



DEZAN SHIRA & ASSOCIATES



Years
1992-2017

Foreign NGO Law, Overseas NGO Law, or “ONGO Law”

October, 2017

Introduction to Overseas NGO Law

ONGO Law and Charity Law – Sister Acts

Permitted and Prohibited Activities

**What's the Intent behind new NGO Law:
Political and legislative Context**

Making Application to Register or File

Dual Supervision: PSB and PSU

Reporting, Fundraising, and Taxation

Enforcement and Sanctions



“Foreign NGO Law” or “Overseas NGO Law” (ONGO), Jan 1, 2017

Law on the Management of the Activities of Foreign Non-Governmental Organizations Within China

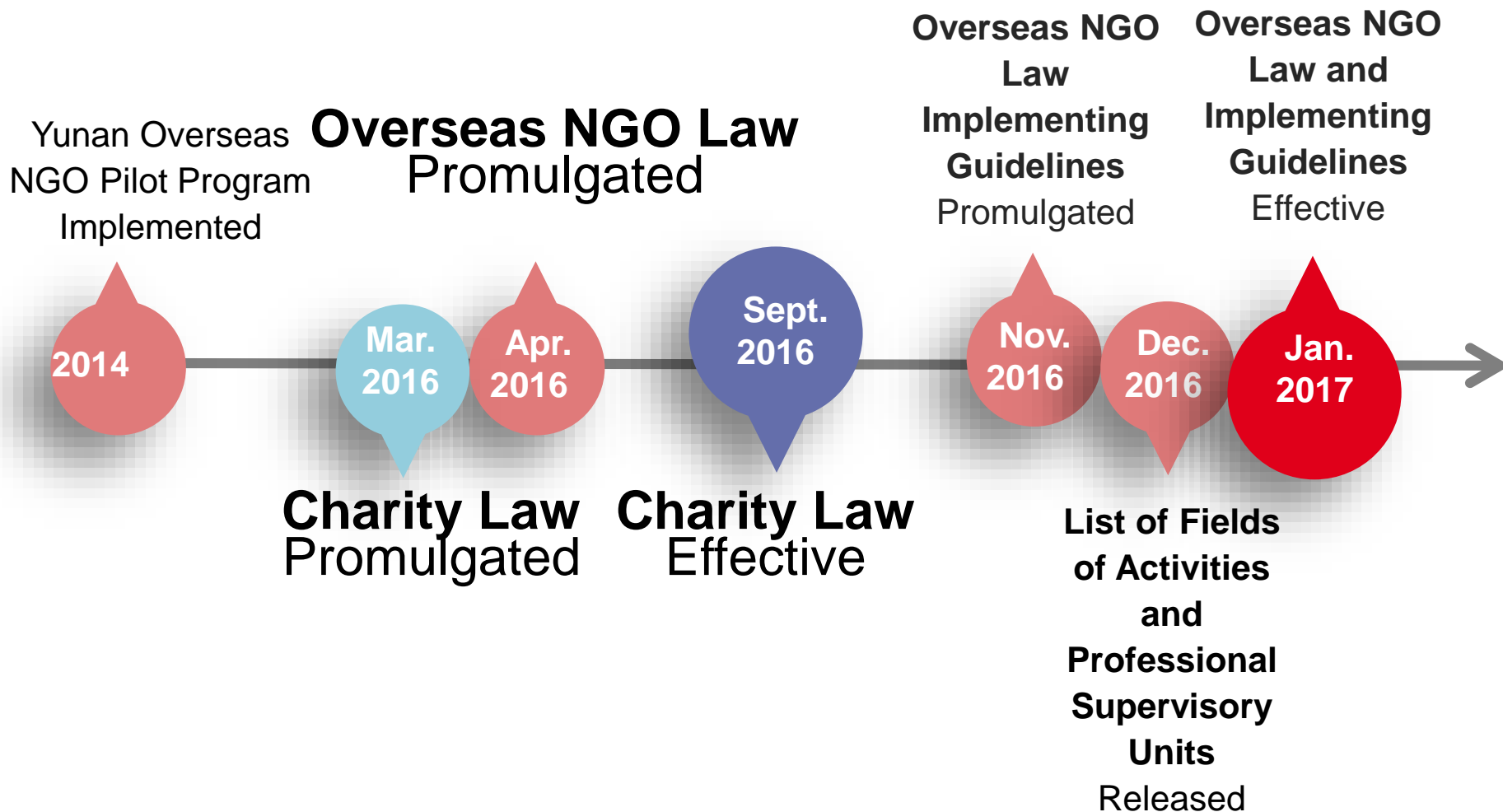


- New law permits foreign NGOs to formally establish and/or conduct activities in China
- Previously only a handful of foreign foundations had ever successfully registered a liaison Representative Office (Gates Foundation, Ford Foundation, etc.)
- Focus throughout the law is controlling the activities of foreign NGOs (“Management of Activities”)
- Fundraising is still not permitted; only certified Chinese charities may fundraise
- An estimated 7,000 NGOs have been operating outside any formal legal regime, with informal or tacit approval of authorities or without any attempt to legitimize.

Fu Ying: ‘There have been more than 7000 ONGOs in China’, Wangyi News,
<http://news.163.com/16/0304/12/BHAHFU9K00014AED.html>, last access time: (5/19/2017).

- Many operate through commercial structures (WFOE or RO) or without any structure. How to transition?
- New law requires formal authorization to operate, so these organizations view new law with anxiety
- Typical high-level Chinese law, general in nature, lacking specifics, “catch all” language
- Implementing regulations and guidance help clarify some and Q&A and more guidance to follow

Overseas NGO Law Timeline



Charity Law, March, 2016

Reorganizes and expands rules and regulations governing domestic charities and fundraising. Eleven years in development.



Chinese society has traditionally struggled to support civil society

- On the Charities Aid Foundation's World Giving Index for 2015, China ranked 144th out of 145 countries, with only Yemen ranking below it.
- Charitable donations in 2012 totaled merely US\$13.2 billion – four percent of those made in the US – although the US represents a high benchmark.
- Several thousand official philanthropic foundations represent just three percent of the US, and only 1.5 percent funded grassroots NGOs.

Editorial comments

- No “good Samaritan” in Confucian philosophy
- Limited tax incentives to incentivize giving
- Lack of ideological basis for charity and social entrepreneurship in Communist philosophy. For instance, the Red Cross has been nationalized in China – most independent charities in perpetual legal no-man's land

World Giving Index 2015*

MOST GENEROUS

1	Myanmar
2	U.S.
3	New Zealand
4	Canada
5	Australia

LEAST GENEROUS

141	Palestinian territories
142	Lithuania
143	Yemen
144	China
145	Burundi

THE WALL STREET JOURNAL.

www.dezshira.com

Charity Law, March, 2016

Reorganizes and expands rules and regulations governing domestic charities and fundraising. Eleven years in development.



May apply for public fundraising certificates to the civil affairs department under which they are registered

- Must have been operational for two years
- Only charitable organizations that have received public fundraising certificates may fundraise
 - Or in cooperation with an entity approved for public fundraising
- Civil affairs bureau must deem organization as having sound governance and a good record of legal compliance (foreign licensing given due consideration? How so if a Chinese organization?)
- In theory, Chinese charities no longer need to find a government sponsor, only registration with the appropriate civil affairs department. In practice, this does not appear to be the case (Shenzhen may be an exception)

Compliance and taxation

- Once an organization receives a public fundraising certificate, each of its public fundraising activities must be filed with the registering civil affairs department.
- Online fundraising activities must be published on an online platform designated by civil affairs authorities.
- Public foundations are required to keep their administrative costs at a level no greater than 10% of overall expenditures for a given year.
- No specific limits for the administrative costs of other charitable organizations (implementing rules may further clarify)
- Charitable organizations are to be given tax benefits, as are those who make charitable contributions (Currently no specific guidance)
- Overseas donations are eligible for reduction or exemption from duties and import VAT “in accordance with the law.”

NGO Law v Charity Law

• Charitable Activities

- Aiding the poor and the needy;
- Assisting the elderly, orphans, the ill, the disabled, and providing special care thereto;
- Alleviating damages from natural disasters, accidents, public health incidents and other emergencies;
- Promoting the development of education, science, culture, health, sports and other causes;
- Preventing and controlling pollution and other public hazards, protecting and improving the ecological environment; and
- Other public benefit activities that comply with the provisions of this Law.

