Singapore's Puzzling Embrace of Shareholder Stewardship: A Successful Secret

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We are grateful for the financial support from the National University of Singapore (NUS) Centre for Asian Legal Studies (CALS), the EW Barker Centre for Law & Business (EWBCLB), and Vanderbilt Law School for jointly funding and organizing a two-day conference on "Comparative Corporate Law & Governance: Asian and Global Perspectives" at NUS Law for which this article was written. We are also grateful to King's College London and the European Corporate Governance Institute for organizing a conference on Global Shareholder Stewardship which provided us with an opportunity to further refine our ideas. In addition, we benefited from feedback on this paper at the University of Tokyo Faculty of Law and Politics' 59th Comparative Law and Politics Symposium. This article significantly benefited from discussions and feedback received from the following people, which we are extremely thankful for: Roger Barker, Kyung-hoon Chun, Gen Goto, Sang Yop Kang Dionysia Katelouzou, Alan K Koh, Martin Gelter, Jennifer Hill, Kenneth Khoo, Lin Lin, Ron Masulis, Curtis Milhaupt, Morgan Ricks, Georg Ringe, Tan Cheng Han, Randall Thomas, Umakanth Varottil, Wang Jiangyu, and Yesha Yadav. We are also grateful for the excellent research assistance provided by Lim Jiawen. Any errors remain our own.

Abstract

In the wake of the 2008 Global Financial Crisis, the UK created the first stewardship code which was designed to transform its rationally passive institutional investors into actively engaged shareholders. In the UK corporate governance context, this idea made sense. Institutional investors collectively own a sizable majority of the shares in most of the UK's listed companies. In turn, if the UK stewardship code could incentivize them to effectively monitor management – to act as "good shareholder stewards" – the managerial short-termism and excessive risk-taking, which were identified as contributors to the GFC, could be avoided.

The UK's idea to adopt a stewardship code sparked a global shareholder stewardship movement. Unsurprisingly, Singapore as a corporate governance leader in Asia, adopted a stewardship code. Based on a superficial textual analysis, the Singapore Code appears to be a near carbon-copy of the UK Code. However, this article, which provides the first in-depth comparative analysis of stewardship in Singapore, demonstrates how Singapore has turned the UK model of stewardship on its head. Rather than enhancing the shareholder voice of institutional investors, shareholder stewardship has been used in Singapore as a mechanism for entrenching its successful state-controlled and family-controlled system of corporate governance. This development has been entirely overlooked by prominent international observers and would be beyond the wildest imaginations of the original architects of the UK Code. Viewed through an Anglo-American lens, this use of "stewardship" may suggest that Singapore has engaged in a corporate governance sham. However, we argue the opposite: it appears to be a secret to Singapore's continued corporate governance success and provides a much-needed Asian (as opposed to Anglo-American) model of good corporate governance for Asia.

Keywords: shareholder stewardship, Singapore corporate governance, comparative corporate law, state owed enterprises, family firms

JEL Classifications: G34, K22, L22

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SINGAPORE'S PUZZLING EMBRACE OF SHAREHOLDER STEWARDSHIP: A SUCCESSFUL SECRET

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ABSTRACT

In the wake of the 2008 Global Financial Crisis, the UK created the first stewardship code which was designed to transform its rationally passive institutional investors into actively engaged shareholders. In the UK corporate governance context, this idea made sense. Institutional investors collectively own a sizable majority of the shares in most of the UK's listed companies. In turn, if the UK stewardship code could incentivize them to effectively monitor management – to act as "good shareholder stewards" – the managerial short-termism and excessive risk-taking, which were identified as contributors to the GFC, could be avoided.

The UK's idea to adopt a stewardship code sparked a global shareholder stewardship movement. Unsurprisingly, Singapore as a corporate governance leader in Asia, adopted a stewardship code. Based on a superficial textual analysis, the Singapore Code appears to be a near carbon-copy of the UK Code. However, this article, which provides the first in-depth comparative analysis of stewardship in Singapore, demonstrates how Singapore has turned the UK model of stewardship on its head. Rather than enhancing the shareholder voice of institutional investors, shareholder stewardship has been used in Singapore as a mechanism for entrenching its successful state-controlled and family-controlled system of corporate governance. This development has been entirely overlooked by prominent international observers and would be beyond the wildest imaginations of the original architects of the UK Code. Viewed through an Anglo-American lens, this use of "stewardship" may suggest that Singapore has engaged in a corporate governance sham. However, we argue the opposite: it appears to be a secret to Singapore's continued corporate governance success and provides a much-needed Asian (as opposed to Anglo-American) model of good corporate governance for Asia.

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I. INTRODUCTION

In 2010, the creation of the world's first stewardship code by the United Kingdom (UK Code) sparked widespread interest in stewardship around the globe.[1] As an Asian tiger economy, which has established itself as a corporate governance leader,[2] Singapore proposed its own version of a stewardship code in 2016. Stewardship Asia, as a Singapore incorporated entity[3] with the stated mission of promoting stewardship in Singapore and Asia, thus introduced the "Stewardship Principles for Responsible Investors" (Singapore Stewardship Code)[4] ostensibly modelled on the UK Code.[5]

However, there are strong reasons to doubt the relevance of the UK concept of shareholder stewardship to Singapore considering its shareholder landscape. Unlike the

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[1] Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497, 506–513 (2018); Ernst & Young, *Q&A on Stewardship Codes* (August 2017) https://www.ey.com/Publication/vwLUAssets/ey-stewardship-codes-august-2017/$FILE/ey-stewardship-codes-august-2017.pdf; Kerrie Waring, 'Investor stewardship and future priorities' (Spring 2017) https://ethicalboardroom.com/investor-stewardship-and-future-priorities/. *See also* Siobhan Riding & Jennifer Thompson, *Chinese governance raises red flags*, FINANCIAL TIMES (June 1, 2019) https://www.ft.com/content/10001b4c-82e8-11e9-b592-5fe435b57a3b; Katherine Sung, *Regime Change Begins at Home: China's New Governance Code*, GLASS LEWIS (Oct. 4, 2018) https://www.glasslewis.com/regime-change-begins-at-home-chinas-new-governance-code/; Ernst & Young, *Q&A on Stewardship Codes* (August 2017) https://www.ey.com/Publication/vwLUAssets/ey-stewardship-codes-august-2017/$FILE/ey-stewardship-codes-august-2017.pdf.

[2] *See e.g.* Dan W. Puchniak & Umakanth Varottil, *Related Party Transactions in Commonwealth Asia: Complexity Revealed* 2–3 (European Corporate Governance Institute (ECGI) Law Working Paper No. 404/2018, last revised May 14, 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3169760>; World Bank, DOING BUSINESS 2019: TRAINING FOR REFORM 5 (2019) https://www.doingbusiness.org/en/reports/global-reports/doing-business-2019 (Singapore ranks 2nd the 'Ease of Doing Business' ranking); World Bank, *Protecting Minority Investors*, https://www.doingbusiness.org/en/data/exploretopics/protecting-minority-investors (data extracted on September 14, 2019, ranks Singapore joint 7th in minority shareholder protection); Alun John, *Japan slides in key Asia corporate governance ranking, ties with India*, REUTERS (Dec. 5, 2018) https://www.reuters.com/article/asia-governance/japan-slides-in-key-asia-corporate-governance-ranking-ties-with-india-idUSL4N1YA17S (Singapore ranked 3rd in a biennial survey on corporate governance by the Asian Corporate Governance Association and CLSA).

[3] Stewardship Asia Centre CLG Limited is a public company limited by guarantee incorporated in Singapore on March 28, 2017. This is based on information the authors purchased from the Accounting and Corporate Regulatory Authority of Singapore, which is on file with the authors.

[4] Strictly speaking, the Singapore Institutional Investor Stewardship Code is a set of 'principles' rather than a 'code' … . STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS (2016) http://www.stewardshipasia.com.sg/sites/default/files/Section%202%20-%20SSP%20(Full%20Document).pdf.

[5] While the authors have not been able to locate any express statement from Stewardship Asia or contained in the Singapore Stewardship Code proper as to the relationship between the UK Code and the Singapore Stewardship Code, scholars have characterised the Singapore Stewardship Code as being 'inspired' by the UK Code: *see e.g.* ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 280 (Cambridge University Press 2019).

UK, most shares in Singapore's listed companies are not owned by institutional shareholders.[6] Instead, Singapore is dominated by companies with controlling-block shareholders able to directly monitor management or manage the company themselves.[7] A significant majority of its listed companies are family firms, whose corporate governance is dominated by family members through their shareholder voting rights.[8] Aside from family firms, the Singapore government – through its privately incorporated holding company Temasek – controls the voting rights in most of Singapore's largest listed companies.[9] Institutional investors have played, and continue to play, only a minor role in Singapore corporate governance, especially when compared to state and family controlling shareholders.[10]

In this context, the primary concerns that spawned the creation of the UK Code in 2010 following the Global Financial Crisis (GFC) – excessive risk-taking and short-termism by management left unmonitored because rationally apathetic institutional investors controlled the shareholder float[11] – are virtually absent in Singapore. Further,

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6 Adriana De La Cruz et. al. OWNERS OF THE WORLD'S LISTED COMPANIES 12, 36, 37 (2019) http://www.oecd.org/corporate/owners-of-the-worlds-listed-companies.htm (based on an analysis of 195 listed companies representing 83% of total market capitalisation in Singapore, finding that institutional investors held 12% of market capitalisation weighted ownership).

7 Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore*, *in* RESEARCH HANDBOOK OF SHAREHOLDER POWER 573, 575–578 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015); Tan Cheng Han et. al., *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 91 (2015). However, this may not always be true for state-controlled companies, which may rely on independent directors to perform monitoring functions: Dan W Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation* 65 AM. J. COMP. L. 265, 315–316 (2017).

8 Based on annual reports with the financial year ending October 2010 to September 2011, about 60.8% of firms listed on the SGX Main Board and Catalist can be classified as family firms: Marleen Dielman et al, SUCCESS AND SUCCESSION: A STUDY OF SGX-LISTED FAMILY FIRMS, CENTRE FOR GOVERNANCE, INSTITUTIONS AND ORGANISATIONS, NUS BUSINESS SCHOOL 8 (2013) https://bschool.nus.edu.sg/Portals/0/images/CGIO/Report/Asian%20Family%20Business%20Report.pdf.

9 Isabel Sim et al, THE STATE AS SHAREHOLDER: THE CASE OF SINGAPORE, CENTRE FOR GOVERNANCE, INSTITUTIONS & ORGANISATIONS, NUS BUSINESS SCHOOL 6, 23–24 (2014) https://bschool.nus.edu.sg/cgio/wp-content/uploads/sites/7/2018/10/SOE-The-State-as-Shareholder-2014.pdf.

10 Adriana De La Cruz et. al. OWNERS OF THE WORLD'S LISTED COMPANIES 12, 36, 37 (2019) http://www.oecd.org/corporate/owners-of-the-worlds-listed-companies.htm (based on an analysis of 195 listed companies representing 83% of total market capitalisation in Singapore, finding that institutional investors held 12% of market capitalisation weighted ownership); ; Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore*, *in* RESEARCH HANDBOOK OF SHAREHOLDER POWER 573, 575–578 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015); Tan Cheng Han et al, *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 91 (2015).

11 *See e.g.* Iris H.-Y. Chiu & Dionysia Katelouzou, *From Shareholder Stewardship to Shareholder Duties: Is the Time Ripe?*, *in* SHAREHOLDER DUTIES 131, 131 (Hanne S. Birkmose ed., Kluwer Law International 2017); Paul Davies, *Shareholders in the United Kingdom*, *in* RESEARCH HANDBOOK ON

the very solution proposed by the UK Code to address institutional investor apathy – to incentivize institutional investors to take a more active role in corporate governance[12] – is accordingly inapplicable to Singapore listed companies, where institutional investors are a comparatively powerless minority in the face of controlling shareholders. This raises the first puzzle: Why did Singapore adopt a stewardship code which was ostensibly modelled on the UK, when it lacks the corporate governance problems that the UK Code was designed to address and the potential for the solution it aims to provide?

A closer examination of the Singapore Stewardship Code reveals a further puzzle: by comparison to the UK Code – and indeed many other stewardship codes – Singapore's Code is curiously toothless.[13] The very title of the Singapore Code – "Singapore Stewardship *Principles* for Institutional Investors" demonstrates that the Singapore Code is not actually a "code" at all. Rather, the Singapore Code is a set of "principles" that are intended to provide "useful guidance" for institutional investors.[14] Notwithstanding the different terminology used, we analyze this set of principles as a "code" for two reasons. First, the Singapore Code is almost uniformly referred to as a "code" by international organizations, scholars, business analysts, and journalists and is often compared to other stewardship codes around the world.[15] Second, the text of the Singapore Code bears a close resemblance to the language used in the UK Code,[16] and other codes around the world.[17]

The Singapore Code provides that all institutional investors (including domestic

SHAREHOLDER POWER 355, 373 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar 2015); Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1005–1006 (2010).

12 Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1014–1015 (2010).

13 ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 288–289 (Cambridge University Press 2019) ("there is no evidence that a key objective of the codes – to promote and protect the long-term success of the investee companies – has been met. … The first problem is that none of the codes (HKPRO, SSP and MCII) are binding; they operate on a purely voluntary basis. Failure by institutional shareholders to sign up or apply the code (after signing up) are met with no penalties or sanctions whatsoever. … In Singapore, the situation is arguably worse [than Hong Kong's stewardship code].)

14 STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 4 (2016)

15 *See e.g.* ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA (Cambridge University Press 2019); Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497 (2018) Ernst & Young, *Q&A on Stewardship Codes* (August 2017) https://www.ey.com/Publication/vwLUAssets/ey-stewardship-codes-august-2017/$FILE/ey-stewardship-codes-august-2017.pdf. *See also* Dionysia Katelouzou & Mathias Siems, *Textual Analysis & Networks* (forthcoming).

16 *Compare* Stewardship Asia Centre, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS (2016); Financial Reporting Council, *UK Stewardship Code* (2012) FINANCIAL REPORTING COUNCIL https://www.frc.org.uk/investors/uk-stewardship-code. *See also* discussion at Part II below.

17 Dionysia Katelouzou & Mathias Siems, *Textual Analysis & Networks* (forthcoming).

ones) are free to adopt the Singapore Stewardship Code in whole, in part, or not at all; compliance is entirely voluntary.[18] Institutional investors who "support"[19] the Code are not required to provide any evidence of compliance with it – that is, if they do actually comply with the Code at all.[20] The impotence of Singapore's Code is accentuated by the fact that – in contrast to many existing codes[21] – it has no mechanism whatsoever to monitor whether "supporters" have actually complied with it.[22] Moreover, the entity which spearheaded and promotes the Singapore Code, Stewardship Asia, is a private entity that has absolutely no regulatory power to supervise the implementation of the Code or enforce it.[23] The Singapore Code does not even provide a suggested model or template of what stewardship means as it encourages those who opt to follow it to "take steps to *satisfy themselves* that they adhere to *their own* stewardship approach" [emphasis added].[24] For a jurisdiction that consistently tops Asian corporate governance rankings – and which regularly ranks as a global leader for its efficient business regulation and good

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18 STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 3 (2016) ("[The Principles] are not intended to be rigid rules to be enforced or prescriptive measures to be adhered to, nor are they intended to constitute a code"); Stewardship Asia, *Stewardship for Singapore Investors: A Matter of Principles* (Press Release, Nov. 2, 2016) https://www.stewardshipasia.com.sg/sites/default/files/02Nov2016%20Press%20ReleaseSTEWARDSHIP%20FOR%20SINGAPORE%20INVESTORS-A%20MATTER%20OF%20PRINCIPLES_0.pdf.

19 It appears that Stewardship Asia has used the term "supporters" rather than "signatories" to demonstrates the relaxed nature of the commitment that is required by institutional investors.

20 Unlike the UK Code, there is no organisational equivalent to the Financial Reporting Council that monitors compliance with the Singapore Stewardship Code. Stewardship Asia bills itself as an organisation that "promotes and propagates the sharing and mutual learning of concepts and practices that would make a difference to organisations" rather than a regulatory agency. Stewardship Asia, *About Us*, https://www.stewardshipasia.com.sg/about-us. Stewardship Asia has also explicitly stated that "The SSP is not enforced or audited.". *See* Stewardship Asia, *FAQs*, https://web.archive.org/web/20191119132047/https://www.stewardshipasia.com.sg/intent.

21 For example, Japan's Financial Services Agency keeps a record of the signatories to the Code and their disclosures on its website: Financial Services Agency, *List of institutional investors signing up to "Principles for Responsible Institutional Investors" ≪Japan's Stewardship Code≫ as of 14 December 2018*, https://www.fsa.go.jp/en/refer/councils/stewardship/20181214/en_list_01.pdf. The UK's Financial Reporting Council retains on its website a list of asset owners, asset managers and service providers that have published a statement on their compliance or otherwise with the Code, and requests that signatories notify the FRC when they have done so, and when the statement is updated. Financial Reporting Council, *Tiering of Stewardship Code Signatories* https://www.frc.org.uk/investors/uk-stewardship-code/uk-stewardship-code-statements.

22 *See generally* STEWARDSHIP ASIA CENTRE, STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 6 (2016).

23 Singapore's equivalent to the Financial Reporting Council (UK) or the Financial Services Agency (Japan) would be the Monetary Authority of Singapore, or the Accounting and Corporate Regulatory Authority.

24 STEWARDSHIP ASIA CENTRE, STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 6 (2016).

corporate governance[25] – why did Singapore introduce a code that provides no singular model of stewardship, no method of determining who has opted to follow the Code and, in turn, no functional mechanism to significantly increase transparency or market pressure on institutional investors to act as "good stewards"? This is the second puzzle this article seeks to solve.

Having introduced an apparently impotent stewardship code for institutional investors, in late 2018 Stewardship Asia proceeded to introduce yet another stewardship code in Singapore – only this time directed at family companies. The Singapore Family Stewardship Code[26] is a version of the Singapore Stewardship Code developed for family companies, and is, to the best of our knowledge, the first (and, as of late-2019, the only) one of its kind in the world. Stewardship Asia has been actively publicizing the Family Stewardship Code to jurisdictions in Asia to promote Singapore as a hub for corporate governance.[27] Directed at family controlling shareholders, the Singapore Family Stewardship Code encourages them to be good "stewards" of their companies. It is noteworthy, however, that this Code does not contemplate divestment of control to non-family shareholders, but rather promotes the entrenchment of family control.[28] Further, the Singapore Family Stewardship Code does not appear to actively encourage or facilitate the involvement of institutional investors or shareholder activists in Singapore family companies. The vision of "stewardship" at the heart of the Family Stewardship Code thus appears to be dramatically different from the concept of institutional investor "stewardship" that is fundamental to the UK Code. This brings us to our third puzzle: why did Singapore introduce a second stewardship code addressed to family controlling shareholders – a constituency that was not contemplated by the UK Code, let alone any other stewardship code introduced to date?

We offer explanations to these three puzzles in this article, which may be briefly summarized as follows. As to the first puzzle, notwithstanding the practical irrelevance and impotence of institutional investors to Singapore listed companies, Singapore

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[25] *See e.g.* World Bank, DOING BUSINESS 2019: TRAINING FOR REFORM 5 (2019) https://www.doingbusiness.org/en/reports/global-reports/doing-business-2019 (Singapore ranks 2nd the 'Ease of Doing Business' ranking); World Bank, *Protecting Minority Investors*, https://www.doingbusiness.org/en/data/exploretopics/protecting-minority-investors (data extracted on September 14, 2019, ranks Singapore joint 7th in minority shareholder protection); Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 288 (2017).

[26] STEWARDSHIP ASIA, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES (2018) https://www.stewardshipasia.com.sg/sites/default/files/SSP-brochure-0913_approved%20for%20printing.pdf.

