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**Legal Development in China's Securities
Market during Three Decades of Reform
and Opening-up**

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Legal Developments in China's Securities Market during Three Decades of Reform and Opening-up

CHEN DAISONG *

I. INTRODUCTION

The policy of reform and liberalization which began in the 1970s triggered the transformation of the Chinese economy from a planned economy to a market economy. At a macro-level, an urgent need for reform of the financial system to correspond with the reform which had taken place in the economic system arose. At a micro-level, there was a need for enterprise to develop, and with this came the problem of creating new fundraising channels and changing how things are run. China's securities markets began to grow in strength, and developed regional, national, and even international prominence, promoting economic development and improving resource allocation. At the same time, the securities market stimulated the introduction of related laws. The introduction of such laws, and in particular the construction of a legal framework to regulate the securities market, flowed from initial efforts to develop such a framework holistically.

Looking back, the thirty years of development of the Chinese securities market since the period of reform and liberalization can generally be divided into four stages: the embryonic stage; the initial stage; the stage of consolidation and adjustment; and the stage of accelerated development, with the rule of law in terms of the securities market deepening all the time. Laws such as *Company Law*, *Securities Law*, administrative rules and other regulatory documents were introduced one by one; uniform regulations and self-regulation were harmonized; and investigation into criminal responsibility, together with the provision of relief to victims, was achieved. The basic framework of the rule of law was created, extending from prevention to sanctions, encouraging the growth of the securities market.

II. THE CONSTRUCTION OF RULE OF LAW OF THE SECURITIES MARKET IN THE EMBRYONIC STAGE (1978-1992)

During the embryonic stage, starting in 1981, the national debt, bank debentures and corporate bonds were released one by one. At the same time, in the early 1980s, systems for holding shares and stock emerged. Some enterprises in developed areas experimented issuing stocks to the public with the support of the relevant regional financial department. By the end of 1992, the securities market reached a degree of sophistication in structure, scale, legal system, management system etc.

A. *The Bond Market*

From 1978 to 1992, bonds issued included national bonds, corporate bonds and bank debentures, etc, amounting to four distinct categories and fourteen types. On 28 January 1981, the State Council released the *Ordinance of the People's Republic of China on Treasury Bills*, which was the first administrative regulation in China's new securities

market. On 27 and 28 March 1987, the State Council released the *Interim Regulation of Corporate Bond* and the *Circular Concerning the strengthening of Stocks and Bond's Management* respectively, which put the issue of both stocks and bonds into uniform supervision for the first time, and distinguished between the issuance and management of stocks and bonds.

From 1981 to 1992, the State Council released new treasury bond rules every year to guide the issuance of treasury bonds in that year. These rules differed slightly over the years, and there was no significant change in its length and content. According to these rules, treasury bonds in the early years could only be issued by the State Council according to the needs of national economic development and financial stability. They could not be used as currency and bought and sold freely. The *Treasury Bond Rules 1985* permitted the mortgaging and discounting of treasury bonds in banks. From the second half of 1986, with the stock, corporate bond, and bank debentures going on a trial exchange in exchange counters in some cities, the State Council gradually relaxed the limitation on the transfer of treasury bonds. The *Treasury Bond Rules 1988* allowed national treasury bonds to be transferred. In February 1988, the State Council approved the trial transfer of treasury bonds in seven cities, and gradually extended this to fifty-four cities. In 19 December 1990, the Shanghai Stock Exchange officially opened, and trading there was open to all.

Corporate bonds were initially issued in 1984, and regional companies spontaneously raised money from both members of society and their workers. Initially, some rules, such as the issuance procedure, face form, and debt service were not standardized. In 1987, the *Interim Regulation of Corporate Bonds* was released, and the means for dealing with corporate debt was standardized. Later on, in order to introduce related rules, a set of supporting measures was released – for example, the State Planning Committee and the People's Bank of China released the *Circular Concerning the Carrying into Effect of the Measures for the examination and approval of Corporate Bonds* on 1 January 1990, which detailed the rules for the amounts involved in applying for, examining and approving companies' issuing bonds. On 5 November 1991, State Tax Administration released a *Circular Concerning Collecting Individual Income Regulation Tax from Corporate Bond Interest Income*, making rules with respect to the determination and collection of tax.

B. *The Stock Market*

On 10 August 1984, the Shanghai government approved the implementation of *Interim Administrative Measures Concerning the Issuance of Stock*, which was drafted by People's Bank of China Shanghai Branch. This was the first regional government regulation, and represented the beginning of the Chinese stock issuance system. From then on, the Chinese system for issuing and exchanging stock improved exponentially. Within a few years, places such as Shanghai, Shenzhen, Shanxi and Fujian all released stock issuance rules. For example, the People's Bank of China Shanxi Provincial Branch released *Administrative Measures for a Corporation's Issuance of Stocks and Bonds* on 16 December 1985; the Fujian provincial government released *Administrative Interim Measures for Corporate Stocks and Bonds in Fujian Province* on 21 August 1986 ; Shanghai City government released *Administrative Measures for Shanghai Stock Exchange* on November, 1990; Shenzhen City government released *Administrative Interim Measures for Shenzhen Stock issuance and Transactions and Interim Measures for Shenzhen Joint Stock Limited Company* in May 1991 and January 1992 respectively. In March 1987, the State Council released a *Circular Concerning the strengthening of Stocks*

and Bond Management, which marked the beginning of uniform management for the stock market. Later, several uniform rules about the stock market were released, including *On Implementing the State Council, 'the Interim Regulation of Corporate Bonds,'* a *'Circular Concerning the strengthen of Stocks and Bond's Management,'* which was released by the People's Bank of China in August 1987, a *Circular Concerning the issue of the Joint Stock System Pilot Programme of the Issuance of Stocks to the Public*, which was released by the General Office of the State Council in December, 1990, and a *Circular Concerning the Reexamining and Approving the Pioneer Share-issuing Enterprises which Issued Stocks to the Public*, which was jointly issued by the State Committee for Restructuring the Economic System, the People's Bank of China, and the State Administration of State Property in May 1991, etc.

