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Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate

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Abstract

Dual-class shares have become one of the most controversial issues in today´s capital markets and corporate governance debates. Namely, it is not clear whether companies should be allowed to go public with dual-class shares and, if so, which restrictions should be imposed. Three primary regulatory models have been adopted to deal with dual-class shares: (i) prohibitions, existing in countries like the United Kingdom, Germany, and Spain; (ii) the permissive model adopted in jurisdictions like Canada, Sweden, the Netherlands, and the United States; and (iii) the restrictive approach recently implemented in Hong Kong and Singapore. This paper argues that, despite the global nature of this debate, regulators should be careful when analysing foreign studies and approaches since the optimal regulatory model to deal with dual-class shares will depend on a variety of local factors. Namely, it will be argued that, in countries with sophisticated markets and regulators, strong legal protection to minority investors, and low private benefits of control, regulators should allow companies going public with dual-class shares with no restrictions or minor regulatory intervention. By contrast, in countries without sophisticated markets and regulators, high private benefits of control, and weak legal protection to minority investors, dual-class shares should be prohibited or subject to higher restrictions. Therefore, the key question to be addressed from a policy perspective is not whether companies should be allowed to go public with dual-class shares but whether dual-class class shares should be allowed and, if so, under which conditions, taking into account the particular features of a country.

Keywords: dual-class shares, controlling shareholders, corporate governance, capital markets, regulatory competition

Table of contents

1. Introduction

2. Features and rationale of dual-class share structures and the misconception surrounding the ‘one share one vote’ principle in corporate law

3. The renaissance of dual-class share structures

4. The promises and perils of dual-class shares

    4.1. The benefits associated with the use of dual-class shares
    4.2. The risks and costs of dual-class share structures

5. Empirical evidence

    5.1. The impact of dual-class shares at a firm-level

        5.1.1. Evidence undermining the desirability of dual-class shares
        5.1.2. Evidence supporting the use of dual-class shares
        5.1.3. Conclusion

    5.2. The impact of dual-class shares for the attraction of IPOs: Early evidence from Hong Kong and Singapore

6. Regulatory approaches to deal with dual-class shares

    6.1. Prohibition
    6.2. Permission
    6.3. Restrictions

7. Local factors affecting the desirability of dual-class shares

    7.1. Sophistication of capital markets
    7.2. Corporate and securities law
    7.3. Private benefits of control
    7.4. Procedural laws
    7.5. Accounting and audit regulation
    7.6. Enforcement

8. Choosing the optimal response to the dual-class shares puzzle

9. Conclusion

1. Introduction

Dual-class shares have become one of the most controversial issues in corporate governance and capital markets around the world.[2] On the one hand, a tough regulatory competition to attract IPOS has led many stock exchanges, including the Singapore Exchange (SGX) and the Stock Exchange of Hong Kong (HKEX), to revise their regulatory framework to allow companies going public with dual-class shares provided that several requirements are met. On the other hand, Nasdaq and the New York Stock Exchange (NYSE) in the United States have been asked by the Council of Institutional Investors to impose time-based sunset clauses to firms going public with dual-class share structures.[3] In the meantime, other leading financial centres, including London and Frankfurt, still prohibit companies from going public with dual-class shares, even though it remains to be seen whether they will keep this approach –especially in the case of the United Kingdom after Brexit– in the light of the competitive regulatory environment existing in today´s capital markets.

This paper argues that, despite the global nature of this debate, the desirability of dual-class shares differs across jurisdictions. Therefore, regulators should be careful when assessing foreign studies and regulatory models on dual-class shares. The question is not whether companies should be allowed to go public with dual-class shares or not but whether they should do so, and if so how, taking into account the particular features of a country.

Section 2 discusses the features and rationale of dual-class share structures and the misconceptions surrounding the 'one share one vote' principle traditionally existing in corporate law. While this article will be focused on the use of dual-class shares by companies going public, it should be kept in mind that companies might decide to create dual-class share structures at different stages: (i) when they are privately held firms; (i) when they decide to go public; and (iii) when they are already listed companies. In general, most countries around the world allow private companies to have shares with multiple voting rights due to the reduced contracting failures existing in these companies.[4] In public companies, however, that is not the case: due to the greater separation of ownership and control, insiders can use their power and superior information to take advantage of public investors. [5] Moreover, before going public, the founders have incentives to choose an optimal governance structure to go public in order to succeed in the IPO. However, if the company is already public, a sudden change in the governance or share structure may not have the same impact. Therefore, insiders may have more incentives to opportunistically change the share structure. For this reason, most countries around the world prohibit dual-class recapitalization.[6]

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[2] Coffee J Jr (2018).

[3] The Council of Institutional Investors has submitted a proposal to Nasdaq and the New York Stock Exchange to impose a 7 year mandatory sunset clause. After this period, the dual-class shares will disappear unless a majority of minority investors decides otherwise. For the analysis of this proposal, see Council of Institutional Investors (2018a).

[4] Privately held corporations are exposed to lower negative externalities. Likewise, investors do not face the severe asymmetries of information and lack of bargaining power existing in a large listed company. Therefore, it makes more sense to provide greater flexibility and contractual freedom to privately held companies. For an overview of this discussion, see the papers in the symposium edition entitled *Contractual Freedom and Corporate Law*, 89 COLUMBIA LAW REVIEW 1395 (1989); Ventoruzzo M (2016); Armour J et al. (2017), p. 18.

[5] Gordon J (1988); Gilson RJ (1987); Fishel D (1987); Ferrarini G (2006).

[6] This prohibition even exists in countries generally friendly with the use of dual-class shares such as the United States. However, this prohibition has not always existed. For an analysis of the prohibition of dual-class recapitalisations in the United States and the rationale behind it, Gordon J (1988); Bainbridge S (1994).

Section 3 explains the rise of the debate on dual-class shares in recent years. Section 4 discusses the arguments in favour and against dual-class share structures. Section 5 reviews the empirical literature on dual-class shares. Section 6 analyses the different regulatory approaches to deal with dual-class shares. Section 7 explains why several factors existing in a particular country may affect the desirability of, and therefore the regulatory model to deal with, dual-class shares. Section 8 advocates for a country-specific solution to the phenomenon of dual-class shares. Section 9 concludes.

2. Features and rationale of dual-class shares and the misconception surrounding the 'one share one vote' principle in corporate law

In a dual-class shares structure, the company´s common equity is divided into different classes of shares: (i) one class of shares ("Class B" shares), usually kept by the founders and its executives, entitle their holders to multiple voting rights per share; (ii) another class of shares ("Class A shares"), usually sold to public investors, embraces the one share one vote principle.[7] Thus, the use of dual-class shares allows founders to keep control with a minority of the company´s share capital.[8]

As it has been mentioned, a company may decide to create dual-class share structures at different stages. This article will focus on whether firms should be allowed to go public with dual-class shares structure, since it is in this context where most countries around the world differ, finding the United Kingdom, Germany, Spain, or Colombia on one side of the scene (prohibiting the use of dual-class shares), Sweden, Canada, Netherlands and the United States on the other (allowing companies going public with dual-class shares), and Hong Kong and Singapore in the middle (imposing several restrictions for companies seeking to go public with dual-class shares).

Despite the rise of the debate in recent years, dual-class share structures are not a new phenomenon. Deviations from the one share, one vote rule are as old as the corporate form.[9] Moreover, while the common perception is that the one share, one vote rule has been one of the most important principles of corporate law[10], this is a misconception.[11] While this principle has been adopted 'on the books' by most jurisdictions around the world, sometimes the one share one vote principle is the *exception* rather than the rule in practice. First, some companies deviate from the one share one vote by issuing *preference shares* – that is, shares with no voting rights in exchange for additional economic advantages attached to those shares.[12] In fact, these shares might be common in certain countries with underdeveloped capital markets and many retail, rationally

[7]For the concept of dual-class shares, see Bebchuk L et al. (2000), p. 445-460; Bebchuk L and Kastiel K (2017); For a comparative, and comprehensive analysis of dual-class shares, see Hong Kong Stock Exchange (2014), and CFA Institute (2018).
[8] Bebchuk L and Kastiel K (2018a).
[9] See Bainbridge S (2017).
[10] The 'one share one vote' principle has been seen as a cornerstone of corporate law. According to this principle, each shareholder´s voting rights will be based on the number of shares owned by the shareholder. For an analysis of this principle, see Ferrarini G (2006); Enriques L et al (2017), p. 80-83; Grossman S and Hart O (1987).
[11] See Bainbridge S (2017). According to Bainbridge: *"(…) Prior to the adoption of general incorporation statutes in the mid-1800s, the best evidence as to corporate voting rights is found in individual corporate charters granted by legislatures. Three distinct systems were used. A few charters adopted a one share-one vote rule. Many charters went to the opposite extreme, providing for one vote per shareholder without regard to the number of shares owned. Most followed a middle path, limiting the voting rights of large shareholders. Some charters in the latter category simply imposed a maximum number of votes to which any individual shareholder was entitled. Others specified a complicated formula decreasing per share voting rights as the size of the investor's holdings increased. These charters also often imposed a cap on the number of votes any one shareholder could cast (…).*
[12] For an analysis of these shares, see Ferran E, Ho LC (2014), p. 132-136.

apathetic investors.[13] Through the issuance of preference shares, controllers may raise capital without losing control. Therefore, preference shares, as dual-class shares, serve as a mechanism to separate cash-flow rights from voting rights,[14] potentially creating controlling minority shareholders.[15]

Second, other companies or legislations impose caps on voting rights, as well as majority of minority approvals for certain transactions.[16] Therefore, while the cash-flow rights of controlling shareholders remain unaffected, these minority approvals or limitations of voting rights sometimes make the company deviate, in practice, from the one share, one vote principle.

