

## Granting to China Made “Easy?”

Host: Ted Hart

Guest: Jessie Krafft – CAF America

**Announcer:** Welcome to the *CAF America Radio Network*, a production of the Charities Aid Foundation of America. As the leader in global giving, CAF America offers more than 20 years of experience and expertise to corporations, foundations, and individuals who wish to give international aid and with enhanced due diligence in the United States.

Through its industry leading grants management programs and philanthropic advisory services, CAF America helps donors amplify their impact. This show is dedicated to these donors and the charities they support. CAF America is uniquely positioned to serve as the bridge between these important partners and transforms vision into meaningful action.

Guests on the *CAF America Radio Network* are leaders in their field who share tips for success and stories that inspire. Our host is Ted Hart, the CEO of the Charities Aid Foundation of America. This is a live call-in show, add your voice by calling 914-338-0855. After the show you can find all of our podcast at [cafamerica.org](http://cafamerica.org). Don't forget to dial 914-338-0855.

Now, welcome the host of the *CAF America Radio Network*, Ted Hart.

**Ted Hart:** Welcome here to this latest edition of the *CAF America Radio Network*. We are live streaming as well over at [facebook.com/CAFAmerica](https://facebook.com/CAFAmerica). My guest here today is Jessie Krafft, the Vice President of Donor Advised and Grant Services here at CAF America. I'm just going to keep this up a little bit and then bring Jessie in.

On January 1st of this year, 2017, the law of the People's Republic of China and the Administration of Activities of Overseas NGO or Non-Governmental Organizations in the mainland of China law came into effect. Many of us refer to that as China's Overseas NGO Management Law.

The law requires that foreign NGO coordinate their efforts with the Ministry of Public Security and provides the framework through which they can continue their activities in the country. There are two different ways that this can be accomplished; one is opening an office in China, the other is applying for a temporary activity license. Jessie, welcome here to the *CAF America Radio Network*.

**Jessie Krafft:** Thank you Ted.

**Ted:** Tee us up a little bit for us in terms of what happened since January 1st?

**Jessie:** Yes, definitely. This law really started quite slowly as some of the listeners might remember from their experiences. It started in January 2017. In the beginning, not much guidance was provided on how to navigate the laws, and implementation was really slow to

standardize. In the beginning, a lot of charities we found weren't even very well aware that the law existed and then certainly not aware of how to comply with it.

It's been a long road since the beginning of this year, helping guide the charities, lead them to resources that might help them determine what they need to do and providing some guidance based on what we've learned from other partners that might have been more experienced. As a donor, as a foreign NGO working with this law, really been helping the charities navigate in different ways since that time happened.

**Ted:** A lot of charities were really left without a lot of information, but so were are the regulators. This has been a learning process in China and outside of China?

**Jessie:** Yes, definitely. It's regulated fairly regionally, within different provinces in China. As you mentioned, the regulators themselves weren't even quite sure what they needed to be collecting from the charities to ensure compliance and everything like that.

Over time, what we've seen in our dialogues with our charity partners is a bit of standardization. In the beginning, the requests that they were making of us were all over the place, different documents here and there, in order to help them apply for approval to receive foreign funding. We've seen that standardize and we're working to help each of those charities understand what that means.

**Ted:** As you said, it's starting to fall into place now, there's a general understanding of what compliance means both in China with the regulators and with many of the charities that might be funded from outside of China. There are two different ways that an intermediary like CAF America might be compliant. One is opening an office in China which you do not have an option if you are actually running your own programs or, in fact, have an office in China, is that correct?

Any intermediary that is running their own programs not funding Chinese programs but running their own or has an office, they don't have an option, they have to register?

**Jessie:** Yes, I think there's been a difference in definitions and things like that on what foreign activities are and things like that. I think each intermediary organization and each donor entity really needs to assess the situation to figure out which of these two options they should work with based on whether they're actually undertaking their own programs in China or simply making grants to other organizations.

**Ted:** Within that law, once you register, there are certain requirements that have to be followed for all of the grants that are made. If you are opening an office, if you are the intermediary that's doing that, you have to plan ahead to do that. Help us to understand, what that intermediary would have to do.

**Jessie:** One of the first ways to comply with this law is to set up your own representative office. That, first of all, requires that the organization partners with a, what they call, professional supervisory unit which is essentially a government-affiliated organization that is approved by the government to sponsor a foreign NGO. First of all, it requires a partnership, finding a partner on the ground that has the status and getting their commitment to work with you in order for you to become a registered office there.

