

# **ForNGO: Opinions and Revision Suggestions on the “Foreign NGO Management Law (Second Reading Draft)”**

Editor’s note: It has been 10 days since the “Foreign NGO Management Law (Second Reading Draft)” started to seek public opinions. In addition to surveys, you could also visit NPC’s website and submit your suggestions directly. ForNGO proposed 11 revision suggestions about “Foreign NGO Management Law (Second Reading Draft)”. We share them here for your kind reference.

Dear Commission of Legislative Affairs of Standing Committee of the NPC,

Thank you for the numerous endeavors to formulate the “Foreign NGO Management Law”. To collect public opinions for the law is a positive method showing respect to public opinions and to ensure the public’s participation in the legislation.

Legal Center for NGO (ForNGO) proposes 11 revision suggestions based on our practice and research, and the feedbacks from our volunteer attorneys as follows:

[The Article sequence numbers below are in consistent with the Article sequence numbers in the “Foreign NGO Management Law (Second Reading Draft)”]

1.

**Article 3:Foreign NGOs in fields such as economics, education, science and technology, health, culture, sports, environmental protection and charity may conduct activities beneficial to the development of the social welfare in accordance with law.**

[Revision suggestion] Delete “beneficial to the development of the social welfare”.

[Reasons for revision] There are two types of NGOs. One is for public benefits, and the other for mutual benefits. As long as the NGOs are conducting activities within mainland China in accordance with Chinese laws and regulations, it is not necessary to restrict them to be beneficial to the development of the social welfare. Otherwise, it will be impossible for a great number of chambers of commerce, associations and industrial organizations to establish representative offices or to conduct activities in china.

2.

**Article 5: Foreign NGOs carrying out activities within mainland China shall abide by Chinese laws; must not endanger China's national unity, security, or ethnic unity; must not harm China's national interests, society's public interest, or other groups' and citizens' lawful rights; and must not violate public order and customs.**

**Foreign NGOs must not engage in or fund for-profit activities or political activities, and must not illegally engage in religious activities or illegally fund religious activities.**

[Revision suggestion] The second paragraph should be changed to “Foreign NGOs must not carry out activities for lucrative purposes, and must not engage in or fund illegal political activities or illegal religious activities”.

[Reasons for revision] (1) NGOs must not conduct activities for lucrative purposes. But it doesn't necessarily mean that they cannot conduct for-profit activities. In addition, “engage in or fund for-profit activities” has a very broad meaning. If NGOs are not supposed to do that, many activities carried out by NGOs have to be prevented, for example, the business exchanges among foreign countries' enterprises in China organized and funded by their own countries' chambers of commerce here. (2) There are legal and illegal political activities. Illegal political activities carried out by foreign NGOs shall be forbidden. However, legal political activities carried out by foreign NGOs, which promote legal construction and strengthen the protection for civil political rights granted by the law, shall be permitted and encouraged.

3.

**Article 7: The State Council Public Security Department and the provincial level public security organs are the registration and management organs for foreign NGOs carrying out activities within mainland China.**

[Revision suggestion] Change the registration and management organs for foreign NGOs carrying out activities within mainland China to “civil affairs departments”.

Amend the registration administrative authority of the activities carried out by oversea NGO within the territory of China into “civil administrative authority”.

[Reasons for revision] (1) From the perspective of the rights and liabilities of the registration and management organs, public securities authorities are liable for the national safety and public security, while the civil affairs departments are liable for civil administrative affairs. It is obvious that civil affairs departments' job responsibilities are closer to the registration and management matters of NGOs. (2) From the perspective of practice, domestic social groups, foundations, private non-enterprise units, and also the representative offices of foreign NGOs are registered in civil affairs departments. Civil affairs departments have gained substantial experiences in it. Keeping them as the registration and management organs of foreign NGOs ensure the continuity and

predictability of the policies. In the meantime, it is a reflection that China welcomes and treats foreign NGOs equally.

4.

