




Can Dual-Class Shares Thrive in Indonesia's Capital Market? A Legal Comparison with Asia's Financial Powerhouses

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Abstract

The introduction of dual-class shares (DCS) in Indonesia, particularly for technology startups, aims to foster innovation and enhance market competitiveness by allowing firms to retain control while accessing capital. This study investigates the implementation of multiple voting shares (MVS) within the DCS framework as outlined in POJK Number 22/POJK.04/2021, analyzing its effectiveness in Indonesia compared to other Asian financial hubs like Hong Kong and China, and offering a comparative legal analysis with the United States and Singapore. The findings reveal that despite the potential of DCS, Indonesia's capital market faces challenges, including the reluctance of companies to adopt



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this structure due to stringent requirements such as market capitalization and audited revenue, which often impede startups from going public. In contrast, countries like the United States and Singapore have adopted a more flexible approach, omitting such requirements, making the DCS model more attractive. The research underscores the urgency for Indonesia to reconsider its regulatory approach to technology startups and capital market access. The novelty of this study lies in its comparative analysis across diverse jurisdictions, identifying legal and regulatory barriers to the successful adoption of DCS in Indonesia. This study contributes to the discourse by proposing a hybrid regulatory approach, suggesting that market capitalization and audited revenue should only be considered when sustainability points cannot be quantified, as practiced in the United States and Singapore. Such a shift could help Indonesia foster a more dynamic and inclusive capital market, encouraging the growth of technology startups while maintaining investor protection and market stability.

KEYWORDS *Dual Class Share, Multiple Voting Share, Good Corporate Government, Capital Market*

I. Introduction

The “*one share, one vote*” (OSOV) principle is a critical corporate governance rule that mandates the equality of shareholder voting rights in numerous jurisdictions. Essentially, OSOV dictates that the quantity of votes a shareholder can cast must correspond to the number of common shares they possess. However, as corporate structures evolve and diversify, some experts argue that this rule has become too inflexible, as it fails to accommodate the varying needs and profiles of investors and companies.¹ A prominent example of this is the advent of technology startups, for

¹ Roberto Tallarita, “*High Tech, Low Voice: Dual-Class IPOs in the Technology Industry*” (Harvard University, 2018).

which the traditional OSOV concept has become less appealing.² These startups often seek to enter the capital market through Initial Public Offerings (IPOs) to raise equity funding, aiming to ensure the sustainability and potential expansion of their businesses.³ Nonetheless, the OSOV principle can pose challenges for these companies, as it may not align with their unique structures and growth strategies. Consequently, alternative voting structures and mechanisms are being explored to better cater to the diverse landscape of contemporary companies and shareholders.⁴

The solution to this challenge has led to the emergence of what is known as Dual Class Share ("DCS"), a shareholding encompassing two or more classes of common stock that carry unequal voting rights at the time of the general meeting of shareholders.⁵ In other words, a DCS is an agreement where two types of shares are issued by the same company, with one type of share granting greater powers compared to the other.⁶ In this case, the founders usually get shares with dual voting rights, while the public and outside investors get shares with ordinary voting rights.⁷ Through dual voting rights under DCS that are not owned by OSOV, it has allowed founders to retain control even though their shareholding is less than a majority in the company, and disproportionate to their

² Tallarita.

³ John Kong Shan Ho, "Allowing Dual Class Share Structure Companies in the Premium Listing Segment of the London Stock Exchange: Appreciating International Experiences and Recognizing Local Conditions," *Capital Markets Law Journal* 16, no. 3 (September 2021): 356–90.

⁴ Shan Ho.

⁵ Anita Indira Anand, "Multiple-Voting Share Structures," in *Shareholder-Driven Corporate Governance* (Oxford University Press, 2019), 69–82.

⁶ Triana Dewi Seroja et al., "Dual-Class Share Structure in the Indonesian Equity Market: Valuing International Insights and Acknowledging Local Wisdom," *Lentera Hukum* 10, no. 3 (2023): 433–68.

⁷ Anita Indira Anand, "Multiple-Voting Share Structures," in *Shareholder-Driven Corporate Governance* (Oxford University Press, 2019), 69–82.

shareholding.⁸ Even with lower voting rights, founders can still obtain funds from the capital market to finance the expansion of their company and at the same time maintain control over the company.⁹

The topic of dual-class shares has emerged as a highly contentious matter within contemporary capital markets and corporate governance discussions globally. Enclosure a Regulatory competition to attract initial public offerings (IPOs) has prompted several stock exchanges, such as the Singapore Exchange (SGX), the Stock Exchange of Hong Kong (HKEX), the Shanghai's Science Technology and Innovation Board (STAR Market), and the Shenzhen Stock Exchange (SZSE), to modify their regulatory framework to permit companies to issue dual-class shares if they choose to go public.¹⁰

To accommodate the special need for a disproportionate structure, regulators in some countries have allowed companies to adopt DCS structures, of which the New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotations (NASDAQ) in the US have been pioneers since 1984. In recent decades, these two exchanges have become ports for other countries, for example in Hong Kong, China, Singapore, to adopt DCS structures.

Even with lower voting rights, company founders can still obtain funds from the capital market to finance their company's expansion and at the same time maintain control of the company.¹¹ Despite the prevalence of the DCS structure, there are concerns over its implementation such as going against corporate governance and fear that

⁸ Lucian A. Bebchuk and Kobi Kastiel, "The Perils of Small-Minority Controllers," *Georgetown Law Journal* 107 (2019): 1453–1514.

⁹ Dhruv Aggarwal et al., "The Rise of Dual-Class Stock IPOs," *Journal of Financial Economics* 144, no. 1 (2022): 122–53.

