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Regulating squeeze-out techniques by controlling shareholders: The divergence between Hong Kong and Singapore

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Title Page

Regulating Squeeze-out Techniques by Controlling Shareholders: the Divergence Between Hong Kong and Singapore

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Abstract

Squeeze-out transactions are controversial as the controlling shareholders may expropriate the minorities' shareholdings at unattractive prices. Existing scholarship has focused on the optimal approach towards regulating such transactions in the US and the UK, which have widely dispersed public shareholdings, but little attention is placed on jurisdictions with concentrated shareholdings, which may necessitate a different approach given that the prospects of expropriation are very high. This article fills the gap by examining Hong Kong and Singapore, which have concentrated shareholdings. Notwithstanding the fact that they have adapted their corporate and securities laws from the UK, Hong Kong ultimately provides greater minority shareholder protection than Singapore.

We present empirical evidence that the differences in regulation have led to a smaller number of squeeze-outs but higher premium payable to minority shareholders in Hong Kong, as compared to Singapore. However, Hong Kong firms experience higher levels of related party transactions prior to the squeeze-outs, which represent another form of tunnelling. We explain that the differences in regulation and discuss the normative implications of our findings. Our study contributes to the broader literature that "law matters" and provides case studies of how interest group politics shape the evolvement of laws and regulation.

Keywords

Squeeze-outs, delistings, going private transactions, controlling shareholders, takeovers; Hong Kong; Singapore

Number of words (excluding footnotes, title page and abstract): 10,282

I. Introduction

Squeeze-outs are controversial because the controlling shareholders can force the minority shareholders to sell their shares against their wishes and at unattractive prices. However, there are often good reasons to allow squeeze-outs, including enabling the listed company to achieve better costs savings and a more efficient organisational structure. In addition, controlling shareholders may wish to avoid the costs associated with running a listed company, especially where the company has not tapped into the capital markets for a significant amount of time.[1]

For these reasons, many jurisdictions, including the United States (US)[2] and the United Kingdom (UK),[3] allow squeeze-outs. US (Delaware law) protects minority shareholders through a combination of shareholder appraisal rights[4] and fiduciary duty class actions.[5] UK does not have appraisal rights nor class action suits and instead requires supermajority of the minority votes or acceptances. However, while there is a substantial body of scholarly work discussing the optimal approach towards squeeze-outs in the UK[6] and

[Acknowledgement of funding redacted]

1 See V Khanna and U Varottil, "Regulating Privatizations in India: A Comparative Perspective" (2015) 63 American Journal of Comparative Law 1009.

2 In Delaware, US, squeeze-outs are known as freeze-out transactions. See G Subramanian, "Fixing Freezeouts" (2005) 116 Yale LJ 2; G Subramanian, "Post-Siliconix Freeze-outs: Theory and Evidence" (2007) 36 J Legal Studies 1.

3 See Part III below.

4 Eg Delaware General Corporations Law (DGCL), s 262. Section 262 provides for an appraisal remedy for shares of any class or series of stock, of a constituent corporation in all mergers and consolidations effected under the DGCL, with certain exceptions. Dissenting shareholders can apply to court to compel that the controllers pay them a fair value for their shares. For discussion on problems of the fair value see B Wertheimer, "The Shareholders' Appraisal Remedy and How Courts Determine Fair Value" (1998) 47 Duke LJ 613.

5 For a discussion on Delaware fiduciary class action suits, see V Khanna and U Varottil, n 1 above.

6 For a discussion relating to schemes of arrangement in UK, see D Kershaw, *Principles of Takeover Regulation* (OUP, 2016); J Payne, "Schemes of Arrangement, Takeovers and Minority Shareholder Protection" (2011) 11 JCLS 67.

US[7] where the public shareholders are widely dispersed,[8] there is limited research as to the empirical effects of the regulatory framework in jurisdictions with concentrated shareholdings which may require a different approach, given the prospects of squeeze-out/delisting are very high.

This article fills the gap by examining squeeze-outs in Hong Kong and Singapore. Both jurisdictions have concentrated shareholdings[9] and are financial centres in Asia. Both have adapted UK corporate and securities laws, and thus have similar rules on corporate law and takeover regulation. [10] Both jurisdictions have a large number of overseas companies. Both jurisdictions also have relatively strong robust enforcement framework.[11]

Part II begins by defining the problems of squeeze-outs and how our work fits into the broader literature. In Part III, we discuss the three common forms of squeeze-outs involving target companies that are incorporated either locally (Singapore or Hong Kong, as the case may be) or in one of the overseas jurisdictions with English origins.[12] First, the bidder may

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7 For a discussion on US approaches towards squeeze-outs, see G Subramanian, "Fixing Freezeouts", n 2, above; G Subramanian, "Post-Siliconix Freeze-outs: Theory and Evidence", n 2, above; R Gilson & J Gordon, "Controlling Controlling Shareholders" (2003) 152 U Penn LR 785.

8 For comparative discussion on European and US approaches towards squeeze-outs, see M Ventoruzzo "Freeze-Outs: Transcontinental Analysis and Reform Proposals" (2010) 50 Virginia Journal of International Law 841.

9 See Claessens S, Djankov S & Lang LHP "The separation of ownership and control in East Asian Corporations" (2000) 58 J Finan Econ 81; Carney, R. W. and Child, T. B., "Changes to the Ownership and Control of East Asian Corporations Between 1996 and 2008" (2013) 107 J Finan Econ 494 (for a more recent snapshot on the ownership concentration in selected East Asian listed issuers, including Hong Kong and Singapore).

10 For a discussion of legal transplantation of UK-style takeover regulation in Hong Kong and Singapore respectively, see D Donald, "Evolutionary Development in Hong Kong of Transplanted UK-Origin Takeover Rules" and WY Wan "Legal Transplantation of UK-Style Takeover Regulation in Singapore", both in U Varottil and WY Wan eds, *Comparative Takeover Regulation: Global and Asian Perspectives* (Cambridge University Press, forthcoming, 2017, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693518 and https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2862805 respectively).

11 CLSA, *CG Watch 2016: Ecosystems matter; Asia's path to better home-grown governance* (September 2016), p. 15 (comparing the scores for enforcement framework between Singapore and Hong Kong).

12 The English-origins jurisdictions are Cayman Islands, Bermuda, and British Virgin Islands (BVI). These countries constitute the top jurisdictions for overseas companies listed in Hong Kong and Singapore (constituting more than 80% of the overseas listed companies in each case). Data is at March 2017 and source: CapitalIQ. As explained below, in addition to the companies incorporated in the above-mentioned jurisdictions, we have also included companies incorporated in the People's Republic of China (PRC) and listed in Hong Kong; for the purposes of Hong Kong rules, they are treated as functionally equivalent to schemes of

make a general offer for the target shares and when it achieves a high acceptance threshold, it may compulsorily acquire the remaining shares. Alternatively, the bidder may obtain full control of the target company in a single transaction via a scheme of arrangement. The last option is that the target company obtains the approval of the shareholders for its delisting and the bidder makes an exit offer to the minority shareholders (known as a delisting offer). We include delisting offers in our study as they are the functional equivalent of squeeze-outs. Delistings deprive the shareholders of a market for their shares, and indirectly force the minority shareholders to tender their shares to the controlling shareholders.[13]

In Part III, we explain that while the company and securities laws in Hong Kong and Singapore are adapted from the UK, there are important differences. Hong Kong is much more restrictive of squeeze-outs than Singapore in many respects. The differences raise a number of interesting questions. First, do the outcomes in the premium that is payable to minority shareholders correlate with the methods of squeeze-out in Hong Kong and Singapore? In other words, we are interested to know whether a more stringent regime would enhance the welfare of minority shareholders (in terms of premiums paid over share prices). Second, how can we explain the divergences between the regulatory framework of two otherwise superficially similar systems? Third, what are the normative lessons and implications of the findings for Hong Kong and Singapore?

To develop our analysis, in Part IV, we examine squeeze-out transactions of companies listed on Singapore Exchange (SGX) and Stock Exchange of Hong Kong (SEHK)

arrangement because the Hong Kong regulators require the issuers to comply with the 75% approval threshold required for schemes of arrangement. There is no reported instance of a squeeze-out for a PRC-incorporated company listed in Singapore. See discussion in n 50 and accompanying text below. See Part III below for a detailed discussion on the three methods of squeeze-outs/delistings involving both locally and foreign incorporated companies in the two jurisdictions.

13 See E Rock, P Davies, H Kanda and R Kraakman, "Fundamental Changes" in *The Anatomy of Corporate Law* (R Kraakman et al ed, 2nd edition, 2009), p 207.

by controlling shareholders (defined for our purposes as holding 30% or more shares) for the period 2008-2014. The companies include local and foreign companies.[14] 30% threshold is chosen as the indicator of control as it is the threshold for the purposes of the mandatory bid rule in both jurisdictions.[15] Our analysis shows that there are significant differences in the frequencies and outcomes of squeeze-outs in two jurisdictions, with minority shareholders receiving lower number of squeeze-outs but larger premiums in Hong Kong, as compared in Singapore. However, in Hong Kong (but not in Singapore), we find that controlling shareholders engage in significantly higher levels of self-dealing transactions in the fiscal year prior to the squeeze-outs where the squeeze-outs are effected by controlling shareholders as compared to squeeze-outs by non-controlling shareholders. Our findings suggest that controlling shareholders in Hong Kong may have engaged in more significant forms of tunnelling via self-dealing.

In Part V, we explain the reasons for the differences in the regulatory framework for squeeze-outs in the two jurisdictions. In Part VI, we discuss the normative implications and we conclude in Part VII. Our study contributes to the literature on squeeze-outs and the broader agency problem between controlling and minority shareholders in the following ways. First, we offer new empirical findings on the squeeze-out transactions of Hong Kong and Singapore, which demonstrates that the small, but significant, difference in the regulatory framework can lead to different outcomes for minority shareholders. Second, we seek to establish the link between self-dealing transactions and squeeze-outs, which may suggest that

[14] The statistics from World Federation of Exchanges, as at December 2015, shows that 37% of the companies listed on SGX are foreign companies. In respect of Hong Kong, as at March 2017, only 15% of the companies listed on SEHK are incorporated under Hong Kong law. Source: CapitalIQ. (See also D Donald, *A Financial Centre for Two Empires* (2013, CUP), ch 3). We have not used the statistics from World Federation of Exchanges for Hong Kong as it classifies China-incorporated companies as "domestic".

