

**Decree of the State Economy and Trade Commission  
(SETC) of the People's Republic of China, the  
Ministry of Finance (MOF) of the People's Republic  
of China, the State Administration for Industry and  
Commerce (SAIC) of the People's Republic of China  
and the State Administration of Foreign Exchange  
(SAFE)**

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The Interim Provisions on Introducing Foreign Investment to Reorganize State-owned Enterprises is promulgated hereafter and shall enter into force as of January 1, 2003.

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**Interim Provisions on Introducing Foreign Investment to  
Reorganize State-owned Enterprises**

**Article 1** In order to guide and normalize the activities of introducing foreign investment to reorganize state-owned enterprises, promote strategic restructuring of the state-owned economy, accelerate the pace of building up a modern enterprise system in state-owned enterprises, and protect the social stability, the Provisions is formulated in accordance with the provisions of the Company Law of the People's Republic of China, the Contract Law of the People's Republic of China and state laws and regulations concerning foreign investment and administration of state assets.

**Article 2** The Provisions applies to the activities of introducing foreign investment to reorganize state-owned enterprises and corporate enterprises with state-owned equities (financial enterprises and listed corporations are excluded) or turn them into corporate enterprises with foreign investment (hereinafter referred to as "introducing foreign investment to reorganize state-owned enterprises").

**Article 3** Introducing foreign investment to reorganize state-owned enterprises in the Provisions includes the following circumstances:

1. A holder of state-owned title in a state-owned enterprise transfers all or part of its title to foreign companies, enterprises or other economic organizations or individuals (hereinafter referred to as "foreign investors"), and the enterprise is reorganized into an enterprise with foreign investment;

2. A holder of state-owned title in a corporate enterprise transfers all or part of its title to foreign investors, and the enterprise is reorganized into an enterprise with foreign investment;

3. A domestic creditor of a state-owned enterprise transfers its credits to foreign investors, and the enterprise is reorganized into an enterprise with foreign investment;

4. A state-owned enterprise or a corporate enterprise with state-owned equities sells all or major assets of the enterprise to foreign investors, and the foreign investors use the assets they bought to establish an enterprise with foreign investment independently or jointly with the enterprise that sold the assets;

5. A state-owned enterprise or a corporate enterprise with state-owned equities absorbs foreign investors' investment through capital increase and share expansion, and reorganizes the enterprise into an enterprise with foreign investment.

**Article 4** State-owned enterprises and corporate enterprises mentioned in Subparagraphs 1,2,3 and 5, Article 3 of the Provisions are called reorganized enterprises. The state-owned titles of state-owned enterprises and state-owned equities of corporate enterprises are jointly called state property. Holders of state-owned titles and state-owned equities are jointly called holders of state property. Holders of state property refer to departments authorized by the state or institutions whose

investment is authorized by the state, enterprises holding state-owned capital, and other economic organizations. Holders of state property, creditors of state-owned enterprises who transfer their credits, and enterprises that sell assets are jointly called reorganizing parties.

**Article 5** A reorganizing party shall select foreign investors with the following conditions:

1. Have the operating credit status and technological level needed by the reorganized enterprise.
2. Have good business reputation and management capacity.
3. Have good financial status and economic strength. The reorganizing party shall require the foreign investors to bring forward a rearrangement program for improving the structure of governance of the enterprise and promoting the sustainable development of the enterprise. The rearrangement program shall include new product development, technological transformation and related investment plan(s), measures to strengthen the management of the enterprise, and etc.

**Article 6** Introducing foreign investment to reorganize state-owned enterprises shall follow the principles listed below:

1. Abide by state laws and regulations, and ensure national economic safety.
2. Accord with requirements for the state's industrial policies. Foreign investors are not allowed to take part in the reorganization of an enterprise (including its directly and indirectly shareholding enterprises) whose business scope falls into the industries to which foreign investment is forbidden according to the Industrial Guide for Foreign Investment. For an enterprise that must be held or relatively held by Chinese shareholders, Chinese shareholders shall remain in a controlling or relatively controlling position after the reorganization.
3. Benefit the economic structure adjustment, and promote the optimum allocation of state-owned capital.
4. Emphasize on introducing advanced technologies and management experience, establishing normalized corporate management structure, and promoting the technological advancement and industrial upgrading of the enterprise.
5. Adhere to the principles of openness, justness, impartiality and trustworthiness, prevent erosion of state assets, not evade or suspend the credits of banks and other creditors, not harm the lawful rights and interests of the employees, and protect the lawful rights and interests of foreign investors;
6. Promote fair competition, and not lead to market monopoly.

