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新型 土

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YIZHONG ZIBEN KONGZHI SHOU YUESHU DE
ZHILI QIANRU GONGTONG ZHILI MOSHI DE TANTAO

农民专业合作社治理结构研究

——一种资本控制受约束的治理嵌入共同治理模式的探讨

邵兴全 著



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西南财经大学学术基金资助出版

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图书在版编目(CIP)数据

新型农民专业合作社治理结构研究:一种资本控制受约束的治理嵌入共同治理模式的探讨/邵兴全著. —成都:西南财经大学出版社, 2014. 6

ISBN 978 - 7 - 5504 - 1451 - 8

I. ①新… II. ①邵… III. ①农业合作社—专业合作社—研究—中国 IV. ①F321.42

中国版本图书馆 CIP 数据核字(2014)第 128193 号

新型农民专业合作社治理结构研究

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责任编辑:李 才

封面设计:何东琳设计工作室

责任印制:封俊川

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|------|--|
| 出版发行 | 西南财经大学出版社(四川省成都市光华村街 55 号) |
| 网 址 | http://www.bookej.com |
| 电子邮件 | bookcj@foxmail.com |
| 邮政编码 | 610074 |
| 电 话 | 028 - 87353785 87352368 |
| 照 排 | 四川胜翔数码印务设计有限公司 |
| 印 刷 | 郫县犀浦印刷厂 |
| 成品尺寸 | 148mm × 210mm |
| 印 张 | 8.125 |
| 字 数 | 200 千字 |
| 版 次 | 2014 年 6 月第 1 版 |
| 印 次 | 2014 年 6 月第 1 次印刷 |
| 书 号 | ISBN 978 - 7 - 5504 - 1451 - 8 |
| 定 价 | 30.00 元 |

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摘 要

新型农民专业合作社是在农村家庭承包经营基础上，同类农产品的生产经营者或者同类农业生产经营服务的提供者、利用者，自愿联合、民主管理的互助性经济组织。从20世纪80年代开始，新型农民专业合作社经过30多年的发展，已经初具规模，对我国的农村经济发展起到了较大的促进作用，尤其是在农资供应、产品销售、市场信息、技术交流等各类服务方面，部分解决了农户分散小生产与大市场的对接问题。2007年7月《中华人民共和国农民专业合作社法》的实施，使得长期以来制约农民专业合作社发展的法律地位和组织属性、利益分配与内部治理等一系列重大问题在一定程度上得到了澄清。但由于新型农民专业合作社形成过程中尚存有经济体制上的“制度遗产”，且参与主体的“多样性”，成长路径的“外生型”以及政治因素的作用，在运行过程中不断地伴生一些新的问题，如合作社内部凝聚力不强，合作社的服务与农民的合作领域有待扩大，合作社的进一步发展受制于资金等要素约束，合作社内部

的治理结构需要进一步的创新等。因此，面对蓬勃发展、生动活泼的农民专业合作社的制度实践，需要从产权制度、治理结构等深层次上全面地、系统地进行理论阐释、分析和研究。

本书在坚持马克思主义关于合作社基本思想的基础上，主要采用法学与经济学、规范分析与实证论证、比较制度分析及案例分析相结合的方法展开研究。以企业理论为出发点，以公司治理为依托，以构建新型农民专业合作社治理模式为主线，以完善新型农民专业合作社的具体治理制度为落脚点，提供一个关于新型农民专业合作社治理模式的制度分析框架。本书研究的核心是在借鉴企业利益相关者治理理论和企业合作博弈论模型的基础上，基于经济上的所有权共享、法律上的民主控制与管理以及社会责任的承担三要素的分析，从合作社的运行效率的角度论证了理想的合作社治理结构为共同治理模式。然而，在实践中共同治理模式却遭遇了对农民专业合作社社员的激励不够与投资不足等现实问题。因此，从实践出发需要理论放松假设条件、修正研究内容，引入一定的资本控制，在确立共同治理模式为目标的前提下，结合我国新型农民专业合作社的治理实践，尝试提出现阶段我国新型农民专业合作社治理模式——资本控制受约束的治理嵌入共同治理模式。按其社员民主控制的基本价值理念及其意思自治的原则、强化经营者受托责任的原则、适当引入资本控制与剩余分配等四大原则，本书进一步从社员结构、表决权制度、法人机关构造、经营者受托责任的履行等方面提出了具体的制度安排、治理关系。本书还选取国内外典型案例进行了相关比较分析，并在分析基础上给出结论、政策建议和未来研究方向。