Looking at all the rules about issuance and exchange during this early stage, one can observe several characteristics: first, development of rules was irregular, with regional variations; second, the structure was oversimplified, and there were few rules which contained sufficient detail to address practical concerns, were compulsory or prohibitive; third, there was insufficient detail in the arrangement of the system¹; fourth, the trial programme with respect to the shareholding system was mainly in Shanghai and Shenzhen, and thus the rules with respect to stock applied primarily only to these two places.

C. The Regulation of the Securities Market in the Embryonic Stage

In this stage, the organization of the securities market had not really been formed, and there was no special securities regulator or uniform regulatory system. The regulation for the securities market was mainly under the control of general departments, such as the People's Bank of China, and was actually managed by regional government and branches of the People's Bank of China. In August 1991, the Securities Association of China was set up in Beijing, which was the first self-regulatory organization in the securities industry. The regulation of the securities market in the embryonic stage was mainly guided by the People's Bank of China, but was also under the control of a number of diverse regulators.

1. Ministry of Finance's Management of the Securities Market

From 1981 to 1985, the Ministry of Finance's managed the securities market independently. At this stage, the securities market was dominated by the national debt. Issuance of treasury bonds was mainly organized and managed by Ministry of Finance. Issuance took place mainly through apportionment, since an exchange market for the national debt was not set up yet. As a result, strictly speaking, there was no securities market management system during this stage.²

2. Regulation Dominated by People's Bank of China

This stage began in 1986, and the department in charge of the securities market was the People's Bank of China. In the meantime, some government organizations and regional governments, such as the Ministry of Finance, the State Planning Committee, the State-owned Assets Supervision and the Administration Committee, had certain management rights.

¹ See Ma Qing Quan, ed., *History of the Chinese Securities (1978-1998)* (Zhongxin, 2003) at 120.

² *Ibid*, at 93.

The *Interim Regulation of the People's Republic of China on the Management of Banks*, which was released by State Council on 7 January 1986, granted the People's Bank of China the comprehensive power and duty to manage securities such as corporate bonds, stocks and the financial market and to make rules about financial laws and policy. Accordingly, the People's Bank of China's branches in each area guided and managed financial issues.

In October 1992, the Securities Committee of the State Council (the Securities Committee) and the China Securities Regulatory Committee (CSRC) were set up. This indicated that China's securities market had gradually been merged to form a uniform regulatory framework all over the country. On 16 December 1992, the State Council released a *Circular Concerning the Strength of the Macro-management of the Securities Market*, which made clear the main work to strengthen the macro-management of the securities market. The Securities Committee was placed in charge of the uniform macro-management of the national securities market and CSRC was the executive institution of the Securities Committee.

At this stage, originating from the need to switch to a market economy, China's securities market began to sprout. This development was dominated by pilot programmes in the regions. The market developed spontaneously and lacked norms and regulations. Shenzhen's "8.10 event"³ reflected a legal system lacking regulatory measures and lagging behind economic development. Thus the introduction of securities legislation became the urgent task for standardizing the development of China's securities market in the next stage.

III. THE LEGAL CONSTRUCTION OF THE SECURITIES MARKET IN THE INITIAL STAGE (1993-1998)

During this period, China's securities market moved from comprising of regional markets to a uniform national market. A series of changes to the legal system, complementing reforms to the shareholding system and the system of State Owned Enterprises, an increase of the number of agencies and investor, brought a growing securities market into the legal system. The regulator also reduced the scale of over-the-counter (OTC) trading, put an end to the illegal action of stock markets, and defused the potential systematic risks associated with the securities market.

A. *The Legal Construction of the Securities Market in the Initial Stage*

The construction of the legal system governing the securities market in the initial stage included the introduction of legislation in the National People's Congress, State Council and other departments. This referred mainly to the *Company Law of the Peoples Republic*

³ From 9 to 11 August 1992, Shenzhen issued 500 million new stocks by way of selling subscriptions. The day before, more than 1 billion quasi-shareholders in Shenzhen and other places all over the country waited in long queues in 302 selling spots. When sales proceeded well on the morning of 9 August, matters soon got out of hand, and there was a clash due to the net organization problems. All the subscription drawing sheets were sold out by the morning of 10 August. That night, about a thousand people who had not got subscription drawing sheets marched in Shennan Middle Road in Shenzhen, with anti-corruption slogans, asking for fairness, blaming the municipal government and the People's Bank of China.

of China and some administrative regulations and administrative rules which were released by the State Council, the Securities Committee and the Securities Regulatory Committee. With the introduction of legislation, great progress was made in the construction of the legal system governing the securities market.

1. “Integrity Legislation” for the Securities Market

At this stage, “integrity legislation” with respect to the securities market was largely embodied in the *Company Law of the People's Republic of China* and administrative rules concerning the management of the stock exchange and the prevention of illegal activities.

The *Company Law* statute, which was not designed specifically for the securities market, took effect on 29 December 1993. It stipulates the definition of a listed company, the conditions and procedures for going public, information disclosure for the listed company, and suspension and termination of the trading of shares. This represented the first time a legislation of the National People’s Congress was used to stipulate requirements with respect to the securities market, laying down a foundation for the development of a share-issuing enterprise securities market. It was a significant milestone for the legal regulation of the market.

In terms of managing the securities exchange, the rules during the embryonic stage were mainly based on the administrative rules of Shanghai and Shenzhen. On 7 July 1993, the securities administration committee released the *Interim Measures for the Management of the Stock Exchange*, bringing the stock exchange within the uniform regulatory system and making specific rules for its establishment, functions, organizational structure and regulations. This was the first set of systematic management rules for the stock exchange, and laid a good foundation for further development. On 21 August 1996, the securities admission committee officially released the *Administrative Measures for the Stock Exchange*, which modified the *Interim Measures for the Management of the Stock Exchange*, adding regulations with respect to members, listed companies and stock exchange activities, and providing for punishment of unlawful practices. Compared with the *Interim Measures for the Management of the Stock Exchange*, the *Administrative Measures for the Stock Exchange* worked more smoothly and did more to promote legal regulation of the securities exchange.

