

在亚洲扎根您的慈善事业
是否设立慈善架构及在何处设立

超过

75%

亚太地区慈善基金会在21世纪建立

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绪言

世界各地的慈善家采用各种不同的架构形式开展慈善工作。1913年,美国的洛克菲勒家族设立了世界上最早的慈善基金会之一,并一直延续至今。相比之下,麦肯齐·斯科特(MacKenzie Scott)在过去两年里捐出逾100亿美元,但除了她家族办公室的顾问团队之外并没有设立任何正式架构。介于成熟的基金会和直接捐赠之间的新型法律模式日益受到欢迎,例如马克·扎克伯格(Mark Zuckerberg)采用的有限责任公司、埃隆·马斯克(Elon Musk)采用的捐赠者指示基金和他弟弟金布尔·马斯克(Kimble Musk)采用的分散自治组织。

虽然慈善捐赠在亚洲是一种历史悠久的传统,但现代意义上有架构的慈善对亚洲来说相对较新。近几十年来,许多家族已建立基金会或慈善信托,为他们的家族创造文化遗产,并支持本地和全球的慈善倡议。随着越来越多家族参与慈善事业,特别是随着亚洲的私人财富水平不断上升,基金会的数量近年来急剧上升。据哈佛大学的报告显示,2018年,亚太地区的慈善基金会达13,170个,其中75%以上在21世纪建立。¹ 中国的慈善组织数目从2009年的不到2,000个飙升至2022年的超过11,000个。²

¹ 哈佛大学肯尼迪政府学院,2018年,“全球慈善报告:全球基金会行业展望”

² 中国民政部

为何需要设立慈善架构？

世界上大多数知名慈善家都选择建立自己的捐赠架构，有些人甚至设立多个不同的架构实现不同的优先事项，为不同的家族成员服务或最大限度地提升税收效益。然而，视乎不同国家和地区的法律，注册和管理慈善架构可能会非常麻烦、耗时，并产生高昂成本。那么设立慈善架构有何好处？

首先，设立自己的慈善架构可以帮助打造和加强您的家族文化遗产。以家族命名的基金会可将其产生的影响与家族的价值观联系起来。除此之外，即使家族不再发挥积极作用，家族的文化遗产依然可以继续存在。瑞典的诺贝尔基金会就是很好的例子。该基金会最初是根据阿尔弗雷德·诺贝尔(Alfred Nobel)的遗愿创立，目的是资助诺贝尔奖。如今基金会不再接受诺贝尔家族的资助，而是通过有效管理其捐赠基金来提供资金，基金会也由专业团队管理，诺贝尔家族并没有积极参与管理。尽管如此，基金会的影响仍然与该家族的名字和价值观密不可分。

其次，慈善架构可以帮助推动您想要从事的慈善事业。如果您想运作自己的项目及聘请员工，成立基金会可能是最好的选择。在一些国家和地区，慈善机构(如香港的基金会或新加坡的公共慈善机构)也可以成为通过私人 and 公开筹款进行合作的平台。

再者，选择合适的慈善架构有助于慈善资本的长期管理。尽管越来越多的慈善家只希望在有生之年捐赠，但许多人仍然选择留出一部分财富，设立一个永续性的基金会资金池。如果管理和投资得当，这些资产不仅可以长期保值，还可以增值，这意味着基金会会有机会随着时间推移增加每年捐赠量。将投资重点放在符合基金会价值观的项目上的现象也日益普遍。

“设立自己的慈善架构可以帮助打造和加强您的家族文化遗产”

选择合适的地点 — 关键决定因素

设立慈善架构的第一步之一是决定它的所在地。许多慈善家默认选择他们的祖国,但有些人选择其他地方或几个不同的地方。以下是我们认为在为慈善架构选择地点时需要考虑的一些关键因素。

1. 注册

在亚洲,注册基金会或慈善信托基金通常比成立公司要复杂得多。近几十年来,重商观念推动了本地区的快速增长,关于设立公司的法律变得更加友好。但在一些国家和地区注册基金会可能需要数年时间,还可能需获得不同政府机构的批准。

需要考虑的重要问题:注册的要求是什么?注册需要多长时间?注册成本是多少?对注册资本是否有要求?

2. 治理

慈善架构的治理架构决定了运作所需的资源和工作。为了提高公众对慈善事业的信任,一些亚洲国家和地区对慈善架构的治理进行了严格的规范。需要考虑的一个关键方面是,慈善家及其家族能否以及如何确保他们能够在有专家和其他利益相关者参与的情况下继续引导架构的发展方向。

需要考虑的重要问题:您和您的家族对参与治理的要求是什么?在您所选择的司法管辖区内,是否有任何与您的计划相冲突的董事会组成要求?是否有对全职雇员人数的要求?向监管部门报告的要求是什么?

3. 活动

大多数慈善家自然倾向于在其慈善架构所能开展的活动较少受到限制国家和地区设立架构。另一个考虑因素是,由于慈善架构通常享受监管机构的税收优惠待遇,许多国家/地区都希望设置一些约束,使基金会的慈善目的明确,并确保大部分利益惠及当地社区。这在亚洲尤其重要,因为大多数亚洲国家都要优先改善本国公民的生活,并希望慈善家关注自己国家的需求。

需要考虑的重要问题:什么会被认定为慈善目的?可获得资助的对象是哪些?慈善支出能否采用有回报的投资形式?活动是否有地理限制?跨境捐赠的流程是怎样的?

