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# 金融蓝皮书®

BLUE BOOK OF FINANCE

总编/李 扬 王国刚 王松奇

## 中国金融法治报告 (2009)

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ANNUAL REPORT  
ON FINANCIAL LAWS AND  
REGULATIONS OF CHINA  
(2009)

主 编/胡 滨 全先银  
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## 主要编撰者简介

中国社会科学院金融研究所法与金融研究室（金融与法律研究中心），是由中国社会科学院金融研究所发起设立的，主要从事法与金融的理论研究、教学工作以及金融法治领域咨询、培训和学术交流的专门机构。研究室（中心）主任为胡滨博士。

研究室（中心）自成立始，即整合了中国社会科学院金融研究所内外多学科专家、学者的研究力量，并与我国金融监管部门、相关金融机构及研究机构建立了稳定的合作关系。研究室（中心）致力于从法治的角度跟踪研究我国金融领域的各方面问题，并向社会公布其研究成果，以推动金融法治理论创新，促进金融业的健康发展。

自2005年起，研究室（中心）每年组织编写《中国金融法治报告》，作为金融法治领域的年鉴性出版物，集中、系统、全面、持续、权威地反映中国金融法治的现状、发展和改革进程。

**胡 滨** 男，1971年出生，安徽六安人。现任中国社会科学院金融研究所法与金融研究室主任，副研究员，法学博士，金融学博士后，硕士生导师。主要社会兼职有国家开发银行特聘专家，德国德意志研究会（DFG）访问学者，澳大利亚孟纳什大学荣誉研究员，精达股份（600577）独立董事。曾先后在建设银行、华安证券、中信证券等单位供职。主持省部级及金融所重点课题的研究十几项，主编中国金融蓝皮书系列《中国金融法治报告》四部，在《法学研究》、《财贸经济》等刊物发表学术论文几十篇，具有丰富的金融法领域实践经验和理论功底，获得中央国家机关青年“创新奖”。主要研究领域为金融法治、金融监管、结构金融（资产证券化）以及法与金融理论等。

**全先银** 男，1975年出生，山东费县人。法学博士，管理学博士后，中国社会科学院金融研究所法与金融研究室助理研究员，著有《商法上的外观主义》（*Research on the Theory of Rechtsschein*），发表论文十几篇，主要研究领域为商法、金融法、金融与法律的交叉研究等。

## Brief Introduction of Key Authors

The Department of Law & Finance (Research Center for Law & Finance) is established by the Institute of Finance & Banking, Chinese Academy of Social Sciences. The Research Center is a specialized institution with the following key objectives: to pursue academic research into the tenets of law and finance, and to conduct teaching, consultation training and academic exchanges in relation to law and finance. Dr. Hu Bin is the director of the Center.

Since the establishment of the Research Center, it has acted as a coordinator by unifying the academic and research capabilities of the scholars and experts, both within and outside the Chinese Academy of Social Sciences with the objective of building a strong and stable partnership and cooperation in the fields of law and finance with other Chinese regulatory and supervisory commissions and agencies, related legal and financial institutions and research organizations. The Research Center is dedicated to the study and research, from a legal perspective, into all aspects of the financial development in Chinese modern economy with a view to announcing/publishing the results of its research thereby, promoting innovation in the theory of law and finance and promoting a healthy growth in the financial sector.

Since 2005, the Research Center has, in each year, published *Annual Report on Financial Laws and Regulations of China*, an yearly publication which reflects in a systematic, comprehensive, persistent and authoritative manner, the current status, the development and reformation of law and finance in China.

**HU BIN** Dr. Hu, born in Liu'an, Anhui Province, People's Republic of China, in 1971, is currently director of the Research Center for Law and Finance of the Institute of Finance & Banking in the Chinese Academy of Social Science (the "IFB, CASS"), holding the titles of Assistant Professor, Doctor in Law, Post-Doctoral in Finance, Master Graduate's Mentor, and concurrently works as an Outside Expert for

China Development Bank, Visiting Scholar of Deutsche Forschungsgemeinschaft (DFG), Honored Researcher of Australian Monash University and Independent Director of Tongling Jingda Special Magnet Wire Co., Ltd. Prior to joining the IFB, he worked with China Construction Bank, Hua'an Securities Co., Ltd. and CITIC Securities Co., Ltd. He took charge of more than ten major projects at the provincial or ministry level for the IFB, and was also Chief Editor of four editions of *Annual Report on Financial Laws and Regulations of China*. He has published over twenty papers in significant legal journals such as *Chinese Journal of Law and Finance & trade economics*. He has extensive practice experience and expert knowledge in the financial laws and regulations. He was awarded with the "Youth Innovation Award" by Central State Organs Work Committee. His main research areas include the financial laws and regulations, financial supervision, structured finance (asset securitization), and legal and financial theory and analysis etc.

