



InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

Policy Cross-domain

Archival Legislation in China - Report I: Provisions Having Impact on Preservation

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Introduction

This part of the study closely examines the following legislation with respect to archival preservation function:

- 1 The Archival Law of the People’s Republic of China (1987, revised 1996) (ALC)
- 2 The Measures for Implementing the Archival Law of the People’s Republic of China (1990, revised 1999) (MIALC)
- 3 The Regulations on Organ’s Work (1983) (OW)
- 4 The Regulations on Scientific-Technological Archival Work (1980) (STAW)
- 5 The General Provisions for Archival Institutional Work (1983) (GPAIW)
- 6 The Establishment Principle and Layout Plan for Archival Institutions in China (1992) (EPLP)
- 7 The Measures for Handling Official Records in the State Administrative Organ (2000) (ORSAO)
- 8 The Interim Measures for the Setting-aside of Electronic Official Records (Order No. 6 of The State Archival Administration, 2003) (SAEOR)

Definition of Record

There is no definition of record in the examined Chinese archival legislation. The term “archives” is exclusively used along the archives’ lifecycle. The term “record” is used in organizational activities as synonymous with “document” and is defined in the professional standard as “[t]he information recorded in the course of the state institutions, social organizations and individuals fulfilling their legal responsibilities or conducting affaires, regardless of forms and formats.” The *Standard for the Setting-aside and Management of Electronic Record* (GB/T 18894-2002) defines electronic records as “records generated in digital environment and stored digitally on media such as magnetic tape, magnetic disk, optical disc, etc., relying on digital equipments such as computer to be read and processed and on communication networks to be transmitted.” It also defines archival electronic records as “electronic records with reference and usefulness values and preserved as archives.”

The *Measures for the Handling of Official Records in the State Administrative Organs* (2000) defines official records as “documents with legal effects and standardized formats formed by the administrative organs in the course of fulfilling their functions, including telegram. These official records are important tools for the legal administrative activities and the conduct of official business.”

The *Interim Measures for the Setting-aside of Electronic Official Records* (2003) defines electronic official records as “electronic data of official records with standardized formats formed in all regions and all departments through the processing of the Electronic Official Records Transmission System equipped by the Administrative Office of the State Council.”

Definition of Archives

ALC clause 2 refers archives to “historical records of permanent national and societal values directly created by the past and current state institutions, social organizations and individuals in the course of conducting political, military, economic, scientific, technological, cultural, religious and other activities, taking various forms such as text, graphic, image, audio-visual and

other formats.”

STAW defines scientific-technological archives as “scientific-technological records, in forms such as drawings, graphics, texts, calculations, photographs, films, video tapes and audio tapes, formed in activities of natural science research, production technologies and infrastructure developments that should be filed and preserved.”

Governance Structure

The archival system in China consists of two administratively and professionally interwoven sub-systems: archival administrations and archival units. The overall principle for archival work is the principle of “centralized direction and level-to-level administration”, which are prescribed by the ALC and the MIALC. Other regulations regarding different types of archives such as the OW and the STAW follow this principle and make corresponding provisions. This therefore sets out the network of administrative and professional relationships among the Party and government bodies, archival administrations and archival units cross the country. Please consult the following provisions:

ALC Clause 6, “The State Archival Administration shall administer archival work and archival profession cross the country with respect to overall planning, coordinating, unifying systems, supervising and directing.

Archival administrations at the level of county government and above shall administer archival work and archival profession within their administrative divisions, and shall supervise and direct the archival works carried out by the organs, associations, enterprises and public institutions and other organizations within the administrative divisions.

Governments under the level of county shall designate personnel responsible for safekeeping archives of their organs and for supervising and directing the archival work in their units.”

ALC Clause 7, “The archival offices or archival personnel in organs, associations, enterprises and public institutions and other organizations are responsible for safekeeping archives of their units and for the supervision and direction of archival work in the unit.”

