



## Policies, Laws & Regulations

### Decree of the State Council of the People's Republic of China

#### No. 378

Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, adopted at the Eighth Executive Meeting of the State Council on May 13, 2003, are hereby promulgated and shall be effective as of the date of promulgation.

Premier: Wen Jiabao

May 27, 2003

### Interim Regulations on Supervision and Management

#### of State-owned Assets of Enterprises

#### Chapter I General Provisions

**Article 1** These Regulations are formulated to establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realize the preservation of and increase in the value of State-owned assets.

**Article 2** These Regulations are applicable to the supervision and management of State-owned assets of State-owned enterprises, State-owned holding enterprises and enterprises with State-owned equity.

These Regulations are not applicable to the supervision and management of State-owned assets of financial institutions.

**Article 3** For purposes of these Regulations, the term "State-owned assets of enterprises" refers to all forms of State investments in enterprises and the equities generated therefrom, as well as other equities which are legally determined to be owned by the State.

**Article 4** State-owned assets of enterprises are owned by the State. The State exercises a State-owned assets management system under which the State Council and local people's governments perform the responsibilities of investor on behalf of the State respectively, enjoying owner's equity, combining rights with obligations and duties, and administering assets, personnel and other affairs.

**Article 5** The State Council represents the State in performing the responsibilities of investor in large State-owned enterprises, State-owned holding enterprises and enterprises with State-owned equity, which have a vital bearing on the lifeline of the national economy and State security, and in large State-owned enterprises, State-owned holding enterprises and enterprises with State-owned equity within such sectors as important infrastructure and natural resources. Enterprises in which the State Council performs the responsibilities of investor are to be determined and announced by the State Council.

The people's government of a province, autonomous region or municipality directly under the Central Government, the people's government at the level of city divided into districts or of autonomous prefecture shall respectively represent the State in performing the responsibilities of investor in State-owned enterprises, State-owned holding enterprises and enterprises with State-owned equity other than those in which the State Council performs the responsibilities of investor. Enterprises in which the people's government of the province, autonomous region or municipality directly under the Central Government performs the responsibilities of investor are to be determined and announced by the people's government of such province, autonomous region or municipality directly under the Central Government, and be reported for the

record to the State-owned assets supervision and administration authority of the State Council. Other enterprises in which the people's government at the level of city divided into districts or of autonomous prefecture performs the responsibilities of investor are to be determined and announced by the people's government at the level of city divided into districts or of autonomous prefecture, and be reported for the record to the State-owned assets supervision and administration authority of the people's government of the province, autonomous region or municipalities directly under the Central Government.

Enterprises in which the State Council, the people's government of a province, autonomous region or municipality directly under the Central Government, or the people's government at the level of city divided into districts or of autonomous prefecture performs the responsibilities of investor are hereinafter collectively referred to as the invested enterprises.

**Article 6** The State Council, the people's government of a province, autonomous region or municipality directly under the Central Government, the people's government at the level of city divided into districts or of autonomous prefecture shall establish a State-owned assets supervision and administration authority respectively. The State-owned assets supervision and administration authority shall, under the authorization, perform the responsibilities of investor according to law, supervise and administer State-owned assets of enterprises according to law.

Subject to the approval of the people's government of a province, autonomous region or municipality directly under the Central Government, a city divided into districts or autonomous prefecture where State-owned assets form a smaller part of the total assets of enterprises need not establish a separate State-owned assets supervision and administration authority.

**Article 7** People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

**Article 8** The State-owned assets supervision and administration authority shall, in accordance with these Regulations and other related laws and administrative regulations, establish and improve its internal supervision systems and strictly abide by the laws and administrative regulations.

**Article 9** In the event of wars, serious natural calamities or other major and emergent situations, the State may, in accordance with the law, uniformly reallocate and dispose State-owned assets of enterprises.

**Article 10** The invested enterprises and the enterprises set up with the investment of such invested enterprises enjoy autonomy in their operation as provided by the relevant laws and administrative regulations.

