

## 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 requites 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.

来源：中国政府网

[http://www.gov.cn/zwggk/2005-05/23/content\\_152.htm](http://www.gov.cn/zwggk/2005-05/23/content_152.htm)

## 中华人民共和国国务院令

第 378 号

《企业国有资产监督管理暂行条例》已经 2003 年 5 月 13 日国务院第 8 次常务会议讨论通过，现予公布，自公布之日起施行。

总

理 温家宝

二〇〇三年五月二十七日

### 企业国有资产监督管理暂行条例

#### 第一章 总 则

**第一条** 为建立适应社会主义市场经济需要的国有资产监督管理体制，进一步搞好国有企业，推动国有经济布局和结构的战略性调整，发展壮大国有经济，实现国有资产保值增值，制定本条例。

**第二条** 国有及国有控股企业、国有参股企业中的国有资产的监督管理，适用本条例。

金融机构中的国有资产的监督管理，不适用本条例。

**第三条** 本条例所称企业国有资产，是指国家对企业各种形式的投资和投资所形成的权益，以及依法认定为国家所有的其他权益。

**第四条** 企业国有资产属于国家所有，国家实行由国务院和地方人民政府分别代表国家履行出资人职责，享有所有者权益，权利、义务和责任相统一，管资产和管人、管事相结合的国有资产管理体制。

**第五条** 国务院代表国家对关系国民经济命脉和国家安全的大型国有及国有控股、国有参股企业，重要基础设施和重要自然资源等领域的国有及国有控股、国有参股企业，履行出资人职责。国务院履行出资人职责的企业，由国务院确定、公布。

省、自治区、直辖市人民政府和设区的市、自治州级人民政府分别代表国家对由国务院履行出资人职责以外的国有及国有控股、国有参股企业，履行出资人职责。其中，省、自治区、直辖市人民政府履行出资人职责的国有及国有控股、国有参股企业，由省、自治区、直辖市人民政府确定、公布，并报国务院国有资产监督管理机构备案；其他由设区的市、自治州级人民政府履行出资人职责的国有及国有控股、国有参股企业，由设区的市、自治州级人民政府确定、公布，并报省、自治区、直辖市人民政府国有资产监督管理机构备案。

国务院、省、自治区、直辖市人民政府、设区的市、自治州级人民政府履行出资人职责的企业，以下统称

所出资企业。

**第六条** 国务院、省、自治区、直辖市人民政府，设区的市、自治州级人民政府，分别设立国有资产监督管理机构。国有资产监督管理机构根据授权，依法履行出资人职责，依法对企业国有资产进行监督管理。

企业国有资产较少的设区的市、自治州，经省、自治区、直辖市人民政府批准，可以不再单独设立国有资产监督管理机构。

**第七条** 各级人民政府应当严格执行国有资产管理法律、法规，坚持政府的社会公共管理职能与国有资产出资人职能分开，坚持政企分开，实行所有权与经营权分离。

国有资产监督管理机构不行使政府的社会公共管理职能，政府其他机构、部门不履行企业国有资产出资人职责。

**第八条** 国有资产监督管理机构应当依照本条例和其他有关法律、行政法规的规定，建立健全内部监督制度，严格执行法律、行政法规。

**第九条** 发生战争、严重自然灾害或者其他重大、紧急情况时，国家可以依法统一调用、处置企业国有资产。

**第十条** 所出资企业及其投资设立的企业，享有有关法律、行政法规规定的企业经营自主权。

国有资产监督管理机构应当支持企业依法自主经营，除履行出资人职责以外，不得干预企业的生产经营活动。

**第十一条** 所出资企业应当努力提高经济效益，对其经营管理的企业国有资产承担保值增值责任。

所出资企业应当接受国有资产监督管理机构依法实施的监督管理，不得损害企业国有资产所有者和其他出资人的合法权益。

## 第二章 国有资产监督管理机构

**第十二条** 国务院国有资产监督管理机构是代表国务院履行出资人职责，负责监督管理企业国有资产的直属特设机构。

省、自治区、直辖市人民政府国有资产监督管理机构，设区的市、自治州级人民政府国有资产监督管理机构是代表本级政府履行出资人职责，负责监督管理企业国有资产的直属特设机构。

上级政府国有资产监督管理机构依法对下级政府的国有资产监督管理工作进行指导和监督。

**第十三条** 国有资产监督管理机构的主要职责是：

- (一) 依照《中华人民共和国公司法》等法律、法规，对所出资企业履行出资人职责，维护所有者权益；
- (二) 指导推进国有及国有控股企业的改革和重组；
- (三) 依照规定向所出资企业派出监事会；
- (四) 依照法定程序对所出资企业的企业负责人进行任免、考核，并根据考核结果对其进行奖惩；
- (五) 通过统计、稽核等方式对企业国有资产的保值增值情况进行监督；
- (六) 履行出资人的其他职责和承办本级政府交办的其他事项。

