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Singapore Company Law and the economy: reciprocal influence over 50 years

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ABSTRACT

A strong reciprocal relationship has existed between Singapore Company Law (SCL) and the economy since Independence in 1965. Swift Parliamentary responses to economic events and successful implementation of Government policies has made it possible to clearly attribute cause and effect to statutory amendments and economic events in turn, proving the reciprocal relationship between the two. The first theme of this article seeks to explain the fundamental characteristics of SCL that have resulted in such an unusually strong reciprocal relationship: (1) Autochthonous nature of SCL; (2) Responsive nature of legislation; and (3) Government control at multiple levels of implementation. The second theme examines the interplay between: (1) Domestic political and economic events; and (2) Foreign laws and economic events in influencing legislative responses over time and their impact on SCL. This will be done through an examination of four key areas of SCL over 50 years of Singapore economic history.

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I. Introduction

The first theme of this article explores the unusually strong reciprocal relationship between Singapore Company Law (SCL) and the economy. Three fundamental characteristics of SCL have contributed to the smooth functioning of the reciprocal relationship. (1) The autochthonous nature of SCL: the law is free to develop according to the demands of commerce without following uncritically the law in other jurisdictions. (2) The responsive nature of legislation: the Singapore legislative process is largely free from political deadlock and a strong parliamentary majority allows the Government to react to economic developments promptly. (3) Government control at multiple levels of implementation: the eventual implementation of a policy is aided by strong Government control at up to four levels of the implementation process (primary legislation, subsidiary legislation, Government agencies and possibly Government-linked Companies (GLCs)).

The second theme examines the interplay between two key factors that have shaped legislative responses to economic events: (1) Domestic political and economic events; and (2) Foreign laws and economic events. The influence of the factors has varied over

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time and also depended on the area of SCL concerned. This article tracks the development of three key areas of SCL to explore the different extents of influence that the factors have had: (1) Regulation; (2) Insolvency; and (3) Protecting Interested Parties.

II. Singapore's legal and economic history post-independence

For the purposes of this article, we have structured the phases of development of Singapore's legal history into four separate parts, tracking the implementation/enactment of milestone pieces of legislation that changed the landscape of SCL. We will examine the events in Singapore economic history that provide the context in which these legal changes were made.

A. Pre-1967: independence as a catalyst for legal change

Before the 1960s, Singapore's economy was virtually dominated by entrepot trade, with only a small manufacturing sector.[1] The Economic Development Board (EDB) was formed in 1961 and tasked with attracting foreign investment. Before 1967, the Companies Ordinance 1940 was in force in Singapore, an Act based on the English Companies Act 1929. Following the merger of Singapore and Malaysia in 1963, Parliamentary draftsmen collaborated in the drafting of the Malaysian Companies Act (1965 Ed.). However, Singapore's sudden independence in 1965 derailed the Act's enactment, leaving Singapore with a company law framework 30-odd years behind English Company Law.

B. 1967–1985: establishment of an SCL framework

Singapore's independence from Malaysia caused a great sense of urgency in Parliament to implement an SCL framework,[2] and Parliament promptly held the first reading of the Companies Bill 1966 on 5 December 1966, a mere year after Independence. The first edition of the Singapore Companies Act (Cap. 50) was enacted in 1967 and came into force on 29 December 1967.

Independence led to a shift in Singapore's economic planning. Following separation from Malaysia in 1965, there was no further prospect of a common market with Malaysia. Import substitution was rejected by the People's Action Party (PAP) Government as impractical[3] given the small domestic market and dearth of natural resources.[4] Instead, the PAP focused on export-led industrialization that would be primarily funded by foreign investments.[5] This strategy placed a heavy emphasis on attracting Multinational Corporations (MNCs) to provide the necessary technology and capital[6] and the use of

[1] Peebles and Wilson, *Economic Growth and Development in Singapore: Past and Future* (Edward Elgar, 2002) 26.
[2] Singapore Parliamentary Debates, Official Report (Hansard) (21 December 1966) (hereafter 'Hansard 1966'), col 1073.
[3] Lee Kuan Yew, 'Growing Economic Links Between Singapore and Switzerland (1971)' in *The Papers of Lee Kuan Yew: Speeches, Interviews and Dialogues* (Gale Asia, 2011) (hereafter '*The Papers of Lee Kuan Yew*').
[4] Peebles and Wilson (n 1) 186.
[5] Jean E Abshire, *The History of Singapore* (Greenwood, 2011) 134.
[6] Ravi Menon, 'An Economic History of Singapore: 1965–2065' *Monetary Authority of Singapore* (5 August 2015) <http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2015/An-Economic-History-of-Singapore.aspx> accessed 20 May 2019.

state-owned enterprises to develop key sectors of the economy, such as defence, transport and telecommunications.[7]

Singapore's focus on export-led industrialization coincided with a global shift towards a new international division of labour. MNCs were actively searching for locations to set up assembly facilities for low value–added goods.[8] Singapore positioned itself as a low-risk investment environment and passed legislation to minimize labour unrest and provide tax incentives.[9] This strategy was highly successful and attracted a considerable transfer of capital investments and technical knowledge to Singapore. By 1972, Singapore's cumulative stock of foreign direct investment stood at USD 547 million,[10] with the economy growing at nine per cent annually from 1965.[11]

C. 1985–2000: corporate regulation and insolvency reform following the economic crisis

This period got off to a rough start with a recession in 1985; the only time that the domestic economy contracted in the face of a growing global economy.[12] To make matters worse, the collapse of Pan-Electric Industries (Pan-El) forced the authorities to close the Stock Exchange of Singapore for the first and only time in its history and damaged Singapore's reputation as a financial centre.[13]

The Crisis led to massive reforms in corporate regulation and insolvency. Parliament responded quickly by enacting the Companies (Amendment) Act 1987, which sought to remedy the weaknesses that had led to the Crisis. A new framework was put in place to enhance the Government's ability to regulate the stock market and stricter regulatory standards were enforced.[14] Further amendments to tighten market regulation were subsequently made in 1989,[15] when there was more time for a comprehensive assessment of the regulatory regime.[16]

An Economic Committee was also established in the wake of the 1985 recession and recommended that Singapore should develop as a risk management centre, conducting money market and capital market activities.[17] This prompted the diversification of the Singapore economy, with reduced reliance on the traditionally dominant manufacturing industry. By 2000, the financial sector accounted for nearly 12 per cent of Singapore's gross domestic product (GDP),[18] making it one of the most important sectors in the economy.

[7] Tan Cheng Han, Dan W Puchniak, and Umakanth Varottil, 'State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform' (2015) 28 Columbia Journal of Asian Law 61.
[8] Ooi Giok Ling, 'Singapore's Changing International Orientations, 1960–1990' in Karine Delaye, Jean-Louis Margolin, and Karl Hack (eds), *Singapore from Temasek to the 21st Century: Reinventing the Global City* (NUS Press, 2010) 333.
[9] Abshire (n 5) 135–136.
[10] Lois Bastide, 'Singapore in the New Economic Geography: From Geographic Location to the Relocation of Economic Dynamics' in François Gipouloux (ed), *Gateways to Globalisation: Asia's International Trading and Finance Centres* (Edward Elgar, 2011) 135.
[11] Ooi (n 8).
[12] Menon (n 6).
[13] 'Pan-Electric shock' (1985) The Economist 78.
[14] Tan Chwee Huat, 'Financial Institutions and Markets' in Tan Chwee Huat and Kwan Kuen-Chor (eds), *Handbook of Singapore-Malaysian Corporate Finance* (Butterworths, 1988) 23.
[15] Hansard (7 April 1989) (hereafter 'Hansard 1989'), col 103ff.
[16] See Part C in Section IV of this article.
[17] Peebles and Wilson (n 1) 232.
[18] Ibid, 113.