Third, in many countries, it is also common to observe deviations from the one share, one vote through the use of stock pyramids and cross-ownership.[17] In a typical stock pyramid, founders obtain control through complex group structures with several layers.[18] In situations of cross-ownership, companies are linked by horizontal cross-holdings of shares that reinforce and entrench the power of central controllers by reducing the amount of equity that a shareholder has to invest to acquire, maintain or defend the control of a corporation.[19] In both cases, a minority stake can lead to a majority of the company´s voting rights.

As a result of these situations, while many countries embrace the one share, one vote principle 'on the books', the reality is quite different. Therefore, regardless of being in favour or against deviations from the one share, one vote principle, there seems to be a misconception surrounding this principle, since it is *formally* considered a cornerstone of corporate law while its deviation is actually very common – and not only in the context of dual-class share structures.

3. The renaissance of dual-class share structures

While firms with dual-class share structure are not new, the use of dual-class shares have become particularly relevant in the past years a result of various events. First, there has been a significant increase in the number of companies going public with dual-class shares in the United States: from 46 dual-class firms going public between 2006-2010 to a total of 104 companies between 2011-2015.[20] Nowadays, public companies in the United States with dual-class shares are worth more than $5 trillion.[21]

Second, tough regulatory competition to attract IPOs has led many jurisdictions to reconsider their regulatory framework regarding dual-class shares structures.[22] This has been the case of two leading financial centres such as Hong Kong and Singapore.[23]

[13] For example, the issuance of ordinary shares is not very common in countries like Brazil and Colombia, where retail investors still play a major role. Therefore, companies in these countries often issue preference shares instead.
[14] Unlike other forms of separation cash-flow rights from voting rights though, holders of preference shares are compensated for giving up their voting rights. This is accomplished through several mechanisms, including a mandatory dividend, a higher dividend, or a higher priority in the event of insolvency.
[15] For this concept, see Bebchuk L et al. (2000), p. 445-460;
[16] Fried J (2018).
[17] Bebchuk L et al (2000), p. 445-460; La Porta R et al (1999); Claessens S et al (2000); Masulis R et al (2011).
[18] Bebchuk L et al. (2000), p. 445-460; Bebchuk L and Kastiel K (2018a).
[19] Ferrarini G (2000), p. 11.
[20] Ritter J (2018).
[21] Jackson R Jr (2018).
[22] For a comparison of the regulatory framework of dual-class shares in Hong Kong and Singapore, see CFA Institute (2018), p. 50-52.
[23] The discussions leading to the implementation of dual-class shares in these jurisdictions seemed to start with the unsuccessful attempt of Alibaba to go public in Hong Kong. See CFA Institute (2018), p. 2.

Traditionally, companies in these jurisdictions were not allowed to go public with dual-class shares.[24] Since 2018, however, they are able to do so, provided that they meet certain requirements.[25]

Third, most tech companies that went public in the past years –including Google, Alibaba, Facebook, Linkedin and, more recently, Snapchat, Pinterest, and Lyft– did so with dual-class shares structures.[26] Therefore, dual-class shares not only can be seen as a powerful tool to promote IPOs but also to create and promote the financing and growth opportunities of the tech companies. As a result, dual-class shares can be more attractive for countries interested in leading the 4th Industrial Revolution.

4. The promises and perils of dual-class shares

4.1. The benefits associated with the use of dual-class shares

Several arguments seem to support the use of dual-class shares. First, by allowing companies going public with dual-class shares, entrepreneurs will not face the fear of losing control. Therefore, they will have more incentives to take their companies public.[27] As a result, several benefits can be created. On the one hand, founders will have the opportunity to raise more funds – not only due to the money raised at the IPO but also afterwards.[28] Thus, they will be in a better position to expand their businesses, contributing to create jobs, innovation, and wealth. On the other hand, investors will enjoy the opportunity to easily invest in companies that may outperform the market.[29] Therefore, the profits of a successful business will be shared with a larger number of investors. Finally, by promoting more IPOs, securities regulators would also contribute to the development of their local capital markets, and this latter aspect can be desirable not only for investors and the market itself –since it may bring more trading, liquidity and informational efficiency– but also for a variety of stakeholders, including stock exchanges, lawyers, bankers, and accountants. Therefore, the attraction of IPOs can be an attractive goal for a country.[30]

Second, the use of dual class shares is a way to allow founders to create value by pursing their –sometimes unique– 'idiosyncratic vision'.[31] And as history has shown in cases like Steve Jobs or Mark Zuckerberg, letting founders pursue their vision can also be a profitable business for investors.[32]

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[24] In Hong Kong, dual-class shares were allowed in the past though. See Huang H (2018).
[25] For an analysis of these requirements, see note 19 above.
[26] See Krishna P (2016); Bebchuk L and Kastiel K (2019b); Bebchuk L and Kastiel K (2019c).
[27] According to a survey to CFOs, losing control is one of the most important reasons to stay private. Brau J, Fawcett S (2006).
[28] Since the company is already public, and therefore it will probably have better corporate governance practices in place (not only imposed by the regulator but also because the higher scrutiny by the market will encourage better practices), the company will be in a position to raise money at a lower cost. Analyzing the relationship between corporate governance and firm´s access to finance, see La Porta R et al. (1997); La Porta R et al. (2000). Moreover, investors will probably face lower asymmetries of information. Therefore, good companies will be in a position to raise money in a world with lower asymmetries of information.
[29] See CFA Institute (2018), p. 1.
[30] Nonetheless, it should be kept in mind that regulators should not get obsessed with the development of capital markets. As some authors have argued, the key variable for the promotion of economic growth is financial development, regardless of how it is achieved: through the capital markets or the banking system. See Demirguc-Kunt A, Levine R (1999). However, it will be difficult to promote financial developments and the goals of the financial system in the absence of competition among providers of financial services. For the goals of the financial system, see Armour J et al. (2016), p. 22-50; See also Levine R (1997).
[31] Goshen Z and Hamdani A (2015).
[32] When it went public in 2004, Google's shares were priced at $85 per share. This increased to about $600 in 2007, and about $1,103 in 2019. Similarly, a $1,000 investment in Facebook at the time of its IPO in 2012

Third, the use of dual-class shares may protect companies from shareholder activists.[33] Therefore, founders and directors can focus on their long-term projects, which can be desirable to promote innovation, R&D, sustainable employment and growth.[34]

Fourth, while dual-class recapitalizations are prohibited in most countries around the world due to the higher risk of opportunism by insiders, companies going public with dual-class shares provide a fair and transparent deal: investors have the opportunity to invest or not in a company, instead of being subject to an unwanted share structures, as it could happen with a dual-class recapitalization. If investors do not trust the founders, or they think they might lose faith in them after a period of time, they will not buy the shares or they will do so at a discount. Therefore, they are not forced to buy the shares. If they do so, it is probably because they think it will be a profitable investment. Hence, in the absence of fraud or any type of opportunistic behaviour, there should be no reasons to complain if the investment does not turn out as expected. It is part of the game in securities markets. Besides, while investors can be protected *ex ante* by just deciding not to invest in a dual-class firm, they can also be protected *ex post* through exit rights: if they are not satisfied with the performance of the firm, they can always sell their shares.

Fifth, market forces mainly associated with higher valuation and firms´ ability to raise finance incentivize founders to choose efficient corporate governance structures at the IPO-stage.[35] As it has been mentioned, investors will discount (or they might not even buy) shares in a company whose managers keep control with a minority position if they do not have something that make them 'unique'. If the founders or the business they run are not found 'special' enough by investors (something that they may infer during the roadshow), the founders themselves will not have incentives to go public with dual-class shares. Therefore, they will only take the company public with dual-class structures if they think (and investors believe) that the gains associated with their particular vision and expertise can exceed the potential costs of having dual-class shares –especially in terms of moral hazard and agency problems. If the expected benefits exceed the expected costs, investors will still be interested in purchasing shares in the company even if, *ceteris paribus*, they would have of course preferred to do so in a company where the one share, one vote principle is respected.

Finally, if many countries –even those prohibiting the use of dual-class shares– allow the separation of cash-flow rights and control rights through other legal devices (e.g., preferred shares, stock pyramids, and cross-ownership structures[36]), why should dual-class shares be prohibited when they fulfil a similar goal and they actually provide a more transparent way to understand the identity and effective power held by the controllers?[37] Therefore, several reasons seem to suggest that dual-class share structures should be allowed.

4.2. The risks and costs of dual-class share structures

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would have increased to about $4,600 in 2018. See Edmonston P (2009); Yahoo Finance, *Google Nasdaq Real Time Price* (available at https://finance.yahoo.com/quote/GOOG/history/). See also Carter S (2018) https://www.cnbc.com/2018/11/21/if-you-put-1000-dollars-in-facebook-at-its-ipo-heres-what-youd-have-now.html); Yahoo Finance, *Facebook Inc Nasdaq Real Time Price* (available at https://finance.yahoo.com/quote/FB/history/).

[33] Jordan B et al. (2016).

[34] Lipton M (2007).

[35] Hart O (1995), p. 208.

[36] For the analysis of stock pyramids and cross-ownerships and its importance around the world, see La Porta R et al (1999); Claessens S et al. (2000); Bebchuk L et al. (2000), p. 445-460; Masulis R et al. (2011). For an analysis of preference shares, see Ferran E and Ho LC (2014), p. 132-138; Pierre-Henri C (2005).

[37] See Gurrea-Martínez A (2018a).

