The Coordinated Efforts of Regulating Overseas Listed Chinese Companies: the story thus far

Horace Yeung (University of Leicester)

E-mail: horace.yeung@le.ac.uk (Corresponding Author)

Flora Huang (University of Essex)

E-mail: flora.huang@essex.ac.uk

Xinmin Liu (East China Normal University)

E-mail: xmliu@law.ecnu.edu.cn

Abstract:

Prestigious financial centres have attracted a number of Chinese companies which are seeking liquidity and at the same time international exposure (e.g. the recording breaking IPO of Alibaba in the US). This article seeks to explore how the regulatory cooperation of securities commissions can be a solution to the concerns arising from the regulation of these companies. One notable example is, the regulators in Hong Kong and China have indeed worked very closely together to devise a comprehensive regulatory framework for the Chinese companies listed on the Hong Kong Stock Exchange. However, with more and more Chinese companies listed on other prestigious exchanges, concerns are not only restricted to the Hong Kong market now, but also for the exchanges which are keen to attract Chinese issuers. The recent Securities and Exchange Commission action to compel five leading accounting firms to produce audit paperwork in relation to some Chinese companies, together with the exodus of Chinese companies from AIM of the London Stock Exchange, have generated much attention. This article will examine various bases of regulatory cooperation, together with some actual examples of cross-border enforcement action so as to underline the successes and challenges of regulating overseas listed Chinese companies.

Keywords:

Chinese companies; stock market regulation; regulatory cooperation; Hong Kong; US

A. Introduction

When a local stock market is not vibrant enough, companies may be able to rely on internally generated profits or debt finance. Alternatively, there has been a growth in "cross-listing" of domestic companies on foreign exchanges. In essence, this involves a company domiciled in one country (the "home" state) choosing to undertake either a primary or secondary listing in another country (the "host" state). Traditionally, New York and London have been very successful in attracting foreign issuers.[1] However, owing to its popularity among Chinese companies, Hong Kong has emerged as a new contender to challenge their position as premier cross-listing destinations.

Along with the creation of domestic markets in the beginning of 1990s, China began to experiment with the direct overseas listing of large and medium sized SOEs. To facilitate and regulate these cross-border financing activities, the State Council promulgated the *Special Regulations of the State Council Concerning Floating and Listing of Shares Overseas by Companies Limited by Shares* and the *Mandatory Provisions for Companies Listing Overseas*, with the input from the Hong Kong authorities. In September 1992, the State Council published its list of the first nine SOEs selected to be the first ever to issue equities overseas. In July 1993, Tsingtao Brewery, which produces the famous Chinese Tsingtao beer, became the first Chinese company to be listed on the Hong Kong Stock Exchange (HKEx).[2] In light of the success in Hong Kong, the scale of overseas listing was expanded. Meanwhile, other international markets were explored. On 4 August 1994, Shandong Huaneng Power Development became the first Chinese company to list its shares directly on the New York Stock Exchange (NYSE). In March 1997, the first Chinese company, Datong Electric Power was listed on the London Stock Exchange (LSE). This article seeks to present a comprehensive discussion on the issues surrounding the regulation of these companies.

The article will first try to ascertain the motivations of the Chinese companies to cross-list. The primary and most obvious advantage of flotation is the opportunity to raise new capital. At the same time, there are some collateral benefits such as the improvement of corporate governance as well as some market and institutional level impact. Particularly in light of these benefits, this article seeks to confirm the companies' apparent commitment to high quality and the collateral effects of spurring domestic legal development. The article also seeks to show how the stock exchanges have used their own listing rules to safeguard the quality of issuers, despite some concessions may be given to overseas issuers. Yet, the commitment to quality can be dubious without a credible threat of enforcement. Subsequently, this article will proceed to examine the bases of regulatory cooperation, which is essential in effectively regulating cross-border financial activities like cross-listing, together with some actual examples of enforcement action. In particular, the goal is to reveal the successes and challenges of the cooperation. The final section will conclude by drawing on the important findings in this article.

[1] In fact, foreign listings were very much the minority. In June 2007, only 3,124 (7 per cent) of over 44,000 equity listings in the world were foreign, most of which in London and New York. See Research and Corporate Development Department, HKEx, 'Foreign Listings on Global Exchanges' in HKEx, *Exchange Magazine* (Oct 2007) 31.

[2] Here "Chinese company" means a company duly incorporated in China. In a more general sense, the foreign listing of Chinese companies took place much earlier, the most prominent example is China International Trust and Investment Corporation, which was listed in Hong Kong under the name Tylfull Company (a Hong Kong-incorporated company) in 1990. The article endeavours to consider "Chinese company" in both strict and broad sense.

B. Chinese Companies' Motivations to Cross-list

The motivation to cross-list can generally be explained by the desire to obtain liquidity and the bonding hypothesis. In the context of Chinese companies, there might also be a market level explanation.[3]

1. Liquidity View

In light of liquidity, overseas market might be valuable for Chinese companies in the early days of the Chinese stock market, when the domestic market was still small and the CSRC imposed a quota on the maximum number of shares that could be issued each year. The intention of the latter was to curb the potentially excessive investment demand in a pre-mature market, where market participants had not developed an understanding of the market rules and their rights and obligations.[4]

2. Bonding View

In addition to liquidity, the bonding hypothesis asserts that international companies can improve their corporate governance standards by cross-listing in a stringent legal and regulatory regime to bond themselves to higher accounting, disclosure and legal practices.[5] As observed by Cai, the sources of incentives for Chinese companies to list on stringent exchanges are derived from stricter rules, independent directors, ownership diversification, and reputational intermediaries.[6] Certain improvements in these corporate governance arrangements are readily observable. For instance, Tsingtao was the first company in China to introduce independent directors to its board.[7] Another example of observable changes is the introduction of strategic investors. A number of prominent business tycoons and companies in Hong Kong, as well as some foreign wealth funds, are consistently among the list of these strategic investors.[8] This strategy has been especially common in the financial sector where the Chinese government faces intense pressure to open their financial industry to foreign investment under China's entry commitments to the World Trade Organisation.[9] These

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[3] Flora Huang and Horace Yeung, *Chinese Companies and the Hong Kong Stock Market* (Routledge, 2014) 18-22.

[4] China Securities Regulatory Commission, *China Capital Markets Development Report* (China Financial Publishing, 2008) 165-166.

[5] Rene Stulz, 'Globalization of Equity Markets and the Cost of Capital' (1999) 12 Journal of Applied Corporate Finance 8 and John Coffee, 'Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance ' (2002) 102 Columbia Law Review 1757.

[6] Hua Cai, 'Bonding, Law Enforcement and Corporate Governance in China' (2007) 13 Stanford Journal of Law, Business & Finance 82, 91-102.

[7] Jinsong Tan et al, 'An Analysis of the Characteristics of Chinese Listed Companies' Independent Director System' (2007) 1 Frontiers of Business Research in China 456, 457. In the context of the Chinese market, only until 2001, the CSRC issued the Guiding Opinion on the Establishment of an Independent Director System in Listed Companies.

[8] Examples are Li Ka Shing and his Cheung Kong Holdings; the Kwok Brothers and their Sung Hung Kai Properties; the Government of Singapore Investment Corporation and the Qatar Investment Authority. See Chee Keong Low, 'Cornerstone Investors and Initial Public Offerings on the Stock Exchange of Hong Kong' (2009) 14 Fordham Journal of Corporate and Financial Law 639, 652-653.

[9] This can be reflected from the Chinese big four banks, which are listed in Hong Kong. Bank of America bought 9 per cent of China Construction Bank's ownership in 2005. In the same year, the Royal Bank of Scotland and other parties led an investment of 10 per cent in Bank of China. In 2006, Goldman Sachs, Allianz Group, and American Express purchased 10 per cent of the Industrial and Commercial Bank of China. In 2010, the Qatar Investment Authority invested in at least 10 per cent of the shares offered by the Agricultural Bank of China. See also, Katharina Pistor, 'Banking Reform in the Chinese Mirror' (2009) Columbia Law and Economics Working Paper No. 354.

institutional investors and independent directors are often described as the guardians of corporate governance.