**Article 7** To transfer the property of a state-owned enterprise or equities of a limited liability company invested and established by a solely state-owned company and two or more state-owned enterprises or two or more state-owned investment entities, the reorganizing party shall solicit in advance opinions of the congress of employees of the reorganized enterprise. Transferring the equities of a corporate enterprise shall have the agreement of the congress of shareholders of the reorganized enterprise. Transferring the credits of a state-owned enterprise shall have the agreement of the state property holders of the reorganized enterprise. An enterprise that sells all or major assets shall have, in advance, the agreement of its state property holders or its congress of shareholders, and inform its creditors.

**Article 8** Introducing foreign investment to reorganize state-owned enterprises shall satisfy the following requirements:

1. Prior to the reorganization, the holders of state property shall organize the reorganized enterprise to check assets, demarcate property rights, clear credits and debts, invite a qualified intermediary organization to conduct financial audit, and evaluate assets according to the Administrative Procedure for the Evaluation of State Property (Decree of the State Council No.91) and the Regulation on Issues Concerning the Evaluation of State Property (Decree of the Ministry of Finance No.14) and other relevant regulations. The evaluation results, after being verified or filed for record as required, become the evidence for determining the prices of the state property and assets.
2. In case the controlling right of the enterprise is transferred to or all or major operating assets of the enterprise are sold to foreign investors after the reorganization, the reorganizing party and the reorganized enterprise shall work out a program for the proper placement of employees. The program shall be passed on the congress of employees. The reorganized enterprise shall use the existing assets to pay the wages in arrears to its employees, the pooled funds that have not been reimbursed, the social insurance premiums due, and other outlays. The reorganized enterprise and the employees shall choose each other. Labor contracts shall be signed again or altered for retained

employees according to law. Economic compensations shall be given to the employees whose labor contracts have been revoked according- to law, and social insurance premiums shall be fully paid once for all to the employees who have been handed over to social security organizations according to law, and the funds needed for the economic compensations and the social insurance premiums shall be deducted from the net assets of the reorganized enterprise before the reorganization, or be disbursed in priority from the proceeds that the holders of state property obtained from transferring the state property.

3. In case the reorganization is made in the form of selling assets, the credits and debts of the enterprise shall be inherited by the original enterprise. If the reorganization is made in other forms, the credits and debts of the enterprise shall be succeeded by the enterprise after the reorganization. Transfer of mortgaged or hypothecated state property or assets shall accord with relevant provisions of the Guarantee Law of the People's Republic of China. The debt successor shall sign with the creditors agreements on the settlement of relevant credits and debts.

4. The reorganizing party shall publicize information on the reorganization, widely recruit foreign investors, investigate into the credit status, reputation, financial status, management capacity, payment guarantee, manager skills and other aspects of the foreign investors, and give priority to the choice of medium- and long-term investors that are able to bring in advanced technologies and management experience, and that are from highly connected industries. The reorganizing party and the foreign investors shall, in response to rational requests of each other, conscientiously and minutely provide relevant information and materials, and not conduct any misleading or fraudulent activities, and undertake the obligation of keeping secrets.

5. In case the reorganization of the enterprise is made in the form of transferring state property or selling assets, the reorganizing party shall give priority to open and competitive bidding in determining the foreign investors and the transfer price. Transfer through open and competitive bidding shall go through relevant procedures according to law, and publicize relevant information on the intended transfer of state property or intended sale of assets. Transfer through agreement shall also be handled publicly. Regardless of the form of the transfer, the reorganizing party and the foreign investors shall sign a transfer agreement according to relevant provisions of the state and the Provisions. The content of such transfer agreement shall include the general situation of the state property, placement of employees, treatment of credits and debts, proportion of the transfer, transfer price, way and terms of payment, matters concerning the property delivery, rearrangement of the enterprise, and other clauses.

