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## State-Owned Enterprises In Singapore Historical Insights Into a Potential Model For Reform

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**THE STAKEHOLDER APPROACH TOWARDS DIRECTORS' DUTIES  
UNDER INDIAN COMPANY LAW: A COMPARATIVE ANALYSIS**

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Abstract

Recognizing that common law does not cast any general duty upon directors towards non-shareholder constituencies, legislatures have sought to formulate a tolerable solution to what they perceive as a gap in existing common law. The British Parliament engaged in one such legislative intervention by adopting the “enlightened shareholder value” (“ESV”) model through section 172 of the UK Companies Act 2006 (the “2006 Act”). This requires directors to have regard to non-shareholder interests *as a means* of enhancing shareholder value over the long term. Another approach was taken by the Indian Parliament through section 166(2) of the Companies Act, 2013 (the “2013 Act”), which appears at first glance to cast a duty on directors to treat non-shareholder interests as an end in itself. In other words, section 166(2) follows the pluralist approach by placing all interests (whether of shareholders or other stakeholders) on par without creating any hierarchy and as being valid in their own right.

In this article, we examine the nature and content of the duty cast under section 166(2) of the 2013 Act in India. In doing so, we also draw on the experiences from similar debates in other jurisdictions, principally the United Kingdom (UK). Our principal thesis is that while section 166(2) of the 2013 Act at a superficial level extensively encompasses the interests of non-shareholder constituencies in the context of directors’ duties and textually adheres to the pluralist approach, a detailed analysis based on an interpretation of the section and the possible difficulties that may arise in its implementation substantially restrict the rights of stakeholders in Indian companies. This makes the Indian situation not altogether different from the ESV model followed in the UK.

Key words: Directors’ duties, company law, shareholders, stakeholders, enlightened shareholder value, India, United Kingdom

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# STATE-OWNED ENTERPRISES IN SINGAPORE HISTORICAL INSIGHTS INTO A POTENTIAL MODEL FOR REFORM

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## ABSTRACT

State owned enterprises are generally regarded as inefficient firms because of political objectives, external interference, and corruption. Notwithstanding this, studies have shown that Singapore state owned enterprises exhibit higher valuations than those of non-GLCs after controlling for firm specific factors and also have better corporate governance practices. In this paper, the authors posit an explanation. This explanation draws on the political, social and economic context that Singapore found herself in during the period of self-governance to the early years of independence from the late 1950s to the early 70s. The paper offers the view that the difficult economic conditions coupled with a contested democratic political environment in Singapore during this period played a significant role in fostering good political governance in Singapore which was in turn transposed to her state owned enterprises.

Key words: Singapore, State owned enterprises, corporate governance, Singapore history

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## INTRODUCTION

It is easy to forget that a few decades ago state-owned enterprises (SOEs) were generally viewed as inefficient quasi-government departments which posed no meaningful competitive threat to privately-owned corporations. In fact, as recently as a decade ago, many pundits posited that SOEs were on the verge of extinction.<sup>1</sup> Around that time, two American academic luminaries boldly declared the “End of History for Corporate Law” claiming that the market-oriented model of the shareholder-centric corporation had triumphed over its principal competitors (SOEs included).<sup>2</sup>

Over the last decade, however, the renaissance of SOEs has made comparative corporate law seem more like the beginning of time rather than the end of history. In this new era, SOEs have made a valiant return from the precipice of extinction and now compose a substantial portion of the world’s most powerful corporations. Indeed, SOEs have come to dominate several key global industries and are the backbone of the Chinese economy (which is on course to become the world’s largest economy).<sup>3</sup>

The meteoric rise of SOEs, combined with the spectacular economic growth of China, has made the future of SOEs in China an issue of global importance. The success and sustainability of China’s SOEs has been vigorously debated both within China and internationally. In the midst of this debate, however, a somewhat surprising view appears to be emerging: that Singapore’s SOEs (also referred to in Singapore as government-linked companies or GLCs) may provide a good model for reforming China’s SOE Model.<sup>4</sup> In fact, very recently, the Chinese government decided that by 2020 the Singapore GLC Model

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<sup>1</sup> *The Long View: And The Winner Is...: Special Report: State Capitalism*, THE ECONOMIST (Jan. 21, 2012).

<sup>2</sup> Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. REV. 439 (2011).

<sup>3</sup> *The Visible Hand: Special Report: State Capitalism*, THE ECONOMIST (Jan. 21, 2012).

<sup>4</sup> For example, Li-Wen Lin & Curtis J Milhaupt, *We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 754 (2013) state that Temasek, Singapore’s state holding company, is a potential model for Chinese economic strategists. *See also*, *Reforming China’s state-owned firms: From SOE to GLC - China’s rulers look to Singapore for tips on portfolio management*, THE ECONOMIST (Nov. 23, 2013); Ronald J. Gilson and Curtis J. Milhaupt, *Sovereign Wealth Funds And Corporate Governance: A Minimalist Response To The New Mercantilism*, 60 STAN. L. REV. 1345, 1359 (2008); Tan Lay-Hong & Wang Jiangyu, *Modelling an Effective Corporate Governance System for China’s Listed State-Owned Enterprises*, 7 J. CORP. L. STUD. 14 (2007).

would be replicated in China 30 times over—making this proposed reform potentially one of the most important corporate governance initiatives of our time.<sup>5</sup>

On the brink of such a watershed reform, it is tempting to jump quickly to make predictions about the impact that transplanting the Singapore GLC Model will have on Chinese corporate governance. This article, however, avoids this temptation. Rather, it focuses on a more basic, yet fundamentally important, question that seems to have been largely overlooked in the rush to reform: What is the historical foundation and important drivers of the Singapore GLC Model? By answering this question, this article hopes to clarify exactly what China is aiming to transplant or, indeed, whether what China (or others) aims to transplant is even transplantable at all. Ultimately, this article concludes that the Singapore GLC Model is so closely intertwined with Singapore’s idiosyncratic history and unique regulatory culture that, although the model has been extremely successful within Singapore, transplanting it to China (and we suspect, most likely, anywhere else) could be difficult.

In the process of arriving at this conclusion, this article further illuminates two broader points that cut to the core of comparative corporate law theory. First, as alluded to above, the success of the Singapore GLC Model and China’s ambition to emulate it challenge notions that corporate governance systems are converging towards a market-oriented (American) model of the shareholder-centric corporation.<sup>6</sup> Indeed, an examination of the historical evolution of the Singapore GLC Model illustrates that a highly successful economy and system of corporate governance can be built on a foundation of corporations that have the government (and not only private free-market actors) as their ultimate controlling shareholder. Importantly, this feature of Singapore corporate governance has been maintained even as Singapore has moved from a developing, to a developed, and now to a world-leading economy that generates a GDP per person that exceeds all of the G7 countries<sup>7</sup> and has produced the world’s highest percentage of millionaires.<sup>8</sup>

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<sup>5</sup> 30 Chinese SOEs to Follow Temasek Model by 2020, WANT CHINA TIMES (May 30, 2014).

<sup>6</sup> Hansmann & Kraakman, *supra* note 2.

<sup>7</sup> World Economic Outlook Database, April 2014, International Monetary Fund Database updated on 8 April 2014. Accessed on 9 September 2014, available at <http://www.imf.org/>.

<sup>8</sup> Shibani Mahtani, *Singapore No. 1 For Millionaires – Again*, THE WALL STREET JOURNAL (Jun. 1, 2012).

