Distribution Agreement

In presenting this thesis or dissertation as a partial fulfillment of the requirements for an advanced degree from Emory University, I hereby grant to Emory University and its agents the non-exclusive license to archive, make accessible, and display my thesis or dissertation in whole or in part in all forms of media, now or hereafter known, including display on the world wide web. I understand that I may select some access restrictions as part of the online submission of this thesis or dissertation. I retain all ownership rights to the copyright of the thesis or dissertation. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.

Signature:

_____ _____

Jian Xu Date

The Institutional Dilemma of Globalized Firms

By

Jian Xu
Doctor of Philosophy

Political Science

Eric Reinhardt, Ph.D.
Advisor

Alvaro Cuervo-Cazurra, Ph.D.
Committee Member

Jennifer Gandhi, Ph.D.
Committee Member

Miguel Rueda, Ph.D.
Committee Member

Jeffrey Staton, Ph.D.
Committee Member

Accepted:

Lisa A. Tedesco, Ph.D.
Dean of the James T. Laney School of Graduate Studies

Date

The Institutional Dilemma of Globalized Firms

By

Jian Xu
Master of Arts, Duke University, 2015
Bachelor of Management, Zhejiang University, 2013

Advisor: Eric Reinhardt, Ph.D.

An abstract of
A dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Political Science
2021

Abstract

The Institutional Dilemma of Globalized Firms
By Jian Xu

This project examines the risks and opportunities arising from the institutional environments that multinational enterprises (MNEs) are embedded in. It has two main components. In the first one, I examine how MNEs establish various forms of connections with state actors as a strategy to mitigate political risks and engage in rent-seeking activities. In the second part, I study the impact of the emerging legal regime of transnational anti-corruption enforcement. I show how transnational law enforcement affects the business performance of firms exposed to diverse and often contradictory institutional requirements.

As a whole, the dissertation highlights the ``double jeopardy'' problem faced by globalized firms that operate across jurisdictional boundaries. In countries where judicial constraints over government misconduct is weak, political arrangements between the state and the business provide the latter with cronyist rent-sharing opportunities and a necessary alternative rights protection mechanism. Meanwhile, globalized firms with exposure to developed jurisdictions governed by strong legal institutions, such as that of the U.S., face the risk of transnational enforcement of strong corporate integrity regulations, such as anti-bribery laws. In this project, I argue that transnational anti-corruption enforcement disrupts the informal arrangements made between globally-connected firms and local government officials, especially in markets with high regulatory barriers and expropriation risks. An implication of such institutional dilemma faced by MNEs is that they need to weigh the resources and constraints provided by one institutional environment against those provided under other institutional settings. Globalized firms may need to make trade-offs and adjust their exposures to and liabilities from divergent institutional requirements and expectations.

The Institutional Dilemma of Globalized Firms

By

Jian Xu
Master of Arts, Duke University, 2015
Bachelor of Management, Zhejiang University, 2013

Advisor: Eric Reinhardt, Ph.D.

A dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Political Science
2021

Contents

List of Tables

List of Figures

1 Introduction

In 2004, when the U.S. e-commerce giant eBay entered the Chinese online shopping market, the only competitor it faced was a small local company called Alibaba. By 2006, however, rivalry between Alibaba and eBay had grown intense, and eBay's market share had declined significantly. As a response, eBay formed a joint venture (JV) with Tom Online, a relatively small and struggling multimedia services provider based in Beijing. A major reason for this JV decision was the political connections of Tom Online, whose controller was a Hong Kong business tycoon with close relationships with the Communist Party leadership. And the chief executive of the joint venture is the grandson of a People's Liberation Army general.[1] Nevertheless, Alibaba had established partnerships with several Chinese state-owned banks and a long-term business agreement with China Post, the state-owned enterprise (SOE) dominating the postal service industry.[2] Eventually, eBay's relationships with Chinese regulators and other officials did not prevent its failure in losing the competition to Alibaba and exiting from the Chinese e-commerce market.

Multinational enterprises (MNEs), like all firms, have incentives to establish privileged market status and a politically favorable environment when competing with other firms in the same market. The incentives are particularly strong when the institutional constraints against MNEs' strategies of making political arrangements with the governing authorities are weak. Therefore, a lack of formal rights protection or impartial administration of law may not necessarily be a prohibitive factor, or even an undesirable quality of the market, from the MNE's perspective in terms of making investment decisions.

When MNEs find ways to align state interests with those of the firm, foreign private actors and host public actors can engage in a collusive scheme that is mutually rewarding. Through discretionary exercises of state power, such collusive schemes unfairly affect the competitive landscape and distort the optimal allocation of resources in the host market.

[1] "For eBay, It's About Political Connections in China," *New York Times*, December 22, 2006.

[2] "How EBay Failed in China," *Forbes*, September 12, 2010; "How Taobao bested Ebay in China," *Financial Times*, March 12, 2012.

Firms who enjoy privileged market access and other nonmarket advantages are able to extract abnormal profits not because of superior capacity of providing attractive goods and services, but because of strengths in seeking political rents and sustaining rent-sharing schemes with public authorities. By incentivizing the state to protect and deliver policy benefits to the collaborate commercial enterprise, MNEs can systematically reduce the political risks associated with the formal institutional setup.

However, for MNEs who are connected to different countries, the means to influence and shape the policy environment may be feasible in some jurisdictions but legally and ethically untenable in others. Business practices that facilitate exchanges of favor with political authorities often lack legitimacy in most developed economy jurisdictions governed by a strong rule of law. The contradictions across diverse institutional environments that globalized firms are exposed to are not easy to resolve for corporate executives. Management of divergent institutional expectations and requirements has become a very important determinant for business success and competitiveness for MNEs operating in global markets under diverse sources of regulatory and political constraints.

For example, in the aftermath of the 2020 Hong Kong National Security Law that criminalizes taking political stances against the central government in Beijing, the global banks and wealth managers in Hong Kong started scrutinizing their clients for potential ties to pro-democracy movements and subjecting them to additional due diligence requirements. At the same time, however, the Hong Kong Autonomy Act of the U.S. imposes sanctions upon Hong Kong and Chinese officials responsible for implementing the national security law. As a result, the same global banks are also screening politically-connected clients such as Chinese politicians, government officials, and senior executives of state-owned enterprises for their political exposure to such U.S. regulatory requirements (Regulation Asia 2020).

Such issues of a conflict of rules have become especially salient in transnational corruption schemes. Foreign corruption has long been a common and effective strategy for

MNEs to reduce political risks and obtain business opportunities in developing economies. But such misconduct has become the target of an emerging transnational anti-corruption legal regime, led by developed economies such as OECD countries. The rigor of transnational judicial scrutiny and sanctions has become too significant to ignore for both international business practice and theory.

In this project, I highlight the interconnectedness of institutional environments for globalized firms who conducts cross-border business operations, including financing, trade, and investment activities. I explore how MNEs navigate such complex institutional environments across jurisdictional boundaries. I firstly raise the empirical puzzle that significant amounts of multinational business activities are taking place in jurisdictions without robust and independent judicial systems. Then, I propose that conventional research in international political economy has overlooked the types of illegitimate political connections that MNEs build with host government authorities and the implications of such connections for MNE's institutional preference. I argue that MNEs can capture the host country's domestic institutions by incentivizing the state to create a more favorable and advantageous institutional environment for the MNE, which explains MNEs' adaptation to and preference for particular political-legal systems.

As an additional contribution to the conventional understandings of captured institutional arrangements, this project takes into account the impact of transnational anti-corruption legal regimes, as an emergent form of global governance that departs from traditional multilateral models constrained by national sovereignty and jurisdictional boundaries. I argue that transnational enforcement intervention acts as an external source of judicial oversight and correction as it sanctions and deters corrupt exchanges and cronyist alliances capturing local institutions. This has significantly affected MNEs' rent-seeking and rent-sharing activities in collaboration with the state in highly regulated industries, and complicates their risk mitigation strategies across multiple jurisdictions. MNEs facing such "double jeopardy" problems will lose the market share to competi-

tors not as constrained by external anti-bribery obligations. Meanwhile, the project also shows that the contradictory institutional demands faced by globalized firms may pressure them to exit markets in either direction due to countervailing political risks: they could either retrieve from engaging with corrupt institutional environments, or disconnect from developed economy jurisdictions such as through delisting from their financial markets. Either outcome, however, may inhibit the diffusion of best business practices and harmonized regulations. Eventually, transnational law enforcement regimes aimed at achieving institutional convergence and market integration may end up accomplishing the opposite result.

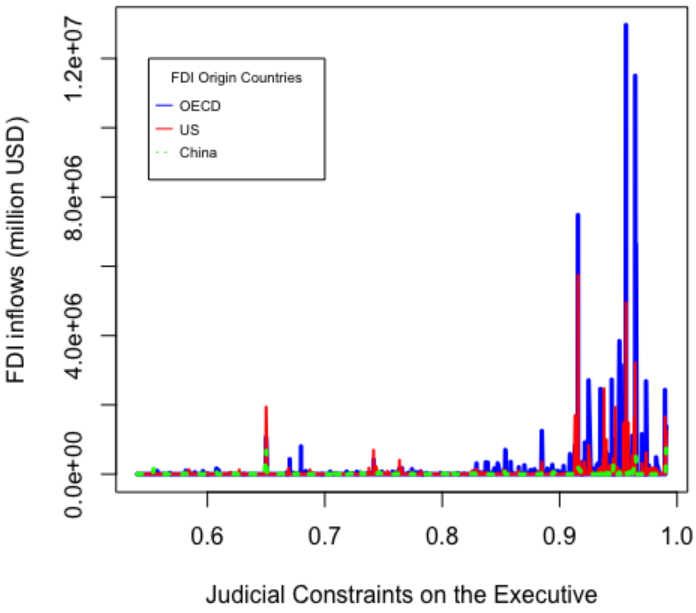
1.1 The Theoretical and Empirical Background

The quality of a country's legal institutions has been recognized as an important factor in attracting and maintaining foreign investment (Li and Resnick 2003; Jensen 2003, 2008a; Moon 2015; Wellhausen 2015b; Allee and Peinhardt 2011). The conventional belief is that when there is insufficient legal constraints against state power, foreign firms face greater risks of expropriation, discrimination, and other outright or subtle acts of predation by the host state that diminish the value of the investment. A lack of binding institutional arrangements that commit the state to following formal rules and procedures is often regarded as barriers to fostering an attractive investment environment.

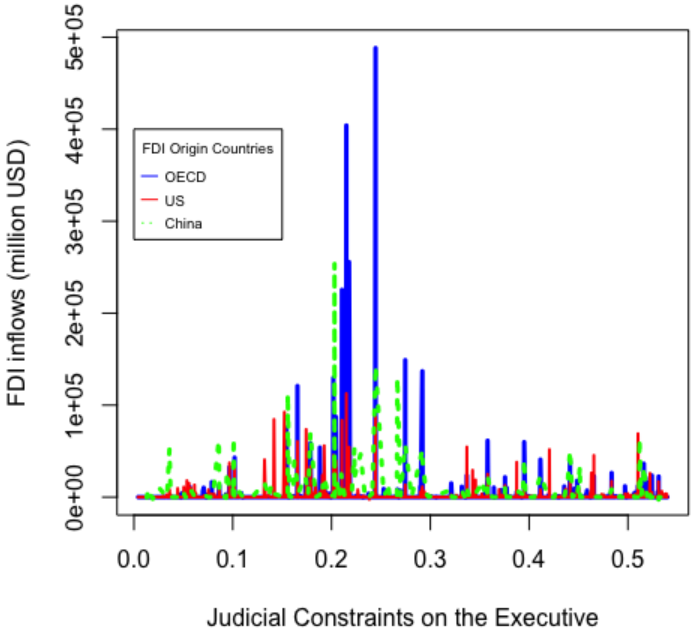
However, we still observe large amounts of foreign direct investments (FDI) flowing into high-risk countries that lack the rule of law and tolerate rampant predations against foreign enterprises (Hajzler 2012). Wright and Zhu (2018) also find that, in the past two decades, much of foreign direct investment in the primary sector has flowed to unconventional, politically risky destinations. This is particularly puzzling considering that fixed asset investments in natural resource projects are highly vulnerable to risks of expropriation AFTER investments have been made, i.e. the ex post hold-up risks (Ramamurti 2003; Hajzler 2014; Zhu and Deng 2018).

Figure 1.1: FDI Inflows and Constraints against the Executive

(A) Above the median JC score



(B) Below the median JC score



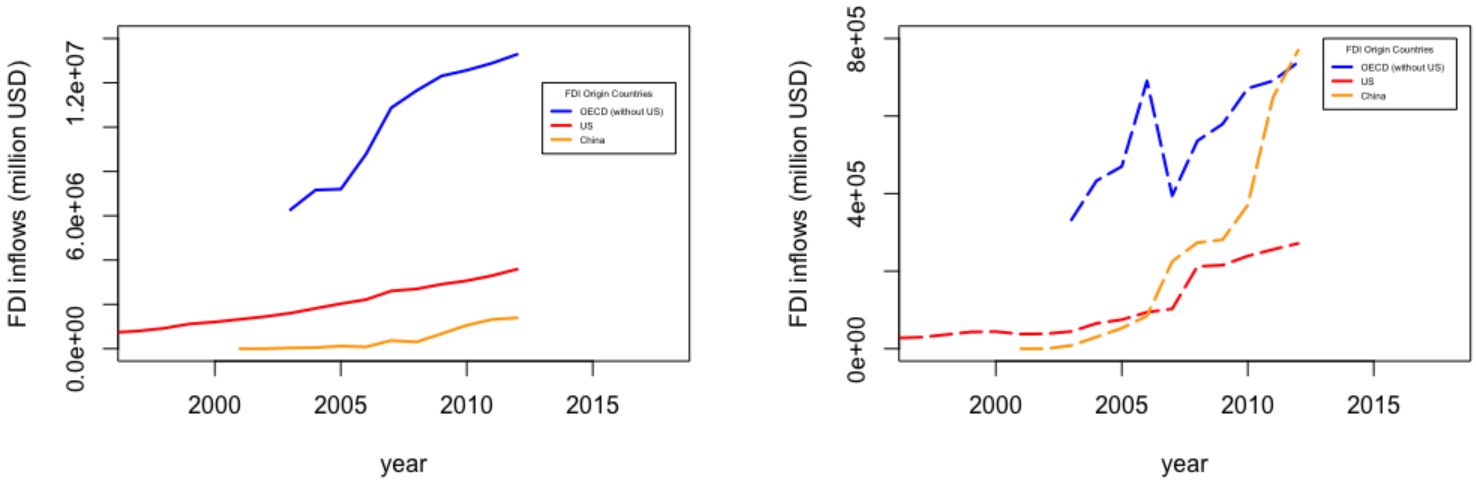
There is an under-explored empirical pattern that weak property rights regimes do not necessarily deter FDI inflows, especially towards highly regulated industries that require special licensing procedures (Malesky et al. 2015). Figure 1.1 shows that, although the majority of FDI flows still go to countries with strong legal systems, there is not a monotonic relationship between institutional quality, measured by the degree of judicial constraints on the executive (JC) (Coppedge et al. 2019), and FDI flows.[3] In particular, China and non-US OECD countries have disproportionately high interests in markets governed by unconstrained executives. Also, unlike OECD states in general, FDI flows from China do not exhibit strong preferences for countries with vigorous judicial checks.

Figure 1.2 examines how the temporal patterns of FDI flows from these three major capital exporters vary between countries with high and low degrees of judicial independence (JI), using a latent measurement by Linzer and Staton (2015). Panel (A) shows that,

[3]The FDI data is obtained from Graham and Tucker (2017) and the UNCTAD website.

Figure 1.2: Comparing FDI Origin Countries

(A) Above the median JI score (B) Below the median JI score



in countries with high de facto judicial independence (JI) scores (above the median), the composition of FDI origin countries remains relatively stable. OECD countries are the dominant investors in countries with good institutions. But the other half of countries below the median level of judicial independence have seen a significant increase in FDI flows from China, especially after 2006. In comparison, U.S.-originating FDI growth in those markets has been lackluster in the same time frame.

Figure 1.3 examines another dimension of the market environment: its openness to foreign investments. I measure FDI restrictiveness at the country-industry-year level by using the OECD FDI Restrictiveness Index.[4] Panel (A) shows that open markets generally attract more FDI, which is consistent with conventional understandings. But disaggregating FDI flows based on the pattern found in Figure 1.2 shows that Chinese investments have disproportionately high weights in countries with weak judicial institutions after 2006. Panel (D) shows that, in countries with JI scores below the first quantile of the full sample of countries, Chinese investment volumes are even larger than the sum of all FDIs

[4]The data is available online at `https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#`.

from OECD countries.

Another important pattern suggested by Figure 1.3 is that FDI flows are much less sensitive to the regulatory barriers to market entry in weak rule of law countries. Both Panels (B) and (C) show that MNEs from OECD countries are more likely to be operating in highly restrictive industries when host country courts are more dependent. This stands in sharp contrast to the pattern observed in countries with a better rule of law where FDI inflows are more strongly corrected with market openness.

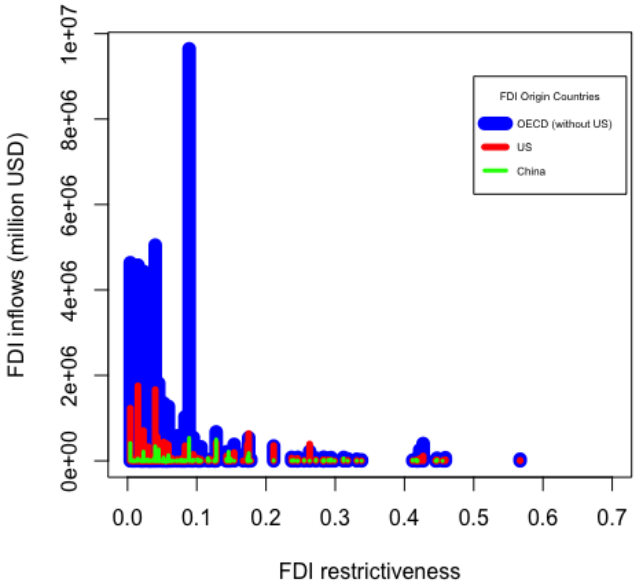
The conventional explanation for this pattern has focused on firms' capabilities, experiences, and practices in mitigating political risks (Beazer and Blake 2018). Special attention has been paid to the role of corruption in international business activities (Zhu and Deng 2018; Cuervo-Cazurra 2008, 2006; Zurawicki and Habib 2010). The argument is that bribery can be used to "grease the wheels of commerce" when governance institutions are weak (Dreher and Gassebner 2013; Méon and Weill 2010; Mendoza et al. 2015), although corruption may not always be effective or efficient (Zhu and Shi 2019; Méon and Sekkat 2005; Kaufmann and Wei 1999; Habib and Zurawicki 2002).

But the existing literature has overlooked the sustainability of corrupt arrangements in cross-border investments conducted by MNEs. MNEs face a commitment problem in transnational bribery. The officials who can abuse their power to deliver benefits and privileges to MNEs in exchange for bribes and other personal contributions are also not inhibited from reneging on their commitment to the corrupt transactions, especially when such agreements are informal. Therefore, the domestic institutional conditions that give rise to the set of political, legal, and regulatory risks also shape the feasibility of MNEs' risk-mitigation strategies.

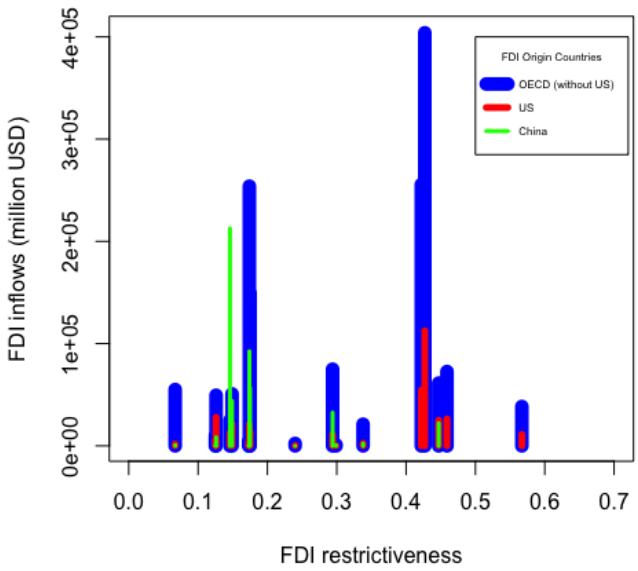
In this project, I argue that MNEs develop alternative rights protection mechanisms in jurisdictions that lack formal institutions to check and correct government misconduct. To overcome the host government's commitment problem, i.e. officials who can deliver can also predate (Weingast 1995), MNEs have incentives to build a broad coalition

Figure 1.3: FDI Inflows into Risky Environments

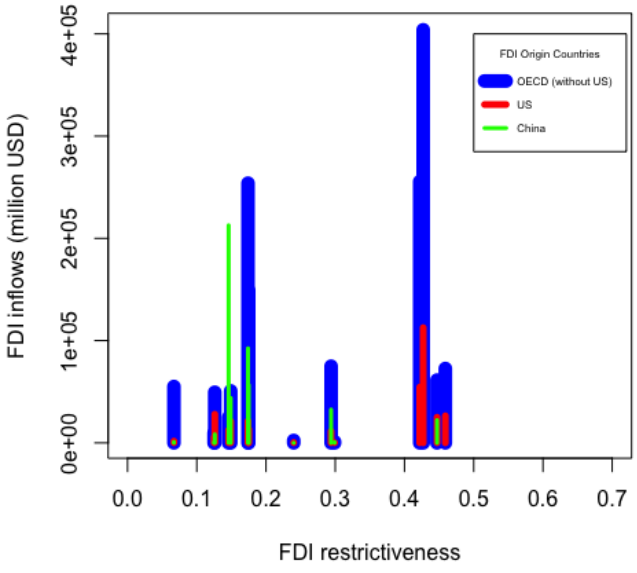
(A) Full sample
2002-2012



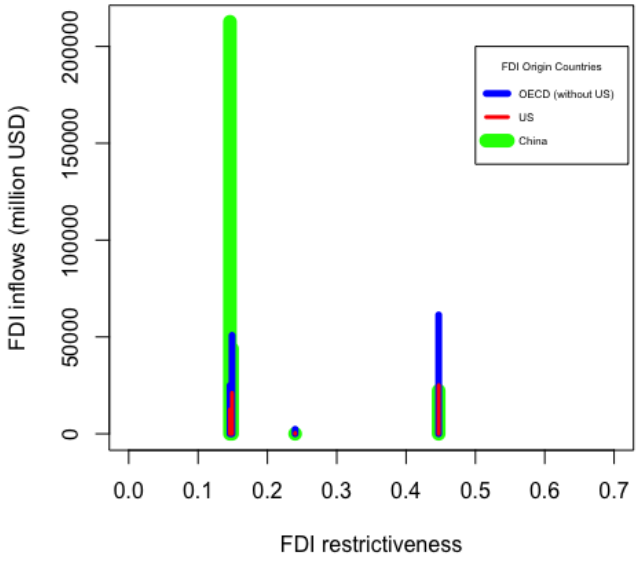
(B) JI score below median
2002 - 2012



(C) JI score below median
After 2006



(D) JI score below first quantile
After 2006



with external stakeholders, such as the state and state-affiliated actors. Such coalition-building strategies include: (1) offering things of value to external actors in exchange for their support on an ad hoc basis, such as bribery; and (2) providing them with partial ownership rights over the private enterprise, which sustains long-term, systematic partnership between the state and the business. These strategies coopt external constituents, including regulators, politicians, and other state-affiliated entities, into the private enterprise, turning them into internal stakeholders whose objectives are more aligned with the firm's interests. MNEs are more likely to successfully sustain such alliances in markets characterized by high regulatory barriers to entry. Host government officials use their gate-keeping power to create rents for incumbent MNEs in restrictive industries, and the two parties share the streams of rents to maintain the cronyist relationship.

This project also explores the implications of the emerging norm of transnational law enforcement for such cross-border government-business dynamics. Transnational anti-bribery legal regimes such as the U.S. Foreign Corrupt Practices Act (FCPA) and the OECD Anti-bribery Convention further complicate the risk-mitigation efforts by MNEs subject to such external liabilities.

On the one hand, transnational anti-corruption law enforcement sanctions and deters transnational bribery perpetrated by MNEs. Given the increased global economic and judicial integration and cooperation, MNEs have faced growing institutional pressure to converge their corporate practices to the unique ethical and legal standards imposed by certain jurisdictions. There are fewer and fewer legal safe havens for MNEs to engage in corrupt activities with impunity due to their exposure to transnational legal liabilities. In this sense, external legal intervention has a potentially positive institutional externality on the governance integrity of host countries that lack robust domestic legal systems. On the other hand, transnational law enforcement discourages the maintenance of rent-seeking coalitions built upon corrupt transactions between the state and foreign firms. This may lead firms to adopt two types of strategies to reduce their risk exposure.

First, when firms have fewer rent-sharing opportunities to commit host government officials to refraining from infringing upon investor rights, they become more likely to divest from high-risk markets to mitigate expropriation risks. Second, firms may perceive the profit potentials of the host market outweighing the benefits from being connected to developed financial markets. As a result, they are more willing to disconnect from the developed jurisdictions in order to mitigate external anti-corruption enforcement risks, instead of exiting the corrupt yet profitable market. Globalized firms will need to adjust their exposure to strong and weak institutional environments, each of which has its own rewards and liabilities.

Meanwhile, transnational anti-corruption enforcement may create market opportunities for MNEs not constrained by any external legal obligations of corporate integrity, e.g. non-OECD private firms. These firms can capture greater market share by maintaining cronyist arrangements with host government authorities. Public procurement contractors and dominant industry players of the domestic market are more likely to be firms with competitive advantages in bribery instead of in delivering high-quality goods and services. Therefore, transnational anti-corruption enforcement, given its limited jurisdiction, may have an unintended consequence of worsening the quality of the host market instead of creating a more level playing field. In this sense, good law does not always mean good economics.

The existing scholarship in international political economy and international business has not systematically examined the double jeopardy problem faced by MNEs, that is, MNEs' informal adaptation strategies in high risk markets engender the additional risk of externally imposed sanctions. This project investigates when the double jeopardy problem emerges and how it may lead to an adverse selection process where firms with comparative advantages in corruption, instead of productive capacities, survive in and dominate the local markets. In terms of implications for global governance, the double jeopardy problem creates obstacles to the diffusion of best regulatory practices and

to global institutional harmonization between developed and underdeveloped jurisdictions. MNEs with regulatory or financial ties to better-governed economies have to make tough choices, either exiting the host country with weak institutions or decoupling from jurisdictions with more stringent regulatory requirements, such as through delisting. This prevents the spread of high regulatory standards via MNEs as an economic intermediary. Therefore, transnational enforcement of rules and laws aimed at upholding market integrity and fairness in global competitions may instead lead to a more fragmented global marketplace with higher disparities in efficiency, equity, and welfare outcomes across jurisdictions.

1.2 The Theory

1.2.1 Cronyist Relationship Between MNEs and Host Officials

The existing international political economy literature has overlooked an important aspect of political risk: when government officials are not constrained from encroaching upon investor rights or violating preexisting agreements, they are also not constrained from engaging in other self-enriching endeavors, such as corrupt rent-seeking activities. A domestic judiciary unable to protect foreign investors from arbitrary government actions that harm investor interests is also less likely to prevent officials' abuse of discretionary public power for private gains.

For investors and managers, the attractiveness of an investment project is determined by its anticipated risks as well as rewards (Brouthers et al. 2008). The traditional literature in international political economy has focused on the risks associated with the lack of institutional constraints over government behavior, but overlooked the potential rewards of weak institutions for multinational enterprises (MNEs). In particular, domestic regulation of market access for foreign firms and investors has important implications for the profitability of business operations. MNEs are often required to obtain market

access approvals to both enter into and continue operation in certain industries. For MNEs, going through the screening and approval procedures in application for the required licences and permits involves extensive formal and informal interactions with the regulators. When local officials are susceptible to external influences in shaping their administration of regulatory policies, as a result of weak legal constraints, MNEs with capabilities to exert such influence may prefer weaker institutional constraints of bureaucrats' discretionary power and more malleable policy implementation process. In other words, MNEs may receive more favorable regulatory treatments in markets lacking robust legal oversight than under a rigid regulatory regime where officials faithfully and rigorously enforce written market rules.

In developing economies, higher regulatory barriers are often associated with higher monopoly rents for market incumbents (Djankov et al. 2002; Wedeman 2003; Zhu 2016). When judicial scrutiny is weak, artificial market access restrictions create rent-seeking opportunities for gate-keeping regulators and strong incentives for MNEs to access surplus profits in the regulated industry given that enforcement is subject to favoritism and manipulation. Similar to domestic firms' engagement in regulatory capture (Stigler 1971; Laffont et al. 1993), MNEs also seek to share in the regulatory rents by striking informal arrangements with host authorities that provide MNEs with market access privileges and protection. MNEs' comparative advantages in capital, technology, and management skills in underdeveloped markets can be used to generate significant profits. This makes MNEs attractive partners for host government officials to build cronyist rent-sharing coalitions.

Numerous cases show that such corrupt arrangements between firms and governments exist around the globe.[5] In Brazil, illicit payments were made to officials of the government and political parties in order to evade taxes and to influence the enactment of legislation that would negatively impact firms' business. In Nicaragua, the American telecommunications company BellSouth Corporation made improper payments to

[5]Detailed case information is available at the FCPA Clearing House (2018).

the wife of the Nicaraguan legislator who was the chairman of the Nicaraguan legislative committee with oversight of Nicaraguan telecommunications. BellSouth retained her in 1998 to lobby for the repeal of the foreign ownership restriction, and in 1999 the Nicaraguan National Assembly voted to repeal the foreign ownership restriction. In Nigeria, Willbros Group made corrupt payments to officials of the Nigerian judicial system in exchange for favorable action on pending cases, including in some instances dismissal of a case affecting the business of the Willbros Nigerian subsidiaries. In Uzbekistan, Telia Company paid bribes to an Uzbek government official who exercised influence over Uzbek telecommunications industry regulators in order to enter the Uzbek telecommunications market, gain valuable telecom assets, and continue operating in Uzbekistan. In India, Pride Forasol made payments to a judge with India's Customs, Excise, and Gold Appellate Tribunal ("CEGAT") to secure a favorable judicial decision for Pride India relating to a litigation matter pending before the official involving the payment of customs duties and penalties assessed for importing a rig. In China, JP Morgan Securities (Asia-Pacific) maintained a "sons and daughters program" that offers prestigious career opportunities to the relatives of officials in Chinese state-owned and controlled enterprises in order to obtain their IPO underwriting contracts (The New York Times 2016). More recently the China Energy Fund Committee (CEFC), a Hong Kong-based NGO funded by a Chinese energy company, offered a $2 million bribe to the President of Chad in exchange for an exclusive opportunity to obtain oil rights in Chad without facing international competition (Reuters 2017).

As these cases indicate, in countries with insufficient judicial constraints, government officials have unchecked power to either increase the costs or limit the business opportunities and returns of MNEs' investment projects. In response, MNEs engage in informal exchanges with local authorities who create regulatory rents for MNEs and share in the spoils (Pinto and Zhu 2016).

1.2.2 Transnational Anti-corruption Deterrence

The global anti-corruption enforcement regime has changed significantly in the past 20 years. Currently there is no centralized international legal forum for the adjudication of transnational bribery charges and imposition of sanctions on such offences. However, many leading exporters of trade and investment, mostly OECD countries, have implemented domestic anti-corruption legislation targeting their national firms' overseas bribery (Jensen and Malesky 2018). The U.S. has led this initiative through vigorous enforcement of its signature anti-corruption statute, the FCPA.

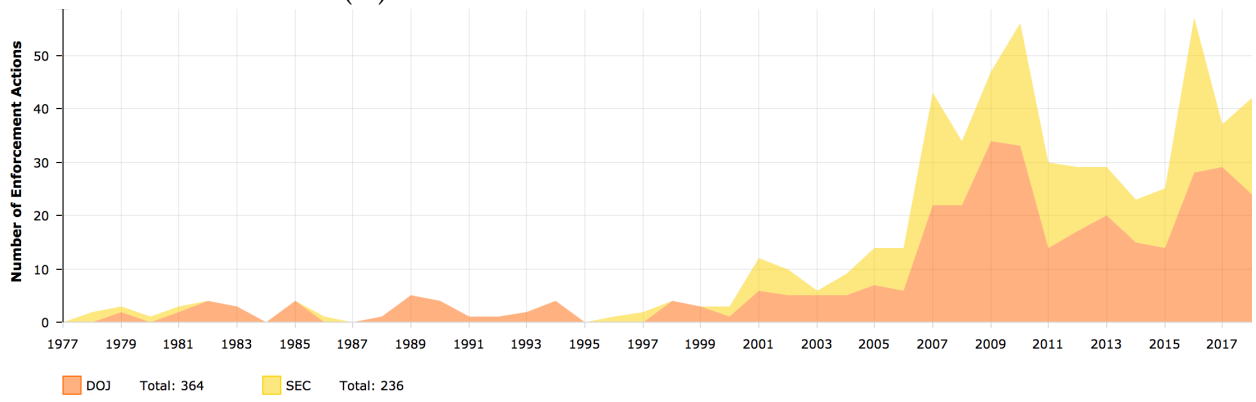
The FCPA, passed in 1977, is the first legislation in the world to recognize and seek to curb contribution of domestically based corporations to foreign bribery. The Act criminalizes the payment of bribes to foreign officials or any government instrumentalities for the purpose of obtaining or retaining business (Guide 2012). The U.S. is thus far the most active country in tackling transnational corruption, and the intensity of enforcement has significantly increased over time.[6] U.S. authorities are also increasingly cooperating with their counterparts in developed countries to prosecute transnational bribery. In order to level the playing field for law-abiding MNEs (Rosenstein 2017a), since the 2010s the DOJ and SEC have started to more aggressively target non-US firms' bribery behavior (Cassin 2018), and have shown no sign of abating (Rosenstein 2017b; Steinman 2017).

Figure 1.4 shows evidence for the increasingly aggressive FCPA enforcement over time, as measured by both the number of enforcement actions and the amount of monetary sanctions imposed. Interestingly, a significant spike in FCPA prosecutions since 2006 is accompanied by a significant increase of Chinese FDI flows into countries with low degrees of judicial independence and a flat growth of U.S. FDIs in the period, as shown in Figure 1.2 Panel (B). Figure 1.4 also suggests that U.S. authorities have obtained more legal cooperation from their foreign partners in countering transnational bribery in recent

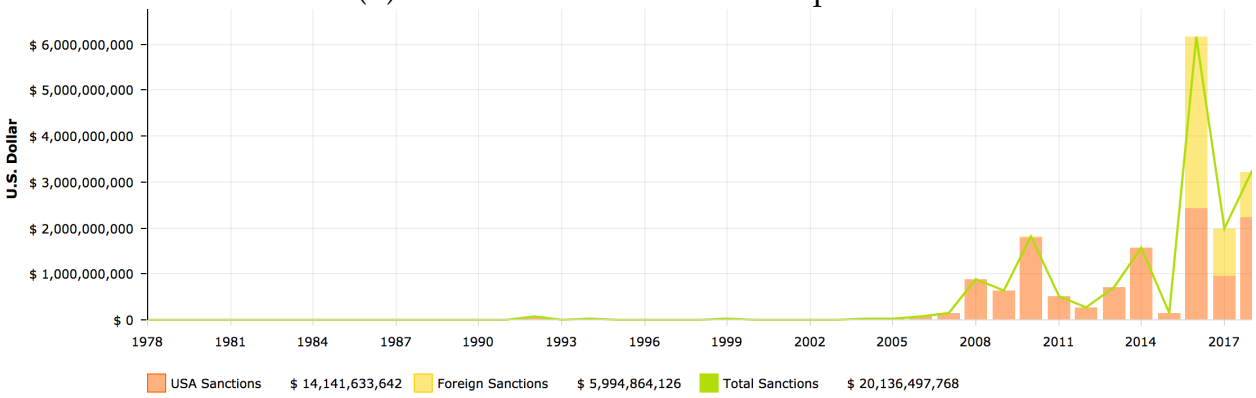
[6]See summary statistics at `http://fcpa.stanford.edu/statistics-analytics.html`. Accessed on August 23, 2019.

Figure 1.4: FCPA Enforcement Intensity Increasing Over Time

(A) Total number of enforcement actions



(B) Total amount of sanctions imposed



Data Source: The Foreign Corrupt Practices Act Clearinghouse (FCPAP)

years, although the pressure of judicial scrutiny is still unevenly felt among global MNEs (Perlman and Sykes 2018).

I argue that the emergent global anti-corruption legal regime has become a significant source of institutional risk for MNEs engaged in rent-seeking and rent-sharing schemes in host countries. Transnational law enforcement exposes and disrupts the cronyist arrangements made between foreign firms and local officials. This has significant economic implications for MNEs relying on such informal transactions with host authorities to obtain business benefits and market privileges. A new norm of global governance through transnational regulation can potentially provide positive institutional externalities to countries that are the most vulnerable to capture by cronyist coalitions between

government officials and multinational corporations.

However, anti-bribery compliance is not a major concern for firms not subject to any external regulations. Transnational enforcement still has limited jurisdiction and cannot deter or penalize corrupt practices by bribe-payers not falling under any transnational regulatory regimes. In general, MNEs with legal exposure to the jurisdictions of OECD countries, such as being listed in U.S. financial markets, are increasingly taking into account their anti-bribery obligations seriously. Firms not exposed to external regulatory frameworks are still relatively free to engage in bribery when the domestic anti-corruption standards are also loose.

1.2.3 Main Arguments

This project aims to test three broad arguments on the institutional dilemma faced by globalized firms.

First, I argue that in countries with weak judicial constraints against bureaucratic malfeasance, high regulatory barriers to market entry result in cronyist arrangements between the state and private businesses. The rent-sharing scheme alleviates the commitment problems faced by foreign firms dealing with unchecked government officials. Under certain conditions, foreign firms may even prefer a rewarding and stable cronyist relationship with the host state that grants them privileged market access and protection over a more impartial, competitive, and transparent market environment.

Second, I propose that MNEs' cronyist engagement with state actors in underdeveloped economies have faced increasingly severe transnational legal consequences. The emerging norm of global governance by transnational law enforcement provides positive institutional spillovers to the lax enforcement in countries most vulnerable to being captured by coalitions between corrupt government officials and multinational corporations.

Third, I contend that transnational anti-corruption enforcement disrupts MNEs' coalition-building strategies used to protect property rights and advance corporate interests in

weakly institutionalized market environments. As a result, developed economy MNEs' investment performance suffers and their incentives to keep investing in developing countries decrease. This may potentially lead to a void of ethical, well-regulated foreign investments in the local market through two types of channels. First, corrupt firms not constrained by any external legal obligations start to fill in the void and capture greater market share through bribery. Second, firms subject to transnational jurisdictions start to decouple from those jurisdictions governed by stronger rule of law, and thus decrease their exposure to external anti-bribery liabilities.

Taken together, the three arguments propose that globalized firms struggle to manage their exposure to diverse and often contradictory institutional requirements. Markets with lax enforcement of corporate integrity rules and unchecked government officials create high profit potentials when engagement in corrupt exchanges is feasible, but hurt firm performance when bribery is no longer in the firm's toolkit. Markets with strong and independent judicial systems provide superior investor rights protection and financing incentives, but also impose stringent regulatory restrictions that limit firms' rent-seeking opportunities. From a firm's perspective, engagement with any particular set of institutional arrangements comes with its own benefits and risks.

1.2.4 Implications and Contributions

The study has implications for the sustainability of long-term economic development in developing economies. MNEs' exploitation of manipulable regulatory processes and engagement in cronyist, rent-seeking activities may serve as a sub-optimal solution to the host country's lack of institutional commitment to protect property rights and investor interests (Khan and Jomo 2000; Guasch and Hahn 1999; Laffont 2005). "Creeping" expropriations such as selective policy enforcement and discriminatory regulatory actions have become a more common form of political risk than outright government takings (Schiffer and Weder 2000; Henisz and Zelner 2010). MNE managers are under pressure to

devise feasible corporate strategies to maximize investment returns, including regulatory capture to extract institutional rents. Therefore, unless transnational anti-corruption laws can be robustly applied to all global competitors, unfettered MNEs will have incentives to engage in non-productive rent-seeking schemes to obtain and retain business (Arbatskaya and Mialon 2018). This will lead to decreased market shares for MNEs with legal exposure to jurisdictions that impose stronger compliance obligations. Investment projects tainted by cronyist arrangements between unchecked MNEs and host government officials may lead to an underprovision of quality goods and services and jeopardize long term economic development in the host country.

The project contributes to our understandings of property rights, economic development, and institution-building in transnational contexts. The global economy is on a general trend towards more integration in markets, government regulations, and corporate practices (Kaczmarek and Newman 2011; Farrell and Newman 2014; Bach and Newman 2010; Newman and Bach 2014). MNEs used to operate in largely isolated institutional environments where the host country's national government exercises sole sovereignty over the administration of rules and laws governing market activities. Therefore, MNEs have developed unique practices and strategies tailored to overcoming the specific institutional challenges inherent in the host environment. The rise of transnational regulation of corporate misconduct in developing economies reshapes the political risk landscape for MNEs and poses fresh challenges to their informal strategies of protecting property rights and advancing business interests in underdeveloped markets. The project points out the inherent tensions in global governance initiatives in terms of building sound institutions to achieve sustainable economic development without a supranational authority to effectively enforce integrity and accountability mechanisms.

1.3 Outline of the Dissertation

In Chapter 2, I review the international political economy and international business literature related to political risks and MNEs' risk mitigation strategies. I also provide a more detailed description of the background and development of FCPA enforcement practices, in particular the reach of FCPA jurisdictions and the political economy factors shaping FCPA prosecution decisions. The chapter points out that the existing scholarship has overlooked the double jeopardy problem faced by MNEs under the current global anti-corruption enforcement regime.

In Chapter 3, I examine the effectiveness of two types of relationship-based strategies for MNEs when they litigate in authoritarian courts where judicial independence is not established. This chapter shows that when the host judiciary is susceptible to undue political influence, i.e. biased against the less politically-powerful party, such legal risk may be exploited by MNEs to their advantage if they are in partnerships with state-affiliated actors when resolving disputes with other actors in court.

In Chapter 4, I investigate how transnational anti-corruption enforcement disrupts the corrupt arrangements made between government officials and firms exposed to external oversight. I argue that FCPA enforcement disrupts the competitive landscape of the targeted countries. It creates more market opportunities for unregulated firms while forcing globalized firms to adjust their institutional exposure to developed versus underdeveloped jurisdictions. The results point to the institutional dilemma and "double jeopardy" problem faced by globalized firms. A potential trade-off exists regarding the costs and benefits arising from divergent institutional expectations and requirements.

