



1. The Overseas NGO Law of China Took Effect

《中华人民共和国境外非政府组织境内活动管理法》正式生效

China's law on the Administration of Domestic Activities of Overseas Non-governmental Organizations (the Overseas NGO Law), which was passed by the Standing Committee of the NPC on April 28, 2016, became effective as of Jan 1, 2017. The Overseas NGO Law is the first state-level legislation governing overseas activities in China by non-governmental organizations (NGOs).

The Scope of Overseas NGO and Overseas NGOs' Activities in China

According to the Overseas NGO Law, overseas NGOs refer to foundations, social organizations, think-tanks, and other non-profit and non-governmental social organizations legally established overseas. It is also worth noting that the Overseas NGO Law excludes the cooperation between overseas and domestic schools, hospitals, natural science, and engineering technology research institutions and academic organizations from the scope of application of this law, and states that such cooperation shall be governed by the relevant regulations of the PRC, although such regulations are not yet in place.

Under the Overseas NGO Law, overseas NGOs may conduct activities conducive to public welfare undertakings in China, provided that these activities do not jeopardize China's national unity, security, and national solidarity, nor damage China's national interest, social public interests, and citizens' and entities' legitimate rights and interests. In addition, overseas NGOs are not allowed to engage in or fund profit-making activities, political events in China, or illegally engage in or fund religious activities in China.

Registration and Record-Filing

The Overseas NGO Law has set up a clear regulatory framework for overseas NGOs, under which there are two approaches for overseas NGOs to enter into China.

First, overseas NGOs shall carry out activities in China through their representative offices registered in China. Overseas NGOs shall register their representative offices by applying to the designated Public Security Authorities in China. More importantly, overseas NGOs are required to seek approval from the corresponding Chinese authorities that regulate the overseas NGOs' fields or industries before making applications to the Public Security Authorities. This approval is a prerequisite to the registration of overseas NGOs' offices.

Second, if an overseas NGO needs to carry out temporary activities (typically one-off events) in China without first establishing a representative office, it must coordinate with its Chinese partner which must be a governmental entity, mass organization, public institution, or social organization in China. The coordination shall be evidenced by a written agreement between the overseas NGO and its Chinese partner. The Chinese partner shall process filing for the temporary activities at the designated Public Security Authorities no later than 15 days prior to conducting them.

Guidelines Released Along With the Overseas NGO Law

In December 2016, the Ministry of Public Security released a guideline concerning the registration and filing process (the MPS Guideline) along with a list specifying the corresponding authorities entitled to regulate the fields or industries to which the overseas NGOs belong (the MPS List). The MPS Guideline provides detailed and clear guidance on what documents are needed for registering representative offices, passing annual inspection of representative offices, and filing temporary activities in the absence of a representative office. The MPS List makes it clear which Chinese authorities the overseas NGOs should get approval from before establishing representative offices. For example, if the American Bar Association wants to set up a representative office in China, it has to first obtain approval from the Ministry of Justice of PRC or its provincial branches which regulate the legal service industry in China.

- Law of the People's Republic of China on the Administration of Domestic Activities of Overseas Non-governmental Organizations
- 《中华人民共和国境外非政府组织境内活动管理法》
- Issuing authority: Standing Committee of the NPC
- Date of issuance: April 28, 2016
- Effective date: Jan. 1, 2017

2. New Work Permit Pilot Scheme for Foreigners Working in China

中国出台新的外国人工作许可试点制度

The State Administration of Foreign Experts Affairs (the SAFEA), which is responsible for retaining foreign talent in China and managing the employment matters of foreigners, promulgated the Implementation Plan for the Pilot Work Permit System for Foreigners Working in China (the New Work Permit Scheme) on Sept. 27, 2016. Ten provinces and municipalities including Beijing and Shanghai were the first to implement the New Work Permit Scheme in October 2016. The New Work Permit Scheme will become applicable nationwide in April 2017.

Below are some highlights of the New Work Permit Scheme:

Classification of Foreign Employees

Under the New Work Permit Scheme, foreign employees will be classified into Class A, Class B, or Class C based on their qualifications/merits or points evaluated by the local human resource authorities:

- > Class A permits are issued to high quality talents whom the Chinese government wishes to retain. To be included in Class A, a foreigner needs to score at least 85 points in his or her evaluation or reach certain criteria of excellence set by the SAFEA. The Chinese government does not impose any quota on work permits for Class A foreign employees.
- > Class B permits are issued to professional talents. Class B foreign employees should score at least 60 points in their evaluation or reach certain professional criteria set by the SAFEA. The Chinese government allocates and adjusts the quotas for the work permits to be granted to Class B foreign employees according to the market demand for foreign professionals in China.
- > Class C permits are issued to ordinary employees. Foreigners who do not satisfy the requirements of Class A or Class B but need to apply for work permits in China will be categorized as candidates for Class C. Based on the New Work Permit Scheme, Class C is primarily set aside for unskilled workers, seasonal workers, temporary employees, interns sent to China pursuant to inter-governmental agreements, etc. The Chinese government strictly controls the quota for work permits for Class C foreign employees.

