Note

A Missing Variable: The Impact of Cross-Border Insolvency Laws on Foreign Direct Investment

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Foreign Direct Investment (FDI) decisions are based on a variety of factors including economic conditions, diplomatic connections, and simple supply and demand, but the stability and development of a state's insolvency laws are factors that are often overlooked.[1] The World Bank provides a score for legal rights of creditors in a given state[2] and data on FDI inflows for most countries of the world.[3] An analysis of these two figures shows that states with more developed legal rights for creditors generally tend to have higher levels of FDI. There are several examples of states whose net inflows of FDI increased substantially from one year to another immediately following revisions and updates to insolvency laws.[4] Some countries differentiate between cross-border and domestic insolvency, while others use the same system for foreign and domestic creditors and debtors.[5] Among the variety of approaches, it is

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1. *See* ASHOKA MODY, FOREIGN DIRECT INVESTMENT AND THE WORLD ECONOMY 38–39 (2007).

2. *World Development Indicators: Financial access, stability, and efficiency*, THE WORLD BANK (2016), http://wdi.worldbank.org/table/5.5.

3. *Foreign Direct Investment Net Inflows*, THE WORLD BANK WORLD DEVELOPMENT INDICATORS, [hereinafter WORLD BANK FDI] http://databank.worldbank.org/data/reports.aspx?source=2&series=BX.KLT.DINV.CD.WD&country (data accessed and saved on Nov. 13, 2017, on file with *Minnesota Journal of International Law*).

4. Compare *id.*, *with* Michael Bader & Mark Montari, *Swiss Debt Enforcement and Bankruptcy Law*, *in* WORLD INSOLVENCY SYSTEMS, 629, 669; Dmitry Kurochkin, *Overview of Russian Insolvency Law*, *in* WORLD INSOLVENCY SYSTEMS 587, 587; Andrew Tetley, *New Zealand*, *in* WORLD INSOLVENCY SYSTEMS: A COMPARATIVE STUDY 507, 508 (Otto Eduardo Fonseca Lobo, ed., 2009).

5. *See* R.W. Harmer, *Report for Australia*, *in* CROSS-BORDER INSOLVENCY,

clear that corporations and individuals engaging in FDI consider insolvency laws as a significant factor that has usually been overlooked in other studies of FDI decisions.

This Note will explore the impact of cross-border insolvency laws on FDI. Its purpose is to understand how insolvency laws impact FDI decisions of individuals and corporations. Part I provides a background of statistics and previous studies of FDI. It also provides a brief overview of bankruptcy to better understand the significance of the issues in Part II. Part II describes how various factors of insolvency laws impact FDI decisions. It does this by providing specific examples of insolvency law reforms having a direct impact on FDI. This Note concludes that improvement and modernization of insolvency laws usually has an immediate and direct impact on FDI.

I. DESCRIBING FOREIGN DIRECT INVESTMENT AND CROSS-BORDER INSOLVENCY

In 2015, global FDI totaled just over $2 trillion United States dollars (USD).[6] Each country receives an average of $11 billion USD.[7] Unfortunately, the average contains many outliers that skew the results. Developed countries tend to have higher FDI amounts than developing countries.[8] For example, slightly less than half of global FDI occurred in just six countries.[9] It is also important to note that a significant portion of FDI is due to corporate mergers and acquisitions of existing corporations rather than investment in new enterprises.[10]

22, 30 (stating there are no separate rules or procedures for domestic or foreign creditors to bring claims); Makoto Ito, *Report for Japan*, *in* CROSS-BORDER INSOLVENCY: NATIONAL AND COMPARATIVE STUDIES, REPORTS DELIVERED AT THE XIII INTERNATIONAL CONGRESS OF COMPARATIVE LAW, MONTREAL 1990 178, 182 (Ian F. Fletcher, ed., 1992) (stating that territorial creditors are given priority in bankruptcy proceedings).

6. WORLD BANK FDI, *supra* note 3.

7. *Id.*

8. *See* J. Peter Neary, *Trade Costs and Foreign Direct Investment*, *in* FOREIGN DIRECT INVESTMENT AND THE MULTINATIONAL ENTERPRISE 25 (Steven Brackman & Harry Garretssen eds., 2008); WORLD BANK FDI, *supra* note 3 (showing around 50 percent of global FDI went to Mainland China, Hong Kong, Ireland, Netherlands, Switzerland, and the United States).

9. *See* WORLD BANK FDI, *supra* note 3 (showing Mainland China, Hong Kong, Ireland, Netherlands, Switzerland, and the United States received $854,327,416,626 billion in foreign direct investment in 2015).

10. Neary, *supra* note 8, at 25–26.

A. EVALUATING FDI

A variety of factors are considered when individuals and corporations decide to engage in FDI in a particular state. The most significant factors are labor cost, corporate taxes, and market size.[11] Other significant factors include geopolitical considerations, government stability, government support of private business activity, and the overall quality of a state's legal system.[12] Different entities and industries would rank the importance of each of these factors differently. For example, a newer company may be especially interested in government subsidization programs while a more established company may be more concerned with long-term corporate tax rates.

Some countries try to encourage FDI within their borders through policies such as tax breaks or preferential loans and grants.[13] One study that evaluated FDI concluded that United States corporations engaged in FDI undertook less FDI as new trade agreements were implemented.[14] Corporations tend to favor FDI where they can take advantage of tax loopholes and concessions rather than equal treatment under treaties.[15] Other policy decisions designed to influence FDI include funding for research and development and education programs designed to train skilled laborers.[16]

A few countries have formally recognized a link between insolvency laws and FDI. The United Arab Emirates (UAE) is currently working to reform of its insolvency laws specifically to encourage FDI.[17] While the UAE currently has bankruptcy procedures in place, debtors are still subject to criminal penalties for non-payment of debts, even while working through

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11. MODY, *supra* note 1, at 17.

12. *See id.* at 38–39. The list includes twenty-nine factors. It is interesting to note that insolvency laws are not mentioned on this list despite statistics showing it is a significant factor often considered. *See id.*

13. Magnus Blomstrum & Ari Kokko, *The Economics of Foreign Direct Investment Incentives*, *in* FOREIGN DIRECT INVESTMENT IN THE REAL AND FINANCIAL SECTOR OF INDUSTRIAL COUNTRIES 37 (Heinz Hermann & Robert Lipsey, eds., 2003).

14. MODY, *supra* note 1, at 17.

15. *Id.*

16. C. Bellak, M. Leibrecht, & R. Stehrer, POLICIES TO ATTRACT FOREIGN DIRECT INVESTMENT: AN INDUSTRY-LEVEL ANALYSIS, OECD GLOBAL F. ON INT'L INV. (2008), http://www.oecd.org/investment/globalforum/40301081.pdf.

