

中国（上海）自由贸易试验区境外投资项目备案管理办法

Filing Administrative Measures for Outbound Investment Projects by China (Shanghai) Pilot Free Trade Zone Enterprises

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上海市人民政府关于印发《中国（上海）自由贸易试验区境外投资项目备案管理办法》的通知

Circular of Shanghai Municipal People's Government on Printing and Distributing the "*Filing Administrative Measures for Outbound Investment Projects by China (Shanghai) Pilot Free Trade Zone Enterprises*"

各区、县人民政府，市政府各委办、局：

To people's government at district and county levels as well as commissions, offices and bureaus of Municipal People's Government:

现将《中国（上海）自由贸易试验区境外投资项目备案管理办法》印发给你们，请认真按照执行。

The "*Filing Administrative Measures for Outbound Investment Projects by China (Shanghai) Pilot Free Trade Zone Enterprises*" is issued for your cautious implementation.

上海市人民政府

Shanghai Municipal People's Government

2013年9月29日

29 September 2013

中国（上海）自由贸易试验区境外投资项目备案管理办法

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第一章 总则

Chapter 1 General Provisions

第一条 为进一步改革境外投资管理方式，切实提高境外投资便利化程度，根据《中国（上海）自由贸易试验区总体方案》，制定本办法。

Article 1 - These measures are formulated to further reform outbound investment administration mode and facilitate outbound investments in accordance with the "Framework Plan for the China (Shanghai) Pilot Free Trade Zone".

第二条 中国（上海）自由贸易试验区管理委员会（以下称“项目备案机构”）对注册在中国（上海）自由贸易试验区（以下简称“自贸试验区”）的地方企业实施的本市权限内的境外投资一般项目，实行备案制管理。

Article 2 - The Administration Committee of China (Shanghai) Pilot Free Trade Zone ("Project Filing Institution") implements a filing administrative system for general outbound investment projects, if within municipal authorities, made by local enterprises registered in the China (Shanghai) Pilot Free Trade Zone ("Pilot FTZ").

第三条 前往未建交、受国际制裁国家，发生战争、动乱等国家和地区，或国家发展改革委认定的其他敏感国家和地区投资的项目；涉及基础电信运营，跨界水资源开发利用，大规模土地开发，输电干线、电网，新闻传媒，或国家发展改革委认定的其他敏感行业的境外投资项目，不分限额，由市委发展改革委初审后报国家发展改革委核准，或由国家发展改革委提出审核意见后报国务院核准。

Article 3 - Outbound investment projects in sensitive countries/regions or sectors must still be subject to the preliminary review by the Shanghai Development and Reform Commission, and final approval by the National Development and Reform Commission or the State Council, regardless of the amount of investment. Sensitive countries/regions include countries that do not have a diplomatic relation with China or suffer from international sanctions, countries/regions where wars or upheavals are taking place, and other sensitive countries/regions designated by the National Development and Reform Commission. Sensitive sectors include industries in respect of basic telecommunication services, development and utilization of cross-border water resources, large scale land development, electricity transmission grids and news media, and other sensitive sectors designated by the National Development and Reform Commission.

第二章 项目备案程序

Chapter 2 Project Filing Procedures

第四条 符合条件的境外投资项目备案申请人（以下简称“备案申请人”）须填写并上报自贸试验区境外投资备案表，同时向项目备案机构提交下列材料：

Article 4 - Qualified filing applicants for outbound investment projects shall fill in and submit the filing form for outbound investment projects made by Pilot FTZ enterprises, and provide the following materials to the Project Filing Institution at the same time:

（一）备案申请人营业执照、公司章程或合伙协议、公司董事会决议或相关的出资决议；

(1) The filing applicant's business license, article of association or partnership agreement, the board resolutions or relevant investment agreements;

（二）证明中方及合作外方资产、经营和资信情况的文件；

(2) Documents supporting the status of assets, operation and credit conditions of the Chinese investor(s) and foreign partner(s);

（三）投标、购并或合资合作项目，中外方签署的意向书或框架协议等文件；

(3) Letter of investment intention or framework agreement signed by Chinese and foreign investors or relevant documents for tendering, M&A or joint venture projects; and

(四) 根据有关规定, 应提交的其他相关材料。

(4) Other relevant materials required by relevant laws and regulations.

第五条 备案申请人对所提交的申请材料内容的真实性负责。

Article 5 - Filing applicants shall be responsible for the authenticity of the filing materials submitted.

