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FOCUS

CORPORATE GOVERNANCE FROM A COMPARATIVE PERSPECTIVE

THE INTERPLAY OF THE STATE AND THE FIRMS: OVERSEAS LISTING AS A GOVERNANCE INSTITUTION FOR CHINESE SOES

*MIAO Yinzhi**

There are both considerable horizontal and vertical governance problems with the Chinese state-owned-enterprises (SOEs), which mean the firm operators are basically unaccountable. Due to the SOEs' privileged positions in the Chinese political economy, almost all kinds of traditional institutions of corporate governance are far from perfect. Thus the value of overseas listing as a governance mechanism is highlighted, and that could be well revealed by a deeper analysis of the cost-and-benefit balance done by the government, which controls the SOEs and makes the real decision of overseas listing. Such a listing would bring a variety of economic benefits to SOEs, but the major driver for the action is the government's wishes to employ an effective mechanism to restructure and discipline the old SOEs, solve the problems such as manager slack and still keep things under control. A change of the main overseas listing place from New York to Hong Kong after the shock of a class action further testifies such considerations from the state. But interestingly, during this process, bound by the external rules, the powerful state itself has gradually been driven in a more market-oriented and rule-abiding direction. This implies the complexity of the interplay of the state and the firm and reflects a typical market-oriented reform and an institutional evolution story of China in the past decades.

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* (缪因知) Ph.D and Associate Professor, at Law School, Central University of Finance and Economics, Beijing 100081, China. The author is grateful for the Victor Brudney Prize from Harvard Law School for the original draft of this paper and further support from Ministry of Education of the People's Republic of China Research Project "Soft Law Governance of Transnational Companies in the Global Community" (12YJC820058). Contact: miaoyinzhi@gmail.com

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INTRODUCTION

China perhaps has the largest group of state-owned-enterprises (SOEs) in the world. As of 2008, total assets of the SOEs were $6 trillion (133% the size of China's economy).[1] As of 2010, total assets of the 120 central-controlled SOEs equaled 62% of China's GDP, total revenues 42% of it.[2]

Although not as viable or active as the emerging private-owned enterprises, SOEs have dominated the capital-intensive sectors such as power, steel, chemicals, and machinery. SOEs also account for approximately 70% of its listed companies[3] in a nominally leading stock market by capitalization.[4] After nearly twenty years of reform, most of them have been corporatized and many even have become listed companies. However, corporate governance remains a big challenge for these firms.[5]

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[1] Jason Dean, Andrew Browne & Shai Oster, *China's "State Capitalism" Sparks a Global Backlash*, Wall Street Journal, Nov. 16, 2010. It also pointed out though France is famous for extensive state involvement, the relevant numbers were $686 billion and 28%.

[2] LIN Liwen and Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 Stanford Law Review 697, (2013).

[3] In 2006 the head of State-Owned Assets Supervision and Administration Commission of the State Council stated that 56% of listed companies were controlled by the Commission or the equivalent local-level state assets departments. See 国务院国有资产监督管理委员会关于印发李荣融同志在全国国有资产监督管理工作会议上的讲话的通知 (Notice Regarding the Printing and Circulation of the Speech Given by Mr. LI Rongrong in the National State Assets Supervision Working Meeting), Mar. 6, 2007, available at http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=90735 (last visited Oct. 10, 2014).

[4] The market overtook Japan as the world's second-largest stock in Jan. 2008 and Jul. 2009, *China's Market Value Overtakes Japan as World's No. 2*, Bloomberg News, Jul. 16, 2009, available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a_84o9PPPGqk (last visited Oct. 10, 2014). But due to the bulk of de facto non-negotiable state-owned shares, a calculation of capitalization by multiply the shares with market price would be overestimating.

[5] Surely, what is a proper role for the SOEs is highly debatable. I agree with the claim that SOEs should retreat from competitive industries and profit maximization should not be its goal. However, in the medium term the Chinese government as the owners of SOEs probably would not to go in this direction. Numerous or even the majority of SOEs operate like ordinary business firms. So for the simplicity, this paper just treats SOEs as firms with a special kind of controlling shareholder, without exploring whether there should be a special social role for them.

This paper focuses on how to improve corporate governance of SOEs in China, where the legal institution is ineffective and the government and SOEs are powerful. This paper also advocates overseas listing as a potential solution.

In the past, a series of paper have addressed the issue of overseas/cross listing from the governance perspective.[6] Nevertheless, few scholars have sufficiently addressed this issue in the context of the particularities of (Chinese) SOEs group. Some Chinese researchers have touched this topic as well, but they adopted an approach regarding general entrepreneurs[7] or placed an emphasis on private owned firms.[8] This paper focuses on the influential and distinctive cluster of Chinese SOEs, which are important and complex enough to draw more academic interest.

This article is composed of the 5 following parts: Part 1 surveys the general governance background in Chinese SOEs, where both horizontal and vertical governance problems exist, the managers remain largely unaccountable. Part 2 explains why that happens by showing the ineffectiveness of various kinds of governance institutions including suits, regulation by the state and the exchanges, corporate control market, media, executive compensations, etc. When explaining why ordinary corporate governance mechanisms have not been very useful and functioning, this article shows that the reason for it lies in the role of the state when it deals with the firms and the market. This highlights unique merits of overseas listing as a governance mechanism for Chinese SOEs, even though it is not a cure for all problems. Then Part 3 examines the meaning and advantages of overseas listing for SOE governance. It is obvious that overseas listing serves as a kind of constraints imposed by superior external legal forces, and could be considered more credible and more easily observed by outsider investors that seek better investor protection. But a more important issue worth discussing is the reason why SOEs and their controllers voluntarily elect to be listed overseas. This part also explores costs and benefits done by government controllers of SOEs, the real decisions makers. This

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[6] *E.g.* Craig Doidge, G. Andrew Karolyi, René M. Stulz, *Why Are Foreign Firms Listed in the U.S. Worth More?*, 71 Journal of Financial Economics 205, (2004); G. Andrew Karolyi, *The World of Cross-Listings and Cross-Listings of the World: Challenging Conventional Wisdom*, 10 Review of Finance 99, (2006); John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 Northwest University Law Review 641, (1999); John C. Coffee, Jr., *Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance*, 102 Columbia Law Review 1757, (2002); John C. Coffee, Jr., *Law and The Market: The Impact of Enforcement*, 156 University of Pennsylvania Law Review 229, (2007); Stephen Choi, *Law, Finance, and Path Dependence: Developing Strong Securities Markets*, 80 Texas Law Review 1657, (2002); William A. Reese Jr. & Michael S. Weisbach, *Protection of Minority Shareholder Interests, Cross-listings in the United States, and Subsequent Equity Offerings*, 66 Journal of Financial Economics, 65–104 (2002).

[7] HUA Cai, *Bonding, Law Enforcement and Corporate Governance in China*, 13 Stanford Journal of Law, Business & Finance 82, (2007).

[8] DING Yuan, Eric Nowak & ZHUANG Hua, *Foreign vs Domestic Listing: An Entrepreneurial Decision*, 25 Journal of Business Venturing, 175─191 (2010).

could well cast lights on the subtle relationship between SOEs and their government controllers and how overseas listing could change the landscape of SOEs governance in China. Based on the advantages that may be brought by overseas listing, Part 4 discusses more specifically about what the change in the overseas listing destination reflects the balance of benefits and costs done by the decision makers, while Part 5 talks more generally about overseas listing's implications in the context of the outsourcing and decentralization of law enforcement in China. This part reveals the picture that as the state selects overseas listing as a way of disciplining for its own sake as the ultimate owner, generally speaking, more and more SOEs are now subject to the external rules imposed, so hopefully investor protection and corporate governance can further develop. In fact, this may only be a specimen of the macro story of China's reforms in the last three decades, a fascinating picture of the interplay of the state and the firm in a country stumbling toward market economy and rule of law.

I. HORIZONTAL AND VERTICAL GOVERNANCE PROBLEMS OF CHINESE SOES

Vertical governance (between shareholders and managers) and horizontal governance (between a controlling shareholder and distant shareholders) are two basic areas to which core corporate governance institutions should respond.[9] Both problems are common in almost any jurisdiction, but "the centrality of each differs" across the world because normally the former dominates in countries with diffuse ownership, where maybe "controller machinations are resolved well," while the latter tends to be the focus in jurisdictions with concentrated shareholding.[10] In the case of SOEs where a controlling shareholder exists by definition, the horizontal problem is not negligible. However, due to the special character of the state being a shareholder, the vertical problem is also pronounced. In general, the governance problem for SOEs is especially significant. The function of almost all traditional ways of governance has also thus been constrained to a great extent.

A. Vertical Problems: Manager Control

The most fundamental way of mitigating vertical problem is large block holder actions, which could replace irresponsible or incompetent directors through voting rights. In SOEs, there of course is a government or government-affiliated entity holding a majority stake of shares. Some SOEs' nominal ultimate shareholders are explicitly government agencies, such as central or local state-owned assets supervision and administration commissions, bureaus of finance, some are holding companies whose

[9] Mark J. Roe, *The Institutions of Corporate Governance*, in Claude Menard & Mary M. Shirley eds. *Handbook of New Institutional Economics*, Springer (Dordrecht), at 371, 372─5 (2005).

[10] Id. at 372.

ultimate controllers are still the government.

