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Independent Directors in Singapore Puzzling Compliance Requiring Explanation

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[FEBRUARY 2017]

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Faculty of Law

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ABSTRACT

At first blush, the rise of independent directors in Singapore provides a straightforward example of a successful legal transplant from the West to Asia. In 2001, Singapore implemented a UK-inspired Code of Corporate Governance, which required the adoption of American-style independent directors on a “comply or explain” basis. Shortly thereafter, an overwhelming 98% of Singapore-listed companies reported full compliance. This, combined with Singapore’s world-leading economic success, ostensibly confirmed the Anglo-American-cum-global conventional wisdom that American-style independent directors are required for good corporate governance.

Using hand-collected data from 245 codes of corporate governance from 87 jurisdictions, this article reveals, however, that Singapore’s supposedly conventional legal transplant of American-style independent directors was, in fact, highly unconventional. We empirically demonstrate that the widely held belief that the American concept of the independent director has been transplanted around the world is a myth. We argue, however, that Singapore’s highly unconventional and seemingly illogical decision to transplant American-style independent directors into its concentrated controlling-block shareholder environment was the product of strategic regulatory design (not ignorance) and was surprisingly effective. It all but guaranteed exceptionally high compliance rates, which sent a critical signal of “good” corporate governance to international markets in the wake of the Asian Financial Crisis and simultaneously allowed Singapore to functionally

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maintain its efficient state-owned and family-owned controlling-shareholder environment.

We confirm our findings using quantitative, qualitative, and hand-collected data which provide fresh insights into Singapore’s intriguing institutional architecture and the unique role played by independent directors in Singapore’s successful state-owned enterprises and family-controlled corporations. In addition, we suggest that Singapore’s successful, but highly unconventional use of American-style independent directors provides a number of important insights into some critical areas of comparative corporate law theory. As many countries, including China, have suggested that they intend to adopt the Singapore model of corporate governance, this article also provides practical insights into how the independent director may evolve as a corporate governance mechanism in other critically important economies in Asia and around the world.

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PART I: INTRODUCTION

At first blush, the story of the rise of independent directors in Singapore appears conventional, if not mundane. In 2001, in the wake of the Asian Financial Crisis, Singapore needed to bolster its corporate governance. It did what every responsible, well-governed, country in Asia was supposed to do: look to the West (or, more precisely, to Anglo-America) for corporate governance solutions.¹

At that time, the American independent director stood out as perhaps the most recognizable global symbol for good corporate governance. Independent directors were (and still largely are) credited with transforming American boardrooms from inept managerial clubs into effective managerial monitors.² In the United Kingdom, the London Stock Exchange was thriving as its dispersedly held American-style Berle-Means type companies embraced American-style independent monitoring boards.³ At the same time, the United Kingdom had also emerged as a global beacon for good corporate governance.⁴ Its implementation of American-style independent directors, through its market-driven “comply or explain” Code of Corporate Governance (UK Code), was the avant-garde of corporate governance reform.⁵ From this perspective, Singapore’s decision in 2001 to implement a UK-inspired Code of Corporate Governance (2001 Code), which required the adoption of American-style

¹ In the late 1990s and early 2000s, the (Anglo) American model of corporate governance was seen by many leading policymakers and academics as the optimally efficient endpoint in the evolution of corporate governance. Ronald Gilson, in his influential 2006 article, concisely described this view as follows: “scholars’ and policymakers’ . . . reactions reflected a teleological view of the evolution of capital markets. They saw a U.S./U.K.-style widely held distribution of stock ownership and control as the end point of corporate governance development; progress consisted of accelerating what selection would make inevitable.” Ronald J. Gilson, *Controlling Shareholders and Corporate Governance*, 119 HARV. L. REV. 1641, 1647 (2006) [hereinafter Gilson, *Controlling Shareholders and Corporate Governance*]. With respect to the corporate governance response to the Asian Financial Crisis, Gilson, in his often-cited 2001 article, summarized the situation as follows: “not long thereafter, the Japanese bubble burst and the American economy boomed . . . The American system then became the apparent end point of corporate governance evolution, a consensus that appears clearly from the IMF and the World Bank’s response to the 1997–1998 East Asian financial crisis.” Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J. COMP. L. 329, 331 (2001) [hereinafter Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*]. The view that the American model of corporate governance was the most efficient corporate governance model which all other systems of corporate governance would evolve towards was most prominently posited by the leading corporate law professors Henry Hansmann and Reinier Kraakman. Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO L.J. 439 (2001). It should be noted that this view was challenged by many academics and policymakers. For example, see Dan W. Puchniak, *The Japanization of American Corporate Governance? Evidence of the Never-Ending History for Corporate Law*, 9 ASIAN-PAC. L. & POL’Y J. 7 (2007).

² Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950–2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465 (2007). For comparative analyses highlighting the shift in US boards towards the managerial monitoring model, see Brian R. Cheffins, *The History of Modern U.S. Corporate Governance, Introduction to THE HISTORY OF MODERN U.S. CORPORATE GOVERNANCE I*, at xxix, xli (Brian R. Cheffins ed., 2012); Paul L. Davies & Klaus J. Hopt, *Corporate Boards in Europe: Accountability and Convergence*, 61 AM. J. COMP. L. 301, 323 (2013); Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 511 (Jennifer G. Hill & Randall S. Thomas eds., 2015).

³ Brian R. Cheffins, *The History of Corporate Governance*, in OXFORD HANDBOOK OF CORPORATE GOVERNANCE, at 56–58 (Mike Wright et al. eds., 2013).

⁴ *Id.* at 19–20.

⁵ *Id.*

independent directors on a “comply or explain” basis, appeared highly conventional. As history would have it, however, it turned out to be anything but.

In fact, as this Article reveals, Singapore’s embrace of American-style independent directors made it a corporate governance outlier. As explained in detail in Part II below, the widely held belief that the American concept of the independent director has been transplanted around the world is a myth.⁶ The reality, which our review of the rules governing independent directors in 245 corporate governance codes from 87 jurisdictions reveals, is that only a handful of jurisdictions have ever adopted the American concept of the independent director (i.e., where directors who are independent from management *only*—but not substantial shareholders—are deemed to be independent).⁷ Instead, most jurisdictions have merely adopted the *term* “independent director” from the United States, while significantly modifying the American concept by requiring directors to be independent from management *and* significant shareholders in order to be considered independent.⁸ This modification is critical, as it alters the core function of the “independent director” from being a corporate governance mechanism designed primarily to monitor management on behalf of dispersed shareholders to one designed primarily to monitor controlling shareholders on behalf of minority shareholders.

At least from the perspective of agency theory, in most jurisdictions it makes perfect sense to modify the American concept of the independent director by requiring independence from significant shareholders. This is because most jurisdictions, aside from the United States and United Kingdom, tend to be dominated by corporations with controlling-block shareholders.⁹ In such corporations, the controlling-block shareholder can effectively monitor (and, if need be, replace) underperforming management or manage the company themselves—making American-style independent directors functionally redundant, at least from the perspective of agency theory.¹⁰ On the other hand, directors who are independent from management *and* significant shareholders (i.e., the *Un-American* concept of independent directors) can *potentially* add significant value in a block shareholder environment by monitoring controlling shareholders and thus mitigating private benefits of control.¹¹

It is against this backdrop that Singapore’s status as a corporate governance outlier becomes glaringly visible. The vast majority of listed companies in Singapore have highly concentrated block-shareholding structures, which have become even more concentrated as Singapore’s wealth has reached world-leading heights.¹² This raises the first puzzle which

⁶ See discussion *infra* Part II.

⁷ See discussion *infra* Part II.

⁸ See discussion *infra* Part II.

⁹ Stijn Claessens et al., *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FIN. ECON. 81, 82, 84 (2000); Hui Huang, *Shareholder Derivative Litigation in China: Empirical Findings and Comparative Analysis*, 27 BANKING & FIN. L. REV. 619, 625, 649 (2012); Rafael La Porta et al., *Corporate Ownership Around the World*, 54 J. FIN. 471, 472, 491–98 (1999); Puchniak, *supra* note 2, at 524–25.

¹⁰ Davies & Hopt, *supra* note 2, at 324; Gilson, *Controlling Shareholders and Corporate Governance*, *supra* note 1, at 1650–51; Puchniak, *supra* note 2, at 524–26.

¹¹ Davies & Hopt, *supra* note 2, at 324.

¹² Claessens et al., *supra* note 9, at 104; Cheng Han Tan et al., *State-Owned Enterprises in Singapore: Historical Insights Into a Potential Model for Reform* 6 (Nat’l Univ. of Sing. Working Paper No. 2015/003, 2015), available at <http://ssrn.com/abstract=2580422> [hereinafter Tan et al., *State-Owned Enterprises in Singapore*]; Lay Hong Tan, *Exploring the Question of the Separation of Ownership from Control: An Empirical Study of the Structure of Corporate Ownership in Singapore’s Top 100 Listed Companies*, 17, 20, 25 (N.Z.

this Article seeks to solve: Why would Singapore’s highly-skilled regulators deviate from the seemingly logical and well-trodden path of other controlling-shareholder dominated jurisdictions by transplanting the American concept of the independent director into Singapore’s controlling-shareholder environment and maintaining it for over a decade?

Strange as this decision may be, the response of listed companies in Singapore to it presents an even more intriguing puzzle. Rather than shun the 2001 Code’s seemingly ill-defined and functionally irrelevant American-style independent directors, listed companies in Singapore embraced them with vigor—which is the opposite of what agency theory and leading corporate governance scholars would have predicted.¹³ In fact, shortly after the 2001 Code went into force in 2003, an overwhelming 96% of Singapore-listed companies reported full compliance with the Code’s recommendation that one-third of the board be composed of American-style independent directors.¹⁴ Not long after that, 98% of Singapore-listed companies reported full compliance, with a majority of all directors in Singapore reportedly being “independent”.¹⁵ These extraordinary statistics raise the second intriguing puzzle that this Article seeks to solve: Why did listed companies in Singapore embrace seemingly functionally irrelevant American-style independent directors; and, what role (if any) have these directors played in Singapore corporate governance?

To add a final twist to this bemusing regulatory tale, after more than a decade of near perfect compliance, Singapore has recently decided to abandon its promotion of American-style independent directors. The 2012 Code of Corporate Governance (2012 Code), which went into full force at the start of 2015, requires independent directors to not only be independent from management, but also from shareholders holding more than 10% of the company’s shares.¹⁶ This raises the final puzzle that this Article seeks to solve: Why, after more than a decade of near perfect compliance, has Singapore decided to abandon American-style independent directors; and, what impact (if any) may this have on the future of corporate governance in Singapore?

For those who prefer short stories and lack the patience for suspense, we offer an abridged account of our solutions to these three puzzles upfront, before delving into the intricate details which form the core of this Article. With respect to the first puzzle, as explained in detail in Part II below, historical evidence suggests that Singapore’s seemingly illogical

Governance Ctr. Working Paper, 2011), <http://docs.business.auckland.ac.nz/Doc/exploring-the-question-of-ownership-from-control.pdf> [hereinafter Tan, *Exploring the Question of the Separation of Ownership from Control*].

¹³ Wolf-Georg Ringe, *Independent Directors: After the Crisis*, 14 EUR. BUS. ORG. L. REV. 401, 413–14 (2013).

¹⁴ HANS TJIO, PRINCIPLES AND PRACTICE OF SECURITIES REGULATION IN SINGAPORE ¶ 5.24 (2d ed. 2011).

¹⁵ *Id.*

¹⁶ MONETARY AUTH. OF SING., CODE OF CORPORATE GOVERNANCE, art. 2.3 (2012), http://www.mas.gov.sg/~media/resource/fin_development/corporate_governance/CGCRevisedCodeofCorporateGovernance3May2012.pdf. MAS granted a longer transition period for listed companies to comply with the new definition of independence in the 2012 Code. Listed companies were allowed make board composition changes at the Annual General Meeting (AGM) following the end of the relevant financial year commencing on or after November 1, 2012. As such, for listed companies with September 30 as their year-end, the changes had to be made by January 31, 2015 (i.e., at the AGM following the financial year ending September 30, 2014). MONETARY AUTH. OF SING., RESPONSE TO RECOMMENDATIONS BY THE CORPORATE GOVERNANCE COUNCIL ON THE CODE OF CORPORATE GOVERNANCE, 9 (2012), http://www.mas.gov.sg/~media/resource/fin_development/corporate_governance/cgcmasrespondedraftwithannexes2may2012.pdf [hereinafter MAS RESPONSE TO RECOMMENDATIONS].

decision to adopt and maintain American-style independent directors for over a decade was the product of strategic regulatory design (not ignorance) and, we argue, was surprisingly effective. Adopting American-style independent directors in the 2001 Code allowed Singapore to send a critical signal of “good” corporate governance to international markets in the wake of the Asian Financial Crisis. In addition, maintaining American-style independent directors throughout the 2000s all but ensured that Singapore would have a high proportion of “independent directors” and near perfect compliance with its Code, without fundamentally altering its unique and functionally efficient state and family-controlled corporate governance system. In fact, based on our own and other in-depth quantitative and qualitative research, we suggest that if Singapore had followed the conventional path by requiring strict independence from controlling shareholders, then deleterious effects may have resulted. Singapore’s unique and functionally efficient system of corporate governance may have been destabilized and the quality of its boards eroded—things standard corporate governance theory would not predict.¹⁷

With respect to the second puzzle, as explained in detail in Part III below, agency theory’s narrow focus on the monitoring function of independent directors provides scant insight into why American-style independent directors were embraced so widely by listed companies in Singapore. After putting agency theory aside and understanding Singapore’s unique institutional and shareholder environment, however, the functionality of American-style independent directors in listed companies in Singapore becomes clear. Interestingly, it appears that the functionality of American-style independent directors in Singapore varies depending on the *identity* of a company’s controlling shareholder. In Family-Controlled Firms (“Family Firms”), American-style independent directors sometimes appear to leverage their close relationship with family-controllers to serve as effective mediators who resolve disputes between family-member-shareholders and/or act as trusted advisers to the family-chairman. In contrast, in state-controlled companies (commonly referred to in Singapore as “Government-Linked Companies”), American-style independent directors appear mainly to fill the gap in managerial monitoring that exists because of the unique institutional constraints that the Singapore government has placed on its own controlling-shareholder power to limit its involvement in directly monitoring or managing Government-Linked Companies. Moreover, in Family Firms and Government-Linked Companies, the adoption of American-style independent directors functions as a firm-level signal of “good” corporate governance, while at the same time does not erode the ultimate control of controlling shareholders in such firms.¹⁸

With respect to the third puzzle, as explained in detail in Part IV below, Singapore’s recent decision to abandon the American concept of the independent director appears to be driven by a myriad of factors, with two standing out for their import and intrigue. First, scandals in *non-Singapore* based companies listed on the Singapore Exchange appear to have been a significant driver of the recent reform. In the late 2000s in Singapore, there was an exponential increase in “S-chip” companies (i.e., companies that are listed on the Singapore Exchange but whose operations and controlling shareholders are located in mainland China, or “PRC-Controlled Firms”). Remarkably, within a few years, PRC-Controlled Firms went from being inconsequential to accounting for one-third of the value of IPOs and 20% of total

¹⁷ See discussion *infra* Part II.

¹⁸ See discussion *infra* Part III.

listings on the Singapore Exchange.¹⁹ PRC-Controlled Firms, however, were riddled with corporate governance scandals, which typically involved wealth tunneling by mainland Chinese controlling shareholders to the bane of minority (individual and institutional) shareholders in Singapore.²⁰ These scandals exposed weaknesses in Singapore’s American-style independent director system, which spurred the reform. Moreover, and perhaps more importantly, they revealed that PRC-Controlled Firms lacked the unique functional substitutes for limiting private benefits of control which appear to have made the American-style independent director system sustainable in *Singapore-based* Government-Linked Companies and Family Firms.²¹

Second, an examination of the 2012 Code’s fine print, combined with our in-depth quantitative and qualitative analysis of the biographical information of every independent director currently on the board of a listed Government-Linked Company, suggests that the reform has been carefully crafted to ensure that Singapore’s largely successful Government-Linked Company corporate governance structure will remain firmly intact. In addition, the reform has been skillfully tailored to not fundamentally disrupt the governance of Singapore’s largely successful Family Firms. This suggests that the reform may once again have more to do with signaling and less to do with functional reform than appears at first blush.²²

Finally, although this is a Singapore story, as described in detail in Part V, it teems with broader lines of inquiry for comparative corporate law theory. First, it suggests that the literature has overlooked that the *identity* of controlling shareholders—not merely whether companies have dispersed or concentrated shareholding—may be critical for determining how independent directors (and, we suspect, many other corporate governance mechanisms) actually function. Second, it suggests that the precise definition of “independence” for directors has received far too little attention—especially in cross-country comparative research, which often erroneously assumes that the American concept of the independent director has been transplanted around the world.²³ Third, it reveals that signaling “good” corporate governance merely to comply with international norms (what we coin “halo signaling”) may be an effective regulatory strategy—especially for smaller jurisdictions that are reliant on foreign investment and which have functional substitutes that ensure good corporate governance.²⁴ Fourth, it illuminates the complex regulatory problems that can emerge in listed companies whose operations and controlling shareholders are beyond the listing jurisdiction’s borders—tentatively suggesting that such problems may cause the erosion of unique local functional substitutes for standard international corporate governance mechanisms. All in all, this is an intriguing Singapore tale which has piqued our interest in

¹⁹ Stephanie Chong, Do Investors Earn Positive Abnormal Returns from Investing in Chinese Firms Listed on the Singapore Exchange? 1, 6–7 (Dec. 2012) (unpublished M.Acc. thesis, National University of Singapore) (on file with ScholarBank@NUS, National University of Singapore); Eveline Danubrata & Charmian Kok, *Accounting Woes Threaten Chinese Listings in Singapore*, REUTERS, July 1, 2011, <http://www.reuters.com/article/2011/07/01/singapore-listings-idUSL3E7HU0AB20110701>.

²⁰ See discussion *infra* Part IV.

²¹ See discussion *infra* Part IV.

²² See discussion *infra* Part IV.

²³ See discussion *infra* Part V.

²⁴ For a more detailed discussion of “halo signaling” see discussion *infra* Part V.

exploring whether these theoretical implications are unique to Singapore or suggest that there are other Asian or global tales of the independent director yet to be told.²⁵

PART II: THE RISE OF AMERICAN-STYLE INDEPENDENT DIRECTORS IN SINGAPORE

A. In the (American) Independent Director We Trust

According to conventional wisdom, the genesis of the independent director as a global mechanism for good corporate governance can be traced to the United States in the 1970s. Prior to the 1970s, boards in the United States were seen largely as an extension of senior management, which served as trusted advisers to, but not monitors of, the CEO.²⁶ As such, the typical American board was composed of senior management and some outsiders with deep connections to the company (e.g., bankers, lawyers, or suppliers), but few, if any, independent directors.²⁷

In the 1970s, however, there was a paradigm shift. Scathing academic evidence of the abysmal failure of insider-dominated advisory boards, a deluge of corporate scandals punctuated by Watergate, and the rise of the social responsibility movement changed the way that Americans viewed the primary function of corporate boards.²⁸ The board was no longer to be a body of friendly trusted advisers to the CEO, but rather a group of independent monitors watching over the CEO and senior management.

The change in the functionality of the American board was initially more aspirational than legal. Professor Melvin Eisenberg's influential 1976 book, *The Structure of the Corporation: A Legal Analysis*, set out a "monitoring model" which viewed mandatory rules as necessary to make the board independent from the senior management whose performance it was supposed to monitor.²⁹ Soon after his book was published, aspiration became quasi-legislation as the NYSE, upon the request of the SEC, amended its listing rules to require all listed companies to have an audit committee composed of directors who were independent from management.³⁰ American courts soon buttressed the managerial monitoring board model by creating several lines of jurisprudence, which although not technically requiring boards to have independent directors, strongly encouraged it.³¹ This laid the foundation for directors who were independent of management to become the centerpiece of the American corporate governance model.

²⁵ For a more detailed discussion of "halo signaling" see discussion *infra* Part V.

²⁶ Gordon, *supra* note 2, at 1513–14; Umakanth Varottil, *Evolution and Effectiveness of Independent Directors in Indian Corporate Governance*, 6 HASTINGS BUS. L.J. 281, 294 (2010); Urska Velikonja, *The Political Economy of Board Independence*, 92 N.C. L. REV. 855, 863–64 (2014).

²⁷ Gordon, *supra* note 2, at 1513–14; Varottil, *supra* note 26, at 294; Velikonja, *supra* note 26, at 863–64.

²⁸ Gordon, *supra* note 2, at 1514–18; Varottil, *supra* note 26, at 295; Velikonja, *supra* note 26, at 908–09.

²⁹ MELVIN A. EISENBERG, *THE STRUCTURE OF THE CORPORATION: A LEGAL ANALYSIS* 162–72 (1976). For a concise description of the impact of Eisenberg's book on the emergence of independent directors in the United States, see Gordon, *supra* note 2, at 1518; Varottil, *supra* note 26, at 295.

³⁰ Cheffins, *supra* note 3, at 3; Gordon, *supra* note 2, at 1518; Velikonja, *supra* note 26, at 883.

³¹ Gordon, *supra* note 2, at 1523–1524; Varottil, *supra* note 26, at 297.

By the 1990s, Professor Eisenberg’s aspirational managerial monitoring model was fully entrenched as a primary feature of American corporate governance, with a majority of directors on American boards being independent from management.³² Then, as the story goes, the American concept of the independent director went global. In the 1990s, in the wake of the collapse of the Japanese and German economies, the American model of corporate governance, with independent directors at its core, took center stage as the standard-bearer for establishing global norms of good corporate governance.³³ In addition, in the 2000s, the United Kingdom with its “comply or explain” Combined Code of Corporate Governance (UK Code)—which essentially was an amalgamation of the suggestions in the Cadbury Report (1992), the Greenbury Report (1995) and the Hampel Report (1998)—emerged as a leader, with the United States, in promoting norms of good corporate governance around the world.³⁴

Many observers viewed the United States and United Kingdom as promoting essentially the same corporate governance norms, with the independent managerial monitoring board in listed companies being one of the key points of congruency. As a result, the term “Anglo-American corporate governance” became part of the global corporate governance lexicon, with independent managerial monitoring boards being one of the hallmarks of the Anglo-American approach.³⁵ This is somewhat ironic because although the inaugural UK Code largely adopted the American concept of the independent director, by its first revision in 2003, the UK Code was amended to require independent directors to be independent from management *and* significant shareholders (i.e., the UK clearly adopted the *Un-American* definition for independence).³⁶ The fact that the UK subsequently abandoned the American concept of the independent director is a significant corporate governance event which has been almost entirely overlooked.³⁷

As such, according to conventional wisdom, by the dawn of the new millennium, the global rise of the American independent director appeared unequivocal. The corporate governance mechanism that had started out as an aspirational model by Professor Eisenberg in the United States in the 1970s had ostensibly been transplanted around the world. The Anglo-American inspired independent director reportedly spread throughout the EU as a result of the

³² Velikonja, *supra* note 26, at 863–64.

³³ Gilson, *Controlling Shareholders and Corporate Governance*, *supra* note 1, at 1647; Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, *supra* note 1, at 331; Puchniak, *supra* note 1, at 20–21.

³⁴ Cheffins, *supra* note 3, at 12–13, 19–20, 22; Varottil, *supra* note 26, at 282, 306.

³⁵ A Google search of the term “Anglo-American corporate governance” done on July 6, 2015 produced 11,200 results. This provides useful insight into how this term has entrenched itself in the comparative corporate governance lexicon. The prominence of the managerial monitoring independent director in the Anglo-American corporate governance model was strengthened with the release of the Principles of Corporate Governance by the Organisation for Economic Co-operation and Development (OECD) in 1999. Similar to the inaugural version of the UK Code, the OECD principles adopted American-style independent directors as a centerpiece of its model for reform. As such, the inaugural OECD and UK codes reinforced the notion of the American-style independent director being a key to good corporate governance.

³⁶ FINANCIAL REPORTING COUNCIL, THE COMBINED CODE ON CORPORATE GOVERNANCE § 1(A.3.1) (2003) (U.K.), http://www.ecgi.org/codes/documents/combined_code_final.pdf. This was at the recommendation of Derek Higgs, *Review of the Role and Effectiveness of the Non-executive Directors* (The Stationery Office 2003), <http://www.ecgi.org/codes/documents/higgsreport.pdf> [hereinafter Higgs Report].

³⁷ Indeed, as Davies and Hopt astutely note, more generally, the critical point of how to define independence in the context of controlled companies has often been overlooked. Davies & Hopt, *supra* note 2, at 320–24.

proliferation of UK-style “comply or explain” corporate governance codes.³⁸ In the wake of Japan’s lost decade (1990–2000) and the Asian Financial Crisis (1997–1999), countries in Asia ostensibly took steps to shore up their maligned corporate governance systems by either heralding the arrival of American-style independent directors as evidence of “good” corporate governance or implementing them as a forced condition of international financial aid.³⁹ As the story goes, whether in the East or West, developed world or developing world, common law jurisdiction or civil law jurisdiction, or indeed almost everywhere in between, the new millennium ostensibly ushered in the global era of the American independent director.

