The Identity of Corporate Governance in China
— Focus on the Revised Company Law of the People’s Republic of China and others —

Yong-ge LIU

I. INTRODUCTION

Since the end of the 20th century, the issue of corporate governance has become a common phenomenon all over the world, not only for academic interests, but also for the practices in enterprise. Although the period and context of disputes and reforming in corporate governance are different between Asia, America and Europe, there still remain many common features in their contents. Moreover, many of those contents are being practiced in American corporate governance. In this way, we can say the same general direction exists in the reform of corporate governance all over the world. This same direction can be categorized as “convergence”.

On the other hand, there are also many different features, such as the function of supervision or the internal audit system, and the methods or policies for market monitoring, which exist within respective countries. There are also some different directions that exist in the corporate governance practices as well. These different directions could be categorized as “divergence”.

The establishment and development of corporate governance in China is different from European countries and other Asian countries. It was a part of reformation for State-owned Enterprises (SOE), in other words, it began from finding a way out of the deadlock in SOE reform. However, once the reforming in corporate governance started in China, it was not only faster than any of the other Asian countries, but also it’s features are more similar to the American style. Because of the influences from the old society system and the tradition of Chinese culture, there were also a lot of peculiarities in the corporate governance in China, not only in the structure, but also in the method.

In this paper, I will survey the background, the main contents and the development of corporate governance in China. I will also verify the trend of convergence
and divergence in corporate governance in China from the aspect of the revised Corporate Law and other acts. Through all of the examinations in this paper, I will confirm the identity of corporate governance in China. Meanwhile, I will also draw out some other subjects for further study.

II. THE INSTITUTIONAL SPREADING AND RESULTS OF CORPORATE GOVERNANCE IN CHINA

After the Communist Party’s government was born in China, there are 3 levels which can be recognized in corporate governance in China ①. The first level was being spread during the 1950s through the 70s, which could be called “politic governance”. The second one was being spread within the 1980s, which could be called “contracting governance”. And the third one was being spread after the 1990s, which could be called “institutional governance”. If we focus on the comparison with other countries, we have to say that the “real” reform of corporate governance in China started from the 1990s. At the same time, the Modern Enterprise System established, Stock Exchange was started up, and Company Law was enacted. The fact that the SOE reformation has met the limitation within the present system and the Communist Party’s government had a stronger orientation for developing was one more reason. In the next several pages, I will investigate the establishment and the spreading of “institutional governance” from the aspect of law formulating, administrative controlling and company system reforming, etc.

From the 14th Convention of Communist Party of China, which submitted the “Socialist Market-Driving Economy” in 1992, establishing the “Modern Enterprise System”, which is almost equivalent to the stock company system, has become the main issue of enterprise reform from 1993. In the meantime, the first Company Law since the Communist Party’s government became established in China, was approved by the 5th Permanent Committee of 8th Congress of China in December of 1993 (In the following, I refer to it as “the Company Law in 1993”). Furthermore, at that point in time when the Company Law was enacted, there have been limited liability companies (LLC) numbering 8,300 and the joint-stock limited companies numbering 3,200 (contained listed companies 183) in China ②. There are three kinds of companies, those which contained the joint-stock limited companies, LLC and the sole of SOE, which is a special form of LLC, all of which were formulated by the
Company Law in 1993. I will focus on the joint-stock limited company, it's basic elements are similar to those of a German and Japanese one regarding the "supervisory board" however there are many features distinct to China (which I will describe it in the following chapter).

The Company Law in 1993 contained 11 chapters or 230 articles, which are, General Provisions (chapter 1), Incorporation and Organization Structure of LLC and Joint-Stock Limited Company (chapter 2 and chapter 3), Issue and Transfer of Shares of Joint-Stock Limited Company (chapter 4), Company Bonds (chapter 5), Financial Affairs and Accounting, Merger and Division, Bankruptcy, Dissolution and Liquidation of Company, or Legal Liability, etc. (chapter 6～10), Supplementary Provisions (chapter 11). Because Securities Exchange Law had not been enacted in the early years of the 1990s, the Company Law in 1993 contained some rules for the listed companies with one section, which mentioned the condition of share listing and trading, disclosure and termination of the listed company, and all of these should be provided by Securities Exchange Law ³. One of the features from the Company Law in 1993 is the restrictive rule that made a high hurdle for founding the joint-stock limited company. The Law says, for example, “the incorporation of a joint-stock limited company must be subject to the approval of a department authorized by the State Council or of the government at the provincial level” (Article 77 of the Company Law in 1993). Also, “the minimum registered capital of a joint-stock limited company shall be RMB 10,000,000 yuan” (about $1,280,000), and “the registered capital of a joint-stock limited company shall be the total amount of paid-up share capital as registered with the Company Registration Authority” (Article 78 of the Company Law in 1993). Furthermore, “the amount of capital contributions made by sponsors in the form of industrial property rights and non-patented technology shall not exceed 20% of the registered capital of a joint-stock limited company” (Article 80 of the company Law in 1993). This is clearly showing that all of these rules would restrict companies, especially private companies which are just setting up ⁴.

After and before the Company Law in 1993 was instituted, Shanghai Securities Exchange & Shenzhen Securities Exchange were established in 1990 and 1991 respectively. The capital market in China was beginning to form. With the capital market in China forming, “Securities Exchange Law of the People's Republic of China “(which will be abbreviated to “the Securities Exchange Law”) was promul-
gated in December of 1998, which focused on protecting the legitimate rights of investors, and standing by the social economy's order and the public benefits. The Securities Exchange Law, which required 6 years to institute, contained 12 chapters or 214 articles. Those are: General Provisions (chapter 1), Issue of Securities (chapter 2), Securities Transaction (chapter 3), M&A of Listed Company (chapter 4), Stock Exchange (chapter 5), Securities Company (chapter 6), the System of Stock’s Registration & Settlement (chapter 7), the System of Securities Transaction and Service (chapter 8), the Association of Stockbrokers (chapter 9), the System of Securities Regulatory (chapter 10), Legal Liability (chapter 11), Supplementary Provisions (chapter 12). The promulgation and enforcement of the Securities Exchange Law offered a basic protection for promoting the securities market in China. Additionally, it changed the situation which decided something on the spur of the moment only by Regulations or Notifications so far, and met a new stage in legislation's building of the securities market in China. Meanwhile, the China Securities Regulation Commission (CSRC) was organized, and the system of securities and exchange supervision was prepared. The CSRC promulgated the procedures of quota permitting the issue of shares in April of 2000, and abolished “the quota system” which allots companies to list on the stock exchange, and changed it to the permission system that was authorized by CSRC. The administrative intervention in listing a company on the Stock Exchange has been cut down in a big way. Before the “quota system” was abolished, however, more than 70% of listed companies had been listed on the Stock Exchange by the end of 2003, and it was a big problem that a lot of the listed companies do not have good conditions.

Taking advantage of the “OECD Principles of Corporate Governance” was enacted in 1999, the reformation of corporate governance was accelerated all over the world. It is different from other Asian countries that the corporate governance in China was not started from “external pressure” but from an internal cause, which is stronger motivation from the Communist Party of China and the Chinese government for pushing China to become a member of WTO and strengthening the competitive ability of Chinese enterprises. This “stronger motivation” became a big driving force for reforming the corporate governance in China. Moreover, when the system of the joint-stock limited company was prepared as in other countries, a lot of scandals were caused by the management in many companies. The Chinese government has recognized the importance in preparing the law
The Identity of Corporate Governance in China

system which includes the Company Law and the Securities Exchange Law and others. Which is another reason for accelerating the reform of corporate governance in China, too.

After 2000, the corporate governance in China is similar to that in other countries all over the world, and the target is mostly the listed company. The reform contents chiefly are: 1) Strengthening the monitoring functions of administrative authorities including in the issue of stocks, the system of listing on the stock exchange reforming, and reinforcing the supervising of listed companies, etc.; 2) Improving the company apparatus including clarifying the rights of shareholders’ general meetings, introducing the independent directors, and introducing the committee system what can be chosen, etc.; 3) Reinforcing the disclosure and internal control system, etc. In the paragraph below, I will focus on the improving of company apparatus to inspect the corporate governance in China after 2000.

