Introduction

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1 Spotlight on the Chinese Firm

Starting in early 2019, US President Donald Trump's administration placed a number of restrictions on the ability of the Chinese company Huawei Technologies Co. Ltd. ("Huawei"), the largest telecommunications equipment producer in the world, to buy US technology. In May of that year, the US Commerce Department placed Huawei on a trade blacklist, and in 2020, the government extended that ban to cover all semiconductors made with US technology and which met Huawei's specifications. A few months later, the Commerce Department further extended the ban to cover all semiconductor chips regardless of whether they matched Huawei's specifications.[1] The US government's efforts to freeze Huawei's supply chain were part of a larger US-China trade war, billed as a new cold war, and one between the two largest economies in the world. The Trump administration justified its acts based on the view that Huawei presented a credible threat to US national security given its ties to the government of the People's Republic of China (PRC). The contest has taken the form of not only tech bans but also economic sanctions, long-arm statutes, anti-suit injunctions, and even hostage-taking by both sides in a regulatory race-to-the-bottom that some have decried as marking the end of globalization.

The US government's concerns about Huawei predate the Trump administration and go back to 2011, when the House Permanent Select Committee on Intelligence investigated Huawei and a second Chinese tech company ZTE. The committee concluded that Huawei failed to cooperate with the investigation and, in particular, failed to explain its relationships with the PRC government,

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[1] For an overview of the timeline of the US government's actions regarding Huawei, see C. Scott Brown, 'The Huawei Ban Explained: A Complete Timeline and Everything You Need to Know' (*Android Authority*, 14 August 2022) www.androidauthority.com/huawei-google-android-ban-988382/.

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the Chinese Communist Party (CCP), and the People's Liberation Army.[2] Over this period, Huawei has offered its own public relations defense and sought to diversify its supply chains and products. Huawei founder Ren Zhengfei has stated, "Neither Huawei, nor I personally, have ever received any requests from any government to provide improper information," citing that sharing personal data without consent would be bad for business.[3]

One of the persistent questions about Huawei is its ownership structure. Whereas the company claims to be owned by "96,768 shareholding employees,"[4] studies suggest that, in reality, employees hold a "virtual stock" that allows them a share in the profits but provides no voting power and thus fails to qualify as shareholder ownership in the traditional sense.[5] Adaptive ownership structures may exist for a number of reasons, but one consequence is nontransparency, which, in the face of persistent doubt about Chinese firms and their relationship to what is commonly referred to as the "Party-State," only exacerbates suspicion if not hostility.[6]

Private tech companies like Huawei exemplify the intense spotlight placed by concerned publics on Chinese companies and their overseas direct investment (ODI). Concerns about links between Chinese capital and the Party-State are even more palpable in regards to Chinese state-owned enterprises (SOEs), which are believed to "play a leading role in [the Party-State's] economic statecraft abroad."[7] Together, Chinese SOEs and, increasingly, Chinese private companies comprise some of the largest enterprises in the world across a range of vital industries, including not only technology but also electricity, petroleum, construction, commercial lending, insurance, construction, telecommunications, and steel, to name a few.[8] Collectively, these companies have investments

[2] US House of Representatives, 'Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE' (8 October 2012) iv–v https://stacks.stanford.edu/file/druid:rm226yb7473/Huawei-ZTE%20Investigative%20Report%20%28FINAL%29.pdf.

[3] 'Huawei Founder Says Will Not Share Data with China – CBS News' (*Reuters*, 19 January 2019) www.reuters.com/article/us-usa-china-huawei-tech-idUSKCN1Q81HC/.

[4] ibid.

[5] Christopher Balding and Donald Clarke, 'Who Owns Huawei?' (SSRN, 17 April 2019) 5 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3372669; see also Colin Hawes, 'Why Is Huawei's Ownership So Strange? A Case Study of the Chinese Corporate and Socio-political Ecosystem' (2020) 21 Journal of Corporate Law Studies 1–38 (finding that while top-down governmental control is too facile a characterization, Huawei's success depends on close relationships with government authorities).

[6] The Party-State refers to the fusion of the PRC government and the Chinese Communist Party (CCP) at each administrative level and in all areas of governance, a fusion that has become even closer under current General Secretary of the CCP, Xi Jinping.

[7] Wendy Leutert, 'Challenges Ahead in China's Reform of State-Owned Enterprises' (2016) 21 Asia Policy 83–99, 87.

[8] Clay Chandler, 'Chinese Corporations Now Dominate the Fortune Global 500 List of Biggest Companies by Revenue – But They Are Far Less Profitable Than Their US Rivals' (*Fortune*, 19 August 2022) https://fortune.com/2022/08/18/fortune-global-500-china-companies-profitable-profitability-us-rivals/.

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in most countries worldwide and are increasingly becoming central players in domestic politics and media. Concerns often stem from the view that internationalizing Chinese firms are instrumentalities of the Party-State, an authoritarian regime that has in recent years become increasingly repressive toward not only those on the margins of society – ethnic and religious minorities, public interest lawyers, domestic and foreign NGOs, and LGBTQ and women's rights activists – but also those at the center, entrepreneurs, and even CCP members. More fundamentally even, critics lament the rise of "China Inc." as inherently incompatible with the existing international legal order, which historically (at least nominally) valorized democracy, liberal rights, and free trade.[9]

Yet concerns directed at Chinese firms and their purported links to the Party-State rely on certain assumptions about their nature and governance. These assumptions generate theories – often untested – that have animated regulatory and administrative responses in a number of Western countries, including not just the United States but also the United Kingdom, Canada, Australia, Germany, and elsewhere. These responses and their policies have had deep and widespread impact on not just the regulation of Chinese ODI but also collaboration in research and development, cross-border movement of peoples and immigration, foreign study and intellectual exchange, and cooperation on international problems ranging from pandemics to climate change.

Further complicating the picture, not all countries respond to China uniformly, nor do all would-be host states make the same assumptions about Chinese investment. Some responses are the opposite to the foregoing. China has presented itself as the champion of developing countries and, in stark contrast to the US-China trade war, many low-income and middle-income countries proactively welcome Chinese investment. Instead of investment screening mechanisms, import bans, and immigration blockades, these countries offer preferential policies to facilitate Chinese ODI into their economies. Eager to promote Chinese investment, these countries welcome Chinese expertise, technology transfer, and even security and law enforcement.[10]

Under programs such as the Belt and Road Initiative (BRI) and the Global Development Initiative, China is supplying much-needed infrastructure and energy to emerging markets, connecting economies, facilitating trade, and lowering transaction costs. These programs may further reduce poverty and improve standards of living, and hence add real value to recipient states. These benefits do not mean that negative externalities are absent. Chinese firms may also exploit local labor and damage the environment or violate local law. They may further

[9] Ji Li, *The Clash of Capitalisms? Chinese Companies in the United States* (Cambridge University Press 2019); Mark Wu, 'The "China, Inc." Challenge to Global Trade Governance' (2016) 57 Harvard International Law Journal 261.

[10] Dawn C. Murphy, *China's Rise in the Global South: The Middle East, Africa, and Beijing's Alternative World Order* (Stanford University Press 2022); Maria Repnikova, *China's Soft Power* (Cambridge University Press 2022); Lina Benabdallah, *Shaping the Future of Power: Knowledge Production and Network-Building in China-Africa Relations* (University of Michigan Press 2020).

cement dependencies between host states and China that may have additional effects through various channels, including, for example, "pro-China" voting patterns in international organizations. In short, the stakes are high, and in a period of ideological competition, precarity, and even paranoia, fact-based and neutral material on which to base responses is all the more important.

