

## Philanthropic Freedom Pilot Study: China Country Report

*Overall Philanthropic Freedom Score: 2.18*

### **General Background Information on China**

- GDP per capita: \$5,445<sup>1</sup>
- Population: 1.3 billion<sup>2</sup>
- Percent of population reporting “giving money”: 10%<sup>3</sup>
- Percent of population reporting “volunteering time”: 4%<sup>4</sup>
- There are three main types of organizations: social associations, civil non-enterprise institutions, and foundations. Social associations are formed through membership and many have government backing and are thus considered government organized NGOs (GONGOs). Civil non-enterprise institutions are non-profit social service providing organizations such as private schools or private nonprofit research organizations. Foundations are grant-making organizations.
- Public trust in government institutions is consistently higher than for CSOs, which until recently have not been well understood
- The philanthropic sector has been dominated by the Chinese government and CSR was used as a way to strengthen corporate relationships with the government.

### **Philanthropic Freedom Score Summary**

Category	Score	Key Points
Civil Society Regulation	2.17	<ul style="list-style-type: none"> <li>• Due to cumbersome registration processes, many nonprofit organizations in China are registered as businesses or unregistered, even though their activities are not-for-profit.</li> <li>• There are restrictions on the types of activities CSOs can pursue. Some activities that are regarded as sensitive can get a CSO investigated or closed down, but there are no clear lines on what those activities are.</li> <li>• Involuntary interference in and termination of CSO activities by a government entity does occur, often without judicial process.</li> </ul>
Domestic Tax Regulation	2.38	<ul style="list-style-type: none"> <li>• The ceiling on donations is 30% of taxable income for individuals and 12% of taxable income for corporations.</li> <li>• Nonprofit organizations can obtain a tax exempt status if they have a public benefit purpose such as poverty relief, education, health, disaster relief, and other activities. Unregistered organizations and those that are registered as businesses cannot obtain a tax exempt status.</li> </ul>
Cross-Border Flows Regulation	2.00	<ul style="list-style-type: none"> <li>• In-kind donations made to China by foreign governments and international groups are exempt from custom duties. Foreign donations have to be processed through specific banks and require specific registration.</li> <li>• In December of 2009, a new regulation was issued by the State Administration for Foreign Exchange that made it more difficult for organizations to accept overseas donations.</li> </ul>
<b>Overall</b>	<b>2.18</b>	<ul style="list-style-type: none"> <li>• <b>The policy environment in China is highly restrictive to philanthropic activity due to policies impeding civil society activities and lack of fiscal incentives for donor entities and recipient organizations.</b></li> </ul>

<sup>1</sup> World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.

<sup>2</sup> Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.

<sup>3</sup> World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.

<sup>4</sup> Ibid.

**Socio-Cultural Background on China's Giving Environment**  
**Provided by Dr. Shawn Shieh**  
**China Country Expert**  
**China Development Brief**

China has had a long history and culture of philanthropic activity. However, that culture was 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, philanthropic activity. Even during the 1980s and 1990s, most philanthropic activity was government dominated. Charitable donations were organized by the government and people gave, not because they wanted to, but because they were told to. Donations generally went to the government and there was little choice of where one's donations went and little information and transparency about their use. Companies did give donations, but most went to projects in traditional areas such as disaster relief, education, and poverty relief. These were primarily projects carried out the government or through government organized NGOs (GONGOs). Corporate Social Responsible (CSR) was mainly a way of strengthening corporations' relationships with the government.

This situation has only begun to change in the last few years as private foundations (mostly corporate and family) have mushroomed. In addition, recent scandals in the government-dominated philanthropy sector, and the use of social media to spread the news about these scandals, have generated a wider public debate about the need to lessen the role of government in philanthropic activity and organizations. Public debate is promoting greater transparency and accountability in the sector. CSR practiced, by Chinese companies, has also become somewhat more diversified and companies are beginning to work more with all Civil Society Organizations (CSOs).

The concept of CSOs, whether government or privately supported, has only been around for the last 20-25 years and most are still quite small, lacking influence and visibility. The public does not fully understand what CSOs are, and surveys show that public trust in government institutions, despite concerns about accountability, is consistently higher than for CSOs. In the last few years CSOs are slowly moving from the ranks of the marginalized to joining the mainstream, but this will be a long process.

Because of the dominant role of government in CSOs and lack of transparency, it is difficult to calculate the total number of CSOs, particularly those grassroots CSOs that are privately supported. It is also difficult to distinguish between those CSOs that are mainly government supported and those that are privately supported.

