

Notice of Shanghai Municipal People's Government on Issuing the Procedures of Shanghai Municipality on the Administration of Approval and Filing of the Projects with Foreign Investment

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Attention: all District People's Governments, and all relevant Commissions, Offices and Bureaus (Administrations) of the Municipal People's Government:

We hereby issue the Procedures of Shanghai Municipality on the Administration of Approval and Filing of the Projects with Foreign Investment to you, and request you to implement them conscientiously.

Shanghai Municipal People's Government

December 22, 2021

Procedures of Shanghai Municipality on the Administration of Approval and Filing of the Projects with Foreign Investment

Chapter I General Provisions

Article 1 Purpose and Basis

For the purposes of standardizing the approval and filing of the projects with foreign investment, improving the government services and facilitating foreign investment, these Procedures are hereby formulated in accordance with the Foreign Investment Law of the People's Republic of China, the Implementation Regulations of the Foreign Investment law of the People's Republic of China, the Regulations on the Administration of Approval and Filing of Enterprise Investment Projects, the Regulations of Shanghai Municipality on Foreign Investment, and the Procedures on the Administration of Approval and Filing of the Projects with Foreign Investment and the other documents.

Article 2 Scope of Application

These Procedures apply to the newly established or acquired projects of foreign investors and foreign-invested enterprises involving fixed assets investment in this Municipality.

Article 3 Projects Management Modes and Competent Organs

This Municipality implements the administration of approval or filing for the foreign investment projects according to law.

The Municipal Development and Reform Commission, district development and reform commissions and the institutions designated by the Municipal People's Government are the approval and filing organs of the projects with foreign investment in this Municipality (hereinafter referred to as "the project approval and filing organs PAFO").

The institutions designated by the Municipal People's Government refer to those that conduct approval and filing of the projects within their regions in accordance with the local rules and regulations.

Article 4 Scope and Limit of Authority

The scope and authority of project approval and filing are as follows:

1. The projects with the total investment (including capital increase) less than 300 million USD in the non-prohibited investment areas prescribed in the Special Administrative Measures for Foreign Investment Access (Negative List) and the Special Administrative Measures for Foreign Investment Access in the Pilot Free Trade Zones (Negative List) (hereinafter referred to as "the Negative List") shall be approved by the Municipal Development and Reform Commission; the approval of the projects with a total investment of US \$300 million (including capital increase) or more shall be conducted in accordance with the relevant provisions of the State.

2. The projects in the areas beyond the Negative List shall be administered in accordance with the principle of consistency for both domestic and foreign investment.

The projects with foreign investment listed in the Articles from 1 to 10 of the Specified Catalogue of the Investment Projects Approved by Shanghai Municipal People's Government shall be subject to approval administration in accordance with provisions. Within the approval authorities of this Municipality, the institutions designated by the district development and reform commissions and the Municipal People's Government shall, according to their authorities, approve the projects with foreign investment within their respective regions, and the other projects shall be approved by the Municipal Development and Reform Commission.

The projects with foreign investment not listed in the Articles from 1 to 10 of the Specified Catalogue of the Investment Projects Approved by the Shanghai Municipal People's

Government shall be filed according to the relevant provisions. The institutions designated by the district development and reform commissions and the Municipal People's Government shall be responsible for the filing of the projects with foreign investment in their respective regions according to the Catalogue of the Investment Projects Filed by Shanghai Municipal People's Government, and the other projects shall be filed by the Municipal Development and Reform Commission.

Where the State and this Municipality have special provisions on the Demonstration Zone for the Green and Integrated Ecological Development of the Yangtze River Delta and other areas, such provisions shall prevail.

Article 5 Investment Autonomy

Foreign investors and enterprises with foreign investment may make their own decisions and bear their own risks in line with the market prospects and economic benefits, sources of funds and product technology solutions of the projects according to law, the project approval and filing organs may not illegally infringe upon their investment autonomy, nor impose restrictions on the access of foreign investment to the areas beyond the Negative List .

