

Symposium: China and the International Legal Order

Meeting Law’s Demand: Chinese Multinationals as Consumers of U.S. Legal Services

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Chinese multinational companies (MNCs), as key agents in China’s global expansion, have elicited considerable academic attention. The accumulated scholarship, however, has neglected Chinese MNCs’ consumption of legal services that are crucial to understanding their adaptation to and impacts on host-country institutions. To narrow the gap, this article empirically explores several major aspects of Chinese MNCs in the U.S. legal market. It finds that Chinese investors generally recognize U.S. legal services as being costly but essential for their U.S. operations. Lacking legal expertise, Chinese managers surmount severe information asymmetry by relying primarily on trusted and knowledgeable third parties for U.S. lawyer recommendations. Most Chinese MNCs spend relatively insignificant amounts on U.S. legal services, leaving them with minimal bargaining power vis-à-vis legal service providers. The U.S. legal expenses of Chinese MNCs vary as a function mainly of their legal service demand, not special corporate attributes such as ownership structure. The findings contribute to ongoing debates about Chinese MNCs, their adaptation to host country institutions, and their impacts on the legal profession and the global legal service market.

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I. INTRODUCTION

The rise of China and its impacts have caught a great deal of attention, and numerous studies have examined the vital agent of China's global expansion—Chinese multinational companies (MNCs)—from diverse theoretical perspectives.¹ A question of theoretical, policy, and practical significance concerns the MNCs' reactions to host country institutions, especially the complex legal and regulatory institutions of developed host countries that bear little resemblance to the environment in which most Chinese MNCs have survived and thrived.² Due to the enormous institutional divide, Chinese MNCs that intend to behave as “model investors” must rely on local legal professionals. The topic, however, has so far received scant academic treatment, which may be ascribed to the scarcity of empirical evidence. This paper attempts to narrow this gap.

Employing both qualitative and quantitative methods, I explore several key aspects of Chinese MNCs' consumption of US legal services. The empirical evidence reveals considerable inter-company variations, and the varying consumption corresponds with legal service needs such as litigation and business reorganization. Variables that are associated with home-state institutions (e.g., state ownership of Chinese investors) do not appear to have any effect independent of the legal service needs. The findings contribute to multiple theoretical and policy debates on topics such as the global ramifications of outbound investments from China.

The paper proceeds as follows. Section II sets the context for analyzing Chinese MNCs' purchase of U.S. legal services by presenting more details about Chinese MNCs in the United States, highlighting the vast institutional gaps between the two countries, and reviewing the existing literature. The section ends with a discussion of the research methodology. Section III presents selected interviews with knowledgeable informants regarding Chinese MNCs' experiences in the U.S. legal environment and relevant descriptive data from surveys of Chinese businesses in the United States. Section IV investigates the significant inter-company variations in the MNCs' legal

1. See, e.g., DEBORAH BRAUTIGAM, *THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA* (2009); Ruben Gonzalez-Vicente, *Mapping Chinese Mining Investment in Latin America: Politics or Market?*, 209 CHINA QUARTERLY 35 (2012); Adrian H. Hearn, *Harnessing the Dragon: Overseas Chinese Entrepreneurs in Mexico and Cuba*, 209 CHINA QUARTERLY 111 (2012); Terence Jackson, *Employment in Chinese MNEs: Appraising the Dragon's Gift to Sub-Saharan Africa*, 53 HUMAN RESOURCE MGMT. 897 (2014); JI LI, *THE CLASH OF CAPITALISMS?: CHINESE COMPANIES IN THE UNITED STATES* (2018) [hereinafter LI, *THE CLASH OF CAPITALISMS*]; CHING KWAN LEE, *THE SPECTER OF GLOBAL CHINA: POLITICS, LABOR, AND FOREIGN INVESTMENT IN AFRICA* (2018).

2. LI, *THE CLASH OF CAPITALISMS*, *supra* note 1, at 20-21 (2018).

service expenses. Section V enumerates the contributions of the findings. Section VI concludes the paper.

II. CHINESE MNCs IN THE UNITED STATES AND THEIR LEGAL NEEDS

Four decades of meteoric growth catapulted China to its current position as the world's second largest economy. At the turn of the 21st century, the Chinese government began to implement policies aimed at spurring outbound foreign investment.³ While much of the capital flew into resource-rich developing countries, an increasing number of Chinese investors have ventured into mature and competitive markets.⁴ Against this backdrop, Chinese direct investment in the United States grew by 32% annually from 2010 to 2015, and the amount surged in 2016, reaching \$46 billion.⁵ However, a tighter foreign exchange control imposed by Beijing for fear of capital flight, plus Trump's election and the subsequent deterioration of U.S.-China relations, abruptly reversed the upward trajectory.⁶ Although Chinese MNCs in the United States face an increasingly hostile legal and regulatory environment, as exemplified by the experience of companies such as Huawei and TikTok,⁷ withdrawal entirely from the U.S. market is the last option as most of the companies have already made substantial investments in the United States. How then do they handle the heightened legal and regulatory risks? Anecdotal reports reveal some clues. Huawei, for instance, has abandoned its previous strategy of avoiding confrontation with the U.S. government and filed multiple lawsuits alleging unlawful and discriminatory actions taken either by Congress or the executive branch.⁸ Whatever tactic Chinese MNCs adopt to address U.S. legal risks, their success inevitably depends on the assistance of local lawyers. However, Chinese MNC's employment of U.S. lawyers has escaped systematic research. The neglect is in stark contrast to the continuous scholarly attention on the production and purchase of legal services by U.S. companies. A review of the existing literature is in order.

3. Yadong Luo et al., *How Emerging Market Governments Promote Outward FDI: Experience from China*, 45 J. WORLD BUS. 68, 75 (2010).

4. Ji Li, *I Came, I Saw, I... Adapted an Empirical Study of Chinese Business Expansion in the U.S. and Its Legal and Policy Implications*, 36 NW. J. INT'L L. & BUS. 143, 148 (2016).

5. *New Neighbors: 2017 Update Chinese Investment in the United States by Congressional District, A Report by the National Committee on US-China Relations and Rhodium Group* (April 2017), http://rhg.com/wp-content/uploads/2017/04/RHG_New-Neighbors_2017-Update_ES.pdf.

6. Thilo Hanemann et al., *Two-Way Street-US-China Investment Trends-2020 Update* (May 11, 2020), <https://rhg.com/research/two-way-street-us-china-investment-trends-2020-update/>

7. Jeanne Whalen, *U.S. Campaign Against Huawei Appears to be Working, as Chinese Tech Giant Loses Sales Outside Its Home Market*, THE WASHINGTON POST (March 31, 2021), <https://www.washingtonpost.com/technology/2021/03/31/impact-us-campaign-against-huawei/>; Ana Swanson et al., *Trump Administration to Ban TikTok and WeChat From U.S. App Stores*, NY TIMES (Sept. 18, 2020), <https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html>.

8. Paul Mozur & Austin Ramzy, *Huawei Sues US Government Over What It Calls an Unfair Ban*, N.Y. TIMES (March 6, 2019), <https://www.nytimes.com/2019/03/06/business/huawei-united-states-trade-lawsuit.html>.

Research about corporate consumers in the legal market has adopted a variety of analytical frameworks. One strand concentrates on efficiency concerns. At the core of the analysis is the recognition of legal service as a credence good, defined as a “service whose usefulness or necessity to the buyer is better known to the seller than to the buyer.”⁹ Due to this nature, corporate buyers typically face enormous information asymmetry in identifying and assessing the needs, quality and price of legal services.¹⁰ To be concrete, corporations lacking necessary legal expertise must rely heavily on the diagnostic and referral functions of outside lawyers.¹¹ The information asymmetry also underlies subsequent purchases of legal services, and outside lawyers therefore enjoy significant leverage over corporate clients in setting the price and quantity of the services.

Corporate clients may mitigate this inherent problem by internalizing legal service production.¹² While strengthening in-house legal departments certainly alleviates the information asymmetry between companies and their outside lawyers,¹³ the problem still exists as corporate executives, board directors, and shareholders lack legal expertise. Rather than characterizing the relationship between corporations and their outside lawyers, the information asymmetry simply crossed the corporate boundary and adheres to intra-company relationships between management executives, directors, and shareholders on the one hand, and general counsels on the other. By internalizing legal service production, however, corporations can employ a variety of compensation schemes to better align the interests of in-house lawyers with the goals of the corporations.

