

CHINA

Philanthropy Law Report



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INTRODUCTION

Since the establishment of the People's Republic of China (PRC) in 1949, China's legal framework has mainly followed the civil law tradition. At the same time, the legal framework is rooted in a Leninist state in which all state institutions come under the control of the Communist Party of China. Prior to 2021, the PRC did not have a civil code. The General Principles of Civil Law, which came into effect in 1987, were intended to create a consistent framework for the interpretation of civil law. In May 2020, the National People's Congress voted to adopt the first Civil Code of the PRC, which came into effect on January 1, 2021.

China's legal framework is constraining for civil society and philanthropic giving. During the current administration of President Xi Jinping, Chinese civil society has come under a great deal of pressure. In terms of both freedom for civil society and philanthropy, China ranks very low among the world's countries. In 2023, Freedom House gave China a low rating of -2 out of a possible 40 points for political rights and 11 out of a possible 60 points for civil liberties. The Charity Aid Foundation's World Giving Index 2022 ranked China 49th out of 114 countries for philanthropic giving.¹

Nevertheless, philanthropy has a rich and varied history in China, which is still felt in the practice of philanthropy in Taiwan and the Chinese diaspora.² In contrast, in the PRC, philanthropic traditions were largely erased as a result of Maoist policies from 1949 to 1976, when the state dominated all forms of social life, including voluntary giving. Even during the 1980s and 1990s, most philanthropic activity was controlled and shaped by government policies, priorities, and institutions. The government organized charitable donations, and people gave not because they wanted to but because they were politically and socially pressured to do so. There was also little

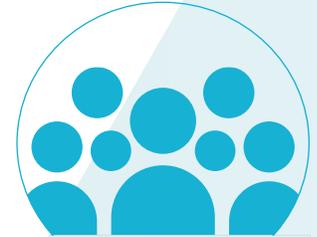
1 "Freedom in the World 2023," Freedom House, <https://freedomhouse.org/report/freedom-world/2019/china>; CAF World Giving Index 2022, Charities Aid Foundation (London: Charities Aid Foundation, 2022), 30, https://www.cafamerica.org/wp-content/uploads/CAF_WORLD_GIVING_INDEX_2021_REPORT_WEB2_100621.pdf; "The Index of Philanthropic Freedom 2015," Hudson Institute (Washington, D.C., 2015), <http://www.hudson.org/research/11363-index-of-philanthropic-freedom-2015>.

2 China's traditions of philanthropy are detailed in such studies as Joanna Handlin Smith, *The Art of Doing Good: Charity in Late Ming China* (Oakland, CA: University of California Press, 2009), and Karla Simon, *Civil Society in China: The Legal Framework From Ancient Times to the "New Reform Era"* (New York: Oxford University Press, 2013).



Capital city:

Beijing



Population:

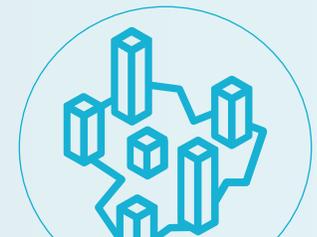
1.39 billion

(2021 estimate)



Type of government:

**Communist
party-led state**



GDP (purchasing power parity):

\$24.9 trillion

GDP per capita:

\$17,600

GDP - real growth rate:

8.11%

(all 2021 estimates)

Source: <https://www.cia.gov/the-world-fact-book/countries/china/>

choice about the recipients. Donations generally went directly to the government or government-organized non-governmental organizations (GONGOs), which dominated the nonprofit sector and had a monopoly on public fundraising. There was little information or transparency about the use of donations. Companies donated as well, but their donations almost always went to projects in government-approved areas, such as poverty alleviation, disaster relief, education, or health. During this period, the idea of corporate social responsibility (CSR) began to gain traction in Chinese companies, but it was regarded as means to strengthen the private sector's relationship with the government more than with target communities.

This situation began to change in the mid-2000s as private foundations mushroomed and exceeded the number of GONGOs, many of which are public foundations.³ In addition, scandals in the philanthropic sector, primarily involving GONGOs, were publicized on social media and generated public debate about reducing the government's monopoly on philanthropic activities and promoting greater transparency and accountability in the sector. At the same time, CSR programs implemented by Chinese companies became somewhat more diverse as companies began to work with nonprofit organizations (NPOs).⁴ International influences also played an increasingly important role as both NPOs and philanthropists looked overseas, particularly to the United States, for models for shaping the philanthropic sector.

Since the late 1990s, there has been a rapid growth of more independent grassroots NPOs and community-based organizations, along with a gradual shift away from a nonprofit landscape dominated by GONGOs. The independent NPO sector is still quite small and fragile and lacks influence and visibility. Most people do not know what NPOs are, and public surveys show that public trust in government institutions is consistently higher than in NPOs. In addition, China's one-party state has continued to adopt a skeptical view of China's young civil society sector, viewing it as a potential threat to the party-state's control and legitimacy.

3 For more information on the evolution of civil society in China, see the interactive timeline "The Rise of Philanthropy and Civil Society in China, 1976-2017," International Center for Not-for-Profit Law (ICNL), https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1yjecJe7g_i86b6GhR80g4lj4wzwbw8LH48vp_Kp9hj5E&font=Default&lang=en&initial_zoom=2&height=650.

4 For the purposes of this report, a nonprofit organization (NPO) is any type of legal entity recognized under the country's laws that is not part of the apparatus of government; that does not distribute profits to its directors, operators, or other persons; that is self-governing; and in which participation is a matter of free choice. NPOs may include associations, foundations, societies, nonprofit companies, etc., both domestic and foreign. An NPO can be organized for either mutual benefit or charitable or public welfare purposes.

The ascension of Xi Jinping to top leadership positions in 2012 and 2013 marked a turning point in the party-state’s efforts to regulate and reshape China’s civil society. Starting in 2016, the state passed an unprecedented wave of new legislation, including the Charity Law and Overseas NGO Law, which were passed by the National People’s Congress, and the Central Committee and State Council Opinion on the Reform of the Social Organization Management System. In 2018, the state drafted new registration and management regulations for “social organizations,” the official Chinese term for nonprofit, non-governmental organizations,⁵ and the Fourteenth Five-Year Plan (FYP) for the Development of Social Organizations, discussed in Section III.⁶ Much of this legislation emphasizes the need to control and guide NPOs to achieve national security goals.

INTERNATIONAL RANKINGS

#79

UN Human Development Index (2021)

Scale (best to worst): 1-191

#86

Fund for Peace: Fragile States Index (2022)

Scale (best to worst): 179-1

#49

Charities Aid Foundation World Giving Index (2022)

Scale (best to worst): 1-145

Subcategories:

49

HELPING A STRANGER

51

DONATING MONEY

35

VOLUNTEERING TIME

⁵ As of May 2023, the State Council is still reviewing the 2018 regulation and the regulation will be implemented until the Council’s approval.

⁶ For more information about the Fourteenth Five-Year Plan (FYP), also see “2016: An Important Dividing Line in China’s Philanthropy and Civil Society Regulation,” ICNL, China Philanthropy Law Factsheet 1, updated August 2018, <https://www.icnl.org/post/tools/china-philanthropy-law-factsheet-1>.

Sources: United Nations Development Program, Human Development Index, <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>; Fund for Peace, “Country Dashboard: China,” Fragile States Index, <https://fragilestatesindex.org/country-data/>; Charities Aid Foundation, World Giving Index 2022, <https://www.cafonline.org/about-us/publications/2022-publications/caf-world-giving-index-2022>

RECENT DEVELOPMENTS

The Coronavirus Pandemic and its Impact on Charitable Giving

The Ministry of Civil Affairs (MCA) has actively issued instruction and guidance to NPOs to ensure that their activities to combat and control the coronavirus pandemic align with government priorities and abide by the 2016 Charity Law. The Announcement on Mobilizing Charitable Forces to Participate in the Prevention and Control of the Pneumonia Epidemic Induced by the Coronavirus in an Orderly and Legal Way, issued in January 2020, requires all public donations of money and supplies in response to the pandemic to be filtered through five GONGOs: Hubei Red Cross, Wuhan Red Cross, Hubei Charity Federation, Wuhan Charity Federation, and Hubei Youth Development Foundation. The Guidelines for Charitable Organizations and the Red Cross to Conduct Epidemic Prevention and Control Charity Fundraising Activities According to Law, issued in February 2020, remind charitable organizations to adhere to the Charity Law and related regulations when engaging in activities to control the spread of the coronavirus, request charitable organizations to file fundraising plans with Civil Affairs departments before carrying out fundraising activities, and require charitable organizations to publish information about any public fundraising activities on a platform designated by the MCA. Finally, the Notice on Further Active Social Organizations in Coordinated Promotion of Epidemic Prevention and Control and Economic and Social Development, issued in March 2020, reminds social organizations to prioritize epidemic prevention and control, work with relevant authorities to ensure resumption of orderly work and production, and take measures to address the needs of the poor.

Application of Overseas NGO Law to Extraterritorial Activities

The Overseas NGO Law regulates the activities of foreign NPOs in China. The international community has largely regarded it with concern as a barrier to their activities in China. In the years after the adoption of the law in 2016, there were some reports that public security bureaus charged with enforcing the Overseas NGO Law interpreted it to apply extraterritorially (that is, to situations in which foreign organizations collaborate with or fund Chinese NPOs participating in activities outside of China). The extent of the adoption of this interpretation is unclear, but such an interpretation may effectively require foreign organizations that support extra-territorial activities by Chinese NPOs

to comply with the registration and reporting requirements under the Overseas NGO Law, described in more detail below.

Stricter Enforcement of Laws for Social Organizations

In March 2021, the MCA issued the Notice on Eliminating the Breeding Grounds for Illegal Social Organizations and Cleansing the Ecological Space for Social Organizations. The notice prohibits all public and private entities from associating with or supporting social organizations that have not complied with the laws governing social organizations. The notice does not specify an enforcement method, but a local expert notes that the government may eject international entities that do not comply with the notice.