Article 6 Compilation of Business Guidance

The project approval and filing organs shall list out the industrial policies related to the projects with foreign investment, formulate and publicize the handling guidelines for project approval and filing. Application materials for project approval, acceptance methods, examination conditions, procedures and time limits shall be clearly listed and the general texts for project application reports shall be provided, the compilation requirements shall be specified; the information and procedures required for project filing shall be clearly listed.

Article 7 Consultancy and Guidance Services

The project approval and filing organs shall compile and make public the answers to frequently asked questions on the approval and filing of the projects with foreign investment, provide consultation and guidance to the foreign investors and enterprises with foreign investment through government hot-lines, government websites, letters, E-mails and so on.

Article 8 Disclosure of Handling Results

The project approval and filing organs shall, in accordance with the relevant rules and regulations on government information disclosure, make public the results of approval and filing.

Article 9 Online Handling and Project Code Management

Except for the projects that involve state secrets, the approval and filing of the projects with foreign investment shall, via the investment project online approval and supervision platform (hereinafter referred to as the online platform) of “Government Online-Offline Shanghai” conduct online acceptance, handling, supervision and service. The relevant departments shall share the project approval and filing information via the “Government Online-Offline Shanghai”.

The online platform generates project codes that are uniquely identified throughout the project implementation cycle. The project approval and filing organs and other relevant departments shall use the project codes uniformly to handle the relevant procedures while the project approval and filing information, supervision information and other important information in the project implementation process shall be uniformly collected into the project codes. The project units may query the information through the project codes.

Article 10 Security Screening

The foreign investment involving national security shall be subject to security screening in accordance with the relevant provisions of the State.

Chapter II Project Approval

Article 11 Project Application Report

For the foreign-invested projects subject to approval administration, the project units shall submit project application reports to the project approval organs.

The project application reports include the following contents:

1. basic information of the project units;
2. basic project information, including project name, project location, project contents (including construction content, etc.), investment scale, investor and country, amount of contribution and proportion of investment, etc.;
3. a statement that the project complies to the Negative List and other foreign investment -related provisions and industrial policies;
4. analysis on the resources utilization of the project and its impact on the ecological environment; and

5. analysis of the project's impact on economy and society.

The foreign investors' project application reports for mergers and acquisitions of domestic enterprises shall include the information of the M & A parties, the M & A plans, the governance structure of the post-M & A enterprise, the scope of business, etc.

Article 12 Report Preparation

The project application reports shall be prepared in accordance with relevant provisions such as the model text and by the project units themselves, or by the engineering consulting units with relevant experiences and abilities commissioned by the project units independently. No unit or individual may force a project unit to entrust an engineering consulting unit to prepare a project application report.

Article 13 Annexed Documents

The project application reports shall be annexed with the following documents:

1. main body certification materials of the Chinese and foreign investors;
2. letter of intent for investment, resolution of the directorate of the company or its highest authority on the capital increase or project merger or acquisition;
3. proposal for land planning, or a paid use contract for the right to use the state-owned construction land, or a market entry contract for operational collective construction land; and
4. other relevant procedures required by laws and administrative rules.

If the project does not involve the addition or adjustment of construction land, nor does it involve the new construction, reconstruction or extension of the buildings and structures, the materials in Item 3 of the preceding Paragraph are not required to be provided.

The project units shall not be required to provide duplicate documents that can be obtained by mutual recognition and sharing of data via the Government Online-Offline Shanghai.

Article 14 Application Submission

For the projects subject to approval by the Municipal Development and Reform Commission, the project units may directly submit the project application reports, or they may be forwarded by the organs designated by the district development and reform commission or the Municipal People's Government. For the projects subject to approval by the district development and reform commission or the organs designated by the Municipal People's Government, the project units shall directly submit the project application reports to the project approval organs.

The project units shall be responsible for the authenticity, legality and integrity of the project application reports and the annexed documents according to law.

The projects that have to be approved by the national project approval organs shall be implemented in accordance with the relevant provisions of the State.

Article 15 Correction and Handling

Where the project application materials are complete and conform to the legal forms, the project approval organs shall accept them.

Where the application materials are incomplete or do not conform to the legal forms, the project approval organs shall, within 5 working days from the date of receiving the application materials, notify the project units to make up and revise the materials by one time. Failure to notify within the time limits shall be deemed as acceptance from the date of receipt.