Second, the success of the Singapore GLC Model challenges the basic conception that private enterprise rather than the state is necessarily more efficient at allocating capital to its most productive use. In fact, in Singapore's case empirical evidence suggests that, at least in certain circumstances, the converse may be true. As such, although the Singapore GLC Model may yet prove to be difficult to transplant, it suggests that even in today's global economy there remains many paths to corporate governance success. Rather than finding any one model, the key to effective corporate governance (if there is one at all) appears to be finding a system that fits each particular jurisdiction's economic, institutional, historical, political and cultural environment, which will, of course, vary (sometimes substantially) from jurisdiction to jurisdiction and even within each jurisdiction over time.<sup>9</sup>

## I. THE ATTRACTION OF THE SINGAPORE MODEL

In 1960, a year after Singapore attained full internal self-governance, it had a GDP per capita of US\$428 that was close to the world average<sup>10</sup> and faced significant challenges.<sup>11</sup> Today, Singapore is one of the richest countries in the world. With virtually no natural resources, effective governance has been the key to Singapore's success.

This has not gone unnoticed. For the past eight years, the World Bank has recognized Singapore as having the best regulatory and economic environment in the world for doing business.<sup>12</sup> Transparency International consistently ranks Singapore in the top five countries in the world for having the lowest level of corruption.<sup>13</sup> *The Wall Street Journal* and The Heritage Foundation consistently rank Singapore in the top few countries in the world with

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<sup>9</sup> For another example of this approach to successful corporate governance see, Dan W. Puchniak, *The Japanization of American Corporate Governance?: Evidence of the Never-Ending History for Corporate Law*, 9 ASIAN-PAC. L. & POL'Y J. 7 (2007).

<sup>10</sup> See, The World Bank, *World DataBank*, available at <http://databank.worldbank.org/data/views/reports/tableview.aspx>.

<sup>11</sup> See, *infra* Part II.

<sup>12</sup> The World Bank Group, *Doing Business: Measuring Business Regulations*, available at <http://www.doingbusiness.org/>.

<sup>13</sup> See, e.g., Transparency International, *Corruption Perceptions Index 2014*, available at <https://www.transparency.org/cpi2014/results>.

respect to economic freedom.<sup>14</sup> The Asian Corporate Governance Association has repeatedly ranked Singapore as having the best corporate governance in Asia.<sup>15</sup>

At first blush, Singapore's leading regulatory, free-market and corporate governance rankings suggest that it may be a poster child for the American-cum-global model for good corporate governance—which is built on the notion that the dispersedly-held, shareholder-centric, Berle-Means corporation is the zenith of efficiency.<sup>16</sup> If one drills down a bit below the rankings, however, it quickly becomes apparent that Singapore's corporate governance model is distinctly un-American at its core. In fact, the dispersedly-held, shareholder-centric, Berle-Means corporation virtually does not exist in Singapore.

To the contrary, Singapore's corporate governance system is built almost entirely on companies owned by concentrated block-shareholders. In fact, over 90% of Singapore's public listed companies have block shareholders who exercise controlling power.<sup>17</sup> In addition, empirical evidence suggests that as Singapore's wealth has increased, its concentration of shareholdings has also increased—the opposite of what proponents of the American corporate governance model would predict.<sup>18</sup> Even more incongruent with the American, market-oriented, shareholder-centric model, is that listed companies in which the government is the controlling shareholder (i.e., GLCs) account for 37% of the total stock market capitalization in Singapore.<sup>19</sup> As such, the Singapore government is by far Singapore's most powerful shareholder. In this light, the initial attraction of Chinese

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<sup>14</sup> The Heritage Foundation & The Wall Street Journal, *2015 Index of Economic Freedom*, available at <http://www.heritage.org/index/ranking>.

<sup>15</sup> Asian Corporate Governance Association, *CG Watch 2014 – Market Rankings*, available at [http://www.acga-asia.org/public/files/CG\\_Watch\\_2014\\_Key\\_Charts\\_Extract.pdf](http://www.acga-asia.org/public/files/CG_Watch_2014_Key_Charts_Extract.pdf).

<sup>16</sup> For an overview of the American-cum-global model for good corporate governance, see, Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, NUS LAW WORKING PAPER NO. 2014/005 (2014), available at <http://ssrn.com/abstract=2400958>.

<sup>17</sup> Luh Luh Lan and Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore*, in RANDALL THOMAS & JENNIFER HILL (EDS.), *RESEARCH HANDBOOK ON SHAREHOLDER POWER* (forthcoming, 2015).

<sup>18</sup> Stijn Claessens, *et. al.*, *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FIN. ECON. 81 (2001); 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 Listed Companies*, WORKING PAPER, 2010, available at <http://docs.business.auckland.ac.nz/Doc/exploring-the-question-of-ownership-from-control.pdf>.

<sup>19</sup> Based on 2008 to 2013 market capitalisation data, GLCs accounted for 37% of the stock market value. Isabel Sim, *et. al.*, *The States as Shareholder: The Case of Singapore*, Centre for Governance, Institutions & Organisations, NUS BUSINESS SCHOOL INSTITUTIONS, FINAL REPORT (July 1, 2014), at 6.

Communist Party officials to the Singapore GLC Model appears obvious—it provides a highly successful model in which the government remains the linchpin of corporate governance and the economy.

Perhaps even more attractive to Chinese Communist Party officials, however, is the evidence that on a micro-economic level the Singapore GLC Model appears to produce strong corporate performance and promotes good corporate governance—something which has tended to elude Chinese SOEs. To the extent that investors will demand a discount to the share price for companies that are perceived to be inefficient or have sub-optimal governance structures, studies have shown that far from Singapore GLCs trading at a discount to their peers, capital markets in fact value GLCs more highly than non-GLCs. One study estimated this premium at 20% after taking into account other variables that might affect firm value such as industry effects, size and monopoly power, profitability (it being the case that GLCs are generally more profitable), and bankruptcy risk.<sup>20</sup>

Another study corroborated this by finding that GLCs on average exhibit higher valuations than those of non-GLCs after controlling for firm specific factors. This study concluded that on average GLCs provided superior returns on both assets and equity and are valued more highly than non-GLCs. GLCs also did better in many performance measures and did not appear to be worse off in other measures. As such, they were more highly valued.<sup>21</sup> Interestingly, this study also found that GLCs in general managed their expenses better than non-GLC companies. The lower expense-to-sales ratio among GLCs indicated that GLCs were more profitable because they ran leaner operations. Such a finding demonstrated that GLCs in Singapore were different from the generally inefficient nationalized firm run by governments.<sup>22</sup> In addition, more recent studies suggest that GLCs

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<sup>20</sup> Carlos D. Ramirez & Ling Hui Tan, *Singapore, Inc. Versus the Private Sector: Are Government-Linked Companies Different?*, IMF WORKING PAPER WP/03/156 (2003), available at <https://www.imf.org/external/pubs/ft/wp/2003/wp03156.pdf>.

<sup>21</sup> James S. Ang & David K. Ding, *Government ownership and the performance of government-linked companies: The case of Singapore*, 16 JOURNAL OF MULTINATIONAL FINANCIAL MANAGEMENT 64, 85 – 86 (2006).

<sup>22</sup> Ang & Ding, *supra* note 21 at 80.



have implemented better corporate governance practices than non-GLCs—which bodes well for their future sustainability and economic performance.<sup>23</sup>

The question that arises is why Singapore GLCs were exceptional in this regard and whether such exceptionalism is transplantable.<sup>24</sup> In this article, we suggest that Singapore’s history around the time of self-governance and eventually independence, in particular her political and social circumstances, was a major factor in the development and governance of her GLCs. Of particular importance was the tenuous hold that the People’s Action Party (PAP), which has governed Singapore since independence, had on power at that time. To increase its legitimacy and support, the PAP set out to improve the lives of Singaporeans and this necessitated good economic management. One important aspect of this was to develop the economy beyond entrepot trade. The establishment of GLCs was an important part of the country’s industrialization plan. In Singapore, competent economic management had a strong correlation to political legitimacy and survivability. Although these conditions are not entirely unique to Singapore, a detailed analysis reveals that they are distinctive enough to call into question whether the Singapore GLC Model is easily transplantable.

