CHINA

Philanthropy Law Report



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CHINA

PHILANTHROPY LAW REPORT

KEY INDICATORS[1]	
POPULATION	1,373,541,278 (2016 estimate)
CAPITAL	Beijing
TYPE OF GOVERNMENT	Communist State
GDP (PURCHASING POWER PARITY)	$21.27 trillion (2016 estimate)
GDP PER CAPITA	$15,400 (2016 estimate)
GDP – REAL GROWTH RATE	6.6% (2016 estimate)

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, it has significant characteristics of 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 in general and philanthropic giving in particular. 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 2016, Freedom House gave China the lowest possible ranking of seven for political rights, along with six for civil liberties.[2] Similarly, the *World Giving Index 2016* ranked China near the bottom with a score of 140 for philanthropic giving.[3] 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.[4]

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[1] Central Intelligence Agency, *The World Factbook* (Washington, DC: Central Intelligence Agency, 2016), https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html.

[2] Freedom House, *Freedom in the World 2016*, https://freedomhouse.org/report/freedom-world/freedom-world-2016.

[3] Charities Aid Foundation, *2016 World Giving Index*, https://www.cafonline.org/about-us/publications/2016-publications/caf-world-giving-index-2016.

[4] Hudson Institute, *The Index of Philanthropic Freedom 2015*, http://www.hudson.org/research/11363-index-of-philanthropic-freedom-2015.

Nevertheless, philanthropy has a rich and varied history in China, which is still felt in the practice of philanthropy in Taiwan and among the Chinese diaspora.[5] In the PRC, in contrast, philanthropic traditions were largely erased as a result of the Communist Party's rigid rule from 1949 to 1978, when the state dominated all forms of social life, including voluntary giving. Even during the 1980s and 1990s, most philanthropic activity was controlled and shaped by government policies, priorities, and institutions. The government organized charitable donations, and people gave not because they wanted to but because they were politically and socially pressured to do so. There was little choice about the recipients either. Donations generally went directly to the government or to government-organized NGOs (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 about ten or fifteen years ago, as private foundations—or what the Chinese call "non-public fundraising foundations" (that is, mostly corporate and family foundations)—mushroomed and exceeded the number of GONGOs, many of which are public foundations or, in Chinese, "public fundraising foundations" (for more, see our interactive timeline The Rise of Philanthropy and Civil Society in China, 1976-2017). In addition, scandals in the philanthropic sector, primarily with 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.[6] 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.

The last decade has seen the rapid growth of 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 has existed for only about twenty years, and it is still quite small and lacks influence and visibility. Most people do not know

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

[6] 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.

what NPOs are, and public surveys show that public trust in government institutions is consistently higher than in NPOs. In short, NPOs, particularly philanthropic and public welfare organizations, have made significant gains in recent years, but those gains are still fragile and lack strong political, social, and cultural foundations.

Recent Developments

The years 2015 and 2016 have witnessed the passage of a number of new laws, measures, and guidelines that will have far-ranging effects on the legal environment for NPOs and philanthropy in China (for more, see our interactive timeline Major Developments in the Regulation of Philanthropy and Civil Society in China, 1976-2017).

First, a series of national security laws have been passed as part of the government's effort to tackle terrorism and other perceived national security threats. In July 2015, the National People's Congress Standing Committee approved a National Security Law,[7] which went into effect immediately. In late December 2015, a Counterterrorism Law[8] was passed, which took effect on January 1, 2016. Finally, November 2016 saw the passage of a Cybersecurity Law,[9] which will go into effect June 1, 2017. Although these laws do not specifically refer to NPOs and philanthropy, they underline the security focus of President Xi's administration and may have some effect on the overall political environment in which NPOs operate.

Second and perhaps more crucially, important laws and regulations with a direct effect on NPOs and philanthropy have been passed, or are being revised (for more, see our Before & After 2016 factsheet series). The Charity Law[10] was passed in March 2016 by the National People's Congress (NPC) and the Management of Overseas Non-Governmental Organization (NGO) Activities in Mainland China Law[11] (hereafter Overseas NGO Law) was passed a month later by the NPC Standing Committee. Both laws are part of President Xi Jinping's push to strengthen the "rule of law" and a general trend towards greater regulation of the NPO sector.

The Charity Law, which was in legislative limbo for almost ten years, went into effect on September 1, 2016. It provides a more enabling environment for charitable organizations operating in China (for more, see our Charity Law FAQ). After its passage, the Ministry of Civil Affairs began issuing various implementing regulations for the Charity Law and social organizations more broadly. These regulations govern a variety of issues, ranging from how

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[7] 国家安全法, *guojia anquan fa.* For an English translation, see http://chinalawtranslate.com/2015nsl/?lang=en.

[8] 反恐怖主义法, *fankongbuzhuyi fa,* sometimes translated as "Anti-Terrorism" or "Counterespionage" Law. For an English translation see http://chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%89%E6%B3%95-%EF%BC%882015%EF%BC%89/?lang=en.

[9] 网络安全法, *wangluo anquan fa.* An English translation available at http://www.chinalawtranslate.com/cybersecuritylaw/?lang=en.

[10] 慈善法, *cishan fa*. An analysis of that law can be found at http://ngochina.blogspot.hk/2016/03/charity-law-faqs.html.

[11] 境外非政府組織境內活動管理法, *jingwai feizhengfu zuzhi jingnei guanli fa.*

social organizations can receive charitable organization status to channels for the public to use in filing complaints about unlawful conduct by social organizations.