[15] Singapore Code on Takeovers and Mergers (Singapore Takeover Code), rule 14; Hong Kong Codes on Takeovers and Mergers and Share Buybacks (Hong Kong Takeover Code), rule 26. When a bidder and its concert parties acquires 30% of the voting shares, it is required to make a mandatory bid for the remaining shares that it does not own.

controllers extract benefits from the targets with these self-dealing transactions before effecting the squeeze-outs. Our study also contributes to the broader academic debate on whether "law matters" and presents two case studies of how the transplantation of UK model of securities regulation evolves differently due to public policy choices, market conditions, market participants and other factors.

II. Squeeze-outs and Theoretical Framework

1. The agency problem and the "law matters" thesis

Squeeze-out is controversial because it deprives a shareholder of continued participation in the company that he has invested in and which he expects to enjoy the upside, if any, until such time he chooses to sell or the company is wound up. In particular, where controlling shareholders effect the squeeze-out, scholars have regarded it as a form of appropriation of private benefits of control since they (controlling shareholders) are eliminating the minority shareholders at a price that reflects "the discount equivalent to the private benefits of control available from operating the controlled company".[16] This raises the classical agency problem as to the conflict between the interests of controlling and non-controlling shareholders in controlled companies (also known as Type II agency problems), which is distinct from the agency problem as to the conflict between the interests of managers and shareholdings found in widely dispersed companies.[17]

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16 R Gilson and J Gordon, "Controlling Controlling Shareholders", n 7 above, at 796.

17 E Fama and M Jensen, "Separation of Ownership and Control" (1983) 26 Journal of Law & Economics 301; A Shleifer and R Vishy, "Large Shareholders and Corporate Control" (1986) 94 Journal of Political Economy 461.

The conflicts of interests arise in the following respects. First, controlling shareholders can choose the timing for the squeeze-out transaction and there is room for opportunistic behaviour. For an example, controlling shareholders may choose to privatise when the prices are at a historical low.[18] Controlling shareholders, who have inside information, may also choose to privatise to deprive the minority shareholders of the upside, which the insiders (controlling shareholders) may foresee, would occur due to upcoming changes in market conditions, more positive outlook or prospects of the company. While the law on insider dealing will limit opportunistic behaviour by curbing trading on inside information, controlling shareholders may still take advantage of their non-specific insights of the value of the company (such as the outlook of the company or its earnings cycle), which does not amount to insider dealing.

Second, controlling shareholders choose the value of the consideration payable to the minority shareholders and this consideration does not always have to be approved by the target boards.[19] For examples, general offers and delisting offers may be effected without the approval of the target board (including its independent directors) which could have potentially overcome the collective action problem of the minority shareholders. Further, controlling shareholders could influence the value of the target, such as by entering into self-dealing transactions prior to the squeeze-out, thereby depressing the value of the target's market price and then seek to privatise the company at low prices.[20]

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[18] E.g. see Bebchuk, L.A., Kahan, M., 2000, "Adverse selection and gains to controllers in corporate freezeouts" in: Morck, R. (Ed.), *Concentrated Corporate Ownership* (The University of Chicago Press, 2000), pp. 247–259. For an example of opportunistic behaviour in Hong Kong, see the going private transaction in *Re PCCW* [2009] HKCU 720, where the Court of Appeal in Hong Kong noted that the going private occurred when the price of PCCW shares were a historic nine-year low, and that the controllers were seeking to deprive the minority shareholders of the prospective increase in the value of the shares following an upturn.

[19] Cf US (Delaware) where in a merger freeze-out, the special committee appointed by the target board has the ability to veto the transaction. See G Subramanian, "Post-Siliconix Freeze-outs: Theory and Evidence", n 2 above.

[20] Du J, He Q & Yuen SW "Tunneling and the decision to go private: Evidence from Hong Kong" (2013) 22 Pacific Basin Finan J 50.

However, existing legal and corporate finance literature has recognised a blanket ban on squeeze-outs is not optimal on economic grounds. First, there may be legitimate reasons why a controlling shareholder wishes to obtain 100% of the target. A controlling shareholder may be only willing to grant further financing on the basis that he holds 100% of the target. A bidder, including a controlling shareholder, may wish to obtain maximum synergies arising from the takeover and effect a re-organization of the assets of the target. A bidder may wish to obtain 100% of the target to be able to utilise the assets of the target ultimately for leveraged financing.[21] Second, from the issuers' perspectives, they may wish to save costs from continued listing, particularly if they have not tapped the capital markets for financing. Allowing a very small minority of shareholders to block the squeeze-out may lead to a decrease in value-enhancing transactions.

Getting the balance right between controlling and minority shareholders is important. A significant body of research, known as "law matters" research, led by La Porta et al, has shown that the legal framework governing financial markets and corporate governance, in particular, protection of minority shareholders, had an important role to play in creating the conditions for strong capital markets.[22] While the link between law and financial development is one of cause or effect has been hotly debated in later studies,[23] the hypothesis has not been decisively rejected. Legal requirements impose constraints on controlling

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21 Wan Wai Yee & Umakanth Varottil, Mergers and Acquisitions in Singapore: Law and Practice (LexisNexis, 2013) at p 619.

22 La Porta R, Lopez-de-Silanes F, Shleifer A & Vishny RW "Law and finance" (1998) 106 J Polit Economy 1113 (examining the rules protecting shareholders in common law and civil law countries and their hypothesis is that small shareholders have less influence in jurisdictions that do not protect their rights). See also La Porta R, Lopez-de-Silanes F & Shleifer A (2008) "The Economic Consequences of Legal Origins" 46 J. Econ. Lit. 285 (rectifying some of the strong former claims in the 1998 work).

23 See eg J Coffee, "The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control (2001) 111 Yale LJ 1 (arguing that legal developments have tended to follow, rather than precede, economic change).

shareholders' ability to privatise the targets at unfair prices. It remains an empirical question as to whether the wealth effects to minority shareholders consequential upon squeeze-outs are correlated to the kind of legal protections in two different jurisdictions, which this paper seeks to test.

2. Interest Group Theory and Concentrated / Dispersed Shareholdings

One of the more recent debates in comparative takeover law literature is the role of interest group politics in explaining the evolution of takeover law. In influential article discussing the evolution of the hostile takeover regime in UK and US, Armour and Skeel argue that UK takeover regulation, favouring greater protection of shareholders' interests found in the City Code of Takeovers and Mergers (UK Code), is attributable to the UK's self-regulatory regime and aggressive lobbying by the institutional shareholders, as opposed to the US where the courts remain the arbiter of takeover disputes.[24] UK takeover regulation is shaped by institutional shareholders pre-empting legislative intervention while US regulation is derived from judge-made case law, largely from Delaware. More recently, Armour, Jacobs and Milhaupt extended the analysis to Japan, which has adopted elements of US takeover regulation and which has largely dispersed shareholdings of publicly listed companies. They argue that the diversity in the hostile takeover regimes in all three jurisdictions is the product of the interaction between the 'demand side' (being the individuals, firms or public) and the 'supply side' of rule production (being the legislature, courts and regulators).[25]

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[24] See J Armour and D Skeel, Jr, 'Who Writes the Rules for Hostile Takeovers, and Why? – The Peculiar Divergence of U.S. and U.K. Takeover Regulation', (2007) 95 Georgetown Law Journal 95, 1727-1794 (arguing, in the context of explaining why US and UK have different substantive rules on defensive measures, that the mode of regulation matters).

[25] See J Armour, J B Jacobs, C J Milhaupt, 'The Evolution of Hostile Takeover Regimes in Developed and Emerging Markets: An Analytical Framework', (2011) 52 Harvard International Law Journal 221-285.

Can the theory of interest group politics apply outside of the US, the UK and Japan, which have relatively dispersed shareholding, to explain the different paths of evolution of Hong Kong and Singapore's regulation of squeeze-outs? Both jurisdictions have relatively concentrated shareholdings and share many similarities in their corporate and securities laws; they have adapted their company legislation from the UK, and have adopted the UK Code and its Takeover Panel in respect of the regulation of public takeovers. Both also have similar legal constraints on corporate insiders and controlling shareholders in gaining disproportionate benefits of private control at the expense of minority shareholders.[26] However, as the discussion in Part III shows, Hong Kong has significantly restricted squeeze-outs by enhancing minority shareholder protections and Singapore has gone the other direction in lowering the barriers for squeeze-outs. We seek to test whether the interest group theory explains the reasons for the differences, based on the evolvement of the law and regulation governing squeeze-outs in both jurisdictions.

III. Squeeze-outs in Hong Kong and Singapore: Regulatory Differences

As outlined in Part I, there are three principal methods of squeeze-outs by controlling shareholders in Hong Kong and Singapore: first, the controlling shareholders makes a general offer followed by compulsory acquisition;[27] second, the controlling shareholders acquire 100% control of the target company via a scheme of arrangement;[28] and third, the controlling shareholders procure the delisting of the target and then make a delisting offer for the remaining shares.[29] Delisting offers are matters of stock exchange regulation in both Hong

[26] See discussion in Part IV(3) below.
[27] Hong Kong Companies Ordinance 2012, section 693; Singapore Companies Act, s 215.
[28] Hong Kong Companies Ordinance 2012, sections 673-674; Singapore Companies Act, s 210.
[29] SEHK listing rule 6.12; Singapore Listing Manual, rr 1307 and 1309. There are also other methods of squeeze-outs/delistings, such as the statutory amalgamation in Singapore (sections 215A to 215G of the Singapore Companies Act) or its equivalent such as the statutory merger process in Cayman Islands (Part 16 of

Kong and Singapore. While the first two forms of squeeze-outs are generally matters for the law of incorporation of the target, as we explain below, in certain instances, the securities laws, particularly the takeover codes, may offer additional levels of protection to minority shareholders which apply to all local public companies and foreign companies with primary listings in Hong Kong and Singapore.[30]

1. General offers and transaction arbitrage

The UK Companies Act 1929 first introduced the possibility of compulsory acquisitions of companies by providing that if holders of 90% or more of the shares of the target company accepted the takeover offer by the offeror, the offeror could compulsorily acquire the remaining shares on the same terms accepted by the majority.[31] The rationale was to facilitate bidders obtaining 100% control of the targets. [32] Singapore and Hong Kong adapted this particular provision on compulsory acquisition via the Companies Act 1967 and the Companies Ordinance 1932[33] respectively, pursuant to the general reception of the UK

Companies Law (2013 Revision) or the 95% statutory merger in Bermuda (section 103 of the Bermuda Companies Act 1981) or the plan of merger in BVI (section 170 of the BVI Business Companies Act 2004). We have excluded the Singapore statutory amalgamations as they have not been used for public mergers and acquisition deals. In relation to the equivalents in the other jurisdictions mentioned in this footnote, in general, the Hong Kong securities regulator requires these processes to comply with the 90% disinterested shareholder acceptance (even for squeeze-outs akin to squeeze-outs such as the 95% statutory merger in Bermuda). See Part III below.

