

NGO 法律热点问题

《中华人民共和国境外非政府组织境内活动管理法》简评

长期以来，中国并无规范和引导境外非政府组织（下称“**境外 NGO**”）在境内活动的专门立法。由此导致境外 NGO 法律地位不稳定，无法开展正常的合作和交流。《中华人民共和国境外非政府组织境内活动管理法》（下称“**《管理法》**”）自 2015 年 4 月开始向社会公开征求意见，历经一年时间，于 2016 年 4 月 28 日经第十二届全国人民代表大会常务委员会第二十次会议通过，并将于 2017 年 1 月 1 日起实施。《管理法》共计七章 54 条，系统地规定了境外 NGO 在境内开展活动的管理制度及法律责任。以下我们将对《管理法》的主要内容及《管理法》对境外 NGO 在中国发展的影响做简要分析。

一. **《管理法》的主要内容**

1. **境外 NGO 范围和活动领域**

(1) 境外 NGO 范围

根据《管理法》规定，境外 NGO 是指在境外合法成立的基金会、社会团体、智库机构等非营利、非政府的社会组织。定义排除了境外学校、医院、自然科学和工程技术的研究机构或者学术组织，对于该等组织与境内学校、医院、自然科学和工程技术的研究机构或者学术组织开展的交流合作，规定按照国家有关规定办理。

(2) 活动领域

根据《管理法》规定，境外 NGO 在中国的活动领域仅限于在公益事业领域，包括经济、教育、科技、文化、卫生、体育、环保等领域和济困、救灾等方面。

2. **登记和备案**

《管理法》明确了境外 NGO 在华开展活动的两种方式：经登记设立代表机构、或经依法备案开展临时活动。

(1) 代表机构设立登记

申请设立代表机构的境外 NGO 需满足以下条件：在境外合法成立、能够独立承担民事责任、章程规定的宗旨和业务范围有利于公益事业发展、在境外存续二年以上并实质性开展活动等。

境外 NGO 设立代表机构登记需先取得业务主管单位的同意，业务主管单位为国务院/省级人民政府的有关部门和单位。登记管理部门为公安机关。

(2) 临时活动备案

未设立代表机构的境外 NGO 直接在中国境内开展临时活动应当与中方合作单位（中国国家机关、

人民团体、事业单位、社会组织)合作进行,由中方合作单位负责办理审批手续,并在开展临时活动十五日前向其所在地的公安机关备案(在赈灾、救援等紧急情况下,备案时间不受提前十五日规定的限制);临时活动期限不超过一年,确实需要延长期限的,应当重新备案。

3. 境外 NGO 境内活动规范

《管理法》主要从以下几方面对境外 NGO 在境内的活动作出了规定:

(1) 年度活动计划备案及工作报告年检

《管理法》要求,境外 NGO 代表机构应当于每年 12 月 31 日前将下一年度活动计划报业务主管单位审查,之后报公安机关备案;并在每年 1 月 31 日前向业务主管单位报送上一年度工作报告,经业务主管单位出具意见后,于 3 月 31 日前报送公安机关,接受年度检查。

(2) 活动资金来源

境外 NGO 在境内活动的资金包括境外合法来源的资金、中国境内的银行存款利息及中国境内合法取得的其他资金,不得在中国境内进行募捐。

(3) 资金收付账户

设立代表机构的境外 NGO 应当通过在公安机关备案的银行账户管理用于中国境内的资金;开展临时活动的境外 NGO 应当通过其中方合作单位的银行账户管理用于中国境内的资金,并实行单独记账,专款专用。

(4) 会计、审计、税务、外汇、人事

《管理法》要求,境外 NGO 代表机构应当执行中国统一的会计制度,聘请具有中国会计从业资格的会计人员依法进行会计核算;其财务会计报告应当经中国境内会计师事务所审计;应依法办理税务登记、纳税申报和税款缴纳等事项;按照中国有关外汇管理的规定办理外汇收支;聘用的工作人员信息需报业务主管单位和公安机关备案。

(5) 不得发展会员

近年来,有“离岸社团”,“山寨社团”以发展会员、收取会费为手段在境内敛财,极少数的组织借社团之名从事危害国家安全、利益的活动。¹此次《管理法》明确,境外 NGO 代表机构、开展临时活动的境外 NGO 不得在中国境内发展会员。