The Overseas NGO Law went into effect on January 1, 2017. Since it came out in draft form in May 2015, the Overseas NGO Law has aroused a great deal of concern among foreign governments as well as NPOs, academic institutions, and business associations both in and outside of China. It was the subject of discussions at the U.S.-China Human Rights Dialogue in August 2015 and during the President Xi Jinping's state visit to Washington in September 2015. Before his visit President Xi made the following comment about the law in an interview with the *Wall Street Journal*:

> China recognizes the positive role of foreign nonprofit organizations (NPOs), welcomes and supports their development in China, and stands ready to provide them with necessary facilitation and assistance. Taking seriously the provision of services to and regulation of foreign NPOs in China, we will regulate, in accordance with law, their activities and protect their lawful rights and interests. All foreign NPOs should obey Chinese law and carry out their activities on a law-abiding and orderly basis.[12]

So far no implementing regulations have been issued for the Overseas NGO Law although they are expected to come out in the near future. Instead "Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-Governmental Organizations within the Territory of China"[13] were published on the Ministry of Public Security's website on November 28, 2016. The Guidelines are divided into four sections: (1) the procedures and documents required for registering a representative office; (2) the procedures and documents required for filing documents for the record for temporary activities; (3) additional issues; and (4) the required forms. The Guidelines have no legal force and are not meant to take the place of implementing regulations for the Overseas NGO Law. Although the Guidelines are meant to provide context, they offer little in the way of additional detail.

Additionally, draft regulations governing the registration and management of the three different types of Chinese social organizations (China's official term for NPOs) are currently being revised after public comments were solicited. These regulations are expected to be finalized and issued in the coming months. The regulations will seek to make registration easier by streamlining the process but also require registered social organizations to adhere to more detailed standards and procedures (for more, see our factsheet Before & After 2016: A Deeper Dive - Tracking Changes in the Regulation of Domestic Social Organizations in China).

Overall, philanthropy in China—particularly private philanthropy—continues to grow and is the main driver behind the rapid changes in the sector. The more enabling Charity Law and revision

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[12] "Full transcript: Interview with Chinese President Xi Jinping," *Wall Street Journal,* September 22, 2015, http://www.wsj.com/articles/full-transcript-interview-with-chinese-president-xi-jinping-1442894700.

[13] **境外非政府**组织**代表机构登**记**和**临时**活**动备**案**办**事指南** *jingwai feizhengfu zuzhi daibiao jigou dengji he linshi huodong bei'an banfa zhinan*.

of regulations for the registration and management of Chinese NPOs reflect the Chinese government's desire to develop the philanthropic sector and ensure that it is more closely and comprehensively regulated and more transparent than in the past. These legislative developments are important not only for their regulatory functions, but also because they officially recognize and reinforce the continuing efforts by policymakers, scholars, practitioners, and citizens over the last decade to bring philanthropy into the public sphere.

Over the last few years, philanthropy has become more democratized and decentralized as a growing number of organizations and individuals have been encouraged and empowered to participate in charitable activities. These changes represent a significant departure from the situation a decade ago, when government-backed organizations such as the Chinese Red Cross, Charity Federation, China Youth Development Foundation, and Soong Chingling Foundation dominated the landscape and enjoyed a near-monopoly on public fundraising. As the use of social media has become a wildly popular means of fundraising,[14] citizen philanthropy has become more mainstream.

The last few years have also seen the rise of new academic institutes and cross-sectoral collaboration, alliances, and platforms that bring philanthropists together with entrepreneurs, academics, media, government officials, and the public. Major universities have helped establish heavyweight academic institutes that promote philanthropy. Corporate philanthropy has largely involved companies sharing their products and technologies with charitable organizations and providing technical support and a platform for public engagement.

Developments impacting civil society more broadly have been significantly less positive. Following the detention of five female activists in March 2015, the government conducted a large-scale, sustained crackdown on rights-defense lawyers.[15] The repression of civil society activists continued with a police raid and investigation of several labor NPOs in the southern province of Guangdong in late 2015.[16] In early 2016, the political environment for civil society in China remained tense with the continuation of the campaign against human rights lawyers, labor activists, and NPOs.[17] In January, the Swedish co-founder of Chinese Urgent Action Working

[14] This includes individuals or groups doing fundraising for charitable activities through virtual or online channels.
[15] Amnesty International estimates that nearly 245 lawyers were called in for questioning, detained, or restricted in their movements. As of July 2015, some thirty lawyers were believed to still be in detention. "Latest Information on Crackdown Against Lawyers and Activist," *Amnesty International*, July 31, 2015. https://www.amnesty.org/en/press-releases/2015/07/china-list-of-lawyers-and-activists-targeted/.
[16] Among the dozens of people questioned were seven labor activists who were detained on criminal charges ranging from "embezzlement" to "picking quarrels and disrupting social order." Like the ongoing repression of lawyers, this repression appeared to have had high-level backing. It was followed by a central-level propaganda campaign against China's most prominent labor activist, Zeng Feiyang. Michelle Chen, "China's Latest Crackdown on Workers is Unprecedented," *Nation*, December 18, 2015. http://www.thenation.com/article/chinas-latest-crackdown-on-workers-is-unprecedented/.
[17] For an excellent, in-depth analysis of the campaign against the lawyers, see Abby Seiff, "China's Latest Crackdown on Lawyers in Unprecedented, Human Rights Monitors Say," *ABA Journal,* February 1, 2016. http://www.abajournal.com/magazine/article/chinas_latest_crackdown_on_lawyers_is_unprecedented_human_rights_monitors/.

Group (CUAWG), a foreign-funded NPO that provides training to Chinese human rights lawyers, was detained for allegedly "endangering state security." He was forced to make a confession on state television and then deported.[18] Later that month, the Beijing Zhongze Women's Legal Counseling and Service Center, a respected legal-aid NPO, was ordered to close its doors.[19] Some reports suggest that one reason for the closure was the center's foreign-sourced funding.[20]

INTERNATIONAL RANKINGS		
RANKING BODY	RANK	RANKING SCALE (BEST – WORST)
UN HUMAN DEVELOPMENT INDEX	90	1-188
FOREIGN POLICY: FRAGILE STATES INDEX	86	178-1
CAF WORLD GIVING INDEX	140	1-145
• HELPING A STRANGER	140	
• DONATING MONEY	138	
• VOLUNTEERING TIME	138	
HUDSON PHILANTHROPIC INDEX	52	1-64

Relevant Laws

Constitutional Framework

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

National Laws and Regulations Affecting Philanthropic Giving

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

Table 1. National Laws and Regulations Affecting Philanthropic Giving in China

[18] Tom Phillips, "Swedish Activist Peter Dahlin Paraded on China State TV for 'Scripted Confession,'" *The Guardian,* January 19, 2016. http://www.theguardian.com/world/2016/jan/20/swedish-activist-peter-dahlin-paraded-on-china-state-tv-for-scripted-confession.

