

民政部关于《民办非企业单位登记管理暂行条例（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，适应民办非企业单位发展实际，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《民办非企业单位登记管理暂行条例》进行了修订。为了更准确的反映社会服务机构的定位和属性、与《中华人民共和国慈善法》的表述相衔接，此次修订将“民办非企业单位”名称改为“社会服务机构”，将现行《民办非企业单位登记管理暂行条例》名称改为《社会服务机构登记管理条例》，形成了《社会服务机构登记管理条例》（《民办非企业单位登记管理暂行条例》修订草案征求意见稿）。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《<民办非企业单位登记管理暂行条例（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“民非条例征求意见”字样。

意见反馈截止时间为 2016 年 6 月 26 日。

Notice of the Ministry of Civil Affairs on the Provisional Regulations for the Registration and Management of Civil Non-Enterprise Units (Revised draft for public consultation) to seek public opinions

The Provisional Regulation on the Registration and Management of Civil Non-Enterprise Unit (Revised Draft for Public Consultation) has been released by the Ministry of Civil Affairs of the People's Republic of China after an in-depth investigation and an experiential summary. The new law is supposed to revise the existing regulations in order to better reflect the status and attributes of social service organizations. Comments on the draft can be made via several different ways listed below. The deadline for comments is the 26th of June.

1) Comments can be submitted via the website <http://www.mca.gov.cn>.

2) Comments can be sent as emails to zcfgs@mca.gov.cn.

3) Comments can also be posted to the following address:

Department of Policies and Laws of the Ministry of Civil Affairs, No.147 North Heyan Street, Docheng District, Beijing, Zip: 100721. (On the envelope please indicate 'Comments on the Draft Regulation on the Registration and Management of Civil Non-Enterprise Units')

**关于《社会服务机构登记管理条例》
(《民办非企业单位登记管理暂行条例》修订草案征求意见稿)的
说明**

对比 1998 年国务院颁布的《民办非企业单位登记管理暂行条例》(以下简称《暂行条例》), 现予公布的《社会服务机构登记管理条例》(《民办非企业单位登记管理暂行条例》修订草案征求意见稿)(以下简称征求意见稿)共 9 章 65 条。

Instructions on the Regulations for the Registration and Management of Social Service Organizations (Provisional Regulations for the Registration and Management of Civil Non-Enterprise Units (Revised Draft for Public Consultation))

Compared with the Provisional Regulations for the Management of Civil Non-Enterprise Units issued by the State Council in 1998, the now-released Regulations on the Registration and Management of Social Service Organizations (Provisional Regulations for the Registration and Management of Civil Non-Enterprise Units (Revised Draft for Public Consultation)) contains 9 chapters and 65 articles.

现将征求意见稿的主要修改内容说明如下:

一、修改了条例名称和相关概念

一是对民办非企业单位的称谓作了修改。《中华人民共和国慈善法》已将民办非企业单位更名为社会服务机构。为保持一致, 征求意见稿将“民办非企业单位”修改为“社会服务机构”。

二是对社会服务机构进行了重新定义。《暂行条例》对民办非企业单位的界定是“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”、“从事非营利性社会服务活动的社会组织”。征求意见稿对社会服务机构的界定是“自然人、法人或者其他组织”、“为了提供社会服务”、“主要利用非国有资产”、“设立的非营利性法人”（第二条）。

将“企业事业单位、社会团体和其他社会力量以及公民个人”修改为“自然人、法人或者其他组织”，主要考虑到这样表述更全面规范。

将“利用非国有资产”修改为“主要利用非国有资产”，主要考虑到这类机构在设立过程中利用了包括国有土地在内的部分国有资产。

将“从事非营利性社会服务活动的社会组织”修改为“为了提供社会服务”、“设立的非营利性法人”，主要考虑到非营利性活动难以界定，而非营利组织是《企业所得税法》明确的概念。

The main content to have been revised is listed as follows:

1. Names of Regulations and Relevant Concepts

Firstly, the name of Civil Non-Enterprise Units is modified. The Charity Law of the People's Republic of China has renamed Civil Non-Enterprise Units as Social Service Organizations. To maintain consistency, the Revised Draft makes the same modification.

