

Measures of Shanghai Municipality for the Management of Property Right Exchange

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Order of the People's Government of Shanghai Municipality
(No.36)

The Measures of Shanghai Municipality for the Management of Property Right Exchange, which were adopted at the 52nd executive meeting of the Municipal people's government on October 18, 2004, are hereby promulgated, and shall come into force as of November 25, 2004.

Mayor Han Zheng
October 25, 2004

Measures of Shanghai Municipality for the Management of Property Right Exchange
(Promulgated by Order No.36 of the People's Government of Shanghai Municipality on October 25, 2004)

Chapter I General Provisions

Article 1 (Purpose)

The present Measures are formulated for the purpose of regulating the acts of property right transaction, promoting the healthy development of property right exchange, and promoting the orderly circulation of state-owned property rights, collective property rights and other property rights.

Article 2 (Scope of Application)

The present Measures shall be applicable to undertaking property right transaction activities in the property right exchange of this Municipality. Unless otherwise there are different provisions by laws, regulations and rules, such provisions shall be followed.

Article 3 (Definitions)

The term "property right" as mentioned in the present Measures, shall refer to the various property rights, including real right, creditor's rights, stock rights, and intellectual property rights, etc..

The term "property right transaction" as mentioned in the present Measures shall refer to the acts of the subject of a property right, who transfers his lawfully owned property right onerously through property right exchanges.

The term "property right exchange" as mentioned in the present Measures shall refer to the place of property right transaction established upon the approval of the People's Government of Shanghai Municipality.

Article 4 (Principles)

The principles of honesty and good faith, and openness, fairness and justness shall be followed in undertaking property right transactions in the property right exchanges.

Article 5 (Entry Transaction)

The transaction of state-owned property right and collective property rights subject to the jurisdiction of this Municipality shall be carried out in the property right exchanges.

The state-owned property right of the enterprises under the Central Government may enter into the

property right exchanges for trading.

A property right transaction carried out at the property right exchange shall not be restricted by the region, industry, capital contribution or subordinate relations.

Article 6 (Administrative Departments)

The State-owned Assets Supervision and Administration Commission of Shanghai Municipal Government (hereinafter referred to as the Municipal SASAC) shall be responsible for the work of administration and coordination of property right exchanges of this Municipality.

The Shanghai Municipal Property Right Exchange Management Office (hereinafter referred to as the Municipal PREMO) is the supervisory institution of the property right exchanges of this Municipality, which shall be responsible for drawing out policies, plans, and management rules for property right exchanges, supervising over the business activities of property right exchanges and activities of intermediary institutions, investigating into and punishing illegal acts, and guiding the work of property right transaction intermediary guilds.

The relevant departments of this Municipality shall, according to their own functions, assist the Municipal SASAC and the Municipal PREMO in the management of property right exchanges.

Chapter II Property Right Exchanges

Article 7 (Nature)

A property right exchange is a not-for-profit public institution with legal person status.

Article 8 (Articles of Association)

A property right exchange shall formulate its articles of association, prescribing its organization framework, membership management, operation of institutions, and other matters concerned.

The opinions of the Municipal PREMO shall be solicited for the formulation and amendment of the articles of association, which shall be reported to the Municipal SASAC for approval.

Article 9 (Transaction Rules)

The property right exchange shall formulate the relevant transaction rules according to law in light of the management system and the articles of association as approved by the Municipal SASAC, and report to the Municipal PREMO for examination.

Article 10 (Service Functions)

A property right exchange shall provide such services as business site, facilities and information for property right transactions.

A property right exchange shall establish a networked platform for the release of property right transaction information, and form into information websites and database systems for online searching, and provide information, management rules, and transaction rules concerning property right transaction in time as well as relevant laws, regulations, rules and policy.

The networked platform for releasing property right transaction information, which is established in a property right exchange, shall be able to realize the interlink of networks or information exchange with the departments of state-owned assets and industry and commerce as well as other relevant administrative departments for the registration of property right certificate alteration.

A property right exchange may provide price settlement services for property right transactions.

Article 11 (Members)

Any intermediary institution, which has the qualification of an enterprise legal person, and undertakes property right transaction activities, makes commitments on abiding by the articles of association of the property right exchanges, and is approved by the property right exchange upon written application, may become a member of a property right exchange.

