

## China's 2016 Charity Law

The 2016 Charity Law is the first law to regulate domestic charitable organizations and their activities in the People's Republic of China (PRC). It is relevant to any entity working in philanthropic, charitable, and nonprofit spaces in China. These Frequently Asked Questions (FAQs) provide general information in response to some of the most common questions about the law.

More information about the Charity Law can be found in the International Center for Not-for-Profit Law's [Philanthropy Law Report](#). An unofficial bilingual version of the Charity Law is [available here](#).

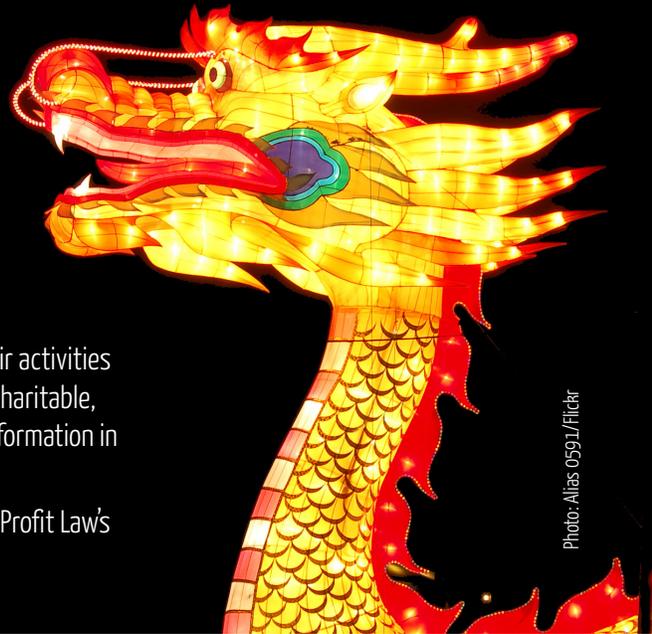


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### What is the Charity Law and when did it go into effect?

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The Charity Law (1) defines charity or public welfare in China; (2) regulates the establishment and management of charitable organizations and charitable trusts, including their assets and activities; (3) regulates the permissibility and management of charitable fundraising and donations; and (4) imposes requirements for information disclosure by charitable organizations to promote greater transparency in the sector.

As of December 2017, more than two thousand social organizations and nearly forty trusts had been designated as charitable.

The Charity Law was passed by the National People's Congress on March 16, 2016, and came into effect on September 1, 2016.

### What is new about the Charity Law?

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The Charity Law introduced a major change in the philanthropic landscape in China, as previously there was no comprehensive national law regulating charity (or what the Chinese also call public welfare).

### What is the benefit of charitable organization status and how is it obtained?

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The Charity Law uses the term charitable organization to refer to a lawfully established nonprofit social organization that complies with the law's provisions and carries out charitable activities for the public benefit as its main purpose. The advantage of charitable organization status is that it enables social organizations to receive additional tax benefits and apply for public fundraising credentials.

To obtain charitable organization status, an organization must be registered legally as a social organization. An organization that is already a registered social organization may apply to a Civil Affairs department to be designated as a charitable organization, in accordance with procedures outlined in the Measures for the Designation of Charitable Organizations issued in August 2016. An organization that is not registered as a social organization may register as a social organization at the same time that it applies for charitable organization status. Both procedures are carried out by a Civil Affairs department.



### What are some of the relevant terms in the Charity Law?

- **Public welfare**—a term often used synonymously with charity in laws and regulations
- **Social organization**—the official Chinese term for a nonprofit, non-governmental organization
- **Charitable organization**—a new category of organization formalized by the Charity Law, which provides procedures for obtaining charitable organization status
- **Charitable trust**—a vehicle for one person (the grantor) to entrust assets to another person or organization (the trustee) to manage for charitable purposes
- **Designation**—the process by which an organization is recognized as a charitable organization
- **File documents for the record**—the procedure provided by the Charity Law for setting up a charitable trust [see fn 1]

*FN1. The process of filing documents for the record (bei'an) is often used by local governments to keep track of small community-based organizations in their jurisdictions. A few years ago it was also used experimentally by the Yunnan provincial government to regulate foreign NGOs in the area. Specifically, foreign NGOs were asked to file documents in return for permission to operate in the province.*

## What is the benefit of a charitable trust and what is the process for establishing one?

4

A charitable trust is a financial arrangement that allows donors to set aside assets for a specific charitable purpose. A charitable trust does not require donors to register first as a social organization.

A charitable trust must have a charitable purpose and carry out charitable activities as defined in the Charity Law. It is set up through the appointment of a trustee, which may either be a recognized charitable organization or a trust company. The trustee needs to file documents for the record at the local Civil Affairs department, according to the procedures outlined in Chapter 5 of the Charity Law and the Measures for Management of Charitable Trusts.

