

Innovative Concepts for Charity Legislation in China

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Introduction

The Ministry of Civil Affairs has been given the mandate to draft a Charity Enhancement Law for China. It is my understanding that when the Party Congress gave this mandate to the Ministry of Civil Affairs ("MCA") it instructed the Drafting Committee to be innovative and creative in the legal concepts it brought forward to the legislature. This paper will propose creative concepts which would make the Charity Law in China an innovative model to be copied by other countries with emerging economies rather than simply being a copy of international models.

This proposal does significantly follow the international model in allowing charitable donation deductions for corporate donors. Corporations already have a significant degree of compliance with China's emerging tax regime. It would not be too great an administrative burden to develop a generous scheme for charitable donation deductions within China's existing tax system.

The challenge which China faces at this point in time is that a much smaller percentage of its individual citizens, as opposed to its corporations, participate in and comply with the government's tax filing requirements. While the participation of individuals in the tax system is increasing, it would be an immense administrative burden to have millions of individuals file for tax benefits for relatively small donations. However, it is these individual donors whom China most needs to attract into the charitable sector and must encouraged to participate by way of volunteering and giving, The innovation proposed is to have the government create a Matching Fund for donations rather than give individual donors a tax deduction or tax credit. This eliminates the need to educate all of the officials working in the tax bureaucracy at this time about the technical complexities of charity law as well as all of the consequent administrative work in filing evidence of donations and calculating variable tax benefits.

There is no need for the tax officials to be involved with charitable donations from individuals if a Matching Fund system is developed. Charities would only be able to receive matching grants for donations actually received by the charity. This requirement that the gift be actually received eliminates the potential problems of fraud from donors claiming on their tax returns for tax deductions for gifts which were not actually made. It is reasonably simple to develop accounting requirements which can verify the accuracy of the amount of donations collected.

The Matching Fund also eliminates the variable economic cost of the donation to donors with different marginal rates of taxation which results from tax deductions. It becomes irrelevant whether the donation is 10

Renminbi given by a poor peasant or is 1 million Renminbi given by a rich entrepreneur. Neither the peasant nor the entrepreneur receives any tax benefit from the government so the fiscal treatment is entirely egalitarian. However, if the charity then receives from the government a matching grant equal to 25% of the donations collected this is the equivalent in cost to the National Treasury of having provided the donor a 20% tax deduction. This Matching Fund innovation achieves an egalitarian economic fairness which is ideologically important to a country like China. Not only is economic benefit to the donor egalitarian but the economic benefit to the charity is also egalitarian in that the donation from the poorest donor triggers exactly the same matching grant as a donation of the same size from the richest donor.

In a country as large and diverse as China, there are issues as to what is the appropriate branch of government to fund fiscal benefits for charitable donations. There are complex issues which a foreigner cannot easily understand with regard to which taxes are paid to local and provincial authorities and which taxes are paid to the national government. If the national government is prepared to fund this Matching Fund at the outset, it is not necessary to address those complex issues with regard to individual donors but only with regard to corporate donations. Given the size and scale of China's economy and the relatively miniscule number of donations from individual, it is not a heavy financial burden for the national government to fund a matching grant program at this point in time. As the number of donations increases, it will be possible to reassess whether the source of the funding should be changed or shared. A Matching Fund program would likely be introduced with specific time limits such as ten years on the assumption that over time it may be prudent to move the fiscal benefits for charitable donations from individuals into the tax scheme similar to the treatment of corporate donations.

China should also consider an innovation which has not been done anywhere else in the world. This is to create a Matching Fund not only for the charity which received the donation from the donor but to provide a grant of an equal amount to what I am calling a National Grassroots Fund which is available to help small charities not yet skilled in fundraising. This would have an egalitarian impact on the emerging charitable sector because it would help small struggling rural organizations to benefit as a direct result of the fundraising success of large institutional charities in the cities which have sophisticated fundraising programs. This concept which I have described as "A Rising Tide Lifts All Boats" (Shui Zhang Zhong Chuan Gao) is a unique innovation which if China adopted it would become a model for many other countries to adopt if they want to benefit struggling grassroots organizations.

If China is to develop a system for fiscal incentive for charitable donations which operates substantially outside of the tax system, then it is better that the government body which regulates charities not be the tax bureau. Consequently, this proposal encourages China to examine the Charity Commission used in England and Wales and create a similar body within the MCA. However, it also recommends innovations which modify the English Charity Commission model by adopting some of the concepts modeled in Singapore and the Philippines which are more appropriate to a country in which the charitable sector is relatively new.