Despite the fact that Chinese ODI is, first, of central importance to global trade and investment, and second, heavily contested, there is, to date, a paucity of readily accessible data with which to assess the claims of Chinese firms and exclusionary governments. Further, as a second and related problem, the lack of reliable material is a problem for policymakers and other decision makers, as well as, and, perhaps more crucially farther "upstream," educators. Students in professional schools – law, policy, business – need to understand how Chinese companies work, their corporate governance, and the operation and effects of their overseas projects on host states. This need applies to students regardless of whether they are from developed or developing countries: Chinese capital is present and, in some cases, actively shaping regulatory fields in both types of economies. Minimally, a greater understanding of Chinese ODI helps curtail misconceptions. Furthermore, a more realistic picture can inform better analysis and response, whether at the legal, commercial, or policy levels. It can assist stakeholders to make informed decisions and to weigh risk and opportunities.

A Casebook on Chinese Outbound Investment: Law, Policy, and Business (hereinafter, the *Casebook*) is designed to meet these needs. Comprised of fifteen case studies, based on primary source materials, and written by experts and researchers, many of whom are either from or have extensive experience in the host state in question, the *Casebook* provides fact-based and neutral teaching material for educators and other concerned parties. Case studies are written with specific overarching objectives in mind: to shed light on the decision-making, policies, and practices of Chinese firms; to understand how Chinese firms adapt to challenging regulatory environments; and to assess what kind of effects Chinese projects have overseas, particularly in developing states where China's footprint may be most pronounced.

The remainder of this Introduction will address the following questions that will help prepare the reader in using the case studies and help lay the groundwork to address the overarching objectives cited above: What are Chinese companies? What are China's international investment strategies? What are the trends in Chinese ODI? What is the relationship between Chinese ODI and the Party-State? What are the effects of Chinese ODI in host states? Lastly, how should the reader use the *Casebook* and how is it organized?

2 What Are Chinese Companies?

Over the last several decades, the rate of growth of Chinese companies has been historic. In recent years, more Chinese companies have occupied the Fortune 500 list than companies from any other country, even if US companies remain more profitable.[11] Chinese companies are active in nearly all major industries in most markets across the world. While the volume of Chinese ODI has decreased in the last few years, nonetheless Chinese ODI remains strong and will likely only continue. This section provides a basic overview of Chinese companies, their corporate forms, the evolution of Chinese corporate law, and the differences between SOEs and private companies.

To understand Chinese companies, it is helpful to have a basic understanding of their corporate forms and how PRC corporate law has changed over time. Starting with the economic reforms after the founding of the PRC in 1949, productive assets in the country were organized as SOEs under "line ministries," which reported to the State Council.[12] It was not until the early 1980s that SOEs were given their own distinct legal personality; before then, they were functional equivalents to extensions of the government and their purpose was less to generate a profit and more to fulfill commands from the central or provincial level governments.[13] With the "opening and reform" (*gaige kaifang*) reforms in the early 1980s, the PRC government sought to raise foreign direct investment (FDI), thus injecting foreign private capital into the state-controlled system, which was soon joined with private capital.[14] During this time, the township and village enterprises (TVEs), a novel form of ownership distinct from both SOEs and private firms, contributed significantly to economic development. This combination or tension between private capital and state direction would come to define the Chinese "socialist market economy."

Concurrent with these efforts, the state began the corporatization and privatization of Chinese assets, through a policy of "holding the big and letting go of the small," establishing stock exchanges in Shanghai and Shenzhen in the early 1990s and also the introduction of the "modern enterprise system," including corporate mechanisms with relevant legal norms.[15] The legal basis for these corporatization efforts was the 1993 Company Law,[16] which has since gone through a number of revisions, including in 2005, a major overhaul that established companies limited by shares.[17] One purpose of the Company Law

[11] See Chandler (n 8).

[12] See Nicholas Calcina Howson and Vikramaditya S. Khanna, 'The Development of Modern Corporate Governance in China and India' in Muthucumaraswamy Sornarajah and Jiangyu Wang (eds), *China, India and the International Economic Order* (Cambridge University Press 2016) 532.

[13] ibid 533. [14] ibid 516.

[15] Nicholas R. Lardy, *Markets over Mao: The Rise of Private Business in China* (Columbia University Press 2014) 18, 45–6; see also Robert C. Art and Minkang Gu, 'China Incorporated: The First Corporation Law of the People's Republic of China' (2021) 20 Yale Journal of International Law 273, 275.

[16] Zhonghua renmin gongheguo gongsifa [The Company Law of the PRC] (adopted by the Fifth Session of the Standing Committee of the Eighth National People's Congress on 29 December 1993).

[17] Zhonghua renmin gongheguo gongsifa [The Company Law of the PRC] (adopted by the Eighteenth Meeting of the Standing Committee of the Tenth National People's Congress of the PRC on 27 October 2005) Ch 4, Sec 1.

has been to allow small, private business ventures more regulatory space for expansion. The role of private business is not to replace state-owned assets but rather to provide a supplement, even if this supplement has grown relative to the state sector over time.[18] The growth of the private sector in the last forty years has been massive. In 1978, more than 99% of the workforce was employed by the state, but by 2017, more than 80% of China's 424 million-strong urban workforce was employed by the private sector.[19] Fueling this massive growth, the Company Law established two separate corporate forms: the limited liability company (for closely held companies) and the joint stock company (for publicly traded corporations). For the latter, the China Securities Regulatory Commission became the main regulator of these companies as it oversees all securities trading for publicly listed companies.

While the corporate forms established by the law roughly correspond to those found in Anglo-American common law, Chinese corporate law has a number of distinct features, some of which stem from China's civil law system but others are a distinct legacy of its socialist law inheritance, which requires state ownership of assets.[20] In particular, China's Company Law includes the following distinct characteristics: a "legal representative" (*faren*) who assumes all liability for misconduct of the company, a "board of supervisors" that oversees the board of directors, an extensive grant of authority for the shareholders that allows in many cases the PRC government to exercise majority stock ownership, and even grounds for workers to shape corporate policy.[21]

In addition, the 2005 Company Law mandates that each company registered in China should have a CCP unit. Specifically, Article 19 specifies that "an organization of the Chinese Communist Party shall be established in a company to carry out party activities according to the Charter of the Communist Party of China and mandates the company to 'provide necessary conditions for the activities of the [CCP organization].'"[22] The influence of the CCP unit on the management of Chinese companies is a black box. Whereas it is possible to overstate the unit's presence in terms of the day-to-day operation of a Chinese company, it is likely that the CCP shapes corporate decision-making externally through its allocation of resources and economic policies that influence the firm's strategic aims, as firms seek to profit from sectors that are supported by the Party-State.

18 Art and Gu (n 15) 286.

19 Colin Hawes, *The Chinese Corporate Ecosystem* (Cambridge University Press 2022) 137.

20 Jiangyu Wang, *Company Law in China* (Edward Elgar Publishing 2014) 20.

21 See Art and Gu (n 15) 307 (discussing China's Company Law's borrowing from German civil law).

22 See (n 17) Art 19. To be more precise, the Company Law needs to be read in conjunction with the Chinese Communist Party Charter, which states that where three or more CCP members request it, a private enterprise must allow the CCP to establish a branch within the firm. In practice, and perhaps surprisingly, in 2019, only 7.42% of private firms had set up CCP branches, and the number has been decreasing since 2016. See Hawes (n 19) Secs 4.7–4.10.

