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香港
晨臣道 8 號
立法會秘書處
法律事務部
助理法律顧問
黃思敏女士

黃女士：

實施《基本法》第二十三條的建議

你曾在二月七日來信，詢問一月二十八日出版的《前瞻》單張所提及的“明令取締”的含義及機制。

《國家安全(立法條文)條例草案》第 15 條建議增訂的《社團條例》第 8A(2)條，訂明本地組織可被保安局局長進一步考慮是否予以取締的三項先決條件。其中(c)款訂明一項先決條件，就是該本地組織從屬於某內地組織，而該內地組織已遭中央基於保障中華人民共和國安全的理由，根據中華人民共和國法律禁止運作，而該項禁止已藉明文禁令正式宣布。

希望上述資料有助了解此事。

保安局局長
(黃宗殷代行)

副本送：

律政司司長 (經辦人：區義國先生 傳真：2501 0371

毛錫強先生) 傳真：2869 1302

警務處處長 (經辦人：鄧厚昇先生) 傳真：2865 6563

} 連助理法律
顧問的來信

二零零三年二月二十二日

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黃思敏女士

黃女士：

實施《基本法》第二十三條的建議

你曾在本年二月二十八日來信，詢問中央禁止內地組織運作的進一步詳情。

據我們了解，下列全國性法律與基於國家安全理由禁止內地組織運作有關—

- (a) 《社會團體登記管理條例》；
- (b) 《民辦非企業單位登記管理暫行條例》；及
- (c) 《中華人民共和國國家安全法》。

《社會團體登記管理條例》第四、三十四和三十五條、《民辦非企業單位登記管理暫行條例》第四、二十六和二十七條，以及《中華人民共和國國家安全法》第四條，分別載於附件 I、II 和 III，以供參考。

此外，取締非法民間組織暫行辦法第 9 條訂明，登記管理機關在宣布某組織為非法組織後，須作出公布。現把該條載於附件 IV，以供參考。

雖然諮詢文件及《前瞻》單張採用“明令取締”一語，而條例草案則採用“明文禁令”，但兩者並無實質分別。條例草案內 proscription of local organization 中“proscription”一詞譯為“取締”，是為了盡量減少可能出現的混淆。

雖然如此，根據“一國兩制”的原則，本地組織會根據香港特區的程序及標準予以取締，而內地當局根據內地法律採取的程序，則完全屬於內地管轄的事情。香港特區不宜覆核這些完全由內地管轄的程序或決定。因此，條例草案第 15 條所述的《社團條例》第 8A(3)條訂明，由中央人民政府發出、述明某內地組織已在內地被取締的證明書，即為該項取締的確證。

希望以上資料有助了解此事。

保安局局長
(黃宗殷代行)

副本送：律政司司長

(經辦人：區義國先生 傳真：2501 0371 (只送英文本)
毛錫強先生) 傳真：2869 1302

二零零三年四月三日

III-06-04-202

Regulations on Registration Administration of Associations

(Adopted at the Eighth Executive Meeting of the State Council
on September 25, 1998, promulgated by Decree No. 250 of
the State Council of the People's Republic of China
on October 25, 1998, and effective as of the date of promulgation)

CHAPTER I

GENERAL PROVISIONS

Article 1

These Regulations are formulated for the purposes of safeguarding the freedom of association of citizens, maintaining the lawful rights and interests of associations, strengthening registration administration of associations and facilitating socialist material as well as cultural and ethical progress.

Article 2

Associations referred to in these Regulations are defined as non-profit-making social organizations voluntarily composed of Chinese citizens that perform activities in accordance with the articles of association for the realization of the common desires of the membership.

Organizations, with the exception of State organs, may, as unit members, be members of associations.

Article 3

The establishment of an association shall be subject to the review and consent of its relevant governing unit, and shall be registered in accordance with the provisions of these Regulations.

Associations shall be qualified as juristic persons.

The following organizations do not fall within the scope of registration under these Regulations.

- (1) people's organizations which have participated in the Chinese People's Political Consultative Conference;
- (2) organizations which have been confirmed by the administrative department for institutional organization of the State Council and are exempt from registration as approved by the State Council;
- (3) organizations which are established within organs, organizations,

enterprises and institutions with the approval of their own units, and perform activities therein.

Article 4

Associations shall abide by the Constitution, laws, regulations and policies of the State, may not oppose the basic principles enshrined in the Constitution, may not endanger the reunification and security of the country or the unity of the nationalities, may not infringe upon State, public or social interests or the lawful rights and interests of other organizations and citizens, and may not breach social ethics and morality.

No associations may conduct profit-making business activities.

Article 5

The State shall protect associations in performing activities in accordance with the laws, regulations and their articles of association, and no organizations and individuals may unlawfully interfere with them.

Article 6

The civil affairs department of the State Council and the civil affairs departments of the local people's governments at or above the county level are the registration administration organs of the people's governments at their corresponding levels (hereinafter referred to as the registration administration organs) for associations.

The relevant departments of the State Council and those of the local people's governments at or above the county level as well as organizations authorized by the State Council or the local people's governments at or above the county level are the relevant governing units over associations of trades, academic disciplines or professions (hereinafter referred to as the governing units).

Where the laws and administrative regulations stipulate otherwise with regard to the supervision and administration of associations, the provisions of the relevant laws and administrative regulations shall be applied.

CHAPTER II JURISDICTION

Article 7

Nationwide associations shall be registered and administered by the registration administration organ of the State Council; local associations shall be registered and administered by registration administration organs of the people's governments in places where they are located. Trans-administrative-region associations shall be registered and administered by the common registration administration organs of the people's governments at the next higher level over the administrative regions that these associations straddle.

Article 8

Where the domiciles of the registration administration organs and the governing units are not in the same places as those of the associations, the registration administration organs and the governing units in places where these associations are domiciled may be delegated with the work of supervision and administration within the scope of the entrustment.

CHAPTER III ESTABLISHMENT AND REGISTRATION

Article 9

In applying for the establishment of an association, the matter shall be subject to the review and consent of the governing unit, and the sponsor shall apply for the approval of preparations to the registration administration organ.

Article 10

To be established, an association shall meet the following requirements:

- (1) possesses more than 50 individual members or 30 unit members; a total of more than 50 members are required where an association consists of both individual and unit members.
- (2) possesses standard name and corresponding organizational structure;
- (3) possesses a fixed domicile;
- (4) possesses full-time staff suitable for its activities;
- (5) possesses lawful assets and sources of funding; a nationwide association shall have an operational fund of not less than 100,000 yuan while a local association and a trans-administrative-region association shall have an operational fund of not more than 30,000 yuan;
- (6) possesses the ability to bear civil liabilities independently.

The name of an association shall be in conformity with the provisions of the laws and regulations, and may not go against social ethics and morality. The name of an association shall correspond to its operational scope, location of members and areas of activities and shall precisely reflect its characteristics. The use of such words as "China", "National" or "Chinese" in the name of a national association shall be subject to approval in accordance with the relevant provisions of the State. No local associations may use such words as "China", "National" or "Chinese" in their names.

Article 11

In applying for making preparations for the establishment of an association, the sponsor shall submit the following documents to the registration administration organ:

- (1) an application letter for making preparations;
- (2) approval documents of the governing unit;
- (3) a capital verification report and the certificate for the site use right;
- (4) basic facts and identity certification of the sponsor and the proposed responsible person;

- (5) the draft articles of association.

Article 12

Registration administration organs shall make their decisions to approve or disapprove the making of preparations for the establishment within 60 days of receipt of all valid documents specified in Article 11 of these Regulations; where the application for making preparations is not approved, the registration administration organ shall give reasons therefor to the sponsor.

Article 13

Registration administration organs shall not approve the making of preparations under any one of the following circumstances:

- (1) where there is evidence to indicate that the purposes and operational scope of the association being applied for making preparations are not in conformity with the provisions of Article 4 of these Regulations;
- (2) where there is no need for establishing such an association as there already exists an association whose operational scope is either identical or similar to that of the proposed association in the same administrative region;
- (3) where the sponsor and the proposed responsible person are still or were once under the criminal penalty depriving them of political rights, or do not possess full capacity for civil conduct;
- (4) where fraud and falsification are resorted to in applying for making preparations;
- (5) where other circumstances prohibited by laws and administrative regulations are involved.

Article 14

An association whose establishment is in preparation shall convene a members' assembly or a members' congress within 6 months from the date of approval of the application for making preparation to adopt its articles of association, and create its executive body, responsible persons and legal representative, and shall apply for establishment registration to the registration administration organ. No activities other than those directly related to making preparations may be performed during the preparatory period.

The legal representative of an association shall not concurrently act as the legal representative of another association.

Article 15

The articles of association of an association shall contain the following items:

- (1) its name and domicile;
- (2) its purposes, operational scope and areas of activities;
- (3) qualifications of its members and their rights and obligations;
- (4) a democratic organizational and managerial system, and procedures for the creation of its executive body;
- (5) qualifications for its responsible persons and procedures for the election and dismissal thereof;

- (6) principles on the management and use of assets
- (7) procedures for revising the articles of association;
- (8) procedures for termination and disposition of assets thereafter;
- (9) other matters that shall be stipulated in the articles of association.

Article 16

The registration administration organs shall complete the review within 30 days from the date of receipt of the application for registration and relevant documents of the association which has accomplished the preparatory work. Registration shall be granted and a Registration Certificate for Association as Juristic Person shall be issued to an association that is free from the circumstances provided in Article 13 of these Regulations and whose preparations are in conformity with all the requirements and the contents of its articles of association are complete. The registration items include:

- (1) the name;
- (2) the domicile;
- (3) the purposes, operational scope and areas of activities;
- (4) the legal representative;
- (5) the funds for its activities;
- (6) the governing unit.

Where registration is not granted, the applicants concerned shall be notified of the decision not granting registration.

Article 17

An association qualified as a juristic person on the day its establishment was approved according to the provisions of law shall, within 60 days after the date of approval of its establishment, file to the registration administration organ for the record. The registration administration organ shall, within 30 days from the date of receipt of the documents for the record, issue a Registration Certificate for Association as Juristic Person.

The items for the record of an association shall include, in addition to the items specified in Article 16 of these Regulations, the approval document issued by the governing unit according to law.

Article 18

An association shall, on the basis of the Registration Certificate for Association as Juristic Person, apply for engraving its seal and opening a bank account. The association shall submit the design of its seal and the number of its bank account to the registration administration organ for the record.

Article 19

An established association that intends to establish a branch or representative office shall, upon the review and consent of the governing unit, submit to the registration administration organ for registration with such documents as the name, operational scope, domicile and the chief responsible person of the branch or representative office.

The branch or representative office of an association is an integral component thereof, and as such, it shall not be qualified as a juristic person. It shall, according to the purposes and within the operational scope specified in the articles of association of the association to which it is affiliated, perform activities, admit members within the scope of authorities by the association. The branch of an association shall not establish its own sub-branch.

An association shall not establish any regional branch.

CHAPTER IV

CHANGES IN REGISTRATION AND CANCELLATION OF REGISTRATION

Article 20

Where it is necessary to make changes in the items of registration or record of an association, it shall, within 30 days from the date of consent upon review by the governing unit, apply to the registration administration organ for making changes in its registration or record (hereinafter referred to as changes in registration).

To revise its articles of association, an association shall, with 30 days from the date of consent upon review by the governing unit, submit the revised articles of association to the registration administration organ for examination and approval.

Article 21

An association shall, after the review and consent by the governing unit, apply to the registration administration organ for cancellation of its registration or record (hereinafter referred to as cancellation of registration) under any one of the following circumstances:

- (1) where it has achieved the purposes set forth in its articles of association;
- (2) where it has been dissolved of its own accord;
- (3) where it has split or merged with another organization;
- (4) where it has been terminated for other reasons.

Article 22

Before an association is to cancel its registration, it shall set up a liquidating group to complete the work of liquidation under the guidance of the governing unit and other relevant departments. The association shall not perform any activities other than the liquidation during the liquidation process.

Article 23

The association shall go through the procedures for cancellation of its registration with the registration administration organ within 15 days after the date of completion of the liquidation. For the cancellation of registration, the association must submit an application signed by its legal representative, a document of approval issued by the governing unit and the liquidation report.

Where the registration administration organ approves the cancellation of

registration, it shall issue a certificate of cancellation, and withdraw the registration certificate, seal and financial vouchers of the association.

Article 24

Where an association dissolves its branch or representative office, it shall go through the procedures for cancellation after the review and consent by the governing unit.

Where an association is canceled, its sub-organization or representative office shall be canceled simultaneously.

Article 25

The remnant assets of a canceled association shall be disposed of in accordance with the relevant provisions of the State.

Article 26

The establishment, cancellation or changes of its name, domicile and the legal representative of an association shall be publicly announced by the registration administration organ.

CHAPTER V

SUPERVISION AND ADMINISTRATION

Article 27

The registration administration organs shall perform the following functions of supervision and administration:

- (1) being responsible for the registration and record of the establishment, changes and cancellation of associations;
- (2) conducting annual verification of associations;
- (3) supervising and verifying cases related to the violation of these Regulations by associations, and imposing administrative punishments on associations whose conducts violate these Regulations.

Article 28

The governing units shall perform the following functions of supervision and administration:

- (1) being responsible for pre-review prior to the preparation application, establishment registration, changes in registration and cancellation of registration of associations.
- (2) supervising and guiding associations to abide by the Constitution, laws, regulations and policies of the State, and to perform activities in accordance with their articles of association;
- (3) being responsible for the preliminary examination of the annual verification of associations;
- (4) assisting the registration administration organs and other relevant departments in investigating and punishing violations of law by associations;

- (5) guiding jointly with relevant organs the issues related to liquidation of associations.

The governing units may not charge any fees on associations for performing their functions specified in the preceding paragraph.

Article 29

The assets of an association must come from lawful resources. No units and individuals may usurp, divide up in secret or misappropriate the assets of an association.

The funds of an association, and the lawful income obtained in accordance with the relevant provisions of the State from the performance of activities specified in its articles of association shall be used for activities specified in its articles of association, and shall not be divided among its members.

The acceptance of donations and grants by an association shall conform to the purposes and operational scope specified in its articles of association, and the association shall use them in accordance with the time limits, models and lawful purposes as agreed with the donors and grantors. The association shall report to its governing unit matters related to the acceptance and use of donations and grants, and shall make them public in a proper way.

The salaries and insurance and welfare benefits for full-time staff of an association shall be determined by reference to the relevant provisions of the State governing institutions.

Article 30

Associations shall follow the relevant rules of the State on financial management, and shall be subject to the supervision of the financial departments. Where the assets of an association come from the appropriation of the State, or from civic donations and grants, it shall, in addition, be subject to the supervision of the auditing organ.

Before the end of the term or the replacement of the legal representative of an association, the registration administration organ and the governing unit shall organize an audit of its finance.

Article 31

Associations shall submit to the governing units their work reports of the previous year prior to March 31 each year, and after the preliminary examination and consent of the governing units, submit them to the registration administration organs prior to May 31 for annual verification. The contents of the work reports shall include: the observance of laws, regulations and policies of the State, the registration undergone in line with these Regulations, activities performed in line with the articles of association, changes in personnel and organizational structure as well as financial management.

The registration administration organs shall simplify the contents of the annual verification of the associations which are granted the Certificate of Registration for Association as Juristic Person in accordance with the provisions of Article 17 of these Regulations.

CHAPTER VI

PENALTY PROVISIONS

Article 32

Where an association has resorted to fraud and falsification in acquiring its registration, or has not performed any activities for one year since the acquirement of the Certificate of Registration for Association as Juristic Person, the registration administration organ shall revoke its registration.

Article 33

Where an association has been involved in any one of the following circumstances, the registration administration organ may give it a warning, order it to make amends, or suspend its activities within a given time limit, or order it to remove and replace the person-in-charge who is directly responsible, or, where the circumstances are serious, revoke its registration; where a crime is constituted, criminal liability shall be investigated according to law:

- (1) altering, leasing or lending the Registration Certificate for Association as Juristic Person, or leasing, or lending the seal of the association;
- (2) performing activities beyond the purposes and operational scope specified in the articles of association;
- (3) refusing to accept supervision and inspections or failing to accept supervision and inspections according to provisions;
- (4) failing to go through procedures for making changes in registration according to provisions;
- (5) establishing without authorization a branch or representative office; or causing serious consequences due to its lax control over its branch or representative office;
- (6) engaging in profit-making activities;
- (7) usurping, dividing in secret or misappropriating the assets of the association or the accepted donations and grants;
- (8) charging fees, raising funds, accepting and using donations and grants in violation of relevant provisions of the State.

Illegal operational volumes or illegal gains coming from the acts as stipulated in the preceding paragraph shall be confiscated, and a fine of not less than one time but not more than three times the illegal operational volumes, or of not less than three times but not more than five times the illegal gains may be imposed simultaneously.

