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*THE APPLICATION OF LAWS AGAINST CHINESE NGOS  
--RESEARCH ON NGO IN CHINA III*

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COALITION FOR  
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## **1. The legal and regulatory framework for Chinese NGOs**

### **1.1 Laws**

There are two kinds of laws that govern NGOs in China. One kind is that the subjects of the application of the laws are NGOs. The other kind is that the laws include rules that are applicable to NGOs as well. The Laws that are adopted by the National People's Congress (NPC) or its Standing Committee include:

Constitution of the People's Republic of China 宪法

Trade Union Law of People's Republic of China 工会法

Law of the People's Republic of China on the Red Cross Society 红十字会法

Welfare Donations Law of the People's Republic of China and relevant tax provisions  
公益事业捐赠法

Foreign Trade Law of the People's Republic of China 对外贸易法

Copyright Law of the People's Republic of China 著作权法

Patent Law of the People's Republic of China 专利法

Law of the People's Republic of China on Certified Public Accountants 注册会计师法

Arbitration Law of the People's Republic of China 仲裁法

Securities Law of the People's Republic of China 证券法

Trust Law of the People's Republic of China 信托法

Education Law of the People's Republic of China 教育法

Teachers Law of the People's Republic of China 教师法

Compulsory Education Law of the People's Republic of China 义务教育法

Vocational Education Law of the People's Republic of China 职业教育法

Law of the People's Republic of China on the Promotion of Privately-run Schools 民办教育促进法

Higher Education Law of the Peoples Republic of China 高等教育法

Urban Real Estate Administration Law of the People's Republic of China 城市房地产管理法

Land Administration Law of the PRC 土地管理法

Electronic Signature Law of the People's Republic of China 电子签名法

Law of the People's Republic of China on Tenders and Bids 招标投标法

Criminal Law 刑法

Law of the PRC on Administrative Permission 行政许可法

Administrative Procedure Law of the PRC 行政诉讼法

Administrative Supervision Law of the PRC 行政监察法

Administrative Reconsideration Law of the PRC 行政复议法

Law of the People's Republic of China on Administrative Penalty 行政处罚法

Law of the People's Republic of China on the Protection of Consumers' Rights and Interests 消费者权益保护法

Law of the People's Republic of China on the Protection of Minors 未成年人保护法

Law of the People's Republic of China on the Protection of Rights and Interests of Women 妇女权益保障法

Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly 老年人权益保障法

Law of the PRC on Enterprise Income Tax 企业所得税法

Law of the PRC on the Administration of Tax Collection 税收征收管理法

Audit Law of the People's Republic of China 审计法

Trademark Law of the People's Republic of China 商标法

Auction Law of the People's Republic of China 拍卖法

Law of the People's Republic of China on Specialized Farmers Cooperatives 农民专业合作社法

Organic Law of the Urban Residents Committees of the PRC 城市居民委员会组织法

Organic Law of the Villagers Committees of the People's Republic of China 村民委员会组织法

Law of the Peoples Republic of China on Regional National Autonomy 民族区域自治法

General Principles of the Civil Law of the PRC 民法通则

Labour Law of the People's Republic of China 劳动法

Law of the People's Republic of China on Scientific and Technological Progress 科学技术进步法

Law of the PRC on Assemblies, Processions and Demonstrations 集会游行示威法

Contract Law of the PRC 合同法

Law of the PRC on State Compensation 国家赔偿法

Archives Law of the People's Republic of China 档案法

The Guarantee Law of the People's Republic of China 担保法

## **1.2 Regulations**

This research finds that there are more than 100 regulations involving NGOs that are issued by the State Council and its departments since 2000.<sup>1</sup> Regulations issued

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<sup>1</sup> In NGO area, the most important three regulations are (1) Regulations on the Registration and Administration of Social Organizations (社会团体登记管理条例); (2) Regulations on the Registration and Administration of Private Non-enterprise Units (民办非企业单位登记管理条例); and (3) The Regulation on Foundation Administration (基金会管理条例). They were all issued by the State Council and conducted by the Ministry of Civil Affairs to govern the establishment and management of China's NGOs.

for Social Associations, Private non-enterprise units and Foundations since November 2013, when “Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform” was adopted, are listed as follows.

