

Appendix 1: Technical Comments on the Charity Law (Draft)

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

<p>第二条 自然人、法人或者其他组织开展慈善活动以及与慈善有关的活动，适用本法。其他法律有特别规定的，依照其规定。</p> <p>Article 2: This law applies to natural persons, legal persons or other organizations carrying out charitable activities or activities related to charities. Where other laws have special provisions, follow those provisions.</p>	<p>This article provides a functional definition of who can engage in charitable activities. This definition is much broader than the definition provided by article 11. Article 11 limits legal persons to “social organization such as foundations, social groups (社会团体), or social service organizations”. If interpreted restrictively article 11 would exclude “other organizations” such as Party and state organs, from the scope of charitable organizations, because article 11 contains a closed catalogue of the forms charitable organizations can take.</p>
<p>第三条 本法所称慈善活动，是指自然人、法人或者其他组织以捐赠财产或者提供志愿服务等方式，自愿开展的下列非营利活动：</p> <p>（一）扶贫济困、扶助老幼病残等困难群体；</p> <p>（二）救助自然灾害等突发事件造成的损害；</p> <p>（三）促进教育、科学、文化、卫生、体育等事业的发展；</p> <p>（四）防治污染和其他公害，保护和改善环境；</p> <p>（五）符合社会公共利益的其他活动。</p> <p>Article 3: "Charitable activity" as used in this law indicates initiation of the following non-profit activities on a voluntary basis by natural persons, legal persons or other organizations through means such as donating property or providing volunteer services:</p> <p>(1) poverty relief and helping the elderly, young, disabled or other disadvantaged groups;</p> <p>(2) relief from damage caused by natural disasters and other emergencies;</p> <p>(3) promotion of the development of areas such as education, science, culture, health, and sports;</p> <p>(4) prevention and control of pollution and other public harms, and protection and improvement of the environment;</p> <p>(5) other activities consistent with the societal public interest</p>	<p>First, Article 3 says that charitable activities should be “non-profit activities” carried out on a voluntary basis. It is not clear whether the concept of “non-profit” activities is limited to non-business activities, or whether it also includes non-profit, business economic activities conducted to achieve the goals listed under article 3, paragraphs 1 to 5.</p> <p>We believe that non-profit, business economic activities are coherent with the intent and goals of the Charity Law. Given that the Charity Law has introduced the concept of “big charity”, we suggest that “charitable activity” under article 3 be interpreted as including both non-profit non-business as well as non-profit business economic activities, as long as they contribute to achieving the goals set by the Charity Law.</p> <p>Second, there are definite logical links among the activities listed under article 3. Poverty relief, helping the elderly, disaster relief, pollution control are four different ways in which the goals of health, education and more generally speaking the public interest can be served. Also, the possibility that rapid economic and social development, globalization and climate change may result in additional needs not yet envisaged by the Draft Law should be taken into account. For instance, it may be specified that the activities listed under paragraph (5) include the activities</p>

	<p>of Chinese charities abroad.</p> <p>Third, supporting the poor and disaster relief have been the focus of charitable activities in China for decades. Therefore, that Article 3 lists the relief of the old, the disabled, young people, the poor, disasters and other similar activities suits the reality of China. Meanwhile, the third category reflects the developmental tendency of international charitable activities. However, the scope of article 3 is still very narrow. For example, some disadvantaged groups, such as drug addicts who need professional help from charities, are not included under Article 3. Article 3 doesn't include religious charitable activities either, which might cause some conflicts with the current practice and laws. According to the "Measures for the Supervision and Administration of Financial Affairs of Religious Premises", donations from individuals and domestic and foreign organizations, as well as charities and other social services income are lawful revenue of the religious organizations and are under the protection of law. (The Measures for the Supervision and Administration of Financial Affairs of Religious Premises (for Trial Implementation), which were adopted at the executive meeting of the State Administration for Religious Affairs on January 7, 2010. They were promulgated and went into force as of March 1, 2010.)</p> <p>Fourth, Paragraph (5) is a catch-all provision that makes one think of the Pemsel case (1891, Great Britain). Under Pemsel, charity had four purposes: poverty relief, advancing education, advancing religion and advancing other charitable purposes. Perhaps, it may be useful to include the advancement of civil society as the fourth purpose of the Charity Law. Also it should be specified whether the logic behind article 3 paragraph 5 is similar to the logic of</p>
--	--

	the Pemsel case, or it is different.
<p>第四条 自然人、法人或者其他组织开展慈善活动，应当遵循合法、自愿、诚信、非营利的原则，不得违背社会公德，不得损害社会公共利益和他人合法权益</p> <p>Article 4: Natural persons, legal persons, or other organizations carrying out charitable activities shall follow the principles of lawfulness, voluntariness, integrity, and non-compensation; and must not violate social morals, and must not harm the societal public interest or the lawful rights and interests of others.</p>	<p>The first sentence of Article 4 lists the principles that natural persons, legal persons and other organizations carrying out charitable activities should follow. These principles are: lawfulness, voluntariness, integrity and non-compensation.</p> <p>The rationale behind the inclusion of the principle of lawfulness in article 4 could well be the need to regulate the activities of charitable organizations, in order to avoid the occurrence of fraudst. Enhancing trust in the activities of charitable organizations is clearly part of the legislative intent behind the Charity law. Accordingly, articles 72 to 80 have set measures allowing charitable organizations to earn trust among donors, the public, and the government.</p> <p>These measures aim at enhancing the transparency of charitable organizations, as well as their responsibility to the public and the government. Publicity of information is an established principle of Chinese law. It was set by the CCP General Office Opinion on Further Advancing Government Openness (关于进一步推行政务公开的意见 – 中办发[2005]12号).</p> <p>A broader principle of responsibility towards society is part of Chinese culture: historically, charitable activities at various stages of the history of China were motivated by the realization that one ought to give back to society what it has taken from it. The idea to share one's wealth and give back to society are one of the possible ways to promote the values of equality (平等) and justice (公正). Contravening one's responsibility towards society would be contravening one's moral duties. The second part of article 4 specifies</p>

