

# Legal Management of Chinese Outbound Investment | by Pete Sweeney

## Background

The Chinese attitude towards outward foreign investment has been historically inconsistent. Confucian and Neo-Confucian thought, focused on agrarian life and values, is profoundly skeptical of merchants, trade, and business. At the same time, a widely remarked on but clumsily labeled cultural tendency called “sinocentrism” led certain Chinese to question the loyalty of Chinese living abroad; the Ming emperor K’ang Hsi went so far as to call for all Chinese expatriates in Southeast Asia to be repatriated to China for execution.<sup>1</sup> Overseas business activity conducted by Chinese nationals therefore was seen by some Chinese as combining greed with treason.

At the same time, thanks to the opium trade and Chinese expansion throughout Southeast Asia and beyond, Chinese businessmen and traders (who existed and flourished in spite of Confucian scorn) routinely invested abroad both to store capital and to conceal it from tax exactions by imperial officials.<sup>2</sup> Chinese individuals, living both abroad and on the mainland, ultimately seized and dominated the opium trade from the colonial powers, and this trade more than anything else served as a conduit for allowing Chinese capital to mobilize and move across porous borders.<sup>3</sup> The Chinese likewise captured the

“comprador” system, meant to serve as a means by which colonial merchants could exploit the Chinese interior, and turned it to serve their own investment purposes. The ultimate result was that the comprador system involved into an invested business partnership with Western businesses in which Chinese business interests and the interests of the colonial trader were more closely synchronized.<sup>4</sup>

The degree to which the Chinese government advocated autarkic or mercantilist policies that held foreigners, their banks, and their businesses, at arms length has been widely discussed as such policies, as a rule, are those that have historically enraged Westerners more than anything else. However, it is more challenging to explain why such laws were violated and under what circumstances . . . and to what extent such policies were diplomatic postures. However, this paper does not propose to systematically survey the history of outbound Chinese investment. I simply note that Chinese outbound investment is not a new phenomenon, nor a negligible one, but rather an area of activity, and of law, to which the West has paid less attention, given that it has never tried to attract such investment until relatively recently. However, now that the American mortgage industry is largely supported by continuing Chinese investment in US Treasury Bonds, more attention is finally being paid to the behavior and structure of Chinese outbound investment.

Communist ideology itself had an inconsistent impact on the ability of individual Chinese investors to invest abroad. After the War against Japan, certain former compradors and businessmen were executed, imprisoned, or saw their assets seized due to actual or alleged

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<sup>1</sup> Anderson, Benedict. Imagined Communities. New York: Verso, 1991 (revised edition) p191

<sup>2</sup> Fairbank, John King and Merle Goldman. China: A New History. Cambridge: Belknap, 1998. p269.

<sup>3</sup> Brook, Timothy “Opium and Collaboration in Central China, 1938-1940 Opium regimes : China, Britain, and Japan, 1839-1952” Timothy Brook and Bob Tadashi Wakabayashi eds. Berkeley : University of California Press, c2000 p340

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<sup>4</sup> Chan, Kai Yiu. “A Turning Point in China's Comprador System: KMA's Changing Marketing Structure in the Lower Yangzi Region, 1912-25”. Business History April 2001 v43 i2 p51

treasonous business tactics. Since Japanese policy was to encourage Japanese capitalists to seize control of Chinese markets, the only investment avenues open to many Chinese businessmen were in Japanese companies or in currency/commodity speculation informed by connections with Japanese occupation authorities. Obviously this sort of activity stained the reputation of Chinese outbound investment. However, when the Communists seized power, they nevertheless had to rely on former capitalists and technocrats to implement their developmental agenda. This occasionally included paying some capitalists dividends from socialized investments.<sup>5</sup> It also involved the maintenance of trade relationships relating to the import of technology and expertise.

However, communism's overall effect was dampening. In order to pay for investments in Stalinist infrastructure i.e. heavy industry, the Chinese government needed to arrogate most investment capital and dedicate it to the headlong construction of factories. According to Zhang Chunlin, "national income distribution was completely manipulated by the government to keep household income in a low level to minimize private savings and generate maximum government savings to finance the investment and operation of SOEs."<sup>6</sup> Therefore the Chinese economy, as a whole, had little money to invest abroad.

