

中国投资者法律 保护与股票市场发展

—— 基于上市公司的视角

马 腾◎著



河南大学出版社
HENAN UNIVERSITY PRESS

ZHONGGUO TOUZIZHE FALV

中国投资者法律

BAOHU YU GUPIAO SHICHANG FAZHAN

保护与股票市场发展

—— 基于上市公司的视角

马 腾 © 著



河南大学出版社
HENAN UNIVERSITY PRESS

· 郑州 ·

图书在版编目(CIP)数据

中国投资者法律保护与股票市场发展:基于上市公司的视角/马腾著. —郑州:河南大学出版社,2013.12

ISBN 978-7-5649-1439-4

I. ①中… II. ①马… III. ①证券法—研究—中国②股票市场—经济发展—研究—中国③上市公司—投资—经济行为—研究—中国 IV. ①D922.287.4②F832.51

中国版本图书馆 CIP 数据核字(2013)第 318418 号

责任编辑 薛建立

责任校对 柴桂玲

封面设计 郭 灿

出 版 河南大学出版社

地址:郑州市郑东新区商务外环中华大厦 2401 号 邮编:450046

电话:0371—86059735

网址:www.hupress.com

排 版 郑州市今日文教印制有限公司

印 刷 郑州市今日文教印制有限公司

版 次 2013 年 12 月第 1 版

印 次 2013 年 12 月第 1 次印刷

开 本 710mm×1000mm 1/16

印 张 14

字 数 163 千字

定 价 42.00 元

(本书如有印装质量问题,请与河南大学出版社营销部联系调换)



作者近照

作者简介

马腾，男，河南嵩县人，1970年8月生。1992年、2001年和2011年分别在郑州大学、武汉理工大学及中南财经政法大学获经济学学士、硕士和博士学位（金融学专业）。现任洛阳理工学院会计学系副主任、副教授。现为中国区域经济学会会员、洛阳市重点人文社科重点研究基地“洛阳市投融资研究中心”

及“洛阳市经济社会发展研究中心”研究员，兼任洛阳市投融资研究中心融资研究所负责人。

主要研究领域为公司金融、金融发展等。代表性研究成果有：《论金融危机救援中私人机构的最后贷款人功能》、《中小企业集合债券增信措施比较研究》、《银行集团内部交易监管的国际经验及启示》、《刍议我国当前的支农再贷款政策》、《我国银行集团资本充足率并表监管问题研究》等十余篇相关学术论文发表在《上海金融》、《特区经济》等CSSCI、中文核心期刊和有影响的学术杂志上，主持完成河南省政府决策项目《完善河南省中小企业集合债券发行制度的对策研究》、河南省教育厅人文社科项目《河南省发行中小企业集合债券相关问题研究》以及洛阳市政府委托项目《洛阳嵩县产业集聚区建设问题与对策研究》、《洛宁县“承接产业转移”研究报告》、《洛阳市国有企业改制中产权交易问题研究》、《出口退税新制问题与对策研究》等，编著《财政与金融》、《国际金融》、《财务会计学》等三本教材。

摘 要

投资者法律保护与股票市场发展关系问题属于金融发展理论中探讨金融发展决定因素的研究范畴,是金融发展理论中最具前沿性的研究领域之一。因而,对我国投资者法律保护与股票市场发展关系进行深入研究具有重要的理论意义。虽然我国股票市场发展已取得长足进步,但实践中还存在许多问题,最为突出的是大量存在上市公司控股股东通过直接或间接地占用、关联交易、非法担保等形式掠夺中小股东利益、攫取控制权私人收益的现象,这将增加上市公司的代理成本,降低公司价值,严重阻碍股票市场正常功能的发挥和健康发展。从本质上讲,上市公司控股股东攫取控制权私人收益现象的大量存在是由于法律对中小投资者利益保护水平较低,不能从外部治理或外部约束方面限制或制约控股股东的侵权行为。因而,从投资者法律保护角度研究我国股票市场发展具有重要的现实意义。