From the latest available comparable data in 2005, the number of CSOs ranges from 620,000 to 8.8 million. Public benefit CSOs make up only a small portion of China's total CSOs, depending on how they are defined and counted. In 2005 when many of these estimates were made, the minimum estimate was around 620,000.<sup>5</sup> This estimate only counts organizations registered with

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5 These estimates are taken from Wang, Shaoguang and Jianyu He, "Associational Revolution in China: Mapping the Landscape", *Korea Observer* 35:3 (Autumn, 2004), and He, Zengke, "Institutional Barriers to the Development of Civil Society in China," in Zheng Yongnian and Joseph Fewsmith, eds., *China's Opening Society: the Non-state Sector and Governance* (Routledge, 2008), pp. 163-164.

China's Civil Affairs Bureau. Of this total, 320,000 are registered and consist largely of GONGOs. Another 300,000 are CSOs that are actually registered as businesses.

In addition, there are some 759,000 small organizations such as student clubs, community-based organizations, and virtual organizations. If we add this to our 620,000 figure, we come up with a total of 1,379,000 CSOs. An even more expansive estimate would include mass organizations and GONGOs which numbered about 6.7 million in 2005 which would bring the total number of CSOs in China to 8,079,000. To call mass organizations and GONGOs, which are creations of the Communist party-state, NGOs is a stretch, although many of these organizations self-identify as CSOs to the outside world. Finally, some scholars consider self-governing organizations in the city and countryside, such as neighborhood committees (78,000) and village committees (644,000), should count as community organizations. If we include these, then we arrive at a maximum estimate of 8,801,000 CSOs in China.

Even this figure does not include rural associations which some scholars believe should be counted and which number anywhere from 1 to 1.6 million.<sup>6</sup> Thus, even if we focus on just the minimum estimate of 620,000 CSOs (recognizing that a good deal of these are GONGOs or government supported), these public benefit CSOs represent a small part of the entire associational landscape in China, whether government or privately supported. It is clear that the development and acceptance of private public benefit Civil Society Organizations as found in Western societies, while beginning to grow in China, is still significantly underdeveloped.

As for how long it takes to register a CSO, it depends on how long it takes the CSO to find a government sponsor, which is a requirement and the major hurdle for registration. This can range from a few weeks to a few years. Once a CSO finds a government sponsor, then registration proceeds quite smoothly and should take no more than a few months.

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6 Watson, Andrew, "Civil Society in a Transitional State," pp.35-36.

