

Does the Dual Listed Company Structure Have a Future?

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Abstract

A dual listed company (DLC) is a single firm comprised of two separate companies in distinct national stock markets, each with its own legal identity and full share listing. Fashionable in the 1980s and 1990s, in recent years DLCs have been declining in popularity among major companies. This study sheds light on the reasons for this reversal, finding there is a growing body of opinion and evidence that the costs of a dual structure outweigh the benefits. This has implications for firms that still retain a DLC legal structure and need to consider moving to unification.

1. Introduction

The choice of legal entity or business structure - such as company, trust or partnership - has a measurable impact on business performance. For transnational firms, there is a further important choice to be made, involving national versus international legal entities and/or share listings, with various models of cross-border legal structure on offer. One model is dual share listing. A dual listed company (DLC) is a single firm comprised of two separate companies (and thus, legal entities) that retain separate listings and identities in their respective markets. Most commonly it will be two national markets, but in some cases may involve two distinct indexes in the same national market. Neither listing is a secondary listing; each is a primary listing.

Dual listing is not the same thing as cross listing. The difference is in the legal structure: a cross listed company remains a single unified legal entity while listing its shares in multiple markets. Dual listing is also different from a merger, when two firms that were separately owned and operated agree to go forward as a single new company, where both firms' shares are extinguished and replaced by new unified stock. DLCs can come in slight variations: a common dual listing model is the separate entities structure, whereby a company operates two equal entities with their own primary listings in different share markets, while combining their operations and cash flows.

One business, two entities

The twin partitioned corporations list independently yet present as one business. They share benefits and risks but have distinct shareholders. The sharing arrangement is usually specified in an equalization agreement. The ownership structure comprises two holding companies, each owning the underlying business. The two companies typically, by contract, institute equalization arrangements to ensure that all shareholders in each company are in the same position with respect to polling, dividend and investment return rights. No other structural arrangements will be necessary. The separate entities structure has been adopted in several cases where a company has brought itself within a dual listed company structure. Harding² suggests that one reason for adopting the separate entities structure can be because the company operates joint ventures with parties outside the DLC structure. Because no movement of assets or shares is involved, the separate entities version of DLC is probably less likely than other types of dual listed structure to spark pre-emptive rights in joint venture agreements.

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² M Harding, 'Dual listed companies: Understanding conflicts of interest for directors' (2002) University of New South Wales Law Journal 25(2)

This makes dual listing particularly suited to bulk project firms with various assets located around the globe. The mining sector is a good example: as Citadel-Magnus³ note, mining is an industry in which enterprises scope, develop and manage projects, including joint ventures, across time zones requiring major ongoing capital. DLCs face particular issues and challenges not shared by unified, single listed companies. These derive from the twin structure, of running one business with two entities. Special corporate governance challenges inevitably arise when a company is dual listed. The interest of shareholders in each of the listed companies in the business is, in principle, the same; yet guaranteeing equal rights in all respects, and achieving a unified management (and voting) structure, can be difficult. Financial equalization is challenging. Equalizing returns between the two groups of owners is the goal: however factors such as different tax regimes between the countries, and unequal share prices between the two markets, get in the way. Risk and risk-sharing between the two entities may also be uneven.

Costs and benefits

Dual listing confers both benefits and costs for the DLC. The benefits may potentially include access to a bigger pool of relevant investors, variegation of liquidity sources, fund raising in more than one market, ability to tap into diverse markets at different times depending on national macroeconomic cycles, and enhanced public profile. Equally, there are often unique costs of dual listing, including transaction costs, logistical overheads/complexity, governance barriers, inefficiencies from loss of synergy benefits, loss of company valuation, loss of tax benefits, and loss from market anomalies and distorted incentives.

The discussion below reviews and weighs the inventory of opinion and research about DLCs. There is a portfolio of recent commentary from worthy sources bearing on the relative merits of unified listing versus dual listing, which deserves to be systematically collated and carefully considered by market participants. The context for this work is that increasingly, fewer major companies are choosing to retain a dual listed legal structure. Those that do, form a shrinking minority. This paper can shed light on the reasons why, and help stakeholders evaluate alternatives to a DLC structure.

2. Evaluating the Dual Listing Model

A DLC structure has ramifications on two fronts: corporate control and commercial outcomes. The commentary and evidence on the dual listing model can be profitably reviewed under these two headings.

A. Control consequences

A significant portion of the DLC literature is motivated by the repercussions for corporate control.

Dual listing involves share listings in two countries, and a perceived benefit can be maintenance of **national identity** and national control of the enterprise concerned. The inclination to retain a home country listing is often for purposes of continuity of corporate identity, perhaps for brand value or business culture reasons, or government pressure, or the need to preserve eligibility for a particular national market index. Thus a DLC can be more palatable than a full merger. Urry⁴ says dual listings can be a way of ‘soothing national pride’ in cross-border deals.

However, while the double headed structure allows the two companies to retain their national and legal identities, law firm Cleary Gottlieb Steen & Hamilton⁵ see disadvantages in dealing with **dual regulatory regimes**, leading to possible friction between the corporate laws required under the two jurisdictions, making it more complicated for the firm to act in a unified way.

To address this, provisions are often made to ensure the two parent companies maintain identical boards, but these can prove ‘cumbersome’ in practice (Herbert Smith Lawyers⁶). Practical difficulties can easily arise in the holding of meetings. It will likely be the case that the entities will wish to hold their meetings at the same time in order that, whilst the sessions are presumptively separate, they appear to be one meeting, with the chair addressing all shareholders, and voting taking place concurrently. Given that the companies will be in different time zones however, this poses **logistical** difficulties.

³ Citadel-Magnus, ‘Going global: The benefits and challenges of dual listings’ (2014) Online article, 20 June

⁴ M Urry, ‘Dual listing may hasten an agreement’ (2007) Financial Times: London, 8 May

⁵ Cleary Gottlieb Steen & Hamilton (2003) ‘Cross border mergers: The cases for and against dual headed structures’ European M&A Report: Brussels October, 3-7

⁶ Herbert Smith Lawyers ‘Dual listed company (DLC) structures – recent developments’ (2003) Corporate Briefing November 1-8

Moreover, given that each DLC entity is likely to be subject to competing company law and regulations governing voting procedure and thresholds of shareholder approval, this can mean time honored principles relating to **directors' duties** come under pressure. The boards of directors in such companies are, in theory, identical: they are 'twin boards'. But a tension is inherent in the concept of dual listed companies each company has independent legal existence but the two companies together operate as a single economic enterprise. Directors of DLCs therefore confront unique circumstances in discharging their usual fiduciary obligation not to place themselves in a position of conflict in respect of their duties to each of their companies.

Harding illustrates the problem with the following scenario. Consider the position of the directors of an Australian dual listed company (say, DLC1 Ltd) which has a dual listed structure with a UK company (DLC2 plc). These directors have duties under statute, at common law and in equity to DLC1. At the same time, the directors' interests include their duty to act in the best interests of other companies of which they are directors, including DLC2. However, notwithstanding their duties to DLC1, the directors are authorized under DLC1's constitution to take into account the interests of DLC1 and DLC2 as a whole when discharging their duties to DLC1. It is here that the tension in dual listed company structures in regards to directors' duties comes into focus - the directors of DLC1 are obliged to look to the interests of DLC1, but also to the interests of the combined double listed company as a whole, in discharging their duties to DLC1 under the law and under DLC1's constitution. In this scenario, must the directors take into account DLC1's interests alone, as well as the interests of the dual listed companies as a whole, when making decisions? Is it sufficient to have regard only to the dual listed companies as a whole? An even more vexing question, says Harding, is what the directors of dual listed companies should do where the interests of those companies conflict, given the obligation to act at all times in the best interests of DLC1 and to not be in a position where the directors have a **conflict of interest** with their duty to act in the best interests of DLC1 (the 'no conflict' rule⁷).

While there is no actual transfer of assets under a DLC, there are contractual arrangements (called a 'Sharing Agreement') under a dual structure to share the earnings from each other's assets. In theory, the two vehicles pay equivalent dividends to their shareholders in line with a pre-agreed ratio, and shareholders have equivalent votes in the decisions regarding the organization in line with the relative 'weights' of the two companies established at the time of the creation of the DLC. In the event that one company does not have sufficient cash flows to pay the agreed dividend to its investors, there are often arrangements for an equalization payment from the other company. This is designed to ensure shareholders will be in the same economic position as if they held shares in a single combined enterprise, regardless of which listing agency's shares they hold.

In practice, given different institutional rules between jurisdictions, **equalization** often faces serious hurdles. An Equalization Ratio⁸ is employed to achieve fairness between the members of the two companies, where the very definition of the ratio 'means' the ratio between the economic rights and voting rights attaching to shares in the two companies. But Hulme⁹ argues that what determines the equalization ratio is a 'human decision' by the board(s). The board will probably be required to determine:

- The value of asset changes relevant to the equalization ratio
- Whether it is appropriate to have a matching action¹⁰
- Whether it is appropriate to make an adjustment to the equalization ratio
- Whether the effect of the Action is or is not material
- What the voting regime shall be if the matter is put to a vote of shareholders

⁷ The 'no conflict' rule says a person who stands in a fiduciary relationship vis-à-vis another person may not place themselves in a position where their own interests, or their duty to a third party, conflicts with their duty to serve the interests of that other person. The rule has its origin in the 18th century case *Keech v Sandford* and finds more recent form in Australian cases such as *Chan v Zacharia*.