Overseas NGO

Nonprofit-making and non-government social organizations such as foundations, social organizations and think-tanks that are duly incorporated overseas.

NGO Activities

Overseas NGOs may carry out activities that are conducive to the development of public interest undertaking in the fields of economy, education, science and technology, culture, health, sports and environmental protection as well as giving finance help for the needy and disaster relief.



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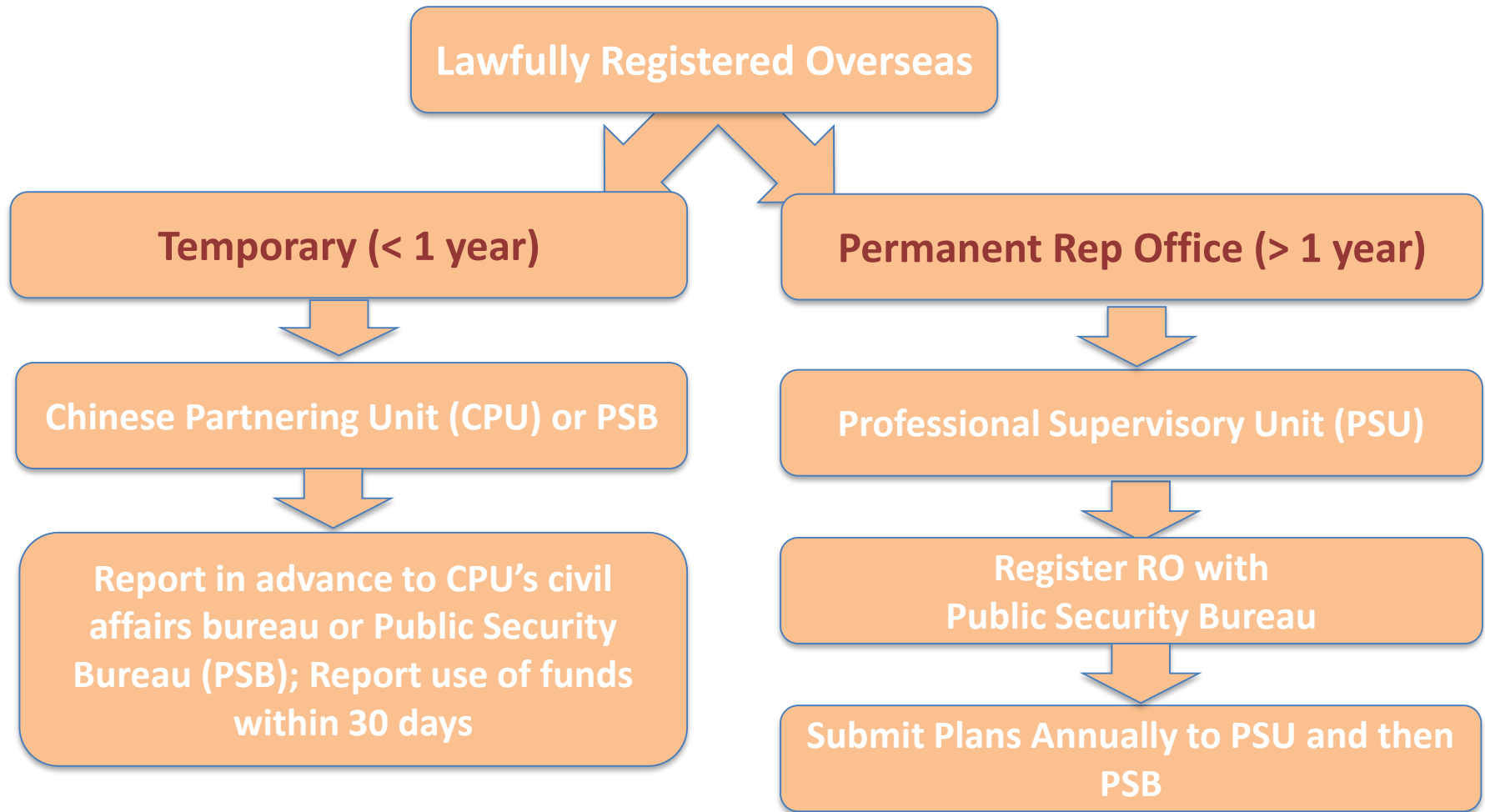


Years
1992-2017

Permitted and Prohibited Activities

*Law on the Management of the Activities of Foreign
Non-Governmental Organizations Within China*

Lawful Activities



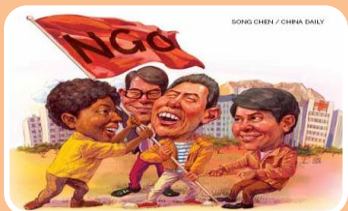
Scope of Lawful Activities – Article 3

“Overseas NGOs may carry out activities that are conducive to the development of public interest undertaking in the fields of economy, education, science and technology, culture, health, sports and environmental protection, as well as giving finance help for the needy and disaster relief in accordance with the present law.”



Scope of Lawful Activities

Representative Office Activities



- Foreign NGOs may only carry out activities using their registered name and within their registered operational scope and geographic region.
- A gap in the law about what is permitted (unlike charity law). Wide discretion left to approving authorities
- See official categories in following slide
Currently registered examples: Trade, Poverty Alleviation, Health, Education, Environment, Youth, Women, International Relations, Economic Development, Disaster Relief
See supporting guidance below

Temporary Activities



- Activities not lasting longer than a year
Current registered examples: Happy Smiles—Helping Children with Cleft Palates, China Climate Change Educational Program, Summer English Camp (YMCA), Retail Business Talents Training (Walmart Foundation), Praising the Earth's "Elephants" Toward Future Wild Animal Protection (WildAid), Second Guangzhou Panyu Migrant Children Community Support and Service Program (Oxfam)
See <http://www.chinafile.com/ngo/latest/foreign-ngos-temporary-activities>

Supporting Guidance



- 2017 List of Fields of Activities, Categories of Projects and Professional Supervisory Units for Overseas NGOs to Carry out Activities in Mainland China (December, 2016), *also known as*
- Catalogue of Fields, Projects and Supervisory Authorities for Overseas NGOs Carrying out Activities in Mainland China (2017)
Guidelines for the Registration and Temporary Activities of Representatives Offices for Overseas NGOs (November, 2016)
- *To be published:* Activities, Project Directory and Competent Authority Directory for Overseas NGOs

Catalogue of Fields, Projects and Supervisory Authorities for Overseas NGOs Carrying out Activities in Mainland China

<http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5579013/content.html?from=singlemessage&isappinstalled=0>

			Category	Sub-categories	PSU	
教育	基础教育	育管理人员能力建	人民政府主管 部门	Intellectu al proper ty rights	theories of internat ional intellectual pr operty rights	departments of people' s gover nments at provincial level
		配合地区和学 校丰富中外人 文交流形式和 内容			Research, exchange and cooperation on theories of internat ional trademarks	State Administration of Indust ry and Commerce, and the co rresponding departments of people' s governments at pr ovincial level
		配合地区和学 校开展拓展学 生国际视野的 教育活动				
		配合地区和学 校实施教育信 息化建设				
	职业教育和继 续教育	支持开展校企 合作	教育部、人力 资源社会保 障部、国家外国 专家局及省级 人民政府主管 部门	Others	Research, exchange and cooperation on quality supervision, and inspection and quarantine; and exc hange and cooperat ion of conflict diam onds and conflict m inerals	General Administration of Qu ality Supervision, Inspection a nd Quarantine and the entry- exit inspection and quarantin e bureaus directly under it, and the corresponding departm ents of people' s governmen ts at provincial level
		协助地区和学 校提升人才培 养质量			Research, exchange and cooperation on courier services	State Post Bureau and the cor responding departments of p eople' s governments at pro vincial level
		配合地区和学 校实施教育信 息化建设			Research, exchange and cooperation on outbound travel	National Tourism Administrati on and the corresponding de partments of people' s gover nments at provincial level
		配合地区和学 校丰富中外人 文交流的形式 和内容			Research, exchange and cooperation on work safety	State Administration of Work Safety and the corresponding departments of people' s go vernments at provincial level

Prohibited Activities

Engaging in activities without registering or filing (Art 46)

Engaging in activities after revocation or suspension (Art 46)

Activities by non-registered agent

- Without registration (temporary or RO), “no overseas NGO may carry out activities or carry out activities in disguised forms within the territory of China, entrust or fund or entrust or fund in disguised forms any entity or individual within the territory of China to carry out activities within the territory of China (Art 9)
- Without registration, “entrusts or funds an entity or individual within the territory of China to carry out activities within the territory of China” (Art 46)

Engaging in for-profit activities (Art 5) – Implies can’t operate via commercial enterprise?