¹⁰ Gurrea-Martínez, A. Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate. *Eur Bus Org Law Rev* 22, 475–515 (2021). 4

¹¹ Dhruv Aggarwal et al., "The Rise of Dual-Class Stock IPOs," *Journal of Financial Economics* 144, no. 1 (2022): 122–53,

the founder as a shareholder may take over the interests of other shareholders resulting in abuse so as to erode investor confidence. Therefore, the higher risk of jeopardizing investor protection associated with DCSC structures is a major concern and regulators where DCS is permitted have implemented various measures to control the operations of companies implementing DCS structures.

Therefore, this article was written with the aim of discussing the recent review of Indonesia's listing regime announced by the Financial Services Authority ("OJK") through POJK Number 22/POJK.04/2021 concerning the Application of Multiple Voting Rights Share Classification by Issuers with Innovation and High Growth Rate Conducting Public Offerings of Equity Securities in the Form of Shares ("POJK 22/2021") which allows companies to use Multiple Voting Share (MVS) under the DCS structure or in POJK 22/2021 known as Shares with Multiple Voting Rights ("SHSM") during the initial public offering/IPO on the Indonesia Stock Exchange ("IDX").

The rest of the article is divided into the following sections. Part B explains the method. Part C looking at its application in Indonesia which has been permitted then compare with countries in the Asian financial center such as China, Hong Kong, and Singapore with the aim of gaining lessons to take once they are allowed to implement DCS. This will discuss eligible requirements for public offering, disclosure requirements, dcs termination (sunset policy), shareholder protection and lock up. Part D looks at the challenge of finding common ground in addressing this problem DCS Indonesia and recommendation policy in the future. Part E contains the conclusion of this article.

This research is doctrinal legal research that uses a comparative approach. As outlined Eberle, through this approach allows access to information to legal sources from different legal systems in facilitating

research to see the relationship between existing legal arrangements.¹² In this case, the research states what should be done from a legal point of view in a particular legal system specifically related to the DCS of Asian financial center countries. This article uses secondary data through a literature review of various sources such as academic publications and government documents. Furthermore, through this approach, this research then provides policy recommendations that can be taken in the future, especially regarding the application of DCS in Indonesia.

II. Comparison of Dual-class Shares Policy in Indonesia, Hong Kong, China and Singapore

Dual-class share (DCS) structures deviate from the conventional "*one share, one vote*" principle by conferring a disproportionate allocation of voting rights to a specific group of shareholders, typically the company's founders. In contrast to the standard practice where a single share of stock corresponds to a single vote, dual-class structures empower founders with super voting shares that may carry 10 or more votes per share, while retaining equal treatment with other common shares in terms of their inherent value and dividends. This alternative framework aims to provide founders with enhanced control over the strategic direction of their companies, while still enabling them to access the benefits of public listing and broader equity investment.

The dual-class share (DCS) structure has witnessed a surge in popularity, with numerous high-profile companies opting for this framework. A prominent example is Google, a subsidiary of Alphabet Inc., which has notably adopted the DCS model, as illustrated in Figure 1.

¹² Edward J. Eberle, "The Method and Role of Comparative Law," *Washington University Global Studies Law Review* 8, no. 3 (2009): 451–83.

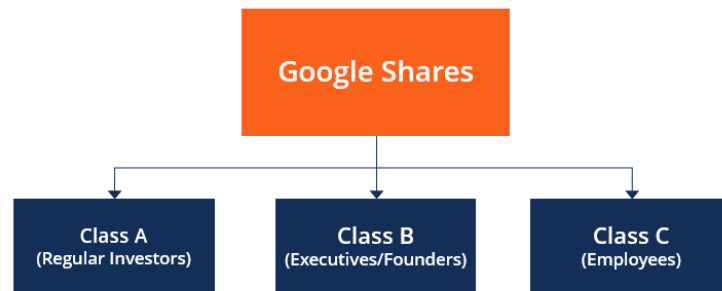


FIGURE 1. Dual-class Share Structure in Google

Source: CFI (2024)

At the time of its IPO in 2004, Google's share structure was segmented into three distinct categories:

- a. Class A Shares: Designed for ordinary investors, these shares grant one voting right per share, ensuring that individual shareholders have a voice in the company's decision-making process.
- b. Class B Shares: Reserved exclusively for Google executives and the company's founders, these shares confer ten votes per share upon their holders. This disproportionate voting power effectively enables key decision-makers to maintain a significant level of control over the company's strategic direction.
- c. Class C Shares: Allocated to Google's rank-and-file employees, these shares are notable for their lack of voting rights. As such, employees holding Class C shares do not have a direct say in the company's governance matters but may still benefit from the financial advantages of stock ownership, such as potential dividends and capital appreciation.

The fundamental argument in favor of the DCS structure is that it gives founders the ability to execute their unique vision because of the innate control it provides them inherently.¹³ When companies use a DCS

¹³ Junzheng Shen, "The Anatomy of Dual Class Share Structures: A Comparative Perspective," *Hong Kong Law Journal* 47 (2016): 477–510.

structure, there is a desire to maintain the company's values on a long-term basis, including integrity and the type of corporate culture of short-term market forces that may threaten them.¹⁴

From its own economic perspective, the DCS structure can be justified on the basis that the concentration of control to the founders who gets a class with better voting rights will somehow to the founders will increase the value of the company and as a result, will increase the value of the company even with limited voting rights.¹⁵ Empirical study evidence shows that from 2007 to 2017, companies with DCS structures outperformed companies based solely on OSOV. This is because the company has better and possible information can have a greater impact on the organizational structure of the company, which in turn improves its performance.¹⁶ Finally with such a position, company are more likely to create long-term interests for shareholders because they are shielded from speculative investors.¹⁷

Another benefit of the DCS structure is that it allows controlling shareholders to reduce the unsystematic risk they incur in holding large investments in the company.¹⁸ Given the disproportionately lower economic interests they have in companies under the DCS structure compared to their voting rights, shareholders under the DCS structure will be more risk averse to investment projects because shareholders under

¹⁴ Tian Wen, "You Can't Sell Your Firm and Own It Too: Disallowing Dual-Class Stock Companies from Listing on the Securities Exchanges," *Penn Law Review* 162, no. 6 (2014): 1496–1516.

