# TABLE OF CONTENTS

I. INTRODUCTION 2

II. RECENT DEVELOPMENTS 4

III. RELEVANT LAWS 6

Constitutional Framework 6
National Laws and Regulations Affecting Philanthropic Giving 6

IV. ANALYSIS 10

Organizational Forms for Nonprofit Organizations 10
Registration of Domestic Nonprofit Organizations 13
Registration of Foreign Nonprofit Organizations 15
Nonprofit Organization Activities 20
Termination, Dissolution and Sanctions 24
Charitable or Public Benefit Status 26
Local and Cross-Border Funding 28
Tax Law 31

APPENDIX A 35
Figure 3 - The Universe of Chinese NGOs

APPENDIX B 36
Figure 4 - The Universe Overseas NGOs in China

V. NEWS AND EVENTS 37
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. At present, there is no civil code in China. The General Principles of Civil Law, which came into effect in 1987, intend to create a consistent framework for the interpretation of civil law.

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 2019, Freedom House gave China a low rating of six and a half out of seven for political rights, and a six out of seven for civil liberties.1 Similarly, the World Giving Index 2016 ranked China near the bottom with a score of 142 out of 144 countries for philanthropic giving.2 The Hudson Institute’s Index of Philanthropic Freedom 2015 ranked China 52 out of 64 countries in terms of creating an enabling environment for philanthropy.3

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.4 By 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 dona-

---

tions, and people gave not because they wanted to but because they were politically and socially pressured to do so. There was little choice about the recipients either. Donations generally went directly to the government or to government-organized non-governmental organizations (GONGOs), which dominated the nonprofit sector and had a monopoly on public fundraising. There was also little information or transparency about the use of donations. Companies donated as well, but their donations almost always went to projects in conventional areas, such as poverty alleviation, disaster relief, education, or health, which were carried out by the government or GONGOs. During this period, the idea of corporate social responsibility (CSR) began to gain traction in Chinese companies, but it was regarded more as means to strengthen the private sector’s relationship with the government 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 (for details, see our interactive timeline The Rise of Philanthropy and Civil Society in China, 1976–2017). 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, the CSR programs implemented by Chinese companies became somewhat more diverse as companies began to work with nonprofit organizations (NPOs) as well as GONGOs. 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 in more independent grassroots NPOs and community-based organizations (CBOs), along with a gradual shift away from a nonprofit landscape dominated by GONGOs. The independent NPO sector is still quite small 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 short, although NPOs, particularly philanthropic and public welfare organizations, have made significant gains in recent years, they are still fragile and lack strong political, social, and cultural foundations.

---

5 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.
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 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, the Wuhan Red Cross, the Hubei Charity Federation, the Wuhan Charity Federation, and the 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, reminds charitable organizations to adhere to the Charity Law and related regulations when engaging in activities to control the spread of the coronavirus, requests charitable organizations to file a fundraising plan with Civil Affairs departments before carrying out the fundraising activities, and requires charitable organizations to publish information about any public fundraising activities on a designated platform set by the MCA. Finally, a 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, and to work with relevant authorities to ensure resumption of orderly work and production, and take measures to address the needs of the poor.

TAX DEDUCTIBILITY FOR PUBLIC WELFARE DONATIONS

In June 2020, the MCA issued an announcement that streamlined the process for social organizations to qualify for pre-tax deductions for public welfare donations. To qualify for the deduction, social organizations must maintain a 3A (out of 5A) rating in an evaluation with the Civil Affairs Department and comply with the Charity Law. Tax deductibility status will be valid for three years and recognized nationwide.

PUBLIC SECURITY DEPARTMENTS BROADLY INTERPRET ONGO LAW TO COVER OVERSEAS ACTIVITIES

The ONGO Law regulates the activities of foreign NPOs in China, and has largely been regarded with concern by the international community as a barrier to their activities in China. Four years after the adoption of the law, there have now been some reports that public security departments charged with enforcing the ONGO Law have interpreted...
the law to apply extraterritorially (i.e., to situations where foreign organizations collaborate with or fund Chinese NPOs to participate in activities outside of China). The extent of the adoption of this interpretation is unclear, but such an interpretation may effectively require foreign organizations supporting Chinese NPOs in extraterritorial activities to comply with the registration and reporting requirements under the ONGO Law, described in more detail below.

**GOVERNMENT STEPS UP ENFORCEMENT OF LAWS GOVERNING SOCIAL ORGANIZATIONS**

In March 2021, the Ministry of Civil Affairs 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.