Over the course of the reform period, the corporate governance of SOEs and private companies has diverged. The general model is for controlling stakes in the SOEs to be owned by a central holding company, which in turn is held by a central government agency, the State-owned Assets Supervision and Administration Commission (SASAC), established in 2003, under the State Council.[23] SASAC exists not only at the central level but also at the provincial and municipal levels and SOEs may fall under the jurisdiction of any of these levels. SOEs generally belong to vertically integrated groups; each company's majority shareholder is the parent company of the group and is itself owned by SASAC.[24] While insiders vary in their views of the extent to which SASAC is successful in reining in some of the largest SOEs, nonetheless it is fair to say that, under SASAC, SOEs are subjected to a different degree of control than private companies. For example, SASAC has the power to select and remove top managers, approve all share transfers, and reap cash flow rights.[25] Such control is amplified through not just SASAC but dense and overlapping networks of both governmental and CCP organizations that may not be the case for private companies.[26]

SOEs and private companies thus have different types of relationships to the Party-State. Historically, SOEs have functioned to perform not just economic but also social and geostrategic aims of the Party-State.[27] Several of the case studies in this *Casebook* concern SOEs and suggest both that SOEs may receive substantial support from the Chinese Party-State and, in turn, that they operate overseas in ways that generally align with the Party-State's interests. However, across a number of areas – market access, state subsidies, proximity to state power, and execution of the government's policy objectives – the distance between large private companies and the Party-State may not be as great as is commonly assumed.[28]

A couple of factors render this assertion more likely in the era of CCP General Secretary Xi Jinping, who has sought to solidify the control of the CCP over all aspects of the PRC government, society, and economy.[29] One, pursuant to Xi's centralization of CCP authority, Chinese firms have more incentives than ever to gravitate toward CCP policies. Two, and related, the costs

[23] Not all SOEs are subject to this structure; some large SOEs are held by other government agencies. Further, large central state-owned banks are owned by the Ministry of Finance through its agency. For more on the history of SOEs and their reform, see Ji Li, 'State-Owned Enterprises in the Current Regime of Investor-State Arbitration' in Shaheeza Lalani and Rodrigo Polanco Lazo (eds), *The Role of the State in Investor-State Arbitration* (Brill Nijhoff 2015).

[24] Li-Wen Lin and Curtis J. Milhaupt, 'We Are the (National) Champions: Understand the Mechanisms of State Capitalism in China' (2013) 65 Stanford Law Review 697, 700.

[25] ibid 737, 740, 743, 744. [26] ibid 707, 723. [27] See Leutert (n 7).

[28] Curtis J. Milhaupt and Wentong Zheng, 'Beyond Ownership: State Capitalism and the Chinese Firm' (2015) 103 The Georgetown Law Journal 665–722, 668.

[29] Jacques deLisle and Guobin Yang (eds), *The Party Leads All: The Evolving Role of the Chinese Communist Party* (Brookings 2022).

of disobedience may be severe, and both PRC regulators and also CCP organs have penalized errant entrepreneurs and top executives for a number of reasons, including having too much autonomy vis-à-vis the Party-State.[30] Under the omnipresent pressures of the Party-State, Chinese firms have little choice but to align their management practices and business objectives with those of the authorities, even if those authorities do not intervene in the day-to-day affairs of companies.[31] Still, and despite the foregoing, as also demonstrated in this *Casebook*, the relationships between private companies and the Party-State (as well as, it should be mentioned, SOEs and the Party-State) are far from uniform and static; rather, they evolve in the face of changing domestic and international policy environments.

3 What Are China's International Investment Strategies?

A threshold question is, does China have international investment strategies? This question goes to the issues of degrees of centralization and coordination in Chinese firms' outbound activities and the financial institutions that support such activities. The answer depends on the unit or scale of one's analysis. At a 30,000-foot level, there is, broadly, coordination as the Party-State sets out broad parameters, including incentives, for Chinese corporations to invest internationally, yet the closer one gets to the granular level, the more disaggregation one sees.

Generally, starting in the late 1990s, first, the major SOEs and then Chinese private companies began engaging in ODI under the "going out" (*zouchuqu*) policy. In 2004, the PRC government reformed what had previously been an onerous "approval" system, a holdover from central planning, toward an "authorization" system that permitted Chinese companies more freedom to invest overseas.[32] During this period in the early 2000s, the various governmental ministries responsible for outbound investment issued a host of regulations that clarified their respective roles and division of labor. For instance, the Ministry of Commerce (MOFCOM) became responsible for authorizing investment projects. The National Development and Reform Commission (NDRC) became responsible for the majority of resource extraction and large foreign exchange projects, with the State Council authorizing large-scale resource extraction, in excess of US$200 million, and also large foreign

[30] Angela Zhang, *Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation* (Oxford University Press 2021); Ning Cao [曹柠], '民营企业的反腐风暴 [Private Enterprises' Anti-corruption Storm]' (*Nanfengchuang* [*South Reviews*], 21 January 2019) https://baijiahao.baidu.com/s?id=1623231503107555258&wfr=spider&for=pc.

[31] Lin Lin and Dan Puchniak, 'Institutional Investors in China: Corporate Governance and Policy Channelling in the Market within the State' (2022) 35 Columbia Journal of Asian Law 75–159.

[32] 关于投资体制改革的决定 (2004) [Decision on the Reform of the Investment System], issued by the State Council in 2004 (no. 20), perma.cc/8UMB-LFD4.

exchange projects, for more than US$50 million.[33] Around this time, the State Administration for Foreign Exchange (SAFE) also began simplifying its procedures and relaxing controls.[34] Lastly, the PRC government established a number of special funds for overseas investments; the policy banks, namely the Export-Import Bank of China (Exim Bank) and China Development Bank, provided more credit support; and also the tax authorities streamlined taxation policies to avoid dual levying agreements with foreign countries, all of which further stimulated ODI.[35]

In 2009, the ODI regime was further refined. MOFCOM delegated more power to lower-level authorities and the NDRC initially sought more centralization of its authority.[36] For ODI, enterprises have ongoing reporting requirements to MOFCOM, and both MOFCOM and SAFE conduct joint inspections each year to verify information and also ensure compliance with PRC laws and regulations.[37] This system applies to both SOEs and private companies, but central SOEs are further subjected to SASAC's system of supervision, including review of their overseas merger and acquisition activities.[38]

It should be noted that, historically, not only has there been some degree of regulatory competition between MOFCOM and NDRC but, given the delegation of powers, there has also been competition between the central and subnational authorities. The consequence is that different local governments compete and may have different priorities in their ODI strategies. These priorities may not always be aligned with those of the central government.[39] Regulatory discoordination means that in practice it is hard to speak of any one coherent ODI strategy. This incoherence is reflected in the disparate outcomes of cases collected in this *Casebook*.

