

**Toward Sound  
Capital  
Markets in  
China**

**Anthony Neoh**

梁定邦  
主编

**中国  
资本  
市场  
前瞻**

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# 中国资本市场前瞻

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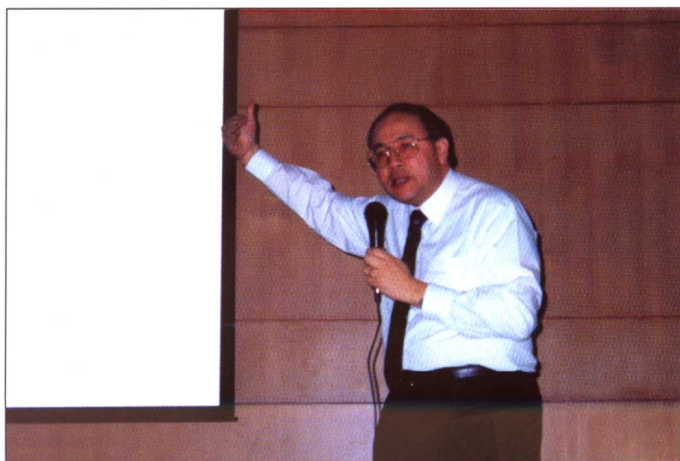
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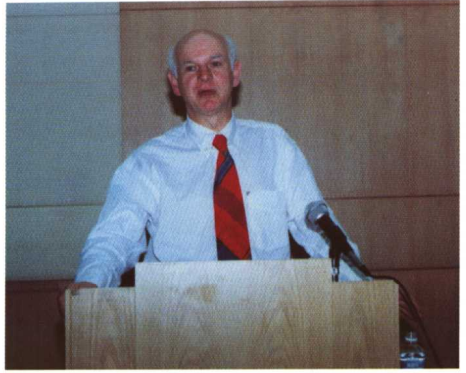
















## 刘鸿儒序

股份制、股票、资本市场长期以来曾经是一个理论禁区,那时人们认为这是私有化的载体和结果,是资本主义独有的东西。随着社会主义市场经济的建立和发展,人们逐渐认识到,股份制、股票、资本市场是市场经济所必需的内容。马克思主义经典理论明确指出:股份制是高度社会化的,对私有制的一种扬弃,股份资本是“导向共产主义”的“最完美的形式”。这就为我国的资本市场自上而下自发形成的试点提供了理论依据。

邓小平同志1992年初的南方谈话,在一些重大理论问题和实践问题上解除了人们在认识上的种种禁锢,为中国资本市场创造了历史性的发展机遇。党的十五大文件,特别是《证券法》的颁布,标志着中国资本市场已经从试点阶段进入到全面发展阶段,它已成为我国社会主义市场经济的重要组成部分,并逐步进入规范发展的轨道。

证券法规从无到有,先有地方性法规,然后逐步形成了全国统一的法规。我国相继颁布涉及公司和证券的法律、司法解释、部门规章和规范性文件约250件,其中包括《中华人民共和国公司法》、《股票发行与交易暂行条例》、《股份有限公司境内上市外资股的规定》、《证券投资基金管理办法》、《中华人民共和国证券法》等一系列法律、行政法规、部门规章,构筑了我国证券法律制度的基本框架,为“依法治市”奠定了法律基础,使证券市场发展走上了法制化建设的轨道。特别是《中华人民共和国证券法》的通过和颁布,既规范了证券市场,又从法律上肯定了证券市场的地位,保护了它的发展。

在证券监管体系方面。1992年10月,党中央、国务院决定成立国务院证券委和中国证监会,行使全面监管证券市场的职责。随后,各省市设立了相应的证券监管部门,并由中国证监会授予一定的监管职责。1998年,国务院决定撤消国务院证券委,工作改由中国证监会承担,并决定中国证监会对地方证管部门实行垂直领导,从而形成了集中统一的证券监管体系。

经国务院同意,上海和深圳两地成立了证券交易所,这大大推动了证券市场的发展。

回顾历史,我国证券市场在筹集社会资金,优化资源配置,提高资金使用

效率,促进经济结构合理调整,支持国家经济建设,推进财政金融体制改革等方面都发挥了积极作用,特别是股票市场在推动国有大中型企业转换经营机制方面作出了重大的历史性贡献,有力地促进了国有企业的改革和发展,带动了国有资产的战略性重组。

我国证券市场近年来取得了世人瞩目的重大成就,但在发展过程中也出现了一些值得注意而且是令人担心的问题。目前证券市场尚处于初创阶段,发育还不完全,难以满足众多国有大中型企业发行股票、债券的迫切需要,市场供求矛盾比较突出,特别是计划经济转轨和国企改制的困难更加大了靠证券市场发展来支持国有企业改革的难度。现在社会上流传着一句话:“国有企业吃完财政吃银行,吃完银行吃股市”,认为证券市场向国有大中型企业倾斜是搞“扶贫”,对于政府要求每个上市企业兼并有发展前途的亏损企业感到困惑,担心会给股票市场带来风险。这种对股票市场潜在风险的担心是可以理解的,目前的确出现了支持国有企业改革和维护证券市场健康发展之间的关系问题,需要妥善加以解决。

