

财 经 博 士 论 丛

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CAIJING BOSHI LUNCONG

罗建钢 著

# 委托代理 国有资产管理体制创新

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中国财政经济出版社

——财经博士论丛——

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## 序

国有经济是现代市场经济的重要组成部分，也是国家调控经济的重要依托手段。无论是东西方国家，也无论实行哪种经济体制，国有经济始终在其经济体系中占有一席之地，当然其重要程度会因经济制度的不同而存在差异。在中国特色社会主义市场经济新体制中，国有经济在调控市场、稳定社会、增加就业和实施经济赶超战略等方面的作用和重要性尤其不可忽视；而势在必行的国有经济战略性改组和国有资产管理体制的改革，可说是方兴未艾，正在走向深入。

国有企业作为一种特殊的企业组织形式，是国有经营性资产的主要载体。国有企业因其产权的公共性特征，而难以完全按照私营企业的样式，直接以产权所有者为核心建立相互制衡的公司治理结构。公有产权的所有者虚化，成为国有企业运行和管理的难点。面对这一世界性难题，各国都在进行探索。试图通过建立某种体制框架进行有效管理，是各种探索的重点。在我国，国有企业的改革可以说是经济体制改革的“攻坚”部分，近二十余年来，虽有各种不同形式的改革和探索，尚难以达于令人满意的效果，其重要的原因之一，是尚未能够以产权为核心和按照公共产权的特性建立较完善的国有资产管理体制。各国国有资产管理体制因国情的不同而产生了许多不同的管理模式，但都与现实中的政治经济体制密切相关。在转型经济国家中，经济转型的模式必然成为构建国有资产管理体制的重要相关条件。社会主义市场经

济条件下，重构国有资产管理体制正是顺应经济体制改革的目标模式而不可避免、极为重大的制度创新。

由此可以理解为何国有资产管理体制问题成为近年来的一大研究热点，有关体制重构、国有出资人职能的履行、国有企业建立现代企业制度、现代产权制度等探讨性的文章，发表于报刊的已有很多，并出现了一批专门研究国有资产管理体制的专著。但像本书作者这样运用委托代理理论系统地研究和阐明国有资产管理体制的专门著作，却不多见。党的十六大以来，我国正在建立以分级出资人制度为核心的国有资产管理新体制，改革实践需要科学的理论和方法作指导。为此，本书作者在这方面进行的有益探索是非常有意义的。

本书的突出特色，首先就是以委托代理理论为基础，将国有资产管理体制置于委托代理链条上进行研究，对国有产权的特征和运行方式以及对国有产权展开后形成的多层级委托代理关系，进行了较为深入透彻的分析。委托代理链条实质上是国有产权权能的释放形式，每一个环节上都存在委托人和代理人，委托人居于产权所有者地位，代理者则为产权经营者。委托者行使所有者（出资人）职能，代理者行使经营者职能。在委托代理关系中，既存在着委托风险，也存在着代理风险，能否有效控制和防范委托代理风险是体制转换成功与否的重要方面。对此，作者颇有创意地提出了一系列独到见解和对策措施建议。与此同时，作者对委托代理链条上各个方面的定位进行了细致分析，对其责、权、利等进行了规范性研究。总之，作者从委托代理角度上条理化地审视和设想国有资产管理体制改革，这种积极的探索努力，给我们提供了新的视野和新的认识。

本书的另一个特色是内容全面，结构清晰、论述严谨。既对我国国有资产的形成和管理体制沿革及现状进行了归纳和分析，

也对国外情况做了介绍与借鉴，进而对在我国构建新型的国有资产管理体制作积极研讨。全书围绕着从国有资产初始委托人到最终代理者这条主线展开，有理论分析，有数学模型，有实证研究，还有对策建议和思路，形成了一本理论联系实际，很有学术价值的关于国有资产管理体制改革的专门著作，并且对于有关管理部门和实际工作者也颇有参考价值。

本书作者罗建钢曾多年从事财政和国有资产管理实际工作，具有较丰富的实践积累，也曾发表过不少研究文章。2001年，他考取我所博士研究生，我是他的指导教师。这本著作是在他的博士论文基础上修改而成，也是他多年实践积累和理论思考的结晶。虽然书稿总体而言具有明显的探讨性质，难免存在不足，但我认为值得鼓励作者将其公开出版，因为这能给从事中国国有资产管理体制改革的研究者和实际工作者提供有益的见解。