The company apparatus in China are very close to those in Japan, which are the shareholders’ general meeting, the board of directors, the chief executive officer (CEO) and the supervisors (or the supervisory board). Shareholders’ general meetings are the highest decision making organ in the company, under it is the board of directors which consist of 5~19 members. The general management is conducted by the CEO who was selected by the board of directors 5. The supervisors inspect the financial affairs and audit whether the directors and CEO’s conduction are correct or not by the laws, and the supervisory board should be composed with the representatives of shareholders and more than 3 representatives of workers in the company.

In 1998, the CSRC promulgated a “Guide Line for Shareholders’ General Meeting in the Listed Company” (abbreviated only to “Guide Line” below), which provided rules for the shareholders’ general meetings convening, discussing subjects and proposals. The “Guide Line” got revised in 2000, and added also some items concretely. From the “Guide Line”, shareholders’ general meetings must have lawyers present, and the lawyers must publish their opinions about whether the attendances and proponents were qualified or not, and they must decide whether the vote process was legitimate or not (Article 7 of “Guide Line”). Furthermore, the election of an external audit corporation has to be proposed by the board of directors, and be decided by the shareholders’ general meetings through a vote (Article 18 of “Guide Line”). Either separately or totally the shareholder whose shares are
over 5%, and the supervisory board, have the right to present the temporary agenda in the shareholders’ general meeting. The board of directors, however, has the rights that judging the additional agenda, and examining it whether or not act against the laws or the article of association of the company, whether or not exceed the authority of the shareholders’ general meeting (Article 12 of "Guide Line"). This Guide Line cleared the rights of shareholders’ general meetings, which were lacking in the Company Law in 1993. It strengthened, however, the authority of the board of directors also for nominating or dismissing the supervisors who are from the exterior of the company, and for judging the temporary agenda. In the revised Company Law in 2005, which absorbed the reforms so far in the shareholders’ general meeting, laid down also the new rules about the rights of asking for convening a shareholders’ general meeting, the right of convening a shareholders’ general meeting, and the right to vote. Moreover, the revised Company Law in 2005 strived to protect the rights of the minority shareholders. In the Company Law in 1993, for example, the shareholder whose right to vote must be more than 1/4 and the directors or supervisors whose right to vote must be more than 1/3 can ask for convening an additional shareholders’ meeting (Article 43 of the Company Law in 1993). But in the revised Company Law in 2005, those rights changed. Shareholders only need more than 1/10 and directors or supervisors still need more than 1/3 respectively (Article 40 of the revised Company Law in 2005). From this change, we can see the shareholders’ rights of asking for convening an additional shareholders’ meeting was secured to some degree, and the hurdle of asking for convening an additional shareholders’ meeting got down. Concerning the rights of asking for convening the shareholders’ meeting, the revised Company Law in 2005 (Article 41) cleared it in the LLC where does not have the board of directors, provided that convenes the shareholders’ meeting by executive directors, and revised it in the joint-stock limited company where does not have a board of directors, defined the convening rights for vice-chairman of the board of directors and specified the convening condition for other directors. The revised Company Law in 2005 established also the relief measures for the case that the shareholders’ meeting was not convened by the board of directors or only by the directors, provided that the supervisors or the supervisory board, and the shareholders, whose right to vote is more than 1/10, convene the shareholders’ meeting. Concerning the right to vote, some new rules were added to the revised Company Law in 2005 (Article 38 and Article
that are: 1) The right of nominating or dismissing the employees' representative director and the employees' representative supervisor do not belong to the shareholders' general meeting; 2) In addition to the authority from law, "the others authorities from the articles of association of the company" was added to the authorities for the shareholders' general meeting; 3) Changed the right to vote from "following the stock shares" (Article 38 of the Company Law in 1993) to "following the article of association of the company" (Article 43 of the revised Company Law in 2005), and "following the stock shares was only applied in the case that there were not any provisions in the article of association of the company. Furthermore, the right of presenting an agenda by the minority shareholders (Article 103 of the revised Company Law in 2005) and the Accumulative Right to vote were added into the revised Company Law in 2005.