Today, the story of the global rise of the American independent director appears as grand as ever. Prominent academics speak of the “unequaled [global] triumph of the concept of director independence,” which ostensibly originated in the United States.⁴⁰ Professor Eisenberg’s aspirational independent managerial monitoring board remains a critical litmus test for good corporate governance around the world.⁴¹ In short, conventional wisdom suggests that the American independent director, which first rose to prominence in the United States in the 1970s, has become one of the most prolific and impactful legal transplants of our time—or so the story goes.

However, it must be noted that although the story of the global rise of the American independent director has become conventional wisdom, leading academics have struggled to explain what has driven this supposed phenomenon.⁴² Despite a litany of empirical studies, there is a surprising absence of empirical evidence in the United States and around the world that independent directors actually improve corporate performance or reduce corporate wrongdoing.⁴³ This academic mystery, however, has not altered the reality that American-

³⁸ Brian Cheffins, *Corporate Governance Reform: Britain as an Exporter*, 8 HUME PAPERS ON PUB. POL’Y: CORPORATE GOVERNANCE AND THE REFORM OF THE COMPANY LAW 6–8 (2000), available at <http://ssrn.com/abstract=215950>.

³⁹ For an example of Japan’s attempt to herald the arrival of American-style independent directors as evidence of “good” corporate governance, see Dan W. Puchniak, *The 2002 Reform of the Management of Large Corporations in Japan: A Race to Somewhere?*, 5 AUSTL. J. ASIAN L. 42 (2003). For an explanation of how the IMF essentially forced Korea to adopt independent directors as a condition of international financial aid, see Hwa-Jin Kim, *Living with the IMF: A New Approach to Corporate Governance and Regulation of Financial Institutions in Korea*, 17 BERKELEY J. OF INT’L L. 61, 74 (1999).

⁴⁰ Ringe, *supra* note 13, at 412. The general consensus that the independent director was created in the United States and then transplanted around the world is confirmed in the leading comparative corporate law book, *The Anatomy of Corporate Law*, which states: “The U.S. is the originator of this form of trusteeship [i.e., the independent director] and still its most enthusiastic proponent.” REINIER R. KRAAKMAN ET AL., *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 65 (2d ed. 2009).

⁴¹ Lucian A. Bebchuk & Assaf Hamdani, *The Elusive Quest for Global Governance Standards*, 157 U. PA. L. REV. 1263, 1302–1304, 1311 (2009).

⁴² Donald C. Clarke, *Three Concepts of the Independent Director*, 32 DEL. J. CORP. L. 73, 77 (2007); Gordon, *supra* note 2, at 1563; Velikonja, *supra* note 26, at 859.

⁴³ The most cited and thorough empirical analysis demonstrating the tenuous link between independent directors and corporate performance in the United States is Sanjai Bhagat & Bernard S. Black, *The Non-Correlation Between Board Independence and Long-Term Firm Performance*, 27 J. CORP. L. 231, 239 (2002). For a detailed overview of the empirical research in the United States, see Gordon, *supra* note 2, at 1500–1509; Velikonja, *supra* note 26, at 859. For an analysis of the link between noncompliance with independent director requirements and board monitoring in the US, see Lixiong Guo and Ronald W. Masulis, *Board Structure and Monitoring: New Evidence from CEO Turnovers* 5 (Eur. Corp. Governance Inst. Working Paper Series in Fin., Paper No. 351/2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021468.

style independent directors dominate the boards of listed companies in the United States more now than at any time in history—with 85% of directors on the boards of large listed companies in the United States now being independent and 60% of such boards having only one non-independent director, the CEO, as of 2013.⁴⁴ The lack of empirical evidence has also not prevented a consensus from emerging among policymakers, regulators, institutional investors, and shareholder activists in the United States that American-style independent directors are critical for addressing and preventing corporate governance failures and financial crises.⁴⁵

In a similar vein, based on our hand-collected data examined in detail below, this lack of empirical evidence has not prevented every country that we examined (87 in total) from adopting provisions to promote independent directors in all of their corporate governance codes (245 in total).⁴⁶ Similarly, corporate governance rating agencies and advisory firms

In Asia, most of the evidence has failed to find a link between independent directors and corporate performance. *See*, for example, A.K. Garg, *Influence of Board Size and Independence on Firm Performance: A Study of Indian Companies*, 32 VIKALPA 39 (2007) (showing that board independence did not guarantee improved firm performance due to poor monitoring roles by independent directors in Indian companies); Haslindar Ibrahim & Fazilah Abdul Samad, *Corporate Governance Mechanisms and Performance of Public-Listed Family-Ownership in Malaysia*, 3 INT’L J. OF ECON. AND FIN. 105 (2011) (finding no significant relationship between the proportion of independent directors and performance in Malaysian firms, while noting that a higher presence of independent directors in a non-family owned firm could improve the firm’s value by bringing in expertise and contacts to the firm); Sidney Leung et al., *Corporate Board and Board Committee Independence, Firm Performance, and Family Ownership Concentration: An Analysis based on Hong Kong Firms*, 10 J. OF CONTEMP. ACCT. AND ECON. 16 (2014) (examining the lack of association between board committee independence and firm performance in family firms in Hong Kong, while also noting a positive relationship between board independence and firm performance in non-family firms); Yoshiro Miwa & J. Mark Ramseyer, *Who Appoints Them, What Do they Do? Evidence on Outside Directors from Japan*, 14 J. OF ECON. & MGMT. STRATEGY 299 (2005) (showing that firms with more outside directors do not outperform firms with fewer outside directors); Muhammad Agung Prabowo & John L. Simpson, *Independent Directors and Firm Performance in Family Controlled Firms: Evidence from Indonesia*, 25 ASIAN PAC. ECON. LITERATURE 121 (2011) (analyzing the relationship between board structure and firm performance in Indonesian Family Firms to suggest that the share of independent directors on the board has an insignificant relationship with firm performance and that there is strong empirical support that family control is negatively related to firm performance); Duc Vo & Thuy Phan, *Corporate Governance and Firm Performance* (2013), http://www.murdoch.edu.au/School-of-Management-and-Governance/_document/Australian-Conference-of-Economists/Corporate-governance-and-firm-performance.pdf (finding no link between independence and firm performance in Vietnamese companies).

However, there is other evidence which suggests that independent directors may improve performance in Asia in certain limited circumstances. *See* Bernard S. Black et al., *Does Corporate Governance Predict Firms’ Market Values? Evidence from Korea*, 22 J. L., ECON., & ORG. 366 (2006) (finding a significant positive effect of independent directors on corporate governance and firm performance in Korea); Jongmoo Jay Choi et al., *The Value of Outside Directors: Evidence from Corporate Governance Reform in Korea*, 42 J. OF FIN. AND QUANTITATIVE ANALYSIS 941 (2007) (examining the valuation impacts of outside independent directors in Korea to find that the effect of outsiders depends on board composition and the nature of the market in which the firm operates).

We note that there has not yet been a detailed empirical analysis of the link between independent directors and corporate performance in Singapore. However, there is limited evidence that there may be some benefits for audit committees for Singapore and Malaysian firms. *See* Michael E. Bradbury et al., *Board Characteristics, Audit Committee Characteristics and Abnormal Accruals*, 18 PAC. ACCT. REV. 47 (2006) (examining 279 Malaysian firms listed on the KLSE and 271 Singapore firms listed on the SGX in 2000 to show that the proportion of independent directors on the audit committee negatively relates to abnormal accruals; this suggests that the higher the number of independent directors on the audit committee, the lower the abnormal accruals associated with the roles of the independent directors present in audit committee).

⁴⁴ Velikonja, *supra* note 26, at 857.

⁴⁵ Velikonja, *supra* note 26, at 915.

⁴⁶ *See* discussion *infra* Part II C.

have not been dissuaded from using the prevalence of American-style independent directors as a key metric for measuring “good” corporate governance around the world.⁴⁷ In sum, while the dearth of empirical evidence supporting the link between American-style independent directors and better corporate governance remains an academic puzzle, the fact that the American-style independent director has come to dominate corporate governance in the United States and has ostensibly been transplanted around the world has become entrenched as conventional wisdom, which remains largely unquestioned.⁴⁸

B. *The Mythical Transplant of the American Independent Director*

Over the last decade, however, a more nuanced story about the global rise of the American independent director has emerged. Some insightful recent scholarship has clearly explained how attempting to transplant the American independent director into jurisdictions outside the United States and United Kingdom is akin to trying to fit a square peg into a round hole. This more recent scholarship is premised on the assumption that at its core, the American independent director is a corporate governance device designed specifically to overcome the shareholder-manager agency problem inherent in companies with widely dispersed shareholders.⁴⁹

Considering that the American independent director first emerged in the United States in the 1970s, this makes perfect sense. For generations, the primary concern of American corporate governance has been to protect widely dispersed shareholders from being bilked by self-interested and functionally autonomous managers in Berle-Means type corporations.⁵⁰ As such, from the time that Professor Eisenberg proposed his managerial monitoring board model, the primary purpose for having directors who are independent from management on the boards of listed companies in the United States has been clear: to monitor management on behalf of dispersed shareholders who are hindered by collective action problems from monitoring management themselves.⁵¹

⁴⁷ Bebchuk & Hamdani, *supra* note 41, at 1302–1304, 1311.

⁴⁸ The assumption that American-style independent directors have been transplanted around the world can be seen in the behavior of leading corporate advisory firms (*see* Bebchuk & Hamdani, *supra* note 41, at 1302–1304, 1311) and in leading research. *See, e.g.*, Gordon, *supra* note 2, at n. 164 (assuming that *Un-American* independent directors in Korea can be directly compared with American independent directors in the United States). Indeed, Black’s often-cited article on independent directors in Korea (*supra* note 43), which Gordon bases his assumption on, makes no mention of the difference in the definition used for independent directors in the United States and Korea, leading to an inaccurate comparison across countries.

⁴⁹ For examples of recent scholarship which explain how attempting to transplant the American independent director into jurisdictions outside the United States and United Kingdom is akin to trying to fit a square peg into a round hole, *see*, Donald C. Clarke, *Independent Director in Chinese Corporate Governance*, 31 DEL. J. CORP. L. 125 (2006); A.C. Pritchard, *Monitoring of Corporate Groups by Independent Directors*, in KOREAN BUSINESS LAW 77 (Hwa-Jin Kim ed., 2012); Umakanth Varottil, *Independent Directors and their Constraints in China and India*, 2 JINDAL GLOBAL L. REV. 127 (2007); Jie Yuan, *Formal Convergence or Substantial Divergence? Evidence from Adoption of the Independent Director System in China*, 9 ASIAN-PAC. L. & POL’Y J. 72 (2007); Puchniak, *supra* note 2, at 512. For leading scholarship highlighting that at its core the American independent director is a corporate governance device designed specifically to overcome the shareholder-manager agency problem inherent in companies with widely dispersed shareholders, *see* Cheffins, *supra* note 2; Gordon, *supra* note 2.

⁵⁰ Cheffins, *supra* note 2, at xi; Puchniak, *supra* note 2, at 515–17.

⁵¹ Gordon, *supra* note 2, at 1477; Puchniak, *supra* note 2, at 512.

This more recent scholarship reveals, however, that although the primary purpose for the American independent director may be clear in America, once it is transplanted outside of the dispersed shareholder environments of the United States and United Kingdom, its primary purpose quickly evaporates.⁵² This is because, as already highlighted above, in almost every jurisdiction in the world, most listed companies are dominated by controlling-block shareholders who are fully capable of either monitoring management directly or managing the company themselves. As such, in countries other than the United States and United Kingdom, the American independent director becomes functionally redundant in most listed companies, at least from the perspective of agency theory.⁵³

It is noteworthy that even in the United States, the American independent director is viewed as largely functionally redundant in companies with controlling-block shareholders. Although it is rarely noted, the NYSE and NASDAQ listing rules explicitly exempt companies with a controlling shareholder from the requirement that boards must have a majority of (American-style) independent directors.⁵⁴ In fact, the NYSE and NASDAQ listing rules go a step further by exempting controlled companies from the requirement that their nomination and remuneration committees must be composed entirely of (American-style) independent directors.⁵⁵ The NYSE and NASDAQ listing rules confirm what this more recent line of scholarship reveals: transplanting the American independent director into a controlling-block shareholder environment appears to make little functional sense at all—at least from the perspective of agency theory.

While this recent line of scholarship is insightful, there is a fundamental reality that it tends to gloss over: only a handful of jurisdictions have ever attempted to fit the square-American-independent-director-peg into the round controlling-block-shareholder-jurisdiction-hole.⁵⁶ As such, it is not merely that the conventional story about the global rise of the American independent director lacks nuance; rather, at its core, it is a myth.⁵⁷ Indeed, it appears that what has been portrayed as one of the most prolific legal transplants of our time is actually a legal mechanism that, in reality, has not been transplanted much at all.⁵⁸

C. *An Outlier Among the Outliers*

⁵² Puchniak, *supra* note 2, at 513–14; Clarke, *supra* note 49; Pritchard, *supra* note 49; Varottil, *supra* note 49; Yuan, *supra* note 49.

⁵³ Puchniak, *supra* note 2, at 513–14; Clarke, *supra* note 49; Pritchard, *supra* note 49; Varottil, *supra* note 49; Yuan, *supra* note 49.

⁵⁴ WACHTELL, LIPTON, ROSEN & KATZ, COMPENSATION COMMITTEE GUIDE 73 (Mar. 20, 2014), <http://www.wlrk.com/files/2014/CompensationCommitteeGuide.pdf>; WEIL, GOTSHAL & MANGES LLP, PUBLIC COMPANY ADVISORY GROUP, REQUIREMENTS FOR PUBLIC COMPANY BOARDS: INCLUDING IPO TRANSITION RULES 2, 13, 15 (Dec. 2013), http://www.weil.com/~media/files/pdfs/Chart_of_Board_Requirements_December_2013.pdf. See also NYSE LISTED CO. MANUAL, § 303A (NYSE 2015) and NASDAQ OMX GRP., INC., NASDAQ STOCK MARKET RULES, § IM-5615-5 (2015).

⁵⁵ Press Release, U.S. Securities & Exchange Commission, NASD and NYSE Rulemaking: Relating to Corporate Governance (Nov. 4, 2003), <http://www.sec.gov/rules/sro/34-48745.htm>; SEC Approves NYSE and NASDAQ Proposals Relating to Director Independence, FINDLAW (Mar. 23, 2006), <http://corporate.findlaw.com/finance/sec-approves-nyse-and-nasdaq-proposals-relating-to-director.html#FTN1>.

⁵⁶ See discussion *infra* Part II.C. For an excellent and insightful piece of scholarship that refreshingly highlights the importance of the various definitions used for independence, see Clarke, *supra* note 42.

⁵⁷ See discussion *infra* Part II.C.

⁵⁸ See discussion *infra* Part II.C.

It is against this backdrop that Singapore’s status as a corporate governance outlier is revealed. Our review of what to our knowledge is the most complete Collection of Corporate Governance Codes (the CCGC, which contains 273 codes, from 94 developed and developing jurisdictions, on six continents, from a variety of legal traditions)⁵⁹ confirms that, contrary to conventional wisdom, the American-style independent director has rarely been transplanted outside of the United States.⁶⁰

With an initial sample of 273 codes from 94 jurisdictions, we conducted a thorough content analysis of all of the codes in the CCGC that were originally drafted in English, officially translated into English, or for which we had foreign language ability. We eliminated the codes from 6 jurisdictions (Argentina, Colombia, Egypt, Mexico, Portugal, and Yemen) because the codes were not originally drafted in English, had not subsequently been translated into English, and we lacked the foreign language ability to review them thoroughly. We also excluded US codes from our review since we were measuring the transplant of the US definition of independent director to the codes in the rest of the world. As such, our final sample set consisted of 87 jurisdictions with 245 codes. We named this set of data the Database of Independent Director Definitions (DIDD) and examined the definition used for independent directors in the relevant provisions of each code.

The list of countries surveyed in the DIDD is in Appendix A below. All of the 245 codes in the DIDD had some provisions relating to “independent directors.” This is a remarkable fact that confirms the extent to which the term “independent director” has become ubiquitous in corporate governance codes around the world. It is somewhat surprising, however, that although all of the codes contain provisions related to independent directors, 14.9% of the codes do not define the term “independent director” at all. This suggests that, at least in some jurisdictions, merely including the term “independent director” in the code is more important than the precise function that “independent directors” actually play in corporate governance practice.

However, most importantly in the context of this analysis, is our finding that only 8.1% of jurisdictions (7 out of 87) in the DIDD currently use the American concept of the independent director in their codes (see Table 1 below).⁶¹ This debunks the conventional wisdom that the American concept of the independent has been transplanted around the world. It also highlights the extent to which Singapore’s use of the American concept of the independent director makes it a corporate governance outlier. This being said, this finding fits with conventional agency theory, as it would predict that countries dominated by controlling-block shareholders (i.e., countries other than the United States and United Kingdom) would

⁵⁹ The list of countries reviewed is in Appendix A.

⁶⁰ Our review was conducted in July 2015. We examined all of the codes of corporate governance available in the Collection of Corporate Governance Codes at that time (CCGC) (273 codes from 94 jurisdictions). The CCGC can be accessed at European Corporate Governance Institute (ECGI), *Corporate Governance Codes, Principles & Recommendations*, <http://www.ecgi.org/codes/index.php> (last visited July 9, 2015). We are grateful to ECGI for compiling this extremely helpful resource and providing free access to it. To our knowledge this is the most complete collection of corporate governance codes available. Our review of codes in the CCGC included all available codes—even those that had no legal effect (i.e., even codes that were not linked to a “comply or explain” regime).

⁶¹ *Id.*

adopt the *Un-American* concept of the independent director to fit with their controlling-block shareholder environments.⁶²

[Insert Table 1 here]

To gain a more accurate understanding of Singapore’s original decision to adopt the American concept of the independent director, we also examined the use of the American concept of the independent director at the time when Singapore adopted its Code in 2001. Although the use of the American concept of the independent director was somewhat more prevalent on a percentage basis in 2001 than it is today, it was still relatively rare at that time. In 2001, only 16.7% of jurisdictions (4 out of 24) used the American definition of independence in their codes (see Table 2 below for a summary of the statistics and Appendix B below for the full list of countries with corporate governance codes in 2001).⁶³ In this sense, Singapore’s original decision to adopt the American independent director in its 2001 Code also makes it a corporate governance outlier.⁶⁴

[Insert Table 2 here]

To be fair, however, Singapore was one of the earliest adopters of a “comply or explain” code.⁶⁵ In addition, as discussed in detail below, at the time that Singapore adopted its inaugural Code in 2001, the first versions of the UK Code and the OECD Model Code were in force and neither explicitly required independence from significant shareholders.⁶⁶ In 2003 and 2004 respectively, however, both codes were revised to specifically require it (i.e., they both adopted the *Un-American* definition for independence) and thereafter became models for other codes that followed.⁶⁷ This being said, when Singapore’s Council on Corporate Disclosure and Governance reviewed the 2001 Code in May 2004 and issued a revised Code

⁶² Ringe, *supra* note 13, at 413–14.

⁶³ ECGI, *supra* note 60.

⁶⁴ *Id.* Our research provided in Table 2 shows that at the time when Singapore adopted its Code in 2001, 24 countries had some form of governance codes for companies, but many had no definition or an unclear definition for independence. Out of the 17 countries with codes that had a definition for “independence,” only 4 (Japan, the Philippines, Singapore, and Sweden) used the “American” definition for independence.

⁶⁵ In our study, we found that Singapore was one of the first few countries that adopted a “comply or explain” regime. Only Australia (1999), South Korea (1999), Malaysia (2000), the United Kingdom (2000), and the Czech Republic (2001) preceded Singapore in this regard.

⁶⁶ COMM. ON CORP. GOVERNANCE, THE COMBINED CODE: CODE OF BEST PRACTICE § 1(A.3.2) (2000):

A.3.2 The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. Non-executive directors considered by the board to be independent in this sense should be identified in the annual report.

OECD, OECD PRINCIPLES OF CORPORATE GOVERNANCE § V(E), § V(E)(1) (1999):

E. The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management.

1. Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration.

⁶⁷ Based on our view of the Codes, changes inspired by the UK and OECD definitions appear to have been especially evident for countries within the EU. Germany, Sweden, and Hungary are some of the countries which have transitioned from an American or unclear definition to a clearly *Un-American* definition after 2003. Indeed, no code within the EU currently employs an American definition.

on July 14, 2005 (2005 Code),⁶⁸ the issue of amending the 2001 Code to include independence from significant shareholders was expressly brought up, but explicitly rejected.⁶⁹ In this sense, Singapore’s decision to maintain the American independent director in its 2005 Code arguably made it even more of a corporate governance outlier because this was done in the face of two influential models for corporate governance reform moving away from the American concept of the independent director—although, admittedly, at the time this was done (and even today), it was not widely discussed as a move away from the American approach. Additionally, in 2005, only 24% of jurisdictions (12 out of 50) used the American definition of independence in their codes (see Table 3 below for a summary of the statistics and Appendix C below for a list of countries with a corporate governance code in 2005).⁷⁰

[Insert Table 3 here]

Even more interesting is the fact that Singapore appears to stand out even among a number of the few other prominent jurisdictions—the UK, Russia, Germany, Japan and Canada—which at some point in their histories were seen to have adopted the American concept of the independent director.⁷¹ Indeed, in each of these other “outlier jurisdictions,” there appears to be an obvious theoretical rationale for the adoption of the American independent director, which Singapore lacks. In the UK, the fact that its inaugural Code did not clearly require independence from significant shareholders could have been justified on the basis that most of the listed companies in the UK have dispersed shareholders—a justification for the

⁶⁸ See MONETARY AUTH. OF SING., REGULATIONS AND FINANCIAL STABILITY: CODE OF CORPORATE GOVERNANCE, <http://www.mas.gov.sg/regulations-and-financial-stability/regulatory-and-supervisory-framework/corporate-governance/corporate-governance-of-listed-companies/code-of-corporate-governance.aspx> (last modified Mar. 11, 2013).

⁶⁹ THE COUNCIL ON CORPORATE DISCLOSURE AND GOVERNANCE, CONSULTATION PAPER ON PROPOSED REVISIONS TO THE CODE OF CORPORATE GOVERNANCE 7–9 (2004), http://www.acga-asia.org/public/files/Singapore_Consultation_Paper_New_Code_Dec2004.pdf [hereinafter CCDG CONSULTATION PAPER].

⁷⁰ See discussion *supra* Part II.C for explanation of the DIDD.

⁷¹ It should be noted that the German, Japanese, and Canadian codes at some point in their histories used an “American definition” of independence and were classified as using such a definition in the DIDD (*see supra* Part II.C for an explanation of the DIDD) during the relevant time periods for each respective country. The latest version of the German code, however, uses an *Un-American* definition as it was amended to include the requirement of separation from a significant shareholder in the definition for independence—while such a criteria is still lacking in the Canadian code. The 2015 Japanese Corporate Governance Code does not define independence, but makes reference to the listing rules, which require independent directors to be independent from management and significant block shareholders—a position which is reinforced by the definition of ‘outside director’ in the recently reformed Companies Act, *see* Dan W. Puchniak et al., *Varieties of Independent Directors in Asia: Diversity Revealed*, in INDEPENDENT DIRECTORS IN ASIA: A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH, II.3 (Harald Baum et al. eds., forthcoming). In addition, the 2015 Code clearly states that one of the responsibilities of independent directors is to monitor conflicts of interest between the company and controlling shareholders. As such, as of July 2015, the German and Japanese codes were classified in the DIDD as *Un-American*, while the Canadian code was classified in the DIDD as *American*. In terms of the UK and Russia, both countries did not explicitly require independence from significant shareholders in their inaugural codes. In both countries, however, their inaugural codes included some general language which could have been interpreted broadly to require such independence from significant shareholders. Therefore, their inaugural codes were classified as “unclear” in the DIDD—although some may argued that they could have been classified as “American” because they did not expressly require independence from significant shareholders. In any event, the codes for both countries have since been amended to explicitly require independence from significant shareholders and are thus currently classified as *Un-American* in the DIDD database.