Another way to show the bonding effect might be to see if there is a genuine regulatory gap between the host and home jurisdictions. Using a panel data set covering a range of developed and developing countries, Armour and colleagues of the Cambridge Centre for Business Research have discovered that significant upward movement in the level of shareholder protection was made by China between 1995 and 2005.[10] It experienced a jump in its shareholder protection score from 5 to 6.5. According to their shareholder protection index of 2005, although the UK and US were the top performers (scores of slightly more than 7), China was more protective of shareholder interests than some developed countries such as Germany and Switzerland. This data set has since been updated to 2013.[11] It has been suggested that between 1990 and 2013 China had experienced the "biggest increase in shareholder protection" amongst 30 countries studied.[12] China, Russia and France were the top performers in shareholder protection in 2013, even better than the UK and US.[13] Although Hong Kong was not studied in the aforementioned data set, Yeung and Huang, by comparing the evolution of the corporate and financial law regimes of Hong Kong and China qualitatively, also confirm that the regulatory framework of China has been catching up fairly quickly.[14] Similarly, in a self-assessment by the CSRC submitted to the OECD, by comparing a broad range of laws, regulations and codes, with the OECD Principles of Corporate Governance, the CSRC was trying to demonstrate that corporate governance had improved significantly since the Chinese stock market was created in 1990.[15]

But concerns remain regarding the corporate governance of Chinese companies. According to a corporate governance report in 2005 by CLSA, a French investment group, and the Asian Corporate Governance Association, Hong Kong and Singapore were on top in terms of the quality of corporate governance among Asian countries, whereas China ranked at the bottom, alongside the Philippines and Indonesia.[16] Fast-forwarding almost 10 years in a recent report in 2014, Hong Kong and Singapore remained at the top and China was still in the bottom three, though it was considered as having the "same score, same ranking" with Korea, one of the OECD countries.[17] Similarly, the World Bank's Protecting Minority Investors Index, as part of its Doing Business Reports, has recently presented a more pessimistic assessment, in contrast to the one from the Cambridge Centre for Business Research above, by putting China in the

[10] John Armour et al, 'Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis' (2009) 6 Journal of Empirical Legal Studies 343.
[11] This is available via Mathias Siems, 'CBR Extended Shareholder Protection Index' (2016) <https://www.repository.cam.ac.uk/bitstream/handle/1810/256566/cbr-spi-30-countries-codebook-and-methodology.pdf?sequence=9&isAllowed=y>. See also Dionysia Katelouzou and Mathias Siems, 'Disappearing Paradigms in Shareholder Protection: Leximetric Evidence for 30 Countries, 1990-2013' (2015) 15 Journal of Corporate Law Studies 127.
[12] Katelouzou and Siems (n 11) 133.
[13] Ibid. 134.
[14] Horace Yeung and Flora Huang, 'One Country Two Systems"' as Bedrock of Hong Kong's Continued Success: Fiction or Reality?' (2015) 38 Boston College International & Comparative Law Review 191.
[15] OECD, 'Corporate Governance of Listed Companies in China: Self-Assessment by the China Securities Regulatory Commission' (2011) <http://dx.doi.org/10.1787/9789264119208-en>.
[16] CLSA, 'CLSA and ACGA's 2005 CG Report Finds Singapore and Hong Kong Remain Top 2 Respective Winners with Minimal Difference Now between the Two' (2005) <https://www.clsa.com/about-clsa/media-centre/2005-media-releases/20051122_en.php>.
[17] ACGA, 'CG Watch 2014' (2014) < http://www.acga-asia.org/public/files/CG_Watch_2014_Key_Charts_Extract.pdf>.

123th position, out of 190 countries.[18] Its score of 4.5 was below the East Asia and Pacific average of 5.2, as well as the OECD high income countries average of 6.5.

3. Wider Benefits

The reason why market and institutional benefits are particularly relevant in the context of Chinese cross-listings is because the decision to list has been made jointly at the company and government levels. As a result, a decision made by companies in China might not necessarily be based on pure commercial calculations. In September 1992, the State Council selected nine state-owned enterprises to be the first ever to issue equities overseas. These companies were "selected" by the state, instead of making a commercial choice of their own. By contrast, in the rest of the world, the decision to list is typically made at the company level only, then subject to approval of relevant authorities. In the context of this article, the market and institutional benefits can be divided into two aspects regulatory cooperation and experimentation.

With respect to cooperation, before the listing of Tsingtao in June 1993, the Securities and Futures Commission (SFC) of Hong Kong and the HKEx entered into a *Memorandum of Regulatory Cooperation* (MORC) with the CSRC, the Shanghai Stock Exchange and the Shenzhen Stock Exchange. This facilitated the communication and cooperation between the two jurisdictions. For example, in 2007, the CSRC and Hong Kong co-operated in 20 or so securities-related enforcement cases.[19] More importantly, the scope of the MORC is not just restricted to joint surveillance and enforcement. It also extends to personnel training and exchange. This was particularly important, when two domestic exchanges in China had been established not too long ago towards the end of 1990. The Chinese authorities inevitably have had much to learn from their Hong Kong counterparts when trading in company shares there in Hong Kong can be traced back to about 1860.[20] The CSRC also sought to cooperate and learn from other overseas regulators such as the Securities and Exchanges Commission (SEC) in the US and the Securities and Investments Board (the predecessor of the Financial Services Authority) in the UK by signing memoranda with them in 1994 and 1996 respectively, shortly before the listing of Shandong Huaneng Power on the NYSE and Datang Electric Power on the LSE.[21]

Local regulatory enhancements through cross-listing have not been limited to the capacity of regulators, but also have covered substantive laws. The Chinese state has a conservative attitude towards introducing new rules. As a result, the use of experimental legislation in regional areas as precedents for drafting new laws at the national level has long been a characteristic of Chinese legal reform.[22] The cross-listing of Chinese companies and the introduction of many special rules tailored to serve these companies, such as the *Mandatory Provisions for Companies Listing Overseas*,[23] appear to be such an experiment. According to

[18] The World Bank, 'Doing Business – China' (2017) <http://www.doingbusiness.org/data/exploreeconomies/china/#protecting-minority-investors>.
[19] CSRC, 'Annual Report 2007' (2008) 56.
[20] See SFC, *Securities Regulation in Hong Kong* (SFC, 2002) 3.
[21] CSRC, 'List of MOUs Signed between CSRC and Overseas Authorities (As of the end of February 2012)' (2012) <http://www.csrc.gov.cn/pub/csrc_en/affairs/Cooperation/201203/t20120315_207208.html>. A much more updated list is available on the Chinese website of the CSRC.
[22] Alice De Jonge, *Corporate Governance and China's H-Share Market* (Edward Elgar, 2008) 29.
[23] The first Mandatory Provisions, applicable to Hong Kong-listed companies only, were issued by the State Commission for Restructuring the Economic System on 10 June 1993. A more generic version, applicable to all overseas listed companies, the Mandatory Provisions for Companies Listing Overseas, was issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System. See e.g. Sanzhu Zhu, Securities Regulation in China (New York, Transnational, 2000) 149,

the CSRC, the experiment is meant to enable Chinese companies to learn about management methods, accounting systems, laws and regulations in other well established markets.[24] The fact that the *Mandatory Provisions* have shared more resemblance with the Chinese Company Law 2005 than its predecessor Company Law 1993 might have suggested that the *Mandatory Provisions* and cross-listed companies were used to advance local company law (see Table 1). The legal experiment involving cross-listed Chinese companies was subsequently turned into actual legal reform.

[Insert Table 1 here]

C. Chinese Companies as a Regulatory Concern

It has been demonstrated that the Mandatory Provision was instrumental in imposing a more stringent set of rules on overseas listed Chinese companies. Yet, their significance might have diminished since the Company Law 2005[25] came into effect, when the latter demanded even higher standards and applied to all companies regardless of whether they are listing overseas or not. Hong Kong has been highly successful in attracting the listing of Chinese companies. By the end of 2015, according to the CSRC, 233 Chinese companies had listed overseas, raising a total of USD290.5 billion.[26] Among them, 207 companies were listed on the Main Board of HKEx (including 10 dual listings in Hong Kong and New York, 4 dual listings in Hong Kong and London, and one triple listing in Hong Kong, New York and London)[27]; 24 were listed on the Growth Enterprise Market in Hong Kong and two were listed on the Singapore Stock Exchange. It can be said that Hong Kong's regulators are more experienced in dealing with Chinese companies, due to the number and the history of Chinese listings. Despite the statistics above, it is not correct to say that the activities of Chinese overseas listing have been largely restricted to Hong Kong only. According to the statistics given by the exchanges, there are indeed 146 and 69 Chinese companies listed on NASDAQ and the NYSE respectively.[28] Similarly, it is alleged that currently 44 Chinese companies are listed in London.[29] Such a discrepancy in statistics can be explained by how a Chinese company seeks a listing. Only those incorporated in Mainland China and whose listings approved by the CSRC are recognised by the regulator. In contrast, the rest acquired a listing via an overseas shelf company and are

and I.A. Tokley, *Company and Securities Law in China* (Sweet & Maxwell, 1998) 98 for more about the Mandatory Provisions.

[24] Edward Chen and Winnie Poon, 'The Role of Hong Kong Capital Markets in Financing Chinese Mainland Enterprises' (2002) Conference Paper for Nomura Research Institute AT10 Researchers' Meeting.

[25] This was further revised in 2013. So, the current version is Company Law 2013. This latest revision, which sought to streamline the registration formalities and relax the threshold for setting up a company, was less extensive than the one in 2005. For a quick summary of the changes, see e.g. PwC, 'China's Amended Company Law Facilitating More Business' (2014) <http://www.pwchk.com.hk/webmedia/doc/635253180786908970_chinatax_news_jan2014_1.pdf>.

[26] CSRC, 'Annual Report 2015' (2016).

[27] The most updated list of some 200 Chinese companies listed in Hong Kong can be seen at, HKEx, 'List of H Share Companies (Main Board)' (2017) <https://www.hkex.com.hk/eng/stat/smstat/chidimen/cd_hmb.htm>. The 11 New York listed companies are: Aluminum Corporation of China Limited (Chalco); China Eastern Airlines Corporation Limited; China Life Insurance Company (China Life); China Petroleum and Chemical Corporation (Sinopec); China Southern Airlines Company Limited; China Telecom Corporation Limited; Guangshen Railway Company Limited; Huaneng Power International, Inc; PetroChina Company Limited; Sinopec Shanghai Petrochemical Company Limited; and Yanzhou Coal Mining Company Limited. The 5 London listed companies are: Air China; China Petroleum and Chemical Corporation; Datang Electric Power; Jiangxi Copper Company Limited; and Zhejiang Expressway Company Limited.