The in-house movement has profound impacts on the legal market and the legal profession. Routine and repeat matters are now handled by corporate legal departments or outsourced to low-cost service providers. As a result, some predicted the replacement of the exclusive long-term company-law firm relationships by spot contracts based on constant bidding wars or company-lawyer relationships.¹⁴ However, corporations cannot and usually do not handle all their legal matters internally. “Because legal needs are variable and unpredictable, it is not cost effective for companies to keep enough qualified

9. Yuk-fai Fong, *When Do Experts Cheat and Whom Do They Target?*, 36 RAND J. ECON. 113, 113 (2005).

10. Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 889 (1990); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 753 (2010).

11. Gilson, *supra* note 10, at 902-03.

12. Ribstein, *supra* note 10, at 760; David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2080 (2009).

13. Gilson, *supra* note 10, at 900-01.

14. John C. Coates et al., *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 L. & SOC. INQUIRY 999, 999 (2011); Wilkins, *supra* note 12, at 2082.

lawyers on their full-time payrolls to respond to surges in legal demand. A law firm can pool the variable demand each client may have, lowering overall volatility of demand¹⁵ Despite the prediction about big law's demise in the wake of the global financial crisis,¹⁶ the U.S. legal service market continues to grow and large law firms report increasing revenue.¹⁷ Over time, big corporations have adopted a hybrid mode of interacting with outside lawyers. Instead of keeping many law firms at arm's length and on spot contracts, more U.S. companies have begun to rely on a panel of repeat service providers.¹⁸ Besides reducing management cost, the new model encourages healthy competition among outside lawyers and incentivizes them to invest in company-specific knowledge.¹⁹

Another stream of the existing research bearing on corporate consumption of legal services examines their value for corporate transactions. Scholars propose a list of functions lawyers could potentially serve. First, lawyers may act as reputational intermediaries that enable their clients to acquire credibility for a market transaction.²⁰ Having a top New York law firm as an issuer's counsel in an IPO, for instance, provides a basic level of quality assurance.²¹ Second, as repeat players, business lawyers may serve as "transaction cost engineers," adding collective value by ameliorating various sources of inefficiency in capital asset transfers.²² Third, as repeat players, law firms accumulate a reservoir of deal information that enables clients to achieve optimal deal pricing, especially in a volatile market for innovative transactions.²³ Fourth, in a highly regulated transactional context, deal lawyers may play a key role in corporate compliance with complex rules such as those regulating market concentration.²⁴

Still another stream of the research explores the global expansion of corporations, mostly those headquartered in Western countries, and the internationalization of the legal market and profession.²⁵ As U.S. companies

15. Coates, et al., *supra* note 14, at 1001.

16. Ribstein, *supra* note 10, at 752.

17. Debra Cassens Weiss, *Gross Revenue Jumped 5% for Top US Law Firms Last Year; Which Firm Surpassed \$4B?*, ABA JOURNAL (April 21, 2020), <https://www.abajournal.com/news/article/gross-revenue-jumped-5-for-top-us-law-firms-last-year-which-firm-surpassed-4b>.

18. Wilkins, *supra* note 12, at 2085.

19. Coates et al., *supra* note 14, at 1002.

20. Karl S. Okamoto, *Reputation and the Value of Lawyers*, 74 OR. L. REV. 15, 22 (1995).

21. *Id.*, at 27.

22. Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 255 (1984).

23. Elisabeth de Fontenay, *Law Firm Selection and the Value of Transactional Lawyering*, 41 J. CORP. L. 393, 405-06 (2015).

24. Steven L. Schwarcz, *Explaining the Value of Transactional Lawyering*, 12 STAN. J.L. BUS. & FIN. 486, 500 (2007).

25. See, e.g., James R. Faulconbridge et al., *Global Law Firms: Globalization and Organizational Spaces of Cross-border Legal Work*, 28 NW. J. INT'L L. & BUS. 455 (2007); John Flood,

invest overseas, they continue to rely on trusted U.S. law firms to handle complex cross-border and even foreign law issues. Driven by this client need, firms in the United States and other capital-exporting countries expanded globally.²⁶ Some set up offices in major emerging markets.²⁷ Their services, however, tend to be severely circumscribed due to regulatory restraints and immature service markets.²⁸ Meanwhile, increasingly globalized operations of Western firms also produced spillover effects on the domestic legal market and legal profession of developing countries.²⁹

The extant literature offers great insights about the relationship between corporations and their legal service providers. Chinese MNCs in the United States, however, pose new questions that have not received adequate scholarly treatment.³⁰ First, as noted, the existing literature has concentrated on U.S. companies or MNCs headquartered in the United States. Little is known about MNCs based in developing countries. How do they interact with lawyers outside their home-state context? Will they make an impact on the legal service market in developed host countries? Second, the literature has neglected the multi-institutional influence that shapes the conduct of MNCs. The growth of Chinese MNCs, subject to institutional pressure from both their home and host states, raises questions about the former's effects. For instance, does widespread under-valuation of legal services in China influence the preferences and behavior of Chinese MNCs in the U.S. legal market? Third, despite the prominent role of state-owned investors in outward Chinese investment, few scholars have investigated their legal service consumption. This paper attempts to narrow these gaps by empirically examining Chinese MNCs' sources of information about U.S. lawyers and their legal expenses in the United States.

As noted, this study employs both quantitative and qualitative methods. The quantitative analysis is conducted on a set of comprehensive survey data

Institutional Bridging: How Large Law Firms Engage in Globalization, 36 B.C. INT'L & COMP. L. REV. 1087 (2013); Ashly H. Pinnington & John T. Gray, *The Global Restructuring of Legal Services Work? A Study of the Internationalisation of Australian Law Firms*, 14 INT'L J. LEGAL PROFESSION 147 (2007); Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOB. LEGAL STUD. 67 (2007); Carole Silver et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Global*, 22 GEO. J. LEGAL ETHICS 1431 (2009); Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1993).

26. Wilkins, *supra* note 12, at 2090. Of course, demand from existing clients is not the only reason for the global expansion of US law firms. See Abel, *supra* note 25, at 739-41.

27. Rachel E. Stern & Su Li, *The Outpost Office: How International Law Firms Approach the China Market*, 41 L. & SOC. INQUIRY 184, 185 (2015).

28. *Id.*, at 200.

29. See, e.g., Bryant Garth, *Corporate Lawyers in Emerging Markets*, 12 ANNUAL REV. L. & SOC. SCI. 441 (2016); Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 L. & SOC'Y REV. 771 (2008); Gregory Shaffer & Henry Gao, *China's Rise: How It Took on the U.S. at the WTO*, 2018 U. ILL. L. REV. 115 (2018); Swethaa S. Ballakrishnen, *Just Like Global Firms: Unintended Gender Parity and Speculative Isomorphism in India's Elite Professions*, 53 L. & SOC'Y REV. 108 (2019).

30. Note that, throughout this book, the empirical analysis revolves around the U.S. subunits of the Chinese MNCs.

collected through a collaboration with the China General Chamber of Commerce USA (CGCC), by far the largest business association of Chinese companies in the United States.³¹ The CGCC has surveyed its members—the U.S. affiliates of the China-based MNCs—annually since 2014. While this paper draws on multi-year data, the analysis relies primarily on the 2019 survey. The 2019 survey questionnaires were sent to about 600 CGCC members, fielding 247 respondents—a response rate of approximately 41%. A comparison between the CGCC members and all Chinese firms registered with the Ministry of Commerce to have made direct U.S. investment indicates an over-representation of large and state-owned enterprises (SOEs) in the CGCC sample,³² which serves well the purposes of this study.³³

The qualitative evidence consists of information from 144 interviews with knowledgeable informants such as business executives, in-house counsel, lawyers, and consultants employed by Chinese companies in the United States.³⁴ The interviews were collected through multi-source snowball sampling. Personal acquaintances, i.e., friends and former colleagues working for Chinese MNCs in the United States, constitute one core group of the interview subjects. They shared valuable insights and introduced me to more interviewees. Another cohort comprises CGCC members, some of whom also tapped into their personal and business networks for possible research subjects. Additionally, some interviews were conducted at various panels, workshops, and conferences on law and foreign investment.³⁵ In short, the method

31. Besides Chinese-invested companies, the membership also includes many fee-paying U.S. companies that do not have the right to vote. The U.S. firms are excluded from the survey sampling.