In Chapter 5, I use a 2014 U.S. appellate court ruling as a quasi-exogenous source of variation in FCPA enforcement. The ruling expanded FCPA's formal jurisdiction to include bribery payments to state-controlled entities, such as SOEs. This chapter examines the impact of the external judicial ruling on firms' interactions with state actors, conditional on the extent of state dominance in the industry.

In Chapter 6, I develop a typological framework to categorize the ways by which firms engage with weak institutions. The chapter also uses a series of cases to illustrate the proposed mechanisms regarding how firms exert corrupt influence over the state and how the FCPA heavily relies on deterrence as a means of regulation. The framework also attempts to explain the variation in potential exposure to transnational scrutiny under each of the four mechanisms.

Chapter 7 concludes and draws broader implications for international political economy research. I also discuss potential future areas of research related to multinational business strategy, anti-corruption policy, transnational regulation and governance, and sustainable development in developing economies.

2 The Existing Literature on Political Risks

2.1 Political Risks as Disincentives for Investment

Existing theories of international political economy have focused on the values of certain characteristics of political institutions that make the host country attractive to foreign direct investments. The conventional literature has pointed out two particularly attractive features of the institutional environment: (1) institutional constraints over government behavior; and (2) policy consistency and predictability.

The first type of institutional feature is usually exhibited by democratic regimes. The received wisdom is that democracies have more "veto players" and thus more checks and balances against government misconduct, such as expropriating investors' assets (Jensen 2003, 2008a; Li and Resnick 2003; Li 2009). The independent branches of a democratic government, including different chambers of the legislature and the judiciary, have the power to correct and deter predation of foreign investors by executive officials. In addition, a free media capable of exposing government misconduct can put pressure on officials to refrain from violating investor rights by increasing transparency (Choi and Samy 2008; Barry and DiGiuseppe 2019).

Institutional checks and balances against the state's opportunistic behavior are especially important for investments with high asset specificity and low asset mobility (Biglaiser et al. 2017). Foreign firms have less bargaining power once their investment projects have been undertaken in the host country, i.e. the obsolescing bargain problem (Vernon 1971). Host officials have stronger incentives to engage in ex post opportunism when they do not face any political or legal consequences for reneging on their contractual commitments to investors or for illegally seizing MNEs' assets (Jensen 2008b; Biglaiser et al. 2017; Ramamurti 2003; Hajzler 2012; Zhu and Deng 2018). The risks of ex post expropriations are higher for MNEs who cannot easily recoup their investments in infrastructure and other fixed assets through institutional channels, such as international

litigation and arbitration (Büthe and Milner 2008; Thomas and Worrall 1994).

The second type of attractive institutional feature centers on policy stability and consistency. Investors generally prefer markets with more political predictability than uncertainty (Pástor and Veronesi 2013). Even if the host environment is vulnerable to corruption and other predatory acts by the state, investors may still find the market attractive if the adverse government actions are predictable (Samphantharak and Malesky 2008; Campos et al. 1999; Asiedu 2006; Olson 1993). The IPE literature is divided in terms of showing which type of regimes delivers more consistent and predictable policy for investors. Proponents of democratic institutions argue that the greater number of veto players ensure that policy shift away from the status quo is difficult (Jensen 2003; Ahlquist 2006). Scholars also argue that institutionalized procedures of government turnover, such as elections, make democratic countries more predictable in the long run than autocracies (Jensen et al. 2012; Feng 1997).

However, a sizable literature also points out that democratic politics lead to more uncertainty than autocratic regimes. Scholars have found that foreign investments are highly sensitive to electoral cycles and that political uncertainty leads firms to reduce investment expenditures until the electoral uncertainty is resolved (Julio and Yook 2016, 2012). In particular, MNEs in extractive industries tend to avoid democracies where frequent government turnovers may result in shifts to political ideologies hostile to foreign investments in natural resource sectors, especially when democratic institutions empower constituencies in favor of labor rights and environmental protections (Asiedu and Lien 2011). In comparison, MNEs are more free to cultivate ties with autocratic leaders to protect their assets from potential political and social backlash (Wright and Zhu 2018).

In summary, conventional understandings of political risks view the lack of these two institutional features as impediments to incentivizing foreign investment inflows. Bureaucrats' unconstrained exercise of discretionary power and inconsistency in policy-making and implementation are believed to be unfavorable from the perspective of for-

eign investors. However, the IPE literature has overlooked the agency of MNEs in the government-business dynamics and their capabilities and deployment of resources to mitigate political risks.

2.2 Informal Risk-Mitigation Strategies

There is abundant interdisciplinary evidence suggesting that, when formal institutions are weak, firms resort to a variety of informal risk mitigation strategies to overcome predatory and discriminatory government regulations and practices. Firms with unique capacities to influence government policies and decision-making processes may even prefer institutional environments that can be easily captured without political or legal consequences over jurisdictions where policies and regulations are always rigidly enforced.

The international political economy scholarship on political risks has just started to pay attention to the capabilities of entrepreneurial MNEs to navigate uncertain political landscapes. Hajzler (2012) documents an empirical puzzle that large amounts of foreign investments have flowed into high-risk countries that lack the rule of law and tolerate rampant predations against foreign enterprises. Wright and Zhu (2018) find that, in the past two decades, much of foreign direct investment in the primary sector has flowed to unconventional, politically risky destinations. This cannot be explained by existing theories that emphasize the potential hold-up risks of fixed asset investment. They argue that personalist dictatorships provide an attractive institutional environment for fixed asset investors because the lack of institutional constraints over the dictator enables the leader, who controls key economic sectors, to facilitate rent-seeking activities for foreign investors. Zhu and Deng (2018) argue that firms in fixed-asset intensive industries have strong incentives to bribe government officials in exchange for property rights protections. This is because high fixed asset intensity creates natural entry barriers, thereby giving rise to market concentration and opportunities for monopoly rent extraction. Malesky et al. (2015) also argue that foreign firms use bribes to enter protected industries in search

of rents, and show that bribe propensity varies across sectors according to expected profitability. They find that in restricted sectors that require special licensing procedures, foreign firms contribute to further corruption.

The international business (IB) literature has provided a large body of evidence that firms' engagement in nonmarket strategies and possession of political resources help alleviate political risk concerns and affect firms' market operations in high-risk countries (Feinberg and Gupta 2009; Luo 2001b; Galang 2012). Firms with extensive prior experiences in operating in bribery-prone countries tend to be more profitable in corrupt markets than firms less savvy on dealing with host governments (Lee and Hong 2012; Perkins 2014; Boddewyn 2015; Murphy et al. 1993). Durnev (2010) finds that investors are less sensitive to political volatility caused by elections in countries with higher levels of corruption. Albino-Pimentel et al. (2018) find that firms with non-market capabilities are insensitive to supranational institutional safeguards, such as bilateral investment treaties, when choosing the location of their international investments. They argue that firms' political competence can substitute for supranational institutional arrangements in addressing risks associated with host country institutional weaknesses. In the similar vein, Konara and Shirodkar (2018) find that MNEs tend to perform better when their subsidiaries are adapting to countries with weaker regulatory institutions than to countries with stronger institutions. It's also shown that firms engage in sophisticated corporate social responsibility (CSR) activities in emerging economies to take advantage of the flawed institutions or "institutional voids" (Zhao et al. 2014). Wiig and Kolstad (2010) show that MNEs adopt CSR initiatives strategically to increase their chances of winning licenses and contracts in Angola, which facilitates patronage problems in resource-rich countries and exacerbates the resource curse.

The literature on regulatory capture has shown that when large corporations are able to exert undue influence over domestic regulatory procedures, they can exploit the regulatory institutions for their own benefits (Carpenter and Moss 2013; Dal Bó 2006). The

problem of corporate capture of state institutions is especially pronounced in transition and emerging economies where administrators lack accountability mechanisms (Iwasaki and Suzuki 2007; Scott 2000; Vithiatharan and Gomez 2014). There is reason to believe that, just like domestic firms, MNEs have strong incentives to capture host government institutions in order to receive nonmarket advantages, especially when local institutions are susceptible to influence-peddling efforts by corporate interests.

In summary, this stream of literature focuses on MNEs' agency in interacting with host authorities. When host government officials are not institutionally constrained in their exercise of discretionary power, MNEs with unique resources and channels to influence government decision-making may perceive such environment as an opportunity instead of investment risks. The value of the rule of law for private investment is not so evident when the national government's industrial and economic policies and regulations are discriminatory or predatory against foreign firms and investors. Foreign investors prefer local administrations who can flexibly bend the rules and laws for them, especially when regulatory policies are not friendly towards or limit the business opportunities of MNEs. In contrast, a government that faithfully and rigorously upholds and enforces investment policies and market rules may not be so attractive for foreign investors, especially when the latter possess competitive advantages in building government relations. Even when government policies and practices are impartial towards all market actors and no form of expropriation is present, politically-endowed foreign firms still have incentives to tilt the playing field in their favor as a rent-seeking strategy and obtain higher-than-normal returns (Ades and Di Tella 1999; Wu 2006).

2.3 Transnational Anti-corruption Legal Regimes

Recognizing that corrupt arrangements made between MNEs and government officials may negatively impact a series of developmental objectives, such as undermining local rule of law institutions, exacerbating economic inequality, decreasing governance effec-

tiveness, and endorsing human rights violations by local authorities (Krever 2007), a battery of legal instruments combining national anti-corruption legislation and regulation and supranational conventions and initiatives have been established to combat transnational corruption (De Sousa 2010). The emergent and quickly developing global anti-corruption governance framework was initially triggered by the enactment of the U.S. FCPA in 1977.

2.3.1 The Background of the FCPA

The Foreign Corrupt Practices Act is the first piece of legislation in the world to regulate the business conduct of domestic entities engaged in foreign markets. The FCPA was enacted in 1977 in response to the post-Watergate investigations that found that U.S. companies were securing foreign government contracts by making improper payments to foreign government officials. In a Congressional Hearing before the House Committee on International Relations in 1975, Representative Stephen J. Solarz stated that "we have an obligation to set a standard of honesty and integrity in our business dealings not only at home but also abroad which will be a beacon for the light of integrity for the rest of the world."[7] The main concern at that time was that U.S. corporate bribes have potentially destabilizing effects on friendly foreign governments and on the institution of democracy throughout the world.[8]

The statute contains two types of provisions.[9] The Anti-Bribery provisions prohibit U.S. companies and citizens, foreign companies listed on a U.S. stock exchange, or any individual acting in the U.S. from corruptly paying, offering to pay, or authorizing the payment of money, a gift, or anything of money, directly or indirectly, to a foreign official

[7] *The Activities of American Multinational Corporations Abroad: Hearings Before the Subcomm. on Int'l Econ. Pol'y of the H. Comm. on Int'l Relations*, 94th Cong. 5 (1975).

[8] *Protecting the Ability of the United States to Trade Abroad: Hearing Before the Subcomm. on Int'l Trade of the S. Comm. on Fin.*, 94th Cong. (1975); *Foreign and Corporate Bribes: Hearings Before the S. Comm. on Banking, Hous., and Urban Affairs*, 94th Cong. 1-2 (1976).

[9] For all the details of the FCPA about its development, provisions, enforcement, sanctions, etc., refer to the Resource Guide published by the DOJ and the SEC at `https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf`.

in order to obtain or retain business. The Books and Records and Internal Control provisions set the accounting requirements for recordkeeping and internal controls regarding corrupt transactions . The Department of Justice (DOJ) and Securities and Exchange Commission (SEC) jointly enforce the FCPA. The DOJ is responsible for criminal enforcement of the statute and for civil enforcement of the Anti-Bribery provisions against non-public companies and foreign companies and nationals. The SEC is responsible for civil enforcement of the Anti-Bribery provisions with respect to issuers as well as overall responsibility for the Books and Records and Internal Control Provisions.

The FCPA provided a model for subsequent transnational anti-foreign bribery regimes. In 1988, the U.S. Congress urged the President to forge an international treaty with the OECD to prevent bribery in international business transactions perpetrated by many of the United States' major trading competitors. This request finally led to the OECD Anti-Bribery Convention signed in 1997. As of November 2019, there are 44 signatories to the Convention, including all OECD countries and 8 non-OECD countries.[10] Since the 2000s, there has been noticeable advancement in establishing other regional and international anti-foreign bribery mechanisms (Klemencic et al. 2007; Carrington 2010). In 1997, the Organization of American States set forth the Inter-American Convention Against Corruption; in 2002, the Council of Europe's Criminal Law Convention on Corruption was enacted; in 2003, the African Union signed the African Union Convention on Preventing and Combating Corruption; also in 2003, the United Nations Convention Against Corruption was established and has been ratified by 182 parties.[11]

These supranational initiatives focus on encouraging states to adopt domestic legislation like the U.S. FCPA that prohibits bribery of foreign public officials. The result is that most developed countries have implemented legislation prohibiting their nationals from making improper payments to foreign officials, and that almost all countries are

[10]The official OECD website provides details on the establishment and the current state of the OECD convention, available at `http://www.oecd.org/corruption/oecdantibriberyconvention.htm`.

[11]See the official UN document at `https://www.unodc.org/unodc/en/corruption/uncac.html`.

parties to some international anti-bribery convention. However, although most countries have ratified one or more of these conventions, the actual distribution of enforcement actions is highly uneven across the participant countries, with the United States being an exceptionally diligent enforcer (Davis 2009).

Data from the OECD Working Group on Bribery shows that the U.S. leads the rest of the Parties to the OECD Convention in the number of investigations, legal dispositions, and sanctions against both individuals and legal persons (OECD 2016). The OECD reports that, for foreign corrupt cases concluded between 1999 and 2014, the U.S. has sanctioned individuals and entities in connection with 128 separate foreign bribery schemes, a number much larger than the second country (Germany with 26 sanctioned schemes), and even larger than the sum of all other OECD countries' sanctions (OECD 2014). Transparency International has classified U.S. enforcement actions against foreign bribery as "active enforcement" (the highest category) since the beginning of the records (Transparency International 2016). Therefore, this project focuses on the impact of the FCPA as the most representative and vigorously-implemented legal instrument against transnational bribery, while also examining how other states' enforcement efforts condition the scope and effectiveness of FCPA prosecutions.

2.3.2 The Reach of FCPA Enforcement

The FCPA applies to three types of entities: issuers, domestic concerns, and persons other than issuers or domestic concerns (Guide 2012). An "issuer" is a U.S. or foreign company that has a class of securities traded on a U.S. exchange or an entity required to file reports with the SEC. A "domestic concern" is any business form (or a U.S. citizen or resident) with a principal place of business in the U.S. or organized under U.S. law. A legal or natural person other than an "issuer" or "domestic concern" is subject to the FCPA if the person makes use of any means or instrumentality of interstate commerce in furtherance of an improper payment scheme while in the territory of the U.S.

FCPA enforcement was relatively mild before the 1990s, mainly due to a lack of cooperation from other major FDI originating countries (Davis 2019; Larson 1980). After a series of negotiations with OECD partners, FCPA enforcement has stepped up since the 2000s, both in its breadth (the number of investigations) and depth (the average amount of monetary penalties) (Davis 2019).

U.S. authorities have kept expanding multi-jurisdictional anti-corruption collaboration and coordination with their foreign counterparts (Willborn 2013; Samanta and Sanyal 2016). Attorneys from the DOJ and the SEC have been building an aligned multinational network of law enforcers with sophisticated legal tools to make it increasingly difficult to engage in foreign bribery with impunity (Dunn 2018). The SEC has always been negotiating Memorandums of Understanding (MOUs) with foreign governments in order to establish official channels of cooperation to facilitate obtaining documents from foreign companies (Bencivenga 1997). The DOJ has also signed Mutual Legal Assistance Treaties (MLATs) with foreign law enforcement agencies in order to facilitate its investigation, e.g. to obtain employee testimony (American Bar Association 2018). The former Deputy Attorney General Rod Rosenstein recently emphasized the DOJ's commitment to international cooperation with foreign partners to combat international corruption (Rosenstein 2017c). For example, the Hong Kong Independent Commission Against Corruption (the ICAC) recently charged a former JP Morgan employee for her role in the "Sons and Daughters" bribery scheme after the same corruption case had been discovered and sanctioned under the FCPA (Cassin 2019).

As a result, the reach of the FCPA-led transnational enforcement regime keeps expanding (Spahn 2013; Ashcroft and Ratcliffe 2012; Jordan 2010; Erbstoesser et al. 2007; McCoy 2001). There has been growing awareness and sensitivity among global MNCs regarding their anti-bribery compliance obligations,[12] for both large corporations operating

[12]There are survey results indicating heightened awareness of the FCPA and other anti-bribery laws among Latin American businesses as well as enhanced compliance efforts of Latin American firms. See one report at http://www.corporatecomplianceinsights.com/growing-fcpa-awareness-latin-america/.

Table 2.1 MNEs' Vulnerability to FCPA Prosecution

Statutory Jurisdictions:	Issuer	Domestic Concern	Others
U.S. headquarter		✓	
U.S. subsidiary or physical presence		✓	
Listed on U.S. exchanges or registered with the SEC	✓		
U.S. nationals		✓	
Utilizing U.S. financial institutions			✓
Bribery transpiring partially or fully on U.S. territory			✓

in high-risk industries as well as small and medium-sized international enterprises (Simon and Turlais 2015; Perlis and Chais 2009). The FCPA compliance requirements have become so demanding and urgent that FCPA enforcement has spawned an industry of specialized FCPA defense counsel, consultants, and forensic accountants (Yocket 2012), often referred to as the "FCPA Inc" (Koehler 2015). MNEs also incur huge costs from both implementing preemptive compliance programs and paying penalties when they fail to prevent bribery.[13] Walmart has disclosed a total amount of $907 million in FCPA-related compliance expenses since 2013,[14] equaling to about $400,000 spent per day.

However, the FCPA and the broader OECD Convention still only have limited jurisdictions in the global marketplace (Yockey 2011). Existing transnational anti-bribery statutes cannot be directly applied to bribe-receiving host government officials.[15] MNCs who are not based in OECD Convention signatory countries or do not have any connections to those countries are also largely immune from anti-bribery prosecutions (OECD 2018). Table 2.1 shows the ways that MNEs can be subject to FCPA jurisdictions. Other categories of entities and corrupt behavior are therefore not regulated by the FCPA.

Among the 539 FCPA enforcement actions until July 2018, 390 are against companies headquartered or incorporated in the U.S., 45 are targeting Chinese firms, 37 are

[13]Firms' concerns about FCPA-related costs have been widely covered by the media. See reports by Fox (2010) and Jones (2012).

[14]See a summary of Walmart's fees and expenses at FCPA Professor (2019).

[15]Except in the case of the UK Bribery Act, which is still very rarely asserted over local officials.

against German companies, 35 are against French companies, 42 are against UK companies, 9 are against Japanese companies, 4 are against South Korean companies, and 15 are against Dutch companies. According to a survey of legal and compliance specialists in 824 companies worldwide conducted by the consulting firm Control Risks from 2015 to 2016, 68 percent of the respondents agreed that international anti-corruption laws serve as a deterrent for corrupt competitors, while 30 percent disagreed (Control Risks 2016). Given a lack of supranational enforcement authority with universal jurisdiction, MNEs face uneven degrees of anti-bribery obligations while operating in markets with diverse institutional features and integrity requirements. In this sense nation states may create "regulatory discontinuities at the border" (Rodrik 2011), and prevent global regulation and supervision of business activities across sovereign boundaries. The differential willingness and capacity of MNEs' home country governments to either cooperate with U.S. authorities or to initiate their own legal proceedings against overseas bribery may have significant distributional implications for MNEs liable to cross-border malpractice vis-á-vis those who are not (Perlman and Sykes 2018).

2.3.3 The Institutional Dilemma Caused by FCPA Enforcement

Table 2.2 shows the countries that have received the most FCPA enforcement actions against misconduct of entities on their territories. These countries are mostly large developing economies with high levels of corruption and/or relatively weak judicial systems, as indicated in different country-level measurements. The nationality distribution of the targeted countries does not seem to suggest that U.S. authorities are preoccupied with violations occurring in diplomatic rival countries while being more lenient towards America's diplomatic allies. This is also consistent with member states' commitment to the OECD Anti-bribery Convention (Cleveland et al. 2009), where Article 5 stipulates that investigation and prosecution of foreign bribery "*shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of*

the natural or legal persons involved" (OECD Anti-bribery Convention 1997).

Table 2.2 Countries Targeted by FCPA Enforcement ($\geq$ 10 actions)

Country	Count
China	103
Nigeria	57
Mexico	52
Iraq	49
Venezuela	48
Indonesia	44
Brazil	42
India	36
Russia	33
Saudi Arabia	28
Argentina	24
Thailand	23
Kazakhstan	23
Gabon	20
Angola	20
Ecuador	18
South Korea	15
Egypt	15
Vietnam	15
Panama	14
UAE	13
Greece	13
Azerbaijan	11
Costa Rica	10
Poland	10
Colombia	10
Niger	10

Source: FCPA Clearing House

Table 2.3 shows that the industries most vulnerable to transnational corruption tend to have high regulatory barriers to entry, such as the oil and gas, healthcare, and upstream industrial goods industries. Firms need to apply for a burdensome set of permits, licenses, and other regulatory approvals in order to obtain and retain access to such industries. The fact that these industries have been most exposed to FCPA sanctions indicate that firms operating in those environments need to weigh the profit potentials of these markets

against the risks of transnational legal oversight.

Table 2.3 Industries Targeted by FCPA Enforcement ($\geq$ 10 actions)

Industry	Count
Oil & Gas	88
Healthcare	64
Industrial Goods	58
Technology	46
Aerospace/Defence	42
Consumer Goods	41
Financial	33
Basic Materials	31
Services	29
Communication Services	27
Transportation	20

Source: FCPA Clearing House

As a whole, the geographic and industrial patterns suggest that many globalized firms are constrained by an institutional dilemma. The weak institutions that govern market access in developing countries provide lucrative rent-seeking opportunities. But complying with the requirements of such institutional environments subject these firms to transnational liabilities imposed by more developed jurisdictions for failing to abide by high ethical and regulatory standards. There is no easy solution to this "double jeopardy" problem for multinational firms with strong incentives to be connected to both worlds. Transnational anti-corruption enforcement may significantly affect the competitive landscape of targeted countries. It could also force MNEs, who often act as intermediaries of institutional diffusion across developed and developing economies, to eventually decouple from either world in order to mitigate political risks arising from contradictory institutional expectations. This aspect of the transnational anti-corruption regime has been overlooked in existing research.

The following chapters will examine how FCPA enforcement interacts with domestic government-business dynamics in affecting transnational actors' strategy and outcomes.

3 Litigation, Institutional Capture, and Rent-seeking

How do multinational enterprises use institutions in host countries to protect their interests and settle disputes with local actors? Foreign firms face significant political risks when investing in countries with weak legal institutions. Conventional wisdom often assumes that foreign investors cannot rely on domestic judiciaries to pursue their claims and seek reparations, especially in countries that lack the rule of law. For example, Ginsburg (2005: 23) suggests that "foreign investors are extremely loath to rely on local courts to resolve business disputes." The common reasoning behind this kind of argument is that domestic courts usually do not have the capacity to free themselves from the confines of their own domestic regimes "so as to give proper attention and respect to international law" and that alien firms are "cut off from any direct participation in the host state's political process" (Brower and Steven 2001: 196).

Therefore, previous studies of investor rights protection have almost exclusively focused on foreign investors resorting to international rights protection regimes beyond host countries, such as investor-state dispute settlement (ISDS) mechanisms (Büthe and Milner 2008; Puig and Shaffer 2018; Wellhausen 2015b). However, in contrast to scholars' conventional expectations, emerging economies with weak institutions do not often appear as defendants of investment disputes resolved by ISDS proceedings. For instance, China has been sued only three times under clauses provided by bilateral investment treaties or other treaties with investment provisions. Likewise, Thailand was sued twice, and Myanmar and Nigeria were each sued only once.[16] Despite its contributions, existing research on dispute resolution vehicles has overlooked a more common platform of investment dispute settlement: the host country's domestic courts.

While domestic courts may be biased, those judiciaries can still be valuable to MNEs, particularly when the litigants are able to capture those institutions. Admittedly, judicial

[16]Latest statistics on known treaty-based ISDS cases retrieved from `https://investmentpolicy.unctad.org/investment-dispute-settlement/advanced-search` as of December 31, 2019.

independence has normatively desirable qualities. However, the flip side of *judicial dependency* implies that courts susceptible to external influence may instead exhibit judicial favoritism toward MNEs under certain circumstances. There have been instances where MNCs with significant political, economic, and legal leverages win lawsuits against host country government even though the courts are corrupt and unreliable (Khatam 2017).

In this chapter, I demonstrate that foreign firms do use host country courts to resolve disputes with local actors, and then I investigate the determinants of MNEs' litigation performance under an authoritarian judiciary. I investigate two different types of relationship-based strategies that MNEs can use to manage litigation risks. First, MNEs can build ad hoc political connections in terms of engaging in exchanges of favor with the judiciary whereby state actors are a "helping hand" in greasing the wheels. Second, foreign firms can strategically incorporate the state as a stakeholder to capture host judicial institutions and score substantial litigation victories.

I argue that forging a joint venture with a state-owned enterprise leads the state to internalize the MNE's interests. A host government, as a business partner, has strong incentives to create various institutional privileges, such as significant adjudicative advantages, for collective benefits. Therefore, the adjudicative advantage is more pronounced under the second strategy than the first one. Foreign firms' abilities to shape host government decision-making may be an important reason why they have not been as resistant to pursuing domestic litigation as scholars have assumed (Hillman et al. 2004). MNEs can form partnerships with state-affiliated actors to align foreign investors' interests with those of the regime and therefore derive significant rent-seeking opportunities in authoritarian regimes.

To test the theory, I construct a novel dataset on the litigation activities of MNEs in China during the period 2002–2017, with the help of my collaborators. The empirical results consistently support my theory. First, foreign investors actively litigate in Chinese domestic courts against both public and private actors, with a frequency much higher

than that in supranational venues of dispute resolution. Second, in general, MNEs are more likely to receive shallow forms of lawsuit success than substantial compensation. Third, conventional indicators of political connections are only a weak determinant of MNEs' lawsuit outcomes. In comparison, foreign firms forming joint venture partnerships with state-owned enterprises significantly receive more substantial reparations, but the magnitude of the effect decreases when external anti-corruption enforcement against MNEs' dealings with state actors is enhanced.

To my best knowledge, this study is the first attempt to systematically investigate MNEs' litigation outcomes in an authoritarian regime. It makes two main contributions to political science research. First, it develops the political economy literature by uncovering how foreign firms protect property rights and settle disputes using host country institutions. By highlighting an overlooked yet important *local* forum of dispute settlement for MNEs, I question the commonly held assumption that foreign investors cannot rely on host country courts to advance their interests. This study shows that "bad" institutions can be valuable to investors, especially when foreign actors can capture dependent courts with public authorities as a form of rent-seeking arrangements. I suggest that when the authoritarian state is incorporated as a stakeholder of the foreign enterprise, the two actors' interests become much more aligned as the partnership renders them "under one roof" (Johns and Wellhausen 2016).

Second, findings of this chapter enrich our understandings of institutions and development in autocracies. In particular, this study provides firm-level evidence regarding the relationship among the rule of law, development of business environment, and policy-making under authoritarianism by empirically examining how the Chinese government regulates foreign investment in the judicial arena. Research on this front will help us better understand the large variation in the levels of private investment in developing countries with highly corrupt judiciaries and weak property rights regimes (Stasavage 2002).

3.1 Institutions and Investor Rights Protection

Existing literature on the relationship between regime type and foreign direct investment (FDI) is mixed (Li et al. 2018). The traditional argument in favor of democratic advantage often points to checks and balances—a large number of veto players, executive constraints, and legislative and judicial oversight—as reasons for fewer expropriations in democracies (Biglaiser and Staats 2012; Jensen 2003, 2008a). In particular, strong legal institutions are believed to reduce risks of expropriation, contract repudiation, and government corruption, all of which improve the investment environment for foreign businesses (Li et al. 2018; North and Weingast 1989). However, the empirical patterns of the relationship between regime type and firms' perceptions of political risks are not conclusive (Kenyon and Naoi 2010; Wright and Zhu 2018).[17]

Conventional research often assumes that foreign investors face higher political risks in countries that lack the rule of law. Supranational dispute resolution vehicles, such as ISDS mechanisms, are expected to provide more effective and reliable investor protection against political risks than domestic judicial proceedings of host countries. Therefore, such third-party forums are often regarded as firms' preferred channel to seek corrective and remedial measures in lieu of deficient host institutions.

I argue that the existing literature has overlooked an alternative rights protection mechanism for MNEs operating in countries without robust judicial institutions. To better understand firms' adaptation strategies to and preference for political risks under weak institutional environments, we need to move beyond scholars' preoccupation with supranational legal channels for dispute resolution, for three reasons.

First, ISDS litigation and arbitration mainly involve the *government* as the defendant who is alleged to violate foreign firms' agreed-upon rights (Wellhausen 2015b). However, foreign firms engage with a much wider range of actors in their daily operations. MNEs

[17]Kenyon and Naoi (2010) find that firms in hybrid regimes report higher levels of concern over policy uncertainty, as a constraint on investment, than those in either more authoritarian regimes or liberal democracies.

are frequent victims of discriminatory and predatory practices by both public and private entities that need to be addressed locally (Zaheer 1995). Thus, MNEs often have to resort to domestic legal procedures to seek compensation, uphold contract integrity, and safeguard their interests against infringement by diverse players in host countries.

Second, international arbitration is generally a last resort for firms because it may have repercussions by shaming the host government (Jensen 2008b). Extensive research has demonstrated that ISDS proceedings have negative reputational impact on defendant states (Minhas and Remmer 2018). Even the mere appearance as the respondent state in international arbitral proceedings negatively impacts a host country's reputation in the eyes of the broader investment community (Allee and Peinhardt 2011). ISDS may also strain the relationship between MNE's home state and the host state (Tienhaara 2011). Therefore, for those MNEs that wish to build cordial relationships with the host government and sustain long-term partnerships, they may refrain from using the ISDS mechanism and exhaust domestic remedies as much as possible (Desai and Moel 2008).

Third, even if MNEs obtain favorable ruling outcomes from ISDS processes, the enforcement of awards has many limitations (Bronckers 2015), such as national courts' attempts to delay or avoid compliance with ICSID (International Centre for Settlement of Investment Disputes) rulings. Many host countries are hostile toward ISDS clauses because they regard such legal delegation as an infringement of sovereignty (Allee and Peinhardt 2010). At the end of the day, international arbitration and adjudication awards still have to rely on domestic courts for enforcement.

For these reasons, the frequency of MNEs' use of third-party resolution mechanisms is disproportionately low, considering the massive business activities and the underlying propensity for disputes to emerge in high-risk markets. For instance, Wellhausen (2016) counts that 676 public international investment arbitration cases were filed in 1990–2014.[18] Statistics from the UN Conference on Trade and Development (UNCTAD) show a similar

[18]The maximum total number of arbitration in a single year is only 65 (in 2013).

pattern: the total count of treaty-based investor-state arbitration cases is 1,023 by the end of 2019. Moreover, emerging economies with weak institutions do not often appear as defendants of public arbitration. ICSID reports that, as of November 13, 2019, China has been sued 3 times, Mexico has been the respondent 25 times, and South Africa appeared only once.[19]

Therefore, it is important to turn our attention to firm-level lawsuit outcomes in *local* dispute settlements, especially when host country courts lack independence. Domestic legal institutions are an important, alternative mechanism for MNEs to settle disputes with local actors and assert corporate interests. We argue that "bad institutions" such as dependent judiciaries do not necessarily deter foreign investors. When judges' decision-making in the host country is susceptible to outside pressure, foreign firms may benefit from bringing lawsuits before domestic judges whose rulings can be easily shaped in favor of foreign litigants.

3.2 MNEs, State Capture, and Litigation Outcomes

How do foreign investors navigate authoritarian legal systems to protect and advance their interests? In what follows in this section, I demonstrate that foreign enterprises actively manage political risks through corporate political activities. Further, I discuss and compare two different types of political resources that are useful for MNEs investing in markets without independent judiciaries. I argue that ad hoc exchanges of favor between foreign businesses and the state may not be sufficient to extract substantial monetary awards from the court. Rather, MNEs can obtain more meaningful lawsuit outcomes when they incorporate the state as an interested shareholder of the foreign enterprise's performance. One effective political instrument for a foreign firm is to adopt a corporate structure, as a mode of market entry, that systematically aligns the objectives of the MNE

[19]Similarly, Wellhausen (2015a) documents that Mexico only appeared 16 times, Russia 8 times, South Africa twice, and China and Nigeria each appeared once in public arbitration in 1995–2011.

with the interests of the state.

Political risks and corporate political activities

While political environments have long been viewed as "risks" to factor into planning, governments also offer opportunities to MNEs (Boddewyn and Brewer 1994). For example, Bonardi (2004) points out that MNEs integrate their political efforts with their market strategies to maintain monopoly rents. Research on the effectiveness of MNEs' strategies to affect opportunities in host countries is still limited, but the literature sheds important light upon how foreign investors manage political risks through corporate political activities.

Firms, as organizations, are more than just passive and conforming actors in response to the government's treatments (Henisz and Zelner 2005). An organization's own internal capabilities are an important determinant of its channels into the policy-making process and therefore the risk of adverse policy changes. Foreign investors can use appropriate organizational linkages to lower the probability that political actors will overturn, alter, or reinterpret their agreements with firms. This is because strong direct or indirect ties to relevant political actors permit organizations to craft "side deals" with these actors for special contract terms or individualized exceptions to adverse changes to existing arrangements. Evidence has shown that building and maintaining political resources increases firms' capabilities. For example, Lyles and Steensma (1996) find that investors' management of their relationship with the government is an important organizational capability and key "factor of success" in Asian infrastructure projects.

MNEs frequently resort to a repertoire of non-market activities, including building personal and organizational ties to sociopolitical institutions and actors, lobbying, making campaign contributions, and conducting public relations campaigns (Mellahi et al. 2016). Firms seek to co-opt political agencies and actors by a variety of tactics, aimed at gaining influence over regulations and receiving preferential treatments from govern-

ment officials (Hillman et al. 2004). In particular, in emerging economies where "resource dependence" on the government is stronger, firms are expected to develop political resources to shield themselves from the perils of political extortions (Peng and Luo 2000).

I argue that, while developing and utilizing political capital is important for multinational enterprises, the political nature of such government-business ties is also crucial (Xu 2020). Conventional notions of political connections in the literature focus on ad hoc personal ties built upon informal exchanges such as bribery. Such relationships, however, do not take full advantage of the political system. A more institutionalized and sustainable arrangement that overcomes the commitment in corrupt exchanges is that the private actor establishes a business partnership with public authorities such that the state's interest becomes structurally and systematically aligned with the firm's.

Corporate structure, the state, and institutional capture

An effective corporate vehicle to co-opt state actors as a stakeholder of the foreign enterprise's commercial success is establishing a joint venture (JV) partnership. I argue that foreign firms can overcome institutional obstacles and manage political uncertainty by choosing a market entry mode that builds ownership ties with host government authorities or state-affiliated actors. In particular, I highlight the value of joint venture partnership with state-owned enterprises (SOEs), as a type of corporate structure for foreign firms to influence the operation of weak institutions.

The choice of entry modes is an important decision for firms investing in foreign countries. Foreign investors' decisions on entry modes and ownership structures are conditional on the "institutional distance" or potential political hazards (Doh et al. 2003; Uhlenbruck et al. 2006). In a classic work, Henisz (2000) examines the effect of corruption on FDI market entry and ownership mode for U.S.-based multinational firms. He argues that MNEs' choice of market entry mode between using minority versus majority equity control relative to domestic firms is associated with the political hazards that firms en-

counter.[20] Partnering with host country firms that possess a comparative advantage in connecting with host country governments can safeguard against the political hazards. Thus, a multinational firm is more likely to choose a minority-owned joint venture as a market entry mode as the level of political hazards increases.

Forging joint venture partnerships with local actors is a common practice by MNEs around the world to mitigate political risks. For example, Smarzynska and Wei (2000) observe that, for foreign firms operating in Eastern European and the former Soviet economies, the probability of forming a joint venture rather than a wholly-owned subsidiary increases with the level of corruption. Likewise, Uhlenbruck et al. (2006) find that foreign firms adapt to the pressures of corruption via entry into joint ventures. They show that MNEs use contracting and partnering as adaptive strategies to participate in markets where corruption poses risks to MNEs' equity ownership. Analyzing a sample of Japanese investors' ownership decisions in the U.S., Chen and Hennart (2002) report that Japanese companies facing higher market barriers in the target industry are more likely to choose joint ventures than wholly-owned subsidiaries.

Joint venture partnerships have unique advantages as an investment structure for foreign corporations (Luo 1997). When the local institutional framework is weak, non-market resources of local firms are especially valuable to foreign investors facing idiosyncratic regulatory challenges. These challenges and barriers incentivize MNEs to pursue joint ventures (Meyer et al. 2009). Local partners' operating privileges can help MNEs gain legitimate rights to conduct business in restrictive regulatory environments (Yiu and Makino 2002). In general, the level of government intervention and environmental uncertainty perceived by MNE managers is positively associated with the probability of choosing the joint venture mode (Luo 2001a). MNEs with cooperative entry modes, such as JVs, enjoy lower investment risks than wholly-owned subsidiaries (Morschett et al. 2010). In fact, when the perceived political, legal, and regulatory uncertainty is high, MNEs are

[20] Political hazards are defined as the feasibility of policy change by the host-country to directly seize assets or adversely change taxes, regulations or other agreements.

less likely to convert from joint ventures to wholly-owned enterprises even if they have the option to do so (Puck et al. 2009).

Therefore, JV partners provide foreign investors with resources to mitigate operational and political risks inherent in the local institutional context. The competitive advantages of JVs derive from the fact that local linkages are important in FDI activities (Chen et al. 2004). More crucially, when domestic firms possess strong political influence over local institutions, MNEs are highly motivated to establish JV partnerships with regime insiders in order to win their support and utilize their political assets (Henisz 2002).

I argue that JV partnerships with SOEs, as an ownership strategy, not only reduce political risks but also shape judicial outcomes in a meaningful way. By partnering with state-affiliated entities, foreign enterprises give the host state a stake in the performance of joint enterprises. When the domestic judiciary is susceptible to political interference, foreign actors can capture the judicial institutions through their ties to the ruling regime and manipulate judicial processes for their own benefits. This type of institutional capture provides significant market advantages for connected regime insiders, at the expense of other less-connected private litigants.

The value of a captured judiciary has manifested itself in comparative politics literature, although its implications for international political economy remain under-explored. Scholars show that firms who are political insiders are more willing to litigate in Chinese courts considered as corrupt and dependent (Ang and Jia 2014). Evidence in Russia also suggests that businesses have strong demands for using legal institutions to protect property rights even when state institutions are ineffective or corrupt (Gans-Morse 2017). Lambert-Mogiliansky et al. (2007) suggest that firms' benefits from bankruptcy proceedings in Russian commercial courts are shaped by the quality of the regional judiciary and the political power of regional governors. In both established and non-consolidated democracies, actors may prefer subservient courts and captured regulators to more independent institutions (Carpenter and Moss 2013).

In grand schemes of institutional capture, SOE JV partnerships co-opt the state as a stakeholder in the performance of the firm and make the state internalize the foreign investor's interests. This joint relationship incentivizes the state to exploit and mobilize the political resources under its control to make systematic, institutionalized beneficial arrangements for the collective enterprise. Establishing SOE JV partnerships, foreign firms can even turn politically-risky environments into profitable opportunities as domestic institutions are enlisted to serve their joint interests. A dependent judiciary can thus be a formal venue of rent-seeking for politically-connected foreign firms that locks in and institutionalizes market privileges.

By contrast, I contend that conventional conceptualizations of political connections only capture ad hoc, expedient types of political exchanges that deliver limited, shallow benefits (Faccio 2006; Wang 2018). Corrupt exchanges with the judiciary face a commitment problem that bribe-receiving officials may not fully deliver on their promises. Thus, the court may only superficially recognize MNEs' legal interests without satisfying their substantial claims. Compared with shallow forms of exchanges of favor, institutional capture is a deeper and more credible commitment by the state to advance the collective corporate interests. Captured authoritarian courts, which are subservient to the state-business coalition, deliver meaningful legal protection of the JV's interests, acting beyond merely recognizing the legal merits of the complainant's claims as the court normally does for other politically connected clients.

In most democratic settings, unduly exerting political influence over the judiciary would be considered illegal. However, in authoritarian contexts where the judiciary is vulnerable to political control, there is little domestic legal consequence for or institutional oversight over judicial manipulation. Nonetheless, external sources of legal scrutiny, such as the emergent transnational anti-corruption enforcement regime, may change MNCs' calculation and malpractice. In Chapter 5, I separately examine the impact of extraterritorial legal intervention as an alternative test of the theoretical mechanisms.

Absent external legal intervention to deter undue influence over the judiciary, I specify the following hypotheses regarding the relationship between MNEs' use of political resources as a risk mitigation strategy and their litigation outcomes in host countries' domestic judiciaries.

Hypothesis 1 (state capture mechanism): All else equal, joint ventures between MNEs and host SOEs are more likely to obtain *substantial* lawsuit victories than other types of foreign firms.

Hypothesis 2 (political connections mechanism): All else equal, MNEs with political connections are more likely to obtain *superficial* lawsuit victories than foreign firms without political connections.

These two mechanisms can function together in the adjudication process and are not mutually exclusive. Nonetheless, all else being equal, I expect the state capture mechanism to have a larger impact on judicial outcomes in authoritarian systems than the political connections mechanism. In later sections, I examine the explanatory power of each of the two mechanisms both separately and simultaneously.

3.3 A New Litigation Dataset

To examine the performance of MNEs' rights-protection efforts via local institutional channels when the host country lacks judicial independence, I construct a new dataset on MNEs' lawsuits litigated in China. In 2013, the Supreme People's Court (SPC) of China started to require all levels of courts to publicize judgment documents online within seven days of judicial decisions,[21] as an effort to increase judicial transparency. The SPC established and maintains an online database, China Judgement Online,[22] which contains court

[21] See an English report at `https://www.loc.gov/law/foreign-news/article/china-courts-required-to-publish-all-effective-opinions-on-one-website`. Accessed on March 23, 2020

[22] The website can be accessed at `https://wenshu.court.gov.cn/`.

rulings in all levels of Chinese courts since 1996.[23] I use these legal records as the main source of the dataset.