Despite this optimistic view of dual-class shares, there are reasons to be sceptical about these structures. First, the existence of dual-class shares may increase agency costs between insiders (ie, directors and controlling shareholders) and outsiders (mainly minority investors) in different ways.[38] On the one hand, dual-class shares allow managers and controllers to be entrenched and therefore isolated from the market for corporate control. As a result, managers may be more relaxed when running the company, and potential acquirers may be prevented from taking over the company and implementing a potentially superior business plan. Therefore, entrenchment may also lead to an opportunity cost for public investors and society as a whole.[39] On the other hand, the existence of dual-class shares may allow insiders to extract private benefits of control regardless of the value added to the corporation. Hence, the combination of entrenchment and expropriation of corporate resources from public investors would significantly increase the agency costs of firms with dual-class shares.[40]

Second, while allowing companies to go public with dual-class share structures may sound appealing for attracting founders and IPOs, it may end up harming the market if minority investors are not properly protected or if the adoption of dual-class shares just obeys to the request of a particular company/founder. Indeed, if minority investors are not adequately protected, they may end up leaving the market. Therefore, this decision not only would destroy value for a country/stock exchange but also for firms and founders themselves since it will reduce their ability to raise capital. Likewise, if a regulation is amended just to attract a particular company (as the United Kingdom was considering with Saudi Aramco,[41] or Alibaba probably expected from the Hong Kong securities regulator), the reputation, credibility and independence of the regulator can be questioned by investors. And if so, they may also decide to leave the market. Under this scenario, the adoption of dual-class shares could decrease the depth of a capital market, what it can discourage many founders from choosing those markets to take their companies public. Therefore, the permissibility of dual-class shares may decrease, rather than increase, IPOs and the development of capital markets.[42]

Third, the use of dual-class share structures may create moral hazard due to the fact that, while founders will enjoy the private benefits of control, they will not fully internalize the costs associated with value-destroying decisions.[43] In other words, since the founders only own a small percentage of the company´s share capital, they will only bear a small percentage of the company´s potential losses despite the fact that they enjoy in full the private benefits of control. As a result, they may be incentivized to engage in riskier decisions that might not be optimal in terms of expected value.

Fourth, according to the efficient capital markets hypothesis, prices reflect all publicly available information as well as the intrinsic value of a company based on their future cash-flows.[44] However, several concerns have been raised in the past years about this hypothesis.[45] Behavioral economists have shown that, due to the problems of bounded

[38] Pointing out that deviations from the one share, one vote principle increases agency costs, and therefore it might be economically undesirable, see Bebchuk L (1999).
[39] This situation can change if a type of 'breakthrough rule', such as the one existing in Europe, is implemented. Under this rule, the company´s insiders would not be able to use their weighted voting rights to fight a hostile acquisition. See Coates C IV (2003); Ferrarini G (2006); Geens K and Hopt K (2010).
[40] Bebchuk L et al (2000), p. 445-460; Bebchuk L, Kastiel K (2017); Bebchuk L and Kastiel K (2018b); Bebchuk L and Kastiel K (2018a).
[41] Binham C et al. (2017).
[42] See Gurrea-Martínez A (2018a).
[43] Bebchuk L et al. (2000), p 445-460; Bebchuk L and Kastiel K (2017); Bebchuk L and Kastiel K (2018a).
[44] See Fama E (1970); Gilson RJ and Kraakman RH (1984).
[45] Fama E (1970). Other authors, however, have pointed out the failures of the Efficient Capital Markets Hypothesis. See Shiller R (2000); De Bondt W and Thaler RH (1985); Shleifer A (2000).

rationality[46] and certain biases, people can make mistakes. Therefore, investors might not be able to accurately price a company in the IPO stage. Or even if they do, they do not have enough information about how the company and its founders may perform or behave in the future. As a result of these asymmetries of information that may exacerbate the problem of bounded rationality, their decisions might not be as optimal as it may seem at first. And if this argument is true for the United States, there will be more reasons to believe it in countries with less sophisticated markets, actors, and investors.[47] Therefore, exclusively relying on the market to protect investors might not always be optimal, especially outside the United States.

Fifth, while the use of dual-class shares can indeed isolate firms from activist investors, this can actually destroy rather than increase value. On the one hand, shareholder activists perform a very valuable monitoring function in the market. Therefore, they can reduce agency problems. On the other hand, shareholder activist can implement some value-enhancing strategies. Finally, it is not clear whether shareholder activism leads to short-termism,[48] and, if so, whether that is a problem.[49] Therefore, if shareholder activists can often increase value by reducing agency problems and promoting value-increasing strategies, and it is not clear whether they create short-termism, isolating companies from shareholder activists might not be the most desirable solution.

Finally, it should be taken into account that, even if, at an early stage, founders have a unique vision that can create value for everyone, this vision can become obsolete, or the founders can become more incompetent or unenthusiastic at some point in the future.[50] Therefore, the fact that founders might be entitled to keep running the firm *forever* might not be the most value-maximizing option for society.

5. The evidence

5.1. The impact of dual-class shares at a firm-level

5.1.1. Evidence undermining the desirability of dual-class shares

In a pioneer empirical investigation of firms with single and dual-class shares structures in the United States, Gompers, Ishii, and Metrick found that that the value of a firm decreases as insider voting rights increase relative to cash-flow rights. Therefore, dual-class shares are associated with lower firm value.[51] In another interesting study, Smart, Thirumalai, and Zutter also concluded that dual-class firms trade at lower values than their peers following IPO, and this valuation discount persists for the subsequent 5 years. They also found shareholders react positively to share-class unifications. Therefore, the combination of both findings seems to suggest that dual-class shares destroy value.[52]

Masulis, Wang, and Xie examined how the divergence between insider voting rights and cash-flow rights affects managerial extraction of private benefits of control. They found that as the divergence widens at dual-class companies, corporate cash holdings are

[46] Jolls C (2007).
[47] Gurrea-Martínez A (2018a).
[48] Bebchuk L et al (2015).
[49] Roe M (2013); Gurrea-Martínez A (2016).
[50] One example of this occurring would be the media company Viacom. While the dual-class shares structure allowed its founder to maintain full control of the company and helped him transform the company into a $40 billion “entertainment empire”, he has since been allegedly suffering from a “profound physical and mental illness” thus raising concerns that he may not be the best leader for the company. See Bebchuk L, Kastiel K (2017).
[51] Gompers et al (2010).
[52] Smart S et al. (2008).

worth less to outside shareholders, CEOs receive higher levels of compensation, managers are more likely to make shareholder-value destroying acquisitions, and capital expenditures contribute less to shareholder value. Therefore, this study supports the hypothesis that managers with greater control rights in excess of cash-flow rights are prone to waste corporate resources to pursue private benefits at the expense of shareholders.[53]

Lauterbach and Pajuste studied the impact of share-class unification on firm value. They found that voluntary share-class unifications are associated with economically significant increases in firm value (Tobin's Q). Therefore, removing dual-class shares is beneficial to firm value, suggesting that dual-class shares can be a sign of poor governance.[54]

In a study of 675 European public companies from 11 countries, Barontini and Caprio analysed the relation between firm value and the wedge between the voting and the cash-flow rights of the largest shareholder.[55] The authors found a negative association between corporate valuation and the control-enhancing devices used by the largest shareholder. Therefore, this study also supports the hypothesis that dual-class share structures destroy value for investors.

Using a new dataset of corporate voting-rights from 1971 to 2015, Kim and Michaely found that as dual-class firms mature, their valuation declines, and they become less efficient in their margins, innovation, and labour productivity compared to their single-class counterparts.[56] Voting premiums increase with firm age, suggesting that private benefits increase over maturity. On the basis of these findings, the authors suggest that effective, time-consistent sunset provisions should be based on age or on inferior shareholders' periodic right to eliminate dual-class voting.

Cremers, Lauterbach, and Pajuste have recently studied the long-term performance of companies with dual-class shares.[57] They have found that, while companies with dual-class firms have higher valuation at IPO (Tobin's Q), premium disappears 6 to 9 years later. Therefore, the desirability of dual-class shares decreases over time. This leads the authors to speak about a 'life cycle' of dual-class shares. This study is consistent with Barah, Forst and Via,[58] who show that, even though insider control at multi-class firms exhibits a positive association with innovation output that exceeds the costs of the voting misalignment, this effect changes over time. Therefore, they conclude that the reducing positive effects of disproportionate insider control post-IPO supports the call for 'sunset provisions' to convert dual class shares to single class within a certain period of time post-IPO.

The underperformance of firms with perpetual dual-class shares has also been shown in a recent empirical study conducted by SEC Commissioner Robert J. Jackson.[59] Namely, this study shows that firms with perpetual dual-class shares underperform relative to their peers after a certain period of time. Therefore, the author concludes that a mandatory time-based sunset clause may seem desirable.

5.1.2. Evidence supporting the use of dual-class shares

[53] Masulis R et al. (2009).
[54] Lauterbach B and Pajuste A (2015).
[55] Barontini R and Caprio L (2005).
[56] Kim H, Michaely R (2019).
[57] Cremers M et al. (2018).
[58] Baran L et al. (2018).
[59] Jackson R (2018).

Not all studies, however, suggest that dual-class (or perpetual dual-class) shares can be undesirable. In an empirical study conducted by Jordan, Kim, and Liu, the authors showed that firms with dual-class shares face lower short-term market pressures, have more growth opportunities and obtain higher market valuations than single-class firms.[60] Likewise, Anderson, Ottolenghi and Reeb found that firms with dual-class shares where larger, older and better operating performers than their single-class peers. [61]

Other studies have suggested that giving more voting power to shareholders who are better informed while reducing the voting power to those less informed, including passive index funds, can be efficient.[62] Therefore, it will make sense to let founders with knowledge and expertise run the company even if investors pay a discounted price in exchange for waiving their voting rights. [63]

In another interesting study, Kim and Michaely shown that the value of mature firms with dual-class shares decline overtime. However, they found that young dual-class firms trade at a premium and operate at least as efficiently as young single-class firms. Therefore, the use of dual-class shares structure can be desirable, at least for young firms. [64]

Finally, collecting evidence from Canadian firms, other authors have shown that firms with dual-class shares outperform their peers over 5, 10, and 15 year periods.[65] Moreover, the use of dual-class share structure may create other benefits for a local economy – especially in terms of protectionism, attraction of IPOs, and development of the financial industry.[66] Therefore, it will make sense to allow dual-class share structures.