In October 2021, the MCA issued its Fourteenth Five Year Plan (FYP) for the Development of Social Organizations.⁷ The FYP lays out the Chinese government's intentions for the regulation of social organizations, drawing on high level policy documents including the Central Committee and State Council's Opinion on the Reform of the Social Organization Management System and Promotion of the Healthy and Orderly Development of Social Organizations, as well as laws and regulations from prior years such as the 2016 Charity Law and 2018 Draft Regulations for Registration and Management of Social Organizations. The FYP calls for increased government involvement in and oversight over social organizations to ensure their "high quality," including through the involvement of the MCA or local Civil Affairs department, professional supervising units (PSUs), and law enforcement agencies.

Pending amendments on the 2016 Charity Law

On December 27, 2022, a draft of the amended Charity Law was submitted for initial deliberation to the thirty-eighth meeting of the Standing Committee of the Thirteenth National People's Congress.⁸ The draft includes a new chapter on the role of charitable organizations in the response to emergencies such as the COVID-19 pandemic, including a requirement that they file fundraising plans with the local government. It also provides more guidance and standards for online charitable fundraising platforms and charitable trusts, both of which have grown quickly in recent years.

⁷ "The 14th Five Year Plan for Social Organizations and the Future of Civil Society in China," NGOs in China (blog), January 4, 2022, <https://ngochina.blogspot.com/2022/01/the-14th-five-year-plan-for-social.html>.

⁸ "Highlights of the Upcoming Charity Law Amendment," China Development Brief, Janry 5, 2023, <https://chinadevelopmentbrief.org/reports/highlights-of-the-upcoming-charity-law-amendment/>.

RELEVANT LAWS

Constitutional Framework

According to the Constitution of the People's Republic of China (1982, as amended), the state respects and guarantees human rights (Article 33). The constitution states that all PRC citizens enjoy the right to freedoms of speech, the press, assembly, association, procession, and demonstration (Article 35), as well as freedom of religious belief (Article 36).

National Laws and Regulations Affecting Philanthropic Giving

Table 1 presents a list of implemented and draft laws and regulations that shape the registration and day-to-day work of NPOs in China.

TABLE 1. NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA

FRAMEWORK LAWS			
Charity Law	2016	First national law regulating domestic charitable organizations, activities, fundraising, and information disclosure.	Bilingual
Management of Overseas NGO Activities in Mainland China Law	2016	First national law regulating activities of overseas NGOs in China (including NGOs from Hong Kong, Macao, and Taiwan).	Bilingual
Trust Law	2001	National law providing for public welfare trusts.	English Translation
Public Welfare Donations Law	1999	National law on the scope of public welfare.	English Translation Bilingual
Law of the Red Cross Society of the People's Republic of China	1993	National Law regulating the Chinese Red Cross, one of very few NPOs to have their own laws.	English Translation
MINISTRY OF CIVIL AFFAIRS REGULATIONS			
Regulations on the Evaluation and Management of Domestic Social Organizations	2021	Regulations standardizing the evaluation process for Chinese social organizations.	Chinese English translation

TABLE 1 (CON'T). NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA

Provisions for Administrative Punishment Procedures by Registration and Management Organs of Domestic Social Organizations	2021	Provisions elaborating the procedures for registration and management organs to use in disciplining Chinese social organizations.	English translation not available
Notice on Eliminating the Breeding Grounds for Illegal Social Organizations and Cleansing Ecological Space for Social Organizations	2021	Notice prohibiting all entities from associating with or supporting social organizations engaged in illegal activities.	English Translation
Measure for Charitable Organizations' Information Disclosure	2018	Ministry of Civil Affairs measure detailing the types of information that charitable organizations must disclose.	English Translation
Provisional Measures for the Investment Activities of Charitable Organizations for Capital Preservation and Appreciation	2018	Measure detailing areas in which charitable organizations may invest for purposes of capital preservation and appreciation.	English translation not available
Measures for the Management of Social Organizations' Credit Information	2018	Measures for managing a social credit system to reward good behavior and punish bad behavior in social organizations.	English Translation
Measures for the Management of Charitable Trusts	2017	Measures issued by the China Banking Regulatory Commission and the MCA expanding on Chapter 5 of the Charity Law on establishing and managing charitable trusts.	English translation not available
Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities	2016	Regulations expanding on Article 60 of the Charity Law placing constraints on the expenditures and management costs of charitable organizations.	English translation not available
Measures for the Designation of Charitable Organizations	2016	Measures detailing how social organizations registered prior to the issuance of the Charity Law may receive charitable organization status.	English Translation
Measures on the Management of Public Fundraising by Charitable Organizations	2016	Measures expanding on Chapter 3 of the Charity Law regarding the criteria and process by which social organizations may seek credentials for public fundraising.	English Translation

TABLE 1 (CON'T). NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA

Provisional Regulations on Admonishment Meetings for Social Organizations by Registration Management Organs and Administrative Law Enforcement	2016	Regulations providing an opportunity for authorities to meet with social organizations to discuss problems with unlawful conduct.	English Translation
Provisional Notice on Registration Management Organs' Acceptance of Complaints and Reports about Social Organizations	2016	Notice on the process for the public to file complaints and reports on unlawful conduct by social organizations.	English Translation
Notice on Social Organizations Initiating Party Construction Work During Registration	2016	Notice requiring social organizations to carry out Communist Party activities.	English translation not available
Measures Standardizing the Behavior of Foundations	2012	Measures setting standards for foundation behavior.	Chinese
Measures for Information Disclosure by Foundations	2006	Measures detailing information disclosure responsibilities and procedures for foundations.	Bilingual
Measures for the Annual Inspection of Foundations	2006	Measures detailing responsibilities and procedures for annual inspection of foundations.	Bilingual
Regulations on the Management of Foundations	2004	Regulation for the registration and management of foundations (including representative offices of foreign foundations).	English Translation (Introduction, Regulations) English Translation (Regulations) Bilingual
Provisional Measures on Banning Illegal Social Organizations	2000	Measure giving government agencies the authority to ban un-registered or improperly registered social organizations.	Bilingual
Provisional Regulations on the Registration and Management of Civil Non-Enterprise Institutions	1998	Regulation on the registration and management of service-providing NPOs.	Bilingual

TABLE 1 (CON'T). NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA

Regulations for the Registration and Management of Social Associations	1998	Regulation for the registration and management of membership associations.	Bilingual
Provisional Measures on the Management of Foreign Chambers of Commerce in China	1989	Measure for the registration and management of foreign chambers of commerce.	English translation not available
TAX LAWS AND REGULATIONS			
Announcement On Matters Concerning The Pre-Tax Deduction of Public Welfare Donations	2020	Announcement stipulating the organizations that can obtain a pre-tax deduction for public welfare donations.	Chinese
Amendment to Law on Individual Income Tax, Art. 6	2018	Amendment to national law addressing individual tax exemptions for public welfare purposes.	Chinese
Enterprise Income Tax Law, Arts. 9, 26	2008	National law regulating corporate tax exemptions for public welfare purposes.	English Translation
Notice of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues concerning the Pre-tax Deduction of Public Welfare Relief Donations	2007	Ministerial notice on pre-tax deductions for public welfare relief donations.	English Translation
Regulation on the Implementation of the Enterprise Income Tax Law, Arts. 51, 52, 53, 84, 85	2007	Implementing regulations for corporate tax exemptions.	Chinese
Detailed Rules for the Implementation of the Individual Income Tax Law (revised 2011), Art. 24	2005	Revised implementing rules on individual income tax exemptions.	Chinese
OTHER POLICIES, LAWS AND REGULATIONS AFFECTING NPOS AND PHILANTHROPY			
Fourteenth Five Year Plan for the Development of Social Organizations	2021	Five Year Plan for social organizations issued by the Ministry of Civil Affairs.	Chinese
Measure on Management of Government Procurement of Services	2020	Measures regulating government procurement of services from enterprises and social organizations.	Chinese

TABLE 1 (CON'T). NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA

Regulation of Religious Affairs	2018	Regulation governing registration and management of religious organizations, schools, churches, and temples.	English
Volunteer Service Regulations August 22, 2017	2017	China's first regulation governing volunteers.	Chinese
Central Committee and State Council Opinion on the Reform of the Social Organization Management System and Promotion of the Healthy and Orderly Development of Social Organizations	2016	Opinion reflecting the government leadership's thinking on the development of the social organization sector and providing policy guidance for the MCA and other ministries and agencies.	English Translation
Provisional Measures on Government Procurement of Social Organization Services	2012	Ministerial-level measures on government procurement of NPO services.	Chinese
Notice of the State Administration of Foreign Exchange on Issues Concerning the Management of Foreign Exchange Donated to or by Domestic Institutions	2009	Notice tightening the management of foreign donations to Chinese NPOs.	Chinese Bilingual
Interim Measures for the Management of Donations for Disaster Relief	2008	Ministerial-level measure on the management of donations for disaster relief.	Chinese
Non-State Education Promotion Law	2002	National law regulating private and nonprofit schools.	English Translation
Provisional Regulations on the Registration and Management of Public Institutions	1998	Ministerial-level regulation for the registration and management of public institutions.	English Translation Bilingual
Law on Assemblies, Processions, and Demonstrations	1989	National law promulgated soon after 1989 Tiananmen protests to regulate outdoor assembly.	English Translation

ANALYSIS

Organizational Forms for Nonprofit Organizations

In China there are three legal forms for “social organizations,”⁹ the official Chinese term for NPOs (see Appendix A).

- Social associations (SAs),¹⁰ which are the equivalent of membership associations;
- Social Service Organizations (SSOs), which are similar to service providing organizations¹¹; and
- Foundations,¹² which can be either public fundraising foundations, which are allowed to fundraise through public channels, or non-public fundraising foundations, which are not allowed to fundraise publicly and are typically funded through major gifts from an individual, company, or family.

The Regulations for the Registration and Management of Social Associations (1998), Provisional Regulations for the Registration and Management of Civil Non-Enterprise Institutions (1998), and Regulations for the Management of Foundations (2004) govern these three types of organizations. A new Regulation on the Registration and Management of Social Organizations, which will replace the above three regulations, has been undergoing drafting and review since 2018.