本书由六章组成。第一章为导论，介绍研究背景、研究目的与意义，明确研究重点解决的问题、研究框架与方法，并初步得出本书可能的创新。

第二章为文献检视与简要述评部分，主要从治理结构的角度来梳理相关文献，并对其进行了简要评论。首先，回顾了相关企业理论的发展演变，重点检视了马克思主义的合作思想、企业契约理论、产权理论、劳动管理型（LMF）理论、企业（公司）治理理论；其次，用专节回顾了国内学者对合作社治理结构的研究现状；最后，对这些文献进行了初步评价。从积极意义方面来说：第一，从方法论分析，现有文献采用多种研究方法，研究视角呈现多元化趋势，既有对合作社外部环境的研究，更有对内部制度构造的解析，这些方法与视角有利于对合作社展开全方位的研究。第二，从理论上，现有文献注重对合作社的性质、作用及演化形态的研究，这对认清合作社内部所蕴含的制度特征具有重要的启发意义。第三，从实践上，积极借鉴公司治理机制，改变合作社的治理形态，并且不断修改立法，这些对我国下一步《农民专业合作社法》的修订具有借鉴意义。但本书也认为目前的研究存在研究对象尚未独立化，研究内容还缺乏系统性，研究方法在理论实证上尚有不足，研究视角仍欠具体等诸多不足。

第三章为规范分析，主要进行了一个理想的理论模型分析，论证了理想的合作社治理结构是共同治理模式。首先，本书分析了合作社治理结构应采用共同治理的三大原因，即经济上的所有权共享、法律上的民主控制与管理、社会责任的承担。这三个条件约束着合作社的治理结构理论上应该采用共同治理模式，只有这样才能调动各个社员的积极性，提高合作社的运作效率。其次，采用企业的合作博弈论模型，论证了理想的合作社治理结构应是共同治理模式，只有这种模式才是合作社治理的均衡解，具有帕累托效率，这部分的论证借鉴了青木昌彦关于企业合作博弈论的研究成果。

第四章在第三章规范分析的基础上基于实践进一步做了经

验实证,提出了一个适应现阶段我国实际情况的治理模式——资本控制受约束的治理嵌入共同治理模式。首先,回到国内外的治理实践,解释了为什么共同治理模式在理论上可行、在实践中却会导致对合作社社员的激励不够与投资不足等现实问题,从而在我国现阶段此种模式应用依然较少。因此,需要放松假设条件,引入资本控制受约束的治理模式。其次,借鉴公司治理的基本理念与原则,在确立共同治理模式为目标的基础上,结合我国合作社的治理实践,提出现阶段我国合作社治理模式是资本控制受约束的治理嵌入共同治理模式,而此种治理模式的理念与原则包括强调社员民主控制的基本价值理念,强化合作社治理的意思自治原则,强化经营者受托责任的原则,适当引入资本控制与剩余分配的原则。最后,为实现和贯彻这些理念与原则,借鉴公司治理的研究成果,从社员结构、表决权制度、法人机关构造、经营者受托责任的履行等方面指出了新型农民专业合作社治理的具体制度安排。

第五章为比较案例分析部分,主要从资本控制受约束的治理嵌入共同治理模式的比较研究出发,选取国外的蒙德拉冈合作社的治理(比较接近于理想的共同治理模式)、国内发达地区浙江临海S镇L村西兰花专业合作社的治理(资本控制型治理)、国内西部地区成都市双流县牧马山蔬菜种植专业合作社(资本控制受约束的治理嵌入共同治理模式)三个案例进行了分析。

首先,蒙德拉冈合作社处于经济发达的西班牙,由于发展时间久远,治理机制较为成熟,其所处的制度环境接近于三个约束条件,因此,采用的治理结构更接近于理想的共同治理模式,即利益相关者积极参与治理。由于这种治理对制度环境要求较高,而今已不具备代表性。