国务院国有资产监督管理机构除前款规定职责外，可以制定企业国有资产监督管理的规章、制度。

**第十四条** 国有资产监督管理机构的主要义务是：

- (一) 推进国有资产合理流动和优化配置，推动国有经济布局和调整；
- (二) 保持和提高关系国民经济命脉和国家安全领域国有经济控制力和竞争力，提高国有经济的整体素质；
- (三) 探索有效的企业国有资产经营体制和方式，加强企业国有资产监督管理工作，促进企业国有资产保值增值，防止企业国有资产流失；
- (四) 指导和促进国有及国有控股企业建立现代企业制度，完善法人治理结构，推进管理现代化；
- (五) 尊重、维护国有及国有控股企业经营自主权，依法维护企业合法权益，促进企业依法经营管理，增强企业竞争力；
- (六) 指导和协调解决国有及国有控股企业改革与发展中的困难和问题。

**第十五条** 国有资产监督管理机构应当向本级政府报告企业国有资产监督管理工作、国有资产保值增值状况和其他重大事项。

### 第三章 企业负责人管理

**第十六条** 国有资产监督管理机构应当建立健全适应现代企业制度要求的企业负责人的选用机制和激励约束机制。

**第十七条** 国有资产监督管理机构依照有关规定，任免或者建议任免所出资企业的企业负责人：

- (一) 任免国有独资企业的总经理、副总经理、总会计师及其他企业负责人；
- (二) 任免国有独资公司的董事长、副董事长、董事，并向其提出总经理、副总经理、总会计师等的任免建议；
- (三) 依照公司章程，提出向国有控股的公司派出的董事、监事人选，推荐国有控股的公司的董事长、副董事长和监事会主席人选，并向其提出总经理、副总经理、总会计师人选的建议；
- (四) 依照公司章程，提出向国有参股的公司派出的董事、监事人选。

国务院，省、自治区、直辖市人民政府，设区的市、自治州级人民政府，对所出资企业的企业负责人的任免另有规定的，按照有关规定执行。

**第十八条** 国有资产监督管理机构应当建立企业负责人经济业绩考核制度，与其任命的企业负责人签订业绩合同，根据业绩合同对企业负责人进行年度考核和任期考核。

**第十九条** 国有资产监督管理机构应当依照有关规定，确定所出资企业中的国有独资企业、国有独资公司的企业负责人的薪酬；依据考核结果，决定其向所出资企业派出的企业负责人的奖惩。

### 第四章 企业重大事项管理

**第二十条** 国有资产监督管理机构负责指导国有及国有控股企业建立现代企业制度，审核批准其所出资企业中的国有独资企业、国有独资公司的重组、股份制改造方案和所出资企业中的国有独资公司的章程。

**第二十一条** 国有资产监督管理机构依照法定程序决定其所出资企业中的国有独资企业、国有独资公司的分立、合并、破产、解散、增减资本、发行公司债券等重大事项。其中，重要的国有独资企业、国有独资公司分立、合并、破产、解散的，应当由国有资产监督管理机构审核后，报本级人民政府批准。

国有资产监督管理机构依照法定程序审核、决定国防科技工业领域其所出资企业中的国有独资企业、国有独资公司的有关重大事项时，按照国家有关法律、规定执行。

**第二十二條** 国有资产监督管理机构依照公司法的规定，派出股东代表、董事，参加国有控股的公司、国有参股公司的股东会、董事会。

国有控股的公司、国有参股的公司的股东会、董事会决定公司的分立、合并、破产、解散、增减资本、发行公司债券、任免企业负责人等重大事项时，国有资产监督管理机构派出的股东代表、董事，应当按照国有资产监督管理机构的指示发表意见、行使表决权。