A major concern about this source of data is the potential selection bias in publicizing the legal documents. It might be possible that Chinese courts prefer publicizing rulings and judgements that seem impartial and professional. I argue that three factors mitigate this concern. First, based on close readings of hundreds of the records, I find that many of them have poor quality in terms of writing proficiency and legal reasoning. Some of the writings are even incomplete. There does not appear to be a stringent screening and censorship process prior to publication. Second, even if the bias toward publicizing "better" documents exists, it would work against my hypothesis that different types of litigants receive significantly different adjudicative decisions. Relatedly, if Chinese courts wish to project a foreign-friendly image by uploading documents that predominantly favor MNEs, I should see MNEs overwhelmingly winning the lawsuits. However, this is not what is observed in the empirical patterns. Third, my interviews with front-line judges presiding over foreign-related cases confirm that uploading these legal documents is a tedious, time-consuming administrative task. Most judges struggle to find time to upload these records, which makes systematically selecting only "good" documents logistically infeasible.[24]

I hired research assistants to web-scrape the legal documents involving foreign litigants in Chinese courts from China Judgement Online. I searched for all cases where a foreign company is one of the litigating parties, either as the plaintiff or as the defendant. Due to budgetary constraints, I focus on China's major FDI inflow origins—Australia, France, Germany, Japan, Singapore, South Korea, the U.K., and the U.S.[25] Presumably,

[23]The website shows that, as of March 24, 2020, it stored about 89 million court documents, including 56 million documents arising from civil lawsuits and 2.5 million documents related to administrative lawsuits.

[24]The fieldwork and related interviews were conducted during the summers of 2018 and 2019, under Emory IRB protocols (IRB00096709 and IRB00103588).

[25]I identify MNEs' nationality in a broad sense, based on either their registered locations or their headquarters. I code the litigant that is (1) from one of these home countries and (2) listed as the first of the group of plaintiffs/defendants.

firms from these states engage in a large majority of cases involving foreign litigants in China.[26] As an improvement over existing research on investor-state dispute settlement that focuses on disputes between foreign investors and local governments, the new dataset enables me to examine legal disputes between MNEs and private actors in the host economy as well.

The primary interest is the ruling outcome for the plaintiff who brings a claim before the court. I measure lawsuit outcomes in several ways. First, I measure whether the court's legal arguments and findings are supportive of or against the plaintiff's claims. We examine whether the court expresses clear support or mostly favorable opinions toward the plaintiff. Second, I consider whether the plaintiff is demanded to pay less court fees than the defendant. In China, judges usually ask the party that they rule against to pay higher litigation-related fees and expenses to the court than the party receiving favorable ruling (Maxeiner 2010). Therefore, the relative allocation of court fees indicates which side has the upper hand in the lawsuit. Third, I look at the amount of monetary compensation awarded to the plaintiff. Following the tradition in corporate lawsuits literature (e.g., Lu et al. 2015; Wang 2018), I examine whether any positive amount of monetary compensation is awarded to the plaintiff. Then I raise the threshold of defining lawsuit victory by looking at whether the plaintiff is awarded compensation that is greater than (1) one quarter, (2) one half, and (3) the full amount of the plaintiff's claim.[27]

I consider both subjective arguments and objective compensation. While judges are oftentimes unequivocal in their opinions toward litigants' claims, sometimes the court's legal stance is mixed and thus less clear. Therefore, the first measure involves more subjective reading and interpretation of the court's judgement. Meanwhile, a judge's explicit support for the plaintiff's claims does not always translate into adequate compensation

[26]Considering the strong ethnic ties between Hong Kong/Macao/Taiwanese investors and mainland Chinese citizens as well as the fact that firms from these localities receive different policy treatments than other foreign companies, I do not include firms from Hong Kong/Macao/Taiwan in this study.

[27]These outcome variables are coded 0 if the plaintiff claims no monetary compensation. I do not consider the ratio of the ruled amount to claimed amount because the ratio would be undefined if the claimed amount is 0.

for the injured party. The other more objective, monetary-compensation-based measures capture the sufficiency of legal remedies.

The main explanatory variable of interest is the corporate structure of the MNE. To identify joint venture partnerships between MNEs and SOEs, I firstly check whether the corporate entity is registered as a JV with the Chinese regulatory authority, the State Administration for Industry and Commerce. As a specific type of JVs, the entity is further coded *SOE JV* if the MNE's JV partner is a state-owned enterprise or has a state agency as its majority shareholder.[28]

While my theory centers on state capture, the conventional view on politicized litigation would suggest that it is simply the political connections of the SOE partner that affects judges' decision-making instead of the corporate entity's capture of legal institutions outright that dictates judicial proceedings. I test our argument against this competing explanation of the state as merely a "helping hand" to obtain favorable judgements (Egger and Winner 2005; Barassi and Zhou 2012). To measure whether a firm is *Politically Connected* (PC), I follow the convention by examining if its board members include any individual who has served in the Chinese Communist Party, the local and central government, the military, or SOEs (Faccio et al. 2006; Wang 2018). Considering the extensive role that the Chinese government plays in the national economy, I also code a firm as *Politically Connected* if it has participated in any social or economic projects led or promoted by the Chinese government, as a form of public-private partnership or corporate social responsibility initiatives (Lin et al. 2015; Zhao 2012).[29]

By including the measure of political connections, I also account for a potential selection bias that politically connected firms are more likely to use courts.[30] It is a common belief that "know-who" is a significant determinant of firms' use of authoritarian legal

[28]This information is hand-coded by our research assistants based on government registries, firms' websites, and data service providers such as Qichacha and Tianyancha.

[29]Some examples of such projects are government procurement contracts, infrastructure constructions, economic development projects, and charity and public welfare programs.

[30]In the next section, I use exact matching to further address potential selection biases.

Table 3.1: MNC lawsuits by origin country

Origin country	Number of lawsuits
Japan	1324
South Korea	924
U.S.	528
Singapore	237
Germany	235
France	198
U.K.	131
Australia	115

procedures (Ang and Jia 2014). By controlling for litigants' political connections, I aim to demonstrate a distinctive mechanism of state capture, beyond the conventional notion of political connectedness.

Each of the models also includes a set of control variables at the lawsuit- and litigant-level, including the plaintiff's home country, industry of operation, court location, case type, ruling year, ruling procedure, and opponent nationality.[31] Although there is limited observable information about the litigation activities, I take into account commonly considered confounders in estimating the effects of corporate political endowment on lawsuit outcomes (Firth et al. 2011; Lu et al. 2015; Wang 2018).

3.4 Empirical Results

I report the empirical results in this section. I first present the descriptive statistics of the new dataset. Then, I show the statistical results using regression models. Finally, I describe the results of additional robustness checks, including an exact matching procedure to address potential selection biases.

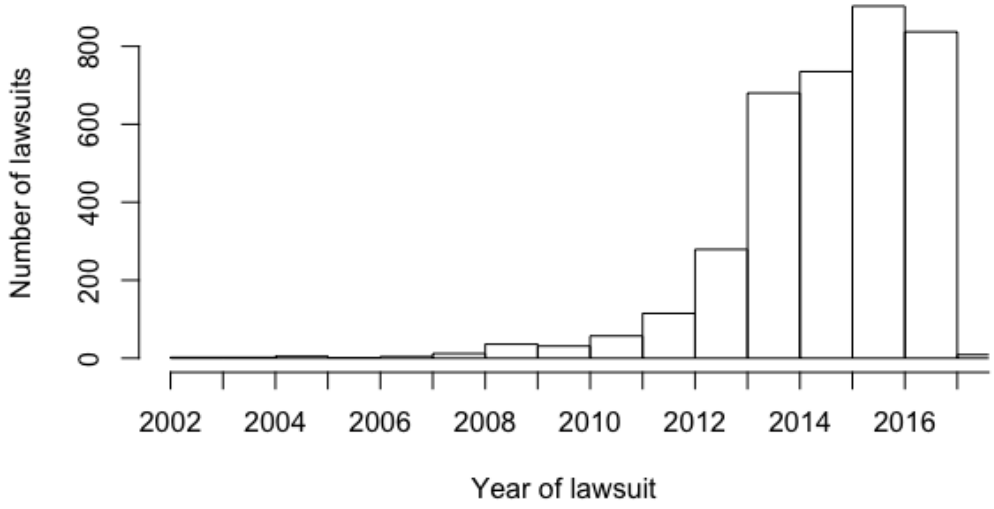


Figure 3.1: Yearly distribution of MNC lawsuits

Descriptive results

The compiled dataset consists of 3,721 cases involving at least one foreign enterprise.[32] Table 3.1 displays the distribution of MNC origin countries in those cases. Japanese and South Korean firms are frequent participants in Chinese judicial proceedings. U.S. companies have been involved in 528 coded lawsuits. To put this number into perspective, the UNCTAD statistics on investor-state disputes show that the U.S. has appeared only 16 times as the respondent state and 174 times as the home state of claimant.[33] Notably, none of these 190 cases involves the Chinese government or firms. The comparative statistics indicate that the volume of foreign-related disputes in Chinese domestic courts is quite significant, compared with international venues of dispute resolution, even after taking into account the number of private arbitrations (Wellhausen 2016).

[31]Summary statistics of these variables are in the appendix, where I also control for several additional firm-level characteristics that may bias the estimation.

[32]There are only 3 cases where foreign natural persons sue Chinese domestic entities in the entire dataset.

[33]See the country statistics at `https://investmentpolicyhub.unctad.org/ISDS/FilterByCountry`.

Table 3.2: Plaintiff win rates

	F. v. All	F. v. D.	F. v. F.	D. v. F.
Judgement	0.546	0.533	0.637	0.471
Less court fee	0.238	0.241	0.201	0.113
Compensation > 0	0.315	0.317	0.273	0.229
Compensation $> \frac{1}{4}$ claim	0.213	0.209	0.222	0.176
Compensation $> \frac{1}{2}$ claim	0.181	0.175	0.198	0.142
Compensation $\geq$ full claim	0.123	0.120	0.135	0.095
Number of cases	2344	2041	277	1389

Note: F = Foreign firm; D = Domestic firm.

The distribution of lawsuit filings is skewed in the time coverage (Figure 3.1). Most of the foreign-related lawsuits are reported in recent years, especially after 2013. Part of the reason is that the judicial transparency reform initiative started to require the publication of all legal documents in 2013. Given the temporal limitation of the judicial transparency requirement, the dataset is more representative of litigation patterns in recent years. As a robustness check, I separate the cases into pre- and post-2013 categories. The findings also hold in the post-reform period.[34]

Table 3.2 reports the summary statistics of MNEs' lawsuit outcomes in China. Interestingly, across all measures of lawsuit outcomes, the average plaintiff win rates are higher when MNEs sue domestic entities than the other way around. However, while MNEs are more likely to obtain supportive judgements from the court, the favorable rulings do not always translate into substantial monetary remedies. In fact, Chinese judges are more likely than not to issue favorable opinions toward MNEs as plaintiffs, but relatively rarely award substantial compensation. Only in 32% of all claims pursued by MNEs against domestic entities did they receive any positive amount of pecuniary compensation, and the likelihood is even lower when it comes to more substantial awards. Likewise, domestic firms seeking reparations from foreign firms are more likely to score superficial lawsuit victories than to obtain meaningful compensation.

[34]See Appendix.

In the appendix, I also examine two particular types of cases. The first one is administrative cases, which can be regarded as the domestic equivalent of investor-state disputes adjudicated in international forums. The results indicate that MNEs actively use domestic courts to sue host government agencies (780 cases), although the local judiciary lacks independence and the winning percentages are relatively low. The second type involves intellectual property rights (IPR) infringement issues. While IP courts are expected to enjoy greater independence due to judges' technical expertise and other institutional guarantees of judicial professionalism (Zhang 2019), MNEs only enjoy superficial forms of rights protection.[35]

The statistical evidence concurs with the qualitative evidence I obtained from interviews with officials from the American Chamber of Commerce (AmCham) in Shanghai. AmCham officials indicate that U.S. MNEs are reluctant to resort to Chinese courts for dispute resolution because the amount of sanctions imposed on offenders is usually too small to deter future violations, and MNEs are not awarded sufficient compensation even if they win the lawsuit.

I further break down MNEs' lawsuit outcomes by corporate structure in Table 3.3. A noteworthy finding is that foreign firms who have entered joint-venture partnerships with state-owned enterprises enjoy substantial adjudicative advantages. The *p*-values for the two-sample Chi-Square tests indicate that, compared with other types of MNEs, SOE JVs are more likely to receive favorable rulings in terms of financially rewarding compensations, but not necessarily supportive judgements. In over a third of the cases, the amount of compensation awarded to SOE JVs is equal to or greater than the claim. Significant differences in average win rates suggest the importance of building ownership ties with state actors for foreign firms in China. Moreover, the results also indicate that JVs with private Chinese firms do not enjoy similar superior litigation performance, compared with average MNEs. Foreign firms with conventional political connections out-

[35]See online appendix.

Table 3.3: MNC lawsuit outcomes against domestic entities

	All MNCs	All JVs	SOE JVs	Connected MNCs
Judgement	0.533 (0.032)	0.641 (0.000)	0.606 (0.183)	0.644 (0.000)
Less court fee	0.241 (0.000)	0.254 (0.486)	0.440 (0.001)	0.252 (0.552)
Compensation > 0	0.317 (0.000)	0.292 (0.563)	0.625 (0.000)	0.293 (0.417)
Compensation $> \frac{1}{4}$ claim	0.209 (0.143)	0.190 (0.535)	0.526 (0.000)	0.182 (0.297)
Compensation $> \frac{1}{2}$ claim	0.175 (0.140)	0.166 (0.695)	0.500 (0.000)	0.154 (0.372)
Compensation $\geq$ full claim	0.120 (0.179)	0.116 (0.819)	0.342 (0.000)	0.107 (0.518)
Number of cases	2041	410	109	397

Note: *P*-values for Pearson's Chi-squared tests comparing each type of firm with all other types are in parentheses.

perform general MNEs only in terms of the shallow measure of adjudicative outcomes, which is opposite to SOE JVs' deeper forms of judicial advantage.

Overall, the descriptive results suggest that market entry modes are important for MNEs to mitigate or overcome adjudicative biases from courts susceptible to political influences in authoritarian regimes (Straub 2008). Turning state actors into stakeholders of the collaborative enterprise can capture weak institutions and shape discriminatory policies and decisions by corrupt judges and bureaucrats in favor of the capturing firm. This partnership creates sustainable and systematic rent-seeking opportunities and non-market advantages for the joint enterprise, which goes beyond the conventional political exchanges based on merely ad hoc relationships.

Table 3.4: Institutional capture and lawsuit outcomes

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**State Capture Mechanism**					
SOE JV	0.447**	0.605**	0.570*	0.736**	0.755*	0.608*
	(0.155)	(0.226)	(0.286)	(0.284)	(0.306)	(0.254)
Observations	3634	2456	2343	2319	2319	2319
(2)	**Political Connections Mechanism**					
Political Connections	0.323**	0.200	0.130	0.049	-0.152	0.004
	(0.099)	(0.316)	(0.178)	(0.135)	(0.180)	(0.155)
Observations	3535	2379	2298	2274	2274	2274
(3)	**State Capture Beyond Political Connections**					
SOE JV	0.264	0.571*	0.567+	0.791**	0.925**	0.708**
	(0.182)	(0.238)	(0.307)	(0.297)	(0.307)	(0.272)
Political Connections	0.301**	0.118	0.056	-0.057	-0.289	-0.116
	(0.108)	(0.329)	(0.199)	(0.148)	(0.179)	(0.160)
Observations	3525	2370	2295	2271	2271	2271
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1;^{*}p < 0.05;^{**}p < 0.01;^{***}p < 0.001.$

Main regression results

The section presents the regression results. I use logistic regressions to estimate the effect of corporate structure on each of the six dichotomous lawsuit outcome measures.[36] Table 3.4 provides the results.

Panel (1) tests the state capture mechanism, where I include *SOE JV* and a fixed set of case- and firm-level control variables. The results show that JV partnerships between MNEs and Chinese SOEs are significantly more likely to win lawsuits than other types

[36]Using linear probability models does not change the substance of the results. See appendix.

of corporate structures across all measures of litigation success. The effect of *SOE JV* is not only statistically significant but also substantively meaningful. By calculating the predicted probabilities, I find that adopting a JV partnership with an SOE makes an MNE, on average, 7.1 percentage points more likely to obtain a favorable judgement, 10.6 percentage points more likely to receive positive compensation, 12.7 percentage points more likely to be awarded more than half of its claims, and 8.5 percentage points more likely to have its claim fully satisfied. Considering firms' relatively low win rates, as reported in Table 3.2, the marginal effect of *SOE JV* on litigation outcomes is quite striking.

In Panel (2), I further test the explanatory power of the mechanism focusing on conventional types of political connectedness of MNCs. I look at how our measure of political connections, that is, a broad range of ties that existing studies commonly explore, affects each of the six adjudicative outcomes. Consistent with the theory, I find that the plaintiff's political connections lead to more favorable court opinion yet without substantial reparations. Thus, the plaintiff's political connections are only a weak predictor of lawsuit success, compared with the corporate structure of the foreign enterprise.

Next, I use *SOE JV* to compete against *Political Connections* in Panel (3) to compare the explanatory power of the two mechanisms. The effects of litigants' political connections remain similar to the pattern in Panel (2), with *Political Connections* maintaining its statistical significance only for the shallow outcome of favorable court opinion. Interestingly, the signs of coefficients turn negative for the higher restitution. It may suggest that the regime insiders that firms are connected to do not necessarily have the business' best interest in mind when they pursue formal litigation. Without the state's interests directly involved in the firm's lawsuit, the connected personnel may even pressure the firm to accept a symbolic victory and a less-than-ideal compensation. In such a case, the MNE's interest is undermined by a non-stakeholder connection who is not committed to protecting the firm's interest.[37]

[37]See more pronounced negative results for the political connection mechanism in the appendix where I exclusively focus on MNEs filing as plaintiffs.

In comparison, *SOE JV*, as an indicator of the firm's ability to capture the institution, significantly helps the plaintiff obtain meaningful remedies.[38] The coefficient sizes become even larger for the more material outcomes in Panel (3). On average, *SOE JV* partnership increases the likelihood of lawsuit success by 3.8 (*Judgement*), 10.1 ($Comp > 0$), 14.1 ($Comp > \frac{1}{2}$), and 9.0 ($Comp \geq full$) percentage points, respectively.

Therefore, the results support my theory that government-business relationships in the form of ad hoc ties between firms and political authorities have limited effects in shaping ruling outcomes. Political connections may only help firms obtain superficial forms of lawsuit victory, such as the court's explicit support. In contrast, SOE JVs enjoy substantial adjudicative favoritism because the state is an interested party in the success of the joint venture. The state, who now has a direct stake in the performance of this enterprise, has incentives to create institutional advantages for foreign firms. The partnership captures domestic institutions to deliver systematic judicial benefits to the JV, often in the form of substantial compensation.

Robustness checks

In previous sections, I discussed that sample selection bias is not a major issue with this study. Nonetheless, another concern regarding the previous analysis is foreign firms' self-selection. JV partnerships with SOEs are not randomly assigned. There could be other unobserved factors that cause a foreign enterprise to both form a JV partnership with an SOE and to win lawsuits. For example, SOE JVs might only file certain types of cases that they are more likely to win. SOE JVs may also be concentrated in certain investor-friendly industries where they receive favorable policies from both the court and the government.

Other than including a series of control variables in the main analysis, I also adopt an exact matching procedure to further address this potential selection bias (Ho et al. 2011).

[38] In the appendix, I consider the defendant's political connectedness, as the flip side of the plaintiff's political ties. The same pattern holds even after conditioning on the political connectedness of both litigants.

Table 3.5: Exact matching results

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**State Capture Mechanism**					
SOE JV	0.923^{*}	0.700	1.570^{+}	2.593^{*}	2.131^{*}	1.831^{+}
	(0.389)	(0.574)	(0.935)	(1.059)	(1.065)	(1.018)
Observations	325	136	125	124	124	124
(2)	**Political Connections Mechanism**					
Political Connections	0.159	-0.160	-0.669^{*}	-0.225	-0.142	0.035
	(0.207)	(0.304)	(0.322)	(0.422)	(0.456)	(0.488)
Observations	809	497	452	448	448	448
Exact matching covariates:	court location, case type, ruling procedure, rule year, public-listed, plaintiff home country, plaintiff industry					

Note: $^{+}p < 0.1$;$^{*}p < 0.05$.

I match on all observable information in the dataset that may simultaneously affect the independent and dependent variables. The set of covariates are similar to the main analysis. I find that the results in Table 3.5 are largely consistent with those in Table 3.4. *SOE JV* remains positive and has a statistically significant effect on most measures of lawsuit success even when using a very conservative estimation technique. The political connectedness of the plaintiff, in contrast, does not significantly contribute to more favorable litigation outcomes.

Besides exact matching, I conduct additional analyses to test the robustness of our findings in the main analysis. First, considering that lawsuit data before the 2013 judicial transparency reform initiative may suffer from sample selection biases, I solely focus on the post-2013 period to reanalyze the results. Second, I revisit the cases where MNEs are the plaintiffs exclusively, as opposed to utilizing all cases in the main analysis. Third, I take into account the political connections of the defendant, as the flip side of the plain-

tiff's political connections, in order to better compare the proposed mechanism of state capture with conventional conceptions of political connectedness. Fourth, I incorporate additional control variables in the regression models, including each MNC's China experience, firm size, and whether the firm is publicly traded. Fifth, I use ordinary least squares (OLS) regressions to provide coefficient estimates that can be directly interpreted. The results of these analyses are available in the appendix. The main findings hold in all of these robustness checks.

3.5 Conclusion

As large volumes of foreign direct investment have flown to developing countries without independent judiciaries, it is important to understand how foreign investors protect their rights and advance their interests in host countries with weak institutions. This study turns our attention from third-party investor rights protection mechanisms to institutional arrangements within host countries. By examining host country courts in an authoritarian regime, I highlight an overlooked *local* legal venue for foreign investors. It contributes to the emergent research agenda that recognizes domestic judiciaries as part of the "global community of courts" dealing with cross-border dispute resolution issues (Slaughter 2003).

Conventional literature on institutions and economic development contends that the value of judicial independence and the rule of law lies in the power of courts to constrain government behavior (Li et al. 2018; Staats and Biglaiser 2012; North and Weingast 1989; Stasavage 2002). The value of an independent judiciary manifests itself in two ways. First, courts check executive malfeasance and overreach by ruling against government behavior that infringes upon investor rights. Second, courts check government policies and practices that unduly advantage certain groups or individuals over others, which helps create a level playing field. Importantly, courts ensure that market rules are fair and impartial to all market participants and no actor enjoys unlawfully obtained privileges

(Haggard et al. 2008; Henisz 2000).

However, I suggest that foreign investors may see value in an authoritarian judiciary that is susceptible to external political influence. I argue that when MNEs form joint venture partnerships with SOEs, they co-opt the state as a stakeholder in the success of the collaborative commercial enterprise. This type of structure can align the interests of the state with those of the foreign investor, which incentivizes the state to create institutional privileges and rent-seeking opportunities that systematically benefit the joint venture.

To test this claim, we construct a new dataset on litigation outcomes of multinational corporations in Chinese courts. The results indicate that foreign firms frequently resort to Chinese domestic courts to resolve disputes and assert their interests for a variety of issues. Overall, the findings point to an under-explored mechanism of state capture where foreign firms, in joint venture partnerships with SOEs, use the authoritarian judiciary to protect and advance their interests. Regime insiders, acting more than a helping hand in "greasing the wheels" and mitigating political risks in the business environment, actually capture the dependant courts in China and extract significant institutional rents in the form of adjudicative privileges.

The results imply that weak courts subject to undue pressure from political authorities may provide rewarding non-market advantages to foreign firms who are capable of capturing weak courts. If MNEs expect to receive preferential legal treatments from captured local courts, they may even prefer seeking local remedies over resorting to alternative, international adjudicative venues, such as ISDS mechanisms and third-party arbitration, which are perceived as more neutral and have received much scholarly attention (Puig and Shaffer 2018).

This chapter still does not fully address potential selection biases. There might be other unobservable confounders that cause firms to form JV partnerships with SOEs and to win lawsuits. In Chapter 5, I exploit a U.S. appellate court ruling in 2014 as an exogenous shock to conduct a differences-in-differences-in-differences estimation of the effects

of SOE JV partnership on lawsuit outcomes in China.

3.6 Appendix

Additional Information on the Dataset

MNE lawsuit distributions

In this section, I present additional information about the new dataset. In the main text, I report foreign firms' lawsuit distribution by year and origin country. Here, I show the MNE lawsuit distributions by court province, court type, ruling procedure, issue, and the plaintiff's industry in Tables 3.A1 to 3.A5, respectively.

Table 3.A1: MNC lawsuit distribution by province

Province	Count
Anhui	14
Beijing	1,156
Chongqing	11
Fujian	60
Gansu	7
Guangdong	530
Guangxi	7
Guizhou	1
Hainan	9
Hebei	34
Heilongjiang	14
Henan	54
Hubei	143
Hunan	9
Inner Mongolia	19
Jiangsu	126
Jiangxi	17
Jilin	31
Liaoning	73
Shaanxi	54
Shandong	283
Shanghai	456
Shanxi	31
Sichuan	43
Tianjin	119
Xinjiang	2
Yunnan	6
Zhejiang	406

Table 3.A2: MNC lawsuit distribution by court type

Court type	Count
Basic	736
Intermediate	1,062
High	810
Supreme	189
Maritime	540
Intellectual property rights	369
Railway	3

Table 3.A3: MNC lawsuit distribution by ruling procedure

Ruling procedure	Count
First instance	2,269
Second instance	1,018
Retrial, retrial review, and trial supervision	205
Others	217

Table 3.A4: MNC lawsuit distribution by issue

Issue	Count
Intellectual property rights	1,450
Contract	1,207
Administration	780
Infringement	763
Others	544
Civil disputes	284
Labor	181
Special procedures	127
Compensation	117
Property	24
Socialist economic order	5
Bribery	1
Malfeasance	1

Table 3.A5: MNC lawsuit distribution by the plaintiff's industry

Industry	Count
Manufacturing	1442
Finance	394
Transportation	270
Retail	249
Trade	146
Others	140
Scientific R&D	87
Culture	71
Leasing & Renting	66
Information Technology	63
Medicine & Health	56
Conglomerate	46
Construction	41
Agriculture	35
Hotel & Restaurants	35
Energy & Power	33
Real estate	30
Environment	11
Education	11
Mining & Extraction	9
International Organization	1

MNE lawsuit outcomes

Table 3.A6 shows the summary statistics of lawsuit performance for MNEs with and without fixed assets respectively. Results suggest that MNEs with fixed asset investments in China experience more favorable litigation outcomes than MNEs that are pursuing transnational litigation without any physical presence in the host country.

Table 3.A6: MNE lawsuit outcomes by fixed assets

	With fixed assets	Without fixed assets
Judgement	0.550	0.498
Less court fee	0.257	0.220
Compensation > 0	0.349	0.265
Compensation $> \frac{1}{4}$ claim	0.233	0.163
Compensation $> \frac{1}{2}$ claim	0.197	0.134
Compensation $\geq$ full claim	0.136	0.094
Number of cases	1406	612

I also examine two particular types of cases in Table 3.A7. The first one is administrative cases where the defendants are government agencies or government-affiliated institutions. This type of litigation can be regarded as the domestic equivalent of investor-state disputes adjudicated in international forums. The results show a pattern similar to that in Table 3.2 in the main text, that is, MNEs are more likely to obtain shallow forms of remedies than more substantial legal redress. The results also indicate that MNEs still actively use domestic courts to sue local government agencies, even though the local judiciary lacks independence and the winning percentages are relatively low. The litigation frequency (780 cases) is much greater than that of the usual ISDS proceedings, indicating a significant yet overlooked venue of dispute resolution for foreign firms against authoritarian governments.

The second type of cases involves intellectual property rights (IPR) infringement issues. In response to greater demands for protecting IPR and incentivizing innovation,

Table 3.A7: Plaintiff win rates (specific cases)

	Administrative	IPR (suing domestic)	IPR (sued by domestic)
Judgement	0.286	0.517	0.182
Less court fee	0.134	0.246	0.077
Compensation > 0	0.042	0.273	0.073
Compensation $> \frac{1}{4}$ claim	0.035	0.106	0.040
Compensation $> \frac{1}{2}$ claim	0.030	0.061	0.040
Compensation $\geq$ full claim	0.028	0.030	0.028
Number of cases	780	1107	294

China established specialized IP courts in Beijing, Shanghai, and Guangzhou in 2014, and more IP tribunals have been set up successively in other cities.[39] These IP courts are staffed with professional legal personnel who deal with highly technical and complex IP disputes. The second column of Table 3.A7 shows a similar pattern of adjudication outcomes even in the highly technical area of IP lawsuits—MNEs in general struggle to win more substantial compensation. Therefore, although IP courts are expected to enjoy greater independence due to judges' technical expertise and other institutional guarantees of judicial professionalism, MNEs only enjoy superficial forms of rights protection.

[39]See a summary of the development of IP courts at `https://www.lexology.com/library/detail.aspx?g=365fea3e-d682-4b63-822d-d7c9f0959b5d`.

Robustness Checks for the Main Analysis

This section reports the statistical results of a battery of additional analysis to check if the main findings of this study are robust to alternative sample selections, variable operationalization, and model specifications. As I will show in this section, the main findings that MNEs' corporate structures are a strong predictor of lawsuit outcomes hold in all of these robustness checks.

Focusing on the post-2013 period

In 2013, the Supreme People's Court (SPC) of China started to require all levels of courts to publicize judgment documents online within seven days of judicial decisions. Since the data before the 2013 judicial transparency form initiative may suffer from sample selection biases, I solely focus on the post-2013 period to reanalyze the results. The results in Table 3.B1 are very similar to those in Table 3.5 in the main text.

Table 3.B1: Institutional capture and lawsuit outcomes (post-2013)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**State Capture Mechanism**					
SOE JV	0.361^{*}	0.636^{***}	0.575^{*}	0.844^{**}	0.822^{**}	0.627^{*}
	(0.150)	(0.186)	(0.264)	(0.270)	(0.314)	(0.272)
Observations	3472	2333	2217	2193	2193	2193
(2)	**Political Connection Mechanism**					
Political Connections	0.341^{***}	0.196	0.166	0.092	-0.129	0.007
	(0.085)	(0.333)	(0.193)	(0.145)	(0.195)	(0.167)
Observations	3378	2261	2177	2153	2153	2153
(3)	**State Capture Beyond Political Connections**					
SOE JV	0.148	0.599^{*}	0.555^{*}	0.885^{**}	0.991^{**}	0.734^{*}
	(0.165)	(0.237)	(0.283)	(0.276)	(0.321)	(0.288)
Political Connections	0.340^{***}	0.107	0.090	-0.031	-0.281	-0.123
	(0.090)	(0.354)	(0.209)	(0.154)	(0.204)	(0.168)
Observations	3369	2253	2175	2151	2151	2151
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Focusing on MNEs as plaintiffs

In the main analysis, I include all cases in the dataset where an MNE may be either a plaintiff or defendant, while controlling for whether the defendant is a domestic entity. Here I exclusively focus on the cases where MNEs are the plaintiffs as a robustness check. The statistical results are available in Table 3.B2. The findings hold in this robustness check.

Table 3.B2: Institutional capture and lawsuit outcomes (MNEs as plaintiffs)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**State Capture Mechanism**					
SOE JV	0.359^{**}	0.644^{**}	0.690	0.955^{**}	0.837^{*}	0.588^{+}
	(0.110)	(0.242)	(0.442)	(0.351)	(0.408)	(0.337)
Observations	2264	1509	1439	1421	1421	1421
(2)	**Political Connection Mechanism**					
Political	0.417^{**}	0.187	-0.259	-0.149	-0.210	-0.162
Connections	(0.152)	(0.363)	(0.227)	(0.187)	(0.201)	(0.206)
Observations	2230	1481	1427	1409	1409	1409
(3)	**State Capture Beyond Political Connections**					
SOE JV	0.038	0.659^{*}	1.109^{*}	1.379^{***}	1.331^{**}	0.959^{*}
	(0.145)	(0.296)	(0.474)	(0.371)	(0.439)	(0.388)
Political	0.443^{*}	0.038	-0.524^{*}	-0.515^{**}	-0.587^{**}	-0.433^{*}
Connections	(0.175)	(0.407)	(0.238)	(0.167)	(0.179)	(0.216)
Observations	2221	1473	1424	1406	1406	1406
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Considering the defendant's political connections

In the main text, I consider the plaintiff's political connectedness to examine the political connections mechanism. The flip side of the plaintiff's political connections is the defendant's political connections. As a robustness check, I use the defendant's political connectedness in the regression models instead. Table 3.B3 shows the results. *SOE JV* remains positive and statistically significant for most of the outcomes variables, even after accounting for the political connectedness of both litigants.

Table 3.B3: Considering the defendant's political connections

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**Countervailing Political Connections**					
SOE JV	0.449^{*}	0.540^{+}	0.500	0.632^{*}	0.595^{+}	0.491^{+}
	(0.208)	(0.299)	(0.325)	(0.318)	(0.351)	(0.276)
Defendant PC	-0.577^{***}	-0.782^{***}	-0.637^{+}	-0.492	-0.513	-0.378
	(0.141)	(0.233)	(0.335)	(0.318)	(0.351)	(0.255)
Num. obs.	3424	2325	2226	2203	2203	2203
(2)	**Balance of Political Connections**					
Plaintiff PC	0.287^{*}	0.183	0.141	0.042	-0.152	-0.012
	(0.112)	(0.320)	(0.181)	(0.145)	(0.185)	(0.159)
Defendant PC	-0.595^{***}	-0.802^{***}	-0.637^{*}	-0.516^{+}	-0.575^{+}	-0.475^{+}
	(0.129)	(0.232)	(0.310)	(0.300)	(0.342)	(0.266)
Observations	3368	2277	2199	2176	2176	2176
(3)	**State Capture Beyond Balance of Political Connections**					
SOE JV	0.305	0.513^{+}	0.492	0.688^{*}	0.758^{*}	0.564^{+}
	(0.238)	(0.307)	(0.350)	(0.330)	(0.357)	(0.305)
Plaintiff PC	0.254^{*}	0.105	0.075	-0.053	-0.265	-0.110
	(0.121)	(0.336)	(0.205)	(0.160)	(0.186)	(0.171)
Defendant PC	-0.599^{***}	-0.864^{***}	-0.673^{*}	-0.521^{+}	-0.577^{+}	-0.478^{+}
	(0.138)	(0.225)	(0.315)	(0.305)	(0.342)	(0.263)
Observations	3359	2269	2196	2173	2173	2173
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Including additional control variables

I did not exhaust the full list of firm-level control variables in the main analysis, because some of those variables suffer from considerable data missingness. In this appendix, I include three additional firm-level control variables.

First, SOE JVs, as a long-term strategic partnership, tend to operate in China longer than other firms. Therefore, it is possible that the longer experience of business operation and greater familiarity with the local environment that give managers an edge in navigating the judicial system. Therefore, I control for the plaintiff firm's experience of operating in China, measured by the number of years of China operation.

Second, SOE JVs tend to be large firms and important contributors of tax and employment in the local economy, which provides greater informal influence over government officials. Therefore, I control for the size of the plaintiff firm as measured by total assets.

Third, nearly a third of MNEs in this dataset are publicly listed firms. MNEs listed in major financial markets are usually constrained by higher corporate integrity standards, such as stronger disclosure requirements. In contrast, MNEs who are not publicly listed are not subject to such external sources of regulatory accountability and scrutiny. Therefore, it is possible that listed MNEs are more proficient in conducting transnational litigation and using legal channels instead of illegal means to advance their interests. In that case, it is their legal capacity and professional skills that generate the adjudicative advantage. Therefore, I also control for whether the MNE is a publicly listed firm.

Due to potential problems with missing data, I add each of these variables in the models separately. Other model specifications remain the same as those in the regression analysis in the main text. Table 3.B4 reports the statistical results. Overall, *SOE JV* remains statistically significant for most of the outcome variables, even after conditioning on additional firm-level control variables.

Table 3.B4: Including addition control variables to the main analysis

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**+ Controlling for China experience**					
SOE JV	0.497^{**}	0.580^{**}	0.539^{*}	0.686^{**}	0.745^{*}	0.538^{*}
	(0.155)	(0.187)	(0.257)	(0.264)	(0.292)	(0.260)
Years of	-0.017	0.113	0.024	0.093	0.080	0.098
China operation	(0.051)	(0.071)	(0.084)	(0.104)	(0.093)	(0.103)
Observations	2995	2040	1945	1923	1923	1923
(2)	**+ Controlling for firm size**					
SOE JV	0.471^{**}	0.174	0.337	0.487	0.679^{*}	0.607^{**}
	(0.171)	(0.255)	(0.288)	(0.303)	(0.328)	(0.220)
Total assets	-0.110	-0.121	0.218	0.196	0.253	0.444^{+}
	(0.288)	(0.195)	(0.322)	(0.268)	(0.259)	(0.254)
Observations	2011	1370	1329	1313	1313	1313
(3)	**+ Controlling for listing status**					
SOE JV	0.447^{**}	0.565^{**}	0.543^{+}	0.700^{*}	0.716^{*}	0.531^{*}
	(0.162)	(0.199)	(0.296)	(0.284)	(0.311)	(0.261)
Public listed	0.228^{*}	0.149	0.246	-0.120	-0.139	-0.069
	(0.116)	(0.225)	(0.166)	(0.265)	(0.344)	(0.249)
Observations	3175	2143	2044	2021	2021	2021
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Using ordinary least squares regressions

I use logistic regressions for the main analysis. Here I use ordinary least squares (OLS) regressions for easier interpretation of the coefficient estimates. Table 3.B5 reports the statistical results. Using OLS regressions does not change the substance of the empirical results.

Table 3.B5: Institutional capture and lawsuit outcomes (using OLS regressions)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
(1)	**State Capture Mechanism**					
SOE JV	0.071^{**}	0.100^{*}	0.106^{*}	0.132^{*}	0.127^{*}	0.085^{*}
	(0.022)	(0.039)	(0.053)	(0.052)	(0.052)	(0.038)
Observations	3634	2456	2343	2319	2319	2319
(2)	**Political Connection Mechanism**					
Political Connections	0.059^{***}	0.029	0.033	0.017	-0.008	0.009
	(0.015)	(0.045)	(0.026)	(0.020)	(0.023)	(0.014)
Observations	3535	2379	2298	2274	2274	2274
(3)	**State Capture Beyond Political Connections**					
SOE JV	0.038	0.094^{**}	0.101^{+}	0.135^{*}	0.141^{**}	0.090^{*}
	(0.028)	(0.036)	(0.056)	(0.053)	(0.052)	(0.039)
Political Connections	0.055^{**}	0.019	0.022	0.004	-0.022	-0.001
	(0.017)	(0.046)	(0.029)	(0.022)	(0.022)	(0.015)
Observations	3525	2370	2295	2271	2271	2271
Fixed Effects:	plaintiff home country, plaintiff industry, court location, ruling year, ruling procedure, case type, domestic opponent					

Note: Robust standard errors clustered by province are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

4 The Transnational Anti-corruption Legal Regime

4.1 Introduction

In many developing countries, high regulatory barriers to market entry combined with unchecked bureaucrats who enforce market access rules provide fertile grounds for corruption. Both foreign and domestic firms need to engage in corrupt exchanges with state authorities in order to obtain the required licences, permits, and other regulatory approvals for entering and operating in particular industries. The firms also need to build informal relationships with local government officials, including tax inspectors, law enforcement officials, customs officials, legislators, etc, in order to protect their assets and properties from being directly or indirectly expropriated. In these circumstances, bribery is common business practice because the local courts are not able or willing to protect investor rights and interests. At the same time, the local judiciary does not provide sufficient oversight, sanction, or deterrence against corrupt activities perpetrated by public and private actors. Thus, the more competitive firms under such conditions are often those with greater capacity to bribe. Market participants compete to bribe their way into lucrative industries protected by high regulatory barriers, sharing in the monopoly rents provided by the officials who administer discriminatory market access rules.

The traditional research on transnational anti-bribery enforcement regime has focused on its impact on cross-border business activities, such as foreign direct investments (FDI) and other business ventures undertaken by multinational enterprises (MNEs) (Cuervo-Cazurra 2006, 2008; Zurawicki and Habib 2010; Cuervo-Cazurra 2016). Scholars have not examined how transnational enforcement affects the behavior of local firms in those countries where transnational bribery conducted by MNEs has been sanctioned by external enforcement. This question is important to examine for three reasons. First, domestic firms directly compete with MNEs in host country markets. If transnational legal actions against MNEs can also deter indigenous local firms' bribery or other illegal practices to

gain unfair market advantages, then the global anti-bribery regime has greater potentials to create a level playing field in the global marketplace (Krever 2007) and to correct institutional deficiencies in developing countries. Second, the corruption landscape of the targeted country can be highly competitive, which necessitates MNEs' adoption of localized strategy in order to respond to such nonmarket demands and to survive in market competitions distorted by corrupt exchanges. External legal intervention not only affects individual firms, but also shapes the whole competitive dynamics and outcomes. Third, corporate misconduct of local firms may have global implications. When indigenous firms are connected to global financial centers, their business performance and practices may affect the interests of foreign investors and stakeholders.[40]

Therefore, this paper focuses on the responses of local firms to transnational legal actions against MNEs in the local market. I argue that transnational anti-corruption law enforcement against MNE targets a country also deters the bribery behavior of local firms who fall under the law's jurisdictional reach. But the external legal deterrence is most effective in market environments where bribery is required to obtain and retain business. After being discouraged from bribery, firms subject to transnational oversight suffer in their business performance as they can no longer compete with other local firms unconstrained by external anti-bribery obligations. For the undeterred market participants, competitive contracts become less costly to obtain through bribery, and they become more incentivized to capture market shares through bribery.

Using an original dataset of the enforcement actions of the U.S. Foreign Corrupt Practices Act (FCPA), combined with information from Compustat North America database and the World Bank Enterprise Survey to measure firm performance and behavior, I find three important aspects of the FCPA's impact on the local economy. First, FCPA interven-

[40]For example, Luckin Coffee is a Chinese coffee company headquartered and mostly operating in the mainland Chinese market. However, its recent scandal of accounting fraud in China has greatly hurt the interests of American investors due to its listing in NASDAQ. See a news report at https://www.cnbc.com/2020/04/02/luckin-coffee-stock-plummets-after-investigation-finds-coo-fabricated-sales.html.

tion decreases illegal payments made by US-listed local firms who operate in industries with high regulatory entry barriers governed by weak legal institutions. Second, as a result of decreased bribery capacity, US-listed local firms operating in such challenging environments become less capable of generating revenues, and become more likely to reduce their short-term investment positions and exit the market. Third, as US-listed firms lose their competitiveness in the local market, other local firms unconstrained by FCPA oversight can obtain government contracts more cheaply, and are more incentivized to engage in corrupt exchanges to gain market share. Overall, the results demonstrate that FCPA scrutiny disrupts the corruption landscape in weakly institutionalized markets, discouraging exclusionary rent-seeking arrangements between scrutinized firms and the government while creating competitive advantages for unconstrained firms.

