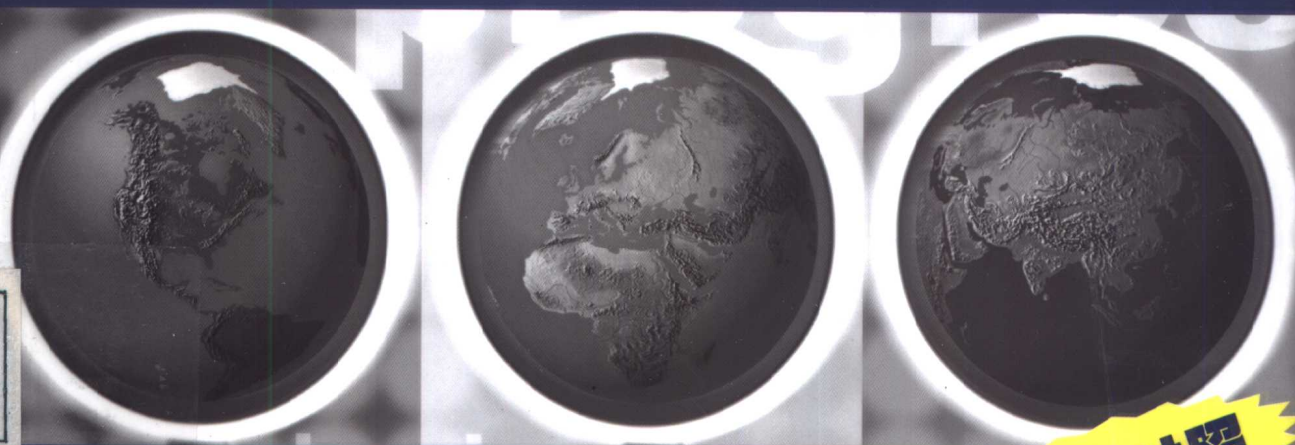


中国公司治理中心策划

公司治理改革: 中国与世界

CORPORATE GOVERNANCE REFORM:
CHINA and WORLD

鲁 桐 主编 王 巍 副主编



中英文对照

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前 言

2001年11月1~2日,中国社会科学院世界经济与政治所中国公司治理中心在北京主办了“公司治理改革:中国与东亚”国际研讨会。来自中国、香港、美国、澳大利亚、菲律宾、马来西亚的官、商、学各界60多位代表参加了会议。与会代表就“银行与证券的公司治理”、“董事会在公司治理中的作用”、“独立董事的作用”、“公司治理的法律法规环境”、“会计制度与信息披露”以及“公司治理改革”等六个主题进行了深入的探讨。30多位代表向会议提交了论文,18位代表在会议上发言,经过严格筛选,我们将部分论文编辑出版。我们认为,这次会议对于推动中国与东亚国家的公司治理改革起到了积极的宣传与推动作用。

公司治理(corporate governance,又译法人治理结构、公司管制)是现代企业制度中最重要的组织架构,它是对公司进行管理和控制的体系。它不仅规定了公司的各个参与者,例如,董事会、经理层、股东和其他利益相关者的责任和权利分布,而且明确了决策公司事务时所应遵循的规则和程序。公司治理的核心是在所有权和经营权分离的条件下,由于所有者和经营者的利益不一致而产生的委托—代理关系。公司治理的目标是降低代理成本,使所有者不干预公司的日常经营,同时又保证管理层能以股东和公司的利益最大化为目标。

公司治理即使在发达的市场经济国家也是一个较新的概念。20世纪90年代以来,在经济全球化的直接影响下,公司治理问题越来越受到世界各国各界人士的关注,形成了公司治理的全球化浪潮。这一国际浪潮是以下因素共同作用的结果:

第一,机构投资者的兴起。过去20年来,美国资本市场的结构发生了根本性的变化,各种机构投资者(包括各种退休基金、互助基金、保险基金等)持有资产占企业总资产的比例由1970年的12.4%,提高到1997年的48%。股东进一步法人化和机构化的趋势使得在英国、美国等发达国家中股东高度分散化的状况发生了很大变化,出现了从“管理人资本主义”向“投资人资本主义”的转化。机构投资者很难“用脚投票”,而往

