

# JUN HE SPECIAL REPORT



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## Recent Developments in Archive Management for Enterprises

On December 17, 2012, the State Archives Administration (“SAA”) issued Provisions on the Scope of the Collection of and the Preservation Period for the Archives of Enterprises (Order of SAA No. 10) (“**Rule No. 10**”). Rule No. 10 became effective on February 1, 2013.

### I. Purpose of Rule No. 10

Before Rule No. 10 was issued, there were no relevant PRC laws that provided detailed and specific requirements in relation to the scope of the collection of and the preservation period for the archives of enterprises.

The Measures on Filing of Archives by State-owned Enterprises, which were issued by the SAA and the State Asset Administration and Supervision Commission (“SASAC”) on January 20, 2004 (the “**SOE Archive Filing Measures**”), categorized various management archives and non-management archives into different categories. However, the SOE Archive Filing Measures apply only to state-owned enterprises, which exclude foreign invested enterprises (“**FIEs**”) and privately owned enterprises.

The Interim Regulations on Archive Management by Foreign-Invested Enterprises, which were issued by the Ministry of Foreign Economic and Trade Commission, Economic and Trade Commission and SAA on December 29, 1994 (the “**FIE Archive Management Regulations**”), provide that the preservation period for archives of an FIE should be divided into three categories, i.e., permanent, long-term and short-term. However, the FIE Archive Management Regulations do not stipulate a specific time for long-term and short-term preservation and do not apply to enterprises other than FIEs.

SAA issued the Archive Standards for Enterprises (DA/T42-2009) (the “**Enterprise Archive Standards**”) on November 2, 2009. The Enterprise Archive Standards, as recommended standards without the force of law, provide an industry standard for filing of archives by enterprises. The Enterprise Archive Standards set out in detail the scope of collection and the preservation period for management

archives and non-management archives in an enterprise. However, the Enterprise Archive Standards apply to large and medium-sized industrial enterprises and not to other types of enterprises. Such other enterprises may, however, refer to the Enterprise Archive Standards.

Rule No. 10 sets out detailed provisions on the scope of collection of and the preservation period for management archives for an enterprise. The provisions on the preservation of management archives in the annex titled “preservation period of management archives” in Rule No. 10 were basically adopted from Appendices A1 to A4 attached to the Enterprise Archive Standards. Since Rule No. 10 is binding in law, the minimum preservation period for management archives, as adopted from the Enterprise Archive Standards, becomes a mandatory provision with binding effect. This means that enterprises will need to abide by this minimum preservation period.

### II. Contents of Rule No. 10

#### 1. Structure of Rule No. 10

Rule No. 10 basically adopts the structure used in the Provisions on the Collection and Preservation of Government Archives issued by SAA on December 18, 2006. Rule No. 10 sets out, among other things, the archives that should be collected, the archives that do not need to be collected and the different preservation periods for collected archives.

#### 2. Application of Rule No. 10

Rule No. 10 applies to all enterprises established within the PRC. The headquarters of a corporate entity established in the PRC may request the entity’s offshore subsidiaries to comply with Rule No. 10. Public institutions operating in the field of science and technology may also refer to Rule No. 10.

#### 3. Scope of Collection of Archives

Rule No. 10 provides that the following archives should be collected: a) documents reflecting an enterprise’s history, research, development, production, service, operation, management and other business activities, any of which contribute to the enterprise’s business activities or to national construction, social development and historical research; b)

documents that constitute evidence of the rights and interests of the state, the enterprise, and the enterprise's employees; c) documents containing instructions or orders from relevant government authorities and superior entities and with which an enterprise is required to comply or implement, as well as documents from unaffiliated entities with which an enterprise needs to comply, implement or otherwise refer to; d) documents relating to an enterprise and that are issued by professional advisors; e) important documents submitted by any subsidiary and controlling entity of the enterprise; and f) documents which should be filed and preserved in accordance with relevant laws and regulations and other documents which are fundamental to the various activities of an enterprise.

