



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **CHINA – 2015**

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***The operating environment for foundations***

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## **I. Legal framework for foundations**

**1. Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

Legally speaking, there are two types of foundations in China (see Article 3 of the 2004 Foundation Management Regulations). One is public fundraising foundations which are allowed to fundraise through public channels. The second type is non-public fundraising foundations which are not allowed to fundraise publicly. Typically, the latter type are funded through major gifts from an individual, company or family.

**2. What purposes can foundations pursue?**

Foundations should serve public benefit purposes in line with their charters (Article 5 of the 2004 Foundation Regulations). The 1998 Public Benefit Donation Law defines public benefit as follows:

- 1) Disaster relief, poverty alleviation, and assistance to the handicapped, as well as activities for social groups and individuals in difficult circumstances.
- 2) Education, scientific, cultural, public health, and athletic undertakings.
- 3) Environmental protection and construction of public facilities.
- 4) Other public benefit undertakings promoting social development and progress.

**3. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

According to Article 8 of the 2004 Foundation Management Regulations, the following requirements are needed to set up a foundation:

1. It should be established in order to achieve a set public benefit objective;
2. The original funds of national public fundraising foundations should be not less than CNY 8 million; the original funds of local public fundraising foundations should be not less than CNY 4 million; the original funds of non-public fundraising foundations should be not less than CNY 2 million and they must retain those funds in their current account;
3. A foundation should have a standard name, a charter, an organisational structure and full-time staff with the appropriate capacity to carry out its [proposed] activities;
4. It must have a fixed place of business;
5. It must be capable of undertaking civil legal liability in its own right.

**4. Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )**

Yes. Foundations are subject to a “dual management” structure. First, foundations must get the approval of an official sponsor or “professional supervisory unit.” This sponsor should work in the same functional area as the foundation, and agree to supervise the foundation. Generally, they are restricted to government bodies, or organizations with close ties to the government or Communist party, since they need to be authorized by a government ministry to serve as a sponsor.

Second, only after a foundation has found an official sponsor can it then register with the Ministry of Civil Affairs if it registering as a national foundation, or the local Civil Affairs office if it is registering as a local foundation.

This process essentially means a foundation needs to get state approval twice, once by getting the approval of a “professional supervisory unit” and then by getting the approval of the Civil Affairs authorities.

**5. Do foundations have to register? If yes, in what register?**

Yes

***a) If foundations are registered, what information is kept at the register?***

According to Article 9 of the 2004 Foundation Regulations, the foundation must provide the following information to the Civil Affairs authorities:

1. A letter of application;
2. A draft charter;
3. Attested proof of funding and proof of place of business;
4. A list of names of board members and proof of their identities, and curricula vitae of the persons it is proposed will serve as Chair and Deputy Chair of the Board and as General Secretary (Executive Director);
5. A document attesting to their professional supervisory units' agreement to the establishment.

***b) If foundations are registered, is the register publicly available?***

Some basic information is publicly available on the Ministry of Civil Affairs website.

**6. Is a minimum founding capital required? Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime?**

Yes but this varies depending on whether the foundation is a public fundraising or non-public fundraising foundation, and also whether it is registered at the national or local level. The original funds of national public fundraising foundations should be not less than CNY 8 million; the original funds of local public fundraising foundations should be not less than CNY 4 million; the original funds of non-public fundraising foundations should be not less than CNY 2 million.

Yes, they must retain those funds in their current account through their lifetime.

**7. What governance requirements are set out in the law?**

**a) *Is it mandatory to have a supervisory board?***

Foundations are required to have a board of directors (see Section 3 of the 2004 Foundation Regulations). They are also required to appoint a supervisory official who will keep check of the financial records and accounts of the foundation in accordance with a process laid down in the charter and monitor the board's compliance with the charter and with the law.

**b) *What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?***

According to Article 20 of the Foundation Regulations: A foundation should establish a board of directors with between 5 and 25 members. Directors' term of service should be stipulated in the charter but a single term must not exceed 5 years. Once a term is served, a director may continue to serve if selected again.

A board of directors will appoint a chair, deputy chair and general secretary (executive director) elected from amongst their membership.

Removal of board members requires approval from at least two-thirds of the board members present.

