

### **About this translation**

This is a CDB translation of a feedback report that contains the views and comments of a focus group that discussed the [second draft of the Overseas NGO Management Law](#). The focus group was convened by Professor Anthony Spires in May, and included Hong Kong-based non-profit organizations as well as Chinese scholars and government officials. The original document aims to provide Chinese policymakers with points for consideration as they contemplate further revisions to the proposed law. The Chinese-language original can be downloaded [here](#).

## **Feedback and Suggestions on the “Overseas NGO Management Law of the People’s Republic of China (Draft)” (Second reading)**

On April 20<sup>th</sup>, 2015 the second reading of the “Overseas NGO Management Law (Draft)” (referred to as “draft” below), initially drafted by the Ministry of Public Security, was held at the 14<sup>th</sup> meeting of the 12<sup>th</sup> National People’s Congress Standing Committee. Adhering to the basic principles of “regulating and guiding the activities of overseas NGOs in China, guaranteeing their legal rights and benefits, and promoting exchange and cooperation,” the draft is divided into nine sections that provide detailed regulations for the operations of overseas NGOs in China, namely general principles, representative offices, temporary activities, regulation of conduct, favorable policies, supervision and management, special regulations, legal responsibility, and supplementary provisions. In the future, the formulation and promulgation of this legislation will allow overseas NGOs conducting activities in China to rely fully on the law.

On May 5th, 2015 the National People’s Congress released the complete text of the draft on its official website ([www.npc.gov.cn](http://www.npc.gov.cn)), soliciting comments from the public. As the main targets of the direct oversight and regulation stipulated by this law, overseas NGOs have followed its formulation and promulgation, and have shown deep concern over the details of the draft. From the perspective of national lawmakers, going through a process of broad consultation and listening to comments and suggestions from all sectors of society can help make the legislation in question more complete and rational. In May of 2015, on the basis of a thorough and meticulous study of the draft, more than ten non-profit organizations (NPOs) from Hong Kong that run projects in mainland China organized an informal discussion of the details of the draft. Mainland legal experts from related fields were invited to participate in the discussion and to conduct investigations of and exchanges on a number of clauses and regulations from the draft, with the aim of providing constructive feedback on relevant sections.

Below is a summary of feedback selected from the Hong Kong NPOs’ informal discussion. Specifically, the feedback touches on 12 aspects of the law, including the scope of activities of overseas NGOs with operations in China, the Professional Supervisory Units, and establishing representative offices. The feedback report is formatted so that each of these aspects is paired to the relevant clause of the draft and followed by a list of questions and suggestions. The questions are raised in the hope that the law will be further clarified or provide further explanation, while the suggestions aim to propose revisions (workable suggestions for revisions were not yet available for all clauses). Finally, this feedback report proposes a number of general suggestions regarding the formulation and implementation of this law in the hope of contributing to the final revision and promulgation of this law.

## 1. Definition of “Overseas NGO”

Article 2. This law concerns overseas NGOs carrying out activities within China. “Overseas NGO” refers to non-profit, non-government social organizations that have been established outside China.

### Questions:

(1) NGOs in many countries and regions are allowed to register as businesses, but they are non-profit organizations in nature and enjoy tax-free policies. Are these organizations included as “Overseas NGOs” as defined by this law?

(2) Do “Overseas NGOs” include overseas foundations? If so, will provisions regarding overseas foundations in “Regulation on the Administration of Foundations” (基金会管理条例) still be applicable?

## 2. Working fields

Article 3. Overseas NGOs that work in fields such as economic, education, science and technology, health, culture, sports, environmental protection and charity may carry out activities that legally develop public welfare.

### Question:

Are poverty alleviation, disaster relief, public health, gender equality, NGO capacity-building and public policy research included in the working areas listed in Article 3?

### Suggestions:

(1) Include the above-mentioned areas since many Overseas NGOs work in those fields.

(2) Use more inclusive terms such as ‘non-profit work’, ‘philanthropic work’, or ‘social development’, to give NGOs more space to work when drafting the law.

