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The Doing Business Indicators In Investor Protection: The Case Of Singapore

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THE DOING BUSINESS INDICATORS IN INVESTOR PROTECTION: THE CASE OF SINGAPORE

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ABSTRACT:

Singapore has been consistently ranked amongst the top for the ranking on the overall *Ease of Doing Business* index in the World Bank's *Doing Business* report. The paper is the first academic paper evaluating the effects and impact of the *Doing Business* project on the business law reform in Singapore. It provides an in-depth case study on how Singapore uses the *Doing Business* indicators in benchmarking its business law reform and the reasons for Singapore's extraordinary performance in the *Ease of Doing Business* index.

The study proves that the emphasis on efficiency in the *Doing Business* has positively influenced the policy making in Singapore. Nevertheless, the paper argues that while efficiency creates competitive edge for an economy, it shall not be the overriding principle in the policy making of a nation. Our core conclusion is that there are considerable limitations in the scope and contents of the indicators, especially the *Protecting Investor* index. We argue that the variables chosen in this indicator fail to capture features like investor protection and thus would not accurately reflect a jurisdiction's quality of governance. Meanwhile, we contend that areas such as investor protection and corporate governance are too context-specific to be evaluated based on a unified business assumption or by pure quantitative methods. We also provide specific suggestions for improvements of the *Doing Business* indicators.

Keywords: Doing Business, Indicators, Investor Protection, Singapore

* Assistant Professor, Faculty of Law, National University of Singapore. Email: lawll@nus.edu.sg The helpful comments on a draft of the Article were received from Mr. Lorenzo Casini, Mr. J. Christopher Thomas, Mr. Junianto James Losari, and participants in the 10th Annual Asian Law Institute (ASLI) Conference in India in May 2013. The authors also thank interviewees in Singapore from business, government, and academia who generously shared their knowledge and insights. Interviews were conducted on an anonymous, background basis.

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I. INTRODUCTION

The World Bank's *Doing Business* project, launched in 2002 is an important project that looks at domestic small and medium-size companies and measures the regulations applying to them through their life cycle.¹ The *Doing Business* report, which was firstly published in 2003, aims to provide an objective basis for understanding and improving the regulatory environment for business around the world.²

Doing Business reports cover various crucial indicator sets and are based on factual information about laws and regulations. They investigate the efficiency of government institutions, including business registries, courts, public credit registries, etc. The methodology used by the *Doing Business* builds on detailed information about regulations that are considered relevant to identifying specific problems and designing reforms. The *Doing Business* report 2014 covers 10 indicator sets over 189 economies: (1) starting a business, (2) dealing with construction permits, (3) getting electricity, (4) registering property, (5) paying taxes, (6) trading across borders, (7) getting credit, (8) protecting investors, (9) enforcing contracts and (10) resolving insolvency.³

Doing Business is part of a World Bank's group effort to support different governments in designing and implementing reforms that create a sound and efficient regulatory environment for businesses.⁴ One particular contribution of the project is the provision of measurable and comparative indicators on business regulations and their enforcement across countries.⁵ It sets benchmarks for decision-makers and provide information about the business environment to individual investors. By comparing each economy based on the quantitative data, *Doing Business* encourages countries to compete towards more efficient regulation.⁶ Over the years, numerous regulatory

¹ World Bank, *About Doing Business: Measuring for Impact*, at 15, available at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-Chapters/About-Doing-Business.pdf>.

² *Id.*, at 16.

³ *Cf.* The *Doing Business Report 2004* contains five topics only: (1) starting a business, (2) hiring and firing workers, (3) enforcing contracts, (4) securing credit, and (5) closing a business. Thereafter, the *Doing Business* extended the coverage of topics.

⁴ World Bank, *Celebrating Reform 2009, Doing Business Case Studies*, at 1, available at <http://www.doingbusiness.org/~media/FDKM/Doing%20Business/Documents/Reforms/Case-Studies/2009/DB09-CS.pdf>.

⁵ *Id.*

⁶ World Bank, *About Doing Business*, available at <http://www.doingbusiness.org/about-us>

reforms have been taken in areas covered in the *Doing Business*. Through these efforts, governments encourage businesses to invest, grow and create the jobs that lift people out of poverty.

Singapore enjoys the distinction of being the world's easiest place for starting and doing business. As of January 2014, Singapore has retained its No. 1 for the seventh year running on the World Bank's *Ease of Doing Business Index*⁷ (**Table 1 & Table 2**). Singapore was also regarded as having the best business environment in Asia-Pacific and worldwide by the Economist Intelligence Unit ("EIU") Business Environment Ranking 2009.⁸

The article is the first academic paper evaluating the effects and impact of the *Doing Business* project on the business law reform in Singapore. It provides an in-depth case study on how Singapore uses the *Doing Business* indicators in benchmarking its business and company law reform and in maintaining and improving its top ranking on the *Ease of Doing Business*. The paper proves that the *Doing Business* has significant impact on the formulation of business policies and decision making in Singapore. In order to improve its business regulatory environment and attract businesses and foreign investors, Singapore has put in substantial resources to improve its performance in the *Doing Business*. Significantly, the indicators attract serious attention of government officials and business leaders, leading to substantial amounts of policy dialogues and regulatory reforms. In particular, in various business law reforms, *Doing Business* indicators are used as "guideposts" (together with other sources) in decision making. As business law is the major branch of law that regulates the operation of a business, Singapore's experience in using *Doing Business* in the business law reform would provide useful guidance for other jurisdictions in future law reforms.

As claimed by the World Bank team, more than 100 academic papers have been published on *Doing Business* topic and related policy issues.⁹ Numerous economic

⁷ In the *Doing Business* 2007, 2008, 2009, 2011, 2012, 2013 and 2014, Singapore was ranked the No. 1 in the overall ease of doing business. In 2005, 2006 and 2010, Singapore was ranked the No.3, No.3 and No.2 respectively.

⁸ Economist Intelligence Unit, *Regional Business Environment Summaries: Asia-Pacific*, available at http://viewswire.eiu.com/index.asp?layout=VWArticleVW3&article_id=484524233

⁹ World Bank, *Doing Business and Related Research*, available at <http://www.doingbusiness.org/research>.

papers have employed *Doing Business* data for their empirical analysis.¹⁰ However, there is scant academic attempt examining the use and implication of *Doing Business* indicators specifically in business law, especially in the area of investor protection, which is an essential element in doing business.¹¹ Thus, this article seeks to fill the literature gap by examining the *Protecting Investors* index and discuss whether it captures the major areas of investor protection, especially minority shareholder protections.

The remainder of this article will proceed as follows. Part II discusses the general impact of the *Doing Business* report in the context of Singapore, Singapore's reaction towards *Doing Business* as well as how Singapore uses the *Doing Business* indicators in business regulatory reforms. Part III critically evaluates the research methodologies employed by the *Doing Business* and points out the limitations of the *Protecting Investors* index. It also provides specific suggestions for improvements of the indicators. Part IV draws conclusion and provides roadmaps for future reform.

II. THE IMPACT OF DOING BUSINESS: REACTIONS AND EVIDENCES FROM SINGAPORE

A. Background on Singapore

Before we examine the role and impact of *Doing Business* in Singapore, one might ask why Singapore always tops the ranking on the *Ease of Doing Business*. To appreciate the impact of *Doing Business* in Singapore, one shall first note that Singapore has a strong tradition of legal import and a free market economy. It has been very willing to respond in creating new laws and institutions to meet the business needs in the increasing globalisation. Moreover, efficiency has been highly valued within the government, and Singapore has endeavoured to achieve greater efficiency in business operations. Significantly, Singapore has been consistently ranked amongst the top for its efficient

¹⁰ E.g. Siemon Djankov, Caralee McLiesh & Rita Ramalho, *Regulation and Growth*, 92 (3) *Economics Letters* 395 (2006); André Stel, David Storey & A. Thurik, *The Effect of Business Regulations on Nascent and Young Business Entrepreneurship*, 28(2) *Small Business Economics* 171 (2007).

¹¹ E.g. Kevin Davis, Angelina Fisher, Benedict Kingsbury & Sally Engle Merry, *Governance by Indicators Global Power through Classification and Rankings*, (2012) (In this book, Davis *et al.* identifies legal, policy, and normative implications of the production and use of indicators as a tool of global governance and assess the strengths, problems, and effects of indicators in Human Rights, Humanitarian Assistance, and Social Investment.) However, there is scant in-depth case study assessing the role of *Doing Business* indicators in specific jurisdiction from legal perspective.

government and legal system, its high quality of the judiciary and the consistency of its application of law by numerous international organizations.¹²

Singapore is an island city-state in Southeast Asia with a territory of approximately 272 square miles. It has been a part of the Sultanate of Johor from the sixteenth to early nineteenth century.¹³ In 1819, the British East India Company decided to develop the southern part of Singapore as a British trading post.¹⁴ Since 1826, Singapore had been under the jurisdiction of British India, and it became the capital of the Straits Settlements in 1836.¹⁵ In 1963, Singapore gained independence from Britain and joined the new Federation of Malaysia. Singapore gained independence as the Republic of Singapore in 1965.

Given the long period under the British colonial rule, Singapore has inherited the English legal traditions, laws and practices, and thus enjoys the attendant benefits of stability and internationalisation inherent in the British system.¹⁶ Meanwhile, “the Singapore legal system risks being affected more directly by factors linked to regionalization and globalisation”.¹⁷ Against this background, Singapore has been willing to learn from the legal developments taking place in other jurisdictions, especially common law jurisdictions, and to improve its legal and judicial systems in the changing business environment. For example, Singapore received English law generally since the Second Charter of Justice in 1826¹⁸. In particular, English commercial law was received under the Application of English Law Act 1994 (for both common law and equity as well as statutory law).¹⁹ As company law is concerned, the current Singapore’s Companies Act has provisions from the United Kingdom, Australian and Canadian

¹² Political and Economic Risk Consultancy Annual Report 2012 ranked Singapore the cleanest country. IMD World Competitiveness Yearbook 2011 placed Singapore at the second of government efficiency rankings.

¹³ For a short history of Singapore, see Walter Woon, *The Applicability of English Law in Singapore*, in Kevin YL Tan ed, *The Singapore Legal System* (1999), at 231.

¹⁴ See *id.*, at 231-232.

¹⁵ See R.J. Jarman ed, *East & South-East Asia Titles: Straits Settlements Annual Reports (Singapore, Penang, Malacca, Labuan)*, at 1855–1941.

¹⁶ Eugene Tan and Gary Chan, *The Singapore Legal System*, available at <http://www.singaporelaw.sg/content/LegalSyst1.html#Section1>; for a brief overview of the Singapore legal system, see Garry F Bell, *The Singapore Legal System in Context- Whither the Concept of the National Legal System* in Kevin YL Tan ed, *The Singapore Legal System* (1999), at 1-16.

¹⁷ Bell, *id.*, at 15.

¹⁸ Andrew B L Phang, *The Reception of English Law*, 2 SAclJ 20 (1990), at 22.

¹⁹ Andrew B L Phang, *The Reception of English Law*, in Kevin Y L Tan ed, *Essays in Singapore Legal History*, Marshall Cavendish, (2005).

Companies' legislation²⁰. It also has many similarities to the Malaysian Companies Act of 1965.²¹ Singapore's Goods and Services Tax Act has adopted provisions from both the United Kingdom Value Added Tax Act and the New Zealand Goods and Services Tax Act.²²

On the other hand, as a young and small country with limited land and no natural resources, Singapore understands that openness is a key to success and it must rely on trade to sustain growth. Therefore, Singapore has taken economic reforms to transform the island into a nation with a free and highly developed market-based economy. Also, knowing that the domestic market is small and easily be saturated, Singapore adopted the high investment, export-led East Asian model and built its human and knowledge assets.²³ This approach enabled Singapore to develop high technology manufactures and tradable services.²⁴ By the end of the 1960s, manufacturing had become the lead sector of the country's economic growth. By the early 1970s, Singapore had reached full employment. In the 1980s, Singapore had become one of the four newly industrializing countries and the highly developed economies in Asia.²⁵ At present, Singapore is ranked the world's second freest economy,²⁶ the world's fourth leading financial centre,²⁷ as well as the country with the world's third highest Gross Domestic Product per capita.²⁸

B. *Doing Business* and Development in Singapore

One of the fundamental goals of the *Doing Business* project is creating a database to highlight the relationship between regulation and development.²⁹ In order to test whether *Doing Business* indicators serve as a useful proxy for better business environment and improvement in competitiveness of Singapore, one may look at the

²⁰ For example, section 216A of the Companies Act, which is the direct statutory derivative action, was suggested by Professor Walter Woon to the parliamentary draughtsman in 1990. Professor Woon noted that the procedures and grounds for a common law derivative action were far from satisfactory and that there was a need to clarify and reform the law. He highlighted sections 239 and 240 of the Canada Business Corporations Act 1985 which *mutatis mutandis* became sections 216A and 216B of the Singapore Companies Act.