**INTERNATIONAL RANKINGS**

<table>
<thead>
<tr>
<th>#85</th>
<th>UN Human Development Index (2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scale (best to worst): 1-189</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#95</th>
<th>Fund for Peace: Fragile States Index (2021)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scale (best to worst): 179-1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#95</th>
<th>CAF World Giving Index (2021)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scale (best to worst): 1-114</td>
</tr>
</tbody>
</table>

**Subcategories**

- 80 HELPING A STRANGER
- 85 DONATING MONEY
- 73 VOLUNTEERING TIME
SECTION III

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 the freedoms of speech, the press, assembly, association, procession, and demonstration (Article 35), as well as the 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>
<thead>
<tr>
<th>FRAMEWORK LAWS</th>
<th>MINISTRY OF CIVIL AFFAIRS REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charity Law 2016</td>
<td>Notice on Eliminating the Breeding Grounds for Illegal Social Organizations and Cleansing Ecological Space for Social Organizations 2021</td>
</tr>
<tr>
<td>First national law regulating domestic charitable organizations, activities, fundraising, and information disclosure</td>
<td>Notice prohibiting all entities from associating with or supporting social organizations engaged in illegal activities.</td>
</tr>
<tr>
<td>Management of Overseas NGO Activities in Mainland China Law 2016</td>
<td>Measure for Charitable Organizations’ Information Disclosure 2018</td>
</tr>
<tr>
<td>First national law regulating activities of overseas NGOs (including Hong Kong, Macao, and Taiwan) in China</td>
<td>Ministry of Civil Affairs measure detailing the types of information that charitable organizations must disclose.</td>
</tr>
<tr>
<td>Trust Law 2001</td>
<td></td>
</tr>
<tr>
<td>National law providing for public welfare trusts</td>
<td></td>
</tr>
<tr>
<td>Public Welfare Donations Law 1999</td>
<td></td>
</tr>
<tr>
<td>National law on the scope of public welfare or public welfare</td>
<td></td>
</tr>
<tr>
<td>Law of the Red Cross Society of the People’s Republic of China 1993</td>
<td></td>
</tr>
<tr>
<td>Law regulating the Chinese Red Cross, one of very few NPOs to have its own law</td>
<td></td>
</tr>
</tbody>
</table>

TABLE 1. NATIONAL LAWS AND REGULATIONS AFFECTING PHILANTHROPIC GIVING IN CHINA
| Provisional Measures for the Investment Activities of Charitable Organizations for Capital Preservation and Appreciation | Ministry of Civil Affairs measure detailing areas in which charitable organizations may invest for purposes of capital preservation and appreciation | Chinese |
| Measures for the management of social organizations' credit information | Measures for managing a social credit system to reward good behavior and punish bad behavior in social organizations | Chinese |
| Measures for the Management of Charitable Trusts | Measures issued by the China Banking Regulatory Commission and the Ministry of Civil Affairs expanding on Ch. 5 of the Charity Law on establishing and managing charitable trusts | English Translation |
| Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities | Regulations expanding on Article 60 of the Charity Law placing constraints on the expenditures and management costs of charitable organizations | Chinese |
| Measures for the Designation of Charitable Organizations | 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 | Measures expanding on Ch.3 of the Charity Law on the criteria and process by which social organizations may seek credentials for public fundraising | English Translation |
| Provisional Regulations on Admonishment Meetings for Social Organizations by Registration Management Organs and Administrative Law Enforcement | 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 | 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 | Notice requiring social organizations to carry out Communist Party activities | Chinese |
| Measures Standardizing the Behavior of Foundations | 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) |
| Provisional Measures on Banning Illegal Social Organizations | 2000 | Measure giving government agencies the authority to ban unregistered 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 |
| Regulations on 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 | Chinese |

**TAX LAWS AND REGULATIONS**

| 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 |
| Table 1 (Cont’d). National Laws and Regulations Affecting Philanthropic Giving in China |
|----------------------------------------|-----------------|------------------|
| **Detailed Rules for the Implementation of the Individual Income Tax Law (revised 2011), Art. 24** | 2005 | Revised implementing rules on individual income tax exemptions |
| **Amendment to Law on Individual Income Tax, Art. 6** | 2018 | Amendment to national law addressing individual tax exemptions for public welfare purposes |
| **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 |