A property right exchange shall put on archives the membership conditions at the Municipal PREMO.

Chapter III Transaction Activities of a Property Right Exchange

Article 12 (Agency by Entrustment)

The assigner and the assignee who enter into a property right exchange and undertake property right transaction activities may entrust members of the property right exchange to conduct property right transaction activities, and sign a contract of agency by entrustment.

Article 13 (Materials Submitted by the Assigner)

When assigning a property right, the following materials shall be submitted to the property right exchange:

1. The effective qualification certificate of the assigner;
2. The effective certificate of the ownership of property right of the assigner;
3. The certificate for granting the assignment of property right;
4. Basic conditions of the object of the assignment; and
5. Other materials that shall be submitted as required by any law, regulation or ministerial rule.

Where any state-owned or collective enterprise assigns all its property right as a whole, which concerns the lawful rights and interests of employees, it shall be subject to the deliberation of the employee representative meeting or employees' congress of the enterprise that makes the assignment according to law. The assigner shall issue certificate documents that have been deliberated by the employee representative meeting or the employees' congress.

Article 14 (Materials Submitted by the Assignee)

The following materials shall be submitted to the property right exchange when accepting a property right:

1. The effective qualification certificate of the assignee;
2. The credit certificate of the assignee; and
3. Other materials that shall be submitted as required by any law, regulation or ministerial rule.

Article 15 (Verification and Examination)

Any member who accepts the agency by entrustment shall make verification on the relevant materials provided by the entrusting party; and the property right exchange shall make examination on the qualification of subject of property right transaction and the transaction conditions.

The assigner and the assignee shall be responsible for the integrity and authenticity of the materials of property right transaction.

Article 16 (Information Release)

A property right exchange shall implement the listing system of property right transaction information.

A property right exchange shall sort out and clear up property right transaction information provided, and release them through the networked platform for releasing property right exchange information. It may also make announcement through mass media or by ways of introductory meetings, etc..

Article 17 (Information Feedback)

After any property right transaction information is released through listing, a property right exchange shall clear up in time the reflected intentional information for transfer and assignment, and do well the registration on application for transfer and assignment.

Article 18 (Price for the Assignment of State-owned Property Rights)

The price for the assignment of state-owned property rights shall be determined mainly on the basis of the appraisal result, and the price discovering mechanism of property right exchange shall also be fully utilized, and two or more things shall be given attention for the conditions of demand and supply of the property right exchange, market price of the same kind of assets, allocation of employees, introduction of advanced technology and other comprehensive factors.

The specific measures for the implementation of assignment price of state-owned property rights shall be formulated by the Municipal SASAC additionally.

Article 19 (Ways of Transaction)

Property right transaction may be conducted by ways of agreement-based transfer, auction, bid tendering, price bidding, and others ways as prescribed by state laws and regulations.

Where after any property right information is released through listing, if there is only one person who has the intention of accepting the assignment, the agreement-based transfer method may be adopted; if there are two or more persons who have the intention of accepting the assignment, the assigner may negotiate with the property right exchange, and determine the assignee and the assignment price by taking such ways as auction, bid tendering or price bidding according to the concrete conditions of the objects of the property right transaction.

Article 20 (Conclusion of a Contract and Its Contents)

After an assigner has reached a bargaining intention with an assignee, they shall sign a property right transaction contract and put their signatures or stamp their seals on it. The following contents shall be included in the property right transaction contract:

1. The name and residence of the assigner and the assignee;
2. Object of transfer;
3. Ways of bargaining;
4. Transfer price and the time and ways of payment;
5. Plans for handling the creditor's right and obligations concerning the objects of transfer;
6. Matters concerning completing a business transaction of property right;
7. Liabilities for breach of contract;
8. Ways of contract dispute resolution; and
9. Other matters as stipulated by the assigner and the assignee.

In addition to the contents of contract as prescribed in the preceding paragraph, the property right transaction contract of state-owned and collective enterprise shall also include the plan for allocation of employees (including retired employees) and other contents.

Article 21 (Certificate of Property Right Transaction)

A property right exchange shall make verification on property right transaction contracts, which are transacted in the property right exchange, and issue a certificate of property right transaction for those complying with the provisions of Article 20 of the present Measures.

