


CORPORATE GOVERNANCE

公司治理理论

李 健 著



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谨以此书献给

为国有企业改革

不倦努力的人们！

序

《公司治理论》一书源于李健博士对国有企业改革的理性反思，作者试图对我国国有企业改革进行有价值的探索。李健博士多年来致力于公司治理理论的研究，并积极参加公司治理实践活动，对公司治理问题颇有见解，也取得了较好成绩。他撰写的《公司治理论》一书就是这种努力的成果。

公司制作为现代企业制度的重要形式，对转换企业经营机制、调整产业结构、增强企业活力、提高经济效率、促进经济发展具有积极的作用。然而，在公司制改造过程中，人们没有把重点放在规范公司治理制度、转变公司运作机制以及建立科学管理体制上，许多所谓的公司不符合现代公司制度的一般规范，与国际惯例要求的规范公司也相去甚远。目前，我国国有企业改革的方向就是建立现代企业制度，建立现代企业制度的重点和核心就是规范公司治理制度，从这个角度来看，研究公司治理问题对我国国有企业改革有着重要的理论价值和实践意义。

在书中，李健博士深入到国内外经济理论研究的前沿，又结合亲身实践的经验，有选择地借鉴和运用相关理论，阐述了公司

内部治理机制和外部治理机制，分析了国有企业治理的现状和问题。总的说来，本书的新意和特点主要表现在：

第一，提出了公司综合治理理论的观点，初步建立了公司综合治理理论的理论框架。

第二，理论联系实际，提出了解决我国国有企业治理问题的实际对策以及建立公司治理制度的建议。

第三，观点明确，如明确指出我国国有企业改革就是国有企业治理和管理改革；积极提倡国有企业产权结构多元化；坚决反对“国有企业改革的惟一出路是私有化”的观点；认为“所有者缺位”的观点不成立，等等。这些体现了作者自己独立的研究风格和学术精神。

全书结构合理，逻辑性强，文字流畅且论述充分，资料丰富，运用得当。纵观全书，确实有不少观点可供参考，值得一读。鉴于此，我很高兴为之作序，并很乐于把这部著作介绍给大家。

黄菊波

1999年8月于北京

前 言

我国经济体制改革是一项前无古人、后无来者的伟大事业，没有现成的模式可以套用，即使有可以借鉴的经验，由于中国国情的特殊性和复杂性，中国国有企业改革也是一个“摸着石头过河”的过程。我国国有企业改革是从放权让利、承包经营、股份制试点等过程中，认识到必须建立现代企业制度的。建立现代企业制度也是一个从不知道应该做些什么，了解到应该做些什么，认识到应该如何去做，理解了怎样做最好的过程。我国国有企业改革是从认识到传统的国有企业效率低、缺乏竞争力开始的。十几年以来，中国政府的各级领导、理论界的专家学者、企业家为国企改革进行了不懈的努力，终于认识到中国大中型国有企业的惟一出路就是建立现代企业制度，现代企业制度就是规范的公司治理制度和科学的管理机制，这是毋庸置疑的。

本书指出我国国有企业改革实际上就是国有企业治理改革和管理改革，建立现代企业制度就是建立健全规范的公司治理结构和科学的管理机制；指出规范公司治理结构是我国国有企业改革中亟需解决的问题。因此，研究公司治理问题既具有理论意义又

具有特别重要的现实意义。

公司治理问题一直是中外专家学者、政府政策制定者以及企业家致力寻求最佳答案的重点和热点。公司治理问题的理论深度和广度及其实际操作中的复杂性，令国内外学者“为伊消得人憔悴”。公司治理不仅仅涉及产权的配置问题，而且涉及公司内部治理结构如何构造、内外部信息是否对称、人力资本究竟有多大份量、机构投资者如何参与、资本市场的均衡过程、相关利益人理论的应用以及各国不同的社会、政治、经济和文化背景，等等。

本书的理论新意主要有：（1）提出公司综合治理论的观点，初步建立了公司综合治理论的理论框架。主张不仅公司内部要建立规范有效的治理结构，而且在外部要形成有利于促进公司内部治理完善化的机制，包括机构投资者、资本市场与相关利益人参与影响公司治理的机制，从内部和外部综合地建立一个国家的公司治理制度，这种观点与狭义的“产权论”、“竞争论”及其他孤立地研究治理问题的理论形成明显的对比。（2）有选择地借鉴了国内外产权理论、制度经济学派、信息经济学、效用函数模型、公司法、对策理论及其模型、公共选择理论、资本市场理论、相关利益人理论，等等，有机地运用这些相关理论形成了公司综合治理论。

