Legal Origin and Corporate Governance for Chinese Family Business: Evidence in Hong Kong, Taiwan and Mainland China

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Abstract

This paper aims to examine if the difference of legal traditions make different corporate governance regimes for protecting interest of listed family enterprises' shareholders through evaluating and comparing corporate governance regimes in the Greater China region, including Hong Kong, Taiwan and Mainland China. The result is consistent with the LLSV paper, i.e. common law tradition constitute better corporate governance regime. We also find that countries with civil law traditions can be enhance the quality of the corporate governance regime through legal and financial reforms, and through adopting some measures which is commonly found in companies govern by common law tradition.

I Introduction

Family businesses play a major role in the business world. Many of the multi-national enterprises are well-known family businesses, including The Trump Organization, Maserati, Tata Group, Toyota, Samsung, etc.. In the Greater China region, family businesses also plays the dominant role for the regional economy and financial market. In 2014, there were 2,743 family enterprises with total market capitalization of US$210 billion in the Greater China region. The family enterprises are 48.3% of the total listed companies in the region (Taiwan Institute of Directors, 2015). Since family businesses is crucial for the economy and the stability of the financial market in the region, the governance of such enterprises is a cause for concern.

Ownership concentration and family management are two key characteristics of family business. One of the key governance challenge for family enterprises may be caused by the characteristics is defining a clear distinction between family members' economic rights as shareholders and their rights as board members and senior management (IFC, 2014). Following the expansion of a family business, the relationship among the owners, managers and employees becomes more complex. The complex relationship may bring conflict of interest and thus negatively affect the interest of shareholders, especially minority shareholders of listed family enterprises. A research showed a negative relationship between investor protection and ownership concentration, as well as between investor protection and the preservation of family management (Burkart, Panunzi and Shleifer, 2003). This situation is more concerned particular for listed family business in Greater China, due to the strong family bond in Chinese society (Tong, 2014).

Corporate governance, which deals with the problem of information asymmetry, manifested in adverse selection and moral hazard, arising from the separation of ownership and control, ensures that the concerns of a listed company's shareholders and stakeholders, including management and board, are taken into proper account, and thus protects the interest of all shareholders (Lee, 1993; La Porta et al., 2000; Anderson and Gupta, 2009; Sarbah and Xiao, 2015). Good corporate governance is possible to tackle the challenge of family enterprises.

A robust corporate governance regime, including the legal, regulatory and institutional frameworks, evolves a good corporate governance system in a jurisdiction (Tsui and Gul, 2002). Some legal origin literatures examine the relationship between legal origin and the protection of investors or corporate governance and states that countries whose legal rules originate in the common law tradition tend to protect investors or to concern good corporate governance more than the countries whose laws originate in the civil law tradition (La Porta, et al., 1998; Burhop and Deloof, 2011).

There are different legal traditions in the Greater China region. Hong Kong adopts common law regime influenced by the United Kingdom in the colonial era while Taiwan adopts German civil law system taken reference from German Civil Code 1900 and influenced by the Civil Code of the Qing Dynasty (Chen, 2011). Moreover, legal system in Mainland China is socialist system of law based primarily on the civil law model (Chen, 2011). As family business which dominates the economy and financial market in the Greater China region requires a good corporate governance to protect interest of shareholders, the region is a suitable field to study corporate governance regimes in different legal origins.

This paper aims to examine if the difference of legal traditions make different corporate governance regimes for protecting interest of listed family enterprises' shareholders through evaluating and comparing corporate governance regimes in Hong Kong, Taiwan and Mainland China. Section II presents a literature review on the relationship between family business, corporate governance and legal origin. Sections III reviews and compares the corporate governance regimes for listed companies in Hong Kong, Taiwan and Mainland China. Section IV presents concluding remarks.

II Literature Review

Chinese Family Business and Corporate Governance

Many literature provides different definition of family business. Gomez-Mejia, Larraza-Kintana and Makri (2003) defines family businesses as an enterprise which has at least two executives from a family that holding at least 5% of the total equity of the enterprise. Moreover, Bartholomeusz and Tanewski (2006) suggest family business is that key executives and board directors should be core members of a family that more than 40% of the company shares are held by close relatives of that family. From these definition, family business can be broadly defined as a company where the voting majority is held by a controlling family (IFC, 2011).

Family, ownership and control are three major concepts in a family business (Ward, 1987). The three elements should be more obvious in Chinese family business. Chen (2001) indicates four features of Chinese family businesses, including family-directed operation, control of dominant family head, enduring roles and family obligations in company's management, and family-accountable corporation. Even if no suitable management talent in family, family members are still preferred over outside professional managers (Chen, 2001). Moreover, Tong (2014) states that Chinese family firms are generally characterized by three features: personalism, paternalism and centralized authority structures. In short, the literature shows that ownership concentration and convergence of majority shareholders and management are more obvious in Chinese family business.

Though the features align the ownership and management interests and thus reduces the interest conflict of interest between management and shareholders (i.e. principal-agency problem) (Jensen and Meckling, 1976; Schulze et al., 2001), it is more likely to bring another agency problem, i.e. the conflict of interest between family shareholders and non-family shareholders (WEF, 2013). This combination of ownership concentration and family control enables controlling family shareholders and owner management to expropriate the wealth from other minority shareholders (Shleifer and Vishny, 1997; Anderson and Reeb, 2003).

