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MEASURES OF SHANGHAI MUNICIPALITY ON THE
COMPENSATORY TRANSFER OF LAND USE RIGHTS

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Municipal People's Government)

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CHAPTER I GENERAL PRINCIPLES

[Article 1] These Measures are formulated in accordance with the relevant State regulations in order to give impetus to all-round reform and the opening up of China to foreigners, to reform the land use system, to trial a system of compensatory transfer of land use rights and to accelerate the development of Shanghai's economy.

[Article 2] For the purposes of these Measures, the meaning of certain terms shall be as follows:

(1) The compensatory transfer of land use rights refers to economic activities, which involve real estate transactions by means of the charged transfer land use rights or the assignment of land use rights.

(2) The charged transfer of land use rights (hereinafter referred to as charged transfer) refers to cases in which the Shanghai Municipal People's Government (hereinafter referred to as the Municipal Government) designates a specified area of State owned land under stipulated terms and conditions, such as the duration of the transfer period and the nature of usage of the land, for development and operation by the transferee of the land use rights, for which the transferee shall pay a transfer charge anthit a land use charge for the right to use the land.

(3) The assignment of land use rights (hereinafter referred to as assignment) refers to the re-transfer of land use rights by the transferee of the said rights after their initial transfer.

(4) The transfer charge paid for the transfer of land use rights refers to the sum of money paid to the Government by the transferee of the land use rights in order to acquire the land use rights.

(5) The land use charge refers to the sum of money paid annually to the Government by the transferee of the land use rights for the use of the land.

(6) The transferee of the land use rights (hereinafter referred to as the transferee) refers to those enterprises, other economic entities and individuals which acquire land use rights as the result of the charged transfer, assignment or inheritance of land use rights.

[Article 3] If the rights to use a piece of land are transferred with compensation, ownership of the land shall remain with the People's Republic of China.

None of the various natural resources, minerals, buried and hidden objects etc., found underground shall be included within the scope of the compensatory transfer of land use rights.

[Article 4] Enterprises, other economic entities and individuals of countries or regions which have not established diplomatic relations with, or which have not established a commercial representative office in the People's Republic of China shall not be entitled to become transferees.

[Article 5] The legal rights and interests of a transferee shall be protected by the law.

All activities relating to the compensatory transfer of land use rights shall comply with the laws and statutory regulations of the People's Republic China and the relevant provisions of Shanghai Municipality.

[Article 6] The Shanghai Municipal Land Administration Bureau (hereinafter referred to as the Municipal Land Bureau) shall be the organ in charge of matters concerning the compensatory transfer of land use rights within the Municipality.

A contract for the charged transfer of land use rights (hereinafter referred to as the transfer contract) shall be signed between the Municipal Land Bureau and the transferee.

[Article 7] The Shanghai Real Estate Registry (hereinafter referred to as the Municipal Registry) shall be responsible for all matters of registration concerning the compensatory transfer of land use rights. Registration document may be consulted by the public.

[Article 8] The maximum number of years of transfer shall be determined by the Municipal Land Bureau from within the following limits:

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| (1) Land for recreation | 20 years |
| (2) Land for industry | 40 years |
| (3) Land for flats and residential use | 50 years |
| (4) Land for hotels, commercial and office buildings | 50 years |
| (5) Land for science & technical research, education, culture and hygiene | 50 years |
| (6) Land for comprehensive use and other purposes | 50 years |

Should it be necessary to exceed the limits stipulated above, the Municipal Land Bureau shall report the matter to the Municipal Government for approval.

[Article 9] On the expiry of the transfer term the transferee may apply for an extension of the term, unless the transfer contract stipulates otherwise or the extension is not permitted under the Municipal plan. The maximum number of years for an extension shall be determined by the Municipal Land Bureau in accordance with the provisions of Article 8 of these Measures.

If the duration of transfer of land use rights is extended, the transfer charge shall be renegotiated and a new contract shall be signed.

[Article 10] Unless the transfer contract provides otherwise, the transferee may assign or mortgage the land use rights, if, however, the assignment or mortgage violates the provisions of these Measures, it shall be invalid.

Land use rights may be inherited.

