
National People's Congress of China Approves Law on Foreign NGOs

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On April 28, 2016, the 20th meeting of the 12th Standing Committee of the National People's Congress (NPC) of China approved The Law on the Administration of Activities by Foreign Non-Governmental Organizations within the People's Republic of China (Foreign NGO Law). Foreign NGOs will need to understand the new law's tighter policing provisions, reporting requirements (including annual reports on planned activities for the coming year) and restrictions on fundraising and recruiting within China, among other changes. The new law does clarify some uncertainties regarding how foreign NGOs in China can operate, but it also engenders new questions about how the relevant authorities will apply its provisions. Foreign NGOs ought to maintain close cooperation with their Chinese partners in efforts to comply with the new rules.

The Foreign NGO Law passed with 147 affirmative votes, one dissenting vote and one abstaining vote in the NPC. The vote took place after almost a year of conducting surveys and research, solicitation of public comments and other forms of exchange of views by the legislators based on a second draft of the Foreign NGO Law (Second Draft) published on May 5, 2015 for public comments ([See Pillsbury Alert](#) on the Second Draft). The NPC held a press conference on the same day of the release of the Foreign NGO Law to answer questions from foreign and domestic media.

While the Foreign NGO Law has made a significant number of changes to the Second Draft, the basic mechanism and rules for regulating foreign NGOs set forth in the Second Draft remain unchanged, including that the Public Security Bureau (PSB) will be the regulator for all foreign NGOs conducting activities in China. Below is our summary of the major provisions in the Foreign NGO Law and our comments on the impact of the law on foreign NGOs.

Scope of Application

A foreign NGO is still broadly defined as “a nonprofit and non-government social organization legally established outside of China” but the Foreign NGO Law gives specific examples of foreign groups that will be regulated by the new law, namely “foundations, social groups and think tanks” (Art. 2). The Foreign NGO Law expressly removes any academic exchanges and cooperation between any foreign and Chinese domestic schools, hospitals and research or academic institutions involving natural science and engineering technology from the scope of the Foreign NGO Law and these activities should be carried out in line with existing regulations (Art. 53).

The Foreign NGO Law also provides a list of sectors in which foreign NGOs are welcome to engage, which are economics, education, science and technology, health, culture, sports, environmental protection, charity and disaster relief (Art. 3). Foreign NGOs engaging in one of these sectors may find it easier to apply than those engaging in sectors that are deemed to be sensitive by the Chinese authorities, such as human rights, civil liberties, etc. The Foreign NGO Law requires an “area of activities and catalogue of projects” to be published by the PSB (Art. 34) but it is unclear at this stage how this document will be drafted and whether activities outside of the scope of this document will be prohibited in China.

Since the Foreign NGO Law aims to regulate the activities conducted by foreign NGOs in China (Art. 2), the name of the law has been changed from the “Law on the Administration of Foreign Non-Governmental Organizations” used for the Second Draft to the “Law on the Administration of Activities by Foreign Non-Governmental Organizations within the People’s Republic of China.”

Form of Presence

As required by the Foreign NGO Law (Art. 9), any foreign NGO conducting activities in China must (1) either register as a legally registered representative office (Rep Office) or (2) make a filing for a temporary activity. Any foreign NGO that has not so registered or made a filing is neither allowed to conduct activities within China nor allowed to engage or fund any individual, legal person or other organizations to conduct activities within China. Any foreign NGO failing to register a Rep Office or make a filing for a temporary activity could be forced to stop any illegal activity, confiscation of illegal property and income with respect to such activity and administrative liabilities for the responsible person, such as up-to-ten-days detention (Art. 46).

1. Rep Office

Any foreign NGO intending to establish a Rep Office in China must have at least two years of substantial operations overseas. The Foreign NGO Law requires the NGO to first obtain prior approval from its Professional Supervisory Unit (*i.e.* a relevant department or unit of the State Council or a provincial government) (Art. 11) (or so-called “mother-in-law”). A catalogue of such Professional Supervisory Units will be published by the Ministry of Public Security of the State Council and the PSBs of the provincial governments which are mandated by the Foreign NGO Law as the regulator of foreign NGOs. The law is silent over the application procedures to obtain approval from a Professional Supervisory Unit. It remains to be seen whether a uniform set of procedures will be adopted or different Professional Supervisory Units will issue different rules.

