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Limited Shareholder Inspection Rights in Singapore: Worrying Legal Gap or Unnecessary for Rankings?

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We are grateful for funding from NUS Law and the NUS Law Centre for Asian Legal Studies (CALS) that supported this research. This paper also significantly benefited from the feedback received at the Asia Conference for Shareholder Inspection Rights: A Comparative Perspective (Jun. 4, 2021). In particular, we would like to thank Tim Bowley, David C. Donald, Gen Goto, Jennifer G. Hill, Robin H. Huang, Neha Joshi, Kon Sik Kim, Randall Thomas, and Umakanth Varottil for their comments on earlier drafts. Finally, we are grateful to Jordan Ng and Su-Jane Yeoh for their exceptional research assistance. Any errors remain our own.

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Abstract

Singapore's formal corporate law and governance rules normally meet or exceed global standards – which explains why it regularly tops prominent Asian and global rankings for good corporate governance. As such, Singapore's outlier status, as the only leading economy in Asia that does not provide a specific mechanism for shareholders to access corporate information, is puzzling.

In this Article we aim to solve this puzzle by offering two explanations that appear to make sense out of Singapore's outlier status as having an unusually restrictive shareholder inspection rights regime. The first, demand-side, explanation is that Singapore's controlling shareholder-dominated landscape generates little demand for greater shareholder information rights. The second, supply-side, explanation rests on two elements. First, as the government is indirectly the largest controlling shareholder in Singapore, it may not have an incentive to expand inspection rights to allow shareholders greater access to the information of its government-controlled companies. Second, and most importantly, shareholder information rights have yet to become established as a significant indicium of "good corporate governance" by globally influential actors. As such, for now, the Singapore government has not needed to supply the formal law to send a signal of good corporate governance by meeting a prominent global standard for inspection rights, because such a standard does not yet exist.

Viewed through the lens of our supply-side and demand-side explanations, in the context of Singapore's unique corporate governance model, its restrictive shareholder inspection rights regime makes sense. Given the success of Singapore's state and family controlling shareholder dominated system of corporate governance, its lack of shareholder inspection rights does not seem to have resulted in any serious corporate governance maladies. However, there are some signs that Singapore's model of corporate governance may gradually be changing – and that the international interest in inspection rights is increasing – which may portend a greater need for a more facilitative inspection rights regime in the future.

Keywords: Singapore company law, corporate governance, inspection rights, controlling shareholders, family firms, state owned enterprises

JEL Classifications: K22

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LIMITED SHAREHOLDER INSPECTION RIGHTS IN SINGAPORE WORRYING LEGAL GAP OR UNNECESSARY FOR RANKINGS?

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ABSTRACT

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INTRODUCTION

Singapore excels in rankings. It has ranked first, or near the top, on the most prominent index that measures good corporate governance in Asia for over a decade.[1] It has ranked first (numerous times), out of close to 200 countries, in the World Bank's prominent Doing Business Report, which has served as a key platform for the American-driven dissemination of global norms of good corporate governance.[2] Temasek, the unlisted private holding company of Singapore's lauded state-owned enterprises, received the highest possible ranking by the Linaburg-Maduell Transparency Index for sovereign wealth funds.[3] In one of comparative corporate law's most cited empirical studies, *The Law and Economics of Self-Dealing*,[4] Singapore was the only country, out of the 72 countries ranked, to receive a perfect score on its Anti-Self-Dealing Index – which was

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[1] Singapore topped the Asian Corporate Governance Association's rankings of good corporate governance in 2012, 2010, 2005, 2004, and 2003. Since 2003, Singapore has consistently been among the top three jurisdictions. *See* the 2003-2020 editions of Asian Corporate Governance Association, *CG Watch*, https://www.acga-asia.org/cgwatch.php.

[2] From 2007-2016, Singapore was ranked first and has always been ranked in the top three positions: *See* the 2004-2020 editions of World Bank Group, DOING BUSINESS, https://www.doingbusiness.org/en/doingbusiness. *See* Dan W. Puchniak & Umakanth Varottil, *Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm*, 17 BERKELEY BUS. L.J. 1, at 4 (2020): "The World Bank's influential Doing Business Report (DBR) has been a key platform for the American-driven dissemination of global norms of good corporate governance. The DBR sets global standards for good corporate governance and motivates jurisdictions to adopt them by publicizing yearly rankings of jurisdictional compliance with these norms."

[3] Isabel Sim et al., *The State as Shareholder: The Case of Singapore*, at 17 (June 2014), https://www.cimaglobal.com/Documents/Our%20locations%20docs/Malaysia/Centre%20of%20Excellence/NUS%20-%20The%20State%20as%20Shareholder%20-%20compressed.pdf.

[4] Simeon Djankov et al., *The Law and Economics of Self-Dealing*, 88 J. FIN. ECON. 430 (2008).

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the foundation for the article's conclusion that effective private shareholder enforcement in listed companies was the key to good corporate governance.[5]

And yet, as one of us has examined elsewhere, despite Singapore's world leading ranking for private shareholder enforcement in listed companies, there has never been a successful lawsuit brought by a shareholder against a director of a listed company in the history of Singapore.[6] Similarly, as one of us has examined elsewhere, Singapore appeared to rank at the top of Asia for its "independent" boards, but its ranking was the product of a definition for "independence" that did not require independence from controlling shareholders – an aberration from the norm for jurisdictions dominated by controlling shareholders.[7] Most recently, as both of us have examined elsewhere, Singapore has adopted a stewardship code for institutional investors, which looks strikingly like the UK's stewardship code, but upon closer examination requires institutional investors to do nothing at all.[8]

The theme that runs through this prior research is that Singapore is extremely adept, when it comes to corporate law and governance, at ensuring its formal law meets or exceeds the important global norms of good corporate governance – which have increasingly been recognized as playing a prominent role in shaping the evolution of corporate law around the world (and, particularly, in Asia).[9] A complimentary theme is that despite Singapore's formal compliance with global norms of good corporate governance, [10] Singapore's corporate law and governance often functions differently in practice. However, ultimately, to investors this gap between Singapore's formal and functional corporate law and governance does not matter much because Singapore's system of corporate governance functions well in practice.[11] In the end, Singapore's high rankings are normally justified, but often for different reasons than the international rankings – which are based mostly on formal law – suggest.

Against this backdrop, at first blush, Singapore's formal law regarding shareholder inspection rights presents a bit of a puzzle. With specific and limited exceptions, Singapore corporate law offers no legal mechanism for shareholders to obtain direct access to or inspect the company's books and records generally. Despite a vaunted electronic register system that makes specific information easily accessible to the public, shareholders of Singapore-incorporated companies generally have limited access to

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5 Puchniak & Varottil, *supra* note 2, at 39; To see how influential *The Law and Economics of Self-Dealing* has been, *see* Puchniak & Varottil, *supra* note 2, at 10; Jeffrey Gordon, *Convergence and Persistence in Corporate Law and Governance*, *in* THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE, at 34 (Jeffrey Gordon & Wolf-Georg Ringe eds., 2018).

6 Puchniak & Varottil, *supra* note 2, at 13-14, 39. See also, Samantha S. Tang, *The Anatomy of Singapore's Statutory Derivative Action: Why Do Shareholders Sue – Or Not?*, 20 J. CORP. L. STUD. 327, at 344 –347 (2020).

7 Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265 (2017).

8 Dan W. Puchniak & Samantha S. Tang, *Singapore's Puzzling Embrace of Shareholder Stewardship: A Successful Secret*, 53 VAND. J. TRANSNAT'L L. 989 (2020).

9 Gordon, *supra* note 5, at 34; Mariana Pargendler, *The Rise of International Corporate Law*, at 9-11 (ECGI Law Working Paper No 555/2020, 2020), https://ssrn.com/abstract=3728650.

10 "Halo signalling" refers to the "strategic adoption of regulation to attract foreign investment notwithstanding the apparent practical irrelevance of such regulation to the jurisdiction's corporate environment": Puchniak & Tang, *supra* note 8, at 1004-1005. *See* Puchniak & Lan, *supra* note 7, at 272, 288-290, 332.

11 Puchniak & Lan, *supra* note 7; Puchniak & Tang, *supra* note 8.

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corporate information. Listing rules create no right or even possibility for shareholders of listed companies to inspect their books and records, nor does company law do so for companies more generally. Attempts at developing specific mechanisms for shareholders to gain greater access to corporate information through case law and law reform have also failed, but with little uproar or comment. Unlike Australia and Hong Kong, which regularly compete with Singapore to top Asian corporate governance rankings, Singapore has silently and consistently failed to provide a specific mechanism for shareholders to gain greater access to corporate information. Indeed, this makes Singapore an outlier among Asia's other leading economies as they all provide a specific mechanism for shareholders to gain greater access to corporate information – uncharacteristically leaving Singapore trailing in Asia on a measure of corporate governance.[12]

We offer two explanations that appear to make sense out of Singapore's failure to provide a specific mechanism for shareholders to gain greater access to corporate information, resulting in its restrictive shareholder inspection rights regime. The first, demand-side, explanation is that Singapore's controlling shareholder-dominated landscape generates little demand for greater shareholder information rights. In Singapore's controlling shareholder dominated listed companies, controlling shareholders can normally use their formal legal rights and informal tactics to access whatever information they require. With a dearth of institutional investors and absence of proxy advisory firms, minority shareholders in Singapore remain a dispersed and enervated group, hobbled by collective-action problems, with a limited voice. Further, based on the way that Singapore's shareholders remedies regime has developed, minority shareholders in listed companies would have little use for information gained from more vigorous inspection rights in shareholder litigation – which dampens a source of demand that exists in some other jurisdictions.

The second, supply-side, explanation rests on two elements that may provide reasons for why Singapore has not followed the other leading jurisdictions in Asia to provide a specific mechanism for shareholders to gain greater access to corporate information. First, as the government, through its holding company Temasek, is the largest controlling shareholder in Singapore, it may not have an incentive to expand inspection rights to allow shareholders greater access to the information of its Government Linked Companies (GLCs). However, our analysis suggests that this factor may be a red herring as the Singapore government has a history of voluntarily going beyond its formal legal obligations to provide access to information regarding its management of GLCs and has specifically limited its shareholder rights to ensure that GLCs are effectively governed. Second, and most importantly, shareholder information rights have yet to become established as a significant indicium of "good corporate governance" by globally-

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[12] David C. Donald, *Over-Disclosure in Hong Kong? The Role of Shareholder Inspection Rights in a Competitive IFC*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, Part II.C [10-11] (Randall Thomas et al., 2021); Umakanth Varottil & Neha Joshi, *Shareholder Inspection Rights in India: Restricted Scope And Diminished Effect*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, Part B.1 [p.6-7] (Randall Thomas et al., 2021); Robin H. Huang, *Shareholder Inspection Rights in China: Law and Practice*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, Part I.B [p.4] (Randall Thomas et al., 2021); Gen Goto, *Shareholder Inspection Rights in Japan*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, at 3 (Randall Thomas et al., 2021); Kon Sik Kim, *Shareholder Inspection Rights in Korea: Law and Practice from a Comparative Perspective*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, Part III [p.4] (Randall Thomas et al., 2021).

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influential actors. As such, for now, the Singapore government has not needed to supply the formal law to send a signal of good corporate governance by meeting a prominent global standard for inspection rights, because such a standard does not yet exist.[13]

Viewed through the lens of our supply-side and demand-side explanations, in the context of Singapore's unique corporate governance model, its restrictive shareholder inspection rights regime makes sense. Given the success of Singapore's state and family controlling shareholder dominated system of corporate governance, its lack of shareholder inspection rights does not seem to have resulted in any serious corporate governance maladies. However, there are some signs that Singapore's model of corporate governance may gradually be changing – and that the international interest in inspection rights is increasing – which may portend a greater need for a more facilitative inspection rights regime in the future.

The remainder of this Chapter proceeds as follows. In Part II, we set out the legal mechanisms through which shareholders may obtain access to corporate information in Singapore and demonstrate, based on a comparative analysis, that shareholder inspection rights in Singapore are restrictive and fail to offer a specific mechanism for shareholders to gain greater access to corporate information – which has become the norm in Asia's leading economies. In Part III, we offer explanations for the curious absence of inspection rights in Singapore based on our supply-side and demand-side explanations. In Part IV, we conclude with an analysis of why Singapore's restrictive inspection rights regime does not appear to have caused problems in the past, but may face pressures to change in the future.

SHAREHOLDER ACCESS TO CORPORATE INFORMATION IN SINGAPORE

In this Part, we first explore legal rights and mechanisms that shareholders can employ to obtain corporate information under Singapore's Companies Act, and the Singapore Exchange (SGX) Listing Rules. We conclude that, at first blush, Singapore's shareholder information rights regime seems to broadly resemble the two other leading Anglo-Commonwealth jurisdictions in its region, namely, Australia and Hong Kong. However, there are two key differences. First, Singapore has no legal mechanism, statutory or otherwise, for shareholders to inspect a company's books and records before commencing legal proceedings as a matter of corporate law. While pre-action disclosure is available as a matter of civil procedure, such proceedings are subject to strict requirements. Second, Singapore's information rights regime restricts publicly available information on a class of state-owned private companies. Given these differences, Singapore's information rights regime is significantly more restrictive than Australia's and Hong Kong's. It also stands out among all other leading Asian economies – common law and civil law – in not having a specific mechanism for shareholders to gain greater access to corporate information.[14]

We round off this Part by investigating an abortive attempt at introducing functional substitutes for the lack of a specific mechanism for shareholders to gain greater access to corporate information in Singapore's company and securities law. *Ezion Holdings Ltd v*

[13] *See infra* Part III.
[14] *See supra* note 12.

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Teras Cargo Transport Pte Ltd[15] ("*Ezion*") is an instructive example of how minority shareholders seeking financial information are hobbled by the absence of a specific mechanism for shareholders to gain greater access to corporate information. It also demonstrates why Singapore's pre-action disclosure regime may not be suitable as a functional substitute for this dearth in the law. It remains the only reported decision that specifically addresses a shareholder's right to inspect books and records. We end by briefly surveying attempts by law reformers to expand shareholder's information rights – which thus far have not resulted in any substantive expansion.

A. Shareholder Information Rights

Members of the public – including shareholders – have the right to inspect registers maintained by the company, including the register of members;[16] register of directors, Chief Executive Officers (CEO), secretaries and auditors;[17] register of the directors' and CEO's shareholdings;[18] register of substantial shareholders;[19] and register of charges.[20] The information available on many of the company's registers, together with various company filings, can be accessed by the public on ACRA's Bizfile online portal for a small fee.[21] Companies are required to update information lodged with ACRA at the end of every financial year in the form of an annual return; non-compliance results in criminal liability for the company and its officers.[22] ACRA, as well as any creditor or member of the company, may apply to court to have the company rectify any statutory non-compliance.[23]

A company[24] must provide a copy of its financial statements,[25] directors'

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15 [2016] SGHC 175, [2016] 5 SLR 226.

16 Companies Act (2006 Rev Ed Sing), ss 12(2)(d) (private company); 192(2) (public company).

17 Companies Act (2006 Rev Ed Sing), ss 12(2)(c), 173(1).

18 Companies Act (2006 Rev Ed Sing), s 164. Directors and officers are obliged to notify the company where they hold shares in the company or its subsidiaries, and changes to such interests; Companies Act (2006 Rev Ed Sing), s 165 (unlisted companies); Securities and Futures Act (2006 Rev Ed Sing), s 133 (listed companies).

19 Companies Act (2006 Rev Ed Sing), s 88.

20 Companies Act (2006 Rev Ed Sing), s 138.

21 Companies Act (2006 Rev Ed Sing), s 12 (public access to specified company information kept by ACRA). *See, e.g.*, Accounting and Corporate Regulatory Authority, *Business Profile*, BIZFILE (Mar. 6, 2020), https://www.tis.bizfile.gov.sg/ngbtisinternet/faces/oracle/webcenter/portalapp/pages/staticpages/BusinessProfile_Static.jspx [https://perma.cc/HB4U-PRGK]. Information provided through BizFile may contain personal details that are not required under the Companies Act (*e.g.*, directors' residential addresses). *See, e.g.*, Accounting and Corporate Regulatory Authority, *Business Profile (Company) of Stewardship Asia Centre CLG Limited (201708522Z)* (Apr. 9, 2019) (on file with author).

22 Companies Act (2006 Rev Ed Sing), s 197, read with Companies (Filing of Documents) Regulations (2005 Rev Ed Sing), reg 36.

23 Companies Act (2006 Rev Ed Sing), s 13.

24 Some companies may be exempt from these requirements: *see, e.g.*, Companies Act (2006 Rev Ed Sing), ss 201A (certain dormant companies exempt from duty to prepare financial statements); 205A, 205B, 205C (companies exempt from audit requirements).

25 Companies Act (2006 Rev Ed Sing), ss 201(1), (2).

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statement,[26] and auditor reports,[27] to its members at least 14 days before an Annual General Meeting (AGM).[28] Non-compliance with statutory reporting requirements is a criminal offence.[29] Specific types of transactions may require the company and its controllers to disclose additional information to shareholders. For example, a company is not permitted to issue a loan, credit transaction, or a related arrangement to a director or a director of a related company,[30] without the prior approval of the shareholders in a general meeting. The amount and extent of the transaction must be disclosed to the shareholders.[31] Where the prior approval of the shareholders is not sought, but the transaction is authorised by the company's directors, the transaction must be repaid or discharged within 6 months of the next annual general meeting.[32] Non-compliance with these requirements results in criminal liability for the directors.[33]

SGX-listed companies must comply with additional requirements under the SGX Listing Rules. Such companies must issue their annual report at least 14 days before the AGM to their shareholders and SGX;[34] the report will be publicly available on SGX's website.[35] The annual report "must contain enough information for a proper understanding of the performance and financial conditions of the issuer and its principal subsidiaries"[36] and usually contains,[37] *inter alia*, audited financial statements,[38] corporate governance report,[39] chairman's (or directors') statement,[40] and auditor's report.[41] As of 2016, SGX-listed companies must also issue an annual sustainability report; compliance with the sustainability reporting requirements provided in the SGX Listing Rules is on a 'comply or explain' basis.[42]

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[26] Companies Act (2006 Rev Ed Sing), ss 201(16), read with the Twelfth Schedule (Contents of directors' statement).

[27] Companies Act (2006 Rev Ed Sing), s 207.

[28] Companies Act (2006 Rev Ed Sing), s 203(1).

[29] Both the company and its officers are liable: *see, e.g.*, Companies Act (2006 Rev Ed Sing), ss 201(6) (financial statements), 203(7) (reports to be made available to members); 204 (director subject to fine not exceeding S$50,000 for failure to lay financial statements etc. before general meeting).

[30] The scope of this provision extends to the director's spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter: Companies Act (2006 Rev Ed Sing), s 162(8).

[31] Companies Act (2006 Rev Ed Sing), s 162(4)(a).

[32] Companies Act (2006 Rev Ed Sing), s 162(4)(b). The directors authorizing the transaction will be jointly and severally liable to indemnify the company from any resulting loss: s 162(5).

[33] Companies Act (2006 Rev Ed Sing), s 162(6).

[34] SGX Mainboard Listing Rules, rule 707(2).

[35] SGX, *Annual Reports & Related Documents*, https://www.sgx.com/securities/annual-reports-related-documents [https://perma.cc/9MDD-ZTBR].

[36] SGX Mainboard Listing Rules, rule 1207.

[37] For a practical summary, see Securities Investors Association (Singapore) & RSM Ethos, *Understanding Annual Reports* (Jan. 2014), https://sias.org.sg/wp-content/uploads/pdf/Understanding_Annual_Reports_Handbook.pdf [https://perma.cc/UP3G-43ZZ].

[38] SGX Mainboard Listing Rules, rules 709A, 711, 1207(5).

[39] SGX Mainboard Listing Rules, rule 710 (describing compliance with the Code of Corporate Governance on a 'comply or explain' basis).

[40] SGX Mainboard Listing Rules, rule 708.

[41] SGX Mainboard Listing Rules, rule 1207(5).

[42] SGX Mainboard Listing Rules, rules 711A and 711B. The sustainability report may be part of the annual report, or issued as a standalone report: SGX & NUS Business School, *Sustainability Reporting – Progress and Challenges*, at 5 (Dec. 2019), https://api2.sgx.com/sites/default/files/2019-12/Sustainability%20Reporting%20-%20Progress%20and%20Challenges.pdf

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SGX-listed companies are also required to promptly disclose all material information that could significantly change share prices.[43] Immediate announcements must be made to the public through SGX for specific information.[44] SGX may request the company to provide further details on announcements.[45] Given that the disclosure requirements under the SGX Listing Rules require listed companies to make timely disclosures of important information to all shareholders, shareholder inspection rights may be less important for listed companies.

