

China's Overseas NGO Law

The [Law on Administration of Activities of Overseas Nongovernmental Organizations in Mainland China](#) (hereafter Overseas NGO Law) is the first comprehensive law regulating the activities of all overseas NGOs (ONGOs) in the People's Republic of China (PRC). These Frequently Asked Questions (FAQs) provide general information in response to some of the most commonly-asked questions about the law. For more information on philanthropy law in China, please see the International Center for Not-for-Profit Law's [China Philanthropy Law Report](#).

What is the Overseas NGO Law and when did it go into effect?

1

If an organization qualifies as an ONGO, then any collaboration, funding, or other activity that it carries out in China with either a Chinese institutional partner or an individual is potentially governed by the Overseas NGO Law.

The law was passed by the Standing Committee of the National People's Congress in April 2016 and came into effect on January 1, 2017.

What is an ONGO?

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Article 2 of the Overseas NGO Law defines ONGOs as “not-for-profit, nongovernmental social organizations lawfully established outside of mainland China, such as foundations, social associations, and think tanks.”

By using the terms “not-for-profit,” “NGOs,” and “social organizations” (the official Chinese term for not-for-profit NGOs), the law covers a wide range of organizations, including industry and trade associations, chambers of commerce, development and human rights NGOs, educational and cultural organizations, and sporting and recreational associations.

How can ONGOs operate in China?

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ONGOs have two legal channels for working in China: they may set up a representative office, or they may file documentation for the record (*bei'an*) to carry out temporary activities (Article 9).

Article 9 states that ONGOs “that do neither of these are not allowed to carry out activities either openly or covertly, or to authorize, fund, or covertly authorize any Chinese work unit (*danwei*) or individual to carry out activities.” This comprehensive provision makes it clear that Chinese work units and individuals put themselves at risk if they cooperate with ONGOs that have not gone through one of these legal channels.



Terms used in the Overseas NGO Law

- **Public Security**—the Chinese police, also referred to as the registration authorities
- **Overseas NGOs (ONGOs)**—see the question “What is an ONGO?”
- **Organizations in charge of operations**—professional supervisory units (PSUs), as described in the official English translation of the law. An ONGO must have the sponsorship of a PSU to register a representative office,
- **Chinese partner**—an entity that files documents for the record on behalf of an ONGO so that it can carry out temporary activities.
- **File documents for the record (*bei'an*)**—a procedure for informing the Ministry of Public Security about a temporary activity to be carried out by an ONGO in collaboration with its Chinese partner [see fn 1]
- **Temporary activity**—an activity carried out by an ONGO in collaboration with a Chinese partner in mainland China, including a funding activity, event, or project

*FN 1. The filing documents for the record (*bei'an*) procedure is often used by local governments as a method for keeping track of small community-based organizations in their jurisdictions. It was also used in the Yunnan provincial government experiment a few years ago to regulate ONGOs in the province. ONGOs were asked to file documents and in return, they were allowed to operate in the province.*

May NGOs fundraise, accept donations, or carry out for-profit activities?

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ONGOs and their representative offices may not carry out fundraising activities in China (Article 21). However, there is no language explicitly prohibiting them from accepting donations, which leaves open the possibility that ONGOs may accept unsolicited donations in China.



Who are the relevant registration and supervisory authorities under the Overseas NGO Law?

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The Ministry of Public Security (MPS) and its provincial-level public security bureaus (PSBs) are the registration authorities for ONGOs. ONGOs must register or file documents for the record for temporary activities with provincial-level PSBs.

In addition, an NGO that sets up a representative office must obtain the formal approval of a professional supervisory unit (PSU) that is willing to serve as the NGO's official sponsor and supervisor. The PSU is generally a designated government agency under the State Council and plays an important role in supervising the NGO's operations and activities in China. The MPS has issued a list of approved PSUs in English and Chinese. Some provinces have also begun to issue their own approved PSU lists.

The PSU requirement places NGO representative offices in what the Chinese call a "dual management" system, in which they report to both Public Security and their PSUs and thus essentially have two supervisors.

What is a Chinese Partner and how is it different than a PSU?

The NGO's Chinese partner may be a government agency; a mass organization, such as the All-China Women's Federation, All-China Federation of Trade Unions, or Communist Youth League of China (see ICNL's [Universe of Chinese NGOs graphic here](#)); a public institution, such as a public university or research institute; or a social organization, such as a membership association, social service provider, or foundation (Article 16). The law does not list for-profit companies as potential Chinese partners.

