

REGULATIONS FOR THE MANAGEMENT OF FOUNDATIONS

基金会管理条例

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第一章 总则

第一条 为了规范基金会的组织和活动，维护基金会、捐赠人和受益人的合法权益，促进社会力量参与公益事业，制定本条例。

第二条 本条例所称基金会，是指利用自然人、法人或者其他组织捐赠的财产，以从事公益事业为目的，按照本条例的规定成立的非营利性法人。

第三条 基金会分为面向公众募捐的基金会（以下简称公募基金会）和不得面向公众募捐的基金会（以下简称非公募基金会）。公募基金会按照募捐的地域范围，分为全国性公募基金会和地方性公募基金会。

第四条 基金会必须遵守宪法、法律、法规、规章和国家政策，不得危害国家安全、统一和民族团结，不得违背社会公德。

第五条 基金会依照章程从事公益活动，应当遵循公开、透明的原则。

第六条 国务院民政部门和省、自治区、直辖市人民政府民政部门是基金会的登记管理机关。

国务院民政部门负责下列基金会、基金会代表机构的登记管理工作：

- （一）全国性公募基金会；
- （二）拟由非内地居民担任法定代表人的基金会；
- （三）原始基金超过 2000 万元，发起人向国务院民政部门提出设立申请的非公募基金会；
- （四）境外基金会在中国内地设立的代表机构。

省、自治区、直辖市人民政府民政部门负责本行政区域内地方性公募基金会和不属于前款规定情况的非公募基金会的登记管理工作。

No. 1 GENERAL PRINCIPLES

Article 1: These regulations have been drafted in order to standardise the organisation and activities of foundations, to protect the legitimate rights and interests of foundations, donors and beneficiaries, and to promote social forces' participation in public benefit enterprises.

Article 2: These regulations when referring to a foundation mean a non-profit legal entity (**非营利性法人**) established in accordance with these regulations that employs assets donated by actual persons (**自然人**), legal entities or other organisations for the purpose of engaging in some public benefit enterprise.

Article 3: Foundations can be divided between those that are oriented towards fundraising from the general public (referred to below as public fundraising foundations) and those that are not (referred to below as non-public fundraising foundations). Public fundraising foundations are further divided by the geographic scope of their fundraising activities as either national or local public fundraising foundations.

Article 4: Foundations must abide by the constitution, the law, rules and regulations and national policy; they must not endanger national security, national unity or the unity of [China's] nationalities, nor must they transgress social morality.

Article 5: Foundations carry out public benefit activities in line with their charters. They should abide by principles of openness and transparency.

Article 6: The Ministry of Civil Affairs under the State Council and its departments at provincial, autonomous region and directly administered municipality level are the organs responsible for the registration and management of foundations.

The Ministry of Civil Affairs under the State Council is responsible for the registration and management of the following [types of] foundation and bodies representing foundations:

1. National public fundraising foundations;
 2. Foundations who propose to appoint as their legal representatives persons who are not residents of mainland China.
 3. Non-public fundraising foundations whose original funds (**原始基金**) are in excess of CNY 20 million and whose founder applies to establish as a foundation to the Ministry of Civil Affairs under the State Council;
 4. Representative bodies in China established by overseas foundations.
- Departments of the Ministry of Civil Affairs at provincial, autonomous region and directly administered municipality level are responsible for the registration and management of local public fundraising foundations

第七条 国务院有关部门或者国务院授权的组织，是国务院民政部门登记的基金会、境外基金会代表机构的业务主管单位。

省、自治区、直辖市人民政府有关部门或者省、自治区、直辖市人民政府授权的组织，是省、自治区、直辖市人民政府民政部门登记的基金会的业务主管单位。

第二章 设立、变更和注销

第八条 设立基金会，应当具备下列条件：

- (一) 为特定的公益目的而设立；
- (二) 全国性公募基金会的原始基金不低于 800 万元人民币，地方性公募基金会的原始基金不低于 400 万元人民币，非公募基金会的原始基金不低于 200 万元人民币；原始基金必须为到账货币资金；
- (三) 有规范的名称、章程、组织机构以及与其开展活动相适应的专职工作人员；
- (四) 有固定的住所；
- (五) 能够独立承担民事责任。

第九条 申请设立基金会，申请人应当向登记管理机关提交下列文件：

- (一) 申请书；
- (二) 章程草案；
- (三) 验资证明和住所证明；
- (四) 理事名单、身份证明以及拟任理事长、副理事长、秘书长简历；
- (五) 业务主管单位同意设立的文件。

