

Order of the Ministry of Transport, National Development and Reform Commission and Ministry of Finance

(No. 11 [2008])

The Measures for the Transfer of Rights and Interests in Toll Roads, which were adopted at the 7th executive meeting of the Ministry of Transport on June 15, 2007, are hereby promulgated and shall come into force as of October 1, 2008.

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Measures for the Transfer of Rights and Interests in Toll Roads

Chapter I General Provisions

Article 1 For purposes of regulating the transfer of rights and interests in toll roads, protecting the legitimate rights and interests of the transferors, transferees and users and promoting the development of the cause of roads, these Measures are formulated in accordance with the Highway Law of the People's Republic of China (hereinafter referred to as the Highway Law) and the Regulation on the Administration of Toll Roads.

Article 2 These Measures shall be followed in the transfer of rights and interests in toll roads within the territory of the People's Republic of China.

Article 3 The following terms as used in these Measures are defined as follows:

1. The term “toll roads” refers to the roads (including bridges and tunnels) which are approved to collect vehicle tolls in accordance with the Highway Law and the Regulation on the Administration of Toll Roads. Toll roads include the roads for which the government repays the loan and commercial roads.

The term “roads for which the government repays the loan” refers to the toll roads which are built under the charge of the transport administrative departments of the people’s governments at and above the county level by utilizing loans or by raising funds from enterprises or individuals on a paid basis.

The term “commercial roads” refers to the toll roads which domestic and foreign economic organizations invested and built, or to the toll roads for which the government repays the loan and whose right to collect tolls is transferred to the domestic and foreign economic organizations.

2. The term “rights and interests in a toll road” refers to the rights to collect tolls, operate advertisements and operate service facilities on a toll road.

3. The term “transfer of rights and interests in toll roads” refers to a transaction, after a toll road is built and begins operation, whereby the transferor transfers its lawfully obtained rights and interests in the toll road to the transferee on a paid basis.

The term “transferors” refers to any domestic and foreign economic organizations which are to transfer to the transferees their lawfully obtained rights and interests in toll roads on a paid basis, including not-for-profit legal persons who specialize in building and managing roads for which the government repays the loan, and domestic and foreign economic organizations which invest in building commercial roads.

The term “transferees” refers to any domestic and foreign economic organizations which lawfully obtain the rights and interests in toll roads from the transferors on a paid basis.

Article 4 The state shall allow the transfer of rights and interests in toll roads in pursuance of law and in the mean time, strictly control the transfer of rights and interests in toll roads.

On the basis of making an all-round consideration of the necessity, reasonableness and burden on the general public and other factors, the state shall stringently restrict the roads for which the government repays the loan from being changed to commercial roads by way of transfer.

In the transfer of rights and interests in toll roads, the relevant laws, regulations and rules shall be followed and the principle of openness, fairness, impartiality and good faith shall be

observed.

Article 5 The transport administrative department of the State Council shall take charge of the transfer of rights and interests in toll roads throughout the country. The development and reform department and the finance administrative department of the State Council shall, according to their respective functions, be responsible for the administration of the transfer of rights and interests in toll roads.

Chapter II Conditions for Transfer of Rights and Interests in Toll Roads

Article 6 A road whose right to collect tolls is to be transferred shall conform to the technical grade and scale as described in Article 18 of the Regulation on the Administration of Toll Roads.

Article 7 The right to collect tolls of a road which is under any of the following circumstances shall not be transferred:

1. It is a separate bridge or tunnel with two vehicle lanes and is less than 1, 000 meters in length;
2. It is a Grade II road; or
3. More than 2/3 of the approved toll period has lapsed.

Article 8 The rights to collect tolls, operate advertisements and operate service facilities on the same toll road project may be transferred on a consolidated basis or be transferred separately.

Article 9 None of the following acts may be committed in the transfer of rights and interests in a toll road:

1. transferring the right to collect tolls by dividing a lawfully approved toll road project into several sections;
2. transferring the rights and interests in a toll road project and those in a non-toll-road project as a package;

3. the transferee has not completely succeeded the former responsibilities and obligations which the transferor undertakes to the government and the general public; or
4. transferring the rights and interests in a road for which the government pays the loan to an enterprise legal person free of charge.