⁸ For example, suppose the equalization ratio is 1:1. Then the amount of any cash dividend paid by the DLC1 in respect of each DLC1 share will be the same amount as the equivalent cash dividend paid by DLC2 in respect of each DLC2 share.

⁹ S Hulme, 'Implications of dual-listed companies for their shareholders' (2003) Research Report, Australian Council of Super Investors (ACSI) September

¹⁰ A 'matching action' is an action by DLC2 to ensure that the economic benefits of one share relative to the other share are maintained.

These are ‘wide powers indeed’, says Hulme, and their exercise ‘cannot effectively be challenged by shareholders’. It effectively tilts the balance of power from shareholders to directors, compared with an ordinary unified entity.

The ability of shareholders to control the company may be further weakened by the **complexity** of dual structures. Lack of transparency about process, misunderstanding among investors, and confusion understanding the financial accounts of the group, can be contributing factors. In particular, Hulme feels that a clear understanding of the **voting structure** of a DLC can be difficult to procure. The provisions of a sharing agreement are often ‘extraordinarily convoluted’:

- DLC principles can require that boards must call meetings of both companies in order to cope with a situation presently arising in only one of them
- any movement to install a director unwelcome to the incumbent board (eg. if a person were proposed as a director of one of the companies but not the other) is going to face considerable uncertainty
- if a director were removed from the board of DLC1, the two boards would be differently composed unless the director were removed also from the board of DLC2

Furthermore, DLCs make it harder for shareholders to garner the numbers for a vote. In the Australian context, for example, a number of provisions of the Corporations Act give particular rights to shareholder groups of a certain size, by reference to votes which can be cast at a general meeting. Thus s249D(1)(a) provides that the directors of a company must call a general meeting if members with at least 5% of the votes that may be cast at a general meeting request it. The DLC structure ‘alters this dramatically’, says Hulme. Assuming the DLC companies to be of equal size, the number of votes which need to be cast by one DLC company is doubled: to have 5% of the entire DLC votes you need to have 10%, not 5%, of the shares in one or other of the DLC partners. The legislative requirement has ‘effectively been doubled’.

Significant confusion has surrounded the **accounting rules** as they apply to dual listed companies. Using Australia as an example, under the Australian Accounting Standards Board’s (AASB) enabling legislation – ASIC Act s224 – the AASB is required to produce standards that provide reliable information to enable investors to assess a company’s financial performance. Ravlic¹¹ argued that, at that time at least, the AASB had ‘failed profoundly in fulfilling its obligations, by not dealing with an accounting issue that would ensure dual-listed companies’. Companies undertaking complicated combinations could find no adequate guidance about what constitutes appropriate reporting. The AASB referred its decisions on DLC matters to the International Accounting Standards Board (IASB), arguing that complexities in accounting for dual-listed structures could be ironed out only with the co-operation of international accounting regulators. Ravlic termed the situation ‘a classic illustration of regulatory paralysis’.

The DLC structure might materially weaken **shareholder control**, the ability of shareholders to influence and discipline boards. Hulme suggests the DLC structure can affect the powers and position of the directors in the following ways:

- Power to amend the objects of the company, via power to amend the DLC agreements (under protection given by the fact that no amendment the directors make in good faith shall constitute a breach of fiduciary duty to the company)
- Power to determine whether any issue is to be decided as a Joint Electorate Action or as a Class Rights Action
- Power to decide what is to be done when the two groups of members have competing interests
- Power under the Sharing Agreement to determine whether to have a matching action, or adjust the equalization ratio
- Power to determine whether an action is immaterial

It can be argued that the DLC structure raises the hurdle dissentient shareholder groups must surmount in order to attract the assistance of the companies legislation in each jurisdiction, thereby making a challenge to directors more difficult. This is exacerbated by the practical difficulties in addressing one half (and/or the other half) of the persons ultimately in control of the votes to be cast. According to Hulme, these most likely have the effect of ‘entrenching board and management control’.

¹¹ T Ravlic. ‘Listing issue needs international input: Companies’ (2001) *The Age* 5 May, and T Ravlic, ‘DLCs paralyze regulators’ (2002) *Australian Financial Review* 1 July

These tendencies will be only reinforced by any move toward **triple listing**. There is little to prevent a DLC moving to a multi-listing structure involving three or more companies and countries rather than two, implying extra corporate cultures and legal systems. Each additional company, country and regulator would likely dilute shareholder control still further.