ALC Clause 8, “The central archival institution and all types of archival institutions at county level and above are cultural institutions responsible for centralized management of archives. They are responsible for accessioning, collecting, arranging, preserving and providing access to archives within respective jurisdiction.”

The EPLP summarizes this as “archival institutions at all levels are cultural public institutions or scientific-technological public institutions under the immediate administration of the central or local archival administrations, including comprehensive and specialized archival institutions.

MIALC details these administrative structures and responsibilities. MIALC clause 3, “Permanently preserved holdings at all levels of state archival institutions shall be divided into three managerial levels. The standards for the division and management tools shall be regulated by the State Archival Administration.”

MIALC clause 4, “All departments under the State Council with authorization from the State Archival Administration, and all provincial-level governments with authorization from their archival administrations may make detailed regulations regarding the management of specialized archives.”

MIALC clause 5, “All levels of governments above county shall strengthen the direction to archival work, and shall include the developing of archival work into their economy and social

development plans, establishing and improving archival units, designating necessary personnel, and ensuring budgets for the developing archival work.

The organs, associations, enterprises and public institutions and other organizations shall strengthen the direction to their archival offices, ensuring the establishment and development of archival work in accordance with the law.”

Provisions from the *Regulations on Organ's Work* (1983) are as follows:

OW clause 3, “All archives formed in the course of conducting business activities shall be centralized and managed by archival offices within the organ.”

OW clause 6, “Organs must establish archival offices to undertake archival work. Organ with no need to establish archival office must designate full-time or part-time archival personnel. Archival offices shall be directed by the organ's administrative office.”

OW clause 7, “The professional work of archival units of all organs at each level shall be directed, supervised and inspected by archival administrations at the same and above level.

Provisions from the *Regulations on Scientific-Technological Archival Work* (1980):

STAW clause 4, “Each unit shall establish and perfect scientific-technological archival work according to the principle of centralized and unified management to ensure the completion, accuracy, safety, systematization and effective use of scientific-technological archives.”

STAW clause 10, “Scientific-technological archival institutions are accountable for inspecting and assisting scientific-technological personnel in formation, accumulation, arrangement and filing of scientific-technological archives.”

STAW clause 26, “The State Archival Administration and the archival administrations at each government level shall strengthen the direction, supervising and inspection for scientific-technological archives.”

STAW clause 27, “Scientific-technological archives must be centralized and managed according to their specialization. All specialized departments under the State Council and all specialized departments owned by governments at provincial level shall establish corresponding specialized archival institutions to strengthen the directions for scientific-technological archival work of their affiliated units.”

STAW clause 29, “Large- and medium-scale enterprises and public institutions must establish scientific-technological archival institutions as immediate subordinators; small-scale enterprises and public institutions may establish independent archival office, or establish archival office for both organizational and scientific-technological archives, or designate full-time (part-time) professionals for the management of such archives.

The scientific-technological archival work in each unit is directed by the head of the unit responsible for production and scientific research or the chief engineer.”

For managing official records in the State Administrative Organ, ORSAO clause 7 requires “the administrative units for handling official records are the Administrative Offices of organs at different administration level, which are responsible for managing official records of their own organs and supervise the management of official records in subordinate organs.” Clause 8 requires “the Administrative Offices of organs at different administration level shall establish Document Departments or designate full-time personnel responsible for handling official records.”

For managing electronic official records, SAEOR clause 3 requires “the forming units of electronic official records shall designate relevant departments or full-time personnel to manage the setting-aside of their electronic official records, integrating the activities of collecting, arranging, filing, preserving and providing access to electronic official records into the

procedures of managing organs' documents and the job duties of relevant officers and employees.” It also requires archival departments in organs shall participate in and guide such activities. Clause 4 requires “archival administrations at the vice-provincial level and above supervise and guide the setting-aside activity of electronic official records.”