When accepting or rejecting the application materials, the project approval organs shall issue written certificates affixed with their special seals and dates. For the application materials accepted, the written certificates shall indicate the unified platform codes of the “Government Online-Offline Shanghai”, and the project units may inquire online, supervise the approval process and the results according to the unified platform codes of the “Government Online-Offline Shanghai”.

Article 16 Project Evaluation

Where the project approval organs need evaluation after receiving the project application materials, they shall, in accordance with relevant provisions, entrust engineering consulting institutions with corresponding experiences and abilities to conduct evaluation within 4 working days.

Where the engineering consulting institutions and the engineering consulting institutions preparing the project application reports are the same units and have a holding or management relationship, or have the same persons in charge, the engineering consulting institutions shall not undertake the evaluation of the projects. Where the engineering consulting institutions have a holding or management relationship with the project units or the person in charge is the same one, the engineering consulting institutions shall not undertake the project evaluation of the project units.

Where the project approving organs entrust the engineering consulting institutions to evaluate

projects, they shall specify the key points of evaluation; except for the complicated projects, the time limit for evaluation shall not exceed 30 working days. The evaluation costs shall be borne by the project approval organs.

Article 17 Departmental Opinions

If a project involves the responsibilities of the relevant industrial administrative department or the local government where the project is located, the project approval organ shall consult with the relevant industrial administrative department or the local government to issue the written review opinions within 7 working days. If the relevant industry administrative department or local government fails to give feedback on the written review opinions within the time limit, it shall be deemed as approval.

Article 18 Public Opinions

Where the project implementation may have a major impact on the public interests, the project approval organs shall, before making decisions of approval, take appropriate measures to solicit public opinions.

Where the relevant departments have conducted substantive examination and issued relevant approval documents on matters concerning the use of land (use of sea), environmental impact, and social stability risks that directly affect the vital interests of the people, the project approval organs may not solicit public opinions repeatedly on the relevant contents.

A system of expert evaluation may be adopted for particularly important projects. Except for the particularly complicated project, the time limit for expert evaluation generally shall not exceed 30 working days.

Article 19 Adjustment, Clarification or Supplement

The project approval organs may, according to the evaluation opinions, departmental opinions, public opinions, etc., request the project units to adjust the relevant contents, or further clarify or supplement the relevant information and documents.

Article 20 Approval Review

The project approval organs shall examine the projects with foreign investment in the following aspects:

1. whether it conforms to the relevant provisions on foreign investment of the State and this Municipality;

2. whether it endangers the economic, social and ecological security and other national securities;

3. whether it conforms to the relevant development and construction plans, technical standards and industrial policies;

4. whether resources are rationally developed and effectively utilized; and

5. whether it affects the major public interests.

Article 21 Decision Approval

The project approval organs shall make decisions on whether to approve or not within 20 working days from the date of accepting the application materials; if the projects are complicated or it is necessary to solicit opinions from the relevant units, the time limit for approval may be extended with the consensus of the chief person-in-charge of the administrative organs, but the time limit for extension shall not exceed 40 working days, and the project units shall be informed of the reasons for such extension.

Where the project approval organs require an entrusted evaluation or have to carry out expert evaluation, the time required shall not be counted within the above time limit. The project approval organs shall inform the project units in writing of the time required for consulting, commissioned evaluation or expert evaluation.

Article 22 Issuance of Approval Documents

If the project approval organs approve the projects, they shall issue the project approval documents to the project units; in case of disapproval, a written notice of disapproval shall be issued and the reasons be given.

When the project approval organs issue the project approval documents or send written notices of disapproval, copies shall be sent to the relevant departments and organs at the same level such as industry administration, housing and urban and rural construction administration, planning resources, ecological environment, water (marine) affairs, transportation and other relevant departments and organs and to the organs at lower levels as well.