在此,我们首先需要明确一个基本观念:中国的社会主义市场经济以国有企业为主体,国有企业在我国企业中占据首要地位,在关系国计民生和国家经济命脉的重要产业中占据主导地位,国有企业改革是当前我国经济体制改革的中心环节,关系到我国社会主义市场经济体制的确立和国民经济的健康发展,因此,我国证券市场的上市公司也必然以国有企业改制上市企业为主体。否则,证券市场就没有生存的根基,无法有效地为发展社会主义市场经济服务,就不可能在国民经济中发挥重要的积极作用。证券市场为国有企业改革和发展服务,是无法回避的,也不应该回避。关键在于国有企业改制和发行上市股票,必须严格遵守《公司法》和国家有关证券市场法律规定规范运作,切实保证上市公司质量,以维护证券市场的健康稳定发展。

放眼全球,在人类进入 21 世纪的今天,世界证券市场的格局和运行机制发生了深刻而巨大的变化,出现了自由化、国际化、衍生化、全球化、电子化的发展趋势。越来越多的国家或地区放松和取消了对金融机构经营业务活动制定的繁文缛节,而对金融体系进行大刀阔斧的改革和重组,促使各类金融机构在证券市场上进行竞争。现代化通讯技术的发展和运用使世界各地金融市场的大批资金在任何时间以秒计的速度在全球范围内转移,导致国际资本流动迅速扩张,推动了全球金融的一体化,资金的跨境流动更加便捷,跨境发行、上市、交易活动不断增加。

在这种情况下,中国的资本市场、或者简单地说,中国的证券市场究竟何



去何从？中国证监会首席顾问梁定邦先生主编的《中国资本市场前瞻》一书给出了很好的答案。该书对中国目前证券市场存在的问题作了深刻的剖析，并以此为基础，提出了许多颇有见地的解决思路。既有法理分析，又有实证研究，说理充分，论证严密，是一本不可多得的好书。

梁定邦先生是我的老朋友。1992年初经国务院批准成立“内地香港证券事务联合工作小组”，研究制定内地企业到海外上市的方案。梁先生作为法律专家参加小组工作，和我们一起合作一年多，解决了一系列法律难题。以后出任香港证监会主席，为推动内地与香港证券市场的共同发展作了大量的工作。自从他担任中国证监会首席顾问以后，对中国内地的资本市场做了大量调查研究工作，提出了许多有价值的建议。《中国资本市场前瞻》一书，体现了他把国际经验和国内经验融为一体的研究成果，读后很有启发。我很高兴为此书作序，向广大读者推荐。

刘鸿儒

2001年8月22日

# Preface

By Liu Hongru

Until recent years, the stock system and capital markets have long been regarded ideologically as a means of private production, and something in the forbidden zone exclusively attributed to capitalism. But with the establishment and development of a Social Market Economy, people have gradually realized their indispensability to economic development. Classical Marxist theory deems the stock system as highly socialized and “developing the useful and discarding the useless” in the private ownership system. It is the best way to develop the best form of communism. This thinking forms the basis of China’s capital market experiences. Thus the capital market has attracted the spontaneous participation of all levels of society.

The notable “Southern Speech” made by Mr. Deng Xiaoping in the beginning of 1992 created a historic opportunity for development of China’s capital market, eliminating various taboos both on some weighty theoretical problems and a few practical ones. Furthermore, the documents of the 15th Congress of the Chinese Communist Party and the enactment of China’s Securities Law marked the shift of China’s capital market from an experimental stage into an all-around developmental phase. The capital market has become an important part of China’s Socialist Market Economy, progressing gradually into the track of development under regulation.

As for securities regulation, it has progressed from local regulation to nationwide regulation. About 250 regulations, judicial interpretation, rules of government bodies and other regulation concerning corporations and securities were promulgated one after another, which included but not limited to the following: The Company Law of the P. R. C., The Provisional Regulations for Stock Issuance and Trading, The Regulations on Domestically Listed Foreign Shares of Joint Stock Company, The Regulation for the administration of Securities In-

vestment Funds, The Securities Law of the P. R. C., etc., all of which constituted the framework of China's securities law system and had laid the legal ground work for "Regulating the Market according to Law". Most of all, the passage of the Securities Law of the P. R. C. played an essential role both in recognizing the importance of the securities market and establishing a platform for its future regulation and development.

