

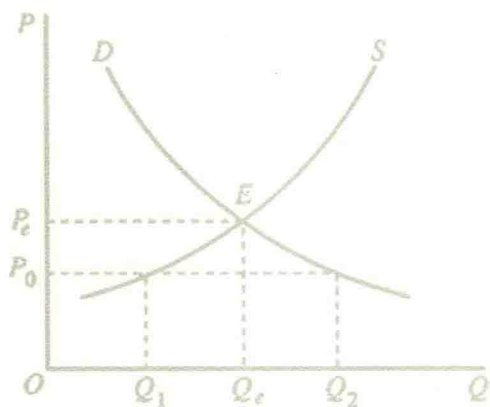
国家社会科学基金重点项目



经济稳定与金融稳定研究

法律经济学视角

席涛◎著



The Study of Economic Stability and
Financial Stability

A Law and Economics Perspective

 中国人民大学出版社

经济稳定与金融稳定研究

法律经济学视角

席 涛◎著

中国人民大学出版社

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前言

笔者主持的是国家社会科学基金重点项目“保持经济稳定、金融稳定和资本市场稳定对策研究”（项目批准号：08AJY037），于2009年4月立项，2014年6月完成项目报送全国哲学社会科学规划办公室提请评审，规划办于2015年8月审核通过准予结项。该项目从论证、投标、获准立项、项目论证会、发表阶段性成果、项目结项匿名评审到再修改完成项目，持续6年多时间。其间，有对项目分析框架的反复质疑，有对阶段性成果发表前的数次修改，疑问与思考交织，传承与创新并存。终于要交出书稿了，追忆从获准立项到完成项目这一理论探讨过程，也是挺有意义的。

重点项目于2009年4月获准立项，2009年7月17日召开了项目论证会，论证会邀请了中国社会科学院经济研究所所长刘树成研究员、世界经济与政治研究所所长张宇燕研究员、金融研究所尹中立研究员，国家行政学院经济学部时红秀教授，全国社会保障基金理事会副理事长王忠民教授，人力资源和社会保障部社会保险基金监督司林志超处长、社会保障研究所金维刚副所长，中国政法大学民商法学院费安玲教授、刘少军教授，中国政法大学法学院焦洪昌教授，中国政法大学法和经济学研究中心徐光东教授、胡继晔教授、贵斌威副教授等20多人，参加项目的讨论。

论证会与专家教授听取了笔者的论证报告后，提出了许多中肯的意见和建议。专家教授建议，保持经济稳定与金融稳定，不能就经济论经济，也不要就金融论金融，经济不稳定与金融不稳定，在经济层面上表现为通货膨胀率过高，或者投资、消费和进出口之间的结构不平衡，或者国际金融危机、经济危机的外部冲击导致的国内经济不稳定，或者企业减产、停产和破产，或者发生银行挤兑。要防范经济不稳定、防范金融不稳定，根本在于从制度上探讨保持经济稳定、金融稳定的长期法律制度安排。项

目组中包括具有经济学背景和法学背景的研究成员，应发挥成员法律与经济交叉学科的专业特长，从世界经济不确定性、美国金融危机和欧洲债务危机的时代大背景考虑，探讨中国保持经济稳定、金融稳定的短期对策和长期制度安排。研究这个重点项目，既有实践意义，也有理论意义。

笔者听取了与会专家教授的意见和建议，拓宽了对项目的思维视野，提高了对项目的理解深度。对原来的项目分析框架，项目组成员又反复进行了讨论和修改，融合经济学和法学的内容，运用经济学分析方法和法学分析方法，从法律与经济二级交叉学科的视野，重新构建了项目分析框架，基本主题是探讨经济稳定与法律制度、金融稳定与法律制度之间的关系，用法律制度保障经济稳定和金融稳定。基于这样的思路分析，经济的不确定性和风险导致经济不稳定，关键和货币政策有关，和《中国人民银行法》相关联；调整产业结构，支持新兴产业投资，抑制过剩产能，关键在于商业银行贷款结构，贷款结构和《商业银行法》相关联；防范经济不稳定出现的风险或者危机，防止出现经济危机导致的企业破产和失业，必须有相应的社会救济措施和相应的社会保障，就和《社会保险法》相关联；防范经济的不确定性和风险，建立市场机制与政府监管的良性互动关系，既要发挥市场调节资源配置的基础性作用，也要发挥政府矫正市场失灵的作用，就和《行政许可法》相关联。基于这样的理解思路，项目构建了经济与法律相结合的分析框架，在这个框架内，探讨从法律制度上保持经济稳定与金融稳定。