Secondly, Social Service Organizations are redefined. The former Provisional Regulations define Civil Non-Enterprise Unit as social organizations established by “enterprises and institutions (企业事业单位), social organizations (社会团体), other social forces and individual citizens”, “using non-state-owned assets”, “to work on non-profit social service activities”. The Revised Draft defines it as a “non-profit legal person” established by “natural persons, legal persons or other organizations”, “to provide social services”, “mainly using non-state-owned assets”. (Article 2).

“Enterprises and institutions, social organizations, other social forces and individual citizen” is modified to “natural persons, legal persons or other organizations” mainly because the latter expression is more comprehensive and standard.

“Using non-state-owned assets” is modified to “mainly using non-state-owned assets” mainly because these organizations will use parts of state-owned assets, including state-owned lands, in their establishment.

“To work on non-profit social service activities” is modified to “non-profit legal person” established “to provide social services” mainly because non-profit activities are hard to define but non-profit organizations are a clear concept within the Enterprise Income Tax

Law.

二、调整完善了管理体制

十八届三中全会要求对行业协会商会类、科技类、公益慈善类、城乡社区服务类社会组织实行直接登记。据此，征求意见稿对双重管理体制进行了调整完善，规定对科技类、公益慈善类、城乡社区服务类社会服务机构实行直接登记，设立其他社会服务机构，应当先经其业务主管单位审查同意（第十条）。同时，为了加强对社会服务机构的行业管理，征求意见稿规定，社会服务机构开展服务需要取得行业许可的，应当按照法律、行政法规的规定，向有关行业审批机关申请行业许可证或者批准文件（第三十四条）。

2. Registration and Management

The Third Plenary Session of the 18th Central Committee of the Communist Party of China states that social organizations working on commerce (industrial associations and chambers of commerce), science and technology, charity and philanthropy, and urban and rural community services can register directly (without a professional supervisory unit). In view of the above, the Revised Draft has further improved the dual management system: it requires that the above social organizations shall register directly, and other social service organizations shall first seek the approval of their professional supervisory units before they are established (Article 10). At the same time, in order to strengthen the management of social organizations through industrial discipline, social service organizations that need an industry license shall apply for an industry license or document of approval according to the related industrial authorities. (Article 34).

三、统一了社会服务机构的组织类型

征求意见稿取消了个体型、合伙型，将社会服务机构统一为非营利性法人（第二条），理由如下：一是与《民办教育促进法》的规定保持一致。《民办教育促进法》明确规定民办学校为法人组织，目前，个体型、合伙型民办学校已完成主体资格变更，转为法人组织形式。二是使申请人的权利义务对等。按照非营利组织的基本要求，社会服务机构的申请人不能从盈余和剩余财产中分配，但个体型、合伙型组织出现财务问题却要承担无限连带民事责任，显失公平。三是要求社会服务机构遵循法人治理结构和运作方式，有利于保持其非营利性。对存量的个体型、合伙型民办非企业单位，可以通过 2 年过渡期实现主体资格变更（第六十五条）。

3. Type of Social Service Organizations

The Revised Draft abolishes two organizational types: “individual” and “partnership”, and unifies all kinds of social service organizations into one category: non-profit legal persons (Article 2).

The reasons are listed below:

The first reason is to maintain consistency with the Private Education Promotion Law (民办教育促进法). The Private Education Promotion Law clearly outlines that private schools are a legal entity. At present, individually-owned and partnership schools have already changed their qualification to being legal persons. The second reason is to equalize founders’ rights and obligations. Due to the fundamental characteristic of non-profit organizations, founders of social service organizations cannot dispose of profits and surplus property, so it is unfair that when individual and partnership organizations have a financial problem their founders should bear unlimited joint civil liabilities. Last but not least, the requirement for a social service organization to follow a reasonable structure and method of corporate governance is beneficial to maintain its non-profit attributes. Existing individual and partnership civil non-enterprise units can change their subject qualification through a 2-year transitional period (Article 65).