Streamlined Application Process

The New Work Permit Scheme has made the application process for foreigner work permits more streamlined and user-friendly. According to the New Work Permit Scheme, Chinese employers who intend to employ foreigners shall file an online application first and submit written application materials later, after the online application has been pre-screened and approved. The human resource authority shall process the online application within five working days upon filing of the online application. In addition, the New Work Permit Scheme provides a number of document checklists for Chinese employers and foreign employees to apply for work permits and any renewal or alteration thereof, as well as the standard formats of application forms in both Chinese and English.

- Implementation Plan for the Pilot Work Permit System for Foreigners Working in China
- 《外国人来华工作许可制度试点实施方案》
- Issuing authority: State Administration of Foreign Experts Affairs
- Date of issuance: Sept. 27, 2016

3. SAIC Issues List of Matters Subject to Random Inspections

工商总局出台随机抽查事项清单

On Dec. 29, 2016, the State Administration for Industry and Commerce (the SAIC) issued the List of Matters Subject to Random Inspections by the SAIC (First edition) (the List). The issuance of the List is in response to the State Council's earlier notice dated May 23, 2016, calling for the establishment of an ex-post monitory system and development of lists of matters subject to random inspections. According to the SAIC, the List is not exhaustive and the local branches of SAIC may add more matters to the local versions of the list subject to random inspections based on their local practice and actual situation.

For each matter that is subject to random inspection, the List set out a description of the matter, the level of SAIC's local branches which are responsible for the inspection, the legal basis for the inspection, and the inspection criteria. The List covers 12 areas in which the SAIC and its local branches have been authorized to enforce the relevant laws and regulations. Below are the key inspection areas on the list:

- > Direct sale related illegal activities;
- > Product quality;
- > Infringement upon consumers' rights and interest;
- > Enterprise information publicity;
- > Enterprise registrations;
- > Enterprise annual reports;
- > Trademark related illegal activities.

All companies in China need to regularly deal with the SAIC or its local branches for a wide range of regulatory matters, from corporate registrations to product liabilities. As the List can also be viewed as a list of essential "dos and don'ts" for companies in China, it is important for them to review the List and use the items on the List applicable to them as indicators in their internal compliance assessments and routine self-examinations.

- List of Matters Subject to Random Inspections the State Administration for Industry and Commerce (First edition)
- 《工商总局随机抽查事项清单(第一版)》
- Issuing authority: State Administration for Industry and Commerce
- Date of issuance: Dec. 29, 2016

4. China Adopts its First Cyber Security Law

全国人大常委会通过网络安全法

On Nov. 7, 2016, the Standing Committee of the National People's Congress (NPC) passed China's first Cyber Security Law (CLS). The legislation is intended to safeguard China's "cyberspace sovereignty" and applies to activities of construction, operation, maintenance, and use of network within China. The law will take effect June 1, 2017.

China's preparation and promulgation of CLS received worldwide attention, with concerns from multinational enterprises and foreign governments that CLS may inhibit cross-border information exchange and even compromise consumer privacy. NPC responded to this concern during a press conference on Nov. 7 by assuring that the law was not intended to create trade barriers or restrict the import of foreign technology or products.

CLS sets up a series of new legal regimes regarding cyber activities:

- > CLS creates the concept of "critical information infrastructure" and defines it as "infrastructure in certain important industries and sectors like telecommunications, information service, energy, transportation, hydropower, finance, public service, and electronic government service, which, once compromised, may seriously endanger national security, national economy or public interests." CLS authorizes the State Council to promulgate the specific scope of such infrastructure. Notably, CLS has set forth obligations of the operators of such critical information infrastructure: (i) the operators' purchase of network product and service, if likely to affect national security, shall pass review of the State Council; (ii) the operator shall store in China the personal information and key data that are collected and generated within China; (iii) the operator shall conduct an annual assessment regarding the safety and potential risk of the infrastructure and report the result to the government.
- > CLS requires that all network operators shall comply with a cyber security classified protection scheme (the CCPS), requiring network operators to take protective measures including keeping a record of all network activity for at least six months. In 2007, the Ministry of Public Security, together with other government agencies, implemented a multi-level protection scheme for information technology systems. This scheme classified all information systems into five categories (with class V as the most critical, that if compromised, national security will be seriously damaged), and setting forth specific duties for system operators to safeguard information and to report incidents of threats and attacks. The CCPS is considered an enhanced version of the existing multi-level protection scheme.
- > CLS imposes a mandatory certification regime for all critical network equipment and network security products. CLS authorizes the national network security department to publish a catalogue of such products, and requires that all such products must pass a security check and get certified by licensed vendors before being sold on the market.
- > CLS sets up stricter obligations on network operators regarding protection of personal information. In addition to requiring all network operators to obtain consent from individuals before collection of any personal information, the law prohibits operators from collecting information not relevant to the services provided, or providing such information to others except when consent from the individual is obtained or when such information has been processed such that no certain individual will be identified. In addition, CLS grants individuals a right to require network operators to erase his or her personal information if any misuse is discovered.