The 2016 Charity Law created a new nonprofit form called the “charitable organization,”¹³ which enjoys tax incentives and public fundraising privileges. Under the Charity Law, social organizations registered as SAs, SSOs, or foundations may apply for status as charitable organizations in one of two ways. They may apply for the status while registering as a social organization, or, if they have already registered as a social organization, they can apply for charitable status following procedures in the Measures for the Designation of Charitable Organizations issued in September 2016. By the end of 2020, 10,310 organizations had received charitable organization status.

⁹ 社会组织, shehui zuzhi.

¹⁰ 社会团体, shehui tuanti. In the past, the standard translation of shehui tuanti was “social organization,” which is confusing since “social organization” is also the term used for the broader concept of 社会组织, shehui zuzhi, which includes civil non-enterprise institutions (CNIs) and foundations in addition to SAs. We therefore use the term “social association” in this report, because it most closely resembles what we think of as a membership association.

¹¹ The term “civil non-enterprise institutions (CNI)” was changed to “social service organization” in the new laws and regulations that came out after 2016, such as the Charity Law, its implementation regulations, and the draft of the Social Organization Registration and Management Regulation. However, many in the civil society sector still refer to “CNIs.” To avoid confusion, we will use “social service organizations” (SSOs).

¹² 基金会, jijinhui.

¹³ 慈善组织, cishan zuzhi.

The Charity Law also revives the charitable or public welfare trust¹⁴ as another legal arrangement for carrying out charitable activities. A charitable trust is a financial arrangement that allows donors to set aside assets for a specific charitable purpose.

Unlike a charitable organization, a charitable trust does not require donors to first register as a social organization. Donors need only to authorize their trustee to “file documentation for the record”¹⁵ with the MCA. The 2001 Trust Law first recognized the charitable trust but did not clearly identify the supervisory authorities or offer clear tax provisions for this type of NPO. As a result, very few public welfare trusts were established. Public welfare trusts are included in the Charity Law to clarify their management and tax status and encourage their use. In 2017, the China Banking Regulatory Commission and MCA jointly issued Measures for the Management of Charitable Trusts, which elaborates the procedures for establishing charitable trusts, the management of and sanctions for charitable trust assets, procedures for the modification and termination of charitable trusts, their supervision and information disclosure requirements, and legal responsibilities. Charitable trusts increased quickly in number from 53 in 2019 to 1,184 by the end of 2022, with a net worth of more than CNY 5.16 billion (approximately \$767.7 million), according to the China Charitable Trust Development Report 2022.

Another type of nonprofit organization is the public institution or public service unit,¹⁶ a quasi-governmental agency typically formed by the government and staffed with government employees. Public institutions are a remnant of the system of central planning set up in the 1950s. Public universities, research institutes, and hospitals fall into this category. They frequently receive grants from foreign donors and are subject to some of the same tax rules as NPOs. There is a plan to reform public institutions by privatizing a portion of them and turning them into social organizations.

As of 2012, there were approximately 450,000 legally registered NPOs in China, a figure that does not include public institutions (Figure 1). By April 2021, that number had grown to about 889,288, of which 374,398 were SAs, 508,009 were SSOs, and 8,275 were foundations (Figure 2). A substantial number of legal NPOs—in particular, SAs and foundations—were either created by the government or have close ties to government agencies and thus are often regarded as GONGOs.

14 慈善信托, cishan xintuo.

15 备案, bei'an. The term “filing documentation for the record” refers to a procedure for notifying the authorities, and thereby gaining their implicit approval, by filing the required materials with the relevant government agency without having to wait for formal approval from that agency.

16 事业单位, shiye danwei.

In addition to these legal forms, there are many informal NPOs that are either registered as for-profit businesses or operating without registration (see Appendix A). There is no legislation that explicitly recognizes the legality of informal organizations. Thus, although these groups might not be NPOs in a legal sense, operationally they are NPOs insofar as they are voluntary, self-governing, mission-driven, non-governmental, not-for-profit organizations founded and governed by private individuals. In contrast to GONGOS, informal NPOs tend to have a more grassroots nature and work independently of the state. Some unregistered NPOs gain legal status by attaching themselves to other legal entities, such as social organizations or public institutions. Many of these informal organizations are funded by foreign governments or international organizations and foundations, which require them to give evidence of the not-for-profit nature of their activities. While there is no accurate data on the number of informal NPOs in China, estimates range from few hundred thousand to a few million.¹⁷

FIGURE 1 - 2001-2016: THE GROWTH OF Social Organizations in China
中国社会团体和社会服务机构的成长



17 The wide range of estimates is due to differences in definitions of NPOs. Some scholars, for example, come up with large numbers because they cast a wide net and include Communist Party-controlled mass organizations, such as the Communist Youth League and Women’s Federation and their local branches as well as rural cooperatives. For discussions of these estimates, see Andrew Watson, “Civil Society in a Transitional State: The Rise of Associations in China,” in Jonathan Unger, ed., *Associations and the Chinese State* (Armonk, NY: M.E. Sharpe, 2008) and Guosheng, “The Hidden Rules Governing China’s Unregistered NGOs: Management and Consequences,” *China Review* 10, no. 1 (Spring 2010): 183-206.

FIGURE 2 - 2003-2016: THE GROWTH OF

Foundations in China

中国基金会的成长



Registration of Domestic Nonprofit Organizations

Social organizations in China have historically been subject to a restrictive “dual management” system.¹⁸ In other words, they have been governed both by the authority that registers and administers them—usually the MCA in Beijing or a provincial, municipal, or local Civil Affairs department—and a professional supervising unit (PSU)¹⁹—usually a government ministry or state agency at the national, provincial, municipal, or local level working in the same sector as the NPO. For example, the PSU of an environmental NPO is most likely to be the Environmental Protection Ministry or another agency working on environmental issues. In addition, the MCA operates a multi-level management system for all NPOs,²⁰ which means that social organizations with nation-wide activities or impact are regulated at the national level, while those with regional or local activities or impact are regulated at the provincial, city, or county level.

Chinese experts note that the dual-management system for certain categories of NPOs will be eliminated when the draft Regulation for the Registration and Management of Social Organizations, which was issued for public comment in August 2018, is promulgated. The draft regulation would allow four categories of social organizations to register directly with the MCA: industry and trade associations and chambers of commerce; science and technology organizations; public welfare and charitable organizations; and urban and rural community organizations. In other words, social organizations in these four categories would no longer be required to obtain the approval of a PSU.

18 双重管理, shuangchong guanli.

19 业务主管单位, yewu zhuguan danwei.

20 分级管理, fenji guanli.

At present, the procedures vary for registering SAs, SSOs, foundations, and charitable organizations, with the requirements for SAs and foundations generally more extensive than for SSOs. All organizations must submit their names and locations, charters, the names of qualified staff, and evidence of a minimum level of assets or capital to carry out their activities. Foundations and SAs have a higher threshold for their initial capital than SSOs and charitable organizations, and national-level foundations and SAs have higher capital requirements than local organizations. SAs are also required to have a certain minimum number of individual or institutional members,²¹ and foundations must have a board of directors.

The Charity Law stipulates that a person may not serve as the leader of a charitable organization if he or she has limited or no civil capacity (that is, is not of sound mind or able to enter into contractual relationship with an understanding of their rights and responsibilities in that relationship); was sentenced for intentional crimes and was released from the sentence less than five years ago; was in charge of an organization that had its registration certificate withdrawn or was banned less than five years ago; or failed to meet conditions set by other laws or administrative regulations (Article 16).

There are various limits on NPOs' ability to establish branch organizations and the geographical scope of their activities. For example, the 1998 Regulations for the Registration and Management of Social Associations allows a social association to set up a branch office with the approval of its PSU but prohibits it from setting up a "regional branch." This could be interpreted to mean that a social association may set up a branch office in a different city of the province in which it operates, but not in another province. The 1998 Provisional Regulations for the Registration and Management of Civil Non-Enterprise Work Units contains similar language prohibiting regional branch offices. Despite these restrictions, a number of NPOs have successfully registered branch offices under different names so that they function as separate NPOs.

The laws and regulations do not require the payment of specific fees in connection with applications to register.

Limitations on the permissible purposes of legally registered NPOs are quite general and usually resemble Article 4 of the 1998 Regulations for the Registration and Management of Social Associations. According to these regulations, social associations must observe the constitution, state laws, regulations, and state policy and may not oppose the basic principles of the constitution. They may not harm the unity, security, or ethnic harmony of the state or the interests of the state, society, or other organizations or citizens. Finally, they may not offend social morality or undertake profit-seeking activities.

Similar provisions can be found in other regulations and the Charity Law, although the

²¹ SAs must have more than 50 members who are natural persons or more than 30 members who are legal persons, or if its members comprise of both natural and legal persons, a total of at least 50 members.

latter contains different language regarding for-profit activities and the establishment of Communist Party groups. Article 9 of the Charity Law states that a charitable organization may not have a “profit-making purpose,” which implies that profit-making activities would be acceptable as long as they support a charitable purpose. It is unclear whether this wording is consistent with that found in the 2018 draft Regulations for the Registration and Management of Social Organizations, which states that social organizations “must not engage in for-profit business activities.” On the establishment of Communist Party groups, the Charity Law is silent. Yet the 2016 Notice on Social Organizations Initiating Party-Building Work during Registration and the 2018 draft regulations make clear that a social organization must set up a Communist Party organization, or at least have a workplan to put in place the conditions needed for the establishment of a party organization, and carry out party activities. The 2016 notice also calls on civil affairs departments to supervise and encourage newly established social organizations to establish Communist Party departments in a timely manner and to integrate Communist Party-building work into the inspection and evaluation processes of NPOs.