**Scoring of China’s Civil Society Regulation  
Provided by Dr. Shawn Shieh**

<p>Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?</p>	<p>There are still numerous legal restrictions on CSO registration and operation in China. Current regulations require that CSOs submit to a dual-management system to be legally registered. That is, before CSOs can register with the Civil Affairs office, they must be sponsored by a “professional supervising unit” which is generally a government agency or government-approved unit. In reality, it is difficult for more grassroots, independent CSOs to find such a sponsor. As a result, many CSOs register as businesses or remain unregistered. According to internal Civil Affairs regulations, these CSOs are technically “illegal” and can be shut down at any time, although the reality is that many of these CSOs continue to operate without much interference. Another onerous restriction is that CSOs cannot establish branches in other parts of the country, but again some CSOs have gotten around this regulation by registering separate entities in different parts of the country. Individuals with criminal records may also not apply to register a CSO.</p> <p>CSOs are required to follow the law. According to Article 35 of the 1982 Constitution, Chinese citizens have freedoms of speech, press, assembly, association, travel and demonstration, but the reality is that there are still significant restrictions on speech, press, assembly, association and demonstration that hamper the work of CSOs.</p> <p>One reason for assigning a lower score on this question is because the actual space for CSOs is quite a bit bigger than the legal space which is quite restrictive. Some Chinese scholars who have studied CSOs extensively estimate that the number of unregistered CSOs, and CSOs registered as businesses, outnumber registered CSOs. Another reason for assigning a lower score is that some provinces and cities are now actively experimenting with reforms that lower barriers to CSO registration. In some provinces such as Guangdong, these reforms have eliminated the need for a professional supervising unit, allowing a CSO to register directly with Civil Affairs. Still, these reforms are local, piecemeal in nature, and there is skepticism about whether they would be applied to CSOs working in more sensitive areas.</p> <p><b>Score: 2.0</b> According to the relevant regulations, Civil Affairs offices are required to decide whether to approve a NGO’s application for registration and must provide a reason no more than 60 days from the time the application was submitted, but it is left unstated whether that reason must be provided in writing and how detailed it must be. There is also no appeal process.</p>
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<p>Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?</p>	<p>There are rules governing the organization’s internal affairs but they are not overly burdensome and are spelled out in the regulations. There are more detailed rules regarding information disclosure and annual inspection for foundations than for other types of CSOs. For example, the regulations governing foundations require that foundation not spend more than 10% of their total expenditures on administrative expenses such as staff salaries and benefits and overhead.</p> <p><b>There are activities that are regarded as sensitive and can get a NGO investigated or closed down, but there are no clear lines on what those activities are.</b> There is a vague state secrets law and individuals and organizations have been investigated, tried and jailed for violating that law when working in sensitive areas. This includes ethnic minorities, esp. Tibetans and Uighers, religion, and to a lesser extent legal aid and labor rights.</p> <p>There are some restrictions on NGOs contacting and cooperating with other sectors, although this depends on the nature and scope of the activity. <b>Restrictions are greater in areas involving grassroots NGOs</b>, as opposed to government-organized NGOs (GONGOs), and in areas where grassroots NGOs work with foreign entities. Examples include the 2009 regulations on foreign funding (which is discussed in more detail on cross-border flows), and monitoring of training workshops for NGOs organized by foreign entities. Certain overseas organizations involved in “democracy promotion” are also not allowed to operate here.</p> <p>Networks and social media are growing in China but still restricted. China has restrictive internet regulations and monitoring systems, and while social media has made a big impact in the charitable, NGO sector, there are limits on what can be said. Networks are allowed but viewed as sensitive and are informal in nature.</p> <p>The reporting requirements are clear and generally require an annual report submitted to the CSOs professional supervising unit, after which the CSO is subject to an annual review by the Civil Affairs office, but this only applies to registered NGOs, not to informal NGOs that are registered as businesses or unregistered. Again, there are more detailed regulations regarding annual inspection and review for foundations than for other types of CSOs.</p>
<p>Indicator Question 3: To what extent is there government discretion in shutting down CSOs?</p>	<p>This score reflects a more liberal policy regarding a CSOs ability to terminate its activities, but more restrictive policy regarding involuntary termination. CSOs <b>can voluntarily terminate</b> its activities, <b>but to cancel its registration, it needs approval from Civil Affairs</b> and must follow a set of procedures specified in the regulations about applying for cancellation and dealing with its assets. Again this only applies to legally-registered CSOs. Informal CSOs are not subject to these regulations.</p> <p>Involuntary <b>interference in and termination of CSO activities by a government entity does occur</b>, and ranges from confiscating materials to penalizing CSOs for not paying taxes to closing a CSOs website and in more extreme cases, to shutting down a CSO. There are procedures specified in regulations for involuntary termination but these are internal regulations that are not well publicized nor are they consistently carried out. The <b>regulations do not provide CSOs with recourse for judicial review.</b></p>
<p style="text-align: center;"><b>Average Score on Civil Society Regulation: 2.17</b></p>	

**Scoring of China's Domestic Tax Regulation  
Provided by Dr. Shawn Shieh**

<p>Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?</p>	<p><b>Score: 3.0</b></p>	<p>There are income tax incentives in both the Enterprise Income Tax Law and the Individual Income Tax Law. Enterprises are allowed to claim tax exemption <b>on donations up to 12% of their total income</b>. Individuals are allowed to claim exemption on <b>donations up to 30%</b>. <b>There are no ceilings on eligible donations from either individuals or corporations.</b></p> <p><i>(This question did not require a score by the expert; CGP applied a score of 3.0. While there are available incentives to individuals and corporations, the pool of organizations that can receive such donations is small due to the limited number of organizations that can register as nonprofit organizations.)</i></p>
<p>Indicator Question 5: To what extent is the tax system favorable to making charitable donations?</p>	<p><b>Score: 2.5</b></p>	<p>While there are significant tax incentives in the various income tax laws, the process of receiving a tax benefit is unclear and inconsistent. <b>Only a small number of public benefit organizations have applied and been approved to provide receipts to donors for tax exemption purposes.</b> Moreover, tax offices and individual donors often are not aware of the tax exemption laws or unsure how to apply them. Once again, these tax incentives can only be enjoyed by legally-registered CSOs. <b>CSOs registered as businesses do not enjoy these incentives and must pay an additional business tax of 5.5%</b> on all their income.</p> <p>In China, in direct contrast to the U.S., the large majority of donations to public benefit causes come from corporations and private entrepreneurs. The fact that individual giving makes up only a small part of total giving in China is in part a reflection of the lack of clear, simple and well-publicized tax exemption regulations and procedures for individual donors. Tax incentives have had a more significant impact on corporate giving, particular for the purpose of starting a foundation. Private foundations in China grew rapidly after the enterprise income tax exemption was raised in 2008 from 3% to 12%.</p>
<p>Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?</p>	<p><b>Score: 2.0</b></p>	<p><b>CSOs receive very few tax exemptions, and do not get exemptions on property or income tax.</b> Legally-registered CSOs do get a few tax exemptions but these are not automatic and must be applied for or negotiated with the relevant tax bureau.</p> <p><i>(This question did not require a score by the expert; CGP applied a score of 2.0 due to the very limited exemptions available to CSOs.)</i></p>