国有资产监督管理机构派出的股东代表、董事，应当将其履行职责的有关情况及时向国有资产监督管理机构报告。

**第二十三條** 国有资产监督管理机构决定其所出资企业的国有股权转让。其中，转让全部国有股权或者转让部分国有股权致使国家不再拥有控股地位的，报本级人民政府批准。

**第二十四條** 所出资企业投资设立的重要子企业的重大事项，需由所出资企业报国有资产监督管理机构批准的，管理办法由国务院国有资产监督管理机构另行制定，报国务院批准。

**第二十五條** 国有资产监督管理机构依照国家有关规定组织协调所出资企业中的国有独资企业、国有独资公司的兼并破产工作，并配合有关部门做好企业下岗职工安置等工作。

**第二十六條** 国有资产监督管理机构依照国家有关规定拟订所出资企业收入分配制度改革指导意见，调控所出资企业工资分配的总体水平。

**第二十七條** 国有资产监督管理机构可以对所出资企业中具备条件的国有独资企业、国有独资公司进行国有资产授权经营。

被授权的国有独资企业、国有独资公司对其全资、控股、参股企业中国家投资形成的国有资产依法进行经营、管理和监督。

**第二十八條** 被授权的国有独资企业、国有独资公司应当建立和完善规范的现代企业制度，并承担企业国有资产保值增值责任。

## 第五章 企业国有资产管理

**第二十九條** 国有资产监督管理机构依照国家有关规定，负责企业国有资产的产权界定、产权登记、资产评估监管、清产核资、资产统计、综合评价等基础管理工作。

国有资产监督管理机构协调其所出资企业之间的企业国有资产产权纠纷。

**第三十條** 国有资产监督管理机构应当建立企业国有资产产权交易监督管理制度，加强企业国有资产产权交易的监督管理，促进企业国有资产的合理流动，防止企业国有资产流失。

**第三十一條** 国有资产监督管理机构对其所出资企业的企业国有资产收益依法履行出资人职责；对其所出资企业的重大投融资规划、发展战略和规划，依照国家发展规划和产业政策履行出资人职责。

**第三十二條** 所出资企业中的国有独资企业、国有独资公司的重大资产处置，需由国有资产监督管理机构批准的，依照有关规定执行。

## 第六章 企业国有资产监督

**第三十三条** 国务院国有资产监督管理机构代表国务院向其所出资企业中的国有独资企业、国有独资公司派出监事会。监事会的组成、职权、行为规范等，依照《国有企业监事会暂行条例》的规定执行。

地方人民政府国有资产监督管理机构代表本级人民政府向其所出资企业中的国有独资企业、国有独资公司派出监事会，参照《国有企业监事会暂行条例》的规定执行。

**第三十四条** 国有资产监督管理机构依法对所出资企业财务进行监督，建立和完善国有资产保值增值指标体系，维护国有资产出资人的权益。

**第三十五条** 国有及国有控股企业应当加强内部监督和风险控制，依照国家有关规定建立健全财务、审计、企业法律顾问和职工民主监督等制度。

**第三十六条** 所出资企业中的国有独资企业、国有独资公司应当按照规定定期向国有资产监督管理机构报告财务状况、生产经营状况和国有资产保值增值状况。

## 第七章 法律责任

**第三十七条** 国有资产监督管理机构不按规定任免或者建议任免所出资企业的企业负责人，或者违法干预所出资企业的生产经营活动，侵犯其合法权益，造成企业国有资产损失或者其他严重后果的，对直接负责的主管人员和其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任。

**第三十八条** 所出资企业中的国有独资企业、国有独资公司未按照规定向国有资产监督管理机构报告财务状况、生产经营状况和国有资产保值增值状况的，予以警告；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予纪律处分。

**第三十九条** 国有及国有控股企业的企业负责人滥用职权、玩忽职守，造成企业国有资产损失的，应负赔偿责任，并对其依法给予纪律处分；构成犯罪的，依法追究刑事责任。

**第四十条** 对企业国有资产损失负有责任受到撤职以上纪律处分的国有及国有控股企业的企业负责人，5年内不得担任任何国有及国有控股企业的企业负责人；造成企业国有资产重大损失或者被判处刑罚的，终身不得担任任何国有及国有控股企业的企业负责人。

## 第八章 附 则

**第四十一条** 国有及国有控股企业、国有参股企业的组织形式、组织机构、权利和义务等，依照《中华人民共和国公司法》等法律、行政法规和本条例的规定执行。

**第四十二条** 国有及国有控股企业、国有参股企业中中国共产党基层党组织建设、社会主义精神文明建设和党风廉政建设，依照《中国共产党章程》和有关规定执行。

国有及国有控股企业、国有参股企业中工会组织依照《中华人民共和国工会法》和《中国工会章程》的有关规定执行。

**第四十三条** 国务院国有资产监督管理机构，省、自治区、直辖市人民政府可以依据本条例制定实施办法。

**第四十四条** 本条例施行前制定的有关企业国有资产监督管理的行政法规与本条例不一致的，依照本条例

的规定执行。

**第四十五条** 政企尚未分开的单位，应当按照国务院的规定，加快改革，实现政企分开。政企分开后的企业，由国有资产监督管理机构依法履行出资人职责，依法对企业国有资产进行监督管理。

**第四十六条** 本条例自公布之日起施行。