17. Tom Arnold, *Bankruptcy Law to Bring FDI Boost*, THE NAT'L (Feb. 1, 2013), http://www.thenational.ae/business/industry-insights/economics/bankruptcy-law-to-bring-fdi-boost.

bankruptcy proceedings.[18] Policies such as this would cause most evaluating FDI opportunities in the UAE to consider the severe consequences if an investment opportunity were to fail.[19] Even with discussion of reforms, the UAE currently has a very low score in the World Bank's Legal Rights Index that will continue to impact FDI decisions.[20]

B. OVERVIEW OF INSOLVENCY

Many countries choose to emulate the bankruptcy processes and rights found in the United States.[21] For example, when updating and reforming its bankruptcy laws in 2006, China based parts of their codes on United States bankruptcy procedures.[22] Instead of rigid standards, the system is described as "[a] controlled, preset process, with clearly delineated boundaries, inside of which the parties have great flexibility to arrive at their own solutions."[23] How the United States addresses cross-border insolvency is a guiding standard for developing countries, as well as any state working to update insolvency laws.[24]

Since bankruptcy laws in the United States are influential in international cross-border insolvency proceedings, a basic overview of United States bankruptcy procedures is useful in understanding the broader issues. It is first important to understand the technical distinction between "insolvency" and "bankruptcy." "Insolvency" generally refers to the status of an individual or corporation being unable to pay debt.[25] "Bankruptcy" generally refers to the legal process used to resolve insolvency of a debtor.[26] In practice, these terms are often used

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18. *Id.*
19. *Id.*
20. THE WORLD BANK, *supra* note 2.
21. *See* Joseph Wielebinski & Davor Rukavina, *An Overview of the Bankruptcy Code and the Bankruptcy Practice in the United States*, *in* WORLD INSOLVENCY SYSTEMS, *supra* note 4, at 693.
22. Rebecca Parry & Haizheng Zhang, *China's New Bankruptcy Law: Notable Features and Key Enforcement Issues*, *in* INTERNATIONAL INSOLVENCY LAW, REFORMS AND CHALLENGES 85, 90 (Paul Omar, ed., 2013).
23. Wielebinski & Rukavina, *supra* note 21, at 694.
24. *Id.*
25. *See* David Kirk, *What is the Difference Between Bankruptcy and Insolvency?*, THE GAZETTE, https://www.thegazette.co.uk/insolvency/content/100329 (last visited Dec. 29, 2016).
26. *See id.*

interchangeably and some countries may have slightly different or very specific legal definitions of each. While most countries have a broad definition of each, Gibraltar has a very specific definition of insolvency being declared when a company owes £500 to any one creditor for over three weeks.[27]

Once one has become insolvent, the usual procedure is to begin a bankruptcy proceeding.[28] The most common proceedings are liquidation and reorganization.[29] In liquidation, a bankruptcy court may appoint a trustee to manage and liquidate an estate on behalf of an individual debtor.[30] A trustee is specifically authorized to collect the assets of an estate, liquidate these assets, adjudicate claims, and make distributions to creditors on behalf of the debtor.[31] However, in practice, most individual debtors remain in possession of their estate.[32] Businesses may liquidate or reorganize and a trustee is generally not appointed in the process.[33] In rare circumstances, such as when fraud or gross mismanagement has taken place, a court may appoint a trustee to oversee a business bankruptcy proceeding.[34]

The prevalence of multinational corporations, improved communications, and liberalized trade policies work together to make international insolvency an important issue today. Cross-border insolvency can have direct impacts on consumers. For example, the August 31, 2016, bankruptcy filing by Hanjin Shipping, a South Korean company, resulted in $14 billion in cargo being essentially stranded at sea while negotiations took place with creditors and while awaiting court orders protecting Hanjin from having ships seized upon entry into ports all around the world.[35] A United States bankruptcy court was asked to

27. Issac Marrache, *Gibraltar*, *in* WORLD INSOLVENCY SYSTEMS, *supra* note 4, at 364.

28. Wielebinski & Rukavina, *supra* note 21, at 695.

29. *Id.* at 706–07 (explaining that individuals usually liquidate while businesses usually reorganize, but either method is available to both individuals and businesses).

30. *Id.* at 706.

31. *Id.* at 715

32. Elizabeth Stong, *United States*, in THE LAW OF INTERNATIONAL INSOLVENCIES AND DEBT RESTRUCTURINGS 409, 425 (James R. Sikenat & Charles D. Schmerler, eds., 2006).

33. *Id.* at 425.

34. *Id.*

35. Natalie Kitroeff, *Hanjin Bankruptcy is the Tip of the Iceberg for Flailing Shippers*, LA TIMES (Sep. 18, 2016, 6:00 AM), http://www.latimes.com/business/la-fi-hanjin-shipping-industry-crisis-20160913-snap-story.html.

determine if the lien rights available under United States law were enforceable even though a Korean court had issued a stay on creditor liens.[36] The Korean order was formally recognized and adopted by the United States Bankruptcy Court.[37] The court cited the United States adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency ("Model Law") in reaching its decision.[38]

The objective of the Model Law, as described in the official *Guide to Enactment and Interpretation* is "to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency."[39] The Model Law defines cross-border insolvency as proceedings in which a debtor has assets in more than one state or creditors in a different state from where the bankruptcy is occurring.[40] Facilitation of international trade was a central policy guiding the creation and implementation of the Model Law.[41] More specifically, the Model Law was designed to address issues of transparency, coordination, and conflicting laws.[42]

On March 29, 2017, Westinghouse, a company specializing in constructing and maintaining nuclear reactors worldwide,[43] filed for bankruptcy.[44] The corporation is based in the United States but is a subsidiary of Toshiba, a Japanese corporation.[45] The Asia division of Westinghouse includes plants in China, Japan, South Korea, India, Taiwan, and Vietnam.[46]

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36. *In re* Hanjin Shipping Co. Ltd., No. 16-27041, 2016 WL 6679487, at *5 (Bankr. N.J. Sept. 20, 2016).

37. *Id.* at *6.

38. *Id.* at *4.

39. *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, UNCITRAL (2013), http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html (last visited Apr. 6, 2017).

40. *Id.*

41. *Id.*

42. *Id.*

43. Diane Cardwell & Jonathan Soble, *Westinghouse Files for Bankruptcy, in Blow to Nuclear Power*, NY TIMES, (Mar. 29, 2017), https://www.nytimes.com/2017/03/29/business/westinghouse-toshiba-nuclear-bankruptcy.html?_r=1.

44. *Id*.

45. *Id.*

46. *Westinghouse Asia*, WESTINGHOUSE, http://www.westinghousenuclear.com/About/Regional-Operations/Asia (last visited Apr. 7, 2017).

