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Legal regulations on charity activities in China and some implications for Viet Nam laws

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History

- Received: 10-4-2023
- Accepted: 15-8-2023
- Published: 30-9-2023

DOI :

<https://doi.org/10.32508/stdjelm.v7i3.1214>



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ABSTRACT

Charity is an activity of mobilizing society's resources for welfare and non-profit purposes. This is also an activity to show the spirit of solidarity and mutual love in accordance with the tradition of the VietNameese nation. However, charity is also a sensitive issue, creating conflicting opinions in society. Therefore, there is a need for a complete legal framework to regulate this issue. In China, philanthropy is also an activity in line with the traditions of the Chinese nation, but this activity is formal, professional, and charities are highly accountable, than VietNam. This is the result of the institutionalization and building of a complete legal framework for the Charity Act since 2016. This shows that China is one step ahead of VietNam in terms of legislative level in matter of charity. Besides, China is a country with a relatively close legal and cultural tradition to VietNam, so this is a good reference channel for VietNam's legislative issues. Within the scope of the article, the authors introduce the background of the 2016 China Charity Law, on the basis of which there is a comparison with the social context of VietNam today. At the same time, the authors analyze some main and outstanding contents of the 2016 China Charity Law to show the perfection of the legal regulations in this country, besides the authors introduce, analyse the current provisions of VietNameese law on charity and calling out some policy implications for VietNameese law. The authors introduce the background of the 2016 Chinese Charity Law, on the basis of which there is a comparison with the social context of VietNam today. At the same time, the authors analyse some main and outstanding contents of the 2016 China Charity Law to show the perfection of the legal regulations in this country, besides the authors introduce, analyse the current provisions of VietNameese law on charity and calling out some policy implications for VietNameese law. The authors introduce the background of the 2016 Chinese Charity Law, on the basis of which there is a comparison with the social context of VietNam today. At the same time, the authors analyze some main and outstanding contents of the 2016 China Charity Law to show the perfection of the legal regulations in this country, besides the authors introduce, analyse the current provisions of VietNameese law on charity and calling out some policy implications for VietNameese law.

Key words: Law on Charity, China, VietNam

INTRODUCTION

Since the 1980s, China has implemented reforms on the mobilization of resources in society for public welfare activities, in which the issue is concerned with creating a reasonable balance between the autonomy of private actors in the use of property for humanitarian purposes in order to promote the public welfare of the State and the issue of this resource being used in a just and appropriate manner promoting the interests of the community¹. The year 2008 is known as “the first year of charities” influenced by two big events promoting charitable activities, raising charity funds to develop strongly, the first is the earthquake in Van Xuyen district (A Ba Autonomous Region, Sichuan Province) and the 2008 Beijing Olympics². In 2008, 14.72 million people became volunteers, this number continued to increase by an average of 31.8% in the

following years, also in 2008, China received goods and funds from domestic and international sources. economy with a total value of 107 billion Yuan, 3.5 times higher than in 2007; 37.1 billion Yuan has been raised from public welfare funds and lotteries, up 4.2% from 2007³. The strong development of the field of charity and fundraising for the purpose of public welfare shows that this is an area that needs to be adjusted and managed by the state with a unified law. Because in addition to the impressive achievements of philanthropy, there are also scandals, which lead to a decline in public trust in charities, charity fundraising activities, in addition to suspicions. suspicions about the issue of charities related to corruption of officials in the Chinese government⁴. From the above situation, at the 11th National People's Congress, some local governments such as Guangdong, Shanghai, Beijing, Huanan... have called for the legalization of the char-

Cite this article : Dung N D, Ha T N Q. **Legal regulations on charity activities in China and some implications for Viet Nam laws.** *Sci. Tech. Dev. J. - Eco. Law Manag.* 2023; 7(3):4672-4684.

ity sector to unify managed according to the motto “from limitation and control to support and encouragement of non-profit organizations” towards mobilizing untapped potential social resources to serve the government’s public welfare goals⁵.

April 2016, After a long wait, the 12th National People’s Congress of the People’s Republic of China officially passed the Charity Law (Charity Law 2016). This Law includes 12 Chapters 112 Articles, it acts as a tool to manage and regulate charitable activities, in addition, some definitions have also been codified such as “charity fundraiser”, “charity fund”, “disclosure of information”. The introduction of the 2016 Law on Charity, which is evaluated by researchers and policy experts, will open up a space for public fundraising for NGOs, “break the monopoly in public fundraising and create competition in charity fundraising”⁶. In addition, the Law is believed to help reallocate China’s philanthropic resources through the liberalization of charity fundraising⁷.

VietNam is a country with a distinctive culture influenced by China, derived from the geographical location and development history of the two countries. The legal systems of the two countries also have certain similarities. In the current social context, charity fundraising activities in VietNam also pose many issues that need to be considered and evaluated. The starting point of charity activities is from our nation’s tradition of mutual love and affection. This is also an activity that has the potential to mobilize great resources in society for humanitarian purposes, but also potentially leads to the risk of social conflict. In VietNam, the historic flood of 2019 that took place in the central region of VietNam can be considered as the year marked by charitable activities and charity fundraising, when individuals organize fundraising (in their own name), including individuals calling for up to 150 billion Dong⁸, but this is only the tip of the iceberg when many other individuals and organizations are also calling for charity during this time. This is also consistent with Cimigo’s research conducted in VietNam showing that more than 50% of the surveyed people have done charity within 12 months, 75% are willing to support charity with money⁹. But the flip side of this humane activity is the controversy about the lack of transparency of individuals doing charity activities, fundraising, and the allocation of money, which also makes VietName society divided into two poles clearly support and not support, potentially risking social conflict. In addition, this is also the cause of the decline in public trust in philanthropic individuals and organizations, which in the long run will affect the mobilization of resources in society for

the purposes of public welfare when the public doubts the transparency of charitable activities and fundraising.