[Article 11] If a transferee is a foreign investment enterprise, it may enjoy favourable treatment in accordance with the relevant provisions and shall no longer be required to pay land use fees in accordance with the Measures concerning Land Use Administration for Sino-foreign Joint Equity Enterprises in Shanghai Municipality. If, however, a foreign investment enterprise has not acquired land use rights according to these Measures, it shall still be required to pay land use fees in accordance with the Measures concerning Land Use Administration for Sino-foreign Joint Equity Enterprises in Shanghai Municipality.

[Article 12] The project manager, in accordance with regulations, shall handle procedures on such matters as application, examination and approval, industrial and commercial registration and registration for tax purposes with the various relevant Municipal departments in charge, for all business activities conducted on the land for which land use rights have been acquired.

CHAPTER II CHARGED TRANSFER OF LAND USE RIGHTS

[Article 13] The piece of land to be transferred and the terms and conditions under which it is transferred shall be formulated jointly by the Municipal Land Bureau, the Shanghai Municipal Urban Planning and Construction Administrative Bureau (hereinafter referred to as the Municipal Planning Bureau) and the Shanghai Municipal Real Estate Administrative Bureau (hereinafter referred to as the Real Estate Bureau), and shall be implemented subject to approval by the Municipal Government.

[Article 14] The Municipal Land Bureau may adopt such methods as bilateral agreements and invitations for tenders when transferring land use rights.

[Article 15] The Municipal Land Bureau shall provide a party interested in becoming a transferee with the following material and information on relevant provisions:

- (1) Details on location, the four boundaries, area measurements and a topographic map;
- (2) Planned usage of the land, stipulated period for completion of a construction project, required minimum input of construction funds and the prescribed minimum area for development;
- (3) Various planning requirements, such as the volume proportion, density and height clearance limits;
- (4) Requirements concerning such matters as environment protection, areas of greenery, sanitation and epidemic prevention, communications and fire protection;
- (5) Present situation of municipal public facilities and construction plans construction requirements;
- (6) Present situation of the surface of the plot;
- (7) Form of transfer and duration of the transfer term;
- (8) Qualifications which a tenderer is required to have;
- (9) Place and closing date for tenders and matters such as tendering procedures, requirements, regulations and criteria for the awarding of a tender;

- (10) Amount of the security deposit to be paid at the time of tender;
- (11) Provisions on the form of payment of and requirements concerning the transfer charge and on the economic responsibilities of the transferee;
- (12) Detailed provisions and measures on such matters as charged transfer and assignment;
- (13) Standard format for a transfer contract;
- (14) Provisions regarding the sale and administration of buildings;
- (15) Other matters.

[Article 16] The procedures for transfer through agreement are:

(1) The Municipal Land Bureau shall provide a party interested in becoming a transferee of land use rights with the necessary information and other relevant provisions concerning the land.

(2) The party interested in becoming a transferee of land use rights shall, within the specified period, submit to the Municipal Land Bureau a construction plan for the development of the land and documents detailing the transfer charge and method of payment, etc.

(3) The Municipal Land Bureau shall respond within 30 days of receiving the documents stipulated above.

(4) After agreement has been reached through consultation, the Municipal Land Bureau shall sign a transfer contract with the transferee and the transferee shall pay a security deposit.

(5) The transferee shall pay the transfer charge in accordance with the provisions of the contract, obtain a Land Use Certificate from the Municipal Land Bureau and register its land use rights with the Municipal Registry within the specified period.

[Article 17] The procedures for invitation of tender are:

(1) The Municipal Land Bureau shall extend invitations for tender, tender documents and detailed information to prospective tenderers, in accordance with actual requirements concerning the land for transfer.

(2) Invited tenderers shall pay a security deposit (interest not accruable) to a designated unit at a designated place within the specified time and date and shall place their sealed tenders in a designated box.

(3) The Municipal Land Bureau, in association with the relevant departments, shall invite experts to form an evaluation committee to take charge of opening sealed tenders, assessing the tenders and selecting the success of tender.

The evaluation committee shall have the right to declare invalid any tender which does not state the qualifications of the tenderer, which fails to meet the requirements stipulated in the tender documents or which is delivered after the closing date.

The evaluation committee shall then examine all valid tenders and choose the successful tender. After the evaluation committee has signed the successful tender, the Municipal Land Bureau shall send a certificate of successful tender to the party whose address is stated on the tender.

