



People's Republic of China

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Foundation, Social Associations (Groups), Social Service Organizations, Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Endowment, Society.

Five main social issues addressed by these organizations: Higher Education, Primary and High School Education, Health and Medical Research, Basic Needs, Environment

Average time established by law to register a philanthropic organization: More than 90 days

Average cost for registering a philanthropic organization: Foundations: US \$300,000 (Minimum); Other forms: approximately US \$5,000

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State Government, and Local Government

In most cases, the level of registration corresponds with the geographic scope of an organization's activities. For example, POs registered at the provincial level are active within that province.

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Initiative	Cross-Border Score	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	2.2	2.4	2.4	2.8	4.0	2.75

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 2.3

The registration process of philanthropic organizations is onerous and cumbersome. The new Charity Law (2016) establishes that in order to be registered as a charitable organization (foundation, social group or social service organization), the main purpose of an organization must be to perform recognized charitable activities for the public good, and must have its own name and location, an organizational charter, and sufficient assets (Charity Law, Article 8). Organizations established prior to the promulgation of this law must re-apply to the civil affairs department that they are registered with to be confirmed as legitimate charitable organizations.

Restrictions on who can be the founder of a charitable organization include having limited civil capacity; having been punished for an intentional crime (ineligible until five years after the criminal penalty is completed); and those who have held a position of responsibility at an organization whose certificate of registration has been suspended or cancelled (also ineligible until five years after the suspension or cancellation) (Article 16).

Barriers to registration can arise due to inconsistencies in the process, since the government officials in the relevant bureaus are given significant discretion in approving or denying registration. In most cases, approval may depend on founders' personal connections within government, how politically sensitive the objectives pursued by the organization appear to the government, or if the founder has connections to international NGOs. As established in the Constitution, China is a socialist state; therefore, the State will encourage and support organizations putting the socialist core values into practice. In cases when individuals, i.e., the founders, are retired government officials, it is much easier for them to form and incorporate a PO because they can more easily convince the relevant government bureau that they will comply with the legal requirements.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 2.8

The objectives and activities of charitable organizations are restricted by law. Permissible objectives include 1) poverty alleviation and assistance; 2) care of elders, orphans and the ill, and assistance for the disabled; 3) natural and emergency disaster relief, public health incidents and other emergencies; 4) promotion of education, science, culture, health, and sports; 5) prevention of environmental risks and protection and improvement of the environment; and 6) other public interest activities permitted by the law. Charitable organizations must not violate social morals, and must not harm national security. They must put the socialist core values into practice, and carry forward the traditional virtues of the Chinese people. (Charity Law, Articles 4 and 5). If an organization's

mission is service-oriented, the government rarely interferes with the organization's daily operations. Most organizations engaging in politically sensitive activities have strong government linkages, and these organizations operate like arms of the government. Registration and operation of grassroots politically sensitive or advocacy organizations has always been difficult in China, resulting in many advocacy organizations operating as unregistered organizations.

POs have also long been required to establish an internal organ of the Chinese Communist Party (hereafter the Party) if they have more than three Party members. "Those social organizations who have been registered by supervisory bodies (and have already been certified as having complete their cleanup and reorganization), and who have at least 3 party members in good standing, should set up a basic party organization" (U.S. Congressional-Executive Commission on China translation of Communist Central Party Circular on Problems Related to the Creation of Party Organizations in Social Organizations, 1998). Details of the internal Party organizations (e.g., the organizational form, the number of Party members, and the contact information of the coordinator) are required to be submitted in an annual report. The first notice of this requirement was issued by the Communist Party Central Committee Organization Department and Ministry of Civil Affairs in 1998. Recently, the General Office of the CPC Central Committee reaffirmed the requirements for establishing Party organs in POs ("Opinions on Strengthening the Construction of the Party in Social Organizations," Communist Party News, September 29, 2015).

Every charitable organization must utilize a standard national accounting system and submit an annual report and financial accounting report to the civil affairs bureau where it is registered (Charity Law, Articles 12 and 13).

The reporting requirements for the annual and financial reports are clear, and the government has even established standard evaluation procedures, ranked each organization from 1A to 5A (the higher the better). The completion of the mandatory reporting is not difficult, but transparency is lacking because, although organizations are required to publish the reports, this requirement is poorly enforced and therefore most of the reports are not available to the public.

