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An Isolated Stakeholder Model: the Lane-Changing Legal Institutions of China's SOEs

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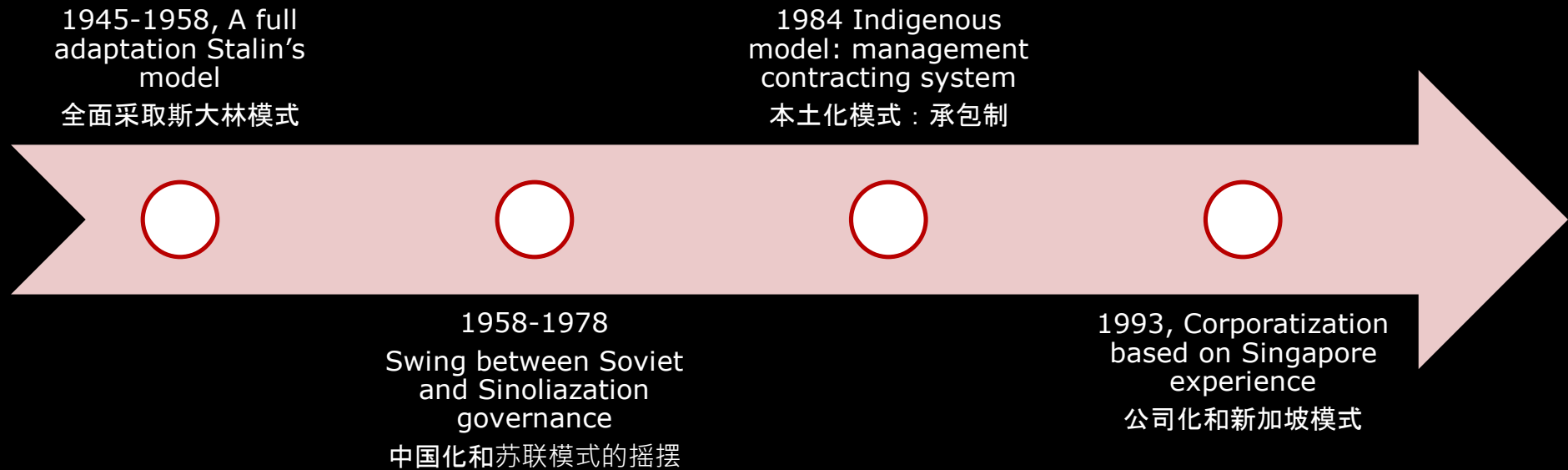
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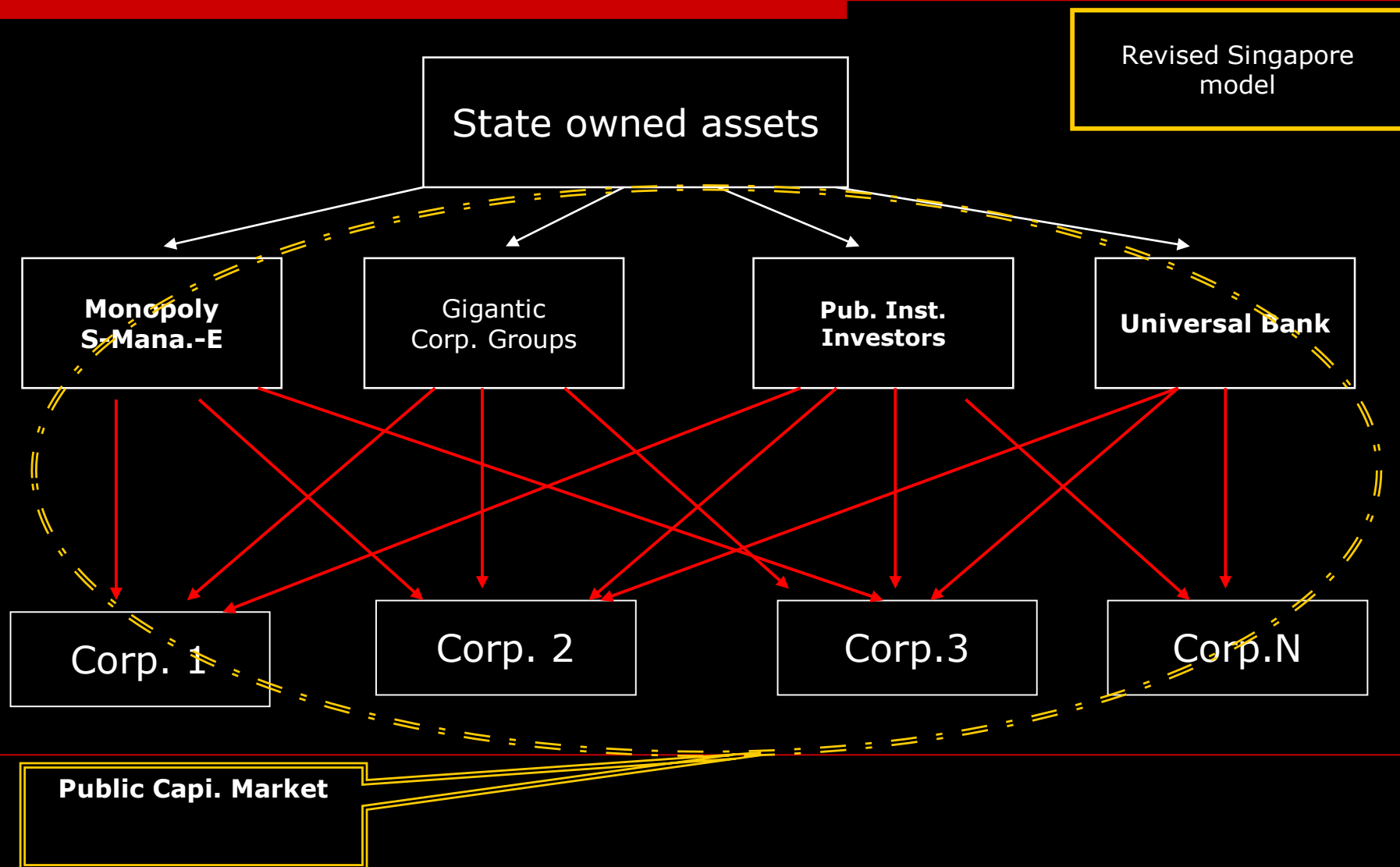
Contents