The results of this study extend Institution-Based View (IBV) of MNE strategies in two ways (Peng et al. 2009; Spencer and Gomez 2011; Rodriguez et al. 2005; Mellahi et al. 2016; Meyer et al. 2009). First, the findings point to the institutional spillover effects of transnational law enforcement. From an economic development perspective, transnational enforcement may reduce the aggregate supply of bribery contributions, thereby exerting a positive institutional externality on the local economy. Meanwhile, from a corporate strategy perspective, external legal intervention reduces the competitiveness of firms who carry heavier compliance burdens when competing in an already-demanding regulatory and legal environment. Therefore, globally-connected firms may experience negative spillover effects from transnational anti-bribery initiatives in their home market when competing with other unfettered local firms.

Second, the findings suggest that weak institutions susceptible to being unduly influenced may also be a source of competitive advantage for firms. Firms who can exert informal influence over weak institutions to generate favorable market outcomes are more competitive in many developing economies than firms with hands tied by stronger anti-bribery obligations. Corrupt rent-seeking arrangements, as an informal rights-protection

mechanism in developing countries, help local firms advance their business interests at the expense of their more regulated, globalized competitors.

4.2 Theory and Hypotheses

Transnational anti-corruption enforcement and local firms

The conventional research on transnational anti-corruption enforcement, in particular on the FCPA, has focused on its impact on transnational business activities, such as trade and FDI. The concern is that strong anti-foreign bribery regimes will hurt the performance of MNEs subject to higher integrity and compliance standards imposed by their home country institutions (Cuervo-Cazurra 2006, 2008). Therefore, a lack of a well-coordinated global enforcement efforts create an unlevel playing field where MNEs from OECD countries are put at a competitive disadvantage compared with MNEs from non-OECD countries (Krever 2007; Brewster 2017; Koehler 2015), especially in corrupt host countries (Chow 2014).

However, existing research has overlooked how indigenous, local firms in the host countries may respond to transnational anti-corruption sanctions against MNE targets in their countries of operation. This question is important because of the three reasons. First, indigenous firms in the developing world have grown to be highly competitive players, at least in their home markets. Local firms may be particularly adept at resorting to nonmarket strategies to compete with foreign firms. In many instances, U.S. firms are pressured to engage in illegal business practices, such as bribery, because the domestic competitors are gaining an edge by adopting such a strategy. Arbatskaya and Mialon (2018) use a game-theoretic model to show that that FCPA enforcement will encourage productive investments and deter bribery in highly corrupt countries only if it is applied to both U.S. firms and their competitors in the host market.

Second, the local bribery market is highly competitive when the rewards are high and

legal risks are low. Therefore, disruption of corrupt exchanges may significantly affect the competitive landscape, resulting in a redistribution of market shares and corporate welfare. Heavily-scrutinized firms, who can no longer survive in the host market after losing the capacity to make informal arrangements with the state, end up surrendering profitable opportunities to their under-regulated competitors. Beyond individual firms' strategic concerns, the overall welfare and development consequences of transnational legal interventions should be considered in evaluating the impact of the emergent global regime.

Third, in a globalized world, the business practices of indigenous firms whose operations are mainly conducted in their home countries may nevertheless have global implications. When the local firms are connected to global financial markets, such as through listing their shares in major stock exchanges, the interests of global investors and stakeholders are highly sensitive to the legality and performance of such firms' local operations, especially in uncertain and risky institutional environments. For instance, Braskem S.A is a major Brazilian petrochemical company whose shares are traded in the New York Stock Exchange. After the company's CEO was charged by US authorities with bribing Brazilian politicians, legislators, and SOE officials, the value of its stocks dropped sharply in the following weeks.[41]

For these reasons, it is important for scholars to turn our attention to how local firms respond to FCPA intervention although these firms are not directly targeted in a specific action. In the following sections, I argue that FCPA enforcement actions against MNE's bribery activities in targeted countries can provide strong deterrence against the bribery behavior of local, non-targeted firms.

[41]Braskem's stock prices (NASDAQ: BAK) plummeted immediately after February 26, 2019, the day when the CEO of Braskem S.A. was officially indicted. The stock prices of BAK during the time period can be obtained at `https://www.nasdaq.com/market-activity/stocks/bak`. The indictment document of the Department of Justice is available at `http://fcpa.stanford.edu/fcpac/documents/5000/003954.pdf`.

Deterrence from transnational anti-corruption enforcement in high-risk environments

As the most vigorously enforced transnational regulatory framework (Davis 2009; Transparency International 2016; OECD 2014, 2016), the FCPA gives the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) statutory jurisdictions over misconduct by firms listed in U.S. stock exchanges (Guide 2012). It means that, a firm headquartered or registered in a non-U.S. territory is also subject to FCPA oversight as long as it is utilizing the U.S. capital markets (i.e. the "issuers"). Therefore, the DOJ and SEC are able to claim extraterritorial jurisdiction over corporate practices in violation of the FCPA even if the illegal activity takes place in a non-U.S. country, e.g. the U.S.-listed firm's home country. Through its long-arm jurisdiction, transnational FCPA oversight can directly regulate the behavior of extraterritorial targets.

I argue that FCPA interventions can deter the bribery behavior of local firms who are not directly targeted but are under the law's jurisdiction. For example, if a firm headquartered in China is listed in the New York Stock Exchange, the firm will be more cautious not to pay bribes in China if a foreign firm operating in China is prosecuted for FCPA violations. The deterrence effect is the result of two characteristics of FCPA enforcement.

First, FCPA sanctions have become very costly for globally-connected companies to engage in corrupt exchanges (Perlman and Sykes 2018). The average monetary value of FCPA sanctions imposed on corporate offenders has significantly increased in recent years, from 89 million in 2008 to 200 million in 2018. The penalties constitute considerable financial burdens for MNEs and may even directly cripple the offender's business operations (Pacini 2012; Sivachenko 2013; Stevenson and Wagoner 2011). The Brazilian state-owned petroleum giant Petrobras was imposed a total monetary sanction of $1.78 billion in 2018,[42] while Walmart has also spent $907 million on FCPA-related compliance expenses since 2013.[43]. Corporate executives have also faced increasing individual lia-

[42]For details of the case, see a report at https://fcpablog.com/2018/09/27/petrobras-reaches-178-billion-fcpa-resolution/.

[43]See a report on the FCPA's impact on Walmart at https://mlexmarketinsight.com/insights-

bilities and served prison terms for their roles in foreign bribery schemes.[44] In addition, FCPA prosecutors often conduct "industry-wide sweeps" in which they target a particular industry and use information gained from one cooperating company to go after other companies in the same industry (Leibold 2014; Stevenson and Wagoner 2011). Costly and credible external regulatory pressure ties the hands of MNEs even in weakly institutionalized, bribery-prone countries (Kwok and Tadesse 2006).

Second, U.S. authorities have kept expanding multi-jurisdictional anti-corruption collaboration and coordination with their foreign counterparts (Willborn 2013; Samanta and Sanyal 2016). Attorneys from the DOJ and the SEC have been building an aligned multinational network of law enforcers with sophisticated legal tools to make it increasingly difficult to engage in foreign bribery with impunity (Dunn 2018). The SEC has always been negotiating Memorandums of Understanding (MOUs) with foreign governments in order to establish official channels of cooperation to facilitate obtaining documents from foreign companies (Bencivenga 1997). The DOJ has also signed Mutual Legal Assistance Treaties (MLATs) with foreign law enforcement agencies in order to facilitate its investigation (e.g., to obtain employee testimony (American Bar Association 2018)). The former Deputy Attorney General Rod Rosenstein also emphasized the DOJ's commitment to international cooperation with foreign partners to combat international corruption (Rosenstein 2017c).

Meanwhile, the deterrence effect is moderated by two factors. Not all globally-connected firms are equally exposed to transnational enforcement risks. Markets with significant risks of noncompliance have two key features: (1) high regulatory barriers to market entry; and (2) weak rule of law institutions. Market entry barriers create economic rents that have market distortion effects (McAfee et al. 2003; Klapper et al. 2006; Dreher and

center/editors-picks/anti-bribery-and-corruption/north-america/walmarts-$900-million-compliance-costs-caused-fcpa-probes-major-financial-impact

[44] See the summary of a landmark case where the president of a Miami company was sentenced to 15 years in prison at https://fcpablog.com/2017/09/29/former-fcpa-fugitive-sentenced-to-time-served/.

Gassebner 2013). One major source of market entry barrier is government regulations that create artificial obstacles for potential entrants to establish a new enterprise in an existing market (Djankov et al. 2002, 2008; Bertrand and Kramarz 2002; Black and Strahan 2001; Blanchard and Giavazzi 2003; McChesney 1987). The potential entrant is willing to pay the cost of overcoming the barrier if the streams of economic rents enjoyed by market incumbents are higher than the entry costs. At the same time, even if a host country has de jure restriction or prohibition of market access by certain firms, de facto implementation of the protectionist policies may be less categorical. The actual administration of market entry rules, and hence a firm's experienced corruption risk, is determined by the second factor: the quality of legal institutions. When the host country does not have a robust legal system to check the government's enforcement of formal statutes, firms will find it easier to circumvent regulatory restrictions, such as using bribery to obtain approvals to enter protected industries. Many developing economies have high market access barriers and regulations aimed to protect certain domestic industries, nominally for public welfare, strategic, or national security purposes. But many of the statutory restrictions are not categorical and are subject to flexible interpretation and implementation given the contingencies (Kirkegaard 2020). Therefore, weak judicial institutions may lead to lax or highly discretionary regulatory enforcement, which makes market access permissions more malleable and less clear-cut for firms capable of employing informal entry strategies.

As a result, in countries with high regulatory barriers to market entry and low qualities of legal institutions, firms are especially exposed to eternal liabilities for their illegal practices aimed at obtaining and protecting market opportunities and interests. Therefore, after a US-listed firms observes FCPA enforcement against an MNE's illegal behavior its own country of operation, the listed firm operating in such demanding and corruption-prone markets should raise caution and refrain from corrupt activities, knowing that it is vulnerable to the same legal liability even though it is not directly targeted this time.

Hypotheses 1a (H1a) *In countries with weak judicial institutions, FCPA enforcement decreases bribery payments made by US-listed local firms in high-barrier industries.*

As a corollary to **H1a**, firms discouraged from corrupt engagement with the government become less capable of navigating the high risk environment. When the formal regulatory restrictions remain high and the local judicial system cannot sufficiently protect investor rights and constrain government officials, firms will experience greater obstacles in daily operations and in obtaining financially rewarding opportunities, such as profitable government contracts. Consequently, their business performance worsens.

Hypotheses 1b (H1b) *In countries with weak judicial institutions, FCPA enforcement decreases the business performance of US-listed local firms in high-barrier industries.*

Transnational anti-corruption enforcement and the competitive landscape

For local firms who do not fall under the jurisdiction of the FCPA, external legal interventions create additional business opportunities. In a weakly institutionalized environment, firms compete to offer bribes to win lucrative contracts and market access privileges, such as operational licenses and permits for restricted industries. When major participants are deterred from participating in the bribery market, other firms who are not exposed to external legal liabilities will find it easier to capture the market share, and hence become more incentivized to engage in corrupt exchanges.

All else equal, as a subset of potential bribe-payers are legally cut off from restrictive industries, it will be easier and less expensive for other players to circumvent formal regulations and obtain exclusive deals through bribery. With fewer bidders to compete with, the remaining firms can make fewer informal payments to obtain the same amount of valuable contracts. As a result, holding constant their revenue streams, the unconstrained firms should make, on average, fewer bribery contributions than before the FCPA intervention. Meanwhile, the unfettered firms should be more incentivized to engage in corruption given that bribery has become more profitable than before when they compete

with more bribing contenders. In sum, external legal intervention has a chilling effect on the supply side of the bribery market and shifts the competitive landscape in favor of those local firms who do not face meaningful domestic or transnational legal oversight.

Corresponding to the FCPA's deterrence effects on the regulated firms, the disruption of the competitive landscape should be the most pronounced in market environments where regulatory discretion can be easily abused as a rent-seeking tool under weak legal restrictions. Firms still capable of manipulating the system can expand their access to exclusive, profiteering opportunities, at the expense of their more-regulated industry peers. Eventually, the US-listed local firms, unable to compete in markets with high entry barriers and weak judicial checks against bureaucratic malfeasance, will have to decrease their investments and exit the market. Similar to findings on MNEs' response strategies (Wrage and Wrage 2005), the more cautious US-listed firms will try to avoid investing in corrupt, high-risk markets and refrain from bidding for exclusive contracts.

It is important to note that, unlike previous research, this paper is not concerned with how FCPA enforcement against an MNE affects the responses of the targeted MNE or other MNEs in the targeted country. This study examines how FCPA enforcement against an MNE shapes the market and nonmarket strategies of other *domestic* firms operating in the same country as the targeted MNE, depending on whether the *domestic* firms are under FCPA jurisdiction or not.

In summary, the above dynamics should generate the following observable implications:

Hypotheses 2a (H2a) *In countries with weak judicial institutions, FCPA enforcement makes it easier for firms not under FCPA jurisdiction to obtain restrictive contracts through bribery in high-barrier industries.*

Hypotheses 2b (H2b) *In countries with weak judicial institutions, FCPA enforcement makes firms not under FCPA jurisdiction more likely to engage in bribery in high-barrier industries.*

Hypotheses 3 (H3) *In countries with weak judicial institutions, FCPA enforcement reduces*

the investments made by US-listed firms in high-barrier industries.

4.3 Data and Methods

I test the hypotheses using two different datasets on firm behavior and performance. To examine the effects of FCPA enforcement on local firms which are subject to FCPA regulations, I use the Compustat North America Database.[45] It is a database of U.S. and Canadian publicly-held companies which provides information on corporate fundamentals obtained from firms' Income Statement, Balance Sheet, Statement of Cash Flows, and supplemental data items (Standard&Poor's 2011). I focus on the subset of firms which are listed on U.S. stock markets with SEC filings but mainly operate in non-U.S. territories. There are in total 3282 unique firms that meet the geographic criteria of extraterritoriality, spanning a time period from 1950 to 2019. Although these firms' locations of operation are outside the U.S., they are under the jurisdiction of the FCPA because of their ties to U.S. financial markets (Guide 2012).

To analyze the effects of FCPA enforcement on firms not under the jurisdiction of the FCPA, I use the World Bank Enterprise Survey (WBES) dataset.[46] The surveys were administrated to business owners and top executives from a representative sample of firms in emerging economies and developing countries across all geographic regions, covering small, medium, and large companies. The respondents were asked questions about characteristics of the business environment including topics on corruption, regulations, and licensing. The dataset has adopted a uniform global methodology for survey implementation since 2006, covering over 160,000 firms across 145 host countries.[47] The survey data has been widely used by scholars, practitioners, and business leaders (Ayyagari et al. 2010), and is arguably the best survey data available that gauges a broad range of sensi-

[45] Accessed through the Wharton Research Data Services at `https://wrds-web.wharton.upenn.edu/wrds/query_forms/navigation.cfm?navId=83`.

[46] Available at `http://www.enterprisesurveys.org`.

[47] For detailed descriptions of the methodology, see `http://www.enterprisesurveys.org/methodology`.

tive topics related to the business environment worldwide. The surveyed firms in this dataset are mostly domestic firms with little to no foreign ownership. 87.7% of the surveyed firms have zero foreign ownership, and the average foreign ownership percentage is only 8%. Therefore, it is safe to assume that the firms in the WBES dataset are mostly not under the FCPA's oversight. In the empirical analysis, I also control for firms' foreign ownership as a robustness check.

Ideally, this study requires a uniform dataset that includes relevant information for both firms listed in the U.S. and firms that are not. But information about the business activities of private firms cross-nationally is very difficult to obtain, especially regarding their illegal practices. Therefore, I use two separate sources of firm-level data to show that, as a whole, the empirical patterns are consistent with the hypotheses and provide strong support for the theory.

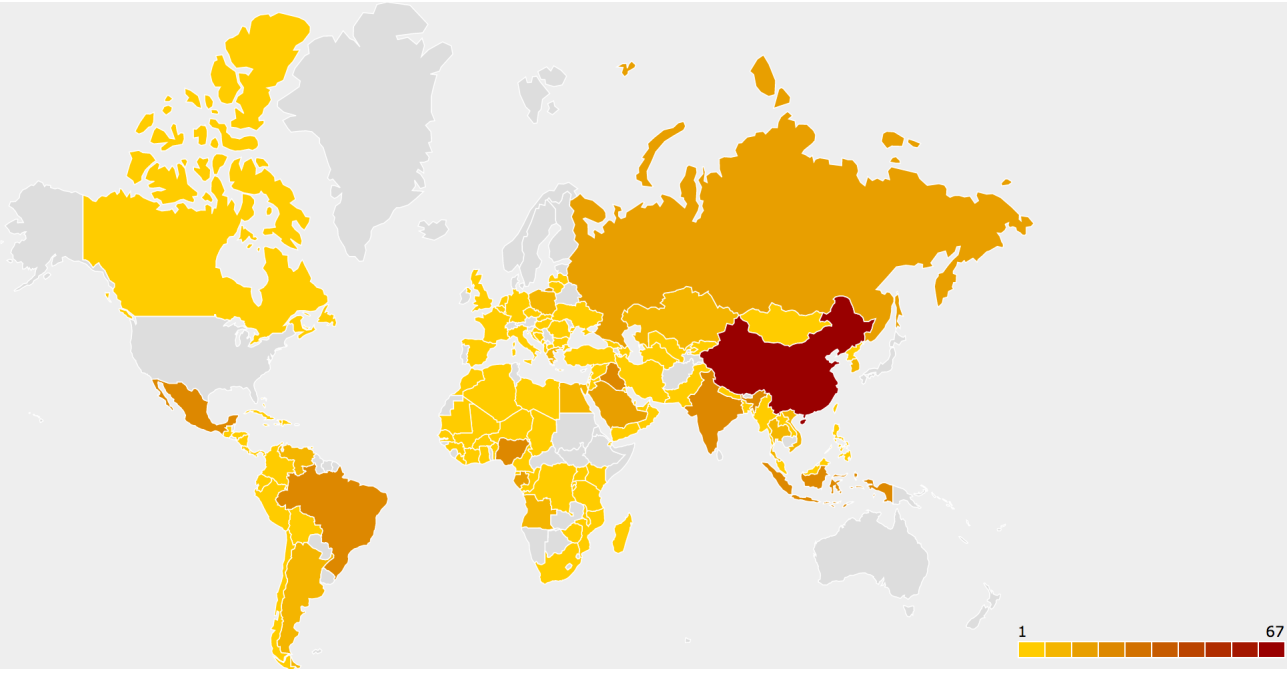
To measure transnational anti-corruption enforcement, I construct an original dataset of the enforcement actions of the FCPA using publicly available information published by the DOJ and the SEC.[48] In addition to identifying the occurrence of FCPA investigation, prosecution, or sanction, I also count the total number of enforcement actions as well as the total number of related enforcement actions for each country-year unit. An enforcement action is a proceeding that is brought by the SEC, the DOJ or both against individuals or entities based on violations of the FCPA or FCPA-related misconduct in a certain country. A related enforcement action is a proceeding that raises FCPA-related claims but does not allege a direct violation of the FCPA itself, such as money laundry and tax evasion. Enforcement actions are "related" if they share a common locality, time period, and bribery scheme.[49] The dataset covers a total of 991 enforcement actions and 3149 related enforcement actions from 1977 to 2017 against MNEs' misconduct in 112 countries. 1977 is the year when the FCPA was enacted. Figure 4.1 shows the geographic

[48]The Foreign Corrupt Practices Act Clearinghouse (FCPAC) at the Stanford Law School also maintains a database of all SEC and DOJ enforcement actions related to the FCPA, accessible at `http://fcpa.stanford.edu/enforcement-actions.html`.

[49]See more details at Clearinghouse (2018).

distribution of FCPA enforcement actions.

Figure 4.1:
Accumulative Distribution of FCPA Enforcement Actions (1977-2017)



Data Source: The Foreign Corrupt Practices Act Clearinghouse (FCPAP)

4.3.1 Dependent variables

To measure the outcome for H1a, I use the accounting entry of "Selling, General and Administrative (SGA) expenses" obtained from the Compustat database. It has been always difficult to directly measure corrupt payments made by firms. However, recent research has established that firms frequently use the SGA expenses account to fraudulently document and conceal various forms of illicit payments to government officials (Howard Scheck CPA 2019; Lawson et al. 2019). In many instances of FCPA violations, firms make commission payments to government procurement officials in order to boost the sales of their products, and then record such payments on firms' books and records as "selling expenses."[50] By looking at how firms' SGA expenses change after anti-corruption actions,

[50]See one example from the DOJ information at `https://www.justice.gov/criminal-fraud/case/united-states-v-dpc-tianjin-co-ltd-court-docket-number-05-cr-482`.

holding other factors constant, I am able to detect and measure shifts in firms' bribery behavior.

To measure firms' business performance in H1b, I use a firm's total revenue standardized by its firm size as measured by total assets. This measurement captures the relative amount of business opportunities obtained by a firm given its capacity. As a comparison, I use the common metric of Return on Assets (ROA) to measure firm profitability. ROA, defined as net income divided by total assets, captures firms' ability to generate profits instead of gross financial rewards. If the theory is correct, FCPA deterrence should be more effective in impeding firms' ability to generate aggregate revenue, as a result of business opportunities lost, than in reducing firms' profitability. Both indicators are provided by the Compustat database.

The dependent variables for H2a and H2b are obtained from the WBES. For H2a, I use firm responses to the survey question on corruption in securing government contracts, "*[w]hen establishments like this one do business with the government, what percent of the contract value would be typically paid in informal payments or gifts to secure the contract?*" The percentage of contract value as paid in bribery can capture how expensive it is for firms to "buy" such government contracts through corrupt transactions, i.e. the relative price of bribes. For H2b, I use responses to the survey question on bribery payments made to public officials in general, "*[i]t is said that establishments are sometimes required to make gifts or informal payments to public officials to 'get things done' with regard to customs, taxes, licenses, regulations, services etc. On average, what estimated total annual value do establishments like this one pay in informal payments or gifts to public officials for this purpose?*" I create a binary indicator for whether the respondent firm reports positive amounts of bribery payments (i.e. whether the value is greater than zero). This variable captures whether firms are incentivized to engage in bribery activities at all. I also use the original monetary value as an additional test for the total amount of bribery payments.

To test H2c, I use firms' short-term investment positions, as obtained from Compustat.

I expect that, after FCPA intervention hampers the ability of US-listed firms to maintain their market share and profit from their existing assets and investments in high-barrier industries, these firms should be more likely to dispose of their assets and decrease investments in such risky environments. Therefore, firms' adjustment of their short-term investment positions will reflect such a risk-mitigation behavior and a shift in investment strategy in the immediate aftermath of a legal shock.

4.3.2 Independent variables

To measure the treatment of FCPA enforcement, I use three measurements with different degrees of intensity: (1) a binary indicator of the occurrence of FCPA enforcement (*Occurence*); (2) the total number of enforcement actions (*annual count*); and (3) the total number of related enforcement actions (*annual related*), for a given country-year unit of observation. I use one-year lag for all three treatment variables. The occurrence of FCPA enforcement in a country, compared with its non-presence, should make the most impact on firm behavior in the following year. Each additional enforcement action should have weaker effects, given that the strongest deterrence is sent by the signal that FCPA intervention could actually occur against targets in a particular country. The third treatment measurement is expected to have the weakest effect. A related enforcement action sends a vague legal signal to firms as it does not directly involve foreign bribery offences.

There are two key mediating factors in the hypotheses: (1) the degree of regulatory barriers to entry; and (2) the quality of judicial institutions. I use the OECD FDI Regulatory Restrictiveness Index to measure de jure regulatory restrictions at the industry-country level of the targeted countries. The index measures statutory restrictions on foreign direct investment across a variety of economic sectors. According to its description, the index gauges the restrictiveness of a country's FDI rules by looking at the four main types of restrictions on FDI: 1) Foreign equity limitations; 2) Discriminatory screening or approval mechanisms; 3) Restrictions on the employment of foreigners as key personnel;

and 4) Other operational restrictions, including restrictions on establishment of branches, on capital repatriation, and on land ownership by foreign-owned enterprises.[51] The index description also explicitly acknowledges that the index *does not* capture how formal FDI rules are implemented de facto. Therefore, the index only measures the formal restrictions as stipulated in written rules and statutes. To better capture the underlying theoretical construct, the analysis mainly uses restriction scores for type (2) (i.e. restrictions related to screening and approval mechanisms).[52]

I use the "judicial constraints on the executive index" from the Varieties of Democracy (V-Dem) Project to measure the strength of a country's judicial system (Coppedge et al. 2019). The V-Dem judicial constraints index is formed by taking the point estimates from a Bayesian factor analysis model of several other V-Dem indicators, including "executive respects constitution", "compliance with judiciary", "compliance with high court", "high court independence", and "lower court independence" (Coppedge et al. 2019). This indicator provides the most comprehensive measurement of a court's de facto ability to check executive malfeasance. I use the median value of this index to split the sample into two subsets: countries with judicial constraints indices above the median level and countries falling below the median level. The analysis focuses on the subsample of countries with below-median judicial constraints indices, i.e. the countries considered to have weak judicial institutions.

Combining these two conditioning variables, I am able to examine the market environments with the exact characteristics that this study aims to investigate: environments where weak judicial constraints against misuse of government power render formal market access regulations subject to arbitrary interpretation and administration by the implementing authorities, which creates rent-seeking opportunities for firms and officials.

[51]The dataset and its description is available at `https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#`.

[52]The codebook mentions specifically that, "[f]or screening, more so than for other policies covering FDI, the degree of restrictiveness of measures in place can vary greatly depending on how rules are implemented" (Kalinova et al. 2010).

The higher regulatory barriers to market entry, the stronger rent-seeking incentives, and hence the greater likelihood that the firms operating in such industries are not complying with relevant laws and regulations. If such firms are under FCPA jurisdiction, they should have the greatest exposure to external legal risks.

4.3.3 Control variables

Considering that FCPA investigations and prosecutions are not randomly conducted, I control for a battery of country-level as well as firm-level variables that may affect both the treatment and the outcome variables.

At the country level, a major confounding variable could be the level of economic development. I control for both GDP per capita and its growth rate. It is possible that firms operating in more developed countries (countries with higher GDP per capita) are less likely to attract the attention of US prosecutors and also less likely to engage in corruption. It is also possible fast fast-growing economies create more economic opportunities and hence more commercial transactions, which invites more FCPA scrutiny. Another concern about endogeneity is the existing level of corruption of a country. Firms within the purview of the DOJ and the SEC may be more likely to be on the authorities' radar if the firms are operating in more corrupt countries. These firms may also be more prepared to cope with external anti-corruption inquiries. I also control for the market size of a country, as measured by its total population. Countries with larger markets have greater profit potentials, which incentivizes firms to use every means possible to access the market. FCPA officials are also generally aware that large emerging markets are hotbeds for corrupt activities (Stern and Li 2016; Spalding 2010). To address the concern that some countries are more exposed to cross-border investment activities than other relatively closed economies, which implies different underlying risks of transnational legal exposure, I control for a country's inward FDI flows as a percentage of its total GDP. The corruption levels data comes from the V-Dem dataset. All other country-level control

variables are obtained from the World Economics and Politics (WEP) Dataverse which offers 87 commonly used data sources in the field of international and comparative political economy (Graham and Tucker 2017).

To test hypotheses H1a, H1b, and H2c that focus on US-listed firms, I control for a set of firm-level characteristics that may affect their probabilities of being targeted by FCPA actions and the outcomes of interest. First, larger firms tend to conduct more economic transactions and have more extensive engagement with a wider variety of public and private stakeholders, which increases their noncompliance risks. I use the value of a firm's total assets to control for its size and potential local interactions. I also include a firm's total sales, as larger revenue streams indicate more contact between a firm and its customer base. Second, in many countries taxation processes entail significant risks of state expropriation and predation (Kesternich and Schnitzer 2010). As a result, taxation has become a significant source of corruption risk. I control for a firm's total income taxes payable to account for the possibility that firms facing greater tax liabilities are more likely to commit bribery. Third, firms with more fixed assets, such as property, plant and equipment, are more physically embedded in the local economy. They cannot easily retrieve their investments due to low asset mobility. Therefore, they may have stronger incentives to maintain good relationships with government authorities to protect and maintain their business operations (Wright and Zhu 2018). I control for the fixed assets ratio of a firm, which is the value of fixed assets that a firm possesses divided by its total assets. Finally, there may be time-invariant characteristics of industries that predispose them to higher noncompliance risks. For example, the extractive industry (e.g. oil and gas), the healthcare industry, and the financial industry are especially vulnerable to corrupt influences due to their high profitability, difficulties in oversight, and technical complexities. Therefore, I include industry dummies for each industry that a firm is operating in. These controls are all obtained from the Compustat dataset.

To test hypotheses H2a and H2b that focus on firms not under FCPA jurisdiction, I

include the same set of country-level control variables. At the firm level, I control for a firm's total annual sales as well as its industry indicator, for the same reasons as for the analysis on US-listed firms. I also control for other potential confounders that may affect firms' relationships with state actors and their competitive positions in the market. These variables all come from the WBES. First, I control for "senior management time spent on dealing with regulations." Firms that have more daily interactions with regulators and officials may build more personal ties with them, and thus enjoy informal advantages in market competitions. But this also exposes such firms to more corruption risks. Second, I control for the percentage of government/state ownership in a firm. Firms with higher state ownership may enjoy special policy treatments and various regulatory and administrative privileges. But the roles played by the government officials serving in state-owned enterprises may raise conflict-of-interest concerns as they need to execute sensitive duties as both public servants and corporate executives. Hence, state ownership needs to be accounted for as an underlying risk factor. In robustness checks I also control for the percentage of foreign ownership to account for potential variation in the degrees of external oversight. Finally, I control for the total number of employees of a firm. Firms who employ more workers are politically and economically salient actors in the locality. Their market influence and competitive positions may be relatively insulated from the compliance challenges that other ordinary market participants experience.

Table 4.1 provides descriptive information on the variables used in the analysis.

4.3.4 Econometric approach

I use Ordinary Least Squares (OLS) regression models to test the hypotheses. I lag all treatment variables by one year. In additional robustness checks I also lag the treatment variabls up to three years, and the results remain robust.[53] Given that some of the variables have very skewed distributions, all continuous independent and dependent vari-

[53]The additional results are available upon request.

Table 4.1: Descriptive Statistics

	Min	Max	Mean	Median	Unit
Country-level					
(1) FCPA occurrence	0	1	0.256	0	country-year
(2) FCPA count	0	21	1.286	0	country-year
(3) FCPA related count	0	94	3.111	0	country-year
(4) Industrial restrictiveness	0	0.348	0.023	0	industry-country-year
(5) Judicial constraints index	0.005	0.992	0.517	0.514	country-year
(6) GDP per capita	115.4	145221.2	9838.5	3249.0	country-year (USD)
(7) Corruption levels (V-Dem)	0.009	0.946	0.441	0.438	country-year
(8) FDI as % of GDP	-82.892	451.716	3.729	1.539	country-year
(9) GDP growth rate (%)	-64.047	149.973	3.946	3.966	country-year
(10)Population	0.004	1371	26.02	4.803	country-year (million)
(11) Natural resource rents (% of GDP)	0	89.166	7.129	2.312	country-year
Firm-level					
(12) SG&A expenses	-67.91	48884.62	1064.17	46.13	firm-year (million USD)
(13) Total sales	-15009.3	475793.5	6621.2	296.1	firm-year (million USD)
(14) Total assets	0	3771200	39850	674	firm-year (million USD)
(15) Income taxes payable	-66.000	11183.430	100.371	0.537	firm-year (million USD)
(16) Fixed assets stocks	0	546691.8	6335.9	141.6	firm-year (million USD)
(14) Revenue	-15009.3	475793.5	6982.8	358.5	firm-year (million USD)
(15) Net income	-38118.50	98806.04	402.98	9.87	firm-year (million USD)
(16) Pretax income	-59451.09	55660.00	673.44	17.86	firm-year (million USD)
(17) Total informal payments	0	10,000	13.18	0	firm-year (million USD)
(18) Bribery-contract value ratio	0	100	2.51	0	firm-year (%)
(19) Time spent on dealing with regulations	0	100	10.75	3.00	firm-year (%)
(20) State ownership	0	100	0.685	0	firm-year (%)
(21) Foreign ownership	0	100	7.958	0	firm-year (%)
(22) Number of employees	0	1,673,000	107.4	20	firm-year (one)
(23) Short-term investments	0	621,093.9	2731.8	1.2	firm-year (million USD)

ables are standardized to satisfy the normality assumption of OLS regression.

In addition to the industry fixed effects included in all regression models, I also add targeted-country fixed effects and enforcement-year fixed effects. This addresses the concern that diplomatic relations between the U.S. and the targeted countries, including economic, political, and military ties and shared memberships in international organizations, may drive enforcement decisions of US authorities (Nadelmann 2010). An additional concern is that the intensity of FCPA enforcement varies significantly year-by-year, especially comparing its frequency in recent years with that of the earlier years since the statute's enactment. The fixed effects models will make sure that the estimated effects of FCPA actions are not driven by any unobserved country-specific or year-specific factors. The

standard errors are clustered by country, considering that the observed outcomes of individual firms located in the same country might be correlated.

4.4 Results

Table 4.2 presents the results for testing Hypothesis 1a. From Model (1) to Model (3), I use three different ways to measure the treatment of FCPA intervention. Model (1) uses the binary indicator of the occurrences of FCPA enforcement against targets in a country for a given year. Model (2) uses the total count of enforcement actions against targets in a country for a given year. Model (3) uses the total count of related enforcement actions against targets in a country for a given year. In Model (4), I control for the ratio of a firm's fixed assets over its total assets, as a way to account for a firm's asset mobility which implies the underlying expropriation risk and a firm's relative bargaining power vis-a-vis the state. I also control for the total amount of income taxes payable in order to parse out firm-level heterogeneity in fraudulent behavior driven by incentives of mitigating tax liabilities instead of regulatory rent-seeking.

The analyses are all conducted using the subsample of country-year observations which have judicial constraints indices below the median value of the full sample. The results show significant and negative coefficients for the interactive terms between the three treatment variables and the conditioning variable of industrial restrictiveness. The *Occurrence* treatment has the largest interactive effect, followed by *Annual count* and then *Annual count of related actions*. The order of effect size is as expected by the treatment's theoretical construct. The strongest form of deterrence is sent by the occurrence of FCPA intervention in a country-year, signalling the ability of US authorities to extraterritorially sanction foreign bribery, and each additional enforcement action sends a weaker signal on average. A related enforcement action provides the weakest form of deterrence against corrupt exchanges as it does not directly target bribery but still suggests the capacity of US legal apparatus to transnationally regulate corporate misconduct. The effect sizes are

Table 4.2: FCPA Enforcement Deters Corrupt Payments

Dependent Variable:	**SG&A Expenses**			
	(1)	(2)	(3)	(4)
Lagged treatment variables				
Occurrence	0.010			0.023
	(0.044)			(0.058)
Annual count		0.001		
		(0.006)		
Annual count of related actions			−0.000	
			(0.002)	
Industrial restrictiveness	0.064	0.051	0.048	0.067
	(0.056)	(0.055)	(0.053)	(0.050)
Occurrence ×	**-0.089[.006]**			**-0.051[.084]**
Industrial Restrictiveness	**(0.033)**			**(0.030)**
Annual count ×		**-0.014[.019]**		
Industrial Restrictiveness		**(0.006)**		
Annual count of related actions ×			**-0.003[.044]**	
Industrial Restrictiveness			**(0.002)**	
GDP per capita	−0.497[.024]	−0.513[.033]	−0.552[.021]	−0.438[0.060]
	(0.221)	(0.241)	(0.240)	(0.232)
Corruption levels	0.228	0.149	0.117	0.415
	(0.630)	(0.610)	(0.600)	(0.712)
Total sales	0.584[.013]	0.584[.013]	0.584[.013]	0.430[.029]
	(0.235)	(0.235)	(0.236)	(0.198)
Total assets	−0.034	−0.034	−0.033	
	(0.039)	(0.040)	(0.040)	
FDI as %	0.020	0.021	0.022	0.022
of GDP	(0.021)	(0.019)	(0.020)	(0.020)
GDP growth rate	0.061[.033]	0.048[.076]	0.049[.072]	0.043
	(0.029)	(0.027)	(0.027)	(0.029)
Population	−0.153	−0.186	−0.347	−0.274
	(0.480)	(0.455)	(0.453)	(0.312)
Total income taxes payable				0.252[006]
				(0.092)
Fixed assets ratio				0.028
				(0.033)
Industry FEs			✓	
Country and Year FEs			✓	
Adj. R^2	0.664	0.664	0.664	0.709
Num. obs.	3313	3313	3313	3060

All models are estimated using OLS regressions. Robust standard errors clustered within country. P-values for the interactive terms and other variables if below 0.1 are reported in brackets.

also substantial. At the mean level of industrial restrictiveness index, FCPA occurrence decreases SG&A expenses by $207 million. A one-standard-deviation increase of the industrial restrictiveness index increases the reduction of SG&A expenses caused by FCPA occurrence by about $258 million on average, holding constant all control variables. For each additional enforcement action, FCPA intervention reduces SG&A expenses by about $32 million at the mean level of industrial restrictiveness, and the reduction is $7 million for each additional related action.

The results for the control variables are also consistent with existing understandings of corrupt behavior. Higher GDP per capital is associated with lower SG&A expenses, which implies that, on average, firms in more developed economies are less likely to engage in corruption. Meanwhile, corrupt environments breed corrupt behavior, as shown by corruption levels being positively associated with SG&A expenses, although not at statistically significant levels. Total sales volumes are strongly correlated with SG&A expenses, which suggests that the residual variations in the dependent variable cannot be explained by normal operational expenses arising from ordinary business activities. The fact that, after controlling for sales volume, an anti-bribery legal instrument still has such a significant impact on SG&A expenses lends credibility to the claim that this accounting category is a valid proxy for corrupt payments and that FCPA enforcement deters bribery behavior by firms under its jurisdiction.

To examine Hypothesis 1b, Table 4.3 assesses the impact of FCPA enforcement on the business performance of US-listed firms, under the condition that corrupt exchanges have been discouraged. Models (1) to (3) use a firm's total revenue standardized by its total assets as a measurement of its performance. Across three model specifications, results consistently indicate that FCPA occurrence significantly decreases the performance of firms under FCPA jurisdiction in highly restricted industries. Model (2) adds fixed assets ratio and income tax liabilities as control variables. Model (3) uses the total value of fixed assets instead of fixed assets ratio to account for asset mobility and underlying expropri-

ation hazards. The coefficients of the three interactive terms remain consistently negative and significant. The results also correspond to the outcomes regarding Hypothesis 1a, as shown above. Meanwhile, I do not find that FCPA occurrence significantly hurts firms' profitability. Models (4) uses the net income divided total assets (ROA) as the conventional indicator of financial performance. Model (5) uses pretax income, which is net income before taxes are subtracted, divided by total assets as an additional test. The findings show that the effect sizes are smaller and the uncertainty of the estimates is larger compared with Models (1) to (3). The results are still consistent with the proposed theoretical mechanism because revenue volumes can better capture a firm's obtained business opportunities in restricted industries. Reduced revenues does not necessarily lead to reduced profitability, especially given that bribery expenses have also gone down.

Tables 4.4 and 4.5 provide the analyses to test Hypotheses 2a and 2b regarding the FCPA's impact on firms not under the law's jurisdiction. Results in Table 4.4 show that government contracts in more restricted industries become less costly to bribe as a result of FCPA enforcement. In industries with high regulatory barriers to entry, firms can make fewer bribery payments to obtain the same value of government contrasts, in the aftermath of FCPA intervention that has been shown to deter bribery payments by US-listed firms. The results are robust to three different ways of measuring the FCPA treatment, with effect sizes differing across the measurements as expected. The findings are also robust to a comprehensive set of firm-level and country-level control variables. Noticeably, firms with higher sales volumes pay fewer bribes for government contracts, which is in line with existing wisdom that larger, economically-more-influential firms tend to have greater bargaining power vis-a-vis the government. Firms with more state-ownership also obtain cheaper government contract via bribery. Model (4) controls for foreign ownership to account for firms' different degrees of external legal exposure to foreign regulations and laws. The result remains robust, which is also unsurprising given that 88% of the surveyed firms have zero foreign ownership.

Table 4.3: FCPA Enforcement Reduces Business Opportunities

Dependent Variable:	**Performance**				
		$\frac{Revenue}{Total\ Assets}$		$\frac{Net\ Income}{Total\ Assets}$	$\frac{Pretax\ Income}{Total\ Assets}$
	(1)	(2)	(3)	(4)	(5)
Occurrence (lagged)	−0.013	−0.002	−0.018	−0.015	−0.015
	(0.012)	(0.013)	(0.013)	(0.025)	(0.025)
Industrial restrictiveness	0.027	0.022	0.022	−0.025	−0.025
	(0.018)	(0.017)	(0.019)	(0.023)	(0.023)
Occurrence ×	**-0.028[.001]**	**-0.021[.075]**	**-0.035[.000]**	**-0.015[.265]**	**-0.017[.197]**
Industrial Restrictiveness	**(0.009)**	**(0.012)**	**(0.009)**	**(0.013)**	**(0.013)**
GDP per capita	0.041	0.041	0.019	0.090	0.094
	(0.037)	(0.042)	(0.038)	(0.093)	(0.094)
Corruption levels	−0.326[.085]	−0.339[.038]	−0.322[.079]	0.093	0.077
	(0.189)	(0.163)	(0.184)	(0.100)	(0.101)
Total sales	0.017[.000]	0.013[.000]	0.049[.000]	0.007[.002]	0.008[.002]
	(0.002)	(0.003)	(0.011)	(0.002)	(0.003)
Total assets	−0.017[.018]		−0.191[.000]		
	(0.007)		(0.031)		
FDI as %	−0.004	−0.002	−0.003	−0.001	−0.002
of GDP	(0.004)	(0.004)	(0.005)	(0.003)	(0.003)
GDP growth rate	0.006	0.009	0.009	−0.026	−0.026
	0.008	0.010	0.010	(0.020)	(0.020)
Population	0.312	0.241	0.253	0.012	0.031
	(0.232)	(0.238)	(0.239)	(0.229)	(0.226)
Total income taxes payable		−0.006	0.002	0.005	0.005
		(0.007)	(0.006)	(0.003)	(0.004)
Fixed assets ratio		0.042[.016]		−0.046[.084]	−0.051[.079]
		(0.017)		(0.027)	(0.029)
Fixed assets value			−0.008[.047]		
			(0.004)		
Industry FEs			✓		
Country and Year FEs			✓		
Adj. R^2	0.022	0.020	0.019	0.016	0.016
Num. obs.	3595	3333	3333	3333	3333

All models are estimated using OLS regressions. Robust standard errors clustered within country.
P-values for the interactive terms and other variables if below 0.1 are reported in brackets.