**Other Policies, Laws and Regulations Affecting NPOS and Philanthropy**

| Regulation of Religious Affairs | 2018 | Regulation governing registration and management of religious organizations, schools, churches and temples |
| 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 Ministry of Civil Affairs and other ministries and agencies |
| Provisional Measures on Government Procurement of Social Organization Services | 2012 | Ministerial-level measures on government procurement of NPO services |
| 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 |
| Interim Measures for the Management of Donations for Disaster Relief | 2008 | Ministerial-level measure on the management of donations for disaster relief |
| Non-State Education Promotion Law | 2002 | National law regulating private and nonprofit schools |
| Provisional Regulations on the Registration and Management of Public Institutions | 1998 | Ministerial-level regulation for the registration and management of public institutions |
| Law on Assemblies, Processions, and Demonstrations | 1989 | National law promulgated soon after 1989 Tiananmen protests to regulate outdoor assembly |
Organizational Forms for Nonprofit Organizations

In China there are currently three legal forms of “social organizations,” which is the official Chinese term for NPOs (see Figure 3 in the Appendix).

- Social associations (SAs), which are the equivalent of membership associations;
- Civil non-enterprise institutions (CNIs), which are similar to service providers; and
- Foundations, 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 typically are funded through major gifts from an individual, company, or family.

The rules currently governing these three types of organizations are the Regulations on the Registration and Management of Social Associations (1998), Interim Regulations on the Registration and Management of Civil Non-Enterprise Institutions (1998), and Regulations on the Management of Foundations (2004). As noted earlier, a new Regulation on the Registration and Management of Social Organizations is being drafted to replace these three regulations.

The recently passed Charity Law created a new nonprofit form called the charitable organization, which enjoys tax incentives and public fundraising privileges. Social organizations previously registered as SAs, SSOs, or foundations will now be able to apply for status as charitable organizations. By the end of 2018, 5,289 social organizations had obtained status as charitable organizations.

Chapter 5 of the new Charity Law revives the charitable or public welfare trust 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.

---

6 社会组织, shehui zuzhi.
7 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 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.
8 The term CNI was changed to Social Service Organization (SSO) 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 use the term “CNI.” To avoid confusion, this Note will use the new term, “SSO.”
9 基金会, jijinhui.
10 慈善组织, cishan zuzhi.
11 慈善信托, cishan xintuo.
Unlike a charitable organization, setting up a charitable trust does not require donors to first register as a social organization. Donors only need to authorize their trustee to “file documentation for the record”\(^\text{12}\) with the Ministry of Civil Affairs. 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 Ministry of Civil Affairs jointly issued Measures for the Management of Charitable Trusts which elaborates on the procedures for establishing charitable trusts, management and sanctions for charitable trust assets, procedures for their modification and termination, their supervision and information disclosure requirements, and legal responsibilities. As of December 2018, there were 136 charitable trusts with assets totaling CNY 2 billion (approximately $290.7 million).

Another type of nonprofit organization is the public institution or public-service unit,\(^\text{13}\) which is 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 (see Figure 1). As of April 2021, that number has grown to about 889,288, of which 374,398 were SAs, 508,009 were SSOs (formerly known as CNIs), and 8,275 were foundations (see Figure 2). A substantial number of legal NPOs—in particular, SAs and foundations—were either created by the government or have close ties with government agencies and thus are often regarded as GONGOs.

In addition to these legal forms, there are many informal NPOs that are either registered as for-profit businesses or operating without registration (see Figure 3 in the Appendix). 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.

---

\(^{12}\) 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.

\(^{13}\) 事业单位, shiye danwei.
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.14

**FIGURE 1 - 2001-2016: THE GROWTH OF**

**Social Organizations in China**

![China Social Organizations Growth Chart](chart_1.png)

*Data reflects only those social organizations which are legally registered with Civil Affairs departments*

**FIGURE 2 - 2003-2016: THE GROWTH OF**

**Foundations in China**

![China Foundations Growth Chart](chart_2.png)

14 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 10:1 (Spring 2010), pp.183-206.
Registration of Domestic Nonprofit Organizations

Social organizations in China have historically been subject to a restrictive “dual management” system. In other words, they have been governed both by the authority that registers and administers them—usually the Ministry of Civil Affairs in Beijing or a provincial, municipal, or local Civil Affairs bureau—and a PSU—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 other agency working on environmental issues. In addition, the Ministry of Civil Affairs operates a multi-level management system for all NPOs, which means that social organizations with nationwide 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 (see our factsheets for more details on these changes). The draft regulation would allow four categories of social organizations to register directly with the Ministry of Civil Affairs: 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 get approval from a PSU.

