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Research Article

Dual-Class Share Structure in the Indonesian Equity Market: Valuing International Insights and Acknowledging Local Wisdom

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ABSTRACT: A lot of major equity markets abroad have allowed the listing of the Dual-Class Share Structure (DCSS) corporations. DCSS is an agreement in which two types of shares are issued by the very same firm, with one type of share conferring greater power compared to the other. The Indonesian Stock Exchange only allows for limited access for DCSS technology-related corporations to list on its Mainboard. To remain attractive as Southeast Asia's top financial centre, Indonesia needs to alter its securities regulations while making its listing market adaptable to meet the needs of various enterprises. This research aims to analyse and elaborate on permitting DCSS corporations to go public and devise suitable governance safeguards to guarantee the highest possible standards of corporate governance are upheld. This research explores the legal certainty and applicability of DCSS in the Indonesian equity market and abroad, using a qualitative approach and thematic analysis of secondary data. The major finding of this research is the acceptance of DCSS adds to issues with abuse of power by the controlling shareholders, which was outweighed by their cash flow rights. While those in favour of DCSS argue that the existing shareholders' main reason for choosing a DCSS arrangement is to preserve company control. Most major exchanges in the world have taken action to accommodate DCSS going public, like those in the USA, Hong Kong, Singapore, and China. Considering the magnitude of the Asian market, Indonesia can emulate the accomplishments of other exchanges too. A series of recommendations are provided to guarantee the highest standards of corporate governance can be upheld, such as: permitting DCSS for new entrants and innovative businesses, regulating the ownership of enhanced voting shares, and setting out sunset provisions for DCSS arrangement.

KEYWORDS: Company Law; DCSS; Dual-class Shares; Equity Market.

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I. INTRODUCTION

There might exist several voting designs, depending on the characteristics of each corporate governance model. In this case, listed corporations enjoy less flexibility in their voting arrangement since they must adhere to additional legal and regulatory requirements. The "one-share, one-vote" notion, which states that the number of votes a shareholder may cast must be equal to the amount of his ordinary shares, is still a mandated condition placed on listed corporations in plenty of jurisdictions.[1] Corporations are consequently prevented from going public if they have good grounds to assign varying voting privileges, such as improving decision-making effectiveness or maintaining a stable development strategy.[2]

"One-share, one-vote" is a crucial corporate governance rule, but some experts argue it's too rigid to accommodate diverse investors and corporations,[3] but some experts argue it's too rigid to accommodate diverse investors and corporations.[4] For instance, owner-managers might desire to obtain equity funding to support their company's prospective expansion, yet they are probably reluctant to give up control to outsiders who might have varying thoughts about how the businesses ought to be run. Assuming the entire stock markets adhere to this "one-share, one-vote" approach, the owners of these businesses might decide against making their company's shares available to the general public and instead choose to put their expansion plans on hold permanently unless they can secure enough capital

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1 David Yermack, "Corporate governance and blockchains" (2017) 21:1 Rev Financ 7–31.

2 Longjie Lu, "The regulation of the dual-class share structure in China: A comparative perspective" (2020) 15:2 Cap Mark Law J 224–249.

3 Dorothy S Lund, "Nonvoting Shares and Efficient Corporate Governance" (2019) 71:3 Stanford Law Rev 687–745.

4 Andrew William Winden, "Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures" (2019) 2018:3 Columbia Bus Law Rev 852–951, online: <https://journals.library.columbia.edu/index.php/CBLR/article/view/1708>.

from other avenues.[5] In such a scenario, economic growth might be harmed and entrepreneurs could miss out on potential profitable investments.

A potential approach to resolve this conundrum is by allocating differentials or varying voting privileges such that a specific group of shareholders owning the same class of shares has disproportional voting privileges compared to the others.[6] Such differentials in a company are known as Dual-Class Share Structure (DCSS). Entrepreneurs may acquire enough capital to support the growth of their businesses while simultaneously keeping control by retaining shares with greater voting privileges and shedding the remaining shares with lesser voting privileges.[7] Entrepreneurs may retain interests with improved "voting privileges" (the ability to cast their votes on shareholder motions and thereby impact decision-making) thanks to the usage of DCSS, whereas other shareholders are restricted to holding shares with limited or even no voting privileges at all. As a result, an entrepreneur can maintain deciding authority over the corresponding corporation despite only owning a small portion of the equity or "cash-flow rights"—namely, rights to receive dividends and other financial benefits from the corporation.[8]

Nevertheless, the ones with greater voting privileges are unlikely to share in the earnings or losses from prospective investments in proportion to their degree of authority, which means that they might be tempted to make business decisions that are sub-optimal for both the corporations as well as those with disadvantaged voting shares.[9] Considering this, the trust that general investors have may be damaged and they may decide not to

5 Douglas Cumming, Michele Meoli & Silvio Vismara, "Investors' choices between cash and voting rights: Evidence from dual-class equity crowdfunding" (2019) 48:8 Res Policy 103740–103758, online: <https://doi.org/10.1016/j.respol.2019.01.014>.

6 Bobby V Reddy, *Finding the British Google: Relaxing the Prohibition of Dual-Class Stock from the Premium-Tier of the London Stock Exchange* (2020).

7 Bernard S Sharfman, "A Private Ordering Defense of a Company's Right to Use Dual Class Share Structures in IPOs" (2018) 63:1 Villanova Law Rev 1–34, online: <https://www.villanovalawreview.com/article/10513-a-private-ordering-defense-of-a-company-s-right-to-use-dual-class-share-structures-in-ipos>.

8 Reddy, *supra* note 6.

9 Jill Fisch & Steven Davidoff Solomon, "Centros, California's 'Women on Boards' Statute and the Scope of Regulatory Competition" (2019) 20:3 Eur Bus Organ Law Rev 493–520, online: <https://doi.org/10.1007/s40804-019-00156-w>.

participate in companies having a two-tiered shareholding structure just because there is a likelihood that the executives of those companies could potentially mistreat shareholders with lesser voting privileges.

Authorities in several nations have embraced the DCSS instead of "one-share, one-vote," with the NYSE and NASDAQ in the US being pioneers.[10] As a result, the American stock market has become increasingly competitive internationally as DCSS gained popularity. Some major economies where DCSS were prohibited had to deal with the shame of having attempted to list corporations on their exchanges eventually listing in the USA.[11] Relaxing the restriction on DCSS represents one of these exchanges' strategies in the competition for high-performing corporations. This is why DCSS was allowed in 2018 in both Singapore and Hong Kong.[12]

Adapting to the DCSS is vital. For instance, numerous Chinese businesses went public in the USA over the past few years primarily as a result of the prospect of DCSS. Hong Kong has been able to remain competitive alongside the USA thanks to its liberalisation. China's Xiaomi, a titan in the technology sector, became the very first DCSS corporation to be listed on the Hong Kong Exchanges and Clearing Limited (HKEX).[13] It is an early indication for the Chinese stock market that the rigid voting arrangement

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10 Lu, *supra* note 2.