Before CLS takes effect June 2017, China is expected to publish a series of new implementing regulations and industry standards regarding the new regimes mentioned above. The real impact of CLS can be more effectively assessed at that time.

- Cyber Security Law
网络安全法
- Issuing authority: National People's Congress
- Date of issuance: Nov. 7, 2016
- Effective date: June 1, 2017

5. China's Top Legislature Enacts the General Provisions of Civil Law

全国人大审议通过《民法总则》

On March 15, 2017, the PRC General Provisions of Civil Law (the General Provisions) were formally adopted by the National People's Congress (NPC). Previously, drafts of the General Provisions were submitted to NPC for three readings in June, October, and December of 2016, respectively. The General Provisions are considered the first step in the compilation of China's first comprehensive civil code. The codification, according to a legislative proposal published by NPC in July 2016, will be completed in March 2020.

Background

China adopted the General Principles of Civil Law (the General Principles) effective since Jan. 1, 1987. The General Principles laid down the basic framework for all future civil and commercial laws of China, stipulating the ground rules regarding citizens (natural persons), legal persons (including enterprise legal persons), agencies, contracts, property rights, civil liabilities, and statutes of limitation. Since then, China has enacted separate civil statutes including, inter alia, the Contract Law, Property Law, Tort Liability Law, and the Law of the Application of Law for Foreign-Related Civil Relations. In March 2015, NPC initiated a two-step campaign to integrate China's existing statutes into one comprehensive civil code, and the first step is to legislate the general provisions of the code to replace the General Principles.

Important Features of the General Provisions

The General Provisions is based on the General Principles, with certain important changes as follows:

- > The General Provisions classifies legal persons into three categories: for-profit legal persons, not-for-profit legal persons, and special legal persons. The General Provisions clarifies that when terminated, not-for-profit legal persons, including social organizations, foundations, and public institutions providing social services, are prohibited from making distributions to its members or initiators, and the remaining assets of such legal persons after liquidation must be used for "public interest" pursuant to its charter document or the decision of its governing authority.
- > The General Provisions clarifies that entities like sole proprietorships, partnerships, and branches of legal persons lack the status of an independent legal person, and, unless otherwise stipulated by the law, the members or investors shall assume unlimited liability for the debt of such entities. Notably, the General Provisions recognizes the non-legal-person entities' right to use their own names in civil activities (including litigation).

- > The General Provisions, for the first time, recognizes “virtual assets” as a type of property protected by the law. The legislature deemed the change to be a response to the call of the “era of Internet and big data.” Despite that the meaning of such “virtual assets” is not clarified under the General Provisions, comments have already been made that the change imparts legitimacy towards various digital assets, including Bitcoins.
 - > The General Provisions extends the statute of limitation for civil claims from 2 years to 3 years and the extended term may apply to all general tort and contractual claims. The legislature has attributed the change to the increasingly complicated transactions that have occurred in recent years. The General Provisions also clarifies that any waiver of the statute of limitation defense in advance is invalid and unenforceable.
 - > The General Provisions provides that personal information of natural persons is protected by law and where any organization or individual needs to obtain someone else's personal information, they must obtain it in accordance with law and ensure information security. Further, personal information must not be collected, used, processed, transferred, bought, or sold in an unlawful manner.
- General Provisions of Civil Law
 - 中华人民共和国民法总则
 - Issuing authority: National People’s Congress
 - Date of issuance: March 15, 2017
 - Effective date: N/A

6. China Publishes the Draft E-commerce Law for Public Comment

电子商务法（草案）征求意见稿发布

On Dec. 27, 2016, the Standing Committee of the National People’s Congress issued the Draft E-commerce Law of the People’s Republic of China (the Draft) for public comment. As a top-down lawmaking effort to regulate the booming e-commerce market in China, the Draft lays out both a general framework and guidance for market players.

