

Lao People's Democratic Republic  
Peace Independence Democracy Unity Prosperity  
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Ministry of Finance

No.: 2736/MoF  
Vientiane Capital, dated: 26 December 2002

**ORDERS**

*on*

**the Implementation of Decree No. 54/PM on the Management of  
State-invested Enterprises**

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- Pursuant to the Prime Minister's Decree No.: 54/PM dated 9 May 2002 on the Management of State-invested Enterprises.

In order to enable all state-invested enterprises to operate their businesses in accordance with roles assigned by the government; to summarize state assets' and budgets' efficiency and status; to ensure important sources of income for state budgets; and for mutual agreement on the implementation of regulations and principles for managing state-invested enterprises,

**The Minister of Finance hereby issues the Orders:**

**I. Objectives and Expected Results**

**1. Objectives**

These Orders are issued to define regulations and principles regarding the incorporation of state-invested enterprises; for implementation of government plans and policies issued periodically and ensure their effectiveness; to serve society and be an important source of income for the state budget; and to make an important contribution to socio-economic development.

**2. Expected Results**

The expected results of these Orders are to be able to manage, monitor, and inspect business operations; set out the capital and number of state-invested enterprises; cause the state-invested enterprises to be managed by boards of directors; and to systematically manage their businesses in accordance with laws and regulations, and mutually agree with the reporting system.

**II. Incorporation and Dissolution of State-Invested Enterprises**

1. A new state-invested enterprise at any management level can be incorporated or dissolved provided that the enterprise obtains official approval from the Minister of Finance as an owner of the capital of the state-invested enterprise and representing the government.

Ministries at central level, ministry-equivalent bodies, and provincial, capital, and special administrative area divisions wishing to incorporate their state-invested enterprises shall make a submission to the Ministry of Finance based upon the study of a business plan, effectiveness assessment, budget estimate, competent personnel to manage the enterprise, and actual budgetary capacity to contribute funds to the enterprise in order to propose it to the government.

2. Dissolution of a state-invested enterprise will be approved by the Ministry of Finance provided that an official request stating reasonable grounds is submitted to the Ministry, all assets and liabilities of the enterprise have been audited, and the cause of and reason for dissolution are reviewed and considered.
3. A state-invested enterprise is prohibited from allowing a private enterprise to abuse or use the name of a state-invested enterprise and from assigning or transferring state assets to other persons and organizations without the consent of the board of directors and the Ministry of Finance; and 100% state-owned enterprises are prohibited from entering into joint ventures with other enterprises which are not related to their business.

### **III. Management of State-Invested Enterprises**

#### **a. Board of directors:**

1. All state-invested enterprises must operate their businesses under the supervision of a board of directors. Each board of directors shall include a representative from the Ministry of Finance acting as a member of the board.

The board of directors is the highest authority of state-invested enterprises, decides specific matters, and operates in accordance with the agreed contract as well as the articles of association of the enterprise.

In addition to the board of directors, state-invested enterprises may request the appointment of a board of partners whereby the make-up of the board of directors can be the same as that of the board of partners. However, it should be made clear which is a meeting of the board of directors and which a meeting of the board of partners and each meeting shall have clear and separate minutes of such meetings.

2. Members representing the government on boards of directors are not required to be current staff of governmental organizations, they can be outsiders such as: retired staff, highly experienced business persons, or Lao experts with knowledge and experience, provided they are approved by the Minister of Finance.

A 100% state-owned enterprise may appoint its representative to be a member of the board of directors of a collective or joint-venture enterprise provided that such collective or joint-venture enterprise is a business with which the state-owned enterprise is approved to be involved.

3. Board of director members may act as members for several enterprises at the same time but not more than three and not involved in the same business as the enterprise for which they are on the board of directors.

During the three-year period, if one or more positions on the board of directors become vacant for any reason, the board of directors or a partners' meeting must propose to the Minister of Finance to approve new members.

