

Interim Measures of Shanghai Municipality for the Archival Filing of Enterprise Investment Projects

(No. 33 [2008] of the Shanghai Municipal Development and Reform Commission, August 23, 2008)

Chapter I General Provisions

Article 1 These Measures are formulated in accordance with the Decision of the State Council on Reforming the Investment System and the Notice of the National Development and Reform Commission on the Guiding Opinions on the Implementation of the Archival Filing System for Enterprise Investment Projects as well as by taking into consideration the actual circumstances of this Municipality.

Article 2 These Measures shall apply to the fixed assets investment projects which are to be invested and constructed funds by enterprises without using any government funds and which are not listed in the Detailed Rules for the Catalog of Investment Projects Subject to the Approval of the Shanghai Municipal Government. These Measures shall not be applicable to the foreign-invested projects and overseas investment projects.

If there are otherwise different provisions in any law or regulation, such provisions shall apply.

Article 3 The institutions determined by the Shanghai Municipal Development and Reform Commission, the Shanghai Municipal Economic Commission and the administrative departments of investment in the districts (counties) and the Shanghai Municipal Government shall be the archival filing organs of the enterprise investment projects of this municipality (hereinafter referred to as the “project archival filing organs”).

Article 4 The Municipal Development and Reform Commission shall formulate together with the relevant departments the Catalog of Investment Projects Subject to Archival Filing with the Shanghai Municipal Government (hereinafter referred to as the Archival Filing Catalogue, see Annex 1), clarify the division of work of the project archival filing organs, and make amendments in good time.

Chapter II Project Archival Filing Procedures

Article 5 The entities applying for project archival filing shall respectively file the projects with the project archival filing organs of the Municipality or the districts (counties) for archival purpose under the Archival Filing Catalogue.

An entity applying for project archival filing shall fill in an Application Form of Shanghai Municipality for the Archival Filing of Enterprise Investment Projects (see Annex 2), and submit the following materials:

1. The photocopy of the business license of the enterprise or the legal person license, and the photocopy of the organizational code certificate;
2. The real estate ownership certificate, or land bid-winning notice, or land transaction confirmation letter, or lease agreement; and
3. Other relevant materials to be submitted under the relevant laws and regulations.

Article 6 The project archival filing organs shall carry out archival filing examination on the projects with respect to, mainly, whether the projects conform to such industrial policies as the Catalogue for the Guidance of Industrial Restructuring and the standard for the access to industry, whether the projects fall into the archival filing administrative scope of their organs, and so on.

Article 7 The project archival filing organs shall issue their opinions on the archival filing of enterprise investment projects of this Municipality (see Annex 3) to the entity applying for project archival filing within 10 working days from receiving the application materials.

As to the projects which do not violate any law or regulation, do not fall in the development scope of projects forbidden by the industrial policies or do not belong to the projects subject to the approval or examination of the government, the archival filing shall be accepted. As to the projects which violate any law or regulation, fall in the development scope of projects forbidden by industrial policies or belong to the projects subject to the approval or examination of the government, the archival filing shall not be accepted, and an explanation shall be made to the entities applying for project archival filing about the provisions of such law or regulation.

Article 8 The project archival filing organs shall, when issuing project archival filing documents, send to the Municipal Development and Reform Commission and other relevant departments a copy of the basic information of the projects, the text of the archival filing documents, etc. by logging into the information system for the management of fixed assets investment projects in Shanghai.

A copy of the opinions on project archival filing issued by the institutions determined by the Municipal Development and Reform Commission, the Municipal Economic Commission and the Municipal Government shall be simultaneously sent to the administrative departments of investment in districts (counties) at the locality.

Article 9 An entity applying for project archival filing shall be responsible for the authenticity of all the application materials for filing.

Chapter III Alteration of Archival Filing

Article 10 In case a construction project has undergone any material change after the obtainment of the project archival filing documents, the entity applying for project archival filing shall timely apply for amending the archival filing to the original project archival filing organ. The original archival filing organ shall amend the project archival filing according to the changes in the project and the relevant provisions. In case a project falls into any of the following circumstances, it shall be regarded as a material change has happened:

1. The legal person of the project changes;
2. The construction place changes;
3. The main construction contents, or the construction nature changes; and
4. Other important items of alteration provided.

Article 11 If an entity applying for project archival filing stops the construction of the filed project, it shall timely inform the original project archival filing organ in written form.

Chapter IV Effectiveness of the Project Archival Filing

Article 12 For an investment project subject to archival filing, the entity applying for project archival filing shall firstly make the archival filing formalities at the project archival filing organ, and, after the filing, apply to the planning, house and land and environmental protection departments for the approval with respect to planning, land use, and environmental impact assessment.

For a project to be invested and constructed by the enterprise applying for using any government subsidies, reloan, discount and other preferential policies, the entity applying for project archival filing shall submit an application report for funds to the relevant department of the government on the basis of the project archival filing opinions.

