

2016: An Important Dividing Line

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in China's Philanthropy and Civil Society Regulation

The year 2016 represents a watershed moment in the development of the legal environment for philanthropy and civil society in China. In 2016 the National People's Congress adopted two comprehensive new laws to regulate the philanthropic and civil society space: The [Charity Law](#) passed in March and the [Overseas Non-Governmental Organization \(NGO\) Law](#) passed in April. In August 2018, the Ministry of Civil Affairs issued for public comment the draft of a Regulation for the Registration and Management of Social Organizations. This regulation is intended to replace the three management regulations for the different types of social organizations: social associations, civil non-enterprise units, and foundations. As the final regulation has yet to be promulgated, this report discusses the draft version, which is designated as tentative by ***. The table below highlights some of the year's key regulatory changes. For more on philanthropy law in China, please see our [China Philanthropy Law Report](#).

	Before 2016	After 2016
Registration of Overseas NGO (ONGO) Representative Offices	<ul style="list-style-type: none"> • Some ONGOs register representative offices under the 2004 Regulations on the Management of Foundations. • Some Yunnan-based ONGOs file documentation to carry out activities in the province under the 2010 Yunnan Province Provisional Regulations Standardizing the Activities of Overseas NGOs. • The large majority of ONGOs work in a legal grey area. • Foreign chambers of commerce are registered under the 1989 Provisional Regulations on Management of Foreign Chambers of Commerce. 	<ul style="list-style-type: none"> • All "nonprofit, non-governmental organizations legally registered outside of China" that carry out activities in mainland China must either register a representative office or file documents for temporary activities under the 2016 Overseas NGO Law. • ONGOs previously registered under the 2004 Regulations on the Management of Foundations must re-register under the Overseas NGO Law. • Overseas schools, hospitals, and research institutes involved in exchanges and cooperation with similar mainland counterparts may be exempted from registration requirements under the 2016 Overseas NGO Law. • Foreign chambers of commerce continue to be registered under the 1989 Provisional Regulations on the Management of Foreign Chambers of Commerce.
Number of Registered ONGO Representative Offices	<ul style="list-style-type: none"> • About 30 ONGOs register representative offices. • About 40 ONGOs file documentation for their projects in Yunnan. • 19 foreign chambers of commerce are registered. 	<ul style="list-style-type: none"> • 187 ONGOs have registered a total of 221 representative offices as of September 30, 2017. • 131 ONGOs have filed documentation for a total of 296 temporary activities as of September 30, 2017. • 19 foreign chambers of commerce are registered.
Scope of ONGO Activities	<ul style="list-style-type: none"> • ONGO representative offices are not allowed to solicit or accept donations within China. 	<ul style="list-style-type: none"> • ONGO representative offices are not allowed to solicit donations, but there is no provision in the Overseas NGO Law against accepting donations.

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Registration of Chinese Social Organizations	<ul style="list-style-type: none"> • Social organizations need a professional supervisory unit (PSU)—essentially a government sponsor—before registering with the Ministry of Civil Affairs or a local department. In this dual management system, social organizations report to both their PSUs and the Ministry of Civil Affairs. 	<ul style="list-style-type: none"> • The dual management system no longer applies to certain categories of social organization (specifically, science and technology, public welfare and charity, and community-based service organizations). Social organizations in these categories no longer need a PSU and can register directly with Civil Affairs.***
Management & Supervision of Chinese Social Organizations	<ul style="list-style-type: none"> • Social organizations must submit to annual inspections (<i>nianjian</i>). • Social organizations are not required by regulations to establish party groups as part of their internal governance. Party documents, however, called for party groups to be established in social organizations. 	<ul style="list-style-type: none"> • Social organizations no longer have annual inspections and must only file annual reports.*** • The draft of the new regulation explicitly states that social organizations should, whenever possible, establish party groups to carry out party activities.***
Charitable Undertakings	<ul style="list-style-type: none"> • The 1999 Public Welfare Donations Law defines public welfare or charity as “disaster relief, poverty alleviation, assistance to persons with disabilities and other groups in difficult circumstances, education, science, public health, culture, athletics, environmental protection, and other public welfare activities promoting social development.” • The law defines the scope of public welfare activities, the regulation of donations, and the rights and responsibilities of donors. • There is no formal procedure for social organizations to qualify for charitable status. Social organizations self-identify as public welfare or charitable organizations. 	<ul style="list-style-type: none"> • The 2016 Charity Law now regulates domestic charitable organizations and trusts, activities, fundraising, information disclosures, and legal responsibilities. Various implementing regulations govern the recognition of charitable organizations, public fundraising, and charitable trusts. • The 2016 Charity Law largely retains the definition of public welfare or charity used in the Public Welfare Donations Law, with a few minor changes. • The Charity Law and the 2016 Measures for the Designation of Charitable Organizations provide a clear procedure for social organizations to qualify as charitable organizations. Social organizations must be legally registered before they can apply for designation as charitable organizations.
Number Designated as Charitable Orgs	0	1,245 as of July 31, 2017
Number of Charitable Trusts	0	32 as of July 31, 2017
Public & Online Fundraising	<ul style="list-style-type: none"> • The 2004 Regulations on the Management of Foundations distinguishes between public fundraising foundations and non-public fundraising foundations. Public fundraising foundations are the only social organizations allowed to raise funds from the public; non-public fundraising foundations must raise funds through private donations or other channels that are not public in nature. • No clear guidelines or standards for online fundraising. 	<ul style="list-style-type: none"> • The Charity Law does away with the distinction between public fundraising and non-public fundraising foundations. Instead, it allows all qualified charitable organizations to apply for public fundraising status. • Implementing regulations for the Charity Law provide more specific guidelines and standards for public and online fundraising.