Westinghouse also operates in nine countries in Europe as well as South Africa and the UAE.[47] Just one corporate bankruptcy will potentially involve claims or liquidation of assets from at least nineteen countries which demonstrates how widespread FDI activities and cross-border insolvency proceedings can be in just one corporation.[48]

The development of the UNCITRAL Model Law, which was formally adopted in 1997, has been an important development in cross-border insolvency.[49] The Model Law has been particularly helpful in resolving issues of jurisdiction in bankruptcy proceedings.[50] For example, the Model Law, as adopted in the United States Bankruptcy Code, requires courts to evaluate a corporation's "Center of Main Interests" (COMI) in determining proper jurisdiction.[51] Factors used to determine COMI include location of headquarters, location of those who actually manage the debtor, location of debtor's primary assets, location of the majority of debtor's creditors, and the jurisdiction whose law would apply in most disputes.[52]

While the Model Law was immediately influential, its significance and influence greatly improved when most of its provisions were added to the United States Bankruptcy Code in 2005.[53] Before the provisions were formally added to the Bankruptcy Code, United States bankruptcy courts had broad discretion in choosing to cooperate with foreign bankruptcy proceedings.[54] This created uncertainty for foreign and domestic

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47. *Westinghouse Europe/Middle East/Africa*, WESTINGHOUSE, http://www.westinghousenuclear.com/About/Regional-Operations/EMEA (last visited Apr. 7, 2017).

48. *Westinghouse Americas*, WESTINGHOUSE, http://www.westinghouse nuclear.com/About/Regional-Operations/Americas (last visited Apr. 7, 2017). Westinghouse operates twenty-five facilities in the United States, most of which are nuclear power plants, and an additional plant in Brazil which brings the total to nineteen countries. *See id*.

49. UNCITRAL, *supra* note 39.

50. Megan R. O'Flynn, *The Scorecard So Far: Emerging Issues in Cross-Border Insolvencies Under Chapter 15 of the U.S. Bankruptcy Code*, 32 NW J. INT'L. & BUS. 391, 403 (2012).

51. *Id.*

52. *In re* SPhinX, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff'd* 371 B.R. 10 (S.D.N.Y. 2007).

53. O'Flynn, *supra* note 50, at 396.

54. *Id. But see* Hilton v. Guyot, 159 U.S. 113, 202 (1895) ("Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction . . . under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries . . . .").

debtors and creditors. The adoption of the UNCITRAL Model Law made consideration of foreign court proceedings mandatory.[55] So far, over 100 United States bankruptcy cases have cited the UNCITRAL provisions in decisions.[56] As the United States continues to use the UNCITRAL Model Law for guidance, more countries will look to its provisions for guidance in formulating their own policy. Its use in the United States adds case law and further legitimizes the Model Law standards.

One example of UNCITRAL Model Law being applied in United States courts is found in the case of *Jaffé v. Samsung Electronics Co., Ltd.*[57] The court was asked to determine if the specific foreign bankruptcy proceeding in progress at the that time was to be recognized by United States courts.[58] The Court specifically mentioned Chapter 15 of the United States Bankruptcy Code being added in order to incorporate the Model Law.[59] Based on the provisions of Chapter 15, the court determined that it was required to recognize the foreign proceeding in question.[60]

Another example of a United States court citing the Model Law can be found in the case *In re Betcorp Ltd.*[61] At issue was an Australian insolvency proceeding and whether the "winding up" of a business in Australia would be recognized in United States courts.[62] The Bankruptcy Court cited the Model Law and considered Australia's interpretation of the application of the Law as persuasive.[63] Specifically, the court determined the insolvency in question would fall under Australian interpretation that "[Australian] company laws qualify under the Model Law."[64] This allowed the United States Court to recognize the Australian proceedings which provided protection for the debtor's interests in the United States.[65]

55. *Id.*
56. *Case Law on UNCITRAL Texts: United States of America*, UNCITRAL (2016), http://www.uncitral.org/clout/search.jspx?f=en%23cloutDocument.country-ref0_s%3aUnited%5c+States%5c+of%5c+America (last visited Sept. 10, 2017).
57. Jaffé v. Samsung Electronics Co., Ltd., 737 F.3d 14, 17 (4th Cir. 2013).
58. *Id.* at 18.
59. *Id.* at 23.
60. *Id.* at 24.
61. *In re* Betcorp Ltd., 400 B.R. 266 (Bankr. D. Nev. 2009).
62. *Id.* at 271.
63. *Id.* at 282.
64. *Id.*
65. *Id.* at 271.

Foreign corporations with significant assets in the United States have also benefitted from emergency proceedings in United States bankruptcy courts. One extreme but illustrative example is found in the case of *In re Yukos Oil Co.*[66] The company was incorporated in Russia and subject to forced sale of its global assets based on government decisions in Russia.[67] The corporation had bank accounts in the United States as well as fifteen percent of its outstanding shares held in the United States.[68] The Court determined that the accounts and shares gave the United States jurisdiction to issue an emergency order temporarily enjoining the sale of the corporation's assets against all creditors except the Russian government.[69] The delay provided through United States bankruptcy law was a factor that allowed arbitration to take place, eventually resulting in an approximately $50 billion judgment against the government of Russia for its efforts to break up the corporation.[70]

C. LEGAL RIGHTS

The World Bank provides a score on a scale of zero to twelve for "Strength of Legal Rights" for corporate entities.[71] The average score is five and the United States received a score of eleven.[72] Only three countries, Montenegro, New Zealand, and Colombia, received a score of twelve.[73] Interestingly, all of these countries also had above average FDI relative to their populations.[74]

The World Bank describes the index as measuring "the degree to which collateral and bankruptcy laws protect the rights of borrowers and lenders and thus facilitate lending . . . with higher scores indicating that these laws are better designed to expand access to credit."[75] The statistics are collected as part

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66. *In re* Yukos Oil Co., 320 B.R. 130 (Bankr. S.D. Tex. 2004).

67. *Id.* at 132.

68. *Id.*

69. *Id.* at 138.

70. Jack Stubbs, *Yukos Shareholders $50 Billion Win is Largest Arbitration Award Ever: GML Director*, REUTERS (July 28, 2014, 4:11 AM), http://www.reuters.com/article/us-russia-yukos-gml-idUSKBN0FX0O620140728.