第十条 基金会章程必须明确基金会的公益性质，不得规定使特定自然人、法人或者其他组织受益的内容。

基金会章程应当载明下列事项：

- (一) 名称及住所；
- (二) 设立宗旨和公益活动的业务范围；
- (三) 原始基金数额；
- (四) 理事会的组成、职权和议事规则，理事的资格、产生程序和任期；
- (五) 法定代表人的职责；
- (六) 监事的职责、资格、产生程序和任期；
- (七) 财务会计报告的编制、审定制度；
- (八) 财产的管理、使用制度；
- (九) 基金会的终止条件、程序和终止后财产的处理。

第十一条 登记管理机关应当自收到本条例第九条所列全部有效文件之日起 60 日内，作出准予或者不予登记的决定。准予登记的，发给《基金会法人登记证书》；不予登记的，应当书面说明理由。

基金会设立登记的事项包括：名称、住所、类型、宗旨、公益活动的业务范围、原始基金数额和法定代表人。

within their own administrative regions, and also registration and management work concerning non- public fundraising foundations that are not covered under the above article.

Article 7: The professional leading units (**业务主管单位**) of foundations or representative bodies of overseas foundations registered with the Ministry of Civil Affairs under the State Council shall be organisations authorised by the ministries under the State Council or by the State Council itself.

The professional leading units of foundations registered with the Ministry of Civil Affairs at provincial, autonomous region and directly administered municipality level shall be organisations authorised by the Ministry of Civil Affairs or by the People's Government at provincial, autonomous region and directly administered municipality level.

No. 2 ESTABLISHMENT, MODIFICATION AND CANCELLATION

Article 8: The following conditions must be met in order to establish a foundation:

1. It should be established in order to achieve a set public interest objective;
2. The original funds of national public fundraising foundations should be not less than CNY 8 million; the original funds of local public fundraising foundations should be not less than CNY 4 million; the original funds of non-public fundraising foundations should be not less than CNY 2 million and they must retain those funds in their current account;
3. A foundation should have a standard name, a charter, an organisational structure and full-time staff with the appropriate capacity to carry out its [proposed] activities;
4. It must have a fixed place of business;
5. It must be capable of undertaking civil legal liability in its own right.

Article 9: When applying to establish a foundation, the applicant must provide the following documentation to the body in charge of registration:

1. A letter of application;
2. A draft charter;
3. Attested proof of funding and proof of their place of business;
4. A list of names of board members and proof of their identities, and curricula vitae of the persons it is proposed will serve as Chair and Deputy Chair of the Board and as General Secretary;
5. A document attesting to their professional leading units' agreement to the establishment.

Article 10: A foundation's charter must make clear its public welfare status and must not contain any reference stipulating a particular actual person, legal entity or other organisation as beneficiary.

The charter must clearly state the following:

1. The foundation's name and place of business;
2. The purpose for which it was established [Its mission] and the scope of its [proposed] public benefit activities;
3. The amount of its original funds;
4. The composition, professional responsibilities and procedural regulations of its board of directors, the qualifications necessary for a person to serve as a board member and the process under which such a member is appointed and their term of their service;
5. The responsibilities of their legal representative;
6. The responsibilities of their supervisory officials (**监事**), the qualifications necessary to serve as one, the process whereby they are appointed and their term of their service;

第十二条 基金会拟设立分支机构、代表机构的，应当向原登记管理机关提出登记申请，并提交拟设机构的名称、住所和负责人等情况的文件。

登记管理机关应当自收到前款所列全部有效文件之日起 60 日内作出准予或者不予登记的决定。准予登记的，发给《基金会分支（代表）机构登记证书》；不予登记的，应当书面说明理由。

基金会分支机构、基金会代表机构设立登记的事项包括：名称、住所、公益活动的业务范围和负责人。

基金会分支机构、基金会代表机构依据基金会的授权开展活动，不具有法人资格。

第十三条 境外基金会在中国内地设立代表机构，应当经有关业务主管单位同意后，向登记管理机关提交下列文件：

- （一）申请书；
- （二）基金会在境外依法登记成立的证明和基金会章程；
- （三）拟设代表机构负责人身份证明及简历；
- （四）住所证明；
- （五）业务主管单位同意在中国内地设立代表机构的文件。