Family shareholders always deploy various measures to enhance their control of a family firm, including dual-class stock, blockholding, cross-holding and pyramidal ownership structure (WEF, 2013). Dual-class stock is a voting structure that the firm has issued more than one class of stock with different voting rights. Blockholding has no general definition. In many jurisdiction, blockholding is defined as owning at least 5% of the total issued share of a firm. Cross-holding is a strategy that a company owns shares in another company which belongs to the family's chain of control in the firm. Pyramidal ownership structures is a control structure that the family holds shares in the firm through one or more intermediate entities of which the family owns less than 100% (Villalonga and Amit, 2006).

The five principles of corporate governance defined by the Organisation for Economic Co-operation and Development ("OECD"), which includes the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and the responsibilities of the board (OECD, 2015), guide the corporate governance of family business and may monitor whether such measures deployed by family shareholders affects shareholders' interests.

Corporate Governance Regime and Legal Origin

Cadbury (1992) states that "Corporate governance is the system by which companies are directed and controlled". It involves the control of corporate structure and director's duties. Effective corporate governance requires a sound corporate governance regime, including legal, regulatory and institutional framework, for companies to establish their corporate governance structures (OECD, 2015). In any corporate governance environment, such framework, which offers minimal standard for investor protection can prevent minority shareholders from unfair advantage of majority shareholders (Tsui and Gul, 2002). Some researches support the argument that the agency problems in family business can be addressed by increasing legal protection of minority shareholders (Enriques and Volpin, 2007; Amit et al., 2015).

A corporate governance regime for listed companies in most jurisdictions are divided into three pillars (OECD, 2014). The first pillar is Company Law that set forth the default option regarding corporate structures in a jurisdiction. The second pillar is Securities Law and regulations that set forth requirements for market participants enforceable for regulators to protect market integrity and interest of investing public with enforcement through regulators. The third pillar is the self-regulated listing rules for regulating listed companies. Some jurisdictions, such as Germany and the United Kingdom, also have national code on corporate governance in "comply or explain" basis (OECD, 2015).

There are two major legal traditions in the world: common law and civil law. Common law originated in England and widely used by Britain's former colonies, including India, Australia and Canada. In common law jurisdiction, including Germany, France and Japan, law cases are extensive used as the judge's source of judgement. The judge also plays an active role in making rules. Thus, common law is flexible and adaptable to any change of social context, and makes incremental change. Conversely, civil law, which is the oldest law system in the world, is based on codification of the law. In civil law jurisdiction, codes and statutes are designed. The judges are responsible to apply the code to the case. Past judgments will not be used as guidance.

Many legal origin literature states that the efficiency of corporate governance rules differs in legal origin. La Porta, Lopez-de-Silanes, Shleifer, and Vishny ("LLSV")(1998) indicates that common law countries have stronger law protection on investor's interest than civil law countries, as agency problems are expected to be stronger in civil-law countries. Moreover, Iturriaga and Pereira do

Carmo (2006) found that the content of good governance codes is influenced by a country's legal system and legal protections for investors. They found that the interests of investors are better guaranteed in common law jurisdictions, codes of good corporate governance practices have lesser measure to protect shareholders' interest than in those countries in civil jurisdictions.

There is also a legal system called socialist law system. It originates in the Soviet Union, and is used in Communist states, including China, Cuba and Vietnam (La Porta et. Al, 2008). It is controversial to define socialist tradition is either an independent tradition or a stem of civil law tradition. However, it can say that all countries adopting socialist tradition is formerly civil jurisdiction, and vice versa (Quigley, 1989).

Corporate Governance Regime, Legal Origin and Board Structures

Moreover, there are two types of board structures commonly found in companies depending on the legal origin of a jurisdiction. Single-tier structure (see Figure 1), in which the unitary board is elected by the shareholders in annual general meeting and plays both management and supervisory functions, is always found in common law jurisdictions. In civil law jurisdictions, companies will have two-tier board structures (see Figure 2), including supervisory board and management board. The former is responsible to overseeing management board's works while the latter performs management and day-to-day operation functions. Members of the two boards are elected by shareholders in general shareholders' meeting. In some jurisdiction, esp. jurisdictions with German legal origin, employment participation in board is required.

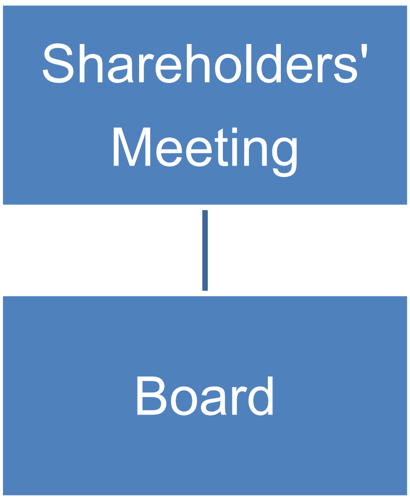


Figure 1: Single-tier board structure

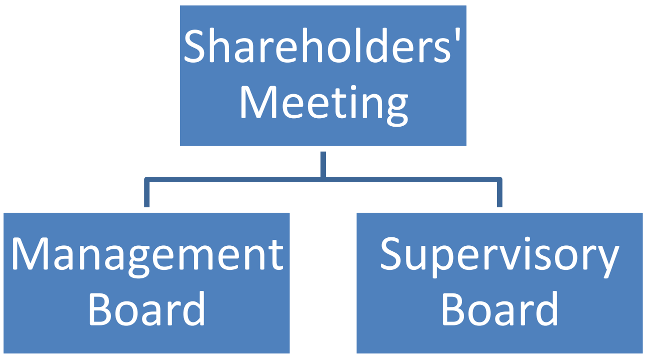


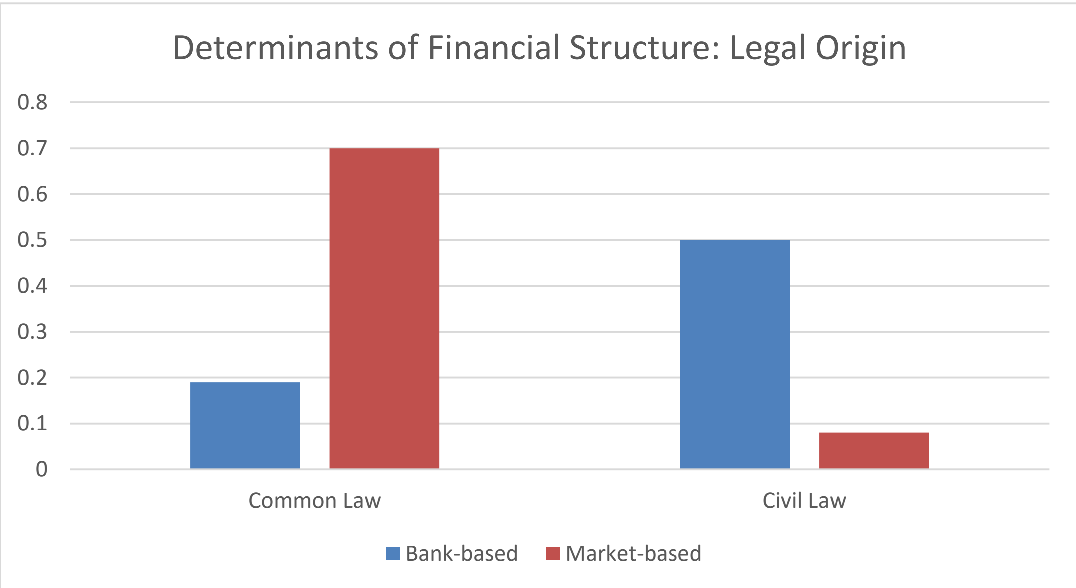
Figure 2: Two-tier board structure

Also, under the single-tier structure, the board should contains several numbers of member who are defined as independent non-executive director ("INED"). INEDs not only play an important role in aligning the interests of management and shareholders by monitoring the board (Agrawal and Knoeber, 1996), but also bring their professional knowledge to contribute to the board's decision making. Under the single-tier structure, it is required to set up nomination, audit and remuneration committees under the board. INED is generally required to participate or chair such committees.

Corporate Governance Regime, Legal Origin and Financial Structures

As mentioned, many research on the relationship between law and finance indicated that jurisdictions with common law tradition tend to offer higher protection to shareholders, especially minority shareholders, and creditors. Gambacorta, Yang and Tsatsaronis (2014) conducted a survey to support that common law jurisdictions are most likely to foster the development of a market-based financial structure while civil law jurisdictions tend to foster the development of a bank-based financial structure (as shown in Table 1)[1]. As higher protection of investor of such jurisdictions encourages trading activity in securities market and thus expands the base of shareholders. On the other hand, as judges' interpretive powers is restrained in civil law jurisdictions, civil law courts are not effective in resolving disputes, including credit disputes. Banks thus emerge as institutions to settle conflicts and enforce contracts without civil law court's intervention (Ergungor, 2001).

Table 1: Financial Structure and Legal Origin



Source: Gambacorta, Yang and Tsatsaronis (2014).

Moreover, different financial structures influenced by different legal tradition causes different

[1] Countries with larger ratios of banking sector development (measured in terms of size, activity, and efficiency) relative to stock market development are classified as bank-based. Countries where the conglomerate ratio of banking sector development to stock market development is below the mean are classified as market-based (Demirgüç-Kunt and Levine, 2001).

outcome on the corporate governance system. Breuer and Salzmann (2012) offer a comparison on the main characteristics of corporate governance systems in bank-based and market-based financial structures. As shown in Table 2, corporate governance system in bank-based structure is characterized as insider controlling, strategic objectives of investors (e.g. business partner of the company), complicated ownership structures, weak minority shareholders' protection, important role played by boards as insider (i.e. management) control, and low takeover activity. Corporate governance system in market-based structure is characterized as outsider controlling, financial objectives of investors, transparent ownership structures, strong minority shareholders' protection, a limited role played by boards as substructure of management, and high takeover activity.

Table 2: Dimension of Corporate Governance

	Bank-based	Market-based
Corporate Control	Insider	Outsider
Investors' Objective	Strategic	Financial
Ownership Structure	Complex	Transparent
Protection of minority shareholders	Weak	Strong
Corporate boards	Important	Negligible
Takeover activity	Low	High

Source: Breuer and Salzmann (2012).

III Corporate Governance Regimes in Hong Kong, Taiwan and Mainland China

A qualitative approach will be adopted to review the corporate governance regime for listed companies in Hong Kong, Taiwan and China. It will review the three-pillar laws and regulations in each jurisdictions with the five principles of corporate governance defined by the OECD. Recalling the five principle, they are: (1) equitable treatment of shareholders, e.g. voting structures and ; (2) rights of shareholders and key ownership functions, e.g. the requirement of annual meeting and proxy voting, pre-emptive right, and approval of shareholders on notifiable transaction; (3) responsibilities of the board, e.g. duties of directors, structure of board, and requirement of independent director; (4) disclosure and transparency, e.g. interest disclosure of directors, senior management and substantial shareholders, disclosure of connected transaction; (5) role of stakeholders, e.g. employee's participation in board and institutional investor stewardship.

Hong Kong

Hong Kong belongs to countries with an English legal origin, i.e. common law tradition, as a former British colony and developed a market-based financial structure (Demirgüç-Kunt and Levine. 2001). Laws and regulations regarding corporate governance in Hong Kong mainly derived from Companies Ordinance ("CO"), Companies (Winging Up and Miscellaneous Provision) Ordinance ("CWUMPO"), Securities and Futures Ordinance ("SFO"), relevant Code and Guidelines issued by the Securities and Futures Commission ("SFC") and the Listing Rules of the Stock Exchange of Hong Kong Limited ("SEHK") (i.e. the Main Board Listing Rules and Growth Enterprise Market Listing Rules).

Breaches of the CO, CUWPO and SFO, except some sections of the ordinances in which the breach will be instituted into civil proceedings, shall be treated as committing criminal offence. Regulations made by SFC and SEHK are non-statutory, breach of the regulations, however, may be instituted disciplinary proceeding by the SFC and SEHK respectively.

Equitable treatment of shareholders

Hong Kong adopts a one-share-one-vote system in which each shareholder holds equal voting right per share. Indeed, regulator also insists to maintain the system. In 2015, the SFC, who has the final say to amend the Listing Rules under the SFO, made an announcement to reject the consultation paper of introducing weighted voting rights issued by Hong Kong Exchanges and Clearing Limited ("HKEx"), SEHK's parent company, with the reason of upholding the core principles of fairness and transparency.

Rights of shareholders and key ownership functions

Shareholders in Hong Kong owns much basic right, including the right of electing/discharging directors, transferring shares, raising inquiry to the Board, cumulative voting, participating and voting on annual general meeting, etc.. Also, the Listing Rules sets requirement particularly for the annual general meeting of listed companies, including to allow shareholders to mail their proxy votes to the companies.

Shareholders can raise proposal on the annual general meeting, if they represent at least 2.5 per cent of the total voting rights of all shareholder or have at least 50 shareholders.

Moreover, for protecting shareholders, disclosure to or approval from shareholders' is required before some corporate activities is implemented, including to implement a notifiable transaction or connected transaction, and to issue new share that number of share is 20% or higher of their existing issued shares.

Notice that the connected transaction rule in the Listing Rules provide minority shareholders certain safeguards against directors, executives or substantial shareholders and their associates, including their spouses and children, taking advantage of their positions when the listed company enter into connected transactions. It compulsorily requires the listed company to consult the SEHK within a designated period before entering into connected transactions.

Besides the Listing Rules, SFC's Codes on Takeovers and Mergers and Share Buy-Backs ("Takeover Code") offers some measures to protect shareholders in the situation of takeovers and mergers, such as establishing an independent board committee composed by all non-executive directors without conflict of interest to the offer for advising disinterested shareholders regarding the offer received, requiring number of votes cast against the scheme resolution shall not be more than 10% of the voting rights attached to all disinterested shares, and requiring a person who acquired 30% or more of the voting right to extend offer to all shareholders.

Responsibilities of the board

Hong Kong companies adopt single-tier board system. The Listing Rules requires listed companies to establish audit committee and remuneration committee under the board. It required listed companies must appoint at least 3 (or one-third of the board directors) INED and establish audit committee and remuneration committee. Both committees should be chaired by INED.

The CO requires a director to exercise reasonable care, skill and diligence, and sets out certain restrictions on the persons who may be appointed as directors of a company, including no convicted of an indictable offence and no guilty of fraud or fraudulent trading. Also, both the CO and Listing Rules set out the eligible criteria for directors. For INED, the Listing Rules prescribe additional eligible criteria of professionalism and independence. In order to maintain the independence of

INED, shareholders who hold more than 1% of the company's share are not eligible to be INED.

Moreover, the SEHK expects directors of listed companies to fulfil fiduciary duties based on its common law regime. Every director must comply with the Model Code for Securities Transactions by Director of Listed Companies ("Model Code") in the Listing Rules that set out SEHK's required standards on listed companies and its director. Listed issuer can comply with their own code on terms no less exacting than those set out in the Model Code.

Corporate Governance Code and Corporate Governance Report are included in the Listing Rules. The Corporate Governance Code sets out SEHK's principles of good corporate governance and its suggestion on corporate governance practices. Listed companies are not mandatory to comply with the Corporate Governance Code, but they have to disclose the reason of the deviation in their interim and annual report. Corporate Governance Report sets out some items, including information about board, remuneration of directors and senior management, internal control and risk management policies, financial reporting, etc., that all listed companies must disclose mandatorily in their interim and annual reports.

Disclosure and transparency

Information asymmetric between board, management and minority shareholders can be reduced through quality and timely disclosure and transparency enhancement. Besides CO's the requirement of issuing annual report with company's financial statements, the SFO also granted statutory backing on various kinds of disclosure.

First, a dual filing regime is established under the Securities and Futures (Stock Market Listing) Rules, a subsidiary legislation of the SFO, to require listing applicants and listed companies to file applications and other on-going disclosure of information with the SFC via the SEHK. Listing applicants and listed companies who intentionally or recklessly disclose materially false or misleading information to the public bears criminal liability.

Second, under the SFO, listed companies are required to disclose inside information, i.e. the specific price-sensitive information that is not generally known, as soon as reasonably practicable. Breach of the statutory obligation is a civil offence which listed companies and their directors may be prosecuted by the SFC before the Market Misconduct Tribunal ("MMT"), an administrative tribunal to deal with market misconduct activities, and may be liable on conviction to a fine.

Third, the SFO requires directors, chief executives and substantial shareholders (person who owned 5% or higher of a company's share capital) of a listed company to disclose their interests, including voting shares, short position in shares, and debenture of the listed company. Disclosure must be made on timely basis when there is any change on nature or percentage level of their interest. Failure to comply with the requirement is a criminal offence. Indeed, this regime helps shareholders to identify the persons who control the company and the person who may benefit from the company's transaction.

