

2006 年诺贝尔和平奖获得者尤努斯教授推荐

扶贫小额信贷与 公益信托制度研究

**The Study of Microfinance and
Public Interest Trust**

孙同全 / 著



经济科学出版社
Economic Science Press

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责任编辑：卢元孝
责任校对：董蔚挺
版式设计：代小卫
技术编辑：潘泽新

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经济科学出版社出版、发行 新华书店经销

社址：北京海淀区阜成路甲 28 号 邮编：100036

总编室电话：88191217 发行部电话：88191540

网址：[www. esp. com. cn](http://www.esp.com.cn)

电子邮件：[esp@ esp. com. cn](mailto:esp@esp.com.cn)

汉德鼎印刷厂印刷

永胜装订厂装订

880 × 1230 32 开 8 印张 200000 字

2006 年 12 月第一版 2006 年 12 月第一次印刷

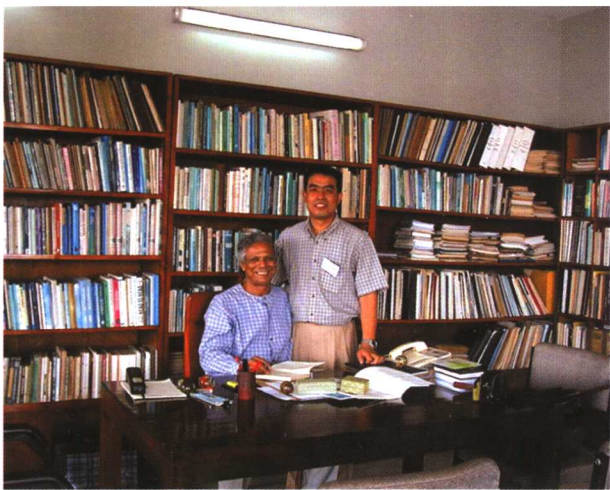
ISBN 7 - 5058 - 5937 - 4/F · 5198 定价：18.00 元

(图书出现印装问题，本社负责调换)

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作者简介

孙同全，吉林出生的山东人，先后在对外经济贸易大学获得经济学学士和法律硕士学位，在中国社会科学院研究生院获得管理学博士学位，曾长期从事国际多边发展援助工作，近年来专注于扶贫小额信贷和中小企业信用担保的实践、研究和培训工作，现供职于中国社会科学院农村发展研究所。



2002年作者访问孟加拉乡村银行时与尤努斯教授合影

内 容 提 要

小额信贷是全球消除贫困最重要的工具之一。我国的扶贫小额信贷起源于国际发展援助，采用非政府组织形式操作。目前，扶贫小额信贷资金的所有权和治理结构问题仍未得到妥善解决，已影响到小额信贷的健康发展。本书综合运用制度经济学、组织社会学和法学理论分析上述问题，提出根据效率、共同目标和合法性等机制，建立扶贫小额信贷公益信托制度的设想。

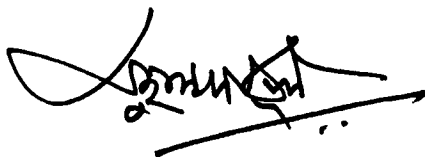
本书适合于小额信贷研究者和实践者，以及所有对小额信贷感兴趣的读者阅读，对从事和热心于公益事业和公益性民间组织研究的人员和实际工作者也有一定的参考价值。

**道之以政，齐之以刑，民免而无耻；
道之以德，齐之以礼，有耻且格。**

——孔子《论语·为政》

I am very happy to see that Dr. Sun Tongquan has come up with an important book, The Study of Microfinance and Public Interest Trust. This is a timely and well researched book. China is paying a lot of attention through appropriate policies to make sure that all regions of China grow at consistent speed. Microcredit becomes an important tool to ensure that disadvantaged people are linked with this growth process.

I encourage everybody to read this book to get better ideas on what needs to be done.

A stylized handwritten signature in black ink, appearing to read 'Muhammad Yunus', with a long horizontal line extending from the bottom right.