项目分析框架建立后，笔者围绕分析框架安排研究进度，相继发表了若干文章，形成了项目研究的阶段性成果，这些阶段性成果经过再修改，就构成了项目的最终成果，也就是这本专著。

发表的阶段性成果也引起了一些关注和影响，有几篇阶段性成果得到了中央政治局委员、全国人大常委会副委员长和全国政协副主席等党和国家领导人的批示，有四篇阶段性成果被国家发展改革委、中国人民银行、全国人大常委会法工委和国务院法制办高度关注，有两篇阶段性成果分别应邀参加了2009年世界银行和国际货币基金组织在加拿大渥太华主办的“金融危机与世界经济稳定研讨会”、2010年经济合作与发展组织（OECD）在法国巴黎主办的“金融危机后监管改革探讨研讨会”。尤其是这些文章中提出的从宏观经济十五个经济变量关系探讨《中国人民银行法》的分析框架、从银行脆弱性和银行风险探讨《商业银行法》的分析框架、从市场失灵视角探讨《行政许可法》的分析框架，在学术理论界引起高度关注、讨论和质疑。

因为项目研究时间设定，该项目报送匿名评审，通过了项目结项，但保

持经济稳定、金融稳定和资本市场稳定的重大理论命题，还有许多需要继续深入研究的问题。笔者在课题中虽然提出了实体经济、虚拟经济、要素价格低估与收入分配的平衡发展问题，虽然提出了制定货币政策需要综合考虑物价、资产价格、汇率、贷款利率和存款利率等十五个经济变量，虽然提出了中国经济肌体自身不均衡而由于外部冲击发生10年一次的经济大波动，包括1989年发达国家违约合同、1997年东南亚金融危机和2007年美国金融危机导致的中国经济大波动，虽然提出了制定政策、立法、修法和废法要进行政策、法律对经济影响、社会影响的事前评估，但由于时间限制、研究方法的局限、经济数据的收集难度、分析模型的不确定性等原因，并没有进行深入研究，或者得出学者一致认可的研究结论。这既是项目结项存在的问题，也是下一步研究的重点。这些预留的问题，有待以后潜心问学。

关于项目的分析框架和问题，笔者自2009年以来在给中国政法大学法和经济学研究中心硕士和博士、法学院硕士和博士、民商法学院硕士和中欧法学院硕士讲授的相关课程中，都做过讲解和讨论。学生们对从法律与经济的视角研究经济稳定、金融稳定与法律制度的相关性，研究依靠法律制度保障中国经济稳定和金融稳定，以及实证分析方法和规范分析方法相结合的分析方法，有着极大的兴趣与偏好，也提出了分析框架存在的问题、意见和建议。

在讨论建立分析框架和项目研究过程中，法和经济学研究中心的徐光东教授、胡继晔教授、张卿教授、贵斌威副教授、李文静老师、周天舒老师和徐文鸣老师提出过针对性意见和建议。专著完稿后，2012级博士生吴秀尧，2013级博士生胡明、杜津宇、高尔坦，2015级博士生陈建伟、冯诗婷和硕士生戴昕琦、胡婷、温彪，参与了从第一稿到第三稿的讨论与校正工作。法和经济学研究中心学术秘书梁敏老师为项目的讨论、修改和专著出版做了大量的组织与协调工作。在此，对他们的劳动与贡献表示衷心感谢！