At present, the procedures for registering SAs, SSOs, foundations, and charitable organizations vary, with the requirements for SAs and foundations generally higher 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 required also to have a minimum number of individual or institutional members, 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.

---

15 The analysis that follows is based on current regulations governing the registration and management of SAs, CNIs, and foundations (see Table 1). However, the regulatory environment is in a state of flux and this analysis may soon be out of date. The newly passed Charity Law, for example, contains provisions that contradict certain aspects of the current regulations. In addition, the current regulations were scheduled to undergo revision starting in 2015, presumably to bring them into line with the Charity Law. In 2016 draft regulations for CNIs and foundations were issued for public comment, so it looks as if the revisions are indeed going forward.

16 双重管理, shuangchong guanli.

17 业务主管单位, yewu zhuguan danwei.

18 分级管理, fenji guanli.
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 Regulation on the Registration and Administration of Social Associations allows a social association to set up a branch office upon 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 on the Registration and Administration of Civil, Non-enterprise 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 distinct 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 Registration and Administration of Social Associations. According to this regulation, 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 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 Regulation 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 Construction Work During Registration and the 2018 draft Regulation 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 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, and 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 of this difficulty, 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 the approval of a PSU. In addition, many grassroots NPOs believe there are no major advantages to registering as NPOs, as in their view legally registered NPOs do not receive significant tax exemption 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 Ministry of Civil Affairs 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 Figure 4). The new law went into effect on January 1, 2017. Though implementing regulations have yet to be issued, a set of 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.19

Prior to the passage of the Overseas NGO Law, the registration status of foreign NPOs was subject to case-by-case scrutiny at the discretion of the Ministry of Civil Affairs and other competent authorities, such as the Ministry of Health, Education, or other ministries governing professional work in specialized fields (see our factsheets No. 1 and No. 3 for more detail on these changes). Foreign chambers of commerce registered in China under the 1989 Provisional Regulations on the Management of Foreign Chambers of Commerce. The 2004 Foundation Management Regulation was the first regulation to explicitly govern the establishment and operations of representative bodies of foreign foundations and NPOs.20 Like their domestic NPO counterparts, representative offices of foreign foundations were subject to dual management by the Ministry of Civil Affairs and a PSU, generally a government agency working in the same sector as the foreign NPO. Many foreign foundations and NPOs had difficulty registering under this regulation because were unable to find PSUs willing to sponsor them.

The informal status of the vast majority of foreign foundations and NPOs in China led the Chinese government to consider measures that would make registration easier and thereby bring foreign NPOs into the regulatory system. In late 2009, Yunnan province experimented with regulations to register foreign NPOs,21 and later statements by the Ministry of Civil Affairs suggested that revised regulations might be forthcoming to ease the registration requirements for foreign foundations and NPOs throughout the country. Those statements eventually were borne out with the circulation of a draft overseas NGO law for public comment in May 2015. When it was issued, the draft law came as a surprise to many observers because so much other NPO legislation was already on the dock- et. However, its release soon after the adoption of a counterespionage law and the release of draft counterrorism and national security laws suggest that national security was a top concern behind its development. The draft law attracted a great deal of attention and debate both in China and in the international community and took almost a year before it was passed on April 28, 2016. It went into effect January 1, 2017.22

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 (for more information, see our

---


20 While the regulations use the term “foreign foundation,” the Ministry of Civil Affairs has not strictly distinguished between foundations and other types of NPOs in previous registration cases, and foreign NGOs that are not considered foundations, such as the World Wildlife Fund and Save the Children, have been able to register under this regulation.


22 The final version of the law bears a slightly different name from the previous drafts: “Law on the Management of Overseas NGOs’ Activities in Mainland China” (境外非政府组织境内活动管理法, jingwai feizhengfu zuzhi jingnei huodong guangli fa).
Unlike previous regulations, which gave the Ministry of Civil Affairs jurisdiction over regulating foreign NPOs, this law assigns jurisdiction to the Ministry of Public Security and provincial public security bureaus (PSBs), again underscoring the security emphasis in the law. The law governs all the activities in mainland China of “nonprofit, non-governmental social organizations legally established overseas,” which includes Taiwan, Hong Kong, and Macau. Article 3 states that “overseas NGOs that work in fields such as economic, 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.” 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: 1) to register a representative office; or, 2) if they do not want to set up an office but want only to carry out activities, to file a record to carry out so-called “temporary activities.” 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 unit or individual to carry out activities.” 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.