²¹ Tan Cheng Han ed, Walter Woon on Company Law (2009), at 14-15.

²² *Id.*

²³ Yusuf, Shahid & Nabeshima, Kaoru, Small Countries Do it Better (World Bank, 2012), at 3.

²⁴ *Id.*

²⁵ World Bank, *Overview of Singapore*, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/SINGAPOREEXTN/0,,contentMDK:20146406~menuPK:286989~pagePK:141137~piPK:141127~theSitePK:272832,00.html>; Yusuf *et al*, *supra* note 23.

²⁶ Index of Economic Freedom 2014.

²⁷ The Global Financial Centres Index 2013.

²⁸ International Monetary Fund, World Economic Outlook Database of Singapore (In 2012, the gross national income per capita for Singapore is 61,046.958 USD).

²⁹ *World Bank 2004a*, at ix-x.

correlation between the rankings in *Doing Business* and other major economic benchmarks and governance indicators.

First, the World Bank's evidence finds that there is a high correlation between the rankings on the *Ease of Doing Business* and the World Economic Forum's Global Competitiveness Index.³⁰ The Global Competitiveness Index assesses measure-capturing factors such as macroeconomic stability, aspects of human capital, the soundness of public institutions and the sophistication of the business community.³¹ Table 1 below indicates that similar to Singapore's performance in the *Ease of Doing Business*, Singapore also presents an outstanding performance across the entire Global Competitive Index. Singapore has been the top Asian country in the Global Competitiveness Index and its overall ranking was increased significantly from No. 7 in 2007 to No.2 in 2012. In particular, the public and private institutions in Singapore have been rated as the best in the world for five years. Singapore is in the top 3 in seven of the 12 categories of the index and appears in the top 10 of three other categories in 2012. It ranks No.1 for the efficiency of its goods and labor markets, and is placed at No.2 in financial market development.³²

Second, the *Ease of Doing Business* is also widely considered to have a close connection with foreign direct investment ("FDI") flow.³³ Various case studies find that higher *Ease of Doing Business* ranking is associated with more FDI in a nation, which would typically create more jobs and bring in new technologies. Many senior officials also have suggested that a better ranking on the *Ease of Doing Business* implies that the investment climate of an economy is more favorable to foreign investors.³⁴ Arguably, business communities would likely to refer to an economy's ranking on *Doing Business*, so as to decide whether to make FDI in this economy.

As a small economy, Singapore has traditionally relied on FDI as a key instrument of industrialization.³⁵ Therefore, a high *Ease of Doing Business* ranking is essential to

³⁰ Doing Business Report 2013, at 19.

³¹ The World Economic Forum, available at <http://www.weforum.org/issues/global-competitiveness>.

³² See the World Economic Forum, *Global Competitiveness Report 2012-2013*, at 11.

³³ Doing Business Report 2013, at 47-49 and Figure 7.1 (noting that since the launch of Doing Business in 2002, nearly 2000 articles in the international press have drawn a connection between FDI and Doing Business. *Doing Business* also carried out a case study on this and proves the connection between Doing Business and FDI).

³⁴ *Id.*

³⁵ See Yusuf *et al.*, *supra* note 24, at 90.

Singapore in attracting FDI and eventually economic development. As per data released by Singapore Department of Statistics, Singapore's FDI stock has been increasing in the time period from 2007 to 2011 (**Table 1 & Table 2**). This is consistent with Singapore's performance on the *Ease of Doing Business*. In fact, despite of Singapore's high *Ease of Doing Business* rankings, there are other positive factors which help Singapore in attracting FDI over years, including, among others, a strong legal system, a knowledge-based environment, and an efficient government with high-integrity.

Third, the number of registered businesses is a clear reflector of the business environment of a country. The World Bank's empirical evidence has proven that business regulatory reforms make a tangible impact on firms' registration.³⁶ Especially, more new firms are registered after reforms making it simpler to start a business.³⁷ It finds that faster business registration is associated with more registration in industries with the strongest potential for growth. Easier start-up is associated with more investment in industries that are often sheltered from competition.³⁸ Statistics also show that smarter business regulation promotes economic growth,³⁹ greater entrepreneurship and firm productivity, as well as formal employment opportunities.⁴⁰

In Singapore, the total number of newly registered businesses firms (including companies, general partnerships, limited liability partnerships, limited partnerships and sole-proprietorships) rose year by year, from 40,580 in 2003 to 56,001 in 2011 (**Table 3**),⁴¹ indicating a sustainable business environment. A reading of Table 1 and Table 2 also shows that the growth of gross national income ("GNI") per capita is consistent with the growth of the registered businesses in Singapore.

In addition, Singapore's desirable economy and business environment has been recognized by various rankings in worldwide governance indicators, including, *inter alia*, the World Economic Forum's Global Competitiveness Report, the Global Information Technology Report, and the Economist Intelligence Unit's Country

³⁶ World Bank, *The Impact of the Regulatory Environment on Local Businesses Around the World*, available at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Miscellaneous/What-is-Doing-Business.pdf>

³⁷ Doing Business Report 2013, at 14.

³⁸ *Id.*, at 21.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ This table was drafted by the authors based on the annual reports of ACRA 2003-2012. In this table, the term "LLP" refers to "Limited Liability Partnership", "LP" refers to "Limited Partnership" and "Business" refers to "General Partnership and Sole Proprietorship".

Forecasts Report. Table 1 shows that Singapore continues to have the most business-friendly environment and most competitive economy over years. Singapore also maintained high rankings on the World Banks' Worldwide Governance Indicators ("WGI") from 1996 to 2011⁴² (Table 4).

Table 1: Singapore's Rankings on Global Indicators and Economic Performance⁴³

Rankings	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Ease of Doing Business Index	-	3	2	1	1	1	3	1	1	1	1
Global Competitiveness Index ⁴⁴	-	-	-	7	5	5	3	3	2	2	2
GNI per capita, PPP (current international \$) ⁴⁵	36,530	38,930	42,330	47,460	51,170	49,620	47,730	57,280	59,950	60,110	-
FDI Flows (billions SGD) ⁴⁶	-	-	-	-	465.7	509.9	574.0	620.3	650.9	-	-

⁴² Worldwide Governance Indicators, *Country Data Report for Singapore, 1996-2011*, available at <http://info.worldbank.org/governance/wgi/pdf/c193.pdf>. (The WGI measures six dimensions of governance, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. Singapore does especially well in the areas of Political Stability and Absence of Violence, Government Effectiveness, and Regulatory Quality.)

⁴³ This table was drafted according to the World Bank's World Development Indicators Database, the World Bank's Doing Business reports and the annual reports of the World Economic Forum's Global Competitiveness.

⁴⁴ The authors can only retrieve the World Economic Forum's Global Competitiveness index after 2006. Thus the figures before 2006 are not reflected in this table.

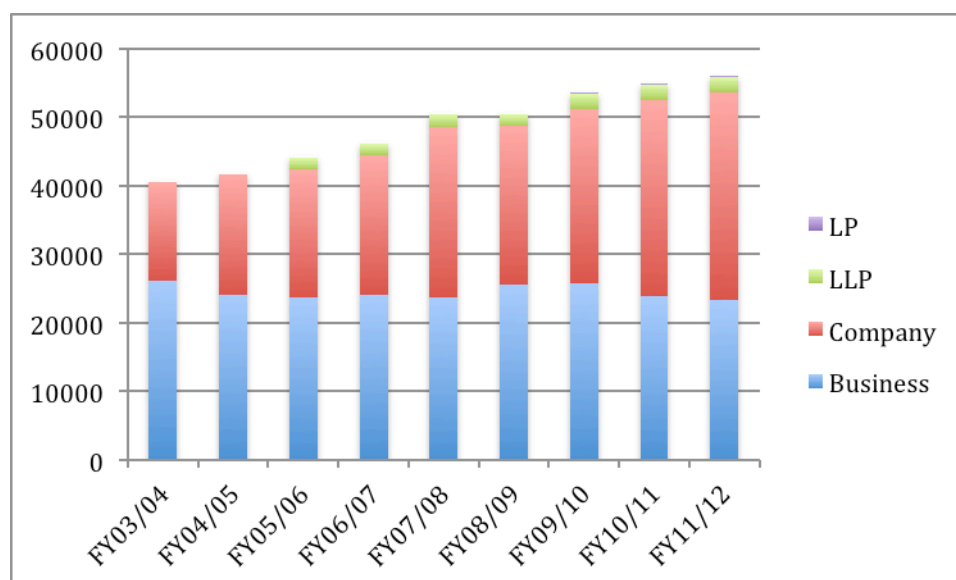
⁴⁵ The data was collected from the World Development Indicators, available at <http://databank.worldbank.org/data/views/reports/tableview.aspx>. The data of the GNI per capita, PPP (current international \$) of Singapore is available until the year of 2012 as of the date of this article.

⁴⁶ The data on foreign direct investment in Singapore is collected from Singapore Department of Statistics, available at http://www.singstat.gov.sg/statistics/browse_by_theme/investment.html. Only FDI figures after 2007 are available as of the date of this article.

Table 2: The Top Jurisdictions on the Ease of Doing Business 2014⁴⁷

	Singapore	Hong Kong	New Zealand	United States
Overall Ranking	1	2	3	4
Starting a Business	3	5	1	20
Dealing with Construction Permits	3	1	12	34
Getting Electricity	6	5	45	13
Registering Property	28	89	2	25
Getting Credit	3	3	3	3
Protecting Investors	2	3	1	6
Paying Taxes	5	4	23	64
Trading Across Borders	1	2	21	22
Enforcing Contracts	12	9	18	11
Resolving Insolvency	4	19	12	17

Table 3: Trend of New Entities Registered in Singapore⁴⁸



⁴⁷ The table was drafted based on Table 1.1 in Doing Business Report (Singapore) 2014.

⁴⁸ To appreciate the increase of the number of registered business vehicles in Singapore, it must be noted that the LLP and the LP are two new business vehicles in Singapore adopted by the Limited Liability Partnership Act 2005 and the Limited Partnership Act 2008 respectively. Meanwhile, the total number of registered business was slightly decreased in the financial year of 2008-2009 due to the global financial crisis.