现把公司综合治理论的基本观点概述如下：

（1）明晰产权结构，建立健全规范化的公司内部治理机制。

第一，产权结构是公司治理制度的基础，说得准确一点，解决好产权问题是解决公司治理问题的必要条件，也就是说，产权问题解决不好，公司治理问题肯定解决不了；但是，产权问题解决了，公司治理问题不一定能解决。在政策建议上，我旗帜鲜明地反对在中国推行“私有化”的观点，大力支持“公司化”或者说“法人化”的观点，而且积极提倡产权结构多元化。我认为建

立健全“产权结构多元化”的公司制度事关重大，这是中国国有企业能否成为市场主体的关键，也是政企能否分开的重要因素。

第二，解决了产权问题，并不等于公司治理就一定能够做好，紧跟下来的工作就是要建立规范化的公司内部治理结构。公司内部治理结构的规范化主要表现在，股东大会、董事会、监事会、经理班子既各司其职，又相互制衡。尤其是，董事会在公司治理中具有核心作用，这种核心作用主要表现在对经理班子的监督作用和激励作用。根据理论研究的结果，我认为要提高董事会的监督作用，首先要加强董事会的自身建设，具体措施包括严格考核董事的资格、专业知识、实际能力以及道德水准，确保独立董事和外部董事在董事会中的适当比例，等等。规范的公司治理结构要求董事会采取合理的激励机制来调动经理班子的积极性，恰如其分地设计与公司经济效益挂钩的报酬津贴制度仍然是我国公司治理的重点。

(2) 发展市场体系，培育市场主体，形成外部竞争环境，建立内部和外部力量协同作用的公司治理制度。

第一，市场经济是居民、企业、政府与市场体系的统一体，光有规范的内部公司治理结构，并不能解决公司治理的所有问题，还必须有信息充分的市场环境。来自市场的竞争机制，既是公司治理的外部动力，也是外部压力。资本市场对公司治理的基本作用是通过收购兼并活动来表现的，收购兼并活动的实质在于公司控制权的转变。公司控制权可能被潜在的外部力量剥夺，这一事实对公司内部治理来说会有助于形成良性的机制。中国的市场体系尚处于新兴市场阶段，必须通过法律法规客观地管理市场，尽可能地减少主观因素对市场体系的不必要的干扰和破坏。

第二，机构投资者是证券市场中重要的投资主体，我们把它看作一种来自外部的公司治理力量。近年来，我国机构投资者的的发展势头很快，管理层大力支持机构投资者的初衷主要是为了

稳定证券市场，减少证券市场的大起大落。从理性的角度来看，机构投资者的投资理念应该是长期投资，尽管机构投资者的目标与它们参与公司治理的压力、动力和意愿存在矛盾，但是作为投资者和股东，机构投资者仍然应该依法履行自己的权利和义务。

(3) 树立广义的公司治理观念。狭义的公司目标一般可以理解为替股东谋求最大化的利润，其实，这一孤立的公司目标源于“资本雇佣劳动”原则。相关利益人理论的本质在于对这一原则进行补充，即公司不仅是“资本与劳动”通过契约形成的联结点，而且是包括其他所有者、供应商、客户、债权人（银行等其他金融机构）、员工以及政府部门等内外部相关利益人的统一体。广义的公司治理观念要求我们研究公司治理问题必须考虑各方面的利益。从我国的实际情况来看，银行是各大小公司的主要债权人，银行必须在公司治理中占有一席之地，当然，我国的银行必须自身先行改革。

(4) “他山之石，可以攻玉”，“扬弃”地借鉴国外优秀的公司治理模式。英、美治理模式和德、日治理模式都是值得我们认真研究的，我们应该从中吸取经验教训。分析英、美公司的股权结构、董事长和总经理的报酬津贴制度和收购兼并活动活跃等特点，以及德、日公司的股权结构、主银行制、员工代表参与制等特点，我们得到的启示是，我们提倡的“公司化”、“股权结构多元化”、“发展市场体系”、“银行债权转股权”、“稽查特派员制度”以及“年薪制”等都是行得通的，关键在于根据我国的具体情况，搞出自己的特色。

ABSTRACT

ON CORPORATE GOVERNANCE

The state-owned enterprises (SOEs) reform in China is in fact the reform of SOEs' governance and management, and establishing modern enterprise system refers to establishing complete and standard corporate governance structure and scientific management system. It is an urgent problem to be solved in the reform of SOEs that the corporate governance structure needs to be standardized. As a result, the research on corporate governance is of great important both in theory and in practice.

