Content

Title： Key Points for the Management and Disposal Of Government-owned Shareholding Ch

Date： 1999.09.08

Legislative： Approved on September 17, 2004 by Executive Yuan as per its

letter, Ref. No.: Yuan-Tai-Ching-0930041631

Article 2, 10 and 11 were amended on October 31, 2006 by Executive Yuan as per its

letter, Ref. No.: Yuan-Tai-Ching-0950043231

Article 11 was amended on April 2, 2008 by Executive Yuan as per its

letter, Ref. No.: Yuan-Tai-Ching-0970011727

Content：

I. General Provisions

1. These Key Points are prescribed for the purposes of regulating re-investment by state-owned enterprises prior to their privatization, accelerating the process of privatization of state-owned enterprises, securing the rights and interests of the equity shareholding owned by the government after privatization of state-own enterprises, and regulating the disposal of government-owned shares in privatized enterprises.
2. The term "state-owned enterprises" as used in these Key Points shall mean the enterprises as defined in Article 3 of the Act for Administration of State-owned Enterprises, and having been approval by the Executive Yuan for privatization in accordance with the provisions set out in Article 5 of the Statute for Privatization of Government-owned Enterprises.
   The term "the authority in charge of the management of government-owned shareholding" shall mean any of the competent authorities in charge of the relevant state-owned enterprises, any of the competent authorities in charge the relevant enterprises which have been privatized, or any government authority as designated by the Executive Yuan.
3. Unless otherwise provided in applicable laws, management of the re-investment projects effected by a state-owned enterprise prior to its privatization and the government-owned shareholding in a state-owned enterprise after the privatization of such state-owned enterprise shall all be handled in accordance with in these Key Points. With regard to matters not provided for in these Key Points, the provisions set out in the "Key Points for the Management of Investment in Private-owned by Special Funds of the Central Government" and its related laws and regulations prescribed by the Executive Yuan shall apply.
   With respect to the matters not provided in the laws and regulations set out in the preceding Paragraph, the respective competent authorities in charge of the relevant state-owned enterprises or the

respective authorities in charge of management of government-owned shareholding may, based on the needs of business operation or the characteristics of the relevant re-investment projects or management of the government-owned shareholding, prescribe other separate management rules or regulations for the management of the respective re-investment projects and/or the government-owned shareholding.

II. Re-investment Projects Effected Prior To The Privatization of State-owned Enterprises

4. Any state-owned enterprise may initiate a re-investment project for the reason that such re-investment project will be contributive to the privatization of the state-owned enterprise, in addition to the causes of re-investment as set forth in Point 3 of the "Key Points for the Management of Investment in Private-owned by Special Funds of the Central Government."

   Any state-owned enterprise intending to initiate a re-investment project shall make substantial statements, in its privatization plan, explaining the rationale that the purpose of its re-investment project is contributive to the privatization of state-owned enterprise. Where the privatization plan has been approved by the Executive Yuan, the state-owned enterprise shall further submit a substantial statements explaining the rationale that the approved re-investment is contributive to the privatization of state-owned enterprise.

   Before initiating a re-investment project, the state-owned enterprise shall submit (to the competent authority) a re-investment proposal stating therein the reasons that its reinvestment proposal based on the causes set forth in Point 3 of the "Key Points for the Management of Investment in Private-owned Enterprise by Special Funds of the Central Government" is contributive to the privatization of state-own enterprises, and assessing whether the proposed re-investment project is in line with the principles set forth in Point 5 of these Key Points.

5. The appropriate competent authority shall examine and evaluate the re-investment proposal in accordance with the following principles to ensure that:

   (1) The objective of the proposed re-investment project conforms to the orientation set by the privatization plan of the said state-owned enterprise, and is substantially contributive to the privatization of the said state-owned enterprise;

   (2) The proposed re-investment project can make effective utilization of the existing resources of the said state-owned enterprise or may upgrade the operating efficiency of the said state-owned enterprise;

   (3) The proposed re-investment project may provide a good and effective investment result; and

   (4) The re-invested enterprise does not have any shareholding in the state-owned enterprise and that the main purpose of re-investment is not one of cross-shareholding.

   The competent authority may, after taking into consideration the shareholding percentage in the re-invested enterprise, the size or amount of the re-invested capital and/or the objective of re-investment, set up the authorization principle and authorize the state-owned enterprises with self-examination responsibility in order to enhance the autonomy of the enterprise in running its business operations.

6. Execution and modification of the budget of the re-investment project shall be effected in accordance with the "Key Points for Execution of the Budget by Subordinate Units of the Central Government" and relevant regulations.

   A state-owned enterprise shall submit periodically information of the operating performance and the financial condition of the re-invested enterprise to the competent authority for its reference and recordation.