However, such control may be weak in practice because they are not true shareholders in the ultimate sense. A government stockholder suffers the agency problem itself and does not bear the consequence of firm efficiency.[11] In theory, the ultimate owner of SOEs is assumed to be the people, this represents an extremely diffused ownership, which discourages monitoring and induces free-ride problems.[12] Further, between that subject and managers of a specific SOE, there are usually a number of chains: the state/the government, a particular government organ in charge of SOEs affairs, some particular officials (ministers and their subordinates), and personnel in the parent company (as long as seven or more levels in practice) of SOEs. The majority of these subjects (some are not natural persons) are bureaucrats and lack the capacity to make any sound business judgment. In additional, they are not well informed to guarantee the efficiency of such an attempt. Even when they have the competence, there is a "free-ride" problem among the bureaucrats who are not inclined to seriously question the operation of SOEs under their supervision.

Therefore, abundant authorities are delegated to the boards of SOE companies. For example, Article 67 of the 2005 Company Law of China stipulates that wholly state-owned companies do not establish shareholder meetings. The state-owned assets supervision and administration authority may authorize the company's board to exercise some of the functions of the shareholder meeting and give the final approval on the important matters of the company.[13]

In non-wholly-state-owned SOEs, boards still have free rein to make decisions because the governmental shareholders have given much deference to them. Two factors are worthy of special notes. The first is that SOEs' leaders are de facto treated as government officials and the appointments are normally determined by the organization (personnel) departments of the communist party, which is not purely business-minded, so the nominal shareholders are not able to remove managers at their will even when the managers are incompetent. The other factor is that the party has chosen many offspring of political leaders to be appointed as the heads of SOEs (partly because they could gain more economic benefits than appointing public servants with little political connections), reinforcing the leverage of SOEs against the control of the government.

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[11] More general theory, see Andrei Shleifer & Robert W. Vishny, *Large Shareholders and Corporate Control*, 94 Journal of Political Economy, 461–88 (1986).

[12] A. Alchian, *Some Economics of property rights*, in A. Alchian eds. *Economic Forces at Work*, Liberty Press (Indianapolis), (1977); J. M. Karpoff and Edward M. Rice, *Organizational Form, Share Transferability, and Firm Performance: Evidence from the ANCSA Corporations*, 24 Journal of Financial Economics 69, 69–105 (1989).

[13] An English version of the Company Law of the People's Republic of China is available at http://www.lawinfochina.com/display.aspx?lib=law&id=4685 (last visited Oct. 10, 2014).

All these contribute to the value dissipation as a result of weak governance. In fact, the SOEs run by managers with extremely little holdings are like the case in managerial capitalism, or could be illustrated as an exaggerated version of the failure of financial capitalism. Although the government retains the power to replace any director or executive and to push a decision if it wishes, this rarely happens if it happens at all because the boards generally are in charge of steering the SOEs to a certain direction.

When this principal fails to control the agent, two phenomena arise and demonstrate that mangers are not working primarily in shareholders' interest. The first is empire building in the SOEs. Growing out of production factories in the old order-oriented economy, each SOE usually has special core business strengths. The government also emphasizes that the SOEs should focus on their main sectors as designated in the past. But the truth is that major SOEs frequently, aggressively expand and launch diversification programs and pursue lucrative opportunities. For example, the booming real estate market has been really hot in recent years, which induced most of major SOEs, including those whose designated industries are not real estate, to join. They even put (loaned) money into it, though that was not welcomed by the State-owned Assets Supervision and Administration Commission, which nominally holds state owned shares in all central controlled non-financial SOEs.

The other phenomenon that displays manager dominance is high consumption of perquisites. They take excessive compensation (to some extent boost salaries to compete with foreign multinational corporations)[14] even when the stock prices of their firms are declining, enjoy excessive perks (a whole bunch of hidden benefits and allowances which are very often more than the final salary, such as housing, car and driver, expense accounts and club memberships[15]), pursue pet projects, elevate incompetent cronies and so forth, just like things used to be regarded as only happening in diffuse ownership jurisdictions.

"[A]gency costs will be incurred only if the benefits to the owner-manger from their creation are great enough."[16] Unfortunately, normally SOEs are not established as a result of economic calculation and balance, hence such cost may be rather big as early as they were founded, and become even bigger as the managers gain more autonomy and influence of political economy.

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[14] For instance, after compiling annual reports of about 1,400 Chinese publicly traded companies, most of which are SOEs, an analyst in Beijing found that in China "the pay gap between executives and the rank and file is widening," the highest-paid executive enjoyed, on average, a 20% pay hike in 2006. In the finance and insurance industry, the average increase was 80%. See Don Lee, *In China, Disparity Takes a Great Leap*, Los Angeles Times, Jun. 10, 2007.

[15] Id.

[16] Michael C. Jensen, *A Theory of the Firm: Governance, Residual Claims, and Organizational Forms*, Harvard University Press (Cambridge), at 106 (2000).

B. Horizontal Problems: Majority Shareholder Dominance

One significant reason for the government's tolerance of SOEs' de facto autonomy in the business is that the companies could cooperate to shift value from the minority shareholders to the government controller.

As a matter of fact, instead of standard rationales such as financing promising investment opportunities in the economy and facilitating secondary trading, one major purpose of transforming old mode SOEs into companies and to establish securities exchanges in China was to tap private savings to supplement or replace fiscal revenue to fund SOEs, which were in the costly process of restructuration.[17] After the partial share issue privatization and the corporations got listed, non-financial goals of the government controllers drove them to utilize the firms for purposes like promoting employment and funding other social and political tasks. For example, studies show that listed Chinese firms with politically-connected CEOs generally performed substantially worse than comparable ones. Also in these firms, more bureaucrats rather than professionals or businessmen were appointed to boards.[18]

In addition to such daily withering and jeopardizing of efficiency, more severe problems existed. Chinese capital markets were troubled by cases of abuse by the state-owned enterprises or governmental entity controllers. Other than unfair related party transactions, flagrant abuse include direct fund borrowed by the controlling shareholder from listed companies or letting the controlled firms provide guarantee for the controllers often when the latter have no intention to return the money to the "cash cows" in the first place. Though these actions are frown upon by the Chinese laws, they cannot be easily prohibited in practice.

II. THE LIMITATION OF TRADITIONAL GOVERNANCE INSTITUTIONS IN THE CASE OF CHINESE SOES

A basic reason for the governance problems discussed above is that the institutions to tame SOEs are weak. Those institutions are discussed in this part as follows. First, this part touches on mechanisms geared primarily towards preventing managers from diverting interests to themselves and stealing. This part then probes those primed to channel managers toward pro-shareholder decision making and deal with diligence and competence problems. These two kinds of institutions solve both types of governance problem at the same time, although they do not address both types of problems uniformly.[19]

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[17] Kenneth W. Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development*, Brookings Institution Press (Washington, D.C.), at 260 (2006).

[18] Joseph P. H. Fan, T. J. Wong & ZHAN Tianyu, *Politically Connected CEOs, Corporate Governance, and Post-IPO Performance*, 84 Journal of Financial Economics, 330–357 (2007).

[19] See Roe, fn. 9 at 371, 373.

Lawsuits. The text of China's securities law seems to be acceptable, but its enforcement is unsatisfactory. In an environment where class action mechanisms to aggregate claims are unavailable, the prospect of this institution is unsurprisingly constrained by a collective action problem and rational apathy. Nonetheless, what makes lawsuits even more difficult is the judiciary. In general, the judiciary not only lack independence and suffer from corruption, but are also unsophisticated in dealing with complicated matters.[20] In particular, they lack willingness to handle sensitive cases like securities lawsuits. For example, when the serious market decline exposed a string of underlying securities scandals and set in motion numerous lawsuits filed against listed companies in 2001, the Supreme People's Court (SPC) instructed that in light of the legal and regulatory uncertainties surrounding these cases, lower courts were not to hear such civil compensation suits for the reason of unpreparedness and incompetence.[21] Obviously, lacking expertise to address the suits is not a good pretext for the court to avoid the inflow of cases. In 2002 and 2003, after much criticism for such a denial of access to the courts, the SPC partly reversed the position and issued guidelines,[22] providing that investor suits for false or misleading disclosure could be brought, but on the conditions that the defendant had been administratively sanctioned by the regulatory authority, China Securities Regulatory Commission (CSRC)[23] or other administrative agencies or had been found liable in a criminal proceeding.[24]

But even in the cases of CSRC-sanctioned companies with actual factual findings of wrongdoing, although they "would appear to be easy targets for investor lawsuits, approximately 85% of the eligible target companies have not been sued," according to a

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[20] See *e.g.* Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao*, Stanford University Press (Stanford), at 120─21 (1999); Randall Peerenboom, *China's Long March toward Rule of Law*, Cambridge University Press (Cambridge), at 326─28 (2002); Donald Clarke, *Power and Politics in the Chinese Court System: The Enforcement of Civil Judgment*, 10 Columbia Journal of Asian Law 1, (1996).

[21] 最高人民法院关于涉证券民事赔偿案件暂不予受理的通知 (*Notice of the Supreme People's Court on Refusing to Accept Civil Compensation Cases Involving Securities for the Time Being*) (promulgated on Sep. 21, 2001, effective Sep. 21, 2001), available at http://www.law-lib.com/law/law_view.asp?id=16373 (last visited Oct. 10, 2014); see also CHEN Zhiwu, *Capital Markets and Legal Development: The China Case*, 14 China Economic Review 451, (2003).