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?</p>	<p>CSOs in <b>general receive very few tax exemptions</b> in contrast with nonprofit public service units (e.g. public universities) which are institutions established with government assets and enjoy a wider range of tax exemptions including exemptions on income and property tax. CSOs however are not exempt from income or property tax.</p> <p><b>Legally-registered CSOs are, in theory, exempt from paying business tax, but the usual practice is to negotiate this with the local tax bureau.</b> Some CSOs do enjoy an exemption on their business tax, but this exemption is not automatic.</p> <p>The range of CSOs that are exempt from tax exemption is also quite narrow. In theory, only the legally-registered CSOs which number around 450,000 are eligible for tax exemption. There are also many hundreds of thousands, and perhaps millions, of informal CSOs either registered as a business or unregistered that are not eligible for tax exemptions.</p> <p>In reality there is a broad range of CSOs that can receive support from private donors. But as we have just noted, <b>there is a narrower range of CSOs that can receive donations that are exempt from taxes.</b> Only legally-registered CSOs can receive donations without having to pay taxes. Furthermore, a much narrower range of CSOs – essentially the category of foundations called public fundraising foundations, which number a little more than 1,000 out of over 450,000 legally-registered CSOs in China -- can engage in public fundraising. Foreign CSOs working in China are not allowed to fundraise in China.</p>
	<p style="text-align: center;"><b>Average Score on Domestic Tax Regulation: 2.38</b></p>

**Scoring of China’s Cross-Border Flows Regulation  
Provided by Dr. Shawn Shieh**

<p>Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc) ? If so, what are these costs?</p>	<p>There are <b>significant costs to cross-border philanthropic</b> exchanges discussed below. A few exceptions to this rule should be mentioned. <b>There are exemptions on customs duties and fees on goods donated by overseas individual and organizations for “poverty-relief and charitable purposes” in China.</b> There are also preferential policies for overseas Chinese who make charitable donations to China.</p> <p><i>(This question does not require a score by the expert; CGP applied a score of 2.5 due to the high restriction on cross border flows, with exceptions on custom duties.)</i></p> <p><b>Score: 2.5</b></p>
<p>Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?</p>	<p>There are significant restrictions on and costs to cross-border charitable flows. First of all, there are no known regulations regulating the flow of charitable contributions outside of China. Historically, China as a developing country has been a major recipient of international donations and aid, although that has changed in the last few years as international aid has declined and Chinese government agencies, companies and foundations have begun to send development aid and donations to other developing areas such as Africa. Still, China’s historical position as a recipient country may explain why relevant laws and regulations governing enterprise and individual income taxes and public donations are silent on if donors to overseas charitable projects receive any tax exemptions, or how such exemptions would be determined.</p> <p>There are procedures in place for accepting donations from abroad that have been tightened in recent years. In December of 2009, a new regulation was issued by the State Administration for Foreign Exchange that made it more difficult for organizations to accept overseas donations. Many GONGOs were exempted from this regulation, but other <b>CSOs had to go through additional procedures to have overseas donations converted to Chinese currency and transferred to their bank accounts.</b> These procedures included requiring overseas donors to produce notarized documents showing that they were charitable organizations. Anecdotal information suggests that this has mostly been an inconvenience but some CSOs have not been able to get their funding. Funding from more sensitive overseas organizations engaged in “democracy promotion” or “labor rights” encounter more difficulty getting into the country.</p> <p><b>Score: 1.5</b></p> <p>There are also restrictions on foreign CSO fundraising activities in China. Foreign CSOs are not allowed to engage in fundraising in China, and there are strict limits on how much money can be taken out of the country.</p>
<p align="center"><b>Average Score on Cross-Border Flows Regulation: 2.00</b></p>	

**Overall Philanthropic Freedom Score\*: 2.18**

\*This score reflects equal weighting of the three categories described above.