Through the above analysis, it can be seen that the current social situation of VietNam and the context before China’s 2016 Charity Law was born have similarities. Therefore, it is necessary to study the outstanding contents of the 2016 China Law on Charity, thereby providing suggestions for legislative activities in VietNam towards the unified management of charitable activities transparently and efficiently.

RESEARCH METHODS

Qualitative research method is used to clarify the research issues, analyze information from previous studies on the China’s Charity law. At the same time, authors examine the legal regulations of China on the charity act and evaluate the legal rules of VietNam to make recommendations.

In addition, the study also uses a comparative method to compare Chinese and VietName legal regulations on charity, thereby clearly showing the completeness of Chinese law and proposing solutions for the VietName law in the future.

RESULTS

China already has relatively complete legislation on philanthropy at the legal level. This humanitarian activity in China has enjoyed good development, mobilizing great social resources thanks to strict and clear regulations, creating conditions for charities to operate transparently, responsibly and guide them. to act professionally. Currently, VietNam has legal provisions related to charity, but it is not really complete, with the social context before the 2016 Charity Law was born, the cultural and legislative traditions are similar. China’s law on charity is a good comparison and reference channel for VietNam’s legislative policy.

DISCUSS

China’s Law on Charity Activities

General provisions of China’s 2016 Charity Law

China’s 2016 Law on Charity includes provisions on: (1) the definition of charity or public welfare in China; (2) the establishment and management of charitable organizations and charitable trusts, including their properties and operations; (3) regulating the authorization and management of charitable donations and fundraising; and (4) requirements for the disclosure of information by charities to promote greater transparency in this area.

Subjects participating in charity activities

a. Social organization

A social organization under Article 8 of the 2016 Law on Charity is a legally established non-profit organization that meets the conditions specified in this Law and aims to carry out charitable activities in society. China's social organizations include foundations, social groups, and social service organizations (formerly known as private non-business units). A social group is a type of membership organization based on human social relationships. Private non-enterprises (social service organizations) are social agencies established by the private sector; they differ from social groups and foundations in that they are a type of entity that directly provides various social services.

Social organizations fill gaps and fill gaps in the public sectors by integrating and mobilizing social resources and by providing social services. At present, China's social organizations cover many fields, including poverty alleviation, support for the elderly and orphans, care for the sick, helping the disabled, disaster relief, education and training, scientific education and protection of culture, health, sports and the environment.

Within the framework of the 2016 Charity Law, charities are required to have an identifier. In the case of foundations, social groups and social service organizations established before the enactment of the Charitable Law, can only be recognized as a charity after applying for recognition.

b. Volunteers and volunteer service

According to Article 61 of the 2016 Charity Law and the Volunteer Service Regulations that took effect on December 1st 2017, voluntary service refers to: "public service provided by charities. volunteers, voluntary service organizations and other organizations voluntarily and free of charge to society or others for charitable purposes". Charities performing charitable services may provide or employ volunteers to provide such services, and may also commission another organization with expertise in the service to provide such services. those services.

Volunteers are recruited through public announcements of information related to charitable activities and notice of possible risks in the process of charity activities; The two parties can sign an agreement clarifying the rights and obligations of the parties, specifying information such as content, method and duration of service (Article 64). Besides, volunteers will be trained in professional skills such as medical treatment and rehabilitation or education and training according to standards and rules developed by the State

or industry organizations (Article 63); be arranged to participate in charity activities appropriate to the volunteer's age, education level, skills and physical condition (Article 66); Insurance for personal injury caused by an accident (Article 68) is purchased by a charity organization.

China's Volunteer Service Development Index Report 2016 shows that, at present, China's volunteer service has three main characteristics. First, the per capita volunteer service time and the percentage of professional volunteer service have increased significantly. Second, based on regional comparisons, Beijing and the provinces in East China have a higher index of volunteer service development than elsewhere. Third, China has increased the number of inputs for volunteer service information collection¹⁰.

Currently, the resource registration system has been applied to volunteers in China. Volunteers can register their identification, service skills, length of service, contact information and other basic personal information through the volunteer service information system run by the Ministry of Home Affairs of the State Council of the People's Republic of China for Development. In addition, volunteers can also register through volunteer service organizations.

As of January 25, 2021, according to the statistics of the Ministry of Internal Affairs of China, the number of people registered in the national volunteer service system has exceeded 190 million people¹¹. There were more than 14,000 registered volunteer service organizations and 2.5 billion hours of volunteer service time recorded between 2016 and 2020.

c. Donations and Charity Fundraising

Article 34 of the 2016 Law on Charity defines "charitable contributions" as voluntary and unpaid activities performed by natural, legal and other organizations to raise property for charitable purposes. Article 21 of the 2016 Law on Charity stipulates that "charity fundraising" includes public fundraising activities aimed at the whole society, as well as targeted fundraising activities aimed at specific recipients.

The 2016 Law on Charity also stipulates that the property used for donation must be legal property that the donor has the right to dispose of, including currency, physical property, buildings, securities, equity, intellectual property rights and other tangible and intangible property. Property and goods used for charitable contributions must have a use value and must comply with standards such as safety, health and environmental protection. In case the donated property is a product of the enterprise, the enterprise must be responsible for the quality of the product in accordance with

the law (Article 36). Upon receipt of donated property, the charity receiving the donation issues a donation receipt to the donor, either printed or supervised by the Department of Finance. Receipts must include the donor information, the type and amount of property donated, the name of the charity, the name of the person responsible, date of receipt and other information. Where donors remain anonymous or refuse to receive receipts for donations, the charity will keep relevant records (Article 38). During the donation process, do not use advertising for tobacco products and charity donations in any way may not be used to promote products and items that are strictly prohibited by law. prohibited (Article 40).

China's charity donation report 2016, issued by the China Federation of Voluntary Services, shows that China's social donations are mainly focused on the fields of education, health, poverty reduction and development. Corporate contributions (which make up the majority of total contributions) reached 65.2%, while individual contributions were approximately 21.09% (of which 35 of China's most famous philanthropists donated more than RMB 100 million each.) However, it is the Chinese people who are at the core of the total amount of individual donations, reaching 9 billion yuan in 2016, up from 7.5 billion yuan in 2015, an increase of about 20 %¹².

It should be noted that China now has stricter restrictions on fundraising activities by social organizations. Article 22 of the 2016 Law on Charity stipulates that only charities that are eligible to raise public funds are allowed to conduct such activities (with a Certificate of Public Fundraising). Furthermore, with online fundraising methods (through the internet), China has developed a charity information platform, whereby all relevant inputs will be published, according to the designation. of the Ministry of the Interior of the State Council (Article 23). Currently, there are 21 approved online platforms for fundraising such as ByteDance charity platform, Xiaomi charity platform, Bilibili charity platform, 360 charity platform, Mango TV charity platform, etc. charity Ping An; Qinqing gongyi; Tencent Charity, Taobao Charity, Weibo Charity, Jingdong Charity, Baidu Charity, Xinhua Charity, Gongyibao, United for Charity, Qingsongchou, China Foundation Center and Ant Financial... According to a report by China's Ministry of Internal Affairs, from January to June 2018, 992 organizations from Charity participated in online fundraising on 11 platforms, posting 11,000 calls for donations for 10,103 projects. 3.57 billion individuals have raised a total of 980 million yuan for these

projects, providing an average of nearly 100,000 yuan per project¹³.

d. Charitable trusts

According to the China Charity Foundation Development Report 2022, the number of recorded charitable trusts in China has reached 1,184 at the end of 2022, with a net asset value exceeding 5.16 billion yuan. (767.7 million USD). According to the report, 392 new charitable trusts have been applied for by 2022 — a record high of 76.24% year-on-year, signaling China's acceleration in charitable trust development¹⁴.

Besides quantity, the quality of trusts has also improved, according to the report, with an increasing number of base trusts, more diverse needs and purposes, and more standardized charity fund management.

Charitable funds continue to benefit society, covering a wide range of areas and themes in philanthropy. While education and poverty alleviation remain the areas of greatest interest, shared prosperity and rural revitalization have also received a larger inflow of money. In addition, trust companies and charities continue to explore more innovative approaches, such as expanding source channels and diversifying types of trustees.

Features of Charitable Trusts

“Charity trust fund” under Article 44 is a trust of the public interest, which is the trustor legally entrust their assets to the trustee for charitable purposes, and the trustee, according to the wishes of the trustor and on behalf of the trustor, manages and disposes of the property to perform charitable activities. The general structure of a charitable trust is shown in Figure 1.

From the above definition, it can be seen that a charitable trust will have many characteristics, in which these funds operate for charitable purposes the most important feature. Accordingly, Article 3 of the Law on Charity 2016 defines charitable purposes as activities for the public benefit carried out voluntarily by natural, legal persons or organizations through the donation of property, provision of services, etc. or other forms, including:

- (1) help the poor;
- (2) helping the elderly, orphans, sick, disabled and special care;
- (3) relief damage caused by natural disasters, accidents, public health incidents and other emergencies;
- (4) promote the development of education, science, culture, health, sports and other causes;
- (5) prevent and reduce pollution and other public hazards, while protecting and improving the natural environment;

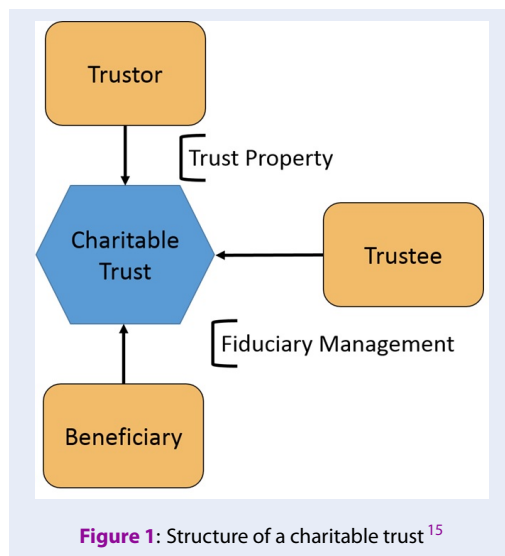


Figure 1: Structure of a charitable trust¹⁵

(6) Other public welfare activities in accordance with the Law on Charity.

Thus, the establishment of charitable trusts for the purpose of serving the public interest is the most important feature of these funds. The term "public interest" differs from "private interest" in that it refers to the interests of non-specific groups. Since a charitable trust is established for charitable purposes, the trust's assets and proceeds from the trust must be used for charitable purposes.

