Law of the PRC on State-Owned Assets of Enterprises

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of safeguarding the state-owned assets of enterprises, preventing the loss of state-owned assets, consolidating and developing the state-owned economy, and

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promoting the development of the socialist market economy.

Article 2 — The state-owned assets of enterprises (hereinafter referred to as "state-owned assets") refer to the rights and interests formed by the state's capital contribution to enterprises. This Law shall apply to the supervision and administration of the state-owned assets of financial enterprises, except as otherwise provided by other laws and administrative regulations.

Article 3 — State-owned assets are owned by the state, that is, owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership rights over state-owned assets.

Article 4 — The State Council and local people's governments shall, in accordance with laws and administrative regulations, respectively perform the functions of capital contributors on behalf of the state and shall enjoy the rights and interests of capital contributors in respect of state-funded enterprises. The state shall establish a state-owned asset supervision and administration system that meets the requirements of the socialist market economy, including a clear division of government and enterprise functions, separation of government administration from state-owned asset management, separation of ownership from management rights, and a combination of rights, obligations and responsibilities.

Article 5 — For the purposes of this Law, the term "state-funded enterprises" (hereinafter referred to as "enterprises") refers to wholly state-owned enterprises, wholly state-owned companies, state-owned capital holding companies and state-owned capital participating companies.

Article 6 — The State Council and local people's governments shall, in accordance with the provisions of laws and administrative regulations, take measures to optimize the distribution and structure of the state-owned economy, promote the concentration of state-owned capital in important industries and key areas, enhance the vitality, control and influence of the state-owned economy, and protect the lawful rights and interests of enterprises and other capital contributors.

Article 7 — The state shall take measures to promote the centralization and concentration of state-owned capital in important industries and key areas, optimize the distribution and structure of the state-owned economy, promote the reform and development of enterprises, enhance the vitality and efficiency of enterprises, and improve the overall quality of the state-owned economy.

Article 8 — The state shall establish and improve a state-owned asset supervision and administration system that is compatible with the socialist market economy, establish and improve a system for the preservation and appreciation of the value of state-owned assets, and establish and improve a liability investigation system for the loss of state-owned assets.

Article 9 — The state shall establish and improve a system for the preservation and appreciation of the value of state-owned assets, and shall formulate measures for the assessment of the preservation and appreciation of the value of state-owned assets.

Article 10 — State-owned assets shall be protected by law, and no entity or individual may infringe upon them.

Chapter II — Investors Performing Capital Contributor Functions

Article 11 — The state-owned assets supervision and administration institution of the State Council and the state-owned assets supervision and administration institutions of local people's governments shall, in accordance with the authorization of the State Council and local people's governments at the corresponding level, respectively perform the functions of capital contributors on behalf of the state and shall enjoy the rights and interests of capital contributors in respect of enterprises. The State Council and local people's governments may, when necessary, authorize other departments or institutions to perform the functions of capital contributors on behalf of the state. The institutions and departments performing the functions of capital contributors on behalf of the state are hereinafter collectively referred to as "investors performing

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capital contributor functions."

Article 12 — The investors performing capital contributor functions shall enjoy the rights to benefit from assets, participate in major decision-making, select managers and other capital contributor rights in respect of enterprises in accordance with the law. The investors performing capital contributor functions shall formulate or participate in the formulation of the articles of association of enterprises in accordance with laws and administrative regulations. Where the investors performing capital contributor functions appoint shareholder representatives to attend the shareholders' meetings or general meetings of state-owned capital holding companies or state-owned capital participating companies, the shareholder representatives shall act in accordance with the instructions of the appointing institution and shall promptly report on the performance of their duties.

Article 13 — The investors performing capital contributor functions shall perform their duties in accordance with laws, administrative regulations and the articles of association of enterprises, and shall ensure the capital contributor rights of enterprises, and shall not interfere with the business activities of enterprises, except as otherwise provided by laws and administrative regulations.