Once you do go through that process, and find a partner and register, and everything like that, basically, the requirement that you have is before December 31st of each year, you would need to submit an annual activity plan to that professional supervisory unit for approval. That's the partner that you're working with. From there, they would then submit it to the relevant authorities for approval and for documentation.

Essentially, you would need to know before that year begins all of the activities that you are going to undertake during that year in order to actually apply those activities.

**Ted:** Right. Then once you have that approval, you then can institute those grants, but they have to be in your plans. The second way to be compliant for those that are not required to open their office or to be registered as an office are charities that are funding Chinese activities. They're not funding their own programs, they're not on the ground, they don't have an office, but they are funding Chinese activities run by Chinese NGOs. That's known as applying for a temporary activity license.

Help us to understand, what is a temporary activity license? As it sounds, it's temporary. How temporary?

**Jessie:** What we've basically learned is that it's per project, it's per one activity. If we are working with one grantee on several different projects, it's likely that we have to apply for several different temporary activity licenses for those programs. Like you said, it is temporary. However, it's something that you can apply for at the time that that activity is about to occur. It doesn't have the requirement that you apply for it a year in advance.

However, it does take some time to apply for this license. You do need to make sure there is some lead time, but you don't need quite as much as you would need for the annual activities requirements if you actually had an office there.

**Ted:** For intermediaries like CAF America that will be obtaining temporary activity licenses, that's really suited for funders that can't plan a year in advance, don't know what they're going to be funding or giving to maybe a little bit more apathetic or just making decisions over the course of the year?

**Jessie:** Yes, exactly. As you kind of alluded, CAF America has decided to work with a temporary activity license because of the fact that registering an office and having to submit annual activity plans is actually quite prohibitive for us in the way that we operate. As you know, we're

a donor-driven organization, often times, our donors come to us at the time they want the money transferred and tell us what they want to do and make a donor advice gift for that purpose.

It's pretty rare that many of our donors would know that they need to submit something that far in advance or would even know that far in advance what they wanted to do. We've decided that the temporary activity license is just a much more flexible way for us to go and it allows us to partner directly with our Chinese grantees on the ground to apply for those licenses.

**Ted:** Okay. The title of this show is granting to China made "easy". This is not easy. This is quite complex. Let's share with our listeners today, what does it mean to have a temporary activity license and how does that fit into the normal international brand making process?

**Jessie:** Definitely the quotes around the easy part are really necessary. It is not easy, you're definitely right about that, but again, it is much more flexible. Having this license-- Basically, in order to apply for a license you have to partner with a local, what they call a Chinese Partner Unit. They'll work with you to gather the relevant documentation that they need in order to submit the application to the government for the license.

They'll be the one leasing with their local government office to talk about what they need to submit and make sure that they have everything they need from us in order to actually apply.

**Ted:** Now, let's make sure that our listeners understand where the regulation fits here because the compliance is actually on the charity being funded, in terms of they're getting a license to be able to pick on this temporary activity and to be funded from outside of China. Is that correct? Or is this license for the donor or the entrepreneur?

**Jessie:** It's actually the Chinese Partner Unit, what we'd call our grantee, that is applying for the license and is responsible for that license. It is something while we as the donor have quite a bit of work to do in order to enable them to apply for that license, it's actually the partner that's taking it on in China.

**Ted:** In the normal vetting process, we would work with the donor, we would vet the charity and that's the Chinese partner that will be obtaining the temporary license. Then they have legal clearance to be able to accept the funds and to undertake the projects. Help us understand, how much is involved here. I know you just came back from the Chinese embassy earlier today, there's a complexity related here in the US in terms of documentation that's needed.

Walk us through and try to give our listeners a bit of a sense of what's the time frame here. It's much more flexible on the go as you're granting which a lot of our donors like to give in that way. Help us understand now, what this process looks like.

**Jessie:** Yes, sure. This is quite complex, so I'll break it down into a couple of pieces. Like you said, of course, all of the standard vetting procedures apply whether you're doing a equivalency determination or expenditure responsibility. Then compliance with anti-money laundering, anti-terrorism, all of that applies and still needs to be completed and this is just another step to that process.

Basically, and like I said, the list of documents will vary slightly. Essentially, there are several documents that you'll need to supply to your Chinese partner. One of which is-- we'll have our registration documents, that's typically our articles of incorporation. We can't just send a copy of this, we actually have to send them an original document.