The State-owned assets supervision and administration authority shall support the independent operation of enterprises according to law, and shall not interfere in their production and operation activities, apart from performing the responsibilities of investor.

**Article 11** The invested enterprises shall make efforts to increase economic efficiency and bear the responsibility of preserving and increasing the value of State-owned assets operated and managed by them.

The invested enterprises shall accept the supervision and administration conducted by the State-owned assets supervision and administration authority according to law, and shall not harm the legitimate rights and interests enjoyed by the owner of State-owned assets of enterprises and other investors.

## Chapter II State-owned Assets Supervision and Administration Authorities

**Article 12** The State-owned assets supervision and administration authority of the State Council is a specially established authority directly subordinated to the State Council which, on behalf of the State Council, performs the responsibilities of investor, supervises and manages State-owned assets of enterprises.

The State-owned assets supervision and administration authority of the people's government of a province, autonomous region or municipality directly under the Central Government, or the State-owned assets supervision and administration authority of the people's government at the level of city divided into districts or of autonomous prefecture, is a specially established authority directly subordinated to the respective people's government which, on behalf of the government at the same level, performs the responsibilities of investor, supervises and manages State-owned assets of enterprises.

The State-owned assets supervision and administration authority of the government at a higher level guides and supervises according to law the management work of State-owned assets supervision and administration of the government at a lower level.

**Article 13** The main responsibilities of a State-owned assets supervision and administration authority are as follows:

- (1) perform the responsibilities of investor for the invested enterprises in accordance with the Company Law of the People's Republic of China and other related laws and regulations, and safeguard the rights and interests of the owner;
- (2) guide and push forward the reform and restructuring of State-owned enterprises and State-owned holding enterprises;
- (3) dispatch supervisory panels to the invested enterprises pursuant to the relevant regulations;
- (4) appoint or remove the responsible persons of the invested enterprises and evaluate their performance in accordance with the statutory procedures, and grant rewards or impose punishments based on the evaluation results;
- (5) supervise and administer the preservation of and increase in the value of State-owned assets of enterprises by means of statistics or auditing;
- (6) perform other responsibilities of investor and undertake other tasks assigned thereto by the government at the corresponding level.

Besides the responsibilities set forth in the preceding paragraph, the State-owned assets supervision and administration authority of the State Council may formulate rules and systems on State-owned assets supervision and administration of enterprises.

**Article 14** The main obligations of a State-owned assets supervision and administration authority are as follows:

- (1) promote the reasonable flow and optimized allocation of State-owned assets, and propel the adjustment of the layout and structure of the State economy;
- (2) maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy;
- (3) explore effective systems and ways for the management of State-owned assets of enterprises, enhance the work of supervision and management of State-owned assets of enterprises, promote the preservation of and increase in the value of State-owned assets of enterprises, and prevent the loss of State-owned assets of enterprises;
- (4) guide and promote the establishment of modern enterprise system in State-owned enterprises and State-owned holding enterprises, improve corporate governance, and advance the modernization of management;

(5) respect and safeguard the operational autonomy of State-owned enterprises and State-owned holding enterprises, safeguard the legitimate rights and interests of enterprises according to law, impel enterprises to operate and manage according to law, and strengthen their competitive power;

(6) offer guidance and coordination to State-owned enterprises and State-owned holding enterprises in overcoming difficulties and solving problems in the process of their reform and development.

**Article 15** The State-owned assets supervision and administration authority shall report to the government at the corresponding level about the supervision and management work of State-owned assets of enterprises, the preservation of and increase in the value of State-owned assets and other major matters.

### Chapter III Administration of Responsible Persons of Enterprises

**Article 16** The State-owned assets supervision and administration authority shall establish and improve the mechanism for selecting and appointing the responsible persons of enterprises and the mechanism of incentives and restraints that meet the requirements of modern enterprise system.