## Does the Charity Law lower the bar for social organizations to engage in public fundraising?

5

Yes. In the past, only public fundraising foundations (numbering fewer than two thousand as of this writing) and a few special social organizations, such as the Chinese Red Cross and China Charity Federation, were authorized to carry out public fundraising activities. The large majority of these organizations had government backing. Non-public fundraising foundations and social organizations without government backing found it difficult to obtain public fundraising status, and the criteria and requirements for doing so were never clearly spelled out.

The Charity Law lowers the bar for public fundraising organizations by allowing all charitable organizations that have been lawfully registered for two years and are in good standing to apply for public fundraising status (Article 22). The Charity Law includes a number of procedures that organizations must follow in connection with their public fundraising. For example, a charitable organization that intends to carry out a public fundraising event must formulate a fundraising plan and file it in advance with the Civil Affairs department in the locality where the event is to be held.

The Charity Law also allows for charitable organizations that do not have public fundraising credentials to carry out public fundraising using the platform of a credentialed charitable organization (Article 26).

## Does the Charity Law address online fundraising?

6

Yes. Fundraising through the Internet is considered public fundraising (Article 23). Charitable organizations that carry out public fundraising online are to publish information about their fundraising initiatives on the Ministry of Civil Affairs' charity information platform. They may concurrently publish fundraising information on their own websites.

In July 2017, the Ministry of Civil Affairs issued two standards for online fundraising platforms: the Basic Technical Specifications for Online Fundraising Platforms for Charitable Organizations and the Basic Management Specifications for Online Fundraising Platforms for Charitable Organizations. The two standards strengthen overall supervision of online fundraising and provide that if a fundraising platform fails to pass a government assessment twice, its public fundraising qualifications will be cancelled. The standards encourage transparency and protect the rights of donors by requiring that information about a charitable organization and its fundraising qualifications and plans be posted prominently on the platform's webpage. Platforms must publicize information about their fundraising operations at least every six months. The standards require platforms to strengthen their service functions by ensuring that they treat all charitable organizations equally and do not discriminate on the basis of location, size, etc. The platforms must clearly state their fees and publicize information about the donations they receive and the donors' identities.



## Charity and Public Welfare under the Charity Law

Article 3 of the Charity Law defines charity or public welfare as nonprofit activities carried out on a voluntary basis by natural persons, legal persons, or other entities, using such means as donating assets or providing the following types of services:

- (1) Poverty alleviation and assistance
- (2) Eldercare, aid for orphans, aid for the ill, assistance for the disabled, or special aid
- (3) Relief from damage caused by natural disasters, disasters caused by accidents, public health incidents, and other emergencies
- (4) Promotion of the development of education, science, culture, health, and sports
- (5) Prevention and control of pollution and other public harms, and protection and improvement of the environment
- (6) Other public welfare activities compliant with provisions of the law.

## The Charity Law and Public Fundraising

Article 23 of the Charity Law defines public fundraising as raising funds using the following methods:

- (1) Donation boxes in public places
- (2) Public charitable events, such as performances, competitions, exhibitions, auctions, and galas
- (3) The dissemination of fundraising information through radio, television, newspapers, the internet, and other media
- (4) Other public fundraising means.

A charitable organization may carry out public fundraising using donation boxes and public charitable events within the administrative area in which it has obtained charitable organization status. If it seeks to carry out public fundraising elsewhere using either of these methods, it must file documentation for the record at the Civil Affairs department in the locality in which the fundraising will be conducted.

## How does a charitable organization qualify for public fundraising credentials?

7

According to Article 22 of the Charity Law, charitable organizations that have been lawfully registered for at least two years may apply for public fundraising credentials at the Civil Affairs department at which they are registered. The department must issue a decision within twenty days of receiving the application and must issue public fundraising credentials if the law's requirements are met.

## What kind of tax incentives does the Charity Law provide for charitable organizations?

8

The Charity Law states that various tax incentives will be available for charitable organizations and donors, the details of which will be negotiated and spelled out in regulations issued by the Ministry of Finance and State Administration of Taxation. The effectiveness of the incentives depends on how well they are promoted and implemented.

The law provides donors with greater flexibility to claim tax deductions. Article 80 allows a donor to carry over to the next year the amount of any charitable donation exceeding the amount deductible in a given year.

## The Charity Law and Existing Legislation



### The Charity Law and the Public Welfare Donation Law (PWDL)

The Charity Law regulates entities previously covered by the 1999 PWDL. Like the PWDL, the Charity Law regulates charitable or public welfare donations and the responsibilities of donors and recipient organizations (Chapter 4). The PWDL refers to public welfare social organizations that are qualified to receive donations. However, it does not provide a process for organizations to obtain public welfare or charitable status.

The Charity Law goes further than the PWDL by setting forth a process for social organizations to apply for status as charitable organizations (Chapter 2). It also has several new sections not found in the PWDL. For example, there is an important section on charitable fundraising (Chapter 3), which expands the rules for permissible public fundraising and for the first time regulates online fundraising. Responding to a series of scandals in the philanthropic sector, in which several foundations were accused of improperly using of funds, the Charity Law also includes a section on information disclosure (Chapter 7) to encourage greater transparency among charitable organizations regarding their fundraising activities and their use of donations.

