

Notice of the State-owned Assets Supervisory and Regulatory Commission of the State Council and the Ministry of Finance on Printing and Distributing the Interim Provisions on the Transfer of State-owned Property Rights of Enterprises to the Management Staff Thereof

(No. 78 [2005] of the State-owned Assets Supervisory and Regulatory Commission)

All the ministries and commissions of the State Council, all the organs directly under the State Council, the state-owned assets supervisory and regulatory organs and the finance departments (bureaus) of all provinces, autonomous regions, municipalities directly under the Central Government and the cities under separate state planning, the Singkiang Production and Construction Corps., and the enterprises directly under the Central Government,

In order to strengthen the supervision over and administration of state-owned assets of enterprises and regulate the transfer of state-owned property rights of enterprises, the Interim Provisions on the Transfer of State-owned Property Rights of Enterprises to the Management Staff thereof have been formulated pursuant to the Notice of the General Office of the State Council on Forwarding the Opinions of the State-owned Assets Supervisory and Regulatory Commission of the State Council Concerning the Standardization of the Restructuring of State-owned Enterprises (No. 96 [2003] of the General Office of the State Council) and the Interim Measures for the Administration of Transfer of State-owned Property Rights of Enterprises (No. 3 of the State-owned Assets Supervisory and Regulatory Commission of the State Council and the Ministry of Finance), and are hereby printed and distributed to you. Please comply with and implement them in light of your actual situations, and any circumstance or problem occurred in your work shall be fed back to us in a timely manner.

State-owned Assets Supervisory and Regulatory Commission of the State Council
Ministry of Finance
April 11th, 2005

Interim Provisions on the Transfer of State-owned Property Rights of Enterprises to the Management Staff Thereof

I. In order to further promote the restructuring of state-owned enterprises, regulate the transfer of state-owned property rights of enterprises and safeguard the orderly

transfer of state-owned property rights, these Provisions are formulated pursuant to the Notice of the General Office of the State Council on Forwarding the Opinions of the State-owned Assets Supervisory and Regulatory Commission of the State Council Concerning the Standardization of the Restructuring of State-owned Enterprises (No. 96 [2003] of the General Office of the State Council) and the Interim Measures for the Administration of Transfer of State-owned Property Rights of Enterprises (No. 3 of the State-owned Assets Supervisory and Regulatory Commission and the Ministry of Finance, hereinafter referred to as the Interim Measures).

II. The "management staff" as mentioned in these Provisions refers to principals and other leaders of a target enterprise implementing the transfer and those entities that directly or indirectly own state-owned property rights of the target enterprise. The "transfer of state-owned property rights of enterprises to the management staff thereof" refers to the transfer to the management staff of the enterprise or to an enterprise that is established by the direct or indirect contribution of the management staff of the transferring enterprise.

III. Any region or department where a state-owned assets supervisory and regulatory organ is established or the government has specified the subject responsible for the value maintenance and increment of state-owned assets and the subject of liability thereof may experiment new ways for the transfer of state-owned property rights of medium and small state-owned and state-holding enterprises to the management staff thereof (unless it is otherwise prescribed by any law, regulation or ministerial rule). The state-owned property rights of large-scale state-owned and state-holding enterprises and the important wholly owned or holding enterprises that undertake major businesses of the said large-scale enterprises as well as those of listed companies may not be transferred to the management staff.

IV. The standards for separating state-owned enterprises from state holding ones shall be governed by the classification standards as set down in the Circular on Printing and Distributing the Interim Provisions on the Standards for Medium and Small Enterprises (No.143 [2003] of the State Economic and Trade Commission) and the Measures of the State Statistics Bureau on Statistical Definitions of Large, Medium and Small Enterprises (for Trial implementation) (No. 17 [2003] of the State Statistics Bureau). In case the State adjusts the pertinent standards in the future, the new standards shall prevail.

V. The transfer of state-owned property rights of enterprises to the management staff thereof shall be strictly governed by the Interim Measures and meet the following requirements:

i. A state-owned property right holding entity shall entrust an intermediary to audit the target enterprise implementing the transfer in strict accordance with the state provisions, of which, if the legal representative of a target enterprise or a state-owned property right holding entity thereof takes part in the acceptance of state-owned property rights of the enterprise, an economic liability auditing thereon shall be carried out.

ii. The formulation of schemes on the transfer of state-owned property rights and other important relevant matters like the asset and capital verification, financial audit, asset appraisal, fixation of base price and entrustment of an intermediary institution shall be uniformly organized and conducted by the state-owned property right holding entity that has the management right pursuant to the relevant provisions, and no executive officer may take part in it.

iii. The management staff should equally compete in the subscription against other transferees. The transfer of state-owned property rights of an enterprise to its management staff shall be openly conducted at a property trading institution as selected by the state-owned assets supervisory and regulatory organ, and the following matters shall be explicitly disclosed at the time of publicizing the information on transfer of state-owned property rights: the property rights currently held by the management staff of a target enterprise, name list of the management staff that plans to take part in accepting state-owned property rights, the proportion to be assigned, purposes for the undertaking of state-owned property rights and the relevant follow-up plans, whether to change major businesses of the target enterprise or not, whether to conduct a significant reorganization to the target enterprise or not, and etc. The conditions for accepting the property rights as set down in the property right transfer announcement may not contain exclusive clauses that are designed for the management staff or other arrangements favorable to the management staff.

iv. No state-owned property right holding entity may deduct such expenses as the employee settlement expenses from its net assets (unless it is otherwise prescribed by the State), or knock down the transfer price of state-owned property rights under any pretext.

v. The management staff shall provide relevant certifications on the capital sources for the transfer when accepting state-owned property rights, and may not be financed by any state-owned or state holding enterprise including the target enterprise, nor may the state-owned property rights or assets of any aforesaid enterprise be used as the

guaranty, mortgage, pledge or discount for the financing of the management staff.