With respect to the regulation of illegal activities such as securities fraud, insider trading and market manipulation, before the *Securities Law* was introduced, illegal activities in the securities market were mainly regulated by two administrative rules made by securities admission committee. On 2 September 1993, the securities admission committee released the *Interim Measures for Prohibiting Securities Frauds*, which contained detailed rules for the categories of and measures for punishment. Building on this foundation, in 31 October 1996, the CSRC released the *Circular Concerning Prohibiting Manipulation of the Securities Market*, which made supplementary rules for the manipulation of market activities. These rules had a significant effect in reducing the number of illegal activities in the securities market, and helped to promote the market’s healthy and well-regulated development.

2. The Stock Market

On 22 April 1993, the securities admission committee released *The Administration of the Issuing and Trading of Shares Tentative Regulations*. This was the first administrative rule to regulate stock issuance and exchange, covering stock issuance quality, procedure, underwriting, listing quality and procedure, the content of and approach to information disclosure of listed companies, mergers and acquisitions etc. It contained the basic rules to regulate the stock issuance and exchange, and although some of these rules were subsequently made redundant by the implementation of rules on *Company Law* and *Securities Law*, at the time of its introduction it was undoubtedly important.⁴

3. The Bond Market

On 2 August 1993, the State Council released the *Regulations on the Administration of Corporate Bonds*, a revision of the *Interim Regulations on the Administration of Corporate Bonds* which had been implemented in March 1987. These regulations represented the conclusion of the development of the bond market at this stage, extending the law from state-owned enterprises to all enterprises with legal personality (except financial organizations). The regulations stipulated that corporate bonds should be issued in an open manner and underwritten by securities operators. They also clarified the compulsory requirements for enterprises to issue corporate bonds etc.

On 8 March 1997, on approval by the State Council, the securities admission committee released the *Administration of Convertible Company Bonds Tentative Procedures*. This allowed listed companies and key state-owned enterprises to issue convertible company bonds, a creative financial instrument featuring characteristics of both bonds and stocks. This expanded the enterprises' abilities to raise funds.

B. Regulation of the Securities Market in the Initial Stage

The "8.10 event"⁵ showed the shortcomings of the regulatory system at that time, i.e. the fact that there were too many regulators, and even sometimes no regulators at all.⁶ As a result, a special securities regulator was needed to strengthen the uniform management of the securities market. The Securities Committee and the CSRC were set up against such a background, and thus a uniform regulatory system began to form.

The establishment of the Securities Committee and the CSRC smoothed the regulatory system to a certain degree, but it still had problems, such as too many overlapping regulators and regulations. For example, the securities operators at that time were still under the management of People's Bank of China and the stock exchange in Shanghai and Shenzhen still administratively belonged to the regional government, while its operations were still under the management of CSRC. These two governing bodies frequently contradicted each other. Moreover, there were some offices under the Securities Committee which did almost the same job as the CSRC.⁷

4 Before the Securities Law was officially introduced, *The Administration of the Issuing and Trading of Shares Tentative Regulations* was always previously regarded as the effective "Securities Code". It was called the "Little Securities Law"

5 See *supra* note 3

6 Liu Hong Ru, "Before and After the Setting Up of China Securities Regulatory Commission" in Fan Yong Jing, Chen Dai Song, and Li Ji Sheng, eds., *The Initial Period of the Stock Market in China (1984-1992)* (Shanghai People Press, 2007).

7 *Ibid.*

These problems were gradually solved with the reform of the regulatory system. For example, the supervisory rights of the People's Bank of China in this area were handed over to CSRC in 1997. In 1998, the Securities Committee merged with the CSRC, and the Stock Exchanges in both Shanghai and Shenzhen both fell under the regulation of the CSRC. After six years of changes and adjustments, the new securities regulation structure was officially established in October 1998.

C. The Judicial Development of the Securities Market in Initial Stage

As the securities market in China developed recently, and not all its systems were complete, illegal activities proliferated within the securities market. As a result, on 9 June 1995, the Securities Committee, People's Bank of China, and the Supreme People's Procuratorate released the *Circular Concerning Strengthening the Work of the Securities Practitioners' Crime Prevention*, seeking to strengthen the investigation and disposal of criminal cases, and to establish an effective system of supervision of organizations dealing in securities and its practitioners.

In addition, the number of bond washing cases had increased dramatically since 1995. For this reason, the Supreme People's Court released *Notes of a Symposium for Proceedings of Bond Washing Cases* on 9 January 1997. It dealt with matters such as filing, jurisdiction, capacity, legitimacy of content, methods of bearing civil liability, and the interlace of bond washing cases and economic crimes, and became the guide for dealing with new types of securities cases.

Thus, at this stage, as China's securities market gradually got off the ground, the legal system began to develop, and the regulatory system became uniform, laying a foundation for further development in the next stage.

IV. THE ROLE OF LEGISLATION AT THE STAGE OF CONSOLIDATION AND ADJUSTMENT (1999-2004)

After nearly 20 years of development during the embryonic and initial stages, China's securities market has made great achievements. However, there were still some shortcomings in the system, and the level of legislative control was not high, which hampered the further development of China's securities market. The relevant government departments and regulators therefore released a series of rules and measures to stimulate, stabilize, standardize and adjust the market to increase investor confidence.

A. Legislation at the Stage of Consolidation and Adjustment

1. The introduction of the Securities Law

Before 1999, various departments drafted more than 250 securities laws and rules, but the system did not work adequately, and there was thus an urgent need to consolidate the basic laws in the area. Against this background, the *Securities Law 1999* was introduced after six years of drafting. Its provisions established basic principles for the securities market,

⁸ *Securities Law 1999* was adopted at the 6th Session of the Standing Committee of the 9th National People's Congress in December 29th 1998, and was brought into force in July 1st 1999.

and addressed basic problems, such as securities issuing and trading securities market regulations.⁹

The *Securities Law 1999* was the fundamental law for China's securities market, and was essential to the stable development of the securities market in the long term. The introduction and implementation of the *Securities Law 1999* heralded a new stage in the legislative governance of China's securities market.