The BRI commenced a new phase of Chinese ODI and sought to create some measure of coherence for ODI, although the BRI has remained mainly a branding opportunity for companies looking to gain governmental support for their projects abroad. In 2015, three Chinese government ministries jointly issued the "Vision and Actions on Jointly Building Silk Road Economic Belt and the Twenty-First Century Maritime Silk Road," inaugurating the BRI.[40] Since then, China's ODI administration and sectoral legislation have been closely tied to

33 Huang Wenbin and Andreas Wilkes, 'Analysis of China's Overseas Investment Policies', Center for International Forestry Research, Working Paper 79 (2011) 11.

34 ibid 11–12. 35 ibid 13–14.

36 Vivienne Bath, 'The Quandary for Chinese Regulators: Controlling the Flow of Investment into and out of China' in Vivienne Bath and Luke Nottage (eds), *Foreign Investment and Dispute Resolution Law and Practice in Asia* (Routledge 2011) 71.

37 ibid 72. 38 ibid.

39 Lee Jones and Shahar Hameiri, *Fractured China: How State Transformation Is Shaping China's Rise* (Cambridge University Press 2021); Yeling Tan, *Disaggregating China, Inc.: State Strategies in the Liberal Economic Order* (Cornell University Press 2021).

40 'Vision and Actions on Jointly Building Silk Road Economic Belt and the Twenty-First Century Maritime Silk Road' issued by the NDRC, Ministry of Foreign Affairs, and MOFCOM in March 2015, perma.cc/Q37M-RYZN.

the BRI and led principally by investment in low-income and middle-income countries in infrastructure, transportation, construction, and energy and natural resources. During this phase, both the NDRC and MOFCOM clarified their guidance for ODI, as ODI was divided into categories of "encouraged," "restricted," and "prohibited."[41]

Starting well before the formation of the contemporary ODI regulatory regime, China aggressively signed on to international investment agreements to provide greater certainty under international investment law. These agreements include bilateral investment treaties (BITs), multilateral investment treaties, and free trade agreements with investment chapters. China's international investment agreement program has bilateral, regional, and global dimensions.

As to its bilateral focus, China has signed on to more BITs than any other country in the world, after Germany. China has undergone multiple generations of BITs, which increasingly align China's BITs with international standards and so in a way that gradually provide more protections for investors as China has transformed, in the reform era, from an FDI-focused country to one that continues to be a major recipient of FDI but also a capital exporter.[42]

As to regional integration, through the BRI, Regional Comprehensive Economic Partnership, Shanghai Cooperation Organization, and other initiatives, China is contributing to the reshaping of regional trade, investment, and security in the Asia-Pacific region. At the global level, China has participated in investment facilitation through such initiatives as the G20 Guiding Principles for Global Investment Policy-Making.[43] Through its international investment agreements as well as its soft law equivalents, namely memoranda of understanding and memoranda of guidance, China is a norm-setter across a range of emerging cross-border legal fields including not only investment frameworks and infrastructure but also fintech, central bank digital currency, and dispute resolution.[44]

[41] 关于进一步引导和规范境外投资方向指导意见的通知 (国办发(2017)74 号) [Notice of Guiding Opinions Regarding Further Guidance and Regulation of the Direction of Overseas Investment (State Council issued (2017) No. 74)], issued by the General Office of the State Council, MOFCOM, NDRC, and Ministry of Foreign Affairs on 4 August 2017, perma.cc/C8EW-RVPW.

[42] Vivienne Bath, 'Chinese Investment and Approaches to International Investment Agreements' in Fabio Morosini and Michelle Ratton Sanchez Badin (eds), *Reconceptualizing International Investment Law from the Global South* (Cambridge University Press 2017) 72.

[43] Julien Chaisse, 'Introduction: China's International Investment Law and Policy Regime – Identifying the Three Tracks' in Julien Chaisse (ed), *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy* (Oxford University Press 2018), 1–22.

[44] Heng Wang, 'Selective Reshaping: China's Paradigm Shift in International Economic Governance' (2020) 23 Journal of International Economic Law 583–606, 585–6; Jiangyu Wang, 'China's Governance Approach to the Belt and Road Initiative (BRI): Partnership, Relations, and Law' (2019) 14 Global Trade and Customs Journal 222–8, 223; Guiguo Wang, 'The Belt and Road Initiative in Quest for a Dispute Resolution Mechanism' (2017) 25 Asia Pacific Law Review 1–16, 1–2.

4 What Are the Trends in Chinese ODI?

Coupled with the improvement of its ODI regime, China's international investment program has resulted in a significant volume of outbound investment. Taking a step back, China's ODI must be considered in the broader context of China's capital export, which includes not just investment but also lending, aid, and finance. China became the world's largest economy by purchasing power parity in 2014. In 2016, China became the second largest outbound investment supplier in the world, and China also became a net capital exporting country.[45] Further, as of 2019, China is the world's largest official creditor, supplying more loans than the International Monetary Fund (IMF) and World Bank.[46] To round out the picture, in addition to populating the Fortune 500 list with Chinese companies, China is the largest trading country in the world and has the world's largest banking system, the second largest stock market, the third largest bond market, and one of the fastest growing digital economies in the world.[47]

Specific to ODI, Chinese capital outflows peaked in 2016 when ODI reached US$196.15 billion.[48] Subsequently, the Chinese government sought greater control over outbound investments to curb speculative investing, particularly in such sectors as luxury real estate, entertainment, and sport teams. By 2019, Chinese ODI had declined to US$136.91 billion,[49] but then increased by 12.3% in 2020 to reach US$153.71 billion, thus making China the largest capital exporting country in the world, by measure of investment flows, for the first time.[50] This is all the more remarkable given that China's achievement occurred during the COVID-19 pandemic, which has generally slowed international trade and investment.

The COVID-19 pandemic has certainly negatively impacted the Chinese economy and its outbound capital, mainly due to the PRC government's own anomalous "zero-COVID" policies, which were extended long beyond policies implemented in most other countries, and thus had a deleterious impact on the domestic economy. The COVID-19 pandemic is one factor among others, including other endogenous constraints such as the anti-corruption campaign

[45] See Matthew S. Erie, Chinese Law and Development (2021) 62 Harvard International Law Journal 70.

[46] ibid. [47] ibid 71.

[48] 中华人民共和国商务部 [Ministry of Commerce of the PRC], 国家统计局 [National Bureau of Statistics], 国家外汇管理局 [State Administration of Foreign Exchange], 2016年度中国对外直接投资统计公报 [*2016 Statistical Bulletin of China's Outward Foreign Direct Investment*] (2017) 3.

[49] 中华人民共和国商务部 [Ministry of Commerce of the PRC], 国家统计局 [National Bureau of Statistics], 国家外汇管理局 [State Administration of Foreign Exchange], 2019年度中国对外直接投资统计公报 [*2019 Statistical Bulletin of China's Outward Foreign Direct Investment*] (2020) 3.

[50] 中华人民共和国商务部 [Ministry of Commerce of the PRC], 国家统计局 [National Bureau of Statistics], 国家外汇管理局 [State Administration of Foreign Exchange], 2020年度中国对外直接投资统计公报 [*2020 Statistical Bulletin of China's Outward Foreign Direct Investment*] (2021) 3, 6.

and "crackdown" on technology firms, as well as exogenous ones, including the US-China trade war and currents of Sinophobia throughout the world that have stymied Chinese ODI.[51]

One effect of these converging factors is a general bifurcation in world opinion on China, Chinese companies, and Chinese ODI, specifically between Western democratic states and low-income and middle-income countries in the Global South.[52] Whereas the United States and its allies have become hardened against Chinese capital, many countries throughout Asia, Africa, and Latin America, and elsewhere, continue to engage in China-related business and have even increased their dependence on China over the course of the COVID-19 pandemic, driving incipient regionalization of the global economy. For instance, cumulative engagement in BRI deals since 2013 has been US$932 billion, and the latest figures suggest that investment in BRI projects remains strong in recent years, despite obstacles, at least according to official numbers.[53] These trends will likely continue in the midterm, which raises challenges for Chinese investment strategies, including acquisition of advanced technologies. The Chinese government intends to address such challenges by domestic reliance, although this strategy remains uncertain.