第六条 项目备案机构应在收到申请材料之日起 5 个工作日内, 向备案申请人出具自贸试验区境外投资项目备案意见 (以下简称“备案意见”)。

Article 6 - The Project Filing Institution shall issue the filing opinion on outbound investment projects ("Project Filing Opinion") within five working days upon the receipt of the filing materials.

对不属于自贸试验区备案范围, 不符合国家法律法规和产业政策, 危害国家主权、安全和公共利益的境外投资项目, 项目备案机构不予备案, 并向备案申请人说明理由。

For outbound investment projects which are not subject to the filing administrative system of the Pilot FTZ or compliant with the relevant laws, regulations or industrial policies, or projects which will endanger national sovereignty, security or public interest, the Project Filing Institution shall reject the filings and will explain the reasons to the filing applicants.

第七条 境外竞标或收购项目, 备案申请人应按照有关规定, 在投标或对外正式开展商务活动前, 向国家发展改革委报送书面信息报告。

Article 7 - For overseas bidding or M&A projects, the filing applicant shall submit an information report in writing to the National Development and Reform Commission before bidding or starting formal business activities in accordance with relevant laws and regulations.

对需要向国家发展改革委登记的地方重大境外投资项目, 应按程序报国家发展改革委登记。

For locally significant outbound investment projects where a registration with the National Development and Reform Commission is required, the relevant party shall report the project information to the National Development and Reform Commission for registration as required.

第三章 备案的变更

Chapter 3 Filing for Changes

第八条 予以备案的境外投资项目出现下列情形之一的, 应向项目备案机构申请变更:

Article 8 - After the filing has been accepted, a filing for changes with the Project Filing Institution is required for any of the following changes of the project:

(一) 投资方或股权发生变化;

(1) Change of investor or equity;

(二) 投资地点、项目主要内容发生变化;

(2) Changes of the investment place or main content of the project; and

(三) 中方投资超过原备案的中方投资额 20%及以上。

(3) The investment made by the Chinese party reaches 120% or more of the Chinese investment amount originally filed.

变更备案的程序, 按照本办法第二章相关规定执行。

The provisions in Chapter 2 of these measures apply to the filing for changes.

第四章 项目备案的效力

Chapter 4 Validity of Project Filing

第九条 予以备案的境外投资项目，备案申请人可凭备案意见，向商务、外汇管理、海关、税务等部门办理相关手续。

Article 9 - If the filing is accepted, the filing applicant may, with the filing opinion, go through other formalities in respect of commerce, foreign exchange administration, Customs, tax, etc.

第十条 项目备案文件有效期为2年，自备案之日起计算。

Article 10 - The valid period of the project filing documents is two years from the date of filing.

第五章 监督管理和法律责任

Chapter 5 Supervision, Administration and Legal Liability

第十一条 项目备案机构应依托自贸试验区监管信息共享机制和平台等，加强境外投资项目事中、事后监管。项目备案机构可以对投资主体执行项目情况进行监督检查。

Article 11 - The Project Filing Institution shall enhance the mid-event control and subsequent supervision on outbound investment projects through the information sharing mechanism and platform of the Pilot FTZ, and may carry out inspections on the investors in respect of the project status.

以虚假材料骗取备案文件的，由项目备案机构撤销其备案文件，将相关情况纳入企业诚信记录，从严审查其后续开展的境外投资，并告知相关部门，依法追究有关企业和人员的责任。

Where the filing applicant was found cheating in filings by presenting false information, the project filing documents shall be withdrawn by the Project Filing Institution with relevant information incorporated into the enterprise's credit records. Any subsequent outbound investment projects made by the enterprise shall be subject to a strict review. Relevant government bodies will be notified of the case. Relevant enterprises and personnel shall take the responsibilities in accordance with laws and regulations.

第六章 附则

Chapter 6 Supplement

第十二条 前往香港特别行政区、澳门特别行政区的投资项目，适用本办法；前往台湾地区的投资项目，按照国家发展改革委、商务部和国台办《关于印发〈大陆企业赴台湾地区投资管理暂行办法〉的通知》（发改外资[2010]2661号）执行。

Article 12 - These measures apply to outbound investment projects in the Hong Kong Special Administrative Region and the Macao Special Administrative Region. For outbound investment projects in Taiwan, the "Circular on Printing and Distributing 'The Administrative Measures for the Mainland China Enterprises' Investments in Taiwan" (Fa Gai Wai Zi [2010] No. 2661), which was promulgated by the National Development and Reform Commission, Ministry of Commerce and Taiwan Affairs Office of the State Council, shall be followed.

第十三条 本办法自2013年10月1日起施行。

Article 13 - These measures will come into effect as of 1 October 2013.

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