- ❑ 1. From SOE to SOA: A Transformed and Expanded Singapore Model
 - ❑ 2. Conflicts of Stakeholders: An Inherent Problem
 - ❑ 3. From SOA to SOE: Waggle Policies and Institutional Conflicts
 - ❑ 4. An Isolated Model of SOE
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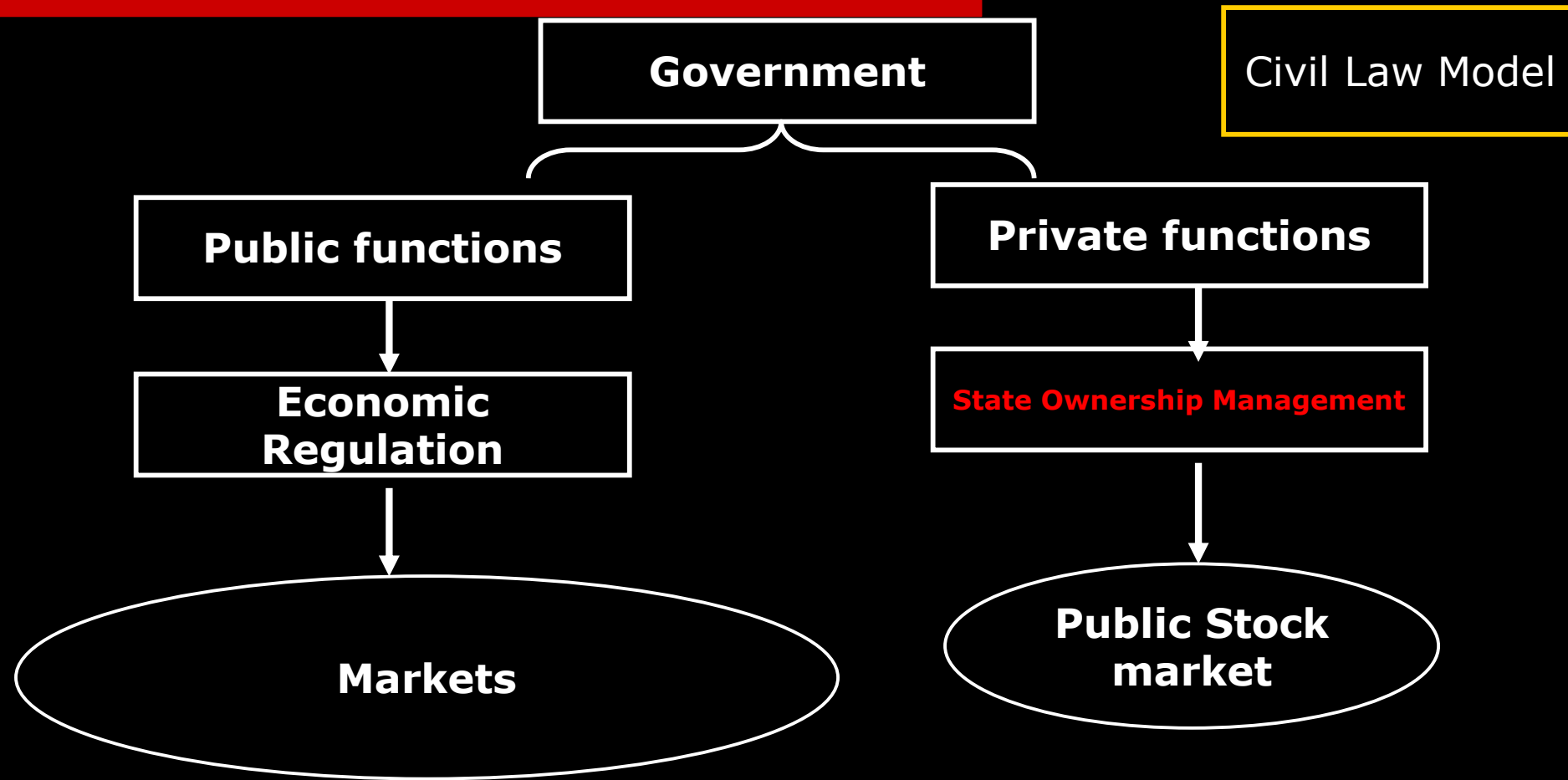
1. From SOE to SOA: A Transformed and Expanded Singapore Model



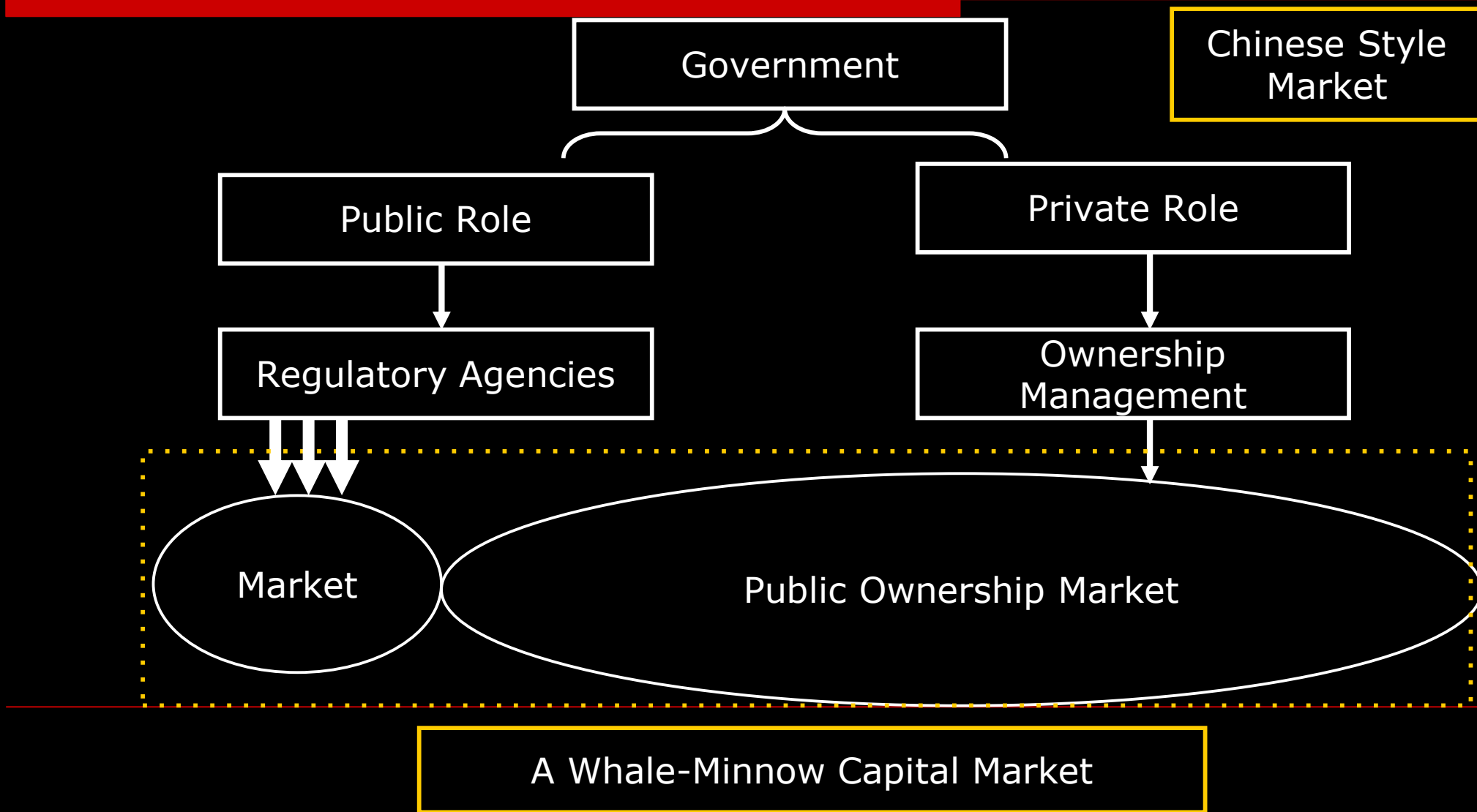
Core Blue Draft by Prof. Wu, Jinglian [最初核心设计]