登记管理机关应当自收到前款所列全部有效文件之日起 60 日内，作出准予或者不予登记的决定。准予登记的，发给《境外基金会代表机构登记证书》；不予登记的，应当书面说明理由。

境外基金会代表机构设立登记的事项包括：名称、住所、公益活动的业务范围和负责人。

境外基金会代表机构应当从事符合中国公益事业性质的公益活动。境外基金会对其在中国内地代表机构的民事行为，依照中国法律承担民事责任。

第十四条 基金会、境外基金会代表机构依照本条例登记后，应当依法办理税务登记。

基金会、境外基金会代表机构，凭登记证书依法申请组织机构代码、刻制印章、开立银行账户。

基金会、境外基金会代表机构应当将组织机构代码、印章式样、银行账号以及税务登记证件复印件报登记管理机关备案。

第十五条 基金会、基金会分支机构、基金会代表机构和境外基金会代表机构的登记事项需要变更的，应当向登记管理机关申请变更登记。

基金会修改章程，应当征得其业务主管单位的同意，并报登记管理机关核准。

7. The system for producing financial accounts and the system for carrying out audits;

8. The system for the management and use of assets;

9. The conditions under which the foundation can be wound up, the process whereby this would happen and how the assets would be disposed of in such case.

Article 11: The organ in charge of registration should give a decision accepting or rejecting the application to register a foundation within 60 days of receiving in full a valid set of the documentation listed in Article 9 of these regulations. Where the application is accepted, they should issue a 'Certificate of Registration as a Legal Entity for Foundations' (**基金会法人登记证书**); where the application is rejected they should give written reasons for so doing.

The items to be stipulated in the registration of a foundation include its appellation, place of business, type, mission, scope of public benefit activities, amount of its original funds and its appointed legal representative.

Article 12: Should a foundation wish to establish a branch organisation or representative organisation, it should apply to register them to the organ it originally applied to for its own registration. The application should include documentation stating the appellation, place of business and responsible persons [for the proposed new entity].

The organ in charge of registration should give a decision accepting or rejecting an application of this type within 60 days. Where the application is accepted, they should issue a 'Certificate of Registration of a Foundation Branch (Representative) Organisation' (**基金会分支（代表）机构登记证书**); where the application is rejected they should give written reasons for so doing.

The items to be stipulated in the registration of a branch or representative organisation of a foundation include its appellation, place of business, type, mission, scope of public benefit activities, and its responsible persons.

Branches or representative organisations of a foundation engage in activities under the aegis of their parent organisation and do not have the status of independent legal entities.

Article 13: Overseas foundations seeking to establish a representative body in China should, having secured the agreement of its professional leading unit, provide the following documentation to the organ in charge of registration:

1. A letter of application;
2. Proof of its legal registration overseas and a copy of its charter;
3. Proof of the identities and curricula vitae of the persons it is proposed will act as responsible persons in the representative body;
4. Proof of its place of business;
5. A document attesting to their professional leading units' agreement to the establishment of a representative body in China.

The organ in charge of registration should give a decision accepting or rejecting the application within 60 days of receiving in full a valid set of the documentation listed above. Where the application is accepted, they should issue a 'Certificate of Registration as the Representative Body of an Overseas Foundation' (**境外基金会代表机构登记证书**); where the application is rejected they should give written reasons for so doing.

The items to be stipulated in the registration of a representative body of an overseas foundation include its appellation, place of business, scope of public benefit activities, and its responsible persons.

Representative bodies of overseas foundations should engage in public benefit activities that are appropriate for the nature of public benefit