[22] 最高人民法院关于受理证券市场因虚假陈述引发的民事侵权纠纷案件有关问题的通知 (*Notice of the Supreme People's Court on the Relevant Issues concerning the Acceptance of Cases of Disputes over Civil Tort Arising from False Statement in the Securities Market*) (promulgated on Jan. 15, 2002, effective Jan. 15, 2002), available at http://www.law-lib.com/lawhtm/2002/16956.htm (last visited Oct. 10, 2014).

[23] The 2005 Securities Law states that this agency is to "carry out supervision and administration of the securities market" and is responsible for investigating and punishing any violations of the securities laws. See Arts. 178─179 of Securities Law of the People's Republic of China (promulgated by the Standing Committee of the National People's Congress on Oct. 27, 2005, effective Jan. 1, 2006).

[24] 最高人民法院关于审理证券市场因虚假陈述引发的民事赔偿案件的若干规定 (*Several Provisions of the Supreme People's Court Regarding Trying Civil Compensation Cases Arising from False Statement in Securities Market*) (promulgated on Jan. 9, 2003, effective Jan. 9, 2003), available at http://www.chinacourt.org/law/detail/2003/01/id/81833.shtml (last visited Oct. 10, 2014).

study eyeing on a period of 2001–2006.[25]

There is no single reason for this fact, but one of the most important reasons is that the majority of such potential defendants are SOEs, and usually the corporate misdeeds are implicitly permitted by their government controllers. For example, transfers of wealth of listed companies to SOEs' parent companies are rooted in the government controllers' desire to utilize the listed companies to serve local economy, relieving the local budget of the burden of financing investments and facilitating economic development at the expense of investors nationwide. Powerful local bureaucrats' own career prospects are closely connected with their regions' performance[26] and political images of their governing, while judicial judgments against SOEs in their jurisdictions obviously would impact not only the economic resources ultimately controlled by the local governments, but also cast shadows on their ruling abilities. Thus, bureaucrats would act to influence courts and cause problems like local favoritism, reducing enforcement rates against local firms.

For the same reasons, the courts themselves are not willing to deal with these cases. Some investors have tried to challenge SOEs listed companies in court, but courts may utilize all kinds of reasons to avoid hearing a case. They apply rigid causation standard so as to deny plaintiff's claims for recovery,[27] or let the cases languishing in courts with no apparent progress toward any judgment. And even if there is a judgment, it is not very likely that it could hold the SOE defendants adequately accountable and confront the behind-the-scenes players: the government. All these render the prospect of a successful recovery simply not worthy of the expense, time, and effort that are needed to be spent in a legal suit.[28]

Besides, even according to the law on paper, what should also be noted is that currently civil suits related to market abuses other than false or misleading disclosure, such as inside trading and manipulation, are not accepted by courts.

In short, civil liability is "not yet a major concern" for most listed companies.[29] Minority shareholders may simply have recognized a lost cause when they see one. Shareholder lawsuit is "simply not yet a viable means" of investor protection in China.[30]

State Regulation. The CSRC may have good intentions, but it is ill equipped,

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[25] Benjamin L. Liebman & Curtis J. Milhaupt, *Reputational Sanctions in China's Securities Market*, 108 Columbia Law Review 929, 944 (2008).

[26] See *e.g.* HUANG Yasheng, *Inflation and Investment Controls in China*, Cambridge University Press (Cambridge), 1996.

[27] Curtis J. Milhaupt & Katharina Pistor, *Law and Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Development around the World*, The University of Chicago Press (Chicago), at 143 (2008).

[28] See Liebman & Milhaupt, fn. 25 at 943.

[29] Id. at 956.

[30] Id. at 977.

overworked, subject to resource constraints and limited political breathing room.[31] "The institutional and political constraints within which the CSRC operates seem apparent."[32] The agency often "comes under extensive external pressure not to take actions."[33] Consequently, the law enforcement record basically is weak.[34] The number of sanctions actually issued by the CSRC looks rather small given the extravagant unpunished, frequent and severe market abuses, while the enforced punishments often come later, "two or more years after the wrongdoing occurred."[35]

The CSRC is especially reluctant to take enforcement actions against politically-connected SOEs,[36] whose controllers are government organs or super SOEs groups that may have almost as high official rank as the CSRC has in China's political economy system.

In short, there appears to be a well accepted consensus that "at least as of now, the legal approach has failed to address the widespread problems" in this markets.[37]

Stock Exchange Regulation. There is a widespread agreement that stock exchange may play an important, if not fundamental, regulatory role in improving listed companies' corporate governance. But this is premised on "the assumption that the exchanges are private, member-run organizations"[38]; otherwise, its function will be severely harmed by state intervention.[39] Unfortunately, China's two stock exchanges are just extensions of the state, "not independent of the state and lack significant autonomous regulatory authority."[40] The paramount influence of the CSRC's "interventionist role" severely undermines and overshadows the exchanges' capacity as self-regulatory organizations,[41] although they are empowered by the Securities Law of China. The CSRC has a kind of administrative subordination relationship with the exchanges, rather than the kind exists

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[31] Id. at 977.

[32] Id. at 942.

[33] Id. at 955─6.

[34] Katharina Pistor & XU Chenggang, *Governing Stock Markets in Transition Economies: Lessons from China*, 7 American Law and Economics Review 184, 185 (2005).

[35] See Liebman & Milhaupt, fn. 25 at 955.

[36] William T. Allen & SHEN Han, *Assessing China's Top-Down Securities Markets* (2010), (New York University School of Law, Public Law & Legal Theory Research Paper Series), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=16483 36 (last visited Oct. 10, 2014).

[37] See Liebman & Milhaupt, fn. 25 at 945.

[38] Id.

[39] John C. Coffee, Jr., *The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control*, 111 Yale Law Journal 1, 34─39 (2001). Another important literatures advocating exchanges' role as regulator is Paul G. Mahoney, *The Exchange as Regulator*, 83 Virginia Law Review 1453, (1997).

[40] See Liebman & Milhaupt, fn. 25 at 931.

[41] SHI Chenxia, *Protecting Investors in China through Multiple Regulatory Mechanisms and Effective Enforcement*, 24 Arizona Journal of International and Comparative Law 451, 471 (2007).

between U.S. Securities and Exchange Commission (SEC) and the New York Stock Exchange (NYSE). In fact, it is legally required for the CSRC to appoint its officials to be the heads of exchanges.

It should be acknowledged that some outstanding scholars have dug out a "fascinating" practice of public criticism performed by stock exchanges as a unique aspect of securities regulation in China.[42] However, the exchanges do not serve as a check on extreme forms of opportunistic transactions, such disciplines often focus on conduct not serious enough to lead to a CSRC action.[43] Useful as it may be on numerous occasions, quite a few companies have failed to effectively respond to such a discipline despite having received two or more rounds of sanctions.[44] Also, both Chinese exchanges have sanctioned private companies more often than state-owned ones, notwithstanding the latter make up a majority of all listed firms. Obviously, the dearth of punishment concerning SOEs does not indicate their exemplary behavior with respect to minority protection.[45] Some Chinese empirical literature focusing on share price effects also casts doubts on its effects.[46] Finally, given its "procedural vagueness" and "lack of a formal appeal mechanism," erroneous criticisms and those with motives unrelated to investor protections may bring cost to society.[47]

Media/Press (Publicity). It has been addressed recently the role of the media in the investor protection of transition economies.[48] When the law is weak, norms may matter more[49] and give more recognition to firms abiding by good behavior standards.[50] Some have concluded that "alternative…corporate governance mechanisms, such as those based on reputation and relationships…support the growth of the Private Sector" in China.[51]

Acclaimed by many as a fourth branch of government, the media not only has promoted corporate information disclosure in China,[52] but also enjoys particularly

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[42] See Liebman & Milhaupt, fn. 25.

[43] Id. at 954.

[44] Id. at 951.

[45] Id. at 957; see also CHEN Gongmeng, Michael Firth & Daniel N. Gao et al, *Is China's Securities Regulatory Agency a Toothless Tiger? Evidence from Enforcement Actions*, 24 Journal of Accounting & Pubulic Policy 451, 469 (2005).

[46] See Liebman & Milhaupt, fn. 25.

[47] Id. at 979.

[48] *E.g.* Alexander Dyck, Natalya Volchkova & Luigi Zingales, *The Corporate Governance Role of the Media: Evidence from Russia*, 63(3) Journal of Finance 1093, 1093─135 (2008).

[49] John C. Coffee, Jr., *Do Norms Matter? A Cross-Country Evaluation*, 149 University of Pennsylvania Law Review 2151, 2175 (2001).

[50] Bernard Black, *Does Corporate Governance Matter? A Crude Test Using Russian Data*, 149 University Pennsylvania Law Review 2131, 2133 (2001) (as reflected in those firms' market capitalizations).

[51] Franklin Allen, QIAN Jun & QIAN Meijun, *Law, Finance, and Economic Growth in China*, 77 Journal of Financial Economics 57, 59 (2005)

[52] Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 Columia Law Review 1, 31, 119 (2005).

significant autonomy in uncovering and reporting on pure financial misconduct and abuse of investor rights. This has enabled it to be an effective regulator of corporate wrongdoing, in sharp contrast to the monitoring of political issues.

However, the media certainly is insufficient to prevent significant levels of misdeeds. The press's strength lies in spotting problems, but no society can rely on the press as a fundamental check against serious abuses. It only has an ancillary function. Especially, its unchanged status as "arms of the party-state, state mouthpiece and intelligence-gathering institution for political leaders"[53] severely undermines its independence in disciplining SOEs and determines its vulnerability to state intervention.