In Table 4.5, I examine how FCPA enforcement affects the unregulated firms' incentives to bribe. Results from Models (1) to (3) indicate that FCPA actions cause these firms to significantly more likely to commit bribery, especially in the more restricted industries. For an industry with the mean level of industrial restrictiveness, FCPA occurrence makes an unregulated firm 3.5 percentage points more likely to commit bribery, and the increase ranges from 8.8 to 17.6 percentage points for industries in the fourth quartile of industrial restrictiveness index. Meanwhile, Model (4) suggests that FCPA enforcement does not necessarily make firms pay higher amounts of bribery, in terms of total monetary values. The interactive coefficient is negative and insignificant. This is consistent with the findings that, although firms are more incentivized to commit acts of bribery, they are now paying fewer bribes in each corrupt transaction. Therefore, the impact of FCPA enforcement on the aggregate amounts of bribery payments seems to be negative, although evidence is not yet conclusive. Overall, the empirical patterns provide strong support for H2a and H2b.

Table 4.6 examines H3 regarding shifts in the investment behavior of US-listed firms, and contrasts the results from the subsample of countries under weak judiciaries with the full sample of countries as well as the subsample of countries governed by strong judiciaries. Models (1) to (3) present the analyses on the subset of countries with below-the-median judicial constraints scores. Considering that firms with larger assets tend to have more investment assets to dispose of, all models also control for firms' total assets. The results indicate that firms under FCPA deterrence significantly reduce their short-term investment positions in the more restricted industries. For firms operating in an industry with an average industrial restrictiveness index under a weak domestic judiciary, the occurrence of FCPA intervention decreases short-term investments by $\$301$ million for the next year, which is further reduced by $\$376$ million if the restrictiveness index increases additionally by one standard deviation. Again, the effect sizes across the three measurements of the FCPA treatment demonstrate an expected pattern of descending magnitude.

Table 4.4: FCPA Enforcement Helps Unregulated Firms Obtain Contracts

Dependent Variable:	**Bribery Price of Government Contract**			
	(1)	(2)	(3)	(4)
Lagged treatment variables				
Occurrence	0.020			0.012
	(0.026)			(0.027)
Annual count		0.034[.004]		
		(0.012)		
Annual count of related actions			0.018[.000]	
			(0.005)	
Industrial restrictiveness	0.023	−0.011	−0.019	0.029
	(0.030)	(0.070)	(0.068)	(0.024)
Occurrence ×	**-0.142[.000]**			**-0.152[.000]**
Industrial restrictiveness	**(0.025)**			**(0.021)**
Annual count ×		**-0.020[.028]**		
Industrial restrictiveness		**(0.009)**		
Annual count of related actions ×			**-0.007[.031]**	
Industrial restrictiveness			**(0.003)**	
Total sales	−2.435[.000]	−2.373[.000]	−2.373[.000]	−2.464[.000]
	(0.603)	(0.591)	(0.590)	(0.634)
Interactions	0.041	0.041[.098]	0.041[.098]	0.042
with regulators	(0.025)	(0.025)	(0.025)	(0.025)
State ownership	−0.003[.060]	−0.003[.057]	−0.003[.057]	
	(0.002)	(0.002)	(0.002)	
Foreign ownership				0.001[.042]
				(0.001)
Number of	−0.007[.087]	−0.007[.066]	−0.007[.066]	−0.008[.043]
employees	(0.004)	(0.004)	(0.004)	(0.004)
GDP per capita	−0.379[.000]	−0.389[.000]	−0.388[.000]	−0.379[.000]
	(0.040)	(0.079)	(0.075)	(0.036)
Corruption levels	3.400[.000]	3.456[.000]	3.441[.000]	3.465[.000]
	(0.340)	(0.611)	(0.576)	(0.296)
FDI as %	0.124	0.015	−0.011	0.124
of GDP	(0.102)	(0.232)	(0.226)	(0.080)
GDP growth rate	−0.503[.000]	−0.376[.044]	−0.342[.066]	−0.504[.000]
	(0.074)	(0.187)	(0.186)	(0.050)
Population	0.194[.000]	0.129[.006]	0.097[.063]	0.200[.000]
	(0.017)	(0.046)	(0.052)	(0.018)
Industry FEs			✓	
Country and Year FEs			✓	
Adj. R^2	0.093	0.093	0.093	0.092
Num. obs.	1325	1325	1325	1326

All models are estimated using OLS regressions. Robust standard errors clustered within country. P-values for the interactive terms and other variables if below 0.1 are reported in brackets.

Table 4.5: FCPA Enforcement Incentivizes Bribery by Unregulated Firms

Dependent Variable:	**Whether bribes were paid**			Total bribery (mil$)
	(1)	(2)	(3)	(4)
Lagged treatment variables				
Occurrence	1.184[.000]			1.047[.000]
	(0.035)			(0.255)
Annual count		0.515[.000]		
		(0.015)		
Annual count of related actions			0.249[.000]	
			(0.007)	
Industrial restrictiveness	−0.037	−0.016	−0.015	0.075
	(0.041)	(0.035)	(0.035)	(0.142)
Occurrence ×	**0.056[.035]**			**-0.182[.469]**
Industrial restrictiveness	**(0.026)**			**(0.251)**
Annual count ×		**0.003[.013]**		
Industrial restrictiveness		**(0.001)**		
Annual count of related actions ×			**0.001[.013]**	
Industrial restrictiveness			**(0.001)**	
Total sales	0.003	−0.001	−0.001	35.426[.018]
	(0.883)	(0.884)	(0.884)	(15.016)
Interactions	−0.021	−0.021	−0.021	0.058
with regulators	(0.023)	(0.023)	(0.023)	(0.055)
State ownership	−0.001[.000]	−0.001[.000]	−0.001[.000]	0.001
	(0.000)	(0.000)	(0.000)	(0.001)
Number of	−0.005	−0.005	−0.005	0.004
employees	(0.006)	(0.006)	(0.006)	(0.018)
GDP per capita	−0.189[.000]	−0.130[.009]	0.011	0.044
	(0.050)	(0.049)	(0.052)	(0.210)
Corruption levels	1.015[.014]	0.393	−0.838[.055]	−0.679
	(0.414)	(0.412)	(0.437)	(1.656)
FDI as %	−0.670[.000]	−0.702[.000]	−0.725[.000]	−0.640
of GDP	(0.139)	(0.120)	(0.118)	(0.479)
GDP growth rate	0.898[.000]	0.989[.000]	1.214[.000]	0.985[.005]
	(0.106)	(0.082)	(0.079)	(0.349)
Population	−0.434[.000]	−1.333[.000]	−1.689[.000]	−0.420[.002]
	(0.018)	(0.039)	(0.050)	(0.135)
Industry FEs			✓	
Country and Year FEs			✓	
Adj. R^2	0.507	0.507	0.507	0.024
Num. obs.	799	799	799	725

All models are estimated using OLS regressions. Robust standard errors clustered within country.
P-values for the interactive terms and other variables if below 0.1 are reported in brackets.

Models (4) and (5) provide additional evidence for H3 by showing that FCPA intervention does not affect the domestic competitive landscape when the domestic judicial institutions are strong enough to constrain government behavior. Model (4) shows that, across the full sample of countries, FCPA deterrence does not have a discernible effect on short-term investment positions, with a coefficient estimate indistinguishable from zero. In Model (5), I restrict the sample to only countries with judicial constraint scores above the first quartile level of the full sample.[54] Similar to the result in Model (4), the external FCPA intervention does not provide an institutional subsidy effect when the domestic judiciaries themselves are robust enough to check executive malfeasance. If anything, a signal of FCPA scrutiny seems to encourage regulated firms to increase short-term investments in countries governed by strong rule of law institutions, in contrast to the findings from the analyses on the subsample with weak judicial systems.

Figure 4.2 visualizes the differential impact of FCPA scrutiny on the short-term investment behavior of US-listed firms operating in weakly institutionalized environments versus better-governed environments. The upper and lower lines indicate 95% confidence intervals around the point estimates. The figure clearly shows that FCPA deterrence causes changes in short-term investment patterns, but the shifts are different depending on the institutional context. It is noteworthy that the FCPA's impact is only noticeably felt among firms operating in industries with high regulatory restrictions on market entry while under weak judicial constraints. The institutional spillover effects of FCPA legal intervention is not as pronounced in other market environments.

[54]There are not enough FCPA enforcement actions targeting firms in countries with above-median levels of judicial constraints scores. I cannot conduct the same analysis using the same model on such a subsample. Therefore, I restrict the sample only to countries above the first quartile score, which have sufficient FCPA interventions.

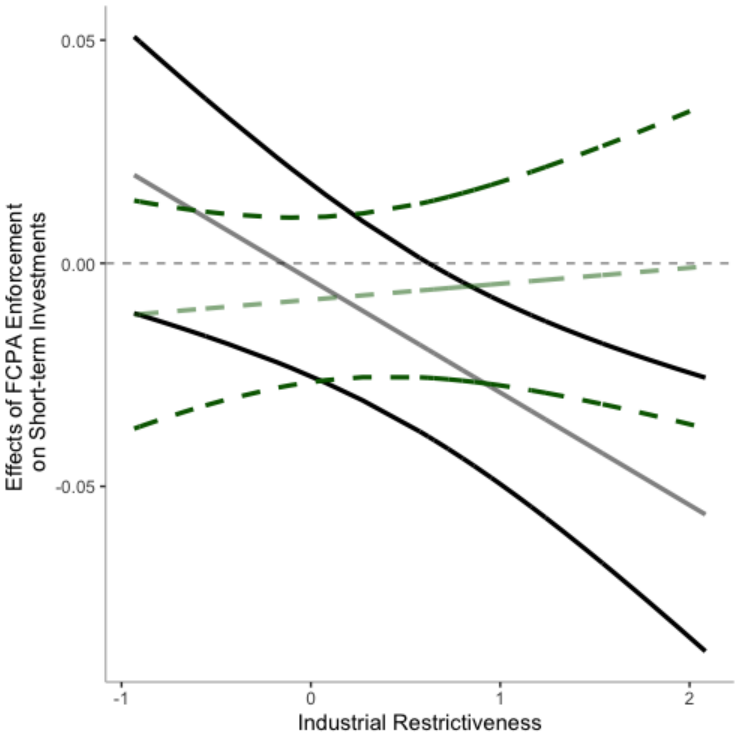
Table 4.6: FCPA Enforcement Discourages Investments by Regulated Firms

Dependent Variable:	**Short-term Investments**				
	Weak judiciary			Full sample	Strong judiciary
	(1)	(2)	(3)	(4)	(5)
Lagged treatment variables					
Occurrence	−0.004			−0.008	−0.000
	(0.011)			(0.009)	(0.009)
Annual count		0.004[.056]			
		(0.002)			
Annual count of related actions			0.001		
			(0.000)		
Industrial restrictiveness	0.003	0.003	0.001	−0.006	−0.020
	(0.015)	(0.015)	(0.016)	(0.007)	(0.017)
Occurrence ×	**-0.025[.002]**			**0.004[.667]**	**0.020[.236]**
Industrial restrictiveness	**(0.008)**			**(0.008)**	**(0.017)**
Annual count ×		**-0.006[.001]**			
Industrial restrictiveness		**(0.002)**			
Annual count of related actions ×			**-0.001[.001]**		
Industrial restrictiveness			**(0.000)**		
GDP per capita	0.027	0.039	0.026	−0.095	−0.121
	(0.034)	(0.031)	(0.038)	(0.073)	(0.092)
Corruption levels	0.056	0.038	0.030	−0.225	−0.301
	(0.072)	(0.055)	(0.059)	(0.174)	(0.265)
Total sales	−0.087	−0.087	−0.088	−0.083[.013]	−0.108[.003]
	(0.074)	(0.074)	(0.074)	(0.033)	(0.036)
Total assets	1.713[.000]	1.713[.000]	1.716[.001]	1.562[.000]	1.505[.000]
	(0.379)	(0.378)	(0.379)	(0.250)	(0.253)
FDI as % of GDP	−0.007[.001]	−0.006[.007]	−0.006[.007]	−0.017	−0.007
	(0.002)	(0.002)	(0.002)	(0.018)	(0.008)
GDP growth rate	0.002	0.001	0.000	−0.008	−0.003
	(0.008)	(0.007)	(0.006)	(0.007)	(0.004)
Population	0.203[.084]	0.179	0.134	0.210	0.020
	(0.117)	(0.122)	(0.137)	(0.138)	(0.025)
Total income taxes payable	−0.010	−0.010	−0.010	0.001	0.007
	(0.015)	(0.015)	(0.015)	(0.019)	(0.025)
Fixed assets value	−0.177[.000]	−0.177[.000]	−0.177[.000]	−0.096[.000]	−0.060[.001]
	(0.026)	(0.026)	(0.026)	(0.027)	(0.017)
Industry FEs			✓		
Country and Year FEs			✓		
Adj. R^2	0.654	0.654	0.653	0.733	0.736
Num. obs.	3328	3328	3328	6811	4524

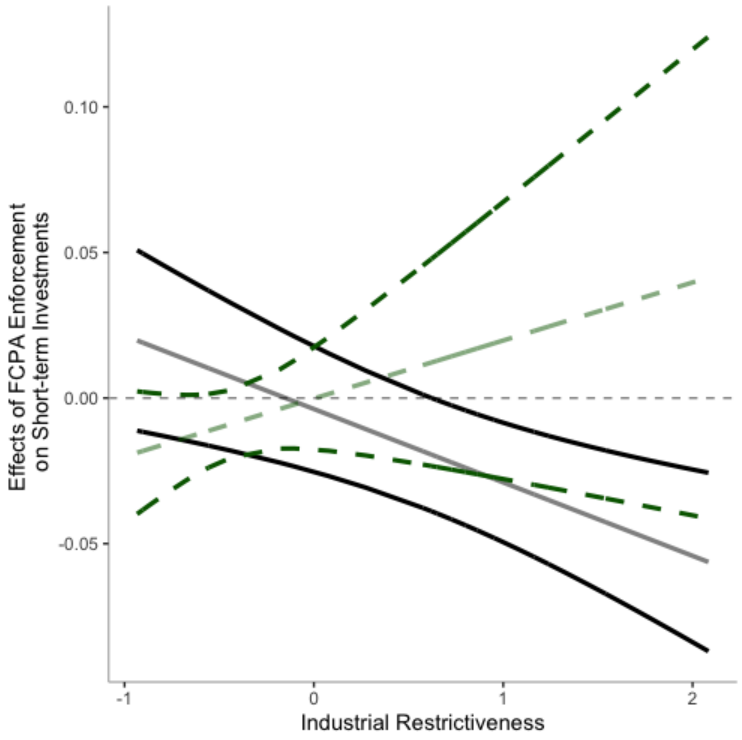
All models are estimated using OLS regressions. Robust standard errors clustered within country.
P-values for the interactive terms and other variables if below 0.1 are reported in brackets.

Figure 4.2:
Conditional Effects of FCPA Enforcement on Short-term Investments

(1) Compared with full sample



(2) Compared with strong judiciary sample



Weak judiciary sample is indicated by ——
(1) Full sample and (2) Strong judiciary sample are indicated by - - - -

4.5 Discussion

This study engages with an emerging body of scholarship on the impact of transnational anti-corruption legal regimes, and turns its attention from multinational corporations and cross-border investments to the local firms in targeted countries. This set of market participants are important to study because the domestic firms are competitors to foreign firms in the host markets. If transnational anti-corruption initiatives are also able to discipline the behavior of targets under foreign jurisdictions, then MNEs may be more likely to comply with global anti-bribery regulations when competing with those local firms. On the other hand, if the domestic competitors are not bound by any domestic or external anti-bribery obligations, imposing strong integrity requirements upon the MNEs under the global regime's limited jurisdiction may force these firms, who are mostly from advanced economies, to abandon corrupt yet profitable local markets.

The results of the study show that FCPA enforcement actions, as the most rigorously-implemented transnational legal instrument against foreign bribery, can extraterritorially regulate certain segments of the indigenous firms operating in the targeted countries. The indigenous firms who are mostly affected by the transnational FCPA intervention are those operating in industries with high regulatory barriers to entry where judicial constraints against bureaucrats' abuse of power are weak. For firms under FCPA jurisdictions due to their connections to US financial markets, the signal that FCPA scrutiny could reach their country of operation deter them from further engaging in corrupt exchanges. As a result, they become less competitive in an environment where bribery is required to obtain and retain business, and forfeit significant investment opportunities. Meanwhile, for firms not under FCPA oversight, they are encouraged to take advantage of the void in the bribery market and capture more lucrative but restrictive business opportunities, such as government procurement contracts, at lower costs. They become more incentivized to engage in corrupt activities because bribery has become more rewarding in cost-benefit terms. Due to their competitive disadvantages in bribery capability, the regulated firms

will decrease their short-term investment positions in the high-barrier market, as a risk-mitigation strategy in response to the external legal deterrence.

The findings offer three novel theoretical contributions. First, this study suggests that transnational institutions may have significant impact on developing economies by shaping their competitive landscapes. Given that the various competing actors in a domestic market have varying degrees of exposure to external regulatory requirements or institutional pressure, legal interventions such as the FCPA can disrupt firms' adaptation strategies in developing economies and their competitiveness. To some extent, transnational anti-corruption enforcement regimes and other similar global legal and regulatory frameworks may provide institutional subsidies to weakly institutionalized environments by correcting and deterring corporate misconduct. However, because of such initiatives' limited jurisdictions, they may exert negative spillover effects in the sense that firms subject to stronger external oversight and higher ethical and legal standards have to forfeit rewarding investment opportunities and their market shares to the less-regulated firms not facing any obligations to abide by corporate integrity rules, especially in developing countries. In this sense, such global regulatory frameworks aimed at creating a more level playing field in the global marketplace may actually further exacerbate disparities in market conditions and market players' relative status, due to uneven compliance requirements and fragmented enforcement efforts.

Second, the results indicate that weak institutions can actually be a source of competitive advantage for firms. When regulatory discretion and judicial constraints are vulnerable to being influenced by corrupt actors, firms who are capable of exerting such undue influences may view institutional weakness as an advantage and opportunity, instead of an unfavorable nonmarket risk. Firms not burdened by ethical and legal considerations are better at utilizing nonmarket resources, such as political connections and bribery contributions, to establish privileged market assess and rent-seeking opportunities without legal consequences. Eventually, the unfettered firms are able to capture greater market

shares and advance their business interests at the expense of their more-regulated and scrutinized competitors.

Third, the findings as a whole suggest that globalized firms may face an institutional trade-off in managing their exposures to diverse institutional environments. On the one hand, weak institutional environments in developing economies generate rent-seeking opportunities, which incentivizes firms to invest in such financially rewarding markets. On the other hand, globalized firms want to maintain access to large global financial markets which are nevertheless underpinned by independent and impartial regulatory and legal institutions. Connections to such developed financial markets inhibit these firms' ability to illegally profiteer from exclusive business opportunities in developing markets. The institutional dilemma faced by globalized firms, as implied by this study, enriches the IBV theories of international business.

4.6 Tests of Other Theoretical Implications

In this section, I examine two alternative implications of my theory. First, the "double jeopardy" problem created by FCPA enforcement makes it more likely for globalized firms to decouple from developed jurisdictions in order to mitigate external enforcement risks. Second, FCPA enforcement create an competitive advantage in bribery for non-exposed firms who can obtain greater profitability and market share.

Delisting Incentives

Table 4.7 uses a series of Cox Proportional Hazards models to estimate the effect of FCPA intervention on US-listed firms' decision to delist from U.S. stock exchanges. Information on firms' delisting decisions comes from the Compustat dataset. It is important to note that the dependent variable only includes "voluntary delisting" instead of "compulsory delisting." This is because compulsory delisting is when a company is forced to delist itself from an exchange when it fails to meet the listing requirements mandated by the

exchange. Therefore it is not an active choice by the firm.

Models (1) to (4) include different sets of control variables that may influence firms' delisiting decisions (citations to follow). The coefficient for the treatment of FCPA intervention remains significant. Model (5) runs an interactive model between the FCPA treatment and the V-Dem "judicial constraints on the executive" index. It shows that the effect size of FCPA intervention is larger in countries with weak judicial constraints on the executive. The result provides evidence for the institutional dilemma faced by globalized firms who are under pressure from both strong and weak jurisdictions.

Figure 4.3 visualizes the odds ratio coefficient of FCPA intervention in Model (2) of Table 4.7. It shows that FCPA occurrence strongly incentivizes firms to delist from U.S. stock exchanges. Firms whose main domestic country of operation experienced an FCPA intervention are between 50 percentage points more (lower 95% bound) to 10 times more (upper 95%) likely to delist from US stock markets, holding other factors constant.

Figure 4.3:
FCPA Enforcement Increases Delisting from U.S. Stock Markets

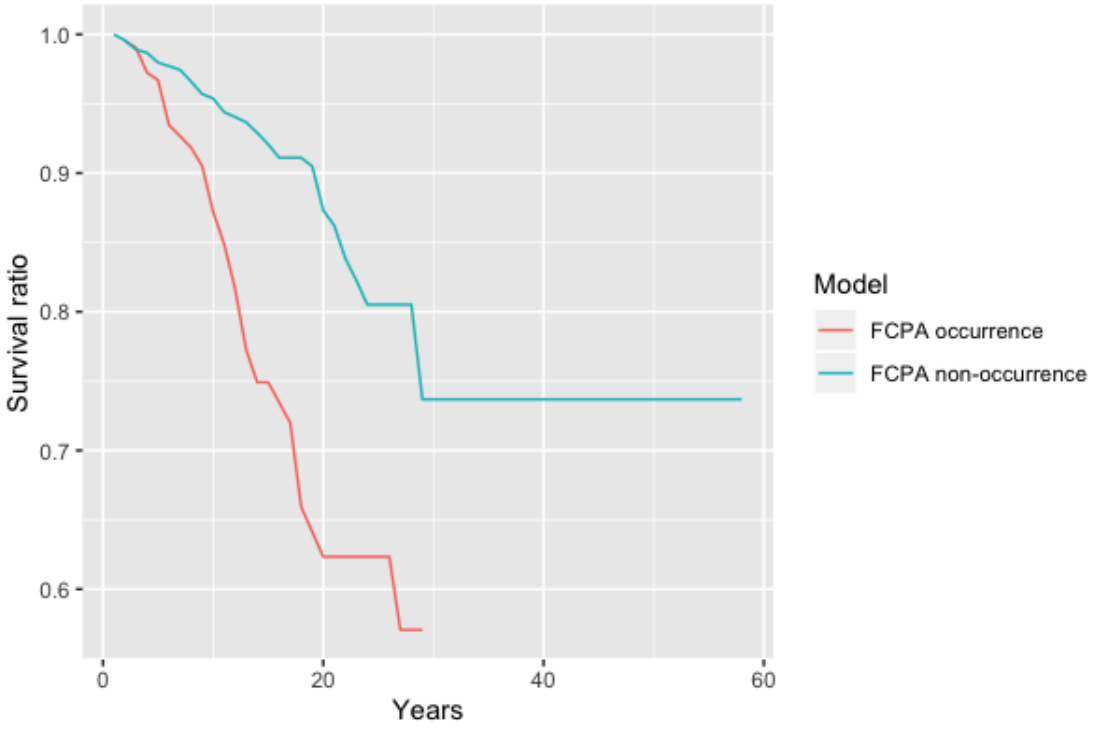


Table 4.7: FCPA Enforcement Encourages Delisiting from the U.S.

Dependent Variable:	**Delisting from U.S. stock markets**				
	(1)	(2)	(3)	(4)	(5)
FCPA occurrence	1.349***	1.362***	1.286*	1.197**	1.682**
	(0.468)	(0.484)	(0.712)	(0.498)	(0.696)
Judicial constraints					0.478
					(0.712)
FCPA occurrence ×					−0.979
Judicial constraints					(0.885)
Net earnings	−0.353	−0.382	−2.500	−0.370	−0.475
	(0.227)	(0.259)	(1.811)	(0.255)	(0.321)
Total assets	−0.736**	0.356		0.411	−1.215**
	(0.372)	(0.464)		(0.464)	(0.603)
Revenue		−1.038**	1.832	−1.176**	
		(0.448)	(4.215)	(0.476)	
Market values			−0.021		
			(0.823)		
Total GDP	0.977***	1.115***	0.891**	1.133***	0.773***
	(0.197)	(0.207)	(0.434)	(0.211)	(0.257)
Polity IV scores	0.125***	0.146***	0.128*	0.129***	0.147*
	(0.037)	(0.039)	(0.068)	(0.042)	(0.084)
EU membership				0.392	
				(0.328)	
Observations	633	633	176	633	580
R^2	0.107	0.117	0.110	0.119	0.086

All models are Cox Proportional Hazards models.
*p<0.1; **p<0.05; ***p<0.01

Advantages of Unexposed Firms

The main analyses are conducted among two relatively separate samples of firms. The first source of firm data is the Compustat North America database, and the second one is the World Bank Enterprise Survey data. I use the Compustat database to examine the responses of US-listed firms operating in non-US countries to FCPA intervention. I use the second sample of firms to examine responses of mostly domestic firms who are not under FCPA jurisdictions. Firms reported in these two sources are very likely to be operating in the same domestic political-legal environment because they are drawn from the same country-year unit of observations. Here, I use a single data source to provide additional evidence that firms not exposed to US jurisdictions see increased financial performance as a result of their competitive advantages in bribery.

The dataset is the Orbis database (Van Dijk 2013), which is a firm-level database of mostly private firms, i.e. non-listed firms, across the globe. In the dataset, only 1.9% firm-year observations have listing status in the U.S., hence exposed to the FCPA as "issuers"; 4.8% firm-year observations have production sites, distribution sites, or sales representation sites located in the U.S., hence exposed to the FCPA as "domestic concerns." Therefore, the total percentage of firms with exposure to U.S. jurisdictions is relatively small, around 7%. The great majority of firms in this panel have no business connections to the U.S.

Table 4.8 examines the effects of FCPA intervention in a country on the business performance of firms in that country who are not exposed to U.S. jurisdictions. The results suggest that, for firms not subject to U.S. jurisdictions (U.S. exposure =0), FCPA occurrence significantly improves their profit margins, ROA, and market shares. For firms under U.S. regulations, the FCPA's effects are more uncertain, as a result of much fewer observations. Based on the signs of the interactive coefficients, U.S. exposure seems more likely to hurt firm performance than help it in the aftermath of FCPA intervention.

Table 4.8: FCPA Enforcement Increases Performance of Non-US-exposed Firms

Dependent variables	**Profit margin**			**ROA**	**Market share**
	(1)	(2)	(3)	(4)	(5)
FCPA occurrence	0.710^{**}	0.617^{**}	0.618^{**}	0.234^{**}	0.027^{*}
	(0.288)	(0.274)	(0.274)	(0.115)	(0.016)
U.S. exposure	1.194^{***}	0.834^{*}	0.830^{*}	0.034	0.025
	(0.350)	(0.492)	(0.491)	(0.041)	(0.035)
FCPA occurence ×	−0.326	−0.232	−0.230	−0.100	0.009
U.S. exposure	(0.523)	(0.477)	(0.476)	(0.076)	(0.039)
Revenue	−0.023	-0.310^{**}	-0.309^{**}	-0.009^{*}	0.034
	(0.071)	(0.129)	(0.129)	(0.005)	(0.024)
GDP per capita	2.544	3.281^{**}	3.294^{**}	1.118	−0.050
	(1.938)	(1.502)	(1.502)	(0.891)	(0.049)
Corruption levels	5.303	8.484^{**}	8.493^{**}	−7.168	−0.110
	(4.080)	(3.926)	(3.927)	(5.899)	(0.135)
FDI as % of GDP	0.083	0.179^{**}	0.180^{**}	0.225	−0.005
	(0.072)	(0.080)	(0.080)	(0.197)	(0.007)
GDP growth rate	0.078	0.270	0.267	−0.273	0.014
	(0.843)	(0.960)	(0.960)	(0.907)	(0.031)
Population	8.646	-15.374^{*}	-15.365^{*}	4.793	-1.813^{***}
	(9.373)	(9.041)	(9.059)	(4.035)	(0.358)
Tax liabilities		0.662	0.662	0.004	-0.040^{**}
		(0.440)	(0.440)	(0.005)	(0.016)
Fixed assets		-1.507^{**}	-1.508^{**}	0.041	−0.233
		(0.636)	(0.637)	(0.046)	(0.219)
Total assets		2.245^{*}	2.248^{*}	−0.062	0.431^{*}
		(1.152)	(1.154)	(0.068)	(0.228)
Peer group size			0.119	0.747	0.024
			(0.321)	(0.632)	(0.015)
Industry FEs			✓		
Country and Year FEs			✓		
Adj. R^2	0.117	0.088	0.088	0.000	0.201
Num. obs.	70759	64659	64645	68763	10256

All models are run on the subsample of firms located in below-the-median levels of V-Dem judicial constraints index.

Robust standard errors are clustered by country.

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$

4.7 General Implications

The lessons drawn from this study are two-fold. From a public policy perspective, transnational anti-corruption enforcement may have negative spillover effects on aggregate economic development and welfare outcomes in host countries. Firms subject to higher ethical standards and more stringent integrity regulations will be forced out of corrupt markets. Therefore, they can no longer act as agents of institutional diffusion in terms of spreading best business practices and ethical corporate conduct. Instead, the more bribery-prone firms are left dominating the market who contribute to the perpetration of corruption, market distortion, and unfair competition. Institutional change and sustainable economic development are harder to take place in developing countries because the agents who have the most promise to promote good policy and business norms have become less competitive. In this sense, *good laws may not necessarily lead to good economics*.

Second, from a nonmarket strategy perspective, the findings suggest that firms need to devise global strategies that can manage diverse sources of institutional risks. Covert, irresponsible nonmarket strategies such as manipulation and exploitation of weak institution have raised increasing ethical concerns and resulted in serious legal consequences. For globalized firms, their accustomed business practices in "dark" jurisdictions with weak anti-bribery compliance obligations may no longer be sustainable if they want to simultaneously benefit from the institutional and market powers of jurisdictions with stronger oversight of corporate misconduct. For many globalized firms with exposure to divergent institutional requirements, they may have to make a choice and adjust their positions in institutional environments where the formal or informal institutional resources have become more of a liability than an asset.

5 Judicial Spillover Effects on a Cronyist Economy

China has received the highest number of the FCPA enforcement actions in the world against entities operating on its territory, with a total of 101 violations sanctioned by U.S. authorities so far.[55] The country has also seen at least one FCPA prosecution since its first occurrence in 2004. This could be attributed to the country's state-dominated economy governed by a judiciary that lacks the independence and power to effectively check government behavior and impartially enforce market rules and industrial regulations (Peerenboom 2009).

5.1 State-dominated Economy and Cronyism

A large body of research has pointed out two important features of the Chinese economy: (1) the dominant role of the state in the economy and (2) the pervasiveness of cronyism.

The Chinese government is capable of influencing market activities through two channels. First, The government directly or indirectly controls the country's largest industrial, commercial, and financial enterprises through ownership rights maintained by the State-owned Assets Supervision and Administration Commission (SASAC) and other agencies at both central and local levels (Naughton and Tsai 2015). The SASAC functions as the ultimate beneficial owner of non-financial SOEs, mixed ownership firms, and even firms with majority private ownership who play important roles in the market economy. Through either direct or multilayered ownership structures, the government has effective control over the managerial decisions of those firms who are dominant market players, in particular the SOEs (Szamosszegi and Kyle 2011; Wang 2014; Milhaupt and Zheng 2014).

The government also plays a regulatory role in the market by making industrial development plans, policies, and guidelines, and implementing such formal rules and statutes in its daily administrative work (Pearson 2007; Liebman and Milhaupt 2015; Kennedy

[55] Official statistics by January 31, 2019.

2011). Meanwhile, the implementing authorities often interpret and carry out respective policies in ways tailored to specific needs, imperatives, and local conditions (Xu 2011; Ong 2012; Van Aken and Lewis 2015; Huang 2015), demonstrating significant regulatory fragmentation, pluralism, and inconsistency (Van Rooij and Lo 2010; Eaton and Kostka 2014; Grabosky 2013).

The second key feature of the Chinese economy is the widespread cronyist relationships between the state and connected firms (Pei 2016). Given that the state is the ultimate beneficial owner of the enterprises under its control, it has incentives to generate and sustain high profits for these crony firms (Yeo 2009; Tsai 2015; Haley and Haley 2013; Yu 2014). A major policy tool used by the state is the administration of market entry barriers through requirements of ownership, corporate structure, and other types of industrial restrictions. Obtaining the regulatory approvals, such as the necessary licensing, permits, and other paperwork, creates significant obstacles and could be prohibitively difficult for unconnected firms. Meanwhile, for regime insiders, the burdensome regulatory requirements may be circumvented, waived, or otherwise satisfied as authorities interpret and implement the formal rules and statutes in expedient fashions. This creates sustainable streams of rents for the crony firms whose connections with the regime provide the privileges of accessing and operating in profitable domestic markets (Sun 2004).

Meanwhile, the domestic judiciary, embedded in the party-state governance structure (Ng and He 2017; He 2012), does not enjoy any independent power to correct the government's practices of market discrimination and favoritism. Market incumbents who have benefited from significant monopoly rents as a result of the high regulatory barriers also have little incentives to change the existing regime (Zhu 2016; Wright and Zhu 2018). Therefore, without external interventions, such rent-seeking and rent-sharing schemes through the state's regulation and granting of privileged market status to crony enterprises have been relatively stable so far, as in other developing economies (Diwan et al. 2020).

5.2 The Industrial Policy and Foreign Investment Restrictions

Chinese industrial policy requires foreign investors and companies to form joint venture partnerships with domestic firms in certain industries (Pearson 1992; Naughton and Tsai 2015). The domestic partners are usually state-owned enterprises (SOEs) or nominally private firms with deep ties to government authorities through intricate ownership structures (Huang 2008, 2003; Shirk 1994; Pearson 2005; Pei 2016).

The National Development and Reform Commission and the Ministry of Commerce of China maintains the Catalogue of Industries for Guiding Foreign Investment (the Catalogue). The Catalogue classifies all industries into three categories: encouraged, restricted, and prohibited. In the "encouraged" category, foreign investments face little regulatory restrictions in market access and operation. Instead, local governments often compete to offer attractive investment incentive packages, such as tax deduction, low-interest loans, cheap land, and supporting infrastructure (Chen 2017). Foreign investors do not need to build local connections in order to receive these favorable policies.

In the "prohibited" category, foreign companies and investors are technically not allowed to enter and operate in the industry, although there is still uncertainty and room for maneuver in practice. Examples include "Fishing in the sea area and inland waters under China's jurisdiction", "Movie production companies, distribution companies, and cinema companies," and "Wholesale and retail of tobacco leaves, cigarettes, redried tobacco leaves and other tobacco products."

In the "restricted" category, foreign investments are still allowed to enter the market, but they are subject to various regulatory constraints. For example, the industry of "Selection and cultivation of new varieties of crops and production of seeds" requires "Chinese parties as controlling shareholders." In the industry of "Exploration and exploitation of oil and natural gas (excluding coal-bed methane, oil shale, oil sands and shale gas)", foreign investments are "limited to Chinese-foreign equity or contractual joint ventures." The restrictions also apply to a variety of manufacturing sectors. For example, the "De-

sign, manufacturing and repair of vessels (including sections)" industry requires "Chinese parties as controlling shareholders;" the "Design, manufacturing and maintenance of general aircraft" is "limited to Chinese-foreign equity or contractual joint ventures."

The industries listed under "restricted" and "prohibited" categories are generally considered "strategic" industries and tend to be dominated by SOEs (Hsueh 2016; Szamosszegi and Kyle 2011), or require foreign investors to establish joint venture partnerships with SOEs (Hsueh 2011; Wu 2016), even though the formal regulations do not explicitly specify "Chinese parties" as state-owned or state-controlled entities.

It is difficult to estimate the exact proportions of SOEs in the restricted and prohibited industries. Complicated and sometimes opaque ownership and control structures can hide the actual degree of ownership held by local or central government authorities, such as SASACs, who could be the ultimate beneficial owners. In general, SOEs have significant market shares in those industries. For example, according to the official statistics in 2015 (Yearbook 2017), SOEs make up of 79.7% of total number of firms, 94.5% of total assets, and 83.7% of total revenue in the "Petroleum and Natural Gas Extraction" industry. SOEs also make up of 79.7% of the total number of firms in the "Tobacco Products Processing" industry, and 63.1% in the "Electricity and Heating Production and Supply" industry. Their shares of total assets and revenues in these industries are even higher, generally around 90%. According to a 2018 report by the Asia Society Policy Institute and the Rhodium Group,[56] in 2017, SOEs' share of revenues in the state-designated "key industries," which include defense, electricity, oil & gas, telecom, coal, shipping, aviation, and railway industries, is 85.6%; SOEs' share in the "pillar industries," which include auto, chemicals, construction, electronics, equipment manufacturing, nonferrous metals, prospecting, steel, and technology, is 46.2%; SOEs share in the "normal industries," which inlcude agriculture, pharmaceutical, real estate, tourism, investment, professional services, general trade, general manufacturing, is only 15.8%. Compared with the other

[56]The report can be accessed at `https://chinadashboard.asiasociety.org/winter-2019/page/state-owned-enterprise`.

two categories, the "normal industries" are much more open to competition from both domestic private firms and foreign firms, which drives down the amount of monopoly rents. SOEs have been more interested in being the dominant actor in the other two types of industries and enjoying significant monopoly rents.

5.3 External Judicial Intervention

Given the lucrative rent-seeking opportunities in Chinese markets with high regulatory entry barriers, MNEs have strong incentives to resort to informal channels to obtain market access, especially when formal regulations are enforced by unconstrained bureaucrats in an arbitrary fashion.

A key enabling factor here is that domestic regulatory agencies with the discretion to implement various industrial restrictions are not sufficiently held accountable for their decisions by an independent judiciary. Government officials in charge of screening investors' eligibility and issuing administrative approvals to operate in certain industries face little constraints from abusing their power for private benefits. Therefore, lacking effective domestic judicial scrutiny over corrupt exchanges and official malfeasance, many MNEs have successfully overcome burdensome regulatory restrictions in China and obtained sufficiently rewarding returns as part of a rent-sharing scheme with local power-holders.

However, a U.S. appellate court ruling in 2014 should change MNEs' calculations regarding the feasibility of doing business with Chinese SOEs given the exposure to demands for improper exchanges. In 2011, Joel Esquenazi and Carlos Rodriguez, two senior executives at Terra Telecommunications, a long-distance telecommunications carrier based in Miami, were convicted by a jury in the Southern District of Florida for FCPA violations and sentenced to jail for 15 and 7 years respectively. They were found guilty of making bribe payments to officials at a state-owned Haitian company, Telecommunications D'Haiti, in exchange for a variety of business advantages. Esquenazi and Rodriguez

then appealed their convictions to the U.S. Eleventh Circuit Court of Appeals. In 2014, the Court of Appeals affirmed their convictions and provided a significant win for the DOJ by rejecting the defendants' argument for a limited definition of a "foreign official" under the FCPA, and ruled instead that a state-controlled enterprise, such as through majority ownership, is an instrumentality of a foreign government such that its employees are considered foreign officials. In August 2014, the Supreme Court denied Esquenazi and Rodriguez's Petition for Writ of Certiorari (FCPA Clearing House 2017), thus the appellate court's ruling stands.

The ruling in 2014 clarified the previously ambiguous judicial standards for enforcement against government "instrumentalities" and significantly empowered the DOJ and SEC to target firms' corrupt exchanges with foreign SOEs (Boedecker 2015). In China's state-dominated sectors, both foreign firms and domestic private firms cannot avoid frequent interactions with state-affiliated firms, either due to joint venture partnerships, upstream and downstream supply chain networks, or arms-length transactions (Chow 2012; Koehler 2007). The form of engagement often involves gift-giving, exchanges of favor, and other relationship-building activities. The state-affiliated entities leverage their influence over public authorities to provide connected firms with favorable treatments in regulation, adjudication, and market access. In exchange, the connected firms provide things of value to their regime-insider business partners such as capital, technological know-how, management expertise, and bribery contributions.

In comparison, firms operating in the more liberalized, competitive sectors have less exposure to the U.S. court ruling's negative impact. While such firms do not enjoy the same privileged rent-seeking status as the incumbent firms in the protected industries, they also have fewer corrupt dealings with SOEs. Moreover, the foreign firms and domestic private firms not connected to regime insiders may even benefit from the ruling when competing with the more connected firms who have lost their privileges as a result of the ruling's deterrence on maintaining corrupt relationships.

Therefore, I use the U.S. appellate court ruling in 2014 as a quasi-exogenous source of variation in FCPA enforcement power to examine the extraterritorial deterrence effects of FCPA enforcement on firm outcomes in China. With the exception of Singapore, the MNEs studied in Chapter 3 are all from countries who are parties to the OECD Anti-Bribery Convention. Although not a signatory to the Convention, Singapore has a robust legal framework for extradition, mutual legal assistance (MLA), recovery of proceeds of corruption, and enforcement of foreign confiscation orders with major OECD countries, including the U.S. (ADB & OECD 2007). Therefore, the MNEs in the lawsuit dataset can all be regulated under the OECD anti-bribery framework; U.S. authorities can either directly enforce FCPA provisions on these firms or seek legal assistance from OECD Convention countries in prosecution and imposing sanctions (Brewster 2017).

I firstly look at the different impact of the ruling on litigation outcomes for MNEs operating in industries protected by regulatory barriers and those with more liberal market access regimes, respectively. I expect the external ruling to incentivize MNEs to reduce their exposure to potential noncompliance risks in their daily interactions with SOEs. As a result, MNEs have less access to the crucial political resources provided by SOE partners in state-dominated sectors. Therefore, I expect the adjudicative advantages enjoyed by SOE JVs, as shown in Chapter 3, to be diminished by the U.S. ruling. Meanwhile, ordinary JVs should not be affected by the ruling as much as SOE JVs, due to the former type's fewer exposure to corrupt exchanges with SOEs. Moreover, for all other MNEs not adopting the SOE JV structure in the highly regulated sectors, their adjudicative disadvantages should be mitigated. The non-SOE JV firms should benefit from the U.S. ruling in terms of higher winning rates in sectors with high regulatory barriers, all else equal.

