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中华人民共和国企业国有资产法(主席令第五号)

中华人民共和国主席令

第 五 号

《中华人民共和国企业国有资产法》已由中华人民共和国第十一届全国人民代表大会常务委员会第五次会议于2008年10月28日通过，现予公布，自2009年5月1日起施行。

中华人民共和国主席 胡锦涛

2008年10月28日

中华人民共和国企业国有资产法

(2008年10月28日第十一届全国人民代表大会常务委员会第五次会议通过)

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第一条 为了维护国家基本经济制度，巩固和发展国有经济，加强对国有资产的保护，发挥国有经济在国民经济中的主导作用，促进社会主义市场经济发展，制定本法。

第二条 本法所称企业国有资产（以下称国有资产），是指国家对企业各种形式的出资所形成的权益。

第三条 国有资产属于国家所有即全民所有。国务院代表国家行使国有资产所有权。

第四条　国务院和地方人民政府依照法律、行政法规的规定，分别代表国家对国家出资企业履行出资人职责，享有出资人权益。

国务院确定的关系国民经济命脉和国家安全的大型国家出资企业，重要基础设施和重要自然资源等领域的国家出资企业，由国务院代表国家履行出资人职责。其他的国家出资企业，由地方人民政府代表国家履行出资人职责。

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第五条　本法所称国家出资企业，是指国家出资的国有独资公司，以及国有资本控股公司、国有资本参股公司。

第六条　国务院和地方人民政府应当按照政企分开、社会公共管理职能与国有资产出资人职能分开、不干预企业依法自主经营的原则，依法履行出资人职责。

第七条　国家采取措施，推动国有资本向关系国民经济命脉和国家安全的重要行业和关键领域集中，优化国有经济布局和结构，推进国有企业的改革和发展，提高国有经济的整体素质，增强国有经济的控制力、影响力。

第八条　国家建立健全与社会主义市场经济发展要求相适应的国有资产管理与监督体制，建立健全国有资产保值增值考核和责任追究制度，落实国有资产保值增值责任。

第九条　国家建立健全国有资产基础管理制度。具体办法按照国务院的规定制定。

第十条　国有资产受法律保护，任何单位和个人不得侵害。

第二章　履行出资人职责的机构

第十一条　国务院国有资产监督管理机构和地方人民政府按照国务院的规定设立的国有资产监督管理机构，根据本级人民政府的授权，代表本级人民政府对国家出资企业履行出资人职责。

国务院和地方人民政府根据需要，可以授权其他部门、机构代表本级人民政府对国家出资企业履行出资人职责。

代表本级人民政府履行出资人职责的机构、部门，以下统称履行出资人职责的机构。

第十二条　履行出资人职责的机构代表本级人民政府对国家出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

履行出资人职责的机构依照法律、行政法规的规定，制定或者参与制定国家出资企业的章程。

履行出资人职责的机构对法律、行政法规和本级人民政府规定须经本级人民政府批准的履行出资人职责的重大事项，应当报请本级人民政府批准。

第十三条　履行出资人职责的机构委派的股东代表参加国有资本控股公司、国有资本参股公司召开的股东会会议、股东大会会议，应当按照委派机构的指示提出提案、发表意见、行使表决权，并将其履行职责的情况和结果及时报告委派机构。

第十四条　履行出资人职责的机构应当依照法律、行政法规以及企业章程履行出资人职责，保障出资人权益，防止国有资产损失。

履行出资人职责的机构应当维护企业作为市场主体依法享有的权利，除依法履行出资人职责外，不得干预企业经营活动。

第十五条　履行出资人职责的机构对本级人民政府负责，向本级人民政府报告履行出资人职责的情况，接受本级人民政府的监督和考核，对国有资产的保值增值负责。

履行出资人职责的机构应当按照国家有关规定，定期向本级人民政府报告有关国有资产总量、结构、变动、收益等汇总分析的情况。

第三章　国家出资企业

第十六条　国家出资企业对其动产、不动产和其他财产依照法律、行政法规以及企业章程享有占有、使用、收益和处分的权利。

国家出资企业依法享有的经营自主权和其他合法权益受法律保护。

第十七条　国家出资企业从事经营活动，应当遵守法律、行政法规，加强经营管理，提高经济效益，接受人民政府及其有关部门、机构依法实施的管理和监督，接受社会公众的监督，承担社会责任，对出资人负责。

国家出资企业应当依法建立和完善法人治理结构，建立健全内部监督管理和风险控制制度。

第十八条　国家出资企业应当依照法律、行政法规和国务院财政部门的规定，建立健全财务、会计制度，设置会计账簿，进行会计核算，依照法律、行政法规以及企业章程的[illegible]人提供真实、完整的财务、会计信息。

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国家出资企业应当依照法律、行政法规以及企业章程的规定[illegible]分配利润。

第十九条　国有独资公司、国有资本控股公司和国有资本参股公司依照《中华人民共和国公司法》的规定设立监事会。国有独资企业由履行出资人职责的机构按照国务院的规定委派监事组成监事会。

国家出资企业的监事会依照法律、行政法规以及企业章程的规定，对董事、高级管理人员执行职务的行为进行监督，对企业财务进行监督检查。

第二十条　国家出资企业依照法律规定，通过职工代表大会或者其他形式，实行民主管理。

第二十一条　国家出资企业对其所出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

国家出资企业对其所出资企业，应当依照法律、行政法规的规定，通过制定或者参与制定所出资企业的章程，建立权责明确、有效制衡的企业内部监督管理和风险控制制度，维护其出资人权益。