但考虑到原来一些境外自然科学的学会曾在中国发展过会员,中国的专家、学者、科学家加入了该学会,因此《管理法》规定境外 NGO 不得在境内发展会员,但国务院另有规定的除外。²

(6) 不得设立分支机构

由于《管理法》允许境外 NGO 在境内设立代表机构,因此立法者认为境外 NGO 没有必要在境内设立分支机构。考虑到原来有一些国外的自然科学的学术机构、学术单位曾经在中国设立分会,《管理法》规定境外 NGO 不得在境内设立分支机构,但国务院另有规定的除外。³

(7) 活动限制

¹ 据中国社会组织网公告,截至 2016 年 4 月 27 日,已有 5 批,共计 427 家“离岸社团”、“山寨社团”被曝光。

² 见全国人大常委会法工委社会法室巡视员郭林茂答记者问, [http://npc.people.com.cn/n1/2016/0428/c14576-](http://npc.people.com.cn/n1/2016/0428/c14576-28312708.html)

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³ 见全国人大常委会法工委社会法室巡视员郭林茂答记者问, <http://npc.people.com.cn/n1/2016/0428/c14576-28312708.html>

《管理法》规定，境外 NGO 在中国境内不得从事或者资助营利性活动、政治活动，不得非法从事或者资助宗教活动，不得危害中国的国家统一、安全和民族团结，不得损害中国国家利益、社会公共利益和公民、法人以及其他组织的合法权益。

4. 监督管理

《管理法》对境外 NGO 在华活动实施多重管理：

(1) 公安机关负责境外 NGO 代表机构的登记、年检、临时活动的备案、违法行为的查处。

(2) 国家安全、外交外事、财政、金融监督管理、海关、税务、外国专家等部门按各自职责对境外 NGO 的活动进行监督管理。

(3) 业务主管单位负责对境外 NGO 设立代表机构、变更登记、年度工作报告提出意见，协助公安机关等部门查处境外 NGO 及其代表机构的违法行为。

(4) 国务院反洗钱行政主管部门对境外 NGO 代表机构、中方合作单位以及接受境外 NGO 资金的中国境内单位和个人遵守反洗钱和反恐怖主义融资规定的情况进行监督管理。

5. 法律责任

《管理法》规定对境外 NGO 违法行为的处罚包括警告、责令限期停止活动、没收非法财物和违法所得、吊销登记证书、取缔临时活动等；对直接

责任人员的处罚包括警告、拘留等。

《管理法》还特别规定，对于从事危害国家安全、国家利益等活动的境外 NGO，公安部门可以将其列入不受欢迎的名单，并禁止其在中国境内再设立代表机构或者开展临时活动。如境外人员违反《管理法》规定的，有关机关可以采取限期出境、遣送出境或者驱逐出境等处罚措施。

二. 《管理法》对境外 NGO 在中国发展的影响

1. 代表机构登记

在《管理法》出台之前，明确针对境外 NGO 登记的全国性规定只有《基金会管理条例》（下称“《基金会条例》”）和《外国商会管理暂行规定》（下称“《商会规定》”），但《基金会条例》仅适用于境外基金会在境内设立代表机构，《商会规定》仅适用于外国商业机构在境内设立的非营利性团体，对于其他形式存在的境外 NGO，并无专门的法律规定。⁴

受限于申请条件和主管部门的态度，境外 NGO 往往很难在民政部门取得民办非企业单位或者社会团体的设立登记。因此，实体登记问题成为众多在中国开展活动的境外 NGO 最关注且最难解决的问题。⁵受此影响，境外 NGO 在人员、税务、独立开展活动等方面，均受到一定的限制。

根据《管理法》规定，境外 NGO 在中国境内开展活动，只能通过两种方式，一种是经登记设立代表机构，一种是以备案的方式开展临时活动。

就设立代表机构而言，《管理法》明确了由公安

⁴ 国内部分省市曾出台过针对境外 NGO 的专门规定，但由于受到区域限制，无法形成规模效应。例如云南省 2009 年曾出台《云南省规范境外非政府组织活动暂行规定》，2015 年《北京市服务业扩大开放综合试点总体方案》规定“对境外科技、教育、经济类非政府组织在中关村设立代表机构，以及境外组织或个人发起设立科技、经济类民办