D. 2000 onwards: growing the financial services industry

The spectre of Pan-El continued to haunt corporate regulation for years after the incident. It was not until the 2000s that Parliament was confident enough with the regulatory framework to start reversing the trend of prescriptive regulation that had started post-Pan-El. In 2001, the regulatory philosophy of the stock market underwent a major paradigm shift from merit-based to disclosure-based regulation.[19]

As Singapore persisted in its attempts to build up its financial services industry, she became more outward-facing in seeking foreign listings and constantly attempted to counter the perception that the Singapore stock markets are over-regulated.[20] One of the key issues that Singapore has also had to face in this area is her reputation as a financial centre. In 2004, the Singapore Stock Exchange was rocked by the China Aviation Oil (CAO) scandal, where a company had to file for creditor protection after suffering massive losses from speculation in derivatives.[21] As Singapore continues to focus on the financial services industry, new regulatory challenges such as whether to allow dual class shares emerge.

Theme I: examining the reciprocal relationship

Law often influences economic (and more broadly, societal) events. Similarly, laws are constantly shaped by economic events as policy makers are forced to respond to them to maintain good governance. In practice, however, a badly drafted and implemented law will fail to effect the intention of Parliament and may lead to unforeseen repercussions. In the same way, a failure on the part of the Legislature to respond to economic events in a timely and apt manner limits the influence of economic events on shaping the law. Regulators may be left with a set of legal tools that are obsolete to the matter at hand. As demonstrated above, however, the Singapore Legislature has been extremely responsive to economic shocks. In this context, the success of legislative responses in Singapore to economic events is an indicator of the strong reciprocal relationship between SCL and the economy.

The reciprocal relationship is founded on three core characteristics of SCL. (1) The autochthonous nature of SCL; (2) the responsive nature of legislation; and (3) Government control at multiple levels of implementation. These characteristics have evolved over time and changed in nature. The path to autochthony took many years, with Singapore gradually becoming more confident of charting its own path in Company Law. On the other hand, the highly responsive nature of legislation has been a characteristic of SCL since Independence. While strong Government control has also been a constant feature of SCL, the increasing privatization of GLCs has weakened Government control over the implementation of SCL over time, raising questions as to the sustainability of the reciprocal relationship.

[19] 'Annual Report 2001/2002' *Monetary Authority of Singapore* (2002) <http://www.mas.gov.sg/annual_reports/annual20012002/developing-annual-c.html> accessed 20 May 2019.

[20] Sam Roseme, 'Singapore's Economic Balancing Act: How a Company's Collapse Challenged the Country's New Corporate Governance Regime' (2007) 24 Pacific Basin Law Journal 249.

[21] Ibid, 250.

III. Features of SCL

A. Autochthonous nature

SCL is progressively autochthonous, with developments in foreign laws carefully assessed for their suitability and, where necessary, adapted to suit the local context.[22] It is this element that allows for the reciprocal relationship between SCL and the economy. While law would certainly influence the economy in a non-autochthonous system, the influence of the economy on law would be more limited.

This was not always the case in Singapore. The path to autochthony was a long one, with Singapore initially starting out by copying foreign legislation wholesale. Pre-Independence Company Law Legislation was often verbatim imports of the corresponding English statutes, with attempts to tailor the law to suit local conditions bearing very little fruit.[23] In fact, so extreme was the practice of following the English legislation, that in Section 107 of the Companies Ordinance, the English numbering of sections was cross-referenced by mistake, instead of the Straits Settlements numbering.[24] This had changed by 1974, when Singapore adopted several proposals from the 1962 United Kingdom (UK) Jenkins Committee Report, which Westminster had rejected.[25] In 1990, Singapore adopted the statutory derivative action ahead of Australia, Hong Kong and the UK.

By 2007, SCL had matured enough for the Steering Committee of the 2007 Review of the Companies Act (Steering Committee) to declare that foreign innovations should only be imported 'if it would serve a useful purpose in our context'.[26] The Steering Committee comprehensively reviewed the Companies Act in light of the legislation of other common law jurisdictions, submitting its report in April 2011.[27] Many of the proposed amendments were enacted in 2014, resulting in the largest overhaul of the Companies Act since independence[28] and signalling that an autochthonous Company Law had come of age.

B. Responsive nature of legislation

The speed at which the Singapore Legislature has been able to respond to trigger events is another defining characteristic of SCL. Developments in the economy are often time-sensitive and delays in legislative response might render proposed initiatives ineffective. The Singapore Legislature has constantly proceeded in a timely manner. A few examples illustrate this.

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[22] Ministry of Finance, *Report of the Steering Committee for Review of the Companies Act* (Ministry of Finance, 2011) (hereafter 'Steering Committee Report') 1–28.

[23] Petra Mahy and Ian Ramsay, 'Legal Transplants and Adaptation in a Colonial Setting: Company Law in British Malaya' (2014) Singapore Journal of Legal Studies 123.

[24] Ibid.

[25] Jiang Yu Wang, 'Making Singapore Company Law More Singaporean? — A Critical Examination of the Recent Revision of the Companies Act in the Light of Comparative Law' (2014) 14 Asian Business Lawyer 15, 28.

[26] Steering Committee Report (n 22) 1–28.

[27] Ministry of Finance, *Consultation Paper on the Report of the Steering Committee for Review of the Companies Act* (Ministry of Finance, 2011) 1.

[28] Ibid.

1. Enactment of the Companies Act

When Singapore separated from Malaysia in August 1965, its Company Law statutory framework was more than 30 years out of date. While Parliament had to deal with the numerous pressing concerns arising from Singapore's sudden independence, the Companies (Amendment) Bill was ready for its first reading within a year after Independence and enacted the following year.[29]

2. Pan-El Crisis (regulation)

During the Pan-El Crisis, the Government promptly responded by closing the Stock Exchange of Singapore for three days, arresting the free fall which had been precipitated by the collapse of Pan-El.[30] Within months of the Crisis, Parliament had prepared a Companies (Amendment) Bill which sought to remedy the weaknesses that had led to the Crisis, proceeding to enact the amendments the following year.[31] While further amendments had to be subsequently made in 1989,[32] Parliament chose to provide an immediate and adequate response to the Crisis, rather than to wait until a more comprehensive framework had been drafted.

3. Pan-El Crisis (insolvency)

The Pan-El Crisis and the 1985 recession highlighted the inadequacies of the existing insolvency procedures. The insolvency regime at that point was 'weighed in favour of creditors'[33] and wholly inappropriate in the background of a recession, where many companies suffered from temporary liquidity problems. When Parliament was addressing the issue of passing amendments to remedy the regulatory weaknesses exposed by the Pan-El Crisis and the recession, it also made changes to the insolvency regime.[34] A major change was the introduction of judicial management as an alternative to winding-up.

4. Amendment of the Companies Act

The 2017 Amendment of the Companies Act further highlights the responsive nature of Singapore Legislature. One of the key amendments which came into effect on 11 October 2017 is the re-domiciliation regime. This amendment allows foreign companies to relocate their business headquarters to Singapore instead of setting up subsidiaries, without losing their corporate history or brand identity.

This means that a foreign company located outside of Singapore may become a registered Singapore private company limited by shares, domiciled in Singapore and continue its operations under the laws of Singapore without having to wind up its business activities and set up a new company in Singapore. The procedure for this transfer of registration is similar to that for setting up a subsidiary in Singapore. In line

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29 Hansard 1966 (n 2).

30 Mimi Ho and others, 'Case Study on Pan-Electric Crisis' (MAS Staff Paper No. 32, Monetary Authority of Singapore, 2004) (hereafter 'MAS Paper') 9.

31 Hansard (26 March 1967) (hereafter 'Hansard 1967'), col 1518.

32 Hansard 1989 (n 15).

33 Catherine Tan Swee Kian, 'The Judicial Management Procedure in Singapore Company Law' (1988) Journal of Business Law 188.