Gatekeepers. Lawyers, accountants, securities analysts, underwriters help verify or warrant information issued by companies. As repeated market players, they have contributed a lot to producing accurate information flow, *i.e.* they work as reputational intermediaries.[54] But gatekeepers may fail to function under pressure from powerful entities like big clients.[55] In a country not ruled by law, the joining of government agencies to press them to say everything is fine is more likely to force gatekeepers to forego professional principles.

As discussed before, local governments and their bureaucrats usually benefit from the listing of companies under their jurisdictions economically and politically, because they have incentives to cover up negative information and even commit severe fraud like producing forged documents such as in the Daqing Lianyi (大庆联谊) IPO, making the work extremely hard for gatekeepers. This is why for the most part Chinese gatekeepers do not earn a very highly regarded reputation and quite a number of law firms and accountant firms have been punished or even had their licenses rescinded for being involved in securities fraud.

In December 2001, the CSRC demanded that all IPO and SPO companies have their annual reports audited by a "world renowned accounting firm."[56] At the time firms of this category contemplated and authorized by the regulator to provide the service were the

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[53] Id. at 1.

[54] Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 Virginia Law Review 549, 619 (1984); Frank Partnoy, *Barbarians at the Gatekeepers?: A Proposal for a Modified Strict Liability Regime*, 79 Washington University Law Quraterly 491, (2001).

[55] John C. Coffee, Jr., *The Acquiescent Gatekeeper: Reputational Intermediaries, Auditor Independence and the Governance of Accounting* (Columbia Law School, The Center for Law and Economic Studies, Working Paper No. 191, 2001), available at http://www.law.columbia.edu/null/Working+Paper+No?exclusive=filemgr.download&file_id=64222&showthumb=0 (last visited Oct. 10, 2014). See more in John C. Coffee Jr., *Gatekeepers: The Role of the Professions and Corporate Governance*, Oxford University Press (Oxford), (2006).

[56] China Securities Regulatory Commission, 公开发行证券的公司信息披露编报规则第 16 号——A 股公司实行补充审计的暂行规定 (*Temporary Regulation Regarding Additional Auditing Requirement for A-Share Listed Companies*), (promulgated on Dec. 30, 2001).

Big Five (Arthur Andersen, Deloitte & Touche, Ernst & Young, KPMG Peat Marwick, and PricewaterhouseCoopers). Unfortunately, the shameful fall of Anderson early in the next year killed this round of reform attempt. However, this may not be that pitiful, given the fact that some research indicates that the Big Four seemed to fail to offer better and more conservative auditing for Chinese companies.[57]

Institutional Investors. The role of institutional investors is still at a nascent stage of development. The reasons are obvious. On one hand, the fund managers suffer all the problems faced by their foreign counterparts, such as more interests in liquidity rather than control,[58] limited time and attention, risk of displeasing incumbents. On the other hand, the pervasive concentrated shareholding structure reduces the chance of institutional investors to obtain a board seat, the power of state-background controllers significantly add difficulties for any outside challengers.

In addition, because the political economy favors SOEs, complaints from unrest minority shareholders through governmental or judicial channel usually could be safely neglected too.

Nonprofit Organization Watchdogs. In some East Asian economies, nonprofit organizations have been playing an increasingly important role in proclaiming a firm commitment to enhance shareholder value, monitor behavior of public companies, and sometimes initiate lawsuits, such as Securities Investor Association of Singapore and its counterparts in Japan, Korea and Taiwan of China. These financial market watchdogs, with a leverage of combined organizational forces like lobbying efforts, could help ensure transparent and fair treatment of investors in an environment lacking effective class action mechanisms.[59]

However, the government strictly constrains the operation of all kinds of nonprofit organizations, fearing that they might be employed as an institutional leverage against the ruling regime.

The Market for Corporate Control/Takeover. The shares of SOEs are not always available for sale, even for the listed ones. The legal barriers for acquiring a Chinese listed company are lower than the case in the U.S. However, the state-owned block is not de facto subject to tender. Before 2006, they are legally untradeable; in fact, they only could be transferred according to administrative orders then. After a major reform in

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[57] LIU Feng & ZHOU Fuyuan, 国际四大意味着高审计质量吗？——来自我国 A 股市场的初步证据 (*Does the Big Four Mean Higher Auditing Quality: Preliminary Evidence from China's A Share Market*), available at http://www.bschool.cuhk.edu.hk/research/cig/pdf_download/GroupC.pdf (last visited Oct. 10, 2014).

[58] John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 91 Columbia Law Review, 1277–368 (1991).

[59] Curtis J. Milhaupt, *Nonprofit Organizations as Investor Protection: Economic Theory and Evidence from East Asia*, 29 Yale Journal of International Law 169 (2004); Wallace Wen-Yeu Wang & CHEN Jianlin, *Reforming China's Securities Civil Actions: Lessons from PSLRA Reform in the U.S. and Government-Sanctioned Non-Profit Enforcement in Taiwan*, 21 Columbia Journal of Asian Law 115, (2008).

2005–2006,[60] they have become legally transferable, but in fact still subject to strict regulations relating to the hand-changing, which aims at maintaining the status of state control for these enterprise. Mere buying up non-state-owned transferable shares do not guarantee a control block in most companies.

For the same reason, proxy contest is not a much reliable choice, although it does happen occasionally.

The Market for Capital. Some SOEs may face difficulty when they try to go back to the market for additional capital because of their bad performance. But the effect of this source of discipline is limited.

First, China is a country where the flow of capital is restricted, ordinary investors lack ample options. For example, the bond market is small. As a result, the newly issued shares have an exceedingly high opportunity to rise rapidly. (For the same reason, price/earning ratio and turnover rate in this market is unusually high, many investors are obsessed with gambling, paying little attention to the underlying value of stocks. Underperforming companies do not always suffer low prices). Hence, the Wall Street rule could not be very effectively used and investors' requirements on listed company performance are lowered.

Second, in addition to the relatively privileged (monopoly) market positions that may ensure a steady cash flow for the SOEs, the government generously subsidizes listed SOEs or their parent companies to maintain their viability, and in turn be able to pursue the government's agendas. For instance, subsidies granted to the auto-parts SOEs are worthy of $28 billion from 2001 to 2011 through cheap glass, steel and technology; another $11 billion by 2020 has been promised by the government. From 2002 to 2009, the subsidies to the paper industry topped $33 billion. Energy subsidies, unsurprisingly, is a catch-all benefit for all industrial SOEs. Such distortions nurtured unproductive and unaccountable behemoths, breed overcapacity. The central government has felt worried and started to remove or reduce subsidies in recent years, but the provincial governments thwart the efforts by beginning to increase them.[61]

The Product Market. Although SOEs may not have an advantage in a competitive product market due to their underperforming governance, this is not a big problem for them. First, many SOEs, especially the biggest ones, enjoy monopolized privileges and policy preferences. Oligopolistic and monopolistic product markets cut some slack to managers who in "non-competitive markets can lose for shareholders some of the monopoly profit."[62]

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[60] Sandra Kister, *China's Share-Structure Reform: An Opportunity to Move beyond Practical Solutions to Practical Problems*, 45 Columbia Journal of Transnational Law 312, 312─363 (2006).

[61] See *Preverse Advantage*, The Econmist, Apr. 27, 2013, see more in Usha Haley and George Haley, *Subsidies to Chinese Industry*, Oxford University Press (Oxford), (2013).

[62] See Roe, fn. 9 at 371, 378. As Professor Roe stressed "monopoly profits may or may not be good for society," although the monopoly profits by SOEs are not something worth applauding, the point here is

Second, the subsidies from the government could be sufficient enough to compensate losses in the product market. For instance, in December 2010, Asia's top refiner China Petroleum & Chemical Corporation (Sinopec), a monopolized SOE, "received a government subsidy of RMB12.3 billion ($1.74 billion) to cover refining losses," which constituted "the third consecutive year for getting a huge cash infusion in state compensation."[63] Hence for SOEs without cutting-edge business or strong market competitiveness, their substantial vested capital (added by continuous subsidies), which constitutes sunk cost, is sufficient enough to fritter away. It is fine for incompetent managers to escape from disciplinary actions for an extended period of time as long as they could recover the enterprise's "variable costs to survive for the life of that capital (which may be longer than their own working lives)."[64]

After the turbulent waves of SOE restructures and reforms mainly transpiring prior to 2003, those survival ones are safe to enjoy a long term of peaceful lives before their possible withering because of inefficiency or underperformance.

The Managerial Labor Market. In China there is hardly such a market for SOEs. The managers enjoy quasi-government-official status and are usually appointed by the organization (personnel) departments of the communist party. Although the people in charge may sometimes think carefully to choose those talented for specific firms, in general, this is not a highly competitive process. The vast number of SOEs make the recruiting task very difficult for the government, so most are get promoted from lower positions within the system. And if a SOE manager is removed, due to his quasi-government-official status, he would be placed into an equivalent position instead of being demoted, as long as his oust is not a result of a criminal conviction.

Another issue significantly undermining such market is that outstanding SOE managers could not contract freely with other SOEs. The organization departments of the communist party of various levels take firm control of the appointments of all the executives of Chinese SOEs corresponding to their levels and may rearrange their positions in a way that would astonish observers from liberal market economies.