[27] *See generally* STEWARDSHIP ASIA, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES (2018)

[28] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 7 (2018).

nonetheless adopted a stewardship code ostensibly modeled after the UK Code as a form of "halo signaling" demonstrating Singapore's commitment to Anglo-American-cum-global standards of good corporate governance.[29] The answer to the second puzzle – the comparatively "toothless" Singapore Stewardship Code – appears to follow naturally from this. Since Singapore neither suffers from the problems nor possesses the ability to implement the solutions that the UK concept of stewardship prescribes, Singapore has no need for a stewardship code with actual "bite". It also has a strong incentive to create a code that allows institutional investors (and family firms) to comply with it effortlessly which helps promote Singapore as a jurisdiction that is easy to do business.

But that is only scratching the surface. Diving deeper, a careful examination of the relationship between Singapore's state investment arm (Temasek), which is also the controlling shareholder of most of Singapore's largest listed companies, and Stewardship Asia reveals another driving force behind the Code. We provide the first analysis of the link between Stewardship Asia, the ostensibly private entity that designed and promotes the Code, and the Singapore state. This link is crucial because it explains how the entity writing the rules for how institutional investors should engage with controlling shareholders (i.e., Stewardship Asia), is itself an arm of Singapore's most powerful controlling shareholder: the Singapore government through its wholly-owned holding company Temasek.[30]

In this context, it makes perfect sense that the Singapore Code is not designed to disrupt the status-quo of the corporate controller or promote powerful shareholder activism. To the contrary, the Code is designed in a way to not disrupt the status quo for corporate controllers – which are the state and wealthy families in Singapore. Importantly, however, there is an institutional architecture in Singapore that serves as a functional substitute for shareholder activism in Singapore's state-owned enterprises.[31] This prevents the type of wealth-reducing private benefits of control from being extracted by Temasek from Singapore's state-owned enterprises – something that may otherwise be expected in a market devoid of shareholder activists and in which the government is both the regulator and the most powerful shareholder.[32]

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[29] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 288 (2017).

[30] Temasek Review, TEMASEK OVERVIEW 2019 42–43 TEMASEK REVIEW (2019) https://www.temasekreview.com.sg/downloads/Temasek-Review-2019-Overview.pdf.

[31] *See generally* Tan Cheng Han et al, *State-Owned Enterprises and the Singapore Model* 28 COLUM. J. ASIAN L. 61, 67–69 (2015) (summarizing empirical studies on the performance of Singapore state-owned enterprises); Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265 (2017).

[32] *Id.*

In addition, by releasing the first stewardship code through Stewardship Asia, the Singapore government took control of this regulatory space and prevented "bottom-up" free-market based approaches to shareholder stewardship – which could have been more unpredictable and potentially disruptive to Singapore's successful corporate governance model – from developing. This act of what we coin "pre-emptive corporate governance" has allowed the government to maintain its existing corporate governance regime, while at the same time allowing Singapore to maintain its position as an Asian and global corporate governance leader by embracing the rising international trend of "shareholder stewardship".

The third puzzle represented by Singapore's Family Stewardship Code can be untangled with a careful examination of the Code itself, and the importance and function of family-controlled companies in Singapore and Asia. We demonstrate that the Family Stewardship Code is a strategic effort by Stewardship Asia to put forward a version of stewardship adapted to Singapore's successful corporate environment, and to address the practical corporate governance issues faced by Asian jurisdictions, which are often distinct from those reflected in the Anglo-American paradigm. The concept of "family stewardship" at the core of the Family Stewardship Code is entirely distinct from the concept, form, and substance of "stewardship" espoused in the UK Code. The only meaningful resemblance is in the use of the term "stewardship", which is now enshrined as a term in the global lexicon for good corporate governance. This is in line with Singapore's general approach to formally adopting global norms of good corporate governance as a form of "halo signaling", while functionally maintaining its successful family and state controlled system of corporate governance.[33] However, interestingly, it appears to perhaps go a step further than past reforms by suggesting a model of corporate governance specifically tailored to Asia – and which is distinct from the traditional Anglo-American model – with Singapore strategically positioned as the standard-bearer for Asia. This approach may be opportunistically timed as the world is potentially shifting from an era of globalism to one of regionalism, especially in Asia.

This Article proceeds as follows. Part II describes Singapore's shareholder landscape and explains Singapore's adoption of a UK-model stewardship code notwithstanding the impotence of institutional shareholders. Part III demonstrates how Singapore's Stewardship Code is "toothless" in comparison to the UK Code, and argues that this is a strategic arrangement designed to protect the otherwise efficient status quo. Part IV explains Singapore's recently introduced Family Stewardship Code, and its significance

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

to Singapore and Asia. Part V concludes by explaining the significance of Singapore's shareholder stewardship story in the context of the broader field of comparative corporate law and governance.

II. THE FIRST PUZZLE: WHY DID SINGAPORE ADOPT A STEWARDSHIP CODE WHEN IT LACKS THE UK'S GOVERNANCE PROBLEMS/SOLUTIONS?

A. THE PREMISE OF MODERN STEWARDSHIP

The rise of institutional shareholders in the UK and US has commanded scholarly attention because of the corporate governance challenges it poses. Most listed companies in the UK and US are no longer examples of the archetypical Berle-Means company with atomized, dispersed shareholders; now, only a modest number of major institutional investors collectively hold a sufficient percentage of shares to exercise effective control.[34] This poses a seismic challenge to the Anglo-American model of corporate governance founded on the agency problem between shareholders and managers. While it is possible for institutional investors to collectively exercise their voting power to minimize shareholder-manager agency costs and act as "good stewards" of their investee companies, institutional investors have ordinarily no incentive to do so.[35] In fact, remaining passive is often their best option to maximize profits.[36]

In the wake of the 2008 Global Financial Crisis ("GFC"), institutional investors were criticized for failing to rein in the excessive managerial risk-taking and short-termism in

[34] Lucian Bebchuk et al, The Agency Problems of Institutional Investors, 31 J. ECON. PERSPECTIVES 89, 92–93 (2017); Ronald J. Gilson and Jeffery N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 865, 874–876; Brian R. Cheffins, The Stewardship Code's Achilles' Heel, 73 MOD. L. REV. 1004, 1017–1020 (2010); Paul Davies, Shareholders in the United Kingdom, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 355, 357–358 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar 2015).

[35] *See* Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence and Policy* 119 COLUM. L. REV (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3282794 (arguing that index fund managers have incentives to underinvest in stewardship and defer excessively to corporate managers), *but see* Edward B. Rock & Marcel Kahan, *Index Funds and Corporate Governance: Let Shareholders Be Shareholders* (manuscript at 33–34, 42–44) Apr. 6, 2019 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3295098 (arguing that index fund managers have incentives to invest in acquiring company-specific information and engage in company-specific analysis).

[36] Lucian A Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSPECTIVES 89, 96–100 (2017).

listed companies that was arguably a key cause of the GFC.[37] In response, the UK issued the world's first stewardship code in 2010 to create incentives for institutional investors to act responsibly and engage with management.[38] From this, we can see that institutional investors were the problem addressed, and the solution supplied, by the UK Code.[39]

In a jurisdiction where institutional shareholders dominated listed companies and could thus potentially wield considerable influence over the internal affairs of investee companies,[40] there is a certain logic in crafting a stewardship code premised on institutional investors being both the problem and the solution. This was the case with the UK Code. With the corporate governance challenges posed by institutional shareholders in the UK (and the US) well-documented in the Anglo-American-dominated corporate governance lay and scholarly discourse, it is tempting to assume that similar problems are shared by many other jurisdictions, and that solutions – stewardship codes – would, barring obstacles, converge.[41] But is the underlying premise – that other jurisdictions' corporate governance landscapes and associated problems are on the whole similar – even valid to begin with?

In contrast to the UK and US, most listed companies in other jurisdictions are under the *de facto* (if not outright *de jure*) control of block-shareholders that can be families, states, or other corporations. In these jurisdictions, institutional shareholders still control only a minority of the total voting power of listed companies, even if their shareholdings have generally increased with time.[42] Consequently, institutional shareholders have

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[37] *See e.g.* Iris H.-Y. Chiu & Dionysia Katelouzou, *From Shareholder Stewardship to Shareholder Duties: Is the Time Ripe?*, *in* SHAREHOLDER DUTIES 131, 131 (Hanne S. Birkmose ed., Kluwer Law International 2017); Paul Davies, *Shareholders in the United Kingdom*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 355, 373 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar 2015); Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1005–1006 (2010).

[38] Prior to the GFC, the Institutional Shareholders' Committee had released a 'code' for institutional investors in 1991; the Stewardship Code released by the Financial Reporting Council in 2010 was substantially similar to this earlier code. Arad Reisberg, *The UK Stewardship Code: On the Road to Nowhere?*, 15 J. CORP. L. STUD. 217, 221–222 (2015)

[39] Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1014–1015 (2010).

[40] *See* Paul Davies, *Shareholders in the United Kingdom*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 355, 357–59 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar 2015). For latest available figures, see Office of National Statistics (UK), *Ownership of UK quoted shares: 2016*, OFFICE OF NATIONAL STATISTICS (U.K.) (Nov. 29, 2017) https://www.ons.gov.uk/economy/investmentspensionsandtrusts/bulletins/ownershipofukquotedshares/2016 (last visited Jul. 24, 2019).

[41] *See* discussion in Goto-Koh-Puchniak article at Part II.

[42] See e.g.; ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 52–55 (Malaysia), 56–59 (India) (Cambridge University Press 2019). While state and family controlling shareholders do not generally dominate listed companies in Japan, it is fair to say that institutional investors do not collectively exercise majority control over most listed companies: Gen Goto, *Legally "Strong" Shareholders of Japan*, 3 MICH. J. OF PRIVATE EQ. VENTURE CAP. L. 125, 144–145 (2014).

limited power to cause a change in corporate control or make a credible threat to do so. Instead of an absent steward, the principal corporate governance problem in these jurisdictions is an entrenched controlling shareholder who may use their very real power not to discharge the function of a steward, but rather to extract private benefits of control at minority shareholders' expense.[43]

What about Singapore? As we discuss in the next subpart, Singapore is no exception to the general rule applying to jurisdictions other than the UK and US in that its listed companies are dominated by block-shareholders. In fact, Singapore turns the conventional wisdom about the superiority of the Anglo-American corporate governance model and the efficiency of dispersed shareholding on its head. As Singapore has risen from a developing, to developed, and now to one of the wealthiest and most sophisticated economies in the world, its shareholder landscape has maintained – if not increased – its level of concentration.[44] Further, its state-controlled and family-controlled corporations have out-performed almost all others, dispelling the now anachronistic wisdom that state-controlled and family-controlled companies are pitstops on the path towards economic development.[45] In fact, the remarkable success of Singapore's state-controlled companies has itself become a model for developing countries – particularly China – to follow.[46] Most importantly from the perspective of the UK stewardship model, within Singapore's shareholder landscape and corporate governance model, institutional investors have played a *de minimis* role. In this context, the introduction of a Singapore Stewardship Code, ostensibly modeled on the UK Code, mystifies. In the rest of this Part, we explain the unique features of Singapore's institutional architecture and shareholder landscape, and discuss the relevance of Singapore's Stewardship Code.