¹⁵ Kristian Rydqvist, "DUAL-CLASS SHARES: A REVIEW," *Oxford Review of Economic Policy* 8, no. 3 (1992): 45–57.

¹⁶ Zohar Goshen and Assaf Hamdani, "Corporate Control and Idiosyncratic Vision," *Yale Law Journal* 125, no. 3 (2016): 560–795.

¹⁷ Kishore Eechambadi, "The Dual Class Voting Structure, Associated Agency Issues, and a Path Forward," *New York University Journal of Law and Business* 13, no. 2 (2017): 503–34.

¹⁸ Aurelio Gurrea-Martínez, "Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate," *European Business Organization Law Review* 22, no. 3 (2021): 475–515

OSOV will take some of those economic risks.¹⁹ In this way, the DCS structure will allow company to better match their level of risk aversion with public shareholders.²⁰

While the main criticism of the DCS structure is that it is based on delegation of power to the company, meaning that controlling shareholders are inevitable.²¹ Separating voting rights from economic ownership, hurts public shareholders because it eliminates the threat of market mechanisms that usually keep company management in check.²² Based on the founders' control over the DCS structure, public shareholders have little or no say in important decisions. Then another fear, is the risk of companies as controlling shareholders taking advantage of their power position at the expense of common shareholders as public shareholders.²³ This is because public shareholders are most vulnerable to mismanagement or failure to fulfill their responsibilities.

Then from the perspective of the stock exchange, if corporate governance and investor protection are not implemented properly it can damage the long-term development of the stock exchange market due to the lack of adequate corporate governance and investor protection.²⁴ This is due to concerns of abuse by controlling shareholders that could lead to negative sentiment over the DCS structure thus lowering investor interest, which in turn leads to poorer valuations and a return to increased negative

¹⁹ Gurrea-Martínez.

²⁰ Gurrea-Martínez.

²¹ Bradford D. Jordan, Soohyung Kim, and Mark H. Liu, "Growth Opportunities, Short-Term Market Pressure, and Dual-Class Share Structure," *Journal of Corporate Finance* 41 (2016): 304–28.

²² Jordan, Kim, and Liu.

²³ Scott W. Bauguess, Myron B. Slovin, and Marie E. Sushka, "Large Shareholder Diversification, Corporate Risk Taking, and the Benefits of Changing to Differential Voting Rights," *Journal of Banking & Finance* 36, no. 4 (April 2012): 1244–53.

²⁴ Aurelio Gurrea-Martínez, "Should Securities Regulators Allow Companies Going Public with Dual Class Shares?," Oxford Business Law Blog, 2018.

sentiment, ultimately resulting in overall damage to the reputation and status of the market.²⁵

As already indicated, the structure of DCS has long been debated for its possible advantages and disadvantages, but some middle ground is essential to offer balance.²⁶ This is usually provided by allowing a DCS structure with some form of sunset policy to finally end company dominance.²⁷ This is said to limit the situation of the company, where the founder is less talented or includes from the successor of the founder to the viability of the company.²⁸ As a matter of protection, countries have established stricter screening with market capitalization requirements and forward outlook assessments, as well as allowing multiple class divisions for certain types of companies, including assessing whether or not the company has talented founders.²⁹

Finally, as Hardman outlines, at its core the DCS structure debate is about whether we should be wrong in ensuring that good investors can discipline bad founders, or whether we should be wrong in ensuring that good founders can be free of bad investors.³⁰ While we can't rely on market forces themselves to provide a filter between good and bad founders, regulators also can't be sure whether a founder will be good or bad. To make matters worse, there is no guarantee that this will inherently

²⁵ Gurrea-Martínez.

²⁶ Jill E. Fisch and Steven Davidoff Solomon, "The Problem of Sunsets," *Boston University Law Review* 99 (2019): 1057–99.

²⁷ Andrew William Winden, "Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures," *Columbia Business Law Review* 3 (2018): 852–951.

²⁸ Winden.

²⁹ Min Yan, "The Myth of Dual Class Shares: Lessons from Asia's Financial Centres," *Journal of Corporate Law Studies* 21, no. 2 (021): 397–432.

³⁰ Jonathan Hardman, "Succession's Lessons for the UK's Dual Class Shares Debate: Beyond the Founder as the Benign Genius," *Law, Culture and the Humanities*, March 2022, 174387212210807.

be good, in fact there is a higher risk that investors do not understand the sector, leading to further market problems.³¹

A. Indonesia

Over the past few years, Indonesia, one of Southeast Asia's largest economies, has experienced rapid growth in its tech startup ecosystem. Encouraging fast-growing technology startups in the country to list their shares on the IDX, OJK has established POJK 22/2021 which allows companies to issue several shares with voting rights when conducting an IPO such as the DCS structure in the form of MVS.

a. Eligible Requirement for IPO

Companies that will implement MVS must meet the following criteria. First, utilizing technology to create product innovations that increase productivity and economic growth, as well as social benefits. Second, having among total assets of at least Rp 2 trillion, having conducted operational activities at least three years before the date of the registration statement, a compound annual growth rate of total assets of at least 20% in a three-year period; and a compound annual revenue growth rate of at least 30% over a three-year period. Third, it is not an issuer that has conducted a public offering of equity securities. Fourth, meet other criteria determined by OJK.³² In connection with the last point, it should be noted that OJK may impose other criteria at its discretion. In addition to the above criteria, issuers must regulate the provisions of MVS in their articles of association.³³

³¹ Hardman.