第四章　国家出资企业管理者的选择与考核

第二十二条　履行出资人职责的机构依照法律、行政法规以及企业章程的规定，任免或者建议任免国家出资企业的下列人员：

（一）任免国有独资企业的经理、副经理、财务负责人和其他高级管理人员；

（二）任免国有独资公司的董事长、副董事长、董事、监事会主席和监事；

（三）向国有资本控股公司、国有资本参股公司的股东会、股东大会提出董事、监事人选。

国家出资企业中应当由职工代表出任的董事、监事，依照有关法律、行政法规的规定由职工民主选举产生。

第二十三条　履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员，应当具备下列条件：

（一）有良好的品行；

（二）有符合职位要求的专业知识和工作能力；

（三）有能够正常履行职责的身体条件；

（四）法律、行政法规规定的其他条件。

董事、监事、高级管理人员在任职期间出现不符合前款规定情形或者出现《中华人民共和国公司法》规定的不得担任公司董事、监事、高级管理人员情形的，履行出资人职责的机构应当依法予以免职或者提出免职建议。

第二十四条　履行出资人职责的机构对拟任命或者建议任命的董事、监事、高级管理人员的人选，应当按照规定的条件和程序进行考察。考察合格的，按照规定的权限和程序任命或者建议任命。

第二十五条　未经履行出资人职责的机构同意，国有独资企业、国有独资公司的董事、高级管理人员不得在其他企业兼职。未经股东会、股东大会同意，国有资本控股公司、国有资本参股公司的董事、高级管理人员不得在经营同类业务的其他企业兼职。

未经履行出资人职责的机构同意，国有独资公司的董事长不得兼任经理。未经股东会、股东大会同意，国有资本控股公司的董事长不得兼任经理。

董事、高级管理人员不得兼任监事。

第二十六条　国家出资企业的董事、监事、高级管理人员，应当遵守法律、行政法规以及企业章程，对企业负有忠实义务和勤勉义务，不得利用职权收受贿赂或者取得其他非法收入和不当利益，不得侵占、挪用企业资产，不得超越职权或者违反程序决定企业重大事项，不得有其他侵害国有资产出资人权益的行为。

第二十七条　国家建立国家出资企业管理者经营业绩考核制度。履行出资人职责的机构应当对其任命的企业管理者进行年度和任期考核，并依据考核结果决定对企业管理者的奖惩。

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履行出资人职责的机构应当按照国家有关规定，确定其任命的企业管理者的薪酬标准。

第二十八条　国有独资企业、国有独资公司和国有资本控股公司的主要负责人，应当接受依法进行的任期经济责任审计。

第二十九条　本法第二十二条第一款第一项、第二项规定的企业管理者，国务院和地方人民政府规定由本级人民政府任免的，依照其规定。履行出资人职责的机构依照本章规定对上述企业管理者进行考核、奖惩并确定其薪酬标准。

第五章　关系国有资产出资人权益的重大事项

第一节　一般规定

第三十条　国家出资企业合并、分立、改制、上市，增加或者减少注册资本，发行债券，进行重大投资，为他人提供大额担保，转让重大财产，进行大额捐赠，分配利润，以及解散、申请破产等重大事项，应当遵守法律、行政法规以及企业章程的规定，不得损害出资人和债权人的权益。

第三十一条　国有独资企业、国有独资公司合并、分立，增加或者减少注册资本，发行债券，分配利润，以及解散、申请破产，由履行出资人职责的机构决定。

第三十二条　国有独资企业、国有独资公司有本法第三十条所列事项的，除依照本法第三十一条和有关法律、行政法规以及企业章程的规定，由履行出资人职责的机构决定的以外，国有独资企业由企业负责人集体讨论决定，国有独资公司由董事会决定。

第三十三条　国有资本控股公司、国有资本参股公司有本法第三十条所列事项的，依照法律、行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由股东会、股东大会决定的，履行出资人职责的机构委派的股东代表应当依照本法第十三条的规定行使权利。

第三十四条　重要的国有独资企业、国有独资公司、国有资本控股公司的合并、分立、解散、申请破产以及法律、行政法规和本级人民政府规定应当由履行出资人职责的机构报经本级人民政府批准的重大事项，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当报请本级人民政府批准。

本法所称的重要的国有独资企业、国有独资公司和国有资本控股公司，按照国务院的规定确定。

第三十五条　国家出资企业发行债券、投资等事项，有关法律、行政法规规定应当报经人民政府或者人民政府有关部门、机构批准、核准或者备案的，依照其规定。

第三十六条　国家出资企业投资应当符合国家产业政策，并按照国家规定进行可行性研究；与他人交易应当公平、有偿，取得合理对价。

第三十七条　国家出资企业的合并、分立、改制、解散、申请破产等重大事项，应当听取企业工会的意见，并通过职工代表大会或者其他形式听取职工的意见和建议。

第三十八条　国有独资企业、国有独资公司、国有资本控股公司对其所出资企业的重大事项参照本章规定履行出资人职责。具体办法由国务院规定。

第二节　企业改制

第三十九条　本法所称企业改制是指：

（一）国有独资企业改为国有独资公司；

（二）国有独资企业、国有独资公司改为国有资本控股公司或者非国有资本控股公司；

（三）国有资本控股公司改为非国有资本控股公司。

第四十条　企业改制应当依照法定程序，由履行出资人职责的机构决定或者由公司股东会、股东大会决定。

重要的国有独资企业、国有独资公司、国有资本控股公司的改制，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当将改制方案报请本级人民政府批准。

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第四十一条　企业改制应当制定改制方案，载明改制后的企业形式、企业资产和债权债务处理方案、股权变动方案、改制的操作程序、资产评估和财务审计等中介机构的选聘等事项。

企业改制涉及重新安置企业职工的，还应当制定职工安置方案，并经职工代表大会或者职工大会审议通过。

第四十二条　企业改制应当按照规定进行清产核资、财务审计、资产评估，准确界定和核实资产，客观、公正地确定资产的价值。

企业改制涉及以企业的实物、知识产权、土地使用权等非货币财产折算为国有资本出资或者股份的，应当按照规定对折价财产进行评估，以评估确认价格作为确定国有资本出资额或者股份数额的依据。不得将财产低价折股或者有其他损害出资人权益的行为。