Based on these provisions, the complete archival system can be summarized as follows:

The State Archival Administration is under the direction of both the Office of the Central Committee of the CPC/the State Council and supervises archival administrations at provincial level; the provincial archival administration is under the direction of both the provincial Party Committee/the provincial government and supervises municipal archival administration; the municipal archival administration is under the direction of both the municipal Party Committee/municipal government and supervises county archival administrations; and so on. For professional work, the direction line is from the State Archival Administration down to the county archival administration.

The archival institutions are under the direction of the archival administrations at the same level.

Within all kind of organizations, the archival office is under the direction of the Office of the unit and is supervised and inspected by the archival administration at the same level, supervise and inspect the archival work of its subordinate units.

Archives Lifecycle

The concept of archives lifecycle is identifiable in the examined legislation. The ALC and relevant regulations respectively address different phases of archives from their formation to destroy along with assigned responsibilities at each phase.

For official records at the active and semi-active phase, ORSAO clause 38 requires “official records shall be arranged (filing) and set aside in a timely manner after their completion, according to the Archival Law of China and other relevant regulations.” Clause 42 requires “retention periods of official records falling into the scope of setting aside shall be scheduled and transferred regularly to archival departments according to relevant regulations.” SAEOR clause 5 regulates the scope of setting-aside and retention schedules of electronic official records shall be identified and made with reference to relevant regulations on paper records, and clause 6 requires electronic official records generally shall be set aside with archival offices immediately after their completion.

At the inactive phase, ALC clause 10 “Materials prescribed to be set aside by statutory regulations must be regularly transferred to archival units or archival personnel for centralized management, and no individual should keep such materials as his or her personal property.” The same clause also prohibits the setting-aside of materials prescribed not to be done so by statutory regulations.

Clause 11, “The organs, social organizations, enterprises and public institutions and other organizations must transfer their archives to archival institutions in the pursuance of statutory regulations.”

MIALC clause 13, “For archives belonged to the preservation scopes of national, provincial and municipal state archival institutions, the fonds creating agencies shall transfer their archives to relevant archival institutions 20 years after the formation of the archives; for archives belonged to the preservation scope of county state archives, the fonds creating agencies shall transfer their archives to relevant county archival institutions 10 years after the formation of the

archives.

Specialized or confidential archives may prolong the transfer to relevant archival institutions with verification and permission from their supervising archival administrations; archives with closed creating agencies or with identified potentials of serious damages or archives are considered unsafe due to inadequate preserving conditions, may be transferred to relevant archival institutions before the prescribed transferring schedule.”

OW clause 12 regulates the process of transferring archives within the organization with reference to lifecycle: “records offices or records handling offices in organizations shall transfer archives to archival offices in the first half of the following year.”

STAW clause 16, “All types of specialized administrative departments shall schedule retention periods for their specialized archives into categories of permanent, long-term and regular preservation.”

GPAIW clause 7 states the same transfer times for archival institutions at different levels as regulated by the ALC.

There are also provisions on records appraisal and destroy

Assignment of Responsibility for Preservation

The assigned responsibilities for preservation (scope of acquisition) are tightly related to the types of archives and the jurisdictions of all types of archival units, which in turn are determined by administrative divisions.

Besides clauses 10 and 11 in ALC, clause 12 states “The cultural relics, books and reference materials kept in museums, libraries and memorials are concurrently archives may be managed by these institutions as regulated by laws and administrative regulations.”

ALC Clause 16, “Collectively-owned and individually-owned archives that are of permanent national and societal values or are confidential should be preserved properly by the owner. In cases where there are no proper preserving conditions or there are factors that are threatening the safety of the archives or may cause serious damage to archives, the State Archival Administration shall have the authority to take such measures of ensuring the integrity and safety of the archives as to preserve the archives for the owner, and when necessary, may purchase or procure these archives.” The same clause also prescribes that the state archival institutions may be the depository or purchasers of collectively-owned or individually-owned archives.

