

I . Safeguarding System & Policy

1. State Laws/Acts

1) Definition of Intangible Cultural Heritage

In the Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO defines “intangible cultural heritage” as “the practices, representations, expressions, knowledge, skills -- as well as the instruments, objects, artefacts and cultural spaces associated therewith -- that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development. The ‘intangible cultural heritage’, as defined in the above paragraph, is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; and (e) traditional craftsmanship.”

By referring to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and giving consideration to the actual situation in China, the Intangible Cultural Heritage Law of the People’s Republic of China, which came into effect on June 1, 2011, defines “intangible cultural heritage” as various traditional cultural manifestations which are handed down from generation to generation by people of all ethnic groups and are regarded as part of their cultural heritage, and objects and spaces relevant to traditional cultural manifestations. Intangible cultural heritage (ICH) includes: (1) traditional oral literature and the language thereof; (2) traditional fine arts, calligraphy, music, dance and drama, quyi and acrobatics; (3) traditional techniques, medicines and

calendar; (4) traditional rituals, festivals and other folk customs; (5) traditional sports and forms of entertainment; and (6) other ICH.

Definition of the Intangible Cultural Heritage Law of the People's Republic of China

The Intangible Cultural Heritage Law of the People's Republic of China (hereinafter referred to as the ICH Law) is a basic law formulated for the safeguarding of ICH in China, and is also an important law issued to comply with the politics, economy, society and culture four-in-one strategic layout of socialism with Chinese characteristics. For the first time in China, the ICH Law clearly provides the legal definition and the scope of ICH, and also specifies investigation, the preparation of a representative list of ICH, transmission and spreading and relevant legal liabilities so that the safeguarding of ICH has a solid legal basis and strong guarantee and that those who violate the law will be held responsible.

2) Name of the Law

The Intangible Cultural Heritage Law of the People's Republic of China

3) Competent Authority (the Legislature)

The Standing Committee of the 11th National People's Congress of the People's Republic of China

4) Year of Establishment

2011

5) Overview of the Law

In August 2004, China ratified the UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage, which requires the state parties to take legal measures to guarantee the safeguarding of ICH. As a state party, in order to fully implement the obligations under this Convention and in accordance with the domestic needs of ICH safeguarding practice, China, by referring to and learning from international experience and considering its own national conditions, formulated the Intangible Cultural Heritage Law of the People's Republic of China (hereinafter referred to as the ICH Law). China began working on legislation of the ICH Law in 1998. And it was adopted at the 19th Session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on February 25, 2011, and hereby came into force on June 1, 2011. As a key law in the history of China's cultural development, the ICH Law demonstrates Chinese people's determination and efforts to safeguard the cultural diversity of human beings, and indicates that China's intangible cultural heritage safeguarding cause has entered a historical stage with laws to abide by.

The ICH Law issued comprises 45 articles in 6 chapters, namely, General Provisions, Intangible Cultural Heritage Investigations, Representative List of the Intangible Cultural Heritage, Transmission and Dissemination of Intangible Cultural Heritage, Legal Liabilities and Supplementary Provisions.

The Chapter 1 “General Provisions” comprises 10 articles such as the legislative purposes, applicable material objects and places, and scope of the Law. This Chapter stipulates that, for intangible cultural heritages with different natures and values, respective safeguarding and preserving measures and principles shall be adopted. Apart from that, it also includes the responsibilities of the government and relevant requirements regarding the participation of the safeguarding of citizens, legal persons and other organizations. Article 1 of the ICH Law states the legislative purposes of this law, and includes 3 aspects: “transmitting and promoting the distinguished traditional culture of the Chinese nation, promoting the building of the socialist spiritual civilization, as well as strengthening the safeguarding and preservation of intangible cultural heritage”. Article 2 stipulates applicable material objects and places as well as the scope of the law, namely “various traditional cultural expressions which are handed down by the people of all ethnicities from generation to generation and are regarded as a constituent part of their cultural heritage, and material objects and places related to the traditional cultural expressions”. Article 3 stipulates the general principles and measures on the safeguarding of intangible cultural heritage, and makes distinction between “preservation” and “safeguarding”. Article 4 stipulates the safeguarding principle, stressing that the safeguarding must comply with the principles of authenticity, completeness and transmission, which shall be “conducive to strengthening the recognition of the culture of the Chinese nation, maintaining the unification of the country and the unity of the nation, and promoting social harmony and sustainable development”. Article 5 stipulates the restrictive principle regarding the use of intangible cultural heritage. Articles 6-10 stipulate the functions and duties of respective governments.