If the number of members of a board of directors is less than three persons, a meeting of the board of directors or an extraordinary general meeting shall be convened in order to make a proposal to the Minister of Finance regarding the appointment of members to the board of directors to fill vacant positions.

Newly appointed persons to fill vacant positions shall perform their duties only for the remaining period until the next appointment of the board of directors.

4. Members of the board of directors may be dismissed individually or entirely at any time in the same manner as they were appointed to the board of directors if there is proof that they are involved with the failure of a business by:
  - Violating legal or regulative requirements that apply to state-invested enterprises.
  - Violating the articles of association of the state-invested enterprise.
  - Committing management and administrative errors which create a conflict of interest for the enterprise. Besides dismissing them from the board of directors, they shall be penalized by measures as stipulated in Civil and Penal Law.

For 100% state-owned enterprise, members of the board of directors may be dismissed by the Minister of Finance for the above offenses;

For collective or joint-venture enterprises, members of the board of directors may be dismissed by an extraordinary general meeting of partners with a two-thirds vote of total shares.

5. The boards of directors of 100% state-owned enterprises are in charge of stipulating the salaries of directors and proposing them to the Minister of Finance for approval.

For collective or joint-venture enterprises, after the board of directors stipulates the directors' salary, this must be reported to the Ministry of Finance for acknowledgement.

6. The board of directors may appoint a secretary who does not have to be a member of the board of directors or board of partners.

b. Director

Directors of state-invested enterprises may be members of the boards of directors of the enterprises for which they are working.

Directors of state-invested enterprises may be dismissed at any time by the Minister of Finance upon the request of the board of directors or board of partners if their performance is poor, if they lack the capability to manage and administer the business, for lack of transparency causing a state budget to be exploited, or causing a business to fail.

Directors of state-invested enterprises operating business without any strategy and not for political duties shall be dismissed if they cause the state-invested enterprise to suffer losses for two consecutive years without reason, and they shall be subject to disciplinary measures and penalties under the Civil and Penal Law depending on the offense.

c. Articles of association:

The articles of association of a state-invested enterprise shall be drafted and signed by the directors based upon mutual agreement among the management of the enterprise and thereafter be sent to the Ministry of Finance for monitoring of compliance with such articles of association.

d. Meeting allowances, board of directors' bonuses, and directors' salaries

1. State-invested enterprises shall pay members of the board of directors an allowance for attending meetings, and if a meeting of the board of directors is not the same as a meeting of partners, the allowance will also be paid to the partners attending a meeting to cover costs incurred in the performance of their duties.
2. Each member of the board of directors shall receive a bonus as a reward for their outstanding performance in contributing to and participating in the meetings of the board of directors based upon the following conditions:

State-invested enterprises may disburse bonuses to their staff, workers, and members of the board of directors in accordance with Article 10 of the Decree No.: 54/PM, dated 9 May 2002, provided that the revenue plans are achieved or overachieved.

Bonus distribution and payment of allowances to the members of the board of directors are decided by the board of directors by using salaries as approved by the Minister of Finance as a basis for calculating meeting allowances and annual bonuses of the members of the board. The disbursement of bonuses and allowances does not need to be approved by the Ministry of Finance.

Directors acting as members of the board of directors shall only receive a director's bonus and shall not be entitled to a bonus as a member of the board of directors.

3. A member of the board is not allowed to borrow money from a state-invested enterprise in any form whatsoever or to request the state-owned enterprise to secure a loan or letter of credit whereby he/she has a binding obligation with other parties.
4. Relevant persons invited to attend a meeting of the board of directors as well as a meeting secretary shall also be entitled to a meeting allowance at a rate of 80% of the total meeting allowance received by a member of the board as compensation for expenses incurred in attending the meeting. Moreover, those people are also entitled to remuneration for particular work that the board of directors asks them to do, and in such cases there shall be a contract between the enterprise and such individuals.
5. Members of the board of directors are entitled to a meeting allowance for each time they attend an ordinary general meeting. The calculation shall be made by dividing the annual

meeting allowance by the number of ordinary general meetings stipulated annually. For example:

- A director's salary is equal to LAK 500,000/month (gross amount, no tax deduction)
- The meeting allowance for the chairman shall be equal to the 4-month salary of a director divided by 4; for example:

$$\begin{aligned} \text{Payable meeting allowance/meeting} &= \frac{\text{Annual allowance } 500,000 \times 4 \text{ months}}{4 \text{ times/year}} = \frac{\text{-----}}{4} \\ &= \text{LAK 500,000/meeting} \end{aligned}$$

- Where the number of meetings per year is fewer than four, the allowance per meeting as mentioned above shall be applied. The remaining allowance shall be paid at the last meeting of the year to match the maximum meeting allowance per year as per the following example of three meetings annually:

$$\begin{aligned} \text{Payment of allowance for the 1}^{\text{st}} \text{ meeting} &= \text{LAK 500,000} \\ \text{Payment of allowance for the 2}^{\text{nd}} \text{ meeting} &= \text{LAK 500,000} \\ \text{Payment of allowance for the 3}^{\text{rd}} \text{ meeting} &= \underline{\text{LAK 1,000,000}} \\ \text{Total} &= \text{LAK 2,000,000} \end{aligned}$$

- If the number of meetings per year is more than four, the allowance per meeting shall be applied even though the total payable allowance exceeds the maximum meeting allowance per year as per the following example of six meetings annually:

$$\begin{aligned} \text{Payment of allowance for the 1}^{\text{st}} \text{ till the 6}^{\text{th}} \text{ meeting} &= \text{LAK 500,000/meeting} \\ \text{Total payable allowance for six meetings annually} &= \text{LAK 3,000,000} \end{aligned}$$

- For an extraordinary general meeting, the same principle as for payment of meeting allowances at an ordinary general meeting shall be applied.
6. An ordinary general meeting of the board of directors shall be held at least every three months based upon the request of the chairman of the board and shall focus on all matters stipulated in a meeting agenda. The meeting agenda shall be circulated to members of the board at least one week prior to the meeting. A request for an extraordinary general meeting shall consist of a meeting agenda the same as an ordinary general meeting.
  7. Directors of state-invested enterprises are not entitled to make decisions on matters regarding the strategic, economic, financial, or technological directions of the state-owned enterprise; contracts binding the enterprise; or plans with the government without the consent of the board of directors.

#### **IV. Determination of Loans, Liabilities, Secured Funds**

1. The board of directors is in charge of determining levels of liabilities, loans, and secured funds as well as investment in production expansion and joint funding that brings benefits to its enterprise and widens the market of the state-invested enterprise.

2. After the board has determined the maximum level of loans that the directors of the state-invested enterprise can borrow, if it becomes necessary for the liabilities, loans, and secured funds to exceed the maximum level stipulated by the board of directors in order to achieve the enterprise objective, the directors may do so provided they obtain special approval from the board of directors.

## **V. State Obligations**

All state-invested enterprises have the following obligations and duties:

1. Directors of state-owned enterprises duly appointed by the Minister of Finance to administer and manage the business operation have the duty to effectively protect all assets, funds, and reserves as well as profits of the enterprise since those are the entire capital granted by the government to the state-owned enterprises. Therefore, the excess remaining from the use belongs solely to the government and the government may request the enterprises to contribute this to its budget at any time if necessary.
2. The profit distribution of collective and joint-venture enterprises shall be based upon the share percentage of each partner after the accounting audit carried out by an independent auditor, and after approval by the board of directors regarding the reserve for business expansion.
3. State-invested enterprises are obliged to report to the Ministry of Finance:
  - Financial statements to be reported on a quarterly basis:
    - Trial balance
    - Income statement
    - Balance sheet (assets)
    - Balance sheet (liabilities)
    - Contracts with other parties
    - Minutes of each meeting of the board of directors
    - Other relevant documents.
  - Financial statements to be reported on an annual basis:
    - Balance sheet
    - Summary and plan for production and investment expansion
    - Tax payment report
    - Manpower and work of public organization
    - Minutes of each year's board of partners' meetings
    - Other reports.
4. Submission of the financial statements as stipulated in clause 3 of Chapter V shall comply with the following:
  - a. Financial Statements to be reported on a quarterly basis:

- A state-invested enterprise must submit the above financial statements to the state asset management authority that supervises the enterprise by the 15<sup>th</sup> of April, July, October, and January each year.
- The provincial Office of State Asset Management summarizes the above documents and information into a given table and thereafter sends it to the Ministry of Finance by the 30<sup>th</sup> of April, July, October, and January each year.

b. Financial statements to be reported on an annual basis:

- A state-invested enterprise must submit the above financial statements to the state asset management authority that supervises the enterprise by the 30<sup>th</sup> of February each year.
- The provincial Office of State Asset Management summarizes the above documents and information into a given table and thereafter sends it to the Ministry of Finance by the 15<sup>th</sup> of March each year.

For state-invested enterprises under the supervision of the State Asset Management Department, the above financial statements shall be submitted to the Department directly.

## **VI. Capital Contribution and Profit Distribution**

1. 100% State-owned Enterprise:

When it is necessary to raise more capital, a director shall request more capital to expand the business of the enterprise through a meeting of the board of directors in order to request approval from the Ministry of Finance regarding the resources for such capital which may be in the form of:

- A loan granted by a domestic or foreign bank
- Additional capital granted by the Ministry of Finance
- Sales of share certificates to staff, workers, or the public.

Upon obtaining approval of the Ministry of Finance regarding the above form for more capital contribution, the actual procedure shall be implemented by liaising with the Ministry of Finance, relevant enterprises, and other parties:

- For a loan from a bank, Ministry of Finance approval shall be obtained based upon the actual capability to repay such a loan.
- For capital contribution by the state budget, whether in cash or in kind, a loan agreement shall be executed between the Ministry of Finance and such state-owned enterprise.
- For the sale of shares, Ministry of Finance approval shall also be obtained.
- The state-owned enterprise shall pay dividends to the government in advance on a quarterly basis, and the dividend assessment shall be conducted after the end of

the financial year, and if the state-owned enterprise overpays the dividend to the government, such excess shall be carried forward to be deducted from the dividend of the following year, but if the enterprise underpays the government dividend, it shall pay the additional amount.

2. Collective or Joint Venture Enterprise

If the government holds more than 50% but not 100% of the shares, the board of directors may raise more funds based upon the approval of a general meeting of partners or the Ministry of Finance by selling more share certificates. If the value of shares sold is more than half the total capital of the enterprise, such enterprise shall no longer be considered a state-owned enterprise but a company with state investment which shall be governed by the Law on Business.

Moreover, the state-invested enterprise may seek other sources of funds to serve its demand for its business operations by borrowing from domestic and foreign banks and financial institutes based upon the approval of the board of directors and the laws and regulations of the Lao PDR.

3. The annual net profits of the state-owned enterprise after paying taxes in accordance with laws and regulations shall be distributed by a state asset management authority based upon the following:

1. To the government as an owner of registered capital, not less than 50%.
2. To a legal reserve at the rate of 5% to 10% until reaching 1/10 of the registered capital.
3. To repay the principal of domestic and foreign loans.
4. To a reserve for business expansion.
5. To other reserves at the rate of 5% of total profits.

The reserve for business expansion shall be summarized and planned on an annual demand basis in accordance with the timeframe stipulated in clause 4 of Chapter V. If the enterprise does not make a summary and plan regarding the reserve for business expansion, such enterprise shall not be entitled to maintain such a reserve and all funds contained in the reserve shall be contributed to the state budget.

The reserve for business expansion duly approved by the Ministry of Finance which is not used or has a remaining balance or does not have any supporting documentation for the use of such reserve or has unreliable supporting documents shall be contributed to the state budget since such reserve cannot be used in the following financial year.

