

Before & After 2016: A Deeper Dive

Tracking Changes in the Regulation of Overseas NGOs and Foundations in China

The year 2016 represents a watershed moment in the development of the legal environment for philanthropy and civil society in China. In 2016 the National People's Congress adopted two comprehensive new laws to regulate the philanthropic and civil society space: the [Charity Law](#) passed in March and the [Overseas Non-Governmental Organization \(NGO\) Law](#) passed in April. Later in 2016 the Ministry of Civil Affairs issued for public comment the drafts of new regulations governing the registration and management of the three types of social organizations. *As the final regulations have yet to be promulgated, this report discusses the draft versions, which are designated as tentative by ***.* This factsheet presents a deeper dive into important changes in the regulation of ONGOs operating in China. For more on philanthropy law in China, please see our [China Philanthropy Law Report](#).

Organizations Affected

Before 2016

- The 2004 Regulations on the Management of Foundations include a section covering the registration and management of representative offices of ONGOs.

• The 1989 Provisional Regulations for Foreign Chambers of Commerce covers the registration and management of representative offices of foreign chambers of commerce.

After 2016

- The Overseas NGO Law covers the registration and management of all activities carried out in mainland China by “non-profit, non-governmental social organizations legally established” outside of mainland China. This includes not only ONGOs’ representative offices (including foreign chambers of commerce), but also ONGOs that do not have representative offices in China.
- One exception is the category of organization that includes overseas schools, hospitals, natural sciences and engineering technology research institutes, and academic organizations engaged in exchanges and cooperation with Chinese schools, hospitals, natural sciences and engineering technology research institutes, and academic organizations. The activities of this category of organization are covered by other “relevant regulations of the State.”

Registration

Before 2016

- ONGOs are able to register a representative office, but must adhere to the dual management system that governs Chinese social organizations. They must obtain approval from a professional supervisory unit (PSU)—a government or party

organ in its area of work—before they are able to register with the Ministry of Civil Affairs.

- The registration authority for ONGOs’ representative offices is the Ministry of Civil Affairs.
- There are no regulations governing activities carried out in mainland China by ONGOs without a representative office in China. These ONGOs are permitted to fund or collaborate with Chinese individuals and organizations as long as they do not violate other Chinese laws. They are not required to have Chinese partners.

After 2016

- The Overseas NGO Law preserves the dual management system for ONGOs that want to register a representative office.
- The Overseas NGO Law changes the registration authority to the Ministry of Public Security and its provincial Public Security Bureaus (PSBs).
- The Overseas NGO Law requires ONGOs that do not have representative offices to have Chinese partners, through which they file documentation on any temporary activities that they carry out in mainland China.
- ONGOs that do not register representative offices or file documentation on temporary activities are not permitted to fund or collaborate with Chinese individuals or organizations.

Management & Supervision

Before 2016

- Representative offices of foreign NGOs are subject to “annual inspections” (*nianjian*), in which they submit reports on their activities and personnel and organizational changes, along with their audited financial reports, to their PSUs for approval. Once the PSUs approve the reports, the NGOs’ representative offices submit them to the registration authority (e.g. the provincial PSB) for approval before March 31. The reports are to be made public through media channels.
- ONGOs’ representative offices are not required to submit plans for the following year’s activities.
- Overseas NGOs without representative offices have no formal supervisory body and do not have to submit reports.

After 2016

- Representative offices of ONGOs must still go through the annual inspection process, in which they submit the required reports to their PSUs for approval and then to the registration authority (e.g., the provincial Public Security Bureau where they are registered) for approval before March 31. The reports are to be made public on the website of the Ministry of Public Security.
- Each year before December 31, ONGOs’ representative offices must submit plans for the following year’s activities, including projected projects and funding, to their PSUs. They must also submit this information to the registration authorities within ten days following approval by their PSUs.
- Overseas NGOs carrying out temporary activities with Chinese partners must submit reports within thirty days of completion of activities (including details on funding) to the registration authorities.

Charitable/Public Welfare Status

Before 2016

- There is no law or regulation providing for charitable status for ONGOs.

After 2016

- Article 36 of the Overseas NGO Law states that “representative offices of overseas NGOs may benefit from tax incentives and other preferential policies in accordance with the law.” These incentives have yet to be specified.
- The Charity Law, which defines a process for obtaining charitable status, applies only to domestic social organizations and makes no mention of ONGOs.

Local and Overseas Funding

Before 2016

- Existing regulations do not explicitly state what types of funding ONGOs can use.
- The 2004 Regulations on the Management of Foundations prohibits ONGOs’ representative offices from fundraising and accepting donations in mainland China.

After 2016

- The Overseas NGO Law permits ONGOs to use three types of funding to support their activities in mainland China: (1) legal sources of funding from overseas; (2) interest on bank deposits in mainland China; and (3) other funds legally acquired in mainland China.
- The Overseas NGO Law prohibits ONGOs’ representative offices from fundraising but says nothing about the acceptance of donations.