

Interim Administrative Measures of Shanghai Municipality for the Examination and Approval of Overseas Investment Projects

(No. 33 [2008] of the Shanghai Municipal Government, August 23, 2008)

Chapter I General Provisions

Article 1 These Measures are formulated according to the Decision of the State Council on Reforming the Investment System and the Interim Administrative Measures of the National Development and Reform Commission for the Examination and Approval of Overseas Investment Projects.

Article 2 These Measures apply to the examination and approval of the overseas investment (including establishment, merger, stock purchase, capital increase, and reinvestment, etc.) projects made by the various legal persons (hereinafter referred to as the “investors”) of this Municipality through overseas enterprises or institutions in which they hold a controlling share.

These Measures are also applicable to the examination and approval of the investment projects made by investors in Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan.

Article 3 For the purpose of these Measures, the term “overseas investment projects” refers to the activities through which an investor obtains overseas ownership, management right and other related rights and interests by contributing their money, negotiable instruments, in-kind objects, intellectual property or technology, stock rights, creditor’s rights and other assets, rights and interests or by providing guarantee.

Article 4 According to the authority for project approval, for an overseas investment project of prospecting and developing crude oil, minerals or other resources, if the investment made by the Chinese party amounts to USD 30 million or more, the approval application shall be filed by the investor and submitted to the National Development and Reform Commission for approval after it is approved by the competent department of overseas investment projects of this Municipality.

For an overseas investment projects other than those as described above, in which the Chinese party makes a foreign exchange investment of USD 10 million or more, the approval application shall be filed by the investor and submitted to the National Development and Reform Commission for approval after it is approved by the competent department of overseas investment projects of this Municipality.

For a project in Taiwan or any country which has no diplomatic relations with China, no matter how much the investment is, the approval application shall be filed by the investor and submitted to the National Development and Reform Commission for approval after it is approved by the competent department of overseas investment projects of this Municipality.

Enterprise groups under separate state planning and central enterprises may directly file applications with the National Development and Reform Commission.

Article 5 The competent department of overseas investment projects of this Municipality shall, within the approval authority for this Municipality, be responsible for the examination and approval of the overseas investment projects of the resource category in which the investment made by the Chinese party is less than USD 30 million and those of other categories in which the Chinese party makes a foreign exchange investment of less than USD 10 million.

## Chapter II Approval Procedures

Article 6 The competent department of overseas investment projects of this Municipality shall, within 5 workdays after accepting an application report, entrust a qualified consultant agency to evaluate the key issues that need to be evaluated and studied. The entrusted consultant agency shall come out with an evaluation report and submit it to the competent department of overseas investment projects of this Municipality within the prescribed time limit.

Article 7 For an overseas investment project subject to the approval of the National Development and Reform Commission, the competent department of overseas investment projects of this Municipality shall, within 20 workdays after accepting the application report, give its examination opinions and forward the opinions together with the application materials to the National Development and Reform Commission.

For a project subject to the approval of this Municipality, the competent department of overseas investment projects of this Municipality shall finish examining the application within 20 workdays after accepting the application report.

If it cannot give and forward its examination opinions or make a decision of approval or disapproval within 20 workdays, the time limit may be extended for 10 workdays upon the approval of the principal of the department, in which case, the applicant shall be told why it is extended.

The time needed for entrusting a consultant agency to do the required evaluation work shall not be counted in the time limit for approval as prescribed in the preceding paragraph.

Article 8 For an overseas investment project subject to the approval of this Municipality, the competent department of overseas investment projects of this Municipality shall issue a written approval document in the case of approval, or notify the investor with a written decision in the case of disapproval, explaining the reasons and notifying the investor that it has the right to apply for administrative reconsideration or bring an administrative lawsuit according to law.

Article 9 For an overseas bidding or takeover project, the applicant shall file a written informational report in accordance with the relevant provisions before tendering a bid or officially initiating a commercial activity. If the project is subject to the approval of this Municipality, the report shall be filed with the competent department of overseas investment projects of this Municipality, which shall issue a letter of confirmation within 7 workdays after accepting the report. If the project is subject to the approval of the state, the report shall be submitted to the competent department of overseas investment projects of this Municipality, which shall then forward it to the National Development and Reform Commission.

The major contents of the information report include:

1. the basic information about the investor;
2. the background information about the investment;
3. the location and orientation of the investment, and the estimated investment scale and building scale; and
4. a time schedule of the project.