American independent director that Singapore lacks.⁷² In any event, as explained above, the UK Code was revised shortly after it was implemented to explicitly include independence from significant shareholders (i.e., the UK explicitly adopted the *Un-American* definition for independence).⁷³

In Russia, its original failure to explicitly require independence from significant shareholders made it a corporate governance outlier in Europe, particularly considering its abundance of controlling shareholders and reputation for minority abuse.⁷⁴ At least theoretically, however, Russia's mandatory cumulative voting in large companies creates a level of independence among minority shareholder-appointed directors from controlling shareholders, regardless of how independence is defined—another justification for the American independent director which Singapore lacks.⁷⁵ In addition, Russia has recently revised its code to explicitly require independence from significant shareholders.⁷⁶

In Germany, its vocal resistance to requiring independence from significant shareholders in its Code also had a solid theoretical basis due to its co-determination system.⁷⁷ The mandatory labor representation required on its supervisory boards by co-determination creates a level of independence from controlling shareholders regardless of how independence is defined.⁷⁸ In addition, the balance between shareholder and labor representatives on the supervisory board struck by co-determination would arguably be disrupted by introducing *Un-American* independent directors to the supervisory board. Both of these justifications for the American independent director are also lacking in Singapore. In any event, similar to several of the other outlier jurisdictions, Germany has included independence from controlling shareholders in its recently amended code.⁷⁹

In Japan, at least in theory, a lack of large-block shareholders and lifetime-employee controlled boards makes the shareholder-manager agency problem (rather than the majority-minority agency problem) more salient—another justification for the American independent

⁷² Puchniak, *supra* note 2, at 524–25.

⁷³ In the UK, when THE COMBINED CODE: CODE OF BEST PRACTICE was first introduced in 2000, there was no separate definition for “independence.” *Supra* note 66. Instead, it was stated that the majority of non-executive directors should be “independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement” (*supra*, § 1(A.3.2)), which some have argued would be wide enough to capture the relationship with significant shareholders. Nonetheless, the position was subsequently clarified. At the recommendation of the Higgs Report, *supra* note 36, ¶ 9.11, a definition of independence was inserted into the 2003 version of the UK Code and this included, inter alia, separation from management and significant shareholders.

⁷⁴ Bernard S. Black et al., *Russian Privatization and Corporate Governance: What Went Wrong?*, 52 STAN. L. REV. 1731 (2000); Guido Ferrarini & Marilena Filippelli, *Independent Directors and Controlling Shareholders Around the World*, 17 (Eur. Corp. Governance Inst. - Law Working Paper No. 258/2014, 2014), available at <http://ssrn.com/abstract=2443786>; PWC, RUSSIAN BOARDS: SELECTION, NOMINATION AND ELECTION 10 (2012), http://www.pwc.ru/en_RU/ru/boardsurvey/assets/e-nomination_survey_eng.pdf.

⁷⁵ Ferrarini & Filippelli, *supra* note 74, at 20; PWC, *supra* note 74, at 20.

⁷⁶ OECD RUSSIA CORPORATE GOVERNANCE ROUNDTABLE, CODE OF CORPORATE GOVERNANCE (RUSSIA) § 2.4.1 (2014).

⁷⁷ Davies & Hopt, *supra* note 2, at 320–21.

⁷⁸ *Id.*

⁷⁹ Markus Roth, *Corporate Boards in Germany*, in CORPORATE BOARDS IN EUROPEAN LAW: A COMPARATIVE ANALYSIS 253, 310 (Paul Davies et al. eds., 2013).

director which Singapore lacks.⁸⁰ Finally, in Canada, its deep economic integration with the United States has caused it to often dovetail a number of its corporate governance mechanisms with the American model—a final justification for the American independent director which Singapore lacks.⁸¹ In sum, Singapore’s lack of an obvious theoretical rationale for its adoption of the American independent director arguably makes it an outlier even among several other prominent outliers.

The point is not that the theoretical rationales above justify the adoption of the American independent director in the other outlier jurisdictions. To the contrary, there are likely convincing arguments in each case which suggest that these other outliers may have and/or will benefit from adopting *Un-American* independent directors. Indeed, as we have seen, it appears that many of the other outlier jurisdictions firmly believe this, as they have already adopted the *Un-American* concept of the independent director in recent reforms to their codes. In a similar vein, as discussed in detail below, Singapore also adopted the *Un-American* independent director in 2012 by amending its definition of independence to require independence from shareholders holding at least 10% of the company’s shares.⁸² In fact, there are even convincing arguments for why America itself should adopt the *Un-American* independent director (beyond its extremely limited adoption on audit committees in listed companies that was the result of the Sarbanes-Oxley Act).⁸³

The point, however, is not to make normative claims about the effectiveness (or lack thereof) of the American independent director in either the United States or the other outlier jurisdictions. Rather, it is to highlight the fact that when Singapore adopted and maintained the American independent director for over a decade, there was no obvious rationale for its outlier decision. To the contrary, at first blush, it appears that adopting and maintaining the *Un-American* independent director would have been the logical course for Singapore to follow.

⁸⁰ Although, Japan theoretically has a dispersed shareholding environment, the reality is much more complex. For a comparative description of the impact of Japan’s shareholding structure on its system of corporate governance see, Puchniak, *supra* note 2, at 524, 530. Moreover, an in-depth comparative analysis of Japan’s optional ‘American-style’ independent director regime suggests that the inaugural definition it introduced for ‘independence’ in 2002 neither required independence from management nor significant shareholders. In this sense, arguably the inaugural definition of ‘independence’ in Japan could be considered to have adopted neither an American nor un-American independent director concept, as it did not require boards that opted for the ‘American-style’ structure to have any directors who were independent from management or significant shareholders—it merely required outside directors. This being said, many commentators labelled the Japanese independent director system ‘American-style’ and the inaugural definition in the company law clearly did not require independence from significant shareholders—which is a hallmark of the American concept of the independent director. see, Puchniak et al., *supra* 71, at II.3.

⁸¹ For example, Canada has long had poison pills and securities class action litigation, and has dovetailed much of its corporate governance with the United States, especially post Sarbanes-Oxley (SOX). For examples of how Canada has focused its independent director requirements on managerial monitoring (i.e., American-style independence), see Barry Reiter, *What Makes a Director Independent?*, LEXPERT (Feb. 2010), <https://www.yumpu.com/en/document/view/36160410/corporate-governance-what-makes-a-bennett-jones>; Stephen Griggs, *Are corporate directors really in charge?*, FINANCIAL POST, Jan. 24, 2013, <http://business.financialpost.com/legal-post/stephen-griggs-are-corporate-directors-really-in-charge>.

⁸² CODE OF CORPORATE GOVERNANCE art. 2.3.

⁸³ Many such arguments were raised with respect to audit committees for US-listed companies. It is, however, debatable whether these arguments can be extended to boards of dispersed, or even controlled, companies as a whole. WEIL, GOTSHAL & MANGES LLP, *supra* note 54, at 6, 30 (“In addition to the general NYSE independence requirements” directors on the audit committee “must not be ‘affiliated’ with company or its subsidiaries”).

Indeed, Singapore's shareholding structure was (and still is) extremely concentrated, with evidence that it has become even more concentrated over time.⁸⁴ Singapore company law did not (and still does not) provide any provisions which in essence hardwire a level of independence from significant shareholders into the structure of corporate boards (e.g., mandatory employee representation or cumulative voting) regardless of the definition used for independence. As such, Singapore's choice to deviate from the seemingly logical and well-trodden path that has developed over the last decade in most other controlling-shareholder jurisdictions, by transplanting the American concept of the independent director into its controlling-shareholder environment, is on its face puzzling.

D. *Strategic Regulatory Design: Local Constraints, Signaling, and Functional Substitutes*

Based on the comparative context described above, there appear to be two possible logical explanations for why Singapore's regulators made their outlier decision to transplant the American independent director into Singapore's controlling-shareholder environment and maintain it for over a decade. One possibility is that Singapore's regulators were ignorant of the critical differences between the corporate governance environment in the United States and Singapore. In turn, they failed to consider the fact that the United States and Singapore face fundamentally different agency problems, which require different corporate governance solutions. Stated simply, the first possibility is that Singapore's regulators made a regulatory blunder, which took them over a decade to fix.

Another possibility is that Singapore's regulators were acutely aware of the differences in the corporate governance environments in the United States and Singapore, but nevertheless decided to adopt the American independent director and maintain it for over a decade. Assuming this was the case, there must have been some local and/or strategic considerations that go beyond standard agency theory which drove Singapore's regulators to logically make their outlier decision. Stated simply, the second possibility is that Singapore's decision to adopt and maintain the American independent director was the product of strategic regulatory design.

Historical evidence suggests that the second possibility—strategic regulatory design—was most likely the basis for Singapore's decision to adopt and maintain the American independent director. To start, it is important to understand the broader regulatory environment in which this specific regulatory decision was made. Singapore is a small country that relies heavily on foreign inflows of capital and has been extremely successful in attracting it.⁸⁵ One of the primary reasons for Singapore's success has been its ability to send signals of good governance and regulation to international markets through its compliance with highly visible international standards.⁸⁶ Perhaps the most cited example of this is

⁸⁴ Claessens et al., *supra* note 9, at 104; Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12; Tan, *Exploring the Question of the Separation of Ownership from Control*, *supra* note 12, at 17, 20, 25.

⁸⁵ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 14–15. *See also* Hawyee Auyong, *Singapore Productivity Challenge: Part I*, LEE KUAN YEW SCH. OF PUB. POL'Y, <http://lkyspp.nus.edu.sg/wp-content/uploads/2014/05/Productivity-challenges-in-Singapore-Part-1.pdf> (last visited July 4, 2015).

⁸⁶ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 5–6.

Singapore's success in the World Bank's *Ease of Doing Business* index in which it has ranked 1st out of 189 countries for the last ten consecutive years.⁸⁷

Singapore's approach to corporate governance, and more specifically the regulation of its independent directors, is another example of its penchant for using strategic regulatory signaling (i.e., what we coin "halo signaling") to attract foreign investment.⁸⁸ Over the last decade, Singapore's success in signaling good corporate governance is evident in its first place ranking in Asia for corporate governance on numerous occasions by various organizations.⁸⁹ Successful signaling has also been demonstrated through Singapore's high level of compliance with its corporate governance code, which itself is often seen as a proxy for good corporate governance.⁹⁰ Singapore's relatively high number of independent directors, especially in the context of Asia, has played an important role in both its high corporate governance rankings and its high compliance rates.⁹¹

It appears that Singapore's current strategy of attracting foreign capital through corporate governance signaling was forged in the early 2000s in the wake of the Asian Financial Crisis. Indeed, at that time, the strategy of using "good corporate governance to draw new capital" to Singapore was noted by the Singapore Parliament.⁹² Moreover, the imperative nature of this initiative was emphasized by the decision of the California Public Employees Retirement System (CalPERS) in the wake of the Asian Financial Crisis to pull "their investments out of companies in Indonesia, Malaysia, Thailand, and the Philippines" based on their poor corporate governance.⁹³ It was in this general context, that in 2000, the Singapore government established the private-sector-led Corporate Governance Committee (CGC) to "attract and retain international capital" in listed companies in Singapore by making "Singapore a financial hub of international standing."⁹⁴

The CGC was comprised of thirteen highly qualified local and foreign members who represented a broad range of corporate stakeholders—directors, lawyers, accountants, fund managers, investment bankers, the corporate sector, and regulators.⁹⁵ The committee

⁸⁷WORLD BANK, DOING BUSINESS 2016: MEASURING REGULATORY QUALITY AND EFFICIENCY 4 (Oct. 2015), <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Chapters/DB16-Mini-Book.pdf> [hereinafter WORLD BANK, DOING BUSINESS 2016].

⁸⁸ See *infra* text accompanying note 309.

⁸⁹ ASIAN CORPORATE GOVERNANCE ASS'N (ACGA) & KPMG, BALANCING RULES AND FLEXIBILITY 19–20 (2014), <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/corporate-governance/balancing-rules-and-flexibility-main.pdf> [hereinafter ACGA & KPMG, BALANCING RULES AND FLEXIBILITY]; ACGA & CLSA, CG WATCH 2014 3–5 (2014), http://www.acga-asia.org/public/files/CG_Watch_2014_Key_Charts_Extract.pdf; Yuen Teen Mak, *Monetary Auth. of Sing. & Singapore Exchange, Improving the Implementation of Corporate Governance Practices in Singapore 2* (2007), http://www.acga-asia.org/public/files/MAS_SGX_CG_Study_Executive_Summary_260607.pdf.

⁹⁰ Eng Yeow Goh, *Changes Mooted to Make Firms More Accountable*, STRAITS TIMES, June 15, 2011, <http://bschool.nus.edu.sg/LinkClick.aspx?fileticket=LlvFR0bj0B4%3D&tabid=1771&mid=5732> (suggesting that high compliance with the Code in Singapore is tantamount to good corporate governance).

⁹¹ TJO, *supra* note 14, ¶ 5.24; ACGA & KPMG, BALANCING RULES AND FLEXIBILITY, *supra* note 89, app. C, at 70–77.

⁹² 77 PARL. DEB., 10th Parliament (2004) 353 (Sing.).

⁹³ *Id.*

⁹⁴ CORPORATE GOVERNANCE COMMITTEE CONSULTATION PAPER 1 (2000), http://www.mas.gov.sg/~media/resource/publications/consult_papers/2000/Consultation%20Paper%20On%20Corporate%20Governance%20Committee [hereinafter CGC CONSULTATION PAPER].

⁹⁵ *Id.* at 18.

members spent a year studying “international best practice benchmarks in corporate governance in major jurisdictions.”⁹⁶ Based on this study, in late 2000, the CGC produced a Consultation Paper that provided the framework and rationale for Singapore to adopt a UK-style “comply or explain” code, with the American independent director at its core.⁹⁷ After a round of public consultation, the CGC issued its Final Report and a Draft Code, which were almost identical in substance to its Consultation Paper.⁹⁸ In April 2001, the Ministry of Finance accepted the Draft Code, with companies required to “comply or explain” with the 2001 Code from January 1, 2003.⁹⁹

It is noteworthy that both the Consultation Paper and Final Report begin by citing a McKinsey Investor Opinion Survey of 200 institutional investors in which 89% of respondents in Asia said they would “pay more for the shares of a well-governed company than for those of a poorly governed company with comparable financial performance.”¹⁰⁰ In a similar vein, at the outset of the Consultation Paper and the Final Report, the CGC also took note of the Investor Responsibility Task Force established by the World Bank and OECD, which aimed to use its influence over \$3 trillion of assets managed by its members to ensure that countries and companies that engaged in reforms to meet global standards of good corporate governance were properly rewarded.¹⁰¹ In short, the CGC was clearly driven by the belief that Singapore stood to benefit enormously by complying with global norms of good corporate governance rather than trying to cure a theoretical agency problem in companies with concentrated shareholders—which, as explained below, may not have actually existed to any great extent in Singapore as a result of its unique functional substitutes for limiting private benefits of control.¹⁰²

From this perspective, the CGC’s proposal for Singapore to adopt the American independent director in its 2001 Code makes perfect sense. As explained in detail above, the American independent director was seen as the gold standard for good corporate governance around the world at that time. The CGC’s Consultation Paper and Final Report clearly framed the utility of the independent director as being an important corporate governance mechanism primarily because of its ability to address the classic shareholder-manager agency problem.¹⁰³ Thus, what was critical, according to the CGC, was that independent directors were independent from the managers that they were designed to monitor.¹⁰⁴ Indeed, Professor Eisenberg would have been impressed by the prominence given to the independent director as a managerial monitor in the CGC’s Consultation Paper, Final Report, and, ultimately, its Draft Code.¹⁰⁵

⁹⁶ *Id.* at 1.

⁹⁷ *Id.* at 4.

⁹⁸ CORPORATE GOVERNANCE COMMITTEE, REPORT OF THE COMMITTEE AND CODE OF CORPORATE GOVERNANCE (2001), <https://www.acra.gov.sg/uploadedFiles/Content/Legislation/ReportoftheCorporateGovernanceCommitteeandCodeofCo.pdf> [hereinafter CGC REPORT].

⁹⁹ *Id.* at 2–3.

¹⁰⁰ *Id.* at 1; CGC CONSULTATION PAPER, *supra* note 94, at 3.

¹⁰¹ CGC CONSULTATION PAPER, *supra* note 94, at 3; CGC REPORT, *supra* note 98, at 1.

¹⁰² See discussion *infra* Part III.B.

¹⁰³ CGC CONSULTATION PAPER, *supra* note 94, at 6; CGC REPORT, *supra* note 98, at 4.

¹⁰⁴ CGC REPORT, *supra* note 98, at 8.

¹⁰⁵ *Id.* at 3–4; CODE OF CORPORATE GOVERNANCE art. 2.1 (Draft Code 2001); CGC CONSULTATION PAPER, *supra* note 94, at 5.

There is no question that the CGC accurately captured the sentiment of global investors and corporate governance pundits in the early 2000s by suggesting the adoption of the American independent director as a global standard for good corporate governance in Singapore. More importantly, however, there is evidence that in addition to being a clear global standard for good corporate governance, the government accepted and maintained the CGC's suggested adoption of the American independent director for at least three other reasons. Interestingly, none of these reasons appear to have anything to do with Professor Eisenberg's managerial monitoring model, but they instead point to the government's skillful use of strategic regulatory design to address (often idiosyncratic) local conditions.

First, adopting the American independent director would not risk excluding a significant percentage of Singapore's small and tight-knit pool of talented directors from sitting on the boards of listed companies.¹⁰⁶ As described in detail in Part III below, quantitative and qualitative evidence suggest that a significant portion of independent directors in listed companies in Singapore have strong connections with the company's controlling shareholder.¹⁰⁷ As such, by accepting the CGC's recommendation to adopt the American independent director, the Singapore government was able to achieve its primary goal of creating a system that promotes compliance of listed companies in Singapore with international standards of good corporate governance while, at the same time, ensuring that the talent level of directors in listed companies was not eroded by a rush to compliance—which might have occurred if the *Un-American* independent director was adopted.¹⁰⁸

Initially, in 2001, there was only anecdotal evidence that the government's concern for maintaining Singapore's small and tight-knit pool of talented directors was a driving force behind its adoption of the American independent director. In 2005, however, the importance of this factor in the government's decision-making became clear. At that time, a newly established private-sector-led corporate governance committee, which was similar to the then defunct CGC, was commissioned by the government to suggest revisions to the 2001 Code.¹⁰⁹ Among its recommendations was a suggestion to tighten the definition for independence by requiring independence from significant shareholders (i.e., to adopt the *Un-American* independent director).¹¹⁰ One of the reasons that the government gave for rejecting this proposal was its potential deleterious effect on the quality of directors in listed companies given Singapore's small pool of talented directors.¹¹¹

Second, adopting the American independent director all but guaranteed exceptionally high compliance rates with the independent director provisions in the 2001 Code and in turn created a high number of "independent" directors in Singapore. This is because controlling shareholders could maintain their ultimate control, while at the same time complying with the Code by selecting directors who were independent of management but with whom they had a connection and could therefore trust. In addition, since 1989, the Companies Act has required

¹⁰⁶ See discussion *infra* Part III.

¹⁰⁷ See discussion *infra* Part III.

¹⁰⁸ See discussion *infra* Part III.

¹⁰⁹ CCDG CONSULTATION PAPER, *supra* note 69, at 2.

¹¹⁰ *Id.* at 4.

¹¹¹ RAJAH & TANN SINGAPORE LLP, SINGAPORE'S NEW CODE OF CORPORATE GOVERNANCE REVISED – APPLICABLE FROM 1 JANUARY 2007 2 (July 2005), <http://eoasis.rajahtann.com/eOASIS/lu/pdf/Revised-CG-2007.pdf>.

all listed companies in Singapore to have an audit committee with at least three members, a majority of whom must be independent from the company’s executive directors and exercise independent judgement.¹¹² Although the Companies Act provides no definition of “independence,” most experts agree that this provision requires all boards of listed companies in Singapore to have at least two American-style independent directors (i.e., even before the 2001 Code was implemented to comply with this somewhat vague provision in the Companies Act, companies were advised to have at least two American-style independent directors on their boards).¹¹³

The ease with which listed companies could comply with the independent director requirements in the 2001 Code is evident in the fact that two years after the “comply and explain” regime became mandatory, 96% of companies listed in Singapore complied with the one-third board requirement.¹¹⁴ In fact, after five years, compliance was at an astounding 98% and a majority of directors in listed companies were reportedly independent—far exceeding the recommendation in the 2001 Code.¹¹⁵ Indeed, it appears that a significant portion of independent directors may have in essence been “created” purely by strategic regulatory design defining existing directors as “independent.” This is evident from the fact that in 2002, before the “comply or explain” regime even became mandatory, 80% of companies already complied with the requirement that one-third of their board must be American-style independent directors.¹¹⁶ It seems that the government’s decision to adopt the American-style independent director may have merely added a visible label to directors who were already on boards to begin with.

As explained in Part III below, however, it is important to note that the reason for the ease of compliance appears to differ somewhat between Family Firms and Government-Linked Companies. In Family Firms, there is empirical evidence which suggests that a large percentage of independent directors are “family friends” with strong personal ties to family-member controllers.¹¹⁷ Conversely, in Government-Linked Companies, there is empirical evidence that a large percentage of independent directors have connections with the government, which is the ultimate controlling shareholder in Government-Linked Companies.¹¹⁸ In both cases, however, it seems that if the 2001 Code required strict independence from the controlling shareholder, then compliance with the 2001 Code and, in turn, the number of independent directors in Singapore would likely have been much lower. It is often suggested that high compliance rates and a high proportion of independent directors are important proxies used to evaluate the quality of corporate governance, which may ultimately drive investment decisions.¹¹⁹ As such, it appears that the government’s decision

¹¹² Companies Act, 2006, ch. 50, § 201(B)(2)(c) (Sing.).

¹¹³ TJO, *supra* note 14, ¶ 5.23.

¹¹⁴ *Id.* ¶ 5.24.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Yuen Teen Mak & Terry Ng, *Independent Directors: A Well-functioning Market*, BUS. TIMES, Sept. 16, 2010, at 7; *see infra* text accompanying notes 155–157.

¹¹⁸ *See infra* text accompanying notes 225–227.

¹¹⁹ INSTITUTIONAL SHAREHOLDER SERVICES INC., 2014 REGIONAL OVERVIEW – ASIA PAC. 5 (2013), http://www.issgovernance.com/file/2014_Policies/ISSAPACRegionalOverview.pdf. (suggesting to investors that a high number of independent directors is good for corporate governance in Singapore and Asia without examining how independence is defined); Bebchuk & Hamdani, *supra* note 41, at 1311 (demonstrating how a high level of American independent directors is used as an important metric of good corporate governance by

to adopt the American independent director may have been a strategic one to attract foreign investment through regulatory signaling.

Obviously, it is difficult to confirm the extent to which strategic regulatory signaling played in the government's decision to adopt and maintain the American independent director. Indeed, if the government publicly advertised its strategy, the strategy itself would fail. As already alluded to above however, Singapore appears to be extremely cognizant of the value of complying with global norms of good corporate governance in order to attract foreign capital.¹²⁰ In addition, there is evidence in an article published in 2003 on independent directors by a prominent Singapore company law academic that strongly suggests the mindset in Singapore of using independent directors as a signaling device became evident around the time that the American independent director was adopted: "[W]hatever their actual utility, it would be considered a retrograde step not to at least presumptively require independent directors for publicly listed companies. Any jurisdiction that does not stipulate the need for independent directors may find itself unable to attract capital to its securities markets."¹²¹ Third, as explained in detail in Part III below, it appears that Singapore has functional substitutes that mitigate the private benefits of control which *Un-American* independent directors are designed to address.¹²² As such, the government's decision to adopt the American independent director may have been based partly on the belief that because of these unique functional substitutes, the American independent director did not present the same corporate governance risks as it may have in other controlling-shareholder environments.¹²³ As explained in Part IV below, however, these functional substitutes appear to have been ineffective in controlling wealth tunneling in *non-Singapore* based PRC-Controlled Firms—one factor which appears to have driven the eventual adoption of the *Un-American* independent director in the 2012 Code.¹²⁴

Again, it does not stand to reason that the Singapore government, which appears intent on demonstrating its compliance with international standards, would advertise its reliance on idiosyncratic functional substitutes as a reason for its decision to adopt the American concept of the independent director. There is, however, some evidence of the government's possible belief in functional substitutes in the reasons it provided for rejecting the proposed adoption

major corporate governance ratings firms without any regard for how the criteria for independence may need to be altered in different corporate governance environments); Goh, *supra* note 90 (suggesting that high compliance with the Code in Singapore is tantamount to good corporate governance. "The corporate governance code is not enforced by law but there is a section devoted to it in every listed firm's annual report. Companies which do not comply with parts of it must explain why. Singapore firms seem to perform well in this area. A study of 280 annual reports by consultancy Freshwater Advisers found that 80% of these listed firms had complied with the code in key areas, such as directors' pay, last year. But as Mr. Chan, who is also chief executive of SPH, noted: 'Whilst Singapore is well regarded for its corporate governance standards, there must be continuous efforts to encourage good corporate governance practices among Singapore-listed companies.'"); Eng Yeow Goh, *Independent Directors play a vital role: Poll*, STRAITS TIMES, June 18, 2009, at 43 (equating a high percentage independent directors on the boards of listed companies in Singapore with good corporate governance, without any concern for how independence is defined).

¹²⁰ See *supra* text accompanying notes 85–87.

¹²¹ Cheng Han Tan, *Corporate Governance and Independent Directors*, 59 SING. ACAD. L.J. 355, 390–91 (2007).