The opening, assessment and selection of a tender shall be conducted in the presence of a party from the Shanghai Municipal Notary Office and a certificate of notarisation shall be issued.

(4) The successful tenderer shall present the certificate of successful tender and sign a transfer contract with the Municipal Land Bureau and pay a security deposit within the specified period.

(5) The successful tenderer shall pay the transfer charge in accordance with the provisions of the contract, obtain a Land Use Certificate from the Municipal Land Bureau and register its land use rights with the Municipal Registry within the specified period.

[Article 18] If the successful tenderer fails to sign a transfer contract with the Municipal Land Bureau within the specified period, its rights of successful tender shall be cancelled and the security deposit shall be forfeited. If, due to certain reasons, the successful tenderer is unable to sign a transfer contract with the Municipal Land Bureau within the specified period, an application for an extension may be lodged with the Municipal Land Bureau 10 days before the expiry of the period. The extension period, however, shall not exceed 30 days.

The security deposit paid by the successful tenderer may be off-set against the transfer charge, and the security deposits paid by unsuccessful tenderers shall be refunded completely to the original addresses by the Municipal Land Bureau within the specified period.

[Article 19] Security deposits may be off-set against transfer charges. If a transferee fails to fulfil the transfer contract, it shall not be entitled to request the refund of its security deposit. If the Municipal Land Bureau fails to fulfil the transfer contract, the security deposit shall be refunded two-fold.

[Article 20] The transfer contract signed between the Municipal Land Bureau and the transferee shall be notarised by the Shanghai Municipal Notary Office.

[Article 21] The transfer charge shall be paid in the currency stipulated in the transfer contract.

[Article 22] The transferee shall pay an annual land use charge in accordance with the following standards:

- (1) Renminbi 1,000 yuan for a piece of land with an area of 1,000 square metres or less;
- (2) Renminbi 1 yuan per square metre for a piece of land with an area in excess of 1,000 square metres.

[Article 23] If a transferee wishes to alter the nature of usage of the land or of planning requirements stipulated in the transfer contract, it shall apply first to the Municipal Land Bureau and, subject to examination and approval of the application by the Municipal Planning Bureau at the request of the Land Bureau, a supplementary payment of the transfer charge shall be made, a supplementary contract signed and registration procedures shall be conducted in accordance with the provisions of the Municipal Land Bureau.

[Article 24] The various application, examination and approval procedures for any building or other facility constructed on the transferred land shall be conducted in accordance with the relevant provisions of the urban planning, construction administration, house property administration, communications, environment protection, sanitation, environment sanitation, fire protection, etc., urban administration departments of Shanghai Municipality.

[Article 25] If a transferee fails to complete the construction of building stipulated in the provisions of the transfer contract, the Municipal Land Bureau may impose a fine and may even recover the land use rights, depending on the actual circumstances.

CHAPTER III ASSIGNMENT OF LAND USE RIGHTS

[Article 26] Land use rights shall not be assigned to another party if the construction of buildings stipulated in the transfer contract is not finished. The partial assignment of land use rights shall be subject to approval by the Municipal Land Bureau.

Any buildings on land which has its land use rights assigned shall be assigned automatically along with the land.

[Article 27] Methods of land use right assignment shall include gift, sale and exchange.

[Article 28] If a transferee sells a completed building, the land use right for the land on which it stands (including the grounds of the building and the enclosing wall) shall be transferred simultaneously. If a building is partly assigned, the various owners of the building shall be entitled to a proportionate percentage of the land use rights, but the land use rights for the land as occupied by the building as a whole shall not be divided.

If a building is split-up for sale, the seller shall determine in advance the proportion of land use rights for each purchaser and shall prepare an agreement on matters concerning administration and maintenance of the building in accordance with the provisions of the Municipal Real Estate Bureau.

The advance sale of buildings shall be subject to approval by the Municipal Real Estate Bureau.

[Article 29] When land use rights are assigned or inherited, the rights, obligations and responsibilities stipulated in the transfer contract and registered in the registration documents shall also be transferred.

