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信托治理优化论



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摘 要

“信托”，顾名思义就是信任委托，即“受人之托，代人理财”，是一种代人理财的财产管理制度。严格讲，信托是委托人将其财产（包括资金、动产、不动产以及股权、知识产权等）委托给受托人，由其按照委托人的意愿并以自己的名义，为受益人的利益或特定目的，进行管理或者处分的行为。现代信托法之父哈佛大学斯考特教授（Austine Wakeman Scott, 1909 ~ 1961）对信托的评价前所未有：“信托的应用范围可以与人类的想像力相媲美。”

随着中国全方位、深层次建设市场经济步伐的加快，信托行业已经在国内的金融格局中占据了极其重要的地位。2001年4月《中华人民共和国信托法》颁布并于同年10月实施，这标志着20多年来中国信托业无法可依的混沌局面成为历史，更重要的是使信托制度这一市场经济金融手段的高级形态在中国得到法律意义上的正式确立，具有重大的理论意义与现实意义。在此新形势下，我们需要用全新的视角来看待信托业的发展，并从中充分认识信托的独特价值、真正领悟信托的丰富内涵、正确运用信托的配置效能，进而提升信托业在我国经济发展中的战略地位。而同时对于信托制度理论的研究，特别是中国信托业治理优化的研究也无疑成为当前理论界和实务界极为关注的一个重要课题。

然而，由于中国信托业的发展时间与行业水平同信托业发达国家相比起步很晚、差距较大，且又经过多次治理整顿，由此导致当前的信托业仍旧存在较多的瓶颈性问题。在这种背景下探讨如何优化发展中国的信托业，既要立足于当前国内对信托及信托业务实际需求的国情，又需借鉴一些信托发达国家的信托业发展的先进经验。

本书从研究信托及治理最基本的概念、精神、原理和职能入手，运用经济学、金融学和信托学原理，对信托及信托业进行辩证地扬弃。此外，在本书中作者也用重彩描述了中国信托业之所以历经五次清理整顿，主要原因是由于中国信托业的法规体系、制度安排以及信托公司治理的严重缺失与不足。在此环境影响下，业内多家信托公司的治理结构均呈现出纷乱无序的特征，并充满危机。这种具有潜在性、危险性的治理结构已严重阻碍了公司制信托企业的发展进程，且直接影响了信托市场的健康发育。这惨痛的教训对处于初期发展中的中国信托业而言，是既深刻又沉重的。因此，在当前信托业步

人大变革的新历史时期，我们必须要以史为鉴，认真研究和总结先前信托业所走过的崎岖路，进而开辟一条指导中国信托业乃至信托公司健康治理、优化发展的坦途。

然而，展望信托业未来的发展之路，业界也较为迷茫。因为回顾信托业过去 20 几年的蹉跎岁月，她一直深陷在极为艰难的境地。虽然信托监管层在不同的历史时期给予了信托业一定的政策支持，但从行业当前发展的现实角度来看，其生存与发展的重负依旧沉重。由此，作者总结了现阶段制约中国信托业发展的主要瓶颈问题。第一，中国社会经济环境制约了信托业的优质发展。信托业的产生与发展需要一定的社会经济条件，其中必备条件包括：一是健全的市场经济体制；二是完善的信托法规体系；三是完备的信用制度和产权制度，使私有财产充分得到保护；四是社会经济发展对信托业务有现实的内生需求。第二，中国的信托公司存在严重的治理缺陷。信托投资公司在治理结构方面的显著缺陷，容易形成依附于政府的、政策性的“官办”融资窗口。第三，中国信托业在管理模式、经营规模、人员素质等方面也存在诸多不足。这些问题由 20 世纪 80 年代一直延伸到今天，并且足足困扰了几代信托人！