¹²² See discussion *infra* Part III.

¹²³ See discussion *infra* Part III.

¹²⁴ See discussion *infra* Part IV.

of the *Un-American* independent director in the 2005 Code.¹²⁵ One of the reasons the government provided for its rejection was that substantial shareholders in Singapore do not pose a serious agency problem because their interests are more often than not aligned with the shareholders as a whole.¹²⁶ As explained in Part III below, although this reasoning may appear dubious in some contexts, there is reason to believe that this may be true in Singapore, as a result of the unique functional substitutes that exist in Government-Linked Companies and Family Firms that mitigate private benefits of control.¹²⁷ As such, it seems that the government likely felt comfortable adopting and maintaining the American independent director because it had some faith in the functional substitutes in Government-Linked Companies and Family Firms—making the utility of the *Un-American* independent director less valuable.

In sum, the historical evidence appears to suggest that Singapore’s seemingly illogical decision to adopt the American independent director was in fact the product of strategic regulatory design. In addition, at least from the perspective of maintaining the quality of directors on Singapore’s boards and sending a signal of good corporate governance, it appears that the government’s decision was effective. In addition, PRC-Controlled Firms aside, Singapore has had relatively few problems with controlling shareholders in listed companies abusing their power to extract private benefits of control.¹²⁸ Therefore, the faith that the government had in the effectiveness of functional substitutes for the *Un-American* independent director appears to have been rational—especially in light of the economic success of Government-Linked Companies and Family Firms.¹²⁹ Admittedly, however, as explained in Part IV below, the rampant wealth tunneling in PRC-Controlled Firms suggests that signaling compliance to international investors while at the same time functionally relying on idiosyncratic local corporate governance mechanisms is an imperfect science. This fact was well articulated by then Deputy Prime Minister and Minister for Finance (and now Prime Minister) Lee Hsien Loong in a 2002 Singapore Parliamentary Debate:

The difficulty is to strike a balance between having a set of standards which are comparable to best practices elsewhere and having a set which is not so onerous that, in our circumstances, we are not able to get them to work and we are just going through the form and the motion rather than to maintain high standards of corporate governance. . .¹³⁰

PART III: THE FUNCTION OF AMERICAN-STYLE INDEPENDENT DIRECTORS IN SINGAPORE

A. Understanding Why Controlling Shareholders in Singapore Have Embraced American-Style Independent Directors

¹²⁵ MONETARY AUTH. OF SING., CONSULTATION PAPER ON PROPOSED REVISIONS TO THE CODE OF CORPORATE GOVERNANCE 4 (2011), http://www.mas.gov.sg/~media/resource/publications/consult_papers/2011/Consultation_Paper_on_Proposed_Revisions_to%20the%20CCG_14Jun2011.ashx [hereinafter MAS CONSULTATION PAPER].

¹²⁶ *Id.*

¹²⁷ See discussion *infra* Part III.

¹²⁸ There has been almost a complete absence of scandals involving controlling-shareholder abuse in Government-Linked Companies since independence. In addition, although there have been scandals in listed Family Firms in Singapore, their overall performance and lack of frequent scandals has been extraordinary—especially considering that for the first two decades after independence, Singapore was a developing country.

¹²⁹ See *infra* text accompanying notes 146, 147, 209, 210.

¹³⁰ 74 PARL. DEB., 10th Parliament (2002) 1185–86 (Sing.).

As explained in Part II above, since 1989, all companies listed in Singapore are required to have at least two American-style independent directors on their boards to fulfil the audit committee requirements in the Companies Act.¹³¹ This mandatory requirement, however, does not account for the reality that over half of the directors on the boards of listed companies in Singapore have been American-style independent directors since the 2000s.¹³² In a similar vein, as explained in detail above, although the government made it relatively easy for listed companies to comply with the suggestion in the 2001 Code that one-third of the board be comprised of American-style independent directors, it must be remembered that Singapore's Code is based on a "comply or explain" regime (i.e., it is not mandatory law) and that the percentage of American-style independent directors on the boards of listed companies has consistently exceeded the recommendation in the Code.¹³³ As such, it is clear that much of the rise of American-style independent directors in Singapore has occurred essentially in an "unregulated space."

In this context, an essential fact that cannot be forgotten is that an independent director must be elected by a majority shareholder vote in order to sit on the board of a listed company in Singapore.¹³⁴ For practical purposes, in Singapore's controlling-shareholder environment, this means that American-style independent directors must have the support of the company's controlling shareholder. In turn, the rise of American-style independent directors to unregulated heights demonstrates that controlling shareholders in Singapore's listed companies strongly support having American-style independent directors on the boards of the companies they control.¹³⁵

To clearly understand why controlling shareholders in Singapore have embraced American-style independent directors with such vigor requires us to first understand the unique governance structure and regulatory architecture that shapes Family Firms and Government-Linked Companies in Singapore. Against this backdrop, the various functions that American-style independent directors perform in Family Firms and Government-Linked Companies, and the diverse incentives that drive them, become clear. Only then is it possible to accurately understand why controlling shareholders in Family Firms and Government-Linked Companies have consistently elected such a large contingent—often a majority—of American-style independent directors to sit on the boards of companies they control.

B. *The Function of American-Style Independent Directors in Family Firms: Signalers, Mediators, and Advisers*

Family Firms are ubiquitous among listed companies in Singapore. According to a recent in-depth empirical study, up to 60.8% of listed companies in Singapore can be classified as Family Firms.¹³⁶ Family Firms, however, tend to be smaller than non-Family Firms, which explains why despite their large numbers, they collectively represent only 33.1% of

¹³¹ Companies Amendment Act, no. 40, § 21 (1989) (Sing.); TJIO, *supra* note 14, ¶ 5.23.

¹³² TJIO, *supra* note 14, ¶ 5.24.

¹³³ See *supra* text accompanying note 115.

¹³⁴ Haoxiang Cai, *An Acid Test of Board Independence*, BUS. TIMES, Oct. 22, 2012.

¹³⁵ See discussion *infra* Parts III.B, IV.A.

¹³⁶ Marleen Dieleman et al., *Success and Succession: A Study of SGX-listed Family Firms* 8 (2013), <http://bschool.nus.edu/Portals/0/images/CGIO/Report/Asian%20Family%20Business%20Report.pdf>.

Singapore's market capitalization.¹³⁷ Even with their smaller size, the fact that Family Firms account for a healthy majority of Singapore-listed companies and approximately a third of Singapore's market capitalization makes understanding the role of American-style independent directors in Family Firms essential for accurately understanding the importance of independent directors in Singapore.

There are three empirical facts that are critical for understanding the corporate governance environment in which American-style independent directors operate in Family Firms. First, empirical evidence suggests that family members collectively hold large controlling blocks of shares in Family Firms, which results in Family Firms having extremely concentrated shareholder structures. On average, the top five largest shareholders in Family Firms control a 65.9% stake, with 38.3% being directly traceable to family members.¹³⁸ Undoubtedly, the amount of shares directly traceable to family members underestimates the actual level of family control, as multiple layers of corporate structures often obscure the true identity of the ultimate shareholder.¹³⁹ Moreover, on average, the top twenty largest shareholders in Family Firms control an astounding 80.5% stake, highlighting the extent of the concentration of shareholding in Family Firms in Singapore.¹⁴⁰ Thus, based on the available empirical evidence, it is likely safe to conclude that in most Family Firms in Singapore, family members collectively enjoy actual control (either directly or indirectly) over Family Firms through their voting rights.

Second, empirical evidence suggests that family members collectively utilize their large blocks of voting shares to dominate the corporate governance of Family Firms. This is clearly illustrated in the dominance that family members have in leadership positions of Family Firms, with 78.6% of CEOs and 72.9% of Chairpersons in Family Firms being family members.¹⁴¹ In addition, in 42.8% of Family Firms, the positions of CEO and Chairperson are combined, with the founder-family-member normally filling this combined position.¹⁴² This concentration of corporate governance power in Family Firms is far greater than that in non-Family Firms, as only 17.0% of non-Family Firms combine the positions of CEO and Chairperson.¹⁴³ In addition, in Family Firms, the average tenure of family-member-directors is an astounding 20.7 years for founder-family-members and 15.7 years for other family members—compared to 7.5 years for non-family-member directors.¹⁴⁴ The long length of tenure for family-member-directors, combined with an extremely low turnover rate for CEOs and Chairpersons in Family Firms, suggests that family members not only dominate the leadership positions in Family Firms, but also use their controlling power to entrench themselves in those positions.¹⁴⁵ In sum, the available empirical evidence suggests that family members normally utilize their large blocks of voting shares to dominate the corporate governance of Family Firms by controlling and entrenching themselves in the most important executive and board positions.

¹³⁷ *Id.* at 10.

¹³⁸ *Id.* at 3.

¹³⁹ *Id.* at 24.

¹⁴⁰ *Id.* at 21.

¹⁴¹ *Id.* at 3.

¹⁴² *Id.* at 17.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 18.

¹⁴⁵ *Id.* at 12–13, 18.

Third, empirical evidence suggests that Family Firms in Singapore have strong corporate performance. Indeed, a recent in-depth empirical analysis found that Family Firms in Singapore “perform significantly better” than non-Family Firms when return on investment was used as an indicator of performance.¹⁴⁶ This finding is consistent with earlier studies, which also find that Family Firms outperform non-Family Firms in Singapore and in Asia generally, based on a variety of other metrics for performance.¹⁴⁷ The ability of Family Firms to significantly outperform non-Family Firms is particularly impressive in the context of Singapore because its economy as a whole is one of the most competitive, dynamic, and wealthy in the world.¹⁴⁸ In sum, the available empirical evidence suggests that on average, Singapore’s Family Firms are relatively well governed.

In light of the clear dominance that family members have over the governance of Family Firms, at first blush, the fact that independent directors account for a sizable 44.6% of directors in Family Firms is somewhat surprising.¹⁴⁹ Indeed, independent directors form the largest constituency of any type of directors in Family Firms—with the remaining directors being 41.5% executive directors, 12.6% non-executive (non-independent) directors, and 1.4% alternate directors.¹⁵⁰ In light of the dominance of family-member-controllers over the governance of Family Firms, the large contingent of independent directors on the boards of Family Firms raises two related and intriguing questions: (1) Why would family-member-controllers, who appear to otherwise dominate the governance of Family Firms, place such a significant contingent of independent directors on the boards of the companies they control?; and (2) What function do these independent directors normally serve?

It makes sense to examine the second question first because understanding the function that independent directors normally serve in Family Firms provides valuable insight into why family-member-controllers have chosen to place such a large contingent of independent directors on their boards. When viewed through the lens of the dominant agency theory, however, the functional utility of having such a large contingent of American-style independent directors on the boards of Family Firms is somewhat puzzling. As explained below, empirical evidence suggests that American-style independent directors have strong connections with family-member-controllers which clearly limit their ability to monitor them effectively.¹⁵¹ This limitation is compounded by the fact that according to Singapore company law, in all public companies, directors can be removed, at any time, without cause,

¹⁴⁶ *Id.* at 12.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ Munshi Ahmed, *Most Competitive Economies 2010*, BLOOMBERG, http://www.bloomberg.com/ss/10/05/0519_most_competitive_countries_2010/2.htm (last visited June 25, 2015); Alan Austin, *World’s Best Economy: Australia Loses Top IAREM Ranking Under Coalition*, INDEPENDENT AUSTRALIA PTY LTD. (Apr. 22, 2015), <https://independentaustralia.net/politics/politics-display/worlds-best-economy-australia-loses-top-spot-under-coalition,7616>; Colin Cram, *The UK Can Learn a lot from Lee Kuan Yew and Singapore*, GUARDIAN, Apr. 4, 2015, <http://www.theguardian.com/public-leaders-network/2015/apr/04/uk-learn-former-colony-singapore-lee-kuan-yew>; Shibani Mahtani, *Singapore No. 1 for Millionaires – Again*, WALL STREET J., June 1, 2012, <http://blogs.wsj.com/scene/2012/06/04/singapore-no-1-for-millionaires-%E2%80%93-again/>; The Heritage Foundation, *2015 Index of Economic Freedom: Country Rankings*, HERITAGE.ORG, <http://www.heritage.org/index/ranking> (last visited June 25, 2015); *List of Countries by GDP (PPP) per Capita*, Wikipedia.org, [https://en.wikipedia.org/wiki/List_of_countries_by_GDP_\(PPP\)_per_capita](https://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)_per_capita) (last modified June 24, 2015).

¹⁴⁹ Dieleman et al., *supra* note 136, at 15.

¹⁵⁰ *Id.*

¹⁵¹ Mak & Ng, *supra* note 117; *see infra* text accompanying notes 155–157.

by a majority shareholder vote—further quelling the ability of American-style independent directors to act as effective monitors of family-member-controlling-shareholders.¹⁵²

Moreover, the ability of American-style independent directors to function as effective monitors of management in Family Firms also appears to be limited. As explained above, family-member-controllers normally use their controlling power to either entrench themselves in senior executive and board positions or, more infrequently, to appoint professional executives to manage the Family Firms under the watchful eye of the board, which they normally chair and ultimately control. In the former case, American-style independent directors are unlikely to be effective monitors of management for the same reasons outlined above that prevent them from effectively monitoring family members in their capacity as controlling shareholders. In the latter case, family-member-controllers normally have sufficient information, financial resources, and controlling power to monitor (and, if need be, replace) underperforming professional managers themselves—significantly obviating the need for a large contingent of American-style independent directors to act as managerial monitors. Thus, at least from the perspective of agency theory, the functional utility of having a large cadre of American-style independent directors on the boards of Family Firms appears, at best, to be limited in the Singapore context.¹⁵³

If we widen our lens of inquiry beyond agency theory, however, several possible functions of American-style independent directors on boards of Family Firms become evident. To start, having more than one-third of the board composed of independent directors allows Family Firms to send a signal of “good” corporate governance by complying with the Code, benefitting the company and ultimately the family-member-controllers. Such compliance for the sake of signaling may be particularly attractive to family-member-controllers in the case of American-style independent directors, as such directors can be recruited to the board from close family friends or business associates of non-executive family-member-controllers, or even from family-member-controllers themselves in cases where Family Firms are managed by professional non-family-members. In addition, the strong removal rights under Singapore company law allow family-member-controllers to retain ultimate control over American-style independent directors during their entire tenure.¹⁵⁴ In sum, the combination of the American concept of the independent director, strong removal rights, and the actual voting control of family-member-controllers creates an ideal environment for signaling “good” corporate governance by ensuring compliance with the Code, while at the same time not threatening the dominance of family-member-controllers over the corporate governance in the firms they control.

Empirical evidence suggests that such a motive may be precisely what has driven the adoption of such a large contingent of independent directors by controlling shareholders on the boards of Family Firms in Singapore. In a comprehensive empirical study of 1,281 directors holding 2,233 independent directorships in 679 Singapore-listed companies, Mak Yuen Teen and Terry Ng used cluster analysis to determine whether independent directors

¹⁵² Companies Act § 152.

¹⁵³ Wilson Ng & John Roberts, *‘Helping the Family’: The Mediating Role of Outside Directors in Ethnic Chinese Family Firms*, 60 HUM. REL. 285, 289 (2007).

¹⁵⁴ Companies Act § 152.

with different traits clustered in different types of Singapore-listed companies.¹⁵⁵ One of their most interesting findings was that independent directors in family-owned companies (which they defined as companies where at least 20% of the ordinary shares are held by at least two generations of family members) are distinct from those in other types of companies in that a much greater proportion of them are “single board” independent directors (i.e., independent directors that sit on only one board).¹⁵⁶ Based on the cluster analysis, Mak and Ng posit that single board independent directors are likely more prevalent in family firms because they are normally recruited “on account of friendship between the [independent directors] and the family owners.”¹⁵⁷ This supports the claim that independent directors in Family Firms in Singapore are not elected to be the watchdog American-style monitors that Eisenberg’s model assumes them to be. Rather, they appear to serve as “family friends” that promote compliance with the Code, which in turn sends the signal of “good” corporate governance to the market—all the while allowing family-members to remain dominant over their firm’s corporate governance.

Indeed, it appears that despite almost complete compliance of Family Firms with the independent director provisions in the Code, the boards of Family Firms in Singapore have not developed to resemble anything remotely similar to the American-style monitoring board that Eisenberg contemplated. This fact, however, should not necessarily be taken to mean that these family-friendly independent directors have been entirely irrelevant in Family Firms in Singapore. To the contrary, there is in-depth qualitative research which suggests that family-friendly independent directors may play an extremely valuable role in Singapore’s Family Firms, but not in the way that agency theory would predict.¹⁵⁸

Wilson Ng and John Roberts carried out an extensive three-year qualitative investigation in the mid-2000s where they conducted one-on-one interviews with a range of directors, managers, and other employees in twenty listed Family Firms in Singapore.¹⁵⁹ They used Critical Incident Technique as a tool for analyzing the corporate governance of these firms.¹⁶⁰ As part of this research project, Ng and Roberts developed case studies of four Family Firms and used their technique to explore the role of independent directors in two of these case studies. Based on this analysis, Ng and Roberts concluded that family-friendly directors can be extremely valuable in fostering effective corporate governance in Family Firms in Singapore, but in a way that escapes the narrow lens of agency theory.¹⁶¹

Ng and Roberts suggest that in order for independent directors to be effective in Family Firms, they must develop a high level of trust and credibility through their personal ties with family members, particularly with the patriarch who normally serves as the Chairperson of Family Firms in Singapore.¹⁶² Based on this foundation of trust and credibility, the family-

¹⁵⁵ Mak & Ng, *supra* note 117, at 7.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Ng & Roberts, *supra* note 153, at 289.

¹⁵⁹ *Id.* at 292.

¹⁶⁰ As described by Ng & Roberts, “‘Critical incident technique’ (CIT) is an interview technique in which the researcher engages the response of interviewees to publicized events or issues that are researched and then raised for discussion (Chell, 1998). This focuses discussion on the perspectives of interviewees within a meaningful context.” *Id.* at 311.

¹⁶¹ *Id.* at 304–05.

¹⁶² *Id.* at 309.

friendly independent directors in their case studies functioned as effective mediators to resolve family and firm disputes and acted as useful advisers to the family patriarch (who, in both case studies, was the Chairman of the Board).¹⁶³ From this perspective, the fact that independent directors in Singapore's Family Firms appear to be family-friendly may suggest that they serve an important function that goes beyond merely signaling.

This may help explain why American-style independent directors made up a significant portion of independent directors even before the 2001 Code went into force.¹⁶⁴ It may also help explain why Family Firms in Singapore exceeded the recommendation in the 2001 Code that one-third of the board be American-style independent directors.¹⁶⁵ Additionally, it illustrates why analyzing the role of independent directors in Singapore *solely* through the narrow lens of agency theory can be misleading.

It must be noted, however, that although agency theory may overlook important functions that American-style independent directors can perform, it is nevertheless helpful for identifying potential agency costs, which may arise if management and/or controlling shareholders in Family Firms are not monitored properly. Indeed, agency theory raises an important question about the corporate governance of Family Firms in Singapore, which cannot be overlooked: considering the limited ability of American-style independent directors to monitor family-controllers effectively, what prevents family-controllers from extracting private benefits of control from Family Firms in Singapore? This question is particularly poignant as Family Firms in Singapore, at least by most accounts, appear not to have serious wealth tunneling problems. To the contrary, as indicated above, empirical evidence suggests that Family Firms are generally well governed and tend to outperform other firms in Singapore's world-leading economy.¹⁶⁶

We suggest that at least two factors have helped mitigate the problem of wealth tunneling in Family Firms in Singapore. First, there is a strong emphasis in Singapore culture on preserving and passing on Family Firms to future generations of the controlling family.¹⁶⁷ Indeed, in Singapore's tight-knit business community, strong cultural norms create an expectation that the Family Firms will be passed on to the children of the family-controllers.¹⁶⁸ Such norms intrinsically link the family's (including even the extended family's) reputation in the community to the success of the Family Firms. Although such norms tend to exist in family businesses in other parts of the world, they appear to be particularly deeply rooted in Singapore's mainly ethnic Chinese business culture.¹⁶⁹ This stands in stark contrast to highly publicized campaigns by American business icons such as Bill Gates and Warren Buffett who have strategically donated almost all of their wealth and business interests to philanthropic causes, rather than pass them onto their children.¹⁷⁰

¹⁶³ *Id.* at 299.

¹⁶⁴ *See supra* text accompanying note 116.

¹⁶⁵ *See supra* text accompanying note 150.

¹⁶⁶ Dieleman et al., *supra* note 136, at 2, 4.

¹⁶⁷ Ng & Roberts, *supra* note 153, at 287, 306–307.

¹⁶⁸ *Id.*; Dieleman et al., *supra* note 136, at 29, 31.

¹⁶⁹ Ng & Roberts, *supra* note 153, at 306–07.

¹⁷⁰ Michelle Nichols, *Warren Buffett, Bill Gates Ask Billionaires to Give Away Wealth*, REUTERS, June 16, 2010, <http://www.reuters.com/article/2010/06/16/us-philanthropy-buffett-gates-idUSTRE65F5CC20100616>; Alex Morrell, *Warren Buffett Unleashes Another \$2.8 Billion Donation*, FORBES, July 6, 2015,

Admittedly, more research must be done on how effective such a cultural norm is as a mechanism for mitigating wealth tunneling in Family Firms.¹⁷¹ Indeed, there is some evidence in other Asian countries (some with a preponderance of ethnically Chinese controlling shareholders) that dominant family controllers use their controlling power to overwhelm independent directors—even when they are properly defined *Un-American* ones—to engage in wealth tunneling, as shown by a lack of improvement in performance.¹⁷² This suggests caution in overgeneralizing Singaporean Chinese family corporate culture, with other Chinese or family corporate cultures throughout Asia and reinforces the need for more careful in-depth research. That being said, based on anecdotal evidence, it is entirely possible that Singaporean Chinese family corporate culture provides at least a partial functional substitute for effective monitoring of family-member controllers by truly independent directors in Family Firms in Singapore.

Second, the effectiveness of Singapore's corporate regulators appears to be another important functional substitute for successful monitoring of family-member controllers by truly independent directors. It is well-known that Singapore's government is among the most effective and efficient in the world, particularly when it comes to regulating business. As already noted, for the past ten years, Singapore has ranked 1st out of 189 countries in the World Bank's *Ease of Doing Business* index, which broadly ranks countries according to the quality of their business regulatory environment.¹⁷³ Singapore is also consistently ranked as a leader in the World Bank Governance Indicators which compare countries based on numerous indicators including government effectiveness, regulatory quality, rule of law, and control of corruption.¹⁷⁴ Similar findings have been reached in a number of other comparative

<http://www.forbes.com/sites/alexmorrell/2015/07/06/warren-buffett-unleashes-another-2-8-billion-donation/> (noting Buffett's pledge to give away 99% of his wealth); Neil Tweedie, *Bill Gates Interview: I Have No Use for Money. This is God's Work*, THE TELEGRAPH, Jan. 18, 2013, <http://www.telegraph.co.uk/technology/bill-gates/9812672/Bill-Gates-interview-I-have-no-use-for-money.-This-is-Gods-work.html> (noting Gates' pledge to give over 95% of his wealth to the Gates Foundation).

It should be noted that this is a matter of degree and that there are, of course, very wealthy philanthropists in Asia and Singapore. However, the trend seems to be much greater in the US, despite little research examining the culture aspect of philanthropic giving versus taking care of one's family, extended family, or clan. For a brief discussion of the cultural difference regarding passing on wealth, see Tania Branigan, *Chinese Billionaires Accused of Stinginess After Charity Banquet Snub*, THE GUARDIAN, Sept. 29, 2010, <http://www.theguardian.com/world/2010/sep/29/chinese-billionaires-gates-buffett> (examining a social event hosted in China by Bill Gates and Warren Buffett).

¹⁷¹ For a concise and interesting overview of the importance of Family Firms and how family culture may improve corporate governance, see Adrian Wooldridge, *Family Companies: To Have and to Hold*, ECONOMIST, Apr. 18, 2015, <http://www.economist.com/news/special-report/21648171-far-declining-family-firms-will-remain-important-feature-global-capitalism>. For an interesting overview of general research on culture and law in corporate governance, see Amir N. Licht, *Culture and Law in Corporate Governance* (Eur. Corp. Governance Inst. - Law Working Paper No. 247/2014, 2014), available at <http://ssrn.com/abstract=2405538>.

¹⁷² See Garg, *supra* note 43 (showing that board independence in Indian firms did not guarantee improved performance); Ibrahim & Samad, *supra* note 43 (finding no significant relationship between the proportion of independent directors and performance in Malaysian firms); Leung et al., *supra* note 43 (examining the lack of association between board committee independence and firm performance in Hong Kong family firms); Miwa & Ramseyer, *supra* note 43 (showing that firms in Japan with more outside directors do not outperform firms with fewer outside directors); Prabowo & Simpson, *supra* note 43 (noting that the share of independent directors on the board has an insignificant relationship with firm performance in Indonesia). For a more complete explanation, see *supra* note 43.