We're registered in the State of Delaware, so we have to get that document from the Department of the State of Delaware and they send that to us. Usually, that takes about 10 days, you can get it expedited. There are costs to getting these original documents from each authority.

Then also, what they've requested are original 501(c)(3) determination letters, which we would have to get from the IRS. We need the original copies of those. Then a document that describes the source of funds, the purpose of the grant, and then also talking about your other activities in China. A lot of that is accomplished typically by a grant agreement and then potentially with a follow-up letter that describes who our donor was so that source of funds and the project that's to be undertaken.

Those are the typical documents that you'd have to start with. Like I mentioned, for the Articles of Incorporation, you need certified copies from the state. These other documents also have to be in the original format. Not only do they need to be in these original formats, but you also have to get them certified by the Chinese Embassy. As you mentioned, I just happened to be there this morning getting some documents certified.

The Chinese Embassy has the requirement that before they'll certify a document, it has to be notarized or that original copy from the Department of the State, of the State of Delaware in our case, has to be notarized and then we have to take it to the actual United States State Department, their authentication office. They need to authenticate the document and then we can bring it to the Chinese Embassy for their certification.

The Chinese Embassy, you have to physically go there. They don't take any electronic requests. You'd have to go and drop it off. Then 10 days later, they'll let you know that it's ready. Then you have to go pick it up. Just each step of this process has a lot of time components required. Each of these documents' certifications also cost money. It ends up adding up quite a bit.

**Ted:** In identifying this and understand this then obviously one of the things that CAF America does for its donors is seek to streamline this as much as possible by getting documents ahead of time, getting certifications and notarizing ahead of time. Trying to cut that time frame down. Of course, how much time will it take for the Department of State authentication's office? How

much time is--? Your saying it's typically going to take 10 days at the Chinese Embassy. It's a good thing that CAF America is in Washington DC so that we can actually get to the Embassy to be able to do that.

These are rather unique requirements for granting into China. There is not another government that we work with that has this level of authentication and requirement. Is that right?

**Jessie:** Yes that's right. As you may know there's certainly other laws in different countries around the world that have this oversight and registration process for foreign funding.

However, none of the other processes that we've been involved in have required this level of document certification and things like that.

We've of course had to provide these documents to others for a variety of reasons, whether it's for their own anti-money laundering laws like in the case of Mexico. Having to certify all these documents and actually mail them original copies of all of this, which means that we can't just do this once, we have to do it every time, is really quite unique and is taking a lot more time than we're used to taking.

**Ted:** Sure. Jessie, we're going to take just a very quick break. When we come back, I want to get into, again, this temporary license, what does it do, and maybe give some examples of the process that we've developed here to help our donors give to China. We'll be right back.

**Ted:** We're live here with Jessie Krafft who is the Vice President of Donor Advice and Grant Services at CAF America. Our topic today is the China Overseas NGO Management Law. Jessie, this does sound like a lot of work, but why did CAF America decide to create this process? How are we at compliance now with this new law? Walk us through that.

**Jessie:** For us, yes, it is a lot of work and it's taking a lot of staff resources for sure. In weighing our different options here, we felt that it was very important for us to maintain our flexibility to choose and shift the programs that we're funding in China during the year. I don't think I mentioned this, but for a temporary license you can file for the license 15 days before the start of the activity. Whereas with the office, if you have a registered office, of course, you have to file for that year in advance by December 31st.

It really does keep us flexible and more nimble even though we have all these steps that we have to follow. It means that we can continue to be driven by our donors and allow them the flexibility to decide when they want to give to China and who their partners will be and things like that throughout the year. In weighing the options, we just really felt strongly that we wanted to maintain that part of who we are and our ability to service our donors.

**Ted:** It also provides, as you said, the flexibility for our donors to be able to give to a very wide array of what we would consider to be a vetted charity, under the China law, our Chinese Partner Unit.

In doing that, donors can come to CAF America and they can choose charities, they can go through the vetting process, they can identify projects at any time during the year and begin the process of working with CAF America for the Chinese Partner Unit to receive the temporary license. As opposed to, as you said before, those that are required to file as an office because they're running their own programs on the ground as well. They have to have that plan done 12 months in advance, but also they have to submit it before that. It's actually, if you're giving at the end of that year, it could be 18 months in advance?