71. THE WORLD BANK, *supra* note 2.

72. *Id.*

73. *Id.*

74. WORLD BANK FDI, *supra* note 3. New Zealand is one of the few countries that sent more FDI than it received. *Id.*

75. THE WORLD BANK, *supra* note 2.

of a larger World Bank initiative known as the *Doing Business* project,[76] which measures business regulations and their enforcement.[77] Data is collected from 190 economies around the world at the national, regional, and city level.[78]

A separate scoring metric was used by the Centre for Business Development at the University of Cambridge to track long-term development of creditor protection in the United States, United Kingdom, France, and Germany.[79] The study provided a score for creditor protections on a scale of zero to one from 1970–2005.[80] The study evaluated a variety of factors, including insolvency procedures, which were further scored within nineteen variables.[81] Comparing these scores to World Bank FDI statistics shows a clear connection between development of insolvency laws and higher FDI figures in the countries that were evaluated.[82]

The World Bank, International Monetary Fund, Asian Development Bank, and European Bank for Reconstruction and Development have recognized the importance of insolvency laws in long-term development goals.[83] These organizations generally require recipients of funding to enact insolvency reforms as a condition of aid.[84] The European Bank for Reconstruction and Development states that "sustainable market development requires access to affordable credit. Capital investment can only happen in an environment where parties can manage the insolvency risk associated with credit relationships."[85] FDI is an important source of capital investment, particularly in

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76. *Id.*

77. *About Doing Business,* THE WORLD BANK, http://www.doingbusiness.org/about-us (last visited Sept. 13, 2017).

78. *Id.*

79. Simon Deakin, Viviana Mollica & Prabirjit Sarkar, *Varieties of Creditor Protection: Insolvency Law Reform and Credit Expansion in Developed Market Economies* (Ctr. for Bus. Research, Univ. of Cambridge, Working Paper No. 473, 2015).

80. *Id.* at 11–12.

81. *Id.* at 8 (giving examples of evaluated variables that include the triggering of insolvency, appointment of bankruptcy trustees, and prioritization of creditor groups in liquidation proceedings).

82. *Compare id.* at 12, *with* WORLD BANK FDI, *supra* note 3.

83. Parry & Zhang, *supra* note 22, at 89.

84. *Id.* at 90.

85. *Debt Restructuring and Bankruptcy International Standards*, EUROPEAN BANK FOR RECONSTRUCTION & DEV, http://www.ebrd.com/what-we-do/sectors/legal-reform/debt-restructuring-and-bankruptcy/international-standards.html (last visited Dec. 30, 2016).

developing countries with limited internal resources.[86] While a variety of factors influence FDI, the development of insolvency laws in a stable legal system is essential for significant increases in FDI figures.

II. ANALYSIS

A variety of factors can be used to evaluate how corporations and individuals approach decisions for FDI. Legal issues, especially insolvency and bankruptcy, have often been overlooked as a factor. In general, investors are looking for a system that is predictable and efficient with a variety of legal rights for creditors.[87] Diplomatic and geopolitical connections are also significant factors that can sometimes counterbalance a lack of the other factors being present in an FDI decision.

In order to adjust the data for differences in overall wealth and relative size of each economy, the figures in this paper are created by dividing the FDI figure for each country by its GDP, which shows FDI as a percentage of GDP. The data shown in the figures uses locally-weighted scatterplot-smoothed analysis (LOWESS) to show how many countries correspond to each legal rights value. The LOWESS analysis also includes a trend line to illustrate correlation.

A useful starting point to evaluate the impact of legal rights of creditors on FDI is the group of twenty largest economies in the world, known as the G20. The G20 consists of meetings between national leaders and finance ministers.[88] There is no formal voting or authority, but it is instead a forum for discussion of issues.[89] Among G20 countries there is a general pattern that higher creditor rights scores indicate higher FDI amounts.[90] For example, countries with an average legal rights

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86. Patrick Del Duca et al., *U.S. Debt Markets Meet the Emerging Markets: Legal Challenges Faced by Cross-Border Lenders*, *in* THE LAW OF INTERNATIONAL INSOLVENCIES AND DEBT RESTRUCTURINGS, *supra* note 32, at 501 (concluding that businesses in emerging markets use United States financial markets for FDI, debt, and finance due to resources not being available or not having as advantageous of terms in their home countries).

87. *See* Parry & Zhang, *supra* note 22, at 85.

88. There are nineteen states on the list with the twentieth member being the European Union. Jamil Mustafa, *What is the G20 and How Does It Work?*, THE TELEGRAPH (Sept. 3, 2016), http://www.telegraph.co.uk/business/0/what-is-the-g20-and-how-does-it-work.

89. *Id.*

90. *See* THE WORLD BANK, *supra* note 2; WORLD BANK FDI, *supra* note 3.

score of five had just over $8 billion in average FDI for 2015 while countries with an average score of eleven had almost $300 billion in average FDI for 2015.[91] Figure 1 illustrates the correlation of FDI and legal rights among G20 countries. *See Figure 1 (figures located in appendix).*[92]

The United Nations Committee for Development Policy provides a list of "least developed countries" (LDCs).[93] The list is created based on the factors of per capita income, human assets, and economic vulnerability.[94] The United Nations encourages trade concessions for countries with this designation.[95] The concession of development financing is especially relevant as it encourages grants and loans from donors and financial institutions.[96] Accessibility of loans for businesses and projects is certainly a factor with a significant influence on FDI.[97]

It is interesting to note that among countries designated as LDCs, legal rights in themselves are not a significant factor in determining FDI levels.[98] See *Figure 2*.[99] However, there is a correlation between the recovery rate of creditors and the legal

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91. *Id.*

92. *See List of Least Developed Countries (as of June 2017)*, UNITED NATIONS COMM. FOR DEV. POL'Y,http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf; World Bank World Development Indicators, Financial access, Stability, and Efficiency (2016) http://wdi.worldbank.org/table/5.5.; WORLD BANK, *supra* note 2; WORLD BANK FDI, supra note 3; Jamil Mustafa, *supra* note 88. Locally-weighted scatterplot-smoothed analysis (LOWESS) shows how many countries correspond to each legal rights value and includes a trend line to illustrate correlation between the legal rights score and FDI as a percentage of GDP.

93. The list currently contains forty-eight countries. *List of Least Developed Countries (as of June 2017)*, UNITED NATIONS COMM. FOR DEV. POL'Y, https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf (last visited Sept. 15, 2017).

94. Per Capita income is defined as gross national income per capita. Human assets are based on indicators of nutrition, health, school enrollment, and literacy. Economic vulnerability is defined as indicators of natural and trade-related shocks, physical and economic exposure to shocks, and smallness and remoteness. *UN recognition of Least Developed Countries (LDC)*, UNITED NATIONS CONFERENCE ON TRADE AND DEV., http://unctad.org/en/Pages/ALDC/Least%20Developed%20Countries/UN-recognition-of-LDCs.aspx (last visited Sept. 15, 2017).

95. *Id.* Concessions include development financing, preferential trade, and technical assistance.

96. *Id.*

97. *See* EUROPEAN BANK FOR RECONSTRUCTION AND DEV., *supra* note 85.

98. *See* WORLD BANK FDI, *supra* note 3; THE WORLD BANK, *supra* note 2.