However, shareholders of private companies cannot avail themselves of the relatively stronger disclosure requirements in the SGX-Listing Rules. Given that shareholder information rights are limited, shareholders may place themselves in a more advantageous position by taking up directorships. Directors have comparatively broader information rights; most importantly, directors have access to all accounting and financial records of the company, including the company's unaudited accounts.[46] Directors have an "almost presumptive right" to inspect the financial records of the company because such information is crucial for discharging their duties to the company. If the company's resists the director's application to inspect, the company bears the burden of proving that the "director intends to use the right to inspect for purposes that are largely unconnected to the discharge of the director's duties".[47] While there is some judicial doubt that shareholder-directors should be permitted to exercise inspection rights *qua* director to obtain information to support a claim in shareholder oppression,[48] or to obtain a better valuation for the shareholder-director's shares,[49] it is difficult in practice for companies to successfully resist a director's application for inspection.[50]

By contrast, shareholders only have access to audited accounts that are presented to them at the AGM – and virtually no way to compel the company to produce such accounts if the company decides to breach its statutory obligations and refuse to hold AGMs.[51] The disparity between inspection rights for directors and shareholders makes it important

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[https://perma.cc/3AAY-GKBA]. The 'comply and explain' approach employed here obliges a company to state any failure to report on any primary component stated in rule 711B, and to give reasons for doing so: SGX Mainboard Listing Rules, Practice Note 7.6: Sustainability Reporting Guide, paragraph 3.2. See also SGX Mainboard Listing Rules, Practice Note 7.6: Sustainability Reporting Guide.

43 SGX Mainboard Listing Rules, rule 703.

44 *See* generally SGX Mainboard Listing Rules, rules 703 and 704

45 *See, e.g.*, HC Surgical Specialists, *Response to Straits Times Article of 10 April 2020* (Apr. 11, 2020), https://links.sgx.com/FileOpen/HCSS-Response%20to%20Straits%20Times%20Article.ashx?App=Announcement&FileID=606090 [https://perma.cc/4VER-KBVN].

46 Companies Act (2006 Rev Ed Sing), s 199. This extends to *de facto* directors: Cheng Tim Jin v Alvamar Capital Pte Ltd [2019] SGHC 220.

47 Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd [2018] SGCA 57, [2018] 2 SLR 1054, [25].

48 Suying Design Pte Ltd v Ng Kian Huan Edmund [2020] SGCA 46, [2020] 2 SLR 221, [125].

49 Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd [2011] SGHC 97, [2011] 3 SLR 1128, [41].

50 *See, e.g.*, Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd [2018] SGCA 57, [2018] 2 SLR 1054; Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd [2011] SGHC 97, [2011] 3 SLR 1128.

51 Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd [2016] SGHC 175, [2016] 5 SLR 226, [20]–[21], [31]. *See infra* Part II.C.

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– if not imperative – for shareholders to obtain directorships where possible.[52]

B. Exempt Private Companies and GLCs: A Privacy Shield for State-Owned Enterprises?

Disclosure requirements are reduced for a specific class of companies called "exempt private companies" under the Companies Act. The statutory definition of a "exempt private company" (EPC) expressly includes state-owned private companies that are wholly state-owned and gazetted as exempt private companies by the Singapore government.[53] The EPC regime effectively allows state-owned companies classified as such to avoid disclosing corporate information that would otherwise be publicly accessible.

Temasek Holdings, one of Singapore's state-linked shareholders, offers a useful example of how EPC status can limit public scrutiny of corporate information. As an EPC, Temasek is not required to file their annual returns, statement of directors, financial statements, and auditors' reports with ACRA.[54] Temasek's EPC status also means that it can decline to make copies of documents filed with ACRA and its register of members available to the public, but not its register of directors and officers.[55] The public therefore does not have a legal right to almost any meaningful information about Temasek. However, despite Temasek's legal status as an EPC, it has issued the Temasek Charter which provides a clear set of principles outlining its corporate governance and shareholder stewardship practices.[56] More importantly, annually, Temasek voluntarily discloses a considerable amount of information about its financial performance, corporate governance, and stewardship activities in the Temasek Review.[57] Given that the Ministry of Finance is the sole shareholder of Temasek, shareholder inspection rights are not at issue in Temasek.

However, shareholder inspection rights are an important issue for minority shareholders in "Government Linked Companies", which are companies listed on the

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[52] Brenda Hannigan, *Shareholder Inspection Rights in the UK*, *in* SHAREHOLDER INSPECTION RIGHTS: A COMPARATIVE PERSPECTIVE, Part II [4] (Randall Thomas et al., 2021):

> This level of access to the company's records is one of the reasons why, in small private companies in particular, it is important for a minority shareholder to secure, if possible, a place on the board. The loss of access to this information is why removal from office in these companies is particularly significant, quite apart from the loss of status and remuneration.

[53] Companies Act (2006 Rev Ed Sing), s 4 (" "exempt private company" means —

> (a) a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or
> (b) any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be an exempt private company;").

[54] Companies Act (2006 Rev Ed Sing), ss 197(1), (2) read with Companies (Filing of Documents) Regulations, regulation 36(c)(i) (solvent exempt private companies do not need to file financial statements with ACRA).

[55] Companies Act (2006 Rev Ed Sing), ss 12 (2A) & (2B).

[56] Puchniak & Lan, *supra* note 7, at 308-309.

[57] *See* Temasek, *Temasek Review*, https://www.temasek.com.sg/en/our-financials/library/temasek-review; Puchniak & Lan, *supra* note 7, at 309.

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SGX, in which Temasek is the controlling shareholder.[58] As a majority of Singapore's largest listed companies are GLCs, which account for almost 37% of the capitalization of the SGX, the Singapore government, through Temasek, is Singapore's largest controlling shareholder.[59] At first blush, this may suggest that the government has little incentive to expand inspection rights because as a controlling shareholder they can use their formal and informal power to gain access to any information they require in GLCs. A more skeptical view may be that as a controlling shareholder, Temasek – and, in turn, the Singapore government – may also have an incentive to limit the inspection rights of minority shareholders as this would allow them to extract private benefits of control more easily from the minority shareholders in GLCs. However, as we explain in detail below, there is little evidence to support this skepticism. In fact, historical evidence suggests that the government's indirect role as Singapore's largest controlling shareholder may, somewhat counterintuitively, be a force which may cause Singapore to expand its shareholder inspection rights in the future.

C. Litigation

Shareholders may obtain information about the company through litigation. Causes of action available to shareholders of Singapore-incorporated companies include the statutory derivative action,[60] oppression remedy,[61] challenges against shareholder resolutions for procedural irregularities,[62] applications to enforce the corporate constitution,[63] statutory injunctions[64] and just and equitable winding up petitions.[65] Representative proceedings may be brought under the Rules of Court, which allows one or more persons to represent a group of persons with the "same interest in any proceedings" in bringing an action or defending a claim.[66] Cases involving representative proceedings in Singapore are rare, and none to date have involved shareholders.[67] It bears repeating

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58 Tan Cheng Han et al., *State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform*, 28 COLUM. J. ASIAN L. 61 (2015); Sim et al., *supra* note 3, at 23-24.

59 Sim et al., *supra* note 3, at 6.

60 Companies Act (2006 Rev Ed Sing), ss 216A –216B. Leave applications to bring a statutory derivative action are generally rare: Tang, *supra* note 6, at 328.

61 Companies Act (2006 Rev Ed Sing), s 216. The overwhelming majority of cases for ss 216 and 216A are brought in respect of closely-held, private companies. Based on a hand-collected dataset on all written judgements issued for shareholder remedies in Singapore maintained by one of the authors from 1987 to 2020, 79 are on the oppression remedy, and 36 on leave applications for the statutory derivative action. Out of these cases, only 2 oppression claims and 2 leave applications did not involve a private limited company.