Non-specific beneficiaries are another important feature of charitable trusts, a quality that distinguishes them from other trusts. The charity trust contract only stipulates the status and scope of the beneficiaries, while the beneficiaries are determined by the trustee. This way, all such trusts will work efficiently. The Charity Law clearly stipulates that the trustee of a charity fund can only be a charity organization or a trust company. Currently, charities and trust companies often work together in the best interests of the charities they are responsible for administering.

Composition and operation of charitable trusts

Charitable trusts consist of a trustor, a trustee, and a beneficiary. Sometimes they also include supervisor, custodians, public welfare project executors, investment managers and other stakeholders. The composition and operation of charitable trusts are illustrated in Figure 2.

The trustor must be a natural or juridical person of full civil capacity, or a legally formed organization, and there is no limitation on the number of trustees or the amount of the trust's assets.

Trustees play an important role in charitable trusts. The trustee can only be a charity or a trust company.

A charity is a legal entity registered or recognized as a charity under the provisions of the Word Law. The trust company is a professional financial institution approved by the China Banking Regulatory Commission (CRC) and currently works with trusts.

Charities and trusts differ in their roles as trustees: (i) the two types of organizations are legal entities with different legal status; (ii) They are regulated by different regulatory bodies. If the trust company acts as a trustee of a charitable trust, it will be subject to supervision by the Ministry of Internal Affairs and the China Banking Regulatory Commission. If a charity acts as a trustee of the charity, it is also supervised by the Ministry of the Interior, but in a different department; (iii) Both have their own advantages. Charities excel at undertaking charitable projects and amassing social influence, while trusts perform better at managing assets. Therefore, Trust companies are often employed as investment managers for the charity, while charities often act as trustees. Nonprofits are often employed as project executors in cases where trust companies are serving as trustees.

The beneficiary can be a natural person, legal person or organization and the trustee may not designate any person with an interest in relation to the trustee or the trustee as the beneficiary.

Disclosure of information about charity activities

Article 69(1) of the 2016 Charity Law provides that government agencies from the district level and above will establish a system of charity information collection and disclosure. The Departments/Departments of Home Affairs will publish charity information to the public in a timely manner through a unified information platform, as well as provide a free charity disclosure service. Charities and their trustees will be required to disclose charity information on the platform specified above. The law also provides that these governments are responsible for the collection and disclosure of charitable information. All of the above obligations will be performed by the respective Department/Department of Home Affairs together with the charities and its trustees.

Charity information collection and disclosure systems involve coordination between Departments of Home Affairs, Bureau of Statistics and other relevant government agencies. These systems not only help regulate and guide the disclosure of information by charities, but also ensure their transparency. Once a system for collecting and disclosing charity information is in place, the Departments/Departments of Home Affairs will begin to build the necessary foundation for charity information disclosure. They have built disclosure

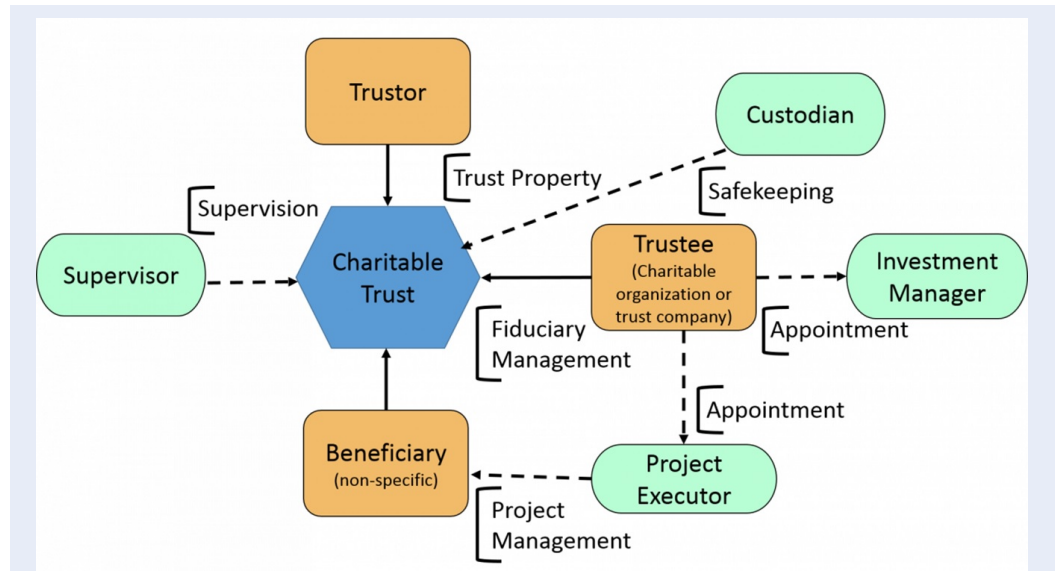


Figure 2: Remarks: A solid arrow standards for a mandatory participant while a dotted arrow indicates a possible related party¹⁵.

platforms with different functions to publicize charity information and statistics. However, these platforms publish information sporadically and cannot guarantee the integrity, professionalism, authenticity, or timeliness of the published information. Therefore, it is necessary to build a combined information disclosure platform, unique to allow the public to more easily find charity information and to enable agencies to collect and analyze data, conduct investigations, and develop policies on the charity sector. On September 4th 2017, “Charity China” (cszg365.com), a nationwide charity disclosure platform, was officially launched to the public. This platform was built by the Ministry of the Interior. It meets the requirement in the Charity Act that charity participants, charitable organizations and trustees disclose charity information to the public. was officially released to the public. This platform was built by the Ministry of the Interior. It meets the requirement in the Charity Act that charity participants, charitable organizations and trustees disclose charity information to the public. This platform was built by the Ministry of the Interior. It meets the requirement in the Charity Act that charity participants, charitable organizations and trustees disclose charity information to the public.