30 Hong Kong Takeover Code, rule 4.1; Singapore Securities and Futures Act (Cap 289), ss 138, 139 and 140.

31 UK Companies Act 1929, 19 & 20 Geo 5, c 23, s 155.

32 In UK, prior to 1929, while many of the companies were successful in acquiring 100% control of targets if they had wanted to do so, there was a small minority of cases where such control could not be obtained, either because of holdout or because of shareholder unavailability. As a result, the UK Companies Act 1929 was enacted which provided that if holders of 90% or more of the shares of the company being acquired accepted the takeover offer, the bidder could compulsorily acquire the remaining shares on the same terms accepted by the majority. See also B Cheffins, *Corporate Ownership and Control: British Business Transformed* (OUP, 2008), at p 43. See also the *Report of the Committee on Company Law Amendment (Cohen Report 1945)*, para 141.

33 Hong Kong Companies Ordinance 1932, s 154.

company legislation. However, the development of the compulsory acquisitions post-reception in the two jurisdictions followed different paths.

These differences arose as a result of the two jurisdictions departing on whether to align their laws with subsequent UK developments; in 1985, UK Companies Act 1985[34] required that shareholdings of the offeror company or its nominee and its "associates" to be disregarded for computing the 90% acceptance threshold.[35] This provided an important minority shareholder protection in requiring that only independent shareholders' shareholdings count towards the compulsory acquisition threshold.

In Hong Kong, in 2002, following the UK developments, the Takeover Code introduced rule 2.11 to exclude shares held by "*concert parties"* of the bidder in counting whether the 90% threshold is achieved.[36] It is important to note that the protection in the Hong Kong Takeover Code, which excludes acceptances by concert parties of the bidder, applies to all public companies, and foreign companies with primary listings in Hong Kong. Almost a decade later, the Hong Kong Companies Ordinance 2012 provided legislative backing to the provision, though it applied only to Hong Kong-incorporated companies.[37]

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[34] The amendment was inserted by Financial Services Act 1986, s 172 (1) and Schedule 12.

[35] Section 430E, UK Companies Act 1985 provides that an associate of an offeror company means: (i) nominee of the offeror company; (ii) holding company, subsidiary or fellow subsidiary of the offeror company, or a nominee of such holding company, subsidiary or fellow subsidiary; (iii) a body corporate in which the offeror company is substantially interested; and (iv) any person, who is, or is a nominee of, a party to any agreement with the offeror for the acquisition of, or an interest in, the shares that are the subject of the take-over offer. This provision is now found in s 988 of the UK Companies Act 2006.

[36] Securities and Futures Commission, *Consultation of the Review of the Code on Takeovers and Mergers* (February 1998).

[37] HK Companies Ordinance, s 693 read with s 667. The definition of "associates" in s 988 the UK Companies Act 2006 is similar to the definition in s 667 of the Hong Kong Companies Ordinance 2012. While the reference in the Hong Kong Companies Ordinance 2012 is to "associates", it is all intents and purposes similar to "concert parties" used in the HK Takeover Code.

Singapore has not followed the changes in the UK. Insofar as Singapore law is concerned, the matter is entirely governed by the law of incorporation of the target company.[38] In 2002, while the Company Legislation and Regulatory Framework Committee recommended that Singapore follow the UK position in excluding associates from counting towards the 90% acceptance threshold, [39] the Singapore Companies Act was amended to only exclude shareholdings held by a "related corporation" of the bidder,[40] which is narrower than "associates" found in the equivalent UK and Hong Kong provisions. As described in Part V(1) below, the matter was considered in the lead up to the recent 2015 changes to the Companies Act but the Government decided not to make the amendment.

The result is that controlling shareholders in Singapore-incorporated targets are able to effect transaction arbitrage, that is, to circumvent the narrow requirements of the compulsory acquisition requirements in two ways, which would not have been possible in Hong Kong. First, in family-held companies, the controlling shareholder can use a bid vehicle whose shareholders are natural persons. In such a case, the shareholdings held by the natural persons and their associates can still count towards the 90% acceptance threshold under s 215 of the Singapore Companies Act. In a recent takeover in Singapore, the press debated as to

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[38] Insofar as the main foreign companies with English origins that are listed in Singapore (namely, Bermuda, BVI and Cayman Islands), none of them has followed the UK Companies Act 1985 insofar as restricting the shareholdings of associates from counting towards the acceptance threshold for a squeeze-out or its equivalent. See Bermuda Companies Act, s 102; BVI Companies Act, s 176; Cayman Islands Companies Law, s 88.

[39] *Report of the Company Legislation Framework and Regulatory Framework Committee* (2002), Recommendation 5.7. The Committee was appointed by the Ministry of Finance, the Attorney-General's Chambers and the Monetary Authority of Singapore in December 1999. The CLRFC's terms of reference were "to undertake a comprehensive and coherent review of our company law and regulatory framework and recommend a modern company law and regulatory framework for Singapore which accords with global standards and which will promote a competitive economy." The members of the CLRFC comprised mainly persons who are in the private sector and with wide ranging experience and expertise.

[40] A related corporation is defined as including the holding company, subsidiary or fellow subsidiary; see s 6 of the Singapore Companies Act.

the principle on whether to exclude such holdings. [41] In Hong Kong, such holdings are excluded under the Hong Kong Takeover Code or the Companies Ordinance 2012 because they are regarded as holdings held by "concert parties" or "associates" of the bidder respectively. [42]

Second, in private equity driven acquisitions, the controlling shareholders can incorporate a special purpose bid vehicle (SPV), taking care that no individual controlling shareholder holds more than 50% of the SPV. The SPV and the controlling shareholders enter into an acquisition agreement for the latter to tender their respective shares to the SPV. The shareholdings of the SPV shareholders may count towards the 90% threshold under s 215 of the Singapore Companies Act. In Hong Kong, such holdings would also be excluded as they are regarded as holdings held either by "concert parties" or "associates" of the bidder.

In theory, to mitigate the problems of prejudice to minority shareholders, section 215 of the Singapore Companies Act allows a dissenting shareholder to object to the compulsory acquisition by filing an application to the Singapore court. However, dissent is extremely rare and there is no reported case of an application under section 215, despite the fact that transaction arbitrage is in fact widespread (as explained in our findings).

2. Schemes of arrangement

The UK Companies (Consolidation) Act 1908 contained the predecessor to the current s 899(1) of the UK Companies Act 2006. Under section 899(1), to effect a scheme of arrangement for a bidder to control the whole of the target in a single transaction, it requires the approval of the majority in number, representing 75% in value of the voting shares

41 Cai HX, "A different spirit of the law in OSIM takeover", *Business Times* (Singapore, 6 May 2016).
42 Hong Kong Companies Ordinance 2012, s 667(1)(a)(vii).

present and voting, as well as sanction of the court. The threshold is thus lower than required for compulsory acquisition. English case law has held that bidders cannot vote alongside with the minority shareholders at the scheme meeting.[43] Hong Kong and Singapore adopted the UK Companies Act's scheme of arrangement provisions in their respective company legislation. However, as is the case of compulsory acquisitions, both jurisdictions have diverged in respect of the regulation of schemes.

In Singapore, the law and regulation relating to the scheme of arrangement was identical to the UK except for two developments. In 2001, the Singapore Code on Takeovers and Mergers (Singapore Takeover Code), which applies to Singapore and foreign companies within a primary listing in Singapore, made it clear that bidders and their concert parties must abstain from voting at the same scheme meeting as the other (minority) shareholders.[44] This requirement is arguably more restrictive than the position that exist at common law. At common law, if the shareholders are treated the same under the same scheme, they will vote in a single class. The exception occurs only if the bidder or its subsidiaries are shareholders of the target; in such a case, they are regarded as having sufficiently different rights to justify separate meetings; other concert parties of the bidder (which are not its subsidiaries) arguably can vote alongside with the minority shareholders. [45] In 2012, section 210 (the provision on schemes of arrangement) was amended to allow the court the discretion to disapply the majority in number requirement.

43 *Re Hellenic and General Trust Ltd* [1976] 1 WLR 123.
44 Singapore Code on Takeovers and Mergers (3 October 2002).
45 See *Re Hellenic*, fn 43 above and accompanying text. See also *Re TT International* [2012] 2 SLR 213; *UDL Argos Engineering and Heavy Industries Co v Li Oi Lin* [2001] 3 HKLRD 634.

In contrast, Hong Kong followed a different path in respect of schemes of arrangement, by making them much more restrictive than in the UK or Singapore. In 1993, the (then) rule 2.10 of the Hong Kong Code on Takeovers and Mergers was introduced, which required approval of a majority in number representing 90% of the votes cast at the scheme meeting.[46] Further changes were made in 1998[47] and in 2002.[48] Under the current requirements, a scheme of arrangement requires the approval by 75% of votes of the disinterested shareholders present and voting. Additionally, the number of votes cast against the scheme must not exceed 10% of the votes of the all of the disinterested shareholders (also known as the 10% objection rule).[49] It should be noted that as the 10% objection rule is contained in rule 2.10 of the Hong Kong Takeover Code, and applies to Hong Kong companies and foreign companies with primary listings in Hong Kong. For People's Republic of China (PRC)-incorporated companies where it is possible to effect a squeeze-out by way of merger or absorption, the Hong Kong Securities and Futures Commission (SFC) applies rule 2.10 of the Hong Kong Takeover Code.[50] In 2012, this 10% objection rule was given statutory backing with the Companies Ordinance 2012 for Hong Kong-incorporated companies. [51] The 10% objection rule replaces the requirement for there to be a majority in number of the shareholders voting for the scheme.[52]

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[46] See Securities and Futures Commission, *A Consultation Paper on a Review of the Hong Kong Code on Takeovers and Mergers* (February 1998).