B. Commercial consequences

A seminal survey of managerial perceptions around the commercial costs and benefits of foreign listing was conducted by Mittoo¹², using a survey of Canadian firms that had listed their securities on the foreign exchanges in the United States and United Kingdom. Access to foreign capital markets and increased stock marketability were perceived by respondent firms to be the major benefits. Consistently, greater **access to capital** is cited as the leading motivation for foreign listing, including dual listing, particularly in larger markets or a more relevant market. Baker & McKenzie¹³ conducted a survey of Australian resources companies with dual listing - a primary listing on ASX and a listing on another national exchange – to gauge management thinking:

What is the primary reason your company sought its dual listing / quotation?

Access foreign investors: 69%

Raise new capital: 13%

Increase liquidity and/or valuation: 6%

Other reason: 12%

Attracting foreign capital was by far the leading reason for dual listing. When companies can't easily attract large amounts of new equity in their home markets, it may seem to make sense to issue new equity in foreign ones. Perhaps that was true back in the 1980s and 1990s, but today, as investors increasingly can trade around the world, McKinsey & Company argues that local stock markets now provide a sufficient supply of equity capital to companies in developed economies. A UK or US listing therefore no longer appears to offer a compelling benefit. And, in an era when online trading provides easy access to foreign markets, the argument that foreign listings can give companies a broader shareholder base 'no longer holds'. A foreign listing is 'not even a condition, let alone a guarantee', for attracting foreign shareholders, McKinsey says (Dobbs & Goedhart¹⁴). It may improve access to private investors, but as capital markets become increasingly global, institutional investors typically invest in stocks they find attractive, no matter where those stocks are listed.

Around 6 percent of respondents to the Baker & McKenzie survey nominated increasing **liquidity** and/or valuation as a prime motive for becoming a DLC. Yet, equally, the results also show that relatively few (one in five) firms find the twin market accounts for more than 15 percent of the trading in their shares:

Approximately what percentage of your company's shares are traded in the other market?

Less than 2.0%: 50%

2.1 – 5.0%: 12%

5.1 – 10.0%: 19%

More than 10.0%: 19%

In theory, increased liquidity will be derived from operating in more than one market. In reality, the Reserve Bank of Australia has suggested that the existence of two separate companies may result in less – not more - capital market liquidity than would result under a single unified company (Bedi and Tennant¹⁵). McKinsey agrees, noting that although liquidity is challenging to measure, the trading volumes of the cross-listed shares of European companies in the United States typically account for less than 3 per cent of these companies' total trading volumes. And for Australian and Japanese companies, the percentage is 'even lower' (Dobbs & Goedhart). This accords with Mittoo's original findings from the sample of Canadian firms, that multiple listings on foreign exchanges 'may not imply higher foreign trading volumes'.

¹² E Mittoo, 'Managerial perceptions of the net benefits of foreign listing: Canadian evidence' (1992) *Journal of International Financial Management and Accounting* 4(1), 4-62

¹³ Baker & McKenzie, 'A report on dual listings by Australian resources companies' (2012) PDF Research Report: Sydney

¹⁴ R Dobbs and M Goedhart (2008), 'Why cross listing shares doesn't create value' (2008) McKinsey & Company: Strategy & Corporate Finance Online article November

¹⁵ J Bedi and P Tennant 'Dual-listed companies' (2002) Reserve Bank of Australia Bulletin: October, 7-13

Work by the Bank of Canada suggests, based on empirical studies, that the **cost of equity capital** generally declines following a foreign cross listing (Chouinard and D'Souza¹⁶). But the post-listing improvement is more pronounced for smaller less mature firms (rather than large established firms), and is generally found to be related not to the event of listing itself, but to a decline in transactions costs or an improvement in the quality and quantity of 'firm-specific factors', such as the information available to investors. Further, because the two holding entities of a DLC are considered separately for stock market index membership, the result is that the group's market capitalization is divided, denying the business any benefits that could have flowed from a unified critical mass in the capital market (Cleary Gottlieb Steen & Hamilton).

