



Statement of

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Hearing on

**“Taking Stock of ‘China, Inc.’: Examining
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Foreign Issuers in U.S. Markets”**

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Chairman Sherman, Ranking Member Huizenga, and distinguished members of the subcommittee, Thank you for inviting the Congressional Research Service to testify today. I am Karen M. Sutter, a Specialist in Asian Trade and Finance at the Congressional Research Service. My statement provides an overview of U.S.-China financial ties, and discusses some potential economic, political, regulatory, structural, and strategic issues and some potential risks for U.S. investors. I also identify several issues for potential congressional consideration.

In particular, I would like to raise six points for your consideration today:

- One, China is selectively opening its financial markets in limited ways to certain U.S. investors. The Chinese government has recently granted licenses or expanded the terms of licenses to allow a few U.S. investment firms to expand offerings in China. These firms see potential growth opportunities in China as a large and important market. U.S. market participation, however, is still curtailed by Chinese government controls, regulations, and competition from large state banks and other state firms. U.S. financial firms may profit from their investments in China. Similarly, some U.S. investors may benefit from the opportunities to invest in companies and industries that China might otherwise restrict. These transactions do not appear to give U.S. investors control, however. As holders of passive financial investments, U.S. investors do have the ability to leverage the productive industrial or technological capabilities that may be developed with the support of U.S. capital. Moreover, the terms of these financial investments do not appear to open China's economy further to U.S. participation on reciprocal terms in a range of sectors that passive U.S. financial investment might support. China's ability to attract passive capital—in combination with its separate but related efforts to secure technology licensing—could diminish its interest or need to further open its economy to U.S. participation and competition.
- Two, the limited and targeted nature of China's financial investment openings to date appears designed in part to attract U.S. capital to areas of China's economy where the government may seek to compensate for weaknesses, such as bad assets and debt.¹ This raises questions about how increased U.S. capital flows to China could create not only growth opportunities but also greater risk exposure for U.S. investors. While there is an element of risk in all investments, the Chinese government's current actions to address building debt in its property sector—including with regard to its second largest developer, Evergrande Group—highlights some specific potential risks for U.S. investors, particularly should U.S. exposure to China's debt markets increase.
- Three, the Chinese government appears to be seeking U.S. capital to fund its strategic and emerging industries, strengthen China's capital markets, and position Chinese firms as global leaders and competitors.² The Chinese government is also supporting the investment in U.S. companies that have relevant technologies and operate in sectors identified in its industrial policies such as *Made in China 2025*.³ China's financial investments in U.S. firms may contribute to the economic viability of some U.S. firms and U.S. economic growth in the short term, but many of these investments appear to be strategic in nature and could over the longer term develop competitive Chinese capabilities.

¹ See CRS In Focus IF11953, *Evergrande Group and China's Debt Challenges*, by Karen M. Sutter and Michael D. Sutherland.

² "2021 Investment Climate Statements: China," U.S. Department of State.

³ See CRS In Focus IF10964, *"Made in China 2025" Industrial Policies: Issues for Congress*, by Karen M. Sutter.

- Four, the growing role of the state in China’s economy and business ecosystem has increased dramatically since 2014 under China’s leader Xi Jinping, intensifying the potential challenges and risks for U.S. companies and the United States more broadly.⁴ The beginning of what could be a significant increase in two-way financial investment is now occurring within this context, potentially giving the Chinese government the ability to exert greater control over Chinese and U.S. companies and the Chinese and global marketplace.
- Five, the corporate structures that Chinese firms are using to expand overseas and invest in U.S. capital markets—such as the variable interest entity (VIE) structure—are complex. These structures arguably make it difficult for U.S. investors to assess potential risks.⁵ While U.S. underwriters, accountants, or legal counsel may have insights into these risks, they may not share this knowledge fully with U.S. investors who ultimately bear the costs of these risks. These complex corporate structures also separate the underlying company (and its operations and assets) from U.S. investors. This potentially limits the ability of U.S. investors to exercise their rights, including the right to seek full legal recourse if necessary.
- Six, there is a lack of transparency on deals and an absence of publicly-available data on the main and growing pathways for two-way investment, which include private equity, venture capital, and private placements. U.S. and Chinese monies appear to be increasingly comingled through the use of funds that operate in both the United States and China. Without further transparency, it is difficult to assess how some financial deals may also support related agreements that are strategic and involve the transfer of technology or know-how. Transparency gaps also potentially affect the ability of the U.S. government to assess aggregate U.S. financial and economic exposure to China and potential risks.

Overview of Financial Ties

Financial ties between the United States and the People’s Republic of China (PRC or China) have expanded significantly over the past few years. The PRC government has created limited openings in China’s debt and equity markets, while China’s firms have expanded into U.S. capital markets.⁶ The Rhodium Group, a U.S.-based research group, estimates that, as of December 2020, U.S. investors held \$100 billion of Chinese debt and \$1.1 trillion in Chinese equities, while Chinese investors held \$1.4 trillion in U.S. debt and \$720 billion in U.S. equities.⁷ As of August 2021, China and Hong Kong held \$1.05 trillion and \$219.4 billion, respectively, in U.S. Treasury securities, making China the second-largest foreign holder after Japan. These figures may understate China’s actual holdings because of the government’s purchases of securities through offshore financial centers (e.g., Cayman Islands).⁸

U.S. stock exchanges offer China’s firms access to deep capital markets and paths to earn hard currency, build brand recognition, and expand overseas. As of May 2021, 248 Chinese firms were listed on the three

⁴ See CRS Report R46915, *China’s Recent Trade Measures and Countermeasures: Issues for Congress*, by Karen M. Sutter.

⁵ See CRS In Focus IF11803, *U.S. Capital Markets and China: Issues for Congress*, by Michael D. Sutherland and Karen M. Sutter.

⁶ Nicholas R. Lardy and Tianlei Huang, “China’s Financial Openings Accelerate,” Policy Brief 20-17, Peterson Institute for International Economics, December 2020.

⁷ Adam Lysenko, Mark Witzke, Thilo Hanemann, and Daniel H. Rosen, “US-China Financial Investment: Current Scope and Future Potential,” Rhodium Group, January 26, 2021.