The first of such is reshuffling and rotating heads of major SOEs, which could be done merely by giving notice. For example, reshuffling took place among CEOs of the three biggest telecoms companies in 2004, the three biggest airlines in 2009, three biggest oil companies (each is a Fortune 500 company) in 2010.[65]

The second can be even more surprising. To some extent, the more managerial capacity a SOE executive demonstrates, the more likely his company career would be

managers, incompletely constrained by the market, do not serve the firm and shareholders well.

[63] FU Chenghao, *Sinopec Confirms State Subsidy for Third Year*, Shanghai Daily News, Mar. 21, 2008.

[64] See Roe, fn. 9.

[65] See *Special Report for State Capitalism: A Choice of Models: Theme and Variations*, The Economist, Jan. 21, 2012.

terminated, because he would be appointed to a government official position as promotion. And the process may happen suddenly and without a sign. For example, WEI Liucheng was the general manager/president of China National Offshore Oil Corporation from 1998 to 2003, and in 2003 he was suddenly ordered to move to the position of the acting governor of Hainan Province. Another instance is in February 2009, when XIAO Yaqing, the General Manager of Aluminum Corporation of China (CHINALCO) was named as the Vice Secretary-general of the State Council.[66] This happened amidst the process of Chinalco's negotiation with a block investing of Rio Tinto Group and less than a week after a strategic cooperation agreement was signed. Expectedly, such an unexpected key personnel replacement confused many international investors, which at least partly contributed to the failure of the deal months later. But this has successfully cultivated a notion in these managerial talents' mind that they are "cadres first and company men second."[67] Their future as entrepreneurs depends on whether they have pleased the organization department rather than whether they have demonstrated superior corporate performance or governance.

Executive Compensation. A common way of tying the interest of managers with that of shareholders in the U.S. is stock-based performance pay. However, since the government controllers normally will retain the blocks, they are not sensitive to stock price, so they are less motivated to use this method to raise the stock price. In fact, due to this reason, those companies that have adopted such form of compensation may be more duly regarded as the result of a manipulation of mangers seeking to enrich themselves. It may be a manifestation of an agency problem rather than merely an antidote.

Also, quasi-government-official status of SOEs managers somewhat shores them of becoming too rich by such arrangements. Finally, the abovementioned slack given by product and other markets makes managers not very worried about their missteps and inaction even there are performance based compensation arrangements.

A More Responsive Board. Directors in SOEs used to be bureaucrats or senior managers and the board is easy to be captive to executives rather than to foster the professionalism of managers. Following the trend in the U.S., Chinese regulators have pushed to bring on special committees and increase the proportion of independent directors in SOEs. However, the effectiveness of such reform "planks" is mixed at best like in America. The inherent information control by managers and the conflict and balance of proximity and objectivity of the board[68] remains a problem.

Additionally, it is apparent that this institution would not effectively cure the

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[66] XIAO Yaqing, *CHINALCO's General Manager Promoted to State Council's Vice Secretary-General*, China Business Focus, Mar. 2009.

[67] See fn. 65.

[68] Jonathan Macey, *Corporate Governance, Promise Kept, Promise Broken*, Princeton University Press (Princeton), at 51─104 (2008).

horizontal problems.

Management Leveraged Buyout. This is neither allowed in big SOEs due to political consideration nor feasible due to the scale of fund required.

Capital Structure/Loan. A large amount of debt could reduce the manager slack. But in China, the major lenders are SOE banks that would not breathe down the neck of SOE industrial companies, not to mention forcing them to bankruptcy, a drastic decision in practice made by the government. Since both are offspring of the government, and the fund transfer between them is not purely commercial transactions but usually at the will of the state, so when the debt faces a great chance of not delinquency, the former would just complain to the state and ask for subsidies for the souring loans. Managers do not sense repeated pressures to come up with lots of cash like those felt by Japanese managers. Thus, the incidence and magnitude of error would be increased because there is no forceful stick from banks. In fact, one of the incentives of the state to reestablish the securities market in China mainland is that the banks and the governments could no longer bear the financial burden to support inefficient SOEs, a new way of collecting fund is needed.

The above analysis depicts the drawbacks to various institutions of corporate governance in the case of Chinese SOEs. A result is that despite other impressive economic dimensions such as foreign reserves, trade surplus, and private savings, Chinese stock market remains underdeveloped in light of its economic heft and potential and incommensurate with its huge economic size. Average Chinese listed companies also are relatively smaller than a number of transition economies like Brazil and Mexico.[69] In general, the stock market is marginal in the financing and real economy[70] and inefficient in pricing capital.[71]

But this paper does not intend to claim that above mechanisms of corporate governance are of no avail. It just tries to show that they may be far from effective to alleviate the particular governance problem faced by Chinese SOEs, thus the merit of overseas listing for enhance corporate governance (which surely has its own weakness) should be adequately noted, even though in numerous countries it may be an untypical and marginal governance institution. But this article neither intends to imply overseas listing as a marvelous antidote or a remedy for all ills nor to say that it is necessarily better than any other institutions. In fact, these institutions could interact as complements and substitutes to collectively improve the quality of management and corporate governance in Chinese SOEs.

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[69] See Liebman & Milhaupt, fn. 25 at 37─38.

[70] See Allen, QIAN & QIAN, fn. 51 at 73; CHEN, fn. 21 at 453.

[71] SU Dongwei, *Chinese Stock Markets: A Research Handbook*, World Scientific Pub Co Inc. (Hackensack), at 88 (2003).

III. WHY THE STATE CHOOSES OVERSEAS LISTING FOR SOES: A GOVERNANCE VIEWPOINT

A. An Benefit-Cost Balance about Overseas Listing in the Eyes of Government Controllers

Overseas listing means having a domestic company to be listed on a foreign exchange, normally one located in an international financial center. In the Western literature, the word "cross listing" is more common, which refers to the situation where an already domestically listed company gets an overseas listing. However, many Chinese major SOEs have not finished their modern style of corporatization restructure until recently. They used to be of a structure without modern corporate organs like the board and regulated by Law on Industrial Enterprises Owned by the Whole People, not by company law. It is not uncommon for them to get overseas listing immediately after the corporatization, then seek a domestic listing years later. Hence the term "overseas listing" is used in this article rather than "cross listing," but this article may employ the claims about cross listing in other literature directly as long as it would not cause any confusion.

An overseas listing in a more renowned exchange normally subjects firms to a more robust legal regime. This includes more stringent listing and disclosure standard, reduced informational asymmetry, stricter regulation and other enhanced scrutiny. The listing may be a form of bonding or signal that assures investors that agency costs will be lowered, behaviors of managers and controllers will be constrained by the conformity requirements. The advantages for corporate governance in the sense of investor protection are apparent.[72]

But in contrast to externally-imposed mechanisms such as regulation, lawsuits and media, this option only functions when the firms voluntarily opt in. So the key point is why the firms would select to be overseas listed at first? What are their incentives? Obviously, the benefits of overseas listing should not only outweigh the cost thus incurred by the company, but more important, the cost borne by those making the real decision of overseas listing.[73]

Current literature focuses mainly on the economic gains brought about by overseas listing, including: (1) higher securities valuation/price premium; and (2) a lower cost of

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[72] See Coffee (2002), fn. 6; Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 The American Journal of Comparative Law 329, 329─357 (2001).

[73] Usually, a significant SOE activity like overseas listing usually should get an approval from not only its controlling shareholder, but relevant government agencies like state-owned assets supervision and administration authority, local government. In the case of biggest SOEs, it may even involve top national leaders.

capital (and more capital).[74] Are these the primary reasons in the case of SOEs?

Some scholars did argue from the perspective of a voluntarily bonding by Chinese "entrepreneurs."[75] But it is important to note that for a fateful decision like listing, controlling shareholders have the say, rather than entrepreneurs or managers. How do the real decision makers view such advantages?

The first abovementioned benefit may not be that crucial to the controller of SOEs, nominal parent companies or the government. Since the transfer of state-owned shares is subject to strict administrative regulations so as to maintain the state control, the direct gain of share value increase is very limited.[76] The second factor carries a relatively greater weight. The controllers and companies need development funds, the government officials and managers both would be glad to see the corporations to be able to expand with the help of more money, and enhance their opportunities for promotion. Besides, the domestic stock market indicia, perhaps due to a limited market size, usually suffer when a large IPO is launched. Hence, taking into account the domestic market's vulnerabilities to sustain major SOEs' public offering, overseas listing is often indispensable when a big SOE searches for capital.

Nevertheless, this article emphasizes that a conscious effort of improving corporate governance from the controller may matter too. Due to their significant political and economic influence, Chinese SOEs in general face little discipline within the national border. There have been considerate vertical and horizontal dimension governance problems in these firms, which means that managers could easily disregard the interests of (nominal, state) controlling shareholders and minority shareholders. And in firms in better financial shape such as major central controlled SOEs, the vertical problems may be even more severe. Under such circumstances, government controllers do not as effectively control the management as private controllers. Hence they have incentives to seek alternative ways to keep the management loyal and diligent. However, not only are conventional institutions imperfect, but the government is also unwilling or unable to enhance the mechanisms:

First, some universal mechanisms, such as more independent courts or media, may bring on uncontrollable consequences that could shake the basis of the whole current ruling system. For example, the extent of press influence may go beyond policymakers' domain[77], decentralized litigations brought by non-state agents are difficult to monitor

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[74] See *e.g.* Coffee (2007), fn. 6 at 231.