Moreover, under the Takeover Code, listed companies are required to enable shareholders to make an informed decision on the merits of an offer by disclosing timely and adequate information.

Role of stakeholders

The corporate governance regime is Hong Kong is not required any employee participation in corporate board. However, for other stakeholder like institutional investors, the SFC aims to improve the stewardship of Hong Kong listed companies through publishing the Principles of the Responsible Ownership for providing guidance on how investor, esp. institutional investors, should fulfil their ownership responsibilities regarding their investment in a listed company. The non-binding and voluntarily-based principles are operated on a "comply-or-explain" basis.

Taiwan

The legal origin of Taiwan is generally classified as German legal origin, i.e. German-civil law tradition, as the Taiwanese law referenced from the Civil Code of the Qing Dynasty which is largely influenced by the German Law and Japan Law (According to LLSV Paper, both German and Japan Law are classified as German legal origin). Moreover, court decisions also become important in the development of Taiwanese civil law due to increasing commercial transactions with the United States (a common law jurisdiction) and increasing concern on adopting standardized employment contract (Chen, 2011).

Moreover, the financial structure of Taiwan has shifted from bank-based to market-based due to the legal and financial reform after the Asian financial crisis in 1997 (Shih, 2000). In the reform, the importance of corporate governance to domestic corporations is taken in to consideration, including the introduction of independent directors and audit committee system. The Company Law and the Securities and Exchange Act of Taiwan is amended in 2006 for enhancing the corporate governance regime (SFI, 2015). Currently, laws and regulations regarding corporate governance in Taiwan mainly derived from the Company Law, the Securities and Exchange Act, regulations issued by the Financial Supervisory Commission ("FSC"), listing regulations of the Taiwan Stock Exchange ("TWSE") and Taipei Exchange ("TPEx"), including Corporate Governance Best Practice Principles and Code of Practice for Integrity Management.

The Securities and Exchange Act empowers the FSC to execute investigation and administrative sanction for violation of the law. In addition, any violation involved criminal activity (i.e. suspected breach of the Criminal Code) shall be instituted to criminal prosecution. Securities & Exchange Act requires juridical branch to constitute a professional court to examine the market criminal suspects.

Equitable treatment of shareholders

Same as Hong Kong, Taiwan adopts a one-share-one-vote system under the Company Law. Also, it is prohibited to implement any flat or scaled voting caps.

Rights of shareholders and key ownership functions

Taiwan's shareholders, same as Hong Kong's shareholders, have the right to elect/discharge directors, to approve material transaction, the change of article of incorporation, and the cumulative voting right under the Company Law. Also, proposal can be raised by shareholders with at least 1% of the total shares.

Though, Taiwan shareholders has no right to mail proxy votes, they still can vote through assigning a proxy to attend the shareholders' meeting or through an electronic voting system. Moreover, a derivative lawsuit regime enables shareholders retain the power to reshuffle the director who abuses the delegate discretionary power through shareholders' meeting.

Responsibilities of the board

Taiwan adopts a two-tier board structure, including Board and Supervisor. The Board is responsible for the functions of management while Supervisors monitors the Board. Both the Board and Supervisors are elected by shareholders though shareholders' meeting. Therefore, under the two-tier structure, Board, Supervisor and shareholders make the system of check and balance. However, Supervisors are not required, if a company has formed an audit committee, i.e. single-tier structure. In order to keep in line with the global trend of adopting single-tier structure, some corporations, such as financial holding company, bank, insurance company and securities investment trust enterprise, with a designated capital requirement should comply with the single-tier structure.

Both the Company Law and the TWSE regulations requires directors to exercise fiduciary duties. If a director violated any laws and regulations when conducting business operations and hence caused damage to any other person, he shall be liable for the damage to such other person.

The Company Law and listing regulations of TWSE and TPEx have not mentioned any prescribing qualifications that a director should have. However, the Company Law prescribes the professional qualification and requirement of independence for INED. Moreover, it should contain at least two (or one-fifth of the board directors) INEDs in a board. The Registry of Independent Directors Database, which contains the information about person who meet the requirement of INED, is established for listed companies' reference on the selection of INED. Also, audit committee should be composed by INEDs and should has at least three members. Therefore, company with single-tier structure must has at least three INEDs, though the Company Law only requires at least two INEDs in the board. For remuneration committee, it requires at least one INED as a member of the committee.

Disclosure and transparency

The Securities and Exchange Act set out the disclosure regime for share transactions by directors, executives and controlling shareholders. In pre-filing stage (i.e. before the transaction), share transactions by directors, managers, or shareholders holding more than 10% of the total shares of a listed company should file an effective registration with the FSC. The post-filing stage (after the transaction) is mainly for connected person of the shareholders holding more than 10% of the total shares of a listed company, such as his/her spouse and son/daughter. They should report their transactions to the listed company by the fifth day of each month. The listed company should compile and file such report with the FSC by the fifteenth day of each month.

Moreover, the Securities & Exchange Act requires chairperson, executive and accounting officers of a listed company to file a declaration for ensuring no false or misrepresentation in company's disclosed information. Listed companies should comply with the TWSE Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities issued by TWSE for disclosing material inside information.

In order to enhance the transparency of listed companies, FSC requires listed companies to contain Group Companies Management Report, Consolidated Financial Statements, Relationship Report and Corporate Governance Report in their annual report.