[19] Didi Kirstin Tatlow, "China Said to Force Closing of Women's Legal Aid Center," *New York Times,* January 29, 2016. http://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guo-jianmei.html?_r=0.

[20] In February, the worsening human rights and civil society situation in China drew the attention of the UN High Commission for Human Rights (UNHRC), which issued a statement expressing its concern about the Chinese government's treatment of lawyers, labor activists, and NPO staff, as well as the Overseas NGO Draft Law. "UN Human Rights Chief Deeply Concerned by China Clampdown on Lawyers and Activists," *United Nations Human Rights Council*, February 16, 2016. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17050&LangID=E.

Title of Law or Regulation	Year Enacted	Description	Links
Framework Laws			
Charity Law	2016	First national law regulating domestic charitable organizations, activities, fundraising, and information disclosure	Bilingual
Management of Overseas NGO Activities in Mainland China Law	2016	First national law regulating activities of overseas NGOs (including Hong Kong, Macao, and Taiwan) in China	Bilingual
Measures Standardizing the Behavior of Foundations	2012	Ministerial-level measures setting standards for foundation behavior	Chinese
Measures for Information Disclosure of Foundations	2006	Ministerial-level measures detailing information disclosure responsibilities and procedures for foundations	Bilingual
Measures for the Annual Inspection of Foundations	2006	Ministerial-level measures detailing responsibilities and procedures for annual inspection of foundations	Bilingual
Regulations on the Management of Foundations	2004	Ministerial-level regulation for the registration and management of foundations (including representative offices of foreign foundations)	English Translation (Introduction, Regulations) English Translation (Regulations) Bilingual
Trust Law	2001	National law that provides for public welfare trusts	English Translation
Provisional Measures on	2000	Ministerial-level measure giving	Bilingual

Banning Illegal Social Organizations		government agencies the authority to ban unregistered or improperly registered social organizations	
Provisional Regulations on the Registration and Administration of Public Institutions	1998	Ministerial-level regulation for the registration and management of public institutions	English Translation Bilingual
Provisional Regulations on the Registration and Administration of Civil Non-Enterprise Institutions	1998	Ministerial-level regulation on the registration and management of service-providing NPOs	English Translation Bilingual
Regulations on the Registration and Administration of Social Associations	1998	Ministerial-level regulation for the registration and management of membership associations	English Translation Bilingual
Law of the Red Cross Society of the People's Republic of China	1993	Law regulating the Chinese Red Cross, one of very few NPOs to have its own law	English Translation
Provisional Measures on Management of Foreign Chambers of Commerce in China	1989	Measures for the registration and management of foreign chambers of commerce	Chinese
Public Welfare Laws			
Public Welfare Donations Law	1999	National law on the scope of public welfare or public welfare	English Translation Bilingual
Tax Laws			
Enterprise Income Tax Law, Arts. 9, 26	2008	National law regulating corporate tax	English Translation

		exemptions for public welfare purposes	
Notice of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues concerning the Pre-tax Deduction of Public Welfare Relief Donations	2007	Ministerial notice on pre-tax deductions for public welfare relief donations	English Translation
Regulation on the Implementation of the Enterprise Income-Tax Law, Arts. 51, 52, 53, 84, 85	2007	Implementing regulations for corporate tax exemptions	Chinese
Detailed Rules for the Implementation of the Individual Income Tax Law (revised 2011), Art. 24	2005	Revised implementing rules on individual income tax exemptions	Chinese
Law on Individual Income Tax (1980, as amended), Art. 6	1980	National law addressing individual tax exemptions for public welfare purposes	English Translation (Select Sections)
Other Laws Affecting NPOs and Philanthropy			
Measures for the Designation of Charitable Organizations	2016	Measures detailing how social organizations registered prior to the issuance of the Charity Law can receive charitable organization status	English Translation
Measures on the Administration of Public Fundraising by Charitable Organizations	2016	Measures detailing the criteria and process by which social organizations can seek credentials for public fundraising	English Translation

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	English Translation
Provisional Regulations on Admonishment Meetings for Social Organizations by Registration Management Organs and Administrative Law Enforcement	2016	Regulations providing an opportunity for authorities to meet with social organizations to discuss problems with unlawful conduct	English Translation
Provisional Notice on Registration Management Organs' Acceptance of Complaints and Reports about Social Organizations	2016	Notice providing means for the public to file complaints and reports on unlawful conduct by social organizations	English Translation
Notice on Social Organizations Initiating Party Construction Work During Registration	2016		Chinese
Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities	2016		Chinese
Provisional Measures on Government	2012	Ministerial-level measures on government	Chinese

Procurement of Social Organization Services		procurement of NPO services	
Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions	2009	Notice tightening management of foreign donations to Chinese NPOs	Chinese Bilingual
Interim Measures for the Administration of Donations for Disaster Relief	2008	Ministerial-level measure on management of donations for disaster relief	English Translation
Non-State Education Promotion Law	2002	National law regulating private and nonprofit schools	English Translation
Law on Assemblies, Processions and Demonstrations	1989	National law promulgated soon after 1989 Tiananmen protests to regulate outdoor assembly	English Translation

Analysis

Organizational Forms for Nonprofit Organizations

In China there are currently three legal forms of "social organizations[21]," which is the official Chinese term for NPO (see Figure 3, the Universe of Chinese NGOs, p. 31).

- Social associations (SAs),[22] which are the equivalent of membership associations;
- Civil non-enterprise institutions[23] (CNIs), which are similar to service providers; and

[21] 社会组织.