5.1.3. Conclusion

Most empirical studies seem to show that the value of companies with dual-class shares decreases over time. Therefore, the evidence seems to favour the position of those advocating for the imposition of *mandatory time-based sunset clauses*.[67] In my opinion, however, there are reasons to be sceptical about this proposal.[68]

First, the empirical evidence about dual-class shares is not conclusive.[69] While most studies indeed found that the value of dual-class firms declined after a certain period of time, they also show that the same firms may enjoy higher valuations at the IPO stage and they can also generate other benefits, including higher levels of innovation, more protection against short-term market pressure, and promotion of the local industry.[70]

[60] Jordan B et al. (2016).
[61] Anderson R (2017).
[62] Lund D (2019). In favour of empowering shareholders, see Bebchuk L (2005). For arguments against, see Bainbridge S (2006).
[63] Lund D (2019).
[64] Kim H, Michaely R (2019).
[65] Allaire Y (2016), p. 3.
[66] Allaire Y (2016), p. 3.
[67] Those advocating for this reform include SEC Commissioner Robert J. Jackson, Jr., Professors Lucian Bebchuk and Kobi Kastiel, and the Council of Institutional Investors. See Jackson R (2018); Bebchuk L and Kastiel K (2017); Council of Institutional Investors (2018c); Coffee J (2018).
[68] Reflecting his opposition to the idea of restricting dual-class shares, see also Goshen Z (2018).
[69] For a summary of the empirical literature and the number of studies in favour and against the use of dual-class shares, see Allaire Y (2018), p. 8. Some studies have also found that multi-class common equity structure with unequal voting rights neither increases nor decreases a company's annualized return on invested capital. Therefore, the use of dual-class shares do not affect firm performance. See Morey G (2017).
[70] Allaire Y (2016), p 4; Baran L et al. (2018).

Second, as some authors have pointed out,[71] it should be taken into account that until Google went public in 2004, most companies going public with dual-class shares were family-owned, media companies.[72] In fact, the percentage of *non-tech* companies, compared to those with a technology-based business, going public with dual-class shares has been traditionally higher in the United States at least until 2014. Since then, the percentage of tech companies going public with dual-class shares has exceeded their non-tech peers.[73] Therefore, many empirical studies analysing the desirability of dual-class shares may not have captured the higher idiosyncratic value probably created by founders of tech firms. As a result, perhaps more research should be needed *across industries* before coming up with such an interventionist solution like the imposition of time-based sunset clauses. On average, it is true that dual-class firms seem to underperform their peers in the long-term. But perhaps this result differs across industries,[74] and innovative, technology-based companies may end up outperforming their peers with single-class structures.[75]

Third, the desirability of dual-class shares can not only differ across firms and industries but also across countries. Therefore, when assessing whether dual-class shares firms outperform or underperform their peers with single-class share structures, regulators should observe the empirical evidence existing in their *own* markets and jurisdictions even if studies from other jurisdictions can be relevant for the discussion and the construction of the empirical study.

Finally, and perhaps more importantly, it should be taken into account that, in the absence of dual-class shares, some firms included in these empirical studies would have never gone public.[76] Therefore, *even if* it were unequivocally shown that firms with dual-class shares structures underperform their peers, there would still be reasons to allow companies with dual-class shares. Otherwise, not only may investors be prevented from enjoying the benefits of investing in successful businesses while helping them fund their operations and growth, regulators could also reduce the liquidity, efficiency, and depth of the market.

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[71] See Berger D and Hodrick L (2018).
[72] See Berger D and Hodrick L (2018).
[73] In 2014, 11.8% of non-tech companies went public with dual-class shares, while 11.3% of tech companies went public with dual-class shares. In 2015, 10.1% of non-tech companies went public with dual-class shares while 38.9% of tech companies went public with dual class shares. More recently, in 2017, 21.8% of non-tech companies went public with dual-class shares while 43.3% of tech companies went public with dual-class shares. CFA Institute (2018). See also Ritter, Jay R (2018).
[74] In my opinion, the desirability of dual-class shares depends across firms and founders. However, from a policy perspective, regulators should clarify whether they allow, restrict or prohibit dual-class shares, and this is actually the purpose of this paper.
[75] This is probably the rationale behind the reform of dual-class shares in Hong Kong. According to the new regulatory framework for dual-class shares in Hong Kong, only 'innovative' firms can go public with dual-class shares. This provision seems to be explained by the belief that founders of these firms can create more value. See Hong Kong Exchange (2018a), p. 8. In my opinion, however, while the rationale of this approach can be easily understood, it would have been more appropriate if, before implementing such a significant reform, the Hong Kong securities regulator had have conducted an empirical study analysing whether innovative firms actually outperform their peers, and what they mean by 'innovative firm'. In the 2014 Concept Paper, the Hong Kong Exchange considered that "innovative", according to the Oxford English Dictionary, means "adjective (of a product, idea, etc.) featuring new methods, advanced and original". Although it also noted that determining whether a company is "innovative" would be subjective and the definition can change over time. Nonetheless, the intention behind including this definition was to "foster the listing of exceptional companies that may have transformative effect on their industry or society in general and that could, in time, produce significant benefits for the market as a whole and to the public". See Hong Kong Exchange (2014).
[76] Keeping control is one of the most important factors to stay private. See survey to CFOs conducted by Brau J Fawcett S (2006); Meluzín T et al. (2018). Arguing that the existence of sunset clauses or even the prohibition of dual-class shares would not discourage companies from going public, see Bebchuk L, Kastiel K (2017).

5.2. The implementation of dual-class shares: a powerful tool to attract IPOs? Early Evidence from Hong Kong and Singapore

According to the available data as of 31 May 2019, only 2 companies went public in Hong Kong since the reform was implemented in April of 2018.[77] Regarding Singapore, there are no records of any firm that went public between June 2018 and May 2019.[78]

While it is too early to judge the effectiveness of the implementation of dual-class shares for the attraction of IPOs in Hong Kong and Singapore, and a proper assessment of these reforms would require controlling for a variety of factors (including number of IPOs in previous years, other legal and institutional reforms implemented in both jurisdictions, etc.), there are reasons to be optimistic about the success of the new regulatory framework for dual-class shares Hong Kong and Singapore. On the one hand, both jurisdictions have adopted a reasonable, middle ground approach to deal with dual-class shares.[79] Therefore, even though some further reforms can still be implemented to enhance the protection of minority investors,[80] the implementation of dual-class shares can make founders better off without generating significant costs for minority shareholders.[81] On the other hand, the capital markets and venture capital industry have grown very rapidly in Hong Kong and Singapore in the past years, and Asia is becoming a very attractive market for many companies and investors. Therefore, it would be reasonable to expect more IPOs in the near future.[82]

Therefore, even though it is unclear whether this reform will help Singapore and Hong Kong compete with New York for the attraction of IPOs (especially in the context of large non-US firms, since US companies usually list their shares on Nasdaq or the New York Stock Exchange), the implementation of dual-class shares in these jurisdictions will make very unlikely to observe what happened with Alibaba and Manchester United. From now on, companies seeking to go public in Hong Kong and Singapore will no longer be forced to end up in New York *just* because of the inability of the founder to take their companies pubic with dual-class shares.

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[77] These companies are Xiami Corporation and Meituan Dianping. See_Hong Kong Exchange (2018b). A third company, Alibaba, has recently announced that it is considering a secondary listing in Hong Kong. See Chandler C (2019). In Singapore, there have been no companies that have gone public with dual-class shares yet, but some companies (such as FWD Group) have considered the possibility of listing on the SGX with dual-class shares. See Bloomberg (2018). Institutional investors have commented that these changes by the SGX and HKEX are “responding to a ‘race to the bottom’ that U.S. stock markets started”. See Borrus A (2019). Similarly, institutional investors have criticised the HKEX’s approach to dual-class shares, arguing that “even with well-intentioned safeguards, including a prohibition on the transfer of super voting rights and the loss of super voting rights upon death or departure, the consultation presents a solution that 1) holds the door open for substantial long term principal agent challenges, and 2) creates significant subjective processes for the HKEX listing committee based on vague criteria, creating new discretionary burdens for the HKEX and uncertainty in the market”: Council of Institutional Investors (2018b).

[78] In addition to keeping in mind that Hong Kong implemented the reform on dual-class shares two months earlier, it should be noted that the number of IPOs in Hong Kong is much larger. Therefore, in relatively terms, is not clear whether the new regulatory framework of dual-class shares has become more effective in Hong Kong or in Singapore. In my view, the lack of companies going public with dual-class shares in Singapore is due to two factors: (i) the general low number of companies going public in Singapore in the past years; and (ii) the inability of small, and medium size companies going public on Catalist (the Singapore venue for growing companies) to use dual-class shares. Arguing that firms going public on Catalist should be allowed to use dual-class share structures, see Lin L (2018).

[79] See Tay PG (2018) and Ballard B (2018).

[80] For example, Singapore might consider the possibility of implementing minority approvals for related party transactions, while both Hong Kong and Singapore may consider the implementation of minority-appointed directors and class actions. Thus, they would provide higher protection to outside investors.