⁸ See CRS In Focus IF11283, *U.S.-China Investment Ties: Overview*, by Andres B. Schwarzenberg and Karen M. Sutter.

major U.S. stock exchanges—up from 217 in December 2020—with a combined market capitalization of \$2.1 trillion, according to the U.S.-China Economic and Security Review Commission.⁹ Initial public offerings (IPOs) in the United States have been particularly popular with Chinese firms in emerging industries, such as electric vehicles. Chinese firms raised an estimated \$15 billion in U.S. IPOs in 2020.¹⁰

U.S. investors also invest in Chinese firms that are listed on China's exchanges, including through investment funds and dual listings on both U.S. and PRC exchanges. Five major index fund managers include Chinese bonds and A-shares of firms listed on China's exchanges in their funds; three major funds include government debt.¹¹ U.S. pension funds are exposed to China's economy through these indices and direct holdings in PRC firms. Many U.S. financial investors seek China exposure with an eye to potential higher returns. These investments indirectly benefit other U.S. investors by providing ways for them to invest in China's large market and economic growth. There is growing interest in China's market since the PRC government recently approved a few U.S. financial firms, including Goldman Sachs, JP Morgan, and BlackRock, to increase their equity stakes in joint ventures with Chinese firms and to operate wholly-owned funds.¹² BlackRock is the largest money manager globally. It has \$9.5 trillion under management as of July 2021, but does not publicly disclose its China assets.¹³

Available data likely understates U.S.-China bilateral financial flows, which appear to be expanding.¹⁴ Chinese firms have many ways to invest in the United States and attract U.S. capital—such as venture capital, private equity, and private placement transactions. Financial flows through these pathways are not captured in most data sets and there is limited transparency as to specific transactions. In private equity and venture capital, monies from U.S. and Chinese sources appear to be difficult to disaggregate using public information.¹⁵ The PRC government's use of a private equity model to channel state funds into domestic and foreign companies, projects, and investments through its use of Government Guidance Funds (GGFs) adds an additional layer of complexity in understanding and assessing potential risks in U.S.-China financial flows. In this model, China's Ministry of Finance is channeling state funds to GGFs and sub-funds. This state money is also routed through SOEs, pensions, state banks, and venture capital firms.¹⁶

Role of the PRC State in Business

A key aspect of potential risk in U.S. investments in Chinese companies centers on the role of the state—including the PRC government, the Communist Party of China (CPC), and the People's Liberation Army (PLA)—in China's economy and business ecosystem. This role blurs lines between China's government authorities and business operations. The Chinese state is directly involved in advancing China's national economic development and related industrial policy goals and in promoting national corporate

⁹ "Chinese Companies Listed on Major U.S. Stock Exchanges," U.S.-China Economic and Security Review Commission, May 5, 2021.

¹⁰ Julia Fioretti and John Cheng, "Chinese Firms Are Listing in the U.S. at a Record-Breaking Pace," *Bloomberg*, April 24, 2021.

¹¹ A-shares represent publicly-listed PRC companies that trade on China's stock exchanges in China's currency, the renminbi.

¹² "JPMorgan Gets Beijing's Approval for First Fully Foreign-owned Brokerage," Reuters, August 6, 2021; "Goldman Sachs Moves to Full Ownership of China securities JV," *Reuters*, October 17, 2021.

¹³ Dawn Lim, "BlackRock Closes In on the Once Unthinkable, \$10 Trillion in Assets," *The Wall Street Journal*, July 14, 2021.

¹⁴ Nicholas Lardy and Tianlei Huang, "Despite the Rhetoric, US-China Financial Decoupling is not Happening," *IR Magazine*, July 20, 2020.

¹⁵ Sean O'Connor, "How Chinese Companies Facilitate Technology Transfer from the United States," Staff Research Report, U.S.-China Economic and Security Review Commission, May 6, 2019.

¹⁶ Tianlei Huang, "Government-Guided Funds in China: Financing Vehicles for State Industrial Policy," PIIE, June 17, 2019; U.S. Chamber of Commerce, "Made in China 2025: Global Ambitions Build on Local Protections," 2017; "Four Things to Know about China's \$670 billion Government Guidance Funds," *Caixin*, February 25, 2020.

champions, sometimes setting commercial terms and influencing corporate decision-making.¹⁷ This overlap between government and business interests has increased since 2006, when China enacted its Medium- and Long-Term Plan in Science and Technology (2006-2020). In the context of that plan, the PRC government has reenergized the role of industrial planning and state financing to advance its goals through commercial or quasi-commercial actors.¹⁸ Since 2006, China has given its companies a central leadership role in advancing national industrial policy and technology goals. The government has sought to maximize the benefits of market flexibilities—including greater operating agility in recruiting talent, fundraising, acquiring foreign technology, and operating offshore—while retaining certain state controls.¹⁹

China's government has supplemented forms of direct state ownership with hybrid forms of state control that involve channeling state funding through government guidance funds and venture capital and private equity firms.²⁰ The CPC has strengthened its representation and influence within firms through the establishment and reinvigoration of corporate Party committees with individual firms, changes to companies' Articles of Association, and influence through supervisory boards and trade unions that fall under state control.²¹ While the number of formally declared state firms managed by the central government declined due to corporate consolidation, arguably the financial and policy influence of the Chinese state expanded into a wider array of sectors and companies through these hybrid models, particularly in strategic and advanced technology sectors.²²

Within this context, China's government frequently distorts the commonly accepted premises and use of economic and trade policy tools by other governments to promote market competition. These distortions arise in part because of how the government applies these tools to seek particular advantages for China's industry and national champions.²³ For example, China's government is not an independent or impartial

¹⁷ Mark Wu, "The 'China, Inc.' Challenge to Global Trade Governance," *Harvard International Law Journal*, Vol. 57, (2016): 1001-1063.

¹⁸ Cong Cao, Richard P. Suttmeier, and Denis Fred Simon, "China's 15-Year Science and Technology Plan," *Physics Today*, December 2006; *The National Medium- and Long-Term Program for Science and Technology Development (2006- 2020)*, State Council of the People's Republic of China, https://www.itu.int/en/ITU-D/Cybersecurity/Documents/National_Strategies_Repository/China_2006.pdf.