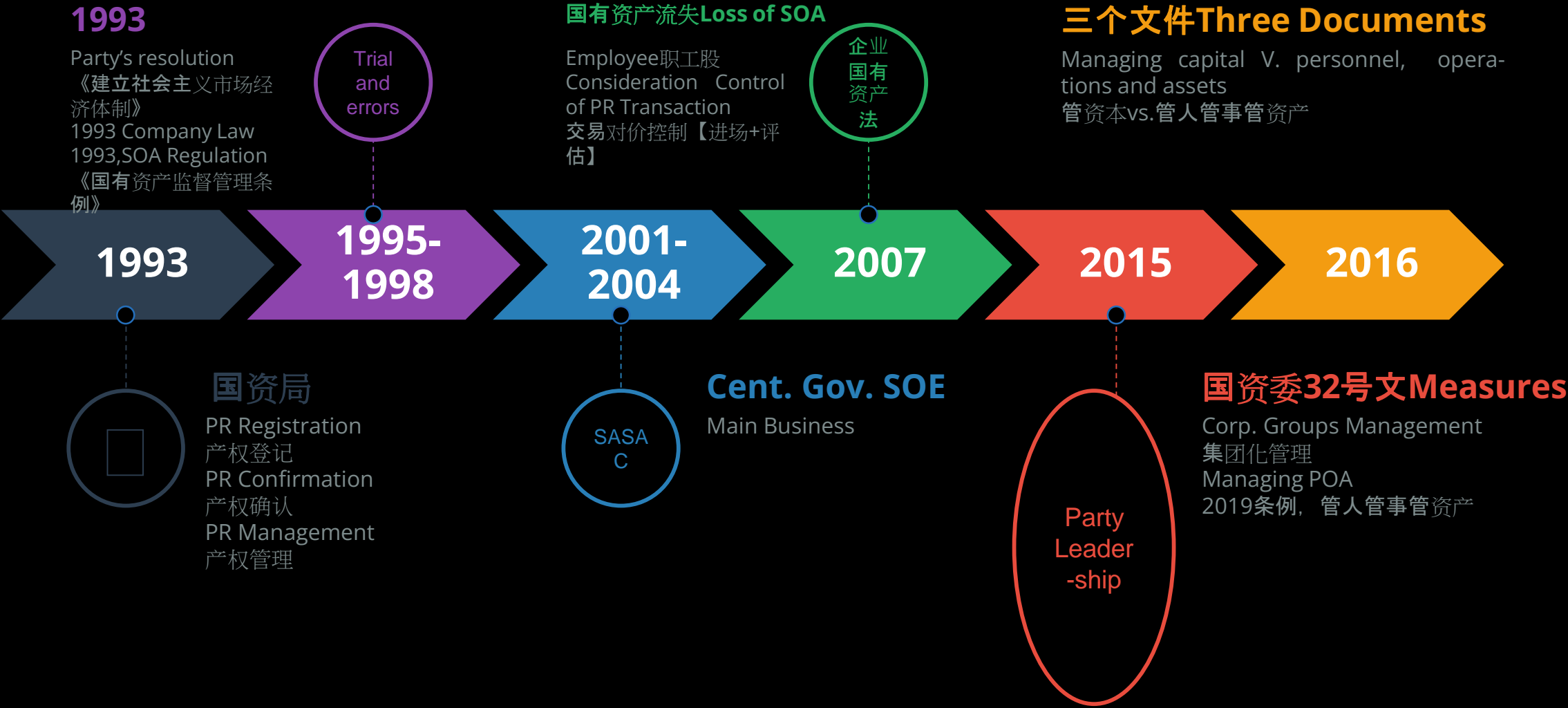
State-owned-assets system 国有资产管理体制



Poles Apart output 南辕北辙的结果



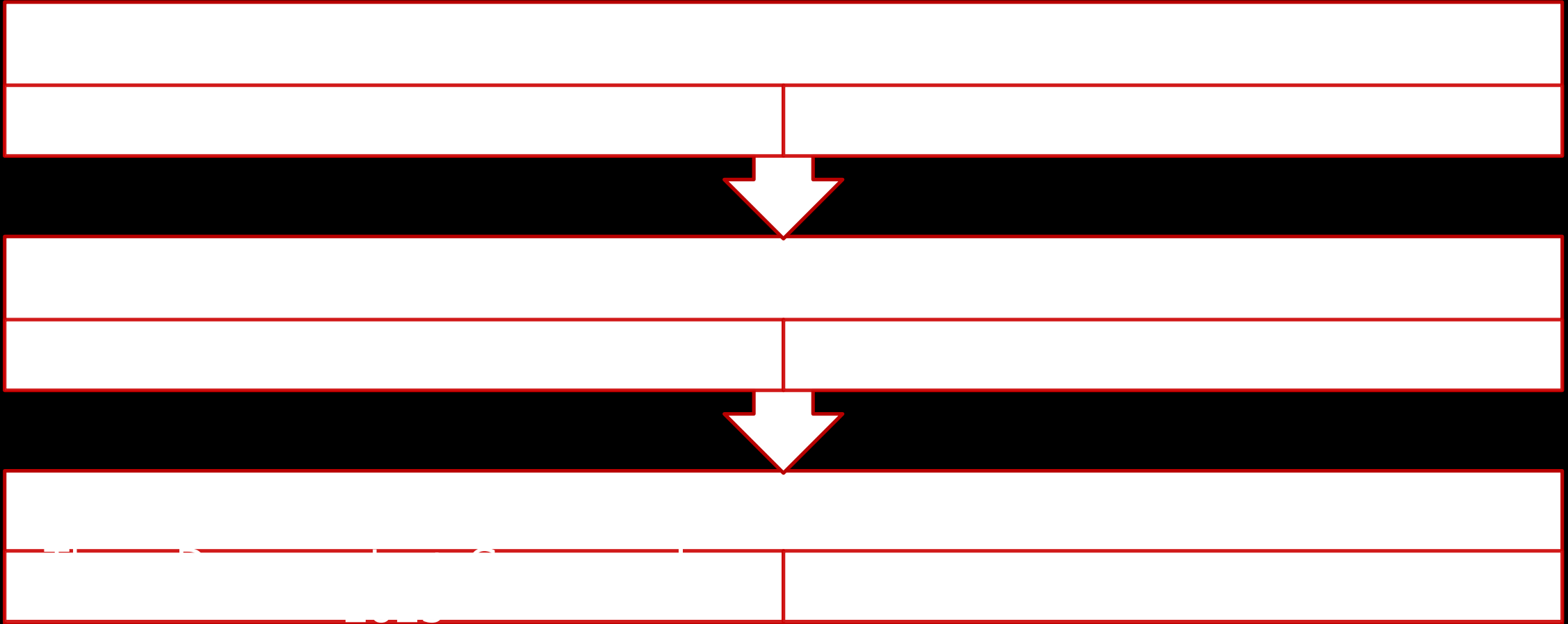
Sinolization of Singapore model