[22]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.

[23] 民办非企业单位， *minban fei qiye danwei*. In the new Charity Law and revised draft regulations, CNIs have been renamed "social-service organizations" (SSOs) (社会服务机构, *shehui fuwu jigou*). In this report, CNIs will be referred to when discussing the current regulations; however, SSOs will be used when referring to the revised draft regulations.

- Foundations,[24] 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 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). The regulations governing these forms of organizations are in the process of being revised and finalized. Draft of these revised regulations were issued in the latter half of 2016 for public comment and the final versions should come out in 2017.

The recently passed Charity Law creates a new nonprofit form called the charitable organization.[25] According to the author's interpretation of the law, social organizations previously registered as SAs, CNIs, or foundations will now be able to apply for status as charitable organizations. However, it is not clear whether a charitable organization will be a legal person that can assume legal liability in the way that SAs, CNIs, and foundations can, or rather will be a status that can be obtained only after registration as a SA, CNI, or foundation. If the latter interpretation is correct, then a charitable organization will have to adhere both to the Charity Law and to the regulations governing registration and management of its type of organization.

Chapter 5 of the new Charity Law revives the charitable or public welfare trust[26] as another legal arrangement for carrying out charitable activities. 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 seem to be included in the Charity Law so as to clarify their management and tax status and encourage their use. Article 45 of the Charity Law states that to be eligible for tax benefits charitable trusts must "file a record"[27] with the Ministry of Civil Affairs.

Another type of nonprofit organization is the public institution or public-service unit,[28] which is a quasi-governmental agency typically formed by the government and staffed with government employees. Public institutions are a residue 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.

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[24] 基金会，*jijinhui.*

[25] 慈善组织, *cishan zuzhi*.

[26] 慈善信托, *cishan xintuo*.

[27] 备案, *bei'an.* The term "filing documents 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.

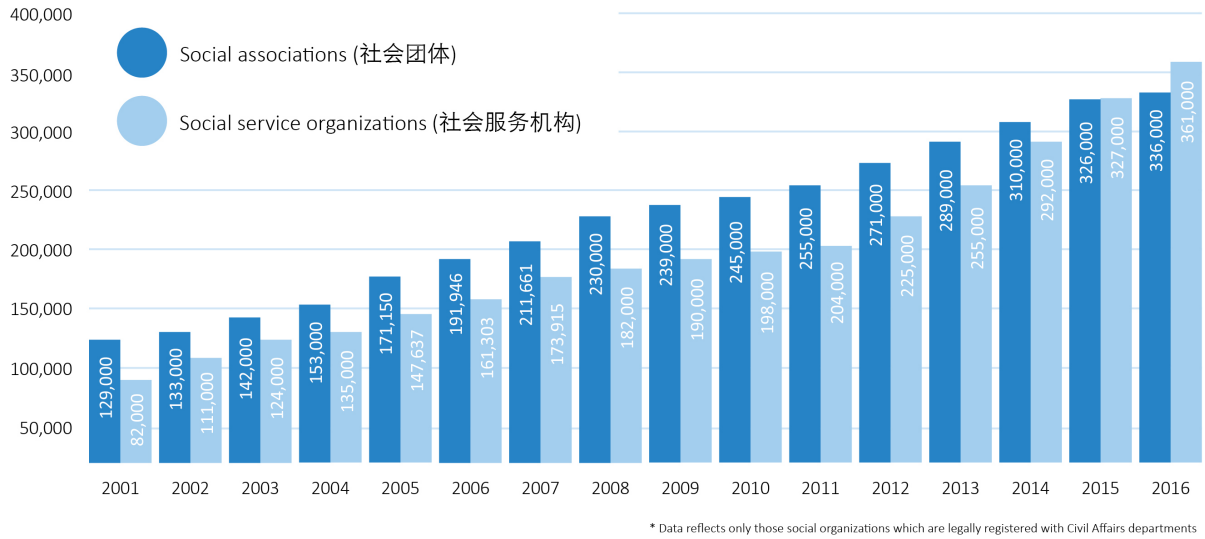
[28] 事业单位，*shiye danwei.*

As of 2012, there were approximately 450,000 legally registered NPOs in China, a figure that does not include public institutions (see Figure 1). By 2014, the number had grown to 606,238 legally registered NPOs, which included 310,000 SAs, 292,000 CNIs, and 4,238 foundations, of which 1,490 were public fundraising foundations and 2,748 were non-public fundraising 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 particular government agencies and thus are often regarded as GONGOs.

Figure 1 - 2001-2016: The growth of

SOCIAL ORGANIZATIONS IN CHINA

中国社会团体和社会服务机构的成长

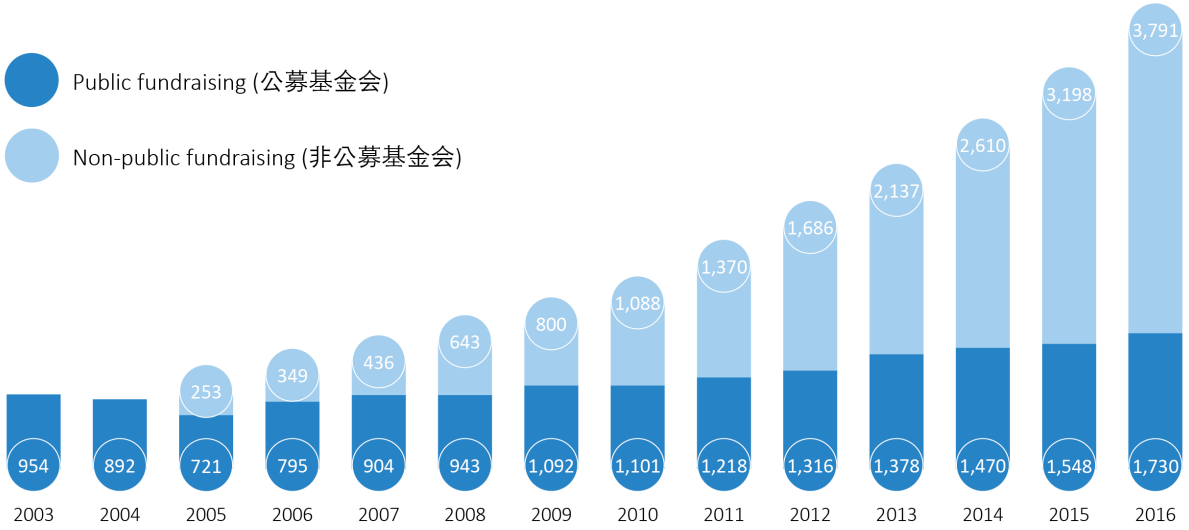


* Data reflects only those social organizations which are legally registered with Civil Affairs departments

