

CHINA

Current as of November 2018

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TABLE OF CONTENTS

- I. [Summary](#)
 - A. [Types of Organizations](#)
 - B. [Tax Laws](#)
- II. [Applicable Laws and Regulations](#)
- III. [Relevant Legal Forms](#)
 - A. [General Legal Forms](#)
 - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities](#)
 - E. [Discrimination](#)
 - F. [Control of Organization](#)
 - G. [Annual Inspection and Information Disclosure](#)
- V. [Tax Laws](#)
 - A. [Income Tax Exemption](#)
 - B. [Deductibility of Charitable Contributions](#)
 - C. [Indirect Taxes: Business Tax, Value Added Tax, and Import Duties](#)
 - D. [Other Taxes](#)
 - E. [Double Tax Treaties](#)
 - F. [Foreign Organizations and Grants](#)
- VI. [Knowledgeable Contacts](#)

I. SUMMARY

A. TYPES OF ORGANIZATIONS

The People's Republic of China (PRC) is a civil law country [\[i\]](#) with four primary legal forms of not-for-profit organizations (NPOs):

- Social Associations (SAs) (社会 体, *shehui tuanti*), which are the equivalent of membership associations; [2]
- Social Service Organizations (SSOs) (社会服 机, *shehui fuwu jigou*) which are similar to service providers. Before 2016, they were known as Civil Non-Enterprise Units (民 单位, *minban feiqiye*); [3]
- Foundations (基金会, *jijinhui*); and
- Public Institutions (事 业 单 位, *shiye danwei*).

The first three of these forms are non-governmental entities known collectively as “social organizations,” which is the official Chinese term for non-governmental NPOs. By contrast, the “public institution” or “public service unit” is a quasi-governmental NPO, generally formed by the government and staffed with government employees. Public universities, research institutes, and hospitals fall under this category. They are discussed in this Note because they frequently receive grants from foreign donors and are subject to some of the same tax rules as NPOs. There is also a plan to carry out a [reform of public institutions](#) by privatizing a portion of them and turning them into social organizations.

In addition to these three legal forms, the Charity Law that went into effect on September 1, 2016, created two new legal arrangements for organizations that carry out charitable activities. The first is the charitable organization (慈善 组 织, *cishan zuzhi*) status, which is open to “lawfully established nonprofit organizations” whose main purpose is “carrying out charitable activities” and who do not have a “profit making purpose” (Charity Law Articles 8-9). Chinese NPOs (also known as social organizations) can obtain charitable organization status in one of two ways. One is to apply for the status when registering as a social organization. If they have already registered as a social organization, then the NPO can apply for charitable status recognition following procedures in the Measures for the Designation of Charitable Organizations issued in September 2016.

The second legal status is the charitable trust (慈善信托, *cishan xintuo*). The charitable or public benefit trust was first recognized in the 2001 Trust Law. However, the law did not make clear who the supervisory authorities were, nor did it set forth clear tax provisions governing charitable trusts. As a result, very few charitable trusts were established after the Trust Law was passed. The intent of including charitable trusts in the Charity Law appears to be to clarify the management of those trusts and tax provisions applicable to them in order to encourage their establishment and use. Article 45 of the Charity Law states that charitable trusts must “file documents for the record” (*bei'an*) with the Civil Affairs authorities in order to be eligible for tax benefits.

Besides the above legal forms, there are unregistered NPOs and informal NPOs registered as for-profit businesses. [4] Some unregistered NPOs gain legal status by attaching themselves to another legal entity, such as a social organization or a “public institution,” a term that includes universities and research institutes. NPOs registered as businesses and unregistered NPOs are technically not NPOs in the legal sense, but they are voluntary, nongovernmental, not-for-profit, self-governing organizations in an operational sense. They are mission-driven, not-for-profit organizations founded by and governed by private individuals. Many are funded by foreign governments and embassies and international organizations and foundations, and are required to justify the not-for-profit nature of their activities in their reports to funders.

Together, these legal forms of NPOs and informal NPOs are the closest equivalent to non-governmental, not-for-profit organizations. A substantial portion of the legal NPOs—in particular, SAs and foundations—

were either created by the government or have close ties to a particular government agency. These NPOs are often referred to as government-organized NGOs (GONGOs). In contrast, informal NPOs are generally more independent of the government.

Note on Terminology:

In addition to the term “social organization,” Ministry of Civil Affairs authorities who oversee NPOs sometimes use the term *minjian zuzhi* (民建), which literally means “popular” organizations, or “citizen-initiated” organizations. There is no good English-language equivalent for this term, but it is often used synonymously with civil society organization (公民社会, *gongminshehui zuzhi*; non-governmental organization, 非政府, *feizhengfu zhuzhi*; or not-for-profit organization, 非盈利, *feiyingli zuzhi*). This “*minjian zuzhi*” category covers SAs, CNIs, and foundations, but not public institutions. The agency within the Ministry of Civil Affairs charged with supervising and registering these organizations—the NPO Management Bureau (民政部, *minjian zuzhi guanli ju*)—also uses the same term.

The term “social organization,” in its broadest and unofficial sense, is sometimes used to refer to trade unions, religious organizations, and other “mass organizations” (群众, *qunzhong zuzhi*) or “people’s organizations” (人民团体, *renmin tuanti*), which have been created by the Communist Party of China as links to specific social constituencies. Examples include the All China Federation of Trade Unions, Communist Youth League, All China Women’s Federation, China Science and Technology Association, All China Youth Federation, and All China Federation of Industry and Commerce. These people’s organizations enjoy a special status; they are governed by separate laws and are beyond the scope of this Note, but they often present themselves to the outside world as NGOs. [5] Similarly, certain not-for-profit organizations such as the Chinese Red Cross enjoy special status and are governed by their own laws. In addition, specific rules governing various kinds of not-for-profit organizations may apply in certain provinces and cities. These rules may be, but are not always, available in Chinese on the websites of the local Civil Affairs authorities or the [website](#) of the Ministry of Civil Affairs based in Beijing. This Note focuses primarily on national legislation.

Recent Developments:

In March and April of 2016, China passed two of the most significant laws regulating the nonprofit sector in the last eighteen years. On March 16, 2016, the National People’s Congress passed the Charity Law; it went into effect on September 1, 2016. The National People’s Congress then passed the Overseas NGO Management Law on April 28, 2016; it went into effect on January 1, 2017. This law is formally titled the “Law on the Management of Overseas NGOs’ Activities in Mainland China;” it regulates the mainland China activities of all “nonprofit, non-governmental, social organizations legally established overseas [including Hong Kong, Macau and Taiwan]” (see Section F below).

The passage of the Charity Law was followed by a series of implementing regulations clarifying various aspects of the law (see the list of Applicable Laws and Regulations below), including measures on the designation of charitable organizations, public fundraising, and the management of charitable trusts. As of April 2018, the Ministry of Civil Affairs (MCA) had designated 4,022 social organizations as charitable organizations and received filings from 82 charitable trusts.

