CASE STUDY SEVEN

This European organisation envisages a permanent engagement with China: the current restrictions therefore are not a reason to disengage

A key objective of this Ford Foundation-funded research project is to monitor and evaluate the state of implementation of China's Overseas NGO Law by documenting the intended and unintended consequences of the new law for European non-profit organisations and their Chinese partners. This case study is based on an in-depth interview conducted after the enactment of the law. It has been anonymised to protect the identity of both the organisation and interviewee(s).

Short version

Past

This organisation has been working in China since 2015 and enjoys good Chinese government relations. Their engagement with China grew out of a Europe-China cooperation programme and focuses on capacity building. With the Overseas NGO Law (henceforth: the law) coming into effect the organisation approached a potential Professional Supervisory Unit (PSU). Although they had previously worked together the potential PSU had not been one of their main partners. Detailed discussions about registration began in January 2017 and the registered office was approved within six months.

Present

Following registration this organisation has been able to continue with much of its previous programme of work although their cooperation with civil society organisations in China has had to be restructured. This organisation's PSU is a Ministry and it is now clear that the majority of financial support they provide will benefit their PSU.

With the new law this organisation has found their work 'changed from every perspective'. The administrative burden was onerous and ensuring approval of activities had slowed down implementation of their strategy in China.
Future

This organisation has made a long-term commitment to working in China. They understand the trend in China towards greater government control and less space for civil society. However, their work addresses an issue of global and domestic importance and developing legal capacity in China will help build a more accountable government. Registering as an overseas NGO provides them with an agreed framework for their operations and they hope to gradually expand their work.

EU-China relations beyond aid

This organisation operates in an area where there are many opportunities for multi-track diplomacy and they participate in an EU-China platform of experts. With a focus on building domestic capacity in China their strategy does not promote Chinese participation in international meetings.

Full version

Past

The organisation began working in China in 2015. Several core staff, including the CEO, had participated in an EU-funded project and they enjoyed good Chinese government relations. Following the end of the EU project they were determined to continue their engagement with China. Three staff set up a China office and began to identify new organisations with which they could cooperate. They also consulted lawyers on their legal status and in 2016 they registered a wholly foreign-owned enterprise. The organisation was aware of the Chinese government’s intention to introduce the law and they began to research the implications. In the months approaching the introduction of the new law they also reached out to the most relevant Professional Supervisory Unit (PSU) for their area of activity to seek help with registration.

In January 2017, within a week of the law coming into effect, the organisation was invited to a meeting by the PSU. The Chinese PSU shared information on the documents required for registration and drew attention to the categories of work that fell under their jurisdiction. After this meeting the organisation collated and translated required documents, secured signatures from Board members and got documents notarised. During this process the potential PSU tried to be helpful and respond to questions, however, they were often unclear about the requirements and had to refer the organisation to the police for clarification on several points. Within three months the organisation had submitted all their documents for review. For the PSU, the documents contained unnecessary details about their work elsewhere and they were asked to make revisions. The registration certificate was eventually issued at the end of June 2017.

The organisation was apparently the first overseas NGO registered by their PSU. A similar US-based organisation also took six months to register despite submitting documentation in January. Delays in registration seemed to reflect considerable uncertainty on the part of the PSU and the need to frequently defer to the police to clarify requirements. Uncertainty on the part of PSUs regarding the detailed requirements of the new law has been a common refrain in interviews conducted for this research project.
This European organisation's work in China fell into three areas. Building on the local staff's prior experience from an EU-China project, the first area focused on dialogue with the government and the facilitation of study visits for officials. A second important area of work was the rule of law programme. This supports the legislative and regulatory drafting process through providing access to expertise. It also provides relevant training for the judiciary and procuratorate. The third area of work was support to civil society. After a scoping exercise and needs assessment, the organisation had decided to help local NGOs litigate in the area of concern through providing support for case-related expenditure. They had also decided to build the legal capacity of NGOs in the field.

Although the organisation had enjoyed a good relationship with their PSU prior to the new law, it had not been their most important partner in China. Key partners were judicial agencies.

Present

State of China-related activities. In the year following registration, this organisation has been able to continue with much of their previous programme of work. They have, however, had to restructure their approach to cooperation with civil society organisations. Under the new model, funds will be made available to NGOs through a Chinese foundation that supports their area of work. At the moment they are still fundraising for the legal capacity building programme and it is, therefore, too soon to assess the effectiveness of this model for supporting domestic NGOs. However, it is already clear that only Chinese organisation with not-for-profit (minfei) registration will be eligible to apply for these funds. Their PSU is broadly supportive of providing assistance to Chinese NGOs.

The European organisation acknowledged that they had adopted a very precautionary approach to the impact of the law. As an organisation set up by lawyers they felt obliged to follow the law where there was a law and they had been carrying out detailed risk assessments of their ways of working.

Impact of the law on Chinese partners. The main impact of the law for the European organisation has been to strengthen the relationship with their PSU, which is a ministry. Before the law came into effect the organisation had limited relations with their PSU; it is now expected that the majority of the financial support they provide will benefit the PSU. The European organisation explained that there had been no explicit discussion of how much they would need to spend with their PSU, but there was an unwritten assumption that they should be the chief beneficiary of funding. The organisation accepted the principle of providing financial support to the PSU since they understood that there was little other incentive for the PSU to take on the responsibilities of supervising international organisations.