[75] See *e.g.* HUA, fn. 7 (explores from the general viewpoint of firms about how they could lure investment in a weak law enforcement environment).

[76] Regarding the general analysis of the impact non-transferability of property rights on organization and incentive, see Alchian, fn. 12; Karpoff and Rice, fn. 12.

[77] Alexander Dyck & Luigi Zingales, *The Corporate Governance Role of the Media*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=335602 (last visited Oct. 10, 2014).

and control. So the state is reluctant to enhance them.

Second, some mechanisms like state-supplied or exchange-supplied regulation are subject to basic political economy constraints of this country. The regulators and the SOEs are within the same "inner circle" and form a type of coexistence relationship.[78] They may not be willing to fight hard against one another. Even if the top leaders delegate more power to the regulators, it remains a question whether or not they will use it against SOEs aggressively.

In fact, a typical overseas listed SOE share the following features:

(1) It has stable revenue, often a result of monopolies or privileged positions in key sectors of the economy, so they could stand firmly in an international exchange without worrying about the disgrace of the risk of being delisted due to bad performance.

(2) It has significant positions in the domestic political economies. It is usually a giant company that will not easily be tamed by usual mechanisms like court, regulator, exchange, gate-keepers, media, market competition, etc.

Therefore, their government controllers try to rein in such big animals by exposing them to a relatively robust outside discipline which is capable of assessing (by more efficient price finding mechanism) and monitoring the firm performance, and imposing punishments when needed.

B. A Concrete Analysis of the Advantages of Overseas Listing as a Corporate Governance Institution

Overseas listing may be more effective where the surrounding institutional environment is relatively devoid of alternative deterrence and punishment mechanisms. Normally, domestic SOE listings in China are viewed from predominantly developmental perspectives like financing local industry, raising fiscal revenues, fueling the ambitions of local officials,[79] and stimulating investment sentiment among the public.[80] But overseas listing does not seem to coincidence with these and could not merely be regarded as an extended version of domestic listing. It has particular forces to make managers better stewards of the resources they control and improve investor protection, especially given the underdevelopment of formal legal institutions in China.

The desirability and advantages of overseas listing as a governance institution for

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[78] For example, a guy who has been sentenced to death reprieved for two years for corruption, XIAO Shiqing, had rotated between the positions of high level officials in CSRC and presidents of state-owned securities companies for several rounds. Such appointments are rather common scenes in China since officials and SOEs leaders basically are all communist cadres that could be freely placed by senior party leaders to different positions at will.

[79] Stephen Green, *The Development of China's Stock Market, 1984–2002: Equity Politics and Market Institutions*, RoutledgeCurzon (London), at 10–12 (2004).

[80] Id. at 207.

Chinese SOEs are as follows:

First, the constraints imposed by foreign regulators from rule-of-law jurisdictions are not only of high standard, but also strict and "real" since they are much less vulnerable to domestic relationships, lobby efforts, and other forms of pressure. For major SOEs, product market and domestic capital market, in which they are privileged blue chips exert little pressure on them. Regulator and courts also press little on them. But in an international market, they are treated more fairly and less favorably, the slack may be picked up.

Second, the ongoing discipline function of overseas listing relies on the efforts and resources of extraterritorial institutions. It does not require much domestic resources and reform attempts at a macro level. Via such a separate institution, an enhanced protection could be achieved without disturbing the older, established firms, so there is less pain and resistance for the reform.

Third, in a country struggling hard to catching up with the leading counterparts, "complying with international level" shows legitimacy[81] by itself, it is an acclaimed "fashionable" social norm that could earn praises and reputations for SOEs and government leaders pushing the move. In the corporate context, this dimension could be a "governance goal" and "corporate legitimacy" like the social considerations called for in Europe continental.[82]

Fourth, for this reason, the prospect of overseas listing has become a good push for one-shot micro reform efforts. Old-styled SOEs usually have a long way to go before looking and acting like a modern company. Undergoing such a restructure itself is of even more significance for their long-term governance goal. However, normally such painful activities are not easy to be carried out and the reform paces in many SOEs are slow. But overseas listing gives a boost to overcome the challenging hurdles.

As a matter of fact, the initial wave of overseas listing occurred in the second half of 1990s, when some major SOEs were directly converted from non-companies enterprises without shares to overseas companies in accordance with Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies of 1994[83], which provides more flexibility for SOEs than Company Law. These firms typically conducted IPOs soon after the incorporation, an expedited practice not allowed for ordinary domestic companies under Chinese laws. For instance, China

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[81] More about the theory of corporate legitimacy, see Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 Georgetown Law Journal 439, 464 (2001); Ronald J. Gilson, Henry Hansmann and Mariana Pargendler, *Regulatory Dualism as a Development Strategy: Corporate Reform in Brazil, the United States, and the European Union*, 63 Stanford Law Review 475, (2011).

[82] See Roe, fn. 9 at 375.

[83] An English version is available at http://www.lawinfochina.com/display.aspx?lib=law&id=707 (last visited Oct. 10, 2014).

Mobile Limited was incorporated in Hong Kong in September 1997 and listed in New York and Hong Kong in the next month.[84] Petro China Company Limited was established in October 1999 and overseas listed half a year later.[85]

The next wave came after China's entry into World Trade Organization in 2001, the government was anxious about how to ensure the big SOEs be able to stand on their feet when facing the incoming fierce competition in a more opened-up market. Four of five biggest SOEs commercial banks accomplished the listing goal after respective drastic restructure actions before 2006, when the Chinese financial market would be promised to be substantially opened. Similarly, China Life Insurance (Group) Company was restructured in 2003, in the same year its main subsidiary China Life Insurance Company Limited was listed.[86]

In both stages, a clear and glorious goal of "meeting the requirements of an international standard" could be technically useful to encourage the firms to proceed more actively. This kind of legitimacy marshals the energies and coordinates activities more easily.

Moreover, in the second stage of the overhaul when the society is more open, renowned foreign companies are invited to participate to increase the attractiveness and credibility of the future IPOs of SOEs because this could "introduce advanced business concepts and management skills so as to further improve the corporate governance"[87] of these firms. For instance, top-tier financial institutions joined as strategic investors of major commercial banks, Bank of America purchased about 10% equity of China Construction Bank and Royal Bank of Scotland acquired 10% in Bank of China's stocks. Owners other than agents of the state brought new viability into the firms.[88] As stockholders, they would be really concerned with the governance of the new entity they helped restructure, and the prospect of listing in an international market made their fund contributions possible in the first place.

Fifth, the effects of overseas listing are manageable or controllable in the eyes of decision makers. Since it is a voluntary and contract-based mechanism, the government could more freely choose to halt the process, switch the target market or even delist the company without raising much criticism or backlash. After all, the effects of such measures are not so obvious or direct to domestic investors.

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[84] See http://www.chinamobileltd.com/about.php?lang=gb (last visited Oct. 10, 2014).

[85] See http://www.cnpc.com.cn/en/aboutcnpc/companyprofile/history/ (last visited Oct. 10, 2014).

[86] See http://www.chinalife.com.cn/publish/English/356/index.html (last visited Oct. 10, 2014).

[87] WU Xiaoling, *Strengthen China's Financial Industry in the Process of Opening up*, available at http://www.pbc.gov.cn/publish/english/956/1945/19452/19452_.html (last visited Oct. 10, 2014).

[88] Donald Clarke, *Corporate Governance in China: An Overview*, 14 China Economic Review 451, 451─472 (2003).

Sixth, after overseas listing, domestic investors of the company could automatically enjoy the improved governance and reduced illegal activities to a great extent. And domestic peers of these companies would be exerted pressures given the fact that investors now have a somewhat better choice. Therefore, they may react to charge up their governance even if they do not choose to be listed overseas themselves.

Thus in theory, three types of advantage are related to the overseas listing for SOEs:

1. Economic advantages: these mainly include price premium and lower capital cost.

2. Regulatory advantages: reliable and accessible high-quality regulation at relative low cost (*i.e.* making use of extraterritorial regulatory resources).

3. Governance advantages which are especially relevant for Chinese SOEs which are not well disciplined by conventional governance institutions. These are composed of two subtypes:

(1) Formal benefits that refer to achieving a status of "internationally recognized good firm", a kind of legitimacy for the firms and for the government.

(2) Substantive benefits as mandated by the perquisite requirements of an overseas listing, including:

1) Pre-listing restructure arrangements so as to conform to the needed structure of a modern company;

2) Sound governance as compelled by the ongoing monitoring and compliance requirements from the exchanges.

Of all these advantages, what appeals to the government controllers the most is that overseas listing appears to be an effective mechanism to restructure and discipline the old SOEs, solve problems like manager slack and still keep things under control. This is the major driver for the state to employ this institution and the main reason such a seemingly bold and "innovative" method could go through as a favored choice.

What also are worth mentioning here is that in such a process the controller should forego some private benefits,[89] mainly composed of the reduction of exploitation of minority shareholders. This may not be a big problem for the type of SOEs seeking listing on an overseas exchange, because most of them are major privileged or even monopolized firms controlled by the central government and with relatively stable market shares and revenues. The government controllers do not have much incentive to extract monetary private benefits of control in these companies. On the other hand, reducing the incidence of shirking and stealing of managers and making the SOEs more viable are an important goal. Hence the decision makers in the government will not mind such a cost.