非企业单位进行试点登记，形成国内外社会组织协同创新、相互促进的良好环境，提升中关村的国际影响力和竞争力。”

⁵ 无法取得登记的境外 NGO，可能采取其他形式在境内活动，例如以境外公司的名义在境内设立代表处。

机关进行登记，而在此之前，境外基金会境内代表处、外国商会的设立登记均是民政部门负责⁶。因此，《管理法》出台后，公安部境外非政府组织管理办公室负责人郝云宏在答记者问中说明，“对已经在民政、工商部门登记的境外非政府组织，要有一套过渡的办法，使他们衔接到新的法律当中”。可预计在《管理法》正式实施（2017年1月1日）之前，相关部门将会对境外 NGO 登记过渡问题出具具体实施意见。

2. 业务主管单位和活动领域目录

在《管理法》出台之前，针对境外 NGO 业务主管单位及活动领域的规定几乎是空白。尽管《基金会条例》规定境外基金会代表机构的设立应取得业务主管单位的同意，业务主管单位对于境外基金会代表机构的活动、财务等均有一定的管理权，但众多境外 NGO 却并不了解哪个机构为其“业务主管单位”。同时，境外 NGO 的活动领域由于缺少专门的规定，使其活动的合法性存在先天缺陷。

根据《管理法》规定，公安部门将制定境外 NGO 活动领域和项目目录，公布业务主管单位名录。因此，《管理法》的出台进一步规范了目前境外 NGO 在中国活动和管理的无序状态，有利于境外 NGO 依法在中国开展活动。但也应注意由于相关目录并未出台，并不排除公安部门会扩大境外 NGO 不得进行活动的“禁区”，限制境外 NGO 的活动领域。同时，如果业务主管单位无法尽快针对应归其管理的境外 NGO 出台具体的监管规定，将不利于境外 NGO 迅速依法开展活动。

⁶ 国务院也曾在 2014 年发布《国务院关于授权国务院民政部门负责境外非政府组织在中国境内活动登记管理工作的通知》（国发〔2014〕36 号），授权民政部门为境外 NGO 在境内的登记管理部门。

⁷ 见 2016 年 1 月 11 日君合专题研究报告《外国慈善基金会中国代表处

3. 接受捐赠管理收紧

在《管理法》出台之前，针对境外 NGO 在中国组织募捐、接受捐赠的规定见于《基金会条例》第二十五条：“境外基金会代表机构不得在中国境内组织募捐、接受捐赠”。究其原因，是因为“从监管者的角度出发，中国允许外国慈善基金会在境内设立代表处的目的在于利用境外资金在境内从事慈善活动，如果中国代表处接受了境内的捐赠，则民政部会认定该外国慈善基金会没有在境内开展活动的经济能力，因而其中国代表处也没有必要继续存续，民政部有权责令其关闭。”⁷

尽管有上述规定，境外 NGO 出于在中国开展活动的目的，往往采取一些曲线救国的方式，例如与境内基金会合作共同发起项目接受捐赠，或者与境外 NGO 总部、捐赠人签署三方协议接受捐赠，或者由捐赠人定向捐助特定项目等。⁸这些方式尽管存在一定的违规风险，但实践中却大量存在。

《管理法》出台后，再次明确了境外 NGO 在中国境内不得进行募捐，其在中国境内开展活动的资金来源仅限于：境外合法来源的资金（主要为境外 NGO 直接拨款）、境内银行存款利息、境内合法取得的其他资金。

为了监管境外 NGO 的资金使用，《管理法》强调了账户管理，即设立代表机构的境外 NGO 其银行账户应在公安机关备案，开展临时活动的境外 NGO 只能通过其中方合作单位的银行账户进行活动，且应专款专用，除此之外，境外 NGO、中方合作单位、个人不得以任何形式在中国境内进行项目

