Diversifying and Strengthening Regulation of Fundraising and Charitable Solicitation in Asia:

Recent Experience in India, China, Singapore, the Philippines, and Taiwan

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Asia is an exceptionally diverse and vast area. In the sphere of regulation of fundraising and charitable solicitation, however, we are seeing some common elements in recent regulation across a number of countries as domestic and cross-border fundraising and charitable solicitation rapidly gathers speed throughout the region.

Throughout the Asia Pacific region, in general terms and with substantial country differentiation, governments are gradually becoming more accustomed to sharing responsibility for social and human services with the nonprofit sector, and thus gradually becoming more comfortable with the idea that nonprofit organizations need to fundraise and solicit funds for their mission-driven activities.

The new regulation of fundraising and charitable solicitation in a number of countries is thus driven—sometimes in different ways and with different emphases—by both a recognition of the broader role that nonprofits and charities can play, and a continuing concern for maintenance of stability and political control. All these swirling, sometimes contradictory concerns are reflected in the growing regulation of fundraising and charitable solicitation in the region.

In brief, key recent developments in the regulation of fundraising and charitable solicitation in Asia include:

- New moves to drafts laws, regulations or other regulatory documents to project government regulation over the burgeoning area of fundraising and charitable solicitation
- Concern both for domestic fundraising and charitable solicitation and for cross-border fundraising and charitable solicitation transactions, though far more actual activity on the domestic side than on the cross-border donations

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1 This paper represents only my own views and not those of any organization or institution. I am grateful to Nathan Jackson for excellent research assistance and to colleagues in India, China, the Philippines, Taiwan and elsewhere for discussions and materials. The draft prepared for the Brisbane conference is quite preliminary and may not be distributed beyond the conference.
• Increasing concern for the commercial activities of nonprofits, and difficulty in differentiating commercial revenue that might (or should) be considered taxable from mission-oriented revenue that should not be considered taxable

• Increased attention to issues of accountability and transparency, as well as fraudulent or manipulative behavior by some charitable organizations

• Increasing concern for nonprofit fundraising and charitable solicitation that is focused on political or religious causes

• A stronger link, in a number of countries, between fundraising/CS regulation and anti-money laundering mandates relating in significant part to terrorism, and often spurred by international agreements after 2001 intended in part to reduce terrorism finance linked to charitable organizations

• Virtually all of the growing focus on regulation of fundraising and charitable solicitation is at the national level, since most of the countries in the region undertake most such regulatory activity at a national level – but in some key countries, such as China, there is increasing discussion of, and even action on, subnational (i.e. state or provincial) regulation of fundraising and charitable solicitation

As in other areas, the elements of fundraising and charitable solicitation regulation in the Asia Pacific area include a wide array of possible regulatory goals and tools available for governmental use. They include regulation of reporting requirements; sales by nonprofits (and treatment of sales revenues); donations, including cash and anonymous giving; cross-border donative transactions; nonprofit/charitable expenses and reasonableness; expression by nonprofit and charities (including free speech and freedom expression issues); fundraising compensation; pledges and enforcement of pledges; registration of fundraisers; exemptions from charitable solicitation statutes (i.e. for churches, educational institutions, or others); strengthening government enforcement in the area; internet fundraising; broader charitable giving rules (including tax provisions) that affect fundraising and charitable solicitation; unrelated business rules and sales of products; and other tools for regulation.

India

India is a good example of the increasing tendency to impose regulatory restrictions on fundraising and charitable solicitation, the multiple motivations and concerns in doing so, and the multiple tools used in that process. India has recently imposed some constraints relating to fundraising, anonymous donations, and sales of products by charities and, through a broad revision of the Foreign Contribution Registration Act (now FCRA 2010), has imposed some new restrictions on fundraising through that mechanism as well.²

² I am grateful to Sanjay Agarwal, Noshir Dadrawala, and Priya Viswanath for information on fundraising and charitable solicitation developments in India. All information on developments in India is preliminary and is subject to further confirmation for accuracy.
Anonymous Donations

Concern about anonymous donations has been growing for years in India, related both to India’s attempts to comply with international protocols on terrorist finance and money laundering and domestic concerns for political uses of donated funds, and nonprofit accountability. Under Section 115BBC of the Income Tax Act, introduced in 2006, if anonymous donations to an NGO or charitable trust exceed Rs.100,000 per year or 5% of total income (whichever is higher), then a tax of 30% is levied on the anonymous donations. A key reason for this tax-based incentive against anonymous donations is the concern about possible money-laundering and related tax evasion.³

But this provision restricting anonymous donations in fundraising started off even harsher than that. As originally proposed and enacted in early 2006, any anonymous donations to an Indian charitable trust or NGO was liable for tax payment of 30% of the value of the donation (proposed section 115BBC, Finance Bill, 2006, as described in AccountAid capsule 196). Religious organizations, which in India attract sizable anonymous, cash donations, were exempted from the proposed new rule.⁴ In formal terms, according to AccountAid, “anonymous donations are not eligible for deduction from taxable income under 35AC or 80G, as donations need to be itemised in the tax return before deduction can be claimed.”⁵