**Article 17** The State-owned assets supervision and administration authority appoints or removes, or makes a proposal to appoint or remove, the responsible persons of its invested enterprises in accordance with the relevant provisions:

(1) appoint or remove the general manager, deputy general manager, chief accountant or other responsible persons of a wholly State-owned enterprise;

(2) appoint or remove the chairman, vice chairman, or director of the board of a wholly State-owned company, and make a proposal to the company for the appointment or removal of the general manager, deputy general manager, or chief accountant, etc.;

(3) nominate the candidate for the director of the board or supervisor to be dispatched to a State-owned holding company according to the company's articles of association, recommend the candidate for the chairman or vice-chairman of the board, or the chairman of the supervisory panel of a State-owned holding company, and make a proposal to the company on the candidate for the general manager, deputy general manager, or chief accountant;

(4) nominate the candidate for the director of the board or supervisor to be dispatched to a company with State-owned equity according to the company's articles of association.

Where the State Council, the people's government of a province, autonomous region, or municipality directly under the Central Government, or the people's government at the level of city or autonomous prefecture provides otherwise on the appointment or removal of the responsible persons of the invested enterprises, such provisions shall prevail.

**Article 18** The State-owned assets supervision and administration authority shall establish a system for evaluating the performance of the responsible persons of enterprises, sign performance contracts with the responsible persons of enterprises appointed by it, and conduct annual and office-term evaluation of the responsible persons according to the performance contracts.

**Article 19** The State-owned assets supervision and administration authority shall, in accordance with the relevant provisions, determine the remuneration of the responsible persons of wholly State-owned enterprises and wholly State-owned companies among the invested enterprises, and grant rewards to or impose punishments upon the responsible persons of the invested enterprises based on the evaluation results.

**Chapter IV Administration of Major Matters of Enterprises**

**Article 20** The State-owned assets supervision and administration authority is responsible for directing State-owned enterprises and State-owned holding enterprises to establish a modern enterprise system, reviewing and approving the restructuring plans or joint-stock transforming plans of the wholly State-owned enterprises or wholly State-owned companies among the invested enterprises, and reviewing and approving the articles of association of the wholly State-owned companies among the invested enterprises.

**Article 21** The State-owned assets supervision and administration authority decides, in accordance with the statutory procedures, on such major matters as the division, merger, bankruptcy, dissolution, capital increase or decrease, or issue of company bonds of wholly State-owned enterprises or wholly State-owned companies among the invested enterprises. The division, merger, bankruptcy or dissolution of key wholly State-owned enterprises or wholly State-owned companies shall, upon the review by the State-owned assets supervision and administration authority, be reported for approval to the people's government at the corresponding level.

When reviewing and deciding on major matters of wholly State-owned enterprises or wholly State-owned companies among the invested enterprises in the field of science, technology and industry for national defense in accordance with the statutory procedures, the State-owned assets supervision and administration authority shall comply with the relevant laws and provisions of the State.

**Article 22** The State-owned assets supervision and administration authority shall, in accordance with the provisions of the Company Law, appoint representatives of shareholders to the shareholders' meeting, or directors to the board of directors, of State-owned holding companies or companies with State-owned equity.

When the shareholder's meeting or the board of directors of a State-owned holding company or company with State-owned equity decides on such major matters as division, merger, bankruptcy, dissolution, capital increase or decrease, issue of company bonds, or appointment or removal of the responsible persons, the representatives of shareholders or the directors appointed thereto by the State-owned assets supervision and administration authority shall voice their opinions and exercise the right to vote according to the instructions of the State-owned assets supervision and administration authority.

The representatives of shareholders or the directors appointed by the State-owned assets supervision and administration authority shall report to the said authority in due time about their performance of responsibilities.

**Article 23** The State-owned assets supervision and administration authority decides on the transfer of State-owned equity of its invested enterprises. The transfer of whole or part of the State-owned equity which may result in the loss of holding position of the State in the invested enterprises shall be reported for approval to the people's government at the corresponding level.