34 Hansard 1967 (n 31).

with Singapore's recent focus on Small and Medium Enterprises (SMEs), this regime is targeted towards small firms.[35]

This amendment reduces operational disruption to foreign companies that wish to re-domicile to Singapore and is meant to target corporate groups seeking to restructure and benefit from a more favourable tax and regulatory environment in Singapore in light of Base Erosion Profit Shifting (BEPS) developments and the need for greater tax transparency.

BEPS refers to the tax avoidance strategies used by multinational companies to exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Under the auspices of the Organization for Economic Co-operation and Development (OECD), over 100 countries and jurisdictions are collaborating to implement measures to tackle BEPS.[36]

Tax havens and low tax jurisdictions without appropriate levels of substance are increasingly being challenged. The re-domiciliation regime is an exemplar of Singapore's swift response to international changes. With the passage of this amendment, Singapore presents in itself an even more attractive opportunity to migrate corporate vehicles to a *bona fide* commercial jurisdiction such as Singapore, which is already recognized by the OECD and the Forum on Harmful Tax Practices (FHTP) as meeting international tax standards and will be warmly welcomed by International Groups.[37]

C. Government control and influence at multiple levels of implementation

The eventual implementation of a policy was aided by strong Government control at up to four levels of the implementation process: primary legislation, subsidiary legislation, Government agencies and sometimes GLCs. The benefits of this level of control were twofold. Firstly, the Government could carefully control the implementation process and ensure that legislation was implemented in a manner consistent with the intention of Parliament. Secondly, by being involved in the commercial world, the Government constantly had 'its ear on the ground' and was able to swiftly craft an appropriate response when a trigger event occurred.

1. 1st and 2nd levels: primary and subsidiary legislation

The PAP has enjoyed nearly complete control of Parliament since its decisive election victory in 1959. Since 1981, the PAP has never gotten less than 93 per cent of all elected parliamentary seats at general elections.[38] This strong Parliamentary majority has allowed for the speedy passing of legislation without delays arising from deadlock or filibustering techniques in Parliament. Strong political support for the Legislature also allowed Parliament to freely

[35] Michelle Quah, 'Foreign firms allowed to re-domicile to Singapore from Oct 11' *The Business Times* (12 October 2017) <https://www.businesstimes.com.sg/companies-markets/foreign-firms-allowed-to-re-domicile-to-singapore-from-oct-11> accessed 20 May 2019.

[36] Ibid.

[37] 'Singapore corporate re-domiciliation regime — up and running!' (November 2017) 39 Tax Alert 3 <https://home.kpmg/content/dam/kpmg/sg/pdf/2017/11/taxalert-201739.pdf> accessed 20 May 2019.

[38] Eugene Tan, 'Chapter 4: The Legislature' in Gary Chan and Jack Lee (eds), *The Legal System of Singapore: Institutions, Principles and Practices* (LexisNexis, 2015) 125.

enact policies which it deemed to best benefit Singapore, without being too concerned about the political impact.

2. 3rd level: Government agencies — the role of EDB and other statutory boards

Statutory boards are separate corporate legal entities that are established by Acts of Parliament. While controlled by the Government, in the sense that they are regulated by and accountable to ministries, statutory boards are given considerable autonomy since they are not Government departments. A considerable number of such boards were set up by the Government largely to aid economic and social development.[39]

For instance, in 1961, the EDB was set up to attract new businesses to Singapore and help the country attain her goals of creating a strong manufacturing sector.[40] It helped foreign investors navigate the red tape and logistical issues in setting up businesses in Singapore and was in charge of administering several tax incentive schemes. In this sense, the EDB helped to ensure that the Government's policies were implemented as they were intended to; even at the ground level, where businesses were concerned.

3. 4th level: Government influence on companies

When Singapore first began its route to industrialization, the Government struggled with a lack of human capital. Local businesses had little experience in the manufacturing sector and the capital markets were far too underdeveloped to provide funding for them.[41] To solve this problem, the Government was heavily involved in setting up new businesses and industries. It did this by aggressively courting MNCs, by strong state involvement in some economic sectors,[42] and by working closely with large businesses in Singapore. As will be shown below, however, Government control has gradually weakened over the years as the Singaporean economy matures in favour of deregulation and privatization.

a. MNCs. As a small country with no sizeable domestic market, Singapore adopted an export-orientated approach right from the beginning. Rather than establishing home-grown local industries, Singapore sought instead to court MNCs to set up operations in Singapore. This eliminated the need to establish a market, since the MNCs had well-established market networks abroad. Further, MNCs would often bear the start-up risk of the new facility, bring in new technology and train the local workforce in the use of such technology.[43]

In order to attract MNCs to establish their Asia-Pacific headquarters in Singapore, the Government granted tax incentives and removed bureaucratic red tape. However, the Government also used these policies as a means of consolidating its control over the MNCs, making clear to the MNCs that the provision of these benefits were contingent on the beneficiary following Government policies. For example, the Government made it absolutely clear that MNCs had to have an export-oriented market.[44] Further 'soft-

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[39] Ibid.
[40] Tan and others (n 7).
[41] Ibid.
[42] Ibid.
[43] Diane K Mauzy and RS Milne, *Singapore Politics Under the People's Action Party* (Routledge, 2002) 68.
[44] Lee (n 3).

control' was exercised by the close contact which MNCs had with EDB officers, who were tasked to aggressively court MNCs and respond to their needs.

The success of this strategy led to the Singapore economy becoming heavily reliant on MNCs. GDP contribution from foreign firms and residents increased from 15.7 per cent in 1966–1973 to 28.1 per cent in 1979–1984.[45] This was particularly pronounced in the manufacturing sector, where foreign investments made up 76.7 per cent of all investments in manufacturing from 1972 to 1986.[46]

However, the focus on MNCs has diminished over the years, especially in light of widespread complaints around 1985 about the 'crowding out' of local entrepreneurs.[47] In response, the EDB then increased its support for local enterprises, with a plan intended for Singapore to 'grow its own MNCs'.[48]

b. GLCs. In the early stages of Singapore's industrialization, the dearth of human and financial capital encouraged the Government to directly intervene in the economy and set up businesses in areas such as finance, transport, logistics and defence. Numerous GLCs were established in sectors which the Government felt were underdeveloped.[49] Some estimated 505 GLCs (in 1986) have largely been held under three Government-controlled holding companies: Temasek Holdings, MDN Holdings and Sheng-Li Holding Company.[50] These GLCs have had various extents of public ownership over time.[51]

Over time, concerns emerged about the dominance of various GLCs and their impact on Singapore capital markets. The Singapore stock market had for some time been limited by the fact that the majority of the GLCs owned by the Government were not listed on the stock exchange. As an extreme example, in 1993, the bulk of daily trading was largely confined to eight stocks, given the limited nature of the market.[52]

This scenario has been remedied partially by Government's privatization of a number of GLCs, to add depth to Singapore's equity markets. By issuing shares to a large number of people, the Government has ensured a widespread distribution of capital.[53] For instance, Singapore Telecommunications was privatized in 1993, and the Government sold a part of its equity in the company.[54] However, privatization has been somewhat hampered by the Government's concern that there are not enough local businessmen with enough capital to take over and run these companies.[55] The Government has announced that its eventual goal is a more market-controlled economy with GLCs and statutory boards playing a smaller role.[56]

45 Ow Chin Hock, 'Development Strategies, Economic Performance, and Relations with the United States: Singapore's Experience' (1990) 1(1) Journal of Asian Economics 68.
46 Ibid.
47 WG Huff, *The Economic Growth of Singapore: Trade and Development in the Twentieth Century* (Cambridge University Press, 1994) 332.
48 Peebles and Wilson (n 1) 188.
49 Roseme (n 20) 257.
50 Ibid.
51 Ow (n 45) 71.
52 Michael S Bennett, 'Securities Regulation in Singapore: The City-State as an International Financial Center' (1993–1994) 12 UCLA Pacific Basin Law Journal 18.
53 Mauzy and Milne (n 43) 72.
54 Peebles and Wilson (n 1) 258.
55 Ibid.
56 Ibid.