第十六条 基金会、境外基金会代表机构有下列情形之一的，应当向登记管理机关申请注销登记：

- （一）按照章程规定终止的；
- （二）无法按照章程规定的宗旨继续从事公益活动的；
- （三）由于其他原因终止的。

第十七条 基金会撤销其分支机构、代表机构的，应当向登记管理机关办理分支机构、代表机构的注销登记。

基金会注销的，其分支机构、代表机构同时注销。

第十八条 基金会在办理注销登记前，应当在登记管理机关、业务主管单位的指导下成立清算组织，完成清算工作。

基金会应当自清算结束之日起 15 日内向登记管理机关办理注销登记；在清算期间不得开展清算以外的活动。

第十九条 基金会、基金会分支机构、基金会代表机构以及境外基金会代表机构的设立、变更、注销登记，由登记管理机关向社会公告。

第三章 组织机构

第二十条 基金会设理事会，理事为 5 人至 25 人，理事任期由章程规定，但每届任期不得超过 5 年。理事任期届满，连选可以连任。

用私人财产设立的非公募基金会，相互间有近亲属关系的基金会理事，总数不得超过理事总人数的三分之一；其他基金会，具有近亲属关系的不得同时在理事会任职。

在基金会领取报酬的理事不得超过理事总人数的三分之一。

理事会设理事长、副理事长和秘书长，从理事中选举产生，理事长是基金会的法定代表人。

第二十一条 理事会是基金会的决策机构，依法行使章程规定的职权。

理事会每年至少召开 2 次会议。理事会会议须有三分之二以上理事出席方能召开；理事会决议须经出席理事过半数通过方为有效。

下列重要事项的决议，须经出席理事表决，三分之二以上通过方为有效：

- （一）章程的修改；
- （二）选举或者罢免理事长、副理事长、秘书长；
- （三）章程规定的重大募捐、投资活动；
- （四）基金会的分立、合并。

理事会会议应当制作会议记录，并由出席理

enterprises in China (符合中国公益事业性质). Overseas foundations undertake civil legal liability for the actions of their Chinese representative bodies in accordance with Chinese law.

Article 14: Foundations and representative bodies of overseas foundations should, having completed their registration under these regulations, register with the tax authorities as the law requires.

Foundations and representative bodies of overseas foundations may use their certificate of registration to apply for an organisation registration number (组织机构代码), to have official seals cut, and to open a bank account.

Foundations and representative bodies of overseas foundations should submit their organisation registration number, design of their official seal, bank account number and a copy of their tax registration documentation to the registration authorities to be placed on file.

Article 15: Should items in the registration of foundations, their branch organisations or the representative bodies of overseas foundations require modification they should apply to the organ in charge of registration for the changes to be made to their registration.

Should a foundation revise its charter, they should seek the agreement of their professional leading unit and report the revised charter to the organ in charge of registration for ratification.

Article 16: Should any of the following circumstances apply for a foundation or the representative body of an overseas foundation, they should apply to the organ in charge of registration for the cancellation of their registration:

1. They intend to wind up as provided for in their charter;
2. They are incapable of carrying out public benefit activities in line the mission stipulated in their charter;
3. They wish to cease activities for some other reason.

Article 17: Should a foundation wish to close down one of its branches or representative bodies it should process the cancellation of the registration of the branch or representative with the organ in charge of registration.

When a foundation cancels its registration, its branch and representative bodies have their registrations cancelled at the same time.

Article 18: Prior to cancelling its registration, a foundation should establish a liquidation organisation (清算组织) and complete the work of settling its accounts (完成清算工作) under the guidance of the organ in charge of registration and its professional leading unit.

A foundation should apply for the cancellation of its registration within 15 days of the completion of liquidation. During the process of liquidation the foundation may not carry out any other activities.

Article 19: The establishment, modification and cancellation of the registration of foundations, their branch and representative bodies and the representative bodies of overseas foundations shall be reported to the public (向社会公告) by the organ in charge of registration.

No. 3 ORGANISATION AND STRUCTURE

Article 20: A foundation should establish a board of directors with between 5 and 25 members. Directors' term of service should be stipulated in the charter but a single term must not exceed 5 years. Once a term is served, a director may continue to serve if selected again.

For non-public fundraising foundations established using the assets of a private individual, no more than a third of board members may be close

事审阅、签名。

第二十二條 基金会设监事。监事任期与理事任期相同。理事、理事的近亲属和基金会财会人员不得兼任监事。

监事依照章程规定的程序检查基金会财务和会计资料，监督理事会遵守法律和章程的情况。

监事列席理事会会议，有权向理事会提出质询和建议，并应当向登记管理机关、业务主管单位以及税务、会计主管部门反映情况。

第二十三條 基金会理事长、副理事长和秘书长不得由现职国家工作人员兼任。基金会的法定代表人，不得同时担任其他组织的法定代表人。公募基金会和原始基金来自中国内地的非公募基金会的法定代表人，应当由内地居民担任。

因犯罪被判处管制、拘役或者有期徒刑，刑期执行完毕之日起未逾 5 年的，因犯罪被判处剥夺政治权利正在执行期间或者曾经被判处剥夺政治权利的，以及曾在因违法被撤销登记的基金会担任理事长、副理事长或者秘书长，且对该基金会的违法行为负有个人责任，自该基金会被撤销之日起未逾 5 年的，不得担任基金会的理事长、副理事长或者秘书长。