If we think of dual listing as a 'synthetic merger', we might expect the DLC structure to generate gains for the business from **synergies**. Lascelles¹⁷, for instance, notes that the DLC group may have much more flexibility to locate assets at the most suitable place within the overall structure. However, the Bedi and Tennant have argued that due to the inherent untidiness of dual listed operations, the existence of twin sets of shareholders may at times 'constrain the flexibility of management', given the ongoing need to maintain separate companies and satisfy the accounting and regulatory frameworks of two countries. This is 'likely to be costly', and possibly 'hamper management's ability to maximize the joint value of the two companies'. Consequently, the full benefits of a more conventional merger 'may not in practice be realized'. Legal firm Cleary Gottlieb Steen & Hamilton concurs, believing that with DLCs it is more difficult to realize the cost savings and synergies of a traditional unified company.

Closely allied with the issue of synergies is that of **takeovers, mergers and acquisitions**. The threat of takeover presents an important discipline on boards, with potential bidders in effect asserting that they can 'manage the company's assets better than the current board' (Hulme). This in turn can be a catalyst for improved efficiencies and unlocking shareholder value. Some commentators, such as Citadel-Magnus, believe that an advantage of the DLC structure is enhanced opportunities for takeovers. But others disagree. Hulme fears that labyrinthine provisions to dissuade takeovers are inherent in the respective documents of each DLC entity, designed to ensure that 'the only takeover proposal that can proceed is a takeover of both entities at the same time'. Thus a hostile takeover offer can come only from a bidder willing to make offers in two different countries, under two different legal systems, prescribing two different statutory procedures. The result is that 'to a very considerable extent' the DLC structure reduces the likelihood of takeover. Cleary Gottlieb Steen & Hamilton concur, saying DLCs make takeover bids for one parent company unattractive without a parallel bid for the other, potentially reducing the appeal of the DLC to a third party. Herbert Smith Lawyers also agree, noting that a foreign dual listed company incorporating and listing in the UK will have to comply with a host of British regulations including the Listing Rules, Companies Act, Takeover Code, and Financial Services and Markets Act. This can reduce the symbiosis that would usually result from an acquisition, as the new buyer would need to ensure that they comply with both regimes, and maintain separate national functions.

Any synergies need to be balanced against increased **costs** from being dual listed. Increased liability stemming from different regulatory requirements can increase compliance risk, effectively requiring greater management costs. Urry notes that dual listing will also result in extra overheads of maintaining two head offices and can make raising capital a more expensive exercise. Citadel-Magnus cite the ongoing costs associated with a second listing, including increased demands on management (time commitment for marketing etc), practicalities of media management (eg. cross-market releases, different time zones), the requirement for additional overseas based advisers, expense of offshore director/board activities, and costs from using different clearing systems (to help keep shares fully fungible).

Such costs escalate during a dispute between the two arms of the organization: Hulme reckons that when one half of the effective electorate consists of members of another company (say) 15,000 kilometres away, any challenge involving – for example – an Australian DLC1 and a UK DLC2 would 'cost something like five times' what a similar challenge would cost if fought wholly within one jurisdiction or the other, respectively.

Cash costs have notably been a factor in decisions to dismantle some foreign listings. McKinsey notes that British Airways and Air France, which several years ago both announced their delisting from US exchanges, estimated they would save around US\$20 million each in annual service and compliance costs. McKinsey quips that this sum 'probably doesn't include the time executives spend monitoring compliance and disclosure for the US market'.

¹⁶ E Chouinard and C. D'Souza, 'The Rationale for Cross-Border Listings' (2003-04) Bank of Canada Review Winter, 23-30

¹⁷ D Lascelles, 'Double identity' (1995) The Financial Times London 27 October

This example highlights reporting costs: maintaining an additional overseas listing generates service outlays (eg. listing fees for stock exchanges) and these have grown enormously over the last few years, notes McKinsey.

On the positive side, the aforementioned Baker & McKenzie (2012) survey is sanguine about dual list costs:

Are there any significant compliance or other costs of your company's dual listing / quotation?

No: 75%

Yes: 25%

A caveat to this result however, is that most respondents were small-cap or mid-size, listed on AIM¹⁸, an 'entry-level' low-cost listing on the London Stock exchange (LSE) designed to give a foothold to fledgling players.

The costs associated with a DLC – both measured and unmeasured no doubt contribute to the anaemic effect that dual listing seems to have on a company's **valuation**. McKinsey state categorically that offshore listing has 'significant costs and few gains for valuations'.