## II. SINGAPORE POLITICS AND SOCIETY DURING THE PERIOD OF SELF-GOVERNANCE

Given the long period of PAP dominance in Singapore’s political life, it may be difficult to recall that unlike many other post-colonial governments, the PAP government did not initially have strong mass support. Thus, after the publication of the Rendel Report in February 1954 which was to lead to elections the following year towards some degree of self-government, Lee Kuan Yew, who was later to become the first Prime Minister of Singapore, felt it was necessary to form an alliance with extreme left-wing militants who were under the influence of the illegal Malayan Communist Party. While Lee Kuan Yew and his group were aware of the force and discontent of the Chinese educated masses, they realized that an alliance with such men, dangerous though it might be, offered the only path

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<sup>23</sup> Sim, *et. al.*, *supra* note 19.

<sup>24</sup> W.G. Huff, *What is the Singapore model of economic development?*, 19 *CAMB. J. ECON.* 735, 743 (1995) states that the Singapore development model carries the lesson that public enterprise organised through a sort of political entrepreneurship can be run efficiently and at a profit.

to political success. The future belonged to politicians who could command the allegiance of the Chinese educated.<sup>25</sup> The task was no doubt made more daunting by the fact that Lee Kuan Yew himself was English educated and could not speak Mandarin or any Chinese dialect fluently.

For their part, the left-wing Chinese extremists saw Lee Kuan Yew and his group as a convenient front to gain political power because they were more likely to be acceptable to the British. Thus, in its early days, the PAP was divided into two wings, the non-communists under Lee Kuan Yew and the pro-communists under Lim Chin Siong. During the early years of the PAP, Lim Chin Siong and his wing were the real force in the PAP, commanding the support of organized labour and the Chinese masses.<sup>26</sup> Thus, at the PAP's third annual conference in August 1957, Lim Chin Siong's wing won half of the seats for positions to the party's central executive committee. The future of the moderate non-communist wing appeared precarious and Lee Kuan Yew and an ally, Toh Chin Chye, who was chairman of the party, stepped down from the leadership. A dramatic turn of events occurred soon after when the Labour Front government under Chief Minister Lim Yew Hock arrested thirty-five active communists including five members of the newly elected PAP central executive committee and eleven branch officials. This allowed Lee Kuan Yew and his allies to regain control of the PAP.<sup>27</sup>

In 1959 new elections were held and the PAP obtained a strong majority winning 43 of 51 seats in the Legislative Assembly. In power, the PAP pursued merger with the Federation of Malaya. An important reason for this was economic survival. Despite considerable progress, industrial development in Singapore in the 1950s was unspectacular and the city could not be regarded as an industrial centre. In 1959 an industrial development programme was initiated in the Federation of Malaya. New industries set up there could obtain 'pioneer status' and tariff protection.<sup>28</sup> This was a potentially serious development for Singapore which regarded Malaya as an important economic hinterland.

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<sup>25</sup> C.M. TURNBULL, *A HISTORY OF MODERN SINGAPORE, 1819 – 2005* (2009), at 255.

<sup>26</sup> *Id.*, at 262.

<sup>27</sup> *Id.*, at 267.

<sup>28</sup> W.G. HUFF, *THE ECONOMIC GROWTH OF SINGAPORE – TRADE AND DEVELOPMENT IN THE TWENTIETH CENTURY 1819-90* (1994).

There was also an urgent need to provide employment. While open unemployment at around 5% in 1957 was not exceptionally high, this did not take into account large numbers of people who could not be regarded as fully employed. 19% of Singapore households and 25% of individuals were found to be in poverty, which was defined as a household income that was insufficient for minimum standards.<sup>29</sup> The rapid rise in the birth rate also foreshadowed future difficulties. Between 1947 and 1957 Singapore's population grew at 4.4% annually with natural increase accounting for most of this growth.<sup>30</sup> This would eventually translate into significant labour force growth and government policy had to take this into account. Singapore's reliance on entrepot commerce and the income from British military bases would be insufficient to meet the needs of a rapidly growing population which would require an increase in social services.<sup>31</sup> In a 1955 report of a mission organized by the International Bank for Reconstruction and Development, Singapore's ability to meet public financial requirements from domestic resources was doubted unless additional taxes were levied and present balances drawn upon.<sup>32</sup> This was because net public expenditure for social services was expected to increase significantly, albeit from a low level.<sup>33</sup>

Goh Keng Swee, who was later to become Singapore's Deputy Prime Minister, described the political situation faced by the PAP government in the following way:<sup>34</sup>

"As a condition for assuming office [in 1959], we had secured the release of the communist united front leaders who had been jailed by the British. The mass organizations were, therefore, once again under complete communist domination, and the government elected on a social democratic platform was virtually their political prisoner.

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<sup>29</sup> *Id.*, at 291.

<sup>30</sup> *Id.*, at 292.

<sup>31</sup> TURNBULL, *supra* note 25, at 275-76.

<sup>32</sup> INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD), THE ECONOMIC DEVELOPMENT OF MALAYA 28 (1955).

<sup>33</sup> *Id.*, at 139.

<sup>34</sup> GOH KENG SWEE, THE PRACTICE OF ECONOMIC GROWTH 96 (1995) (hereinafter "GOH (1995)").

By 1960, the social democrats in the PAP reluctantly came to the decision that they had to break with the communists, and possibly bring the fight into the open. Their chances of success were extremely small, and it was likely that the communists would then take over the reins of government, either directly or, more likely, through proxies willing to prostitute themselves for a brief illusion of political glory.”<sup>35</sup>

Although it is sometimes remarked that the difficulties of the 1950s and 1960s may be overstated to enhance the role played by the PAP government as led by Lee Kuan Yew, it cannot be doubted that the political climate at that time was fluid and uncertain.

To increase its popular support, the PAP government embarked on a programme of social reform.<sup>36</sup> One priority was to construct more public housing. The Housing and Development Board was established on 1 February 1960 with Lim Kim San, who was to later become a government minister, as its first chairman. The Board replaced the Singapore Improvement Trust and was tasked with solving Singapore’s housing problem. At the time, many were living in unhygienic slums and squatter settlements with only 9% living in government flats. In less than three years the Board built 21,000 flats and by 1965 it had built 54,000 flats. Today, about 82% of Singaporeans live in public housing.<sup>37</sup> Other significant steps were to improve health facilities, utilities, and education. For example, expenditure on education rose from \$600,000 in 1960 to \$10 million in 1963 and the school population increased over the same period from 290,000 to 430,000. The PAP pledged to provide universal free primary schooling as its first educational priority and embarked on a crash school building programme and the recruiting and training of teachers.<sup>38</sup>

Such ambitious social goals would be unsustainable without economic development. In the 1950s and early 1960s, a generally held view was that Singapore was not viable as an independent entity and had to be part of Malaya. Historically, Singapore had played an

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<sup>35</sup> He went on to say that at times it seemed that escape from disaster was achieved only through the assistance of a benevolent Providence, *Id.*, at 98.

<sup>36</sup> TURNBULL, *supra* note 25, at 284 – 285.