c. Large local companies. Companies in certain sectors have been protected by the Government, allowing them to perform exceptionally well with a state-mandated oligopoly. Such protection had the effect of rendering these companies amenable to the control of the Government. The prime examples of these are the financial and banking sectors.[57] The banking sector in Singapore has traditionally been dominated by four main banking groups: the privately-owned Oversea-Chinese Banking Corporation, United Overseas Bank and Overseas Union Bank groups, and the Government-owned Development Bank of Singapore.[58] These local banking groups have been protected by the Government in the sense that foreign competition in the banking sector was limited through policies restricting the number of foreign banks and what they could do (e.g. the opening of branches and automatic teller machines).[59]

However, in the interests of developing Singapore into a global financial hub, the Government has since decided to open up the financial industry to more foreign banks. The protection offered by the Government has gradually been eroded, with the number of foreign banks rising sharply from 1981 to 1990 (from 86 to 128).[60]

4. Conclusion on the control model

The Government mechanisms explained above have allowed for the reciprocal relationship between SCL and the economy to flourish. The Government has clearly established control over the four levels of implementation, allowing them to pass legislation and then ensure that it is implemented in practice in the manner originally intended. It also allows for a strong feedback loop where policymakers are also kept aware of the changing conditions on the ground and are able to shape their policies accordingly. While it is not uncommon for governments to play an entrepreneurial role, Singapore is one of the few countries where the role has been played successfully. Unlike in systems which practice nationalization, Singapore successfully established enterprises that created new wealth and jobs.[61]

Moving forward, it is clear that the level of governmental control has been changing over time. The PAP Government went from occupying every seat in Parliament to the lowest level of 93 per cent.[62] By the standards of most developed democracies, this is still exceptionally high. There has been a drive to reduce the role of the statutory boards and GLCs in favour of market self-regulation. MNCs are also diminishing in importance in the Singaporean economy as the Government's focus shifts to SMEs in Singapore.

Despite these changing trends, the Government continues to maintain a very high level of control over the implementation of its regulations and in its engagement with local businesses. There is no reason to doubt that the reciprocal relationship will continue, with the Legislature responding to trigger changes in the Singapore economy with policies that can be effectively implemented at every level.

[57] Ibid, 46.
[58] Huff (n 47) 343.
[59] Peebles and Wilson (n 1) 116.
[60] Huff (n 47) 344.
[61] Tan and others (n 7).
[62] Tan (n 38) 125.

Theme II: factors influencing legislative responses

We will focus on two key factors motivating legislative reform: (1) Domestic political and economic events; and (2) Foreign laws and economic events, the two key factors that have had tremendous influence on SCL. The influence of these factors has changed over time and is very dependent on the particular area of SCL concerned. Three areas of SCL have been selected for review for the purposes of this study: (1) Regulation; (2) Insolvency; and (3) Protecting Interested Parties.

IV. Riding the regulation roller-coaster: changes in Singapore's regulatory regime

The first locally formed joint stock companies emerged following the establishment of Singapore as a trading post in 1819.[63] The Singapore Stockbrokers Association was formed in June 1930 to regulate the interest of the investing public and the conduct of its own members.[64] This was the precursor to the modern Singapore Stock Exchange. On 23 May 1973, the Securities Industry Act 1973 was enacted alongside several other amendments to the Companies Act, forming the first modern regulatory framework for securities regulation in Singapore.[65]

The traditional small capitalization of the domestic capital market in Singapore explains the slow development of a comprehensive regulatory framework. The requirement of compulsory savings under the Central Provident Fund (CPF) scheme locked up a sizeable portion of available capital[66] in a market with an already limited pool of investors. In terms of equity capital markets, the MNCs and GLCs which dominated the Singapore economic scene (as noted above) often bypassed the domestic capital market in favour of foreign capital markets (for MNCs) and government funding (for GLCs). For debt capital markets, most MNCs preferred to rely on foreign funding such as loans and trade credits with their parent companies.[67] In addition, GLCs were not created through share issues and were largely held by one or more of the large government holding companies.

In 1984, Parliament made some changes to the regulatory regime, including amendments to broaden the scope of insider trading provisions and strengthen the regulation of take-overs.[68] However, barely a year after the Companies Act (Cap. 50) (1984 Rev. Ed.) came into force, Parliament was forced to review the Act once again due to the Pan-El Crisis.

A. The Pan-El Crisis[69]

Pan-El was a marine salvage and construction company that got into financial trouble when it was unable to meet its debt obligations. Further investigations revealed that the

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63 Wong Kie Ann, 'Role of Singapore and Malaysian Stock Exchanges' in Tan and Kwan (eds) (n 14) 74.
64 Ibid, 75.
65 Ibid, 81.
66 Peebles and Wilson (n 1) 94.
67 Ibid, 209.
68 Hansard 17 January 1984 (hereafter 'Hansard 1984'), col 345–346.
69 See Hans Tjio, *Principles and Practice of Securities Regulation in Singapore* (2nd edn, LexisNexis, 2011) 40–47.

company had entered into some SGD 280 million of forward contracts in its shares that it could not honour.[70] The financial collapse of Pan-El affected several stockbroking firms who were overtrading and over-extending loans.[71] The worry was that this would set off a chain reaction that would result in stockbrokers, banks and minority shareholders losing practically all their investments.[72]

B. Framework for analysing the post-Pan-El reforms

In the wake of the Pan-El Crisis, Parliament reacted by enacting the Companies (Amendment) Act 1987 and the Securities Industry Act 1986, which sought to remedy the weaknesses that had led to the Crisis.[73] Corporate regulation mechanisms can be divided along at least two lines. Firstly, there can be merit-based regulation — where a regulator assesses securities being offered to the public; and disclosure-based regulation — where market participants are allowed to make their own assessment of the securities being offered, based on information that firms are required to provide. Secondly, the disclosure of corporate information can be regulated by automatic disclosure — where firms are required to release certain kinds of information without the express demand of regulators; and reactionary disclosure — where parties are given legal powers to request specific information from firms.

C. Reform of corporate regulation

The Companies (Amendment) Act 1987 and Securities Industry Act 1986 provided the Government with a framework to ensure that the Singapore Stock Exchange properly regulates the market.[74] The two main areas of reform in corporate regulation were disclosure and audit requirements. For broking houses, minimum financial requirements were set through capital adequacy requirements[75] and limits were placed on requirements for maintenance of reserve funds for firms.[76]

1. Disclosure requirements

A new rule empowered ten per cent of the members of a company or the holders of five per cent of the issued share capital to require the disclosure of the directors' emoluments and benefits in an audited statement.[77] Regulators were given the power to require local and foreign companies to produce company records, with mutilation or destruction of the documents being made an offence.[78] In cases of commercial fraud, inspectors could order directors to produce their personal bank statements.[79] The new regulatory regime was a far cry from the limited powers of inspection provided for in the Companies Act (1967 Ed.),

[70] 'Singapore after its Pan-Electric shock' (1986) The Economist 92 (hereafter 'The Economist').
[71] Tan (n 14) 23.
[72] The Economist (n 70) 92.
[73] Parliament expressly referenced the Pan-El Crisis in the Parliamentary debates over the Companies (Amendment) Bill 1987 and the Securities Industry Bill 1986. See Hansard (5 May 1986), col 51 and Hansard (31 March 1986), col 1442.
[74] Wong (n 63) 82.
[75] Ibid.
[76] Ibid.
[77] Andrew Hicks, 'Company Law Reform in Singapore' (1987) 8(4) The Company Lawyer 188.
[78] Ibid.
[79] Ibid.

which a specially commissioned committee of the London Metropolitan Police found to be inadequate.[80]