#### 4. Preservation Period

Rule No. 10 divides the period for which archives should be preserved into permanent and fixed terms. A fixed term can be 30 years or 10 years. A 10-year or 30-year (as the case may be) fixed term is the minimum preservation period. An enterprise can stipulate a longer term.

Management archives that should be preserved permanently include important archives relating to an enterprise's formation and history, internal resolutions, property rights, investments, decisions by industry associations or professional advisors affecting the enterprise, evaluation and audit reports, notarizations and authentications, work in connection with affairs of the China Communist Party (CCP) or administrative work, human resources, the media, important visiting individuals and internal reports on important issues within the enterprise's group.

Rule No. 10 has, based on the Enterprise Archive Standards, stipulated in an annex titled "preservation period for management archives in enterprises" a minimum preservation period for 18 categories of "management archives". Such archives include those relating to business management, production and technology management, administration, and work in connection with CCP affairs.

Pursuant to Rule No. 10, an enterprise should collect and preserve "non-management archives" relating to production, research and development, basic construction, equipment, accounting and government officials and workers in compliance with relevant regulations and standards and based on the enterprise's actual situation. We understand that Appendices A5 to A10 of the Enterprise Archive Standards are important references for the collection and preservation of the non-management archives mentioned above.

#### 5. Management of the Scope of Collection of and Preservation Period for Archives

Rule No. 10 requires an enterprise to produce a table

containing an appropriate scope for the collection of and the period of preservation for management archives (the "Table"). This exercise should be conducted in accordance with Rule No. 10 and any relevant special regulations. In addition, an enterprise should guide subordinating enterprises in preparing similar Tables and approve the same.

Prior to Rule No. 10, the Provisions on Archive Management by Enterprises required centrally governed state-owned enterprises to file with SAA its internal rules and measures for archive management. Rule No. 10 further sets out approval requirements for Tables produced by state-owned enterprises. Tables prepared by the headquarters of centrally governed state-owned enterprises (including but not limited to central state-owned enterprises under the supervision of SASAC, central financial enterprises and central cultural enterprises) should be submitted to SAA for approval before implementation. Tables prepared by the headquarters of a locally governed state-owned enterprise should be submitted to the local counterpart of SAA of the same level as such enterprise for approval before implementation.

### III. Remarks on Rule No. 10

Rule No. 10 has contributed to the further development of the legal framework for archive management by enterprises in China. This legal framework consists mainly of the Archive Law (the "Archive Law") of 1996, the Implementation Measures on Archive Law (the "Archive Implementation Measures") of 1999, the Provisions on Archive Management by Enterprises of 2002, the FIE Archive Management Regulations of 1994, the SOE Archive Filing Measures of 2004, and the Interim Provisions on the Supervision and Inspection of Archive Filing of 1992.

Under Rule No. 10, the preservation period for an archive depends on whether the archive is important or general. While provisions under Rule No. 10 are much more specific than their predecessors, such provisions do not make an express distinction between important archives and general archives. Instead, Rule No. 10 leaves it to the enterprise to make a judgment based on the enterprise's actual situation. Interpretation and implementation of Rule No. 10 is likely to depend heavily on policy.

Regarding the implementation of Rule No. 10 and preparation of the Table, SAA and its local counterpart treat state-owned enterprises and other types of enterprises differently. Pursuant to the Provisions on the Range of Archives Collected by Archival Facilities at All Levels and of All Classes, state-owned enterprises should, after a certain period (usually 10 years or 20 years pursuant to the Archive Implementation Measures) submit archives to internal archival facilities established by themselves or to external comprehensive

archival facilities of the same level as such enterprises. A collectively-owned enterprise or privately owned enterprise can submit its archives to an external comprehensive archival facility by mutual agreement. If certain archives are useful to the state and society, the comprehensive archival facility may obtain such archives by way of donation taking or purchase. However, pursuant to the FIE Archive Management Regulations, an FIE owns its archives and is obligated to protect such archives.

Based on our consultations with SAA's local counterparts in Beijing and Shanghai, at this stage, SAA and its local counterparts will mainly guide and supervise state-owned enterprises on producing the Table. While Rule No. 10 also applies to FIEs and privately owned enterprises, in practice, SAA and its local counterparts indicate that such enterprises may gradually adjust to the requirements of Rule No. 10.