When drafting a new charity law it is reasonable to expect China to examine the laws in other countries to learn best practices and seek international models. However, the charity models which work are ones which reflect the concrete realities and aspirations of the society in those countries. For example, the model

developed in the United States of America works very well in the USA because it reflects the economic, ideological and social culture of that country. However, even its closest neighbour, Canada, has varied the USA model of tax deductions for charitable donations from individuals because Canada believes that tax credits for charitable donations from individuals is ideologically more compatible with Canada's more socialist views of the distribution of wealth and tax benefits. If Canada needs to vary the international model to adapt to its own quest for a more egalitarian society than it is evident that China must be even more innovative and radical in adapting such a model. It is my sincerest hope that China will develop a model of charity law that is first based upon the criteria that it is appropriate for China today and secondly will serve as a new model for other countries seeking to create an enabling legal and fiscal environment for their charitable sectors. It is important for China to learn from the world; but this learning must lead to innovation rather than replication. In drafting its charity legislation, China has the opportunity to promote indigenization as an alternative to globalization, Indigenization is not simply about finding indigenous origins that mirror global trends but about blazing a distinctive path for charity in China which reflects its culture and history and provides a pioneering model to be followed by others. A "globalization" model in which all the fiscal incentives go to the donor through the tax system is not necessarily the best model to promote and enhance charity in China — or in many other evolving economies.

The primary legal sources for the innovations I am proposing are England, Singapore, Canada, the Philippines and the United States. However, the proposal also includes innovations that have never yet been tried in any country. The problem is that the dominant models come from developed industrial countries and are designed to reflect the ideologies driving those economies. In my view, China should consider pioneering a new model with specific ideological and economic rationales that are more appropriate for an evolving economy.

Tax Theory for Charitable Deductions

The predominant international model for fiscal incentives for charitable gifts is the tax deduction system used in the United States. The charitable donation incentive system in the USA is based on the granting of tax deductions to individuals and corporations which donate to recognized charitable institutions. The legal theory underlying a charitable tax "deduction" is that the money transferred to the charity never really belonged to the donor because the donor chose to transfer it to the charity. Consequently, it is excluded from the donor's taxable income and taxed in the hands of the recipient charity. However, because the recipient charity is tax exempt, it pays no tax. Similarly, because the income was excluded from the taxable income of the donor, the donor also pays no tax. The USA, Canada and other countries limit the effects of the tax deduction theory by restricting the percentage of income which a donor can deduct. However, because the tax impact relates back to the taxable income of the donor it is necessarily not egalitarian in a tax system with different rates of taxation.

Perhaps the easiest way to understand the legal theory behind the deduction is to contrast the deduction with the law on covenants in England which has no percentage limitations. Prior to the passage of the UK Finance Act in March 1988, non-charitable covenants had substantially the same tax treatment as charitable covenants. I will confine my discussion to treatment of charitable covenants. The practice was that a donor entered into a binding legal obligation known as a "Deed of Covenant" which was a contract under seal

irrevocably transferring payments to a charity which were not payments for goods or services received or expected. The donor was normally required to have entered the Deed of Covenant prior to receiving the income transferred under the Deed. In 1988 the minimum period for a covenant was three years and the obligation to make the annual payment stated in the covenant could not be revoked during that three-year time period.

Under the English system of covenants, the donor had paid tax on the amount of the payments made to the charity pursuant to the Deed of Covenant prior to the gift. Unlike the deduction system in the USA, the donor did not get a refund of the taxes which he had paid. Instead, the recipient charity applied to the Inland Revenue, the tax authority in England, to recover the amount of tax which the donor would have paid on the Covenant payment assuming the basic rate of income tax. In 1988 this was 25%. Unlike the deduction system in the USA, this rate does not reflect the marginal tax rate of the individual donor.

From the State's fiscal perspective, one of the issues with regard to charitable tax deductions is that the government has no accurate way of knowing how much money is being transferred to charities because the amounts deducted due to gifts to charities simply disappear from the National fiscal accounts. The State would have to aggregate all of the income received by charities, determine how much of that income was claimed as a deduction by the donor and determine the marginal tax rate of each donor in order to compute the total fiscal cost of charitable tax deductions. In the English system, the inland Revenue pays out the precise calculated amounts of tax recovery payments to each charity applying for a refund. Consequently, the government in England can easily calculate the total cost to the National Treasury of the tax incentives for charitable giving. Further, it is possible for the government to determine which charities benefited from these costs and how much each charity received.