<sup>37</sup> See <http://www.hdb.gov.sg/fi10/fi10320p.nsf/w/AboutUsHDBHistory?OpenDocument>.

<sup>38</sup> TURNBULL, *supra* note 25 at 284.

important role in the Malayan economy and it was considered that she would not be economically viable without union with the Federation of Malaya. Singapore's leaders were keen on merger with the Federation as this would ensure Singapore's continued access to Malayan markets. On 31 August 1963, Singapore together with Sabah and Sarawak joined the Federation of Malaya to form the new Federation of Malaysia. However, the period of merger proved to be a difficult one and on 9 August 1965 Singapore ceased to be part of Malaysia.

The separation from Malaysia was traumatic for the Singapore leadership as many within the PAP had not conceived that Singapore would have to go it alone<sup>39</sup> though Goh Keng Swee was convinced by July 1965 that Singapore's economy could only flourish if it was completely free of control from the Malaysian central government.<sup>40</sup> A further potentially devastating blow was to come several years later when on 15 January 1968 the British government announced that its forces east of Suez would be withdrawn in December 1971. Given that the British military bases in Singapore provided substantial employment, not to mention the importance to the economy of the businesses that supported the military bases, this was a severe setback to the government of a new and developing country.<sup>41</sup> Beyond the immediate economic consequences, the withdrawal of British forces also meant that Singapore would have to invest more in building up its military. This would

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<sup>39</sup> In his autobiography, LEE KUAN YEW, *FROM THIRD WORLD TO FIRST – THE SINGAPORE STORY: 1965-2000* (2000), he wrote at 19 that he never expected to find himself in charge of an independent Singapore which faced “tremendous odds with an improbable chance of survival. Singapore was not a natural country but man-made, a trading post the British had developed into a nodal point in their world-wide maritime empire. We inherited the island without its hinterland, a heart without a body.” See also TURNBULL, *supra* note 25, at 274 – 275.

<sup>40</sup> TURNBULL, *supra* note 25, at 295. He was probably alone in this view, *id.*, at 299. Goh Keng Swee admitted that the expulsion from Malaysia was a terrifying experience for Singaporeans of his generation, see his speech in March 1986 to the Government of Egypt titled “Transformation of Singapore's Economy, 1960-1985” reproduced in LINDA LOW (ED.), *WEALTH OF EAST ASIAN NATIONS: SPEECHES AND WRITINGS BY GOH KENG SWEE* (1995) ( hereinafter “Goh (1986)” ), at 24.

<sup>41</sup> LEE KUAN YEW, *supra* note 39, at 69 estimated that British military expenditure was some 20% of Singapore's GDP, providing over 30,000 jobs in direct employment and another 40,000 in support services. Lawrence B. Krause, *Government as Entrepreneur* in *MANAGEMENT OF SUCCESS: THE MOULDING OF MODERN SINGAPORE* 438 (1989) stated the British expenditures constituted 12.7% of GDP in 1967 and were responsible, directly and indirectly, for the employment of 38,000 local workers, 20% of the work force.

place further pressure on its public finances. There was also the issue of confidence in Singapore's future which was necessary to attract investment into the country.<sup>42</sup>

It has been said that the beginnings of a significantly expanded and more intrusive role played by the government in the economy can be traced to the announcement of the military withdrawal.<sup>43</sup> Prior to this the government confined itself mainly to more traditional activities and to indirect involvement in the economy.<sup>44</sup> Indeed Goh Keng Swee stated that by 1968 a change in emphasis took place in Singapore's industrial promotion policy. Industrial development acquired a fresh urgency as a result of the decision by the British Labour Government to accelerate the end of the British military presence east of Suez.<sup>45</sup> The impending military withdrawal brought about a change in Singapore's economic path that has endured notwithstanding her development as an advanced economy today.

### III. THE FOCUS ON INDUSTRIALISATION TO BRING ABOUT ECONOMIC GROWTH IN SINGAPORE

Goh Keng Swee, who became Finance Minister in 1959, saw industrialization as the means to the economic growth that would provide part of the solution to the problems outlined earlier. Before the 1959 election he had called for industrialisation as the key to rapid

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<sup>42</sup> Singapore's vulnerability, or perceived vulnerability, is still an important element in government policy and rhetoric today. E.g. see GAVIN PEEBLES & PETER WILSON, *ECONOMIC GROWTH AND DEVELOPMENT IN SINGAPORE – PAST AND FUTURE* 6-7 (2002).

<sup>43</sup> Ow Chin Hock, *Singapore* in NGUYEN TRUONG (ED.), *THE ROLE OF PUBLIC ENTERPRISE IN NATIONAL DEVELOPMENT IN SOUTHEAST ASIA: PROBLEMS AND PROSPECTS* 163 (1976). After winning the 1968 general election, two of the policy directions laid down by the PAP government were the stimulation of economic growth through the cultivation of new activities and by taking advantage of new economic opportunities, and increased functional specialization in the institutions concerned with economic development. These policy directives led to the establishment of a number of public enterprises and also brought direct government participation into new spheres such as manufacturing, transport, trading and banking. The government no longer confined itself to an indirect economic role. It assumed entrepreneurial responsibilities and moved into areas which had traditionally been in the hands of the private sector. According to Ow Chin Hock, *id.*, at 158, this can be contrasted with the government's approach in its State Development Plan, 1961 – 1964, which focused on the pattern and financing of government development expenditure, which would support and complement the industrialisation programme. From this plan it could be seen that although the government envisaged a larger role for itself in economic development, it confined itself to the indirect role of providing economic infrastructure and incentives to attract foreign investment and promote industrial growth.

<sup>44</sup> Krause, *supra* note 41, at 438.

<sup>45</sup> GOH (1995), *supra* note 34, at 9.

economic growth. This would mop up unemployment and finance social reform.<sup>46</sup> Thus the new PAP government adopted many of the policies of the previous government such as the establishment of industrial estates and tax incentives to attract new enterprises and encourage the expansion of existing ones. It also set up the Economic Development Board (EDB) as a replacement for the Singapore Industrial Promotion Board. The role of the EDB was to attract new businesses to Singapore to enable the country to develop a manufacturing base. EDB's first foray into industrialisation was made in the hope that it would create 214,000 new jobs by 1970 to achieve full employment.<sup>47</sup> Industrialisation efforts were initially directed towards import substituting industries which was the policy adopted in the Federation of Malaya. This policy was later abandoned when Singapore ceased to be part of Malaysia. In its place came export oriented industrialisation.<sup>48</sup>

One difficulty with the industrialisation strategy was that Singapore's largely entrepot economy did not naturally lend itself to industrialisation. The base of human capital necessary for this was insufficient, and the government may also not have been able or willing to look to the Chinese educated businessmen who had traditionally made up Singapore's entrepreneurs.<sup>49</sup> The capital markets were relatively under-developed and may also not have been able to support large private undertakings, while the private sector could also have been risk averse.<sup>50</sup> A former EDB Chairman has gone so far as to say that Singapore had no industrial base whatsoever to build on.<sup>51</sup> Multinational corporations were one substitute for this, the other being strong state involvement in certain sectors of the

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<sup>46</sup> TURNBULL, *supra* note 25, at 276. LEE KUAN YEW, *supra* note 39, at 67 said that after grappling with the problem of unemployment for years since taking office in 1959, "all of us in the cabinet knew that the only way to survive was to industrialize. We had reached the limits of our entrepot trade. The outlook was a further decline". The need for an industrial drive was also recognized by the previous government, see R. LE BLANC, *SINGAPORE: THE SOCIO-ECONOMIC DEVELOPMENT OF A CITY-STATE* 13 (2008).