ALC Clause 17, “In the occurrence of transferring assets of state-owned enterprises and public institutions, the rules of transferring relevant archives should be made by state archival administration.”

MIALC clause 2 specifies the determining of scope of the above-defined archives: “the scope of state-owned archives shall be determined by the State Archival Administration and relating departments; the scope of collectively-owned, individually-owned and other non state-owned archives shall be determined by archival administrations in provincial level governments with authorization from the State Archival Administration.”

OW clause 27, “Archives of all kinds of temporary working groups shall be transferred to relevant responsible organizations or archival institutions when they are dismissed.”

STAW clause 21, “Archives of exported technologies and equipments shall be centralized and managed by the scientific-technological archival offices in the exporting units.”

STAW clause 21, “Archives of projects or initiatives completed in conjunction with several units shall be fully preserved by the leading unit; assisting units shall preserve the originals

relating to their parts of work and submit copies to the leading unit.”

STAW clause 28, “All specialized administrative departments subordinated to the State Council may establish specialized archival institutions, acquiring and preserving their specialized scientific-technological archives of long-term and permanent values.

Large- and medium-scale cities shall establish archival institutions for acquiring and preserving archives of city plans and infrastructure constructions with long-term and permanent values.”

GPAIW clause 6, “The scopes of acquisition of archival institutions:

1. archives of permanent values created by all of the organs, social organizations at the same level and their parent organizations; provincial, municipal and county archival institutions acquire archives of long-term values as well;
2. archives of dismissed units that originally fall into the scope of the archival institutions;
3. archives created before the foundation of the People’s Republic of China that fall into the scope of the archival institutions.

GPAIW clause 9, “Archival institutions must pay attention to the acquiring and collecting of all types of materials related to archival holdings under their custody.”

GPAIW clause 10, “Archival institutions must strengthen the collecting of historical archives and materials. Archival institutions above provincial level shall establish specified departments or designate full-time personnel for the collecting of such archives.”

For electronic official records, SAEOR clause 4 prescribes “the reliability, integrity, security and recognizability of electronic official records shall be protected by the forming units before their transfer to archival units, and shall be protected by archival units after the transfer.”

The EPLP details the acquisition scopes for all types of archival institutions across the country based on the ALC.

The *Keeping Secret Law of the People’s Republic of China* (1989) has relevant provisions on keeping and protecting confidential records and archives under the custody of archival units.

Barriers and Enablers to Preservation

Due to the principle of centralized management and statutory prescription for funding archival work, there are many advantageous conditions for archival preservation.

MIALC clause 11, “The designing principles and layout plans of all archival units in the country shall be regulated by the State Archival Administration, and be implemented with the approval from the State Council.”

MIALC clause 15, “Archival institutions at each government level shall implement the following management measures for the archives under their custody:

1. establishing scientific management system, gradually achieving preservation standardization,
2. implementing specified storehouse suitable for safely preserve archives, implementing necessary fire-proof, flood-proof, pest-proof and security equipments
3. protecting and managing archives with effective measures according to the different levels assigned to the archives, and
4. implementing scientific-technological equipments for modernized archival management when necessary and possible.”

There are penalty provisions in ALC and MIALC imposed to actions such as

1. damaging or lose state-owned archives,
2. providing, copying, publishing and destroying archives without authorization,
3. selling and transferring archives without authorization,
4. failing to set aside archives or to transfer archives regularly according to schedules,
5. failing to protect archives with knowing the dangers to them,
6. causing loss of archives due to the neglect of duties of archival personnel,
7. possessing archives belonging to organizations and refusing to transfer archives to archival institutions, and
8. violating regulations to enlarge or narrow acquisition scopes without authorization.

The above actions many result in administrative sanctions or legal liabilities to the head of the archival units and the persons with direct responsibilities.

OW clause 19 specifies equipment requirements for the storehouse of the organ's archives and requires "regular checking on preservation conditions, timely conservation, migration and other technical handling of archives."