**Article 11: Foreign NGOs applying to establish a representative office require the consent of a professional supervisory unit.**

[Revision suggestion] Clarify and set out the procedure of foreign NGOs' application to their professional supervisory units, which includes, for instance, the application documentations, examination requirements, time limit of approval, reconsideration procedure and etc.

[Reasons for revision] In practice, NGOs always encounter registration problems due to the fact that they are not able to find their professional supervisory units. As a result, we suggest that the law clarifies the application procedure and examination requirements in order to reinforce the operability of this Article.

5.

**Article 12: Foreign NGOs shall apply to register the establishment of a representative office with the registration management organs within 30 days of obtaining the consent of the professional supervisory unit. Applications to register a representative office shall submit the following documents and materials to the registration management organs:**

- (1) The written application;**
- (2) Supporting documents and materials as provided for in the first paragraph of Article 10 of this Law;**
- (3) Proof of identity, resume and materials showing proof of no criminal record for the proposed chief representative;**
- (4) Materials showing the proposed residence for the representative office;**
- (5) Materials showing the sources of capital;**
- (6) Documents of consent from the professional supervisory unit;**
- (7) Other documents and materials provided for by law or administrative regulations.**

**Registration management organs reviewing the applications of foreign NGOs to set up representative offices may organize experts to conduct assessments as needed.**

**Registration management organs shall issue a decision to authorize or not authorize within 60 days of receiving an application.**

[Revision suggestion] Delete “registration management organs reviewing the applications of foreign NGOs to set up representative offices may organize experts to conduct assessments as needed”; shorten the time limit of the registration management organs’ decision making process of whether to grant the establishment of foreign NGOs’ representative offices.

[Reasons for revision] Before submitting the application to the registration management organ, a foreign NGO has already got the approval from its professional supervisory unit to establish a representative office. Thus, the registration management organ only needs to review the documentations approved by the professional supervisory unit and other basic materials. Further substantive examinations will increase the workload of the foreign NGO applicant and that of the registration management organ receiving the application.

6.

**Article 18: Where foreign NGOs that have not established representative offices within mainland China seek to carry out temporary activities in mainland China, they shall first secure temporary activity permits. The duration of a temporary activity must not exceed one year.**

**Foreign NGOs seeking to carry out temporary activities within mainland China must cooperate with one of the following organizations (hereinafter "Chinese Partner Units"): state organs, mass organizations, public institutions, or social organizations.**

[Revision suggestion] Change “shall first secure temporary activity permits” in the first paragraph to “shall abide by the relevant laws and the administrative regulations or rules”; delete the second paragraph.

[Reasons for revision] On one hand, there are already a large number of laws and regulations currently in effect managing and restraining the temporary activities carried out by foreign NGOs within mainland China categorized according to the different natures of the activities. It is unnecessary to add an extra requirement of securing temporary activities permits. In addition, it is very difficult for the registration management organs to examine the activities of different categories and diversified natures; on the other hand, together with the development of foreign and domestic NGOs, the organizations have growing demands for mutual exchanges, and foreign NGOs are holding more activities in mainland China more frequently. Requesting foreign NGOs that haven’t established representative offices to secure temporary activities permits to carry out their temporary activities will hinder the development of NGOs. In the meantime, it will increase the work intensity of the registration management organs, and consume excessive amount of administrative costs.

7.

**Article 32: Foreign NGOs' representative offices hiring personnel or recruiting volunteers within mainland China, shall entrust local foreign affairs service units, or other units designated by the Chinese government, to handle it.**

**Foreign NGOs' representative offices shall report personnel information to the professional supervisory unit and registration management organs.**

**Foreign NGOs carrying out temporary activities must not directly recruit volunteers, and where truly needing volunteers, shall have the Chinese partner unit recruit.**

[Revision suggestion] Delete the restrictions over foreign NGOs' representative offices' hiring personnel or recruiting volunteers within mainland China and those over their recruiting volunteers while carrying out temporary activities.

