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国际业务中心 > 跨国并购与投融资团队 主办

2016年6月29日 | 第1号

中国对海外非政府组织的管理：新法指南

China's New NGOs Law for Foreign NGOs: A Guidance

The Law of the People's Republic of China (PRC) on Management of the Activities of Overseas Non-Governmental Organizations' (NGOs') Activities within Mainland China (The Foreign NGOs Law), promulgated in April, 2016 and scheduled to take effect on January 1, 2017, is the first comprehensive law for Foreign NGOs in China.

The new Foreign NGOs Law has legislated requirements for registration, record filing, operation supervision and some convenient measures for Foreign NGOs. Nearly 7,000 Foreign NGOs will be affected by the law and it will have a more profound influence on the development of Foreign NGOs in China. This article will introduce the basic elements of the new law and analyze some of its key provisions.

The Foreign NGOs Law: What Is It About?

According to the Foreign NGOs Law, "Foreign NGOs" refers to the non-government social organizations such as foundations, social organizations and think-tanks that are duly incorporated overseas.^[1] The qualified Foreign NGOs can carry out activities in the fields of economy, education, technology, science, culture, health, sports, environment protection and financial help for the disadvantaged and disaster relief, which are beneficial to China's public interest. Meanwhile, Foreign NGOs are not allowed to engage in or fund any profit-making activities, political activities or illegal religious activities.

Within China, the competent administrative department of public security under the State Council and the public security organs under the provincial people's governments are the registration authorities of Foreign NGOs. Based on the Foreign NGO's mission, it has to submit to supervision and reporting

requirements imposed by departments and agencies of similar missions under the State Council and under the provincial people's governments to conduct activities in China.

The Foreign NGOs can and can only conduct activities within China by two legal methods: (1) by registering representative offices or (2) by conducting temporary activities after filing records. Otherwise, no Foreign NGOs can conduct activities, fund or entrust any parties in any form in China.

1. Registration of a Representative Office

Only the qualified Foreign NGO can establish a representative office within China to carry out activities. A Foreign NGO's representative office in China has no legal person status. A Foreign NGO is allowed to establish more than one representative office on the basis of its needs.

According to Article 10, the qualified Foreign NGOs must meet the following requirements^[2]:

- (1) The Foreign NGO was lawfully incorporated outside of China;
- (2) The Foreign NGO is able to independently bear civil liability;
- (3) The purpose and scope of business of the Foreign NGO specified in the bylaws are conducive to the development of the public interest;
- (4) The Foreign NGO has been in existence for more than two (2) years outside China and has actually and materially conducted activities;
- (5) Satisfying other conditions specified in the laws and administrative regulations.

Additionally, the application of a representative office is subject to the approval of the "competent administrative department," which is determined and released by the competent department in charge of public security under the State Council, public security organs under the provincial people's governments together with relevant departments.

After obtaining the approval from the competent administrative department, the Foreign NGO is obliged to submit the following materials to the registration authorities within thirty (30) days applying for the registration of a representative office:

- (1) A written application form;
- (2) Credentials and other materials that meet the requirements specified in Article 10 herein;
- (3) Identification certificate, resume, proof or statement of no criminal record of the chief representative of the representative office to be established;
- (4) Proof of domicile of the proposed representative office;
- (5) Proof of the funding sources;

- (6) Approval certificate from the competent administrative department concerned; and
- (7) Other documentation and materials specified in the law and administrative regulations.

The registration authorities shall make a decision on whether or not to approve the registration application within sixty (60) days upon acceptance of the application.^[3]

Upon obtaining the approval of the registration certificate from the registration authorities, the Foreign NGO shall apply for tax registration, engrave its official seal and open an account with a bank within the territory of China by presenting the registration certificate by law, and shall file a photocopy of the tax registration certificate, sample of its official seal as well as its bank account information with the registration authorities for record.

