

# China Crackdown on Non-Registered NGOs

By Mark Schaub & Serena Guo

August 2021

A number of offices operated by international organizations in China have been recently visited by Chinese Public Security Bureau (PSB) officers for operating in a non-compliant manner. Such organizations have been urged by the PSB to establish NGO Representative Offices if they wish to operate in China long term.

Many of these organizations have been foundations, trade associations and membership organisations rather than the politically motivated groups that the term NGO may conjure up in the reader's mind. This article will provide an overview of the PRC NGO Law; what is considered to be an NGO under Chinese law, what options work and which do not.

## Overview of Law

*The PRC Administrative Law on Overseas NGOs' Activities within China* (in Chinese: 中华人民共和国非政府组织境内活动管理法) ("**PRC NGO Law**") was passed at the 20th meeting of the Standing Committee of the 12th National People's Congress and took effect on January 1, 2017.

It is the first law on the administration and supervision of Overseas NGOs' activities in mainland China. It should be noted that PRC government treats the PRC NGO Law as falling under national security legislation and this explains in part why it is the PSB that cracks down upon NGOs in China in case of a failure to comply with PRC NGO Law.

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## Definition of Overseas NGOs

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According to PRC NGO Law, the foundations, social groups, think-tank institutions, and other non-profit, non-government social organizations legitimately established overseas would be deemed as Overseas NGOs (“**Overseas NGOs**”).

Article 3 of PRC NGO Law further provides the Overseas NGOs may engage in activities in fields such as the economy, education, science and technology, culture, health, sports, environmental protection, alleviation of poverty, disaster relief, etc. to promote the development of the public welfare. Furthermore, the Catalogue of Activity Fields and Projects of Overseas NGOs in China and Directory of Sponsoring Authorities (revised in 2019) (“**Activities Catalogue**”) details the types of activities and sectors in which Overseas NGOs may operate under PRC NGO Law.

According to our interpretation of PRC NGO Law, we understand an organization will be considered as an Overseas NGO if it:

1. is non-governmental;
2. is non-profit;
3. is legally established overseas (i.e. outside of mainland China);
4. engages in activities in mainland China; and
5. engages in one or more public benefit activities including but not limited to the economy, trade, agriculture and others as outlined in the Activities Catalogue.



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#### Videos:

- [“China Art of Law” YouTube channel \(all videos\)](#)
- [Knowing Yourself - THE China Market Entry Checklist](#)
- [Starting a Business in China](#)
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## What options do Overseas NGOs have?

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The overseas NGO will have the option of setting up a representative office (“Representative Office”) in China or carry out temporary activities by cooperating with a Chinese Cooperative Partner (see definition below).

### I. Representative Office

Most Overseas NGOs opt to establish a Representative Office. It is worth noting that under PRC law the Representative Office is not recognized as a legal person and therefore the Overseas NGO will take full legal responsibility.

As with other Chinese social organizations (i.e. social groups or foundations), Representative Office is subject to dual administration in China. This means there is respectively a “registration authority” and a “business supervisory authority”.

The Ministry of Public Security or its local bureaus (“**PSB**”) will be Representative Office’s registration authority. The identity of the business supervisory authority will depend on the specific activities to be carried out by Representative Office. There are dozens of business supervisory authorities listed in the Activities Catalogue.

In our experience, some PSB officers will help facilitate and make introduction to the business supervisory authority once they are satisfied with Representative Office’s initial application documents.

After obtaining approval from the business supervisory authority, an Overseas NGO must then apply to the registration authority of PSB for the registration of a Representative Office within 30 days. The PRC NGO Law specifies the application materials that are to be submitted and the time limit (i.e. 60 days) for examination of these application materials. However, it should be noted the said 60 days do not include the time to approach and discuss with PSB, prepare application documents including the notarization work and complete the execution, and meet other requirements.

In our experience, it will take 6-12 months to complete the Representative Office registration.

## What options do Overseas NGOs have? (cont.)

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### II. Approval for Temporary Activities

Generally, Overseas NGO is not permitted to conduct any activities in mainland China prior to the formal registration of Representative Office. However, PRC NGO Law also provides a temporary permit for the Overseas NGOs which are not willing to establish a Representative Office in China.

According to PRC NGO Law, Overseas NGO may carry out “temporary activities” in cooperation with Chinese government offices, non-government organizations, public institutions, or social organizations (“**Chinese Cooperative Partners**”)[1]. Notably, neither commercial enterprises nor individuals are included in the said scope of Chinese Cooperative Partners.

In practice, the Overseas NGO should first find a Chinese Cooperative Partner, which agrees to assist Overseas NGO in carrying out temporary activities and help with relevant formalities with competent authorities. Pursuant to Article 17 of PRC NGO Law, within fifteen days before carrying out the temporary activities, the Chinese Cooperative Partner should complete approval formalities in accordance with PRC NGO law and finish the record-filing procedures with competent PSB.

The recorded information must include the following:

1. Supporting documents and materials that the Overseas NGO is established legitimately;
2. the written agreement between the Overseas NGO and the Chinese Cooperative Partner;
3. the relevant materials such as the name, objectives, geographic area and duration etc. of the temporary activities;
4. proof materials for project funding and source of funds, and the bank account of the Chinese Cooperative Partner;
5. proof document that the Chinese Cooperative Partner has obtained approval; and
6. any other documents and materials stipulated by laws and administrative regulations.