¹⁷³ WORLD BANK, DOING BUSINESS 2016, *supra* note 87, at 4.

¹⁷⁴ WORLD BANK, WORLDWIDE GOVERNANCE INDICATORS: COUNTRY DATA REPORT FOR SINGAPORE, 1996–2014 (2014), <http://info.worldbank.org/governance/wgi/pdf/c193.pdf>.

studies on effective and efficient governance by a number of other international organizations.¹⁷⁵ This evidence supports largely anecdotal evidence that the effectiveness of Singapore's public regulators in policing and preventing serious wealth tunneling provides at least a partial functional substitute for effective monitoring of family-member controllers by truly independent directors of Family Firms in Singapore.

Unfortunately, beyond anecdotal evidence, the effectiveness of Singapore's regulators in preventing wealth tunneling in Family Firms is difficult to prove definitively. As the story goes, most Singapore family-controllers would not dare attempt to engage in blatant wealth tunneling because they believe they would be caught by the effective public regulatory authorities and heavily punished. Indeed, in addition to Singapore's public regulators being well-funded and well-staffed, Singapore's small and tight-knit business community makes it easier for public regulators to quickly gather information and take action against abuse by family-controllers of Family Firms in Singapore. Moreover, the fact that the Singapore Exchange (SGX) is a Government-Linked Company is said by some to make it easier for the public regulatory authority (the Monetary Authority of Singapore (MAS)) to work closely with the SGX on regulatory issues. Finally, it has been suggested that Singapore-based listed companies largely cooperate with regulators, even when they may have engaged in wealth tunneling, because they believe a failure to cooperate would be even more harmful to their long-term interests than essentially admitting to their malfeasance.¹⁷⁶

As discussed in detail in Part IV below, however, the significance of Singapore culture and the effectiveness of Singapore's regulators as a check on wealth tunneling has more recently been illuminated by the rash of scandals in PRC-Controlled Firms.¹⁷⁷ These firms fell beyond the reach of Singapore regulators and were not bound by the cultural norms of Family Firms in Singapore. As such, they were able to exploit the gap in corporate governance created by a lack of truly independent directors and an absence of Singapore's functional substitutes for keeping private benefits of control in check in Singapore based Family Firms.¹⁷⁸

C. The Function of American-Style Independent Directors in Government-Linked Companies: Filling the Gap Created by Singapore's Unique Regulatory Regime

In recent times, with Singapore receiving so many international accolades for having one of the most free, dynamic, and wealthy economies in the world, it is easy to forget that the most powerful shareholder in Singapore, by far, is the Singapore government.¹⁷⁹ The Singapore government, through its holding company Temasek Holdings Pte Ltd (Temasek), is the controlling shareholder in twenty-three of Singapore's largest listed companies (commonly

¹⁷⁵ See, e.g., WORLD JUSTICE PROJECT, RULE OF LAW INDEX 20 (2015), http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf.

¹⁷⁶ This statement is based mainly on anecdotal evidence that the authors have received from people involved in the regulatory system in Singapore. However, this anecdotal evidence is supported by the fact that until the recent China Sky case, no firm had ever rejected a request by the SGX to appoint a special auditor. The China Sky case involved a PRC-Controlled Firm, which suggests that the corporate culture in such companies may be different than in Singapore-based firms and that they are considerably more insulated from the reach of Singapore regulators. CORPORATE GOVERNANCE CASE STUDIES VOL. II, at 1–13 (Yuen Teen Mak ed., 2013), <http://governanceforstakeholders.com/wp-content/uploads/2013/05/CPA-CG-Case-Studies-Vol2-0410.pdf>.

¹⁷⁷ See discussion *infra* Part IV.

¹⁷⁸ See discussion *infra* Part IV.A.

¹⁷⁹ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12.

referred to as Government-Linked Companies).¹⁸⁰ Collectively, these twenty-three Government-Linked Companies account for an astonishing 37% of Singapore's total market capitalization.¹⁸¹ Moreover, Singapore's Government-Linked Company model has recently become an issue of global importance as the Chinese Communist Party has identified it as the model for reforming China's juggernaut State-Owned Enterprises.¹⁸² As such, understanding the role of independent directors in Singapore's Government-Linked Companies is not only essential for accurately understanding the importance of independent directors in Singapore, but may also provide useful insights into the future role of independent directors in Chinese State-Owned Enterprises and, in turn, in the global economy.

As has been explained in detail elsewhere, the genesis of the government's current status as Singapore's most powerful shareholder can be traced back to Singapore's post-independence period in the late 1960s.¹⁸³ At that time, the People's Action Party (PAP), which has governed Singapore since its independence, made the bold decision to intervene in a variety of sectors in the economy by investing in a wide range of companies. The PAP justified its decision by citing Singapore's dearth of skilled entrepreneurs and lack of private capital, which were believed to be hindering Singapore's economic development.¹⁸⁴ In addition, the PAP's decision to jumpstart the economy through government ownership of strategic companies was timely, as the British, following their potentially destabilizing military withdrawal from Singapore in 1968, transferred land and assets to the Singapore government.¹⁸⁵

It is noteworthy that, from the outset, the PAP was acutely aware of the risks involved in the government being an active investor in the private economy. Then Prime Minister Lee Kuan Yew later wrote that he was fearful that Government-Linked Companies would become subsidized loss-making nationalized corporations, suffering the same ill fate as government corporations in other new countries.¹⁸⁶ In a similar vein, when Singapore's Government-Linked Company model was still in its embryotic stage, then Deputy Prime Minister Goh Keng Swee cautioned that "one of the tragic illusions that many countries of the Third World entertain is the notion that politicians and civil servants can successfully perform

¹⁸⁰ Isabel Sim et al., *The State as Shareholder: The Case of Singapore* 23–24 (2014), http://bschool.nus.edu/Portals/0/docs/FinalReport_SOE_1July2014.pdf.

¹⁸¹ *Id.* at 6.

¹⁸² Li-Wen Lin & Curtis J Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 754 (2013) (stating that Temasek, Singapore's state holding company, is a potential model for Chinese economic strategists). *See also* Ronald J. Gilson & Curtis J. Milhaupt, *Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism*, 60 STAN. L. REV. 1345, 1359 (2008); Lay Hong Tan & Jiangyu Wang, *Modelling an Effective Corporate Governance System for China's Listed State-Owned Enterprises: Issues and Challenges in a Transitional Economy*, 7 J. CORP. L. STUD. 14 (2007); *Reforming China's State-Owned Firms: From SOE to GLC - China's Rulers Look to Singapore for Tips on Portfolio Management*, ECONOMIST, Nov. 23, 2013, <http://www.economist.com/news/finance-and-economics/21590562-chinas-rulers-look-singapore-tips-portfolio-management-soe-glc> [hereinafter *Reforming China's state-owned firms*].

¹⁸³ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 13–14.

¹⁸⁴ *Id.* at 15–18.

¹⁸⁵ *Id.* at 15.

¹⁸⁶ *Id.* at 18; LEE KUAN YEW, *FROM THIRD WORLD TO FIRST – THE SINGAPORE STORY: 1965–2000*, 87 (2000).

entrepreneurial functions. It is curious that, in the face of overwhelming evidence to the contrary, the belief persists.”¹⁸⁷

Indeed, the PAP had a strong incentive to heed its own warning as the party’s political legitimacy and power has, from its inception, been “deeply intertwined with Singapore’s economic performance.”¹⁸⁸ As such, it was (and still is) in the PAP’s self-interest to devise and maintain a system to ensure that Government-Linked Companies were not merely government automatons guided purely by political motives, but rather incorporated (and preferably listed) companies managed in a commercially effective manner to maximize their long-term value.¹⁸⁹

In 1974, with a view to developing such a system, the Singapore government incorporated Temasek as an exempt private limited company under the Singapore Companies Act (Companies Act).¹⁹⁰ The government’s portfolio of Government-Linked Companies was then transferred to Temasek, whose sole shareholder is the Singapore Minister for Finance (MOF).¹⁹¹ The government hoped that by interposing a holding company between itself and its portfolio of Government-Linked Companies, that Government-Linked Companies would be insulated from any undue political influence and managed as competitive commercial companies.¹⁹²

The obvious risk in Temasek’s corporate structure is that despite it being an incorporated company—which according to Singapore company law is a separate legal person whose day-to-day affairs are managed by its board of directors—the government (through the MOF) is its sole shareholder.¹⁹³ From this perspective, Temasek is a wholly-owned subsidiary of the government and, in turn, the government is the ultimate controlling shareholder of the twenty-three publicly listed Government-Linked Companies in Temasek’s portfolio. As such, although the interposition of Temasek created a level of formal legal separation between the government and Government-Linked Companies, the government’s status as Temasek’s sole shareholder raised the prospect of Government-Linked Companies becoming political automatons rather than the successful commercial vehicles that the PAP desired them to be.

To mitigate this risk, the PAP constructed a highly visible and well-tailored regulatory regime, which aims to prevent the government from abusing its position as the ultimate controlling shareholder of Government-Linked Companies in four ways. First, restrictions are placed on the MOF’s shareholder rights to prevent the government from abusing its position

¹⁸⁷ Sim et al., *supra* note 180, at 15.

¹⁸⁸ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 25.

¹⁸⁹ *Id.* at 21; Yen Nee Lee, *Temasek’s Success down to Separation of its Role from Govt’s*, TODAY, Sept. 23, 2014, <http://m.todayonline.com/business/temaseks-success-down-separation-its-role-govts>.

¹⁹⁰ Sim et al., *supra* note 180, at 6; Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 21.

¹⁹¹ Under the Minister for Finance (Incorporation) Act, ch. 183, § 2(1) (2014), the Minister for Finance is a body corporate. See TEMASEK HOLDINGS (PRIVATE) LIMITED, TEMASEK ANNUAL REVIEW 2014, 20 n.1 (2014) [hereinafter TEMASEK ANNUAL REVIEW 2014].

¹⁹² *FAQs: Why was Temasek Established*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited July 8, 2015) (stating that the objective of the asset transfer “was to free the Ministry of Finance to focus on its core role of policymaking and regulations, while Temasek would own and manage investments on a commercial basis”); *FAQs: Is the President Involved in Temasek’s Business Decisions*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited Nov. 11, 2015) (stating that neither the President nor the Singapore Government is involved in Temasek’s business decisions).

¹⁹³ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 21.

as Temasek's sole shareholder for short-term political gain. Although the MOF is Temasek's sole shareholder, the President of Singapore must concur with the MOF's appointment, reappointment, or removal of Temasek's directors.¹⁹⁴ This restriction is enshrined in the Singapore Constitution, which designates Temasek as an important state-owned company (referred to as a "Fifth Schedule" entity) requiring additional oversight from the President.¹⁹⁵ The President is elected by Singaporeans every six years to oversee the management of national reserves and he sits apart from the government in a non-executive position.¹⁹⁶ He is also restricted from being a member of any political party or engaging in any commercial enterprise.¹⁹⁷ As such, the President's veto over the MOF's selection and removal rights is designed to provide an extra layer of insulation for Temasek from undue political influence. In addition, Temasek's Articles of Incorporation make it clear that its board (and not the MOF as Temasek's sole shareholder) has ultimate authority over the amount of dividends paid to the government.¹⁹⁸ This aims to provide an additional safeguard against the government using its status as Temasek's sole shareholder to engage in wealth tunneling to fund projects for short-term political gain.

Second, restrictions are placed on Temasek's board to ensure that its decisions are commercially (and not politically) oriented. As a Fifth Schedule entity, Temasek's board is accountable to the President to ensure that every disposal of an investment by Temasek is transacted at fair market value.¹⁹⁹ In addition, Temasek requires approval from the President to draw on any reserves it accumulated prior to the term of the incumbent government.²⁰⁰ These provisions serve as safeguards against Temasek's board deciding to either dispose of its investments or draw on past reserves for non-commercial (political) reasons.

Third, restrictions are placed on the role that Temasek plays in the management decisions of Government-Linked Companies, with the aim of preventing undue government influence from trickling down through Temasek into its portfolio of Government-Linked Companies. These restrictions are distinct from the ones described above, as they are based on Temasek's own public corporate governance policy statement: the Temasek Charter.²⁰¹ Although the Temasek Charter is not legally binding or enforceable, it provides a form of soft law which, if breached, may inflict reputational harm on Temasek. According to the Temasek Charter, as an engaged shareholder, Temasek aims to promote good corporate governance in its portfolio of Government-Linked Companies by drawing on its contacts to prepare shortlists of high caliber, experienced, and diverse directorial candidates for Government-Linked

¹⁹⁴ Sim et al., *supra* note 180, at 16; *FAQs: How is the President Involved with the Board of Temasek?*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited July 8, 2015).

¹⁹⁵ CONSTITUTION OF THE REPUBLIC OF SINGAPORE, Aug. 9, 1965, S 1/63, art. 22A.

¹⁹⁶ Sim et al., *supra* note 180, at 16 n.8.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 16.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*; *FAQs: How is the President Involved in the Protection of Temasek's Past Reserves?*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited July 8, 2015).

²⁰¹ Temasek Holdings (Private) Limited, *Background and Context of Temasek Charter 2009*, (2009), http://www.temasek.com.sg/Documents/userfiles/files/Charter_2009_-_Background_and_Context.pdf [hereinafter *Temasek Charter*].

Companies.²⁰² The individual boards of Government-Linked Companies can then decide whether to include Temasek's recommendations in their final list of directorial candidates, with Temasek reserving its right to exercise its voting power in directorial elections.²⁰³ The Temasek Charter, however, makes it clear that although Temasek is an engaged shareholder, it does not direct the business decisions or operations of Government-Linked Companies.²⁰⁴ In this sense, Temasek is in some ways akin to an engaged pension fund, which actively votes its shares but does not become directly involved in the management of its portfolio companies. Temasek's self-imposed restriction on becoming directly involved in the management of Government-Linked Companies is yet another way in which undue political influence is prevented from trickling down through Temasek into its portfolio of Government-Linked Companies.

Fourth, Temasek subjects itself to strict audit and disclosure requirements to expose any poor corporate governance (politically motivated or otherwise) and to demonstrate that it is a successful commercial company run ultimately for the benefit of Singaporeans.²⁰⁵ To this end, Temasek provides annual statutory financial statements to the MOF, which are audited by an international audit firm.²⁰⁶ In addition, although Temasek is an exempt private company—which under Singapore law is not legally required to disclose any financial information to the public—it has chosen to publish a Group Financial Summary and portfolio of performance in its yearly Temasek Review since 2004.²⁰⁷ The high quality of Temasek's disclosure has garnered it the highest possible ranking for transparency among sovereign wealth funds by the Linaburg-Maduell Transparency Index.²⁰⁸ Temasek's audit and disclosure practices are yet another measure taken to ensure that it is run as a successful commercial enterprise and not for the government's short-term political gain.

Considering the extent of the measures taken to ensure that Temasek and its portfolio of Government-Linked Companies are successful commercial companies, the natural question that arises is: How successful have Temasek and its portfolio of Government-Linked Companies been? Almost every available metric for corporate performance points to Temasek and its Government-Linked Companies being extremely successful. Temasek's initial portfolio of Government-Linked Companies in 1974 was worth S\$354 million, but today has grown to S\$215 billion as of March 2013, with an astonishing average annual return since inception of 16%—significantly outstripping the average performance of other large and mid-sized Singapore listed companies.²⁰⁹ In a similar vein, empirical evidence

²⁰² *Id.*; Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 21; *FAQs: Does Temasek Request Representation on the Boards of Companies in Which it Invests?*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited July 8, 2015).

²⁰³ *FAQs: Does Temasek Request Representation on the Boards of Companies in Which it Invests?*, *supra* note 202; *FAQs: How Does Temasek Work with its Portfolio Companies?* TEMASEK, <http://www.temasek.com.sg/abouttemasek/faqs#> (last visited July 8, 2015).

²⁰⁴ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 21–22; *Temasek Charter*, *supra* note 201.

²⁰⁵ Sim et al., *supra* note 180, at 8, 16, 34.

²⁰⁶ *Id.* at 16.

²⁰⁷ TEMASEK ANNUAL REVIEW 2014, *supra* note 191 (providing an overview of Temasek's governance process, portfolio holdings by geography and sectors, significant investments and divestments made during the financial year, highlights of key developments, and an indication of Temasek's outlook and future directions); Sim et al., *supra* note 180, at 16.

²⁰⁸ Sim et al., *supra* note 180, at 17.

²⁰⁹ *Id.* at 17, 20. Temasek's net portfolio value is S\$266 billion, as of March 2015. *Portfolio Highlights*, TEMASEK, http://www.temasek.com.sg/portfolio/portfolio_highlights (last visited Nov. 22, 2015).

suggests that Government-Linked Companies on average are significantly more profitable, better governed, and receive much higher valuations than non-Government-Linked Companies.²¹⁰ This empirical evidence suggests why the Chinese Communist Party has recently embraced the Temasek model as a template for reforming its own State-Owned Enterprises and pledged to create “30 Temaseks” in China by 2020.²¹¹

In sum, there is little doubt that Temasek and its portfolio of Government-Linked Companies have been successful. In the context of this Article, however, the critical question is: what role have independent directors played in their success? At first blush, it appears that independent directors are at the core of the Temasek model. After all, Temasek advertises the fact that “the majority of [its] board members are non-executive independent private sector business leaders.”²¹² In addition, it advocates that the boards of Government-Linked Companies be “independent of management in order to provide effective oversight and supervision of management.”²¹³ Thus, at least based on Temasek’s self-proclaimed corporate governance policy, the use of independent directors as a mechanism to monitor management (i.e., American-style independent directors) is a critical feature of its corporate governance model.

To determine whether Temasek has put its American-style independent director policy into practice, we hand-collected and analyzed all publicly available information on all of the independent directors currently on the boards of Temasek and its portfolio of Government-Linked Companies (we refer to this body of information as the Temasek Independent Director Database (TIDD)).²¹⁴ As noted above, Temasek is a private (unlisted) limited company. Therefore, Temasek is not required to have any independent directors on its board or to disclose any information about its corporate governance practices—including which of its directors it considers to be independent.²¹⁵ However, Temasek voluntarily discloses a considerable amount of information about its board and corporate governance practices in the Temasek Review and on its official webpage.²¹⁶ Based on our analysis of this information and the TIDD, it appears that Temasek’s claim that “the majority of [its] board members are non-executive independent private sector business leaders” is indeed accurate.²¹⁷

More specifically, based on the information in the TIDD, Temasek’s board appears to be comprised of extremely qualified, highly accomplished, and widely respected Singaporean (10) and international (3) directors who all, except the CEO, appear to be independent from

²¹⁰ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 6–7.

²¹¹ *30 Chinese SOEs to Follow Temasek Model by 2020*, WANT CHINA TIMES, May 30, 2014, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20140530000094&cid=1102> [hereinafter *30 Chinese SOEs to Follow Temasek Model by 2020*].

²¹² *Board of Directors*, TEMASEK, <http://www.temasek.com.sg/abouttemasek/boardofdirectors> (last visited July 04, 2015) [hereinafter *Board of Directors*, TEMASEK].

²¹³ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 22.

²¹⁴ The TIDD was prepared based on a review of information contained in the annual reports of Government-Linked Companies available on the SGX website which were accessed online on December 21–22, 2014. Moreover, additional internet searches were done in January 2015 to gather as much publicly available professional information about the independent directors on the boards of Temasek and its portfolio of Government-Linked Companies as possible. Dan W. Puchniak & Luh Luh Lan, *Temasek Independent Director Database (TIDD)* (Jan. 2015) (unpublished manuscript) (on file with authors).

²¹⁵ Sim et al., *supra* note 180, at 15–17.

²¹⁶ TEMASEK ANNUAL REVIEW 2014, *supra* note 191, at 50–56.

²¹⁷ *Board of Directors*, TEMASEK, *supra* note 212.

Temasek's management.²¹⁸ This is illustrated by the most recent additions to Temasek's board which include: Robert Zoellick (Chairman of Goldman Sachs International Advisors and the former President of the World Bank); Peter Voser (former CEO of Royal Dutch Shell); Robert Ng (one of the wealthiest and most influential entrepreneurs in Singapore and Asia); and Lucien Wong (Chairman and Senior Partner of one of Singapore's leading corporate law firms).²¹⁹ In addition, Temasek's Chairman and CEO positions are held by separate people and the Chairman is a non-executive director who, based on the information in the TIDD, appears to be independent from Temasek's management.²²⁰ In sum, all of the publicly available information we collected for the TIDD suggests that Temasek's board conforms to the American-style independent director model that it purports to follow.²²¹

Turning our attention to the boards of Government-Linked Companies, our review of the most recent annual reports of the twenty-three Government-Linked Companies in Temasek's portfolio reveals that 64.87% of directors are identified by the Government-Linked Companies as "independent directors"—significantly exceeding the level of independence recommended by the Code.²²² Our review of the TIDD—which includes all publicly available biographical information about the 148 directors identified by Government-Linked Companies as "independent"—reveals that they are generally highly skilled, prominent figures in the Singapore business community who appear to be independent from the management of their respective Government-Linked Companies.²²³ As such, based on the publicly available information in the TIDD, it appears that Temasek has achieved its stated goal of promoting Government-Linked Companies boards that are "independent of management in order to provide effective oversight and supervision of management."²²⁴

However, merely confirming that the boards of Temasek and its portfolio of Government-Linked Companies conform to Temasek's stated policy of promoting American-style independent managerial monitoring boards leaves a gaping hole in our analysis. Considering Temasek's controlling-shareholder structure and Singapore's regulatory regime which aims to insulate Government-Linked Companies from political influence, a critical question remains: are the American-style independent directors on the boards of Temasek and its portfolio of Government-Linked Companies also independent from the Singapore

²¹⁸ TIDD, *supra* note 214.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ This has been confirmed by other academic reviews of Temasek's Board, which similarly conclude that Temasek's Board comprises high quality directors who are independent from Temasek's management, which it is designed to monitor. A recent in-depth analysis of state-owned enterprises in Singapore found that: "the 10-member Temasek board comprises mostly independent members, with independent, Non-Executive Directors chairing the three key board committees. The roles of Chairman and CEO are separate, fulfilled by two different persons. Four of the board members are current or former civil servants, and a majority of them come from business backgrounds." Sim et al., *supra* note 180, at 16.

²²² The annual reports that were reviewed were those available on the SGX website, which were accessed online on December 21–22, 2014. There is a full summary of the review conducted of the annual reports in the TIDD

²²³ TIDD, *supra* note 214.

²²⁴ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 22. Indeed, another recent academic review of the boards of Government-Linked Companies reached a similar conclusion that the boards of Government-Linked Companies "exhibit a higher standard of corporate governance by having a higher proportion of independent directors on their boards." Christopher C. Chen, *Corporate Governance of State-Owned Enterprises: An Empirical Survey of the Model of Temasek Holdings in Singapore* 22 (Sing. Mgmt. Univ. Sch. of Law Research Paper No. 6/2014, 2013), available at <http://ssrn.com/abstract=2366699>.

government? The answer to this question is critical as it sheds light on the function(s) that these independent directors perform and, in turn, why they may have been elected to their respective boards.

To answer this question, we re-examined the biographical information in the TIDD to determine the extent of the connections (if any) between the Singapore government and the American-style independent directors on the boards of Temasek and its portfolio of Government-Linked Companies. To state our general finding upfront, at first blush, the connections appear to be extensive. Our re-examination of the information revealed that eight out of twelve of the American-style independent directors on Temasek's board currently hold (five) and/or previously held (five) positions in the Singapore government and/or on government bodies.²²⁵ In addition, as is widely publicized, the CEO and sole executive director of Temasek, Madam Ho Ching, is married to the current Prime Minister of Singapore, Lee Hsien Loong, and she was formerly a civil servant in the Singapore government.²²⁶ In a similar vein, there appears to be a significant number of formal connections between the American-style independent directors on the boards of Government-Linked Companies and the Singapore government. Our re-examination of the biographical information of the 148 directors that Government-Linked Companies identify as "independent directors" revealed that 50% of them (74 out of 148) currently hold (49) and/or previously held (41) positions in the Singapore government and/or government bodies.²²⁷

In the absence of these government connections, the primary function of American-style independent directors in Temasek and its portfolio of Government-Linked Companies would be relatively clear. As explained in detail above, to insulate Government-Linked Companies from political influence, the shareholder rights of the government and Temasek to intervene in the management of Government-Linked Companies have been restricted significantly.²²⁸ While these restrictions reduce the risk of the government and Temasek extracting private (political) benefits of control from Government-Linked Companies, they simultaneously limit the government and Temasek's abilities to monitor management effectively or manage Government-Linked Companies themselves. As such, American-style independent directors are a critical component of the Temasek model as they fill the managerial monitoring gap created by Singapore's unique regulatory environment. From this perspective, the high percentage of American-style independent directors on the boards of Temasek and its portfolio of Government-Linked Companies makes sense. It also reinforces the PAP's foundational policy that Government-Linked Companies should be governed as successful commercial (not political) enterprises.