Article 34

Where the activities of an association violate other laws and regulations, they shall be dealt with by the relevant State organs according to law; where the relevant State organs consider that its registration should be revoked, the registration administration organ shall revoke its registration.

Article 35

Where an organization makes preparations without approval for establishing an association, or an organization without registration performs activities in the name of an association, or an association whose registration has been revoked continues to perform activities in the name of the association, it shall be banned by the registration administration organ, its illegal properties shall be confiscated; and criminal liabilities shall be investigated according to law where a crime is constituted; where a crime is not constituted, administrative penalties for public security shall be imposed according to law.

Article 36

Where an association is ordered to suspend its activities within a given time limit, the registration administration organ shall seal up its registration certificate, seal and financial vouchers.

Where the registration of an association has been revoked, the registration administration organ shall withdraw its registration certificate and seal.

Article 37

Any staff member of the registration administration organs and the governing units who abuses his powers, commits illegalities for personal interests or by fraudulent means, or neglects his duties shall be investigated for criminal liabilities according to law where a crime is constituted; those whose acts do not constitute crimes shall be subject to administrative sanctions according to law.

CHAPTER VII

SUPPLEMENTARY PROVISIONS

Article 38

The format of the Registration Certificate for Association as Juristic Person shall be determined by the civil affairs department of the State Council.

No fees may be charged for the annual verification of associations.

Article 39

Associations established before the effectiveness of these Regulations shall, within one year of their effectiveness, apply for re-registration in accordance with the relevant provisions of these Regulations.

Article 40

These Regulations take effect as of the date of promulgation. The Regulations on the Registration Administration of Associations promulgated by the State Council on October 25, 1989 shall be repealed simultaneously.

中华人民共和国国务院令

第 250 号

《社会团体登记管理条例》，已经 1998 年 9 月 25 日国务院第 8 次常务会议通过，现予发布，自发布之日起施行。

总 理 朱镕基

一九九八年十月二十五日

社会团体登记管理条例

第一章 总 则

第一条 为了保障公民的结社自由，维护社会团体的合法权益，加强对社会团体的登记管理，促进社会主义物质文明、精神文明建设，制定本条例。

第二条 本条例所称社会团体，是指中国公民自愿组成，为实现会员共同意愿，按照其章程开展活动的非营利性社会组织。

国家机关以外的组织可以作为单位会员加入社会团体。

第三条 成立社会团体，应当经其业务主管单位审查同意，并依照本条例的规定进行登记。

社会团体应当具备法人条件。

下列团体不属于本条例规定登记的范围：

- (一) 参加中国人民政治协商会议的人民团体；
- (二) 由国务院机构编制管理机关核定，并经国务院批准免于登记的团体；
- (三) 机关、团体、企业事业单位内部经本单位批准成立、在本单位内部活动的团体。

第四条 社会团体必须遵守宪法、法律、法规和国家政策，不得反对宪法确定的基本原则，不得危害国家的统一、安全和民族的团结，不得损害国家利益、社会公共利益以及其他组织和公民的合法权益，不得违背社会道德风尚。

社会团体不得从事营利性经营活动。

第五条 国家保护社会团体依照法律、法规及其章程开展活动，任何组织和个人不得非法干涉。

第六条 国务院民政部门 and 县级以上地方各级人民政府民政部门是本级人民政府的社会团体登记管理机关（以下简称登记管理机关）。

国务院有关部门和县级以上地方各级人民政府有关部门、国务院或者县级以上地方各级人民政府授权的组织，是有关行业、学科或者业务范围内社会团体的业务主管单位（以下简称业务主管单位）。

法律、行政法规对社会团体的监督管理另有规定的，依照有关法律、行政法规的规定执行。

第二章 管 辖

第七条 全国性的社会团体，由国务院的登记管理机关负责登记管理；地方性的社会团体，由所在地人民政府的登记管理机关负责登记管理；跨行政区域的社会团体，由所跨行政区域的共同上一级人民政府的登记管理机关负责登记管理。

第八条 登记管理机关、业务主管单位与其管辖的社会团体的住所不在一地的，可以委托社会团体住所地的登记管理机关、业务主管单位负责委托范围内的监督管理工作。

第三章 成立登记

第九条 申请成立社会团体，应当经其业务主管单位审查同意，由发起人向登记管理机关申请筹备。

第十条 成立社会团体，应当具备下列条件：

（一）有 50 个以上的个人会员或者 30 个以上的单位会员；个人会员、单位会员混合组成的，会员总数不得少于 50 个；

(二) 有规范的名称和相应的组织机构;

(三) 有固定的住所;

(四) 有与其业务活动相适应的专职工作人员;

(五) 有合法的资产和经费来源,全国性的社会团体有10万元以上活动资金,地方性的社会团体和跨行政区域的社会团体有3万元以上活动资金;

(六) 有独立承担民事责任的能力。

社会团体的名称应当符合法律、法规的规定,不得违背社会道德风尚。社会团体的名称应当与其业务范围、成员分布、活动地域相一致,准确反映其特征。全国性的社会团体的名称冠以“中国”、“全国”、“中华”等字样的,应当按照国家有关规定经过批准,地方性的社会团体的名称不得冠以“中国”、“全国”、“中华”等字样。

第十一条 申请筹备成立社会团体,发起人应当向登记管理机关提交下列文件:

(一) 筹备申请书;

(二) 业务主管单位的批准文件;

(三) 验资报告、场所使用权证明;

(四) 发起人和拟任负责人的基本情况、身份证明;

(五) 章程草案。

第十二条 登记管理机关应当自收到本条例第十一条所列全部有效文件之日起60日内,作出批准或者不批准筹备的决定;不批准的,应当向发起人说明理由。

第十三条 有下列情形之一的,登记管理机关不予批准筹备:

(一) 有根据证明申请筹备的社会团体的宗旨、业务范围不符合本条例第四条的规定;

(二) 在同一行政区域内已有业务范围相同或者相似的社会团体,没有必要成立的;

(三) 发起人、拟任负责人正在或者曾经受到剥夺政治权利的刑事处罚,或者不具有完全民事行为能力的;

(四) 在申请筹备时弄虚作假的;

(五) 有法律、行政法规禁止的其他情形的。

第十四条 筹备成立的社会团体,应当自登记管理机关批准筹备之日起6个月内召

开会员大会或者会员代表大会，通过章程，产生执行机构、负责人和法定代表人，并向登记管理机关申请成立登记。筹备期间不得开展筹备以外的活动。

社会团体的法定代表人，不得同时担任其他社会团体的法定代表人。

第十五条 社会团体的章程应当包括下列事项：

- (一) 名称、住所；
- (二) 宗旨、业务范围和活动地域；
- (三) 会员资格及其权利、义务；
- (四) 民主的组织管理制度，执行机构的产生程序；
- (五) 负责人的条件和产生、罢免的程序；
- (六) 资产管理和使用的原则；
- (七) 章程的修改程序；
- (八) 终止程序和终止后资产的处理；
- (九) 应当由章程规定的其他事项。

第十六条 登记管理机关应当自收到完成筹备工作的社会团体的登记申请书及有关文件之日起 30 日内完成审查工作。对没有本条例第十三条所列情形，且筹备工作符合要求、章程内容完备的社会团体，准予登记，发给《社会团体法人登记证书》。登记事项包括：

- (一) 名称；
- (二) 住所；
- (三) 宗旨、业务范围和活动地域；
- (四) 法定代表人；
- (五) 活动资金；
- (六) 业务主管单位。

对不予登记的，应当将不予登记的决定通知申请人。

第十七条 依照法律规定，自批准成立之日起即具有法人资格的社会团体，应当自批准成立之日起 60 日内向登记管理机关备案。登记管理机关自收到备案文件之日起 30 日内发给《社会团体法人登记证书》。

社会团体备案事项，除本条例第十六条所列事项外，还应当包括业务主管单位依法出具的批准文件。

第十八条 社会团体凭《社会团体法人登记证书》申请刻制印章，开立银行帐户。社会团体应当将印章式样和银行帐号报登记管理机关备案。

第十九条 社会团体成立后拟设立分支机构、代表机构的，应当经业务主管单位审查同意，向登记管理机关提交有关分支机构、代表机构的名称、业务范围、场所和主要负责人等情况的文件，申请登记。

社会团体的分支机构、代表机构是社会团体的组成部分，不具有法人资格，应当按照其所属于的社会团体的章程所规定的宗旨和业务范围，在该社会团体授权的范围内开展活动、发展会员。社会团体的分支机构不得再设立分支机构。

