CONTROLLING THE CONTROLLING SHAREHOLDERS: THE SINGAPORE PERSPECTIVE

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Shareholding Structure & Corporate Governance

• Disperse ownership (US, UK) vs. Concentrated ownership (Europe, Asia)

• Managers (Agent) & Shareholders (Principal) vs. Controlling Shareholders (Agent) & Minority Shareholders (Principal)

• Vertical agency problems vs. Horizontal agency problems
Strategies used for resolving CG issues

- Participative strategy vs. Controlling strategy

- Participative strategy: shareholders (particularly the minority) are enabled and encouraged to exercise greater participation in the company

- Controlling strategy: controlling or regulating the actions of the controlling shareholders rather than empowering the minority shareholders.

Strategies used for resolving CG issues

- Participative strategy is not useful for concentrated shareholders’ model of firm.

- Corporate governance efforts in controlled companies may instead be better spent on the controlling strategy.
Case of Singapore

- **Ownership structure of companies in Singapore**
  - similar to most parts of the world (other than the U.S. and the U.K)
  - large companies generally have concentrated shareholding with either business families or the state being the controlling shareholders.

Case of Singapore

- A study of the 100 largest firms listed on SGX by market cap. based on data for 2007-2008 shows that 26 of them are controlled to varying degrees by the state, GLCs (Tan, 2010). Of the remaining 74 companies, 69 are family-owned companies, with family holding as high as 69.52% of shares in the company (Tan, 2011).
- Greater concentration of shareholding among the larger 20% of the companies when compared to the bottom 20% companies (Tan, 2010).
Case of Singapore

- A study over a 10-year horizon ending 2007-2008 indicates greater concentration during the latter part of the 10-year period rather than at the beginning (Tan, 2010). This suggests that concentration in shareholding in Singapore companies is gaining traction, and there is no evidence to suggest a transition toward a Berle and Means ownership structure.

- A study with a larger sample size of 743 companies listed on SGX indicates that 386 companies (or 52% of the sample size) comprise family companies (Dieleman, et. al., 2011).

- This study too reveals high concentration of ownership, with the top 10 owners of a company holding an average stake of 73% in non-family companies and 74% in family companies.
Case of Singapore

- Although level of concentration in shareholding in Singapore companies suggests a strong presumption of the existence of self-dealing transactions and expropriation of minority shareholders, no evidence of expropriation was found in state-controlled companies or family-held companies.

Case of Singapore

- **What can we conclude?**
  - Singapore corporations generally controlled by controlling shareholders.
  - No direct empirical evidence of tunneling in Singapore companies, but possibility is there.
  - The evidence suggests the likelihood of the controller-minority agency problem being acute in family owned companies.
  - Less is known about the agency problem in GLC, although state ownership is motivated by public interest concerns that might operate differently from the private interests sought to be exercised by business families.
Singapore’s Strategies

- **Participative Strategies**
  - Shareholders in Singapore companies have significant powers given by law, much more so than shareholders in U.S. companies.
    - appoint and remove directors with a simple majority of votes at a shareholders’ meeting. Right to remove director is an absolute one in listed co, even where there is no “cause”.
    - Shareholder approval required for several matters such as disposal of a significant asset or business of a company, payment of executive compensation to senior managers, a merger of the company, etc.

Singapore’s Strategies

- **Participative Strategies**
  - Shareholders holding at least 10% of the shares (to be reduced to 5%) of the company are entitled to make a request to the board of the company to convene a general meeting of the shareholders. Shareholders holding 5% voting rights in the company may also propose resolutions that the company must put to vote.
Singapore’s Strategies

• Participative Strategies
  • Two proxy rule – to be amended to allow multiple proxies to vote. Time for submission of proxy extended from 48 hours to 72 hours.
  • From 1 Jan 2014, all SGX primary listed companies must hold their meetings in Singapore, unless they are prohibited from doing so by the laws in the jurisdictions of their incorporation. If it is to be held outside, to have video conferencing or webcast to allow shareholders in Singapore to follow the proceeding.

Singapore’s Strategies

• Participative Strategies
  • From 1 August 2015, listed companies to conduct meeting by poll rather than by show of hands. Also need to disclose voting decisions and outcome promptly.
Singapore’s Strategies

• But
  – No strong evidence of shareholder activism, unlike those in the west or even in other Asian markets such as Japan (Puchniak and Nakahigashi, 2012) and India (Varottil, 2012).
  – No market for proxy advisory firms

• Participative strategies are not useful as shareholders are not differentiated and main aim is still to strengthen shareholders’ power relative to the board and the management

Singapore’s Strategies

• Controlling Strategies
  – Allows balancing of powers between minority and majority shareholders
  – Ex Ante measures
  – Ex Post measures
Singapore’s Strategies

• Ex Ante measures
  – Private ordering: through shareholders’ agreement and articles of associations. Limitation with the latter because the articles of association can be enforced by a shareholder only to exercise “membership rights”.
  – Also, not common with public companies

• Ex Ante measures
  – Regulatory Restrictions: through regulating “Interested Persons Transactions” (IPT) – includes controlling shareholders other than CEO and Director
  – 3% of the group’s latest audited net tangible assets-announcement.
  – 5% shareholders’ (excluding the interested party) approval

• Limitation: restricted to listed companies; amount less than $100k excluded.
Singapore’s Strategies

• Ex Ante measures
  – Regulatory Restrictions: Self-dealing law
  – But more targeted on the Board and management rather than on controlling shareholders, although if controlling shareholders are also directors, they will be caught. Also, the concept of shadow director in Singapore.
  – Unlike directors, controlling shareholders do not owe a fiduciary duty to minority shareholders (subject to oppression remedy, see below)

Singapore’s Strategies

• Ex Post measures
  – Minority actions: Oppression and Derivative Actions
  – S. 216 and S 216A of the Companies Act
  – Oppression under S. 216: a shareholder can bring an action if the affairs of the company are being carried on in a manner that is oppressive to him or if an act or conduct of the company unfairly discriminates or is otherwise prejudicial to him
  – Direct action against the director or controlling shareholder
  – Legal hurdles
Singapore’s Strategies

• Oppression – under s 216
  – A shareholder can bring an action if the affairs of the company are being carried on in a manner that is oppressive to him or if an act or conduct of the company unfairly discriminates or is otherwise prejudicial to him
  – Direct action against the director or controlling shareholder
  – Legal hurdles
  – Limitations of remedies and types of companies

Singapore’s Strategies

• Derivative Actions – under s 216A
  – Action against directors for breach of duties; not exactly against the controlling shareholders
  – Statutory provision used to be limited to private and unlisted companies
  – Limitations
    • Benefits to company
    • No market for class action in Singapore at the moment
Singapore’s Strategies

• Way Forward
  – No one-size fits all strategy. Concentrated shareholding companies deserve different strategy to tackle the agency problem
  – Participative v Controlling Strategy
    • Cumulative voting
    • Fiduciary duties of controlling shareholders in certain situations