Secondly, I look at the impact of this external judicial intervention on U.S.-listed firms located in China, the subsample of firms studied in Chapter 4. These firms, due to their connections with U.S. financial markets, should also expect enhanced FCPA oversight over transactions with SOEs after the 2014 ruling. Similar to the first mechanism, I expect

that those U.S.-listed firms operating in the state-dominated industries with high regulatory restrictions should be more negatively affected by the 2014 ruling than similar firms operating in the more liberalized sectors in China.

The empirical analysis will examine the following hypotheses:

Hypothesis 1: *The U.S. ruling decreased the adjudicative advantages of SOE JVs, while mitigating the adjudicative disadvantages of other corporate structures adopted by MNEs, in state-dominated industries.*

Hypothesis 2: *The U.S. ruling decreased the performance of U.S.-listed firms operating in the state-dominated industries in China.*

5.4 The Empirical Design

The Models

To examine **Hypothesis 1** on litigation outcomes, I exploit the 2014 ruling as a quasi-exogenous source of variation in the capacity of SOE JV's influence-peddling over the judiciary. I examine whether the 2014 ruling has heterogeneous effects on lawsuit outcomes depending on whether the MNE is operating in state-dominated industries and whether the MNE is an SOE JV. The idea is similar to a difference-in-difference-in-differences design (Imbens and Wooldridge 2007). I use the following model to estimate the heterogeneous effects of the 2014 ruling.

$$\begin{aligned} Y_{i,c,t} = \beta_0 &+ \beta_1 Ruling_t \times StateInd_i \times SOEJV_i \\ &+ \beta_2 Ruling_t \times StateInd_i + \beta_3 Ruling_t \times SOEJV_i + \beta_4 StateInd_i \times SOEJV_i \\ &+ \beta_5 Ruling_t + \beta_6 StateInd_i + \beta_7 SOEJV_i \\ &+ \mathcal{X}'_{i,t}\Gamma + \mathcal{Y}'_c\Phi + \epsilon_{i,c,t} \qquad (1) \end{aligned}$$

where $Y_{i,c,t}$ denotes the lawsuit outcome for firm i in case c in year t. $Ruling_t$ indicates

whether the lawsuit is adjudicated before or after 2014. $StateInd_i$ is a dichotomous variable representing whether firm i operates in an SOE-dominated industry. $SOEJV_i$ is a dummy variable signifying whether firm i is a joint-venture firm between an MNC and Chinese SOE. I control for a set of firm-level and case-level variables, $\mathcal{X}'_{i,t}$ and $\mathcal{Y}'_c$, that may confound the effect of the external legal intervention. $\epsilon_{i,c,t}$ is the error term.

The coefficient of interest is β_1, that is, the coefficient on the three-way interaction term. It estimates the average difference between the following two changes in win rates as a consequence of the 2014 ruling: (1) the change in the average win rate difference between SOE JVs operating in *state-dominated* industries and SOE JVs operating in other sectors; (2) the change in the average win rate difference between other foreign firms (i.e., MNCs other than SOE JVs) operating in *state-dominated* industries and other foreign firms operating in *state-dominated* sectors. If the implied heterogeneity between SOE JVs and other MNCs as well as between state-dominated industries and non-state-dominated industries exist, then we should expect a negative and statistically significant β_1. Meanwhile, we should not expect to see a negative and significant β_2, as the ruling should not deter other MNCs in state-dominated industries. If anything, β_2 should be positive, as the less-privileged firms' competitors weaken their political control over the judiciary.

To examine **Hypothesis 2**, I use the same 2014 ruling to conduct a conventional difference-in-differences (DiD) estimation. The DiD model is:

$$Y_{ispt} = \beta_0 + \beta_1 Ruling_s + \beta_2 StateInd_t + \beta_3 Ruling_s \times StateInd_t + \mathcal{X}'_{ist}\Gamma + Dummies_{pt} + \epsilon_{ispt} \quad (2)$$

In model (2), Y_{ispt} is the firm-level outcomes. $StateInd_s$ is a binary indicator of whether the industry s that Firm i is operating in is an SOE-dominated sector. $Ruling_t$ is a binary indicator of whether the firm-level observation occurs before or after the year 2014. $\mathcal{X}'_{ist}$ is a set of firm-level control variables included to satisfy the parallel trends assumption of DiD designs.

Local political dynamics may also affect corporations' legal and illegal engagement practices with political authorities and state-affiliated firms, such as the anti-corruption campaign launched by President Xi Jinping around 2014. Such local dynamics have uneven intensity across geographical regions and time periods, which may confound the differential effects of external FCPA oversight on state-dominated versus liberalized sectors of the Chinese economy since 2014. Therefore, I include a fully saturated set of province-year dummies $Dummies_{pt}$ to account for all provincial-level time trends. The province-year dummies cover 28 Chinese provinces that US-listed firms are operating in and 52 years from 1968 to 2019, with a total of 444 indicators. Including the province-year fixed effects also addresses other potentially confounding geographic and temporal heterogeneities including a province's population size, level of economic development, GDP growth rate, governance quality, and other provincial socio-economic characteristics that vary by year. The model specification aims to satisfy the parallel trends assumption of DiD designs.

Data and Measurement

I use the Catalogue to create a proxy for the extent of SOE dominance in the industry, which captures the pervasiveness of corrupt exchanges with SOEs. $StateInd$ is coded as 1 if Firm i is operating in either the "restricted" or "prohibited" industries, and 0 otherwise. The government authorities periodically revise the Catalogue and the general policy trend is reducing the number of restricted and prohibited industries and opening up more sectors for foreign and private investments. The industries still listed under "restricted" and "prohibited" categories in 2017 have mostly remained so since the beginning of the industrial policy. Therefore, I use the 2017 Catalogue to code the industries that have always been protected and hence most prone to rent-seeking.[57] 2017 is also the latest year observed in most of my datasets.

[57]The English verison of the 2017 Catalogue can be accessed at `http://www.fdi.gov.cn/1800000121_39_4851_0_7.html`.

In the litigation dataset, in 29.0% of the cases the plaintiff firm operates in a state-dominated industry, and in 5.2% of the cases the plaintiff firm is an SOE JV. Moreover, 73.5% of the cases were adjudicated after 2014. To test Hypothesis 1, I include the same set of control variables as the main analysis in Chapter 3 except for year and industry.

In the Compustat listed firm dataset, 28.0% of the observations are in the state-dominated industries, and 25.2% are observed after 2014. For Hypothesis 2, I use the same CompuStat dataset to measure the firm-level outcome variables, including SG&A expenses, revenue, profitability, sale of investments, and market values., while restricting the observations to only firms located in mainland China. The firm-level control variables include total assets, fixed asset stocks, total sales, and income tax liabilities. As mentioned, the 444 province-year fixed effects $Dummies_{pt}$ are included in all models to take into account the decentralized nature of China's economic development models (Jin et al. 2005) and province-specific time trends.

5.5 Results for Hypothesis 1

Table 5.1 displays the results of the heterogeneous effects arising from the 2014 exogenous ruling. With the exceptions of the first (*Judgement*) and sixth (*Comp* $\geq$ *full*) measures of lawsuit outcomes, the coefficients of the triple interaction term are all negative and statistically significant. The coefficient for the first outcome variable is in the expected negative direction, though the result is not statistically significant. A potential explanation is that SOE JVs do not care much about obtaining favorable judicial opinions in the first place; they are more interested in winning actual monetary compensation, as hypothesized. Moreover, the coefficient of the sixth outcome, which is the most substantial victory measure for the plaintiff, is indistinguishable from 0. A possibility is that, since awarding the full amount of claim is a very rare judicial decision that indicates particularly strong ties between the plaintiff and the court, the extraterritorial judicial intervention is not powerful enough to disrupt this kind of political exchanges.

Table 5.1: Heterogeneous effects arising from the 2014 exogenous ruling

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **SOE JV**	-0.039 (0.071)	-0.160^{+} (0.086)	-0.135^{**} (0.049)	-0.092^{*} (0.037)	-0.121^{***} (0.035)	-0.010 (0.014)
Ruling $\times$ StateInd	0.100^{***} (0.019)	0.056^{*} (0.027)	0.072 (0.057)	0.0002 (0.055)	-0.017 (0.036)	-0.002 (0.041)
Ruling $\times$ SOE JV	-0.016 (0.037)	0.061 (0.037)	0.100^{*} (0.043)	0.109^{*} (0.046)	0.131^{***} (0.034)	0.030 (0.033)
StateInd $\times$ SOE JV	0.037 (0.051)	0.305^{***} (0.072)	0.382^{***} (0.062)	0.379^{***} (0.077)	0.482^{***} (0.079)	0.291^{***} (0.059)
Ruling	-0.049^{***} (0.014)	-0.056^{***} (0.017)	-0.065^{+} (0.038)	-0.028 (0.026)	-0.040^{*} (0.016)	-0.021 (0.015)
StateInd	-0.042^{*} (0.021)	-0.034^{+} (0.018)	0.023 (0.059)	0.087^{+} (0.046)	0.089^{***} (0.026)	0.057^{+} (0.033)
SOE JV	0.067^{*} (0.027)	-0.007 (0.025)	-0.082^{+} (0.043)	-0.067^{+} (0.040)	-0.120^{***} (0.034)	-0.046 (0.030)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	3,634	2,456	2,343	2,319	2,319	2,319
Adjusted R^2	0.292	0.092	0.203	0.127	0.116	0.103

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1;^{*}p < 0.05;^{**}p < 0.01;^{***}p < 0.001$.

Table 5.2: Changes in predicted win rates (%)

Outcome: Comp > 0	SOE JVs	Other MNCs	Relative change in diff.
State-dominated sectors	***73.3*** $\rightarrow$ **66.7**	*29.1* $\rightarrow$ 35.7	-13.2
Other sectors	*25.0* $\rightarrow$ 24.2	*31.6* $\rightarrow$ 22.4	8.4

Note: *pre-2014 win rates* $\rightarrow$ post-2014 win rates.

However, the size of the deterrent effect is quite substantial for other measures of lawsuit outcome. For example, regarding the most common measure (i.e., *Comp* > 0), the 2014 ruling yields a 13.5 percentage points decrease in the win rates for SOE JVs in state-dominated industries relative to other types of MNEs in those sectors. Since triple-interactions are hard to interpret, I calculate the changes in predicted win rates regarding the same outcome in Table 5.2.[58] The results confirm that, in state-dominated industries, SOE JVs perform worse after the 2014 ruling, while the adjudicative disadvantages of other types of foreign firms have been reduced. This pattern is not observed in other industries. Overall, the results suggest that the 2014 U.S. court ruling does have a negative impact on the lawsuit outcomes of SOE JVs in the state-dominated sectors in China, although the impact has its limitations.

I also conduct additional analyses in the appendix. First, I incorporate additional firm-level control variables in the regression models. The findings hold in these robustness checks. Second, I investigate the impact of the U.S. court ruling for private JVs. The results indicate that non-SOE JVs operating in state-dominated sectors are more likely to win lawsuits after the exogenous ruling. Thus, private JVs actually benefit from potential FCPA sanctions for bribing SOEs, which concurs with my arguments.

5.6 Results for Hypothesis 2

Stock market reactions

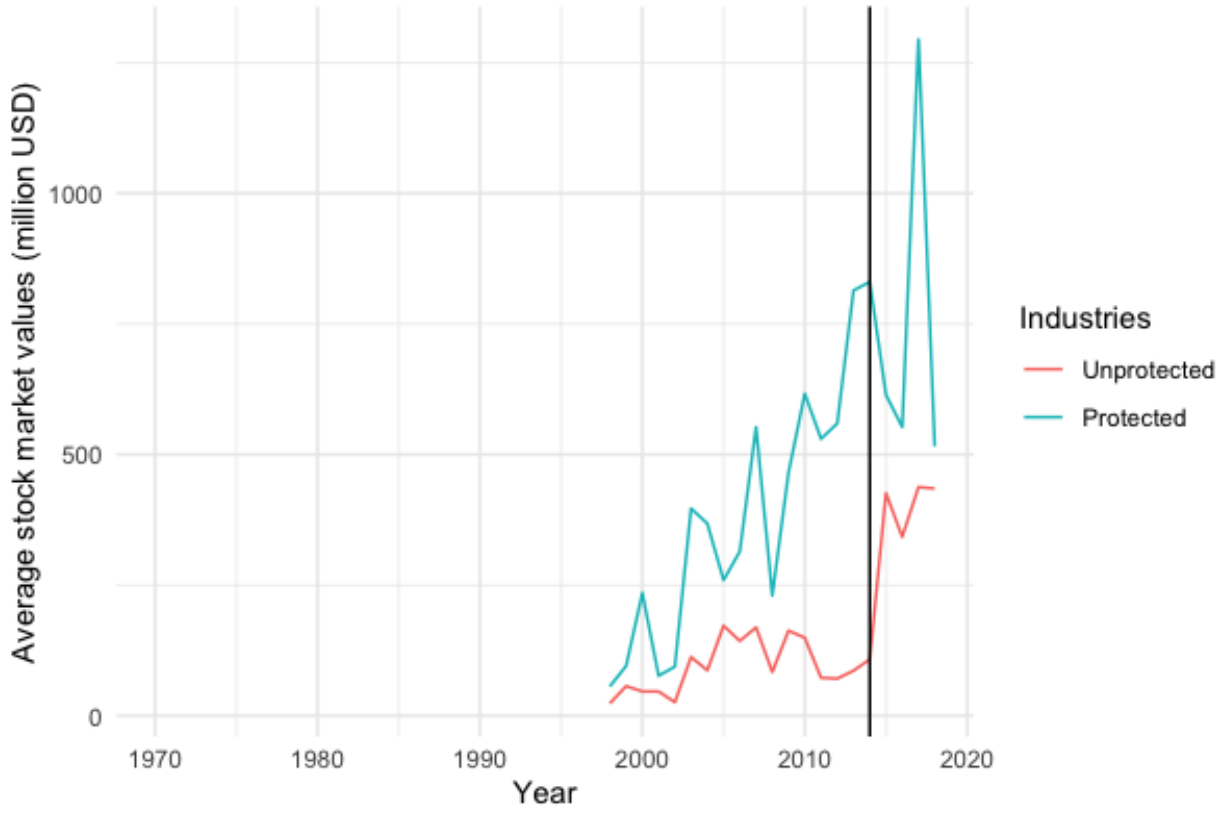
Figure 5.1 presents some preliminary evidence that the 2014 U.S. appellate court ruling has an observable impact on US-listed firms operating in China. It is noteworthy that the impact is different for those firms operating in China's protected industries ($StateInd = 1$) than those in the unprotected industries ($StateInd = 0$).

Figure 5.1 shows that the average stock market value of US-listed firms operating in China's protected industries decreased sharply in 2014, while firms in the unprotected

[58] The changes in win rates regarding other outcome measures share a similar pattern.

industries saw a significant jump in market values. The gap between the average market values of these two sectors' firms has been narrowed significantly after 2014. This may suggest that, after bribing SOEs is unequivocally outlawed under the FCPA, firms in the protected industries can no longer maintain connections to regime insiders and power-holders. The state-business partnership that has delivered market access, favorable regulatory treatments, and other nonmarket privileges is now disrupted by potential external legal interventions. Meanwhile, investors see more value in firms operating in unprotected industries which are less exposed to corrupt engagement with state-affiliated actors. The stock market reactions are consistent with the proposed mechanism regarding the uneven vulnerabilities of firms in different sector types to external judicial oversight.

Figure 5.1:
2014 ruling and stock market reactions of US-listed firms in China



Regression results

In this section, I provide stronger evidence for the theoretical claims using difference-in-differences regressions. Table 5.3 shows the results from estimating the DiD model (1). The primary quantity of interest is the coefficient for the interactive term β_3, which is expected to be negative because the court ruling should hurt the performance of firms in state-dominated industries much more than those in liberalized industries.

The other two quantities of interest are β_1, the coefficient for $Ruling$, and β_2, the coefficient for $StateInd$. β_1 should not have a statistically discernible effect because this coefficient alone estimates how the 2014 ruling affects firms operating in non-state-dominated industries, i.e. the liberalized industries, who are NOT exposed to the expanded jurisdiction of the FCPA. β_2 is expected to be positive and significant because this coefficient alone estimates the effect of being in state-dominated industries on US-listed firms PRIOR TO the 2014 ruling. If the proposed theoretical mechanism is correct regarding the differences between regulated and unregulated firms, firms operating in state-dominated industries *before* 2014 should be more likely to engage in corrupt exchanges and, as a result, enjoy better business performance than they do *after* 2014.

Table 5.3 shows that the coefficient for the interactive term $Ruling \times StateInd$ is negative and significant for the first four firm outcomes, consistent with the expectations. The results indicate that the 2014 court ruling, which set a new legal standard to tie firms' hands in interacting with state-controlled entities, has significantly decreased the bribery payments (Model (1)), revenue (Model (2)), net income (Model (3)), and ROA (Model (4)) of US-listed firms operating in China's state-dominated sectors. Notably, "Selling, General, and Administrative Expenses" is reduced significantly in state-dominated industries after 2014, even after controlling for firms' total sales and total assets, which provides strong evidence that firms experience enhanced legal deterrence against corrupt dealings in the restrictive sectors. The positive interactive coefficient in Model (5) indicates that expanded judicial scrutiny over corporate misconduct also pressured firms to sell their

Table 5.3: Transnational FCPA Deterrence on US-listed Firms in China

Dependent Variable:	**SG&A Exp**	**Revenue**	**Net Income**	**ROA**	**Sale of Invst**
	(1)	(2)	(3)	(4)	(5)
Ruling	0.026	0.012	0.0002	0.047	−0.031
	(0.022)	(0.016)	(0.049)	(0.102)	(0.024)
StateInd	**0.048*****	**0.046*****	**0.083****	**0.336****	**−0.050*****
	(0.006)	**(0.011)**	**(0.037)**	**(0.145)**	**(0.018)**
Ruling × StateInd	**−0.013***	**−0.064*****	**−0.098*****	**−1.379*****	**0.196*****
	(0.008)	**(0.017)**	**(0.021)**	**(0.085)**	**(0.023)**
Total assets	2.099***	0.271***	0.075	0.068	1.340***
	(0.099)	(0.028)	(0.056)	(0.048)	(0.162)
Total sales	0.128***		0.331***	−0.101	−0.129***
	(0.038)		(0.040)	(0.159)	(0.002)
Total income taxes payable	0.108***	−0.004	0.702***	0.065	−0.066
	(0.020)	(0.065)	(0.028)	(0.048)	(0.047)
Fixed assets value	−0.918***	0.685***	−0.123*	0.066	−0.831***
	(0.042)	(0.098)	(0.073)	(0.144)	(0.070)
Province × Year FEs			✓		
Observations	3,592	3,809	3,801	3,750	3,745
Adjusted R^2	0.962	0.798	0.821	0.378	0.703

Note: Robust standard errors are clustered by industry and year.

*p<0.1; **p<0.05; ***p<0.01

investments in those bribery-prone, state-led sectors, as a risk-mitigation strategy to ensure external compliance.

The coefficient for *Ruling* (β_1) is also consistent with theoretical predictions. In the liberalized sectors ($StateInd$ = 0) where corrupt exchanges with state-affiliated entities are less necessary, the 2014 ruling does not significantly affect firms' bribery behavior or business performance. The positive and significant coefficient for $StateInd$ (β_2) suggests that, before 2014 (*Ruling* =0), US-listed firms operating in state-dominated sectors were more actively engaging in corrupt exchanges and enjoying more profitable rent-seeking opportunities than they have been since 2014.

Overall, the results obtained from the DiD design provide additional evidence for the argument that transnational FCPA enforcement has uneven spillover effects on the domestic entities operating in the targeted countries. The credible threat of FCPA intervention deters firms' corrupt exchanges used to obtain and retain business in highly regulated industries governed by unconstrained authorities. In this way, extraterritorial legal interventions potentially provide a form of institutional subsidy to developing economies with weak governance. Meanwhile, however, corrupt business environments become less attractive for firms under stricter external regulations than those who are weakly constrained or unconstrained by any external oversight, which prompts the eventual market-exits of more-regulated firms. This has important implications for the competitive dynamics of the targeted country and may undermine the original purpose of transnational anti-corruption governance in terms of creating a more level playing field in the global marketplace.

5.7 Conclusions

In this chapter, I use stronger identification strategies to offer evidence for two main arguments. First, in countries without independent judicial institutions to check government actions and to faithfully enforce regulatory rules, private firms have incentives to engage

in informal exchanges with the state in order to protect investments, to obtain rewarding business opportunities, and even to capture the dependent institutions. Firms have particularly strong incentives to enter industries with high regulatory barriers to market access which create significant rent-seeking opportunities. Second, as the current global market environments become increasingly integrated through financial and legal channels, transnational enforcement against corruption, led by countries with strong regulatory power, provides external legal remedy and correction to countries without independent and robust judicial oversight of their own.

5.8 Appendix

Table 5.C1: Heterogeneous effects (controlling for China experience)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **SOE JV**	-0.086 (0.082)	-0.151^{+} (0.083)	-0.138^{**} (0.043)	-0.084^{**} (0.029)	-0.122^{**} (0.041)	-0.015 (0.023)
Ruling $\times$ StateInd	0.101^{***} (0.025)	0.086^{**} (0.028)	0.080^{*} (0.040)	0.006 (0.045)	-0.013 (0.032)	-0.006 (0.032)
Ruling $\times$ SOE JV	-0.0004 (0.044)	0.059 (0.037)	0.097^{**} (0.036)	0.099^{*} (0.041)	0.123^{***} (0.033)	0.028 (0.032)
StateInd $\times$ SOE JV	0.065 (0.066)	0.311^{***} (0.070)	0.360^{***} (0.047)	0.360^{***} (0.068)	0.465^{***} (0.085)	0.278^{***} (0.068)
Ruling	-0.052^{***} (0.010)	-0.076^{***} (0.019)	-0.078^{*} (0.033)	-0.035^{*} (0.016)	-0.045^{**} (0.015)	-0.028^{+} (0.015)
StateInd	-0.048^{*} (0.023)	-0.059^{**} (0.022)	0.033 (0.048)	0.094^{**} (0.036)	0.102^{***} (0.020)	0.065^{***} (0.017)
SOE JV	0.066^{+} (0.035)	-0.014 (0.028)	-0.072 (0.046)	-0.057^{+} (0.034)	-0.105^{**} (0.035)	-0.045 (0.029)
Years of China operation	-0.001 (0.001)	0.001 (0.001)	-0.0002 (0.001)	0.001 (0.001)	0.0002 (0.001)	-0.00004 (0.002)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	2,995	2,040	1,945	1,923	1,923	1,923
Adjusted R^2	0.298	0.102	0.224	0.134	0.126	0.119

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Table 5.C2: Heterogeneous effects (controlling for firm size)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **SOE JV**	-0.081 (0.151)	-0.250^{***} (0.061)	-0.178^{***} (0.036)	-0.201^{***} (0.026)	-0.248^{***} (0.024)	-0.056^{**} (0.019)
Ruling $\times$ StateInd	0.098^{***} (0.014)	0.064^{*} (0.025)	0.087^{***} (0.021)	-0.005 (0.024)	-0.040 (0.027)	-0.024 (0.033)
Ruling $\times$ SOE JV	-0.039 (0.072)	0.075^{**} (0.029)	0.108^{**} (0.038)	0.109^{**} (0.040)	0.142^{***} (0.038)	0.046 (0.035)
StateInd $\times$ SOE JV	0.073 (0.115)	0.267^{***} (0.058)	0.342^{***} (0.055)	0.420^{***} (0.044)	0.484^{***} (0.062)	0.285^{***} (0.055)
Ruling	-0.052^{***} (0.015)	-0.077^{***} (0.015)	-0.091^{***} (0.023)	-0.056^{***} (0.015)	-0.067^{***} (0.015)	-0.043^{+} (0.025)
StateInd	-0.023 (0.023)	-0.070^{**} (0.024)	0.009 (0.038)	0.087^{***} (0.018)	0.105^{***} (0.017)	0.069^{***} (0.021)
SOE JV	0.079^{+} (0.047)	-0.037^{+} (0.019)	-0.109^{*} (0.047)	-0.091^{**} (0.034)	-0.098^{**} (0.033)	-0.047 (0.031)
Total assets	-0.007 (0.022)	0.001 (0.012)	0.072 (0.044)	0.056^{**} (0.017)	0.061^{***} (0.011)	0.091^{***} (0.007)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	2,011	1,370	1,329	1,313	1,313	1,313
Adjusted R^2	0.292	0.140	0.254	0.144	0.145	0.136

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Table 5.C3: Heterogeneous effects (controlling for listing status)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **SOE JV**	-0.046 (0.078)	-0.151^{+} (0.089)	-0.134^{***} (0.040)	-0.088^{***} (0.023)	-0.121^{***} (0.028)	-0.002 (0.019)
Ruling $\times$ StateInd	0.098^{***} (0.018)	0.070^{*} (0.028)	0.084^{+} (0.043)	0.015 (0.047)	-0.005 (0.034)	0.001 (0.036)
Ruling $\times$ SOE JV	-0.014 (0.042)	0.056 (0.040)	0.087^{*} (0.039)	0.105^{**} (0.040)	0.127^{***} (0.027)	0.022 (0.027)
StateInd $\times$ SOE JV	0.049 (0.060)	0.310^{***} (0.068)	0.383^{***} (0.041)	0.364^{***} (0.056)	0.467^{***} (0.077)	0.283^{***} (0.058)
Ruling	-0.041^{**} (0.016)	-0.067^{**} (0.022)	-0.075^{*} (0.030)	-0.041^{*} (0.017)	-0.050^{***} (0.011)	-0.029^{*} (0.012)
StateInd	-0.052^{***} (0.016)	-0.051^{*} (0.024)	0.013 (0.044)	0.082^{*} (0.035)	0.089^{***} (0.024)	0.053^{*} (0.025)
SOE JV	0.059^{+} (0.033)	-0.016 (0.024)	-0.077^{+} (0.045)	-0.063^{+} (0.037)	-0.113^{***} (0.034)	-0.047^{+} (0.027)
Public listed	0.034^{+} (0.020)	0.016 (0.032)	0.042 (0.036)	-0.010 (0.036)	-0.014 (0.015)	-0.003 (0.008)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	3,175	2,143	2,044	2,021	2,021	2,021
Adjusted R^2	0.292	0.095	0.219	0.133	0.123	0.110

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Table 5.C4: Heterogeneous effects (including all additional controls)

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **SOE JV**	-0.074 (0.150)	-0.236^{***} (0.068)	-0.152^{***} (0.041)	-0.190^{***} (0.029)	-0.247^{***} (0.024)	-0.058^{***} (0.017)
Ruling $\times$ StateInd	0.096^{***} (0.013)	0.067^{*} (0.026)	0.092^{***} (0.024)	-0.003 (0.029)	-0.038 (0.026)	-0.023 (0.032)
Ruling $\times$ SOE JV	-0.043 (0.072)	0.070^{*} (0.029)	0.085^{*} (0.036)	0.104^{*} (0.041)	0.145^{***} (0.040)	0.051 (0.036)
StateInd $\times$ SOE JV	0.083 (0.119)	0.266^{***} (0.054)	0.360^{***} (0.040)	0.424^{***} (0.037)	0.485^{***} (0.059)	0.284^{***} (0.054)
Ruling	-0.050^{***} (0.014)	-0.079^{***} (0.015)	-0.093^{***} (0.024)	-0.057^{***} (0.016)	-0.069^{***} (0.017)	-0.045^{+} (0.026)
StateInd	-0.031 (0.021)	-0.081^{**} (0.027)	-0.022 (0.033)	0.077^{***} (0.016)	0.102^{***} (0.018)	0.068^{**} (0.021)
SOE JV	0.075 (0.050)	-0.040^{*} (0.019)	-0.104^{*} (0.048)	-0.093^{**} (0.036)	-0.102^{**} (0.033)	-0.052^{+} (0.029)
Years of China experience	0.0003 (0.002)	0.001^{+} (0.001)	0.001 (0.001)	0.001 (0.002)	0.001 (0.001)	0.0004 (0.003)
Total assets	-0.009 (0.023)	-0.001 (0.012)	0.065 (0.044)	0.054^{**} (0.019)	0.062^{***} (0.012)	0.092^{***} (0.007)
Public listed	0.045^{*} (0.019)	0.025 (0.029)	0.096^{*} (0.040)	0.018 (0.048)	-0.004 (0.017)	-0.012 (0.016)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	2,000	1,363	1,324	1,309	1,309	1,309
Adjusted R^2	0.294	0.143	0.267	0.145	0.145	0.137

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

Table 5.C5: Heterogeneous effects for private joint ventures

	Dependent variable:					
	Judgement	*Court fee*	*Comp* > 0	*Comp* $> \frac{1}{4}$	*Comp* $> \frac{1}{2}$	*Comp* $\geq$ *full*
Ruling $\times$ **StateInd** $\times$ **Private JV**	0.125^{***} (0.012)	0.461^{***} (0.039)	0.132^{+} (0.068)	0.183^{***} (0.016)	0.207^{***} (0.041)	0.179^{***} (0.031)
Ruling $\times$ StateInd	0.087^{***} (0.009)	0.016 (0.034)	0.068^{**} (0.024)	-0.039 (0.028)	-0.082^{*} (0.033)	-0.047^{+} (0.027)
Ruling $\times$ Private JV	-0.018 (0.037)	-0.049 (0.039)	-0.016 (0.030)	0.027 (0.033)	-0.017 (0.029)	-0.017 (0.041)
StateInd $\times$ Private JV	0.013 (0.053)	-0.200^{***} (0.022)	0.062 (0.045)	0.017 (0.025)	-0.001 (0.027)	-0.040 (0.030)
Ruling	-0.058^{***} (0.017)	-0.074^{***} (0.016)	-0.087^{***} (0.026)	-0.053^{**} (0.018)	-0.058^{***} (0.016)	-0.039^{***} (0.012)
StateInd	-0.022^{**} (0.009)	-0.042^{*} (0.019)	-0.006 (0.018)	0.104^{***} (0.006)	0.137^{***} (0.019)	0.089^{***} (0.017)
Private JVs	0.009 (0.035)	0.026 (0.041)	-0.091^{**} (0.028)	-0.112^{***} (0.031)	-0.076^{*} (0.032)	-0.041 (0.052)
Years of China experience	0.0002 (0.001)	0.001 (0.002)	0.001 (0.001)	0.002^{*} (0.001)	0.001 (0.001)	0.001 (0.003)
Total assets	-0.010 (0.021)	-0.003 (0.015)	0.073^{+} (0.040)	0.065^{***} (0.017)	0.074^{***} (0.018)	0.103^{***} (0.019)
Public listed	0.044^{*} (0.022)	0.025 (0.024)	0.102^{***} (0.029)	0.023 (0.038)	-0.001 (0.022)	-0.012 (0.021)
Fixed Effects:	plaintiff home country, court location, ruling procedure, case type, domestic opponent					
Observations	1,976	1,341	1,317	1,302	1,302	1,302
Adjusted R^2	0.296	0.152	0.268	0.143	0.137	0.133

Note: Two-way robust standard errors clustered by province and industry are in parentheses.
$^{+}p < 0.1$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$.

6 Case Studies

In this chapter, I conduct case studies to provide qualitative evidence for the two main mechanisms proposed in the dissertation. First, in industries with high regulatory barriers to entry, foreign firms need to build ties with government agencies and state-affiliated entities to obtain market access privileges and to avoid expropriatory regulatory actions such as taxation and administrative penalties. Second, the threat of external FCPA actions deters the maintenance of corrupt exchanges between private firms under FCPA jurisdiction and the state, including state-owned enterprises. I focus on several industries with high regulatory barriers within regimes that lack independent judiciaries to check bureaucratic misconduct, which creates high potentials of rent-seeking.

Karklins (2002) provides a typology of corruption in the domestic context of post-communist regimes. Building upon her work, I propose a typological framework in Table 6.1 to analyze four different types of transnational corrupt relationships between foreign business and the host government, representing the different ways through which multinational interests influence the operation of weak institutions. The first dimension concerns the form of corrupt activities. MNEs can choose to engage in bribery directly or building ownership ties with the state. Direct forms of bribery include providing money, gifts, job opportunities, or other things of value to government officials as a direct offering. This type of exchanges is more ad hoc and informal. The government officials receiving the bribes do not have stakes in the well-being of the bribe-giving firm. In other words, the official does not benefit from the firm's commercial performance, other than receiving the direct bribery payment. On the other hand, if an MNE chooses to establish ownership ties with the state, a government agency or state-affiliated entity, such as state-owned enterprises, will have investments in the MNE, and thus hold formal stakes in the MNE's commercial performance. The cronyist corporate project may take the form of equity investment or joint venture partnership.

The second dimension of the typology concerns the purpose of corruption. The MNE

may seek to obtain business opportunities, including market access, commercial and public contracts, and other operating privileges pertaining to specific industries. Alternatively, the MNE may have a broader institutional objective to influence government policy and regulation. MNEs may attempt to shape policies regarding taxation and penalties, judicial proceedings, legislation, market competition, and other types of of regulatory rules and administrative procedures. I define the obtaining of rewarding business opportunities through political means *rent-seeking*, and the outcome of successfully influencing public policy and regulation through corruption *capture*.

Based on whether MNEs are engaging in the informal form of direct bribery or building formal ownership ties with the state, I categorize the corrupt relationships into four types: *informal rent-seeking*, *formal rent-seeking*, *informal capture*, and *formal capture*. In the following section, I show how several cases of transnational corruption fit into these categories. I also argue that, for most of the FCPA's history, maintaining ownership ties with the state entails fewer anti-corruption risks for MNEs than outright bribery exchanges. This could explain why there have been fewer FCPA actions against MNEs with state investments or partnerships than against wholly foreign-owned firms, even in the state-dominated industries, until stronger judicial scrutiny was imposed in recent years.

Table 6.1: Rent-seeking and Institutional Capture in High-barrier Industries

		Purposes of corruption	
		Obtain business	**Influence policy and regulation**
Means of corruption	**Direct bribery**	*Informal rent-seeking*	*Informal capture*
	Ownership ties	*Formal rent-seeking*	*Formal capture*

6.1 Informal Rent-seeking

The manufacture, registration, distribution, sale, and prescription of pharmaceuticals are highly-regulated activities throughout the world. While there are multinational regula-

tory schemes, it is typical that each country establishes its own regulatory structure at a local, regional, and/or national level. These regulatory structures generally require the registration of pharmaceuticals and regulate labeling and advertising. Additionally, in certain countries the government establishes lists of pharmaceuticals that are approved for government reimbursement or otherwise determines those pharmaceuticals that may be purchased by government institutions. Moreover, countries often regulate the interactions between pharmaceutical companies and hospitals, pharmacies, and healthcare professionals.

Pfizer Inc. ("Pfizer") is a global pharmaceutical company that discovers, develops, manufactures and markets prescription medicines for humans and animals. According to the official court document,[59] Pfizer China, Pfizer's subsidiary based in Beijing, provided cash payments, hospitality, gifts, and support for international travel to doctors employed by Chinese government healthcare institutions from 2003 to 2007. The payments of cash and other things of value were intended to influence these government officials to prescribe or purchase Pfizer products, provide hospital formulary listing, and otherwise use their influence to grant Pfizer China an unfair advantage.

In a related case, Pfizer HCP Kazakhstan, Pfizer's subsidiary in Kazakhstan, applied to the Kazakh government for approval of the registration of a Pfizer product for sale in Kazakhstan in 2000. At about the same time, two representatives of a Kazakh company approached Pfizer's Regional Manager for the Central Asia and Caucasus region and requested an exclusive distributorship of the Pfizer product. When the Regional Manager informed the Kazakh company's representatives that Pfizer policy prohibited exclusive arrangements, the representatives stated that if their company did not receive the exclusive distributorship, Pfizer HCP Kazakhstan would be unable to sell the Pfizer product in Kazakhstan. Afterwards, Pfizer HCP Kazakhstan experienced substantial difficulty obtaining approval of its registration, including receiving numerous requests for addi-

[59] See the SEC Complaint at `https://www.sec.gov/news/press-release/2012-2012-152htm`. Accessed on June 17, 2020.

tional documentation and clinical trial data. Despite Pfizer HCP Kazakhstan's compliance with these requests, the Kazakh government did not grant approval. The Regional Manager explained the situation to his supervisor and indicated in contemporaneous internal correspondence that he believed that the Kazakh company was associated with senior Kazakh government officials. Consequently, Pfizer HCP Kazakhstan entered into exclusive distribution agreements for the Pfizer product with the Kazakh company. Soon after the agreement was reached in May 2000, the Kazakh government approved a three-year registration for the Pfizer product. In 2003, Pfizer HCP Kazakhstan faced requests for exclusive distributorship again when it was required to renew its registration for the Pfizer product with the Kazakh government. Pfizer HCP Kazakhstan again encountered difficulties obtaining approval until it signed an additional contract with the Kazakh company.

6.2 Formal Rent-seeking

Diagnostic Products Corporation ("DPC") is a California-based corporation that develops and manufactures medical diagnostic test systems and related test kits. In October 1991, DPC established DePu Biotechnological & Medical Products Inc. ("DePu") in Tianjin, China as a joint venture. The joint venture partner was a local state-owned enterprise. From 1991 to 2002, DPC Tianjin made cash commission payments to laboratory personnel and doctors employed by hospitals owned by the Chinese government to obtain sales agreements and purchase orders from these hospitals for the sales of immunodiagnostic systems, immunochemistry kits, and other medical equipment.[60] DPC Tianjin recorded the commission payments on its books and records as "selling expenses."

There are other manufacturers and suppliers in China with whom DPC Tianjin competed. In order to obtain exclusive business deals with the state-owned hospitals, DPC

[60]See the DOJ information at `https://www.justice.gov/criminal-fraud/case/united-states-v-dpc-tianjin-co-ltd-court-docket-number-05-cr-482`. Accessed on June 18, 2020.

Tianjin leveraged the political resources of the SOE partner to build connections with employees of the hospitals, usually the laboratory heads or assistants, whereby the employees helped promote the sale of DPC Tianjin's products.

In a similar fashion, Mead Johnson, a global manufacturer and marketer of infant formula and child nutrition products, also benefited from its connection with the SOE partner.[61] Mead Johnson China is a joint venture between Mead Johnson, who holds majority ownership, and a Chinese state-owned medical and pharmaceutical company. From 2008 to 2013, Mead Johnson China made improper payments to certain health care professionals (HCPs) at state-owned hospitals in China to recommend Mead Johnson's nutrition products to, and provide information about, expectant and new mothers. These payments were made to assist Mead Johnson China in developing its business and were made by giving local third party distributors discounts which would be passed along to the HCPs. The state-owned partner facilitated Mead John's marketing and sales efforts through the medical sector by directly contacting the healthcare facilities and HCPs.

It is also a common practice in the financial sector. Deutsche Bank, the German multinational financial services corporation, has a joint venture with a state-owned securities company in China. From 2006 to 2015, the Deutsche Bank's joint venture subsidiary in China maintained a corrupt referral hiring program in the Asia-Pacific region.[62] Deutsche Bank hired candidates whose parents are in charge of SOEs that the bank tried to win business from. In overcoming some of the hiring restrictions imposed by the bank's global hiring policy, Deutsche Bank's Chinese JV used the SOE to hire and retain an employee whose father is the chairman of another SOE which is an important client for the bank, including IPO contracts. Deutsche Bank successfully completed several transactions with the SOE as a result of the referral hire program.

[61] See the SEC information at `https://www.sec.gov/news/pressrelease/2015-154.html`. Accessed on June 18, 2020.

[62] See the SEC information at `https://www.sec.gov/enforce/34-86740-s`. Accessed on June 18, 2020.

6.3 Informal Capture

Avon Products Inc. (Avon) is a global manufacturer and marketer of beauty products. Avon Products China is a wholly owned subsidiary of Avon incorporated in China that used a direct selling model. However, in 1998 the Chinese government banned all direct selling. During the negotiation for China to join the World Trade Organization (WTO), the WTO requested that the Chinese government consider allowing direct selling in the country as part of its admission into the organization. In 2001, the Chinese government agreed to allow direct selling within three years. Avon wanted to influence the legislation and regulations governing the re-implementation of direct selling in China. Avon also wanted to be the first company to implement direct selling if, and when, the new regulations became effective.[63]

In the years leading up to 2003, Avon Products China had expanded its government relations department to liaise with the Ministry of Commerce (MOFCOM) and the State Administration for Industry and Commerce (AIC), the government agencies responsible for the implementation of direct selling regulation. Employees in the Corporate Affairs department of Avon Products China provided gifts, entertainment, and travel to government officials in these agencies for the purpose of influencing the direct selling laws and to position Avon Products China as one of the companies to be selected to test direct selling when the new regulations were implemented.

In October 2003, Avon was told informally that when China opened its markets to direct selling, Avon Products China would be the first company to receive a test license. During this period, Avon Products China continued to provide meals, travel, and entertainment to MOFCOM and AIC officials. Avon Products China also sponsored cultural events, paid for journalists to attend corporate announcements, and purchased the placement of positive news stories, as well as the suppression of negative news stories, in gov-

[63] See the DOJ information at `https://www.justice.gov/opa/pr/avon-china-pleads-guilty-violating-fcpa-concealing-more-8-million-gifts-chinese-officials`. Accessed on June 19, 2020.

ernment media, to maintain a positive corporate image of the company. In April 2005, MOFCOM and AIC officially approved Avon Products China as the first company to receive test approval to conduct direct selling in Beijing, Tianjin, and Guangdong Province.

In other bribery schemes, MNEs attempt to capture an even wider arrange of institutions. Norteck Inc. (Norteck) manufactured and sold a wide variety of products for residential and commercial construction as well as the personal and enterprise computer markets. Linear Electronics (Linear China) is a wholly-owned subsidiary of Norteck in China. From 2009 to 2014, Linear China made improper payments and gifts to local Chinese officials in order to receive preferential treatment, relaxed regulatory oversight, and reduced customs duties, taxes, and fees. The improper payments and gifts to local Chinese officials included cash payments, gift cards, meals, travel, accommodations, and entertainment. Linear China made the illicit payments to local officials from multiple different governmental departments, including customs, tax, fire, police, labor, health inspection, environmental protection, and telecommunications. Similar to the Avon case of beauty products industry, the electronics manufacturing industry in China has relatively low regulatory barriers to entry. But in both cases, the purpose of direct bribery is less about obtaining market access than about influencing market regulations to create a more favorable macro-institutional environment.