Concerning the board of directors, the CSRC promulgated the "Guide Line for Introducing the System of Independent Directors to Listed Company" (abbreviated to "Guide Line for Introducing the Independent Director" below) at August of 2001, which was modeled on the corporate governance in America. By the "Guide Line for Introducing the Independent Director", the listed company must introduce more than 2 independent directors in it's board of directors by the 30th of June of 2002, and more than 1/3 of it's board of directors by the 30th of June of 2003, and has to have more than 1 accountant specialist within the independent directors. The independent directors have an obligation to the shareholders' general meeting to nominate the directors, and express their opinions independently about electing and dismissing the directors and upper managers; about the reward of those directors and upper managers; about the important transaction; and about the possible affairs that harm the minority shareholders' interests. After the "Guide Line for Introducing the Independent Director" was promulgated, most of listed companies had introduced the independent director by June of 2003. In the revised Company Law in 2005, the convening process for the board of directors meeting was materialized, and the authority of the vice-chairman in the board of directors for convening the shareholders' general meeting was provided. In the Company Law in 1993, for example, "the chairman of the board of directors convenes the board of directors meeting. When the chairman of the board of directors does not fulfill the duty because of a particular cause, the vice-chairman or other directors who are nominated by the chairman convene the board of directors meeting. More than 1/3 direc-
tors can ask for convening the board of directors meeting" (Article 48 of the Company Law in 1993). Contrasting to the provisions in the Company Law in 1993, the revised Company Law in 2005 improved the process for convening the board of directors meeting, that says: "The chairman convenes the board of directors meeting. If the chairman could not fulfill the duty or does not fulfill the duty, one director who was recommended by more than half of directors can fulfill it." (Article 48 of the revised Company Law in 2005). About the representative of the company, the Company Law in 1993 said that only the chairman of the board of directors represents the company (Article 103 of the Company Law in 1993). But by the revised Company Law in 2005, in addition to the chairman, the chief executive officer (CEO) or other executive directors can represent the company as well (Article 13 of the revised Company Law in 2005). This provision focused on dissolving the problem of the rights over concentration in the company. Furthermore, the revised Company Law in 2005 permitted formally introducing the independent director into the listed company (Article 123 of the revised Company Law in 2005), and founded the system of company secretary in the listed company also (Article 124 of the revised Company Law in 2005). The company secretary makes most of the preparations for the convening of the shareholders’ general meeting and the board of directors meeting, keeping track of the documents which are connected with shareholders, and disclosing all material matters regarding to the company, including the financial situation, performance, ownership, and governance of the company.