Article 10 The transfer of the rights and interests in a toll road for which the loan of any international financial organization or foreign government has not been paid off shall, under relevant provisions of the state, and before the application for transfer is approved, be subject to the consent of the original department which examined and approved the use of foreign loan.

The transferee in the transfer of rights and interests in a toll road shall, under the relevant provisions of the state on the administration of investments, and before the application for transfer is approved, submit an investment project application to the investment administrative department with the corresponding administrative power for examination and approval. The contract on transfer of rights and interests in a toll road shall be submitted when submitting the investment project application for examination and approval.

Article 11 The transfer of the right to collect tolls for a toll road shall be subject to the consent of the following interested parties:

1. the creditors of this road;
2. the pledge-holder of the right to collect tolls for this road;
3. all of the investors of this road; and
4. the parties whose consent to the transfer or re-transfer of the right to collect tolls for the road is required by the contract on investment and construction of the road and the contract on transfer of the right to collect tolls for the road.

Article 12 The transferee in the transfer of the right to collect tolls for a road shall meet the following requirements:

1. Its financial status is good and the enterprise owner's rights and interests are not less than 35% of the actual construction cost of the project to be transferred;
2. It has a good business reputation and has not committed any serious violation of law and regulation during its economic activities; and

3. Other requirements as prescribed in laws and regulations.

The requirements for the transferee in the separate transfer of the right to operate advertisements or service facilities on a road shall conform to the local regulations, and the rules and regulations of the provincial people' s government.

Article 13 To transfer the right to collect tolls for a road for which the government repays the loan, an application may be filed with the provincial people' s government for extending the toll period, but the extension shall not exceed 5 years and the accumulative toll period shall not exceed 20 years. The accumulative toll period of a road, for which the government repays the loan, in a province, autonomous region or municipality directly under the Central Government in the Mid-western Region as determined by the state shall not exceed 25 years.

For the transfer of the right to collect tolls for a commercial road, the toll period shall not be extended and the accumulative toll period shall not exceed 25 years. The accumulative toll period of a commercial road in a province, autonomous region or municipality directly under the Central Government in the Mid-western Region as determined by the state shall not exceed 30 years.

No one may increase the vehicle tolls with the excuse of transfer of the right to collect tolls for a road.

Chapter III Procedures for Transfer of Rights and Interests in Toll Roads

Article 14 To transfer the right to collect tolls for a road, the transferor may, before going through the formalities for examination and approval of the transfer, first file with the examination and approval organ an application for initiating a transfer project.

The applicant shall submit the following materials when filing an application for initiating a transfer project:

1. the brief introduction to the road whose right to collect tolls is to be transferred, including the construction period of the road, technical grade, scale, investment sources and amount, the time of collecting tolls after it starts operation, incomes and payments relevant to

this toll road during the recent 3 years, etc. ;

2. causes and purposes of the transfer;
3. investment orientation of the income from the to-be-transferred road for which the government repays the loan;
4. the written consent of the interested parties as described in Article 11 of these Measures;
5. in the case of transferring the rights and interests in a toll road for which the loan of any international financial organization or foreign government has not been paid off, the written consent of the original department which examined and approved the use of foreign loan shall be provided;
6. the document of the provincial people' s government on approval of collecting vehicle tolls;
7. the accounting report of the immediate previous year audited by the audit organ or by a qualified accounting firm;
8. in the case of initial transfer of the right to collect tolls for a road, the construction completion based final accounts and audit report of this toll road shall be furnished;
9. in the case of transfer of the right to collect tolls for a commercial road, the articles of association of the company shall be furnished;
10. in the case of re-transfer of the right to collect tolls for a road, the former transfer agreement shall be furnished; and
11. other documents which the examination and approval organ deems necessary.