Chapter 2 “Intangible Cultural Heritage Investigations” consists of 7 articles. Among them, Articles 11, 12 and 13 stipulate relevant duties for government departments to carry out intangible cultural heritage investigations, including conducting the investigations, collecting relevant material objects and making relevant databases public. Article 14 stipulates that citizens, legal persons and other organizations may conduct investigations of intangible cultural heritage in accordance with the law. Article 15 stipulates that the foreign organizations or individuals conducting investigations of intangible cultural heritage shall report to relevant authorities for approval. And after the completion of such investigation, the investigation report and the pictures of the material objects

and the duplicate copies of information obtained shall be submitted. Foreign organizations shall conduct the investigations in cooperation with the domestic institutions engaging in relevant academic research. Article 16 stipulates relevant rules that shall be observed during the investigation process. In other words, the consent from the investigation targets shall be obtained; their customs shall be respected; and their lawful rights and interests shall not be prejudiced. The last article of this Chapter is about the stipulation of the rescue of intangible cultural heritage items on the verge of extinction. It states that the cultural authorities of the people's governments at the national level should immediately record and collect the relevant material objects or adopt other rescue and preservation measures; and that if transmission is needed, effective measures that support transmission shall be adopted.

Chapter 3 “Representative List of Intangible Cultural Heritage” comprises 10 articles. Article 18 stipulates that the State Council and the provincial people's governments shall establish the representative list of intangible cultural heritage. The system of Representative List of Intangible Cultural Heritage serves as the core constituent of China's intangible cultural heritage safeguarding system, laying a basis for a number of systems and measures such as safeguarding plan and the representative transmitters. So far, China has successfully established the list systems at four levels (national-level, provincial level, municipal level and county level). Article 19 is about the detailed provisions regarding the system building of national-level representative list of intangible cultural heritage. Article 20 stipulates that, as a significant supplementation to the government-recommended application procedure, any citizen, legal person and other organizations may make recommendations directly to the provincial cultural authorities to apply for inscription the items into the national-level representative list of intangible cultural heritage. Article 21 stipulates that the same items of intangible cultural heritage with their form and content fully preserved in more than two regions may simultaneously be included in the national-level list. Article 22 stipulates the procedures and principles of the evaluation and review of the items to be included in the national-level representative list. Articles 23 and 24 specifically stipulate the procedures and principles concerning the public notice, approval and publication of the national-level representative list of intangible cultural heritage. Articles 25-27 are about the stipulation of the safeguarding and management of the representative items.

There are altogether 10 articles in Chapter 4 “Transmission and Dissemination of Intangible Cultural Heritage”, comprising provisions on the transmission and spread systems of the intangible cultural heritage. Article 28 stipulates that the State encourages and supports the transmission and spread of the representative