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[43] *See e.g.* Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia – Complexity Revealed*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, 526–32 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar Publishing 2015) (discussing private benefits of control accruing to controlling shareholders in Asian jurisdictions of China, Japan, and Singapore).

[44] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 268 (2017).

[45] Tan Cheng Han et al, *State-Owned Enterprises and the Singapore Model* 28 COLUM. J. ASIAN L. 61, 67–69 (2015) (summarizing empirical studies on the performance of Singapore state-owned enterprises); Marleen Dielman et al, SUCCESS AND SUCCESSION: A STUDY OF SGX-LISTED FAMILY FIRMS, CENTRE FOR GOVERNANCE, INSTITUTIONS AND ORGANISATIONS, NUS BUSINESS SCHOOL 2, 12 (2013) https://bschool.nus.edu.sg/Portals/0/images/CGIO/Report/Asian%20Family%20Business%20Report.pdf (providing empirical evidence that Singapore-listed family firms "perform significantly better" than non-family firms on returns on investment, and outperform non-family firms in Singapore and Asia generally on a range of metrics).

[46] Tan Cheng Han et al, *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 62–63 (2015); Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 754–755 (2013).

B. ILLUMINATING SINGAPORE'S INSTITUTIONAL ARCHITECTURE & SHAREHOLDER LANDSCAPE

Instead of institutional shareholders such as banks, pension funds, and mutual funds, the dominant players in Singapore's listed firms are controlling-block shareholders that possess sufficient control either to monitor management, or in the alternative, to intervene directly in the management of their investee companies personally.[47] Controlling shareholders may be divided primarily into two types. The first is family shareholders who collectively hold controlling blocks of voting rights in many of Singapore's listed companies; we will say more about this type of shareholder later in Part IV. The second, which is the focus of this Part, is the single largest player in Singapore's capital market: the state itself.

The state holds shares and voting rights through Temasek Holdings Private Limited (Temasek), which is a private incorporated company under Singapore's *Companies Act*.[48] The Singapore Minister for Finance – which is a body corporate[49] – is the sole shareholder of Temasek.[50] In turn, Temasek is the controlling shareholder of the companies in its portfolio of government-linked companies (GLCs).[51] These GLCs include 23 of Singapore's largest publicly listed companies, which comprise about 37% of the total capitalization of the Singapore Exchange (SGX).[52] Singapore's corporate landscape is thus dominated by controlling shareholders, rather than institutional

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[47] See e.g.; Luh Luh Lan & Umakanth Varottil, Shareholder Empowerment in Controlled Companies: The Case of Singapore, in RESEARCH HANDBOOK OF SHAREHOLDER POWER 573, 575–578 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015); Tan Cheng Han et al., *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 91 (2015); but see Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 315–316 (2017).

[48] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 316 (2017) ("As noted above, Temasek is a private (unlisted) limited company. … 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.").

[49] Minister for Finance (Incorporation) Act (c. 183, rev. ed. 2014) (Sing.).

[50] Temasek Holdings, *Investor Factsheet* (Jul. 9, 2019), archived Aug. 25, 2019 at https://web.archive.org/web/20190825115005/https://www.temasek.com.sg/content/dam/temasek-corporate/our-financials/investor-library/fact-sheet/2019_Investor_Fact_Sheet_English.pdf.

[51] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 307 (2017); Tan Cheng Han et al., *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61 (2015).

[52] Isabel Sim et al, THE STATE AS SHAREHOLDER: THE CASE OF SINGAPORE, CENTRE FOR GOVERNANCE, INSTITUTIONS & ORGANISATIONS, NUS BUSINESS SCHOOL 6, 23–24 (2014) https://bschool.nus.edu.sg/cgio/wp-content/uploads/sites/7/2018/10/SOE-The-State-as-Shareholder-2014.pdf.

shareholders, passive or otherwise. In fact, over 90% of Singapore's public listed companies have block-shareholders who exercise controlling power.[53]

Both state and family controlling shareholders perform distinct functions in Singapore's corporate environment. Notwithstanding Temasek's status as a wholly-owned subsidiary of the Government of Singapore,[54] substantial constitutional safeguards and an institutional architecture were put in place by the Singapore legislature to prevent the state from using its control over Temasek to tunnel wealth from GLCs or otherwise abuse its power.[55] What is perhaps most striking and significant is the fact that on almost every available metric for corporate performance, Temasek and its GLCs have been highly successful. As Puchniak and Lan observe:

> 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 its inception of 16%—significantly outstripping the average performance of other large and mid-sized Singapore-listed companies. Likewise, empirical evidence suggests that government-linked companies on average are significantly more profitable, better governed, and receive much higher valuations than nongovernment-linked companies.[56]

Further, although Temasek is an exempt private company – which under Singapore law is not legally required to disclose any financial information to the public[57] – it voluntarily publishes an annual group financial summary and portfolio of performance which has garnered it the highest possible ranking for transparency among sovereign wealth funds by the Linaburg-Maduell Transparency Index.[58]

Puchniak and Lan have compared Temasek's engagement with its GLCs as "akin to an engaged pension fund, which actively votes its shares but does not become directly

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[53] Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore, in* RESEARCH HANDBOOK OF SHAREHOLDER POWER (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015) 573, 579.

[54] *See supra* note 49 and accompanying text.

[55] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 307–308 (2017); Constitution of the Republic of Singapore, as amended and in force Apr. 1, 2017, arts. 22C(3), 22D(5)–(6), Fifth Sched. Pt. II.

[56] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 316 (2017), citing Isabel Sim et al, THE STATE AS SHAREHOLDER: THE CASE OF SINGAPORE, CENTRE FOR GOVERNANCE, INSTITUTIONS & ORGANISATIONS, NUS BUSINESS SCHOOL 17, 20 (2014) https://bschool.nus.edu.sg/cgio/wp-content/uploads/sites/7/2018/10/SOE-The-State-as-Shareholder-2014.pdf.

[57] Companies (Filing of Documents) Regulations (Rg. 7, Cap. 50, 2005 rev. ed.), reg 6(1)(c)(i) (exempting solvent exempt private companies from filing documents in regulation 6(2)), reg 6(2) (requiring companies not otherwise exempt to file financial statements and auditors' report) (as amended by s 513/2018). The current version has been in force since August 31, 2018.

[58] Sovereign Wealth Fund Institute, *Linaburg-Maduell Transparency Index (LMTI)* https://www.swfinstitute.org/research/linaburg-maduell-transparency-index (giving Temasek Holdings the highest rating of 10 based on a set of 10 indicators).

involved in the management of its portfolio companies".[59] However, in exceptional cases, Temasek has actively intervened in the affairs of its investee companies when doing so was beneficial for the company's long-term performance. A clear example of this can be seen in a recent case where Temasek acted to defend one of its GLCs, Olam International,[60] which was targeted by a short-selling campaign by Muddy Waters – an aggressive US activist hedge fund. When Muddy Waters released a spurious report alleging accounting malfeasance at Olam, Olam's share price suffered a serious fall. Olam's downward spiral was only gradually halted when one of Temasek's investment arms purchased sufficient shares to obtain a majority stake in Olam through an all cash offer, and Temasek had publicly announced its support for Olam. Market observers noted that Temasek's actions demonstrated that "Temasek will back them to the hilt and shake out shorts (short-sellers) and doubters at the same time".[61] Temasek's intervention in the Olam case demonstrates its commitment to long-term sustainable investment and judicious activism – while at the same time quelling the market for US-style activist shareholders and other long-term institutional investors. This government-centered form of corporate governance, which has proved extremely successful for decades, has made Singapore an attractive potential corporate governance model for China, as well as for many other jurisdictions around the world.[62]

As with Temasek, Singapore's family controlling shareholders also have significant incentives – and have done so in practice – to actively monitor management of their companies and to do so with a long-term view towards promoting the company's success.[63] In short, Singapore's state and family controlling shareholders have acted as "engaged stewards" seeking to promote the long-term interests of the companies even in the absence of the Singapore Stewardship Code. We discuss family controlling shareholders and their role in corporate governance in greater detail in Part IV.

By contrast, there is no evidence to show that institutional investors have played

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[59] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 309 (2017)

[61] *Temasek Offer lifts Olam Clear of Muddy Waters*, Business Times (Mar. 15, 2014) https://www.businesstimes.com.sg/top-stories/temasek-offer-lifts-olam-clear-of-muddy-waters (referring to analysis by HSBC in a research note). *See also* Ernest Lim, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 79 (Cambridge University Press 2019); Christopher Langer & David Yong, *Temasek Drags Olam From Muddy Waters to Winning $1 Billion Loan*, BLOOMBERG (Nov. 3, 2015) https://www.bloomberg.com/news/articles/2015-11-02/temasek-drags-olam-from-muddy-waters-to-winning-1-billion-loan.

[62] Tan Cheng Han et al., *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 62–63, 91 (2015); Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 754–755 (2013).

[63] See discussion at Part IV below.

anything more than a minor role in the corporate governance of Singapore listed companies compared to state and family controlling shareholders. Based on a recent empirical study of 195 Singapore listed companies representing 83% of total market capitalization, institutional investors held only 12% of market capitalization weighted ownership.[64] In addition, there is no evidence that institutional shareholders have used their limited shareholdings to play an active role in corporate governance. Indeed, also the role of shareholder activists, and even proxy advisory firms, has been extremely limited in Singapore.[65] Private pension funds, which are major institutional investors in many developed economies, do not exist as such in Singapore. Instead, Singapore's state-run equivalent of a pension fund operates pursuant to a complex arrangement that reinforces the government's central role in corporate governance.[66] This clearly sets Singapore apart from the UK (and US), in that it does not have a body of institutional investors who collectively own a majority stake in listed companies, yet have remained rationally passive.

