

China - Circular on Serious Implementation of the Urgent Notice of the State Council General Office Concerning Enhancement of Management over State-Owned Assets in Foreign-Invested Enterprises, 1996

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**Circular on Serious Implementation of the Urgent Notice
of the State Council General Office Concerning En-
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Foreign-Invested Enterprises
(Promulgated by State-Owned Assets Administration on
April 16, 1996)** 1
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2 On November 22, 1995, the General Office of the State Council issued the Urgent Notice on Issues Relating to Current Examination and Approval of Enterprises with Foreign Investment (Guobanfa Plain Code Telegram No.35<1995>, hereinafter referred to as the Urgent Notice), which, has provided clear stipulations concerning some prominent issues existing in the current process of examination and approval of enterprises with foreign investment and the management of state-owned assets, requiring the tightening of examination and approval of foreign investment projects and at the same time “strengthening the management of state-owned assets to ensure their value preservation and appreciation”. In order to ensure the smooth administration of state-owned assets in foreign-invested enterprises, the State Council General Office also requires, in the notice, that “governments of various levels and relevant departments concerned should actively support the work of state-owned assets administrative departments and evaluation agencies”. In the spirit of recent instructions by Central Party Committee and State Council leaders on strengthening state-owned assets management in foreign-invested enterprises, and with a view to implementing the stipulations of the Urgent Notice, this circular is hereby issued to address the relevant questions concerning the management of state-owned assets in foreign-invested enterprises.

3 I. State-owned assets administrative departments of all levels

should, in accordance with the requirements of the Urgent Notice, immediately organize forces to conduct in an in-depth manner the work of managing state-owned assets in foreign-invested enterprises. Special organs should be appointed to be responsible for this matter and chief leaders or the competent leaders in charge of managing state-owned assets in enterprises should assume responsibility in person as an institutional guarantee. Currently, emphasis should be laid on doing the following items well.

1. Deeply conduct surveys and studies of the status of state-owned assets management in foreign-invested enterprises. The stock of state-owned assets in foreign-invested enterprises and their changes upward or downward should be accurately found out; the operational efficiency of those state-owned assets should be ascertained and forecasts about the trends of their changes should be made through analysis; the main problems relating to the management of such state-owned assets and their root causes should be identified and analyzed, including issues of infringement by unlawful foreign businessmen and dereliction of duty on the part of Chinese management as well as the losses in state-Chinese assets arising therefrom, and measures should be immediately adopted to resolve those problems and the results of solution should be reported to the State State-Owned Assets Administration level by level.

2. Actively coordinate the investigations by financial and taxation departments on the distribution, utilization and collection of the operational revenues from state-owned assets in foreign-invested enterprises and on the status of corporate tax payment, deduction or exemption. In accordance with the stipulations of the Caigongzi Document No.295(1995) jointly issued by the Ministry of finance and the State State-Owned Assets Administration, collaboration is required with the financial departments in surrendering and monitoring the hand-over of operational revenues from state-owned as-

sets.

6 3. Conduct a statistical survey on the basic facts of state-owned assets in foreign-invested enterprises, and the results of the survey as well as attached written explanations should be submitted to the State State-Owned Assets Administration by the end of June (statistical forms are attached to this circular).

7 II. The work of state-owned assets management should be strengthened at the link of examination and approval of the establishment of enterprises with foreign investment, and strict procedures should be applied to the state-owned assets evaluation and confirmation prior to the examination and approval. The work of project proposal and confirmation of state-owned assets evaluation should be closely linked with state-assets management so as to avoid losses of state assets that may result from delinkage* of the two tasks.

8 1. The Administrative Method for State-Owned Assets Assessment (State Council Degree No.91) should be strictly abided by. Any enterprise and unit which intends to contribute state-owned assets as investment to enterprises with foreign investment must have the assets assessed and the results of assessment shall be submitted to the departments of state assets administration for confirmation. If enterprises with foreign investment, which are established after the issuance of State Council General Office's Urgent Notice on November 22, 1995, are found to fail to go through the procedure of assets assessment and confirmation or to violate the rules by non-assessment or under-evaluation, the causes must be investigated and serious treatment shall be meted out in cases of violation of State Council General Office rules. In such cases, apart from necessary economic penalties, the leaders of the Chinese partners shall be held responsible. Cases of failure to assess the state assets that amount to fairly big value and state assets losses arising therefrom shall be reported to State State-Owned Assets Admin-

istration, which may then further be reported to the State Council when necessary.

9 2. To better coordinate the management of state assets assessment with that of state-owned property right and let assets assessment play a better role in basic administration and make state-owned property management more scientific, realistic and operable, departments of state-owned assets administration should make full use of the results of assets assessment in conducting the job of state property right management in foreign-invested enterprises and verification of state assets contribution should be based on the notification of assessment confirmation.

10 3. To prevent unlawful foreign businesses from over-pricing their investments in the form of either tangible assets like imported machinery and equipment or intangible assets like proprietary technology, and to prevent them from contributing shoddy or outdated assets as quality or new ones, the monitoring agencies and competent authorities in charge of examining and approving equity or contractual joint venture contracts shall require the Chinese parties to provide price assessment reports from commodity inspection departments or documents of state assets assessment confirmation from state assets administrative departments.

11 III. Strengthening management of Chinese state-owned property right in foreign-invested enterprises so as to effectively safeguard the legitimate rights and interests of state assets owners.

12 1. Prior to the approval of enterprises with foreign investment, the state-owned assets administrative departments shall, through state assets monitoring agencies or enterprise administrative departments, require Chinese parties to submit their joint venture contracts for examination, and if questions of unreasonably low ratio of equity share or revenue share or unreasonably arrangements in cost sharing and managerial staff, they are obliged to order the

Chinese partners in the ventures to contact the foreign partners in a timely manner for appropriate settlement.

13 2. After the registration and operation of foreign-invested enterprises, state assets administrative departments should collaborate with industrial and commercial administrative departments in regular examination of the status of cash contributions by foreign partners and fulfillment of other terms of cooperation. If the cash contribution is not in place according to contractual time limit, they shall require the Chinese parties to discuss with foreign parties the adjustment of equity contribution ratios and terms of cooperation, and the foreign parties shall be held responsible for the losses arising from foreign party's violation of contractual terms.

14 3. When major changes in property like capital increase or stock enlargement in foreign-invested enterprises involve the exercise of investor rights, the Chinese partners should listen to report by Chinese managerial staff and call meetings of technical and financial staff for joint deliberation and decision-making prior to convention of board of directors. Cases involving fairly large value or affecting the position of Chinese parties' majority equity holders, approval should be solicited from state assets monitoring departments or enterprise administrative departments, which should be filed with state assets administrative department for record.

15 4. Where Chinese parties are majority equity owners in equity or contractual joint ventures, changes in property right are subject to corporate assets assessment by state assets administrative departments in accordance with the Administrative Method for State-Owned Assets Assessment and its implementing rules.

16 IV. Establishing the system of state-owned assets report and assessment in foreign-invested enterprises so as to ensure the value preservation and appreciation of state-owned assets.

17 1. State assets administrative department of various levels should

enhance working links with financial departments and should assist the financial departments in verifying the annual final accounts of foreign-invested enterprises, and on the basis of corporate accounting reports, carry out sectoral general analysis about the state-owned assets stock and its upward or downward changes of foreign-invested enterprises as well as economic performance analysis. The materials of collective regional reports and written explanations should be submitted by the end of June every year to State State-Owned Assets Administration and Ministry of Finance.

2. The system of examining state assets value preservation and appreciation in foreign-invested enterprises should be established, and the examinations of foreign-invested enterprises or Chinese partners in such enterprises shall be conducted in accordance with the stipulations of the Trial Method for Examining State-Owned Assets Value Preservation and Appreciation (Guoziqifa No.98<1994>) jointly formulated and issued by State State-Owned Assets Administration, Ministry of Finance and Ministry of Labor. The criteria of examination shall be set and issued by the monitoring agencies or enterprise administrative departments.

State assets administrative departments of all levels are obliged to organize and push forward the work of examination and carry out holistic and industry -by -industry examination of the status of state assets value preservation and appreciation in foreign-invested enterprises.

V. Strengthening the discipline and code of behavior for Chinese parties and urging Chinese partners to seriously live up to the responsibility of safeguarding the rights and interests of Chinese state assets owners.

1. In collaboration with the monitoring agencies or enterprise administrative departments, state assets administrative departments

of all levels shall urge Chinese partners in foreign-invested firms to seriously fulfill their duty of the principal investors and the responsibility of preserving an increasing the value of state-owned assets and let them effectively exercise all their legitimate right and safeguard the interests of Chinese state assets owners. State assets administrative departments shall regularly organize sporadic examinations to find out whether the Chinese partners have effectively exercised all their rights and whether they have fulfilled all the duties prescribed by the monitoring and enterprise administrative departments.

22 2.The qualifications of Chinese partners in foreign-invested enterprises should be standardized. Shell enterprises or those without the function of production and operation can hardly fulfill the rights and obligations of joint venture partners and cannot be allowed to continue holding the state property rights in foreign-invested enterprises, and therefore necessary adjustments should be made to the effect that the monitoring agencies or enterprise administrative departments re-decide new Chinese partners, and after obtaining the agreement of state assets administrative departments, formalities of property right transfer and registration shall be conducted.

23 Appendix: Forms of statistical survey on the basic status of state-owned assets administration in foreign-invested enterprises(omitted)

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