11 Yu-Hsin Lin & Thomas Mehaffy, "Open Sesame: The Myth of Alibaba' s Extreme Corporate Governance and Control" (2016) 10:2 Brooklyn J Corp Financ Commer Law 438–471, online: <https://brooklynworks.brooklaw.edu/bjcfcl/vol10/iss2/5/>.

12 Leonard Ching, Alvin Zhuang & Wayne Chan, "Dual-class share structures - The Singaporean response" (2019) 14:4 Cap Mark Law J 451–468; Robin Hui Huang, Wei Zhang & Kelvin Siu Cheung Lee, "The (re)introduction of dual-class share structures in Hong Kong: a historical and comparative analysis" (2020) 20:1 J Corp Law Stud 121–155, online: <https://doi.org/10.1080/14735970.2019.1638004>.

13 Zoe Condon, "A snapshot of dual-class share structures in the twenty-first century: A solution to reconcile shareholder protections with founder autonomy" (2018) 68:2 Emory Law J 335–367, online: <http://edition.cnn.com/2012/07/30/sport/football/manchester-united-stock-football/index.html;>; Min Yan, "The myth of dual-class shares: lessons from Asia's financial centres" (2021) 21:2 J Corp Law Stud 397–432, online: <https://doi.org/10.1080/14735970.2020.1870843>; Min Yan, "Differentiated voting rights arrangement under dual-class share structures in China: expectation, reality, and future" (2020) 28:2 Asia Pacific Law Rev 337–359, online: <https://doi.org/10.1080/10192557.2020.1855794>.

has led to the demise of potential local businesses. If the Chinese authorities fail to respond to this situation, there will undoubtedly be an increase in outflows of capital abroad.[14] This is the case too with Indonesia. As a result, Indonesia launched DCSS in 2021 for the technological innovation corporations, a newly founded division of the Indonesian Stock Exchange (IDX) via Financial Services Authority Regulation 22/POJK.04/2021. However, this is simply not adequate because in principle the driving force of the Indonesian economy is not only through the technology and innovation sectors.

Despite being widely used, the DCSS is still a contentious issue. Critics claim it violates corporate democratisation and has the unintended side effect of allowing shareholders with greater voting privileges to expropriate the interests of the remaining investors.[15] As a result, authorities in the stock markets at which DCSS are permitted have put into effect several measures to regulate the workings of DCSS corporations and the behaviour of their agents due to the greater likelihood of compromising investor protection brought about by DCSS.[16] Research by Gurrea-Martinez argues that the global regulatory approaches to DCSS and suggests that countries with weak minority investor protection, high private benefits of control, and unsophisticated markets should prohibit or restrict DCSS, while countries with strong legal protection and low private benefits should allow it.[17]

In Indonesia, the DCSS is a newfound notion in corporate governance. Therefore, comparisons from other economies' regulatory experiences might be useful. However, the Indonesian authority must also fully consider Indonesia's equity market makeup and investor protection law to be able to govern DCSS corporations effectively. In short, the aforementioned highlights the urgency and significance of this study in particular in the

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14 Shuai Shao, "Impact of dual-class share structure: Alibaba IPO success analysis" (2023) 29:2 Asia Pacific Bus Rev 350–371, online: <https://doi.org/10.1080/13602381.2023.2179169>.

15 Lu, *supra* note 2.

16 Huang, Zhang & Lee, *supra* note 12.

17 Aurelio Gurrea-Martínez, "Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate" (2021) 22:3 Eur Bus Organ Law Rev 475–515, online: <https://doi.org/10.1007/s40804-021-00212-4>.

context of the Indonesian equity market. Therefore, this paper will fill the gap on the matter of DCSS by providing an empirical analysis of the impact of DCSS on corporate performance and governance quality in the Indonesian equity market, which is a relatively new and underexplored context for DCSS.

Furthermore, dual-class capitalisation has repeatedly been referred to as being "the most significant topic regarding corporate governance today" in the USA, prominently by Professor John C. Coffee, Jr.—a well-known expert in securities law and corporate governance.[18] As a result, there are many scholarly articles examining the benefits of DCSS in the American scholarly communities, while astonishingly, there has not been much intellectual debate on the subject in Indonesia (and also in the United Kingdom). It is safe to say that the novelty of this inquiry sits in this predicament, and it has been overdue for Indonesia to do an intricate normative analysis on the DCSS, which further merits this line of inquiry.

This paper is presented against this backdrop and explores the listing regulation in Indonesia, to assess whether DCSS companies should be allowed in the listing sector of the IDX. The remainder of the sections make up this paper's content. The next section will elaborate on the methodology of this research. The section following that will analyse the legal-theoretical justifications in favour of and against the DCSS. In this section, this paper will also examine the way other significant financial markets—such as the USA, Singapore, Hong Kong SAR, and China—have approached this situation. Most importantly, this section will analyse the way DCSS corporations are now treated in Indonesia's securities markets and the justifications for changing its listing regulations. Along with this, this paper suggests that Indonesia ought to permit DCSS corporations to list in the listing of the IDX after putting in place some suitable governance safeguards to guarantee the highest possible standards of corporate governance to be upheld. In the end, it is contended that since other noteworthy financial hubs have permitted companies with such an arrangement to list mainly on their main board, there could be no excuse as to why Indonesia cannot do the same

[18] Fisch & Davidoff Solomon, *supra* note 9.

to increase the competitive qualities of its stock market, provided the necessary safeguards have been put in effect to protect the financial interests of investors. Finally, the last section contains the conclusion.

II. METHODOLOGY

Using doctrinal legal research, this research aims to describe the norms that apply in a particular legal system In this, the research states what must be done from a legal perspective in a particular legal system.[19] The article utilises secondary data that represents the work of scholars who have studied DCSS using literature reviews from a variety of publications such as Scopus, Emerald, Thomson Reuters, HeinOnline, Proquest, and Sage. This research then employed a qualitative research approach to investigate the legal certainty and applicability of DCSS in various jurisdictions examined. It included thoroughly reviewing and analysing the available literature on the DCSS. The data was acquired by thoroughly reviewing relevant literature sources, including academic journals, government documents, and other relevant records. Thematic analysis was used to analyse the data, which entails locating and classifying the recurrent themes that appeared in the data. From this, the inquiry was able to demonstrate the reliability and trustworthiness of the research findings by using this strategy, and it also managed to make sure that the data gathered was an accurate representation of the subject of the research.[20]

III. DUAL-CLASS CAPITALISATION BASED ON THOSE AGAINST AND IN FAVOR OF DCSS

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19 David Tan, "Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum" (2021) 8:8 Nusant J Ilmu Pengetah Sos 2463–2478, online: <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/download/5601/3191>.

20 Dinesh Kumar, Sunil Kumar & Akashdeep Joshi, "Assessing the viability of blockchain technology for enhancing court operations" (2023) 65:5 Int J Law Manag 425–439.