The problem with the English covenanting system is that historically it only paid the charity an amount based upon the basic tax rate whereas the individual donor in fact may have paid a much higher rate of taxation, By contrast, in the charitable deduction system the monetary value of the deduction "floats" and accords to the marginal tax rate of the donated dollar which is deducted. This system is much more attractive to a rich donor with a 45% tax rate because the National Treasury absorbs 45% of the cost of the donation and the real cost to the donor is only 55% of the amount donated. On the other hand, for a poor donor who has only a 15% marginal tax rate, the real cost to the donor is 85% of the amount of the donation. China might find it ideologically unacceptable to have a deduction system which subsidizes the cost of charitable donations made by rich donors far more than it subsidizes the cost of donations made by poor donors, China only has variations of marginal tax rates from 5% to 45% on salary income. However, it is possible that a greater source of donations is non-salary income resulting from the sales of assets which is taxed at a flat rate of 20%. Corporations have a flat tax rate of 33%. Consequently, corporations receive a greater tax benefit than individuals giving from asset sale income.

The fiscal policy considerations relating to the different cost of charitable donation deductions to donors of different incomes became a significant issue in Canada in the 1980's. Activists in the charitable sector made the case that it was inequitable to require small donors to absorb a greater percentage of the cost of donations to charity than rich donors. Consequently, in 1988, Canada switched from a tax deduction system to a more egalitarian system of "tax credits" for charitable donations made by individuals. In Canada

today, donors receive a charitable donation tax credit based upon the lowest marginal rate for all donations up to an aggregate of \$200 in a year. If the aggregate of charitable donations of an individual exceeds \$200 a year, then the charitable donation tax credit is increased to the highest marginal rate for each dollar donated over the \$200 threshold. This means that the tax benefit received by a poor donor who is taxed at the lowest marginal rate is exactly the same as that received by the rich donor at the highest marginal rate.

Viewed from the perspective of the fiscal accounts of the National Treasury, tax credits are "tax expenditures" so are visible in the National accounts. This provides the government with a greater understanding of the total fiscal cost of charitable donation tax credits than the old deduction system. However, Canada maintained the deduction system with regard to donations by corporations and corporations do not get tax credits because corporate tax rates historically were much more uniform.

Viewed from the perspective of socialist policies of egalitarianism, the tax credit is preferable to a tax deduction. However, the marginal rate of taxation for corporations is theoretically the same for the same type of income and is not "progressive" beyond certain uniform thresholds. This is the same in China where the corporate rate of taxation varies very much less than the tax rates applied to the salary incomes of individuals. Assuming that the taxation rate of corporation's is 33% and the uniform tax rate for non-salary income of individuals is 20%, then if a donor has a corporation, the most tax efficient gift is to have the corporation make the donation. This discrepancy is addressed later in this paper.

The advantage with setting up a tax deduction system for corporations is that they already file corporate tax returns and it is not a significant administrative burden to add charitable deductions to the existing tax law. Most of the charitable donations now made in China are made by corporations. Most corporations in China want the ability to claim tax deductions for charitable gifts. Corporations in Canada can claim tax deductions for aggregate donations up to the amount of 75% of the corporation's taxable income. If China encourages corporations to become generous donors by legislating liberal tax deduction provisions, this will be an important step towards the international model for tax incentives for charitable donations.

Donors Must File for Tax Benefits for Charitable Deductions or Credits

The problem with both the charitable donation deduction and tax credit systems in the USA and Canada is that they rely on the individual or corporate donor to file a tax return, In Canada, a donor is not entitled to a tax benefit for a charitable donation unless a formal receipt containing information prescribed by the *Income Tax Act* is officially issued by the charity and is filed with the donor's tax return. This adds a huge administrative burden to the charity as well as to the State. This model presents a problem for China at this stage because many individuals do not yet file tax returns. In countries with many decades of experience with income tax filings the compliance with filing requirements is much higher. Many of the individuals who contribute to natural disasters and other charitable causes in China are elderly persons who do not have enough taxable income to require them to pay tax. It would be a huge increase to the administrative workload of the State to require all of these people to begin filing tax returns simply to enhance charitable giving.