**QUAN XIANYIN** Dr. Quan, born in Fei'xian, Shandong Province, People's Republic of China, in 1975, is Assistant Professor of the Research Center for Law and Finance of the Institute of Finance & Banking in the Chinese Academy of Social Science (the "IFB, CASS"), Doctor in law, Post-Doctoral in management. He has published the book of *Research on the Theory of Rechtsschein* and over twenty papers. His main research areas include Commercial law, the financial laws and regulations and cross-study of law and finance.

## 前 言

“世上不变的唯有改变!”在变与不变的交织中,我们的《中国金融法治报告》已是第4次与大家见面了。从这4期报告里读者可以发现,不变的是我们对于中国金融法治前景的信仰,是我们对中国金融法治现状及未来作出系统、全面和深刻报告的努力与坚持,是我们综合运用法学与金融学理论分析金融发展的视角和勇气;而逐步加以调整和完善的是我们发布报告的时间,是我们每期所涵盖的主要内容,是我们每期报告的编著者。作为中国社会科学院金融研究所系列年度报告,同时也作为金融与法律研究中心、法与金融研究室的研究成果,《中国金融法治报告(2009)》秉承了“记载事实”、“客观评论”以及“金融和法律交叉研究”的理念。

2008年无论对于世界还是对于中国而言,都是一个极其特殊的年份。于世界而言,由华尔街金融危机引发的全球金融与经济危机,激发了我们对于健全金融法治的进一步思考。于中国而言,除了2008年的金融法治又取得了新的成就外,2008年还是中国改革开放30周年。这30年来,我国在金融法治领域的成就和经验教训,极其值得总结和吸取。为此,我们的报告增设了专栏,将中国金融法治置于改革开放的大背景下进行回顾与展望,并具体剖析了银行、证券与期货、基金、信托、保险以及外汇管理等领域的法治化进程,系统总结了这30年的进展和经验教训,并从中导出了对于中国未来金融法治建设极为有益的启示。

《中国金融法治报告(2009)》由胡滨、全先银担任主编,负责报告的组织、统编和撰写工作;孙爱林、张建棣作为副主编参加了相关组织和撰写工作;李扬、王国刚对本书的立意、框架和选题提出了修改意见,并最终审定本书。感谢王娜博士和社会科学文献出版社的周丽老师,以及为本书赐稿的所有专家和学者。中国社会科学院金融研究所期待着以《中国金融法治报告》为媒介和平台,与社会各界进行广泛的合作和交流,共同为中国金融法治建设事业而努力。

胡 滨

2009年1月18日



## Foreword

“The only constant is change!” Now in its fourth edition, the *Annual Report on Financial Laws and Regulations of China* comes to us in this world of change. You may find that in those successive four editions of the *Annual Report* that what has not changed is our faith in the prospects of the financial laws and regulations of China, and our courage and pride to analyze the current financial developments based on the comprehensive cross-utilization of legal and financial theories. We adjusted the time of the publishing of the *Annual Report*, improved principal contents of this edition and included updated legal and financial analysis. As one of a series of annual reports of the Chinese Academy of Social Science and as an achievement of the Department of Law & Finance (Research Center for Law & Finance), *Annual Report on Financial Laws and Regulations of China 2009* follows the principles of “record of truth”, “objective comment” and “cross-over research on finance and law”.

The year 2008 was a special year for the world and for China. Because of the global economic and financial crisis which was initiated by the Wall Street financial crisis, we endeavored to give further analysis and thought on perfecting the financial laws and regulations of China. In addition to the achievements reached this year in China, the year 2008 is the thirtieth anniversary of Chinese Reform and Opening-up. In summarizing the historical experience and lessons learned over the past 30 years, we added a special column into this *Annual Report* under which the review and prospects of the financial laws and regulations of China are made within the context of the Reform and Opening-up. We have analyzed developments in fields of banking, securities and futures, funds, trusts, insurance and foreign exchange, and have summarized historical developments and drawn lessons from the past 30 years thereby gaining inspiration for the future promotion of the financial laws and regulations of China.

Dr. Hu Bin and Dr. Quan Xianyin held the positions of Chief Editors for *Annual*

*Report on Financial Laws and Regulations of China 2009* and were charged with editing, organization and composition. Sun Ailing and Zhang Jiandi, as Vice Chief Editors, participated in organization and composition. Li Yang and Wang Guogang contributed in approaching, framing and choosing topics and examined and approved the *Annual Report*. We give our deepest appreciation to Wang Na, Zhou Li from the Social Science Academic Press, and each individual scholar and expert who contributed to the *Annual Report*. We hope that the *Annual Report* can serve as a medium through which we can communicate and cooperate with all people and contribute to promotion of the financial laws and regulations of China.