(3) Or use an alternative method: list the areas forbidden by the law, and Overseas NGOs can work in all the areas except the ones that are listed.

## 3. Define “conduct activities”

Article 6. Overseas NGOs that conduct activities in China shall do so in the name of a legally registered representative office (代表机构). Unregistered representative offices that wish to conduct activities shall obtain a temporary activity permit (临时活动许可) in advance. It is prohibited for overseas NGOs that are unregistered or have not legally obtained a temporary activity permit to conduct activities within China, or commission domestic Chinese individuals, legal persons, or organizations to conduct activities within China.

### Question:

What does it mean by “conduct activities” in Article 6? For instance, NGOs usually need to carry

out a needs assessment and search for partners before officially carrying out their projects. Does it mean all these preparatory activities are illegal if the NGO hasn't registered or obtained a temporary activity permit?

**Suggestion:**

Define “activities” more clearly, for example change it to “project activities.”

#### **4. Professional Supervisory Unit (业务主管单位)**

Article 7. The relevant departments of the State Council and provincial level governments, as well as organizations authorized by the State Council or provincial level governments, are the Professional Supervisory Units of overseas NGOs conducting activities in China.

Article 11. Overseas NGOs that apply to establish a representative office shall have received the consent of a Professional Supervisory Unit.

**Questions:**

- (1) Lots of Overseas NGOs do comprehensive work, which covers multiple areas such as education, poverty alleviation, disaster relief and public health. How do these multi-field NGOs find their Professional Supervisory Unit?
- (2) What does “the consent of a Professional Supervisory Unit” mean in Article 11? Does it mean “administrative licensing (行政许可)” or just oral consent? How do NGOs apply for “the consent of a Professional Supervisory Unit”?
- (3) Most government agencies would refuse to serve as a Professional Supervisory Unit for Overseas NGOs if there aren't any incentives. If a large number of Overseas NGOs cannot find a Professional Supervisory Unit then they cannot acquire legal status. What happens then?

**Suggestions:**

- (1) Provide specific guidelines for multi-field Overseas NGOs to find their Professional Supervisory Units.
- (2) Provide a list of government agencies that can serve as Professional Supervisory Units. Can the Liaison Office of the Central People's Government, Constitutional and Mainland Affairs Bureau or even the Hong Kong and Macau governments serve as Professional Supervisory Units for Hong Kong NGOs?
- (3) Clarify the application process for Overseas NGOs to find a Professional Supervisory Unit, and make it more convenient for Overseas NGOs to apply and register by changing “the consent of a Professional Supervisory Unit” into a more specific administrative procedure.
- (4) Or change “the consent of a Professional Supervisory Unit” into centralized management by specialized departments (归口管理) after registration. In other words put Overseas NGOs under centralized management by specialized departments after giving them legal status.

## 5. Establish one representative office and branch office

Article 10 ... Overseas NGOs may only establish one representative office within China. The representative office of an overseas NGO shall operate activities using their registered name, and within the operational boundaries that have been approved.

Article 23 ... Unless otherwise regulated for by the State Council, overseas NGOs and their representative offices must not establish any branch office in China.

### Questions:

- (1) Lots of Overseas NGOs carry out their work in different regions of China by setting up work stations or program implementing sites. Do these stations and sites qualify as “branch office” in article 23.
- (2) Can an Overseas NGO set up more than two representative offices within China that are different in nature? For example alongside establishing a representative office providing direct services, can an Overseas NGO set up foundations or other non-profit social organizations such as schools or hospitals?
- (3) For Overseas NGOs without headquarters and registered separately in different countries or regions, can they set up different representative offices in China using different identities or are they only allowed to establish one representative office using one unified identity?