The innovation of creating a Matching Fund mechanism for fiscal incentives for donations is intended to avoid the administrative burden of having charitable deductions added to the tax returns of individuals. If the donations are small, the administrative cost of filing tax receipts, calculating the donor's taxable income and processing refunds for donations from individuals will be greater than amount of the tax refund. The Matching Fund innovation keeps the tax authorities out of the charitable donation scheme for individuals and saves an enormous amount of administrative costs to donors, charitable organizations and the State.

Another category of potential donors includes those people who have amassed huge amounts of wealth but have not yet begun disclosing this wealth to the tax authorities in China. This failure to file tax returns is an important issue which I am not seeking to condone or reward. On the other hand, this category of persons may include the potentially most generous donors. Consequently, one does not want to discourage them from funding good works with this amassed wealth even if concerns continue as to the fact that this wealth was not taxed in the first place. In the future, China might devise a tax amnesty program which encourages and allows people to deal with past tax delinquency or misconduct by making approved charitable donations. This would regularize their position with regard to the tax authorities so that they began filing tax returns on a go-forward basis. A well-publicized tax amnesty program could be a tremendously effective incentive to bring large amounts of charitable money into this sector while encouraging citizens to participate fully in the legitimate tax system.

Pay Tax Incentives Directly to Charitable Organizations

The solution to the problems outlined above is for China to develop a Matching Fund donation incentive system independent of tax system and pay the fiscal incentive directly to the Charitable Organization rather than to the donor. This solution avoids all the bureaucratic problems of filing tax returns or issuing official receipts. It creates much less work for the charity, as it does not have to issue official tax receipts. It creates much less work for the State, as it does not have to process millions of additional tax returns. It is also much less work for the donor, who must do nothing beyond simply giving the money to the Charitable Organization.

This solution also means that the donor who pays no income tax knows that his donation triggered the same amount of additional financial benefit going to the charity from the State as if that donor paid tax at the highest rate. It also allows donors who have no taxable income (or untaxed wealth) to transfer funds to Charitable Organizations knowing that the charities will obtain an additional financial benefit from the State. The financial incentives are available to charities whether their donations were collected from nameless persons on the street, from elderly citizens, from envelopes stuffed under the door or from prominent citizens who receive very high profile public recognition.

Incentives for Charitable Donations from Individuals versus Corporations

The uniform tax rate in China today for non-salary income of individuals is 20%. The taxation rate of corporations is 33%. Consequently, there is a strong fiscal incentive for donors who have the ability to do so to make donations out of corporate taxable income rather than individual taxable income. There

are good policy reasons to level the playing field between corporate and individual donors if MCA wants to truly encourage and enhance charitable giving. Ultimately, individual donors are much more important for a growing and altruistic charitable sector than corporate donors.

It is also important to remember that corporations can claim a deduction for a "donation" as an advertising expense to earn income if the corporation obtains the appropriate amount of public recognition. There is a great gap between the level of altruism required to make a donation which may generate income as a result of the publicity surrounding the donation, and the level of altruism required to make a donation where recognition, if any, is simply a public honour. The intent of this law is not only to increase the money being contributed to Charitable Organizations but also to promote altruism among donors. Careful thought must be given to promoting donations which are based in altruism rather than encouraging self-interest in giving.

The charity legislation should also consider the fact that the tax rate of corporations, being 33%, is substantially higher than the tax rate of individuals, which is 20%. A 20% deduction is the same cost to the National Treasury as a grant from the Matching Fund equal to 25% of the donation. A 20% deduction for a 100 RMB gift to a Charitable Organization results in a cost to the donor of 80 RMB and a cost to the National Treasury of 20 RMB. A 25% grant from the Matching Fund triggered by an 80 RMB donation results in the Charitable Organization receiving 100 RMB with a cost to the donor of 80 RMB and a cost to the National Treasury of 20 RMB.

The innovation to solve the problem of the corporation receiving more favourable tax treatment than individual donors may be found by looking at the tax rules in Singapore. Singapore provides donors with a tax deduction which is double the amount of the tax payable. The Singapore donor gets a 40% tax deduction while the tax rate is only 20%. In the context of this proposal in China, this would mean that if an individual donor made a gift of 1,000 Renminbi (RMB), the Charitable Organization would apply to the Matching Fund for a payment of 500 RMB. This would provide individuals with a financial incentive equal to a 40% tax deduction. Because China is seeking to introduce and encourage charitable giving, I would argue that there are very good reasons to follow Singapore's model and double the financial benefits triggered by donations from individuals. Since corporations receive some corporate benefit by way of advertising and increasing their business by the increased goodwill from the public for charitable donations, they have a intangible benefits which accounts for the difference between 33% and 40% fiscal incentive.