Concerning the supervisor and the supervisory board, the CSRC and the Economic & Trade Committee of China (ETCC) promulgated “the Code of Corporate Governance for a Listed Company” (henceforth to referred to as “Code”) in their joint names in 2001 9, provided not only the responsibility of the supervisors (Articles 59~63 of “Code”) but also the formation of the supervisory board, and the rules of proceedings of steering (Articles 64~68 of “Code”). The “Code” provided that: 1) To be a supervisor one has to have special knowledge about accounting and practical experience, and the formation of the supervisory board has to be able to ensure monitoring and checking of the board of directors, CEO, upper managers and the financial affairs independently and effectively; 2) A listed company has to lay down the formal rules about proceedings of steering in it’s articles of association of the company, and the supervisory board meeting must follow the rules about proceedings of steering strictly; 3) The supervisory board must convene
it's regular meeting periodically, and call an additional meeting according to needs also. If the regular meeting did not convene because of some reason, the supervisory board must give an explanation about it (Article 66 of "Code"); 4) The supervisory board can ask for the directors, CEO, upper managers and the internal and the external accountant supervisors to take part in the meeting, and answering questions from the supervisors (Article 67 of "Code"); 5) The supervisory board must make a meeting minutes, and the supervisors and the recorder must sign their name on it when the meeting is convened. Supervisors have the right of asking for recording down their statement and the answer from the directors etc. in the meeting. The meeting minutes of the supervisory board must be preserved in the company as an important document (Article 68 of "Code"). From these provisions, we can see that the function of monitoring from the supervisory board was reinforced more after the "Code" was promulgated. Furthermore, some new provisions about the independence of the supervisory board, the number of supervisory board meeting times, and the supervisors' authority were added in the revised Company Law in 2005. About the independence of supervisory board, the revised Company Law in 2005 clarified that within the supervisory board there must be more than 1/3 employees' representatives, and the supervisory board can set a chairman and vice-chairman (Article 118 of the revised Company Law in 2005). And the supervisory board must hold a meeting at least one time per 6 months, also it can ask to call an additional meeting (Article 120 of the revised Company Law in 2005). In addition to the mentioned provisions, some new authorities were added to the supervisory board in the revised Company Law in 2005. The new authorities are: 1) The right of asking for the shareholders' general meeting to dismiss the directors and upper managers; 2) The right of putting a question or a suggestion to the board of directors about their resolution; 3) The right of presenting an agenda to the shareholders' general meeting; 4) The right of convening the shareholders' general meeting when the board of directors does not convene it; 5) The right of investigating or getting an external audit to investigate when they noticed something was wrong in the management; 6) The right of suing the directors and upper managers, etc.

Still more, the revised Company Law in 2005 revised the Company Law in 1993 totally, and adjusted most of the chapters and sections in the revised Law *. The total articles were reduced from 230 to 219, the articles about the stocks and bonds
for issuing, dealing and monitoring were deleted, which became annexed in the revised Securities Exchange Law in 2005.

The reform of corporate governance in China has passed more than 10 years from transferring to the Modern Enterprise System in the beginning of the 1990s. During this term, the strong desire for developing from the Communist Party and Chinese government was the main propulsive force to reform the corporate governance in China, and with the laws and regulations which were enacted and revised, the reforming in corporate governance in China has quickly given China equal footing with the other developed countries of the world. As a result, the style of corporate governance in China is becoming closer to that of America, not only in the internal governance but also in the external governance. In another words, the reforming in corporate governance in China, as well as in other countries, is creating convergence that brings them closer to the corporate governance in the U.S.A.

III. THE FEATURES OF CORPORATE GOVERNANCE IN CHINA

From the 1990s, the reforming in corporate governance spread over the world, in spite of the different starting points of the countries involved. One can recognize some common factors such as reinforcing the rights of the minority shareholders, reinforcing the monitoring function of the board of directors, and securing the transparency in management, etc. It means also that the reforming in corporate governance throughout the world moves in the same direction. But then, in the Europe continental countries where they adopted the Continental Law, and the function of supervising and executing are divided through the separation in company apparatus, contrasts with America and the U.K. where they adopted the Common Law, and the separation between the supervising and executing are only based on the function but not on the company apparatus. On the other hand, looking at the corporate governance in the U.K. where the reforming in corporate governance was almost lead by the private institutes and practices by the company itself, compared to many Asian countries, however, the reformation of corporate governance is led by their government, including parts of countries which were forced by the IFM and World Bank also. These differences mean that beside the “convergence”, there is a “divergence” existing in the corporate governance reform over the world. In the next several pages, I want to verify the features of corporate governance in China.
The background and motivation of reforming in corporate governance in China, as mentioned above, are different from not only European countries but also other Asian countries. It began from reforming the central dictatorial planning economic system, transferred the reform from "contracting governance" in 1980s to "institutional governance" in 1990s. In the first stage, the reform had to face the relic of the old system, and met a lot of restrictions, although the Chinese government had a strong initiative for pushing the reform. The Company Law in 1993 was established with the background what is mentioned above, although the company apparatus which was provided by the Company Law is very similar to those in Japan, there are many features that are unique to China that people involved are content with.