2. Audit requirements

The form and content of accounts were standardized, reducing the possibility of information being cherry-picked to present a misleading picture.[81] Directors were required to take reasonable steps to ensure that the accounts were audited at least 14 days before the Annual General Meeting (AGM) and if the accounts were submitted on time, auditors would be guilty of an offence if the audit was not completed before the AGM.[82]

As Parliament had more time to reflect on the Pan-El Crisis, further amendments to the corporate regulatory regime were made by a further statutory amendment in 1989.[83] Public companies were required to establish a system of internal accounting controls and audit committees were mandated for listed companies.[84] In addition, auditors were given the responsibility of reporting corporate fraud, with the enactment of a new rule requiring them to report actual or potential offences involving fraud or dishonesty.[85]

D. Analysing the post-Pan-El reforms

The pre-1985 corporate regulatory regime was deficient in both merit-based and disclosure-based regulatory mechanisms. The regulators had no real powers[86] and minority shareholders had little legal recourse other than a largely inapplicable oppression remedy[87] and a common law derivative action that was notoriously difficult to bring.[88] Both automatic disclosure and reactionary disclosure were weak, with no mandated standards for presenting accounts and inadequate powers given to the regulators to demand information.[89] With an information deficit, both regulators and shareholders not only lacked the ability to do anything about questionable practices, but were often completely ignorant of such practices in the first place. Self-regulation was completely non-existent. It is thus unsurprising that the corporate regulatory regime was completely unable to detect the fraud and questionable practices that had such an impact on the securities market.

The post-Pan-El reforms sought to improve disclosure and investor protection,[90] enhancing both automatic and reactionary disclosure of information by increasing audit and disclosure standards. The merit-based regulatory regime was improved, with regulators being given more powers to ensure compliance and auditors being tasked with highlighting fraudulent and dishonest practices. In the wake of the Crisis, Parliament chose to err on the side of caution, enhancing the regulatory regime to

80 Hansard (5 May 1986) (hereafter 'Hansard 1986'), cols 38–39.
81 Hicks (n 77) 188.
82 Ibid.
83 Hansard 1989 (n 15).
84 Ibid, cols 106–107.
85 Ibid.
86 MAS Paper (n 30) i.
87 Chia Yaru, 'The Business of Judging Directors' Business Judgments in Singapore Courts' (2016) 28 Singapore Academy of Law Journal 428, 470–471.
88 Hansard (14 September 1992) (hereafter 'Hansard 1992'), col 231.
89 Hansard 1986 (n 80).
90 Hicks (n 77) 189.

the extent that there were concerns that Singapore would be at a disadvantage when compared to other financial centres like Hong Kong or Tokyo.[91]

E. Concerns of over-regulation

By 1993, changes to the competitive landscape in Southeast Asia meant that Singapore's regulatory regime was considered to be significantly more restrictive than that of any other Asian securities market.[92] In light of the growth of aspiring financial centres in the region like Australia, Indonesia, Malaysia, Thailand and Taiwan, Singapore faced the difficulty of having to balance prudent regulatory standards with international competition for capital. This was particularly difficult given that Singapore had the disadvantage of having a significantly smaller domestic market than those of its competitors.

F. Changing the regulatory regime

Singapore moved from a merit-based regime for public companies to a disclosure-based one in 1997.[93] She was heavily criticized for this at the time and even more so when the CAO scandal broke out later.[94] Under the merit-based regime, the regulator would decide which products would be allowed on the market. The switch to a disclosure-based regime allowed companies more freedom in this respect. The regulator's focus would be on full and frank disclosure, with the onus on the investor to make informed decisions.

The decision on whether to move from a merit-based to a disclosure-based regulatory regime required Parliament to carefully balance the interests of ownership and management of companies.[95] The move eliminated the need for companies to receive approval from a regulatory agency prior to proceeding with a transaction,[96] easing the regulatory burden on management. On the other hand, it required shareholders to more actively monitor the management of companies if they wished to safeguard their investments. Without a regulator to determine which transactions should be approved, shareholders would have to rely on the public disclosures filed by management to determine whether to intervene or to vote with their feet and sell their shares.

The difficulty is that the disclosure-based model requires shareholders to be more vigilant in the oversight of the companies which they own. Shareholder monitoring is weak where minority shareholders are dispersed and ultimately, the equity market in Singapore is dominated by the government, families and wealthy individuals.[97] Shareholders still tend not to ask for more information.[98] In the absence of activist institutional investors, these are not good conditions for encouraging shareholder monitoring.

91 'Crime and punishment' (1986) The Economist 20.
92 Bennett (n 52) 15.
93 Tjio (n 69) 56.
94 Roseme (n 20) 261.
95 'Corporate Finance Committee: The Securities Market Final Recommendations' *Monetary Authority of Singapore* (1998) 5 <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/1998/Report-of-Corporate-Finance-Committee-The-Securities-Market-Final-Recommendations.aspx> accessed 19 June 2019.
96 Roseme (n 20) 261.
97 Ibid.
98 Ibid.

G. The CAO Crisis

In November 2004, CAO filed for protection from its creditors after suffering losses from speculative derivatives trading totalling USD 550 million.[99] Despite legal requirements of continuous disclosure, the losses were not disclosed to the Singapore Stock Exchange or captured in the company's financial statements.[100] The Chief Executive Officer of CAO, Chen Jiulin was found guilty of consenting to the non-disclosure and making of misleading statements and was jailed and fined.[101]

A few months after the CAO Crisis, the Singapore Stock Exchange announced that it would enhance its standards of governance and listings as part of 'an annual review'.[102] The focus of the new amendments was stated to be on enhancing corporate governance and extending the role of intermediaries.[103] The CAO Crisis also appears to have triggered a change in the disclosure attitude of the Monetary Authority of Singapore (MAS). Whilst they tended to emphasize the confidentiality of its dealings with financial institutions in the past, the MAS has provided increased information in the form of staff and information papers, and substantiated grounds for enforcement actions against financial institutions since the CAO Crisis.[104]

The trend towards deregulation may simply have been temporarily derailed. The Chairman of the Singapore Stock Exchange stated in the company's annual report that the CAO Crisis did not necessarily suggest that the regulatory regime was defective.[105] As such, it is questionable whether the CAO Crisis has resulted in any long-term significant changes to the regulatory regime.

H. Factors affecting legislative responses

1. Foreign laws and economic events

The Singapore regulatory regime has been influenced by a wide variety of various factors. In terms of foreign laws and economic events, Singapore's move from a merit-based to a disclosure-based regulatory regime may have been influenced by increasing competition from other developing financial centres in Southeast Asia.[106] Her drive to present herself as not 'overly-regulated' was also a direct result of the desire to attract Chinese companies to list in Singapore.[107]

The CAO Crisis illustrates the difficulties that Singapore faces in becoming a strong financial centre. While Singapore's key selling point has been its strong regulatory regime, which inspires confidence in investors,[108] it must balance this against the demands of companies who may potentially want to list in Singapore. Moving forward, it appears that Singapore will continue to adjust her regulatory regime depending on foreign laws and economic events.

99 Ibid, 250.
100 Tjio (n 69) 63.
101 Ibid, 64, citing *Public Prosecutor v Chen Jiulin* DAC 23249/2005.
102 Roseme (n 20) 267.
103 Ibid, 267–268.
104 Yvonne CL Lee, 'The Corporate Rule of Law: Governing Singapore's Securities Regulators' (2007) 3(2) The Corporate Governance Law Review 225, 243.
105 Roseme (n 20) 262.
106 Bennett (n 52) 9.
107 Roseme (n 20) 260.
108 Ibid, 250.

2. Domestic political and economic events

As for domestic political and economic events, the immediate responses to the Pan-El and CAO Crises demonstrate the paramount influence which domestic developments have on SCL. In contrast to foreign laws and economic events, which were responded to over time, the legislative responses to domestic events were generally swift and bold, no doubt reflecting the immediacy of the impact domestic events can have on the local economy and the need to manage any potential political fallout from disgruntled investors.