[81] In countries with less sophisticated markets and a lower level of protection to minority investors, however, the costs of implementing this reform would have been much higher.

[82] Thus, the IPO would provide an exit to venture capitalists. Analyzing the relationship between capital markets and the venture capital industry, see Black B and Gilson RJ (1998).

6. Regulatory approaches to deal with dual-class shares

6.1. Prohibition

Many countries around the world, including the United Kingdom,[83] Germany, Spain, Colombia, and Argentina, still prohibit the use of dual-class shares. In my opinion, the strict adherence to the one share, one vote might be justified for three possible factors: (i) economic reasons associated with moral hazard, entrenchment and agency problems; (ii) legal reasons mainly related to fairness and equal treatment of shareholders; and (iii) influence of lobbies (mainly institutional investors).

From an economic perspective, dual-class shares have been criticized on two primary grounds. First, the use of dual-class creates minority controlling shareholders.[84] Therefore, even if these shareholders have their reputation and part of their wealth at risk, they do not internalize all the costs of their decisions.[85] As a result, they might not have the right incentives to make the most value-maximizing decisions in terms of expected value. Namely, as they will not internalize all the costs of their decisions, they might incur a problem of over-investment.[86] Second, the existence of dual-class shares may entrench current insiders from the market for corporate control.[87] Therefore, since it will be more difficult to remove the existing controllers, not only will the shareholders be prevented from having other controllers with a potentially superior business plan but they can also be exposed to managerial opportunism and laziness.[88]

A second argument potentially provided to explain the prohibition of dual-class shares can be based on the concept of equality among shareholders.[89] According to this argument, dual-class shares should be prohibited on the basis of the 'one share, one vote' principle that should prevail in corporate law. In my opinion, however, this justification does not seem very convincing. As it has been mentioned, there are many ways to circumvent the one share one vote principle, including the use of stock pyramids and cross-ownership. Moreover, even if all deviations of the one share one vote principles were prohibited, it is not clear whether this is the most efficient outcome for firms.[90] Therefore, this argument seems very vague.

Finally, another aspect sometimes omitted when studying corporate law is the role played by lobbies. Some authors have argued that the director-friendly and shareholder-friendly takeover law, existing in the United States and the United Kingdom respectively, is partially explained by the corporate ownership structures existing in these countries.[91] In the United States, the traditional existence of dispersed ownership structures with

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[83] Dual-class shares are prohibited for companies listing on the UK's Premium Listing. A Premium Listing means the company is expected to meet the UK's highest standards of regulation and corporate governance. According to Premium Listing Principle 3, all equity shares in a class that has been admitted to premium listing must carry an equal number of votes on any shareholder vote. See Financial Conduct Authority (2019a).

[84] Bebchuk L and Kastiel K (2018a).

[85] Bebchuk L et al. (2000), p. 445-460; Bebchuk L and Kastiel K (2017); Bebchuk L and Kastiel K (2018b); Bebchuk L and Kastiel K (2019a); Winden A (2018).

[86] The concept of 'overinvestment' refers to those situations in which projects with a negative net present value are being pursued, usually because even though they are not the most value-maximizing projects in terms of expected value, they can yield very high returns in the unlikely event of success. See Brealey A et al. (2011).

[87] For an analysis and importance of the market for corporate control, see Manne H (1965); Easterbrook F and Fischel D (1981).

[88] Bebchuk L and Kastiel K (2018a).

[89] Ferrarini G (2006).

[90] See Hart O and Grossman S (1987); Ferrarini G (2006).

[91] Armour J and Skeel D (2007).

small and rationally apathetic shareholders has made managers very powerful.[92] Institutional investors, on the other hand, have been present in the United Kingdom for many decades.[93] Therefore, even though the United Kingdom is also a jurisdiction with dispersed ownership structure,[94] shareholders were more informed, powerful and coordinated than in the United States. As a result, shareholders have been in a better position to advocate for a more shareholder-friendly takeover law. This may explain not only the UK approach to dual-class shares, but also many provisions and developments, including the takeover law and even the existence of the first Corporate Governance – precisely designed to protect (powerful) shareholders from managerial opportunism.

While the prohibition of dual-class shares in the United Kingdom can be explained –at least in part– by this latter argument based on the role of lobbies, this is probably untrue in other countries banning companies going public with dual-class shares such as Spain, Germany, Colombia and Argentina. In my opinion, the regulatory model adopted by these countries is probably due to the second reason mentioned above –that is, the false respect for the one share one vote and the vague concept of fairness– perhaps in conjunction with other factors, including a more traditional legal scholarship[95], and the tendency to replicate many practices from the United Kingdom.[96] Indeed, on the one hand, the lack of influence of the law and economics literature in these countries makes it very unlikely that the prohibition is based on the first, economic argument.[97] On the other hand, it is also very unlikely that the lobbies of families and other controlling shareholders existing in these countries were in favour of the prohibition something that would make them even more powerful, unless they perceived that this reform, linked to the problems of tunnelling already existing in many of these countries (e.g., Mexico, Italy, Spain)[98], the controlling families may have wanted to keep the one share one vote as a way to have more access to finance.

6.2. Permission

Many countries around the world, including the United States, Sweden, Canada, and the Netherlands, allow companies going public with dual-class shares in a very permissible way – that is, without being subject to many restrictions. In my opinion, this regulatory model can be explained by three primary reasons: (i) economic factors mainly related to efficiency gains created by founders and the ability of the market to create optimal governance structures at the IPO stage; (ii) the influence of lobbies (mainly directors); and (iii) regulatory competition and attraction of IPOs.

First, from an economic perspective, it can be optimal to let the founders keep running the firm once the company is already public. Sometimes, they have a unique set of skills

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[92] Roe M (1994).
[93] La Porta R et al. (1998); Cheffins B (2008).
[94] La Porta R et al. (1999); Claessens S et al. (2000); Cheffins B (2008); Mayer C and Franks J (2017).
[95] The influence of traditional legal scholars in these countries undermines the use of economics, finance, and other disciplines to explain and improve the design of corporate law. See Gurrea-Martínez A (2018c). Therefore, it is very unlikely that the prohibition of dual-class shares is based on economic arguments such as moral hazard and entrenchment.
[96] This is particularly true in the field of corporate governance. Despite the fact that the primary corporate governance problem existing in the UK corporation has been the risk of opportunism of managers vis-à-vis shareholders while the primary corporate governance in a controlled firms is the risk of opportunism of the controlling shareholder vis-à-vis outside investors, the UK Corporate Governance Code – and more generally the development of UK corporate and takeover law- has been very influential in Continental Europe, Asia and Latin America, which are actually countries with concentrated ownership structures and controlling shareholders. Therefore, it seems that legal transplant without further analysis could also help explain the corporate governance provisions existing in many countries.
[97] For the lack of influence of the law and economics literature in these countries, see Garoupa N et al. (2014) and Gurrea-Martínez A (2018c).
[98] See Enriques L, Volpin P (2006); La Porta R et al. (2008).

or a vision that nobody else can replicate.[99] Therefore, prohibiting founders from pursuing their vision can be harmful for the shareholders. Moreover, market forces discourage value-destroying founders from going public with dual-class shares. Since the market would price the company and its founders, insiders should not have incentives to go public with dual-class shares unless they think (and investors believe) that they can create value. This factor would explain why not all founders take their companies public with dual-class shares,[100] and why many founders voluntary restrict their powers through the use of contractual provisions usually refer to as 'sunset clauses'.[101]

Second, as it has been mentioned, directors have seemed to play a major role in the design of corporate law in the United States. Therefore, taking into account that many directors of start-ups are also their founders, they may have lobbied to make a pro-founder jurisdiction. Moreover, the US –and particularly Silicon Valley– has positioned itself as a leading entrepreneurial centre. Therefore, it would be more consistent with this vision to allow founders to keep pursuing their ventures. In other countries adopting this permissive approach, as in the case of Sweden, the explanation is even more straightforward: since Sweden is a country with many family-owned firms[102], the controlling families may have pushed for this reform. In fact, this argument has been made by some authors in the context of takeover law in Continental Europe.[103]

Third, this regulatory approach can also be explained by the desire to attract IPOs and become a competitive stock exchange. As it has been mentioned, the fear of losing control is one of the most important reasons for founders to keep their companies private.[104] Thus, the use of dual-class shares may incentivize founders to go public, what it can be desirable not only for both founders (since they will be in a position to raise more money) and investors (due to the fact that they may enjoy part of the profits of a successful, growing company) but also for the market, the financial industry, and the economy as a whole. Therefore, allowing dual-class shares can be a way to face the tough regulatory competition existing nowadays for the attraction of IPOs. In fact, this seems to be the reason behind the recent move of Hong Kong and Singapore to allow companies going public with dual class shares.

6.3. Restrictions

Finally, other countries have opted for an intermediate approach. Under this model, companies can go public with dual-class shares provided that several requirements are met. This approach has recently been adopted by Hong Kong and Singapore in an attempt to compete with other financial centres (particularly New York) for the attraction of IPOs, after seeing how companies like Alibaba – the biggest IPO in the history[105]- decided to go public in New York just because they were unable to go public with dual-class shares in Hong Kong.[106]

Under this restrictive model, the requirements generally imposed to companies seeking to go public with dual-class shares can be classified into five primary groups: (i) more

[99] Goshen Z and Hamdani A (2016)
[100] After all, losing control seems to be one of the major fears to take a company public. See Brau J and Fawcett S (2006).
[101] For the concept and types of sunset clauses, see Bebchuk L and Kastiel K (2017). Showing some data about the evolution of (voluntary) sunset clauses in companies with dual-class share structures in the United States, see Allaire Y (2018), p. 14. The increasing use of more restricted sunset clauses can be due to the existence of more sophisticated investors demanding more accountability from founders.
[102] Bjuggren CM et al. (2011).
[103] Ventoruzzo M (2008); see also Armour J and Skeel D (2007).
[104] Brau J and Fawcett S (2006).
[105] Alibaba raised $25 billion from its IPO: Mac R et al (2014). See also New York Stock Exchange (2014).
[106] Betts C (2014).

stringent corporate governance rules; (ii) sunset clauses; (iii) maximum differential voting rights; (iv) types of companies allowed to go public with dual-class shares; and (iv) approval by regulators or stock exchanges.