其次,浙江临海S镇L村西兰花专业合作社地处我国经济

相对发达的地区，资本控制得到加强，决策权控制在专业大户手中，更倾向于股份公司的性质，这种所有权安排出现的分层性和分群性及成员之间的异质性，在一定程度上偏离了合作社本质，并伴随出现了合作社功能弱化现象。因此，这种不加限制的资本控制不值得提倡，否则合作社会沦为某些农村“能人”牟利的工具。

最后，成都市双流县牧马山蔬菜种植专业合作社地处西部，在治理结构上采用资本控制受约束的治理嵌入共同治理模式，资本控制受到严格约束。治理模式具有以下基本特征：一是通常由比较具有企业家素质的“农村精英”（比如此案例中的廖德富）、龙头企业、基层供销社等出资作为股东，再吸收普通社员股金组建而成；二是投票方式多样化，以一人一票与一股一票相结合，但资本所拥有的投票权受到严格约束，一般控制在20%以内，具体到牧马山蔬菜种植专业合作社的表决权方式，“以一人一票与一股一票相结合的表决权制度，但个人股东拥有的投票权一般控制在10%以内”；三是分配方式以按股分配与按交易量分配相结合的方式，牧马山蔬菜种植专业合作社的分配方式为“提取利润的20%作为公积金，40%按交易量分红，40%按社员交纳股金分红”。因此，从产权结构、决策机制及分配制度等分析，这个合作社治理结构处于理想的共同治理模式与资本控制型治理之间，是一个运作良好的合作社，其治理结构形式更具有适应性与合理性。

总之，资本控制受约束的治理嵌入共同治理模式的建立和发展，是经济当事人在外部利益引导下适用市场经济运行机制而进行的一项制度创新，这种制度创新有其必然性和可能性。同时，在我国合作社的创建、发展过程中，基于资本和企业家才能的比较优势，合作社的产权受到资本控制的影响，这在一定程度上偏离了合作社本质。因此，为避免这种情况的发生，

在以后的合作社治理中，应完善立法，将资本的控制限制在一定的范围之内。

第六章包括两部分内容：一是研究结论及对政策制定带来的一些启示；二是指出了未来继续研究的方向。

关键词：新型农民专业合作社 共同治理模式 资本控制
受约束的治理嵌入共同治理模式

Abstract

A farmers' professional cooperative is a mutual-aid economic organization, which is voluntarily formed by production and business operators of similar agricultural products or by providers or users of similar agricultural production and business operation services on the basis of rural household contractual management and which is subject to democratic management. From the 1980s on, with the development during the last 20 years, a new pattern of farmers' professional cooperative has begun to take shape and has played a larger role in promoting the development of rural economy. Especially, to some extent, it has solved the joint problems between the production of dispersive farmers and the unified market. Since the implementation of Law of the People's Republic of China on Farmers' Professional Cooperatives in July, 2007, a series of problems concerning legal status, organizational attributes, profit distribution and internal governance which restrict the development of farmers' professional cooperatives

have been clarified to some degrees. However, with the “systemic heritage” of economic system, the “diversity” of involved parties, the “exogenous type” of growth path and the function political elements in the forming process of farmers’ professional cooperatives, some issues have emerged ceaselessly in farmers’ professional cooperatives’ operation process, such as the weak cohesion inside the farmers’ professional cooperatives, the improvement of the areas of cooperation between the service of farmers’ professional cooperatives and farmers, the further innovation of governance structure inside farmers’ professional cooperatives and the further development of farmers’ professional cooperatives which is subject to a fund. Therefore, facing the vigorous development of the practice of farmers’ professional cooperatives, the systematical theoretical interpretation focusing on property right system and governance structure are necessary.

Mainly based on the Marxism ideas about cooperatives, the methods in this book are the combination of the method of jurisprudence and economics, normative analysis and empirical demonstration, comparative institutional analysis and case analysis. A system analysis framework about management mode of cooperatives is being provided which is started from the enterprise theory relying on corporate governance, adopts the management mode of cooperatives as the main line and aims at the perfection of the specific governance systems. In order to demonstrate theoretically the ideal management mode of cooperatives, and draw lessons from corporate stakeholders governance theory, this book concludes that the ideal goal of management of cooperatives is common governance participated by all members. But in practice, the common mode will result in sufficient excitation of members and inadequate investment. In that case, the com-

mon governance infixed by constrained capital control is preferable in the present stage of our country. Meanwhile, considering the short implementation of Law of the People's Republic of China on Farmers' Professional Cooperatives, the practice of governance structure maturing and developing the rough regulation of governance system because of the principle of "be broad rather than detailed" in legislation, this book will transit from the theory of management mode to the specific practices by using the related regulations of legal corporate governance for reference.