Today the situation is complicated by waves of liberalizing market reform that have re-monetized the economy and flushed both state and non-state sectors with cash to invest. According to Wong and Chan, "due to the positive saving-investment and export-import

gaps, the [Chinese] economy has, for years, experienced a net resource outflow. Technically speaking, China's economy can sustain significant capital outflow for investment purposes." The result has been a surge in outbound investment, which has been largely occluded from public view by FDI rushing into China. Recently, however, there has been increasing coverage of Chinese state-sponsored strategic investments in Central Asia and Latin America (and, as noted, in US Treasuries), which include bilateral trade agreements, loan commitments for infrastructure, and so on. Presently Chinese companies openly control some \$30 billion in foreign investments, which includes management of some 20,000 overseas employees.

However, such initiatives are only part of the outbound investment mixture, which also includes the activities of individuals, SOEs, private sector businesses, and myriad hybrids thereof that invest abroad for profit, and not necessarily honest profit at that.

There are a wide range of plausible motives for Chinese to move money abroad, and these motives are hardly unique to the Chinese investor. The government has a need to do so in order to maintain its currency parity and to make strategic investments in critical resources. Businesses and SOEs making regular transactions abroad need to maintain foreign currency assets and likewise can make strategic investments for business purposes.

There are, of course, an entirely separate set of less transparent motives. Those skeptical of the government's attitude towards individual property rights, including the right to personal savings, are inclined to hide their money abroad. Widespread distrust of the state-controlled banking system (exacerbated by the Asian currency crisis of the late 90s) drives certain investors to imitate their own government and park their money in foreign currency reserves. Others seek to evade taxes by moving money around foreign subsidiaries

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<sup>5</sup> Shuoguang, Wang. Failure of Charisma: the Cultural Revolution in Wuhan. Oxford University Press, USA (July 1, 1995)

<sup>6</sup> Zhang Chunlin. "Financing the SOE Sector: Institutional Evolution and Its Implications for SOE Reform" *China & World Economy* Number 6, 2002

or into secret accounts. “It is widely known,” write Qiao Liu and Geng Xiao, “that many Chinese enterprises used to park a large proportion of their foreign exchange holdings in Hong Kong, with some later funneled into foreign countries as foreign investment and some subsequently recycled into China as China’s “new FDI” after such ‘round tripping’.”<sup>7</sup> They go on to note that in 1997 such capital flight (as evidenced in the Errors & Omissions line item in China’s balance of payments) amounted to a missing \$22 billion.

As in other areas of the Chinese economy, sorting the public from the private can prove difficult, and this exacerbates the problem the Chinese government faced. For example, in November 2005, a Chinese national name Liu Qibing who worked for the Chinese State Reserve Bureau (SRB: a semi-private entity that manages China’s raw material reserves), managed to single-handedly distort the global copper market by shorting Chinese copper on the London Metals Exchange and getting caught with his pants down. The original reaction of the SRB was to deny that Mr. Qibing existed, and following that, to assert that Mr. Qibing had acted as a private individual and therefore the Chinese government was not obligated to make up the shortage, which ran to the immediate tune of \$300 million. Nevertheless, China was forced to begin dumping copper on the market to reduce the world price. This sort of behavior is mirrored at lower levels of magnitude; Unger and Chan demonstrate how in many cases, privatizations of small village industries was driven by the concerned local governments concerned with reducing their liabilities for debts incurred by reckless or falsely registered public enterprises.<sup>8</sup>

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<sup>7</sup> Liu, Qiao, and Geng Xiao “Why Do Firms Disguise Their Profits? Theory and Evidence from China.” Working paper. January 31, 2004  
<http://test.ccf.org.cn/cicf2004/papers/2-3-1.pdf>

<sup>8</sup> Unger, Chan. *Inheritors of the Boom*. 51

The case highlights another issue. Basic investing competence and accountability is a problem, and it may well be more serious than lawbreaking. Many SOEs or privatized SOEs do not have much staff experienced in overseas investments or in managing those who do. Nor does it appear that there is a regulated connection between those taking the risks with such investments and those paying the consequences for same. As this threatens both the credibility of the government and its goal of economic growth, the government is making a public attempt to address the problem. A recent article in the *China Daily* warned that the government is going hold officials liable for bad investments using the new Audit Law, due to take effect June 1<sup>st</sup> of this year. The article quotes Auditor-General Li Jinhua, who claimed that while auditors in a 2005 campaign discovered the illegal use of \$198 million in 10 large SOEs, “wrong [investment] decision-making and mismanagement” resulted in an economic cost of \$1.7 billion at the same firms.<sup>9</sup>

### **The Legal Framework**

There are two primary means by which the Chinese government proposes to address the problem of tracking and regulating outbound capital flows. First is the State Administration for Foreign Exchange (SAFE), which is charged with regulating foreign currency transactions, both inbound and outbound. SAFE has published numerous circulars regarding the legal means by which Chinese citizens, companies, and SOEs can invest in foreign currencies in foreign accounts. SAFE reports to the State Council and the People’s Bank of China. Much of SAFE’s activity related to the regulation of outbound capital flows centers around laws regarding the complexities of registering foreign capital

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<sup>9</sup> Xing Zhigang “Officials to be liable for bad investment” *China Daily*. Updated: 2006-03-10 05:57  
[http://www.chinadaily.com.cn/english/doc/2006-03/10/content\\_530653.htm](http://www.chinadaily.com.cn/english/doc/2006-03/10/content_530653.htm)

accounts, stocks, dividends, and ownership. SAFE estimates that China loses about 2% of its GDP to illegal foreign investments and accounts that pass under its radar.<sup>10</sup> Like any other government, SAFE is up against a wide variety of companies with a common economic incentive to disguise money from the government through complex ownership transactions. Its published regulations therefore make dense reading, but the theme is simple; register all outbound investments and changes to same, including changes to company structures/ownership that convert domestic companies to foreign-owned companies (which enjoy significant tax incentives) and vice versa. However, SAFE is not solely concerned with blocking or discouraging outbound flows; given the nature of the economy, it must allow some surplus capital to escape the RMB in order to maintain currency parity. It has, in fact, taken certain steps to make it easier to invest abroad. For example, SAFE recently overturned a regulation requiring a “security deposit” to be made against foreign investment profits and specified a mechanism by which existing deposits would be refunded *with interest*.<sup>11</sup>

Regarding the less efficient and yet more powerful public sector, in 1982 the NPC created an auditing mechanism (The National Audit Office) to oversee the financial activities of its burgeoning state sector and noted same in the amended Constitution.<sup>12</sup> In

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<sup>10</sup> “How Much Capital Has Taken Flight from China?” Economic Reporter, no. 33 (19 Aug. 2002).

<sup>11</sup> “Circular of the State Administration of Foreign Exchange on the Relevant Issues Concerning the Refund of the Security Deposit for Remitted Back Overseas Investment Profits” Promulgated 07-08-2003

<sup>12</sup> Constitution Article 91. The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels and those of the state financial and monetary organizations and of enterprises and undertakings. Under the direction of the Premier of the State Council, the auditing body independently exercises its power to

1994 it passed a specific Audit Law and made the Auditor-General (AG) a member of the State Council, reporting directly to the Premier. According to the current Constitution, the AG can only be removed by the NPC and is otherwise allegedly free of interference. The AG has the sensitive job of investigating the budgets and expenditures of various state entities, including “state-owned enterprises which are vital to the national economy and people's livelihood [which] receive large entitlements from the government *or suffer substantial losses* [italics mine], as well as other state-owned enterprises designated by the State Council or corresponding local people's governments.” Given the powerful nature of some of these entities, interference and influence cannot be credibly dismissed. It is important to note a large exclusion: the PLA is not subject to the Audit Office but is charged with implementing its own audit mechanism “in accordance with the audit law.”<sup>13</sup>

The AG's powers, like the powers of so many others charged with judging the government's behavior, appear wide but are critically truncated when it comes to actual effect. While the auditors are charged with a wide range of investigative powers, they must still go through the regular legal system for enforcement. If an SOE declines to cooperate with an investigation, the auditors must push courts and police both to apply the stick to the recalcitrant. However, the auditors can also issue public criticisms of the given company, effectively making loss of face through the press the first real penalty the auditors can apply. On the other hand, the audit law also restricts auditors from publishing “state secrets.” Given that the Chinese government considers a wide range

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supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.

<sup>13</sup> Full text of the audit law is appended to this document below.

of economic information to fall under the domain of state secrets, this clause constitutes yet another loophole through which the audit law can be used to muzzle an auditor.

Likewise the Audit Law delegates much actual auditing authority to localities, leaving the central auditing office the option to run “special investigations” in case of local irregularities but otherwise charging the “governors of provinces, chairmen of autonomous regions, mayors, prefecture heads and heads of counties or districts” with running audits and passing their results upwards to the central office.

### **Conclusion**

Clearly much depends on the actual abilities and competencies of these two organizations to promote productive foreign investment by SOEs and private enterprise without allowing outbound investment to constitute an extension of the Chinese economic Wild West. From the examples I provided, it is clear that outbound investment is attractive to the corrupt, the incompetent, and the reckless. However, it is also a critical component of forging a healthy relationship of trust with foreign businesses and in developing the sustainable diplomatic relationships with other nations that can be reinforced, or crippled, by China’s Liu Qibings. In many cases this relationship is off to a rocky start, as in the collaboration with China’s Aviation Ministry and Brazil’s Embraer, but for every Embraer there is a Lenovo. It is difficult to understate the critical task confronting Chinese law in this arena, given both the potential risks and the opportunity to hand.

# REGULATIONS ON AUDIT OF THE PEOPLE'S REPUBLIC OF CHINA

## CHAPTER 1

### GENERAL PROVISIONS

Article 1 This Law is formulated in accordance with the Constitution, with a view to strengthening the State supervision through auditing, maintaining the financial and economic order of the country, promoting the building of a clean government and ensuring the healthy development of the national economy.

Article 2 The State shall practise a system of supervision through auditing. The State Council and the local people's governments at or above the county level shall establish audit institutions.

Revenues and expenditures of various departments of the State Council, of the local people governments at various levels and their departments, revenues and expenditures of State-owned monetary organizations, enterprises and institutions as well as other revenues and expenditures subject to auditing according to this Law, shall be supervised through auditing in accordance with the provisions of this Law.

Audit institutions shall, according to law, supervise through auditing the authenticity, legality and effectiveness of the revenues and expenditures specified in the preceding paragraph.

Article 3 Audit institutions shall conduct supervision through auditing in accordance with the functions and powers, and procedures prescribed by the law.

Article 4 The State Council and the local people's governments at or above the county level shall annually present to the standing committees of the people's congresses at the corresponding levels the audit reports prepared by audit institutions on budget implementation and other revenues and expenditures.

Article 5 Audit institutions shall independently exercise their power of supervision through auditing in accordance with the law, subject to no interference by any administrative organ or any public organization or individual.

Article 6 Audit institutions and auditors shall, in performing their audit items, be objective and fair, practical and realistic, clean and honest , and keep secrets.

## CHAPTER II

### AUDIT INSTITUTIONS AND AUDITORS

Article 7 The State Council shall establish the National Audit Office to take charge of the audit work throughout the country under the leadership of the Premier of the State Council. The Auditor General shall be the administrative leader of the National Audit Office

Article 8 Audit institutions of the people's governments of provinces, autonomous regions, municipalities directly under the Central Government, cities divided into districts, autonomous prefectures, counties, autonomous counties, cities not divided into districts and municipal districts shall be in charge of the audit work within their respective administrative areas under the respective leadership of governors of provinces, chairmen of autonomous regions, mayors, prefectural heads, or heads of counties and districts as well as under the leadership of audit institutions at the next higher levels.

Article 9 Local audit institutions at various levels shall be responsible for and report on their work to the people's governments at the corresponding levels and to audit institutions at the next higher levels, and their audit work shall be directed chiefly by the audit institutions at the next higher levels.

Article 10 Audit institutions may, as required by work, designate resident audit officers to areas under their jurisdiction.

Resident audit officers shall, according to the authorization of audit institutions, conduct audit work in accordance with the law.

Article 11 Funds required by audit institutions for performing their functions shall be listed in the budgets of and guaranteed by the people's governments at the corresponding levels.

Article 12 Auditors shall possess the professional knowledge and ability suited to the audit work they engage in.

Article 13 Auditors shall withdraw in performing audit items if they have an interest in the auditees or the audit items.

Article 14 Auditors shall have the obligations to guard State secrets and the auditees's trade secrets they have come to know in performing their functions.

Article 15 Auditors shall be protected by law in performing their functions in accordance with the law.

No organization or individual may reject or obstruct auditors from performing their functions in accordance with the law, or retaliate against them.

Persons in charge of audit institutions shall be appointed or removed in accordance with legal procedures. None of them may be removed or replaced at will unless they are found guilty of illegal acts, or negligent or no longer qualified for the appointment.

### CHAPTER III

#### RESPONSIBILITIES OF AUDIT INSTITUTIONS

Article 16 Audit institutions shall exercise supervision through auditing over the budget implementation, final accounts and management and use of extra-budgetary funds of departments (including their subordinate units) at the corresponding levels and of the people's governments at lower levels

Article 17 The National Audit Office shall, under the leadership of the Premier of the State Council, exercise supervision through auditing over the implementation of the budget of the Central Government and submit audit reports thereof to the Premier.

Local audit institutions at various levels shall, under the respective leadership of the governors of provinces, chairmen of autonomous regions, mayors, prefectural heads and heads of counties or districts as well as under the leadership of audit institutions at the next higher levels, exercise supervision through auditing over the budget implementation at the corresponding levels and submit audit reports to the people's governments at the corresponding levels and to the audit institutions at the next higher levels.

Article 18 The National Audit Office shall exercise supervision through auditing over the revenues and expenditures of the Central bank.

Audit institutions shall exercise supervision through auditing over the assets, liabilities, profits and losses of the State-owned monetary organizations.

Article 19 Audit institutions shall exercise supervision through auditing over the revenues and expenditures of the State institutions.

Article 20 Audit institutions shall exercise supervision through auditing over the assets, liabilities, profits and losses of the State-owned enterprises.

Article 21 Audit institutions shall conduct audit in a periodic and planned way of the State-owned enterprises that are vital to the national economy and the people's livelihood, or State-owned enterprises that heavily depend upon government subsidies, or have large amount of losses, and other State-owned enterprises designated by the State Council or the people's governments at the corresponding levels.

Article 22 Supervision through auditing over the enterprises with State-owned assets controlling their shares or playing a leading role, shall be stipulated by the State Council.

Article 23 Audit institutions shall exercise supervision through auditing over the budget implementation and final accounts of the State construction projects.

Article 24 Audit institutions shall exercise supervision through auditing over the revenues and expenditures of the social security funds, public donations and other relevant funds and capital managed by governmental departments and public organizations authorized by the government.

Article 25 Audit institutions shall exercise supervision through auditing over the revenues and expenditures of projects with aids or loans provided by international organizations or governments of other countries.

Article 26 In addition to the audit items stipulated by this Law, audit institutions shall exercise supervision through auditing over the items that shall be audited by audit institutions as stipulated by other laws, administrative rules and regulations, in accordance with the provisions of this Law as well as relevant laws, administrative rules and regulations.

Article 27 With regard to the particular items relating to State revenues and expenditures ,audit institutions shall have the right to carry out special investigations through audit from relevant localities ,departments and units and report the results thereof to the people's governments at the corresponding levels and to the audit institutions at the next higher levels.

Article 28 Audit institutions shall determine their audit jurisdiction on the basis of the auditee's financially subordinate relations or the supervisory and managerial relations with respect to the State assets of auditees.

Where a dispute arises on audit jurisdiction between audit institutions, the matter shall be determined by an audit institution superior to both disputing parties.