In order to be transparent in the activities of charities, the 2016 Law on Charity requires that these organizations must publish their annual operation reports and financial and accounting reports every year.

Financial accounting reports of charities with public fundraising information must be audited (Article 72). Charities with public donation certificates must periodically publicize their fundraising and charitable projects. In case the crowdfunding period exceeds 6 months, specific instances of public fundraising must be reported at least every 3 months and after the fundraising is over, the fundraising summary will be published within 3 months. In case the implementation period of a charity project is over 6 months, the project implementation report must be reported at least once every 3 months and after the project is finished, the overall situation of implementation and use of funds must be publicly disclosed. donated property within 3 months (Article 73). In addition, the charity organization, the trustee of the charity fund is responsible for informing the beneficiary of information such as the amount of the donation, the working process, and the working regulations (Article 75). Information that the 2016 Law on Charity requires Departments/Departments of Home Affairs and other relevant agencies to ensure timely disclosure:

- (1) Registration information of the charity;
- (2) Charity trust records;
- (3) List of charities eligible for crowdfunding;
- (4) List of charities eligible to receive pre-tax receipts for their public benefit donations;
- (5) Details of preferential tax rates, financial support, subsidies and other incentives for charitable activities;

- (6) Information regarding the purchase of services from charities;
- (7) Results of any examination or evaluation of charities or trusts;
- (8) Results of commendation and reward of charity organizations or other organizations and individuals;
- (9) Any other information required by other laws and regulations.

The above charity information is very important for the management and monitoring of charitable activities. In addition, the Departments/Departments of Home Affairs are obliged to publicly notify if they revoke the registration certificates of charities due to violations. To urge departments to carry out their supervisory duties, Article 108 of the 2016 Charity Law provides that if Internal Departments/Departments or officers fail to disclose the requested information, they will be required to correct treated or punished under the Civil Service Act.

However, for information relating to state secrets, trade secrets or personal privacy, as well as information such as names, titles, addresses and contact methods of donors or the charity trustee does not consent to the disclosure, which is not made public (Article 76).

Legal responsibility

When charities do any of the following, the Departments/Departments of Home Affairs will order repairs within a certain period of time; in case of failure to repair within the prescribed time limit, the registration certificate will be revoked and public announcement will be made: (1) Performing non-charitable charitable activities; (2) charitable property is divided, embezzled, seized or misused; (3) Receiving funding with conditions that violate the law or are contrary to social ethics, or conditions attached to beneficiaries that are illegal or contrary to social ethics.

When charities commit any of the following acts, the Departments of Home Affairs will order repairs within a certain period of time; in case of failure to repair within the stated time, the activities are temporarily suspended for a certain period of time and the repairs will be made: (1) Violating Article 14 of the 2016 Charity Law, causing loss of life. charity property exit; (2) Using assets that are not used for investment to invest; (3) Arbitrarily changing the purpose of using the donated property; (4) having an annual spending norm for charity activities or administrative expenses that violate the provisions of Article 60 of the Law on Charity 2016; (5) failure to fulfill the obligation to disclose information as prescribed by law; (6)

failure to submit annual work reports or financial accounting reports, or fundraising plans; (7) Disclosure of sponsor's private personal information, Where charities violate the provisions of this law by disclosing State secrets or trade secrets, they will be sanctioned in accordance with relevant laws. Where a charity organization violates the above regulations and earns illicit profits, the civil service agency has the right to confiscate it; the person directly in charge and other directly responsible persons shall be fined from 20,000 to 200,000 Yuan.

In case the initiation of donation activities involves one of the following acts, the Department/Department of Home Affairs will warn and order the suspension of donation activities; the illegally solicited property is required to be returned to the donor; where it is difficult to return, the Department/Department of Home Affairs collects it and transfers it to other charity organizations for charity; Relevant organizations and individuals shall be fined from 20,000 to 200,000 yuan: (1) An organization or individual that is not eligible for public fundraising raises public funds; (2) misinformation or other means have been used to mislead or instigate fundraising goals; (3) Set targets or indirect targets for units or individuals; (4) Obstructing public order, production and business or people's lives.

In the event that charities fail to issue donors with a receipt for their contributions in accordance with the law, fail to provide volunteers with records of volunteering activities in accordance with the law, or fail to respond in a timely manner. Timely and actively for the donor, the Department/Department of Home Affairs will issue a warning and request repair within a certain period of time; and if the repair is not done within the specified time, the operation is temporarily suspended.

In case a charity commits fraud for tax gain, the tax authority shall investigate and handle it in accordance with law; In serious cases, the Department/Department of Home Affairs revokes the registration certificate and makes a public announcement. When charities engage in or sponsor activities that jeopardize national security or the public interest, the relevant authorities will investigate and make decisions in accordance with the law, and the Department/Department of Home Affairs will revoke the certificate of registration and make a public announcement.

In case the charity trustee has one of the following cases, the Division/Department of Home Affairs shall warn and order rectification within the prescribed

time limit; where there is illegal profit, the Department/Department of Home Affairs confiscated; the person directly in charge and other directly responsible person shall be fined from 20,000 to 200,000 yuan: (1) Using the trust property and proceeds for non-charitable purposes; (2) Failure to report the handling of fiduciary activities and financial positions to civil authorities or to disclosing it to the public.