7. In the event that the re-investment objective of a state-owned enterprise cannot be achieved, that the re-invested enterprise makes losses for three (3) consecutive years and such condition cannot be improved, or that the state-owned enterprise deems it is necessary to withdraw its investment or discontinue the re-investment project due to material changes in the situation confronting it, the state-owned enterprise shall report in writing such event to the competent authority for review and resolution.

   Notwithstanding the absence of the cause set forth in the preceding Paragraph, if it is deemed necessary to withdraw the investment or to discontinue the re-investment project because the execution of such re-investment will cause a delay of the implementation of its privatization program, the said state-owned enterprise shall report in writing such event to the competent authority for review and resolution.

   Where the re-investment project is under either of the circumstances set forth in the preceding two paragraphs, the competent authority may still be entitled, *ex officio*, to order the said state-owned enterprise to withdraw the investment or to discontinue the re-investment project, even though the said state-owned enterprise does not report such event to the competent authority.

8. Where the state-owned enterprise intends to sell the equity shares of the re-invested enterprise owned by it in whole or in part, because of achieving the objective of its re-investment project, withdrawal of its re-investment capital as set forth in the preceding Point hereof or any other reason, it shall file the information pertinent to the following matters to the competent authority for its examination and approval and handle the sale in accordance with the applicable budgeting procedures:
   (1) the objective of its original re-investment project;
   (2) the cause of the proposed sale;
   (3) its financial statements of the last three (3) years and its investment effectiveness analysis;
   (4) the current capital and the list of shareholders of the re-invested enterprise and its shareholding percentage in the re-invested enterprise; and
   (5) the amount of equity shares to be sold and the method of the proposed sale.

9. Any state-owned enterprise intending to re-invest shall file an

application with the competent authority for its approval, and in addition thereto, enter into a shares subscription agreement with each of the shareholders having a controlling power over the enterprise in which the re-investment is to be made. Such share subscription agreement shall contain the following particulars:

(1) the price per share or the calculation formula of share;

(2) the term of validity of the share subscription agreement and the representations and warranties of the parties thereto;

(3) the conditions for termination or cancellation of the share subscription agreement;

(4) the existence or non-existence of any restriction on the assignment of the shareholding representing the re-investment capital during the term of the share subscription agreement, and the period of such restriction, if any;

(5) the non-competition clause prohibiting the state-owned enterprise from engaging in the business that the re-invested enterprise operates;

(6) the seats of directors and supervisors owned by the state-owned enterprise in the re-investment enterprise (including the number and the term of office of directors and supervisors and their discharge procedures, with or without proper cause) and other management rights (e.g. the veto right on specific matters);

(7) the confidentiality requirement; and

(8) other important matters (e.g. the matters involved in the negotiations that are substantially contributive to the implementation of the proposed re-investment project).

Where the terms and conditions of the shares subscription agreement as provided in the preceding paragraph can be incorporated in the articles of incorporation of the re-invested enterprise so far as the nature of such terms and conditions are concerned, such terms and conditions shall be incorporated in the articles of incorporation of the re-invested enterprise in order to secure the rights and interests vested in the government owned shareholding.

III. Management of Government-owned Shareholding in Privatized Enterprises

10. In order to completely implement the policy of privatization of state-owned enterprises, each authority in charge of the management of government-owned shareholding shall manage the remaining government-owned shareholding in the privatized enterprise based on the following principles:

(1) to enhance the corporate governance of the privatized enterprises so as to safeguard the rights and interests of the government-owned shares, and to effect the business operation of the privatized enterprises;

(2) to retain, based on the consideration of the public living requirements and national defense, a specific percentage of government-owned shareholding in any state-owned enterprise engaged in the business related to pubic utilities or national defense affairs for a specific period of time after its privatization, so as to enable the representatives of such

government-owned shareholding to have a substantial veto right in respect of certain material issues or affairs; and

(3) to make a prudential assessment of the issue as to whether the whole portion of government-owned shares in a state-owned enterprise which no longer has any special policy-based mission should be released or not .

For a state-owned enterprise engaged in the business related to public utilities or national defense affairs as referred to in Item (2) under the preceding paragraph, the most appropriate percentage of government-owned shareholding in such enterprise after its privatization shall be submitted by the authority in charge of the management of government-owned shareholding to the Executive Yuan for its approval.

11. After privatization of a state-owned enterprise, the most appropriate percentage of government-owned shareholding in such privatized enterprise shall be assessed and formulated by the authority in charge of the management of government-owned shareholding and reported to the Executive Yuan for approval, and that such appropriate percentage of government-owned shareholding shall be subject to a periodic review thereafter.

The release plan for the remaining government-owned shareholding in a privatized enterprise shall be formulated by the authority in charge of the management of government-owned shareholding and reported to the Executive Yuan for approval. The authority in charge of the management of government-owned shareholding or an agency or institution as designated by the authority in charge of the management of government-owned shareholding shall execute the works of the shares release.