Under Article 10 of the Archive Law, an enterprise's archives

that should be collected and kept as archives pursuant to state regulations must, in accordance with the relevant regulations, be regularly submitted to internal archival administrators for centralized administration. No person may keep such archives as his or her personal property. Article 24 of the Archive Law further stipulates that failure to comply with these rules may lead to the imposition by SAA, its local counterparts or other competent authorities of administrative sanctions on those persons directly responsible for the failure to comply. If the failure to comply amounts to a crime, criminal responsibility may be imposed in accordance with the law. If any FIE or privately owned enterprise fails to comply with Rule No. 10 by failing to prepare or revise Tables or fails to collect those archives that should be collected pursuant to relevant laws, SAA or its local counterparts may impose sanctions on the related responsible persons.

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## 企业档案管理制度的新发展

国家档案局于2012年12月17日发布《企业文件材料归档范围和档案保管期限规定》(国家档案局令第10号)(以下简称“10号令”),并自2013年2月1日起施行。

### 一、立法意图和背景

关于企业文件归档范围和档案保管期限,现有法律规定均较为模糊。就归档范围而言,2004年1月20日国家档案局和国务院国资委联合发布的《国有企业文件材料归档办法》在附件“国有企业文件材料归档范围”中对各项管理类及非管理类档案的划分做出过分类,但其仅适用于国有企业;就保管期限而言,外经贸部、国家经贸委和国家档案局于1994年发布的《外商投资企业档案管理暂行规定》中,规定档案保管期限应分为永久、长期、短期三种。至于长期和短期所指的年限,均未予以明确。而且,其适用范围仅限于外商投资企业。

作为规范企业档案工作的行业标准,国家档案局于2009年11月2日发布了《企业档案工作规范》(DA/T42-2009)。其附表“企业文件归档基本范围与保管期限参考表”对企业各项管理类及非管理类档案的范围和保管期限均做了细致的规定。但是,其适用范围为“大中型工业企业,其他类型企业及事业单位可参照使用”,并且,其本身作为推荐标准、并不具有法律的强制执行效力。10号令后附的“企业管理类档案保管期限表”,基本上承袭了《企业档案工作规范》附表A1-A4的内容,将上述标准中与管理类档案相关的保管期限通过部门规范性文件的形式加以确认,从而设定了具有强制力的管理类档案最低保管期限。

### 二、主要内容

#### 1. 体例特点

国家档案局曾于2006年12月18日发布《机关文件材料归档范围和文书档案保管期限规定》。10号令基本上完全遵循该份文件的体例,明确了企业文件资料的归档范围、不归档范围及归档档案保管期限的划分等内容。

#### 2. 适用对象

10号令适用于在中华人民共和国境内注册设立的企业。在境外经营的企业,由企业总部参照10号令提出实施要求;科技事业单位可参照执行。

#### 3. 归档范围

10号令要求企业应归档的材料主要包括:(1)反映本企业在研发、生产、服务、经营、管理等各项活动和基本历史面貌的,对各项活动、国家建设、社会发展和历史研究具有利用价值的文件材料;(2)维护国家、企业和职工权益具有凭证价值的文件材料;(3)需要贯彻

执行的有关机关和上级单位的文件材料,非隶属关系单位发来的需要执行或查考的文件材料;(4)社会中介机构出具的与本企业有关的文件材料;(5)所属和控股企业报送的重要文件材料;以及(6)有关法规规定应归档保存的文件材料和其他有查考价值的文件材料。同时,10号令概括性的规定了企业无需归档的文件材料。

#### 4. 保管期限

10号令明确企业档案的保管期限分为永久、定期两种,定期一般分为30年、10年。上述定期期限为最低期限,各企业在具体划分时可选择更长的期限。

需永久保存的企业管理类档案主要包括与下述事项相关的重要文件:企业设立、历次变更、内部决议、产权、投资、与企业相关的决定、财务审计评估、公证认证、党群行政工作、人力资源、新闻媒体、领导和社会知名人士视察、集团内部关于重要问题的报告等。