四、允许县级人民政府民政部门登记的社会服务机构在住所地县级区域范围内设立分支机构

《暂行条例》规定“民办非企业单位不得设立分支机构”，主要是从当时的立法环境和管理状况考虑的。为了扩展服务规模，提升服务质量，社会服务机构亟需设立分支机构。同时，考虑到社会组织跨出登记管理机关的管辖范围设立分支机构，登记管理机关将难以有效管理，且社会服务机构多数在区县民政部门登记，征求意见稿本着积极稳妥、适度放开的精神，拟限定在县级人民政府民政部门登记的社会服务机构可在其住所地县级行政区域范围内设立分支机构（第三十五条）。

4. Branches of Social Service Organizations

The Provisional Regulations outline that civil non-enterprise units are not allowed to set up a branch office. This was based upon the legislative environment and administrative situation of the time. However, there is now an urgent need for social service organizations to establish their own branches, in order to extend the scale and quality of their service. Meanwhile, considering the difficulties in effectively supervising the branches outside the jurisdiction of a social service organization’s government registering agency, and also the fact that most of the social service organizations are registered with district or county level civil affairs authorities, the Revised Draft plans to allow those social service organizations registered with civil affairs departments at the county-level to set up their branches within the local county-level administrative region (Article 35).

五、规范了社会服务机构的组织机构、活动准则和财产管理

为加强对社会服务机构的规范管理，征求意见稿增加了组织机构、活动准则和财产管理 2 章，对社会服务机构的理事会构成（第二十七条）、职责和议事规则（第二十八条）、监事（会）职权（第三十条）、法定代表人（第三十一条）、理事、监事的任职资格（第三十二条）和履职要求（第三十三条）提出了明确的要求，对社会服务机构开展需要行业审批的特定社会服务活动、开展涉外活动（第四十二条）提出了明确的要求，对社会服务机构财产的管理和使用（第三十七条）、接受和使用捐赠（第三十九条）、会计和审计监督（第四十条）、注销和清算程序（第二十条至第二十五条）提出了明确的要求，以引导社会服务机构自我管理、依法自治，并加强对社会服务机构的非营利性监管。

5. Organizational Framework, Activity Principle and Property Management

To strengthen the standard management of social service organizations, the Revised Draft adds 2 new chapters: Organizational Framework; Activity Principle and Property Management. The draft contains clear requirements for the constitution of the board of directors of social service organizations' (Article 27), responsibilities and rules of order (Article 28), function and power of the board of supervisors (Article 30), legal representation (Article 31) as well as qualifications and capabilities of the board of directors and board of supervisors (Article 32 and 33). It also lists explicit requirements for special social service activities and foreign-related activities that need professional examination and approval. (Article 42), the management and usage of organization's property (Article 37), the acceptance and usage of donations (Article 39), accounting and auditing (Article 40) and cancellation and liquidation procedures (Article 20 to 25).

六、将年度检查调整为年度工作报告和信息公开

为落实国务院关于简政放权、加强事中事后监管的要求，征求意见稿参考商事制度改革中变年度检查为年度报告和公示的做法，将年度检查调整为社会服务机构应当履行的年度工作报告（第四十五条）和信息公开义务（第四十四条、第四十六条），同时，登记管理机关通过实施随机抽查，将不履行年度工作报告和信息公开义务的社会服务机构列入异常名录等方式（第五十三条），加强监督，既有利于社会服务机构更好地依法自治，又有利于社会公众对社会服务机构进行社会监督，还有利于管理部门加强事中事后监管

6. Replacing annual inspection with annual work reports and Information Disclosure

In order to implement the State Council's requirement about streamlining administration and delegating more powers to the lower level, the Revised Draft

changes the annual inspection to an annual work report (Article 45) and an obligation to guarantee information disclosure (Article 44 and 46), which shall be carried out by social service organizations. Also, through random checks, the registration and administration authority will put those organizations that don't respect these regulations into an "abnormal list" (Article 53). This will be helpful for social service organizations to legally govern themselves, it will make it more convenient for the general public to supervise those social service organizations, and it will also favour supervision by government authorities both at the time and later.