Hu Bin

January 18, 2009

## 摘 要

《中国金融法治报告（2009）》由“总报告”、“改革开放三十年中国金融法治化进程”、“前沿与热点”以及“调研报告”四个部分构成。“总报告”部分分为两篇：第一篇为“法治愿景下的中国金融改革——中国金融法治化进程回顾与展望”，是将中国金融法治置于改革开放的大背景下，系统地总结了三十年来中国金融法治的基本脉络、存在问题和发展趋势。第二篇为“全球金融危机背景下的中国金融法治建设——2007～2008年度综述”，其分析了2007～2008年度中国金融法治建设情况，特别是在全球金融危机背景下中国政府采取的各项金融政策和措施，提出了完善金融监管、加强金融立法、积极应对金融危机的政策建议。“改革开放三十年中国金融法治化进程”部分具体剖析了我国银行、证券与期货、基金、保险、信托以及外汇管理等领域的法治化进程，认真总结了这三十年的进展和经验教训，并从中导出了对于中国未来金融法治建设极为有益的启示。“前沿与热点”部分包括2007～2008年的热点问题分析，重大案例或事件的评析，新出台或实施的法律法规对中国金融业的影响分析，以及前沿理论探讨等方面。热点问题涉及金融危机下的中国金融监管与立法、网络银行交易的风险分配、私募股权基金、主权财富基金等；重大案例评析从太平洋证券上市、机动车强制保险保费争议等事件出发，对中国公司上市制度的创新及其法律边界、机动车强制保险的模式选择等问题进行了评析；新法评析主要包括《中华人民共和国物权法》、《中华人民共和国劳动合同法》以及《证券公司监督管理条例》等的颁布实施对中国金融发展及某些具体制度的影响；理论探讨则集中在中国公司债券的发行监管体制、返程投资的外汇管制、赤道原则以及金融控股公司的内部信息等方面。“调研报告”部分收录了“中国金融法治环境调研报告”，该报告是中国社会科学院金融研究所课题组在对黑龙江省及河北省唐山市进行国情调研的基础上形成的，是我国金融法治现状的一个区域性标本和缩影。

## Abstract

*Annual Report on Financial Laws and Regulations of China 2009* consists of chapters entitled “Overall Reports”, “Developments in Financial Laws and Regulations of China in the 30 Years of Reform and Opening-Up”, “Frontier Theories and Current Issues” and “Investigation Report” .

“Overall Reports” contains two articles: the first article is entitled “*Financial Reform of China with the Goal of Rule of Law-Thinking Back and Looking Forward on the Developments in Financial Laws and Regulations of China*”, and summarizes the basic structure, the existing problems and the trends in developments of the financial laws and regulations of China within the context of the 30 years of Reform and Opening-up . And the second article is entitled “*Construction of Financial Laws and Regulations of China during the Financial Crisis: Annual review 2007 – 2008*”, and analyzes the developments of the financial laws and regulations of China from 2007 to 2008 , in particular the measures and policies that the government and administration of China adopted in the global financial crisis aimed at strengthening financial supervision and legislation to resolve certain difficulties arising from the crisis.

In “*Developments in Financial Laws and Regulations of China in the 30 Years of Reform and Opening-Up*”, the authors analyze developments in fields of banking, securities and futures, funds, trusts, insurance and foreign exchange, and summarize historical developments and lessons learned from the past 30 years to gain inspiration for the promotion of the financial laws and regulations of China.

“*Frontier Theories and Current Issues*” consists of analysis and evaluations of the current issues, frontier theories and major cases, and the impacts of newly promulgated laws and regulations with respect to finance. The current issues relate to the financial supervision and legislation of China in the financial crisis, risk allocation of internet banking transactions, private equity funds and sovereign wealth funds and other issues.

The major cases include the exchange listing of Pacific Securities Co. , Ltd. and controversies rising from the compulsory motor vehicle insurance requirement. The authors analyze and evaluate the innovations on the exchange listing regulations of China and the choice of the model for compulsory motor vehicle insurance. The evaluation of new laws and regulations primarily includes the impact of the *Property Law* , the *Labor Contract Law* and the *Regulations of Supervision and Administration on Securities Companies* on the developments of the financial laws and regulations of China and specific government institutions. The study of theories focuses on the supervision system of securities issuances of Chinese companies, foreign exchange administration on round trip investments, the equator principles and the inside information of financial holding companies.

“*Investigation Report*” includes the “*Investigation of the Current Situation of Financial Laws and Regulations of China*” which is based on the investigations in Heilongjiang Province and Tangshan Municipality, Hebei Province, completed by a project team of the Institute of Finance & Banking in the Chinese Academy of Social Science and is a regional epitome of current situation of the financial laws and regulations of China.

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