(Muhammad Yunus)

23 Oct., 06

2006 年诺贝尔和平奖获得者 尤努斯教授为本书题词

我很高兴地看到孙同全博士完成了一本重要著作——《扶贫小额信贷与公益信托制度研究》。这本书对有关问题的研究做得很好，也很及时。目前，中国非常重视通过采取适宜的政策来保证各地区的协调发展。在这种情况下，小额信贷成为确保弱势群体参与这一发展进程的重要工具。

我希望大家都能来读读这本书，以获得更好的思路。

穆罕默德·尤努斯

2006 年 10 月 23 日

序

孙同全博士的专著《扶贫小额信贷与公益信托制度研究》即将出版，可喜可贺！

孙同全博士专著的研究对象是扶贫小额信贷和公益捐赠资金的信托化治理，为什么要研究这个问题呢？人类社会发展的历史表明，社会全面协调的发展离不开公益事业的高度发展。而公益事业的发展离不开公益捐赠资金的有效使用和监管。目前我国的公益事业几乎都是政府操办和主导的。但一方面，随着我国经济体制改革的深化，民营经济正迅速壮大，一个富裕阶层正在形成，民间慈善捐赠的冲动不断增强。另一方面，我国的政府机构改革和行政管理体制的改革也在不断深化，其出发点是重新明确政府的职能和它与社会和市场领域的关系。家宝同志2006年9月在谈到农村综合体制改革时曾指出，乡镇政府“在履行好政府职能的同时，要把不应该由政府承担的经济和社会事务交给市场、中介组织和村民自治组织”。但政府的功能简化、分解后，留下的空间有没有其他类型组织来填充？政府分解出的功能是否有其他的组织来接手？实践证明，政府和市场之间的社会服务空间需要填补，包括民间公益事业在内的第三部门需要发展起来，这不仅是社会自己来解决社会的问题，而且是对政府主导的社会服务体系的重要而有利的补充。

但近年来,由于公益事业中一些滥用捐赠资金的事件的发生,人们开始发问:“我捐的钱都花在哪了,是怎么花的?受捐助的人是否得到了捐款或者捐助利益?”对捐款使用不透明和滥用的批评之声逐渐增多、增强。公益捐赠资金的善款善用,不仅仅是公益组织自身的事情,更关乎社会道德、良知、互信、宽容和我国和谐社会的发展。公益捐赠资金在使用和操作过程中也引发了一系列的问题:谁来监督管理捐赠资金?如何来监管?受赠机构应该采用怎样的组织形式?公益捐赠资金的使用应该怎样决策?捐款人和捐出的资金是什么关系,怎样保证捐款人的捐赠愿望的实现?捐赠人与捐赠管理人之间是什么样的法律关系?等等。公益事业管理中的种种问题抑制了人们将这种慈善捐赠的冲动变为行动,也阻碍了第三部门的发育,而所有这些问题都指向了公益捐赠资金的治理。可以说,公益捐赠资金的治理问题关系到了社会各界捐赠的信心,也关系到政府职能的转变,已成为无法回避、必须解决的问题。建立透明、公开、具有公信力的公益事业的治理结构和制度安排显得尤为重要。

孙同全博士长期从事联合国开发计划署对华援助项目的执行工作,并从1998年开始参与到外援扶贫小额信贷项目的执行和培训工作。在工作中他发现有一个问题一直困扰着外援扶贫小额信贷的相关各方,即:小额信贷的循环资金到底归谁所有?在外援的扶贫小额信贷项目实施中,这个问题的负面影响已经显现,并由此引发了一系列问题,具体表现在:基层小额信贷机构对资金的使用不负责,扶贫偏离目标,有滥用及挪用小额信贷资金的现象;小额信贷的贷款质量严重下降;小额信贷机构本身社团的组织形式与其在捐赠资金的基础上建立起来的法人机构的实质不相符,决策机制缺乏民主;整个小额信贷的运行缺乏有效的监督,缺少后续资金支持,导致商业化的倾向,等等。这些问题甚至导致有的小额信贷机构已

经倒闭或名存实亡。小额信贷资金的权属问题和治理结构的问题如果长期不解决，将全面危及这些小额信贷项目的生存和发展。

·孙同全博士根据在自己工作中所接触到的上述问题，根据信托制度理论和我国的《信托法》等法规以及国内外相关经验，结合我国的具体实践和操作案例，分析我国的公益信托治理机制，沿着治理结构和财产所有权两条线索对外援扶贫小额信贷的法律本质进行了分析，他认为外援扶贫小额信贷的本质是公益信托，捐助机构是委托人，国内援助机构和小额信贷机构是受托人，目标客户（低收入者和穷人）是受益人，而政府则起监督的作用。所以，可以用公益信托的治理结构来解决外援扶贫小额信贷所遇到的困难。他得出的结论是：公益捐赠资金的法律实质是公益信托财产，应以公益信托制度的原理来建构公益捐赠资金的治理结构，这种结构应该非营利的模式；外援的扶贫小额信贷资金作为公益捐赠资金的一种，其法律实质也是公益信托财产，而不是所谓的概念模糊的国有财产，应该建立公益信托制度来加以治理，小额信贷机构应该转为财团等公益法人的形式。他因此建议：要在社会观念上将财产分为公益性和私益性财产两类，这两种财产分别对应着非营利的组织形式；在法律方面，应该设立财团法人制度，确立公益组织的法人财产权，并制定公益信托制度的实施细则，为公益信托制度的应用提供具体的规则和指导；对外援扶贫小额信贷应该建立公益信托的治理结构，建立扶贫小额信贷公益信托基金和小额信贷协会，为扶贫小额信贷的发展提供融资、技术支持和监督等服务，支持扶贫小额信贷健康、持续地发展。