财政部财政科学研究所所长、研究员、博士生导师

常康

## 内 容 摘 要

国有经济普遍存在于主权国家中，其功能、定位和在一国经济体系中的作用因国家的不同而存在差异。在以国有经济为主导的原社会主义国家中，因体制缺陷和资源配置方式低效而面临着计划经济模式向市场经济模式的转型，转型的方式有“渐进”和“激进”两种选择，前苏联等国家选择的是“激进”式道路，导致了严重的通货膨胀及经济倒退，而我国选择了“渐进”的改革方式，经济取得了稳定增长，由此验证了路径选择的正确性。我国国有企业和经营性国有资产管理体制改革的深化，正是在经济转型与建立公共财政框架的大背景下进行的。这既是一种历史的必然，也是我国社会主义市场经济改革中的重大课题。本书采用比较研究、实证研究和规范研究相结合的方式，以委托代理理论为基点，将我国经营性国有资产管理体制置于委托代理链条中进行研究。在学者们大量研究的基础上，吸收和借鉴了国内外前沿性的研究成果，针对我国构建新型的国有资产管理体制中委托代理关系的建立，进行了深入、细致的探讨，构造了我国经营性国有资产管理体制中委托代理关系的基本框架。

委托代理问题存在于人类社会经济活动的各个方面，当委托别人代理某件事情效率更高时，就会产生委托代理。现代公司制企业中普遍存在着委托代理关系，是因为所有权与经营权的高度分离，社会分工细化及管理专门化，以及采取委托代理方式更能节约成本提高效益。委托代理关系中，由于信息不对称、委托人

与代理人目标函数不一致等原因而产生代理问题。对代理问题的解决依赖于委托人设计一个“激励相容”的机制，促使代理人为委托人的目标而努力工作。我国经营性国有资产具有面广、线长、布局不合理、资产质量低下、经营效率不高等特点；在管理体制上，存在着所有者缺位、政企不分、所有权与经营权混为一谈等缺陷，对此本书进行了大量的定量分析。运用委托代理理论重构经营性国有资产管理体制的现实意义就在于，它是解决国有产权所有者缺位的必要途径，是促使政企分开和国有企业建立现代企业制度、完善法人治理结构的需要。

我国国有资产管理体制历经了“计划经济时期”、“有计划商品经济时期”、“社会主义市场经济时期”三个重要的阶段，前两个时期围绕着国有企业“上收下划”、“放权让利”这根主线而进行的改革，因其未能触及到关键性的产权问题，收效甚微。社会主义市场经济时期展开的以产权为核心的改革，尤其是国务院国资委的成立，将国有资产管理体制的改革推向深入，解决了多年以来未曾解决的产权改革问题，使这项改革步入了正轨。

国外经营性国有资产管理体制尽管情况千差万别，但仍存在一些共性的做法，值得我们借鉴。一是议会与政府有明确的分工，议会是国有资产的所有者，对国有资产进行立法监管，政府具体行使所有者权利，通过设立专门机构或由有关主管部门具体行使出资人职能，并做到政企分开和政资分开；二是中央和地方所拥有国有资产的范围分工明确、产权清晰；三是一般都设立国有资产控股公司进行资本营运；四是国有经营性企业普遍采取现代公司制形式，建立法人治理结构，以市场方式运作并参与竞争。

我国经营性国有资产管理体制改革的目标取向，应是合理构建从初始委托人到最终代理人的委托代理关系。体制被简化为以



中央、省、市（地）三级国有资产监督管理机构为出资人主体而构建的委托代理链条，其链条的主干部分为政府—国有资产监督管理委员会—国有资产运营机构—国有投资企业。链条的连接通过契约形式而市场化，其后的研究正是循着这条主线而进行的。

一是中央与地方政府的关系。从行政体制看，在中央集权形式下地方所拥有的行政性权力非常有限；从经济管理分权看，地方政府作为区域性经济组织和管理者，利益主体残缺，分税制不完全，信用主体缺失；从国有资产出资人角度看，中央政府与地方政府同为国有资产出资人主体，但中央政府拥有终极所有权，合理划分各自的产权，并明确界定中央和地方政府的权利和责任变得尤其重要，也是国有资产市场化委托代理的重要环节。

二是政府与国资委的关系。市场经济条件下政府职能的转换是建立新型政企关系的关键，政府定位于“公共管理职能”，国资委定位于“国有资产出资人职能”，这是摒弃行政性委托代理，建立政府与国资委市场性委托代理关系的核心问题。只有这样，才能有效分离政府的经济管理职能和国有资产所有者职能。与此同时也对国资委作为独立的利益主体问题进行了研究。

三是国资委与国有资产运营机构的关系。国资委与运营机构同处于委托代理链条的中间环节，都扮演着既是委托人又是代理者的双重角色，存在着行为目标相悖的问题。只有清晰地划定各自的权限和责任，并建立有效的激励约束机制，才能解决双重角色融合的问题，同时又是防范委托和代理风险的必要手段。对于国有资产运营机构的组建及运营，国外有一些较为成功的经验值得借鉴，国内上海和深圳也进行了较长时间的探索，这是我们研究和建立运营机构的重要基础。