Within 30 days after obtaining the approval from the Professional Supervisory Unit, a foreign NGO must then submit an application with the PSB. The PSB will issue a registration certificate (Registration Certificate) within 60 days after receiving the application (Art. 12). The Registration Certificate will specify,

among others, the business scope and territory of activities of the Rep Office of a foreign NGO (Art. 13) and the Rep Office must conduct activities within such registered business scope and territory (Art. 18).

The Foreign NGO Law removes the restriction on foreign NGOs of being allowed only one representative office in China set forth under the Second Draft. They will be allowed to establish offices according to their operational needs but the number and locations are subject to the approval by the regulatory authorities. In addition, the new law also removes the five year limit on operations of representative offices in China which was required in the Second Draft.

2. Filing for Temporary Activity

Under the Second Draft, a foreign NGO was required to work with a Chinese partner (a State organ, a people's organization, a public institution or a social organization) for any temporary activities. A foreign NGO would have had to first obtain approval from a Professional Supervisory Unit and then file the application with the competent PSB for a temporary activity permit. The NPC acknowledges comments that such application procedures were too onerous for any temporary activity and now provides in the Foreign NGO Law that in case of any temporary activity by a foreign NGO in China, the foreign NGO must work with a Chinese partner and its Chinese partner must handle the approval procedures pursuant to relevant national regulations and make a filing with the registration and administration authority (i.e. the PSB) at the Chinese partner's location 15 days before the temporary activity. Any temporary activity must not exceed one year and a new filing must be made in case there is a need to continue such temporary activity (Art. 17).

Supervision by Multiple Authorities

The Foreign NGO Law involves a multiple supervisory framework. The activities carried out by foreign NGOs in China are monitored by the following authorities:

- Public Security Bureau, as the registration and administration authority for foreign NGOs
- Professional Supervisory Unit, which shall assist the PSB with monitoring and any investigation of foreign NGOs in China
- Other supervisory authorities, such as government agencies responsible for national security, finance, foreign affairs, Customs, tax, etc.

Under the current regime, the Ministry of Civil Affairs is responsible for supervising domestic nonprofits and foreign foundations. However, the Foreign NGO Law empowers the PSB to be the registration and administration authority to approve the registration and supervision of all foreign NGOs. The change of the supervision power from the civil affairs department to the police department has raised concerns from foreign NGOs.

The Foreign NGO Law provides the PSB with the power to, in case of any suspected illegal activity, (i) summon representatives of the representative office of a foreign NGO to give them a "talking to", (ii) enter any NGO's offices to conduct an on-site inspection, (iii) question individuals, (iv) review, copy, seal any documents, and (v) seal and/or take away any property, materials, or venues relating to the suspected illegal activity (Art. 41). The PSB also has the power to inquire into bank accounts and may freeze any bank accounts relating to the investigation of the foreign NGO (Art. 42).

In addition, the PSB can demand the Chinese partner of a foreign NGO to stop any temporary activity if it deems such activity endangers national security as provided under Article 5 of this law (Art.17). The PSB has the power to put a foreign NGO on a blacklist if it is engaged in any serious illegal activities provided under Article 47 of this law and such foreign NGO will be prohibited from establishing a representative office or carrying out temporary activities in China (Art. 48).

Onerous Reporting Requirements

The Foreign NGO Law imposes various reporting requirements on foreign NGOs in China.

1. Rep Office

A Rep Office is required to report its annual activity plan for the next year to its Professional Supervisory Unit by December 31 each year. This report should include, among other information, the implementation of the Rep Office's activities and the use of funds for the next year. After the Professional Supervisory Unit approves this report, the Rep Office must file it with the Public Security Bureau within 10 days (Art. 19). If, under special circumstances, the Rep Office needs to adjust its activity plan, it must make a timely filing with the PSB.

The Rep Office is also required to submit an annual work report for the previous year to its Professional Supervisory Unit before January 31 of the following year. After review and comment by the Professional Supervisory Unit, the Rep Office must submit the report to the PSB before March 31 for the annual inspection by the PSB. Such annual work report should include, among other information, an audited financial and accounting report, description of activities in the past year and any change in personnel and organizational structure (Art. 31). The Rep Office is required to disclose such report to the public on a website designated by the PSB.

2. Filing for Temporary Activity

For a foreign NGO carrying out a temporary activity in China, in addition to the pre-filing made by its Chinese partner with the competent PSB, a report regarding the status of the temporary activity and use of funds must be filed with the PSB by the foreign NGO and its Chinese partner within 30 days after completion of the temporary activity (Art. 30).

