

中国资本市场前瞻

Toward Sound Capital Markets in China

梁定邦 主编

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目 录

刘鸿儒序	(1)
周道炯序	(9)
周正庆序	(14)
周小川序	(21)
梁定邦序	(26)
前言 新千年开始之际的中国资本市场	梁定邦(1)
第一章 中国证券法律体系及国际比较	(45)
第一节 导论	(47)
《证券法》对中国资本市场监管之影响	梁定邦(47)
第二节 评论	(53)
《证券法》:政府、市场与法律的互动关系	吴志攀(53)
谈证券法的阶段性立法特点	沈春耀(68)
证券立法的严格性和执行力	刘 弘(69)
第三节 论文	(70)
我国《证券法》的整体评价	杨 亮(70)
浅评中国证券法律制度	郑 瑛(89)
第二章 证券发行制度及国际比较	(99)
第一节 导论	(102)
证券发行制度的法律框架	梁定邦(102)
第二节 评论	(107)
资本市场全球化和会计准则国际化:动向与对策	张为国(107)
市场人士眼中的我国证券发行市场	李建勇(130)
股票发行的程序	Colin Stewart(139)
在香港上市应有的概念	许浩明(144)
风险投资与二板市场的发展	刘曼红(148)
第三节 论文	(151)
中国股票发行审核机制的法律评价与展望	于绪刚(151)
中国股票发行定价制度问题分析	黄永庆(168)

各国股票发行制度比较研究·····	周慢文(173)
第三章 上市公司义务与公司治理 ·····	(182)
第一节 导论·····	(184)
上市公司治理结构·····	梁定邦(184)
第二节 评论·····	(193)
公司治理之伦理和文化透视·····	梁定邦(193)
《巴菲特:从100元到160亿元》序·····	梁定邦(198)
组织控制、市场控制—公司治理结构的模式选择	
和制度安排·····	秦晓(205)
现代企业制度与公司治理结构·····	曹凤岐(219)
从全球角度看公司治理·····	Gerrit M. Oyens(226)
关联交易与独立财务顾问·····	林义相(229)
第三节 论文·····	(232)
上市公司治理的法律分析·····	姜丽勇(232)
公司治理与国有企业改革·····	邱东辉(244)
公司治理结构的国际比较·····	张红军(249)
不当关联交易的法律控制·····	潘攀(256)
论股东对董事诉权之法律完善·····	罗培新 杨宏芹(284)
第四章 价格发现——二级市场与清算体系 ·····	(298)
第一节 导论·····	(301)
交易市场与清算体系·····	梁定邦(301)
第二节 评论·····	(310)
国际证券交易所的发展趋势·····	屠光绍(310)
资本市场中证券交易所的角色——现况与前瞻·····	许耀华(321)
中央结算系统所扮演的角色——现在与未来·····	盛善祥(327)
作为有组织市场的交易所——一些概念的辨析·····	吴伟聪(335)
第三节 论文·····	(338)
网上证券交易产生的法律问题·····	朱绵茂(338)
证券交易所的监管权·····	彭冰(353)
第五章 上市公司收购兼并 ·····	(361)
第一节 导论·····	(362)
上市公司收购兼并的法律框架·····	梁定邦(362)
第二节 评论·····	(373)
[兼并与收购]应采取什么模式·····	梁定邦(378)