Informal capture also takes place in the more regulated industries. Avery Dennison Corporation (Avery) is a U.S. company that manufactures and markets self-adhesive materials, office products, labels and graphics imaging media. Avery China is a wholly-owned subsidiary of Avery headquartered in Shanghai, China. Avery China sells reflective materials through the Reflectives Division. Reflective materials are commonly used in printing, road signs and emergency vehicle markings. In China, the Ministry of Public Security requires that all products used in road communications and safety meet certain requirements as certified by an authorized government entity. One such entity is called the Traffic Management Research Institute under the Ministry of Public Security

located in Wuxi, Jiangsu Province (Wuxi Institute). The Wuxi Institute helps formulate project plans, draft product and project specifications, and tests pilot projects, and as such could play an important role in awarding government contracts. From early 2004, Avery China's Reflectives Division sought to obtain business through the Wuxi Institute.[64] As part of that effort, in January 2004, an Avery China sales manager accompanied four Wuxi Institute officials to a meeting and bought each a pair of shoes with a combined value of approximately $500. In May 2004, Avery China hired a former Wuxi Institute official as a sales manager for the Reflectives Division, because his wife was also an official at the Wuxi Institute who was in charge of two projects that Avery China wanted to pursue: a "digital license plate" project for which Avery China had previously bid unsuccessfully, and a pilot project to develop a new graphic design for police cars. In August 2004, Avery China was awarded the two government contracts through the Wuxi Institute to install new graphics on approximately 15,400 police cars for two Chinese government entities.

In addition, in both China and Indonesia, Avery provided sightseeing trips and illegal payments to customs officials, who regulatory visited its warehouse to inspect goods, to obtain bonded zone licenses and to overlook bonded zone regulatory violations. Avery China's Reflectives Division also provided kickback payments to two state-owned enterprises to secure sales contracts.

6.4 Formal Capture

Formal capture is a form of corruption where the state bends the rules for foreign business interests because the state itself is the stakeholder or shareholder of the multinational enterprise. The corporate structure allows MNEs to capture the public institutions by making them subservient to the joint interests of foreign capital and host government officials. In this way, MNEs enjoy significant institutional advantages and profitability.

[64] See the SEC information at `https://www.sec.gov/litigation/litreleases/2009/lr21156.htm`. Accessed on June 19, 2020.

Such collusive arrangements are also less visible, more formalized, and more legitimized than outright bribery exchanges.

Och-Ziff Capital Management Group (Och-Ziff) is a U.S. hedgefund that controlls a variety of investment vehicles through myriad subsidiaries. The company provided investment advisory and management services to those vehicles in return for management fees and incentive income. In 2008, Och-Ziff entered into a joint venture partnership with a partner firm who has close ties to government officials at the highest level within the Democratic Republic of Congo (DRC) and holds multiple mining-related interests in the DRC. The DRC partner engaged in a bribery scheme to consolidate copper and cobalt mines into the joint enterprise and to takeover a Canadian mining company.

The DRC partner is closely connected to a senior DRC official who is also a national parliamentarian. The DRC official has the ability to take official action and exert official influence over mining matters in the DRC. The official orchestrated the taking of the Canadian company's interest in the DRC Mine and made it available to Och-Ziff's DRC partner. The DRC official once sent an email to Och-Ziff stating that:

"*The DRC landscape is in the making and I am shaping it - like no one else. I would love to have you beside me as a long-term partner. As a 40% shareholder, I facilitated your entry at an attractive time/price knowing that you see there is a bigger picture in all of this. What this bigger picture exactly looks like, is yet to be determined, but it is your partner who is holding the pen - I just need flexibility on the drawing board to create full value for our partnership.*"

The Canadian firm engaged in legal proceedings in the DRC courts to try to nullify the seizure of its interest in the DRC Mine. Then, Och-Ziff's DRC partner paid bribes to judges involved in the court case to influence the outcome of the proceedings to the benefit Och-Ziff and the DRC partner. The DRC partner's lawyer mentioned that he had to "arrangement with supreme court, attorney general, and magistrates." He asked for payments to these officials and members of the lawyers' office that worked on the file. Afterwards, the lawyer met with the attorney general and the magistrate that wrote the

opinion. He also made contact with the three judges of the supreme court, and stated that "they got clear instructions to rewrite the opinion" and to make sure that the Canadian mining company lost. Throughout the bribery scheme, Och-Ziff provided the DRC partner with significant financing to carry out the resolution of the DRC legal dispute and to gain control of the Canadian company.

In another case, an MNE subverted corporate privacy regulations by using its JV partner's political connections. The U.S. company Dun & Bradstreet Corporation (D&B) is a global provider of business information. HDBC is a joint venture formed between D&B's Chinese subsidiary, D&B China, and Chinese Company Huaxia International Credit Consulting Co. Limited (Huaxia) who is the 51% majority shareholder of HDBC. Huaxia used its government connections to source financial statement information directly from provincial offices of the Chinese State Administration of Industry and Commerce (AIC), Chinese National Bureau of Statistics, lawyers, and other individuals rather than publicly available sources.

Access to the business information, including financial statement information, archived in the AIC offices is highly regulated under Chinese law. Public access to the AIC archived file on a business entity is limited to enterprise registration information, documents submitted for approval in an application for enterprise registration, items concerning the change of the enterprise, items concerning the deregistration of the enterprise, and items concerning supervision and inspection. However, access to the complete AIC archived file for an entity, including its financial statement information, is restricted to law enforcement agencies, the judiciary, disciplinary/inspection organizations, and law firms in the limited circumstances related to representation of clients in lawsuits. Supporting documents for case initiation and the lawyer's license are required to be produced to the AIC before such access is granted to a lawyer or law firm. Chinese law further provides that AIC archived files cannot be made public and those who obtain such AIC archived files shall not use such files to engage in commercial services.

Nevertheless, D&B China's JV partner Huaxia routinely obtained restricted financial statement data by making improper payments to government officials, either through its employees or third-party agents. Due to Huaxia's political connections, AIC officials also became complicit in helping HDBC acquire certain non-public AIC business data through unofficial arrangements, and provided fake tax receipts to legitimize the illicit payments. In both the cases of Och-Ziff and D&B, their JV partners generated value beyond obtaining market access and business opportunities. More importantly, they helped the foreign firms influence the operation of legal and regulatory institutions. This is a highly rewarding form of multinational corporate governance whereby the state has been captured to serve private interests, due to state actors' ownership in the collaborative enterprise.

6.5 The Risks and Deterrence of the FCPA

In this section, I use the typology to explain the observed patterns of disparity among different types of FCPA violations. For example, among all 102 enforcement actions conducted against entities in China so far, 63 cases involve MNEs mainly using direct bribery to obtain business (*informal rent-seeking*), 22 case involve MNEs using direct bribery to influence policy and regulation (*Informal capture*)), 12 cases involve MNEs using ownership ties to obtain business (*formal rent-seeking)*, and 5 cases involve MNEs mostly using ownership ties to influence policy and regulation (*formal capture*).

6.5.1 The Risks of FCPA Exposure

I argue that the four different types of corrupt exchanges entail different levels of risks of being exposed by FCPA interventions. The proposed typology can explain the empirical disparity in the observed numbers of FCPA violations committed in different ways by MNEs with different corporate structures, especially in highly regulated markets under weak domestic legal systems. In the case of informal rent-seeking, MNEs operating as wholly foreign-owned enterprises (WFOEs) make illegal payments to government

officials to obtain business opportunities on an ad hoc basis. I argue that this type of activity has the greatest risk exposure to FCPA sanctions, especially in industries with high regulatory barriers. This is because the corrupt transaction delivers directly observable benefits to a firm who is otherwise not competitive or qualified enough to obtain the business through legitimate channels, such as the regular application and bidding process. Firms making abnormal profits in the regulated industries are often subjects of whistle-blower reports by industry competitors and their own employees, and are on the radar of law enforcement agencies. In the pharmaceutical and healthcare industry, for example, the pattern of uncovering bribery schemes usually involves a company obtaining lucrative procurement contracts by state-owned hospitals or product subscription by healthcare professionals. The MNC's accounting department may find unusually high expense items related to selling and promotional activities and flag the expenditures to the management. In channels other than voluntary self-disclosure, the SEC conducts auditing of the suspected MNC's books and records, and discovers irregular, unexplained payments and expense entries. In such cases of direct rent-seeking by MNCs, the exchanges of favor are more visible; it is easier for enforcement authorities to identify and establish the quid pro quo than other types corrupt arrangements.

The case of informal capture is less vulnerable to external legal actions, because it is harder to attribute the regulatory shift to a specific company's illicit contribution. The policy and institutional change may take place as a result of the bribery scheme, but the facade of formal procedures required for institutional change can shield the perpetrators from potential external legal scrutiny. As long as the domestic policy-making process and the bureaucratic procedures for policy implementation maintain their prima facie legitimacy, changing the rules of the market is a more covert way of exerting corrupt influence. Meanwhile, informal capture is still not a legally-waterproof action in terms of transnational enforcement risk. The MNC needs to engage in corrupt transactions itself in order to effectively request and receive the political favors, which exposes them

to external liabilities when the particular industry is subject to enhanced oversight. For example, China's pharmaceutical industry has very stringent regulations regarding direct selling. Large companies such as Avon and Herbalife tried to fast-track liberalizing China's regulatory regime by offering a variety of monetary and nonmonetary benefits to the regulatory bodies, the Ministry of Commerce and the State Administration for Industry and Commerce (SAIC). They also precluded any potential investigations and penalties to be levied upon them for noncompliance with existing laws by making bribes to SAIC officials "to build the connection," stating that "it is better to spend money beforehand than spending money afterwards."[65]

Establishing ownership ties with state-affiliated entities has been a safer strategy to engage in rent-seeking and institutional capture than outright bribery payments. The state partner uses its informal ties with relevant government authorities to facilitate the exchanges of favor. The corruption scheme is less visible and identifiable than the MNC doing the "dirty work" itself, which has been the case for most of the FCPA's enforcement history until the definition of "government instrumentality" was broadened by U.S. court rulings in recent years (Boedecker 2015). An example of such covertly conducted, formal rent-seeking involves Telefonaktiebolaget LM Ericsson (Ericsson), a multinational networking and telecommunications equipment and services company headquartered in Sweden, who holds a majority-owned joint venture with a state-controlled enterprise in China, Nanjing Panda Electronics Company Limited. Ericsson's joint venture partner used its connections to facilitate payments to Chinese government officials and a state-owned telecommunications company in order to win business from that telecommunications company and other state-owned customers. The joint venture partner has retained employees, consultants, and other intermediaries who have strong connections and highly skilled access to government officials. The Swedish company Ericsson itself does not need to directly participate in any bribery transactions in order to obtain the

[65]For the Herbalife case, see the DOJ indictment at `https://www.justice.gov/criminal-fraud/fcpa/cases/yanliang-li`. Accessed on June 25, 2020.

profitable telecommunications contracts.

Formal capture is the most ideal form of corruption for MNCs, as it entails the fewest enforcement risks while delivering sustainable streams of rents. The structure enables long term partnership between the MNC and the state and provides a variety of non-market privileges, including shaping market rules in favor of the collective enterprise. The corruption scheme is less susceptible to external legal intervention due to its covert, insidious nature and the procedural legitimacy of formalized institutional change. One case from the telecommunications industry demonstrate this mechanism. BellSouth Corporation is an American telecommunications holding company based in Atlanta, Georgia. In 1997 it acquired a 49% ownership interest in Telefonia Celular de Nicaragua, S.A. (Telefonia), Nicaragua's only provider of wireless telephone services. At the time of BellSouth's acquisition of its minority interest in Telefonia, a Nicaraguan law, Article 29 of the General Law of Telecommunications and Postal Services, imposes a foreign ownership restriction that prohibited foreign companies from acquiring a majority interest in Nicaraguan telecommunications companies. Meanwhile, one of Telefonia's board members is the wife of the chairman of the Nicaraguan legislative committee with oversight of Nicaraguan telecommunications. The wife provided various regulatory and legislative services, including lobbying for repeal of the foreign ownership restriction. The lobbyist's husband, chairing the legislative committee with jurisdiction over the foreign ownership restriction, drafted the text of the proposed repeal of the foreign ownership restriction and enlisted support for the proposed repeal from other Committee members. The husband scheduled and presided at a hearing in April 1999, during which his Committee heard arguments from BellSouth and others advocating repeal of the foreign ownership restriction. In September 1999, the Committee referred the proposed amendment for approval by the Nicaraguan National Assembly. In December 1999, the National Assembly voted to repeal the foreign ownership restriction. In Jun 2000, BellSouth increased its ownership interest in Telefonia to 89 percent.

Compared with ad hoc exchanges of favor, establishing state partnership to shape the institutional environment in favor of the joint enterprise formalizes and legitimizes corrupt exchanges between state and business. The corporate structure shields the firm's illegitimate nonmarket activities from external anti-corruption scrutiny. I argue that it is the main reason that the exposed "grand" corruption schemes is much rarer than other types of transnational corruption activities that do not engage in systematic capture of domestic institutions.

6.5.2 The Deterrence Effect

For MNCs operating in economies that lack robust judicial oversight, they have strong incentives to undertake various forms of corrupt dealings with host government officials. Meanwhile, given the amount of economic transactions taking place, it is impossible for transnational enforcement to target and punish every bribery offence. I argue that FCPA enforcement relies on a deterrence strategy that has grown much more potent over time. Firms under FCPA jurisdiction have become highly sensitive to the underlying threat of external sanctions. When an extraterritorial enforcement action targets a firm in the host country, other entities in the same host market will also be deterred from bribery if they fall within the remit of FCPA. The FCPA achieves the deterrence effect by discouraging potential offenders, while firms' reactions to the external intervention may vary with their industrial and corporate characteristics. As a result of global enforcement collaboration among the U.S. DOJ, SEC, Swiss Attorney General's Office, and the Brazilian Federal Police and Federal Prosecution Service, Braskem eventually paid a total monetary penalty of $957 million as settlement agreement. Andrew Ceresney, SEC's former Director of Enforcement, mentioned that such global resolutions "send strong messages of deterrence to companies and individuals, as they know they will face sanctions from the U.S., as well as other places they do significant business."[66] Steven R. Peikin, the Co-Director of

[66]Remarks at the 33rd Annual International Conference on Foreign Corrupt Practices Act (November 30, 2016). `https://www.sec.gov/news/speech/speech-ceresney-113016.html`. Accessed on July

SEC's Division of Enforcement, also stated that the top benefit of international coordination and cooperation in fighting corruption is that "it sends strong messages of deterrence to companies and individuals who might otherwise see bribery and corruption as a way of maximizing their commercial advantage."[67] Both of them highlighted holding individual corporate executives accountable as an effective way to accomplish the Enforcement Division's goal of deterrence. When delivering a congressional testimony on the Braskem case, the former Assistant U.S. Attorney David Hall specifically mentioned that "one of the positive effects from law enforcement actions like this, and particularly effective multilateral law enforcement actions like this, is to create a deterrent effect and to change the standard."[68] FCPA enforcement has also maintained a "big fish" tactic that recommends punishing high-profile corrupt individuals as harshly as possible in order to demonstrate the public desire of anti-corruption and to deter possible future instances of corruption (Klitgaard 1988).

FCPA can regulate the behavior of firms with financial ties to the U.S. even if the target is operating in foreign jurisdictions. Braskem, S.A., a corporation headquartered and incorporated in Brazil, was the largest petrochemical company in the Americas, with significant interests in the petrochemical and thermoplastic products industries. From 2006 to 2014, in order to obtain business and to influence Brazilian taxation policy and its implementation, Braskem paid bribes to various foreign officials in Brazil, including one official at Petrobras, the Brazilian state-owned petroleum company, senators and representatives of the Brazilian congress, and political party officials with at least two leading political parties in Brazil.

Disclosed case information also suggests that firms learn from the experiences of oth-

1, 2020.

[67]Remarks at New York University School of Law (November 9, 2017). https://www.sec.gov/news/speech/speech-peikin-2017-11-09. Accessed on July 1, 2020.

[68]Hearing Before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade of The Committee on Foreign Affairs, House of Representatives, 106th Congress (March 26, 2019). https://www.govinfo.gov/content/pkg/CHRG-116hhrg35616/pdf/CHRG-116hhrg35616.pdf. Accessed on July 1, 2020.

ers in the same country when making bribery decisions. Diageo, headquartered in the United Kingdom, is a leading producer and distributor of premium branded spirits, beer, and wine. From 2003 to 2009, its wholly-owned Indian subsidiary, Diageo India, paid bribes to relevant government departments and entities to increase sales of its products, to secure favorable product placement and promotion within stores, to obtain initial listings and annual label registrations for Diageo brands, price revision approvals, and favorable factory inspection reports, and to secure the release of seized shipments of Diageo products. Diageo settled its FCPA violation with the SEC in administrative court by paying a total monetary penalty of $16 million in 2011.[69] Beam Inc is a US manufacturer of alcoholic beverages whose Indian subsidiary, Beam India, is a direct competitor of Diageo in the Indian spirit markets. In 2010, Beam engaged a global accounting firm to conduct a compliance review of Beam India. The accounting firm then reported that grease payments were likely to have been made to government officials. After receiving this report, Beam consulted a U.S. law firm with FCPA expertise, which advised that these issues required follow up. Beam then retained an Indian law firm to review and expand upon the work performed by the accounting firm. The Indian law firm confirmed the accounting firm's findings about improper payments and gifts made to Indian officials. The U.S. law firm forwarded to Beam's general counsel's office the 2011 SEC enforcement action concerning FCPA violations by Diageo India. Beam subsequently sent a lawyer from its General Counsel's office to India to interview senior Beam India management to ask whether similar conduct was occurring at Beam India and to provide additional FCPA training. Because of the need to continue conducting business in India, Beam did not then conduct additional transactional testing as advised by the U.S. law firm or conduct due diligence on third parties as advised earlier in the year by the global accounting firm. Howoever, Beam cauntioned that "if we are doing anything in the same manner as Diageo did that was violative, we should change it and look to how we can do things in a

[69]See the SEC administrative proceeding at `https://www.sec.gov/whistleblower/award-claim/award-claim-2011-42`. Accessed on July 7, 2020.

more clearly compliant manner." After subsequent FCPA compliance reviews and internal investigations in 2012, Beam eventually voluntarily disclosed its FCPA violations.[70]

[70]See the SEC administrative proceeding at https://www.sec.gov/enforce/34-83575-s. Accessed on July 7, 2020.

7 Conclusion

The dissertation project highlights the complexity of the global institutional environment that multinational firms are embedded in and entrepreneurial firms' political strategies in response to such institutional complexity.

The relationship between a country's institutional environment and its attractiveness to private investors is one of the key themes in international political economy research. There has been growing academic interest, informed largely by by international business and management scholarships, in how MNEs adopt tailor-made strategies to adapt to specific institutional environments. Meanwhile, when conducting cross-border investment, financing, and trade activities, these multinational firms' adaptation strategies to particular institutional settings may not be compatible with other institutional requirements that they are subject to. Through different angles, this project examines the problems of navigating political risk landscapes across jurisdictional boundaries in the contemporary global marketplace.

7.1 Core Findings and Implications

Chapter 3 reveals that MNEs can actually rely on domestic judiciaries in authoritarian regimes to protect and advance their interests. Dependent judiciaries susceptible to undue political influence have long been considered as an unreliable venue for resolving disputes between foreign firms and local actors and for addressing the commitment problem posed by an unconstrained host government. In this chapter, I examine the value of a unique type of government-business relationship that MNEs build to manage legal risks and to address the commitment problem: incorporating the state as a stakeholder of a collective enterprise to capture host judicial institutions for their joint benefits.

In comparison to ad hoc political ties that provides only superficial commitment by the state to protect investor interests, forging a joint venture with a state-owned enter-

prise makes the state internalize the foreign investor's interests. The host government, as a business partner, has strong incentives to create institutional privileges, such as systematic adjudicative advantages, to benefit the collective enterprise. Therefore, this type of relationship can more effectively commit the state to advancing the MNE's interests through judicial means. The findings highlight the value of business partnerships between MNEs and state-affiliated actors in terms of aligning foreign investors' interests with regime interests and of generating rent-seeking opportunities under a dependent, authoritarian judiciary.

Chapter 4 examines the deterrence effect of transnational anti-corruption enforcement based on global firms' jurisdictional exposure. The results show that firms with listings in U.S. financial markets, thus subject to FCPA jurisdiction, are indeed deterred from bribery after observing FCPA interventions in their market of operation. Such transnational deterrence against corruption disrupts the bribery market for exclusive business opportunities, such as government contracts, and may empower those firms not exposed to FCPA oversight in capturing greater market shares. As a result, firms exposed to U.S. jurisdictional oversight may have two options: market exit or jurisdictional exit. US-listed firms may choose to either divest from corrupt markets or delist from U.S. stock exchanges in order to mitigate external legal liabilities.

This study also enriches our understandings about how institutions affect corporate performance and strategy, especially in countries with deficient domestic sanction and deterrence mechanisms against corrupt rent-seeking activities. The findings suggest that weak institutions susceptible to being unduly influenced may also be a source of competitive advantage for firms. Firms capable of exerting informal influences over weak institutions are more competitive in many developing economies than firms with hands tied by stronger corporate integrity and ethical obligations. Corrupt rent-seeking arrangements, as an informal rights-protection mechanism in developing countries, help unconstrained firms advance their business interests at the expense of their competitors subject to strin-

gent regulations from foreign jurisdictions.

Chapter 5 provides an empirical link between the transnational deterrence effect of FCPA jurisdictional oversight, as found in Chapter 3, and firms' cronyist ties with state-affiliated entities, as shown in Chapter 2. Focusing on the case of China, I show that the expansion of FCPA jurisdiction to include illegal dealings with *state-owned* entities significantly reduces the adjudicative advantages of MNE-SOE joint ventures in state-dominated industries. The expanded jurisdictional reach also hurts the investment performance of US-listed firms operating in industries dominated by SOEs. As a whole, these empirical patterns provide a coherent picture of the institutional tensions faced by globalized firms caught between divergent political and legal requirements.

Chapter 6 provides detailed cases to demonstrate the four different channels by which foreign firms engage with weak institutions: informal rent-seeking, informal capture, formal rent-seeking, and formal capture. The case studies further support the idea that forging business partnerships with state-owned entities is a very effective way of gaining sustainable market advantages for foreign firms. Such covert forms of corruption schemes not only deliver formalized streams of rents for the joint enterprise, but may even capture weak institutions through influencing market rules, laws, and regulations.

Meanwhile, given the complexity and volume of transnational corruption schemes, FCPA enforcers heavily rely on a deterrence strategy to regulate the behavior of potential offenders. Several illustrative cases in Chapter 6 provide support for the mechanisms proposed in Chapters 4 and 5 that firms' jurisdictional exposure to the U.S. often result in strong deterrence against FCPA violations, especially in the aftermath of FCPA enforcement actions.

7.2 Changing Patterns of Global Investments

The dissertation project offers some explanations for the changing patterns of global investments as identified in Chapter 1. The overall evidence suggests that transnational en-

terprises are actively learning to adapt to the particular institutional environments they are exposed to. Meanwhile, the different degrees of corporate integrity and compliance obligations create uneven constraints on these firms' adaptability to local environments.

All else equal, firms prefer strong institutional constraints on government executives than arbitrary policy-making. That is why there is still a positive correlation between measurements of a country's judicial constraints and its FDI inflows. However, firm-level heterogeneity in political capital and external legal constraints implies that some firms stand to profit from weak judicial checks against public and private malfeasance. For firms governed by the OECD Anti-Bribery Convention, especially those subject to the U.S. FCPA, they will be less competitive in corrupt markets where unfettered firms attempt to influence the operation of weak institutions. This may explain the disproportionately high levels of Chinese investments flowing into countries with weak judicial constraints on government executives, and the relatively low exposure of U.S. investments to such markets.

In addition, those sectors with high regulatory barriers to entry are especially vulnerable to corrupt rent-seeking activities under weak judiciaries. The international political economy scholarship has only recently started to examine how benefits from corrupt rent-seeking with authoritarian regimes may outweigh the potential risks from dealing with unconstrained leaders. Meanwhile, scholars have not taken into account external sources of legal threats posed by transnational enforcement and they may affect global firms' incentives of using corrupt means to mitigate political risks. By studying these two factors in conjunction, i.e. regulatory rent-seeking and transnational scrutiny, this dissertation sheds some light on the phenomenon that emerging market FDIs have started to dominate markets with high regulatory entry barriers and weak judicial oversight since transnational anti-corruption enforcement gained momentum.

Multinational firms' heterogeneity in their ability to build up and deploy political capital to influence weak institutions may explain their risk appetite towards particular insti-

tutions. Market-supporting institutions create a predicable and safe environment for capital investment and accumulation, but also limit the market participants' influence over the under-girding institutions. Globalized firms, with superior productive and financial capacities, may be especially incentivized to shape or exploit the underlying institutions to create undue market advantages in local economies. Therefore, for these transnational enterprises, bad law may actually be good for business, and good law is not always desirable. High regulatory barriers to market entry combined with weak judicial constraints over bureaucratic discretion in enforcing the regulatory barriers create fertile grounds for corrupt rent-seeking arrangements. Unregulated and undeterred investors are drawn to such risky environments as found in many developing economies.

7.3 Transnational Regulation and Development

The empirical analyses conducted in this project are not able to fully assess the net welfare effects or the long-term development outcomes of transnational anti-corruption enforcement. What is known regarding the original intention of the global anti-corruption regime is to curb corruption perpetrated by the traditional exporters of capital, i.e. the Western MNEs. With the rise of indigenous firms and foreign participants from the developing world, such as Chinese MNEs, intense competition in the Global South markets has called for a variety of nonmarket means of building competitive advantages. In this sense, traditional enforcement focusing on MNEs from the Global North may no longer be sufficient and may even lead to unintentional, negative consequences in the host countries.

On the positive side, transnational actions against the regulated MNEs should reduce the total number of bribe-payers in host markets. There will be fewer corrupt bidders for government contracts, which may lead to fewer illicit proceeds extracted by host government officials. Meanwhile, the unregulated foreign and domestic firms will find it easier to bargain with the soliciting officials with fewer corrupt competitors, and thus may be

more active and successful in bribing their ways into exclusive business opportunities. Overall, how such dynamics changes the aggregate frequency and amount of corrupt transactions in a country is uncertain. Regardless, the price of bribes will be transferred in part or in full to the local population who are market consumers or beneficiaries of government services. Corrupt exchanges almost always transfer some welfare from the general public to the parties engaging in corruption. The local citizens are bearing the ultimate costs of corruption and it does not matter much to them which perpetrator (public or private, foreign or domestic) is getting a greater slice of the pie.

In addition to monetary-based welfare loss, the vulnerable population also suffers from other types of negative consequences as a result of uneven transnational anti-corruption enforcement. MNEs from the developed world have long been a source of best business practices to developing economies, such as modern corporate governance culture, cutting-edge technology, and corporate integrity standards. When these MNEs are replaced or forced out of local markets by other firms not providing similar values, the quality of the local market's ecosystem deteriorates: competitive firms are more likely to be those with greater capacity to bribe instead of those delivering best goods and services; labor and environmental protection will adhere to lower standards; government-funded projects will be undertaken by unqualified firms; marketplace discrimination of various sorts are more likely to persist. For instance, there have been reports of Chinese MNEs' disregard for human rights protection in their mining projects in Africa.[71]

At a societal level, it is difficult to make conclusive policy evaluations on global anti-corruption initiatives that take into account both monetary and non-monetary objectives. But transnational anti-corruption efforts with limited jurisdiction over global firms do not seem to yield positive development outcomes in the targeted countries. More quantitative and qualitative evidence is needed to convincingly demonstrate what happens to a country's long-term economic and political development when unscrutinized corrupt

[71]See a report by Human Rights Watch at `https://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines`. Accessed on March 23, 2021.

influence drives out scrutinized corrupt influence.

7.4 Policy Preferences of Firms and States

From a firm-level perspective, the dissertation's empirical analyses confirm that exposure to U.S. jurisdictions subjects firms to high regulatory pressure under the FCPA. The substantial deterrence effect of U.S. jurisdictional exposure is the result of the accumulative sanctions imposed by U.S. enforcers over the years, and also explains the incentives of both regulators and the regulated firms to push for an expansion of FCPA jurisdiction in order to level the playing field for all globally-connected firms. The U.S. has imposed more sanctions on non-US OECD firms than US firms in recent years, and also given more attention to Global South firms in response to their increasingly active roles in transnational corruption schemes. Such shifts in enforcement priority may explain U.S. firms' general lack of objection to aggressive FCPA enforcement (Perlman and Sykes 2018).

However, the dissertation project demonstrates that the FCPA's ostensible goal of creating a fair and just global market order is unlikely to play out as intended. Even the U.S. government, as the predominant provider of transnational enforcement, cannot avoid unintentionally empowering and handing over market shares to unscrutinized firms who still roam outside of U.S. judicial purview. In attempting to provide a global public good of transnational regulation, the current regime paradoxically generates a form of negative institutional spillovers on the targeted countries. Therefore, the findings imply that two outcomes are likely to emerge.

First, firms losing out in corrupt markets will lobby for more aggressive and coordinated global enforcement equipped with expanded jurisdictional reach. This may be especially preferable for well-established firms in high-risk jurisdictions who have already developed the capacity to cope with external anti-corruption oversight. But this would constitute significant entry barriers for newcomers to the local market with little experience of managing simultaneously local corruption demands and transnational

anti-corruption constraints.

Second, when globalized firms under the institutional dilemma choose to decouple from U.S. jurisdictions, instead of exiting from corrupt markets, the U.S. government may also change their enforcement approaches. They may opt for a more lenient approach of prosecuting and imposing sanctions on firms operating in "dark jurisdictions." From a national economic policy standpoint, this will decrease the costs of U.S. regulatory exposure and therefore encourage more global firms to establish business connections to the U.S. market. This option is nevertheless morally questionable and may face public opinion pressure. U.S. regulators could also crack down even harder on corruption by claiming wider jurisdictions against overseas perpetrators with even tenuous ties to the U.S., and seek to impose greater sanctions upon the bribe-receivers, i.e. the host government officials. However, this approach inevitably faces significant logistical and financial obstacles and may generate diplomatic backlash.

Whether globally-connected firms exposed to FCPA jurisdictions choose to exert influence over policy or making jurisdictional choices that minimize exposure to the transnational anti-corruption regime, the certain thing is that both firms' and states' preferences are changing. This rise of global anti-corruption regime is a relatively recent phenomenon, which has coincided with the rise of emerging market MNEs and indigenous firms from the Global South which are not subject to meaningful transnational oversight. Both firms and government agencies are trying to keep pace with the development of global business environment. The current geopolitical tensions between superpowers have only accentuated the institutional dilemma faced by globalized firms.

7.5 Business Ethics in Corporate Political Strategies

The implications of this project also raise many ethical concerns. Domestic corruption and bribery are outlawed in almost every country in the world. It is not advisable to any company, as a matter of principal, to engage in any form of illicit exchanges with govern-

ment authorities. In an ideal world, all domestic and foreign firms should compete under the same, unified legal framework that respects and protects all stakeholders' legitimate rights and interests. In reality, however, the market rules are not always designed or implemented in such a way. Unfairness of market rules and inequality of market participants' power and resources inevitably create incentives to flout, bypass, or reshape the existing market order. As a result, firms do not always engage in innovative and productive market activities.

Corporations operating in weak rule of law environments need to make difficult moral and ethical decisions, even when they are not legally bound by transnational anti-corruption obligations. Business executives in many situations face the tradeoff between maximizing shareholder values and upholding corporate values of integrity and honesty. The dissertation does not offer empirical support for any type of dominant strategy that would work for all challenging situations. One potential prescription for firms faced with such conundrums is informed by U.S. firms' experiences resisting bribery demands. One noticeable outcome of the rigorous enforcement of the FCPA is that it gives U.S. firms a very credible reason to resist corrupt solicitations. This has gradually built up the reputation for U.S. companies that their hands are really tied when it comes to bribery. Therefore, host government officials would expect less or no illegal contributions from U.S. firms when they apply for licences, permits, or other operating privileges. This does not mean that U.S. firms are still able to obtain and retain businesses free of bribery, but it has in many instances strengthened their bargaining positions vis-a-vis bribery solicitors.

In the same spirit, when a company is persistent in refusing bribery requests, it may establish a reputation of fair business practices and high ethical standards. Instead of citing the FCPA as a credible reason of non-cooperation, the company may refer to its own impeccable record in engaging with government officials and winning their approvals, such as successful bids for government contracts. However, this kind of nonmarket capability usually needs to be backed by superior market competitiveness, e.g. technological

prowess or unique corporate assets. Market-based business advantages can substitute for or mitigate the need of using nonmarket strategies in many instances.

One case in point is MNEs originating from Singapore. Singapore is not an OECD country or a signatory to the OECD Anti-bribery Convention. It has the 11th largest FDI outward stocks in the world by 2019, an amount greater than those from Italy, South Korea, or Spain.[72] Meanwhile, its top investment destinations include high-risk jurisdictions such as mainland China, India, Indonesia, and Malaysia. However, there has only been one Singapore-headquartered company sanctioned under the FCPA up till March, 2021.[73] This is remarkable achievement given that Singapore has a globally-connected economy and U.S. regulators could relatively easily claim jurisdictions over Singaporean MNEs operating in the world. Based on the author's interviews, one plausible reason is that strong domestic controls over Singaporean firms' conduct in overseas markets have helped create a reputation of bribery-resistance for Singaporean MNEs. Host government officials understand these foreign firms' high regard for a rule-based market order and the legal constraints they face at home, and therefore create many exceptions for Singaporean investors in terms of bribery requests. In addition, Singaporean firms do possess unique advantages in managerial and technological know-hows. A track record of successful investments combined with their well-known adherence to a rule of law culture have helped Singaporean MNEs overcome the ethical dilemma faced by many global firms.

7.6 Generalizability of the Findings

The empirical analyses are mainly based on MNEs' litigation data in Chinese courts, financial data of firms publicly-listed in the U.S., and information on enforcement actions under the FCPA. Therefore, the key independent and dependent variables of this study

[72]According to UNCTAD statistics on FDI outward stocks: `https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx`. Accessed on March 26, 2021.

[73]See information on the case at `https://fcpa.stanford.edu/fcpac/documents/5000/003623.pdf`. Accessed on March 26, 2021.

are limited to two countries, the U.S. and China. This inevitably raise concerns about the generalizability and external validity of the findings.

I argue that the theoretical mechanisms proposed in this dissertation project are generalizable to other settings as well. Many developing economies institute complex and burdensome regulatory regimes governing market entry for certain industries. Meanwhile, these regulations are administered by bureaucrats and judges with significant discretion in interpreting and enforcing the written statutes. In many instances, excessive bureaucratic red-tapes and redundant rules are intentionally created to generate rent-seeking opportunities for government officials. Such a business environment is condoned and aided by a weak rule of law system where the judiciary is not independent enough to resist undue external influences. This creates incentives for MNEs to cultivate and exert political influence over host state regulators and judges.

The host country's market size also does not need to be as large as China's in order to make the rent-seeking and rent-sharing arrangements sufficiently attractive to foreign investors. In fact, many MNEs' corruption schemes are taking place in small and medium-sized markets, especially the resource-rich countries, and can generate more premiums than their normal business operations in larger yet better-governed economies. The specific form of government-business connection and transaction varies across institutional contexts, but all entail some type of partnership with state-owned or state-affiliated entities. In such cooperative relationships, MNEs are exchanging their expertise in technology, management, or finance, along with bribery contributions and kick-backs, for access to regulated industries with significant rent-seeking opportunities.

The study's explanatory variables are dependent upon legal interventions under the U.S. FCPA. This is driven by the fact that the U.S. has been the predominant, peerless enforcer of anti-foreign corruption law. U.S. authorities also provide the most comprehensive information on their enforcement actions. Such data availability has not been provided for any other country's enforcement efforts. In addition, some signatories of

OECD Anti-Bribery Convention have modeled their own foreign bribery laws after the FCPA and been learning from the U.S. experience, such as the UK and France.[74] The U.S. enforcement agencies have also led or initiated multi-jurisdictional enforcement collaboration with counterparts from other OECD Convention signatories. Therefore, studying FCPA enforcement as the primary legal treatment should be fairly representative of the effect of the global anti-corruption regime. In the future, even more countries are expected to emulate the FCPA as a model of transnational enforcement, and further research is in due course should data availability allows.

7.7 Future Research

The two themes explored in this dissertation project could be further developed in individual papers. First, I will continue to examine the exploitation of weak property rights protection institutions and the anti-competitive strategies adopted by politically-savvy firms in developing countries. Chapter 3 shows that authoritarian judiciaries may help foreign firms build market advantages under certain conditions, acting beyond as merely rights-protection tools. Utilizing legal institutions for rent-seeking and anti-competitive purposes, instead of just for investor protection, is an especially salient issue in intellectual property (IP) rights protection regimes. Foreign firms may resort to authoritarian judiciaries to create and lock in their IP assets and institute technical barriers to entry into certain industries, thereby building up monopolistic market status. Weaponizing IP assets to deter market entry and to engage in regulatory rent-seeking is a well-known phenomenon across the world. MNEs may be especially incentivized to exploit authoritarian judiciaries in large developing countries, vulnerable to external influence, whose judgements can be profitably enforced across the entire domestic markets.

In this regard, I also intend to examine the forum-shopping behavior of multinational

[74] See a study of the French law at `https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/france`. Accessed on March 26, 2021.

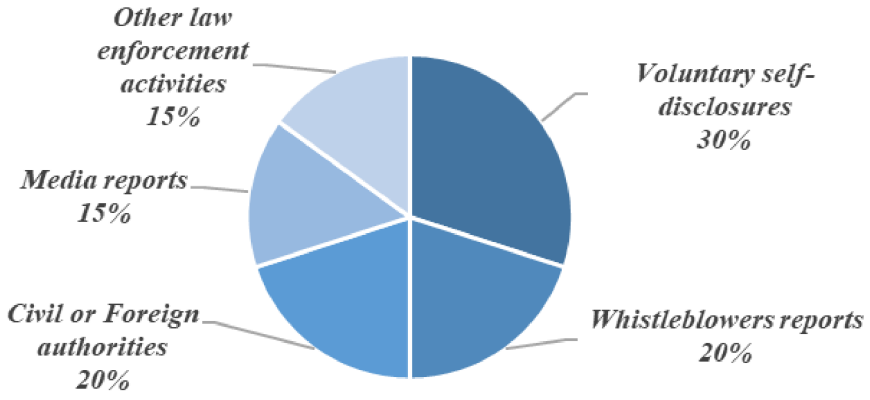
firms in rights protection. A major weakness of Chapter 3 is that I do not take into account MNEs' decision-making processes in choosing their legal venues for dispute resolution. Many MNEs have the options of international arbitration or mediation as provided under various investment treaties or commercial agreements. Each of these legal tools entails its own benefits and risks, compared with domestic litigation in authoritarian regimes. Future research will examine how MNEs make such trade-offs in their forum-shopping behavior and how MNEs take advantage of weak judicial institutions and engage in abusive litigation in the IP realm.

This line of inquiry will take into account the role played by market power. Host countries with larger market sizes and hence greater profit potentials may be more capable of coercing foreign firms to follow local norms and requirements. When the FCPA was introduced in 1977, and for more than two decades afterwards, there was no developing economy market so important to MNEs that they feel compelled to engage in corruption despite potential external legal liabilities. With the rise of emerging markets, such as China, India, and Indonesia, alongside increasingly competitive firms from these regions, the current global anti-corruption regime seems inadequate to regulate both Global North MNEs operating in weakly-governed environments as well as the behavior of Global South firms investing both at home and abroad. In this sense, China as both a host market and as a source of FDI is an exceptional case. It has proven challenging to fully deter MNEs' bribery in China as well as to constrain Chinese MNEs' overseas bribery. Many firms cannot afford to lose the Chinese market, and are this willing to risk noncompliance with the FCPA in trying to curry favor with Chinese officials. Market access considerations may be a less salient factor for other countries when firms make trade-off decisions in jurisdictional arbitrage and institutional exploitation.

Regarding the second theme of transnational anti-corruption legal regimes, one remaining yet significant question is related to the politics of transnational enforcement. The political economic considerations of FCPA enforcement is both a theoretical issue as

well as an identification issue in terms of endogeneity concerns, as I try to address in Chapter 4. The "United States Phase 4 Monitoring Report" recently published under the OECD Anti-Bribery Convention rejects the claims that FCPA enforcement is improperly politicized (OECD 2020). It was specifically mentioned that "*[a]cademics, private sector lawyers, and civil society concurred that the attorneys currently in the FCPA units in the DOJ and SEC were committed professionals with high integrity. They did not believe that political considerations had ever influenced FCPA enforcement, and they agreed that there would have been resignations or reports if any political pressure had been exerted*" (p.77).

Figure 7.1: Estimated Sources of the U.S. Foreign Bribery Cases resolved by the DOJ



The report also reveals that, based on the approximate percentages of the origin of cases resolved by the DOJ (Figure 7.1), the great majority of cases resolved by the DOJ originate from sources that the U.S. government has not control over. However, this still does not provide sufficient evidence that the DOJ does not have any biases in prosecution and pursing potential leads, as suspicions arise from its "China Initiative." Future research will examine how prosecutorial discretion is exercised in FCPA enforcement actions, and the geopolitical implications of the assertion of long-arm jurisdictions under the FCPA. With enhanced FCPA scrutiny over dealings with state-owned and state-affiliated entities, as demonstrated in Chapter 5, developing countries with large state-dominated

sectors and US-listed domestic firms are likely to experience more transnational legal interventions and, as a result, more geopolitical conflicts. Great power competitions under a globalized economy will increasingly play out in the judicial arena where each country tries to project its domestic laws onto the international stage to shape the rules and norms governing political and economic exchanges.

The most surprising element of this dissertation project is that the U.S. DOJ and the SEC seem to be very relentless and persistent in their enforcement efforts. If we believe that these agencies are *apolitical* actors whose main duty is to impartially police the global market and eradicate transnational corruption, then it seems puzzling why they are so tirelessly providing a public good when the overall returns to the U.S. government and companies are unclear (or even negative). If they are picking and choosing targets and carrying out their own or the U.S. government's self-interested political agenda, then their activities undermine the very value and principal that they proclaim to uphold: a rules-based global market order of fairness, neutrality, and integrity.