第三节　与关联方的交易

第四十三条　国家出资企业的关联方不得利用与国家出资企业之间的交易，谋取不当利益，损害国家出资企业利益。

本法所称关联方，是指本企业的董事、监事、高级管理人员及其近亲属，以及这些人员所有或者实际控制的企业。

第四十四条　国有独资企业、国有独资公司、国有资本控股公司不得无偿向关联方提供资金、商品、服务或者其他资产，不得以不公平的价格与关联方进行交易。

第四十五条　未经履行出资人职责的机构同意，国有独资企业、国有独资公司不得有下列行为：

（一）与关联方订立财产转让、借款的协议；

（二）为关联方提供担保；

（三）与关联方共同出资设立企业，或者向董事、监事、高级管理人员或者其近亲属所有或者实际控制的企业投资。

第四十六条　国有资本控股公司、国有资本参股公司与关联方的交易，依照《中华人民共和国公司法》和有关行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由公司股东会、股东大会决定的，履行出资人职责的机构委派的股东代表，应当依照本法第十三条的规定行使权利。

公司董事会对公司与关联方的交易作出决议时，该交易涉及的董事不得行使表决权，也不得代理其他董事行使表决权。

第四节　资产评估

第四十七条　国有独资企业、国有独资公司和国有资本控股公司合并、分立、改制，转让重大财产，以非货币财产对外投资，清算或者有法律、行政法规以及企业章程规定应当进行资产评估的其他情形的，应当按照规定对有关资产进行评估。

第四十八条　国有独资企业、国有独资公司和国有资本控股公司应当委托依法设立的符合条件的资产评估机构进行资产评估；涉及应当报经履行出资人职责的机构决定的事项的，应当将委托资产评估机构的情况向履行出资人职责的机构报告。

第四十九条　国有独资企业、国有独资公司、国有资本控股公司及其董事、监事、高级管理人员应当向资产评估机构如实提供有关情况和资料，不得与资产评估机构串通评估作价。

第五十条　资产评估机构及其工作人员受托评估有关资产，应当遵守法律、行政法规以及评估执业准则，独立、客观、公正地对受托评估的资产进行评估。资产评估机构应当对其出具的评估报告负责。

关闭
中国政府网
微博、微信

第五节　国有资产转让

第五十一条　本法所称国有资产转让，是指依法将国家对企业所形成的权益转移给其他单位或者个人的行为；按照国家规定无偿划转国有资产的除外。

第五十二条　国有资产转让应当有利于国有经济布局和结构的战略性调整，防止国有资产损失，不得损害交易各方的合法权益。

第五十三条　国有资产转让由履行出资人职责的机构决定。履行出资人职责的机构决定转让全部国有资产的，或者转让部分国有资产致使国家对该企业不再具有控股地位的，应当报请本级人民政府批准。

第五十四条　国有资产转让应当遵循等价有偿和公开、公平、公正的原则。

除按照国家规定可以直接协议转让的以外，国有资产转让应当在依法设立的产权交易场所公开进行。转让方应当如实披露有关信息，征集受让方；征集产生的受让方为两个以上的，转让应当采用公开竞价的交易方式。

转让上市交易的股份依照《中华人民共和国证券法》的规定进行。

第五十五条　国有资产转让应当以依法评估的、经履行出资人职责的机构认可或者由履行出资人职责的机构报经本级人民政府核准的价格为依据，合理确定最低转让价格。

第五十六条　法律、行政法规或者国务院国有资产监督管理机构规定可以向本企业的董事、监事、高级管理人员或者其近亲属，或者这些人员所有或者实际控制的企业转让的国有资产，在转让时，上述人员或者企业参与受让的，应当与其他受让参与者平等竞买；转让方应当按照国家有关规定，如实披露有关信息；相关的董事、监事和高级管理人员不得参与转让方案的制定和组织实施的各项工作。

第五十七条　国有资产向境外投资者转让的，应当遵守国家有关规定，不得危害国家安全和社会公共利益。

第六章　国有资本经营预算

第五十八条　国家建立健全国有资本经营预算制度，对取得的国有资本收入及其支出实行预算管理。

第五十九条　国家取得的下列国有资本收入，以及下列收入的支出，应当编制国有资本经营预算：

（一）从国家出资企业分得的利润；

（二）国有资产转让收入；

（三）从国家出资企业取得的清算收入；

（四）其他国有资本收入。

第六十条　国有资本经营预算按年度单独编制，纳入本级人民政府预算，报本级人民代表大会批准。

国有资本经营预算支出按照当年预算收入规模安排，不列赤字。

第六十一条　国务院和有关地方人民政府财政部门负责国有资本经营预算草案的编制工作，履行出资人职责的机构向财政部门提出由其履行出资人职责的国有资本经营预算建议草案。

第六十二条　国有资本经营预算管理的具体办法和实施步骤，由国务院规定，报全国人民代表大会常务委员会备案。

第七章　国有资产监督

第六十三条　各级人民代表大会常务委员会通过听取和审议本级人民政府履行出资人职责的情况和国有资产监督管理情况的专项工作报告，组织对本法实施情况的执法检查等，依法行使监督职权。

第六十四条　国务院和地方人民政府应当对其授权履行出资人职责的机构履行职责的情况进行监督。

第六十五条　国务院和地方人民政府审计机关依照《中华人民共和国审计法》的规定，对国有资本经营预算的执行情况和属于审计监督对象的国家出资企业进行审计监督。

第六十六条　国务院和地方人民政府应当依法向社会公布国有资产状况和国有资产监督管理工作情况，接受社会公众的监督。

关闭
中国政府网
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任何单位和个人有权对造成国有资产损失的行为进行检举和

第六十七条　履行出资人职责的机构根据需要，可以委托[illegible]所对国有独资企业、国有独资公司的年度财务会计报告进行审计，或者通过国有资本控股公司的股东会、[illegible]决议，由国有资本控股公司聘请会计师事务所对公司的年度财务会计报告进行审计，维护出资人权益。