32. The comparison was conducted by a member of a separate research team working on the CGCC survey and was with the Ministry of Commerce data for 2014. A few more words about the possible issues of bias: first, survival bias, i.e., Chinese companies that have withdrawn from the U.S. market after the realization of certain legal risks are not observed. Chinese MNCs were all expanding in the United States before the onset of the trade war. A thorough search of public sources has not identified any sizable Chinese corporate members of CGCC that have entirely withdrawn from the U.S. market by 2019. Second, non-response bias. The CGCC annual survey has been conducted annually, with different sets of questions. Tests run on the 2014 data show no significant evidence of non-response bias to the survey questionnaires. Regarding question-specific non-responses, tests using the 2019 data show no significant differences between the responding firms and the non-responding firms in terms of their major firm characteristics such as size and ownership structure. Third, common method bias. Though it is a potential methodological issue for survey research, in this paper common method bias is of less concern because the variables used herein are simple and specific objective attributes, e.g., legal fees, not any complex subjective outputs of the survey subjects that are prone to generating systematic error variance; also, the questions generating the data were placed far apart in the survey, with no indication of any implicit theories connecting them. See Philip M. Podsakoff et al., *Common Method Biases in Behavioral Research: A Critical Review of the Literature and Recommended Remedies*, 88 J. APPLIED PSYCH. 879, 883-85 (2003).

33. This study focuses on the companies with the potential to hire full-time in-house lawyers, not small Chinese-invested businesses such as take-out restaurants, laundromats, and travel agents, which will account for the majority of Chinese-invested companies in the United States if the selection for the sample is not qualified.

34. The semi-structured interviews were conducted over many years for a long-term project exploring Chinese MNCs' adaptation to various US institutions. Some of the interviews only touch on the topic of in-house counsel. That said, they provide important background information for this paper.

35. An example of such events is the annual Practicing Law Institute program on Doing

generated a sample of professionals with diverse backgrounds.

III. CHINESE MNCs AND U.S. LAWYERS

Chinese MNCs investing in the United States confront enormous institutional hurdles. Their home state is a developing country undergoing dramatic social and economic transformations. Given a relatively weak judiciary and a highly interventionist state, savvy businessmen in China treat law as secondary to social and governmental connections.³⁶ In the United States, by contrast, law enjoys a more elevated status in business transactions. Also, U.S. laws and legal procedures are more complex and adversarial than those in China.³⁷ As noted in an earlier study, for Chinese MNCs to cross the wide institutional gaps, especially to navigate the U.S. legal and regulatory system, reliance on local professionals is indispensable.³⁸ Do the Chinese executives, having been accustomed to a home-state environment that undervalues legal services, appreciate the importance of law and high-quality legal advice in running a U.S. business?

The qualitative evidence portrays a mixed picture. A U.S. lawyer advising Chinese corporate clients analogize some of them to “headless flies” that “keep bumping into legal issues.”³⁹ Clueless as they are, Chinese managers are reluctant to pay for professional services. The lawyer ridicules some Chinese investors: “they would rather risk a ten-million-dollar investment than pay ten thousand dollars to hire lawyers.”⁴⁰ Even those who hire lawyers appear to underrate the services. A lawyer complains that “clients of mainland China are penny-pinching.”⁴¹ Another lawyer echoes, “it’s easier to work with U.S. clients. Once you have done a good job, they care less about the fees. Chinese clients expect you to do a good job at a low price.”⁴² Another lawyer gives more details, “Chinese clients are certainly more fee-sensitive than U.S. clients. They want fee cap or discount. They delay paying the bills. Our firm charges about half of the market rate for top U.S. firms.”⁴³ Another lawyer makes a similar observation, “Chinese clients don’t like the idea of charging by hours. We have to offer fee caps.”⁴⁴ An informant concludes that “Chinese

Business in and with Emerging Markets; see more details at <https://www.pli.edu/programs/doing-business-in-and-with-emerging-markets>.

36. See, e.g., Wei Zhang & Ji Li, *Weak Law v. Strong Ties: An Empirical Study of Business Investment, Law and Political Connections in China*, 13 REV. L. & ECON. 1 (2017); Yuen Yuen Ang & Nan Jia, *Perverse Complementarity: Political Connections and the Use of Courts among Private Firms in China*, 76 J. POL. 318 (2014).

37. ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 17-21 (2d ed. 2019).

38. JI LI, THE CLASH OF CAPITALISMS, *supra* note 1, at 56.

39. Interview with a partner at the U.S. office of a large Chinese law firm (July 3, 2019).

40. Interview with a partner at the U.S. office of a large Chinese law firm (July 3, 2019).

41. Interview with a senior associate of a large U.S. law firm (June 5, 2019).

42. Interview with a partner of a large U.S. law firm (June 8, 2019).

43. Interview with a partner of the U.S. office of a large Chinese law firm (April 6, 2019).

44. Interview with a partner of a U.S. law firm (April 6, 2019).

companies' attitude towards attorneys are different. They don't value the opinions of attorneys."⁴⁵ Similarly, another lawyer notes that "Chinese clients don't listen to lawyers' opinions. Their response is always: 'do whatever you can to get the deal done.'"⁴⁶ And lawyers are to be avoided: according to another informant, Chinese clients would not seek professional legal assistance unless they are left with no other choice.⁴⁷

On the other hand, some informants find no attributes unique to Chinese corporate clients. One U.S. lawyer, a partner at a top New York firm, agrees that Chinese clients pay a lot of attention to cost, "but so do U.S. clients."⁴⁸ Another observes that his Chinese clients are fee-sensitive, and "they are very strict about billing. They do not allow us to do legal research for more than two hours or bill on conferences. They do not think those are necessary But this may not be a unique attribute of Chinese clients. [Company X] (a large Korea-based multinational) is the same."⁴⁹ According to a Chinese executive, her company (the U.S. subsidiary of a Chinese MNC in the construction sector) spends more on U.S. legal matters than the local competitors.⁵⁰ A senior manager working for a Chinese MNC in finance notes that his company would forego profits to avoid violating any U.S. law, and about a third of their U.S. workforce are in legal and compliance departments.⁵¹

Still others narrate a more nuanced story in which Chinese MNCs' legal service consumption in the United States varies according to the circumstances. "When in trouble, find a lawyer; when in big trouble, find a more expensive lawyer," comments a Chinese executive on how he negotiates the complex U.S. business environment.⁵² Another lawyer observes that "for routine matters, Chinese companies tend to hire cheap lawyers. But when FBI knocks on the door, they go hire the best lawyer in town."⁵³ And some note significant changes in the attitude, "Chinese companies are changing. They are more aware of the value of professional service and willing to pay for it."⁵⁴ Another informant observes a common trend in the change of his Chinese clients' attitude towards U.S. legal services and the cost, "at the beginning, they would consider [the legal fee of] a hundred dollars an hour to be expensive. They don't understand the value of legal service. Until a lawsuit hits, and they suffer a big loss. Then they learn not to care about nickels and dimes when buying legal services ... legal troubles make Chinese clients appreciate the importance

45. Interview with a U.S. lawyer (March 31, 2015).

46. Interview with a U.S. lawyer (March 31, 2015).

47. Interview with a U.S. lawyer (June 11, 2012).

48. Interview with a partner of a large U.S. law firm (Nov. 10, 2018).

49. Interview with a partner of a large U.S. law firm (May 18, 2019).

50. Interview with an executive of the U.S. subsidiary of a large Chinese multinational (June 23, 2017).

51. Interview with a manager of a Chinese bank's U.S. branch (Sept. 1, 2018).

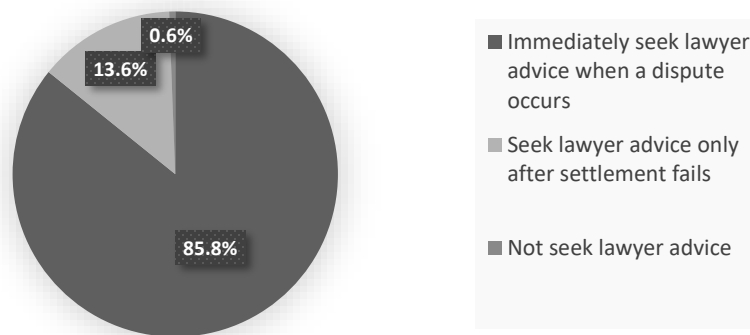
52. LI, *THE CLASH OF CAPITALISMS*, *supra* note 1, at 106.