Table 4: Worldwide Governance Indicators of Singapore Over Time⁴⁹

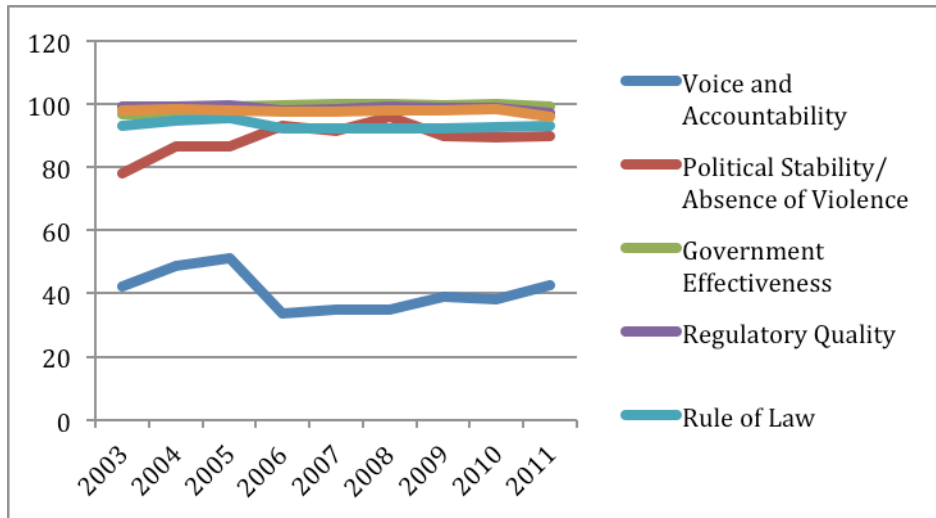
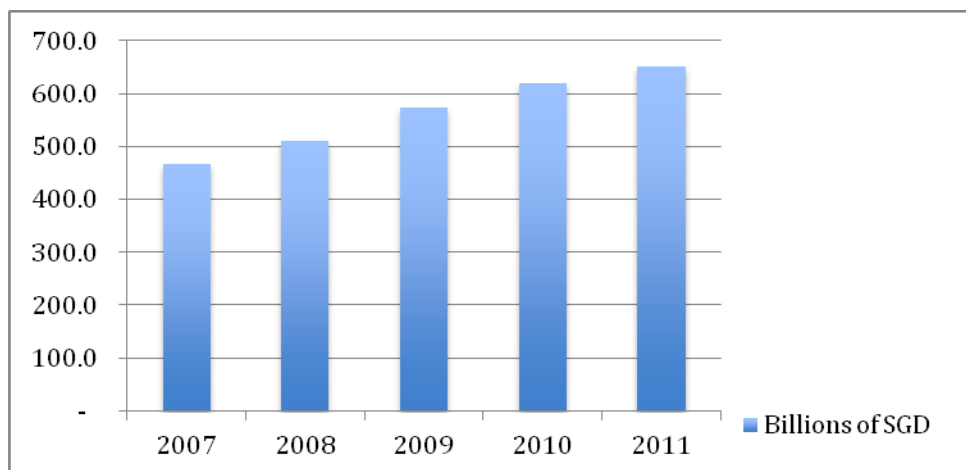


Table 5: Singapore Foreign Direct Investment Stock 2007-2011⁵⁰



C. How Does Singapore Use *Doing Business*

1. Decision Making and Institutional Structure

As observed by Davis *et al*, the use of indicators as a technology of global governance can be expected to affect the decision making by governing entities.⁵¹ In particular, *Doing Business* has inspired more than 270 business regulatory reforms since 2003.⁵²

⁴⁹ This table was drafted based on the World Bank's Worldwide Governance Indicators Reports of Singapore from 2003 to 2011. The reports are available at: http://info.worldbank.org/governance/wgi/sc_chart.asp#. The figures show the percentile rank of Singapore in different indexes of the governance indicators.

⁵⁰ *Supra* note 46.

⁵¹ Davis *et al*, *Governance by Indicators*, *supra* note 11, at 15-16.

⁵² *Doing Business Report 2011*, at vi.

Policy makers who are responsible for formulating rules and regulations of business, would be particularly interested in *Doing Business*, as they help in identifying the best performing jurisdiction or competitive jurisdictions on an individual indicator.

In the context of Singapore, decisions made by government agencies are in some way influenced by various kinds of indicators. In particular, *Doing Business* have largely motivated policy makers to modernize its business legislation and policies. Since 2002, Singapore government has participated in the global survey of doing business conducted by the World Bank.⁵³ A number of government agencies are involved in this project, including, *inter alia*, the Ministry of Trade & Industry, the Ministry of Finance, the Ministry of Manpower, the Accounting and Corporate Regulatory Authority (“ACRA”), Subordinate Courts, the Singapore Customs, the Monetary Authority of Singapore, the Land Transport Authority, the National Environment Agency, the Insolvency & Public Trustee’s Office and the Singapore Land Authority.⁵⁴ In particular, ACRA⁵⁵ is a key government agency involved in the *Doing Business* project. ACRA has the mission of making Singapore the best place to do business. It regularly reviews and refines business legislation to ensure that they are on par with global best practices,⁵⁶ and makes recommendations to the government on matters relating to the registration and regulation of business entities.⁵⁷ ACRA has contributed significantly to Singapore’s rankings for the indicator of *Starting a Business*.⁵⁸

Meanwhile, *Doing Business* is widely cited by the government in official websites and annual reports.⁵⁹ The Ministry of Trade and Industry, ACRA, the Singapore Economic Development Board (“EDB”),⁶⁰ as well as the SRING Singapore,⁶¹ also frequently advocate Singapore’s rankings on the *Ease of Doing Business*. All these enhance the weight of the *Doing Business* in the country and in its policy deliberations.

⁵³ See *Doing Business Reports 2003 - 2012, Acknowledgements*.

⁵⁴ See *Doing Business Report 2011 & Doing Business Report 2012, Acknowledgements*.

⁵⁵ ACRA was formed as a statutory board on April 1, 2004, following the merger of the then Registry of Companies and Businesses (“ROC”), and the Public Accountants’ Board (“PAB”).

⁵⁶ See ACRA Annual Report 2011/2012, at 18.

⁵⁷ See *About ACRA*, available at http://www.acra.gov.sg/About_ACRA/About_Us.htm.

⁵⁸ See ACRA Annual Report 2011/2012, at 20.

⁵⁹ For example, the rankings of Singapore on the *Doing Business* are highlighted in ACRA’s Annual Report 2010/2011, at 2.

⁶⁰ Singapore Economic Development Board is the lead government agency for planning and executing strategies to enhance Singapore’s position as a global business centre. The rankings of Singapore on the *Doing Business* are highlighted in its homepage, e.g. <http://www.edb.gov.sg/content/edb/en/why-singapore/about-singapore/facts-and-rankings/rankings.html>; and <http://www.enterpriseone.gov.sg/en/News/2010/Nov/101108%20Easy%20For%20SMEs.aspx>

⁶¹ SPRING Singapore is a government agency under the Ministry of Trade and Industry. It is responsible for helping Singapore enterprises grow and building trust in Singapore products and services.

2. *Approaches Taken by Singapore*

While the details of the process may vary periodically, in general, procedures for government agencies to apply the *Doing Business* indicators in Singapore are as follows. First, the Ministry of Trade and Industry would lead a coordinated reform effort by bringing together other government agencies (typically statutory boards⁶²) to study the *Doing Business* and discuss on how to improve the ease of doing business domestically.⁶³ Specifically, the *Doing Business* indicators are used as a benchmarking tool in evaluating the country's performance on different aspects of the business regulatory environment and stimulating policy debate and dialogue for future reforms.⁶⁴

The implementation role is normally assigned to different governmental agencies according to their respective mandates. For example, ACRA, being the national regulator of businesses entities and public accountants in Singapore, is mainly responsible for monitoring and implementing the *Starting a Business* indicator. Similarly, the Inland Revenue Authority, which is a government agency administering payment of taxes, is responsible for the indicator of *Paying Taxes*. The Insolvency & Public Trustee's Office, which administers the affairs of individual and corporate insolvencies, is in charge of the indicator of *Resolving Insolvency*. As to the indicator of *Trading Across Borders*, the Singapore Customs plays a major role in its implementation. In the meantime, a close cooperation among government agencies is always required to enable overall improvement of the nation's ranking on a specific indicator, as well as its performance in the *Ease of Doing Business*. For instance, both the Land Transport Authority and the Inland Revenue Authority have worked jointly on the indicator of *Paying Taxes*.⁶⁵

The involved ministries and statutory boards of the *Doing Business* project would then conduct thorough analyses on their respective indicators, as well as comparative studies among jurisdictions on specific indicators.⁶⁶ Specifically, the involved

⁶² In Singapore, a statutory board is an autonomous agency of the Government that is established by an Act of Parliament and overseen by a government ministry.

⁶³ Interview with a government official who has actively participated in the World Bank's survey on Doing Business in Singapore (anatomy required).

⁶⁴ *Id.*

⁶⁵ Interview with a government official who has actively participated in the World Bank's survey on Doing Business in Singapore (anatomy required).

⁶⁶ *Id.*

government agencies would study Singapore's ranking on each indicator and identify potential areas that may require better implementation or regulatory reforms. Thereafter, the government agencies would submit proposals internally for further action.⁶⁷ As observed by an official involved in the *Doing Business* project, comparative studies of various sorts of regulations on business activities help them identify the underlying institutional and regulatory problems within their agencies, and it is a useful regular exercise for their organization.⁶⁸

3. *Other Initiatives within the Government*

Apart from the ministries and statutory boards that are involved in the study and implementation of *Doing Business* indicators, there are other internal committees within the Singapore government that also make efforts to evaluate and improve business conditions in the nation. The Smart Regulation Committee is a typical example.⁶⁹ This committee was set up by the Singapore government in 2005 as a part of the government's effort in changing the mindset of agencies - from a regulator and controller to a facilitator.⁷⁰ It seeks to "establish an effective and responsive regulatory regime to foster self regulation and market discipline, and facilitate a competitive and innovative climate for doing business."⁷¹ In recent years, there have been hundreds of Smart Regulation initiatives done by different Government agencies and many of these have contributed to a business-friendly environment of Singapore.⁷²

In addition, many statutory boards also set up various internal committees to fulfill their missions. For instance, the Business Facilitation Advisory Committee was set up by ACRA to advise the organization on matters relating to starting and doing business in Singapore, with the aim of improving existing procedures and processes.⁷³ The Business

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Civil Service College of Singapore, *The Introduction of The Smart Regulation for Singapore*, available at <http://www.cscollege.gov.sg/cgl/EthosPast/06Apr/04Smart.pdf>

⁷⁰ *Id.* (Noting that this committee was evolved from the Rules Review Committee, which aimed to produce optimal regulation and to keep regulations updated in the changing business environment. Both the Smart Regulation Committees and the Rules Review Committee were formed to support the "Cut Red Tape" initiative in the government).

⁷¹ Third Report of the Estimates Committee (Parl.2 of 2011), Presentation to Eleventh Parliament, Second Session (March 14, 2011), at 8, available at [http://www.parliament.gov.sg/lib/sites/default/files/paperpresented/pdf/2011/Parl%20of%20of%202011%20-%20Report%20of%20the%20Estimates%20Committee%202011%20-%2011%20Mar%202011\[1\].pdf](http://www.parliament.gov.sg/lib/sites/default/files/paperpresented/pdf/2011/Parl%20of%20of%202011%20-%20Report%20of%20the%20Estimates%20Committee%202011%20-%2011%20Mar%202011[1].pdf).

⁷² *Id.*, at 9.

⁷³ Ministry of Finance, News Release, available at http://app.mof.gov.sg/newsroom_details.aspx?type=press&cmpar_year=2010&news_sid=20100830956247712435.

Registry and Facilitation Division of ACRA, which oversees the registration of business entities, participates annually in the *Doing Business* survey and studies the *Doing Business* reports regularly. It also develops new initiatives to make it easier to start and do business in Singapore.⁷⁴

D. *Doing Business* in Singapore's Business Regulatory Reforms

1. *Sustained Efforts*

Even before the launch of the *Doing Business* project in 2002, Singapore had already been very proactive in reducing cost and complexity of business regulation. Singapore's most notable regulatory improvements have been in the areas of *Starting a Business*,⁷⁵ *Trading Across Borders*⁷⁶, and *Resolving Insolvency*⁷⁷. All these efforts largely contributed to Singapore's high rankings on the *Ease of Doing Business*.

Firstly, the online-registration system – BizFile, is a noteworthy improvement in the ease of starting a business. It is an innovative online filing and information retrieval system initiated by the then Registry of Companies (“ROC”) in 2001.⁷⁸ The then ROC was the first regulatory agencies in the world to offer all its services online.⁷⁹ Before the system was made available, the process to start a business in Singapore was tedious, as the staffs had to enter customers' data into the registration system manually. Today, BizFile offers close to 300 e-services and serves as a one-stop facilitator for businesses, substantially minimising the cost and time of starting up a business.⁸⁰ Especially, the time to incorporate a company is reduced from 5 days to 15 minutes.⁸¹ Information is updated within 30 minutes of a successful filing, while the same process took 14 to 21 days before the reform.⁸² Moreover, businessmen can also do a search for registered

⁷⁴ Interview with a government official who has actively participated in the World Bank's survey on *Doing Business* in Singapore (anatomy required).