Public fundraising (e.g., showing fundraising advertisements in public) is allowed only with specific government approval, and conflict of interest rules prohibit founders, major donors, and managers who conduct transactions with the charitable organization must not participate in the charitable organizations' decision making process regarding the transactions (Charity Law, Article 14). When donors who publicly pledge a donation or sign a written donation agreement refuse to deliver according to the agreement, receiving organizations can file a complaint with the People's Courts to enforce payment (Charity Law, Article 41). Conversely, when charitable organizations misuse donated assets in violation of the purposes agreed upon in donor agreements, the donors have the right to demand rectification. If the PO fails to comply, the donor can file a complaint with the Civil Affairs Bureau.

Question 3: To what extent is there government discretion in shutting down POs?

Score: 1.5

The organization's governing body has the authority to voluntarily terminate its activities. Organizations can also be involuntarily terminated by government. They will be terminated on the

following circumstances: conditions for termination are provided for in the charter manifest; there has been a merger or division; the organization has not been engaged in philanthropic activities for more than three consecutive years; or registration has been revoked (Charity Law, Article 17). After the liquidation of its assets, the residual assets will be transferred to a charitable organization with the same or similar charitable purpose in accordance with the charitable organizations' charters.

POs are often considered sensitive because of political considerations, so most restrictions are on POs ever obtaining initial registration approval, rather than termination. Occasionally, the state shuts down POs without reasonable cause if they engage too heavily on politically sensitive issues. For example, Beijing Zhongze Women's Legal Counseling and Service Center was shut down in early 2016 and "no reason was given for the order." (Tattlow, Didi, "China Is Said to Force Closing of Women's Legal Aid Center" The New York Times, January 29, 2016). Most of the time, politically sensitive POs simply cannot legally register as nonprofits, registering instead as for-profit corporations because they are subject to less government controls.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 2.5

Donations to charitable organizations and activities by legal and natural persons are tax exempt (Charity Law, Article 80). According to the latest proposed amendment to the *Enterprise Income Tax Law of the People's Republic of China* (2017), corporate donors can take a pre-tax deduction of up to 12 percent of its current year's profits; donations above 12 percent can be deducted over the following three years (subject to the annual 12% cap). This new law is much more favorable for corporate donations than previous law, under when corporations were only allowed a one-time deduction of up to 12 percent of current year's profits.

For POs, it is hard to obtain the tax-exempt qualification established by Notice 160/2008 on Pre-tax Deduction of Public Welfare Donations, issued by the Ministry of Finance, the State Administration of Taxation, and the Ministry of Civil Affairs (corporations can only claim the deduction if the donation is received by a PO with the tax-exempt qualification). For individuals, it is even harder to deduct donations from individual income because the deduction procedure is time-consuming and no specific regulations has been issued regarding the tax deduction procedures.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 2.3

Charitable organizations and the income they receive for charitable purposes are tax-exempt. However, obtaining tax-exempt status is a strict and complex procedure.

Organizations are heavily restricted in their ability to raise funds from the public for several reasons. First, POs are only allowed to promote causes publicly (even in forms as basic as advertising in subway stations) if they have special government approval. Otherwise, POs cannot publicly promote their work.

Second, not all POs can fundraise publicly, as special government approval is required (Charity Law, 2016, Article 22). To apply for public fundraising credentials, a PO must submit a written application to the civil affairs bureau where it is registered, including a financial audit report for the two years preceding the application and the board of directors' meeting minutes regarding the application for public fundraising credentials (Article 6 of the Measures on the Administration of Public Fundraising by Charitable Organizations, 2016). A decision on the certification is to be made within 20 days after the application is accepted. Public fundraising activities must be published on an online information website approved by the Ministry of Civil Affairs. Additionally, the Administrative Measures for Public Fundraising Platforms requires that public fundraising platform operators verify the charitable status of organizations using their platform and report illicit behavior.

Obtaining this public fundraising certificate is not easy since the requirements are hard to achieve for nascent POs. Moreover, many local governments do not have clear instructions on how to apply the measures, and therefore, in practice many POs are unable to obtain or do not even attempt to obtain such approval.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 2.3

There are no specific regulations on the deductions of overseas donations sent to POs abroad. In 2009, the government issued The Notice of the State Administration of Foreign Exchange on Issues concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions (issued by the State Administration of Foreign Exchange, December 25, 2009). This Notice regulates the sending out cross-border donations from the perspective of the foreign exchange administration. Currently it is very rare for domestic POs to send cross-border donations. There are a few cases of overseas donations, e.g., China-Africa Project Hope (XINHUANET.com, 2015) and the Confucius Institutes (english.hanban.org, 2017). These POs have strong government backing, and their projects serve the government's diplomatic strategies. Media coverage of fundraising for international causes is also virtually non-existent.

