

## Introduction

*With great power comes great responsibility.*<sup>1</sup>

The titular phrase ‘founders without limits’ describes an environment in which founders of high-growth companies, especially in the tech sphere, are given the scope, tools and incentives to grow their businesses as listed companies and to pursue their long-term visions for success without having to succumb to the short-term pressures which many have argued have haunted the capital markets for decades. Dual-class stock is a mechanism which can give founders that latitude, and, consequently, attract such founders to the listed company markets. However, the quote at the start of this Introduction, ‘With great power comes great responsibility’, from comic book lore, can easily pertain to the debate surrounding dual-class stock. Dual-class stock is a company share capital structure that embraces multiple classes of shares. In this book, as in the literature on ‘dual-class stock’, it will be assumed that at least one of those classes of shares will grant to the holder of shares of that class voting rights that are disproportionately greater than the holder’s cut of the company’s dividends, distributions and residual proceeds upon a winding-up – ‘cash-flow’ or ‘equity’ rights. In its simplest form, a ‘dual-class company’ will have issued two classes of stock. One such class will comprise shares each of which possesses a single vote that can be exercised at general meetings of shareholders – classically referred to as ‘one share, one vote’. The other class will comprise shares which possess multiple voting rights: ten, twenty or more votes per share. The cash-flow rights attached to each class of shares will be identical. The controversy that has bedevilled dual-class stock ascribes to the fact that a dual-class structure can be used by a shareholder to retain or amass sufficient voting control over material decisions of the company, while only holding a small proportion of the equity. Correspondingly, the decisions made

<sup>1</sup> The quote has been attributed to S. Lee and S. Ditko, ‘Amazing Fantasy #15, “Spider-Man!”’ (August 1962).

by that shareholder do not proportionately impact its wealth. Those in control of the company fail to fully feel the consequences of their actions.<sup>2</sup> The shareholder has great power, but little of the responsibility.

Although the premise of dual-class stock can apply to companies with all manner of characteristics, in this book, dual-class stock will be discussed in the context of publicly listed companies.<sup>3</sup> The literature and research on the subject almost invariably relates to listed companies. The controversial aspects of dual-class stock are more keenly felt where those holding shares with inferior-voting rights, and, often, the majority of the equity in the company, comprise thousands of public shareholders who have little, if any, influence on the capital structure of the company and who may be prejudiced by the acts of the holders of enhanced-voting shares. In contrast to the controversial aspects, the public equity markets are where dual-class stock can shine. Many have bemoaned the short-term approach taken by corporations as a result of pressure from public shareholders with short-term profit aspirations. With dual-class stock, a shareholder holding control through the ownership of enhanced-voting shares can take decisions on behalf of the company largely insulated from the views of the public shareholders. A balance exists between the risks to public shareholders in the use of dual-class stock and the benefits that dual-class structure can bring to the health of the company and its shareholders over the longer term.

In the United Kingdom, as of the time of writing, dual-class stock is essentially prohibited on the most prestigious tier of the Main Market of the London Stock Exchange – the ‘premium tier’. Although proposals have been made to expand the scope of capital structure permissible on the premium tier,<sup>4</sup> as will be discussed in this book, such proposals do not constitute ‘genuine’ dual-class stock.<sup>5</sup> ‘Genuine’ dual-class stock is, though, permitted on many of the world’s most prominent stock exchanges, including the NYSE, NASDAQ, Hong Kong, Singapore, Tokyo, Shanghai, Mumbai and Toronto. If dual-class stock is nothing but trouble, it begs the question why evidently sophisticated markets are open to the implementation of dual-class structure. In this book, the probity of dual-class stock will be assessed, with a view to evaluating the sagacity of the United Kingdom’s premium tier approach to dual-class stock. The underlying context to this book is the dearth of new listings on the London Stock Exchange, particularly by technology companies, which have, in other jurisdictions, been prolific adopters of dual-class stock upon their IPOs. The