**Article 24** Where any major matters of the important subsidiary enterprises established with the investment of the invested enterprises need to be reported by the invested enterprises to the State-owned assets supervision and administration authority for approval, the management measures therefor shall be separately formulated by the State-owned assets supervision and administration authority of the State Council and submitted to the State Council for approval.

**Article 25** The State-owned assets supervision and administration authority shall, in accordance with the relevant provisions of the State, organize and coordinate the work concerning the merger and bankruptcy of wholly State-owned enterprises and wholly State-owned companies among the invested enterprises, and cooperate with the relevant departments to make arrangements for settling laid-off workers.

**Article 26** The State-owned assets supervision and administration authority shall, in accordance with the relevant provisions of the State, work out the guideline for the remuneration system reform of its invested enterprises, and regulate and control the overall level of the allocation of remuneration of its invested enterprises.

**Article 27** Subject to the approval of the State Council, wholly State-owned enterprises and wholly State-owned companies among the invested enterprises may enjoy the rights prescribed in Article 12 of the Company Law as investment companies or holding companies as

specified by the State Council, and may enjoy the rights prescribed in Article 20 of the Company Law as State-authorized investment institutions.

**Article 28** The State-owned assets supervision and administration authority may authorize qualified wholly State-owned enterprises and wholly State-owned companies among the invested enterprises to engage in authorized operation of State-owned assets.

The authorized wholly State-owned enterprises and wholly State-owned companies shall operate, manage and supervise according to law the State-owned assets generated from State investment in their wholly owned enterprises, holding enterprises or enterprises with equity.

**Article 29** The authorized wholly State-owned enterprises and wholly State-owned companies shall establish and improve a modern enterprise system, and be liable to preserve and increase the value of State-owned assets of enterprises.

## **Chapter V Management of State-owned Assets of Enterprises**

**Article 30** The State-owned assets supervision and administration authority shall, in accordance with the relevant provisions of the State, be responsible for the basic management work, such as the definition and registration of property rights, the supervision and management of assets appraisal, the making of inventory of assets and liabilities, assets statistics, and overall assessment of State-owned assets.

The State-owned assets supervision and administration authority shall coordinate the settlement of disputes over property rights of State-owned assets among its invested enterprises.

**Article 31** The State-owned assets supervision and administration authority shall establish a system for the supervision and management of property rights trading of State-owned assets of enterprises, reinforce the supervision and management of property rights trading of State-owned assets of enterprises, promote the reasonable flow of State-owned assets of enterprises, and prevent the loss of State-owned assets of enterprises.

**Article 32** The State-owned assets supervision and administration authority shall perform the responsibilities of investor for the returns on the State-owned assets of the invested enterprises in accordance with law, and for any major investment and financing plan, development strategy and planning in accordance with the development plan and industrial policies of the State.

**Article 33** Where the disposal of any major assets of wholly State-owned enterprises and wholly State-owned companies among the invested enterprises is subject to the approval of the State-owned assets supervision and administration authority, the matter shall be dealt with in accordance with the relevant provisions.

## **Chapter VI Supervision of State-owned Assets of Enterprises**

**Article 34** The State-owned assets supervision and administration authority of the State Council shall, on behalf of the State Council, dispatch supervisory panels to wholly State-owned enterprises and wholly State-owned companies among the invested enterprises. The composition, powers and ethics of conducts of a supervisory panel shall be in compliance with the Interim Regulations on Supervisory Panels of State-owned Enterprises.

The dispatch of supervisory panels to wholly State-owned enterprises and wholly State-owned companies among the invested enterprises by the State-owned assets supervision and administration authority of the local people's government on behalf of the people's government at the corresponding level shall be conducted with reference to the provisions of the Interim Regulations on Supervisory Panels of State-owned Enterprises.

**Article 35** The State-owned assets supervision and administration authority shall supervise the financial situations of its invested enterprises in accordance with law, establish and improve the index system for the preservation of and increase in the value of State-owned assets, and

safeguard the rights and interests of the investor of State-owned assets.