感谢中国人民大学出版社的编辑，他们用高度的敬业精神和认真负责的编辑劳动，发现和校正了专著中的许多问题，使得本书能以高质量出版。

本书中存在的问题和错误，均由作者自负。

本专著出版，得到国家社会科学基金重点项目资助，在此表示感谢。

席涛

2016年3月6日于蓟门法大

Preface

My project, the Studies of Strategies to Maintain Economic Stability, Financial Stability and Capital Market Stability (Project Approval Number: 08AJY037), was initiated back in the April of 2009, and it was completed in the June of 2014 and was submitted to National Planning Office of Philosophy and Social Science for review. The Office approved the project in the August of 2015. The on-going project continued for 6 years, from the initial stage of demonstration, tender submission, approval to initiate, demonstration conference, publication of results by different phases, anonymous reviews for the project's knot, to additional amendments to the project at the end. During this period, I questioned the analytic framework of my project and amended the results from different phases before publishing them. The entire process was an interwork of questioning and thinking, coexistence of inheriting and creating. Now the project was finally completed and it is time to submit my script, it is meaningful for me to trace back to my thought process and investigate my own work.

This key project received its approval to initiate in the April of 2009. On the 17th of July in 2009, a demonstration conference was called for this project. The attendees of this conference included but not limited to Shucheng Liu, Director from Institute of Economics Chinese Academy of Social Sciences, Yuyan Zhang, Director from Institute of World Economics and Politics Chinese Academy of Social Sciences, Zhongli Yin, Analyst from Institute of Financial Research Chinese Academy of Social Sciences, Professor Hongxiu Shi from Economics Department in China Acade-

my of Governance, Zhongmin Wang, Vice President of National Council for Social Security Fund, the People's Republic of China, Zhichao Lin, Director of Social Insurance Funds Supervision Department of Ministry of Human Resources and Social Security of the People's Republic of China, Weigang Jin, Vice Director of Social Insurance Research Institute, Professor Anling Fei, Shaojun Liu from Civil and Commercial Law School and Professor Hongchang Jiao from Law School in China University of Political Science and Law, Professor Guangdong Xu, Professor Jiye Hu and Associate Professor Binwei Gui from the Center for Law and Economics of China University of Political Science and Law. These 20-odds experts were part of the discussion of this project.

After listening to my proposal at the conference, the experts offered many pertinent opinions and advice. They suggested that in order to make meaningful discussion on the strategies to maintain economic and financial stability, I should not consider the economic or finance as they stand. The fluctuation in economy and finance could appear in the forms of overrated inflation rate; the un-equilibrium structure of investment, expenses and import and export trades; unstable domestic economy inflicted by the impacts from international financial crisis; or reduction of output, discontinuation or even bankruptcy of domestic corporations; or even runs on banks. In order to prevent unstable economy or unstable finance, it was essential to discuss the issue from its institutional aspect and to focus on the legal institutional arrangements to maintain long-term economic stability and financial stability. The project team consisted of members with economics background and legal background, which allowed them to give full play of their expertise and to study the short-term strategies and long-term institutional arrangements to maintain domestic economic and financial stability in the times of Financial Crisis in United States, European Debt Crisis and Uncertainty in Global Economy. As such, the project possessed both practical significance and theoretical significance.

I have listened to their opinions and advice, which helped broaden my view to this project and helped me understand it better. After the conference,

I have discussed and amended the original analytic framework over and over. I then reconstructed the analytic framework by employing the content from economics and law, their respective analytic approach and viewpoint from the interdisciplinary of economics and law. The theme was to study the relationship between economic stability and legal institution and the relationship between financial stability and legal institution and how to retain economic and financial stability with legal institution. Under this rationale, the economic instability caused by economic uncertainty and risks, its key lied in the currency policy and is related to Law of the People's Republic of China on the People's Bank of China; to adjust industrial structure, support investments in emerging industries and inhibit excess capacity, its key lied in the loan structure in commercial banks and the loan structure was related to Law of the People's Republic of China on Commercial Banks; to prevent the risks that may occur in the economic instability and to prevent the corporations bankruptcy and job loss caused by economic crisis, there should be remedy measures issued by the government and corresponding social insurance, thus its key lied in The Social Insurance Law of the People's Republic of China; to prevent the economic uncertainty and risks and build a positive interactive relationship between market mechanism and government supervision, not only was it necessary to exert the basic role of market regulation and allocation of resources but also necessary to exert the influence of government when the market failed, thus its key lied in Law of the People's Republic of China on Administrative Permission. From this perspective, this project has built an analytic framework based on the inter-discipline of economics and law. Within this framework, I studied the strategies to maintain economics stability and financial stability from the perspective of legal institution.

