

中国（上海）自由贸易试验区外商投资项目备案管理办法

Filing Administrative Measures for Foreign Investment Projects in China (Shanghai) Pilot Free Trade Zone

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

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

各区、县人民政府，市政府各委、办、局：

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

现将《中国（上海）自由贸易试验区外商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 Foreign Investment Projects in China (Shanghai) Pilot Free Trade Zone*" is issued for your cautious implementation.

上海市人民政府

Shanghai Municipal People's Government

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29 September 2013

中国（上海）自由贸易试验区外商投资项目备案管理办法

Filing Administrative Measures for Foreign Investment Projects in China (Shanghai) Pilot Free Trade Zone

第一章 总则

Chapter 1 General Provisions

第一条 为规范中国（上海）自由贸易试验区（以下简称“自贸试验区”）外商投资项目管理制，根据《中国（上海）自由贸易试验区总体方案》，制定本办法。

Article 1 - In order to standardize the administrative system for foreign investment projects in the China (Shanghai) Pilot Free Trade Zone ("Pilot FTZ"), these measures are made in accordance with the "Framework Plan for the China (Shanghai) Pilot Free Trade Zone".

第二条 本办法适用于自贸试验区内实行备案制管理的外商投资项目。

Article 2 - These measures apply to foreign investment projects which are subject to the filing administration system in the Pilot FTZ.

自贸试验区项目备案管理范围包括：自贸试验区外商投资准入特别管理措施（负面清单）之外的中外合资、中外合作、外商独资、外商投资合伙、外国投资者并购境内企业、外商投资企业增资等各类外商投资项目（国务院规定对国内投资项目保留核准的除外）。

Projects subject to the filing administration in Pilot FTZ refer to all foreign investment projects other than those that fall inside the scope of the "Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone". The projects include Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprises, foreign-invested partnerships, acquisition of domestic enterprises by foreign investors, capital increase by foreign investors, etc. (except for investment projects subject to approval requirements as stipulated by the State Council).

法律、法规另有规定的，从其规定。

Laws and regulations, if providing otherwise, shall prevail.

第三条 属于国家安全审查范围的外商投资项目，需按照有关规定进行安全审查。

Article 3 - Foreign investment projects which fall inside the scope of the national security review shall be reviewed in accordance with relevant regulations.

第四条 自贸试验区管理委员会为自贸试验区外商投资项目备案机构（以下称“项目备案机构”），负责自贸试验区外商投资项目备案和监督管理。

Article 4 - The Pilot FTZ Administration Committee shall be the "Project Filing Institution" for foreign investment projects in the Pilot FTZ and undertake the responsibility for the supervision and administration on the foreign investment project filings in the Pilot FTZ.

第二章 项目备案程序

Chapter 2 Project Filing Procedures

第五条 自贸试验区项目备案管理范围内的外商投资项目申请人（以下称“备案申请人”）填写并上报自贸试验区外商投资项目备案表相关信息，同时向项目备案机构提交下列材料：

Article 5 - Filing applicants for foreign investment projects in the Pilot FTZ shall fill in and submit the filing form for foreign investment projects in the Pilot FTZ with relevant information, and provide the following materials to the Project Filing Institution at the same time:

（一）中外投资各方的企业注册证（营业执照）、商务登记证（个人投资者提供个人身份证明）；

(1) Enterprise registration certificates (business licenses), business registration certificates (identification certificates for individual investors) of all Chinese and foreign investors;

(二) 投资各方签署的投资意向书，增资、并购项目的公司董事会决议或相关出资决议；

(2) Letter of investment intention signed by each investor, the board resolutions or relevant investment agreements in respect of capital increase and M&A projects;

(三) 房地产权证，或土地中标通知书（或土地成交确认书、或国有建设用地使用权出让合同），或租赁协议；

(3) Real estate property certificates, notifications of bid-winning for land use right (or confirmation letters for transfer of land use right, assignment contracts of State-owned land use right for construction purpose), or leasing agreements; and

(四) 根据有关法律法规，应提交的其他相关材料。

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

备案申请人对所提交申请材料内容的真实性负责。

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

同步申报项目备案和企业设立（变更）的，按照自贸试验区“一表申报、一口受理”机制办理。

If a filing for establishment of an enterprise (or changes in registered items of an established enterprise) is required to be performed simultaneously, the "one-form declaration" and "one-window acceptance" mechanism shall be applied.

第六条 项目备案机构应在收到申请材料之日起 10 个工作日内，向备案申请人出具自贸试验区外商投资项目备案意见（以下简称“项目备案意见”）。

Article 6 - The Project Filing Institution shall issue the filing opinion on foreign investment projects in the Pilot FTZ ("Project Filing Opinion") to filing applicants within ten working days upon the receipt of the filing materials.

对不违反法律、法规，符合国家产业政策规定，属于自贸试验区外商投资项目备案管理范围的外商投资项目，项目备案机构应予以备案。不予备案的，应在项目备案意见中说明理由。

The filing shall be accepted if the project, which is subject to the filing administration system, is consistent with the national industrial policy without any violations of laws and regulations. If the project filing is rejected, reasons for the rejection shall be stated in the Project Filing Opinion.

第七条 予以备案的外商投资项目，备案申请人可凭项目备案意见，办理规划、用地、环评、建设等审批手续；申请使用政府补助、转贷、贴息等优惠政策的，可凭项目备案意见，向相关部门提交资金申请报告；申请进口设备减免税等优惠政策的，可凭项目备案意见，向国家或市发展改革部门申请办理相关手续。

Article 7 - If the filing is accepted, the filing applicant may proceed with other approval procedures such as planning, land use, environment evaluation, construction with the Project Filing Opinion, which may also be required when the applicant is applying for financial-related incentives (e.g. government subsidy, preferential loans, discounted interest, etc.) or for import taxes incentives from relevant government departments (e.g. the National Development and Reform Commission or its local branches) on imports of equipment.