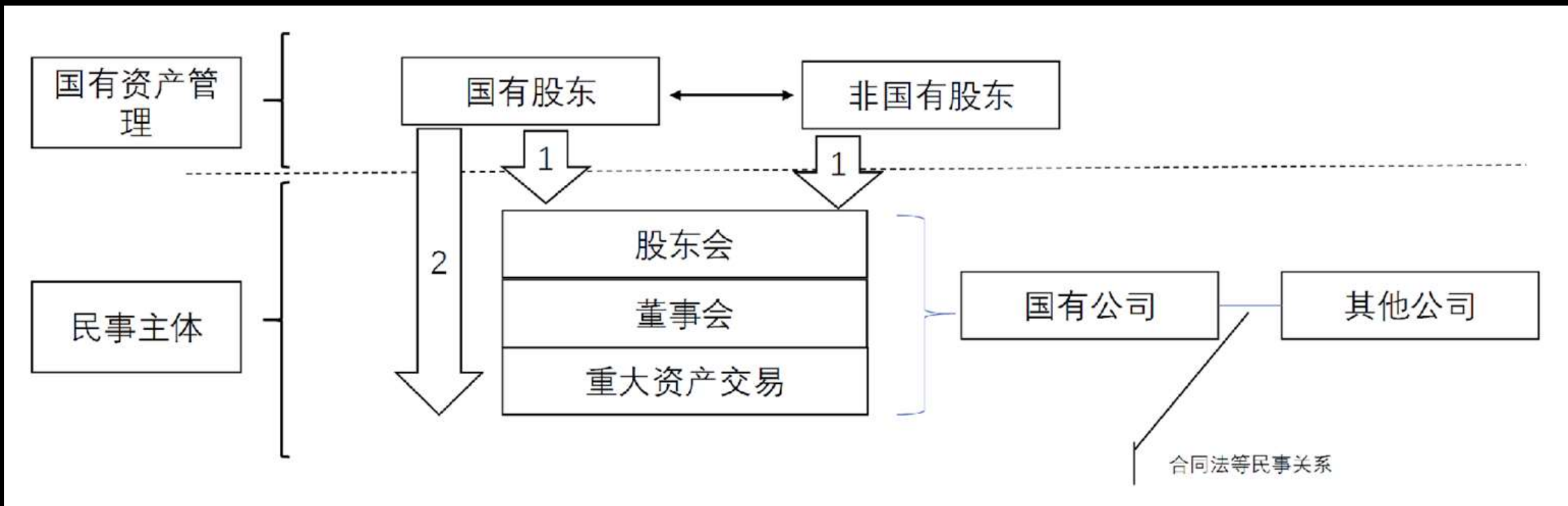
2. Conflicts of Stakeholders: An Inherent Problem



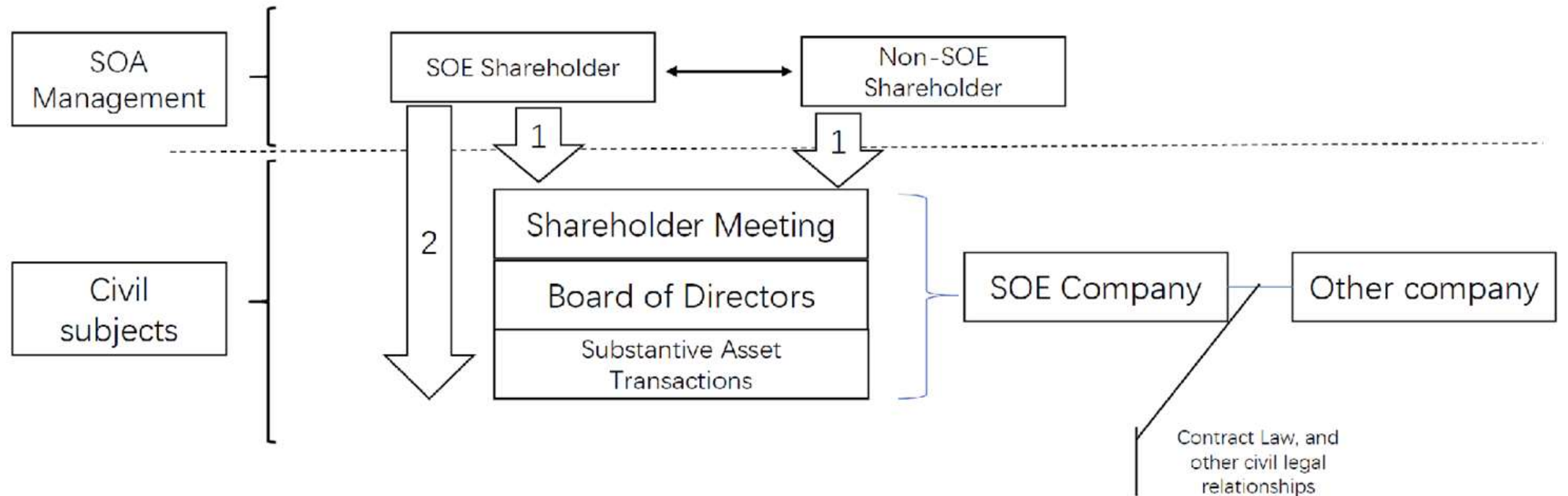
3. From SOA to SOE: Waggle Policies and Institutional Conflicts



