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地方政府与上市公司 融资履约机制研究

章铁生 等 著

 中国人民大学出版社



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· 北京 ·

图书在版编目 (CIP) 数据

地方政府与上市公司融资履约机制研究/章铁生等著. —北京: 中国人民大学出版社, 2016. 5

(财会文库)

ISBN 978-7-300-22880-8

I. ①地… II. ①章… III. ①地方政府-影响-上市公司-融资-研究-中国
IV. ①F279. 246

中国版本图书馆 CIP 数据核字 (2016) 第 108101 号

财会文库

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Difang Zhengfu yu Shangshi Gongsi Rongzi Lüyue Jizhi Yanjiu

出版发行 中国人民大学出版社

社 址 北京中关村大街 31 号

邮政编码 100080

电 话 010-62511242 (总编室)

010-62511770 (质管部)

010-82501766 (邮购部)

010-62514148 (门市部)

010-62515195 (发行公司)

010-62515275 (盗版举报)

网 址 <http://www.crup.com.cn>

<http://www.ttrnet.com>(人大教研网)

经 销 新华书店

印 刷 北京易丰印捷科技股份有限公司

规 格 155 mm×230 mm 16 开本

版 次 2016 年 5 月第 1 版

印 张 11.75 插页 2

印 次 2016 年 5 月第 1 次印刷

字 数 158 000

定 价 39.00 元

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印装差错 负责调换

本专著得到国家社科基金青年项目“地方政府与上市公司融资履约机制研究”（项目批准号：10CJL022）资助。

课题主持人：章铁生

课题组成员：徐德信 林钟高 陈冬华

魏立江 郑 军



摘 要

20 世纪 90 年代以来,中国资本市场发展迅速,同时呈现出鲜明的新兴转型特征,其中地方政府在上市公司融资履约问题上施加了独特的影响。本课题试图探索这一影响机制及其不同侧面,主要采用新比较经济学履约能力意义上的交易成本分析。

中国经济转型的成功很大程度上要归功于中国在经济领域的分权式改革,作为分权过程的改革,地方政府可以对很多决策产生重大影响,因此,对我国上市公司融资契约实施问题的分析,需要把地方政府考虑进来。经济分权和特殊的政治激励,构成了中国地方政府发展经济的强大激励,引起了地区之间的激烈竞争。面临高强度激励的地方政府对上市公司融资契约的实施者——



法庭和监管机构实施能力的影响是截然不同的，由此形成了我国地方政府深度参与其中的上市公司融资履约机制。一方面，由于地区之间的竞争，导致地方政府具有对地方法院涉及当地企业纠纷的案件进行干预的强烈动机，再加上我国地方法院在人事和财务上对地方政府的依赖，以及我国经济民事案件一般采用“原告就被告”原则，使这种动机变成了现实，削弱了法院作为第三方的实施能力。另一方面，同样是由于地区之间的竞争，引发了地区间对资源包括资本市场资源的争夺，我国证券监管机构则灵活运用其被赋予的资本市场资源分配权——证券发行管制权，充分调动了地方政府参与上市公司治理的积极性，从而增强了自己的实施能力。本课题循着从提出问题、分析问题到解决问题的基本思路，首先对公司融资引起的投资者保护问题，以及地方政府在其中的重要作用做了一项基于文献的分析；随后分别理论分析并实证检验了地方政府与辖内公司首次公开发行股票（IPO）机会的获取以及地方政府在辖内上市公司融资合约履行中出现问题（陷入财务困境或违规）时的履约行为及其经济后果；最后结合这些理论分析和实证研究的结果，找出了目前我国上市公司融资履约机制过分依赖证券行政监管和地方政府参与履约的局限之处，分别从强化证券侵权案件立法和执法、完善证券发行监管、全面理解并发挥地方政府作用等角度提出了优化我国上市公司融资履约机制的对策。

本课题具体的研究内容如下：

第1章是绪论。主要交代本课题的研究背景、研究问题、研究内容以及学术贡献等。

第2章对地方政府在上市公司融资契约中的重要作用做了一项基于文献的分析。本章在指出公司融资引起的公司治理问题和投资者法律保护对公司融资契约实施的重要意义后，分别梳理了投资者法律保护的经济后果、国别差异与原因的文献，以及政府管制对公司融资契约实施的重要价值的文献，为后续研究提供了基础。已有文献研究发现，投资者法律保护具有十分重要的经济后果，这些研究基于各国法律渊源不同，得出普通法系国家比民法法系国家给予