³² Art. 3 (2) POJK 22/2021

³³ Art. 3 (1) POJK 22/2021

b. Disclosure Requirements

POJK 22/2021 provides MVS disclosure requirements in the prospectus in the framework of the public offering such as details of the DCS structure and associated risks, reasons for adopting it, key matters subject to enhanced voting rights and their implications.³⁴ While recently, IDX will provide a unique code in the trading exchange so that investors can specifically distinguish between DCS and non-DCS structure stocks.

c. Sunset Policy

Based on POJK 22/2021, MVS can only be valid for 10 years from the effective date of the IPO registration statement.³⁵ After the MVS expires, the company can extend the MVS validity period for another 10 years, subject to the approval of the independent shareholders at the general meeting of shareholders.³⁶ Other than time-based, MVS will be converted into ordinary shares based on the following events: First, the MVS holder dies or is declared in the conservatorship and within six months MVS is not transferred to another MVS holder or to a party who has been determined to be the party entitled to own MVS; Second, the MVS holder transfers his MVS to another party who has not been appointed as the MVS holder in the IPO prospectus; Third, MVS holders, collectively or severally, hold no more than 50% of the total voting rights in the issuer, and such condition is not corrected within six months after its occurrence; Fourth, the MVS period has expired if the MVS holder is a legal entity, no longer meets the eligibility criteria as described above; or Fifth, if the MVS holder is a director at the issuer, then he no longer serves

³⁴ Art. 19 POJK 22/2021

³⁵ Art. 5 (1) POJK 22/2021

³⁶ Art. 5 (2) dan (3) POJK 22/2021

as a director at the issuer or can no longer carry out his duties as a director based on the decision of the relevant agency (including OJK).³⁷

d. Investor Protection and Lock Up

POJK 22/2021 prohibits MVS holders from transferring all or part of their MVS for two years after the effective date of the IPO registration statement.³⁸ In addition to regulating lock-ups for MVS holders, the POJK also regulates lock-ups for existing ordinary shareholders of the company. If the book value per share recorded in the issuer's last financial statements is lower than the IPO price, then all existing common shareholders of the company may not transfer all or part of their shares in the issuer for eight months after the effective date of the IPO.³⁹ In addition, the company must apply the ratio of MVS votes to common shares in the following proportions:⁴⁰

TABLE 1. Ratio of MVS votes in Indonesia

Percentage of MVS Ownership in the Issuer's Issued and Paid-up Capital	Voting Rights Ratio (MVS)
Between 10% and 47.36%	10: 1
Between 5% and 10%	20: 1
Between 3.5% and 5%	30: 1

Source: OJK, 2024

B. Hong Kong

DCS in Hong Kong has been banned since 1989, but later in 2013, there was renewed debate for DCS in Hong Kong to be allowed by the Hong Kong Stock Exchange ("HKEX") due to Alibaba's plans to list on the

³⁷ Art. 14 POJK 22/2021

³⁸ Art. 6 (1) POJK 22/2021

³⁹ Art. 6 (2) POJK 22/2021

⁴⁰ Art. 10 (1) POJK 22/2021

HKEX.⁴¹ However, back then regulations excluded it and for this reason, Hong Kong missed out on some good opportunities to list well-performing companies, such as Alibaba. Under the pressure of international competition, in April 2018, the HKEX finally lifted the ban.⁴² The HKEX amended its main board listing rules and included Chapter 8A, under which DCS structure companies have been allowed under known Weighted Voting Rights (WVR) to register on its main board subject to certain safeguards and measures.⁴³

a. Eligible Requirement for IPO

The HKEX permits new issuers to adopt dual-class shares (DCS) only at the time of their Initial Public Offering (IPO) and explicitly prohibits companies that have already gone public from implementing dual-class recapitalizations.⁴⁴ In Hong Kong alone, companies wishing to adopt DCS must meet the minimum market capital requirement of HK\$40 billion, or if the market capitalisation is less than HK\$40 billion, there is an additional requirement to have at least HK\$1 billion in revenue from the most recent audited financial year.⁴⁵ These requirements are implemented as a metric of business success and development potential as well as to ensure that DCS is only used on a limited basis in established, high-profile companies.⁴⁶

⁴¹ Raymond Siu Yeung Chan and John Kong Shan Ho, “Should Listed Companies Be Allowed to Adopt Dual-Class Share Structure in Hong Kong?,” *Common Law World Review* 43, no. 2 (014): 155–82.

⁴² Chan and Shan Ho.

⁴³ Robin Hui Huang, Wei Zhang, and Kelvin Siu Cheung Lee, “The (Re)Introduction of Dual-Class Share Structures in Hong Kong: A Historical and Comparative Analysis,” *Journal of Corporate Law Studies* 20, no. 1 (2020): 121–55.

⁴⁴ HKEX Mainboard Listing Rules 8A.05

⁴⁵ HKEX Mainboard Listing Rules 8A.06

⁴⁶ Huang, Zhang, and Lee, “The (Re)Introduction of Dual-Class Share Structures in Hong Kong: A Historical and Comparative Analysis.”

In addition to the above requirements, separately HKEX also provides additional requirements. First, companies that want to make a public offering with a DCS structure must be innovative companies. HKEX defines an innovative company as one company with more than one of the following characteristics: (i) its success is demonstrated due to implementation, the company's core business, new technologies, innovations and/or new business models, which also serve to differentiate the company from existing players; (ii) the existence of research and development carried out so as to contribute significantly to the value of activity costs and main costs; (iii) its success is demonstrated due to its unique features or intellectual support; and/or (iv) has a market capitalization/value of intangible assets that are substantial compared to their tangible assets.⁴⁷

Furthermore, HKEX will consider the overall circumstances to determine the company's conformity with the eligibility criteria for DCS. Under this standard, the HKEX reviews facts and circumstances on a case-by-case basis to determine whether a company can be characterized as innovative and qualified for the DCS structure.

b. Disclosure Requirements

To increase transparency and public awareness about DCS companies, the HKEX requires companies to make additional disclosures in public offerings. The Weighted Voting Rights (WVR) Warning, for example, is given as a unique code that must be clearly placed on the front page of all company documents including periodic financial statements, circulars, notices and announcements as well as documents or proof of ownership of registered equity securities.⁴⁸ In particular, recording documents and periodic financial statements, DCS warnings are further

⁴⁷ HKEX, Guidance Letter: Suitability for Listing with a WVR Structure (GL93-18, April 2018).