In general, grassroots NPOs working on areas aligned with government priorities, such as education, poverty alleviation, disaster relief, health, and environmental protection, have an easier time registering than NPOs working on more sensitive areas, such as labor rights, legal aid, public advocacy, religion, or ethnic Tibetan cultural preservation. However, NPOs report that by far the most difficult aspect of registration is finding a PSU willing to supervise or take responsibility for an NPO. GONGOs usually find PSUs relatively easily, whereas independent, grassroots NPOs with few or no ties to the government have a more difficult time, in part because of their independent status but also because GONGOs have already laid claim to many of the government agencies qualified to play this role. As a result, a significant portion of grassroots NPOs—perhaps as many as one-third to two-thirds of organizations, depending on their locations—are unable to register as NPOs and either register as businesses or work without registration. Grassroots NPOs often prefer to register as businesses because it is a relatively simple and straightforward process and does not require



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the approval of a PSU. In addition, many grassroots organizations believe there are no major advantages to registering as NPOs, as in their view legally registered NPOs do not receive significant tax exemptions or such exemptions are difficult to secure.

Charitable trusts do not need to register, but, as noted earlier, trustees must file the trust documents with the MCA to enjoy certain tax exemptions.

Registration of Foreign Nonprofit Organizations

Until the passage of the new Overseas NGO Law in April 2016, there were no comprehensive laws governing foreign NPOs in China (see Appendix B).²² The new law went into effect on January 1, 2017. Although implementing regulations have yet to be issued, the temporary, non-binding Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-Governmental Organizations within the Territory of China are now available.²³

The Overseas NGO Law is the PRC's first law (as distinct from regulations issued by a ministry) to govern the management of foreign NPOs. Unlike previous regulations, which gave the MCA jurisdiction over the regulation of foreign NPOs, this law assigns jurisdiction to the Ministry of Public Security and provincial public security bureaus (PSBs), underscoring the security concerns evident in the law. The law governs all the activities in mainland China of "nonprofit, non-governmental social organizations legally established overseas," which is understood to include Taiwan, Hong Kong, and Macau (Article 2). Article 3 states that "overseas NGOs that work in fields such as economic affairs, education, science and technology, health, culture, sports, environmental protection, and charity may carry out activities that legally develop the public welfare." Moreover, "foreign NPOs carrying out activities in mainland China must abide by Chinese laws; may not endanger China's national unity, security, or ethnic unity; and may not harm China's national interests, societal public interest, and the lawful rights and interests of citizens, legal persons, and other organizations"(Article 5). In addition, foreign NPOs in mainland China may not engage in or fund for-profit activities or political activities, engage in illegal activities, or fund religious activities.

The Overseas NGO Law provides only two legal channels for foreign foundations and NPOs to carry out activities in China. They may register a representative office, or, if they do not want to set up an office but want only to carry out activities, they may file

²² The term "overseas NPO" rather than "foreign NPO" is used because the Chinese term is meant to include not only foreign NPOs but also NPOs established in territories considered by the Chinese government to be part of China: Hong Kong, Macau, and Taiwan. Previous regulatory initiatives were regulations issued by ministries under the State Council, which either addressed only a specific category of NPOs (such as chambers of commerce) or were part of another regulation (for example, the 2004 Regulations on the Management of Foundations). This law supersedes the earlier regulations. For more information, see ICNL, "China's Overseas NGO Law," March 2018, <https://www.icnl.org/post/tools/faq-chinas-overseas-ngo-law>.

²³ China Development Brief provides an English translation of the Guidelines, available at <https://chinadevelopmentbrief.org/reports/guidelines-on-registering-a-representative-office-and-filing-to-conduct-temporary-activities-for-overseas-ngos/>.

a record²⁴ to carry out so-called “temporary activities” (Article 9).²⁵ The law states that “foreign NPOs that do neither of these [two options] are not allowed to carry out activities either openly or covertly, or to authorize, fund, or covertly authorize any Chinese work unit²⁶ or individual to carry out activities” (Article 32). This is a fairly comprehensive statement that essentially says that all Chinese work units and individuals will put themselves at risk if they cooperate with a foreign NPO that has not gone through one of these two legal channels for working in China. As of December 31, 2021, 631 representative offices of overseas NGOs had been registered, and 4,018 temporary activities had been recorded. About 62 percent of organizations with representative offices were based in the United States, Hong Kong, Japan, South Korea, or the United Kingdom. Sixty-eight percent of registered representative offices were located in either Beijing, Shanghai, Guangdong, Yunnan, or Sichuan.

Foreign NPOs wishing to set up representative offices will still be subject to a dual-management system and must find relevant government agencies to serve as PSUs before registering with the Ministry of Public Security (Article 11). The ministry and provincial PSBs have published a directory of eligible PSUs. Under the 2016 law, foreign NPOs may set up more than one representative office, but they may not have branch representative offices in China unless otherwise allowed by regulations issued by ministries and state agencies under the State Council, such as the MCA, Ministry of Finance, State Administration of Taxation, and State Administration of Foreign Exchange. Representative offices of foreign foundations must “engage in public welfare activities that are appropriate for the nature of public welfare enterprises in China,” although the law provides no clear guidelines on what is meant by “public welfare.” Representative offices of foreign NPOs do not have the status of legal persons and therefore, in accordance with the law, assume civil legal liability for the actions of their representative offices in China. They may not engage in fundraising but they can accept donations from within China.

24 备案, bei'an.

25 临时活动, linshi huodong.

26 单位, danwei. A work unit is a general term describing a place of work, including a company, NGO, university, or government department.



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The law states that the registration authority (such as the PSB) shall decide whether to grant or refuse the registration request within sixty days of receiving an application (Article 12). The regulations do not stipulate specific fees in connection with an application to register a foreign representative office.

The law requires representative offices of foreign NPOs to go through burdensome approval, inspection, and reporting procedures. By December 30 of each year, the representative offices of foreign NPOs must send activity plans for the following year to their PSUs, which approve the plans and within ten days file a record with the registration authorities (Article 19). Under special conditions, changes in activity plans may be reported to the Ministry of Public Security in a timely manner. A representative office must also undergo an annual inspection,²⁷ which entails submitting to the PSU a work report that includes a financial report, audit report by a certified accountant, and reports on fundraising activities, donations received, grants made, and staffing and organizational changes (Article 31). After approval, the report is then submitted to the relevant department in the MCA. The representative office must also report to the registration authorities about the staff that it hires (Article 27).²⁸

The other option proposed by the Overseas NGO Law for foreign NPOs working in China—that of filing documents for the record for temporary activities—looks potentially less onerous. The foreign NPO needs only to file materials with the PSB showing that it has an agreement with a Chinese partner, which can be a government agency, mass organization,²⁹ public institution³⁰ such as a public university, or social organization³¹ such as a SA (or membership association),³² SSO (or social-service provider),³³ or foundation (Article 16). The Chinese partner is different from a PSU. While the PSU should be a government agency acting in a supervisory role vis-à-vis the foreign NPO, the Chinese partner does not have a formal supervisory role and may be a quasi-governmental institution, such as a public university, research institute, or social organization.

Foreign NPOs that go through this second process to operate in China must fulfill certain conditions and procedures. Their Chinese partner must go through an unspecified approval procedure at least fifteen days before the planned activity and file a record

27 年度检查, niandu jiancha.

28 The Measures for the Information Disclosure of Foundations issued by the MCA in 2006 require that domestic foundations or representative offices of foreign foundations publicly disclose information about their internal operations and business undertakings. This information must include the annual work report, descriptions of fundraising activities by the foundation, and descriptions of public welfare funding projects (including grants to other organizations) undertaken by the foundation. It is doubtful that this measure will continue to be in effect for foreign NPOs with the passage of the Overseas NGO Law.

29 群众组织, qunzhong zuzhi.

30 事业单位, shiye danwei.

31 社会组织, shehui zuzhi. There is no further description of what constitutes a “social organization,” but presumably it should be a legally registered social organization (rather than one of many social organizations registered as businesses or unregistered). For-profit businesses are left out of this list of potential partners.

32 社会团体, shehui tuanti.

33 社会服务组织, shehui fuwu zuzhi.

with the registration authority in the locality in which the activity will take place. The foreign NPO must also file certain information with the public security authorities, including “certification of its legal establishment; its agreement with the Chinese partner; the name, goal, location, and time period for the temporary activity; certification of project expenses and funding sources; the Chinese partner’s bank account; and approval documents from the Chinese partner for the activity” (Article 17). If the Chinese partner is a social organization, foreign NPO must also submit documentation of approval from the Chinese partner’s PSU. The law says nothing about the foreign NPO needing approval from the PSB after filing materials, suggesting that the NPO only needs to inform the PSB before proceeding with the activity. However, reports from foreign NPOs indicate PSBs may ask for additional information and may not always accept the filing, which is equivalent to non-approval. The temporary activity may not exceed one year. If the time period for the activity is longer than that, the foreign NPO will need to refile a record. Foreign NPOs carrying out temporary activities must use the bank accounts of their Chinese partners to manage funds, creating a special account for their activities (Article 22).

The Overseas NGO Law appears to have made it increasingly difficult for foreign NPOs to operate in China, particularly those working outside of government-sanctioned issues such as poverty alleviation, environmental protection, and care for the elderly, children, and disabled. For example, public security bureaus charged with implementing and enforcing the Overseas NGO Law have pressured overseas NPOs to stop working with Chinese NPOs perceived to work on rights issues and have sometimes not accepted filings for temporary activities in these situations. Moreover, there are reports that public security bureaus have interpreted the Overseas NGO Law to extend to activities involving the collaboration of overseas NPOs with Chinese NPOs outside of the Chinese mainland, even though the Overseas NGO Law’s jurisdiction is limited to the Chinese mainland.

Nonprofit Organization Activities

POLITICAL ACTIVITIES AND LOBBYING

NPOs in China are not explicitly prohibited from taking part in political activities. According to Article 15 of the Charity Law, “charitable organizations must not undertake or assist activities that endanger national security and societal public interests or accept contributions that carry additional conditions in violation of laws, regulations, and social mores, and must not attach conditions for beneficiaries that are in violation of laws, regulations, and social mores.”

For foreign NPOs, the Overseas NGO Law has vague language prohibiting activities that could be construed as political, such as “the incitement of resistance to implementation of laws and regulations; illegal efforts to obtain state secrets; the spread of rumors, defamation, or the publication or dissemination of other harmful information

that endangers state security or damages the national interest; participation in or funding of political activity or illegal religious activities; or other activities that endanger state security or damage the national or public interest.” Although no explicit rules exist, most NPOs, except for GONGOs and mass organizations, such as the All-China Federation of Trade Unions and certain affiliated organizations of the Chinese Communist Party, are forbidden from engaging in political activities surrounding elections.

