

Comments from U.S. Universities¹ on “Non-Mainland Non-Governmental Organization Management Law of the People’s Republic of China (Draft)”

June 4, 2015

The U.S. universities and institutions of higher education named below have carefully reviewed the Non-Mainland Non-Governmental Organization Management Law of the People’s Republic of China (Draft) (the “Draft Law”) and appreciate the opportunity to provide comments.

We are very concerned about whether and how the Draft Law would apply to the broad range of educational activities that non-Mainland universities and our personnel engage in with our Chinese counterparts. While the comments included here are the views of the below-named U.S. universities, we believe that they reflect concerns that are relevant to nearly all non-Mainland universities (including universities domiciled in the Hong Kong and Macao Special Administrative Regions and Taiwan) that conduct educational and research activities and exchange in China.

1. Application to Universities. The Draft Law applies to “non-Mainland non- governmental organizations” (境外非政府组织), which are further defined as “non- profit, non- governmental social organizations” (非营利, 非政府社会组织). It is not clear whether these terms are meant to include non-Mainland universities.

The terms “non-Mainland non-governmental organizations” (境外非政府组织) and “non-profit, non-governmental social organizations” (非营利, 非政府社会组织) do not fully correspond to the terms traditionally used to describe non-Mainland universities either in their home countries or in the statutes and regulations of the People’s Republic of China.

- The term “social organization” (社会组织), which appears in certain Chinese regulations, is not used to describe non-Mainland universities, or even Mainland universities, which are typically public institutions (事业单位).
- While many non-Mainland universities are non-profit private universities, a significant percentage of the world’s universities are non-profit public universities, including most Chinese universities and many of the world’s top- ranked universities.
- While non-Mainland universities are often organized as non-profit institutions, for-profit universities do exist and play a significant role in the education sector in many countries.

The ambiguity of the terminology in the Draft Law consequently raises a question as to whether the Draft Law is intended to apply to all non-Mainland universities, to some non-Mainland universities, or to no non-Mainland universities.

¹ These comments are jointly submitted by the following U.S. universities and institutions of higher education: Boston University; Columbia University; Cornell University; Duke University; New York University; Northwestern University; Rutgers, The State University of New Jersey; University of Illinois at Urbana-Champaign; University of Iowa; University of Michigan; and Vermont Law School.

2. Scope of Activities

The Draft Law applies to non-Mainland non-governmental organizations “conducting activities” in China. The term “activities” (活动) is not defined in the Draft Law and, if read broadly, could include almost any program, event or activity that a non-Mainland entity or its personnel conducts in China.

If the Draft Law were to apply to non-Mainland universities and the term “activities” were given a broad reading, then even a single instance of the following activities, among others, would require registration under the Draft Law:

- A non-Mainland university, in cooperation with a Chinese government agency, conducts an international research conference in China
- Faculty of a non-Mainland university travel to China to interview applicants for graduate school at the non-Mainland university
- Faculty of a non-Mainland university travel to China to present a seminar or lecture in a course
- Faculty of a non-Mainland university conduct a training workshop for a Chinese government agency in China
- A non-Mainland university is engaged by a Chinese entity to assist on the establishment and development of an educational program or research enterprise at a Chinese university or research institute
- The medical center or hospital of a non-Mainland university engages in research collaborations, clinical advisory projects, or training or education programs with Chinese universities or hospitals
- Faculty, graduate students and undergraduate students of a non-Mainland university travel to China in academic exchange programs with Chinese universities
- Faculty of a non-Mainland university travel to China as part of joint research projects conducted with Chinese universities
- A non-Mainland university organizes a networking event for its alumni living and working in China
- A non-Mainland university, through its alumni association, sponsors a tour of China so that its alumni and their families can develop a better understanding of China and the non-Mainland university’s programs in China
- A student singing group from a non-Mainland university travels to China to participate in a competition that is properly licensed under existing Chinese law and regulations

3. Implications for the Internationalization of Chinese Universities

The Outline of China's National Plan for Medium and Long-term Education Reform and Development (2010-2020) included a directive that Chinese higher education institutions open their faculties to the world, participate in creating collaborative academic organizations, and establish research centers with foreign education and research institutes. Following that directive, many Chinese higher educational institutions and the provinces or municipalities that support them have initiated a wide range of academic exchange and educational activities and established united research and development centers in China with non-Mainland universities. We are very concerned that the requirements of the Draft Law may have a dampening effect on both existing and future initiatives. Non-Mainland universities, especially smaller non-Mainland universities and non-Mainland universities with more limited programs in China, may decide that the complexity of the registration process, the on-going operational requirements, and the related financial and administrative burdens necessitate modifying, temporarily suspending, or even closing their programs.

4. Recommendation

We recommend that the Draft Law be clarified to clearly exclude from the coverage of the Draft Law non-Mainland universities and other institutions of higher education, public and private, for-profit and not-for-profit, and the activities of their personnel in China. Most non-Mainland university activity in China is conducted (1) in partnership with established and qualified Chinese universities, or approved institutions, (2) openly and pursuant to existing Chinese laws and regulations, and/or (3) in furtherance of exchange and understanding between the People's Republic of China and other countries. Applying the Draft Law to non-Mainland universities may have the unintended and negative effect of restricting or severely reducing academic and research exchange and cooperation between the People's Republic of China and the world's very best academic institutions.