First, countries adopting this restrictive model may implement, or require companies to adopt, more stringent corporate governance rules. Namely, as public investors will become less powerful in a company with dual-class shares, it would make sense to enhance the protection of minority shareholders. This can be achieved, for example, by requiring minority-appointed directors,[107] empowering minority investors for the election of independent directors,[108] or subjecting related party transactions and other decisions potentially conflicted for the controllers to the approval of a majority of the minority.[109]

Second, the imposition of sunset clauses can also serve a reasonable middle ground for the regulation of dual-class shares. Sunset clauses consist on contractual provisions that would make the dual-class shares disappear once a specified situation occurs (e.g., period of time, founder's death, transfer of years, etc), unless a majority of the minority decides otherwise.[110] In a time-based sunset clause,[111] the triggering event is the expiration of a defined period of time. These clauses seek to respond to the so-called 'life cycle' of dual-class shares, that is, the fact that the value of firms with dual-class share structures usually declines after a certain number of years.[112] In event-based sunset clauses, however, the triggering event is a defined fact, such as the founder's death or incapacity, the transfer of shares to third parties, or the failure to meet certain requirements in terms of ownership in the company´s share capital. These latter clauses may have different policy justifications, depending on the type of event. For example, if the use of a dual-class share structure is justified on the basis of the unique vision of the founder, it would not make sense to keep the dual-class shares structure if the founders die, transfer their shares, or are incapacitated. When the triggering event, however, is the failure to keep a minimum percentage of share, the rational behind this provision is showing public investors that the founders have enough skin in the game. Therefore, since the interests of the founders will be more aligned with the interests of public investors, and the founder will internalize a higher portion of the costs associated with their decisions, the moral hazard problem potentially created by the use of dual-class shares will be reduced.

Third, another type of restrictions to the use of dual-class shares may consist of imposing caps on the number of votes associated with those shares with superior voting rights. For example, a country may decide, as Hong Kong and Singapore have actually done, to limit the number of voting rights to 10 votes per share.[113] Thus, public investors can be more protected by making sure that, in order to have full control, the founders should keep a minimum percentage of the company´s shares capital. Therefore, as it happens with those sunset clauses triggered once the founders are unable to keep a minimum

[107] The imposition of minority-appointed directors has been adopted in Italy. See Passador M (2018); Gurrea-Martínez A (2019).
[108] In the UK, independent directors in controlled firms are elected by two majorities: (i) a majority of the shareholders' meeting, and (ii) a majority of independent shareholders. See Financial Conduct Authority (2019b). See also Gurrea-Martínez A (2019).
[109] This majority of minority approval is used for certain transactions in several jurisdictions, including Hong Kong and Israel. See Fried JM et al. (2018).
[110] For a deep analysis of the concept and features of sunset clauses, see Bebchuk L and Kastiel K (2017).
[111] This proposal has been suggested in the United States by the Council of Institutional Investors and several authors. See Council of Institutional Investors (2018d); Bebchuk L and Kastiel K (2017); Jackson R Jr (2018).
[112] See Cremers M et al. (2018), Jackson R Jr (2018).
[113] For a comparison of the requirements to go public with dual-class shares in Hong Kong and Singapore, see CFA Institute (2018), p. 51.

percentage of the company's shares, this system will help align the interests of the founders with the interest of public investors.

Fourth, regulators can also impose restrictions to the use of dual-class shares depending the type of firm interested in going public. For example, it could be stated that the use of dual-class shares is just available to tech companies or, as Hong Kong has required, to 'innovative firms'. The rationale behind this approach is allowing dual-class shares only in the context of companies with more disruptive business models, in which the particular vision and skills of the founders can justify the existence of dual-class shares.

Finally, another type of restrictions may consist on requiring the approval of the regulator or stock exchange after conducting a thorough assessment of the 'suitability' of the company interested in going public with dual-class shares. This approach, for example, has been adopted by Singapore,[114] and it requires issuers to demonstrate the 'suitability' of the company to list with a dual-class share structure, for example, by showing the particular features of the business model, the role and contributions of the shareholders, the participation of sophisticated investors, the skills and competence of the controlling shareholders, and the corporate governance of the firm, among other aspects[115]. This approach might be justified on the basis that it may provide public investors with an additional layer of protection. This protection might be needed in countries without sophisticated capital markets, that is, markets unable to properly price the quality of the firm, the founders, the governance structure, and any other publicly available information about the company. Thus, under this approach, the regulator or stock exchange would fulfil the function that, in countries with very sophisticated capital markets such as the United States, is performed by the market. However, in order for this system to work, the regulator or stock exchange assessing the suitability of the company should be meet several features, including sophistication, credibility, independence and lack of corruption. Otherwise, this approach can do more harm than good.

In my opinion, this suitability requirement is not needed for a sophisticated trading venue such as the SGX Mainboard. In fact, it can even create uncertainty[116], as it happens with the provision of the Hong Kong Exchange restricting the use of dual-class shares to 'innovative companies'. However, it would make sense for the Catalist.[117] Unfortunately, companies are not allowed to go public on the SGX Catalist.[118] In my opinion, while the lower level of sophistication and liquidity of this trading venue and the greater existence of asymmetries of information between issuers and investors may justify this prohibition, there are still reasons to support the use of dual-class shares on the Catalist. First, these markets are primarily designed to serve as a listing venue for growing companies. Therefore, due to the great role played by the founder in the early stages of a business, it might make more sense to favour the use of dual-class shares in this type of companies. Second, the Catalist imposes similar corporate governance rules than those existing for the Mainbaord. Therefore, in terms of legal mechanisms provided to protect public investors, there are no significant differences between both listing venues. Third,

[114] For a complete analysis of the factors suggested to determine the 'suitability' of a company to be allowed to go public with dual-class shares, see Consultation Paper on Proposed Listing Framework for Dual Class Share Structures: Responses to Comments, Singapore Exchange, 26 June 2018 (available at https://api2.sgx.com/sites/default/files/Responses%2Bto%2BFeedback%2Bon%2BDCS%2BConsultation%2BPaper%2B%2528260618%2529.pdf).
[115] Op. cit., p. 3-4.
[116] This objection was made by many respondents to the consultation paper in Singapore. See *op. cit.,* at 4.
[117] The Catalist is a platform targeted at young and fast-growing companies. It is the equivalent to the UK's Alternative Investment Markets. Companies looking to list on the Catalist are subject to less stringent requirements as compared to listing on the Mainboard. See Teen M, Lai M (2019). For Catalist Listing Rules, see Singapore Exchange (2019). For the UK's Alternative Investment Markets, see Hornok J (2015).
[118] Suggesting that the use of dual-class shares should only be allowed for companies listed on the Catalist, see Lin L (2018).

as the Catalist is a sponsor-based regime (similar to the UK's Alternative Investment Market), there is a gatekeeper appointed to work closely with the issuer. Therefore, the existence of these gatekeepers may compensate investors for the reduced informational efficiency potentially existing in these markets. For these reasons, I think Singapore should reconsider its position regarding the prohibition of companies going public with dual-class shares on the Catalist. Namely, I believe that the use of dual-class shares should be allowed on the Catalist subject to the restrictions currently existing on the Mainboard, including the 'suitability requirement'. By contrast, I do not think the suitability requirement is needed for a sophisticated trading venue such as the SGX Mainboard.

7. Local factors affecting the desirability of dual-class shares

Many countries and scholars around the world have been discussing whether companies should be allowed to go public with dual-class shares. In my opinion, however, the discussion has not been properly framed. The question is not whether securities regulators should allow companies going public with dual-class shares but whether they should do so –and if so how– taking into account the particular features of a country.

It will be argued that, when deciding the optimal regulatory response to deal with dual-class shares, regulators should consider a variety of local factors, including: (i) the level of sophistication of capital markets; (ii) corporate and securities laws; (iii) the level of private benefits of control; (iv) procedural laws; (v) accounting and audit regulation; and (vi) quality and credibility of enforcement. These factors will help regulators determine the *overall* level of protection provided to public investors, which should be the leading factor determining whether or not dual-class shares should be allowed in a particular country.

7.1. Sophistication of capital markets

One of the most important aspects with considering whether and, if so, under what conditions, companies should be allowed to go public with dual-class shares is the level of sophistication of the market. In countries with more sophisticated markets due to the existence of more issuers, trading volume, liquidity, sophisticated investors, investment banks, analysts, broker-dealers, proxy advisors, securities lawyers, and financial advisors, among other actors, the implementation of dual-class share structures will be less risky. In these countries, markets will be able to price –at least much better than in non-sophisticated markets– the value potentially added by the founder.[119] In order words, markets will become more informally efficient. As a result, if the founders realize –usually during conducting the roadshow– that they are not as 'special' as they think they are, they will not have incentives to go public with dual-class shares. Therefore, founders will only choose going public with dual-class shares if they (and their investor) think that they can add value to the company. Similarly, once a company has become public, the existence of a sophisticated capital market will incentivize corporate directors to behave in a more efficient, diligent and honest manner. Otherwise, the market will reflect react by pushing down the stock price. And taking into account that, if the stock price goes down, the directors can lose their jobs if they are subject to a hostile takeover, and they can also lose the value of their shares and stock options (if any), from an ex ante perspective, they will have incentives to maximize the interest of the shareholders.