No formal legal rules restrict NPO involvement in the legislative process or lobbying or define how much of an organization’s budget may be devoted to such activities. A number of studies show that NPOs such as trade and industry associations and chambers of commerce engage in lobbying government agencies at both the national and local levels.³⁴ More recently, associations of entrepreneurs, grassroots NPOs, and foundations have begun to lobby government agencies.³⁵ These lobbying efforts take many forms, including meeting officials on social occasions, providing company or industry information to government agencies, inviting policymakers to policy-related meetings, supporting scholarly research on policy, submitting articles to the media, engaging in philanthropy that involves policymakers, submitting requests for open government information to government agencies, submitting petition letters to government agencies, and submitting policy recommendations to representatives during legislative sessions. Organizations commonly debate legislative proposals through the mass media and communicate their opinions to the National People’s Congress, Chinese People’s Political Consultative Conference, and provincial and municipal legislatures. Article 19 of the Charity Law encourages the establishment of industrial associations in the charitable sector, which will presumably carry out lobbying.

34 See Scott Kennedy, *The Business of Lobbying in China* (Cambridge: Harvard University Press, 2005), and Deng Guosheng and Scott Kennedy, “Big Business and Industry Association Lobbying in China,” *China Journal* 63 (January 2010): 101-125.

35 See “The Diversification of Public Advocacy in China,” *China Development Brief*, 2013, <http://chinadevelopmentbrief.cn/publications/cdb-special-report-diversification-public-advocacy-china-march-2013/>.



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ECONOMIC ACTIVITIES

There are conflicting statements in the relevant laws and regulations about NPOs' engagement in for-profit activities. According to Article 9 of the Charity Law, social organizations are not permitted to pursue commercial activities as their principal purpose, which suggests that they can engage in for-profit activities as long as they are not the principal purpose of the organization. For example, SAs, SSOs, foundations, and public institutions may invest in commercial entities. As noted earlier, this conflicts with other regulations prohibiting social organizations from carrying out profit-making activities altogether. As interpreted by the State Administration of Industry and Commerce, the authority responsible for commercial activities, even though SAs, SSOs, foundations, and public institutions may not engage in for-profit businesses, they may invest in commercial entities unless the State Council provides otherwise.³⁶ The laws and regulations do not always clearly distinguish between "related" and "unrelated" commercial activities.

The 2018 Provisional Measures for the Investment Activities of Charitable Organizations for Capital Preservation and Appreciation provide detailed guidance on the Charity Law's basic principles concerning appropriate areas of investment for charitable organizations for purposes of capital preservation and appreciation. Under the provisional measures, a charitable organization can either directly purchase asset management products issued by financial institutions, such as banks, trusts, securities, funds, futures, insurance asset management institutions, and financial asset investment companies, or directly invest in equity by initiating startups, mergers and acquisitions, and participation in shares (Article 4). Additionally, the provisional measures prohibit charitable organizations from the following investment activities: direct trading of stocks, direct purchase of commodities and financial derivatives products, investments in life insurance products, provision of loans to individuals and enterprises in the name of investment, investments that fail to comply with national industrial policies, investments that may expose the organization to unlimited liability, investments that violate the purposes of the organization and may damage the reputation of the organization, and other activities prohibited by national laws and regulations (Article 7).

PROHIBITION ON DISTRIBUTION OF INCOME OR ASSETS/PRIVATE INUREMENT

The 1998 Regulations for the Registration and Management of Social Associations generally prohibit any action to usurp, divide in secret, or misappropriate the assets of an SA (Article 29). All of an SA's income must be devoted to the activities addressed in its governing statute or constitution and may not be divided among members. All donations and subsidies must be used in conformity with the association's purposes and the agreements made with donors. In addition, employees' compensation must be set with reference to the salaries of employees of the PSU or other unit, which means they generally mirror the salaries of civil servants. The provisions governing foundations and

³⁶ See Council on Foundations, "Country Notes: China," 2015, <http://www.cof.org/content/china>.

SSOs are nearly identical to this.³⁷ For example, Article 52 of the Charity Law states, “the assets of charitable organizations shall only be used entirely for charitable purposes in accordance with their charter and the donation agreement, and must not be distributed among the founders, donors, or members of the charitable organizations. Charitable assets must not be privately divided, embezzled, withheld, or misappropriated by any organization or individual.”

Regarding self-dealing and conflicts of interest, no more than one-third of board members may be close family relations of a private individual whose assets are used to establish a non-public fundraising foundation, according to the 2004 Regulations for the Management of Foundations. At other foundations, close relations may not serve simultaneously as directors. Directors or board members who receive financial remuneration from a foundation may not make up more than one-third of its board members (Article 20). The posts of chair and deputy chair of the board of directors or secretary general may not be occupied by persons employed by state bodies; the legal representative of a foundation may not at the same time be the legal representative of any other organization; and the legal representative of a foundation whose original funds are of domestic origin shall be a person who is a legal resident of mainland China.³⁸ The regulations prohibit a board member with a personal interest connected to the interests of the foundation from taking part in decision-making related to that matter and prohibit a board member, supervisory official (appointed by the board to keep check of the foundation’s financial records and accounts and monitor the board’s compliance with the charter and the law), and their close relations from having any kind of business dealings with the foundation. In addition, the supervisory official and board members not serving in full-time posts at the foundation may not be paid (Article 23).

Similarly, Charity Law states that founders, major donors, and managers of charitable organizations “must not use their association to harm the interests of charitable organizations or beneficiaries or the public interest” and if they “partake in transactions with the charitable organization must not participate in the charitable organizations’ decision making process regarding the transactions, and conditions related to the transactions shall be made public” (Article 14).

EXPENDITURES AND ADMINISTRATIVE EXPENSES

Expenditures and administrative expenses at foundations and charitable organizations are subject to specific requirements and limits. The expenditures of a public fundraising foundation may be no less than 70 percent of the total income of the previous year and the expenditures of a non-public fundraising foundation may be no less than 8 percent of the balance of the fund of the previous year, according to the Regulations for

³⁷ See the 2004 Regulations on the Management of Foundations, Article 27; 1998 Interim Regulations on the Registration and Management of Civil Non-enterprise Institutions, Article 21; and Charity Law, Article 52.

³⁸ 应当由内地居民担任, yingdang you neidi jumin danren.

the Management of Foundations. Staff and administrative expenses may not exceed 10 percent of total expenditures (Article 29).

The Charity Law similarly requires that foundations with public fundraising credentials spend no less than 70 percent of their total incomes from the previous year, or 70 percent of their average incomes for the last three years, on charitable activities, and that their annual management costs not exceed 10 percent of that year's total spending. It further states that if there are special circumstances making compliance difficult, a report shall be made to the relevant Civil Affairs departments and a public explanation of the situation offered (Article 60). The 10 percent limit on administrative costs has been criticized by many NPOs as failing to account for the differing needs of organizations, although it should be noted that this limit is imposed only on foundations with public fundraising credentials and not on other types of charitable organizations.

The 2016 Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities set limits on spending on charitable activities and management by charitable organizations. The limits on spending on charitable activities and management fees are stricter for foundations, charitable organizations with public fundraising credentials, and charitable organizations with higher end-of-year net assets. For example, charitable SAs and SSOs with public fundraising credentials cannot spend less than 70 percent of their total income in the previous year, and their annual management expenses cannot exceed 13 percent of their total expenditures. Public fundraising foundations have a 10 percent cap on their annual management expenses. Articles 6–9 of the regulations set out specific limits for the different categories of charitable organizations. The regulation also states that smaller charitable organizations with management fees below CNY 200,000 (approximately \$29,000) do not have to comply with the limits on expenditures and management fees.

GOVERNMENT SUPERVISION

An NPO's main government supervisors are the registration authority (the central or local Civil Affairs department) and the NPO's PSU, which is generally a government or party body. Previously, the MCA and the PSU had to receive annual reports



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from the NPO and perform annual inspections of the organization. However, under the draft regulations for SAs, SSOs, and foundations, reporting and monitoring will no longer involve an annual inspection process but only the submission of annual reports to the MCA.³⁹

Other government bodies with supervisory roles include the State Administration of Taxation, Ministry of Finance, State Administration of Foreign Exchange (in the case of foreign donations to NPOs), Ministry of Human Resources and Social Security, police, and state security. In addition, if an NPO receives funding from a government or Communist Party body, it will also come under that body's supervision.

Additionally, the Provisional Notice on Registration Management Organs' Acceptance of Complaints and Reports about Social Organizations describes a mechanism that allows the public to file complaints and reports on unlawful conduct by social organizations. The MCA is responsible for handling these complaints and reports and making them public. The Provisional Regulations on Admonishment Meetings for Social Organizations by Registration Management Organs and Administrative Law Enforcement provide an opportunity for authorities from the MCA and law enforcement agencies to meet with social organizations to discuss problems with unlawful conduct, offer corrective actions, and, if necessary, put appropriate penalties into place.

Termination, Dissolution, and Sanctions

The laws and regulations governing NPOs contain similar provisions for voluntary or involuntary termination and dissolution. A foundation or representative body of a foreign foundation may voluntarily dissolve if it intends to conclude the activities specified in its charter, is incapable of carrying out the public welfare activities specified in its charter, or wishes to cease activities for some other reason. When a foundation cancels its registration, its branch and representative bodies have their registrations cancelled at the same time (Regulations on the Management of Foundations, Article 16). A charitable organization shall be terminated if the circumstances for termination as set out in its organizational charter are met; termination is required because of a division or merger; the organization has not engaged in charitable activities for two consecutive years; the organization is de-registered or has its registration certificate withdrawn; or other legal conditions under which an organization shall terminate are met (Charity Law, Article 17).

