

China Legal Briefing* 250

July 2015



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1. Draft of new Foreign NGO Law Open for Public Commenting

With the exception of foundations, so called Non-Governmental Organizations or NGOs are not able register their offices with the Chinese authorities because the country lacks of laws governing the presence and the operation of foreign NGOs. This situation forces many NGOs to operate in a legal grey area, for example by setting up profit making enterprises to be able to conduct any activities in China at all.

Now, a solution to this problem is in sight. On May 13, 2015, the National People's Congress released the second draft of the *Foreign NGO Management Law (Foreign NGO Law)*, which is now open for public commenting. This new law, when it comes into force, will be applicable to all non-profit and non-governmental social organizations from outside of mainland China that carry out activities in mainland China and will provide two possible ways for them to legally conduct activities in China:

1. By setting up a Representative Office

NGOs registered in foreign countries and having been operating overseas for at least two years will be eligible for setting up a Representative Office (Rep Office) in China. To do so, they will, in a first step, need to obtain an approval from the Chinese Professional Supervisory Unit responsible for their specific activity. The substantive requirements for obtaining such an approval are not yet defined but it is almost certain that the scope of activity of an NGO will be screened and that an approval will only be handed out if the activity is not deemed to be contrary to the interests and the overall policies of the government. This in mind, NGOs that focus on topics such as environmental protection, sports or the welfare of children will be welcome in China while NGOs with a more politically controversial focus will certainly not be admitted. Once the approval has been obtained, the NGO may file for registration with the local Public Security Bureau, which will issue a Registration Certificate. The Registration Certificate will be valid for a (renewable) maximum period of five years and allow the NGO to set up a Rep Office in China.

2. By obtaining a Temporary Activity Approval

The second option for an NGO to legally carry out an activity in China will be to cooperate with a Chinese partner. This partner may be a state organ, a public institution or a social organization. As is the case for the Rep Office, the NGO will also have to obtain a prior approval from the Professional Supervisory Unit and can then apply for a so called Temporary Activity Approval with the Public Security Bureau. This option is only open for cooperations that last a maximum of one year.

NGOs that conduct their activities in China illegally, namely without setting up a Rep Office or without obtaining a Temporary Activity Approval, will be subject to heavy penalties: Their property and financial gains may be confiscated, they may be fined with up to RMB 50'000

and the responsible persons may face up to five days of detention. In lighter cases however, they may also get away with a simple warning.

Multiple Supervision Authorities

Both, the Professional Supervisory Unit and the Public Security Bureau will be charged with the supervision of the foreign NGOs. Besides these authorities, it is to be expected that other governmental entities, such as the Ministry of National Security, the State Administration of Taxation, the General Administration of Customs or the Ministry of Foreign Affairs will be authorized to supervise the NGOs with regard to specific questions lying in their competence sphere.

However, the exact competences of the different supervisors are not yet clearly defined, though it seems that – very generally speaking – the Professional Supervisory Unit will give opinions while the Public Security Bureau will be responsible for taking measures. However it will turn out, it can already be predicted that the unclear division of competences will lead to administrative confusions, at least in the first few months or years of the law's implementation and until the proceedings between the multiple Chinese authorities have levelled off.

Restrictions on the Employment of Staff

A Rep Office will have to have a chief representative and may, in addition, have up to three representatives. Chinese employees or volunteers will have to be recruited through a local employment agency or other agencies designated by the Chinese government. Foreign staff must not make up more than 50% of a Rep Office's staff and foreign staff must exclusively work for one Rep Office only.

Restrictions on Funding

Foreign NGOs will not be allowed to acquire members within mainland China and they will also be barred from raising funds or accepting donations in mainland China. In fact, they will only be allowed to be funded from the sources outside of mainland China. In mainland China, their explicit funding possibilities will be restricted to getting interest payments from their banks.