<sup>2</sup> F. Easterbrook and D. Fischel, ‘Voting in Corporate Law’ (1983) 26 *J. Law Econ.* 395, 409; J. Dammann, ‘The Controlling Shareholder’s General Duty of Care: A Dogma That Should Be Abandoned’ (2015) 2 *U. Ill. L. Rev.* 479, 494; F. Easterbrook and D. Fischel, eds., *The Economic Structure of Corporate Law* (Harvard University Press, 1991) at 73; C. Li et al., ‘Ownership Structure and the Cost of Corporate Borrowing’ (2011) 100 *J. Financ. Econ.* 1, 2; H. Hu and B. Black, ‘The New Vote Buying: Empty Voting and Hidden (Morphable) Ownership’ (2006) 79 *S. Cal. L. Rev.* 811, 851; HKEX, ‘Concept Paper: New Board’ (June 2017) at 18.

<sup>3</sup> The rationale for such a limitation is discussed in more detail below in the section ‘Scope’.

<sup>4</sup> HM Treasury, ‘UK Listing Review’ (3 March 2021).

<sup>5</sup> See Section 1.5.7 of Chapter 1.

lack of an option to adopt dual-class stock on the premium tier could be deterring the listing of UK tech companies. Founders of tech companies may fear losing control, and therefore the potential to be removed from the business if short-term profits are not robust, through a premium tier IPO. Dual-class stock allows a founder to sell and issue substantial levels of equity on the public markets while retaining voting control. However, institutional shareholders, who dominate the UK public markets,<sup>6</sup> are concerned that opening the doors to dual-class stock will enable founders to amass vast fortunes upon IPO, and subsequently exploit public shareholders through abusing their powers as corporate controllers with no effective oversight. The core of this book examines whether such ‘founder without limits’ should be hailed or feared on the premium tier.

The subject matter of this book has broad appeal. Dual-class stock has been described as ‘the most important issue in corporate governance today’,<sup>7</sup> and the topic has, in numerous jurisdictions, vexed practitioners, academics and regulators alike for decades. Accordingly, this book will be of interest to scholars, students and purveyors of the fields of controlling shareholders, shareholder rights and corporate governance. Since the kernel of the book correlates dual-class stock with the potential to breathe life into the UK tech sector, it will additionally be of interest to legal practitioners, economists and business schools. Many elements of the book also serve as an essential roadmap for regulators, and, if the United Kingdom’s rules are relaxed, as a continuing adjunct to policy-making going forward. Although the book mainly focuses on the implications of dual-class stock in the United Kingdom, it collates a body of work that has been progressed across multiple jurisdictions over many years. In particular, the book retains relevance in the United States, where, notwithstanding the recent widespread use of dual-class stock by tech companies, there has been a backlash of sorts against the structure, returning the theme to prominence, and, also, in jurisdictions such as Hong Kong and Singapore, which have more recently commenced their journeys to accepting dual-class companies on their public markets.

This book touches upon corporate law, economics and policy-making, but prior detailed knowledge of any of these disciplines is not required by a reader. It is assumed that a reader will be unfamiliar with the nuances and technical details of dual-class structure and the associated laws and regulations, and, therefore, these are spelled-out, at least in broad terms, throughout the book. I hope that this book will prove informative and illuminating, and, above all, enjoyable, to readers, whether or not you believe that the United Kingdom should welcome ‘founders without limits’ with open arms.

<sup>6</sup> After excluding individuals, charities and public sector bodies, institutional shareholders, both in the United Kingdom and globally, hold the remainder of UK equities, amounting to 77.77 per cent of UK listed shares as of 31 December 2018 (calculated using data from: ONS, ‘Ownership of UK Quoted Shares: 2018’ (January 2020)).