<sup>47</sup> Chan Chin Bock, *How Singapore Became a Newly Industrialised Economy* in *SINGAPORE ECONOMIC DEVELOPMENT BOARD, HEART WORK 2 – EDB & PARTNERS: NEW FRONTIERS FOR THE SINGAPORE ECONOMY* 13 (2011).

<sup>48</sup> Goh (1986), *supra* note 40, at 24 - 25 referred to the period 1960 – 1965 as the first phase of economic development in Singapore and said that this phase ended with little achieved. Nevertheless some valuable lessons were learnt including that import substitution industrialization was not a feasible policy for Singapore; another option was to produce for the export market; and the importance of political stability.

<sup>49</sup> HUFF *supra* note 28, at 320.

<sup>50</sup> Lee Sheng Yi, *Public Enterprise and Economic Development in Singapore*, 21(2) *MALAYAN ECONOMIC REVIEW* 49, 51 (1976).

<sup>51</sup> Chan, *supra* note 47, at 13. On the other hand, HUFF, *supra* note 28, at 289 expressed the view that by 1959, despite industrial development not being spectacular, a solid foundation for industrialisation had been built.

economy.<sup>52</sup> It was the government's perceived need to support the transformation of the Singapore economy that led to the formation of GLCs. Singapore's leaders found control over key domestic markets and institutions the most effective way to respond to opportunities in the world economy to meet the main planning objectives of absorbing surplus labour and promoting economic growth.<sup>53</sup> This was not entirely a break with the past because of the colonial inheritance of statutory boards such as the Singapore Harbour Board.<sup>54</sup> More importantly, as mentioned earlier the British pull-out served as a significant catalyst for even greater state involvement.

To ameliorate the impact on Singapore from the withdrawal of British troops, the British government agreed to hand over some of its assets. One was the naval dockyard at Sembawang which was handed over for a token sum of SGD1.00. Sembawang Shipyard Pte Ltd was established on 19 June 1968 to begin business as a commercial ship repairer with Swan Hunter (International) Limited as Managing Agent. Similarly, Keppel Shipyard (Pte) Ltd was established in 1968 when Keppel Harbour was taken over from the British Royal Navy. The former Royal Air Force Changi air base was chosen in 1975 to be the site of Singapore's international airport and the site expanded through land reclamation. Today it is managed by Changi Airport Group (Singapore) Pte Ltd and is one of the most successful airports in the world. Other properties that the British handed over to Singapore included Sentosa island which is a major tourism attraction; the former British Army headquarters at Fort Canning; the Seletar military airfield; and the Pasir Panjang military complex which now houses most of the academic departments of the National University of Singapore, the country's oldest university.

The Singapore government did not stop at establishing GLCs from the assets handed over by the British. Indeed the government went well beyond what the colonial government would have thought was within its remit. GLCs were a means for the government to take the

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<sup>52</sup> HUFF, *supra* note 28, at 320 where he quotes Goh Keng Swee in an interview: "we imported entrepreneurs in the form of multinational corporations and the government itself became an entrepreneur in a big way"; Huff, *supra* note 24, at 739 – 743. See also LEE KUAN YEW, *supra* note 39, at 75 who said that the government concluded that Singapore's best hope lay with the American multinational corporations which brought higher technology in large scale operations, creating many jobs.

<sup>53</sup> Huff, *supra* note 24, at 748 citing an interview with Goh Keng Swee.

<sup>54</sup> HUFF, *supra* note 28, at 331.



lead in establishing new industries, including in the services sector, where the private sector could not or would not. Indeed, National Iron and Steel Mills Limited was incorporated as early as 12 August 1961 and was the first manufacturing plant in the Jurong Industrial Estate that the government had established.<sup>55</sup> The Development Bank of Singapore, now known simply as DBS, was established in 1968 to take over the development finance section from EDB. It was thus an important catalyst for Singapore's industrial development in the early years after independence. Lee Kuan Yew explained that DBS helped finance entrepreneurs who needed venture capital because the established banks had no experience outside trade financing and were too conservative and reluctant to lend to would be manufacturers.<sup>56</sup> Other important GLCs that were established included Singapore International Airlines; Neptune Orient Lines which was the national shipping company;<sup>57</sup> and Chartered Industries of Singapore Pte Ltd which was established to make ordnance for the Singapore Armed Forces. In 1968 Singapore Shipbuilding & Engineering Pte Ltd, now known as ST Marine Limited, was established to support the Singapore Navy, and in 1975 Singapore Technologies Aerospace Pte Ltd<sup>58</sup> was formed to support the Singapore Air Force. Today, Chartered Industries, ST Marine and ST Aerospace are all part of the ST Engineering group, one of Singapore's largest GLCs. It has also diversified its customer base significantly with much of its business today coming from commercial companies.<sup>59</sup>

The circumstances that Singapore found herself in probably explain the importance of GLCs in her economy compared to other Asian peers such as Japan, Hong Kong, South Korea and Taiwan. Hong Kong's development was largely driven by private enterprise. While many large companies in Japan, South Korea and Taiwan did benefit from state support, it did not lead to widespread government ownership of companies. What may have

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<sup>55</sup> Some companies such as National Iron and Steel Mills Limited were established as joint ventures with Singaporean and overseas investors.

<sup>56</sup> LEE KUAN YEW, *supra* note 39, at 77.

<sup>57</sup> Thus GLCs were also established in the services sector as shown by Singapore International Airlines and Neptune Orient Lines.

<sup>58</sup> Today it is known as ST Aerospace Limited.

<sup>59</sup> Chua Beng Huat, *State-owned enterprises, state-capitalism and social distribution in Singapore*" (forthcoming in THE PACIFIC REVIEW) has also described how Singapore used certain statutory boards that existed during the colonial period and delinked their regulatory functions from the supply of services, thus allowing the government to regulate the prices of services provided domestically while simultaneously enabling the suppliers to become commercial enterprises that were able to take advantage of opportunities in Singapore and abroad, in the process transforming them into multinational corporations.

distinguished Singapore from these economies were the generosity of the British in giving Singapore land (without charge) that could be used for economic or defence purposes, and the perceived market failure of a lack of entrepreneurs to support industrialisation.<sup>60</sup> Both factors acting in tandem caused the state to become a significant market participant.<sup>61</sup> Indeed, in 1977 Goh Keng Swee explained that government owned enterprises in Singapore came about because of the “colonial inheritance” and to encourage investors to take the plunge which was especially important in the early years of industrialisation when private investors needed a lot of encouragement and which continued later when new needs were identified.<sup>62</sup> The domestic market was too small to support industry and business experience was confined to import and export trade, banking, and regional shipping instead of industrial enterprises.<sup>63</sup> Unlike nationalisation which did not create new wealth but only effected a transfer of ownership and control, the government established new enterprises to create new wealth and jobs to add to the growth of the Gross National Product. Public ownership did not come about because of ideological grounds<sup>64</sup> though the fact that the PAP was established as a socialist political party may have been a contributing factor as there would have been no ideological aversion to state ownership.<sup>65</sup> Underpinning all this was the insecurity brought about by the reality of an independent Singapore without a hinterland.<sup>66</sup>

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<sup>60</sup> LEE KUAN YEW, *supra* note 39, at 86; Lee Sheng Yi, *supra* note 50, at 55.

<sup>61</sup> It has also been pointed out that the Singapore government’s role as an entrepreneur also affected savings behaviour which helped to finance the necessary capital accumulation for economic development, see GREGOR HOPF, *SAVING AND INVESTMENT: THE ECONOMIC DEVELOPMENT OF SINGAPORE 1965-99 – AN IN-DEPTH LOOK AT THE COUNTRY’S SAVING BEHAVIOUR AND GOVERNMENT CONTROL* 136-38 (2009).

