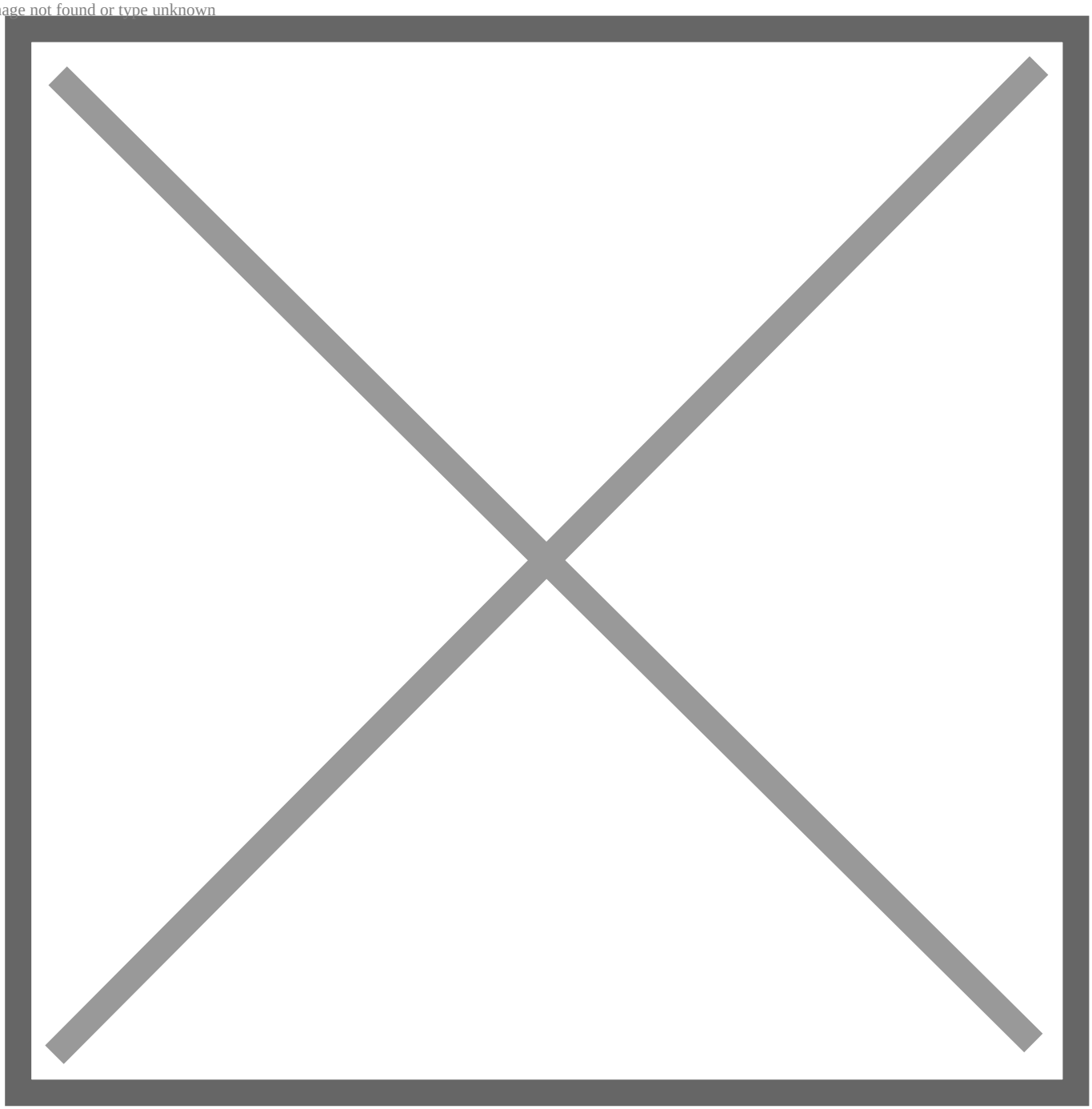
China's New Law on Overseas NGOs: What Will Change for Setting Up and Ensuring Smooth Operations

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There has been a lot of discussion in media in recent years about China's regulation of foreign Non-governmental Organisations (NGO), and starting January 1st 2017 a new Law on the Activities of Foreign NGOs will come into effect.

Adoption of this law has brought many questions and debates. This article highlights the key provisions regulating the setting up and operations.