In addition, the three regulations governing the registration and management of the three types of “social organizations”—SAs, SSOs and foundations—are currently under revision. [6] In early August 2018, the

Ministry of Civil Affairs issued a draft Regulation for the Registration and Management of Social Organizations for public comment. This draft regulation replaces the three previous regulations that formed the core of the regulatory system for social organizations: the "Regulations for the Registration and Management of Social Groups" issued on October 25, 1998; the "Provisional Regulations on the Registration and Management of Civil Non-enterprise Units" issued on October 25, 1998; and the "Foundation Management Regulations" issued on March 8, 2004. If this regulation is approved, as expected, it would constitute the biggest regulatory development since the passage of the Charity Law and Overseas NGO Law in 2016.

One other important development concerns the regulation of online fundraising, which has grown quickly over the last few years. In 2017, the MCA approved 12 online fundraising platforms, the biggest of which are Tencent Charity, Ant Financial, and Taobao Charity. Together, these platforms raised a total of 2.58 billion yuan (\$405 million) in donations in 2017. The MCA also 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, their qualifications will be canceled. They are also intended to protect the rights of donors through oversight from society and information disclosure. Information on public donations is to be posted prominently on the platform's webpage, and platforms are to publicly announce information about their operations at least every six months. The standards 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.

B. TAX LAWS

Income Tax: In theory, donations, state subsidies, and some other forms of income are tax-exempt. According to the Public Welfare Donations Law, contributions to legal NPOs are theoretically deductible from income tax, with limits depending on the type of taxpayer, the type of beneficiary, and the use of the contribution (see Section V.B). [7] In practice, however, NPOs that are legally registered with Civil Affairs must still apply separately to the tax bureau in order to obtain tax benefits. Furthermore, there is little familiarity with income tax deductibility for donations among both tax authorities and donors, a problem that is compounded by the absence of a comprehensive and coherent tax system tailored specifically to NPOs. Contributions to informal NPOs, moreover, are not tax deductible.

On August 31, 2018, the National People's Congress Standing Committee passed an amendment to the Individual Income Tax Law, incorporating into law the cap on income that individuals may deduct based on donations to charitable causes. Article 6 of the amendment addresses charitable donations as follows: "the amount of money for donations that does not exceed 30% of the taxable income declared by taxpayers can be deducted from their taxable income, on 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." The 30% figure is stated in implementing regulations of the tax law, but the amendment incorporates it into the law itself. The amendment also introduces a full pre-tax deduction for charitable donations with the approval of the State Council.

Another significant development with regard to tax incentives for charitable contributions came on May 10, 2016, when the Ministry of Finance and the State Administration of Taxation issued a Notice on Questions Concerning Corporate Tax on Equities Donations to Public Benefit Organizations, clarifying 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 (see Section V.D).

Indirect Taxes: In theory, NPOs that engage in nursing, medical, educational, cultural, or religious activities or activities in which services are performed by the disabled are exempt from the Business Tax on the sale of services. In practice, they often need to register separately for tax benefits. Moreover, informal NPOs that are registered as businesses are required to pay the Business Tax.

The PRC also subjects most goods and services to VAT and imposes customs duties on imports. Certain goods are exempt from VAT and customs duties, including goods donated by international organizations as well as goods donated by persons outside China to specified national-level social organizations.

II. APPLICABLE LAWS AND REGULATIONS

- [Constitution of the People's Republic of China \(1982, as revised\)](#)
- [Provisional Measures on Management of Foreign Chambers of Commerce in China \(July 1, 1989\)](#)
- [Law of the Red Cross Society of the People's Republic of China \(adopted by the Standing Committee of the National People's Congress, October 31, 1993\)](#)
- [Regulations on the Registration and Administration of Social Associations \(issued by the State Council, October 25, 1998\)](#)
- [Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions \(issued by the State Council, October 25, 1998\)](#)
- [Interim Regulations on the Registration and Administration of Public Institutions \(issued by the State Council, October 25, 1998\)](#)
- [Public Welfare Donations Law \(adopted by the Standing Committee of the National People's Congress, June 28, 1999\)](#)
- [Provisional Measures on Banning Illegal NGOs \(issued by the Ministry of Civil Affairs, April 10, 2000\)](#)
- [Trust Law of People's Republic of China \(adopted by the Standing Committee of the National People's Congress, April 28, 2001\)](#)
- [Non-State Education Promotion Law of the People's Republic of China \(adopted by the Standing Committee of the National People's Congress, December 28, 2002\)](#)
- [Regulations on the Management of Foundations \(issued by the State Council, March 8, 2004\)](#)
- [Provisions on the Administration of Names of Foundations \(issued by the Ministry of Civil Affairs, June 23, 2004\)](#)
- [Accounting System for Civil Not-for-Profit Organizations \(issued by the Ministry of Finance, August 18, 2004\)](#)
- [Measures of Annual Inspection of Private Non-Enterprise Entities \(issued by the Ministry of Civil Affairs, April 7, 2005\)](#)
- [Measures for the Information Disclosure of Foundations \(issued by the Ministry of Civil Affairs, January 12, 2006\)](#)
- [Measures for the Annual Inspection of Foundations \(issued by the Ministry of Civil Affairs, January 12, 2006\)](#)

- *Law of the People's Republic of China on Individual Income Tax (1980, as amended); and Detailed Rules for the Implementation of the Individual Income Tax Law of the People's Republic of China (revised in 2005)*
- *Provisional Regulations of the People's Republic of China on Enterprise Income Tax (1993), and Detailed Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Enterprise Income Tax (1994)*
- *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 (January 18, 2007)*
- *Enterprise Income Tax Law of the People's Republic of China (promulgated by the National People's Congress March 16, 2007, effective January 1, 2008)*
- *Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China (issued by the State Council, 2007)*
- *Measures for the Administration of Donations for Disaster Relief (issued by the Ministry of Civil Affairs, April 28, 2008)*
- *Select Opinions of the General Office of the State Council on Accelerating and Promoting the Reform and Development of Trade Associations and Chambers of Commerce (September 24, 2007)*
- *Notice of the General Office of the Ministry of Health on the Provisions on the Administration of the Representative Agencies of Overseas Foundations whose Businesses are under the Charge of the Ministry of Health (March 27, 2008)*
- *Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions (No. 63 [2009]) [[English](#)] [[Chinese](#)] [[8](#)]*
- [Charity Law](#) (March 16, 2016)
- [Management of Overseas NGOs' Activities in Mainland China Law \(2016\)](#)
- [Provisional Regulations on Admonishment Meetings for Social Organizations by Registration Management Organs and Administrative Law Enforcement \(March 16, 2016\)](#)
- [Provisional Notice on Registration Management Organs' Acceptance of Complaints and Reports about Social Organizations \(August 15, 2016\)](#)
- [Measures for the Designation of Charitable Organizations \(September 1, 2016\)](#)
- [Measures on the Administration of Public Fundraising by Charitable Organizations \(September 1, 2016\)](#)
- [Notice on Social Organizations Initiating Party Construction Work During Registration \(September 18, 2016\)](#)
- [Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities](#)
- [Measures for the Management of Charitable Trusts \(July 2017\)](#) [Regulation on Social Organisation Credit Information Management](#) (社会组织信用信息管理办法) (January 24, 2018)
- [Measure for Charitable Organizations' Information Disclosure](#) (慈善组织信息公开办法) (August 6, 2018)

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

Three main legal forms of NPOs in China are relevant to foreign grantmakers: the social association (SA) (*shehui tuanti*); the social service organization (SSO) (*shehui fuwu jigou*); the foundation (*jijinhui*); and the quasi-governmental public institution (*shiye danwei*). The 2016 Charity Law also provides for two other arrangements: the charitable trust (*cishan xintuo*) and the charitable organization (*cishan jigou*).