2. Record Filing for Temporary Activities

The other option for Foreign NGOs to carry out temporary activities within China is to apply to local registration authorities for record filing, and such option is only for those Foreign NGOs which have not established representative offices within China.

According to Article 16, a Foreign NGO can only carry out temporary activities in the territory of China in cooperation with the Chinese State organs, mass organizations, public institutions or social organizations that are called “Chinese Cooperators.”

Within fifteen (15) days before the activities are carried out, the Chinese Cooperator shall file records to registration authorities in its located place with the following materials:

- (1) Credentials and materials evidencing the legal incorporation of the Foreign NGO;
- (2) The written agreement between the Foreign NGO and its Chinese Cooperator;
- (3) Relevant information such as the name, purpose, location and period of the temporary activities;
- (4) Proofs of source(s) of project expenses and funds as well as the bank account information of the Chinese Cooperator; and
- (5) Approval documentation obtained by the Chinese Cooperator; and
- (6) Other documentation and materials specified in the law and administrative regulations.

The filing time will not be subject to the requirements specified in the preceding paragraph in the event of emergencies such as disaster relief and rescue, and more.^[4]

The period for temporary activities shall not exceed one (1) year; any extension requires the submission of a new record filing.

Foreign NGOs Conducting Activities in China: What Should You Know

1. Funds for Activities

There are only three types of approved funds for Foreign NGOs' activities within China: (1) funds from legitimate overseas sources; (2) interest on bank deposits accrued within the territory of China; and (3) other funds legally obtained within the territory of China.^{[5](21 条)} Solicitation of donations within China with a purpose of raising money is strictly prohibited.

Besides, Foreign NGOs are required to open a bank account in China through their representative offices and file with registration authorities to manage those activities funds; while carrying out temporary activities, Foreign NGOs shall manage their funds through the bank account of their Chinese Cooperator(s). Such bank accounts of the Chinese Cooperator(s) shall be kept separately and used for the dedicated purposes.

The fund shall only be used by Foreign NGOs within its registered scope of business, activity areas, and the agreement concluded with a Chinese Cooperator. Any Foreign NGO that has not registered its representative office or filed its temporary activities is not allowed to support, in any form, any entity or individual within the territory of China to carry out activities.

2. Report System

The new Foreign NGOs Law has established a restrictive report system for Foreign NGOs conducting activities in China. Foreign NGOs shall comply with China's unified accounting system and submit a qualified report to registration authorities within the certain period of time.

According to Article 19 and 31, the representative office of a Foreign NGO shall, by December 31 of each year, submit its activity plan for the next year including the project implementation, fund use and other information to the supervisory authority for approval. Within ten (10) days upon receipt of such approval, the representative office of a Foreign NGO shall submit the activity plan to the Registration and Administration Authority for record filing.^[5] Furthermore, the representative office of a Foreign NGO shall submit the annual report for the preceding year to its Supervisory Authority by January 31 of each year. After receiving comments and feedback from the Supervisory Authority, such report shall be submitted to the Registration and Administration Authority by March 31 for annual inspection.^[6]

The annual work report shall include the audited financial report, accounting statements, description of the activities and changes in employee and organizational structure of the representative office.^[7]

1. Organizational Structure and Employment

A Foreign NGO shall not establish a branch office in China unless otherwise provided by the State

Council. The representative office has no legal status.

According to Article 29, the representative office of a Foreign NGO shall have a chief representative and may recruit up to three other representatives if needed. A person shall not serve as chief representative or representative if:

- (1) He/she has no or limited capacity for civil conduct;
- (2) He/she has a criminal record;
- (3) He/she once served as a chief representative or representative for a representative office of a Foreign NGO that has been de-registered or revoked of the registration certificate by law and less than five (5) years have elapsed since the date of de-registration or revocation; and
- (4) He/She fails to meet the conditions of other laws or administrative regulations. ^[8]

To recruit staff in the representative office in China of a Foreign NGO, the NGO shall abide by the laws and administrative regulations and shall submit the information of its staffs to the supervisory authority and the registration and administration authority for record filing. However, unless otherwise provided by the State Council, neither representative office of Foreign NGOs nor Foreign NGOs conducting temporary activities shall recruit members within the territory of China.