Investor advocacy organisations typically have a negative opinion of DCSS. An uneven voting arrangement, it is said, has the potential to harm a business's overall governance evaluations, and this may then have an impact on how institutional shareholders perceive the corporation itself.[21] The reason for this is predicated on the significance of shareholders' voting privileges, which is supported by the shareholder primacy theory. In essence, it suggests that businesses existed to promote the interests of their owners. To be more precise, the notion requires that businesses be managed to maximise shareholder value.[22] In its simplest form, the case for shareholder primacy promotes democratic legitimacy: since shareholders represent the voting populace, the corporation must prioritise serving its best interests.[23]

To establish shareholder primacy in theoretical economics, researchers turned to the conventional economic utilitarian justification of maximising efficiency or overall societal utility.[24] As opposed to becoming owners of the corporation, this justification takes us back towards the "nexus of contracts" concepts.[25] In these illustrations, the fictional corporate entity was collectively founded by several different groups of people, each of whose agreements with the others formed a shareholder. Since this comparison, it is asserted that the only "residual beneficiaries" of the corporation's returns are its shareholders. The shareholders, the ones whose claims are last in line, bear both the expenses and profits from any favourable or unfavourable corporate performance.[26] Shareholders are the entity having the most incentives for making decisions that are discretionary as residual claimants since the power to vote (i.e., the right to employ discretion) comes after the

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21 Haomin Wang, Gang Kou & Yi Peng, "Multi-class misclassification cost matrix for credit ratings in peer-to-peer lending" (2021) 72:4 J Oper Res Soc 923–934, online: <https://doi.org/10.1080/01605682.2019.1705193>.

22 Jeff Schwartz, "De Facto Shareholder Primacy" (2020) 79:3 Maryl Law Rev 652–699.

23 Grant M Hayden & Matthew T Bodie, "The Corporation Reborn: From Shareholder Primacy to Shared Governance" (2020) 61:7 Bost Coll Law Rev 2419–2485, online: <https://lawdigitalcommons.bc.edu/bclr/vol61/iss7/4>.

24 Grant M Hayden & Matthew Bodie, "Power, Primacy, and the Corporate Law Pivot" (2022) 24:4 Univ Pennsylvania J Bus Law 885–907, online: <https://scholarship.law.upenn.edu/jbl/vol24/iss4/8>.

25 Schwartz, *supra* note 22.

26 Hayden & Bodie, *supra* note 23.

residual claim. Hence, the shareholder primacy corporate theory is undermined by the very existence of DCSS, wherein a particular category of shareholders has reduced or no voting privileges.

However, it is frequently stated that the argument for shareholder primacy is founded on the idea of "shareholder homogeneity," and this presupposes that every single shareholder belongs to a comparable situation and has an identical set of interests.[27] Yet, subject to a wide range of conditions, stockholders may have quite distinct financial interests. The fundamental tenet of the "one-share, one-vote" rule is the belief that shareholders all possess a common interest in maximising their wealth and value. Every single shareholder possesses a different stake in maximising the residual because each has a varying right to a portion of it. Regardless of whether we believe that most shareholders' primary goals are to maximise their wealth, each shareholder might have various perceptions regarding the time horizons to achieve this maximisation.[28] In other words, different shareholders may define wealth and value maximisation differently. In addition, several sovereign wealth trusts and pension funds that represent public sector workers control a sizable portion of the interests in major corporations nowadays. These entities might possess objectives that are distinct from the ones of conventional shareholders.[29] As a result, the idea of a shareholder democracy having a homogenised purpose is incompatible with the diverse interests of shareholders. Because of this, shareholders are unlikely to possess the same preferences and are unlikely to attempt to implement those criteria through lockstep voting habits.[30]

The acceptance of this sort of share, according to DCSS critics, adds to issues with abuse of power, collective punishment, and inactivity that result in

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27 Ben W Lewis & W Chad Carlos, "Avoiding the Appearance of Virtue: Reactivity to Corporate Social Responsibility Ratings in an Era of Shareholder Primacy" (2022) 67:4 Adm Sci Q 1093–1135.

28 Sophia Zhengzi Li, Ernst Maug & Miriam Schwartz-Ziv, "When Shareholders Disagree: Trading after Shareholder Meetings" (2022) 35:4 Rev Financ Stud 1813–1867.

29 Hayden & Bodie, *supra* note 23.

30 Maria Goranova & Lori Verstegen Ryan, "The Corporate Objective Revisited: The Shareholder Perspective" (2022) 59:2 J Manag Stud 526–554.

marginalisation.[31] Given that the controlling groups or shareholders are not exposed to the same degree of financial risk as the rest of the stockholders, sceptics have argued that these individuals lack the right incentives to make the best decisions for the corporation.[32] These remarks, nevertheless, could be refuted by arguing that investors understood exactly what they were going to get when they initially bought the shares. Corporate law ought to foster private ordering and decision-making, including the likelihood that some shareholders might consent to a lesser role in exchange for a favourable outcome. This could result in a lower price, and shareholders ought to be free to strike a deal if they so choose.[33]

In a corporation with two classes of shares, the power of control is outweighed by their cash flow rights.[34] Typically, there are two distinct groups of shareholders: the more privileged class and the less privileged class. The more privileged class shareholders possess the majority of the voting rights and govern the corporation despite owning a small amount of equity, while the less privileged class shareholders own low- or non-voting shares.[35] Those in favour of DCSS argue that the existing shareholders' main reason for choosing a DCSS arrangement is to preserve company control.[36] Dilution of shares shall not impede the initial objective of the corporation which is personified by the owner-manager. Businesses with DCSS arrangements are typically started by a select number of associates or close relatives, and they depend extensively on the abilities, know-how, and business insight of their pioneers and additionally on their collaboration and mutual trust. During the startup phase, proprietors typically hold all of the corporation's shares and serve as executives, so they can develop and put into practice firm-specific marketing tactics. On the other hand, if DCSS are outlawed in the equity

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31 Adi Grinapell, "Dual-Class Stock Structure and Firm Innovation" (2020) 25:1 Stanford J Law, Bus Financ 40–85, online: <https://law.stanford.edu/publications/dual-class-stock-structure-and-firm-innovation/>.

32 Hayden & Bodie, *supra* note 24.

33 Shaanan Cohney et al, "Coin-Operated Capitalism" (2019) 119:3 Columbia Law Rev 591–676.

34 Kishore Eechambadi, "The Dual Class Voting Structure, Associated Agency Issues, and a Path Forward" (2017) 13:2 New York Univ J Law Bus 503–534.

35 Lu, *supra* note 2.

36 Eechambadi, *supra* note 34.

market, their influence over the company is in jeopardy at the exact moment of the IPO. On the contrary, if DCSS are made available, controllers can maintain their position of authority and carry out their plans regardless of the IPO.[37] The DCSS may also serve as a potent deterrent to hostile corporate acquisitions.[38] DCSS corporations are infrequently the focus of the acquirers in the competition for corporate control. Because controllers are shielded from external danger, the business environment for the corporation is sustained. Decision-making is also more effective when authority is concentrated in the grasp of a single or small group of capable businesspeople.[39]

The advantages of the DCSS arrangement are predicated on the pioneers' good faith performance for the corporation in its entirety. The agency issue among controlling and non-controlling shareholders is going to, nevertheless, occur whenever the governing authority resides in one person or a handful of shareholders.[40] When there is a concentration of control in a corporation, the majority shareholders' interests could be expropriated by those in control for their gain.[41] In contrast to inferior-class shareholders who possess the bulk (majority) of the corporate shares and have very little ability to sway decision-making, shareholders with voting privileges who dominate the process of making decisions possess just a small amount of equity in the corporation. Hence, the voting class shareholders will probably be more likely to use their influence and authority for manipulative purposes because they are going to be more aware that the expenses associated with their self-profit endeavours will be borne primarily by the majority of the shareholders with no voting privileges.[42] A management entrenchment is a

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37 Lu, *supra* note 2.

