

# 金融托管经典案例研究



中国金融经典案例系列



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——对广东国际信托投资公司证券营业部  
托管的实践与理论分析

方加春 著

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# Financial Trusteeship Classical Case Research

— *Practical and Theoretical Analysis for GITIC'S  
Brokerage Branches Being Entrusted*

**By Dr. Jiachun Fang**

Economic Science Press

# 前 言

1998年10月6日，中国人民银行发布公告，对广东国际信托投资公司（以下简称广信公司<sup>①</sup>）进行关闭清算，其所属9家证券营业部和基金部由广发证券股份有限公司（以下简称广发证券公司）托管，震惊中外的中国首例非银行金融机构关闭清算破产案从此拉开托管序幕。

1997年，亚洲金融危机爆发，广信公司长期积累的金融支付风险加速暴露。1998年下半年出现严重的支付危机。外国银行为了撤走资金，天天上门逼债，而且条件也极为苛刻。在万不得已的情况下，为了最大限度地维护债权人利益，中央经过慎重研究，决定由中国人民银行对广信公司实施行政关闭。1998年10月6日中国人民银行发布公告，对广信公司进行关闭清算。公告大体内容如下：

鉴于广信公司不能支付到期债务，为了保护债权人的权益，根据《中华人民共和国中国人民银行法》、《中华人民共和国公司法》及中国人民银行《金融机构管理规定》，经国务院批准，中国人民银行决定：于1998年10月6日关闭广信公司，收缴原广信总公司及分支机构的《金融机构法人许可证》、《金融机构营业许可证》和《经营外汇业务许可证》，停止广信公司的一切业务经营活动。中国人民银行依法组织成立清算组，广东省省长助理武捷思同志任清算组组长，对广信公司进行关闭清算。

在清算期间，广信公司的债权债务由中国银行托管；公司下属的证券交易营业部，委托广发证券公司管理，其业务经营活动照常进行。广信公司全资附属和控股的非金融企业照常经营。

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<sup>①</sup> 人们习惯称之为广国投。

经过三个月关闭清算，结果比预想的严重得多。关闭清算的初步结果是：广信公司总资产 214.71 亿元，总负债 361.45 亿元，资不抵债 146.94 亿元。鉴于广信公司财务状况恶化的严重性，已无能力支持该公司的正常运作，为维护债权人权益，根据《中华人民共和国企业破产法》、《中华人民共和国公司法》和中国人民银行有关金融监管法规，广信公司董事会经过慎重研究，决定由不能支付到期巨额债务、严重资不抵债的广信公司及附属深圳公司、广信租赁公司和广信企业发展公司，向法院提出破产申请。

广信公司关闭，清算直至破产，其所属的证券营业部由广发证券公司托管，这开创了我国金融发展史上的金融托管先例，为我国金融业的托管建立了首例经典案例。

广发证券公司托管广信公司证券营业部是金融托管的经典案例，主要体现在以下四个方面：

开创性：广发证券公司托管广信公司的证券营业部，在国内外都是史无前例。国际上许多发达国家都发生过金融企业关闭破产案例，但作为国有企业法人主体关闭清算破产，而其所属的证券营业部又必须保持正常经营，这实属罕见。在中国企业托管史上出现过国有实业企业停业整顿托管的案例，但大型金融企业关闭清算破产，部分证券业务托管经营在此之前尚无先例。

普遍性：主要表现在：（1）广信公司下属证券营业部存在的大量违规经营，在证券行业中具有普遍的代表性意义，“麻雀虽小五脏俱全”，托管中发现的问题，对进一步提高证券业规范经营重要性的认识有极大的帮助；（2）广发证券公司对广信公司证券部历时 3 年的托管，并化解证券营业部的风险和经营困难，规范营业部的管理等许多经验，具有普遍的意义；（3）广发证券公司从 1998 年 10 月至 2002 年连续参加 3 次信托公司关闭所属证券营业部托管实践中总结的托管操作实务，对中国今后资本市场发展中出现的证券经营机构兼并收购、重组有重要的指导作用；（4）广发证券公司参加托管实践中提出的许多理论和法规问题具有普遍的研究价值。