V. Rising from the ashes: insolvency policy as a tool for growth

There were no major developments to the insolvency regime from 1967 to 1984 and the Pan-El Crisis in 1985, which coincided with a recession. Up until that time, Singapore focused on attracting foreign investments and courting MNCs to set up operations in the country. The Government also set up numerous GLCs. A study conducted around 1978 revealed that not a single MNC's business had failed in Singapore.[109] It revealed that wholly-owned foreign enterprises from the United States (US), Europe and Japan had a failure rate of only six per cent.[110] One can thus see why insolvency reform was not a priority at this point. The most important companies to Singapore's economy at the time had a very low risk of insolvency, reducing the importance of a well-developed regime to deal with such situations. As for GLCs, they were largely managed by the Government and strong insolvency legislation was not required to deal with the case if they went insolvent.

The pre-Pan-El insolvency regime has been described as 'weighed in favour of creditors'.[111] Companies with temporary liquidity problems were subject to the mercy of its creditors and sometimes forcibly wound up.[112] 1985 marked the beginning of a shift towards a more debtor-friendly system. The recession also highlighted the changes in the economic climate. With the rising cost of labour acting as a disincentive to foreign firms, Singapore could no longer predominantly rely on foreign investment to create jobs. The Government adapted its economic strategy to focus, *inter alia*, on the promotion of innovation, enterprise and entrepreneurship.[113] The 1985 amendments to the insolvency regime were in line with these objectives as they were intended to encourage entrepreneurship and healthy risk-taking, leading to a climate more conducive to corporate rescue.

A. Framework for understanding insolvency policy

Insolvency policy focuses on balancing the various conflicts of interest at play when a company is teetering on the brink of collapse. There is an agency problem in that the company management has an incentive to take excessive risks and attempt to trade its way out of the crisis. Creditors have an incentive to force payment as quickly as possible,

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[109] Lee Kuan Yew, 'Extrapolating from the Singapore Experience (1978)' in *The Papers of Lee Kuan Yew* (n 3).
[110] Ibid.
[111] Tan (n 33) 188.
[112] Ibid.
[113] Ibid.

attempting to secure an advantage over other creditors. The result of these conflicts of interest is the need for a neutral system to manage affairs and maximize aggregate welfare.

B. The repeal of automatic disqualification of directors

Another aspect of insolvency policy is the extent to which directors and other senior management are held to account for a failed business enterprise. In 1984, a particularly controversial amendment was passed with the intention of preventing abuse of the corporate form.[114] In one of the rare occasions documented in Hansard, several Members of Parliament vehemently objected to this amendment,[115] which provided for the automatic disqualification of directors from other directorships if they were on the boards of two insolvent companies which had gone into liquidation within five years of one another.[116] The provision was arguably intended to pre-empt and prevent the practice of establishing phoenix companies. When a company goes insolvent, its former directors may simply set up another company with a similar name to benefit from the goodwill of the previous firm, whilst avoiding its liabilities. While the amendment may have had the effect of weeding out unfit directors, it also had the potential to disqualify directors who were merely unlucky enough to join the boards of two failing companies. Leave of court could be obtained to certify one as fit to be a director again, but the unfortunate director was left to bear the consequences of the disqualification applying in the interim. The grave impact of the automatic disqualification provision was felt within a year. The timing of the amendment could not have been worse, for the 1985 Pan-El Crisis and the recession hit with full force shortly after it was passed, rendering numerous companies insolvent and affecting a considerable number of directors.

The concept of automatic disqualification is fundamentally unsound. A disqualification regime should be designed to protect shareholders from directors who are unfit to manage. Automatic disqualification is both under and over-inclusive as it fails to consider the significant element of chance. The key factor of the soundness of the management decisions is weakly assessed through the proxy of whether the company is liquidated, while the irrelevant considerations of chance and the number of companies heavily influences the disqualification.

Automatic disqualification was also at odds with the strategy of promoting local entrepreneurship. By 1987, Parliament acknowledged that a court order should be required for disqualification and repealed automatic disqualification.[117] Currently, the position stands that directors are disqualified only where a court order to that effect has been made or they have been convicted of certain criminal offences. This is a more refined approach to protecting shareholders and safeguarding against the abuse of corporate form.

C. The introduction of judicial management

The birth of judicial management in Singapore is directly attributable to the Pan-El Crisis.[118] The prolonged state of limbo that Pan-El was in before its eventual liquidation highlighted

[114] Hansard (29 June 1984), col 1511.
[115] Andrew Hicks and Walter Woon, *The Companies Act of Singapore: An Annotation* (Butterworths, 1989) 296.
[116] Hansard 1984 (n 68) col 347.
[117] Hicks and Woon (n 115) 296.
[118] Walter Woon (ed), *Woon's Corporations Law* (LexisNexis, 2016) 971.

the inadequacies of the existing insolvency procedures, prompting the Government to introduce a new mechanism.[119] The intention was to preserve viable businesses and protect them from creditors until they could be restored to profitability.[120] It has been said that the Pan-El Crisis and the 1985 recession contributed to a commercial environment more conducive to entrepreneurship and healthy risk-taking.[121]

The effectiveness of judicial management in Singapore is questionable. In 2013, the Report of the Insolvency Law Review Committee (ILRC) noted that there are few reported success cases where judicial management has been applied and that the majority of applications for judicial management filed in the courts have not been granted.[122] However, the ILRC acknowledged that judicial management still has a role to play in Singapore's insolvency regime, particularly in cases where there is a need to realize or maximize the value of corporate assets that would be extinguished or devalued in the event of liquidation.[123] Thus, they proposed retaining it, but with certain reforms to address its deficiencies.[124]

D. An international insolvency hub

In the wake of the 2008 global financial crisis and growing demand for restructuring work in the Asia Pacific region,[125] the Government spotted an opportunity for Singapore to position itself as a leading insolvency and debt restructuring centre.[126] Following the recommendations made in the report of the ILRC in 2013 and another report by the Committee to Strengthen Singapore as an International Centre for Debt Restructuring in 2016, Singapore recently reviewed and adopted wide ranging reforms to its insolvency restructuring regime in 2017. Reforms included amendments to the Companies Act in 2017 as well as the enactment of the Insolvency, Restructuring and Dissolution Act in 2018. The amendments to the Companies Act made significant changes to Singapore's Scheme of Arrangement procedures by incorporating features of Chapter 11 of the US Bankruptcy Code 1978 (Bankruptcy Code). Chapter 11 of the Bankruptcy Code is widely regarded as pro-debtor, pro-restructuring and highly flexible,[127] as well as a successful model for reforms of restructuring laws worldwide.[128] In addition, the enactment of the Insolvency, Restructuring and Dissolution Act consolidated insolvency laws from different pieces of legislation (Bankruptcy Act for personal insolvency and Companies Act for corporate insolvency). This enhanced clarity and reduced uncertainty arising out of cross-referencing across various pieces of legislation, which would increase local

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119 Hicks (n 77) 188.
120 Ibid.
121 Debby Lim, 'Banking and Insolvency' 30.1.1 <http://www.singaporelaw.sg/sglaw/laws-of-singapore/commercial-law/chapter-30> accessed 20 May 2019.
122 Ministry of Law, *Report of the Insolvency Law Review Committee* (Ministry of Law, 2013) 82–89.
123 Ibid.
124 Ibid.
125 Ministry of Law, *Report of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring* (Ministry of Law, 2016) (hereafter 'Insolvency Committee Report') 1.5.
126 Ibid, 2.1–2.3.
127 Gerald McCormack and Wan Wai Yee, 'Transplanting chapter 11 of the US bankruptcy code into Singapore's restructuring and insolvency laws: Opportunities and challenges' (2019) 19(1) Journal of Corporate Law Studies 69, 72.
128 Ibid.

and foreign businesses' access to Singapore laws.[129] These changes have indeed established Singapore as an international centre for insolvency and debt restructuring, enabling insolvency to be an engine for economic growth in Singapore in a very different way.