Acting outside the scope of the registration or filing (Art 18, 23)

Acting outside approved geographic regions (Guidelines, no overlap with other regions)

Setting up branches (Art 18)

Operating bank accounts (except PSB registered) (Art 5, 21) - prohibits agent accounts!?

Engaging in fundraising (Art 21)

Engaging in or funding political activities (Art 5)

Engaging in or funding religious activities (Art 5)

Engaging in membership development (Art --)

Casual hiring, follow Chinese labor laws (Art 27)

Catch-all Language (Art 5 and Art 47)

- Engaging in activities that “endanger China’s national unity, security, or ethnic unity”
- “Spreading rumors, engaging in defamation, or publishing or disseminating other harmful information that endangers state security or damages the national interest”
- “Harming China’s national interests, the public interest, or the lawful rights and interests of citizens, legal persons, or other organizations”
- “Inciting resistance to the implementation of laws and regulations”
- “Obtaining State secrets illegally”



Limitations of the Representative Office

- It may only employ four foreign workers, the Chief Representative and three Representatives
 - To what extent would additional foreign visitors be permitted?
- Local workers must be hired through a qualified staffing agency (FESCO, China Star, DSA)
 - Existing NGOs using commercial LLC (WFOE) not thus restricted
- If it's decided to tax it, and it's taxed as a traditional commercial RO, then high tax burden
- Donations in China would need to be delivered through its partner (and partner's bank)
- Receives funds from parent, so to what extent hire third parties to implement projects?
- Might be able to pay for logistics services, pay for consulting services. What will be the potential permitted scope of activities of these Foreign NGO Ros?
- Will this be a matter decided by the PSU when developing the annual plan?
- Types of payments that Foreign NGO RO can receive or make in China may be the discretion of the responsible PSU and PSUs may have differing opinions on this



What's a qualified NGO?

Vague language grants authorities wide discretion:

“Not-for-profit and non-governmental social organizations, such as foundations, social groups, and think tanks lawfully established [or incorporated] outside of China”

Reference in the law to establishment abroad as an NGO suggests the foreign characterization as an NGO would be considered very relevant.

A foreign NGO must meet the following criteria

- Lawfully established outside of mainland China
- In for two years outside China, has conducted *substantial activities*
- Independently able to assume civil liability
- Activities focus: *Its aims and scope of activities in its organizational charter are beneficial to the development of the public benefit sector*
- *Other requirements and conditions under laws or regulations*



What's a qualified NGO?

- Not Universities? Not when recruiting? Not when engaged in certain activities?
- See the curious Article 53
- Is this an exclusion for certain types of NGOs or certain types of NGO activities?
- Article 53 is an afterthought at the end of the law – “Supplementary Provisions”
- Very last Article, other than effectiveness Article 54

Article 53

Overseas schools, hospitals, natural science, engineering, and technological research institutions or academic organizations and their domestic counterparts shall conduct exchange and cooperation in accordance with applicable provisions of the State.

Overseas schools, hospitals, natural science, engineering and technological research institutions or academic organizations specified in the preceding paragraph will be prosecuted for legal liability by law if they violate Article 5 of the present Law in carrying out activities within the territory of China (Art 53)

“Hao Yunhong, deputy director general of the NGO management office at the MPS, told the Chamber in Beijing that a foreign university coming to China to recruit students will not be required to comply with the law . . . These activities are not subject to the NGO law, as they are subject to MOE regulations. . . Foreign universities may engage in recruiting activities in China through overseas study agencies that have a license from the Ministry of Education,” said Hao. “These activities are not subject to the NGO law, as they are subject to MOE regulations.” <https://thepieenews.com/news/foreign-heis-exempt-from-chinas-ngo-law/>



What's a qualified NGO? Universities?

Catalogue of Fields, Projects and Supervisory Authorities for Overseas NGOs Carrying out Activities in Mainland China (2017)

科技	农村科技项目	科技部、中国科学技术协会、国家外国专家局及省级人民政府主管部门和单位			
	公共科技服务				
	理论研究				
	公民科学素质建设				
	科技服务平台建设				
	科技创新政策研究、科技发展趋势研究、				
				Cooperating with localities and schools to enrich the form and content of cultural dialogue between China and foreign countries	
				Promoting exchanges of faculty between China and foreign countries	

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文化	科技	宣传服务	科技部、中国科学技术协会、国家外国专家局及省级人民政府主管部门和单位			
		科技创新发展及成果推广				
		基础性科学人才再培训				
		科学技术交流与合作				
		科学技术知识的普及				
	文化艺术	文化艺术创作与表演	文化部、国家文物局及省级人民政府主管部门			
		文化艺术教育和培训				
		公共文化服务				
		文物及非物质文化遗产保护				
		网络文化服务				
		文化创意和设计服务				
		文化娱乐休闲服务				
		艺术品及相关服务				
		文化经纪代理				

Promoting Chinese students to study abroad and foreign students to study in China

Supporting localities and colleges and universities to enhance the quality of higher education

Cooperating to carry out academic dialogue activities

Launching joint research projects

Facilitating localities and colleges and universities to carry out cooperation and exchanges with the countries in the first line of the "one Belt and one Road" initiative.

Supporting universities to explore and establish credit conversion and mutual recognition systems

Cooperating with colleges and universities to organize and

Ministry of Education and the corresponding departments of people's governments at provincial level



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Intent behind new NGO Law: Political and Legislative Context

Political and Legislative Context

To strengthen Communist Party rule after six decades, the prioritization of the “rule of law” was declared at the 2013 and 2014 Plenums of the 18th Central Committee under the leadership of Xi.

http://www.china.org.cn/china/third_plenary_session/2014-01/15/content_31203056.htm, http://www.china.org.cn/china/third_plenary_session/2013-11/16/content_30620736_4.htm

It's argued that “Rule of law” means strengthening the legal foundation and legal instruments by which the party governs, not subjecting the party itself to the “rule of law.” New legislation strengthens and typically broadens authority and vague language enhances authority's discretion.

Substantial new legislation has followed suit, including, among others:

- *National Security Law*
- *Overseas/Foreign NGO Law* (offered for comment at nearly same time as *National Security Law*)
- *Counter-Terrorism Law*
- *Network Security Law*
- *Foreign Investment Law*

Accompanied by rising expenditures on domestic security, purportedly more than spent for external security (2013 figures are last available). “In 2013, it was widely reported that the Chinese regime spent more on public security (769 billion yuan) than on the the People's Liberation Army (740 billion yuan). Since then, however, the regional budget on public security has been concealed from the overall expenditure, according to Radio Free Asia.” https://www.theepochtimes.com/china-continues-vast-spending-on-domestic-security_1984944.html



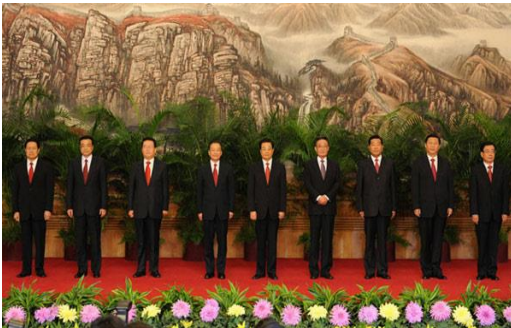
Legislative and Political Context

Interestingly, even before the “rule of law” speech by Xi, at the Third Plenum Decision of the 18th Central Committee in 2013 cited “social management innovation” as healthy, also describing it as “social governance,” emphasizing the positive view of civil society activity. “Social management innovation” was also cited and prioritized in the 12th Five Year Plan (2011 - 2015). http://www.china.org.cn/china/third_plenary_session/2013-11/16/content_30620736_5.htm

Stimulate the vitality of social organizations. Social organizations will take over public services they are suitable to provide. The country will prioritize the development of industry associations, trade unions and social organizations in fields of science and charity, as well as urban and rural community services. *They are to directly apply and register according to the law when they are founded.*

However, the new leadership’s positive comments were not an unconditional embrace of any social activity. Security seems to be the dominate theme. Well before these pronouncements on civil society, the Xi administration had begun a crackdown on China’s civil society that continues to the present. Any reforms were obviously very limited and selective, intended only for certain types of charitable organizations, economic and trade associations, etc., but definitely not for religious activity or political or legislative advocacy, especially those potentially regarded as “Western” in origin.