38 Condon, *supra* note 13.

39 Guo Li & Peng Yuchen, "Regulating the Listed Companies with Dual-Class Share Structure: International Experiences and Reflective Takeaways for China" (2019) 56:2 J Peking Univ Soc Sci 132–145.

40 Lu, *supra* note 2.

41 Ernest Lim, "Controlling shareholders and fiduciary duties in Asia" (2018) 18:1 J Corp Law Stud 113–150, online: <https://doi.org/10.1080/14735970.2017.1354471>.

42 Tian Wen, "You can't sell your firm and own it too: Disallowing dual-class stock companies from listing on the securities exchanges" (2014) 162:6 Univ PA Law Rev

resulting issue too. In a corporation with a DCSS arrangement, shareholders with voting rights have authority over the hiring and firing of board members and frequently serve as executive directors themselves. Consequently, board members will never be held accountable to all shareholders.[43]

The considerations presented above demonstrate that while the issue of DCSS might or might not be in the most beneficial interests of shareholders, this type of ownership arrangement does not seem in danger of becoming obsolete yet. Notwithstanding one's opinions of DCS mechanisms, they appear to be a trend that will continue in several industries and businesses. That is why it has become crucial for us to comprehend the evolution of the DCSS and how business-controlled mechanisms are affected by it. Hence, the subsequent sub-section will examine how the matter of DCSS structure has been addressed by the world's largest markets for securities.

IV. THE DCSS ARRANGEMENT IN MAJOR EQUITY EXCHANGES

Regulators take action to govern DCSS arrangements in equity markets where such shares are legal. Nonetheless, they all employ a distinct method for approaching control. The strategy in any given market is primarily influenced by the features of its economic structure and the laws governing securities. In this part, the rules governing DCSS corporations in the USA, Hong Kong SAR, Singapore, and China—representing four predominantly distinct approaches—are scrutinized, and the rationales behind the distinctions are examined.

A. NYSE and NASDAQ in the United States of America

The NYSE and NASDAQ are the two biggest equity markets in the entire globe, both located in the USA. The two exchanges have maintained the essential tenet of SEC Rule 19c-4, which prohibited the listing of shares of

1495–1516, online: <https://scholarship.law.upenn.edu/penn_law_review/vol162/iss6/5/>.

43 *Ibid*; Lu, *supra* note 2.

corporations whose voting privileges were eliminated, diminished, or otherwise restricted on national equity exchanges. Because the SEC overstepped its regulatory power according to the Securities Exchange Act of 1934, Rule 19c-4 was contested in federal court in 1990. The new rule was eventually overturned by the District of Columbia Court of Appeals because it was a concern of state business law and went outside the SEC's authorised executive authority.[44]

In the USA, the DCSS are currently governed by their listing requirements. This is because, despite the ruling, The SEC was successful in getting the major stock exchanges to adjust their listing criteria to reflect an attitude that was analogous to the previous Rule 19c-4. While the NYSE and Nasdaq standards usually gave corporations significant freedom in establishing differing voting privileges for several classes of ordinary stock at the stage of their IPO, they additionally imposed restrictions on activities taken afterwards that would severely restrict the voting privileges of current public investors.[45] In light of this, although USA-listed corporations are subject to restrictions on the DCSS, corporations were granted considerable freedom to go public with this DCSS arrangement. Perhaps the most stringent requirement is that shareholders' voting privileges in currently publicly traded corporations cannot be unreasonably diminished or limited; specifically, dual-class recapitalisations are not permitted for businesses that went publicly under the "one-share, one-vote" model (see NYSE Listed Company Manual 313.00 (A) and NASDAQ Equity Rules 5640). A DCSS arrangement may only be utilised by fresh issuers at the start of their IPO.

The explanation behind this rule is based on the capacity to equitable voting is a crucial component of shareholder privileges whereby investors from the public buy interests of corporations with "one-share, one-vote." The voting privileges of shareholders who have no control are going to be eliminated or diminished if eventually, controllers use a DCSS recapitalisation to grant themselves disproportionate voting privileges, something the public investors are unable to revoke. Alternately, if a corporation chooses to use a DCSS

44 Dov Solomon, "The Importance of Inferior Voting Rights in Dual-Class Firms" (2020) 2019:2 BYU Law Rev 533.

45 *Ibid.*

arrangement at the outset of its IPO, the public investors will be informed of the lessened voting privileges associated with these securities and will be empowered to decide whether or not they want to invest.[46]

Superior-class shareholders may possess several votes for each share, but lower-class shareholders are limited to one vote for each share. The proportion of votes assigned to superior and lower shares that are most used is 10:1. Additionally, 20:1 and 50:1 happen to be popular too. The proportion is not capped by both exchanges. Therefore, the voting privileges of the superior shares advocate for dramatic circumstances in meetings. Shares without voting rights are also allowed. To safeguard shareholders with non-voting interests, the stock exchanges stipulate that every other shareholder's rights must remain equitable and stipulate that each shareholder has an entitlement to be privy to any correspondence.[47] Apart from the aforementioned prerequisites, DCSS corporations are free to decide the duration that the DCSS should last and under what conditions it ought to be transformed into a "one-share, one-vote" model. Without a doubt, the USA takes a laissez-faire stance when it comes to regulating the DCSS.

B. HKEX in Hong Kong SAR

In Hong Kong, DCSS were outlawed for many years. As a result, it missed out on several excellent chances to list noteworthy corporations like Alibaba.[48] The HKEX finally withdrew the prohibition in April 2018 because of intense global financial rivalry. Hong Kong boasts arguably the strictest rules of DCSS in the world, in contrast to the laissez-faire supervision in the USA. The issuance, functioning, and termination of DCSS are governed by specific obligations placed on DCSS corporations and their controllers under the HKEX Listing Rules.

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46 Gurrea-Martínez, *supra* note 17.

47 Lu, *supra* note 2.

48 John Kong Shan Ho, "Revisiting the viability to allow dual-class share structure companies to list in the financial market of Hong Kong" (2018) 47:3 Common Law World Rev 167–195.

Identical to the current position taken by the USA, the HKEX forbids DCSS recapitalisations by currently publicly traded corporations and only permits fresh issuers to opt for the DCSS arrangement at the onset of the IPO. Prospective issuers must meet the criteria for "innovative businesses" and meet the necessary income and equity capitalisation thresholds to use the DCSS arrangement (see HKEX Mainboard Listing Rules 8A.05).

A corporation is considered "innovative" by the HKEX if it possesses at least two of the qualities listed below: its accomplishment is proven to be related to the utilisation of cutting-edge technology, breakthroughs, and/or an entirely novel approach to the corporation's core operations, which in turn helps distinguish the corporation apart from competitors; research and development remain an important factor contributing to its anticipated worth and is an important operation in the corporation; its accomplishment is proven to be linked to its distinctive characteristics or intellectual property; and/or it boasts an innovative product or service.