海外兼并和收购概览·····	顾希雍(393)
兼并和收购——一个律师的视角·····	高育贤(414)
上市公司并购之问题及其展望·····	刘 弘(422)
公司收购兼并的监管理念·····	戴立宁(426)
我国公司收购兼并制度评述·····	方流芳(430)
第三节 论文·····	(432)
上市公司收购:动因、效率与机制优化——对一起失败的 买壳上市案例的反思·····	邵东亚(432)
上市公司收购中的“控制权”问题·····	汤 欣(444)
上市公司收购法律监管模式·····	郑 琰(451)
第六章 证券市场不当行为 ·····	(464)
第一节 导论·····	(467)
市场不当行为规制的法律框架·····	梁定邦(467)
第二节 评论·····	(473)
金融市场中的参加者及其行为 ·····	Pamela P. Root(486)
证券市场不当行为的宏观思考·····	林义相(495)
现阶段市场不当行为之评价·····	应健中(498)
香港内幕交易案件的审理 ·····	Hon. Justice Michael Hartman(505)
市场不当行为的一线监管·····	徐 明(509)
第三节 论文·····	(511)
内幕交易的法律问题·····	姜丽勇(511)
股民诉红光公司高管人员及中介机构 虚假陈述赔偿案评析·····	郑顺炎(525)
信誉机制、法律机制与证券市场的有效性——证券欺诈行为的 经济学分析·····	邵东亚(536)
诉讼成本对证券民事救济的约束·····	邱海洋(550)
第七章 证券中介机构的监管 ·····	(559)
第一节 导论·····	(562)
证券市场中介机构监管的国际标准·····	梁定邦(562)
第二节 评论·····	(575)
证券公司存在的问题及建议·····	黄世忠(575)
当市场变动或暴跌时若干审慎监管方法·····	尹应能(581)
中国证券公司法人治理结构的探索性实践·····	徐卫国(584)
证券公司的管理与监管 ·····	Tim Freshwater(615)

第三节 论文·····	(619)
证券市场会计人员的法律监管·····	罗培新 何永哲(619)
民间审计对第三者的民事责任·····	陈 洁(630)
第八章 证券投资基金的监管·····	(643)
第一节 导论·····	(646)
证券投资基金监管的法律框架·····	梁定邦(646)
第二节 评论·····	(658)
中国内地与香港社会保障基金系统的比较 ·····	Stuart H. Leckie(664)
中国新兴市场共同基金的角色·····	周道志(668)
第三节 论文·····	(670)
开放式投资基金的产品创新研究·····	田 昆(670)
关于产业投资基金的设立及宏观、微观层面分析 ·····	李望知(681)
论我国证券投资基金“内部人控制”的风险与防治·····	董华春(691)
投资基金管理人法律监管中的几个问题·····	马伯寅 郭 雳(719)
指数化威力与投资基金·····	付 崇(727)
附录一 国际证监会组织:《证券监管目标与原则》·····	(734)
附录二 公司治理的有关文件·····	(825)
经济合作及发展组织:《公司治理原则》·····	(825)
中国证监会:《上市公司治理准则》·····	(867)
附录三 梁定邦访谈录·····	(877)
附录四 梁定邦及评论嘉宾简历 ·····	(1023)
附录五 参考网址 ·····	(1034)

Table of Contents

Preface By Liu Hongru	(4)
Preface By Zhou Daojiong	(11)
Preface By Zhou Zhengqing	(17)
Preface By Zhou Xiaochuan	(23)
Preface By Anthony Neoh	(36)
Prologue: The Chinese domestic capital markets at the dawn of the New Millenium	Anthony Neoh(18)
 Chapter 1 The Chinese securities law system and international comparisons	(45)
Section 1 Introduction	(47)
The Securities Law: Implications for the Chinese domestic capital markets	Anthony Neoh(47)
Section 2 Discussion	(53)
The Securities Law: Interaction between the government, the market and the law	Wu Zhipan(53)
The Securities Law: legislating for the present stage of development of the markets	Shen Chunyao(68)
The Securities Law: need for rigor in logic and enforcement	Liu Hong(69)
Section 3 Essays	(70)
Reviewing the Securities Law as a whole	Yang Liang(70)
Discussing the System of securities law in our country	Zheng Yan(89)
 Chapter 2 The system of securities offerings and international comparisons	(100)
Section 1 Introduction	(102)
The legal structure for securities offerings	Anthony Neoh(102)
Section 2 Discussion	(107)
Globalisation of capital markets and internationalisation of accounting standards: trends and solutions	Zhang Weiguo(107)

Our country's securities offerings market in the eyes of market practitioners	Li Jianyong(130)
"A" SHARE OFFERING PROCESS	Colin Stewart(133)
Necessary concepts for listing in Hong Kong	Herbert Hui(144)
Venture Capital and the Second Board	Mannie Liu(148)
Section 3 Essays	(151)
The system for reviewing public securities offering: review of the law and proposals for the future	Yu Xugang(151)
The price discovery process in Chinese securities offerings: an analysis of the present system	Huang Yongqing(168)
International comparisons of securities offerings	Zhou Manwen(173)
Chapter 3 The duties of listed companies and corporate governance	(182)
Section 1 Introduction	(184)
Corporate Governance	Anthony Neoh(184)
Section 2 Discussion	(193)
The Culture of Corporate Governance	Anthony Neoh(193)
Foreword to Warren Buffett's Essays in Corporate Governance	Anthony Neoh(198)
Choices in models and systems of corporate governance: organization control, market control	Qin Xiao(205)
Modern enterprise systems and corporate governance	Cao Fengqi(219)
A View of Corporate Governance from the Global Perspective	Gerrit M. Oyens(222)
Connected transactions and independent financial advisers	Lin Yixiang(229)
Section 3 Essays	(232)
Legal analysis of corporate governance	Jiang Liyong(232)
Corporate governance and reform of State Owned Enterprises	Di Donghui(244)
International comparisons of Corporate Governance	Zhang Hongjun(249)
Unlawful connected transactions and legal controls	Pan Pan(256)
Shareholders litigation rights against directors: perfecting the system	Luo Peixin and Yang Hongqin(284)
Chapter 4 Price Discovery, the Secondary Market and its Clearing Systems	(298)
Section 1 Introduction	(301)

Trading, Clearing and Settlement	Anthony Neoh(301)
Section 2 Discussion	(310)
International securities exchanges; development trends	Tu Guangshao(310)
The Role of a Stock Exchange within a Capital Market: Now and in the Future	Alec Tsui(313)
The Role of a Central Clearing System: Now and in the Future	Stewart Shing(327)
Exchanges as Organised Markets Clearing some Misconcepts	Wu Weicong(330)
Section 3 Essays	(338)
The legal issues relating to on-line trading	Zhu Mianmao(338)
The Power of regulation of stock exchanges	Peng Bing(353)
Chapter 5 Mergers and Acquisitions of Listed Companies	(361)
Section 1 Introduction	(362)
The legal structure for the mergers and acquisitions of listed companies	Anthony Neoh(362)
Section 2 Discussion	(373)
What Model Should We Adopt for Companies Mergers and Acquisitions	Anthony Neoh(373)
An Overview of Mergers and Acquisitions Activity Overseas	Kenneth Hsi-Jung Koo(381)
Mergers and Acquisitions; A Lawyer's Perspective	Teresa Ko(401)
The legal issues now and in the future for listed companies mergers and acquisitions	Liu Hong(422)
Regulatory philosophies in listed company mergers and acquisitions	Linin Dai(426)
Reviewing our country's system of acquisition and mergers	Fang Liufang(430)
Section 3 Essays	(432)
Analysing the motives and efficiency in the acquisition of listed companies, and proposing solutions for improvement; drawing lessons from an abortive attempt to purchase the shell of a listed company	Shao Dongya(432)
Issues arising from acquiring a controlling interest in a listed company	Tang Xin(444)

A Model Law for the regulation of the acquisition of listed companies	Zheng Yan(451)
Chapter 6 Market Abuse in the Securities Markets	(464)
Section 1 Introduction	(467)
Securities Law and Market Abuse	Anthony Neoh(467)
Section 2 Discussion	(473)
Participants in the financial markets and their actions	Pamela P. Root(473)
Macro considerations of market abuse in the securities markets	Lin Yixiang(495)
Reviewing present market abuses	Ying Jianzhong(498)
The Insider Dealing Tribunal in Hong Kong	Hon. Justice Michael Hartman(500)
Front Line regulatory work relating to market abuse	Xu Ming(509)
Section 3 Essays	(511)
Legal issues relating to insider trading	Jiang Liyong(511)
Investor litigation against senior management and intermediaries in the Hong Guang Case	Zheng Shunyan(525)
Credit system, legal system and the effectiveness of the securities market; the economic analysis of securities fraud.	Shao Dongya(536)
Litigation costs and civil remedies as a means of establishing discipline in securities markets	Qiu Haiyang(550)
Chapter 7 Regulation of Securities Intermediaries	(559)
Section 1 Introduction	(562)
International standards in regulation of intermediaries in the securities market	Anthony Neoh(562)
Section 2 Discussion	(575)
Problems and Solutions pertaining to securities firms	Huang Shizhong(575)
Prudential regulation in times of violent market changes	Richard Yin(581)
Corporate Governance in China's securities firms	Xu Weiguo(584)
Management and Regulation of Securities Firms	Tim Freshwater(606)
Section 3 Essays	(619)
Regulating accounting professionals in the securities market	Luo Peixin and He Yongzhe(619)
Audit and third party civil liabilities	Chen Jie(630)

Chapter 8 Regulation of Securities Investment Funds	(643)
Section 1 Introduction	(646)
The legal structure for the regulation of securities investment funds	Anthony Neoh(646)
Section 2 Discussion	(658)
Comparison of the Pension Fund System between Mainland China and Hong Kong	Stuart H. Leckie(658)
The role of mutual funds in the emerging market of China	Zhou Daozhi(668)
Section 3 Essays	(670)
Open-ended funds; a study into product innovation	Tian Kun(670)
Establishment of asset investment funds; a macro and micro analysis	Li Wangzhi(681)
Connected party control of investment funds; a study of risk prevention	Dong Huachun(691)
A few issues in the regulation of fund managers	Ma Boyin and Guoli(719)
The power of indexation and investment funds	Fu Chong(727)
Appendix 1 IOSCO Objectives and Principles of Securities Regulation	(767)
Appendix 2 Documents on Corporate Governance	(825)
OECD Principles of Corporate Governance	(842)
Principles of Corporate Governance issued by the China Securities Regulatory Commission	(867)
Appendix 3 Extracts from media interviews of Anthony Neoh	(877)
Appendix 4 Biographical notes of Anthony Neoh and discussants	(1023)
Appendix 5 Useful web-sites	(1034)

刘鸿儒序

股份制、股票、资本市场长期以来曾经是一个理论禁区,那时人们认为这是私有化的载体和结果,是资本主义独有的东西。随着社会主义市场经济的建立和发展,人们逐渐认识到,股份制、股票、资本市场是市场经济所必需的内容。马克思主义经典理论明确指出:股份制是高度社会化的,对私有制的一种扬弃,股份资本是“导向共产主义”的“最完美的形式”。这就为我国的资本市场自上而下自发形成的试点提供了理论依据。

邓小平同志 1992 年初的南方谈话,在一些重大理论问题和实践问题上解除了人们在认识上的种种禁锢,为中国资本市场创造了历史性的发展机遇。党的十五大文件,特别是《证券法》的颁布,标志着中国资本市场已经从试点阶段进入到全面发展阶段,它已成为我国社会主义市场经济的重要组成部分,并逐步进入规范发展的轨道。

证券法规从无到有,先有地方性法规,然后逐步形成了全国统一的法规。我国相继颁布涉及公司和证券的法律、司法解释、部门规章和规范性文件约 250 件,其中包括《中华人民共和国公司法》、《股票发行与交易暂行条例》、《股份有限公司境内上市外资股的规定》、《证券投资基金管理办法》、《中华人民共和国证券法》等一系列法律、行政法规、部门规章,构筑了我国证券法律制度的基本框架,为“依法治市”奠定了法律基础,使证券市场发展走上了法制化建设的轨道。特别是《中华人民共和国证券法》的通过和颁布,既规范了证券市场,又从法律上肯定了证券市场的地位,保护了它的发展。

在证券监管体系方面。1992 年 10 月,党中央、国务院决定成立国务院证券委和中国证监会,行使全面监管证券市场的职责。随后,各省市设立了相应的证券监管部门,并由中国证监会授予一定的监管职责。1998 年,国务院决定撤消国务院证券委,工作改由中国证监会承担,并决定中国证监会对地方证管部门实行垂直领导,从而形成了集中统一的证券监管体系。

经国务院同意,上海和深圳两地成立了证券交易所,这大大推动了证券市场的发展。

回顾历史,我国证券市场在筹集社会资金,优化资源配置,提高资金使用

效率,促进经济结构合理调整,支持国家经济建设,推进财政金融体制改革等方面都发挥了积极作用,特别是股票市场在推动国有大中型企业转换经营机制方面作出了重大的历史性贡献,有力地促进了国有企业的改革和发展,带动了国有资产的战略性重组。

我国证券市场近年来取得了世人瞩目的重大成就,但在发展过程中也出现了一些值得注意而且是令人担心的问题。目前证券市场尚处于初创阶段,发育还不完全,难以满足众多国有大中型企业发行股票、债券的迫切需要,市场供求矛盾比较突出,特别是计划经济转轨和国企改制的困难更加大了靠证券市场发展来支持国有企业改革的难度。现在社会上流传着一句话:“国有企业吃完财政吃银行,吃完银行吃股市”,认为证券市场向国有大中型企业倾斜是搞“扶贫”,对于政府要求每个上市企业兼并有发展前途的亏损企业感到困惑,担心会给股票市场带来风险。这种对股票市场潜在风险的担心是可以理解的,目前的确出现了支持国有企业改革和维护证券市场健康发展之间的关系问题,需要妥善加以解决。

在此,我们首先需要明确一个基本观念:中国的社会主义市场经济以国有企业为主体,国有企业在我国企业中占据首要地位,在关系国计民生和国家经济命脉的重要产业中占据主导地位,国有企业改革是当前我国经济体制改革的中心环节,关系到我国社会主义市场经济体制的确立和国民经济的健康发展,因此,我国证券市场的上市公司也必然以国有企业改制上市企业为主体。否则,证券市场就没有生存的根基,无法有效地为发展社会主义市场经济服务,就不可能在国民经济中发挥重要的积极作用。证券市场为国有企业改革和发展服务,是无法回避的,也不应该回避。关键在于国有企业改制和发行上市股票,必须严格遵守《公司法》和国家有关证券市场法律规定规范运作,切实保证上市公司质量,以维护证券市场的健康稳定发展。

放眼全球,在人类进入 21 世纪的今天,世界证券市场的格局和运行机制发生了深刻而巨大的变化,出现了自由化、国际化、衍生化、全球化、电子化的发展趋势。越来越多的国家或地区放松和取消了对金融机构经营业务活动制定的繁文缛节,而对金融体系进行大刀阔斧的改革和重组,促使各类金融机构在证券市场上进行竞争。现代化通讯技术的发展和运用使世界各地金融市场的大批资金在任何时间以秒计的速度在全球范围内转移,导致国际资本流动迅速扩张,推动了全球金融的一体化,资金的跨境流动更加便捷,跨境发行、上市、交易活动不断增加。

在这种情况下,中国的资本市场、或者简单地说,中国的证券市场究竟何

去何从？中国证监会首席顾问梁定邦先生主编的《中国资本市场前瞻》一书给出了很好的答案。该书对中国目前证券市场存在的问题作了深刻的剖析，并以此为基础，提出了许多颇有见地的解决思路。既有法理分析，又有实证研究，说理充分，论证严密，是一本不可多得的好书。

梁定邦先生是我的老朋友。1992年初经国务院批准成立“内地香港证券事务联合工作小组”，研究制定内地企业到海外上市的方案。梁先生作为法律专家参加小组工作，和我们一起合作一年多，解决了一系列法律难题。以后出任香港证监会主席，为推动内地与香港证券市场的共同发展作了大量的工作。自从他担任中国证监会首席顾问以后，对中国内地的资本市场做了大量调查研究工作，提出了许多有价值的建议。《中国资本市场前瞻》一书，体现了他把国际经验和国内经验融为一体的研究成果，读后很有启发。我很高兴为此书作序，向广大读者推荐。

刘鸿儒

2001年8月22日

Preface

By Liu Hongru

Until recent years, the stock system and capital markets have long been regarded ideologically as a means of private production, and something in the forbidden zone exclusively attributed to capitalism. But with the establishment and development of a Social Market Economy, people have gradually realized their indispensability to economic development. Classical Marxist theory deems the stock system as highly socialized and “developing the useful and discarding the useless” in the private ownership system. It is the best way to develop the best form of communism. This thinking forms the basis of China’s capital market experiences. Thus the capital market has attracted the spontaneous participation of all levels of society.