[Article 30] The assignment of land use rights may be conducted within China or abroad. Those countries and regions, however, which have not established diplomatic relations with or a commercial representative office in the People's Republic of China shall be excluded. If an assignment is conducted outside Chinese territory, certificates of notarisation and attestation shall be obtained from the notary and diplomatic organs of the country or region and a certificate of attestation shall be obtained from the diplomatic or consular mission or commercial representative office of the People's Republic of China. If an assignment is conducted within Chinese territory, certificates of notarisation shall be obtained from the Shanghai Municipal Notary Office or another notary office with the relevant jurisdiction.

The inheritance of land use rights shall be notarised by the Shanghai Municipal Notary Office, unless the matter has undergone mediation or judgment in a court.

[Article 31] The assignment of land use rights and buildings shall be subject to transfer of title in the register and payment of transfer fees and relevant taxes to the Municipal Land Bureau and the Municipal Real Estate Bureau respectively, based on presentation by the assignee of legal documents, such as a contract of assignment or a certificate of inheritance notarised or certified in accordance with the provisions of Article 30 of these Measures. An assignment which has not had its title altered shall not be valid.

[Article 32] If land use rights (together with the buildings thereon) are transferred or inherited, the assignee shall register with the Municipal Registry after the signing of the contract of assignment or notarisation of inheritance.

[Article 33] If, at the time of assignment of land use rights, amendments are required to be made to the provisions of the transfer contract regarding the purpose of usage of the land and planning requirements, the matter shall be handled in accordance with the provisions of Article 23 of these Measures.

[Article 34] In the case of the transfer of ownership of an entire enterprise or other economic entity which possesses land use rights, the land use rights shall also be transferred and procedures shall be handled in accordance with the relevant provisions of these Measures.

CHAPTER IV MORTGAGE

[Article 35] Land use rights and buildings and related attachments on the land may be mortgaged.

The establishment of mortgage rights shall be registered with the Municipal Registry.

[Article 36] The respective rights and obligations of a mortgagor and mortgagee shall be stipulated in the mortgage contract. A mortgage contract shall not violate the provisions of a transfer contract.

[Article 37] Existing leasing arrangements shall not be affected if a mortgagor mortgages already leased property.

[Article 38] A mortgagee shall be entitled to priority payment. The order of precedence among mortgagees shall be determined in accordance with the order of registration with the Municipal Registry.

[Article 39] If a mortgagor is unable to fulfil its obligations on time or declares its dissolution or bankruptcy during the term of the mortgage contract, the mortgagee shall be entitled to dispose of the collateral in accordance with the law and the provisions of the contract.

If land use rights and buildings and other attachments on the land are acquired as a result of the realisation of collateral, the assignee shall obtain notarisation and certification in accordance with the provisions of Article 30 of these Measures and shall complete registration procedures for the change of title in accordance with the provisions of Article 31 and 32 of these Measures.

[Article 40] If a mortgage is discharged due to settlement of debts or other reasons, the mortgagor and mortgagee shall cancel registration of the mortgage with the Municipal Registry.

CHAPTER V RECOVERY OF LAND USE RIGHTS

[Article 41] On the expiry of the term of usage stipulated in the transfer contract, the land use rights for the piece of land in question shall return to the Municipal Land Bureau. The Municipal Land Bureau shall, at the same time cancel the land use certificate and shall notify the Municipal Registry to cancel registration. The buildings and other attachments on the land shall be recovered concurrently at no charge.

Any technical equipment, etc. which the transfer contract stipulates must be removed shall be dismantled by the transferee within the stipulated period. Non-standard buildings, etc., shall be dismantled and cleared away by the transferee within the stipulated period or dismantling and clearing fees shall be paid by the transferee, unless the provisions of the contract stipulate otherwise.

[Article 42] Land use rights shall not be recovered before the expiry of the term of the transfer contract. In special circumstances the Municipal Land Bureau may, if necessitated by the requirements of social public interest, recover land in accordance with legal procedures and appropriate compensation shall be awarded.

The Municipal Land Bureau shall notify the transferee in respect of the reasons for recovery, site location, the four boundaries and the date of recovery of a land use rights six months before its recovery, and announcement shall be made within the area connected to the land to be recovered. The land use rights and

the buildings and other attachments to the land to be recovered shall be recovered by the Municipal Land Bureau on the date stipulated in the announcement.