**c) *What are the duties and what are the rights of board members, as specified by national legislation?***

According to Article 21 of the Foundation Regulations:

The board of directors is the decision making body of a foundation and should carry out their again responsibilities as laid down in the charter in accordance with the law.

The board of directors should meet at least twice a year, with two thirds of directors in attendance as quorum. Decisions must achieve a simple majority of those attending a meeting to be effective.

Decisions concerning the following major items require a two-thirds majority of directors attending a meeting to be effective:

1. Revisions to the charter;
2. Election or dismissal of the chair, deputy chair or general secretary;
3. Major fundraising or investment activities as stipulated in the charter;
4. The division or amalgamation of the foundation.

**d) *What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?***

The existing regulations governing foundations do not give founders any specific rights. Major decisions such as a change of purpose requires approval from a simple majority of the board in which at least two-thirds of the board is present. In reality, the founder does exercise a great deal of influence over the purpose of the foundation, particularly for nonpublic fundraising foundations, the large majority of which were started in the last 10 years with a major donation/gift from a company, individual or family.

**e) *What are the rights of beneficiaries (e.g. right of information)?***

**f) *What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?***

According to Article 20 of the Foundation Regulations:

For non-public fundraising foundations established using the assets of a private individual, no more than a third of board members may be close family relations of that individual; for other foundations, close relations may not serve simultaneously as directors.

Directors who receive financial remuneration from a foundation may not make up more than a third of its board members.

Article 23 of the Foundation Regulations specify other rules regarding conflict of interest:

The posts of chair and deputy chair of the board of directors or secretary general should not be taken by persons currently employed by state bodies. The legal representative of the foundation may not at the same time be the legal representative of any other organisation. The legal representative of public fundraising foundations and non-public fundraising foundations whose original funds are of domestic Chinese origin should be a person whose is a legal resident of mainland China (应当由内地居民担任).

Should a board member find there is a connection between their personal interests and the interests of the foundation, they should not take part in decision making related to the matter; nor should a

board member, the supervisory official or their close relations have any kind of business dealings with the foundation.

The supervisory official and board members not serving in a full time post at the foundation may not be paid.

**g) *Can staff (director and/or officers) participate in decision making? How and to what extent?***

Staff such as the director can participate in decision making if they are members of the board, however their influence is likely to be small compared to the founder and other board member.

**8. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

**a) *Do the director and officers have powers of representation?***

Yes although this is generally specified in the charter and not in the laws.

**9. Liability of the foundation and its organs**

**a) *What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?***

Yes, the Foundation Regulations restrict the number of board members who are also paid full-time staff of the foundation. Board members who receive remuneration from the foundation can make up no more than one-third of the board.

**b) *Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?***

No

**c) *What is the liability of executive staff?***

The liability of executive staff and board members is spelled out in Article 43 of the Foundation Regulations:

Should a foundation’s board of directors make decisions that violate these regulations or their own charter and that lead to a loss of the foundation’s assets, those directors who took part in the decision should be held responsible for making appropriate reparations.

Should a board member, the supervisory official or any member of a foundation's staff misappropriate or misuse foundation assets they should repay the amount they illegally took. Where there is criminal culpability they should be dealt with accordingly.

**d) Can the founder modify the standard of diligence for board members in the foundation's statutes?**

Yes

**c) Can board members be held civilly and/or criminally liable in the following cases?**

Article 43 of the Foundation Regulations has this to say: Should a foundation's board of directors make decisions that violate these regulations or their own charter and that lead to a loss of the foundation's assets, those directors who took part in the decision should be held responsible for making appropriate reparations.

Should a board member, the supervisory official or any member of a foundation's staff misappropriate or misuse foundation assets they should repay the amount they illegally took. Where there is criminal culpability they should be dealt with accordingly.

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation's statutes.				x	
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).				x	
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.			x		
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.			x		
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.			x		

**10. Are economic activities<sup>1</sup> allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?**

Yes but commercial activities cannot be the principal purpose of an NPO. The law does not distinguish between "related" and "unrelated" commercial activities. As interpreted by the State Administration of Industry and Commerce (the authority responsible for commercial activities), SAs, CNIs, foundations, and public institutions cannot themselves engage in for-profit businesses, but they can invest in commercial entities unless the State Council provides otherwise.