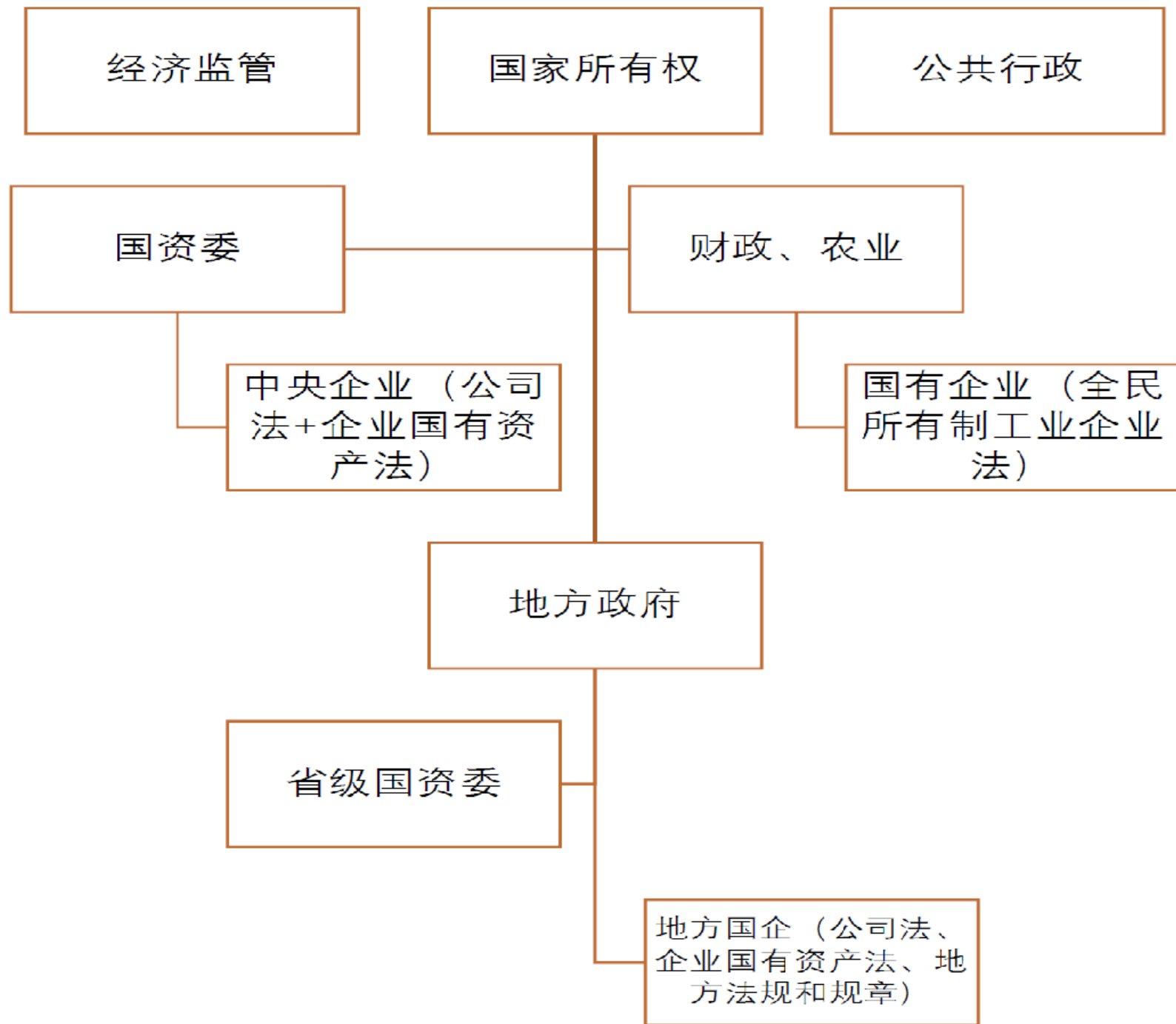
国资监管和公司治理



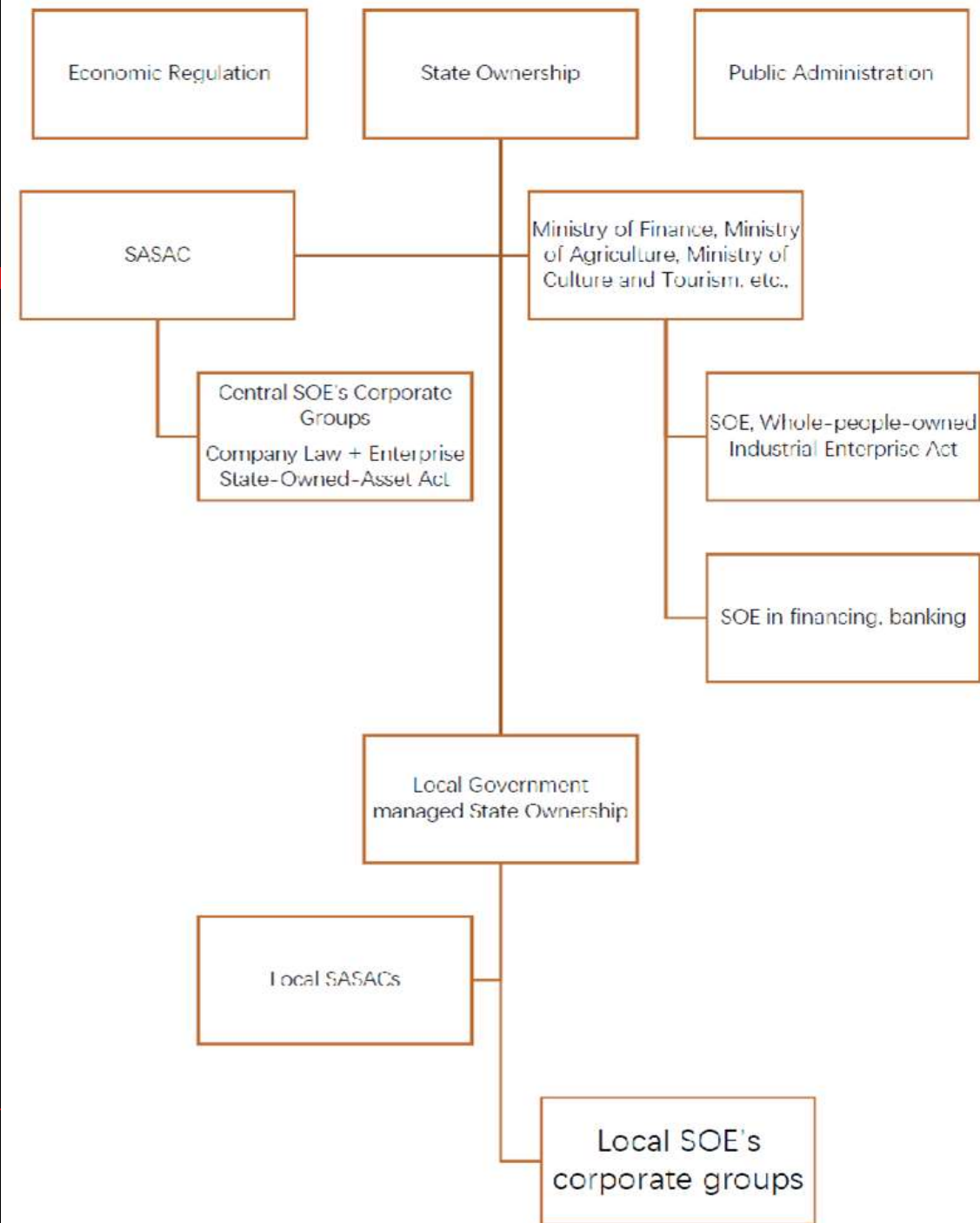
3. From SOA to SOE: Waggle Policies and Institutional Conflicts