99. *Id.*

rights index.[100] In general, higher scores on the legal rights index lead to higher recovery rates per dollar.[101] For example, LDCs with a score of ten for legal rights have an average recovery rate per dollar of $0.35 while LDCs with a score of zero for legal rights have an average recovery rate per dollar of just $0.04.[102] *See Figure 3*.[103] While legal rights in themselves do not seem to directly impact FDI in LDCs, the recovery rate per dollar is certainly a factor that would be considered by those exploring FDI in LDCs.[104]

There are currently 119 countries that are not part of the G20 or an LDC.[105] When comparing legal rights and FDI there is a clear correlation between the two. *See Figure 4*.[106]

A. PREDICTABILITY

It is well-recognized that "effective and predictable rules of insolvency create a better environment for FDI."[107] In the United States, legal rights of creditors do not fluctuate significantly over time.[108] As noted by at least one commentator "[a]bsence of predictability is a disincentive for FDI."[109] Lenders are more likely to extend credit where the outcomes of insolvency are more predictable and subject to "known parameters" of law.[110]

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100. *See* THE WORLD BANK, DOING BUSINESS, http://www.doingbusiness.org/data/exploretopics/resolving-insolvency; THE WORLD BANK, *supra* note 2.

101. *See* THE WORLD BANK, DOING BUSINESS, *supra* note 100; THE WORLD BANK, *supra* note 2.

102. *See* THE WORLD BANK, DOING BUSINESS, *supra* note 100; THE WORLD BANK, *supra* note 2.

103. *Id.*

104. *See* Steven J. Arsenault, *Leaping Over the Great Wall: Examining Cross-Border Insolvency in China Under the Chinese Corporate Bankruptcy Law*, 21 IND. INT'L. & COMP. L. REV. 1 (2011).

105. *See* WORLD BANK, WORLD DEVELOPMENT INDICATORS, GROSS DOMESTIC PRODUCT 2015, http://databank.worldbank.org/data/download/GDP.pdf; *G20*, *supra* note 88; *Least Developed Countries supra* note 93.

106. *See* WORLD BANK FDI, *supra* note 3; THE WORLD BANK, *supra* note 2.

107. Fernando Locatelli, *International Trade and Insolvency: Is the UNCITRAL Model Law on Cross-Border Insolvency an Answer for Brazil?,* REVISTA DO MINISTERIO PUBLICO DO RS, PORTO ALEGRE (2009), http://www.amprs.com.br/public/arquivos/revista_artigo/arquivo_1259072860.pdf.

108. See WORLD BANK FINANCIAL ACCESS, *supra* note 2.

109. Hale E. Sheppard, *The New Mexican Insolvency Law: Policy Justifications for U.S. Assistance*, 6 UCLA J. INT'L. L. & FOREIGN AFF. 45 (2001).

110. Felicity Deane and Rosalind Mason, *The UNCITRAL Model Law on Cross-Border Insolvency and the Rule of Law*, 25 INT'L INSOLVENCY REV. 138 (2016).

Lenders also favor jurisdictions with courts that have experience and specialization in bankruptcy.[111] For example, the United States has a system of courts where judges exclusively hear bankruptcy cases. At least one evaluator ranks the United States insolvency process fairly low in its development of creditor rights.[112] However, the United States has a system that is stable and predictable over time compared to the other countries in the study.[113]

While China has a fairly developed bankruptcy procedure, how its court system addresses bankruptcy can be unpredictable, which inhibits FDI. One example that drew much attention involved the bankruptcy proceedings of Eastern Star Airlines.[114] Despite the airline negotiating amicable settlements with all of its creditors in order to work toward restructuring, a Chinese court still ordered that the company be liquidated and dissolved.[115] This example of unpredictability is a significant factor that has led to China being ranked fairly low in its rights of creditors according to the World Bank.[116] Even states with high ratings in creditor rights may still impede investment if the system is unpredictable.[117]

Bilateral Investment Treaties (BIT) are a common method to improve predictability and provide protection for investors engaging in FDI.[118] In the United States, they are specifically designed to "protect private investment, to develop market-oriented policies in partner countries, and to promote United States exports."[119] A BIT between the United States and Ecuador "recognizes that parties may protect the rights of creditors . . . ."[120] A similar provision is found in the BIT between

111. *Id.*

112. Deakin, *supra* note 79.

113. *Id.*

114. Yujia Jiang, *The Curious Case of Inactive Bankruptcy Practice in China: A Comparative Study of U.S. and Chinese Bankruptcy Law*, 34 NW. J. INT'L L. & BUS. 559, 580–81 (2014).

115. *Id.*

116. WORLD BANK FINANCIAL ACCESS, *supra* note 2.

117. Jon Ruiss, *Insolvency Laws of Romania and Ukraine: Why Romania's Insolvency Laws Work Better for Foreign Direct Investment*, 20 AM. BANKR. INST. L. REV. 759 (2012).

118. OFFICE OF THE U.S. TRADE REPRESENTATIVE, *Bilateral Investment Treaties*, https://ustr.gov/trade-agreements/bilateral-investment-treaties (last visited Sept. 9, 2017).

119. *Id.*

120. Ecuador Bilateral Investment Treaty, U.S.-Ecuador, art. IV, ¶ 3, Aug. 27, 1993, http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/

the United States and Morocco.[121] A BIT between the United States and Jordan goes further in describing restrictions on FDI transfers.[122] It specifically allows each contracting party to prevent transfers in order to apply laws of "bankruptcy, insolvency, or the protection of the rights of creditors."[123] Although studies have produced mixed results, in general, the implementation of BITS have resulted in increased FDI levels for participating countries.[124]

B. EFFICIENCY

The efficiency of a country's insolvency procedures also impacts FDI. In the United States, all creditors are treated equally, unlike some systems which use a "race to the courthouse" approach in distributing payments to creditors.[125] The system encourages negotiation and overall fairness toward respective creditors.[126] In addition, United States bankruptcy petitions are automatically accepted at the time of filing and do not need formal acceptance from a court.[127] This creates a fairly predictable process. In contrast to this approach is China's bankruptcy process. While bankruptcy laws are fairly developed, Chinese courts have broad discretion in whether to even accept a bankruptcy petition.[128] Chinese bankruptcy and procedural codes provide no guidance to courts on this important procedural

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121. Morocco Bilateral Investment Treaty, U.S.-Morocco, art. IV, ¶ 3(c), Jul. 22, 1985. http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005864.asp.

122. Jordan Bilateral Investment Treaty, U.S.-Jordan, art. V, ¶ 4(a), Jul. 2, 1997, http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005590.asp.

123. *Id.*

124. Deborah L. Swenson, *Why Do Developing Countries Sign BITs?*, 12 U.C. DAVIS J. INT'L L. & POL'Y 131, 146 (2005).

125. Wielebinski & Rukavina, *supra* note 21, at 694. "Race to the Courthouse" is a common term used in the field to describe a practice in which the first creditors to file their claim with the court are paid first. Each subsequent creditor is then paid in the order filed until the court has distributed all money it determines can be paid by the insolvent debtor.