items of intangible cultural heritage. Article 29 stipulates that the Ministry of Culture and the provincial cultural authorities may determine the representative transmitters of the representative items of intangible cultural heritage at their same levels. Article 30 stipulates that the cultural authorities of the people's governments above the national level shall adopt relevant measures to support the transmission and dissemination activities. Article 31 stipulates the obligations that the representative transmitters shall perform. Article 32 stipulates that the people's governments above the national level shall be responsible for the publicity and exhibition of the representative items of intangible cultural heritage. Article 33 stipulates that the State encourages the undertaking of relevant activities regarding scientific and technical research, and the recording, compilation and publication of the representative items. Article 34 stipulates that schools and news media shall carry out education and publicity related to safeguarding of intangible cultural heritage and tries to popularize knowledge of intangible cultural heritage. Article 35 stipulates that public cultural institutions such as libraries, cultural centers, museums, science and technology museums, academic research institutions, safeguarding institutions, as well as state-own artistic performance troupes and entities operating venues for performance, shall carry out the compilation, research and academic exchange of intangible cultural heritage and the publicity and exhibition of the representative items according to their respective business scope. Article 36 stipulates that the State encourages and supports the citizens, legal persons and other organizations to set up display premises and transmission premises for intangible cultural heritage in accordance with the law in order to exhibit and transmit the representative items of intangible cultural heritage. Article 37 stipulates that the State encourages and supports the reasonable utilization and development of the representative items of intangible cultural heritage; and that the local people's governments above the national-level shall support relevant entities, while relevant entities may be entitled to the preferential tax policies in accordance with the law.

Chapter 5 "Legal Liabilities" comprises 5 articles, stipulating the legal liabilities for the violation of this Law. Article 38 stipulates that the staff of the cultural authorities and other relevant departments who derelict duties, abuse powers, practice favoritism or commit irregularities in the work concerning the safeguarding and preservation of intangible cultural heritage shall be punished in accordance with the law. Article 39 stipulates that the staff of the cultural authorities and other relevant departments who offend against the customs of the investigation target when conducting the investigation of intangible cultural heritage and cause serious consequences shall be punished in accordance with the law. Article 40 stipulates the legal liability for the damaging of relevant

material objects and places. Article 41 stipulates the legal liability for the violation of this Law conducted by a foreign organization or individual. Article 42 stipulates that a party that violates the provisions of this Law shall be subject to criminal liability in accordance with the law if such act constitutes a criminal offense.

Chapter 6 “Supplementary Provisions”, including 3 articles, belongs to the attachment part of this Law, and forms a separate chapter. Article 43 stipulates that local measures and provisions shall be formulated by the provinces, autonomous regions and municipalities directly under the Central Government by applying the relevant provisions of this Law as a reference. Article 44 stipulates the applicable provisions of relevant laws concerning intellectual property issue, and the applicable provisions of relevant laws concerning the safeguarding of traditional medicine and traditional arts and handicrafts, etc. Article 45 stipulates that this Law shall come into force on June 1, 2011.

The promulgation and implementation of the ICH Law is a milestone event for the safeguarding of intangible cultural heritage in China, as well as a major step for China to improve the socialist legal system with Chinese characteristics and to strengthen its cultural legislation.

2. Cultural Policy

China takes the safeguarding of intangible cultural heritages as an important part of the national strategy on cultural development. China released several documents, laws and regulations and policies relevant to the safeguarding of intangible cultural heritages at a national-level, and incorporated them into the Outline of the National Cultural Development Program during the 11th Five-Year Plan Period and the Outline of the National Cultural Reform and Development Program during the 12th Five-Year Plan Period. The cause of China's intangible cultural heritages is heading for a stage of integrated and systematic safeguarding. On the basis of vigorously promoting the implementation of Intangible Cultural Heritage Law of the People's Republic of China, summarizing and clarifying missions, goals and measures of intangible cultural heritage safeguarding in an all-round way, Ministry of Culture has promoted and established a system of intangible cultural heritage safeguarding that conforms to China's national conditions and initiated the compiling work of 3 Plans, which are Plan of Development of Undertakings related to Intangible Cultural Heritage Development during the 12th Five-Year Plan, Special Plan for Developing National Pilot Project of the Safeguarding and Utilization of Intangible Cultural Heritage Safeguarding during the 12th Five-Year Plan Period, Safeguarding Plan and Funds Demand for national -level Intangible Cultural Heritage Listed Items during the 12th Five-Year Plan Period. The safeguarding of intangible cultural heritage has become an important part of cultural work in the new era. Ministry of Culture and Ministry of Finance and other relevant departments have established interministeriel conference system; cultural departments of the Central and provincial governments established a special management organization, forming a work mechanism featuring "governmental organization, social participation, clear responsibilities and joint efforts", and have taken three approaches of integrated conservation, productive safeguarding, rescuing conservation, to promote the undertakings related to the safeguarding of intangible cultural heritage in China. Below is a brief introduction of important documents issued by the State Council and its departments concerned.