Figure 2 - 2003-2016: The growth of

FOUNDATIONS IN CHINA

中国基金会的成长



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, the Universe of Chinese NGOs, p. 31). 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, nongovernmental, not-for-profit organizations founded and governed by private individuals. In contrast to GONGOs, informal NPOs tend to have a more grassroots nature and work independently of the state. Some unregistered NPOs gain legal status by attaching themselves to other legal entities, such as social organizations or public institutions. Many of these informal organizations are funded by foreign governments or international organizations and foundations, which require them to give evidence of the not-for-profit nature of their activities. While there is no accurate data on the number of informal NPOs in China, estimates range from few hundred thousand to a few million.[29]

[29] 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[30]

Social organizations in China have historically been subject to a restrictive "dual management" system.[31] 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 professional supervisory unit[32] —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 professional supervisory unit 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,[33] 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 revised regulations for each of the NPO types are finalized (see our factsheets for more details on these changes). The draft regulations for Social Service Organizations (SSOs) (e.g. CNIs) as issued in mid-2016 would allow four categories of SSOs 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 SSOs. In other words, SSOs in these four categories would no longer be required to get approval from a professional supervisory unit. The draft regulations for foundations would also allow most foundations to register directly with the Ministry of Civil Affairs.

At present, the procedures for registering SAs, CNIs, foundations, and charitable organizations vary, with the requirements for SAs and foundations generally higher than for CNIs. 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 CNIs 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. However, if the draft regulations for foundations are

[30] 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.

[31] **双重管理**, *shuangchong guanli.*

[32] 业务主管单位, *yewu zhuguan danwei.*

[33] 分级管理，*fenji guanli.*

approved, foundations will be allowed to register at lower levels of government, down to the county level, and initial capital requirements for their registration would be lower.

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

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 Regulations for Registration and Management 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 has somewhat different language regarding for-profit activities. In Article 9 it states that charitable organizations may not have a "profit-making purpose," thereby allowing for profit-making activities as long as they support a charitable purpose. According to the draft regulations, SSOs (e.g. CNIs) and foundations would be required to set up a Communist Party group within the entity when conditions permit (for example, according to party regulations, there would need to be at least three staff members who are party members).

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 professional supervisory unit willing to supervise or take responsibility for an NPO. GONGOs usually find professional supervisory units 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 professional supervisory unit. 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 exemptions and in any case such exemptions are

difficult to secure. However, it remains to be seen if and how registration process will actually change, since the new Charity Law is not entirely clear about registration issues.

Charitable trusts do not need to register, but 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 Universe of Overseas NGOs, p. 32). 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[34].

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.[35] Like their domestic NPO counterparts, representative offices of foreign foundations were subject to dual management by the Ministry of Civil Affairs and a professional supervisory unit, 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 they had been unable to find professional supervising units 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 the late 2009, Yunnan province experimented with regulations to register foreign NPOs,[36] and later statements by the Ministry of Civil Affairs suggested that revised regulations might be forthcoming to ease the registration requirements

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34 The Guidelines in Chinese can be found on the Ministry of Public Security's new Overseas NGO Service and Management Platform, http://ngo.police.sh.cn:8081/xxfb/f/view-6583-16535.html. As of this writing, the Guidelines are only available in English on the Shanghai Public Security Bureau's website, http://ngo.police.sh.cn:8081/xxfb/f/view-6583-16535.html.

[35] 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.

[36] Yunnan Province's Provisional Regulations Standardizing the Activities of Overseas Non-Governmental Organizations (2009). An English translation is at http://chinadevelopmentbrief.cn/wp-content/uploads/2014/08/Yunnan-Provinces-Provisional-Regulations-Standardizing-the-Activities-of-Overseas-Non-Governmental-Organizations1.pdf.

for foreign foundations and NPOs throughout the country. Those statements eventually were borne out with the appearance of a draft Overseas NGO Law in May 2015 for public comments. When it was issued, the draft law came as a surprise to many observers because so much other NPO legislation was already on the docket. However, its release soon after the adoption of a counterespionage law and the release of draft counterterrorism 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.[37]

The Overseas NGO Law is the PRC's first law (as distinct to regulations issued by a ministry) to govern the management of foreign NPOs (for more, see our Overseas NGO Law FAQ).[38] Unlike previous regulations, which gave the Ministry of Civil Affairs jurisdiction for 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, nongovernmental social organizations legally established overseas," which includes Taiwan, Hong Kong and Macau (Article 2). 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" (Article 5). In addition, foreign NPOs in Mainland China may not engage in or fund for-profit activities or political activities, engage in illegal activities, or fund religious activities.

The Overseas NGO Law provides only two legal channels for foreign foundations and NPOs to carry out activities in China: 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[39] to carry out so-called "temporary activities" (Article 9).[40] The law states that "foreign NPOs that do neither of these [that is, 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[41] or individual to carry out activities" (Article 32) This is a fairly

[37] 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).*

[38] Here, the term "overseas NPO" rather than "foreign NPO" is used because the Chinese term is meant to include not only foreign NPOs but also NPOs established in territories considered by the Chinese government to be part of China: Hong Kong, Macau, and Taiwan. Previous regulatory initiatives were regulations issued by ministries under the State Council, which either addressed only a specific category of NPOs (such as chambers of commerce) or were part of another regulation (for example, the 2004 Regulations on the Management of Foundations). This law will supersede the earlier regulations, although they are not mentioned in the draft law.