OW clause 22, "Essential archives of the Party and governments above provincial level may be copied and preserved more than one sets to ensure their safety and the convenience of use."

STAW clause 19 specifies the same requirements for storing and preserving scientific-technological archives as clause 19 in OW.

STAW clause 20, "Scientific-technological Archives shall make copies of important scientific-technological archives and preserve them in different locations to ensure their safety and access under emergencies."

STAW clause 25, "Storehouses for scientific-technological archives complying with preservation requirements shall be constructed at the time of new enterprises and public institutions are established and office buildings are constructed."

GPAIW clause 12 regulates the same requirements for archival storehouse identified in other regulations.

GPAIW clause 13, "Archival institutions shall conduct research and improve technologies for archival preservation to prolong the lifetime of archives. Important archives that are damaged or fading must be repaired or migrated timely."

GPAIW clause 16, "Archival institutions shall conduct regular investigations for archives under their custody and their preservation conditions; timely investigation and handling should be undertaken under emergencies."

For the preservation of electronic official records, SAEOR states:

Clause 7, "The electronic official records with permanent or long-term value must be made into paper records which shall be set aside with the storing media of the original electronic official records, and shall establish the connecting relationship between.

Clause 10, "The setting-aside of electronic official records shall be conduct on the platform of "The National Government System Official Resource Network Email System". The archival offices in the forming units of electronic official records shall be equipped with adequate storage, processing ability and comparatively safe system."

Clause 11, "The forming units of electronic official records shall equip adequate storage space and safe temporary storage to preserve electronic official records after completion in order to ensure their integrity and safety.

Clause 17, "The set-aside electronic official records shall be classified, arranged and copied to three sets on durable media, one of which shall be preserved with seal, one be preserved in another location and one be provided for use."

The most obvious insufficiency in the examined legislation is the lack of a section of complete definitions or interpretations. Because of this, many provisions appear vague and hard to be understood without additional information. The term “archival work”, for instance, has a very high rate of appearance but fails to indicate the attached meanings such as job duties and responsibilities by itself. The most confusing area in the ALC and the MIALC is the responsibility for supervising and inspecting current records management. There is no explicit assignment of such responsibility to archival administrations at all levels, however, there are some provisions giving responsibility to archival offices in organs, associations, enterprises and public institutions to “supervise the formation, accumulation and setting-aside of records and materials of their units.” The lack of authorization for archival administrations at all levels to supervise or at least to assist records management in organizations should be considered as one major problem with respect to records reliability and authenticity, which will consequently cause problem for appraisal and preservation.

Appendix 1 Glossary for the Study of Archival Legislation in China

Archival administration: an independent government body with responsibilities of directing, supervising and inspecting archival work ranging from the State Archival Administration down to provincial-level, municipal, and county archival administration.

State archival institution: the state-owned archival repository established correspondingly with the administrative division ranging from the central archival institution and national archival institution down to provincial-level, municipal, county archival institution. It has two different types: comprehensive archival institution and specialized archival institution.

Archival office: the repository for archives that established in various organizations including the Party and government organs, enterprises and public institutions, and social organizations (= records office + records center in NA).

Archival personnel: employees in lower-level governments (e.g., township) or small-size organizations responsible for archival work without independent administrative identity, i.e. reporting to other departments or offices within the organization.

Archival unit: an umbrella term covers state archival institutions, archival centers and archival personnel.

Archival work: the whole range of functions and activities relating to archives carried out in archival units.

Comprehensive archival institution: this type of archival institution is set according to administrative divisions or historical periods, collecting and managing various kinds of archives within its jurisdiction. There are three national comprehensive institutions, the Central Archival Institution, the first Historical Archival Institution and the Second Archival Institution.

Department archival institution: this type of archival institution is public institutions established in some central and local special departments, collecting and managing the departmental archives, e.g., archival institution for Ministry of Foreign Affairs or the Supreme People's Court.

