

UNOFFICIAL TRANSLATION UNPROOFREAD BY MOFCOM

Measures for the Administration of Foreign Aid (Trial)

Chapter 1 General Provisions

Article 1

In order to regulate the administration of foreign aid and increase the effectiveness thereof, these Measures are formulated in accordance with the relevant laws and administrative regulations.

Article 2

The term "foreign aid", as used in these Measures, refers to the activities providing economic, technical, material, human resources and administrative support to recipient countries, supported by the Chinese government's financial resources for foreign aid (hereinafter referred to as "aid funds").

Article 3

The main recipients of Chinese foreign aid are: developing countries that have already established diplomatic relations with China and that are in need for foreign aid; and international or regional organizations with the majority of members being developing countries.

In cases of emergency or under special circumstances such as humanitarian assistance, developed countries or developing countries that have not established diplomatic relations with China can also be recipients of China's foreign aid.

Article 4

China's foreign aid should adhere to the principles of respect for recipient countries' national sovereignty and non-interference into recipient countries' internal affairs. Foreign aid should be committed to reducing and eliminating poverty, improving livelihoods and the ecological environment, promoting economic development and social progress, strengthening capacity for self-development and consolidating and developing friendly and cooperative relations with recipient countries.

Article 5

MOFCOM shall be responsible for foreign aid work, including drafting and implementing policy and programmes, developing foreign aid plans, selecting foreign aid projects (hereinafter referred to as "aid projects") and organizing the implementation, administering the use of aid funds and conducting aid projects on international exchange and cooperation.

The Economic and Commercial Counselors' offices at Chinese embassies shall assist MOFCOM with foreign aid-related inter-governmental affairs and be responsible for overseas supervision and administration of the implementation of aid projects.

Provincial-level departments in charge of commerce shall assist MOFCOM with foreign aid-related matters.

Article 6

MOFCOM shall set up an overall foreign aid statistical system, and collect, collate and prepare foreign aid statistical materials.

Article 7

MOFCOM shall establish a unified foreign aid logo and be responsible for the supervision and administration of the use of this logo.

Chapter 2 Foreign Aid Policy Planning

Article 8

MOFCOM shall, in conjunction with relevant departments, formulate mid- to long-term foreign aid policy planning and country aid strategies which shall be implemented upon approval.

Article 9

MOFCOM shall establish a foreign aid project database system.

Article 10

The foreign aid project database will serve as main evidence for the planning and budgeting of foreign aid funds as well as project initiation.

Article 11

MOFCOM shall be responsible for collecting, accessing and selecting country-specific foreign aid projects for the database, and managing the database in a dynamic manner.

Chapter 3 Forms of Foreign Aid

Article 12

Financial resources for foreign aid mainly include three types: grants, interest-free loans and concessional loans.

Grants are mainly used to meet recipient countries' needs in areas such as poverty reduction, people's livelihoods, social welfare, public services and humanitarian aid;

Interest-free loans are mainly used to meet recipient countries' needs in areas such as public infrastructure and industrial and agricultural production;

Concessional loans are mainly used to support recipient countries' productive projects with economic benefits and large-scale infrastructure construction, and provide large quantities of mechanical and electronic products and complete sets of equipment.

Article 13

Except under special circumstances, MOFCOM shall organize the implementation of foreign aid through governmental channels.

Article 14

The main foreign aid modality shall be project aid.

In cases of emergency or under special circumstances such as humanitarian assistance, cash contributions to the recipients are permitted.

Article 15

Aid projects mainly include the following forms:

- (1) Complete projects: supported by aid funds, by organizing or guiding the construction, installation and trial production of the whole or part of the process, China provides complete sets of equipment and engineering facilities for production and living, and public services; and projects with long-term quality assurance and necessary technical support services;
- (2) Goods and materials: supported by aid funds, China provides general materials for production and living, technical products or single-item equipment as well as necessary technical support services;
- (3) Technical cooperation: supported by aid funds, China helps the recipient side reach certain technical objectives with the comprehensive use of means such as dispatching experts and technicians or providing equipment;
- (4) Human resource development cooperation: supported by aid funds, China provides various kinds of academic degree education, short- and medium- term studies and trainings, personnel exchange and senior expert services to officials and technical personnel from the recipient countries;
- (5) Volunteer services: supported by aid funds, China sends volunteers to recipient countries to engage in public welfare services.