The problem of corporate governance has always been an important and hot topic on which Chinese and foreign specialist, governmental policy-makers and entrepreneurs have been working to find the best solution. The theoretical depth and range of this problem and the complexity in practice bring great trouble to those specialists. Corporate governance involves not only the allocation of property right, but also the establishment of the internal governance structure, the asymmetry of inside and outside information, the portion of human resources, the equilibrium of capital market, the application of the theory of stakeholder model and the differ-

ent social, political, economic and cultural backgrounds in different countries, and so on.

This book includes nine parts:

Part one, introduction: topic, concept and methodology. In this part, I briefly reviewed the history of China's SOEs reform and the development of China's corporation system, and clarified the motive and the realistic meaning to the study of this topic. Meanwhile, I explained the basic meaning of the topic—corporate governance in detail and showed my own attitude towards the study and the practice of the economic theory.

Part two, the separation of ownership from managerial authority: the principal-agent approach. I studied the essence of corporation, the separation of ownership from managerial authority, the emergency of the principal-agent approach comprehensively, systematically and deeply, with the application of Marxist property right view and the reference of the theoretical instruments of the western New-institutional school. I also analyzed the influence of transaction cost, uncertainty, information asymmetry over the principal-agent system, and used models to analyze the internal relations between trustors and agents, risk and incentive.

Part three, the corporate governance structure: power and balance. I gave a detailed description about a standard corporate governance structure, which involves the rights and obligations, responsibility and function of stockholders, the general meeting, directors, the board of directors, the supervisory board.

Part four, the independence of the board and managerial internal control: analysis of the model. I used the models to analyze the phenomenon and mechanism of the abuse of power by corporate elites in depth and in essence.

Part five, the role of institutional investors on corporate governance:

outside mechanism. In this part, I discussed the objectives of institutional investors, and their pressure, motive, willingness and ways when involving in the governance activities.

Part six, the capital market: functions and drawbacks. I clarified the function of capital market on corporate governance, and discussed mainly the function of takeover on governance, the principal strategy, the gain and the loss.

Part seven, the theory of stakeholder model: the multi-objectives of corporation. The main body of this part is the theory of stakeholder model, the common stakeholders include investors, suppliers, customers, creditors, employees and governmental departments.

Part eight, the typical governance model in foreign countries: comparison and reference. In this part, I introduced the Anglo-American corporate governance and the German or Japanese governance structures, we could benefit from those experiences.

Part nine, the current situation of the governance of SOEs: problems and solutions. I described the basic situation of the SOEs' governance, pointed out the drawbacks of the SOEs governance, and clarified my view on "the absence of ownership" and "the phenomenon of internal control" and the establishment of incentive mechanism to managerial elites in SOEs.

The new points of the book involve: first, putting forward a view of corporate comprehensive governance and establishing its rough theoretical framework. I hold that we should not only establish a standard and efficient governance structure inside a corporation, but also create a outside system that would help to perfect the internal governance of a corporation, including the participation of institutional investors, the capital market and the stakeholders. This viewpoint is in contrast with other views, such

as “theory of property right” and “theory of competition”. Second, learning selectively from western property right theories, new-institutional school, information economics, utility function model, corporate laws, game theory, public choice theory, capital market theory, theory of stakeholder model and so on.

The basic viewpoints of corporate comprehensive governance theory are summarized as follows:

Firstly, clarifying the structure of ownership, establishing and perfecting normal internal corporate governance system.

I have a clear-cut stand that China's SOEs reforms are actually the SOEs governance reform and management reform. The establishment of modern enterprise institution is to set up and perfect the corporation governance system and the necessary management mechanism. The current situation of the up-to-date SOEs governance structure is still pale and weak. It is urgent for us to take effective measures to solve the problem theoretically and practically.

Corporations are contractual networks which are composed of insiders and outsiders. There having existed the transaction cost, the information asymmetry and uncertainty, the corporation forms must be the optimal ones and the best solutions should be varied. It can be proved that the Anglo-American corporate form and the German or Japanese governance structures are both successful. According to the Coase Theorem, without transaction cost, a firm can choose any forms that are the best ones. But it is impossible that there exists no transaction cost, among the various corporations, there are some kinds of forms that should be the most profitable ones. I conclude that whether private ownership, or public ownership, or mixed ownership, all the corporations could be in the most profitable state. Buchanan told us that if the efficiency could be guaranteed,

either public ownership or private ownership could enter any fields. Therefore, I argue that we should not enclose ourselves with the property right arrangements or the ownership structure, and we should insist that the efficiency is the key principle. Comrade DengXiaoPing defined the criterion of whether is good or bad, he held on his own views that everything is good, provided it is good for the development of social productive forces, provided it is good for the enhancement of comprehensive national power, provided it is good for the improvement of the living conditions of ordinary people. As mentioned above, I focus on that the normal and scientific corporate governance system should gear to the different types of property right arrangements, that is to say, we could establish different patterns of corporation governance structure based on the different types of ownership structure. In order to seek truth from facts, when we are researching the corporate governance system, above all, we should free ourselves from old and wrong ideas.

To establish effective corporate governance system, we should strictly obey China's "Corporation Law" and "Security Law", and observe China's "Accounting Principles" and "Financial General Provisions" and international practice. We must set up the "separation-check and balance" corporate governance structure which is made up of the general meeting and the board of directors and the supervisory board. In addition, we should strengthen the construction of the party's committee and the labor union and the congress of workers and staff. I firmly support that their roles in the governance should be improved gearing to the specific and complicated national conditions in China.

The underlying problem of corporate governance as recognized by traditional scholars tracing back from the present day via Berle and Means and Marshall to Karl. Marx and Adam Smith lie with the separation of

beneficial ownership and executive decision-making in the joint-stock company. The separation gives rise to the problems of incentive incompatibility, information asymmetry, and liability disproportionality between the managers and the corporation owners. As a consequence, the abuse of power by corporate elites may become a principal and serious problem to corporate governance. Because of excess power in the hands of senior management, some of whom abuse this in the service of their own self-interest. The result is damaging for the state, for the SOEs, for the people, for the shareholders, for the industrial system, and for society as whole. I argue that we could take the institutional restraints on managerial behavior—as provided by elected non-executive director, the audit process, the threat of takeover to prevent the state-owned assets and corporation assets from being used in ways dictated by the managerial interest.

Secondly, developing market mechanism, cultivating independent market entities, forming a external competitive circumstance, and establishing the corporate governance system coordinated by internal and external power.

The capital market is an important corporate governance mechanism which is from the outside. The capital market forces the corporate senior managers to make decision with regard to the current share price, or else risk a heightened threat of hostile takeover. The threat of hostile takeover could promote the board of directors to strengthen the monitoring of the management, and to spur the managerial personnel on to greater effort to maximize the well-being of the corporation's shareholders. Therefore, the capital market could be seen as one of providing an environment in which shareholders and managers are encouraged to share long term performance horizons.

The major growth in institutional shareholders is mainly the growth in

investment funds in China. There is an increasing emphasis on the need for institutional shareholders to play an active role in the governance of companies. However, there exists the contradiction among the objectives of institutions and their willingness and ability actively to govern corporation. The ultimate beneficiaries of institutional funds and fund managers responsible for the investment of those funds may act to emphasize short term profits, but the corporate governance issues are the longer term things. There are many qualified people of high level professional knowledge and ability in the institutions in China. I argue that the authorities concerned and the department concerned and the experts concerned should seek for reasonable ways to encourage these people of extraordinary ability of the institutions to intervene in corporation governance matters.

Thirdly, setting up a broad concept of corporate governance.

The most fundamental challenge to the principle of "Capital hire labor" comes from the theory of the stakeholder model of the corporation which is also the supplement to the principal-agent approach. Actually, the central proposition at the heart of the stakeholder approach is that the purpose or the objective function of the corporation should be defined more widely than the maximization of shareholder welfare alone. In particular it holds that there should be some explicit recognition of the well-being of other groups having a long term association with the corporation. These groups are usually taken to include suppliers, customers, banks, government departments, and, particularly, employees.

In the German and Japanese governance systems, there appears to be agreement to the views that corporate goals should be defined more widely than shareholders profits.

Finally, learning selectively from the excellent patterns of corporate governance in foreign countries.