Article 15 After the examination and approval organ receives an application for initiating a transfer project, it shall conduct a preliminary examination on whether the right to collect tolls, which the applicant applies for transferring, meets the transfer conditions, and issue its examination opinions on initiating a transfer project.

The examination opinions on initiating a transfer project may be the basis which the transferor may, in making the pre-phase preparations for the transfer, use to certify that the to-be-transferred right to collect tolls for the road conforms to the transfer conditions.

The examination opinions on initiating a transfer project shall be valid for a year as of the date of issuance.

Article 16 To transfer the right to collect tolls for the following toll roads, the transferor shall authorize a qualified asset appraisal agency to assess the value of the right to collect tolls:

1. a road for which the government repays the loan;
2. a commercial road with fiscal investment; and
3. a road invested with state-owned capital.

The appraisal report issued by the asset appraisal agency shall be the basis for determining the minimum transaction price of the to-be-transferred right to collect tolls for the toll roads as described in the preceding paragraph.

The transferor shall, under the relevant provisions of the state on asset appraisal, submit the asset appraisal report issued by the asset appraisal agency to the relevant department for examination and approval or for archival purposes.

Article 17 The transferor shall authorize an asset appraisal agency, which satisfies the following conditions, to appraise the value of the right to collect tolls under Article 16:

1. The asset appraisal agency has the asset appraisal qualifications as prescribed in laws and administrative regulations;
2. The personnel of the asset appraisal agency have the professional knowledge and experience commensurate with the appraisal of the value of right to collect tolls for toll roads; and
3. Neither the asset appraisal agency nor any of its personnel commits any violation or has any bad record of violations during the recent three years.

Article 18 The method of present value of proceeds shall be adopted to appraise the value of the right to collect tolls in the transfer of rights and interests in a toll road. The proceeds period involved herein shall be stipulated by the transferor and the asset appraisal agency within the extent of the approved toll period.

Article 19 To transfer the right to collect tolls for a road for which the government repays the loan or for a commercial road with fiscal investment, the transferee shall be selected by

public bidding on a fair, impartial and open basis.

Article 20 The bidding activities relevant to the transfer of the rights and interests in toll roads shall strictly conform to the Bidding Law of the People' s Republic of China.

The transport administrative department of a provincial people' s government shall be responsible for the supervision and administration of the whole bidding process relevant to the transfer of the rights and interests in toll roads. The development and reform department and the finance administrative department of a provincial people' s governments shall, according to their respective functions, be responsible for the supervision over the bidding activities.

Article 21 As to the bidding activity in the transfer of the rights and interests in a toll road, the transferor shall publish a bid announcement in the newspapers, periodicals, information network or other media as designated by the state. The announcement shall last not less than 20 days.

Article 22 A base price shall be set for the bidding activity in the transfer of rights and interest in a road for which the government repays the loan or in a commercial road with fiscal investment or with state-owned capital investment. The base price for the bidding in the transfer of the right to collect tolls shall not be lower than the appraised price as approved or confirmed by the relevant department.

Article 23 The transferor shall prepare bid invitation documents according to law. The bid invitation documents shall include:

1. the basic information about the bid project, including the information about the construction period of the project, date of starting operation, technical grade and scale, investment sources and amount, incomes and payments during recent years, etc. ;
2. conditions, and qualification and credit-standing requirements for the transferee. To transfer the rights and interests in a road for which the government repays the loan or in a commercial road with fiscal investment, the transferee shall be required to promise that the enterprise it establishes to operate the road will not provide any guarantee to outsiders, including provision of guarantee in any form for a debt of the transferee, nor bear any liability of the transferee;
3. rights and obligations of the transferee;

4. way of payment for the transfer price, time limit (not exceeding 6 months after the contract' s entry into force) and guarantee requirements;
5. requirements for maintenance, afforestation, and water and soil conservation during the operating period;
6. procedures for dissolution and liquidation at the termination of operations, and the criterions on road, and the auxiliary facilities and service facilities on the road at the delivery of the rights and interests;
7. conditions for the termination and cancellation of the transfer agreement in the case of bankruptcy of the transferee or of the enterprise it establishes to operate the road;
8. conditions for the government' s termination of the agreement on transfer of rights and interest in the toll road;
9. conditions for preparation of the bid document, and the way, place and deadline for the service thereof;
10. bid opening place, and time arrangements for opening and evaluating the bid;
11. bid evaluation criterions, methods and procedures, and factors for the determination of invalid bid;
12. main terms in the transfer contract concluded;
13. plan on resettlement of employees;
14. plan on disposal of the creditor' s rights and debts; and
15. other matters necessary to be described.