5 What Is the Relationship between Chinese ODI and the Party-State?

The extent to which Chinese firms, engaged in investing overseas, act on behalf of the Party-State or are beholden to the Party-State's authority is a hotly contested question that has generated extensive debate in academic, policy, and

[51] See generally, Matthew S. Erie, 'Civilization on Pause – Introduction to Special Issue on "China's Global Capital and the Coronavirus: Views from Comparative Law and Regulation"' (2023) 18 Asian Journal of Comparative Law 1–17.

[52] Compare Laura Silver, Kat Devlin, and Christine Huang, 'Unfavorable Views of China Reach Historic Highs in Many Countries', Pew Research Center (6 October 2020) www.pewresearch.org/global/2020/10/06/unfavorable-views-of-china-reach-historic-highs-in-many-countries/ (tracking negative evaluations of China in advanced economies mainly due to China's COVID-19 response but also human rights concerns in Xinjiang and Hong Kong) with Josephine Sanny and Edem Selormey, 'AD489: Africans Welcome China's Influence but Maintain Democratic Aspirations' (*Afrobarometer*, 15 November 2021) www.afrobarometer.org/publication/ad489-africans-welcome-chinas-influence-maintain-democratic-aspirations/ (noting that in thirty-four African countries China was perceived to be the most positive external actor).

[53] Christoph Nedopil, 'China Belt and Road Initiative (BRI) Investment Report H1 2022', Green Finance & Development Center, FISF Fudan University, Shanghai (July 2022) 5; see also 中华人民共和国商务部 [Ministry of Commerce of the PRC], 2022年1-5月我对"一带一路"沿线国家投资合作情况 [China's Investment and Cooperation with Countries Along the "Belt and Road" from January to May 2022] (28 June 2022), www.mofcom.gov.cn/article/tongjiziliao/dgzz/202206/20220603322656.shtml; Xinhua (新华) [New China], 2023年我国对外投资合作平稳发展 [In 2023, China's Foreign Investment Cooperation with Develop Steadily], 中国一带一路网 [China's Belt and Road Net] (4 February 2024), www.yidaiyilu.gov.cn/p/0BH2HGGF.html.

business circles. As an empirical matter, the relationship between the corporate sector and the government in China is complex and ad hoc, meaning that there is no "one-size-fits-all" scenario.[54] In other words, on the question of whether commercial or political drivers are most relevant in shaping Chinese ODI, the answer requires a fact-based inquiry that depends on a number of issues, including the nature of transaction, the type of firm, the size of the investment, the investment destination, the industry in question, and relations between home and host state, to name a few.

The Party-State has various ways – sticks and carrots – to influence firms domestically. These include both ownership and control as well as less formal mechanisms, including the role of CCP cells in corporations and the thick networks within which corporate managers and executives are embedded, networks invariably shaped by the Party-State's interests.[55] Politically connected entrepreneurs, state subsidies, and chambers of commerce are all additional ways in which the Party-State influences corporations.[56] PRC regulators further have various tools to influence corporate decision-making.[57]

The nexus between the Party-State and corporations, which is already complex, becomes even more complicated when one focuses on corporations' outbound activities. As a legal requirement, when Chinese investors localize in host states, they assume corporate forms under host state law. Incorporation under local law is required regardless of whether the transaction is a merger and acquisition or a greenfield investment, although the former often receives more regulatory scrutiny in many developed economies than the latter.[58] The key question, then, is whether the various mechanisms for Party-State control or influence that characterize the Chinese domestic economy survive the incorporation of a Chinese firm in a host state.

Studies suggest that contextual factors shape the relationship between a Chinese-invested firm abroad and the Party-State. For example, the most extensive study of Chinese investors in the United States concludes that "long-term commercial interests instead of home-state policies drove most of the Chinese investments in the United States."[59] An ethnographic study of Chinese investment in the mining sector in Zambia confirmed that central SOEs operate not just for profit but also out of the "nation's strategic, lifeline, security

[54] See Hawes (n 19) 15. See also Meg Rithmire, *Precarious Ties: Business and the State in Authoritarian Asia* (Oxford University Press 2023).

[55] See Milhaupt and Wentong Zheng (n 28) 683–4. See also 中华人民共和国公司法 [PRC Company Law] (promulgated by the National People's Congress, 26 Octpber 2018, effective 26 October 2018) art. 19 (requiring companies to provide the "necessary conditions" to facilitate the activities of party organizations).

[56] See Milhaupt and Wentong Zheng (n 28) 683–6.

[57] See Zhang (n 30) 23, 68.

[58] Karl P. Sauvant, 'Is the United States Ready for FDI from China? Overview' in Karl P. Sauvant (ed), *Investing in the United States: Is the US Ready for FDI from China?* (Edward Elgar Publishing 2009) 9–10.

[59] See Li (n 9) 5.

interests."[60] A more recent study found that Chinese regulators have generally reduced their control over investment decisions but nonetheless maintain important channels of influence, and such influence is particularly regnant in the case of SOEs.[61] Further, whereas SOE investments are aligned with macropolicy in the form of five-year plans, direct intervention on a day-to-day basis by state or CCP officials is less apparent.[62] Additional studies on Chinese institutional investors confirm this view.[63] Hence, while general trends may be observable, much depends on the context for Chinese ODI. This conclusion has implications for host state policy response to Chinese ODI, specifically in regard to investment screening mechanisms and the nature of their review of transactions.

6 What Are the Effects of Chinese ODI?

Just as in the varied types of relationships between Chinese firms engaging in ODI and the Party-State, so too are the effects of Chinese ODI on the host state and relevant stakeholders and communities nonuniform. On the one hand, the PRC government has sought to prioritize sustainable development across nearly all sectors, including Chinese-invested and Chinese-managed projects overseas. On the other hand, China remains mostly dependent on fossil fuels and is therefore one of the largest carbon emitters in the world. This Janus-faced experience of the Chinese economy is, to some extent, internationalizing along with Chinese ODI.

China's commitments to sustainable development and its performance to date remain impressive and far-reaching. China was one party to adopt the 2030 Agenda for Sustainable Development in 2015 and has since published regular national plans on its implementation of the 2030 Agenda for Sustainable Development. In so doing, China has interpreted sustainable development in light of its own development history and experience, with a focus on poverty alleviation, environmental protection, and sustainable governance, rather than, for example, on universal human rights or rule of law, which are core goals of the 2030 Agenda.[64]

[60] Ching Kwan Lee, *The Specter of Global China: Politics, Labor, and Foreign Investment in Africa* (University of Chicago Press 2017) 33.

[61] Xiaohan Gong and Anatole Boute, 'For Profit or Strategic Purpose? Chinese Outbound Energy Investments and the International Economic Regime' (2021) 14 Journal of World Energy Law and Business 345–62, 347.

