

**CHINA** LISTED COMPANY  
CORPORATE GOVERNANCE REPORT

OECD-China: Corporate Governance  
Joint Assessment Programme  
Self-Assessment

# 中国上市公司治理 发展报告

OECD-中国：公司治理共同评估项目自评估

中国证券监督管理委员会

**CHINA** LISTED COMPANY  
CORPORATE GOVERNANCE REPORT

OECD-China: Corporate Governance  
Joint Assessment Programme  
Self-Assessment

# 中国上市公司治理 发展报告

OECD-中国：公司治理共同评估项目自评估

中国证券监督管理委员会

责任编辑：戴 硕 董 飞

责任校对：刘 明

责任印制：程 颖

### 图书在版编目(CIP)数据

中国上市公司治理发展报告(Zhongguo Shangshi Gongsì Zhìlì Fāzhǎn Bào gào): OECD—中国: 公司治理共同评估项目自评估: 汉英对照/中国证券监督管理委员会. —北京: 中国金融出版社, 2010.12

ISBN 978-7-5049-5760-3

I. ①中... II. ①中... III. ①上市公司—企业管理—研究报告—中国—汉、英 IV. ① F279.246

中国版本图书馆CIP数据核字 (2010) 第236475号

出版 **中国金融出版社**

发行

社址 北京市丰台区益泽路2号

市场开发部 (010) 63266347, 63805472, 63439533 (传真)

网上书店 <http://www.chinafph.com>

(010) 63286832, 63365686 (传真)

读者服务部 (010) 66070833, 62568380

邮编 100071

经销 新华书店

印刷 北京松源印刷有限公司

尺寸 180毫米×260毫米

印张 16.75

字数 258千

版次 2010年12月第1版

印次 2010年12月第1次印刷

定价 68.00元

ISBN 978-7-5049-5760-3/F.5320

如出现印装错误本社负责调换 联系电话(010) 63263947

## 编 委 会

主 任： 尚福林

副主任： 桂敏杰 李小雪 庄心一 姚 刚 刘新华  
姜 洋 朱从玖 吴利军

委 员： 杨 桦 童道弛 祁 斌 赵争平 王 林  
张思宁 黄 炜 焦津洪 孙树明 刘洪涛  
张慎峰 张育军 宋丽萍 俞建华 于宝恒

# 专家咨询委员会

(按姓氏笔画排序)

马明哲 王 石 王 巍 王东明 宁向东 刘鸿儒  
苏树林 李 扬 李兆熙 李维安 肖 钢 张维迎  
张新文 陈清泰 林义相 金立扬 胡汝银 贾小梁  
徐乐江 郭广昌 郭树清 鲁冠球

## 编写工作小组

组 长： 杨 桦

副组长： 欧阳泽华 赵立新 蔡建春 安青松 严伯进  
刘 燕

工作人员： 黄 明 张卫东 潘春生 祝 欢 高 莉  
蒋星辉 孙虹霞 蒋学跃 陈朝晖 黄建山  
雍 旭 任顺英 余江炫 任 为 周宏达

## 经合组织专家组

经合组织公司事务处：

Grant Kirkpatrick, Fianna Jesover

经合组织公司治理委员会：

顾游鹏(Ben Cushman), Magda Bianco

**CHINA LISTED COMPANY  
CORPORATE GOVERNANCE REPORT  
EDITORIAL COMMITTEE**

**Chairman:** SHANG Fulin

**Vice Chairmen:** GUI Minjie, LI Xiaoxue, ZHUANG Xinyi,  
YAO Gang, LIU Xinhua, JIANG Yang,  
ZHU Congjiu, WU Lijun

**Members:** YANG Hua, TONG Daochi, QI Bin,  
ZHAO Zhengping, WANG Lin,  
ZHANG Sining, HUANG Wei,  
JIAO Jinhong, SUN Shuming, LIU Hongtao,  
ZHANG Shenfeng, ZHANG Yujun,  
SONG Liping, YU Jianhua, YU Baoheng

## CONSULTING COMMITTEE

MA Mingzhe, WANG Shi, WANG Wei, WANG Dongming,  
NING Xiangdong, LIU Hongru, SU Shulin, LI Yang,  
LI Zhaoxi, LI Weian, XIAO Gang, ZHANG Weiying,  
ZHANG Xinwen, CHEN Qingtai, LIN Yixiang, JIN Liyang,  
HU Ruyin, JIA Xiaoliang, XU Lejiang, GUO Guangchang,  
GUO Shuqing, LU Guanqiu