那么怎样舞动中国信托业的转型之舞？如何令信托业早日步入一条快速稳健、持续发展的坦途呢？作者认为，只有正确诊断好信托业的病因，才能按病用药，出具良方。本书所要表现的核心内容就是要深度挖掘中国信托业不同时期的治理缺陷，且将从“信托业五次行业整顿”、“信托行业的政策与立法”、“信托业发展的核心症障”、“国内外信托业治理模式”、“不同国家的监管体系”等多维角度来揭示中国信托业的治理缺陷，并逐渐向本书的立意靠拢，通过对中国信托业治理优化的路径和策略的研析，最终导出本书的价值核心——“信托业优化治理框架下的高能发展与定位——构建信托业高能多元优化治理模式”。

本书以中国信托业现实缺陷作为开篇部分，并从中国信托业的五次行业整顿入手，直接指明了优化治理信托业发展缺陷的命题。后又逐步介绍了我国信托业发展中的诸多治理缺失。在第二章中，作者紧紧围绕着中国信托业发展的核心症障——治理缺失的这一核心问题，从多个方面纵谈了“中国信托公司成长的内部缺陷”、“中国信托公司发展的外部障碍”和“治理缺失是中国信托业发展的核心症障”这三个方面的问题。特别是在“信托业发展核心症障”的问题当中，作者详细甄别了“信托机构的设置缺陷”、“业务经营不善”、“不良资产过高”、“组织结构缺陷”、“业务拓展机制缺陷”，这为本书逐渐切入正题作了伏笔。

在本书的理论研析篇部分,作者特别介绍了“信托的基本内涵、起源及其功能”、“信托的法律定位及基本原则”、“信托制度发展的历史渊源及其重要价值”、“信托的综观效能”等多个方面内容,并从信托基础理论、效能理论上探讨了信托业的一些基本概念和常识,且进行了升华与提炼。

第四章内容是本书的核心内容之一。作者从治理理论的思辨与借鉴的角度,论述了“公司治理理论有关概念的界定”、“国内外关于公司治理理论的研究现状”、“信托公司治理结构的理论范式研究”、“国际治理改革的发展潮流”、“国际主流公司治理模式的比较及其借鉴”等多个学术界关于公司治理理论的各项学说及其流派。这其中包括:“特里克尔(Tricker, 1984)的公司治理理论”,“哈特的公司治理理论”,“青木昌彦与钱颖一的公司治理理论”,“科克伦与沃特克的公司治理理论”,“布莱尔的利益相关者共同治理理论”,“张维迎对公司治理的理论研究”,“杨瑞龙对公司治理的理论研究”,“李维安等对公司治理的理论研究和何玉长对公司治理的理论研究”等诸多研究学说。进而为我国信托业的公司治理提供了理论上的优化治理基础和借鉴。

此外,作者还通过对国外经济运行实践中的三种公司治理模式,即英、美等国为代表的“市场主导型”公司治理模式,以日、德等国为典型代表的“银行主导型”公司治理模式,以韩国、东南亚等国为典型代表的“家族控制型”公司治理模式的综合研究,并对照我国信托企业在立法上采用的股东主权的理论范式,在实践中引入的美英国家的“市场主导型”模式+国内自发形成的“家族控制型”公司治理模式,且结合我国深层次文化特质,提出了我国信托企业特有的“关键人主导型”治理模式的生成机制和发展弊端。该种治理模式在目前信托企业运行当中存在着严重的治理缺陷。首先,从理论上讲,由于信息不完全、不对称,人的有限理性和未来的不可预见性,导致了信托企业契约不完全,产生了严重的委托—代理问题。其次,从我国经济实践上看,这与我国传统政治、经济和社会文化所形成的路径依赖有关,更与制度的缺失与缺陷有关。制度的缺失与缺陷导致了合谋的产生,合谋反过来又加剧了制度的损毁;“关键人”的真实参与则成为合谋产生的主导因素,合谋也与“关键人主导型”公司治理模式构成了天然的联系。所以,作者认为从抑制合谋入手,建立一系列适合我国信托公司治理特点的创新制度,特别是加强对“关键人”的治理,可起到显著效果。