There are occasional examples of overseas personal giving, e.g., individual donations made to Harvard (Zhang, 2014; NPR.org, 2014). These cases are rare and depend on personal connections. Because of the scarcity of legal regulation of cross-border donations, some Chinese philanthropists have even set up POs abroad; for example, Jack Ma, Chairman of Alibaba Group, explained that he

established a philanthropic trust overseas because “China’s system for charity funds is not yet perfect” (Custer, 2015).

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 2.5

In principle, overseas donations for charitable activities in China are entitled to exemption from import duties and also from import VAT (Charity Law, Article 80). In practice, however, the regulation on how to process the exemption is not clear. All funding from abroad is subject to surveillance by police and national security departments. Police and national security departments maintain active surveillance of domestic POs that receive overseas funding. Foreign and international NGOs seeking to maintain temporary or permanent operations in China are required to register, have a supervising government department (Directive of the PRC Ministry of Public Security on Overseas Non-governmental Organizations’ Activities and Projects within the Territory of China, 2016), and provide proof of funding (Reuters, 2016).

The Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions (December 25, 2009), issued by the State Administration of Foreign Exchange, also regulates overseas donations and has been thought to be a major obstacle for domestic POs receiving overseas donations “China tightens NGO foreign exchange donation management”, BBC. March 16, 2010).

Additionally, Article 44 of the Law on Activities of Overseas Nongovernmental Organizations (effective January 2017), establishes anti-money laundering oversight and supervision to representative offices of overseas NGOs, Chinese partners, and organizations and individuals on the mainland of China who accept funding from overseas NGOs.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 2.5

POs play an increasingly important role in delivery of social services and advocacy, and the question should consider the two roles separately. In China, the service component of the work of POs is welcomed by the government and society, and there is a good level of political and economic stability favorable to the continued growth of philanthropy. By promoting the concept of “social management,” the government at different levels has contracted a growing amount of social service projects to POs. This public-private partnership became an emphasis of the state’s central planning priorities after 2010. The central government’s twelfth Five-Year plan for 2011–2015 even devoted one chapter to

elevating the “social management” concept as one of the government’s key targets (Shi, 2016). By contrast, the advocacy role of POs is still heavily regulated, and POs in this sphere must employ various strategies to conduct even basic advocacy efforts, such as “(1) cultivating a stable, interactive relationship with the government using existing institutional means to communicate their concerns; (2) carefully selecting the “frames” used to present their preferred policy goals and outcomes; and (3) obtaining media exposure to mobilize societal support for their goals in order to put pressure on the local state.” (Dai and Spires, 2017).

Some observers, however, believe that grassroots POs in China can create informal “policy networks among government officials” and “these networks work in similar ways to those in democracies.” (Teets, 2017). Grassroots POs can form “horizontal connections” between ordinary citizens and utilize their “vertical connections” with government officials to facilitate success (Lu & Tao, 2017).

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

The Chinese government has established a series of policies to support the development of POs. One of the most important milestones is the Charity Law that became effective in 2016 (See further information on: <http://www.chinalawtranslate.com/2016charitylaw/?lang=en>). Although there are still restrictive articles in the law, it is a significant step forward for philanthropic freedom in contemporary China in terms of providing greater clarity on PO operations and fundraising (Chin, 2016). So in general, the policy environment is favorable for growth in philanthropic freedom.

However, the state still heavily regulates both POs involved in advocacy and activities of international POs. In 2016, the state introduced a law requiring all international NGOs to receive approval from the police in order to operate in China (Law on Activities of Overseas Nongovernmental Organizations, 2017). The state carefully distinguishes what it considers to be the appropriate roles of POs and treats advocacy and international POs differently than domestic social service POs. In October 2017, the 19th Congress of the Chinese Communist Party released President Xi’s report which deems POs as an important “political power”, but only in the context of Communist Party control and leadership: “Social organizations play a key role in communicating the Party’s propositions, carrying out the Party’s decisions, overseeing community-level social governance, uniting and mobilizing the people, and promoting reform and development. In doing so, we will focus on improving the organizational capability of primary-level Party organizations and give priority to enhancing their political functions” (Xinhua, 2017).