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

<p>others.</p>	
<p>第六条 国务院民政部门主管全国慈善工作，县级以上地方各级人民政府民政部门主管本行政区域慈善工作。</p> <p>县级以上人民政府有关部门依法按照各自职责做好相关慈善工作。</p> <p>Article 6: The civil affairs department under the State Council oversees charity work nationwide; civil affairs departments of the people's governments at or above the county level oversee the charity work within their respective administrative jurisdictions.</p> <p>The relevant departments of people's governments at the county level or above do work on charities well in accordance with their own duties.</p>	<p>Article 6 is consistent with existing practice, in that it places charitable work under the oversight of the Ministry of Civil Affairs. Over the medium or long term, however, as Chinese charities are becoming more active globally, and providing charitable services both in China and abroad, the need to harmonize the competences among the various government departments responsible for, respectively, overseeing charities, leading China's foreign policy, coordinating the activities of NGOs may emerge. The Charity Law should specify whether the Ministry of Civil Affairs' oversight applies to domestic activities of Chinese NGOs, or to their global activities as well.</p>
<p>Article 7: March 5 of every year is "China Charity Day".</p>	<p>It is suggested that article 7 be moved after Article 114 and before Article 115, as its rationale is more compatible with the concept of “Supplementary Provisions” than with the idea of general provisions.</p>

Chapter 2. Charitable organizations

Comments on the spirit of Chapter 2

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

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

<p>第八条 本法所称慈善组织，是指依法登记，以开展慈善活动为宗旨的非营利组织。</p> <p>Article 8: "Charitable organizations" as used in this Law refers to lawfully registered non-profit organizations whose main purpose is carrying out charitable activities.</p>	<p>First, in interpreting article 8, it would be useful to introduce a distinction between the goals of charitable activities, and the concrete objects of their operations. It is true that the main purpose of non-profit organizations is carrying out charitable activities. However, it is also true that for-profit businesses can spend some of their surplus on charitable activities, without being a charity.</p> <p>For instance, a bakery or any other small business can invest some of the revenue from the sale of cakes on baking free bread for the needy. In various European countries, this is an established charitable practice that takes place outside of the state regulation. Please compare this article with article 40.</p> <p>Second, Article 8 does not offer a clear definition of charities, and it doesn't clarify whether registered NGOs should register again as a charities.</p>
<p>第九条 慈善组织应当符合下列条件：</p> <p>（一）以开展慈善活动为宗旨；</p> <p>（二）不以营利为目的；</p>	<p>Paragraph (1) could benefit from introducing a distinction between the purpose of an organization, i.e. for-profit or not-for-profit, where charitable purposes are one of many possible not-for-profit purposes, and the</p>

<p>(三) 有自己的名称和住所; (四) 有组织章程; (五) 有必要的财产; (六) 有符合条件的组织机构和负责人; (七) 法律、行政法规规定的其他条件。</p> <p>Article 9: Charitable organizations shall comply with the following requirements:</p> <p>(1) Have carrying out charitable activities as its main purpose; (2) not have a profit-making purpose; (3) Have its own name and location; (4) Have an organizational charter; (5) Have necessary assets; (6) Have institutional framework and responsible parties meeting requirements; (7) other requirements provided for by laws and administrative regulations.</p>	<p>activities of an organization. The relative lack of distinction between purpose and activities (or objects) of an organization is a feature of U.S. legislation. Reference to the German Company Law may be useful to make a neater distinction between the concept of purpose and activity of organizations, and avoid repeating the mistake existent in U.S. legislation.</p> <p>At a first reading, paragraph (4) prompts the question of what type of legal entities charitable organizations are. Article 11 answers this question therefore, for the sake of clarity it is suggested that article 11 be moved between articles 8 and 9.</p> <p>Paragraph (5) does not set any minimum capital requirements. Setting a minimum capital requirement is a possibility, as proved by the experience of some Eastern European states. In Poland, for instance, foundations running not-for-profit activities have a minimum capital requirement of EUR 2,500,000. However, we believe that this requirement is not suitable for China's conditions. The legal philosophy behind the registration system is that if the law doesn't offer you a nature or status, then you don't have it and you are not allowed to do certain things, and if capital requirements are introduced, this will be true particularly of smaller charities. As a required condition, “have necessary assets” may benefit larger charities, while setting too high a threshold for individuals, corporations and other organizations who wish to set up, and develop charities.</p>
<p>第十条 设立慈善组织，应当向县级以上人民政府民政部门申请登记。符合本法规定条件的，民政部门应当自受理申请之日起三十日内作出准予登记的决定；不符合本法规定条件的，不予登记，并书面说明理由。</p> <p>已经设立的社会组织，符合慈善组织条件的，</p>	<p>First, it should be seen whether the National People's Congress wishes legislation to be retroactive. If this provision of the Charity Law is going to be retroactive, then there will be no transition period.</p> <p>Second, this is an intertemporal provision and therefore it would be more logical to place it in</p>

<p>可以向原登记的民政部门申请变更登记为慈善组织，民政部门应当自受理申请之日起二十日内作出准予变更登记的决定。</p> <p>Article 10: Establishment of charitable organizations shall be by application for registration to the civil affairs department of a people's government at the county level or above. Where the requirements provided by this law are met, civil affairs departments shall issue a decision to authorize registration within 30 days of receiving the application; where the requirements of this law are not met, registration is not provided and the reason is explained in writing.</p> <p>Already established social organizations that meet the requirements for charitable organizations may apply to the civil affairs department that they registered with to modify the registration to that of a charitable organizations, and the civil affairs department shall make a decision on modification of the registration within 20 days of accepting the application.</p>	<p>Chapter 11 among other Supplementary Provisions.</p> <p>Third, this paragraph allows already existing civil society organizations to register as charities, provided they meet the requirements set by article 9. One should consider whether “already established” means “already registered”, or rather whether article 9 allows non-registered CSOs to register or change their registration status <i>ex-post</i>. From the rest of paragraph 2, it is clear that the possibility to change registration status includes only NGOs that are already registered at civil affairs departments. However, the use of more generic wording as 设立 can give rise to interpretive controversies. Therefore, it is suggested that the first sentence of article 10, paragraph 2 be amended as follows: 已经依法设立的</p>
<p>第十一条 慈善组织可以采取基金会、社会团体、社会服务机构等社会组织形式。</p> <p>Article 11: Charitable organizations may adopt models of social organization such as foundations, social groups (社会团体), or social service organizations.</p>	<p>First, please see our comments on article 2. There is a contradiction between article 2 and article 11.</p> <p>Second, Article 11 lists some of the organizational models charitable organizations may adopt. Foundations, social groups, and social service establishments however are only three of the possible forms a charitable organization may take. The growth of global NGOs, China's growing involvement in international disaster relief operations, and its role as an emerging international donor underscore the need to allow the existence of</p>

