

## **Law of the People's Republic of China on the State-Owned Assets of Enterprises**

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

(No. 5)

The Law of the People's Republic of China on the State-Owned Assets of Enterprises, which was adopted at the 5th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on October 28, 2008, is hereby promulgated and shall come into force on May 1, 2009.

President of the People's Republic of China: Hu Jintao

October 28, 2008

Law of the People's Republic of China on the State-Owned Assets of Enterprises

(Adopted at the 5th session of the Standing Committee of the 11th National People's Congress on October 28, 2008)

Contents

Chapter I General Provisions

Chapter II Bodies Performing the Contributor's Functions

Chapter III State-invested Enterprises

Chapter IV Selection and Evaluation of State-invested Enterprise Managers

Chapter V Major Matters concerning the Rights and Interests of the State-owned Assets Contributor

Section 1 Common Provisions

Section 2 Enterprise Restructuring

Section 3 Transactions with an Affiliated Party

Section 4 Assets Appraisal

Section 5 Transfer of State-owned Assets

Chapter VI State-owned Capital Operating Budget

Chapter VII State-owned Assets Supervision

Chapter VIII Legal Liabilities

Chapter IX Supplementary Provisions

Chapter I General Provisions

Article 1 This law is formulated for the purposes of safeguarding the basic economic system of China, consolidating and developing the state-owned economy, strengthening the protection of state-owned assets, giving play to the leading role of the state-owned economy in the national economy, and promoting the development of the socialist market economy.

Article 2 The term "state-owned assets of enterprises" (hereinafter referred to as the "state-owned assets") as mentioned in this Law refers to the rights and interests formed by the various forms of investment of the state in enterprises.

Article 3 The state-owned assets shall be owned by the state, i.e. owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership of state-owned assets.

Article 4 The State Council and the local people's governments shall, in accordance with laws and administrative regulations, perform respectively the contributor's functions for state-invested enterprises and enjoy the contributor's rights and interests on behalf of the state.

The State Council shall, on behalf of the state, perform the contributor's functions for the large-sized state-invested

enterprises that have bearings on the national economic lifeline and state security determined by the State Council and the state-invested enterprises in such fields as important infrastructures and natural resources. The local people's governments shall, on behalf of the state, perform the contributor's functions for other state-invested enterprises.

Article 5 The term "state-invested enterprise" as mentioned in this Law refers to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling.

Article 6 The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Article 7 The state shall take measures to promote the centralization of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state 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 control force and influence of the state-owned economy.

Article 8 The state shall establish and improve the state-owned assets administration and supervision system meeting the requirements of the development of the socialist market economy, establish and improve the evaluation and accountability system of value maintenance and increment of state-owned assets, and ensure the performance of responsibilities for the value maintenance and increment of state-owned assets.

Article 9 The state shall establish and improve the basic management system of state-owned assets. The specific measures shall be formulated according to the provisions of the State Council.

Article 10 State-owned assets shall be protected by law, and no entities and individuals shall infringe upon them.

## Chapter II Bodies Performing the Contributor's Functions

Article 11 The state-owned assets supervision and administration body under the State Council and the state-owned assets supervision and administration bodies established by the local people's governments according to the provisions of the State Council shall perform the contributor's functions for state-invested enterprises on behalf of and upon the authorization of the corresponding people's government.

The State Council and the local people's governments may, when necessary, authorize other departments or bodies to perform the contributor's functions for state-invested enterprises on behalf of the corresponding people's government. The bodies and departments that perform the contributor's functions on behalf of the corresponding people's government shall be together referred to as the "bodies performing the contributor's functions" hereinafter.

Article 12 A body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law.

A body performing the contributor's functions shall formulate or participate in the formulation of the bylaws of state-invested enterprises according to the provisions of laws and administrative regulations.

For the major matters on the performance of the contributor's functions that are subject to the approval of the corresponding people's government as prescribed by laws, administrative regulations and the corresponding people's government, a body performing the contributor's functions shall report such matters to the corresponding people's government for approval.

Article 13 When attending the shareholders' meeting or general assembly of shareholders convoked by a company in which the state has a stake, whether controlling or non-controlling, the shareholder representative(s) appointed by a body

performing the contributor's functions shall put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and report the performance of his duties and results thereof to the appointing body in good time.

Article 14 Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

Article 15 A body performing the contributor's functions shall be responsible to the corresponding people's government, report its performance of the contributor's functions to the corresponding people's government, accept the supervision and assessment by the corresponding people's government, and be responsible for the value maintenance and increment of state-owned assets.

A body performing the contributor's functions shall, according to the relevant state provisions, report regularly the summary analyses concerning the total volume, structure and changes of, return on, etc. of the state-owned assets to the corresponding people's government.

### Chapter III State-invested Enterprises

Article 16 The state-invested enterprises shall enjoy the rights to possess, use, profit from and dispose of their movables, immovables and other property according to laws, administrative regulations and enterprise bylaws.

The operation autonomy as well as other lawful rights and interests legally enjoyed by the state-invested enterprises shall be protected by law.

Article 17 The state-invested enterprises engaged in business activities shall observe laws and administrative regulations, strengthen business management, enhance economic benefits, accept the administration and supervision legally implemented by the people's governments and their relevant departments and bodies, accept the supervision of the general public, assume social responsibilities, and be responsible to the contributor.

The state-invested enterprises shall establish and improve the legal person governance structure according to law, as well as the internal supervisory management and risk control systems.

Article 18 The state-invested enterprises shall establish and improve the finance and accounting system, maintain account books and conduct accounting according to the provisions of laws, administrative regulations and the public finance department of the State Council, and provide the contributor with true and complete financial and accounting information according to laws, administrative regulations and enterprise bylaws.

The state-invested enterprises shall distribute profits to the contributor according to laws, administrative regulations and enterprise bylaws.

Article 19 A wholly state-owned company or a company in which the state has a stake, whether controlling or non-controlling, shall set up a board of supervisors in accordance with the Company Law of the People's Republic of China. For a wholly state-owned enterprise, its board of supervisors shall be composed of the supervisors appointed by the body performing the contributor's functions according to the provisions of the State Council.

The board of supervisors of a state-invested enterprise shall, according to laws, administrative regulations and enterprise bylaws, supervise the performance of duties of the directors and senior managers, and supervise and inspect the financial status of the enterprise.

Article 20 A state-invested enterprise shall apply the democratic management through the assembly of employee representatives or other channels according to law.

Article 21 A state-invested enterprise shall legally enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to an enterprise in which it invests.

For the enterprise in which it invests, the state-invested enterprise shall, according to laws and administrative regulations, safeguard its rights and interests as a contributor by formulating or participating in the formulation of the bylaws of the enterprise in which it invests and establishing the internal enterprise supervisory management and risk control systems with definite rights and responsibilities and effective check and balance.

#### Chapter IV Selection and Evaluation of State-invested Enterprise Managers

Article 22 A body performing the contributor's functions shall, according to laws, administrative regulations and enterprise bylaws, appoint or remove, or suggest the appointment or removal of the following personnel of a state-invested enterprise:

1. Appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise;
2. Appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company; and
3. Proposing the director and supervisor candidates to the shareholders' meeting or general assembly of shareholders of a company in which the state has a stake, whether controlling or non-controlling.

The directors and supervisors of a state-invested enterprise who shall be employee representatives shall be elected democratically by employees according to the relevant laws and administrative regulations.

Article 23 Any of the directors, supervisors and senior managers appointed or proposed for appointment by a body performing the contributor's functions shall meet the following requirements:

1. Having good moral characters;
2. Having the expertise and working capability as required by the position;
3. Being in a health condition enabling him to normally perform his duties; and
4. Meeting other requirements of laws and administrative regulations.

Where any director, supervisor or senior manager, during his term of office, does not satisfy any of the aforesaid requirements any more or becomes prohibited from being a director, supervisor or senior manager of a company as prescribed by the Company Law of the People's Republic of China, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 24 A body performing the contributor's functions shall, according to the prescribed conditions and procedures, assess the candidates for directors, supervisors and senior managers to be appointed or proposed for appointment. If such candidates pass the assessment, it shall appoint or propose the appointment of them according to the prescribed authority and procedures.

Article 25 Without the approval of the body performing the contributor's functions, no director or senior manager of a wholly state-owned enterprise or wholly state-owned company shall hold a position concurrently in any other enterprise. Without the approval of the shareholders' meeting or the general assembly of shareholders, no director or senior manager of a company in which the state has a stake, whether controlling or non-controlling, shall hold a position concurrently in any other enterprise operating the similar business.

Without the approval of the body performing the contributor's functions, the chairman of the board of directors of a wholly state-owned company shall not be the president concurrently. Without the approval of the shareholders' meeting or the general assembly of shareholders, the chairman of the board of directors of a company in which the state has a controlling stake shall not be the president concurrently.

No director or senior manager shall concurrently serve as a supervisor.

Article 26 The directors, supervisors and senior managers of a state-invested enterprise shall comply with laws,

administrative regulations and enterprise bylaws, and bear the obligations of fidelity and diligence to the enterprise; shall not take bribes or acquire other illegal gains or improper benefits by taking advantage of their positions; shall not encroach on or embezzle the enterprise property; shall not decide major enterprise matters ultra vires or in violation of procedures; and shall not otherwise damage the rights and interests of the state-owned assets contributor.

Article 27 The state shall establish the assessment system of business management performance of the managers of state-invested enterprises. A body performing the contributor's functions shall conduct annual and office term assessments of the enterprise managers appointed by it, and decide the rewards and punishments to the enterprise managers according to the assessment results.

A body performing the contributor's functions shall, pursuant to the relevant state provisions, determine the standards of remuneration for the managers of state-invested enterprise appointed by it.

Article 28 The principal persons in charge of a wholly state-owned enterprise, a wholly state-owned company or a company in which the state has a controlling stake shall accept the office term economic accountability audit conducted according to law.

Article 29 For the enterprise managers as provided for in subparagraphs 1 and 2 of paragraph 1 of Article 22 of this Law, if they shall be appointed or removed by the corresponding people's government as provided for by the State Council and the local people's governments, such provisions shall prevail. A body performing the contributor's functions shall assess, reward or punish the aforesaid enterprise managers, and decide the standards of remuneration for them, in accordance with the provisions of this Chapter.

## Chapter V Major Matters concerning the Rights and Interests of the State-owned Assets Contributor

### Section 1 Common Provisions

Article 30 The state-invested enterprises shall comply with laws, administrative regulations and enterprise bylaws in such major matters as merger, splitting, restructuring, listing, increase or reduction of registered capital, issuance of bonds, major investment, provision of large-sum security for others, transfer of major property, large-sum donation, distribution of profits, dissolution, and petition for bankruptcy, without prejudice to the rights and interests of the contributor and creditors.

Article 31 The merger, splitting, increase or reduction of registered capital, issuance of bonds, distribution of profits, dissolution and petition for bankruptcy of a wholly state-owned enterprise or a wholly state-owned company shall be decided by the body performing the contributor's functions.

Article 32 The matters listed in Article 30 of this Law of a wholly state-owned enterprise or a wholly state-owned company, other than those that shall be decided by the body performing the contributor's functions according to Article 31 of this Law and the relevant laws, administrative regulations and enterprise bylaws, shall be decided by the persons in charge of the wholly state-owned enterprise through collective discussion or decided by the board of directors of the wholly state-owned company.

Article 33 The matters listed in Article 30 of this Law of a company in which the state has a stake, whether controlling or non-controlling, shall be decided by the shareholders' meeting, general assembly of shareholders or the board of directors of the company according to laws, administrative regulations and company bylaws. If the matters are decided by the shareholders' meeting or general assembly of shareholders, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

Article 34 For the merger, splitting, dissolution or petition for bankruptcy of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake or any other major matter which shall be reported by the body performing the contributor's functions to the corresponding people's government for approval as prescribed by laws, administrative regulations and the corresponding people's government, the body performing the

contributor's functions shall, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, report such a matter to the corresponding people's government for approval.

The "important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake" as mentioned in this Law shall be determined in accordance with the provisions of the State Council.

Article 35 If a relevant law or administrative regulation provides that such matters as issuance of bonds and investment of state-invested enterprises shall be reported to the people's governments or the relevant departments or bodies of the people's governments for examination and approval, verification and approval or archival purposes, such provisions shall prevail.

Article 36 A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

Article 37 In such major matters as merger, splitting, restructuring, dissolution and petition for bankruptcy of a state-invested enterprise, the opinions of the trade union of the enterprise shall be heeded, and the opinions and suggestions of the employees shall be heeded through the assembly of employee representatives or other channels.

Article 38 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall perform the contributor's functions in the major matters of an enterprise in which it invests under the provisions of this Chapter by analogy. The specific measures shall be stipulated by the State Council.

## Section 2 Enterprise Restructuring

Article 39 The term "enterprise restructuring" as mentioned this Law refers to:

1. Restructuring a wholly state-owned enterprise into a wholly state-owned company;
2. Restructuring a wholly state-owned enterprise or wholly state-owned company into a company in which the state has or does not have a controlling stake; and
3. Restructuring a company in which the state has a controlling stake into a company in which the state does not have a controlling stake.

Article 40 The enterprise restructuring shall be decided by the body performing the contributor's functions or the shareholders' meeting or general assembly of shareholders of a company under legal proceedings.

For the restructuring of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, the body performing the contributor's functions shall report the restructuring scheme to the corresponding people's government for approval, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake.

Article 41 A restructuring scheme shall be worked out for the enterprise restructuring, which shall indicate the enterprise organizational form after the restructuring, plan on the disposition of enterprise assets, debts and claims, plan on equity changes, operating procedures for restructuring, selection and engagement of such intermediaries as assets appraisal and financial audit, etc.

If the enterprise restructuring involves the resettlement of enterprise employees, an employee resettlement plan shall be also formulated and adopted at the assembly of employee representatives or the employees' assembly upon deliberation.

Article 42 In the enterprise restructuring, the assets and capital verification, financial auditing and assets appraisal shall be conducted according to the relevant provisions to accurately define and verify assets and objectively and fairly determine the value of assets.

If the enterprise restructuring involves the conversion of such non-monetary property of the enterprise as property in kind, intellectual property rights and land use rights into the contribution of state-owned capital or into the state-owned shares, the converted property shall be appraised according to the relevant provisions, and the amount of the state-owned capital contribution or the amount of state-owned shares shall be determined on the basis of the price confirmed by appraisal. No property shall be converted into shares at a low price, and any other acts prejudicial to the contributor's rights and interests shall be banned.

### Section 3 Transactions with an Affiliated Party

Article 43 An affiliated party of a state-invested enterprise shall not seek any improper benefits and damage the interests of the state-invested enterprise by taking advantage of any transaction with the state-invested enterprise.

The term "affiliated party" as mentioned in this Law refers to a director, supervisor or senior manager of an enterprise or a close relative thereof, or an enterprise owned or actually controlled by such a person.

Article 44 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall not gratuitously provide an affiliated party with capital, commodities, services or other assets, and shall not conduct a transaction with an affiliated party at an unfair price.

Article 45 Without the approval of the body performing the contributor's functions, a wholly state-owned enterprise or wholly state-owned company shall not commit any of the following acts:

1. Entering into an agreement on property transfer or loan with an affiliated party;
2. Providing a security for an affiliated party; or
3. Making joint investment with an affiliated party to form an enterprise, or making investment in an enterprise owned or actually controlled by a director, supervisor or senior manager or a close relative thereof.

Article 46 A transaction between a company in which the state has a stake, whether controlling or non-controlling, and an affiliated party shall be decided by the shareholders' meeting, general assembly of shareholders or board of directors of the company according to the Company Law of the People's Republic of China, relevant administrative regulations and company bylaws. If the transaction is decided by the shareholders' meeting or general assembly of shareholders of the company, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

When the board of directors of the company makes a resolution on a transaction with an affiliated party, the director involved in the transaction shall neither exercise his voting right nor exercise the voting right on behalf of any other director.

### Section 4 Assets Appraisal

Article 47 For the merger, splitting, restructuring, transfer of major property, investment of non-monetary property or liquidation of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, or any other matter in which the assets appraisal shall be conducted according to a law or administrative regulation or the enterprise bylaws, the appraisal of the relevant assets shall be conducted according to the relevant provisions.

Article 48 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall entrust a legally established and qualified assets appraisal agency with the assets appraisal; and if any matter that shall be reported to the body performing the contributor's functions for decision is involved, the information on entrusting the assets appraisal agency shall be reported to the body performing the contributor's functions.

Article 49 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake and its directors, supervisors and senior managers shall faithfully provide the relevant information and materials for

the assets appraisal agency, and shall not collude with the assets appraisal agency in the appraisal.

Article 50 The assets appraisal agency and its staff entrusted with the appraisal of the relevant assets shall comply with laws, administrative regulations and appraisal practice guidelines to appraise the assets independently, objectively and fairly. The assets appraisal agency shall be responsible for the appraisal report produced 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 legal transfer of the rights and interests formed by the state’s contribution to an enterprise to any other entity or individual, other than the gratuitous transfer of state-owned assets according to the state provisions.

Article 52 The transfer of state-owned assets shall be favorable to the strategic adjustment of the layout and structure of the state-owned economy, the loss of state-owned assets shall be prevented, and the legal rights and interests of all the parties to the transaction shall not be damaged.