<sup>62</sup> Goh Keng Swee, *Public Enterprises*, speech at the NTUC INCOME Annual General Meeting, Jun. 20, 1977 reproduced in LOW, , *supra* note 40 (hereinafter “Goh (1977)”), at 122 – 123. In addition, there were companies established for specific needs such as those to support defence needs.

<sup>63</sup> Goh Keng Swee, *What Causes Fast Economic Growth*, speech delivered at the 4<sup>th</sup> K.T. Li Lecture on 13 October 1993 at Harvard University reproduced in LOW, *supra* note 40, at 252; Goh (1995), *supra* note 34, at 7.

<sup>64</sup> Goh (1977), *supra* note 62, at 122 – 123.

<sup>65</sup> PEEBLES & WILSON, *supra* note 42, at 30. Ow Chin Hock, *supra* note 43, at 169, also suggests that government participation served as a safeguard against excessive foreign control and ownership.

<sup>66</sup> There have been suggestions that the PAP government used the opportunity presented by Singapore’s expulsion from Malaysia to engender a constant sense of crisis so as to build support for the PAP and encourage Singaporeans to make sacrifices for the future, see e.g. HOPF, *supra* note 61, at 324 – 326; PEEBLES & WILSON, *supra* note 42 at 7. While it is true that the PAP government does try to justify many policies on the basis of Singapore’s inherent vulnerability as a small state, and was undoubtedly astute enough to make use of Singapore’s expulsion to solidify its support, it is suggested that its fear of going it alone was genuine. Historically, geographically and culturally Singapore was bound to the Malayan peninsula and the idea of an independent Singapore separate from Malaya would not have been the preferred option at that time and unthinkable to a large part of the population.

The PAP's approach to economic survival was thus a pragmatic one. Goh Keng Swee said that the PAP had to try a more activist and interventionist approach as the *laissez faire* policies of the colonial era had led to little economic growth, massive unemployment, wretched housing, and inadequate education. An aspect of this more interventionist approach was the government's direct effort in promoting industrial growth through GLCs which in turn created substantial employment.<sup>67</sup>

The Singapore government was not unaware of the risks of such an approach. Lee Kuan Yew has written of his fear that the GLCs would become subsidised and loss making nationalised corporations as had happened in many new countries. However, he was persuaded by Hon Sui Sen, who was then a Permanent Secretary and later became Minister for Finance, that it was possible to succeed as these companies could compete in the market. If they were not profitable they would be shut down. Lee Kuan Yew, together with other cabinet colleagues such as Goh Keng Swee, thought this bold plan was worth the risk given the dearth of entrepreneurs.<sup>68</sup>

Singapore's industrialisation efforts proved successful. The economy saw a shift to manufacturing. Its share in total output grew from 16.6% in 1960 to 29.4% by 1979. In 1992, manufacturing contributed 27.6% of GDP and accounted for 27.5% of employment.<sup>69</sup> Public enterprises were, by the first half of 1974, thought to account for 14 – 16% of total manufacturing output.<sup>70</sup> The successful management of the Singapore economy is a major factor for the PAP's longevity as the ruling party in Singapore. Accordingly, when elections were held in September 1963 the PAP gained a clear victory, winning 31 out of 51 seats. The Barisan Sosialis, which had been formed by former PAP members, managed to win 13 and the United People's Party won 1. The PAP's victory in the following election held in 1968 was even more comprehensive. The Barisan Sosialis boycotted the election and the ruling party won every seat that was contested.

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<sup>67</sup> Goh (1995), *supra* note 34, at 104 - 105.

<sup>68</sup> LEE KUAN YEW, *supra* note 39, at 87.

<sup>69</sup> Huff, *supra* note 24, at 739.

<sup>70</sup> Lee Sheng Yi, *supra* note 50, at 64.

The Barisan's boycott in 1968 meant that the outcome of the election was a foregone conclusion. The 1963 election is therefore a better indicator of a decisive switch in popular support to the PAP. While it is true that the Barisan operated at a disadvantage in that election as some of its leaders were in prison, the outcome was not certain. According to a historian, the result of the 1963 polls appeared to hang in the balance and the PAP's clear victory was a surprise to both PAP and Barisan supporters alike.<sup>71</sup> The PAP obtained just under 47% of the popular vote while the Barisan obtained around 33%. A major reason for this was the PAP's governance record. The party's good economic management and social policies had helped it to garner more support from the populace. As the PAP leadership under Lee Kuan Yew was aware of its initially precarious position within Singapore's political arena, and sought to win the support of the majority of Singaporeans, their strategy was to improve the social and economic conditions of the people. Good economic management was regarded as an important key to strengthening the PAP's political position, and government entrepreneurship was intended to facilitate Singapore's economic development.<sup>72</sup> GLCs gave the government considerable influence in certain segments of the economy.

The link between economic legitimacy and political power in Singapore cannot be understated. Singapore has for most of her modern history been a largely immigrant society focussed on commercial enterprise. The Chinese, Indians and other races that came to Singapore did so to engage in trade or to find work. By the end of the nineteenth century Singapore had a secure place in the pattern of world trade as a staple port, the entrepot for Southeast Asian raw materials and Western manufactured goods, with an increasingly sophisticated infrastructure of commercial institutions and expertise.<sup>73</sup> Singapore today is still essentially a commercial city and her survival is premised on her ability to be commercially relevant to the wider region around her and as an important node for Western commercial enterprises and investors. Thus while economic growth is important to all countries, it has an almost existential condition in Singapore. It is therefore not surprising

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<sup>71</sup> TURNBULL, *supra* note 25, at 286.

<sup>72</sup> Goh (1995), *supra* note 34, at 103 refers to the government having to involve itself in direct ownership and control of many industrial, financial and commercial enterprises to bring about economic growth.

<sup>73</sup> TURNBULL, *supra* note 25, at 105.

that economic legitimacy is probably the most important determinant of political legitimacy in Singapore.

The social contract with the people that has kept the PAP government in power since independence is widely accepted to be the promise of employment and a fair distribution of economic benefits, a significant part of which is represented by the provision of good public housing which a large majority of Singaporeans reside in.<sup>74</sup> It has been suggested that any serious diminution of the positions of GLCs would have major implications for the political regime, one reason being that the fortunes of the GLCs will influence the reformulation of any new social contract between the government and Singapore's citizens.<sup>75</sup> Thus fortuitously from the outset the conditions to encourage the responsible management of GLCs were in place. The management of GLCs in the Singapore context cannot be separated from the overall approach that the PAP government adopted in the development of the Singapore economy. After all it was civil servants acting at the behest of their political masters who were tasked in the earlier years with managing GLCs which they did with the goal of economic development in mind.

In keeping with the goal of fostering good governance, the government also adopted a zero tolerance approach to corruption. It is well known that corruption was fairly widespread in Singapore in the 1950s and 1960s and the PAP set out to contrast its conduct with that of the previous Labour Front government. Much of the corruption in Singapore at the time was of the petty kind but there were also larger scandals. The PAP government set out to eradicate corruption and today Singapore is regarded as one of the least corrupt countries. This undoubtedly was also a factor in GLCs in Singapore being relatively well managed and not the victims of rent seeking that often occur in SOEs elsewhere. Indeed the aversion of the PAP government to corruption, particularly in the public sector, is evidenced by the fact that under Singapore law, a public servant who receives any gratification shall be

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<sup>74</sup> The perception that this social contract is less effective today was a major contributing factor to the results of the 2011 General Election in Singapore which saw the opposition winning an unprecedented 6 out of the 87 elected seats in Parliament and the loss of 2 cabinet ministers. Subsequently, the Workers Party won a by-election in January 2013 when the PAP Speaker of Parliament resigned his seat.