[39] 备案*, bei'an*.

[40] 临时活动, *linshi huodong.*

[41] 单位*, danwei.*

comprehensive statement that essentially says that now that the law has gone into effect, 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 professional supervisory unit (PSU) before registering with the Ministry of Public Security (Article 11). The ministry and provincial PSBs have also published a directory of eligible professional supervising units[42]. Under the new law, foreign NPOs may set up more than one representative office but they may not have branch representative offices in China unless otherwise allowed by regulations issued by ministries 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" (although the law provides no clear guidelines on what is meant by "public welfare"). Representative offices of foreign NPOs do not have the status of legal persons and therefore, in accordance with the law, assume civil legal liability for the actions of their representative offices in China. They may not engage in fundraising but they can accept donations from within China.

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 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 (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,[43] 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 (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 (Article 27).[44]

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[42] The directory is now available on the Ministry of Public Security's website in Chinese, http://bit.ly/2lzJwPL.

[43] 年度检查*, niandu jiancha*.

[44] 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 (that is, projects of a public welfare nature, including grants to other organizations) undertaken by the foundation. It is

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;[45] public institution,[46] such as a public university; or a social organization,[47] such as a SA (that is, a membership association),[48] CNI (or social-service provider),[49] or foundation[50] (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 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, nongovernmental 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" (Article 17). 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 (Article 22).

NPO Activities

Political Activities and Lobbying.

NPOs in China are not explicitly prohibited from taking part in political activities. According to 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

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doubtful that this measure will continue to be in effect for foreign NPOs with the passage of the Overseas NGO Law.

[45] **群众**组织, *qunzhong zuzhi.*

[46] **事**业单**位**, *shiye danwei*.

[47] 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.

[48] **社会**团**体**, *shehui tuanti*.

[49] **社会服**务组织, *shehui fuwu zuzhi.*

[50] **基金会**, *jijinhui*.

social mores" (Article 15). 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 of government agencies at both the national and local levels.[51] More recently, associations of entrepreneurs, grassroots NPOs, and foundations have begun to lobby government agencies.[52] 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. NPOs are not permitted to pursue commercial activities as their principal purpose, according to Article 9 of the Charity Law. Regulations also prohibit NPOs from carrying out profit-making activities. However, as interpreted by the State Administration of Industry and Commerce, the authority responsible for commercial activities, even though SAs, CNIs, foundations, and public institutions may not engage in for-profit businesses, they may invest in commercial entities, unless the State Council provides otherwise.[53] The law does not distinguish between "related" and "unrelated" commercial activities.

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

[52] See China Development Brief, *The Diversification of Public Advocacy in China*, 2013, http://chinadevelopmentbrief.cn/publications/cdb-special-report-diversification-public-advocacy-china-march-2013/.

[53] See Council on Foundations, Country Notes: China, 2015, http://www.cof.org/content/china.

There are varying limits on the ability of NPOs to establish branch organizations and the geographical scope of their activities. However, according to the newly issued draft regulations, SSOs (e.g. CNIs) would be allowed to set up branches in the country administrative area in which the organization is registered.

Prohibition on Distribution of Income or Assets/Private Inurement. The Regulations on the Registration and Administration 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 professional supervising unit or other unit, which means they generally mirror the salaries of civil servants. The provisions governing foundations and CNIs are nearly identical to this (see the 2004 Regulations on the Management of Foundations, Article 27; 1998 Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions, Article 21; and Charity Law, Article 52). 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, for 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 (Article 20). The posts of chair and deputy chair of the board of directors or secretary general may not be occupied by persons employed by state bodies; the legal representative of a foundation may not at the same time be the legal representative of any other organization; and the legal representative of a foundation whose original funds are of domestic Chinese origin shall be a person who is a legal resident of mainland China.[54] The regulations prohibit a board member with a personal interest connected to the interests of the foundation from taking take 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 a full-time post at the foundation may not be paid (Article 23).

[54]应当由内地居民担任, *yingdang you neidi jumin danren.*

Similarly, 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" (Article 14).

Expenditures and Administrative Expenses. Expenditures and administrative expenses at foundations and charitable organizations are subject to specific requirements and limits. The expenditures of a public fundraising foundation may be no less than 70 percent of the total income of the previous year and the expenditures of a non-public fundraising foundation may be no less than 8 percent of the balance of the fund of the previous year, according to the Foundation Management Regulations. Staff and administrative expenses may not exceed 10 percent of total expenditures (Article 29).

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

The Regulations on the Annual Expenditures and Management Expenses of Charitable Organizations Carrying Out Charitable Activities set limits on spending by charitable organizations on charitable activities and management expenses.[55]

Government Supervision. Previously, the Ministry of Civil Affairs and an NPO's professional supervisory unit 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), the Ministry of Human Resource and Social Security, the 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.

[55] An announcement of the regulation and its text can be found on the Ministry of Civil Affairs website, http://www.mca.gov.cn/article/zwgk/jd/201610/20161000002156.shtml.

Additionally, one mechanism described in the newly issued 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 (2004 Foundation Management Regulations, Article 16). A charitable organization shall be terminated if the circumstances for termination as set out in its organizational charter are met; termination is required because of a division or merger; the organization has not engaged in charitable activities for two consecutive years; the organization is de-registered or has its registration certificate withdrawn; or other legal conditions under which an organization shall terminate are met (Charity Law, Article 17).

Upon dissolution a foundation must establish a liquidation organization and settle its accounts under the guidance of the organ in charge of registration and its professional supervisory unit. Left-over 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 (2004 Foundation Management Regulations, Articles 18, 19, and 33). The rules for charitable organizations are similar (see Charity Law, Article 18).