[62] ibid 353. [63] See Lin and Puchniak (n 31).

[64] Compare Ministry of Foreign Affairs of PRC, 'China's Position on the Implementation of the 2030 Agenda for Sustainable Development', 22 April 2016, www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201604/t20160422_679457.html with Council of Europe, 'UN Agenda 2030', www.coe.int/en/web/programmes/un-2030-agenda#:~:text=The%202030%20Agenda%20for%20Sustainable,equality%20and%20non%2Ddiscrimination%E2%80%9D ("The UN 2030 Agenda envisages 'a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination'").

In the context of Chinese ODI, sustainable development has been linked to the idea of the "green BRI," a concept that the PRC government has advocated particularly since some of its overseas projects have attracted criticism for their failure to safeguard the environment and comply with local law.[65] However, in practice, the environmental and social impact of overseas projects has not been a focus of the PRC government. Consequently, there is no legislation with enforcement effect to screen the environmental and social impact of overseas projects. Institutionally, the Ministry of Ecology and the Environment, which is the central administrative unit in charge of environmental protection in China, does not have any mandate to regulate overseas projects.[66] Notwithstanding the lack of enforceable regulation, the PRC government has issued a number of normative documents that purport to foster sustainable development and environmental protection in overseas investment.[67] The problem with all of these documents, however, is that they are nonbinding.[68] The same issue applies to the regulation of so-called "environmental, social and governance investing" as well as "corporate social responsibility" across Chinese industries.

The lack of teeth in Chinese regulation has not prohibited the growth of sustainable development in Chinese ODI. One study by the NDRC's BRI Center, conducted in 2021, collected 241 overseas projects, including 184 green energy projects, 39 green manufacturing projects, 9 ecological environmental protection projects, 4 green transportation projects, 4 green overseas park projects, and 1 green agriculture and forestry project.[69] In addition to such officially sanctioned accounts, scholars have independently verified China's leadership in green finance and green credit.[70] In short, China has made real strides in ensuring that some of its overseas projects promote sustainable development.

[65] See, e.g., 环境保护部 [Ministry for Environmental Protection], 外交部 [Ministry Foreign Affairs], 发展改革委 [Nat'l Dev. Ref. Comm'n.], & 中华人民共和国商务部 [Min. Comm.], 关于推进绿色 "一带一路"建设的指导意见 [Guiding Opinion on Promoting the Building of the Green BRI] (26 April 2017), www.mee.gov.cn/gkml/hbb/bwj/201705/t20170505_413602.htm.

[66] See Matthew S. Erie and Jingjing Zhang, 'A Comparison of Inbound and Outbound Investment Regulatory Regimes in China: Focus on Environmental Protection' in Henry Gao, Damian Ross, and Ka Zeng (eds), *China and the WTO: 20 Years On* (Cambridge University Press 2023) 443–5.

[67] See, e.g., 对外投资合作环境保护指南 (商合发 [2013] 74 号) [The Environmental Protection Guidelines for Foreign Investment and Cooperation (issued by MOFCOM and cooperating ministries [2013] No. 74)], 18 February 2013, perma.cc/7NST-6VYY.

[68] See Erie and Zhang (n 66).

[69] BRI Center, Nat'l Dev. Ref. Comm'n. 绿色一带一路典型项目案例库建设与应用研究 [Construction and Application of the Green B&R Project Case Library], 31 July 2021, 9.

[70] See, e.g., Virginia Harper-Ho, 'Sustainable Finance and China's Green Credit Reforms: A Test Case for Bank Monitoring of Environmental Risk' (2018) 51 Cornell International Law Journal 609, 609; Lin Lin and Yanrong Hong, 'Developing a Green Bonds Market: Lessons from China' (2022) 23 European Business Organization Law Review 143–85.

The other side of the picture, however, shows Chinese firms violating local laws in their overseas projects, including environmental law, labor law, and other areas of both public and private laws. There is a growing literature that demonstrates that Chinese-invested firms either willfully ignore the protection of local rights or unknowingly fail to uphold their responsibilities under law.[71] Some of this behavior can be attributed to the fact that many Chinese firms going abroad do not have sufficient experience and undergo a learning curve in challenging regulatory environments that differ substantially from the status quo back home.[72]

Another related reason for Chinese-invested firms' problems with host state law is that they have not yet developed cultures of compliance with local authorities. Along these lines, when Chinese firms get into legal trouble abroad, they often seek protection from the PRC embassy in the host state, rather than follow established dispute resolution procedures, including administrative consultation or litigation in local courts.[73] Yet another factor that explains Chinese firm behavior overseas is that Chinese financing is not tied to conditionalities of good governance, human rights, and rule of law as are loans from the IMF or World Bank.[74] As Chinese firms may be more risk-tolerant than Western ones in conducting business in jurisdictions with poor governance standards,[75] the lack of conditionalities may exacerbate those conditions. While international financial institutions as well as foreign investors from Western states may bring their own set of suboptimal practices to host states, nonetheless Chinese capital has been shown to have distinct issues. To summarize, whereas the PRC government has made considerable progress in endorsing sustainable development, projects on the ground do not always reflect such priorities and, instead, may lead to negative externalities in host states. This *Casebook* is designed to help multiple stakeholders understand the nature of Chinese firms and their overseas projects, including their positive and negative effects on host economies.

[71] See, e.g., Aaron Halegua, 'Where Is the Belt and Road Initiative Taking International Labour Rights? An Examination of Worker Abuse by Chinese Firms in Saipan' in Maria Adele Carrai and Jan Wouters (eds), *The Belt and Road Initiative and Global Governance* (Edward Elgar Publishing 2020); Miriam Driessen, *Tales of Hope, Tastes of Bitterness: Chinese Road Builders in Ethiopia* (Hong Kong University Press 2019); Yifeng Chen and Ulla Liukkunen, 'Enclave Governance and Transnational Labour Law: A Case Study of Chinese Workers on Strike in Africa' (2019) 88 Nordic Journal of International Law 558–86; Muhammed Azeem, 'Theoretical Challenges to TWAIL with the Rise of China: Labor Conditions under Chinese Investment in Pakistan' (2019) 20 Oregon Review of International Law 395–436; Johanna Coenen et al., 'Environmental Governance of China's Belt and Road Initiative' (2020) 31 Environmental Policy and Governance 3–17; Jingjing Zhang, 'Chinese NGOs Meet with African NGOs on Holding Chinese Companies Accountable' (*NGOChina*, 21 November 2019) https://ngochina.blogspot.com/2019/11/chinese-ngos-meet-with-african-ngos-on.html.

[72] Erie (n 45) 111. [73] ibid 101.

[74] Scott Morris, Brad Parks, and Alysha Gardner, 'Chinese and World Bank Lending Terms: A Systematic Comparison across 157 Countries and 15 Years', Center for Global Development Policy Paper 170, April 2020, 3.

[75] ibid 53.

7 How to Use This *Casebook*

This *Casebook* is designed to be a resource for those interested to learn how Chinese commercial and financial actors balance their respective duties to their owners and controllers, regulators, and affected communities in their overseas projects. It is one of the first casebooks to feature original case studies that illustrate various types of legal, policy, and business issues that arise in the course of Chinese outbound investment.[76] Case studies were selected based on the significance of the issues they present, from the corporate structure of Chinese firms to interactions between Chinese investors and the legal system of host states to questions of international and transnational law. Each case study provides insights on such pressing issues as technology, corporate governance, compliance, labor and environment, lending practices, business and human rights, and global value chains. Whereas there is much discussion of these topics in the public media, the case studies are in-depth fact-oriented descriptions of cases based on primary source material. The cases studies are current as of the time of publication and some are still in the process of being resolved, as in the case of disputes. These have been included, however, as they present important issues for study and enough information about the case has been collected so as to identify the salient concerns.

