

## **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

### **ASSESSING THE IMPACT OF CHINA'S FOREIGN NGO LAW**

On January 1, 2017, a new Chinese law will go into effect that has the potential to greatly impact the way that nonprofits conduct business in the country. In April, the National People's Congress of China approved "The Law on the Administration of Activities by Foreign Non-Governmental Organizations within the People's Republic of China," colloquially called the Foreign NGO Law, which will generally require new foreign-based nonprofit organizations to be vetted by Chinese police before they conduct any operations in China. While more details about the law are discussed below, U.S. based nonprofits will need to understand the law's restrictive policing provisions and reporting requirements before setting up a new nonprofit in China.

#### **I. Scope of the Foreign NGO Law**

The Foreign NGO Law applies to all new foreign Non-Governmental Organizations (NGOs) that want to do business in China on a permanent or temporary basis. At this point, it is unclear whether the law is retroactive, and the law does not address the issue of whether existing foreign NGOs in China can continue their operation as is, or if they will be subject to the Foreign NGO Law.

The law defines a foreign NGO as "a nonprofit and non-government social organization legally established outside of China." However, the law gives specific examples of groups that will be regulated, namely foundations, social groups, and think tanks. While associations are not directly addressed under this broad definition we see no reason to think that they would not be subject to this law and its requirements. Further the Foreign NGO Law provides a list of sectors in which foreign NGOs are welcome to engage, although they will be subject to the law's scrutiny: economics, education, science and technology, health, culture, sports, environmental protection, charity and disaster relief. Universities, hospitals, and scientific research organizations are exempt from the law's requirements.

#### **II. Process of the Foreign NGO Law**

The Foreign NGO Law requires any new foreign NGO to (1) either register as a legally registered representative office; or (2) make a filing for a temporary activity. Any foreign NGO that has not registered or made a filing is prohibited from conducting activities within China.

In order for a foreign NGO to file for permanent status, or as a legally registered representative office, the law requires that it have at least two years of operations outside China. Subsequently, the NGO must obtain prior approval from its Professional Supervisory Unit (i.e. a relevant department or unit of the State Council or a provincial government) and a registration certificate from the Public Security Bureau. The certificate will detail the business scope and territory of activities of the representative office.

If a foreign NGO would like to file for temporary activity, the foreign NGO must work with a Chinese partner who will handle the approval procedures and make a filing under current law. Any temporary activity cannot exceed one year, otherwise a new filing must be made. The Foreign NGO law does not define what a temporary activity is, but it could be assumed that a one time event or conference would count as a temporary activity that would trigger a filing with the proper authorities. Further, Article 46

describes one punishable offense as “Carrying out activities in the name of a foreign NGO representative office or foreign NGO that has not registered or filed” giving China a wide area to act on activities they deem covered by the Foreign NGO Law. In the case of a foreign NGO selling education or certificates, they would most likely have to register with a Chinese authority. Article 53 of the law contains special provisions that apply to foreign schools, hospitals, natural science and engineering technology research institutions or academic organizations carrying out exchanges or cooperation with mainland Chinese counterparts.

### **III. Potential Issues for U.S. Nonprofits**

1. New foreign NGOs that want to conduct business in China will now be subject to supervision by the Public Security Bureau, or Chinese police. This is a change from current law which provides that the Ministry of Civil Affairs supervises NGOs. This change to a police department is noteworthy as the law delegates broad power to the Public Security Bureau, such as: (1) the power to summon agents of the representative office of a foreign NGO to give them a “talking to,” (2) enter any foreign NGOs’ offices to conduct an on-site inspection, (3) question individuals, (4) review, copy, seal any documents, and (5) seal and/or take away any property, materials, or venues relating to the suspected illegal activity. The Public Security Bureau also will have the power to inquire into bank accounts and may freeze any bank accounts relating to the investigation of the foreign NGO.
2. Further, substantial reporting is now required by the new law. New foreign NGOs doing business in China will be required to report their annual activity plan for the following year, which must include information as to how funding will be expended.
3. Funding for activities conducted by foreign NGOs in China will now be limited to money legally raised outside of China, interest earned on deposits in China, and other money lawfully acquired within China. Further, a foreign NGO that is in China permanently has to manage its funds through a bank account registered with the Public Security Bureau and any foreign NGO conducting temporary activities in China must manage its funds through the bank account of its Chinese partner, and will be separately audited.

While the Foreign NGO Law is a big change from current Chinese law, questions about implementation remain as much of the law’s regulations and rules have yet to be written. A particular concern that needs to be determined is whether the law is just prospective, or retroactive, and applies to all foreign NGOs currently operating within China. Nevertheless, U.S. based NGOs should pay close attention in the coming months to the law’s implementation.

\* \* \*

David S. Lieberman | [dlieberman@wc-b.com](mailto:dlieberman@wc-b.com) | 202-785-9500

Andrew C. Dye | [andrewd@wc-b.com](mailto:andrewd@wc-b.com) | 202-785-9500

**Disclaimer:** This article is for informational purposes only and does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader.