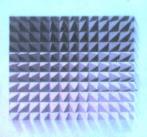
中山大学会计论丛

ZHONGSHAN UNIVERSITY
SERIES IN ACCOUNTING

独立董事与公司治理: 基于我国上市公司的研究

谭劲松/著



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中山大学会计论丛

独立董事与公司治理: 基于我国上市公司的研究

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A Study on China's Listed Companies

中国财政经济出版社

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谨以此献给

恩师阎达五教授和师母林熹教授

以及

给我谆谆教诲的所有老师!

总 序

魏明海

在新千禧之年刚刚来临之际,我们组织撰写的《中山大学会计论丛》很快就要出版,并与广大的读者见面了。

《中山大学会计论丛》试图体现两个方面的特色:一方面是 将我们的研究融入现代会计和会计理论发展的主旋律中;另一方 面是在我们的学术探索中充分体现中山大学的人文精神和校园文 化。

现代会计和会计理论发展的主旋律是什么?我们的研究是否要融入这一主旋律中去?这不仅仅是我们组织撰写《中山大探写出的问题,也是我们组织撰写如磋、共同题。现代会计的产生与商品市场、资本市场的形成、发展相联系。最近一段时期以来,我们愈来愈相联系。最近一段时期以来,我们愈来愈相联结构、信息技术发展对会计的影响。在会计学术界,理论的研究也愈来愈关注信息披露和产品,使理激励和会计政策选择等一系列问题。在我们的这套论处中,既有讨论会计准则、会计文化和智力资本会计的。

同时我们还注意到现代会计理论研究方法的多样化。尽管实证、分析性的研究方法在主流学派中得到了广泛的运用,但规范

的研究方法仍很有价值。在我们的这套论丛中,有的研究比较多 地采用规范的研究方法,而有的则尝试采用了实证的研究方法。

中山大学是一所非常有传统的高等学府。当年孙中山先生创办中山大学时,就确定了"博学、审问、慎思、明辨、笃行"的校训。孙中山先生"天下为公"的精神境界和冯乃超老校长的教育思想对于每一位中大人都产生了巨大的影响。我们深深感受"有容乃大"、立志做"大事",特别是把学问作为一件大事的情景在中山大学随处可见。近年来,我们也依照"有容乃大"的思想,吸纳各方人才、吸收各种理论流派、同各方人士交流、内外各类机构合作,从中得到养分和支持,有了一些进步和发展。这套论丛就是我们在与外界交流合作过程中取得的主要成果,也是各方人士加入中山大学管理学院会计学系时或之后献给这个集体的一份厚礼。

由于我们这个集体还非常年轻,根基不深、积累不厚,还处于发展的初期,这套论丛肯定会有许许多多的不足和局限性。我们之所以这个时候就拿出来,一方面是要给大家,尤其是在这个集体工作的年轻学者与学术界交流的机会;另一方面是要得到社会各界,特别是会计学术界的批评指正,以帮助我们提高得更快一些、发展得更快一些!

公司治理, 虽然作为一个概念被正式提出来的时间尚短, 但 作为一种现象却已存在相当长时间。事实上,公司治理伴随现代 公司制企业的产生而产生、是一个看似新鲜实则古老、看似简单 实则复杂的话题。而对于改革开放已逾二十载、现正处于从传统 计划经济向市场经济转变的中国。研究探讨如何建立有效的公司 治理机制,不仅有其深刻的理论意义,而且有着更为重要的现实 意义。同时、我向来认为、会计学科越来越呈现出边缘性的特 征. 固守传统只会使研究范围越来越窄, 必须开创新的研究和实 践领域,拓宽会计理论研究和实务工作的范围。我主张、会计学 专业博士生的研究应与经济、管理、金融、法律等众多学科相结 合,实现多学科渗透和交叉,从会计学与其他学科的交接点进行 研究. 这样可以大大丰富会计研究的内容。因此, 三年前劲松刚 入校时,与我讨论博士论文的研究内容,提出围绕公司治理进行 研究,我很快同意了。同时,我也觉得,公司治理是一个大题 目,范围太大,笼统地以公司治理为题,内容过于宽泛,因而必 须将研究内容进一步予以细化。此外,考虑到专业跨度,作为会 计专业的学生,应考虑如何发挥自身的知识结构优势,结合本专 业的特点,体现本学科的专业优势,把会计问题与公司治理有机 融合起来。后来,随着中国证监会《关于在上市公司建立独立董 事制度的指导意见》的颁发,劲松进一步提出将论文的研究范围 缩小至公司治理与独立董事制度,我认为这是个不错的方向,予

以肯定,同时也就研究思路、研究内容、研究方法、以及与会计 管理的结合等问题提出了一些意见。

经过一段时间的艰苦努力,他终于就上述问题完成了初步研究,在此基础上形成了题为《独立董事与公司治理——基于我国上市公司的研究》的博士论文,并顺利通过了论文答辩。总体来说,这篇博士论文从一个全新的角度讨论独立董事与公司治理,既具深刻的理论意义,也有重要的现实意义,观点独到,论述清晰,证据充分,资料期实,逻辑严谨,研究方法规范,是一篇优秀的博士论文。

与我看到的其他相关文献相比,我认为,这篇博士论文主要 有以下特点:

- 1. 在系统地梳理了企业理论基本线索的基础上,讨论了现代企业制度的产生和发展过程、以及现代企业制度的特点,并分析了现代企业制度与公司治理、公司治理与独立董事制度的基本关系,认为随着现代股份有限公司的产生,企业所有权和实际制权分离,不仅股东会空壳化,而且董事会事实上也被虚置,这样,改善公司治理的问题就自然而然地提了出来,改革和复兴营会成为改善公司治理的一个重要方面,独立董事制度正是顺应了完善公司治理的这一要求而引入的。论述过程环环相扣,层次分明,逻辑严谨。
- 2. 对独立董事制度产生和发展过程进行了系统归纳,对独立董事制度的核心和灵魂——独立董事的独立性、以及与之密切相关的独立董事的激励和约束机制问题进行了较为深入、全面的讨论,提出了作者的观点。论文认为,独立董事的独立性既要求形式上(即名义上)的独立,更重要的是实质上的独立,同时这种独立性还是相对的,它不同于注册会计师的"独立性",既要独立于企业,又不能完全超脱于企业(解决悖论一:独立董事既

制约,既有较强的理论意义,也有一定的现实意义,有利于有关政策的进一步完善。

4. 对我国独立董事制度的现状进行了较为详尽的(甚至可能是迄今为止最为全面的)数据统计,分析了我国上市公司独立董事制度实施情况的基本特征,既可以为后续的理论研究提供有关数据基础,又能为进一步完善我国的独立董事制度和上市公司治理提供一定的证据支持。

事实上,无论是独立董事,还是公司治理,都是非常广泛的研究领域,有很多可供研究的内容,结合会计管理(包括对外会计管理和对内会计管理),也有很多问题有待于进一步研究,例如董事会中独立董事制度的最优安排、独立董事制度与对外会计管理的关系、独立董事制度与内部会计管理的关系、独立董事制度与内部会计管理的关系、独立董事与会专门委员会、我国独立董事制度实施效果的检验、独立董事与公司特征、独立董事与公司特征、独立董事与公司特征、独立董事与公司特征、独立董事与公司特征、独立董事的报酬符。希望广大同仁继续就这一问题展开更深入的讨论和研究。

十三年前,劲松从中国人民大学会计系硕士毕业时,我曾建议他继续攻读博士学位,但他执意南下,任教于中山大学管理学院。十年后,他终于返回母校继续他的博士研究生生活,并如期完成学业,顺利圆了他的"博士梦"。作为导师,我为他感到高兴和欣慰。此次论文公开出版,他请我为之作序,我欣然命笔。

是为序。

A52

2003 年 7 月 于中国人民大学林园

前 言

将博士论文修改后公开出版,似乎已经成为学界的一种不成文的"习俗"。吾乃一介凡夫,自是不能免"俗",也来凑个热闹。稍有不同的是,我拿来公开出版的,基本上是"原汁原味"的博士论文,除了在付印前将能发现的技术错误和文字错误作了订正(当然这并不能保证书中再也没有类似错误,只是希望这类错误尽可能少一些)外,对文章内容没有作任何实质性修改。

之所以出版"原汁原味"的博士论文,我为自己找了一条"堂而皇之"的理由。博士论文作为一个阶段性的研究成果,是在当时特定环境下产生的,标志着一个阶段的结束,尽管存在很多缺陷甚至错误,不加修改即公诸于众,当然会自曝家丑,但它却表明了我本人在当时条件下对相关问题的认识水平。将一个不是非常完美的阶段性研究成果和专家的批评展示给读者,也许对读者更有帮助和启发。