特殊性：主要体现在下述两个方面。其一，关闭的是一般大型金融企业，托管的却又是全社会敏感的证券业务，因此广发证券公司受命托管广信公司下属的证券营业部，肩负着特殊的历史使命，某种程度上说，这次托管只许成功不能失败。其二，广信公司关闭清算破产涉及大量的外债，

因此对其证券营业部的托管处置既要参考国际惯例，又要符合中国国情，这一特殊性是与其他国有企业关闭兼并托管收购的重大差别。

复杂性：广信证券营业部存在的问题之多，涉及多方面的利益矛盾，使托管极其困难。同时广信证券营业部正常经营与否影响到9万多投资者的稳定，影响到资本市场的健康发展。此外，托管证券营业部是一个复杂的社会工程，成功的托管需要地方政府、公检法部门、地方证管办、审计税务等等的通力支持与配合。

本书围绕广发证券公司托管广信公司下属的证券营业部这一典型金融案例，分三部分论述。

第一部分包括三章，围绕托管过程，分析了广信公司从辉煌到关闭直至破产的历程；概述了广发证券公司托管广信公司证券营业部的三年历史；总结了广信公司证券营业部从行政决定转让到市场化拍卖过程的经验，并对广信公司破产的原因进行深入的分析。本部分对历史性经验的总结与剖析，描述了广信公司从辉煌到关闭破产的历史性遗憾，分析了广信公司走上不归路的原因和教训。揭示了广发证券公司成功托管艰难历程，以及政府等有关部门在处理广信公司证券营业部问题上极其慎重和曲折的过程，并最终成功地开辟了从托管到收购的证券营业部收购途径，首创中国金融托管的经典案例。

第二部分包括四章，围绕托管实务系统地介绍并总结了广发证券公司的托管工作和经验，包括总体实施方案、财务与交易业务的托管，计算机系统的托管，以及托管结束对被托管证券营业部处置的三种方案。本部分具有较强的实践操作性，对金融企业托管全过程具有重要的参考价值。

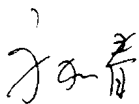
第三部分包括六章，围绕金融证券托管实践提出的大量理论问题与实践问题，采取专题研究的方法对托管法理、中外托管比较、投资权益保障、托管成本与效益分析、政府在托管中的地位与作用进行深入研究。同时，系统地探讨广发证券公司托管广信公司证券营业部的托管案例对发展中国资本市场的借鉴意义。最后部分是在前面两篇对案例的起因及案例本身与托管实务做了全面的介绍、分析和总结的基础上，再从理论的高度进一步对托管案例进行深入研究。中国首例信托投资公司的关闭破产清算，而所属的证券营业部被托管并要求正常经营，在中国金融证券发展史上极具典型意义。这一经典案例将在实践与理论两个方面对中国金融业特别是证券业和信托业发展产生深远影响。从实践看，广发证券公司对广信公司的成功托管与收购，为中国证券市场处理未来的类似问题，提供了宝



贵的经验。在托管过程中形成的基本原则、工作方案和程序以及许多协议文本，都是可供借鉴的宝贵财富。而托管过程中发现的许多重大问题及其解决问题的思路和方法，既为规范证券市场提供了新的思路和方法，也为立法与司法工作的进一步完善和健全证券市场的法律法规建设提供了实践案例。从理论上讲，广信公司证券营业部的托管，提出了许多亟待研究的问题。既有经济学研究的问题，也有会计学需要研究的问题，既有法学需要研究的问题，也有管理学需要研究的问题等等。例如：金融业托管的法律依据及法律程序问题，投资者的权益如何保障，托管方、受益方和委托方之间的责、权问题，以及政府如何在托管市场中正确行使行政和经济职能等。通过这些重大问题深入的理论研究，必将有力地促进中国证券市场的规范化发展和推动证券市场法律建设，为中国未来出现的金融托管实践提供正确的理论指导。