2. Stock Market

At this stage, the CSRC released a series of rules, covering Initial Public Offerings (IPO), the sponsorship system, mergers and acquisitions etc.

(a) *The Administrative Measures for Listed Companies' New Issue*: This was the set of coordinated rules released by the CSRC in order to implement the IPO rules on *Company Law* and *Securities Law*. It supplemented the rules of information disclosure. In further promoting a market-oriented issuance mechanism, and by focusing on share allotments, the *Administrative Measures for Listed Companies' New Issue* implemented the brokers' recommendation system, and achieved the goal of increasing brokers' responsibilities.

(b) *Measures for Guidance of IPO*: To ensure the smooth implementation of changes to the stock issuance system and approval system, the CSRC released *Measures for Guidance of IPO* on 16 October 2001. These regulated the issue of securities, ensured securities operators performed their duties according to the guidance procedure, and improved the quality of listed companies, thus paving the way for the implementation of approval system.

(c) *Interim Measures for the System of Securities Flotation and Guarantee*: On 28 December 2003, the CSRC released the *Interim Measures for System of Securities Flotation and Guarantee*. These measures covered the registration of sponsor institutions and sponsors, the duties of sponsor institutions, the working rules of sponsorship, regulatory measures, legal responsibilities, and all other levels of sponsorship and stipulated the rules in the operational level of the sponsorship system. This was a useful addition to the existing provisions, since it regulated securities issuance and listing, improved the listed companies' quality and securities operators' level of operation, and stimulated the healthy development of China's securities market.

(d) *Acquisition of a Listed Company Management*: After the introduction of the *Securities Law 1999*, the securities market developed very fast, and mergers and acquisitions (M&A) happened frequently. In order to regulate the M&A of listed companies and promote the orderly running of acquisitions, the CSRC released the *Acquisition of a Listed Company Management* on 28 September 2002. This dealt with the rules, procedures, and information disclosure, etc, for takeover agreements and tender offers, and made detailed rules for the immunity requirement of tender offers, made clear the regulatory measures for listed companies and their legal responsibility if they broke the rules, efficiently optimized the resource allocation of the securities market, and protected investors' interests while safeguarding the order of the securities market.

⁹ China Securities Regulatory Commission, ed., *Chinese Capital Market Development Report* (China Finance Press, 2008) at 20.

3. Bond Market

Pursuant to the State Council's requirements for enlarging securities market categories and improving the capital market system, the CSRC introduced the *Administration of Convertible Corporate Bonds Tentative Procedures and the Issue of Convertible Corporate Bonds by Listed Companies Implementing Procedures* on 26 April 2001. It provided for issuing conditions, applications and checking procedures, underwriting, buying back, selling back and debt to equity, information disclosure, and legal liability, etc. Its introduction promoted the enforcement of *Securities Law*, regulated the issuance of convertible bonds, and stimulated the development of convertible bonds. From then on, convertible corporate bonds became an important tool for the refinancing of listed companies, and it provided investors with a new form of investment.

With the implementation of the *Securities Law*, the securities market gained proper legal status, a number of coordinated rules and enforcement regulations were introduced, the level of legislation improved, and the legal governance of the securities market matured.

B. Regulation of the Securities Market during the Stage of Consolidation and Adjustment

The period of consolidation and adjustment was one in which a uniform system of regulation was achieved. One of the important regulation measures was the establishment and reform of the Issuance Examination Committee.¹⁰

In September 1999, according to the requirements of *Securities Law*, the Issuance Examination Committee was established under the auspices of the CSRC. It was responsible for checking the quality of companies which applied to issue stock, in order to solve the problem of over-centralization of the power to decide when shares could be issued to the public. The establishment of the Issuance Examination Committee was the starting point for the reform of the issuance and examination system of the securities market. However, the Issuance Examination Committee lacked transparency in its operations – for example, the members of the issuance examination committee was secret and operated by secret ballot. This lent itself to corruption, and led to a lack of confidence. For this reason, in December 2003 the CSRC introduced the *Interim Measure for Share Issuance Examination Committee*, which implemented a major reform of the issuance and examination system. The number of committee members was reduced from 80 to 25, secret ballots were replaced with open ones, an accountability mechanism and supervision mechanism for the Issuance Examination Committee were established, and the checking responsibility of the committee was strengthened. Before the issuance and examination conference, the CSRC announced the time of the conference, the names of the committee members who would be attending the conference, and the list of enterprises which were waiting to be checked. After the conference, the findings of the conference were released to the general public. Thus transparency was increased.

The establishment and reform of the issuance and examination system thus increased its professionalism and accountability, as well as improving efficiency.

10 *Ibid*, at 63.

C. The Judicial Regulation of the securities market during the period of consolidation and adjustment

As the courts began to hear more cases relating to civil compensation in relation to securities matters, great breakthroughs were made in this area.

On 21 September 2001, the Supreme People's Court released the *Circular Concerning Temporarily not Accepting Securities Civil Compensation Related Files*. This circular held that the Chinese capital market was moving towards full development, but that there were still many problems, such as insider trading, fraud, and market manipulation. However, the courts did not have the capacity to hear civil compensation cases then.

The situation changed quickly after that. On 15 January 2002, the Supreme People's Court released the *Circular Concerning Accepting Civil Tort-Related Problems Caused by Misrepresentation in the Securities Market*. It stipulated that the courts could hear cases involving the civil tort of misrepresentation when they have been investigated by the CSRC and its local offices. The release of this circular represented a big step for the legal governance of China's securities market and greatly promoted the judicial regulation of activities in the market. After the release of this circular, several listed companies were sued by investors.