国资监管和 集团管理



3. From SOA to SOE: Waggle Policies and Institutional Conflicts



3. From SOA to SOE: Waggle Policies and Institutional Conflicts

- Three new documents of principle were issued in 2015
 - *Guiding Opinions of the CPC Central Committee and the State Council on Deepening the Reform of State-owned Enterprises*, issued on August 24, 2015
 - *Opinions of the State Council on the Development of Mixed Ownership Economy in State-owned Enterprises*, issued on 23 September 2015
 - *Several Opinions of the State Council on Reforming and Improving the Management System of State-owned Assets*, of 4 November 2015.

 - Core policy level arguments: Towards to Temasek Model by MOF
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3. From SOA to SOE: Waggle Policies and Institutional Conflicts

- **Turning Points**
 - *Measures for the Supervision and Management of the Trading of State-Owned Assets of Enterprises* promulgated by the Ministry of Finance and the State-owned Assets Supervision and Administration Commission on 24 June 2016.
 - **企业国有资产交易监督管理办法【财政部、国资委，2016年6月24日】**
 - **第四条** 本办法所称国有及国有控股企业、国有实际控制企业包括：
 - （一）政府部门、机构、事业单位出资设立的国有独资企业（公司），以及上述单位、企业直接或间接合计持股为100%的国有全资企业；
 - （二）本条第（一）款所列单位、企业单独或共同出资，合计拥有产（股）权比例超过50%，且其中之一为最大股东的企业；
 - （三）本条第（一）、（二）款所列企业对外出资，拥有股权比例超过50%的各级子企业；
 - （四）政府部门、机构、事业单位、单一国有及国有控股企业直接或间接持股比例未超过50%，但为第一大股东，并且通过股东协议、公司章程、董事会决议或者其他协议安排能够对其实际支配的企业。
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3. From SOA to SOE: Waggle Policies and Institutional Conflicts

- (1) [100% share]
 - Solely state-owned enterprises (companies) established through the investment of government departments, agencies, or public institutions, and wholly state-invested enterprises in which the combined direct and indirect shareholdings of the aforementioned bodies and enterprises amount to 100% of the equity of the enterprise; █
 - (2) [>50% aggregate share]
 - Enterprises to which one or more of the bodies or enterprises listed in Article 4(1) above have contributed capital and in which their combined holdings of the property rights (equity) exceed 50% and one of them is the largest shareholder;
 - (3) [>50% share]
 - Subsidiaries, at all levels, of the enterprises listed in Articles 4(1) and 4(2) above in which such enterprises have invested and own more than 50% of the equity;
 - (4) [<50% + contractual control]
 - Enterprises in respect of which a government department, agency, public institution, or any single state-owned or state-controlled enterprise, has a direct or indirect shareholding of less than 50% but is the largest shareholder and has de facto control by virtue of a shareholders' agreement, the company's Articles of Association, a resolution of the board of directors, or other contractual arrangement.

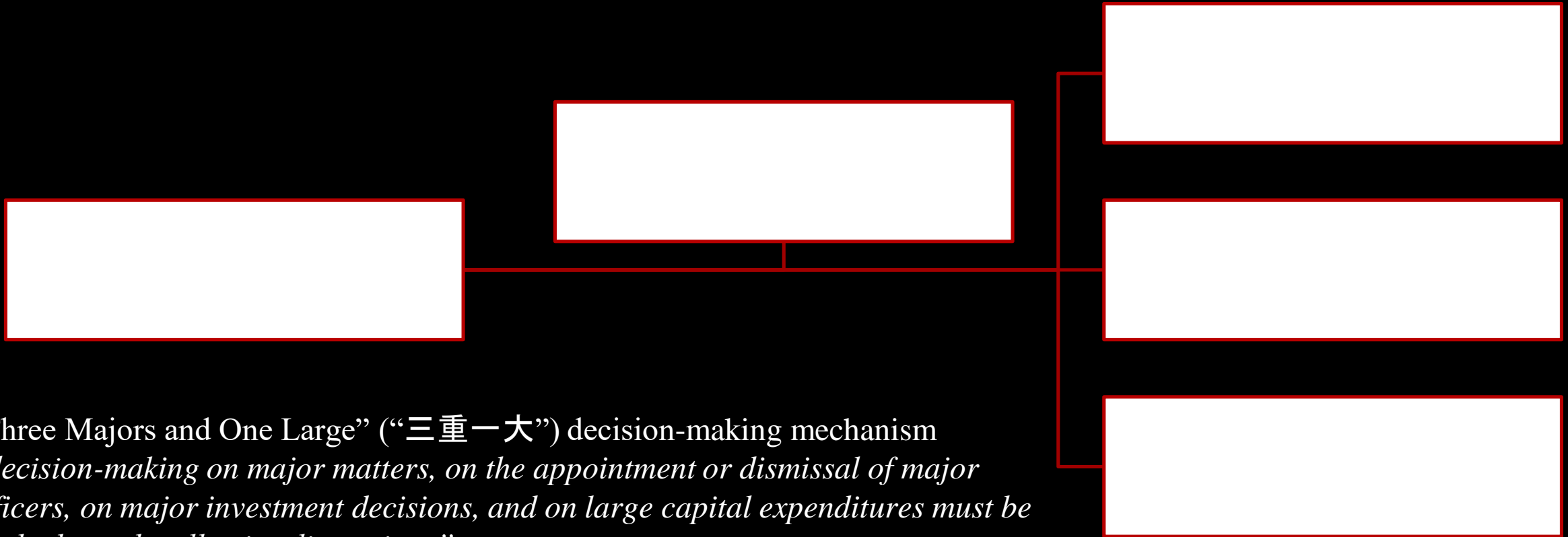
 - **A big loop: a controlling block without controlling power**
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3. From SOA to SOE: Waggle Policies and Institutional Conflicts