孙同全博士的专著以外援的扶贫小额信贷为例，但中心问题谈的是具有共性的公益捐赠资金的信托化治理，这就使他的这部著作超越了小额信贷的范畴，具有更为普遍的理论和实践意义。在这里，我想讲一个小小的花絮。2006年10月下旬，我国的有关民间

组织机构预定在北京召开小额信贷国际研讨会，被誉为“小额信贷之父”的孟加拉国的尤努斯教授要出席并讲话。但正在会议筹办期间，10月中旬，尤努斯教授获得了2006年度的诺贝尔和平奖，这样一来，情势就发生了一些微妙的变化，开会地点改在钓鱼台国宾馆，一些原来很难请到的单位和媒体也踊跃参加。开幕式那天也是天公作美，风和日丽，阳光明媚，尤努斯教授一出现，则人头攒动，镁光灯闪个不停，许多人都想与教授合影，使尤努斯教授享受了一次“超女”的待遇。尤努斯教授在讲话时也意味深长地说，他记得小额信贷的会议从未在这么好的地方开过。他同时指出，他本人和孟加拉国乡村银行获得诺贝尔和平奖将为小额信贷事业提供一个非常好的发展契机。

由尤努斯教授的讲话我联想到，随着我国有关部门对小额信贷事业的逐渐重视，外援占小额信贷的比重将越来越低，公益性的小额信贷所占小额信贷资金的比重也可能逐步下降。但公益性捐赠资金总是存在的，也就必然存在公益性捐赠资金的治理结构和财产所有权的问题。关于各方面捐赠的小额信贷资金，有的地方政府曾直白地说，只要钱到我县政府账户上了，钱也就拿不走了。今年夏天，笔者带着几个学生曾对某个国际性扶贫组织的扶贫项目进行过评估，在调查和对村民的访谈中，我们感到村民对于该组织投资建设的项目的权属认识也是比较混乱的。在对村民代表的访谈中，有些人认为项目资产属于该组织，有些人则认为项目资产名义上属于该组织，但实际上属于村里。实践中看到的种种现象使我们深切感到，国际组织、民间组织或个人提供的社会公益事业的资金或实物其财产的权属问题必须进一步明确，治理结构应进一步完善，使项目参与者有更大的经济激励，项目才在经济上具有可持续性。我想，这也许就是孙同全博士这项研究的普遍性的意义之所在。

研究公益捐赠资金的信托化治理，在理论上涉及法学、管理

学、制度经济学、组织社会学等多个学科，在实践中涉及许多操作性的问题，是一项跨学科、理论性和实践性非常强的研究，在中国可以说是一项开创性的工作。这项工作需要研究者具有多方面的理论储备，较为丰富的实践经验，以及对现实问题的敏锐把握。孙同全博士本科阶段研读国际经济合作，硕士阶段专修法律，在博士期间则主修农村发展，他的外语也达到了一定的水平，又长期从事外援项目的执行工作，是进行该项研究的合适的复合型人才。他在攻读博士期间，充分调动了多年来的积累，潜心钻研，终于完成了以公益捐赠资金的信托化治理为核心内容的博士论文。现又在论文的基础上，进一步修改完善，完成了这部专著，实属不易！但此书的出版，应该说只是他在这方面研究的一个起点，希望他能锲而不舍，持之以恒，将这项重要的研究工作继续进行下去，取得更为丰硕的成果！是为序。

张晚山

2006年11月20日

Summary

Since professor Mohammad Yunus created micro-credit in 1976 in Bangladesh for the poor, especially poor women, Grameen Bank has made a great achievement: a journey from one village to 71 thousands villages, from 42 poorest borrowers in 1976 to 6.05 million borrowers (Women borrowers: 96.45%), From first disbursement of Tk. 856 (US\$27) to cumulative disbursement of Tk. 290.03 billion (US\$5.716 billion) . GB has become a replication model of microfinance for the whole world, especially the developing world. MF has been adopted as a main and effective development tool.