62 Companies Act (2006 Rev Ed Sing), s 392.

63 Companies Act (2006 Rev Ed Sing), s 39; *cf.* Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd [2016] SGHC 19, [2016] 2 SLR 366, [40]–[47].

64 Companies Act (2006 Rev Ed Sing), s 409A. *See* Oro Negro Drilling Pte Ltd v Integradora de Servicios Petroleros Oro Negro, SAPI de CV [2019] SGHC 35, [112] ("It is unusual for a corporate applicant (as in this case) to apply for an injunction founded on s 409A of the Companies Act. A corporate applicant can just as well apply for an injunction in equity as an injunction is an equitable remedy."), [142] (absence of Court of Appeal authority interpreting this provision).

65 Insolvency, Restructuring and Dissolution Act 2018, ss 125(1)(i), (3).

66 Rules of Court (2014 Rev Ed Sing), Order 15, rule 12(1).

67 Representative proceedings tend to involve members of country clubs. *See, e.g.*, Tan Chin Seng v Raffles Town Club (No 2) [2003] SGCA 27, [2003] 3 SLR 307; Koh Chong Chiah v Treasure Resort Pte Ltd [2013] SGCA 52, [2013] 4 SLR 1204.

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that unlike Australia[68] and Hong Kong,[69] Singapore does not have a legal mechanism, statutory or otherwise, for shareholders to inspect the company's books and records generally.

For completeness, we briefly consider a shareholder's options for obtaining corporate information through Singapore's civil procedure regime. Pre-action discovery[70] and pre-action interrogatories[71] (collectively "pre-action disclosure") are available subject to strict requirements. Following commencement of litigation, information may be obtained through: (1) an application for further and better particulars at the pleadings stage;[72] (2) discovery;[73] (3) interrogatories;[74] and (4) the trial itself. Search orders (i.e., *Anton Piller* orders) may be granted in exceptional circumstances.[75] Documents obtained pursuant to discovery and search orders[76] are subject to the plaintiff giving an implied undertaking to the court "to use the documents disclosed to him only for the proper purposes of conducting his own case, and … not to use them for any collateral or ulterior purpose".[77] This makes it extremely difficult for a shareholder-plaintiff to use corporate documents obtained through one set of proceedings to institute other legal proceedings against other directors or shareholders.[78]

As a strategy for obtaining corporate information, shareholder litigation in Singapore has obvious disadvantages. Most importantly, litigation is expensive. Apportionment of costs by Singapore courts generally takes the form of "costs follow the event":[79] the loser pays for both their own expenses and (some of) the winner's.[80] The prospect of an

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68 Corporations Act 2001, s 247A.

69 Companies Ordinance 2014, s 740.

70 Rules of Court (2014 Rev Ed Sing), Order 24, rule 6(1). The applicant may be required to furnish security for costs, making this an expensive option: Order 24, rule 6(6). *See* ED&F Man Capital Markets Limited v Straits (Singapore) Pte Ltd [2020] SGCA 64, [2020] 2 SLR 695, [32]–[36].

71 Rules of Court (2014 Rev Ed Sing), Order 26A. The applicant may be required to furnish security for costs: Order 26A, rule 3.

72 Rules of Court (2014 Rev Ed Sing), Order 18, rule 12(3).

73 *See* generally Rules of Court (2014 Rev Ed Sing), Order 24; SINGAPORE CIVIL PROCEDURE 2020, at paras 24/0/2–24/19/3 (Chua Lee Meng & Paul Quan eds., 2019).

74 *See* generally Rules of Court (2014 Rev Ed Sing), Order 26; SINGAPORE CIVIL PROCEDURE 2020, at para 26/0/2 (Chua Lee Meng & Paul Quan eds., 2019).

75 Rules of Court (2014 Rev Ed Sing), Order 29, rule 2. *See* SINGAPORE CIVIL PROCEDURE 2020, at para 29/8A/3 (Chua Lee Meng & Paul Quan eds., 2019); Fong Wai Lyn Carolyn v Airtrust [2011] SGHC 88, [2011] 3 SLR 980, [86] (search order initially granted in conjunction with leave application to bring statutory derivative action set aside by High Court).

76 In practice, the party executing a search order is usually required to furnish an express undertaking to the court to the same effect: Supreme Court Practice Directions Para 42, Form 6, Schedule 3.

77 SINGAPORE CIVIL PROCEDURE 2020, at para 24/1/6 (Chua Lee Meng & Paul Quan eds., 2019). This is also called a "*Riddick* undertaking": Haywood Management Ltd v Eagle Aero Technology Pte Ltd [2014] SGHC 164, [2014] 4 SLR 478, [57]-[59].

78 A *Riddick* undertaking may be modified by the court in exceptional circumstances. Two conditions must be met: "First, cogent and persuasive reasons must be furnished for the request. Second, it must not give rise to any injustice or prejudice to the party who had given discovery": Beckkett Pte Ltd v Deutsche Bank AG [2005] SGCA 34, [2005] 3 SLR(R) 555, [19].

79 Rules of Court (2014 Rev Ed Sing), Order 59, rule 3(2).

80 Corporate law scholars often refer to this as the 'loser pays' rule. In practice, the loser is usually only liable for a portion (called "party-and-party" costs) of the winner's total legal fees (called "solicitor-and-party" costs): Rules of Court (2014 Rev Ed Sing), Order 59, rule 27 (costs to be taxed on a standard or indemnity basis); SINGAPORE CIVIL PROCEDURE 2020, at para 59/27/5 (Chua Lee Meng & Paul Quan

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adverse costs order[81] creates considerable financial disincentives.[82] Unlike the UK[83] and Australia,[84] third party funding arrangements in Singapore are limited to international arbitration proceedings and connected proceedings.[85] Shareholders in Singapore therefore have no practical ability to shift the costs of litigation to a third-party funder.

D. Abortive Attempts at Creating Inspection Rights

Generally, attempts to create shareholder inspection rights through case law have been unsuccessful. The 2016 Singapore High Court case of *Ezion* is a rare, but useful, example of shareholder litigation in this area. In *Ezion*, the defendant company had neglected to hold an AGM for the financial years ending in 2013, 2014, and 2015. The last set of audited financial statements issued by the defendant was for the financial year ending in 2012. The plaintiff was a minority shareholder that had repeatedly requested for the defendant to provide its financial statements for the 2013 and 2014 financial years. The plaintiff argued that the defendant had little incentive to hold AGMs given that non-compliance would only be penalized with small fines. Following the defendant's consistent failure to supply the requested financial statements, the plaintiff applied to court to obtain an order for the defendant to produce its financial statements and accounts for the 2015 financial year, even though these statements had not been prepared or audited.[86]

The High Court denied the plaintiff's application. Judicial Commissioner Aedit Abdullah (as he then was) held that the Companies Act did not contain any express provision for shareholders to be given the company's financial statements before such statements had been prepared. In the absence of any statutory provision, shareholders had no broad right to the company's financial information. Shareholders only had the right to be given financial statements that had been audited and prepared for an AGM under section 203 of the Companies Act. Where no AGM was held – as was the case for the defendant – shareholders had no right to obtain such financial statements from the company.[87]

In holding that a shareholder's information rights were restricted to those expressly

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eds., 2019). As one of the authors has pithily stated elsewhere, "The Anglo-Commonwealth position is therefore that the "loser pays", but it is rarely "loser pays *all*"": Alan K. Koh & Samantha S. Tang, *Direct and Derivative Shareholder Suits: Towards a Functional and Practical Taxonomy*, *in* COMPARATIVE CORPORATE GOVERNANCE 431, at 434 (Afra Afsharipour & Martin Gelter eds., 2021).