实际上,几乎所有"玩笔杆子"(现在应该叫"玩键盘")的人都会有同感:写文章确实不易,改文章则是更难。因此,另外一条理由也许更为真实,那就是天性懒惰和对修改文章的"恐惧"。我不禁想起论文最后定稿时的情景:深夜12点,我站在窗前,望着水塘对面的学生宿舍和远处的天空,大叫:"我再也不玩了!!!"那是熬过了痛苦的62个日日夜夜之后的发泄!此后的日子里,对论文的修改竟有了一种无以名状的"恐惧",加上天性懒惰,以至于当时论文写作时的种种冲动和灵感全都荡然无

存。"冷冻"一段时间后,再回头看自己写的论文,发现竟有如此多地方"丑陋得不堪入目",需要"化妆"和"美容"甚至"脱胎换骨"的地方实在太多了,而且是越看越"丑"。也许修改后就面目全非,完全是另外一番模样了。想起来都觉得"恐怖",最后觉得还是趁早出版最省事。

感谢五位匿名评阅人和由戴德明教授 (主席)、耿建新教授、荆新教授、王化成教授、宋常教授共五名专家组成的论文答辩委员会在"非典"期间对论文的评审。专家们的意见非常尖锐但确实非常中肯,招招见血,式式见肉,有些甚至直奔本文"命门"。所有意见中,有些是限于各种条件暂时未能求得圆满解决,有些则是我冥思苦想都无法求得正解的"死结"。按照诸位专家的意见对论文进行修改,将使论文趋于完美。

下面将专家们对本论文的主要批评意见和修改建议做一简单归纳,以便读者更清楚地了解本文的缺陷。

- 1. 有专家认为:论文第三章力图对中国的独立董事制度进行讨论,而且论文思路主要是通过对已有理论、观点和事实的总结来论证自己的观点,但实际上作者自己的观点却被大量引用的研究成果所淹没,因此若能更加明确提出自己的观点,把自己的观点和研究很好地系统化,使读者一目了然,然后加以分析和论证,就能突出自己的研究成果。
- 2. 有专家认为: 虽然论文全面论述了独立董事和公司治理的相关问题, 但也正是因为全面而使得重点不够突出。
- 3. 有专家认为:论文对于我国独立董事制度薪酬与独立性 之间的关系论述仍显不足。
- 4. 有专家认为:独立董事制度与会计管理联系最密切的问题审计委员会、论文应对这一问题展开讨论。
 - 5. 有专家认为:论文最后的讨论与建议,写得不够痛快,

应该有一个明确的意见。

- 6. 有专家认为:独立财务董事作用的定量方面的讨论不够。
- 7. 有专家认为: 第三章如果拆分成两章或三章, 全文在结构上可能会更清晰。
- 8. 有专家认为:如果能做个问卷调查之类的研究,了解一下上市公司和社会各界对独立董事制度的需求和期望,论述可能会更为圆满。

除上述意见和建议外,专家们还提出其他很多批评意见和修改建议,这里姑且将它们"私藏"。所有这些批评也许使得我"很没面子",但我却从心底里感谢上述专家的无私劳动,感谢他们在百忙中阅读我的论文并提出中肯的批评和建议。这些意见会成为我以后研究和思考问题的重要指引,同时我也希望有更多人分享他们的劳动成果,这样更能体现专家们辛勤劳动的价值,因此在未征得他们同意的情况下,擅自作主公开他们的意见。我想专家们也会很乐意看到广大同行分享他们的劳动成果。

感谢中国财政经济出版社会计分社的郭兆旭社长以及该社的所有其他朋友对本论文公开出版的大力支持和所付出的辛勤劳动。

最后,感谢所有关心和帮助过我的领导、老师、同学和各界朋友,同时也希望以后继续得到大家的关心和帮助!

谭劲松

2003年7月

于广州中山大学管理学院善思堂

Abstract

According to the modern corporate theories, a firm is, in nature, a nexus of contracts involving various interest groups. Since, compared with market contracts, these contracts are incomplete and long-term, monitoring and motivation issues become eminent. In the classical entrepreneurial firm setting, there are barely agency problems, along with low agency costs and simple monitoring and motivation issues. This is due to the fact that the operation and management are simple because of the limitation of scope and scale, and the fact that the owners and the managers are actually the same, which results in no separation of ownership and control. However, when the technical and economic developed, new industries, such as railroads and mines, were came into being because of the mass production. These industries, at the very beginning, required a huge investment and higher-level management, and thus made entrepreneurial companies, which inherently defective, become unable to survive and expand. Since then, limited companies, who could largely acquire social capital and expand management facilities and thus accommodate the expanding production scale, were set up to hit the fashion. Limited companies were greatly different from the entrepreneurial firms on the investment structure, management framework and governance mode. Particularly, the extreme

diversion of investors led to the fact that most of the investors, though they were also owners of the corporation, were unable to be involved in the daily management of the company. Rather, the interest groups who were not investing (or, in some cases, were just investing a small portion of the company) actually controlled the company. Therefore, gradually professional managers were born to make management their career, and then the so-called separation of ownership and control began. After that, how to protect the various interest groups, such as the investors and the creditors, who owns no control of the company, from being expropriate, how to allocate the powers within the firm in order to have the power, interests and responsibilities matched and coordinated, have become the basic and critical issues of modern enterprises.