本书的第三篇——优化治理篇是本书的心智结晶部分,更是本书的升华篇章。本篇特别对“中国信托业治理缺陷的实证分析”、“对中国信托业治理监管体系的研析”、“中国信托业治理优化的路径和策略”、“信托业优化治理框架下的高能发展与定位——构建信托业高能多元优化治理模式”进行了全

方位的、深层次的、客观性的、前瞻性的、严谨性的探讨。在第六章“对中国信托业治理缺陷的实证分析”中，作者对“中国信托业治理的内外部环境”、“中国信托业治理结构的内在缺陷”进行了一定的剖析，从中作者认为“关键人主导型”治理模式、“利益主体的分化与合谋”是我国信托企业内部治理的最大缺陷。由此造成诸多治理问题在信托业现阶段的发展中尤为突出。其主要归集为以下几个方面：（1）内部制约机制虚化；（2）“一股独大”问题严重；（3）政府职能“缺位”、“越位”和“错位”；（4）董事会职能缺位，难以发挥功能；（5）垂直型组织管理模式效率低下；（6）长期激励机制缺位；（7）法律制度缺失、信息披露不健全；（8）风险管理体系不完善；（9）缺乏成熟的受托责任和社会文化；（10）新闻舆论和社会公众监督不足；（11）缺乏长期导向的企业文化。

本书通过对上述十一项缺陷问题的系统阐述，引导出作者对中国信托业治理优化的综合路径和策略。其中在第八章“加快我国信托公司治理制度创新”的论述中，作者将“治理结构创新模式的构建”、“股权结构安排”、“决策与监督职能的设计”、“剩余控制权与剩余索取权的分配”、“外部市场监督机制的建立”、“创新信托公司的组织制度”、“实施信托风险全面管理体系”、“建立健全信托公司自律机制”、“优化信托公司治理文化”等多个具有一定创新的思想纳入进来，特别又将“全面完善信托公司内控制度”、“强化信托公司内部监督模式”、“构造信托业务屏蔽系统结构体系”、“加强信托公司风险管理”、“导入国际战略投资者”、“优化内部治理结构”的创新性内容融为一体，进而令中国信托业治理优化的路径和策略更具完备。

第九章是本书的精髓部分，同时也是作者对中国信托业治理体系的奉献。在此章中，作者通过两个模型的设计，为“信托公司高能多元优化治理模式”的构建打下了一定的理论基础。其中“股东—雇员分享模型”解释了股东、人力资本和外部人（债权人、信托关系人）这三方主体包括了涉及信托公司经营多元实体：股东、内部员工和经理以及外部人（债权人、信托关系人）。同时也是企业的客户，还是构成企业经营环境的基石）。通过他们的共同治理，信托公司内部治理结构可能得到改善。其中，雇员（包括经理和员工）通过与股东谈判分享剩余索取权，提高了工作积极性，可能创造出更高的劳动效率并扩大组织租金，从而增加各方的效用。此外，“内外部人博弈模型”则说明：随着债权资产比例的增加，或者说外部人（债权人、信托关系人）投入占企业各类资产比例的提高，外部人（债权人、信托关系人）具有不断增加监督努力的愿望。在实际情况中，可以理解为：内外部人动态博弈的关键环节是外部人（债权人、信托关系人）具有撤资威胁的力量，即要求内部

人尽心尽力,在出现不良迹象时要求其改正行为偏差,否则将撤回借贷或投入资本(可以有事先的制度安排)。信托公司高负债率和受托理财的特点使外部人(债权人、信托关系人)治理具有较高的实际意义。根据这一章的模型设计基础,作者从实际角度阐述了有关中国信托公司高能多元优化治理模式建设的各项问题。

首先,股东通过股东大会形成决议,选举代表进入董事会行使其治理权力,掌握企业部分的剩余控制权,并拥有分享企业剩余收入(或简化为企业纯利润)的权力。中国部分信托公司具备了有一定集中度的分散股权结构。从理论和国外实际情况看,这是高效公司治理以及良好经营绩效的基础。董事会下属各委员会是股东权力行使的重要工具。