One vidence of this is the so-called 'post-listing anomaly'. McKinsey research finds that on average, companies listed on a foreign exchange don't suffer negative share price movements after the announcement of a delisting, implying there was no real valuation gain when listed. Lau, Diltz & Apilado¹⁹ use US data and, while detecting positive returns around the date of acceptance on the foreign exchange, find evidence of abnormal negative returns in the post-listing period. Baker, Khan & Edelman²⁰ also show that stock prices of a company rise before its listing on another national exchange, then fall soon afterward – and they particularly confirm that this pattern applies in the case of dual listings. Various explanations for the post-listing anomaly have been proposed. Bedi and Tennant posit that investors may view the DLC structure as 'somewhat complex and less transparent' than a conventional single company, pricing it at a discount. Urry suggests that under a dual listing regime, shareholders in one country may not be keen to accept paper issued and listed in another country and so might sell the shares they receive, depressing the share price. Herbert Smith Lawyers argue that, because a DLC structure can be an obstacle to takeovers, the share price of the entities may be discounted as a result, depressing the group's value.

A further phenomenon that calls into question the supposed valuation benefits of DLCs is observed **price discrepancies**: mis-pricing between the shares of the two markets. This leaves one share at a discount to the other²¹. In theory, the two share prices, measured in a common currency, should be identical since they represent equivalent claims on the future cash flows of the group. Lascelles claims that even if the shares between DLC partners drift apart there are plenty of arbitragers in the market and any gap 'quickly gets pushed together again'. But the evidence shows otherwise. Froot and Dabora²² show that significant mispricing in DLCs has existed over a long period of time, and a similar study by de Jong, Rosenthal & van Dijk²³ found DLCs produce large deviations from theoretical price parity of almost 10%. While factors such as different tax treatment of dividends and differing stock market liquidity conditions may be involved, investors seem to 'value the two parts of the company less highly than they would a single larger company', even though the cash flows are the same.

An implication of unequal share pricing is that the DLC structure, far from enhancing a group's valuation, may instead constrain it. The Bedi and Tennant study argues that while the reasons for on-going price divergences remain unclear, the fact that two of three DLCs involving major Australian companies had persistently traded at a significant premium in the Australian market relative to the UK market 'tends to refute claims that companies can increase shareholder value' by shifting their listing to larger overseas exchanges.

¹⁸ AIM: Alternative Investment Market of the London Stock Exchange

¹⁹ S Lau, J.D Diltz and V. Apilado. 'Valuation effects of international stock exchange listings' (1994) *Journal of Banking and Finance* 18, 743-755

²⁰ K Baker, W Khan and R Edelman, 'The post-dual listing anomaly' (1994) *Journal of Economics and Business* 46(4), 287-297

²¹ For example, since the inception of the BHP Billiton DLC, the UK Plc's observed share price discount to the Australian Ltd's share price has been around 10% on average.

²² K Froot and E Dabora, 'How are stock prices affected by the location of trade?' (1999) *Journal of Financial Economics* 53(2), 189-216

²³ A de Jong, L Rosenthal and M van Dijk, 'The Risk and Return of Arbitrage in Dual-Listed Companies' (2009) *Review of Finance* 13, 495-520

Urry notes that Brambles Industries gave up its dual listing structure in 2005, partly to save money but also to eliminate a UK discount that had ranged from 6.4 per cent to 13 per cent over the preceding year. Cleary Gottlieb Steen & Hamilton suggest dual share price discrepancies can cause difficulties for DLCs when pricing new issues (eg rights issues).

Differences of opinion exist around the **tax implications** of dual listing. Bedi and Tennant observe that disparities in national tax systems may favor a DLC structure if it means cross-border dividend payments to shareholders are minimized. Herbert Smith Lawyers add that the attraction of a DLC structure may include continuity of tax treatment, before and after dual listing. However, Cleary Gottlieb Steen & Hamilton note that while a DLC allows shareholders resident in one jurisdiction to continue to receive tax advantaged dividends via tax credits on dividends paid in that jurisdiction²⁴, from a corporate tax perspective such payments can be inefficient, depending on whether the jurisdictions involved treat payments under an equalization agreement as a taxable receipt, and whether the company is treated as tax resident even if it is incorporated elsewhere. Herbert Smith Lawyers echo this: in a DLC, dividends generally continue to be received by shareholders from a company resident in the same jurisdiction. This is normally beneficial because domestic dividends often carry tax credits/exemptions and withholding tax may be deducted if dividends are paid from a foreign source.²⁵ However, such payments, if made, ‘may be very tax inefficient’, says Herbert Smith. For example, a payment may be treated as a taxable receipt by the receiving DLC partner without any corresponding tax deduction for the other partner²⁶.