126. P.J. Kozyris, *Report for the United States of America*, in CROSS-BORDER INSOLVENCY, *supra* note 5, at 244 (describing the United States bankruptcy process as shifting "from legalistic to economic approaches").

127. *Id.* at 245.

128. Anna Ansari, *The 2006 Enterprise Bankruptcy Law of the People's Republic of China: A Further Step Toward the Creation of a Modern Insolvency Framework*, 20 J. BANKR. L. & PRAC. 5 art. 1, 10 (2011).

matter.[129] Even with an updated bankruptcy code, unpredictability in acceptance of bankruptcy petitions by a court creates a serious impediment for anyone considering FDI opportunities in China who is using bankruptcy laws as a factor in the decision-making process.[130]

Some countries intentionally improve efficiency by creating expedited procedures for simpler bankruptcy proceedings. For example, Switzerland has established "Summarized Bankruptcy Proceedings" which allow for quick liquidation without formal creditor meetings for simpler insolvencies.[131] Switzerland's creditor rights score is around the average for its region, but is also lower than one would expect compared to other world financial centers.[132] It still had a fairly high FDI amount for 2015 of nearly $98 billion.[133] In 2005, France created shorter "conciliation" proceedings for simpler bankruptcy cases.[134] That same year, it reached its record high FDI total of just over $85 billion.[135] Predictable, simplified and efficient bankruptcy procedures clearly influence FDI. More specifically, legislation that simplifies otherwise complex or time-consuming procedures generally results in higher FDI amounts.

C. DIPLOMATIC AND GEOPOLITICAL CONSIDERATIONS

Diplomatic and geopolitical considerations also significantly influence FDI decisions. There is often overlap between the top sources of FDI inflow and destinations of FDI outflow. For instance, the top five FDI inflow sources and FDI outflow destinations for France include the Netherlands, United States, Germany, and United Kingdom.[136] In New Zealand, the top five

129. *Id.*

130. *Id.*

131. Bader, *supra* note 4. The process also requires advance notification to creditors who are allowed to demand that regular bankruptcy proceedings take place.

132. WORLD BANK FINANCIAL ACCESS, *supra* note 2. Switzerland's creditor rights score was six. Scores for other countries in the region include Germany at six, France at four, and Austria at five.

133. WORLD BANK FDI, *supra* note 3. Switzerland's 2015 FDI was $97,577,566,732.

134. Andrew Tetley & Marcel Bayle, *Insolvency Law in France, in* WORLD INSOLVENCY SYSTEMS, *supra* note 4, at 199.

135. WORLD BANK FDI, *supra* note 3. France's 2005 FDI was $85,179,159,787.

136. *France and Monaco*, U.S. DEPT. OF STATE, INVESTMENT CLIMATE STATEMENTS (2016), http://www.state.gov/e/eb/rls/othr/ics/investmentclimate

FDI inflow sources and FDI outflow destinations overlap with Australia, the United States, and the United Kingdom appearing on both lists.[137]

FDI inflow to countries with lower creditor and other legal rights is generally from countries with close diplomatic ties. Bahrain currently has a creditor rights score of one.[138] The country's top sources of FDI inflow are Kuwait, Saudi Arabia, Libya, and the United Arab Emirates, which together account for over eighty percent of FDI inflows.[139] All of Bahrain's sources of FDI inflows, except for Libya, have at least slightly higher levels of creditor rights.[140] Despite Bahrain's lack of creditor rights, investors from countries with close diplomatic ties are still willing to assume the higher risks of investment in Bahrain.[141]

D. LEGAL RIGHTS

Investors often send FDI outflow to countries with higher creditor rights rankings than their own. The United States largest sources of FDI in 2015 were the United Kingdom, Japan, Canada, Germany, France, Ireland, Switzerland, and Netherlands.[142] Together, these accounted for just over seventy-five percent of FDI inflows for the United States.[143] All of these countries had lower creditor rights rankings than the United States with Japan, Germany, France, Ireland, Switzerland, and especially the Netherlands having significantly lower levels of creditor rights.[144]

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statements/index.htm?year=2016&dlid=254363.

137. *New Zealand,* U.S. DEPT. OF STATE, INVESTMENT CLIMATE STATEMENTS (2016), http://www.state.gov/e/eb/rls/othr/ics/investmentclimate statements/index.htm?year=2016&dlid=254303.

138. WORLD BANK FINANCIAL ACCESS, *supra* note 2.

139. *Bahrain*, U.S. DEPT. OF STATE, INVESTMENT CLIMATE STATEMENTS (2016), http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/ index.htm?year=2016&dlid=254435

140. WORLD BANK FINANCIAL ACCESS, *supra* note 2. Creditor rights scores are Kuwait-2, Saudi Arabia-2, Libya-0, and United Arab Emirates-2. *Id.*

141. *Id.*

142. ORG. FOR INT'L INV., FOREIGN DIRECT INVESTMENT IN THE UNITED STATES 3 (2016), http://www.ofii.org/.

143. *Id.*

144. WORLD BANK FINANCIAL ACCESS, *supra* note 2 (scoring the United States at eleven, the United Kingdom at seven, Japan at four, Canada at nine, Germany at six, France at four, Ireland at seven, Switzerland at six, and the Netherlands at three).

China provides an interesting illustration of the concept working the other way as well, in that those investing in developing countries with lower levels of creditor rights tend to be from the most developed countries.[145] China's top sources of FDI inflows are Hong Kong, British Virgin Islands, Japan, Singapore, and the United States.[146] While a separate legal rights score is not available for Hong Kong or the British Virgin Islands, Singapore and the United States have significantly higher levels of creditor rights than China.[147] This data suggests that investors from less-developed countries are generally not willing to assume the risks of investing within the still-developing Chinese financial system.[148]

E. EXAMPLES OF INSOLVENCY LAW DIRECTLY IMPACTING FDI

This section provides a few examples of insolvency and bankruptcy laws having a direct impact on FDI. Changes that improve creditor rights or predictability generally result in increases to FDI figures the same year the change is implemented or shortly after once the new policy is better publicized or understood.[149] In contrast, changes that are seen as reducing creditor rights, even minimally, can cause long-lasting harm in the form of reduced FDI amounts.[150]

The World Bank *Doing Business* project provides several suggestions and guidelines for broad policy changes to bankruptcy laws.[151] It suggests that improving reorganization procedures reduces failure rates among firms.[152] Bankruptcy procedures can also impact loan terms, leverage ratios, and bank

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145. *China*, U.S. DEPT. OF STATE, INVESTMENT CLIMATE STATEMENTS (2016), http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2016&dlid=254271.

146. *Id.*

147. WORLD BANK FINANCIAL ACCESS, *supra* note 2 (giving creditor scores for China of four, Singapore, eight, United States, eleven). Japan received the same score as China. *Id.*

148. *Cf.* Del Duca, *supra* note 86.