**Jessie:** Right. Something that's good for our donors to remember is that our eligibility will be the same for these Chinese organizations. As many of you know, when we vet an organization, they're eligible with us typically for a period of one to three years depending on the risk level and what we're finding in our review. If one of these partners is already eligible with us, that means all we have to do in order to make a grant in our new project with them is to file for this license. While we still have that vetting procedure, if it's an already eligible organization, it does make that process a bit quicker and easier on both the partner and non-CAF America. It will allow us to get the funds there more quickly.

**Ted:** If the license is sufficiently broad for the project that's being funded, is it possible that two donors might be able to give to the same charity in support of that project?

**Jessie:** Yes, it is possible. We just need to make sure in that lead documentation that we're sending-- Because, of course, the source of the funds is an important part of that application, we just need to know if there will be several donors giving to the same project and then we can put them into the application as well so that the same donors can use or that different donors could use that same activity license.

**Ted:** What about the effect on the Chinese Partner Unit or the charities, how has this been received by them, and how are they working through the compliance process?

**Jessie:** In the beginning, just like for us, there was a lot of frustration, not with us but with just the process in general, and a lot of confusion, of course. Now, that's turned into very apologetic and very apologetic, thanks to us, for complying with everything and with helping them get through it. For them, they do have to go through this registration process, so there is work on their end as well.

They've been very willing to partner with us and very excited and grateful that we are willing to go through these extra steps that it takes in order to make sure this funding gets to them from their donors. That's been really important to them but there's certainly frustration on their end as well.

**Ted:** As we said, this is a license for the charity to have permission to work with the foreign funder and to be able to accept those funds and be compliant, because there could be penalties for them in accepting funds that aren't accepted outside of this wall?

**Jessie:** I don't know what our partners experience has been with other donors, necessarily. I just know that because we're so willing to comply with it and willing to give them whatever it is that they need, that they've been very appreciative. That's certainly good and it's building stronger relationships with them for sure.

**Ted:** Jessie, beginning to wrap up here. The new law came into effect January 1st, 2017. There was a fair amount of misunderstanding or not enough understanding of the regulations by the regulators, by the charities, by everyone involved. A few months went by where everyone was trying to figure out: How will this be administered? What are the requirements? There were different provincial decisions had been made. The Ministry of Public Security which oversees this was working on this as well.

Now that we're several months later, it's now become, has it not? More normalized. There is an understood process. CAF America understands exactly what's required. We can now work without donors and work with our Chinese partners to now begin to affect the funding going into China on a regular basis.

**Jessie:** Yes, definitely. It's become much more normalized. The documents that they're requesting are much more similar across the board which means that we're stocking up on all of our original documents requesting different copies and things like that so that we're ready. The process has certainly become more streamlined for us as well as we've learned along the way.

We're ready to work with any of our donors that want to get into China and certainly it requires some conversation and determining what we can do. We're happy to talk to any donors that want to talk about their specific instances that they want to fund in China.

**Ted:** I'm looking at the two methods that China has provided for compliance. Those intermediaries that are required to register as an office have a very different path and that they have to have this long view. And the donors who give have to have this long view in terms of who they want to give, how much they want to give, and for what project.

CAF America is under the compliance method that is much more flexible but also requires us to really have things very well organized, to have our original documents ready to go. Outside of that, that's really the only thing that's materially different. If we think of it, the kinds of questions that the Chinese government are asking of us are the same kinds of questions that we would ask of charities that we're funding or from donors that were receiving money from, in terms of making sure that we understand the source of the funds, the purpose of the grant, and the activities.

**Jessie:** Yes, certainly. Definitely, to a certain extent. Of course, we don't require all of these certification procedures by the Embassy and everything like that.

**Ted:** I think that's really the only thing that's materially different.

**Jessie:** Right, but yes we're very sympathetic because of course through our application processes, we're asking for quite a bit of information and documentation. That allows us to comply. We really see ourselves as partners with our grantees around the world because we are willing to set any requirements that they need in order to legally accept the funds from us just as they're willing to submit to our requirements so that we can send the funds to them. That's really an important part of what we do and so we're happy to work with these organizations to get what they need to accept funds from their donors.

**Ted:** Terrific. Jessie, thank you for being my guest here today. It's not easy but we have helped our donors understand the granting to China can be made easier than it might be if you did not understand the process in place. Thank you for joining us here on the *CAF America Radio Network*.

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