	<p>organizational formats compatible with all of these activities. Entities which are a conglomerate of social, not-for-profit enterprises exist already – CANGO is the most obvious example. CANGO may be qualified as an association of NGOs but, it operates in ways very similar to a corporation that controls other corporations active in various sectors.</p>
<p>第十二条 慈善组织的章程，应当载明下列事项：</p> <p>（一）名称和住所；</p> <p>（二）组织形式；</p> <p>（三）设立宗旨及业务范围；</p> <p>（四）财产来源及构成；</p> <p>（五）决策、执行机构的组成及职责；</p> <p>（六）内部监督机制；</p> <p>（七）财产管理使用制度；</p> <p>（八）项目管理制度；</p> <p>（九）终止条件及终止后财产的处理；</p> <p>（十）其他重要事项。</p> <p>Article 12: Charitable organizations' charters shall contain the following:</p> <p>(1) name and location;</p> <p>(2) Organizational model;</p> <p>(3) the purpose of establishment and scope of operations;</p> <p>(4) Asset sources and composition;</p> <p>(5) the composition and duties of the decision-making and implementation bodies;</p> <p>(6) internal oversight mechanisms;</p> <p>(7) asset management and utilization systems;</p> <p>(8) project management systems;</p> <p>(9) conditions for termination and disposition of assets after termination;</p> <p>(10) other important matters.</p>	<p>In light of article 78 of this Law we suggest that the adoption of a code of ethical conduct and its disclosure to the public be made mandatory for all charities, Chinese as well as foreign.</p> <p>If the organizational models allowed under paragraph (2) are the same as allowed under article 11 then this should be specified. Otherwise, paragraph (2) can be understood as allowing charitable organizations' chart to contain organizational models other than those of foundations, social groups, or social services organizations.</p> <p>Paragraph (3) introduces a distinction between the goal of a charity's operation and its purpose. This is a very good distinction, in light of our comments on articles 2 and 11.</p> <p>Paragraph (5) seems to be redundant. The composition and the duties of the decision-making and implementation organs should be governed by legislation on foundations, social groups and social service organizations because, we can imagine that each one of these entities may have a different kind of decision-making and implementation bodies. Likewise, if charitable organizations are distinct from foundations, social groups and social service organizations, then the Charity Law should at least designate their decision-making and implementation bodies.</p> <p>The same observations can be made about paragraph (6)</p>

<p>第十三条 慈善组织应当根据法律、行政法规以及章程的规定，建立健全内部治理结构，明确决策、执行、监督等方面的职责权限。</p> <p>慈善组织应当执行国家统一的会计制度，依法进行会计核算，建立健全会计监督制度，并接受政府有关部门监督管理。</p> <p>Article 13: Charitable organizations shall establish sound internal governance structures, with clearly [defined] areas of responsibility for strategy, implementation and supervision etc., pursuant to the provisions of laws, administrative rules and regulations and the charter.</p>	<p>It is not clear to what laws “the provision of laws, administrative rules and regulations” refer. This article can be interpreted as allowing the application of the Corporate Law by analogy.</p>
<p>第十四条 慈善组织的财产包括：</p> <p>（一）创始财产；</p> <p>（二）捐赠财产；</p> <p>（三）其他合法财产。</p> <p>Article 14: The assets of charitable organizations include:</p> <p>(1) Start-up assets;</p> <p>(2) Donations;</p> <p>(3) Other lawful assets.</p>	<p>We urge the National People's Congress to provide a more precise definition of what can or cannot be included in the category of “start-up assets” under paragraph (1).</p> <p>Paragraph (3) should specify whether the lawful assets of charities include sources of income only, or also investment means.</p>
<p>第十六条 慈善组织对募集的财产，应当登记造册，妥善保管，专款专用。</p> <p>捐赠人捐赠的实物不易储存、运输或者难以直接用于慈善目的的，慈善组织可以依法拍卖或者变卖，所得收入扣除成本等必要费用</p>	<p>There is a somewhat weak logical link between paragraph (1) and paragraph (2) of article 16.</p> <p>Paragraph (2) could become a distinct article, or placed among the supplementary provisions.</p>

<p>后，应当全部用于约定的捐赠目的。</p> <p>Article 16: Charitable organizations shall create records for registration and conduct proper management of raised assets, and shall earmark funds for specified purposes,.</p> <p>Donors' donated materials that are not easy to store, transport or are difficult to use for charitable purposes, may be auction or sold in accordance with the law by the charity organizations, and the proceeds after deducting costs and other necessary expenses, shall be used exclusively for the purpose of the donation agreement.</p>	
<p>第十七条 慈善组织应当按照章程规定的慈善宗旨开展慈善活动。</p> <p>慈善组织开展慈善活动支出的比例以及管理成本的标准，捐赠协议有约定的，按照其约定；捐赠协议未约定的，依照国务院民政部门的有关规定。</p> <p>Article 17: Charitable organizations shall carry out charitable activities in accordance with charitable purpose set forth in the charter.</p> <p>Where donation agreements stipulate the proportion of expenditures that charitable organizations will spend on charitable activities as well as standards for management costs, follow those stipulations; where there are no stipulations in the donation agreement, follow the relevant provisions of the department of civil affairs under the state council.</p>	<p>Article 17, paragraph (2) sets forth important rules about the ration between incoming and outcoming donations. These rules are important to ensure greater accountability of charities. However, the National People's Congress may wish to consider that, in other jurisdictions, the percentage of donations that can be used to cover administrative costs is decided by a central authority, and that charitable organizations are ranked by rating agencies.</p>
<p>第二十条 慈善组织不得从事、资助危害国家安全和公共利益的活动，不得接受附</p>	<p>The definition of social public interest is very broad, and such broadness is necessary to include different kinds of legitimate interests,</p>