了投资者更强的保护这一结论。由于法律是不断变化的,法律渊源一般不会变化,因此,对于如何加强投资者法律保护,已有研究还很有局限。由于投资者保护法律改革要求法律体系进行重大改革,困难很大,探求功能趋同可能更为明智,即利用其他一些功能性替代方式来发挥作用,如股权集中、完善的会计标准、行业自律、成立专门法院、利用外国监控人、声誉和关系等,特别是政府管制对上市公司融资契约实施的重要意义得到了不完备法律理论和新比较经济学派的公共实施论的深入探讨。最后结合我国自 20 世纪 70 年代末以来的经济分权式改革和晋升激励所引发的地方政府之间的激烈竞争,分析了地方政府在上市公司融资契约中的重大作用。

第 3~4 章研究地方政府与 IPO 机会的获取。第 3 章以 2006—2012 年间的 IPO 申请为样本,研究产权性质与 IPO 机会的关系,发现产权性质对 IPO 机会没有显著影响。研究表明,伴随着转型进程的推进和国有企业改革攻坚战在 21 世纪初基本完成,中国资本市场在 2006 年出现转折性变化,进入了新的发展阶段,股权融资不再有产权性质歧视。第 4 章以我国 2006—2012 年民营企业的 IPO 申请为研究样本,同时考察企业拥有的企业层面政治关系和所在辖区层面政治关系,实证研究了政治关系是否有助于民营企业得到 IPO 机会。研究发现,政治关系对民营企业的 IPO 机会存在显著影响,拥有政治关系越多的民营企业越可能通过发审委 IPO 审核。研究表明,在中国这样的制度环境下,政治关系作为一种重要替代机制正在发挥作用。

第 5~6 章研究地方政府在辖内上市公司融资合约履行中出现问题时的履约行为及其经济后果。第 5 章通过分析证券发行管制下的地方政府“护租”行为,研究了地方政府参与辖内上市公司财务困境风险化解的机制:中央政府证券发行管制形成垄断租金,地方政府围绕证券发行机会的竞争使得垄断租金转化成为可占用性准租。为使辖内公司未来获得发行证券机会,避免租值转移,地方政府积极参与辖内上市公司财务困境风险化解。上述理论分析得到了经验证据的支持,以 2005—2012 年处于财务困境的上市公司为研究样



本,发现辖内上市公司处于财务困境状况对该地区未来的公司证券发行申请通过发审委审核的比例存在显著影响,地方政府则会根据自身执行能力努力避免辖内上市公司处于财务困境。第5章的研究对于中国转型期证券行政监管阶段性有效,特别是地方政府积极参与辖内上市公司财务困境风险化解给出了机理性解释并提供了经验证据。第6章研究了薄弱法律环境下,基于政府管制权力外溢增强政府监管机构作为第三方的契约实施能力,从而调动地方政府积极化解上市公司违规风险的实施机制是否存在以及怎样存在。证券监管机构在地区间分配IPO资源时,可能会考虑各地所辖上市公司发生违规情况的频率和严重程度,地方政府出于自身理性,会做出履行与否以及履行多少的对策。研究发现,在法律实施机制下,投资者因公司发生违规的市场损失大,但通过诉讼可能得到的补偿也大,但是在管制实施机制下,投资者市场损失与诉讼收益都小,因为中小投资者能够观测到契约及其实施的影响因素,并事先将此信息反映在股票定价中,地方政府执行契约的程度越高,公司股价因为违规所受损失就越小,在管制实施机制下,地方政府主动积极救助,投资者损失以股价下跌较少的形式,得到一定程度的弥补。

第7章提出了优化我国上市公司融资履约机制的对策。第7章基于第3~6章的研究结论,分别从强化证券侵权案件立法和执法、完善证券发行监管、全面理解并发挥地方政府作用等角度提出了优化我国上市公司融资履约机制的对策。在强化证券侵权案件立法和执法方面,应该尽快出台内幕交易和操纵市场民事赔偿的司法解释,拓展前置程序、因果关系以及投资者损害的认定范围,理性认识集团诉讼在处理证券民事侵权纠纷上具有的优势,充分认识到和解是解决证券民事赔偿案件的重要途径,发挥地方政府在其中的重要作用。关于完善证券发行监管,股票发行注册制改革是资本市场牵一发而动全身的改革,需要有步骤地推进,但注册制不是简单的登记生效制,不是说股票发行不要审了,而是审核方式要改革,改革的方向是政府不断放权,加大市场的调节功能。未来证券监管机构的监管重心应进一步转向重视信息披露,弱化对地方政府的依赖,强