自从 LLSV 开创从投资者法律保护角度研究股票市场发展的研究范式以来,国内外许多学者进行了大量的后续研究,但大多数是跨国静态比较研究,或直接用两者的实际数据实证说明其关系。另外,对上市公司股权结构、控制权私人收益、公

司价值的研究很少与投资者法律保护、股票市场发展联系起来,往往是就单个问题进行分析。笔者尝试将投资者法律保护、上市公司股权结构(或股权集中度)、控制权私人收益及股票市场发展纳入统一的框架进行分析,并以此说明我国投资者法律保护对我国股票市场发展的决定作用。其逻辑关系如下:一国投资者法律保护程度低,将导致上市公司股权结构集中,而集中的股权结构及较低的投资者法律保护水平将产生较高的控制权私人收益水平,这就增加了公司的代理成本,降低了公司价值,阻碍了股票市场的健康发展。另外,从时间的纵向角度实证分析投资者法律保护与上市公司价值的关系也可以验证投资者法律保护对股票市场发展的影响和作用。本书以上市公司股权结构、控制权私人收益、公司价值为研究的中间变量。

基于上述研究思路的逻辑分析,笔者通过构建模型的方法厘清了相关变量之间的关系,重点介绍和评析了投资者法律保护、控制权私人收益、公司价值与股票市场发展关系,以及 Edwards 和 Weichenrieder(1999)、LLSV(2002)的理论模型。关于 Edwards 和 Weichenrieder(1999)提出的上市公司股权结构、控制权私人收益与公司价值之间关系的理论模型,笔者指出其不足之处在于没有将投资者法律保护这一重要的外部治理变量纳入其中、没有得出明晰的结论等。关于 LLSV(2002)提出的投资者法律保护、存在控股股东的股权结构和公司价值之间相互关系的理论模型,笔者指出其没有区分上市公司控制权和现金流权的分离对控制权私人收益、公司价值的影响。在克服上述模型不足的基础上,笔者构建了投资者法律保护、控制权私人收益与股票市场发展之间关系的分析模型并推导出了清晰的结论。根据模型推导的结论,笔者提出了五个研究假

设并以此统领本书的研究思路。

基于以上认识,本书分析框架的安排如下:第一,从时间的纵向角度分析和度量我国投资者法律保护水平及其变化趋势;第二,实证研究我国上市公司股权结构及股权集中度的变化趋势,用上市公司股权集中度的现状分析判断我国上市公司存在的主要代理成本类型,上市公司股权集中度的变化趋势与投资者法律保护之间的关系分析则说明投资者法律保护的作用;第三,在股权集中的假定被证实的前提下,分析判断上市公司控制权私人收益的水平及其与投资者法律保护的关系;第四,实证研究投资者法律保护与上市公司价值、股票市场发展的关系;第五,在以上分析的基础上,明确我国投资者法律保护与股票市场发展的关系并提出有针对性及前瞻性的政策建议。

研究结论表明:我国投资者法律保护水平呈现出随时间的推移不断提高的趋势,比较研究的结论表明我国投资者法律保护水平仍然较低;我国上市公司股权集中度基本上呈现逐步下降趋势,只是在 2008~2010 年有小幅度的回升,国别比较表明我国上市公司股权集中度较高及上市公司的主要代理成本是控股股东掠夺控制权私人收益,我国投资者法律保护程度与上市公司股权集中度呈现反方向的变化关系;我国上市公司控制权私人收益水平的均值为 18.561%,比较研究结论表明,我国上市公司控制权私人收益水平较高,我国控制权私人收益水平的变化趋势呈现阶段性的特点,这与投资者保护法律法规的实施及控制权市场发展状况有关,随着我国投资者法律保护水平的提高,上市公司控股股东获得控制权私人收益的水平在下降;控制权和所有权的分离度指标与控制权私人收益水平呈现不显著同方向变化的关系;我国投资者法律保护水平和上市公司价值正相关,即随着投资者法律保护程度的提高,股票市场