## **DRAFTING TEAM**

**Team Leader:** YANG Hua

**Deputy Leaders:** OUYANG Zehua, ZHAO Lixin,  
CAI Jianchun, AN Qingsong, YAN Bojin,  
LIU Yan

**Members:** HUANG Ming, ZHANG Weidong,  
PAN Chunsheng, ZHU Huan, GAO Li,  
JIANG Xinghui, SUN Hongxia,  
JIANG Xueyue, CHEN Zhaohui,  
HUANG Jianshan, YONG Xu,  
REN Shunying, SHE Jiangxuan,  
REN Wei, ZHOU Hongda

## **OECD Experts Team**

**OECD Corporate Affairs Division:**

Grant Kirkpatrick, Fianna Jesover

**OECD Corporate Governance Committee:**

Ben Cushman, Magda Bianco

## 序 言

今年是中国资本市场建立20周年。过去20年，我国资本市场从无到有，从小到大，从区域到全国，逐步发展壮大，为促进国民经济和社会发展作出了重要贡献。资本市场的发展推动了现代企业制度在中国的确立，作为中国公司群体优秀代表的上市公司，是资本市场发展的基石。上市公司治理制度的完善及治理水平的提高，夯实了资本市场基础，增强了资本市场的吸引力和活力，有效发挥了资本市场优化资源配置的功能，促进了我国资本市场的健康稳定发展。

中国的公司治理实践是在国有企业改革和民营企业发展过程中逐步探索和建立，并结合中国自身实际，形成了有中国特色的公司治理经验和模式。中国的公司治理是由政府和市场参与者共同推动发展的，政府对公司治理法律体系的建设和完善发挥了主导作用。中国有关公司治理的法律体系建设虽然起步较晚，但发展迅速，日益完备。中国证监会一直将完善公司治理作为工作重点之一，按照《公司法》和《证券法》的框架，在独立董事、信息披露、关联交易、股东大会、并购重组、投资者保护等方面采取了各项有力措施，出台了一系列部门规章和规范性文件，包括《上市公司治理准则》、《上市公司信息披露管理办法》、《上市公司章程指引》、《上市公司股东大会规则》、《关于在上市公司建立独立董事制度的指导意见》、《关于加强社会公众股股东权益保护的若干规定》、《上市公司收购管理办法》、《上市公司重大资产重组管理办法》、《上市公司股权激励管理办法（试行）》等。这些部门规章与规范性文件的制定与实施，极大地推动了公司治理改革的进程，有力地促进了上市公司治理水平的提升。同时，在中国证监会的推动下，从2005年起，开展了上市公司股权分置改革、清欠和上市公司治理专项活动，有力地夯实了市场基础，对于培育市场信心，鼓励投资稳健发展也具有重要的现实意义。

中国公司治理实践的发展与法律体系的不断完善，为世界各国公司治理提供了有益参考，同时，中国也需要进一步学习借鉴各国及国际组织的成熟经验，客观评析中国公司治理取得的成就及有待完善的地方。正是基于这一缘由，中国证监会和经济合作与发展组织（Organisation for Economic Co-operation and Development，简称“经合组织”）达成了“OECD—中国：

公司治理共同评估项目”的合作意向。作为应对经济全球化的挑战而成立的国际组织，经合组织一直致力于为各国政府提供一个探讨、发展和完善经济及社会政策的平台。经合组织在公司治理领域有着长期的经验，其制定的《公司治理原则》为公司治理提供了一套国际化的标准，是国际上最有影响力的公司治理指引之一，在其成员国中具有广泛的影响。此次中国证监会与经合组织的携手合作，旨在推进中国的公司治理法律制度与国际通行规则之间的对话与交流，对于探索中外公司治理的兼容模式具有积极意义。

中国证监会与经合组织合作的“OECD—中国：公司治理共同评估项目”于2009年正式启动。根据双方协商安排，中国证监会工作小组经过反复讨论和修订，完成了中国上市公司治理自评估报告，也即本书《中国上市公司治理发展报告》，并将报告英文版提交给经合组织。经合组织公司治理委员会会议对报告进行了讨论，并提出了反馈意见。目前，报告已经定稿，主要从股东权利、平等对待股东、信息披露、董事会和监事会的责任与监督、利益相关者与公司社会责任等方面阐述了中国公司治理情况。其中最具特色的部分，是对照OECD《公司治理原则》的相应条文，详细缕析了中国公司治理的相关制度和实践。