After building the framework, I planned the research schedule according to the analytic framework and subsequently published the articles that consisted of the results from phases of this research project. After amending results by phases, these results form the final results of this project, and then this book.

The results by phases published by me have also aroused some attentions

and impacts. Some of the results have received comments and instructions from Members of the Political Bureau of the Communist Party of China Central Committee, the Vice Chairman of Standing Committee of National People's Congress, the Vice Chairman of Chinese people's Political Consultative Conference and other chairmen from the party central committee and national leaders. There were four results by phases which received high attentions from National Development and Reform Commission, the People's Bank of China, the Legislative Affairs Commission of the Standing Committee of the National People's Congress and Legislative Affairs Office of the State Council of the People's Republic of China. Another two results by phases were invited respectively to participate in the Financial Crisis and World Economic Stability Conference held by World Bank and International Monetary Fund in Ottawa, Canada in 2009 and Post Financial Crisis Regulatory Reform held by OECD in Paris, France in 2010. Especially the analytic framework to study the relationship between 15 variables in macro-economics and Law of the People's Republic of China on the People's Bank of China, the analytic framework to study the fragility and risks of banks from the perspective of Law of the People's Republic of China on Commercial Banks have both drawn great attentions, discussions and questions from the academia.

Due to time constraints, this project was submitted for anonymous review and approved for finalization, but there are still a large number of topics to be further discussed in order to fully study this topic. Even though I raised questions of balanced development in the topics of substantial economy, virtual economy, underestimated factor price and income allocation; even though I proposed the drawing up currency policy needed to take the 15 variables such as commodity price, asset price, exchange rate, borrowing rate and interest rate into consideration; even though I suggested that the domestic inherent unbalanced economic growth impacted by external economic fluctuation in 10 years, including Breach of Contract by Developed Countries in 1989, the Southeast Asian Financial Crisis in 1997 and Subprime Mortgage Crisis in 2007; even though I raised that before drawing up Policies, Acts, Amendments, Abolition, prior assessment regarding how they

will affect the economy and society is highly recommended, I did not go in depth to research the problem or obtain the consistent research findings due to the time constraints, the limited research approaches, the difficulty of collecting economics data and the uncertainty in the analytic framework. These problems even existed at the finalization of the project and became the emphasis of my future research and study.

I have given explanation and held discussion regarding the project's analytic framework and questions in the master's and doctoral courses in the Center for Law and Economics of China University of Political Science and Law in Law School, and master courses of Civil and Commercial Law School and the China-EU School of Law. My students showed interests in, from the viewpoint of law and economics, studying the correlation between economic stability/financial stability and legal institution, studying the strategies to maintain domestic economic stability and financial stability with the help of legal institution and the analytic methodology combining positive analysis and normative analysis. They also raised questions and offered opinions and suggestions.

During the course of building framework and researching of this project, Professor Guangdong Xu, Professor Jiye Hu, Professor Qing Zhang, Associate Professor Binwei Gui, Dr. Wenjing Li, Dr. Tianshu Zhou and Dr. Wenming Xu from the Center for Law and Economics of China University of Political Science and Law have given me pertinent opinions and advice to my research. After finishing the script, Ph. D. candidates Xiuyao Wu of class 2012, Ming Hu, Jinyu Du, Ertan Gao of class 2013, Jianwei Chen, Shiting Feng of class 2015, M. A. candidates Xinqi Dai, Ting Hu and Biao Wen participated in the discussion and revision from 1st script to 3rd script. Min Liang, the academic secretary from the Center for Law and Economics of China University of Political Science and Law, has done a great deal of coordination for the discussion, revision and publication for this project. I cannot thank them enough for their work and contribution to my project.

Thanks to the editors of China Renmin University Press. They found and corrected many mistakes in my script with a high degree of professionalism and

responsible editing work, which enabled it to be published in high quality.

I am responsible for the problems and mistakes in my book.

I would like to express my gratitude to National Planning Office of Philosophy and Social Science, who funded the publication of this book.

Xi Tao

At China University of Political Science and Law in Beijing

Mar 6th, 2016

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