To ensure the integrity of each case study, such material includes transactional documents, interviews with stakeholders, internal company reports, regulatory and normative documents, and caselaw and arbitrations. This focus on primary source material is consistent with the aim of providing objective and neutral accounts of Chinese outbound investment that are not driven by ideological bent or argument. Furthermore, a distinguishing characteristic of this *Casebook*, and one that further ensures the integrity of individual case studies, is that many of the case studies are written by experts and researchers who have firsthand knowledge of the topics. Authors include lawyers who advised on transactions, organized litigation strategies on behalf of affected parties, and led advocacy efforts at the local, national, and international levels. Many authors are either from China or from the countries that are the host countries for Chinese capital discussed in the case study. Still others have conducted long-term research on the questions they explore in their case study and have insights on the operation of Chinese firms and host state regulators.

[76] For past casebooks and for reference, see Runhui Lin, Jean Jinghan Chen, and Li Xie, *Corporate Governance of Chinese Multinational Corporations: Case Studies* (Palgrave Macmillan 2020); Liu Baocheng and Chandni Patel, *Overseas Investment of Chinese Enterprises: A Casebook on Corporate Social Responsibility* (Globethics 2020); Jan Drakokoupil, *Chinese Investments in Europe: Corporate Strategies and Labor Relations* (European Trade Union Institute 2017); Michael Moser and Chiann Bao, *Managing 'Belt and Road' Business Disputes: A Case Study of Legal Problems and Solutions* (Wolters Kluwer 2021); Permanent Forum of China Construction Law, *Legal Risks and Opportunities Facing Chinese Engineering Contractors Operating Overseas* (Wolters Kluwer 2019).

In addition, the case studies provide concrete examples of Chinese corporations' operations particularly in emerging economies. They cover a wide geography from Latin America to Africa to Central Asia and Southeast Asia. While the focus of the *Casebook* is on low-income and middle-income states, to provide breadth of comparison, it also includes two case studies that take place in the United States or its territories, where Chinese corporations face a different set of regulatory hurdles. While it is impossible to cover every topic in Chinese investment law and to include every jurisdiction, the case studies included in the *Casebook* offer a representative sample of Chinese investment processes, experiences, and challenges.

The case studies are written primarily for teaching in professional schools, including law schools, policy schools, and business schools. While each case study may not equally lend itself to the different needs of educators in such diverse institutions, educators will find in the *Casebook* ample material for designing their courses. The *Casebook* will likely not be the sole textbook for designing a course but rather may function as a supplementary resource, to be used where relevant. Each case is loosely based on the case study method developed by Harvard Business School in terms of its content and form, which provides a standard and well-recognized approach to presenting such material but moves beyond a focus on just managerial or administrative situations. Instead, case studies describe either, on the Chinese firm side, specific policies or practices of Chinese companies toward host state authorities or resources (human or natural), their corporate structure and relationship to regulators from China or host states, use of financial instruments such as debt restructuring, approaches to designing, maintaining, and financing infrastructure projects overseas, or, on the side of the host state, regulators, commercial parties, and concerned public's responses to legal issues raised by Chinese firms, as well as examples of resolving such disputes in the course of Chinese cross-border business.

Law educators will find case studies that illustrate specific legal and regulatory controversies across a range of fields, including business organizations, labor and employment, environmental protection, and the role of judicial review in foreign investment. Several case studies are deliberately designed around specific disputes that either entered litigation or arbitration. They reveal key issues pertaining to international contracts including choice of law concerns. Business educators will be able to identify case studies that show adaptive responses by Chinese firms in such areas as forming or dissolving international joint ventures. The cases reveal the localization strategies of Chinese firms. Along these lines, cases show how Chinese managers respond to challenging or even hostile investment environments. Policy educators will be able to use certain cases to illustrate how both the Chinese government and host states can introduce law and policy reform to foster more inclusive and sustainable investment projects. In addition to these core audiences, the *Casebook* will also be of interest to legal practitioners, businesspeople, policymakers, and members of civil society whose rights and interests are implicated in the course of Chinese-invested projects overseas.

Each case study identifies an issue or controversy, explains its importance, communicates what can be learned from the case, and describes the sources used in its drafting. Cases are primarily descriptive and rely heavily on verified facts. Pursuant to the tradition of case studies for educational purposes, the authors do not posit an argument but rather present the facts in as comprehensive a manner as possible. They have, however, pursuant to the data and materials used, identified the key issues raised by the case study. As such, the educator has guidance in terms of generating discussion in class around the major issues.

In terms of structure, each case study contains an overview, an introduction, the details of the case, as well as a conclusion. Each case study also then includes a section entitled "Discussion Questions and Comments" that is meant to guide the teaching of the case study. This section is often divided into three subsections, including questions for law audiences, policy audiences, and business audiences. The legal discussion entails questions of judicial, legislative, and possibly executive authority and lawmaking. They provide some context and background to the legal issues in the case. The policy discussion draws attention to how China or the host state create policy around investment and trade. The questions may also hint at ways to improve such policy. The business discussion is focused on issues of strategy and decision-making, either at the firm or industry level. The discussion points and questions often demonstrate overlap between the three subsections. Not every case will throw up the three types of discussions and questions. Some case studies may lend themselves to legal questions rather than business or policy ones. The discussion points and questions are certainly nonexhaustive but may help as starting points for analysis and class reflection.

8 Organization of the *Casebook*

The *Casebook* consists of fifteen cases grouped into six sections that cover important legal aspects of Chinese outbound investment. The sections include Corporations, Compliance, Infrastructure, Labor, Finance, and Disputing. Collectively, they represent the lifespan of Chinese ODI, from market entry to resolving disputes that arise in the course of business.

Section 1, "Corporations," lays a foundation by presenting the core unit of analysis: Chinese corporations. This section includes two case studies. The first by Colin Hawes, "Alibaba and Ant Group: Developing a Hybrid Chinese-International E-commerce Platform Ecosystem," takes a deep dive into Alibaba, one of the most consequential tech companies in the world, by showing the constantly evolving relationships between the company, the PRC government, and international investors. Importantly, Colin shows how such companies operate in the gray area of financial regulation, through, for example, variable interest entities that show corporate innovation pursuant to a hands-off approach by regulators. Ignacio Tornero, in his case study, “Chinese M&A in Latin America: Jiangsu Yanghe Distillery’s Stake Acquisition in VSPT Wine Group in Chile,” moves from China to Chile to show how Chinese joint ventures form in foreign markets. Ignacio demonstrates how Chinese companies enter emerging markets and what kinds of international law tools (e.g., free trade agreements) are helpful to that effect.