There is mixed evidence on whether a DLC structure improves the group’s **visibility/public profile**. A study by Baker, Nofsinger and Weaver²⁷ shows that international firms listing their shares on the NYSE or LSE do experience a significant increase in publicity, when proxied by analyst coverage and print media attention. The increase in analyst following is also associated with a decrease in the cost of equity capital after the listing event. However McKinsey finds that cross-listed European companies are covered by only about 2 more analysts than those that are not cross-listed a ‘very modest difference’, since the average number of analysts covering the 300 largest European companies is 20. Such a small increase is ‘unlikely to have any economic significance’, conclude Dobbs and Goedhart. Herbert Smith Lawyers also see this issue as a double-edged sword for DLCs: the desire to enable the raising of finance in two markets needs to be weighed against the fact that, as two smaller separately listed companies, there may be less market visibility than would apply with a larger unified entity listed on one exchange. Even if dual listing does leverage a higher public profile, double regulatory reporting can require revealing previously confidential sensitive company information, which may have the unwanted side-effect of helping competitors.

3. The Impetus for Unification

An exit strategy for companies that are currently dual listed is to move toward unification. There are a number of reasons why DLC companies should look at moving to a unified single listing.

Dual listing remains a small minority

In terms of numbers, DLC companies remain quite unusual in the international context, because the take up rate of this form of corporate organization has been modest, at best. This raises an piercing question: if the DLC apparatus yields all the net benefits that some advocates once claimed (Wilson²⁸), then why is it not more widespread by now? Early on, the answer might have been that dual listing needed more time to fully flower. But enough time has now elapsed to conclude that the performance of the DLC corporate legal structure has been modest at best, even disappointing.

²⁴ For example, Australian shareholders benefit from a franking credit when they receive dividends from an Australian company.

²⁵ For example, UK corporates holding shares in a UK company in a DLC can continue to receive their dividends tax free and UK individuals can continue to obtain the 10% tax credit attaching to domestic dividends.

²⁶ For instance, some argue that in BHP Billiton’s case, if an adequate restructuring can be created, the ability to release franking credits more efficiently would be a source of value.

²⁷ K Baker, J Nofsinger and D Weaver, ‘International cross-listing and visibility’ (2002) *Journal of Financial and Quantitative Analysis* 37(3), 495-521

²⁸ C Wilson, ‘Dual identity: the benefits of listing on multiple markets’ (2011) PDF Report Trowers & Hamlins

The dual listed club is shrinking

More than that, over the past decade or so, around the globe we have witnessed an exodus of major players from dual listing. The 2000s have seen a growing number of high profile companies choosing to abandon their dual structure, including:

SmithKline Beecham (UK/US) 1989-1996
 ABB Group (Sweden/Switzerland) 1988-1999
 Allied Zurich (UK/Switzerland) 1998-2000
 Dexia (Belgium/France) 1996-2000
 Nordbanken/Merita (Sweden/Finland) 1997-2000
 Fortis (Belgium/Netherlands) 1990-2001
 Royal Dutch Shell (UK/Netherlands) 1907-2004
 Eurotunnel (France/UK) 1986-2005
 Brambles Industries (Australia/UK) 2001-2006
 Thomson Reuters (UK/Canada) 2008-2009

Notably, the lifecycle of dual listing is also shortening. While older generation DLCs such as Unilever²⁹ (1930-) and Royal Dutch Shell (1907-2004) maintained dual listing for 100 years or so, the newer DLC generation have terminated the arrangement after lives of just 7, 11, 2, 4, 3, 11, 19, 5 and 1 years – an average of only six years. Once a reasonable fit for the purpose of international expansion perhaps, Johnstone³⁰ observes that dual-listed structures have fallen out of vogue. He argues dual-listed companies are unwinding their structures and opting for a single unified structure because of the challenges of running separate companies that, when it all boils down, share the same cash flow. Brambles is cited as evidence of this, of complexity being a factor in moving toward unification: Brambles scrapped its British listing in 2006, and at the time, then chairman Don Argus argued the move would eliminate ‘the complexity of the dual listing’.³¹

Dual listing has underperformed

In its 2012 survey of DLCs, Baker & McKenzie asked respondents to sum up their overall experience with dual listing and received this response:

Has the dual listing / quotation met your company’s expectations?
 Exceeded expectations: 6%
 Met expectations: 44%
 Has not met expectations: 50%

The DLCs surveyed are somewhat lukewarm toward their dual listing, with half reporting that it had not met their expectations.

Dual listing is increasingly unnecessary

The importance of dual listings has diminished as it has become easier and cheaper for investors to trade in world markets. Coffee³² points out that although foreign listing has been traditionally explained as an attempt to break down market segmentation and increase investor recognition of the firm, the globalization of financial markets and instantaneous electronic communications render these rationales increasingly dated. The Bank of Canada agrees, saying technological progress and the liberalization of capital flows have lowered the barriers that once insulated national markets from each other (Chouinard & D’Souza).³³

²⁹ Unilever is the leading counterexample to the trend: the Anglo-Dutch consumer group reviewed its listing in 2005 and decided to retain the structure, concluding the benefits outweighed any costs

³⁰ E Johnstone. ‘Dual-listing advantages diminishing’ (2008) Sydney Morning Herald 4 December

³¹ Johnstone also gives BHP Billiton as an example, saying: ‘the complexity of a dual-listing surfaced in BHP’s since-aborted merger with Rio Tinto, where different takeover offers were being made for the miner’s separate Australia and British entities’.