其次,人力资本在信托公司资源结构中的重要地位,决定了信托公司的治理结构设计要特别强调人力资本的重要性。随着中国资本市场的开放和完善,信托公司融资渠道也得到不断的拓展。相对成本不断降低的金融资本,人力资本逐渐成为更稀缺的资源。作者认为在中国信托公司这样一个特定的企业范畴内,人力资本有充足的理由参与公司的治理,而这又体现在两个方面:一是行使部分的剩余控制权。二是拥有企业的剩余索取权,即企业组织租金的分享。

第三,信托公司高负债率与信托资产量大的特点决定了债权及外部治理的重要性。中国的信托公司作为金融机构具有负债比例高的特性。信托公司的这一资产状况基本满足笔者理论设计的条件。按照模型的设计,外部人(债权人、信托关系人)应当在公司内部享有部分治理权力,以保障外部人(债权人、信托关系人)的利益不受到损害。笔者认为可以在董事会中引入独立董事,让他们代表外部人(债权人、信托关系人)的利益。这部分董事在产权上能够代表所有外部人(债权人、信托关系人),因而对内拥有较强的影响力。同时,信托公司信托资产规模的急剧增加,构成信托关系人群体的扩大化,这就为信托关系人(委托人与受益人)对信托企业的共同治理提出了一个新课题。因此,在信托业未来的优化治理中,引入信托关系人在内的高能多元优化治理模式可以说是信托业治理的一种前瞻性创新。

本书主要的理论及实践贡献有:

(1) 根据对中国信托业的深入分析,特别是对中国信托业及部分重点信托公司的实证分析,得出结论:中国信托业治理严重缺失,亟待构建优化的治理模式。

(2) 明示了中国信托业治理缺陷的根源是我国信托公司“关键人主导型”治理模式。其特征是我国信托公司形成的基础,家族控制是我国民营资

本发展的历史必然,而“关键人控制”则是普遍的现实存在。其基本特征如下:①是“关键人”大权独揽,并且常常在台前或幕后集控制权、执行权和监督权于一身,进行公司决策和运作,股东大会、董事会和监事会权力虚置。②是特殊的二元制公司治理模式和“金字塔”型的公司治理结构。与德国等大陆法系国家垂直式的二元制治理模式不同,我国信托企业采取二元平行式二元制模式,即董事会和监事会均由股东大会产生,在法律地位上是平等的,董事会仅对股东大会负责,而无须对监事会负责,造成监事会只有监督权而无决策权。我国信托公司治理结构的基本特点是呈“金字塔”的治理结构,这一结构的最低层是股东大会,它是信托公司的最高权力机构,决定着信托公司所有重大事项。该结构的中间层是董事会和监事会,分别承担着公司事务的决策权和监督权;处于最顶层的经理人(“内部人”中占核心地位的“关键人”),承担信托公司日常事务的执行权,并对公司董事会负责,处于金字塔顶端。③是合谋现象严重。由于信息不完全且不对称,相关利益主体分化和关键人参与而形成“广泛的合谋”,小股东、员工及债权人等外部人处于绝对劣势,权益难以保证。四是控制权市场、经理人市场、劳动力市场等外部市场不健全,外部监控软约束。

(3)对传统的股东主权的公司治理范式、经理主导的公司治理范式进行了创新式的论述。特别反思传统的“股东至上理论”,扬弃“利益相关者思想”,独创中国信托公司的高能多元优化治理机制及模式。根据中国信托业高负债率、高信托财产、高知识含量的特点,引入外部人(债权人、信托关系人)和人力资本的治理效能。

(4)构建内部人—外部人(债权人、信托关系人)动态博弈模型,推断出结论:外部人(债权人、信托关系人)的监督力度和内部人的努力程度呈正相关关系。同时,随着债权比例与信托财产的增加,外部人(债权人、信托关系人)具有不断增加监督动能的愿望。

