

Guidelines for the Foreign NGOs Law are in process

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The Ministry of Public Security (the "**MPS**") and its Shanghai branch co-organized a meeting ("**Meeting**") on 14 October 2016 to discuss the implementing issues related to the *PRC Law on Management over Foreign NGOs' Activities in China* (the "**Foreign NGOs Law**"). According to discussion at the Meeting, the MPS has formulated the *Guidelines on the Procedures of Registration for the Representative Offices and Record Filing for Temporary Activities of Foreign NGOs (Draft for Comments)* (the "**Draft Guidelines**") and is currently seeking for consultation from the relevant parties. The final Guidelines will be published before 1 January 2017 when the Foreign NGOs Law takes effect. However, the MPS has not indicated or promised whether the Draft Guidelines will be further revised and circulated to the general public for consultation before its final effectiveness or will become effective on publication.

(We have previously prepared a three-part alert on the Foreign NGOs Law – Part I can be accessed [here](#), Part II can be accessed [here](#), and Part III can be accessed [here](#).)

Draft Guidelines Overview

The MPS has been working on guidelines for Foreign NGOs' registration and operation in China, including the Draft Guidelines and the *Catalogue of Areas and Projects for Foreign NGOs' Activities Permitted in China*, and the *Catalogue of Supervisory Authority for Foreign NGOs* (the "**Catalogue**").

As disclosed by the MPS' officials during the Meeting and from our own sources of information, the Draft Guidelines cover the following main parts, with some further noteworthy requirements:

1. The procedures and application documents for the registration of a representative office ("**RO**"), including procedures for establishment registration, registration of post-establishment change, annual plan

filing, annual inspection, and deregistration, etc.;

- a) As to the requirement on notarization and/or legalization, the registration application documents ("**Documents**") subject to such requirement are: the Foreign NGO's registration certificate and charter/articles of association, the authorization letter for the RO registration, the identity certificate and resume of the foreign individual appointed to be the chief representative ("**Chief Representative**") of the RO, the certificate of good standing and active operation of the Foreign NGOs in its domicile jurisdiction for over two years. This scope is similar to forming a commercial representative office in China, except for the requirement on notarization and/legalization of the Chief Representative's resume;
- b) The name of a RO shall also satisfy the following requirements:
 - i. The name shall contain the following components: "the name of the Foreign NGO" + "the geographic location of the RO" + the term "Representative Office (or Agency, Liaison Office, etc.)";
 - ii. "The geographic location of the RO" refers to the name of the administrative division at or above the county level where the RO will be located;
 - iii. If the name of the Foreign NGO itself does not identify its original registration location (country or region), then the name of its RO shall include such originating location and follow the formula as: "the name of the Foreign NGO" + "(the Foreign NGO's original registration location)" + "the geographic location of the RO" + the term "Representative Office (or Agency, Liaison Office, etc.)."

- c) Although a Foreign NGO is permitted to establish more than one RO in different locations, whether a national registration or a simplified and unified registration for multiple locations is available is still silent under the Draft Guidelines. Accordingly to media reports, some Foreign NGOs have raised this concern and question during the Meeting, which the MPS' officials responded that they will also consider this issue.
- d) The Draft Guidelines further specify that the change of the following five matters of the RO shall be submitted for the Supervisory Authority' approval and registered with the MPS at provincial level:
- i. name;
 - ii. Chief Representative;
 - iii. registered place;
 - iv. business scope and/or activity locations; or
 - v. Supervisory Authority.
2. Record filing procedures for the Foreign NGOs' temporary activities in China, which are generally the same as the provisions under the Foreign NGOs Law;
3. Determination on the Supervisory Authority:
- i. The Foreign NGO shall refer to the Catalogue and, based on its business scope, activity locations and other considerations for conducting activities, apply to the corresponding government agency for acting as its Supervisory Authority; and
 - ii. If the business scope of an RO involves multiple areas of activities, it shall determine its Supervisory Authority based on the main field of its activities;
4. The Foreign NGOs Management Department of the MPS at provincial level are likely to formulate their own corresponding guidelines to provide further guidance and service for the registration and record filing of the Foreign NGOs; and
5. The Draft Guidelines also include various template forms for registration/record filing, which seems to have already covered details in many aspects.

Online System to be Developed

The officials from the MPS also informed during the Meeting that they are currently establishing the online information system and website for Foreign NGOs' management, which will enable Foreign NGOs to schedule appointments for registration and/or filing, and apply and submit materials through such online platforms. Any relevant guidelines and policies will also be published on such platforms in the future.

Local Authorities in Charge

As informed by the MPS officials during the Meeting, MPS is also currently discussing with the Ministry of Civil Affairs ("MOCA") and State Administration for Industry & Commerce ("SAIC") on the transition work for certain Foreign NGOs which have been previously registered with MOCA or SAIC, to ensure the transition to and consistency with the new regulatory regime under the Foreign NGOs Law.

As said, the Foreign NGOs Management Department of MPS at provincial level will be responsible for registration and record filing matters of the ROs or the Chinese Cooperative Body for temporary activities within such region. The Foreign NGOs Management Department of MPS at the central level will only be responsible for coordinating and providing instructions to its local departments.

Further, the MPS at provincial level are setting up dedicated reception counters to accept applications of registration and record filing at their exit-entry administration center, so that

the Foreign NGOs and their foreign staff can apply for other relevant formalities, such as their work and residence permits, at the same time.

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