[28] The list of Chinese companies on the two exchanges respectively can be found on their websites: NASDAQ <http://www.nasdaq.com/screening/companies-by-region.aspx?region=Asia&country=China> and the NYSE <https://www.nyse.com/publicdocs/nyse/data/CurListofallStocks_12-31-15.pdf>.

[29] China Daily, 'London Bourse Bids to Lure Chinese Listings' (11 Mar 2016).

not subject to Chinese regulation, such as the *Mandatory Provisions* and the *Special Regulations*. Other than the aforementioned exchanges, this type of listing is also seen in other exchanges. For example, according to Reuters, there were 25 "Chinese companies" listed on the Frankfurt Stock Exchange in 2014.[30]

The concern on these Chinese companies listed via a "non-conventional" route can perhaps be demonstrated by the collapse of China Aviation Oil (CAO), which is still listed on the Singapore Stock Exchange following a corporate restructuring, at the same time revealing the problematic governance structure of Chinese state-owned companies. In 2004, CAO disclosed massive trading losses in derivative transactions and subsequently filed for court protection from creditors. In the view of Milhaupt and Pistor, this incident suggested some major oversight and compliance problems within the company.[31] Although cross-listed Chinese companies are generally the best performers of the state sector, their success is not because of entrepreneurial spirit or managerial skill, but rather their exclusive monopolistic status in their respective business.[32] One sceptical view is that the transformation of China's partially privatised (or corporatised as used by many scholars) giants is plagued by structural problems associated with the transition from a planned economy to a market economy. The majority of their shares are essentially state-owned. Almost all senior appointments and their dismissals, as in the case of CAO, are initiated by state bureaucrats, instead of strict market disciplines.[33]

In theory, appropriate enforcement actions can be triggered by several institutions. First in line is clearly the stock exchange, which has admitted the company to its market and is responsible for monitoring its compliance and disclosure requirements. Sponsors, lawyers and accountants also involved in the listing process are usually entrusted by the exchange and the listing rules to duly perform their roles as gatekeepers. Finally and ultimately, a public regulatory agency (can be from the home and/or host jurisdiction) is the fearsome law enforcer. In the CAO debacle, the prompt actions taken by Singapore's regulators and criminal enforcement agents were highly praised despite growing concerns about possible conflicts of interest posed by the exchange's assertive recruitment of Chinese companies while fulfilling its role of investor protection.[34] On the other hand, the role of the Chinese regulator was noteworthy. Since 2001, CAO engagement in opportunistic or speculative trading had attracted the CSRC's attention and in March 2002 the regulator censured the company's Chinese parent for CAO's trading in derivatives without prior approval and instructed CAO to cease its speculative derivatives trading, to restrict its derivatives trading to hedging, and to apply for approval to trade in futures for hedging purposes, despite CAO's significant increase in derivatives trading volume.[35] It should be noted here as a public company incorporated and listed in Singapore that is majority owned by a state-owned Chinese company, CAO was directly regulated by regulators in Singapore but just indirectly by those in China.

More recently in 2014, the US-China Economic and Security Review Commission issued a report expressing its concern over the risks of China's internet companies on US stock

[30] Reuters, 'Frankfurt Exchange's China Dream Turns to Nightmare' (22 September 2014).
[31] Curtis Milhaupt and Katharina Pistor, *Law and Capitalism* (University of Chicago Press, 2008) 129.
[32] Jing Leng, 'Interaction between Domestic and Overseas Capital Markets and Corporate Governance of Chinese Listed Companies'(2005) 7 Studies in International, Financial, Economic and Technology Law 273, 311. CAO had a monopoly in market distribution of jet oil for China's domestic civil carriers. Other examples are the cellular duopoly of China Mobile and China Unicom, which both are listed in Hong Kong, as well as the oligopoly the big four banks, all of which are listed in Hong Kong.
[33] Milhaupt and Pistor (n 31) 130.
[34] Ibid. 134.
[35] Stewart Hamilton and Jinxuan Zhang, *Doing Business with China: Avoiding the Pitfalls* (Palgrave, 2012) 92-94.

exchanges.[36] The report especially highlighted the phenomenon that most private Chinese companies bypassed the home country requirement to obtain permission to list, using a complex and highly risky mechanism known as a Variable Interest Entity (VIE). VIE is an organisational structure that allows Chinese companies in sensitive fields such as internet, telecom value-added services and financial services to attract foreign investment while ensuring total Chinese ownership.[37] The VIE structure is also used as a method for Chinese domestic entities to gain access to international capital markets through offshore listings. In a conventional IPO, investors purchase ownership rights to a corporate share regardless of nationality. But under Chinese law, companies operating in particular industries like internet technology must be wholly Chinese-owned. So in order to get around the tight foreign ownership control in China, investors in those Chines technology companies are indeed investing in an offshore shell in tax havens, such as the Cayman Islands, rather than an actual piece of the company.

2014 was a successful year for the New York bourses. Alibaba Group, the largest e-commerce company in China, was founded by Jack Ma and 17 co-founders in Hangzhou in eastern China in 1999, was successfully listed on the NYSE and raised a record-breaking USD25 billion, making it the largest IPO in history. Also, JD.com, a Chinese retailing website akin to Amazon, and Weibo, a Chinese microblog akin to Twitter with over 140 million users, both launched their IPO on NASDAQ. All of China's major internet companies that list on US exchanges use the VIE structure as a means of circumventing Chinese restrictions on their access to foreign capital.[38] The risk of investing in VIEs is best illustrated by Alibaba's SEC Form F-1 in the section entitled "Risk Factors", which states:

> The ownership structures of our material wholly-foreign owned enterprises and our material variable interest entities in China, both currently and immediately after giving effect to this offering, do not and will not violate any applicable PRC law, regulation or rule currently in effect…However, [our legal advisor] has also advised us that there are substantial uncertainties regarding the interpretation and application of current PRC laws, rules and regulations.[39]

Indeed Alibaba's listing was fairly dramatic and sparked two more controversies. The controversies began when a white paper was made public on 28 January 2015 by China's commerce regulator, the State Administration for Industry and Commerce (SAIC), accusing Alibaba of failing to crack down on the sale of fake goods, bribery and other illegal activity on its sites.[40] The news caused the company's shares to plummet. Because of loss suffered by investors, a securities class action was brought against Alibaba and certain of its officers and/or

[36] Kevin Rosier, 'The Risks of China's Internet Companies on U.S. Stock Exchanges' (2014) US-China Economic and Security Review Commission Staff Report.
[37] See more Flora Huang, 'New York vs. Hong Kong - A Burst of Regulatory Competition: The Listing of Alibaba' (2015) University of Leicester School of Law Research Paper No. 15-22 <http://ssrn.com/abstract=2630060>.
[38] Rosier (n 36) 3.
[39] Alibaba's SEC Form F-1 Filing, 40-41.
[40] The white paper was subsequently removed from SAIC's website, but the full text is still viewable on the website of an official newspaper of the Chinese government, People's Daily (28 January 2015), at <http://finance.people.com.cn/n/2015/0128/c1004-26463776.html>. An English translation of the major parts of the white paper is available from, Quartz, 'The Chinese Government has Erased a Damning Report on Alibaba, but You can Read It Here' (29 January 2015), at <http://qz.com/335675/the-chinese-government-has-erased-a-damning-report-on-alibaba-but-you-can-read-it-here>. See more in Huang (n 37).

directors for violations of the *Securities Exchange Act of 1934*.[41] The basis of this action was on the ground that Alibaba had issued materially false and misleading statements regarding the soundness of the company's business operations, the strength of its financial prospects and concealing substantial ongoing regulatory scrutiny. Further, the company failed to disclose that company executives had met the SAIC in July 2014, just two months before the company's IPO, and that regulators had then brought to Alibaba's attention a variety of highly dubious - even illegal - business practices.

The second controversy indeed had happened prior to the listing. In July 2013, the Alibaba Group was reported to have almost finished their IPO preparations, and the only thing that remained to be decided was whether to list in the US or Hong Kong.[42] Hong Kong was supposed to be the top choice for Alibaba. The Hong Kong regulators, however, refused to approve Alibaba's partnership structure, in which a group of insiders, including founder Jack Ma, control the board despite owning a minority share. Such a corporate structure is allowed in New York. This might have called for a deeper thought on the motivation for Chinese companies to cross-listing. Is bonding or avoiding more suitable to explain phenomenon? A parallel question is whether international listings would prompt a "race to the top" scenario, in which the quality of shareholder protection is improved over time, or a "race to the bottom" scenario, in which issuers migrate to regimes with the lower standard of shareholder protection.[43] In the context of this article, a more pressing question is whether Chinese companies are adequately regulated by the foreign regimes.

The two major principles in listing regulation are: (1) to ensure that the prices of publicly traded securities are reasonably well-informed and (2) to ensure that public shareholders are protected by effective corporate governance arrangements once they become shareholders.[44] Different legal strategies are employed accordingly to protect the interests of investors. For example, the entry strategy includes mandatory disclosure for new issues of shares and continuing disclosure requirements for listed companies.[45] The trusteeship strategy involves the empowerment of a disinterested third party to screen companies that wish to enter the stock market.[46] The rules and standards strategy concerns the acceptable characteristics and behaviour of listed companies.[47] This section will examine how these strategies can come into play to regulate Chinese companies.