The Law focuses on foreign/overseas NGOs and defines them as "non-profit making and non-government social organisations such as foundations, social organisations and think-tanks incorporated overseas". Some of the institutions mentioned in the definition, such as foreign foundations, have been so far regulated together with domestic foundations only on a level of regulation, which has lower legal force than law.

Foreign NGOs can carry out activities which are conducive to the development of public interest in areas such as the economy, education, science and technology, culture, health, sports and environmental protection, as well as providing financial assistance during disasters.

However, engaging in fund profit-making activities or political or funding religious activities illegally is prohibited. This sets out clearly the areas where foreign NGOs are or are not allowed to operate. They can be present in China in a form of representative office or in case of temporary activities, they can cooperate with a Chinese partner and the project needs to be filed.

The Law lists requirements for foreign NGOs to be able to set up representative offices in China such as existence for more than two years, ability to bear civil liability independently and purpose and scope of business conducive to the development of the public interest.

The process of setting up has two steps: approval and registration, which is similar to the current foreign investment system.

The registration authority is China's Public Security Bureau (PSB). When reviewing the application, the PSB can organise experts to perform assessments of the application situation as needed.

After successful registration, the representative office of the NGO will obtain a registration certificate which will contain, among others the scope of business and areas of activities. The representative office will afterwards apply for tax registration, seal or chop and open an account with a bank within the territory of China.

The Law pays quite a lot of attention to funding and the financial side of running an NGO representative office. Activities in China can only be funded from a lawful overseas source, interest on bank deposits within the territory of China and another funds obtained by legal means within the territory of China.

The above three ways of funding are the only ones permitted. Soliciting donations within China is forbidden. All funds shall be managed through the bank account filed by the representative office.

For temporary activities, the funds shall be managed through a bank account of the Chinese co-operator. So far it is not very clear who can act as that Chinese co-operator, the Law mentions it can be a Chinese state body organ, mass organisations, public institutions or social organisations.

The Law stresses that neither a foreign NGO or its Chinese co-operator, nor an individual may receive funds or make payments for project activities in whatever form through any channel other than the registered bank account. Financial statements shall be audited by a certified accounting firm.

As for the HR side, all employees working for the representative office shall be filed with the competent administrative department and the registration authorities for their records. Developing membership of foreign NGOs within China is prohibited.

The representative office shall submit a plan of activities for the following year including ways of project implementation and use of funds. At the end of the year it shall produce a report on its work of the previous year to the competent administrative department. Such a report, affixed with the opinions issued by the competent administrative department shall be submitted to the registration authorities for annual inspection. The report shall include audited financial/accounting statements, information of the activities carried out as well as changes in employees and organisational structure. The report shall be then made public on the website of the registration authorities.

It is clearly stipulated in the Law that no entity or individual may act as an agent of an overseas NGO without registration of representative office or filing temporary activities, nor can an entity or individual act as the agent in a disguised form by accepting the entrustment and funding by such overseas NGOs.

The section of the Law on convenient measures says that the state protects and supports overseas NGOs, and relevant departments at all levels shall provide those foreign NGOs who conduct activities by law with necessary convenience and services.

Respective authorities will develop a catalogue of the fields and projects for overseas NGOs and announce the directory of the competent administrative departments to provide overseas NGOs with guidelines for carrying out activities. Authorities will also provide the overseas NGOs with policy consulting and activity guidance services. Foreign NGOs are also entitled to tax incentives by law.

In case a public security organ, in its role as a supervisory and administrative authority for a foreign NGO, identities any act suspected of violating any provisions of the law, it may hold a talk with the chief representative and other persons in charge of the representative office, conduct on—site inspection, carry out an inquiry into the entities and individuals relating to the incident under investigation, consult or copy documents and materials, seal up the documents that are likely to be transferred, destroyed, concealed or altered, seal up or detain premises, facilities or property.

Public security organs may also query the bank accounts. The Law contains provision related to legal liability and measures which the competent authority can adopt in case of illegal activities, such as confiscating illegal earnings, issuing warnings, or in serious cases detaining the directly liable persons for 10 or 15 days in respective cases, filing criminal liability, revoking the registration certificate, banning activities and even deportation. Sanctions are also imposed to supervising

authorities for neglecting their duties or engaging in malpractice for private gains.

Overall the law is a complex regulation governing the setting up, operation, funding, legal liability, supervision and sanctions for breaching the Law, and provides authorities with a great power to act in case of activities that are in breach to this Law.

If you have any further questions, contact the EU SME Centre's legal team here.