The notable “Southern Speech” made by Mr. Deng Xiaoping in the beginning of 1992 created a historic opportunity for development of China’s capital market, eliminating various taboos both on some weighty theoretical problems and a few practical ones. Furthermore, the documents of the 15th Congress of the Chinese Communist Party and the enactment of China’s Securities Law marked the shift of China’s capital market from an experimental stage into an all-around developmental phase. The capital market has become an important part of China’s Socialist Market Economy, progressing gradually into the track of development under regulation.

As for securities regulation, it has progressed from local regulation to nationwide regulation. About 250 regulations, judicial interpretation, rules of government bodies and other regulation concerning corporations and securities were promulgated one after another, which included but not limited to the following: The Company Law of the P. R. C., The Provisional Regulations for Stock Issuance and Trading, The Regulations on Domestically Listed Foreign Shares of Joint Stock Company, The Regulation for the administration of Securities In-

vestment Funds, The Securities Law of the P.R.C., etc., all of which constituted the framework of China's securities law system and had laid the legal ground work for "Regulating the Market according to Law". Most of all, the passage of the Securities Law of the P.R.C. played an essential role both in recognizing the importance of the securities market and establishing a platform for its future regulation and development.

Similarly, China's Securities Supervision System has much progressed. On Oct. 1992, the State Council approved the establishment of the Securities Committee of the State Council and the China Securities Regulatory Commission to exclusively perform the duties of supervising the securities market at the national level. Thereafter, corresponding securities supervision agencies were set up in various provinces, with certain supervision duties conferred by China's Securities Regulatory Commission. In 1998, the State Council revoked the appointment of the Securities Committee of the State Council and shifted its work to the China Securities Regulatory Commission. From that time onwards, according to the decision of the State Council, the China Securities Regulatory Commission directly leads all local securities supervision agencies, thus forming a unified, national securities supervision system.

Besides, with the approval of State Council, two Stock Exchanges were separately set up in Shanghai and Shenzhen, which greatly promoted the development of the securities market.

In retrospect, China's securities market contributed greatly to various aspects of economic development, such as raising public funds, optimizing the allocation of resource, enhancing the efficiency of fund deployment, promoting the reasonable adjustment of the economy, facilitating the reform of the financial system, and so on. Most of all, the securities market made historic contribution to the transformation of the management structure for large and medium-sized State Owned Enterprises, "SOEs", accelerating their reform and development and becoming the driving force behind the strategic restructuring of the management of state-owned assets.

In recent years, significant achievements were made in China's securities market, while some notable and worrisome problems have emerged. The securi-

ties market now in its initial stage has not yet fully developed. The market finds it difficult to meet the urgent needs of the many large and medium-sized SOEs for stock and bonds issuance, and supply and demand are mismatched. The difficulties encountered in the transformation from a centrally-planned economy to a socialist market economy and the consequent need for SOEs to adjust, represents an additional challenge to the securities market. There is now a prevailing saying: "After eating up the Government's finances, SOEs begin to eat the banks. After eating up the banks, SOEs begin to eat the stock market". Some people think that government policy favorably inclines the stock market to large and medium-sized SOEs, reflecting a policy of "poverty assistance" (of SOEs). People are also perplexed by the policy of requiring listed enterprises to carry enterprises operating in the red and not those with development potential, and people thus worry about the risk of this policy doing harm to the stock market. This kind of anxiety is of course, understandable. So, the conflicting interests between boosting the interests of SOEs and the maintenance of the securities market's sound development remain to be tackled properly.

Here, first of all, we should bear in mind the fundamental notion that the China Socialist Market Economy is rooted in the SOE. SOEs hold the primary position among all Chinese enterprises and play the leading role in developing key industries concerning the national economy and the people's livelihood. Because of that, the reform of SOEs is central to the reform of our national economic system and the establishment of China's Socialist Market Economy. Therefore, the listed enterprises transformed from the SOEs should definitely constitute the main part of listed companies in the capital market. Or else, deprived of its source of survival, SOEs would not effectively serve the Socialist Market Economy. In all, we can not and should not dodge the reality that securities market serve the reform and development of SOEs. What we should do is to make sure that the transformation of SOEs and issuance of listed stocks will function normally, in compliance with the Company Law and other related regulations, securing the quality of listed companies, thus maintaining the soundness and stability of the securities market.

Taking a global view, vast and profound changes have taken place in the