Article 14 — The investors performing capital contributor functions shall comply with laws and administrative regulations, strengthen the supervision and administration of enterprises, improve the level of enterprise management, and protect the lawful rights and interests of enterprises and other capital contributors.

Article 15 — The investors performing capital contributor functions shall be responsible to the people's government at the corresponding level, shall report to the people's government at the corresponding level on their performance of capital contributor functions, and shall be subject to the supervision of the people's government at the corresponding level. The investors performing capital contributor functions shall, in accordance with relevant state regulations, regularly report to the people's government at the corresponding level on the overall operation of the state-owned assets and the supervision and administration of the state-owned assets.

Chapter III — State-Funded Enterprises

Article 16 — A state-funded enterprise shall enjoy the rights of a legal person and property rights in respect of its property, including the right to possess, use, benefit from and dispose of the enterprise's property, in accordance with the law, and shall bear civil liability independently with all of its property. A state-funded enterprise shall engage in business activities in accordance with the law, shall accept the supervision of the people's government and its relevant departments and institutions in accordance with the law, and shall be subject to regulation by social and public supervision and shall bear social responsibility.

Article 17 — A state-funded enterprise shall establish a corporate governance structure with legal person governance as the core, improve the internal supervision and administration system and risk control system, and improve the level of enterprise management in accordance with the law. A state-funded enterprise shall comply with laws and administrative regulations, strengthen enterprise management, improve economic efficiency, and preserve and increase the value of state-owned assets.

Article 18 — A state-funded enterprise shall establish and improve a financial and accounting system, prepare financial and accounting reports in accordance with laws, administrative regulations and the provisions of the finance department under the State Council, and submit them to the capital contributor in accordance with regulations.

Article 19 — A wholly state-owned company, a state-owned capital holding company or a state-owned capital participating company shall establish a board of directors and a board of supervisors in accordance with the Company Law of the People's Republic of China. The board of directors and the board of supervisors of a wholly state-owned company shall include employee representatives. The employee representatives on the board of directors shall be democratically elected by the employees of the company

through the employee representatives' congress, the employee assembly or other forms. The proportion of employee representatives on the board of supervisors shall not be less than one-third, and the specific proportion shall be prescribed by the articles of association of the company.

Article 20 — A state-funded enterprise shall establish a workers' congress system in accordance with the law. The workers' congress shall exercise its functions and powers in accordance with the law. A state-funded enterprise shall establish a trade union in accordance with the Trade Union Law of the People's Republic of China, and carry out trade union activities in accordance with the law to safeguard the lawful rights and interests of the employees.

Article 21 — Where a state-funded enterprise intends to carry out any of the following acts, it shall comply with the provisions of laws, administrative regulations and the articles of association of the enterprise, and shall be decided upon by the shareholders' meeting, the general meeting or the board of directors:

(1) Merger, division, restructuring or dissolution of the enterprise, or application for bankruptcy;

(2) Increase or decrease of registered capital of the enterprise;

(3) Issuance of enterprise bonds;

(4) Distribution of profits;

(5) Other matters that shall be decided by the capital contributor in accordance with laws and administrative regulations and the articles of association of the enterprise.

Article 22 — Where a state-funded enterprise intends to carry out restructuring, merger, division or a change of major property rights, it shall comply with the provisions of laws, administrative regulations and the articles of association of the enterprise, and shall not damage the rights and interests of capital contributors and creditors.

Article 23 — Where a state-funded enterprise carries out an affiliated transaction with an affiliated party, it shall comply with the provisions of laws, administrative regulations and the articles of association of the enterprise, and shall not damage the rights and interests of the state-owned assets and the interests of other capital contributors. The directors, supervisors and senior managers of a wholly state-owned enterprise, a wholly state-owned company, a state-owned capital holding company or a state-owned capital participating company shall not use their positions to obtain illegitimate benefits, or embezzle, misappropriate or encroach upon enterprise property, or use their positions to seek commercial opportunities for themselves or others, or operate similar businesses for themselves or others, or carry out affiliated transactions with the enterprise in violation of regulations.