81 Courts may apportion costs between the parties in a variety of ways: Rules of Court (2014 Rev Ed Sing), Order 59, rule 1.

82 *See, e.g.*, Tang, *supra* note 6, at 347–349. While a plaintiff who successfully obtains leave to bring a derivative action may benefit from an indemnity order for the company to bear the costs of the litigation under section 216B of the Companies Act, such orders are rarely granted in practice: Tang, *supra* note 6, at 349.

83 Rachael Mulheron, *England's Unique Approach to the Self Regulation of Third Party Funding: A Critical Analysis of Recent Developments*, 73 CAMBRIDGE L.J. 570 (2014).

84 John Walker et al., *Funding Criteria for Class Actions*, 32 U. NEW SOUTH WALES L.J. 1036, at 1036–37 (2009).

85 Civil Law Act (1999 Rev Ed Sing), s 5B read with Civil Law (Third Party Funding) Regulations 2017, ss 2–3.

86 Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd [2016] SGHC 175, [2016] 5 SLR 226, [1] – [9].

87 *Id.* [11]–[16], [22].

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provided for in the Companies Act, his Honour relied on a strict interpretation of the division of powers between directors and shareholders. Under the Act, management power is exclusively vested in directors. His Honour therefore reasoned:

> Given this distinction between the roles of directors and members or shareholders, *it is not surprising that the Act does not give an express right to members to general information*. The distinction between the roles and powers of directors as against shareholders or members underlines and puts in context the purpose of the provision of the reports under s 203 of the Act: it is to allow the members or shareholders to exercise their vote at general meetings, which is the usual occasion for the members to exercise their powers. It then follows that members are entitled to the financial statements and accounts only as such reports need to be given for a general meeting.
>
> An unqualified right to financial information of the company is conceivably a valuable one for shareholders. On the other side of the scale, such a right would probably impose additional burdens on the company and its directors. *In the absence of a clear and strong ground, consonant with the statutory regime in place, it would not be appropriate for the courts to create such a right.* Whether or not the statute should be amended to confer such a right is a matter for the relevant agency to consider.[88]

In so doing, the High Court may have effectively pronounced any attempt at creating inspection rights via case law dead on arrival. While his Honour observed that the defendant had suggested that the plaintiff apply for pre-action discovery, the learned Judicial Commissioner wisely declined to indicate if it was a viable solution. With respect to the defendant's counsel,[89] pre-action discovery would have likely presented at least four difficulties. First, pre-action discovery is intended for plaintiffs who intend to commence litigation, not shareholders seeking corporate information for the purpose of monitoring the company and its management. Such shareholders may be contemplating a course of action *other* than litigation. Second, even for plaintiffs who intend to commence litigation, pre-action discovery is extremely narrow in scope as it is restricted only to situations where the plaintiff lacks sufficient facts to commence proceedings (i.e., it is unavailable if the plaintiff has sufficient facts to commence proceedings).[90] Third, documents obtained through pre-action discovery are subject to an implied undertaking to the court for the conduct of the case.[91] This would constrain the plaintiff shareholder's options, especially if it turns out that the documents obtained would not be useful for Singapore litigation, but in another jurisdiction. Fourth, the court has the power to make the pre-action discovery order conditional on the plaintiff giving security for costs,[92] which may potentially increase the financial risks and costs associated with the proceedings.

Finally, *Ezion* concluded with the High Court's observation that any expansion of information rights available in the Companies Act would be a matter for law reform. But have such efforts been successful? In fact, law reform proposals to increase access to

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88 *Id.* [20]–[21], [31] (emphasis added).
89 One would be naturally suspicious about any legal strategy volunteered by opposing counsel.
90 Ching Mun Fong v Standard Chartered Bank [2012] SGCA 38, [2012] 4 SLR 185, [23], [39]-[40].
91 SINGAPORE CIVIL PROCEDURE 2020, at para 24/1/6 (Chua Lee Meng & Paul Quan eds., 2019).
92 Rules of Court (2014 Rev Ed Sing), Order 24, rule 6(6).

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corporate information have been stillborn. Specifically, the 2011 Steering Committee Report rejected a proposal for establishing a legal mechanism for shareholders to obtain access to minutes for meetings of the board of directors,[93] stating that:[94]

> The Steering Committee disagrees with the proposal as the board will have to pass resolutions dealing with many confidential and sensitive matters, for example, entering into negotiations, commencement or discontinuation of litigation, and authorising the search for candidates for a key appointment. Such a right would hamper the board's duties. The Steering Committee also notes that even majority shareholders do not have such a right to obtain board resolutions.

In failing to even introduce a version of shareholder inspection rights limited to the minutes of board meetings, Singapore's corporate law regime has clearly diverged from its common law regional rivals, Australia and Hong Kong – as well as the other leading economies in Asia.[95] *Ezion* therefore leaves a shareholder desirous of inspection rights with limited options. First, a shareholder may try to obtain a directorship to take advantage of a director's comparatively expansive inspection rights. Second, shareholder inspection rights may be provided for in the corporate constitution and enforced by registered members.[96] However, both options are unlikely to be available to minority shareholders who do not have the necessary shares to either appoint themselves as directors using an ordinary resolution, or amend the corporate constitution via a special resolution to add shareholder inspection rights where none exist.

THE REASONS FOR LIMITED INSPECTION RIGHTS IN SINGAPORE

A. Demand-Side: Controlling Shareholder Dominance, a Dearth of Shareholder Litigation, and Private Ordering Quell Demand

As the only leading Asian economy lacking a specific mechanism for shareholder inspection rights, one might expect that there would be demand from shareholders for such a mechanism. However, as explained above, aside from the single reported decision (*Ezion*) and the rejected proposal in 2011 to provide shareholders with a mechanism to access board minutes, the demand for reform has been virtually silent. We offer three reasons for the almost complete lack of any demand for an expansion of Singapore's limited shareholder inspection rights.

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93 Ministry of Finance, *Report of the Steering Committee for Review of the Companies Act* , at 2-41 (June 2011), https://www.mof.gov.sg/docs/default-source/default-document-library/news-and-publications/press-releases/annex-a-sc-report-complete-2.pdf. The proposal before the Steering Committee was

> to enable minority shareholders to obtain copies of board resolutions without the need to go through a discovery process. The proposed mechanism could require the company to furnish board resolutions upon a written request by at least two members holding not less than 5% in aggregate of the issued share capital of the company. The written request should specify exactly what is being requested, so as not to facilitate a fishing expedition.

94 *Id.*

95 *See supra* note 12.

96 Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd [2019] SGHC 68, [269]–[270].