Chapter 4 Initiation of Aid Projects

Article 16

Except in cases of emergency or under special circumstances such as humanitarian assistance, projects that are planned to be initiated should be selected from the project database.

Article 17

A feasibility study should be conducted before the project is initiated.

China can require the recipient country to provide materials related to the project to be initiated, as a prerequisite for the feasibility study.

Article 18

Except for projects which, according to relevant regulations, require approval from the State Council, MOFCOM shall make the decision as to whether to initiate the project based on the results of the feasibility study.

Article 19

After the aid project is initiated, MOFCOM in general should consult and sign a project initiation agreement with the recipient side.

This project initiation agreement should specify the technical content, financial arrangements and rights and obligations of all parties, in particular:

- (1) The necessary local conditions for project implementation and the undertaking of ongoing operations, guarantee or management responsibilities;
- (2) The bearing or exemption of tariffs and taxes related to the equipment, general goods and materials and a reasonable amount of living supplies for aid personnel entering the recipient country;
- (3) The benefits provided for the entry, residence and operation of Chinese equipment, general goods and materials, and aid personnel;
- (4) The courteous treatment for aid personnel in the project implementation process and measures that guarantee the safety of personnel in the recipient country.

Article 20

Should major adjustments to the project initiation agreement be made during the implementation process of the project, a supplement to the agreement should be signed between China and the recipient country.

Article 21

For projects supported by concessional loans, the decision as to whether to initiate the project shall be made by MOFCOM based on the assessments by the undertaking financial institution; a concessional loan framework agreement shall be signed with the recipient side.

Chapter 5 Supervision and Management of Aid Projects

Article 22

MOFCOM shall be responsible for the supervision and inspection of the safety, quality, functions, progress and the use of funds of aid projects.

Article 23

In general, the Chinese side is responsible for the implementation of aid projects.

In consultation with the recipient side, the aid project can be implemented in accordance with the principle of division of labour between China and the recipient side, or by the recipients themselves under China's external supervision.

Article 24

Agencies in charge of aid projects shall organize, supervise and administer the implementation of relevant aid projects in accordance with MOFCOM's regulations and under MOFCOM's supervision and inspection.

Article 25

MOFCOM shall be responsible for administering the qualification of Chinese implementing entities for aid projects.

Article 26

For aid projects implemented by the Chinese side, the implementing entity should be selected through a bidding process or other means. MOFCOM shall develop relevant measures separately.

Article 27

The Chinese implementing entities must not transfer or illegally subcontract the tasks of the aid project.

Article 28

For aid projects implemented by the Chinese side, MOFCOM or agencies in charge of foreign aid should in general consult and sign a foreign aid project implementation agreement with the recipient side, stipulating the specific matters related to project implementation as well as the rights and obligations of both parties.

Article 29

For aid projects implemented by the Chinese side, MOFCOM or agencies in charge of foreign aid should establish a project implementation contract with the implementing entity, stipulating specific matters related to project organization and implementation as well as the rights and obligations of both parties.

The project implementation contract should specify the implementing entity's responsibility for project quality assurance within a reasonable service period.

Article 30

For aid projects implemented according to the second clause of Article 23, the Chinese side should consult and sign agreements with the recipient, specifying rights and obligations of both parties.

Article 31

Except those relating to dual-use items and technological export control, foreign aid goods and materials are not subject to export quotas and licensing regulations.

Article 32

For goods and materials that need to be procured in and shipped from China, MOFCOM shall, in conjunction with the relevant departments of the State Council, establish measures for export inspection, supervision and port clearance.

Article 33

MOFCOM may suspend or terminate an aid project if it cannot be completed due to reasons such as diplomatic relations, national security, international obligations or force majeure.

Article 34

MOFCOM shall administer aid funds in accordance with the relevant fiscal budget regulations and establish supporting systems for budget compilation, implementation and adjustment.