⁴⁸ HKEX Listing Rule 8A.37 dan HKEX Listing Rule 8A.38

clarified by including a description of the DCS, the company's reasons for adopting DCS, and related risks for shareholders.⁴⁹ This alert informs the public that the company is controlled under the DCS and informs investors about the potential risks of investing in a company with a DCS structure. In addition, DCS shareholders must also be identified in the listing documents as well as interim and annual reports. To enhance the visual difference between DCS companies from non-DCS companies on the exchange, a 'W' letter marker is placed at the end of the stock name.⁵⁰

c. Sunset Policy

The HKEX restricts shareholders of the DCS structure to directors of companies with certain sunset clauses. It is implemented to ensure that DCS shareholders are managing individuals who make material contributions to the company's long-term innovative success.⁵¹ Therefore, enabling these companies to fully utilize the benefits of DCS structure shares to provide exclusive visionary capabilities of their management bodies. In relation to the transfer of DCS structure shares converted into non-DCS shares, made when the DCS structure shareholder dies, ceases to be a director, is considered by HKEX to be paralyzed, or no longer meets the requirements of the director, then the DCS structure shares expire.⁵²

d. Investor Protection and Lock Up

In order to reduce the risk to the DCS structure, the HKEX has established rules of protection requirements including for investors in DCS structured companies. This includes first, when listing on the exchange, the company aligns voting rights between DCS holders and

⁴⁹ HKEX Listing Rule 8A.37

⁵⁰ HKEX Listing Rule 8A.42

⁵¹ HKEX Listing Rule 8A.11

⁵² HKEX Listing Rule 8A.17

non-DCS shareholders as a means of limiting the voting rights of DCS shares in certain situations. It is required that non-DCS shareholders amounting to at least 10% of the voting rights under OSOV may convene a general meeting and also add resolutions at the general meeting of shareholders.⁵³

Furthermore, certain important matters shall be selected based on OSOV, where each DCS share shall be treated as OSOV share while important matters shall be selected based on the following: (i) amendments to the articles of association; (ii) the variation of rights inherent in each class of shares; (iii) appointment or dismissal of Independent Non-executive Directors; (iv) appointment or dismissal of auditors; and (v) dissolution of the listed issuer.⁵⁴

Second, a lock-up policy is imposed in the form that investors must remain on hold at the time of the IPO and will be required to maintain an aggregate of 50% of their investment for no less than six months after the completion of the IPO.⁵⁵ This is so that holders do not immediately sell their shares which are feared to have a bad influence on DCS structured shares. In addition, WVR shareholders must collectively own a minimum of 10% of the company's total issued share capital.⁵⁶

Finally, to strengthen the monitoring function in DCS companies, HKEX requires each company to establish a Corporate Governance Committee, chaired by and composed entirely of Independent Non-executive Directors (INEDs), an independent non-executive director, with the aim of ensuring that the company is operated for the benefit of all shareholders as it is appointed under OSOV to ensure the independence of directors from DCS shareholders and thus they It is expected to protect the interests of shareholders in various decisions.⁵⁷

⁵³ HKEX Listing Rule 8A.09

⁵⁴ HKEX Listing Rule 8A.24

⁵⁵ Hong Kong Exchanges and Clearings Ltd, 38–39.

⁵⁶ HKEX Listing Rule 8A.12

⁵⁷ HKEX Listing Rule 8A.33 and Rule 8A.34

C. China

Company Law China since 1993 has implemented the OSOV regime for public companies. The applicability of the OSOV also remained unchanged in its 2013 changes. Including in 2018 also still prohibits companies from going public with a DCS structure. But the occurrence of Alibaba, Baidu, Tencent, Xiaomi and other Chinese tech giants opting for IPOs in the U.S. and more recently, Hong Kong and Singapore in 2018 adopting the DCS structure, has triggered China to relax its restrictions on OSOV and allow the DSC structure by creating a Sci-Tech Innovation Board on the Shanghai Stock Exchange ("SSE").⁵⁸ Therefore, in January 2019, China's Securities and Regulatory Commission (CSRC) allowed high-tech and innovative companies to register with a DCS structure known as Differentiated Voting Rights (DVR).⁵⁹

a. Eligible Requirement for IPO

Currently, the DCS structure can only be allowed by SSE only specifically for companies: (i) focusing on global technologies with national key areas to be able to deliver a significant state economy; (ii) follow government strategies, rely on core technologies and have innovative capabilities; and (iii) have a stable business structure, a high level of market recognition and reputation, and growth potential.⁶⁰ In addition, SSE in permitting DCS structures is currently only available to

⁵⁸ Min Yan, "Differentiated Voting Rights Arrangement under Dual-Class Share Structures in China: Expectation, Reality, and Future," *Asia Pacific Law Review* 28, no. 2 (2020): 337–59.

⁵⁹ Charlie Xiao-chuan Weng, Shangxuan Wu, and Zhaohui Shen, "The First Step of a Long March: Dual-Class Company Regulation and the Experiment by the Sci-Tech and Innovation Board in China," in *Technology and Corporate Law* (Edward Elgar Publishing, 2021), 178–204.