正如此次托管是金融证券托管在中国金融史上的首例一样，系统地总结分析金融证券托管典型案例，这在国内理论界实不多见。实际上，金融托管是金融退出的一种方式，因而，本案例还可以从金融退出这一更高的视角加以剖析。由于涉及本案例的许多相关资料欠缺，加上本人平时忙于商务和研究能力所限，本书难免存在许多缺陷，敬请读者鉴谅和提出批评与建议。

有幸的是本人和广发证券公司的领导班子以及部分骨干员工，全程参与了广信公司证券营业部的托管实践。抛开个人和公司历时3年托管工作的辛酸苦辣，站在历史和社会负责的高度，也有必要把这一典型的托管实践，从政策法规实务到理论研究作一深入全面的分析总结。广发证券公司董事长陈云贤博士在公司不断倡导“知识图强，求实奉献”的精神，也是促成笔者下决心且千方百计挤时间撰写本书的重要原因，如果本书的出版能够达到抛砖引玉的作用，对中国资本市场的健康稳健发展有一定的参考价值，那将不负笔者本人的苦心和诚望了。



2002年作于广州

# Preface

On October 6<sup>th</sup> 1998, the People's Bank of China proclaimed that Guangdong International Trust Investment Corporation had to be closed and liquidated. GITIC's 9 brokerage branches and fund department were entrusted by GF Securities Co. LTD. It was a startled case for China and foreign countries that non-bank financial institute was closed and liquidated in China. It was the first trusteeship case.

In 1997, Asian Financial Crisis broke out. GITIC's long-term accumulated financial defray risks accelerated to exposure. In the second half year of 1998, GITIC appeared seriously defray crisis. For withdrawing funds, foreign banks went to GITIC for getting their money back and asking rigorous conditions everyday. For these situations and protect creditors' rights and interests, China central government made a serious decision that GITIC was closed and liquidated by the People's Bank of China. On October 6<sup>th</sup> 1998, the People's Bank of China proclaimed as following:

Herein GITIC can not pay the maturity debt, to protect creditors rights and interests, according to the People's Bank Law of China, China Company Law, and the People's Bank's Financial Institutes Management Regulations, approved by State Department, the People's Bank decided to close GITIC on October 6<sup>th</sup> 1998, took over GITIC and its branches' Financial Institutes Artificial Person License, Financial Institutes Operation License, and Foreign Exchange License, stopped GITIC all business operations. The People's Bank organized to set up a liquidation team, Assistant to Guangdong Province Wu Simin worked as head of liquidation team, which would be responsible for GITIC's closing and liquidation.

During liquidation, GITIC's credits and debts were entrusted by Bank of China. GITIC's brokerage branches were entrusted by GF Securities CO. LTD. , all businesses operations went along as usual. GITIC's fully owned subsidiaried and holding non-financial corporations continued to operate.

After three-month liquidation, the result was more serious than expectation. The first liquidation result, GITIC had RMB 21.5 billion total assets, RMB 36.15 billion

total debts, and RMB 14.7 billion net debts. Based on GITIC's serious financial conditions, which cannot support GITIC's normal operations. To protect creditors' rights and interests, based on China Corporate Bankruptcy Law, China Company Law and Financial Supervision Regulations of the People's Bank of China, the board of directors of GITIC made a serious decision that that can pay the huge amount of mature debts, GITIC and its subsidiaries applied to bankruptcy to the court.

GITIC was closed, liquidated and then went bankrupt. Its brokerage branches were entrusted by GF Securities Co. LTD. This was the first case in China finance development history.

GITIC's brokerage branches were entrusted by GF Securities. That is a classical trusteeship case for the following reasons.