Foreign NPOs wishing to set up a representative office will still be subject to a dual-management system and must find a relevant government agency to serve as a PSU before registering with the Ministry of Public Security. The ministry and provincial PSBs have also published a directory of eligible PSUs. Under the new law, foreign NPOs

---

23 Here, the term “overseas NGO” rather than “foreign NGO” 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 will supersede the earlier regulations, although they are not mentioned in the draft law.
24 Overseas NGO Law, Article 2.
25 Overseas NGO Law, Article 5.
26 备案, bei’an.
27 临时活动, linshi huodong. Overseas NGO Law, Article 9.
28 单位, danwei.
29 Overseas NGO Law, Article 32.
30 Overseas NGO Law, Article 11.
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 under the State Council, such as the Ministry of Civil Affairs, 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,” though 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.

The law states that the registration authority (e.g., the PSB) shall decide whether to grant or refuse the registration request within 60 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 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, 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. After approval, the report is then submitted to the relevant department in the Ministry of Civil Affairs. The representative office must also report

---

31 年度检查, niandu jiancha.
32 Overseas NGO Law, Article 31.
to the registration authorities about the staff that it hires.\textsuperscript{33}

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 will only need to file materials with the PSB showing that it has an agreement with a Chinese partner, which can be a government agency; mass organization;\textsuperscript{34} public institution;\textsuperscript{35} such as a public university; or a social organization;\textsuperscript{36} such as a SA (that is, a membership association),\textsuperscript{37} SSO (or social-service provider),\textsuperscript{38} or foundation.\textsuperscript{39} The Chinese partner is different from a PSU, which should be a government agency and acts in a supervisory role vis-à-vis the foreign NPO. The Chinese partner does not act in a formal supervisory role and may be a quasi-governmental institution, such as a public university or research institute, or a social organization (the official Chinese term for a nonprofit, non-governmental organization).

Foreign NPOs that go through this second process to operate in China must fulfill certain conditions and procedures. The Chinese partner must go through an unspecified approval procedure at least fifteen days before the planned activity and file a record with the registration authority in the locality where 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.”\textsuperscript{40} The law says nothing about the foreign NPO requiring approval from the PSB after filing materials, suggesting that the NPO only needs to inform the PSB and may proceed immediately with its activity. 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 re-file a record. Foreign NPOs carrying out temporary activities must use the bank accounts of their Chinese partners to manage funds and must create a special account for their activities.\textsuperscript{41}

\textsuperscript{33} Overseas NGO Law, Article 27. The Measures for the Information Disclosure of Foundations issued by the Ministry of Civil Affairs 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.

\textsuperscript{34} 群众组织, qunzhong zuzhi.

\textsuperscript{35} 事业单位, shiye danwei.

\textsuperscript{36} 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 (there are also many social organizations that are registered as businesses or unregistered). For-profit businesses are left out of this list of potential partners.

\textsuperscript{37} 社会团体, shehui tuanti.

\textsuperscript{38} 社会服务组织, shehui fuwu zuzhi.

\textsuperscript{39} 基金会, jijinhui. Overseas NGO Law, Article 16.

\textsuperscript{40} Id. at Article 17.

\textsuperscript{41} Id. at Article 22.
The ONGO 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 departments charged with implementing and enforcing the ONGO Law have pressured ONGOs to cease working with NPOs perceived to work on rights issues. Moreover, there are reports that public security departments have interpreted the ONGO Law to apply to situations where Chinese NPOs collaborate with ONGOs to participate in activities outside of China.

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 activity 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. More recently, associations of entrepreneurs, grassroots NPOs, and foundations have begun to lobby government agencies. These lobbying efforts take many forms, including meeting officials on social occasions, providing company or industry information to government agencies, hosting policy-related meetings and inviting policymakers, 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 NPC, the Chinese People’s Political Consultative Conference (CPPCC), and provincial and municipal legislatures. Article 19 of the Charity Law encourages the establishment of industrial associations in the charitable sector, which presumably will carry out lobbying.

ECONOMIC ACTIVITIES

There are conflicting statements in the relevant laws and regulations about engaging 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 an organization’s principal purpose. For example, SAs, SSOs, foundations, and public institutions may invest in commercial entities. As noted earlier, this conflicts with other regulations, which prohibit 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. The law does not distinguish between “related” and “unrelated” commercial activities.