Supervision and Regulation Over Overseas NGOs' Activities In Mainland China

As mentioned above, the new Foreign NGOs Law has set up a more restrictive registration and record filing system for Foreign NGOs conducting activities in China.

Foreign NGOs operating in China shall also follow administrative regulations to carry out activities and be supervised by authorities in charge of the national security department, foreign affairs department, financial administration and regulation departments, customs, taxation and foreign experts with their respective responsibilities. Furthermore, the anti-money laundering departments under the State Council shall supervise and manage the opening and the use of the bank accounts by the representative offices of Foreign NGOs.

Public security organs shall be responsible for the registration and annual inspection of representative offices of Foreign NGOs, the filing for temporary activities by Foreign NGOs, and for investigating illegal practices of Foreign NGOs and their representative offices.

The public security organs may legally take the following measures if any acts are suspected of violating the relevant provisions:

- (1) Interviewing the chief representative and other persons in charge of the representative office of a

Foreign NGO;

- (2) Entering into the premises and activity venues of a Foreign NGO within the territory of China for on-site inspection;
- (3) Inquiring the entities and individuals relating to an incident under investigation and request an explanation of related issues;
- (4) Inspecting and copying the documents and materials related to an incident under investigation and seal up the documents and materials that might be removed, destroyed, concealed or falsified; and
- (5) Sealing up or detaining the premises, equipment or properties related to suspected illegal activities.^[9]

Public security organs under the People's Government at the municipal level or above shall give warnings or orders to stop activities within the certain period to the representative offices of Foreign NGOs and Foreign NGOs carrying out the temporary activities with their Chinese partners (Article 45 to Article 48): public security officials may confiscate illegal assets or unlawful gains and in serious cases, it may revoke the registration certificates or ban temporary activities of a Foreign NGO:

If a Foreign NGO or and a representative office of a Foreign NGO conducts any of the followings, its registration certificate shall be revoked or its temporary activities shall be banned; (1) inciting resistance against the enforcement of laws and regulations; (2) obtaining State secrets illegally; (3) spreading rumors, libeling, publishing or disseminating other harmful information that damages state security or undermines national security; (4) engaging in or funding political activities, or illegally engaging in or funding religious activities; and (5) other activities that are detrimental to state security, national interest, or societal public interests. (Article 47)

A Foreign NGO and the representative offices of a Foreign NGO that are deregistered or have their registration certificates revoked, or its temporary activities banned due to the violation of Article 47, shall not set up representative offices or conduct temporary activities in China within five (5) years from the date of deregistration, revocation, or being shut down.

Furthermore, the directly liable persons may be prosecuted for criminal liability, and the public security department under the State Council may add the Foreign NGO to a blacklist and prohibit the Foreign NGO from establishing representative office or conducting temporary activities in China.

Practical Advice For NGOs

The existing Foreign NGOs in China needs to review and adjust their organization structures,

compliance filing practices and internal policies according to the new Foreign NGOs Law before it becomes effective on January 1, 2017. For information or questions, please contact Shan Luan at luanshan@deheng.com.

如果您有问题或需要更多信息，请随时电邮 luanshan@deheng.com。

Reference:

- [1] Article 2 of the Foreign NGOs Law
- [2] Article 10 of the Foreign NGOs Law
- [3] Article 12 of the Foreign NGOs Law
- [4] Article 17 of the Foreign NGOs Law
- [5] Article 19 of the Foreign NGOs Law
- [6] Article 31 of the Foreign NGOs Law
- [7] Article 31 of the Foreign NGOs Law
- [8] Article 29 of the Foreign NGOs Law
- [9] Article 41 of the Foreign NGOs Law

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