[47] The change in 1998 kept the 90% approval threshold but added a further test, if the 90% approval was not met, more than 2.5% must vote against the proposal for it to fail. See Securities and Futures Commission, *Consultation Paper on a Review of the Hong Kong Code on Takeovers and Mergers* (February 1998).

[48] The 2002 amendments provide that all takeovers effected by way of a scheme of arrangement must have the approval of 75% disinterested shareholders present and voting and no more than 10% of the disinterested shareholders voting against. See Securities and Futures Commission, Consultation Paper on the Review of the Codes of Takeovers and Mergers and Share Repurchases (April 2001).

[49] Hong Kong Codes on Takeovers and Mergers and Share Buybacks, rule 2.10.

[50] E.g. squeeze-out or privatisation of the "H" shares of Great Wall Technology in 2014 (copy on file with authors).

[51] HK Companies Ordinance 2012, ss 673-674.

[52] See Companies Registry, *Briefing Notes on Part 13 – Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back.*

The 10% objection rule is a "unique" minority shareholder protection device, [53] which is not present in Singapore or in the UK. For example, in Singapore, if the target firm has 40% of the shares held by the bidder and its concert parties, dissenting shareholders must hold at least 15% of the votes to block the vote, assuming that all shareholders turn up to vote. However, in Hong Kong, dissenting shareholders holding as few as 6% can block the vote. As such, it is easier for the minority shareholders to achieve the 10% objection threshold than the headcount test.

3. Delisting offer

In contrast to compulsory acquisition and schemes of arrangement whose provisions are found in the company legislation, the delisting process has been a function of stock exchange listing rules. The bidder, which is the controlling shareholder, procures the delisting of the company, and then proceeds to make an exit offer for the remaining shares. The exit offer is usually an offer to the shareholders for cash. More rarely, the company undertakes a selective capital reduction to cancel the shares held by the minority shareholders.[54]

In this respect, Singapore and Hong Kong have diverged from the UK approach, which itself has recently seen significant changes to the regulation of delistings. In UK, prior to July 2005, an issuer could cancel its listing with the appropriate notice. In 2005,[55] the listing rules were amended to require a bidder to achieve 75% of the target pursuant to a takeover offer before the bidder may cancel the target's listing with the appropriate notice.

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53 See *Re PCCW Ltd* [2009] HKCU 494.

54 E.g. in recent years there have been capital reduction cases involving companies have been delisted: Keppel Land Limited (2015), Gul-Technologies Singapore Limited (2014), CK Tangs Limited (2011).

55 The requirement of shareholder approval was put in place following the consultation paper published by the Financial Services Authority (as it then was) *Consultation Paper 203: Review of the listing regime* (CP203), setting out its policy proposals for consultation. See Randall, Listing and prospectus rules: a guide to the new regime" (2005) Practical Law for Companies 23.

Otherwise, a withdrawal of listing requires approval of 75% of the shareholders, present and voting.[56] In May 2014, the listing rules[57] were amended again and a bidder, which has more than 50% of the target and is seeking to withdraw the premium listing after its takeover offer of the target upon reaching 75%, must also obtain acceptances from the majority of the minority shareholders. [58] In a non-takeover situation, an issuer would require approval of 75% of the shareholders, present and voting. Where there is a controlling shareholder, the delisting has to be separately approved by a majority of the votes held by the independent shareholders.[59]

In Singapore, since 1999, the listing rules of SGX provide that voluntary delisting by listed companies requires approval of at least 75% of the voting shares, present and voting, and not more than 10% voting against the delisting.[60] The directors and controlling shareholders may vote. [61] The rule was prompted by the takeovers of CSA Holdings by Computer Science Corp and of Inchcape Marketing Services by Li & Fung, where the bidder stated its intention to delist the target once it obtains control, even though it was not entitled to exercise its rights of compulsory acquisition.[62] Despite the assertion of the SGX that the

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56 Listing rules (pre-May 2014), rule 5.2.5 R.

57 FSA Listing Rules 5.2.11D.

58 Listing rules, rule 5.2.11A. The rules were amended to provide greater protection for minority shareholders in controlled companies, in light of the corporate governance scandals surrounding these companies, such as Bumi (now renamed Asia Mineral Resources), Eurasian Natural Resources Corporation (now de-listed) and Essar Energy; see R Barker and I Chiu, 'Protecting Minority Shareholders in Blockholder-Controlled Companies – Evaluating the UK's Enhanced Listing Regime in Comparison with Investor Protection Regimes in New York and Hong Kong' Capital Markets Law Journal 10 (2014) 98-132. The May 2014 amendments allows the majority of the minority shareholders to be disapplied if an existing controlling shareholder achieves 80% shareholding of the target after a takeover offer. However, this disapplication exception was removed in January 2016. FSA Listing Rules 5.2.11D. The FCA found that this disapplication had "potentially significant consequential and unintended implications for investor protection". If an offeror already held 80% of the issuer's voting share capital, it had the ability to cancel the issuer's listing without either independent shareholder approval or its offer being accepted by any independent shareholders.

59 Listing rules, rule 5.2.5 R.

60 Stock Exchange of Singapore, Statement: Amendment of Listing Manual; Clause 208 – Delisting (14 January 1999), copy on file with author.

61 Listing Manual, rr 1307 and 1309.

62 See also J Chia "SES gives shareholders a say in delisting plans" *Straits Times* (Singapore, 15 January 1999).

amendment was consistent with the practices of other stock exchanges, [63] it was then consistent with the UK but was not consistent with Hong Kong (as outlined below). Singapore has not followed the restrictions for delisting that were put in place in UK in May 2015 and January 2016.

In Hong Kong, since 1991,[64] an issuer which has a listing on the SEHK only may withdraw its listing if it has obtained approval of an independent majority representing at least 75% voting shares, present and voting; the directors, chief executives and any controlling shareholders or any of their associates are *not* allowed to vote at the meeting. The shareholders should be offered compensation in the form of cash or other reasonable alternatives. This provision requiring independent shareholder approval was introduced after the public outcry surrounding the 1990 delisting of Video Technology (with a view of relisting at another market) at a price that was widely seen as extremely low. [65]

In 2004, the SEHK listing rules were amended to provide a further safeguard for the minority shareholders along the lines of the 10% objection rule found in the Hong Kong Takeover Code; [66] rule 6.12 of the SEHK listing rules provides for that for the withdrawal of listing of an issuer, there must be approval by not less than 75% of the voting shares, present

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63 Raj C, "SES makes voluntary delisting rules more transparent", *Business Times* (Singapore, 15 January 1999).

64 Stock Exchange of Hong Kong, *Rules Governing the Listing of Securities* (3rd edition, 1989) as amended, rule 6.06. For companies listed on the Growth Enterprises Market (GEM), see rule 9.20 of the GEM rules (which is similar in the requirement).

65 In the end, Video Technology sought a separate majority vote by independent shareholders, even though the stock exchange listing rules only required the approval of 75% of the shareholders, present and voting. See Chai CK, "Exchange to force vote on delisting" *South China Morning Post* (Hong Kong, 28 January 1991); G Hewett, "Rule move will block 'back-door delisting'", *South China Morning Post* (Hong Kong, 14 April 1991).

66 SEHK, Proposed Amendments to the Listing Rules Relating to Corporate Governance Issues Consultation Conclusions (2003), <https://www.hkex.com.hk/eng/newsconsul/mktconsul/cpbefore2005.htm> accessed 1 July 2016.

and voting, and the number of votes cast against the delisting resolution must not be more than 10% of all of the votes attached to disinterested shareholders.

Thus, the result is that shareholders in Singapore face the pressure to tender their shares in ways not present in Hong Kong. Not only can the controlling shares vote in the delisting offer in Singapore, if the minority shareholders in Singapore do not accept the offer, they face the prospect of holding delisted shares. In contrast, HK Takeover Code provides that not only the delisting resolution must be subject the approvals set out in the listing rules, there is an additional requirement that the bidder is entitled to exercise, and in fact exercising, its rights of compulsory acquisition.[67] Unless exempted, there should not be a situation where the shareholders are left holding delisted shares. One final point to note is that unlike the US, there is no equivalent of an alternative over-the-counter trading system in Singapore such as the Pink Sheets.[68] Thus, minority shareholders who do not accept the delisting offer would suffer from the lack of liquidity, which might further undermine the value of their shares.

IV. Do the Differences in Regulation Result in Different Outcomes?

1. Data and methodology

In this Part, we seek to test whether the differences in regulation lead to different results for minority shareholders in Hong Kong and Singapore. Our database comprises all of

[67] Hong Kong Takeovers Code, rule 2.2(c). However, we note that the Takeovers Panel has granted an exemption from this requirement in the case of the delisting of the H shares of PRC companies from SEHK, due to the fact that there is no right of compulsory acquisition under PRC law. See e.g. Fosun International and Shanghai Forte Land, Composite Offer and Response Document dated 25 February 2011 (copy on file with authors).

[68] See eg J Macey, "Down and Out in the Stock Market: The Law and Economics of the Delisting Process" (2008) 51 J Law and Economics 683.

the general offers (which were followed by compulsory acquisitions), schemes of arrangement and delisting offers in Hong Kong and Singapore that were announced during the period of 2008-2014, including locally incorporated and foreign companies. We choose 2008 as this was the year of the occurrence of the global financial crisis which led to a number of squeeze-outs in Hong Kong and Singapore.[69] M&A transactions involving publicly listed companies in Hong Kong and Singapore are identified using the Securities Data Corporation (SDC) international mergers and acquisitions database. However, in the case of Singapore, we find that the database of M&A transactions implemented by way of delisting offers in the SDC database is not complete. We therefore supplement with the list of companies which were delisted with exit offers during the relevant period, such list having been obtained from SGX. In the case of Hong Kong, we examined the list of companies that were delisted from *SEHK Factbook*[70] for each year during the 2008-2014 period and we then check the reasons for their delistings. We are unable to find any formerly SEHK-listed company during the relevant period that was the subject-matter of a delisting offer and hence it is not necessary to supplement the data for Hong Kong.