The PSU had insisted that the European organisation ensures that the activity-related categories identified in their registration largely align with the PSU's areas of authority so that they could present the application to the police in a particular light. The organisation understands that if they want to broaden their scope of work in the future this should not be a problem, now that registration is approved.
The organisation commented that the work had 'changed from every perspective'. Importantly, registration under the law had increased the administrative burden for the organisation. They had made a considerable initial investment in staff time to complete the registration process, including attendance at many meetings. It had taken two months to draft annual work plans although in the end the PSU did not want to be given too much detail; project level details rather than individual activities were largely sufficient. The one-month deadline for reporting on the previous year's activities had now been extended until the end of March since it was impossible to audit accounts in the original timeframe. The organisation was still waiting for approval of its bank account. The tax department was proving to be the obstacle since the organisation already had a bank account as a WFOE.

MOUs and concept notes were now required with Chinese partners for all projects. The European organisation understood that the PSU would largely supervise their work through their Chinese partners.

The organisation was trying to work in the same way as before, but they admitted to reframing some of their work to make it more palatable to the PSU. Chinese NGO participants were not yet able to participate in their work as before the law. The organisation was trying to secure new funding for their legal capacity building work.

Overall, the organisation felt that the law had not had as harsh an impact as many had feared. This, they suggested, was perhaps reflective of the way the law in China operates. Their PSU was supervising about six overseas organisations and was trying to be service oriented and minimise the burden for everyone. Both the PSU NGO office and the police were generally helpful and appeared to be supportive. The PSU was a relatively open-minded ministry and used to international engagement. Moreover, the focus area was not politically sensitive, but an area where progress is important to the government. A key factor in their success registering was probably the good personal relationships between key personnel in the European organisation and the ministry.

Ensuring that their work was approved by their PSU had slowed down the implementation of their strategy in China. This was partly due to delays in securing new funding until their status was clarified. They had had to put on hold plans to introduce legal education and career planning for NGOs due to a lack of funds. How the organisation could find an acceptable way to support civil society remained a key concern. They were still trying to work out how they could minimise any risks from these relationships.

The organisation prefers to provide support within China. Over the years they had supported the participation of several judges at international meetings. However, recently it had become much more difficult to get approval for officials to join in overseas visits and the length of such visits was restricted. Wherever possible the organisation wanted to bring experts to China and had not explored increasing overseas activities.

The organisation has been registered for less than a year and is still feeling its way in terms of the impact of the law on their programme work. They found the registration process slow, but their PSU was clearly committed to their successful registration in order to ensure continued cooperation. The need to register and the delays in registration had had a short-term impact on their ability to raise funds for some of their China work. They were now hopeful they could start expanding their scope of work with new funds. They are particularly keen to expand their legal work with universities to reach law students.
Future

This European organisation is very clear that it has made a long-term commitment to working in China. Frustrations with the administrative burden of the law are secondary to their overriding objectives of continuing their work within the country. Although the law has limited some of the scope of their work they recognise that the law is part of a broader political trend in China towards greater government control and less space for civil society. Since they envisage a permanent engagement with China current restrictions are not a reason to disengage.

The organisation sees its impact in China largely in terms of building capacity in tackling problems of global and domestic importance. They believe that the problems they are addressing need to be resolved within China through more accountable government and their contribution is to help build the legal capacity that should make this possible. The organisation recognises that this is a long-term piece of work and they are prepared to endure what may be short-term difficulties. This European organisation is also committed to maintaining good relations with the government. This is not only because they need the support of the government to continue their work in China, but also because the authorities are the main actor they are trying to influence. Through registration the organisation believes it now has an agreed framework for operating in China. It understands what is possible and sees some scope for gradually expanding their work.

The staff based in China have considerable influence in determining the China strategy. They are responsible for planning and implementing programmes while the Head Office provides funding and oversight. China-based staff have excellent local knowledge as well as strong personal reasons to stay in China and their views on the appropriate strategy are given considerable weight.

The organisation has a short history in China and unlike many other international NGOs was not active in the relatively more liberal operating environment before Xi Jinping became CCP General Secretary. The organisation's 'business model' is largely based on building the capacity of influential stakeholders among whom government officials and judicial officers are seen to be critical. Registration under the law is essential to their continued operations in China. Registration does not seem to have seriously limited the scope of their work except in terms of their engagement with NGOs. Chinese NGOs are an important target group for legal capacity building, but programming in this area is small scale. Their model for supporting local NGOs through a relevant Chinese foundation may be effective. The success of this approach may say something about the determination of various stakeholders to provide targeted help to local NGOs in this particular area. It may not offer a model that other overseas NGOs can emulate. Key questions to answer will be the allocation of funds and how much the European organisation can input into the process.

EU-China relations beyond aid

This European organisation operates in an international field that already provides many opportunities for multi-track diplomacy. Their mission and scope of work in China, however, focuses on building Chinese capacity to be more effective domestically and they do not have a strategy to provide significant support for Chinese participation at the international level. They would not be particularly interested in engaging in more institutionalised civil society cooperation unless it were specifically related to their field. They are already involved in an EU-China platform of experts in their field.
Initiatives, such as Belt and Road Initiative (BRI), offer some potential common ground for greater international cooperation outside China. Chinese organisations are encouraged to support BRI and the ambitious scale of BRI guarantees relevance to a wide range of NGOs. The European organisation observed that there is some funding in this area.

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