在境内接受捐赠可行性研究》。

⁸ 见 2016 年 1 月 11 日君合专题研究报告《外国慈善基金会中国代表处在境内接受捐赠可行性研究》。

活动资金的收付。同时,《管理法》规定,境内任何单位和个人不得接受未登记代表机构、开展临时活动未经备案的境外 NGO 的委托、资助,代理或者变相代理境外 NGO 在中国境内开展活动。

从前述规定可以看出,主管部门对于之前存在的间接募捐方式应有所了解,因此制定了针对性的管理规定,杜绝了境外 NGO 境内进行募捐的途径。

除上述内容之外,《管理法》对境外 NGO 的业务活动管理、人员管理、财务管理等方面均有一定

的加强。

《管理法》作为我国第一部专门规范境外 NGO 境内活动的法律,填补了我国在该领域的立法空白。但由于《管理法》刚刚出台,内容比较原则,还有待主管部门制定具体的实施细则。但可以预见,《管理法》的出台是主管部门对境外 NGO 在中国多年活动实践的回应,将对境外 NGO 在境内的活动产生深刻影响,对此,我们将拭目以待。

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NGO

Brief Comments on the Law of the People's Republic of China on the Management of Activities of Overseas Non-Governmental Organizations within the Territory of China

For a long time, China has had no special legislation on regulating and guiding the activities of overseas non-governmental organizations ("**Overseas NGOs**") within the territory of China. This makes the legal status of Overseas NGOs unstable, affecting their normal cooperation and communication. One year after starting to solicit public comments in April 2015, the *Law of the People's Republic of China on the Management of Activities of Overseas Non-Governmental Organizations within the Territory of China* ("**Management Law**") was approved at the twentieth session of the Standing Committee of the twelfth National People's Congress on April 28, 2016 and will go into effect on January 1, 2017. The Management Law has seven chapters and 54 articles in total, which provides systematic rules for the management and the legal liabilities of Overseas NGOs operating in China. Below is a brief analysis of the *Management Law* and its impact on the development of Overseas NGOs

in China.

I. Main Content of the Management Law

1. Definition and Scope of Activities

(1) Definition of Overseas NGOs

Under the Management Law, Overseas NGOs are non-profit, non-governmental social organizations legitimately established overseas such as foundations, social groups, think tanks and so forth. Such a definition excludes overseas schools, hospitals, natural science and engineering technology institutes and academic associations. The communications and cooperation carried out by such organizations with domestic schools, hospitals, natural science and engineering technology institutes or academic associations shall follow other Chinese related regulations.

(2) Scope of Activities

Activities carried out by Overseas NGOs in China shall be limited to the areas of public welfare, including fields such as economy, education, technology, culture, health, sports, environmental protection and areas such as poverty alleviation and disaster relief.

2. Registration and Filing

The Management Law provides two methods for the Overseas NGOs to operate in China: (1) establishing and registering representative institutions in China, or (2) conducting temporary activities after filing.

(1) Registration of Representative Institutions

Overseas NGOs seeking to establish representative institutions shall satisfy key requirements, including but not limited to: being lawfully established overseas, capable of assuming civil liabilities independently, having a mission and scope of activities set out in a charter which are beneficial to the development of the public welfare, having been in existence for at least two consecutive years, having substantive activities, etc.

Prior to its registration, the Overseas NGO shall first obtain the consent of a professional supervisory entity which shall be a related department and entity of the State Council or Provincial People's Government. The authority in charge of establishment registration is the applicable Public Security Authority.

(2) Filing of Temporary Activities

Overseas NGOs without representative institutions in China shall cooperate with Chinese partners (such as Chinese national authorities, civil associations, institutional organizations and public organizations) to jointly hold temporary activities in China. The Chinese partner shall complete the filing formalities at local Public Security Authority fifteen days prior to the temporary activity (under emergency circumstances such as disaster relief, rescue and so forth, the time for filing may not be subject to the fifteen-day requirement). The term for temporary activities shall not exceed one year and the filing may be renewed if an extension is necessary.

3. Operating Rules for Activities of Overseas NGOs in China

The Management Law regulates the activities of Overseas NGOs in China mainly by the following methods:

(1) Filing of Annual Activity Plans and Annual Inspections

The Management Law requires that the representative institutions of the Overseas NGOs shall submit annual activity plans to be pre-approved by the professional supervisory entities and shall file the plan with the Public Security Authorities prior to December 31 of each year. They shall also submit an annual work report for the previous year to the professional supervisory entities prior to

January 31 each year, and after it is accepted by the professional supervisory entities, they shall submit it to the Public Security Authorities prior to March 31 for annual inspection.