Article 10 Where an investor of an overseas investment project needs to pay the necessary pre-construction expenses (including the cash deposit for performance of contract and the letter of guarantee, etc.) of the project with foreign exchange, it shall file an application for approval. If the project is subject to the approval of Central Government, the application shall be submitted to the competent department of overseas investment projects of this Municipality which shall then forward it to the National Development and Reform Commission for approval; if the project is subject to the approval of this Municipality, the application shall be submitted to the competent department of overseas investment projects of this Municipality for approval. The approved preconstruction expenses shall be incorporated into the total investment of the project.

Article 11 Where an approved overseas investment project falls under any of the following circumstances, if it is subject to the approval of the Central Government, an application for change shall be submitted to the competent department of overseas investment projects of this Municipality which shall then forward it to the National Development and Reform Commission; if it is subject to the approval of this Municipality, an application for change shall be submitted to the competent department of overseas investment projects of this Municipality:

1. the building size, any major content of construction or any major product changes;
2. the venue of construction changes;
3. any investor or stock right changes; or
4. the amount of investment of the Chinese party exceeds the approved amount by 20% or more.

The procedures for approving an application for change shall be analogically governed by the relevant provisions of Chapter II of these Measures.

### Chapter III Project Application Report

Article 12 An overseas investment project application report shall cover:

1. the project name and the basic information about the investors;
2. the background information of the project and a brief description of the investment environment;

3. the building size, major content of construction, products, target market, benefits and risks of the project;
4. the total investment of the project, the amount of investment contributed by each party, the form of investment, the fund-raising plan and the amount of foreign exchange used; and
5. for a takeover or purchase of stock, a detailed description of the company concerned.

Article 13 The following materials shall be attached to the application report:

1. a resolution of the board of directors or a relevant investment resolution;
2. documents proving the assets, operation and credit status of the Chinese party and the foreign party;
3. a letter of intent of financing issued by a bank;
4. if the investment is made with negotiable instruments, in-kind objects, intellectual property or technology, stock rights, creditor's rights or other rights and interests, the amount of investment shall be determined according to the assessed value or fair value of the rights and interests, in which case an assets assessment report issued by a qualified accountant or assets assessment agency or a document issued by a third party which can prove the value of the said rights and interests shall be submitted;
5. for a bidding, merger or joint venture project, a letter of intent or framework agreement signed by the Chinese party and the foreign party; and
6. for an overseas bidding or takeover, an information report shall be filed according to Article 9 of these Measures, which shall be attached with a letter of confirmation issued by the National Development and Reform Commission or the competent department of overseas investment projects of this Municipality.

#### Chapter IV Conditions for Approval and Effect

Article 14 The conditions under which an overseas investment project shall be approved are as follows:

1. it satisfies the state laws, regulations and industrial policies, and it does not endanger the national sovereignty, security or public interests or violate the norms of international law;
2. it meets the demands for sustainable economic and social development, is good for developing the strategic resources needed for developing the national economy, satisfies the state requirements on adjusting the industrial structure, facilitates the export of the technologies,

products, export and labor with comparative advantages, and is favorable for absorbing foreign advanced technologies;

3. it confirms to the state provisions on the administration of capital accounts and foreign debts; and

4. the investor has the required investment strength.

Article 15 The investor of an overseas investment project shall handle the foreign exchange, customs, entry & exit, and tax formalities upon the strength of the approval document issued by the project examining and approving authority. Without the approval document, the foreign exchange department, the customs and the tax department may not handle the relevant formalities for it.

Before signing any document of final legal force, the investor shall get the approval document issued by the project examining and approving authority.

Article 16 The approval document issued by the project examining and approving authority shall be valid for two years. Within the valid period, the approval document shall be the basis for the investor to handle the formalities described in Article 15 of these Measures. Upon the expiration of the valid period, the investor shall handle those formalities upon the strength of the document approving the extension of the valid period as issued by the project examining and approving authority.

Article 17 Where any investor gets any approval document for its overseas investment by providing false materials or other illegal means, the project examining and approving authority may cancel the approval document it has issued.

Article 18 The project examining and approving authority may supervise and inspect the investors' implementation of their overseas investment projects, and deal with the problems found out in its supervision and inspection according to law.

## Chapter V Supplementary Provisions

Article 19 The power to interpret these Measures shall remain with the Development and Reform Commission of this Municipality.

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

Shanghai Development and Reform Commission

August 22, 2008