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. Elsewhere there are the usual provisions that NPOs must abide by the constitution and laws of the country and should not carry out activities that endanger national security or societal interests (see Article 6 in the 2004 Foundation Management Regulations and Article 15 in the Charity Law).

Charitable or Public Welfare Status

The Charity Law provides a special designation for charitable organizations (for more, 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 (Charity Law, Articles 69 and 95).

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" (Charity Law, Articles 3-5).

Charitable organizations should be existing NPOs such as SAs, CNIs, 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. 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 (Charity Law, Article 22), may engage in public fundraising, including online fundraising. 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—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, fundraising, and use of donated funds, particularly it the funds are raised through public channels (Charity Law, Chapter 8). 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 the charitable organization 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. 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.[56]

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 does not appear to be any explicit restriction on an NPO's use of domestic funding to carry out activities abroad.[57] However, an implicit restriction could be the 10 percent limit on administrative expenses mentioned in the Foundation Management Regulations and the Charity Law, since overseas activities may raise an NPO's administrative expenses above this threshold.

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

[57] 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.

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 in China will need to report their funding sources as part of their applications (Article 5). They must manage their finances according to Chinese accounting standards, employ locally certified accountants, and have a Chinese accounting firm audit their financial records (Article 24). In addition, they must file annual reports with their two supervisory agencies—the provincial Public Security Bureau and the professional supervisory unit—showing the nature of their activities and the use of funds. A foreign NPO that files a record for "temporary activities" also need to show its funding sources (Article 17) and file a report about the activity and the use of funds no more than thirty days after the activity ends (Article 30).

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. The implementing regulations normally come out a few years after the law.

Generally speaking, there is a perception that associating with foreign persons or organizations will elevate the risks to Chinese organizations and individuals. In the past, an association with foreign persons or organizations was stigmatized because of China's troubled history with foreign powers, particularly those in the West and Russia. The anti-Western prejudice has been revived in recent years by those within President Xi's administration. This fear of foreigners is manifested in the reluctance of professional supervisory agencies 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 a representative office or filed a record for temporary activities within China" (Article 32).

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 2005). At the present, these laws are being revised.

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.[58]

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.

On January 1, 2008, the revised Enterprise Income Tax Law and Implementing Regulations for the Enterprise Income Tax Law came into effect. 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 law and regulations, legal not-for-profit organizations were exempt from enterprise income tax provided they are "qualified not-for-profit organizations" (Article 26 of the Enterprise Income Tax Law).[59] 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."

[58] See Council on Foundations, Country Notes: China.

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

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.[60] 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.

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 so far no tax regulations for foreign NPOs have been issued by the Ministry of Finance and State Administration of Taxation.[61]

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 CNIs.[62] For example, the 1999 Public welfare Donation Law states that corporations and other enterprises making donations to public welfare undertakings may enjoy business tax benefits (Article 24); that individuals and private small businesses making donations to public welfare undertakings may enjoy personal tax benefits (Article 25), 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 (Article 26).

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,[63] provided it does not exceed 30 percent of taxable income (Law on Individual Income Tax, Article 6). For corporate donors, the revised Enterprise Income Law that went into effect in 2008 sets tax deductibility at 12 percent of annual profits (Article 9). The implementing regulations for this law elaborate by stating that public welfare expenditures

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

[61] 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.

[62] The new Charity Law may include CNIs, but revised tax regulations have not yet been issued.

[63] 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.

incurred by an enterprise are deductible provided they do not exceed 12 percent of total annual profits (Article 53). 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[64], 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 nonprofit 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. [65]

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. In addition, the process for claiming tax benefits is 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. In addition, 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.

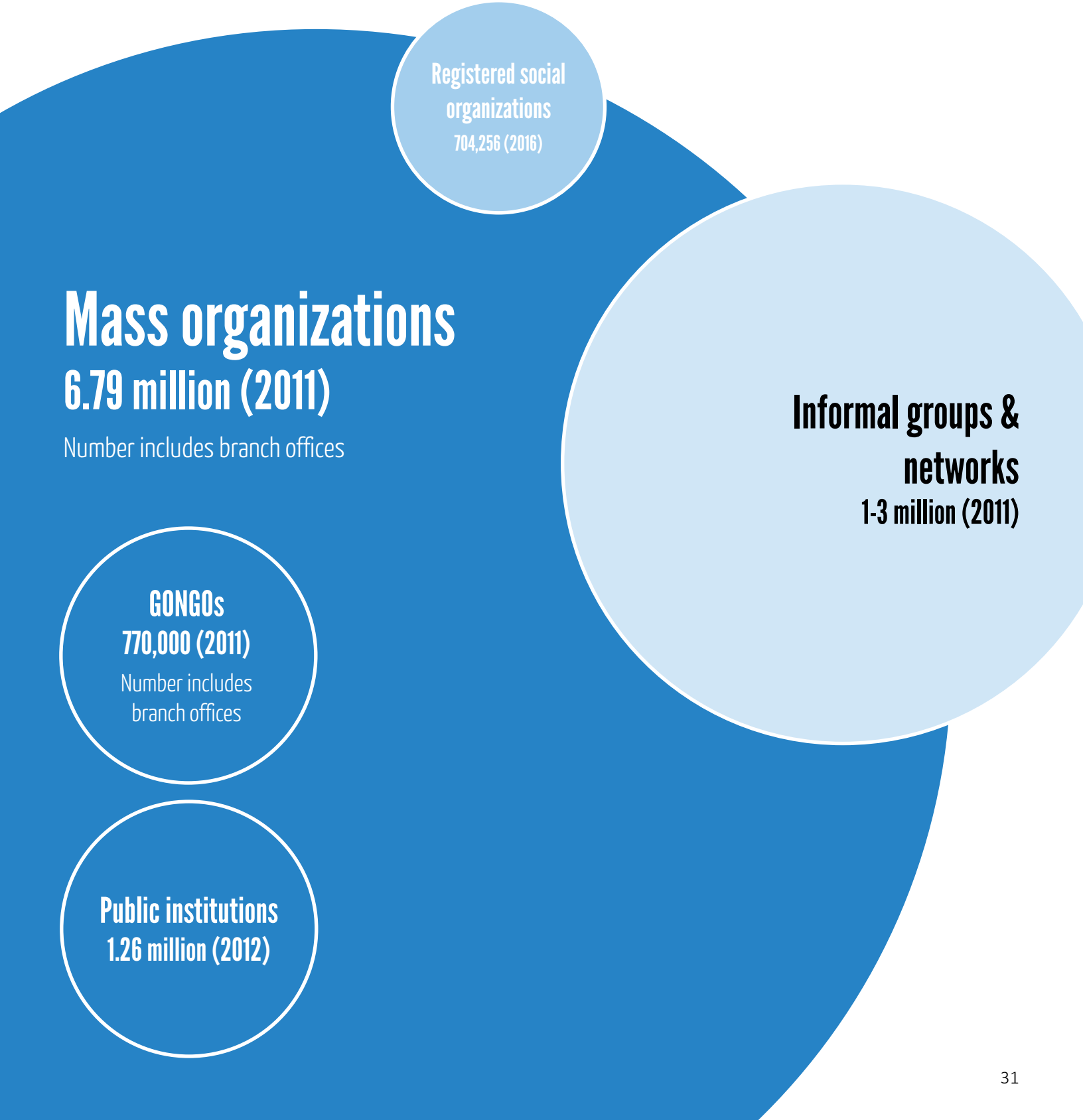
[64] 关于公益股权捐赠企业所得税政策问题的通知, *guan yu gong yi gu quan juan zeng qi ye suo de shui zheng ce wen ti di tong zhi*.
[65] "New Policy on Equity Donations to Public Welfare Organizations Released," *China Development Brief,* May 18, 2016. http://chinadevelopmentbrief.cn/news/new-policy-on-equity-donations-to-public-welfare-organizations-released/.