Social Associations (SAs): SAs constitute the earliest form of legal NPOs in the PRC and are essentially membership associations of various kinds. Many industry and professional associations fall into this category. They are formed to advance “the common desires of their members,” and may be formed for mutual benefit or public benefit (Regulations on the Registration and Administration of Social Associations).

SAs are subject to joint oversight by (1) their registration and administration agency (generally the Ministry of Civil Affairs in Beijing or a provincial, municipal, or local civil affairs bureau or office); and (2) a professional agency responsible for the organization (generally a government ministry or other state agency at the national, provincial, municipal, or local level with jurisdiction over the SA's sphere of activity). As with all NPOs, the Civil Affairs bureaucracy carries out a “multi-level management system” (分 管理, *fenji guanli*) in which SAs with nationwide activities or impact are regulated at the national level, while SAs with regional or local activities or impact are regulated at the provincial, city, or county level.

The requirements for registering as an SA, particularly a national-level SA, are set quite high and it is difficult to obtain SA status without some amount of government support. As a result, many SAs have some sort of government background and are perceived as GONGOs, rather than independent NPOs.

Social Service Organizations (SSOs): SSOs are “non-profit legal persons established by natural persons, legal persons, or other organizations mainly using non-state-owned assets to provide social services” (Draft Regulations on the Registration and Administration of Social Service Organizations).

Private schools, private not-for-profit research institutes, and private not-for-profit hospitals are often registered as SSOs. SSOs, like SAs and foundations, are subject to the joint oversight of a registration and administration agency (generally Ministry of Civil Affairs or provincial or local civil affairs authority) and a professional agency such as a government ministry or agency at the provincial or local level.

It is generally easier to register as an SSO than an SA, and more independent NPOs have been able to register as SSOs, especially at the local level. In recent years, more informal NPOs registered as businesses have been able to register as SSOs.

Foundations: A foundation is a not-for-profit organization that promotes public benefit undertakings through grants and donations. Its assets are donated by individuals, legal persons, or other organizations (Regulations on the Administration of Foundations (RAF) Article 2).

Foundations, like SAs and SSOs, are regulated by both a registration and administration agency, usually the Ministry of Civil Affairs in Beijing or a provincial, municipal, or local Civil Affairs bureau or office, and by a professional agency such as the relevant government ministry or agency at the national, provincial, municipal, or local level. In laws and regulations issued prior to the 2004 Foundation Regulations (such as the Public Welfare Donations Law), the term “social organization” included foundations. [\[9\]](#)

The 2004 Regulations on the Administration of Foundations distinguish between foundations that are authorized to engage in public fundraising (hereafter “public foundations”) (公募基金会, *gongmu jijinhui*) and those that cannot, e.g. non-public fundraising (hereafter “private foundations”) (非公募基金会).

会, *feigongmu jijinhui*). [10] Private foundations are generally funded by a major gift from a corporation or family. Over the last 14 years, with the rapid increase of wealthy entrepreneurs and the emergence of tax laws encouraging individual and corporate giving, private foundations have grown very quickly and now far outnumber their public foundation counterparts.

Before the 2016 Charity Law, public fundraising status was highly coveted and enjoyed only by public foundations, many of which were GONGOs such as the China Youth Development Foundation, the Soong Ching Ling Foundation, and the China Foundation for Poverty Alleviation. Only a few independent foundations were able to get public fundraising status. The Charity Law has essentially erased this distinction between public and private foundations by allowing all organizations that have held charitable organization status for two years to apply for public fundraising status (Charity Law Article 22).

Charitable Organizations: The Charity Law, which went into effect on September 1, 2016, created a new legal status: the charitable organization (慈善, *cishan zuzhi*). Charitable organization status is open to “lawfully established nonprofit organizations” whose main purpose is “carrying out charitable activities” and who do not have a “profit making purpose” (Charity Law Article 8-9). The three categories of social organizations can obtain charitable organization status in one of two ways. One is to apply for the status when registering as a social organization. Alternatively, if the entity has already registered as a social organization, then it can apply for charitable status recognition following procedures in the Measures for the Designation of Charitable Organizations issued in September 2016.

As of April 2018, 4,022 organizations have been officially accredited as charitable organizations (慈善), compared to more than 500 one year ago. Of these 4,022 charitable organizations, the vast majority are foundations, while the rest are social associations and social service organizations.

Charitable Trusts: Chapter 5 of the Charity Law revives the charitable trust (慈善信托, *cishan xintuo*) as another legal entity that can carry out charitable activities. The charitable or public benefit trust was first recognized by the 2001 Trust Law; however, the Trust Law did not clearly identify the supervisory authority or offer clear tax provisions governing this type of nonprofit. As a result, very few public benefit trusts were established. It appears that the Charity Law mentions public benefit trusts in order to clarify aspects of their establishment and governance, as well as to encourage their formation. Article 45 of the Charity Law states that charitable trusts must “file a record” (*bei'an*) with the Ministry of Civil Affairs in order to be eligible for tax benefits.

Since the Charity Law went into effect, a total of 82 charitable trusts have been established, attracting around 952 million yuan (around \$150 million) to address issues such as poverty alleviation, education, and left-behind children.

Public Institutions: Public institutions are “social service organizations sponsored by state organs or other organizations using state-owned assets that engage in educational, science and technological, cultural, medical, and other activities for the purpose of social benefit” (Interim Regulations on the Registration and Administration of Public Institutions, Article 2). Accordingly, these organizations are commonly and more closely-linked to the state than other types of NPOs. Public schools and universities, scientific research institutes, and public social care institutions are generally public institutions. [11] On April 16, 2012, the State Council released the “Guidelines on Advancing Public Institution Reform by Categories,” regarding the government’s ambitious plans to convert around 80 percent of existing public institutions into social organizations over a five year period as part of a broader effort to streamline government administration.

B. PUBLIC BENEFIT STATUS

Chinese law distinguishes between NPOs that have a public benefit purpose and those that serve other purposes. The two main laws defining the scope of public benefit activities are the 1999 Public Welfare Donations Law (PWDL) and the 2016 Charity Law.