In light of the aforementioned criteria, the HKEX evaluates the particulars of every case to decide whether or not a corporation qualifies as "innovative" and eligible for the DCSS. Additionally, the corporation must meet one of the requirements listed below: a total market capitalisation of no less than HK$40 billion or a market capitalisation of at least HK$10 billion along with a turnover of at least HK$1 billion for the most recently audited fiscal year (see HKEX Mainboard Listing Rules 8A.06). By defining the requirements for DCSS corporations, the HKEX hopes to guarantee that the utilisation of the model to each corporation is rational and justifiable, hence lowering the chance that it would be exploited for selfish purposes.[49]

The HKEX establishes stringent regulations to govern the functioning of DCSS corporations to safeguard against expropriation and misuse. Superior class shareholders are required to serve as directors in any DCSS corporation. The HKEX hopes that simply by implementing this, directors will fulfil their obligations to the corporation and all of its shareholders as well. In Hong Kong, directors alone—not shareholders—are generally subject to a fiduciary

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[49] Fa Chen, "Does the dual-class share structure help stock markets attract issuers? Empirical lessons from global financial centres" (2023) 43:1 Leg Stud 159–178.

duty and the duties of care. Therefore, mandating shareholders of the superior class to serve as directors is a simple approach to stop these individuals from committing expropriation.[50] Furthermore, according to the HKEX, superior-class shareholders ought to have played a significant role in the expansion of the business and contributed significantly to it. The governing body aims to make clear that only those who possess irreplaceable human resources that are necessary for the growth of the corporation are eligible to receive preferred voting privileges.[51] Moreover, the HKEX requires the amount of votes proportion of the superior shares shall not exceed 10 times the ordinary votes of the inferior class, in contrast to the USA whereby DCSS corporations are free to establish their unique voting arrangements.[52] Shares without voting rights are thus prohibited. To lessen the disparity between their authority and economic interests, superior-class shareholders are prohibited from imposing irrational and disproportionate measures. The number of shares of the superior class will remain unchanged following the IPO (see HKEX Mainboard Listing Rules 8A.13). Additionally, the HKEX lists several corporate matters that are exempt from the DCSS arrangement's application. Any pertinent motions must alternatively be decided by "one-share, one-vote." These issues include modifications to the corporation's constitution, the modification of shareholder privileges, the election and dismissal of executives, and voluntary winding-up. These issues are those that are considered of the greatest importance to the survival of a business or are substantially associated with shareholders' interests and directors' behaviour.[53]

Consequently, the HKEX stipulates that superior class shares ought to be reverted to regular shares if the DCSS may no longer be acceptable due to changes in the corporation's business plan, shareholder structure, and governance system. Shares ought to be reverted to regular shares if the

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50 Fa Chen & Lijun Zhao, "To Be or Not to Be: An Empirical Study on Dual-Class Share Structure of Us Listed Chinese Companies" (2017) 16:2 J Int Bus Law 215–248.

51 Min Yan, "A Control-Accountability analysis of Dual Class Share (DCS) Structures" (2020) 45:1 Delaware J Corp Law 1–46.

52 Ho, *supra* note 48.

53 Lu, *supra* note 2.

superior class shareholders were to pass away, no longer qualify to be directors, and/or have proven unfit for serving as directors or if their superior shares have been transferred to others. Solely the founding controllers of the corporation may receive enhanced voting privileges at the point of the IPO. They cannot be held or obtained using transference or heredity. The DCSS aids the corporation's founders in keeping control during a crucial period of growth. It is possible that the new owners of preferred class shares, who ought to serve as directors, are incapable or uninterested in overseeing the business. The objectives of the corporation as a whole along with other investors are in danger in this situation. Hence, the mandatory conversion rules, which restrict weighted voting privileges to founding controllers only, thus become vital.[54]

C. SGX in Singapore

In Singapore, every share of equity given out by the corporation shall grant its shareholders access to one vote per equity share at any meeting of shareholders of the corporation under section 64(1) of its previous Companies Act 2006. A reform to the law permitting publicly traded corporations to hand out shares with multiple votes and non-voting shares was put forward in the 2011 consultation document. The committee's justification for the change is that doing so would provide businesses more freedom in managing their capital. The Singapore Exchange (SGX) would also be responsible for deciding to what extent listed corporations deserve to be permitted to launch such equities. A small number of responders, nevertheless, voiced worry that the initiative would jeopardise minority rights and business governance norms throughout the public comment period. They claimed that since Singaporean corporations are mostly managed by a group of shareholders, Singapore is distinct from other Western developed economies. Shares with multiple voting rights can therefore be utilised to seriously harm minority interests.[55]

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54 *Ibid.*

55 Dan W Puchniak & Samantha S Tang, "Singapore's Puzzling Embrace Shareholder Stewardship : A Successful Secret Singapore's Puzzling Embrace of Shareholder

Dual-class boards, where directors who serve major shareholders are in an ideal position to take advantage of minority shareholders who do not have as much representation, were frequently created because of an elevated level of control among corporate executives and major shareholders. To address the aforementioned issue, the steering committee chose to only apply the appropriate protections and limitations on listed corporations. Therefore, it was suggested that section 64 of the 2006 Act be completely repealed and that section 64A be added to the modified Companies Act, permitting public corporations to offer various classes of shares subject to specific protections and limitations.[56] Among the protections and limitations are: owners of nonvoting shares ought to be granted the same opportunity to vote for a motion to dissolve or wind up the corporation or a resolution that changes the entitlements of the non-voting shares, and in cases where the corporation has multiple classes of shares, the notification of a meeting wherein a resolution is put forward to be enacted ought to be distributed to every class separately.[57]

To retain Singapore's attractiveness as an important international financial centre and assist its equity markets in fighting for new listings, the Singaporean government permits corporations to issue several classes of shares. Early in 2016, the Monetary Authority of Singapore (MAS) and the SGX began debating whether to permit DCSS listings on the latter after section 64A of its Companies Act was passed and brought into effect. When owner-managers become ingrained in the corporation's management, entrenchment risks appear. Owner managers who attempt to take unfairly large personal gains from the corporation at the expense of minority shareholders run the danger of being accused of expropriation. The SGX then proposed a few protections to reduce the risks of entrenchment and expropriation. SGX suggested a maximum voting differential of 10:1 and claimed that such a ratio is a regularly used voting disparity in multiple jurisdictions that permits the public offering of DCSS as a way to reduce the

Stewardship : A Successful Secret" (2021) 53:3 Vanderbilt Law Rev 989–1021, online: <https://scholarship.law.vanderbilt.edu/vjtl/vol53/iss3/7>.

56 Ho, *supra* note 48.

57 Lu, *supra* note 2.

allocation and entrenchment of voting privileges in owner management.[58] It is also suggested that strengthening the autonomous component of corporations with DCSS arrangements to reduce expropriation risks by mandating that if the board's chairman does not comprise an independent director, a minimum of fifty per cent of the board should be made up of independent directors.