Restrictions on Funding and Staffing

Funding for activities conducted by foreign NGOs in China is limited to money legally raised outside of China, interest earned on deposits in China, and other money lawfully acquired within China (Art. 21). A foreign NGO and its Rep Office are prohibited from raising funds or accepting donations within China (Art. 21).

The Rep Office must manage its funds through a bank account registered with the PSB. Any foreign NGO conducting temporary activities in China should manage its funds through the bank account of its Chinese partner, and should be separately booked and audited. Except for the bank account provided under the above two circumstances, any foreign NGO, Chinese partner or individual is not allowed to receive and pay any funds in any other forms for its projects carried out in China (Art. 22).

The Foreign NGO Law removes or loosens certain restrictions under the Second Draft on the staffing of the Rep Office and foreign NGOs carrying out temporary activities in China. For example, the Second Draft

required that the foreign staff in a Rep Office shall be no more than 50 percent of the total number of staff and a staff of a Rep Office of a foreign NGO could not take a position in the Rep Office of another foreign NGO. The Second Draft also prohibited any foreign NGO carrying out temporary activities in China from recruiting volunteers. These restrictions have been removed under the Foreign NGO Law. The Foreign NGO Law still requires that staff information for any Rep Office be filed with the PSB and Professional Supervisory Unit for their records (Art. 27). Except as otherwise approved by the State Council, the Foreign NGO Law prohibits foreign NGOs from recruiting members in China (Art. 28).

Implementation of the New Law

The Foreign NGO Law will take effect on January 1, 2017. During the NPC press conference held on April 28, officials explained that the reason why the Foreign NGO Law will only become effective more than 8 months after its issuance is that (1) foreign NGOs should be given sufficient time to understand and be familiar with the new law and their rights and obligations thereunder; (2) the PSB, the Professional Supervisory Unit and other relevant authorities should be given time to prepare more detailed and comprehensive implementation rules; and (3) training will need to be given to government officials for them to provide better services to foreign NGOs and more effectively implement the Foreign NGO Law.

The Foreign NGO Law also requires the relevant government departments to provide policy consultation and guidance for foreign NGOs (Art. 35) and requires the PSB to establish a website to publish application procedures for a Rep Office and filing for a temporary activity (Art. 36).

Our Comments

1. Despite the enhanced scrutiny of foreign NGOs, the Foreign NGO Law clarifies the requirements and procedures for foreign NGOs in China. This will at least clear up some uncertainties that currently exist for foreign NGOs having actual operations in China. Those operating in a gray area or as a for-profit entity should carefully review the new law and decide whether they wish to keep the status quo or prepare to comply with its requirements and procedures (see item 3. below).
2. While the Foreign NGO Law has established the basic legal framework for regulating the activities of foreign NGOs in China, the implementation of the law is still subject to the various implementations measures and guidelines to be published by the relevant authorities in the coming months. Foreign NGOs should keep a close eye on the following documents:
 - (1) A catalogue of Professional Supervisory Units to be published by the PSB for assisting foreign NGOs to locate their respective Professional Supervisory Unit;
 - (2) An “area of activities and catalogue of projects” to be published by the PSB; and
 - (3) Application procedures for a Rep Office and filing for a temporary activity.
3. The Foreign NGO Law does not address the issue whether certain existing entities of foreign nonprofits can continue their operation as is. Certain foreign nonprofits have established their presence in China in the form of a for-profit enterprise, a representative office of a foreign non-enterprise economic organization, an office of a foreign chamber of commerce, or a representative office of foreign foundations, based on existing regulations. There is no provision under the Foreign NGO Law suggesting that these entities are required to undergo the registration procedures for foreign NGOs. It is

likely that these entities will be permitted to conduct their existing operations since their operations in China are legal so long as they operate within the scope of their approved activities.

4. The Professional Supervisory Unit and the Chinese partners are more familiar with the foreign NGOs in their respective sectors than the PSB, and their opinions are valued by the PSB. One suggestion we have for foreign NGOs intending to operate in China is that rather than worrying about how the PSB will enforce the law, a foreign NGO may start to consider how to enhance its relationship with existing partners in China and how to establish contact with more partners in China. Some Chinese partners have regular communications with the relevant authorities, which may serve as the Professional Supervisory Unit for the foreign NGOs. These efforts may benefit any future application made by the foreign NGOs under the Draft NGO Law once it is effective.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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