It is also worthnoting that since SOE managers surely incur substantial constraints

[89] Craig Doidge, *U.S. Cross-Listings and the Private Benefits of Control: Evidence from Dual-Class Firms*, 72 Journal of Financial Economics 519, 550 (2004) (providing empirical evidence of this impact).

after the listing, why don't they resist? The reasons may be as follows: first, with the establishment of a general trend of overseas listing for major SOEs and the wide recognition of the legitimacy arising from the disciplines brought by overseas listing, it is hard for one particular firm to demand an exception. Second, after the annoying U.S. risk of class action has been circumvented by listings in Hong Kong (see more below), there is no much potential harm to be incurred by them. Moreover, compliance costs are not directly imposed on managers. They also do not have some particular bad behaviors in mind that would be deterred by foreign regulators. Third, making the firm "better," by getting listed overseas, enhances promotion opportunities for senior executives. Forth, quite a few companies bargained in this process a plan for performance-based stock options as a new part of executive compensations, said to be a feature of "international practice."

To this extent, it is not impossible that some managers are actually inclined to have the companies listed overseas. But they would not be the primary factors because the issue relates to the strict regulating system of state-owned shares. Such a plan needs to be approved by the government, the final controller.

IV. THE CHOICE OF THE OVERSEAS LISTING DESTINATION: A FURTHER CALCULATION OF BENEFITS AND COSTS

When the plans about overseas listing are discussed, there would be a complicated assessment of benefits and costs. Concerns with governance advantages probably outweigh those with economic advantages. These could be well revealed by the evolution of the SOEs' choice in the destination of overseas listing, such as New York.

At the first glance, a U.S. exchange seems to be the best candidate for an overseas listing destination.

First, the US is no doubt the biggest international capital market, which promises the largest potential for the amount of capital to be raised (especially for big enterprises) and reduced cost of capital; second, according to some scholars, major U.S. exchanges are the sole place that will make the cross listing firms reap extraordinary benefits like noticeable valuation premium. Such benefits may not be available elsewhere, including London.[90]

But gains come with pains. Lower cost of capital comes with stronger regulation and more extensive disclosure requirements.[91] And sometimes the companies may be

[90] Craig Doidge, G. Andrew Karolyi, René M. Stulz , *Has New York Become Less Competitive in Global Markets? Evaluating Foreign Listing Choices Over Time*, 91 Journal of Financial Economics 253, 269–270 (2009); see Doidge, Karolyi & Stulz, fn. 6 at 206.

[91] Luzi Hail & Christian Leuz, *International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter?*, 44 Journal of Accounting Research 485, 524 (2006) (finding that countries with "more extensive disclosure requirements and stronger securities regulation" exhibit a lower cost of capital).

reluctant to engage in such an arrangement. For example, Sarbanes-Oxley Act (SOX), which puts an emphasis on heavy compliance requirements, has been blamed by many as the reason for foreign firms' declining to be listed in the U.S.,[92] because it has significantly raised compliance costs of listed companies and increased risks faced by company leaders.

Although many Chinese commentators have underscored the importance of SOX's effects, heightened cost is not that influential for the overseas-listing-seeking major Chinese SOEs.[93] They are big enough to assimilate the incremental governance cost of paperwork, which is carried out by ordinary staff instead of high level executives or governmental officials. For these big privileged enterprises, irregularity like flawed accounting practices are also not common, shirking and lack of an international brand, instead of stealing, is of more concerns. So the certifying requirements by SOX are not a potential hazard too.

However, an unexpected "frivolous" class action significantly drives Chinese major SOEs away from New York to Hong Kong after 2004. Before 2004, a number of leading SOEs, including the three biggest oil companies, the four biggest telecom companies and the biggest insurance company all chose to be dual listed in New York and Hong Kong roughly simultaneously. In spring 2004, senior executives of Chinese banks still paid a visit to the NYSE to discuss about their listing plans, but when the wave of bank listing preparation unfolded in the second half of 2004, none of them chose New York any more. Hong Kong became the sole place for giant SOEs' overseas listing since then. Obviously, this could not be explained by economic factors of either the listing place or the listing corporations themselves (see Table 1).

Table 1 The Overseas Listing of Some Biggest SOEs in Key Industries

Name	Listing Place and Year	Position in the Industry
China United Network Communications Group Co., Ltd. ("China Unicom")	New York Stock Exchange (NYSE) and Hong Kong Stock Exchange (HKEx) 2000, Shanghai Stock Exchange (SSE) 2002	The three biggest telecom operators in China
China Mobile Limited (subsidiary of China Mobile Communications Corporation)	NYSE, HKEx 1997, incorporated in 1997	
China Telecom Corporation Limited (subsidiary of China Telecommunications Corporation (China Telecom))	NYSE, HKEx 2002	
China Communications Services Corporation Limited (subsidiary of China Telecom)	HKEx 2006	

(*To be continued*)

[92] Committee on Capital Markets Regulation, Interim Report of the Committee on Capital Markets Regulation 2–6 (2006), available at http://www.capmktsreg.org/pdfs/11.30Committee Interim ReportREV 2.pdf (last visited Oct. 10, 2014).

[93] In general, big foreign firms continue the trend to cross-list in the U.S. following the enactment, see Joseph D. Piotroski & Suraj Srinivasan, *The Sarbanes-Oxley Act and the Flow of International Listings*, 46 Journal of Accounting Research 427, (2008). Hence there should be other reasons for the retreat of Chinese big SOEs.

(*Continued*)

Name	Listing Place and Year	Position in the Industry
Industrial and Commercial Bank of China	HKEx 2006, the biggest commercial bank	The biggest five commercial banks
Agricultural Bank of China	HKEx 2010, it is the last listed because its asset is worst.	
Bank of China	HKEx 2006	
China Construction Bank	HKEx 2005	
Bank of Communication	HKEx 2005	
PetroChina Company Limited (subsidiary of China National Petroleum Corporation, CNPC)	NYSE, HKEx 2000, SSE 2007, established in 1999	The three largest oil and gas producer and suppliers
China Petroleum & Chemical Company (Sinopec Corp.), (subsidiary of China Petrochemical Corporation (Sinopec Group))	HKEx 2000, NYSE 2001, the group established in 1998	
China National Offshore Oil Corporation	NYSE, HKEx 2001	
Huaneng Power International, Inc.	NYSE ADR 1994 HKEx 1998, SSE 2001	One of the largest power producers
Air China	HKEx 2004	The three biggest airlines
China Eastern	NYSE, HKEx, SSE 1997	
China Southern	NYSE, HKEx 1997, SSE 2003	
The People's Insurance Company(Group) Of China	HKEx 2012	The biggest four insurance companies
China Life Insurance Company Limited (subsidiary of China Life Insurance (Group) Company)	NYSE, HKEx 2003 SSE 2007	
Ping An Insurance (Group) Company of China, Ltd	HKEx 2008	
New China Life Insurance Company	HKEx 2011	
China Cinda Asset Management Co.	HKEx 2013	The largest financial asset management company

Sources: Compiled by the author according to information on the official websites of mentioned firms.

This table illustrates overseas listing of biggest SOEs in several key industries. All of them are ultimately controlled by the Chinese government.[94] Situations in these industries are typical and could be representative of major SOEs in almost all industries.

One can learn from this tablet that: (1) Overseas listing is a rule for biggest SOEs, largely eliminating the viability of firm-specific explanations regarding the fiscal conditions and CEOs preferences of individual firms; (2) 2004 is the year of watershed for NYSE as or not as a choice; and (3) the first wave of listing took place in the initial corporatization movement of major SOEs after mid-1990s, not long after when these corporations are formed, the second wave was after 2001, when China entered the WTO.

Although there has hardly been an official explanation, it should be noted that in spring 2004, an unexpected class action against China Life Insurance Company Limited ("China Life") and its five directors was brought by nine investors for violations of

[94] All the biggest non-financial SOEs are finally controlled by the State-owned Assets Supervision and Administration Commission, a list of them in English is available at the website of the commission, http://www.sasac.gov.cn/n2963340/n2971121/n4956567/index.html (last visited Oct. 10, 2014).

Section 10(b) and 20(a) of the Securities Exchange Act. In June 2006, after vigorous legal contests by the Company, the SEC finally announced after investigations that it would take no action to the firm and in September 2008 the New York Southern District Court found that the plaintiffs' claims lacked merit and dismissed the complaint. The plaintiffs initially notified the United States Court of Appeals for the Second Circuit of their intention to appeal before they finally withdrew it in January 2009, thus making the District Court's dismissal final.[95] However, the proud company's image was badly tainted in China's public opinion as early as the time it was involved in the suit. While this may be perceived as ordinary commercial risks in the U.S., this is considered as too annoying and humiliating for SOEs and very likely for Chinese leaders in charge of SOE affairs. This is especially so in the context where China Life's innocence was at last proved years long later. The risk of a U.S. listing suddenly was found to be unacceptably high, even such a lawsuit has not been of high frequency.

For the decision makers, the government controllers, the real major benefits of SOEs overseas listing are: (1) more capital; and (2) more disciplines for managers, while share value increase is not very important. The major costs are: (1) reduced private benefits of control (not so important for the government controllers); and (2) discipline effects which may be extended to the controllers.

Therefore, Chinese *lingdao* (leaders) may want a foreign force to help monitor managers, but they do not intend to get themselves involved in any high-profile shameful event. Bad publicity caused by easy-to-be-brought class litigations and corresponding potential legal punishment aiming at board members and high level executives who also have official status can be too much.[96] In other words, for these major SOEs, money is not a big problem, but "face" is significant. And being sued across the Pacific is not much less disgraceful than being convicted. This partly explains why China Life did not settle the case like an American giant, but chose to fight for a declaration of the innocence and to endure the costly, aggressive, and disgraceful adversarial questioning of a long deposition.

