

民政部关于《基金会管理条例（修订草案征求意见稿）》公开征求意见的通知

为贯彻落实慈善法，适应基金会发展实际，为社会公众参与公益慈善事业提供法制保障，按照国务院和民政部2016年立法计划，民政部在总结实践经验，深入调查研究，广泛征求意见，反复研究论证的基础上，对《基金会管理条例》进行了修订，形成《基金会管理条例（修订草案征求意见稿）》（以下简称“征求意见稿”）。为了广泛听取社会公众意见，进一步提高立法质量，现将征求意见稿及其说明全文公布，征求社会各界意见。各有关单位和各界人士如对征求意见稿有修改意见，可通过以下方式反馈：

（一）登陆民政部网站（网址<http://www.mca.gov.cn>），点击首页上方导航栏“互动”，进入“征求意见”栏（或直接点击首页下方“征求意见”栏），随后点击《民政部关于〈基金会管理条例（修订草案征求意见稿）〉公开征求意见的通知》提交意见。

（二）通过电子邮件方式将意见发送至：zcfgs@mca.gov.cn。

（三）通过信函方式将意见寄至：北京市东城区北河沿大街147号民政部政策法规司（邮政编码：100721），请在信封上注明“基金会条例征求意见”字样。

意见反馈截止时间为2016年6月26日。

**Revised Regulations on Foundation Management released
online for public consultation**

The draft of the revised Regulations on the Management of Foundations has been published on the Ministry of Civil Affairs

website for public consultation. The content of the Draft is displayed on the website in full.

There are three ways to send your comment to the Ministry of Civil Affairs of the People's Republic of China:

1. Visit the website of the Ministry of Civil Affairs (<http://www.mca.gov.cn>), click Feedback (互动), go down to the public consultation section (征求意见), click the link to Draft Regulations on Foundation Management, and submit your comment online.

2. Write an email to zcfgs@mca.gov.cn

3. Write a letter and send it to the Legislative Affairs Commission of the Ministry of Civil Affairs, Beiheyuan Street no.147, Dongcheng District, Beijing, Zip 100721. (On the envelope please indicate 'Comments on the Draft Regulations on Foundation Management')

The deadline for comments is the 26th of June 2016.

关于《基金会管理条例（修订草案征求意见稿）》的说明

《基金会管理条例》（以下简称“条例”）2004年颁布施行以来，基金会发展迅速，截至2015年底，全国基金会共4719个，净资产总额1100多亿元。于此同时，基金会发展出现不少新情况、新问题，最近颁布的《中华人民共和国慈善法》（以下简称“慈善法”）也提出了新要求。为适应基金会发展实际，贯彻落实慈善法，进一步加强和完善社会公众参与公益慈善事业的法制保障，民政部启动条例修订工作，在认真总结实践经验和深入调查研究的基础上，起草了《基金会管理条例（修订草案征求意见稿）》（以下

简称“征求意见稿”），共8章82条。现将征求意见稿主要修改内容说明如下：

Instructions on the Regulations on Foundation Management (revised draft for public consultation)

Since the promulgation of the Regulations on Foundation Management in 2004, foundations have developed at a fast speed. By the end of 2015, there were 4719 foundations with a net asset value over 110 billion Yuan in China. At the same time, new issues and problems have occurred due to their development. Facing the requirements of the recently released Charity Law, the Ministry of Civil Affairs started to revise the Regulations on Foundation Management and drafted a new regulation, consisting of 8 chapters and 82 articles, for public consultation. The changes made in the new draft are listed below:

一、关于与慈善法的衔接

针对基金会属于慈善组织的基本属性，征求意见稿与慈善法进行了衔接。一是要求基金会应当“以开展公益慈善活动为宗旨”（第八条）。二是规定基金会应当在登记证书中载明其慈善组织属性（第十五条）。三是明确基金会应当适用慈善法的有关规定（第七十八条）。

1. Corresponding to the Charity Law

Since foundations fall into the category of charity organizations, the revised draft of the Regulations on Foundation Management has to be kept in line with the new Charity Law. Firstly, the draft

requires foundations to conduct activities for charitable purpose (article 8). Secondly, foundations shall make their charitable nature clear in their registration certificates (article 15). Thirdly, foundations should follow the relevant regulations in the Charity Law (article 78).

二、关于登记管理体制

征求意见稿规定了直接登记和双重管理混合的登记管理体制，并降低了基金会准入门槛，鼓励基金会的发展，特别是基金会在基层的发展。一是成立基金会一般直接向民政部门申请登记；按照有关规定属于直接登记范围之外的还要经业务主管单位审查同意，在设立后接受业务主管单位的管理（第十二条、第十七条）。二是将基金会的登记管理权限由部、省两级拓展为部、省、市、县四级（第六条）。三是对市、县级登记的基金会规定了较低的注册资金标准（第八条）。

2. Registration and Management

The new draft specifies a registration and management system that allows for both direct registration and dual management. The draft also lowers the bar for the registration of foundations in order to encourage their development, especially at the local level. First of all, most foundations can directly apply for registration to the departments of civil affairs, unless it is otherwise regulated that in specific cases a foundation shall first go through the review and get the permission from a professional supervisory unit, and be subject to monitoring by the unit after registration (article 12 and 17). Secondly, the department levels that are qualified to do registration are expanded from just the ministerial and provincial levels to the ministerial, provincial,

city and county levels (article 6). Thirdly, the minimal requirement for registration capital is lowered for foundations that aim to register at the city and county levels (article 8).