<sup>7</sup> J. Coffee, ‘Dual Class Stock: The Shades of Sunset’ *CLS Blue Sky Blog* (19 November 2018), <http://clsbluesky.law.columbia.edu/2018/11/19/dual-class-stock-the-shades-of-sunset/>

## OVERVIEW

I wish to tell the story of dual-class stock in the United Kingdom – from the history of its prohibition through to a compelling blueprint for a renaissance on the premium tier. The laws and regulations, and the discussions appertaining thereto, referenced in this book are generally current as of 1 January 2021 (unless otherwise stated), although some references to later material have been possible, including the more recent proposals of the UK Listing Review which are discussed throughout. The book is divided into three parts. Part I sets the scene for an analysis of dual-class stock firms, by putting dual-class stock into context. Chapter 1 outlines the rise of the phenomenon in the United States, particularly in the technology sphere, and its pertinence to the United Kingdom’s dwindling level of technology, and other company listings. From the perspective of a founder, the possibilities available to foster a high-growth company in the United Kingdom will be assessed, together with the scope that dual-class stock offers to enhance the options available. As will be noted further in Chapter 1, the US experience of dual-class stock will consistently be drawn upon in the book, since the largest listed dual-stock companies exist in, and the majority of existing dual-class stock research pertains to, that jurisdiction, and the breadth, investor base, maturity and ownership structure of publicly listed firms in the United States make them the most appropriate comparators to issuers on the LSE. Chapter 1 will also outline the proposals of the UK Listing Review in the context of dual-class stock, and it will be discussed that those proposals fall far short of ‘true’ dual-class stock and may not attract to the premium tier the types of firms envisaged. Chapter 2 chronicles the history of the LSE’s path toward proscribing dual-class stock from a position where such structures were largely accepted. This history will be juxtaposed with a history of the NYSE’s attitude to dual-class stock, which has moved from a strict prohibition to a generally permissive environment. The histories of those stock exchanges that have recently relaxed their rules on dual-class stock, including the Tokyo, India, Hong Kong, Singapore and Shanghai exchanges, will also be delineated, together with an account of the approaches taken by the other major global exchanges. Chapter 3 describes some of the other mechanisms that can be used to create a divergence between voting and cash-flow rights within companies and determines that an equivalence cannot be presumed between those mechanisms and dual-class stock. Chapter 4 discusses some of the more esoteric arguments against dual-class stock, so that they can promptly be dismissed as pertinent factors.

Part II investigates the benefits and detriments of dual-class stock from the perspective of founders and public shareholders. Chapter 5 discusses the controlling shareholder phenomenon. It is not intended that this book should provide a detailed exposition of the considerations appertaining to one share, one vote firms in the presence of controlling shareholders, with the subject well-served by other

controlling shareholder focused literature,<sup>8</sup> but given the link between control and dual-class stock, a brief elucidation of the presence of controlling shareholders in the United Kingdom provides a launching point for the dual-class discussion to follow. The differing dynamics between one share, one vote, and dual-class stock, controlling shareholder firms will be outlined. Chapter 6 provides a normative assessment of dual-class firms, comparing and contrasting the potential benefits and detriments to public shareholders of founder behaviour incentivised by dual-class structure. The gamut of international literature on the topic is corralled and digested into a UK-centric framework, with a view to distinguishing the United Kingdom from a number of other jurisdictions on the basis of its legal, regulatory and market environment. The chapter concludes with the formulation of a ‘tradeoff’ methodology which emphasises the nature of the actions incentivised by dual-class structure, and which can be utilised to develop policy. Chapter 7 evaluates the existing empirical evidence on dual-class firms from around the world. Unlike traditional empirical reviews, the chapter collates studies that analyse dual-class firms using different performance measures to attain a holistic view of dual-class stock. It will be shown that, in fact, dual-class firms suffer from a discount in share price that is not warranted by any deficiencies in the subsequent performance of such firms. The chapter suggests that by giving public shareholders more comfort that they will not be expropriated by the holders of enhanced-voting stock, the cost of capital for such companies can be reduced. A route forward for the United Kingdom is proposed that combines an acceptance of dual-class stock (above and beyond the limited proposals of the UK Listing Review) with judicious protective measures for public shareholders.