For each transaction, we examine the target company circulars (including scheme circulars) and announcements that are published by the target companies, available in the stock exchange filings, company websites and subscription databases.[71] We have only included M&A transactions involving squeeze-outs by controlling shareholders, which including their concert parties, hold 30% or more of the target shares. The concert party shareholdings are determined by the disclosures in the target circulars and the disclosure requirements are identical in Singapore and Hong Kong, as both jurisdictions draw their

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69 WY Wan "Independent Financial Advisers' Opinions for Public Takeovers and Related Party Transactions in Singapore", (2012) 30 C&SLJ 32.

70 HKEX Factbook, available at https://www.hkex.com.hk/eng/stat/statrpt/factbook/factbook.htm (last accessed 9 January 2017).

71 These include CapitalIQ and Perfect Filings.

requirements from the UK Code. We excluded M&A transactions that did not involve the goal of the acquisitions of the remaining interests of the shares (such as acquisitions of only partial interests in the company and takeovers where the bidder has stated that it has no intention of compulsorily acquire the remaining shares). Our sample yields 42 and 110 squeeze-out transactions by controlling shareholders in Hong Kong and Singapore respectively. (There were 62 and 123 squeeze-out transactions in aggregate in these two jurisdictions respectively.)

We then hand collect information relating to the terms of the squeeze-outs, the transaction structures, and share ownership as at the date of announcement of the takeover. We also collect target firm characteristics, including total assets and market to book value as at the end of the financial year prior to the takeover announcement. We calculate the premium by taking the difference between the offer price at the date of announcement and the volume-weighted average prices (VWAP) of the ordinary shares of the target companies for a period of 12 months, 6 months, 3 months, and 1 month, in each case preceding the announcement of the squeeze-out, and the difference is scaled by the relevant VWAP price. Information on the VWAP prices on the Hong Kong and Singapore-listed companies are obtained either from the circulars (which extract the prices from Bloomberg) or directly from Bloomberg (if the prices are not stated in the circulars). We also calculate the premium to net asset value (NAV) (as at the most current financial information available before the takeover announcement), which is obtained from SDC Platinum, and missing values are manually supplemented with the data from Bloomberg. One of the target companies (CapitaMalls Asia) is dual listed on SGX and SEHK and we classified as it as a SGX-listed company as it is primarily listed on SGX.[72]

[72] The company has a secondary listing on SEHK.

Our approach is comparable to the approaches conducted by Subramanian (for US transactions) and Bugeja (for Australian transactions) in determining whether different transactions lead to different outcomes for minority shareholders. In the US, Subramanian focused on whether the then-different standards of judicial review for tender offers versus merger squeeze-outs affect minority shareholder gains in squeeze-out transactions post-*Siliconix*, [73] an important Delaware case that provides that a freeze-out by tender offer be not subject to an entireness fairness review, as compared to a merger squeeze-out.[74] Subramanian's empirical study of controlling stockholder squeeze-out transactions in a four-year period following the *Siliconix* case found that minority shareholders obtained lower cumulative abnormal returns in tender offer squeeze-outs relative to merger squeeze-outs in that period. Bugeja found that the premium for schemes of arrangement are lower than for general offers in Australia, in line with the prediction that the approval thresholds for schemes are lower than that for general offers. Following Bugeja, we seek to test whether the premium is affected the transaction structures, which has been used in prior literature as a measure of whether target shareholders are disadvantaged in transaction structures.[75]

Figure 1 summarises the squeeze-out transactions in the sample by markets and transaction structures (general offers followed by compulsory acquisitions, schemes of arrangement and delisting offers). We classify squeeze-outs of H shares of PRC-incorporated companies effected by merger by absorption as schemes of arrangement because they are

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[73] In *re Siliconix, Inc. Shareholders Litigation*, 2001 WL 716787 at *17 (Del. Ch. 2001).

[74] See F. Restrepo, 'Do Different Standards Of Judicial Review Affect The Gains Of Minority Shareholders In Freeze-Out Transactions? A Re-Examination Of Siliconix', (2013) 3 Harvard Business Law Review 321; Guhan Subramanian, 'Post-*Siliconix* Freeze-Outs: Theory And Evidence', (2007) 36 Journal of Legal Studies 1.

[75] See M Bugeja et al, "To scheme or bid? Choice of takeover method and impact on premium" (2015) Aust J of Mgt 1; Du et al, n 20s above. See also G Subramanian, "Post-Siliconix Freeze-outs: Theory and Evidence" (2007) 36 J of Legal Studies 1. Cf TW Bates et al, "Shareholder Wealth Effects and Bid Negotiation in Freeze-out Deals: Are Minority Shareholders Left Out in the Cold" (2006) 81 J Fin Econ 681 (who argues that a comparison of prices paid in various transaction structures may be meaningless if it is not possible to compare prices with some reliable indication on the fair value of the shares).

required to comply with rule 2.10 of the Hong Kong Takeover Code. Figure 1 shows that squeeze-outs are much more common in Singapore than Hong Kong. Based on deal numbers, Singapore has almost twice the number of squeeze-outs than Hong Kong, even though the number and market capitalisations of listed companies in Hong Kong is significantly higher than in Singapore.[76] Figure 2 further shows the breakdown of squeeze-outs effected by bidders and their concert parties who hold more than 30% of the target respectively. The number of cases in the two markets are consistent with our hypothesis that Singapore is more liberal in the squeeze-out requirements, particularly in favour of controlling shareholders. This results a larger number of squeeze-outs in Singapore than in Hong Kong even if we confine to cases where the bidder's shareholding is higher than 30% at the commencement of the offer (also known as toehold).

Figure 1 Number of squeeze-outs and their respective transaction structures in each market

[To insert]

Figure 2 Number of squeeze-outs by controlling and non-controlling shareholders in each market

[To insert]

We measure the differences in the means of premium paid in squeeze-out transactions between the two jurisdictions. Table 1 shows our results for Hong Kong and Singapore under three different transaction structures in respect of the premiums to net asset value (NAV) and

[76] Source: World Federation of Exchanges, showing that the number of listed companies as at December 2015 in Hong Kong and Singapore is 1,866 and 769 respectively. The market capitalisation of listed companies as at December 2014 in Hong Kong and Singapore is USD3,966 billion and USD774.1 billion respectively.

1-month, 3-month, 6-month and 12-month VWAP where data is available.[77] Table 1 is confined to cases where squeeze-outs were effected by controlling shareholders (namely, shareholders and their concert parties holding 30% as at the date of announcement).

Table 1 Means of premiums offered in Singapore and Hong Kong for squeeze-outs by controlling shareholders

[To insert]

Comparing the two jurisdictions, we find that in general premiums offered in Hong Kong are statistically significantly higher than in Singapore. If we compare all the cases between the two markets, we find that generally the means of premiums offered in Hong Kong are statistically significantly higher than the premiums in Singapore.[78] If we further control the size and profitability of a company (including total assets, total earnings and returns on asset), in unreported results, we find that the differences in means to premiums still stand for premiums to 1-month and 3-month VWAP (significant at 1% level) and 6-month VWAP (with *p* value on the borderline of 0.055). The result is consistent with the outcomes discussed in the previous paragraph.

2. Findings on premium, deal structures and markets

[77] Due to lack of market data, we cannot find historical share prices for some companies to calculate one or more VWAPs, especially for 12-month VWAP where we need full year data. Those companies are International Mining Mach Holdings Ltd, Kee Shing Holdings, SCMP Group Ltd in Hong Kong and CentraLand Ltd, Texchem-Pack Holdings (S) Ltd, Vantage Corp Ltd, Yantai Raffles Shipyard Ltd, The Ascott Ltd, CHT (Holdings) Ltd, Courts (Singapore) Ltd, Nera Telecommunications Ltd and Singapore Food Industries Ltd in Singapore.

[78] We find that the differences in means between Singapore and Hong Kong is statistically significant for premiums to 1-month, 3-month and 6-month (significant at 1% level) and premiums to NAV and 12-month VWAP (significant at 5% level).

Figure 1 above shows that among the transaction structures involving squeeze-outs by controlling shareholders, Singapore has significantly more delisting offers (which is the most coercive form of transaction structure), while Hong Kong has more schemes of arrangement. In general, it is more likely that squeeze-outs are effected by way of schemes of arrangement in Hong Kong (nearly 50% of all cases in Hong Kong) than in Singapore. This is consistent with our prediction set out above on the transaction structure.

Based on data shown in Table 1 above, we then compare the differences in premiums between different transaction structures within the same market. In Singapore, we find no statistical significance for the differences in means between general offers and schemes of arrangement. However, the mean VWAP premia of general offers are statistically significantly higher than those of delisting offers, regardless of which VWAP we consider.[79] The result fits into our prediction that delisting offers, as the most coercive form of squeeze-out, would result in lower premiums for other shareholders.

In Hong Kong, we cannot make the comparison with the delisting offers as all of the transactions are implemented as either takeover offers or schemes of arrangement.[80] However, we find that there is no statistical difference in premium for the general offers and schemes of arrangement in Hong Kong. In other words, premiums for general offers and schemes of arrangement were in the same range and there is no proof showing which transaction structure would yield more benefits to minority shareholders in Hong Kong. This is in line with data in Singapore.

Focusing at Singapore, there are two puzzles: first, why is it that among squeeze-out of companies with controlling shareholders, general offers remain much more common than

[79] The differences in means between general offers and delisting offers are significant at 5% level for 1-month, 3-month and 6-month VWAP and at 1% level for 12-month VWAP.

[80] There are transactions involving delisting of H-shares from the SEHK, but they were preceded by takeover offers.

schemes of arrangement? Second, why do minority shareholders receive a lower premium in general offers than in schemes? The approval threshold for general offers (90%) is higher than for schemes of arrangement (75%) and we would expect that the premium for general offers will be higher since the support required increases and yet the evidence is mixed. To explain these differences, we hypothesise that there is significant transaction arbitrage that is exercised by controlling shareholders as explained in Part III(1) above, such that controlling shareholders are able to select transaction structures that allow their votes to be counted into the compulsory acquisition threshold. In addition, we hypothesise that with the transaction arbitrage, controlling shareholders can avoid paying a higher premium.