VI. No executive officer, if under any of the following circumstances, may accept any of the state-owned property rights of the target enterprise:

- i. Upon audit, he is found to be directly responsible for the decline in the operational achievements of the enterprise;
- ii. Transferring or hiding assets on purpose, or exercising influence on the net capital of the target enterprise through associated transactions;
- iii. Providing false materials to an intermediary and thus distorting the audit and evaluation results, or colluding with the relevant party to distort the asset evaluation results or drive down the transfer price of state-owned property rights;
- iv. Violating the relevant provisions and taking part in the formulation of the schemes on the transfer of state-owned property rights and other important relevant matters like the asset and capital verification, financial audit, asset appraisal, fixation of base price or entrustment of an intermediary;
- v. Failing to provide certifications on the capital source for the transfer.

VII. The relevant working procedures and submission of materials for the transfer of state-owned property rights of an enterprise to its management staff shall be implemented pursuant to the Interim Measures.

VIII. Where the state-owned property rights are still reserved after the transfer of state-owned property rights of an enterprise to its management staff, no executive officer having participated in accepting the state-owned property rights may act as a shareholders' representative of the state-owned shares of the restructured enterprise. A relevant state-owned property right holding entity shall, pursuant to the relevant state provisions, designate qualified persons to act as shareholders' representatives of the state-owned shares and to perform shareholders' rights according to law.

IX. The management staff may not indirectly accept state-owned property rights of an enterprise by way of trust or entrustment.

X. In case nature of the state-owned stocks of a listed company held by an enterprise needs to be altered after its transfer of state-owned property rights to its management staff, it shall be conducted pursuant to the relevant state provisions.

XI. During the course of segmentation between major and minor businesses and

restructuring of the latter, and resettling abundant employees, if an enterprise as listed by the state-owned assets supervisory and regulatory organ and the relevant departments into the scope of enterprises implementing the segmentation between major and minor businesses and restructuring the latter needs to transfer its state-owned property rights to its management staff, it shall be carried out pursuant to the Implementing Measures for Large and Medium State-owned Enterprises to Separate Major Business from Minor Ones, to Reform the Latter and to Resettle Abundant Employees (No. 859 [2002] of the State Economic and Trade Commission) and the supporting documents thereof.

XII. A state holding enterprise of new and high technology or a scientific and research institution to be restructured in line with the Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the Ministry of Finance and the Ministry of Science and Technology Concerning the Development of the Equity Incentive Pilot Work by State Holding Enterprises of New and High Technology (No. 48 [2002] of the General Office of the State Council) and the Notice of the General Office of the State Council on Forwarding Some Opinions of the Economic Restructuring Office of the State Council Further Reforming the Property System of Scientific and Research Institutions to Be Restructured (No. 9 [2003] of the General Office of the State Council) plans to carry out the equity incentive pilot work and needs to transfer its state-owned property rights to its management staff, it shall report it to the finance administrative department or state-owned assets supervisory and regulatory organ at or above the provincial level for approval.

XIII. The state-owned assets supervisory and regulatory organs at all levels and the relevant supervision departments shall energetically strengthen the supervision and administration of the transfer of state-owned property rights to the management staff, sum up experiences in a timely manner, unceasingly improve the relevant regulations, rules and supervision measures, and earnestly maintain the legitimate rights and interests of capital contributors and employees.

XIV. The property right trading institutions as selected by the state-owned assets supervisory and regulatory organs at all levels shall, pursuant to the requirements as set down by these Provisions, strengthen the examination of the matters involving the acceptance of state-owned property rights by the management staff thereof, and seriously perform their duties and obligations.

XV. In case a relevant organ or functionary violates these Provisions and transfers state-owned property rights to the management staff of any enterprise, the state-owned assets supervisory and regulatory organ, the finance administrative department or the department empowered by the government shall request the transferor to terminate the transfer of state-owned property rights, or, when necessary, file a lawsuit to the people's court to invalidate the transfer, and hold the relevant persons to be responsible pursuant to the Interim Measures for the Supervision and Administration of State-Owned Assets of Enterprises (Order No. 378 of the State Council), the Regulation on the Penalties and Sanctions on Illegal Fiscal Acts (Order No. 427 of the State Council) and the Interim Measures; and anyone suspected of a crime shall be transferred to a judicial organ for penalties.

XVI. The transfer of state-owned property rights of an enterprise or any other entity without separating governmental functions from enterprise management to its management staff shall be subject to the approval of the finance administrative department or the empowered state-owned assets supervisory and regulatory organ, and which shall be implemented by referring to these Provisions.