**11. Are foundations permitted to be major shareholders?**

There is nothing in the regulations that addresses this issue.

**12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?**

There are some general rules in the Foundation Regulations under Section 4 on Management and Use of Assets as follows:

**Article 27:** The assets of a foundation and its other sources of income are protected under the law. No work unit or individual may take a portion or the whole thereof or misuse them in any way.

A foundation should use its assets in accordance with its mission as stipulated in its charter and within the scope of public benefit activities so laid down, Donations that are given with an accompanying agreement giving clear instructions for their use must be used in line with the agreement.

If a foundation receives donations in kind that it is impossible to use in accordance with their mission, they may auction or otherwise sell of the items and use the money raised to fulfill the purpose of the donation.

**Article 28:** A foundation should employ legal, safe and effective means to ensure that their original funds maintain their value or grow.

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<sup>1</sup> For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

While there are few restrictions on a foundation's asset management, there are tax restrictions in the tax code. A foundation's income from economic and commercial activities (e.g. investment, trade of goods and services, etc.) is taxed at the same rate (25%) as a business. Exceptions to this rule are rare. Enterprises owned solely by public schools, for example, are exempted from a substantial part of the business tax and VAT. The income of scientific research institutes and higher educational institutions, if derived from the transfer of technology, is exempted from business tax. Some foundations have tried to call for a change in this tax regulation to give foundations preferential treatment.

**13. Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Yes, but any income generated may be taxed at the same rate (25%) as a business.

**14. What are the requirements for an amendment of statutes/amendment of foundations purpose?**

Major decisions such as amending the statutes or purpose of the foundation require a two-thirds majority of directors in attendance to be effective.

Regarding amendments to a foundation's statutes or purpose, Article 15 of the Foundation Regulations require that the foundation apply to the registration authorities for any changes made to the foundation's registration. Should a foundation revise its statutes, the foundation should seek the agreement of its professional supervisory unit and report the amendments to the registration authorities for ratification.

**15. What are requirements with regard to reporting, accountability, auditing?**

Foundations need to submit to an annual inspection by the registration authorities (Civil Affairs), in coordination with their professional supervisory unit, and submit an annual work report to the registration authorities.

According to Article 22 of the Foundation Regulations, a foundation should appoint a supervisory official whose term of service will be the same as a member of the board. Members of the board, their close relatives or financial staff of the foundation may not serve as supervisory official.

The supervisory official will keep check of the financial records and accounts of the foundation in accordance with a process laid down in the charter and monitor the board's compliance with the charter and with the law.

When attending board meeting the supervisory official has the right to question and make suggestions to the board, and should also report on relevant matters (反映情况) to the organ in charge of registration, the professional leading unit and also the tax and auditing authorities.

The following articles in Section 5 Monitoring and Management are also relevant:

**Article 30:** Should a foundation engage in any grant making activities, it should make public the nature of that activity and the processes for applying for a grant and the selection of grantees.

**Article 32:** Foundations should employ the national unified system of accounting, keep accounts in accordance with the law and establish a full and effective internal system for the monitoring of accounts.

**Article 36:** Foundations and representative bodies of overseas foundations should submit an annual work report to the organ in charge of registration of foundations before the 31st of March every year and submit to an annual inspection. The annual report should be inspected and approved by the foundation's professional leading unit prior to submission to the organ in charge of registration.

The annual work report should include: a financial report; an audit report by a certified accountant; reports on fundraising activities, donations received and grants made; and any changes to staff or the organisation.

**Article 37:** Foundations should submit themselves to the supervision of their accounts and tax records by the appropriate authorities in accordance with the law.

Foundations should conduct a financial audit at the end of each term of service of their board (换届) or change in the legal representative.

**Article 38:** Foundations and representative bodies of overseas foundations should make their annual work reports public through media channels stipulated by the organ in charge of registration once that organ has checked and approved the report, to allow public query and monitoring of their work.

**Article 39:** Donors have the right to make inquiries to a foundation about how their donation was used and how it is being managed and offer opinions and suggestions concerning this. Foundations should respond to such inquiries in a timely and truthful fashion.