As well as many capitalist countries, the shareholders’ general meeting in China is the superlative authority organ in company. It can change the articles of association of the company, approve capital increase and bonds issues, permit the financial plan and profit distribution, decide the directors and supervisors’ personal affairs and their remuneration. Meanwhile, with the background that the stock shares of SOEs are an overwhelming majority in the capital market in China, then the phenomenon of "overwhelming majority" in the listed company is remarkable also. In spite of the regulations in laws, it is the truth that the rights of minority shareholders have not been protected effectively in China.  

By the Company Law, the board of directors must be made-up of 5~19 members, and besides the chairman, there may be a vice-chairman (Article 109 of the revised Company Law in 2005). However, both the chairman and the vice-chairman must be selected by more than half of the directors (Article 110 of the revised Company Law in 2005). Within the board of directors there are authorities whose duties are: 1) Convening the shareholders’ general meetings and make reports; 2) Carrying out the decision from shareholders’ general meeting; 3) Deciding the business plan and the investing policy; 4) Drawing up the financial plan and account settlement scheme yearly; 5) Enacting the scheme regarding dealing with profits and losses; 6) Enacting the scheme regarding capital increase or decrease; 7) Enacting the scheme regarding the merger, break up and dissolution of the company, and about changing the company’s ownership; 8) Establishing the management machinery in company; 9) Selecting and dismissing the CEO, vice-CEO and chief financial officer (CFO), and deciding their reward; 10) Enacting the basic management system in
company; 11) The other authorities which are determined by the articles of association of the company (Article 47 of the revised Company Law in 2005). From these provisions, we can know that the board of directors in China is quite similar to those in America, Japan and other countries. However, based on the special composition of ownership in the listed company, where the greater part of directors who were sent by the majority shareholders (or "controlling shareholders") which almost all are government or SOE, the board of directors meeting actually became an "one voice meeting", that is a meeting which is controlled by the majority shareholders' directors. Especially within the board of directors in many listed companies, which are reorganized by SOE, there are a lot of Communist Party members, that means the listed companies still have a stronger influence from the Communist Party of China. Furthermore, the revised Company Law in 2005 stipulated that the representatives of employees, who were elected by the employees from the employees' general meeting, can become the director (Article 109 of the revised Company Law in 2005). And the right to nominate and dismiss the employees' representative directors is not allowed in the shareholders' general meeting. In addition to these characteristics of the company apparatus in China, many passages such as Article 17, 18, 45, 118, 187 in the revised Company Law in 2005 mentioned the employees' interests in participating in the management in their companies.

After "the Guide Line for Introducing the Independent Director" was promulgated by CSRC in 2001, the listed company had to introduce more than 1/3 independent directors in those boards of directors by the end of June of 2003. Moreover, the revised Company Law in 2005 formally stipulated that the listed company must introduce the independent director in those boards of directors. But the definition of "Independent Director" in China is different from America and other countries 10. By the Article 49 of "Code", the independent director must be independent from both the company and the main shareholders, and can not be in charge of any other post except for the independent director. In "the Guide Line for Introducing the Independent Director", which provided that forbidding the people who held directly or indirectly more than 1% of the issued stock shares, or who is the top 10 shareholder, or the top 10 shareholder's relatives to be an independent director. It provided also that forbidding the people who belong to the organization which directly or indirectly held more than 5% of the issued stock shares or which is the top 5 shareholder, or whose relatives to be an independent director (Article 3rd in
the Chapter 3 of “the Guide Line for Introducing the Independent Director”). From these provisions, we can find out the feature of the independent director in China, that is, the “independence” of independent directors contained twice meanings: to be independence from not only the management but also the controlling shareholders (those almost are the state holding companies). This feature, of course, resulted from the special composition of ownership in the listed companies in China.