化以保荐人为核心的中介机构的职责，并加大执法力度。对于由此带来的地方政府参与上市公司融资履约机制可能性与积极性的影响，需要在更高层次上破解，努力的方向是要改变地方官员晋升激励机制，引导地方政府积极推进改善辖区市场化进程，为辖内企业营造良好的公平竞争环境，以促使更为市场化的上市公司融资履约机制的形成。

作为一个新兴转型市场，我国资本市场经过 20 多年的发展，取得了一定的成就，对我国地方政府与上市公司融资履约机制的研究，对于我国资本市场今后的发展具有重要启发意义，对于其他新兴转型经济体也具有重要借鉴价值。

关键词：证券监管 地方政府 上市公司 融资履约机制



Abstract

Since the 1990s, China's capital market has developed rapidly, while showing a distinctive feature of emerging and transition, among which local governments exerted unique influence on contract implementation issues of listed companies' financing. This research attempts to explore this mechanism and its different sides, mainly using transaction cost analysis based on performance capabilities in the sense of new comparative economics.

The success of China's economic transformation is largely attributed to China's decentralization reform in the economic field. In the process of decentralization reform, local governments can



have a significant impact on many decisions. Therefore, in the analysis of China's listed companies' financing contract implementation issues, we need to take local governments into consideration. China's decentralization in economic and the special political promotion constitute a powerful incentive of economic development for local governments, causing a fierce competition between regions. Facing with high-intensity incentives, local governments have a different impact on the perpetrators of the listed companies' financing contract such as local courts and regulatory agencies, thus forming a listed companies' financing performance mechanisms, in which local government is deeply involved. On the one hand, because of the competition between regions, local governments have a strong incentive to intervene cases which involve local companies, coupled with the dependence of district courts on local governments about personnel and finance, as well as China's economic and civil cases generally use the "defendant on plaintiffs" principle, make this motivation become a reality, weakening implementation capacity of the courts as a third party. On the other hand, the competition between regions also lead to competition for resources between the regions including the capital market resources, China's securities regulatory agencies flexibly use its capital market resources distribution rights—their right to regulate the issuance of securities fully mobilized the enthusiasm of the local government to participate in the governance of listed companies in their jurisdiction, thereby enhancing their ability to implement.

This subject follow the process to put forward problems, analyze problems and solve the problem. First, we conducted a literature analysis about the question of the protection of investors by financing and the important function of local government. Then we used theoretical analysis and empirical method respectively to test the influence of local governments on the enterprises' IPO opportunity

and we used empirical method to analyze the logic and consequences of local governments' behavior to implement contract of listed companies' financing in their jurisdiction (be in financial trouble and violations). With the consequence of theoretical analysis and empirical research, finding the confine of a listed companies' financing performance mechanisms over depend administrative regulation and the government, we put forward suggestions respectively from strengthen court enforcement and improve the regulation of securities issuance to fully understand the role of local government to optimize the performance mechanism of listed companies' financing in our country.

The specific contents of this research are as following:

Chapter 1 is an introduction. It mainly explains the origin of this study, the questions, the research contents and possible theoretical contribution of the study.

In chapter 2 we conducted a literature analysis about the important role of local government on the financing contract. Firstly, we point out the significance of corporate governance issues caused by corporate finance and legal protection of investors on financing contract implementation. Then we presented literatures about the economic consequences, the country differences and the reasons of legal protection of investors respectively, as well as literatures about the great importance of government control on the implementation of financing contract to provide a basis for future research. Existed researches suggest that legal protection of investors have very huge economic consequences. These studies focused on differences in national legal sources, so they concluded that common law countries give investors greater protection than civil law countries. However, the law is constantly changing, sources of law generally do not change, so existed researches have many limitations on how to strengthen the legal protection of investors. The reform of investor



legal protection requires major reform in the legal system, it is rather difficult. Maybe it's more sensible to explore functional convergence, namely to take some other alternative functional way, such as equity concentration, improving accounting standards, industry self-regulation, the establishment of special courts, the implementation of foreign supervisors, reputation and relationships and so on. In particular, the importance of government regulation on listed companies financing contract implementation get deeply discussed in the aspect of incomplete legal theory and the public implementation of new comparative economics. Finally, we analyzed the major role of local governments in listed companies financing contract combined with economic decentralization reforms since the late 1970s and intense competition among local governments caused by political promotion incentives.