Section 2, “Compliance,” examines, broadly, the relationship between Chinese corporate behavior and the relevant rules (local, national, and international) in the contexts in which they conduct business. The three cases in this section each show how Chinese corporations have confronted and adapted to challenging regulatory environments using an array of means from employing local counsel and lawyers to political lobbying and community and political risk mitigation to formal litigation. These cases help to understand how Chinese firms adapt to regulatory systems that differ from their own. Yuan Wang’s “Africa’s Tech Challenge: A Chinese State-Owned Enterprise’s Corporate Social Responsibility Experiment in Kenya” shows how a Chinese SOE operating in Kenya adopted a highly successful corporate social responsibility (CSR) initiative through bottom-up rather than top-down initiatives. Yuan’s case study thus complicates assumptions that SOEs operate only through central commands; rather, CSR can highlight the creativity between Chinese representatives and local counterparties on the ground. Marco Germanò’s “State Grid’s Localization Strategies in Belo Monte, Brazil” provides another success story in terms of State Grid’s learning curve in entering the hydroelectric market in Brazil. Marco shows show State Grid was able to manage complex regulatory concerns in order to build the world’s longest transmission line for hydroelectric power. Lastly, Han Liu and Ji Li present in their case study, “TikTok versus United States,” an extreme example of a Chinese company adapting to a hostile host environment. As Han and Ji show, TikTok has had to adopt a number of localization strategies to survive investment screening and other prohibitive measures adopted by the US authorities.

Section 3, “Infrastructure,” provides three case studies that show what works – and what doesn’t – in the establishment and operation of Chinese-financed and Chinese-managed infrastructure projects throughout the world. Infrastructural development has become the hallmark of China’s economic footprint overseas, especially in developing states. These case studies each provide an in-depth and granular account of a particular infrastructure project financed, managed, or designed by Chinese companies. Each case study sheds light on either the establishment of such projects, and the various methods employed by diverse actors to facilitate the project’s success in the affected community, or the project’s effects, including on the environment or human rights of that community. In “The Colombo Port City Project: How Chinese Investment Interacts with Local Public Law” by Dilini Pathirana and

Dinesha Samararatne, the authors examine the public law consequences of the Chinese-financed port. They draw attention to the problem of regime change and regulatory uncertainty but also the possible violations of public law pursuant to the creation of regulatory carve-outs such as in special economic zones (SEZs). Leigha Crout and Michael Liu, in their case study, "The Lower Sesan II: Human Rights Implications for Chinese Overseas Projects," bring attention to the environmental and human rights issues following the construction of Cambodia's largest hydroelectric dam, of which a Chinese SOE has a controlling stake. Leigha and Michael illustrate what happens when nontransparent Chinese corporate practices operate in opaque host states, and the role of local actors, including NGOs and civil society in mitigating the negative consequences. Otari Kakhidze presents a more sanguine view in his "The Special Economic Zone at Duqm, Oman: A Chinese-Invested Strategic Port." Otari's case study shows how a Chinese SEZ in Oman both illustrates common features found in other Chinese SEZs and has distinct features including, for example, the active participation of subnational Chinese actors (e.g., provincial authorities).

Section 4, "Labor," examines through two case studies one of the most consequential areas for Chinese investment. Both case studies spotlight problems in terms of both the use of Chinese labor overseas and the employment of local workers. Beginning with Aaron Halegua's "Chinese Workers and Forced Labor on the Imperial Pacific Casino Project in Saipan," this case study emphasizes how problems arise in the complex subcontracting arrangements involving the use of Chinese workers in overseas Chinese projects. However, Aaron also demonstrates the response by the workers, including legal and advocacy measures. In "The Impact of Chinese Investments on the Gold Mining Sector in Kyrgyzstan" by Nuraiym Syrgak kyzy and Robin Lee, the authors find that, based on their case study, Chinese companies operating in extractives industries in developing countries may not follow domestic labor law. Local recruiting companies play a prominent role in the labor abuses that follow, but forms of local resistance including civil society can correct some of the violations.

Section 5, "Finance," turns to the commercial, lending, and banking structures that support Chinese overseas projects. China has a distinct system of overseas finance which differs from that of international financial organizations such as the IMF or World Bank. These two case studies thus explore how Chinese commercial and policy banks are critical institutions in Chinese outbound investment, supplying loans and debt restructuring to foreign governments and commercial parties. The case studies exhibit both distinct Chinese practices and how Chinese respond to common occurrences such as joint venture termination. First, Charles Ho Wang Mak, in "Sovereign Debt Restructuring in Zambia: A Chinese Approach," explains how China, the largest creditor in the world, operates to restructure debts in one particular instance, that of Zambia. Charles examines China's debt restructuring practices and provides a comparative perspective in light of multilateral efforts. Second, in her “Exiting International Joint Ventures between Chinese and South African Banks,” Thembi Madalane examines how a Chinese bank that entered into a joint venture with a South African one manages changing circumstances in the context of contractual expectations.

Section 6, “Disputing,” through three cases, examines explicitly how Chinese corporations and their counterparties, as well as interested third parties, resolve conflicts in the course of cross-border (and cross-straits) business. “Chinese Overseas Investment and Environmental Accountability: A Legal Battle against the Chinese-Financed Coal-Fired Power Plant in Boké, Guinea” by Jingjing Zhang and Emily Scherr examines the practices of a Chinese company in the extractives sector in Guinea. Despite official Chinese pronouncements to end the construction of Chinese coal plants overseas, Jingjing and Emily show that such practices continue but are also contested by a range of NGO entities. Kai-Shen Huang presents a different type of dispute in “Micron versus UMC and Fujian Jinhua: The Cross-Border Struggle over Integrated Circuits’ Trade Secrets.” Kai-Shen’s case examines how a Chinese SOE allegedly stole trade secrets from a US tech company by poaching talent from the US company’s Taiwan branch in the hypercompetitive semiconductor industry. Kai-Shen shows the different legal responses by authorities in Taiwan and the United States to alleged Chinese theft. Lastly, in “The Use of Foreign Investment Treaties in the Protection of Chinese Outbound Investments: *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria*,” Ngozi S. Nwoko and Stanley U. Nweke-Eze present yet another different type of dispute. This one is between a Chinese company as investor and a host government and centers on alleged wrongs committed by that host state, Nigeria. Ngozi and Stanley diagnose the various legal strategies – including litigation and arbitration – used by Zhongshan and its affiliates, ultimately succeeding in one of the first instances of investor–state arbitration initiated by a Chinese corporation.

There is some overlap between the sections, and case studies from different sections may demonstrate common trends or issues. For example, several of the case studies demonstrate the problems when Chinese corporations operate in low-income countries with embryonic regulatory regimes. Such situations often lead to poor outcomes in terms of business operations and their externalities, particularly as encountered by affected communities. Likewise, several case studies show how civil society and NGOs can marshal relevant legal or extralegal resources to protect rights infringed upon. Another cross-cutting theme is the role of intermediaries between Chinese corporations and local regulators. Local lawyers, subcontractors, and related interlocutors often have substantial leeway in shaping outcomes. Lastly, the role of geopolitics looms large across a number of case studies. While the US-China trade war is one cause for the geopolitical uncertainty, it is not limited to the US-China relationship and, for example, affects US allies and other important jurisdictions like Taiwan. Many developing countries are caught in the middle of US-China lawfare. While economic sanctions and the severing of global supply chains affect their markets, they also have some agency in affecting regulatory decisions and market directions. In short, while issues pertaining to Chinese overseas investment are continually evolving against such a backdrop, the *Casebook* provides a set of case studies to examine in depth the operations of Chinese corporations operating overseas and the consequences of their projects.