对于企业经营管理、生产技术管理、行政管理、党群工作等“管理类”档案保管期限,10号令在《企业档案工作规范》的基础上,编制了“企业管理类档案保管期限表”作为附件,明确了18个大类的管理类档案的最低保管期限,供企业参考执行。

在管理类档案之外,企业产品生产和服务业务、科研开发、基本建设、设备仪器、会计、干部与职工人事等文件材料的归档范围和档案保管期限,需按国家有关规定、标准,结合企业实际执行。我们理解,《企业档案工作规范》中A5-A10各个附表,是上述“非管理类”档案确定归档范围和保管期限的重要参考依据。

#### 5. 归档范围和档案保管期限表的编制及报批

10号令要求企业依据10号令及相关专业规定,编制各类文件材料归档范围和档案保管期限表。同时,要求企业按照资产归属关系,指导并审批所属企业对上述归档范围和档案保管期限表的编制。

在《企业档案管理规定》要求“中央管理的企业制定本企业档案管理制度和办法须报国家档案局备案”之外,10号令对国有企业的归档范围和“管理类”档案保管期限表编制工作设置了报批要求:中央管理的企业(包括国务院国资委监管中央企业、金融企业、中央所属文化企业等)总部的文件材料归档范围和管理类档案保管期限表,报国家档案局同意后执行;地方国有企业总部编制的文件材料归档范围和管理类档案保管期限表,报同级档案行政管理部门同意后执行。

### 三、简评

1. 10号令的实施,进一步完善了以《中华人民共和国档案法》(1996年修订)为核心,以《中华人民共和国档案法实施办法》(1999年修订)、《企业档案管理规定》(2002年发布)、《外商投资企业档案管理暂行规定》(1994年发布)、《国有企业文件材料归档办法》(2004年发布)、《档案执法监督检查工作暂行规定》(1992

年发布）等法规、规章为补充的企业档案法规体系。

2. 尽管在相当大的程度上做出了细化，但由于对重要文件和一般文件的区分仍需结合企业自身实际情况决定，10 号令的解释和实施仍然带有很强的政策性。

3. 由于对不同所有制企业档案归集的要求宽严有别<sup>1</sup>，对文件材料归档范围和档案保管期限表编制的管理也就存在松紧之分。根据我们从北京、上海等地方档案管理部门了解到的信息，目前各级档案管理部门均主要针对国有企业的归档行为实施监督和指导并

<sup>1</sup> 依据国家档案局于 2011 年 11 月 21 日发布的《各级各类档案馆收集档案范围的规定》，国有企业的档案应该在形成之后并经过《中华人民共和国档案法实施办法》所规定的特定年限（一般为 10 年或 20 年）之后，向国有企业自己设立的档案馆或同级的综合档案馆进行归集。集体和民营企业事业单位的档案则需经协商同意之后，方可由综合档案馆收集或代存；其对于国家和社会有利用价值的档案，各级档案馆也可以通过接受捐赠、购买等形式获取。而依据《外商投资企业档案管理暂行规定》，原则上外商投资企业档案属企业所有，同时企业承担保护档案的义务。

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进行具体的事前审查。对于外商投资企业和内资民营企业，《企业档案管理规定》虽然同样授予档案管理部门监督和指导的职权，但实践中，相关部门一般仅原则性的要求非国有企业按照 10 号令的规定逐步规范归档范围和保管期限。

4. 但是，根据《中华人民共和国档案法》第 10 条，“对国家规定的应当立卷归档的材料，必须按照规定，定期向本单位档案机构或者档案工作人员移交，集中管理，任何个人不得据为己有”。其第 24 条进一步规定，不按规定归档的，“由县级以上人民政府档案行政管理部门、有关主管部门对直接负责的主管人员或者其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任”。如果外商投资企业和内资民营企业不遵守 10 号令的规定，未编制或修订归档范围和档案保管期限表、导致相关应归档文件未归档，档案管理部门可能会按照上述法律规定对相关责任人予以处罚。