Regulations (Chinese)	Regulations (English)	Issuing Department	Issuing Date	Coverage/Scope
行业协会商会与行政机关脱钩总体方案	Overall Programme of the Separation of Administrative Organs and Industry and Business Association	The General Office of the CPC Central Committee;  The General Office of the State Council	07/08/2015	Social Associations
民政部关于探索建立社会组织第三方评估机制的指导意见	Guidance of Ministry of Civil Affairs on Exploring the Establishment of the Third Party Assessment Mechanism by Social Organizations	Ministry of Civil Affairs	5/13/2015	Social Associations;  Private non-enterprise units;  Foundations
民政部 财政部关于规范全国性社会组织年度财务审计工作的通知	Notice on Regulating the Annual Financial Audit of National Social Organizations	Ministry of Civil Affairs;  Ministry of Finance	2/25/2015	Social Associations;  Private non-enterprise units;  Foundations
最高人民法院、民政部、环境保护部关于贯彻实施环境民事公益诉讼制度的通知	Notice on the Implementation of the Civil Procedure of Environmental Public Interest Litigation	The Supreme People’s Court;  Ministry of Civil Affairs;  Ministry of Environmental Protection	12/26/2014	
民政部 财政部 人民银行关于加强社会团体分支	Notice on Strengthening the Financial Management	Ministry of Civil Affairs;	12/16/2014	Social Associations

（代表）机构财务管理的通知	of Social Organizations Branches (Representatives)	Ministry of Finance; People's Bank of China		
民政部关于贯彻落实《国务院关于促进慈善事业健康发展的指导意见》的通知	Notice on the Implementation of "Guidance of the State Council on promoting the development of philanthropy"	Ministry of Civil Affairs	12/15/2014	Social Associations;  Private non-enterprise units;  Foundations
国务院关于促进慈善事业健康发展的指导意见	Guidance of the State Council on promoting the development of philanthropy	The State Council	11/24/2014	Social Associations;  Private non-enterprise units;  Foundations
财政部 民政部关于支持和规范社会组织承接政府购买服务的通知	Notice on Supporting and Standardizing the Social Organizations for Government Procurement of Services	Ministry of Civil Affairs;  Ministry of Finance;	11/25/2014	Social Associations;  Private non-enterprise units;  Foundations
中国残疾人联合会 民政部关于促进助残社会组织发展的指导意见	Guidance on Promoting the Development of the Disabled Communities	China Disabled Persons Federation;  Ministry of Civil Affairs	11/20/2014	Social Associations;  Private non-enterprise units;  Foundations
民政部 财政部关于加强社会组织反腐倡廉工作的意见	Opinions on strengthening social organization anti-corruption work	Ministry of Civil Affairs; Ministry of Finance	11/6/2014	Social Associations;  Private non-enterprise units;  Foundations
关于推进行业协会商会诚信自律建设工作的意见	Opinions on Promoting the Integrity and Self Discipline Construction Work of Industry Association and Chamber	Ministry of Civil Affairs;	10/31/2014	Social Associations

民政部 财政部关于取消社会团体费标准备案规范会费管理的通知	Notice on the Cancellation of Filing of Membership Fee of Social Organizations and Standardization of the Management of Membership Fee	Ministry of Civil Affairs;  Ministry of Finance	7/25/2014	Social Associations
民政部关于贯彻落实国务院取消全国性社会团体分支机构、代表机构登记行政审批项目的决定有关问题的通知	Notice on the Implementation of the Decision of the State Council on the Cancellation of Some Items about Approval and Examination of Administrative Registration of National Social Organizations Branches and Representatives	Ministry of Civil Affairs	02/26/2014	Social Associations
关于印发《党政机关、事业单位和社会组织网上名称管理暂行办法》的通知	Notice on the Issuance of "the Measures of Online Names of Party and Government Organs, Institutions and Social Organizations"	State Commission Office for Public Sector Reform;  Ministry of Industry and Information Technology	2/20/2014	Social Associations
财政部关于做好政府购买服务工作有关问题的通知	Notice on Issues Involving the Government Procurement of Services	Ministry of Finance	12/4/2013	Social Associations
民政部关于加强和创新慈善超市建设的意见	Opinions on Strengthening and Improving the Construction of Charity Supermarket	Ministry of Civil Affairs	12/31/2013	Private non-enterprise units