Article 24 After the transferee is decided, the transferor and transferee shall sign a contract on transfer of the rights and interests in the toll road.

The transfer contract shall include the following terms:

1. the name and residence of the transferor and transferee;
2. project name and operating contents;
3. business scope and transfer period;

4. transfer price, time limit for paying the price (not exceeding 6 months after the contract' s entry into force), and way of payment;
5. matters concerning the delivery of assets;
6. plan on resettlement of employees of the transferor;
7. rights and obligations of the transferor;
8. rights and obligations of the transferee;
9. road maintenance and service quality guarantee measures (including the preparation of maintenance and repair security);
10. responsibilities for operating risks;
11. road maintenance responsibilities;
12. way and time for delivering the road;
13. methods for solving the disputes;
14. liabilities for either party' s breach of contract;
15. conditions for modification or cancellation of contract;
16. ownership and delivery of the right to collect tolls for the road after the expiration of the transfer contract; and
17. other terms which both the transferor and the transferee believe necessary.

Article 25 The contract on transfer of the right to collect tolls for a road shall become effective as of the date of approval of the transfer of the right to collect tolls for the road.

Article 26 The transfer of right to collect tolls for a national highway (including national backbone highway or national expressway network project, the same below) shall be subject to the approval of the transport administrative department of the State Council. The transfer of the right to collect tolls for any road other than a national highway shall be subject to the examination and consent of the provincial transport administrative department and be submitted to the provincial people' s government for approval.

The transfer of the rights to operate advertisements, operate service facilities and collect tolls for a road on a consolidated basis shall be subject to the approval of the examination and

approval organ with the power to examine and approve the right to collect tolls for roads.

The examination and approval of the separate transfer of the right to operate advertisements or service facilities on a road shall be governed by the local regulations, and the rules and regulations of the provincial people' s government.

Article 27 To apply for the transfer of the right to collect tolls for a road, the transferor shall submit to the examination and approval organ the application documents, including:

1. the examination opinions on initiating a transfer project if it has ever filed an application for initiating a transfer project, or the relevant materials as listed in Article 14 if it has never filed any application for initiating a transfer project;
2. the materials relevant to the appraisal of the value of the right to collect tolls, which was made during the pre-phase of transfer under pertinent provisions, and the document on the examination and approval or archival-filing of the asset appraisal report;
3. the information about bidding activity during the pre-phase of transfer and about the determination of the transferee;
4. the transferee' s financial accounting report of the immediate previous year issued by the audit department or an accounting firm, and the duplicate of legal person business license of the transferee;
5. the formalities undergone under Article 10 and written opinions of consent;
6. specific investment orientation of the transfer income;
7. information about management of rights and interests in a toll road;
8. contract on transfer of the rights and interests in a toll road, which was signed by the transferor and transferee; and
9. other documents which the examination and approval organs believes necessary.

Article 28 The examination and approval organ shall, according to the requirements in the Administrative License Law and relevant provisions, handle formalities for the examination and approval of transfer of the right to collect tolls in a road.

When the examination and approval organ examines an application for transfer of the rights and interests in a toll road, it shall comprehensively take into account such factors as state

interests and public interests.

If the examination and approval organ consents to the transfer of the right to collect tolls for a road, it shall issue a document on approval of transfer of the right to collect tolls for the road.

Article 29 Where the transfer of the right to collect tolls for a road is approved by the provincial people' s government, the transferor shall, within 30 days after the date of approval, submit the examination and approval opinions of the provincial transport administrative department, the approval document of the provincial people' s government as well as the transfer contract to the transport administrative department of the State Council for archival purposes.

Article 30 The transport administrative department of the State Council shall, within 30 days after the date of approval of the transfer of the right to collect tolls for a road, send a copy of the approval document to the development and reform administrative department and public finance administrative department of the State Council.

Article 31 The transferor shall be responsible for the genuineness and legitimacy of the application materials it has submitted.

Chapter IV Management of Use of Transfer Income

Article 32 The income from transfer of the rights and interests in a road for which the government repays the loan shall, except for the portion to be used for repaying the road construction loan and the raised fund on a paid basis, be totally used for road construction. No entity shall use the said income for any project other than road construction project.

The portion of the income from the transfer of the rights and interests in a commercial road with fiscal investment which is attributable to the fiscal investment shall, except for the portion to be used for repaying the road construction loan, be mainly used for road construction.

Article 33 The orientation of uses of the income from transfer of the rights and interests in a commercial road entirely invested with private funds shall be decided by the investors

themselves.

The relevant departments of the state shall encourage the investors to continue to use the said income as investment to road construction projects.

Article 34 The portion of income from transfer of the rights and interests in a road for which the government repays the loan or in a commercial road with fiscal investment, which is attributable to the fiscal investment, shall be incorporated into the budgetary management. The transferor shall, within 3 working days after obtaining the aforesaid transfer income, turn it over to the treasury according to the prescribed budget level. In the case of reform of non-tax income management system, the relevant provisions on the reform shall be followed. The public finance administrative department shall incorporate the transfer income into the budget of fiscal revenue and expenditure of the current year and follow the relevant provisions on treasury management in the allocation of funds.

Chapter V Post-transfer Management and Take-back of Rights and Interests in Toll Roads

Article 35 The transferee owns the rights and interests in a toll road during the transfer period while the road and the auxiliary facilities on the road are still in the ownership of the state.

Article 36 At the expiration of the transfer period as stipulated in a contract on transfer of the rights and interests in a toll road, the road, and auxiliary facilities and service facilities on the road shall be in a good technical state, be taken back by the state free of charge and be managed by the transport administrative department.

If it is necessary for the state to take back the transferred rights and interests in a toll road prior to the expiration of the transfer period for the reason of public interests, the transport administrative department to receive the rights and interests in the said toll road shall compensate the transferee for its loss in pursuance of law. The maximum compensation amount shall be computed and determined on the basis of the former transfer price and the proportion of the period taken back ahead of schedule to the formerly approved transfer period.

Article 37 After the transfer of the rights and interest in a toll road, the function of the road administration on this road shall still be exercised by the transport administrative

department of the local people' s government at or above the county level or by the dispatched office or personnel of the road administration organ.

Article 38 After the transferee obtains the rights and interests in a toll road in pursuance of law, the lawfully established road operating enterprise shall, under the criterions and requirements of the state, do a good job in the management of road maintenance, afforestation, as well as the water and soil conservation within the range of land used for the road, and regularly inspect, test and maintain the toll road and facilities along the road so as to ensure that the toll road be in a good technical state.

The road operating enterprise shall, according to the requirements of the transport administrative department, regularly provide a report on the test of technical state of the road.

Article 39 A road operating enterprise shall accept the industrial administration of the transport administrative department of the State Council and the transport administrative department of the people' s government of the province, autonomous region or municipality directly under the Central Government, collect tolls through network according to relevant requirements, observe other uniform requirements for the road network and timely provide statistical materials and relevant operation information.

Article 40 After the transfer of rights and interests in a toll road, the transport administrative department of the province, autonomous region or municipality directly under the Central Government shall supervise and inspect the management of the collection of tolls and maintenance of the road.