This book consists of 6 chapters. The first chapter introduces the background, the goal and the significance of the research, makes clear the issues to settle, the framework and methods and firstly concludes the potential innovation.

The second chapter is literature review which summarizes the related legal and economic literature from the perspective of governance structure and make comments. First of all, all members of enterprises theory are reviewed that mainly include the cooperation ideas in Marxism, the contract theory of the firm, the theory of property rights, labor management theory and corporate governance theory. Secondly, the chapter reviews the research status of cooperative management structure by domestic scholars. Thirdly, comments are initially made about the literature. On the positive side, firstly, the existing literature adapts many kinds of research methods. Research angles tend to make diversification, including the research of external environment conditions and the analysis of internal structure of cooperatives which are good to broaden the research. Secondly, the existing literature theoretically focus on the research of the nature, function and the evolution types of cooperatives, which contains enlight-

ening significance in recognizing systematical characteristics of internal cooperatives. Thirdly, learning positively from the company governance structure, changing the type of governance of cooperatives and amending the laws ceaselessly, which are good for the amendment of Law of the People's Republic of China on Farmers' Professional Cooperatives. The book also holds a view that there exists much insufficiency such as the dependent objects, the lack of systemization in contents, empiricism in methods and unspecific perspectives.

The third chapter is the part of model analysis which demonstrates the ideal management structure of cooperatives is common governance mode. First, this chapter analyses the three reasons of adapting common management mode: ownership sharing, democratic control and management and the bearing social responsibility, which lead to the application of common governance mode necessary to all members' enthusiasm and improvement of the operation efficiency. Second, the ideal structure, namely, the common governance model is demonstrated by adapting the enterprise cooperative game theory model and the model is the equilibrium solution of cooperative management which is Pareto Effect. The demonstration has drawn some lessons from the research findings of enterprises cooperatives game theory made by Masahiko Aoki.

Based on the demonstration of the above-mentioned model, firstly, Chapter 4 gets back to the management practice in the worldwide to explain why the common governance mode is practicable theoretically but results in weak encouragement and inadequate investment in practice, making the model weak in the present time. Therefore, assumptions should be released and the control of capital should be applied. Secondly, learning from the ideas and principles of corporate

governance, basing the goal of adapting to model of common governance and combining the governance practice of farmers' professional cooperatives, it is provided that at the present stage the available governance mode is the common governance mode restricted by the constraints of capital control, which emphasizes the value sense of democracy, strengthens operators' fiduciary duty and appropriately adopts the capital control and surplus distribution. Last but not least, to put the ideas and principles into effect, the specific systematical arrangement, such as member structure, system of the right to vote, the structure of organ of legal person and fiduciary duty of operators, are provided by getting experiences of the research of cooperate governance.

Chapter 5 is a comparative case analysis which makes 3 selections of the governance of enterprises in Mondragon (a typical mode of common governance), the management of broccoli professional cooperatives in L village of S town located near the coast of Zhejiang Province (the capital-control governance), which is a developed area, as well as the administrative of vegetable cultivation professional cooperatives in Mumashan of Shuangliu County in Chengdu City (the common governance mode restricted by the constraints of capital control).

Through the analysis of the mentioned part, it is concluded that the introduction of capital control, which is inevitable and possible, is a systematical innovation of market economy mechanism when the economic parties are guided by external benefits. However, the ownership arrangement in cooperatives appears obvious layered, clustering and heterogeneous effect between members and goes far away from the nature of cooperatives, accompanying the weakening of the

function of cooperatives. To avoid the negative sides, it is necessary to restrict the control of capital.

There are two sections in Chapter 6. The first section is about the conclusion and the enlightenment in making policies influenced by the conclusion. The second section is about the direction of future research.

Key Word: a new pattern of farmers' professional cooperative, common governance mode, common governance mode restricted by the constraints of capital control

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