往作为战略投资者进行长期投资。这种所有权结构的变化要求恢复所有者主权，直接关注公司治理问题。

第二，在经济全球化和经济自由化的发展下，企业面临的竞争压力加大。20世纪80、90年代出现了跨国购并浪潮，涌现了大量恶意收购、杠杆收购和公司重组等兼并形式。基于保护自身利益的需要，股东和公司利益相关者要求健全公司治理结构的呼声越来越高。

第三，经理人员的高薪酬引致的不满。从投资者的角度看，一个公司高级管理人员报酬水平及构成，可以很好地说明该公司的治理有效程度。近些年来，人们普遍对与日俱增的经理人员的高报酬感到不满，特别是经理人员的报酬并不总是与公司盈利的增长挂钩。美国投资者责任中心凯西·鲁克斯顿前不久对美国标准普尔1500家大型公司的1141名公司总裁的报酬进行了研究，表明在机构投资者的压力下，美国公司总裁报酬结构发生了明显变化，即报酬中的很大一部分是股票或股票期权，形成了与公司业绩挂钩的激励机制。

第四，各种腐败、丑闻、公司倒闭案件的增多，也是公司治理引起国际社会普遍关注的重要因素。

公司治理的国际浪潮首先是从英国开始的。20世纪80年代，不少英国著名公司的相继倒闭，引发了英国对公司治理问题的讨论，由此产生了一系列委员会制定最佳公司治理原则。世界上较早的公司治理原则是由英国的财政报告委员会、伦敦证券交易所联合成立的公司治理原则委员会，在Cadbury勋爵领导下，于1992年12月发表了《公司治理财务报告》。报告提出了董事会的最佳行为准则。继Cadbury报告以后，许多国家、国际组织、中介机构、行业协会以及公司各层次纷纷制定了各自的“公司治理原则”。其中，影响最大、波及范围最广的是经济合作与发展组织(OECD)的《公司治理原则》。OECD为了在全球推行上述治理原则，每年在亚洲、拉丁美洲、俄罗斯召开公司治理圆桌会议，就公司治理原则在各国和地区的应用问题展开对话。其他国际机构也积极推动公司治理运动。如世界银行与OECD合作，于1999年建立了“全球公司治理论坛”，以推进发达国家和发展中国家的公司治理改革。

公司治理既然属于制度范畴，它直接受各国的历史、文化、政治、经济、法律等因素的影响，因而存在不同的治理模式。近年来，国际社会对于“一种公司治理模式是否具有普遍适用性”(One size fits all)的问题展

开了激烈的争论。答案是明确的，世界上并不存在惟一完美的公司治理模式。从实践上看，各类治理模式都面临着新的挑战。以英美为代表的外部监控模式开始怀疑完全依赖市场监控的有效性，从而把目光转向公司内部，要求独立董事发挥更有效的内部监督作用；以日德为代表的内部监控模式开始重视资本市场等市场因素对公司治理的有效作用；以东南亚国家和地区为代表的家族模式也开始借鉴良好公司治理的成功经验，着手进行公司治理的系列改革，包括加强法律法规等制度建设；制定公司治理规范；强调公司信息披露的质量和监管；引入独立董事制度；加强对中小股东的保护；等等。

虽然好的公司治理结构没有单一的模式，但从公司发展的实践和投资者的立场上看，好的公司治理应具备某些共同的要素，其中包括：(1) 问责机制和责任 (Accountability & Responsibility)。如强调董事会的职责，强化董事的诚信与勤勉义务，确保董事会对经理层的有效监督；建立健全绩效评价与激励约束机制。(2) 公平性原则 (Fairness)。主要指平等对待所有股东，如果他们的权利受到损害，应有机会得到有效补偿；同时，公司治理结构的框架应确认公司利益相关者 (债权人、雇员、供应商、客户等) 的合法权利。(3) 透明度原则 (Transparency)。一个强有力的信息披露制度是对公司进行市场监督的典型特征，是股东具有行使表决权能力的关键。信息披露也是影响公司行为和保护投资者利益的有力工具。强有力的披露制度有助于公司吸引资金，维持对资本市场的信心。良好的治理结构要求在信息披露中采用高质量会计标准——国际会计准则，提高国家之间信息的可比性。良好的治理结构要求可靠的信息审计，以确保信息披露的真实性和准确性。公司内部的审计委员会由独立董事担任。