⁷⁵ The indicator of *Starting a Business* contains different indicators on the procedures that are officially required for an entrepreneur to start up and formally operate an industrial or commercial business. These indicators include obtaining all necessary licenses and permits and completing any required notifications, verifications or inscriptions for the company and employees with relevant authorities. The final ranking on the ease of starting a business is the simple average of the percentile rankings on its component indicators.

⁷⁶ *This indicator* “measures the time and cost (excluding tariffs) associated with exporting and importing a standardized cargo of goods by sea transport.”

⁷⁷ This indicator “studies the time, cost and outcome of insolvency proceedings involving domestic entities.”

⁷⁸ K. Latha, *Harnessing the Internet to Streamline Procedures*, in *Doing Business Report 2008*, at 22.

⁷⁹ *Supra* note 78, at 23.

⁸⁰ *Guide to Bizfile*, available at http://www.acra.gov.sg/Quick+Links/Guide_to_Bizfile/About+BizFile.htm.

⁸¹ *Supra* note 78.

⁸² *Id.*

entities, purchase information of registered entities, and file business transaction on BizFile easily.⁸³

In recent years, the BizFile system has been reviewed and improved to achieve greater efficiency in starting a business. For example, MyBizfile, a project to make transactions via Bizfile easier was launched in February 2008.⁸⁴ Since 2010, business owners have been able to get Goods and Services Tax registered simultaneously and seamlessly when registering their business, by using the same online form.⁸⁵ They can also reserve their web domain name or activate their customs account at the same time when they register their businesses with BizFile.⁸⁶ In 2011, a new value-added service was introduced where a newly registered business can open a corporate bank account immediately after successful registration.⁸⁷

Secondly, the Online Business Licensing Service – EnterpriseOne, is an award-winning service provided by the government to streamline, simplify and integrate the application of licenses from various agencies and to save time and costs for enterprises.⁸⁸ The portal offers a single point of access to a whole range of comprehensive information on government assistance programmes, regulations and e-services for businesses. Users can easily find the business information and services relevant to their needs from the interactive tools, such as starting, growing and sustaining business in Singapore.

Thirdly, the Pro-Enterprise Panel (“PEP”) is another significant achievement of Singapore government on facilitating doing business. It is a public-private partnership set up to help businesses overcome rules and regulations that hinder them unnecessarily.⁸⁹ Since its inception in August 2000, the PEP has reviewed nearly 1,800 suggestions from businesses and more than half of them have been accepted for

⁸³ *Id.* In April 2005, ACRA added online filing for limited liability partnerships to Bizfile. It later added a new module to provides online registration and renewals for public accountants’ licenses, cutting the time for renewals from 2 months to 30 minutes. Registration time fell from an average of 3 months to less than 21 days.

⁸⁴ *Supra* note 78.

⁸⁵ See ACRA Annual Report 2010/2011, at 35.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ This service was awarded the United Nation Public Service Award 2005 in the category of “Application of Information and Communication Technology (“ICT”) in Government: eGovernment”. In 1995, this eGovernment system was institutionalized as “Public Service 21” (www.ps21.gov.sg).

⁸⁹ Ministry of Trade and Industry, *About the Pro-Enterprise Panel*, available at <http://www.mti.gov.sg/ProEnterprisePanel/Pages/About-Pro-Enterprise-Panel.aspx?cat=Pro-Enterprise%20Panel>

implementation.⁹⁰

Fourthly, the TradeNet® system is an electronic data interchange system that Singapore made in facilitating export and import. This is a venture in electronic trading implemented in January 1989.⁹¹ It allows for a one-stop portal for traders to/from Singapore, and enables exchange of trade message and information electronically. Under the system, the trading community is given the means of submitting permit applications electronically to the government bodies for processing. If the permit application is approved, a permit message will be returned electronically to the sender. This system substantially reduces the cost and time for trade and expedites the clearance of the cargo⁹² and contributes largely to Singapore's high rankings on the *Trading Across Border* index.

2. Recent Business Regulatory Reforms

Singapore periodically reviews business regulation and legislation to ensure that its business environment remains highly attractive and amongst the most trusted in the world. Since the launch of the *Doing Business*, the Singapore government has initiated a series of regulatory reforms to improve economic efficiency and facilitate doing business, including, especially, the review of the Companies Act, the review of the Business Registration Act and the review of the Corporate Governance Code.

In October 2007, a fundamental review of the Companies Act was launched,⁹³ aiming at ensuring an efficient and transparent corporate regulatory framework that supports Singapore's growth as an international hub for both businesses and investors.⁹⁴ In 2011,

⁹⁰ The Singapore Business Federation, *SBF Welcomes Member's Feedback on Red Tape to Help Create a Pro-business Environment in Singapore*, available at <http://www.sbf.org.sg/public/tradebiz/bizupdates/pep.jsp>

⁹¹ Singapore Customs, *An Overview of TradeNet*, available at <http://www.customs.gov.sg/leftNav/trad/TradeNet/An+Overview+of+TradeNet.htm>; see also, https://www.tradexchange.gov.sg/tradexchange/default.portal?nfpb=true&pageLabel=main_tn

⁹² The system was implemented on January 1, 1989.

⁹³ The Companies Act is the principal legislation governing companies in Singapore. The last comprehensive review of the Companies Act was launched in 1999 by the Company Legislation and Regulatory Framework Committee ("CLRFC"). One of the major recommendations made to the Companies Act is the formation of one member companies and introduction of new business vehicles into Singapore, i.e. the Limited Partnership and the Limited Liability Partnership, aiming to provide greater flexibility for entrepreneurs. See *Report of The Company Legislation and Regulatory Framework Committee 2002, Recommendation 1.1*.

⁹⁴ The Steering Committee comprises ten members from varied backgrounds, including accountancy, corporate law, corporate governance, academia and the government. The Steering Committee was supported by five working groups established to look at detailed aspects of the proposals suggested by the Steering Committee. There is also a broadly-based consultative committee in this Companies Act review, which included wider legal representation. From November 2007 to July 2010, the Steering Committee held a total of fourteen meetings to discuss various issues raised by the Working Groups.

the Report of the Steering Committee for the Review of the Companies Act was published for public consultation. In May 2013, a proposed draft Companies (Amendment) Bill 2013 was issued and a public consultation exercise was conducted. The major recommendations to the Act include, inter alia, expanding the scope of applicants for bringing derivative actions to all listed Singapore-incorporated companies⁹⁵; heightened disclosure requirements for the Chief Executive Officer;⁹⁶ and lowering the threshold for eligibility to demand a poll.⁹⁷ The amendment bill to the Companies Act is currently under drafting process by the Attorney-General's Chambers and the ACRA.⁹⁸

The review of the Business Registration Act was launched in 2010,⁹⁹ with a view to modernise and make it more relevant to the present day business environment.¹⁰⁰ The major areas proposed for review include the definition of "business", scope of regulation, duration of registration, registration of information, etc.¹⁰¹

In 2012, the Monetary Authority of Singapore issued a revised Code of Corporate Governance.¹⁰² The key changes to the code focus on areas such as director independence, board composition, director training, multiple directorships, alternate directors, remuneration practices and disclosures, risk management, as well as shareholder rights and roles.

In addition, several reforms have been recently proposed or made to reduce the

⁹⁵ Under the current Companies Act, the statutory derivative action in section 216A (2) of the Companies Act does not apply to a company that is listed on the securities exchange in Singapore. Recommendation 2.29 of the *Report of the Steering Committee for the Review of the Companies Act* suggests expanding the scope of applicants for bringing derivative actions in Singapore.

⁹⁶ Recommendation 1.25 of the *Report of the Steering Committee for the Review of the Companies Act* recommends that the disclosure requirements under section 156 of the Companies Act (duty to disclose conflict of interests in transactions or proposed transactions with the company, or by virtue of holding any office or property) and section 165 of the Companies Act (duty to disclose shareholdings and interests in shareholdings in the company or related corporation and changes thereof) should be extended to the Chief Executive Officer of a company. It also suggests that the duty to act honestly and use reasonable diligence in section 157(1) should be extended to the Chief Executive Officer of a company.

⁹⁷ Recommendation 2.2 of the *Report of the Steering Committee for the Review of the Companies Act* suggests that the threshold of 10% of total voting rights for eligibility to demand a poll shall be lowered to 5% of total voting rights. It is believed that a lower threshold, especially for a private company which had limited number of shareholders, would enable a minority shareholder to better exercise his rights.

⁹⁸ For the progress of the Companies Act reform in Singapore, see <http://www.acra.gov.sg/Legislation/Companies+Act+Reform.htm>

⁹⁹ The Business Registration Act is the basic legislation governing sole proprietorships and partnerships in Singapore. It came into effect in 1974. Since then, it has had only piecemeal amendments. The last amendment was made in 2009.

¹⁰⁰ *Public Consultation on Review of Business Registration Act, available at* <http://www.acra.gov.sg/Publications/Public+Consultation+on+Review+of+Business+Registration+Act+%28Cap.+32%29.htm>

¹⁰¹ The feedback received on the Business Registration Act reform is currently under review by ACRA.

¹⁰² The Code was first issued in 2001. In July 2005, a revised code was issued. The 2012 Code supersedes and replaces the Code that was issued in 2005.

procedures required for official correspondence and starting a business. For example, to simplify the process of deed execution while preserving a level of adequate security,¹⁰³ a public consultation report was issued by ACRA and the Attorney-General's Chambers in 2010.¹⁰⁴ This report proposes that companies and limited liability partnerships shall be allowed to execute documents by the signature of certain persons, as an alternative to execution under seal, so that a company or a limited liability partnership will not need a common seal to execute a document as a deed.¹⁰⁵ The feedback received for this consultation is currently under review.¹⁰⁶ In 2010, new workplace safety and health regulations were promulgated and low-risk industries were allowed to submit documents online, making it easier to obtain construction permits. In 2012, the procedure of property registration was eased through improvement of its computerized system.¹⁰⁷

Worth noting, rather than resting on its rankings on the *Ease of Doing Business*, Singapore has been improving its business environment because it is in its interest to do so. It would do so without the *Doing Business*. However, the *Doing Business* does influence what Singapore focuses upon.

III. A CRITICAL EVALUATION OF THE *DOING BUSINESS* INDICATORS IN INVESTOR PROTECTION

A. Recent Scholarly Debates Over *Doing Business* Indicators

As observed by Davis *et al*, efficiency, consistency, transparency, scientific authority, and impartiality are the essential virtues of indicators in assisting and guiding decision-making processes by decision makers.¹⁰⁸ Using the already-available and simplified indicators would reduce the burden of processing information in the course of decision making.¹⁰⁹ Especially, “there is a seemingly instinctive human predisposition that favors summary measures over more complex data processing, as they reduce cognitive

¹⁰³ Under the current law of Singapore, it is not mandatory for a company to have a common seal to start a company. It is only compulsory to have a common seal for the purposes of holding land. (Companies Act of Singapore, section 19(5))

¹⁰⁴ *Supplementary Report on Formalities in the Execution of Documents: Amendments to Companies Act and Limited Liability Partnerships Act*, available at <http://www.acra.gov.sg/NR/rdonlyres/A546722A-0411-4848-9B0F-1A7BFCA24AFE/18051/ReportNo1of2010.pdf>.

¹⁰⁵ ACRA Annual Report 2011/2012, at 25.

¹⁰⁶ *Id.*, at 28.

¹⁰⁷ *Doing Business Report 2010*, at 20.

¹⁰⁸ Davis *et al*, *Governance by Indicators*, *supra* note 11, at 16-17.

¹⁰⁹ *Id.*, at 17.

transaction costs by providing a ready-made means of comparison”.¹¹⁰ The unequivocal ordinal data make indicators reliable inputs. Consistency is also likely to increase the legal or moral authority of decision making in some contexts.¹¹¹

The *Ease of Doing Business* index also possesses all or most of these elements. It has received numerous accolades internationally. One particular virtue is that it provides a cost-effective means for users to obtain information about an economy’s business environment and business features. Specifically, it helps to explain various features of legal systems in private business transactions, and explore how they work in practice with simplified, measurable and comparable indicators.¹¹² The large variety of studies covered in the index provides useful information for policy makers on future regulatory reforms.