(5)根据信托公司债权比例、信托财产以及债权结构、信托结构的状态,设计以独立董事来代表外部人(债权人、信托关系人)的利益,行使包括债权、受益权等在内的所有资本的治理权力。

Abstract

“trust”, as its name suggests just believe in and entrust, namely “receive support of people, manage money matters for people”, it is one that take the place of property management system, people of financing. Say strictly, trust is that the client entrusts its property (including fund, movable property, real estate, stock right, intellectual property right etc.) to the trustee, by it with one’s own name according to the client’s will, it is the beneficiary’s interests or specific purpose, behavior managed or punishing. The appraisal on trust of father of modern Trust Law Professor Scott of Harvard University (Austine Wakeman Scott, 1909 – 1961) is unprecedented: “the range of application of trust can compare favourably with human imagination.”

with the quickening of omni – directional and profound construction of Chinese market economy trust industry occupies important status extremely among domestic financial pattern already. Issued and implemented October of the same year in “Trust Law of the People’s Republic of China” in April of 2001, this indicates the Chaos situation that there are no laws to abide by of trust industry of China has become history for over 20 years. The more important thing is it marks trust system this senior shape of economy and finance means receives the formal establishment in the legal meaning in China, which has great theory meaning and realistic meaning. Under the new situation here, we need to treat the development of the trust industry with brand – new visual angle, and fully realize unique value, abundant content, proper disposal function by using trust, and then promote the strategic position in our country’s economic development of trust industry. And the research to the trust system theory at the same time, especially the Chinese trust industry governance optimization undoubtedly becomes an extremely concerned important subject of present theory circles and practice circles

But because compared with trade level and developed country of trust industry time starts very late, disparity is relatively great in the development of the Chinese trust industry, and undergoes numerous improvement and rectification again, therefore lead to the fact the present trust industry still has more bottleneck questions. Discussing under this kind of background how to optimize the trust industry which develops

China, should base on being present and domestic to trust and national conditions of the trust industry actual demand, need to draw lessons from advanced experience of development of trust industry of some trust developed countries.

This text is from the most basic concept, spirit, principle and function of trust to start with, uses the economics, finance to study the principle with trust, develops what is useful and discarded. In addition the author devotes more lines to Chinese trust industry 5 times clear ups originally, deriving mainly from the absence of law and regulation, system arrangement as well as corporate governance. Under the influence of this environment, the administration structure of many trust companies demonstrates disorderly and unordered characteristic and full of crises. This kind of potentially dangerous administration structure hinders company development process, and has influenced the healthy development of the trust market directly. Such lesson to Chinese trust industry in initial stage is both deep and painful. So, here to step into the new historical period of the great change in the face of the present trust industry, we must use history as a guide and mirror, study and summarize the lopsided way that the institute of trust industry passed by before conscientiously, and then open up new ground for Chinese trust industry even trust company healthy governance and optimal development.

But looking forward to the future developing road of trust industry, the industry is comparatively confused. Because reviewed trust industry for the past more than 20 years, she gets deeply stuck in the extremely difficult condition. Though trust has supervised layer and offered certain policy support to the trust industry in different historical periods, but according to realistic angle of industry development, the heavy load against its survival and development is still heavy. Therefore author gives main bottleneck for development of industry at present as follow, First, China's social economic environment has restricted the high - quality development of the trust industry. The production and development of the trust industry need certain social economic condition, among them the essential condition includes: First, sound market economic system; Second, complete trust regulation system; Third, complete credit system and property relations, which makes the private property protected abundantly; Fourth, there are realistic endogenous demands for the trust industry in social economic development. Second, the trust company of China has serious administration defects. The remarkable defect in administration structure of trust and investment corporation, apt to form the financing window "operated by official bodies" depending

on the government. Third, a great deal of drawbacks exist too in such aspects as management mode, business scale, personnel's quality insufficiently in the Chinese trust industry. these Questions keep extending until today from the eighties of last century, and fully perplexed several generations of trusters !