- Transactions of the state-owned assets of enterprises" shall include:
- (1) the transfer of rights and interests in an enterprise by a body performing the functions of contributor of capital, a wholly state-owned enterprise, a state-controlled enterprise, or an effectively state-controlled enterprise, where such rights and interests were formed through the contribution of various forms of capital by such body or enterprise (hereinafter referred to as "transfer of property rights in an enterprise");
- (2) the increase of capital in a wholly state-owned enterprise, state-controlled enterprise, or effectively state-controlled enterprise (hereinafter referred to as "capital increase of an enterprise"), excluding capital increases effected by direct investment by the government of additional equity capital; and
- (3) the transfer of substantial assets by a wholly state-owned enterprise, state-controlled enterprise, or effectively state-controlled enterprise (hereinafter referred to as the "transfer of assets of an enterprise").

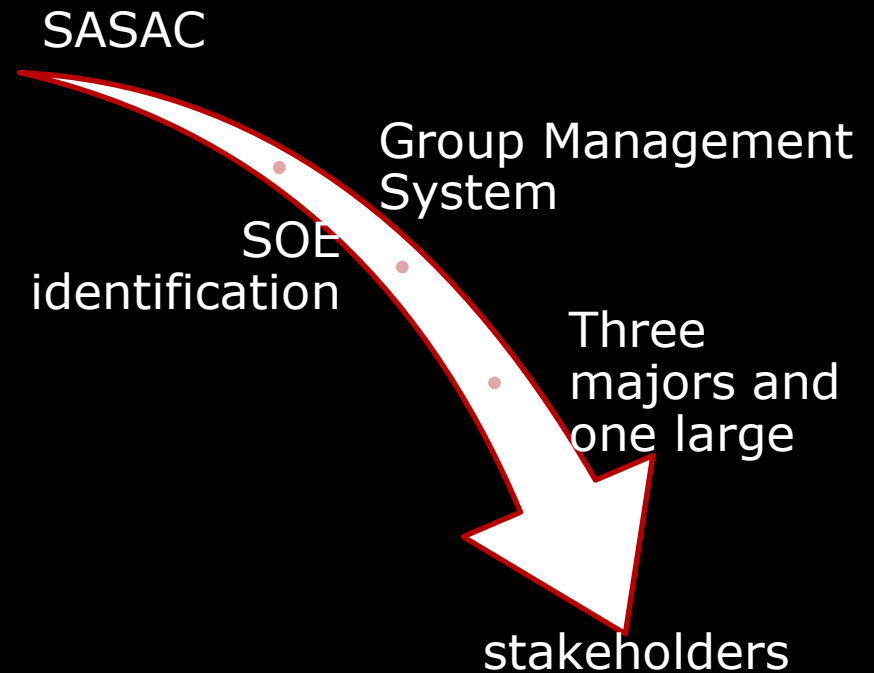
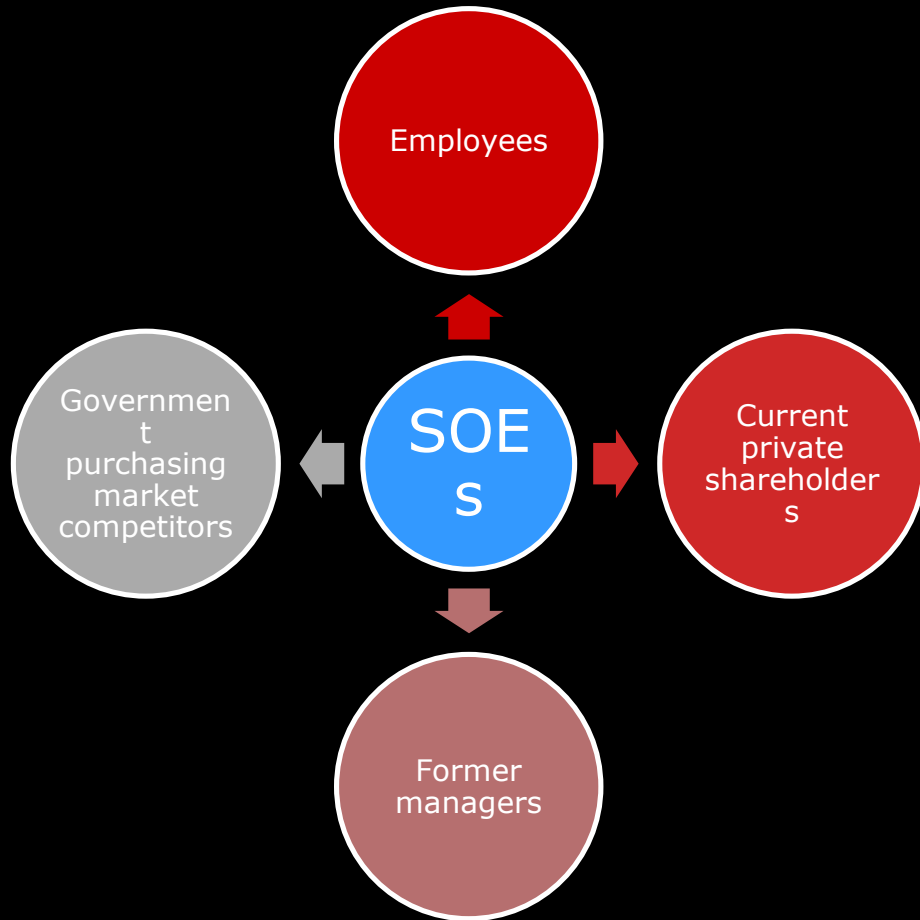
- 第三条 本办法所称企业国有资产交易行为包括：
 - （一）履行出资人职责的机构、国有及国有控股企业、国有实际控制企业转让其对企业各种形式出资所形成权益的行为（以下称企业产权转让）；
 - （二）国有及国有控股企业、国有实际控制企业增加资本的行为（以下称企业增资），政府以增加资本金方式对国家出资企业的投入除外；
 - （三）国有及国有控股企业、国有实际控制企业的重大资产转让行为（以下称企业资产转让）。
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SOE's Law Conflicts



“Three Majors and One Large” (“三重一大”) decision-making mechanism
“decision-making on major matters, on the appointment or dismissal of major officers, on major investment decisions, and on large capital expenditures must be made through collective discussions”.