第八章　法律责任

第六十八条　履行出资人职责的机构有下列行为之一的，对其直接负责的主管人员和其他直接责任人员依法给予处分：

（一）不按照法定的任职条件，任命或者建议任命国家出资企业管理者的；

（二）侵占、截留、挪用国家出资企业的资金或者应当上缴的国有资本收入的；

（三）违反法定的权限、程序，决定国家出资企业重大事项，造成国有资产损失的；

（四）有其他不依法履行出资人职责的行为，造成国有资产损失的。

第六十九条　履行出资人职责的机构的工作人员玩忽职守、滥用职权、徇私舞弊，尚不构成犯罪的，依法给予处分。

第七十条　履行出资人职责的机构委派的股东代表未按照委派机构的指示履行职责，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分。

第七十一条　国家出资企业的董事、监事、高级管理人员有下列行为之一，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分：

（一）利用职权收受贿赂或者取得其他非法收入和不当利益的；

（二）侵占、挪用企业资产的；

（三）在企业改制、财产转让等过程中，违反法律、行政法规和公平交易规则，将企业财产低价转让、低价折股的；

（四）违反本法规定与本企业进行交易的；

（五）不如实向资产评估机构、会计师事务所提供有关情况和资料，或者与资产评估机构、会计师事务所串通出具虚假资产评估报告、审计报告的；

（六）违反法律、行政法规和企业章程规定的决策程序，决定企业重大事项的；

（七）有其他违反法律、行政法规和企业章程执行职务行为的。

国家出资企业的董事、监事、高级管理人员因前款所列行为取得的收入，依法予以追缴或者归国家出资企业所有。

履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员有本条第一款所列行为之一，造成国有资产重大损失的，由履行出资人职责的机构依法予以免职或者提出免职建议。

第七十二条　在涉及关联方交易、国有资产转让等交易活动中，当事人恶意串通，损害国有资产权益的，该交易行为无效。

第七十三条　国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员违反本法规定，造成国有资产重大损失，被免职的，自免职之日起五年内不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员；造成国有资产特别重大损失，或者因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序被判处刑罚的，终身不得担任国有独资企业、国有独资公司、国有资本控股公司的董

事、监事、高级管理人员。

第七十四条　接受委托对国家出资企业进行资产评估、财务审计的资产评估机构、会计师事务所违反法律、行政法规的规定和执业准则，出具虚假的资产评估报告或者审计报告的，依照有关法律、行政法规的规定追究法律责任。

第七十五条　违反本法规定，构成犯罪的，依法追究刑事责任。

关闭

第九章　附　　则

中国政府网
微博、微信

第七十六条　金融企业国有资产的管理与监督，法律、行政法规另有规定的，依照其规定。

第七十七条　本法自2009年5月1日起施行。

责任编辑：马娟

相关链接

中华人民共和国企业国有资产法（主席令第五号）

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关闭

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Enterprise State-owned Asset[illegible] of the People's Republic of China (Chairm[illegible]rder No. 5)

Central government portal website www.g[illegible]rce:

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Order of the President of the People's Republic of China

No. 5

The "Law of the People's Republic of China on State-Owned Assets of Enterprises" was adopted by the Fifth Session of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on October 28, 2008. It is hereby promulgated and will come into force on May 1, 2009 .

President of the People's Republic of China Hu Jintao

October 28, 2008

Enterprise State-owned Assets Law of the People's Republic of China

(Adopted at the Fifth Session of the Standing Committee of the Eleventh National People's Congress on October 28, 2008)

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Chapter 1 General Provisions

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Article 1 This Law is enacted for the purpose of ng the basic economic system of the country, consolidating and developing the state-owned e rengthening the protection of state-owned assets, giving play to the leading role of the d economy in the national economy, and promoting the development of the socialist mar y.

Article 2 The term "state-owned assets of enterp reinafter referred to as "state-owned assets") as mentioned in this Law refers to the rights and interests formed by the state's various forms of capital contributions to enterprises.

Article 3 State-owned assets are owned by the state, that is, by the whole people. The State Council exercises the ownership of state-owned assets on behalf of the state.

Article 4 The State Council and local people's governments shall, in accordance with the provisions of laws and administrative regulations, perform the investor's duties and enjoy the investor's rights and interests respectively on behalf of the state to state-funded enterprises.

For large state-funded enterprises determined by the State Council that are related to the lifeline of the national economy and national security, and state-funded enterprises in the fields of important infrastructure and important natural resources, the State Council shall perform the investor's duties on behalf of the state. For other state-funded enterprises, the local people's government shall perform the investor's duties on behalf of the state.

Article 5 The term "state-funded enterprises" as mentioned in this law refers to wholly state-owned enterprises and wholly state-owned companies funded by the state, as well as state-owned capital holding companies and state-owned capital-joint companies.

Article 6 The State Council and local people's governments shall, in accordance with the principles of separation of government and enterprises, separation of social public management functions from those of state-owned asset contributors, and non-interference in the independent operation of enterprises in accordance with the law, perform their duties as contributors in accordance with the law.

Article 7 The state takes measures to promote the concentration of state-owned capital in important industries and key fields related to the lifeline of the national economy and national security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the state-owned economy. Economic control and influence.

Article 8 The state shall establish and improve a state-owned assets management and supervision system that is compatible with the development requirements of the socialist market economy, establish and improve the assessment and accountability system for maintaining and increasing the value of state-owned assets, and implement the responsibility for maintaining and increasing the value of state-owned assets.

Article 9 The state establishes and improves the basic management system of state-owned assets. The specific measures shall be formulated in accordance with the regulations of the State

Council.

Article 10 State-owned assets are protected by law and shall not be violated by any unit or individual.

Chapter II Institutions Performing the Contributor's Duties

关闭
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Article 11 The state-owned assets supervision an ration institution of the State Council and the state-owned assets supervision and administ titution established by the local people's government in accordance with the provisions ate Council shall, according to the authorization of the people's government at the corresp el, perform the investor's duties to the state-funded enterprises on behalf of the peo rnment at the same level.