India’s Finance Minister outlined the government’s reasons for the shift:

“The Standing Committee on Finance has expressed concern that many charitable institutions misuse the provisions of the Income Tax Act. I propose to focus on one misuse, namely, receiving anonymous or pseudonymous donations. Accordingly, I propose that anonymous or pseudonymous donations to wholly charitable institutions will be taxed at the highest marginal rate. Such donations to partly religious and partly charitable institutions/trusts will be taxed only if the donation is specifically for an educational or medical purpose. However, I make it clear that such donations to wholly religious institutions and religious trusts will not be covered by the new provision.”⁶

The shift toward reducing anonymous donations was also connected to concerns about money laundering and terrorism, part of India’s attempt to modernize its regulatory and banking systems and to join the Financial Action Task Force, which was beefed up to combat terrorist finance (including through charitable organizations) in the years after the September 2001 terrorist attacks in the United States. India adopted 49 action points related to FATF’s protocols earlier in this decade as well.

AccountAid, India’s key nonprofit accounting and consulting firm, had a clear reaction to the proposed tax on anonymous donations: “The Minister [of Finance] has dealt a big blow to

³ AccountAid capsules 196, 204, 284.
⁵ AccountAid capsule 196.
the practice of 'gupt daan' [charitable donation] by blocking anonymous donations…. As it is worded, even coin-box collections will attract a tax of 30%. So don't be surprised if you are asked to show your voter card or driving license before dropping loose coins in a hospital collection box! Apparently, the move is targeted at the practice of laundering business funds through charity. NGOs are not likely to be affected, as most of them maintain detailed records of their donors.”

The solution was to require the donor’s identity, and to discourage anonymous cash giving. According to AccountAid, organizations “will be required to maintain a record showing the name and address of the donor [if the donations are to be tax exempt]. Also for their own protection, they may prefer to receive donations through account payee cheques.”

Section 115BBC of the Finance Bill 2006 was enacted as proposed in 2007. But it proved draconian, of course – the choice between all anonymous donations being taxable, or imposing onerous information or payment requirements on those who just want to put money into a donation box provoked opposition from the charitable sector, or just withdrawing from collecting money anonymously. As AccountAid put it, “[i]n 2006, all anonymous donations to charitable organisations became taxable [at] 30%. This included even coin-box collections of 2-5 rupees. Many NGOs withdrew their collection boxes in frustration.”

The NGO community protested. In January 2008, a group of organizations (including such prominent groups as AccountAid, Oxfam, National Foundation for India, and HelpAge India) pressed for a reversal of the shift to taxing anonymous donations, arguing that “[t]he government is trying to curtail crime, but it is a huge problem for people who want to remain anonymous….” So in 2008 the Finance Ministry proposed a more moderate solution. Under this new amendment to Section 115BBC, charitable organizations are exempt on anonymous donations of Rs.100,000 or 5% of total income, whichever is higher.

So, in the example AccountAid provides, an NGO with total income of ten million rupees can report anonymous donations of 500,000 rupees “without any bother of tax.” And “[a] smaller NGO with income of just [500,000 Rupees] can also report anonymous donations of [100,000 Rupees], without any tax…. So go ahead, and tap that shy donor – without any tax implication!”

For some Indian NGOs, which had had to begin removing collection boxes because of concern with the new provision, even that somewhat ameliorated impact was still too onerous.

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7 AccountAid capsule 196. For further discussion, see Sidel, Philanthropy and Law in South Asia update 2007.
8 AccountAid capsule 204.
9 AccountAid capsule 284.
10 Citation.
11 AccountAid capsule 284, Clause 42 of Finance Bill 2009, Proposed amendment to section 115BBC, effective from current Financial Year 2009-10. As described in another source, “Section 115BBC was introduced for the first time in the Finance Act, 2006, to tax anonymous donations to charitable organisations at the maximum marginal rate of 30%. Subsequently, a degree of relief was granted under the Finance (No 2) Act, 2009, that such anonymous donations aggregating up to five years of the total income of an organisation or a sum of Rs1,00,000-whichever is higher-will not be taxed.” NGOs ask for ban on anonymous donations to be repealed, citation.
In June 2010, the respected Executive Secretary of India’s Centre for Advancement of Philanthropy, Noshir Dadrawala, led a coalition of organizations in seeking a repeal of Section 115BBC, even in its amended form.12

Dadrawala and his colleagues sent a petition to the Indian Parliament, noting that “[w]e are of the view that Section 115BBC, even after the amendment made by Finance (No 2) Act 2009, is a deterrent for genuine charitable organisations to mobilise funds for welfare and developmental work from the general public or ordinary citizens who are motivated to give for altruistic and not money laundering reasons…. [A] very large number of genuine charitable organisations and NGOs raise funds through collection boxes and people who put money into these boxes mainly comprise children and ordinary citizens of this country who may have heard about 'black money' but don't have any and contribute to charitable institutions only out of a genuine charitable impulse.” Dadrawala pointed out the especially hard effects on “NGOs which cater to orphans cancer patients, and the mentally disabled [since] these organisations get nearly 30% of their annual donations from charity boxes.”13