1. Entry Strategy

This strategy concerns both the initial and subsequent regular disclosures of companies. The key mechanism of the former is a prospectus. In Hong Kong, specific requirements for the

[41] *Khunt v. Alibaba Group Holding Limited et al*, New York Southern District Court, Case No. 1:15-cv-00759, for an alleged violation of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated.
[42] Beijing Review, 'Alibaba IPO Looms- China's E-commerce Market Leader is Planning on a US Listing. How will this Change the Company's Future' (31 March 2014) <http://www.bjreview.com.cn/business/txt/2014-03/31/content_610758.htm>.
[43] See generally Coffee (n 5) and Larry Ribstein, 'International Implications of Sarbanes-Oxley: Raising the Rent on U.S. Law' (2003) 3 Journal of Corporate Law Studies 299, 300. See also Amir Licht, 'Cross-listing and Corporate Governance: Bonding or Avoiding' (2003) 4 Chicago Journal of International Law 122.
[44] Gerard Hertig et al, 'Issuers and Investor Protection' in Kraakman and others (eds) *The Anatomy of Corporate Law: A Comparative and Functional Approach* (2nd edn OUP, 2009) 275-304. See also Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (2nd edn Hart, 2015) 487.
[45] Hertig et al (n 44) 276-277.
[46] Ibid. 289-290.
[47] Ibid. 291-294.

information in a prospectus are set out in Chapter 11 and Appendix 1 of the Listing Rules.[48] In the US, an IPO prospectus must meet all requirements of the applicable SEC form, Form S-1 for a domestic issuer and Form F-1 for a foreign issuer. Similarly, detailed provisions regarding a content of a prospectus can be found in the Financial Conduct Authority's Prospectus Rules for the UK. All these rules are not substantially different from each other in a sense that a prospectus is intended to be a comprehensive yet accessible document containing the information necessary for investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company, as well as the rights attaching to the securities being offered. One notable strategy employed in response to the extra risks posed by foreign issuers is that these issuers are generally asked to state the regulatory differences between the home and host countries.[49]

2. Trusteeship Strategy

It is virtually certain that issuers are required to go through a screening process before they become listed. Listing applications are screened in the interests of the investing public. An application can be refused if the listing might jeopardise investor interests. In Hong Kong, the SFC has delegated the duty to approve listings to the HKEx. The listing review and approval process in Hong Kong is undertaken by the Listing Committee and the Listing Division of the HKEx. The composition of the Listing Committee is specified in the Listing Rules.[50] In the UK, the Financial Services and Markets Act gives statutory powers in relation to listings and listed companies to the Financial Conduct Authority, which also acts as the UK Listing Authority.[51] In the US, a foreign issuer must comply with the registration provisions and continued reporting requirements of the Securities Exchange Act, as amended, as well as certain registration provisions of this act.[52] The SEC will oversee the compliance of these requirements. According to the investigation by Jackson and Roe, these seasoned regulators should have adequate staffing and resources to perform their functions effectively, when compared with some less developed markets.[53]

3. Rules and Standards Strategy

As just discussed, listing applications are screened by the competent authorities. Screening criteria are based on objective and observable standards. These can include, but are not limited to, incorporation requirement, profit, capitalisation or revenue test, together with other criteria. In Hong Kong, companies that are incorporated overseas can list on the HKEx, but they are subject to the provisions under Listing Rule Chapter 19 (or 19A for Chinese companies). In 2016, the exchange considered 27 jurisdictions as acceptable as an issuer's place of

[48] Some variations exist for an overseas issuer. For example, in Hong Kong, overseas issuers are required under Listing Rule 19.08 to include a summary of the provisions of the constitutive documents of the overseas issuer and the relevant regulatory provisions of the jurisdiction in which the overseas issuer is incorporated. The listing document of a Chinese issuer must contain a summary of the relevant Chinese laws under Listing Rule 19A.27.
[49] See e.g. Item 10 of SEC Form 20-F to supplement information prescribed by Form F-1 pursuant to s 12 of the Securities Exchange Act of 1934, and the Hong Kong List Rule (HKLR) 19.08.
[50] HKLR 2A.17.
[51] Section 72 of the Financial Services and Markets Act 2000.
[52] NYSE, 'IPO Guide' (2013) 100.
[53] According to Jackson and Roe, Hong Kong's SFC is one of the most intense regulators in the world. The SFC had the highest staffing and budgets in 2006 among regulators in the world. The direct staff per million of population ratio in Hong Kong was 59.59. The US figure was 23.75, a country where the enforcement intensity is perceived as high. Concerning budgets, Hong Kong had a budget of around USD320,000 per billion GDP, whereas in markets such as the US and UK, the figures were around USD80,000. See Howell Jackson and Mark Roe, 'Public and Private Enforcement of Securities Laws: Resource-based Evidence' (2009) 93 Journal of Financial Economics 207.

incorporation.[54] The US seems to be more welcoming to overseas issuers as, for example, the NYSE had issuers from 46 countries by the end of 2015.[55] The LSE is even more international with issuers from 64 countries.[56] The concern from the HKEx to have a more prudent approach is to ensure an overseas issuer is "incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong".[57]

The HKEx's prudent approach can also be exemplified by its refusal of Alibaba's listing application. Both the HKEx and the LSE prohibit the listing of companies, such as Alibaba, that employ "differential voting structures" while such structure is permitted in the US.[58] The structure, also known as dual class shares (DCS), offers additional classes of shares that provide holders with greater voting rights. The traditional one share-one vote is frequently described as a "legal consequence" of shareholder primacy, and a bedrock principle of corporate governance.[59] On the other hand, one-share-one vote comes with costs as it may deter entrepreneurs from going public to avoid the risk of losing control of the company and impair blockholders' ability to monitor management.[60] In other words, adopting DCS can ensure that the blockholders can retain control when the company goes public.

The NYSE and NASDAQ permit companies with pre-existing DCS structures to list on their markets, but do not allow an issuer, once listed, to implement a DCS structure that would discriminate the interests of existing shareholders.[61] In contrast, the Premium Listing Principles set out in Listing Rule 7.2.1AR apply to every company with a premium listing of their equity shares in London. Under Premium Listing Principle 5, a listed company must ensure that it treats all holders of the same class of premium listed shares equally in respect of the rights attaching to such listed equity shares except where holders are in a different position. Similarly, companies with DCS are prohibited by the HKEx, in order to provide fair and equal treatment to all shareholders.[62] The prohibition is set out in the Main Board Listing Rule 8.11, which states that, "The share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid". Despite the exchange has the discretion to accept DCS structure "in exceptional circumstances" agreed with it, no companies have been admitted by the HKEx under such

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[54] HKEx, 'List of Acceptable Overseas Jurisdictions' (2016) <https://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/list_of_aoj.htm>.
[55] NYSE, 'Current List of All Non-U.S. Issuers' (2016) <https://www.nyse.com/publicdocs/nyse/data/CurListofallStocks_12-31-15.pdf>.
[56] LSE, 'List of All Companies' (2016) <http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-and-issuers.htm>.
[57] HKLR 19.05.
[58] For an in-depth discussion and comparison of the approaches adopted by Hong Kong, London and New York, see Flora Huang, 'Dual Class Shares around the Top Global Financial Centres' (2017) forthcoming in Journal of Business Law.
[59] Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991) 73. In their view, "votes follow the residual interest in the firm, and unless each element of the residual interest carries an equal voting right, there will be a needless agency cost of management."; and Colleen Dunlavy, 'Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights' (2006) 63 Washington and Lee Law Review 1347, 1367. However, Hayden and Bodle argue that the assumption of shareholder homogeneity is false as corporate democracies tend to define the requisite institutional interest too narrowly and thus restrict the right to vote to shareholders alone. See Grant Hayden and Mattew Bodle, 'One Share, One Vote and the False Promise of Shareholders Homogeneity' (2008) 30 Cardozo Law Review 445.
[60] Mike Burkart and Samuel Lee, 'One Share-One Vote: The Theory' (2008) 12 Review of Finance 1, 40-41.
[61] NYSE Listed Company Manual, Rule 313(A) and NASDAQ Stock Market Rule 5640.
[62] Fair and equal treatment to all shareholders is a fundamental principle of Hong Kong's Listing Rules. See HKLR 2.03(4).

exception.[63] In light of the prospect and the subsequent loss of Alibaba's listing, the exchange did hold a consultation to explore whether DCS should be permissible for companies listed or seeking to list in Hong Kong in 2014-2015.[64] But it has finally decided that it would not proceed with its draft proposal, especially taking into account the opposition from the regulator SFC.[65] Such a stance has illustrated the city's unequivocal commitment to "the core principles of fairness and transparency" which underpin its success, but might have been completely shutting out from the competition for issuers with DCS structures.