The works of shares release as referred to in the preceding paragraph include all works of the shares release as required during the period after the completion of the share-releasing plan until the completion of the release of shares as provided in that plan.

12. Representatives of the government-owned shareholding in privatized enterprises shall be selected from specialized and well-experienced experts so as to be able to bring into play his/her supervisory function. In addition to the foregoing qualifications, a supervisor shall also have the practical accounting experience or capability in the fields of accounts auditing and financial analysis. For the selection, evaluation and discharge of the representatives of government-owned shareholding, management and evaluation guidelines shall be prescribed by the authorities in charge of the management of government-owned shareholding by making reference to the applicable laws and regulations.

13. In a privatized enterprise, the representative of government-owned shareholding shall, prior to a discussion or a meeting for resolution in respect to any of the following material matters, include his/her own opinions on the relevant documents, and submit such information to the authority in charge of the management of government-owned shareholding for its approval and instructions:

(1) the enactment of and amendment to the articles of incorporation;

(2) the execution, modification or termination of any contracts

pertaining to the lease-out of all business, the mandate of business operations or the frequent operation of the business jointly with others;

(3) the assignment or the taking over of the whole or a material portion of the business or properties;

(4) material financial changes or alterations;

(5) the enactment and amendment of the rules for providing external guaranties other than the guaranties which are provided as part of its guaranty business;

(6) material investment(s) other than those investments made by financial institutions;

(7) material proposal(s) related to personnel affairs (e.g. retainment or discharge of general manager or vice general manager, et, al.); or

(8) dissolution or merger or amalgamation.

The representatives of the government-owned shareholding shall bring forth at the relevant discussion or meeting his/her opinions based on the instruction(s) given to him/her under the preceding paragraph, and shall, after the discussion or meeting, report the conclusions of the discussion or meeting to the authority in charge of the management of government-owned shareholding for its recordation.

With respect to the extemporary motion(s) made legally at any discussion or meeting convened by a privatized enterprise, the representative of government-owned shareholding shall voice the appropriate assertion or opinion in such a discussion or at such a meeting based on the position to protect the rights and interests of the government-owned shareholding, and shall, after the discussion or meeting, report the conclusions of the discussion or meeting to the authority in charge of the management of government-owned shareholding for its recordation.

14. Where a privatized enterprise initiates any investment project, the representative of the government-owned shareholding shall report the case to the authority in charge of the management of government-owned shareholding for its approval and instructions in accordance with the provisions set out in Paragraph 1 of the preceding article hereof. In addition, the representative of the government-owned shareholding shall also request the said privatized enterprise to enter into a share subscription agreement with the shareholders having the controlling power over the invested enterprise and to effect proper monitoring over the investment activities so as to secure the rights and interests of government-owned shareholding. However, the representative of the government-owned shareholding may, upon approval of the authority in charge of the management of government-owned shareholding, withhold his/her request for the execution of a shares subscription agreement based on the special nature of a particular investment project.

With respect to the contents of the shares subscription agreement and incorporation of such contents thereof into the articles of incorporation of the invested enterprise, Point 9 hereof shall apply *mutatis mutandis*.

IV. Disposal of Government-owned Shareholding

15. Disposal of government-owned shares shall be conducted in the manner where procedures shall be open to public, information transparent and rights and interests in the government-owned shareholding protected.

16. Where government-owned shares are offered for sale or for share conversion in accordance with Item 1, Paragraph 1, Article 6 and Article 14 of the Statute for Privatization of Government-operated Enterprises, such sale or share conversation shall be transacted in accordance with the applicable laws and regulations governing securities trading transactions, and in addition thereto, the provisions set out in these Key Points shall also be complied with under any of the following circumstances;

(1) Where the government-owned shares are to be sold or converted into other company's shares through negotiation; or

(2) Where the number of government-owned shares to be sold or converted into other company's shares in a specific transaction is equal to 3% of the total issued shares of the issuing enterprise, or where the floor price of the government-owned shares which are to be sold is equal to Five Billion New Taiwan Dollar (NT$5,000,000,000) or more.

In case the disposal of government-owned shares is done by the issuance of exchangeable government bonds, the transaction shall be effected in accordance with the provisions set forth in the Guidelines for the Issuance of Exchangeable Government Bonds by the Central Government.

17. Where disposal of government-owned shares is to be effected in accordance with the preceding point hereof, the following procedures shall be complied with:

(1) A share releasing plan shall be prepared by the appropriate authority in charge of the disposal of government-owned shares, which plan shall contain at least particulars such as: the method of selling or converting government-owned shares; the reason for adopting such method of selling or converting government-owned shares; the number of shares to be released and other material information associated with the transactions thereof. If the government-owned shares are to be sold or converted into other company's shares through negotiation, the share-releasing plan shall also include the reason for adopting such negotiation method and the qualification requirements for an acceptable transaction counterpart.