社会团体不得设立地域性的分支机构。

第四章 变更登记、注销登记

第二十条 社会团体的登记事项、备案事项需要变更的，应当自业务主管单位审查同意之日起 30 日内，向登记管理机关申请变更登记、变更备案（以下统称变更登记）。

社会团体修改章程，应当自业务主管单位审查同意之日起 30 日内，报登记管理机关核准。

第二十一条 社会团体有下列情形之一的，应当在业务主管单位审查同意后，向登记管理机关申请注销登记、注销备案（以下统称注销登记）：

- （一）完成社会团体章程规定的宗旨的；
- （二）自行解散的；
- （三）分立、合并的；
- （四）由于其他原因终止的。

第二十二条 社会团体在办理注销登记前，应当在业务主管单位及其他有关机关的指导下，成立清算组织，完成清算工作。清算期间，社会团体不得开展清算以外的活动。

第二十三条 社会团体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。办理注销登记，应当提交法定代表人签署的注销登记申请书、业务主管单位的审查

文件和清算报告书。

登记管理机关准予注销登记的，发给注销证明文件，收缴该社会团体的登记证书、印章和财务凭证。

第二十四条 社会团体撤销其所属分支机构、代表机构的，经业务主管单位审查同意后，办理注销手续。

社会团体注销的，其所属分支机构、代表机构同时注销。

第二十五条 社会团体处分注销后的剩余财产，按照国家有关规定办理。

第二十六条 社会团体成立、注销或者变更名称、住所、法定代表人，由登记管理机关予以公告。

第五章 监督管理

第二十七条 登记管理机关履行下列监督管理职责：

- (一) 负责社会团体的成立、变更、注销的登记或者备案；
- (二) 对社会团体实施年度检查；
- (三) 对社会团体违反本条例的问题进行监督检查，对社会团体违反本条例的行为给予行政处罚。

第二十八条 业务主管单位履行下列监督管理职责：

- (一) 负责社会团体筹备申请、成立登记、变更登记、注销登记前的审查；
- (二) 监督、指导社会团体遵守宪法、法律、法规和国家政策，依据其章程开展活动；
- (三) 负责社会团体年度检查的初审；
- (四) 协助登记管理机关和其他有关部门查处社会团体的违法行为；
- (五) 会同有关机关指导社会团体的清算事宜。

业务主管单位履行前款规定的职责，不得向社会团体收取费用。

第二十九条 社会团体的资产来源必须合法，任何单位和个人不得侵占、私分或者挪用社会团体的资产。

社会团体的经费，以及开展章程规定的活动按照国家有关规定所取得的合法收入，必须用于章程规定的业务活动，不得在会员中分配。

社会团体接受捐赠、资助，必须符合章程规定的宗旨和业务范围，必须根据与捐赠人、资助人约定的期限、方式和合法用途使用。社会团体应当向业务主管单位报告接受、使用捐赠、资助的有关情况，并应当将有关情况以适当方式向社会公布。

社会团体专职工作人员的工资和保险福利待遇，参照国家对事业单位的有关规定执行。

第三十条 社会团体必须执行国家规定的财务管理制度，接受财政部门的监督；资产来源属于国家拨款或者社会捐赠、资助的，还应当接受审计机关的监督。

社会团体在换届或者更换法定代表人之前，登记管理机关、业务主管单位应当组织对其进行财务审计。

第三十一条 社会团体应当于每年3月31日前向业务主管单位报送上一年度的工作报告，经业务主管单位初审同意后，于5月31日前报送登记管理机关，接受年度检查。工作报告的内容包括：本社会团体遵守法律法规和国家政策的情况、依照本条例履行登记手续的情况、按照章程开展活动的情况、人员和机构变动的情况以及财务管理的情况。

对于依照本条例第十七条的规定发给《社会团体法人登记证书》的社会团体，登记管理机关对其应当简化年度检查的内容。

第六章 罚 则

第三十二条 社会团体在申请登记时弄虚作假，骗取登记的，或者自取得《社会团体法人登记证书》之日起1年未开展活动的，由登记管理机关予以撤销登记。

第三十三条 社会团体有下列情形之一的，由登记管理机关给予警告，责令改正，可以限期停止活动，并可以责令撤换直接负责的主管人员；情节严重的，予以撤销登记；构成犯罪的，依法追究刑事责任：

（一）涂改、出租、出借《社会团体法人登记证书》，或者出租、出借社会团体印章的；

（二）超出章程规定的宗旨和业务范围进行活动的；

（三）拒不接受或者不按照规定接受监督检查的；

（四）不按照规定办理变更登记的；

(五) 擅自设立分支机构、代表机构，或者对分支机构、代表机构疏于管理，造成严重后果的；

(六) 从事营利性的经营活动的；

(七) 侵占、私分、挪用社会团体资产或者所接受的捐赠、资助的；

(八) 违反国家有关规定收取费用、筹集资金或者接受、使用捐赠、资助的。

前款规定的行为有违法经营额或者违法所得的，予以没收，可以并处违法经营额1倍以上3倍以下或者违法所得3倍以上5倍以下的罚款。

第三十四条 社会团体的活动违反其他法律、法规的，由有关国家机关依法处理；有关国家机关认为应当撤销登记的，由登记管理机关撤销登记。

第三十五条 未经批准，擅自开展社会团体筹备活动，或者未经登记，擅自以社会团体名义进行活动，以及被撤销登记的社会团体继续以社会团体名义进行活动的，由登记管理机关予以取缔，没收非法财产；构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予治安管理处罚。

第三十六条 社会团体被责令限期停止活动的，由登记管理机关封存《社会团体法人登记证书》、印章和财务凭证。

社会团体被撤销登记的，由登记管理机关收缴《社会团体法人登记证书》和印章。

第三十七条 登记管理机关、业务主管单位的工作人员滥用职权、徇私舞弊、玩忽职守构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第七章 附 则

第三十八条 《社会团体法人登记证书》的式样由国务院民政部门制定。

对社会团体进行年度检查不得收取费用。

第三十九条 本条例施行前已经成立的社会团体，应当自本条例施行之日起1年内依照本条例有关规定申请重新登记。

第四十条 本条例自发布之日起施行。1989年10月25日国务院发布的《社会团体登记管理条例》同时废止。

III-06-04-203

Interim Regulations on Registration Administration of Private Non-enterprise Units

(Adopted at the Eighth Executive Meeting of the State Council
on September 25, 1998, promulgated by Decree No. 251
of the State Council of the People's Republic of China on
October 25, 1998, and effective as of the date of promulgation)

CHAPTER I GENERAL PROVISIONS

Article 1

These Regulations are formulated for the purposes of standardizing registration administration of private non-enterprise units, protecting their lawful rights and interests, and facilitating the socialist material as well as cultural and ethical progress.

Article 2

Private non-enterprise units referred to in these Regulations are defined as social organizations which are established by enterprises, institutions, associations or other civic entities as well as individual citizens using non-state assets and conduct not-for-profit social service activities.

Article 3

The establishment of a private non-enterprise unit shall be subject to the review and approval of its relevant governing unit, and shall be registered in accordance with the provisions of these Regulations.

Article 4

Private non-enterprise units shall abide by the Constitution, laws, regulations and policies of the State, may not oppose the basic principles enshrined in the Constitution, may not endanger the reunification and security of the country or the unity of the nationalities, may not infringe upon the State interests, public and social interests as well as the lawful rights and interests of other organizations and citizens, and may not go against social ethics and morality. No private non-enterprise unit may conduct business activities for profit.

Article 5

The civil affairs department of the State Council and the civil affairs departments of the local people's governments at or above the county level are the registration administration organs of the people's governments at their corresponding level (hereinafter referred to as the registration administration organs) for private non-enterprise units.

The relevant departments of the State Council and those of the local people's governments at or above the county level as well as organizations authorized by the State Council or the local people's governments at or above the county level are the relevant governing units over private non-enterprise units within the relevant trades, and professions (hereinafter referred to as the governing units).

Where the laws and administrative regulations stipulate otherwise with regard to the supervision and administration of private non-enterprise units, these provisions of the relevant laws and administrative regulations shall be applied.

CHAPTER II JURISDICTION

Article 6

The registration administration organs shall be responsible for the registration administration of the private non-enterprise units whose establishment has been reviewed and approved by the governing units at the corresponding level.

Article 7

Where the domiciles of the registration administration organs and the governing units are not in the same places as those of the private non-enterprise units, they may delegate to the registration administration organs and the governing units in places where these private non-enterprise units are domiciled the work of supervision and administration within the scope of the delegation.