Despite an attempt to preserve quality, on the other hand, there are concerns on the extent of concessions offered to foreign issuers. For example, issuers listed on the NYSE are in principle subject to the corporate governance requirements set forth in the NYSE Listed Company Manual. However, except two compulsory requirements[66], foreign issuers are indeed permitted to follow home country practices in lieu of the provisions under the Manual.[67] The same is also true for NASDAQ.[68] The extent of concessions is even more obvious when a foreign issuer opts for a Standard Listing (only available to companies incorporated outside the UK prior to October 2009) in London. A sponsor is not needed in a Standard Listing.[69] Also the foreign issuer does not have to comply with the UK Corporate Governance Code. Instead, it will just need to comply with the lower EU requirements with respect to the Disclosure and Transparency Rules (DTR).[70] Furthermore, going back to the disclosure requirements somewhat, ad hoc disclosures in the case of significant transactions and related party transactions are not needed.[71] Likewise in Hong Kong, Chinese companies are exempt from disclosing certain related part transactions involving "Chinese governmental bodies".[72] All these may be quite consistent to an early observation by Coffee that the exchanges have the incentives to waive the listing requirements for foreign issuers, amidst an increasingly competitive market for them to attract international issuers.[73]

D. Enforcement Issues

The above might have discussed certain strategies to ensure the *ex ante* quality of issuers. However, *ex post* enforcement of ongoing obligations of issuers, once listed, can be a

[63] Charltons Solicitors, 'Hong Kong Stock Exchange Publishes Concept Paper on Weighted Voting Rights' (2014) <http://www.charltonslaw.com/hong-kong-law/hong-kong-stock-exchange-publishes-concept-paper-on-weighted-voting-rights>.
[64] HKEx, 'Consultation Conclusions to Concept Paper on Weighted Voting Rights' (2015) <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082cc.pdf>.
[65] The SFC published a statement on 25 June 2015 and made clear that the regulator would not support a draft proposal for primary listings with DCS structures, even with certain safeguards, such as ring-fencing and anti-avoidance measures. See SFC, 'SFC Statement on the SEHK's Draft Proposal on Weighted Voting Rights (2015) <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR69>. The exchange's decision to abandon the proposal can be here in HKEx, 'Listing Committee Announces Way Forward on Weighted Voting Rights' (2015) <https://www.hkex.com.hk/eng/newsconsul/hkexnews/2015/151005news.htm>.
[66] NYSE Company Manual 303A.06 and 303A.11. These two requirements are: i) an audit committee must be in place; ii) the differences between home and host countries corporate governance practices must be explained.
[67] NYSE Company Manual 303A.00.
[68] Nasdaq Rule 5615(a)(3).
[69] As opposed to a Premium Listing, see Listing Rule (LR) 8.2.1R.
[70] LR 14.3.24R and DTR 7.2.
[71] As opposed to a Premium Listing, see LR 10 and 11.
[72] HKLR 14A.03.and HKLR 19A.14. For the definition of 'Chinese governmental bodies', see HKLR 19A.04.
[73] Coffee (n 5) 1813.

concern.[74] A domestic securities regulator, which is equipped with investigatory and enforcement powers conferred by statutes, should, in theory, be capable of regulating most securities-related activities. The difficulties posed by cross-listing as a cross-border financial activity is that the listed company is domiciled in one country (the "home" state) but undertaking either a listing in another country (the "host" state). Normally in this case, most of the operations and assets of the company are located in the home state. The degree of its presence in the host state can be as little as a listing status together with a registered office as required by the listing rules.[75] Accordingly the long arm of the host country laws and regulators may not be capable of reaching other jurisdictions. In light of the difficulties of cross-border enforcement, there is a danger that regulators might simply choose to avoid it. There was documented evidence showing that in the US, the SEC did not effectively enforce the law against cross-listed companies.[76] More worryingly, the SEC did not often succeed in prosecuting the small number of foreign insiders that it did pursue. Similarly, it is alleged that the UK regulated foreign issuers considerably "less rigorously" than it regulated its own domestic companies.[77]

As indicated by Muchlinski, the difficulties of ascertaining "a legal jurisdiction" associated with cross-border activities arises from three general categories: the power to enact laws; the power to adjudicate disputes; and the power to enforce legal orders and judgments.[78] In relation to overseas listings, there are three tiers of regulatory concern, namely company law, securities regulation and listing rules.[79] Apparently, the division of role is clear cut. As the Chinese companies are domiciled in China, they are subject to Chinese company law. As they issue shares in, for instance, the US, at the second level, they are subject to the Securities Act of 1933 or the Securities and Exchange Act 1934 (depending on the nature of the offering) and regulated by the SEC. At the third level, they are also regulated by the exchange of their choice (which can be the NYSE, NASDAQ or others) and relevant listing rules. In practice, there are some further complications. One concern is, the roles of regulators are not distinct. whilst the SEC has residual powers under the securities law to disapprove new listing rules proposed by recognised exchanges or to require changes to existing listing rules, in Hong Kong and London the stock exchanges themselves have full responsibility for making and enforcing listing rules.[80] A second concern is there is no complete separation between the three tiers of law. The listing rules do have some control over how companies are controlled and directed through notably their corporate governance requirements.[81] One final concern is, despite the regulators are supposed to monitor the companies and enforce the laws if required, they are unable to perform their functions due to jurisdictional and geographical limitations.

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[74] For the importance of enforcement, see generally John Coffee, 'Law and the Market: The Impact of Enforcement' (2007) 156 University of Pennsylvania Law Review 229.

[75] For example, under HKLR 8.12, a prospective issuer applying for a primary listing on the Exchange must have a sufficient management presence in Hong Kong.

[76] Jordan Siegel, 'Can Foreign Firms Bond Themselves Effectively by Renting US Securities Laws?' (2005) 75 Journal of Financial Economics 319.

[77] Coffee (n 74) 239.

[78] Peter Muchlinski, *Multinational Enterprises and the Law* (2nd edn OUP, 2007) 129.

[79] Iain MacNeil and Alex Lau, 'International Corporate Regulation: Listing Rules and Overseas Companies' (2001) 50 International and Comparative Law Quarterly 787, 792-793.

[80] Ibid.

[81] Issuers listed on the NYSE are subject to governance requirements set forth in the NYSE Listed Company Manual, but might be exempt in the case of foreign issuers, see the NYSE Manual 303A.00. In the UK, the UK Listing Rule 9.8.7 requires overseas companies with a premium listing must include in its annual report and accounts a statement of compliance of the UK Corporate Governance Code and an explanation of non-compliance. The adoption of the Code on Corporate Governance into the Listing Rules in Hong Kong can be seen in HKLR Appendix 14.

1. Coordinated Efforts

An international problem should entail an international solution. The International Organisation of Securities Commissions (IOSCO) may represent coordinated efforts to solve the problems arising from cross-border financial transactions by that bringing together the world's securities regulators and is recognised as the global standard setter for the securities sector. Its membership regulates more than 95 per cent of the world's securities markets in more than 115 jurisdictions.[82] Its *Objectives and Principles of Securities Regulation* are recognised as the international regulatory benchmarks for securities markets. A more notable achievement of the IOSCO, in the context of this article, was the establishment of the *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (MMoU) in 2002. The MMoU sets forth an international mechanism for cross-border cooperation and is primarily aimed at exchange information for the purpose of regulatory enforcement regarding securities markets.[83]

As of January 2017, there were 112 MMoU signatories (out of 149 ordinary and associate members of the IOSCO which are eligible to opt into the Memorandum), including regulators in almost all major markets. The number of information requests has been on the rise since 2003, from 56 in that year to 3,203 in 2015 (see Table 2). This illustrates the rise of cross-border financial activities and the associated need to regulate them. In the specific context of this article, the CSRC has published its international enforcement cooperation statistics since 2007 (also in Table 2). It can be seen that the number of enforcement assistance request received by the CSRC has had an overall trend of upward movement, except in 2008 when there was a sudden surge perhaps owing to the global financial crisis. This demonstrates that there is avenue available for the CSRC and overseas regulators to work together.

[Insert Table 2]

In addition to the multilateral platform, the scope of cooperation is also supplemented by bilateral arrangement. By the end of 2015, the CSRC had signed 62 bilateral Memoranda of Understanding (MoU) with overseas regulators from 58 countries and regions.[84] The purpose of the MoU is to enable parties, through mutual assistance and the exchange of information, to (1) accomplish the basic principles of protecting investors, (2) maintain fair, orderly and efficient markets and (3) ensure compliance with each other's laws and rules.[85] More importantly, the bilateral arrangement can go beyond information sharing. Joint surveillance and investigation is possible under the law of each authority’s jurisdictions. The substantive procedures of how this can be conducted are decided on a case-by-case basis and should be agreed in advance. The agreement will cover specific matters including details of the target entities or companies, and the documents that the signatories wish to jointly inspect.[86] Furthermore, there can be a provision of general technical assistance from a seasoned regulator with a view to strengthening the competence of a less developed regulator. In the bilateral Memorandum of Understanding between the SEC and the CSRC, the former has vowed to

[82] IOSCO, ‘About IOSCO’ (2016) <https://www.iosco.org/about/?subsection=about_iosco>.
[83] The MMoU itself sets out the specific requirements for: what information can be exchanged and how it is to be exchanged; the legal capacity to compel information; the types of information that can be compelled; the legal capacity for sharing information; the permissible use of information; and the specific requirements regarding the confidentiality of the information exchanged.
[84] CSRC, ‘Annual Report 2015’ (2016).
[85] SFC (n 20) 218-219.
[86] MORC, appendix 4.

provide training and technical assistance to facilitate the development of a sound regulatory framework of securities regulation in China.[87]

One notable area requiring joint efforts in enforcement is the extra-territorial effect of the Foreign Corrupt Practices Act[88]. The Act was enacted for the purpose of making it unlawful for all US persons and certain foreign issuers of securities to make payments to foreign government officials to assist in obtaining or retaining business. From 2010 until now, the SEC has sanctioned 11 cases of bribery involving a Chinese element.[89] But in the view of Torres, despite an "enhanced dialogue" agreement between the SEC and the CSRC and the memoranda in place, the enforcement arrangement is insufficient.[90]