(2) Sources of Funding for Activities

Funding for activities carried out by Overseas NGOs in China is limited to funds that have been legally raised abroad, interests gained from savings deposited in banks within China and other funds that have been lawfully acquired within China. Overseas NGOs shall not raise funds within China.

(3) Accounts for Receiving and Paying Funds

An Overseas NGO that has established its representative institution shall use a bank account that is filed with the Public Security Authority to manage the funds used within China. An Overseas NGO that runs temporary activities in China shall manage the funds used within China through the bank accounts of its Chinese partners, and a special account shall be set up dedicated exclusively to funds for these temporary activities.

(4) Accounting, Audits, Taxation, Foreign Exchange and Personnel

The Management Law provides that the representative institution of an Overseas NGO shall implement the standard Chinese accounting system and engage Chinese

certified accountants to handle its accounting. Its financial statements shall be audited by a Chinese domestic accounting firm. It shall also complete tax registration, declare taxes, pay taxes and so forth, as well as deal with foreign exchange receipts and payments pursuant to Chinese related foreign exchange regulations and file information on all personnel it employs to its professional supervisory entity and the Public Security Authority.

(5) No Recruitment of Members

In recent years, there have been some "offshore associations" and "pseudo-communities" accumulating wealth by means of membership recruitment and collection of membership fees in China, some of which carry out activities endangering national security and interests in the name of their associations.¹ In the current version, the Management Law explicitly provides that representative institutions of Overseas NGOs and Overseas NGOs carrying out temporary activities shall not recruit members in China.

However, given that some overseas natural science academic associations have previously recruited members in China and Chinese experts, scholars and scientists have previously joined such associations, the Management Law stipulates that Overseas NGOs shall not recruit members in China but the State Council may grant exceptions.²

¹ According to the announcement on the China Social Organization Website, as of April 27, 2016, 5 batches, 427 "offshore associations" and "emulated associations" in total have been exposed.

² See Social Law Branch of the Legal Service Commission of the

Standing Committee of the National People's Congress, counselor Guo Linmao's answers to journalists' questions, <http://npc.people.com.cn/n1/2016/0428/c14576-28312708.html>.

(6) No Establishment of Branches

It is the opinion of the legislators that it is unnecessary for Overseas NGOs to establish branches within China because the Management Law allows Overseas NGOs to establish representative institutions. Given that there were some overseas natural science academic associations and entities with established branches in China, the Management Law provides exception in the case of branches set up in China in accordance with other regulations promulgated by PRC State Council.³

(7) Limitations on Activities

The Management Law provides that Overseas NGOs shall not engage in or sponsor any for-profit or political activities; illegally engage in or sponsor religious activities; endanger the national integrity, security and unity of China; or damage Chinese national interests, public interests of the society or legitimate rights and interests of citizens, legal persons and other organizations.

4. Supervision and Management

The Management Law imposes multiple levels of supervision and management on the activities of Overseas NGOs in China:

(1) The Ministry of Public Security and its local counterparts are the authorities responsible for registering institutions, conducting

annual inspections, filing records of temporary activities, and investigating and handling any illegal activities of Overseas NGOs.

(2) The Departments of State Security, Foreign Affairs, Finance, Financial Supervision and Management, Customs, Tax, Foreign Experts and other departments will supervise and manage the activities of Overseas NGOs according to their respective responsibilities.

(3) The professional supervisory entities shall be responsible for advising on the establishment of representative institutions by Overseas NGOs, changing registrations and annual work reports, and assisting the Public Security Authorities and other departments in investigating and handling any illegal activities of Overseas NGOs and their representative institutions.

(4) The Anti-money Laundering Departments under the State Council will supervise and manage the status of compliance with laws and regulations against money laundering and financing of terrorism by the representative institutions of Overseas NGOs, their Chinese partners, and the individuals and organizations within China receiving funding from Overseas NGOs.