CHAPTER III REGISTRATION

Article 8

The application for the registration of a private non-enterprise unit shall meet the following requirements:

- (1) has obtained approval from the governing unit after review;
- (2) possesses a standard name and requisite organizational structure;
- (3) possesses professional staff suitable for its business activities;
- (4) possesses lawful properties as required for its business activities;
- (5) possesses a necessary site.

The name of a private non-enterprise unit shall be in conformity with the provisions of the civil affairs department of the State Council, and may not be headed with such words as "China", "National" or "Chinese".

Article 9

In applying for the registration of a private non-enterprise unit, the sponsor shall submit the following documents to the registration administration organ:

- (1) an application letter for registration;
- (2) approval documents of the governing unit;
- (3) a certificate for site use right;
- (4) a capital verification report;
- (5) basic facts and identity certification of the proposed responsible person;
- (6) the draft articles of association.

Article 10

The articles of association of a private non-enterprise unit shall contain the following items:

- (1) its name and domicile;
- (2) its purposes and operational scope;
- (3) its organizational and managerial system;
- (4) procedures for the election and dismissal of the legal representative or the responsible person;
- (5) principles on the management and use of assets;
- (6) procedures for revising the articles of association;
- (7) procedures for termination and disposal of the assets thereafter;
- (8) other matters that shall be stipulated in the articles of association.

Article 11

The registration administration organs shall make decisions to grant or not to grant registration within 60 days from the date of receipt of all valid documents of the application for establishment registration.

The registration administration organs shall not grant registration under any one of the following circumstances, and shall give reasons therefor to the applicant:

- (1) where there is evidence to indicate that the purposes and operational scope of the private non-enterprise unit being applied for registration are not in conformity with the provisions of Article 4 of these Regulations;
- (2) where fraud and falsification are resorted to in applying for establishment;
- (3) where there is no need for establishing such a private non-enterprise unit as there already exists a private non-enterprise unit whose operational scope is either identical or similar to that of the proposed private non-enterprise unit in the same administrative region;
- (4) where the proposed responsible person is still or was once under criminal penalty depriving himself political rights, or does not possess full capacity for civil conduct;
- (5) where other circumstances prohibited by laws and administrative regulations are involved.

Article 12

Where a private non-enterprise unit is approved for registration, the registration administration organ shall register the name, domicile, purposes and operational scope, the legal representative or the responsible person, the start-up fund, the governing unit, and respectively issue a Certificate of Registration for Private Non-enterprise Unit (Legal Person), Certificate of Registration for Private Non-enterprise Unit (Partnership) or Certificate of Registration for Private Non-enterprise Unit (Individual) in accordance with the different modes of bearing civil liabilities.

Where a private non-enterprise unit has, according to the provisions of relevant laws and other administrative regulations, upon review or registration by the relevant competent department, obtained a corresponding profession licensing certificate, the registration administration organ shall simplify the registration procedures and issue the corresponding certificate for registration of private non-enterprise unit on the basis of certifying documents on profession licensing produced by the competent department.

Article 13

No private non-enterprise unit may establish any branch.

Article 14

A private non-enterprise unit shall, on the basis of the registration certificate, apply for engraving its seal and opening a bank account. The private non-enterprise unit shall submit the design of its seal and the number of its bank account to the registration administration organ for the record.

Article 15

Where it is necessary to make changes in the items of registration of a private non-enterprise unit, it shall, within 30 days from the date of consent after review by the governing unit, apply to the registration administration organ to make changes in its registration.

Where a private non-enterprise unit intends to revise its articles of association, it shall, with 30 days from the date of consent after review by the governing unit, submit the revised articles of association to the registration administration organ for examination and approval.

Article 16

Where a private non-enterprise unit dissolves of its own accord, splits up or merges, or needs to have its registration canceled for other reasons, it shall undertake the procedures for cancellation of registration with the registration administration organ.

Before a private non-enterprise unit may cancel its registration, it shall set up a liquidating group to complete the work of liquidation thereof under the guidance of the governing unit and other relevant departments. The private non-enterprise unit may not perform any activities other than liquidation during the liquidation period.

Article 17

The legal representative or responsible person of a private non-enterprise unit shall undertake the procedures for the cancellation of registration with the registration administration organ within 15 days after the completion of the liquidation. For the cancellation of registration, the private non-enterprise unit must submit an application for the cancellation, a document of approval issued by the governing unit and the liquidation report.

Where the registration administration organ approves the cancellation of registration, it shall issue a certificate of cancellation, and withdraw the registration certificate, seal and financial vouchers.

Article 18

The establishment, cancellation and change of name, domicile and legal representative or responsible person of a private non-enterprise unit shall be publicly announced by the registration administration organ.

CHAPTER IV

SUPERVISION AND ADMINISTRATION

Article 19

The registration administration organs shall perform the following functions of supervision and administration:

- (1) being responsible for the registration of the establishment, change and cancellation of private non-enterprise units;
- (2) conducting annual verification of private non-enterprise units;
- (3) supervising and inspecting cases related to the violation of these Regulations by private non-enterprise units, and imposing administrative punishments on private non-enterprise units whose conducts violate these Regulations.

Article 20

The governing units shall perform the following functions of supervision and administration:

- (1) being responsible for pre-review prior to the registration of establishment, changes and cancellation of private non-enterprise units.
- (2) supervising and guiding private non-enterprise units to abide by the Constitution, laws, regulations and policies of the State, and to perform activities in accordance with their articles of association;
- (3) being responsible for the preliminary examination of the annual verification of private non-enterprise units;
- (4) assisting the registration administration organs and other relevant departments in investigating and punishing violations of law by private non-enterprise units;
- (5) guiding jointly with the relevant organs issues related to liquidation of private non-enterprise units.

The governing units may not charge any fees to private non-enterprise units for the performance of the functions specified in the preceding paragraph.

Article 21

The assets of a private non-enterprise unit must come from lawful resources. No units and individuals may usurp, divide in secret or misappropriate the assets of a private non-enterprise unit.

The lawful income of a private non-enterprise unit obtained in accordance with the relevant provisions of the State from performing activities specified in its articles of association shall be used for the activities specified in its articles of association.

The acceptance of donations and grants by a private non-enterprise unit shall conform to the purposes and operational scope specified in its articles of association, and private non-enterprise unit shall use them in accordance with the time limits, ways and lawful purposes as agreed with the donors and grantors. The private non-enterprise unit shall report to its governing unit matters related to the acceptance and use of donations and grants, and shall make them known to the public in a proper way.

Article 22

The private non-enterprise unit shall follow the relevant rules of the State on financial management, and be subject to the supervision of the financial departments. Where the assets of a private non-enterprise unit come from the appropriation of the State, or from civic donations and grants, it shall, in addition, be subject to the supervision of the auditing organ.

Before the replacement of the legal representative of a private non-enterprise unit, the registration administration organ and the governing unit shall organize an audit of its finance.

Article 23

The private non-enterprise unit shall submit to the governing units their work reports of the previous year prior to March 31 each year, and after the preliminary examination and consent of the governing units, submit them to the registration administration organs prior to May 31 for annual verification. The contents of the work reports shall include: the observance of laws, regulations and policies of the State, the registration undergone in accordance with these Regulations, activities performed in accordance with the articles of association, changes in personnel and organizational structure as well as financial management.

The registration administration organs shall simplify the contents of the annual verification of the private non-enterprise units which are granted the certificate of registration in accordance with the provisions of the Paragraph 2, Article 12 of these Regulations.

CHAPTER V

PENALTY PROVISIONS

Article 24

Where a private non-enterprise unit is resorted to fraud and falsification in acquiring its registration, or where the approval of its establishment has been revoked by the governing unit, the registration administration organ shall revoke its registration.

Article 25

Where a private non-enterprise unit is involved in any one of the following circumstances, the registration administration organ may give it a warning, order it to make amends, or suspend its activities within a given time limit, or, where the circumstances are serious, revoke its registration; where a crime is constituted, criminal liability shall be investigated according to law:

- (1) altering, leasing or lending the registration certificate for private non-enterprise unit, or leasing, lending the seal of the private non-enterprise unit;
- (2) performing activities beyond the purposes and operational scope specified in its articles of association;
- (3) refusing to accept supervision and inspections or failing to accept supervision and inspections according to provisions;
- (4) failing to undertake procedures for making changes in registration according to provisions;
- (5) establishing a branch;
- (6) engaging in for-profit activities;
- (7) usurping, dividing in secret or misappropriating assets of the private non-enterprise unit or accepted donations and grants;
- (8) charging fees, raising funds or accepting and using donations and grants in violation of the relevant provisions of the State.