The State Council and local people's governments may, as needed, authorize other departments and institutions to perform the investor's duties for state-funded enterprises on behalf of the people's government at the same level.

Institutions and departments that perform the functions of contributors on behalf of the people's governments at the same level are hereinafter collectively referred to as institutions that perform the duties of contributors.

Article 12 An institution performing the functions of a contributor shall, on behalf of the people's government at the same level, enjoy the rights of a contributor such as asset income, participation in major decision-making, and selection of managers for state-funded enterprises in accordance with the law.

The institution performing the investor's duties shall formulate or participate in the formulation of the articles of association of the state-funded enterprise in accordance with the provisions of laws and administrative regulations.

The institution performing the contributor's duties shall report to the people's government at the corresponding level for approval of major matters concerning the performance of the contributor's duties that are required by laws, administrative regulations, and the people's government at the same level to be approved by the people's government at the same level.

Article 13 Shareholder representatives appointed by institutions performing the functions of contributors to participate in shareholders' meetings and shareholders' meetings held by state-owned capital holding companies and state-owned capital holding companies shall submit proposals, express opinions, and exercise voting rights in accordance with the instructions of the appointing institutions, and Report the status and results of its performance of duties to the entrusting agency in a timely manner.

Article 14 The institution performing the investor's duties shall perform the investor's duties in accordance with laws, administrative regulations, and the articles of association of the enterprise, protect the rights and interests of the investor, and prevent the loss of state-owned assets.

Institutions performing the investor's duties shall safeguard the legal rights enjoyed by the enterprise as a market entity, and shall not interfere with the business operations of the enterprise except for performing the investor's duties in accordance with the law.

Article 15 The institution performing the contributor's duties is responsible to the people's government at the same level, reports to the people's government at the same level on the

performance of the contributor's duties, accepts the supervision and assessment of the people's government at the same level, and is responsible for maintaining and increasing the value of state-owned assets.

Institutions performing the functions of contributors shall, in accordance with the relevant provisions of the state, regularly report to the people's government at the corresponding level the summary and analysis of the total amount, structure, change [illegible]me of state-owned assets.

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Chapter III State-funded Er[illegible]

Article 16 A state-funded enterprise shall have [illegible] to possess, use, benefit from and dispose of its movables, immovables and other properties [illegible]dance with laws, administrative regulations and the articles of association of the enterprise.

The operating autonomy and other lawful rights and interests enjoyed by state-funded enterprises in accordance with the law shall be protected by law.

Article 17 State-funded enterprises engaged in business activities shall abide by laws and administrative regulations, strengthen business management, improve economic efficiency, accept the management and supervision of the people's government and its relevant departments and institutions in accordance with the law, accept the supervision of the public, and undertake social responsibility. Responsibility, responsible to the investor.

State-funded enterprises shall establish and improve the corporate governance structure in accordance with the law, and establish and improve internal supervision and management and risk control systems.

Article 18 State-funded enterprises shall, in accordance with laws, administrative regulations, and the provisions of the financial department of the State Council, establish and improve financial and accounting systems, set up accounting books, conduct accounting, and provide capital contributors with true , Complete financial and accounting information.

A state-funded enterprise shall distribute profits to investors in accordance with laws, administrative regulations and the articles of association of the enterprise.

Article 19 A solely state-owned company, a state-owned capital holding company and a state-owned capital holding company shall establish a board of supervisors in accordance with the provisions of the "Company Law of the People's Republic of China". For a wholly state-owned enterprise, the institution performing the functions of the investor shall appoint supervisors to form the board of supervisors in accordance with the provisions of the State Council.

The board of supervisors of a state-funded enterprise shall, in accordance with laws, administrative regulations, and the articles of association of the enterprise, supervise the behavior of directors and senior managers in performing their duties, and conduct supervision and inspection of the enterprise's finances.

Article 20 State-funded enterprises shall, in accordance with the provisions of the law, implement democratic management through employee congresses or other forms.

Article 21 State-funded enterprises shall enjoy rights of investors such as asset income, participation in major decision-making, and selection of managers for their invested enterprises in accordance with the law.

State-funded enterprises shall, in accordance with the provisions of laws and administrative

regulations, formulate or participate in the formulation of the articles of association of the invested enterprises, establish an enterprise internal supervision and management and risk control system with clear powers and responsibilities, and effective checks and balances, in order to protect their investors. rights and interests.

⊗关闭

Chapter Four Selection and Assessment of Manage -funded Enterprises

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Article 22 The institution performing the contri ties shall, in accordance with laws, administrative regulations and the articles of associ e enterprise, appoint or recommend the appointment or removal of the following perso ate-funded enterprises: (

1) Appoint and remove managers, deputy managers, fi nagers and (2) Appoint and remove the chairman, vice

-chairman, director, chairman of the board of supervisors and supervisors

of wholly state-owned companies; Candidates.

In state-funded enterprises, the directors and supervisors who should be employee representatives shall be democratically elected by the employees in accordance with relevant laws and administrative regulations.

Article 23 The directors, supervisors, and senior managers appointed or proposed to be appointed by the institution performing the investor's duties shall meet the following conditions:

(1) have good conduct;

(2) have professional knowledge and work ability that meet the requirements of the position (

3) Have the physical condition to be able to perform their duties normally;

(4) Other conditions stipulated by laws and administrative regulations.

Where directors, supervisors, or senior managers fail to comply with the provisions of the preceding paragraph during their tenure, or are prohibited from serving as directors, supervisors, or senior managers of the company as stipulated in the Company Law of the People's Republic of China, the institution performing the investor's duties shall punish them according to law. dismissal or propose dismissal.

Article 24 The institution performing the investor's duties shall inspect the candidates for directors, supervisors, and senior managers to be appointed or proposed to be appointed in accordance with the prescribed conditions and procedures. Those who pass the inspection shall be appointed or suggested to be appointed in accordance with the prescribed authority and procedures.