A Chinese partner is different than a PSU, which generally is a government agency or mass organization that serves in a supervisory role over the NGO. The Chinese partner only collaborates with the NGO and does not act in a supervisory capacity.

How does an NGO set up a representative office?

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To set up a representative office, an NGO must obtain the approval of PSU before registering with the provincial PSB (Article 11). Article 10 specifies eligibility requirements for an NGO that wishes to set up a representative office, and Article 12 specifies the materials that an NGO must submit in order to register. The law does not specify what happens if the NGO cannot find an appropriate PSU. The PSB must decide

whether to approve the NGO's registration request within sixty days of receipt of the application.

What are the reporting requirements for NGO representative offices?

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In addition to the usual reporting on taxes, finances, and human resources, an NGO's representative office must send its PSU an annual activity plan covering such matters as project implementation and the use of funds by December 31 of the preceding year. The NGO's representative office should file the plan with the provincial PSB within ten days of obtaining PSU approval (Article 19).

As part of its annual inspection (*niandu jiancha*), the representative office must send an annual work report and audited financial report for the previous year to its PSU by January 31 and to the PSB by March 31 (Article 31).

Can an NGO representative office registered in one province carry out activities elsewhere?

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Yes, as long as the multiple locations are specified in the representative office's registration documents. If the representative office needs to modify in its registration documents to allow for moving its activities to another province, changing its scope of operations, changing its chief representative, etc., it should first obtain the approval of its PSU and then within thirty days apply to the registration authorities for approval of the modification (Article 14).

A PSU that is a local rather than national-level agency may not approve an NGO's move of its activities to a different province. In such a case, one option is for the NGO to register an additional representative office in the province in which it wishes to work.

Can an NGO representative office set up a branch office in another location?

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Under the law, a branch office is an office opened by an existing NGO representative office but is not registered with the provincial PSB. The law does not allow ONGOs to set up branch offices in China unless otherwise allowed by State Council regulations (Article 18). However, as an alternative to setting up a branch office, an NGO may register representative offices in more than one province.

How does an NGO file documents for the record for temporary activities?

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Filing documents for the record is a legal channel that allows NGOs to operate in China without setting up representative offices.

Filing documents is a less onerous procedure than registration and is also used by other organizations, such as small community-based organizations and charitable trusts, under the Charity Law and other rules. Importantly, the process does not require an NGO to find a PSU and thus be regulated under the dual management system governing NGO representative offices. The NGO need only show that it has an agreement with a Chinese partner, which then files the necessary documentation with public security authorities. In theory, this procedure means that the NGO must only inform the PSB rather than obtain its approval for carrying out activities. In practice, however, an NGO needs confirmation from the PSB that it has received all necessary documentation. In other words, the PSB may hold up the filing process by requesting more information.

To carry out an activity, the NGO's Chinese partner must go through the approval process required by the Chinese government at least fifteen days before the activity and file documents with the registration authority in that locality. The Chinese partner must create a special bank account to receive and manage funds for the temporary activity and may not commingle those funds with funding intended for other activities. Neither the NGO nor the Chinese partner may use any means other than the specified bank account to receive or disburse funds for an activity (Article 22).

An NGO must use the same name that it used to file documents to carry out its temporary activities.



What documents must be filed for a temporary activity?

According to Article 17 the following materials must be filed:

1. Certification of the NGO's legal registration
2. The agreement between the NGO and its Chinese partner
3. Materials about the name, goal, location, and time period of the temporary activity
4. Materials certifying the project expenses, funding sources, and the Chinese partner's bank account
5. Any additional approval documents that the Chinese partner requires to conduct the activity.

What are temporary activities? What rules govern them?



What constitutes a "temporary activity"?

The law is vague about what constitutes a temporary activity, other than stating that the activity may not exceed one year. Lacking additional guidance from the MPS, many NGOs wonder if a temporary activity includes something as small as a meeting in Beijing to discuss progress on an ongoing project or as large as a year-long project.

[A look at the temporary activities filed from January to November 2017](#) suggests that there is quite a bit of flexibility in the definition of acceptable temporary activities. The data shows that roughly one-third of the temporary activities were activities such as conferences or exchanges lasting less than one month, another third were for projects lasting eleven to twelve months, and the final third were for activities lasting anywhere from two to ten months.