Appendix: 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.

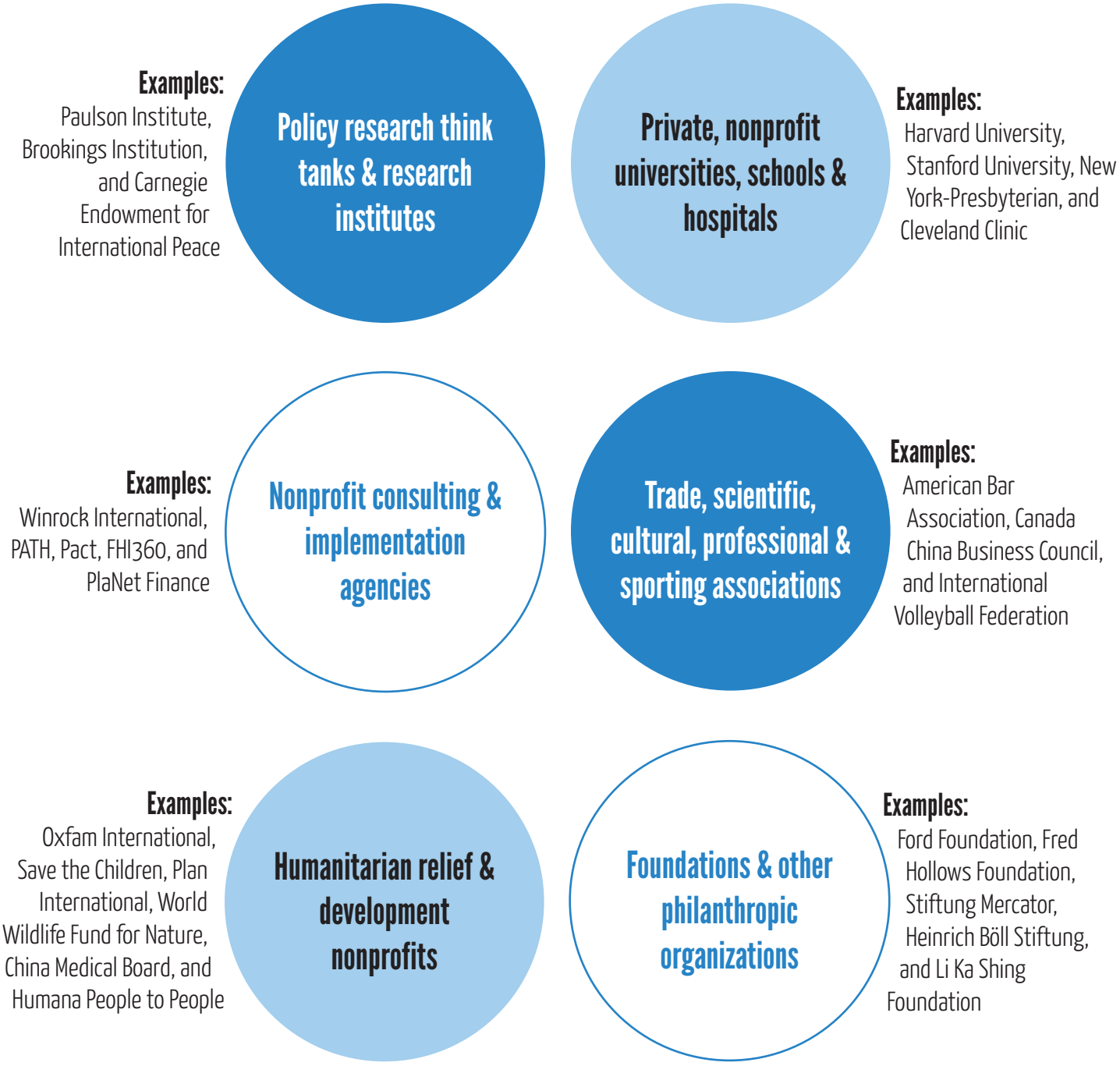




Appendix: Figure 4

THE UNIVERSE OF OVERSEAS NGOs IN CHINA

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



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

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