***a) What type(s) of report must be produced?***

- annual financial report (yes)
- annual activity report (yes)
- public benefit/activity report, (yes)
- tax report/tax return, (yes)
- other reports e.g. on 1% schemes)

***b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?***

The annual work report (which includes a financial report; an audit report by a certified accountant; reports on fundraising activities, donations received and grants made; and any changes to staff or the organization) must be submitted to the registration authorities (Civil Affairs) every year.

***c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?***

Yes, by both the foundation's professional supervisory unit, and the registration authorities.

***d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)***

Article 36 of the Foundation Regulations stipulates that the foundation's work reports need to be made available to the public through "media channels", but the reality is that only a small minority of Chinese foundations do make their reports public. Even when they are made public, the reports are often quite general in nature.

***e) What are the legal requirements concerning external audit? Is external audit required by law for all foundations?***

Yes, according to Article 37 of the Foundation Regulations, foundations should conduct a financial audit at the end of each term of service of their board, or change in the legal representative.

***f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?***

The regulations do not specify, only that they should be undertaken by a certified public accountant.

## **16. Supervision (which authority – what measures / sanctions?)**

***a) Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?***

Chinese foundations must submit to a dual management system which means they generally have two supervisory authorities. One is the professional supervising unit, and the other is the registration authority (the Ministry of Civil Affairs, or local Civil Affairs department). Some foundations that have Civil Affairs as both the professional supervisory unit and registration authority only have one supervisory authority.

***b) What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?***

Both the professional supervising unit and registration authorities review the work report, and the registration authorities conduct an annual inspection.

**c) Is approval from the authority required for certain decisions of the Board of Directors?**

Only if the decision affects the foundation's registration status, in which case the decision does need the approval of the registration authorities. For example, if a foundation wanted to change the geographic focus of its work, or if a foundation wanted to significantly change its purpose, in which case it may then need to find a new professional supervisory unit.

**d) Is it mandatory to have a state supervisory official on the board?**

No

**e) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public benefit status?**

The registration authorities are responsible for assessing penalties to foundations that violate the Foundation Regulations.

The following articles in Section 6 on Legal Liability specify enforcement measures:

**Article 41:** Foundations, their branches or representative bodies, or the representative bodies of overseas foundations that display any of the circumstances listed below will have their registrations revoked by the organ in charge of registration:

1. If they engage in any form of falsification during the application process; or if they have not begun activities in accordance with their charter within twelve months of having their registration approved;
2. If they meet the conditions for cancellation of their registration but do not go through the process for cancellation as laid down in these regulations and continue to carry out activities.

**Article 42:** Foundations, their branches or representative bodies, or the representative bodies of overseas foundations that display any of the circumstances listed below will receive a warning from the organ in charge of registration and be instructed to cease the said activity; in serious cases their registration may be revoked:

1. Those who do not carry out activities in accordance with their mission or within the scope of public benefit activities as stipulated in their charter;
2. Who engage in any form of falsification in filling out proofs of accounting, in their registered account books and in drafting their financial reports and accounts;
3. Who do not follow regulations when registering or modifying their registration;
4. Who do not meet the public benefit expenditure levels laid down in these regulations;
5. Who do not submit to annual inspection, or whose inspection does not meet requirements as laid down in these regulations;
6. Who fail to fulfill requirements to make information public or who falsify such information.

The organ in charge of registration should ask the tax authorities to demand back payment of any tax remitted for foundations or the representative bodies of overseas foundations that act in any of the ways listed above for the period during which the infringement occurred.

**Article 43:** Should a foundation's board of directors make decisions that violate these regulations or their own charter and that lead to a loss of the foundation's assets, those directors who took part in the decision should be held responsible for making appropriate reparations.

Should a board member, the supervisory official or any member of a foundation's staff misappropriate or misuse foundation assets they should repay the amount they illegally took. Where there is criminal culpability they should be dealt with accordingly.

There are additional enforcement actions specified in Measures for the Annual Inspection of Foundations (issued by the Ministry of Civil Affairs in 2006) for foundations that do not pass the annual inspections.