Illegal operational volumes or illegal gains coming from the acts as set forth in the preceding paragraph shall be confiscated, and a fine of not less than one time but not more than three times the illegal operational volumes, or of not less than three times but not more than five times the illegal gains may be imposed simultaneously.

Article 26

Where the activities of a private non-enterprise unit violate other laws and regulations, they shall be dealt with by the relevant State organs according to law; where the relevant State organs consider that its registration should be revoked, the registration administration organ shall revoke its registration.

Article 27

Where a private non-enterprise unit without registration performs activities in the name of a private non-enterprise unit, or a private non-enterprise unit whose registration has been revoked continues to perform activities in the

name of the private non-enterprise unit, it shall be banned by the registration administration organ, its illegal properties shall be confiscated; and criminal liabilities shall be investigated according to law where a crime is constituted; where a crime is not constituted, administrative penalties for public security shall be imposed according to law.

Article 28

Where a private non-enterprise unit is ordered to suspend its activities within a given time limit, the registration administration organ shall seal up its registration certificate, seal and financial vouchers.

Where the registration of a private non-enterprise unit has been revoked, the registration administration organ shall withdraw its registration certificate and seal.

Article 29

Any staff members of the registration administration organs and the governing units who abuse their powers, commit illegalities for personal interests or by fraudulent means, or neglect their duties shall be investigated for their criminal liabilities according to law where crimes are constituted; those whose acts do not constitute crimes shall be subject to administrative sanctions according to law.

**CHAPTER VI
SUPPLEMENTARY PROVISIONS**

Article 30

The format of the registration certificate for private non-enterprise unit shall be determined by the civil affairs department of the State Council .

No fees may be charged for the annual verification of private non-enterprise unit.

Article 31

The private non-enterprise units established before the effectiveness of these Regulations shall, within one year of their effectiveness, apply for registration in accordance with the relevant provisions of these Regulations.

Article 32

These Regulations take effect as of the date of promulgation.

民办非企业单位登记管理暂行条例

(1998年10月25日国务院令第二百
五十一号发布 自发布之日起施行)

第一章 总 则

第一条 为了规范民办非企业单位的登记管理,保障民办非企业单位的合法权益,促进社会主义物质文明、精神文明建设,制定本条例。

第二条 本条例所称民办非企业单位,是指企业事业单位、社会团体和其他社会力量以及公民个人利用非国有资产举办的,从事非营利性社会服务活动的社会组织。

第三条 成立民办非企业单位,应当经其业务主管单位审查同意,并依照本条例的规定登记。

第四条 民办非企业单位应当遵守宪法、法律、法规和国家政策,不得反对宪法确定的基本原则,不得危害国家的统一、安全和民族的团结,不得损害国家利益、社会公共利益以及其他社会组织和公民的合法权益,不得违背社会道德风尚。

民办非企业单位不得从事营利性经营活动。

第五条 国务院民政部门 and 县级以上地方各级人民政府民政部门是本级人民政府的民办非企业单位登记管理机关(以下简称登记管理机关)。

国务院有关部门和县级以上地方各级人民政府的有关部门、国务院或者县级以上地方各级人民政府授权的组织,是有关行业、业务范围内民办非企业单位的业务主管单位(以下简称业务主管单位)。

法律、行政法规对民办非企业单位的监督管理另有规定的,依照有关法律、行政法规的规定执行。

第二章 管 辖

第六条 登记管理机关负责同级业务主管单位审查同意的民办非企业单位的登记管理。

第七条 登记管理机关、业务主管单位与其管辖的民办非企业单位的住所不在一地的,可以委托民办非企业单位住所地的登记管理机关、业务主管单位负责委托范围内的监督管理工作。

第三章 登 记

第八条 申请登记民办非企业单位,应当具备下列条件:

- (一) 经业务主管单位审查同意;
- (二) 有规范的名称、必要的组织机构;
- (三) 有与其业务活动相适应的从业人员;
- (四) 有与其业务活动相适应的合法财产;
- (五) 有必要的场所。

民办非企业单位的名称应当符合国务院民政部门的规定,不得冠以“中国”、“全国”、“中华”等字样。

第九条 申请民办非企业单位登记,举办者应当向登记管理机关提交下列文件:

- (一) 登记申请书;
- (二) 业务主管单位的批准文件;
- (三) 场所使用权证明;
- (四) 验资报告;
- (五) 拟任负责人的基本情况、身份证明;
- (六) 章程草案。

第十条 民办非企业单位的章程应当包括下列事项:

- (一) 名称、住所;
- (二) 宗旨和业务范围;
- (三) 组织管理制度;
- (四) 法定代表人或者负责人的产生、罢免的程序;
- (五) 资产管理和使用的原则;

- (六) 章程的修改程序;
- (七) 终止程序和终止后资产的处理;
- (八) 需要由章程规定的其他事项。

第十一条 登记管理机关应当自收到成立登记申请的全部有效文件之日起 60 日内作出准予登记或者不予登记的决定。

有下列情形之一的,登记管理机关不予登记,并向申请人说明理由:

- (一) 有根据证明申请登记的民办非企业单位的宗旨、业务范围不符合本条例第四条规定的;
- (二) 在申请成立时弄虚作假的;
- (三) 在同一行政区域内已有业务范围相同或者相似的民办非企业单位,没有必要成立的;
- (四) 拟任负责人正在或者曾经受到剥夺政治权利的刑事处罚,或者不具有完全民事行为能力的;
- (五) 有法律、行政法规禁止的其他情形的。

第十二条 准予登记的民办非企业单位,由登记管理机关登记民办非企业单位的名称、住所、宗旨和业务范围、法定代表人或者负责人、开办资金、业务主管单位,并根据其依法承担民事责任的不同方式,分别发给《民办非企业单位(法人)登记证书》、《民办非企业单位(合伙)登记证书》、《民办非企业单位(个体)登记证书》。

依照法律、其他行政法规规定,经有关主管部门依法审核或者登记,已经取得相应的执业许可证书的民办非企业单位,登记管理机关应当简化登记手续,凭有关主管部门出具的执业许可证明文件,发给相应的民办非企业单位登记证书。

第十三条 民办非企业单位不得设立分支机构。

第十四条 民办非企业单位凭登记证书申请刻制印章,开立银行账户。民办非企业单位应当将印章式样、银行帐号报登记管理机关备案。

第十五条 民办非企业单位的登记事项需要变更的,应当自业务主管单位审查同意之日起 30 日内,向登记管理机关申请变更登记。

民办非企业单位修改章程,应当自业务主管单位审查同意之日起 30 日内,报登记管理机关核准。

第十六条 民办非企业单位自行解散的,分立、合并的,或者由于其他原因需要注销登记的,应当向登记管理机关办理注销登记。

民办非企业单位在办理注销登记前,应当在业务主管单位和其他有关机关的指导下,成立清算组织,完成清算工作。清算期间,民办非企业单位不得开展清算以外的活动。

第十七条 民办非企业单位法定代表人或者负责人应当自完成清算之日起15日内,向登记管理机关办理注销登记。办理注销登记,须提交注销登记申请书、业务主管单位的审查文件和清算报告。

登记管理机关准予注销登记的,发给注销证明文件,收缴登记证书、印章和财务凭证。

第十八条 民办非企业单位成立、注销以及变更名称、住所、法定代表人或者负责人,由登记管理机关予以公告。

第四章 监督管理

第十九条 登记管理机关履行下列监督管理职责:

- (一) 负责民办非企业单位的成立、变更、注销登记;
- (二) 对民办非企业单位实施年度检查;
- (三) 对民办非企业单位违反本条例的问题进行监督检查,对民办非企业单位违反本条例的行为给予行政处罚。

第二十条 业务主管单位履行下列监督管理职责:

- (一) 负责民办非企业单位成立、变更、注销登记前的审查;
- (二) 监督、指导民办非企业单位遵守宪法、法律、法规和国家政策,按照章程开展活动;
- (三) 负责民办非企业单位年度检查的初审;
- (四) 协助登记管理机关和其他有关部门查处民办非企业单位的违法行为;
- (五) 会同有关机关指导民办非企业单位的清算事宜。

业务主管单位履行前款规定的职责,不得向民办非企业单位收取费用。

第二十一条 民办非企业单位的资产来源必须合法,任何单位和个人不得侵占、私分或者挪用民办非企业单位的资产。

民办非企业单位开展章程规定的活动,按照国家有关规定取得的合法收入,必须用于章程规定的业务活动。

民办非企业单位接受捐赠、资助,必须符合章程规定的宗旨和业务

范围,必须根据与捐赠人、资助人约定的期限、方式和合法用途使用。民办非企业单位应当向业务主管单位报告接受、使用捐赠、资助的有关情况,并应当将有关情况以适当方式向社会公布。