基金会理事遇有个人利益与基金会利益关联时，不得参与相关事项的决策；基金会理事、监事及其近亲属不得与其所在的基金会有任何交易行为。

监事和未在基金会担任专职工作的理事不得从基金会获取报酬。

第二十四條 担任基金会理事长、副理事长或者秘书长的香港居民、澳门居民、台湾居民、外国人以及境外基金会代表机构的负责人，每年在中国内地居留时间不得少于 3 个月。

第四章 财产的管理和使用

第二十五條 基金会组织募捐、接受捐赠，应当符合章程规定的宗旨和公益活动的业务范围。境外基金会代表机构不得在中国境内组织募捐、接受捐赠。

公募基金会组织募捐，应当向社会公布募得资金后拟开展的公益活动和资金的详细使用计划。

第二十六條 基金会及其捐赠人、受益人依照法律、行政法规的规定享受税收优惠。

第二十七條 基金会的财产及其他收入受法律保护，任何单位和个人不得私分、侵占、挪用。

基金会应当根据章程规定的宗旨和公益活

family relations of that individual; for other foundations, close relations may not serve simultaneously as directors.

Directors who receive financial remuneration from a foundation may not make up more than a third of its board members.

A board of directors will appoint a chair, deputy chair and general secretary elected from amongst their membership. The chair of the board is the legal representative of the foundation.

Article 21: The board of directors is the decision making body of a foundation and should carry out their again responsibilities as laid down in the charter in accordance with the law.

The board of directors should meet at least twice a year, with two thirds of directors in attendance as quorum. Decisions must achieve a simple majority of those attending a meeting to be effective.

Decisions concerning the following major items require a two thirds majority of directors attending a meeting to be effective:

1. Revisions to the charter;
2. Election or dismissal of the chair, deputy chair or general secretary;
3. Major fundraising or investment activities as stipulated in the charter;
4. The division or amalgamation of the foundation.

The board of directors should have minutes kept of their meetings which should be read, approved and signed by members in attendance.

Article 22: A foundation should appoint a supervisory official (监事), whose term of service will be the same as a member of the board. Members of the board, their close relatives or financial staff of the foundation may not serve as supervisory official.

The supervisory official will keep check of the financial records and accounts of the foundation in accordance with a process laid down in the charter and monitor the board's compliance with the charter and with the law.

When attending board meeting the supervisory official has the right to question and make suggestions to the board, and should also report on relevant matters (反映情况) to the organ in charge of registration, the professional leading unit and also the tax and auditing authorities.

Article 23: The posts of chair and deputy chair of the board of directors or secretary general should not be taken by persons currently employed by state bodies. The legal representative of the foundation may not at the same time be the legal representative of any other organisation. The legal representative of public fundraising foundations and non-public fundraising foundations whose original funds are of domestic Chinese origin should be a person whose is a legal resident of mainland China (应当由内地居民担任).

The posts of chair and deputy chair of the board of directors or secretary general should not be taken by persons who because of committing a crime have been put under public surveillance, detained or imprisoned within 5 years of the end of that sentence; nor by those who are currently or have formerly been under sentence of having their political rights removed; nor by those who have served in such posts and had legal culpability at other foundations that were closed down for illegal activities within 5 years of the closure of the said foundation.

Should a board member find there is a connection between their personal interests and the interests of the foundation, they should not take part in decision making related to the matter; nor should a board member, the supervisory official or their close relations have any kind of business dealings with the foundation.

The supervisory official and board members not serving in a full time post at the foundation may not be paid.

动的业务范围使用其财产；捐赠协议明确了具体使用方式的捐赠，根据捐赠协议的约定使用。

接受捐赠的物质无法用于符合其宗旨的用途时，基金会可以依法拍卖或者变卖，所得收入用于捐赠目的。

第二十八条 基金会应当按照合法、安全、有效的原则实现基金的保值、增值。

第二十九条 公募基金会每年用于从事章程规定的公益事业支出，不得低于上一年总收入的 70%；非公募基金会每年用于从事章程规定的公益事业支出，不得低于上一年基金余额的 8%。
基金会工作人员工资福利和行政办公支出不得超过当年总支出的 10%。