Similarly, China's Securities Supervision System has much progressed. On Oct. 1992, the State Council approved the establishment of the Securities Committee of the State Council and the China Securities Regulatory Commission to exclusively perform the duties of supervising the securities market at the national level. Thereafter, corresponding securities supervision agencies were set up in various provinces, with certain supervision duties conferred by China's Securities Regulatory Commission. In 1998, the State Council revoked the appointment of the Securities Committee of the State Council and shifted its work to the China Securities Regulatory Commission. From that time onwards, according to the decision of the State Council, the China Securities Regulatory Commission directly leads all local securities supervision agencies, thus forming a unified, national securities supervision system.

Besides, with the approval of State Council, two Stock Exchanges were separately set up in Shanghai and Shenzhen, which greatly promoted the development of the securities market.

In retrospect, China's securities market contributed greatly to various aspects of economic development, such as raising public funds, optimizing the allocation of resource, enhancing the efficiency of fund deployment, promoting the reasonable adjustment of the economy, facilitating the reform of the financial system, and so on. Most of all, the securities market made historic contribution to the transformation of the management structure for large and medium-sized State Owned Enterprises, "SOEs", accelerating their reform and development and becoming the driving force behind the strategic restructuring of the management of state-owned assets.

In recent years, significant achievements were made in China's securities market, while some notable and worrisome problems have emerged. The securi-



ties market now in its initial stage has not yet fully developed. The market finds it difficult to meet the urgent needs of the many large and medium-sized SOEs for stock and bonds issuance, and supply and demand are mismatched. The difficulties encountered in the transformation from a centrally-planned economy to a socialist market economy and the consequent need for SOEs to adjust, represents an additional challenge to the securities market. There is now a prevailing saying: "After eating up the Government's finances, SOEs begin to eat the banks. After eating up the banks, SOEs begin to eat the stock market". Some people think that government policy favorably inclines the stock market to large and medium-sized SOEs, reflecting a policy of "poverty assistance" (of SOEs). People are also perplexed by the policy of requiring listed enterprises to carry enterprises operating in the red and not those with development potential, and people thus worry about the risk of this policy doing harm to the stock market. This kind of anxiety is of course, understandable. So, the conflicting interests between boosting the interests of SOEs and the maintenance of the securities market's sound development remain to be tackled properly.

Here, first of all, we should bear in mind the fundamental notion that the China Socialist Market Economy is rooted in the SOE. SOEs hold the primary position among all Chinese enterprises and play the leading role in developing key industries concerning the national economy and the people's livelihood. Because of that, the reform of SOEs is central to the reform of our national economic system and the establishment of China's Socialist Market Economy. Therefore, the listed enterprises transformed from the SOEs should definitely constitute the main part of listed companies in the capital market. Or else, deprived of its source of survival, SOEs would not effectively serve the Socialist Market Economy. In all, we can not and should not dodge the reality that securities market serve the reform and development of SOEs. What we should do is to make sure that the transformation of SOEs and issuance of listed stocks will function normally, in compliance with the Company Law and other related regulations, securing the quality of listed companies, thus maintaining the soundness and stability of the securities market.

6 Taking a global view, vast and profound changes have taken place in the

organization and operation of the global securities markets, as human society enters the 21st century. The trend is one of liberalization, internationalization, derivatization, electronisation. More and more countries or regions are deregulating their financial sectors, promoting reforms and restructuring of their financial systems, with the aim of strengthening the competitiveness of their financial institutions and securities markets. The application of modern communication technology enables the transfer of vast amount of capital with amazing speed around the world, dramatically expanding the international flow of capital and enormously promoting the integration of global finance. Because of that, cross-border flow of capital is much more convenient and the cross-border issuing, listing and trading of securities have increased rapidly.

Under such circumstances, what course should China's capital market follow? The book named, "Toward Sound Capital Markets in China" under the editorship of Mr. Liang Dingbang, the Chief Adviser to the China Securities Regulatory Commission may well provide convincing answers. Based on a comprehensive survey of the problems of China's Securities Market, it correspondingly advances perceptive solutions, comprising both jurisprudential analysis and empirical studies, with deliberate argument and rigorous reasoning, which makes the book truly remarkable.

Mr. Liang Dingbang (Anthony Neoh) is my old friend. In the beginning of 1992, with the approval of the State Council, the Working Group on Securities Affair of the Mainland & Hongkong was formed to propose the scheme for overseas listing of mainland enterprises. As a legal expert, Mr. Liang was invited to join this group and resolved a series of difficult legal puzzles during the time of our cooperation which lasted for more than one year. Later on, he chaired the Hongkong Securities and Futures Commission and made great efforts to promote the development of securities market both in the mainland and in Hongkong. Ever since his appointment to the post of Chief Adviser of China Securities Regulatory Commission, Mr. Liang has spared no pains in investigation and research of the securities market in mainland, making valuable suggestions and proposing many solutions. This book results from his long-term research with the involvement of practitioners and academics with rich experience both at

home and abroad. This book has indeed enlightened me. Therefore, it is my pleasure to write the above and commend the book to all those who are interested in the subject.

**Liu Hongru**

August 22<sup>nd</sup>, 2001