## **17. When and how does a foundation dissolve?**

The following articles of the Foundation Regulations specify the conditions for dissolution of the foundation:

**Article 16:** Should a foundation or the representative body of an overseas foundation face one of the following situations, they should apply to the organ in charge of registration for the cancellation of their registration:

1. They intend to conclude their activities as provided for in their charter;
2. They are incapable of carrying out public benefit activities in line the mission stipulated in their charter;
3. They wish to cease activities for some other reason.

**Article 17:** Should a foundation wish to close down one of its branches or representative bodies it should process the cancellation of the registration of the branch or representative with the organ in charge of registration.

When a foundation cancels its registration, its branch and representative bodies have their registrations cancelled at the same time.

**Article 18:** Prior to cancelling its registration, a foundation should establish a liquidation organisation and complete the work of settling its accounts under the guidance of the organ in charge of registration and its professional leading unit.

A foundation should apply for the cancellation of its registration within 15 days of the completion of liquidation. During the process of liquidation the foundation may not carry out any other activities.

**Article 19:** The establishment, modification and cancellation of the registration of foundations, their branch and representative bodies and the representative bodies of overseas foundations shall be reported to the public by the organ in charge of registration.

**Article 33:** Monies left over when a foundation is wound up should be used for public benefit ends as stipulated in the foundation's charter; funds which cannot be used in this way will be donated by the organ in charge of registration to another public benefit organisation with similar aims and objectives to the original foundation. Any such action will be made public.

**18. Under what conditions does the civil law in your country recognise a foreign foundation?**

According to the Foundation Regulations, foreign foundations/NGOs can register a representative office under the same conditions as a Chinese foundation. The foreign foundation must first find an official sponsor to be its professional supervisory unit. Most foreign foundations/NGOs have been unable to register primarily because they have not been able to find a professional supervisory unit. As a result, most either register as a representative office of a company, or remain unregistered and work through a Chinese partner.

Article 13 of the Foundation Regulations note that if a foreign foundation is successful in registering a representative office, then the representative office should engage in public benefit activities that are appropriate for the nature of public benefit enterprises in China. In addition, the representative office is not considered a legal person. Only the foreign foundation's home office can undertake civil legal liability for the actions of their representative bodies in China in accordance with Chinese law.

**19. Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**

The Foundation Regulations are vague on conducting activities overseas. The regulations do limit the geographic scope of a foundation's activities by distinguishing between national and local foundations. National foundations can operate nationwide, while local foundations can technically only operate within the administrative area of the locality in which they are registered. In reality, local foundations often do not and cannot adhere to this requirement.

**II. Tax treatment of the foundation**

**1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?**

When a foundation registers with Civil Affairs, they also should register with the relevant tax authorities (e.g. the national or local tax bureau).

**2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)**

**3. Is specific reporting required for the use of state funds?**

There are no special reporting requirements mentioned for the foundation's annual work report, but if the foundation does get state funds for outsourcing of social services, then there are separate reporting requirements.

**4. Is there an obligation to report on donors and beneficiaries?**

According to the Foundation Regulations and the Measures for the Information Disclosure of Foundations (issued by the Ministry of Civil Affairs in 2006), foundations must report on fundraising activity, donations received, and grants made, in their annual work reports, but the regulations do not specify any level of detail regarding donors and beneficiaries.

## **5. Are there specific accounting rules for foundations?**

Article 32 of the Foundation Regulations specify: Foundations should employ the national unified system of accounting, keep accounts in accordance with the law and establish a full and effective internal system for the monitoring of accounts.

In addition, Article 4 of the Measures for the Annual Inspection of Foundations states:

The financial statement shall comply with the contents and requirements as prescribed by the Accounting System for Non-profit Organizations. A certified public accountant shall, when auditing any report, show proof of the uniform acceptance by the accounting firm as well as evidence of the commission contract from the audited foundations and representative offices of overseas foundations.

## **6. Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

Yes, see Question 2 in Section I above.

## **7. Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

Yes, the 2007 Regulation on the Implementation of the Enterprise Income Tax Law states:

Article 51 The term “public benefit donations” as used in Article 9 of the Enterprise Income Law refers to the donations made by an enterprise via public benefit social organizations or the people’s government at the county level or above, and its departments, in public benefit undertakings as prescribed in the 1998 People’s Republic of China Public Benefit Donation Law.