¹⁹ *Ibid.*

²⁰ Barry Naughton, *The Rise of China's Industrial Policy 1978 to 2020*, Universidad Nacional Autonoma de Mexico, 2021 (See Chapters 4 and 5); Ngor Luong, Zachary Arnold, and Ben Murphy, "Understanding Chinese Government Guidance Funds: An Analysis of Chinese-Language Sources," Center for Security and Emerging Technology, March 2021; Yifei Gong, Peiyue Li, and Ziqiao Shen, "Research on Operating Efficiency of Government Industry Guidance Funds," *Theoretical Economics Letters*, February 2020.

²¹ Jennifer Hughes, "China's Communist Party Writes Itself Into Company Law," *Reuters*, August 14, 2017; Scott Livingston, "The Chinese Communist Party Targets the Private Sector," CSIS, October 2020; Christopher Balding and Donald Clarke, "Who Owns Huawei?," April 19, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3372669.

²² "State-Owned Enterprise Policy Reform," The China Dashboard, Asia Society Policy Institute and the Rhodium Group, Winter 2020 (Note: China's National Bureau of Statistics data on SOEs does not include data for stock companies or other types of ventures that involve SOEs or are state financed or tied. See Edimon Ginting and Kaukab Naqvi, Reforms, Opportunities, and Challenges for State-Owned Enterprises," Asian Development Bank, July 2020, pp. 190-224); Karen Jinrong Liu, Xiaoyan Lu, Junsheng Zhang, and Ying Zheng, "State-Owned Enterprises in China: A Review of 40 Years of Research and Practice," *China Journal of Accounting Research*, Volume 13, Issue 1, March 2000; Lingling Wei, "China's Xi Ramps Up Control of Private Sector," *The Wall Street Journal*, December 10, 2020; Scott Livingston, "The New Challenges of Communist Corporate Governance," CSIS Brief, January 15, 2021.

²³ China's national champions are firms that have a dominant or leadership position in China's market and receive certain government support, preferences, and market protections. They are not always formally depicted as such, but in certain instances they are identified to play particular roles in China's economic and industrial policy plans. U.S. Chamber of Commerce, "Competing Interests in China's Competition Law Enforcement: China's Anti-Monopoly Law Application and the Role of Industrial Policy," August 2014.

market regulator, and has direct financial and policy interests in the market segments and companies in which it invests and favors. China uses an interplay of trade and investment protections combined with targeted market openings to incentivize the transfer of foreign technology and advanced production capabilities to China and PRC entities.²⁴ The PRC government enjoys informal influence in setting market conditions and terms for companies.²⁵ Unlike the United States, where the legal and regulatory system aims to protect individual rights, including from government interference, the regulatory and legal system in China is oriented toward protecting and advancing the interests of the state.²⁶ China's actions introduce new considerations for U.S. policies, laws, and regulations because the CPC has strong levers of influence among its top firms and controls the court system in China, making it difficult for U.S. companies to seek redress in China.²⁷

Corporate Structures

Many Chinese firms that list on U.S. stock exchanges and operate offshore use complex structures that may obscure risks, state ties—including to the Communist Party of China (CPC), the government, and the military—and other corporate details, complicating the effectiveness of U.S. government oversight and U.S. investors' legal recourse. In many instances, the stocks and core assets of parent Chinese firms are not listed on U.S. exchanges. Like other foreign companies, some Chinese firms use American Depositary Receipts (ADRs), a structure that allows a secondary U.S. exchange listing of a foreign company.²⁸ The overseas parent firm's stocks are listed in the United States through a contractual arrangement that bundles the company's stock certificates. Most listings of China's large state-owned enterprises (SOEs) are ADRs. These ADRs typically include a small portion of the shares that SOEs list in China. The original China-listed shares represent a small portion of the overall firm. This structure potentially shields the parent and its assets from the exercise of shareholder rights and financial or litigation risk. The U.S. legal entity for China's SOEs may be a shell company with few assets of its own.²⁹

The opacity of China's system can make it hard to secure evidence. It also can prolong litigation and impose significant costs on U.S. investors in asserting their rights. The PRC government's backing and support for Chinese firms in U.S. courts could create potential asymmetric advantages in their resources over U.S. counterparts. Even when a Chinese SOE parent company directs and controls a U.S. entity, it has proven difficult (but not impossible) to establish the relationship in legal proceedings. Since 2014, the Aviation Industry Corporation of China (AVIC), for example, has tried to deny direct ties to its U.S. affiliates and assert immunity under the Foreign Sovereign Immunities Act (P.L. 94-583) to thwart U.S.

²⁴ James McGregor, "China's Drive for 'Indigenous Innovation': A Web of Industrial Policies," U.S. Chamber of Commerce and APCO Worldwide, July 2010.

²⁵ Jeremie Waterman and Tami Overby, "China's Approval Process for Inbound Foreign Direct Investment: Impact on Market Access, National Treatment and Transparency," U.S. Chamber of Commerce, November 11, 2012.

²⁶ Pittman P. Potter, "The Chinese Legal System: Continuing Commitment to the Primacy of State Power," *The China Quarterly*, February 12, 2009; Jamie P. Horsley, "Party Leadership and Rule of Law in the Xi Jinping Era: What Does an Ascendant Chinese Communist Party Mean for China's Legal Development?," The Brookings Institution, September 2019; Moritz Rudolf, "Xi Jinping Thought on the Rule of Law: New Substance in the Conflict of Systems with China," Stiftung Wissenschaft und Politik, SWP Comment, April 2021.