The high proportion of American-style independent directors who hold current and/or held past positions with the Singapore government and/or government bodies, however, injects a

²²⁵ TIDD, *supra* note 214.

²²⁶ CURTIS J MILHAUPT & KATHARINA PISTOR, LAW AND CAPITALISM: WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD 137 (2008); Sara Webb, *Temasek's Chief, Ho Ching, Likes to Take Risks*, N.Y. TIMES, July 27, 2007, http://www.nytimes.com/2007/07/27/business/worldbusiness/27iht-temasek.1.6862331.html?_r=0 ("Ho began her career at the Ministry of Defense, where she met her husband, Lee Hsien Loong, the eldest son of former Prime Minister Lee Kuan Yew").

²²⁷ TIDD, *supra* note 214.

²²⁸ See *supra* text accompanying notes 194–208.

level of uncertainty into this analysis. At first blush, it may suggest that the government is using its influence over Temasek to elect government-connected American-style “independent” directors to the boards of Government-Linked Companies to gain political influence over them—essentially circumventing the highly visible regulatory regime created to depoliticize the boards of Temasek and its portfolio of Government-Linked Companies. This suggestion fits with the views of some leading international observers who point to the deep ties between the PAP and the past and current Presidents of Singapore as evidence of the politicization of Temasek and its portfolio of Government-Linked Companies.²²⁹ In a similar vein, some international observers suggest that the power wielded by Madam Ho Ching, as the Prime Minister’s wife and CEO of Temasek, is further evidence of how politics has infiltrated the decision-making process in Temasek and its portfolio of Government-Linked Companies.²³⁰

While such suggestions cannot be dismissed entirely, an in-depth analysis of the extent and nature of the government connections we have uncovered suggests that, for at least three reasons, political influence does not appear to be the driving force behind the appointments of American-style independent directors to the boards of Temasek and its portfolio of Government-Linked Companies. First, it is important to note that, based on the publicly available biographical information in the TIDD, 50% of American-style independent directors on the boards of Government-Linked Companies have *no* present or past *formal* connections with the Singapore government or government bodies at all.²³¹ If the goal of the government is to covertly control Government-Linked Companies by electing government-connected American-style independent directors to their boards, one would expect virtually all such directors to have government connections—which clearly appears not to be the case.

Second, a significant portion of the government connections we uncovered in the TIDD are based solely on American-style independent directors holding some position (which is often a part-time board or advisory appointment) related to a branch of the government that is far removed from anything to do with the regulation or governance of Temasek and/or its portfolio of Government-Linked Companies. Specifically, among those American style-independent directors who hold current and/or held past positions with the government, 59.81% of the current positions and 70.73% of the past positions were in statutory boards and/or agencies under a Ministry other than the MOF.²³² The remoteness of these positions suggests that they are not likely being used by the government to control the boards of Government-Linked Companies covertly by appointing people who occupy them to such boards. If the goal of the MOF was to circumvent the limitations on its controlling-shareholder power, one would expect it to use its influence to place mostly MOF officials or those closely connected with the MOF on such boards—which appears clearly not to be the case.

²²⁹ Kyle J. Hatton & Katharina Pistor, *Maximizing Autonomy in the Shadow of Great Powers: The Political Economy of Sovereign Wealth Funds*, 50 COLUM. J. TRANSNAT’L L. 1, 47–66 (2012).

²³⁰ *Id.* at 49–59; MILHAUPT & PISTOR, *supra* note 226, at 137.

²³¹ TIDD, *supra* note 214.

²³² *Id.*

Third, the Singapore government is well-known for its meritocracy, competitive remuneration, and prestige.²³³ Indeed, these foundational features of the Singapore government help explain why it is internationally recognized as one of the most efficient and least corrupt governments in the world.²³⁴ The extraordinary nature of the Singapore government combined with Singapore being a small city-state has resulted in many of the most talented Singaporeans either becoming civil servants or holding some appointment in the government or on a government body.²³⁵ As such, rather than the existence of current or past government positions being viewed as a proxy for political interference by the government in Government-Linked Companies, such positions are more likely an indication that these directors have been selected from among the most talented group of Singaporeans (many of whom, due to their talent, have some connection to the government). In turn, it would be surprising to find that the vast majority of American-style independent directors on the boards of Temasek and its portfolio of Government-Linked Companies had no connection with the Singapore government—especially considering the strong performance of Government-Linked Companies.²³⁶

In sum, it appears that the primary function of American-style independent directors on the boards of Temasek and its portfolio of Government-Linked Companies is to monitor management in the interest of shareholders—a function that is critical given the restrictions placed on the controlling-shareholder power of the government and Temasek. Indeed, we suggest that the critical nature of this function is the primary reason why the government and Temasek have used their controlling power to elect such a large contingent of American-style independent directors to the boards of Temasek and its portfolio of Government-Linked Companies. In addition, the manner in which Temasek advertises the significant proportion of American-style independent directors on its board and the way in which Government-Linked Companies highlight their compliance with the Code’s independent director requirements in their annual reports suggest that sending a signal of “good” corporate governance is also likely a driver for the government and Temasek to elect American-style independent directors.²³⁷

²³³ Corrupt Practices Investigations Bureau (CPIB), *Transparency International*, CPIB.GOV, <https://www.cpi.gov.sg/international/international-and-regional-corruption-related-surveys-rankings/transparency> (last updated July 3, 2015) [hereinafter CPIB, *Transparency International*]; Transparency International, *Corruption Perceptions Index 2014: Results*, Transparency.org <https://www.transparency.org/cpi2014/results#myAnchor1> (last visited June 25, 2015).

²³⁴ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 20; CPIB, *Transparency International*, *supra* note 233.

²³⁵ Often, the very brightest students from the top universities in Singapore aim to work as a civil servant in the Singapore government—usually taking this opportunity over high-profile opportunities to work in top-tier local and international firms. In addition, leaders in private industry are often recruited by the government to become civil servants or to provide input by being members of government committees.

²³⁶ This same line of reasoning also applies to the current positions held by Madam Ho Ching and Tony Tan. Their professional qualifications and accomplishments suggest why they were able to excel in government positions and also suggest that their current positions are based more on merit than any attempt for the government to politicize the Temasek model.

²³⁷ *Board of Directors*, TEMASEK, *supra* note 212 (Temasek describes its board as follows: “[o]ur Board provides overall guidance and policy directions to our management. We currently have thirteen members on our Board. The majority are non-executive independent private sector business leaders.”); *FAQs: How Does Temasek Work with its Portfolio Companies?*, *supra* note 203 (Temasek says the following about the boards of its portfolio of Government-Linked Companies: “Temasek advocates that boards be independent of management in order to provide effective oversight and supervision of management. This includes having

Finally, it is important to stress that the risk of the government and Temasek using their shareholder power to extract private benefits of control from Government-Linked Companies is limited in Singapore's regulatory environment. In addition to the risk being limited by the restrictions placed on the controlling-shareholder power of the government and Temasek, the nature of the Singapore civil service itself—a culture of meritocracy, carefully calibrated performance incentives, and systematic monitoring—provides another layer of protection (which does not exist in the case of a stereotypical controlling shareholder) against wrongful behavior directed towards extracting private benefits of control from Government-Linked Companies.²³⁸ Thus, ironically, despite Temasek and its portfolio of Government-Linked Companies having controlling shareholders, it appears that the American concept of the independent director is congruent with Singapore's unique Government-Linked Company corporate governance model. In fact, as suggested above, it appears that requiring strict separation between the government and independent directors on the boards of Temasek and its portfolio of Government-Linked Companies would likely reduce the talent pool from which such directors may be drawn, without resulting in any significant perceivable benefits.

PART IV: SIGNALING REFORM: AMERICAN-STYLE INDEPENDENT DIRECTORS ABANDONED?

A. The Impetus for the 2012 Reform: Shifting International Standards, PRC-Controlled Firm Scandals, and Signaling

By now it should be clear that Singapore's decision to transplant the American concept of the independent director into its controlling-shareholder environment in 2001 and maintain it for over a decade was not only rational, but most likely an example of successful strategic regulatory design. In a similar vein, the widespread support of American-style independent directors by controlling shareholders in Singapore appears to have been driven by strategic considerations which, on balance, seem to have largely benefited Government-Linked Companies and Family Firms.

Indeed, throughout the 2000s, Singapore appears to have benefited from its outlier decision to adopt and maintain American-style independent directors. It enjoyed almost perfect compliance with the independent director requirements in its Code and was repeatedly ranked as having the best corporate governance in Asia.²³⁹ In addition, during this time, Singapore's Government-Linked Companies and Family Firms were able to signal “good” corporate governance by complying with the Code, while at the same time maintaining the controlling shareholder structures upon which their exceptional business performance was built.²⁴⁰

The success of American-style independent directors in Singapore in the 2000s also dovetailed with an extraordinary period in Singapore's economic history. Since the Asian

mostly non-executive members on boards with the strength and experience to oversee management. Similarly, Temasek advocates that the Chairman and CEO roles be held by separate persons, independent of each other”). All of the annual reports for all of the Government-Linked Companies reviewed for the TIDD claim to comply with the independent director requirements in the 2012 Code. *See* TIDD, *supra* note 214.

²³⁸ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 20–23.

²³⁹ MAK, *supra* note 89, at 2; TJIO, *supra* note 14, ¶ 5.24.

²⁴⁰ *See supra* Part III.B.

Financial Crisis, Singapore's economic growth has catapulted it to having a GDP per person that is now more than double Japan's and which is considerably higher than any other Asian tiger economy.²⁴¹ Indeed, Singapore's GDP per person is now substantially higher than any G7 country and its economy is ranked as the best in the world.²⁴² As a result, Singapore's financial regulation and corporate governance have drawn worldwide attention—particularly from China and other developing countries which seek to emulate its success.²⁴³

Against this backdrop, the decision of Singapore's regulators to (ostensibly) abandon the American concept of the independent director in the 2012 Code (which went into full force in early 2015) appears puzzling: why after more than a decade of success would Singapore decide to abandon the American concept of the independent director?; and, what impact (if any) may this have on the future of corporate governance in Singapore?

There appear to be three key reasons for why Singapore's regulators decided to (ostensibly) abandon the American concept of the independent director. First, by the end of the 2000s, an international consensus had started to emerge that American-style independent directors might be ill-suited for controlling-shareholder environments like Singapore.²⁴⁴ In a similar vein, around the same time, recognition was growing that in most jurisdictions, independent directors were required to be independent from management *and* significant shareholders.²⁴⁵ Considering these developments, upon the recommendation of Singapore's private sector-led CGC, the MAS adopted a new definition of independence in the 2012 Code (the details of which are discussed below), which at first blush appears to abandon the American concept of the independent director and change the manner in which listed companies in Singapore will be governed.²⁴⁶

In arriving at this decision, MAS noted the international trend that independent directors in controlling-shareholder jurisdictions were increasingly being recognized as a mechanism for addressing the majority-minority agency cost problem (i.e., independent directors were no longer viewed solely as a corporate governance mechanism to monitor management on behalf of minority shareholders).²⁴⁷ In addition, MAS highlighted that making such a change would align Singapore's corporate governance "with international best practices" and, thus, "enhance market confidences in the strength of the governance of listed companies in Singapore."²⁴⁸ In other words, MAS' desire to send a strong signal of Singapore's "good"

²⁴¹*List of Countries by GDP (PPP) per Capita*, WIKIPEDIA.ORG, *supra* note 148; *A Game of Leap Frog*, ECONOMIST, Apr. 28, 2012, <http://www.economist.com/node/21553498>.

²⁴² Alan Austin, *World's Best Economy: Australia Loses Top IAREM Ranking Under Coalition*, *supra* note 148; *List of Countries by GDP (PPP) per Capita*, WIKIPEDIA.ORG, *supra* note 148.

²⁴³ Gilson & Milhaupt, *supra* note 182, at 1359; Lin & Milhaupt, *supra* note 182, at 754; Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 3–4; Tan & Wang, *supra* note 182; *Reforming China's state-owned firms*, *supra* note 182; *30 Chinese SOEs to Follow Temasek Model by 2020*, *supra* note 211.

²⁴⁴ This is illustrated by a number of academic articles around this time which suggest that American-style independent directors may be ill-suited for controlling-shareholder environments. See Bebhuk & Hamdani, *supra* note 41, at 1311; Davies & Hopt, *supra* note 2, at 320–21; Ferrarini & Filippelli, *supra* note 74, at 16; Ringe, *supra* note 13, at 420.

²⁴⁵ Davies & Hopt, *supra* note 2, at 320–21; Ferrarini & Filippelli, *supra* note 74, at 16.

²⁴⁶ MAS RESPONSE TO RECOMMENDATIONS, *supra* note 16, at 2.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 3. Another example of a signal of good governance without real functional change in Singapore is the issue of multiple directorships. Though not a focus of this paper, the multiple directorships issue is one that the market has identified without actual significant problems, yet one that the Singapore government has seemingly already addressed in order to send a signal of good corporate governance, without making any real functional

corporate governance to the market played a significant role in its decision to (ostensibly) abandon the American concept of the independent director in the 2012 Code.²⁴⁹

Second, despite Singapore's indisputable economic success throughout the 2000s, Singapore was rocked by a litany of corporate scandals, which mainly involved controlling shareholders abusing their shareholder power to extract private benefits of control from their companies. Although a handful of these scandals involved Singapore based companies, the bulk of them involved PRC-Controlled Firms.²⁵⁰ These scandals received widespread domestic and international attention, which seriously threatened Singapore's otherwise leading reputation for sound financial regulation and corporate governance.²⁵¹

Both the meteoric rise of PRC-Controlled Firms and their propensity to be embroiled in egregious scandals are astounding. In the early 2000s, immediately following the Asian Financial Crisis, PRC-Controlled Firms were virtually unheard of in Singapore. By the end of the 2000s, they accounted for approximately half of all new listings on the SGX and 20% of its total listings and made up almost one-third of its total IPO value.²⁵² The phenomenal rise of PRC-Controlled Firms, however, was marred by a litany of corporate scandals. Astonishingly, by 2011, almost 10% of PRC-Controlled Firms had been suspended from trading on the SGX due to governance or accounting-related issues.²⁵³ This figure is even more troubling considering that it excludes a number of PRC-Controlled Firms which had been either delisted entirely or saved by a white knight.²⁵⁴

change in the corporate governance of listed firms. *Id.* at 19. For a more thorough discussion on the problem of multiple directorships in Singapore, see Eugene Kang, *Multiple Directorships: How Many is Enough?*, BUS TIMES., May 16, 2014, <http://www.btinvest.com.sg/specials/boardroom/multiple-directorships-how-many-is-enough/>.

²⁴⁹ *Id.* at 3. It is noteworthy that although it is increasingly accepted that the American independent director is no longer the "gold standard" of good corporate governance around the world, there still exist otherwise sophisticated comparative analyses that continue to see it as the "gold standard" or fail to pay attention to the critical issue of how independence is defined. For examples, see INSTITUTIONAL SHAREHOLDER SERVICES INC., *supra* note 119, at 5 (suggesting to investors that a high number of independent directors is good for corporate governance in Singapore and Asia without examining how independence is defined); Bebchuk & Hamdani, *supra* note 41, at 1311 (demonstrating that a high level of American-style independent directors is used as an important metric of good corporate governance by major corporate governance ratings firms without any regard for how the criteria for independence may need to be altered in different corporate governance environments). In addition, although Singapore's outlier status was increasingly recognized throughout the 2000s, to our knowledge, until we conducted this research, the extent of Singapore's outlier status was not fully appreciated. In fact, within the last year, one of the most comprehensive surveys on boards of directors was done without making clear whether the statistics on independent directors in the Report are based on the definition of independence used prior to the 2012 Revised Code of Corporate Governance (i.e., when independence under the 2005 Code was defined as only requiring separation from management, but not a major shareholder) or the post-2012 Code definition (i.e., where independence is defined according to the definition in art. 2.3 of the 2012 Code which suggests that a director with a relationship with a 10% shareholder should not be considered independent). See INST. OF SING. CHARTERED ACCOUNTANTS & SING. INST. OF DIRECTORS, THE SINGAPORE DIRECTORSHIP REPORT 28 (2014), <http://isca.org.sg/media/776653/sg-directorship-report.pdf>.

²⁵⁰ Jonathan Kwok, *Are S-chips Still a Possible Play?*, STRAITS TIMES, Dec. 25, 2011; Stamford Law Corporation, *Making SGX Attractive to S-Chips*, LEGAL 500, <http://www.legal500.com/c/singapore/developments/27515> (last visited June 25, 2015) [hereinafter Stamford, *Making SGX Attractive to S-Chips*].

²⁵¹ CORPORATE GOVERNANCE CASE STUDIES II, *supra* note 176, at 20–21.

²⁵² Chong, *supra* note 19; Danubrata & Kok, *supra* note 19.

²⁵³ Kwok, *supra* note 250.

²⁵⁴ *Id.*

The majority of the PRC-Controlled Firm scandals involved egregious wealth tunneling by mainland Chinese controlling shareholders largely at the expense of minority shareholders in Singapore.²⁵⁵ In turn, by the end of the 2000s, Singapore’s regulation of controlling shareholders and the SGX had been called into question.²⁵⁶ This heightened the need for Singapore to send a signal of “good” corporate governance by reaffirming its adherence to international best practices—which by the 2010s included the adoption of *Un-American* independent directors in controlling-shareholder environments.²⁵⁷ As such, the damage done by PRC-Controlled Firms’ scandals to Singapore’s reputation for good corporate governance appears to have been another factor which drove MAS to (ostensibly) abandon the American independent director in the 2012 Code.²⁵⁸

Third, although the reform to the definition of independence in the 2012 Code has been advertised as Singapore abandoning the American concept of the independent director to meet international best practices, it is questionable whether this is in fact the case.²⁵⁹ Indeed, as explained in detail below, it appears that the restrictive definition adopted in the 2012 Code requiring independence from significant shareholders, combined with Singapore’s rules for electing directors and its unique shareholder structure, will most likely render the reform more of a change in the form of corporate governance in Singapore rather than in how it actually functions.²⁶⁰ As such, it appears that another factor which drove the reform of the definition of independence in the 2012 Code is that it was crafted in such a way that Government-Linked Companies and Family Firms could signal compliance with international best practices without fundamentally altering their controlling-shareholder corporate governance structures.

In fact, surprisingly, it appears that in many instances, even after the new independent director provisions in 2012 Code have gone into full force in 2015, American-style independent directors will continue to be the dominant type of independent directors on the boards of many listed companies in Singapore—the opposite of what the reform to the definition of independence in the 2012 Code would suggest. As such, similar to the 2001 Code, Singapore’s new independent director regulations will likely send a signal of “good” corporate governance by (ostensibly) adopting the *Un-American* concept of the independent director without fundamentally altering the controlling-shareholder governance structures in Family Firms and Government-Linked Companies, which form the bedrock of Singapore corporate governance.

B. *The Un-American Definition of Independence in the 2012 Code: More of a Change in Form than Function*

²⁵⁵Meijun Qian, *Why S-chip fraud cases keep cropping up*, BUS. TIMES, Feb. 17, 2012; Stamford, *Making SGX Attractive to S-Chips*, *supra* note 250.

²⁵⁶Aarti Maharaj, *New Corporate Governance codes to shake up Singapore’s Boardrooms*, CORPORATE SECRETARY (June 17, 2011), <http://www.corporatesecretary.com/articles/international/11925/new-corporate-governance-codes-shake-singapores-boardrooms/>; Danubrata & Kok, *supra* note 19.

²⁵⁷MAS CONSULTATION PAPER, *supra* note 125, at 3; MAS RESPONSE TO RECOMMENDATIONS, *supra* note 16, at 2.

²⁵⁸Maharaj, *supra* note 256.

²⁵⁹MAS RESPONSE TO RECOMMENDATIONS, *supra* note 16, at 3.

²⁶⁰See discussion *infra* Part IV.B.

To accurately understand why the amended definition of independence in the 2012 Code is more likely to result in a formal, rather than functional, change in Singapore corporate governance, it is necessary to examine the precise wording of the relevant amendment. Articles 2.3(e) and (f), which were added to the definition of independence in the 2012 Code, state that a director is deemed to *not* be independent if she is “A director who is a 10% shareholder or an immediate family member of a 10% shareholder of the company; or a director who is or has been directly associated with a 10% shareholder of the company, in the current or immediate past financial year.”²⁶¹

There are three aspects of this expanded definition of independence which suggest that it is more likely to bring about a formal rather than functional change in Singapore corporate governance. First, it appears that the *Un-American* definition in the 2012 Code is *unlikely* to prevent most (if not, all) independent directors on the boards of Government-Linked Companies that have current or past connections with the MOF or Singapore government from continuing to be deemed as independent directors. The MOF and Singapore government clearly qualify as 10% shareholders in all Government-Linked Companies, because a “10% shareholder” is defined in the 2012 Code as “a person who has an interest” in not less than 10% of the company’s voting shares—which the MOF and Singapore government clearly have as a result of being the sole shareholder of Temasek.²⁶² The 2012 Code, however, limits those considered to be “directly associated” with a 10% shareholder to persons “being accustomed or under the obligation...to act in accordance with the directions, instructions or wishes of the 10% shareholder in relation to the corporate affairs of the corporation.”²⁶³ As the explicit policy of the MOF and the Singapore government is to not interfere in the corporate affairs of Government-Linked Companies,²⁶⁴ no one connected with the MOF or Singapore government would likely qualify as a “directly associated” person. This limitation on the *Un-American* definition in the 2012 Code is critical considering that, as revealed in Part III above, 50% of independent directors in Government-Linked Companies have current or past connections with the Singapore government—the ultimate controlling shareholder of all Government-Linked Companies.²⁶⁵

Indeed, our review of the latest annual reports of Government-Linked Companies revealed that these companies uniformly appear to interpret the definition of independence in the 2012 Code in the restrictive manner described above.²⁶⁶ This appears to be the case, as not a single annual report mentions any connection between independent directors and the MOF or the Singapore government—despite the fact that many such relationships appear to exist. To be clear, this does not suggest that Government-Linked Companies are contravening the 2012 Code. To the contrary, it confirms that such relationships appear not to be covered by the restrictive *Un-American* definition of independence in the 2012 Code.

²⁶¹ CODE OF CORPORATE GOVERNANCE art. 2.3(e)–(f).

²⁶² CODE OF CORPORATE GOVERNANCE 4 n.2 (defining “10% shareholder”).

²⁶³ CODE OF CORPORATE GOVERNANCE 5 n.6 (defining “directly associated”).

²⁶⁴ Goh Keng Swee, *Public Enterprises*, speech at the NTUC Income Annual General Meeting (June 20, 1977), in WEALTH OF EAST ASIAN NATIONS: SPEECHES AND WRITINGS BY GOH KENG SWEE 122–23 (Linda Low ed., 1995); Sheng Yi Lee, *Public Enterprise and Economic Development in Singapore*, 21 MALAYAN ECON. REV. 49, 57 (1976); Lee, *supra* note 186; Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 21.

²⁶⁵ TIDD, *supra* note 214; see *supra* Part III.C and text accompanying note 227 for a more in-depth discussion of what constitutes a connection.

²⁶⁶ TIDD, *supra* note 214.

In addition, as Temasek is an unlisted private exempt company, the 2012 Code and, in turn, its expanded *Un-American* definition of independence, do not apply to it at all. As such, Temasek can continue to apply the American concept of the independent director when describing the characteristics of its board, which it does on a completely voluntary basis. This appears to be the approach that Temasek has taken, as it describes its directors and the directors in its portfolio companies as independent with a clear focus on their independence from the management of Temasek and its portfolio companies—and not their independence from the MOF or Singapore government.²⁶⁷

Second, the amendment to the definition of independence will likely have less of an impact on independent directors in Family Firms than may appear at first blush because it is limited to those with an interest of “not less than 10%” of the company’s voting shares.²⁶⁸ As many of Singapore’s Family Firms are now transitioning to their third generation of family ownership, their shares are increasingly held in blocks of less than 10%—despite the fact that family members collectively still maintain actual voting control in most Family Firms.²⁶⁹ As such, a friend or associate of a family member holding less than 10% (which as family members’ blocks become smaller, will become increasingly more common) may still be deemed to be independent under the expanded definition of independence.

It is noteworthy that the CGC proposed that the threshold for independence from significant shareholders be set at 5%, as this is the threshold at which shareholders are considered to be “substantial shareholders” for notification purposes under the Singapore Companies Act and the Securities and Futures Act.²⁷⁰ MAS, however, justified its decision to set the threshold at 10% by relying on the fact that there is no single international norm for such thresholds and that it was the first time the concept of independence from a substantial shareholder had been introduced into Singapore.²⁷¹

In addition, the “directly associated” person restriction (discussed above with respect to Government-Linked Companies) also leaves considerable wiggle room for 10% shareholders in Family Firms to elect “family-friendly” independent directors, as many family friends will likely be able to claim that they are not “accustomed” or “under an obligation” to act in accordance with the wishes of friends who are also family controllers.²⁷² Moreover, as the *Un-American* definition in the 2012 Code is further limited to directors directly associated with a 10% shareholder “in the current or immediate past financial year,” this further expands the scope for electing “family-friendly” directors in Family Firms who may have worked for

²⁶⁷ See sources cited *supra* note 237.