DCS arranged that publicly traded corporations were officially permitted for new businesses who desire to be listed on the SGX's main board as of June 26, 2018. The SGX evaluates a corporation's appropriateness for listing with a DCSS arrangement holistically, considering a few eligibility criteria.[59]

D. SSE and SZSE in China

Each share has always been given a single vote at shareholder general meetings ever since the very first Chinese Company Law was passed in 1993. Later changes to company law did not significantly alter this provision. For example, the most recent Chinese Company Law (2013) stipulates that shareholders attending a general meeting must be eligible for a single vote for every share owned. This may not be shocking at all. The proportional voting idea, which accords shareholders voting privileges corresponding to their respective shares of residual profits or losses, is justified in China using the same residual proprietary rights of shareholders as is done in the West.[60]

Versatile arrangements for financing are necessary to promote the long-term growth of high-tech and innovative enterprises and to keep them within the nation's equity markets. Consequently, the necessity of creating greater flexibility in financial structures and reacting to a market that is constantly evolving has led to the easing of regulatory limits. This drive to remain competitive with rival stock exchanges has also contributed to this development to play catch-up in mainland China. The HKEX and the SGX, which both changed their listing criteria in 2018 to allow DCSS IPOs, have

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[58] Shu Yih Ng, "Dual Class Shares Listings in Singapore - Problems and the Way Forward" (2020) 38 Singapore Law Rev 182–212.

[59] Lu, *supra* note 2.

[60] Yan, *supra* note 13.

fueled China's growth by luring technological and innovative businesses from mainland China to list, as well as in other emerging markets. The Chinese Company Law 2013, which states that the State Council may create alternative laws for the issue of securities of varieties that go beyond those allowed by the Company Law, is used by the newly implemented listing rules as justification for circumvention. In a nutshell, the listing rules employ the exception granted by Article 131 to support the approval of multiple classes of shares with extraordinary voting rights that are out of proportion to their economic involvement in the corporation.[61] After learning about HKEX's move to allow DCSS, following, the Shenzhen Stock Exchange (SZSE) on 12 June 2020 removed the DCSS taboo. The Shanghai Stock Exchange (SSE) also follows suit by officially launching the listing of DCSS on 13 June 2019.[62]

The SSE caps every multiple voting share to a maximum of ten votes per share and restricts the ownership of such interests to specified individuals or organisations to minimise the disparity among controllers' voting privileges and cash flow entitlements—similar to those of HKEX and SGX. Secondly, China has implemented event-based sunsets, and this could reduce enhanced voting shares to a common voting share in the case of the occurrence of a predetermined event.[63] The controller's enhanced voting privileges would end in the event of their demise, retirement, or disability. The transfer of ownership of the shares with enhanced voting privileges to a third party who is not considered "affiliated" with the initially designated owners is another example of such an occurrence where sunset would be initiated. Thirdly, to establish managerial responsibility, improved institutional corporate governance norms are established, wherein independent board members are supposed to contribute to maintaining the highest standards of corporate management. Additionally, there are restrictions on how controllers can utilise their enhanced voting privileges about significant corporate modifications or situations where a conflict of interest is probably to arise. The former situation includes changing the corporation's charter, merging,

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61 *Ibid.*

62 Chen, *supra* note 49.

63 Yan, *supra* note 13.

dividing, dissolving, and changing its legal structure. As a final point, the Chinese government demands broadened disclosure and requires DCSS corporations to publish information within their listing paperwork along with their interim and yearly reports, which includes the reasoning for implementing DCSS, sunset clauses, the consequences of utilising DCSS, and other specifics concerning these share structures, as well as the risks associated with them.[64]

V. THE TREATMENT OF CORPORATIONS WITH DCSS AND ITS MOST RECENT LISTING REGIME

A. Rationales for Conducting Review on DCSS Listing Regime in Indonesia

Shareholders are unlikely to possess a basis for disputing the utilisation of those enhanced voting privileges if a corporation's founding paperwork expressly stipulates them. Consequently, the issuance of shares by corporations with different voting privileges is not prohibited by Indonesian company law. Public enterprises have benefited greatly from the support of the Indonesian equities market. The ownership structure of the corporations traded on the IDX became highly fragmented. Restricting voting rights was commonly employed on the IDX and received no negative feedback. They were thought to be especially useful for small-scale investors who analysed dividends to assess corporate performance.[65]

Nevertheless, institutional investors started making remarks about the drawbacks of DCSS which were beginning to be taken seriously. According to a particular contention, "non-voting shares should constantly be treated with caution." They may give overpower to an unreliable elite having a small financial stake. The fact that non-voting stockholders do not influence the corporation is where the risk is. By then, the unfavourable habit of offering limited shares with voting rights gained a strong dislike and resentment from institutional investors. The split of the listing system into Mainboard listing,

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64 *Ibid*.

65 Darmawati Muchtar et al, "Dynamic performance of Indonesian public companies: An analysis of financial decision behaviour" (2018) 6:1 Cogent Econ Financ 1–14, online: <https://doi.org/10.1080/23322039.2018.1488343>.

developmental board, and acceleration board is a major aspect of the present Indonesian listing system. right after an examination of the Indonesian listing system's framework, the three-tiered portions of its listing system were put in place to ensure that the framework of the system and corporations' obligations under it were clear.[66] Mainboard listing denotes a listing that adheres to the stricter "super-strict" standards. The only acceptable securities for the Mainboard listing in the IDX currently include equity shares only. To safeguard institutional investors, IDX prohibits listing corporations with enhanced voting privileges in their mainboard, hence DCSS corporations are unlikely to be eligible.

The IDX observed that plenty of shareholders mainly see a Developmental listing as an "unattractive alternative" for a listing given that it is lacking in transparency once we consider the distinction between Mainboard and Developmental listing. While the designation suggests that it is "second best," yet critically its roles and objectives are ambiguous. Therefore, analysts frequently advise businesses not to take this path of going public.[67] Reservations were also expressed by quite a few of the parties involved regarding the main equity markets in the country's capacity to provide expansion financing, especially to start-up scientific and technology enterprises. Notwithstanding all of this, Indonesia continues to be a very desirable marketplace with a strong market dynamic. Additionally, the number of established foreign businesses with a principal listing in their native country is decreasing. This is because it is becoming considerably simpler for investors throughout most financial centres to transact securities in foreign corporations, which is a long-term worldwide phenomenon.[68] Additionally, as was already said, many underwriters consider the term

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[66] Felicia Maria & Ulya Yasmine Prisandani, "Establishing a Limited Liability Company: A Comparative Analysis on Singaporean and Indonesian Law" (2021) 1:1 Lawpreneursh J 43–57, online: <https://journal.prasetiyamulya.ac.id/journal/index.php/TLJ/article/view/520>.

[67] Dea Adielyani & Irene Rini Demi Pangestuti, "Companies on Financial Distress: the Main Board and" (2023) 38:2 Media Ekon dan Manaj 303–325, online: <http://sister.untagsmg.ac.id/index.php/fe/article/view/3550>.

[68] Carlos Ragazzo & Rafael Costa, "Overseas Primary Listing: U.S. Stock Markets as a Global Hub for IPOs?" (2023) 31:2 Univ Miami Bus Law Rev 46–86, online: <https://repository.law.miami.edu/umblr/vol31/iss2/4/>.