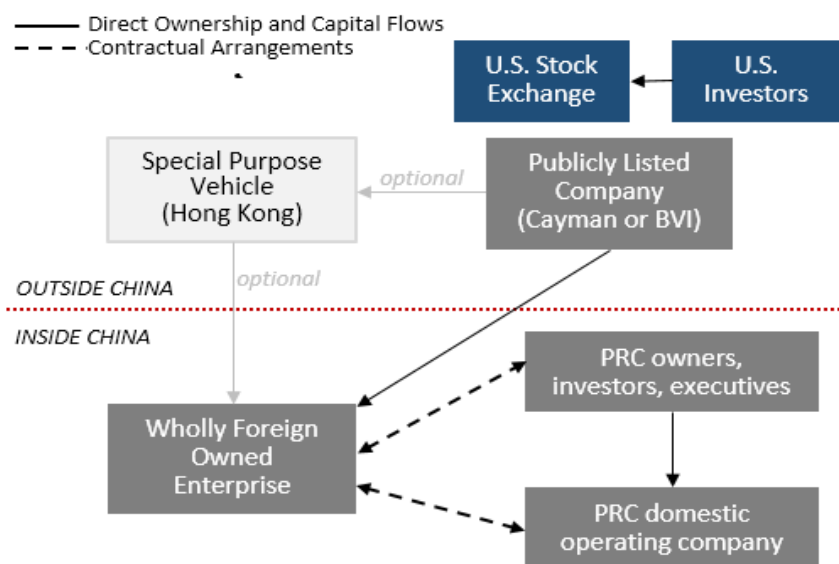
²⁷ See CRS In Focus IF11803, *U.S. Capital Markets and China: Issues for Congress*, by Michael D. Sutherland and Karen M. Sutter Jamie P. Horsley, "Party Leadership and Rule of Law in the Xi Jinping Era: What Does an Ascendant Chinese Communist Party Mean for China's Legal Development?," Global China Report, The Brookings Institution, September 2019.

²⁸ United States Securities and Exchange Commission, "Investor Bulletin: American Depositary Receipts," August 2012, <https://www.sec.gov/investor/alerts/adr-bulletin.pdf>.

²⁹ Shen Hong and Yvonne Lee, "China Sees Citic Listing as Model for State-Firm Overhauls," *The Wall Street Journal*, June 2, 2014.

litigation, despite China having committed when it joined the World Trade Organization (WTO) that its state firms would operate on a commercial basis.³⁰

Figure 1. Outline of the VIE Structure



Source: CRS, with information from multiple sources. Note: Example of a typical variable interest entity (VIE) structure. The specific potential flows between the U.S. Stock Exchange and U.S. investors, and the VIE structure, are not shown.

CRS estimates that two-thirds of all PRC firms listed in the United States—including Alibaba, Baidu, and Tencent—use a variable interest entity (VIE) structure. While not unique to Chinese firms, many Chinese companies use a VIE structure to work around Chinese government restrictions on direct or active foreign investment in certain sectors. The structure has also been used by firms to participate and compete in otherwise restricted market segments in China.³¹ A VIE structure involves the owners of a Chinese firm creating an offshore holding company in which foreign investors can purchase an equity claim. The holding company is tied to the “parent” through a series of contracts and revenue sharing agreements that mimic ownership arrangements but do not provide the same rights typically afforded to investors in U.S.-listed firms.³² The contracts underpinning the VIE allow the PRC owner(s) to move funds across the

³⁰ Patrick Jenevein, testimony before the U.S. – China Economic and Security Review Commission on *Chinese Investment in the United States: Impacts and Issues for Policymakers*, January 26, 2017; “Chinese state entities argue they have ‘sovereign immunity’ in U.S. courts,” *Reuters*, May 11, 2016, <https://www.reuters.com/article/us-china-usa-companies-lawsuits-idUSKCN0Y2131>.

³¹ See CRS In Focus IF11803, *U.S. Capital Markets and China: Issues for Congress*, by Michael D. Sutherland and Karen M. Sutter. The term “variable interest entity” originates from the U.S. Financial Accounting Standards Board FIN46(R), which stipulates the conditions for consolidating VIEs in corporate financial statements. For more, see Financial Accounting Standards Board, “FASB Interpretation No. 46 (revised December 2003): Consolidation of Variable Interest Entities,” https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1175801627792&acceptedDisclaimer=true.

³² Chinese variable interest entity (VIE) structures typically depend on five types of legal agreements: 1) a loan agreement that capitalizes the VIE; 2) an equity pledge made by the VIE owners as collateral; 3) a call option agreement allowing the WFOE to purchase the VIE at a set price; 4) a power of attorney agreement that assigns to the WFOE normal shareholder rights; and 5) a series of technical service agreements or asset licensing agreements that allow the WFOE to extract all of the residual profits of the VIE. See Paul L. Gillis, “Accounting Matters: Variable Interest Entities in China,” *Forensic Asia*, September 18, 2012, <https://www.chinaaccountingblog.com/vie-2012septaccountingmatte.pdf>.

business, while creating a firewall between the listed entity and the core assets and licenses held by the PRC owner (**Figure 1**).³³

VIE arrangements appear to have no definitive legal standing in China, which may leave U.S. investors without recourse in China. U.S. Securities and Exchange Commission (SEC) Form 20-F disclosures by some firms acknowledge the risks of VIEs because they are incorporated offshore, conduct most operations in China, and have executives who reside outside the United States.³⁴ Some Chinese VIEs have reduced U.S. shareholder value, including for large corporate investors, by shifting business licenses and issuing off-the-books bonds. In 2010, for example, Alibaba reportedly failed to inform Yahoo (a 43% stake investor) about its spinoff of the online payment firm Alipay to a separate VIE, controlled by its chairman Jack Ma. Some analysts assess that the terms of the subsequent settlement were unfair to Yahoo.³⁵ In February 2021, global investors reportedly also had no alternative exit strategy or legal rights for an estimated \$10 billion invested in an offshore shell company after the PRC government suspended Ant Financial's \$34.5 billion IPO in Shanghai and Hong Kong.³⁶ In 2021, the PRC government enhanced controls over technology firms, including new restrictions on Alibaba, shareholding and a board seat in ByteDance, and new data security reviews for firms listing offshore.³⁷

Disclosure and Accounting Issues

While most Chinese firms are required to file an SEC 20-F annual report for foreign issuers, there are exemptions on specific disclosure requirements, particularly for ADRs. The SEC relies on China's reporting and disclosure rules, which are less extensive than U.S. requirements.³⁸ Disclosure of shareholders and operations may present a conflict of interest for Chinese firms with government ties. China's government prohibits the Public Company Accounting Oversight Board (PCAOB)—a nonprofit entity created by Congress to oversee audits of U.S.-listed firms—from inspecting the work of auditors based in China and Hong Kong.³⁹ Chinese law restricts the auditors' documentation of work performed in the country from being transferred out of China. The PRC government has sometimes invoked state secrets and national security provisions to limit the ability of U.S. regulators to review financial reporting

³³ Brandon Whitehill, "Buyer Beware: Chinese Companies and the VIE Structure," *Council of Institutional Investors*, December 2017; Paul L. Gillis and Fredrik Oqvist, "Variable Interest Entities in China," *GMT Research*, March 13, 2019, <https://www.chinaaccountingblog.com/weblog/2019-03-vie-gillis.pdf>; Justin Hopkins, Mark Lang, and Jianxin Zhao, "The Rise of US-Listed VIEs from China: Balancing State Control and Access to Foreign Capital," *Kenan Institute of Private Enterprise Research Paper No. 19* (February 2018); and Jamie Powell, "VIEs: China's nuclear option," *The Financial Times*, October 9, 2019.