The Chinese government could generate a great deal of public good will by making it clear that it is providing a "matching" grant equal to 50% of the amount of each donation from individuals rather than a tax deduction. I believe such a Matching Fund system is ideologically more acceptable to China than the charitable deduction model. China would pioneer an innovative model that will significantly enhance charitable giving in China. There is an enormous amount of political goodwill which would arise from such a Matching Fund program if it was widely advertised. Until such time as individuals begin donating large amounts of money, the political benefits of a well publicized Matching Fund will be much greater than the actual financial cost of such an incentive.

Shui Zhang Zhong Chuan Gao ("A rising tide lifts all boats")

One of the challenges raised by the efforts to enhance charity in China is determining how best to develop a charity enhancement policy which promotes harmony among all sectors of the population rather than jealousy. If this charity legislation results in only encouraging charitable giving from corporations and extremely wealthy donors, it might make grassroots organizations in poorer regions in the interior of China feel alienated from the charity process rather than encouraged. Frequently, corporations and philanthropists are given a great deal of publicity when they give hundreds of millions of Renminbi to build very high profile projects such as hospitals in a big city. There is nothing wrong with these projects and they are to be encouraged if no corruption or private benefits are involved. However, large donations should be encouraged in such a way that they do not cause rural grassroots organizations to believe that charity is just another economic endeavour which provides overwhelming advantages to rich coastal cities and does not help poor rural organizations and areas.

Consequently, I am proposing an entirely new model of government support for charitable giving that will position China to become a leader in charitable funding by creating a paradigm that is more appropriate to new evolving economies than the Western globalization model. This proposal is based upon China adapting the Singapore model to double the government's subsidy of charitable donations. I refer to this bold innovation as "ARising Tide Lifts All Boats". The proposal would work as follows.

If an individual donor makes a gift of 1,000 RMB to a Charitable Organization then that Charitable Organization will retain the 1,000 RMB for whatever purposes are agreed to by the donor. This is entirely consistent with the international model relating to charitable deductions.

The recipient Charitable Organization will then apply to the Matching Fund for a grant of 500 RMB. The model of the Charitable Organization applying directly to the Matching Fund for the fiscal incentive is consistent with the English model. The quantum of the grant is consistent with the Singapore model of the government doubling the tax-paid subsidy on the gift.

The innovation of the this new Chinese model is that the Matching Fund will only give the recipient Charitable Organization 250 RMB. This is effectively consistent with the models used in Canada, England, the United States and other countries in that the recipient Charitable either directly or indirectly obtains a fiscal benefit from the donation. The normal model would be to require the Charitable Organization to add the 250 RMB to the original gift of the donor to be used for the project which he or she supported. However, another innovation China might consider is whether the Charitable Organization should be required to use this 250 RMB to fund the core costs of operating the Charitable Organization rather than the glamour project selected by the donor or the particular emergency that triggered the donation.

The additional 250 RMB will be paid into a special account, which I will call the Grassroots Charitable Organization Fund, held by the MCA or some independent regulator such as the Charity Commission. The Grassroots Charitable Organization Fund will hold this money and ultimately distribute it not to the Charitable Organization which received money from the donor, but rather as the source of grants to small struggling charities who have very limited amount of access to reach large donors. The objective of this system is to truly

enhance and encourage charitable giving which benefits all sectors and regions of China and encourage a more egalitarian success of the charitable sector.

Consider this example. If Beijing University receives a 100 million RMB gift from Mr. Li for its faculty of medicine, it will receive and retain the 100 million RMB from Mr. Li. In addition, Beijing University will obtain another 25 million RMB from the Matching Fund in "repayment" of the taxes which Mr. Li has previously paid on 100 million RMB taxable income. Consequently, Beijing University has no grounds to complain about this system because it has 25 million RMB more than it would have had without this fiscal incentive for the donation.

