

境外NGO将被实施

“双轨制” 监管

最近, 《境外非政府组织管理法 (草案二次审议稿)》 (下称“《草案》”) 公布, 向社会公开征集意见。

定义境外非政府组织

《草案》将境外非政府组织定义为在境外成立的非营利、非政府的社会组织。

设立代表机构或开展临时活动

(1) 境外非政府组织可以在中国设立代表处

- 境外非政府组织在境外存续二年以上且开展实质性活动
- 在中国只能设立一个代表处
- 需取得业务主管单位同意 (下文详述)
- 应在省级或省级以上公安机关登记注册
- 驻在期限不超过五年, 但经申请同意可重新申请登记注册

(2) 境外非政府组织可以在中国开展临时活动

- 必须与中方合作单位合作开展活动
- 需取得业务主管单位同意
- 向省级或省级以上公安机关申请临时活动许可证
- 期限不得超过一年

监管

Draft Law Outlines Dos and Don'ts of Foreign NGOs for the First Time

The second draft of the Law on Administration of Foreign Nongovernmental Organizations (the “**Draft Law**”) was published for seeking public opinions recently.

Draft Law Defines Foreign Nongovernmental Organization(s)

The Draft Law gives a definition of foreign nongovernmental organizations which refer to non-profitable and nongovernmental social organizations established overseas.

Representative Office Establishment or Temporary Events

(1) The Draft Law allows foreign NGOs to set up their representative offices in China

- Foreign NGOs shall have been existing for more than two years overseas and carrying out substantial activities.
- An foreign NGO can set up only one representative office in China.
- Prior consent from the governing business authorities (see details below) is needed.
- The representative office shall register with public security authorities of provincial level or above.
- The term of residence of the representative office shall be no more than five (5) years and upon approval the representative office may be re-registered after term expiry.

(2) The Draft Law also allows foreign NGOs to hold temporary events in China

- Foreign NGOs must cooperate with their Chinese partners for temporary events in China.
- Prior consent from the governing business authorities is needed.
- Foreign NGOs shall apply to public security authorities of provincial level or above for temporary events license.

(1) “双轨制” 监督管理：中国省级或省级以上政府部门是境外非政府组织的业务主管单位；同时，中国省级或省级以上公安部门是登记管理机关。

(2) 境外非政府组织需事先向政府监管部门报送其活动安排。

(3) 境外非政府组织不得从事或者资助营利性活动、政治活动，不得非法从事宗教活动或者非法资助宗教活动。

(4) 境外非政府组织不得在中国发展会员。

目前，中国对境外非政府组织管理可依据的法规主要有两部：一是1989年6月颁布的《外国商会管理暂行规定》，以外国商会为其管理对象，主要是那些由境外在华活动的商业机构或人员设立，不从事任何商业活动的非营利性团体。二是2004年3月颁布的《基金会管理条例》，其中有对外国基金会进行管理的相关条款（《草案》对境外非政府组织设立的基金会亦有相关限制性规定）。

地址：中国上海市浦东新区芳甸路1155号浦东嘉里城办公楼8楼
邮编：201204
电话：+86 21 50101666
传真：+86 21 50101222
邮件：info@mhplawyer.com
网址：www.mhplawyer.com

● The term of temporary events license shall be no more than one year.

Administrations

(1) “Dual-Track Approach” administration: the competent governmental departments of provincial level or above are the governing business authorities of Foreign NGOs; public security authorities of provincial level or above are the registries.

(2) Foreign NGOs will be required to report their activity plans to the competent authorities in advance.

(3) Foreign NGOs will be prohibited from engaging in or sponsoring any profit-making or political activities, or any religious activities by violation of applicable laws.

(4) Foreign NGOs will not be allowed to develop membership in China.

At present, there are only two administrative regulations governing foreign NGOs: one is the Provisional Rules on Administration of Foreign Chambers of Commerce promulgated in June 1989 which governs the foreign chambers of commerce; the other is the Regulations on Administration of Foundations promulgated in March 2004 which includes clauses in connection with foreign foundations (the Draft Law also provides restrictions to the activities of those foundations established by foreign NGOs).

Martin Hu & Partners

8F, Kerry Parkside Office, 1155 Fang Dian Road, Shanghai 201204, P. R. China

T. +86 21 50101666

F. +86 21 50101222

E. info@mhplawyer.com

W. www.mhplawyer.com