Upon dissolution, a foundation must establish a liquidation organization and settle its accounts under the guidance of the organ in charge of registration (Civil Affairs) and its PSU. Leftover funds shall be used for public welfare ends as stipulated in the founda-

39 For more information, see ICNL, "Before & After 2016: A Deeper Dive," China Philanthropy Law Factsheet 2, <https://www.icnl.org/wp-content/uploads/China-Factsheet-2-domestic-NGOs-final-31-Aug-2018-update.pdf>; "Before & After 2016: A Deeper Dive: Tracking Changes in the Regulation of Overseas NGOs and Foundations in China"; and "FAQ: China's 2016 Charity Law," March 2018, <https://www.icnl.org/post/tools/faq-chinas-2016-charity-law>.

tion's charter or, if they cannot be used in this way, shall be donated to another public welfare organization with similar aims and objectives. Any such action is to be made public. A foundation then applies for the cancellation of its registration within fifteen days of the completion of liquidation (Charity Law, Articles 18, 19, and 33). The rules for charitable organizations are similar (see Charity Law, Article 18).

Conduct that can justify government sanctions as well as the sanctions themselves are spelled out in Chapter 6 of the 2004 Regulations for the Management of Foundations and Chapter 10 of the Charity Law. Both the Charity Law and the 2018 draft Regulation for the Registration and Management of Social Organizations contain more specific corrections and penalties for organizations that violate their legal responsibilities. In addition, the 2018 Measures for the Management of Social Organizations' Credit Information is part of a broader, big-data initiative by the Chinese government, in cooperation with commercial credit-rating companies, to establish a social credit program for individuals and organizations that will encourage good behavior and discourage bad behavior. This particular regulation sets up a management system to deal with social organizations that do not fulfill their obligations and engage in illegal conduct. Two "blacklists" have been established: one for social organizations engaging in irregular activities, such as failing to submit their annual work reports to the Civil Affairs department in a timely manner or failing to set up party groups according to regulations, and another for social organizations that have committed serious illegal or dishonest acts, such as falsifying registration materials. The social organizations on these lists cannot bid on government contracts or receive government financial aid. In contrast, social organizations with good social credit will be given priority when bidding on government contracts or requesting financial and policy support.

Finally, NPOs must abide by the constitution and laws of the country and should not carry out activities that endanger national security or societal interests (Regulations on the Management of Foundations, Article 6, and Charity Law, Article 15).

Charitable or Public Welfare Status

The Charity Law provides a special designation for charitable organizations.⁴⁰ To obtain such status, the applicant registers at the Civil Affairs department in its locality. The Civil Affairs authorities are supposed to publicly identify organizations that succeed in registering as "charitable organizations." Civil Affairs departments at the county level and above are instructed to establish a charitable credit record system to assess charitable organizations and encourage third-party agencies to carry out evaluations and make the results public (Articles 69 and 95).

Charitable or public-interest activities are defined as "the following public welfare activities

⁴⁰ For more information on this point, see ICNL, "Before & After 2016: A Deeper Dive," "Before & After 2016: A Deeper Dive: Tracking Changes in the Regulation of Overseas NGOs and Foundations in China," and "FAQ: China's 2016 Charity Law."

voluntarily carried out by natural persons, legal persons, and other organizations through the donation of property, the provision of services or other means: helping the poor and the needy; assisting the elderly, orphans, the ill, and the disabled, and providing special care; alleviating losses incurred by natural disasters, accidents, public health incidents, and other emergencies; promoting the development of education, science, culture, health, sports, and other causes; preventing and alleviating pollution and other public hazards and protecting and improving the eco-environment; and other public welfare activities in accordance with the law. Charitable activities must be lawful, voluntary, honest, and non-profit, and they may not violate social morality, endanger national security, or harm societal public interests or the lawful rights and interests of other persons. The government encourages charitable activities that represent the core values of socialism and promote the traditional morals of the Chinese nation” (Articles 3–5).

Charitable organizations should be registered as NPOs, such as SAs, SSOs, or foundations, before they can apply for and obtain charitable status. Registration for charitable organization status requires applying to the MCA or local Civil Affairs department. Among other requirements, the applicant must aim to carry out charitable rather than profit-making activities and must have a name and address, an organizational charter, necessary financial assets, and an organizational structure and person in charge (Article 9).

The 2016 Measures for the Designation of Charitable Organizations detail how social organizations that registered before the Charity Law went into effect will be able to receive charitable organization status. To be eligible an organization must: (1) meet the conditions for registering as a social organization; (2) have as its purpose the carrying out of charitable activities; (3) not have profit-making as its purpose and set aside all earned income for charitable purposes provided for in the organization’s charter; and (4) ensure that its directors comply with the law. An organization applying for charitable status needs to show that its members or board have approved the application for charitable designation. It must submit the application with supporting materials to the relevant Civil Affairs department. The Civil Affairs department will then review the application and provide a



Charitable organizations should be registered as NPOs ... before they can apply for and obtain charitable status. Registration for charitable organization status requires applying to the MCA or local Civil Affairs Department.

response within twenty days. If the application is denied, the department will provide a written response with reasons.

Charitable organizations may engage in fundraising and, if they meet certain qualifications, may engage in public fundraising, including online fundraising (Charity Law, Article 22). Other benefits include special tax benefits, preferential use of public land under certain conditions, and qualification to participate in government programs that purchase social services from charitable organizations (Charity Law, Chapter 9).

The 2016 Measures on the Management of Public Fundraising by Charitable Organizations provide more detail on the criteria and process required for charitable organizations to obtain public fundraising credentials. Under these measures, all qualified, registered social organizations that have had “charitable organization” status for at least two years are able to apply for public fundraising credentials. The charitable organization must meet various requirements—for example, it must set up standard internal governance structures, have full-time staff, participate in a social organization assessment, and comply with the law. Social organizations that already enjoyed public fundraising privileges prior to the passing of the Charity Law will not need to reapply through this process. The measures also address public fundraising over the internet, as well as collaborative public fundraising arrangements in which social organizations lacking public fundraising credentials may carry out public fundraising in collaboration with social organizations that have those credentials.

In an effort to increase transparency and trust in the charitable sector, charitable organizations must disclose detailed information about their organizations and their activities, including fundraising and use of donated funds, particularly if the funds are raised through public channels (Charity Law, Article 22).

Local and Cross-Border Funding

Local NPO fundraising is regulated primarily by the Charity Law, which contains the latest and most detailed legal provisions. Cross-border funding is regulated primarily by the Overseas NGO Law. Prior to the Charity Law, the 1999 Public Welfare Donations Law was the most relevant legislation on local funding.

The rules for soliciting domestic donations—that is, fundraising within China—and the rights and responsibilities of donors and charitable organizations are spelled out in Chapters 4–6 and Chapter 8 of the Charity Law. The rights of donors include such provisions as their right to dictate and be informed about how their donations are used. The Individual Income Tax Law and Enterprise Income Tax Law regulate tax exemptions for domestic donors that support domestic NPOs. Domestic NPOs that obtain funds through government contracting are governed by relevant government decisions.⁴¹

⁴¹ Relevant decisions include the Guiding Opinions of the General Office of the State Council on Government Purchasing Services from Social Actors, 2013, and the Ministry of Finance’s Government Contracting of Services Management Measure, 2014.

Online fundraising in particular has grown rapidly over the last decade, with CNY 10 billion yuan (about \$1.5 billion) raised online for charity in 2021, an increase of 18 percent from 2020. As a result, the government has begun to regulate online fundraising platforms. In July 2017, the MCA issued two standards for online fundraising platforms: the Basic Technical Specifications for Online Fundraising Platforms for Charitable Organizations and the Basic Management Specifications for Online Fundraising Platforms for Charitable Organizations. These two standards strengthen overall supervision of online fundraising and establish the rule that if platforms fail to pass a government assessment twice, they will no longer be able to conduct public fundraising. The standards also intend to protect the rights of donors by providing for oversight from society and information disclosure. The standards require platforms to public post information on public donations on their webpage, including the charitable organization's full name, public fundraising certificate, fundraising plan, and contact information. At least every six months, platforms must publicly announce information about their operations, including but not limited to a list of their charitable organization partners, the number of public fundraising activities they have carried out, the amount of funds raised, and their operating income and expenditures. The standards also require platforms to strengthen their service functions by ensuring non-discriminatory treatment (that is, treating all charitable organizations equally and not discriminating on the basis location, size, etc.), clearly stating their fees, and properly managing information on the donations they receive and on the donors' identities.⁴²

Domestic NPOs are permitted to operate internationally, and in recent years, there has been a noticeable trend of Chinese NPOs working abroad, mostly in Southeast Asia and Africa. There is no explicit restriction on an NPO's use of domestic funds to carry out activities abroad.⁴³ However, there appears to be no institutionalized channel for or clear policy on sending donations to support NPOs' projects overseas. In an interview, Wu Peng, the director of the department of international development at the China Foundation for Poverty Alleviation, which as of 2018 had raised CNY 160 million (approximately \$23.3 million) for overseas aid and projects in twenty countries since 2005, noted in a 2019 interview that the Chinese government has no clear policy that allows Chinese social organizations to transfer funds directly to legally established overseas branch organizations and advocated for a special channel to be set up for transferring

42 The platform should display the details of the donation, including donation time, donor name or donor independent identification, donor ID, payment method, payment amount, the name of the event, whether the donation is from overseas, etc., and display and allow a person to export the donor's official charitable donations receipt, which should include the name of the donor, donation project, donation amount, and mailing address. Charitable organizations should also be able to manage or export information within the platform by displaying donor information, including the donor's name or platform donor's independent identification, displaying under each donor's name the total amount and number of donations given to a particular charitable organization, and displaying, by donor's name, the total amount of donations made and the number of donations made, and allowing the sorting and exporting of a list of donors.

43 The 2009 State Administration of Foreign Exchange Notice covers only donations by the Chinese government and business for overseas activities but says nothing about Chinese NPOs' funding of overseas activities, perhaps because in 2009 there were very few Chinese NPOs operating abroad.

donations in foreign currency overseas.⁴⁴ Moreover, as mentioned above, a number of provincial public security bureaus have interpreted the Overseas NGO Law and its various requirements for registration and reporting as applying to situations in which foreign organizations fund the attendance of Chinese NPOs at activities outside of China.