Nevertheless, the *Doing Business* also faces various criticisms.¹¹³ One particular critique to the project is that it sacrifices depth for the breadth of coverage.¹¹⁴ The *Doing Business* reports generally focus on describing results rather than the analyses used to support them.¹¹⁵ Another critique is that the data are collected from experts who may have no direct experience with the business conditions they are evaluating; and thus such assessments may be not likely to reflect the real concerns of local investors.¹¹⁶ Also, as some of these assessments of business conditions rely on the perceptions of business managers, their results are undermined by biases in the survey design, scaling of responses, the lack of a shared reference point for responses, or unrepresentative samples.¹¹⁷

The third objection is that the choice and the number of indicators are limited and a particular legal system should not be assessed with pure mathematical methods and

¹¹⁰ Sanjai Bhagat, Brian Bolton & Roberta Romano, *The Promise and Peril of Corporate Governance Indices* (2008) 108 Colum. L. Rev. 1803, at 1860.

¹¹¹ *Id.*

¹¹² Kevin E. Davis & Michael B. Kruse, *Taking The Measure of Law: The Case of The Doing Business Project* (2007) 32 Law & Soc. Inquiry 1095, at 1103.

¹¹³ See, e.g. Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Indicators As A Technology of Global Governance* (2012) 46 Law & Soc’y Rev. 71; Davis & Kruse, *Taking The Measure of Law: The Case of The Doing Business Project*, *supra* note 112; Benjamin, Paul, and Jan Theron, *Costing, Comparing and Competing: The World Bank’s Doing Business Survey and the Bench-Marking of Labour Regulation*, in Corder, Hugh, ed., *Global Administrative Law: Innovation and Development* (2009).

¹¹⁴ Davis & Kruse, *Taking The Measure of Law: The Case of The Doing Business Project*, *supra* note 112, at 1103.

¹¹⁵ *Id.*

¹¹⁶ See Davis *et al.*, *Indicators As A Technology of Global Governance*, *supra* note 113, at 28.

¹¹⁷ World Bank 2004a, at 8-10, cited in Davis & Kruse, *Taking The Measure of Law: The Case of The Doing Business Project*, *supra* note 112, at 1099.

“one size fits all” approach.¹¹⁸ As admitted by the World Bank group, the *Doing Business* project does not measure all aspects of the business environment that matter to firms and investors. It accepts that there are three key limitations to the indicators: (1) limited in scope, (2) limited to the standardized case scenarios, and (3) limited to the formal sector.¹¹⁹ Especially, it does not measure areas such as security, macroeconomic stability, market size, the level of skills, or the strength of financial systems.¹²⁰ This is probably inevitable due to how the indicator was constructed.

Based on the case studies of Singapore, we argue that there are a few more methodological concerns within the *Doing Business*, besides the limitations listed above. In particular, we prove that a number of the variables used are vulnerable and we have chosen to focus on the limitation in the indicator of *Protecting Investors*. On the one hand, it is beyond the scope of this article to examine every indicator in the *Doing Business*. On the other hand, unlike other indicators which mainly measure the time and costs of starting and operation of a business, the *Protecting Investor* index does not make specific measurement of the time and costs of procedures involved in a business transaction. It is, however, based on a hypothetical business assumption, which we argue it fails to capture essential information of investor protection that it purports to capture. We elaborate on these areas in the following sections.

B. *Protecting Investors* Indicators: The Case for Singapore

1. *Testing the Accuracy - Only What is Measured is Measured?*

This indicator of *Protecting Investors* measures the strength of minority shareholder protections against directors’ misuse of corporate assets for personal gain. The indicator is comprised of 3 dimensions: (1) transparency of related-party transactions (extent of disclosure index), (2) liability for self-dealing (extent of director liability index) and (3) shareholders’ ability to sue officers and directors for misconduct (ease of shareholder suits index).¹²¹ Each of the indexes has several components. The ranking on

¹¹⁸ See e.g., Bénédicte Fauvarque-Cosson and Anne-Julie Kerhuel, *Is Law an Economic Contest? French Reactions to the Doing Business World Bank Reports and Economic Analysis of the Law* (2009) 57 Am. J. Comp. L. 811, at 823.

¹¹⁹ Doing Business Report 2013, at 18.

¹²⁰ *Id.*, at 17-18.

¹²¹ Doing Business, *Protecting Investors Methodology*, available at <http://www.doingbusiness.org/methodology/protecting-investors>.

the strength of *Protecting Investors* is the simple average of the percentile rankings on its component indicators.¹²²

In order to make the data comparable across jurisdictions, the World Bank researchers made several assumptions about the business transaction¹²³- the Buyer is a publicly traded corporation listed on Singapore stock exchange. It is a manufacturing company and has its own distribution network. The Buyer has a board of directors and a chief executive officer (“CEO”) who may legally act on behalf of the Buyer where permitted. Mr. James is the Buyer’s controlling shareholder and a member of Buyer’s board. He owns 60% of the Buyer and elected 2 directors to the Buyer’s board. Mr. James also owns 90% of the Seller, a company that operates a chain of retail hardware stores. The Seller recently closed a large number of its stores. Mr. James proposes that the Buyer purchase the Seller’s unused fleet of trucks to expand the Buyer’s distribution of its food products, a proposal to which the Buyer agrees. The price is equal to 10% of the Buyer’s assets and is higher than the market value. The proposed transaction is part of the company’s ordinary course of business and is not outside the authority of the company. The Buyer enters into the transaction.

According to the *Doing Business* reports, Singapore maintained a high level of protection to investors over time from 2006 to 2013 (**Table 5**). It stands at No. 2 on the *Protecting Investor* index repeatedly in 2012 and 2013.¹²⁴

Singapore gains a full score of 10 on the extent of disclosure index,¹²⁵ double of the average score of 5 in the East Asia & Pacific region and the score of 6 for the OECD countries.¹²⁶ The calculation is made as follows: the board of directors must approve the transaction and Mr. James is not allowed to vote (a score of 3). The Buyer is required to disclose immediately all information affecting the stock price, including the conflict of interest (a score of 2). In its annual report, the Buyer must also disclose the terms of the transaction and Mr. James’ ownership in the Buyer and the Seller (a score of 2). Before

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Doing Business Report 2012 & Doing Business Report 2013, Economy Profile of Singapore.

¹²⁵ Ease of Doing Business in Singapore, Protecting Investors available at <http://www.doingbusiness.org/data/exploreeconomies/singapore/#protecting-investors>

¹²⁶ *Id.*

the transaction, Mr. James must disclose his transaction to the other directors (a score of 2). Singapore requires an external body to review the transaction (a score of 1).

As to the *Extent of Director Liability* index¹²⁷, Singapore scored 9, higher than the average score of 5 in the East Asia & Pacific region and the score of 5 for the OECD countries.¹²⁸ Assuming that all required approvals are obtained, all required disclosures are made, and the transaction causes damages to the Buyer. Certain shareholders can sue Mr. James and the other parties that approved the transaction (a score of 1). In order to hold Mr. James liable in Singapore, for example, Mr. James is liable if the transaction was unfair, oppressive or prejudicial to minority shareholders (a score of 2). Shareholders can hold members of the approving body liable for the damage that the Buyer-Seller transaction causes to the company if the transaction is unfair, oppressive, or prejudicial to minority shareholders (a score of 2). A court can void the transaction upon a successful claim by a shareholder plaintiff when the transaction is oppressive or prejudicial to minority shareholders (a score of 1) Mr. James has to pay damages for the harm caused to the company (a score of 1) and to repay profits made from the transaction upon a successful claim by the shareholder plaintiff (a score of 1). Fines and imprisonment can be applied against Mr. James (a score of 1). Adding all these scores in the seven components gives Singapore a score of 9 on the index.

The *Ease of Shareholder Suits* index measures the ability of shareholder to sue directly or derivatively.¹²⁹ Singapore scored 9 in this index, higher than the average score of 6 in the East Asia & Pacific region and the score of 7 for the OECD countries.¹³⁰ Under the assumption made, shareholders owning 10% or less of Buyer's shares cannot inspect transaction documents before filing suit (a score of 0), but can request an inspector to

¹²⁷ There are seven components in this index. They are: (1) whether a shareholder plaintiff is able to hold Mr. James liable for the damage the Buyer-Seller transaction causes to the company; (2) whether a shareholder plaintiff is able to hold the approving body (the CEO or the members of the board of directors) liable for the damage the transaction causes to the company; (3) whether a court can void the transaction upon a successful claim by a shareholder plaintiff; (4) whether Mr. James pays damages for the harm caused to the company upon a successful claim by the shareholder plaintiff; (5) whether Mr. James repays profits made from the transaction upon a successful claim by the shareholder plaintiff; (6) whether both fines and imprisonment can be applied against Mr. James; (7) whether shareholder plaintiffs are able to sue directly or derivatively for the damage the transaction causes to the company.

¹²⁸ *Id.*

¹²⁹ *Supra* note 121. It assesses six components regarding the use of shareholder suits, including, among others, the range of documents available to the shareholder plaintiff from the defendant and witnesses during trial, whether shareholders owning 10% or less of the company's share capital have the right to inspect the transaction documents before filing suit, and whether the plaintiff can obtain categories of relevant documents from the defendant without identifying each document specifically.

¹³⁰ *Supra* note 125.

investigate the transaction (a score of 1). The plaintiff can obtain relevant documents¹³¹ from the defendant and witnesses during trial (a score of 4). The plaintiff can request categories of documents from the defendant without identifying specific ones (a score of 1). The plaintiff can directly question the defendant and witnesses during trial without prior approval (a score of 2). The level of proof required for civil suits is lower than that of criminal cases (a score of 1). Adding all these scores in the 6 components gives Singapore a score of 9 on the index.

The accuracy of the scores reflected in this index is questionable. Singapore was one of the first Commonwealth countries to have introduced a statutory derivative action, indicating its commitment to be at the forefront of Commonwealth in protecting the interests of minority shareholders.¹³² However, the current Singapore Companies Act limits the availability of the statutory derivative action to unlisted companies only. The statutory derivative action under section 216A (2) of the Companies Act does not apply to a company that is listed on the stock exchange in Singapore,¹³³ which is not the position in many jurisdictions.¹³⁴ Also, Singapore judges take a rather conservative approach in their interpretation of the statutory derivative action.¹³⁵ Thus, there is no statutory derivative action against directors in listed companies in practices at present.¹³⁶ However, the *Protecting Investors* index is based on the assumption that the Buyer is a publicly traded company and it concludes that shareholders can sue derivatively for the damage that the Buyer-Seller transaction causes to the company.¹³⁷ This statement does not accurately reflect the current law and practices of Singapore regarding statutory derivative action and it would mislead users who attempt to draw

¹³¹ These documents include: (1) information that the defendant has indicated he intends to rely on for his defense; (2) information that directly proves specific facts in the plaintiff's claim; (3) any information that is relevant to the subject matter of the claim; and (4) any information that may lead to the discovery of relevant information.

¹³² Meng Seng Wee & Dan W. Puchniak, *Derivative Actions in Singapore: Mundanely non-Asia, Intriguingly non-American and at the Forefront of the Commonwealth*, in Dan W. Puchniak, *et al* eds, *The Derivative Action in Asia*, 347 (Cambridge, 2012). For the history of statutory derivative action in Singapore, see *Supra* note 21, at 378-379.

¹³³ *Supra* note 21, at 380. However, it must be noted that, Recommendation 2.29 of the Report of the Steering Committee for the Review of the Companies Act suggests expanding the scope of applicants for bringing derivative actions so as to make statutory derivative action be applicable to all listed Singapore-incorporated companies. This recommendation provides minority shareholders of listed companies new recourse in respect of a wrongdoing to the company where the wrongdoer is a controlling shareholder or is in a position to prevent an action from being brought against him. Nevertheless, we have to wait and see whether the statutory derivative action will be widely used among listed companies in the future.

¹³⁴ In jurisdictions such as the United States, the United Kingdom, Italy, Japan and China, derivative action is applicable to publicly traded companies.