<p>加违反法律法规条件的赠与。</p> <p>Article 20: Charitable organizations must not engage in or fund activities that endanger national security or social public interests, and must not accept gifts that have conditions attached which violate laws and regulations.</p>	<p>which do not yet exist but may emerge as a result of China's economic and social development. For instance, we can imagine that the interests of victims of paedophilia, domestic violence, or of persons having a non-mainstream sexual orientation could be components of the social public interest that should not be harmed.</p>
<p>第二十三条 慈善组织终止，应当进行清算。慈善组织决策机构应当在民政部门公告其业务活动终止后三十日内成立清算组进行清算。不成立清算组或者清算组不履行职责的，民政部门可以申请人民法院指定有关人员组成清算组进行清算。</p> <p>清算后的剩余财产，由民政部门主持转赠给宗旨相同或者相近的慈善组织，并向社会公告。</p> <p>Article 23: A liquidation shall be conducted of terminated charitable organizations.</p> <p>The decision-making body of a charitable organization shall establish a liquidation team to conduct liquidation 30 days after the civil affairs department announces the termination of its services and activities. Where a liquidation team is not formed or it does not carry out its responsibilities, the civil affairs departments may ask the people's courts to appoint relevant personnel to form a liquidation team and to conduct liquidation.</p> <p>After liquidation, as presided over by civil affairs departments, the residual assets are transferred to charitable organizations with the same or similar purposes, which shall be announced to the public.</p>	<p>First, this is a welcome change from the Anglo-Saxon Cypres Doctrine, where the allocation of assets of liquidated entities is to be decided by the court. It is also a much more market-friendly provision.</p> <p>Second, given that charities are legally distinct from companies (公司), it is not clear whether relevant provisions of the Charity Law apply to charitable groups, or whether termination, and liquidation teams should be further regulated by the Ministry of Civil Affairs.</p>
<p>第二十四条 慈善组织可以依法成立行业组</p>	<p>First, as industry organizations can and often</p>

<p>织。</p> <p>慈善行业组织应当反映行业诉求，推动行业交流，加强行业自律，提高慈善行业公信力，促进慈善事业发展。</p> <p>Article 24: Charitable organizations can establish industry organizations according to law.</p> <p>Charity industry organizations shall reflect the demands of the industry, push for industry-wide communication, improve the credibility of the industry, and promote the development of charities.</p>	<p>do have a for-profit motive, it is not clear whether industry associations are coherent with the charitable activities as they are defined under article 3.</p> <p>Second, charitable activities are trans-local and trans-national. Creating organizations responsible for a single industry may slow down the development of the charity sector. If the rationale of this provision is introducing a tighter supervision on charitable activities, then it is suggested that a central body responsible for the coordination and management of trans-local and trans-national activities be established.</p>
<h3>Chapter 3. Charitable Fundraising</h3>	
<h4>Comments on the spirit of Chapter 3</h4> <p>According to Chapter 3, charitable collections may be conducted in public, or they may be non-public, or “co-operative”, that is be conducted within a community organization or a work unit. Public collections are conducted by charities, which have been legally registered for more than two years, operate correctly, are well-managed and did not receive any administrative penalty. Private collections are conducted by legally registered charities. Under an earlier draft for soliciting comments, a third kind of charitable collection could be conducted by qualified charities and organizations or individuals, provided charities stipulated a contract with them.</p> <p>In the past, news media, enterprises and public institutions were among the entities that could collect charitable donations. An earlier draft for soliciting comments stated that organizations or individuals, such as the news media, enterprises and public institutions, which did not comply with the conditions of public collections, could not conduct public collections on their own. Under this draft, it was not clear whether these entities could raise funds privately. Therefore, we welcome its deletion from the current draft version of the Charity Law.</p>	
<p>第二十六条 慈善组织自登记之日起可以向特定对象进行非公开募捐。</p> <p>依法登记满两年、运作规范的慈善组织，可</p>	<p>This provision has been criticized as being extremely restrictive. We believe that it is coherent with the need to better regulate and manage the charity sector, yet very difficult to enforce and perhaps unfair to newly established</p>

<p>以向原登记的民政部门申请公开募捐资格证书。民政部门经审查，没有发现其受到本法规定行政处罚的，应当发给公开募捐资格证书。</p> <p>法律、行政法规规定自登记之日起可以公开募捐的慈善组织，由民政部门发给公开募捐资格证书。</p> <p>Article 26: Charitable organizations may begin conducting non-public fundraising of specified targets from the day on which they are registered.</p> <p>Charitable organizations that have been lawfully registered for two years and have regular activities may apply to the civil affairs department at which they registered for a public fundraising certificate. Where upon review, civil affairs departments have not discovered the receipt of any administrative punishments provided for by this Law, they shall issue a public fundraising qualification certificate.</p>	<p>charities.</p> <p>First, NGOs that are registered under existing regulations can circumvent this provision either by using article 31, a very good and flexible provision, or by counting the years of operation under previous regulations, change their legal status and apply for registration from the day when the law will go into effect.</p> <p>Second, newly established charities would have to wait two years before they can conduct public fundraising, while charities that under article 114 are already established but not yet registered can raise funds among the public without being registered or having the fundraising certificate either. In any case, article 31 can be used to circumvent these limitations.</p> <p>Third, this article does not allow individuals to raise funds for charitable purposes. The legislative purpose of the Charity Law is, among others, protecting lawful collection, and determining the nature of the collected property under a personal account. However there are many individuals who request donations, or collect money through social media, to help relatives who, for instance, may suffer from illnesses, or be among the victims of natural disasters. We believe that, in these cases, disputes between donors and donees could be solved according to the civil code. In any case, not allowing individuals to conduct fundraising perhaps does not help to achieve the purpose of the Charity law, protecting the legal rights and interests of charities, donors, volunteers and beneficiaries.</p>
<p>第二十七条 慈善组织开展公开募捐，应当在其登记的民政部门行政管理区域内进行，但捐赠人的捐赠行为不受地域限制。</p> <p>公开募捐可以采取下列方式：</p> <p>（一）在当地公共场所设置募捐箱；</p>	<p>Article 27 can limit the growth of the charity sector, because it sets a geographical limitation on public fundraising that is out of tune with the reality of the charity sector in China. The difficulties posed by the geographic limitation on public fundraising are in part solved by article 28 yet an element of contradiction</p>