Article 23 Alteration Approval

Where the projects that have obtained project approval documents fall under any of the following circumstances, the project units shall timely submit written applications to the original project approval organs for alteration:

- 1.The project location has altered;
- 2.The investor or equity has altered;
- 3.The investment scale and project contents (including construction content) have undergone major changes;
- 4.The alteration of the projects may have major adverse impacts on the economy, society or environment; and
- 5.Other major circumstances requiring adjustment of the contents prescribed in the project approval documents.

The project approval organs shall, within 20 working days from the date of accepting the application, make written decisions on whether to approve the alteration.

Article 24 Extension Approval

Where the construction of a project needs to be postponed due to the failure of commencement within 2 years since the approval organs issued the project approval documents or approved the decisions on the alteration of the projects, the project units shall apply to the project approval organs for the extension 30 working days prior to the expiration of the two-year period.

The project approval organs shall, within 20 working days from the date of accepting the application, make decisions on whether to approve the extension of the construction commencement and issue corresponding documents. The construction may only be postponed once, and the period shall not exceed one year at most. If the State has other provisions on the extension of project commencement, such provisions shall prevail.

If the construction is not started within 2 years or the application for extension is not made to the project approval organs in accordance with the relevant provisions, the project approval documents or the decisions approving the project alteration shall automatically be invalid.

Chapter III Project Filing

Article 25 Online Filing

For the projects with foreign investment subject to the filing administration, the project units shall inform the project filing organs of the following filing information through online platforms before the project implementation:

1. the information of the project unit; and
2. the project name, project location, project contents (construction content enclosed), investment scale, investor and country, amount of contribution and proportion of investment, statements for complying with the Negative List and industrial policies, etc.

The project units shall be responsible for the authenticity, legality and integrity of the project filing information.

Article 26 Filing Correction and Completion

The project filing organs shall complete the filing upon receipt of all the project filing information as prescribed in Article 25. If the project units submit incomplete project filing information, the project filing organs shall guide the project units to make correction.

If the project filing organs find that the projects are in the areas prohibited from investment by the Negative List, or the investment is prohibited by the industrial policies, or shall be subject to the approval administration according to law, or they are not within the scopes of authority of the project filing organs, they shall timely inform the project units to make corrections or go through relevant procedures according to law. If the project units refuse to make corrections, the project filing organs shall revoke the project codes in a timely way and notify the project units.

Article 27 Filing Alteration

Where there is a major alteration in the investment scale, project contents (construction content enclosed), investors and equity and other information of the filed project, or if the project implementation is abandoned, the project units shall notify the project filing organs in a timely manner through the online platforms, and modify the relevant information.

If the project units or the project locations have altered, the project units shall re-fill in the project filing information through the online platforms and cancel the original filing project codes.

Article 28 Certificate of Filing

If the project units have completed the project filing or altered the project filing, they may print them on their own through the online platforms or require the project filing organs to issue the Certificate of Filing for the Project with Foreign Investment in Shanghai Municipality or the Certificate of Filing Alteration of the Project with Foreign Investment in Shanghai Municipality.

Article 29 Objection Handling

If the project units have objections to the cancellation of the project codes by the project

filing organs, the project units may apply to the higher-level project filing organs for review, and the higher-level organs shall make timely reviews and inform the project units of the results.

Chapter IV Supervision Administration

Article 30 Tiered Guidance and Supervision

The higher-level project approval and filing organs shall strengthen their guidance and supervision over the lower-level project approval and filing organs and timely correct improper acts in their project administration.

Article 31 In-process and Post-process Supervision

The project approval and filing organs shall, in accordance with their prescribed authorities of approval and filing and the principle of he who approves conducting supervision and he who is in charge conducting supervision, strengthen and standardize the in-process and post-process supervision on the projects with foreign investment through online monitoring and on-site verification as to make sure whether they have obtained approval documents or have gone through the filing procedures in accordance with the law before implementation, and whether the projects are implemented in accordance with approval documents or filing contents.

Article 32 Sharing and Handling of Regulatory Information

The project approval and filing organs and other departments that are responsible for projects supervision and administration according to law shall realize the sharing of regulatory information via the “Government Online-Offline Shanghai”. If the project units are found to violate laws and rules, the cases shall be dealt with according to law and the relevant violation information shall be registered according to provisions.