Then how to wave the dance of transition of the Chinese trust industry? How to make trust industry step into a level road of fast and sane, sustainable developing as soon as possible? I think, only diagnose the cause of disease of the good trust industry correctly, medicine could be used properly, and good recipe provided. The key content that this text should display is to excavate the administration defect of different periods of Chinese trust industry in depth, and from multidimensional angle of "trust industry five times rectification", "policy and legislation of trust trade", "the key diseases of development of trust industry", "domestic and international trust industry governance mode", "different countries supervisory systems" to announce administration defect of Chinese trust industry, and draw close to the conception of this text gradually. Through analysing the governance optimization route and tactics of Chinese trust industry, the core value of this text finally gives out - "Trust industry high energy development and orientation under governance optimization frame - construction of the high energy and pluralistic optimized governance mode of trust industry".

This text regards realistic defect of Chinese trust industry as the part of the introductory song, and starts with five rectifications, of Chinese trust industry, points out the issue of governance defect optimization of trust industry directly. And then recommends a great deal of administration defect and absence in the development of trust industry. In chapter two, focused on the key disease of governance absence and defect, the writer spells out "the inside defect in the development of Chinese trust companies", "external obstacle in the development of Chinese trust companies" and "the key disease of governance absence of Chinese trust industry". Especially in the question of "the key disease and hinders of trust industry development", the writer discerns "the organization defect of the trust" in detail, "the business managed improperly", "too high non - performing assets", "institutional framework defect", "the mechanism defect for business expansion", which foreshadows for the main context.

In the part of theory analysis, the writer especially introduces "basic intension of trust", "the origin and function", "law of trust orientation and basic principle", "trust historical origin and important value", "comprehensive efficiency of trust", probes into some basic conception and general knowledge of the trust industry from

trust basic theory, distilled and refined.

Chapter four is one of the key contents of this text. From the sublated angle, the writer expounds “the definitions to some concepts of company governance”, “current research on the governance theory domestically and internationally”, “the normal form on administration structure of trust company”, “the trend of world governance reform”, “comparison and lessons from international major company governance mode” from some schools of theory which includes: “the company governance theory of Terrick (Tricker, 1984)”, “the company governance theory of Harte”, “Company governance theory of Teri Aoki and Yingyi Qian”, “company governance theory of Cochran and Walter”, “mutual governance by interest related parties theory of Blair”, “Company governance theory of WeiYing Zhang”, “Company governance theory of RuiLong Yang”, “Company governance theory of Weian Li and Yuchang He”. All of them offer theoretic foundation and lessons to draw for Chinese trust industry governance.

In addition, the writer adopts to the governance mode of three kinds of companies in the practice of economical operation of foreign countries; such countries as Great Britain and American etc. are representatives' company's governance mode of “market orientated”, company's governance mode of “bank orientated” taking such countries as Japan, Germany etc. as typical representative, comprehensive research of company's governance mode of “family's governance type” taking such countries as S. Korea, Southeast Asia etc. as typical representative, and contrasts the normal form of the shareholder sovereignty that Chinese trust companies adopt in legislation; and Chinese spontaneous company governance mode of “family's governance mode” with “market orientated mode” of the countries of America and Great Britain introduced in practice; Combining our country profound cultural speciality, put forward our country trust company peculiar “key people leading type” formulation mechanism of governance mode and drawback. This kind of governance mode exists serious administration defect in trust companies operation at present. First of all, theoretically, incomplete and asymmetric information, people limit and future unpredictability, give rise to incomplete agreement in enterprise, produced serious commission - agency problem. Secondly, from economic practice of our country, this relates to the route relying from the tradition of our political, economic and social culture, related to absence and defect of the system even more, the absence and defect of the system have resulted in conspiracy, which aggravated the the system conversely. The participation of “key

people” becomes the leading factor producing conspiracy, which forms the natural connection with company’s governance mode of “key people’s leading type” too. So, the writer believes starting with suppressing conspiracy, setting up a series of innovative suitable for the system of managing characteristic of trust company of our country, especially strengthening the administration of “key people”, can get remarkable result.