Representative offices of foreign foundations may not fundraise in China, according to the Overseas NGO Law, but they may accept donations. Foreign NPOs that apply to set up a representative office in China will need to report their funding sources as part of their applications (Article 5). They must manage their finances according to Chinese accounting standards, employ locally certified accountants, and have a Chinese accounting firm audit their financial records (Article 24). In addition, they must file annual reports with their two supervisory agencies—the provincial PSB and the PSU—showing the nature of their activities and the use of funds. A foreign NPO that files a record for “temporary activities” also needs to show its funding sources and file a report about a funded activity and the use of funds no more than thirty days after the activity ends (Articles 17 and 30).

There is a perception that affiliations with foreign individuals or organizations will elevate the risks to Chinese organizations and individuals. In the past, an association with foreign persons or organizations was stigmatized because of China’s troubled history with foreign powers, particularly those in the West and Russia. The anti-Western prejudice has been revived in recent years by President Xi’s administration. This fear of foreigners is manifested in the reluctance of PSUs to take responsibility for sponsoring and supervising foreign NPOs. The Overseas NGO Law reinforces this stigma by putting the registration of foreign NPOs in the hands of the Ministry of Public Security. The law also sends a clear warning to Chinese individuals and organizations that they must not cooperate with a foreign NPO that has not gone through one of the two legal channels for operating in China in stating that “organizations or individuals in China shall not be hired by, accept financial



Representative offices of foreign foundations may not fundraise in China, according to the Overseas NGO Law, but they may accept donations. Foreign NPOs that apply to set up a representative office in China will need to report their funding sources as part of their applications.

⁴⁴ “Wu Peng: Bringing the Chinese Experience to the World” China Development Brief, interview with Gabriel Corsetti And Yin Qian, April 25, 2019, <https://chinadevelopmentbrief.org/reports/wu-peng-bringing-the-chinese-experience-to-the-world/>.

support from, or represent or covertly represent overseas NGOs that have not legally registered a representative office or filed a record for temporary activities within China.”⁴⁵ The risk of associating with foreign persons or organizations has risen because of growing tensions between China and the United States and other Western countries, allegations of western support for the protests in Hong Kong that began in the summer of 2019, and the US sanctions against Chinese legislators in response to passage of the National Security Law for Hong Kong in June 2020. The National Security Law itself criminalizes collaboration with foreign forces, which includes foreign funders. A number of Hong Kong NPOs and groups funded by foreign sources have had to close and individuals associated with these organizations have been arrested as a result of the law.

Tax Law

Both charitable organizations and donors enjoy tax benefits. The current benefits are spelled out in the Enterprise Income Tax Law (most recently amended in 2007) and the Individual Income Tax Law (most recently amended in 2018). An amendment to Article 6 of the Individual Income Tax Law essentially incorporates language from the law’s previous implementing regulations. The amendment states that “the amount of money for donations that does not exceed 30 percent of the taxable income declared by taxpayers can be deducted from their taxable income, on the condition that the income is donated to charitable causes such as education, poverty alleviation, and relief. The provision stipulated by the State Council that a full pre-tax deduction can be made for charitable donations shall prevail.” This second sentence offers the possibility of more preferential tax incentives for charitable organizations upon approval by the State Council.

An NPO is taxed on its commercial activities on the same basis as a commercial enterprise unless the law stipulates otherwise. Exceptions to this rule are rare. Enterprises owned solely by public schools, for example, are exempted from a substantial portion of business and value-added taxes. The income of scientific research institutes and higher educational institutions, if derived from the transfer of technology, is exempted from business tax (Enterprise Income Tax Law, Article 26).⁴⁶

China has three categories of income tax: enterprise income tax, foreign-enterprise income tax, and individual income tax. In principle, the “state encourages the development of public welfare undertakings, and grants support and preferential treatment to public welfare social organizations and public welfare nonprofit institutions,” according to the 1999 Public Welfare Donations Law. This law established benefits relating to enterprise income tax (Article 24), individual income tax (Article 25), and import duties and value-added tax (Article 26). The specifics of the exemptions are set forth in other

⁴⁵ See Council on Foundations, “Nonprofit Law in China: Country Notes,” May 2019, <https://cof.org/content/nonprofit-law-china>.

⁴⁶ However, interviews with legal experts suggest that only certain types of income, such as donated income, are eligible for this benefit.

laws and regulations. For example, the Ministry of Finance issued a circular in 2003 exempting educational material donated for poverty alleviation and other charitable purposes from import taxes.

Previously, the enterprise tax applied to all enterprises with and without legal personality and all other organizations with income—a provision that was interpreted as including NPOs. However, under the revised Enterprise Income Tax Law and implementing regulations of 2008, legal NPOs are exempt from enterprise income tax provided they are “qualified not-for-profit organizations.”⁴⁷ According to Article 84 of the Implementing Regulations, a qualified not-for-profit organization is defined as an organization that concurrently meets the following conditions: “(1) completed the registration for not-for-profit organizations according to law; (2) engages in public welfare activities or not-for-profit activities; (3) the income obtained is used for the public welfare or not-for-profit undertaking as registered, approved, or stipulated in the charter with the exception of the reasonable expenses relating to the organization in question; (4) the properties and the fruits thereof are not to be distributed; (5) an organization whose properties, in the case of deregistration, shall be used for public welfare or not-for-profit purposes or shall be donated to another organization of similar nature and tenets, and shall be publicized to the general public; (6) the founder shall not reserve or enjoy any property right to the properties he gave to the organization in question; (7) the expenses for the salaries and fringe benefits of the staff members are controlled within the prescribed proportion, and none of the organization’s properties shall be distributed in any disguised manner.”

Certain categories of NPO income are exempt from taxation. For example, in January 2007, the Ministry of Finance and State Administration of Taxation issued a notice exempting relief donations to NPOs from their pre-tax income. These donations must be used by NPOs for the purposes of education, civil affairs, other public welfare undertakings, or the alleviation of suffering from natural disasters or poverty.

To gain tax exempt status, an NPO must obtain approval from the finance and tax departments under the State Council, in collaboration with other relevant ministries and agencies of the State Council.

In June 2020, the Ministry of Finance and the State Administration of Taxation issued the Announcement on Matters Concerning the Pre-Tax Deduction of Public Welfare Donations, which streamlines the process for social organizations to qualify for pre-tax deductions of public welfare donations. This pre-tax deductibility will also be valid for three years and recognized nationwide. To qualify, social organizations must maintain at least a 3A rating (the highest rating is 5A) in annual evaluations by Civil Affairs departments and comply with the provisions on expenditures and management fees specified in the Charity Law.

⁴⁷ Notice on the Policies and Relevant Management Issues Concerning the Pre-Tax Deduction of Public Welfare Relief Donations, 2007.

A foreign NPO is subject to taxes, such as income tax and business tax, if it is registered as a representative office of a foreign-invested enterprise, which is an enterprise in China that in which a non-Chinese company or individual invests. The law is unclear about tax exemptions for representative offices of foreign NPOs. The Overseas NGO Law states that there will be tax benefits for foreign NPOs operating in China, but as of May 2023, the Ministry of Finance and State Administration of Taxation has not issued any tax regulations for foreign NPOs.⁴⁸

The law does not impose any other fees or payments in lieu of taxes on NPOs.

The civil and tax laws provide for tax benefits for individual and corporate donors to public welfare foundations and eligible social organizations. For example, the 1999 Public Welfare Donation Law states that corporations and other enterprises making donations to public welfare undertakings may enjoy business tax benefits (Article 25) and that individuals and private small businesses making donations to public welfare undertakings may enjoy personal tax benefits (Article 26). Foreigners making donations of goods and materials to public welfare SAs and public welfare public institutions may enjoy reductions in or the elimination of import taxes and import procedural fees.⁴⁹

There are also tax incentives for both individual and corporate donations. For example, the part of income donated by individuals to educational and other public welfare causes may be deducted from taxable income (Law on Individual Income Tax, Article 6), provided it does not exceed 30 percent of taxable income (Regulation on the Implementation of the Enterprise Income Tax Law, Article 53). For corporate donors, Article 9 of the revised Enterprise Income Tax Law that went into effect in 2008 sets tax deductibility at 12 percent of annual profits. The implementing regulations for this law elaborate by stating that public welfare expenditures incurred by an enterprise are deductible provided they do not exceed 12 percent of total annual

⁴⁸ The new Charity Law may include SSOs, but revised tax regulations have not yet been issued.

⁴⁹ Article 24 of the Detailed Rules for the Implementation of the Individual Income Tax Law (revised 2005) says that donations by individuals to educational and other public undertakings mentioned in Section 2, Article 6, of the Tax Law means donations by individuals through social organizations or state organs within the territory of China to educational and other social and public undertakings, areas suffering severe natural disasters, or poverty-stricken areas.



The Overseas NGO Law states that there will be tax benefits for foreign NPOs operating in China, but as of May 2023, the Ministry of Finance and State Administration of Taxation has not issued any tax regulations for foreign NPOs.

profits.⁵⁰ There is no limit on the amount that a philanthropist may designate to a charity under the law on inheritance.

On May 10, 2016, the Ministry of Finance and the State Administration of Taxation issued a Notice on Questions Concerning Corporate Tax on Equities Donations to Public Welfare Organizations,⁵¹ which clarifies that stock donations for charitable purposes are eligible for tax deductions. The notice affects donations made since January 1, 2016, and applies to equities of other corporations and shares of publicly held companies held by corporations. For the purposes of this notice, “public welfare organizations” are non-profit social organizations such as foundations and charitable organizations that are dedicated to the public welfare, are registered domestically, do not have profit-making as their purpose, and have been confirmed as eligible for tax-deductible donations. This notice is intended to prevent situations in which large donations of stock give rise to heavy tax burdens.⁵²

On April 1, 2016, the Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation jointly issued an announcement stating that there would be no import tariff or value-added taxes levied on materials from foreign donors used directly for charity.