To test our hypotheses, we look at the general offers in Singapore and identify which are the ones that are transaction arbitrage cases, based on the two incidents of arbitrage possibilities outlined in Part III(1) above. They are: (i) transactions where the controlling shareholder uses a bid vehicle whose shareholders are natural persons. In such a case, the shareholdings held by the natural persons and their associates can still count towards the 90% acceptance threshold under section 215 of the Singapore Companies Act. Such holdings are excluded in Hong Kong under the Hong Kong Takeover Code or the Companies Ordinance 2012 because they are regarded as holdings held by "concert parties" or "associates" of the bidder respectively; and (ii) private equity driven acquisitions, where the controlling shareholders have incorporated a SPV; the SPV and the controlling shareholders enter into an acquisition agreement for the latter to tender their respective shares to the SPV. The shareholdings of the SPV shareholders may count towards the 90% threshold under section 215 of the Singapore Companies Act. In Hong Kong, such holdings would also be excluded as they are regarded as holdings held by "concert parties" or "associates" of the bidder.

Table 2 presents our results. We find that almost half of the general offers (29 cases out of 63) in Singapore involve transaction arbitrage. By conducting a two-sample t-test, we find that the premiums payable to minority shareholders in transaction arbitrage cases of general offers are statistically lower than in non-transaction arbitrage cases in respect of premiums to the latest net asset value (significant at 1% level) and premiums to 6-month and 12-month VWAP (significant at 5% level) (See Column E in Table 2). The premiums paid in transaction arbitrage cases are slightly higher (for VWAP) but similar to those in delisting offers and the difference between them is not statistically significant (see Column H in Table 2). By contrast, non-transaction arbitrage cases of general offers have statistically higher premia than delisting offers (see Column F in Table 2).

Table 2 Transaction arbitrage and premiums in Singapore

[To insert]

However, once we compare non-transaction arbitrage general offers and schemes (see Column G in Table 2), there is no significant difference in any of the premiums payable. Thus, the fact that the approval threshold for non-transaction arbitrage general offers is stricter than for schemes of arrangement has not resulted in a difference in the outcomes. Our results may be compared with the results of Bugeja et al,[81] who found that the use of schemes in Australia results in shareholders receiving lower offer prices, though our results do not support the same conclusion in our sample of Singapore squeeze-out cases. However, we only have a small sample size of only 11 schemes of arrangement, which may have resulted in the lack of significant difference.

[81] Bugeja, "To scheme or bid? Choice of takeover method and impact on premium", n 75 above.

Thus, Table 2 confirms our hypotheses that there is a significant amount of transaction arbitrage and that controlling shareholders in arbitrage cases pay less premium than the non-transaction arbitrage cases.

3. Findings on related party transactions and squeeze-outs

We have seen that in Hong Kong, the controlling shareholders' expropriation of minority shareholders through squeeze-outs is relatively more stringently controlled and minority shareholders obtain relatively higher premiums for their shares in the squeeze-outs, as compared to Singapore. However, the picture may not be complete. Controlling shareholders may engage in other forms of tunnelling actions prior to the squeeze-out, such as significant related party transactions (RPTs) or self-dealing transactions between the listed companies and their controlling shareholders that favour the latter. For instance, asset tunnelling, such as selling (or buying of assets) at above (below) market prices, represents a diversion of the value from the listed company.[82] In such a case, the transaction, and rational expectations of such future transactions, may result in listed companies experiencing significant negative returns and depressed share prices, respectively. The premiums offered by controlling shareholders then appear to be higher than what they would be if there were no self-dealings that amount to tunnelling.

Thus, consistent with the existing literature, any evaluation to the regulation squeeze-outs is not complete unless we consider potential tunnelling transactions between the listed

[82] Eg Cheung YL, Rau PR & Stouraitis A "Tunneling, propping, and expropriation: evidence from connected party transactions in Hong Kong" (2006) 82 J. Finan. Econ. 343; B Black, "How corporate governance affect firm value? Evidence on a self-dealing channel from a natural experiment in Korea" (2015) 51 Journal of Banking & Finance 131.

companies and their controlling shareholders.[83] Existing literature has demonstrated that controlling shareholders do expropriate wealth through self-dealing transactions in Hong Kong.[84] More particularly, in the context of squeeze-outs, in Hong Kong, Du et al have demonstrated that in a sample of squeeze-outs of 61 companies, the controlling shareholders enter into disadvantageous RPTs with the listed companies, and then proceed to squeeze out the minority shareholders at low prices when remaining public is no longer attractive.[85]

The difficulty with regulating RPTs is that RPTs are not necessarily always inimical to the non-controlling shareholders; [86] they can benefit the listed companies if they provide opportunities to the listed companies to transact at prices that will otherwise not be available to them. For these reasons, RPTs are required to be disclosed in accordance with International Financial Reporting Standards (IFRS), on which the Singapore Financial Reporting Standards and Hong Kong Financial Reporting Standards are based.[87] In addition, under the respective jurisdiction's stock exchange rules, transactions between the listed companies and their controlling shareholders (or directors), known as connected party transactions (CPTs) in Hong Kong [88] and interested person transactions (IPTs) in Singapore[89] are regulated

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83 Gilson & J Gordon, "Controlling Controlling Shareholders", n 7 above. Gilson and Gordon have argued that, in the US context, one should also consider a third form of tunneling, that is, the rules governing the sales of control. However, in our paper, we have not considered the rules governing the sales of control in connection with tunneling as the takeover codes in both Hong Kong and Singapore require that the premium to be paid upon the sale of control to be shared with all of the minority shareholders pursuant to the mandatory bid rule, which is not present in the US.

84 Cheung et al, ibid. In this case, the authors found expropriation of minority shareholders through connected party transactions (explained below).

85 Du J, He Q & Yuen SW (2013) "Tunneling and the decision to go private: Evidence from Hong Kong" 22 Pacific Basin Finan J. 50.

86 See R Gilson & J Gordon, "Controlling Controlling Shareholders", n 7 above; Atanasov V, Black B and Ciccotello C, "Law and Tunneling" (2012) 37 *Journal of Corporation Law* 1.

87 Source: IFRS Foundation, *IFRS Application Around the World: Jurisdiction Profile for Hong Kong and Singapore*, <http://www.ifrs.org/use-around-the-world/pages/jurisdiction-profiles.aspx> accessed 1 July 2016.

88 SEHK listing rules, ch 14A.

89 SGX listing rules, ch 9.

specifically.[90] CPTs and IPTs requires full disclosures to the relevant stock market and/or independent shareholder approvals, depending on the relevant thresholds of the transactions relative to the size of the listed companies.

We seek to test whether in each jurisdiction, squeeze-outs by controlling shareholders are preceded with significantly higher RPTs (or the associated CPTs and IPTs) as compared to squeeze-outs by non-controlling shareholders. If so, it will suggest that there is a likelihood of expropriation by controlling shareholders, in addition to that suggested by the evidence relating to the premiums payable in squeeze-out transactions. Using a two-sample t-test on our sample of Hong Kong squeeze-out transactions, we find that the mean amount of RPTs in the fiscal year preceding the squeeze-out transactions by controlling shareholders are (US$241.6 million), which is statistically significantly higher than the mean amount of corresponding RPTs for squeeze-out transactions by non-controlling shareholders (US$112.44 million) (significant at 5% level). We obtain the same results after controlling for the size of the companies (total assets and earnings). When we test the differences in the mean amount of CPTs in the fiscal year preceding the squeeze-outs transactions by controlling and non-controlling shareholders, we obtain similar results (CPTs being US$141.90 million and US$47.26 respectively, and the difference being significant at 5% level). Similar results are obtained after we put in controls for the size of the companies. In Singapore, by contrast, we do not find statistical significance in respect of the difference between the mean amount of RPTs (or IPTs) in the fiscal year prior to squeeze-outs by controlling and non-controlling shareholders, with or without controls for the size of the companies.

[90] The definitions of "connected parties" and "interested persons" are not the same as "related parties" under the accounting rules of Hong Kong and Singapore respectively.

Thus, the evidence suggests that while the law and regulation more stringently polices squeeze-outs by minority shareholders in Hong Kong, there is a distinct possibility that controlling shareholders may nevertheless potentially engage in other forms of asset tunnelling prior to the squeeze-out, thereby incurring value losses to minority shareholders. The risk of asset tunnelling appears to be higher in Hong Kong than in Singapore. Unlike squeeze-outs, it is often much more difficult for the minority shareholders to assess RPTs, since they involve an assessment of whether the value that the listed company is giving is at least equal to the value that it receives. Thus, any reform to the squeeze-out regime should be made in conjunction with the evaluation of the expropriation of benefits via RPTs (and their associated CPTs and IPTs).

V. Reasons for the Differences in the Regulation

Having demonstrated the differences in the substantive outcomes for minority shareholders in squeeze-out transactions in Hong Kong and Singapore, we turn to the question of *why* they are different. In this Part, we argue that the differences are accounted due to a combination of reasons – differences in share ownership by adult population and the influence of the press, as well as the mode of regulation, which have deeper, substantive consequences.

1. Differences in share ownership and influence of the press

Why have the regulators have made it a priority to ensure protection of the minority investors in Hong Kong, more so that in Singapore? We suggest that it is because of the higher local retail participation in the stock market, and the fact that the regulator wanted to correct particularly egregious behaviour of controlling shareholders that occurred in response to media reports, in Hong Kong. Unlike other kinds of expropriating behaviour such as RPTs, CPTs (Hong Kong) and IPTs (Singapore) where the exact private benefits of control are not disclosed and tunneling is much more difficult to measure, unfair squeeze-outs are more visible as there are existing benchmarks which shareholders can use, including premiums to historical share prices, profitability and asset values.

We argue that the SFC took a more pro-minority investor protection attitude, particularly in 1990s due to the aggressive documented squeeze-outs of family controlled companies that were reported widely by the media. This could be seen from the Video-Tech squeeze-out in 1990, where in the aftermath, market participants actively lobbied the SEHK which introduced the requirement that controlling shareholders were barred from voting in back-door delistings. In 1992, in connection with the consultation for giving minority shareholders a greater say in whether squeeze-outs effected by schemes of arrangement were successful, the SFC pointed to the risks that Hong Kong investors face due to the closely held nature of Hong Kong companies (which at that time was the predominance of family controlled companies), the limited development of independent directors, and the lack of an activist institutional base. Similar concerns arose in 1998 in connection with determining the appropriate threshold for schemes of arrangement.