In this regard, the dissertation project echoes with the idea that the "stateness" of globalized firms is very tricky concept, which calls for a coordinated global regulatory framework. When the DOJ sanctions a British-run firm which is listed in the New York Stock Exchange, incorporated in the British Virgin Islands, and headquartered in Hong Kong, multiple stakeholders are affected and it is difficult to fully assess the net benefits or costs to the U.S. government, investors, and consumers. When a globalized firm is embedded in multiple jurisdictions, multiple state authorities might have incentives to regulate its behavior if they see sufficient rewards from enforcement. Meanwhile, the governments may also shirk their oversight responsibilities and pass the buck when they do not foresee any attractive outcomes for themselves. MNEs may also strategically employ their stateness to evade certain jurisdictional responsibilities or to enjoy certain jurisdictional benefits, much like what they have been doing through ISDS channels.

Therefore, states should seek to combine unilateral legal tools, such as the FCPA, with

multilateral regulatory regimes, such as the ISDS mechanism, in tackling transnational corruption. One potential solution is the establishment of an international tribunal that adjudicates cross-border corruption cases and imposes due sanctions. Governments from both the developed and the developing world will need to coordinate and delegate sufficient jurisdictions and resources to the third-party judicial body in order to make it functional and effective. Like all international institution-building efforts, this kind of endeavor may face a whole new set of challenges of itsown. But this type of global mission is still worth pursing in light of the limitations of the current US-centered enforcement regime. Future research may also explore the possibilities of such an ambitious project.

References

ADB & OECD (2007). Mutual legal assistance, extradition and recovery of proceeds of corruption in Asia and the Pacific. https://www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf [Accessed 19-February-2020].

Ades, A. and Di Tella, R. (1999). Rents, competition, and corruption. *American economic review*, 89(4):982–993.

Ahlquist, J. S. (2006). Economic policy, institutions, and capital flows: Portfolio and direct investment flows in developing countries. *International Studies Quarterly*, 50(3):681–704.

Albino-Pimentel, J., Dussauge, P., and Shaver, J. M. (2018). Firm non-market capabilities and the effect of supranational institutional safeguards on the location choice of international investments. *Strategic Management Journal*, 39(10):2770–2793.

Allee, T. and Peinhardt, C. (2010). Delegating differences: Bilateral investment treaties and bargaining over dispute resolution provisions. *International Studies Quarterly*, 54(1):1–26.

Allee, T. and Peinhardt, C. (2011). Contingent credibility: The impact of investment treaty violations on foreign direct investment. *International Organization*, 65(3):401–432.

American Bar Association (2018). 2017 year-end fcpa update. https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/winter/should_fcpa_territorial_jurisdiction_reach_extraterritorial_proportions/. [Online; accessed 20-January-2019].

Ang, Y. Y. and Jia, N. (2014). Perverse complementarity: Political connections and the use of courts among private firms in China. *Journal of Politics*, 76(2):318–332.

Arbatskaya, M. N. and Mialon, H. M. (2018). The impact of the foreign corrupt practices act on competitiveness, bribery, and investment. *SSRN Working Paper*.

Ashcroft, J. and Ratcliffe, J. (2012). The recent and unusual evolution of an expanding fcpa. *Notre Dame JL Ethics & Pub. Pol'y*, 26:25.

Asiedu, E. (2006). Foreign direct investment in africa: The role of natural resources, market size, government policy, institutions and political instability. *World economy*, 29(1):63–77.

Asiedu, E. and Lien, D. (2011). Democracy, foreign direct investment and natural resources. *Journal of international economics*, 84(1):99–111.

Ayyagari, M., Demirgüç-Kunt, A., and Maksimovic, V. (2010). Are innovating firms victims or perpetrators? tax evasion, bribe payments, and the role of external finance in developing countries. *Policy Research Working Paper*.

Bach, D. and Newman, A. L. (2010). Transgovernmental networks and domestic policy convergence: Evidence from insider trading regulation. *International Organization*, 64(3):505–528.

Barassi, M. R. and Zhou, Y. (2012). The effect of corruption on fdi: A parametric and non-parametric analysis. *European Journal of Political Economy*, 28(3):302–312.

Barry, C. M. and DiGiuseppe, M. (2019). Transparency, risk, and fdi. *Political Research Quarterly*, 72(1):132–146.

Beazer, Q. H. and Blake, D. J. (2018). The conditional nature of political risk: How home

institutions influence the location of foreign direct investment. *American Journal of Political Science*.

Bencivenga, D. (1997). Anti-bribery campaign: Sec cracks down on illegal payments abroad. *New York Law Journal*, 110(10):5–6.

Bertrand, M. and Kramarz, F. (2002). Does entry regulation hinder job creation? evidence from the french retail industry. *the quarterly journal of economics*, 117(4):1369–1413.

Biglaiser, G., Lee, H., and Staats, J. L. (2017). The effects of political and legal constraints on expropriation in natural resource and manufacturing sectors. *International Area Studies Review*, 20(4):311–333.

Biglaiser, G. and Staats, J. L. (2012). Finding the 'democratic advantage' in sovereign bond ratings: The importance of strong courts, property rights protection, and the rule of law. *International Organization*, 66(3):515–535.

Black, S. E. and Strahan, P. E. (2001). The division of spoils: rent-sharing and discrimination in a regulated industry. *American Economic Review*, 91(4):814–831.

Blanchard, O. and Giavazzi, F. (2003). Macroeconomic effects of regulation and deregulation in goods and labor markets. *The Quarterly Journal of Economics*, 118(3):879–907.

Boddewyn, J. J. (2015). Political aspects of mne theory. In *The Eclectic Paradigm*, pages 85–110. Springer.

Boddewyn, J. J. and Brewer, T. L. (1994). International-business political behavior: New theoretical directions. *Academy of Management Review*, 19(1):119–143.

Boedecker, K. (2015). When does an entity amount to an instrumentality of a foreign government under the Foreign Corrupt Practices Act: Emerging judicial guidelines. *Journal of Law, Business & Ethics*.

Bonardi, J.-P. (2004). Global and political strategies in deregulated industries: The asymmetric behaviors of former monopolies. *Strategic Management Journal*, 25(2):101–120.

Brewster, R. (2017). Enforcing the fcpa: International resonance and domestic strategy. *Va. L. Rev.*, 103:1611.

Bronckers, M. (2015). Is investor–state dispute settlement (isds) superior to litigation before domestic courts? an eu view on bilateral trade agreements. *Journal of International Economic Law*, 18(3):655–677.

Brouthers, L. E., Gao, Y., and McNicol, J. P. (2008). Corruption and market attractiveness influences on different types of fdi. *Strategic management journal*, 29(6):673–680.

Brower, C. N. and Steven, L. A. (2001). Who then should judge: Developing the international rule of law under nafta chapter 11. *Chi. J. Int'l L.*, 2:193.

Büthe, T. and Milner, H. V. (2008). The politics of foreign direct investment into developing countries: Increasing fdi through international trade agreements? *American Journal of Political Science*, 52(4):741–762.

Campos, J. E., Lien, D., and Pradhan, S. (1999). The impact of corruption on investment: Predictability matters. *World development*, 27(6):1059–1067.

Carpenter, D. and Moss, D. A. (2013). *Preventing regulatory capture: Special interest influence and how to limit it*. Cambridge University Press.

Carrington, P. D. (2010). The international movement to deter corruption: Should china join. *US-China Law Review*, 7:1.

Cassin, R. L. (2018). Hating on the fcpa won't make it go away. `https://fcpablog.com/2018/6/8/hating-on-the-fcpa-wont-make-it-go-away/`. Accessed on

August 23, 2019.

Cassin, R. L. (2019). Hong kong charges ex-jpmorgan banker in 'princeling' bribery case. http://www.fcpablog.com/blog/2019/5/16/hong-kong-charges-ex-jpmorgan-banker-in-princeling-bribery-c.html.

Chen, L. (2017). Grounded globalization: Foreign capital and local bureaucrats in China's economic transformation. *World Development*, 98:381–399.

Chen, S.-F. S. and Hennart, J.-F. (2002). Japanese investors' choice of joint ventures versus wholly-owned subsidiaries in the us: The role of market barriers and firm capabilities. *Journal of International Business Studies*, 33(1):1–18.

Chen, T.-J., Chen, H., and Ku, Y.-H. (2004). Foreign direct investment and local linkages. *Journal of International Business Studies*, 35(4):320–333.

Choi, S.-W. and Samy, Y. (2008). Reexamining the effect of democratic institutions on inflows of foreign direct investment in developing countries. *Foreign Policy Analysis*, 4(1):83–103.

Chow, D. (2012). China under the foreign corrupt practices act. *Wis. L. Rev.*, page 573.

Chow, D. C. (2014). Why china's crackdown on commercial bribery threatens us multinational companies doing business in china. *Ariz. J. Int'l & Comp. L.*, 31:511.

Clearinghouse, F. C. P. A. (2018). Datasets. http://fcpa.stanford.edu/about-the-fcpac.html#datasets.

Cleveland, M., Favo, C. M., Frecka, T. J., and Owens, C. L. (2009). Trends in the international fight against bribery and corruption. *Journal of Business Ethics*, 90(2):199–244.

Control Risks (2016). International business attitudes to corruption. https://www.rai-see.org//wp-content/uploads/2016/01/corruption-survey-2016.pdf. [Online; accessed on 10-November-2018].

Coppedge, M., Gerring, J., Knutsen, C. H., Lindberg, S. I., Teorell, J., Marquardt, K. L., Medzihorsky, J., Pemstein, D., Pernes, J., von Römer, J., et al. (2019). V-dem methodology v9. *V-Dem Working Paper Forthcoming*.

Cuervo-Cazurra, A. (2006). Who cares about corruption? *Journal of International Business Studies*, 37(6):807–822.

Cuervo-Cazurra, A. (2008). The effectiveness of laws against bribery abroad. *Journal of International Business Studies*, 39(4):634–651.

Cuervo-Cazurra, A. (2016). Corruption in international business. *Journal of World Business*, 51(1):35–49.

Dal Bó, E. (2006). Regulatory capture: A review. *Oxford Review of Economic Policy*, 22(2):203–225.

Davis, K. E. (2009). Does the globalization of anti-corruption law help developing countries? *SSRN Working Paper*.

Davis, K. E. (2019). *Between Impunity and Imperialism: The Regulation of Transnational Bribery*. Oxford University Press.

De Sousa, L. (2010). Anti-corruption agencies: between empowerment and irrelevance. *Crime, law and social change*, 53(1):5–22.

Desai, M. A. and Moel, A. (2008). Czech mate: Expropriation and investor protection in a converging world. *Review of Finance*, 12(1):221–251.

Diwan, I., Keefer, P., and Schiffbauer, M. (2020). Pyramid capitalism: Cronyism, regula-

tion, and firm productivity in egypt. *The Review of International Organizations*, 15(1):211–246.

Djankov, S. et al. (2008). *The regulation of entry*, volume 1904. World Bank Publications.

Djankov, S., La Porta, R., Lopez-de Silanes, F., and Shleifer, A. (2002). The regulation of entry. *The quarterly Journal of economics*, 117(1):1–37.

Doh, J. P., Rodriguez, P., Uhlenbruck, K., Collins, J., and Eden, L. (2003). Coping with corruption in foreign markets. *The Academy of Management Executive*, 17(3):114–127.

Dreher, A. and Gassebner, M. (2013). Greasing the wheels? the impact of regulations and corruption on firm entry. *Public Choice*, 155(3-4):413–432.

Dunn, G. (2018). 2017 year-end fcpa update. https://www.gibsondunn.com/wp-content/uploads/2018/01/2017-year-end-fcpa-update-1.pdf.

Durnev, A. (2010). The real effects of political uncertainty: Elections and investment sensitivity to stock prices. *Available at SSRN 1549714*.

Eaton, S. and Kostka, G. (2014). Authoritarian environmentalism undermined? local leaders' time horizons and environmental policy implementation in china. *The China Quarterly*, 218:359–380.

Egger, P. and Winner, H. (2005). Evidence on corruption as an incentive for foreign direct investment. *European journal of political economy*, 21(4):932–952.

Erbstoesser, E. R., Sturc, J. H., and Chesley, J. W. (2007). The fcpa and analogous foreign anti-bribery laws—overview, recent developments, and acquisition due diligence. *Capital Markets Law Journal*, 2(4):381–403.

Faccio, M. (2006). Politically connected firms. *American Economic Review*, 96(1):369–386.

Faccio, M., Masulis, R. W., and McConnell, J. (2006). Political connections and corporate bailouts. *Journal of Finance*, 61(6):2597–2635.

Farrell, H. and Newman, A. L. (2014). Domestic institutions beyond the nation-state: Charting the new interdependence approach. *World Politics*, 66(2):331–363.

FCPA Clearing House (2017). FCPA enforcement actions. http://fcpa.stanford.edu/enforcement-action.html?id=264 [Accessed 20-January-2020].

FCPA Clearing House (2018). Fcpa enforcement actions. Case details are available at http://fcpa.stanford.edu/fcpac/documents/5000/003625.pdf, http://fcpa.stanford.edu/fcpac/documents/4000/003405.pdf, http://fcpa.stanford.edu/fcpac/documents/4000/002817.pdf, http://fcpa.stanford.edu/fcpac/documents/5000/003568.pdf. [Online; accessed 19-July-2018].

FCPA Professor (2019). Checking in on wal-mart's pre-enforcement action professional fees and compliance enhancements expenses. https://fcpaprofessor.com/checking-wal-marts-pre-enforcement-action-professional-fees-compliance-en [Online; accessed on 4-November-2018].

Feinberg, S. E. and Gupta, A. K. (2009). Mnc subsidiaries and country risk: Internalization as a safeguard against weak external institutions. *Academy of Management Journal*, 52(2):381–399.

Feng, Y. (1997). Democracy, political stability and economic growth. *British Journal of Political Science*, 27(3):391–418.

Firth, M., Rui, O. M., and Wu, W. (2011). The effects of political connections and state ownership on corporate litigation in china. *Journal of Law and Economics*, 54(3):573–607.

Fox, T. (2010). What is the cost of fcpa compliance? or what is the cost of non-compliance? https://www.lexisnexis.com/LegalNewsRoom/securities/b/securities/posts/what-is-the-cost-of-fcpa-compliance-or-what-is-the-cost-of-non-compliance [Online; accessed on 4-November-2018].

Galang, R. M. N. (2012). Victim or victimizer: Firm responses to government corruption. *Journal of Management Studies*, 49(2):429–462.

Gans-Morse, J. (2017). Demand for law and the security of property rights: The case of post-soviet russia. *American Political Science Review*, 111(2):338–359.

Ginsburg, T. (2005). International substitutes for domestic institutions: Bilateral investment treaties and governance. *International Review of Law and Economics*, 25(1):107–123.

Grabosky, P. (2013). Beyond responsive regulation: The expanding role of non-state actors in the regulatory process. *Regulation & Governance*, 7(1):114–123.

Graham, B. A. and Tucker, J. R. (2017). The international political economy data resource. *Review of International Organizations*, Online First.

Guasch, J. L. and Hahn, R. W. (1999). *The costs and benefits of regulation: implications for developing countries*. The World Bank.

Guide, F. (2012). A resource guide to the us foreign corrupt practices act. *By the Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission*.

Habib, M. and Zurawicki, L. (2002). Corruption and foreign direct investment. *Journal of international business studies*, 33(2):291–307.

Haggard, S., MacIntyre, A., and Tiede, L. (2008). The rule of law and economic development. *Annu. Rev. Polit. Sci.*, 11:205–234.

Hajzler, C. (2012). Expropriation of foreign direct investments: sectoral patterns from 1993 to 2006. *Review of World Economics*, 148(1):119–149.

Hajzler, C. (2014). Resource-based fdi and expropriation in developing economies. *Journal of International Economics*, 92(1):124–146.

Haley, U. C. and Haley, G. T. (2013). *Subsidies to Chinese industry: state capitalism, business strategy, and trade policy*. Oxford University Press.

He, X. (2012). The party's leadership as a living constitution in china. *Hong Kong Law Journal*, 42:73.

Henisz, W. J. (2000). The institutional environment for multinational investment. *Journal of Law, Economics, and Organization*, 16(2):334–364.

Henisz, W. J. (2002). The institutional environment for infrastructure investment. *Industrial and corporate change*, 11(2):355–389.

Henisz, W. J. and Zelner, B. A. (2005). Legitimacy, interest group pressures, and change in emergent institutions: The case of foreign investors and host country governments. *Academy of Management Review*, 30(2):361–382.

Henisz, W. J. and Zelner, B. A. (2010). The hidden risks in emerging markets. *Harvard Business Review*, 88(4):88–95.

Hillman, A. J., Keim, G. D., and Schuler, D. (2004). Corporate political activity: A review and research agenda. *Journal of Management*, 30(6):837–857.

Ho, D. E., Imai, K., King, G., and Stuart, E. A. (2011). Matchit: Nonparametric preprocessing for parametric causal inference. *Journal of Statistical Software*.

Howard Scheck CPA, J. (2019). Uncovering bribes hidden in books and records. *Journal of Accountancy*, 228(4):28–33.

Hsueh, R. (2011). *China's Regulatory State: A New Strategy for Globalization*. Cornell University Press.

Hsueh, R. (2016). State capitalism, Chinese-style: Strategic value of sectors, sectoral characteristics, and globalization. *Governance*, 29(1):85–102.

Huang, X. (2015). Four worlds of welfare: Understanding subnational variation in chinese social health insurance. *The China Quarterly*, 222:449–474.

Huang, Y. (2003). One country, two systems: Foreign-invested enterprises and domestic firms in china. *China Economic Review*, 14(4):404–416.

Huang, Y. (2008). *Capitalism with Chinese characteristics: Entrepreneurship and the state*. Cambridge University Press.

Imbens, G. and Wooldridge, J. M. (2007). What's new in Econometrics? *NBER Working Paper*.

Iwasaki, I. and Suzuki, T. (2007). Transition strategy, corporate exploitation, and state capture: An empirical analysis of the former soviet states. *Communist and Post-Communist Studies*, 40(4):393–422.

Jensen, N. (2008a). Political risk, democratic institutions, and foreign direct investment. *The Journal of Politics*, 70(4):1040–1052.

Jensen, N., Biglaiser, G., Li, Q., and Malesky, E. (2012). *Politics and foreign direct investment*. University of Michigan Press.

Jensen, N. M. (2003). Democratic governance and multinational corporations: Political regimes and inflows of foreign direct investment. *International Organization*, 57(3):587–616.

Jensen, N. M. (2008b). *Nation-States and the Multinational Corporation: A Political Economy of Foreign Direct Investment*. Princeton University Press.

Jensen, N. M. and Malesky, E. J. (2018). Nonstate actors and compliance with international agreements: An empirical analysis of the oecd anti-bribery convention. *International Organization*, 72(1):33–69.

Jin, H., Qian, Y., and Weingast, B. R. (2005). Regional decentralization and fiscal incentives: Federalism, chinese style. *Journal of public economics*, 89(9-10):1719–1742.

Johns, L. and Wellhausen, R. L. (2016). Under one roof: Supply chains and the protection of foreign investment. *American Political Science Review*, 110(1):31–51.

Jones, A. (2012). Fcpa: Company costs mount for fighting corruption. `https://www.wsj.com/articles/SB10000872396390444752504578024893988048764`. [Online; accessed on 4-November-2018].

Jordan, J. (2010). Recent developments in the foreign corrupt practices act and the new uk bribery act: A global trend towards greater accountability in the prevention of foreign bribery. *NYUJL & Bus.*, 7:845.

Julio, B. and Yook, Y. (2012). Political uncertainty and corporate investment cycles. *The Journal of Finance*, 67(1):45–83.

Julio, B. and Yook, Y. (2016). Policy uncertainty, irreversibility, and cross-border flows of capital. *Journal of International Economics*, 103:13–26.

Kaczmarek, S. C. and Newman, A. L. (2011). The long arm of the law: Extraterritoriality and the national implementation of foreign bribery legislation. *International Organiza-*

tion, 65(4):745–770.
Kalinova, B., Palerm, A., Thomsen, S., et al. (2010). *OECD's FDI Restrictiveness Index: 2010 Update*. Citeseer.
Karklins, R. (2002). Typology of post-communist corruption. *Problems of post-communism*, 49(4):22–32.
Kaufmann, D. and Wei, S.-J. (1999). Does" grease money" speed up the wheels of commerce? Technical report, National bureau of economic research.
Kennedy, S. (2011). *Beyond the Middle Kingdom: Comparative Perspectives on China s Capitalist Transformation*. Stanford University Press.
Kenyon, T. and Naoi, M. (2010). Policy uncertainty in hybrid regimes: Evidence from firm-level surveys. *Comparative Political Studies*, 43(4):486–510.
Kesternich, I. and Schnitzer, M. (2010). Who is afraid of political risk? multinational firms and their choice of capital structure. *Journal of International Economics*, 82(2):208–218.
Khan, M. H. and Jomo, K. S. (2000). *Rents, rent-seeking and economic development: Theory and evidence in Asia*. Cambridge University Press.
Khatam, D. (2017). Chevron and ecuador proceedings: A primer on transnational litigation strategies. *Stan. J. Int'l L.*, 53:249.
Kirkegaard, J. F. (2020). Chinese investment in the us and the eu is declining–for similar reasons. *China & World Economy*, 28(2):59–83.
Klapper, L., Laeven, L., and Rajan, R. (2006). Entry regulation as a barrier to entrepreneurship. *Journal of financial economics*, 82(3):591–629.
Klemencic, G., Stusek, J., and Gaika, I. (2007). Specialized anti-corruption institutions. review of models: Organisation for economic co-operation and development. *Anti-corruption Network for Eastern Europe and Central Asia*.
Klitgaard, R. (1988). *Controlling corruption*. Univ of California Press.
Koehler, M. (2007). The unique fcpa compliance challenges of doing business in china. *Wis. Int'l LJ*, 25:397.
Koehler, M. (2015). A common language to remedy distorted foreign corrupt practices act enforcement statistics. *Rutgers UL Rev.*, 68:553.
Konara, P. and Shirodkar, V. (2018). Regulatory institutional distance and mncs' subsidiary performance: climbing up vs. climbing down the institutional ladder. *Journal of International Management*, 24(4):333–347.
Krever, T. (2007). Curbing corruption-the efficacy of the foreign corrupt practice act. *NCJ Int'l L. & Com. Reg.*, 33:83.
Kwok, C. C. and Tadesse, S. (2006). The mnc as an agent of change for host-country institutions: Fdi and corruption. *Journal of International Business Studies*, 37(6):767–785.
Laffont, J.-J. (2005). *Regulation and development*. Cambridge University Press.
Laffont, J.-J., Tirole, J., Idei, G., et al. (1993). Cartelization by regulation. *Journal of Regulatory Economics*, 5(2):111–130.
Lambert-Mogiliansky, A., Sonin, K., and Zhuravskaya, E. (2007). Are Russian commercial courts biased? Evidence from a bankruptcy law transplant. *Journal of Comparative Economics*, 35(2):254–277.
Larson, W. L. (1980). Effective enforcement of the foreign corrupt practices act. *Stanford Law Review*, pages 561–580.
Lawson, B. P., Martin, G. S., Muriel, L., and Wilkins, M. S. (2019). How do auditors

respond to fcpa risk? *Auditing: A Journal of Practice & Theory*, 38(4):177–200.

Lee, S.-H. and Hong, S. J. (2012). Corruption and subsidiary profitability: Us mnc subsidiaries in the asia pacific region. *Asia Pacific Journal of Management*, 29(4):949–964.

Leibold, A. (2014). Extraterritorial application of the fcpa under international law. *Willamette L. Rev.*, 51:225.

Li, Q. (2009). Democracy, autocracy, and expropriation of foreign direct investment. *Comparative Political Studies*, 42(8):1098–1127.

Li, Q., Owen, E., and Mitchell, A. (2018). Why do democracies attract more or less foreign direct investment? a metaregression analysis. *International Studies Quarterly*, 62(3):494–504.

Li, Q. and Resnick, A. (2003). Reversal of fortunes: Democratic institutions and foreign direct investment inflows to developing countries. *International organization*, 57(01):175–211.

Liebman, B. L. and Milhaupt, C. J. (2015). *Regulating the visible hand?: the institutional implications of Chinese state capitalism*. Oxford University Press.

Lin, K. J., Tan, J., Zhao, L., and Karim, K. (2015). In the name of charity: Political connections and strategic corporate social responsibility in a transition economy. *Journal of Corporate Finance*, 32:327–346.

Linzer, D. A. and Staton, J. K. (2015). A global measure of judicial independence, 1948–2012. *Journal of Law and Courts*, 3(2):223–256.

Lu, H., Pan, H., and Zhang, C. (2015). Political connectedness and court outcomes: Evidence from Chinese corporate lawsuits. *Journal of Law and Economics*, 58(4):829–861.

Luo, Y. (1997). Partner selection and venturing success: The case of joint ventures with firms in the people's republic of china. *Organization science*, 8(6):648–662.

Luo, Y. (2001a). Determinants of entry in an emerging economy: A multilevel approach. *Journal of Management Studies*, 38(3):443–472.

Luo, Y. (2001b). Toward a cooperative view of mnc-host government relations: Building blocks and performance implications. *Journal of International Business Studies*, 32(3):401–419.

Lyles, M. A. and Steensma, H. K. (1996). Competing for large-scale infrastructure projects in the emerging asian markets: Factors of success. *The Columbia Journal of World Business*, 31(3):64–75.

Malesky, E. J., Gueorguiev, D. D., and Jensen, N. M. (2015). Monopoly money: Foreign investment and bribery in vietnam, a survey experiment. *American Journal of Political Science*, 59(2):419–439.

Maxeiner, J. R. (2010). Cost and fee allocation in civil procedure. *American Journal of Comparative Law*, 58(S1):195–222.

McAfee, R. P., Mialon, H. M., and Williams, M. A. (2003). Economic and antitrust barriers to entry. *Nakip, M.(2006). Pazarlama Araştırmaları. İstanbul, Seçkin Yayıncılık*.

McChesney, F. S. (1987). Rent extraction and rent creation in the economic theory of regulation. *The Journal of Legal Studies*, 16(1):101–118.

McCoy, J. L. (2001). The emergence of a global anti-corruption norm. *International Politics*, 38(1):65–90.

Mellahi, K., Frynas, J. G., Sun, P., and Siegel, D. (2016). A review of the nonmarket strategy literature: Toward a multi-theoretical integration. *Journal of Management*, 42(1):143–173.

Mendoza, R. U., Lim, R. A., and Lopez, A. O. (2015). Grease or sand in the wheels of commerce? firm level evidence on corruption and smes. *Journal of International Development*, 27(4):415–439.

Méon, P.-G. and Sekkat, K. (2005). Does corruption grease or sand the wheels of growth? *Public choice*, 122(1-2):69–97.

Méon, P.-G. and Weill, L. (2010). Is corruption an efficient grease? *World development*, 38(3):244–259.

Meyer, K. E., Estrin, S., Bhaumik, S. K., and Peng, M. W. (2009). Institutions, resources, and entry strategies in emerging economies. *Strategic Management Journal*, 30(1):61–80.

Milhaupt, C. J. and Zheng, W. (2014). Beyond ownership: state capitalism and the chinese firm. *Geo. LJ*, 103:665.

Minhas, S. and Remmer, K. L. (2018). The reputational impact of investor-state disputes. *International Interactions*, 44(5):862–887.

Moon, C. (2015). Foreign direct investment, commitment institutions, and time horizon: How some autocrats do better than others. *International Studies Quarterly*, 59(2):344–356.

Morschett, D., Schramm-Klein, H., and Swoboda, B. (2010). Decades of research on market entry modes: What do we really know about external antecedents of entry mode choice? *Journal of International Management*, 16(1):60–77.

Murphy, K. M., Shleifer, A., and Vishny, R. W. (1993). Why is rent-seeking so costly to growth? *The American Economic Review*, 83(2):409–414.

Nadelmann, E. A. (2010). *Cops across borders: The internationalization of US criminal law enforcement*. Penn State Press.

Naughton, B. and Tsai, K. S. (2015). *State capitalism, institutional adaptation, and the Chinese miracle*. Cambridge University Press.

Newman, A. and Bach, D. (2014). The european union as hardening agent: soft law and the diffusion of global financial regulation. *Journal of European Public Policy*, 21(3):430–452.

Ng, K. H. and He, X. (2017). *Embedded Courts: Judicial Decision-making in China*. Cambridge University Press.

North, D. C. and Weingast, B. R. (1989). Constitutions and commitment: The evolution of institutions governing public choice in seventeenth-century England. *Journal of Economic History*, 49(4):803–832.

OECD (2014). *OECD Foreign Bribery Report: An Analysis of the Crim of Bribery of Foreign Public Officials*. OECD Publishing.

OECD (2016). 2015 data on enforcement of the anti-bribery convention. `https://www.oecd.org/daf/anti-bribery/WGB-Enforcement-Data-2015.pdf`. [Online; accessed 17-April-2019].

OECD (2016). 2015 data on enforcement of the anti-bribery convention. `https://www.oecd.org/daf/anti-bribery/WGB-Enforcement-Data-2015.pdf`. [Online; accessed 10-July-2018].

OECD (2018). 2017 enforcement of the anti-bribery convention. The OECD Working Group on Bribery report can be accessed at `http://www.oecd.org/daf/anti-bribery/OECD-WGB-Enforcement-Data-2018-ENG.pdf`.

OECD (2020). Implementing the oecd anti-bribery convention — united states phase 4 report. `https://www.oecd.org/daf/anti-bribery/`

United-States-Phase-4-Report-ENG.pdf. [Online; accessed 26-November-2020].

OECD Anti-bribery Convention (1997). Oecd convention documents. https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf. [Online; accessed 20-July-2020].

Olson, M. (1993). Dictatorship, democracy, and development. *American political science review*, 87(3):567–576.

Ong, L. H. (2012). Between developmental and clientelist states: Local state-business relationships in china. *Comparative Politics*, 44(2):191–209.

Pacini, C. (2012). Foreign corrupt practices act: Taking a bite out of bribery in international business transactions. *Fordham J. Corp. & Fin. L.*, 17:545.

Pástor, L. and Veronesi, P. (2013). Political uncertainty and risk premia. *Journal of Financial Economics*, 110(3):520–545.

Pearson, M. M. (1992). *Joint ventures in the People's Republic of China: The control of foreign direct investment under socialism*. Princeton University Press.

Pearson, M. M. (2005). The business of governing business in china: Institutions and norms of the emerging regulatory state. *World Politics*, 57(2):296–322.

Pearson, M. M. (2007). Governing the chinese economy: Regulatory reform in the service of the state. *Public Administration Review*, 67(4):718–730.

Peerenboom, R. (2009). *Judicial independence in China: lessons for global rule of law promotion*. Cambridge University Press.

Pei, M. (2016). *China's crony capitalism*. Harvard University Press.

Peng, M. W. and Luo, Y. (2000). Managerial ties and firm performance in a transition economy: The nature of a micro-macro link. *Academy of management journal*, 43(3):486–501.

Peng, M. W., Sun, S. L., Pinkham, B., and Chen, H. (2009). The institution-based view as a third leg for a strategy tripod. *Academy of Management Perspectives*, 23(3):63–81.

Perkins, S. E. (2014). When does prior experience pay? institutional experience and the multinational corporation. *Administrative Science Quarterly*, 59(1):145–181.

Perlis, M. and Chais, W. (2009). Investigating the fcpa. https://www.forbes.com/2009/12/08/foreign-corrupt-practices-act-opinions-contributors-michael-pe
html?sh=58cdc37d4e81. [Online; accessed on 20-April-2019].

Perlman, R. L. and Sykes, A. O. (2018). The political economy of the foreign corrupt practices act: An exploratory analysis. *Journal of Legal Analysis*.

Pinto, P. M. and Zhu, B. (2016). Fortune or evil? the effect of inward foreign direct investment on corruption. *International Studies Quarterly*, 60(4):693–705.

Puck, J. F., Holtbrügge, D., and Mohr, A. T. (2009). Beyond entry mode choice: Explaining the conversion of joint ventures into wholly owned subsidiaries in the people's republic of china. *Journal of international business studies*, 40(3):388–404.

Puig, S. and Shaffer, G. (2018). Imperfect alternatives: Institutional choice and the reform of investment law. *American Journal of International Law*, 112(3):361–409.

Ramamurti, R. (2003). Can governments make credible promises? insights from infrastructure projects in emerging economies. *Journal of International Management*, 9(3):253–269.

Regulation Asia (2020). Hong kong wealth managers scrutinise

clients for political links. https://www.regulationasia.com/hong-kong-wealth-managers-scrutinise-clients-for-political-links/. [Online; accessed 30-September-2020].

Reuters (2017). U.s. charges two with bribing african officials for china energy firm. https://www.reuters.com/article/us-usa-china-corruption/u-s-charges-two-with-bribing-african-officials-for-china-energy-firm-idUS [Online; accessed 19-July-2018].

Rodriguez, P., Uhlenbruck, K., and Eden, L. (2005). Government corruption and the entry strategies of multinationals. *Academy of management review*, 30(2):383–396.

Rodrik, D. (2011). *The globalization paradox: democracy and the future of the world economy*. WW Norton & Company.

Rosenstein, R. (2017a). The 34th international conference on the foreign corrupt practices act. https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-co [Online; accessed 23-August-2019].

Rosenstein, R. (2017b). Ethics and compliance initiative annual conference. https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-ethics-and-compliance-ini [Online; accessed 23-August-2019].

Rosenstein, R. (2017c). Fcpa enforcement and anti-corruption developments: 2017 year in review. See Rod Rosenstein's remarks quoted in https://www.paulweiss.com/media/3977568/19jan18-fcpa-ye.pdf.

Samanta, S. and Sanyal, R. (2016). The effect of the oecd convention in reducing bribery in international business. *Global Business & Management Research*, 8(1).

Samphantharak, K. and Malesky, E. J. (2008). Predictable corruption and firm investment: evidence from a natural experiment and survey of cambodian entrepreneurs. *Quarterly Journal of Political Science*, 3:227–267.

Schiffer, M. and Weder, B. (2000). Catastrophic political risk versus creeping expropriation: What determines private infrastructure investment in less developed countries?". *World Bank*.

Scott, C. (2000). Accountability in the regulatory state. *Journal of law and society*, 27(1):38–60.

Shirk, S. L. (1994). *How China opened its door: the political success of the PRC's foreign trade and investment reforms*. Brookings Institution Press.

Simon, D. and Turlais, J. (2015). Global market requires heightened awareness of fcpa enforcement. https://wislawjournal.com/2015/03/17/global-market-requires-heightened-awareness-of-fcpa-enforcement/.

Sivachenko, I. (2013). Corporate victims of victimless crime: How the fcpa's statutory ambiguity, coupled with strict liability, hurts businesses and discourages compliance. *BCL Rev.*, 54:393.

Slaughter, A.-M. (2003). A global community of courts. *Harv. Int'l LJ*, 44:191.

Smarzynska, B. K. and Wei, S.-J. (2000). Corruption and composition of foreign direct investment: Firm-level evidence. *NBER Working Paper (No. 7969)*.

Spahn, E. K. (2013). Implementing global anti-bribery norms: from the foreign corrupt practices act to the oecd anti-bribery convention to the un convention against corrup-

tion. *Ind. Int'l & Comp. L. Rev.*, 23:1.
Spalding, A. B. (2010). Unwitting sanctions: Understanding anti-bribery legislation as economic sanctions against emerging markets. *Fla. L. Rev.*, 62:351.
Spencer, J. and Gomez, C. (2011). Mnes and corruption: The impact of national institutions and subsidiary strategy. *Strategic Management Journal*, 32(3):280–300.
Staats, J. L. and Biglaiser, G. (2012). Foreign direct investment in latin america: The importance of judicial strength and rule of law. *International Studies Quarterly*, 56(1):193–202.
Standard&Poor's (2011). Standard poor's compustat xpressfeed understanding the data. Accessed at https://wrds-www.wharton.upenn.edu/documents/841/Understanding_The_Data_57jARh2.pdf.
Stasavage, D. (2002). Private investment and political institutions. *Economics & politics*, 14(1):41–63.
Steinman, B. (2017). The fcpa blog. https://fcpablog.com/2018/6/11/bill-steinman-the-fcpa-is-not-dead-redux/. [Online; accessed 23-August-2019].
Stern, R. E. and Li, S. (2016). The outpost office: how international law firms approach the china market. *Law & Social Inquiry*, 41(1):184–211.
Stevenson, D. D. and Wagoner, N. J. (2011). Fcpa sanctions: too big to debar. *Fordham L. Rev.*, 80:775.
Stigler, G. J. (1971). The theory of economic regulation. *The Bell journal of economics and management science*, pages 3–21.
Straub, S. (2008). Opportunism, corruption and the multinational firm's mode of entry. *Journal of International Economics*, 74(2):245–263.
Sun, Y. (2004). *Corruption and market in contemporary China*. Cornell University Press.
Szamosszegi, A. and Kyle, C. (2011). *An analysis of state-owned enterprises and state capitalism in China*, volume 52. Capital Trade, Incorporated for US-China Economic and Security Review Commission.
The New York Times (2016). Jp morgan chase to pay $264 million to settle foreign bribery case. https://www.nytimes.com/2016/11/18/business/dealbook/jpmorgan-chase-to-pay-264-million-to-settle-foreign-bribery-charges.html. [Online; accessed 19-July-2018].
Thomas, J. and Worrall, T. (1994). Foreign direct investment and the risk of expropriation. *The Review of Economic Studies*, 61(1):81–108.
Tienhaara, K. (2011). *Regulatory Chill and the Threat of Arbitration: A View from Political Science*. Cambridge University Press.
Transparency International (2016). *Global corruption report: sport*. Routledge.
Tsai, K. S. (2015). The political economy of state capitalism and shadow banking in china.
Uhlenbruck, K., Rodriguez, P., Doh, J., and Eden, L. (2006). The impact of corruption on entry strategy: Evidence from telecommunication projects in emerging economies. *Organization science*, 17(3):402–414.
Van Aken, T. and Lewis, O. A. (2015). The political economy of noncompliance in china: the case of industrial energy policy. *Journal of Contemporary China*, 24(95):798–822.
Van Dijk, B. (2013). Orbis database. *URL: https://orbis. bvdinfo. com*.
Van Rooij, B. and Lo, C. W.-H. (2010). Fragile convergence: Understanding variation in the enforcement of china's industrial pollution law. *Law & Policy*, 32(1):14–37.

Vernon, R. (1971). Sovereignty at bay: The multinational spread of us enterprises. *The International Executive*, 13(4):1–3.

Vithiatharan, V. and Gomez, E. T. (2014). Politics, economic crises and corporate governance reforms: Regulatory capture in malaysia. *Journal of Contemporary Asia*, 44(4):599–615.

Wang, J. (2014). The political logic of corporate governance in china's state-owned enterprises. *Cornell Int'l LJ*, 47:631.

Wang, Y. (2018). Relative capture: Quasi-experimental evidence from the Chinese judiciary. *Comparative Political Studies*, 51(8):1012–1041.

Wedeman, A. H. (2003). *From Mao to market: rent seeking, local protectionism, and marketization in China*. Cambridge University Press.

Weingast, B. R. (1995). The economic role of political institutions: Market-preserving federalism and economic development. *Journal of Law, Economics, & Organization*, pages 1–31.

Wellhausen, R. L. (2015a). Bondholders vs. direct investors? Competing responses to expropriation. *International Studies Quarterly*, 59(4):750–764.

Wellhausen, R. L. (2015b). Investor–state disputes: when can governments break contracts? *Journal of Conflict Resolution*, 59(2):239–261.

Wellhausen, R. L. (2016). Recent trends in investor–state dispute settlement. *Journal of International Dispute Settlement*, 7(1):117–135.

Wiig, A. and Kolstad, I. (2010). Multinational corporations and host country institutions: A case study of csr activities in angola. *International Business Review*, 19(2):178–190.

Willborn, E. (2013). Extraterritorial enforcement and prosecutorial discretion in the fcpa: A call for international prosecutorial factors. *Minn. J. Int'l L.*, 22:422.

Wrage, S. and Wrage, A. (2005). Multinational enterprises as "moral entrepreneurs" in a global prohibition regime against corruption. *International Studies Perspectives*, 6(3):316–324.

Wright, J. and Zhu, B. (2018). Monopoly rents and foreign direct investment in fixed assets. *International Studies Quarterly*, 62(2):341–356.

Wu, M. (2016). The china, inc. challenge to global trade governance. *Harv. Int'l LJ*, 57:261.

Wu, S.-Y. (2006). Corruption and cross-border investment by multinational firms. *Journal of Comparative Economics*, 34(4):839–856.

Xu, C. (2011). The fundamental institutions of china's reforms and development. *Journal of economic literature*, 49(4):1076–1151.

Xu, J. (2020). The role of corporate political connections in commercial lawsuits: Evidence from chinese courts. *Comparative Political Studies*, (Forthcoming).

Yearbook, C. S. (2017). National bureau of statistics of the people's republic of china. 2014. *Avaliable online: http://www. stats. gov. cn/tjsj/ndsj/2017/indexch. htm (accessed on 30 September 2018)*.

Yeo, Y. (2009). Between owner and regulator: Governing the business of china's telecommunications service industry. *The China Quarterly*, 200:1013–1032.

Yiu, D. and Makino, S. (2002). The choice between joint venture and wholly owned subsidiary: An institutional perspective. *Organization science*, 13(6):667–683.

Yocket, J. W. (2012). Choosing governance in the fcpa reform debate. *J. Corp. L.*, 38:325.

Yockey, J. W. (2011). Solicitation, extortion, and the fcpa. *Notre Dame L. Rev.*, 87:781.

Yu, H. (2014). The ascendency of state-owned enterprises in china: Development, controversy and problems. *Journal of Contemporary China*, 23(85):161–182.

Zaheer, S. (1995). Overcoming the liability of foreignness. *Academy of Management journal*, 38(2):341–363.

Zhang, Z. (2019). *Intellectual Property Rights in China*. University of Pennsylvania Press.

Zhao, M. (2012). CSR-based political legitimacy strategy: Managing the state by doing good in China and Russia. *Journal of Business Ethics*, 111(4):439–460.

Zhao, M., Tan, J., and Park, S. H. (2014). From voids to sophistication: Institutional environment and mnc csr crisis in emerging markets. *Journal of Business Ethics*, 122(4):655–674.

Zhu, B. (2016). Mncs, rents, and corruption: Evidence from china. *American Journal of Political Science*.

Zhu, B. and Deng, Q. (2018). Monopoly rents, institutions, and bribery. *SSRN Working Paper*.

Zhu, B. and Shi, W. (2019). Greasing the wheels of commerce? corruption and foreign investment. *The Journal of Politics*, 81(4):1311–1327.

Zurawicki, L. and Habib, M. (2010). Corruption and foreign direct investment: What have we learned? *International Business & Economics Research Journal (IBER)*, 9(7).