A senior official with the well-known national NGO Child Rights and You (CRY) agreed with this assessment: “Since the advent (of the new provisions) to the I-T Act in 2006, we have raised very limited funds through anonymous donations,” noted Kreeanne Rabadi, a CRY regional director. Another NGO leader said that “larger NGOs are affected by the provisions as they receive more anonymous donations, while smaller NGOs may not be affected [as much].”14

Prevention of Money Laundering Act and Disclosure of Funding Sources

2009 changes in the Indian Prevention of Money Laundering Act (PMLA) also had some implications for fundraising and charitable solicitation in India, indicating a broader range of measures to regulate fundraising than merely tightening up on anonymous donations. These amendments were part of India’s commitments to the Financial Action Task Force to try to eliminate terrorist finance through charitable organizations, and imposed greater accountability on Indian nonprofits, but could have more far-reaching impact on them as well.

Under the 2009 PMLA amendments, nonprofit companies, charitable trusts, NGOs, and societies were brought within the scope of the Act as part of a “global commitment to account for all finance flows.”15 Under the PMLA’s requirements, these nonprofit and charitable groups would “not only have to disclose the source of their funds, but also be scrutinized for large monetary transactions.” Earlier, the PMLA had applied primarily to banking and financing institutions, with expansion to money transfer organizations. Under the PMLA, the nonprofits and charities subject to the Act would need to observe the tightened post-September 11 “know your customer” provisions and provide disclosure where required.

12 NGOs ask for ban on anonymous donations to be repealed, citation.
13 Citation.
14 http://www.moneylife.in/article/78/6717.html.
Some supported this expansion of regulation. “Money laundering in India [is] rampant through NGOs and charitable trusts,” noted a Mumbai lawyer. “The majority of industrialists and even some top politicians [have been] using NGOs to launder their black money back into the country. The amendment would prove an effective tool in the hands of authorities and would take the veil off the racket…. Earlier, the NPOs were not forced to disclose the source of their funds, except in some specific cases.” Now, in addition to the know your customer rules and required disclosures, “[i]f the donation is too large and the authorities call on the organization to know the source of funding, then it cannot use the excuse that it had come from an unknown source.”[16] [Accountability and disclosure issues to be added]

Sales of Products and Fees for Provision of Services for Fundraising Purposes

Another set of developments potentially affecting fundraising and charitable solicitation in India began with a decision by the Indian Supreme Court in 2007. In Commissioner of Income Tax v. Gujarat Maritime Board (Appeal (Civil 5656 2007),[17] the Supreme Court ruled that the Maritime Board – originally a statutory body serving a public function whose previous status as a “local authority” had been nullified by legislation – qualified as a “charitable” institution under the Income Tax Act, its income from rentals, stevedoring and other activities was used for public purposes, and thus that business income was not subject to taxation.

In the words of the Supreme Court, the “Gujarat Maritime Board is established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive…. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, … [since the] Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor port[s] in the State of Gujarat … [t]herefore, they are entitled to be registered as [a] ‘Charitable Trust’ under Section 12A of the 1961 [Income Tax] Act.”[18]

That decision was regarded by many as an over-expansion of the definition of a charitable institution, and it lead to a reaction – an amendment of the Income Tax Act in 2008 that implicates fundraising and the sale of products by charitable institutions. Under the [new/amended] section 2(15) of the Act, if a charity has annual receipts exceeding one million rupees (10 lakh) from the sale of products or from fees from provision of services, then it will lose its charitable exemption from taxation.[19]

These shifts have complicated revenue production and fundraising for some Indian charities. And there are some limitations. A key Indian nonprofit regulatory specialist describes the situation as follows: “This restraint does not apply to charities focusing on health services, education or working for the poor (traditional understanding of charity). It applies to modern charities which are sometimes difficult to distinguish from commercial enterprise. This change was made when a transport corporation managed to convince the Supreme Court that it was a

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[16] Id.
[18] Id.
charity serving a publicly useful purpose! To limit the tax implication of this for genuine charities, we are encouraging them to spin off the 'business units' as separate non-exempt trusts/NPOs."  

Despite having outlined these various new restrictions on fundraising and charitable solicitation in India, it is important to note that India remains relatively free for charitable fundraising. As one knowledgeable specialist puts it, “[i]n India organisations may fund raise in every creative and innovative way as long as it is not immoral or illegal (e.g: gambling etc.). There are no specific rules setting limits on fundraising, allowable use of fundraising receipts, regulation of campaigns, hawkers, advertising, expenses, etc. associated with fundraising.” Nonetheless, over time, the situation in India appears to be shifting toward greater regulation and restriction on fundraising and charitable solicitation on a number of fronts.  

**China**

The situation in China is, of course, quite different from India. The nonprofit community is both newer and more fragile, often with less space available from political authorities for their activities, especially advocacy work. The domestic funding community is growing rapidly, now with over 2,000 private foundations dotting the country, from a base of a few government-affiliated foundations in the 1990s and the early part of this decade. Fundraising and charitable solicitation regulation has not kept pace with these developments, but is under close attention from the government in Beijing, and in particular the Ministry of Civil Affairs, which is largely responsible for this area of legislation.