The separation of ownership and control, originated from the modern enterprises system, along with the corporate governance issues that are resulted from principal- agency problems, are all aiming at constructing an institutional framework, which could balance the of power within the company and at the same time coordinates various interest groups. Such an institution is functioned through external market adjustments and internal structure integrations. Its ultimate purpose is to establish an institutional arrangement that clearly states the responsibility of each group, makes each group appropriately functioned, employs both incentive and constrain mechanisms, and incorporates coordination and segregation of power. Although different countries (or regions), due to the divergence of their actual situation such as legal systems, ownership structures, cultural backgrounds and etc., shall adopt various corporate governance models,

or, some of them, solve corporate governance issues via external market function of resource allocation, the ultimate purpose and the requirements are quite the same. Though corporate governance and corporate management are related mechanisms, they are not on the same plane. They are combined through the corporate management and its strategic planning. In this regard, Board of Directors, a permanent delegate of Shareholder's Conference, is acting as monitor and as the core of governance, no matter viewed from external governance or internal governance perspective. However, for some reasons, the typical "Shareholders - Board of Directors - Management" regime has been changed, and the Shareholders and the Board of Directors are somehow losing their powers. Therefore, independent director system were born in countries such as the U.S. and the U.K. as an important measure to improve corporate governance and to reform the Board of Directors.

As any other system, independent board system shall have an institutional foundation for its existence. The effectiveness of the independent director system required three premises. They are set out as the following according to their degree of importance; first, the establishment of the external market system and the perfection of market mechanism, the clarification of property right and property relationships, and the foundation of market economy culture and the meeting of other corporate governance requirements; second, the establishment of clear corporate governance relationship, the clarification of responsibilities between various interest groups, and a good governance structure, especially a clear positioning of Board of Directors and a good function of it; third, the condition of the

independent director system, including the independence of individual independent director, the independence of all independent directors as a whole, the working environment and the incentive as well as the monitoring mechanisms. Let's discuss these three premises in detail below.

The first premise

Independent director system first came into being in the U.S. and the U.K. These countries are having the characteristics of the widespread of investors of listed companies and the existence of an advanced external market (including stock market and the control right market generated therefrom, professional manager market, loan market and etc.). Along with the globally corporate governance movement, such independent director system gradually spread to the rest of the world, including the (south)east Asia. However, an important fact is that the typical German and Japan corporate governance model is not in a favor of the independent director system. The reason has been that countries like Germany and Japan do not have an advanced external market mechanism, and the corporate governance systems thereof are mainly functioned via internal governance mechanisms. As for China, none of the stock market, the loan market, the control right market and manager market are as sufficient as those in the countries where the independent director system has been employed. Therefore, they are not providing sufficient premises or conditions for the independent director system to be employed in China. In addition, analysis shows that it is not the most critical measure for China to employ the independent director system for the purpose of resolving corporate governance problems.

The key to the listed companies' governance problem is not the independent director system, and we cannot reach the conclusion that the implementation of independent director system is materially helpful to the resolution of listed companies' governance problems.

The second premise

Enterprises that adopt independent director system are all in the countries that having the corporate governance characteristics of paying their top management a high salary and adopting single board system (i.e. adopting just the board of directors system, while in those countries adopting double board system (i.e. board of directors as well as supervisory board system), independent director system is not prevailing. These include countries like Germany, which adopts an up-down level double board, and Japan, which adopts a parallel double board system. Theoretically speaking, independent director under the single board regime is similar to the supervisory board under the double board regime, with no substantial difference. To remain the double board system, China could improve its supervisory board system to compensate the lack of supervision. If what we concern is just the supervisory mechanism, theoretically speaking, supervisory board system has advantage over the independent director system. Also, to adopt independent director system basing on the current double board system in China, we have to taking into account how the two legal systems and two corporate governance mechanism can co-exist and coordinate. On the other hand, the most outstanding issue for China's corporate governance is the fading out Board of Directors. If this is not given the first priority to be solved, it is hard to conclude that employing independent director