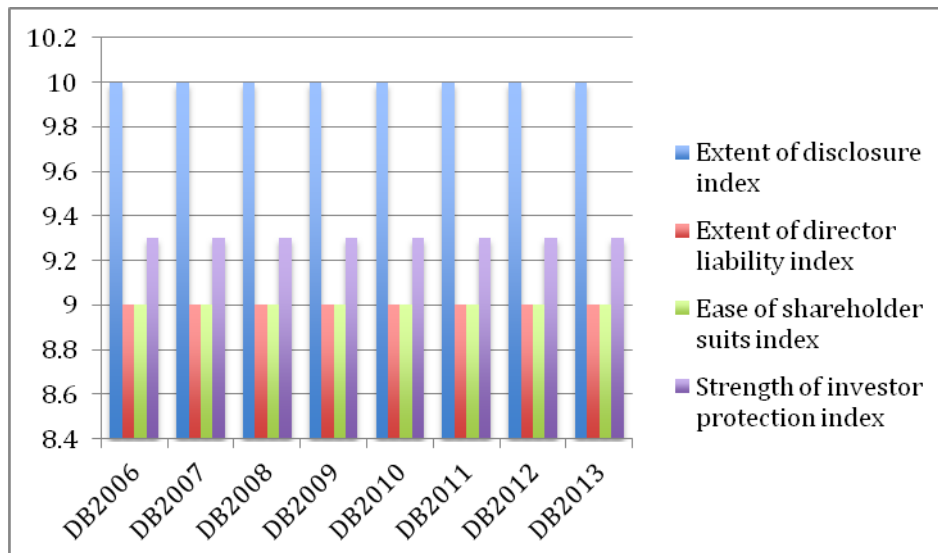
¹³⁵ *Supra* note 132, at 347.

¹³⁶ It should also be noted that only one reported section 216 of the Companies Act case has involved a publicly traded company and in that instance the court held that there was no exercise of dominant power sufficient to trigger the section. See *Tong Keng Meng v Inno-Pacific Holdings Ltd and another* [2001] 3 SLR(R) 311; [2001] SGHC 294.

¹³⁷ Doing Business Report 2013, Economy Profile of Singapore, at 69.

an inference regarding shareholder litigation from the rankings of *Ease of Shareholder Suits*.

Table 5: The Strength of Investor Protection in Singapore Over Time¹³⁸



2. *Limit in the Scope- Is that All for Investor Protection?*

A scrutiny of the research methodologies employed by the World Bank finds that there are several methodological limits in the scope of the *Protecting Investors* index.

First of all, the *Doing Business* claims that this indicator measures the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain. The indicator is measured based on a business assumption that the buyer is a corporation listed on the economy's most important stock exchange.¹³⁹ This is a limited analysis.

Private companies constitute a significant part of a nation's economy. The creation and expansion of smaller enterprises and innovative start-ups are an essential drive for a sustainable economy. In Singapore, there were 28,511 new companies registered in Financial Year 2010/2011.¹⁴⁰ Nevertheless, as of January 2010, there were only 640

¹³⁸ Source: Doing Business Report 2012, Economy Profile of Singapore, Table 7.1. The strength of investor protection index ranges from 0 to 10, with higher values indicating more investor protection.

¹³⁹ If the number of publicly traded companies listed on that exchange is less than 10, or if there is no stock exchange in the economy, it is assumed that Buyer is a large private company with multiple shareholders. See *supra* note 121.

¹⁴⁰ ACRA Annual Report 2010/2011, at 62.

companies listed on the main board of the Singapore Stock Exchange.¹⁴¹ The number of listed companies in Singapore is much smaller than the private companies. Moreover, there are a certain number of public companies in Singapore.¹⁴² These public companies are not listed on the stock exchange, such as the companies limited by guarantee, and the companies limited by shares which are incorporated as public companies without stock exchange listing.¹⁴³ In addition, statistics show that 99% of enterprises in Singapore are small and medium enterprises (“SMEs”).¹⁴⁴

Therefore, the *Protecting Investors* index should not ignore the companies that are not listed on the stock exchange. Especially, as smaller companies may not have a strong impetus to allocate resources to improve their internal control and risk management, there is a greater demand for better protection of investors in small firms. We admit that, since private companies are not subject to public disclosure requirements, it is difficult for the World Bank to collect and compile measurable and accurate data from these companies. As the *Protecting Investor* index is highly aggregated, readers should be informed that a higher ranking on the index merely indicates that the regulations offer stronger investor protection against self-dealing in the areas measured and in publicly traded companies only. It does not and is unable to test the general level of investor protection of corporations in practice.

Moreover, even in the case of publicly traded companies, the scope and extent of the law of investor protection is much broader than what is measured in the *Protecting Investor* index. The methodology of the index is developed based on an economic article titled “The Law and Economics of Self-dealing”.¹⁴⁵ While this paper presents an innovative and fascinating measure of investor protection, it mainly focuses on private enforcement mechanisms that govern a specific self-dealing transaction and it fails to cover many core areas of shareholder protection, especially minority shareholder protection.

¹⁴¹SGX Market Statistics, http://en.wikipedia.org/wiki/Companies_listed_on_the_Singapore_Exchange.

¹⁴²Singapore Companies Act, section 4 (1) provides that a company that is not a private company is a public company.

¹⁴³*Supra* note 21, at 19.

¹⁴⁴SPRING Singapore, available at <http://www.spring.gov.sg/aboutus/pi/pages/performance-indicators.aspx>.

¹⁴⁵Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, *The Law and Economics of Self-dealing*, *Journal of Financial Economics* 88 (2008), at 430–465.

In fact, rules protecting investors come from different sources, including company, security, bankruptcy, takeover, and competition laws, as well as stock exchange regulations and accounting standards.¹⁴⁶ In the realm of securities law, “investor protection” denotes legal support for investors in the public trading markets through committing publicly traded companies to different strategies.¹⁴⁷ These strategies include mandatory disclosure by publicly traded companies, quality restrictions on publicly traded companies (e.g. mandating appointment rights and approval rights for shareholders, providing listing and delisting requirements for companies, etc),¹⁴⁸ as well as enforcement of investor protections (e.g. private enforcement, public enforcement, gatekeeper enforcement and informativeness of financial reports).¹⁴⁹ Nevertheless, the *Protecting Investors* index fails to examine the systemic market law that falls within above categories.

In corporate law context, shareholders are the most common investors and there are basic governance rules that protect the interests of shareholders as a class, such as the appointment rights of shareholders, the independent directors, the decision rights, the reward strategy and affiliation rights.¹⁵⁰ There are also many important legal constraints that are widely used to protect the interests of minority shareholders – principally in the form of standards, such as the duty of loyalty, the oppression standard, and abuse of majority voting.¹⁵¹ However, the *Protecting Investors* index does not measure these aspects in details.¹⁵² It only addresses three narrow dimensions of investor protection in the area of related-party transaction.

First, the power to select or remove directors or other managers - the appointment right – is at the core of corporate governance.¹⁵³ The appointment rights of shareholders are important for addressing the agency problems of (1) minority shareholders in relation to controlling shareholders; (2) shareholders in relation to managers; and (3) company employees in relationship to the shareholder class as a whole.¹⁵⁴ Minority appointment

¹⁴⁶ Rafael La Porta *et al.*, *Investor Protection and Corporate Governance*, 58 J. Fin. Econ. 3 (2000), at 7.

¹⁴⁷ Reinier Kraakman *et al.*, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (2009), at 276.

¹⁴⁸ *Id.* at 277-294.

¹⁴⁹ *Id.* at 294-301.

¹⁵⁰ *Supra* note 147, at Chapter 3.

¹⁵¹ *Id.* at 99.

¹⁵² Doing Business Report 2012, Economy Profile of Singapore, at 61. It states “The overall ranking on the strength of investor protection index tells only part of the story.”

¹⁵³ *Supra* note 147, at 42.

¹⁵⁴ *Id.*

rights are enhanced by either reserving board seats for minority shareholders or overweighting minority votes in the election of directors.¹⁵⁵ By ensuring that minority shareholders are able to have one or more representatives on the board, the board would be prevented from becoming the expression of the controlling shareholder.¹⁵⁶ The minority shareholders would thus have access to centralized management – they would have access to more information about the company’s business operation and would be able to influence the substantive decisions taken by the board.¹⁵⁷ In addition, there are many other legal devices which are used to dilute the appointment powers of large shareholders so as to protect the interests of small shareholders, such as “vote capping” regime, and imposing a ceiling on the control rights of large shareholders.¹⁵⁸ Several American jurisdictions provide that directors and corporate officers may be removed without cause.¹⁵⁹ In Singapore, to prevent shareholders from exercising their choice to accept or reject any particular candidate, the law does not allow shareholders in public companies to elect two or more persons as directors in a single resolution.¹⁶⁰ However, the *Protecting Investors* index does not deal with the legal issue of appointment rights in different jurisdictions.

Second, decisions rights for shareholders are another widely used strategy to protect the interests of shareholders as a class. Shareholders generally obtain mandatory decision rights in issues such as fundamental corporate changes (e.g. mergers, liquidations, sales or corporate assets) and ratification.¹⁶¹ Different jurisdictions provide different types of decision rights to protect minority shareholders. For example, British law provides three major types of decision rights: requiring supermajority approval for certain decisions; excluding the majority from voting; and giving decisions to individual shareholders.¹⁶² Worth noting, in order to make the designing of executive remuneration in a fairer and transparent way, British law also grants shareholders an

¹⁵⁵ *Id.*, at 90.

¹⁵⁶ Paul Davis, *Introduction to Company Law* (2010), at 262.

¹⁵⁷ *Id.*, at 262- 63.

¹⁵⁸ *Supra* note 147, at 91

¹⁵⁹ See N.Y. Bus. Corp. Law, section 706(b) (removal of directors) & section 716 (removal of officers)

¹⁶⁰ Companies Act of Singapore, section 150 (1); see also *supra* note 21, at 251.

¹⁶¹ Jesse H. Choper, John C. Coffee, Jr. & Ronald J. Gilson, *Cases and Materials on Corporations* (2008) 553; Robert B. Thompson, *Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue* (2000) 62(3) *Law and Contemporary Problems* 215, at 216; *supra* note 147, at 72.

¹⁶² See *supra* note 157, at 241.

advisory vote on individual director's remuneration.¹⁶³ Nevertheless, the *Protecting Investors* index does not measure the decision rights of shareholders. It only examines who can approve a related-party transaction in the business assumption.¹⁶⁴ Moreover, even if the law provides decision rights to shareholders, it does not mean that shareholders are always in a position to participate in corporate decisions, as whether and how shareholders can exercise these decision rights are subject to various practical factors such as the ownership structure of the firm and the market for corporate control. Specifically, in concentrated shareholding structure, it would be difficult for minority to resist board proposals being brought to a shareholder vote. Therefore, to provide a comprehensive and accurate evaluation of the strength of investor protection in a jurisdiction, the *Doing Business* should also collect and analyze detailed information about regulations on decision rights, as well as the feature of ownership structure of a jurisdiction.

Third, incentive strategies that come in forms of trusteeship and reward are also important legal strategies which have been used to reduce agency costs and protect the interests of investors. There are generally two reward mechanisms in corporate law – the sharing rule that motivates loyalty by tying the agent's monetary returns to those of the principle;¹⁶⁵ and the trusteeship strategy that seeks to remove conflicts of interest to ensure that an agent will not obtain personal gain from diserving her principle.¹⁶⁶

The trusteeship means placing the decision in the hands of persons not beholden to the majority shareholder.¹⁶⁷ As far as publicly traded companies are concerned, the United States, the United Kingdom, Japan and Singapore usually have only one board of directors (one-tier board system). The board exercises the legal power to supervise and manage a corporation, either directly or through its committees. By contrast, in two-tier board systems, such as Germany and Austria, monitoring powers can be given to the supervisory board of non-executive directors, which then appoint and supervise

¹⁶³ Paul L. Davies & Klaus J. Hopt, *Corporate Boards in Europe – Accountability and Convergence* (2013) 61 Am. J. Comp. L. 301, at 363. (noting that shareholders are able to exercise advisory voting on both the overall executive pay policy and the remuneration of individual directors in the United Kingdom. Recently proposals have been made for a three-yearly binding vote on pay policy).

¹⁶⁴ A score of 0 is assigned if it is the Chief Executive Officer or the managing director alone; score of 1 if the board of directors, the supervisory board or shareholders must vote and Mr. James is permitted to vote; score of 2 if the board of directors or the supervisory board must vote and Mr. James is not permitted to vote; score of 3 if shareholders must vote and Mr. James is not permitted to vote.