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

Although formalized organizational philanthropy is thought to be a new phenomenon in China, China has a long history of charity and philanthropy. The dominant Chinese traditional philosophy, Confucianism, belongs to an ethical tradition that promote values such as communal values,

altruism, solidarity, trust, and honesty. The oldest POs, which were called Yicang, are the most famous historical device for social welfare and were first established by Fan Zhongyan in 1050 (Twitchett, 1959). The first priority of Yicang was ritual and educational expenses (Beattie, 1973). They also provided farmland (collective estate) and rice rations, subsidized the expenses of marriage and burial ceremonies, and supported the needy, unemployed and disabled (Watson, 1982, 602).

However, during the Cultural Revolution (1960s-1970s), most of these traditional values were destroyed or hidden. After recovering from the upheaval, the state began to emphasize economic development and materialism but not traditional virtuous values (1980s-1990s). After 2000, traditional values began to regain their importance in society. Other than Confucian beliefs, Buddhism, Taoism, Islam, and Christianity all have a significant number of believers in China (Wang, Liu, Nan, Zhao, & Zhang, 2015, p. 358), and the resurgence of these religious strains has also led to a growth in associated charitable giving.

The 2008 Wenchuan earthquake greatly facilitated the development of modern philanthropy in China: individuals and corporations generated the largest donations in Chinese history and POs widely collaborated with each other in disaster relief (Zheng, 2015; Zhu & Lai, 2014). Donations to POs continued to increase after 2008, although hampered by a controversial Chinese Red Cross scandal in 2011 (“China charity scandal resignation,” BBC, July 5, 2011). Some argue that although the scandal hurt donors’ trust of government-affiliated POs, it correspondingly increased the development of grassroots POs (“Online scandal underscores Chinese distrust of charities,” The New York Times, July 3, 2011; Deng, 2015). After a short stagnant period between 2011 and 2012, the total donations to POs continued to grow at the speed of about 20 percent per year (China Charity Alliance, 2017).

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

In 2016, there were about 702,000 POs employing 7,637,000 people (compared to 271,000 POs in 2012); the total giving amounted to 82.7 billion CNY (approximately US \$13.1 billion in 2017), and 9,310,000 people have volunteered 25,226,000 hours (2016 Annual Statistics from the Ministry of Civil Affairs of PRC). However, these numbers underestimate the size of the philanthropic sector because of the rigid registration system that has “forced many either to remain unregistered or to register as for-profit entities” (Shi, 2016). Numerous new laws and regulations were established in 2016, and the legal and policy environments has become clearer than in the past, at least for social service POs. The sector is blooming because of the service role of POs; however, POs’ role in advocacy is still restricted. Xinsong Wang at Beijing Normal University and his colleagues generalized four characteristics of philanthropy in contemporary China (Wang, Liu, Nan, Zhao, & Zhang, 2015, p. 366), and the following challenges are still valid concerns as of 2017:

“First, the state dominates the philanthropic industry. Despite this and the fact that public spending is very high in China, the nonprofit sector receives very little funding from the government. Moreover, the government backs many GONGOs and public foundations and has a significant control over their management. Second, the major donors in China are enterprises,

both state-owned and private ones. About 80 percent of donations in 2010 came from enterprises. For this reason, fund-raising organizations in China pay more attention to the social values and needs of enterprises; however, public accountability of the nonprofit sector is more controversial as individuals donate only a small portion to philanthropic organizations. Third, because many philanthropic organizations receive government backing and some philanthropy scandals have been exposed in recent years, public trust over philanthropic organizations has decreased, which will likely affect future donations. Finally, the Chinese tax system does not effectively incentivize charitable giving, which hinders potential donors.”

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The Chinese Charity Law went into effect on September 1, 2016.
- September 9th, a national online fundraising day (not a statutory holiday), was initiated in 2015.
- PRC Law on the Administration of Activities of Overseas Non-Governmental Organizations within the Territory of China went into effect in January 2017.

Future development trends in the philanthropic landscape

It is expected that the number of POs will grow exponentially, following a trend that started a few years ago. The 2015 UNDP publication “Unleashing the Potential of Philanthropy in China” considers that the growth of private foundations has revitalized the philanthropic sector in China by increasing donations, bringing in new and professional human resources, and introducing more diverse missions and projects. More collaboration between government and POs is also expected, as well as increasing popularization of social enterprise as a philanthropic activity.

Three key recommendations to improve the environment for philanthropy

- Better instruction for POs' participation in influencing the government policy agenda;
- More international communication and exchange; and
- More international philanthropic projects promoted by domestic POs.