第三十条 基金会开展公益资助项目，应当向社会公布所开展的公益资助项目种类以及申请、评审程序。

第三十一条 基金会可以与受助人签订协议，约定资助方式、资助数额以及资金用途和使用方式。
基金会有权对资助的使用情况进行监督。受助人未按协议约定使用资助或者有其他违反协议情形的，基金会有权解除资助协议。

第三十二条 基金会应当执行国家统一的会计制度，依法进行会计核算、建立健全内部会计监督制度。

第三十三条 基金会注销后的剩余财产应当按照章程的规定用于公益目的；无法按照章程规定处理的，由登记管理机关组织捐赠给与该基金会性质、宗旨相同的社会公益组织，并向社会公告。

第五章 监督管理

第三十四条 基金会登记管理机关履行下列监督管理职责：

- (一) 对基金会、境外基金会代表机构实施年度检查；
- (二) 对基金会、境外基金会代表机构依照本条例及其章程开展活动的情况进行日常监督管理；
- (三) 对基金会、境外基金会代表机构违反本条例的行为依法进行处罚。

第三十五条 基金会业务主管单位履行下列监督管理职责：

- (一) 指导、监督基金会、境外基金会代表机构依据法律和章程开展公益活动；
- (二) 负责基金会、境外基金会代表机构年度检查的初审；

Article 24: Residents of Hong Kong, Macau or Taiwan, or foreign nationals serving as chair, deputy chair or secretary general of the board of a foundation or as legal representative of the representative organisation of an overseas foundation must be resident in mainland China for at least three months every year.

No. 4 MANAGEMENT AND USE OF ASSETS

Article 25: When a foundation engages in fundraising or receives donations it should be in accordance with its mission and the scope of its activities as stipulated in its charter. Representative bodies of overseas foundations may not engage in fundraising or accept donations within China.

Public fundraising foundations when engaging in fundraising should make public the activities for which the money raised is intended to be used and details of how it is to be spent.

Article 26: Foundations, their donors and beneficiaries enjoy tax benefits as stipulated by law and administrative regulations.

Article 27: The assets of a foundation and its other sources of income are protected under the law. No work unit or individual may take a portion or the whole thereof or misuse them in any way. A foundation should use its assets in accordance with its mission as stipulated in its charter and within the scope of public benefit activities so laid down. Donations that are given with an accompanying agreement giving clear instructions for their use must be used in line with the agreement.

If a foundation receives donations in kind that it is impossible to use in accordance with their mission, they may auction or otherwise sell of the items and use the money raised to fulfill the purpose of the donation.

Article 28: A foundation should employ legal, safe and effective means to ensure that their original funds maintain their value or grow.

Article 29: The amount of money spent annually by public fundraising foundations on the public benefit activities stipulated in their charter must not be less than 70% of the previous year's income; non-public fundraising foundation's annual expenditure on the public benefit activities stipulated in their charter must not be less than 8% of the surplus from the previous year.

A foundation may not allocate more than 10% of its total expenditure to cover staff wages and benefits and overheads.

Article 30: Should a foundation engage in any grant making activities (**公益资助项目**), it should make public the nature of that activity and the processes for applying for a grant and the selection of grantees.

Article 31: A foundation may draft a contract with a grantee setting out the method of giving the grant, its amount and how it is to be spent. Foundations have a right to monitor how grants they make are used. If a grantee does not use the grant in the agreed way or if they violate the agreement in any other way, the foundation may cancel their contract with them.

Article 32: Foundations should employ the national unified system of accounting (**国家统一的会计制度**), keep accounts in accordance with the law and establish a full and effective internal system for the

(三) 配合登记管理机关、其他执法部门查处基金会、境外基金会代表机构的违法行为。

第三十六条 基金会、境外基金会代表机构应当于每年 3 月 31 日前向登记管理机关报送上一年度工作报告，接受年度检查。年度工作报告在报送登记管理机关前应当经业务主管单位审查同意。

年度工作报告应当包括：财务会计报告、注册会计师审计报告，开展募捐、接受捐赠、提供资助等情况以及人员和机构的变动情况等。

第三十七条 基金会应当接受税务、会计主管部门依法实施的税务监督和会计监督。基金会在换届和更换法定代表人之前，应当进行财务审计。

第三十八条 基金会、境外基金会代表机构应当在通过登记管理机关的年度检查后，将年度工作报告在登记管理机关指定的媒体上公布，接受社会公众的查询、监督。

第三十九条 捐赠人有权向基金会查询捐赠财产的使用、管理情况，并提出意见和建议。对于捐赠人的查询，基金会应当及时如实答复。

基金会违反捐赠协议使用捐赠财产的，捐赠人有权要求基金会遵守捐赠协议或者向人民法院申请撤销捐赠行为、解除捐赠协议。

第六章 法律责任

第四十条 未经登记或者被撤销登记后以基金会、基金会分支机构、基金会代表机构或者境外基金会代表机构名义开展活动的，由登记管理机关予以取缔，没收非法财产并向社会公告。