149. *See* WORLD BANK FDI, *supra* note 3; *see also* WORLD BANK FINANCIAL ACCESS, *supra* note 2.

150. *See* WORLD BANK FDI, *supra* note 3; *see also* WORLD BANK FINANCIAL ACCESS, *supra* note 2.

151. DOING BUSINESS, REFORMING THE BUSINESS ENVIRONMENT IN 2015/16, at 38 (2017), http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Chapters/DB17-Reforming-the-Business-Environment-in-2015-2016.pdf.

152. *Id.*

recovery rates.[153] During 2015 and 2016, the World Bank reports that at least twenty-four countries had enacted significant bankruptcy reforms including some conducted at the regional level.[154]

1. France

While FDI figures vary significantly from one year to another, there is an overall increase in France's FDI from 1970–2015.[155] Interestingly, legal rights of creditors also varied during this time.[156] During times of lower rights for creditors, FDI also decreases.[157] For example, from 2000–2005, the average debtor control score dropped to its lowest point since at least 1970.[158] France's highest FDI ever received occurred in 2005 and has had an overall pattern of decline since that time.[159] The data suggests that as the score dropped, so did investor confidence in the predictability of the system and that the damage is ongoing.[160] From 1984–1990, there was an increase in overall creditor rights.[161] In 1984, the FDI for France was just over $2 billion while in 1990 it was just over $13 billion.[162] These figures indicate that improvements to legal rights of creditors leads to increased FDI whereas lowering levels of creditor rights, even due to seemingly minor changes, can have lasting impacts on FDI decisions.[163]

153. *Id.*

154. *Id.* The Organization for the Harmonization of Business Law in Africa created uniform cross-border insolvency procedures for seventeen states. *Id.*

155. WORLD BANK FDI, *supra* note 3. FDI in 1970 was $621,212,781, 1990 was $13,183,285,334, and 2010 was $38,899,924,637. *Id.*

156. Deakin, *supra* note 79. While aggregate legal rights improved, the ability of creditors to control debtor activity during bankruptcy in order to preserve assets declined slightly. The score from 1980-1984 was 0.49. From 1985-1989, the score dropped to 0.46. It dropped to 0.45 in the period of 2000-2005. *Id.*

157. *See Id.*

158. *Id.*

159. WORLD BANK FDI, *supra* note 3.

160. *Id.*

161. Deakin, *supra* note 79. The average aggregate score for creditor rights from 1980-1984 was 0.46 and from 1985-1989 the score increased to 0.50. *Id.*

162. WORLD BANK FDI, *supra* note 3.

163. See Deakin, *supra* note 79; *see also* WORLD BANK FDI, *supra* note 3.

2. United States

In 2005, the United State Bankruptcy Code was updated to incorporate the UNCITRAL Model Law.[164] This update made United States recognition of cross-border insolvency proceedings more predictable.[165] In 2007, the United States reached its highest FDI inflow amount since 2000 which was not surpassed until 2015.[166] The improved predictability of an already well-developed bankruptcy code seems to have had an impact on FDI levels as the new provisions were implemented.

3. New Zealand

After a seven year review, New Zealand passed the Companies Amendment Act of 2006.[167] Prior to the Act, bankruptcy proceedings generally required unanimous agreement of settlements with creditors or complete liquidation.[168] The Act provided alternative procedures allowing for reorganization of an insolvent entity.[169] The law came into force in 2007.[170] New Zealand also experienced its highest FDI levels on record in 2007.[171] Investors seem to have been influenced by the changes to New Zealand's improved bankruptcy process which resulted in the record FDI levels.

4. Russia

In October of 2002, Russia passed legislation rewriting their insolvency laws to bring them in line with modern international standards.[172] Further updates were made over several years and the law was formally implemented in 2009.[173] Even though the provisions were not formally implemented until later, the preliminary legislation reforming insolvency laws led to

164. O'Flynn, *supra* note 50 at 396.
165. *Id.* at 398.
166. WORLD BANK FDI, *supra* note 3.
167. Tetley, *supra* note 4.
168. *Id.*
169. *Id.*
170. *Id.* at 509.
171. WORLD BANK FDI, *supra* note 3.
172. *See* Kurochkin, *supra* note 4.
173. *Id.*

increased FDI.[174] In 2003, FDI levels rose significantly,[175] and in 2004, they nearly doubled from their 2003 levels.[176] Even preliminary work toward insolvency law reform can impact FDI levels as corporations see improvement to existing legal procedures.[177]

5. European Union

The European Union provides a broader overview of the same concept. While each member has its own bankruptcy laws, the European Union also has regulations for cross-border insolvency in European Council Regulation 1346/2000.[178] Some of the provisions include guidelines for determining jurisdiction and full recognition of foreign proceedings.[179] These guidelines improve predictability of cross-border insolvency proceedings at the regional level.[180] Europe also has the second-highest legal rights score of any region with only North America receiving a higher score.[181] The result of the combined rights of creditors and increased predictability in cross-border insolvency is that the European Union accounts for twenty-nine percent of global FDI and receives just over $20 billion more in FDI than North America.[182]

6. China

China provides an interesting exception to the pattern of bankruptcy laws leading to increases in FDI. In 2007, China implemented numerous reforms to update its bankruptcy process.[183] Oddly, the number of bankruptcies declined as the

174. *See e.g.*, WORLD BANK FDI, *supra* note 3. FDI in 2002 was $1,144,000,000. FDI in 2003 was $1,844,000,000. *Id.*

175. *Id.*

176. *Id*. FDI in 2004 was $15,402,990,000. *Id.*

177. *See id.*; Kurochkin, *supra* note 4.

178. Emmanuel Roger France & Tim Van Canneyt, *Belgian Insolvency Law*, *in* WORLD INSOLVENCY SYSTEMS, *supra* note 4, at 41, 76–77.

179. *See id.* at 77.

180. *Id.*

181. WORLD BANK FINANCIAL ACCESS, *supra* note 2. Europe's overall score is six while North America's is ten.

182. WORLD BANK FDI, *supra* note 3. The European Union's FDI total for 2015 was $580,656,109,603. North America's was $560,720,286,845. *Id.*

183. *See* Jiang, *supra* note 114, at 560.

new policies were implemented.[184] Despite China's population, it has significantly fewer bankruptcy filings than comparable countries.[185] In 2009, the United States had 1,473,675 bankruptcy filings while China only had 2,434.[186] While there is a slight increase in FDI after 2007, by 2016, FDI had returned to being very similar to the levels received in 2008 and only slightly higher than the 2007 figures.[187]

There are additional issues with China in its requirements and procedures for managers of companies experiencing insolvency. Individual managers are generally forbidden from leaving the country and are subject to civil penalties for insolvency.[188] In addition, government-appointed liquidation panels, which can speak on behalf of management, often consist of bureaucrats rather than financial and legal professionals.[189] For example, during the reorganization of one company, a 24 member panel consisted of one accountant, one lawyer, and a myriad of government officials including several mayors and an administrator for a government environmental agency.[190] While the official laws allow for broad creditor protections, the approach to management and use of a bureaucratic process rather than a judicial one hinders the implementation of the rights that are alleged to exist.