³ See Social Law Branch of the Legal Service Commission of the Standing Committee of the National People's Congress, counselor Guo

Linmao's answers to journalists' questions, <http://npc.people.com.cn/n1/2016/0428/c14576-28312708.html>.

5. Legal Responsibilities

Pursuant to the Management Law, punishments of illegal activities of Overseas NGOs include warnings, orders to stop activities within a given period, confiscation of illegal assets and unlawful gains, nullification of the registration certificates, elimination of temporary activities and so forth. Punishments of the individuals directly responsible include warnings, detention and so forth.

The Management Law also specifically provides that the Public Security Authorities may blacklist Overseas NGOs conducting activities endangering national security and interests in their databases and are authorized to prohibit such Overseas NGOs from setting up representative institutions again or conduct temporary activities in China. For foreigners violating the Management Law, related departments may order them to leave China within a given period of time, have them repatriated, or deported.

II. Impacts of the Management Law on the Development of Overseas NGOs in China

1. Registration of Representative Institutions

Before the Management Law, the national

regulations specifically relating to registration of Overseas NGOs only included the Regulations on Administration of Foundations ("**Regulations on Foundations**") and the Interim Provisions for the Administration of Foreign Chambers of Commerce in China ("**Provisions for Chambers of Commerce**"). However, the Regulations on Foundations only applies to the establishment of representative institutions by foreign foundations, while the Provisions for Chambers of Commerce is limited to non-profit entities established by foreign organizations in China. There are no specific legal provisions for other types of Overseas NGOs.⁴

With unclear application requirements and the unpredictable attitudes of authorities, it is has been difficult for Overseas NGOs to register as private non-enterprise units or public organizations with the Civil Affairs Departments in the past. As a result, many Overseas NGOs who wish to operate in China⁵ have had concerns about how to register themselves in China, and without registering, Overseas NGOs face various limitations with respect to personnel, taxation and independent activities.

According to the Management Law, Overseas NGOs are required to operate in China through either of the following two methods: (1)

⁴ Certain provinces have introduced specific provincial provisions for Overseas NGOs, which however cannot have great and profound effect as a result of the regional limitation. For instance, Yunnan Province has adopted Interim Provisions for Regulations on Activities of Overseas NGOs of Yunnan Province in 2009. Another example is the Overall Plan for Comprehensive Pilot Project in Further Opening-up of Service Industry in Beijing Municipality of 2015, stating that registration shall be applied on pilot basis to the establishment of the Zhongguancun representative offices by overseas science and technology, education and economic organizations and

other non-government organizations and establishment of the private non-enterprise science and technology or economic entities promoted by overseas organizations or individuals, form the sound environment of collaborative innovation and mutual improvement of foreign and domestic social organization and enhance the international influence and competitiveness of Zhongguancun.

⁵ In some cases, Overseas NGOs which fail to obtain registration certificates may have to register their representative offices in China in the name of overseas companies, due to the vagueness in current practice.

establishing and registering representative institutions in China, or (2) conducting temporary activities.

With respect to establishing representative institutions, the Management Law clearly states that the Public Security Authorities shall be responsible for the registrations, while in the past, the Civil Affairs Department was the responsible authority for the registration of the representative offices of overseas foundations and foreign chambers for commerce.⁶ As a result, after the promulgation of the Management Law, Hao Yunhong, the director of the Management Office of Overseas NGOs of the Ministry of Public Security explained in his response to journalists that there will be a set of transitional approaches, assisting those Overseas NGOs already registered with the Civil Affairs Departments or Industry and Commerce Departments to update their registration in accordance with the new Management Law. We expect that before the Management Law comes into effect (i.e. January 1, 2017) implementation rules will be introduced for these Overseas NGOs.

2. List of Professional Supervisory Units and Activity Fields

Before the Management Law, there were no provisions in China relating to professional supervisory units and the scope of activity for Overseas NGOs. Although the Regulations on Foundations stipulate that the establishment of

representative institutions of foreign foundations shall obtain the consent of the professional supervisory units, which shall have certain managerial rights on the activities and finances of the representative institutions of foreign foundations, many representative institutions of foreign foundations have no idea which department should be their professional supervisory unit. In the same vein, the lack of specific provisions on the scope of activities makes the understanding of legitimate activities for Overseas NGOs vague and vulnerable.