¹⁶⁵ Reinier Kraakman *et al*, *supra* note 147, at 43.

¹⁶⁶ *Id*, at 43.

¹⁶⁷ *Supra* note 157, at 261.

management boards.¹⁶⁸ Meanwhile, there are some jurisdictions, such as France, Italy and the Netherlands that give companies the choice between the one-tier and the two-tier forms.¹⁶⁹

Nevertheless, the business assumption made in the *Protecting Investors* index only mentions the supervisory board in the two-tier system.¹⁷⁰ It does not cover jurisdictions with one-tier board systems; or those jurisdictions that have both one-tier board system and two-tier board system¹⁷¹. It also fails to deal with the role and effectiveness of the independent director in the one-tier board system, which serves an important monitoring function as the supervisory board in the two-tier board system. Moreover, even among jurisdictions with one-tier systems, the requirements of having independent directors on the board and their effectiveness in monitoring also vary widely in practice.¹⁷² For example, the idea of having independent directors as trustees of the firm is proved to be valuable in maximizing shareholder wealth in the United States over the years,¹⁷³ while it may not work similarly effective in those jurisdictions where there are more concentrated ownership structures, such as India¹⁷⁴ and China.¹⁷⁵ However, the business assumption made by the *Doing Business* fails to address the diversity of the board composition and their effectiveness among jurisdictions, either in law or in practice.

Fourth, affiliation rights in the form of mandatory disclosure are the key issues in shareholder protection as well. Corporate law requires directors to disclose certain

¹⁶⁸ Reinier Kraakman *et al*, *supra* note 147, at 56.

¹⁶⁹ *Supra* note 163, at 315 - 316. (Noting that Italy introduced three choices for companies in 2003: besides a two-tier system, the single tier arrangement was offered either with the traditional board of internal auditors or without it but with a mandatory audit committee of the board. Dutch legislation, which was traditionally based on a two-tier system, provided the option of a one-tier board in 2012.)

¹⁷⁰ *Supra* note 121.

¹⁷¹ See *supra* note 169.

¹⁷² Reinier Kraakman *et al*, *supra* note 147, at 70 (noting that the United States has been taking the lead with 81% independent directors in listed companies. In the United Kingdom, 59% directors are independent directors in the boards of listed companies. Italy and France also have an average of 46% of independent directors in listed companies.); Tan Lay Hong *et al*, Corporate Governance of Listed Companies in Singapore (2006), 142. (Noting that in Singapore, 50% of the Singapore's top 50 Straits Times Indexed companies have at least one-third of the board's being independent directors.)

¹⁷³ See Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 Stan. L. Rev. 1465 (2007).

¹⁷⁴ See Umakanth Varottil, *Evolution and Effectiveness of Independent Directors in Indian Corporate Governance* (2010) 6 Hastings Bus. L.J. 281 (Noting that due to the concentrated ownership structures in Indian companies, it is the minority shareholders who require the protection of corporate governance norms from actions of the controlling shareholders. Thus board independence does not provide an effective solution to this problem.)

¹⁷⁵ See generally Yuan Zhao, *Independent Directors in China: the Path in which Direction?* (2011) 22(11) I.C.C.L.R., 352. (noting the ineffectiveness of independent directors in Chinese listed companies due to the concentrated shareholding structure.)

information to the company.¹⁷⁶ Securities law imposes various disclosure obligations on publicly traded companies. Disclosure of accurate and timely material information on the issuers enables investors to assess the risks and rewards of their investment. It also provides the information necessary to protect minority shareholders through voting or litigation.¹⁷⁷ The disclosure regimes for publicly traded companies include two broad dimensions: (1) the disclosure obligations regarding securities issues and issuers; and (2) the informativeness of their disclosure requirements.¹⁷⁸ Disclosure generally comes in the forms of prospectus disclosure, periodic financial disclosure, and continuing disclosure. Besides publicly traded corporations, private companies and businesses are also subject to certain disclosure requirements such as filing of annual returns, updated business venues, and updated shareholding information.¹⁷⁹ Meanwhile, the provision of information about a firm's past and current financial position and its accompanying valuation methodologies, as well as the auditors that help to assist in assuring the quality of the disclosure are essential in enhancing investor protection.¹⁸⁰

However, the *Extent of Disclosure* index does not measure the above areas, but merely measures whether the related-party transaction is disclosed to the public and whether the director discloses the conflicts of interests in the related-party transaction to the board. Although mandatory disclosure of related-party transaction is a vital legal strategy that against expropriation by managers or controlling shareholders and provides potential litigants with information to bring before a court,¹⁸¹ it is just one of the many disclosure obligations of a publicly traded corporation. Arguably, the score of a jurisdiction reflected in this index does not accurately represent the general level of transparency in a jurisdiction.

3. Summary of Section B

As has been showed in earlier discussion, the *Protecting Investor* index seems not able to accurately reflect a jurisdiction's strength in investor protection and quality of corporate governance due to its narrow coverage. There are many other areas with

¹⁷⁶ In Singapore, directors' duties of disclosure can be found in sections 156 & 165(1) of the Singapore Companies Act.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 282.

¹⁷⁹ E.g. Singapore Companies Act, section 165.

¹⁸⁰ See *id.*, 50, at 285-86.

¹⁸¹ See *supra* note 147, at 49.

regard to corporate governance and investor protection not measured by the *Doing Business*, such as balance of powers, monitoring by shareholders, internal control procedures and auditor independency. Arguably, it is nearly impossible for one aggregated number to describe and capture such a complicated and evolving area.

Moreover, as a jurisdiction's business environment is exceedingly complex, providing a summary of investor protection by using a simple variable can be highly misleading to users of the indicators, especially those without detailed information about the background of the jurisdiction. There are two ways to solve this problem.

First of all, *Doing Business* may consider not including the *Protecting Investors* index, so as to make the report more accurate. In fact, what is a good governance institution for one jurisdiction need not be good or effective for another, given vast jurisdictional differences in their legal systems, political economy and regulatory architecture. As observed by French scholars Claude Ménard and Bertrand du Marais, the *Doing Business* reports do not cover the specificities of legal systems but only rank countries according to a set of superficial indices.¹⁸² They do not measure the real impact of specific legal instruments but simply identify the market power in fixing the legal tools used in making business transactions.¹⁸³ As observed by Porta et al., "the nature of investor protection, and more generally of regulation of financial markets, is deeply rooted in the legal structure of each country and in the origin of its laws."¹⁸⁴ Empirical evidence also seeks to prove the links between the quality of legal regimes, the nature of national capital markets and corporate governance systems.¹⁸⁵

In particular, the level of protection needed for investors is largely subject to local ownership structures. The dispersed or concentrated nature of the shareholder body may have different impact of a governance system, particularly on what the board of directors does and to whom it is accountable.¹⁸⁶ For example, in the United Kingdom

¹⁸² Claude Ménard & Bertrand du Marais, *Can We Rank Legal Systems According to Their Economic Efficiency?* 26 Wash. U. J.L. & Pol'y (2008) 55.

¹⁸³ *Id.*

¹⁸⁴ *Supra* note 146, at 24.

¹⁸⁵ See, e.g., Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. Fin. 471 (1999); Rafael La Porta et al., *Investor Protection and Corporate Governance*, 58 J. Fin. Econ. 3 (2000); Rafael La Porta et al., *Law and Finance*, 106 J. Pol. Econ. 1113 (1998); Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. Fin. 1131 (1997).

¹⁸⁶ See *supra* note 169, at 305.

where there is a prevalence of dispersed shareholding,¹⁸⁷ the most pressing agency problem exists between management and shareholders as a class. Thus more protection is required for shareholders as a class, rather than for the minority shareholder solely. In Singapore where there is a more concentrated shareholding in listed companies¹⁸⁸, the agency relationship is more problematic between majority and minority shareholders. Arguably, the level required for minority protection in Singapore should be generally higher than that in the United Kingdom. Nevertheless, the *Protecting Investors* index fails to address the diversity of this issue and applies the same standard in assessing investor protection among different jurisdictions.

Alternatively, since the initial goal of the *Doing Business* is to provide an objective basis for improving the regulatory environment for business, and to “encouraging countries to compete towards more efficient regulation”,¹⁸⁹ the variables selected in the report must seek to achieve high objectiveness and comprehensiveness. To achieve this, the *Protecting Investors* index must include more measureable variables, but not limit to three indexes only, i.e. the extent of disclosure index, the extent of director liability index and the ease of shareholder suits index.¹⁹⁰

Firstly, as to the *Extent of Disclosure* index, it is suggested that it should examine the disclosure system more comprehensively. For example, the index should not simply look at whether disclosure of related party transactions is required, but also survey what information must be disclosed by a publicly traded corporation in an annual report (e.g. all material off-balance sheet transactions, arrangements, obligations and other relationships), when must it disclose, and in what manner must the financial reports be presented (e.g. whether the report is presented in a simple and understandable way¹⁹¹). In addition, given the importance of the independence of auditor and audit committee in ensuring accurate disclosure of financial reports and

¹⁸⁷ See *supra* note 169, at 310.

¹⁸⁸ See Tan, Lay Hong, *Exploring the Question of the Separation of Ownership from Control: An Empirical Study of the Structure of Corporate Ownership in Singapore's Top 100 Listed Companies (2011)*, online: <http://docs.business.auckland.ac.nz/Doc/exploring-the-question-of-ownership-from-control.pdf>, 17 & 24. (noting that share ownership in the top one hundred listed companies in Singapore is highly concentrated. 0.19% of the total number of shareholders own 90.68% of the shares in these one hundred companies and the average median size of the largest shareholder's shareholding is 32.77%.)

¹⁸⁹ *Doing Business* Report 2013, at 16.

¹⁹⁰ *Supra* note 121.

¹⁹¹ For example, in the United States, section 409 the Securities Exchange Act requires companies to disclose material changes of a corporation's financial condition on a rapid and current basis and in plain English. See financial disclosures of the United States in Choper *et al.*, *Cases and Materials on Corporations*, *supra* note 161, at 332 - 333.

corporation, the requirements of qualification or disqualification of an auditor, as well as the audit committee composition and authority should also be covered by *Protecting Investors* index.

Secondly, with regards to the *Extent of Director Liability* index, simply assessing the availability of direct or derivative suit in a jurisdiction is not enough. To assess the overall level of director liability in a jurisdiction, the index should also examine the intensity of shareholder derivative actions and the different liability standards employed to prove director liability (e.g. strict liability or weaker liability standard). In addition, issues such as how to measure the levels of public enforcement against default directors (i.e. legal and regulatory actions brought by market regulators or public prosecutors or stock exchanges) must also be included in the survey.

Thirdly, the *Ease of Shareholder Suits* index evaluates several procedural rights available to the shareholder plaintiff during trial. Nonetheless, it does not look into other important elements in relation to the ease of shareholder suit before trial. It is suggested that the index should also cover pre-trial procedures (exhaustion of internal remedies), such as to what extent may the plaintiff shareholder circumvent the board or directors, the supervisory board, or the body of shareholders to initiate the suit before trial; under what circumstance must a demand be made to take action; and what are the consequences of a decision by the board or directors, the supervisory board, or the body of shareholders not to take action? In addition, considering the great impact of litigation costs (typically comprising of lawyers' fee, filing fees and other litigation fees) on the utility of derivative suits, the World Bank team may also include the level of litigation costs as a component in the index.

C. Does Only Efficiency Matter?

The *Doing Business* project in general focuses on economic efficiency of legal rules. It measures mainly the procedures, time and costs of doing a business. It then establishes the ranking of these countries according to certain variables, particularly their capacity to attract foreign investments.¹⁹² The design of the *Doing Business* index also mainly

¹⁹² See e.g., *supra* note 118, at 820.

draw on economic insights gleaned from economic literature.¹⁹³ Research papers (and the original datasets) that contributed to this project are basically economic articles.¹⁹⁴

It is understandable that the reason for the use of measurable economic methodologies is that they can best serve the object of the project - presenting quantitative indicators on business regulations. As compared to other research methodologies such as doctrinal analysis and historical analysis, economic analysis makes it easier for the *Doing Business* team to update the indicators in a relatively objective, inexpensive and replicable way. From the standpoint of policy makers, these quantitative indicators serve as a useful tool for them to compare with other jurisdictions, and to identify problems which exist in their business regulations.