第四十一条 基金会、基金会分支机构、基金会代表机构或者境外基金会代表机构有下列情形之一的，登记管理机关应当撤销登记：

(一) 在申请登记时弄虚作假骗取登记的，或者自取得登记证书之日起 12 个月内未按章程规定开展活动的；

(二) 符合注销条件，不按照本条例的规定办理注销登记仍继续开展活动的。

第四十二条 基金会、基金会分支机构、基金会代表机构或者境外基金会代表机构有下列情形之一的，由登记管理机关给予警告、责令停止活动；情节严重的，可以撤销登记：

(一) 未按照章程规定的宗旨和公益活动的业务范围进行活动的；

monitoring of accounts.

Article 33: Monies left over when a foundation is wound up should be used for public benefit ends as stipulated in the foundation's charter; funds which cannot be used in this way will be donated by the organ in charge of registration to another public benefit organisation with similar aims and objectives to the original foundation. Any such action will be made public.

No. 5 MONITORING AND MANAGEMENT

Article 34: The organ in charge of registration of foundations has the following responsibilities in regards of monitoring and management:

1. Conduct annual inspections of foundations and representative bodies of overseas foundations;
2. Conduct day-to-day monitoring and supervision of how foundations and representative bodies of overseas foundations carry out activities in line with these regulations and their own charters;
3. Penalise those foundations and representative bodies of overseas foundations whose actions violate the regulations;

Article 35: The professional leading units of foundations have the following responsibilities in regards of monitoring and management:

1. To give guidance and monitor foundations and representative bodies of overseas foundations to carry out public benefit activities in accordance with the law and their own charters;
2. Give preliminary approval to the annual inspections of foundations and representative bodies of overseas foundations;
3. Coordinate with the organ in charge of registration and other law enforcement agencies in the investigation and punishment of any illegal activities by foundations and representative bodies of overseas foundations.

Article 36: Foundations and representative bodies of overseas foundations should submit an annual work report to the organ in charge of registration of foundations before the 31st of March every year and submit to an annual inspection. The annual report should be inspected and approved by the foundation's professional leading unit prior to submission to the organ in charge of registration. The annual work report should include: a financial report; an audit report by a certified accountant; reports on fundraising activities, donations received and grants made; and any changes to staff or the organisation.

Article 37: Foundations should submit themselves to the supervision of their accounts and tax records by the appropriate authorities in accordance with the law.

Foundations should conduct a financial audit at the end of each term of service of their board (换届) or change in the legal representative.

Article 38: Foundations and representative bodies of overseas foundations should make their annual work reports public through media channels stipulated by the organ in charge of registration once that organ has checked and approved the report, to allow public query and monitoring of their work.

Article 39: Donors have the right to make inquiries to a foundation about how their donation was used and how it is being managed and offer opinions and suggestions concerning this. Foundations should respond to such inquiries in a timely and truthful fashion.

- (二) 在填制会计凭证、登记会计账簿、编制财务会计报告中弄虚作假的;
- (三) 不按照规定办理变更登记的;
- (四) 未按照本条例的规定完成公益事业支出额度的;
- (五) 未按照本条例的规定接受年度检查, 或者年度检查不合格的;
- (六) 不履行信息公布义务或者公布虚假信息信息的。