### Suggestions:

- (1) Clarify the term “branch office” and allow Overseas NGOs to set up program implementing offices/service offices/work stations in different regions of China. If this is not done then a large number of Overseas NGOs will face difficulties in carrying out their work.
- (2) To supervise program implementing offices/service offices/work stations set up by Overseas NGOs, the government can monitor their unified bank accounts or single out the chief representative as the subject of liability.
- (3) Set up clarification procedures before registration so that if an Overseas NGO (regardless if it is nationally registered or provincially registered) clarifies it will work in different regions of China when applying for registration, it can set up program implementing offices/service offices/work stations in those regions.

## 6. Status of a Legal Person

Article 13 ... The representative office of an overseas NGO does not have the status of a legal person.

### Question:

If the representative office of an Overseas NGO does not have the status of a legal person, how does it sign working agreements as a legal and independent entity to bid on projects or work with related Chinese organizations?

## 7. Annual activity plan

Article 24. The representative office of an overseas NGO shall submit an activity plan that details the projects that they intend to run and how they intend to use their funding in the coming year. This plan should be submitted to the Professional Supervisory Unit before November 30th every year. After the consent of a Professional Supervisory Unit, the representative office shall submit it to the registration management authorities for filing within 10 days....

### Questions:

- (1) Generally, the board of trustees of an Overseas NGO approves the organization's annual plan in March or April. It will therefore be difficult for an Overseas NGOs to submit their annual plan on November 30 since it's the time they are still drafting their plan for the coming year.
- (2) What does "the consent of a Professional Supervisory Unit" mean? Does it mean "administrative licensing (行政许可)" or just oral consent?
- (3) How detailed should the annual plan submitted to the registration management authorities for filing be?
- (4) The work that an Overseas NGO does can be unpredictable. For example, there might be extra work if a natural disaster occurs. Does the NGO have to be responsible for this kind of plan adjustment or associated extra work?

### Suggestions:

- (1) Adjust the time that Overseas NGOs have to submit their plans. For example, it can be changed to April, so that the timing would align with the approval period of Overseas NGOs' annual plans.
- (2) Clarify what "the consent of a Professional Supervisory Unit" means so that Overseas NGOs can better understand how to submit their annual plan for filing.
- (3) Provide samples of annual plans for reference in implementing rules and statutory interpretations of the law.

## 8. Submit a project description for filing

Article 24 ... Before overseas NGOs begin a project they shall submit for filing their registration documents, temporary activity permit, and a description of their project to municipal level and above (under which administrative districts are established) public security authorities who administrate the district in which the project will be carried out.

### Questions:

- (1) What does "project" mean? What's the difference between "project" and "activity" in this article? For example, do Overseas NGOs have to submit documents for filing if they are only going to organize a seminar or carry out a survey?
- (2) What does "submit for filing" mean? Does it mean that Overseas NGOs only have to report to the public security authorities that administer the district in which the project will be carried out? Or does it mean they will they have to acquire official authorization from those public security

authorities for approval of all of their activities?

(3) In the event of an emergency such as a natural disaster, should there be a contingency plan for Overseas NGOs to submit related documents for filing more quickly so that they can start their relief work as soon as possible?

## 9. About the use of funds for activities

Article 26. Funding for activities run by overseas NGOs in China include:

...

(3) Other money that has been lawfully acquired within China.

...

Unless otherwise approved by the State Council, overseas NGOs and their representative offices in China must not conduct fundraising activities or accept donations in China.

### Questions:

(1) If “other money” in article 26 does not refer to donations, then what does it refer to?

(2) If Chinese individuals or legal persons propose to donate to an Overseas NGO without any public fundraising attempts from the NGO, should the Overseas NGO refuse the donation?

(3) Does “money acquired within China” include: Money donated to Chinese bank accounts of Overseas NGOs by overseas individuals or legal persons; or Money donated to overseas bank accounts of overseas NGOs by individuals or legal persons within China?

### Suggestion:

Allow Overseas NGOs and their representative offices to receive donations on the condition that they don't obtain the money through public fundraising. In practice charitable donations can come in many different forms. For example, the benefactors of an Overseas NGO work may wish to give money or material donations to support the future operation of that organization.