的发展水平增高。

基于上述研究结论,本书最后提出了促进我国股票市场发展的三个政策建议:应进一步完善投资者法律保护制度和提高执法效率,采取措施促进我国控制权市场的完善与发展,从优化公司治理结构着手抑制控制权私人收益。

ABSTRACT

The relationship between the legal protection of investors and the development of stock market belongs to the category of financial determinants' factors in the financial development theory, which is one of the most cutting-edge research areas. So, it has important theoretical significance that we study the relationship between the legal protection of investors and the development stock market in China. Although China's stock market has made great progress, there are still many problems in practice, in which the most prominent is the existence of the phenomenon that a large number of controlling shareholders of listed companies plunder the interests of small shareholders and the private benefits of control through direct or indirect occupation, related party transactions, illegal guarantees and other forms, which will increase the company's agency costs, reduce the company's value, seriously hinder the normal function of the stock market and healthy development. In essence, the existence of the phenomenon of private benefits of which is seized by the controlling shareholders of listed company is due to the

lower level of legal protection of the interests of small investors. It cannot limit or restrict the controlling shareholder in the infringement from external control or external constraints. Thus, it has important practical significance to study the development of China's stock market from the point of the legal protection of the investors.

Since LLSV created the study paradigm of which researched the development of stock market from the legal protection of the investors, many domestic and foreign scholars have conducted a number of follow-up study. But, most of their researches are cross-comparative study of static, or explaining directly its relationship between the actual empirical data. Other, the study about the ownership structure of listed companies, private benefits of control and the value of the company has little link with the legal protection of the investors and the stock market. They are often the study on a single issue. I try to put the investor protection, ownership structure, the private benefits of control and the stock market development into a unified framework of analysis, which shows the role in the decision of laws protect investors in China's stock market. The logic is as follows: a lower degree of legal protection for foreign investors will lead to concentration of ownership structure of listed companies, while the concentrated ownership structure and the lower level of legal protection of investors will have a higher level of private benefits of control, which increases the company's agency costs, lower value of the company, impede the healthy development of the stock market. In addition, the empirical

analysis, which about the legal protection of the investors and listed companies, by vertical angle from the time can also verify the value of the relationship between the legal protection of the investors in the stock market impact and effect. The middle variables of the article analyze is the private benefits of control, the value of the company.

To the logic of the above, the author clarified the relationship between the relevant variables by building models. To the theoretical model of the relationships about the legal protection of the investors, the private benefits of control, the stock market and the value of the company, the article highlighted and assessed the theoretical model of Edwards and Weichenrieder (1999) and LLSV (2002). About the theoretical model of Edwards and Weichenrieder (1999), which about the relationship of the ownership structure of listed companies, the private benefits of control and the the firm value, the author pointed out that its shortcomings are that they did not put the legal protection of the investors, which is the important external governance variables, into the analysis framework, and did not reach the clear conclusions, etc. About the theoretical model of LLSV (2002) which translates the relationship between the legal protection of investors, the ownership structure of the controlling shareholder of the company and the value of company, the author pointed out that it did not distinguish the reflection the separation of the control and cash flow of the listed companies over the private benefits of control, the value of the company. With the basic of the above model, the author builded the model about the

relationship between the legal protection of the investors, the private benefits of control and the development of the stock market and derived the clear conclusions. According to the conclusions from the model, the author proposed five hypotheses and guided the research of the article with them.

Based on the above understanding, this analytical framework is as follows: First, this article will analysis and measure the level and its trends of the legal protection of the investors in China from the the vertical angle of time; second, the article will empirically research the trends of the ownership structure of the listed companies and the concentration of ownership in china, and analyse the main types of agency costs of listed companies in China by the situation of the concentration of ownership of the listed companies, and translate the role of the legal protection of investors investors accoding to the relationship between the legal protection of the investors and the trends of the ownership structure of listed companies; third, if the assumption of the concentrating ownership was confirmed, this article will analyse and measure the level of the private benefits of control of the listed companies and its relationship with the legal protection of the investors; fourth, this article will empirically study the relationship between the legal protection of the investors, the value of the listed companies and the develoship of the stock market; finally, with the basic of the above analysis, this article will make the conclouision of the relationship between the development of stock market and the legal protection of the investors in china and propose the targeted and forward-looking

recommendations of policy.