If in the course of performing a charitable obligation or a third party suffers damage caused by the charity's or volunteer's negligence, the charity organization shall be responsible for compensation in accordance with law; and if the damage was intentionally caused by volunteers or their gross negligence, charities can claim compensation from them. In case in the course of participating in charity activities, the volunteer suffers damage caused by the charity's negligence, the charity organization must be responsible for compensation according to the provisions of law; In case the damage is caused by force majeure, the charity can support the volunteer. In the case of natural persons, When the Departments/Departments of Home Affairs and other relevant agencies at the district level or above, or their officers or public servants, have any of the following situations, the relevant agencies at the higher level or the supervisor will order the repair; where punishment is required, the recruitment and dismissal agency or supervisory authority imposes sanctions against those directly responsible and other persons directly responsible: (1) failing to fulfill the obligation to disclose information as prescribed by law; (2) impose quotas or indirect quotas on fundraising tasks, force the appointment of volunteers or charities; (3) failure to perform supervisory and management duties as prescribed by law; (4) unlawful implementation of administrative coercive measures or administrative sanctions; (5) distributing charitable property, embezzlement, possession or misuse; (6) Other acts of abuse of professional authority, neglect of duties or improper conduct for personal gain.

Current VietNameese law provisions on charitable activities and some policy implications for VietNam

Current regulations of VietNameese law on humanitarian charity

Currently, charitable activities and charity fundraising in VietNam are governed by a number of sub-law documents such as Decree No. 39/2019/ND-CP dated November 25th 2019 of the Government on organization and operation of social funds, charity funds; Decree No. 93/2021 ND-CP dated October

27, 2021 on mobilizing, receiving, distributing and using voluntary contributions from domestic and foreign organizations and individuals to assist in overcoming difficulties due to natural disasters, epidemics and incidents; support patients with critical illnesses. Through the two documents mentioned above, it can be seen that there is no limitation on subjects participating in volunteer activities, be it social funds, charity funds or individuals and organizations with full civil act capacity. can conduct mobilization activities, distribute relief.

So, the establishment and construction of social funds and charity funds will be governed by Decree No. 93/2019. Meanwhile, the process of organizing and mobilizing the distribution of money and aid goods will be governed by Decree 93/2021. However, the scope of regulation of Decree 93/2021 only revolves around epidemics including: Human infectious diseases specified in Article 3 of the Law on Prevention and Control of Infectious Diseases 2007; animal diseases specified in Clause 8, Article 3 of the Law on Veterinary Medicine in 2015 and plant pests and diseases that are declared epidemics according to the provisions of Clause 1, Article 17 of the Law on Plant Protection and Quarantine 2013; Incidents are situations caused by natural disasters or human-caused conditions specified in Clause 1, Article 3 of Decree No. 30/2017/ND-CP dated March 21, 2017 of the Government on regulations on organization and operation of emergency response services. incident deputy, natural disasters and search and rescue and patients with fatal diseases are patients suffering from diseases on the list of dangerous diseases prescribed by the Ministry of Health (Article 3, Decree 93/2021). From the above regulations, it can be seen that in addition to the cases mentioned above, other charitable activities and donations are not covered by this document, so the cases are outside the scope of Decree 93/2021. will be governed by the common law Civil Code 2015.

Decree 93/2021 has developed a relatively complete legal framework for mobilizing and distributing money for charity purposes. In which, volunteering activities are carried out on a voluntary basis to support activities to help overcome the consequences of good ears and diseases, and to support patients of critical illnesses. This is also an activity that is honored and encouraged to create favorable conditions for individuals and organizations to operate (Article 4, Decree 93/2021). This regulation shows the consistent view of our Party and State. On the issue of volunteering, it is to honor and create a favorable legal corridor for literary activities, in accordance with the nation's moral tradition. But besides that, Decree 93/2021 also

prohibits acts of taking advantage of volunteer activities for profit,

For organizations' mobilization, receipt and distribution activities are specified in Chapter II, in which Section 1 provides for organizations participating in mobilizing, receiving, distributing and using voluntary donations. to contribute to overcoming difficulties, natural disasters, epidemics and incidents in the country. The content of this section governs the activities of organizations participating in charitable activities such as the Fatherland Front, the Red Cross Society, the mass media agencies, social funds, charity funds, organizations, businesses... In which, the Decree sets out requirements for volunteering activities to set up a campaign committee (Article 7); regulations on mobilization, reception and distribution time (Article 8); Organizing the receipt and management of contributed funds (Article 9) as well as distribution and use of funding sources (Article 10). In addition, the Decree also stipulates the content of expenditures from the mobilization budget, reporting regime, financial management, requirements on publicity and transparency in the process of mobilization, receipt and distribution (Articles 11, 12, 13, 14). In general, regulations for philanthropic organizations are relatively complete, when organizations mobilize, receive and distribute when these organizations must comply with the financial reporting regime, publicity, transparency in its operations. In addition to being regulated by Decree 93/2021, the activities of organizations are also regulated by other relevant documents such as Decree 93/2019 for Social Funds, Charity Funds, and the Red Cross Law 2008, the VietNam Fatherland Front Law 2015... The contents of these documents all have requirements on publicity, transparency and accountability. distribution (Articles 11, 12, 13, 14). In general, regulations for philanthropic organizations are relatively complete, when organizations mobilize, receive and distribute when these organizations must comply with the financial reporting regime, publicity, transparency in its operations. In addition to being regulated by Decree 93/2021, the activities of organizations are also regulated by other relevant documents such as Decree 93/2019 for Social Funds, Charity Funds, and the Red Cross Law 2008, the VietNam Fatherland Front Law 2015... The contents of these documents all have requirements on publicity, transparency and accountability. distribution (Articles 11, 12, 13, 14). In general, regulations for philanthropic organizations are relatively complete, when organizations mobilize, receive and distribute when these organizations must