53. Interview with a U.S. lawyer (April 16, 2020).

54. Interview with a partner of the U.S. office of a large Chinese law firm (April 6, 2019).

of U.S. legal services.”⁵⁵

Figure 1: Use of U.S. Legal Services in Dispute Resolution



Source: 2017 CGCC survey data (213 responded to the survey questionnaire, and 176 to this question); survey question: *What would your company normally do when legal disputes occur?*

While the qualitative evidence is inconclusive or even conflicting, the survey data reveal a discernible contour of the part U.S. lawyers play in various aspects of the Chinese MNCs’ U.S. operations. As

Figure 1 illustrates, when a legal dispute arises in the United States, 85.8% of the Chinese MNCs would immediately consult a U.S. lawyer, 13.6% would do so after settlement efforts have failed. And for the decision to litigate a dispute in a U.S. court, 79.9% of the Chinese MNCs would take a U.S. lawyer’s opinion seriously.⁵⁶ The reliance on U.S. lawyers appears to intensify

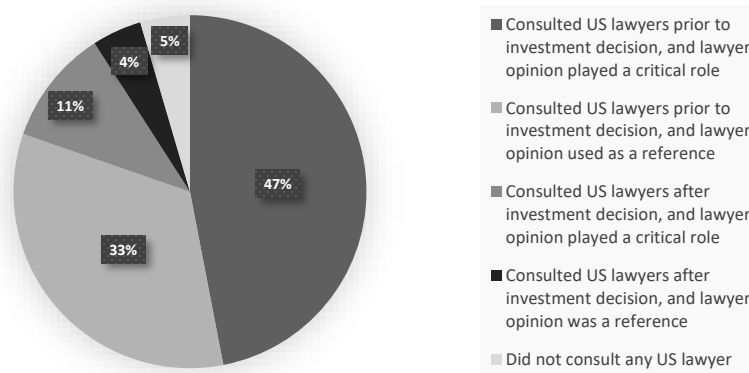
55. Interview with a partner of the U.S. office of a large Chinese law firm (June 8, 2019).

56. Data from 2017 CGCC Survey. 213 responded to the survey questionnaire, and 144

with the gravity of the matter. Responding to an actual or hypothetical conflict with a government body in the United States, 87.9% would consult lawyers and follow their advice. To offer some perspective, only 48.6% and 42.2% would seek assistance from business associations and the Chinese government respectively to address this increasingly plausible political risk.⁵⁷

Additionally, Chinese MNCs engage U.S. lawyers for business transactions, though, consistent with the above-mentioned negative view expressed by some informants, Chinese institutional influence clearly manifests in the timing of lawyer participation. As shown in Figure 2, and in contrast to typical U.S. practices, 21% of the Chinese MNCs would bring lawyers onboard only after an investment decision has been made or would not consult a U.S. lawyer at all, which mirrors the common home-state practice of excluding lawyers from active participation in business negotiations.⁵⁸ One lawyer comments that it is not uncommon for Chinese clients to get U.S. legal advice “only after having signed a binding MOU [memorandum of understanding] on a deal.”⁵⁹

Figure 2: U.S. Legal Services and Investment Decisions



Source: 2014 CGCC survey data (106 responses to the survey questionnaire, 66 responded to this question); survey question: *Which of the following best describes your company’s use of U.S. legal services in making investment decisions?*

The survey data presented in Figure 1 and Figure 2 evince dual institutional influence: the preferences of a minority of Chinese executives

responded to the survey question.

57. *Id.*

58. Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L. J. 1057, 1080 (1997).

59. Interview with a U.S. lawyer (June 11, 2012).

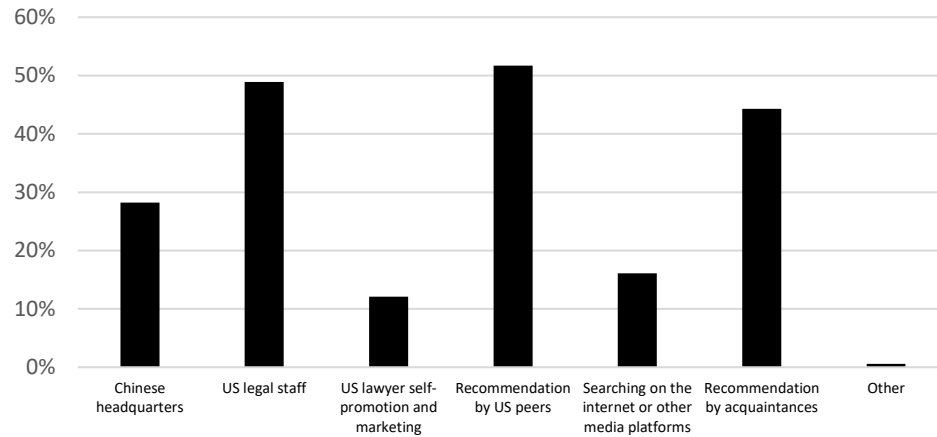
regarding lawyers' roles in dispute resolution and corporate reorganizations continue to echo those of their home-country counterparts. Yet for most Chinese MNCs, U.S. lawyers assume a major role in their U.S. operations. That invites the same questions as examined in the literature on corporate consumption of legal services, and on the evolution of the legal market and profession. As noted, information asymmetry characterizes the purchase of legal services; corporate consumers generally lack the knowledge to judge the needs, price, quantity, and quality of the legal services necessary to optimize their legal risk management. And the information asymmetry is further exacerbated by the vast institutional gaps confronting Chinese MNCs in the United States. How do they address this problem?

As shown in Figure 3, Chinese MNCs depend heavily on U.S. peers, in-house counsel, and acquaintances for information about U.S. lawyers. Recommendations from U.S. peers constitute the most popular channel. As noted, corporations need diagnostic services "advising the client what needs doing and how it initially should be accomplished."⁶⁰ Because legal issues tend to be company-specific, the most accurate information about potential service suppliers would be from sources familiar with such issues. Therefore, the finding of reliance by Chinese MNCs on their U.S. peers for information about lawyers confirms the need to effectively overcome the information asymmetry. In the same vein, corporate managers rely on in-house legal staff for information about U.S. lawyers. Echoing the existing literature, the hiring of in-house counsel narrows the information gap and shifts the diagnostic and referral functions away from outside lawyers.⁶¹ Moreover, a large number of Chinese executives count on their acquaintances for U.S. lawyer information. This broad category comprises diverse groups. For instance, lawyers having established cordial personal relationships with Chinese managers are often ready to provide referrals.

Figure 3: Source of Information about US Lawyers

60. Gilson, *supra* note 9, at 890.

61. Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgement and Organizational Representation*, 64 *IND. L. J.* 479, 483-84 (1988).



Source: 2017 CGCC survey (213 responded to the survey questionnaire, and 174 to this question); multiple choice survey question: *How does your company acquire information about U.S. lawyers?*

By contrast, Chinese MNCs generally disregard sources that reinforce the information asymmetry. U.S. lawyers engage in extensive business development activities such as marketing and self-promotion. But the vast majority of Chinese MNCs ignore this information channel—slightly more than 10% of Chinese managers get information from U.S. lawyers’ self-marketing. One may speculate that the vast majority of Chinese managers, lacking knowledge about the U.S. legal profession, cannot accurately assess the validity of the lawyers’ claims. Hence the downplay of this information source. Likewise, only 16% of Chinese managers would conduct searches on the internet or other media platforms. Again, lacking requisite knowledge, most Chinese managers probably cannot effectively process and analyze the enormous amount of information in the public domain. And most of the 16% likely focus on various rankings, which may serve as a basic albeit noisy proxy for service quality.⁶² Put simply, the lawyer or law firm advertisements popping up after a Google search are probably not the best way to draw the attention of potential Chinese corporate clients.

Notably, 28% of the managers would rely on their Chinese headquarters for information about U.S. lawyers. As previously noted, the global expansion of U.S. companies accelerated the internationalization of U.S. law firms as the former continue to rely on their trusted counsels to handle cross-border or even foreign law matters.⁶³ Now a reversal of the information flow may be occurring. U.S. law firms have been operating in the Chinese market for

62. Ji Li & Wei Zhang, *What Do Chinese Clients Want?*, 15 U. PA. ASIAN L. REV. 86, 94 (2019).

63. Silver, *supra* note 25, at 75 (2007); Abel, *supra* note 25, at 743.

decades, serving American companies investing in China as well as Chinese firms doing cross-border transactions that contain a U.S. law component, e.g., an initial public offering on the New York Stock Exchange.⁶⁴ As their businesses expand globally, the same Chinese companies now make substantial investments in the United States. Their prior experience working with various U.S. law firms may aid the local executives in selecting lawyers. Moreover, some savvy U.S. lawyers understand the strict hierarchical control of Chinese corporations, and they focus business development on the headquarters. A trip to Beijing to give a presentation on complying with U.S. anti-money laundering rules, plus some wining and dining afterwards with the CEO or general counsel, might get the law firm on the company's preferred vendor list and recommended to local managers in the United States.⁶⁵

Chinese MNCs thrived in a home-state environment vastly different from the U.S. system where law is essential for doing business. To adapt to the complex host-state institutions, Chinese MNCs inevitably rely on U.S. lawyers. Unsurprisingly, most of them incur higher legal and compliance cost in the United States,⁶⁶ not unlike U.S.-invested MNCs headquartered in other countries.⁶⁷ But how much do Chinese MNCs actually spend on purchasing U.S. legal services? Do they pay millions of dollars each year to outside lawyers as large U.S. companies do, which would give the Chinese MNCs considerable leverage and pricing power vis-à-vis U.S. law firms? It is important to understand the Chinese MNCs' legal expenses as they shape the companies' relationships with U.S. lawyers.