The findings show that: the level of the legal protection of the investors in china shows a rising trend, and the conclusions of the comparative study shows that the level of the legal protection of the investors in china is still low; the ownership concentration of the china's listed companies basically shows the trend of gradual downward, only a small recovery from 2008 to 2010, and the study of the country comparison shows that the higher ownership concentration of the listed companies in china and the main agency cost of the listed companies is the private benefits and the trends of the relationship between the legal protection of the investors and the ownership structure of the listed companies in China shows in the opposite direction; the mean level of private benefits of control of the listed companies in China is 18.561%, and the comparative study concluded that the China's listed companies has a high level of private benefits of control, and its trends show the characteristics by stage, which dues to the the implementation of the laws and regulations of the legal protection of the investors and the developments of the control market. Along with the promoving level of legal protection, the level of private benefits of control obtained by the controlling shareholders of the listed companies is falling; the relationship between the indicators of the separation of ownership and control and the level of private benefits of control shows no significant change in the same direction; the relation between the level protection of investors and the velue of the listed companies in china shows a positive correlation, that, with a higher level of the legal

protection of investors, the higher the level of development of the stock market.

Based on the above findings, the article proposed three recommendations of the policy of the development of our stock market: we should further perfect the system of the legal protection of investors and improve the efficiency of law enforcement. We should take measures to promote and improve the control market in china, and inhibit the private benefits of control through optimizing the structure of the corporate governance.

目 录

| | |
|---------------------------------------|------|
| 导 论 | (1) |
| 一、研究背景与意义 | (1) |
| 二、相关概念的界定 | (8) |
| 三、研究思路及主要内容 | (10) |
| 四、本书可能的创新之处 | (14) |
| 第一章 本书的分析框架及相关文献综述 | (16) |
| 第一节 投资者法律保护与股票市场发展 | (17) |
| 一、相关文献综述 | (17) |
| 二、对相关文献的简单评价 | (20) |
| 第二节 投资者法律保护 and 上市公司所有权结构 | (21) |
| 一、相关文献综述 | (22) |
| 二、对相关文献的简单评价 | (26) |
| 第三节 上市公司股权结构、控制权私人收益和股票 市场发展 | (27) |
| 一、基于分散股权基础上的代理问题研究文献 | (27) |
| 二、基于集中股权基础上的代理问题研究文献 | (28) |

| | |
|--|------|
| 三、投资者法律保护、控制权私人收益与股票市场 发展 | (33) |
| 第四节 相关理论模型述评及本书研究模型构建 | (41) |
| 一、Edwards 和 Weichenrieder 的理论模型及其评价 | (41) |
| 二、LLSV 的理论模型及其评价 | (46) |
| 三、本书研究模型的构建 | (50) |
| 四、本书的研究假设 | (55) |
| 本章小结 | (56) |
| 第二章 中国投资者法律保护程度的分析与度量 | (59) |
| 第一节 中国股票市场投资者法律保护制度的历史 沿革 | (60) |
| 一、中国投资者法律保护制度的构成与演变 | (60) |
| 二、中国投资者保护法律与监管的执行 | (63) |
| 第二节 中国投资者法律保护程度的度量 | (64) |
| 一、西方学者衡量投资者法律保护时的指标选取和 度量方法 | (64) |
| 二、我国学者衡量投资者法律保护时的指标选取和 度量方法 | (66) |
| 三、我国股票市场投资者法律保护程度的度量 | (67) |
| 第三节 中国投资者法律保护程度与其他国家的比较 | (78) |
| 一、股东权利方面的比较 | (79) |
| 二、投资者保护法律执行效率方面的比较 | (80) |
| 三、投资者保护法律制度方面的比较 | (81) |
| 本章小结 | (82) |