



Supervision

Guiding Opinions on Strengthening Legal Risk Prevention in the International Operation of Central Enterprises

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All central enterprises:

In order to meet the needs of the rapid development of the international operation of central enterprises, give full play to the supporting and guaranteeing role of the legal work of enterprises, effectively prevent overseas legal risks, and effectively maintain the safety of state-owned assets, the following guiding opinions are put forward.

1. Attach great importance to legal risk prevention in international operation

(1) Fully understand the important role of legal risk prevention in international operation. In recent years, the pace of international operation of central enterprises has been accelerating, the number of overseas investment and mergers and acquisitions, foreign trade and engineering contracting projects has increased significantly, and the total amount of overseas state-owned assets has increased significantly. But at the same time, the legal risks in the international operation of enterprises are increasingly prominent, and the work of risk prevention and control and response to foreign-related cases needs to be strengthened urgently. At present, the world economy is undergoing in-depth transformation and adjustment, with frequent multilateral and bilateral economic dialogues and negotiations, and changes in international economic and trade rules. The external policy and legal environment for enterprises to operate internationally is more complex and severe. In order to thoroughly implement the requirements of the 18th National Congress of the Communist Party of China on "enhancing the ability of enterprises to operate internationally and cultivating a number of world-class multinational companies", and to speed up the transformation from domestic operations to international operations, central SOEs must take the prevention of overseas legal risks into consideration. On the important agenda of international operation, we should pay close attention to it.

(2) Firmly establish the awareness of rules and the business philosophy of compliance with laws and regulations. It is necessary to give full play to the role of legal work in supporting and guaranteeing the international operation of enterprises, pay attention to mastering and applying international rules, and abide by the laws of the country where they are located, as well as my country's laws, regulations and rules on foreign investment and management of overseas state-owned assets. Continuously improve the ability to use legal thinking and legal means to solve various complex and difficult problems encountered in international operations. It is necessary to carry out overseas business management activities in compliance with laws and regulations, avoid vicious competition in violation of regulations, strive to create a good image of "responsible central enterprises", "law-based central enterprises" and "sunshine central enterprises", and effectively build a bottom line for enterprises to prevent overseas legal risks.

2. Effectively strengthen the construction of legal risk prevention mechanism and system for international operation

(3) Accelerate the promotion of overseas businesses and overseas subsidiaries to establish and improve legal risk prevention mechanisms and systems. In accordance with the principle of "prevention in advance and control in the event, supplemented by post-event remediation", establish and improve the legal risk prevention mechanism and system with the comprehensive realization of legal review of business contracts, rules and important decisions as the main

content, and effectively prevent legal risks. It extends to all overseas businesses and overseas subsidiaries, branches and offices (referred to as overseas subsidiaries). It is necessary to continuously improve the rules and regulations suitable for international operation, and embed the legal risk prevention mechanism into overseas listing and mergers and acquisitions, major project contracting, strategic investment introduction, corporate governance, financial and tax management, labor and employment, environmental protection, intellectual property and anti-counterfeiting. Commercial bribery and other business processes, to achieve full coverage of legal risk prevention from project feasibility study to decision-making, from negotiation and signing to operation, termination, withdrawal and other international business activities.

(4) Attach importance to strengthening the legal risk prevention work system and team building for international business operations. It is necessary to establish a legal risk prevention work system for international business operations led by the general counsel, with division of labor between legal affairs agencies and business agencies, and cooperation and participation of legal counsel and business personnel. Pay attention to the personnel and funds invested in strengthening the prevention of overseas legal risks, and guide and urge qualified overseas subsidiaries to set up legal affairs offices or assign full-time legal advisers. It is necessary to take various measures to strengthen business training, exercise through multiple channels and multiple positions, and cultivate legal professionals. At the same time, attention should be paid to attracting the backbone of business operations to enrich the internal legal team of the enterprise, so as to accelerate the creation of a team of professionals who are familiar with international operations and have legal expertise. High-quality overseas legal talent team. It is necessary to attach importance to the use of external legal resources such as law firms, and reasonably select and hire professional lawyers at home and abroad with good social reputation and service quality, so as to realize the complementary advantages of internal legal consultants and external lawyers.

(5) Give full play to the important role of the general counsel of the enterprise and the legal affairs agency. In international operations, the general counsel's role in organizing and reviewing relevant decision-making compliance, the legal affairs agency's centralized management role in overseas legal affairs, and the legal counsel's professional supporting role in overseas business operations should be emphasized. Corporate legal advisors shall participate in the whole process of decision-making, negotiation, signing, and operation management of major overseas business projects, and provide legal opinions in a timely manner; corporate leaders and relevant business departments shall pay attention to potential legal risks prompted by legal advisors, and organize and formulate response plans in a timely manner; Overseas projects with relatively large or even major legal risks shall not be blindly decided or implemented in violation of regulations.

(6) Establish and improve the accountability system for legal risk prevention of international business operations. It is necessary to strictly implement the "Interim Measures for the Investigation of Liability for Asset Loss of Central Enterprises" (Order No. 20 of the State-owned Assets Supervision and Administration Commission of the State Council) and other regulations, and the major overseas investment and operation activities of enterprises have not been reviewed by law, or although they have been reviewed, correct legal opinions are not adopted. If losses are caused, the relevant leaders of the enterprise shall be held accountable; for those who have undergone legal review but have not found serious legal loopholes due to major dereliction of duty and cause major losses, the general counsel of the enterprise and the person in charge of the legal affairs agency shall be held accountable; If major losses are caused due to neglect of legal risk prevention or violation of laws and regulations in international operations, the relevant personnel shall be held accountable.

3. Deepen the prevention of legal risks in overseas investment and mergers and acquisitions

(7) Conscientiously carry out legal demonstration and due diligence of the project. It is necessary to combine legal demonstration of overseas investment and mergers and acquisitions with market demonstration and technical demonstration, and make project decisions in accordance with the law. In-depth study and mastery of the laws, regulations and regulatory requirements of foreign capital access, investment review, industry supervision, import and export control, labor and employment, foreign exchange management, tax management, land management, environmental protection, etc. Bilateral investment and trade agreements. It is necessary to conduct an in-depth investigation of the equity structure, organizational form, asset ownership, important contracts, major disputes, operating conditions and credit status of the relevant partners or target companies, comprehensively identify and evaluate the legal risks of the project, and provide legal opinions.

(8) Properly deal with overseas investment review and related legal risks. It is necessary to have an in-depth understanding of the procedures, rules and standards for foreign investment access, national security review, and anti-monopoly review in the country and region where the investment is made to ensure the compliant operation of overseas investment. Adhere to the status of independent market players of enterprises, and be good at using the rules of the World Trade Organization, relevant international treaties, bilateral trade and investment protection agreements, as well as administrative and judicial remedies in the countries and regions where they are located, to safeguard their legitimate

rights and interests and fair treatment. It is necessary to pay attention to the use of various channels and methods such as contractual agreements, commercial insurance and investment insurance to effectively prevent risks caused by government changes, nationalization, expropriation and legal changes in the countries and regions where the investment is located.

(9) Guiding and urging overseas subsidiaries to operate in compliance. It is necessary to guide and urge overseas subsidiaries to consciously abide by the laws and regulations of the countries and regions where they invest, and to do a good job in compliance work such as information disclosure, related transactions, corporate governance, and property rights management. Standardize employee management in accordance with the law, do a good job in collective negotiation and negotiation with trade union organizations, strengthen employee knowledge and skill training, protect their legitimate rights and interests, and avoid labor disputes. According to local laws and regulations, pay attention to incorporating tax management, environmental protection, safety production, occupational health, etc. into the daily operation and management system of overseas subsidiaries, improve risk assessment, risk early warning, safety prevention and emergency response capabilities, and properly respond to overseas emergencies in accordance with the law. It is necessary to standardize business activities such as overseas project bidding, bulk commodity procurement and sales, and put an end to illegal acts such as commercial bribery. It is necessary to instruct overseas subsidiaries to attach importance to coordinating relations with local governments, the public, media, communities and other stakeholders, and pay attention to maintaining close contact with Chinese embassies and consulates abroad.

4. Efforts to prevent legal risks in the field of international trade

(10) Attach importance to the application of the rules of the World Trade Organization. It is necessary to conduct in-depth research and abide by the relevant agreements and agreements on trade in goods and services of the WTO. Investigations on anti-dumping, anti-subsidy and safeguard measures initiated overseas shall be reported to relevant government departments in a timely manner, and active responses shall be made according to the law by using administrative and judicial remedies of the originating country and the WTO dispute settlement mechanism. When foreign imported products cause damage to the domestic industry where the enterprise is located due to dumping, subsidies, etc., it is necessary to actively apply to the competent government department to take trade remedy measures to protect the legitimate rights and interests of the enterprise. When the trade policies of relevant countries do not conform to WTO rules in international operations, they should actively report to Chinese government departments, and strive for a fair competitive trade policy environment through the WTO trade policy review mechanism.

(11) Accurately grasp the source and control links of trade risks in goods. Central enterprises engaged in the trade of goods should have a deep understanding of the credit status of the transaction object and the economic policy and legal environment of the exchange in the country and region. risk, and actively strive for payment and settlement conditions that are conducive to full performance of the contract and timely and safe collection of foreign exchange. It is necessary to correctly apply the Incoterms Interpretation Principles, and legally define the division of risks, responsibilities and costs between the two parties in the handover and transportation of goods.

(12) Pay attention to strengthening risk prevention in key areas of trade in services. Central enterprises engaged in service trade such as overseas project contracting, aviation shipping, telecommunications and power grids should, on the basis of careful study of relevant national and regional policies and laws, attach great importance to the risk research and judgment of contract terms, and do a good job in relevant claims and counterclaims, as well as construction period, quality, safety, price changes, labor and other aspects of the division of responsibilities. Issues such as government bans, tax changes, and adjustments to the scope of operating licenses should be properly addressed, and targeted measures should be taken, focusing on preventing legal risks in market access, security reviews, and consumer rights protection.

V. Properly handle key legal issues in overseas investment and trade

(13) Effectively strengthen the management of overseas business contracts. It is necessary to conduct legal centralized management of overseas business contracts, establish contract accounts, and pay attention to the backup and archiving of relevant documents. It is necessary to do a good job of dynamic tracking of the performance of the contract, and to investigate and resolve the hidden risks in the performance of the contract in a timely manner. In the event of major changes in circumstances, force majeure events, and other changes in policies, laws and markets, legal advisors and relevant business personnel should be organized to study the response plan in a timely manner, and decide whether to negotiate to change the original contract or sign a supplementary agreement. In the event of a contract performance risk, emergency measures such as taking preservation measures, filing claims, and retaining relevant evidence should be done in a timely manner.

(14) Strictly regulate the authorization of overseas business. Attention should be paid to strengthening the legal review and control of overseas business authorization and power of attorney. According to factors such as business type, transaction amount, risk level, etc., the overseas subsidiaries shall be divided into different levels, reasonably authorized, and responsibilities shall be clarified. Standardize the scope and procedures of overseas business authorization, and clarify the content, duration and expiration conditions of authorization. If the authorization expires, expires or is changed

in the middle, the power of attorney shall be withdrawn in time, and procedures such as informing the counterparty of the transaction shall be performed in accordance with the law.

(15) Strictly control overseas guarantees. It is necessary to strictly abide by the relevant provisions of the state on external guarantees of domestic institutions, and when issuing a letter of guarantee to an external party, the type, purpose, conditions of validity and expiration, and amount of the letter of guarantee should be prudently determined. It is necessary to standardize the internal review and approval procedures of enterprises, and without legal review and risk assessment, it is not allowed to issue letters of commitment, letters of comfort, letters of support and other documents with a guarantee nature at will. It is necessary to properly handle guarantee claims disputes in accordance with the law, and actively respond to guarantee fraud.

(16) Attach importance to strengthening the management of overseas intellectual property rights. It is necessary to formulate and implement a corporate intellectual property strategy, and earnestly carry out the creation, application, management and protection of intellectual property in accordance with the laws of the country and region where the business is located and the provisions of relevant international conventions. It is necessary to meet the needs of overseas business development of enterprises, timely handle patent applications, trademark registrations, etc., and clarify the scope of protection of trade secrets, responsible subjects and confidentiality measures. Seriously organize the inquiry, retrieval and analysis of intellectual property transactions, strictly examine the intellectual property certification documents provided by the partner or the target company, and make a reasonable evaluation and price. It is necessary to attach importance to the early warning of overseas intellectual property rights, and strengthen the management of intellectual property rights in all aspects of research and development, manufacturing, sales, use, licensing, and transfer. Intellectual property barriers in the form of technical standards, technical alliances, domestic laws, etc.

(17) Handle overseas legal disputes in accordance with the law. According to the characteristics of the industry in which the enterprise is located, the nature of the project, the negotiating position and other factors, the method of dispute resolution shall be reasonably agreed in the overseas business contract, and the favorable location, institution and applicable laws and rules for litigation or arbitration shall be sought. Documents and materials such as overseas business contracts, letters, and meeting minutes should be properly preserved and managed to provide evidence support for dealing with potential disputes. In the event of a major lawsuit or arbitration case, a special working group led by enterprise leaders and attended by legal advisors should be established to organize and formulate a thorough work plan. Pay attention to the statute of limitations, attach importance to the use of evidence and expert witnesses, reasonably select external lawyers, and actively assert rights. It is necessary to master the application of relevant bilateral mutual legal assistance agreements and international conventions, and promptly apply to the judiciary to do a good job in the service, recognition and enforcement of legal documents involving the rights and interests of the enterprise.

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