China researcher Wiliam Nee at Amnesty International, says the legislation comes “when there is arguably a rise in xenophobic attitudes on the part of the government, and increasing paranoia about the role of civil society that is not directly controlled by the Communist Party.”



www.dezshira.com



A human rights activist, a secret prison and a tale from Xi Jinping's new China

<https://www.theguardian.com/world/2017/jan/03/human-rights-activist-peter-dahlin-secret-black-prison-xi-jinpings-new-china>



Peter Dahlin spent 23 days in a 'black prison' in Beijing, where he says he was deprived of sleep and questioned with a 'communication enhancement' machine. Here he tells the story of his incarceration and expulsion from the



A foreign spy arrives in China posing as an academic.

“Everybody please introduce yourself and say a little something about your work.
Let’s start with this pretty lady.”



The Chinese female and foreign spy posing as an academic begin dating.

"Dear, do you still need to keep secrets from me?" asks David.

"I just want to use them for an article, let me take a look."



"Here's a copy, when you're done please give it back to me."

"Relax, sweetheart."



“What happened? David hasn’t called me recently, and his phone is always off.”

The foreign academic persisted in asking for “internal references” from the woman, but when she complies, then he disappeared.

Officials from China’s Ministry of State Security later tell her she was dating an overseas spy.



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Making Application to Register

Third Plenum of the 18th Central Committee in 2013

Stimulate the vitality of social organizations. Social organizations will take over public services they are suitable to provide. The country will prioritize the development of industry associations, trade unions and social organizations in fields of science and charity, as well as urban and rural community services. They are to directly apply and register according to the law when they are founded.

Article 9, Overseas NGO Law, 2017

Overseas NGOs shall register their representative offices established by law for carrying out activities within the territory of China; where an overseas NGO needs to carry out temporary activities within the territory of China without registering or setting up a representative office, a filing shall be made by law

Supervised by State and Provincial Police

Article 6

The State Council and the public security organs under the provincial people's governments are the registration authorities of overseas NGOs carrying out activities within the territory of China. Relevant departments and agencies under the provincial people's governments are corresponding competent departments in charge of overseas NGOs carrying out activities within the territory of China.

Article 7

The public security organs and relevant departments under the people's governments at the county level or above shall, within the scope of their respective duties, implement supervision and administration of and provide services for overseas NGOs carrying out activities within the territory of China by law.

The State establishes a mechanism for coordinating supervision and administration of NGOs from overseas to be responsible for carrying out research on, coordinating and solving the major issues that arise during supervision and administration of and providing service for overseas NGOs carrying out activities within the territory of China.

Article 39

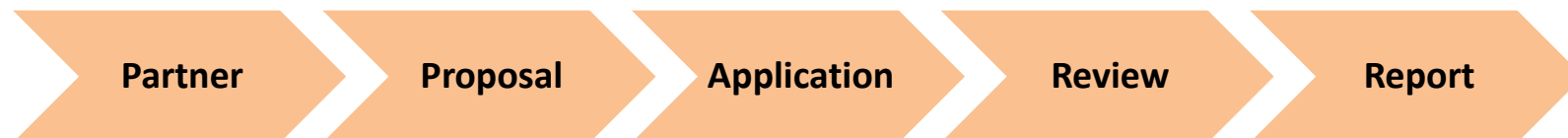
Overseas NGOs carrying out activities within the territory of China are subject to the supervision and administration of the public security organs, relevant departments as well as the competent administrative department.

Foreign NGO RO Registration Process

	Procedures	Notes
1	Obtaining approval of Professional Supervisory Unit (PSU)	<ul style="list-style-type: none"> Approval procedures may vary by PSU (e.g. different PSUs may or may not require lease to be in place prior to accepting or approving application)
2	Applying for NGO RO registration with provincial level Public Security Bureau (PSB) within 30 days of PSU acceptance	<ul style="list-style-type: none"> PSB reserves right to organize experts to conduct assessments (if needed) (Decision in 60 days)
3	Submit application materials to PSB's Overseas NGO Management Office	<ul style="list-style-type: none"> Completed application form Documentation certifying the NGO complies with NGO law (Article 10) Chief representative identity documents and proof of no criminal record RO office premises documentation Sources of capital documentation Consent from professional supervisory unit Other documents and materials required by law or by administrative regulations
	Registration Certificate is issued and publicly announced	<ul style="list-style-type: none"> Certificate shall include RO name, address, business scope, activity area, chief representative, PSU
4	Conducting Post Licensing Procedures <ul style="list-style-type: none"> Chops Bank Account Opening Tax Registration 	
5	Registering Post-Licensing Procedures with PSB	<ul style="list-style-type: none"> Tax Bureau (LTB or STB) have not issued official or unofficial guidance on NGO tax treatment

Note: No branches and only within their registered region - serious operational challenges on scope of activities,

Temporary Activity Approval and Compliance Process



Overseas NGO identifies domestic NGO partner to register its activities or registers directly with MPS/PSB. Should conduct due diligence on partner and confirm registration

Submit (online) activity proposal Overseas NGO management office (MPS/PSB) 15 days ahead (except in emergency)

Submit documentation to Overseas NGO management office (could vary by bureau):

- Evidence of establishment of overseas
- Agreement between the overseas NGO and Chinese partner
- Document the name, goal, location and period of the temporary activity
- Document project funding and sources and bank account of the Chinese partner
- Approval documents of Chinese partner

Other documentation required by other laws or regulations

Overseas NGO management office reviews. Disapproval would require immediately ceasing activities

Within 30 days of the project, the Chinese partner must submit a report to the Overseas NGO management office detailing the project and finances

Temporary Activities Partners

The following may serve as Chinese partners:

Chinese state authorities, mass organizations, public institutions and social organizations (Art --)

Guangzhou PSB adds, “state organs, people’s organizations, public institutions and social organizations.”

Neither individuals nor companies may serve.

Mass Organizations:

“people’s organization” and “mass associations” are pre-market reform concepts. The term “people’s organization” may often connote a more CPC-friendly movement, but these two terms overlap. CPC has created around several large organizations to oversee constituencies:

- All-China Women’s Federation
- Youth Communist League (recently under fire under Xi’s regime)
- All-China Federation of Trade Unions
- All-China Federation of Returned Overseas Chinese
- professionals such as scientists, writers, artists and cultural workers

Public Institutions:

Very broad. Many current examples are government related - schools, universities, hospitals, and provincial and municipal departments.

For examples, see <http://www.chinafile.com/ngo/latest/foreign-ngos-temporary-activities>

Peking University Office of Science and Technology Development

Shanghai Academy of Social Sciences

Zhaoqing Red Cross

Guangdong Province Zhongshan Children Welfare Hospital

Social Organizations:

Very broad, although currently far, far fewer of these have registered.

For examples, see <http://www.chinafile.com/ngo/latest/foreign-ngos-temporary-activities>

China Charity Federation

Bayan Nur Sand and Grass Industry Association

China Wildlife Conservation Association (“under the frameowkr of the China Science Association”)



Article 13

The registration authorities shall issue a registration certificate and make the registration information public if they approve the registration of the representative office of an overseas NGO



Faith-based?