教育部 财政部 民政部关于加强 中央部门所属高 校教育基金会财 务管理的若干意 见	Opinions on Strengthening the Financial Management of Universities Foundations	Ministry of Education;  Ministry of Finance;  Ministry of Civil Affairs	9/18/2014	Foundations
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## 2. The new development of legislation and application in the past 6 months

### 2.1 “Overall Programme of the Separation of Administrative Organs and Industry and Business Association” 行业协会商会与行政机关脱钩总体方案

The General Office of the CPC Central Committee and the General Office of the State Council issued “Overall Programme of the Separation of Administrative Organs and Industry and Business Association” in July 2015. The subjects in this Programme are Social Associations that named industry association, business association, chamber of commerce, union and such. The tasks of this Programme include: separating the organizations and building a comprehensive supervision relationship, separating the functions and clarifying administrative entrustment, separating the finance, separating the personnel, as well as separating party construction and foreign affairs from social associations. According to the text itself, this Programme is drafted following the spirits and plans of the “Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform” and “Plan for the Institutional Restructuring of the State Council and Transformation of Functions Thereof.”<sup>2</sup>

### 2. “Guidance of Ministry of Civil Affairs on Exploring the Establishment of the Third Party Assessment Mechanism by Social Organizations”民政部关于探索建立社会组织第三方评估机制的指导意见

The Ministry of Civil Affairs issued the “Guidance of Ministry of Civil Affairs on Exploring the Establishment of the Third Party Assessment Mechanism by Social Organizations” in May 2015. The general thought of this third party assessment mechanism is developing institutional mechanisms and policies, making third party

<sup>2</sup> <http://politics.people.com.cn/n/2015/0709/c1001-27275204.html>



become an important hand to supervise the government and an significant platform for social supervision, promoting the self construction of social organizations, and improve social organizations to play a greater role in the economic and social development.<sup>3</sup> According to the explanation of the Ministry of Civil Affairs, assessment of social organizations has played an important role in promoting government reform, improving corporate governance of social organization, and perfecting credit evaluation system of social organization. It also provides practical basis for governments to transfer functions and purchase services from social organizations. However, the assessment work still has problems of unbalanced development, the lack of independence, the lack of professional skills, and insufficient application of assessment results. The assessment mechanism requires improvement.<sup>4</sup>

### **3. Writing from Academics and Officials in the past 6 months**

3.1 Qingyu Ma, Xijin Jia, The Direction of Development and the Trends of the Future of Chinese Social Organizations, Journal of China National School of Administration, April 2015, p62,67 马庆钰, 贾西津, 中国社会组织的发展方向与未来趋势

The development opportunities of Chinese social organizations include that the transition of economy and society improved the development environment; the goal of the modernization of national governance creates new development chances; the decentralization of government brings request to development; and that the policy innovation leads to new development conditions.

3.2, Guoliang Shi, Designing the Tax Policy Reform of Social Organizations Based on Policy Assessment, China Civil Affairs, June 2015, p28,31 石国亮, 在政策评估基础上设计社会组织税收政策的改革方案

The article answers the question why it is important to evaluate the tax policy and its enforcement for social organizations.

3.3 Qingyu Ma, Strategic Thinking on Developing Chinese Social Organizations During the 13th Five-Year Plan, Journal of the Party School of the Central Committee of the C.P.C., Vol.19,No.2, April 2015, p58,64 马庆钰 : 十三五期间我国社会组织发展思路

The modernization of national governance is a new goal in the process of entering the stage of comprehensive deepening reform. Social participation and social organizations development are significant factors affecting the modernization. The

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<sup>3</sup><http://www.mca.gov.cn/article/zwgk/fvfg/mjzzgl/201505/20150500819647.shtml>

<sup>4</sup> <http://www.mca.gov.cn/article/zwgk/jd/201505/20150500819646.shtml>

strategic status of social organizations is primarily due to their indispensable role in china's overall upgraded reform, such as their participatory role in the governance era, relationship with the transformation and transfer of government functions, potential contribution to economic development, status in the market economic reform, and facilitation of social harmonious stability. Therefore, during the 13th Five-Year Plan, it is necessary for the Central Government to further its attention and support on developing social organizations, to establish the directions, principles, and objectives of China's social organizations in line with the modernization of national governance, to confirm the working agendas and key points of reform on developing social organizations with the foothold being decentralization and promoting participation.