⁶⁰ SSE, Examination Rules of Issuance and Listing for the Sci-Tech Innovation Board (2019).

companies that fall into categories specializing in information technology, biotechnology and pharmaceuticals, energy and environmental protection.⁶¹ Just like in Hong Kong, DCS in China is only valid for IPO.⁶²

To be able to adopt the DSC structure, SSE requires companies to have a market capitalization of at least RMB 10 billion or have a market capitalization of at least RMB 5 billion with revenues of at least RMB 500 million for the last audited financial year.⁶³ In support of the DCS structure, China's Sci-Tech Innovation Board was officially launched as an additional major index in SSE, to further support the development of innovative enterprises in the field of science and technology.⁶⁴

b. Disclosure Requirements

SSE, in increasing transparency and public awareness around the regulation of DCS structures, has required companies adopting DCS structures to make complete and detailed disclosures of information, especially related to governance risks associated with DVR arrangements and related shareholder protection mechanisms.⁶⁵ Details of shareholders owning shares under this DCS structure shall be disclosed to all shareholders in the notice of the general meeting of shareholders.⁶⁶ The implementation and changes of such arrangements, as well as the implementation of measures to protect shareholders with lower voting rights, are also required to be disclosed in the company's periodic reports.

⁶¹ SSE, The Guidance on Sponsoring Companies to List on the Sci-Tech Innovation Board (2019), s 5.

⁶² Hamid Beladi et al., "Dual-Class Share Structure on the Dividend Payout Policy: Evidence from China Concepts Stocks," *International Review of Financial Analysis* 82 (July 2022): 102212, <https://doi.org/10.1016/j.irfa.2022.102212>.

⁶³ SSE Star Market Listing Rules Article 2.1.4.

⁶⁴ Yan, "Differentiated Voting Rights Arrangement under Dual-Class Share Structures in China: Expectation, Reality, and Future."

⁶⁵ SSE Star Market Listing Rules Article 4.5.12.

⁶⁶ SSE Star Market Listing Rules Article 4.5.12.

But unlike in Hong Kong, there is no unique code on the exchange given to companies that adopt the DCS structure.

c. Sunset Policy

As we have seen, shares with a DCS structure can be converted into shares with sole voting rights at a certain time in the future if there is a time-based sunset provision or when a predetermined event is triggered in the context of an event-based sunset. Such is the case with the HKEX in Hong Kong, where shares with special voting rights will be converted into shares with sole voting rights on the transfer of shares with special voting rights and the controller who ceases to serve as director, as discussed above. Similarly, SSE has established termination provisions in four situations, i.e.: (i) fails to meet its eligibility for the requirements of SSE Star Market Listing Rules Article 4.5.3. related directors who make material contributions to the development of the company or business growth may hold special voting rights under the DCS structure; (ii) holders with special voting rights lose their actual control of the shares; (iii) holders with special voting rights transfer shares with these special voting rights, or delegate the exercise of special voting rights to another person; and (iv) the company's controller changes.

d. Investor Protection and Lock Up

To ensure founders retain control, special voting rights in the DCS structure are restricted to persons who were directors both before and after the IPO, and those who have made material contributions to the development or growth of the company's business, as mandated in SSE Star Market Listing Rules Article 4.5.3.⁶⁷ Furthermore, SSE mandates that public shareholders must not be less than 10% of all voting shares issued by a company in an effort to increase ownership incentives to better align

⁶⁷ Yan, "Differentiated Voting Rights Arrangement under Dual-Class Share Structures in China: Expectation, Reality, and Future."

the controlling interests with those of public shareholders.⁶⁸ Furthermore, to protect investors, there are special requirements for individual retail investors who participate directly in SSE. To become a qualified investor, an individual needs at least RMB 500,000 in their account and no less than 24 months of having joined the exchange as commensurate measures to protect shareholders.

D.Singapore

One of the main reasons Singapore allows companies to adopt the DCS structure is to help the Singapore Exchange ("SGX") compete in order to maintain its competitiveness as a financial centre.⁶⁹ The DCS structure in Singapore began when Manchester United initially considered listing on the SGX with the DCS structure but eventually opted to list its shares on the NYSE in August 2012.⁷⁰ Difficulties in obtaining approval for DCS's offering in Singapore at the time were cited as the main reason for the change of listing venue.⁷¹ But the enactment of section 64A of its Companies Act, which came into force in early 2016, sparked discussions between the Monetary Authority of Singapore (MAS) and SGX on whether to allow DCS structures.⁷² In February 2017, SGX finally published a consultation paper on the DCS structure with the aim of soliciting feedback, views and suggestions from the public regarding broad policy considerations on whether to introduce a listing framework for the

⁶⁸ SSE Star Market Listing Rules Article 4.5.7

⁶⁹ Leonard Ching, Alvin Zhuang, and Wayne Chan, "Dual-Class Share Structures—the Singaporean Response," *Capital Markets Law Journal* 14, no. 4 (2019): 451–68.

⁷⁰ Ching, Zhuang, and Chan.

⁷¹ Ching, Zhuang, and Chan.

⁷² Shu Yih Ng, "Dual Class Shares Listings in Singapore - Problems and the Way Forward," *Singapore Law Review* 38 (2020): 182–212.