四是国有资产运营机构与所投资企业的关系。运营机构又叫授权投资机构和授权经营企业，一般由国家独资设立，是专门从

事国有资产运营的特殊企业法人，其企业组织形式多为控股公司。它与所投资企业的关系是一种完全意义上的产权纽带关系。作为国资委的出资人代表，运营机构依照其在投资企业所占股权比例，行使出资人权利。运营机构所投资企业的形式主要有：国有独资企业、国有控股企业、国有参股企业。国有投资企业的股权代理市场化问题是值得深入研究的问题。基本的认识是，股权代理市场化更有效率。

五是国有经营性企业内部委托代理关系。不同的企业制度具有不同的委托代理链。现代公司制企业的委托代理源于产权能在不同的主体之间的分配。股东大会行使出资人所有权，董事会是所有权代表机构，经理层是经营权拥有者，监事会行使出资人监督权，这就是相互制衡的公司治理结构，是较为典型的委托代理关系。

本书最后对经营性国有资产委托代理关系的法律保障及相关问题进行了探讨。国有资产法律体系不健全，对国有资产管理体制改革形成了重大制约。尽快建立以《国有资产法》为主体的国有资产法律体系是保障国有资产管理体制重构、国有企业改革深化、建立规范的委托代理关系的重要环节。国有企业市场化有赖于企业家市场的建设，要改变“重官轻商”的传统思维定势，由政府主导，营造有利于企业家成长的外部环境，推进企业家职业化及市场的建立。国有企业主辅分离的主旨，就是政府帮助国有企业卸掉沉重的历史包袱，将企业办社会的职能回归政府，还企业以本来面目。为国有企业的重组、改革及核心竞争力的培养提供基础条件。

## ABSTRACT

State-owned economy widely exists in all sovereignties but it has different functions, orientation, and roles in the economic systems of different countries. Because of system deficiencies and low efficiency resource distribution mechanisms, the former socialist countries dominated by state-owned economy now face the transition from planning economy toward market economy. In the transition, there are two alternative paths, "gradual" transition and "radical" transition. The former Soviet Union Countries chose the "radical" path, which led to severe inflation and economic retrogress. China, instead, chose the path of "gradual" reform and achieved steady economic growth, indicating that China has chosen the right approach. The deepening of State-owned enterprise and State-owned asset management system reform in China is being carried out under the overall background of economic transition and public fiscal framework establishment. This represents both an inevitable historic tendency and a key topic in the ongoing Chinese socialist economic reform. This Article combines comparison study, empirical study, and canonical study, takes proxy system as its starting point, and examines the management system of operating State-owned assets in China in terms of the proxy chains. Based on extensive research performed by scholars, this Article also absorbs and refers to the lat-

est domestic and international study achievements, carries out in - depth and meticulous discussions on the establishment of new proxy relationships in the Chinese State - owned asset management system, and proposes a fundamental framework for the proxy relationships to be established in the Chinese systems on operating State - owned asset management.

Proxy relationships exist in every aspect of human social and economic activities and they emerge whenever it is more efficient to perform something through commissioning others. In modern corporate enterprises, proxy relationships are common because of the high degree separation of ownership and operating rights, the development of social labor division, and management specialization, as well as it is more cost effective to adopt proxy operation. In proxy relations, proxy problems occur because of information asymmetry and discrepancies between the objective functions of the consignor and the consignee. The solving of these proxy problems depends on the consignor's designing a "stimulation compatibility" mechanism so as to encourage the consignee to work hard for the consigner's objectives. As the Chinese operating State - owned assets are of such characteristics as extensive coverage, large scope, irrational layout, poor quality, and low efficiency, this Article conducts enormous quantitative analysis on these characteristics. Furthermore, the Chinese State - owned assets management system contains such deficiencies as owner vacancy, excessive government direct intervention in enterprises' business activities and the confusion between ownership and operating rights. The practical significance of using proxy theories to reconstruct the management mechanisms of operating

State-owned assets is that it is the necessary approach to address ownership vacancy of State-owned property rights, to promote the separation of government and enterprises, and to establish a sound corporate management framework in accordance with modern corporate systems.

In China, State-owned asset management systems have gone through 3 important stages, the "planning economy period", the "planned commodity economy period", and the "socialist market economy period". During the former two periods, reform was mainly carried out under the theme of "adjusting the administration rights on State-owned enterprises among governments at different levels", did not touch upon the key issues related to property rights, and was consequently of little effect. The reform performed during the socialist market economy period focuses on property rights and, especially with the establishment of the State Administration Commission of State-owned Asset under the State Council, the State-owned asset administration system reform is further deepened and aimed at solving the property right reform problems that have existed for many years, in this way the form now goes on the right track.