²⁶⁸ CODE OF CORPORATE GOVERNANCE art. 2.3.

²⁶⁹ Dieleman et al., *supra* note 136, at 25 (discussing a survey of firms to note that family ownership fragments over time as more generations are born).

²⁷⁰ MAS CONSULTATION PAPER, *supra* note 125, at 5 n.1.

²⁷¹ MAS RESPONSE TO RECOMMENDATIONS, *supra* note 16, at 3.

²⁷² CODE OF CORPORATE GOVERNANCE 5 n.6.

a family controller in the past.²⁷³ Again, it is noteworthy that the CGC proposed a three-year look-back period, but that MAS rejected it in favor of a shorter time period.²⁷⁴

Third, as directors of listed companies in Singapore can be removed, without cause, at any time, by a majority vote of shareholders, the family-controllers in Family Firms and Temasek (and, in turn, indirectly the MOF and Singapore government) as the controlling shareholder of Government-Linked Companies, will ultimately maintain control of the fate of the *Un-American* independent directors in their respective companies.²⁷⁵ The 2012 Code reinforces the ultimate control of controlling shareholders over *Un-American* independent directors by explicitly stating that “a director will not be considered ‘directly associated’ with a 10% shareholder by reason only of his or her appointment having been proposed by that 10% shareholder.”²⁷⁶ This further calls into question how *Un-American* the independent directors on the boards of Government-Linked Companies and Family Firms will actually be in practice.

In sum, it appears that Singapore’s regulators will once again be able to send a signal of “good” corporate governance by complying with international best practices, as most listed companies will be able to easily comply with the newly-adopted *Un-American* concept of the independent director in the 2012 Code. At the same time, in Government-Linked Companies, directors who may have some form of connections with the MOF or the Singapore government can still be deemed to be independent directors in most (if not, all) cases.²⁷⁷ In addition, there is considerable scope for “family-friendly” directors to be elected by family-member controllers to the boards of Family Firms as independent directors. All said, we do not in any way imply that such directors cannot be independent in their decision-making. However, we are of the opinion that the changing of the definition of independent directors from the American concept to the *Un-American* one will not cause a major shift in the corporate governance of listed companies in Singapore.

C. *Strategic Regulatory Design Revisited: The Rationale Behind the 2012 Code’s Restrictive Definition of the Un-American Independent Director*

The choice of Singapore’s regulators to adopt the *Un-American* independent director in a manner that signals good corporate governance, while still leaving Singapore’s controlling-shareholder corporate governance system largely intact, may prove once again to be an example of successful strategic regulatory design. This is especially likely in Government-Linked Companies, which have been largely free from corporate scandals and are effectively insulated from controlling-shareholder abuse by Singapore’s unique regulatory architecture.²⁷⁸ In addition, as explained in Part III above, requiring strict separation between independent directors in Government-Linked Companies and the Singapore government

²⁷³ MAS RESPONSE TO RECOMMENDATIONS, *supra* note 16, at 3 (“Firstly, MAS will reduce the look-back period from the proposed three years to the ‘current or immediate past financial year’. This is consistent with the period applied to a director’s relationship with other provisions dealing with director independence in the Code.”).

²⁷⁴ MAS CONSULTATION PAPER, *supra* note 125, at 5.

²⁷⁵ Cai, *supra* note 134.

²⁷⁶ CODE OF CORPORATE GOVERNANCE 5 n.6.

²⁷⁷ TIDD, *supra* note 214; *see supra* Part III.C and text accompanying notes 232, 263–265.

²⁷⁸ *See discussion infra* Part IV.C.

would likely significantly reduce the talent pool for such directors while providing limited corporate governance benefits.²⁷⁹ In sum, it appears that the 2012 Code's restrictive definition of the *Un-American* independent director is warranted in the case of Government-Linked Companies.

The situation in Family Firms, however, appears to be somewhat less clear. Although Family Firms in Singapore have performed extremely well, a few recent corporate scandals involving Family Firms suggest that *Un-American* independent directors may provide a useful additional check on private benefits of control.²⁸⁰ Moreover, requiring stricter separation between the controlling shareholders and independent directors in Family Firms would not significantly reduce the talent pool of independent directors for Family Firms—which distinguishes Family Firms from Government-Linked Companies. This being said, there is still the risk that the family-based corporate culture of Family Firms may be disrupted if their boards become dominated by non-family-friendly directors and, as explained in Part III above, in some cases, family-friendly independent directors appear to add unique value. As such, there is likely a stronger rationale for promoting stricter separation between controlling shareholders and independent directors in Family Firms than in Government-Linked Companies. However, the success of Family Firms in Singapore suggests that their controlling-shareholder dominated model should not be entirely discarded.

It appears that Singapore's regulators have attempted to strike this difficult balance for Family Firms in the 2012 Code. In addition to amending the definition for independence, the 2012 Code adds two other provisions which will likely make the boards of Family Firms somewhat more independent from family-controllers. First, under the 2012 Code, directors who have been on the board for more than nine years must have their independence reviewed and the board must explain why they should still be considered to be independent.²⁸¹ In light of the exceptionally long tenure of directors in Family Firms—especially family-member directors—this provision will likely have a significant impact on creating more separation between independent directors and controlling shareholders in Family Firms.²⁸²

Second, under the 2012 Code, companies with a chairperson who is not an independent director are required to have at least half of their boards composed of independent directors (as opposed to one-third when the chairperson is an independent director).²⁸³ This new provision will likely have the greatest impact on the boards of Family Firms, as they currently stand out among listed companies in Singapore in their propensity to combine the positions of CEO and chairperson (i.e., in not having an independent chairperson).²⁸⁴ Ultimately, however, while these two additional provisions will likely have the greatest impact on Family Firms, for the reasons outlined above, they are unlikely to fundamentally change the

²⁷⁹ Vincent Wee, *Boardrooms Due for Re-calibration*, BUS. TIMES, Apr. 12, 2012.

²⁸⁰ CORPORATE GOVERNANCE CASE STUDIES VOL. III, at 20–29 (Yuen Teen Mak ed., 2013), <http://www.cpaaustralia.com.au/documents/cg-vol-3.pdf>.

²⁸¹ CODE OF CORPORATE GOVERNANCE art. 2.4; SINGAPORE INSTITUTE OF DIRECTORS & INSTITUTE OF SINGAPORE CHARTERED ACCOUNTANTS, THE SINGAPORE DIRECTORSHIP REPORT 2014 28 (2014), <http://isca.org.sg/media/776653/sg-directorship-report.pdf> (noting that only 26.4% of independent directors in the firms surveyed had tenures that exceeded nine years).

²⁸² See *supra* notes 144, 145.

²⁸³ CODE OF CORPORATE GOVERNANCE art. 2.2.

²⁸⁴ Dieleman et al., *supra* note 136, at 17.

controlling-shareholder-dominated corporate governance system in Family Firms in Singapore.²⁸⁵

In stark contrast to the situation in Government-Linked Companies and Family Firms, there have been significant changes in the regulation of PRC-Controlled Firms, which are aimed at fundamentally changing their corporate governance. However, these changes have gone far beyond the provisions related to independent directors in the 2012 Code. Although the PRC-Controlled Firm scandals appear to have been an impetus for Singapore to adopt the *Un-American* concept of the independent director, Singapore's regulators have not viewed the implementation of *Un-American* independent directors as the sole solution to the PRC-Controlled Firms problem. This appears to be prudent, as the PRC-Controlled Firm scandals have illuminated at least two critical distinctions between PRC-Controlled Firms and Government-Linked Companies/Family Firms that appear to warrant a distinct and more robust regulatory regime.

First, the corporate structure of PRC-Controlled Firms effectively places their corporate controllers beyond the reach of Singapore's normally effective and powerful regulators.²⁸⁶ In the typical PRC-Controlled Firm, the revenue-generating operations and business are conducted solely in China, while a separate entity is normally incorporated as a shell company in a low tax jurisdiction for the purpose of listing it on the SGX.²⁸⁷ In a number of PRC-Controlled Firm scandals, the corporate controllers of the listed company used their controlling power to tunnel wealth from it back to China—where the controllers could carry on “business as usual” under the protection of local Chinese authorities.²⁸⁸ In such situations, Singapore's regulators have been left with the unsatisfactory option of imposing sanctions on the hollowed-out listed company—which, in practice, only serves to further punish its minority shareholders (and not its corporate controllers).

Second, the difference in corporate culture between Singapore-based Government-Linked Companies/Family Firms and PRC-Controlled Firms is another factor which may suggest that a distinct and more robust regulatory regime is warranted for PRC-Controlled Firms. In Singapore-based Family Firms, the focus of passing on the wealth of the business to the next generation and maintaining the controlling family's reputation in Singapore's small tight-knit business community helps mitigate the risk of private benefits of control.²⁸⁹ In a similar vein, in Singapore-based Government-Linked Companies, the meritocratic, largely corruption-free and efficient culture of the Singapore civil services, combined with Singapore's distinct regulatory architecture for protecting the boards of Government-Linked Companies from

²⁸⁵ See *supra* Part IV.B.

²⁸⁶ Stamford, *Making SGX Attractive to S-Chips*, *supra* note 250; Yuen Teen Mak, *Now Let's See the Practical Impact*, BUS. TIMES, June 16, 2011.

²⁸⁷ Stamford, *Making SGX Attractive to S-Chips*, *supra* note 250.

²⁸⁸ The standard response from local Chinese authorities has often been that no action could be taken against these corporate controllers because they had not breached Chinese law. *Id.*

²⁸⁹ Ng & Roberts, *supra* note 13, at 287, 307. For evidence supporting the argument that reputation and social norms work better in small (homogeneous) tight-knit communities, see, ROBERT ELLICKSON, ORDER WITHOUT LAW (1991); ERIC POSNER, LAW AND SOCIAL NORMS (2000) (discussing collective action problem, social norms, and the importance of signaling in communities); Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 116 (1992); Weitseng Chen, *Arbitrage For Property Rights: How Foreign Investors Create Substitutes for Property Institutions in China*, 24 WASH. INT'L L.J. 47, 87–88 (2015).

politics, appears to significantly reduce the risk of private benefits of control in Government-Linked Companies.²⁹⁰ In contrast, the culture of good corporate governance tends to be lacking in PRC-Controlled Firms as they have tended to be second-class Chinese companies that have emerged from an environment where controlling-shareholder abuse is rife.²⁹¹

To attempt to mitigate the higher risk of private benefits of control in PRC-Controlled Firms, the SGX Listing Rules were amended in 2008 to require foreign issuers to have at least two independent directors who are Singapore residents on a continuing basis on their boards.²⁹² This tightening of the regulations, however, was somewhat ineffective as most reputable Singaporean directors were unwilling to take the risk of acting as a resident independent director in a PRC-Controlled Firms. Considering the opaque nature of their operations in China and their history of corporate scandals, reputable Singaporean directors feared being the target of Singapore's regulators when PRC-Controlled Firms scandals emerged. Indeed, the scarcity of Singaporeans willing to act as resident independent directors in PRC-Controlled Firms resulted in one Singaporean, with an unusually high tolerance for risk, gaining the nickname "Mr. S-Chip."²⁹³ Unfortunately for Mr. S-Chip, after serving on numerous PRC-Controlled Firm boards, his luck ran out and he became embroiled in a number of PRC-Controlled Firm scandals.²⁹⁴

Although the SGX took a number of additional steps to tighten accounting and legal rules in PRC-Controlled Firms, the scandals continued and the fundamental problem of rogue PRC-Controlled Firm controllers being beyond the reach of Singapore's regulators remained unsolved.²⁹⁵ Finally, in 2014, the SGX entered into an agreement with the Chinese Securities Regulatory System to develop a direct listing framework for PRC-Controlled Firms that want to list on the SGX in the future. Essentially, this framework creates a dual compliance requirement under which all new PRC-Controlled Firms will have to be vetted by the Chinese Securities Regulatory System for their compliance with Chinese law and then by the SGX for their compliance with Singapore law.²⁹⁶ This new approach to PRC-Controlled Firms is built on the idea that if Chinese regulators play a part in the vetting process, they may be more willing to facilitate actions against rogue controllers of PRC-Controlled Firms when scandals arise *ex post*, which should provide an *ex ante* deterrent effect.

As this new "dual compliance" system has not yet been rolled out, only time will tell whether it will solve the problem of controlling-shareholder abuse that has plagued PRC-Controlled

²⁹⁰ See *supra* Part III.C and notes 171, 233, 234.

²⁹¹ Qian, *supra* note 255.

²⁹² SINGAPORE EXCHANGE, LISTING RULE AMENDMENTS (2006), http://rulebook.sgx.com/net_file_store/new_rulebooks/s/g/SGX_Mainboard_Rules_September_1_2006.pdf. ("Listing Rule 221

1.4 Listing Rule 221 be amended as follows.

221 A foreign issuer must have at least two independent directors, at least one of whom must be resident in Singapore. Purpose of amendment: To ensure sufficient local representation on the board of a foreign issuer and the ability to take steps in the event of a problem.").

²⁹³ CORPORATE GOVERNANCE CASE STUDIES II, *supra* note 176, at 1–13.

²⁹⁴ *Id.*; Lynette Khoo, 'Mr S-chips' Believes in Longer Gestation Period; S-chips Should 'Think Like Listed Companies' Before Listing: *ID*, BUS. TIMES, June 27, 2009 (noting Mr. Lai's position as an independent director on six PRC-Controlled Firms, four of which faced different sets of issues).

²⁹⁵ Danubrata & Kok, *supra* note 19.

²⁹⁶ Stamford, *Making SGX Attractive to S-Chips*, *supra* note 250.

Firms in Singapore. Although most observers view the PRC-Controlled Firm scandals as a rare failure of Singapore's regulators, they also illuminate a key to Singapore's success. They suggest that the extraordinary economic performance and absence of such scandals in Government-Linked Companies and Family Firms, may critically hinge on the effectiveness of Singapore's regulatory and business culture—two mechanisms for mitigating private benefits of control that PRC-Controlled Firms lack. In fact, it appears that these two mechanisms have served as important functional substitutes for directors that are fully independent from the large block controlling-shareholders which dominate Family Firms and Government-Linked Companies in Singapore. In essence, they appear to reduce the need for vigorous monitoring of controlling shareholders by truly *Un-American* independent directors. In this sense, the PRC-Controlled Firm scandals provide a window into how Singapore's Family Firms and Government-Linked Companies may be plagued by corporate scandals in the absence of its effective regulatory and wealth-enhancing corporate culture.

PART V: UNIQUELY SINGAPOREAN, BUT WITH COMPARATIVE LESSONS THAT ABOUND

To be sure, on some level, the story of the rise of the independent director in Singapore is uniquely Singaporean. Indeed, only by understanding Singapore's unique political history, regulatory architecture, institutional environment, shareholder landscape, and detailed legislation can one gain an accurate picture of the rise and function of the independent director in Singapore. This suggests that caution should be exercised when attempting to draw larger comparative corporate law lessons from this analysis.

More specifically, at least three aspects of the independent director in Singapore highlight its idiosyncratic nature. First, as our research above reveals, Singapore's adoption and maintenance of the American independent director into its controlling-block shareholder environment made (and arguably still makes) it a corporate governance outlier.²⁹⁷ In addition, Singapore stands out among other outliers, as it lacks any obvious rationale for its outlier behavior.²⁹⁸ While this revelation provides valuable insight into a unique and important aspect of Singapore's world-leading corporate governance system, it also suggests that drawing wider comparative lessons from it may be difficult.

Second, Singapore's status as a small city-state suggests that many of the most salient aspects of the rise and function of the independent director in Singapore may not be readily generalizable. The ability of Singapore's regulators to use informal mechanisms to effectively mitigate private benefits of control in local companies has almost certainly been facilitated by the small tight-knit nature of Singapore's business community.²⁹⁹ Moreover, the small size of Singapore's pool of talented independent directors is another distinct feature that has had a significant impact on the regulation of independent directors in Singapore.³⁰⁰ Finally, Singapore's status as a small city-state heightens the need for it to attract foreign capital, while at the same time limits its ability to set its own corporate governance standards—both

²⁹⁷ See *supra* Part II.C.

²⁹⁸ See *supra* Part II.D.

²⁹⁹ See *supra* Part III.A. For evidence supporting the argument that reputation and social norms work better in small (homogeneous) tight-knit communities, see, Ellickson, *supra* note 289; Posner, *supra* note 289; Bernstein, *supra* note 189; Chen, *supra* note 289.

³⁰⁰ See *supra* Part II.D.

of which make Singapore stand out in terms of the high-powered incentives it has to either comply, or signal compliance, with international corporate governance standards.

Third, Singapore's unique regulatory architecture and institutional environment also suggest that the rise and function of the American independent director in Singapore may be exceptional. Indeed, as explained in detail elsewhere, the regulatory architecture governing Government-Linked Companies—which ironically makes the American concept of the independent director fit neatly into Singapore's Government-Linked Company controlling-block shareholder environment—appears to be uniquely Singaporean and would likely be difficult for other jurisdictions to replicate.³⁰¹ As explained above, Singapore's efficient and meritocratic government has played an important role in the rise of the independent director in Singapore.³⁰² This is also an aspect of Singapore's independent director story that distinguishes it from other jurisdictions—particularly from developing jurisdictions which tend to have a keen interest in the Singapore model.

Despite the undeniably Singaporean character of the rise and function of the independent director in Singapore, this analysis teems with comparative lessons that appear to challenge some of the core understandings about independent directors and, more generally, comparative corporate law. First, it suggests that comparative corporate law pays insufficient attention to the *precise identity* of shareholders—not merely whether they are generally dispersed or concentrated—as a determinant of how independent directors (and, we suspect, many other corporate governance mechanisms) actually function. As demonstrated above, the function and effectiveness of independent directors in Singapore is highly contingent on whether they are on the board of a Family Firm, a Government-Linked Company, or a PRC-Controlled Firm.³⁰³ This is due primarily to the distinct nature of the various types of controlling shareholders that dominate the corporate governance in these different types of companies. Ultimately, this suggests that understanding the precise identity of controlling shareholders (i.e., who they are and, in turn, what drives them) is imperative for accurately understanding the function and effectiveness of independent directors and potentially many other corporate governance mechanisms.³⁰⁴

Second, this analysis suggests that the definition of “independence” has received far too little attention. It is astounding that firms specializing in (and being paid for) corporate governance advice, which influences the allocation of trillions of dollars of investment capital, have often erroneously assumed that American-style independent directors have been (or should be) transplanted around the world—entirely overlooking how the definition of independence varies in critically important ways among jurisdictions (and even within jurisdictions over time).³⁰⁵ It is also surprising that some of the most often cited literature on independent directors—particularly cross-country empirical analyses—have also almost entirely disregarded the critical differences in the definition of independence and/or often erroneously assumed the global ubiquity of American-style independent directors.³⁰⁶ Similarly, the failure

³⁰¹ Tan et al., *State-Owned Enterprises in Singapore*, *supra* note 12, at 23.

³⁰² See *supra* notes 113–115, 117 and accompanying text.

³⁰³ See *supra* Parts III.B, III.C, IV.A.

³⁰⁴ This point is elaborated on further in Puchniak, *supra* note 2.

³⁰⁵ Bebchuk & Hamdani, *supra* note 41, at 1302–1304, 1311.

³⁰⁶ See Gordon, *supra* note 2, at n. 164 (assuming that *Un-American* independent directors in Korea can be directly compared with American independent directors in the United States). Although Gordon draws this

of prominent international organizations, such as the World Bank, to take account of differences in the definition of independence among jurisdictions is disconcerting.³⁰⁷ As the Singapore story illustrates, how independence is defined is critically important and must be carefully considered.

Third, the rise of the independent director in Singapore is a reminder of the importance of signaling as a driving force in both the regulation and adoption of independent directors—something which has largely been overlooked.³⁰⁸ Interestingly, it appears that Singapore has been able to credibly signal “good” corporate governance by merely formally adopting independent directors without fundamentally altering the manner in which its companies function. At first blush, it would seem that such “hollow signaling” would be quickly identified by free-market forces and thus be highly ineffective as its credibility as a signal of “good” corporate governance quickly erodes.

In Singapore, however, such “hollow signaling” appears to have remained effective and credible for a significant period of time. We suggest that this has occurred because of the unique functional substitutes that Singapore developed to mitigate private benefits of control. In other words, a credible signal was maintained because it was functionally credible, in that Singapore’s system of corporate governance kept private benefits of control in check in Government-Linked Companies and Family Firms (i.e., Singapore delivered on its promise to investors, but just not in the way that the signal suggested it would). It may therefore be more accurate to view Singapore’s adoption of the American independent director as an example of what we have coined “halo signaling”, as it was not entirely “hollow” and was done primarily to bolster the image of Singapore’s corporate governance by leveraging on the positive image of American-cum-international norms of “good” corporate governance (i.e., something akin to the “halo effect”).³⁰⁹

conclusion from Black et al., *supra* note 43, neither article distinguishes between the definitions used for independent directors in the United States and Korea to the weakness of both.

³⁰⁷ The World Bank’s Ease of Doing Business rankings are a highly regarded measure of business regulations in 189 economies around the world. Though the rankings were first established in 2005, only in 2015 did the World Bank add a measurement for corporate governance and independent directors. Despite this, the World Bank fails to distinguish among definitions of independence. In 2015, the questionnaire left the definition up to the jurisdiction of the surveyee. In the 2016 questionnaire, however, the questionnaire unilaterally adopted the OECD definition of independence (“not owning any shares...and otherwise not having any material or pecuniary relationship with the company directly or indirectly through related persons”). The World Bank’s adoption of the OECD definition overlooks the different definitions of independent applied across corporate governance and the resulting different effects on economies to the detriment of the rankings. See NADINE ABI CHAKRA & HERVÉ KADDOURA, DOING BUSINESS 2015 MEASURING BUSINESS REGULATIONS PROTECTING MINORITY INVESTORS IN [NAME OF ECONOMY] (2014), <https://web.archive.org/web/20150318173942/http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Methodology/Survey-Instruments/DB15/DB15-PMI.pdf>; NADINE ABI CHAKRA ET AL., DOING BUSINESS 2016 PROTECTING MINORITY INVESTORS (2015), <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Methodology/Survey-Instruments/DB16/DB16-PMI-questionnaire.pdf>.

³⁰⁸ Davies and Hopt have similarly stressed the importance of signaling as a possible explanation for the adoption of independent directors through corporate governance codes in controlling shareholder dominated environments in their recent insightful analysis of corporate boards in Europe. Davies & Hopt, *supra* note 2, at 325–326.

³⁰⁹ We derived this term from two different theories which relate to the behavior that we are attempting to describe with respect to the Singapore government’s adoption of “independent directors” as well as the adoption of “independent directors” by listed companies in Singapore. The first theory is “signaling theory,” which has

Finally, the problems that Singapore has faced with PRC-Controlled Firms illuminate the complexity of corporate governance regulation in an increasingly globalized environment. It is now common for companies to be listed in jurisdictions that have no connection to their place of business or the domicile of their controllers. As demonstrated by PRC-Controlled Firms in Singapore, such companies may disrupt otherwise effective local corporate governance solutions that rely on informal regulation built on reputational capital and local business norms. This suggests that more formal, transparent, and standard regulatory mechanisms—similar to the ones that Singapore has implemented to mitigate its problem with PRC-Controlled Firms—may increasingly become the norm. We suggest this with a twinge of sadness as academics who delight in uncovering idiosyncratic local corporate governance solutions that challenge conventional wisdom.

wide applicability but in the case of economics involves some informed market participants taking certain actions to overcome information asymmetry by revealing private information to others. For example, in the context of this Article, a listed company in Singapore may comply with the independent director requirements in the Code to signal to the market that it is practicing “good” corporate governance, or the Singapore government may adopt regulations to promote independent directors to signal to all international investors that Singapore promotes “good” corporate governance. The “halo effect” is a cognitive bias in which an observer's overall impression of a person, company, brand, or product influences the observer's feelings and thoughts about that entity's character or properties. For example, in the context of this Article, the view that emerged that American corporate governance was tantamount to “good” corporate governance meant that if listed companies in Singapore and Singapore as a whole could be seen as adopting the American model, they would be assumed to have “good” corporate governance.

PART VI: TABLES AND APPENDICES

TABLES

TABLE 1 AMERICAN/*UN*-AMERICAN DEFINITION OF INDEPENDENT DIRECTOR IN CURRENT CODES AS OF JULY 2015

	Number of countries	Percentage ¹
With no definition of independent director	13	14.9
With American definition ²	7	8.1
With <i>Un</i> -American definition ³	48	55.2
Unclear definition ⁴	19	21.8

¹N=87

²"American definition" means the definition expressly requires independence from management and the company, but not from significant shareholders.