Aid funds should be used for the designated purpose only and should be accounted for separately; no entity or individual may use the funds for other purposes for any reason.

Article 35

MOFCOM shall establish a foreign aid evaluation system and assess the implementation of aid projects.

Article 36

In accordance with the laws, any entity and individual may file complaints or report to MOFCOM on illegal acts committed by Chinese implementing entities.

Article 37

MOFCOM shall establish a credit assessment system to assess the behavior of the implementing entities involved in the process of aid project implementation.

Chapter 6 Management of Foreign Aid Personnel

Article 38

Foreign aid personnel refers to personnel designated by the government or the Chinese implementing entities to carry out foreign aid tasks.

Article 39

Foreign aid personnel shall enjoy benefits stipulated by the government during the project mission overseas.

Article 40

During the project mission in the recipient country, foreign aid personnel should abide by the laws and regulations of China and the recipient country, respect the recipient country's customs and practices, seriously fulfil job responsibilities and must not engage in any other business activities.

Article 41

The Chinese implementing entities should establish labour contracts with foreign aid personnel in accordance with laws, specifying the wage regulations and establishing standard labour contractual relations.

Article 42

The Chinese implementing entities shall be responsible for ensuring the appropriate working and living conditions and personal accident insurance for foreign aid personnel, in accordance with relevant regulations.

Article 43

MOFCOM shall, in conjunction with the relevant departments of the State Council, establish minimum conditions for foreign aid personnel and set up corresponding personal accident insurance and assistance systems.

Article 44

Foreign aid personnel that have made outstanding achievements during the project mission shall be awarded by MOFCOM in accordance with laws; those who have sacrificed their lives during the mission shall be reported to the relevant department of the State Council by MOFCOM to be granted the title of martyr.

Chapter 7 Legal Responsibilities

Article 45

Any implementing entity that uses fraud, bribery or other improper means in order to obtain qualification shall be disqualified. MOFCOM shall issue a warning, and may concurrently furthermore impose a fine of up to 30,000 RMB and publicize the decision in accordance with the laws. Those that breach any provision of the relevant laws or administrative regulations shall be subject to administrative penalties in accordance with relevant laws and administrative regulations. Where a crime is constituted, it shall be subject to criminal liabilities in accordance with the laws.

Article 46

If an implementing entity commits any of the following acts, MOFCOM shall issue a warning, and may concurrently furthermore impose a fine of up to 30,000 RMB and publicize the decision in accordance with the laws. Those that breach any provision of the relevant laws or administrative regulations shall be subject to administrative penalties in accordance with the relevant laws and administrative regulations. Where a crime is constituted, it shall be subject to criminal liabilities in accordance with the laws.

- (1) Transferring or illegally subcontracting the tasks of the aid project in violation of the provision of Article 27;
- (2) Not fulfilling or delaying the fulfilment of the obligations according to the project implementation contract which affects the implementation of the projects and causes adverse effects;
- (3) Misappropriating aid funds in violation of the second clause of Article 34;
- (4) Violating the provision of Article 42.

Where the Chinese implementing entity violates the first clause of this Article and are therefore subject to administrative penalties or criminal liabilities, it shall not be selected to undertake aid projects for two to six years starting from the day when the penalty takes effect.

Article 47

If any person from State agencies and agencies in charge of foreign aid commits any of the following acts, the person shall be subject to the corresponding administrative penalty in light of the seriousness of circumstances; where a crime is constituted, he/she shall be subject to criminal liabilities in accordance with the laws.

- (1) Asking for other persons' properties by taking advantage of his/her post, or accepting properties of other persons to advance interests for such persons in violation of the laws;
- (2) Abusing power, neglecting duties or practicing favourism to the detriment of national interests;
- (3) Leaking State secrets.

Chapter 8 Supplementary Provisions

Article 48

The implementation and administration of humanitarian assistance projects may be subject to a separate set of regulations, and should abide by those regulations.

Article 49

These Measures do not apply to the administration of military aid.

Article 50

These Measures are subject to the interpretation by MOFCOM.

Article 51

These Measures will come into force from 15 December 2014.