

## New Law Outlines Dos and Don'ts of Foreign NGOs

### 1. Background

On May 13, 2015, Chinese National People's Congress (the "NPC") Standing Committee issued the second draft of Law on Administration of Foreign Nongovernmental Organizations (the "Draft") to solicit public opinions. NPC, after one-year review, ratified the Law on Administration of Domestic Activities of Foreign Nongovernmental Organizations (the "NGO Law") on April 28, 2016. The NGO Law will take effect on January 1, 2017.

### 2. Definition of Foreign NGOs

Consistent with the Draft, the NGO Law gives a broad definition of foreign nongovernmental organizations ("NGOs") which refer to non-profitable and non-governmental social organizations including without limitation the foundations, social institutions and think tanks. NGOs are generally allowed to carry out activities in the areas of economics, education, science, culture, health, sports, environmental protection, etc. that are beneficial to the development of the social welfare.

### 3. Representative Office Establishment or Temporary Events

#### (1) Representative offices

Foreign NGOs may establish representative offices:

## 新法出台规范境外非政府组织活动

### 1. 背景

2015年5月13日，全国人民代表大会（“全国人大”）常务委员会发布了《境外非政府组织管理法草案二次审议稿》（“《草案》”）向社会公开征求意见。经过了为期一年的审议，全国人大于2016年4月28日发布了《境外非政府组织境内活动管理法》（“《境外非政府组织法》”）。《境外非政府组织法》将于2017年1月1日生效。

### 2. 境外NGO的定义

与《草案》相同，《境外非政府组织法》赋予了境外非政府组织一个非常宽泛的定义。根据《境外非政府组织法》，境外非政府组织是指在境外合法成立的基金会、社会团体、智库机构等非营利、非政府的社会组织。一般来讲，境外非政府组织可以在经济、教育、科技、文化、卫生、体育、环保等领域和济困、救灾等方面开展有利于公益事业发展的活动。

### 3. 设立代表处或开展临时活动

#### (1) 代表处

满足以下条件，境外非政府组织可以设立代表处：

- 境外非政府组织在境外存续二年以上并实质性开展活动；
- 取得业务主管单位的同意；并且
- 应在省级或者省级以上公安机关登记。

与《草案》相比，《境外非政府组织法》删去了对于代表处的数量、每五年需重新登记、自主招聘员工和志愿者以及外国员工比例这几个方面的限制。

#### (2) 临时活动

- they have been existing for more than two years overseas and carrying out substantial activities;
- they shall obtain prior consent from the governing business authorities; and
- they shall register with the public security authorities of provincial level or above.

In comparison with the Draft, the NGO Law removed the restrictions on number of representative offices, re-registration every five years, staff and volunteers' recruitment, and percentage of foreign staff in each representative office.

## (2) Temporary events

The NGO Law allows foreign NGOs having no representative offices to hold temporary events in China.

- Foreign NGOs must cooperate with their Chinese partners for temporary events;
- The term of temporary events shall be no more than one year;
- Foreign NGOs shall file with provincial public security authorities at least 15 days before the temporary events are held;
- Where temporary events must be carried out in emergency situations such as disaster relief or rescues, the above filing time limit can be waived.

In comparison with the Draft, the NGO Law does not require any more a prior

《境外非政府组织法》允许未设立代表处的境外非政府组织在中国开展临时活动。

- 境外非政府组织必须与中方合作单位合作开展活动；
- 临时活动期限不得超过一年；
- 境外非政府组织需在开展临时活动十五日前向其所在地的省级公安机关备案；
- 在赈灾、救援等紧急情况下，需要开展临时活动的，备案时间不受前款规定的限制。

与《草案》相比，《境外非政府组织法》不再要求开展临时活动需取得业务主管单位的同意。

## 4. 监管

### (1) “双轨制”监管

- 境外非政府组织的业务主管单位：省级或省级以上相关政府部门；
- 登记机关：省级或省级以上公安机关。

### (2) 境外非政府组织代表处应当：

- 提前向业务主管单位报告其下一年度的年度活动计划，并获得业务主管单位的同意。
- 在获得业务主管单位的同意后，针对以上活动计划报登记机关备案（省级或省级以上公安机关）。
- 为完成年度检查工作，向业务主管单位和登记机关提交其上一年度的年度工作报告。
- 在登记机关的网站上公开其年度工作报告。

### (3) 境外非政府组织在中国境内不得从事或者资助营利性活动、政治活动，不得从事或者资助宗教活动。为了向境外

consent from the governing business authorities for temporary events.

#### 4. Administrations

(1) “Dual-Track Approach” administration:

- Governing business authorities of foreign NGOs: the competent governmental departments of provincial level or above;

- Registries: public security authorities of provincial level or above.

(2) The representative offices of foreign NGOs are required to

- report their annual activity plans for the following year to the governing business authorities in advance and obtain consent.

- file the plans with the registries (public security authorities of provincial level or above) after obtaining the consent.

- submit their annual working reports for the previous year to the governing business authorities and the registries for annual inspection.

- publicize their annual working reports on the website of the registries.

(3) Foreign NGOs are prohibited from engaging in or sponsoring any profit-making or political activities, or any religious activities by violation of applicable laws. In order to provide guidance to foreign NGOs, the NGO Law requires public security authorities,

非政府组织提供指引，《境外非政府组织法》要求公安机关会同有关部门制定境外非政府组织活动领域和项目目录，公布业务主管单位名录。

(4) 境外非政府组织不得在中国境内发展会员。

(5) 境外非政府组织在中国境内活动资金包括境外合法来源的资金、中国境内的银行存款利息以及中国境内合法取得的资金。境外非政府组织不得在中国境内进行募捐。与《草案》相比，《境外非政府组织法》删除了境外非政府组织不得接受中国境内捐赠这一限制。

#### 5. 例外

《境外非政府组织法》第53条规定，境外学校、医院、自然科学和工程技术的研究机构或者学术组织与境内学校、医院、自然科学和工程技术的研究机构或者学术组织开展交流合作活动可被排除适用。而《草案》仅对中外合作办学排除适用。

together with the relevant ministries, to draft catalogs of foreign NGOs' areas of activity and projects, and to publish a list of competent governing business authorities.

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

(5) Funding for activities of foreign NGOs in China includes funds from legitimate sources overseas; interest on bank deposits in China and other funds legally acquired in China. Foreign NGOs are not allowed to raise funds in China. In comparison with the Draft, the NGO Law removed the restriction on accepting donations in China.

### **5. Exemption**

The NGO Law exempts its application to the exchange and cooperative activities between Chinese and foreign schools, hospitals, and science and engineering research institutes, while the Draft only excludes its application to Sino-foreign cooperative educations which are governed by Sino-foreign cooperative education regulations.