<p>(二) 在当地举办义演、义赛、义卖、义展、义拍、慈善晚会等；</p> <p>(三) 通过当地广播、电视、报刊等媒体发布募捐信息；</p> <p>(四) 其他公开募捐方式。</p> <p>Article 27: Charitable organizations carrying out public fundraising shall do so within the administrative region administered by the civil affairs departments with whom they have registered, but there is no geographic limitation on donors' donations.</p> <p>Public fundraising may adopt the following means:</p> <p>(1) Set up donation boxes in local public places;</p> <p>(2) Hold local charity events such as charity performances, charity competitions, charity exhibitions, charity auctions, and charity galas;</p> <p>(3) Publish fundraising information through media such as local radio, television, and press;</p>	<p>between article 27 and 28 remains.</p> <p>First, we imagine that most in order to circumvent the limitations introduced by article 27, charities will either avoid to register and operate under article 114, or else they will apply for registration at the provincial level.</p> <p>Second, in the event of natural disasters of proportions comparable of those of the Wenchuan earthquake, it may be difficult for both donors and local governments to coordinate their efforts across provinces. The question of what role, if any, foreign citizens can play in donating to Chinese charitable organizations remains.</p>
<p>第二十八条 具有公开募捐资格的慈善组织，可以通过互联网开展募捐。</p> <p>在省级以上民政部门登记的慈善组织，可以通过其网站或者其他网站开展募捐。在设区的市和县级民政部门登记的慈善组织，可以在其登记的民政部门建立或者指定的慈善信息平台开展互联网募捐</p> <p>Article 28: Charitable organizations eligible for public fundraising can conduct fundraising on the Internet.</p> <p>Charitable organization that have registered at civil affairs departments at or above the provincial level can conduct fundraising through</p>	<p>Online transactions and information are more and more important to citizens' daily lives, and work. Therefore, more detailed provisions should be made to regulate public fundraising via the internet.</p>

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

<p>Article 38: Donors can donate through charitable organizations and can also donate directly to beneficiaries.</p> <p>Assets donated by donors shall be lawful assets for which they have the right to dispose of. Charitable donations of property, include tangible and intangible assets such as funds, physical goods, marketable securities, equities, and including intellectual property income.</p>	<p>which are donated to the public by their creators or inventors. In fact, intellectual property is mentioned in article 87 of the Draft. Its inclusion under article 38 would increase the internal coherence of the Charity Law.</p>
<p>第三十九条 捐赠人捐赠的实物应当具有使用价值，符合安全、卫生等标准。</p> <p>捐赠人捐赠本企业产品的，应当提供产品合格证书或者质量检验证书。</p> <p>Article 39: The material objects donated by donors shall have value in use, and shall comply with safety, health and other requirements.</p> <p>Where the donor donates a product of its own enterprise, it shall provide a certificate of product approval or product quality inspection certificate.</p>	<p>We believe that article 39 is redundant, and suggest its deletion, as relevant provisions have been already set by the legislation on product safety.</p>
<p>第四十一条 慈善组织接受捐赠，应当向捐赠人开具由财政部门统一监（印）制的公益事业捐赠票据。捐赠票据应当载明捐赠人、捐赠财产的种类及数量、慈善组织名称和经办人姓名、票据日期等。捐赠人匿名或者放弃接受捐赠票据，慈善组织应当做好相关记录。</p> <p>Article 41: Charitable organizations accepting donations shall issue to the donors public welfare donation receipts uniformly printed by or under the supervision of treasury departments.</p>	<p>We understand that the intent of article 41 is making each and every donation trackable. Therefore, we ask whether:</p> <p>First, this provision applies to charitable sales as well.</p> <p>Second, whether it applies to donations made through donation boxes. What happens if a donor drops an anonymous check of 10.000 RMB in a donation box?</p>

<p>Donation receipts shall state clearly the donor, the types and amount of assets donated, the name of the charitable organization, the name of the responsible person, the date of the receipt, and other information. Where the donors are anonymous or decline to accept the donations receipts, charitable organization shall keep relevant records.</p>	
<p>第四十二条 慈善组织接受数额较大的捐赠,应当与捐赠人签订书面捐赠协议,但捐赠人表示不签订的除外。</p> <p>慈善组织接受数额较小的捐赠,捐赠人要求签订书面捐赠协议的,慈善组织应当与捐赠人签订书面捐赠协议。</p> <p>书面捐赠协议包括捐赠人和慈善组织名称、捐赠财产的种类、数量、质量、用途、交付时间等内容。</p> <p>Article 42:Where a charitable organization receives a comparatively large donation, it shall sign a written donor agreement with the donor, except where donors state that they won't sign.</p> <p>Where a charitable organization receives a comparatively small donation, and the donor requests a written donor agreement, the charitable organization shall enter into a written agreement with the donor.</p>	<p>We believe that a threshold should be set, or that at least an explanation of what “comparatively” means should be provided.</p>
<p>第四十四条 捐赠人应当履行捐赠义务。捐赠人违反捐赠协议逾期未交付捐赠财产,有下列情形之一的,慈善组织或者其他接受捐赠的人可以要求交付;捐赠人拒不交付的,可以依法向人民法院申请支付令或者起诉:</p> <p>(一) 捐赠财产用于本法第三条第一项、第二项规定的慈善活动,并订立书面捐赠协议;</p>	<p>There is a conflict between article 44 and the Civil Code. Under the Civil Code, avoiding liability under unilaterally beneficial contracts is possible, while under article 44 it is not.</p> <p>The second paragraph of this article refers to a more general matter already regulated by the Civil Code.</p>