The transport administrative department of the province, autonomous region or municipality directly under the Central Government shall check the toll road whose rights and interests were transferred not later than 6 months prior to the expiration of the transfer period as stipulated in the contract on transfer of the rights and interests in a toll road. If the road, upon check, conforms to the technical grade and criterions as approved at the transfer of the rights and interests in the toll road, the road operating enterprise may, under relevant provisions of the state, go through the formalities for delivering the road to the transport administrative department at the expiration of the transfer period. If it does not conform to the technical grade and criterions as approved at the transfer of the rights and interests in the toll road, the road operating enterprise shall maintain the road within the time limit as determined by the transport administrative department, and shall not go through the road delivery formalities until the road meets the relevant requirements. If the road does not meet the relevant requirements after the expiration of the transfer period, the transport administrative department shall take back the right to collect tolls for the road, handle the road delivery

formalities, designate another entity to maintain the road and have the maintenance expenses paid by the former road operating enterprise.

Chapter VI Legal Liabilities

Article 41 Anyone who, in violation of these Measures, approves the transfer of rights and interests in a toll road shall be investigated and punished under Article 47 of the Regulation on the Administration of Toll Roads.

Article 42 For any violator of Article 9 of these Measures, the transport administrative department of the State Council or the provincial transport administrative department shall, according to its functions, order it to make a correction and give an administrative sanction to the directly responsible person-in-charge and other directly liable persons. If any crime is constituted, they shall be subject to criminal liabilities.

Article 43 Any transferor who, in violation of these Measures, fails to conduct a bidding process if it should have selected the transferee by bidding, or whose bid procedures or contents do not conform to the provisions of these Measures, shall be investigated and punished in accordance with the Bidding Law of the People's Republic of China.

Article 44 Where an intermediary agency, in violation of these Measures, commits falsification during the audit or appraisal of the project of transfer of rights and interests in a toll road or issues any seriously untrue accounting report or appraisal report, it shall, in light of the seriousness of the circumstance, be punished by the relevant institution under relevant laws and regulations.

Article 45 Anyone who, in violation of these Measures, commits any of the following acts shall be investigated and punished in accordance with Article 52 of the Regulation on the Administration of Toll Roads:

1. the transferor fails to turn over to the state treasury the income from the transfer of the rights and interests in a road for which the government repays the loan or the portion of the income from the transfer of the rights and interests in a commercial road with fiscal investment, which is attributable to the fiscal investment, in full amount;
2. the transport administrative department or the finance administrative department fails to use the income from the transfer of the rights and interests in a road for which the government

repays the loan or the portion of the income from the transfer of the rights and interests in a commercial road with fiscal investment, which is attributable to the fiscal investment, to repay the loan or the raised fund on a paid basis, or uses it for any purpose other than road construction.

Article 46 The transferee who, in violation of these Measures, fails to perform the obligations of road maintenance, afforestation and water and soil conservation within the range of land used for the road shall be investigated and punished in accordance with Articles 54 and 55 of the Regulation on the Administration of Toll Roads.

Article 47 An examination and approval organ or any of its functionaries who, in violation of these Measures, is under any of the following circumstances shall be investigated and punished in accordance with Articles 72 and 74 of the Administrative License Law of the People's Republic of China:

1. failing to issue examination and approval opinions within the time limit as prescribed in these Measures;
2. granting approval to an application for transfer of rights and interests in a toll road which does not meet the statutory conditions and procedures, or by overstepping the statutory powers; or
3. during the course of acceptance or examination of an application, failing to notify, once and for all, the transferor of the contents that must be supplemented and corrected.

Article 48 Where any of the functionaries of the examination and approval organ extorts or accepts money or property from others or seeks other benefits during the process of examination and approval of transfer of rights and interests in toll roads, he shall be investigated and punished in accordance with Article 73 of the Administrative License Law of the People's Republic of China.

Chapter VII Supplementary Provisions

Article 49 The time limits as prescribed in these Measures shall be computed on the basis of working days, excluding statutory holidays.

Article 50 These Measures shall come into force as of October 1, 2008. The Administrative Measures for Paid Transfer of Right to Operate Roads promulgated by Order No. 9 of the Ministry of Communications on October 9, 1996 shall be abolished simultaneously.