The third chapter in this text – optimized governance is intelligence crystallization part of this text, a distillation chapter of this text even more. This part probes especially “Chinese trust industry governance real example of defect analysis”, “analysis of supervisory system to the Chinese trust industry”, “Chinese trust industry governance route and tactics that optimized”, “high energy development and orientation under optimized governance frame – construction of high energy and pluralistic governance mode” omni – directionally, profoundly, objectively, perspectively and rigorously. In chapter six the writer carries on “analysis with the real example of the Chinese trust industry governance defect”, “Chinese domestic and foreign environment for trust industry governance”, “Chinese inherent defect of administration structure of trust industry”. the author believes “key people leading type governance mode”, “division and conspiracy of interest subject” are heavy defect of inside governance. A great deal of administration questions are particularly outstanding in the present stage of development of trust industry and collects as several following respects mainly: (1) weak inside restriction mechanism; (2) “one shareholder big alone”; (3) government function “noplacement, overplacement and misplacement”; (4) the board of directors function absence, difficult to play the role; (5) vertical organization mode to be low efficiency; (6) long – term incentive mechanism absence; (7) the legal system lacked, and information disclosure imperfect; (8) the risk management system incomplete; (9) lackness of mature trust responsibility and social culture; (10) press and public supervision insufficiency; (11) lackness of long term corporate culture.

By explaining to above – mentioned 11 issues, it arises that comprehensive route and tactics of governance optimized of China trust industry. In chapter eight author takes such issues into account as “accelerate the governance system innovation of our trust company”, “construction of governance structure innovation”, “the stock right structure arrangement”, “design of decision making and supervision function”, “surplus governance power and surplus ask for the distribution right”, “setting – up of supervision mechanism of outside market”, “organization system of innovative trust

company”, “implementing the overall management system of the trust risk”, such a lot of thoughts with certain innovation as “setting up and amplifying the self – discipline system of trust company”, “optimizing the culture of trust company governance” and “improve inside control system of trust company in an all – round way”, “strengthening trust company inside supervision mode”, “constructing the trust business shielding structure system”, “strengthen trust company risk management”, “introduction of international strategic investors”, “optimizing the inside administration structure” are combined together, and then make governance route and tactics optimized of Chinese trust industry even more complete.

Chapter nine is a marrow part of this text, the devotion to the Chinese trust industry governance system. In this chapter, the author lays certain theoretical foundation for the construction of “the high energy and pluralistic governance mode optimized of trust company” through the design of two models. “Shareholder – employee share model” explains shareholders, whether manpower capital and outside people (the creditor, trust concerns people,), which involve the plural entity that the trust company deals in. Shareholder, interior employee and manager and outside people (the creditor, trust concerned people) are customer of enterprise at the same time, forming the foundation stone of enterprise’s management environment. Through common administration, the administration structure may be improved inside the trust company. Among them, employee (including manager and staff), through negotiation with shareholder share surplus asking right, improve working enthusiasm, may create higher efficiency and expand and organization rent, thus increase the utility of each side. in addition “domestic and foreign people play chess model” proves with increase of the creditor’s assets proportion, outside people (the creditor, Trust concerned people,) in other words with outside people inputs increasing, outside people (the creditor, trust concerned people) have willings to exert more effort to supervise constantly. In the actual conditions it can be interpreted as: the key link that domestic and foreign people play chess dynamically is that the outside (the creditor, trust concerned people) has strength of withdrawing investment, namely requiring inside people to make all – out efforts, correcting deviated behavior while the bad sign appears, otherwise recalling the liabilities or invested capital (can be arranged in advance). Trust company’s characteristics of high liabilities and commission financing make outside people governance (the creditor, trust concerned people,) have higher actual meanings. According to the model design basis of this chapter, writer explains in

terms of issues of construction of high energy and pluralistic optimized governance mode of the Chinese trust company.