**Article 9** Introducing foreign investment to reorganize a state-owned enterprise shall follow the procedures below:

1. The reorganizing party (if two or more reorganizing parties are involved, one of them shall be determined) shall file an application for the reorganization with the department in charge of economy and trade of its level. Application materials for the reorganization shall be attached with a feasibility report, situations of the reorganizing party and the reorganized enterprise, conditions of the foreign investors (including the financial reports that have been audited by certified public accountants for the past three years and the market share of the products or services of other enterprises with actual controlling rights in the same industry within the territory of China), the reorganization program (including programs for placement of employees, treatment of credits and debts, and enterprise rearrangement), the business scope and equity structure of the enterprise (including its directly or indirectly shareholding enterprises) after the reorganization, and other documents. The department in charge of economy and trade with which the application has been filed shall check and ratify the application according to the limits of authority prescribed in the Regulation on Guiding Foreign Investment and other related laws and regulations. In case a central enterprise and its wholly-owned or controlled enterprises are to be reorganized, or the reorganized enterprise directly or indirectly holds equities in listed corporations, or the gross assets of the enterprise after the reorganization are not below US\$30 million, the check and ratification shall be made by the department of the State Council in charge of economy and trade. In case the reorganization may lead to market monopoly and hinder fair competition, a public hearing shall be organized before the check and ratification. The department in charge of economy and trade shall give an answer whether the application is accepted within 45 days after receiving the application materials for the reorganization. If a public hearing is necessary, the answer shall be given within

three months. If the state has other regulations on the utilization of foreign investment in industries to which a reorganized enterprise and its directly or indirectly shareholding enterprises belong, or on the change in the nature of state-owned shares held by holders of state equities of listed corporations caused by equity change, the said regulations shall be complied with.

2. The transfer agreement signed between the reorganizing party and the foreign investors shall be reported for approval according to the relevant provisions of the Circular on Distributing the "Provisional Procedures for the Administration of Enterprises' State Capital and Financial Management" issued by the MOF (CaiQi [2001] No.325). The transfer agreement shall go into effect after the approval. The transfer agreement shall be attached with the registration certificate of state property, information on the ratification or record of the audit and asset evaluation reports of the reorganized enterprise, plan for the placement of its employees, agreement on credits and debts, program for enterprise rearrangement, related resolutions of the reorganizing party and the reorganized enterprise, opinions or resolutions of the congress of employees of the reorganized enterprise, and other documents.

3. The reorganizing party or the reorganized enterprise shall, according to law, handle the check and ratification procedures for enterprises with foreign investment by presenting the approval documents of the reorganization application and the transfer agreement. If the enterprise after the reorganization is a limited liability company, the procedures shall be handled according to relevant provisions of the Company Law of the People's Republic of China.

4. The enterprise after the reorganization or the investors shall, according to the provisions of registration administration regulations, present the approval documents prescribed in Subparagraphs 1 and 3 of this Article to the original registration organ that has the authority for registration of enterprises with foreign investment or the registration organ in its locality that has the authority for registration of enterprises with foreign investment. If the enterprise after the reorganization is a limited liability company, the procedures shall be handled according to relevant provisions of the Company Law of the People's Republic of China.

5. The reorganizing party shall, according to relevant provisions, handle the state property delivery procedures and the ownership alteration registration procedures by presenting the approval documents for the reorganization and the transfer agreement, the certificate of foreign exchange registration of foreign investment and relevant documents, and entrust certified public accountants to issue a capital verification report according to law. If the land used by the enterprise after the reorganization was state-allotted, the procedures for check and ratification and transfer of land-use right shall be handled according to law.

6. Foreign exchange proceeds of the reorganizing party obtained from the transfer of state property and credits or from the sale of assets shall be sold with the approval of the SAFE office by presenting the approval documents for the reorganization and the transfer agreements. If a reorganized enterprise is reorganized in the form of capital increase and share expansion to attract foreign investors' investment, with the approval of the SAFE office, it may open a foreign exchange capital account to retain the foreign exchange capital put in by the foreign investors.

7. The applications for reorganization, the transfer agreements and related approval documents of state key enterprises under quota limit checked and ratified by the local departments in charge of economy and trade and those in charge of finance, debt-for-equity swap enterprises approved by the state, and enterprises in the industries belonging to the limited category in the Industrial Guide for Foreign Investment shall be reported to the department of the State Council in charge of economy and trade and the department of the State Council in charge of finance respectively for record.