comply with the financial reporting regime, publicity, transparency in its operations. In addition to being regulated by Decree 93/2021, the activities of organizations are also regulated by other relevant documents such as Decree 93/2019 for Social Funds, Charity Funds, and the Red Cross Law. 2008, the VietNam Fatherland Front Law 2015... The contents of these documents all have requirements on publicity, transparency and accountability. distribution when these organizations must comply with the financial reporting regime, publicity and transparency in their operations. In addition to being regulated by Decree 93/2021, the activities of organizations are also regulated by other relevant documents such as Decree 93/2019 for Social Funds, Charity Funds, and the Red Cross Law 2008, the VietNam Fatherland Front Law 2015... The contents of these documents all have requirements on publicity, transparency and accountability. distribution when these organizations must comply with the financial reporting regime, publicity and transparency in their operations. In addition to being regulated by Decree 93/2021, the activities of organizations are also regulated by other relevant documents such as Decree 93/2019 for Social Funds, Charity Funds, and the Red Cross Law. 2008, the VietNam Fatherland Front Law 2015... The contents of these documents all have requirements on publicity, transparency and accountability.

For donations, distribution and use of voluntary contributions of individuals are specified in Section 2. This is a remarkable content because charity activities of individuals have appeared a series of shortcomings from the perspective of legal and social, eroding public trust in charitable activities and potentially profiting from this activity¹⁶. In particular, the Decree sets out certain requirements for individuals calling for charity, these requirements (associated with responsibilities) revolve around the purpose of ensuring transparency, publicity as well as ensuring the process of charity. supervision of State agencies and society for individual activities calling for charity. The following requirements can be mentioned: the responsibility to notify in the media and the People's Committee of the commune (in writing) where the individual resides about the purposes, scope, methods and forms of advocacy. , receiving account (for money), receiving location (for in-kind), time of distribution commitment for all sources of conditional and unconditional contributions (Clause 1, Article 17); Responsibility to coordinate with the People's Committee where the support is received in the distribution of support sources (Clause 1, Article 18); Unified responsibility with the organization, individual contributions to have a plan

to implement the distribution (Clause 3, Article 18); Requirements on financial management and disclosure of contributions (Article 19).

Although the Decree basically regulates individual activities calling for charity, but because it is only at the level of the Decree, the content still has many shortcomings such as: there is no regulation on the time to close and open the maximum calling account. how long is multi; In case the individual has notified the People's Committee of the receiving place but does not receive a response, what will be done or some regulations are difficult to implement such as agreeing with the individual or organization contributing on the plan? support is impossible for cases of unconditional support and a large number of contributors... Therefore, for philanthropic activities of individuals in particular and organizations in general, it is necessary to have a regulatory level text.

Some policy implications for VietNam

According to the study presented above, Vietnam does not currently have a comprehensive legislative framework governing charitable operations. Instead, pertinent rules are dispersed throughout many legal instruments. This results in slack legal enforcement, which may allow for the exploitation of legal loopholes to profit from philanthropic endeavors. This undermines public confidence in humanitarian work and increases social unrest. The study led the authors to draw the following conclusions and recommendations:

Firstly, it is necessary to enact a law on charitable activities. Charity is the mobilization of social resources for welfare purposes. As mentioned, VietNam does not have regulations on this activity at the legal level. International experience shows that a number of countries with advanced legislation in the world already have charity laws, even very early (As the UK has since 1961). For China, the introduction of the Law on Charity has created a corridor and legal space for organizations and individuals to participate in charity activities, both mobilizing social resources, and transparently operating sensitive activities. this feeling. In VietNam, it is estimated that there are millions of small and medium-sized voluntary organizations operating in the gray area¹⁷, in addition, in VietNam today, along with the traditional way of doing charity, there have appeared many new methods and tools for charity such as social enterprises, impact investing, online fundraising, admin social...¹⁸. In addition, some predict that when income increases, people will be more interested in the issue of corporate social responsibility¹⁹, on the other hand, there

is also an opinion that volunteering activities in VietNam cannot be imitated like abroad, so it may not be suitable for VietNameese customs and beliefs²⁰. As analyzed, volunteering activities have mobilized great resources in society but also have the potential to create social conflicts, as well as profiteering and lack of transparency. Because of such a complicated nature, if only adjusting at the level of the Decree will not show its importance and not be able to regulate this activity. Therefore, at the level of general suggestions on improving the law, it is advisable to develop a document at the legal level regulating volunteering activities. But while China's model of philanthropic activity legislation is one worth considering, VietNam's existing social situations must be taken into account when developing legal regulations.

Secondly, expand the connotation of the word charity in the provisions of the law. According to the provisions of Decree 93/2021/ND-CP, the scope of regulation of this document is limited to the scope of support for difficulties caused by natural disasters, epidemics and incidents; For patients with serious illnesses, the above regulation has put many other support activities outside its scope of regulation, so voluntary activities are outside the scope of the Decree. Decree 93 returns to the general provisions of the Civil Law from the perspective of giving and giving. Therefore, there will be many groups, organizations and volunteer models that are not institutionalized, leading to a lack of support from state agencies, spontaneity, lack of management, and potential risk of profiteering. from this activity leads to the public's confidence in this good act being reduced.