Article 24 — A state-funded enterprise shall establish a risk control system, strengthen risk management, and prevent and resolve business risks.

Article 25 — A state-funded enterprise shall establish a system for the preservation and appreciation of the value of state-owned assets. Under any of the following circumstances, the value of state-owned assets may be assessed:

(1) Merger, division, restructuring or dissolution of the enterprise;

(2) Transfer of major property of the enterprise by means other than public agreement;

(3) Acquisition of assets not in the form of currency;

(4) Other circumstances provided for by laws, administrative regulations and the articles of association of the enterprise.

Chapter IV — Selection and Assessment of State-Funded Enterprise Management

Article 26 — State-funded enterprise management personnel shall be selected and appointed in accordance with laws, administrative regulations and the articles of association of the enterprise. The board of directors and board of supervisors members of a wholly state-owned enterprise shall be appointed and removed by the investors performing capital contributor functions, or shall be democratically elected by the employees of the enterprise in accordance with the law. The chairman, vice-chairman, directors and supervisors of a wholly state-owned company shall be appointed and removed in accordance with the Company Law of the People's Republic of China.

Article 27 — The state shall establish and improve an assessment system for the performance of state-funded enterprise management personnel, and the capital contributor shall assess the performance of the management personnel appointed by it.

Article 28 — The remuneration of the principal responsible persons of a wholly state-owned enterprise or a wholly state-owned company shall be determined by the investors performing capital contributor functions. The remuneration of the principal responsible persons shall be linked to the operating performance of the enterprise and the value preservation and appreciation of the state-owned assets of the enterprise.

Article 29 — The chairman of the board of directors, supervisors, senior managers and other management personnel of a state-funded enterprise shall comply with laws, administrative regulations and the articles of association of the enterprise, shall be loyal to their duties, diligent and responsible, and shall not commit any act that damages the rights and interests of the state-owned assets.

Article 30 — The chairman of the board of directors, supervisors, senior managers and other management personnel of a state-funded enterprise shall not commit any of the following acts:

(1) Obtaining illegitimate benefits by taking advantage of their positions;

(2) Embezzling, misappropriating or encroaching upon enterprise property;

(3) Seeking commercial opportunities for themselves or others by taking advantage of their positions;

(4) Operating similar businesses for themselves or others;

(5) Carrying out affiliated transactions with the enterprise in violation of regulations;

(6) Transferring the enterprise's assets at a low price or transferring the enterprise's assets for personal gain without authorization;

(7) Other acts that violate the duty of loyalty and diligence.

Chapter V — Major Matters Involving State-Owned Asset Rights and Interests

Article 31 — Where a wholly state-owned enterprise or a wholly state-owned company is involved in any of the following major matters, the investors performing capital contributor functions shall make a decision:

(1) Merger or division of the enterprise;

(2) Restructuring of the enterprise into a company limited by shares;

(3) Increase or decrease of registered capital;

(4) Issuance of enterprise bonds;

(5) Distribution of profits;

(6) Dissolution of the enterprise or application for bankruptcy.

Article 32 — Where a wholly state-owned enterprise or a wholly state-owned company is involved in any of the following major matters, the investors performing capital contributor functions shall make a decision, or the board of directors of the wholly state-owned company shall make a decision in accordance with the

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authorization of the investors performing capital contributor functions:

(1) Major investment of the enterprise;

(2) Provision of large-amount guarantees for others;

(3) Transfer of major property of the enterprise;

(4) Large-amount donations.

Article 33 — Where a state-owned capital holding company or a state-owned capital participating company is involved in any of the major matters provided for in Articles 31 and 32 of this Law, such matter shall be decided by the shareholders' meeting or the general meeting or the board of directors of the company in accordance with laws, administrative regulations and the articles of association of the company. The shareholder representatives appointed by the investors performing capital contributor functions shall exercise their rights in accordance with the provisions of Article 12 of this Law.

Article 34 — Major matters such as the merger, division, dissolution or application for bankruptcy of a state-funded enterprise shall comply with the provisions of the Law of the People's Republic of China on Enterprise Bankruptcy and other relevant laws.