Article 20

An Overseas NGO shall not impose conditions in violation of Chinese laws and regulations on the Chinese cooperator and the beneficiaries in carrying out activities within the territory of China [No membership development, Art --]

LDS Charities with China Charity Federation

Charitable Activities in Hebei Province, Shanxi Province, Heilongjiang Province, Sichuan Province, Yunnan Province, Henan Province, Hainan Province, Shandong Province, Liaoning Province, Fujian Province

Dates: 2017-06-23/2018-01-31

Islamic Relief with Gansu International Economic and Technology Cooperation Among the People Promotion Association

Seasonal Food Distribution and House Repair Project in Gansu Province, Linxia Prefecture, Dingxi and Pingliang Cities

Dates: 2017-06-15/2018-06-14

Christian Action with Qinghai Province, Hainan Prefecture Department of Civil Affairs, Singapore Ngee An Polytechnic

Youth Serving Nanhai Prefecture Children's Welfare House

Activities in Qinghai Province, Hainan Prefecture, Gonghe County

Dates: 2017-06-16/2017-06-18

Evangelical Medical Aid Society with Yunnan Disabled Rehabilitation Center

Helping Low-Income People with Disabilities in Yunnan Province and Kunming City

Dates: 2017-05-07/2017-11-25



World Vision	Hong Kong	Gansu Disabled Welfare Foundation	Gathering Good Program for Helping Raise Children with Disabilities	Gansu Province, Dingxi City, Anding District, Longxi County, Weiyuan County, Tongwei County	2017-07-20	2017-12-31
World Vision	Hong Kong	Hunan Charity Federation	"Stay Far from Disaster, Love Life" Program for Preventing and Reducing Disasters	Hunan Province	2017-04-07	2017-09-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Anhua County 2016 Post-Flood Reconstruction Program	Hunan Province, Anhua County	2017-04-07	2017-09-30
World Vision	Hong Kong	Chinese Academy of Sciences Institute of Psychology	Psychological Aid 2017 Meeting and Humanitarian Standards Briefing	Beijing, Chaoyang District, 16 Lincui Road	2017-05-25	2017-05-26
World Vision	Hong Kong	Sichuan Charitable Foundation for People's Livelihood	Post-Ya'an Earthquake Reconstruction Project Pledge Drive	Sichuan Province	2017-08-29	2017-09-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Anhua County 2017 Flood Assistance Project	Hunan Province, Anhua County	2017-08-29	2017-12-30
World Vision	Hong Kong	Sichuan Charitable Foundation for People's Livelihood	Sichuan Province, Jiajiang County School Desks, Chairs, and Dorm Beds Free Assistance Project	Sichuan Province, Jiajiang County	2017-08-29	2017-09-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Lianyuan City 2017 Flood Assistance Project	Hunan Province, Lianyuan City	2017-08-29	2017-12-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Lianyuan City 2017 Flood Assistance Project	Hunan Province; Lianyuan City, Anhua County, and Taojiang County	2017-08-29	2017-12-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Anhua County 2017 Flood Assistance Project	Hunan Province, Anhua County	2017-08-29	2017-09-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Taojiang County 2017 Flood Assistance Project	Hunan Province, Taojiang County	2017-08-29	2017-12-30
World Vision	Hong Kong	Hunan Charity Federation	Hunan Province, Taojiang County 2017 Flood Assistance Project	Hunan Province, Taojiang County	2017-08-29	2017-09-30
World Vision	Hong Kong	Shaanxi Province Charity Association	"Children as the Foundation" Area Poverty Alleviation and Development Project	Shaanxi Province, Ankang City, Baihe County; Hanzhong City, Yang County; Baoji City, Long County; Tongchuan City, Yaozhou District	2017-06-14	2017-09-30



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Years
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Dual Supervision: PSB and PSU

Supervised by State and Provincial Police

Article 6

The State Council and the public security organs under the provincial people's governments are the registration authorities of overseas NGOs carrying out activities within the territory of China. Relevant departments and agencies under the provincial people's governments are corresponding competent departments in charge of overseas NGOs carrying out activities within the territory of China.

Article 7

The public security organs and relevant departments under the people's governments at the county level or above shall, within the scope of their respective duties, implement supervision and administration of and provide services for overseas NGOs carrying out activities within the territory of China by law.

The State establishes a mechanism for coordinating supervision and administration of NGOs from overseas to be responsible for carrying out research on, coordinating and solving the major issues that arise during supervision and administration of and providing service for overseas NGOs carrying out activities within the territory of China.

Article 39

Overseas NGOs carrying out activities within the territory of China are subject to the supervision and administration of the public security organs, relevant departments as well as the competent administrative department.

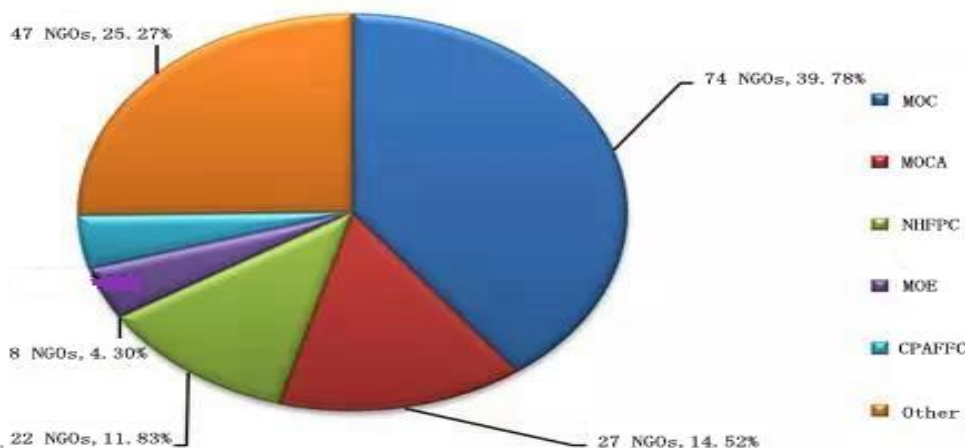
Dual Supervision

Overseas NGOs establishing ROs or engaging in temporary activities both need a partner. For Representative Offices, it's a Professional Supervisory Unit (PSU).

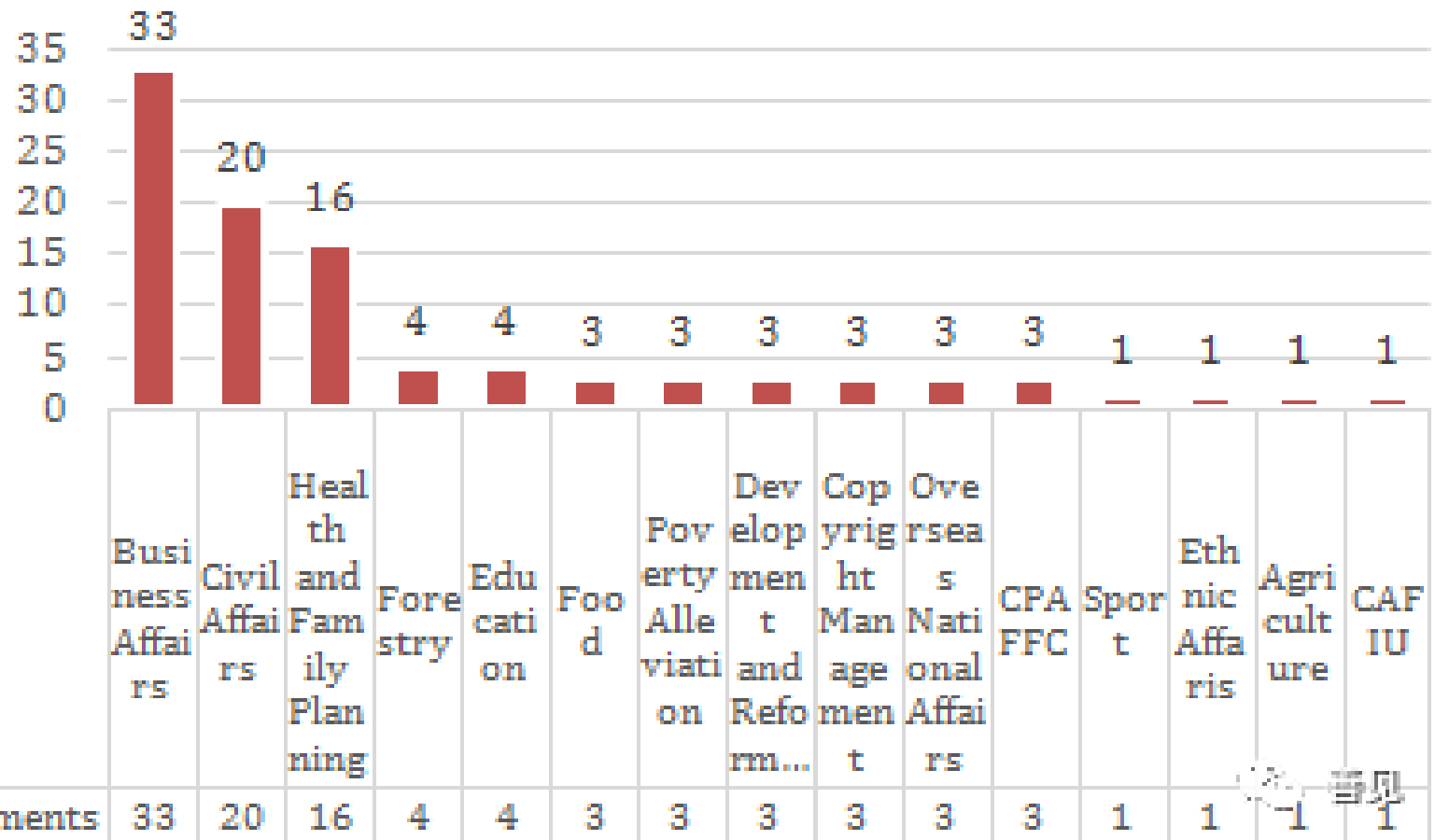
Professional Supervisory Units (PSU)