"Developmental Listing" to be inferior, which is why it is frequently stated that foreign businesses are hesitant to list under such an inferior categorisation.[69]

There are hence two justifications for carrying out this assessment. Firstly, it is interested in setting up a rosy picture of how financial services will develop in Indonesia. Secondly, it also encourages Jakarta to actively participate in determining the trajectory of its future. Whether or not DCSS corporations deserve to be permitted to post listings on the Mainboard sector of the IDX is one question concerning which the public's reaction will be sought as part of the inquiry. Additionally, it sought opinions from the public regarding how to guarantee that Indonesia's rigorous standards of corporate governance are upheld if DCSS businesses are permitted to list within the Mainboard segment of the IDX. Indonesian-based critics have maintained that the absence of Indonesian technology IPOs within the IDX in contrast with neighbouring exchanges constitutes one of the main reasons why Indonesia must give serious thought to permitting DCSS corporations to go public on the Mainboard segment of the IDX. It is similar to the situation in Hong Kong before 2018, which has already been addressed.[70]

Indonesia's government wants to draw technology firms to the IDX for two primary explanations. Firstly, for technological companies, stock can be an essential form of funding. Without a strong track record of profits, innovative businesses with lengthy production cycles may find it difficult to secure loan financing. In addition, credit institutions may avoid technological businesses looking for funding for lengthy, unpredictable projects. Investment in research and development can therefore be curtailed without having entry to the equity markets. Equity investment for technology-related businesses may thus have positive effects, promoting productivity, innovation, and economic growth in general.[71] The promotion

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69 Bonnie Mindosa & Pananda Pasaribu, "Initial Public Offering: New Evidence From Indonesia" (2020) 8:1 J Bus Enterpreneursh 1–17.

70 Ho, *supra* note 48.

71 Ingyu Oh, Yunsung Koh & Yun Kyung Kim, "A new global division of labour in venture capital flows: Coupang's IPO success at the New York Stock Exchange" (2023) 29:2 Asia Pacific Bus Rev 279–298.

of creating employment opportunities is expected, and Indonesia's technological sector is expected to rank among the top employers. Additionally, if technology-related corporations become publicly traded in Indonesia, financial institutions with a presence in Indonesia can benefit from their expansion and success. Authorities should therefore look for ways to encourage the public offering of Indonesian technological enterprises on the IDX. Sadly, this is not always the case for other non-technological sectors with innovative traits.[72]

A non-technological public corporation cannot presently be listed within the Mainboard sector with a DCSS arrangement. These businesses are restricted to listing today in the Developmental section. However, the entire IDX acknowledged that a Developmental sector listing is frequently viewed negatively by numerous prospective underwriters due to the designation's connotation of being "second best." With this, prospective corporations may be deterred from listing at all.[73] An owner of a technological and non-technological business could be hesitant about listing on the Mainboard section because it forbids DCSS mostly out of concern for accountability. If an owner wants to significantly spread their financial portfolio and expand the business they founded, they are going to lose control under a Mainboard listing with "one-share, one-vote."[74] However, DCSS arrangements allowed owners to explore listing advantages while keeping control, as evidenced by the increase in these offerings in the USA. Undoubtedly, a technological business from Indonesia could seek listing on the NASDAQ or the NYSE (or even the SGX or HKEX), all of which permit DCSS arrangements.[75] However, a foreign listing could render it harder for investors in Indonesia to participate in the expansion of these businesses, and this could prove detrimental to the Indonesian economy.

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[72] Reddy, *supra* note 6.

[73] Ho, *supra* note 48.

[74] Bobby V Reddy, "Warning the UK on Special Purpose Acquisition Companies (SPACs): great for Wall Street but a nightmare on Main Street" (2022) 22:1 J Corp Law Stud 1–44, online: <https://doi.org/10.1080/14735970.2022.2036413>.

[75] Ho, *supra* note 48.

Furthermore, it is simpler for the current executives to adhere to its long-term innovative strategy with a DCSS. Being able to think strategically towards the future can be said to be especially advantageous for these corporations.[76] They frequently engage in new product development and, particularly in the first years of their development stage, try to achieve profitability by taking advantage of manufacturing cycles, which might raise spending on research and development to the detriment of immediate profits. Entrepreneurs will be less able to stick with such product cycles if they are subjected to pressure from investors to stick to high short-term earnings.[77] In addition, innovative technological businesses also need leaders and workers to deploy "firm-specific" resources. If executives feel a greater sense of security that their jobs are guaranteed in the longer term, they will consequently be more inclined to shell out on firm-specific talent acquisition. The controller's dedication over a longer period may also inspire other staff members to participate in the firm-specific human resources that are so crucial in businesses with strong "asset-specificity," like high-tech sectors.[78]

Accordingly, it is asserted that permitting DCSS arrangement corporations to go public on the board sector of the IDX allows owners to accumulate capital and acquire large sums of equity funding for expansion while still maintaining control. Insights and examples from other jurisdictions show that permitting DCSS arrangement firms to be listed on the mainboard contributes to the equity market's diversification and the attraction of a greater number of technological and innovative IPOs.[79] Considering the magnitude of Asia's technological sector, assuming DCSS businesses are permitted to list within the IDX's Mainboard section, there is no excuse why the IDX cannot emulate the accomplishments of its Singapore or Hong Kong counterparts in luring technological and innovative IPOs.[80] This means that to avoid stagnating and an absolute absence of investor interest

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[76] Marc T Moore, "Designing Dual-Class Sunsets : The Case for a Transfer-Centered Approach" (2020) 12:1 William Mary Bus Law Rev 93–166, online: <https://scholarship.law.wm.edu/wmblr/vol12/iss1/4/>.

[77] Ng, *supra* note 58.

[78] Reddy, *supra* note 6.

[79] Ho, *supra* note 48.

[80] Reddy, *supra* note 74.

in the years to come, the Indonesian authorities must urgently expand the securities market and attract potential new corporations. The IDX should imitate other prominent exchanges by permitting such businesses to be traded while in tandem imposing security measures and constraints to guarantee that the highest standards of corporate governance can be upheld, rather than forbidding them from doing so on its Mainboard segmentation. The piece that follows will proceed to elaborate on this.

B. Suitable Oversight Measures for DCSS to List on the IDX Mainboard

1. Permitting DCSS for New Entrants and Innovative Businesses

At first, incumbent Mainboard section traded corporations should not be permitted to offer enhanced voting shares since doing so would negatively impact the voting privileges of existing shareholders who have previously existed but are not solicited to purchase the shares in question. It may be possible to hinder listed businesses with single-class share arrangements from switching to DCSS solely to the advantage of their dominating owners while jeopardising the interests of minority shareholders by prohibiting the issuing of enhanced voting shares. When the SGX and HKEX changed their mainboard listing criteria to make room for DCSS businesses, they also introduced this approach.[81]

Secondly, criteria ought to be open for "innovative businesses" with DCSS should be permitted to go public on the Mainboard portion of the IDX, similar to its Hong Kong counterpart, considering that technological innovation and emerging-market enterprises currently do not exist on the Mainboard section of the IDX. It seems to make sense considering that it was mentioned earlier, that luring tech firms to the IDX is a goal of the Indonesian policymakers. Therefore, executives in the "low-growth conventional sectors" who cannot explain the fulfilment of its requirement to opt for DCSS and have enhanced voting shares to achieve their corporate goals shall not be hindered either.[82] There is no single description for these

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81 Puchniak & Tang, *supra* note 55; Chen, *supra* note 49.

