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## **Regulations for the Management of Foundations**

### **基金会管理条例**

#### **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 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.

## **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 (監事), the qualifications necessary to serve as one, the process whereby they are appointed and their term of their service;
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 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.

### **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 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.



**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.

#### **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 fulfil 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 foundations 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 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.

## **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 these 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.

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.

## **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 sequestered. 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 fulfil 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.

## **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.

Translated by *Jim Weldon*, March 2004.

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