The PWDL confers public benefit status on two categories of organizations: “public welfare social organizations” and “public welfare nonprofit public institutions.” In theory, NPOs with public benefit status are eligible for tax deduction or exemption (PWDL Chapter 4). However, the reality is quite different, as China lacks a comprehensive, coherent, and detailed set of tax regulations for NPOs. As a result, tax bureaus and NPOs themselves are often not familiar with the preferential tax provisions, and receiving tax deductions or exemptions requires that both the NPO and the individual or enterprise making the donation undertake additional procedures. NPOs with public benefit status are also subject to stricter government supervision (PWDL Chapters 3-5). [\[12\]](#)

According to Article 10 of the PWDL, “public benefit social organizations” are legally established foundations, charitable organizations, and other social organizations founded to promote public benefit undertakings. Article 3 of the PWDL provides that the following activities qualify as “public benefit undertakings”: (1) Disaster relief, poverty alleviation, assistance to the handicapped, and assistance to social organizations in needy circumstances; (2) Education, scientific, cultural, public health, and athletic undertakings; (3) Environmental protection and construction of public facilities; and (4) Other public benefit undertakings promoting social development and progress. [\[13\]](#)

“Public benefit nonprofit institutions” are legally-established educational institutions, scientific research institutions, health institutions, cultural institutions, public sports institutions, social welfare institutions, and others that carry out public benefit undertakings and are not-for-profit.

All foundations, some SAs, and most public institutions have public benefit status. In theory, SSOs can also obtain public benefit status and accept donations under the PWDL.

Informal NPOs registered as businesses or that are unregistered, however, are not eligible for tax exemption, even though operationally they are nonprofit and have a public benefit purpose. Some of China’s best-known independent public benefit NPOs fall into this category.

Articles 3-5 of the 2016 Charity Law define the scope of charitable, public benefit activity as follows:

Article 3: ‘Charitable activities’ in this law refers to the following public interest activities voluntarily carried out by natural persons, legal persons and other organizations through the donation of property, the provision of services or other means: (1) Helping the poor and the needy; (2) Assisting the elderly, orphans, the ill, the disabled, and providing special care; (3) Alleviating losses incurred by natural disasters, accidents, public health incidents and other emergencies; (4) Promoting the development of education, science, culture, health, sports and other causes; (5) Preventing and alleviating pollution and other public hazards, protecting and improving the environment; (6) Other public interest activities in accordance with this law.

Article 4: Charitable activities shall abide by the principles of being lawful, voluntary, honest, and non-profit, and must not violate social morality, or endanger national security or harm societal public interests or the lawful rights and interests of other persons.

Article 5: The government encourages and supports natural persons, legal persons and other organizations in legally carrying out charitable activities that represent the core values of socialism and promote the traditional morals of the Chinese nation.

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 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 (Charity Law Article 9).

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.

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

The Measures on the Administration 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, such as setting up standard internal governance structures, maintaining full-time staff, participating in a social organization assessment, and complying 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, fundraising, and use of donated funds, particularly if the funds are raised through public channels (Charity Law Chapter 8).

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

Chinese law generally prohibits inurement for all NPOs except private schools, which are regulated by the Law to Promote Private Education.

Existing laws and regulations generally prohibit any action to "usurp, divide in secret, or misappropriate the assets" of an SA (Regulations on the Registration and Administration of Social Associations Article 29). All of an SA's income must be devoted to the activities addressed in the association's 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 set for employees of the supervising governmental agency or other unit, which means they generally mirror the salaries of civil servants.

With regard to foundations and CNIs, the relevant provisions are nearly identical to those governing SAs (Regulations on the Management of Foundations Article 27; Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions Article 21). A 2005 Ministry of Civil Affairs notice on CNIs' accountability and self-governance further requires that all CNIs comply with the Accounting System for Civil NPOs issued in August 2004, thereby securing additional protection against inurement in the case of CNIs.

The 2004 Foundation Management Regulations, for example, provides detailed provisions on “self-dealing” and conflicts of interest. Article 20 of the Regulations states: “For non-public fundraising foundations established using the assets of a private individual, no more than a third of board members may be close family relations of that individual; for other foundations, close relations may not serve simultaneously as directors,” and “directors who receive financial remuneration from a foundation may not make up more than a third of its board members.” Article 23 of the Regulations specifies other rules regarding conflicts of interest:

The posts of chair and deputy chair of the board of directors or secretary general should not be taken by persons currently employed by state bodies. The legal representative of the foundation may not at the same time be the legal representative of any other organisation. The legal representative of public fundraising foundations and non-public fundraising foundations whose original funds are of domestic Chinese origin should be a person whose is a legal resident of mainland China (须为中国内地居民).

Should a board member find there is a connection between their personal interests and the interests of the foundation, they should not take part in decision making related to the matter; nor should a board member, the supervisory official or their close relations have any kind of business dealings with the foundation.

The supervisory official and board members not serving in a full time post at the foundation may not be paid.

For public institutions, all of the institution's income must be devoted to activities that advance its purposes (Interim Regulations on the Registration and Administration of Public Institutions Article 15). The public institution must use all donations and subsidies in conformity with the purposes of the organization and the agreements with donors.

The Public Welfare Donations Law sets forth similar provisions regarding inurement (Public Welfare Donations Law Articles 17, 18, and 23).

There is one exception to the general rule against inurement: The founders of a private school are permitted to receive a “reasonable return” on their investment (Law to Promote Private Education Article 51).

The legal framework contains general prohibitions governing financial transactions or “self-dealing” between NPOs and their founders, donors, directors, officers, employees, or family members.

These prohibitions can also be found in recent legislation such as the Charity Law. 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.”

Furthermore, 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.”

B. PROPRIETARY INTEREST

The Accounting System for Civil NPOs (effective January 2005) specifically states that “resource providers do not have ownership of [NPOs]” (Accounting System for Civil NPOs Article 2(3)). Though the law and regulations do not explicitly prohibit a donor from making a conditional donation, various regulations limit how an NPO can use its property and income, which may imply that donors cannot revoke their contributions.

The Public Welfare Donations Law provides that if the recipient changes the nature and use of the donated property without the consent of the donor, and refuses to abide by a competent authority’s order to cure the violation of the donor’s instructions, the authorities can transfer the property to another NPO with the same or similar purposes, after consulting the donor (Article 28).

The regulations do not address whether members of a mutual benefit SA can reclaim their contributions when they cease being members.

The founders of a private school may retain a proprietary interest in the property they contribute to a school. During the existence of the school, however, they are entitled to claim only a “reasonable return,” and they cannot revoke their contribution or reclaim their property (Law to Promote Private Education Article 36). It is not yet clear whether they can recover their property upon dissolution of the private school.

With regard to charitable or public interest NPOs, the 2016 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” (Article 52).

C. DISSOLUTION

Because the State has formed virtually all public institutions and most SAs and foundations that exist today, the assets of a dissolved NPO generally are transferred to another NPO or to the State.

For SAs, Article 25 of the Regulations on the Registration and Administration of Social Associations provides that “[t]he remaining assets of a cancelled social association shall be disposed of in accordance with the relevant provisions of the State.” The relevant governmental agencies have opined that the assets should not be returned to members or donors. [\[14\]](#) Further, the Standard Form of Statutes of Social Associations, issued by the Ministry of Civil Affairs, provides that remaining assets should be used to support undertakings similar to those of the dissolved organization, under the supervision of the relevant government authorities (Standard Form of Statutes of Social Associations, Article 25).