Part III continues the roadmap for regulators and policy-makers. Chapter 8 identifies and critically examines the potential for existing legal, regulatory, psychological and market factors in the United Kingdom to constrain the ability of controlling shareholders holding enhanced-voting stock to abuse public shareholders, if dual-class firms were to emerge on the LSE’s premium tier. Chapter 9 points the way forward and discusses the efficacy of various types of further protective measures for public shareholders that could form part of a proposed balanced package of provisions accompanying a relaxation of the LSE’s premium tier prohibition on dual-class stock. It is discussed that the key consideration in a balanced

<sup>8</sup> For example, see C. Holderness and D. Sheehan, ‘The Role of Controlling Shareholders in Publicly Held Corporations: An Exploratory Analysis’ (1988) 20 *J. Financ. Econ.* 317; R. Gilson and J. Gordon, ‘Controlling Controlling Shareholders’ (2003) 152 *U. Pa. L. Rev.* 785; B. Reddy, ‘The Fat Controller: Slimming Down the Excesses of Controlling Shareholders in UK Listed Companies’ (2018) 38 *OJLS* 733; B. Cheffins, ‘Corporate Law and Ownership Structure: A Darwinian Link?’ (2002) 25 *UNSW Law Journal* 346; R. Gilson, ‘Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy’ (2006) 119 *Harv. L. Rev.* 1641; J. Hill et al., eds., *The Research Handbook on Shareholder Power* (Edward Elgar, 2015); L. Enriques and T. Tröger, eds., *The Law and Finance of Related Party Transactions* (Cambridge University Press, 2019); A. Boyle, *Minority Shareholders’ Remedies* (Cambridge University Press, 2002).

protection package is that the relevant protective measures should be sufficiently robust to prevent the most egregious forms of abuse by enhanced-voting shareholders and to assuage the anxieties of public investors in dual-class firms, without falling into the potential trap of the UK Listing Review and being so severe that they blunt the qualities of dual-class structure that create value for all shareholders or substantively discourage the listing of firms that the approval of dual-class structure is intended to attract.

The book finishes with concluding remarks, summarising the proposals made in the book and the connotations going forward.

#### SCOPE

The parameters surrounding the discussion to follow are summarised in this section. An unconstrained examination of dual-class stock could easily subsume several volumes, and, therefore, as a matter of pragmatism, the scope of this book will be limited in some respects. The limits are based upon the context within which dual-class stock is considered controversial and the likelihood of the manner in which dual-class stock would be utilised in a jurisdiction where it is permitted.

#### *Publicly Listed Companies*

Dual-class stock can be implemented by private companies or publicly listed companies. However, the topic is mainly discussed, both academically and in policy circles, in the context of publicly listed companies, and this book will follow a similar approach. As discussed in Chapter 2, private companies are permitted to use dual-class structures with a great deal of freedom, and such capital structures are widespread in the private company world. However, with a private company, those contemplating investment in such a company, generally, will be able to negotiate the terms directly with the other investors or owners, particularly at the time the business is founded, and, to a lesser degree, at later stages. For example, at the set-up stage, investors will have a level of input into the capital structure of the company. Additionally, to the extent that a dual-class structure is, or has been, implemented, investors can, and often do, demand minority investor protection rights, not necessarily attached to the shares that they hold, whether that be at the set-up or later stages of the company's development. There is complete freedom of choice as to whether a person makes an investment in a private company, and, in most instances, private companies will, in the United Kingdom, be prohibited from soliciting investments from unsophisticated retail investors.<sup>9</sup>

Unlike private companies, public companies can offer their securities to the public and solicit investments, albeit in accordance with strictly defined and

<sup>9</sup> See Section 1.5.3 of Chapter 1 for more details.