[Article 43] The amount of compensation for premature recovery of land use rights shall be determined through consultation between the Municipal Land Bureau and the transferee, in accordance with such matters as the length of the remaining term of the transfer contract, nature of the usage of the land, value of on-ground buildings and other attachments and the amount of the transfer charge.

If a dispute arises during discussions over the amount of compensation to be paid, either party to the dispute may file a suit in the People's Court. The recovery of the land use rights on the date specified in the announcement shall not affect the final decision on the amount of compensation to be awarded.

[Article 44] If land use rights are to be recovered before the expiry of the term of the transfer contract, the Municipal Land Bureau may, after consultation with the transferee, exchange with the transferee the land use rights for another piece of land. At the time of exchange, the Municipal Land Bureau shall settle accounts after discussing and determining with the transferee the amount of compensation to be awarded due to the recovery of the first piece of land and the amount of transfer charges to be paid on the substituted piece of land.

If land use rights are exchanged, the Municipal Land Bureau shall sign a new transfer contract with the transferee and the transferee shall complete the various procedures for registration and exchange of certificates.

CHAPTER VI TAXATION

[Article 45] After the signing of a transfer contract or assignment contract, the transferee or assignee shall complete tax registration procedures with the Shanghai Municipal Taxation Bureau (hereinafter referred to as the Municipal Tax Bureau) and shall pay contract tax at the preferential rate of 50% in accordance with the provisions of the Detailed Rules for the Implementation of the Provisional Regulations of Shanghai Municipality on Contract Tax. A transfer contract shall be exempt from contract tax.

[Article 46] If land use rights are transferred together with the buildings on the land, the transferee shall pay contract tax. The tax rate shall be:

3% of the purchase price in the case of a sale;

3% of the current value in the case of a gift;

3% of the current value in the case of an exchange which shall be classified as the same as purchase and sales dealings.

The taxpayer shall declare the purchase price or the current value, subject to its verification by the Municipal Tax Bureau.

[Article 47] If a transferee constructs a buildings on transferred land, real estate tax shall be paid in accordance with the provisions of the Provisional Regulations Governing the Urban Real Estate Tax. The tax shall be calculated at a rate of 1.2% of the value of the item after the transferee has deducted 20% of its original value and shall be paid in half-yearly instalment.

Buildings newly constructed in the Economic and Technological Development Zones may enjoy the preferential treatment of five years exemption from real estate tax, beginning from the date of their completion.

[Article 48] If, on the completion of a building, the transferee re-assigns the building together with the land use rights or leases the building, Consolidated Industrial and Commercial Tax shall be paid in accordance with the Regulations of the People's Republic of China on Consolidated Industrial and Commercial Tax.

The tax rate shall be:

3% of the sale price in the case of a sale;

5% of the rental in the case of a lease.

In addition, income from the operations of a building shall be subject to income tax in accordance with the provisions of relevant income tax laws. If the sale or leasing is conducted by an individual, tax shall be levied in accordance with the provisions of the Individual Income Tax Law of the People's Republic of China.

CHAPTER VII SUPPLEMENTARY PRINCIPLES

[Article 49] If a transferee is an enterprise or other economic entity within the territory of the People's Republic of China, its tax payments shall be handled firstly in accordance with the relevant tax provisions which apply to domestic enterprises. Foreign investment enterprises, however, shall pay tax in accordance with these Measures.

[Article 50] If a dispute of an economic nature concerning the compensatory transfer of land use rights occurs, either party to the dispute may refer the matter to a Chinese arbitration organ or another arbitration organ in accordance with the arbitration clause in the contract or a written arbitration agreement concluded after the dispute has arisen.

In the absence of an arbitration clause in the contract or a written arbitration agreement made after the dispute has occurred, either party to the dispute may file a suit in the People's Court in accordance with the relevant State laws.

[Article 51] The Municipal Government Office of Legal Affairs shall be responsible for the interpretation of these Measures.

[Article 52] Detailed provisions concerning the implementation of these Measures shall be formulated by the Municipal Land Bureau and other relevant departments and shall be implemented subject to approval by the Municipal Government.

[Article 53] Any later amendments to these Measures shall not affect contracts signed before the amendment. If, however, an amendment to these Measures provides favourable treatment to a transferee, the transferee may apply for and enjoy the favourable treatment, unless State laws stipulate otherwise.

[Article 54] These Measures shall take effect from 1 January 1988.