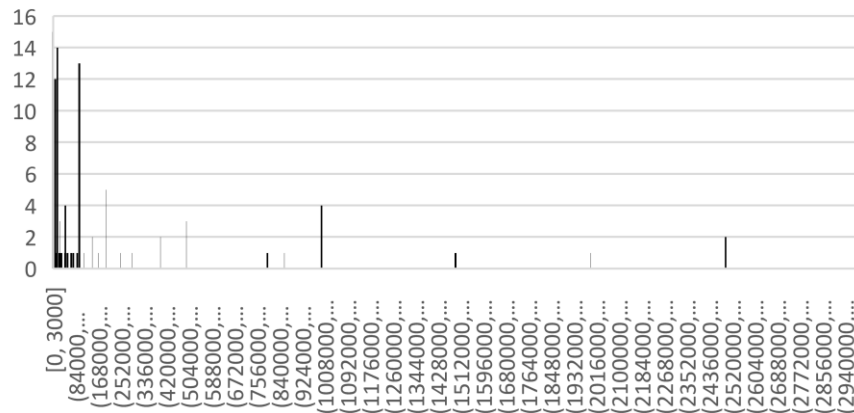
Figure 4: Chinese MNCs' Legal Fees in the United States

64. Rachel E. Stern & Su Li, *The Outpost Office: How International Law Firms Approach the China Market*, 41 L. & SOC. INQUIRY 184, 192 (2015).

65. Interview with the general counsel of a Chinese company's U.S. subsidiary (July 16, 2019).

66. LI, THE CLASH OF CAPITALISMS, *supra* note 1, at 67.

67. REGULATORY ENCOUNTERS: MULTINATIONAL CORPORATIONS AND AMERICAN ADVERSARIAL LEGALISM 23 (Robert A. Kagan & Lee Axelrad eds., 2000).



Source: 2019 CGCC survey (one outlier excluded) (247 responded to the questionnaire, and 117 to the survey question); survey question: *What was the approximate fee your company paid to the following third-party professional services organizations in 2018? Please fill in the specific amount in the column, such as \$200,000.*

As Figure 4 illustrates, Chinese MNCs' average legal fees to U.S. lawyers fell far below the market average for U.S. companies.⁶⁸ Though the distribution is skewed, the vast majority of the Chinese MNCs paid less than \$400,000 in 2018 to U.S. lawyers. The finding has major implications. Chinese MNCs, given their special attributes and peculiar home-state institutional influence, face heightened legal and regulatory risks in the United States. Upon entering the U.S. market, most of the Chinese MNCs lack the diagnostic capacity that would enable them to identify their own legal service needs. Such a function is typically performed either by trusted lawyers possessing rich company-specific knowledge, or by competent in-house counsel. Modest fees expected from Chinese MNCs would disincentivize U.S. lawyers from acquiring the company-specific knowledge. As noted by a Chinese in-house counsel, "U.S. lawyers often don't understand our business, nor our legal issues."⁶⁹ Also, with so little to contribute to the revenue of large U.S. firms, Chinese MNCs are treated as "low-quality clients."⁷⁰

Of course, Chinese MNCs may address the problem by cultivating in-house legal capacity, as asset specificity induces vertical integration.⁷¹ And

68. According to the ACC 2018 Survey in which U.S. respondents were overrepresented, the mean and median for outside legal spending are \$9,710,316 and \$845,000 respectively. *2019 Global Legal Department Benchmarking Report*, at 9, https://www.acc.com/sites/default/files/2019-06/ACC_Benchmark_062019.pdf.

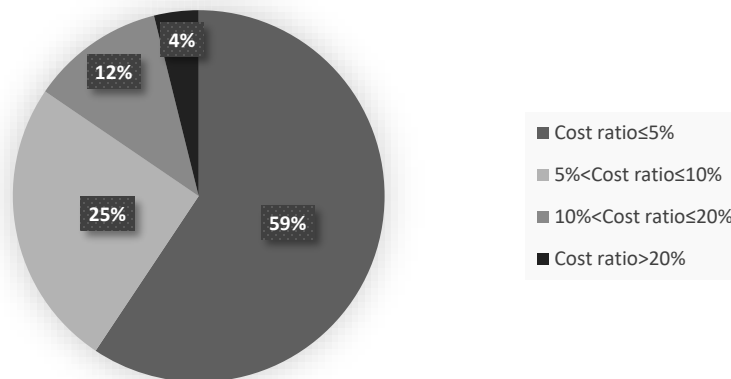
69. Interview with an in-house counsel of the U.S. subsidiary of a large Chinese multinational (May 14, 2017).

70. Interview with a partner at a U.S. law firm (June 7, 2020).

71. OLIVER E. WILLIAMSON, *MARKETS AND HIEARCHIES: ANALYSIS AND ANTITRUST*

recent empirical research affirms the efforts by some Chinese MNCs to internalize legal service production.⁷² However, rather than eliminating information asymmetry, internalization merely converts it to an intra-company problem underlying the employment and management of in-house counsel. Lay Chinese managers can neither evaluate the professional knowledge or skills of U.S. in-house counsel nor assess the quality of the internally produced legal services. The wide institutional gaps between the two countries further exacerbate the issue, as some Chinese MNCs expatriate Chinese legal managers or hire lay people to oversee U.S. legal matters.⁷³ In short, for most Chinese MNCs, internalizing U.S. legal service production is probably no less challenging than making optimal purchases on the legal market.

Figure 5: Ratio of Legal Fees to Selling, General, and & Administrative Expenses



Source: 2019 CGCC survey (247 responded to the questionnaire, and 155 to the survey question); survey question: *What was the ratio of fees paid to outside law firms to sales and administrative expenses (SG&A) in 2018?*

The survey also inquired about the ratio of Chinese MNCs' legal to operating expense. In particular, data was collected on the percentage of fees paid to outside lawyers versus SG&A (selling, general and administrative expenses), a major category of non-production costs often used to present a snapshot of a company's financial conditions. This measure takes into account the size of a Chinese MNC's U.S. operation and the stage of its expansion. As shown in

Figure 5, the distribution of the data largely mirrors that for the

IMPLICATIONS 16-19 (1975).

72. Ji Li, *Going Out and Going In-House: Chinese Multinationals' Internal Legal Capacity in the United States*, L. & SOC. INQUIRY (forthcoming 2021).

73. 2019 CGCC Survey.

previously reported dollar amount, with 59.4% of the responding firms reporting a ratio below 5%, and only 3.87% higher than 20%. Although Chinese MNCs incur more legal and compliance costs in the United States, the costs account for a relatively small portion of their operating budget, which correlates with the Chinese managers' varying perception of U.S. legal risks.⁷⁴

IV. ANALYSIS OF THE VARYING U.S. LEGAL EXPENSES

As noted earlier, the informants' accounts articulate different reactions of Chinese MNCs to the U.S. legal system, and the survey data affirms significant inter-company variations. The variations pose novel questions of theoretical and practical interest. For instance, is the ownership structure of Chinese investors associated with their U.S. legal expenses? As one informant notes, "state-owned Chinese companies tend to do better than the privately-owned ones in following the rules. It's not their money; they (the managers) don't want to take any risk."⁷⁵ Knowledge about the ownership effect will contribute to the nascent literature on the management and performance of state-owned MNCs.⁷⁶ Also, what is the link between the legal needs of a Chinese MNC's U.S. operation and the amount paid to outside lawyers? The answer will assist U.S. lawyers in identifying potential Chinese clients or the service demand of their existing Chinese clients.

This section statistically examines an array of factors that may relate to the variations of the reported legal expenses. The two measures, the amount of fees paid to U.S. lawyers and the ratio of legal cost to operating cost, will be tested respectively. Because the former is skewed, I use its log-transformed data for the ordinary least square (OLS) tests.⁷⁷ The latter is scale data, on which I run both OLS and ordered logit tests. I will analyze the following independent and control variables that fall roughly into three categories. First, some factors such as the amount of litigation generate temporary, unpredictable, or oscillating service demand, and existing theories predict a high correlation between such variables and corporate legal expenses. Second, a few factors may give rise to high and stable stream of demand for legal services. Large companies, for instance, typically deal with more legal issues and therefore pay larger fees. Third, some attributes that are special to Chinese

74. Fewer than 20% of Chinese companies consider complex U.S. law to be a major business challenge (2018 CGCC Survey); fewer than 20% consider U.S. litigation risk to be a major challenge (2019 CGCC Survey).