Article 52 The term “public benefit social organizations” as used in Article 51 of the present Regulation refers to such social organizations as foundations, charitable organizations, etc. that concurrently meet the following conditions:

- (1) being lawfully registered and having the status of a legal person;
- (2) serving the purpose of promoting the public benefit and not taking profit-making as its purpose;
- (3) all the assets and increments belonging to the legal person;
- (4) the proceeds and operational surplus being used mainly for the cause that meets the purpose of establishment of the legal person in question;
- (5) the surplus property after the termination of the enterprise not belonging to any individual or profit-making organization;
- (6) refraining from engaging in any business that has nothing to do with its purpose of establishment;
- (7) having a complete financial and accounting system;
- (8) the donor not participating in the distribution of the property of the social body in any way;
- (9) other conditions as prescribed by the departments of finance and taxation of the State Council in collaboration with the Civil Affairs departments of the State Council in charge of the administration of the registration of social bodies.

8. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country:

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation				
Environmental protection	X			
Civil or human rights			X	
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination		X		
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation		X		
Assistance to refugees or immigrants		X		
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			
Protection of animals		X		
Science, research and innovation				
Education and training	X			
European and international understanding				
Health, well-being and medical care	X			
Consumer protection		X		
Assistance to, or protection of vulnerable and disadvantaged persons	X			
Amateur sports	X			
Infrastructure support for public benefit purpose organisations		X		
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

9. Support of “the public at large”

a) Do the activities of a tax-exempt foundation generally have to benefit “the public at large”?

Yes

**b) If yes, can a tax-exempt foundation support a small number of disadvantaged/underprivileged individuals?**

Yes

**Examples: Do the following purposes promote the public at large?**

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants	X				
For benefit of the inhabitants of a village with 10,000 inhabitants	X				
For benefit of the employees of a company					X
For benefit of the members of a family					X
For benefit of the students of a university	X				
Award for the best student of a university				X	

## 10. Non-Distribution Constraint

**a) Does a tax-exempt foundation generally have to follow a “non-distribution constraint”<sup>2</sup> which forbids any financial support of the foundation board, staff, etc.?**

The tax code is unclear on this issue.

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<sup>2</sup> For the purposes of this profile, a non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

**b) What happens with the foundation's assets in case of dissolution?**

See Question 17 above.

**11. "Altruistic" Element**

**a) Is remuneration of board members allowed in civil law and in tax law? If remuneration is allowed, are there any limits in civil law and/or in tax law?**

According to Articles 20 and 23 of the Foundation Regulations, remuneration of board members is allowed in the Foundation Regulations, but only if a board member is a full time staff of the foundation. Otherwise, remuneration is not allowed. Also, no more than one-third of the board can receive remuneration from the foundation.

**b) Does tax law allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)**

The tax law is unclear on this issue.

**c) Is there a maximum amount that can be spent on office/administration costs in civil law and in tax law?**

Yes. According to Article 29 of the Foundations Regulations: A foundation may not allocate more than 10% of its total expenditure to cover staff wages and benefits and overheads.

**If yes, how are "administration costs" defined? Please indicate which of the following types of expenditures would/would not be considered as "administration costs":**

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

Personnel costs and board remuneration could be submitted as “project costs” needed to carry out a project, in which case, they could be considered to not be administrative costs.

The same logic would apply for costs related to programs/projects run by the foundation, and possible for costs related to fundraising.

The remaining costs would be considered administrative costs.

## 12. Hybrid Structures (elements of private benefit in public benefit foundations)

### **a) Does the civil law of your country accept the following provisions/activities of a public benefit foundation?**

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.			X		
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.			X		
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.			X		
A foundation distributes a (small) part of its income to the founder or his family.					X

### **b) Does the tax law of your country accept the following provisions/activities of a tax-exempt foundation?**

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.			X		
The founder retains a beneficial reversionary interest in the capital of a property or other asset to retain for its own continuing use.			X		
The gift is of only the freehold reversion (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.			X		
A foundation distributes a (small) part of its income to the founder or his family.					X

**13. Distributions and Timely Disbursement**

**a) Are foundations allowed to spend down their capital?**

**b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?**

Yes and No.