According to the Management Law, the Ministry of Public Security will issue a list of acceptable activities and projects for Overseas NGOs, as well as a list of all qualified professional supervisory units. Therefore, the Management Law together with these lists will provide the basis for regulating the unclear status of Overseas NGOs in China, which will benefit and facilitate Overseas NGOs in conducting activities in China accordingly. On the other hand, since the relevant lists have not been issued, it is likely that the Public Security Authorities may retain or expand the prohibited areas in which Overseas NGOs are allowed to engage. Similarly, if professional supervisor units cannot introduce practical supervision rules for their respective areas, Overseas NGOs may not be able to comply with the Management Law quickly enough in order to conduct their lawful activities.

⁶ The State Council issued the Notice on Authorizing the Civil Affairs of the State Council to Take Charge of the Registration and Management of Activities of Overseas NGOs in China in 2014 (Guo Fa [2014] No. 36)

authorizing the Civil Affairs Departments as the domestic registration and management departments of Overseas NGOs.

3. Restriction on Accepting Donations

Before the Management Law, soliciting and accepting donations by Overseas NGOs in China was subject to Article 25 of the Regulations on Foundations, under which the representative institutions of overseas foundations are not allowed to solicit or accept donations within the territory of China. The reasoning from the authorities' point of view, is that the purpose of allowing foreign charities and foundations to establish representative offices in China is to utilize foreign funds to carry out charity activities within the territory of China. If a representative office raises donations in China, then that overseas charity or foundation will be regarded as lacking the economic capacity to carry out activities in China, and thus failing to meet a fundamental condition of operation under the Regulations on Foundations. Correspondingly, the Ministry of Civil Affairs may order such overseas charity or foundation to close its representative office.⁷

Notwithstanding, Overseas NGOs may take certain alternative measures in order to receive donations in China. For example, they may accept donations by initiating projects jointly with domestic foundations, or accept donations by entering into tri-party agreements with the headquarters of the Overseas NGO and the donor, or procure a donor to make its donation to a specific project directly and so on.⁸ Although the risk of non-compliance is not full

eliminated, such alternative measures are not uncommon practice in China.

The Management Law reiterates that Overseas NGOs are not allowed to raise funds in China and the funding for its activities in China shall be limited to the funds that have been legally raised abroad (mainly contributed by its head office), interests incurred by bank deposit in China, and other funds that are lawfully acquired in China.

To supervise the uses of funds of Overseas NGOs, the Management Law imposes strict rules on the management of bank accounts. Specifically, Overseas NGOs that have established representative institutions shall file their bank accounts with the Public Security Authorities, while Overseas NGOs that run temporary activities in China shall use their Chinese partner's bank accounts to deposit funds in China, and a special account shall be set up dedicated exclusively to funds for these temporary activities. Other than the above, Overseas NGOs, Chinese cooperators and individuals shall not give or receive funds for their activities within China in any other form. In addition, the Management Law provides that any and all units or individuals in China shall not accept a commission, accept financial support from, or represent, open and disguised, Overseas NGOs without the required registration in China.

⁷ See JunHe Special Topic Research Report on January 11, 2016, the Feasibility Study regarding Accepting Donations in China by Domestic Representative Offices of Foreign Charity Foundations.

⁸ See JunHe Special Topic Research Report on January 11, 2016, the Feasibility Study regarding Accepting Donations in China by Domestic Representative Offices of Foreign Charity Foundations.

From the above wording of the Management Law, the Chinese government has noted the existing disguised methods of raising funds in China and therefore promulgated specific rules to stop such non-compliance on raising funds in China by Overseas NGOs.

In addition, the Management Law strengthens the management and supervision of representative institutions of Overseas NGOs with respect to business activities, personnel, finance and other areas.

The Management Law, as the first law specifically regulating the activities of Overseas NGOs in China, fills the regulatory gaps in this area. However, the Management Law focuses on high level principles, and the details for implementation are still under discussion. But it is obvious that the Chinese government is drawing from years of experience supervising and serving the operations of Overseas NGOs in China, and the Management Law along with the upcoming implementation rules will have a profound impact on the activities of Overseas NGOs in China. We will wait and see.

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