In contrast, the squeeze-outs and delistings in the 1990s in Singapore tended to be situations involving external bidders willing to take the companies private by offering decent

premiums.[91] Squeeze-outs at opportunistic prices became controversial in Singapore only during post-dot com bubble in 2001, in the wake of the SARS epidemic in 2003 and particularly the global financial crisis of 2008. While independent law reform committees in Singapore did recommend the law and regulation to be more consistent with the UK and Hong Kong, the Government has been reluctant to make it too difficult for blockholders of family companies to privatise or restructure the operations. The Singapore regulators were also concerned not to put in place policies that discourage companies (and their controlling shareholders) from listing in Singapore.

Unlike Hong Kong, while the media in Singapore may report on the general dissatisfaction of the minority shareholders in the squeeze-out, the impact is somewhat lessened since the local retail participation in the stock market has historically been lower in Singapore than in Hong Kong.[92] Since 1990, 9.2% of the adult population has become invested in the Hong Kong stock market and this figure rose to 21.5% and 36.2% in 2000 and 2014 respectively. While we are unable to obtain comparable figures for Singapore for the 1990s, but by 2009, only 11.1% of the adult population are stock investors in Singapore, compared to 22.98% in Hong Kong.[93] In 2014, SGX has also separately reported that only 8

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91 Sivanithy R, "Latest Hollowing-out is Different and Troubling" *Business Times* (Singapore, 13 May 2016).

92 Eg SGX, 'SGX Says More Retail Investors in Stock Market; Launches 2014 Edition of StockWhiz Contest' (30 June 2014) <http://www.btinvest.com.sg/markets/news/88567.html?source=si_news> accessed 17 March 2016; see also L Kan, "SGX proposals widen access to IPOs for retail investors", *Business Times* (Singapore, 1 October 2012), citing SGX data that the local retail participation in Singapore is at 8%, in contrast to Hong Kong which is at 25%.

93 See Grout et al, "One Half-Billion Shareholders and Counting: Determinants of Individual Share Ownership around the World" (2009), SSRN, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1364765> accessed 1 June 2016.

to 10% of the whole population in Singapore was invested in stocks, compared to 25% in Hong Kong.[94]

Given the lower retail participation in the stock market, it is likely that media reports on unfair squeeze-outs have less influence on the regulators. For instance, Miller found that in the US market, the press covers firms and accounting frauds that are of interest to a broad set of readers;[95] thus, greater local participation is likely to result in press reporting of egregious behaviour or fraud. In under-developed markets, such as in Russia, Dyck found that the shareholders' influence and lobbying the international media increases the likelihood that the corporate governance violation is reversed or the fact that the regulator is forced to act.[96]

2. Mode of regulation – legislation and soft law

In both Hong Kong and Singapore, the regulation of squeeze-out is not found only in respective company legislation but also in stock exchange listing rules and the takeover codes.[97] However, the principal drivers of the mode of regulation, that is, the regulators, are different in the two jurisdictions. In Hong Kong, the main driver of tightening of the squeeze-out rules has been the SFC and the SEHK, which oversee the amendments in the Hong Kong Takeover Code and the SEHK listing rules respectively.[98] Half of the board of Hong Kong

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94 See R Sivanithy, "CDP sees highest 12-month surge in new accounts" *Business Times* (Singapore, 20 June 2014).

95 Miller, G., "The press as watchdog for accounting fraud" (2006) 44 Journal of Accounting Research, 1001–1033.

96 Dyck, A., Volchkova, N., Zingales, L., "The corporate governance role of the media: Evidence from Russia" (2008) 63 Journal of Finance, 1093–1135.

97 The term "soft regulation" is derived from DK Smith, "Governing the Corporation: The Role of Soft-Regulation" (2012) 35 UNSW 378.

98 Securities and Futures Ordinance, s 23.

Exchanges and Clearing Limited, the parent company of SEHK, comprises of the Government nominees, excluding the chief executive.[99] It is only in more recent years (in 2012) that statutory backing is given to the disinterested shareholder approval in the company legislation. In contrast, in Singapore, the Securities Industry Council (SIC), which administers the Singapore Takeover Code, and the SGX have not actively initiated the reforms, preferring to leave any reforms to legislation.

We give two examples. First, in respect of compulsory acquisition, as outlined in Part III(1)(a) above, in Hong Kong, since 2002, there was a requirement in the Hong Kong Takeover Code that shares held by concert parties cannot be computed into the 90% threshold. It was only in 2012, after a period of 10 years, that the Companies Ordinance 2012 gave statutory effect by imposing the requirement to mandatorily exclude the computation from the threshold shares held by associates. In the case of Singapore, in spite of market feedback asking for more rigorous protection towards minority shareholders in squeeze-out, SGX has publicly stated that compulsory acquisition matters are matters for the legislation to determine.[100] While two attempts were made by independent law reform committees to recommend that Singapore should adopt the UK's more minority-shareholder friendly provisions, they have not succeeded.

Second, for schemes of arrangement, in Hong Kong, the 10% objection rule found in section 674(2) of the Companies Ordinance 2012 first originates in a slightly different form from the amendment in of the Hong Kong Takeover Code in 1993. It has since been given statutory backing in the form of the Companies Ordinance 2012.[101] In contrast, in Singapore,

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99 Securities and Futures Ordinance, s 77.

100 A Khalid, "To delist or not? It's up to shareholders, says SGX", *Straits Times* (Singapore, 1 October 2002).

101 Companies Ordinance 2012, s 674(2).

prior to 1999, the SIC had viewed the issue that it was a matter for the shareholders to decide and for the court to approve. It was only in 1999 that the SIC put in place the requirement for bidder and concert parties to abstain from voting, [102] which is a more modest proposal than Hong Kong's 10% objection rule.

We argue that the principal driver of regulation has substantive implications on the content of regulation. Legislation has to be determinate and predictable, to ensure appropriate enforcement, whether civil or criminal, and avoiding the need for ex post litigation. One of the main reasons why the Singapore Government eventually rejected the amendment to section 215 for the shareholdings of the associates to be excluded from the 90% threshold is that it would lead to indeterminacy in the law. The concept of disinterested shares would have also met the same objection. In contrast, if the rules are found in stock exchange listing rules or takeover code, notwithstanding that they also are promulgated indirectly by the state, these rules can afford to be more indeterminate and open-textured. Breach of the listing rules remains a breach of contractual obligations, though the exchange is now able to take disciplinary sanctions.[103] Breach of the takeover code is not violation of law though the market participants may be subject to sanctions. It is possible for the transaction planners to *ex ante*, to obtain guidance from the securities regulators in ways which are not possible in legislation. Regulators are also more cautious in advocating changes to the legislation.

VI. Lessons and Implications

[102] SIC, *Consultation on the Revision to the Singapore Code on Takeovers and Mergers* (1 November 1999).

[103] SGX listing rules, ch 14.

One general lesson from the economics and finance literature is that robust financial markets contribute to fast economic growth.[104] In particular, as compared to the bank-centered financial systems, economies organised around securities markets tend to promote innovation, hence a sustainable growth.[105] At the same time, strong investor protection is considered crucial to viable financial markets.[106] In this sense, protecting outside investors from exploitation by corporate insiders advances economic efficiency as a whole.

To the extent that squeeze-outs by controlling shareholders present opportunities for insiders to exploit outsiders, therefore, a tight legal restraint on this particular type of activity contributes to uplifting investors' confidence in the capital market, as well as the viability of the market. Moreover, the higher threshold set for squeeze-outs in Hong Kong brings squeeze-outs deals closer to voluntary transactions between ordinary market participants. Barring the concern over holdouts, such voluntary transactions would create an optimal level of squeeze-out activities. In other words, squeeze-outs will happen only when it does generate greater corporate value than leaving equity with minority shareholders. The premium paid to the minority simply reflects their share of the additional corporate value brought about by the squeeze-out. Consequently, should squeeze-out be the only form of insider exploitation, we perhaps have a good reason to sing praise for the legal approach taken in Hong Kong to regulate squeeze-out activities.

Indeed, our study does show that minority shareholders of Singapore companies are in fact disadvantaged in compulsory acquisitions and delistings, as compared to the schemes of arrangement. Controlling shareholders are able to exercise transaction arbitrage around the

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104 Robert G. King and Ross Levin, "Finance and Growth: Shumpeter Might Be Right" (1993) 108 Quarterly Journal of Economics, 717-737; Ross Levine and Sara Zervos, "Stock Markets, Banks, and Economic Growth" (1998) 88 American Economic Review, 537-558.

105 John C. Coffee, Jr., Hillary A. Sale, and M. Todd Henderson, Securities Regulation: Cases and Materials (13th ed.) (2015) Foundation Press, 10.

106 Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Law and Finance" (1998) 106 Journal of Political Economy, 1113-1155.

minority shareholder protection provisions found in general offers and pay a lower premium. They have also exercised their ability to procure the delisting of the target, thereby pressuring the minority shareholders to accept their undervalued offers. These are areas of concern as controlling shareholders generally pick the transaction structures that lead to the maximum certainty and the lowest price.

We also find that the existing safeguard for delistings in Singapore, that is, the requirement to provide a reasonable exit offer, is weak.[107] The independent financial adviser opines on the reasonableness of the exit offer (and the independent directors normally follow the IFA's advice). However, due to the inherent subjectivity of these opinions, shareholders cannot rely on the IFAs to deter opportunistic bids. In unreported results, we find that in 5 (10.87%) cases in the sample of SGX-listed companies that are the subject-matter of delisting offers, the IFAs have found that the exit offers are fair and reasonable notwithstanding that the exit offers in question is at a steep discount (more than 30%) to the latest NAV as at the latest financial date. Only in two cases did the bidders withdraw their exit offers because the IFAs opined that their offers were not fair and reasonable.[108]

Particularly, since retail investors usually hold smaller percentages of equity and have weaker bargaining positions than institutional investors, and given the goal of SGX to increase retail participation in the stock markets,[109] there is a need to boost the confidence of the retail investors that they will not be short-changed by the controlling shareholders if they (the controllers of these companies) choose to delist.

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107 See Wan Wai Yee, ""Independent Financial Advisers' Opinions for Public Takeovers and Related Party Transactions in Singapore", n 69 above.

108 See Texchem Pack Holdings, "Proposed Voluntary Delisting of Texchem Pack Holdings (S) Ltd" (1 June 2010); Elec & Eltek and Kingboard Chemical Holdings, "Proposed Voluntary Delisting of Elec & Eltek" (21 August 2009).