**Statutory Development**

The basic statutes have little to say about fundraising thus far. The *Regulations on the Registration and Management of Social Organizations* (1999), for example, require that social organizations have a source (or sources) of funds, and that funds be lawfully obtained, without seizure, division or diversion by other institutions or individuals, and used for organizational purposes (Art. 29). “Contributions or donations to social organisations must be used in compliance with the principles and areas of work laid down in the organisation’s charter, and in compliance with purposes, methods and timescale as agreed with donors. Social organisations must report to their professional leading unit on the receipt and use of contributions and donations, and must use appropriate means of publicising relevant information to society at large.” (Art. 29)  

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20 Private discussion.
21 And, of course, there are some older regulations as well. To cite only one example, “the Bombay Entertainment Duty Act 1923 provides for levy of duty on ‘any payment made by way of Sponsorship amount for a program’. Technically ‘Sponsorship’ cannot be equated to ‘Donation’. Donation is voluntary and sans quid pro o. Sponsorship provides support similar to a benefactor but in exchange of advertisement. In fact, Sponsorship is a form of advertisement in which companies pay to be associated with a cause. It’s a form of Cause Related Marketing. Also, for companies, Sponsorship is a 100% write off as advertising expense. A donation would give them only 50% deduction u/s 80G of the Income Tax Act.” Discussion with Mumbai-based specialist.
In addition, “[s]ocial organisations must comply with the national financial management system and regulations, and accept the supervision of the Ministry of Finance; if an organisation’s capital resources also derive from national subsidies or public contributions and donations it must also accept the supervision of the National Audit Office.” (Art. 30) Sanctions are available if organizations engage in “profit seeking activities” or if contributions or donations are seized, divided up, or diverted (Art. 33). Otherwise there is virtually nothing on fundraising and charitable solicitation. Regulations on other forms of nonprofit organizations say little more on fundraising.23

Separately from the organizational statutes, however, China did adopt a Public Welfare Donation Law in 1999, “to encourage donations; standardize the behavior of donors and recipients; protect the legal rights of donors, recipients and beneficiaries; and promote the development of public welfare undertakings.” (Art. 1)24 The Public Welfare Donation Law adopted some basic principles that are likely to be carried forward in future Chinese regulation of this topic – an area now under debate in China. Those principles include the following:

- “Donations should be used in a manner respecting the wishes of the donor, and conforming with the end purpose of public welfare. Donated property may not be diverted to other purposes.” (Art. 5)

- “Donors should abide by laws and regulations; they should not violate social mores, and should not work against the public interest, or any other people's lawful interests.” (Art. 6)

- “Donations received by public welfare organisations add to the value of society, and therefore receive the protection of the nation's laws from seizure, embezzlement, or damage by any work unit or individual.” (Art. 7)

Beyond such principles, the Public Welfare Donation Law permitted government organizations at the county level or above to accept and use donations on the occurrence of a natural disaster or when asked by donors (Art. 11). It provided donors with certain rights as well as obligations: “Donors may specify the quality, amount, and use of donations by means of contracts with recipients. The donor has the right to decide the type, use, and amount of the donation. Donors should fulfill the donation agreement, and according to the period of time and fashion arranged in the contract transfer the donated property to the recipient.” (Art. 12) Further rights were provided to donors to construction projects (Art. 13). Brief provisions referring to other government bodies and regulations are made to help facilitate donations from abroad and from overseas Chinese (Arts. 14, 15).

For recipients, the Public Welfare Donation Law provides that recipients should receipt and record donations (Art. 16); “make use of donations and financial aid in activities and undertakings that conform with the specified purpose,” including prompt use of disaster donations” (Art. 17); seek consent of donors before changing the use of donations (Art. 18);
report to the government on donations as required by relevant regulation and submit to audits (Art. 20); respond truthfully to donor’s inquiries about the use of donations (Art. 21); “make public the conditions, use and management of donations and must accept the supervision of society (jieshou shehui jiandu)” (Art. 22). On administrative costs, the Law provides that “employees’ salaries and office expenses should be derived from interest on donations and other income, and be commensurate with standards specified by the government.” (Art. 23) If recipients change the nature or use of donations without donor permission, they may be sanctioned by relevant government authorities or the funds seized for use by another organization (Art. 28). Other violations may bring criminal penalties (Arts. 29, 30)

On incentives for giving, at this early stage in 1999, the government provided only that “Corporations and other enterprises that … make donations to public welfare undertakings, will … enjoy business tax benefits,” (Art. 24), and that “Individuals and private small businesses (gongshanghu) that … make donations to public welfare undertakings, will … enjoy personal [individual] tax benefits.” (Art. 25) Chinese tax law and regulation has, in the years since 1999, begun the process of spelling out such incentives in increasingly generous ways.25

Regulations on the management of foundations that were adopted in 2004 (and now under revision as well) provided some very preliminary rules for fundraising and use of raised funds by a certain type of public fundraising foundation.26 Those public fundraising foundations must begin with a minimum capital of 8 million Chinese yuan for national public fundraising foundations and 4 million Chinese yuan for local public fundraising foundations (Art. 8(2)). And the Regulations provided some basic principles for the use of funds raised:

- “When a foundation engages in fundraising or receives donations it should be in accordance with its mission and the scope of its activities as stipulated in its charter. Representative bodies of overseas foundations may not engage in fundraising or accept donations within China.” (Art. 25)

- “Public fundraising foundations when engaging in fundraising should make public the activities for which the money raised is intended to be used and details of how it is to be spent.” (Art. 25)

- “Foundations, their donors and beneficiaries enjoy tax benefits as stipulated by law and administrative regulations” – a general provision that has begun to be detailed with further tax regulation (Art 26)

- “The assets of a foundation and its other sources of income are protected under the law. No work unit or individual may take a portion or the whole thereof or misuse them in any way. A foundation should use its assets in accordance with its mission as stipulated in its charter and within the scope of public benefit activities so laid down. Donations that are given with an accompanying agreement giving clear instructions for their use must be used in line with the agreement. If a foundation receives donations in kind that

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25 Citation and more in publication version.
it is impossible to use in accordance with their mission, they may auction or otherwise sell of the items and use the money raised to fulfil the purpose of the donation (Art 27)

- “A foundation should employ legal, safe and effective means to ensure that their original funds maintain their value or grow” (Art. 28)

- “Donors have the right to make inquiries to a foundation about how their donation was used and how it is being managed and offer opinions and suggestions concerning this. Foundations should respond to such inquiries in a timely and truthful fashion. If foundations violate agreements with donors concerning the use of their donations, the donor has the right to demand the foundation follow their agreement or to ask the courts to revoke the donation and annul the agreement” (Art. 39)

Perhaps most important – and most specifically – the 2004 Regulations on the Management of Foundation specified that “[t]he amount … spent annually by public fundraising foundations on the public benefit activities stipulated in their charter must not be less than 70% of the previous year’s income…. A foundation may not allocate more than 10% of its total expenditure to cover staff wages and benefits and overheads.” (Art. 29) These last provisions have proven controversial and difficult for the authorities to enforce.

In general, public fundraising foundations that are licensed at the provincial level may only fundraise within that area. But some such locally-licensed public fundraising foundations indeed do raise funds beyond their provincial (or municipal) borders, and at least one foreign researcher notes that the Ministry of Civil Affairs “is tacitly permitting fund raising across provincial boundaries despite provincial registration.” This is also an issue for drafting of national fundraising regulations or revision of the Public Welfare Donation Law that the Ministry of Civil Affairs is considering.27

The Foundation Regulations are now under review and redrafting, and for good reason – they are general, limited, and have insufficiently facilitated the development of philanthropy in China. In a recent case that involved the difficulty that one well-known public fundraising foundation had in being registered by the government, even the official Chinese news agency Xinhua noted the shortcomings of current legislation and the difficulties that organizations have in undertaking fundraising. “The Jet Li One Foundation had been operating as a special program under the Red Cross Society of China,” wrote Xinhua, “since China does not have laws or regulations which allow the establishment of non-governmental public fund-raising foundations.”28

Beyond these developments, the Charity Law – long in draft and not yet adopted – is expected to include some brief provisions on fundraising and charitable solicitation as well.

[Additional information on implementing regulations and other regulatory documents]

27 Cite to Karla Simon.
The result of the burgeoning levels of nonprofit activities in China, and the preliminary regulatory framework and policies on fundraising adopted by the government, is a situation in which many nonprofit organizations are carrying out extensive fundraising that is not necessarily either permitted or prohibited by formal regulation. For larger charitable institutions that derive some of their funds from domestic or overseas corporates or from foundations or other NGOs, as most do, this can be a problem, since they need some clarity about their legal rights and obligations – and tax consequences. A 2010 survey by Corporate Citizenship in Action (CCIA), a Beijing-based group, identified some of these problems, including unwillingness to give without government tacit or formal approval and, for the nonprofit community, tight control over many aspects of their operations, including fundraising, by the government.\(^{29}\)

The Drafting of National Fundraising Regulations and Revision of the Public Welfare Donation Law

The Ministry of Civil Affairs is currently drafting national fundraising regulations, and may also amend the 1998 Public Welfare Donation Law.

[More information to be added to publication draft and discussed at conference]

The Emergence of Provincial and Local Regulation

Until national fundraising regulations are promulgated and (or) the Public Welfare Donation Law is revised, the focus of activity for fundraising and charitable solicitation regulation has moved to the provincial and municipal levels. With the full authorization and consent of the Ministry of Civil Affairs and other government agencies, a number of Chinese provinces and municipalities have begun drafting charity, nonprofit and even fundraising regulations that are required to be consistent with national law and regulations and that would be applicable within those provincial or municipal jurisdictions.

Shenzhen and Jiangsu have been two of the leaders in these efforts, with Shenzhen being particularly interesting because its local reforms of charitable regulation come under a formal agreement with the Ministry of Civil Affairs in which Shenzhen will serve as a trial area for charity law reform (民政部深圳市人民政府推进民政事业综合配套改革合作协议).