³⁴ See, for example, Baidu Inc., 2018 Annual Report, p. 25, <http://ir.baidu.com/static-files/b22e554d-d929-4c21-92a4-d3e1fbc4da0b>.

³⁵ Liana B. Baker, "Yahoo Gets Short End of Stick in Alibaba Deal," *Reuters*, July 29, 2011.

³⁶ Jing Yang and Julie Steinberg, "How a 'Surefire' Bet on Ant Group Has Trapped Global Investors," *The Wall Street Journal*, February 9, 2021.

³⁷ Keigh Zhang and Jing Yang, "China Targets Firms Listed Overseas After Launching Didi Probe," *The Wall Street Journal*, July 6, 2021.

³⁸ Securities Exchange Act of 1934, §240.12g3-2, https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ac604a56b88470087f66b127d7c029f0&mc=true&n=pt17.4.240&r=PART&ty=HTML#se17.4.240_112g3_62.

³⁹ U.S. Securities and Exchange Commission, "Statement on the Vital Role of Audit Quality and Regulatory Access to Audit and Other Information Internationally—Discussion of Current Information Access Challenges with Respect to U.S.-listed Companies with Significant Operations in China," December 7, 2018, <https://www.sec.gov/news/public-statement/statement-vital-role-audit-quality-and-regulatory-access-audit-and-other>.

of U.S.-listed, China-based companies.⁴⁰ PCAOB's inability to confirm the financial health of U.S.-listed Chinese firms may expose U.S. investors in these firms to greater risk.

In June 2020, NASDAQ delisted Chinese firm Luckin Coffee after it was found to have fabricated sales.⁴¹ The Holding Foreign Companies Accountable Act (P.L. 116-222) requires firms to disclose state and military ties and mandates a delisting from U.S. exchanges if the PCAOB cannot inspect a firm's auditors for three consecutive years. In July 2020, the SEC issued an alert about U.S. exposure to China's financial markets.⁴² In November 2020, the SEC announced disclosure considerations for China-based issuers.⁴³ In July 2021, the SEC enhanced scrutiny of Chinese firms, particularly VIEs, after China's restrictions on U.S.-listed firms wiped out an estimated \$400 billion in value and China's ride-hailing firm DiDi Global Inc. failed to fully disclose regulatory risks before listing on the New York Stock Exchange.⁴⁴

The ongoing financial troubles of Evergrande Group, China's second-largest property developer, have highlighted several accounting and investment practices that affect the firm's financial position and that are not necessarily unique to Evergrande.⁴⁵ U.S. auditors and underwriters have signed off on the firm's investment and accounting practices for years.⁴⁶ These practices include:

- **Counting unbuilt and unsold properties and interest payments as assets.** About 60% of the firm's assets are unbuilt and unsold properties, and the firm counts loan interest payments as assets. This inflates the firm's position and increases risks if property values fall.⁴⁷
- **Using previously-financed deals as collateral for new loans.** This practice allowed the firm to accumulate debt and become leveraged.⁴⁸ The People's High Court of Hainan Province determined that another state-tied firm undergoing government restructuring due to debt issues, HNA Group, had affiliates that provided mutual guarantees for repayments.⁴⁹ The Swiss government in 2019 determined that HNA used similar practices to leverage and finance its global acquisitions and operations.⁵⁰
- **Investing in unrelated sectors beyond the core business.** Some Chinese firms use insurance, trust, and wealth management businesses to earn higher returns and invest offshore. The Shenzhen government is investigating Evergrande's insurance business.⁵¹

⁴⁰ Karen Yeung, "Trade war may scuttle China's interest to share 'state secret' company audit reports with U.S." *South China Morning Post*, July 5, 2019, <https://www.scmp.com/economy/china-economy/article/3017457/trade-war-may-scuttle-chinas-interest-share-state-secret>. For an overview of the U.S. accounting and auditing regulatory structures involved, see CRS Report R44894, *Accounting and Auditing Regulatory Structure: U.S. and International*, by Raj Gnanarajah.

⁴¹ "Luckin Coffee Receives Delisting Notice from Nasdaq for Failure to File its Annual Report," Company Press Release, June 23, 2020.

⁴² "U.S. Investors' Exposure to Domestic Chinese Issuers," Risk Spotlight, Division of Economic and Risk Analysis, Securities and Exchange Commission, July 6, 2020.

⁴³ "Disclosure Considerations for China-Based Issuers," CF Disclosure Guidance: Topic No. 10, Division of Corporation Finance, Securities and Exchange Commission, November 23, 2020.

⁴⁴ "Statement on Investor Protection Related to Recent Developments in China," Public Statement, SEC Chair Gary Gensler, July 30, 2021.

⁴⁵ See CRS In Focus IF11953, *Evergrande Group and China's Debt Challenges*, by Karen M. Sutter and Michael D. Sutherland.

⁴⁶ Tabby Kinder, "Evergrande Crisis Puts PwC Role in Spotlight," *Financial Times*, October 11, 2021.

⁴⁷ China Evergrande Group, Annual Report 2020.

⁴⁸ Ibid.

⁴⁹ Kenji Kawase, "Chinese Court Says Troubled HNA Group's Businesses Highly Chaotic," *Nikkei Asia*, March 16, 2021.

⁵⁰ "HNA Group Commits Serious Breach of Disclosure Obligations," Swiss Financial Market Supervisory Authority (FINMA), September 25, 2019.

⁵¹ "China Evergrande's Wealth Management Arm Faces Local Government Inquiry," *Reuters*, September 27, 2021.