[Reasons for revision] Foreign NGOs have passed dual examinations by both the professional supervisory units and the registration management organs when they establish their representative offices and apply for temporary activities permits. Based on these, such representative offices shall govern their own daily operations or the activities they carry out under the condition that they do not violate this law or other relevant laws and regulations. The restrictions on their recruitment capacity not only reduce the work efficiency of such representative offices or foreign NGOs, but also increase human costs. In addition, it is difficult to implement the restrictions on some special occasions such as earthquake relief and other emergencies.

8.

**Article 33: Foreign NGOs' representative offices and foreign NGOs carrying out temporary activities must not develop, or covertly develop, membership within mainland China.**

[Revision suggestion] Delete “or covertly develop”.

[Reasons for revision] “Covertly develop” is a vague term, which may cause any Chinese individual or organization that frequently participate in the temporary activities carried out by a certain foreign NGO's representative office or by a certain foreign NGO to be identified as “covertly developed membership”. This will severely hinder foreign NGOs or their representative offices from carrying out activities in mainland China.

9.

**Article 35: The proportion of foreign personnel at foreign NGOs' representative offices must not exceed 50% of total staff numbers.**

**Foreign NGOs' representative offices' personnel must not simultaneously hold positions at other foreign NGOs' representative offices.**

[Revision suggestion] Delete the restrictions on the foreign staff numbers of foreign NGOs' representative offices and the positions of their staff.

[Reasons for revision] First of all, the restrictions on the foreign staff numbers of foreign NGOs' representative offices and the positions of their staff will eventually hamper the recruitment of the representative offices, and in turn, affect their operations in mainland China; Secondly, compared with the regulation that foreign shareholders shall recruit for their companies established in mainland China with no restriction, such restrictions on foreign NGOs' representative offices do not seem to be necessary; most importantly, the second paragraph of this Article restricts that every single Chinese person shall only hold the position in one foreign NGO's representative office. This is not conducive for charitable individuals to participate in social charity services.

10.

**Article 38: Individuals, legal persons, and other organizations within mainland China must not be retained or receive funding, or represent, or covertly represent, foreign NGOs carrying out activities that have not registered a representative office or acquired a temporary activities permit.**

[Revision suggestion] Delete "or covertly represent"

[Reasons for revision] "Represent" has a very clear legal definition. But "covertly represent" is a very vague term. Suggest to delete it, and to explain "represent" from the perspective of civil laws.

11.

**Article 52: Foreign NGOs seeking to independently or collaboratively establish foundations or private social institutions must apply for registration in accordance with this law, and all other relevant Chinese laws and administrative regulations. Consult the relevant provisions in Chapter 2 of this law for registration methods.**

**Article 65: "Private civic institutions" as used in this Law refers to lawfully registered social organizations, organized by social forces and engaging in social service activities.**

[Revision suggestion] (1) In Article 52, substitute "foundations or private social institutions" with "social organizations"; (2) Separately stipulate the registration method of the social organizations established or collaboratively established by foreign NGOs in mainland China in Article 52 with reference to the current registration systems in effect. For example, instead of simply stating that "consult the relevant provisions in Chapter 2 of this law for registration methods", change it to "the registration methods shall be formulated by the State Council". (3) Delete Article 65.

[Reasons for revision] (1) “Social organizations” is a widely used concept in the laws and regulations currently in effect. It covers NGOs in usual sense, including social groups, private non-enterprise units, foundations and others. It is accurate enough to use “social organizations” here instead of defining the concept of “private civic institutions”; (2) As interpreted from Article 52 and Article 65, “private social institutions” include “foundations”. Thus, the expression “foundations, private social institutions” is not accurate; (3) The registration requirements for foreign NGOs to establish their representative offices set out in Chapter II are higher than the current registration requirements for some types of foreign NGOs to establish or collaboratively establish social organizations; from the perspective of reform and opening up, and of international development, our legislation shall promote the exchanges and communications between domestic and foreign organizations, and encourage foreign organizations to conduct activities in China. It is harmful to China’s international image if the registration requirements are becoming more difficult to implement in future legislations.

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