**c) Does the civil law and/or the tax law of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?**

Yes but depends on the type of foundation. According to Article 29 of the Foundation Regulations, the amount of money spent annually by public fundraising foundations on the public benefit activities stipulated in their charter must not be less than 70% of the previous year’s income; non-public fundraising foundations’ annual expenditure on the public benefit activities stipulated in their charter must not be less than 8% of the surplus from the previous year.

**d) Does the civil law and/or the tax law of your country require a foundation to spend a percentage of its overall assets in the form of a “pay-out rule”?**

No

**Example: Does the civil law of your country accept the following activities of a public benefit foundation?**

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.					

#### **14. Does activity abroad put the tax-exempt status at risk?**

Neither the civil or tax regulations address this issue. The general understanding is that a foundation registered in China will primarily carry out activities in China. In practice, some overseas activities are permitted and we are now seeing more Chinese foundations carrying out activities/projects in other countries such as Southeast Asia and Africa, so we may see efforts to better regulate this activity in the future.

#### **15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.**

No.

#### **16. Income tax treatment**

How are the following types of income treated for income tax purposes?

##### ***Grants and donations***

Not taxed

##### ***Investment income (asset administration) –***

Taxed at 25%, which is same rate as businesses

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation

##### ***Economic activities related/unrelated) -***

Generally taxed at 25%, but depends on implementation. Foundations can apply separately for tax relief for these activities.

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

***Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities)? NOT TAXED***

***Is major shareholding considered as an economic activity and taxed accordingly?***

Unclear, not addressed in civil or tax regulations

**17. Are capital gains subject to tax? If so, are they taxed as income or liable to a separate tax?**

Yes, a foundation's capital gains is subject to the same tax rate (25%) as a company's capital gains.

**18. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?**

No

**19. Is capital tax levied on the value of assets, where applicable?**

No

**20. Are there taxes on the transfer of assets by foundations?**

No

**21. Are there any other taxes to which public-benefit foundations are subject there (e.g. real property tax)?**

**22. Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions\_ – if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:**

Unclear. According to the Foundation Regulations, which are the only laws/regulations that address the legal status of foreign foundations, a foreign foundation in China can only register as a representative office of a foreign foundation. Unlike Chinese foundations, a rep office of a foreign foundation is not a legal person.

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other?

**23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?**

No

**III. Tax treatment of donors of public benefit foundations**

**1. System of tax credit<sup>3</sup> or tax deduction<sup>4</sup>?**

The civil and tax laws do provide for tax benefits for individual and corporate donors to public benefit foundations.

For example, the 1999 Public Benefit Donation Law states:

**Article 24:** Corporations and other enterprises that under the stipulations of these regulations make donations to public benefit undertakings, will in the administration of these regulations enjoy business tax benefits.

**Article 25:** Individuals and private small businesses that under the stipulations of these regulations make donations to public benefit undertakings, will in the administration of these regulations enjoy personal tax benefits.

**Article 26:** Foreigners making donations of goods and materials to public benefit Social Associations and public benefit non-profit institutional work units for use in public benefit undertakings, will in the administration of these regulations will enjoy reduction or elimination of import taxes and import procedural fees.

It should be noted though that the specific regulations tend to be quite general, and the process for getting tax benefits is not simple or well understood. Tax deductibility for individuals, for example, is not a simple process as it is not claimed very often and many tax authorities are unfamiliar with the process. In addition, many public benefit nonprofits lack the proper documentation since they need to apply separately to the tax authorities for eligibility for tax deductibility.

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<sup>3</sup> For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

<sup>4</sup> For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

## **2. Tax treatment of individual donors**

### ***a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?***

Yes. According to Article 6 of the Law of the People's Republic of China on Individual Income Tax - The part of income donated by the individuals into education and other public welfare causes shall be deducted from the income amount taxable in accordance with the relevant regulations of the State Council.

According to Article 24 of the Detailed Rules for the Implementation of the Individual Income Tax Law of the People's Republic of China (Revised in 2005) - Donations by individuals to education and other public undertakings mentioned in Section 2 of article 6 of the Tax Law mean donations by individuals to education and other social and public undertakings and the areas suffering severe natural disasters or poverty-stricken areas through social organizations or State organs within the territory of China.