Thirdly, it is necessary to reform the management mechanism for charities. Currently, the activities of voluntary organizations in VietNam have not really promoted their inherent potential. This issue partly comes from the legal basis, and also from the management mechanism for non-profit organizations operating for charity purposes. According to a study by the Ho Chi Minh City Peace and Development Fund, among the factors that create a truly favorable environment for voluntary organizations, the most important legal and regulatory framework is the first. This study assesses that the current management, registration and licensing mechanism for organizations in the charity ecosystem in VietNam is complicated, with many layers of procedures leading to a large number of charitable initiatives. and small and medium-sized volunteering activities are in the "gray zone"²¹. The above fact leads to the need to

change the management mechanism for voluntary organizations, creating a favorable and transparent environment for their activities. In China, the Government has been very successful in creating a suitable and favorable management mechanism from which voluntary organizations in China have had conditions to operate in a transparent and responsible manner¹, this is a successful model worthy of reference for the improvement of charity law in VietNam.

Finally, Vietnam must conduct studies on trust funds and create trust fund regulations to support trust activities generally and trust activities for charity purposes specifically. According to the author's research, China passed a law governing trusts in 2001²². This is unusual because trusts are a special institution that originated in the UK^{23,24}, and China, a socialist legal system nation (influenced by Civil law), passed a law enacting an institution meant to protect the wealth of British aristocrats²⁵. Trust fund institutions are regarded by researchers as "the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence"²⁶. Although resource mobilization for the country's quickly expanding economy and rising demand for asset trusts are both boosted by the efficient operations of trusts²⁷ and trust management firms in China²⁸. As previously said, VietNam is a nation with a legal system and social structure akin to that of China, making it possible to study and create legal guidelines on trust funds to aid in the management of trust funds, charitable giving, and the mobilization of social resources.

CONCLUSION

In terms of legislation and legal reform related to charity, China has taken a big step forward when it passed the Law on Charity, on the legal basis that China's philanthropy has gradually entered the government. regulations, as well as ensuring the transparency and responsibility of the philanthropist. Thanks to that, the public's trust in this act of receiving literature and affection is strengthened and enhanced. VietNam is in a social context similar to China before the introduction of the Law on Charity, so the article has analyzed the highlights, the social context for the introduction of the Law on Charity on the basis of the Law on Charity. The authors have made some recommendations, implying legal policy for VietNam.

CONFLICT OF INTEREST

The authors declare that he has no conflicts of interest.

AUTHORS' CONTRIBUTION

- Nguyen Duy Dung is responsible for the content: Ideation for the article; Abstract, Introduction; Discussion; Conclusion.

- Tran Nguyen Quang Ha is responsible for the content: regulations of China on charity; Discussion; translation.

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Quy định pháp luật về hoạt động từ thiện nhân đạo của Trung Quốc và một số gợi ý đối với pháp luật Việt Nam

Nguyễn Duy Dũng*, Trần Nguyễn Quang Hạ



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TÓM TẮT

Từ thiện là hoạt động huy động nguồn lực của xã hội phục vụ phúc lợi, có mục đích phi lợi nhuận. Đây cũng là hoạt động thể hiện tinh thần tương thân, tương ái phù hợp với truyền thống của dân tộc Việt Nam. Tuy nhiên, từ thiện cũng là vấn đề nhạy cảm, tạo ra những luồng dư luận trái ngược nhau trong xã hội. Do đó cần có một khung pháp lý hoàn thiện điều chỉnh vấn đề này. Tại Trung Quốc, hoạt động từ thiện cũng là hoạt động phù hợp với truyền thống của dân tộc Trung Hoa, tuy nhiên hoạt động này lại mang tính chất chính quy, chuyên nghiệp và các các tổ chức từ thiện có trách nhiệm giải trình cao hơn Việt Nam. Đây là kết quả của việc thể chế hoá, xây dựng một khung pháp lý hoàn chỉnh cấp Đạo luật cho vấn đề từ thiện từ năm 2016. Điều này cho thấy Trung Quốc đã đi trước Việt Nam một bước về trình độ lập pháp trong vấn đề từ thiện. Bên cạnh đó, Trung Quốc là quốc gia có truyền thống văn hoá, pháp lý tương đối gần gũi với Việt Nam, nên đây là kênh tham khảo tốt cho vấn đề lập pháp của Việt Nam. Trong phạm vi bài viết, các tác giả giới thiệu về bối cảnh ra đời của Luật Từ thiện Trung Quốc năm 2016, trên cơ sở đó có sự so sánh với bối cảnh xã hội của Việt Nam hiện nay. Đồng thời, các tác giả phân tích một số nội dung chính, nổi bật của Luật Từ thiện năm 2016 của Trung Quốc nhằm cho thấy mức độ hoàn thiện của quy định pháp luật tại quốc gia này, bên cạnh đó tác giả giới thiệu, phân tích quy định hiện hành của pháp luật Việt Nam về từ thiện và gợi mở một số hàm ý chính sách đối với pháp luật Việt Nam.

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Lịch sử

- Ngày nhận: 10-4-2023
- Ngày chấp nhận: 15-8-2023
- Ngày đăng: 30-9-2023

DOI : <https://doi.org/10.32508/stdjelm.v7i3.1214>



Bản quyền

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Trích dẫn bài báo này: Dũng N D, Hạ T N Q. Quy định pháp luật về hoạt động từ thiện nhân đạo của Trung Quốc và một số gợi ý đối với pháp luật Việt Nam. *Sci. Tech. Dev. J. - Eco. Law Manag.* 2023, 7(3):4672-4684.