Audit institutions at higher levels may authorize audit institutions at lower levels to audit he items under their jurisdiction as stipulated from paragraph 2 of Article 18 to Article 25 in this law. Audit institutions at higher levels may directly audit the major items under the jurisdiction of audit institutions at lower levels. However, unnecessary repetitive audits shall be avoided.

Article 29 Departments of the State Council an of the local people's governments at various levels, State-owned monetary organizations, enterprises and institutions shall establish and improve their

internal auditing systems in accordance with the relevant provisions of the State., Such internal auditing shall be subject to the professional guidance and supervision of audit institutions.

Article 30 Public audit firms that independently conduct public audit according to law shall be guided, supervised and managed in accordance with relevant laws and provisions of the Sate Council.

## CHAPTER IV

### POWERS OF AUDIT INSTITUTIONS

Article 31 Audit institutions shall have the power to require auditees to submit, in accordance with the relevant provisions, their budgets or plans for financial revenue and expenditures, statements about budget implementation, final accounts and financial reports ,audit reports produced by public audit firms and other information relating to their revenues and expenditures. Auditees shall not refuse to do so, or delay the submission or make false reports.

Article 32 Audit institutions shall, in conducting audit, have the power to examine the accounting documents, account books, accounting statements and other information and assets relating to revenues and expenditures of the auditees, and the auditees shall not refuse to produce those materials.

Article 33 Audit institutions shall, in conducting audit, have the power to carry out investigations among units or individuals concerned into matters relating to audit items and obtain relevant testimonial materials. The units and individuals concerned shall support and assist the audit institutions in their work by providing them with truthful information and relevant testimonial materials.

Article 34 When audit institutions conduct audit, the auditees shall not transfer, conceal, falsify or destroy their accounting documents, account books, accounting statements or other information relating to their revenues and expenditures, and shall not transfer or conceal the assets that are in their possession but obtained in violation of the provisions of the State.

Audit institutions shall have the power to stop the ongoing acts of the auditees relating to the revenues and expenditures in violation of the provisions of the State. If they do not succeed in stopping such acts, they shall, with the approval of the responsible persons of audit institutions at or above the county level, notify the financial departments and the competent authorities to suspend allocating funds directly related to the acts in violation of the provisions of the State regarding the revenues and expenditures or to suspend the use of the funds already allocated. However, adoption of the above-mentioned measures shall not hinder the lawful business activities, production and operation of the auditees.

Article 35 If audit institutions consider that the regulations of the competent departments at higher levels on revenues and expenditures implemented by the auditees contravene the law or the administrative rules and regulations, they shall suggest that the competent departments concerned make corrections. If the departments concerned fail to make corrections, the audit institutions shall refer the matter to the competent organs for disposition according to law.

Article 36 Audit institutions may issue circulars about their audit results to the relevant governmental departments or publish such results to the public.

Audit institutions shall, in circulating or publishing audit results, keep State secrets and trade secrets of the auditees in accordance with the law and observe the relevant provisions of the State Council.

## CHAPTER V

### AUDIT PROCEDURES

Article 37 Audit institutions shall form audit teams according to the audit items specified in the plans of the audit programs and shall serve audit notifications on the auditees three days prior to the execution of audit.

The auditees shall cooperate with audit institutions in their work and provide necessary working conditions.

Article 38 Auditors shall conduct audit and obtain testimonial materials by means of examining accounting documents, account books, accounting statements, and documents and data relating to the audit items, checking cash, negotiable securities and other property, and making investigations of the units and individuals concerned.

Auditors shall, in making investigations of the units and individuals concerned, produce their work certificates and a copy of the audit notification.

Article 39 Audit teams shall, after the completion of audit ,submit audit reports to the audit institutions. However, prior to the submission, they shall solicit opinions of the auditees. The auditees shall, within ten days from the date of receiving the audit reports, send their comments in written form to the audit teams or audit institutions.

Article 40 Audit institutions shall, after examining the audit reports, give an appraisal of the audit items and produce their audit opinions. They shall, within the sphere of their statutory functions and powers, make audit decisions on revenues and expenditures in violation of the provisions of the State ,that must be dealt with or punished according to law ,or they shall make suggestions concerning such disposition or punishment to the competent authorities.