The donation that does not exceed 30% of the taxable income claimed by taxpayers may be deducted from the taxable income.

### ***b) Which assets qualify for tax deductibility?***

## **3. Tax treatment of corporate donors**

### ***a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?***

In 2007, the tax deductibility for corporate donors was increased to 12% of their annual profits. According to Article 53 of the Implementing Regulations for the Enterprise Income Tax Law, the public interest expenditures incurred by an enterprise are deductible to the extent that they do not exceed 12% of the annual total amount of profits of the enterprise.

### ***b) Which assets qualify for tax deductibility?***

**4. Tax treatment of donations to non-resident public-benefit foundations – do donors get the same tax incentive?**

No. Article 25 of the Foundations Regulation specifically states that representative offices of overseas public benefit foundations are not allowed to fundraise, or accept donations, in China.

**5. Other frameworks such as percentage law systems**

**6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?**

*What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?*

**7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?**

*What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required)? Annual financial report (translation required)? Documents providing evidence for certain tax law*

*requirements e.g. that income was actually spent for public benefit purposes?)?*

#### **IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

##### **1. Individuals –**

**2. Legal entities –** there is no preferential tax treatment for organizations, such as non-profits, that receive funds from foundations, unless the non-profit succeeds in applying separately for preferential treatment with the relevant tax authorities.

**3. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

No

#### **V. Gift and inheritance tax**

**1. Does gift and inheritance tax/transfer tax exist in your country and if yes who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?**

No. China does not currently levy Inheritance Tax, although such a tax has previously been proposed, the latest occasion being in October 2013. It is speculated that an inheritance tax may be imposed in 2016.

Sources:

<http://www.ibtimes.com/chinas-proposed-inheritance-tax-meets-widespread-disapproval-1413240>

<http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20141229000013&cid=1103>

**2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?**

**3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?**

**4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?**

**5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public benefit foundations?**

**VI. Trends and developments**

**1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments, or are changes being discussed?**

No

**2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws / rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)?**

Yes, see the ICNI Country Note for China, particularly on Access to International Resources

**3. Are there any other recent trends or developments affecting the legal and fiscal environment for public benefit foundations in your country?**

Yes, see the ICNL Country Note for China, particularly Section 9 on Pending NGO Legislative/Regulatory Initiatives.

**4. Public fundraising**

***Are there any specific laws that regulate fundraising and do they affect foundations?***

The main law is the Public Benefits Donation Law of the PRC (1999). A more comprehensive Charity Law that would replace the Public Benefits Donation Law is currently being drafted and may be approved as early as this year or 2016.

### **Useful contacts**

Please add names and contact details of persons who may be contacted for queries regarding the information in this profile or for further details of the legal and fiscal environment for foundations in your country.

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### **Selected bibliography**

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

Shawn Shieh, "Same Bed, Different Dreams? The Evolving Relationship between Foundations & Grassroots NGOs in China", Paper presented at the China Philanthropy Summit, Indiana University, Indianapolis, Oct. 31-Nov. 1, 2014 (There is very little academic literature on China's philanthropy sector. Much of the current scholarship by leading Chinese and international scholars in the field was presented at this summit. A list of the paper titles can be found [here](#).)

Wang Ming, ed. *Emerging Civil Society in China (1978-2008)* (Brill, 2011) contains selected chapters with detailed discussion of the legal framework

Karla Simon, *Civil Society in China* (Oxford University Press 2014)

The Hudson Institute's Center for Global Prosperity carried out a 2013 Philanthropic Freedom pilot study that included a [report on China](#).

[International Center for Not-for-Profit Law \(ICNL\) Council on Foundations](#)  
[China Development Brief](#)  
[China Foundation Center](#)  
[China Philanthropy Initiative](#)

### **Selected law texts online:**

Please list here the links to relevant national laws where these are available online

For a comprehensive listing of relevant national laws and regulations, see China Development Brief's [Research section](#), and ICNL's China [Country Note](#) in the Legal Snapshot section which lists National Laws Affecting the Sector, and the ICNL [online database](#)

### **About the EFC Legal and Fiscal Country profiles**

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.”

[www.efc.be](http://www.efc.be)

### **About the European Foundation Centre**

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors. Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice.