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大陆、台湾公司治理法律问题比较研究

The Comparative Research of Legal Question of
Corporate Governance in Mainland China and Taiwan

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内 容 摘 要

现代公司治理制度研究是个跨全球化与本土化的热门议题，有关公司治理理论的研究，沸沸扬扬，世界各国都争相推行公司治理运动。大陆与台湾因应国际经济环境变化及潮流趋势，为发展企业全球竞争力，在其既有的政治经济社会文化体系下，虽已有各自公司治理实务的发展和相关法规的制定，然由于两岸公司制度独特的历史问题，在关注焦点差异所兼纳采行世界不同公司治理模式时，均面临实践效果上的困惑。目前并没有一套放诸四海皆准的公司治理结构，外国经验引进如是一味囫圇吞枣或因噎废食，均无益于制度的完善，因此如何建立符合国情的公司治理制度乃本文研究的目的及动机。

全文由前言、正文和结论组成。正文分为五章。

第一章旨在说明公司治理的理论基础及现代公司治理的模式。本章将公司治理的理论基础分为代理理论、管家理论以及资源依赖理论等三类；并以此为基本，将实务上公司治理的模式区分为英美企业传统治理结构、欧洲企业共同决策治理结构，以及混合治理结构等三种模式。

第二章藉由对英、美、德、日各国公司治理原则最新发展的讨论，来分析最佳公司治理的发展模式，祈望从中归纳出适合于大陆与台湾公司治理发展的轨迹。

第三章则集中于大陆公司治理之发展与现况，其中对于大陆企业目前在公司治理上的缺失及其原因多所着墨。本章指出，股权结构过度集中、内部人控制问题、激励制度不完善与约束机制欠缺等因素，是造成目前大陆公司治理问题的主要原因。

而在第四章中，本文继续针对台湾公司治理的问题、发展与现况，再做讨论。本文归纳出导致台湾公司治理缺失的原因计有：董事之独立性不足、经营权与所有权未有效分离、法规遵循度不佳、股东之漠视与盲从、企业交叉持股严重、无有效之外部监督机构、司法程序冗长、少数股东代表诉讼，无法发挥

监督效果、现行台湾公司法法人董监之弊端、独立董事个人之义务难以厘清等。

莫基于第三章与第四章的讨论，本文的第五章着重在大陆与台湾公司治理实践的比较研究。本章从股份结构调整、建立独立董事制度、信息披露制度、公司治理守则、投资人保护机构等五方面进行比较分析。而本章的第四节则对大陆与台湾公司治理的发展，提出四点建议，分别是：完善公司治理机制、信息披露透明化、鼓励设置符合国际标准之公司治理评等机构、倡议创设符合国情之公司道德揭露及评议机构。

关键词：大陆、台湾；公司治理；法律问题；比较研究

ABSTRACT

The modern corporate governance is a hot issue in globalize and localize study. A lot of nations are trying to carry out the modern corporate governance. Both mainland China and Taiwan enterprises try to change themselves to fit in with the ever-changing environment and the world trend for the corporate governance. To develop global competition of enterprises, under the political situation, society and culture, organizations develop their own management to adjust inside and outside rules in organizations and to fit regulation. So far there is no standard system to fit each nation across the world. Most Organizations face the same problem that one experience of management in one country can not fit for another country and need to develop a new management system to fit for another country. Therefore, the targets and purposes of this article focus on the accurate methods that can set up suitable corporate governance systems for mainland China and Taiwan enterprises.

The article comprises of preface, text and conclusion. The text includes five chapters.

In chapter one, the author illustrates the theoretical foundations for corporate governance and concludes all the corporate governance theories into three styles those are agency theory, stewardship theory and resource dependence theory.

According to the practice experiences of United Kingdom, United States of America, Germany and Japan, the author analyzes the best developing style of corporate governance and tries to find out the suitable way for mainland China and Taiwan enterprises in chapter two.

In chapter three, the author focuses on the developing condition of mainland China's enterprises. By the way, the author points out the shortcomings of corporate governance in systems mainland China's enterprises.

In chapter four, the author also discusses the developing condition of Taiwan's enterprises and points out the shortcomings of corporate governance systems in Taiwan's enterprises.

Based on the discussion mentioned above, in chapter five, the author compares the corporate governance systems of mainland China and Taiwan's enterprises and propounds four suggestions for mainland China and Taiwan's corporate governance systems for the enterprises' sustainable developing.

Key Words: Mainland China, Taiwan; Corporate Governance; Legal Question; Comparative Research

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