**Article 10** Foreign investors shall pay the transfer fees or capital contribution with freely convertible currencies or other lawful properties and equities remitted in from overseas. With the approval of the SAFE offices, they may also use the net Renminbi profits from investments in China or other lawful properties and equities to pay the transfer fees or capital contribution. The above-mentioned lawful property and equities include:

1. Properties of the foreign investors obtained from the liquidation, equity transfer, recovering investment in advance, and capital reduction of other enterprises with foreign investment in China.

2. State property or assets acquired by the foreign investors from state-owned enterprises or corporate enterprises with state equity;

3. Credits acquired by the foreign investors from creditors of state-owned enterprises;

4. Other ways of capital contribution stipulated by laws and regulations. When verifying the capital provided by the foreign investors, the certified public accountants shall carry out the capital verification procedures and issue capital verification reports according to the provisions of the Circular of the Ministry of Finance (MOF) and the State Administration of Foreign Exchange (SAFE) on Further Strengthening the Verification of Payment of Legal Capital by Investors of Enterprises with Foreign Investment and Perfecting Foreign Exchange Registration of Foreign Direct Investment (FDI) (CaiKuai [2002] No.1017).

**Article 11** In case the reorganization is done in the form of transfer, the foreign investors shall, as a general rule, pay the full price within three months after the day when the license of enterprise with foreign investment is granted. If it is really difficult, in accordance with law, more than 60 percent of the total price shall be paid within six months after the day when the business license is granted, and guarantee shall be provided according to law for the rest that shall be paid up within one year.

**Article 12** In case the controlling right of the enterprise is transferred to or all or major operating assets of the enterprise are sold to the foreign investors after the transfer of state property, before full payment by the foreign investors, the reorganizing party has the right to know and supervise the production, operating and financial conditions of the enterprise after the reorganization, and the foreign investors and the enterprise after the reorganization shall give necessary conveniences. Before the foreign investors establish an enterprise with foreign investment with the acquired assets, they are not permitted to conduct operating activities by using the above-mentioned assets.

**Article 13** Proceeds from transfer of state property and assets shall be collected by the reorganizing party, and be managed and used according to relevant provisions of the department of the State Council in charge of finance.

**Article 14** The foreign investors may, according to laws, remit overseas net profits obtained from the enterprise after the reorganization, proceeds from equity transfer, funds shared after the expiration or termination of the enterprise, and other lawful incomes. With the approval of the SFAE offices, the said incomes may also be reinvested within China.

**Article 15** In the process of introducing foreign investment to reorganize state-owned enterprises, the taxation policies shall follow the provisions of the state laws and administrative regulations related to taxation, and the charging policies shall follow the provisions of the Circular on Exemption and Reduction of Related Charges in the Course of Reform, Reorganization and Transformation of Enterprises issued jointly by the State Development Planning Commission, the State Economic and Trade Commission, the Ministry of Supervision, the Ministry of Finance, the State Audit Administration, and the State Council Office for Checking Unhealthy Tendencies (JiJiaFei [1998] No.1077).

**Article 16** Any person in the reorganizing party or the reorganized enterprise who goes beyond his/her limit of authority, neglects his/her duty or colludes with the foreign investors, embezzles money or takes bribery, and violates the lawful rights and interests of the state, creditors and employees, shall be given administrative penalty and punishment by relevant departments according to law. In case crime is constituted, criminal responsibilities shall be pursued according to law.

**Article 17** If any government official in charge of the check and ratification violates the Provisions by giving approval without authorization or abusing his/her authority for personal gains, and thereby harms lawful rights and interests of the state, creditors and employees, the related departments shall, according to the authorization limit in cadre administration, investigate and fix the administrative responsibilities of the persons directly responsible and the persons in charge. In case crime is constituted, criminal responsibilities shall be pursued according to law.

**Article 18** The Provisions also applies to reorganizations of state-owned enterprises with the participation of investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region and the enterprises with foreign investment that have been established.

**Article 19** The SETC, the MOF, the SAIC and the SAFE are responsible for the interpretation of the Provisions.

**Article 20** The Provisions shall enter into force as of January 1, 2003.