In sum, Singapore's corporate governance context features neither excessive risk-taking by listed companies dominated by management, nor an absence of shareholder stewards leading to short-termism,[67] such that the concerns that drove the UK's adoption of the 2010 Stewardship Code are entirely absent. Institutional investors do not dominate Singapore listed companies given that they have paltry voting rights in comparison to

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64 Adriana De La Cruz et. al. OWNERS OF THE WORLD'S LISTED COMPANIES 12, 36, 37 (2019) http://www.oecd.org/corporate/owners-of-the-worlds-listed-companies.htm

65 Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore, in* RESEARCH HANDBOOK OF SHAREHOLDER POWER 573, 575–578 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015)

66 Singapore's pension-fund equivalent is a compulsory savings plan operated by the Singapore government called the Central Provident Fund ("CPF"), that all working Singaporeans and Permanent Residents are required to contribute to; CPF funds are invested in Special Singapore Government Securities that are issued and guaranteed by the Singapore government. The proceeds from these bonds are pooled with other funds from the Singapore government, and are ultimately converted to foreign assets and transferred to the Government of Singapore Investment Corporation ("GIC"), Singapore's sovereign wealth fund, to "manage over a long investment horizon". GIC invests the vast majority of its assets in listed companies outside of Singapore, especially in the US and Europe. *See* Central Provident Fund Board, *CPF Overview*, CENTRAL PROVIDENT FUND BOARD https://www.cpf.gov.sg/Members/AboutUs/about-us-info/cpf-overview; Ministry of Finance, Section IV: *Is our CPF money safe? Can the Government pay all its debt obligations?*, MINISTRY OF FINANCE SINGAPORE (2014) https://www.mof.gov.sg/policies/our-nation's-reserves/Section-IV-Is-our-CPF-money-safe-Can-the-Government-pay-all-its-debt-obligations; GIC, *Investments: Performance* (Mar. 31, 2019) https://www.gic.com.sg/investments/performance/.

67 Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore, in* RESEARCH HANDBOOK OF SHAREHOLDER POWER 572, 579–580 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015) (describing the dominant corporate governance problems in Singapore, and emphasizing that such problems arise from Singapore's concentrated shareholding landscape).

their UK counterparts;[68] rather, it is controlling shareholders that exercise effective control over Singapore listed companies. It would thus be unrealistic to expect the solutions that the UK Code proposes – for institutional investors to take an active role in corporate governance – to function in the same way in Singapore as they would in the UK. The first puzzle that this Article will solve thus presents itself: if none of the corporate governance problems or solutions that the UK Code was designed to address exist in Singapore, why then did Singapore ostensibly adopt a UK-model stewardship code?

C. SINGAPORE'S STEWARDSHIP CODE: AN EFFECTIVE SIGNALING DEVICE

Given the practical impotence and irrelevance of institutional investors in Singapore, we argue that the Singapore Stewardship Code is a form of "halo signaling" introduced to demonstrate Singapore's commitment to the Anglo-American-cum-global norms of "good" corporate governance. Here, "halo signaling" 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.[69]

A previous example of Singapore's successful effort at "halo signaling" was its adoption of American-style independent directors in its Corporate Governance Code. Independent directors in the US are expected to monitor management to address the shareholder-manager agency problem arising from dispersed shareholders,[70] and are thus not required to be independent from controlling shareholders. When Singapore first adopted American-style independent directors in its Corporate Governance Code, an obvious conundrum arose: given that controlling shareholders dominate Singapore's listed companies, American-style independent directors were functionally irrelevant since they could not be expected to effectively monitor controlling shareholders and mitigate private benefits of control.[71] Singapore nonetheless adopted American-style independent directors to signal its compliance with American corporate governance norms, and its commitment to "good" corporate governance in the aftermath of the 1997 Asian Financial Crisis.[72] In fact, Singapore had already developed domestic functional substitutes for American-style independent directors through unique corporate governance arrangements in state and family controlled firms.[73]

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68 *Id*.

69 Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 272, 288 – 290, 332 (2017).

70 *Id.* at 273–278.

71 *Id.* at 269.

72 *Id*. at 288–290.

73 *Id*. at 295–317.

We believe that by adopting a UK-style stewardship code, Singapore is yet again engaging in a form of "halo signaling" similar to its embrace of American-style independent directors. We draw this conclusion based on the text of the Stewardship Code itself juxtaposed against the practical irrelevance of institutional investors themselves in Singapore and the reality of Singapore's shareholder landscape (as described above). In explaining the importance of the Singapore Stewardship Code, the preamble states:

> Many countries are seeing a trend towards fragmented ownership, especially in listed companies, with many shareholders each holding a small proportion of shares. Coupled with increasingly shorter shareholding tenure, the ownership mentality is arguably being eroded and replaced by a prevalent short-term view of investment and portfolio management. Hence, the emphasis on stewardship is relevant and timely.[74]

While these corporate governance issues are relevant for jurisdictions with dispersed shareholding environments such as the UK and US, they are not applicable to a jurisdiction with a controlling-block shareholder environment, which has maintained or increased the concentration of its shareholder landscape over time, as is the case in Singapore.[75] The concerns articulated in the Code's preamble demonstrate a remarkable disconnect with the reality of Singapore's corporate environment, where controlling-block shareholders dominate listed companies.[76] It would be difficult to make out a case on the available evidence that Singapore suffers from the corporate governance problems arising from dispersed shareholding or short-termism.

Further, the Code is also expressly addressed to "institutional investors who are asset owners and asset managers",[77] and are "most applicable to Singapore-based institutional investors with equity holdings in Singapore-listed companies".[78] Yet, as we have explained above, institutional investors only play a minor role in the corporate governance of Singapore listed companies as compared to state and family controlling shareholders. The purported concerns driving the introduction of the Code are clearly irrelevant to Singapore – and it is their very irrelevance that makes the case that the Code is being adopted for signaling reasons, rather than to address practical corporate governance problems in Singapore.

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[74] STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 3 (2016).

[75] Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore, in* RESEARCH HANDBOOK OF SHAREHOLDER POWER 572, 579–580 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015); Tan Cheng Han et al., *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 66–67 (2015)

[76] *Id.*

[77] STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 3 (2016).

[78] STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 4 (2016).

III. THE SECOND PUZZLE: WHY DID SINGAPORE ADOPT A "TOOTHLESS" CODE?

A. THE "TOOTHLESS" NATURE OF THE SINGAPORE CODE REVEALED

At first blush, a textual analysis of the seven broad principles in the Singapore Code would lead one to the conclusion that it is similar to the UK Code. Indeed, all seven principles articulated in the UK Code can find broadly parallel principles in the Singapore Code, with only a few minor differences in wording. Thus, based on a superficial textual analysis of the seven principles in both codes, it would be reasonable to conclude that the Singapore Code addresses the same issues, and promotes the same responses to those issues, as the UK Code. However, as is often the case, the devil is in the details. A careful examination of the preamble of the Singapore Code and a few subtle, but critical, differences in wording in the Singapore Code's principles, reveals that the two codes are dramatically different – and that the Singapore Code also departs from most other codes which claim to have been modelled on the UK Code.

First, the Singapore Code does not articulate a singular model of stewardship with which investors should comply. The UK Code was specifically designed to set out clear and concise expectations for "good stewardship" to encourage institutional investors to either adopt these practices, or face market scrutiny if they decide to deviate from them, backed by a requirement for investors to give reasons for their deviation.[79] Notwithstanding the Singapore Code's apparent similarity to the text of the UK Code, the Guidance to Principle 1 of the Singapore Code states that investors can "*satisfy themselves* that they adhere to their *own stewardship approach* in carrying out investment activities".[80] The idea that each investor can develop their own view of stewardship, without benchmarking it against a single settled model or code, is significantly different from the UK Code. In other words, it is possible for each institutional investor to adopt a version of the Singapore Code that the investor has adapted to their own needs. Even if there is substantial variation among the versions of the Singapore Code that each individual investor has adopted, all of them could be considered to have adopted or complied with the Singapore Code.

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[79] Arad Reisberg, *The UK Stewardship Code: On the Road to Nowhere?*, 15 J. CORP. L. STUD. 217, 221–223 (2015); Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1005–1006 (2010).

[80] STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 6 (2016).

Second, flowing axiomatically from the fact that there is no single model, the Singapore Code does not employ a "comply or explain" approach. Rather, the preamble states that the "level of commitment [to the principles] are matters that are left to each individual investor to adopt, on a wholly voluntary basis".[81] This combined with the aforementioned "self-satisfaction standard" provide the Singapore Code with neither benchmark nor venue for disclosure – elements that lie at the core of a typical "comply or explain" regime. Without such a regime, the Singapore Code is not designed to significantly increase market pressure on institutional investors to follow a particular model of "good stewardship" – a function which is central to the UK Code and most other stewardship codes. Pursuant to the UK Code, signatories promise to publish a statement of commitment to the Code, and the Financial Reporting Council (FRC) has a website with links to the individual pledges by the institutional investors[82] – a further mechanism to increase market-based pressure to encourage transparency, and either adherence to or justified deviation from the UK Code. In addition, the FRC lists and tiers the institutional investors based on the quality of their disclosure under the UK Code[83] – further enhancing transparency and market pressure to promote that Code's model of good stewardship.

None of these features exist for the Singapore Code. Stewardship Asia refers to institutional investors who have decided to adopt the Code as "supporters" – as opposed to the "signatories" referred to in the UK Code. The softer language of "supporters" suggests that Stewardship Asia wants a much softer regime than the UK Code. Stewardship Asia's webpage explicitly states that the Singapore Code "is not enforced or audited at all".[84] While Stewardship Asia has provided a list of such supporters on its website, there is no information as to the degree of their compliance with the Code.[85] There is thus no mechanism to determine if institutional investors have complied with the

81 STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 3 (2016).

82 Financial Reporting Council, *Tiering of Stewardship Code Signatories,* FINANCIAL REPORTING COUNCIL https://www.frc.org.uk/investors/uk-stewardship-code/uk-stewardship-code-statements

83 *Id.*

84 *See* Stewardship Asia, *FAQs*, https://web.archive.org/web/20191119132047/https://www.stewardshipasia.com.sg/intent.