第二十二条 民办非企业单位必须执行国家规定的财务管理制度,接受财政部门的监督;资产来源属于国家资助或者社会捐赠、资助的,还应当接受审计机关的监督。

民办非企业单位变更法定代表人或者负责人,登记管理机关、业务主管单位应当组织对其进行财务审计。

第二十三条 民办非企业单位应当于每年3月31日前向业务主管单位报送上一年度的工作报告,经业务主管单位初审同意后,于5月31日前报送登记管理机关,接受年度检查。工作报告内容包括:本民办非企业单位遵守法律法规和国家政策的情况、依照本条例履行登记手续的情况、按照章程开展活动的情况、人员和机构变动的情况以及财务管理的情况。

对于依照本条例第十二条第二款的规定发给登记证书的民办非企业单位,登记管理机关对其应当简化年度检查的内容。

第五章 罚 则

第二十四条 民办非企业单位在申请登记时弄虚作假,骗取登记的,或者业务主管单位撤销批准的,由登记管理机关予以撤销登记。

第二十五条 民办非企业单位有下列情形之一的,由登记管理机关予以警告,责令改正,可以限期停止活动;情节严重的,予以撤销登记;构成犯罪的,依法追究刑事责任:

- (一) 涂改、出租、出借民办非企业单位登记证书,或者出租、出借民办非企业单位印章的;
- (二) 超出其章程规定的宗旨和业务范围进行活动的;
- (三) 拒不接受或者不按照规定接受监督检查的;
- (四) 不按照规定办理变更登记的;
- (五) 设立分支机构的;
- (六) 从事营利性的经营活动的;
- (七) 侵占、私分、挪用民办非企业单位的资产或者所接受的捐赠、资助的;

(八) 违反国家有关规定收取费用、筹集资金或者接受使用捐赠、资助的。

前款规定的行为有违法经营额或者违法所得的,予以没收,可以并处违法经营额1倍以上3倍以下或者违法所得3倍以上5倍以下的罚款。

第二十六条 民办非企业单位的活动违反其他法律、法规的,由有关国家机关依法处理;有关国家机关认为应当撤销登记的,由登记管理机关撤销登记。

第二十七条 未经登记,擅自以民办非企业单位名义进行活动的,或者被撤销登记的民办非企业单位继续以民办非企业单位名义进行活动的,由登记管理机关予以取缔,没收非法财产;构成犯罪的,依法追究刑事责任;尚不构成犯罪的,依法给予治安管理处罚。

第二十八条 民办非企业单位被限期停止活动的,由登记管理机关封存其登记证书、印章和财务凭证。

民办非企业单位被撤销登记的,由登记管理机关收缴登记证书和印章。

第二十九条 登记管理机关、业务主管单位的工作人员滥用职权、徇私舞弊、玩忽职守构成犯罪的,依法追究刑事责任;尚不构成犯罪的,依法给予行政处分。

第六章 附 则

第三十条 民办非企业单位登记证书的式样由国务院民政部门制定。

对民办非企业单位进行年度检查不得收取费用。

第三十一条 本条例施行前已经成立的民办非企业单位,应当自本条例实施之日起1年内依照本条例有关规定申请登记。

第三十二条 本条例自发布之日起施行。

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会第三十次会议通过
【章名】 目 录

第一章 总 则
第二章 国家安全机关在国家安全工作中的职权
第三章 公民和组织维护国家安全的义务和权利
第四章 法律责任
第五章 附 则

【章名】 第一章 总 则

第一条 为了维护国家安全，保卫中华人民共和国人民民主专政的政权和社会主义制度，保障改革开放和社会主义现代化建设的顺利进行，根据宪法，制定本法。

第二条 国家安全机关是本法规定的国家安全工作的主管机关。

国家安全机关和公安机关按照国家规定的职权划分，各司其职，密切配合，维护国家安全。

第三条 中华人民共和国公民有维护国家的安全、荣誉和利益的义务，不得有危害国家的安全、荣誉和利益的行为。

一切国家机关和武装力量、各政党和各社会团体及各企业事业组织，都有维护国家安全的义务。

国家安全机关在国家安全工作中必须依靠人民的支持，动员、组织人民防范、制止危害国家安全的行为。

第四条 任何组织和个人进行危害中华人民共和国国家安全的行为都必须受到法律追究。

本法所称危害国家安全的行为，是指境外机构、组织、个人实施或者指使、资助他人实施的，或者境内组织、个人与境外机构、组织、个人相勾结实施的下列危害中华人民共和国国家安全的行为：

(一) 阴谋颠覆政府，分裂国家，推翻社会主义制度的；

- (二) 参加间谍组织或者接受间谍组织及其代理人的任务的;
- (三) 窃取、刺探、收买、非法提供国家秘密的;
- (四) 策动、勾引、收买国家工作人员叛变的;
- (五) 进行危害国家安全的其他破坏活动的。

第五条 国家对支持、协助国家安全工作的组织和个人给予保护,对维护国家安全有重大贡献的给予奖励。

【章名】 第二章 国家安全机关在国家安全工作中的职权

第六条 国家安全机关在国家安全工作中依法行使侦查、拘留、预审和执行逮捕以及法律规定的其他职权。

第七条 国家安全机关的工作人员依法执行国家安全工作任务时,经出示相应证件,有权查验中国公民或者境外人员的身份证明;向有关组织和人员调查、询问有关情况。

第八条 国家安全机关的工作人员依法执行国家安全工作任务时,经出示相应证件,可以进入有关场所;根据国家有关规定,经过批准,出示相应证件,可以进入限制进入的有关地区、场所、单位;查看或者调阅有关的档案、资料、物品。

第九条 国家安全机关的工作人员在依法执行紧急任务的情况下,经出示相应证件,可以优先乘坐公共交通工具,遇交通阻碍时,优先通行。

国家安全机关为维护国家安全的需要,必要时,按照国家有关规定,可以优先使用机关、团体、企业事业组织和个人的交通工具、通信工具、场地和建筑物,用后应当及时归还,并支付适当费用;造成损失的,应当赔偿。

第十条 国家安全机关因侦察危害国家安全行为的需要,根据国家有关规定,经过严格的批准手续,可以采取技术侦察措施。

第十一条 国家安全机关为维护国家安全的需要,可以查验组织和个人的电子通信工具、器材等设备、设施。

第十二条 国家安全机关因国家安全工作的需要,根据国家有关规定,可以提请海关、边防等检查机关对有关人员和资料、器材免检。有关检查机关应当予以协助。

第十三条 国家安全机关及其工作人员在国家安全工作中,应当严格依法办事,不得超越职权、滥用职权,不得侵犯组织和个人的合法权益。

第十四条 国家安全机关工作人员依法执行职务受法律保护。

【章名】 第三章 公民和组织维护国家安全的义务和权利

第十五条 机关、团体和其他组织应当对本单位的人员进行维护国家安全的教育,动员、组织本单位的人员防范、制止危害国家安全的行为。

第十六条 公民和组织应当为国家安全工作提供便利条件或者其他协助。

第十七条 公民发现危害国家安全的行为,应当直接或者通过所在组

组织及时向国家安全机关或者公安机关报告。

第十八条 在国家安全机关调查了解有关危害国家安全的情况、收集有关证据时，公民和有关组织应当如实提供，不得拒绝。

第十九条 任何公民和组织都应当保守所知悉的国家安全工作的国家秘密。

第二十条 任何个人和组织都不得非法持有属于国家秘密的文件、资料和其他物品。

第二十一条 任何个人和组织都不得非法持有、使用窃听、窃照等专用间谍器材。

第二十二条 任何公民和组织对国家安全机关及其工作人员超越职权、滥用职权和其他违法行为，都有权向上级国家安全机关或者有关部门检举、控告。上级国家安全机关或者有关部门应当及时查清事实，负责处理。

对协助国家安全机关工作或者依法检举、控告的公民和组织，任何人不得压制和打击报复。

【章名】第四章 法律责任

第二十三条 境外机构、组织、个人实施或者指使、资助他人实施，或者境内组织、个人与境外机构、组织、个人相勾结实施危害中华人民共和国国家安全的行为，构成犯罪的，依法追究刑事责任。

第二十四条 犯间谍罪自首或者有立功表现的，可以从轻、减轻或者免除处罚；有重大立功表现的，给予奖励。

第二十五条 在境外受胁迫或者受诱骗参加敌对组织，从事危害中华人民共和国国家安全的活动，及时向中华人民共和国驻外机构如实说明情况的，或者入境后直接或者通过所在组织及时向国家安全机关或者公安机关如实说明情况的，不予追究。