Enterprise and Public Institution archival institution: large-scale enterprises may establish their own archival institutions collecting their own archives; some public institutions such as the Chinese Academy of Science and some universities may establish their own archival institutions.

Organ: ?

Party: the Communist Party of China (CPC).

Specialized archival institution: refers to the type of archival institution collects and manages archives formed in some a specialized field or on some special medium/format. There are four national specialized archival institutions.

State: the People's Republic of China

State Archival Administration: the highest level of archival administration.

Unit: an umbrella term refers to all kinds of organizations including organs, associations, enterprises and public institutions.

Appendix 2 List of Legislation for the Study of Archival Legislation in China

(Ranked by importance)

1. 中华人民共和国档案法: The Archival Law of the People's Republic of China (1987, revised 1996) (ALC)
2. 中华人民共和国档案法实施办法: The Measures for Implementing the Archival Law of the People's Republic of China (1990, revised 1999) (MIALC)
3. 中华人民共和国立法法: The Legislation Law of the People's Republic of China (2000)
4. 中华人民共和国电子签名法: The Electronic Signatures Law of the People's Republic of China (2004)
5. 中华人民共和国商标法: The Trademark Law of the People's Republic of China (1982, 1993, 2001)
6. 中华人民共和国保守国家秘密法: The Keeping Secret Law of the People's Republic of China (1989)
7. 中华人民共和国保守国家秘密法实施办法: The Measures for Implementing the Keeping Secret Law of the People's Republic of China (1990)
8. 中华人民共和国版权法: The Copyright Law of the People's Republic of China (1991, 2001)
9. 中华人民共和国专利法: The Patent law of the People's Republic of China (1984, 1992, 2000)
10. 中华人民共和国民法通则: The General Provisions of the Civil Law of the People's Republic of China (1987)
11. 中华人民共和国民事诉讼法: The Civil Procedure Law of the People's Republic of China (1991)
12. 中华人民共和国刑法: The Criminal Law of the People's Republic of China (1979, 1997, 1999)
13. 中华人民共和国刑事诉讼法: The Criminal Procedure Law of the People's Republic of China (1979, 1996)
14. 中华人民共和国香港特别行政区基本法: The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (1991, 1997)
15. 机关工作条例: The Regulations on Organ's Work (1983) (OW)
16. 科学技术档案工作条例: The Regulations on Scientific-Technological Archival Work (1980) (STAW)
17. 计算机软件保护条例: Regulations on the Protection of Computer software (2002)
18. 档案馆工作通则: The General Provisions for Archival Institutional Work (1983) (GPAIW)
19. 全国档案馆设置原则与布局方案: The Establishment Principle and Layout Plan for Archival Institutions in China (1992) (EPLP)
20. 国家行政机关公文处理办法: The Measures for Handling Official Records in the State Administrative Organ (2000) (ORSAO)
21. 电子公文归档管理暂行办法: The Interim Measures for the Setting-aside of Electronic Official Records (The Sixth Directive of The State Archival Administration, 2003) (SAEOR)

22. 各级国家档案馆开放档案办法: The Measures for the Opening of the State Archival Institutions (1991)
23. 外国组织和个人利用我国档案试行办法: The Interim Measures for the Use of Archives by Foreign Organizations and Individuals (1992)
24. 最高人民法院关于民事诉讼证据的若干规定: Certain Stipulations on Civil Action Evidence by the Supreme People's Court (2001)
25. 最高人民法院关于审理涉及计算机网络著作权纠纷案件适用法律若干问题的解释: The Explanations to Certain questions of Applicable Laws regarding the Tries of Dispute Cases Involving Computer Network Copyright by the Supreme People's Court (2000)
26. 最高人民法院关于审理名誉权案件若干问题的解释: The Explanations to Certain questions regarding the Tries of Reputation Right Cases by the Supreme People's Court (1998)