Several provinces and municipalities have begun drafting regulations that specifically focus on fundraising and charitable solicitation. Perhaps the most detailed (or the most far along) of these are the regulations drafted in Hunan Province. The draft provincial Regulations on Solicitation of Donations (湖南省募捐管理条例 (征求意见稿)) are considerably more detailed than the few national provisions available in the Public Welfare Donation Law or the organizational statutes.

The draft Hunan donations regulations, for example, providing direct guidance on what purposes funds can be raised for; the types of organizations allowed to solicit donations; a

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\(^{29}\) Ivan Zhai, *Beijing ‘keeps firm hand on NGO finances,’* South China Morning Post, March 7, 2011, at http://www.scmp.com/portal/site/SCMP/menuitem.2af62ecb329d3d7733492d9253a0a0a0/?vgnextoid=d01344638db8e210VgnVCM100000360a0a0RCRD&ss=China&ss=News.
requirement of a “solicitation plan” be reported to the relevant civil affairs agency at the local level and released to the public; some provisions for donor’s rights and obligations; provisions on use of donations and recipients; limitations on permissible solicitation costs (by activity, not by amount); supervision by government agencies, the media, and donors; a general provision on tax incentives that refers back to national regulations without breaking new ground at the provincial level; sanctions for unauthorized solicitation and unauthorized use of donations; and other provisions. 30 The Hunan solicitation regulations are an important harbinger of fundraising regulatory developments in China, though national rules and other local rules are likely to differ in a number of ways. The Hunan regulations are reprinted in Chinese and in English translation at Appendix A.

[More on provincial/municipal regulation of fundraising and charitable solicitation in the publication version]

Singapore

Singapore has clear, detailed and firm rules on fundraising that are included in its charity law. 31 In 2007, Singapore published regulations for its charitable institutions, designated as “institution[s] of a public character,” that included fundraising rules. Those rules embodied a “duty to donors” requiring that an institution of a public character “conducting a fundraising appeal shall ensure that … any information provided to donors or to the general public is accurate and not misleading,” (sec. 8(1)(a)) and requiring the disclosure of the name of the charitable institution, the purpose of the donation, whether a commercial fundraiser has been utilized (sec. 8(1)(b)), and requiring that “any information relating to donors is kept confidential, and no information relating to a donor is given to any other person without the consent of the donor.” (sec. 8(1)(c)).

The 2007 regulations also permitted (but did not require) the relevant charitable sector administrator 32 to authorize organizations raising funds to issue tax deduction receipts (sec. 9(1)), and prescribing the form and language to be used in that receipt (sec. 9(3)). The provision seems to have given the charitable sector authorities significant discretion in which institutions may be authorized to provide tax deduction receipts, though the charitable sector administrator is responsible for issues such tax deduction receipts where the organization itself has not be authorized to do so (sec. 9(8)).

The 2007 regulations also imposed a duty on charitable organizations to maintain records on donations received (sec. 10), and required recipients “to use any donation received by it in accordance with this regulation,” including “any specified lawful purpose” named by the donor (sec. 11(1)(2)). If no purpose is communicated, such donations “may be used to fund any activity carried out by the institution of a public character … that is exclusively beneficial to the community in Singapore as a whole and is not confined to sectional interests or groups.

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32 As defined in sec. 2 of the 2007 Regulations, the relevant charitable sector administrator may be the [charity commissioner – check] or other government official designated in particular sectors of work.
of persons based on race, belief or religion; and … that meets its objectives under its governing instruments and the objectives of the Sector Administrator.” (sec. 11(4))

Organizations are also required to maintain specified accounting records for five years (sec. 12), and the regulations provide the charitable sector administrator with power to inspect donation and accounting records (sec. 13).

For high-receipt donee organizations raising more than $1 million Singapore “from any single fund-raising appeal” (sec. 14), such groups are required to “maintain separate financial accounts in respect of that fund-raising appeal; and … at the end of the financial year, disclose on its own Internet website” or the charitable sector administrator’s site, that appeal’s total gross receipts, total expenses, and “the purposes for which the funds raised in the fund-raising appeal were used or will be used.” (sec. 14)

Finally, and perhaps most controversially, the 2007 fundraising regulations specify that the total fund-raising and sponsorship expenses of an institution of a public character for the financial year commencing on or after 1st July 2006, and for every subsequent financial year, shall not exceed 30% of the total gross receipts from fund-raising and sponsorships for that financial year (sec. 15(1)), providing a formula for calculation of the maximum ratio, subject to additional rules that may be issued.

Audits are also required for institutions of a public character, including an auditor’s report (also to be supplied to the relevant charitable sector administrator) on “the use of donation moneys and whether such use is in accordance with the objectives of the institution of a public character [and] the fund-raising and expenditure plans … for the following financial year.” (sec. 16(1)(c )(d)). The auditor’s report is also required to certify “whether the institution of a public character has complied with the requirements of regulation 15 (Fund-raising expenses).” (sec. 17(3)). Large institutions of a public character33 are required to publish its annual report and audited financial statements are published on its own website, or on websites specified by the Commissioner.