Article 13 For a project without going through archival filing formalities or a project that has undergone any material change but has failed to undergo archival filing, none of the departments of city planning, housing, land and resources, environmental protection, resources utilization, and safety production, etc. may handle the relevant

formalities of permission.

Article 14 A project archival filing document shall be valid for 2 years, which shall be calculated from the date when the archival filing is made.

Chapter V Legal Liabilities

Article 15 The project archival filing organs and their functionaries shall strictly implement the relevant provisions of these Measures, and shall not delay the issuing of archival filing documents.

Article 16 Where any of the functionaries of a project archival filing organ abuses his power, neglects his duties, seeks private benefits or extorts and accepts bribes during the course of project archival filing, he shall be given an administrative sanction; where any crime is constituted, he shall be subject to criminal liabilities.

Article 17 Where an enterprise falls into any of the following circumstances, the project archival filing organ shall, in accordance with laws, order it to stop construction and make up the relevant formalities in light of the circumstances, and the relevant enterprise and persons shall be subject to liabilities:

1. Dismembering the project;
2. Providing false materials;
3. Starting the construction without going through archival filing formalities; or
4. Carrying out construction not in accordance with the archival filing.

Chapter VI Supplementary Provisions

Article 18 For any of the projects which is to be invested and constructed without using government funds by a central public institution in Shanghai, a local public institution, non-government organization or any other non-enterprise entity and which is not listed into the Detailed Rules for the Catalogue of Investment Projects Subject to the Approval of the Shanghai Municipal Government, these Measures shall apply by analogy.

Article 19 The power to interpret these Measures shall remain with the Shanghai Municipal Development and Reform Commission.

Article 20 These Measures shall come into force on September 1, 2008.

Annex:

1. Catalog of Enterprise Investment Projects Subject to the Archival Filing of the Shanghai Municipal Government
2. Application Form of Shanghai Municipality for the Archival Filing of Enterprise Investment Projects
3. Opinions on the Archival Filing of Enterprise Investment Projects of Shanghai Municipality

Shanghai Municipal Development and Reform Commission

August 22, 2008

Annex 1

Catalog of Enterprise Investment Projects Subject to the Archival Filing of the Shanghai Municipal Government

Brief Description

1. This Catalogue is formulated in accordance with the Decision of the State Council on Reforming the Investment System (No.20 [2004] of the State Council) and by taking into consideration the actual circumstances of this Municipality.

2. For the projects for archival filing listed in this Catalogue, the archival filing shall be accepted by the Municipal project archival filing organs.

(1) The Municipal Economic Commission shall be responsible for the archival filing of projects within the fields of industry and commerce;

(2) The administrative departments of investment in Pudong New Area shall be responsible for the archival filing of the projects subordinated to its area according to the relevant provisions;

(3) The institutions determined by the Shanghai Municipal Government refer to the institutions which make the archival filing of projects within their jurisdictions upon the delegation of the relevant departments in accordance with the provisions of the local regulations, rules and regulatory documents of the Municipal Government, including the Administrative Committee of Shanghai Waigaoqiao Bonded Zone, Administrative Committee of Zhangjiang Hi-Tech Park, Administrative Committee of Chemical Industry Park, Administrative Committee of Lingang New City, Administrative Committee of Yangshan Bonded Port, Office of Development and Construction Administrative Committee of Changxing Island, Administrative Committee of Export Processing Zones established in Shanghai authorized by the State Council, etc.; and

(4) As to other projects, the Municipal Development and Reform Commission shall be responsible for the archival filing.

3. For other projects for archival filing that are not listed in this Catalogue, the institutions determined by the administrative departments of investment in the districts (counties) and the Municipal Government shall conduct the archival filing at the locality of the projects at issue.

The authority to accept archival filing shall not be delegated to lower departments.

4. If there are otherwise different provisions on the projects archival filing organs made by any ministry or commission of the State or the Municipal Government, such provisions shall apply.

I. Industry

Motor vehicle: shall be governed by the special provisions approved by the State Council.

II. Real Estate

The projects within the areas where construction is restricted, e.g., places of historical and cultural importance and outstanding historical buildings, projects at both sides of the Huangpu River and Suzhou River, projects within the area of World Expo, the Hongqiao hub planning area, and the special projects provided for by the Municipal Government.

III. Social Projects

Water tourist projects such as cruises, yachts, cruise ships, luxurious hotels and the tourist projects with total investment of 300 million yuan or above.

IV. Others

The restricted projects as listed in the Catalogue Guiding the National Industrial Restructuring but not listed into the catalogue subject to the approval shall be filed with the municipal projects archival filing organ for archival purpose.

For the projects that need comprehensive balance of shoreline or energy balance or covers two or more districts (counties) or are covered by any important policy according to the relevant provisions, the Municipal Development and Reform Commission shall be responsible for the archival filing.

The central enterprises in Shanghai, and the enterprises subject to the municipal administration may choose to go through the archival formalities at the municipal project archival filing organ.