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Introduction to New Rules for Management of Foundations in China

At 2004, The State Council of China has revised its *Regulation for Management of Foundations*, the basic rules about foundations in China. The revision had been promulgated by an order issued by the Premier Wen, Jiaobo on March 8th, 2004, and had come into effect since June 1st, 2004. The new rules was titled as *Administrative Rules for Management of Foundations* (thereafter “this or the Regulation”).

This new regulation contains seven chapters and totally 48 articles, governing all aspects of supervision and regulation of foundations in the People's Republic of China. It also applies to foreign branches or representative offices established by foreign or overseas foundations in China.

What follows is a short brief of the main provisions of this Regulation:

Chapter One covers general provisions about foundations, including the purpose and goal of the regulation; Legal definition and the nature of a foundation and its major categories; General principles and requirements over activities of a foundation; Regulatory agencies and the conference of regulatory power and its allocation between regulatory agencies at different government level.

Purpose and Goals: First article indicates that this Regulation is intended to regulate formation and operation of foundations, and to protect their rights and interests, their donators and beneficiaries, and to encourage social support for causes of general public welfare.

Regulatory Agency and its powers: The Ministry of Civil Affairs of the State Council and local Departments of Civil Affairs of a provincial government or that of a government at equivalent level (Autonomous Regions and municipalities) are regulatory agencies which have supervisory and regulatory powers over the formation and operation of foundations in China. They may issue warnings, order corrections or organizational changes or even suspend or revoke registration certificate for misconducts of foundations.

Legal Definition of a Foundation: A foundation by this Regulation is defined as a not-for-profit legal person who is formed in accordance with the rules set by this Regulation and financially based on assets endowed by individuals, legal persons or other organizations and operates with the sole intention of engaging in public welfare causes.

Categories of Foundations: The Regulation divides foundations into two major categories:

1) Openly-soliciting Foundations: foundations that are authorized to raise money from general public. Based on territorial scope where they are allowed to raise money, openly-soliciting foundations can be further divided into national openly-soliciting foundation and local openly-soliciting foundations.

2) Non-openly-soliciting Foundations: foundations that are not allowed to raise money from general public and receive donations only within certain private individuals or organizations.

Requirements of formation: A national openly-soliciting foundation can not be formed with an

amount of initial capital funds lower than 8 million Yuan (Renmingbi), which is equivalent to an amount of \$966000; For a local open foundation, this limit of amount is 4 million Yuan; And for a close foundation, it is 2 million Yuan. Also, the Regulation requires that a foundation must have adequate staff and a stable office as its legal residency. The last requirement is that a foundation must be able to bear its civil responsibilities independently

Registration: A foundation comes into being when it is issued a registration certificate (or charter) by a regulatory agency. To be registered, applicants must submit the regulatory agency documentations as follows:

- 1) with the purpose to advance public welfare;
- 2) application;
- 3) draft of the bylaw;
- 4) Proof of contribution of initial capital funds and proof of registered office.
- 5) List of names of directors and their identifications; Curriculum Vitae of would-be chairman, vice-chairman and Secretary General of the board of directors.
- 6) preliminary approval from its professional leading unit (yewu zhuguan danwei in Chinese)* prior to submission of application to regulatory agency

In no more than 60 days post receiving application and all required documentations, the regulatory agency shall make a decision of either approval or denial of the application.

The foundation shall also, post its receipt of charter, register at local Taxation Bureau for the taxation purpose.

Organizational Structure of a Foundation: The board of directors is the supreme authority within a foundation, which has the right to decide on all fundamental matters that have to do with the tasks of the foundation. The board of directors shall consist of at least 5 and up to 25 members.

The term of a director shall be set by the bylaw of the foundation but shall not be more than 5 years. A director can be reelected without term limit.

Mandatory Subject matters of a bylaw:

Such subject matters shall be specified by the bylaw of a foundation as:

- 1) Name and domicile of the foundation;
- 2) tasks and fields of its business;
- 3) Amount of initial capital funds;
- 4) Organization, powers and rules of procedure of the board of directors; membership, selection procedure and term of a director;
- 5) duties of the chairman as the legal representative of a foundation;
- 6) Duties, qualification, selection and term of the monitor;
- 7) Compilation and approval of accounting documentations;
- 8) Management and use of foundation resources;
- 9) terms, procedure of the termination of a foundation and disposal of foundation assets.