As a result, in countries with more sophisticated markets, such as the United States, the risk of allowing dual-class shares will be lower. By contrast, in countries with less

[119] These markets will closely reflect the ideas of the Efficient Capital Market Hypothesis in which price reflect all publicly available information and the intrinsic value of the future cash-flows of a firm. See Gilson RJ and Kraakman R (1984); Fama E (1970).

sophisticated markets, unable to effectively and efficiently price the information associated with a company or their insiders, investors will enjoy a lower level of protection. In these countries, investors will face a type of adverse selection problem, since they will not be able to distinguish between good and bad firms/managers. Besides, due to the inability of the market to reflect the value of corporate decisions through the stock price, managers and controlling shareholders may have incentives to opportunistically enrich themselves at the expense of public investors. After all, the market will not be punishing them for any misbehaviour. Therefore, the risk of allowing dual-class shares will be lower in countries with less sophisticated capital markets. In contrast, when the capital market is sophisticated enough, the market itself may act as one of the most powerful mechanisms to protect public investors.

7.2. Corporate and securities laws

Most of the *legal* protections provided to public investors are derived from a country's corporate and securities laws. Hence, in order to decide how risky the use of dual-class shares can be in a country, it might be useful to analyse how protected minority investors are in a particular jurisdiction. For that purpose, in addition to some indexes traditionally used to measure the level of protection to minority investors[120], which usually include a variety of shareholders' rights and remedies (e.g., ability to call a shareholder meeting, derivative actions[121], level of disclosure, availability and effective of oppression remedies[122], existence and number of independence directors, etc), it might be relevant to consider new developments and proposals to enhance the protection of minority investors. These proposals may include, for example, the approval of transactions by a majority of minority investors,[123] or the existence of directors appointed by minority investors.[124]

The way securities laws is designed can also affect the protection of investors.[125] For example, in order to reduce regulatory costs for firms, many countries may decide to reduce their level of disclosure required to issuers (e.g., reducing quarterly reporting obligations, increasing the number of exemptions of the prospectus potentially used to issue securities, etc). Or even if they do not, these disclosure obligations may just focus on the level of information instead of the quantity of the information and how this information is provided (e.g., clear, understandable, summarized, etc.). If so, a lower level of information[126], or more complexly provided information, may imply a weaker protection to public investors.

After conducting a comprehensive assessment of corporate and securities laws, if it is concluded that minority investors are not properly protected, it will be riskier to allow companies going public with dual-class shares. By contrast, if corporate and securities

[120] For example, the World Bank prepares an index of the protection of minority shareholders. See https://tcdata360.worldbank.org/indicators/h0fe73d6c?country=BRA&indicator=645&viz=line_chart&years=2007,2017
[121] In some countries, derivative actions exist 'on the books' but they are not so common in practice due to a variety of factors, including procedural rules (e.g., distribution of legal fees) and the level of share concentration existing in the country. For an analysis of derivative actions around the world and why they are not common in some countries, see Li Xn (2007); Reisberg A (2007); Siems M (2012), p. 93-116; Gelter M (2012); Puchniak D et al. (2012); Koh P (2001); Erickson J (2018).
[122] Nenova T (2003).
[123] Fried K et al. (2018); Enriques L (2015).
[124] Belcredi M and Enriques L (2015); Malberti C and Sironi E (2007); Passador ML (2018); Gurrea-Martínez A (2019).
[125] La Porta, R et al (2006)
[126] Op. cit.

laws provide a strong protection to public investors, a country should be more inclined to allow the use of dual-class shares.

7.3. Private benefits of control

Closely related to the level of investor protection under corporate and securities laws, another important feature affecting the level of risk associated with allowing companies going public with dual-class shares is the existence and significance of private benefits of control in a country. In other words, it will be relevant to analyse the level of influence, power and appropriation of corporate resources by insiders. In countries where controllers enjoy large private benefits of control,[127] making the controllers more powerful will become riskier for public investors. Therefore, regulators should become more sceptical about the possibility of allowing companies going public with dual-class shares.[128] By contrast, in countries with low levels of private benefits of control, there will be a lower risk associated with permitting dual-class share structures.[129]

7.4. Procedural laws

Other legal remedies potentially provided to protect investors can be found in the laws regulating corporate litigation and civil procedure. For example, if a country imposes a high burden of proof to sue corporate insiders, there will be a higher risk of opportunism of insiders vis-à-vis public investors. Therefore, it will be risker to allow the use of dual-class shares. By contrast, if litigation is facilitated, for instance, by not imposing a high burden of proof, providing the reimbursement of the legal expenses associated with a successful legal action, allowing contingency fees, or facilitating the use of class actions, public investors will enjoy a greater level of protection. And they will do so because, due to the higher risk of being sued, corporate insiders will have more incentives to avoid any violation of the law and any type of opportunistic behaviour. Therefore, in countries with more friendly litigation rules, especially if these rules include the existence of class actions, there will be a lower risk associated with allowing the use of dual-class shares. By contrast, if a country does not allow the use of class actions, and makes litigation against corporate directors more difficult, there will be a higher risk of opportunism of insiders vis-à-vis public investors. Therefore, regulators should be more sceptical about the possibility of allowing companies going public with dual-class shares.[130]

7.5. Accounting and audit regulation

Financial reporting and audit regulation also play an essential role in the protection of public investors. Namely, by providing information about the company's performance and financial position, the existence of accounting and financial reporting obligations help

[127] These countries include, for example, South Korea, Mexico, Italy and Brazil. See Dyck A, Zingales L (2003).

[128] Interestingly, however, various empirical studies have shown that the market has reacted positively to the implementation of shares with multiple voting rights in Italy and France despite the fact that these countries are characterized for having controlling shareholders, and, particularly in Italy, high private benefits of control. See Belot F et al (2019); Bourveasu T et al (2019); Bajo E. et al (2019); Ecchia, B and Visconti, R. (2016).

[129] These countries include, for example, Sweden, Norway, Singapore, the United Kingdom, and United States. In Sweden, 80% of public companies have dual-class shares. See report by Shearman & Sterling and ECGI (2007). See also Ventoruzzo M (2015). While this percentage can be worrying for other countries, it does not seem to do so for a country like Sweden, not only characterized by low private benefits of control but also – and very related- for their good laws. See Gilson RJ (2005).

[130] In fact, the lack of class actions seemed to be one of the factors influencing the decision to prohibit the use of dual-class shares in Hong Kong. See Hong Kong Exchanges and Clearing Limited (2014).

reduce asymmetries of information between issuers and investors while facilitating investment decisions.

However, since issuers may have perverse incentives to lie about their financial situation in order to attract more investors, the appointment of a reliable, qualified third party to verify this information seems to be required. This is essentially the role and function played by auditors. By acting as reliable third parties in charge of verifying the company's financial statements, auditors play two primary functions. *Ex post,* they protect public investors by making sure that corporate insiders do not lie about the company's financial position. *Ex ante*, they create confidence on public investors, facilitating firms' access to finance and the development of capital markets.[131]

However, since auditors appointed, paid and removed by the audited company, and they often provide other professional services to the audited company, they face a clear conflict of interests.[132] For this reason, when assessing how protected public investors are, it is important to analyse the credibility of the system of auditors.

In countries with more stringent regulations for the independence and qualifications of auditors, and clearer and more useful requirements in terms of financial reporting, public investors will enjoy a higher level of protection. If so, the risk of allowing dual-class shares will be lower. By contrast, in countries with less stringent accounting and audit rules, the risk of expropriation of corporate insiders vis-à-vis public investors will be higher. In these latter jurisdictions, therefore, allowing the use of dual-class shares will be riskier.

7.6. Quality and credibility of enforcement

The quality of the 'law on the books' in a country is useless unless it is accompanied by a proper enforcement. Therefore, the way the corporate, securities and accounting laws are enforced are an essential component of investor protection.[133] For that purpose, there are many types of enforcement mechanisms, as well as many factors potentially affecting the quality and credibility of enforcement.[134] Regardless of whether the enforcement is private or public, or how the enforcement has been achieved, the quality and credibility of the enforcement will depend on the sophistication and reliability of various actors and institutions.

First, the judicial system plays an essential part of the enforcement institutions in a country. Indeed, the existence of a reliable, independent, sophisticated, and efficient judiciary makes public investors be more confident about the protection of their rights, since they know that any opportunistic conduct by corporate insiders will be quickly challenged in course and, if so, punished. As a result, directors and controlling shareholders will have less incentives to expropriate minority investors. Therefore, in countries with more efficient, independent and sophisticated judicial systems, the use of dual-class shares will be less risky. By contrast, if a judicial system is slow, unsophisticated, or corrupt, public investors' rights might not be properly or quickly

[131] Gelter M and Gurrea-Martinez A (2019)
[132] Op. cit.
[133] The enforcement of the law is important for the protection of investors. In this regard, potential shareholders and creditors provide finance to firms as their rights are legally protected: La Porta R et al. (2000). Some authors have even argued that "enforcement of the rule of law is the central functional difference between developed market economies and developing economies". See Bergelöf E and Claessens S (2016).
[134] Armour J et al. (2009); Jackson H and Roe M (2009).

protected. As a result, allowing companies going public with dual-class would be riskier in these countries.

Second, securities regulators also play a major role in the enforcement of the law – particularly securities laws and, in some countries, also corporate laws. Indeed, since a sophisticated, independent and well-equipped regulator will have the opportunity to provide a more effective supervision of securities markets, corporate insiders will be more deterred from violating the law or engaging in any type of opportunistic behaviour. As a result, public investors will enjoy a greater level of protection. Therefore, the risk of allowing dual-class shares will be lower in these countries. By contrast, if a securities regulator is not very sophisticated, or it is 'captured' by the regulated entities, it will unlikely be able to perform its monitoring functions in an effective, reliable manner. As a result, public investors might not be properly protected. Therefore, the use of dual-class shares will be riskier in these countries.