The Philippines

More detailed information on fundraising and charitable solicitation regulation in the Philippines will be provided in the publication version of the paper. In general terms, however, the Philippines has long regulated fundraising and charitable solicitation, particularly with a goal to prevent unfair fundraising practices and fraudulent or unscrupulous fundraisers, and in recent years has further enhanced and detailed that regulatory environment.

Philippines fundraising regulation goes back at least to the 1970s. The Solicitation Permit Law (1978), from the Marcos era, required fundraisers to obtain a permit to “solicit or receive contributions for charitable or public welfare purposes” from the then-Department of

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33 Defined as “an institution of a public character with gross annual receipts in each financial year of not less than $10 million [Singapore] in the 2 financial years immediately preceding the current financial year….” Gross annual receipts “include all income, grants, donations, sponsorships and all other receipts of any kind.” (Sec. 19(6)(7))
Social Services and Development, along with reporting requirements as defined by the Department. Violations were punishable by a prison term and/or fine.\(^{34}\)

More recent regulations on public solicitations adopted in 2007 and gazetted in 2008\(^ {35}\) (and which amended 2003 regulations on the subject)\(^ {36}\) expanded the role of the Department of Social Welfare and Development in regulating fundraising and charitable solicitation, bringing virtually all non-governmental, public, education, professional and other organizations within their scope, including foreign fundraisers (IV(1)(2)).

In general terms, the 2008 regulations require permitting for fundraising and charitable solicitation (VI(3)); prohibit solicitation through lotteries, raffles and similar methods where the prize awarded would be drawn from such activity, as well as “all other means contrary to law, public policy and morals,” (3.2) and any solicitation materials “portray[ing] a dehumanizing picture or situation of the intended beneficiary/ies.” (3.3). Beneficiary/recipient groups may not have their names used without consent and a memorandum of agreement specifying the use of funds raised (3.4). Business groups may not obtain fundraising permits, though their welfare arms may (3.5). Individual inurement from funds raised is prohibited (3.7). Funds raised must be deposited in the banking system (4.2), and acknowledged to donors except for specified exceptions (4.3). “Administrative cost for the fund raising activity” may not exceed 15% of proceeds, and “the remaining eighty five percent (85%) shall be utilized entirely for the projects/programs of the targeted beneficiaries” (4.1)

Detailed regulations apply to the permitting process itself, including the requirement of a “work and financial plan stating … the target funds to be generated and its utilization” for public fundraisers (VII(1)(d) and similar board requirements for non-governmental fundraisers. All fundraising materials must carry the “DSWD authority number, coverage and effectivity date.” (5.3(c)) Detailed rules apply to tickets, ballots and cards, raffles and other forms of charitable solicitation.

The 2008 Philippine regulations may be among the most detailed rules on fundraising anywhere in Asia. Yet they are still not considered sufficient to prevent unfair practices and deception in charitable solicitation. A new Public Solicitation Law has been proposed that would supplant the 2008 regulations and is aimed at “protect[ing] the general public from unscrupulous solicitation.”\(^ {37}\)

In specific terms, the proposed Law attacks four key problems: “(1) the need to intensify the monitoring of individuals/organizations/associations who were issued authority to conduct solicitation; (2) the need to religiously monitor the proceeds of the solicited funds to ensure that these are delivered to the intended beneficiaries or are all used for projects for which these are intended for and to protect the general public as well as the beneficiaries from being exploited;

\(^{34}\) Presidential Decree No. 1564 of 1978 (Amending Act No. 4075 otherwise known as Solicitation Permit Law.


(3) the presence of several organizations conducting fund raising activities without the required solicitation permit and (4) the need to increase the penalties or sanctions for violators and/or soliciting fund outside the country.”

The draft Law applies broadly to virtually all kinds of fundraisers, like the 2008 Regulations (sec. 3); diversifies the authority to issue public solicitation permits to provincial governors and mayors as well as the Department of Social Welfare and Development depending on the scope of fundraising (sec. 6); makes clear that permits issued under the law are not valid for fundraising solicitations directed at the millions of Filipinos working abroad (sec. 7); confirms the availability of tax deductions for donors as specified in the national Internal Revenue Code (sec. 10); requires, like the 2008 Regulations, agreements between fundraisers and beneficiaries on the terms of the fundraising project and use of proceeds (sec. 11); maintains the limit of 15% of fundraising proceeds to be used for “the administrative cost of the … fundraising activity or other operations of the agency” (sec. 12); mandates reporting on fundraising activities to the relevant permit agency (sec. 13); provides for a complaint process (secs. 14, 15); and prohibits fundraising without a required permit, beyond the permitted coverage area or mode of solicitation, the use of fake or expired solicitation permits (sec. 16); and provides for imprisonment of up to a year, and/or a fine, and/or banning from solicitation activity for violations of the Law (sec. 17).

Of particular note in the Philippine context is that some fundraising and solicitation practices are covered by self-regulation initiatives such as the Philippine Council for Nonprofit Certification (PCNC), and the Code of Conduct for Development NGOs (Code NGO). [To be discussed further in the publication version of the paper.]