(2) The appropriate authority in charge of the disposal of government-owned shares shall report the execution results of the share-releasing plan to the Executive Yuan for its recordation after completion of the disposal of government-owned shares; provided that if the government-owned shares are, through negotiation, sold or converted into other company's shares, the share-releasing plan provided in the preceding item shall be submitted to the Executive Yuan for its approval in accordance with Paragraph 2, Article 6 of the Statute for Privatization of Government-owned Enterprises prior to the disposal of government-owned shares.

(3) Except for matters which are not suitable for disclosure under the relevant domestic or foreign laws and regulations or due to its nature, the public notice for soliciting investors in the government-owned shares to be disposed of shall be published for five (5) consecutive days on the website of the appropriate authority in charge of the disposal of government-owned shares, and for one (1) day on the newspapers having nationwide circulation; provided, however, that the requirement of public notice provided in this item (3) shall not apply to the sale of government-owned shares in government-owned financial institutions by way of share conversion in accordance with the Financial Holding Company Act and such sale by the way of share conversion shall be handled in accordance with the Financial Holding Company Act and relevant regulations.

(4) Where government-owned shares are to be sold or converted into other company's shares through negotiation, the transaction counterpart shall be solicited publicly, and the period of the public notice shall be decided by the appropriate authority in charge of the disposal of government-owned shares according to the amount of the government-owned shares to be sold; provided, however, that the period of the initial publishing of such notice shall in no case be shorter than any of the applicable period specified herein below:

  (i) If the aggregate amount of shares for sale in a single offering is less than 3% of the total issued shares of the said enterprise: 14 days;

  (ii) If the aggregate amount of shares for sale in a single offering is equal to 3% or more but is less than 10% of the total issued shares of the said enterprise: 21 days; or

  (iii) If the aggregate amount of shares for sale in a single offering is equal to 10% or more of the total issued shares of the said enterprise: 28 days.

(5) After the expiration of the period of initial public notice provided in the preceding item (4), if the number of investors willing to take part in the negotiation is less than three (3), the appropriate authority in charge of the disposal of government-owned shares may shorten the period of public notification; provided that the period shortened shall not be less than five (5) days.

(6) Where the government-owned shares are to be sold or converted into other company's shares through negotiation, the negotiation shall not begin unless the number of investors who expressed its willingness to take part in the negotiation during public notice period exceeds three (3); provided, however, that if the number of investors willing to take part in the negotiation remains less than three (3) after the second investor soliciting process, the appropriate authority in charge of the disposal of government-owned shares may make contact with the interested investors directly for a negotiation for the sale of the government-owned shares pending release, only to the extent that the contents and terms and conditions provided in the original public notice have not been

materially changed.

(7) Where the government-owned shares are to be sold or converted into other company's shares through negotiation, the appropriate authority in charge of the disposal of government-owned shares may, contingent upon the situation of each individual case, request, in the public notice for soliciting interested investors to take part in the negotiation, the interested investor to furnish a deposit of a specific amount at the time of expressing their willingness to participate in the negotiation or prior to the execution of a contract. Such deposit shall be refunded, without interest, to the payer(s) thereof upon failure of the negotiation or after the investor(s) having successfully completed the negotiation has/have signed a contract and has/have fulfilled his/their obligations under such contract.

(8) Where the government-owned shares are to be sold or converted into other company's shares through negotiation, if the appropriate authority in charge of the disposal of government-owned shares discovers that the investors taking part in the negotiation are engaged in collusion or have conducted any unlawful or improper act harmful to consummation of a fair and reasonable share-releasing arrangement, the appropriate authority in charge of the disposal of government-owned shares may forthwith nullify the negotiation proceedings and the negotiation results, if any, and may further refer the case to judicial authorities for legal actions. Investors who are adjudicated by the competent judicial authority to have conducted unlawful or improper act shall be deprived of their respective qualification for participating in the share-releasing process to be initiated by the same enterprise thereafter.

(9) The appropriate authority in charge of the disposal of government-owned shares shall indicate in the public notice the provisions set out in the preceding item (8), and shall further indicate therein that the act of an investor to express its willingness to take part in the share-releasing negotiation shall be deemed as its consent to accept the provisions set out in the preceding item (8).

(10) The contents of the contract executed as a result of the sale or share conversion of government-owned shares through negotiation shall be submitted to the Legislative Yuan for its recordation by the appropriate authority in charge of the disposal of government-owned shares; provided, however, that if the parties to that contract are bond by a confidentiality obligation set out in that contract, an abstract of such contract will be reported to the Legislative Yuan instead.

V. Addendum

18. The provisions set out in these Key Points may apply *mutatis mutandis* to local government-owned enterprises.