Third, the existence and sophistication of a market of *lawyers* can also play an important role in the enforcement of corporate and securities laws. Namely, the likelihood of being sued for breaking the law or for a breach of fiduciary duties may affect the behaviour of corporate directors. Therefore, the more developed a market of litigation lawyers is, the more protected public investors can be from the opportunism of corporate insiders.[135] Therefore, in countries with an active market of securities and litigation lawyers, the risk of allowing dual-class shares will be lower. By contrast, in countries without a developed market of securities and litigation lawyers, there will be a higher risk associated with the use of dual-class shares.

Finally, the existence of activist investors not only may affect the sophistication and informationally efficiency of a market –as it was mentioned in previous sections– but also the effectiveness and credibility of the enforcement. Indeed, due the higher interest of activist investors in the governance and performance of companies, these shareholders have incentives to spend resources in gathering and analysing information, as well as monitoring corporate insiders. Likewise, in case of identifying a breach of directors' duties, or any type of oppressive conduct by directors, managers or controlling shareholders, they also have the incentives and resources to initiate a lawsuit. In fact, even if the directors properly perform their duties but, in the view of the shareholder activist, the directors are not maximizing the value of the firm, the shareholder activist can still do something: it may even consider the possibility of starting a campaign against corporate insiders with the purpose of influencing some managerial, corporate or financial decisions.

As a result, public investors will be indirectly more protected in countries with activist shareholders willing and able to closely monitor corporate insiders. Thus, the risk of allowing dual-class shares will be lower in these markets. By contrast, the use of dual-class shares will be higher in markets mainly formed by passive shareholders. For that purpose, however, it should be noted that, depending on the type of passive investor prevailing in the market, the risks associated with the use of dual-class shares may also differ. For example, if most passive shareholders are institutional investors, there will be a lower risk of allowing dual-class shares, since these investors may have a lot of bargaining power and more resources to gather and analyse information. However, if most passive shareholders in a market are retail investors, then the risk of allowing dual-class shares will be much higher, not only because these shareholders will have a lower bargaining power but also because they will face larger asymmetries of information.

[135] Sometimes, the size of a market of litigation lawyers will depend on a variety of factors including the availability of class actions and the possibility of agreeing contingency fee.

8. Choosing the optimal response to the dual-class share puzzle

The use of dual-class shares may create several benefits, mainly associated with allowing founders to pursue their (sometimes unique) vision and encouraging firms to go public. However, the existence of share with multiple voting rights also entails some risks. Even though, in my opinion, the costs and benefits of dual-class shares structure are *firm-specific*, and therefore they will depend on the particular company and founders, from a policy perspective, regulators should decide how to deal with dual-class shares.

This paper argues that the optimal solution to deal with dual-class shares depends on the particular features of a country. In countries with sophisticated markets, strong legal protections to minority investors, low private benefits of control, proper corporate, audit and litigation rules, and independent and capable regulators and courts, the use of dual-class shares will not be that risky. Therefore, if a country meets all these features, as it is probably the case in the United States, there seem to be no need to prohibit or even restrict the use of dual-class shares. Companies should be able to choose whether, and if so how, they want to go public. And in case of imposing any restrictions, these restrictions should consist of event-based sunset clauses rather than the time-based sunset clauses. The imposition of time-based sunset clauses should only be considered (if so) if the empirical evidence about the long-term value of dual-class shares were conclusive, and it shows that companies with dual-class shares, regardless of their industry, underperform their peers with single share structures.

By contrast, in countries with non-sophisticated markets, weak legal protections to minority investors, high private benefits of control, and less independent and capable regulators and courts, as it is the case in many emerging economies, dual-class shares should be prohibited or subject to strict sunset provisions (e.g., time-based sunset clauses). Moreover, caps on the number of votes per share and stringent corporate governance rules should also imposed. If not, by allowing companies going public with dual-class, the regulator could hamper, rather than develop, the local capital markets, since many public investors may feel unprotected.

Finally, in jurisdictions with mixed futures, the optimal regulatory may differ. For example, if the country is closer to those with highly sophisticated markets, strong legal protections to minority investors, reliable and efficient regulators and courts, and low private benefits of control, as it can be the case in Hong Kong and Singapore, the use of dual-class shares should be allowed subject to minor restrictions. These restrictions may include, for example, the imposition of event-based sunset clauses, limitations on the number of votes per shares and, if the country has controlling shareholders, perhaps stringent corporate governance to prevent tunnelling.[136] Moreover, the implementation of class actions can also be a desirable policy to enhance the protection of minority investors.

[136] For the concept of 'tunneling', see Johnson S et al. (2000). The authors use the term tunneling *"to refer to the transfer of resources out of a company to its controlling shareholder (who is typically also a top manager".* Therefore, *"it does not cover other agency problems, such as incompetent management, placement of relatives in executive positions, excessive or insufficient investment, or resistance to value-increasing takeovers*". According to the authors *"(….) tunnelling comes in two forms. First, a controlling shareholder can simply transfer resources from the firm for his own benefit through self-dealing transactions. Such transactions include outright theft or fraud, which are illegal everywhere though often go undetected or unpunished, but also asset sales, contracts such as transfer pricing advantageous to the controlling shareholder, excessive executive compensation, loan guarantees, expropriation of corporate opportunities, and so on. Second, the controlling shareholder can increase his share of the firm without transferring any assets through dilutive share issues, minority freeze-outs, insider trading, creeping acquisitions, or other financial transactions that discriminate against minorities (…)".* For other definitions of tunneling, distinguishing between asset tunneling, equity tunneling, and cash-flow tunneling, see Atanasov V et al

By contrast, if the mixed features of a country make it closer to those with unsophisticated capital markets, weak legal protection to minority investors, high private benefits of control, and unreliable regulators and courts, the regulatory approach to dual-class shares should be more restrictive. For example, in addition to the measures suggested above (that is, event-based sunset clauses, more stringent corporate governance rules, limitation of voting rights per shares and class actions), it would seem more desirable to impose time-based sunset clauses. In addition, if the country, despite its weaknesses, has sophisticated and reliable regulators, perhaps the regulator can be given the power to decide whether a company is 'suitable' to go public with dual-class shares. Thus, the regulator would be correct the market failures existing in those countries. Therefore, it would be fulfilling the assessment and informational functions that, in sophisticated markets, would be performed by the markets themselves.

If this approach is adopted, the evaluation of the 'suitability' of a company to go public with dual-class shares can be implemented by requiring the issuer to convince the regulators why they deserve to go public with dual-class shares. For that purpose, their argument should be based on a variety of legal, financial and business matters. For instance, the issuer may show that, due to the uniqueness of the company's business model or the founder's skills, the existence of dual-class shares can be justified. Likewise, the proposed holders of dual-class share structures may show that, in order to compensate the reduced power given to minority shareholders, the company has implemented various corporate governance policies seeking to provide more protection to public investors. For example, the company may decide to appoint minority-appointed directors. Similarly, and even if it were not required by the legislation, the company may voluntarily decide to subject certain decisions potentially used for tunnelling, such as related party transactions and the remuneration of directors, to the approval of a majority of the minority, or the majority of a group of directors comprising both independent directors and minority-appointed directors.

In my opinion, even if the regulator may sometimes fail in its judgment (e.g., allowing companies to go public with dual-class shares when they should not, or the other way around), this system may still work better than a non-functioning capital market. And perhaps it is also more desirable than prohibiting the use of dual-class shares, since it can be the only way to encourage many families, states and founders to take their companies public, thus promoting the development of a capital market. However, it should be reminded that, in order for this system to work, while the market is underdeveloped, the regulator should be highly sophisticated, independent, and totally reliable, and the legal framework should provide a reasonable protection to minority investors. Otherwise, the implementation of this system would do more harm than good.

9. Conclusion

Dual-class shares have become one of the most controversial issues in today´s capital markets and corporate governance debates around the world. Namely, it is not clear whether companies should be allowed to go public with dual-class shares and, if so, which restrictions (if any) should be imposed. Three primary regulatory models have been adopted to deal with dual-class shares: (i) prohibitions, existing in countries like the United Kingdom, Germany, Spain, Colombia, or Argentina; (ii) the permissive model adopted in various jurisdictions, including Canada, Sweden, the Netherlands, and particularly the United States; and (iii) the restrictive approach recently implemented in Hong Kong and Singapore. This paper has argued that, despite the global nature of this debate, regulators should be careful when analysing foreign studies and approaches,

(2014). For an empirical investigation of tunneling through related party transactions in Hong Kong and Singapore, see Chen C et al. (2018).

since the optimal regulatory model to deal with dual-class shares will depend on a variety of local factors. It has been argued that, in countries with sophisticated markets and regulators, strong legal protection to minority investors, and low private benefits of control, regulators should allow companies going public with dual-class shares with no restrictions or minor regulatory intervention (e.g., event-based sunset clauses). By contrast, in countries without sophisticated markets and regulators, high private benefits of control, and weak legal protection to minority investors, dual-class shares should be prohibited or subject to higher restrictions (e.g., time-based sunset clauses and stringent corporate governance rules). Intermediate solutions should be adopted for countries with mixed features. Therefore, the key question to be addressed from a policy perspective is not whether companies should be allowed to go public with dual-class shares, as many authors and regulators seem to be discussing, but whether dual-class class shares should be allowed and, if so, under which conditions, taking into account the particular features of a country.

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