However, the Matching Fund will provide an additional 25 million RMB received from the government for the Grassroots Charitable Organization Fund, This is not a simple budgeted allocation from the government for Charitable Organizations but is only triggered if and when ordinary citizens contribute to charity. The unique innovation is that when this gift is publicized, both Beijing University and the Matching Fund will have communicated to the public that the government has encouraged Mr. Li to make this gift not just by increasing the amount given to Beijing University but by making 25 million RMB available to the weakest and neediest Charitable Organization's throughout China by contributing to the Grassroots Charitable Organization Fund. Consequently, all Charitable Organizations should rejoice in Mr. Li's generosity because they have the potential to benefit from it as well. Consequently, no small Charitable Organization should feel jealous or resentful but should be grateful to Beijing University for successfully soliciting the gift.

Similarly, when an old-age pensioner gives only 100 RMB to a local Charitable Organization, that donor will know that the local Charitable Organization will actually receive 125 RMB. Just as importantly, that donor will know that an additional 25 RMB is being added to the Grassroots Charitable Organization Fund to assist tiny, needy, rural Charitable Organizations which have no way of telling the pensioner of their needs or of seeking a donation from him.

If such a system is to truly result in a "rising tide lifting all boats", then it is absolutely imperative that the Chinese people have every confidence that the money in the Grassroots Charitable Organization Fund is being distributed fairly and without any corruption or undue influence by people in high places. It is possible that the body which would handle this money might not be MCA or the Matching Fund but could be a specially mandated body which is assigned this task. It is also possible that it could be an existing body within the charitable sector. However, my instincts suggest that it would be much wiser to create something new rather than turn this over to an existing body.

It could also be possible for the government to say that a small percentage of the money which it contributes to this Grassroots Charitable Organization Fund should go to promoting and enhancing charity among the Chinese population and to assisting in the supervision and enhancement of charity regulation. However, the vast majority of the Grassroots Charitable Organization Fund must be made available for needy organizations to apply for grants through a transparent and accountable process so that the Chinese people have confidence that the money is going to enhance charitable activities as the government intended.

I do not know enough about how China allocates the right to collect taxes among different government bodies to fully adapt this proposal to China. However, if taxes are collected primarily at other than a national government level, it might be best for Beijing to contribute 25% from national funds to the Matching Fund for the Charitable Organization Grassroots Fund irrespective of where the donor pays taxes. It is a political decision as to whether the law forces local governments to contribute the other 25% which goes to the local Charitable Organization receiving the donation from the donor or whether Charitable Organizations will be required to pressure the local tax authority for this contribution. Beijing could provide some arm twisting to obtain the consent of local authorities. This would work reasonably well if the donor paid tax in Shanghai and the Charitable Organization was based in Shanghai also. It would be more problematic if the donor was paying tax in Beijing and the recipient Charitable Organization was in Shanghai. However, in that situation, hopefully the local tax authority in the recipient jurisdiction would recognize the fact that contributing 25% from its revenues results in a contribution of 4 times that amount from a donor who has no revenue link to the locality of the recipient Charitable Organization. Consequently, the local government should recognize that a greater incentive is required to attract donors from outside the locality.

The result of such an arrangement would be that the central government would be providing a matching grant to the Charitable Organization Grassroots Fund irrespective of the tax status and location of the donor, other than adapting it to apply to corporate donors. This would help the little boats to rise with all charitable donations. The local government would provide a matching grant to Charitable Organizations in their geographic jurisdiction irrespective of the tax status and location of the donor. If the donor is local, the government would be effectively (but not technically) reducing the tax collected from that donor. If the donor is not local, the generosity of the gift is even greater because it comes from a stranger in a different jurisdiction and the local government should be even more grateful and consequently still provide the matching grant.

Recommendation Regarding MCA Charity Commission

One of the most important decisions for the development of the charitable sector in China will be determining which legal body should be responsible for determining which organizations qualify as Charitable Organizations and for supervising compliance requirements under the new law. I will refer to this body as the regulator of charities (the "Regulator"). My recommendation is that the law should create a new Regulator which is under the MCA but is not directly part of an existing government unit.

In the USA and Canada, the regulation of charities is carried out by the tax authorities. In Canada the regulator is the Charities Directorate within the Canada Revenue Agency and in the USA it is the Exempt Organizations division within the Internal Revenue Service. I am recommending against those models and think that it would be much better for China to have a Regulator not based in the tax office such as the Charity Commission in England and Wales.

The problem with a tax based regulator is that it tends to formulate policies regarding the charitable sector on the basis of fiscal policy and cost. As a result, a tax-based regulator will be much less likely to allocate generous benefits to Charitable Organizations than a regulator whose mandate is to promote good social

policy and public benefit. The Charity Commission bases its decisions about what social purposes have sufficient public benefit to qualify as Charitable Organizations exclusively on the law of charity. While tax regulators such as the Charities Directorate supposedly ignore fiscal cost when granting Charitable Organization status, in reality they are part of a government body primarily concerns with tax considerations.

In my opinion, the Regulator should be a body of persons created specifically for this purpose. One possibility might be to model it upon the legal status and funding of the National Seniors Association within MCA. I understand the National Seniors Association, formerly known as the China National Committee on Aging, is not a government agency; but is funded by the government and run by an official having a rank equal to a Deputy Minister.

The Charitable Organization is a relatively new concept in China and if Charitable Organizations are to be nurtured and protected then the Regulator should have as its primary mandate the creation, encouragement and regulation of these new social institutions. This requires training bureaucrats and leaders in government and society to appreciate the special social advantages that Charitable Organizations can bring to China's society. This demands new and innovative thinking. It is quite likely that bureaucrats from other existing government departments might view Charitable Organizations with greater suspicion and provide less support than a Regulator modeled on the Charity Commission.

This international symposium is focused on a new law to enhance the role of role of the charitable sector in China. The more familiar I become with the concrete realities of China the More convinced I become that the role of the Regulator is more important than the definitional and administrative provisions in this law. The specific laws and regulations governing Charitable Organizations will have to continually change and evolve to reflect changing social realities in China. A law which is perfect for the realities of 2007 will be deficient by 2010. However, a Regulator that earns the confidence of the State through prudent policies can be given the legal and administrative powers necessary to adjust to the different needs of an evolving sector. This will be especially important until such time as the courts become more familiar with the role assumed by Charitable Organizations in modern China and with the policies that provide power and liberty to the civil society sector.

In my opinion China should focus less on creating a civil society sector that immediately looks like the international model. International standards will not always be applicable or acceptable to China, Instead, China should formulate a law that will enable the Regulator to help create and shape Charitable Organizations that meet China's needs for the next ten years. At the end of a ten or fifteen year period, China will have a civil society sector which both reflects the particular needs and realities of China and increasingly reflects the international standard. This does not mean that China will simply move towards the present international standard over a period of ten years. Rather, China will have a time period within which to shape the international standard so that China's experience and leadership can converge with international experience and norms. A properly constituted and empowered Regulator can do this more effectively than a law focused on creating the perfect model for Charitable Organizations.

Recommendations Regarding Singapore as Regulator Model

The registration process for Charitable Organizations should not only be as objective as possible, consideration should be given to involving sector organizations in the process. One model for this innovation is the National Council of Social Service in Singapore. As of July 1, 2006, Singapore removed the Charity Commission from the Inland Revenue Authority of Singapore (IRAS) and transferred it to the Ministry of Culture Youth and Sports (MCYS). The reason for the change was that the government decided that the tax authorities did not have their requisite degree of familiarity or expertise with the social issues involved in charities and the governance issues related to charities. It was thought that MCYS would be better able to handle issues involving the charitable sector than tax officials. This change in Singapore is very consistent with the recommendation that the Regulator not be a body within the tax authorities.

There was another innovation of regulation in Singapore which I think should be of great interest to China. This innovation is that Singapore effectively subcontracts charitable registration out to six different ministries or agencies other than IRAS. This is a policy which has been in place since 1992 and is worthy of consideration by China. To my knowledge, this is an innovation pioneered in Singapore but China should also consider the Philippine Council for NGO Certification. PCNC is a private, voluntary, non-stock, non-profit corporation that serves as a service organization whose main function is to certify non-profit organizations that meet established criteria for financial management and accountability in the service to underprivileged Filipinos. PCNC was established by six of the country's largest national NGO networks and is authorized by the Department of Finance of the Philippine government to certify non-profit organizations-applying for donee institution status. PCNC does not have the level of government representation and involvement which exists in the Singapore model.