It is the obligation that establishing the supervisory board which should be composed with more than 3 supervisors (Article 118 of the revised Company Law in 2005). The authorities of the supervisory board are, 1) Examining the company’s financial affairs; 2) Monitoring the directors and upper managers’ executive practices, and proposing to dismiss the directors and upper managers when they break the laws, regulations and the articles of association of the company, as well the resolution of the shareholders’ general meeting; 3) Revising the acts of directors and upper managers when it was harmful to the company interests; 4) Convening the shareholders’ general meeting when the board of directors did not, or does not convene it; 5) Present the agenda to the shareholders’ general meeting; 6) Suing the directors and upper managers based on the regulation of the Article 152 of the revised Company Law in 2005; 7) The others action which are laid down in the articles of association of the company (All of those regulations were laid down in Article 54 of the revised Company Law in 2005). In addition to the “chairman” position, the “vice-chairman” position can be set up in the supervisory board, and the supervisory board meeting has to convene at least one time every 6 months, and the supervisors can propose to convene an additional meeting of shareholders (Article 118 of revised Company Law in 2005).

From these regulations above, we can see the supervisory board in China is very similar to that of Japan in it’s function, we can see also, however, many unique Chinese features in it. About the composition of the supervisory board in China, for example, the revised Company Law in 2005 provided that the supervisory board must be composed by the representatives of shareholders and a suitable proportion of the representatives of employees, and the proportion of representatives of employees can not be below 1/3. The concrete proportion can be provided by the articles of association of the company, and the representatives of employees in the supervisory board shall be democratically elected by either the general meeting of employees’ representatives, or the general meeting of the employees, or another
democratic method (Article 118 of the revised Company Law in 2005) \(^2\). Also, from this regulation, we knew that the employees, as one of stakeholders, whose interests are regarded as more important in China than in other countries. This feature in corporate governance in China showed not only the special social system in China (China still professes it adopts socialism, even now), but also based on Chinese traditional culture \(^3\). Of course, it reflected the current situation in China as well, that the Chinese government wants to build a “harmonious society” officially and has to regard the employees’ interests because it is directly linked to social stability.

Besides the mentioned company apparatus above, the “Lao San Hui” (the Committee of Communist Party, the general meeting of employees’ representatives and the labor union) still preserved in the joint-stock limited companies, especially the Communist Party has still been keeping a strong influence to the listed companies. This is the feature of corporate governance in China, too.

So far, I examined the features of corporate governance in China, only through the provisions of the Company Law in this paper. Except the Company Law, the Securities Exchange Law and the Bankruptcy Law are containing the same features as to the corporate governance in China also, and I will examine it in another paper.

From what has been covered so far, you can find out about lots of features of the corporate governance in China, and it means that in addition to the “convergence”, there is also a “divergence” direction which exists in the reform of corporate governance in China.

**IV. CONCLUSION**

In this paper, I surveyed the reforming in corporate governance in China from examining the provisions of laws, especially the revised Company Law in 2005. From this study, I confirmed that following the “Modern Enterprise System” was established and the capital market was prepared in the 1990s, the corporate governance in China has been close to that of America, where the standard company apparatus was prepared and the functional separation between the monitoring and the executing was made. On the other hand, the Chinese features in corporate governance, that are different from not only European but also other Asian countries, were confirmed also. In other words, in reforming corporate governance in China
after the 1990s there were two perspectives - "convergence" which agrees with the corporate governance practices of other countries, and "divergence" which contains the Chinese features - those that seem to differ. From this survey, I can say that the identity of the corporate governance in China was examined also.

Meanwhile, I could not investigate subjects like the followings: The first one is about the core essentials of the features regarding the corporate governance in China. In the reform of corporate governance around the world there are some common factors and not a few special factors also. The special factors are based on the respective social system and the varied traditional culture. This is a very important subject but I could not survey it because of the restriction on the number of leaves, however I will analyze it at another time. The second one is about the study of scope of corporate governance. The issue of corporate governance spread over many academic areas such as: Economics, Law and Management. It is related to many laws such as the Company Law, the Securities Exchange Law and Bankruptcy Law. And it contains many themes such as: how to prevent the scandals, how to raise the value of the company and advance competitive strength, etc. In this paper, I only investigated the reform of corporate governance in China focusing on the company apparatus through the perspective of management based on the Company Law, but removed others although those are similarly important.