Article 53 The transfer of state-owned assets shall be decided by the body performing the contributor’s functions. If a body performing the contributor’s functions decides to transfer the whole state-owned assets or transfer the partial state-owned assets which will cause the state to lose the controlling position over the enterprise, it shall report such a decision to the corresponding people’s government for approval.

Article 54 The transfer of state-owned assets shall follow the principles of valuable consideration, openness, fairness and equity.

Except the state-owned assets that may be directly transferred by agreement in accordance with the state provisions, the transfer of state-owned assets shall be openly conducted at a legally established property right exchange. The transferor shall faithfully disclose the relevant information to invite a transferee; if the invitation leads to two or more prospective transferees, open bidding shall be adopted for the transfer.

The transfer of shares traded on an exchange shall be carried out according to the Securities Law of the People’s Republic of China.

Article 55 For the transfer of state-owned assets, a minimum transfer price shall be reasonably determined on the basis of the price which is legally appraised and confirmed by the body performing the contributor’s functions or approved by the corresponding people’s government after being reported thereto by the body performing the contributor’s functions.

Article 56 During the transfer of the state-owned assets which may be transferred to the directors, supervisors and senior managers of the enterprise and their close relatives or the enterprises owned or actually controlled by these persons as prescribed by the laws and administrative regulations or the state-owned assets supervision and administration body under the State Council, the aforesaid persons or enterprises, if participating in the transfer, shall equally compete for the transferred assets with other participants; the transferor shall truthfully disclose the relevant information according to the relevant state provisions; and the relevant directors, supervisors and senior managers shall not take part in the various work on the formulation and organization of implementation of the transfer plan.

Article 57 If the state-owned assets are transferred to any overseas investor, the relevant state provisions shall be observed, and the national security and public interest shall not be compromised.

## Chapter VI State-owned Capital Operating Budget

Article 58 The state shall establish and improve the state-owned capital operating budget system to carry out budget administration of the state-owned capital income obtained and expenditures therefrom.

Article 59 For the following state-owned capital income obtained by the state and the expenditures from the following income, a state-owned capital operating budget shall be formulated:



1. The profits distributed to the state by the state-invested enterprises;
2. Income from the transfer of state-owned assets;
3. Liquidation income from the state-invested enterprises; and
4. Other state-owned capital income.

Article 60 The state-owned capital operating budget shall be compiled annually and separately, brought into the budget of the corresponding people's government, and submitted to the corresponding people's congress for approval.

The expenditures in the state-owned capital operating budget shall be arranged according to the scale of income in the budget of the year, and no deficit shall be listed.

Article 61 The public finance departments of the State Council and the relevant local people's governments shall be responsible for compiling the draft state-owned capital operating budgets, and the bodies performing the contributor's functions shall propose to the public finance departments the draft state-owned capital operating budgets for which they perform the contributor's functions.

Article 62 The specific measures and implementing procedures for the administration of state-owned capital operating budgets shall be stipulated by the State Council and filed with the Standing Committee of the National People's Congress for archival purposes.

#### Chapter VII State-owned Assets Supervision

Article 63 The standing committee of the people's congress at every level shall legally exercise the powers of supervision, through hearing and deliberating the specialized work reports on the performance of the contributor's functions by the corresponding people's government and on the supervision and administration of state-owned assets, organizing the law enforcement inspection on the implementation of this Law, etc.

Article 64 The State Council and the local people's governments shall conduct supervision over the performance of functions by the bodies empowered by them to perform the contributor's functions.

Article 65 The audit organs of the State Council and the local people's governments shall, according to the Audit Law of the People's Republic of China, conduct audit supervision over the implementation of the state-owned capital operating budgets and the state-invested enterprises falling within the subjects of the audit supervision.

Article 66 The State Council and the local people's governments shall make available to the public the status of state-owned assets and the information on the state-owned assets supervision and administration, and accept the supervision of the general public, according to law.

Entities and individuals shall have the right to report and file accusations of acts causing losses of state-owned assets.

Article 67 A body performing the contributor's functions may, when necessary, entrust an accounting firm to audit the annual financial report of a wholly state-owned enterprise or wholly state-owned company, or through a resolution of the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, cause the company to engage an accounting firm to audit the annual financial report of the company, so as to protect the rights and interests of the contributor.