3. From SOA to SOE: Waggle Policies and Institutional Conflicts

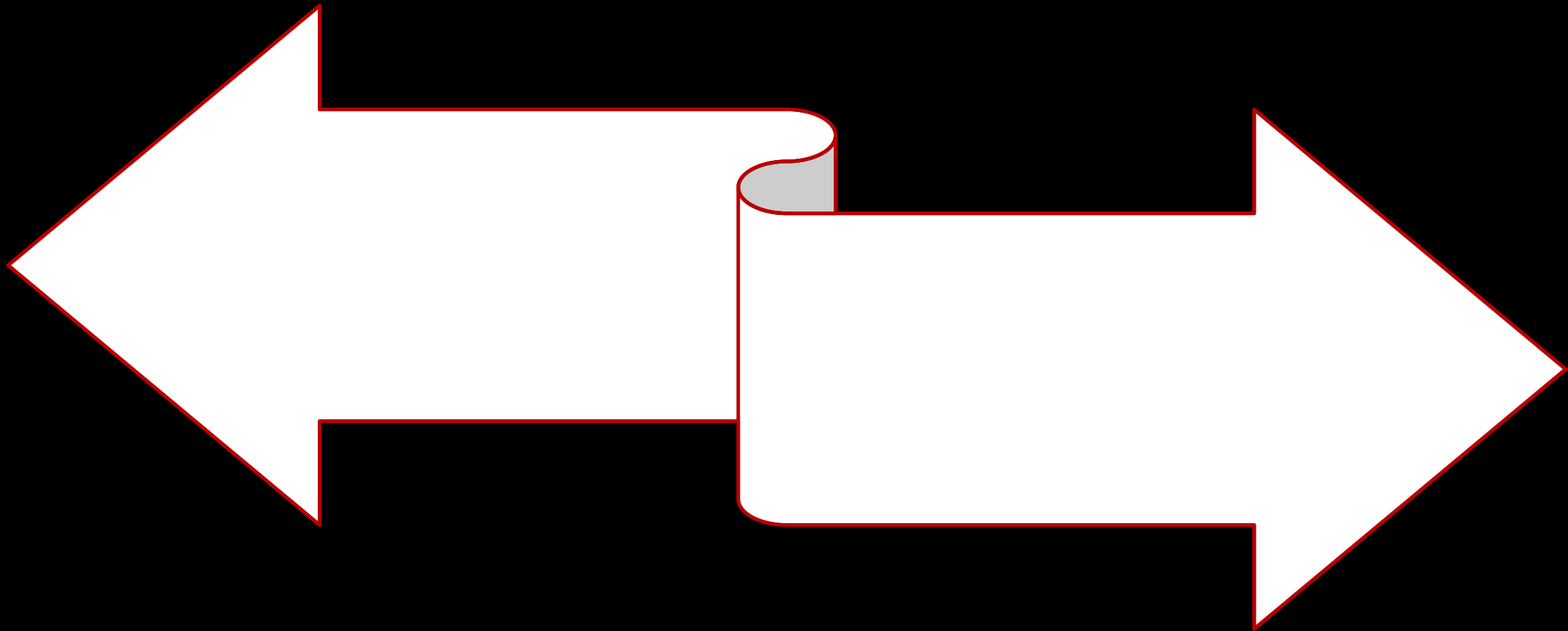


2023, Company Law 公司法

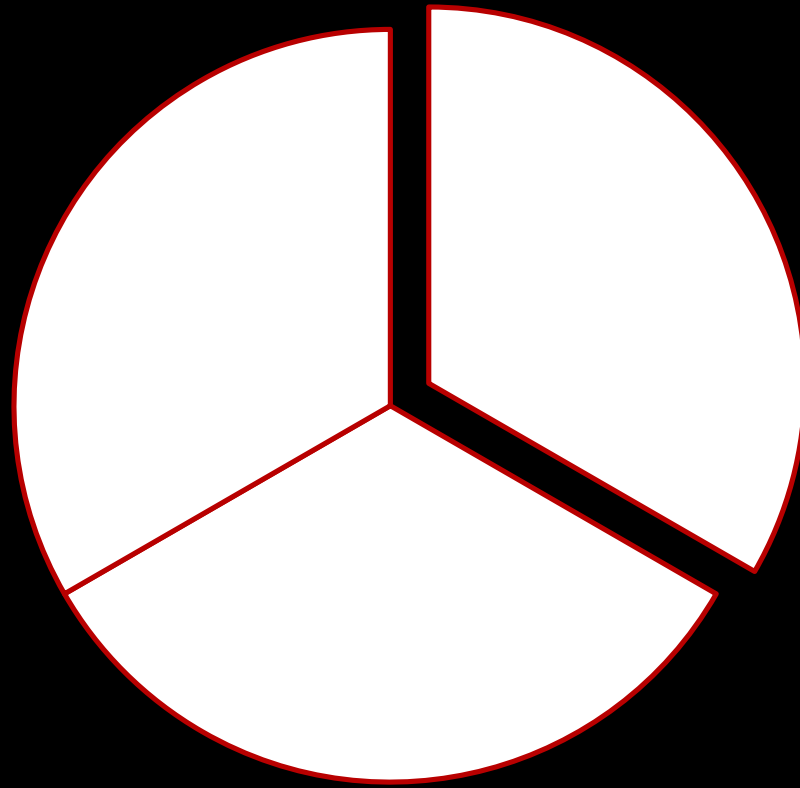
- The 2023 *Company Law* separates the provisions on wholly state-owned enterprises, which were previously included under limited liability companies, into a standalone Chapter VII.
- *Article 168: The term state-funded company in this law refers to wholly state-owned enterprises and state-controlled enterprises, including state-funded limited liability companies and joint-stock companies.*
- *Article 169: A state-funded company is subject to the investment responsibilities of the State, which are exercised by the State Council or local people's governments on behalf of the State. These authorities hold investment rights and enjoy the rights of investors. The State Council or local governments may authorize state-owned assets supervision and administration institutions or other departments/agencies to act on their behalf in fulfilling investment responsibilities for state-funded companies.*
- *Institutions and departments authorized to exercise investment responsibilities on behalf of the respective people's government are collectively referred to as investment responsibility institutions.*

- **第一百六十八条** 国家出资公司的组织机构，适用本章规定；本章没有规定的，适用本法其他规定。
 - 本法所称国家出资公司，是指国家出资的国有独资公司、国有资本控股公司，包括国家出资的有限责任公司、股份有限公司。
 - **第一百六十九条** 国家出资公司，由国务院或者地方人民政府分别代表国家依法履行出资人职责，享有出资人权益。国务院或者地方人民政府可以授权国有资产监督管理机构或者其他部门、机构代表本级人民政府对国家出资公司履行出资人职责。
 - 代表本级人民政府履行出资人职责的机构、部门，以下统称为履行出资人职责的机构。
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An Isolated Model of SOE



An Isolated Model of SOE



End

□ Thank You.