第二十六条 明知他人有间谍犯罪行为，在国家安全机关向其调查有关情况、收集有关证据时，拒绝提供的，由其所在单位或者上级主管部门予以行政处分，或者由国家安全机关处十五日以下拘留；情节严重的，比照刑法第一百六十二条的规定处罚。

第二十七条 以暴力、威胁方法阻碍国家安全机关依法执行国家安全工作任务的，依照刑法第一百五十七条的规定处罚。

故意阻碍国家安全机关依法执行国家安全工作任务，未使用暴力、威胁方法，造成严重后果的，比照刑法第一百五十七条的规定处罚；情节较轻的，由国家安全机关处十五日以下拘留。

第二十八条 故意或者过失泄露有关国家安全工作的国家秘密的，由国家安全机关处十五日以下拘留；构成犯罪的，依法追究刑事责任。

第二十九条 对非法持有属于国家秘密的文件、资料和其他物品的，以及非法持有、使用专用间谍器材的，国家安全机关可以依法对其人身、

物品、住处和其他有关的地方进行搜查；对其非法持有的属于国家秘密的文件、资料和其他物品，以及非法持有、使用的专用间谍器材予以没收。

非法持有属于国家秘密的文件、资料和其他物品，构成泄露国家秘密罪的，依法追究刑事责任。

第三十条 境外人员违反本法的，可以限期离境或者驱逐出境。

第三十一条 当事人对拘留决定不服的，可以自接到处罚决定书之日起十五日内，向作出处罚决定的上一级机关申请复议；对复议决定不服的，可以自接到复议决定书之日起十五日内向人民法院提起诉讼。

第三十二条 国家安全机关工作人员玩忽职守、徇私舞弊，构成犯罪的，分别依照刑法第一百八十七条、第一百八十八条的规定处罚；非法拘禁、刑讯逼供，构成犯罪的，分别依照刑法第一百四十三条、第一百三十六条的规定处罚。

【章名】 第五章 附 则

第三十三条 公安机关依照本法第二条第二款的规定，执行国家安全工作任务时，适用本法有关规定。

第三十四条 本法自公布之日起施行。

Interim Measures on Banning Illegal Private Organizations

(Promulgated by Ministry of Civil Affairs on 10 April 2000)

Article 1 These Measures are formulated for the purposes of safeguarding social stability and State security in accordance with the *Regulations on Registration Administration of Associations*, the *Interim Regulations on Registration Administration of Private Non-enterprise Units* and related regulations.

Article 2 Any organization under one of the following circumstances is an illegal private organization-

- (1) An organization making preparations without approval for establishing an association;
- (2) An organization without registration performing activities in the name of an association or a private non-enterprise unit;
- (3) An association whose registration has been revoked continuing to perform activities in the name of the association or a private non-enterprise unit.

Article 3 Registration administration organs of associations and private non-enterprise units (hereinafter referred to as registration administration organs) are responsible for conducting investigations into and collecting relevant evidence against illegal private organizations, making decisions to ban these illegal private organizations according to law and confiscating their illegal properties.

Article 4 The banning of an illegal private organization shall be undertaken by the registration administration organ of the place where unlawful activity takes place.

The banning of an illegal private organization involving more than two registration administration organs of corresponding level, shall be undertaken by their common higher registration administration organ or a relevant registration administration organ as specified.

The banning of an illegal private organization engaging in cross-province (autonomous region or municipality) activities shall be undertaken by the civil affairs department of the State Council or a relevant registration administration organ as specified.

Article 5 Registration administration organs should conduct prompt investigations into an illegal private organization upon discovery, and should inform the departments concerned without delay if it is within their purview.

Article 6 Where a registration administration organ conducts investigations into an illegal private organization, there shall not be less than two law enforcement officers and the officers shall produce identity documents.

Article 7 Where a registration administration organ conducts an investigation into an illegal private organization, the units and individuals concerned should truly reflect the situation and provide relevant information. They should not refuse to provide any evidence. Nor should they conceal evidence or produce false evidence.

Article 8 Where a registration administration organ conducts an investigation into an illegal private organization in accordance with the law, it may obtain evidence in relation to the situation and information of the case by means of note-taking, copying, recording, video-recording, photo-taking, etc.

Where there is a possibility of losing the evidence or there is difficulty in obtaining the evidence thereafter, with the approval of the person-in-charge of the registration

administration organ, a register of the evidence may first be kept and a decision should be made within seven days to handle the evidence without delay. Meanwhile, the parties or officers concerned shall not destroy or transfer the evidence.

Article 9. In respect of an illegal private organization identified after investigations, the registration administration organ should make a decision to ban the organization, declare the organization illegal and make an announcement in accordance with the law.

Article 10. After the banning of an illegal private organization, any illegal properties confiscated by the registration administration organ in accordance with the law shall be put up for public auctions according to State provisions or disposed of according to relevant provisions of the State.

Any illegal proceeds confiscated by the registration administration organ in accordance with the law and any money obtained from selling confiscated illegal properties in auctions shall all be handed over to the state treasury.

Article 11. In respect of a banned illegal private organization, the registration administration organ should recover its seals, labels, materials, financial receipts, etc. and file them on record.

Where it is necessary to destroy any seals or materials, approval should be obtained from the person-in-charge of the registration administration organ. The seals or materials should be destroyed under the supervision of more than two law enforcement officers and a list of destroyed items should be made.

Article 12. After banning an illegal private organization, the registration administration organ should open a file and place the relevant record materials on file without delay in accordance with the provisions of record management.

Article 13. Where a banned illegal private organization continues to launch activities, the registration administration organ should report to the relevant department without delay for carrying out a joint investigation.

Article 14. These Measures take effect as of the date of promulgation.

#47348

取缔非法民间组织暂行办法

(2000 年 4 月 10 日民政部令第 21 日发布 自发布之日起施行)

第一条 为了维护社会稳定和国家安全，根据《社会团体登记管理条例》和《民办非企业单位登记管理暂行条例》及有关规定，制定本办法。

第二条 具有下列情形之一的属于非法民间组织：

- (一) 未经批准，擅自开展社会团体筹备活动的；
- (二) 未经登记，擅自以社会团体或者民办非企业单位名义进行活动的；
- (三) 被撤销登记后继续以社会团体或者民办非企业单位名义进行活动的。

第三条 社会团体和民办非企业单位登记管理机关（以下统称登记管理机关）负责对非法民间组织进行调查，收集有关证据，依法作出取缔决定，没收其非法财产。

第四条 取缔非法民间组织，由违法行为发生地的登记管理机关负责。

涉及两个以上同级登记管理机关的非法民间组织的取缔，由它们的共同上级登记管理机关负责，或者指定相关登记管理机关予以取缔。

对跨省（自治区、直辖市）活动的非法民间组织，由国务院民政部门负责取缔，或者指定相关登记管理机关予以取缔。

第五条 对非法民间组织，登记管理机关一经发现，应当及时进行调查，涉及有关部门职能的，应当及时向有关部门通报。

第六条 登记管理机关对非法民间组织进行调查时，执法人员不得少于两人，并应当出示证件。

第七条 登记管理机关对非法民间组织进行调查时，有关单位和个人应当如实反映情况，提供有关资料，不得拒绝、隐瞒、出具伪证。

第八条 登记管理机关依法调查非法民间组织时，对与案件有关的情况和资料，可以采取记录、复制、录音、录像、照相等手段取得证据。

在证据可能灭失或者以后难以取得的情况下，经登记管理机关负责人批准可以先行登记保存，并应当在七日内及时作出处理决定，在此期间，当事人或者有关人员不得销毁或者转移证据。

第九条 对经调查认定的非法民间组织，登记管理机关应当依法作出取缔决定，宣布该组织为非法，并予以公告。

第十条 非法民间组织被取缔后，登记管理机关依法没收的非法财物必须按照国家规定公开拍卖或者按照国家有关规定处理。

登记管理机关依法没收的违法所得和没收非法财物拍卖的款项，必须全部上缴国库。

第十一条 对被取缔的非法民间组织，登记管理机关应当收缴其印章、标识、资料、财务凭证等，并登记造册。

需要销毁的印章、资料等，应当经登记管理机关负责人批准，由两名以上执法人员监督销毁，并填写销毁清单。

第十二条 登记管理机关取缔非法民间组织后，应当按照档案管理的有关规定及时将有关档案材料立卷归档。

第十三条 非法民间组织被取缔后，继续开展活动的，登记管理机关应当及时通报有关部门共同查处。

第十四条 本办法自发布之日起施行。