#### Chapter VIII Legal Liabilities

Article 68 Where a body performing the contributor's functions commits any of the following acts, the directly liable person in charge and other directly liable persons of the body shall be subject to sanctions according to law:

1. Appointing or proposing the appointment of managers of a state-invested enterprise in violation of the statutory qualifications for office;
2. Encroaching upon, illegally withholding or embezzling the funds of a state-invested enterprise or the state-owned capital

income to be turned in;

3. Making a decision on a major matter of a state-invested enterprise in violation of the legal authority or procedures, which has caused losses of state-owned assets; or
4. Other wise failing to perform the contributor's functions according to law, which has caused losses of the state-owned assets.

Article 69 Where any staff member of a body performing the contributor's functions neglects his duties, abuses his powers or engages in malpractice for personal gains, which does not constitute a crime, he shall be subject to a sanction according to law.

Article 70 Where any shareholder representative appointed by a body performing the contributor's functions fails to perform his functions according to the instructions of the appointing body, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law.

Article 71 Where any director, supervisor or senior manager of a state-invested enterprise commits any of the following acts, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law:

1. Taking bribes or obtaining other illegal income or improper benefits by taking advantage of his position;
2. Encroaching on or embezzling enterprise assets;
3. During the enterprise restructuring, property transfer, etc., transferring the enterprise property or converting the enterprise property into shares at a low price, in violation of laws, administrative regulations and the rule of fair trade;
4. Transacting with the enterprise in violation of the provisions of this Law;
5. Unfaithfully providing an assets appraisal agency or accounting firm with the relevant information or materials, or colluding with an assets appraisal agency or accounting firm in issuing a false assets appraisal report or audit report;
6. Making a decision on a major matter of the enterprise in violation of the procedures for decision-making as prescribed by laws, administrative regulations and enterprise bylaws; or
7. Otherwise performing his duties in violation of laws, administrative regulations and enterprise bylaws.

The income obtained from any of the acts listed in the preceding paragraph by a director, supervisor or senior manager of a state-invested enterprise shall be recovered according to law or be owned by the state-invested enterprise.

Where a director, supervisor or senior manager appointed or proposed for appointment by a body performing the contributor's functions commits any of the acts listed in paragraph 1 of this Article, which has caused gross losses of state-owned assets, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 72 During such transactions as one involving an affiliated party and the transfer of state-owned assets, if the parties maliciously collude to damage the rights and interests of state-owned assets, such transactions shall be void.

Article 73 Where any director, supervisor or senior manager of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake is removed from office for a violation of this Law which has caused gross losses of state-owned assets, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake within 5 years from the day of removal; if the violation has caused especially gross losses of state-owned assets or he has been subject to a criminal punishment for corruption, bribery, encroachment upon property, embezzlement of property or undermining of the socialist market economic order, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake for life.

Article 74 Where an assets appraisal agency or an accounting firm which is entrusted with the assets appraisal or financial auditing of a state-invested enterprise produces a false assets appraisal report or audit report in violation of laws,

administrative regulations and practice guidelines, it shall be subject to legal liabilities according to laws and administrative regulations.

Article 75 Whoever violates this Law shall be subject to the criminal liability if the violation constitutes a crime.

#### Chapter IX Supplementary Provisions

Article 76 If any law or administrative regulation provides otherwise for the administration and supervision of state-owned assets of financial enterprises, such provisions shall prevail.

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

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# 中华人民共和国企业国有资产法

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）

## 目 录

第一章 总 则

第二章 履行出资人职责的机构

第三章 国家出资企业

第四章 国家出资企业管理者的选择与考核

## 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

### 第二节 企业改制

### 第三节 与关联方的交易

### 第四节 资产评估

### 第五节 国有资产转让

## 第六章 国有资本经营预算

## 第七章 国有资产监督

## 第八章 法律责任

## 第九章 附 则

## 第一章 总 则

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。

第五条 本法所称国家出资企业，是指国家出资的国有独资企业、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 and 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规定向出资人提供真实、完整的财务、会计信息。

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，向出资人分配利润。

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。

履行出资人职责的机构应当按照国家有关规定，确定其任命的国家出资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。

第四十一条 企业改制应当制定改制方案，载明改制后的企业组织形式、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，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。

#### 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的出资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。

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控告。

第六十七条 履行出资人职责的机构根据需要，可以委托会计师事务所对国有独资企业、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、股东大会决议，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，损害国有产权权益的，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。

## 第九章 附 则

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。