Role of stakeholders

For listed company with two-tier structure, the Company Law requires at least 3 Supervisors to monitor the board and to audit company's accounting. Supervisors are not necessarily selected from shareholders of the company, but should not be directors, executive or staff of the company. Supervisors can check any financial record of the company at any time, convene shareholders' meeting when necessary, and attend Board meeting.

The corporate governance regime is Taiwan is not required any employee participation in the board of a company. Moreover, there is currently no stewardship code for institutional investors in Taiwan. However, the TWSE has commenced a consultation for introducing the proposed Stewardship Principles for Institutional Investors to promote institutional investors' stewardship responsibilities.

Mainland China

Mainland China adopts so-called socialist law tradition. However, the Soviet Union Civil Code it used since 1949 was based on the German Civil Code (Chen, 2011). The main difference between socialist law and other legal traditions is real property, as no individual ownership of real property in socialist countries. Therefore legal reform belongs to economic reform of socialist market economy in late-1970s. China's law and regulations is modelled many civil jurisdictions. China has also modelled the securities regulatory regime of Hong Kong and the United States (Qian, 1995; Ma 2000). Moreover, as bank played major role on providing financial services before the fast growing development of stock market, China is currently classified as bank-based financial structure (Eichengreen, 2015).

Corporate governance regime in Mainland China is composed by different laws, regulations and rules formulated by legislators, and various level of administrative government department, including the Company Law ("PRC Company Law") and the Securities Law ("PRC Securities Law") formulated by the National People's Congress or its Standing Committee, Circular of the State Council on its Approval of the CSRC's Opinion on Improving the Quality of Listed Companies issued by the State Council. relevant departmental provisions, such as Code of Corporate Governance of Listed Companies, Regulations on Information Disclosure of Listed Companies and Guiding Opinions on the Establishment of the System of Independent Directors in Listed Companies, issued by The China Securities Regulatory Commission ("CSRC"), and self-disciplinary rules made by the Shanghai Stock Exchange ("SSE") and Shenzhen Stock Exchange ("SZSE").

The CSRC may deliver administrative sanctions, such as warnings, fines, disqualification and banning for entering into the industry, for listed companies or persons who violate relevant law and regulation in the corporate governance regime. Those suspected of a criminal offence (i.e. breach of the Criminal Law of the People's Republic of China) shall be transferred to courts for prosecutions.

Equitable treatment of shareholders

Same as Taiwan and Hong Kong, China adopts one share one vote principle. Some Mainland non-state-owned listed companies who also listed in Hong Kong have shareholders in A share and H share. In this situation, these companies need to hold shareholders' meetings for owners A shares and H shares separately. However, both kind of shareholders enjoy the same voting right.

Rights of shareholders and key ownership functions

Same as Hong Kong and Taiwan, China's shareholders enjoys the right to transfer shares, to vote on general shareholders' meetings, to inquire the Board of Directors, and cumulative voting rights, etc.. However, shareholders who want to make proposal must hold over 3% of the issued shares.

Shareholders should vote in person or by proxy on the general shareholders' meeting. Though shareholders has no right to mail proxy votes, they can vote via an online voting platform.

Moreover, for protecting shareholders, disclosure to or approval from shareholders' is required before some corporate activities is implemented, including to implement a notifiable transaction or connected transaction, and to issue new share that number of share is 20% or higher of their existing issued shares.

Moreover, if a listed company buys or sells a major assets within one year, or the amount of guarantee exceeds 30 percent of its total assets, it must be subject to resolution by the general shareholders' meeting, and must be subject to adoption by the shareholders who hold two-thirds or more of the voting rights.

Furthermore, controlling shareholder who manipulates the company in unfair and inequitable related-party transactions, and thus causes serious loss to the company, the controlling shareholder must bear criminal liability.

Responsibilities of the board
Similar to Taiwan, listed companies in Mainland China adopts two-tier broad structure. The Supervisory Board monitors the Board of Directors and executive and is entitled to inspect company's finance. Shareholders elects both the Board of Directors and Supervisory Board in general shareholders' meeting. The Board of Directors may, according to the resolution of the general shareholders' meeting, establish special committees, including strategy committee, audit committee, nomination committee and remuneration committee.

Moreover, the PRC Company Law set outs the qualification and independence requirement for INED. Same as Hong Kong, INED cannot hold more than 1% of the share of the company for maintaining his independence.

It requires that at least one-third of the total Board members should be INED. The mentioned committees should be convened by INED. It also requires that at least one INED with professional accounting qualification in the audit committee. Any material and connected transaction must be granted approval from INED before discussing in the Broad of Directors.
Directors shall be liable for the resolutions adopted by the Board of Directors. If the resolution of the board violates laws and regulations, or the resolutions of the general shareholders' meeting, and thus causes serious losses to the company, the directors who participate in the adoption of the resolution shall be liable for compensation to the company.
Furthermore, the PRC Securities Law identify directors, executives and controlling shareholders as persons possessing inside information and prohibit them to disclose such information or to conduct

insider dealing. However, it has no any disclosure regime for the inside information.

Disclosure and transparency

Directors, executives and shareholders with 5% or more of shares of listed companies and its related persons should submit a list of related parties of the companies and explain the relationship.

When the Board of Directors or general shareholders' meeting of the listed company examines any issue regarding the related-party transactions, the connected directors or shareholders must withdraw from voting. The voting result should also be disclosed after the agreement is signed.

Role of stakeholders

The Board of Directors may have representatives from among the staff and workers of the company. Also, the Supervisory Board is composed by representatives of shareholders and representatives of the staff and workers appropriate proportion prescribed by the company's articles of association. The representatives should be elected by the staff and workers through general meeting of the staff and workers. Moreover, there are no stewardship code for institutional investor in Mainland China.