prescribed requirements and offering documentation.<sup>10</sup> Also, at the time of an IPO, although the views of prospective investors are often pre-emptively solicited to ensure the success of the listing, the issuer, in coordination with the relevant listing authority, has full control over the choice of capital structure. Any rights protecting the public shareholders will generally be secured indirectly as a result of market forces to ensure the success of the listing, rather than through direct negotiation. Furthermore, subsequent to the IPO of a public company, any acquirors of shares in the secondary market or any further investors upon future issuances of shares (unless the capital structure is changed mid-stream) are subject to the capital structure already adopted at the time of the IPO. The investors in publicly listed companies comprise a broad church, including not only sophisticated hedge funds, banks, private equity funds, mutual funds and other institutional investors but also individuals who form part of the general public. Markedly, even if individuals are not investing directly, they may be exposed to the whims of publicly listed companies through interests in pension funds, insurance products and investment funds. A greater level of scrutiny is therefore essential where ‘unsophisticated’ retail investors directly or indirectly invest in public companies, and where dual-class stock represents a take-it-or-leave-it structure.<sup>11</sup> The need for greater protection for public shareholders generally is reflected by the enhanced regulatory rules that apply to listed companies.<sup>12</sup>

Additionally, companies listed on the premium tier of the LSE’s Main Market can comprise part of the FTSE-indices, at which point freedom of choice can become a luxury. The significance of the indices is further outlined in Chapter 1, but, in summary, certain funds track specific indices, essentially requiring them to invest in constituent companies to adhere to the relevant investment strategy. Many pension, insurance and investment funds, to which retail investors may be exposed, pursue such ‘passive’ strategies in whole or in part. Accordingly, freedom of choice is very much curtailed in the event that a listed company that has undergone an IPO with dual-class stock subsequently becomes a constituent of an index. Investors with no discretion as to whether to invest in a dual-class firm are deserving of greater protection.<sup>13</sup>

<sup>10</sup> *ibid.*

<sup>11</sup> See D. Ratner, ‘The Government of Business Corporations: Critical Reflections on the Rule of One Share, One Vote’ (1970–1971) 56 *Cornell L. Rev.* 1, 17, where it is discussed that the equity in privately owned companies is owned by people who are, or have been, actively involved in the business, or are related by personal or business ties to people who are, whereas the equity in a publicly listed company is owned by a substantial number of people who acquired it in the open market and have no other connection with the corporation and its business.

<sup>12</sup> For example, UK publicly listed companies are subject to the Listing Rules, if listed on the Main Market, the AIM Rules for Companies, if listed on AIM, and the Takeover Code.

<sup>13</sup> This may be the very reason why certain US indices have excluded dual-class stock (for further details, see Section 2.3 of Chapter 2), and it is also an indirect justification for excluding premium listings of dual-class structures, since non-premium listed firms are excluded from the FTSE indices.

Finally, although it is accepted that large private companies exist, in comparison, the scale of publicly listed companies is, on average, greater. Listed companies can be immense, with individual businesses employing tens of thousands of workers, and their actions can have significant impacts on a network of stakeholders, including customers, suppliers, consumers, the environment and society generally. Publicly listed companies, and the equity capital markets generally, serve an important purpose in a capitalist market-based system.<sup>14</sup> From the perspective of the issuers, public investors represent a substantial and valuable source of financing for companies, and the equity capital markets provide an avenue for owners of companies to exit their investments in whole or in part. From the perspective of investors, the listing of securities by public companies allows hands-off ‘outsiders’ the opportunity to share in the potential success of large organisations in which they would only otherwise have had the opportunity to invest if they were intrinsically involved in the business, had close relationships with the ‘insiders’, or if they were sophisticated investors with a professional specialisation in private company investment. Given the lack of effective negotiating ability of public investors, the absence of freedom of choice for certain investors and the sprawling influence of publicly listed companies, an examination of dual-class stock is most critical in the publicly listed company arena.