- To register a representative office with the MPS/PSB, foreign NGOs must obtain the approval of the appropriate “professional supervisory unit” (PSU)
- PSUs are likely to be government agencies responsible for regulating the relevant field. Education-related organizations would be supervised by the Ministry of Education or local counterparts. MPS to issue a catalog of designated PSUs. See official directory constantly being updated
- Temporary registration partners seem likely to be more numerous by nature of more numerous temp work
- Commerce departments (MOC), civil affairs departments (MOCA), and National Health and Family Planning Commissions (NHFFC) are the most common.
- Others include anti-poverty departments, the Development and Reform Commission, copyright management departments, overseas nationals affairs departments, the Chinese People's Association for Friendship with Foreign Countries (CPAFFC), sports departments, ethnic affairs departments, agriculture departments, etc.

As of August



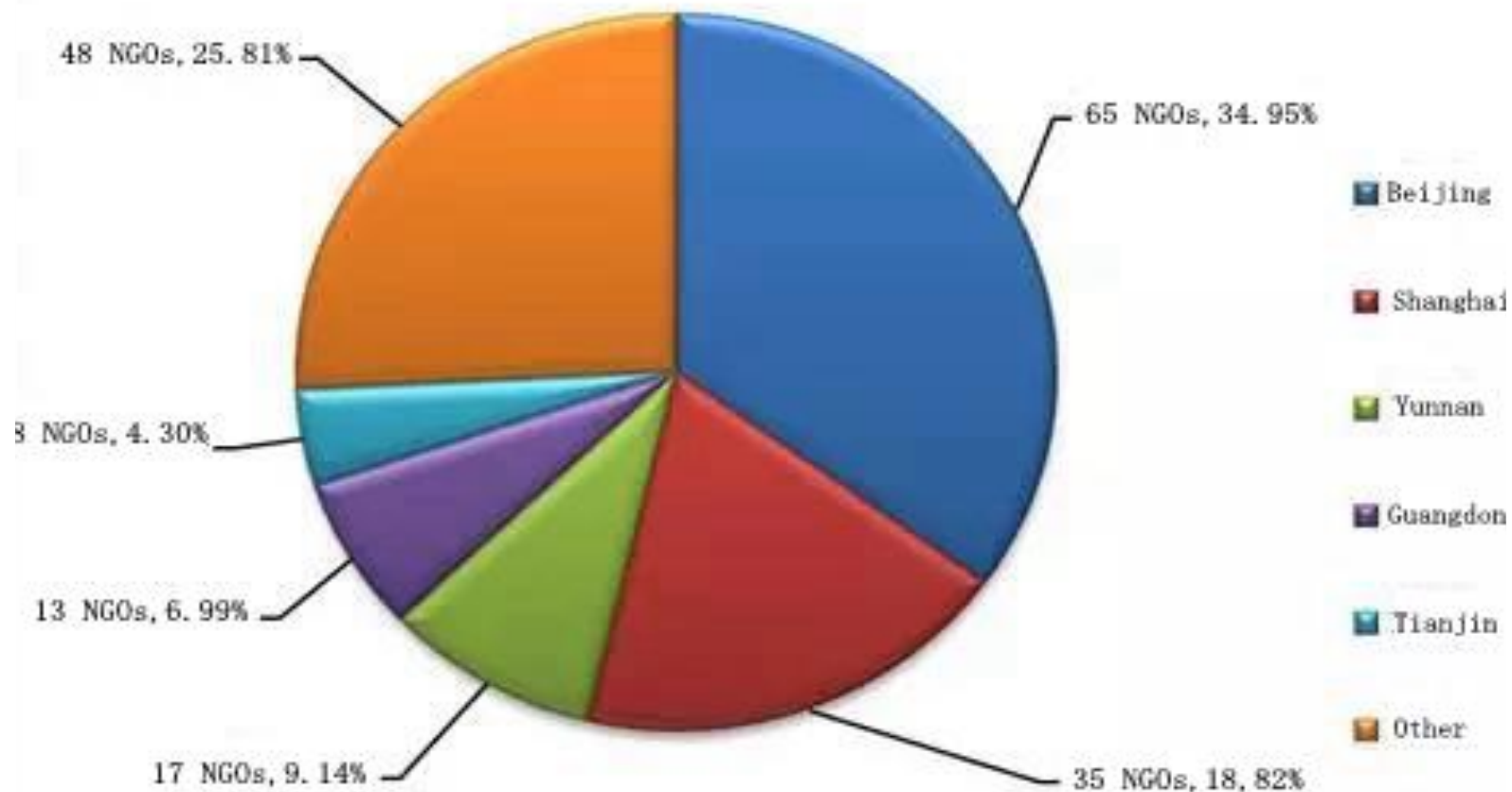
■ Departments



<http://chinadevelopmentbrief.cn/articles/a-statistical-analysis-of-the-implementation-of-the-ongo-law-2/>

www.dezshira.com

As of August



PSU: Primary Hurdle to Registration

- Overseas NGOs are responsible to identify the correct PSU and to initiate contact with the PSU at the correct level (Eg, provincial level)
- The roster of PSUs available is growing, as should familiarity with “sponsoring” foreign NGOs
- However, substantial liabilities attach when taking on an Overseas NGO, thus discouraging PSUs
- PSUs have no obligation to accept an ONGO application and may decline without feedback
- There is no uniform application procedure among PSUs; it would vary between PSUs or not yet exist
- MPS/PSB will typically not liaise with a PSU to confirm they are an appropriate PSU nor provide guidance on application procedures
- Where a relationship exists between an NGO and PSU, obviously receptivity increases
- About the PSU relationship – see the World Vision story in follow slides
- The NGO and PSU would normally negotiate a master cooperation agreement
 - *Article 23: An overseas NGO shall use the funds within the registered scope of business and the area of activities of its representative office or the agreement concluded with its Chinese cooperator*



PSU and Scope of Geographic Activity

- According to the Guide, “in the case of an overseas NGO with two or more ROs, there shall be no overlapping of the specified locations of activity among its ROs.” (*Guidelines*, I, (1), F)
- The main reason ONGOs may set up multiple ROs is they cannot receive endorsement of their PSUs for cross-provincial activity (Eg, World Vision)
- Most ROs under the charge of civil affairs departments operate in a more restricted fashion under the limited geographical reach of the civil affairs departments
- ROs whose PSUs are national-level ministries or commissions may be regarded as having supervisory capabilities that stretch across multiple provinces or nationwide



Registering and Working in China – an Interview with Albert Yu, World Vision

4 Aug 2017 | Children · China in the World · Education · Left-Behind Children · Overseas NGOs

This interview was conducted by CDB's Gabriel Corsetti



CDB: Since China's Overseas NGOs Law came into effect, registration has become the most pressing issue for overseas NGOs in China. So what would you say the most challenging part of the process of registration has been for the World Vision?

Albert Yu: World Vision currently works in 12 provinces, so initially, we had to determine whether we would be able to register at the national level, which would allow us to be covered across the whole country under one professional supervisory unit. As we explored this possibility, we decided another feasible approach was to also attempt registering in different provinces. In the end, we obtained registrations at several provinces, however, it did lead to a heavy investment in manpower and relationship building across all the provinces we aimed to register in. The challenge also included determining who to approach to be our PSU, and being able to engage with them. In the past, our programs have been implemented at the county level, so while we enjoyed strong relationships at that level, we would need to strengthen our relationships at the provincial level. Once we were able to confirm our PSUs, it was just a matter

<http://chinadevelopmentbrief.cn/articles/registering-and-working-in-china-an-interview-with-albert-yu-world-vision/>

1/3

9/6/2017

Registering and Working in China - an Interview with Albert Yu, World Vision - China Development Brief

of following the process as stipulated by the law. After confirming the PSU, we worked closely with our counterparts to make sure everything was in order before we submitted the application to the respective provincial public security departments to complete registration.