85 Stewardship Asia, *SSP Expressions of Support*, https://web.archive.org/web/20191119132440/https://www.stewardshipasia.com.sg/sites/default/files/SSP%20Expressions%20of%20Support_16%20May%202019.pdf (as of May 16, 2019). The Investor Management Association of Singapore also maintains a list of members who have expressed support for the Singapore Code. As of September 3, 2019, 54 Singapore organisations have expressed their support for the Singapore Code. *See* Investor Management Association of Singapore, *Singapore Stewardship Principles (SSP)* http://www.imas.org.sg/Articles/267-singapore-stewardship-principles-ssp-.html.

Singapore Code, or to enforce compliance where institutional investors fall short.

Third, it goes without saying that the Singapore Code – as stated in the preamble – is entirely voluntary. This reinforces the idea that the Singapore Code is not designed to significantly alter the status quo. It should be noted that the initial version of the UK Code was itself entirely voluntary; the fact that the UK Code is now mandatory for certain domestic institutional investors is unique to the UK,[86] and is not a characteristic that is shared by other jurisdictions that developed stewardship codes explicitly or implicitly modelled on the initial UK Code. In this sense, although the purely voluntary nature of the Singapore Code further distinguishes it from the UK Code, this is in fact a red herring – as there is nothing really to voluntarily submit to at all. In this light, when the preamble of the Singapore Code states that the principles are "*not intended to be a "box-ticking" exercise*", one is left wondering whether there are, in fact, any boxes to tick at all.[87]

Fourth, there is no regulatory agency in Singapore that is responsible for the administration of the Singapore Code. The UK Code was issued by the FRC, which also issued and administers the UK Corporate Governance Code.[88] The FRC is a regulatory body with enforcement power against accountants and actuaries,[89] although it is not a regulatory body overseeing the financial markets; that function is performed by the Financial Conduct Authority (FCA).[90] By contrast, Stewardship Asia is a private entity that appears to be tasked only with promoting the Singapore Stewardship Code and the Family Stewardship Code to investors.[91] Stewardship Asia has no power to regulate or enforce compliance with the Singapore Stewardship Code. Notably, neither the Monetary Authority of Singapore[92] (Singapore's closest equivalent to the FCA), nor the Accounting and Corporate Regulatory Authority[93] (Singapore's closest counterpart to the FRC) were tasked with the administration of the Singapore Stewardship Code.

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86 FCA Handbook, *COBS 2.2.3, Disclosure of commitment to the Financial Reporting Council's Stewardship Code*, FINANCIAL REPORTING COUNCIL https://www.handbook.fca.org.uk/handbook/COBS/2/2.html.

87 STEWARDSHIP ASIA CENTRE, STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 2–4 (2016) (emphasis added).

88 Financial Reporting Council, *UK Stewardship Code* (2012) FINANCIAL REPORTING COUNCIL https://www.frc.org.uk/investors/uk-stewardship-code.

89 Financial Reporting Council, *Professional Oversight*, FINANCIAL REPORTING COUNCIL https://www.frc.org.uk/auditors/professional-oversight.

90 Financial Conduct Authority, *About the FCA* (Jul. 30, 2019) https://www.fca.org.uk/about/the-fca.

91 Stewardship Asia Centre, *About Us* (2018) https://www.stewardshipasia.com.sg/about-us.

92 Monetary Authority of Singapore, *Regulation* (Sep. 19, 2019) https://www.mas.gov.sg/regulation.

93 Accounting and Corporate Regulatory Authority, *Overview of ACRA* (Sep. 19, 2019) https://www.acra.gov.sg/who-we-are/overview-of-acra.

B. A CODE DESIGNED FOR SIGNALING, NOT FOR DISRUPTIVE CHANGE

From this analysis, one would be inclined to conclude that Singapore's Code is either the most toothless stewardship code in the world, or is in fact not even a "code" at all, but merely publicity. We argue that this misses the point altogether. Singapore's adoption of a stewardship code should be understood as an effort to send a signal of good corporate governance without fundamentally up-ending Singapore's existing – and effective – corporate governance system. The tension between compliance with global perceptions of good corporate governance and maintaining Singapore's unique corporate governance system was articulated by then Minister of Finance (and present Prime Minister), Lee Hsien Loong in 2002:[94]

> 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 . . . .

Even in the absence of a stewardship code, Singapore already had "good stewards" in the form of Temasek and family controlling shareholders – backed by an institutional architecture and public enforcement mechanisms – which effectively controlled the problem of systematic wealth-reducing private benefits of control.[95] Notwithstanding its apparent dissimilarity from the Anglo-American idea of an "institutional investor", Temasek has branded itself as a "steward" of its investee companies in recent years.[96] Temasek's involvement in Singapore's Stewardship Code has also gone beyond what one might expect from an institutional investor. Our detailed examination of public company records, press statements, and business journalism reveals that Temasek funds Stewardship Asia and it is part of the Temasek group, and had a hand in Stewardship Asia's early efforts at drafting and promoting the Singapore Stewardship Code.[97]

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94 74 PARL. DEB., 10th Parl. 1185–86 (2002).

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

96 *See e.g.* Temasek, *Our Purpose*, TEMASEK, https://www.temasek.com.sg/en/who-we-are/our-purpose.html ("Our Temasek Charter guides our day-to-day decision-making … Temasek is a trusted steward – we strive for the advancement of our communities across generations").

97 Stewardship Asia was founded in 2011 as the Stewardship and Corporate Governance Centre, which was a Temasek-led initiative. See Ho Ching, *Transcript: Luncheon Remarks by Ho Ching at Stewardship Asia 2018 Roundtable*, TEMASEK (Jun. 4, 2018) https://www.temasek.com.sg/en/news-and-views/news-room/speeches/2018/luncheon-remarks-by-ho-ching-stewardship-asia-2018.html;

Temasek also indirectly funds Stewardship Asia through the Temasek Trust, Temasek's philanthropic arm. The Temasek Trust 'manages 19 philanthropic endowments and gifts from Temasek and other donors', and provides a 'sustainable 4% endowment funding rate' for entities that it supports, which includes Stewardship Asia.[98]

The relationship between Temasek and Stewardship Asia thus sets Singapore apart from other leading jurisdictions who have adopted stewardship codes.[99] Unlike Japan or the UK stewardship codes, Singapore's Code is not the result of a 'top-down' government led initiative, given that the Code was not developed by a government regulator or agency and Stewardship Asia discloses no clear legal relationship to the Singapore government. However, Temasek's involvement in Stewardship Asia suggests that the Code is linked, at least in part, to the efforts of a state *controlling shareholder* – making it distinctly different from the US and South Korean examples, which were driven by private institutional investors and devoid of government involvement. This could lead foreign observers to believe that Singapore's Code is ostensibly the product of a 'bottom-up' initiative similar to the US or South Korea Codes, insofar as Stewardship Asia may be deemed by those unfamiliar with Singapore's context to be representing the interests of institutional investors in Singapore generally.[100]

Thus, it was Temasek, through its close relationship with Stewardship Asia, that spearheaded the Singapore Stewardship Code as a form of "halo signaling" with minimal disruption to the status quo. In influencing and promoting the Singapore Stewardship Code, Temasek indirectly took control of a nascent regulatory space and its future development. This allowed the state, as the most powerful controlling shareholder, to preempt market players from creating a more aggressive bottom-up code that might disrupt the status quo maintained by Singapore's controlling shareholders. This form of "halo signaling" without effecting any substantive change to institutional investors is arguably efficient, since Singapore's corporate governance issues do not lie with

Ravi Menon, *Corporate Governance – going beyond the rules*, BANK OF INTERNATIONAL SETTLEMENTS (Oct 1., 2012) https://www.bis.org/review/r121002a.pdf. *See also* Singapore Institute of Directors, *Shareholder stewardship gets a push in Singapore*, DIRECTORS BULLETIN (2017) https://www.sid.org.sg//images/PDFs/Publications/DirectorsBulletin/2017Q1/Shareholder%20stewardship%20gets%20a%20push%20in%20Singapore.pdf. ('The Working Group, which includes SID and other members and was chaired by Stewardship Asia Centre (which is part of the Temasek Group), first met in September 2014. Most members of the Working Group moved on to be members of the Steering Committee that will promote and administer the SSP.')

[98] Temasek Review, TEMASEK OVERVIEW 2019 42–43 TEMASEK REVIEW (2019) https://www.temasekreview.com.sg/downloads/Temasek-Review-2019-Overview.pdf.

[99] Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497, 507–513 (2018).

[100] *Id*.

institutional investors, and Singapore overall has demonstrated its commitment to strong corporate governance. This is not to say that Temasek is acting against the interests of minority shareholders, or corporate governance in general, by seizing this regulatory space. Rather, Singapore's controlling shareholders – including Temasek – have substantial incentives to function as "stewards" of their companies, and have an exceptional long-term track record of doing so effectively.[101] Controlling shareholders of Singapore's listed companies stand to enjoy external and private benefits of control – at an efficient level – that motivate them to be effective stewards, and appear to propel Singapore's highly effective corporate governance system.[102]

Further, the "toothless" nature of Singapore's Code would arguably facilitate compliance by major institutional investors seeking to comply with stewardship codes in multiple jurisdictions. Given the diverse approaches to stewardship taken in various jurisdictions,[103] one might expect institutional investors with operations in these jurisdictions to face considerable challenges in complying with materially different requirements imposed by various stewardship codes. By contrast, the fact that the Singapore Code does not unilaterally impose a single model of stewardship, coupled with the "self-satisfaction standard" employed by the Code,[104] can accommodate diverse approaches to stewardship. This practically eliminates any compliance challenges that institutional investors might face with regards to the Singapore Code, and greatly facilitates the passive adoption by institutional investors around the globe of the Singapore Code – making it easy for them to do business in Singapore.