*Innovative* It was the Chinese unprecedented case that GITIC brokerage branches were entrusted by GF Securities. Globally speaking, it could be happened for many bankruptcies over financial firms. However, while the legal entity announced bankruptcy and its belonging brokerage branches still kept a normal business going, this was certainly rare through financial history, as well as in China. It was the first case for a large financial company went bankruptcy in China, also was the first case for this brokerage branches trusteeship.

*Universalism* First, GITIC's brokerage branches had a great deal of unlawful operations, which was universal and representative in China's securities industry and led us to know essentially to follow lawful operations in securities industry. Second, after GITIC's brokerage branches were entrusted by GF Securities, the operations risks and difficulties had been reduced. Third, from October 1998 to 2002, GF Securities took part in three-time trusteeship for trust companies' brokerage branches and got a lot of practical trusteeship operation experiences, which benefit M&A operations for future capital market development in China.

*Particularity* First, the trusteeship for financial industries need high social responsibilities. This trusteeship must be successful and cannot be failure. Second, GITIC's bankruptcy involved a great amount of foreign debts. To deal with this case, it had to follow international standards and the situations, laws and regulations of China.

*Complicate* The many hidden problems inside as well as many parts interest concerned made GF Securities, the trusteeship was extremely difficult. The well daily business running of GITIC's brokerage branches, indeed far beyond the business itself, was about the government crisis dealing confidence among over 90 000 investing public and of course the further well going of Chinese capital market. The entrusting was a social engineering that need well cooperation and support from local government, judicial administration, local Securities Regulatory Commission branch, and auditing and taxation bureau.

The main text contains three parts.

Part one contains three chapters. This part reviewed GITIC from glorious to bankruptcy

development history, the 3 years trusteeship period by GF Securities, the process from administrative transferring to market auction analysis over GITIC bankruptcy. The analysis over the historical experiences gave a general description over GITIC's "from market maker to bankruptcy end" failure and revealed the reason and lesson drawn from the failure. Also it exposed tough task facing GF Securities' Trusteeship and the sinuosity process of the government decision. The road from entrustship to successful acquisition by GF Securities that became a classical case in China financial history.

Part two contains four chapters concentrating on the entrustship practices. This part systematically evaluated the practices and summarized the experiences of this entrustment in various aspects including the trusteeship plan, the solutions to the trusteeship accounting systems, brokerage services and computer trading systems, the operations of brokerage branches, etc. The topics discussed in this part emphasized more on the practical experiences that would serve as an useful reference to future trustship of the financial corporations.

Part three contains six chapters focusing on the theoretical issues raised throughout the trusteeship. Topics such as the governing laws and practices of trusteeship, comparison of China-foreign trusteeship practices, the protection of investors' rights, trusteeship cost and benefit analysis, the role and function of the government in the trusteeship, etc. All these were discussed and analyzed in this part. Finally, it explored the significance of this trusteeship practices to China's capital market. Based on the introduction and evaluation in previous parts on the reasons and practices of the trusteeship, part three developed a theoretical review of the whole case. As the first of its kind, this case may pose great influence on both theoretical and practical area of China's financial industry, especially in the securities and trust investment field. From the practical point of view, GF Securities' successful trusteeship and purchase of GITIC brokerage branches provided precious experiences and references for the similar cases in the future. The rules, plans, procedures and the documents that developed in the trusteeship can also be useful references. Meanwhile, the problems encountered and the solutions developed in the trusteeship practices not only develop new thoughts and methods for regulating China's stock market, but also provide the stock market legislation with resources and examples. From theoretical point of view, the trusteeship of GITIC brokerage branches also raised the discussion and analysis of problems and issues in economic, accounting, legislative and managerial areas. The topics discussed include the legal process and support of the trusteeship practices in financial industry, the protection of the investors' benefits, the settlement of rights and obligations among the fiduciary, the beneficiary and the trustee, the role and function of government control in the trusteeship practices. The research on these major issues will contribute a lot to promote the standardize development of China's securities market, as well as to accelerate the process of setting up the law system, and to provide guideline to the future trusteeship practices in the financial industry in China.