Rep Offices will have to manage their assets through a bank account which will have to be registered with the Public Security Bureau. NGOs running temporary activities in China will have to use the bank account of their Chinese partners and document the use of the funds in an independent accounting book.

Conclusion

Critics of the new law have raised serious concerns due to the extremely broad and vague provisions and the very tight national security control underlying this Draft Foreign NGO Law. Although it remains to be seen how strict the law will be applied by the Chinese authorities, they will, in any case, screen foreign NGOs very carefully before allowing them to enter the country.

2. Draft Environmental Protection Tax Open for Public Commenting

On June 10, 2015, the Legislative Affairs Office of the State Council opened the long-awaited draft of the Environmental Protection Tax Law (EPT Law) for public commenting. This draft EPT Law was jointly drawn up by the Ministry of Finance, the State Administration of Taxation and the Ministry of Environmental Protection.

Up to now, enterprises and public institutions had to inform the Environmental Protection Bureau where and how they wanted to dump their waste, pay a fee and they were allowed to do so. Now, in a further step of the Chinese government's efforts to reduce the alarming environmental pollution that came along with the country's economic rise, this practice is supposed to end. A steering tax, introduced in the new EPT Law, will create an incentive to stop the dumping of waste on land or water by taxing this practice (so called direct discharge tax) whilst the so called indirect discharge of waste, namely through certified waste treatment plants, remains untaxed.

The tax will have to be paid by enterprises as well as public institutions that continue to dump their waste directly in the environment. However, there are some exemptions to this principle: large scale farmers will not be taxed because they already farm more environmental friendly than small farmers and also, so called mobile pollution, i.e. pollution from motor vehicles, locomotives, off-road mobile machinery, ships and aircrafts will be exempt from the tax.

The tax will be calculated based on the amount of waste that will be disposed of, whereby the waste is divided into four categories to which different rates apply. These four categories are: air pollutants, water pollutants, solid waste pollutants and noise pollutants (industrial or construction site noise). This could turn out to be quite pricy for enterprises that have been used to dump their waste anywhere in the environment for a small fee: The draft law proposes, for example, a rate of up to RMB 4 per kg of solid waste or RMB 4'400 per month for industrial noise that is 12 decibels above the local standard.

The local governments may reduce the tax by half if a taxpayer discharges less than 50% of the national or local discharge standards and if it does not exceed the pollutant total discharge control quota.

In the draft law, the lawmakers made it very clear that they are serious about this steering tax. The worst polluters are called by their names and actually listed in the draft law connected with a clear order to law enforcement officers to keep an eye on them. This list includes, among others, enterprises engaging in the industries of thermal power generation, steel, cement, aluminium electrolysis, coal, metallurgy, construction materials, mining, chemistry, petro chemistry, pharmaceuticals and textile.

3. Non-Administrative Licences abolished by the State Council

According to the current Chinese Administrative Licensing Law, a government license is required to carry out activities that, generally speaking, affect public or national safety, human health or environmental protection. Such activities include, for example, arms production, running a hospital or setting up a waste treatment plant.

Such licenses are handed out by the authorities to the applicant through an administrative procedure during which the authority reviews whether the applicant, who can be a natural or a legal person, meets the requirements for the specific activity he would like to carry out.

While different laws provide a legal basis for some of these licenses currently handed out by various Chinese authorities, there are 133 licenses that do not have a legal basis in a law but rather in internal governmental documents. The law may only list certain requirements for a right to be enjoyed, though does not explicitly stipulate that a license is required. The (additional) requirement of having to have a license is then introduced on the internal document level only.

Now, this practice is going to end. On May 4, 2015, the State Council issued the *Decision of the State Council to Abolish Certain Non-Administrative Licensing Items* (Guo Fa [2015] No. 27). By this act, the State Council abolished the category of non-administrative licences.

Among others, this affects the Double Tax Agreement between China and Switzerland because a non-administrative licence was required to enjoy the preferential tax. This will no longer be needed, making the process just a bit easier.

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