Article 35 — Where a state-funded enterprise transfers its state-owned assets, it shall follow the principles of equivalence and compensation, openness, fairness and justice, and shall transfer the state-owned assets through a legally established property rights trading venue, except where a direct agreement transfer may be carried out in accordance with state regulations. The transfer of state-owned assets by a state-funded enterprise shall be truthfully disclosed to the public, and the relevant information shall be made public. The proceeds obtained from the transfer of state-owned assets shall be disposed of in accordance with state regulations.

Article 36 — Where a state-funded enterprise makes an outward investment, purchases or sells goods or services, or purchases or sells immovable property or other property, it shall follow the principles of openness, fairness and justice, and conduct the transaction through public bidding, auction, listing or other methods, except where a direct agreement transaction may be carried out in accordance with laws and administrative regulations.

Article 37 — Where a state-funded enterprise intends to carry out restructuring, it shall formulate a restructuring plan, specify the methods for the disposal of enterprise debts, the resettlement of employees and the restructuring of the enterprise in accordance with the law, and shall carry out asset verification, financial auditing and asset valuation. The restructuring plan shall be implemented after deliberation and approval by the workers' congress or the employee assembly.

Article 38 — Where a wholly state-owned enterprise or a wholly state-owned company intends to merge with a non-state-owned enterprise, or acquire a non-state-owned enterprise, it shall carry out due diligence, asset valuation and financial auditing on the target enterprise.

Article 39 — Where a state-funded enterprise is involved in any of the matters provided for in this Chapter, it shall carry out asset valuation in accordance with the law, and the asset valuation report shall be filed or verified by the investors performing capital contributor functions or the relevant departments authorized by the State Council.

Article 40 — The restructuring of a state-funded enterprise and the transfer and disposal of state-owned assets by a state-funded enterprise shall be carried out in accordance with the law, and shall not damage the rights and interests of capital contributors, creditors, employees and the public.

Chapter VI — State-Owned Capital Operating Budget

Article 41 — The state shall establish a sound state-owned capital operating budget system, and shall implement budget management over the revenue and expenditure of state-owned capital, and shall include it in the government budget at the corresponding level.

Article 42 — The state-owned capital operating budget shall be prepared separately, submitted to the people's congress at the corresponding level for approval, and announced to the public. The state-owned capital operating budget shall include the following revenue and expenditure items:

(1) Revenue from state-owned capital, including dividends from state-owned enterprises, income from the transfer of state-owned property rights, and income from the liquidation of state-owned enterprises, among others;

(2) Expenditure of state-owned capital, including expenditure on capital injection, expenditure on the reform of state-owned enterprises, expenditure on the structural adjustment of the state-owned economy, and other expenditures.

Article 43 — The investors performing capital contributor functions shall prepare a draft state-owned capital operating budget and submit it to the finance department of the people's government at the corresponding level. The finance department shall prepare a state-owned capital operating budget draft and submit it to the people's government at the corresponding level for approval before submitting it to the standing committee of the people's congress at the corresponding level for examination and approval.

Article 44 — The revenue from state-owned capital shall be collected in full and turned over to the state treasury in accordance with laws and administrative regulations. No entity or individual may retain, misappropriate, withhold or default on the revenue from state-owned capital.

Article 45 — The expenditure of state-owned capital shall be used in accordance with the approved budget, and no entity or individual may change the use without authorization.

Chapter VII — Supervision of State-Owned Assets

Article 46 — The standing committees of people's congresses at all levels shall, by hearing and deliberating the special work reports of the people's governments at the corresponding levels, organizing the enforcement inspection of this Law, and other means, exercise supervision over the performance of the functions of capital contributors in respect of state-owned assets and the supervision and administration of state-owned assets in accordance with the law.

Article 47 — The State Council and local people's governments shall exercise supervision over the performance of the functions of capital contributors in respect of state-owned assets and the supervision and administration of state-owned assets by the institutions and departments authorized to perform the functions of capital contributors in accordance with the law, and shall evaluate and assess their work.