China has achieved a rapid economic growth since its opening to the outside in 1978. But a big population of the poor has benefited little from the economic achievements, especially in the remote areas. In mid 1990s, GB model was introduced to China by the support from Grameen Trust. Since then, many international development agencies have launched many MF projects in China to assist poverty reduction. The foreign assisted MF has become one important part of the effort to reduce the poverty in China. Under international projects, many microfinance institutions (MFIs) have been established, most of which are in the form of nongovernmental organizations (NGOs).

Internationally, MFIs are organized in different forms: NGO, sav-

ings and loan cooperative, credit union, governmental bank, commercial bank, or nonblank financial institution. In Bangladesh, Professor Yunus's pilot developed into Grameen Bank; in Mongolia, UN projects turned into Xacbank. But within the present legal and policy framework in China, MFIs cannot fund their loan portfolios with client, member deposits or commercial loans, and have almost no opportunity to become an authorized formal financial institution in market, although the central bank launched a policy allowing small scope of pilot of micro credit company in rural areas.

Which type of organization should Chinese MFIs go to? Some internationally assisted MFIs tended to move to be commercialized, in terms of organizational behavior and purpose. And in some MFIs, the internationally donated fund has been misused.

The author of this book tries to answer the above question by analyzing the nature of the assisted fund, ownership and governance of MFIs.

The book started from analyzing the nature, ownership and governance of donated funds, with the theory of institutional economics, sociology of organizations and law. In the institutional economics, a transaction is the basic unit of economic analysis, and any transaction occurs with a positive cost. When transaction cost increases to make the transaction impossible, an organization will appear to replace the transaction. But an organization has its own boundary, because the internal transaction cost will increase to an extent to stop its extension. In this case, a network of organizations appears. The exposition of the formation of organizations and networks is called efficiency process. From the point of view of sociology of organizations, an organization has been connected with other organizations in a network, where it plays its own role. The

reason why organizations form a network is because they have common goals. This is common goal process. All organizations and their networks must have legality to survive in the social environment. The legality includes the conformity with law, moral, customs, and other social concepts. This is the legality process.

The author argues that donated funds should be governed in the form of a network of organizations, which is public-interest-oriented, that includes donor, receiver, beneficiary and supervisor. The network is formed through the above three processes, to reach all parties' the common goal, i. e. the public interests.

In the book, the nature of any property can be symbolized by its purpose of usage. There are two purposes of a property: private or public. With different purpose i. e. different nature, of their property, organizations can be divided into two types: for profit and non-profit. Public donated funds should be managed in form of non-profit organizations and non-profit networks.

In the view of law, an operational public donated fund is a public interest trust, that is, the donor trusts the fund to receiver, and the receiver uses the fund to service the beneficiaries for public purposes. The donor is the settler of a public interest trust, and the receiver is the trustee. A public interest trust is governed in a network with different parties. A foundation is a legal person form of a public interest trust when it needs to serve the public interests permanently. Donated funds are trusted property, being legally independent from the property of all parties in the trust.

The author concludes that the nature of the foreign assisted MF is a public interest trust, which should be governed in form of a public-inter-

est-oriented network; the donor agencies are settlers of the trust, the implementing agency of the assistance and MFIs are trustees, and targeted clients of MFIs are beneficiaries. MF funds are public interest trust property, not the property of any party of the network, or even state-owned assets; the assisted loan fund should be used to serve the poor. As a legal person and the trustee of MF public interest trust, MFIs should be granted the legal title of the assisted funds, only in this case, the interests of the staff of MFIs will be guaranteed and therefore the staff has incentives to manage the fund properly.

The author suggests reconstructing the governance framework of the foreign assisted MFIs, according to the principles of public interest trust and Trust Law; formulate bylaws of the Trust Law to provide guidance to build public interest trust institutions. For the sustainable development of the MF for the poor, there should establish a trust fund, like Grameen Trust and PKSF of Bangladesh, as whole sale funds for the MFIs that are in good performance, and establish a MFIs' association as a supervisor to regulate and provide technical support. So the public trust system will provide institutional framework for China's MFIs to serve the poor in a sustainable way.

China now is at a key stage of its development to modernization, where the gap between the rich and the poor is becoming wider and wider. Therefore the society is threatened by the potential social conflicts. The central government of China raises the scientific development outlook, makes "building a comprehensive Xiaokang Society" the top on its agenda, especially with a stress on the development of "harmonious society". China needs more public welfare undertakings, which are damper and lubricant for the society. But recent news reports shows that