On 9 January 2003, the Supreme People's Court released the *Circular Concerning Hearing the Civil Tort Cases Caused by Misrepresentation in the Securities Market*. It made clear rules for the practical problems related to filing and accepting, such as the prerequisite of accepting the filing of a lawsuit and the judicatory court, forms of action, determination of misrepresentation, criterion of liability and excuses free from responsibility, joint infringement of right, and determination of the losses. It provided in detail simple rules for hearing civil tort cases based on misrepresentation in the securities market. On 27 January 2003, the Ha Er Bing Intermediate People's Court officially heard the Daqinglianyi case, and thus the first official class action suit in this area was born.¹¹

In the criminal arena, in order to prosecute securities crimes effectively, the Supreme People's Procuratorate and the Ministry of Public Security jointly released the *Regulation Regarding the Criterion of Prosecution of Economic Crime Cases*, which made clear the criteria for determining securities crimes. The release of this regulation greatly promoted the prosecution of securities crimes. The judicial authorities investigated and severely dealt with a series of serious securities crimes which severely damaged investor interests and had an adverse social impact.

With the consolidations and adjustments made in this period, the securities market's development was further standardized, legislative governance was improved, and thus the securities market moved into the stage of accelerated development.

¹¹ Because there was previously no law with regard to class actions, it took a long while for this case to be filed. In 2004, the Appeal Court, Hei Long Jiang Provincial High People's Court, made the judgment that Daqinglianyi should give 564 investors RMB 8,8370,000 Yuan in compensation, and Shenyinwanguo was jointly liable to 433 of these investors in the sum of RMB 6,080,000 Yuan.

V. LEGISLATIVE DEVELOPMENTS IN THE GOVERNANCE OF SECURITIES MARKETS IN THE STAGE OF ACCELERATED DEVELOPMENT (SINCE 2005)

During this period, the development of the securities market moved quickly, and legislative governance advanced at a much deeper level. The reform of equity separation was also basically completed. Regulatory measures progressed, and channels for obtaining remedies in tort opened gradually.

The National People's Congress adopted a comprehensive revision of *Company Law* and *Securities Law* on 27 October 2005. The implementation of rules and regulations relating to these laws had been made gradually, and thus a new legal system was formed. The reform on equity separation, which began on 29 April 2005 and finished at the end of 2007, established a sound foundation for the efficient operation and healthy development of the market.

A. Comprehensive legislation on securities markets

1. The comprehensive revision of Securities Law and Company Law

The newly revised *Securities Law* expanded the scope of application, removed restrictions on separate operation, improved the issuance of securities, trading and settlement system of registration, increased supervision of securities companies, established the securities investor protection fund system, improved the securities regulatory management system, and increased legal liabilities imposed on violators in securities market.¹² The revision of *Securities Law*, which was based on analyzing the securities market operating rules and the characteristics of the current phase, made timely adjustments pursuant to the development of the needs of the securities market, thus proving significant not only in promoting the formation of a scientific and regulated modern enterprise system, but also in accelerating securities market development and enhancing the quality of development.¹³

The newly revised *Company Law* regulated the governance structure of listed companies, set forth strict legal obligations and responsibilities for listed companies and related staff, and relocated some provisions found originally in the *Company Law* to the *Securities Law*.¹⁴ The establishment or adjustment of these systems improved the basic legal system in China's securities market and coordinated the functions of *Company Law* and *Securities Law*, positively facilitating the improvement of the legal system of securities markets.

The revision of *Company Law* and *Securities Law*, which together form a systematic summary of practices in the securities market, made arrangements for the long-term development of the legal governance of China's securities markets.

2. The sponsor system on securities issuance and listing

The newly revised *Securities Law* recognized the establishment of the sponsor system. The CSRC issued the *Provisional Measures of Sponsor System on Securities Issuance and Listing* on 28 December 2003, marking the official establishment of the sponsor system. The CSRC promulgated *Due Diligence Guidelines for Sponsors* in May 2006, providing

12 See CSRC, *Report on the Development of China's Capital Market* (China Financial Press, 2008) [Report on Development] at 71.

13 "Regulation and Development- Shang Fulin Interprets Securities Law" *Shanghai Stock Journal* (28 October 2005) A1.

14 See *Report on Development*, *supra* note 12, at 70.

that the sponsor must diligently investigate conditions and information of great importance to investors in investment decision-making, and regulating comprehensively the approach and contents to be investigated.

To accommodate the increasingly market-oriented nature of securities issuance, the CSRC revised the *Provisional Measures of Sponsor System on Securities Issuance and Listing* and renamed it as the *Management Measures on Sponsor System on Securities Issuance and Listing*, which took effect on 1 December 2008 and further strengthened the market restriction mechanism on securities issuance and listing.

3. *Re-financing system for listed companies*

The CSRC issued the *Regulations on Securities Issuance by Listed Companies* (the *Regulations on Securities Issuance*) on 7 May 2006. At the same time, the *Interim Administration Measures on Convertible Bonds* and *Implementation Rules on the Issuance of Convertible Bonds by Listed Companies* were repealed, since the *Regulations on Securities Issuance* apply to the issuance of convertible bonds by listed companies. The *Regulations on Securities Issuance* set forth rules on conditions for refinancing, issuance procedures and information disclosure systems, strengthened the market restriction mechanism during issuance, increased the responsibility of the intermediary agencies, and promoted the quality listed companies.

4. *The system of legal liability with respect to securities related crimes*

The *Amendment to People's Republic of China Criminal Law* was implemented on 29 June 2006. It revised some provisions on securities-related crimes, and added certain new securities-related criminal charges, providing a legal basis for the effective crackdown on securities-related crimes and the maintenance of order in the securities market.

In order to crack down on the evolving securities-related crime and maintain confidence in the stock market, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued details on the guidelines ascertaining the crimes adopted by the Amendment and promulgated the *Supplementary Provisions Regarding Prosecution Standard on Economic Crime Cases* on 5 March 2008. The Supplementary Provisions established guidelines with regard to the prosecution of illegal disclosure, failure to disclose important information, breach of fiduciary duty and damage to the interests of listed companies, insider trading, disclosure of insider information, stock market manipulation, breach of fiduciary duty, misusing entrusted property, covering the securities exchanges, securities companies, listed companies, and the directors, supervisors, and senior management of listed companies. This provided a clearer basis for ascertaining securities-related crimes, and a clearer separation between criminal and non-criminal liability.