Article 25 Directors and senior managers of wholly state-owned enterprises and wholly state-owned companies are not allowed to hold concurrent jobs in other enterprises without the consent of the institution performing the investor's duties. Without the consent of the shareholders' meeting or shareholders' meeting, the directors and senior managers of state-owned capital holding companies and state-owned capital holding companies are not allowed to hold concurrent positions in other enterprises operating similar businesses.

Without the consent of the institution performing the investor's duties, the chairman of a wholly state-owned company shall not concurrently serve as a manager. Without the consent of the shareholders' meeting or shareholders' meeting, the chairman of the state-owned capital holding company shall not concurrently serve as the manager.

Directors and senior managers shall not concurrently serve as supervisors.

Article 26 Directors, supervisors, and senior managers of state-funded enterprises shall abide by laws, administrative regulations, and the articles of association of the enterprise, and shall have the obligation of loyalty and diligence to the enterprise, and shall not take advantage of their powers to accept bribes or obtain other illegal income or improper benefits , shall not embezzle or misappropriate enterprise assets, shall not overstep their powers or violate procedures to decide on major matters of the enterprise, and shall not [illegible] acts that infringe upon the rights and interests of state-owned asset contributors.

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Article 27 The state establishes a performance a[illegible]ystem for managers of state-funded enterprises. The institution performing the investor[illegible]shall conduct annual and tenure assessments of the enterprise managers it appoints, and det[illegible]ards and punishments for the enterprise managers based on the assessment results.

The institution performing the investor's duties shall, in accordance with the relevant state regulations, determine the remuneration standards for the managers of the state-funded enterprises appointed by it.

Article 28 The main persons in charge of wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies shall accept the audit of economic responsibility during their term of office according to law.

Article 29 The enterprise managers specified in Item 1 and Item 2 of Paragraph 1 of Article 22 of this Law shall be appointed and removed by the people's government at the same level as stipulated by the State Council and the local people's government, and the regulations shall be followed. The institution performing the investor's duties shall assess, reward and punish the above-mentioned enterprise managers and determine their salary standards in accordance with the provisions of this chapter.

Chapter V Major Matters Concerning the Rights and Interests of State-owned Assets Contributors

Section 1 General Provisions

Article 30 State-funded enterprises merge, split, restructure, go public, increase or decrease registered capital, issue bonds, make major investments, provide large guarantees for others, transfer major properties, make large donations, distribute profits, and dissolve, When applying for bankruptcy and other major matters, laws, administrative regulations, and the articles of association of the enterprise shall be complied with, and the rights and interests of investors and creditors shall not be damaged.

Article 31 Mergers and divisions of wholly state-owned enterprises and companies, increase or decrease of registered capital, issuance of bonds, distribution of profits, dissolution and application for bankruptcy shall be decided by the institution performing the functions of the investor.

Article 32 Where a wholly state-owned enterprise or a wholly state-owned company has any of the matters listed in Article 30 of this Law, except in accordance with Article 31 of this Law and the provisions of relevant laws, administrative regulations, and the articles of association of the enterprise, the contributor's duties shall be performed. In addition to those decided by the relevant institutions, wholly state-owned enterprises shall be decided through collective discussion by the person in charge of the enterprise, and wholly state-owned companies shall be decided by the board of

directors.

Article 33 Matters listed in Article 30 of this law in a state-owned capital holding company or a state-owned capital holding company shall be decided by the company's shareholders' meeting, shareholders' meeting or board of directors in accordance with laws, administrative regulations and the company's articles of association. If it is decided by the shareholders' meeting or the general meeting of shareholders, the shareholder rep e appointed by the institution performing the investor's duties shall exercise the rights nce with the provisions of Article 13 of this Law.

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Article 34 The merger, division, dissolution, ap for bankruptcy of important wholly state-owned enterprises, wholly state-owned companie te-owned capital holding companies, as well as laws, administrative regulations, and the provisions of the people's government at the same level shall be reported to the Ministry by the institution performing the investor's duties. For major matters approved by the people's government at the same level, the institution performing the functions of the investor shall report to the people's government at the same level for approval before making a decision or giving instructions to the shareholder representatives it appoints to attend the shareholders' meeting or shareholders' meeting of the state-owned capital holding company.

The important wholly state-owned enterprises, wholly state-owned companies and state-owned capital holding companies mentioned in this law shall be determined in accordance with the provisions of the State Council.

Article 35 For matters such as bond issuance and investment by state-funded enterprises, relevant laws and administrative regulations shall report to the people's government or relevant departments and institutions of the people's government for approval, approval, or filing, and such provisions shall be followed.

Article 36 Investment by state-funded enterprises shall comply with national industrial policies, and conduct feasibility studies in accordance with state regulations; transactions with others shall be fair and paid, and reasonable consideration shall be obtained.

Article 37 For major matters such as merger, division, restructuring, dissolution, and application for bankruptcy of a state-funded enterprise, the opinions of the enterprise's trade union shall be heard, and the opinions and suggestions of the employees shall be heard through the employee representative meeting or other forms.

Article 38 Wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies shall perform their duties as contributors with reference to the provisions of this chapter for major matters of their invested enterprises. The specific measures by the State Council.

Section 2 Enterprise Restructuring

Article 39 The enterprise restructuring referred to in this law refers to:

(1) a wholly state-owned enterprise being changed into a wholly state-owned company;

3) The state-owned capital holding company is changed to a non-state-owned capital holding company.

Article 40 The restructuring of an enterprise shall be decided by the institution

performing the investor's duties or by the company's shareholders' meeting or shareholders' meeting in accordance with statutory procedures.

For the restructuring of important wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies, the institutions performing the functions of investors shall, before making decisions or giving instructions to the shareholder representatives appointed by them to participate in the state-owned capital ompany's shareholders' meeting or shareholders' meeting, shall Submit the restructuring pl eople's government at the same level for approval.