109 See n 92 and accompanying text above.

In making a recommendation, however, we are also mindful that squeeze-out is not the sole channel through which insiders could exploit external investors. Thus, if the rules are tightened against squeeze-out, it does not necessarily mean that shareholders will always be better off, since the controlling shareholders may substitute it for other means of tunnelling, namely, RPTs (or the associated CPTs and IPTs). In this regard, further consideration also should be placed on the scope and ambit of the listing rules relating to the CPTs and IPTs.[110]

Finally, it is worth noting that the risk of exploitation may be especially serious when controlling shareholders are seeking to squeeze out the minority shareholders. When it comes to the taking private deals launched by external bidders after completion of a takeover offer, this kind of risk might become less of a concern. In this regard, the UK approach for premium listed companies has the merits of clearly drawing such distinction and represents a middle ground between Hong Kong and Singapore positions. To recap, in the UK, a bidder which achieves a 75% shareholding of the target pursuant to a takeover offer can then effect a cancellation of listing with the appropriate notice. However, the bidder which has more than 50% of the target and is seeking to withdraw the premium listing after its takeover offer of the target upon reaching 75%, must also obtain acceptances from the majority of the minority shareholders on the date that its firm intention to make its takeover offer was announced.[111] These delisting rules found in the UK for the premium listed companies are generally more favourable to minority shareholders where it is the controlling shareholders taking the company private. The lack of response on the part of passive or untraceable shareholders will work against the bidder. If adopted in Singapore in place its current delisting requirements, this will represent an improvement to the position of the minority shareholders where the

110 See nn 88-89 above.

111 FCA Listing Rules, r. 5.2.11A. See nn 58-59 and accompanying text.

current threshold for approval of the delisting proposal is 75%, with not more than 10% voting against, of shareholders present and voting. In such a case, the lack of response on the part of passive or untraceable shareholders will work in *favour* of the bidder. In contrast, the current Hong Kong rules make it very difficult for there to be a delisting since it requires 75% vote of disinterested shareholders, and does not draw a distinction between the cases of whether the delisting has occurred after a takeover by controlling or non-controlling shareholders.

VII. Conclusion

In both the Hong Kong and Singapore systems, each of which features concentrated share ownership and whose company law heritage is found in the UK, there are important differences in regulating squeeze-outs. Hong Kong is much more restrictive of squeeze-out than Singapore, particularly from the perspective of controlling shareholders. We have found that squeeze-outs are much more common in Singapore than Hong Kong, even after controlling the number of listed companies in both jurisdictions. The premium offered by bidders is significantly higher in Hong Kong than in Singapore, even controlling for target company characteristics. The choice of squeeze-out structure differs; Singapore is more likely to have delisting offers (which is the most coercive form of transaction structure) while Hong Kong is more likely to have schemes of arrangement or general offers. We also find that controlling shareholders exercise transaction arbitrage around the seemingly narrower rules of general offers in Singapore, with substantive effects on the premium received by minority shareholders.

However, we note that the position relating to squeeze-outs must be evaluated in light of other forms of tunnelling that controlling shareholders may engage in. We find that, in

Hong Kong, the levels of RPTs among squeeze-outs by controlling shareholders to be higher than squeeze-outs by non-controlling shareholders, which suggest that controlling shareholders may engage in other forms of expropriation of value from minority shareholders.

We argue that the reason for the differences in the regulation lies in the fact that the combination of the higher participation of the adult local population in the securities market, the greater involvement in the press and the greater depth of the securities market have influenced the regulators to adopt certain policies that optically favour the minority shareholders in Hong Kong, as compared to Singapore. Squeeze-out is one instance of such policy where it is immediately obvious as to the premium that is made available to the minority shareholders. In addition, we argue that mode of regulation is different in the two jurisdictions. Singapore has regarded the issue to be dealt with via legislation, rather than through listing rules and takeover codes, with the result that reforms which appear to introduce indeterminacy in the law are rejected. The concern appears that if legislation is too vague and flexible, too much of the discretionary power would be delegated to regulators.

The implications of this research for Hong Kong and Singapore policies are twofold. First, we believe there is a case for strengthening minority shareholder protection for delisting offers Singapore. Second, any strengthening of minority shareholder protection in squeeze-outs will have to be viewed in light of other forms of tunnelling that may be carried out by controlling shareholders. Our findings are likely to be of interest to regulators in any future review of the law and regulation governing Hong Kong and Singapore takeovers. It would also be relevant for emerging economies in Asia and elsewhere in the world as to the appropriate framework to be put in place to ensure the appropriate balance be struck between majority and minority shareholders.

Figure 1 Number of squeeze-out transactions and their respective transaction structures in each market

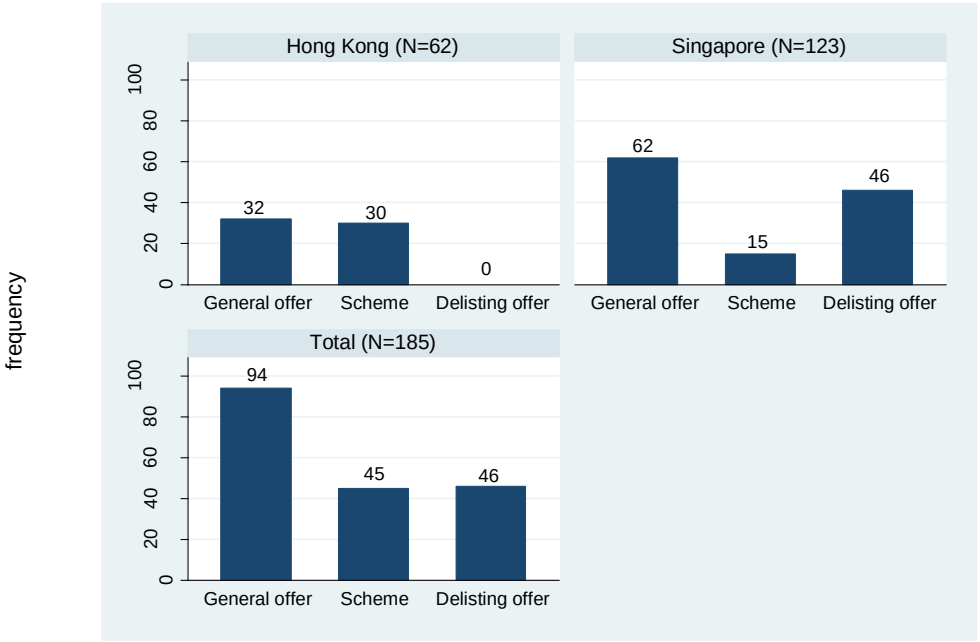

Figure 2 Number of squeeze-out transactions by controlling and non-controlling shareholders in each market

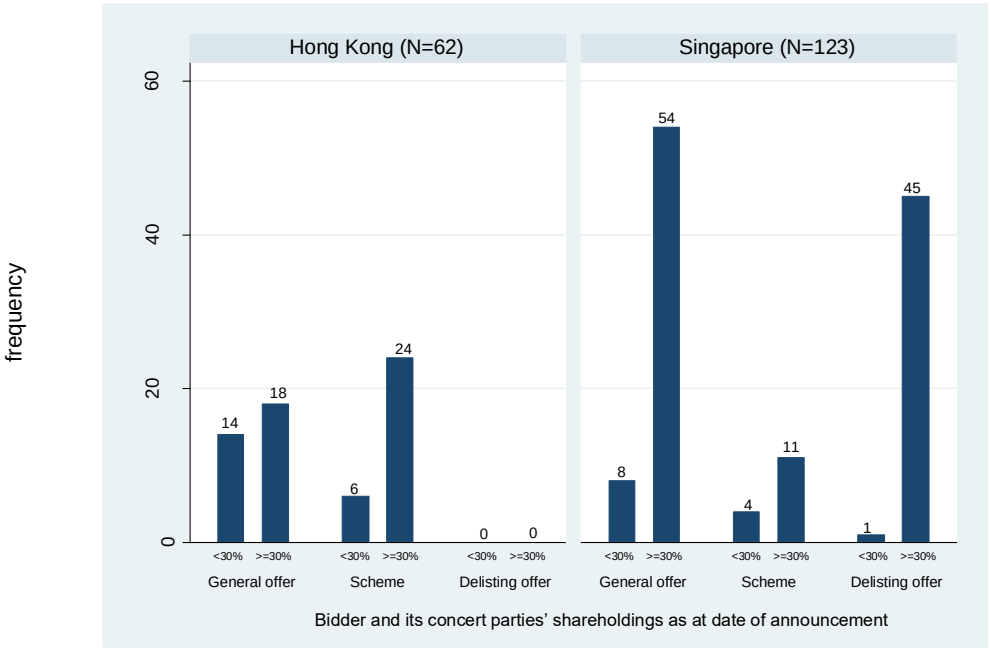

Table 1 Means of premiums offered in Singapore and Hong Kong for squeeze-outs by controlling shareholders

	Singapore				**Hong Kong**		
	General offer	**Scheme of arrangement**	**Delisting**	**Total**	**General offer**	**Scheme of arrangement**	**Total**
Total No of cases	**54**	**11**	**45**	**110**	**18**	**24**	**42**
NAV	63.351	24.008	44.851	51.849	104.217	147.914	129.187
1-month VWAP	39.064	38.691	26.145	33.954	45.065	62.222	55.623
3-month VWAP	40.385	38.648	27.799	35.197	45.151	65.775	57.843
6-month VWAP	42.993	37.394	28.932	36.694	50.879	60.491	56.794
12-month VWAP	43.685	36.258	24.278	35.347	46.644	50.030	48.728

Table 2 Transaction arbitrage and premiums in Singapore

	A	B	C	D	E	F	G	H
Premiums to:	Non-arbitrage general offers (N=28)	Arbitrage general offers (N=26)	Delisting (N=45)	Scheme of arrangement (N=11)	Differences between A and B	Differences between A and C	Differences between A and D	Differences between B and C
NAV	120.035	2.308	44.851	24.008	117.727^	75.184*	96.027	-42.543
1 month VWAP	45.256	32.396	26.145	38.691	12.860	19.111^	6.564	6.251
3-month VWAP	45.604	34.765	27.799	38.648	10.839	17.805^	6.957	6.965
6-month VWAP	50.729	34.961	28.932	37.394	15.768*	21.797^	13.335	6.029
12-month VWAP	53.890	33.480	24.278	36.258	20.410*	29.612^	17.633	9.202

Notes:
* signifies $p < 0.05$.
^ signifies $p < 0.01$.