The 2018 Provisional Measures for the Investment Activities of Charitable Organizations for Capital Preservation and Appreciation provides detailed guidance on the Charity Law’s basic principles on appropriate investment areas for charitable organizations for purposes of capital preservation and appreciation. Under the Provisional Measures, a charitable organization can either (1) 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 (2) directly invest in equity through initiating startups, mergers and acquisitions.

---

and participation in shares. Additionally, the Provisional Measures prohibit charitable organizations from the following investment activities: (1) directly trading stocks, (2) directly purchasing commodities and financial derivatives products, (3) investing in life insurance products, (4) providing loans to individuals and enterprises in the name of investment, (5) making investments that fail to comply with national industrial policies, (6) making investments that may expose the organization to unlimited liability, (7) making investments that violate the purposes of the organization and may damage the reputation of the organization, and (8) engaging in other activities prohibited by national laws and regulations.

**PROHIBITION ON DISTRIBUTION OF INCOME OR ASSETS/PRIVATE INUREMENT**

The 1998 Regulations on 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 CNIs are nearly identical to this. 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, in non-public fundraising foundations established using the assets of a private individual, no more than one-third of board members may be close family relations of that individual, and at other foundations, close relations may not serve simultaneously as directors, according to the 2004 Foundation Management Regulations. Directors or board members who receive financial remuneration from a foundation may not make up more than one-third of its board members. 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

---

46 Id. at Article 7.
47 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
Chinese origin shall be a person who is a legal resident of mainland China. 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 the matter, as well as 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.

Similarly, Article 14 of the Charity Law states that the 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.”

**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 Foundation Management Regulations. Staff and administrative expenses may not exceed 10 percent of total expenditures.

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. 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 Regulation 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

---

49 应当由内地居民担任, yingdang you neidi jumin danren.
50 Regulations on the Management of Foundations, Article 23.
51 Regulations on the Management of Foundations, Article 29.
52 Charity Law, Article 60.
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 Regulation 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 yuan (approximately $29,000) do not have to comply with the limits on expenditures and management fees.

**GOVERNMENT SUPERVISION**

Previously, the Ministry of Civil Affairs and an NPO’s PSU had to receive annual reports from the NPO and perform annual inspections of the organization. However, in the newly revised draft regulations for SAs, SSOs, and foundations, reporting and monitoring will no longer involve an annual inspection process but only the submission of an annual report to the Ministry of Civil Affairs (for more, see our Before & After 2016 factsheet series).

Other government bodies with a supervisory role 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 Resource 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, one mechanism described in the Provisional Notice on Registration Management Organs’ Acceptance of Complaints and Reports about Social Organizations is a channel allowing the public to file complaints and reports on unlawful conduct by social organizations. The Ministry of Civil Affairs 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 also provide an opportunity for authorities from the Ministry of Civil Affairs 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. 53 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. 54

Upon dissolution a foundation must establish a liquidation organization and settle its accounts under the guidance of the organ in charge of registration and its PSU. Leftover funds shall be used for public welfare ends as stipulated in the foundation'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. 55 The rules for charitable organizations are similar. 56 Conduct that can justify government sanctions and the sanctions themselves are spelled out in Chapter 6 of the 2004 Foundation Management Regulations and Chapter 10 of the Charity Law. The Charity Law and the 2018 draft Regulation for the Registration and Management of Social Organizations both 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 Bureau 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

53 Regulations on the Management of Foundations, Article 16.
54 Charity Law, Article 17.
55 Id. at Articles 18, 19, and 33.
56 See Charity Law, Article 18.
carry out activities that endanger national security or societal interests. 57

Charitable or Public Welfare Status

The Charity Law provides a special designation for charitable organizations (for further details, see our Before & After 2016 factsheet series and our Charity Law FAQ). 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 or 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. 58

Charitable or public-interest activities are defined as “the following public welfare activities 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.” 59

Charitable organizations should be existing NPOs such as SAs, SSOs, or foundations that apply for and obtain charitable status. Registration for charitable organization status requires

57 See Regulations on the Management of Foundations, Article 6, and Charity Law, Article 15.
58 Charity Law, Articles 69 and 95.
59 Id. at Articles 3-5.
applying to the Ministry of Civil Affairs or local department of Civil Affairs. 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.  

The 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. According to these measures, 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 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. 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.