1) The Notice of the State Council on Strengthening Safeguarding of Cultural Heritages

On December 22, 2005, the State Council issued the Notice of the State Council on Strengthening the Safeguarding of Cultural Heritages (GF [2005] No. 42) (hereafter referred to as the Notice). According to the Notice, the State Council decides that the second Saturday in June of each year as of 2006 shall be the "Cultural Heritage Day" of China. Regarding the relevant issues on strengthening the safeguarding of cultural heritages, we shall fully recognize the significance

and urgency of the safeguarding of cultural heritages; be aware of guiding ideology, basic guidelines and overall objective of strengthening the safeguarding of cultural heritages; spare no efforts to deal with outstanding problems that the safeguarding of intangible cultural heritage is faced with; actively promote the safeguarding of intangible cultural heritages, carry out general survey on intangible cultural heritages, formulate plans of intangible cultural heritage safeguarding, rescue precious intangible cultural heritages, formulate lists system of intangible cultural heritages list; and strengthen the safeguarding of minority cultural heritages of ethnic groups and cultural biological zones.

2) Opinions of the General Office of the State Council on Strengthening China's Safeguarding of Intangible Cultural Heritages

On March 26, 2005, the General Office of the State Council issued Opinions of the General Office of the State Council on Strengthening the Safeguarding of Intangible Cultural Heritages of Our Country (GBF [2005] No. 18) (hereafter referred to as the Opinions), including four items: 1. being fully aware of the significance and urgency of the safeguarding of intangible cultural heritages of our country; 2. goals and guidelines for the Safeguarding of Intangible Cultural Heritage; 3. establishing a list system and gradually formulating a system with Chinese characteristics for the safeguarding of intangible cultural heritages; 4. strengthening leadership, fulfilling responsibilities, and establishing a coordinative and effective work mechanism. As the attachment to this file, Interim Measures for Application and Recognition of Representative National Intangible Cultural Heritages listed specific selection criteria of representative national intangible cultural heritages: 1. having extraordinary value for showing the Chinese nations' cultural creativity; 2. rooted in cultural traditions of relevant communities and transmitted generation after generation and with distinct local features; 3. playing a role of acknowledgement of Chinese culture, strengthening social coherence, enhancing national unity and social stability and as an important bond for cultural communication; 4. applying traditional craftsmanship and skills excellently, presenting outstanding standard; 5. having unique value of witnessing living cultural traditions of the Chinese nations; 6. playing a significant role for sustaining cultural transmission of the Chinese nations and exposed to the risk of disappearing due to social transformation or lack of safeguarding measures.

3) Opinions on Using Traditional Festivals to Promote Fine Traditions of National Culture

On June 17, 2005, Publicity Department of the CPC Central Committee, Central Cultural Office, Ministry of Education, Ministry of Civil Affairs and Ministry of Culture jointly issued Opinions on Using Traditional Festivals to Promote Fine

Traditions of National Culture (WMB [2005] No. 11), including 6 items: 1. the significance and principles and requirements of using traditional festivals to promote fine traditions of national culture; 2. highlighting the cultural connotation of traditional festivals; 3. organizing well the celebratory activities for important traditional festivals; 4. fully playing the function of news media; 5. actively carrying out the research and safeguarding of traditional festivals; 6. effectively strengthening the management and guidance to traditional festival activities.