75. Interview with a U.S. lawyer (March 31, 2015).

76. See, e.g., Alessia A. Amighini, et al., *Do Chinese State-Owned and Private Enterprises Differ in Their Internationalization Strategies?*, 27 CHINA ECON. REV. 312 (2013); Garry D. Bruton et al., *State-Owned Enterprises Around the World as Hybrid Organizations*, 29 ACADEMY OF MGMT. PERSP. 92 (2015); L. Jeremy Clegg et al., *The Autocratic Advantage: Internationalization of State-Owned Multinationals*, 53 J. WORLD BUS. 668 (2018); Alvaro Cuervo-Cazurra et al., *Governments as Owners: State-Owned Multinational Companies*, 45 J. INT'L BUS. STUD. 919 (2014).

77. Two responding companies reported zero legal expenses. These two values were dropped from the natural log transformation.

MNCs, e.g., state ownership, will be analyzed to assess their hypothetical connections with corporate legal expenses.

A. *Description of variables*

Category One

Litigation in U.S. courts. For MNCs operating in the United States, litigation is often unavoidable. And navigating the complex and highly technical adjudicatory system requires professional assistance of U.S. lawyers. Due to the unpredictability and volatility of litigation work, even companies with large in-house legal department often outsource it, let alone Chinese MNCs confronting enormous institutional hurdles in the United States.⁷⁸ Extensive reliance on U.S. legal services comes at a high cost. Hence, I test a hypothetical link between a Chinese MNC's involvement in U.S. litigation and its legal expenses. I reviewed and coded all the federal lawsuits on Bloomberg Law that involve the Chinese firms included in the 2019 CGCC survey.⁷⁹ As shown in Table 1, an average Chinese MNC in my sample experienced 1.54 federal cases since their entry in the U.S. market.

Business reorganization. Apart from litigation, companies typically rely on outside lawyers for work relating to major business reorganizations such as mergers or acquisitions. Again, such service needs are unpredictable and temporary, so it is generally more cost-efficient to delegate the work to outside lawyers. Hence, I hypothesize that Chinese MNCs in the United States that recently conducted a business reorganization would report higher legal costs. From the survey data I construct a dummy variable that equals one if a Chinese MNC engaged in mergers or acquisitions in the previous two years, zero otherwise.

Category Two

Size of U.S. operation. A good proxy for stable legal service needs of a Chinese MNC is the size of its U.S. operation. Large companies often have to deal with legal and regulatory issues that normally do not concern firms of smaller scale (e.g., antitrust law). Also, within the same legal area, large companies tend to have more legal service needs (e.g., labor and employment disputes). Therefore, I hypothesize a positive link between business size and external legal expenses. On the other hand, due to economies of scale, large companies should report a lower ratio of legal cost to operating cost. To test

78. Ribstein, *supra* note 9, at 758.

79. An ideal measure would be the exact number of lawsuits in federal, state, and municipal courts involving a responding CGCC company in 2018. However, data on state and municipal court cases are not available for most states. For those that are available, the data is typically incomplete. Also, most of the Chinese respondents did not have any federal lawsuits in 2018, so I choose the total number of federal cases to be the proxy variable of a Chinese company's litigation service needs.

these two hypotheses, I use U.S. revenue as a measure of Chinese MNCs' business size.⁸⁰

In-house counsel. The availability of corporate counsels at Chinese MNCs may be associated with their legal expenses in two opposite ways. On the one hand, in-house legal capacity may relate positively to the cost of external legal services. First, in-house counsel can be regarded as a proxy for the amount and complexity of repeat legal issues facing a Chinese MNC. And those confronting frequent and complex legal issues in the United States should incur higher legal costs. Second, the availability of in-house counsel may signal relevant managerial attitudes; everything else being equal, Chinese companies with full-time internal legal staff may take legal matters more seriously than those without. Such an attitude might be reflected in more fees. Third, in-house counsels, many of whom are corporate lawyers, serve the diagnostic function that enables the identification of company-specific legal needs, which results in higher fees paid to outside lawyers. All these hypothetical claims point to a positive tie between in-house capacity and outside legal service cost. On the other hand, the literature on in-house movement cites cost-saving as a primary driver,⁸¹ so it is possible that, other variables held constant, internal legal capacity would lead to lower fees paid to outside lawyers. To test these diverging associations, I create a dummy variable that equals one if a responding MNC has employed a full-time legal manager licensed to practice law in the United States, and zero if otherwise.

Listing status. Many SOEs and private Chinese companies large enough to make U.S. investments have listed their shares on major exchanges in China and abroad. As the additional oversight by securities regulators magnifies U.S. legal risks, Chinese companies listed on the stock exchanges may take law more seriously than other Chinese firms, and as a result purchase more legal services in the United States. A question in the survey inquired about the listing status of the responding firm's managing entity. From the data, a dummy variable is created and assigned the value of one if a Chinese business in the United States is managed by a listed company, zero if otherwise.⁸²

Sectoral regulation. Regulatory intensity of the sectors in which Chinese companies operate may also have an effect on their external legal expenses. Prior literature has documented that corporate clients are less cost-conscious

80. The data is derived from a scale question on the total US revenue of a CGCC survey respondent. The survey subjects chose one of five levels of revenue, with the lowest level being "below one million dollars" and the highest level "above 100 million dollars."

81. Wilkins, *supra* note 11, at 2080; Craig B. Glidden, *The Evolution and Influence of Corporate Legal Departments*, 12 FLA. ST. U. BUS. REV. 131, 134 (2013). However, in the past few decades the in-house movement coincided with the escalation of spending on outside law firms in the United States. Wilkins, *supra* note 11, at 2084.

82. One may reasonably argue that U.S. securities regulation is uniquely consequential. Hence, I create an alternative listing status dummy that equals one if a Chinese investor is listed in the United States, zero otherwise. Tests using this alternative dummy return similar results.

when purchasing legal services for “betting the company” matters.⁸³ In heavily regulated sectors such as banking, high-stakes matters abound, and companies tend to regard legal expenses as a necessary and ordinary operational expense. Hence, Chinese companies operating in heavily regulated sectors may report more lawyer fees. To assess this hypothetical relationship, I use the regulation intensity index compiled by McLaughlin and his colleagues. Each of the survey respondents is assigned to an industry designated by a two-digit NAICS (North American Industry Classification System) code, which corresponds to a regulatory intensity index number.⁸⁴

Entry mode. The mode of entry adopted by a Chinese investor may influence the legal expense. Presumably, those that make the entry by acquiring an established U.S. business do not have to tackle a slew of novel legal and regulatory issues, as their peers that engage in greenfield investments usually have to. To measure the variation, I create a dummy variable that equals one if a Chinese MNC entered the U.S. market via a merger or an acquisition or by forming a joint venture, zero if otherwise.

Table 1: Summary Statistics

VARIABLE	MEAN	STD. DEV.	MIN	MAX	NUMBER OF OBSERVATIONS
INVESTMENT DURATION	10.271	8.325	1	38	218
STATE OWNERSHIP (50%)	0.304	0.461	0	1	230
STATE OWNERSHIP (10%)	.078	.269	0	1	230
LISTING STATUS	0.398	0.491	0	1	226
ANNUAL US REVENUE	2.535	1.587	1	5	202
M&A IN THE PAST TWO YEARS	0.270	0.445	0	1	178
PROFESSIONAL IN-HOUSE LEGAL MANAGER	0.346	0.477	0	1	188
LEGAL FEES	356282.8	1219213	0	1.10E+07	113
LN(LEGAL FEES)	10.663	2.036	5.704	16.213	110
LEGAL FEE RATIO SCALE (1-4)	1.6	0.842	1	4	155
SECTORAL REGULATION	50656.02	52294.36	511.455	214953.4	230
NUMBER OF LAWSUITS	1.539	4.296	0	30	206
ENTRY MODE	.214	.411	0	1	220

Data source: 2019 CGCC survey.

83. John C. Coates, et al., *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 L. & SOCIAL INQUIRY 999, 1021 (2011).

84. All the respondents report their industries. I checked all their official websites or, when such websites are not available, third-party reports to ascertain their industries. For those operating in multiple industries, I use the one most heavily regulated. As typical with this type of proxy measures, the index is not perfect. For instance, real estate is relatively heavily regulated industry. But, because it is normally regulated at the state and local level, the industry appears to be subject to light federal regulation. For more details, see McLaughlin, Patrick A., and Oliver Sherouse. RegData US 3.1 Annual (dataset). QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2018. <https://quantgov.org/regdata-us/>.