## 10. Tax payment and benefits

Article 31. The representative office of an overseas NGO shall legally make a tax registration, tax declarations, and pay taxes.

Article 42. Overseas NGO representative offices shall enjoy tax benefits and other favorable policies in accordance with law.

### Question:

Are application for tax benefits and laws and regulations regarding tax payment of Overseas NGOs the same as those that apply to NGOs in China such as foundations?

## 11. Volunteers

Article 32. If the representative office of an overseas NGO wishes to recruit staff or volunteers in China, they shall commission a local foreign affairs service unit, or other unit as designated by the government, to carry out their employment matters

...

Overseas NGOs that conduct temporary activities in China must not directly recruit volunteers. If they do require volunteers they shall do so through their Chinese partner organization.

### Questions:

- (1) There are various types of volunteers, for instance, during natural disasters, Overseas NGOs might need volunteers to help them move disaster relief materials. Do they still have to ask their Chinese partners to recruit that type of volunteers?
- (2) When benefactors of an Overseas NGO's help that have established a long-term mutually trusting relationship with the organization, ask to volunteer for that organization, should the NGO refuse?

### Suggestions:

- (1) Divide volunteers into different categories: long-term volunteers should be recruited through Chinese partners whereas temporary volunteers, such as disaster relief volunteers, can be recruited more flexibly.
- (2) Give Overseas NGOs more autonomy for volunteer recruitment. For example, allow Overseas NGOs to recruit volunteers on their own as long as they provide information about it in the activity plans that they submit to their supervisory units, or allow overseas NGOs to recruit a limited number of volunteers.

## 12. Assistance from a Chinese partner

Article 21. Overseas NGOs may arrange for a Chinese partner organization to assist in dealing with the Professional Supervisory Unit and registration management authorities.

Article 38. Individuals, legal persons, and organizations in China must not be hired by, accept financial support from, or represent or covertly represent, overseas NGOs that have not legally registered a representative office or obtained a temporary activities permit.

### Questions:

- (1) Does article 21 apply to both those Overseas NGOs that are applying for a temporary activity permit and those that are applying to establish a representative office?
- (2) Overseas NGOs that have already been carrying out work in China will have already hired organizations to represent them. Should these organizations stop working immediately after the law is enforced, or will they be given a period of time to make adjustments?



**Suggestion:**

Since Overseas NGOs usually need assistance from Chinese organizations to register or to acquire temporary activity permits, we suggest Article 38 should not apply to activities related to Chinese organizations that help Overseas NGOs to register or acquire temporary activity permits.

**13. Other general suggestions**

(1) Standardize the procedures related to administrative actions by Professional Supervisory Units (such as consent to the registration of the representative office of an Overseas NGOs, consent to a temporary activity permit, and consent to annual activity plans), and clarify the power and responsibilities of relevant government agencies when taking the role of Professional Supervisory Units to safeguard the rights of Overseas NGOs.

(2) For Overseas NGOs that already operate in China, the law should give them some time to make adjustments, for example, give them a year or half a year to apply for registration, during which time the law does not apply to them. Otherwise the work that those NGOs have been doing in China will be illegal after the law is enacted.

(3) Expand the scale of public consultation and prolong the time period during which the public can submit their opinions about the law. The government should also take advice from Overseas NGOs in different nations and regions so that the law will be in line with the current situations of Overseas NGOs in China.

(4) Supplementary provisions of this law should be drafted in as much detail as possible in order to make future practices easier.

The above questions and constructive suggestions about the draft law are based on the opinions of dozens of Hong Kong NPOs working in different areas. Hopefully, the legislating authorities and relevant government agencies will take the advice and suggestions of all interested parties and stakeholders in order to make a final version of the law that is in line with the actual situations of organizations working in the field, and with an aim to make the work of NGOs in China easier and able to fully contribute to the development of the public welfare sector in mainland China.

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15<sup>th</sup> May 2015