CDB: How do you think registering in so many different provinces will affect World Vision's work in the future?

AY: Prior to the ONGO law, we already had a zonal management structure in China. We have projects in 12 provinces and we split them into four zones. Each zone had its own administrative office. Given our pre-existing presence in China, establishing a representative office in multiple provinces wasn't going to require a significant shift for us. At the end of the day, our interest was being able to continue serving children and the communities we work in, to continue our presence and deepen our impact. We are also now in the process of determining how best to support the administration of multiple representative offices.



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Reporting, Fundraising, Taxation

Reporting and Compliance (NGO RO)

Annual Activity Plan (for upcoming year)

- Before December 31 each year, RO shall submit the Activity Plan for the following year to PSU for approval, including project implementation and fund utilization
- Within 10 Days after PSU approval, complete “Overseas NGO Annual activity plan filing form” (Form 7) and submitted to registration management organ together with the activity plan for the flowing year. Art 19

NOTE: If activity plan needs to be modified, NGO will be required to timely complete and file “Overseas NGO Annual Activity Plan Amendment Filing Form” with PSB

Annual Compliance (for previous year)

- NGO RO will submit Work Report for preceding year to PSU before January 31 each year
- PSU reserves the right to provide comments on Work Report
- NGO RO will complete Overseas NGO annual report and file with PSB for annual inspection before March 31 each year (detailed requirements on annual inspection have yet to be provided)

Formal Hiring – And Report It

- Foreign NGO shall comply with the laws and administrative regulations in employing staff within the territory of China, and shall file the information about its employees with the competent administrative department and the registration authorities for record (Art 27)

General Prohibition on Fundraising

Article 21

No overseas NGO may acquire or use any funds other than those mentioned in the preceding paragraph for carrying out activities within the territory of China. Neither an overseas NGO nor its representative office may solicit donations within the territory of China.*

**(1) Funds from lawful overseas source; (2) Interest on bank deposits within the territory of China; and (3) Other funds obtained by legal means within the territory of China.*

The Foreign NGO Management Law prohibits foreign NGOs (including its ROs registered in China) from engaging in or providing financial support to any for-profit activities. However, it doesn't mean no income is allowed for foreign NGOs. Whether it is for profit or not is determined by the purpose. NGOs should not focus on earning a profit and providing dividends for shareholders/owners.

*Yunhong Hao, Deputy Director General (DDG) of Foreign NGO Management Bureau
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Fundraising - and Bank Accounts - Article 22

- *An overseas NGO that sets up a representative office shall manage the funds to be used within the territory of China through the bank account filed by the representative office with the registration authorities.*
- *An overseas NGO that carries out temporary activities within the territory of China shall manage the funds to be used within the territory of China through the bank account of its Chinese Cooperator. Such bank account shall be kept separately and used for the dedicated purposes.*
- *Neither an overseas NGO and its Chinese Cooperator nor an individual may receive funds or make payment for project activities within the territory of China in whatever form through any channel other than the bank accounts specified in the preceding two paragraphs*



Fundraising, Model 1, Special Fund

专项基金 (zhuanxiangjijin)

Mechanics

- Utilize the fundraising authority and bank account of a partner Chinese firm
- Chinese partner firm must have public fundraising credentials
- Fundraising materials and webpage(s) should characterize the project as the Chinese partner firm's project
- Promotionals should not refer to the foreign NGO (project should appear solely the project of the Chinese partner)
- The foreign NGO also partners with (or hires) a grassroots Chinese NGO with robust volunteer base to execute project
- The foreign NGO, fundraiser, and grassroots NGO have "gentleman's agreements" about dispersal of monies
- Monies go from fundraisers bank to grassroots Chinese NGO's bank (should not pass thru foreign NGO's account)
- The project stays within the scope of both Chinese NGO's permitted activities and permitted geographic regions

Comments

- Very popular approach – perhaps 80% of foreign NGOs in China use this model
- This model can't prove relief for overhead expense of foreign NGOs – no money delivered to the foreign NGO account
- The Chinese fundraiser takes a cut (up to 10%); GONGOs reportedly aggressively offer this services to foreign NGOs
- The money is legally donated to the Chinese NGO, so the "gentleman's agreement" could easily be challenged



Fundraising, Model 2, hosting model

Mechanics

- Reportedly only one case so far, the World Wildlife Fund (WWF)
- China Chairman is China Vanke real estate mogul, Wang Shi
- In April of 2017, Wang Shi and other famous Chinese citizens associated with the WWF set up a Chinese NGO in Shenzhen (not able to verify if this is The One Foundation or another)
- Reportedly, this is WWF's vehicle for fundraising for WWF in China
- In theory, this fundraiser is controlled by a Chinese board, but WWF handles daily management
- This would amount to a Chinese hosting arrangement, Charity's version of a VIE
- Local NGO should not use WWF's name and logo, although referencing "joint activity" might pass

Comments

- Shenzhen is reportedly one of the few places a local NGO can set up without a PSU
- Can hire all your staff and ground support at the local NGO, so it helps solve the China overhead expense issue
- Success depends on limited enforcement of the new law, since a foreign NGO is only supposed to do business through its own registered NGO in China (Technically, it may not be compliant with new NGO law)
- They figure they are not violating the intent – to stop prohibited activities
- By reputation, the WWF local NGO is a "very courageous person" in NGO world (aka, gutsy and brazen)
- Some NGO denizens have complained to MPS, but the MPS dismissed complaints saying it was in jurisdiction of civil affairs bureau



Fundraising, Model 3, parallel commercial company

Mechanics

- A parallel commercial entity (WFOE) would be maintained to hire and pay project staff
- The WFOE would ideally be a legitimate, independent consulting business with a book of clients, not just a captive cost center of the foreign NGOs headquarters
- Foreign NGO would hire the multi-staffed WFOE to implement projects for the NGO ROI
- The WFOE would be established abroad with no obvious connection to the NGO RO

Comments

- Assumes foreign NGOs may procure logistical services, consulting services, etc.
- Foreign NGO law forbids use of unregistered agents and bank accounts
- Any parallel WFOE should achieve as much independence as possible
- Transactions with the RO NGO should appear to be “arms length”
- The WFOE’s “controlling party” should not be the foreign NGO headquarters
- Foreign NGO law forbids operation of for-profit business
- It is argued the for-profit prohibition only applies to the NGO RO
- Could such a WFOE serve as a vehicle to pool resources for multiple NGO ROs in China
Because a WFOE is a commercial enterprise governed by the AIC, so the MPS will not investigate
- Uncertain to what extent such a structure and operation would attract the scrutiny of authorities

“For the WFOE set-up or to be set up by a for-profit corporation with a foreign NGO as the ultimate shareholder, they can continue as long as they will do ordinary businesses as normal for-profit companies and comply with applicable laws. They can donate the money or otherwise use their money for public interests or charity purposes. However, the WFOEs cannot be used to solely carry out “NGO” activities on behalf of the foreign NGO for promoting the mission of the foreign NGO.”

Yunhong Hao, Deputy Director General (DDG) of Foreign NGO Management Bureau

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Taxation and Remaining Issues

Collecting and Disbursing Payments

- Foreign NGO RO cannot solicit donations in China
- However Foreign NGO Law leaves open the option for receiving payments as “other funds obtained by legal means within the territory of China”
- It seems very possible the payments that Foreign NGO RO can receive or make in China will be the discretion of the responsible PSU and PSUs have differing opinions on this

Tax exemptions, VAT fapiao, and Permanent Establishment

- The RO of an overseas NGO is “entitled to tax incentives, etc., by law” (Art 36)
- While foreign NGO ROs are eligible for tax exemptions, no details are provided
- No further directives from tax authorities; they are very hesitant to grant exemptions
- It's expected that by year end, a relevant circular will be issued on exemptions
- Insiders currently predicting two contracting results:
 - NGO ROs will be fully taxable, because many are pressing the tax bureau to allow them to issue “fapiao,” thus incentivizing partners
 - NGO ROs may be able to choose the actual profit method, thus no CIT would be triggered (if no profit). For VAT, there's a rumor that commercial ROs in Beijing could be exempted from VAT, based on an internal tax bureau document, and some Ros have even successfully applied for a refund. Therefore, it seems unlikely NGO ROs would need to pay VAT. But in the case any NGO RO needs to issue tax invoices, VAT would be triggered.
- Temporary activity could give Foreign NGOs significant exposure to PE risk in China. It is reasonable to expect the MPS and its branches at provincial levels to request travel records of all employees sent by a Foreign NGO to China to help the MPS to monitor the Foreign NGO's activities in China and it is plausible they would share with the other agencies, including the tax bureau. Tax authorities could then calculate the days a Foreign NGO's employees have spent in China to assess a PE.