Audit institutions shall, within 30 days from the date of receiving the audit reports ,serve their audit opinions and audit decisions on the auditees and units concerned.

Audit decisions shall enter into effect from the date when they are duly served.

## CHAPTER VI

### LEGAL LIABILITY

Article 41 If an auditee in violation of this Law, refuses or delays provision of information relating to the audit items, refuses or hinders examination, the audit institution concerned shall order the auditee to make correction or may circulate a notice of criticism and issue a warning. Anyone refusing to make correction shall be investigated for responsibility in accordance with the law.

Article 42 When an audit institution discovers an auditee, in violation of the provisions of this Law ,transfers ,conceals ,falsifies or destroys accounting documents, account books, accounting statements or other materials relating to the revenues and expenditures ,the audit institution shall have the power to stop such acts.

If an auditee commits any of the acts specified in the preceding paragraph, and if the audit institution considers that the persons in charge and other persons held directly responsible shall be given administrative sanctions according to law, the audit institution shall put forward suggestions to this effect. And the auditee or its superior organ or the supervisory organ shall make decisions without delay in accordance with the law. If the offence constitutes a crime, the judicial organ shall investigate for criminal responsibility according to law.

Article 43 If an auditee in violation of this Law, transfers or conceals assets gained unlawfully, the audit institution, the people's government or the competent authorities shall have the power to stop such acts within the sphere of its statutory functions and powers or appeal to the court for adoption of preservative measures If an auditee commits any of the acts specified in the preceding paragraph, and if an audit institution considers that the persons in charge and other persons held directly responsible shall be given administrative sanctions according to law ,the audit institution shall put forward suggestions to this effect. And the auditee or its superior organ or the supervisory organ shall make a decision without de- lay in accordance with the law. If the offence constitutes a crime, the judicial organ shall investigate for criminal responsibility according to law.

Article 44 Audit institutions, the people's governments or the competent authorities shall, within the sphere of their statutory functions and powers and in accordance with the laws ,and administrative rules and regulations, deal with the acts violating the budgets committed by departments (including their subordinate units) at the corresponding levels or the governments at lower levels or other acts in violation of the provisions of the State regarding revenues and expenditures.

Article 45 If an auditee commits any acts in violation of the provisions of the State regarding revenues and expenditures ,the audit institution, the people's government or the competent

authorities shall, within the sphere of its statutory functions and powers and in accordance with the laws ,and administrative rules and regulations, order the auditee to turn over within a time limit the part of the revenues that shall be turned over ,to return within a time limit the income gained unlawfully or the State-owned assets illegally seized or take other corrective measures, and may impose penalties on the auditee according to law.

Article 46 With respect to the persons in charge and other persons held directly responsible for the acts committed by the audit in violation of the provisions of the State regarding revenues and expenditures ,if the audit institution considers that they shall be given administrative sanctions according to law ,the audit institution shall put forward suggestions to this effect. The auditee or its superior organ ,or the supervisory organ shall make a decision without delay in accordance with the law.

Article 47 If an auditee violates the provisions of relevant laws, or administrative rules and regulations in matters of its revenues and expenditures and if the offence constitutes a crime, the auditee shall be investigated for criminal responsibility according to law.

Article 48 Whoever retaliates or makes a false charge against an auditor shall, if such an act constitutes a crime, be investigated for criminal responsibility; if such an act does not constitute a crime, he shall be given administrative sanctions.

Article 49 If an auditor abuses his functions and powers, engages in malpractice for selfish ends, or neglects his duties, and if his act constitutes a crime, he shall be investigated for criminal responsibility; if his act does not constitute a crime, he shall be given administrative sanctions.

## CHAPTER VII

### SUPPLEMENTARY PROVISIONS

Article 50 Regulations on audit in the Chinese People's Liberation Army shall be formulated by the Central Military Commission in accordance with this Law.

Article 51 This Law shall enter into effect as of January 1, 1995.The Audit Regulations of the People's Re public of China promulgated by the State Council on November 30, 1988 shall be annulled therefrom.

(In case of discrepancy between the English translation and the original Chinese text, the Chinese text shall prevail - Translator)