VI. International and regional influence and reputation: protecting interested parties

Majority shareholders have significant control of a company, directly through exercise of their voting rights at a company general meeting, or more importantly, indirectly through their ability to appoint and remove directors. However, creditors and minority shareholders will also be significantly affected by the decisions of the majority shareholders with respect to the company. Thus, Company Law provides for several safeguards to ensure that these interested parties are protected from the untrammelled control of the majority shareholders over the company. These safeguards include capital maintenance regulations which address the tension between creditors and shareholders with respect to the allocation of a company's capital. This section studies the evolution of such safeguards over Singapore's economic history.

The main developments in these safeguards occurred relatively later than those for regulation and insolvency. Singapore was an established financial centre by the 1970s but increased competition from other regional financial centres significantly intensified in the late 1990s and early 2000s.[130] It was during this period that Singapore began to significantly relax its capital maintenance regime. At the same time, with a less prescriptive regulatory regime following the adoption of a more disclosure based system, Singapore started to place more emphasis on protecting minority shareholders.

A. The statutory derivative action

The first milestone of safeguards reform occurred in 1993, with the enactment of a statutory derivative action. While the common law derivative action did exist in Singapore at the time, the considerable difficulties posed by the rule in *Foss v Harbottle* applied to Singapore common law as well[131] and Parliament recognized this.[132] Initially, the statutory derivative action was limited to unlisted companies on the basis that listed companies were already subject to extensive central regulation and disgruntled shareholders could readily sell their holdings on the open market.[133] Parliament was concerned that extending the statutory derivative action to listed companies would encourage minority shareholders to make frivolous applications and open the floodgates of litigation.[134] The statutory derivative action was only extended to listed companies in 2014, on the advice of the Steering Committee[135]

[129] Paul Apathy, Emmanuel Chua, and Rowena White, 'Singapore's New "Omnibus" Insolvency, Restructuring and Dissolution Bill' *Law Gazette* (January 2019) <https://lawgazette.com.sg/feature/singapores-new-omnibus-insolvency-restructuring-and-dissolution-bill> accessed 20 May 2019.

[130] Menon (n 6).

[131] Keay and Loughrey, 'Something Old, Something New, Something Borrowed: An Analysis of the New Derivative Action under the Companies Act 2006' (2008) 124 Law Quarterly Review 469.

[132] Hansard 1992 (n 88).

[133] Hansard (28 May 1993), col 293.

[134] Ibid.

[135] Walter Woon, 'Reforming Company Law in Singapore' (2011) 23 Singapore Academy of Law Journal 795, [43], citing Steering Committee Report (n 22), Recommendations 2.29 and 2.30.

that frivolous applications would likely be minimal due to the prospect of having to pay the legal costs of the application.[136]

B. The introduction of share buy-backs

The next milestone occurred in 1998, when Parliament introduced an amendment allowing companies to buy-back their own shares using distributable profits without the need for court approval.[137] This was one of the effects of Singapore moving from a merit-based to a disclosure-based regulatory regime in 1997. Parliament noted that share buy-backs provided certain advantages over capital reduction procedures in terms of flexibility and efficiency,[138] advantages which led several of Singapore's larger corporations to consider and push for the approval of such schemes.[139] The key driving force for the amendment was the increased competition from other financial centres, as Parliament noted that Singapore was behind the US, the UK, Hong Kong, Australia and New Zealand in that it lacked some form of share buy-back procedure.[140]

The scope of the share buy-back provisions were extended in 2000 to include preference shares[141] and again in 2005, when companies were allowed to buy-back shares using profits or paid-up capital, instead of only distributable profits.[142] As permitting share buy-backs potentially increased the risk of disadvantaging creditors, Parliament introduced a solvency test, which made directors personally liable if they approved share buy-backs knowing that it would result in the insolvency of the company.[143]

C. The 2005 major reforms

Safeguards underwent a massive paradigm shift in 2005, with numerous amendments being made to modernize the regime and abolish what were perceived to be outmoded relics of the past. The concepts of par value and authorized capital were removed from the legislation on the grounds that they were highly inaccurate proxies for value and served no useful purpose.[144] An alternative capital reduction regime was also instituted, allowing companies to reduce their share capital without the need for court approval.[145] Instead, a special shareholders' resolution would suffice, provided that it was supported by a solvency statement from the company's directors.[146]

Financial assistance restrictions were also liberalized, with companies allowed to provide such assistance, provided that it did not exceed ten per cent of the paid-up capital and reserves of the company, or there was unanimous shareholder approval.[147]

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136 Ibid.
137 Hansard (12 October 1998) (hereafter 'Hansard 1998'), col 1078.
138 Ibid.
139 Victor CS Yeo, 'Singapore: A Cautious Approach to Share Buy-Backs' (1999) 20(9) The Company Lawyer 308, 109.
140 Hansard 1998 (n 137) col 1078.
141 Hansard (13 November 2000), cols 1027–1028.
142 Hansard (16 May 2005) (hereafter 'Hansard 2005'), col 702.
143 Hansard 1998 (n 137) col 1078.
144 Hansard 2005 (n 142) col 699.
145 Ibid, cols 700–701.
146 Ibid, col 701.
147 Ibid, cols 700–701.

Once again, Parliament attempted to protect shareholders through a disclosure-based mechanism, where directors were required to make a solvency statement that would result in criminal penalties if made without reasonable grounds.[148] In 2014, financial assistance was eventually made even easier by the introduction of a new 'material prejudice' exception that provided that financial assistance by a public company or a subsidiary of one was not prohibited so long as, *inter alia*, it did not materially prejudice the interests of the company, its shareholders and the claims of its creditors and the terms of assistance were fair and reasonable to the company.[149] The financial assistance prohibition for private companies was completely abolished.

Greater reliance was placed on disclosure-based mechanisms, with the Companies (Amendment) Act 2014 introducing a new procedure for financial assistance in Section 76(9BA). To safeguard shareholders, Section 76 of the Companies Act (2006 Rev. Ed.) provides that a company may not provide financial assistance in connection with the acquisition of its own shares. Before 2014, there were limited exceptions to the Section 76 rule, involving the making of a solvency statement by directors and a whitewash procedure of shareholders passing a special resolution. The new Section 76(9BA) procedure simplifies matters considerably by allowing financial assistance in cases where the directors pass a resolution that the company should give the assistance, provided that the terms of the assistance are fair and reasonable to the company and the interests of the company, shareholders and creditors are not materially prejudiced.

D. 2014: taking flexibility to the next level

By 2014, Singapore was starting to feel significant pressure to introduce more flexibility into its capital markets regulation. Leading bourses like the New York Stock Exchange and the London Stock Exchange had allowed dual-class share (DCS) structures for listed companies for years, making them an attractive listing location for tech companies in particular, which have tended to prefer such structures.[150] In contrast, the Hong Kong Stock Exchange had lost the listing of Alibaba to the New York Stock Exchange due to its unwillingness to remove or allow the circumvention of its ban on DCS.[151] The loss of one of the largest ever initial public offerings on the basis of this single point weighed heavily on the minds of Parliament, which was already under pressure on this issue due to reports that Manchester United had supposedly given up attempts to list in Singapore due to the prohibition on DCS.[152] Parliament eventually amended the law to allow for DCS for public companies in addition to private ones.[153] The issue thus shifted to the Singapore Stock Exchange to determine whether to allow DCS structures to list on the Exchange.

148 Woon (ed) (n 118) 351.
149 Companies Act 2006, s 76(9BA).
150 Hansard (8 October 2014) (Mr Ong Teng Koon).
151 Ibid.
152 Pey Woan Lee and Christopher CH Chen, 'Modernising Company Law: The Singapore Experience' (2016) 34(2) Company and Securities Law Journal 157, 162.
153 Wang (n 25) 43.