The Measures on the Management of Public Fundraising by Charitable Organizations provide more detail on the criteria and process for charitable organizations seeking public fundraising credentials. Under these measures, all qualified, registered social organizations that have had “charitable organization” status for at least two years will be 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 new 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 organization and activities,

60 Id. at Article 9.
61 Id. at Article 22.
62 Id. at Chapter 9.
fund-raising, and use of donated funds, particularly if the funds are raised through public channels. These requirements will increase the reporting burdens of charitable organizations.

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, which went into effect on January 1, 2017. Prior to the Charity Law, the 1999 Public Welfare Donations Law was the most relevant legislation on local funding (for more, see our Before & After 2016 factsheet series).

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 detail in Chapters 4-6 and Chapter 8 of the Charity Law, respectively. 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.

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. However, there appears to be no institutionalized channel for or clear policy on sending donations to support NPOs’ projects overseas. In an interview, Mr. 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, suggested that the Chinese government has a clear policy that allows Chinese social organizations to transfer funds directly to legally established overseas branch organizations and has set up a special channel for transferring donations in foreign currency overseas. Moreover, as mentioned above, a number of public security departments have interpreted the ONGO Law and its various requirements for registration and re-

---

63 Id. at Chapter 8.
65 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.
porting to apply to situations where foreign organizations fund Chinese NPOs to attend activities outside of China.

In July 2017, the Ministry of Civil Affairs 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.” The two standards strengthen overall supervision and establish a rule that if platforms fail to pass a government assessment twice, they will no longer be able to conduct public fundraising. They are also intended to protect the rights of donors by providing for oversight from society and information disclosure. The standards require that information on public donations be posted prominently on the platform’s webpage, and that platforms publicly announce information about their operations at least every six months. The standards also require platforms to strengthen their service functions by ensuring non-discriminatory treatment, clearly stating their fees, and properly managing information on the donations they receive and on the donors’ identities.

The management of foreign donations to and from domestic organizations was tightened in 2009 with the issuance of the State Administration of Foreign Exchange notice, which requires domestic NPOs receiving donated funds from abroad, as well as Chinese organizations making donations to foreign NPOs, to submit an application along with their registration documents and the donation agreement to the bank. In some cases, they may need to provide a notarized donation agreement. NPO representatives and funders report that these rules have been implemented inconsistently. Some NPOs have encountered problems, such as the need to produce more paperwork and, in a few cases, an inability to withdraw foreign funds from the bank. But other NPOs have not experienced problems, which suggests that the banks may not be aware of these rules or NPOs are not given trouble if they have good relationships with their banks.

Representative offices of foreign foundations may not fundraise in China, according to the Overseas NGO Law, but they may accept donations.

Under the Overseas NGO Law, foreign NPOs that apply to set up a representative office

---

67 This information includes the charitable organization’s full name, public fundraising certificate, fundraising plan, and contact information.

68 The information should include, but not be limited to, a list of its charitable organization partners, the number of public fundraising activities it has carried out, the amount of funds raised, and the platform’s operating income and expenditures.

69 The fundraising platforms should treat all charitable organizations equally and not discriminate based on location, size, etc.

70 The platform should: (1) 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 (2) display and allow one 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: (1) displaying donor information, including the donor’s name or platform donor’s independent identification; (2) displaying under each donor’s name the total amount and number of donations given to a particular charitable organization; and (3) 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.
in China will need to report their funding sources as part of their applications. They must manage their finances according to Chinese accounting standards, employ locally certified accountants, and have a Chinese accounting firm audit their financial records. 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 the activity and the use of funds no more than thirty days after the activity ends.

Aside from the requirements spelled out in the Overseas NGO Law, foreign NPOs are not subject to vetting procedures or other scrutiny that may impede or discourage philanthropic giving, but this may change with the recent passage of the National Security and Counterterrorism Laws. While neither law addresses cross-border funding, the more detailed implementing regulations that normally accompany these laws may include procedures that more closely regulate cross-border funding.

In terms of limits on affiliating with foreign individuals or organizations, there is a perception that such affiliations 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 those within 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: “Organizations or individuals in China shall not be hired by, accept financial support from, or represent or covertly represent overseas NGOs that have not legally registered...”

---

71 Overseas NGO Law, Article 5.
72 Id. at Article 24.
73 Id. at Article 17 and 30.
a representative office or filed a record for temporary activities within China.” 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 United States’ application of sanctions against Chinese legislators in response to the passage of the National Security Law for Hong Kong in June 2020.

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 (VAT) taxes. The income of scientific research institutes and higher educational institutions, if derived from the transfer of technology, is exempted from business tax.