<sup>75</sup> Garry Rodan, *International capital, Singapore's state companies, and security*, 36 CRITICAL ASIAN STUDIES 479, 480 (2004).

presumed to have received such gratification corruptly as an inducement or reward unless the contrary is proved by such public servant.<sup>76</sup>

With GLCs seen as an important engine in the development of the Singapore economy, the main method chosen by the government to exercise control over GLCs when civil servants ceased to manage such companies was the appointment of top civil servants to the boards of these companies. These civil servants serve a monitoring function but otherwise government control is very loose. The government makes no attempt to appoint managers or other personnel to manage the companies and normally does not interfere in the management of GLCs.<sup>77</sup> The boards of GLCs are policy boards rather than functional (managerial) ones.<sup>78</sup> This model has endured and is still largely in operation today though one important difference is the interposition of a company to play the role that the state once did. Temasek Holdings Pte Ltd was incorporated on 1 January 1974 to hold and manage the investments and assets previously held by the Singapore government.<sup>79</sup> Its sole shareholder is the Minister for Finance and the transfer of government assets to Temasek was to allow it to manage those assets on a commercial basis.<sup>80</sup>

Temasek states that it is an engaged shareholder that promotes sound corporate governance in its portfolio companies. This includes supporting the formation of high calibre, experienced and diverse boards to guide and complement management leadership. Temasek's policy is not to direct the business operations or decisions of the companies in its

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<sup>76</sup> *Prevention of Corruption Act* (Cap 241), ¶ 8. The general position without the presumption is that the prosecution has to prove both the gratification and that such gratification was solicited or given "as an inducement to or reward for" doing or forbearing to do something, *Prevention of Corruption Act*, ¶ 5.

<sup>77</sup> Lee Sheng Yi, *supra* note 50, at 57; Goh (1977), *supra* note 62, at 124. Though it was said in the 1970s that certain top civil servants were found to sit on several boards at the same time and that such interlocking directorships allowed control and coordination with government policies to be ensured, see Ow Chin Hock, *supra* note 43, at 177, and also PHILLIP N. PILLAI, *STATE ENTERPRISE IN SINGAPORE: LEGAL IMPORTATION AND DEVELOPMENT* 117, 202-04 (1983). Pillai points out that government directors are clustered along related industries to allow specialization and prevent over-extension that would lead to such directors being unable to expand adequate time and energy on the activities of their companies. Specialization means that these directors would be familiar with the industry, trends and developments and could more readily contribute and safeguard the state's investment than if they were directors of companies in widely disparate groups.

<sup>78</sup> PILLAI, *supra* note 77, at 116.

<sup>79</sup> A commentator has opined that the state-business relationship is even closer today, especially in the previous decade when Temasek Holdings and its GLCs have expanded, see Ho Khai Leong, *Political Consolidation in Singapore: Connecting the Party, the Government and the Expanding State* in TERENCE CHONG (ED.) *MANAGEMENT OF SUCCESS: SINGAPORE REVISITED* 74 (2010).

<sup>80</sup> See, information on Temasek, available at <http://www.temasek.com.sg/abouttemasek/faqs>.

portfolio and to leave this to their respective boards and management. Temasek does, however, advocate that boards be independent of management in order to provide effective oversight and supervision of management. This includes having mostly non-executive members on boards with the strength and experience to oversee management. Similarly, Temasek advocates that the Chairman and Chief Executive Officer roles be held by separate persons, independent of each other.<sup>81</sup> As with the position soon after independence, top civil servants as well as former top civil servants serve on the boards and senior management of many GLCs. It is not uncommon for such persons and other establishment figures to hold multiple directorships in GLCs. It is possible to see in such arrangements the fostering of continued loyalty to the government<sup>82</sup> in addition to participation in key sectors of the economy. Having GLCs that are efficiently run advances these objectives.

It is noteworthy that Temasek has been a strong advocate of independent (American-style) boards, which focus primarily on monitoring management as opposed to being involved directly in the management of GLCs. In fact, until very recently, Singapore's Code on Corporate Governance required only that independent directors be independent from management, but not controlling shareholders. Although such a definition resonates closely with the law, practice and evolution of independent directors in the United States, it contrasts sharply with the position taken by most other jurisdictions in which controlling shareholders predominate.

At first blush, Singapore's traditionally narrow definition of independence appears to call into question the authenticity of her commitment to truly independent boards. Indeed, conventional comparative corporate governance theory suggests that the primary role of independent directors in a controlling shareholder environment should be to monitor controlling shareholders with the ultimate goal of protecting minority shareholders by

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<sup>81</sup> See, <http://www.temasek.com.sg/abouttemasek/faqs>.

<sup>82</sup> For example, CARL A. TROCKI, SINGAPORE: WEALTH, POWER AND THE CULTURE OF CONTROL 174 (2006) offers the view that the GLCs and statutory boards are important political tools as they provide the government with a ready means of rewarding its bureaucratic allies with jobs as directors or managers of these enterprises. They also act as a recruiting ground for talent. Cf PILLAI, *supra* note 77, at 206, who asserts that there is an absence of the political spoils system by which the ruling party appoints directors to state enterprises on the basis of political expediency and as rewards for political service, rather than ability or potential contribution to the enterprise.

policing private benefits of control—a task that is unlikely to be performed adequately by directors connected with the controlling shareholder. Interestingly, however, it appears that conventional corporate governance theory may not apply to Temasek in this case as the foundational assumption that controlling shareholders are strongly incentivized to extract private benefits of control does not fit into Temasek’s incentive structure. To the contrary, based on our analysis above, it appears that Temasek is highly incentivized to use its controlling power to ensure that GLCs are run efficiently as this serves its (and, ultimately, the PAP’s) long-term interests.<sup>83</sup> This is further bolstered by the existence of strong functional substitutes (to board independence) such as the robust public enforcement mechanism in Singapore.

#### CONCLUSION: REFLECTING UPON THE EVOLUTION OF GLCs IN SINGAPORE

As evident from the preceding discussion, Singapore adopted a unique trajectory towards growth that was spearheaded by her GLCs. The success of GLCs in Singapore can be attributed to a number of factors that have been entrenched within the country’s governance system as a result of her historical experience. We argue that any attempt to replicate the Singapore model in other jurisdictions such as China ought to take into account these historical underpinnings, failing which the success of any transplant would not be beyond doubt.

History reveals the operation of certain characteristics that are specific to GLCs in Singapore.<sup>84</sup> *First*, Singapore is a city-state and an international financial centre. While corporate governance measures are shaped by investor preferences, particularly those placed by global financial investors of repute, their enforcement (both public and private) is considerably strong in Singapore. The stellar reputation of Singapore and her companies,

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<sup>83</sup> For a more detailed discussion of how classic corporate governance theory and the concept of private benefits of control fails to capture the complex reality of controlling shareholders in Asia see, Puchniak, *supra* note 16.

<sup>84</sup> Some of these characteristics are discussed in Isabel Sim, Steen Thomson & Gerard Yeong, *The State as Shareholder: The Case of Singapore*, REPORT PUBLISHED BY THE CHARTERED INSTITUTE OF MANAGEMENT ACCOUNTANTS (CIMA) & CENTRE FOR GOVERNANCE, INSTITUTIONS AND ORGANISATIONS (CGIO) (June 2014), at 40-41.



whether privately-owned or government-owned, in the overall corporate governance standings in Asia is therefore entirely understandable.