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First, Singapore's listed companies are mostly family-controlled and state-controlled firms – with almost all having a controlling shareholder.[97] Contrary to the predictions of some of the most prominent corporate governance scholars, as Singapore has reached world leading levels of economic wealth and development, its listed companies have continued to be dominated by controlling shareholders and its stock market has become even more concentrated.[98] In such a market, the most influential and powerful voices are controlling shareholders, who can use their formal and informal power to gain access to corporate information.[99] In addition, controlling shareholders may be hesitant to allow minority shareholders greater access to companies which they view as their own – especially in family firms which make up a majority of the listed firms in Singapore.[100] Also, state-controlled and family-controlled firms have performed well overall and there has not been systematic problems with wealth tunneling[101] – which may make it less likely for minority shareholders to demand an expansion of their inspection rights.

Second, minority shareholders in Singapore listed companies have a weak voice. Institutional investors hold 6% of the market capitalization in Singapore – which is amongst the lowest in the world and limits the ability of sophisticated minority shareholders to band together to collectively have a strong voice.[102] Proxy advisory firms are almost non-existent in Singapore – further eliminating an important source of demand which enhances the voice of minority shareholders in other markets.[103] The Singapore Investors Association (SIAS), which aims to act as a voice for minority shareholders in listed companies, has traditionally been a mediator between corporate management and minority shareholders – in contrast to the more litigious role played by other similar entities in Asia.[104] These factors have combined to create a weak culture of shareholder

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97 Puchniak & Lan, *supra* note 7, at 296-297, 305; Tan et al., *supra* note 58, at 66-67; Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER (Jennifer G. Hill & Randall S. Thomas eds., 2015).

98 Puchniak & Lan, *supra* note 7, at 268; Tan et al., *supra* note 58, at 67; Stijn Claessens et al., *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FIN. ECON. 81, at 104 (2000); Tan Lay Hong, *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*, at 17, 20, 25 (2011), http://docs.business.auckland.ac.nz/Doc/exploring-the-question-of-ownership-from-control.pdf.

99 *See supra* Part I.

100 Puchniak & Lan, *supra* note 7, at 296; Marleen Dieleman et al., *Success and Succession: A Study of SGX-listed Family Firms*, at 8 (May 2013), https://bschool.nus.edu.sg/cgs/wp-content/uploads/sites/7/2018/10/Success-and-Succession-2013.pdf.

101 Puchniak & Varottil, *supra* note 2, at 16.

102 Dan W. Puchniak, *The False Hope of Stewardship in the Context of Controlling Shareholders: Making Sense Out of the Global Transplant of a Legal Misfit*, AM. J. COMP. L., Table 4 (forthcoming 2021).

103 Lan & Varottil, *supra* note 97, at 582.

104 Robin H. Huang, *Rethinking the Relationship Between Public Regulation and Private Litigation: Evidence from Securities Class Action in China*, 19 THEORETICAL INQUIRIES L. 333, at 359 (2018); Andrew Jen-Guang Lin, *The Assessment of Taiwan's Shareholder Stewardship Codes: From International Stewardship Principle to Alternative Good Stewardship*, *in* GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming); Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State*, at 49 (ECGI Law Working Paper No 590/2021, 2021), https://ssrn.com/abstract=3858348.

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activism in Singapore, which may explain the lack of a demand for expanded inspection rights.[105]

Third, as mentioned earlier, despite Singapore ranking first on global indicators of private enforcement of minority shareholders' rights, there has never been a reported successful action brought by a minority shareholder against a director of a Singapore listed company.[106] As explained elsewhere, this is not due to a lack of minority shareholders' remedies – such as the derivative action and oppression remedy – in the Companies Act.[107] Rather, it is due to the way the case law for using these remedies has developed and the financial disincentives for shareholders in listed companies to pursue these remedies.[108] Although minority shareholder litigation regularly occurs in small closely held companies, the political clout and economic incentives for minority shareholders in such companies is unlikely to be sufficient for them to be effective agents for legislative change. Moreover, there is case law that has confirmed that if minority shareholders negotiate for inspection rights to be included in the corporate constitution, they can enforce them.[109] For minority shareholders in closely held companies this may be a viable functional substitute to a legislative mechanism for inspection rights as they may have the ability to shape the corporate constitution at the company's inception – an example of how private ordering in Singapore may remove a possible source of demand for legislative change.

B. The Singapore Government Has Little Incentive to "Supply" Expanded Inspection Rights

As highlighted in the Introduction, Singapore has an established and successful history of reforming its laws to stay at the forefront of the latest global trends for good corporate governance. In 1993, Singapore was one of the earliest countries to adopt a statutory derivative action, which has come to be seen as a key component of an effective system of corporate governance in the commonwealth and around the world.[110] In 2001, Singapore was an early adopter of a UK-style "comply or explain" corporate governance code, which had the promotion of independent directors at its core – a trend that went global in the 2000s with almost 90 jurisdictions adopting such codes and independent

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105 Puchniak & Tang, *supra* note 8, at 1003-4.

106 Puchniak & Varottil, *supra* note 2, at 13-14; Tang, *supra* note 6, at 344 –347.

107 Puchniak & Varottil, *supra* note 2, at 39-40.

108 Puchniak & Varottil, *supra* note 2, at 13-14; Tang, *supra* note 6, at 347–349. *See* also Companies Act (2006 Rev Ed Sing), s 39; *cf.* Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd [2016] SGHC 19, [2016] 2 SLR 366 [40]–[47].

109 Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd [2016] SGHC 19, [2016] 2 SLR 366, [92]-[93]; Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd [2019] SGHC 68, [269]–[270]..

110 Dan W. Puchniak, *The Derivative Action in Asia: A Complex Reality*, 9 BERKELEY BUS. L.J. 1, at 6 (2012); Harald Baum & Dan W. Puchniak, *The Derivative Action: An Economic, Historical and Practice-Oriented Approach*, *in* THE DERIVATIVE ACTION IN ASIA: A COMPARATIVE AND FUNCTIONAL APPROACH 1 (Dan W. Puchniak et al. eds., 2012); Meng Seng Wee & Dan W. Puchniak, *Derivative Actions in Singapore: Mundanely Non-Asian, Intriguingly Non-American and at the Forefront of the Commonwealth*, *in* THE DERIVATIVE ACTION IN ASIA: A COMPARATIVE AND FUNCTIONAL APPROACH 323 (Dan W. Puchniak et al. eds., 2012); Tang, *supra* note 6, at 336–339.

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directors becoming a key global metric for measuring the quality of a jurisdiction's corporate governance.[111] In 2016, Singapore adopted a UK-style stewardship code embracing the latest global trend in good corporate governance.[112] In 2018, Singapore went one step further by becoming the first jurisdiction in the world to have a stewardship code for family firms – which has been marketed as a model that other jurisdictions in Asia should follow.[113] Against this backdrop, at first blush, it is puzzling why the Singapore government has not "supplied" shareholders with a specific mechanism for inspection rights. However, upon closer examination, we suggest that there are two reasons which may help provide an answer to this puzzle.