#### *Dual-Class Stock as a Means to Control*

Lessons from the United States suggest that the implementation of dual-class structure is primarily accompanied by a single shareholder (or connected shareholders) retaining effective control of a publicly listed company while holding a disproportionately smaller portion of the equity, and dual-class firms without controlling shareholders are rare.<sup>15</sup>

Conversely, if both inferior-voting and enhanced-voting shares were listed and made freely available to public shareholders, a dispersed ownership system for both classes of shares could develop where voting control is diffuse. The creation of divergences between voting and cash-flow rights on an investor-by-investor basis in a diffused ownership dual-class firm can confuse the dynamics of a simple one share, one vote diffused-ownership system and create a variety of consequences that diverge from those relevant to a dual-class firm where the enhanced-voting shares are not offered to the public and, instead, are owned by insiders. Those shareholders wishing to hold shares with voting rights would be able to acquire those shares in the market, whereas those with no volition to exercise voting rights would still be

<sup>14</sup> By way of analogy, see the comments in D. Walker, ‘A Review of Corporate Governance in UK Banks and Other Financial Industry Entities: Final Recommendations’ (26 November 2009) at 70.

<sup>15</sup> L. Bebhuk and K. Kastiel, ‘The Perils of Small-Minority Controllers’ (2019) 107 *Geo. L.J.* 1453, 1496 found that 83.6 per cent of Russell-3000 dual-class companies have a controlling minority shareholder (an earlier draft noted the figure as 96.7 per cent of S&P-1500 dual-class firms).



able to share in the economic prospects of the company, presumably at a discounted price.<sup>16</sup> Such a development does not, initially, raise, to the same level of materiality, considerations of the mischief that could be entertained by controllers being able to detach their voting and cash-flow rights. Even if, subsequent to IPO as a dispersed ownership firm, a shareholder were to acquire control through the purchase of enhanced-voting shares, as discussed in more detail in Chapters 6 and 8, for many UK listed companies, the acquiring shareholder would be required to make an offer to all the shareholders in the company, preventing minority shareholders from being subjugated to a controller without a fair exit mechanism.<sup>17</sup> Indeed, there is an argument that a truly dispersed ownership dual-class structure could generate significantly positive outcomes for firms from stewardship and governance perspectives. Enhanced-voting shares could be issued to shareholders interested in active stewardship based upon detailed research, and inferior-voting shares could be issued to passive shareholders with little interest in stewardship or voting, ensuring that voting stock is in the hands of public institutional shareholders who ascribe value to the vote and can exercise influence undiluted by votes in the hands of uninformed shareholders or shareholders apathetic toward voting.<sup>18</sup> As the markets organically align themselves amongst the two classes of shares, the company will reduce agency and transaction costs,<sup>19</sup> and thereby lower its costs of capital.

However, this ideal model faces a number of challenges. Firstly, it is not clear that even those shareholders who actively buy and sell shares with a view to making market-beating profits, and are assumed to benefit from informed stewardship, are, in fact, truly incentivised to incur significant expenditure on detailed research.<sup>20</sup> It cannot be guaranteed that placing voting stock in the hands of such shareholders will be any more effective in that regard than a one share, one vote system that does not discriminately allocate voting rights between different types of public shareholders.

<sup>16</sup> In relation to the discount applied to inferior-voting shares, see Section 7.4 of Chapter 7. However, the level of discount may in fact be small if enhanced-voting shares are dispersed and not held by a controller or associated group of controllers (see Section 6.2.7 of Chapter 6), and if inferior-voting shareholders perceive that management is being kept in check by a group of shareholders willing to, and adept at, monitoring the executive.

<sup>17</sup> Takeover Code, Rule 9.

<sup>18</sup> D. Lund, 'Nonvoting Shares and Efficient Corporate Governance' (2019) 71 *Stanf. L. Rev.* 687; also see A. Alchian and H. Demsetz, 'Production, Information Costs, and Economic Organization' (1972) 62 *Am. Econ. Rev.* 777, 789.

<sup>19</sup> Lund (2019) (n 18 above 724).