B. *Stock market*

1. *The reform on equity separation*

Equity separation, a historic and systemic defect, restricted the regulated development of China's stock market in many respects. With the liberalisation and the steady development of the stock market, the continuous accumulation of issuance and listing of new shares made the problems resulting from equity separation increasingly prominent. To address this issue, the CSRC, approved by the State Council, issued the *Circular on the Reform of Share Separation of Listed Companies* on 29 April 2005. As at 31 December 2007, listed companies engaging in or having completed equity separation reform procedures

accounted for 98% of all listed companies in terms of market value, marking the basic completion of the reform. The success of equity separation reform erased the problems of division of interest and prices among state-owned shares, personally-owned shares, and circulating shares, thus the same types of shareholders enjoyed the same rights in terms of the circulation of and income from shares. The prices of all types of shares were determined by the market uniformly, and secondary market prices began to reflect the true value of a listed company and became the common interest foundation of all types of shareholders.

The reform of equity separation was a major reform in China's stock market to improve the market-based system and operational mechanism, as well as an unprecedented innovation. Its significance lies not only in solving a historic problem, but it was also a valuable experience in introducing institutional innovation in capital markets, and created conditions for other reforms.¹⁵

2. *The system of M&A and the reorganization of listed companies*

The market-oriented system on the acquisition of listed companies was established by a series of regulations by the CSRC, including *Management Measures on the Acquisition of Listed Companies* (newly revised in July 2006), *Management Measures on Major Reorganization of Listed Companies* (introduced on 18 May 2008) and *Management Measures on the Business of Financial Advisors Involved in Major Reorganization of Listed Companies* (introduced on 4 August 2008). This diversified restructuring modes and means, and encouraged the continuation and improvement of the innovative modes such as targeted refinance, share-exchange and combination. It also changed the approach to regulation, giving full play to the market mechanism, and establishing the financial advisor system, which recognized the importance of intermediary agents, thus making oversight responsibility division more explicit.

The CSRC issued the *Decision on the Establishment of the Audit Committee of Listed Companies M&A and reorganization in Issuance Review Committee* (the *Decision on the Establishment of the Audit Committee*) and *Work Guidelines for CSRC Audit Committee of Listed Companies M&A and Reorganization* (the *Guidelines for CSRC Audit Committee*) on 17 September 2007. The *Decision on the Establishment of the Audit Committee* stipulated that any major asset restructuring of listed companies, listed companies buying assets from a particular entity by newly added shares, listed companies merging, separating, etc., should file an application with the audit committee of M&A and reorganization. The *Guidelines for CSRC Audit Committee* laid down rules for of the Committee, the relevant duties, procedures as well as regulation mechanisms, establishing a complete set of operating procedures for the Committee. The establishment of the committee was conducive to improving the quality and transparency of reviewing, to ensure that open, fair and just principles were implemented in M&A and reorganization of listed companies, and to further improve the efficiency of M&A and reorganization of listed companies.

3. *Price inquiry system*

The new shares price inquiry system represents a transition from administrative pricing to market pricing. The system was established by *CSRC Circulation on Matters related to the*

15 See *Report on Development, ibid.* at 49-50.

Trial of Share Price Inquiry system in IPOs in January 2005 and its supporting document, the Memo on the Standards of Share Issuance Reviewing No. 18 – Regulatory Requirements on The Conditions and Behavior of IPOs shares price inquiry Objects.

On 19 September 2006, *Management Measurements on the Issuance and Underwriting of Securities*, formulated by the CSRC, took effect. The regulations integrated and improved rules on underwriting, and regulated the underwriting acts in accordance with the new requirements after the comprehensive supervision of securities companies, going to great lengths to regulate IPO share price inquiries, pricing and distribution etc., and further improving the price inquiry system.

C. Bond market

On 6 February 2006, the Shanghai Stock Exchange issued the Implementing Rules on bond trading in the Shanghai Stock Exchange; the China Securities Depository and Clearing Corporation issued *Implementing Rules on Bond registration, hosting and Settlement*; and the Securities Industry Association released *Guidelines on the Commission Agreement Bonds Pledge Repurchase*. These three sets of provisions, focusing on improving the treasury bond buy-back system, improved the degree of regulation of the bond market in the stock exchange. On 14 August 2007, the *Pilot Measures on Issuance of Corporate Bonds*, took effect. The Measures set out specific rules on issuance methods, issuance conditions, issuance procedures, protection of the interests of bondholders etc., implementing the guiding ideology of establishment of market-oriented corporate bonds regulatory regime and marking the official launch of China's long-awaited corporate bonds issuance.

D. Securities market regulation in the period of accelerated development

During this period, multi-level regulation network systems, including supervision bodies, self-regulatory organizations and intermediary organizations began to take shape within the securities market, improving the system of regulation responsibilities and consolidated regulation.

1. The CSRC's consolidated supervision

The CSRC achieved effective supervision by strengthening self-regulatory bodies and intermediary agencies on the one hand – by improving their legal responsibilities and professional disciplines in order to push forward the process of market regulation, and on the other hand introducing reforms in securities law enforcement system, improving the efficiency thereof.

(a) *Strengthening regulation on intermediary agencies*: First, the CSRC continued to push forward the consolidated supervision of securities companies. The customer margin pilot third-party depository system, starting in 2004, was fully implemented in the entire industry in July 2006. At the same time, the CSRC introduced supervision based on the classification of securities companies, and established the risk monitoring and early warning system with net capital being the center.

Second, the CSRC promoted supervision on securities related public accounting. The CSRC established a system of accounting and asset appraisal supervised by regional authorities, of inspecting accounting firms on site, as well as a joint meeting of the Chief Accountant system to enhance regulation, organization and coordination on major

accounting, auditing, assets evaluation issues in securities markets, and to improve the securities regulators' ability to master policies on accounting, auditing, etc.