³² J Coffee, ‘Racing towards the top? The impact of cross-listings and stock market competition on international corporate governance’ (2002) Columbia Law Review volume 102(7), 1757-1831

³³ At the same time, the Bank qualifies this, noting that geography has not become completely irrelevant: obstacles to international capital flows, such as legal restrictions on capital mobility and foreign ownership, and the costs associated with trading and

Conventional wisdom has long held that companies cross-listing their shares buy access to more investors, greater liquidity, a higher share price, and a lower cost of capital. And in the 1980s and 1990s, hundreds of companies from around the world duly cross-listed their shares. Yet according to McKinsey, this strategy ‘no longer appears to make sense’, because capital markets have become more liquid and integrated, and investors more global. Or perhaps, because ‘the benefits of cross-listing were overstated from the start’.

Dual listing involves costs and complexity

The ongoing costs of DLCs are significant, the structures are complex, and the logistics inefficient. Practical difficulties stem from long distance and different time zones, problems with dual meetings and voting procedures, timing of news announcements, and increasing demands on management. The group has to comply with the regulatory and accounting regimes of two jurisdictions, which is costly and requires additional advisers, overseas based directors, property, and so on. Value drivers for the entity can suffer as a consequence, with board members effectively directing ‘two’ companies rather than one, which increases confusion and potential conflicts of interest. The existence of two sets of shareholders may at times constrain the flexibility of management, impacting shareholder value. And the synergies that flow from a unified register are foregone.

Dual listing’s value benefits may be elusive

On core business metrics such as valuation, liquidity, M&A and investor visibility, the evidence for DLCs is mixed at best. There is little evidence that overseas listing increases shareholder value: on average companies don’t suffer a share price decline upon delisting (Pett³⁴). In fact, research suggests that overall shareholder value may actually be lowered by dual listing: Bedi and Tennant suggest the net result for combining the entity ‘tends to be a modest increase in overall market value’, which implies that investors could enjoy a higher company valuation upon unification. Far from enhancing liquidity, liquidity may be less under DLC because critical mass in each market is reduced and investors value the two arms less than they would a single entity. McKinsey arrives at a blunt assessment: companies from developed economies ‘derive no benefit from second listings in foreign equity markets’ and ‘those that still have them should reconsider’.

Dual listing sits uneasy with shareholder control

The complexity and the dual structure tends to entrench the power of directors at the expense of shareholders. Dual listing weakens the ability of shareholders to maintain control of board and management, and makes it harder for future directives to come from the shareholders rather than the board and management. Moreover, there is the ongoing threat of further dilution of control in the future, through listing in multiple countries.

4. Implications

Public discussion around the merits of companies being dual listed has intensified lately. DLC firms are increasingly being questioned as to the benefits of their dual listings, the relative liquidity on each exchange, and the cost of maintaining the listings. This has seen the media and investors publicly query the benefits of maintaining a dual listing, given the significant costs and regulatory requirements.

While dual listing still has some supporters, its list of detractors is large and growing. And while acknowledging that the reasons for maintaining dual listing will vary from company to company and will depend on specific circumstances, nevertheless it seems fair to say that any advantages of dual listing are generally outweighed by the disadvantages. Two or three decades ago, various reasons were cited by dual-listed companies for choosing their DLC structure. This begs the question underpinning this article: are the reasons given by these companies back then, still credible today? Has the time come for their arcane dual-listed structure to be unified, like so many of its peers are doing?

This article has surveyed the pros and cons of dual share listing. The implications of the analysis are:

- These are vital questions for the future performance of a DLC
- There are valid reasons for raising these questions with a DLC

acquiring information on firms listed abroad, still exist. The segmentation of markets that results from these barriers may still provide incentive for corporate managers to adopt international share listings.

³⁴ D Pett. ‘Cross-listings don’t always pay off for investors in the end’ (2013) Financial Post 26 June

- There is reason to doubt that a DLC structure is still fit for purpose
- There is a *prima facie* case for exploring the option of unification

Taking into account the panel of evidence and opinion surveyed, there are grounds for reasonable doubt over whether DLC remains fit for purpose, as a corporate legal structure.

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