The Singapore Stock Exchange was understandably uncertain as to this decision. There are concerns that allowing DCS may not be in Singapore's interest as a financial centre.[154] However, the general consensus is that it may be worth allowing them so long as proper safeguards and regulations are put in place to manage the risks.[155] Although there should be the flexibility to offer DCS listings when the right company comes along, companies with DCS structures are not intended to and are unlikely to become the norm in Singapore.

E. Factors affecting legislative responses

1. Foreign laws and economic events

Due to a small domestic capital market, Singapore's success as a financial centre was highly dependent on its ability to attract foreign firms and capital. As such, the Government has always been cognizant of the need to evaluate Singapore's safeguards[156] vis-à-vis the competition and ensure that it remains attractive to investors and potential listing companies. This involves a delicate balancing act. It is crucial to ensure that safeguards are not excessively strict as to drive away potential listing companies and simultaneously, offer sufficient protection to investors to avoid a reputation of being a weak regulator beholden to the interests of companies and majority shareholders. In practice, international pressures have resulted in a constant softening of what were once seen as necessary safeguards. This is in line with global trends as well, as competition for mobile capital intensifies.[157]

The strongest indication of the sheer influence which foreign laws and economic events have on safeguards in Singapore is probably Singapore's recent shift to permit DCS structures through an amendment to the Companies Act. Despite numerous concerns about the risk to Singapore's reputation, Singapore's Parliament has decided to remove the legal impediment.

2. Domestic political and economic events

The influence of domestic political and economic events on safeguards in Singapore can be seen by the close relationship between the development of the Singapore domestic capital markets and capital maintenance regulations. Before the 1970s, limited domestic capital markets corresponded with few changes to the regulatory regime. Thereafter, with increased privatization of GLCs and the permission to use CPF funds to invest in certain shares, domestic capital markets expanded, with a corresponding increase in the rate of developments of the regulatory regime.[158]

[154] Mak Yuen Teen, 'MAS Should Say No To Dual-Class Shares' *Governance for Stakeholders* (26 August 2016) <http://governanceforstakeholders.com/2016/08/26/mas-should-say-no-to-dual-class-shares/> accessed 20 May 2019.

[155] Listing Advisory Committee, *Annual Report 2016* (Singapore Stock Exchange, 2016).

[156] For an example of the relevant safeguards, please see Section VI of this article.

[157] New Zealand has abolished the capital maintenance doctrine altogether. Wee Meng Seng argues that Singapore should do the same (Wee Meng Seng, 'Reforming Capital Maintenance Law: The Companies (Amendment) Act 2005' (2007) 19 Singapore Academy of Law Journal 295).

[158] Peebles and Wilson argue that the Government used the liberalization of the use of the CPF 'as an incentive for attracting foreign fund managers to Singapore', noting that at the end of 2000, CPF balances totalled SGD 90.298 billion (Peebles and Wilson (n 1) 89).

VII. Power shift among sources of influence over time

As a small nation, Singapore is heavily reliant on trade and investment flows with foreign jurisdictions. The dominating influence of foreign laws and economic events arises out of the need to constantly keep Singapore as an attractive trading partner and investment destination. Due to Singapore's small domestic capital markets, regulations and safeguards protecting interested parties have had to be carefully calibrated. There is a natural tension between large controlling shareholders who can make the decision of whether to list in Singapore and the many other smaller investors who must decide whether Singapore has stringent enough measures to protect their investments. Similarly, the desire to attract businesses to Singapore necessitates frameworks that are familiar to the international business community which leads to a tension with autochthony.

Amidst a global trend of greater competition for mobile capital, Singapore has been under heavy pressure to adjust to market demands. Key points include the shift from a merit-based to a disclosure-based regulatory system in 1997, and the move to allow DCS structures to list in Singapore in 2016, both changes which were most likely brought about as a response to changes in the regulatory regimes of foreign jurisdictions.

SCL has undergone several cycles where the influence of foreign jurisdictions has varied. From 1967 to 1985, the heavy reliance on foreign investment meant that Singapore had to be particularly responsive to developments in foreign jurisdictions. However, this did not translate into changes in SCL because the vast majority of foreign companies were either subsidiaries of companies that were based overseas or preferred to seek debt financing from overseas markets.[159]

The period following the Pan-El Crisis and the recession in 1985 marked a relative decline in the influence of foreign laws and economic events, and a rise in the influence of domestic political and economic events. In particular, the Pan-El Crisis meant that SCL had to address the deficiencies in its regulatory structure for capital markets. In terms of insolvency, the 1985 recession prompted an urgent re-examination of the creditor-friendly insolvency regime, which threatened to bankrupt numerous businesses which were still viable.

As a result of the 1985 recession, Singapore looked to the financial sector as a potential means of growth. A large capital market had to be established and Parliament had to consider how to woo foreign investors to Singapore. However, by 1993, Singapore's regulatory regime was still considered to be significantly more restrictive than that of any other Asian securities market.[160] Increasing competition from neighbouring countries at the time forced Singapore to reform her regulatory regime yet again, marking a revival of foreign influences in SCL. This culminated in the significant shift from a merit-based to a disclosure-based regulatory system in 1997. The continuance of the dominance of foreign influence can be seen from the decision to allow DCS structures to list in Singapore in 2016. Moving forward, the desire of the Singapore Stock Exchange to continue courting mainland Chinese and Southeast Asian

[159] Peebles and Wilson (n 1) 209.
[160] Bennett (n 52) 15.

companies to list in Singapore suggests that foreign laws and economic events will once again dominate in their influence of the future direction of SCL.

The other sector of potential growth Singapore is looking into is that of insolvency services and the development of Singapore into an insolvency hub. Given the need to offer an internationally familiar insolvency framework, Singapore has adopted large portions of the US Chapter 11 provisions in its latest reforms to its insolvency regime. The fact that it has done so despite the recommendations of the ILRC[161] shows the extent to which foreign influence has had on SCL.

On the whole, however, the clearest patterns in the development of SCL over time have been the periodic waxing and waning influences of foreign and domestic laws and events. At the present moment, the trend in the majority of areas of SCL very much appears to be the rising influence of foreign laws and economic events. In an increasingly competitive world, this is completely understandable given Singapore's small size. The need to constantly ensure that Singapore is an attractive trading partner and investment destination is likely to persist for the foreseeable future and future developments in SCL are likely to continue to be heavily influenced by the developments of overseas jurisdictions. While SCL remains autochthonous insofar as Parliament independently decides which foreign laws to adopt, global pressures mean that Parliament is considerably limited by foreign factors in shaping the overall framework of SCL.

VIII. Fifty years ahead: SCL and the economy

The Managing Director of the MAS, Ravi Menon predicts that from 2026 to 2040, Singapore's economy will predominantly be driven by the export of capital and people, with widespread use of technology and increased focus on the ideas economy.[162] SCL would have to adapt to the new economic climate by pre-empting these changes and creating the necessary legal frameworks well in advance of them. One question is whether the types of companies traditionally found in the Companies Act such as exempt private companies and companies limited by guarantee are sufficient to provide the flexibility that businesses today demand. This in turn is linked to the broader issue of how to make corporate legislation continue to be 'fit for purpose', including the optimal balance between regulation and its associated costs. The export of capital and people would also necessarily require strong corporate governance and capital markets practices in Singapore ensuring that the headquarters and/or hubs based in Singapore are stable, efficient and resistant to fraud and dishonest practices. The use of software in regulation like automated auditing technology and spot-checking software could boost efficiency and pre-empt possible problems.

Insolvency could be one of the major areas for economic growth in Singapore, with a world-class insolvency hub based in Singapore, at the forefront of international insolvency practices. Regulation and the protection of interested parties would have to be flexible enough to attract investments to one of the world's leading bourses, located in Singapore, while a strong disclosure regime coupled with a well drafted statutory derivative action ready to protect minority shareholders.

[161] Insolvency Committee Report (n 125) 1.5.
[162] Menon (n 6).

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