Comparison of Corporate Governance Regime

Table 3 shows a summary of legal origin, financial structure and pillars of corporate governance framework those mentioned in literature review. Hong Kong, as a common law regime, develops a market-based financial structure. Regulatory regime is influenced by differences in legal traditions that common law jurisdictions tend to use more self-regulation than civil law jurisdiction (Grajzl & Murrell, 2007). As mentioned above, only CO, CWUMPO and SFO are statutory-backed. Breach of rules and regulation of the SFC and SEHK will not commit offence, but will only be disciplined by SFC and SEHK's self-regulated disciplinary action. In short, breaching regulations in Hong Kong's corporate governance regime is not necessarily instituted in expensive and time-consuming judicial procedure. The common law regime of Hong Kong may, therefore, gives the flexibility to the market and industry for development.

Though Taiwan's legal regime is mainly influenced by Germany and Japan, economics development and financial reform changed it to be market-based financial structure and to be more concern on court's decision. Also, a regulators encourage listed companies to adopt single-tier board structure which is commonly found in the company governed by common law regime.

Table 3: Comparison of Legal Origin, Financial Structure and Corporate Governance

Jurisdictions	Legal Origin	Financial Structure	Pillars of Corporate Governance Framework		
			1st Pillar	2nd Pillar	3rd Pillar
Hong Kong	Common Law	Market-based	▪ CO ▪ CWUMPO	▪ SFO ▪ SFC's relevant codes and guidelines	▪ SEHK Listing Rules (including Corporate Governance Code and Report
Taiwan	Civil Law (German/ Japan)	Market-based	▪ The Company Law	▪ The Securities and Exchange Act, ▪ FSC's relevant regulations	▪ Listing regulations of TWSE and TPEx
Mainland China	Socialist Law developed based on German Civil Law	Bank-based	▪ PRC Company Law	▪ PRC Securities Law ▪ Relevant rules and regulations issued by CSRC and relevant government agencies	▪ Self-regulated rules, including SSE and SZSE Listing Rules

Moreover, though China adopts socialist legal origin based on German civil law tradition since 1949, the socialist legal tradition, which has no concept on property rights, is not suitable to develop socialist market economy in late-1970s (Chen, 2011). Thus, China's securities law and regulations is modelled many jurisdiction, including Hong Kong and the United States (Qian, 1995; Ma 2000). Indeed, though China's regime maintains the two-tier board structure with employment participation which is commonly found in companies governed by German civil law tradition, it also introduces INED and special committees, those are commonly found in companies governed by common law tradition, in both the Board of Directors and Supervisory Board.

Same protection and not the matter of legal origin?

Referencing different jurisdictions, including common law jurisdictions, both Taiwan and Mainland China developed comprehensive corporate governance regimes which covers many measures and mechanism to protect the interest of shareholders. Recalling family shareholders' strategy of ownership control (i.e. dual-class stock, blockholding, cross-holding and pyramidal ownership structure), it seems that the comprehensive regimes of Taiwan and Mainland China, similar to Hong Kong, have relevant measures to protect the interest of non-family shareholder in certain extent as shown in Table 4, such as enhancing company's transparency through disclosure and restraining family owners' tunnelling behaviour via the pyramidal ownership structures by INED's monitoring (Chen et al., 2014).

Table 4: Mechanism to Protect Non-family Shareholders from Family's Control Strategy

	Hong Kong	**Taiwan**	**China**
Dual-class stock	One share one vote	One share one vote	One share one vote
Blockholder	Disclosure of interest	Disclosure of share transactions by directors and controlling shareholders	Information disclosure for major equity changes
Cross-holding	Disclosure of connected transaction, Approval of notifiable transaction by shareholders.	Disclosure of affiliated corporations, Approval of material transaction by shareholders.	Disclosure of Related Party Transactions, Approval of material or connected transaction by board/shareholders.
Pyramidal ownership	INED	INED	INED

However, the civil law histories of Taiwan and Mainland China have emphasized different kind of rules and codes rather than standards of behaviour. It may cause companies and individuals in the jurisdiction to comply with the laws in form, rather than in substance. Their rules under civil law tradition may not flexible enough to adapt to the changing context (Tsui and Gul, 2002). The weak basic rule and low adaptability are also the reason of lower ranking in eleven Asian markets as shown in Table 4 (ACGA, 2014).

Table 5: Corporate Governance Ranking in Asia 2014

Rank	Countries/ Regions	Legal Traditions
1	Hong Kong	Common Law
6	Taiwan	Civil Law
9	China	Civil Law

Source: Extract from Corporate Governance Ranking in Asia 2014 (ACGA, 2014)

Corporate Governance Scorecard

Cheung et al. (2007) constructed a corporate governance index for Hong Kong through a scorecard based on the five OECD principles with different weighting for the principles. For comparing the effectiveness of the corporate governance regimes, it will first to score the indicators. The indicators are the mentioned measures or mechanisms in each principle included in the regimes. They will receive a score of 3 (good), 2 (fair), 1 (poor) or 0 (no measure). When scoring the indicator, one of the important consideration is whether the mechanism is statutory-backed/mandatory, or whether the threshold to trigger the mechanism for the interest of minority shareholders is low. It will then calculate the sub-total score in each principle and calculate the weighted score with the weighting designed by Cheung's scorecard. It will finally calculate the final score by the sum of weighted score. The regime with the highest score will be identified as the most effective among the jurisdictions.

Table 6: Scorecard for Evaluating Corporate Governance Regimes in the Greater China Region.