Since the GITIC case was the first financial institution entrusting case in China, the systematical researches and analyzes on financial trusteeship cases are very rare in China. Owing to the poor historical information on the case, my busy daily work and my ability on analyze, the book may have some defects and imperfections.

The senior management, a number of staffs of GF Securities and I have been involved in the whole trusteeship process of the GITIC case, I don't mean to show the tough trusteeship work during the past three years, but from the altitude of social and historic responsibilities, I do think it is necessary for me to write a book to make a deep and complete theoretical analyse and to make a summary of the entrusting practice of the GITIC case. Dr. Chen Yunxian, the chairman of GF Securities put forward the core value of company culture of GF Securities as "Being practical and realistic, and developing through our professional knowledge and experience", I sincerely hope that the book can play a role as "throw out a minnow to catch a whale", and contribute a little to the healthy development of China's capital market.

**Jiachun Fang**

**Guangzhou**

2002



方加春

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以及国内多种报刊杂志上发表学术论文40余篇；近  
年在《中国证券报》、《证券时报》和《上海证券报》  
三大证券报刊刊登多篇关于资本市场前瞻性的  
文章，如《券商希望大于挑战》、《中国证券市  
场努力实现第2次飞跃》、《经纪业务的全面  
转型与券商的应对策略》等。方加春博士近  
年曾到美国南加州大学作访问学者，多  
次参加国内外高层次有关资本市场的  
研讨会（如2001年香港财富论  
坛）并多次发表演说。方加春博士  
对中国资本市场发展前沿问题、  
尤其对中国证券公司的管理  
问题有丰富的理  
论和实践经验。

# FINANCIAL TRUSTEESHIP CLASSICAL CASE RESEARCH

Practical and Theoretical Analysis for GITIC'S  
Brokerage Branches Being Entrusted

By Dr. Jiachun Fang



## 中国金融经典案例系列



# 博 穗 文 苑

*B o S u i W e n Y u a n*

面对入世后  
我国金融市场面临的  
挑战，面对我国金融市场  
持续发展所出现的各种案例与理  
论问题，需要思想睿智以启迪未  
来、需要进行深入研究以开拓未  
来、需要案例的反思以警示未来。为  
此，我们向读者隆重推出博穗文苑。博，  
渊源深厚、精深丰富之意，作为学位名  
又是博士之美称；穗，丰收硕果之意，作  
为地名又是广州市的别称；由博而穗，由  
渊源而丰收，由精深而结出硕果。其思想  
和作品起源于人才密集的广州，以及博士  
硕士成群的广发证券股份有限公司。博  
穗文苑拈取当今中国金融案例与理论研  
究之精粹奉献给读者，籍此为我国金  
融市场的发展做出自己的贡献。博穗  
文苑包括以下几个系列：金融案  
例研究系列、金融理论研究系  
列、证券市场研究系列、产  
业分析研究系列等。每  
年从全国范围选  
取精品出版。





# 中国金融经典案例系列

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## 策划人语

有博士军团美誉的广发证券人吹着雄壮的号角，又一次抢滩登陆“金融案例研究系列”。其首例研究成果是震惊中外的中国非银行金融机构关闭清算破产案，也是中国首家非银行金融业务托管案例。这一战役是继登上“证券投资分析”理论研究高峰之后的又一次成功突破。随之，他们将逐次奔袭“证券市场研究系列”、“产业分析研究系列”……

作为金泉文库的策划人，我有幸参与了这支博士军团研究成果的出版工作。我们共同创造了“博穗文苑”的品牌；我们以近乎完美的设计打造这支文化部队的形象；同时，我们也丰富了金泉文库金融精品图书的品种。

我们品尝着初步成功的喜悦，期盼着共同享受金色的收获。

王书燕

二〇〇二年七月九日