基金会、境外基金会代表机构有前款所列行为的, 登记管理机关应当提请税务机关责令补交违法行为存续期间所享受的税收减免。

第四十三条 基金会理事会违反本条例和章程规定决策不当, 致使基金会遭受财产损失的, 参与决策的理事应当承担相应的赔偿责任。

基金会理事、监事以及专职工作人员私分、侵占、挪用基金会财产的, 应当退还非法占用的财产; 构成犯罪的, 依法追究刑事责任。

第四十四条 基金会、境外基金会代表机构被责令停止活动的, 由登记管理机关封存其登记证书、印章和财务凭证。

第四十五条 登记管理机关、业务主管单位工作人员滥用职权、玩忽职守、徇私舞弊, 构成犯罪的, 依法追究刑事责任; 尚不构成犯罪的, 依法给予行政处分或者纪律处分。

第七章 附则

第四十六条 本条例所称境外基金会, 是指在外国以及中华人民共和国香港特别行政区、澳门特别行政区和台湾地区合法成立的基金会。

第四十七条 基金会设立申请书、基金会年度工作报告的格式以及基金会章程范本, 由国务院民政部门制订。

第四十八条 本条例自 2004 年 6 月 1 日起施行, 1988 年 9 月 27 日国务院发布的《基金会管理办法》同时废止。本条例施行前已经设立的基金会、境外基金会代表机构, 应当自本条例施行之日起 6 个月内, 按照本条例的规定申请换发登记证书。

Source: Ministry of Civil Affairs of the People's Republic of China, “基金会管理条例,”(accessed June 8, 2011),

If foundations violate agreements with donors concerning the use of their donations, the donor has the right to demand the foundation follow their agreement or to ask the courts to revoke the donation and annul the agreement.

No. 6 LEGAL LIABILITY

Article 40: Anyone who carries out activities in the name of foundations, their branches or representative bodies, or the representative bodies of overseas foundations that have not registered, or who have had their registrations revoked may have their organisation suppressed by the organ in charge of registration and their illegal assets sequestrated. Any such action should be made public.

Article 41: Foundations, their branches or representative bodies, or the representative bodies of overseas foundations that display any of the circumstances listed below will have their registrations revoked by the organ in charge of registration:

1. If they engage in any form of falsification during the application process; or if they have not begun activities in accordance with their charter within twelve months of having their registration approved;
2. If they meet the conditions for cancellation of their registration but do not go through the process for cancellation as laid down in these regulations and continue to carry out activities.

Article 42: Foundations, their branches or representative bodies, or the representative bodies of overseas foundations that display any of the circumstances listed below will receive a warning from the organ in charge of registration and be instructed to cease the said activity; in serious cases their registration may be revoked:

1. Those who do not carry out activities in accordance with their mission or within the scope of public benefit activities as stipulated in their charter;
2. Who engage in any form of falsification in filling out proofs of accounting, in their registered account books and in drafting their financial reports and accounts;
3. Who do not follow regulations when registering or modifying their registration;
4. Who do not meet the public benefit expenditure levels laid down in these regulations;
5. Who do not submit to annual inspection, or whose inspection does not meet requirements as laid down in these regulations;
6. Who fail to fulfill requirements to make information public or who falsify such information.

The organ in charge of registration should ask the tax authorities to demand back payment of any tax remitted for foundations or the representative bodies of overseas foundations that act in any of the ways listed above for the period during which the infringement occurred.

Article 43: Should a foundation's board of directors make decisions that violate these regulations or their own charter and that lead to a loss of the foundation's assets, those directors who took part in the decision should be held responsible for making appropriate reparations.

Should a board member, the supervisory official or any member of a foundation's staff misappropriate or misuse foundation assets they should repay the amount they illegally took. Where there is criminal culpability they should be dealt with accordingly.

Article 44: Should a foundation or the representative bodies of overseas

foundations be ordered to cease activities, the organ in charge of registration will seal (封存) its registration certificate, official seals and financial documentation (财务凭证).

Article 45: Should staff of the organ in charge of registration or professional leading units abuse their position, fail in their duties, or commit irregularities for personal gain they will be dealt with accordingly where there is criminal culpability. Where the case is not criminal they will be given administrative or disciplinary sanction in accordance with the law.

No. 7 SUPPLEMENTARY

Article 46 When these regulations refer to the representative bodies of overseas foundations it means foundations established in accordance with the law in foreign countries and also in the Hong Kong and Macau Special Administrative Regions of the People's Republic of China and in the Taiwan region.

Article 47: The format for foundation's registration application letters and annual reports, and models for their official seals will be laid down by the Ministry of Civil Affairs under the State Council.

Article 48: The regulations take effect from the 1st of June 2004. At the same time the State Council's 'Measures for the Management of Foundations' (基金会管理办法) issued on the 27th of September 1988 are annulled.

Foundations and the representative bodies of overseas foundations established prior to these regulations taking effect should apply for a new registration document as stipulated in these regulations within 6 months of them taking effect.

Source: China Development Brief, "[Regulations for the Management of Foundations](#) (基金会管理条例)," trans. Jim Weldon, (accessed June 8, 2011)