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Article 41 Enterprise restructuring shall formul ructuring plan, specifying the organizational form of the enterprise after restructuring, or dealing with corporate assets and creditor's rights and debts, the plan for equity changes, operating procedures for restructuring, selection and engagement of intermediary agencies such as asset evaluation and financial auditing, etc. matter.

If the enterprise restructuring involves the resettlement of enterprise employees, a plan for employee resettlement shall also be drawn up, which shall be deliberated and approved by the workers' congress or the workers' assembly.

Article 42 Enterprise restructuring shall carry out asset and capital verification, financial audit, and asset evaluation in accordance with regulations, accurately define and verify assets, and determine the value of assets objectively and fairly.

Where the restructuring of an enterprise involves the conversion of non-monetary properties such as physical objects, intellectual property rights, and land use rights of the enterprise into state-owned capital contributions or shares, the converted property shall be evaluated in accordance with regulations, and the valuation and confirmation price shall be used as the basis for determining the amount of state-owned capital contributions or shares. in accordance with. It is not allowed to convert the property into shares at a low price or engage in other acts that damage the rights and interests of the investors.

Section 3 Transactions with Related Parties

Article 43 Affiliated parties of state-funded enterprises shall not take advantage of transactions with state-funded enterprises to seek improper benefits and harm the interests of state-funded enterprises.

The term "affiliated parties" as mentioned in this Law refers to the directors, supervisors, senior management personnel of the enterprise and their close relatives, as well as the enterprises owned or actually controlled by these personnel.

Article 44 Wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies shall not provide related parties with funds, goods, services or other assets free of charge, and shall not conduct transactions with related parties at unfair prices.

Article 45 Without the consent of the institution performing the investor's duties, wholly state-owned enterprises and wholly state-owned companies shall not engage in the following acts:

(1) Sign property transfer and loan agreements with related parties;

(2) Provide guarantees for related parties;

(3) Establishing an enterprise jointly with related parties, or investing in an enterprise owned or actually controlled by directors, supervisors, senior managers or their close relatives.

Article 46 The transactions between state-owned capital holding companies, state-owned capital holding companies and related parties shall be decided by the company's shareholders' meeting, shareholders' meeting or board of directors in accordance with the "Company Law of the People's Republic of China" and relevant administrative reg nd the company's articles of association. Where it is decided by the company's shareholdng or general meeting of shareholders, the shareholder representative appointed by tion performing the investor's duties shall exercise its rights in accordance with the pro Article 13 of this Law.

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When the company's board of directors makes a resol transaction between the company and related parties, the directors involved in the transaction shall not exercise voting rights, nor shall they exercise voting rights on behalf of other directors.

Section 4 Asset Evaluation

Article 47 Where wholly state-owned enterprises, wholly state-owned companies and state-owned capital holding companies are merged, split up, restructured, transferred major property, invested abroad with non-monetary property, liquidated, or have laws, administrative regulations, and enterprise articles of association that require asset evaluation In other cases, the relevant assets shall be evaluated in accordance with regulations.

Article 48 Wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies shall entrust qualified asset appraisal institutions established in accordance with the law to conduct asset appraisal; The situation of the asset appraisal agency shall be reported to the agency performing the investor's duties.

Article 49 Wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies and their directors, supervisors, and senior managers shall truthfully provide relevant information and materials to asset evaluation agencies, and shall not collude with asset evaluation agencies to make evaluations.

Article 50 An asset appraisal institution and its staff who are entrusted with appraising relevant assets shall abide by laws, administrative regulations, and appraisal practice standards, and independently, objectively, and impartially evaluate the entrusted assets to be appraised. An asset appraisal institution shall be responsible for the appraisal report issued by it.

Section 5 Transfer of State-owned Assets

Article 51 The term "transfer of state-owned assets" as mentioned in this law refers to the act of transferring the rights and interests formed by the state's capital contribution to an enterprise to other units or individuals in accordance with the law, except for the transfer of state-owned assets without compensation in accordance with state regulations.

Article 52 The transfer of state-owned assets shall be conducive to the strategic adjustment of the layout and structure of the state-owned economy, prevent the loss of state-owned assets, and shall not damage the legitimate rights and interests of the parties to the transaction.

Article 53 The transfer of state-owned assets shall be decided by the institution performing the investor's duties. If the institution performing the investor's duties decides to

transfer all the state-owned assets, or transfer part of the state-owned assets so that the state no longer has a controlling position in the enterprise, it shall report to the people's government at the same level for approval.

Article 54 The transfer of state-owned assets shall follow the principles of equivalent compensation and openness, fairness and justice.

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Except for those that can be transferred directly b t in accordance with state regulations, the transfer of state-owned assets shall be ca ublicly at a legally established property right trading place. The transferor sh ully disclose the relevant information and solicit the transferee; if there are more t nsferees resulting from the solicitation, the transfer shall adopt the transaction meth ic bidding.

The transfer of listed and traded shares shall be carried out in accordance with the provisions of the "Securities Law of the People's Republic of China".

Article 55 The transfer of state-owned assets shall be based on the price assessed in accordance with the law, approved by the institution performing the functions of the investor, or submitted to the people's government at the same level for approval by the institution performing the functions of the investor, and the minimum transfer price shall be reasonably determined.

Article 56 State-owned assets that may be transferred to the directors, supervisors, senior management personnel of the enterprise or their close relatives, or to enterprises owned or actually controlled by these personnel as stipulated by laws, administrative regulations or the state-owned assets supervision and administration institution of the State Council, shall be When the above-mentioned personnel or enterprises participate in the transfer, they shall bid on an equal basis with other transferee participants; the transferor shall truthfully disclose relevant information in accordance with relevant state regulations; relevant directors, supervisors and senior managers shall not participate in the formulation of transfer plans and Various tasks carried out by the organization.

Article 57 The transfer of state-owned assets to foreign investors shall abide by relevant state regulations and shall not endanger national security and social public interests.

Chapter VI Budget for State-owned Capital Operations

Article 58 The state establishes and improves the state-owned capital operation budget system, and implements budgetary management of state-owned capital income and its expenditure.