Whilst the multilateral platform, supplemented by bilateral arrangements, is recognised as "an essential tool in assisting regulators to enforce securities laws globally and locally"[91], it is also subject to several criticisms. First, all these memoranda constitute more of an expression of a desire to cooperate than a binding agreement.[92] In a television interview, former SEC Chairman Mary Schapiro confirmed that they did not have "a level of cooperation that makes it possible for us to get access to Chinese companies the way [the Commission] need".[93] It is also worth noting that, despite an apparently more established relationship between China and Hong Kong, Chinese authorities have once denied SFC's requests to access several suspects in high profile scandals involving cross-listed companies, such as Liu Jinbao, the former chief executive of the Bank of China (Hong Kong); Yang Bin, chairman of Euro-Asia Agricultural Holdings, an orchid grower in northeast China; and Zhou Zhengyi, chairman of Shanghai Land Holdings.[94] In theory, the MMoU does provide for some measures in the event that the home country regulators are "unhelpful". These measures include: providing a period of time for the signatory to comply; full peer review of a signatory that may not be in compliance; public notice of non-compliance; suspension of a signatory from MMoU participation; or ultimately termination from the MMoU participation.[95] However, there have been no reports of the use of any of these measures and whether to cooperate or not is largely left to the regulators who should have the incentives to preserve their reputation and credibility.[96]

2. Stepping Up the Pressure

[87] Memorandum of Understanding Regarding Cooperation, Consultation and the Provision of Technical Assistance 1994, para 7-8.
[88] 15 U.S.C. §§ 78dd-1, et seq.
[89] SEC, 'SEC Enforcement Actions: FCPA Cases' (2016) <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>.
[90] See Nicholas Torres, 'Enforcing the Foreign Corrupt Practices Act in China' (2016) 3 Emory Corporate Governance and Accountability Review 2041, 2043. This framework for dialogue between the Commissions was established in 2006. The new dialogue has three primary objectives: 1) to identify and discuss securities markets regulatory developments of common interest, particularly those relevant to reporting requirements for public companies listed in one another's markets; 2) to improve cooperation and the exchange of information in cross-border securities enforcement matters; and 3) to continue and expand upon the existing program of training and technical assistance provided by the SEC to the CSRC.
[91] Rita Cunha, 'The IOSCO Multilateral Memorandum of Understanding MMoU: An International Benchmark for Securities Enforcement' (2010) 15 Uniform Law Review 677, 685.
[92] Jiangyu Wang, 'Regulatory Competition and Co-operation between Securities Markets in Hong Kong and Mainland China' (2009) 4 Capital Markets Law Journal 383, 390.
[93] ABC News, 'US Officials: China Refuses to Help Stop Investment Scams' (2013).
[94] David Donald, *A Financial Centre for Two Empires* (CUP, 2014) 252-253. All these individuals were under detention in the mainland for possible fraud or corruption related criminal charges.
[95] IOSCO MMoU paras III(c) and (d).
[96] Janet Austin, 'IOSCO'S Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information' (2012) 23 Criminal Law Forum 393, 416.

It can be seen that the success of the memoranda hinges on whether or not the signatories act upon the requests that they receive. They have no hard obligations to fulfil the request. This prompts the US regulators to look for other solutions, amidst the "epidemic of China-based frauds" involving a number of Chinese companies listed on US stock exchanges.[97] Comparing the style of regulators, the SEC has long had a fearsome reputation amongst listed companies when the SFC is considered as trying hard "to balance between liberal markets and investor protection" and the UK regulator being labelled as "annoying rather than fearsome".[98] This perception is consistent with the three models of public enforcement set forth by Gadinis and Jackson.[99] The continental model (France, Germany and Japan), which is described as a government-led model, preserves significant authority for central government control over securities market regulation, albeit with a relatively limited enforcement apparatus. The American model (co-operation model) assigns a broad range of power to market participants in almost all aspects of securities regulation but also maintains strong and overlapping oversight of market activity through well-endowed governmental agencies with more robust enforcement traditions. The English model (flexibility model), which is also applicable in Hong Kong, grants significant leeway to market participants in performing their regulatory obligations, but relies on government agencies to set general policies and maintain some enforcement capacity.[100] Such regulatory philosophy is not just limited to the regulator's own backyard, the US has indeed played a proactive role in reshaping international securities regulation and has strong incentive to do so to help preserve its role as a leading securities regulator and to prevent future economic crises.[101]

The regulator's hard stance is best exemplified by its action against the Chinese presence of five leading international accounting firms.[102] In 2012, the SEC alleged that the firms had wilfully refused to furnish their audit work papers and other documents relating to their audit work to the Commission, pursuant to Section 106 of the Sarbanes-Oxley Act of 2002, in connection with audit and interim review work for ten China-based US issuers.[103] The identities of the ten issuers under investigation were considered "of minimal relevance" and thus allowed to be kept anonymous in order to minimise their public exposure.[104] Section 106 of the Sarbanes-Oxley Act reinforces the applicable and enforceability of the Act on any

[97] ABC News (n 93).
[98] Mark Johnson and Tim Edgar, 'Hong Kong Needs to Learn from its Peers' (2006) 25 International Financial Law Review 26, 26.
[99] Stavros Gadinis and Howell Jackson, 'Markets as Regulators: A Survey' (2007) 80 Southern California Law Review 1239.
[100] The UK has strived to take a new, intrusive and direct approach after the Financial Crisis in 2007-08. For example, Hector Sants, former chief executive of Financial Services Authority, made the following comments in 2009, 'There is a view that people are not frightened of the FSA. I can assure you that this is a view I am determined to correct. People should be very frightened of the FSA.' See Reuters, 'Highlights - FSA Chief Promises Intrusive, Direct Regulation' (12 March 2009).
[101] See Eric Chaffee, 'The Internationalization of Securities Regulation: The United States Government's Role in Regulating the Global Capital Markets' (2010) 5 Journal of Business & Technology Law 187 and Antonio Marcacci, 'IOSCO and the Spreading of a US-Like Regulatory Philosophy around the World' (2014) 25 European Business Law Review 759. As observed by Marcacci, the similarities between the IOSCO's Principles and many US pieces of securities legislation are so many to easily assume that IOSCO has heavily absorbed the US regulatory philosophy and then spread it around its members through its Objectives and Principles of Securities Regulation.
[102] The firms include BDO China Dahua, Ernst & Young Hua Ming, KPMG Huazhen, Deloitte Touche Tohmatsu and PricewaterhouseCoopers Zhong Tian. For the details of the enforcement action, see BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014). For the eventual outcome, see SEC, 'SEC Imposes Sanctions Against China-Based Members of Big Four Accounting Networks for Refusing to Produce Documents' (2015) <https://www.sec.gov/news/pressrelease/2015-25.html>.
[103] BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014) Section I Parts A & B.
[104] Ibid. footnote 3.

foreign public accounting firm, that prepares or furnishes an audit report with respect to any issuer, to the same extent as a US public accounting firm. A foreign firm is required to produce its audit work papers for the Public Company Accounting Oversight Board or the SEC in connection with any investigation by either body with respect to an audit report or opinion the firm issued. In January 2014, Judge Cameron Elliot, an administrative law judge, issued an initial decision ruling against the firms.[105] After the hearing, the SEC received multiple productions of work papers from the firms through assistance provided by the CSRC.[106] In 2015, the SEC reached a settlement with four of the five firms.[107] Under the settlement, the firms each agreed to pay USD500,000 and admit that they did not produce documents before the proceedings were instituted against them in 2012.

The SEC regarded the result as "an important milestone" in the regulator's ability to obtain documents from China.[108] It appears that the regulator has yielded some considerable successes by exerting pressure on the auditors, which are regarded as part of the trusteeship strategy of corporate regulation.[109] Other than the subsequent assistance from the CSRC, the 112-page Initial Decision by Judge Elliot is valuable in revealing the role of CSRC in the whole episode, when the interactions between regulators are normally kept confidential.[110] Despite Judge Elliot has redacted large portions of the factual findings and legal discussion pertaining to Chinese law and interactions between the SEC and the CSRC to preserve confidentiality in order to encourage the continued constructive engagement between the regulators[111], what was left in the Initial Decision could still unearth part of the situation, which is otherwise not publicly available. It was revealed that in the investigation of one of the issuers by Daniel Weinstein, a senior counsel of SEC, he had previously considered to seek and obtain documents from the CSRC.[112] But after discussions with the Office of International Affairs of the SEC, which revealed that requests made to the CSRC in other investigations had not been fruitful, an information request was therefore not sent out. Furthermore, it was revealed by Ji Feng, Dahua's executive partner, that in a meeting with representatives of the Chinese Ministry of Finance (MOF), the CSRC, and five other leading accounting firms, the MOF and CSRC officials explicitly stated three opinions.[113] First, they said that Chinese accounting firms must abide by Chinese laws and they cannot provide work papers and related documents to overseas regulators directly.[114] Second, they said that if any overseas regulatory agencies request access to work papers, they should discuss the matter with Chinese regulatory authorities. Third, they said that legal penalties would be imposed on firms that provide work papers without authorisation. This clearly has explained why the firms had been reluctant to produce its audit

[105] BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014).
[106] SEC (n 102).
[107] Ibid. The proceeding continues against Dahua CPA, which left the BDO international network on 30 April 2013.
[108] Ibid.
[109] Reinier Kraakman et al, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (2nd edn OUP, 2009) 43.
[110] The confidentiality requirement is stipulated in Section 11 of the MMoU. Each Authority will normally keep confidential requests made under the MMoU, the contents of such requests, and any matters including consultations between or among the authorities, and unsolicited assistance.
[111] BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014) Section I Part C.
[112] Ibid. 7.
[113] Ibid.
[114] The applicable law in this instance is the Provisions on Strengthening Confidentiality and Archives Administration in Overseas Issuance and Listing of Securities, which was promulgated by the Announcement of China Securities Regulatory Commission, State Secrecy Bureau, State Archives Administration ([2009] No. 29) on 20 October 2009, which prohibits work papers from leaving China without approval of the regulatory authorities. The Provisions were formulated in accordance with the relevant provisions in the laws and regulations, including the Chinese Securities Law, the State Secrets Law and the Archives Law.