Category Three

State ownership in Chinese investors. Drawing on insights from the literature on state-owned enterprises (SOEs), I hypothesize that legal fee is associated with the ownership structure of Chinese MNCs. The extant theories, however, predict two opposing associations. The multiple-agency problem plagues state-owned Chinese MNCs and leads to an acute misalignment of interests between the managers and the nominal owners.⁸⁵ Though the ultimate ownership of Chinese SOEs is allegedly vested in “the people,” it is agents appointed by certain government bodies that exercise real control over the management, and the government bodies in turn face their own agency problems. As a result, SOE managers may heavily discount corporate cost savings. Large U.S. legal fees, unhinged to the remuneration of SOE managers, may not catch their attention.

On the other hand, the same multi-agency problem may induce an opposite hypothesis. Due to severe interest misalignment, Chinese companies with substantial state ownership resemble government bureaucracies in terms of operations and organizational form. Compared to private firms, the SOEs rely more heavily on measurable metrics to run their operations. While the quality of legal services is difficult to assess due to their nature as credence goods, the costs are easily observed and measured. Therefore, managers of state-owned MNCs may pay more attention to legal expenses than to subtle criteria such as service quality or long-term corporate benefits. As noted by an in-house lawyer of a large state-owned Chinese MNC, to avoid trouble or suspicion, her department normally selects U.S. lawyers based on cost. She once proposed an elite New York firm where she had spent a year as a visiting lawyer, and for that she had to “write a detailed report to justify the deviation from the set practice.”⁸⁶ Indeed, recent empirical research found state-owned Chinese MNCs to be more attentive to fee rates in the selection of U.S. lawyers.⁸⁷ Such fee-sensitivity may result in lower U.S. legal expenses.

To test these two conflicting hypotheses, I create a dummy variable and assign it the value of one if a Chinese government entity owns more than fifty percent of a Chinese investor’s equity interest and zero otherwise. Majority equity interest in theory enables corporate control over the investor’s actions in the United States, yet it may not be a *sine qua non* for the home-state government to exert influence.⁸⁸ Thus, I code another dummy variable to capture more extensive and subtle state control, which equals one if the

85. Cuervo-Cazurra et al., *supra* note 76, at 931.

86. Interview with an in-house counsel of a Chinese SOE (May 3, 2017).

87. Li & Zhang, *supra* note 62, at 107-08.

88. Ji Li, *State-Owned Enterprises in the Current Regime of Investor-State Arbitration*, in *THE ROLE OF THE STATE IN INVESTOR-STATE ARBITRATION* (Shaheza Lalani & Rodrigo Polanco, eds., 2014).

Chinese government owns less than fifty percent but more than ten percent of the investor and zero otherwise.⁸⁹ The two dummy variables together codify the three major ownership types of Chinese investors: majority state ownership, significant minority state ownership, and private ownership (the baseline).

Duration of U.S. investment. Chinese companies that entered the U.S. market earlier may have adapted to the local business environment's high legal fees. By contrast, due to the undervaluation of legal services in China, Chinese MNCs that have just ventured abroad might pay closer attention to external legal expenses. To test this inertia hypothesis, I include the duration of a Chinese MNC's investment in the United States.

B. Analysis of test results

The test results reveal the nuances of Chinese MNCs' demand-driven legal expenses in the United States. First, lawsuits are costly. In all the five model specifications, the amount of federal litigation is highly significant and positively associated with fees paid to U.S. lawyers. As discussed earlier, given the complexity and technicality of litigation in U.S. courts, even domestic companies with in-house legal departments often have to outsource such work.⁹⁰ Also, the service needs generated by U.S. lawsuits tend to oscillate, so it is cost-effective to hire outside lawyers to meet any demand surge.⁹¹ The same logic appears to apply to Chinese MNCs in the United States.

Table 2: Regression results (dependent variable: fees paid to U.S. law firms)

	1	2	3	4	5
<i>State ownership (50%)</i>	.116 (.423)	.123 (.433)	.114 (.449)	.227 (.553)	.226 (.555)
<i>State ownership (10%)</i>	.330 (.683)	.350 (.688)	.336 (.686)	.178 (.711)	.181 (.716)
<i>Number of cases</i>	.170*** (.051)	.170*** (.051)	.171*** (.051)	.187*** (.056)	.184*** (.055)
<i>Mergers & acquisitions</i>	1.172*** (.411)	1.170*** (.416)	1.161*** (.423)	1.150** (.439)	1.151** (.441)
<i>US revenue</i>	.297** (.147)	.298** (.149)	.298* (.150)	.323** (.162)	.325** (.162)

89. Ten percent is typically regarded as the threshold for passive ownership of a company. State owners with less than Ten percent equity normally are not considered to be active participants in corporate decisions.

90. Omari Scott Simmons & James D. Dinnage, *Innkeepers: A Unifying Theory of the In-House Counsel Role*, 41 SETON HALL L. REV. 77, 126 (2011).

91. Rosen, *supra* note 61, at 508.

<i>In-house legal manager</i>	.802** (.400)	.804** (.402)	.799* (.405)	.764* (.438)	.769* (.442)
<i>Entry mode</i>		.093 (.475)	.097 (.481)	.005 (.486)	-.003 (.491)
<i>Listing status</i>			.072 (.373)	.029 (.399)	.021 (.407)
<i>Investment duration</i>				-.027 (.026)	-.026 (.026)
<i>Sectoral regulation</i>					7.98e-07 (3.81e-06)
<i>Constant</i>	8.977*** (.400)	8.952*** (.425)	8.926*** (.416)	9.154*** (.493)	9.117*** (.509)
<i>N</i>	99	98	98	93	93
<i>R-square</i>	0.36	0.35	0.35	0.34	0.34

Data source: 2019 CGCC survey; OLS test results reporting robust standard error.

Second, major business reorganizations drive up legal expenses. As shown in Table 2, the coefficient on the variable of mergers and acquisitions is positive and significant; Chinese MNCs that have recently engaged in such transactions report higher legal costs. The finding is unsurprising. In a country with sophisticated legal and regulatory systems, transactions such as a merger invariably require extensive law firm support.⁹² Only the largest U.S. corporations are able to internalize partial production of such services.⁹³ While some Chinese MNCs are comparable in size to large U.S. companies, their U.S. subunits tend to be of limited scale. Hence, they have to rely entirely on outside lawyers to facilitate such transactions.

Third, the size of U.S. operations is significantly and positively associated with the amount of fees paid to outside lawyers. In other words, the other variables held constant, Chinese MNCs with larger U.S. businesses report higher external legal costs. This finding affirms the conventional view. Larger operations inevitably encounter more legal and regulatory issues, hence incur more payments for legal services. Also, as will be illustrated by the test results below, such MNCs are also more capable of affording expensive legal services.

Fourth, in-house legal capacity is positively associated with Chinese MNCs' payments to U.S. lawyers; all else being equal, Chinese MNCs with

92. De Fontenay, *supra* note 23, at 396-97.

93. Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497, 530 (2007).

professional legal managers tend to pay more to outside lawyers. As noted earlier, the presence of a full-time in-house legal manager generally reflects a steady flow of legal and regulatory matters that justifies the internal production of legal services. Moreover, professional in-house counsels perform the diagnostic function that identifies more legal risks to be addressed by outside lawyers. Establishing in-house positions may also evidence certain MNCs' conservative managerial approach towards legal and compliance matters, which tends to raise legal expenses.

None of the other variables is significant. Among them the ownership structure of Chinese investors merits some discussion. As discussed earlier, the multi-agency and multi-tasking nature of SOEs arguably hinders optimal consumption of legal services, and recent empirical research unveiled the fee sensitivity of state-owned Chinese investors in selecting U.S. lawyers.⁹⁴ Therefore, one reasonably expects a significant association between the ownership structure variable and legal service expenses. The lack of such a link may be attributed to two factors.⁹⁵ Unlike large U.S. corporations, most Chinese MNCs have insignificant legal expenses and therefore no bargaining leverage over U.S. law firms in service pricing.⁹⁶ Thus, the fee-sensitivity of state-owned Chinese investors does not impact the total service costs. Also, it is possible the opposite hypothetical effects offset each other, producing an insignificant test result.⁹⁷

Table 3: Regression results (dependent variable: ratio of legal fee to operating cost, scale one to four)

	1	2	3	4
<i>State ownership (50%)</i>	-.023 (.164)	-.001 (.184)	-.041 (.410)	.052 (.445)
<i>State ownership (10%)</i>	.457 (.369)	.293 (.398)	.863 (.696)	.585 (.774)
<i>Number of cases</i>	.031* (.016)	.034** (.016)	.065 (.045)	.074 (.048)
<i>Mergers & acquisitions</i>	.346** (.165)	.394** (.169)	.936** (.391)	1.129*** (.425)

94. Li & Zhang, *supra* note 62, at 107-08.

95. Due to the relatively limited sample size, inferences from the finding of non-significance are tentative.

96. Given the overrepresentation of large Chinese companies in the sample, the average U.S. legal expense of all Chinese companies with direct investment in the United States should be lower than the figure presented in this article.