<sup>20</sup> B. Reddy, 'The Emperor's New Code? Time to Re-Evaluate the Nature of Stewardship Engagement Under the UK's Stewardship Code' (2021) 84 *MLR* 842, 857-861; R. Gilson and J. Gordon, 'The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights' (2013) 113 *Columb. L. Rev.* 863, 891-893; L. Bebchuk et al., 'The Agency Problems of Institutional Investors' (2017) 31 *J. Econ. Perspect.* 89, 99; A. Reisberg, 'The UK Stewardship Code: On the Road to Nowhere' (2015) 15 *JCLS* 217, 233; D. Arsalidou, 'Shareholders and Corporate Scrutiny: The Role of the UK Stewardship Code' (2012) 3 *ECFR* 342, 364; I. Chiu, 'Turning Institutional Investors into "Stewards": Exploring the Meaning and Objectives of "Stewardship"' (2013) 66 *Curr. Leg. Probl.* 443, 461.

Secondly, the model does not countenance the possibility that the publicly available enhanced-voting shares could fall into the hands of shareholders with different investment objectives to the majority of the inferior-voting shareholders. For example, enhanced-voting shares could be acquired by short-term orientated hedge funds, or, even worse, nefarious conduct could develop in a takeover scenario where a shareholder has a significant economic interest in a one share, one vote target, and a significant voting, but small economic, interest in a dual-class bidder through holding enhanced-voting shares.<sup>21</sup> The scenario could create incentives for the shareholder to exercise its votes in the dual-class firm for the benefit of the target by using its voting power to support the bidder overpaying for the target. These considerations, and the fact that a dispersed ownership of enhanced-voting shares will make it difficult for any potential investor to ascertain where the balance of power will land at any given moment, have led to certain jurisdictions, such as Hong Kong and Singapore, requiring enhanced-voting shares to remain unlisted.<sup>22</sup>

Given the uncertainties surrounding the use of enhanced-voting stock in a dispersed ownership structure, and the fact that dual-class stock is utilised in the United States almost ubiquitously to ingrain control, this book will assess dual-class stock on the assumption that a shareholder or a group of related shareholders controls the company, in what would effectively represent a ‘controlling shareholder’ structure. The term ‘controller’ can also have different connotations. A plethora of literature exists in relation to the impact and consequences of large ‘blockholders’ in companies. The definition of ‘blockholder’, though, is often nebulous,<sup>23</sup> and much of the US academia labels any shareholder owning more than 5 per cent of the voting rights in a corporation as a ‘blockholder’ on the somewhat arbitrary basis that such shareholdings in public corporations are required to be disclosed pursuant to Section 13d of the 1934 Securities Act. However, a true ‘controlling shareholder’ is one that has the ability to replace the directors of the company, and therefore is able to have a fundamental influence on the appointment and removal of managers. Therefore, in this book, the term ‘controller’ will be used to refer to a shareholder or an associated group of shareholders that controls a majority of the votes (or at least a sufficiently large proportion of the votes to give them effective control where the remainder of the voting rights are substantially dispersed between small shareholders).<sup>24</sup> The singular, ‘controller’, will mainly be

<sup>21</sup> With respect to this concept of ‘empty voting’, see, for example, Hu and Black (2006) (n 2 above 811 and 816).

<sup>22</sup> For more detail, see Chapters 2 and 9.

<sup>23</sup> For a discourse in the inconsistencies in defining ‘blockholder’, see A. Edmans, ‘Blockholders and Corporate Governance’ (2014) 6 *Annu. Rev. Financ. Econ.* 23, 35; A. Edmans and C. Holderness, ‘Blockholders: A Survey of Theory and Evidence’ in *The Handbook of the Economics of Corporate Governance*, eds. B. Hermalin and M. Weisbach (Elsevier, 2017) at 548.

<sup>24</sup> As discussed further in Section 1.4 of Chapter 1, in the United Kingdom, for most listed companies, holding a majority of the votes will give a controller the ability to appoint and remove directors unilaterally.