中国公司治理机制以及其他公司法律制度的建设，经历了从借鉴各国公司治理经验到形成自己公司治理模式的转变。长期以来，中国都是结合自己具体国情，虚纳百川，借鉴学习，积极融入世界经济体系。试望未来，中国将积极参与到国际性的规则制定之中。中国与世界的对话交流，中国证监会与国际性机构的合作仍会持续地、广泛地展开，这对于中国企业走向世界，以及各国企业投资中国，都是十分有益的。

尚福林

中国证券监督管理委员会主席

# Preface

This year marks the 20th anniversary of the Chinese capital market. In the past two decades, it has started from scratch and experienced an extraordinary growth with market size increasing from small to big and market coverage from regional to nationwide, playing an important role in the national economic and social development. The development of the capital market has promoted the establishment of modern enterprise system in China. Listed companies, outstanding representatives of Chinese enterprises, are the corner stone of sound capital market development. The improved governance system and higher governance level of listed companies have consolidated the foundation of the capital market, increased its attractiveness and vitality, given an effective boost to the capital market's role in optimizing resource allocation and promoted the healthy and steady development of the Chinese capital market.

Corporate governance in China has been explored and established in the process of state-owned enterprises reform and private enterprises growth. Corporate governance experience and model with Chinese characteristics have come into being in light of the actual situation in China. It has developed under the joint effort of the government and market participants, with the former playing a leading role in the construction and improvement of the corporate governance legal framework. Although China has started the creation of a legal system for corporate governance rather lately, the system has developed fairly quickly and increasingly full-fledged. The China Securities Regulatory Commission (CSRC) has all along identified the improvement of corporate governance as a priority, adopted various strong measures in the areas of independent directorship, information disclosure, interest related party transaction, general shareholders' meeting, merger and acquisition and reorganization and investor protection within the framework of the Company Law and the Securities Law, and issued a series of department rules and normative documents, including Code of Corporate Governance of Listed Companies, Regulations on Information Disclosure of Listed Companies, Guidelines on Articles of Association of Listed Companies, Rules on Shareholders' Meetings of Listed Companies, Guiding Opinions on the Establishment of the System of Independent directors in Listed Companies, Provisions on Strengthening the Protection of the Rights and Interests of Public Shareholders, Regulations on the Takeover of Listed Companies, Regulations on Major Asset Reorganization of Listed Companies, and Regulations on Option Incentives of Listed Companies (Trial) etc. The formulation and implementation of these regulatory provisions and normative documents have greatly promoted the corporate governance reform process and facilitated the improvement

of corporate governance level of listed companies. Meanwhile, pushed by the CSRC, a special campaign was launched as of 2005 for listed companies to conduct non-tradable share reform, clear off outstanding debts from controlling shareholders and improve corporate governance. The campaign has consolidated the market foundation and is of great practical significance to build up market confidence and encourage steady investment growth.

The development of corporate governance practices in China and the constant improvement of the relevant legal system offer useful information for other countries. China also needs to further draw upon mature experiences of other countries and relevant international organizations and objectively evaluate achievements and gaps. For this reason, the CSRC and the Organisation for Economic Co-operation and Development (OECD) reached an agreement to cooperate on a joint corporate governance assessment programme. As an international organization born to deal with challenges of economic globalization, the OECD has all along committed itself to providing a platform for governments to explore, develop and improve economic and social policies. The organization has long-term experience in the field of corporate governance. Its Principles of Corporate Governance provide a set of international standards for corporate governance and have extensive influence in member states as one of the most influential guidance on corporate governance in the world. The cooperation between the CSRC and the OECD is designed to advance dialogue and communication between Chinese corporate governance legal system and internationally accepted rules and therefore of special significance for the exploration into a mode of compatibility between Chinese and foreign corporate governances.

The OECD-China corporate governance joint assessment programme was formally launched in 2009. Upon consulted arrangement between the two sides, the CSRC working group completed a self-assessment report after meticulous discussions and revisions, i.e., the present China Listed Company Corporate Governance Report. The English edition of the report was presented to the OECD, which then provided feedbacks and conducted a discussion about the report at its Corporate Governance Committee meeting. The now finalized report describes the status of corporate governance in China, covering shareholders' rights, equal treatment of shareholders, information disclosure, responsibility and supervision of the board of directors and the supervisory board, stakeholders and corporate social responsibility. It features a detailed comparison between Chinese corporate governance system and practices and the relevant OECD principles.

The creation and development of Chinese corporate governance and other legal systems governing companies have moved from drawing upon experiences of other countries to finding its own corporate governance model. For a long time, China has humbly learned from others on the basis of its national conditions and made active efforts to integrate itself into the world economic system. Looking into the future, China will take an active part in international rule-making. Dialogue and communication between China and the world including cooperation between the CSRC and international institutions will continue and expand comprehensively, which will be very much beneficial for Chinese enterprises to go global and for foreign enterprises to invest in China.