三、关于监管制度

按照放管结合，加强事中事后监管的原则，征求意见稿规定了行业自律、社会监督、政府监管相结合的综合监管。一是将现行的年检制度改为年度报告制度（第五十六条、第五十七条、第五十八条）。二是加强对基金会的信用约束，探索建立信用记录、活动异常名录等制度（第六十五条）。三是明确了登记管理机关应当履行的监督管理职责和可以采取的有关措施（第六十三条、第六十四条）。四是规定了业务主管单位和有关部门应当履行的监督管理职责（第六十六条、第六十七条）。五是规定了社会公众、新闻媒体对基金会的监督，建立了基金会的行业自律（第六十八条）。

3. The supervisory and management system

The new draft sets up a comprehensive supervisory system consisting of self-discipline, social monitoring and government supervision. Firstly, the existing annual inspection system is revised and a yearly report system is introduced (article 56, 57, and 58). Secondly, the draft is more rigorous about the credit records of foundations, probing the establishment of a credit recording system and an illegal activity list (article 65). Thirdly, it specifies the responsibilities of the registration and management authorities and measures that can be taken (article 63 and 64). Fourthly, the draft stipulates the responsibilities of the professional supervisory units and relevant government departments (article 66 and 67). Fifthly, it requires that foundations shall be subject to media scrutiny and public

supervision and that they shall establish a self-disciplinary system (article 68).

四、关于内部治理

按照权责明确、运转协调、制衡有效的原则，征求意见稿在条例的基础上完善了基金会组织机构和内部治理的一系列制度，保障基金会的依法自治。一是明确了基金会应当根据实际设立中国共产党的组织（第四条）。二是补充完善了基金会的决策、监督、执行机制（第三章）。三是对具有公开募捐资格的基金会规定了高于一般基金会的治理要求（第二十三条、第二十五条、第三十二条）。

4. Internal Governance

Following the principles of responsibility, efficiency and accountability, the draft adds a list of regulations on the foundations' organizational structure and internal governance to ensure their legal autonomy. Firstly, if possible, foundations shall establish party branches (article 4). Secondly, the draft adds a new set of regulations to the foundation' s decision-making, supervision and operation systems (chapter 3). Thirdly, the draft imposes more strict rules of governance on foundations with public fundraising qualifications than it does on other foundations (article 23, 25 and 32).

五、关于活动准则

征求意见稿将条例的第四章“财产的管理和使用”更名为“活动准则”，对基金会开展公益慈善活动进行了全面规制。一是不再区分公募和非

公募基金会，新成立的基金会应当在发起人、理事会成员等特定对象范围内开展定向募捐；成立满两年后可以依法申请公开募捐资格（第四十一条）。二是对突发事件公开募捐、接受非现金捐赠等加强规范（第四十二条、第四十三条）。三是基金会开展公益慈善活动的年度支出和管理费用的标准、保值增值行为，统一执行慈善法的配套规章，在征求意见稿中不做具体规定（第四十八条、第四十九条）。四是取消了基金会分支机构、代表机构登记，强化了基金会对专项基金等分支机构的主体责任（第五十条）。

5. Code of Activities

The draft changes the title of the fourth chapter from “Management and Utilization of Properties” to “code of activities” and provides comprehensive regulations on foundations’ charity activities. First of all, there is no longer a division between the public fundraising foundation and the non-public fundraising foundation during the registration process. A newly established foundation can raise funds within a restricted circle of people including founders and board members; after two years, the foundation can apply for a qualification for public fundraising (article 41). Secondly, the draft adds new regulations on fundraising for emergency events and non-cash donations (article 42 and 43). Thirdly, the criteria for yearly expenditures and management fees for foundations’ charity activities shall follow the regulations that will be promulgated to enforce the Charity Law; therefore, there are no longer specific regulations within the draft on this aspect (article 48 and 49). Fourthly, the draft abolishes the registration of branches and representative agencies of foundations, but strengthens the responsibility of a foundation regarding the management of its branches, for instance special funds (专项基金) (article 50).

六、关于信息公开

征求意见稿增设了第五章“信息公开”，对条例中有关信息公开的内容进行了整合，建立了全面的基金会信息公开制度。一是按照年度公开、随时公开和定期公开，分类规定了基金会的信息公开义务（第五十六条——第六十二条）。二是规定了登记管理机关和其他政府部门的信息公开义务（第五十四条、第五十五条）。

此外，征求意见稿还针对有关违法行为制定修改了相应的法律责任（第七章）。

6. Information disclosure

The draft adds a new chapter, the fifth chapter on information disclosure, which combines all the relevant provisions on information disclosure in the original regulation and establishes a comprehensive information disclosure system for foundations. Firstly, the draft divides a foundation's responsibility to disclose information into three categories: yearly disclosure, periodical disclosure and disclosure at any time (article 56 - 62). Secondly, the draft specifies the responsibility of information disclosure of the registration agency and other government departments (article 54 and 55).

In addition, the draft also revises the relevant sections on legal responsibilities for illegal activities (chapter 7).

Link to the original article:

http://mp.weixin.qq.com/s?__biz=MjM5ODY0NzAyNA==&mid=2651605744&idx=1&sn=c353b917d22dd820921be6b558c7d2d8&scene=1&srcid=0526NDEDiDR2lrt7WXdm16BF#wechat_redirect