世纪之交，公司治理的全球化浪潮方兴未艾。无论是发达国家还是发展中国家，都把完善公司治理看作是改善投资环境，夯实经济基础的必要手段。为了在日益变化的世界中保持竞争力，公司必须不断创新并改变其治理机制，以满足新的市场需求。

这次会议在这样的国际背景下举行，有其特殊意义。1997 年东亚金融危机爆发以后，人们普遍认识到造成金融危机的深层次原因在于东亚企业公司治理基础的脆弱性。主要表现在所有权相对集中，大股东侵占中小股东利益；董事会缺乏诚信和问责机制；信息披露不充分；公司治理法律法规不健全；等等。

在我国，公司治理的主要问题是股权结构过于集中，国有股权“一股独大”，控股股东侵害中小股东利益的现象严重；大量国有股、法人股不能流通，使公司控制权市场难以形成。同时，国有股权控制权不明确，形成国有股权虚置，导致“内部人控制”现象严重。

我们必须充分认识到中国与东亚国家公司治理改革的迫切性和艰巨性。随着经济全球化的发展，各国进一步开放本国市场，国内金融市场将完全融入国际市场。面对这样的前景，按照国际规范建立和完善自己的公司治理更显十分紧迫。中国加入 WTO 之后，中国企业面临的国际竞争在很大程度上将是制度的竞争，是公司治理效率的竞争。没有完善的公司治理，国内企业在利用国际资本市场筹集资金方面首先就会输给自己的竞争对手，在产品市场的竞争也就会更加困难。

作为国家的智囊机构之一，我们愿意为推动中国公司治理水平的提高付出自己的努力。同时，也欢迎所有同行志士加入我们的行列。在此，我特别要感谢美国国际私人企业中心（Center for International Private Enterprise, CIPE）和福特基金会（The Ford Foundation）对本次国际研讨会的慷慨资助。也衷心感谢来自国内外的公司治理专家学者、政府官员和企业家的积极参与和支持。最后，我还要感谢经济管理出版社，特别是该社副总编辑沈志渔先生及杨世伟先生、谭伟先生，正是他们的远见和耐心，使我们大家能够分享到这一成果。

中国社会科学院世界经济与政治研究所
中国公司治理中心主任、教授 鲁桐博士

2002 年 4 月 15 日

April 15, 2002

Foreword

An international symposium “Corporate Governance Reform: China and East Asia” was held in November 1 – 2, 2001 under the organization of the Chinese Center for Corporate Governance (CCCCG) of the Institute of World Economics and Politics, Chinese Academy of Social Sciences. Attending were more than 60 representatives from the official, business and academic circles of China, Hong Kong, the United States, Australia, the Philippines and Malaysia. The participants made an in-depth exploration into six themes, including “Corporate Governance of Banks and Securities Companies”, “Roles of Board of Directors in Corporate Governance”, “Roles of Independent Directors”, “Legal Environment of Corporate Governance”, “Accounting System and Information Disclosure” and “Corporate Governance Reform”. More than 30 representatives submitted papers with 18 presentations on the conference. We have screened the papers and hereby published them. We hold that the symposium has played a positive role of disseminating and promoting the reform of corporate governance structure in China and East Asia.

Corporate governance is the most important organizational framework of modern corporate system and a system for managing and controlling corporations. It has not only provided for the responsibilities and functions and powers of participants in a corporation, such as board of directors, management, shareholders and other parties of interest but also clarified the rules and procedures in policy decision making. The core of corporate governance is the agency relationship. The objective of corporate governance is to lower agency cost so that owners do not interfere in the routine operations of a corporation and ensure that the management serves the purpose of maximizing the interests of shareholders and the corporation as a whole.