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 VAT (Article 26). The specifics of the exemptions are set forth in other 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.

75 Enterprise Income Tax Law, Article 26. However, interviews with legal experts suggest that only certain types of income, such as donated income, are eligible for this benefit.
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 not-for-profit organizations are exempt from enterprise income tax provided they are “qualified not-for-profit organizations.”

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) engage 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 18, 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 (with the highest rating being 5A) in an annual evaluation by the Civil Affairs Department, and comply with the provisions on expenditures and management fees specified in the Charity Law.


77 Interviews with foreign NPOs that have managed to register as representative offices of foreign foundations in China are also unclear on this issue. It should be pointed out that the legal status of a foreign NPO is not the same as the legal status of a legally registered Chinese NPO. Foreign NPOs are only allowed to register representative offices, which are not regarded as legal persons.
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 is invested in by a non-Chinese company or individual. 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 September 2019, the Ministry of Finance and State Administration of Taxation has not issued any tax regulations for foreign NPOs.78

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 SAs, but not SSOs.79 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,80 that individuals and private small businesses making donations to public welfare undertakings may enjoy personal tax benefits,81 and that 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.82

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,83 provided it does not exceed 30 percent of taxable income.84 For corporate donors, Article 9 of the revised Enterprise Income Tax Law that went into effect in

---

78 The new Charity Law may include CNIs, but revised tax regulations have not yet been issued.
79 Public Welfare Donation Law, Article 24
80 Id. at Article 25.
81 Id. at Article 26.
82 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.
83 Law on Individual Income Tax, Article 6
84 Regulation on the Implementation of the Enterprise Income Tax Law, Article 53.
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 profits.85 There is no limit to the amount that a philanthropist may designate to a charity under the inheritance law.

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,86 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.87

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 (VAT) 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 above 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. As a result, income tax exemptions for Chinese NPOs appear to be more the exception than the rule. 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. Tax deductibility for individuals who make donations to NPOs, for example, is not a common practice, and many tax authorities are unfamiliar with the process. There are reports that 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.

85 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 zeng qi ye suo de shui zheng ce wen ti di tong zhi.
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.

Mass organizations

6.79 million (2011)
Number includes branch offices

GONGOs

770,000 (2011)
Number includes branch offices

Registered social organizations

704,256 (2016)

Bottom-up, grassroots

Informal groups & networks

1-3 million (2011)

Top-down, government-organized

Public institutions

1.26 million (2012)
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.

**Policy research think tanks & research institutes**
- Examples: Paulson Institute, Brookings Institution, and Carnegie Endowment for International Peace

**Private, nonprofit universities, schools & hospitals**
- Examples: Harvard University, Stanford University, New York-Presbyterian, and Cleveland Clinic

**Nonprofit consulting & implementation agencies**
- Examples: Winrock International, PATH, Pact, FHI360, and PlaNet Finance

**Trade, scientific, cultural, professional & sporting associations**
- Examples: American Bar Association, Canada China Business Council, and International Volleyball Federation

**Humanitarian relief & development nonprofits**

**Foundations & other philanthropic organizations**
- Examples: Ford Foundation, Fred Hollows Foundation, Stiftung Mercator, Heinrich Böll Stiftung, and Li Ka Shing Foundation

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.
Gabriel Corsetti, “Civil society finds new paths in Wuhan,” China Development Brief 29 February 2020
https://chinadevelopmentbrief.cn/reports/civil-society-finds-new-paths-in-wuhan/

Cathy Cao Xi, “The remarkable online volunteers of the COVID-19 Outbreak,” China Development Brief 5 March 2020
https://chinadevelopmentbrief.cn/reports/the-remarkable-online-volunteers-of-the-covid-19-outbreak/

Holly Snape, “China alters civil society rules, allowing more groups to respond to coronavirus,” ChinaFile 5 March 2020

“How and why the Charity Law could be amended,” Charity Times 16 October 2020
This Philanthropy Law Report is made possible by the generous support of the Bill & Melinda Gates Foundation. The Report was prepared by the International Center for Not-for-Profit Law in partnership with Shawn Shieh and issued in March 2017. It was updated to reflect changes as of August 2018, September 2019, and May 2021. The views expressed herein are those of the authors and do not necessarily reflect the views of the Bill & Melinda Gates Foundation. The information in this report reflects the authors’ understanding of laws and regulations currently in effect in the People’s Republic of China, as well as best international practice, and does not constitute a legal opinion or advice.