What if a temporary activity lasts longer than one year?

If there is a need to prolong a temporary activity, the Chinese partner must request an extension by resubmitting the documentation.

What if a temporary activity is for disaster relief?

In conducting a response to an emergency, such as a disaster relief operation, an NGO is not required to file documents for the record in advance.

What reporting requirements apply to NGOs' temporary activities?

Within thirty days of the completion of a temporary activity, an NGO and its Chinese partner must submit a written report about the activity and the use of funds to registration authorities (Article 30).

Does an NGO carrying out temporary activities in more than one province need to file documents in each province?

This seems to depend on the Chinese partner that is responsible for filing documents with the PSB. Interviews with NGOs suggest that in some cases their Chinese partners were able to file documents with the PSB in one province for carrying out temporary activities in multiple provinces. In another case, the NGO had to have its Chinese partner file documents in each province in which it carried out activities.

Does an NGO need to file documents for a temporary activity conducted outside of mainland China?

The law could be possibly be interpreted to cover activities held overseas, such as an NGO funding a Chinese individual to attend an event abroad. In such a case the funding of the Chinese individual could constitute a temporary activity.

What other measures apply to ONGO representative offices and temporary activities?

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The following are some of the more significant measures affecting all ONGOs operating in China. This is not an exhaustive list.

1. ONGOs must abide by regulations for foreign exchange transactions (Article 25).
2. ONGOs and their representative offices may not recruit members in China unless otherwise allowed by State Council regulations (Article 28).
3. Chinese work units and individuals may not be authorized to act for (weituò), fund, represent, or covertly represent ONGOs carrying out activities in China (Article 32).
4. Public Security will place any ONGO whose registration has been revoked or whose activity been cancelled on a list of ONGOs that are not allowed back into the country (Article 48).
5. Overseas schools, hospitals, academic organizations, and natural science, engineering, and technology research organizations should carry out their exchanges and cooperative activities with similar Chinese organizations according to relevant government regulations (Article 53). This article suggests but does not explicitly state that these types of ONGOs may be exempt from the Overseas NGO Law.

What are the implications of the law for ONGOs that work with grassroots organizations?

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Grassroots organizations and similar groups have grown rapidly in the past ten to fifteen years. Unlike mass organizations and government-organized non-governmental organizations (GONGOs), these nonprofit non-governmental organizations have few or no ties to the government. They work on a wide range of issues.

Grassroots organizations have been able to develop over the years by relying heavily on ONGO funding and support, in large part because they were often unregistered, had few to no ties to the government, and did not work in areas that aligned with state priorities. By regulating and restricting the activities of ONGOs in China, the Overseas NGO law will likely have a very significant negative impact on grassroots organizations.

Is there room for ONGOs to shape the implementation of the Overseas NGO Law?

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In the years ahead, there will be areas in which ONGOs can shape the law's implementation and enforcement. Four areas merit particular attention.

- Detailed implementing regulations still need to be drafted. The MPS may outsource some of the drafting to Chinese experts who are familiar with NGO management and programming. ONGOs should consider how to participate in this process by working with these experts.
- The MPS will need to ensure that the various agencies engaged in implementing the law coordinate with PSUs working with Public Security to supervise ONGO representative offices. ONGOs should provide feedback to their PSBs and PSUs on problems they experience because of a lack of coordination between government agencies.
- The law includes multiple statements about the services that Public Security and other government agencies will provide to ONGOs to better implement the law. ONGOs should hold government agencies accountable to this promise of services.
- ONGOs should seek clarification from the MPS of Article 36, which states that ONGO representative offices will be able to enjoy tax exemptions and other preferential policies. To date no concrete exemptions or preferential policies have been issued. More detailed regulations will need to be issued by the finance and tax authorities in the next few years.



Unless they are properly registered as social or charitable organizations, grassroots organizations will most likely be unable to serve as Chinese partners and will not be able to continue to receive support and funding from ONGOs.



Where can I learn more about philanthropy law in China?

More information about the Overseas NGO Law may be found in ICNL's [China Philanthropy Law Report](#), which offers detailed information about the national laws and regulations affecting philanthropy in China. [ChinaFile's China NGO Project](#) also provides valuable up-to-date information, analysis, and data on the Overseas NGO Law and its implementation.