The Interim Regulations on the Registration and Administration of Civil Non-Enterprise Institutions are silent in this regard, but officials generally treat CNIs (SSOs) in the same manner as SAs. [\[15\]](#)

For foundations, Article 33 of the Regulations on the Administration of Foundations provide that “[t]he remaining assets of a cancelled foundation shall be used for public benefit purpose designated in its constitution. When it is not feasible to do so, the registration and administration agency will arrange for the assets to be donated to public benefit organizations whose nature and purpose are similar to the one in question.”

As noted above, because public institutions are established with state-owned assets, the state typically acquires remaining assets upon dissolution, even in the absence of explicit provisions for their return.

Private schools may be an exception. The Law to Promote Private Education provides that the remaining assets will be disposed of according to related laws or regulations, which have not been issued yet (Article 59). It is possible that the rules will allow founders to recover the property they contributed, but only to the extent of its original value.

Regarding charitable NPOs, Article 18 of the 2016 Charity Law requires either the decision-making body of the organization to establish a team for liquidation or allows the local department of the Ministry of Civil Affairs to apply to a people's court to form a team for liquidation. Financial assets remaining after liquidation must be transferred to charitable organizations with the same or similar aims, in accordance to the organization's charter. If the charter does not specify such organizations, the local department of the Ministry of Civil Affairs will be tasked with transferring the funds to such organizations. After the liquidation process, the dissolved organization must apply for deregistration with the local department of the Ministry of Civil Affairs with which they registered, and the departments will announce the results to the public.

D. ACTIVITIES

1. GENERAL

An NPO must limit its activities to those set forth in its constitution or statutes (Regulations on the Registration and Administration of Social Associations Articles 29 and 33; Interim Regulations on the Registration and Administration of Civil Non-Enterprise Institutions Articles 21 and 25; Regulations on the Administration of Foundations Articles 27 and 42).

Different types of NPOs are able to qualify as legal persons, provided that they follow the appropriate registration procedures. As such, all NPOs have the power to engage in activities of legal persons, except to the extent that the law provides otherwise.

Charitable or public welfare activity is defined in Article 3 of the 2016 Charity Law as "initiation of the following non-profit activities on a voluntary basis by natural persons, legal persons and other organizations through means such as donating assets or providing services, or voluntarily carrying out the following public interest activities: (1) Poverty alleviation and assistance; (2) Eldercare, aid for orphans, aid for the ill, assistance for the disabled, or special aid; (3) relief from damage caused by natural disasters, disasters caused by accidents, public health incidents and other emergencies; (4) promotion of the development of areas such as education, science, culture, health, and sports; (5) prevention and control of pollution and other public harms, and protection and improvement of the environment; (6) Other public interest activities compliant with the provisions of this law."

2. ECONOMIC ACTIVITIES

NPOs face certain limitations on commercial activities. SAs, SSOs, foundations, and public institutions cannot themselves engage in for-profit activities, but they can invest in commercial entities unless the State Council provides otherwise. [\[16\]](#) According to the Charity Law, conducting commercial activities cannot be the principal purpose of a charitable organization (Charity Law Article 9). The law does not distinguish between "related" and "unrelated" commercial activities.

An NPO's commercial activities are taxed on the same basis (25 percent) as those of a commercial corporation unless the law stipulates otherwise. Exceptions to this rule are rare. Enterprises owned solely

by public schools, for example, are exempted from a substantial part of the business tax and VAT. The income of scientific research institutes and higher educational institutions, if derived from the transfer of technology, is also exempted from business tax. [\[17\]](#)

3. POLITICAL ACTIVITIES

The Charity Law and Overseas NGO Law both contain provisions that may limit NPOs' engagement in political activities. Article 15 in the Charity Law, for instance, includes the following broadly-worded prohibitions: "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."

The Overseas NGO Law specifically prohibits foreign organizations from "engaging in or funding political activity" or "other situations that endanger state security or damage the national or public interest" (Article 5).

Though no explicit rules exist, NPOs are generally forbidden from engaging in political activity surrounding an election, except for mass organizations like the All-China Federation of Trade Unions and certain organizations affiliated with the Chinese Communist Party.

Despite these prohibitions, there are no formal legal rules explicitly restricting NPO involvement in the legislative process. Social organizations commonly debate legislative proposals through the mass media, and communicate their opinions to the National People's Congress (NPC), the Chinese People's Political Consultative Conference (CPPCC) (an advisory body that meets annually at the same time as the NPC), and provincial and municipal legislatures.

E. DISCRIMINATION

The Constitution of the People's Republic of China guarantees that all "Citizens of the People's Republic of China have the duty as well as the right to receive education" (Constitution Article 46). Article 4 of the Constitution also guarantees the equality of all national and ethnic groups in China, and prohibits any form of discrimination against minorities (Constitution, Article 4). [\[18\]](#)

F. CONTROL OF ORGANIZATION

A Chinese NPO may be controlled by a for-profit entity. For-profit organizations commonly form or join social organizations, such as chambers of commerce, trade associations, or industry associations. In formal terms, members control a social organization through the members' assembly, though in practice, the members' authority may not be substantial.

Many SSOs and private foundations have been established by for-profit organizations. Founders of an SSO or a foundation are permitted to control it throughout its existence. Although it is not explicitly provided in the regulations, control may be established by the statute of an SSO or a foundation. In practice, a public institution is wholly controlled by its founding organization, which is ordinarily a government agency.

In theory, a Chinese NPO could be controlled by a foreign charitable organization, which must be disclosed in the affidavit accompanying its establishment. According to the Regulations for the Administration of Foundations (2004), foreign individuals and organizations may establish representative offices in China, and foreigners are eligible for the positions of president and officers of foundations as long as they reside in China no fewer than three months a year. [\[19\]](#) Generally the only form of social organization that foreigners can legally join is a foreign chamber of commerce, such as the American Chamber of Commerce-

People's Republic of China (AmCham China) and the British Chamber of Commerce in China. [20] The Overseas NGO Law, however, does not have provisions allowing foreign NGOs to establish a Chinese NPO.

G. ANNUAL INSPECTION AND INFORMATION DISCLOSURE

The Measures for the Annual Inspection of Foundations issued by the Ministry of Civil Affairs in 2005 require that foundations and representative offices of overseas foundations provide their annual work report for the previous year to the relevant registration and administration organ for review. An annual work report must include: financial statements, auditing reports, and information on donations, acceptance of donations, and offers of funding, as well as any changes in staffing or institution.

The [Regulations on the Registration and Management of Social Associations](#) and [Interim Regulations on the Registration and Administration of Civil Non-Enterprise Institutions](#) spell out similar requirements for SAs and CNIs.