4. 财务

对于任何慈善架构而言,管理资金的流入、流出和投资都极为关键。在理想的情况下,该架构应该能够收到可减免税的捐款,控制其支付的节奏,并寻求在受到尽可能少的投资策略限制的情况下增加其慈善资本的价值。规管这些事项的规则在亚洲各地差别很大。

需要考虑的重要问题:税收减免政策是什么?是否有任何对筹资的限制?最低年度捐赠支付额是多少?是否有任何投资限制?是否有任何营利活动限制?

亚洲慈善事业的温床

作为亚洲的两大金融中心,香港和新加坡多年来一直是极具吸引力的慈善架构目的地。两地各有优缺点。近年来,随着两地尝试吸引更多投资者,尤其是家族办公室,慈善事业的监管环境备受关注,而且有一直延续的势头。

香港

香港以其有利市场的政策环境和资本的自由流动而著称,拥有悠久的慈善历史,多年来一直是慈善架构的理想目的地。香港拥有大量本地和海外组织以及多个全球知名的慈善家族,政府鼓励慈善行业带头解决各种社会问题,并为其提供支持。近年来,凭借作为通往中国内地门户的独特地位,香港在中国慈善家中尤其受欢迎。

在香港税务局认可各类免税慈善架构中,主要有两类,即担保有限公司或慈善信托。这些机构需要按照《税务条例》第88条的规定办理申请手续。这些机构亦可筹款及为捐赠者提供税收减免收据。

香港为慈善机构提供了亚洲最灵活的环境之一。关于治理结构的监管要求有限,对机构可进行的活动几乎没有限制,在捐赠基金的筹资和资产管理方面有很大的回旋余地。这使得慈善机构能够以相对较轻的行政负担支持世界各地的各类活动。

然而为其成功所累,注册流程近来大幅放缓,目前已存在积压情况。在香港注册慈善架构可能需时接近一年。政府曾尝试引入慈善条例和设立专门的政府机构来管理慈善事务,但该尝试最终以失败告终,整个生态系统如今仍然依赖于具有不确定性的法律判例和政策。

“香港为慈善机构提供了亚洲最灵活的环境之一”

新加坡

新加坡以其高效的行政管理著称,新加坡政府一直致力于在其国内形成支持慈善事业的监管和政策环境,其中包括在文化、社区及青年部委任慈善专员(“CoC”),负责加强慈善部门工作。

在新加坡,慈善机构可以采用信托、基金或担保有限公司的形式。要获得免征企业所得税待遇,必须通过经济发展局国际组织计划办公室,在CoC或非营利税收激励(NPOTI)组织注册为慈善机构。后者专为具有全球和地区使命的组织而设。若要向捐赠人开具250%的税收减免收据,慈善机构可以申请公共慈善机构(IPC)计划或资助人税收减免计划。然而,这些计划设有限制条款,即资金必须流向本地项目。

“新加坡政府一直致力于在其国内形成支持慈善事业的监管和政策环境”

凭借250%的IPC税收减免,新加坡提供了全球最慷慨的税收政策来鼓励慈善。然而,新加坡仍然区分用于本地和海外活动的慈善资本,政策主要偏向支持本地活动。例如,该国的80/20规则要求,参与向新加坡公众筹集资金的慈善机构至少要将80%的资金分配给新加坡的项目。对慈善机构的治理也有具体的要求,例如对董事会成员中本地人的人数要求,监管和披露要求也相对严格。

NPOTI计划于2007年首次引入并将于2022年3月31日到期,但新加坡政府意识到这是吸引更多外国非营利组织在该国设立机构的机会,因此将该计划延长至2027年12月31日。政府也在寻找新的方式来巩固新加坡作为区域慈善中心的地位。

亚洲新趋势:捐赠者指示基金

正如早前所提及,如今美国和欧洲的许多慈善家选择设立捐赠者指示基金,这是介乎直接捐赠与设立专门基金会之间的折中方案。这些机构采用以下模式:在公共慈善机构设立捐赠账户,使捐赠者能够进行慈善捐款,立即获得税收减免,并提供有关基金捐款流向的意见。³

该选择的优点颇多,包括匿名捐赠、税收优惠、流程简单和成本效益。捐赠者指示基金还能为那些资产规模不足以承担独立基金会管理成本的捐赠者建立持续参与的平台,并创造财富。另一个优点是没有年度最低捐赠支出要求。然而在一些国家和地区,捐赠者指示基金因其相对隐秘的性质、有限的监管以及在捐款方面相对较少的支付压力而引起争议。

在亚洲,捐赠者指示基金仍是相对较新的概念。新加坡是这方面的先驱,新加坡社区基金会就是一个很好的例子,它为捐赠者指示基金账户提供了母平台。随着越来越多的国家/地区寻求鼓励捐赠的新方式,预计捐赠者指示基金将发挥更加重要的作用。

“随着越来越多的国家/地区
寻求鼓励捐赠的新方式,预计捐赠者指
示基金将发挥更加重要的作用”

³ 美国慈善信托基金 (National Philanthropic Trust)

结论

若要设立合法注册的实体支持您的慈善事业,您需要仔细考虑,不仅要选择合适的方式,还要选择合适的地点。在许多亚洲慈善家眼中,香港和新加坡是极具吸引力的选择,但其他亚洲国家/地区正在迎头赶上,并更新相关政策,以吸引本地区日益增加的慈善财富。我们相信,这些发展将有助于亚洲慈善家扩大影响力,实现他们的目标。

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