4) Interim Measures for Safeguarding and Administration of National-level Intangible Cultural Heritages

On November 2, 2006, Ministry of Culture issued Interim Measures on Safeguarding and Management of National Intangible Cultural Heritages (Order No. 39 of the Ministry of Culture of the People's Republic of China) as a supporting department regulation of Opinions of the General Office of the State Council on Strengthening China's Safeguarding of Intangible Cultural Heritages (GBF [2005] No. 18) (hereafter referred to as Opinions) further details relevant content of Opinions, and brings about specific requirements for safeguarding unit, representative transmitters and management measures of national-level intangible cultural heritages; clearly specifies respective responsibilities of cultural administrative department of the State Council, cultural administrative departments of provincial governments and those of county governments, conditions and responsibilities of safeguarding units, conditions to be an transmitter of representative intangible cultural heritage, etc.

5) Interim Measures for Recognition and Administration of Representative Transmitters for National-level Intangible Cultural Heritage Items

On May 14, 2008, Ministry of Culture of the People's Republic of China issued Interim Measures for Recognition and Administration of Representative Transmitters for national-level Intangible Cultural Heritage Items (Order No. 45 of Ministry of Culture of the People's Republic of China) (hereafter referred to as Interim Measures) As a department regulation supporting Opinions of the General Office of the State Council on Strengthening China's Safeguarding of Intangible Cultural Heritages (GBF [2005] No. 18) and matching Interim Measures for Safeguarding and Administration of National Intangible Cultural Heritages issued by the Ministry of Culture, Interim Measures further specifies content related to transmitters in the two documents above and clearly specifies principles of recognizing transmitters of representative national-level intangible cultural heritage items, conditions to be an transmitter, procedures of application and approval of transmitter, obligations of transmitters, and methods to disqualify transmitters, etc.

6) Guiding Opinions on Strengthening the Construction of National Cultural Biological Safeguarding Zones

On February 10, 2010, Ministry of Culture issued Guiding Opinions on Strengthening the Construction of National Cultural Biological Safeguarding Zones (WFYF [2010] No. 7). According to the essence of the Notice of the State Council on Strengthening Safeguarding of Cultural Heritages (GF [2005] No. 42) and Opinions of the General Office of the State Council on Strengthening the Safeguarding of Intangible Cultural Heritages of China (GBF [2005] No. 18) and the requirement of the Outline of the National Cultural Development Program during the 11th Five-Year Plan Period, Ministry of Culture launched construction work of cultural ecological safeguarding zone to further deepen safeguarding of China's intangible cultural heritages, putting forward 6 opinions: 1. significance of the construction of national cultural ecological safeguarding zones; 2. policies and principles for the construction of national cultural ecological safeguarding zone; 3. conditions for the setting up of national cultural ecological safeguarding zones; 4. basic procedures for setting up national cultural ecological safeguarding zones; 5. basic measures for establishing national cultural ecological safeguarding zones; 6. mechanism of establishing national cultural ecological safeguarding zones.

7) Guiding Opinions on Strengthening the Productive Safeguarding of Intangible Cultural Heritages

On February 2, 2012, Ministry of Culture issued Guiding Opinions on Strengthening the Productive Safeguarding of Intangible Cultural Heritages (WFYF [2012] No. 4). According to essence of Intangible Cultural Heritage Law of the People's Republic of China (Order No. 42 of the President of the People's Republic of China) and Opinions of the General Office of the State Council on Strengthening the Safeguarding of Intangible Cultural Heritages of China (GBF [2005] No. 18), the Ministry of Culture putted forward four guiding opinions on productive safeguarding of intangible cultural heritages: 1. fully recognizing the significance of productive safeguarding of intangible cultural heritages; 2. correctly grasping the policies and principles of productive safeguarding of intangible cultural heritages; 3. scientifically propelling the implementation of productive safeguarding of intangible cultural heritages in a deep-going way; 4. establishing and improving the mechanism for productive safeguarding of intangible cultural heritages.