The Measures for the Information Disclosure of Foundations issued by the Ministry of Civil Affairs in 2006 require foundations or representative offices of overseas foundations to disclose internal information and business undertakings to the general public. The following information must be made generally available: (1) the annual work report of a foundation or representative office of an overseas foundation; (2) information on donation activities by the foundation; and (3) information on the welfare funding projects undertaken by the foundation.

Article 13 of the Charity Law requires that “charitable organizations shall submit an annual work report and a financial accounting report to the civil affairs department with which they were registered. Reports should include information on annual fundraising and donation acceptance, the use and management of charitable assets, the implementation of charitable projects and also charitable organizations' staff wages and benefits.”

To increase transparency and trust in the charitable sector, Chapter 8 of the Charity Law has stricter, more detailed requirements for charitable organizations to disclose information regarding their organization, activities, fundraising, and use of donated funds, particularly funds raised through public channels. These requirements will increase the reporting burdens on charitable organizations.

In line with the renewed emphasis on transparency and information disclosure, the drafts of the revised regulations for SAs, SSOs, and foundations also contain more detailed requirements for disclosing information.

V. TAX LAWS

A. INCOME TAX EXEMPTION

China has three categories of income tax: Enterprise Income Tax, Foreign Invested Enterprise and Foreign Enterprise Income Tax, and Individual Income Tax.

Under the Public Welfare Donations Law, the “state encourages the development of public benefit undertakings, and grants support and preferential treatment to public benefit social organizations and public benefit nonprofit institutions.” The Public Welfare Donations Law establishes benefits relating to Enterprise Income Tax (Article 24), Individual Income Tax (Article 25), and Import Duties and VAT (Article 26), but the specifics of the exemptions are set forth in other laws and regulations.

In January 2008, the revised Enterprise Income Tax of the People's Republic of China came into effect. Under Article 26 of the new amendments, legal not-for-profit organizations are exempt from income tax provided that they meet relevant provisions. Specifically, the income of "qualified not-for-profit organizations" is exempt from Enterprise Income Tax. The procedures for obtaining tax-exempt status require that the NPO get approval from the finance and tax departments under the State Council, in addition to other relevant ministries and agencies of the State Council.

According to the Regulations on the Implementation of the Enterprise Income Tax Law of the People's Republic of China, the term "qualified not-for-profit organizations" refers to an organization that meets the following conditions:

- 1. It has completed registration for not-for-profit organizations according to law;*
- 2. It engages in public interest activities or not-for-profit activities;*
- 3. Income obtained is used entirely for the public interest or not-for-profit undertakings as registered, approved, or stipulated in the charter, with the exception of reasonable expenses related to the organization;*
- 4. Properties and the benefits thereof are not to be distributed;*
- 5. Pursuant to the registration, approval, or stipulations of its charter, the surplus properties of the organization after write-off shall be used for public interest or not-for-profit purposes or shall be donated via the administrative agency responsible for registration (usually the Ministry of Civil Affairs or local civil affairs bureau) to another organization of the same nature and with the same tenets, and shall be publicized to the general public;*
- 6. No sponsor shall reserve or enjoy any property rights to the properties the sponsor gave to the organization in question; and*
- 7. Expenses for the salaries and fringe benefits of staff members are controlled within prescribed limits, and none of the organization's properties shall be distributed in any disguised manner.*

The term "qualified income of the not-for-profit organization" does not include income of the not-for-profit organization arising from profit-making activities unless it is set forth by the relevant department of finance or taxation of the State Council.

An NPO's donations, financial support from the government, membership dues, and some other income are all exempt from Enterprise Income Tax. [21] However, because tax offices are often unfamiliar with the tax regulations related to NPOs, income exemptions for Chinese NPOs appear to be more the exception than the rule. Additionally, informal NPOs are ineligible for such tax exemptions.

B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Recent changes in tax legislation have increased the portion of taxable income that individuals and enterprises can deduct for public benefit donations to qualified NPOs. Individual taxpayers can now deduct up to 30 percent of their taxable income for public benefit contributions to legal NPOs (Regulations for the Implementation of the Individual Income Tax Law, Article 24, and the 2018 amendment to the Individual Income Tax Law). Enterprises can deduct up to 12 percent of their taxable income (Enterprise Income Tax Law Article 53). The State Council may also approve a full pre-tax deduction for charitable donations (2018 amendment to the Individual Income Tax Law).

According to the Regulations on the Implementation of the Enterprise Income Tax Law of the People's Republic of China, the term "public interest donations" as used in Article 51 of the Enterprise Income Tax Law refers to donations made by an enterprise to "public interest social organizations" or the people's government at the county level or above, and its departments, for public interest undertakings as prescribed in the Public Welfare Donations Law.

The term "public interest social organizations" includes any foundation or charitable organization that meets the following conditions:

- 1. It is lawfully registered and has the status of a legal person;*
- 2. It serves the purpose of promoting public interest and does not adopt profit-making as its purpose;*
- 3. All of its assets and profits belong to the legal person;*
- 4. Its proceeds and operational surplus are used primarily for the cause for which the legal person was established;*
- 5. The surplus property after the termination of the enterprise is not distributed to any individual or profit-making organization;*
- 6. The organization refrains from engaging in any business that does not relate to its purpose of establishment;*
- 7. It has a sound financial and accounting system;*
- 8. The donor does not participate in the distribution of the property of the social body in any way; and*
- 9. Other conditions as prescribed by the departments of Finance and Taxation of the State Council in collaboration with the Civil Affairs departments of the State Council in charge of managing the registration of social organizations.*

The more favorable regulations regarding tax deductibility of public benefit donations have had mixed results. Enterprises have taken advantage of these incentives to establish private foundations. The increase in the percentage of enterprise income eligible for tax deductibility from 3 percent to 12 percent in 2008 was one main factor behind the rapid growth of private foundations. Individuals, however, have not been as quick to take advantage of the tax laws due to poor implementation of the laws regarding deductibility on individual income taxes and a cultural perception that individuals should not benefit financially from public benefit donations. As a result, the large majority (about 60 percent) of donations to public benefit causes in China come from corporations. [\[22\]](#) The fact that individual giving makes up a small part of total giving in China is in part a reflection of the lack of clear, simple, and well-publicized tax exemption regulations and procedures for individual donors.

While in theory there are significant tax incentives in the various income tax laws, the process of applying for a tax benefit is unclear and inconsistent. Only a small number of NPOs have applied and been approved to provide receipts to donors for tax exemption purposes. Moreover, tax offices and individual donors often are not aware of the tax exemption laws or are unsure about how to apply them. In addition, these tax incentives can only be enjoyed by legally registered NPOs, not informal NPOs. Informal NPOs, such as those registered as businesses, do not enjoy these incentives and must pay an additional business tax on their income.

Chapter 9 of the Charity Law lists various general tax exemptions for charitable organizations and activities, as well as individuals and organizations that make donations to charitable organizations and

activities. The specific details will come out in implementing regulations issued by the tax and finance departments.

C. INDIRECT TAXES: BUSINESS TAX, VALUE ADDED TAX, AND IMPORT DUTIES

China subjects certain sales of goods and services to Business Tax (which relates to provision of services) and VAT (which relates to sales of goods), and offers few exemptions.