Article 48 — The audit institutions of the State Council and local people's governments at or above the county level shall, in accordance with the law, exercise audit supervision over the state-owned assets and the implementation of the state-owned capital operating budget.

Article 49 — The people's governments at or above the county level and their relevant departments shall, in accordance with the law, exercise supervision over the relevant work of state-funded enterprises, and shall not interfere with the normal production and operation activities of enterprises.

Article 50 — A state-funded enterprise shall accept the supervision of the public and the media in accordance with the law. A state-funded enterprise shall disclose its operation and the status of the preservation and appreciation of the value of state-owned assets to the public in accordance with relevant state regulations, and shall accept the supervision of the public.

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Article 51 — Any entity or individual shall have the right to report or accuse any act that causes the loss of state-owned assets. The relevant departments and institutions shall, in accordance with the law, promptly investigate and handle such reports or accusations and shall keep the identity of the reporter or accuser confidential.

Chapter VIII — Legal Liability

Article 52 — Where the investors performing capital contributor functions commit any of the following acts, the directly responsible persons in charge and other directly responsible persons shall be given sanctions in accordance with the law:

(1) Failing to perform the functions of capital contributors in accordance with legal statutory authority and procedures;

(2) Illegally interfering with the production and operation activities of enterprises;

(3) Illegally disposing of enterprise property;

(4) Committing other acts of abuse of power, dereliction of duty, or practicing favoritism and engaging in fraudulent practices.

Article 53 — Where the directors, supervisors or senior managers of a state-funded enterprise abuse their powers, cause losses to the state-owned assets of the enterprise, or commit any of the acts set out in Article 30 of this Law, they shall be liable for compensation in accordance with the law; and they shall be removed from their posts within five years or for life in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 54 — Where a state-funded enterprise, in the course of restructuring, merger, division or transfer of state-owned assets, causes losses to state-owned assets by means of concealing assets, falsely reporting assets, transferring assets at a low price without authorization, or by other means, the directly responsible persons in charge and other directly responsible persons shall be given sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 55 — Where a director, supervisor or senior manager of a state-funded enterprise, by taking advantage of the restructuring, merger, division or transfer of state-owned assets, or by committing other illegal acts, transfers, embezzles or encroaches upon state-owned assets, and the circumstances are serious, he shall not serve as the director, supervisor or senior manager of any enterprise for life.

Article 56 — Where an asset valuation agency or an accounting firm issues a false asset valuation report or audit report, the directly responsible persons in charge and other directly responsible persons shall be given sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 57 — Where a department or institution performing the functions of supervision and administration of state-owned assets commits any of the following acts, the directly responsible persons in charge and other directly responsible persons shall be given sanctions in accordance with the law:

(1) Failing to perform the duties of supervision and administration of state-owned assets in accordance with the law, resulting in losses of state-owned assets;

(2) Illegally interfering with the production and operation activities of enterprises;

(3) Committing other acts of abuse of power, dereliction of duty or practicing favoritism and engaging in fraudulent practices.

Article 58 — Where any entity or individual commits any of the following acts, the illegally obtained property shall be recovered or the illegally obtained income shall be confiscated; the directly responsible persons in

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charge and other directly responsible persons shall be given sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law:

(1) Retaining, misappropriating, withholding or defaulting on the revenue from state-owned capital;

(2) Illegally changing the use of state-owned capital expenditure;

(3) Encroaching upon or misappropriating enterprise property by taking advantage of corporate restructuring or merger or division.

Chapter IX — Supplementary Provisions

Article 59 — The supervision and administration of the state-owned assets of financial enterprises shall be separately provided for by the State Council in accordance with this Law and other relevant laws and administrative regulations.

Article 60 — The supervision and administration of the state-owned assets of enterprises formed by the state's capital contribution to foreign countries (regions) shall be separately provided for by the State Council in accordance with this Law and other relevant laws and administrative regulations.

Article 61 — This Law shall come into force on May 1, 2009.

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