

Translation



The following regulations, issued by the PRC government in 2016, aim to create clearer and stronger financial incentives for institutions and individuals to convert scientific breakthroughs into commercially viable or otherwise practical applications.

Title

State Council Notice on the Publication of Certain Regulations on Implementing the Law of the People's Republic of China on Promoting the Conversion of Scientific and Technological Achievements
国务院关于印发实施《中华人民共和国促进科技成果转化法》若干规定的通知

Author

PRC State Council (国务院). The State Council is China's cabinet and the executive branch of the PRC government.

Source

PRC government website. The Notice is dated February 26, 2016 and was uploaded to the website on March 2, 2016.

The Chinese source text is available online at:

https://web.archive.org/web/20201119173507/http://www.gov.cn/zhengce/content/2016-03/02/content_5048192.htm

Translation Date

January 7, 2021

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Editor

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To the people's governments of all provinces, autonomous regions, and province-level municipalities, and all ministries and commissions of the State Council and their respective agencies:

Several Regulations on Implementing the Law of the People's Republic of China on Promoting the Conversion of Scientific and Technological Achievements are hereby issued to you. Please carry them out conscientiously.

State Council
February 26, 2016

(This document to be released publicly)

Several Regulations on Implementing the *Law of the People's Republic of China on Promoting the Conversion of Scientific and Technological Achievements*

The following provisions have been formulated in order to accelerate implementation of the innovation-driven development strategy; to put into practice the *Law of the People's Republic of China on Promoting the Conversion of Scientific and Technological Achievements*; to open up channels for combining science and technology (S&T) and the economy; to promote mass entrepreneurship and mass innovation; to encourage research and development (R&D)

institutions, institutions of higher learning ("universities"), enterprises and other innovation entities, as well as S&T personnel, to transfer and convert scientific and technological achievements into practical applications; and to advance the upgrading of the economy based on raising quality and improving efficiency:

I. Promoting technology transfer by R&D institutions and universities

(1) The State shall encourage R&D institutions and universities to transfer S&T achievements to enterprises or other organizations by means of assignment, licensing, or investment based on assessed value. State-established R&D institutions and universities should adopt measures which give priority to small- and medium-size enterprises (SMEs) in the transfer of S&T achievements, so as to provide a supply of technology for mass entrepreneurship and mass innovation.

For the S&T achievements in their possession, state-established R&D institutions and universities can decide independently among assignment, licensing or investment based on assessed value, and except where state secrets or national security are involved, they do not need to apply for approval or filing.

State-established R&D institutions and universities are entitled, in accordance with law, to use the assessed value of the S&T achievements in their possession for confirmation of the equity or capital contribution percentages in conversions into shares, and, by means of a promoter's agreement, investment agreement, articles of association or other modality, clearly stipulate the ownership, prices, numbers of shares given in conversion, capital contribution proportions, and other matters pertaining to S&T achievements, so as to clarify property rights.

(2) State-established R&D institutions and universities should establish and improve technology transfer work systems and mechanisms, refine their management system for the transfer and conversion of S&T achievements into practical applications (科技成果转移转化), specify the parties responsible for various tasks in the conversion of S&T achievements into practical applications (科技成果转化), establish and improve a leadership team-based collective decision-making system for major S&T achievement conversion matters, strengthen construction of specialized teams for S&T achievement conversion, optimize the S&T achievement conversion process, and carry out S&T transfer by their own organizations responsible for S&T transfer work or by commissioned independent institutions that provide S&T achievement conversion services. R&D institutions and universities shall be encouraged to establish specialized S&T transfer organizations on the precondition that staffing levels do not increase.

All income that state-established R&D institutions and universities earn from the conversion of S&T achievements shall be retained by such organizations and included in their budgets, rather than handed over to the treasury; after deducting the rewards and compensation of personnel who made important contributions to the completion and conversion of S&T achievements, it should be used mainly for relevant work such as scientific and technological R&D and achievement conversion, and for supporting the operation and development of technology transfer institutions.

(3) State-established R&D institutions and universities should determine the prices of the S&T achievements in their possession by means of agreement-based pricing, listing and trading on technology trading markets, auctions, and other such market-based methods. In the case of agreement-based pricing, the entities in possession of S&T achievements should publicly announce the names and transaction prices of the S&T achievements at their respective entities, with the duration of the announcement to be at least 15 days. Entities should specify and make public the procedures and methods for handling disputes.

(4) For SMEs that use the conversion of S&T achievements into shares as an investment method, the State shall encourage them to fully utilize the capital markets to grow bigger and stronger. The financial and S&T administrative departments of the State Council must study and formulate relevant policies exempting state-owned shares formed by state-established R&D institutions and universities using the conversion of technology into shares from having to transfer holdings to the National Social Security Fund when such enterprises are listed.

(5) Before March 30 of each year, state-established R&D institutions and universities should submit to their departments in charge, in accordance with the prescribed format, an annual report on their conversion of S&T achievements into practical applications over the preceding year. Following review, by April 30 of each year, the departments in charge will submit each entity's annual report on conversion of S&T achievements into practical applications to the information management system designated by the S&T and financial administrative departments. The content of the annual report mainly includes:

1. Overall results obtained and problems faced in the conversion of S&T achievements into practical applications;
2. The number of S&T achievements obtained according to law, and relevant circumstances;
3. Circumstances relating to S&T achievement assignment, licensing and investment based on assessed value;
4. Circumstances relating to the promotion of industry-university-research institute collaboration, including self-built (自建) and jointly built R&D institutions, S&T transfer institutions, and service platforms for the conversion of S&T achievements into practical applications; circumstances relating to the signing of S&T development contracts, S&T consulting contracts and S&T service contracts; and circumstances relating to talent cultivation and personnel flows;
5. Circumstances relating to S&T achievement conversion performance and rewards and punishments, including the earning and distribution of income from conversion of S&T achievements into practical applications, rewards and compensation for S&T achievement conversion personnel, etc.

II. Stimulating innovation and entrepreneurship by S&T personnel

(6) When state-established R&D institutions and universities formulate systems for distributing the earnings from S&T achievements, they must, in accordance with regulations, fully listen to the opinions of their organizations' S&T personnel, and make public relevant systems at their organizations. When rewards are given according to law to persons who complete S&T achievements at work, and other personnel who make important contributions

to the conversion of S&T achievements into practical applications, execution shall be in accordance with the following provisions:

1. Where technology assignment or licensing methods are used in the conversion of S&T achievements produced at work, at least 50% of the net income obtained from the technology assignment or licensing should be withdrawn to use for rewards.

2. Where investment with the assessed value of S&T achievements is used to implement conversion, at least 50% of the shares or capital contribution percentage obtained from investment with the assessed value of S&T achievements shall be withdrawn to use for rewards.

3. For personnel who make major contributions in the R&D and conversion of S&T achievements into practical applications, their share of rewards received shall be at least 50% of the total amount of rewards.

4. For the rewards given to personnel for carrying out activities such as S&T development, S&T consulting and S&T services in the course of S&T achievement conversion work, the execution can be in accordance with the "Law on Promoting the Conversion of Scientific and Technological Achievements" and these provisions.

(7) S&T personnel of state-established R&D institutions and universities, provided they perform the duties of their positions and complete the work of their jobs, may, with the consent of their organizations, work part-time at enterprises, etc., engaging in S&T achievement conversion activities. R&D institutions and universities should establish a set of rules, or enter agreements with S&T personnel, on the rights and obligations of such personnel during and after their part-time and off-duty engagement in S&T achievement conversion activities. In principle, the National Science and Technology Program and Foundation projects undertaken by S&T personnel may not be suspended during periods of off-duty entrepreneurship. Where suspension is truly necessary, procedures shall be handled in accordance with the relevant administrative measures.

We shall actively promote the gradual elimination of administrative levels (行政级别) for the business management positions of state-established R&D institutions and universities and their internally established schools, departments and institutes, and establish personnel management systems that conform to the fundamental patterns of S&T innovation, so as to promote the transfer and conversion of S&T achievements into practical applications.

(8) For S&T achievement conversion rewards received by S&T personnel who take on leadership positions, implementation shall be in accordance with the principle of categorized management (分类管理):

1. Where the principal leaders of the public institutions of State Council departments and entities, and of local affiliated R&D institutions and universities (not including internally established institutions), as well as principal leaders of organizations that are affiliated with such institutions and possess independent legal person qualifications, are the main completers of S&T achievements or make important contributions to the conversion of S&T achievements into practical applications, they may receive cash rewards in accordance with the provisions of the "Law on Promoting the Conversion of Scientific and Technological Achievements," and in principle may not receive equity incentives. Where other S&T personnel who take on leadership

roles are the main completers of S&T achievements or make important contributions to the conversion of S&T achievements into practical applications, they may receive such rewards and compensation as cash, shares and capital contribution percentages in accordance with the provisions of the "Law on Promoting the Conversion of Scientific and Technological Achievements."

2. When the public announcement system is implemented for distributing the earnings from S&T achievement conversion to S&T personnel who take on leadership roles, their authority shall not be used to misappropriate earnings from conversion of the S&T achievements of others.

(9) The State shall encourage enterprises to establish and improve S&T achievement conversion incentive and distribution mechanisms, and to fully utilize methods such as equity sales, equity awards, stock options, project revenue bonuses and job bonuses to stimulate S&T personnel to carry out S&T achievement conversion. The financial, S&T and other administrative departments of the State Council must study and formulate equity and bonus incentive policies for state-owned S&T enterprises, and implement incentives for S&T personnel together with deepening reform of state-owned enterprises (SOEs).

(10) During the process of converting S&T achievements into practical applications, where prices are determined by means of listing and trading on technology trading markets, auctions and other such methods, or pricing is by agreement, and the proposed transaction prices are announced at the organization itself and the technology exchange market, then under the precondition that the organization's leadership performs its duty of due diligence and there is no unlawful gain, it shall be exempted from decision-making liabilities that arise in the pricing of S&T achievements due to subsequent changes in values following conversion of S&T achievements into practical applications.

III. Creating a good environment for the transfer and conversion of S&T achievements into practical applications

(11) The departments in charge of R&D institutions and universities, as well as the financial, S&T and other relevant departments, should take S&T achievement conversion as one of the evaluation indicators when performing performance evaluations of organizations.

(12) Support shall be increased for R&D institutions and universities (and their personnel) with outstanding performance in S&T achievement conversion. The departments in charge of R&D institutions and universities, as well as the financial, S&T and other relevant departments, shall give evaluations of organizations' S&T achievement conversion performance based on the organizations' annual S&T achievement conversion reports, and shall take the evaluation results as a basis of reference in granting support for organizations.

State-established R&D institutions and universities should devise incentive systems and give rewards to specialized S&T transfer organizations with outstanding performance.

(13) We must properly perform the work of extending nationwide the pilot tax policies for national independent innovation (自主创新) demonstration zones, and properly put into practice existing tax policies for promoting conversion of S&T achievements into practical

applications. We must actively study and explore tax policies for supporting individuals and organizations in the conversion of S&T achievements into practical applications.

(14) Relevant departments of the State Council must, in accordance with the provisions of laws and the relevant regulations on the categorization reform (分类改革) of public institutions,¹ study and formulate S&T achievement conversion policies that conform to the characteristics of their administered industries and regions. For S&T achievement conversion that involves national security or state secrets, the departments in charge of industries must refine the administrative system, so as to stimulate and standardize relevant S&T achievement conversion activities. For S&T achievements that involve state secrets, relevant units should properly perform declassification and classification downgrading work in a timely fashion based according to the circumstances.

(15) All localities and departments must effectively strengthen the organization and leadership of S&T achievement conversion work, promptly study new circumstances and new problems, strengthen policy coordination, optimize the policy environment, carry out monitoring and evaluation, promptly summarize and extend experiences and practices, intensify propaganda efforts, improve the quality and efficiency of S&T achievement conversion, and promote the transformation and upgrading, quality improvement, and increased efficiency of China's economy.

(16) The *Notice of the General Office of the State Council on Forwarding Certain Regulations of the Ministry of Science and Technology and Other Departments on Promoting the Conversion of Scientific and Technological Achievements* ([1999] No. 29) shall be repealed concurrently. Where previous relevant provisions are inconsistent with these provisions, these provisions shall be followed.

¹ Translator's note: "Public institutions" (事业单位) are organizations created and led by PRC government departments that provide social services. Unlike state-owned enterprises (SOEs), public institutions do not create material products and do not generate income. Public institutions are not considered government agencies, and their employees are not civil servants. Most public institutions are fully or partially government-funded, but some fully privately funded (but still government-led) public institutions exist. Public institutions typically provide services in areas such as education, science and technology, culture, health, and sanitation.