**Article 36** Wholly State-owned enterprises and State-holding enterprises shall strengthen their internal supervision and risk control, establish and improve the systems of finance, audit, corporate legal counsel, and democratic supervision by staff members and workers in accordance with the relevant provisions of the State.

**Article 37** Wholly State-owned enterprises and wholly State-owned companies among the invested enterprises shall, in accordance with the relevant provisions, regularly report to the State-owned assets supervision and administration authority about the situations of their finance, production and operation, as well as the preservation of and increase in State-owned assets.

## Chapter VII Legal Liability

**Article 38** Where, in violation of the relevant provisions, the State-owned assets supervision and administration authority appoints or removes the responsible persons of its invested enterprises, or makes a proposal to appoint or remove the responsible persons of its invested enterprises, or illegally interferes in the production and operation of the invested enterprises and infringes upon their legitimate rights and interests, thereby causing loss of State-owned assets of the enterprises or other serious results, the person directly in charge and other persons directly responsible therefor shall be given an administrative sanction in accordance with law. If a crime is constituted, criminal liability shall be investigated in accordance with law.

**Article 39** Where, in violation of the relevant provisions, a wholly State-owned enterprise or wholly State-owned company among the invested enterprises fails to report to the State-owned assets supervision and administration authority about the situations of its finance, production and operation, or the preservation of and increase in the value of State-owned assets, it shall be given a warning; if the circumstances are serious, the person directly in charge and other persons directly responsible therefor shall be given a disciplinary sanction in accordance with law.

**Article 40** Where the responsible person of a State-owned enterprise or State-holding enterprise abuses his power or neglects his duty, thus causing loss of State-owned assets of the enterprise, such person shall take the liability of compensation and be given a disciplinary sanction in accordance with law; if a crime is constituted, criminal liability shall be investigated in accordance with law.

**Article 41** The responsible person of a State-owned enterprise or State-holding enterprise who is liable for the loss of State-owned assets of the enterprise, and therefore given a disciplinary sanction of removal from office or heavier, shall not take the office of responsible person of any State-owned enterprise or State-holding enterprise within five years; and the responsible person who causes heavy loss of State-owned assets of the enterprise or is imposed upon criminal penalty shall not take the office of responsible person of any State-owned enterprise or State-holding enterprise for life.

## Chapter VIII Supplementary Provisions

**Article 42** The organizational form, organizational structure, rights and obligations of State-owned enterprises, State-holding enterprises and enterprises with State-owned equity shall be governed by the Company Law of the People's Republic of China and other laws, administrative regulations as well as these Regulations.

**Article 43** The build-up of primary organizations of the Communist Party of China, the development of socialist ideological and cultural progress, the improvement of the Party's work style and the build-up of clean government in State-owned enterprises, State-holding enterprises and enterprises with State-owned equity shall be conducted pursuant to the Constitution of Communist Party of China and other relevant provisions.

Trade unions in State-owned enterprises, State-holding enterprises and enterprises with State-owned equity shall be organized pursuant to the relevant provisions of the Trade Union Law of the People's Republic of China and the Constitution of Trade Unions of China.

**Article 44** The State-owned assets supervision and administration authority of the State Council, the people's government of a province, autonomous region or municipality directly under the Central Government may formulate implementing measures in accordance with these Regulations.

**Article 45** Where there is any discrepancy between these Regulations and the administrative regulations on the supervision and administration of State-owned assets formulated before the effectiveness of these Regulations, these Regulations shall prevail.

**Article 46** Units that have not had their government functions separated from enterprise management shall, in accordance with the provisions of the State Council, accelerate the reform to separate government functions from enterprise management. After the accomplishment of the separation of government functions from enterprise management, the State-owned assets supervision and administration authority shall perform the responsibilities of investor and conduct the supervision and management of State-owned assets of the enterprise according to law.

**Article 47** These Regulations shall be effective as of the date of promulgation.

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