The general Business Tax law exempts NPOs and other entities that engage in nursing, medical, educational, cultural, or religious activities, or activities in which services are performed by the disabled (Interim Regulations on the Business Tax, Article 6).

Goods sold within China or goods imported from abroad are subject to VAT. The Interim Regulations on the Value Added Tax exempts from VAT goods for scientific research, experimentation, and education; antique books; and goods imported by organizations of the disabled to be used specifically for the disabled. Imported goods donated by foreign governments and international organizations are also exempt from the VAT (Interim Regulations on the Value Added Tax Article 16).

Goods donated by foreign governments and international organizations are also exempt from customs duties (Customs Law Article 56), though an application may need to be submitted in order for organizations to enjoy that exemption.

Certain other donations are also exempt from customs duties and VAT (Public Welfare Donations Law Article 26). In 2001, the Ministry of Finance, the State Administration of Taxation, and the Customs General Administration jointly issued the Interim Methods of Customs Duties Exemption of Donated Goods for the Purposes of Poverty Relief or Charity. This exemption applies to goods donated by people outside China that are accepted by the government or by “Social Organizations established with the permission of competent departments of the State Council, whose purposes are humanitarian, poverty relief or charity” (Public Welfare Donations Law, Article 5). The Customs General Administration enacted implementing rules, under which the exemption applies only to several national-level social organizations. Most NPOs are excluded. [\[23\]](#)

According to other rules made by the Customs General Administration, goods are exempted from Customs Duties and VAT if (1) they are imported by scientific research institutes or schools, (2) they are directly for scientific research or education, and (3) they cannot be produced in China.

Certain customs duties or taxes may also be exempted by special rules adopted after significant disasters, such as the 2008 earthquake in Sichuan Province.

On January 18, 2007, the Ministry of Finance and the State Administration of Taxation issued a Notice on the Policies and Relevant Management Issues concerning the Pre-Tax Deduction of Public Welfare Relief Donations. This notice exempts relief donations given to NPOs from their pre-tax income. Eligible donations include those for the purpose of education, civil affairs, other public welfare undertakings, or those for districts suffering from natural disasters or poverty.

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.

D. OTHER TAXES

NPOs also qualify for exemptions from other taxes, including Real Estate Tax, Urban Land Use Tax, and Tax on Acquisition of Real Estate.

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 Benefit Organizations 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 benefit organizations” are nonprofit social organizations such as foundations and charitable organizations that are dedicated to the public benefit, 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. [\[24\]](#)

E. DOUBLE TAX TREATIES

China and the United States have entered into a double-taxation treaty, but it does not specifically address the deductibility of contributions by U.S. residents and businesses to NPOs.

F. FOREIGN ORGANIZATIONS AND GRANTS

Incremental efforts to regulate foreign organizations and funding reached a watershed in April 2016 with the passage of the Management of Overseas NGO Activities in Mainland China Law (hereafter “Overseas NGO Law”) by the National People’s Congress. This law represents the first, comprehensive effort to regulate overseas NGO (ONGO) activity in China. [\[25\]](#)

The Overseas NGO Law provides two options for “not-for-profit, nongovernmental social organizations lawfully established outside of mainland China” to legally carry out activities in China: They must either (1) register a representative office; or, (2) file documentation (~~报~~, *bei’an*) to carry out so-called “temporary activities” (~~报~~, *linshi huodong*) in case they want to only carry out activities without setting up an office (Overseas NGO Law Article 9). The law states that “ONGOs that do neither of these [i.e. neither register an representative office, nor file a record for “temporary activities”] are not allowed to carry out activities either openly or covertly, or to authorize, fund, or covertly authorize any Chinese work unit [~~位~~, *danwei*] or individual to carry out activities” (Overseas NGO Law Article 32). This statement essentially provides that all Chinese work units and individuals will be putting themselves at risk if they cooperate with a ONGO that has not undergone one of the two legal channels for working in China.

For ONGOs wishing to set up a representative office, the Overseas NGO Law retains the main defect of the 2004 Foundation Management Regulations that prevented so many ONGOs with an office in China from registering: the dual-management system. Under this system, an ONGO must find a relevant government agency to serve as a professional supervisory unit (PSU) before registering with the Ministry of Public Security (Overseas NGO Law Article 11). The Ministry and provincial public security bureaus (PSBs) have published a directory of eligible professional supervising units. [\[26\]](#)

The law requires representative offices of ONGOs to go through burdensome approval, inspection, and reporting procedures. By December 30 of each year, the representative offices of ONGOs will have to send activity plans for the following year to their professional supervising agencies, which approve the plans and within ten days file a record with the registration authorities (Overseas NGO Law 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 (年度 , *niandu jiancha*), which entails submitting to the professional supervisory unit 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 (Overseas NGO Law Article 31). After approval, the report is then submitted to the relevant department in the Ministry of Civil Affairs. The representative office must also report to the registration authorities about the staff that it hires (Overseas NGO Law Article 27). [27]

Representative offices of ONGOs must “engage in public benefit activities that are appropriate for the nature of public benefit enterprises in China.” Representative offices of ONGOs 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 other option proposed by the Overseas NGO Law for ONGOs working in China—that of filing documentation for “temporary activities”— may be less onerous. The ONGO 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 (群众 , *qunzhong zuzhi*); public institution (事业单位 , *shiyedanwei*), such as a public university; or a social organization (社会组织 , *shehui zuzhi*) [28], such as an SA (that is, a membership association) (社会团体 , *shehui tuanti*), CNI (or social-service provider) (社会服务组织 , *shehui fuwu zuzhi*), or foundation (基金会 , *jijinhui*) (Overseas NGO Law Article 16). The Chinese partner is different from a professional supervisory unit, which should be a government agency and acts in a supervisory role vis-à-vis the ONGO. 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.

ONGOs 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 ONGO 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” (Overseas NGO Law Article 17). The temporary activity may not exceed one year. If the time period for the activity is longer than that, the ONGO will need to re-file documentation. ONGOs 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 (Overseas NGO Law Article 22).

The Overseas NGO Law went into effect on January 1, 2017. After a slow start, the Ministry of Public Security and its provincial bureaus have been more rigorously implementing the Overseas NGO Law. As of November 2018, overseas NGOs had registered 427 representative offices in China, and filed 1,179 temporary activities. More information about the implementation of the law can be found on [ChinaFile’s China NGO Project](#), and [China Development Brief](#), both of which are regularly monitoring the law’s implementation.

VI. KNOWLEDGEABLE CONTACTS

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FOOTNOTES

[1] After more than 2,000 years with its own unique legal tradition, China began to embrace the civil law tradition of the western world early in the 20th century. During the Republic of China period (1912-1949), systematic legislation placed China firmly in the civil law family. Since the establishment of the People's Republic of China in 1949, the legal tradition in China has remained mainly civil law, though with significant characteristics of socialism. Thus there is no Civil Code in China at present, but only General Principles of Civil Law.