97. Though the sample size limits the power of the models, significance is highly unlikely even with larger samples given the large error terms relative to the coefficients for the state ownership variables.

<i>US revenue</i>	-.115** (.047)	-.124** (.049)	-.299** (.127)	-.324** (.138)
<i>In-house legal manager</i>	-.033 (.143)	-.030 (.156)	.010 (.379)	.035 (.397)
<i>Entry mode</i>	-.284** (.142)	-.351** (.138)	-.606 (.437)	-.772* (.456)
<i>Listing status</i>		.004 (.166)		-.246 (.394)
<i>Investment duration</i>		-.003 (-.003)		-.012 (.028)
<i>Sectoral regulation</i>		3.37e-07 (1.63e-06)		1.09e-06 (3.93e-06)
<i>Constant</i>	1.779*** (.169)	1.808*** (.203)		
<i>N</i>	133	127	133	127
<i>R-square/</i>	0.09	0.11	0.05	0.06
<i>Pseudo R-square</i>	(OLS)	(OLS)	(ordered logit)	(ordered logit)

Data source: 2019 CGCC survey; ordered logit tests, and OLS test results reporting robust standard error.

In a second set of tests, I switch to the “ratio of legal cost to operating cost” as the dependent variable, and Table 3 presents the results. First, a recent merger or acquisition would significantly raise the ratio of legal expense to operating cost. The finding, robust across all the specifications, reconfirms the claim that major corporate restructuring give rise to complex legal and regulatory issues that are more efficiently handled by outside lawyers. As discussed earlier, even U.S. companies with in-house legal departments usually outsource such work. Second, related to reorganization is the entry mode variable. It is significant in three of the four tests and negatively associated with the legal cost ratio. As hypothesized, Chinese MNCs that entered the United States by building businesses from scratch, instead of acquiring or partnering with local firms, have to tackle myriad costly legal issues, and as a result, record a higher ratio of legal to operating cost. Third, the size of Chinese MNCs’ U.S. operations is significantly correlated with their relative level of legal expenses. The coefficient is now negative, suggesting that larger U.S. businesses report lower ratios of legal to operating expenses. Evidently, economies of scale are at work. Legal problems that may bankrupt a small business often have no measurable revenue impact on a large firm.

Fourth, the litigation variable is significant in two of the tests.⁹⁸ Again, all

98. The results are weakly significant at the 15% level in the other two tests, so it is possible

the other variables held constant, having more federal lawsuits increases the legal cost ratio of a Chinese MNC. This probably explains why even large companies are motivated to settle disputes out of courts. Fifth, the proxy variable for in-house legal capacity is no longer significant. From the earlier tests, we learned that the internal legal capacity correlates with a higher amount of fees paid to outside lawyers. The result from the tests of the legal cost ratio indicates that such companies also incur higher costs in other areas of operations. Last, the ownership structure of Chinese investors is not significant. Combining this with the finding from the previous tests that legal fees do not vary as a result of ownership structure, one can draw tentative inference that Chinese state-owned investors do not differ from their privately-owned peers in terms of U.S. legal expenses, when the other variables are held constant.

To summarize, Chinese MNCs in the United States, having to surmount enormous institutional hurdles, rely extensively on local legal professionals to navigate the complex legal and regulatory regime. While they recognize that legal services in the United States are more costly than in China, the average amount they spend is insignificant, though outliers such as Huawei exist that incur enormous U.S. legal expenses. Therefore, U.S. law firms tend to treat average Chinese companies as “low quality clients,”⁹⁹ and they lack strong incentives to acquire the company-specific knowledge. Meanwhile, without much leverage, Chinese MNCs generally have limited control over their U.S. legal costs, which vary mainly according to the legal service demand, not firm characteristics such as ownership structure.

V. CONTRIBUTIONS AND SUGGESTIONS FOR FUTURE RESEARCH

To the best of my knowledge, this is the first empirical study of developing country MNCs as consumers of U.S. legal services. The findings make several important contributions. First, they add to the ongoing debates about the impacts of Chinese MNCs in host countries, which have so far neglected the crucial role of professional service providers. The findings herein demonstrate that, contrary to anecdotal evidence, the majority of Chinese investors recognize the importance of lawyers in negotiating U.S. legal risks. However, their legal expense budget is insignificant compared to large U.S. corporations. Therefore, most Chinese MNCs may not receive premium legal services tailored to their specific needs.

Second, the findings contribute to the literature on the legal profession and the global legal service market. As just noted, U.S. law firms lack strong incentives to invest in the knowledge specific to Chinese MNCs. The issue can be addressed either by internalizing legal service production or by hiring firms already possessing such knowledge, i.e., Chinese law firms. Like the market

that future tests using larger samples may return significant results.

99. Interview with a partner of a U.S. law firm (June 7, 2020).

force propelling the global expansion of U.S. law firms,¹⁰⁰ the demand of Chinese MNCs is driving some Chinese law firms abroad.¹⁰¹ While few of them aspire to be one-stop shops that can satisfy all the U.S. legal needs of their clients, they have aspired to serve as competent “outside general counsel” of Chinese investors in the United States.¹⁰² Compared to their U.S. counterparts, the Chinese law firms should be better motivated to offer high quality services as the MNCs are their major clients back in China. This new development and its theoretical and practical implications await more systematic future research.

Third, this paper contributes to the sizable literature on the behavior and performance of Chinese MNCs. According to the empirical analysis, Chinese MNCs’ legal service consumption appears to be driven primarily by their host-state service needs. Though the descriptive survey data and the interviews with some informants reveal measurable home-state influence, the bulk of the inter-company variations in the legal expenses of Chinese MNCs are associated with the amount of litigation, business reorganization, and the size of U.S. operations, and in ways expected from typical U.S. corporate consumers of legal services. Therefore, between the home-state and the host-state institutional pressure, Chinese MNCs appear to yield more to the latter, which should ease the anxiety about the growing presence of Chinese businesses in developed host countries.

Some of the interviews indicate home-state normative influence on Chinese MNCs’ attitude towards lawyers and their purchase of US legal services. However, since such influence presumably shapes the preferences and behavior of all Chinese MNC executives, the regression analysis has failed to detect it.¹⁰³ Future empirical research may compare the data herein with the legal expenses of Chinese investors in other host countries to further assess the potential home-state normative influence.

Last, this paper adds to the ongoing theoretical and policy debates about state-owned MNCs. Many have voiced deep concerns that the vanguards of state capitalism will spread the Chinese state-business relationships along with their outbound investments.¹⁰⁴ This study tentatively concludes that state ownership per se is not associated with Chinese MNCs’ legal expenses (either the amount of fees or the ratio) once the investors’ U.S. legal needs have been controlled for. Though prior research found state-owned Chinese investors to

100. Abel, *supra* note 25, at 743.

101. Jing Li, *All Roads Lead to Rome: Internationalization Strategies of Chinese Law Firms*, 6 J. PROFESSIONS & ORG. 156, 157 (2019).

102. Interview with a partner of a Chinese law firm’s U.S. office (Jan. 8, 2020).

103. Xiaohua Lin, *State Versus Private MNCs from China: Initial Conceptualizations*, 27 INT’L MKTG. REV. 366, 368 (2010).

104. LI, THE CLASH OF CAPITALISMS, *supra* note 1, at 18-19.

be more fee-sensitive when it comes to selecting U.S. lawyers,¹⁰⁵ the preference does not appear to affect how much they ultimately pay, which I attribute to information asymmetry and their lack of pricing power in U.S. legal market. Extraterritorial effects of state ownership in Chinese MNCs may exist, but they are probably issue- and area-specific. Future research should devise a more nuanced analytical framework for understanding state-owned MNCs and their implications for the global economic and legal order.

VI. CONCLUSION

While Chinese MNCs have spawned numerous front-page reports, their investments in the United States remain at an infant stage; and the escalating confrontation between the two superpowers has reversed their expansion trajectory. Though Chinese investors rely heavily on U.S. lawyers to bridge the vast institutional gaps and to navigate the byzantine U.S. legal system, their limited scale caps the legal expenses at a low average level. Thus, Chinese companies possess little pricing power in the U.S. legal service market and are treated by top law firms as “low quality clients.”¹⁰⁶ Without much leverage over U.S. lawyers, Chinese MNCs’ legal expenses are determined more by their service needs than by under-explored corporate attributes such as ownership structure. The findings shed light on multiple debates about Chinese MNCs and their impacts on the legal profession, the legal service market, and other aspects of developed host countries.

105. Li & Zhang, *supra* note 62, at 107-08.

106. Interview with a partner at a U.S. law firm on June 7, 2020.