DCS structure in Singapore.⁷³ Finally, since June 26, 2018, new companies wishing to be listed on SGX have been allowed to implement a DCS structure known as MVS.

a. Eligible Requirement for IPO

Unlike Hong Kong and China, SGX does not set market capitalization requirements and only new offerings are allowed to adopt the DCS structure. Although there is no market capital requirement, SGX has an assessment that can be considered in suitability for a public offering application through the DCS structure as follows: (i) business model, by having the concept of a long-term plan that allows to increase growth rapidly; (ii) the company's track record, including the operational track record of the company, business or group; (iii) the role and contribution of DCS shareholders to the success of the company.⁷⁴

b. Disclosure Requirements

The rules require companies adopting the DCS structure to include a statement on the cover page of the annual report to include the following details pertaining to each DCS shareholder, such as: (i) the name of the shareholder; (ii) the number of DCS shares; (iii) total voting rights of DCS shares; (iv) the number of non-DCS shares; (v) total voting rights of non-DCS shares; (vi) total voting rights of DCS and non-DCS shares.⁷⁵

Furthermore, the company must clearly disclose in its offering prospectus, introductory documents and shareholder circulars, details of the structure of DCS and the associated risks, the reasons for adopting it, the main matters subject to enhanced voting rights and their implications. to non-DCS shareholders, the main provisions in its articles of association

⁷³ Pey-Woan Lee, "Dual-Class Shares in Singapore - Where Ideology Meets Pragmatism," *Berkeley Business Law Journal* 15, no. 2 (2019): 440–67.

⁷⁴ SGX Mainboard Rules 210(10)(b)

⁷⁵ SGX Mainboard Rules 1207(i).

relating to DCS shares and also six details relating to each DCS shareholder (as applicable also to the annual report above).⁷⁶

In clearly distinguishing a DCS company from a non-DCS company, in addition to the rule requiring a prominent statement emphasizing that the company is a DCS company on the cover page of its prospectus, offering memorandum, introductory documents, and circulars, companies adopting the DCS structure will be uniquely coded with non-DCS companies aiming to raise awareness and be easy to clearly identify on the exchange for investors.⁷⁷

c. Sunset Policy

In certain events, DCS structure shares will automatically change to shares based on OSOV, with the trigger events being as follows: (i) DCS shares are transferred to anyone, and in the case of a permitted group of holders, any person who does not belong to the group of holders; (ii) where the responsible director ceases to be a director (whether due to death, incapacity, retirement, resignation or otherwise). However, the expiration of this DCS structure does not apply if specifically approved by shareholders through the general meeting of shareholders process.⁷⁸

d. Investor Protection and Lock Up

To protect shareholders against the risks associated with DCS structure shares, SGX imposes the following protection requirements. First, to limit the voting inequality between DCS and non-DCS shares, SGX imposes a maximum of 10% per DCS share and that the voting ratio between DCS and non-DCS shares cannot be changed after the listing of 1:10%.⁷⁹

⁷⁶ SGX Mainboard Rules 610(10).

⁷⁷ SGX Mainboard Rules 610(10)(a).

⁷⁸ SGX Mainboard Rules Rule 210(10)(f).

⁷⁹ SGX Mainboard Rules 210(10)(d).

Second, avoid the transfer of share ownership by DCS holders. To ensure that DCS shareholders do not suddenly abandon their commitment to the DCS company and align their interests with non-DCS shareholders, SGX requires that DCS shareholders must provide a contractual agreement to lock up the transfer or release of their entire shareholding in the DCS issuer at the time of listing for at least 12 months after listing on the stock exchange.⁸⁰

Third, DCS shareholders are limited to responsible directors or a group of persons or entities within the 'permitted group of holders' of the issuing applicant.⁸¹ In addition, DCS shareholders must be determined at the IPO stage and in the case of the 'permitted group of holders, the scope of the permitted group of holders' must also be determined at the IPO stage.⁸²

Four, just as in Hong Kong in increasing the independence of directors, to ensure accountability and oversight, SGX rules require that it consist of a majority of INEDs and also be chaired by INEDs.⁸³ Next, similar to Hong Kong, certain important matters must be chosen through a voting process conducted under the basis of OSOV.⁸⁴

III. Characterized the Issue Within Jurisdictions and Identifying the Equations for Indonesia

Although there is debate whether DCS structure companies should be allowed to make public offerings, globally many exchanges have allowed companies to be allowed to adopt DCS structures due to commercial considerations and competitive pressure from other exchanges, including

⁸⁰ SGX Mainboard Rules 229(a).

⁸¹ SGX Mainboard Rules 210(10)(e).

⁸² SGX Mainboard Rules 210(10)(c).

⁸³ SGX Mainboard Rules 210(10)(i).

⁸⁴ SGX Mainboard Rules 730(b).

those carried out by countries in the Asian financial center of Hong Kong, China, Singapore, and recently followed by Indonesia. In general, countries in Asian financial centers have taken a more cautious approach in allowing DCS structure companies to be listed on exchanges by imposing safeguards and restrictions to protect investors and only allowing certain types of companies with DCS structures. This is because with a concentrated shareholding structure, there are concerns that the DCS structure will increase the risk of a minority shareholder takeover and confirmation by the controller.⁸⁵

However, the existence of such risks has not deterred regulators in the Asian financial hub from allowing DCS structure companies to be listed on their exchanges. They instead implemented many safeguards and restrictions after consultation with stakeholders to ensure that high standards of corporate governance were maintained while allowing companies with such DCS structures to be implemented.⁸⁶

Regarding Indonesia's recent adoption, if you look at Law Number 40 of 2007 concerning Limited Liability Companies ("PT Law") related to corporate governance with the implementation of the DCS structure, the PT Law does not prohibit it based on Article 53 and Article 84 and the PT Law. Where Article 53 paragraph (3) allows a company to have more than one classification of shares provided that one of them is ordinary shares or OSOV in its articles of association. Furthermore, Article 54 paragraph (4) explains the type of share classification based on Article 53 paragraph (3), where the DCS structure can be included as a voting rights share classification based on Article 53 paragraph (4) point a. This is then affirmed in Article 84 paragraph (1) that every share issued has one voting right, unless the articles of association specify otherwise. Therefore,

⁸⁵ Ho, "Revisiting the Viability to Allow Dual-Class Share Structure Companies to List in the Financial Market of Hong Kong."