1. Definition of E-commerce and Operators

The Draft applies to e-commerce activities that occur within China or involve operators or customers within China. E-commerce is defined under the Draft as the operational activities of trading goods or services through the Internet and other information networks. The Draft classifies e-commerce operating entities, *i.e.*, the operators, into two categories: third-party e-commerce platform operators (Platform) and other e-commerce operators. The Platform is defined as those who provide webpage space, virtual business site, transaction intermediation service, and information publication for other e-commerce operators.

2. Duties of Platform Operators

2.1 Special Duties applicable to Platform Operators

The Draft retains a separate section outlining duties that are exclusively applicable to Platform operators. For example, the Platform operators shall examine and supervise activities of participating vendors (*i.e.*, vendors who trade on the platform) and their duties include reviewing and registering the background information of vendors and sanctioning those vendors committing illegal activities by giving a warning letter, suspending, or terminating the platform service pursuant to the service agreement and the transaction rules of the Platform. In addition, if the Platform also conducts “self-operated businesses,” *i.e.*, trading goods or services that are purchased by itself, the Platform shall distinguish in a conspicuous manner those self-operated businesses and other participating vendors in order to not mislead customers.

2.2 Duties regarding Protection of Personal Data

The Draft emphasizes the importance of personal data protection by setting forth the following obligations of operators:

- (i) The operators shall establish rules regarding collection and utilization of personal data and guarantee that such rules are accepted by users; in addition, any amendment to such rules must be pre-approved by its users.
- (ii) The operator shall promptly respond to any user’s request for information regarding the user; if the user submits a request to correct or supplement any personal data, the operator shall promptly update according to the request.
- (iii) If any statutory or contractual term of use expires, the operator shall delete, cease using, or destroy relevant personal data.
- (iv) If exchanging shared personal data with others, the operators shall take necessary steps to ensure the data cannot be used to identify any specific person or his or her terminal device and that the data cannot be recoverable.
- (v) Where the operator fails its obligation regarding personal data protection, the government authority may issue a sanction up to revocation of its business license.
- (vi) With regard to cross-border activities, the Draft does not stipulate any specific obligation; instead, the Draft authorizes the state to establish a mechanism for storage, exchange, and protection of data in cross-border transactions.

2.3 Duties regarding IP Protection and Fair Competition

The Draft also emphasizes the importance of creating an orderly market with fair competition. The Draft addresses the issue from the following two perspectives:

- (i) The Draft specifies certain duties of operators regarding IP protection. All operators shall establish rules regarding IP protection. Only Platform operators are obligated to take remedial steps including deletion, blocking, disconnecting, or terminating service if the Platform becomes aware of any IP infringement committed by the participating vendors. The Draft imposes a “messenger” duty upon the Platform operators regarding IP disputes against the vendors trading on its platform: when the Platform receives a complaint of IP infringement from the IP owner, the Platform shall promptly forward the complaint to the vendor concerned, and if the vendor makes an undertaking of non-infringement to the Platform, the Platform shall forward the undertaking to the IP owner and promptly cease the remedial actions against the vendors.
- (ii) The Draft expressly prohibits certain activities that impair fair competition or the credit of other businesses, including: (a) use of business marks that are identical to or similar to another business’ well-known marks including their websites, domain names, and webpages because it is misleading to the public and confusing to the market; (b) use of electronic marks of government agencies or social organizations that is misleading to others; (c) inflating the reputation of itself or others by fabricating transactions, deleting negative comments, trading favorable comments by offering payment or other conditions; (d) damaging the reputation of others through malicious comments inconsistent with fact; (e) harassing, threatening, or forcing any counterparty to make, modify, or delete comments regarding the goods or services received; (f) tampering with or selectively disclosing the credit evaluation records of an operator.

3. Customer’s Right to Cancel an Electronic Contract

The Draft clarifies that a customer may cancel an electronic contract that is made through an automated transaction system when the customer makes an “input” mistake if the following conditions are satisfied:

(i) the automated transaction system does not provide a solution to correct the input mistake; (ii) the customer has immediately notified the counterparty that an input mistake occurs; and (iii) the customer has not received substantial benefit or items of value from the counterparty. However, the Draft does not specify the meaning of “automated transaction system,” or what an “input” mistake may cover.

The Draft will be open for public comment until Jan. 26, 2017.

- The E-commerce Law of the People's Republic of China (Draft)
- 中华人民共和国电子商务法（草案）
- Issuing Authority: the Standing Committee of the National People’s Congress
- Date of Issuance: Dec. 27, 2016 / Deadline for Comment: Jan. 26, 2017

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