Principle (Weight)	**Indicator**	**Hong Kong**	**Taiwan**	**Mainland China**
Equitable treatment of shareholders (20%)	voting structures	3	3	3
Sub-total score		3	3	3
Weighted score (A)		0.6	0.6	0.6
Shareholders' right (15%)	proxy voting/ electronic vote	2	3	3
	approval for material transaction	3	3	1
	Approval for issuing new share	3	1	2
	Shareholders' proposal	2	3	1

	Derivative lawsuit	0	3	0
Sub-total score		10	15	7
Weighted score (B)		1.5	2.25	1.05
Responsibilities of the board (30%)	Fiduciary duties	3	3	3
	Board Structure	3	3	2
	Qualification of director	3	1	1
	INED	3	3	2
Sub-total score		12	10	8
Weighted score (C)		3.6	3	2.4
Disclosure and transparency (30%)	Change of interest	3	3	3
	Inside information	3	1	0
	Material and related party transactions	3	3	3
Sub-total score		9	6	6
Weighted score (D)		2.7	1.8	1.8
Role of stakeholders (5%)	Employee participation	0	0	3
	Stewardship Code	3	0	0
Sub-total score		3	0	3
Weighted score (E)		0.15	0	0.3
Total Score (A)+(B)+(C)+(D)+(E)		8.55	7.65	6.15

Table 6 shows that Hong Kong's regime is the most effective among the Greater China region. Though this comparative approach has some limitations on the accuracy of the evaluation, including selective scoring behaviour and incomplete indicators in each principles, the sequence of the three regimes' ranking is consistent with Corporate Governance Ranking in Asia 2014 as shown in Table 5.

Moreover, though Taiwan is a civil jurisdiction, its financial structure is changed to be market-based through economic reform. Also, the jurisdiction of Taiwan has contained some common law characteristic, such as concerning court's decision and enabling single-type board structure. It may be the reason to get higher rank than China's regime. It may be consistent with LLSV's conclusion that countries whose legal rules originate in the common law tradition tend to protect investors more than the countries whose laws originate in the civil law tradition (La Porta et al., 1998).

Enforcement and Corporate Governance

LLSV (1998) argued that where legal protection for investors is weak, a strong legal enforcement may act as a substitute. Despite the argument has not empirically supported, some researchers agree that stricter enforcement can achieve higher level of corporate governance (Heinrich et al., 2007; Liu, 2014). One of the dimension of the strictness is the deterrent effect of enforcement. Comparing the regulatory consequence of breaching some rules of the three corporate governance regimes as shown in Table 7, Taiwan and Mainland China's penalty may not effectively deter wrongdoers.

The regulatory consequences of Taiwan and Mainland China's regimes are mainly TWSE/TPEx's disciplinary actions and CSRC's administrative sanctions. Indeed, such penalty generally includes written warning, public pyramid, suspension of permit/ licence, and fine of limited amount. In the case of Taiwan, many measures regarding corporate governance is launched by TWSE/TPEx. Such level of regulation is non-statutory backed and self-regulated. In the case of China, besides involving criminal matter, all breaches related to PRC Securities Law or relevant regulations will lead to CSRC's administrative committee. Deterrent effect of the committee's sanctions is limited.

Table 7: Penalties Relating to Breach of Relevant Regulation in the Corporate Governance Regimes

	Hong Kong	**Taiwan**	**Mainland China**
Approval for material transaction	Disciplinary actions by SEHK	Disciplinary actions by TWSE/TPEx	Administrative sanctions by CSRC
Disclosure of interest	Criminal Offence (Fine and Imprisonment)	Regulatory fine implemented by FSC	Administrative sanctions by CSRC
Disclosure of Inside information	Civil Liability (Regulatory Fine) by MMT	Disciplinary actions by TWSE/TPEx	N/A
Disclosure of related party transactions	Disciplinary actions by SEHK	Disciplinary actions by TWSE/TPEx	Administrative sanctions by CSRC

Of course, it is not required to put all regulations with the high strictness of enforcement. As a regulator, it is important to balance between market integrity, including investor protection, and market development. However, for some important regime which may directly affect the market integrity, it must enhance the strictness of enforcement. In the case of Hong Kong, a person who breaches the provision regarding disclosure of interest commits offence. The person may be lead to criminal prosecution before court and is possible to be fined or jailed. It is because the change of interests of directors, executives and substantial shareholders is related to the interest of minority shareholders. Thus, relevant family shareholders who substantially holds the shares of the family business should be strictly comply with the rules.

Though the corporate governance regimes of Taiwan and Mainland China is comprehensive, the effectiveness of the regimes may be weakened by the inadequate deterrence of enforcement.

IV Conclusion

In conclusion, this paper examined if the difference of legal traditions make different corporate governance regimes for protecting interest of listed family enterprises' shareholders through evaluating and comparing corporate governance regimes in the Greater China region, including Hong Kong, Taiwan and Mainland China. The result is consistent with the LLSV paper, i.e. common law tradition constitute better corporate governance regime, and with the ACGA Corporate Governance Ranking in Asia 2014, i.e. Hong Kong ranked the highest, Taiwan ranked the middle and Mainland China ranked the lowest among them.

Though the corporate governance regimes of Taiwan and Mainland China become more comprehensive and can provide some protection for minority shareholders to monitor the family shareholders, they are still not an effective regimes. It is because: (1) the civil law natures cause companies and individuals to comply with the laws in form, rather than in substance; and (2) the regulatory penalties of the regimes are inadequate deterrence of enforcement.

We also find from the case of Taiwan that countries with civil law traditions can be enhance the quality of the corporate governance regime through legal and financial reforms, and through adopting some measures which is commonly found in companies govern by common law tradition.

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