The reserve for business expansion shall be approved after the accounting summary and from the net profits following tax payment. Therefore, a current year's reserve for business expansion will be used in the following financial year.

4. Other reserves in addition to the above reserve, such as social welfare and bonus reserves, are prohibited. Social welfare expenses and bonuses are social incentives of the state-owned enterprise given to its members of the board of directors, directors, staff, and workers which shall be recognized as expenses based upon the description of the state-owned enterprise in accordance with enterprise accounting principles.



5. If a state-owned enterprise ineffectively operates its business and suffers losses, the Ministry of Finance shall warn the enterprise's board of directors to seek a resolution and to explain to the Ministry of Finance for inspection of the actual cause.

## **VII. Procurement, Liquidation, Removal, and Replacement of Assets**

1. A state-owned enterprise's procurement of assets shall comply with procedures under the Regulation on Procurement No. 95/PM dated..... issued by the government.
2. The board of directors shall consider the needs of its enterprise to procure assets, and shall take regard of the actual capacity of the enterprise with the aim of procuring assets to mainly serve the business and on a reasonable basis, ensuring flow production.
3. A state-invested enterprise wishing to liquidate, remove, or replace assets shall comply with the following procedures:
  - It should make a request to the state asset management authority that supervises its enterprise;
  - The state asset management authority that supervises the state-invested enterprise shall consider the request and inspect the requested assets based upon the conditions and regulations for liquidation of assets of the state asset management authority. If such assets meet the conditions, the authority and relevant committees shall value the assets based upon the actual condition of the assets.
  - The authority shall notify the relevant enterprise regarding the valuation and the method of liquidation, such as general auction or auction within the enterprise. The sale proceeds shall be used as revolving capital or be contributed to the state budget.
  - Approved assets for liquidation shall be removed by the enterprise from its account. If it is a vehicle, its number plate shall be changed from the enterprise number plate to another within 45 days. However, the state asset management authority at each level shall not recognize any sale-purchase of assets of the state-invested enterprise unapproved by the authority or the board of directors. In such cases, the enterprise shall be liable for violating the regulation in accordance with clause..... of Chapter VIII.

## **VIII. Measures against State-invested Enterprises**

1. State-owned enterprises violating requirements stipulated in Decree No. 54/PM, dated 9/5/02 and these Orders shall be sanctioned by the following measures depending on each case:
  - Late distribution or non-distribution of dividends in accordance with the timeframe stipulated in a minute after the assessment shall result in a fine of 5% of the payable dividend per month.

- Nonsubmission of quarterly financial statements in accordance with the timeframe stipulated in Article..... shall result in a fine of LAK 500,000/time for the first claim, LAK 1,000,000 for the second claim, and LAK 2,000,000 for the third claim by relevant authorities. If there are more than three claims, the directors of the enterprise will be warned and the issue will be presented to superior authorities for consideration if directors are still not submitting such statements.
- State-owned enterprises not summarizing the use of a reserve for business expansion and not presenting a plan for business expansion shall not receive approval to distribute a dividend in the relevant financial year; and such profits shall be contributed to the state budget since it is considered that such an enterprise does not intend to expand its business.
- Procurement, liquidation, removal, and replacement of assets shall comply with the regulations on procurement, liquidation, removal, and replacement of assets issued by the state asset management authority. In case of violations of those regulations, an offending enterprise shall be fined 10% of the purchase value per month, and if the replacement of assets takes more than 45 days, such assets shall be seized by the government without any appeal by the enterprise.

### **IX. Implementation**

State asset management authorities at each level shall be assigned to be in charge of overall supervision in the name of the government as a shareholder of the state-invested enterprise, and shall act as centralized authorities for the financial performance of all state-invested enterprises countrywide. Their responsibilities also include an accounting audit and financial examination with a focus on the actual level of generated profits which will be the basis for dividend calculation, determination of capital, and form of enterprise. These Orders shall be in force and effect from the date of signature.

Vientiane, date

**Minister of Finance**

*[Seal and signature]*

**Soukanh Mahalath**