SHANG Fulin

Chairman of China Securities Regulatory Commission

# 序 言

过去的二十多年，中国政府相关部门将加强公司治理框架的建设作为加速企业改革和资本市场发展的一部分，为其发展作出了不遗余力的贡献。的确，中国自1990年股票交易市场建立以来，公司治理框架发生了改变，资本市场也发展得有声有色。许多新的机构已经建立起来，诸多新的法律和法规也已通过，而这个过程仍在继续。

在这份自我评估报告中，中国证券监督管理委员会参照经合组织公司治理原则介绍了中国的法律和法规，记录了其在多大程度上得以落实，并指出了未来发展的方向。该报告经过了经合组织公司治理委员会的详细讨论。中国政府相关部门制定与发展的法律和监管框架以其广度和深度给经合组织公司治理委员会留下了深刻的印象。该报告在经合组织公司治理原则的所有方面都进行了阐述。

自我评估报告是一项重要而及时的基准性工作。经合组织非常高兴该报告在上海举行的由中国证监会、上海证券交易所、深圳证券交易所联合主办的经合组织——亚洲公司治理圆桌会议上发布。该报告将有助于在国家与地区间更好地增进理解，交流经验。

展望未来，中国——如同世界上许多其他国家一样面临着挑战：如何确保贯彻落实法律法规从而规范公司治理，对于许多致力于维护资本市场建设及企业发展的监管部门而言是一个关键的问题。这已成为经合组织公司治理委员会的工作中心。

这份报告是始于2004年的经合组织——中国公司治理政策对话的重大成果。它已被证明在增进相互理解和支持中国改革议程上取得了极大的成功。经合组织期待在完善公司治理方面继续深化与中国的合作伙伴关系。



Richard Boucher  
经合组织副秘书长

# Preface

For more than twenty years, Chinese authorities have worked hard to build a stronger corporate governance framework as part of accelerated enterprise reform and capital market development. Indeed, since the stock-market was established in 1990, the corporate governance framework has been transformed and capital markets have developed dynamically. New institutions have been created and many new laws and regulations have been adopted -- and this process continues.

In this Self-Assessment, the Chinese Securities Regulatory Commission (CSRC) presents China's laws and regulations by reference to the OECD Principles of Corporate Governance. The assessment documents how much has been accomplished, and points out the direction for further development. The report was thoroughly discussed by the OECD Corporate Governance Committee which was impressed by the breadth and depth of the legal and regulatory framework that has been developed by the Chinese authorities. All aspects of the Principles are addressed.

The Self- Assessment is an important and timely benchmarking exercise. The OECD is very pleased that it is being launched at the OECD Asian Roundtable on Corporate Governance in Shanghai, hosted by the CSRC and the Shanghai and Shenzhen Stock Exchanges. The Self-Assessment will contribute to better understanding and exchange of experience among all the jurisdictions in the region.

Going forward, China – like many other countries around the world – faces the challenge of ensuring that its laws and regulations are translated into changed corporate practice. This is a key issue for many authorities who seek to sustain capital market and corporate development and has become central to the OECD Committee's work.

This report is a key output of the OECD-China Policy Dialogue on Corporate Governance that began in 2004 and has proven very successful in promoting mutual understanding and supporting China's reform agenda. The OECD looks forward to continuing to deepen our partnership with China in improving corporate governance.



Deputy Secretary General, OECD



# 目 录

<b>第一章 中国公司治理框架</b>	<b>1</b>
2 一、中国公司治理的形成及发展	
8 二、中国上市公司治理的法律框架	
13 三、中国上市公司治理的监管体系	
<b>第二章 股东权利</b>	<b>17</b>
18 一、股东权利概述	
18 二、与OECD原则比较，我国的具体做法	
<b>第三章 平等对待股东</b>	<b>29</b>
30 一、平等对待股东概述	
31 二、与OECD原则比较，我国的具体做法	
<b>第四章 信息披露</b>	<b>39</b>
40 一、信息披露的基本概述	
44 二、与OECD原则比较，我国的具体做法	
<b>第五章 董事会、监事会的责任与监督</b>	<b>67</b>
68 一、我国董事会及监事会制度概述	
71 二、与OECD原则比较，我国的具体做法	
<b>第六章 利益相关者与公司社会责任</b>	<b>85</b>
86 一、利益相关者权益在中国的法律保障	
90 二、与OECD原则比较，我国的具体做法	