Tax Benefit: A foundation, its donators and beneficiary are entitled to tax benefit in accordance with the law and administrative rules.

Obligation of publicity of openly-soliciting foundations: When it has received donations, an openly-soliciting foundation shall publish the activities and programs the foundation is going to sponsor with the donations and the specific financial plan.

Obligation of Compliance to Bylaw and Endowment Agreement: The use of foundation assets and resources shall accord with the purpose and tasks set by the bylaw, and shall also be subject to provisions of the endowment agreement if any.

Limitation of Expenditure: For an openly-soliciting foundation, annual expenditure for by-law specified public welfare causes shall account for no less than 70% of total income received in the last fiscal year. For a non-openly-soliciting foundation, this amount shall be above 8% of total sum of remain funds of last fiscal year. No more than 10% of annual total expenditure can account for wage and benefit of foundation staff and administrative expenses.

Supervision and Regulation: Power and duties of regulatory agencies: Such powers are conferred to regulatory agencies as:

- 1) examine foundations and foreign representative offices of overseas foundations annually;
 - 2) supervise day-to-day business and activities of foundations to enforce the compliance to the Regulation and the by-laws.
 - 3) prosecute violations committed by foundations and representative offices of overseas foundations.
- Also the Regulation confer the supervisory powers and duties as follows are granted to professional leading unit:

- 1) instruct and oversee foundations and representative offices of overseas to perform public welfare activities on the basis of laws and bylaws;
- 2) conduct preliminary examination prior to annual examination made by the regulatory agencies;
- 3) collaborate with regulatory agencies and other law enforcement authority in prosecuting violations committed by foundations and representative offices of overseas foundations.

Obligation of Submission of Annual Report: Foundations and representative offices of overseas foundations shall submit annual report to regulatory agency no later than March 31 on each year. Prior to the submission, the report shall first obtain approval from a foundation's professional leading unit. The Annual Report shall cover accountancy report, auditing report of a certified public accountant and information about money-raising, donation-receiving and support-providing activities and information about personnel change in the last year.

When its annual report has been approved by the regulatory agency, a foundation shall publish the report in a public media designated by regulatory agency, making it accessible to the public, who has the right to make criticism or remarks on it.

Monitor from Tax Bureau and Inland Revenue Department: Foundations shall be subject to supervision and oversight from the Tax Bureau and Inland Revenue Department for taxation purpose and accounting purpose respectively.

Formation and Sample of fundamental documentation: Formats of application for registration and foundation Annual Report and by-law shall be made by the Ministry of Civil Affairs.

Main Violations and penalties: This Regulation also lists main violations or misconduct with corresponding penalties the regulatory agencies may set, including but not limited as:

- 1) conduct activities in the name of a foundation without registration certificate;
- 2) Diverting from original intended objectives;
- 3) Acting without permission in establishing branches or representative units;
- 4) Engaging in for-profit activities;
- 5) Misuse of funds;
- 6) Refuse to perform obligation of publicity.
- 7) Refuse to accept the annual examination conducted by regulatory agency.

*(According to current rules relating to Not-for-profit organization (or social organizations) in China, a non-profit organization, a foundation, for example, is required to find an organizational sponsor (in Chinese slang, a popo or mother-in-law), which is usually a government agency carrying out work in a similar subject matter area. An environmental NGO, for example, might seek sponsorship from the State Environmental Protection Administration or a local Environmental Protection Bureau. In the language of the law, this organizational sponsor is called the professional leading unit.(yewu zhuguan danwei) Professional leading unit has the power to oversee and monitor the activities of a non-profit organizations and perform some supervisory function. Its supervision, along with the regulation and supervision performed by the regulatory agencies, namely the Ministry of Civil Affairs and local Departments of Civil Affairs, constitutes the so-called dual regulation of social organizations in China, which has long been employed as a means to achieve a heightened control of the freedom of private association in China). Accordingly, there are “two masters” for not-for-profit organizations in China.

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