Corporate governance is a new concept even in a well developed market economy. Since the 1990s, under the direct impact of economic globalization, corporate governance has received increasing attention from people of all quarters in all countries, forming a global tide, which is the result of the concerted action by the following factors: First, the rise of institutional investors. Over the past two decades, fundamental changes have taken place in the structure of the capital market in the United States. The proportion of assets in the total assets of the corporate sector held by institutional investors (including pension funds, mutual funds and insurance fund) rose from 12.4% in 1970 to 48% in 1997. The trend of corporatization and institutionalization of shareholders has changed fundamentally the high dispersion of shareholders in such developed economies as Britain and the United States, transforming it from “manager capitalism” to “investor capitalism”. It is hard for institutional investors to “vote with their feet”. Instead, they often make long-term investment as strategic investors. Such changes in the ownership structure require the restoration of the power of the owners so that they are directly concerned about corporate governance.

Second, economic globalization and liberalization have exerted increasing pressure on enterprises in their competition, thus giving way to a transnational acquisition drive in the 1980s and 1990s, when a lot of hostile acquisition, leverage purchasing and reorganizations appeared. The voices of shareholders and parties of interest in companies have been rising higher and higher, demanding sound corporate governance in order to better protect their own interests.

Third, the high remuneration of management personnel has aroused discontent. From the perspective of investors, the level and composition of remuneration of senior management staff of a company may well tell the effectiveness of the corporate governance of a company. In recent years, discontent about the daily rising high remuneration of management personnel has become widespread, especially when the remuneration is not always tied to the profitability of a company. Kathy Luxton of the US Investors Responsibility Center came out with a research report on the remuneration of

1141 corporate presidents from 1500 large corporations, which finds that the composition of the remuneration of US corporate presidents has changed significantly thanks to the pressure of institutional investors, that is, a big part of it are stocks or stock options.

Fourth, the cases of corruption, scandal and bankruptcy have increased, which also constitute an important factor that has aroused the widespread attention of the international community.

The international corporate governance drive started in Britain. In the 1980s, many British noted companies went bankrupt, arousing discussions on corporate governance and yielding the best corporate governance principles formulated by a number of committees. The earliest corporate governance principles were contained in the Cadbury Report on “Financial Aspects of Corporate Governance”, compiled under the leadership of Sir Adrian Cadbury and published in December 1992 by the Cadbury Committee on the Financial Aspects of Corporate Governance together with the London Stock Exchange. The report put forward the best practice for the board of directors. Following the Cadbury Report, many countries, international organizations, intermediary organizations and trade associations and companies all formulated their own corporate governance principles. The most influential and the most widely adopted are OECD Principles of Corporate Governance. To make the principles adopted globally, OECD has organized round-table conferences in Asia, Latin America and Russia every year to enter into dialogs on the application of corporate governance in all these countries and regions. Other international organizations have also actively promoted the corporate governance drive. The World Bank and OECD cooperated in establishing a Gmoba Corporate Governance Forum in 1999 to push the reform of corporate governance in both developed and developing countries.

Corporate governance belongs to the institutional area, subjecting to the influence of history, culture, politics, economy and law of each country and that is why there are different models of corporate governance. In recent years, there have been heated disputes on “one size fits all” in the international community. The answer is clear. There is no perfect corporate

governance model in the world. In practice, all governance models are facing new challenges. The UK and US, which is noted for the external regulation model, have begun to doubt the effectiveness of monitoring entirely by relying on the market and turned inward to companies themselves, demanding that independent directors display the role of more effective internal oversight. Japan and Germany, representing the internal control model, have begun to pay attention to the effective role of such market factors as capital market in corporate governance; Southeastern Asian countries and regions, representing the family model, have begun to borrow the successful experience of good corporate governance and to carry out reforms, including the institutional construction such as formulating laws and regulations, corporate governance standards, stressing the quality and oversight of corporate information disclosure, introduction of the independent director system and the strengthening of the protection of medium-sized and small shareholders.