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Enforcement and Sanctions

Enforcement and sanctions

- Still very early days to know to what extent law will be strictly enforced and violators sanctioned
- China has a long history of selective or sporadic enforcement, one moment turning a “blind eye” and then suddenly “putting its foot down”
- Practically, the basis for sanctions in the new law was never needed, although they provide specific guidance and legitimate actions
- A heavy emphasis on registration or filing
 - *A representative office or carries out temporary activities without filing shall not set up a representative office or carry out temporary activities within the territory of China within 5 years from the date on which the activities are banned (Art 48)*
- An incomplete, sampling of the many enforcement and sanction provisions found in Articles 41 to 52
- Note the tone - stops sounding like a regulations for charities and more like a national security law, betraying underlying fear of authorities
 - Entering into the domicile and arena areas of activities of the overseas NGO (Art 41)
 - Copying and seal up documents in order to preserve them for an investigation (Art 41)
 - Sealing up and size premises, facilities or property suspected of being involved in the illegal activities (Art 41)
 - Check into bank account activity and freeze funds suspected of being involved in illegal activities (Art 42)
 - Warn and order to terminate activities (Art 45)
 - Confiscate illegal property or earning (Art 45)
 - Revoke registrations (Art 45)
 - Impose penalties (Art 45)
 - Detail liable persons for ten days (Art 46)
 - Blacklisted from registering or filing in China and detail liable persons for 15 days (Art 47) Prosecute for criminal liability (“crimes of splitting the country, damaging national unity or subverting State power” (Art 47)
 - Blacklisting for 5 years or permanently (Art 48)
 - Confiscate registration certificate and seals and declare them invalid (Art 49)
 - Deport foreigners (Art 50)
 - Prosecute Chinese authorities who do not uphold the law (Art 51)



Positive Note

Article 8

The State commends the overseas NGOs that make outstanding contributions to the development of China's public interest undertakings



The ultimate purpose of the Foreign NGO Management Law is to better serve these foreign NGOs and safeguard their legitimate rights and interests. The law is not about setting limitations on foreign NGOs' activities in China, nor about moving against China's opening-up of the NGO sector. It is about providing legal frameworks for lawful foreign NGOs operating in China, giving legitimate support to them and protecting their rights and interests.

Yunhong Hao, Deputy Director General (DDG) of Foreign NGO Management Bureau

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Historic Models - Transitioning to New

How Were NGOs Registered Prior to *NGO Law*

“NGO” RO

Civil Affairs Bureau

- After 2008 NGOs were permitted to register an RO with the Civil Affairs Bureau (however this was

RO

AIC

- Prior to 2008 NGOs were permitted to register an RO directly with AIC

WFOE

AIC

- AIC typically would not permit an NGO to directly register a WFOE; however, many NGOs used for-profit holding companies to register WFOEs

Transitioning

The law will be implemented from Jan 1, 2017. For existing foreign NGOs that were previously registered in China with MCA or AIC, they will be transferred from the original registration authority to MPS by submitting certain supplemental document. For foreign NGOs that have not registered in China, there will be a transition period for them to apply for relevant certificates and go through relevant administrative process. MPS acknowledged the registration process may take some time after the Law takes effectiveness.

Yunhong Hao, Deputy Director General (DDG) of Foreign NGO Management Bureau

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How NGOs Are Registered After NGO Law

How estimated 7,000 foreign NGO outside the law can transition not explicitly addressed. The silence has aroused much anxiety.

“NGO” RO

Civil Affairs Bureau

RO

AIC

WFOE

AIC

NGO RO

Public Security Bureau

Temp.
Activity

(w/ Chinese Partner
Organization)

Charity

Civil Affairs Bureau

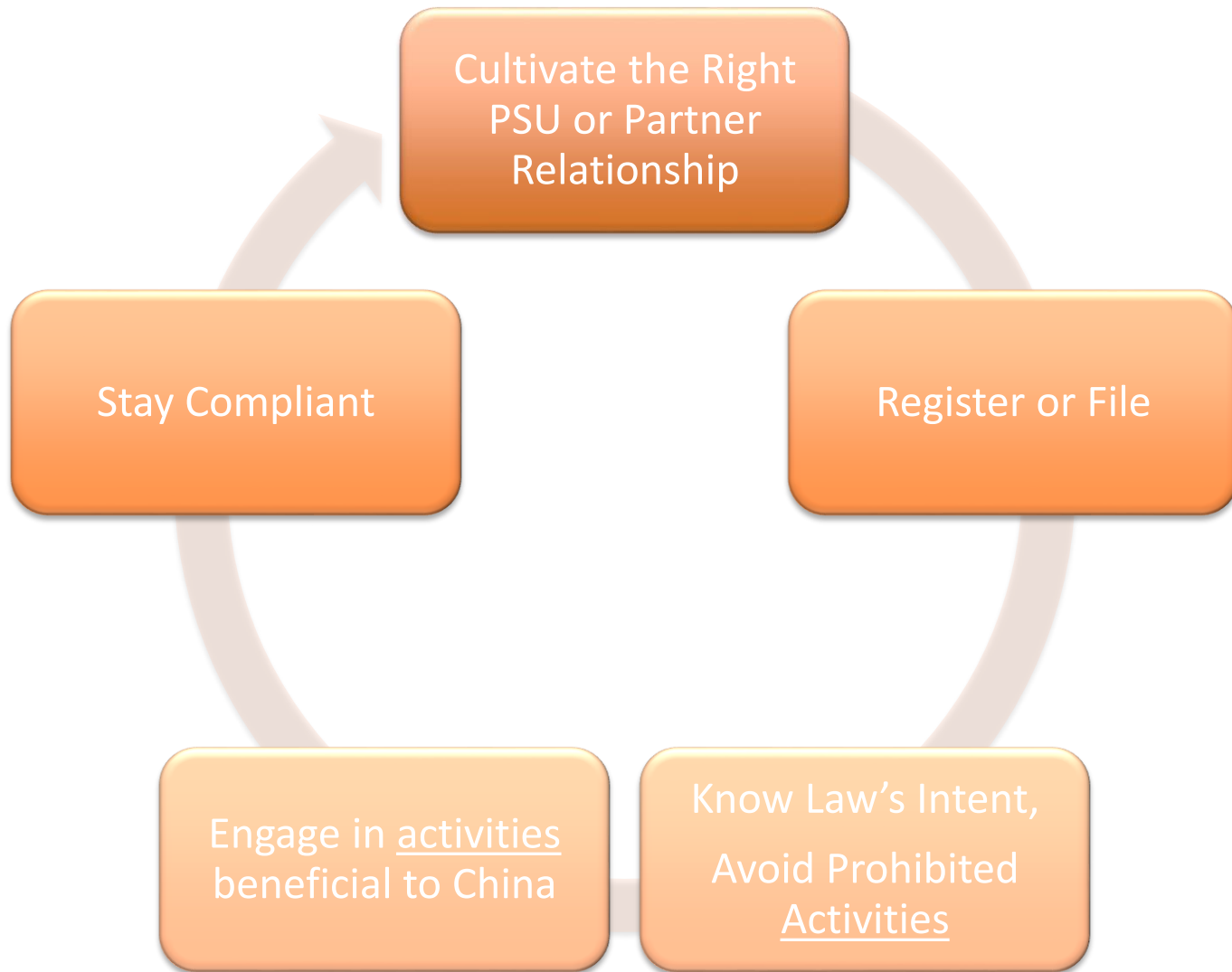


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Conclusion





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- Dezan Shira Asian Alliance Members

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