⁸⁶ Julian Franks, Colin Mayer, and Stefano Rossi, "Ownership: Evolution and Regulation," *Review of Financial Studies* 22, no. 10 (October 2009): 4009–56, <https://doi.org/10.1093/rfs/hhn108>.

with OJK issuing POJK 22/2021 and followed by IDX by issuing Decree Number Kep-00101/IDX/12-2021 concerning Amendments to Regulation Number I-A concerning Listing of Shares and Equity Securities Other Than Shares Issued by Listed Companies, the DCS structure in Indonesia can be permitted.

Then in terms of adoption, Indonesia like other Asian financial center countries that take a strict approach with caution in allowing DCS structure companies to be listed on the exchange by imposing safeguards and restrictions to protect investors and only allowing certain types of companies with DCS structures. Despite the outlook in Indonesia with expectations for many tech startups to go public, but with Indonesia like other Asian countries having concerns from what Min Yan's recent findings are, seeing the implementation of DCS structures in Asian countries is experiencing challenges from the enthusiasm for the implementation of DCS structures, while there are still very few companies that have so far chosen to go public with DCS structures.⁸⁷

Only three of the more than 400 start-ups listed on the HKEX since 2018, one of more than 100 start-ups listed on SSE, and no start-ups listed on the SGX in the adoption of the DCS structure.⁸⁸ The very low take-up of dual-class shares in new IPOs in Hong Kong, Singapore and China at least partly reflects the diminishing appeal of such share structures when mandatory safeguards are tight. This situation can be contrasted with the IPO of the DCS structure in the US, where there are no such mandatory security measures so that 26 of the 134 newly listed companies in 2018 and 25 of the 112 newly listed companies in 2019 have adopted the DCS structure.⁸⁹

According to Yan, too many restrictions on the requirements of the DCS structure can ultimately undermine founders' ability to create more

⁸⁷ Yan, "The Myth of Dual Class Shares: Lessons from Asia's Financial Centres."

⁸⁸ Yan.

⁸⁹ Yan.

value by implementing long-term projects without fear of losing control.⁹⁰ In other words, although security measures are helpful in controlling increased corporate governance risks, excessive restrictions can weaken the value of dual-class shares. It is therefore important to strike a balance between the two sides. In short, security measures are a double-edged sword: they can effectively protect shareholders with lower voting rights, but the price is to restrain the ability of visionary founders and entrepreneurs to exercise their weighted voting rights.⁹¹

Thus, it is important to look for safeguards that help policymakers find a middle ground between benefits for company founders and public shareholders. In this regard, Min Yan voiced what policymakers and regulators should really focus on is how to use this double-edged sword to strike a balance between maintaining a flexible capital structure and controlling related corporate governance risks, or perhaps to explore more mechanisms to reduce reliance on strict security measures as a constraint by reducing the mandatory restrictions on class lists double to allow for more flexibility, but pair this with policies that have already been adopted.⁹²

The author sees Min Yan's opinion above can be attributed to the challenge of the requirement that the company must have an expected market capitalization of a certain value or have at least a certain level of revenue to the maximum that has been audited. Indeed, in the US, in the absence of this kind of requirement, it has become attractive for companies to choose the US as the place of listing. While the majority are in Asian countries, market capitalization and audited earnings are the deciding factors in considering whether a company is eligible to register with the DCS structure. However, for Singapore, SGX does not impose such requirements and only establishes that founders have suitability with the

⁹⁰ Yan.

⁹¹ Yan.

⁹² Yan.

DCS structure through a holistic assessment of the company's suitability for listing.

The authors are of the view that Singapore's approach in this regard is more flexible than the approach of other Asian countries where market capitalization and income are not decisive factors. As John Kong Shan Ho revealed,⁹³ Where evaluating an applicant's eligibility based on revenue or market capitalization may be too conservative given the growth potential of many tech companies must be assessed by intangible value such as concepts or ideas. Thus, the authors provide recommendations in a hybrid manner that can be applied with market capitalization and audited earnings not being the determining factors, where the first uses steps such as Singapore's conformity check as the beginning of the assessment. Market capitalization and audited revenue are only applied to determine when sustainability points cannot be measured.

In Singapore and the United States, market capitalization and audited earnings are not the principal criteria at the initial stage of evaluating the implementation of dual-class shares. The choice to adopt dual-class shares is generally influenced by several aspects, such as the company's ownership configuration, voting authority, and the necessity for founder or management retention. Regulatory authorities in both nations, including the Singapore Exchange (SGX) and the Securities and Exchange Commission (SEC), have formulated standards and listing regulations that consider all facets of a company's operations, governance, and performance. These rules may encompass factors including as market capitalization and earnings; however, they do not constitute the exclusive or principal criterion for sanctioning dual class share arrangements.

Therefore, this recommendation can be considered by OJK if in the future experiencing challenges such as described above and of course

⁹³ Ho, "Allowing Dual Class Share Structure Companies in the Premium Listing Segment of the London Stock Exchange: Appreciating International Experiences and Recognizing Local Conditions."

according to the author there is no need to rush to be replaced at this time because in Indonesia it does not look the same as in other Asian financial center countries.

IV. Conclusion

Indonesia has tried to adopt the virtues of existing jurisdictions while OSOV is widely recognized as a basic principle of corporate governance, but allows the DCS structure to be implemented through POJK 22/2021. The existence of POJK 22/2021 brings fresh air for technology startups to be able to list in the capital market while still holding control of the company. But in addition to bringing fresh air, on the other hand, there are concerns about challenges faced such as in other Asian financial centers that are still low in the adoption of DCS structures. In this article, if Indonesia faces challenges in the future, hybrid solutions can be considered with suitability checks as the beginning of the assessment and audited market capitalization and revenue being the deciding factors if sustainability points cannot be measured. Therefore, to keep companies interested in adopting the DCS structure, regulators have a responsibility to frequently review regulations to ensure their exchanges are market-friendly.

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*An investment in
knowledge pays the best
interest.*

Benjamin Franklin

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