work papers for the Public Company Accounting Oversight Board or the SEC, despite Section 106 of the Sarbanes-Oxley Act, and despite Dahua and Ernst & Young had been described as "very willing" to provide the work papers.[115] The SEC is clearly not in a very good position to enforce the law against China-based companies when the CSRC has not been keen to provide assistance and at the same time the firms have not been allowed to cooperate directly. As indicated by the SEC, investigators "were hampered by the lack of audit work papers" in the enforcement action.[116]

It is worth noting that in contrast, the Public Company Accounting Oversight Board may be in a better position to receive Chinese assistance. On 10 May 2013, the Board, the MOF, and the CSRC executed a Memorandum of Understanding on Enforcement Cooperation (MOUEC) which sets forth the parties' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the parties' respective laws. However, as of this moment, the SEC's MoU with Chinese authorities is just restricted to provision of technical assistance but not enforcement and supervisory cooperation.[117] Yet, the MMoU should still apply.[118] This might have illustrated a pitfall. As Paul Atkins, former Commissioner of the SEC, testified before Judge Elliot in the case above, the Commission's policy was to use bilateral cooperative agreements to enhance international enforcement cooperation, which were quite limited in the context of relationship between China and the US.[119] The MOUEC might have represented a more appropriate path for US regulators to pursue requests for the production of information.

Putting pressure on the auditors as a strategy for a regulator to obtain information apparently is the new trend amidst suboptimal regulatory cooperation, despite the existence of MMoU and various MoU. Hong Kong's SFC has taken pride in "regular and constructive dialogue with relevant authorities and actively take part in Mainland-Hong Kong co-operation initiatives" and "significant achievements" arising from policy initiatives and co-operative frameworks, including investigatory assistance, exchange of information, and market or product-related arrangements.[120] However, a simultaneous development that took place in Hong Kong like the US was that, the SFC commenced proceedings against Ernst & Young Hong Kong for failing to produce to the SFC specified accounting records of Standard Water Limited.[121] Standard Water (acquired by and now part of Beijing Enterprises Water Group[122]) was a wastewater treatment company in China, which applied for listing to the HKEx on 9 November 2009. As a result of this application, the SFC requested from Ernst & Young the audit working papers and underlying accounting documents relating to Standard Water. In the first time, Ernst & Young did not comply with this request and claimed that it did not have the relevant records which were held in Mainland China by its joint venture partner there, Ernst & Young Hua Ming.

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[115] BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014).

[116] Ibid. 18.

[117] The SEC currently has 25 cooperation arrangements and 47 supervisory arrangements with other regulators all over the world.

[118] The CSRC became a signatory to the MMoU in 2007. See CSRC, 'The CSRC Signs IOSCO Multilateral MOU' (2007) <http://www.csrc.gov.cn/pub/csrc_en/affairs/AffairsIOSCO/200708/t20070810_71093.html>.

[119] BDO China Dahua CPA et al, SEC Initial Decision Release No.553 (Jan. 22, 2014) 70.

[120] SFC, 'Cooperation – Mainland China' (2016) <http://www.sfc.hk/web/EN/about-the-sfc/collaboration/mainland/>.

[121] SFC, 'SFC Commences Legal Proceedings against Ernst & Young over Access to Accounting Records' (2012) <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=12PR92>.

[122] Beijing Enterprises Water Group Limited is a company listed on the Main Board of the HKEx (Stock Code: 0371). It is an arm of Beijing Enterprises Holdings Limited, also listed in Hong Kong (Stock Code: 0392), which is backed by the People's Government of Beijing Municipal.

In the second time, Ernst & Young then claimed that the documents could not be produced because of restrictions under Chinese law. Despite the SFC's attempt to seek assistance from the relevant authority in China using its standing arrangements for mutual assistance in investigatory matters, the information request still got nowhere.[123] The response from their Chinese counterparts was the view that accounting records, including audit working papers, may be the subject of claims of state secrecy under Chinese law and that all Hong Kong accountants are required to obtain the consent of the relevant Chinese authorities before handing over any accounting records to regulators like the SFC.[124]

As with the US episode, the SFC did not give in and exercise its right under Section 185 of the Securities and Futures Ordinance of Hong Kong which empowers the court to inquire into the circumstances of Ernst & Young's non-compliance with the SFC's information request.[125] The Court of First Instance in Hong Kong found in favour of the SFC that Ernst & Young was in possession of records and documents which were likely to contain information relevant to SFC's investigation and the auditor failed to comply with the SFC request without reasonable excuse. The auditor has since complied with the court order compelling production to the SFC of specified accounting records in its possession.[126]

Despite the success of the regulators in the two instances, commentators have criticised the Chinese secrecy law that it is largely a grey area that hampers the international accounting firms and overseas regulators' role in tackling corporate frauds.[127] Gillis has even gone further to suggest that the lack of certainty and clarity surrounding the accounting issues of cross-listing may put prospective Chinese issuers off or even worse can be a cause for delisting for existing Chinese listed companies.[128]

3. Throwing in the Towel?

As with all commercial decisions, cross-listing involves a calculation of costs and benefits. If the costs of a listing outweigh its benefits, it is logical for prospective issuers to re-assess their options, and for existing listed companies to delist. From a purely liquidity perspective, by the end of 2016, the Shanghai Stock Exchange was the fourth largest stock exchange in the world in terms of market capitalisation, just behind the NYSE, NASDAQ and the Tokyo Stock Exchange.[129] Another local option, the Shenzhen Stock Exchange, was not too far behind by having a comparable size to the LSE and HKEx.[130] Chinese companies should more easily get the equity finance they want from local bourses when compared to the past, especially taking into the consideration that China is moving towards a registration-based system of IPO from

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[123] SFC (n 121).
[124] Provisions on Strengthening Confidentiality and Archives Administration in Overseas Issuance and Listing of Securities, see note 114 above.
[125] *SFC* v *Ernst & Young* [2015] 5 HKLRD 293.
[126] SFC, 'EY's Appeal over Audit Working Papers Discontinued; (2015) <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR79>.
[127] Rohan Maitra, 'Scaling Two Great Walls: Resolving the Impasse between China's State Secrets Law and International Disclosure Requirements' (2016) 36 Northwester Journal of International Law and Business 587 and Raymond Chan and John Ho, 'Could Complying with China's Secrecy Laws be an Excuse for Auditors not to Provide their Working Papers of Auditing Chinese Companies? Recent Cases in the United States and Hong Kong' (2015) 26 King's Law Journal 99.
[128] Paul Gillis, 'Reaching the Endgame: A US Court's Ban on the Auditing of US-Listed ChinaCos Creates an Impasse in the Countries' Attempt to Reach an Agreement on Cross-Border Listing and Accounting Issues' (2015) 33 International Financial Law Review 22.
[129] Statistics from the World Federation of Exchanges.
[130] Ibid. The market capitalisation of the LSE was around USD 3.5 trillion, when those of the HKEx and the Shenzhen Stock Exchange were around USD 3.2 trillion.

an approval-based system.[131] In contrast to the bonding hypothesis, the need to opt into a stringent legal regime and follow high standards is the obvious deterrent for many companies that seek to cross-list.[132] Many commentators have blamed the Sarbanes-Oxley Act for driving issuers away from the US and causing more delisting.[133]

The exodus of Chinese companies might also have been witnessed in London. As discussed previously, the CSRC-recognised activities of Chinese companies in London remain small. Since the admission of Air China in 2004, there should have been no new Chinese companies (again recognised by the CSRC) listing on the LSE. However, as reported by the Financial Times, as of 2015, roughly 80 companies from China had joined the LSE's AIM (formerly Alternative Investment Market) in the past ten years, but only about 45 remained.[134] In the period of 2014/15 alone, 13 Chinese companies were delisted. The notable difference between the Main Market of the LSE and AIM is that the former is a regulated market under the EU law, whilst the latter is an exchange regulated market.[135] In general, AIM companies also need to comply with any relevant national law and regulation as well as certain European Commission Directive standards and regulations where applicable, such as Market Abuse Directive and Regulation, the DTR and the Prospectus Rules, but the core regulatory requirements come from the AIM Rules for Companies which set out the rules and responsibilities in relation to AIM companies.[136] There are no prescriptive entry criteria, for example on minimum size, trading history or free float. Integral to both the admission process and ongoing obligation on AIM is a nominated adviser.[137] The nominated adviser is responsible to the exchange for assessing the appropriateness of an applicant for AIM, or an existing AIM company, for advising and guiding an AIM company on its responsibilities.[138] Again, this is a trusteeship strategy in action. The nominated adviser is entrusted with the role of safeguarding of the quality and governance of an issuer. The absence of a nominated adviser can lead to suspension of trading and, if that persists, cancellation of listing status.[139]

One example is Sorbic International. Sorbic is a company specialising in production and sale of the food preservatives sorbic acid and potassium sorbate from its base in Linyi City, Shandong Province, China. On 16 June 2015, the company announced that finnCap Ltd, the company's nominated adviser had resigned, leaving the company with one month to find a

