects and performing public welfare activities shall be counted as public

welfare expenditures. The law stipulates that the salary and welfare expenses of the staff of the Foundation and administrative office expenses must not exceed 10% of the total expenditure for the year. The annual public welfare expenditures of public fund-raising foundations shall not be lower than 70% of the total income of the previous year. The annual public welfare expenditures of non-public fund-raising foundations shall not be lower than 8% of the fund balance of the previous year.

- viii. Administrative Expenses** - According to the Accounting System for Private Non-profit Organizations, administrative expenses shall refer to the expenses incurred by private non-profit organizations for organizing and managing their business activities, including the fund of the board of directors (or similar authorities) and the salaries, bonuses, welfare, housing accumulation funds, housing subsidies, social security fees, retirees' wages and subsidies of administrative officers, as well as office expenses, utilities, postal and telecommunications charges, property management fees, travel expenses, depreciation costs, repair charges, rental fees, amortization charges for intangible assets, loss of assets, loss of asset impairment, loss due to estimated liabilities, agency fees, and repayable donated assets.
- ix. Competent Business Authority** - Under the dual management system, the social organizations of China are all subject to the registration of the civil affairs departments and to the dual management of the registration authority and competent business authority. In accordance with relevant regulations, the relevant departments of the State Council and the relevant departments of the people's governments at or above the county level, or the organizations authorized by the State Council or local people's governments at or above the county level are the competent business authorities of the social organizations or private non-enterprise organizations in the relevant industries, disciplines, or businesses; the relevant departments of the State Council or the organizations authorized by the State Council are the competent business authorities of the foundations and representative offices of overseas foundations registered at the civil affairs departments of the State Council; the relevant departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government or the organizations authorized by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are the competent business authorities of the foundations registered at the civil affairs departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.
- x. Member and Member Assembly of Social Organizations** - Social organizations are non-profit social organizations that are voluntarily formed by members to carry out activities in accordance with their articles of incorporation in order to realize their common wishes. Members of Chinese social organizations include individual members or unit members. Individual members must be Chinese citizens. Organizations other than state organs can join social organizations as unit members. The highest authority of a social organization is the member (or member representative) assembly, which shall exercise the following powers:

- (1) To formulate and amend the articles of incorporation;
- (2) To elect and remove directors;
- (3) To deliberate the work reports and financial reports of the board of directors;
- (4) To decide on termination;
- (5) To decide on other major issues.

xi. No-fault Liability - No-fault liability is a system established to compensate for the insufficiency of negligence liability. No-fault liability refers to a form of statutory liability that does not take into account the negligence of the injurer or the negligence of the victim when the damages occur. Its purpose is to compensate the victim for the loss. Paragraph 3 of Article 106 of the General Principles of the Civil Law stipulates that "Civil Liability shall still be borne even in the absence of fault, if the law so requests". In a certain sense, no-fault liability is also a legal liability.

xii. Fault Liability - In accordance with the General Principles of the Civil Law, fault liability is the basic principle for the determination of liability in China's civil liability system, and it is the principle for the determination of liability that is generally applicable under normal circumstances. The fault in the civil law refers to the subjective adverse psychological state of the offender as to the unlawful acts and the results thereof, including intentional or negligent.

xiii. Fair Liability - Fair liability refers to the fact that, in the event that the parties have no fault in causing damage, the court shall, on the basis of the concept of fairness, order the offender to compensate for the victim's property damage after considering the property status and other conditions of the parties. Article 132 of the General Principles of the Civil Law provides that "If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances".

xiv. Public Trust - A type of trust that is specifically provided by the trust law and corresponds to a private trust, and refers generally to a trust that is established for public interest. According to Article 60 of the Trust Law, "A trust established for any of the following purposes of public interests is a public trust: (1) Helping poor people; (2) Helping disaster victims; (3) Assisting the disabled; (4) Developing education, technology, culture, art and physical education undertakings; (5) Developing medical and sanitation undertakings; (6) Developing environment protection undertakings and maintaining the environment; and (7) Developing other public undertakings of the society."

xv. Trustor - the person who entrusts certain property rights it owns to the trustee to establish a trust.

xvi. Trustee - the person who promises to accept the trust, holds trust property, and manages or disposes of trust property.

xvii. Trust Beneficiary - the person who enjoys the beneficial right and trust interests.

xviii. Charity Information - According to Article 70 of the Charity Law, the civil affairs departments and other relevant departments shall first make public the following charity information:

- (1) Registration information of charitable organizations;
- (2) Records of charitable trusts;
- (3) The list of charitable organizations with public fund-raising qualification;
- (4) The list of charitable organizations qualified for pre-tax deduction receipts for public interest donations;
- (5) Details of preferential tax rates, financial aid, subsidies and other promotional measures for charitable activities;
- (6) Information regarding purchasing services from charitable organizations;
- (7) Results of any inspections and evaluations of charitable organizations and charitable trusts;
- (8) Results of any commendations or penalties of charitable organizations or other organizations and individuals;
- (9) Any other information required by other laws and regulations.