Although there is not a fixed model for good corporate governance structure, there are some factors shared in common as from the perspective of the practice of corporate development and investors. They include (1) accountability and responsibility, such as strengthening the functions of the board of directors, enhancing the integrity and industriousness of directors; ensuring the effective monitoring of the management by the board of directors and the establishment of a sound performance assessment and incentive restriction mechanism; (2) fairness, which refers to fair treatment to shareholders, who should get effective compensation for the losses they sustain. At the same time, the corporate governance structure should assure the legitimate rights of parties of interest (creditors, employees, suppliers and customers) in the company; (3) transparency. A strong and effective information disclosure system is the typical feature of a company subject to market regulation and the key for shareholders to exercise the voting right. Information disclosure is also a useful tool to influence the corporate behavior and protect the interests of investors. A strong and effective information disclosure system is useful in attracting capital and maintain its confidence in the capital market. Good corporate governance structure requires the adoption

of high quality accounting standards-International Accounting Principle in information disclosure so that information of different economies can be compared. Good corporate governance structure demands reliable information auditing in order to ensure the truthfulness and accuracy of the information disclosed. The internal audit committee should be formed by independent directors.

At the turn of the century, the globalization of corporate governance is forging ahead wave upon wave. All economies, developed or developing, regard corporate governance as a necessary means to improve investment environment and strengthen the economic foundation. In order to maintain competitiveness in the changing world, a company must make constant innovations and change its governance mechanism to meet the new market demand.

Against this background, the conference is of particular significance. After the East Asian financial crisis in 1997, it is widely held that the deep cause for the crisis lies in the fragility of the corporate governance structure, which mainly manifests itself in the relative concentration of ownership, expropriation of the interests of small shareholders by large shareholders, the lack of integrity and accountability and responsibility on the part of the board of directors, inadequate information disclosure and incomplete laws and regulations on corporate governance.

In China, the main problem in corporate governance structure is the overconcentration of equity structure, with too big a state-owned equity and serious expropriation of small shareholders by controlling shareholders. A large amount of state equity and corporate shares are not circulatable, making it difficult to form a market of corporate control. In the meanwhile, the state equity control is not clear, reducing the state equity in form only, thus leading to serious insider control.

We must be fully aware of the urgency and difficulty in the reform of the governance structure in China and Southeast Asian countries. With the progress of economic globalization, all countries will further open their own markets and their internal financial markets will fuse entirely into the

international market. In such prospects, it seems more pressing to build and improve corporate governance according to international standards. After China's accession to the WTO, China is facing, to a large extent, institutional competition and competition in the efficiency of corporate governance structure. Without a sound corporate governance structure, domestic enterprises would lose to its rivals first in raising funds from the international capital market and would find it harder to compete on the product market.

As a think-tank for the state, we are willing to make our contributions to raising the level of corporate governance and at the same time welcome all our colleagues to join us. Special gratitude should go to the Center for International Private Enterprise, (CIPE) and the Ford Foundation for their generous contributions to the international symposium. Our heart-felt thanks should also go to Chinese and foreign corporate governance experts and scholars, government officials and entrepreneurs for their active participation and support. Lastly, I would also like to thank the Economic Management Publishing House, especially to Mr. Shen Zhiyu, Vice-Eidtor-General, Mr. Yang Shiwei, Editor-in-Chief and Mr. Tan Wei, editor for their far-sight and patience that have enabled us to enjoy such achievements.