Article 33 Project Implementation Declaration

The project units shall truthfully submit the basic information such as project initiation, implementation progress and project completion through online platforms.

Prior to the commencement of the projects, the project units shall log in the online platforms and file the basic information of the project commencement. After the commencement, the project units shall file the basic information of the dynamic progress of the project construction on a yearly basis. After the completion and acceptance of the projects, the project units shall file the

basic completion information of the projects.

After the implementation of the project merger and acquisition, the project units shall log in the online platforms to file the project completion.

Article 34 Credit Discipline

The information concerning the illegal acts and their dealing of the project units in the process of approval, filing and implementation shall be collected and made public through the Shanghai Municipal Public Credit Information Service Platform in accordance with relevant laws and rules.

Chapter V Legal Liability

Article 35 Tiered Instruction for Correction

Where the project approval and filing organs are under any of the following circumstances, they shall be ordered to make corrections by their higher administrative organs, and the chief responsible persons and directly responsible persons shall be punished by the relevant departments and units according to law and discipline:

1. Approval or filing is granted beyond legitimate authorities;
2. Approving the projects that do not meet the statutory requirements;
3. Refusing to approve the projects that meet the statutory conditions;
4. Unauthorized addition or reduction of the examination and approval conditions, or examination and approval in a disguised form in the name of filing;
5. Failing to make decisions on approval within the statutory time limit; or
6. Failing to perform supervision duties according to law or failing to conduct supervision effectively, resulting in serious consequences.

Article 36 Responsibility of Project Approval and Filing Organ

The project approval and filing organs and their staff that abuse power, neglect their duties, practice favoritism, solicit and accept bribes, or disclose, illegally provide commercial secrets known to them when performing their duties in the process of project approval or filing and supervision shall be punished in accordance with the law; if the case constitutes a crime, criminal liability shall be investigated according to law.

Article 37 Liability for Untruthful Declaration

Where the project units that apply for approval and filing by spinning off projects, hiding information or providing false application materials or using other unfair means, the project approval organs shall not accept or approve the application, the project filing organs shall cancel the project codes through online platforms, and impose penalty in accordance with the relevant provisions.

Article 38 Liability for Project Approval

As for the projects subject to the approval administration, if the project units fail to go through the approval procedures or fail to implement the projects in line with the contents of the approval documents, the project approval organs shall order them to stop construction or production according to law, and deal with them in accordance with the relevant provisions.

Where the project approval documents are obtained by cheating, bribery or other improper means, the project approval organs shall revoke the approval documents according to law and impose penalties in accordance with relevant provisions. If the cases constitute a crime, criminal liability shall be investigated according to law.

Article 39 Liability for Project Filing

As for the projects subject to the filing administration, if the project units fail to lawfully submit the project information or the alteration information of the filed projects to the filing organs or provide false information to the filing organs, the project filing organs shall order correction within a time limit; those who fail to make correction within the time limit shall be punished according to the relevant provisions.

Article 40 Liability for Violating the Negative List and Industrial Policy

Where foreign investors invest in the areas prohibited from investment according to the Negative List, or their investment activities violate the special administrative measures for restricted access as prescribed in the Negative List, or the project units invest and construct the projects prohibited by the industrial policies, they shall be dealt with in accordance with relevant provisions.

Chapter VI Supplementary Provisions

Article 41 Implementation References

The investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, Taiwan region and Chinese citizens residing abroad who invest in this Municipality shall make investments referred to these Procedures; where laws, administrative rules and the State have special provisions on the administration of the projects with foreign investment, such provisions shall prevail.

Article 42 Preliminary Trial and Implementation

Where the State and this Municipality have special provisions of preliminary trial and implementation on the administration of the projects with foreign investment for Pudong New Area, China (Shanghai) Pilot Free Trade Zone, Lingang New Area, Hongqiao International Open Hub and other areas, such provisions shall prevail.

Article 43 Validity Period

These Procedures shall be effective as of March 1, 2022, and remain valid until February 28, 2027.

(Where the English translation differs in meaning from the Chinese original, the Chinese original shall be taken as the standard.)