Article 22 (Alteration of Right Certificate)

The assigner or assignee who makes a property right transaction in a property right exchange shall go through relevant formalities for alteration of right certificates at the relevant departments of state-owned assets, industry and commerce, real estate, foreign investment, taxation, public securities, and etc. upon the strength of the property right transaction certificate and property right transaction contract issued by the property right exchange.

All the relevant departments shall make a decision on alteration of right certificates upon the strength of the certificate of property right transaction and the text of property right contract issued by the property right exchange within 15 workdays from the date when the application for alteration is accepted.

Article 23 (Indication of Charging Price)

The charging standard for handling property right transaction in a property right exchange shall be publicized at the property right exchange.

Article 24 (Suspension and Termination of Property Right Transaction)

In case any of the following circumstances occurs, a transaction may be suspended upon the

application of the assigner, assignee or the third party to the property right exchange:

1. Having dispute over the assigned property right, which has not been resolved; or
2. Property right transaction activities cannot be carried out in light of the stipulated time limit and procedures due to force majeure.

In case any circumstance in the aforesaid item (1) or (2) occurs, which results in the inability of the property right contract to be performed continuously, the transaction shall be terminated.

Article 25 (Report)

A property right exchange shall report the property right transaction conditions to the Municipal SASAC and the Municipal PREMO periodically. In case there is anything abnormal in the state-owned property right during the course of property right transaction, it shall report to the Municipal SASAC in time; if there is anything important for a property right transaction, it shall report to the Municipal PREMO in time.

Article 26 (Prohibitive Acts)

No property right whose ownership is not clear or is under dispute may enter into any property right exchange for transaction.

No property right exchange may make property right intermediary activities directly or in disguised form.

No member may accept the entrustment of both the assigner and the assignee in the same property right transaction, or take such means as duress, fraud, bribery, vicious collusion and etc. to make property right transaction.

Chapter IV Dispute Resolution and Legal Liabilities

Article 27 (Dispute Resolution)

In case any dispute occurs during the process of a property right transaction, either party to the property right transaction may apply for conciliation to the property right exchange or the Municipal PREMO; or may apply for arbitration or lodge a complaint to the people's court according to stipulations of contract.

Article 28 (Disposal of Property Right Transaction Certificate Issued in Violation of Regulations)

The Municipal PREMO may, for any property right transaction of any property right exchange in violation of provisions, which has been put on records for investigation and confirmed, order the property right exchange to withdraw the property right transaction certificate illegally issued.

Where any property right transaction certificate is revoked, which results in the invalidity of a property right transaction and leads to damages, the property right exchange assigner, assignee or member that violates the provisions shall undertake the corresponding compensation liabilities.

Article 29 (Handling of Acts for Undertaking State-owned or Collective Property Right Transaction in Violation of Regulations)

Where any state-owned or collective property right is transacted outside the property right exchange, the relevant personnel liable shall be subject to liabilities according to law imposed by the Municipal SASAC.

Article 30 (Liabilities and Handling)

In case any property right exchange and any of its staff members violates the present Measures and the relevant provisions, the Municipal PREMO shall order it/him to correct; if the circumstance is serious, and results in the loss of state-owned or collective assets or economic loss to the parties, it/he shall, in addition to undertaking civil liabilities according to the relevant laws and regulations, be subject to the liabilities imposed by the Municipal SASAC and the relevant departments according to law; if a crime is constituted, it/he shall be subject to criminal liabilities according to law.

Chapter V Supplementary Provisions

Article 31(Purchase and Merger by Foreign Capital)

In case any property right is purchased or merged by foreign capital in a property right exchange, it shall also meet the requirements of the Catalogue for Guiding Foreign Investment Industry as issued by the state, and go through the formalities in accordance with the provisions of laws, regulations and rules.

Article 32 (Custody and Assignment of Share Rights)

Where a non-listing joint stock company transfers its state-owned share rights, it shall be subject to the custody of the property right exchange with the consent of the capital contributors of state-owned assets.

Where a state-owned enterprise in this Municipality accepts any share rights of a non-listed joint stock company, it shall accept it at the property right exchange in light of the procedures for property right transaction as prescribed in the present Measures.

Article 33 (Date of Implementation)

The present Measures shall come into force as of November 25, 2004. The Measures of Shanghai Municipality for Property Right Exchange Management as promulgated by the Municipal government on December 22nd, 1998 shall be repealed simultaneously.