第八条 项目备案机构在出具项目备案意见的同时，应将项目备案基本信息及备案文件文本等抄送相关部门。

Article 8 - Copies of the basic information of the project and relevant files shall be sent to relevant departments when the Project Filing Institution issues the filing opinion.

第三章 备案的变更

Chapter 3 Filing for Changes

第九条 予以备案的外商投资项目出现下列情形之一的，视为重大变更，应向项目备案机构申请变更：

Article 9 - After the filing has been accepted, any of the following changes of the project is considered as a substantial change where a filing for changes with the Project Filing Institution is required:

- (一) 投资方或者股权发生变化;
- (1) Changes of investors or equity;
- (二) 项目地点发生变化;
- (2) Changes of project location;
- (三) 项目主要内容发生变化;
- (3) Changes of main content of the project;
- (四) 总投资超过原备案投资额 20%及以上;
- (4) Total investment reaches 120% or more of the amount originally filed; and
- (五) 有关法律法规和产业政策规定需要变更的其他情况。
- (5) Other circumstances as required by relevant laws, regulations and industrial policies.

备案变更程序, 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.

第十条 予以备案的外商投资项目发生变更, 如变更后不属于自贸试验区外商投资项目备案管理范围的, 应参照外商投资项目核准相关规定, 向有权核准的机关申请办理核准手续, 且自核准文件出具之日起, 原项目备案文件自动失效。

Article 10 - After the filing has been accepted, if changes occur to the foreign investment project so that it is no longer subject to the filing administration of the Pilot FTZ (instead, an approval requirement applies), the relevant applicant shall apply to competent authority for project approval in accordance with relevant regulations. The original Project Filing Opinion is automatically invalid when the project approval is issued.

已核准的外商投资项目发生变更, 若变更后属于自贸试验区外商投资项目备案管理范围的, 应参照本办法相关规定, 向项目备案机构申请办理备案手续, 且自备案文件出具之日起, 原项目核准文件自动失效。

For foreign investment projects originally subject to approval administration (instead of "filing administration") and where the relevant approval has been granted, if changes occur to the project so that it becomes subject to the filing administration, the relevant applicant shall apply for filing with the Project Filing Institution according to these measures. The original project approval is automatically invalid when the relevant filing opinion is issued.

第十一条 予以备案项目如停止实施, 备案申请人应及时书面告知项目备案机构。

Article 11 - After the filing has been accepted, if the project ceases operation, the filing applicant shall notify the Project Filing Institution in writing on a timely basis.

予以备案项目如迁出自贸试验区外, 应参照区外有关外商投资项目管理规定办理手续, 并及时书面告知项目备案机构。

After the filing has been accepted, if the project moves outside the Pilot FTZ, the relevant applicant shall complete relevant formalities in accordance with relevant regulations in respect of foreign investment projects outside the Pilot FTZ and notify the Project Filing Institution in writing.

第四章 监督管理和法律责任

Chapter 4 Supervision, Administration and Legal Liability

第十二条 项目备案机构应加强对自贸试验区外商投资备案项目事中、事后监管, 可通过自贸试验区监管信息共享机制和平台、企业年报制度等, 对项目实施情况进行核查。

Article 12 - The Project Filing Institution shall enhance the mid-event control and subsequent supervision on foreign investment projects, and may review the project progress through the information sharing mechanism and platform of the Pilot FTZ, enterprise annual reporting system, etc.

第十三条 项目备案机构工作人员在项目备案过程中滥用职权、玩忽职守、徇私舞弊、索贿受贿的，依法给予行政处分；构成犯罪的，依法追究刑事责任。

Article 13 - If the official with the Project Filing Institution abuses authority, is negligent of duty, commits fraud, solicits or accepts bribes, he or she shall be subject to administrative punishment according to relevant laws and regulations; if a crime is constituted, he or she shall be subject to criminal charges according to relevant laws and regulations.

第十四条 有下列情形之一的外商投资项目，项目备案机构应当依法责令停止投资建设，视情形补办相关手续，并依法追究有关企业和人员的责任，相关情况纳入企业诚信记录：

Article 14 - For foreign investment projects with any of the following situations, the Project Filing Institution shall order to stop the project and, depending on the circumstances, require the relevant applicant to perform relevant procedures which should have been performed. Relevant enterprises and personnel shall take the responsibilities in accordance with laws and regulations; relevant information shall be incorporated into the enterprise's credit records:

(一) 拆分项目的；

(1) Splitting the project ;

(二) 提供虚假材料的；

(2) Providing false materials;

(三) 未予以备案擅自开工建设的；

(3) Starting the project without performing the filing; and

(四) 不按照备案内容进行投资建设的。

(4) The project is inconsistent with what has been filed.

第五章 附则

Chapter 5 Supplement

第十五条 项目备案文件有效期为2年，自备案之日起计算。

Article 15 - The valid period of the project filing documents is two years from the date of filing.

第十六条 香港特别行政区、澳门特别行政区和台湾地区的投资者在自贸试验区投资的项目，参照本办法执行。

Article 16 - The investment projects by investors from the Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan shall be implemented in accordance with these measures.

第十七条 本办法自2013年10月1日起施行。

Article 17 - These measures will come into effect as of 1 October 2013.

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