The relevant tax regulations for NPOs tend to be general and are being revised as new laws such as the Charity Law come into effect. It should be noted, however, that the reality is quite different from what is stated in the tax regulations. Chinese NPOs report that they must apply for income tax exemptions separately to relevant tax offices, many of which are unfamiliar with NPOs and the tax regulations governing them. In addition, NPOs that are registered as businesses or are unregistered are ineligible for these tax exemptions. The process for claiming tax benefits is also not simple or well understood, although it is improving. Tax deductibility for individuals who make donations to NPOs, for example, is not a common practice, and some tax authorities are unfamiliar with the process. In recent years, tax deductibility for individuals has become easier in major cities such as Beijing but in smaller cities is still a challenge. Finally, many public welfare NPOs lack the proper documentation to claim tax benefits and must apply separately to the tax and finance authorities to establish eligibility for their donors to receive tax deductions.

50 关于公益股权捐赠企业所得税政策问题的通知, *guan yu gong yi gu quan juan zeng qi ye suo de shui zheng ce wen ti di tong zhi*.

51 “New Policy on Equity Donations to Public Welfare Organizations Released,” China Development Brief, May 18, 2016 <http://chinadevelopmentbrief.cn/news/new-policy-on-equity-donations-to-public-welfare-organizations-released/>.

52 “New Policy on Equity Donations to Public Welfare Organizations Released,” China Development Brief, May 18, 2016, <https://chinadevelopmentbrief.org/reports/new-policy-on-equity-donations-to-public-welfare-organizations-released/>.

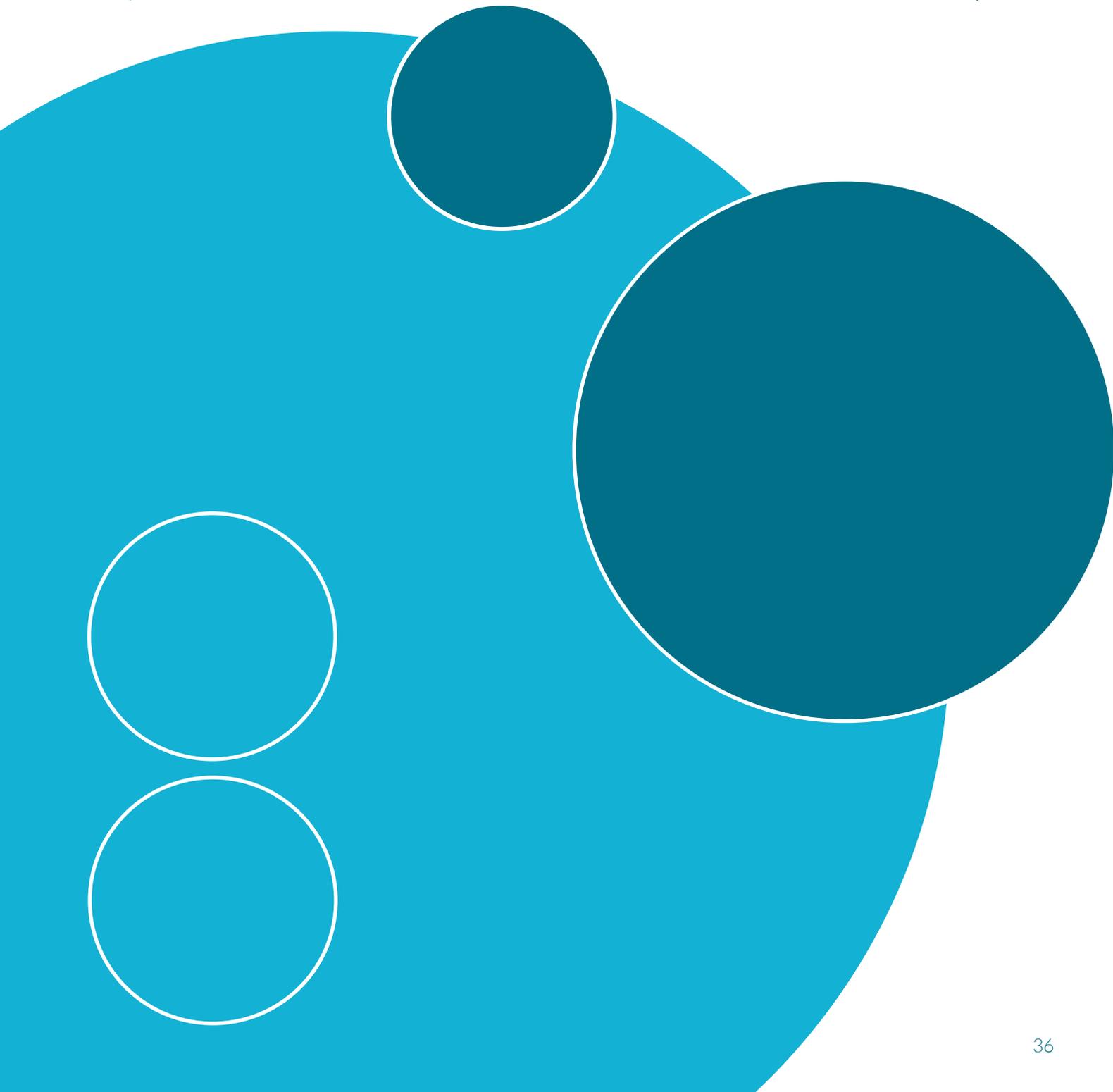
APPENDIX A

FIGURE 3

The Universe of Chinese NGOs

This interactive tool helps users visualize the Chinese civil society sector. Hover your cursor over the titles for more information about each type of organization. Note: Interactivity only works in Adobe Acrobat.

← **Top-down, government-organized** ————— **Bottom-up, grassroots** →

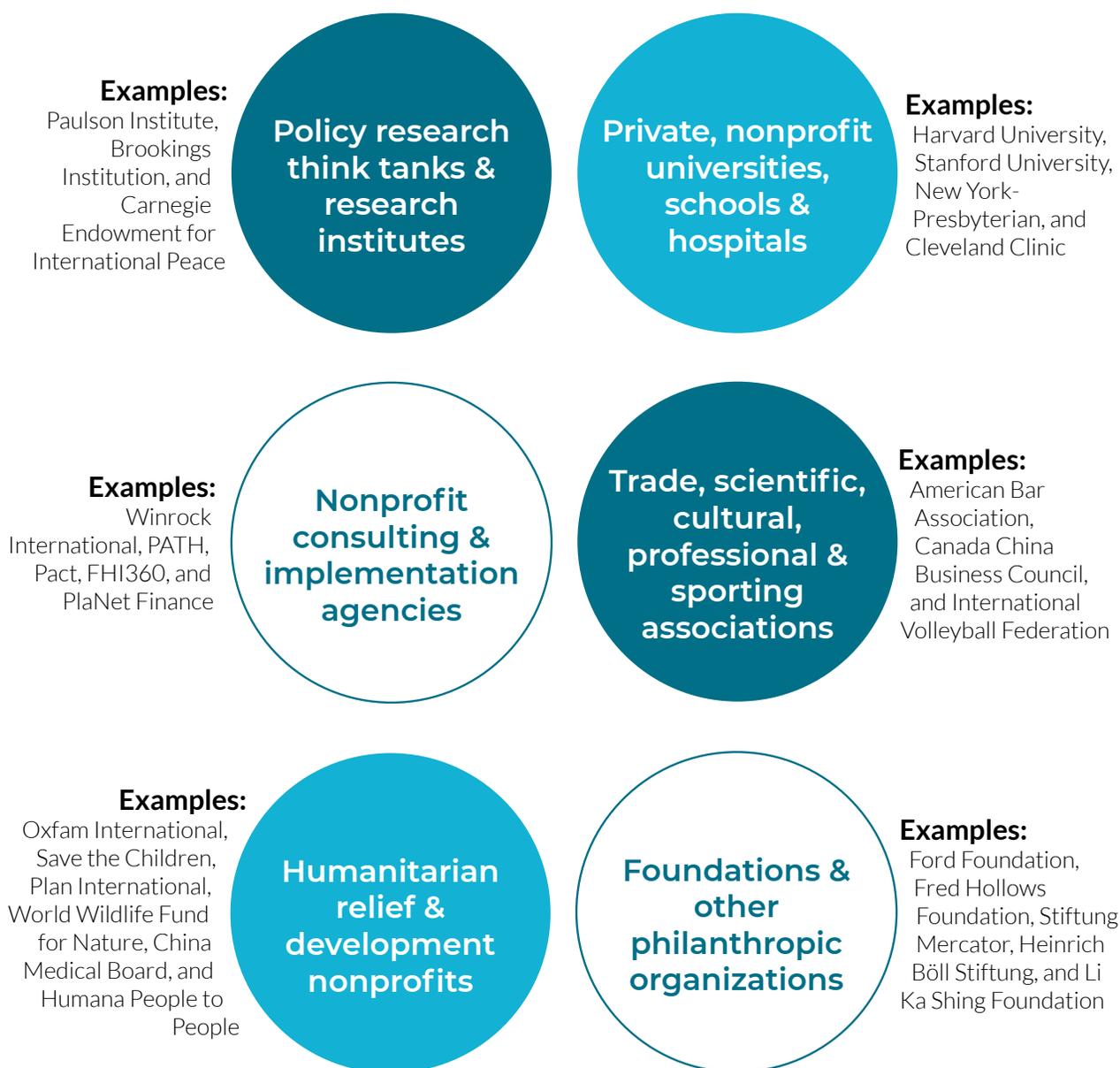


APPENDIX B

FIGURE 4

The Universe of Overseas NGOs in China

The circles below represent the six major categories of overseas non-governmental organizations (NGOs) in China.



The classification system used here is based on one developed by Nick Young of the China Development Brief in “NGOs: the Diverse Origins, Changing Nature and Growing Internationalization of the Species” (2005). It has been updated in the following ways: (1) faith-based organizations were removed as a stand-alone category, as most are included in these other categories; (2) campaigning organizations are incorporated under humanitarian relief and development organizations; (3) private nonprofit universities, schools, and hospitals have been added; and (4) the category of professional associations has been broadened. Please note that the circles are not to scale.

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