[2] The standard translation for "Social Associations" has, in the past, been "Social Organizations," which is confusing because "Social Organizations" is also the term used for the broader concept of *shehui zuzhi*, which includes SAs, CNIs, and foundations. This Note therefore uses "Social Associations," instead, because they most closely resemble what are known as membership associations.

[3] The Charity Law and the coming revision of the Registration and Management Regulations for CNIs now refers to them as SSOs.

[4] A number of scholars estimate that informal NPOs outnumber legal NPOs. As of 2012, there were approximately 450,000 legally-registered NPOs, but estimates of the number of informal NPOs run from 1 million to 3 million, depending on which types of organizations are counted. 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 Deng, "The Hidden Rules Governing China's Unregistered NGOs: Management and Consequences," *The China Review*, 10:1 (Spring, 2010).

[5] In 2007, "Some Opinions of the General Office of the State Council about Accelerating and Promoting the Reform and Development of Trade Associations and Chambers of Commerce" encouraged the separation of trade unions from the government.

[6] The three regulations being revised are the Regulations on the Registration and Administration of Social Associations (1998); Interim Regulations on the Registration and Administration of Civil Non-Enterprise Institutions (1998); and Regulations on the Management of Foundations (2004). Drafts of those regulations were issued for public comment in the second half of 2016; however, the drafting process has been held up and as of May 2018 it was unclear when the final versions will be issued.

[7] For further information on tax laws applicable to NPOs in China, see Leon Irish, Jin Dongsheng, and Karla Simon, [China's Tax Rules For Not-For-Profit Organizations](#) (hereafter Tax Report). The paper also contains a lengthy discussion of the general legal rules applicable to all types of NPOs in China.

[8] The Regulations on the Administration of Foundations (2004) were adopted to replace the 1988 Regulations on Foundations (issued by the State Council on September 27, 1988). Under the 1988 Regulations, foundations were a special category of social organization. Consequently, the term "social organization" in other laws and regulations has usually been used to include foundations. But the 2004 Regulations no longer describe foundations as a special category of social organization. Foundations may be in somewhat of a legal limbo, in theory if not in practice, because they are not discussed in the General Principles of Civil Law.

[9] English translations of some of these laws and regulations can be found on China Development Briefs' [website](#).

[10] The revised draft Regulations for Management of Foundations and the Charity Law do away with the distinction between public and private foundations. Under the new law and regulations, all foundations, as well as other charitable organizations, that meet certain criteria will be able to apply for public fundraising status.

[11] One may question whether a public institution qualifies as an NPO at all, given that the government provides a public institution's original assets and exerts greater control over it than over an ordinary NPO. Even so, a public institution is subject to certain taxes on the same basis as social associations and civil non-enterprise institutions, and the Public Welfare Donations Law treats donations to institutions the same as donations to public benefit social organizations. Whatever category public institutions may belong in, they are regularly the recipients of foreign grants, and so they are included in this Note.

[12] Leon Irish, Jin Dongping, and Karla Simon list some of the problems with China's tax system for NPOs in Section 5 of their 2004 World Bank study, "China's Tax Rules for Not-for-Profit Organizations." These problems are still relevant today.

[13] Article 50 of the Trust Law also lists the extent of "public benefit purposes" in terms of public benefit trusts (or charitable trusts). It is nearly the same as Article 3 of the Public Welfare Donations Law.

[14] The Department of Politics and Law of the Office of Law of the State Council & the Bureau of Administration of Non-governmental Organizations of the Ministry of Civil Affairs (ed.), "Interpretation of the Regulations on the Registration and Administration of Social Organizations and the Interim Regulations on the Registration and Administration of Private Non-enterprise Units," Beijing: China Social Press, 1999, pp.58-59.

[15] *Id.* p.142.

[16] Article 6 and 7 of the Opinions on Several Issues Concerning Registration and Administration of Enterprises (June 29, 1999).

[17] See Tax Report, *supra* note 7.

[18] In practice, however, there is evidence of widespread discrimination in employment and education against members of particular ethnic groups, as well as other groups such as those with disabilities and certain diseases. Some Chinese NPOs, such as Yirenping, were founded specifically to combat discrimination against these groups.

The Constitution also provides in formal terms for other rights and freedoms, including the freedom of speech, the press, assembly, association, procession, and demonstration; the right to petition the state; the right to receive compensation for violations of civil rights; the right and duty to work and to rest; the right to assistance from the state for the elderly, ill, or disabled; rights to pursue scientific, literary, and artistic creation; equal rights for women; the right to defense for accused persons; and the right for minority nationalities to use their national languages.

In recent years, Chinese public interest lawyers have sought to enforce and detail some of these rights and freedoms through legal action. In most of those cases, the courts have declined to hear such petitions or have rejected them, and a number of public interest lawyers have been arrested, detained, or discouraged from undertaking rights-based cases.

[19] One rare example of a legally-registered NPO that was founded by a foreigner and managed to register as the representative office of a foreign foundation is Half the Sky, which works on orphan care and has very close ties with the Ministry of Civil Affairs.

[20] Chambers of commerce are the only type of foreign NPO regulated by stand-alone regulations, namely the [Provisional Measures on Management of Foreign Chambers of Commerce in China issued in 1989](#). As mentioned earlier, foreign foundations are allowed to gain legal status under a section of the 2004 Regulations on Administration of Foundations, but these Regulations primarily address the legal registration and administration of Chinese foundations.

[21] Although in theory all of an NPO's income is subject to Enterprise Income Tax, a 1997 Ministry of Finance and State Administration of Taxation circular provides a broad exemption for qualified NPOs (Circular Concerning Related Issues of Collection of Enterprise Income Tax to Public Institutions and Social Organizations). To implement this circular, the State Administration of Taxation adopted the Methods of Administration on the Collection of Enterprise Income Tax to Public Institutions, SAs, and CNIs. These two documents provide for the described exemptions.

[22] Anke Schrader and Mingxia Zhang, [“Corporate Philanthropy in China,”](#) The Conference Board Report, 2012.

[23] Methods for the Implementation of the Interim Methods of Customs Duties Exemption of Donated Goods for the Purposes of Poverty Relief or Charity.

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

[25] The official English-language translation can be found at on the Ministry of Public Security’s website [here](#). For more detailed analysis of this law, see Shawn Shieh’s ChinaFile article, [“The Origins of China’s New Law on Foreign NGOs”](#), Kristin Shi-Kupfer and Bertram Lang’s article in *The Diplomat*, [“Overseas NGOs in China: Left in Legal Limbo”](#), and Professor Jia Xijin’s “China’s Implementation of the Overseas NGO Law,” the English-language translation of which can be found on [China Development Brief’s website](#). More analysis and information and FAQs about the Overseas NGO Law can also be found on the blog, [NGOs in China](#).

[26] The directory is now available on the Ministry of Public Security’s website in Chinese: <http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5579013/content.html?from=timeline&isappinstalled=0>.

[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 benefit funding projects (that is, projects of a public benefit nature, 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.

[28] 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.