Although the operating State-owned asset administration systems differ in many aspects, they have some common practices and can offer China some valuable references. First, there are definite responsibility division between the congress and the government. The congress is the owner of State-owned asset and carries out supervision on State-owned assets through legislation, while the government exerts the rights and interests of State-owned asset owner

and fulfills the investor functions through establishing special government agencies or through relevant authority government agencies. In the process, the government does not directly involve the operations of enterprises and the capital operations. Second, the State - owned asset administration scope division between the central government and the local government is definite and the property right ownership is clear. Third, usually some State - owned asset holding companies are established to perform capital operations. Fourth, State - owned operating enterprises generally take the form of modern companies, establish legal person management framework, and participate in competition through market operations.

The reforming targets of operating State - owned asset administration systems are to properly establish proxy relationships from initial consignors to final consignees. The administration systems should be streamlined into an owner structure made up State - owned asset supervision and regulatory commissions at 3 levels, central, provincial, and municipal (prefecture) and on basis of such a framework, a proxy chain should be set up. Trunk parts of the chain should be government - state - owned asset supervision and regulatory commission - State - owned asset operation agencies - State - owned investment enterprises. The linkages of chains are market - oriented via contracts and agreements and the study below follows this clue.

First of all, to design the relation between the central government and the local governments. In terms of administration system, under the centralized administration system, the local governments' administrative authority is very limited; from the point view of eco-

conomic administration right division, as the organizer and regulator of regional economy, local governments are unable to enjoy the proper rights and interests of State - owned asset owners, the tax income division regulations are incomplete, and there is the shortage of credit bodies. Although the central government and the local governments are both State - owned asset investors, yet the central government should possess ultimate ownership. It is necessary to properly divide their property rights and particularly important to clearly define the rights and responsibilities of central government and local governments. This also represents a key part of the market - oriented proxy relationships for State - owned assets.

Second, to properly define the relations between the government and the State - owned asset supervision and regulatory commissions. The government function transition under market economy is the cornerstone for establishing new government - enterprise relations and the government should focus on its "public administration functions" and the SARSAC should play the role of "State - owned asset investor". This is the core issue involved in abandoning the administrative proxy and establishing market proxy relations between the government and the SARSAC. Only in this way, can the government's economic administration functions and the State - owned asset owner functions be divided. Simultaneously, this Article also examines the issue of taking the SARSAC as independent interest body.

Third, to improve the relations between the SARSAC and State - owned asset operating organizations. As intermediate players in the proxy chains, the SARSAC and the operating organizations

both have the dual roles of consignors and consignees and have conflict targets. Only through definitely fixing their rights and responsibilities and establishing effectively stimulation and binding mechanisms, can they harmonize their dual roles. Besides, they also represent the necessary measures to control the consigner and consignee risks. In other countries, there are also some successful experiences on the establishment and operations of State - owned asset operating organizations and in China, Shanghai and Shenzhen have experimented on this issue for long period of time. These data and materials provide significant foundations for our studying and setting up operating organizations.

Fourth, to establish relationships between the State - owned assets operating organizations and the enterprises they invest in. The operating organizations, also known as the authorized investment organizations and authorized operating enterprises, usually are wholly funded by the State and special corporate entities that are engaged in State - owned asset operation. Such corporate entities often take the form of holding companies. Their relationships with the enterprises they invest in are purely property rights. As investor representatives of the SARSAC, the operating organizations exert shareholder rights and interests according to the State's equity share in the enterprises. The enterprises with investment from the operating organizations are mainly in the form of wholly State - owned enterprises, State - holding enterprises, and enterprises with minority investment from the State. The market - oriented reform of equity proxy on State investment enterprises is a topic worth in - depth study. The basic understanding is that the market - oriented reform of equity proxy can



improve operating efficiency.

Fifth, to define proxy relationships within State - owned operating enterprises. Different enterprise systems involve different proxy chains. The proxy relationships in modern corporate enterprises originated from the distribution of property right capacities among different bodies. The shareholder conference exerts the investors' ownership, the board of directors is an ownership representative body, the management possesses the operating rights, and the council of supervisors fulfills the investors supervision rights. In this way, a mutually balanced corporate management framework is established, involving typical proxy relationships.

Finally, this Article discusses the statutory support for the proxy relationships on operating State - owned assets and related issues. The institutional system on State - owned assets is incomplete and constitutes a major obstacle to the reform of State - owned asset management systems. Establishing a State - owned asset statutory system, including the "State - owned Asset Law", is an important measure to guarantee the management system restructuring of State - owned assets, the deepening of State - owned enterprise reform, and the establishment of standard proxy relationships. The market - oriented reform of State - owned enterprises relies on the development of entrepreneur market and the traditional conception that "reiterating officials and neglecting businessmen" should be changed. The government should lead the creation of an external environment that is favorable to the cultivation and growth of entrepreneurs and promote the professionalism and the establishment of entrepreneur markets. Through separating of State - owned enterprises' main op-