### The Charity Law and Regulations Governing the Registration and Management of Social Organizations

A precondition for obtaining status as a charitable organization is registration as a nonprofit legal entity—that is, as a social association, social service organization, or foundation. A charitable organization must comply with both the Charity Law and regulations governing the registration and management of the specific type of social organization. For example, a foundation that obtains status as a charitable organization must comply with both the Charity Law and the Regulation for the Management of Foundations.

### The Charity Law and the Trust Law

The Charity Law also addresses organizational forms covered by other legislation. For example, the 2001 Trust Law has a section on charitable trusts that has never been implemented. In 2015 Jack Ma of Alibaba made news when he donated approximately \$2.4 billion to set up a charitable trust outside of China, arguing that the regulatory environment for charitable trusts in China was not sufficiently mature. The Charity Law includes a section on charitable trusts (Chapter 5), and the 2017 regulation on Measures on the Management of Charitable Trusts elaborates the rules for charitable trusts.

### The Charity Law and the Overseas NGO Law

There is little if any overlap between the Charity Law and Overseas NGO Law, both of which were passed in 2016. While the Charity Law regulates Chinese nonprofit social organizations, the Overseas NGO Law regulates overseas nonprofit non-governmental organizations.



Where can I learn more about philanthropy law in China?

More information about the Overseas NGO Law may be found in ICNL's [China Philanthropy Law Report](#), which offers detailed information about the national laws and regulations affecting philanthropy in China. [ChinaFile's China NGO Project](#) also provides valuable up-to-date information, analysis, and data on the Overseas NGO Law and its implementation.

## Why should we see the Charity Law as a positive development?

9

There are a few reasons why the Charity Law should be regarded as a positive development.

(1) The language and intent of the Charity Law are, for the most part, supportive of the development of charitable organizations and activities, particularly in comparison to the Overseas NGO Law.

2) In comparison to the PWDL, the Charity Law broadens the definition of public welfare or charity. Like the PWDL, the Charity Law defines charitable activities but includes the catchall category of “public benefit activities that comply with this law.” How broadly this catchall category is interpreted depends on how the central and local governments implement and enforce the law. Time will tell whether the law allows for more controversial activities, such as performance art events protesting sexual harassment or lawsuits in defense of labor activists.

The law also broadens the definitions of the types of charitable organizations and their undertakings to include charitable organizations and trusts, urban and rural community organizations, and volunteering.

(3) The law contains less state-centric language than previous regulations, which imposed strict limits on freedom of association. Previous regulations commonly included clauses providing that only one social organization working on a particular issue could be registered within a given administrative area; that a social organization registered in a particular administrative area could work only in that area; and that a social organization could not establish branches in other localities. These provisions do not appear in the Charity Law.

(4) The law does not require charitable organizations to go through an annual inspection (nianjian) process. Under previous regulations, nonprofit organizations underwent an annual inspection, which required them to submit reports for inspection and approval to their PSUs and the local department of the Ministry of Civil Affairs. Under the Charity Law, charitable organizations are required to file only annual work and financial reports with the Civil Affairs department with which they are registered (Article 13).

(5) The law encourages the establishment of industrial and professional associations of philanthropic organizations to promote self-regulation in the sector (Article 19).



The Charity Law lowers the bar for public fundraising organizations by allowing all charitable organizations that have been lawfully registered for two years, and are in good standing, to apply for public fundraising status.

## What areas of the Charity Law can be improved?

10

There are a few areas in which the Charity Law can be improved.

(1) The law uses vague language regarding threats to national security and the public interest, which could be used to harass or close down charitable organizations. For example, Article 104 states that charitable organizations engaging in or funding activities that endanger national security or the public interest will be investigated and could have their registrations revoked.

(2) In requiring groups to register first as social organizations before applying for charitable organization status, the law emphasizes formal organizational status, which discriminates against small, grassroots groups, which are often unregistered and informal. For example, many of the more independent advocacy and rights-based activist groups in China are not formally registered.

(3) The law limits administrative expenses to 10 percent of total annual expenses (Article 60). The 10 percent limit is too low and hampers the ability of organizations to hire professional staff or rent appropriate venues for their offices. In addition, it does not take into account the differing expenditures of various types of charitable organizations.

(4) The law emphasizes transparency in a country in which nonprofit non-governmental organizations have been punished for being transparent about their work. It also imposes onerous information disclosure requirements, which require significant staffing and other resources to fulfill. Such resources may be lacking in smaller organizations and could conflict with the requirement in Article 60 that management costs be kept under 10 percent.

(5) Article 95 of the law calls for Civil Affairs departments to set up a system for assessing the social credit of charitable organizations and their responsible persons [see fn 2]. However, it does not specify criteria for assessing social credit, which raises concern about the way in which organizations and responsible persons will be evaluated.

*FN2. Social credit refers to a wide-ranging, ambitious big data initiative undertaken by the Chinese government in cooperation with commercial credit rating companies. The initiative seeks to set up a system for monitoring, evaluating, and regulating the behavior of individuals and organizations in China. A good introduction to this initiative can be found [here](#).*