82 Reddy, *supra* note 74; Reddy, *supra* note 6.

corporations, and all definitions can change as time goes by, therefore defining them is challenging. But the Indonesian authorities, particularly the IDX, might additionally offer instructions for prospective applicants, analogous to whatever its equivalent in Hong Kong is currently doing, by outlining the elements that the equity market will take into consideration in acknowledging "innovative" businesses, [83] and not just opening up for technological corporations only like what IDX is currently doing right now. Observations from HKEX demonstrate that the authority can be lenient in determining whether or not an application is an innovative business when implementing such recommendations. A further inquiry revolves around whether the securities authority ought to establish the prerequisite that such corporations maintain a projected market capitalisation of a certain amount or that they achieved a minimum of a specific number of profits in their most recent audited fiscal year to permit DCSS corporations to be listed on the Mainboard section of the IDX (like in the HKEX). However, on the contrary, another exchange, the SGX, ignored such constraints and just said that the securities director must prove that the corporation is "suitable for listing" under a DCSS arrangement.[84]

According to the authors, Singapore's response to this issue is more accommodating than Hong Kong's. Market capitalisation and income cannot be the only things to consider when judging if a corporation is appropriate for listing with a DCSS arrangement; they ought not to be the only ones. Determining a corporation's suitability based solely on its earnings or market valuation may be excessively cautious because plenty of technology-related businesses should have their growth potential measured by intangible qualities which include concepts or innovations. Thus, it is proposed that the IDX ought to emulate the example set by its Singaporean equivalent and conduct a comprehensive review of a prospective DCSS IPO application.

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[83] Chen, *supra* note 49.
[84] Ching, Zhuang & Chan, *supra* note 12.

2. Regulating the Possession of Enhanced Voting Shares to Controllers

As previously said, one significant benefit of a DCSS for corporations is that it gives a founder-manager the chance to maintain authority over their organisation in a fast-evolving business climate shortly after soliciting money from the public to finance a corporate expansion initiative. The founder-manager can lead the corporation to zero in on its long-term strategic goals without worrying about the short-termism of equity markets or the prospect of a hostile acquisition by unscrupulous acquirers by choosing the management team. This argument rationally implies that in organisations employing a DCSS, both founder-managers and incumbent top executives who have the same goals as the founder-manager ought to be qualified to receive the privilege of subscribing to enhanced voting shares.[85]

The HKEX has comparable restrictions as well. It limits ownership of these kinds of shares to individuals who served as (and continue to be) directors of the corporation about beneficiaries of DCSS. Furthermore, the shares in question will irrevocably mature if the beneficiary stops serving as a director; passes away or becomes disabled; or transfers the ownership interest to somebody else.[86] According to the aforementioned article, the only means by which to maintain the enhanced voting privileges of the interests is by transferring the founder-managers' enhanced voting shares onto another founder-managers. Other methods of transmission ought to render the shares into ordinary shares with voting rights with a single vote per share instantaneously. Proper succession management is made possible in DCSS organisations via the transference of founder-managers' enhanced voting shares to succeeding founder-managers. This allows the enterprises' goals and ambitions to be carried out over a longer period.[87]

As in the case of Singapore and Hong Kong, the Indonesian authorities or IDX might additionally require that the voting privileges of DCSS not be greater than ten times the voting power of regular shares and that regular shareholders maintain a minimum of ten per cent of the corporation's ballots

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85 Ragazzo & Costa, *supra* note 68.
86 Yan, *supra* note 13.
87 Ho, *supra* note 48.

to reduce the risk of expropriation and entrenchment. In the same way, major modifications to constitutional provisions and alterations of class privileges must be resolved on a one-share, one-vote footing. Corporations employing this type of share arrangement must be compelled to identify themselves with a special stock code and publish the proper cautionary wording, justification, and related risks in their listing documentation.[88]

3. Set Out Sunset Provisions for DCSS Arrangement

When a corporation announces its IPO, a timeline must be built into the planning of the DCSS. As was mentioned, a founder-manager would frequently choose a DCSS to maintain control over his or her business while it remains in its infancy and has inconsistent operating results. Once the firm becomes listed for a while, its business activities ought to grow steadier, and it ought to be better prepared to handle the demands of investors along with any prospective hostile acquisitions. Hence, once the corporation becomes listed for a specified amount of time, the enhanced voting shares are supposed to be discontinued.[89] This research advises both financiers and corporations to think about adopting DCSS with clear sunset restrictions as opposed to completely disallowing DCSS to corporations. Minority shareholders might decide to extend the DCSS at a predefined time after the IPO, or it might stay in effect until a particular occurrence, for instance, the passing of a set amount of time. These rules must be straightforward to comprehend while being easy to apply. They give businesses and investors the chance to benefit from DCSS whilst those benefits are obvious, i.e., when they are new and expanding quickly, while also giving businesses a time-consistent mechanism to be dismantled once the appropriate period has passed. The Indonesian authorities or IDX can communicate with stakeholders after weighing into consideration specific market circumstances regarding the ideal amount of time frame that should be placed on the DCSS arrangement for Indonesian corporations to be listed on the board sector of the IDX.

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[88] Ng, *supra* note 58.
[89] Ho, *supra* note 48.

VI. CONCLUSION

One-share, one-vote is a fundamental tenet of corporate governance that guarantees executives and managers will answer to shareholders. Controllers who have enhanced voting shares under the DCSS arrangement will be motivated to take advantage of investors with inferior voting shares and seek out unjustified profits. However, because founder-managers can concentrate their corporations on long-term strategic goals, a DCSS may increase the intrinsic value of specific company types, including technology-based enterprises or corporations with attractive "innovative" character. One finding from the analysis of this piece demonstrates that by putting in place certain protections and constraints to uphold rigorous corporate governance standards, comparable to other significant exchanges worldwide, such businesses can be permitted to go public on the Mainboard segment of the IDX and solidify their comparative advantage in luring IPOs of emerging sector corporations, which are currently absent from in Indonesia. Regulators undoubtedly must constantly examine policies to make sure that they remain business-friendly given the enormous competition that financial hubs experience from outside sources for capital and business. That is why to remain attractive as Southeast Asia's top financial center, Indonesia needs to alter its securities listing regulation while making its listing market adaptable to meet the needs of various enterprises. Undoubtedly, there are certainly worries that permitting DCSS corporations to list on the IDX's Mainboard market might diminish the safety offered to investors. The inclination of economies to fight with one another should not be interpreted hastily, though as a "race to the bottom" by prudential standards. Thus, it is said with confidence that the IDX should let DCSS businesses go public on the Mainboard sector on account of economic considerations, provided that the industry has adequate protections and regulations for safeguarding investors as recommended in this paper.

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COMPETING INTEREST

The authors declare no competing interests.

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