(b) *Integration of CSRC internal law enforcement system*: Based on the successful experience accumulated since the implementation of "separation of investigation and trial" in securities markets violation in 2002, the CSRC set up an Administrative Sanction Committee in October 2006. Once the CSRC decides to investigate an alleged violation, the case is brought to the Administrative Sanction Committee, with members of the Committee finding the evidence and facts of the case, proposing possible sanctions according to the law, and the final sanction being awarded by the Committee based on its decision. In November 2007, the CSRC Inspection Brigade was set up, and the No.1 Inspection Bureau and the No.2 Inspection Bureau were consolidated into a new Inspection Bureau. Meanwhile, the CSRC also reinforced the inspection force of regional branches, thus leading to the implementation of "separation of investigation and trial" mode, with different departments in charge of investigation, hearing and reconsideration and litigation. With clear procedures and specific responsibilities, the efficiency of CSRC law enforcement has improved.

2. *The role of multi-level network supervision*

The newly revised *Securities Law* granted the rights of securities listing, suspending and terminating of listing to stock exchanges, emphasizing its self-disciplinary function. Accordingly, the Shanghai Stock Exchange and the Shenzhen Stock Exchange revised their rules, such as those on listing and trading, strengthening their supervisory functions and promoting corporate governance and regulated operations of listed companies. They also issued early warning risks to member companies, urging them to prevent and address risks. Meanwhile, the Securities Industry Association was given full power to exercise its self-disciplinary functions, promoting the construction of industry norms and assisting in the role of self-discipline in supervision. Securities companies, accounting firms, law firms, assets evaluation agencies, credit rating agencies and other intermediary agencies make full use of their professional knowledge, ensuring the quality of prospective listed companies.

E. *Judicial Governance of the Securities Market in the period of Accelerated Development*

The *Securities Law*, thoroughly revised in October 2005, imposed civil liability for false statements and insider trading, as well as rules for civil liability for market manipulation, fraud and other violations, enriching and developing the civil remedies in securities law, and correcting the long-held emphasis on criminal penalties and administrative sanctions. Moreover, the Supreme People's Procuratorate and the Ministry of Public Security supplemented prosecution standards in order to address the need to crack down on securities crimes.

At this stage, civil litigation related to securities became active. Yinguangxia¹⁶ linked with the reform of share division, set the precedent of settling disputes through

16 Yinguangxia Company posted a staggering fraudulent profit of 745,000,000 RMB for the period of 1999-2000. Shenzhen Tianqin Accounting Firm and accountants issued a fraudulent auditing report. After the scandal was disclosed, the price of the shares dropped dramatically. The CSRC delivered a sanction to Yinguangxia. Investors brought actions against Yinguangxia. Yinguangxia paid 5,435,000 shares through capital reserve-convert-into-shares on 25 May 2007.

reconciliation. In the judgments of the Lantian shares case,¹⁷ the accounting firm concerned was held jointly and severally liable for civil compensation with respect to false representations, the first case in mainland China. In the Zhengbaiwen case,¹⁸ the investor plaintiffs brought a successful action, and in the Dongfang Electronics case, "China's first securities case"¹⁹ a similar conclusion was reached. Moreover, in the Hangxiao Steel Structure case,²⁰ persons convicted of insider trading were sentenced to imprisonment as well as paying heavy fines.

At this stage, the courts continued hearing cases involving false statements. Additionally, more cases of insider dealing and market manipulation were heard. The National Conference on Civil and Commercial Trial Work, held on 30 May 2007, specified the hearing of civil compensation cases against insider dealing and market manipulation, the People's court concerned decided that the question of whether or not cases should come before the courts would be determined by the pre-procedure set by judicial interpretations, and that the jurisdiction should be in line with pertinent rules.²¹ Thus, where civil compensation for matters such as insider trading, market manipulation and fraud was concerned, the system gradually came to allow for legal determinations to be made.

In addition, *Circulation Addressing Illegal Securities Activities*, issued in February 2008 by the Supreme People's Court and three other departments, further removed the barriers for the victims of securities-related crimes seeking civil relief, specifying civil compensation channels and clearing the way for civil remedies.

The Supreme People's Procuratorate and the Ministry of Public Security jointly issued the *Supplementary Provisions Regarding Prosecution Standards on Economic Crime Cases* on 5 March 2008, which supplemented the *Regulations on Prosecution Standard on*

17 Hubei Lantian Co. Ltd received sanctions from the CSRC on 26 October 1999, on the ground of a fraudulent assets listing. 83 investors brought actions against Lantian, and the case was heard by Wuhan Intermediate Court. The court later decided against Lantian, which was ordered to pay compensation of 5,400,000RMB, and other 8 defendants (including Hualun Accounting Firm) were held jointly liable. This is the first decision of a court requiring an accounting firm to assume joint liability for a false statement.

18 Zhengbaiwen was listed in the Shanghai Stock Exchange on 18 April 1996. Zhengbaiwen's false statement was exposed by the media on 31 October 2000. The shares of Zhengbaiwen were labeled as "PT". Investors who suffered losses brought an action in the Zhengzhou Intermediary Court for compensation. Later the court and the appeal court decided in favor of the claimants.

19 The Dongfang Electronics share prices increased to a high of 60RMB in 2000. It was later found that the former chairman of board of directors and the former GM were guilty of overstating the business profit. The court delivered sentences which marked the prelude to the most significant false statement case involving more than 7,000 investors and a compensation of 424,000,000 RMB. Four and a half years later, the claimants' lawyers settled with the chairman of the board of directors, and shares in Dongfang Electronic were used to compensate the loss of all eligible claimants at 6.39RMB/share, with the compensation totaling more than 300,000,000RMB.

20 Hangxiao Steel Structure's (HSS) stock price has more than doubled since 12 February 2007 – going from 4.24 yuan to 10.75 yuan, hitting the daily maximum rise of 10 percent 10 times in a month. This event caused suspicion among the regulatory authority and investors. After investigating, the China Securities Regulatory Commission (CSRC) found HSS and China International Fund had discussed possible contracts for work in Angola. Board chairman Shan Yinmu addressed the firm's annual conference on 12 February, disclosing that the company was signing huge overseas contracts. HSS disclosed the information publicly 3 days later. The CSRC decided that HSS violated rules on disclosure. In addition, other officials of HSS were convicted of disclosing inside information and insider dealing.