- **Use of complex offshore structures tied to the CEO.** Evergrande uses overlapping contracts and shareholding to facilitate financial flows that make it difficult to assess liabilities. The CEO and his family reportedly hold a large share of the firm's offshore debt.⁵² In March 2021, a Hainan court ruled that HNA's 320 affiliates should be merged because: (1) relationships and shareholding were too confusing to disaggregate; (2) internal controls were fictitious; (3) internal credit and debit dealings were impossible to align; and (4) shell companies were used extensively.⁵³

Economic Factors

U.S. concerns about China's high debt levels have intensified since September 2021, when Evergrande Group failed to repay its debt obligations.⁵⁴ Evergrande's situation highlights potential broader and longer-term risks in China's economy that Congress may consider as U.S. financial investors seek to expand investments in China. It also raises questions about the role of U.S. and other underwriters and auditors of Chinese firms and whether they sufficiently assess and disclose risks to U.S. investors.⁵⁵

China's government appears to be seeking to reduce debt and curtail market risks among firms like Evergrande, but defaults and a decline in property values could have broader effects. The property market accounts for almost 30% of China's GDP, a higher percentage than in most countries, and thus has complicated China's efforts to reduce debt.⁵⁶ Property is a main source of local government revenue and a key factor in corporate valuations and household net worth. This constrains policy options, despite China's leader Xi Jinping's statements that support reducing debt and inequality. Declining land revenue could affect local governments' ability to repay loans and special bonds, which Nomura Holdings estimates reached almost \$7 trillion in 2020 (44% of China's GDP).⁵⁷ China relies on debt-financed fixed asset investment (including property) and exports for growth, and is facing supply disruptions; energy and commodity shortages; and industrial and property overcapacity, potentially exacerbating economic risks.⁵⁸

Evergrande owes about \$305 billion in debt (2% of China's GDP). The firm is obligated to repay \$124 billion this year—including \$19.3 billion in bonds—but may only have 10% of this amount in cash on hand.⁵⁹ The firm is said to owe money to 171 domestic banks and 121 financial firms.⁶⁰ Off-book liabilities have not been disclosed. As China's largest issuer of high-yield dollar denominated debt, Evergrande was an attractive investment, despite known risks, because it paid coupons of 7.5% to 14%.⁶¹

⁵² "In Depth: How Evergrande's Founder Played the Capital Markets," *Caixin*, September 28, 2021.

⁵³ Kenji Kawase, "Chinese Court Says Troubled HNA Group's Businesses Highly Chaotic," *Nikkei Asia*, March 16, 2021.

⁵⁴ Narayanan Somasundaram, "Evergrande Favors Domestic Investors as Default Looms," *Nikkei Asia*, October 19, 2021.

⁵⁵ Han Wei, "Hong Kong Regulator Probes PwC on Evergrande Audit," *Caixin*, October 19, 2021.

⁵⁶ Greg Ip, "China's Necessary but Risky Pivot from Debt," *The Wall Street Journal*, September 23, 2021.

⁵⁷ Amanda Lee, "China Debt Concerns Mounting as Beijing Shifts Attention to Hidden Local Government Financing," *South China Morning Post*, September 20, 2021.

⁵⁸ Michael Pettis, "What Does Evergrande Meltdown Mean for China?," China Financial Markets, Carnegie Endowment for International Peace, September 20, 2021.

⁵⁹ On October 21, 2021, Evergrande reportedly transferred \$83.5 million to Citibank in its role as a trustee to repay investors for a September 23, 2021 coupon payment that had been due on September 23, 2021. Thomas Hale and Hudson Lockett, "Evergrande Pays Missed Dollar Bond Coupon, says Chinese State Media," *Financial Times*, October 22, 2021.

⁶⁰ "China: What is Evergrande and is it too Big to Fail," BBC News, September 29, 2021.

⁶¹ Brian Spegele, Julie Steinberg, and Elaine Yu, "How Evergrande Grew and Grew, Despite Years of Red Flags," *The Wall Street Journal*, October 8, 2021.

China's total debt—household, corporate, and government—is estimated to have reached 290% of GDP in 2020, with the majority of debt held by companies.⁶²

The PRC government so far is using a traditional toolkit to rein in risky activity, while trying to avoid market contagion and moral hazard, a tendency toward riskier behavior when someone else bears the risks. The government benefits from a closed capital account, but the size of Evergrande's exposure (including secondary exposure), could complicate this approach, weaken confidence, and raise debt levels.

- **Commercial bankruptcy is a policy choice that appears to be prompted by Chinese government actions.** Evergrande's debt crisis was triggered by government restrictions on its ability to raise new funds to pay its debt obligations, exposing its highly leveraged position. Tightened housing policies have further softened the market and weakened the position of Evergrande and other Chinese property firms.⁶³
- **Restructuring assets and shareholding aims to stabilize operations and avoid a direct bailout.** The PRC government is a shareholder in Evergrande and many other firms it investigates or restructures.⁶⁴ The government typically directs state investors to acquire assets and shareholding positions to cover liabilities and reposition troubled firms, at times realigning winners and losers within China's system.⁶⁵ In 1999 and 2003, the government created large asset management companies to offload pervasive non-performing loans in the state banking sector. In 2012, the government directed firms to prop up the Shanghai Stock Exchange. The Shenzhen government has intervened to support Evergrande in the past. State investors are now investing in the firm and its subsidiaries, and are assuming some of its liabilities.⁶⁶
- **Creditors may not be repaid equally.** It is uncertain to what extent China will allow losses on Evergrande's creditors and whether it might offer preferential repayment terms for domestic creditors.⁶⁷ Some analysts expect the PRC government to prioritize domestic retail investors, suppliers, contractors, and banks.⁶⁸ With the collapse of the Guangdong Investment Trust Corporation in 1999, the government prioritized domestic creditors.⁶⁹ Internal transactions among business units and executives, as well as unregistered

⁶² CRS review of data from the Bank of International Settlements.

⁶³ "Economic Watch: China's First-tier Cities Tighten Real Estate Policies," *Xinhua*, March 27, 2021.

⁶⁴ The Shenzhen government is a large shareholder in Evergrande. In 2017, Evergrande moved its real estate assets into the Hengda Real Estate firm, with plans (later deferred) to list Hengda on the Shenzhen Stock Exchange through a reverse takeover of Shenzhen Real Estate, a Shenzhen government firm. Hengda sold 25 percent of its shares to the Shenzhen government and other state investors. Evergrande is also tied to the central government. The Ministry of Finance's CITIC Group is a shareholder. In 2018, Evergrande signed a \$16 billion agreement with the central government's China Academy of Science to invest in priority emerging technologies on its behalf. Evergrande has acquired electrical vehicle firms in the United States, the UK, and Sweden, and has invested in biotechnology research at Harvard University.