C. IS THE STATE CONTROLLING SHAREHOLDER WRITING THE RULES OF THE GAME FOR ENGAGEMENT WITH ITSELF?

Given Temasek's close relationship with Stewardship Asia, a skeptical observer might wonder if Temasek's influence over Stewardship Asia creates a serious conflict of interest. It would appear that the entity writing the rules for how institutional investors should engage with controlling shareholders (i.e., Stewardship Asia), is itself an arm of Singapore's most powerful controlling shareholder: the Singapore government through its wholly-owned holding company Temasek. Based on these assumptions, one might

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[101] Tan Cheng Han et al, *State-Owned Enterprises and the Singapore Model*, 28 COLUM. J. ASIAN L. 61, 68–69, 94 (2015).

[102] Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, 514–15 (Jennifer G. Hill & Randall S. Thomas eds., Elgar Publishing 2015).

[103] Dan W. Puchniak et. al., *Shareholder Stewardship in Asia* (forthcoming).

[104] Stewardship Asia Centre, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 6 (2016).

conclude that it would be in Temasek's interests for the Singapore Code to be designed in a way that would avoid disrupting management or promoting powerful shareholder activism. As one might expect if Jeff Bezos and Mark Zuckerberg wrote the rules for how Blackrock, Fidelity, and State Street, should engage with Amazon and Facebook, the Code is designed in a way to not disrupt the status quo for corporate controllers – which in Singapore are the state and wealthy families.

These assumptions are, however, erroneous in Singapore's context. Distinct from the US corporate governance environment in which Amazon and Facebook exist, Temasek is located within an institutional architecture that serves as a functional substitute for shareholder activism. As explained above, there are substantial legal constraints that prevent undue state influence from being exerted on Temasek's board or its subsidiary companies, and ensures that decisions made by Temasek's management are made for commercial and not political reasons. Temasek has further committed itself to refrain from being directly involved in the management of its investee companies.[105] This prevents the type of wealth-reducing private benefits of control from being extracted by Temasek from Singapore's state-owned enterprises – which one may expect would be extracted from Amazon and Facebook if Bezos and Zuckerberg were themselves the regulators and the US corporate governance environment was devoid of shareholder activism. We may assume that Temasek is – and will continue to – abide by the same constraints in relation to Stewardship Asia. There is thus far no evidence that Temasek has, or intends to, exert any undue influence over Stewardship Asia and the Singapore Stewardship Code, and to use the Code to protect the status quo purely for selfish reasons that result in inefficient wealth tunneling.

Rather, it seems that the real reason for the enactment of the Singapore Stewardship Code may be far more benign. By releasing the first stewardship code through Stewardship Asia, the Singapore government took control of this regulatory space and prevented more bottom-up approaches of shareholder stewardship – which could have been more unpredictable and potentially disruptive to Singapore's successful corporate governance model – from developing. This form of "pre-emptive corporate governance" has allowed the government to maintain the existing system of corporate governance – which has served itself and Singapore extremely well – while at the same time allowing Singapore to maintain its position as an Asian and global corporate governance leader by embracing "shareholder stewardship".

[105] Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 307–310 (2017).

IV. THE THIRD PUZZLE: WHY HAVE A STEWARDSHIP CODE FOR FAMILY COMPANIES?

A. SINGAPORE'S FAMILY STEWARDSHIP CODE

After the release of Singapore's Stewardship Code in 2016, events would take a surprising turn in October 2018, when Stewardship Asia released a second "stewardship code" under the title "Stewardship Principles for Family Businesses" (Singapore Family Stewardship Code). At first glance, this appears to be a version of the Singapore Stewardship Code developed for family companies to encourage family controlling shareholders to be good "stewards" of their companies.[106]

The Singapore Family Stewardship Code is, to the best of our knowledge, the first and only one of its kind in the world. Given the importance of family companies to Singapore, this development does not surprise: family companies play a central role in Singapore's economy, and up to 60.8% of publicly listed companies can be classified as family firms.[107] This is in line with broader economic trends in Asia; family firms comprise a substantial segment of both small and medium enterprises, and large public listed firms in many Asian jurisdictions.[108] By introducing the world's first family stewardship code, Singapore has positioned itself as a corporate governance leader for Asia and its leading economies.

Turning to the substantive provisions of the Family Stewardship Code, it is notable that as with the Singapore Stewardship Code, the Family Stewardship Code is not a "code" *per se*, but rather a set of seven principles. These principles aim to encapsulate a way of doing business representing "the essence of responsible and meaningful value creation in a sustainable way to benefit stakeholders, as well as the larger community that [family businesses] are a part of".[109]

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106 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES (2018).

107 Marleen Dielman et. al., SUCCESS AND SUCCESSION: A STUDY OF SGX-LISTED FAMILY FIRMS, CENTRE FOR GOVERNANCE, INSTITUTIONS AND ORGANISATIONS, NUS BUSINESS SCHOOL 8 (2013) https://bschool.nus.edu.sg/Portals/0/images/CGIO/Report/Asian%20Family%20Business%20Report.pdf.

108 *See e.g.* Gur Aminadav & Elias Papaioannou, *Corporate Control Around the World* (manuscript at Table 1) J. Fin. (forthcoming) https://sites.google.com/site/papaioannouelias/research/publications (describing the shareholding structures and profiles of shareholders in listed firms in over a hundred jurisdictions in 2012); Adrian Wooldridge, *To Have and to Hold: Special Report on Family Companies* THE ECONOMIST 2 (Apr. 18, 2019) http://www.economist.com/sites/default/files/20150418_family.pdf ("the centre of the modern economy is shifting to parts of the world—most notably Asia—where family companies remain dominant.").

109 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 1 (2018).

Principle 1 reads: "Driven by a sense of purpose, anchored by values"; it encourages a family business to articulate and clearly communicate the purpose of the family business, and to implement them in practice. Principle 1 appears to contemplate that the "purpose" of a family business should account for considerations other than pure profit-maximization or mere commercial goals, in that it directs family shareholders to aim for "responsible wealth creation".[110] This principle appears to be consistent with Principle 1 of the Singapore Stewardship Code, which exhorts investors to "establish and articulate their policies on stewardship responsibilities".[111] However, unlike institutional investors who are ordinarily corporate outsiders and who individually cannot control the company, family controlling shareholders are the quintessential corporate insiders who can, and do, intervene in the company's management. As compared to corporate outsiders, as is the case for institutional investors in most UK listed companies, family controllers are far more intimately connected with management and are normally the best informed.[112]

More importantly, what seems to have escaped the global stewardship movement's attention is the fact that, when one goes beyond a superficial textual analysis and considers the function of the Family Stewardship Code, it is starkly different than any other stewardship code we are aware of. Principles 2 to 7 of the Family Stewardship Code have no direct equivalent in the Singapore Stewardship Code. Principle 2, simply stated, is "Cultivate an ownership mentality". This principle encourages owners and employees to take responsibility for the business' long-term growth. In particular, it discourages family owners from using company resources to benefit themselves, and encourages family owners to "embrace the responsibility for creating long-term social and economic value to a wider group of stakeholders, and not just myopically focusing on family wealth to foster ownership mentality amongst all those who play a role in the success of the business".[113] In a similar vein, Principle 3 encourages family shareholders to "Integrate short-term and long-term perspectives", by ensuring that short-term goals are consistent with long-term goals, and looking beyond short-term gains to focus on the preservation of "intangible values such as kinship and loyalty".[114] Although their focus on long-term value over short-term profit makes Principles 2 and 3 broadly consistent with the general thrust of stewardship codes around the world, maintaining values of kinship and loyalty

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110 STEWARDSHIP ASIA CENTRE, SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS 6 (2016)

111 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 4 (2018).

112 Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 298–300 (2017).

113 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 4 (2018).

114 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 5 (2018).

suggests the continuing entrenchment of the family as the corporate controller, which has no equivalent elsewhere.[115]

Principle 4 states "Expect changes, nurture agility and strengthen resilience". This principle encourages family businesses to develop skills to adapt to new challenges in a rapidly changing business environment. Family businesses should strive to build capacity to leverage new opportunities, and to refrain from passively clinging on to traditional practices.[116] This reinforces the idea of keeping the family business viable in the long run, which would ultimately preserve the future for the family as the corporate controller.

Principle 5 emphasizes the importance of non-family participants and stakeholders, and exhorts family shareholders to "Embrace inclusiveness and build strong stakeholder relationships". This principle encourages family businesses to maintain family unity and develop longstanding relationships with internal and external stakeholders. In particular, this principle encourages family businesses to engage with stakeholders through corporate law and governance mechanisms such as annual general meetings and voluntary disclosure reports.[117] Board diversity is also singled out as a good practice for family businesses; this is particularly significant in Singapore's context given that many family companies have traditionally operated according to traditional Asian family values that emphasizes control by an autocratic patriarch, "who enlists his children and siblings *(women usually excepted)* to assist in the family business".[118] Despite this call for diversity, there is nothing to suggest that the family should divest its controlling stake in the company to external organizations or individuals. Rather, the focus is on nurturing a strong stakeholder culture to sustain family-controlled companies for the future.

Principle 6 appears to reflect environmental, social and governance concerns; it states "Do well, do good, do right; contributing to community". This principle promotes the importance of "non-economic wealth", such as "social capital, communal ties, family reputation and core values".[119] Once again, it appears that the Family Stewardship Code is attempting to develop a model for long-term family control where reputation rather than shareholder activism is a significant check on the extraction of private benefits of control in family companies.

Principle 7 is arguably the most interesting provision in the Family Stewardship Code

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[115] Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497, 512–513 (2018).

[116] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 5 (2018).

[117] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 6 (2018).

[118] Samantha S Tang, *Corporate Divorce in Family Companies* [2018] LLOYD'S MARITIME AND COMMERCIAL LAW QUARTERLY 19, 24 (emphasis added).

[119] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 6 (2018).