Dr. Tong LU

Professor and Director of Chinese Center for Corporate Governance,
Institute of World Economics and Politics,
Chinese Academy of Social Sciences

“公司治理改革：中国与东亚” 国际研讨会开幕致辞

陈佳贵研究员
中国社会科学院副院长

各位来宾、女士们、先生们：

首先，我代表中国社会科学院向参加“公司治理改革：中国与东亚”国际研讨会的中外来宾表示热烈欢迎！

今天，来自不同国家的学者、政府官员和企业人士共同探讨公司治理改革问题有着重要的现实意义。世纪之交，各国企业不仅面临着经济全球化和知识经济等的挑战，也面临着在新的形势下，如何再造良好的制度框架，使企业运行得更灵活、更有效。

公司治理是企业管理的重要内容之一。它关系所有者、经营者以及劳动者的权力与利益关系的一整套制度安排，是企业生存和发展的基础。由于经济体制、经济发展阶段和社会文化传统的不同，各国形成了不同的公司治理模式。有些学者把它分为三类：即英美模式、日德模式和东南亚模式。在社会经济由传统经济向以知识、信息为基础的新经济转型过程中，无论哪种模式都面临着改革的挑战。以英美为代表的外部监控模式，开始将公司治理的注意力转向内部，不仅仅关注股东的权力和利益，同时强调企业利益相关者的责任和权利。在知识经济条件下，人们对经营者在公司治理的地位和作用问题也需要进行重新审视。以日德为代表的内部监控模式也由于其经济发展战略和企业制度难以适应竞争的挑战而要求重建。其改革的方向是加强外部市场对公司治理的控制作用，强调对广大中小股东利益的保护，强调企业的社会责任等。以东南亚国家和地区为代表的家族监控模式在1997年爆发的东南亚金融危机中，充分暴露了企业制度的内在缺陷——控股股东严重侵犯广大中小股东的利益、内部人控制失控和信息披露等问题。可以说，东南亚国家和地区所面临的公司治理改革的挑战

比前两类国家要大。

虽然世界上存在不同的治理模式，也不存在惟一最佳的公司治理范本，但我们认为，任何公司治理模式的改革应包含和遵循基本的原则和因素，其中包括：（1）充分保障和维护包括中小股东在内的所有股东的利益；（2）发挥董事会在履行受托责任中的关键作用；（3）充分调动企业利益相关者的积极性，并保护他们的权利；（4）信息披露的及时、准确，提高信息披露的透明度。

中国经济的改革开放已经走过了 20 多年的历程。我们所取得的成就举世瞩目，中国在世界政治和经济中的地位不断提升。但我们深知，今后中国经济体制改革将进入攻坚阶段。我国的国有企业的改革，在经历了放权让利、承包经营责任制、转换企业经营机制后，目前已进入到以产权制度改革为核心的建立现代企业制度阶段。建立现代企业制度，既是我国 20 多年企业改革发展的必然结果，又是我国国有企业面临的深刻的制度创新。其实质是构建现代企业的产权关系和良好的公司治理结构，促进企业经营机制的转变，提高管理效率和经济效益。

中国共产党第十五届四中全会通过了《关于国有企业改革与发展若干重大问题的决定》，第一次明确提出公司治理结构是企业建立现代企业制度的核心。全会中所提出的产权多元化、所有权与经营权分离、转换企业经营机制的问题，都是我国国有企业所面临的艰巨任务。同时，我们还必须完善建立现代企业制度的外部条件，包括完备的市场体系、有效的监管体系、法律环境、信用制度等。

同时，中国的所有制结构经营实现了多元化，除国有企业外，私营企业和其他非国有企业也有了很大发展。它们也需要建立与其所有制性质及特点相适应的治理结构。如何建立适合中国经济转型过程中的各类公司治理模式和管理模式，将具有及其重要的理论意义和实践价值。在这方面，我们既需要借鉴外国的成熟经验，也需要我们不断创新。中国社会科学院是中国社会科学研究最高机构，为中国经济改革开放提供决策依据和政策建议是我们义不容辞的责任。在过去的改革开放过程中，中国社会科学院发挥了不可或缺的作用，以后，我们也将一如既往，为中国经济的繁荣昌盛贡献出自己的力量。为此，我们一定要加强与世界各国同行的交流与合作，不断提高自身的学术水平。我相信，这次“公司治理改革：中国与东亚”国际研讨会将促进中国学者与国外学者的交流与合作，有助于相互

借鉴各国和地区在推动公司治理改革中的先进经验。

最后，预祝研讨会圆满成功。

谢谢大家。