Chapters 3 and 4 we studied the influence of local governments on the enterprises' IPO opportunity. In chapter 3 we took IPO application during 2006 to 2012 as a sample to study the relationship between the nature of properties and IPO opportunities. We found that the nature of properties have no significant effect on IPO opportunities. The results showed that, because of the promotion of the transition process and the campaign of state-owned enterprise' reform has completed at the beginning of this century, China's capital market has changed a lot in 2006 and has entered a new stage of development, in which equity financing is no longer discriminated by the nature of properties. In the 4th chapter, we took the IPO application of private enterprises in 2006 to 2012 as a research sample, and observed the political relations both in corporate level and region level to research empirically whether political relations can help private enterprises get more IPO opportunities. The results showed that under the institutional environment in China, political relations as an alternative mechanism is playing an important role.



In chapters 5 to 6 we used empirical method to analyze the logic and consequences of local governments' behavior to implement contract of listed companies' financing in their jurisdiction.

In chapter 5, through analysis of local government "protection rent" under securities issued regulation, we studied the local government participate in risk resolving of listed companies' financial distress; monopoly rents is generated by the control of securities offerings by the central government, the competition of getting chance to publish securities among local governments transforms monopoly rents into appropriable quasi rent. In order to obtaining a chance of securities offering in future, avoiding the transferring of rents, the local government positively participate in dissolving financial risk of the companies which are in their jurisdiction. Theories analyzed above are supported by empirical evidences. Take the listed companies which were in financial risk during 2005 to 2012 as our sample, studies have found that the situation of the financial distress of companies in jurisdiction has a significant influence on the proportion of the pass of applying for future securities offering, which is examined by the issuance examination committee. The local government will try their best to reduce financial distress of the listed companies in their jurisdiction according to their own executive ability. Research in this chapter is stage effective to administrative supervision of securities offerings in the transition period of China. Especially, a mechanical explanation and experience evidence is given to interpret the dissolving of financial problem of listed companies in their jurisdiction, which is positively participated in for the local governments.

The 6th chapter examines whether it exists a kind of mechanism and how does it exist under the weak legal environment based on that the government regulation power spillover could strengthen the capacity of regulatory agencies to implement contract as a third party,



and mobilize local government to solve violation risks of listed companies. The securities' regulatory agencies may take violation frequency and severity of listed companies in the jurisdiction into consideration when distributing IPO resources, so the local government will decide whether to implement or how much to implement for their own rationality. The study found that in the law enforcement mechanism, the company violation occurs may lead to a large market losses to investors, but the compensation investors may get by litigation is also large. However, under the control implementation mechanism, market losses and litigation earnings to investors are both small, because small and medium investors can observe contracts and the influence factors of them, and the information is reflected in stock price in advance. The higher the degree of local governments to perform the contract, the smaller loss of the companies' shares due to irregularities, because under the control implementation mechanism local governments assist the companies actively so the investors can get a degree of offset in the form of shares price fall less.

Chapter 7 provides suggestions for the optimization of the performance of listed companies' financing mechanism. Based on the research conclusion of The 3th chapter to the 6th chapter, we put forward suggestions respectively from strengthen court enforcement and improve the regulation of securities issuance to fully understand the role of local government to optimize the performance mechanism of listed companies' financing in our country. In strengthening court enforcement on security tort, we should issue insider trading and market manipulation of civil compensation in judicial interpretation as soon as possible, expanding the prepositional procedure, causal relationship and accredited investors damage. Rationally know the advantages of group litigation in the treatment of securities civil disputes. Pay more attention to settlement is an important approach to



solve the securities civil compensation cases, and play the important role of local government. On improving securities issue supervision, registration system rather than examination system is a good way. But because the stock issuing registration reform is a systemic reform of the whole capital market, it needs to be promoted gradually. Registration system is not a simple registration effective system. It's not to say that share issuance does not need to be examined anymore, it's the way to examine needs to be reformed. The direction of the reform is that the governments delegate powers to the market, enlarging the adjustment function of the market. Securities regulation agencies should attach more attention to information disclosure in the future, weaken dependence on local government, strengthen responsibility of agencies where sponsors as the core, and intensify law enforcement. For the impact on the possibility and positivity of the local government taking participation in implement contracts of the listed companies' financing, it needs to be broke at a higher level. One direction is to change the local officials' promotion incentive mechanism, guiding local governments to actively promote improving marketization process in its jurisdiction, creating a fairly competitive environment, thus promote the formation of a more market-oriented implementation mechanism of listed companies' financing.

As an emerging and transition market, China's capital market has made some achievements after 20 years of development, research on China's local governments and listed companies' financing compliance mechanism has an inspiring meaning for the development of China's capital market, it also has an important reference value for other emerging economies in transition.

Key Words: Securities regulatory; Local government; Listed companies; Enforcement mechanism of financing contract



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