Therefore, it is reasonable that the decision makers are willing to forego the monetary superiority of a New York listing and make do with a second best choice.[97] No wonder that the whole group of the government and Chinese SOEs were alerted by the China Life event and found it necessary to reconsider whether to be listed in the US.

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[95] In re China Life Securities Litigation, No. 04 Civ. 2112 (TPG), 2008 BL 199112 (S.D.N.Y. Sep. 03, 2008) United States District Court, S.D. New York.

[96] A subtle aspect is that the cause of the China Life suit was that the National Audit Office of China found certain accounting irregularities in the predecessor of the new founded China Life (but the liability needed not to be borne by China Life), and such an auditing itself constituted a kind of reformist action by the new administration. Hence the Chinese leaders would feel upset that a progressive attempt has been exploited by foreign investors to baselessly attack a renowned SOE. The American market environment thus seemed so uncomforting and unreliable.

[97] For example, when Bank of China changed its listing destination from New York to Hong Kong, its anticipated amount of money raising was reduced by one third.

The existence of robust Hong Kong securities market offers a highly practical alternative for the Chinese SOEs. The island is obviously an international/regional financial center. In general, London and Hong Kong are places to which transactions, listings, and trading volume are migrating from the U.S.[98] Its regulatory environment is excellent, obviously much better than Chinese mainland. Contrary to some studies claiming that nowhere else other than the U.S. offers a cross listing value premium,[99] empirical studies found "bonding premium" in the Hong Kong listed Chinese firms against those domestically listed.[100] Hence a "retreat" from the non-congenial American environment to the coast of South China Sea is not very disgraceful for Chinese firms. This allows the firms to turn their heads away from the American market without much concern about commercial and reputation losses.

The more important superiority of Hong Kong is its great understanding and respect for practices with Chinese characteristics, offering unparalleled operation convenience unavailable almost anywhere else. When Beijing intends to enhances Hong Kong's status of an international center to show the advantage of the new order after it replaced Britain's ruling in 1997, such "infusion" of SOEs became a more robust trend.

This is not bad for both sides not only from the economic perspective but also from the governance perspective. Due to the multiple links between Chinese mainland and Hong Kong, pressures faced by the city-jurisdiction, which should foster its market-oriented appeal to ensure economically competitiveness are not totally out of the considerations of the Chinese government. Beijing may not recklessly press Hong Kong securities and seriously degrade its standards for the sake of SOEs.

In other words, a retreat from New York to Hong Kong as the main destination for listing is not a complete backward move, but a clarified reflection of how the decision makers view the governance function of overseas listing. The Chinese government may not have whole-heartedly embraced Western standards, but due to its pursuit of political legitimacy, those in power have strong incentives to deliver sustainable economic growth. The Chinese government may not always be enthusiastic about marching ahead, sometimes it even steps back, but the basic direction in the area of corporate governance is consistent with the logic of better investor protection. Even if the decision makers may not willingly sacrifice too much or change a lot merely for abiding international rules, they would give in and discard the traditional model occasionally when needed. From this point of view, a less tough but still tough Hong Kong market as an overseas listing destination may better prepare SOEs for solid, continued, even though modest, progress.

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[98] See Committee on Capital Markets Regulation, fn. 92.

[99] See Doidge, Karolyi & Stulz, fn. 90.

[100] SUN Qian, Wilson H. S. Tong and WU Yujun, *Bonding Premium as a General Phenomenon* (2006), available at http:// ssrn.com/abstract=890962 (last visited Oct. 10, 2014).

V. LAW AND ECONOMIC GROWTH NEXUS IN CHINA FROM THE PERSPECTIVE OF OVERSEAS LISTING

The attempt of overseas listing is a way of outsourcing and decentralizing the law enforcement concerning corporate governance. Even though it cannot effectively eliminate all the pathologies in the corporate governance of SOEs as a technical institution, it possesses more significant meanings. The profoundness of such a step is not only that it grants authorities to parties other than the powerful (central) government, which is already unusual itself, but that it also further subjects the government to continuous external rules to a considerate degree. Although delisting theoretically remains a possible option to escape a tough governance environment, it is easier said than done, and so far it seems unlikely in the medium term. The corporations and the government have chosen to painfully adapt to the international rules instead of moving backward. Also, overseas listing will work as a form of "regulatory competition"[101] to drive the domestic authorities to learn and improve its own regulation.

However, to some degree, this is neither a wonder nor an exception to the broad picture of institutional evolutions in China. Within the diversified arms of the Chinese political authorities, there are already numerous individuals, including some senior leaders, who have fought to build a check on the vast bureaucratic machinery, constrain the untrammeled authority of officials, bring corruption under control, and push the state and the society forward. There have been a series of laws promulgated and substantially enforced, directly confining the once unbridled state power in the past three decades. Therefore, it is not very surprising to witness a purposely injected reform that imposes some constraints on the SOEs. While the government as a whole may keep firmly its dominant or even above-the-law position, some parties within the ruling system may be more subjected to a commitment to strict legal scrutiny for the sake of economic growth as a fundamental ruling legitimacy. Even if the law may be initially employed as a mere means in this sense, it could also work to enhance a right-based system from time to time.

Additionally, unintended consequences always take place as the newly enacted laws begin to take on an enduring life of its own and walk according to its inherent logic in an imperfect setting. Constrains on the power could be brought to bear on public powers in the form of the enhanced protective capacity of law by oversight personnel within the system as well as by external parties who have been impressed by the new opportunities afforded by the institutional reforms and are eager to advance their own interests. On the new platform of overseas listing, ordinary investors possess a new expectation about law along with more leverage to exert their individual rights against the SOEs, pushing the Titans to form a habit of being more concerned with investor welfare even in the

[101] See Coffee (2002), fn. 6.

domestic context. For example, senior executives in SOEs may be more concerned about the legal risk after witnessing legal punishments on their counterparts in other companies.

Other outside players with raised courage also would seize the opportunities with less hesitation to move the bureaucratic machinery to a favorable direction through exploring the possibility of invoking more opportunities under various circumstances. For instance, one of the most active parties pushing overseas listing of SOEs is investment banks within and outside China. They were motivated by the prospect of gaining profits from such businesses, but their efforts led the Chinese SOEs to be more on the internationally-recognized market tracks.

In general, after the Chinese government clearly identified its goal as building a "market economy" ("with Chinese characteristics") in 1992, inherent laws of economy operation (such as "investors need protection") have gradually compelled the state to act within the invisible boundaries and even sparingly allocated some control rights to the market participants to help rein in the untrammeled established interests.

In this process, after having a taste of the magic flavor of the market, even those in power may realize that other than the conventional approach of instrumentally making use of the law to coordinate the economy, it is for the sake of themselves to have a check on the established interests like SOEs with the assistance of reform-oriented constituencies within the system. Permitting the implanting of a "Trojan horse" becomes possible, even if it may ultimately turn against the whole old system and undermine the hold of those outpaced on power.

In short, a gradual but steady reform instead of one that would rapidly alter the existing framework and landscape has been the basic theme of China's last thirty years' endeavor in developing economic institutions and law building. In spite of a soil of suboptimal nutrients, the implanted tree of law slowly and occasionally bears its intended fruit for future generations. Overall, a relatively more decentralized approach to legal governance and a more investor-protective atmosphere could be achieved.

CONCLUSION

China's state-owned sector and the whole system are at the crossroads. More market-oriented institutional breakthroughs are still high in the agenda of the reformists within the government. The pace is determined by the state whose priorities do not always align with those of the market.

An interesting perspective here would be how the state effectively collaborates with the market in disciplining the SOEs, even though the primary aim of the state is to purses its own economic benefits. The big SOEs may become the prey of inside managers due to their governance structures. The state wants to control the firms more effectively, and one way is to apply advanced market and corporate governance institutions. Overseas listing

turns out to be especially workable in many aspects when alternative ways of corporate governance may not work in the political economy of China. As a strong, reliable, and easily-observable external monitoring and enforcement mechanism, overseas listing has effectively made SOE managers more cautious, diligent, accountable and law-abiding, which is very important for investor protection and pushing the country towards a market end.

The special strengths of overseas listing as more functional governance institution lie in the fact that it works outside the national border but can transfer the effects across the border. Therefore, it may serve the goals of the government, controllers of SOEs, to achieve tremendous accomplishments in the progress of the market and law. In other words, the attempt of going to an international financial center is a type of governmental reform effort rather than innovations of enterprise management.

This is not just a common Adam Smith style story that self-interest seekers (here the government) may simultaneously benefit the society. Overall, such a mechanism may gradually drive the state to better adapt to a larger stage and outside game rules. Overseas listing may be something purposely utilized by the state initially, but the state may finally be overwhelmed by the logic of the modern market and a new universal order of law. After all, a general trend in Chinese capital market is that regulators and investors alike are paying more attention to the fundamentals of corporate governance.[102] Overseas listing represents a signal of embracing the world, and once it starts, the trend would be irresistible and irreversible. Even the choice of ceasing to list SOEs on the toughest U.S. exchanges may still be of net positive effects in Chinese corporate governance.

[102] See Liebman & Milhaupt, fn. 25 at 956.