⁶⁵ Thomas Hale, Edward White, and Sun Yu, "Evergrande: What would China's biggest debt restructuring look like?," *Financial Times*, September 22, 2021; Yu Ning, Wang Juanjuan, and Denise Jia, "HNA Group's Final Crisis," *Caixin*, February 22, 2021.

⁶⁶ Matthew Loh, "Beijing is Working Behind the Scenes to Pull Evergrande out of Danger, Urging State-Owned Firms to Buy the Property Developer's Assets," *Business Insider*, September 29, 2021.

⁶⁷ Narayanan Somasundaram, "Evergrande Favors Domestic Investors as Default Looms," *Nikkei Asia*, October 19, 2021.

⁶⁸ Michael Pettis, "What Does Evergrande Meltdown Mean for China?," *China Financial Markets*, Carnegie Endowment for International Peace, September 20, 2021.

⁶⁹ T.K. Chang, "Ten Lessons of the GITIC Bankruptcy," *The Wall Street Journal*, January 12, 2021; Wu Jiesi, *Chinese Phoenix: The Debt Restructuring of the Guangdong Enterprises Group*, ISI Publications, 2001.

investments, may not be repaid. In the Chinese government's restructuring of HNA Group, the company is proposing to only repay \$25 billion of \$60 billion in obligations.⁷⁰

Political Factors

The national security assessments of both the Trump and Biden Administrations have warned about China's trajectory and have prioritized concerns about China as a strategic competitor.⁷¹ There is ongoing concern among some in the executive branch and Congress about the ways in which U.S. commercial and investment ties may be supporting China's industrial policies of concern and funding the development of technological capabilities of concern that also may support China's military. Concerns about the risks that China's statist economic and technology practices and the related asymmetric structure of commercial ties may pose to U.S. national interests have been building for over 15 years in the executive branch, Congress, and the U.S. business community. Moreover, passive financial investments may indirectly support China's policies to restrict its strategic and technology sectors to foreign competition because China can access U.S. capital through financial markets instead, without having to worry about U.S. control or competition. This lack of reciprocity in investment terms and China's market barriers appears to disadvantage the United States.

The U.S. government has taken some actions to restrict U.S. investments in certain firms identified as being tied to China's military, but the ecosystem of relevant activity tied to China's dual-use industrial policies is arguably broader.⁷² In June 2021, the Biden Administration issued Executive Order (E.O.) 14032—which supersedes the Trump Administration's E.O. 13959. It restricts U.S. capital market investments in certain named PRC companies identified as being tied to China's military. The E.O. omitted some military-tied firms that had been previously identified by the Department of Defense and included in the November 2020 Trump Administration Executive Order.⁷³ Some in the U.S. financial sector had challenged the scope of E.O. 13959, including corporate nomenclature and whether listed firms are tied to their China parent.⁷⁴ Some Chinese firms challenged the earlier E.O. on due process and evidence issues and said they would launch parallel indices to retain stocks in question.⁷⁵ As of June 2020, the U.S. Department of Defense (DOD) identified 44 PRC military firms operating in the United States under reporting requirements in the FY1999 National Defense Authorization Act (NDAA) (P.L. 105-261). The new executive order and the June 2021 DOD list do not include previously-listed firms, such as China National Chemical Corporation, Xiaomi, Inc., and Advanced Micro Fabrication Equipment. DOD's list is not exhaustive and some experts view it as only a first step in identifying Chinese firms of concern.

⁷⁰ Wang Juanjuan and Manyun Zou, "HNA Seeks to Repay Less Than Half of Debt Claims Sought Against Airline Unit," *Caixin*, September 28, 2021.

⁷¹ "Interim National Security Strategic Guidance," Office of the White House, March 3, 2021; "National Security Strategy of the United States of America," Office of the White House, December 18, 2017.

⁷² See CRS In Focus IF10964, "Made in China 2025" *Industrial Policies: Issues for Congress*, by Karen M. Sutter; CRS In Focus IF11684, *China's 14th Five-Year Plan: A First Look*, by Karen M. Sutter and Michael D. Sutherland; CRS Report R46767, *China's New Semiconductor Policies: Issues for Congress*, by Karen M. Sutter; and CRS Report R46581, *Semiconductors: U.S. Industry, Global Competition, and Federal Policy*, by Michaela D. Platzer, John F. Sargent Jr., and Karen M. Sutter.

⁷³ "Executive Order on Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China," June 3, 2021.

⁷⁴ Seleha Mohsin and Jennifer Jacobs, "Biden Team Likely to Proceed With Trump China Investment Ban," *Bloomberg*, May 6, 2021.

⁷⁵ "Granting Plaintiffs' Motion for Preliminary Injunction; Granting Plaintiffs' Motion for Leave to File Supplemental Declaration," *Xiaomi Corporation vs. Department of Defense*, United States District Court for the District of Columbia, March, 12, 2021, https://www.courtlistener.com/recap/gov.uscourts.dcd.226816/gov.uscourts.dcd.226816.21.0_1.pdf.

These concerns are exacerbated by developments in China to tighten control in the name of national economic security interests. Since 2014, China's government has adopted a set of interrelated laws and measures that seek to enhance the government's control over a wide range of commercial activity, within and outside of China. These measures signal the government's growing assertiveness in advancing and aligning China's national policy tools to seek global economic, technology, and military leadership. The measures include extraterritorial reach and aim to counter policy tools and actions that the United States and other governments have applied toward China. The policies pressure U.S. and other firms to abide by China's policies and laws in ways that contravene U.S. authorities. Some of China's actions appear to be aimed at pressuring U.S. and foreign firms to work around U.S. and foreign government authorities and potentially violate U.S. and foreign laws by penalizing firms that contravene China's measures. Some provisions provide for retaliation in what appears to be an effort to codify and legitimize the PRC government's apparent propensity to use economic coercive measures to advance its economic and political objectives, often arguably in violation of global trade rules and norms.⁷⁶