The issue on corporate governance is an "incomplete subject forever" and the reforming in corporate governance in China, as well as other countries in the world, will continue to grow. With the process constantly developing, we can anticipate that the corporate governance in China will have a richer presence in the near future.

NOTES

1) Yong-ge LIU (2003)
3) In October of 2005, the Company Law in 1993 was revised completely and approved by the 12th Permanent Committee of 10th Congress of China. The revised Company Law in 2005 contained 11 chapters or 219 articles.
4) In the revised Company Law in 2005, the minimum registered capital of a joint-stock limited company is reduced from 10,000,000 yuan (Article 78 of the Company Law in 1993)
to 5,000,000 yuan (about $650,000), and the registered capital of a joint-stock limited company can be paid in installments. Furthermore, the way of investment became diversified, and founding a "one owner" LLC was approved by the revised Company Law in 2005 (Article 58 of the revised of Company Law in 2005).

5) The Securities Exchange Law was revised 2 times after it was promulgated in 1998. The first revision was in August of 2004, and the second revision was in October of 2005. The revised Securities Exchange Law in 2005 contained 12 chapters or 240 articles.


7) In the revised Company Law in 2005, the position of CEO in LLC was changed from "compulsory" to "optional". It means that the right of whether or not setting the position of CEO in LLC is decided by it's board of directors.

8) The "Code" contained 8 chapters or 95 articles, and it provided that: 1) Shareholders & shareholders' general meeting; 2) The overwhelming majority of shareholders and listed company; 3) Supervisors and supervisory board; 4) The performance assessment and incentive for directors, supervisors and executive officers; 5) Stake holders; 6) Disclosure; etc. In addition to the Company Law in 1993, the "Code" became one more important act in corporate governance in China since 2001.

9) The Company Law of the People's Republic of China had been revised 2 times since it was enacted in 1993 until it was revised totally in 2005. During this term, both of the revisions in 1999 and in 2004 were a narrow range revision.

10) In the revised Company Law in 2005, "the Accumulative Right to Vote" (Article 106) and "the System of the Shareholders’ Representatives to Sue" (Article 152) were added. It means that the right of minority shareholders was starting to be considered in China as well.


13) Concerning the influence of the tradition of Chinese culture, I could not survey it in this paper because of the restriction on the number of leaves.


REFERENCES

(Japanese References)


KAWAI Shinichi [2003] The Listed Companies in China -- Focus on the insider control. SOTOSHA.

KANDA Hideki [2006] An Introduction to Company Law. IWANAMISHINSHO.


KOSANO Hiroshi [2001] Economics of Corporate Governance. NIHONKEIZAISHINBONSHA.


[English References]


OECD [2001] Corporate Governance in Asia—a Comparative Perspective—. OECD.


[Chinese References]


LIAO Li (eds.) [2003] Corporate Governance & Independent Directors. CHING HUA University Press. (Beijing)


ZHAO Hsu-dong (eds.) [2006] A Comparison between the New Company Law and the Old One. People’s Court Press. (Beijing)

LANG Hsian-ping [2004] Corporate Governance. Social Sciences Literatures Press. (Beijing)

WANG Wen-yu [2003] New Companies and company Law. ZHONG GUO ZHENG FA University Press. (Beijing)

ACKNOWLEDGMENTS

This paper is a part of my research in America from 2005 through 2006. I am grateful to SAKUSHIN-GAKUIN University, where I am employed, which gave me the research opportunity. Special thanks to professor NAKAMURA Mizuho who introduced me the great research environment in the U. S. A. and professor Edwin M. Epstein who was supporting and encouraging me continuously in U. C. Berkeley, which is a famous university all over the world. Also, I greatly appreciate Mr. Michael Creighton and Mr. Dana T. Redford who checked this paper, and gave a lot of precious comments and valuable advice. Of course, if there were some mistakes in this paper, they belong solely to me.