Indeed, the choice of time, cost, and simplicity are significant metrics in starting and doing business. However, economic efficacy of doing business is only one dimension of the overall business environment of a jurisdiction.¹⁹⁵ In essence, the *Doing Business* is about “smart” business regulations, and not necessarily “fewer” regulations.¹⁹⁶ There are five major features that constitute “SMART business” regulations according to *Doing Business*: (1) STREAMLINED—regulations that accomplish the desired outcome in the most efficient way; (2) MEANINGFUL—regulations that have a measurable positive impact in facilitating interactions in the marketplace; (3) ADAPTABLE—regulations that adapt to changes in the environment; (4) RELEVANT—regulations that are proportionate to the problem they are designed to solve; and (5) TRANSPARENT—regulations that are clear and accessible to anyone who needs to use them.¹⁹⁷ Therefore, users of *Doing Business* should be reminded that the “*Ease of Doing Business*” is not equivalent to “*Speed of Doing Business*” or “*Economic Costs of Doing Business*”. A higher ranking on the *Ease of Doing Business* index only means that the government of the jurisdiction has managed to create rules that facilitate interactions in the marketplace more efficiently and less costly than other jurisdictions.

Moreover, economic efficacy is not necessarily an ideal solution for problems within a business environment, especially in dealing with corporate governance and business

¹⁹³ See *Doing Business Report 2013*, at 15.

¹⁹⁴ *Supra* note 121.

¹⁹⁵ Fauvarque-Cosson & Kerhuel, *supra* note 118, at 823.

¹⁹⁶ *Doing Business Report 2013*, at 16.

¹⁹⁷ *Id.*

ethical issues. For example, although Singapore has ranked top over the years in the *Doing Business* indicators, reflecting an excellent regulatory environment in the starting and operation of a local firm, it has had several corporate scandals involving listed companies and even charitable organisations in recent years.¹⁹⁸ Lessons from these scandals indicate failures in corporate governance and investor protection within these organizations. Arguably, the lack of proper internal control and risk management is one of the roots of the problems. It may well be that other jurisdictions have worse scandals qualitatively and quantitatively, but the Singapore ones do highlight the methodological limitations in the *Doing Business*.

Furthermore, a desirable business environment also requires effective corporate governance, strong corporate compliance, sufficient public awareness, effective public enforcement, as well as a good socio-economic environment. All of which is immeasurable by pure economic variables. Therefore, it is important for users of the *Doing Business* reports to understand the limits of the indicators and to note that the indicators may not be an appropriate proxy to investors who wish to rely on it to predict corporate performance of a jurisdiction.

Lastly, instead of relying on economic literature to develop the indicators, more involvement by law professors and legal experts, as well as more exploration into the legal issues is desired for the improvement of the *Doing Business* indicators. Nevertheless, it is easy to say what changes we like to have, while how to achieve them is a far more difficult matter.

D. Does Only Rules Matter?

The foundation of the *Doing Business* is the notion that rules matter. According to the project, economic activity, particularly private sector development, benefits from clear and coherent rules.¹⁹⁹ Where such rules are reasonably efficient in design, transparent

¹⁹⁸ For example, in 2004, a publicly traded company in the Singapore Exchange, China Aviation Oil (CAO) collapsed because of a US\$550 million loss in speculative oil trading. In the following years, there are five other corporate scandals in which directors potentially breached their directors duties owed to companies listed on the Singapore Exchange. These companies were ACCS, Auston International, Citiraya, Daka Designs and Informatics. Another serious corporate governance scandal is the 2005 National Kidney Foundation Singapore (“NKF”) scandal that involves misuse of funding and fabrication of invoice, indicating low level of transparency and poor internal governance in this foundation. In 2012, Kong Hee, a pastor at Singapore’s biggest church-City Harvest Church, and five others were on charges of misusing up to S\$50million of church money to fund the music career of Mr. Kong’s wife, Sun Ho.

¹⁹⁹ *Doing Business Report 2013*, at 16.

and accessible to those for whom they are intended and can be implemented at a reasonable cost, they are much more effective in promoting growth and development.²⁰⁰ The quality of the rules also has a crucial bearing on how societies distribute the benefits and bear the costs of development strategies and policies.²⁰¹

It is argued that not only the text matters to a business environment, but also whether the rule is enforced adequately in their context. When good rules are in place, it remains to be seen how effectively these rules will be implemented and how they would ultimately improve the business environment within a region. In fact, the *Doing Business* project does address the enforcement of law in its chosen topics (e.g. the *Enforcement of Contract* index, the *Protecting Investors* index and the *Getting Credit* index). For instance, the *Enforcement of Contract* index specifically measures the efficiency of the judicial system in resolving a commercial dispute. The process of data collection of the *Doing Business* project also reveals that local experts' knowledge of and experience with how certain formal norms are applied and implemented are examined and considered in the drafting of the reports.²⁰² The role of enforcement in regulatory intervention is also discussed in the reports.²⁰³ However, it seems that substantial emphasis is placed on the enforcement by courts, and less consideration is made on public enforcement by regulators. Especially, the extent of corporate compliance of business entities and the extent of regulatory investigation into alleged breaches of laws by business entities are not addressed in the *Doing Business*.

Corporate compliance is essential in achieving a responsive and trusted regulatory environment for an economy. Typically, when investors set up firms or engage in new investment, they have to obtain certain rights that are protected through the enforcement of regulations and laws. In the context of Singapore, there are many efforts exemplifying the nation's commitment in improving corporate compliance through public enforcement. Unfortunately, these areas are not measured in the *Doing Business*. For example, the Governance Surveillance Division of ACRA oversees compliance and governance matters of registered business entities, such as preventing disqualified

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See Davis & Kruse, *Taking The Measure of Law: The Case of The Doing Business Project*, *supra* note 112, at 1100.

²⁰³ *Doing Business Report 2004*, at xii. (Noting that regulatory intervention is particularly damaging in countries where its enforcement is subject to abuse and corruption).

directors in non-listed companies from continuing to act as directors and preventing stock exchange blacklisted persons from holding directorships in listed companies.²⁰⁴ The division investigates into alleged breaches of the various business laws or complaints received from the public regarding various business issues, such as breach of directors' duties, breach of accounting standards, etc.²⁰⁵ The division also collaborates with other government agencies in disqualifying directors convicted of the Employment Act offences or in disqualifying individuals who register entities when they are not the true owners.²⁰⁶

ACRA also set up the Enforcement Division to oversee disclosure of corporate and financial information of businesses.²⁰⁷ It typically issues summons and warrants to errant directors or business owners who fail to comply with the business legislation, such as the Companies Act and Business Registration Act. It also promotes voluntary corporate compliance through public education initiatives and programmes, such as conducting the directors' proficiency training to new directors and publication of directors' handbook.²⁰⁸

In view of the above, it is suggested that the *Doing Business* project should cover more enforcement issues and to survey how well business regulations are implemented across jurisdictions. The comparator can be mainly the adherence to due process and implementation of law in areas of doing business. Areas to be considered include: (1) how the government agencies (especially, the companies registry, the credit bureau, the supervisory authority of capital market, the white-collar crime enforcement agency, etc) handle all forms of business complaints, including governance-related matters and breaches under the business legislation and regulations; and (2) how different government agencies work with each other to ensure appropriate enforcement when steps are taken against the offenders of corporate governance (e.g. how government agencies deal with cross-agency complains or misdirected feedback from the public effectively). In Singapore, there is a "No Wrong Door" policy - requiring all public

²⁰⁴ Overview of Divisions and Departments of ACRA, available at http://www.acra.gov.sg/About_ACRA/Our+Divisions+and+Departments.htm

²⁰⁵ Interview with a government official of ACRA (anatomy required).

²⁰⁶ *Id.*

²⁰⁷ *Supra* note 204.

²⁰⁸ Singapore government, Press Released, *Company Directors Go Back to School for Lessons on Directors Duties and Responsibilities*, available at http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/acra/press_release/P-20120925-1.html

agencies to deal with misdirected feedback or cross-agency issues from the public effectively, so that the public would not be directed from one agency to another to have their queries attended to.²⁰⁹

In addition, the *Doing Business* may consider referring to the World Justice Project²¹⁰ on how they measure the regulatory enforcement across jurisdictions.²¹¹ It is suggested that the *Doing Business* should consider measuring the following aspects: (1) whether business regulations are effectively enforced; (2) whether business regulations are applied and enforced without improper influence; (3) whether administrative proceedings are conducted without unreasonable delay; and (4) whether due process is respected in administrative proceeding.

IV. CONCLUSION

The case study of Singapore shows that the *Doing Business* project has informed and inspired various business regulatory reforms in Singapore. The fact that Singapore consistently ranks the highest on the *Ease of Doing Business* index indicates that the Singapore government has managed to formulate conducive rules and regulations that facilitate starting and doing business. Nevertheless, while the *Doing Business* report is a useful benchmark for self-reflection, it provides only one metric of a good business environment. The success of Singapore in the *Ease of Doing Business* may also be attributed to various factors, including, inter alia, a well-established business infrastructure, a well-regulated financial market, sophisticated legal system, efficient

²⁰⁹ Singapore Public Services, No Wrong Door, http://www.challenge.gov.sg/magazines/archive/2004_09/cover_story/cover_story.html

²¹⁰ The World Justice Project is an independent, non-profit organization which develops communities of opportunity and equity by advancing the rule of law worldwide.

²¹¹ See World Justice Project, available at <http://worldjusticeproject.org/factors/effective-regulatory-enforcement> (The World Justice Project looks at six subfactors in the index of regulatory enforcement: (1) Government regulations are effectively enforced; (2) Government regulations are applied and enforced without improper influence; (3) Administrative proceedings are conducted without unreasonable delay; (4) Due process is respected in administrative proceedings; and (5) The Government does not expropriate without adequate compensation.)

governance, and a diversified and talented business community. We also argue that, while efficiency creates competitive edge for an economy, it shall not be the overriding principle in the policy making of a nation, as there are considerable informational disadvantages within the *Doing Business* report. In indicators relating to efficiency, *Doing Business* does well and which is measured gets attention and gets done. Nevertheless, there are several limitations in the scope of contents and research methodologies employed by the *Doing Business*.

First of all, many important areas in achieving a trusted and conducive business environment are not addressed in the *Doing Business*. In particular, several basic governance rules that protect the interests of investors, such as the appointment rights and the decision rights are not systematically measured. Also, it is difficult for a single set of indicators to capture the full range of factors that would affect the quality of a business environment. Even for the chosen areas in the *Doing Business* project, it is challenging to evaluate how the law actually applies in practice. Typically, the essential areas in achieving a responsive business environment, such as investor protection and corporate governance are too comprehensive and complicated to be evaluated based on a unified business assumption or by pure quantitative methods. Thus, a simple variable of investor protection would create an illusion for investors, as it treats some of many pieces of information that are relevant for investor protection as an overall assessment of a nation's level of investor protection. We thus suggest that the *Doing Business* project consider taking out the indicator of *Protecting Investors* so as to make the evaluation of business regulatory environment more accurate.

Moreover, the *Doing Business* project measures mainly efficiency and we admit that the quantitative indicators help to reflect the level of efficiency in the selected areas of

doing business. However, the type of regulatory reform that is needed or suitable in a business environment can vary substantially across jurisdictions. Meanwhile, the best or most efficient rules of doing business vary with the context for which they are to be used, as business performance is highly context-specific. It is subject to the specific nature of the business, legal infrastructure, corporate structure and economy of a nation, and many other associated political economic elements of a society. Especially, the level of protections required for investors is largely subject to the specific ownership structures in different capital markets. Therefore, improving economic efficacy in doing business is not necessarily an ideal solution for problems within a business environment, especially in dealing with corporate mismanagement and improving corporate ethics.

Lastly, the *Doing Business* report provides a cost-effective means for consumers of the indicators to understand where an economy stands in the aggregate rankings. However, these indicators should not be overused as a universal standard of quality for all aspects of a business environment. Policy makers and business communities should exercise caution in attempting to draw inferences from a jurisdiction's ranking on the *Doing Business* indicators. Policy makers shall also consider the peculiar needs of their business communities, in order to make the business regulations work feasibly in the specific context, and adapt their economy to the changing business climate and increasing globalization.