First of all, shareholder form resolution through shareholders' meeting, elect representatives to enter board of directors executing their governance power, grasp enterprise the surplus governance power and, have power to share enterprise's surplus income (or simplify for enterprise's pure profits). Some trust companies in China have the scattered stock right structure with certain concentration degree. From theory and foreign actual conditions, this is foundation for high - efficient governance and good performance. all the committees subordinating board of directors is important tool for shareholder power executed.

Secondly, it is an important position of the manpower capital in the resource structure of trust company that determines that the administration structural design of the trust company should especially emphasize the importance of the manpower capital. With opening and completion of Chinese capital market, trust company financing channel constantly expanded. As against to financial capital that cost reduces constantly, manpower capital becomes rarer gradually. I think in a specific enterprise category such as the Chinese trust company, the manpower capital has sufficient reasons to participate in the administration of the company, and this reflects in two aspects again: First, executing some surplus governance power. Second, having the right for surplus profit, i. e. sharing organization rent.

Third, trust company characteristic of high liabilities determines importance of the creditor governance. It has characteristic of high in proportion in debt that the trust company of China is regarded as the financial institution. The creditor's rights state of the trust company meets the condition that author's theory is designed basically. According to the design of the model, the outside (the creditor, trust concerned people) should enjoy and manage power partly inside the company, by ensuring the interests of the outside people (the creditor, trust concerned people) not to be damaged. The writer believes the independent directors introduced from the board of directors represent the interests of the outside people (the creditor, trust concerned people). This part of directors can represent all outside people including bank on the property right (the creditor, trust concerned people), therefore there is stronger influence power inwards. Meanwhile, scale of trust assets rapid increase, gives arise to trust related people group expanded, which proposes a new subject of common administration by trust concerned people (client and beneficiary) to trust company. So, fu-

ture optimization in governance, high energy and pluralistic optimized governance mode concerned people of trust related can be regarded as a kind of perspective innovation in trust industry.

The main theory of this text and practice contribution are as follows:

(1) according to the in - depth analysis to the China trust industry, especially to China trust industry and the real examples of some key trust companies, draw the conclusion: The Chinese trust industry seriously lacks governance, the governance mode urgently to be structured and optimized.

(2) show clearly origin of Chinese trust industry governance defect is “key people leading type” governance mode. Its characteristic is the foundation that a trust company of our country forms, family governance is inevitability of private capital development of our country, and the general reality is “key people governance”. Its essential feature is as follows: ①It is “key people” that centralize power in one person’s hands, and often incorporate governance power, right of execution and authority to supervise into an organic whole in the backstage in front of the platform, carrying on company’s decision and operation, shareholders’ meeting, board of directors and board of supervisors put empty. ②It is special duality that makes company’s governance mode and company administration structure in “Pyramid” type. Different from binary governance mode with continent law country such as Germany, our trust country adopts the parallel formula of duality mode, i. e. board of directors and board of supervisors are produced by the shareholders’ meeting, which have equal legal status, the board of directors is only responsible for shareholders’ meeting, needn’t be responsible for board of supervisors; the board of supervisors have authority only to supervise but not to make decision. The basic characteristic of the administration structure of our trust company presents administration structure of “Pyramid”, the lowest of this structure is shareholders’ meeting, which is the highest authority of the trust company, determining all great items of trust company. The intermediate level of this structure is the board of directors and board of supervisors, bearing policy - making power and supervision authority respectively; managers at the top (“key people” occupy key status in “inside people”) bear the rights of execution of the daily affairs of trust company, responsible for board of directors of the company. ③serious phenomenon of conspiracy. Because information totally asymmetric, relevant interests subject split up and key people’s participation form “the extensive conspiracy”, such outside people as minority stock holder, staff and the creditor etc. are in absolute in-