[131] China Daily, 'China to Push IPO Registration System Gradually' (2016). According to the CSRC, it will relinquish its approval authority and allow stock exchanges to manage a streamlined registration process, in which the timing and pricing of IPOs will be left to the market. See also, Gabriel Wildau, 'China's Regulatory Grip on IPOs Leads to Arbitrage and Distortions' (25 March 2015) Financial Times.
[132] Licht (n 43).
[133] See for example, Anupama Naidu, 'Was Its Bite Worse than Its Bark - The Costs Sarbanes-Oxley Imposes on German Issuers May Translate into Costs to the United States' (2004) 18 Emory International Law Review 271; Kate Litvak, 'The Effect of the Sarbanes-Oxley Act on Foreign Companies Cross-Listed in the U.S.' (2007) 13 Journal of Corporate Finance 195; and Ellen Engela et al, 'The Sarbanes–Oxley Act and Firms' Going-private Decisions' (2007) 44 Journal of Accounting and Economics 116.
[134] Kate Burgess, 'London Stock Exchange Clamps Down on Aim-quoted Chinese Companies' (9 October 2015) Financial Times. There has been indeed a parallel drop in the overall number of international companies on AIM. In 2005, there were 220 foreign companies. As of December 2016, there were 173. Statistics from AIM <http://www.londonstockexchange.com/statistics/historic/aim/aim-statistics-archive-2016/dec-16.pdf>.
[135] Gullifer and Payne (n 44) 482.
[136] AIM Rules for Companies, July 2016, Introduction.
[137] Ibid. s 1. In order to be eligible for AIM, an applicant must appoint a nominated adviser and an AIM company must retain a nominated adviser at all times.
[138] The responsibilities of nominated advisers are set out in the AIM Rules for Nominated Advisers.
[139] AIM Rules for Companies, July 2016, s 1.

replacement before the company's admission to trading is cancelled.[140] The company had indeed plagued by problems like board conflicts and had its shares trading suspended earlier on 1 May 2015. According to a company announcement, the company's CEO had been removed from office earlier but he refused to hand-over the company's corporate seals and business licences, and transferred funds belonging to the company to himself.[141] Sorbic was finally delisted on 17 July 2015. Unfortunately, the Sorbic episode was not an isolated incident. The nominated adviser and two directors of Camkids, a Chinese children's clothing company, simultaneously resigned in September 2015 over plans to hand most of the company's cash to three distributors.[142] The company was delisted roughly one month later. This trend went on to 2016 when Auhua Clean Energy, an environmental technology group based in the Shandong Province of Eastern China, was delisted in March 2016 following the resignation of its nominated adviser Grant Thornton earlier.[143]

As a response to the wave of Chinese companies on AIM suspending or leaving, the LSE has demanded that all nominated advisers to monitor their Chinese clients more thoroughly.[144] According to some commentators, the departure of these Chinese companies may have represented how regulation has put right "an experiment [of letting Chinese companies into AIM] gone wrong".[145] However, this may be true at the expense of existing shareholders of the delisted companies. These shareholders may need to hang onto their virtually worthless shares. For example, the shares of Camkids floated in late 2012 at a price of 88 pence, but were worth merely 3 pence each right before the suspension.[146]

E. Conclusion

The article has presented a comprehensive discussion of issues, development and controversies surrounding the phenomenon of Chinese cross-listings spanning across decades. Such activities have traditionally concentrated in Hong Kong. With the joint efforts from regulators on both sides of the home and host jurisdictions, a sound framework of regulation was established. Despite some occasional scandals involving Chinese cross-listed companies, the HKEx has been in overall successful in attracting Chinese issuers, at the same time in maintaining its reputation as a prestigious international financial centre.[147] Yet, when more and more Chinese issuers started to flock to exchanges all over the world, problems simultaneously started to surface. Recently in 2014, the US-China Economic and Security Review Commission issued a

140 LSE, 'Sorbic International Plc - Resignation of Nominated Adviser' (2015) <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/SORB/12390217.html>.
141 LSE, 'Sorbic International Plc - Update on Suspension' (2015) <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/SORB/12342910.html>.
142 LSE, 'Camkids Group plc - Resignation of the Company's Nominated Adviser and Director Resignations' (2015) <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CAMK/12518339.html>.
143 LSE, 'Cancellation - Auhua Clean Energy Plc' (2016) <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/other/12754790.html>.
144 Kate Burgess, 'China's Future on Aim Looks Fragile after Regulatory Shake-up' (11 October 2015) Financial Times.
145 Ibid.
146 Kate Burgess, 'Aim's Chinese Disasters Offer Cautionary Tale for Chancellor' (23 September 2015) Financial Times.
147 According to the Global Financial Centre Index < http://www.zyen.com/research/gfci.html>, Hong Kong has been constantly regarded as a leading financial centre, just behind New York and London.

report alerting potential investors of the risks of China's internet companies on US stock exchanges.[148]

This article has explained that there are various motivations for the Chinese companies to cross-list. On the face of it, all listings are about money. In addition, as proposed by scholars, these companies seek to affiliate themselves with leading exchanges in order to realise additional benefits, most notably prestige. In the context of China, there is also a wider dimension in relation to the market and local institutions supporting its development. This article has shown that before 2005, all cross-listed companies had been required to commit to a set of higher standards, as set forth by the *Mandatory Provisions*, in addition to the national company law. Effectively, there were two sets of company law in China, one for cross-listed companies and another for the rest. This is quite unusual as the higher standards normally come from the second and third tiers of regulation, i.e. securities law and listing rules. Listed company may be subject to some additional requirements in company law, but certainly not in the way China did. But of course, the *Mandatory Provisions* appear insignificant now as the Company Law 2005 (and its successor Company Law 2013) has set a high standard for all companies. Listing rules have always been playing a role in regulation. For example, the HKEx's turning away of Alibaba may be an indication of the bourse's focus on quality/reputation over revenue.

This comes to another question, whether the commitment to quality by the companies is credible. This may depend on whether there is a genuine threat of enforcement action.[149] Owing to the nature of cross-listing, in which the host country regulators generally have no access to the operations and assets of the cross-listed companies, cross-border enforcement is the solution. This article has discussed pubic enforcement with respect to, for example, the China Aviation Oil case and the SEC action against five leading accounting firms, as well as private enforcement with respect to the Alibaba case. The basis of cooperation between authorities can come from both multilateral and bilateral arrangements. Nonetheless, as revealed in this article, the SEC has come across tremendous difficulties in gauging assistance from the CSRC. This has largely stemmed from the general reluctance of the CSRC to "play ball". More problematically, the cooperation bases do not create any binding international legal obligations and are largely operating on a voluntary basis, with minimal consequence from non-compliance. The SEC episode against the accounting firms (and a similar episode in Hong Kong) might have shed some light on the way out, that is, to use hard law to exert pressure on some big players in the market which in turn, with the publicity generated, do the same on the CSRC. Secondly, stepping up the cooperation scope through bilateral arrangement is desirable.

Finally, a pessimistic picture is that there might be no place for these Chinese companies (especially for the smaller ones) on the prestigious exchanges. At least this is what has happened to the LSE's AIM. There has been a significant scale of Chinese delistings. Whilst Chris Gibson-Smith, former Chairman of the LSE Group has once said, "When there is a sense of crisis concerning Chinese companies in other exchanges, notably the US, we feel little impact", [150] existing shareholders of those delisted companies who suffered substantial financial loss would not necessarily share the same view.

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[148] Rosier (n 36).
[149] This paper focuses on strictly legal mechanisms, but reputational sanctions may work as well. See Liebman, Benjamin and Curtis Milhaupt, 'Reputational Sanctions in China's Securities Market' (2008) 108 Columbia Law Review 929.
[150] International Financial News, 'The Attractiveness and Queries for Chinese Companies Seeking a London Listing' (18 August 2014) (in Chinese) <http://paper.people.com.cn/gjjrb/html/2014-08/18/content_1466244.htm>.

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G. Tables

Table 1 – Selected Features of the Three Laws

Fiduciary Duty of Directors, Supervisors and Senior Personnel	Duty of loyalty only	Duties of loyalty and care	Duties of loyalty and care
Fiduciary Duty of Controlling Shareholders	N/A	Controlling shareholders (30% or up) must show good faith in exercising their rights	Controlling shareholders (50% or up) must show good faith in exercising their rights
Exit Strategy	N/A	During a merger or split of company	1. Fail to distribute profits; 2. Merger or split of company; 3. Renewal of operation term or dissolution
Information Rights	Basic passive information rights	Enhanced passive information rights	Enhanced information right plus right of making inquiries
Shareholders' Meetings	Basic powers	1. Power to initiate new motion (5% of shareholding); 2. Right to individual notice.	1. Power to initiate new motion (3% of shareholding); 2. Right to individual notice.

Private Placement of Shares	Not allowed	Allowed	Allowed
Pre-emptive Right	N/A	N/A (but provided by Hong Kong Listing Rules and recognised by the Mandatory Provisions)	Yes
Shareholder Action	No mention of civil remedies	Disputes resolved through Chinese courts or arbitration	Derivative actions permitted and in some cases direct actions

Table 2 - MMoU Information Requests

	2003	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Overall	56	307	384	526	726	868	1,262	1,624	2,088	2,377	2,658	3,080	3,203
China	NR	NR	NR	NR	15	141	64	33	69	54	90	97	130

Note: NR denotes 'Not Reported' Source: IOSCO; Annual Reports of the CSRC, various years