First, as explained above, the Singapore government, through Temasek, is indirectly Singapore's largest controlling shareholder as it owns a controlling stake in listed GLCs – which account for most of Singapore's largest listed companies.[114] As such, the government can likely use its controlling power over Temasek, and in turn GLCs, to get any corporate information it requires from GLCs – reducing the incentive for the government to "supply" expanded shareholder inspection rights. Perhaps, more importantly, as Singapore's largest controlling shareholder, one may suspect that the government may not want to supply expanded inspection rights to minority shareholders in GLCs as this would provide a mechanism for them to challenge the government's ultimate control. Moreover, it would prevent the government from extracting private benefits of control from GLCs – which may be good for corporate governance, but would run counter to the government's self-interest as the ultimate controller of GLCs who, at least in theory, should enjoy such private benefits of control.[115]

However, this analysis incorrectly assumes that the Singapore government: (1) is driven by the same incentives as a typical controlling shareholder; and (2) enjoys the same legal powers as a typical controlling shareholder. Both of these assumptions are incorrect. As one of us has explained in detail elsewhere, from the inception of Singapore's unique system of government-controlled listed companies in the 1970s, the incentive of the Singapore government has been to use its shareholder power to ensure that GLCs are run as effective businesses to maximize long-term shareholder value.[116] A strict adherence to the government's approach is evidenced by Temasek's performance and the good corporate governance of GLCs – which have both exceeded non-government-controlled companies in Singapore's highly developed and prosperous

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[111] Puchniak & Lan, *supra* note 7, at 277-278; Dan W. Puchniak & Kon Sik Kim, *Varieties of Independent Directors in Asia*, *in* INDEPENDENT DIRECTORS IN ASIA: A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH 89, 95-96 (Dan W. Puchniak et al. eds., 2017).

[112] Puchniak & Tang, *supra* note 8, at 991.

[113] Puchniak & Tang, *supra* note 8, at 1013; Puchniak, *supra* note 102; Ernest Lim & Dan W. Puchniak, *Can a Global Legal Misfit be Fixed? Shareholder Stewardship in a Controlling Shareholder and ESG World*, *in* GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming).

[114] Puchniak & Lan, *supra* note 7, at 305; Tan et al., *supra* note 58, at 66-67.

[115] For an explanation of different types of private benefits of control, *see* Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, at 527-528 (Jennifer G. Hill & Randall S. Thomas eds., 2015).

[116] Tan et al., *supra* note 58, at 84, 87-88; Puchniak & Lan, *supra* note 7, at 306.

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economy.[117] In short, there is no evidence that the Singapore government has used its controlling power to systematically extract private benefits of control from GLCs. Rather, all available evidence suggests that GLCs have been run in a way to benefit all shareholders – including minority shareholders.[118]

Relatedly, as one of us has explained in detail elsewhere, the government has constructed an institutional architecture that has put restrictions on the powers it has as the indirect controlling shareholder in GLCs.[119] This has been done to ensure that the government does not deviate from its adherence to the principal that GLCs should be run to maximize long-term shareholder value – and not in a way to extract private political benefits of control to benefit the government.[120] To achieve this the government has put hard law and soft law mechanisms in place that restrict its ability to exercise its full rights as a controlling shareholder and that require Temasek to go beyond its formal obligations as an EPC (see discussion related to EPCs above).[121] The government's history of ensuring that GLCs are run to maximize long-term shareholder value and its consistent effort to build a regulatory system to ensure that the government does not extract private benefits of control, suggest that the Singapore government may be inclined to supply expanded shareholder inspection rights – which is the opposite of what one may expect based on the sole fact that it is the country's largest controlling shareholder.

The second, more credible, reason why the government may feel no need to supply expanded inspection rights is because such rights have yet to become established as a significant indicium of "good corporate governance" by globally-influential actors. Providing a specific mechanism for shareholders to gain greater access to corporate information in company law and securities law, is not a feature of corporate governance that has reached the prominence of independent directors – or even derivative actions – as a mechanism that stands out as a global metric for measuring good corporate governance.

A plausible reason for the failure of shareholder inspection rights to achieve this status is that the United Kingdom – which is a (if not, the) world leader in the creation and dissemination of global norms of good corporate governance – itself does not have a specific mechanism for shareholder inspection rights.[122] As such, it is unsurprising that nothing in UK-style corporate governance codes or UK-style stewardship codes, suggests that such a mechanism is required to comply with these two instruments for promoting global norms of good corporate governance – which arguably have had the greatest influence over such norms over the last several decades.

Relatedly, Singapore has been able to maintain its high rankings as a leader in Asian corporate governance and in global indicators of protection of minority shareholders' rights without having such a mechanism. Moreover, Singapore's shareholder inspection rights regime is strikingly similar to the UK's – allowing

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[117] Tan et al., *supra* note 58, at 68-69; Puchniak & Lan, *supra* note 7, at 310; Sim et al., *supra* note 3, at 17, 20; James S. Ang & David K. Ding, *Government Ownership and the Performance of Government-Linked Companies: The Case of Singapore*, 16 J. MULTINATIONAL FIN. MGMT. 64, at 85-86 (2006).

[118] Tan et al., *supra* note 58, at 91; Puchniak & Lan, *supra* note 7, at 316-317; Puchniak, *supra* note 115, at 529.

[119] Puchniak & Lan, *supra* note 7, at 312-314.

[120] Puchniak & Lan, *supra* note 7, at 312-314; Tan et al., *supra* note 58, at 89-91.

[121] Tan et al., *supra* note 58, at 87-89; Puchniak & Lan, *supra* note 7, at 307-310.

[122] Hannigan, *supra* note 52.

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Singapore the comfortable position of being able to bask in the halo of the UK's status as the global beacon for good corporate governance, without having a specific mechanism for shareholder inspection rights. As such, unless the UK adopts a specific mechanism to expand shareholder inspection rights and/or it arises as a global norm, the Singapore government will have little incentive to supply a specific mechanism for expanded shareholder inspection rights.

A FUTURE FOR INSPECTION RIGHTS IN SINGAPORE? MAYBE, BUT LIKELY NOT SOON

There are some developments that may cause our supply and demand equation to change. On the supply-side, there is some evidence that SIAS has recently become a bit more active in shareholder disputes and may begin to demand more power for minority shareholders[123] – one of which could be inspection rights. The law in Singapore related to proxy voting has been amended to make it easier for institutional investors to play a role in corporate governance.[124] Shareholder inspection rights seem to be emerging as a topic which is receiving greater interest globally from comparative corporate law scholars – which is evidenced by this Book project.

However, it is unlikely in the short term that SIAS will get involved in advocating legislative change. Also, as institutional investors own 6% of the stock market, even with a more facilitative regime for them to express their voting power, they will need to accumulate a much larger stake for their voice to have any real power – especially in Singapore's controlling shareholder dominated environment. Finally, until a specific mechanism for inspection rights becomes a global norm of good corporate governance and/or the United Kingdom adopts a specific mechanism for shareholder inspection rights, the supply-side pressure on the Singapore government to expand shareholder inspection rights will likely be limited. In sum, a specific mechanism for inspection rights does not appear likely to arrive in Singapore anytime soon.

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[123] Tang, *supra* note 6, at 351; Lee Meixian, *SIAS to Revive Independent Equity Research 'A Year from Now'*, THE BUSINESS TIMES (Oct. 7, 2019), https://www.businesstimes.com.sg/companies-markets/sias-to-revive-independent-equity-research-a-year-from-now;

[124] Lan & Varottil, *supra* note 97, at 580-581.

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