While reforms were enacted, the reality was that they were merely a façade on the same system. The reforms also only addressed insolvency of corporations and not of individuals.[191] Corruption is still prevalent in Chinese courts which obviously leads to unpredictable and contradictory bankruptcy outcomes.[192] In addition, the process of registering a business in China is often quite difficult.[193] While China's FDI rates are fairly stable, they are small, relative to the country's

184. *Id.* at 561.
185. *Id.*
186. *Id.*
187. *See* WORLD BANK FDI, *supra* note 3.In 2007, FDI was $156,249,335,203 and increased to $290928431467 by 2013. But by 2016, FDI had returned to $170,556,525,654, which is very similar to its 2008 FDI of $171,534,650,311 and only slightly higher than 2007. *Id*.
188. Jiang, *supra* note 114 at 579.
189. *See id.* at 579–80.
190. *Id.*
191. *Id.* at 564.
192. Ansari, *supra* note 128.
193. *See* U.S. DEPT. OF STATE, *supra* note 145.

population.[194] The combination of unpredictability in bankruptcy outcomes and inefficiency within the courts has prevented China from experiencing the full benefits of increased FDI as a result of improved bankruptcy procedures.[195]

III. CONCLUSION

The adoption of the UNCITRAL Model Law has significantly influenced cross-border insolvency. There are several examples of cases in which United States courts deferred to decisions of foreign courts in addressing specific cross-border insolvencies. Studies and recommendations from the World Bank have influenced recent legislative changes in how countries address cross-border insolvency.

Insolvency laws have usually been overlooked as a variable in how FDI decisions are reached. A comparison of legal rights of creditors with FDI statistics shows a direct correlation between improvements to insolvency and bankruptcy laws and higher FDI amounts. Investors are looking for stability and predictability in the event of the failure of a business venture. States with higher ratings for legal rights generally also have higher rates of FDI. While a variety of factors influence FDI, it is clear that the development of insolvency and bankruptcy laws is a significant factor considered by investors that has usually been overlooked.

194. WORLD BANK FDI, *supra* note 3. China's FDI inflows in 2015 were $242,489,331,627 compared to the United States FDI figure of $506,161,000,000. *Id.*

195. *See e.g.*, Ansari, *supra* note 128.

Appendix: Figures 1-4

***Figure 1*: LOWESS Analysis of Legal Rights and FDI for 19 G20 Countries**

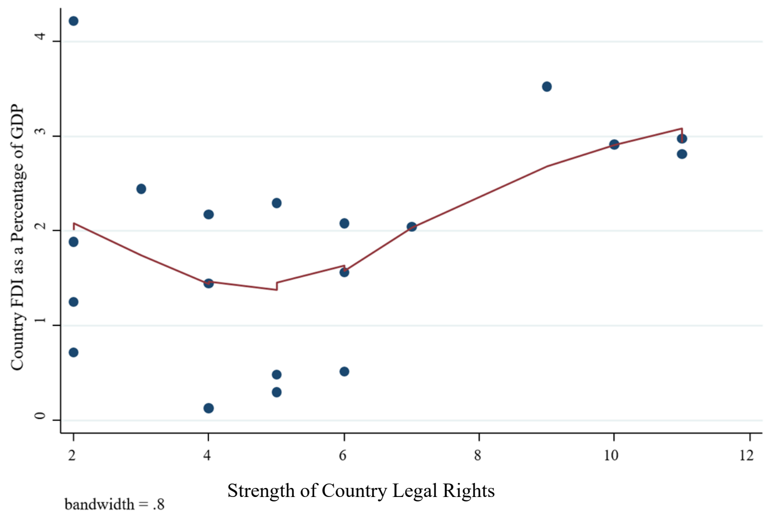

***Figure 2*: LOWESS Analysis of Legal Rights and FDI for 46 Least-Developed Countries**

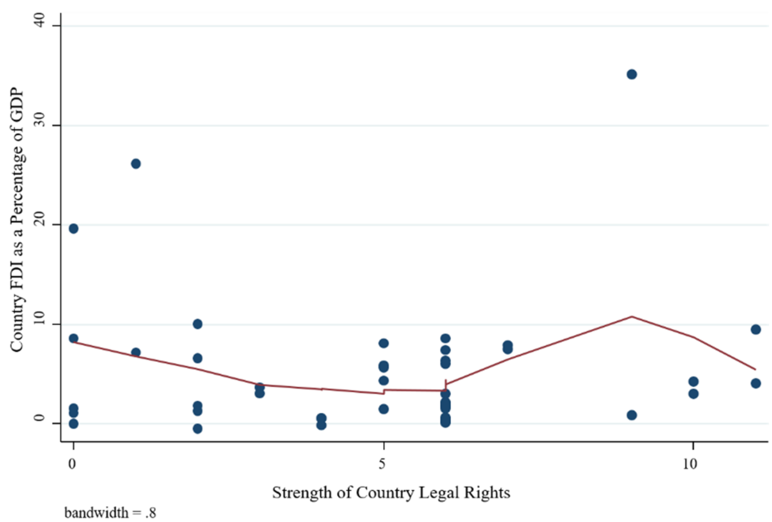

***Figure 3*: Average Debt Recovery Rate Per Dollar (LDCs)**

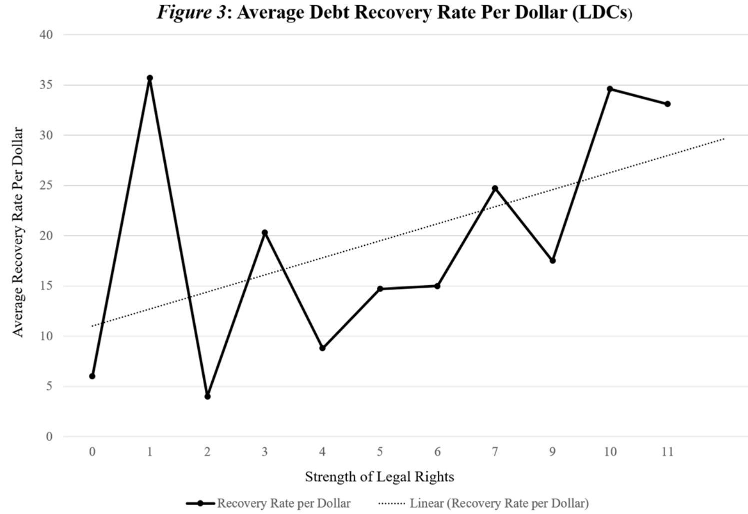

***Figure 4*: LOWESS Analysis of Legal Rights and FDI for 111 Other Countries**