[1] Article 16 of PRC NGO Law.

## What options do Overseas NGOs have? (cont.)

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There is also a time limit for the recorded temporary activities. PRC NGO Law provides the time limit for the recorded temporary activities must not exceed 1 year. Where it is necessary to extend the said period, a new record filing should be made.

Furthermore, PSB has right to order the Chinese Cooperative Partner to stop the temporary activities if it considers the activities has the following situations:

1. violate laws;
2. endanger national unity, security, or ethnic unity;
3. harm national interests, societal public interest or others' lawful rights and interests;
4. involve the operation or funding of for-profit or political events; or
5. constitute illegal activities involving the operation or funding of religious activities [2].



Compared to registering a Representative Office in China, submitting documents for temporary activities are relatively straightforward, documents related to the domicile and the chief representative are not required to prepare under this option. In addition, it is generally easier to find a Chinese Cooperative Partner rather than a business supervisory authority.

However, in practice we understand it is not as easy as described in the PRC NGO Law to file for temporary activities. Many Chinese Cooperative Partners are reluctant to cooperate with Overseas NGO due to additional administrative burden and political concern. Furthermore, a Representative Office gives the Overseas NGO far more protection regarding intellectual property rights, tax treatment, staffing, finance, and other operational factors in China.

[2] Article 5 of PRC NGO Law.

## What options do Overseas NGOs have? (cont.)

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### III. Commercial Entity

Some NGOs active in the Chinese market have established a consulting company – normally, in the form of a wholly foreign-owned enterprise – to carry out their activities. This entity would have a general consulting business scope by including “business consulting” or similar wording, host the marketing website, and conduct basic marketing and after sales support activities. It would also invoice directly in RMB. However, such entity would not be compliant as the PRC NGO Law specifically states that any foreign non-government non-for-profit organization **must** establish a Representative Office in China and Overseas NGOs are prohibited from covertly entrusting or financing any organization, individual or agent from carrying out activities on its behalf if Overseas NGO itself is not registered or has not filed a temporary activity permit. Some trade promotion bodies have a bolt on trading WFOE to help facilitate the import of products into China. Such trading WFOEs are simple and straightforward to establish with low investment costs.



## What are the sanctions for non-compliance?

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Activities in China could be suspended either temporarily or permanently. This is totally subject to the PSB's sole discretion.

In a worst case scenario, directly responsible personnel may be detained for a few days.

Another issue is the risk of being found as having a permanent establishment in China.

In addition to performing its responsibilities as registration authority, the PSB are also responsible for taking measures against any non-compliant activities by Overseas NGOs and their Representative Offices[3]. The investigatory and punishment measures available to the PSB include but are not limited to the following:

1. interviewing and questioning the responsible personnel of Overseas NGOs' Representative Office;
2. examining and sealing materials;
3. accessing Overseas NGOs' offices and activity places within China;
4. sealing and seizing places, facilities or assets involved in law-breaking activities; revoking registration certificates; prohibiting temporary activities; and
5. warning or detaining directly responsible personnel[4].

As to foreign personnel who violate the provisions of the PRC NGO Law, they can be subject to measures of the relevant authorities including being ordered to leave the territory of China within a specific period (i.e. being deported or expelled [5]).

[3] Article 41 of PRC NGO Law.

[4] Article 42, Article 45 to Article 47 of PRC NGO Law.

[5] Article 50 of PRC NGO Law.



## Five-year prohibition period and “Unwelcome List”

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In the event that the activities of an Overseas NGO seriously violate the PRC NGO Law, including carrying out activities within China in a way not specifically permitted under PRC law, or if a Representative Office is ordered to de-register or has its registration certificate revoked, or if the Overseas NGO is ordered to stop any temporary activities, the Overseas NGO may face the consequence of not being permitted to register a Representative Office or carry out temporary activities in China for five years<sup>[6]</sup>.

As to Overseas NGOs falling into one of the circumstances listed in Article 47 of the PRC NGO Law, the PSB can include it in the “Unwelcome List” and prohibit it from registering a Representative Office or carrying out temporary activities within China indefinitely<sup>[7]</sup>.

The activities prohibited by Article 47 of PRC NGO Law include: inciting resistance to the implementation of laws; illegally obtaining state secrets; creating rumors, engaging in defamation, or the publication or dissemination of other harmful information that endangers state security or damages the national interest; engaging in or funding political activities; or illegally engaging in or funding religious activities; and other situations that endanger state security or damage the national or public interest.

## Summary

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Foreign NGOs have become a more established part of the China economic and social landscape.

By some counts there are some 7,000 foreign NGOs operating in China<sup>[8]</sup> in some form or another – official or under the radar. However, most commentators believe there are some 500 to 700 foreign NGOs registered officially as Representative Offices in China and many more engaging in temporary activities.

Many of these registered foreign NGOs are trade promotion bodies or guild like organizations. These tend to be far less controversial organizations than NGOs dedicated to political or social issues. In our experience, the Chinese authorities have been even handed in dealing with these entities provided the Overseas NGOs have agreed to bring their operations in line with the legal requirements.

<sup>[6]</sup> Article 48 of PRC NGO Law.

<sup>[7]</sup> Article 48 of PRC NGO Law.

<sup>[8]</sup> <https://www.scmp.com/news/china/policies-politics/article/2097923/why-foreign-ngos-are-struggling-new-chinese-law>



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