



## CHINA LEGAL BRIEFING 66

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### 1. National

#### *Certain Provisions on Regulating the Mutual Relationship between the Bench and the Bar with a View to Upholding Justice*

关于规范法官和律师相互关系维护司法公正的若干规定

【**Adopted By**】 Supreme People's Court, Ministry of Justice

【**Adopted On**】 March 19<sup>th</sup> 2004

【**Subject**】 Professional Ethics

【**Effective From**】 March 19<sup>th</sup> 2004

【**Source**】 [www.china.org.cn](http://www.china.org.cn)

The document is adopted to make the justice seen to be done. It does not define the scope of the lawyer and the judge and as a result seems to be applied only to the person that holds the practice permit, who has been granted the qualification certificate and has finished one year of training at a law firm (Lawyers Law 2001, Article 2, 8).

The regulation concerns three main aspects. First, the prohibition of a unilateral meeting between the judge and a single party. Second, judges recusing and lawyers declining to provide service. Third, bribery and corruption issues.

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From the lawyer's perspective, he shall not disclose to the parties, both before and after he has been retained, that he is relative, classmate, student, teacher or former colleague of the judge in charge of this case. Further, he shall decline the offer from the party to represent him or terminate the power of attorney, where he is disallowed by the law to do so. In addition, the lawyer retained by the party shall not send gifts, money or securities on the occasion of the wedding or funeral of the judge or his immediate relatives; neither shall he fix up the judge's house, buy gifts for the judge or invite him to entertainment and free trips; nor shall he reimburse the costs of the judge; loan him vehicles or communication apparatus.

The judge may draw the attention of the relevant authorities to the misconducts of the lawyer and suggest disciplinary measures and administrative punishment. Parties and the third parties may also draw the attention of relevant authorities to the misbehavior of the lawyer or submit communication that is not anonymous.

### ***Regulation on Foundations***

基金会管理条例

**【Issued By】** State Council

**【Adopted On】** March 8<sup>th</sup> 2004

**【Subject】** Foundation

**【Effective From】** June 1<sup>st</sup> 2004

**【Source】** [www.mca.gov.cn](http://www.mca.gov.cn)

This regulation repeals the Provisions on Foundations of 1988 (“基金会管理办法”). The established foundation shall renew its registration certificate within 6 month of the effective date of this regulation.

The Foundation refers to a legal person established in accordance with this regulation for the purpose of the commonwealth on the basis of assets donated by natural persons, legal persons and other entities. The Foundation may either be a Public Foundation or a Non-Public Foundation. The Public Foundation is further divided into a National Foundation and a Regional Foundation according to the area of fundraising.

The registration and administration authorities for the foundations are the Ministry of Civil Affairs and its provincial offices. The Ministry of Civil affairs is responsible for the registration and administration of the following foundations: (1) national public foundations; (2) foundations whose legal representative is not a resident of the mainland; (3) non-public foundations whose original assets exceed RMB 20 million; (4) representative institutions established in the mainland by foreign foundations.

The thresholds of original assets of foundations are RMB 8 million, 4 million and 2 million, respectively for National Public Foundations, Regional Public Foundations and Non-Public Foundations.

The documents for the establishment of Representative Institutions of Foreign Foundations comprise: (1) the application; (2) the proof of legal status and articles of association; (3) the personal identification and resume of the prospective head of the representative institution; (4) the proof of address; (5) the approval from the relevant authorities of China according to the activities of the foundation.

The liabilities incurred by the Representative Institutions of Foreign Foundations shall be borne by the Foreign Foundation.

***Circular on Arbitration of Disputes Involving Securities and Futures in Accordance with the Law***

关于依法做好证券、期货合同纠纷仲裁工作的通知

**【Issued By】** Legal Office of State Council, China Securities Regulatory Commission

**【Subject】** Arbitration

**【Adopted On】** January 18<sup>th</sup> 2004

**【Source】** [www.law-star.com](http://www.law-star.com)

The circular is adopted to speed up the settlement of disputes involving securities and futures. Disputes between market parties at equal footing may submit their disputes for arbitration:

1. Disputes of issuance and underwriting between an issuer and a securities company or between securities companies themselves;
2. Disputes between a securities company, a securities agency company, a securities consultancy institution, a futures consultancy institution and their clients;
3. Disputes of issuance, management, custodianship of fund between a fund initiator, a fund management company and a fund custodian;
4. Disputes between an issuer, a public company on one side and an accounting firm, a law firm or a rating agency on the other;
5. Disputes of changes in shareholding of a public company, a securities company, a securities agency company and a fund management company;
6. Other contractual disputes between a securities company, a securities agency company, a securities consultancy institution, a futures consultancy institution, a public company, a fund management company, a securities registration and clearance company and other parties to the securities and futures market.

The circular requires the incorporation of an arbitration clause in the standard contracts for securities and futures transactions by 30 June 2004.

***Circular on Certain Issues Regarding the Administration of the Sale of Traveler's Checks in Foreign Currencies***

关于外币旅行支票代售管理等有关问题的通知

**【Issued By】** State Administration of Foreign Exchange

**【Adopted On】** March 1<sup>st</sup> 2004

**【Subject】** Traveler's Checks

**【Effective From】** April 1<sup>st</sup> 2004

**【Source】** [www.safe.gov.cn](http://www.safe.gov.cn)

This circular applies to the sale of traveler's checks in foreign currencies by domestic commercial banks to domestic institutions, representative agencies of foreign institutions in China, individual residents and non-residents of China. The traveler's check refers to an instrument in convertible currencies issued by a foreign bank or special financial institution acting as the ultimate payer.

The traveler's check in foreign currencies can in principle be sold only for such non-trade purposes as tourism, pilgrimage, family visit, medical treatment and payment for costs related to overseas study. The domestic institutions and representative agencies of foreign institutions may not purchase travelers' checks in foreign currencies by using whatever kind of cash. This limitation, however, does not apply to individuals.

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