The agency in Singapore which is likely of the greatest interest as a model for China is the National Council of Social Services (NCSS). Prior to 1958 the provision of social services in Singapore were carried on by a wide variety of individual agencies without any coordination or support. Consequently in 1958, the Singapore Council of Social Services (SCSS) was incorporated as an "umbrella body" to provide coordination among such individual social service organizations as well as volunteers and supporters in the community. At some time China should consider the merits and problems in having "umbrella bodies", or what the Australians would call "peak organizations", in the evolution and management of the social services sector. While SCSS provided a coordinating function at a policy and program level, it did not provide any assistance with regard to fundraising. Consequently in 1983, the Community Chest was established as a fundraising body for social service organizations. The "Community Chest" organization was the predecessor body of the United Way in North America. The Community Chest in Singapore functioned in many ways that are similar to the United Way movement, especially as the United Way operated a decade ago.

The government of Singapore was not sure that this SCSS and Community Chest combination provided adequate support for social service organizations in Singapore. Consequently, in 1992, the Department of Social Welfare decided that it should have a bigger role in this sector. A special act of Parliament was passed in 1992 creating the National Council of Social Services which merged the Community Chest with the SCSS. The government also agreed to provide 50% of the cost of running the new NCSS. The role of NCSS as an umbrella body was to make recommendations to the government with regard to its policies on social service

programs and to provide advocacy support to the social service sector. Advocacy is an important part of the role given to NCSS and is authorized and encouraged by the Singapore government.

NCSS seeks to maintain its role as an umbrella body which is independent of government. It has 374 member agencies at this time and those member agencies elect 50% of the members of the NCSS Board. The government nominates the President and the remaining 50% of the Board. NCSS continues to do fundraising but only provides funding up to 50% of the budgets of its members. In this way it differs from some of the original United Way models in which the United Way did all of the fundraising for its members so that they would not be competing for the same donors.

The most significant factor about NCSS for consideration is that it also has the added role of being the "sector administrator" for social service organizations. All social service agencies must apply to become members of NCSS in order to obtain the favoured tax status of being an Institution of Public Character ("IPC"). A charity must obtain IPC status in order for its donors to obtain double tax deductions for gifts.

The primary areas of concern for the NCSS are: the elderly, children and youth, the disabled and families. If a social service organization wants to do work in any of these program areas and wants to do it within Singapore, they must become involved with NCSS. If their intent is carry on Social Services internationally, they would not qualify under NCSS. However, NCSS provides guidance to its member agencies on issues such as best practices as well as governance and financial standards. In this way the government has an indirect role in setting standards for the operations of social services agencies but the direct role is played by an independent body with equal representation from the sector.

It is not possible for a social service agency to bypass NCSS and go directly IRAS to obtain its IPC tax status. The IRAS will send all social service applicants back to NCSS rather than grant them IPC status. The exception to this policy comes when an applicant organization which does social services also provides charitable services in many others areas outside of social services. While part of its activities clearly falls within the mandate of NCSS, NCSS does not have the expertise to evaluate its programs that are not social services, Consequently, the application is sent to the IRAS for registration as an IPC.

Another example of this multiple purpose charity would be charitable foundations which make grants to all fields of charity. The IPC registration would be handled directly by the IRAS. China may want to follow this precedent of having the tax authorities deal directly with the registration of charitable foundations founded by individual and corporate donors rather than having these registrations subcontracted to an umbrella body or other designated agency.

A social service organization applies to NCSS and is granted IPC status for a period of one year if accepted. After one year, the organization's activities are reviewed and it gets three-year renewal as an IPC. Thereafter, the review period is normally every five years. A social service agency can only obtain and retain its IPC status as long as it becomes and remains a member of NCSS.

There are some significant policy issues in granting IPC status for only a short period with constant reviews. Among them is whether China has the administrative infrastructure to process frequent reviews as well as

new registrations. In Canada, once a charity is granted registration by the tax authorities, it maintains its registered charity status as a matter of right as long as it meets the financial and reporting filing requirements and does not engage in misconduct,

Conclusion

There are many difficult issues for China to consider in drafting its charity legislation. There is much to be learned by looking at international models. However, there is always the danger of becoming entranced by international models and simply wanting to transplant them to China. If China is to develop a charitable sector which truly meets the needs of its citizens, it must be innovative and adapt foreign concepts to domestic political, cultural, social, economic and fiscal realities. If China does so, it will not only create charity legislation which will serve China. China will have created charity legislation which will serve as an important model to much of the world which is looking for new ways to provide an enabling legal and fiscal environment for emerging economies and progressive societies.