<p>(二) 捐赠人通过广播、电视、报刊、互联网等方式公开承诺捐赠。</p> <p>捐赠人订立书面捐赠协议或者公开承诺捐赠后经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行捐赠义务。</p> <p>Article 44: Donors shall fulfill their obligations to donate. Where, in breach of the donation agreement, donors fail to deliver donated assets exceeding the time limit, and where one of the following circumstances exists, charitable organizations or other persons accepting the donations can request delivery; where the donors refuse to deliver, [charitable organizations and other persons accepting donations] can apply to the people's courts for orders of payment or sue.</p> <p>Where the financial situation of a donor considerably deteriorates after the donor has entered into a written donor agreement or has publicly promised to donate, so as to gravely affect its production or management or his/her family life, the donor is released from fulfilling the duty to donate.</p>	
<p style="text-align: center;">Chapter 5. Charitable Services</p>	
<p>第五十七条 本法所称慈善服务，是指慈善组织以及其他组织或者个人基于慈善目的，向他人或者社会提供的非营利服务。</p> <p>Article 57: "Charitable services" as used in this Law refer to the non-profit services provided to others or to the society by charitable organizations and other organization or individuals based on charitable purposes.</p>	<p>First, we suggest that article 57 be moved between article 3 and article 4.</p> <p>Second, it could be specified whether “non-profit services” means gratuitous, or it means activities that yields a margin that does not aim at making profits.</p>
<p>第五十八条 慈善组织开展慈善服务，可以</p>	<p>Article 58 is clearly modelled after American</p>

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

<p>provide volunteers with necessary capacity to carry out the charitable services, and safeguard volunteers' lawful rights and interests.</p> <p>Before charitable organizations arrange for volunteers to participate in charitable service where personal injury might occur, they shall purchase accidental personal injury insurance for the volunteers.</p>	
<p>第七十一条 县级以上人民政府民政等有关部门应当建立协调机制，提供需求信息和便利条件，引导和支持慈善组织以及其他组织或者个人有序开展慈善服务。</p> <p>Article 71: People's governments at the county level or above and relevant departments shall establish coordination mechanisms providing necessary information and convenience, guiding and supporting the charitable organizations and other organizations and individuals to orderly carry out charitable services.</p>	<p>This is a very good provision, and we suggest that the powers of these coordination mechanisms include the management and coordination of trans-local, trans-provincial, and trans-national activities of Chinese and foreign charities.</p>
<p style="text-align: center;">Chapter 7. Information Openness.</p>	
<p>第七十三条 县级以上人民政府建立健全慈善信息统计和发布制度。</p> <p>国务院民政部门应当建立统一的慈善信息系统。县级以上人民政府民政部门应当建立或者指定慈善信息平台，及时向社会公开慈善信息，并免费提供慈善信息发布服务。</p> <p>慈善组织和慈善信托的受托人应当在前款规定的平台发布慈善信息，并对信息的真实性负责。</p> <p>Article 73: People's governments at or above the county level establish and improve the gathering and release system of charity information.</p>	<p>First, this provision is very good and extremely modern.</p> <p>Second, the creation of two distinct information systems that is a unified charity information system managed by the Ministry of Civil Affairs, and information systems created by local civil affairs departments is likely to hold back the development of the charity sector. In an information economy, a timely sharing of data is crucial. Therefore we suggest that either:</p> <p>a) information on all charitable organizations, Chinese and foreign, be released at the central level.</p>

<p>The civil affairs department of the State Council shall establish a unified charity information system. The civil affairs departments of the people's governments at or above the county level shall establish or designate charity information platforms, timely release charity information to the public, and provide charity information release services for free.</p> <p>Charitable organizations and the trustees of charitable trusts shall release charity information on the platforms stipulated by the preceding paragraph, and shall be responsible for the authenticity of the information.</p>	<p>or</p> <p>b) central, provincial, and county-level databases are linked at the stage of their design and programming already, rather than after they have been programmed and launched. We understand that some provinces may face economic difficulties in setting up their information systems, therefore we also suggest that the Central Government allocates special funds to the poorer provinces.</p> <p>Third, it is not clear what penalties, if any, charitable organizations that refuse to share information or that share false or misleading information would face. Therefore we suggest that a reference to article 104 of the Draft be made.</p>
<p>第七十四条 县级以上人民政府民政等有关部门应当及时向社会公开下列慈善信息：</p> <p>（一）慈善组织登记事项；</p> <p>（二）慈善信托备案事项；</p> <p>（三）具有公开募捐资格的慈善组织名单；</p> <p>（四）具有公益性捐赠税前扣除资格的慈善组织名单；</p> <p>（五）对慈善活动的税收优惠、资助补贴等促进措施；</p> <p>（六）向慈善组织购买服务的信息；</p> <p>（七）对慈善组织、慈善信托开展检查、评估的结果；</p> <p>（八）对慈善组织或者其他组织和个人表彰、处罚结果；</p>	<p>It is not clear for how long the information listed under article 74 should remain public.</p>

<p>(九) 法律、法规规定应当公开的其他信息。</p> <p>Article 74: The civil affairs departments and other relevant departments of the people's governments at or above the county level shall timely disclose to the public the following charity information:</p> <p>(1) the registration of charitable organizations; (2) charitable trusts filing matters; (3) the list of charitable organizations with public fundraising credentials; (4) the list of charitable organizations qualified to tax deductions for public interest donations; (5) Measures for promoting charitable activities such as preferential tax treatment and funding subsidies; (6) Information on purchasing of services from charitable organizations; (7) Outcomes of investigations into charitable organizations and charitable trusts; (8) The outcome of commendations and punishments of charitable organizations, other organizations and individuals; (9) Other information that laws and regulations provide shall be disclosed.</p>	
<p>第七十五条 慈善组织应当每年向社会公开下列信息:</p> <p>(一) 组织章程、统一社会信用代码、登记证书号码等登记信息; (二) 决策、执行、监督机构成员信息; (三) 年度工作报告, 包括经审计的财务会计报告、年度开展募捐以及接受捐赠情况、开展慈善项目情况; (四) 国务院民政部门要求公开的其他信息。 上述信息有重大变更的, 慈善组织应当及时向社会公开。</p>	<p>We suggest that information about:</p> <p>a) all members of charitable organizations b) their affiliation to Chinese or to foreign legal persons Be included within the scope or information to be disclosed, to allow Chinese and foreign citizens who live in China to have more elements to judge the trustworthiness of charities.</p>

<p>Article 75:Charitable organizations shall annually disclose to the public the following information:</p> <p>(1) The organization charter, and registration information such as the unified social credit code and the number of the registration certificate;</p> <p>(2) Information on the members of their decision-making, implementation, and supervision bodies;</p> <p>(3) Annual work report, including audited financial accounting report, annual situations of conducting fundraisings, accepting donations, and the situations of carrying out charity programs.</p> <p>(4) Other information required to be disclosed by the civil affairs department of the State Council.</p> <p>Where they are major changes to the information abovementioned, charitable organization shall timely disclose them to the public.</p>	
<p>第七十九条 城乡社区组织、单位在内部开展慈善募捐，应当在本社区、单位内部及时公开款物募集和使用情况。</p> <p>Article 79:Where urban and rural community organizations or work units conduct internal charitable fundraisings, the raised funds and materials and the situations of usage shall be timely made public inside their own communities or work units.</p>	<p>We suggest that urban and rural community organizations and work units be allowed to conduct trans-local, and trans-provincial activities within their objective capacity, as well as building networks with other charitable entities.</p>
<p>Chapter 8. Promotions Measures</p>	
<p>第八十一条 县级以上人民政府应当根据本法和当地经济社会发展情况，制定促进慈善</p>	<p>In the spirit of public participation (公众参与), we suggest that beneficiares be allowed to</p>

<p>事业发展规划、政策和措施。</p> <p>县级以上人民政府及其有关部门应当在各自职责范围内，向慈善组织、慈善信托受托人等提供慈善需求信息，为慈善活动提供指导和帮助。</p> <p>Article 81:The people's governments at or above the county level shall, in accordance with this Law and local economic and social development statuses, formulate plans, policies and measures to promote of the development of charities.</p> <p>People's government at or above the county level and the relevant departments thereof shall, within their own duties, provide charity demand information to charitable organizations or the trustees of charitable trusts, and provide guidance and help to charitable activities.</p>	<p>provide charity demands information either to people's governments, other relevant organs, or to charitable organizations themselves.</p>
<p>第八十三条 慈善组织及其取得的收入依法享受税收优惠。</p> <p>Article 83:Charitable organizations and the income thereof enjoy tax benefits according to law.</p>	<p>One of the most important reasons why an organization may choose to register as a charity is the possibility to enjoy tax benefits. However, the Tax Law does not automatically grant tax exemptions to charitable organizations. The Notice of the Ministry of Finance and the State Administration of Taxation on Issues concerning the Administration of Tax Exempt Eligibility of Non-profit Organizations (2014) states the conditions of tax exemption. If an organization is registered as a public charity, does it still have to apply for tax exempt status according to the Notice? The Draft doesn't seem to offer real tax benefits to charities.</p>
<p>第八十八条 慈善组织开展扶贫、济困、助残、养老、救孤需要慈善服务设施用地的，可以依法使用国有划拨土地或者农村集体建设用地。慈善服务设施用地非经法定程序不得改变用途。</p> <p>Article 88:Where charitable organizations carrying out poverty relief, financial assistance, assistance for the disabled, eldercare, or aid for</p>	<p>We understand that state-owned land and rural collective construction land are an extremely valuable resource, and its use should be carefully managed and controlled.</p> <p>However, other charitable organizations – such as those conducting not-for-profit waste treatment, providing drug and/or alcohol rehabilitation services etc., may need to use land too. Therefore we suggest that the scope</p>

orphans require land for charitable service facilities, they may use state-owned allocated land or rural collective construction land. The use of land for charitable services must not be altered except through legally prescribed procedures.	of subjects entitled to use state-owned or collective land be broadened to include all charities that have an objective need to use land.
Chapter 9. Supervision and Management	
<p>第一百零一条 县级以上人民政府民政部门应当建立慈善组织及其负责人信用记录制度,并向社会公布。</p> <p>民政部门应当建立慈善组织评估制度。鼓励和支持第三方机构对慈善组织进行评估,并向社会公布评估结果。</p> <p>Article 101:The civil affairs departments of county level people's governments and above shall establish credit records systems for charitable organizations and their responsible persons, and shall make these public.</p> <p>Civil affairs departments shall establish charitable organizations evaluation systems. Third-party institutions are encouraged and supported to conduct evaluations of charitable organizations and to release the evaluation results to the public.</p>	<p>We ask whether article 101 provides the only legislative basis for the existence of “rating agencies”, as we believe that third-party institutions, and evaluation systems, can be established independently of article 101 of the Draft.</p>
Chapter 10. Legal Responsibility	
<p>第一百零四条 慈善组织有下列情形之一的,由民政部门予以警告、责令改正,或者限期停止活动;情节严重的,吊销登记证书:</p> <p>(一) 未按照慈善宗旨和业务范围开展慈善活动;</p>	<p>According to article 22 paragraph (3), charitable organizations can be terminated if they do not engage in charitable activities for three consecutive years. This article, at paragraph (1) stipulates that charitable organizations that do not carry out charitable activities in accordance with charitable</p>

<p>(二) 违反信息公开义务或者公开的信息不真实;</p> <p>(三) 未按照规定进行年度报告;</p> <p>(四) 泄露捐赠人、志愿者、受益人个人隐私。</p> <p>Article 104: Where charitable organizations have any of the following situations, the civil affairs departments give a warning and order corrections or temporarily suspend activities; and where circumstances are serious, revoke registration documents:</p> <p>(1) not carrying out charitable activities in accordance with the charitable purpose and scope of operations;</p> <p>(2) violations of information disclosure obligations or disclosing untrue information;</p> <p>(3) not conducting an annual report in accordance with provisions;</p> <p>(4) Leaking donors', volunteers', or beneficiaries' private information.</p>	<p>purposes, and with their scope of operations shall incur penalties.</p> <p>The wording of article 22 paragraph (3) and paragraph (1) of this article, if read together, pose an interpretive difficulty:</p> <p>does “not engage in charitable activity” mean that the charity does not operate? Does it mean that the charity carries out non-charitable activities?</p> <p>If articles 104 paragraph (1) and 22 paragraph (3) are interpreted in the second sense, then the goal of article 104 is undermined. One could argue that charitable organizations can carry out activities not related to their purpose and/or scope of operation for three years, without undergoing a temporary suspension of their activities, or without having to comply with correction orders issued by civil affairs departments.</p>
<p>第一百零五条 慈善组织有下列情形之一的,由民政部门予以警告、责令改正,或者限期停止活动;情节严重的,吊销登记证书;有违法所得的,由民政部门予以收缴,转赠给宗旨相同或者相近的慈善组织,并可以对直接负责的主管人员和其他直接责任人员处一万元以上十万元以下罚款;构成犯罪的,依法追究刑事责任:</p> <p>(一) 私分、挪用或者侵占慈善财产;</p> <p>(二) 违反本法第十九条规定造成慈善财产损失;</p> <p>(三) 擅自改变捐赠财产用途;</p> <p>(四) 将不得用于投资的财产用于投资;</p> <p>(五) 接受附加违反法律法规条件的赠与。</p>	<p>The proposed range of fines may not be sufficient to deter large domestic, foreign, or transnational charities and their personnel from the conducts listed under paragraphs (1) to (5). Therefore, we suggest that fine be levied in proportion of the total amount of unlawful gains. A fine of 50 per cent of the total amount of unlawful gains may be considered.</p> <p>The same suggestion is made for article 106, and article 110 paragraph (1).</p>

<p>Article 105: Where charitable organizations have any of the following situations, the civil affairs departments give a warning and order corrections or temporarily suspend activities; and where circumstances are serious, revoke registration documents. Where there are unlawful gains, the civil affairs departments collect them and transfer them to charitable organizations with the same or similar purpose, and may also fine the persons who are directly in charge and other directly responsible personnel between 10,000 and 100,000 yuan; and where a crime is constituted, pursue criminal responsibility in accordance with law:</p> <p>(1) Secretly dividing, embezzling or misappropriating charity assets; (2) Violating article 19 of this law, causing losses of charitable assets; (3) changing the use of donated property of one's own accord; (4) Using assets that must not be used for investment for investments; (5) Accepting gifts with attached conditions that violate laws and regulations.</p>	
<p>第一百零七条 慈善组织不依法向捐赠人出具公益事业捐赠票据、不依法出具志愿服务记录证明或者不依法答复捐赠人对其捐赠财产使用信息查询要求的，由民政部门予以警告，责令改正。</p> <p>Article 107: Where charitable organizations fail to issue donors with a public welfare donation receipt in accordance with law, fail to issue a record showing volunteer service in accordance with law or do not respond to donors' inquiries regarding the use of their donated assets, the civil affairs</p>	<p>If the goal of the Charity Law is to make each and every donation traceable, then penalties for the act of failing to issue donors with a public welfare donations receipt should be made steeper. A warning and an order to correct such behavior are unlikely to deter charities from committing or reiterating the act of failing to issue public welfare donations. Fines amounting to 100% of the amount of the donations hidden may be a better deterrent.</p>

<p>departments give a warning and order corrections.</p>	
<p>第一百一十条 慈善信托有下列情形之一的，由民政部门予以警告，责令停止违法行为，有违法所得的，由民政部门予以收缴，转赠给宗旨相同或者相近的慈善组织或者其他慈善信托，并可以对直接负责的主管人员和其他直接责任人员处一万元以上五万元以下罚款：</p> <p>（一）将信托财产及其收益用于非慈善目的；</p> <p>（二）未按照规定将信托事务处理情况及财务状况向民政部门报告或者未向社会公开。</p> <p>Article 111:Where in the course of charitable service beneficiaries or third parties suffer harms caused by the negligence of charitable organizations or volunteers, the charitable organizations bear responsibility for compensation in accordance with law; and where the harm is intentionally caused by a volunteer or their gross negligence, the charitable organizations may seek compensation from them.</p> <p>Where in the course of participating in charitable service volunteers suffer harms caused by the negligence of charitable organizations, the charitable organizations bear responsibility for compensation in accordance with law; and where the harm is caused by force majeure, the charitable organizations shall give appropriate subsidies.</p>	<p>This is a matter that should be regulated by the civil code. Besides, there is a visible Anglo-American influence that may not be in accord with the reality of China's legal system. We wonder whether this article truly plays a role in the Draft, and therefore we believe its deletion may be considered.</p>
<p>第一百一十三条 对慈善活动负有监督管理</p>	<p>This is a very good provision, that will most</p>

<p>职责的县级以上人民政府有关部门及其工作人员有下列情形之一的，由上级机关或者监察机关责令改正；应当给予处分的，由任免机关或者监察机关对直接负责的主管人员和其他直接责任人员依法给予处分；构成犯罪的，依法追究刑事责任：</p> <p>（一）违反信息公开义务；</p> <p>（二）摊派或者变相摊派捐赠任务，强行指定志愿者、慈善组织提供服务；</p> <p>（三）不履行监督管理职责；</p> <p>（四）违法实施行政强制措施和行政处罚；</p> <p>（五）私分、挪用或者侵占慈善财产；</p> <p>（六）其他滥用职权、玩忽职守、徇私舞弊行为。</p> <p>Article 113:Where relevant departments of people's governments at the county level or above that have responsibility for oversight of charitable activities have any of the following situations, the relevant departments at the level above or the supervisory organ order corrections; where a punishment should be given, the organ for hiring and terminations, or the supervisory organ, gives sanctions in accordance with law to the persons who are directly in charge and other directly responsible personnel; where a crime is constituted, pursue criminal responsibility in accordance with law:</p> <p>(1) Violations of information disclosure obligations;</p> <p>(2) Giving quotas or indirect quotas for fundraising tasks, forcibly appointing volunteers or charitable organizations to provide sources;</p> <p>(3) Not performing oversight and management duties;</p>	<p>likely avoid that local governments and organs act against the goals of the Charity Law.</p>
--	---

<p>(4) Unlawfully implementing administrative compulsory measures or administrative punishments;</p> <p>(5) privately dividing, embezzling or misappropriating, charitable property;</p> <p>(6) Other abuses of professional powers, dereliction of duties, or improper conduct for personal gain.</p>	
--	--