

# Before & After 2016: A Deeper Dive

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## Tracking Changes in the Regulation of Domestic Social Organizations in China

The year 2016 represents a watershed moment in the development of the legal environment for philanthropy and civil society in China. In 2016 the National People's Congress adopted two comprehensive new laws to regulate the philanthropic and civil society space: the [Charity Law](#) and the [Overseas Non-Governmental Organization \(NGO\) Law](#). In August 2018, the Ministry of Civil Affairs issued for public comment the draft of a Regulation for the Registration and Management of Social Organizations. This regulation is intended to replace the three management regulations for the different types of social organizations: social associations, civil non-enterprise units, and foundations. As the final regulation has yet to be promulgated, this report discusses the draft version, which is designated as tentative by \*\*\*. For more on philanthropy law in China, please see our [China Philanthropy Law Report](#).

### Organizational forms

#### Before 2016

- Social organizations are divided into three categories: social associations (*shehui tuanti*), civil non-enterprise units (*minban feiqiye*), and foundations (*jjinhui*).
- The 2004 Regulations on the Management of Foundations created two categories of foundations: public fundraising foundations and non-public fundraising foundations.
- Charitable trusts are mentioned in the Trust Law, but there is no record of any in existence.

#### After 2016

- Under the new regulatory regime, civil non-enterprise units are renamed social service organizations. The other categories of social organization remain the same.\*\*\*
- There is no longer any distinction between public and non-public fundraising. All foundations and other social organizations that have had charitable organization status for 2 years may apply for public fundraising status.
- The Charity Law revives charitable trusts, which begin to appear in 2017.

### Registration

#### Before 2016

- Registration as a social organization presents high barriers to entry because of the dual management system.
- In the dual management system, social organizations need sponsorship from a professional supervisory unit (PSU)—a government or party organ in its area of work—before they register with the Civil Affairs department. Social organizations are supervised by both the PSU and the Civil Affairs department.
- Social service organizations are not allowed to establish branch organizations.
- Foundations may establish branches or representative offices, but they must register them.
- Foundations may register only at the provincial or central level.

#### After 2016

- The Charity Law and other new regulations lower the barriers to entry. Once registered, social organizations must comply with more detailed regulations and assume greater legal liability.
- The dual management system no longer applies to four categories of social association and social service organizations (industry and trade associations and chambers of commerce; science and technology organizations; public benefit, charitable organizations; and urban and rural community social service organizations). Social organizations in these categories do not need a PSU and are able to register directly with the Civil Affairs department. Most foundations are also able to register directly with the Civil Affairs department without a PSU.\*\*\*
- Social service organizations may establish branch organizations in the administrative area in which they are registered.\*\*\*
- Foundations no longer have to register branch organizations or representative offices, but they assume more responsibility for the supervision of their branches.\*\*\*
- Foundations may register at the city- or county-level Civil Affairs department.\*\*\*

## Management & Supervision

### Before 2016

- Social organizations come under the dual management of their PSU and the Civil Affairs department.
- Social organizations are required to go through an annual inspection (nianjian), in which they submit reports of activities and personnel and organizational changes along with audited financial reports to their PSU and the Civil Affairs department for approval.
- Responsibility for managing and supervising social organizations is vested in the PSU and the Civil Affairs department.
- Party groups are not mentioned in the regulations.

### After 2016

- Four categories of social organizations no longer need a PSU and are directly supervised by the Civil Affairs department.\*\*\*
- Social organizations no longer need to go through annual inspections and only submit annual reports to the Civil Affairs department.\*\*\*
- Responsibility for management and supervision is more dispersed, with less emphasis on governmental supervision and more emphasis on internal governance and self-regulation through public disclosure of information and industry associations.\*\*\*
- Regulations explicitly mention that social organizations are to set up party organizations whenever possible (e.g., when there are at least three party members in the organization) to hold party activities and provide guidance and supervision that ensures the organization adheres to party policies.\*\*\*

## Charitable/Public Welfare Status

### Before 2016

- The 1998 Public Welfare Donations Law (PWDL) states that individuals and organizations may donate to charitable or public welfare social associations and public institutions. However, there is no clear process for obtaining charitable organization status.
- Under the PWDL, public welfare consists of (1) disaster relief, poverty alleviation, and assistance to the handicapped, as well as activities for social groups and individuals in difficult circumstances; (2) educational, scientific, cultural, public health, and athletic undertakings; (3) environmental protection and construction of public facilities; and (4) other public benefit undertakings promoting social development and progress.

### After 2016

- The Charity Law creates a separate charitable organization status and a clear process for social organizations to obtain that status.
- The definition of charity or public welfare in the Charity Law shows little change from the definition of public welfare in the PWDL. The definition includes (1) poverty alleviation and assistance; (2) eldercare, aid for orphans, aid for the ill, assistance for the disabled, or special aid; (3) relief from natural disasters, disasters caused by accidents, public health incidents, and other emergencies; (4) promotion of education, science, culture, health, and sports; (5) protection and improvement of the environment; and (6) other public interest activities compliant with provisions of the law.

## Local and Overseas Funding

### Before 2016

- Only a small group of public fundraising foundations in China, along with a few other government-organized NGOs (GONGOs), such as the Chinese Red Cross and the China Charity Federation, are authorized to carry out public fundraising.
- No regulations exist on online fundraising.

### After 2016

- The Charity Law allows social organizations that have held charitable organization status for two years to apply for public fundraising status.
- Regulations and standards for online fundraising are issued in 2016.