3.4 Tuan Yang,<sup>5</sup> Start Social Organization Stock Reform and Promote Social Collaborative Governance, Administration Reform, February 2015, p61,64. 杨团,尽快启动社会组织存量改革 推进社会协治

The author puts forward to two definitions: social collaborative governance(社会协治) and stock reform(存量改革). Social collaborative governance means to start the social stock reform on the basis of a clear mind of the social situation. While the stock reform means to motive the energy of the social civil organizations that are exempted from registration. On the one hand, it is important to promote stock reform of social civil organizations that are exempted from registration. On the other hand, it has to encourage public service and cultivate the carrier of social power of collaborative governance.

3.5 Yupei Dou<sup>6</sup>, Strengthen Party Construction and Promote the Healthy Development of Social Organizations, Administration Reform, April 2015, p7,12 窦玉沛,加强党建工作 促进社会组织健康发展

Yupei Dou believes it requires great efforts to build solid foundation of party construction during the reform and development of social organizations. The management system of party construction in social organizations should be clarified, which will also be an effective way to improve the scientific capability of the party to conduct party construction.

3.6 Ming Wang<sup>7</sup>, Strengthen the Top Level Design and Start Legislative Process of Social Organization Law as Soon as Possible, Economic Affairs, 2015(3)王明, 加强顶层设计, 尽快启动社会组织法立法程序

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<sup>5</sup> Tuan Yang is a professor at Chinese Academy of Social Sciences

<sup>6</sup> Yupei Dou is the deputy Minister of Ministry of Civil Affairs

<sup>7</sup> Ming Wang is a Professor at Tsinghua University.

Ming Wang Suggests to promote the Legislation of a united law to govern NGOs. The lack of a united law causes problem that the authority of regulations is too low. The new legislation should clarify the line between government and any kinds of social organizations, should clarify the basic legal rights and responsibilities of NGOs, and should protect the interest and future development of NGOs.

3.7 Qiongru Sun, Social Organizations and Legal Construction, Guangming Daily, April 29, 2015. 孙琼如, 社会组织与社会法制建设

The rule of law has two connotations. The first one is that the formation of the rule of law includes the text system on institutional level, the legal recognition on the psychological level, the legal spirits on the cultural level, and the value of rule of law in daily life style. The other connotation is that the operation of a legal society includes the implementation and enforcement of laws and the practice of citizens. The construction a society governed by rule of law has to be supported by social organizations. Social organizations can play great roles in legislation, popularizing laws, enforcing laws, and providing public legal service.

3.8 Ju Xie, The Legislation on Social Organizations Must Deal with Three Relations. Study Times, November 2014. 谢菊, 社会组织立法必须处理好三个关系

The Legislation on Social Organizations Must Deal with Three Relations. The first one is the relationship between the universal rules and the Chinese characteristics. The Second one is the relationship between the external environment and the inner governance. The third one is the relationship between the theoretical knowledge and practical exploration.

3.9 Zhenguo Chai, Xinchao Zhao, The Organization Department of Legal System Construction from the Perspective of Social Governance, Hebei Law Science, 2015(4) 柴振国, 赵新潮, 社会治理视角下的社会组织法制建设

Social governance is an important part of national governance. It has to promote the social management system innovation to achieve the modernization of social governance. Social coordination and public participation is also a significant manner of innovation of national governance.

3.10 Linjinag Zhang, The Three Core Propositions of Legislation on Social Organizations, Administration Reform, March 2015. 张林江, 社会组织立法的三个核心命题

The first proposition is that the legislation on social organizations should be a law that promotes the development of social organizations or a law that restraints and limits social organizations. The second proposition is what is the scope of the law and if all social association, private non-enterprise units, foundations and massive

unregistered NGOs shall all be covered by one law. The third proposition is that the nature of the legislation. Should it be a law that implements the Constitution, an administrative law, or a civil law?