It states simply: "Be mindful of succession".[120] This principle recognizes the importance of timely and planned succession to not only family successors, but also the utility of external expertise and professional assistance. This principle is crucial because it reveals that while the concept of "stewardship" espoused in the Family Stewardship Code appears to be consistent with that articulated in other stewardship codes – especially the Code's focus on long-term investment and stakeholder considerations – it differs in critical ways. First, unlike the version of "stewardship" employed in the UK Code – which envisions institutional shareholders playing a more active role in the corporate governance of their investee companies[121] – Singapore's Family Stewardship Code does not contemplate complete divestment of control to non-family shareholders, but rather the continued participation of family successors groomed for the task. The Singapore Family Stewardship Code does not appear to actively encourage or facilitate the involvement of institutional investors or shareholder activists in Singapore family companies. For example, there is nothing in the family stewardship code which contemplates collective action by institutional investors – or indeed any action by institutional investors at all.

Further, the Family Stewardship Code takes a substantially different approach to compliance than the UK Code – and most other stewardship codes. The Code provides guidance on how these principles may be put into practice, but does not rely on any form of "comply or explain" or any other mechanism to place any market pressure on family controllers. Per the Code, these principles "aim to articulate the mindset and attitudes, as well as behaviors and practices that would foster success, significance and sustainability for [family businesses]".[122] This specifically contemplates the longevity of the family as the long-term corporate controller, without contemplating that the family might divest control or governance power to institutional investors or any other stakeholder. As with the Singapore Stewardship Code, the Family Stewardship Code neither demands evidence of compliance from signatories who voluntarily 'sign up' to the Code, nor does it provide any mechanism for shareholders or external regulatory agencies to monitor compliance with the Code. This represents a substantial deviation from the compliance requirements provided in stewardship codes from other jurisdictions, including the UK Code.

[120] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 7 (2018).

[121] Financial Reporting Council, THE U.K. STEWARDSHIP CODE 8 (Sept. 2012), https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf

[122] STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES 4–7 (2018).

B. Stewardship for Family Controllers: A Meaningful Approach for a Truly Asian Problem

The salience of the Family Stewardship Code in Singapore is underscored by the significant incentives that family controlling shareholders have to act as "stewards" of their companies by monitoring and directly intervening in the company's management to promote the long-term success of the family business. Singapore family firms have a strong culture that encourages family controllers to preserve and pass on the family business to future generations of the controlling family or families.[123] These cultural norms also link the family's reputation to the success of the family business,[124] giving controllers significant incentives to monitor or directly manage the family firm to promote its long-term success. While tunneling in family firms may be a concern in other jurisdictions, previous research by one of the authors posited "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".[125] There is also anecdotal evidence that family controllers are reluctant to engage in obvious wealth tunneling for fear of being caught by Singapore's efficient public regulators.[126]

Beyond Singapore, family-controlled firms also play a central role in many Asian jurisdictions. Examples of leading family businesses in Asia include Samsung (South Korea), Suntory Holdings (Japan),[127] CK Hutchinson Holdings (Hong Kong), and Far

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123 Wilson Ng & John Roberts, *"Helping the Family": The Mediating Role of Outside Directors in Ethnic Chinese Family Firms*, 60 HUM. REL. 285, 287, 306–07 (2007); Marleen Dielman et al, SUCCESS AND SUCCESSION: A STUDY OF SGX-LISTED FAMILY FIRMS, CENTRE FOR GOVERNANCE, INSTITUTIONS AND ORGANISATIONS, NUS BUSINESS SCHOOL 29, 31 (2013) https://bschool.nus.edu.sg/Portals/0/images/CGIO/Report/Asian%20Family%20Business%20Report.pdf; Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 302 (2017).

124 Wilson Ng & John Roberts, *"Helping the Family": The Mediating Role of Outside Directors in Ethnic Chinese Family Firms*, 60 HUM. REL. 285, 306–07 (2007)

125 Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 303 (2017).

126 *Id.* at 304.

127 The controlling shareholder of Suntory Holdings Limited (the holding company of the Suntory Group), which as of Dec. 31, 2018 held 89.50% of Suntory Holdings, is Kotobuki Fudōsan (Kotobuki Realty) Co. Ltd, an asset management company controlled by the Saji and Torii families that founded Suntory. See Suntory Holdings Ltd., *2018-nen 12-gatsu-ki: Kessan Jōkyō (IFRS) (Renketsu)* (2018年12月期決算概況〔ＩＦＲＳ〕（連結）) [*Financial Statements as of December 2018 (IFRS) (Consolidated)*] (Feb. 15, 2019) 8–9, archived at https://web.archive.org/web/20190825134149/https://www.suntory.co.jp/news/article/mt_items/SBF0807.pdf (reporting that Kotobuki Realty's shareholding and that Suntory Holdings' Chairman (Saji Nobutada) and Vice-Chairman (Torii Shingo) also hold positions as Chairman and Vice-Chairman of

East Organisation (Singapore). In this context, Singapore's development of the Family Stewardship Code is both salient and timely, in that Singapore is the first jurisdiction to develop a stewardship code specifically directed at a business model widely adopted in Asia that faces corporate governance challenges not addressed by the UK Code – or indeed any other stewardship code. The Family Stewardship Code's Asian focus is evident given Stewardship Asia's reliance on Asian examples in its promotion of the Code, including the Banyan Tree Group (Singapore), Hoshi Ryokan (Japan), the Lopez Group (Philippines), Diamond Hotel (Philippines), and the Mayapada Group (Indonesia).[128] Further, Stewardship Asia also recently launched its Family Business Campaign ("FB77") in September 2018 to promote the Family Stewardship Code to Japan, Philippines, Indonesia, Singapore, Thailand, Australia, and China.[129] The Family Stewardship Code and FB77 thus demonstrate Singapore's ambition of reinforcing its position as a corporate governance leader in Asia – and even perhaps making Singapore the standard bearer for an new Asian model of corporate governance.

Given the centrality of family businesses to Asia – and the growing interest in stewardship as an avenue for corporate governance in such companies – the absence of family companies from stewardship codes in other leading jurisdictions is a significant omission. This could arise from an excessively narrow perception of the problems sought to be resolved by stewardship in such jurisdictions. Singapore's Family Stewardship Code thus represents a meaningful contribution to the growing global stewardship movement and an increase focus on corporate governance in Asia.

V. SINGAPORE-STYLE STEWARDSHIP: A SUCCESSFUL SECRET

Stewardship in Singapore is far more complex than it appears at first blush. Indeed, a superficial textual analysis of the seven principles in the Singapore Code would reasonably lead one to believe that stewardship in Singapore is a near carbon-copy of the original UK Code. The mention of the growing corporate governance problems arising from dispersed shareholding and short-termism in the preamble of the Singapore Code could rightly leave an outside observer to conclude that the corporate governance problems which drove the adoption of the UK Code and Singapore Code were nearly

Kotobuki Realty, and that previously, when they served respectively as Suntory's President and Vice-President, also served as President and Vice-President of Kotobuki concurrently; *Japan's Suntory mulling IPO*, NIKKEI ASIAN REV., Jul 28, 2015, at https://asia.nikkei.com/Business/Japan-s-Suntory-mulling-IPO (last visited Aug. 25, 2019) (describing Kotobuki as the Saji and Torii clans' asset management company).

128 STEWARDSHIP ASIA CENTRE, STEWARDSHIP PRINCIPLES FOR FAMILY BUSINESSES (2018).

129 *Id*.

identical. The solution suggested by the seven principles of both codes – motivating institutional investors to be "good stewards" by using their collective voting power to monitor management – suggests that both codes propose the same solution to their ostensibly common corporate governance problems. Foreign readers of academic and popular reports that appear to assume that the Singapore Code is merely a transplant of the UK Code may come away with the mistaken impression that the UK model of stewardship has been transplanted to Singapore.[130] In short, it is entirely understandable why a foreign observer viewing stewardship in Singapore based on a superficial textual analysis, would perceive the evolution of stewardship in Singapore to be evidence of the UK model going global.

The fact that foreign observers might reasonably conclude that Singapore has embraced the apparently UK-driven global stewardship movement is not an accident, but by design. As we have explained, Singapore has a strong incentive to maintain its position as a corporate governance leader by sending a signal that it has embraced the UK model of stewardship, which has become a global indicia of good corporate governance. The fact that so many academic and popular reports assume Singapore has done this is evidence that it has achieved this goal.

However, this is merely the start, not the end, of the Singapore stewardship story. In many respects, stewardship in Singapore turns the UK model on its head, and appears to be uniquely Singaporean. Singapore does not have the corporate governance problems that sparked the UK Code, and the impotence of institutional investors in Singapore means that the UK stewardship solution is similarly absent in Singapore. A closer examination of the Singapore Code reveals that it does not contemplate a single model of stewardship, but rather it allows investors to develop their own understanding of stewardship. Both of Singapore's stewardship codes are merely flexible principles rather than strict regulatory requirements, and there is no easy way to determine which institutions have chosen to adopt these principles because there is no central repository of information about such "adoptees". Further, there is no body with any regulatory power whatsoever to disseminate or enforce the Singapore Code. Viewed through a UK lens, stewardship in Singapore may be seen as a sham or failure based on this granular and contextual analysis.

To the contrary, we suggest that both of Singapore's stewardship codes have been decidedly successful. Through its implementation of not one, but two, stewardship codes, Singapore has reinforced its position as a corporate governance leader that embraces Anglo-American-cum-global norms of good corporate governance. By developing the

[130] *See* text and sources cited at footnote 5 above.

concept of "family stewardship", Singapore has also positioned itself as a stewardship leader in a way that resonates with a seminal corporate governance problem and solution in Asia, which may potentially allow it to become a leader in an emerging movement of Asian corporate governance. The timing of this development is significant as regionalism appears to be replacing globalism as a megatrend.

Importantly, Singapore has been able to position itself as a leader in the global stewardship movement without disrupting its highly successful state-controlled and family-controlled system of corporate governance. Counterintuitively, Singapore's unique brand of stewardship seems to have reinforced – rather than disrupted – its state-controlled and family-controlled system of corporate governance. It would have been beyond the wildest imaginations of the original architects of the UK Code that shareholder stewardship would be successfully used as a mechanism for entrenching state-control and family-control over corporate governance. Nevertheless, Singapore's unique approach to stewardship may very well be a secret to Singapore's continued market-leading corporate governance success.

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