*Second*, despite the dominant ownership and control of the government, GLCs are professionally-managed with limited interference from the government. Temasek's policy is to ensure that independent boards on portfolio companies provide the requisite strategic direction and monitoring so as to benefit shareholders, including the minority shareholders. The hands-off approach that is historically evident in GLCs stands in stark contrast to some countries where the government (or in China, the Chinese Communist Party (CCP)) holds a tight leash over its SOEs and their management and governance. For instance, in Chinese SOEs, decision-making on important matters vests in the hands of the CCP, which it exercises through various mechanisms including by deciding on the appointment and promotion of top SOE executives.<sup>85</sup> While it is true that political legitimacy constitutes the bulwark of strong economic development both in Singapore and China, the manner in which such legitimacy is asserted in the context of SOEs varies significantly in the two countries. While it is indirect and subtle in the Singapore context, it is rather pronounced in China.

*Third*, the broad themes of public governance in Singapore have also been transposed to its GLCs. Professionalism in management and governance, executive compensation practices that ensure attraction of the best talent and a zero-tolerance policy towards corruption are hallmarks of governance both in Singapore's public sector as well as its GLCs. Not many countries have achieved the level of talent, effectiveness and efficiency in their public governance to make it a potential asset in the highly competitive global market for corporate governance, which seems to be apparent in the interface between the Singapore government and her GLCs.

*Fourth*, the existence in the 1950s and 1960s of a contested democratic political environment appeared to play a significant role in fostering good political governance in Singapore which was in turn transposed to her GLCs.<sup>86</sup> The PAP was clearly aware of how

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<sup>85</sup> Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, (2014) 47 CORNELL INT'L L. J. (forthcoming).

<sup>86</sup> This is by no means an assertion that democracy is a necessary prerequisite for economic growth. Rather, the fact that Singapore adopted a democratic form of government and the PAP faced a

the Labour Front government lost support as a result of negative public perception brought about partly by allegations of corruption against a member of the cabinet. The PAP therefore sought to cast itself in the 1959 elections as the party of honest and efficient government. Having won convincingly, it had to live up to its promises or risk being punished in subsequent polls. The task was all the more urgent as Lee Kuan Yew and his allies in the PAP had the communist wing of the Party to contend with which eventually broke away to form the Barisan Sosialis.<sup>87</sup>

*Fifth*, the fact that the PAP's legitimacy is deeply intertwined with Singapore's economic performance creates a structure in which Temasek has clear incentives to ensure that GLCs are effectively governed for the benefit of all shareholders. This suggests that conventional comparative corporate governance theory, which assumes that controlling shareholders are incentivized primarily to extract private benefits of control, does not seem to apply in full force to Temasek. As such, to understand Temasek and how it exerts controlling power over the governance of GLCs, requires a uniquely Singaporean lens to illuminate the historical foundations of the principles of economic pragmatism and political stability that have moulded its effective governance.

In this article, we began with a discussion of the "convergence" thesis in corporate governance and how the emergence and operation of SOEs detract from that thesis.<sup>88</sup> As we have further sought to establish, the historical evolution of Singapore GLCs and the unique factors of governance they display appear to throw cold water on the convergence argument. On the contrary, there are clear indications of divergence. In that context, our study of the historical evolution of GLCs in Singapore reflects greater sanguinity about the divergence approach towards corporate governance that is supported by the "path dependency" thesis. This suggests that corporate structures and institutions are likely to be

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contested political environment were factors that we argue contributed significantly to good governance in Singapore.

<sup>87</sup> The absence of universal suffrage in China is another significant difference from Singapore. However, the historical political cycle in China could act as a proxy. It is a familiar aspect of Chinese history that her dynasties have followed the familiar path of giving way to revolution when the ruler is perceived to have lost the Mandate of Heaven by failing to rule well. There can be no doubt that the leaders of the CCP are aware that if the CCP wishes to remain in power, good governance will have to be strengthened and corruption reduced.

<sup>88</sup> Hansmann & Kraakman, *supra* note 2.

shaped very closely by existing structures, which are not amenable to material change due to rent seeking and interest group politics.<sup>89</sup> Moreover, as our study underscores, political<sup>90</sup> and cultural<sup>91</sup> factors play an important role in shaping corporate governance structures and practices. Having said this, it is entirely possible that over time, Singapore's dominant form of corporate governance could evolve sufficiently to resemble the market-oriented model of the shareholder-centric corporation. Even so, it is perhaps a fallacy to assume that there is a 'resting point' for corporate governance structures. A 'converged' system of corporate governance may itself evolve over time into something materially different.

While the optimism among Chinese officials to achieve a transplant of Singapore's successful GLC model into China is comprehensible, as might be the case with other countries exploring this model as a potential one for reform, we caution against its wholesale adoption without regard to the underlying historical factors in Singapore that have been at play. The goal of this article has been to highlight these historical factors with a view to providing some further strands of thought into the convergence-versus-divergence debate.

At the same time, we consider this study to be the initial building block for further academic research on Singapore GLCs. Possible further avenues for research include: (i) the precise nature of management and governance structures and mechanisms in GLCs, and how they operate in fact; (ii) comparison between the governance structures and mechanisms between GLCs and privately-owned companies in Singapore; and (iii) comparison between the governance and performance of GLCs and SOEs in other jurisdictions. These will enable a further understanding of the role and impact of SOEs,

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<sup>89</sup> Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. R. 127, 129 (1999). See also, William Bratton & Joseph A. McCahery, *Comparative Corporate Governance and the Theory of the Firm: The Case Against Global Cross Reference*, 38 COLUM. J. TRANSNAT'L L. 213, 213 (1999) (arguing against convergence of corporate governance because "each national governance system is a system to a significant extent").

<sup>90</sup> MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE (1994); MARK J. ROE, POLITICAL DETERMINANTS OF CORPORATE GOVERNANCE: POLITICAL CONTEXT, CORPORATE IMPACT (2003); Raghuram G. Rajan & Luigi Zingales, *The Great Reversals: The Politics of Financial Development in the Twentieth Century*, 69 J. FIN. ECON. 5 (2003); RAGHURAM G. RAJAN & LUIGI ZINGALES, SAVING CAPITALISM FROM THE CAPITALISTS: UNLEASHING THE POWER OF FINANCIAL MARKETS TO CREATE WEALTH AND SPREAD OPPORTUNITY (2004).

<sup>91</sup> Amir N. Licht, *The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems*, 26 DEL. J. CORP. L. 147 (2001).

which continue to be a dominant force in several Asian markets, with their influence extending to other parts of the world. More broadly, it is our hope that these approaches will expand and challenge conventional notions and theories in corporate governance, so as to widen the discourse.

Finally, we should expressly add a caveat about what this article is not about. We do not seek to argue by implication that Singapore should continue to rely on GLCs as major drivers of her economy. While her historical circumstances suggest a strong path dependency towards strong state involvement in the economy,<sup>92</sup> it is and will remain an open question whether this should still be the case or if it is time for the government to further distance itself from the commercial sphere. This continues to be a matter of debate within Singapore. What this article seeks to demonstrate is that Singapore has shown it is possible to have efficient SOEs, and that this was because of her unique experiences and circumstances.

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<sup>92</sup> An additional factor that reinforces this path dependency is Temasek's role in safeguarding and investing Singapore's reserves, a role that it plays together with other government institutions such as the Government Investment Corporation of Singapore, the Monetary Authority of Singapore and the Central Provident Fund.