**Taiwan**

Taiwan had some of the earliest regulation of fundraising in Asia. The Republican government promulgated regulations on fundraising in 1942. In 1953, the Kuomintang government revised and re-promulgated Regulations on the Consolidated Fundraising Movement of Donations (May 20, 1953) for application on Taiwan. The 1953 Regulations were basic rules on fundraising intended to apply to all fundraising activities (Art. 1) and to establish broad governmental control over charitable solicitation. The Regulations permitted fundraising abroad and at home for national causes, but limited solicitations for local causes to local areas, with the exception of fundraising after disasters for emergency aid (Art. 2).

Fundraising required government approval. Under Article 3 of the 1953 Regulations, both “purposes” and “methods” of fundraising had to be reported to authorities so that they could be subjected to approval from government agencies responsible for the professional area, i.e. health or education. The idea of dual management thus has its roots quite early, and of course, certainly not only on the mainland. Any fundraising from abroad, however, had to go higher – to

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38 Id.
39 Id.
40 Revised and promulgated as Decree Tai Kuei Tzu No. 2873 of the Executive Yuan No. 42, May 20, 1953.
the national cabinet, the Executive Yuan, for approval. And “[t]hose who undertake any fundraising … without approval should be banned by the administrative and social authority in charge.” (Art. 3)

The 1953 regulations also incorporated requirements to respect donors’ wishes, prohibited disrupting traffic to raise money, prohibited “compulsory donations,” and barred fundraisers from “ask[ing] for rewards from … fundraising.” The rules capped fundraising expenses at five percent of amounts raised up to NTD 150,000, and two percent of amounts raised over NTD 150,000 (Art. 4). And the concern with fundraising pressure continued: Article 5 banned supervisors and administrators from pressuring their colleagues or subordinates, and schools from pressuring their students for donations. Other provisions dealt with the use of public funds for charitable fundraising, and enforcement. [Fundraising regulation in Taiwan between 1953 and 2006, if any]

New fundraising and charity donation regulations were put in place in Taiwan in 2006.\(^{41}\) The Regulations on Charitable Donations for Social Welfare Funds (2006) rules apply to all charitable fundraising for social welfare purposes other than political and religious fund raising (Art. 3), and to fundraising groups that include public schools, social welfare companies, incorporated entities, and other institutions (Art. 4). Funds collected may only be used for social welfare activities, educational & cultural affairs, charitable activities, international humanitarian rescue work, and other approved purposes (Art. 8). Fundraising activities may be carried on for one year before new approvals are required (Art. 12) and all fundraising must be receipted (Art. 16). Government agencies are permitted to accept charitable donations but not to initiate them – except in disaster and international rescue situations (Art. 4).\(^{42}\)

The 2006 regulations echo the 1953 prohibition on pressuring individuals and groups for donations: “[A]ctivities of solicitation for charity donations must not be conducted [in an] “obligatory” fashion, or by any other unwilling [or] forced manner….” (Art. 14). And the 2006 Regulations also echo the 1953 rules on approvals for fundraising: Fundraising activities at the local level must be approved by the relevant city or county government, and those that cross local boundaries are approved by central government agencies (Art. 7). And maximums are continued on fundraising expenses. Expenses are capped (Art. 17) at 15% for donations raised under NT$10 million; at 15% of NT$10 million and 8% of amounts raised over 10 million NTDollars; at those rates plus 8.7% of amounts over NT$100 million; and at 1% of amounts raised over NT$1 billion. Fundraising expenses over NT$10,000 must be paid by check or through account transfers, and not by cash.\(^{43}\)

Funds raised must be used for the purposes for which they were solicited, and if those needs have been satisfied then government approval is needed for other uses of donations (Art. 19). Documentation of fundraising, expenses, and use of donations must be provided to government agencies (Art. 20). Funds must be returned to donors (Art. 22) if the fundraising group is not in an approved statutory category, their activities have not been approved by the relevant government agencies, or such permission has earlier been cancelled by government.

\(^{42}\) Id.
\(^{43}\) Id.
bodies. Finally, the 2006 Regulations provide a variety of administrative sanctions and fines for violations of the rules.\textsuperscript{44}

**Conclusion**

Asia presents a picture of significant diversity in the regulation of fundraising and charitable solicitation. But it is clear that that regulation is increasing across a number of countries in the region. Several have been surveyed here, and other recent developments in other countries could be included as well. In the longer term, domestic nonprofits and charities will hope that the increase in rulemaking on fundraising helps to facilitate charitable donations from the general public, foundations, and other donors, and that it is matched by facilitative developments in tax incentives.

There is reason for caution as well, particularly in countries like India and China, where fundraising and charitable solicitation regulation is certainly a double-edged sword – both facilitating as well as restricting these activities, and helping to channel fundraising and donations in directions governments would prefer them to go. These developments will bear close watching in the years ahead.

\textsuperscript{44} Id. For academic commentary on Taiwanese fundraising regulation, see Liu Yizhong, *The Impact of the Implementation of Public Charitable Collection Regulation on NPOs Fund-Raising* (M.A. thesis, Nanhua University, 2010); Feng Yan, *Regulation and Self-Regulation: The Formation of NPO Accountability*, National Taiwan University, 1991).