

## **Governing foreign aid through acts — effects, impacts and implications for China**

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Along with its fast economic development, China has increased its foreign aid rapidly in recent years. The forms and structure of the aid are also experiencing changes. These changes bring challenges to the existing foreign aid management system of China. China has been considering and discussing the necessity and feasibility of formulating a regulation to improve its governance of foreign aid. Learning from other donor countries' experiences becomes urgent and meaningful for China to improve its own aid management system. The OECD/DAC member countries have more experiences and research outcomes on policy and law making in foreign aid. Taiwan of China has also developed its law on foreign aid. In this context, we conducted a comparative study on international foreign aid regulatory system on selected cases including Australia, Japan, South Korea, United Kingdom, United States and Taiwan of China. The purpose of the study is to draw lessons for mainland China to strengthen its aid regulation system and improve its aid effectiveness.

The term of regulation in this research refers to the combination of law and policy papers that bear binding force. The term of regulation system refers to a system composed of the law, policy and their organizational carriers. The forms of policy papers of foreign aid mainly include policy statements and regional or country development cooperation planning documents. The forms of policy statements can be further divided into white paper, cabinet reports to parliament/congress and multi-year planning documents.

Foreign aid laws can be categorized into the following five types: (1) basic law, with stipulation on the purposes, objectives, principles, modalities, management and supervision of foreign aid; (2) organizational law, regulating the formation, function, management and operation of the special organization that is responsible for foreign aid; (3) administrative rules and decrees, providing rules for foreign aid business operation and implementation; (4) international treaties and bilateral or multilateral development cooperation agreements, in which aid commitments or programs are made; (5) other regulations that are related to foreign aid activities, such as governmental procurement law, budgeting and appropriation act, foreign trade regulation and transportation rules, etc. Our findings show that the regulation systems differ from one to another. Some cases have specific foreign aid law and policy papers, and others not. The countries without special foreign aid law often use policy statements. The purposes of making foreign aid policy and law are generally the same, that is, to clarify the purposes and principles of foreign aid and to regulate the behaviors of

aid agencies. However, the reasons for formulating foreign aid law are actually complicated. It is not a result of linear change from policy paper to legal act, but a consequence of interaction between political system, legal institution, international and domestic situation, and realistic needs. Nevertheless, there seems to be a tendency that foreign aid regulatory systems are moving from dispersed single special regulations to uniformed institutional system and from short-term regulations to long-term stable regulations.

Our policy implications for China include:

1. Foreign aid regulation system includes not only the policy statements or the basic law at the top level, but also the rules for specific aid activities and the organizations that implement the policies or laws. The basic laws and policy statements only provide a framework of foreign aid. The aid activities rely more on the specific regulations;
2. It seems that there are no strong connections between the efficiency and effectiveness of aid management and the existence of a specific foreign aid law. However, a specific foreign aid law is of great importance for ensuring consistency of foreign aid purposes and principles, as well as the stability of aid administration and management;
3. A foreign aid law should provide a general legal framework rather than operational details because operations often need to be adjusted according to national and international situation. Providing too many detailed provisions might require frequent modifications of the law which need going through complicating procedure and costing more time and may impair the authoritativeness and stability of the law;
4. Good organizational structure and management mechanisms of foreign aid may contribute more to the efficiency and effectiveness of aid. It is argued in this report that a special entity with relatively independent status and full authority will be helpful for improving the efficiency and effectiveness of aid administration and management, ensuring the consistency and predictability of foreign aid policy, as well as benefiting the assessment and accountability of aid performance. However, at the same time, such institutional arrangement may also cause issues of “selfish departmentalism”, and result in dependent on aid industrial interests. Such negative consequences should be taken into consideration by the government.