³"*Un*-American definition" means the definition expressly requires independence from management, the company, *and* significant shareholders

⁴"Unclear definition" means that there is a definition for independence but the requirements are too vague to determine whether the definition should be classified as "American" or "*Un*-American."

TABLE 2 **AMERICAN/*UN*-AMERICAN DEFINITION OF INDEPENDENT DIRECTOR IN CODES AS OF 2001**

	Number of countries	Percentage ¹
With no definition of independent director	7	29.2
With American definition ²	4	16.7
With <i>Un</i> -American definition ³	11	45.8
Unclear definition ⁴	2	8.3

¹N=24

²"American definition" means that the definition expressly requires independence from management and the company, but not from significant shareholders.

³"*Un*-American definition" means that the definition expressly requires independence from management, the company, *and* significant shareholders.

⁴"Unclear definition" means that there is a definition for independence, but the requirements are too vague to determine whether the definition should be classified as "American" or "*Un*-American."

TABLE 3 **AMERICAN/*UN*-AMERICAN DEFINITION OF INDEPENDENT DIRECTOR IN CODES AS OF 2005**

	Number of countries	Percentage ¹
With no definition of independent director	5	10.0
With American definition ²	12	24.0
With <i>Un</i> -American definition ³	26	52.0
Unclear definition ⁴	7	14.0

¹N=50

²"American definition" means that the definition expressly requires independence from management and the company, but not from significant shareholders.

³"*Un*-American definition" means that the definition expressly requires independence from management, the company, *and* significant shareholders.

⁴"Unclear definition" means that there is a definition for independence, but the requirements are too vague to determine whether the definition should be classified as "American" or "*Un*-American."

APPENDICES

APPENDIX A LIST OF COUNTRIES SURVEYED IN THE DATABASE OF INDEPENDENT DIRECTOR DEFINITIONS

Country	Name of Code	Year Released (Current version)	Language	Included/Excluded in the dataset
Albania	Corporate Governance Code for Unlisted Joint-Stock Companies in Albania	2008	English	Included
Algeria	Code Algerian de Gouvernance d'Enterprise	2010	French	Included
Argentina	Código de Mejores Prácticas de Gobierno de las Organizaciones para la República Argentina	2004	Spanish	Excluded
Armenia	Code of Corporate Governance of the Republic of Armenia	2010	English	Included
Australia	Corporate Governance Principles and Recommendations: 3rd Edition	2014	English	Included
Austria	Austrian Code of Corporate Governance	2012	English	Included
Azerbaijan	Azerbaijan Corporate Governance Standards	2011	English	Included
Bahrain	Corporate Governance Code	2010	English	Included
Baltic States	Baltic Guidance on the Governance of Government-owned Enterprises	2010	English	Included
Bangladesh	Code of Corporate Governance for Bangladesh	2004	English	Included
Barbados	Corporate Governance Codes and Principles	2013	English	Included
Belgium	2009 Belgian Code on Corporate Governance	2009	English	Included
Bosnia and Herzegovina	Standards of Corporate Governance	2011	English	Included
Brazil	Code of Best Practice of Corporate Governance (4th Edition)	2009	English	Included
Bulgaria	Code for Corporate Governance	2012	English	Included
Canada	Corporate Governance Guideline	2013	English	Included
China	Provisional Code of Corporate Governance for Securities Companies	2004	English	Included

Colombia	Colombian Code of Corporate Governance for Closed Societies and Family Firms	2009	Spanish	Excluded
Croatia	Corporate Governance Code	2010	English	Included
Cyprus	Corporate Governance Code (3rd Edition Amended)	2012	English	Included
Czech Republic	Corporate Governance Code based on the OECD Principles	2004	English	Included
Denmark	Recommendations on Corporate Governance	2014	English	Included
Egypt	Code of Corporate Governance for Listed Companies	2011	Arabic	Excluded
Estonia	Corporate Governance Recommendations	2006	English	Included
Finland	Finnish Corporate Governance Code 2010	2010	English	Included
France	Corporate Governance Code of Listed Corporations	2013	English	Included
Georgia	Corporate Governance Code for Commercial Banks	2009	English	Included
Germany	German Code of Corporate Governance	2014	English	Included
Ghana	Corporate Governance Guidelines on Best Practices	2010	English	Included
Greece	Hellenic Corporate Governance Code	2013	English	Included
Guernsey	GFSC Finance Sector Code of Corporate Governance	2011	English	Included
Hong Kong	Consultation Conclusions on Review of the Corporate Governance Code and Associated Listing Rules	2011	English	Included
Hungary	Corporate Governance Recommendations	2012	English	Included
Iceland	Guidelines on Corporate Governance (4th Edition)	2012	English	Included
India	Corporate Governance Voluntary Guidelines 2009	2009	English	Included
Indonesia	Code for Good Corporate Governance	2007	English	Included
Ireland	Corporate Governance for Credit Institutions and Insurance Undertakings	2013	English	Included
Israel	Goshen Report	2006	English	Included

Italy	Corporate Governance Code	2014	English	Included
Jamaica	Code on Corporate Governance	2006	English	Included
Japan	Japan's Corporate Governance Code	2015	English	Included
Jordan	Jordanian Corporate Governance Code	2012	English	Included
Kazakhstan	Code on Corporate Governance	2007	English	Included
Kenya	Code of Corporate Governance Practices for Public Listed Companies in Kenya	2014	English	Included
Latvia	Principles of Corporate Governance and Recommendations on their Implementation	2010	English	Included
Lebanon	Corporate Governance Guidelines for Listed Companies	2010	English	Included
Lithuania	Corporate Governance Code for the Companies Listed on NASDAQ OMX Vilnius	2010	English	Included
Luxembourg	ALFI Code of Conduct for Luxembourg Investment Funds	2013	English	Included
Malawi	Code of Best Practice for Corporate Governance in Malawi	2010	English	Included
Malaysia	Code on Corporate Governance	2012	English	Included
Malta	Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes	2014	English	Included
Mauritius	Guideline on Corporate Governance	2012	English	Included
Mexico	Código de Mejores Prácticas Corporativas	2010	Spanish	Excluded
Moldova	Code of Corporate Governance	2007	English	Included
Mongolia	Corporate Governance Code of Mongolia	2007	English	Included
Montenegro	Corporate Governance Code in Montenegro	2009	English	Included
Morocco	Code Marocain de Bonnes Pratiques de Gouvernance des Etablissements et Entreprises Publics	2011	French	Included
Netherlands Antilles	Corporate Governance: Summary of Best Practice Guidelines	2006	English	Included

New Zealand	Corporate Governance in New Zealand: Principles and Guidelines - Handbook for Directors, Executives and Advisers	2004	English	Included
Nigeria	Code of Corporate Governance for Banks and Discount Houses	2014	English	Included
Norway	Norwegian Code of Practice for Corporate Governance	2014	English	Included
Oman	Code of Corporate Governance for Public Listed Companies	2002	English	Included
Pakistan	Public Sector Companies (Corporate Governance) Rules	2013	English	Included
Peru	Principles of Good Governance for Peruvian Companies	2002	English	Included
Poland	Code of Best Practice for WSE Listed Companies	2012	English	Included
Portugal	Código de Governo das sociedades	2014	Portuguese	Excluded
Qatar	Corporate Governance Code for Companies Listed in Markets Regulated by the Qatar Financial Markets Authority	2009	English	Included
Republic of Macdeonia	Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange	2006	English	Included
Republic of Maldives	Corporate Governance Code	2012	English	Included
Romania	Bucharest Stock Exchange Corporate Governance Code	2009	English	Included
Russia	Russian Code of Corporate Governance	2014	English	Included
Saudi Arabia	Corporate Governance Regulations in the Kingdom of Saudi Arabia	2010	English	Included
Serbia	Corporate Governance Code of the Belgrade Stock Exchange	2008	English	Included
Singapore	Code of Corporate Governance	2012	English	Included
Slovakia	Corporate Governance Code for Slovakia	2008	English	Included
Slovenia	Corporate Governance Code	2009	English	Included
South Africa	King Code of Governance for South Africa	2009	English	Included

South Korea	Code of Best Practice for Corporate Governance	2003	English	Included
Spain	Código de buen gobierno de las sociedades cotizadas	2015	English	Included
Sri Lanka	Best Practice on Corporate Governance	2008	English	Included
Sweden	Swedish Code of Corporate Governance	2010	English	Included
Switzerland	Swiss Code of Best Practice for Corporate Governance	2008	English	Included
Taiwan	Corporate Governance Best-Practice Principles for TSE/GTSM Listed Companies	2010	English	Included
Thailand	Principles of Good Corporate Governance For Listed Companies	2006	English	Included
The Netherlands	Dutch Corporate Governance Code	2008	English	Included
The Philippines	Revised Code of Corporate Governance	2009	English	Included
Trinidad and Tobago	Trinidad & Tobago Corporate Governance Code	2013	English	Included
Tunisia	Guide de Bonnes Pratiques de Gouvernance des Entreprises Tunisiennes	2008	English	Included
Turkey	Corporate Governance Principles	2005	English	Included
Ukraine	Ukrainian Corporate Governance Principles	2003	English	Included
United Arab Emirates	Corporate Governance Code for Small and Medium Enterprises Dubai	2011	English	Included
United Kingdom	The UK Corporate Governance Code	2012	English	Included
USA	Full CII Corporate Governance Policies	2013	English	Excluded
Yemen	Guidelines on Corporate Governance	2010	Arabic	Excluded

APPENDIX B LIST OF COUNTRIES WITH CORPORATE GOVERNANCE CODES IN 2001

Country	Name of Code	Year Released	Date Released	Type of definition for Independent Director
South Africa	Code of Corporate Practices & Conduct	1994	11/24/1994	Unclear
France	Recommendations on Corporate Governance	1998	6/9/1998	Un-American
Thailand	SET Code of Best Practice for Directors of Listed Companies	1998	1/19/1998	Un-American
India	Desirable Corporate Governance in India	1998	4/1/1998	No definition
Spain	Código de Buen Gobierno	1998	2/26/1998	No definition
Australia	Corporate Governance: A Guide for Investment Managers and Corporations	1999	1/7/1999	Un-American
South Korea	Code of Best Practices for Corporate Governance	1999	9/1/1999	Un-American
Hong Kong	Code of Best Practice	1999	2/1/1999	No definition
Ireland	Corporate Governance, Share Option and Other Incentive Schemes	1999	1/1/1999	No definition
Indonesia	Code for Good Corporate Governance	2000	3/1/2000	Un-American
Malaysia	Code on Corporate Governance	2000	3/1/2000	Un-American
The Philippines	ICD Code of Proper Practices for Directors	2000	3/30/2000	American
United Kingdom	The Combined Code	2000	5/15/2000	Unclear
Denmark	Guidelines on Good Management of a Listed Company	2000	2/29/2000	No definition
Germany	Corporate Governance Rules for German Quoted Companies	2000	1/1/2000	No definition
Romania	Corporate Governance in Code in Romania	2000	6/24/2000	No definition
Japan	Revised Corporate Governance Principles	2001	10/26/2001	American
Sweden	Corporate Governance Policy	2001	10/26/2001	American
China	Code of Corporate Governance for Listed Companies in China	2001	1/7/2001	Un-American
Czech Republic	Revised Corporate Governance Code based on the OECD Principles	2001	2/1/2001	Unclear
Greece	Principles of Corporate Governance	2001	7/24/2001	Un-American
Malta	Principles of Good Corporate Governance	2001	10/1/2001	Un-American

The Netherlands	SCGOP Handbook of Corporate Governance	2001	8/1/2001	Un-American
Singapore	Code of Corporate Governance	2001	3/21/2001	American

APPENDIX C LIST OF COUNTRIES WITH CORPORATE GOVERNANCE CODES IN 2005

Country	Name of Code	Year Released	Date Released	Type of definition for Independent Director
South Africa	Code of Corporate Practices & Conduct	1994	11/24/1994	Unclear
India	Desirable Corporate Governance in India	1998	4/1/1998	No definition
Ireland	Corporate Governance, Share Option and Other Incentive Schemes	1999	1/1/1999	No definition
Malaysia	Code on Corporate Governance	2000	3/1/2000	Un-American
Romania	Corporate Governance in Code in Romania	2000	6/24/2000	No definition
China	Code of Corporate Governance for Listed Companies in China	2001	1/7/2001	Un-American
Indonesia	Code for Good Corporate Governance	2001	4/1/2001	Un-American
Greece	Principles of Corporate Governance	2001	7/24/2001	Un-American
Sweden	Corporate Governance Policy	2001	10/26/2001	American
Hungary	Corporate Governance Recommendations	2002	2/1/2002	Un-American
Pakistan	Code of Corporate Governance	2002	3/28/2002	American
Russia	Russian Code of Corporate Conduct	2002	4/4/2002	American
Oman	Code of Corporate Governance for Public Listed Companies	2002	6/3/2002	American
Switzerland	Swiss Code of Best Practice for Corporate Governance	2002	6/25/2002	American
Italy	Corporate Governance Code	2002	7/1/2002	Un-American
Peru	Principles of Good Governance for Peruvian Companies	2002	7/1/2002	Un-American
Cyprus	Corporate Governance Code	2002	9/24/2002	Un-American
Thailand	Code of Best Practice for Directors of Listed Companies	2002	10/1/2002	Un-American
Taiwan	Taiwan Corporate Governance Best-Practice Principles	2002	N/A	No definition
The Philippines	Code of Corporate Governance	2002	N/A	American
Canada	Corporate Governance Guideline	2003	1/1/2003	American

Australia	Corporate Governance Principles and Recommendations: 1st Edition	2003	1/3/2003	Un-American
South Korea	Code of Best Practice for Corporate Governance	2003	2/1/2003	Un-American
Lithuania	Corporate Governance Code for the Companies Listed on the National Stock Exchange of Lithuania	2003	4/23/2003	Un-American
Ukraine	Ukrainian Corporate Governance Principles	2003	6/3/2003	Un-American
United Kingdom	The Combined Code	2003	7/23/2003	Un-American
France	Corporate Governance of Listed Corporations	2003	10/1/2003	Un-American
Nigeria	Code of Corporate Governance in Nigeria	2003	10/1/2003	American
Finland	Corporate Governance Recommendations for Listed Companies	2003	12/1/2003	Unclear
New Zealand	Corporate Governance in New Zealand: Principles and Guidelines	2004	2/16/2004	Un-American
Bangladesh	Code of Corporate Governance for Bangladesh	2004	3/1/2004	Unclear
Brazil	Code of Best Practice of Corporate Governance (3rd Edition)	2004	3/30/2004	American
Mauritius	Report on Corporate Governance for Mauritius	2004	4/1/2004	Un-American
Japan	Principles of Corporate Governance for Listed Companies	2004	4/16/2004	American
Czech Republic	Corporate Governance Code based on the OECD Principles	2004	6/1/2004	Un-American
Poland	Best Practices in Public Companies	2004	10/29/2004	Un-American
Hong Kong	Conclusions on Exposure of Draft Code on Corporate Governance Practices and Corporate Governance Report	2004	11/19/2004	Un-American
Spain	Principles of Good Corporate Governance	2004	12/1/2004	Un-American
Belgium	Corporate Governance Code	2004	12/9/2004	Un-American
The Netherlands	SCGOP Handbook of Corporate Governance	2004	N/A	Un-American
Turkey	Corporate Governance Principles	2005	2/1/2005	Unclear
Austria	Austrian Code of Corporate Governance	2005	2/22/2005	No definition
Germany	German Code of Corporate Governance	2005	6/2/2005	American
Singapore	Code of Corporate Governance	2005	7/14/2005	American

Denmark	Revised Recommendations on Corporate Governance	2005	8/15/2005	Un-American
Malta	Principles of Good Corporate Governance: Revised Code for Issuers of Listed Securities	2005	11/3/2005	Un-American
Norway	Norwegian Code of Practice for Corporate Governance	2005	12/8/2005	Unclear
Slovenia	Corporate Governance Code	2005	12/14/2005	Unclear
Latvia	Principles of Corporate Governance and Recommendations on their Implementation	2005	12/27/2005	Un-American
Iceland	Guidelines on Corporate Governance (2nd Edition)	2005	N/A	Unclear

APPENDIX D LIST OF COUNTRIES WITH CORPORATE GOVERNANCE CODES IN 2015

Country	Name of Code	Year Released	Date Released	Type of definition for Independent Director
Albania	Corporate Governance Code for Unlisted Joint-Stock Companies in Albania	2008	14/4/2008	Un-American
Algeria	Code Algerian de Gouvernance d'Enterprise	2010	N/A	Un-American
Argentina	Código de Mejores Prácticas de Gobierno de las Organizaciones para la República Argentina	2004	1/1/2004	Excluded
Armenia	Code of Corporate Governance of the Republic of Armenia	2010	30/12/2010	Un-American
Australia	Corporate Governance Principles and Recommendations: 3rd Edition	2014	16/4/2014	Un-American
Austria	Austrian Code of Corporate Governance	2012	1/7/2012	Unclear
Azerbaijan	Azerbaijan Corporate Governance Standards	2011	N/A	Un-American
Bahrain	Corporate Governance Code	2010	16/3/2010	Un-American
Baltic States	Baltic Guidance on the Governance of Government-owned Enterprises	2010	2/6/2010	Unclear
Bangladesh	Code of Corporate Governance for Bangladesh	2004	1/3/2004	Unclear
Barbados	Corporate Governance Codes and Principles	2013	1/2/2013	Un-American
Belgium	2009 Belgian Code on Corporate Governance	2009	12/3/2009	Un-American
Bosnia and Herzegovina	Standards of Corporate Governance	2011	31/10/2011	Un-American
Brazil	Code of Best Practice of Corporate Governance (4th Edition)	2009	1/9/2009	Un-American
Bulgaria	Code for Corporate Governance	2012	1/2/2012	No definition
Canada	Corporate Governance Guideline	2013	1/1/2013	American
China	Provisional Code of Corporate Governance for Securities Companies	2004	15/1/2004	Un-American
Colombia	Colombian Code of Corporate Governance for Closed Societies and Family Firms	2009	1/9/2009	Excluded
Croatia	Corporate Governance Code	2010	N/A	Un-American
Cyprus	Corporate Governance Code (3rd Edition Amended)	2012	13/9/2012	Un-American
Czech Republic	Corporate Governance Code based on the OECD Principles	2004	1/6/2004	Un-American
Denmark	Recommendations on Corporate Governance	2014	1/11/2014	Un-American

Egypt	Code of Corporate Governance for Listed Companies	2011	13/2/2011	Excluded
Estonia	Corporate Governance Recommendations	2006	1/1/2006	Un-American
Finland	Finnish Corporate Governance Code 2010	2010	15/6/2010	Unclear
France	Corporate Governance Code of Listed Corporations	2013	1/6/2013	Unclear
Georgia	Corporate Governance Code for Commercial Banks	2009	23/9/2009	Un-American
Germany	German Code of Corporate Governance	2014	24/6/2014	Un-American
Ghana	Corporate Governance Guidelines on Best Practices	2010	N/A	Unclear
Greece	Hellenic Corporate Governance Code	2013	1/10/2013	Un-American
Guernsey	GFSC Finance Sector Code of Corporate Governance	2011	30/9/2011	No definition
Hong Kong	Consultation Conclusions on Review of the Corporate Governance Code and Associated Listing Rules	2011	28/10/2011	Un-American
Hungary	Corporate Governance Recommendations	2012	12/11/2012	Un-American
Iceland	Guidelines on Corporate Governance (4th Edition)	2012	1/12/2012	Unclear
India	Corporate Governance Voluntary Guidelines 2009	2009	24/12/2009	No definition
Indonesia	Code for Good Corporate Governance	2007	1/1/2007	No definition
Ireland	Corporate Governance for Credit Institutions and Insurance Undertakings	2013	23/12/2013	Un-American
Israel	Goshen Report	2006	17/12/2006	No definition
Italy	Corporate Governance Code	2014	14/7/2014	Un-American
Jamaica	Code on Corporate Governance	2006	25/10/2006	Un-American
Japan	Japan's Corporate Governance Code	2015	5/3/2015	Un-American
Jordan	Jordanian Corporate Governance Code	2012	N/A	Unclear
Kazakhstan	Code on Corporate Governance	2007	26/7/2007	Unclear
Kenya	Code of Corporate Governance Practices for Public Listed Companies in Kenya	2014	19/5/2014	Un-American
Latvia	Principles of Corporate Governance and Recommendations on their Implementation	2010	1/5/2010	Un-American
Lebanon	Corporate Governance Guidelines for Listed Companies	2010	N/A	Unclear
Lithuania	Corporate Governance Code for the Companies Listed on NASDAQ OMX Vilnius	2010	1/1/2010	Un-American
Luxembourg	ALFI Code of Conduct for Luxembourg Investment Funds	2013	1/6/2013	No definition
Malawi	Code of Best Practice for Corporate Governance in Malawi	2010	1/6/2010	American

Malaysia	Code on Corporate Governance	2012	1/3/2012	No definition
Malta	Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes	2014	1/9/2014	No definition
Mauritius	Guideline on Corporate Governance	2012	2/8/2012	Unclear
Mexico	Código de Mejores Prácticas Corporativas	2010	N/A	Excluded
Moldova	Code of Corporate Governance	2007	1/6/2007	American
Mongolia	Corporate Governance Code of Mongolia	2007	N/A	Un-American
Montenegro	Corporate Governance Code in Montenegro	2009	13/5/2009	Un-American
Morocco	Code Marocain de Bonnes Pratiques de Gouvernance des Etablissements et Entreprises Publics	2011	2/2/2011	Un-American
Netherlands Antilles	Corporate Governance: Summary of Best Practice Guidelines	2006	1/11/2006	Unclear
New Zealand	Corporate Governance in New Zealand: Principles and Guidelines - Handbook for Directors, Executives and Advisers	2004	16/3/2004	Un-American
Nigeria	Code of Corporate Governance for Banks and Discount Houses	2014	16/5/2014	No definition
Norway	Norwegian Code of Practice for Corporate Governance	2014	30/10/2014	Unclear
Oman	Code of Corporate Governance for Public Listed Companies	2002	3/6/2002	American
Pakistan	Public Sector Companies (Corporate Governance) Rules	2013	8/3/2013	Unclear
Peru	Principles of Good Governance for Peruvian Companies	2002	1/7/2002	Un-American
Poland	Code of Best Practice for WSE Listed Companies	2012	21/11/2012	Un-American
Portugal	Código de Governo das sociedades	2014	1/1/2014	Excluded
Qatar	Corporate Governance Code for Companies Listed in Markets Regulated by the Qatar Financial Markets Authority	2009	27/1/2009	Un-American
Republic of Macedonia	Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange	2006	1/6/2006	No definition
Republic of Maldives	Corporate Governance Code	2012	12/2/2012	American
Romania	Bucharest Stock Exchange Corporate Governance Code	2009	22/1/2009	Un-American
Russia	Russian Code of Corporate Governance	2014	18/4/2014	Un-American
Saudi Arabia	Corporate Governance Regulations in the Kingdom of Saudi Arabia	2010	16/3/2010	Un-American

Serbia	Corporate Governance Code of the Belgrade Stock Exchange	2008	9/7/2008	No definition
Singapore	Code of Corporate Governance	2012	2/5/2012	Un-American
Slovakia	Corporate Governance Code for Slovakia	2008	1/1/2008	Un-American
Slovenia	Corporate Governance Code	2009	8/12/2009	Un-American
South Africa	King Code of Governance for South Africa	2009	1/9/2009	Unclear
South Korea	Code of Best Practice for Corporate Governance	2003	1/2/2003	Un-American
Spain	Código de buen gobierno de las sociedades cotizadas	2015	1/2/2015	No definition
Sri Lanka	Best Practice on Corporate Governance	2008	1/7/2008	Unclear
Sweden	Swedish Code of Corporate Governance	2010	1/1/2010	Unclear
Switzerland	Swiss Code of Best Practice for Corporate Governance	2008	21/2/2008	American
Taiwan	Corporate Governance Best-Practice Principles for TSE/GTSM Listed Companies	2010	1/12/2010	Un-American
Thailand	Principles of Good Corporate Governance For Listed Companies	2006	1/3/2006	American
The Netherlands	Dutch Corporate Governance Code	2008	10/12/2008	Un-American
The Philippines	Revised Code of Corporate Governance	2009	15/7/2009	Unclear
Trinidad and Tobago	Trinidad & Tobago Corporate Governance Code	2013	26/11/2013	Un-American
Tunisia	Guide de Bonnes Pratiques de Gouvernance des Entreprises Tunisiennes	2008	25/6/2008	Un-American
Turkey	Corporate Governance Principles	2005	1/2/2005	Unclear
Ukraine	Ukrainian Corporate Governance Principles	2003	3/6/2003	Un-American
United Arab Emirates	Corporate Governance Code for Small and Medium Enterprises Dubai	2011	1/9/2011	No definition
United Kingdom	The UK Corporate Governance Code	2012	28/9/2012	Un-American
Yemen	Guidelines on Corporate Governance	2010	29/3/2010	Excluded