Article 59 For the following state-owned capital income obtained by the state, and the following income expenditures, the state-owned capital operation budget shall be prepared:

(1) profits from state-funded enterprises; (2) income from the transfer of state-owned assets;

Liquidation income obtained by state-funded enterprises;

(4) Other state-owned capital income.

Article 60 The state-owned capital operation budget shall be compiled separately on an annual basis, included in the budget of the people's government at the corresponding level, and reported to the people's congress at the corresponding level for approval.

State-owned capital operating budget expenditures are arranged in accordance with the budget revenue scale of the year, and deficits are not listed.

Article 61 The financial departments of the State Council and relevant local people's governments are responsible for the preparation of the draft state-owned capital operation budget, and the institutions that perform the functions of contributors submit to the financial departments draft proposals for state-owned capital operation budgets that they perform the functions of contributors.

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Article 62 The specific measures and implementat for the budget management of state-owned capital operations shall be formulated by the S il and reported to the Standing Committee of the National People's Congress for the record.

Chapter VII Supervision of Stat sets

Article 63 The standing committees of the people's congresses at all levels exercise supervision in accordance with the law by listening to and deliberating the special work reports on the performance of the investor's duties by the people's governments at the corresponding level and the supervision and management of state-owned assets, and organizing law enforcement inspections of the implementation of this law. Authority.

Article 64 The State Council and local people's governments shall supervise the performance of the functions of the institutions authorized by them to perform the functions of investors.

Article 65 The auditing organs of the State Council and local people's governments shall, in accordance with the provisions of the "Audit Law of the People's Republic of China", conduct auditing and supervision over the implementation of state-owned capital operating budgets and state-funded enterprises that are audited and supervised.

Article 66 The State Council and local people's governments shall announce to the public the status of state-owned assets and the status of state-owned assets supervision and management in accordance with the law, and accept the supervision of the public.

Any unit or individual has the right to report and accuse the behavior that causes the loss of state-owned assets.

Article 67 The institution performing the functions of the capital contributor may entrust an accounting firm to audit the annual financial and accounting reports of wholly state-owned enterprises and companies, or pass a resolution of the shareholders' meeting or shareholders' meeting of the state-owned capital holding company, and the The state-owned capital holding company hires an accounting firm to audit the company's annual financial accounting report to protect the rights and interests of investors.

Chapter VIII Legal Responsibilities

Article 68 Where an institution performing the functions of a contributor commits any of the following acts, its directly responsible executives and other directly responsible personnel shall be punished according to law

: (2) Misappropriating, retaining, or misappropriating funds of state -

funded enterprises or state-owned capital income that should be turned over; (

3) Violating statutory authority and procedures, deciding on major matters of state-funded enterprises, resulting in loss of state-owned assets;

(4) Other behaviors that do not perform the investor's duties in accordance with the law, resulting in the loss of state-owned assets.

Article 69: Where staff members of institutions performing investor duties neglect their duties, abuse their powers, engage in favoritism, and do not constitute a crime, they shall be punished in accordance with the law.

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Article 70 If the shareholder representatives ap the institution performing the investor's duties fail to perform their duties according to uctions of the appointing institution, and cause losses to state-owned assets, they s able for compensation according to law; if they are state employees, they shall be punished to law.

Article 71 Directors, supervisors, and senior ma state-funded enterprises who commit any of the following acts and cause losses to state-owned assets shall be liable for compensation according to law; if they are state employees, they shall be punished according to law

: (2) Misappropriating or misappropriating corporate assets; (3) Transferring corporate assets at low prices in violation of laws, administrative regulations, and fair trade rules in the process of corporate restructuring and property

transfer (4) Trading with the enterprise in violation of the provisions of this law

; Issuing false asset appraisal reports and audit reports;

(6) Violating the decision-making procedures stipulated by laws, administrative regulations and the articles of association of the enterprise, and deciding on major matters of the enterprise

;

The income obtained by directors, supervisors, and senior managers of state-funded enterprises due to the acts listed in the preceding paragraph shall be recovered according to law or shall be owned by the state-funded enterprise.

Where the directors, supervisors, and senior managers appointed or proposed to be appointed by the institution performing the functions of the investor commit any of the acts listed in the first paragraph of this article, causing heavy losses to state-owned assets, the institution performing the functions of the investor shall be removed from office or put forward a suggestion for removal according to law .

Article 72 In transactions involving related party transactions, transfer of state-owned assets, etc., if the parties maliciously collude to damage the rights and interests of state-owned assets, the transaction is invalid.

Article 73 Directors, supervisors, and senior managers of wholly state-owned enterprises, wholly state-owned companies, and state-owned capital holding companies who violate the provisions of this law and cause heavy losses to state-owned assets, and who are removed from office, shall not serve as state-owned enterprises within five years from the date of dismissal. Directors, supervisors, and senior managers of sole proprietorships, state-owned companies, and state-owned capital holding companies; who have caused particularly heavy losses to state-owned assets, or who have been sentenced to criminal punishment for corruption, bribery, embezzlement, misappropriation of property, or disrupting the order of the socialist market economy, Shall not serve as directors,

supervisors, or senior managers of wholly state-owned enterprises, wholly state-owned companies, or state-owned capital holding companies for life.

Article 74 Assets evaluation agencies and accounting firms entrusted to conduct asset evaluations and financial audits of state-funded enterprises, in violation of laws, administrative regulations, and practice standards, issue false asset evaluation reports or audit reports, and shall be punished in accordance with relevant laws. , the provisi inistrative regulations to pursue legal responsibility.

Article 75 Anyone who violates the provisions of and constitutes a crime shall be investigated for criminal responsibility according to la

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Chapter IX Supplementary Provisions

Article 76 The management and supervision of state-owned assets of financial enterprises shall be governed by laws and administrative regulations that provide otherwise.

Article 77 This Law shall come into force on May 1, 2009.

Responsible Editor: Ma Juan

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