21 See Xi Xiaoming, "Give Full Play of the Role of Civil and Commercial Trial and Provide Judicial Protection to the Construction of A Harmonious Society" (Address, 30 May 2007), online: [www.zwmSCP.com <http://www.zwmSCP.com/list.asp?Unid=5828>](http://www.zwmSCP.com/list.asp?Unid=5828).

Economic Crime Cases issued in 2001. The Supplementary Provisions added more proportion and greater standards, expanding the situations in which alleged crimes should be prosecuted, detailing the conditions for criminal offenses, and thus providing a clearer basis for ascertaining securities related crimes and the dividing line between crimes and non-crimes, as well as the timely transfer of cases from administration departments to the judicial departments – all of importance in China's effort to combat securities crimes.

VI. CONCLUSION

After three decades, the legal governance of China's securities market has made considerable progress. Further strides can be made by considering what still needs to be done, and by learning the lessons from other countries. It can be anticipated that in the future China's securities market legislation and regulations, as well as the role played by the judicial system, will develop further, promoting the development of the entire stock market.

List of laws and regulations mentioned in this article:

Serial No.	Name of Laws or Regulations
1	<i>Ordinance of the People's Republic of China on Treasury Bills</i>
2	<i>Interim Regulation of Corporate Bond</i>
3	<i>The Circular Concerning the strengthening of Stocks and Bond's Management</i>
4	<i>The Treasury Bond Rules 1985</i>
5	<i>The Treasury Bond Rules 1988</i>
6	<i>Interim Regulation of Corporate Bonds</i>
7	<i>Circular Concerning the Carrying into Effect of the Measures for the examination and approval of Corporate Bonds</i>
8	<i>Circular Concerning Collecting Individual Income Regulation Tax from Corporate Bond Interest Income</i>
9	<i>Interim Administrative Measures Concerning the Issuance of Stock,</i>
10	<i>Administrative Measures for a Corporation's Issuance of Stocks and Bonds</i>
11	<i>Administrative Interim Measures for Corporate Stocks and Bonds in Fujian Province</i>
12	<i>Administrative Measures for Shanghai Stock Exchange</i>
13	<i>Administrative Interim Measures for Shenzhen Stock Issuance and Transactions</i>
14	<i>Interim Measures for Shenzhen Limited Company</i>
15	<i>Circular Concerning the strengthening of Stocks and Bond Management</i>
16	<i>Circular Concerning the Issue of the Joint Stock System Pilot Program of the Issuance of Stocks to the Public</i>
17	<i>Circular Concerning the Reexamining and Approving the Pioneer Share-issuing Enterprises which Issued Stocks to the Public</i>
18	<i>The Interim Regulation of the People's Republic of China on the Management of Banks</i>
19	<i>Circular Concerning the Strength of the Macro-management of the Securities Market,</i>
20	<i>The Company Law of the Peoples Republic of China</i>
21	<i>Interim Measures for the Management of the Stock Exchange</i>
22	<i>Administrative Measures for the Stock Exchange</i>
23	<i>Securities Law of the Peoples Republic of China</i>
24	<i>Interim Measures for Prohibiting Securities Frauds</i>
25	<i>Circular Concerning Prohibiting Manipulation of the Securities Market</i>
26	<i>The Administration of the Issuing and Trading of Shares Tentative Regulations</i>
27	<i>Regulations on the Administration of Corporate Bonds</i>
28	<i>Administration of Convertible Company Bonds Tentative Procedures</i>
29	<i>Circular Concerning Strengthening the Work of the Securities Practitioners' Crime Prevention</i>
30	<i>Administrative Measures for Listed Companies' New Issuance</i>
31	<i>Measures for Guidance of IPO</i>
32	<i>Interim Measures for System of Securities Flotation and Guarantee</i>
33	<i>Administration of Convertible Corporate Bonds Tentative Procedures</i>

34	<i>Interim Measure for Share Issuance Examination Committee</i>
35	<i>Circular Concerning Temporarily not Accepting Securities Civil Compensation Related Files</i>
36	<i>Circular Concerning Accepting Civil Tort-Related Problems Caused by Misrepresentation in the Securities Market</i>
37	<i>Circular Concerning Hearing the Civil Tort Cases Caused by Misrepresentation in the Securities Market</i>
38	<i>Regulation Regarding the Criterion of Prosecution of Economic Crime Cases</i>
39	<i>Provisional Measures of Sponsor System on Securities Issuance and Listing</i>
40	CSRC issued the <i>Provisional Measures of Sponsor System on Securities Issuance and Listing</i>
41	CSRC promulgated <i>Due Diligence Guidelines for Sponsors in</i>
42	<i>Management Measures on Sponsor System on Securities Issuance and Listing</i>
43	<i>Regulations on Securities Issuance by Listed Companies</i>
44	<i>Amendment to People's Republic of China Criminal Law</i>
45	<i>Supplementary Provisions Regarding Prosecution Standard on Economic Crime Cases</i>
46	<i>Circular on the Reform of Share Separation of Listed Companies</i>
47	<i>Management Measures on the Acquisition of Listed Companies</i>
48	<i>Management Measures on Major Reorganization of Listed Companies Management</i>
49	<i>Measures on the Business of Financial Advisors Involved in Major Reorganization of Listed Companies</i>
50	<i>Decision on the Establishment of the Audit Committee of Listed Companies M&A and Reorganization in Issuance Review Committee</i>
51	<i>Work Guidelines for CSRC Audit Committee of Listed Companies M&A and Reorganization</i>
52	<i>Circulation on Matters related to the Trial of Share Price Inquiry System in IPOs</i>
53	<i>Management Measurements on the Issuance and Underwriting of Securities</i>
54	<i>Supplementary Provisions Regarding Prosecution Standards on Economic Crime Cases</i>