China's efforts to promote data sovereignty appear to be central to advancing its broader economic security policies. China has expanded data localization requirements and placed data under new trade authorities, such as export controls and security review requirements for Chinese firms listing or operating overseas. China's new measures enhance the government's control over foreign data (e.g., personal identifying and health information), intellectual property (IP), technology, and research that is transferred to or developed in China and may increase the potential risks to the United States of U.S. government, commercial, and academic activities in these areas. In 2021, China has passed laws on data security and personal data that appear aimed at strengthening PRC government control and curtailing U.S. extraterritorial reach over data subject to China's control.⁷⁷

These new requirements could further limit the ability of the U.S. government to implement measures, such as SEC requirements that PRC-listed firms disclose details about their owners and subsidiaries. In July 2021, for example, China's Cybersecurity Administration reportedly undertook a security review of the China's ridesharing service Didi Chuxing Technology Co., arguably due in part to concerns that its overseas listing on the New York Stock Exchange could prompt greater public disclosure and release of the company's data as part of U.S. listing requirements.⁷⁸ Some Members of Congress have asked the SEC to investigate and respond to these measures and related PRC government actions regarding particular companies listed on U.S. exchanges.⁷⁹ In July 2021, the SEC announced it would require additional disclosure by and scrutiny of PRC firms listed on U.S. exchanges, and particularly those using a VIE structure.⁸⁰

⁷⁶ See CRS Report R46915, *China's Recent Trade Measures and Countermeasures: Issues for Congress*, by Karen M. Sutter.

⁷⁷ Mary Lam, "PRC Legal Update: Key Takeaways from China's Two Sessions 2021," Bryan Cave Leighton Paisner, March 16, 2021; Jihong Chen, Peng Cai, Jiawei Wu, Yating Jiao, and Jiabin Sun, "New Legislative Trend of Tightening ICV Data Regulation in China," Zhong Lun Law Firm, June 1, 2021.

⁷⁸ Lingling Wei and Keith Zhai, "Chinese Regulators Suggested Didi Delay Its U.S. IPO," *The Wall Street Journal*, July 5, 2021.

⁷⁹ Kiran Stacey and James Politi, "Senators Call on U.S. Securities Regulator to Investigate Didi IPO," *The Financial Times*, July 8, 2021.

⁸⁰ "Statement on Investor Protection Related to Recent Developments in China," Public Statement by SEC Chair Gary Gensler, July 30, 2021, <https://www.sec.gov/news/public-statement/gensler-2021-07-30>. CRS estimates that two-thirds of all Chinese firms listed in the United States use a VIE structure. A VIE structure involves the owners of a Chinese firm creating an offshore holding company to which foreign investors can purchase an equity claim. The holding company is tied to the "parent" through a series of contracts and revenue sharing agreements that mimic ownership arrangements but do not provide the same rights typically afforded to investors in U.S.-listed firms. See CRS In Focus IF11803, *U.S. Capital Markets and China: Issues for Congress*, by Michael D. Sutherland and Karen M. Sutter.

Considerations for Congress

Many Members of Congress have raised concerns about market transparency and U.S. investor protections, and in 2020, Congress passed the Holding Foreign Companies Accountable Act (P.L. 116-222) to address its concerns about the lack of compliance by Chinese firms with the SEC's statutory audit requirements. Congress also has focused on potential risks arising from areas in which the U.S. government may lack visibility and understanding of aggregate PRC financial holdings in the United States and U.S. holdings in China. In the 116th Congress, some Members introduced legislation that would have required the Secretary of the Treasury to submit to Congress a report on the exposure of the United States to China's financial sector (S. 4629). In addition, the National Defense Authorization Act for FY 2021 (P.L. 116-283) requires the Secretary of the Treasury to conduct a study about the extent to which China's increasing global trade and investment exposes the international financial system to increased risk relating to illicit finance. Some in Congress have raised concerns that U.S. investors may be funding PRC state and military-tied firms, and broader industrial policies and activities of concern.⁸¹ In May 2020, the U.S. government's Thrift Savings Plan board deferred implementing a decision to tie its international fund to an index that includes Chinese firms. The deferral was in response to pressure from Congress and the Trump Administration.⁸² In the 2021 NDAA, Congress reauthorized and bolstered requirements for DOD to report on PRC military firms operating in the United States.

Congress also might consider the potential costs and benefits of the following options:

- Expanding U.S. government identification of Chinese firms with state and military ties and potentially expanding related restrictions.
- Examining China's role beyond U.S. stock exchange listings—such as private equity, debt financing, and private placements—to assess the costs and benefits of U.S. exposure and strategic implications. As the U.S. government increases oversight and scrutiny over Chinese firms listed on U.S. exchanges, other investment options may emerge.
- Considering due diligence and liability requirements for U.S. actors that represent Chinese firms; potentially urging the SEC to further investigate and verify the accuracy and completeness of the information provided and to issue regular alerts on China investments.
- Strengthening disclosure requirements—including for investment risk and beneficial ownership—to account for state ties, opacity in China's system, complex corporate structures, and limited legal recourse. Consider requiring that all firms, including ADRs, (1) file a 10K equivalent with full details about ownership, shareholding, and corporate ties; (2) issue quarterly reports and timely updates on major changes; and (3) provide separate unconsolidated financial statements for VIE contracts and controllers.
- Potentially requiring Chinese firms to: (1) establish a U.S. legal presence directly tied to its China parent; (2) hold ultimate beneficiaries in China legally accountable for listed firms; and (3) place a significant deposit with U.S. regulators in the event of litigation.
- Examining how Chinese firms are operating, investing, and raising funds in U.S. markets or with U.S. capital in strategic and emerging technology sectors, with a focus on those

⁸¹ In March 2021, Senators Marco Rubio, Mike Braun, Tom Cotton, Ben Sasse, John Kennedy, and Rick Scott introduced the American Financial Markets Integrity and Security Act. The legislation would prohibit Chinese companies that are listed on the U.S. Department of Commerce Entity List or the U.S. Department of Defense list of Communist Chinese military companies from accessing U.S. capital markets. Representative Mike Gallagher introduced companion legislation in the House of Representatives.

⁸² Ana Swanson, "Federal Retirement Fund Halts Planned China Investment Under Pressure," *The New York Times*, May 13, 2020.

- that remain closed or restricted to U.S. competitors in China. Determining if there is sufficient visibility and oversight of China's activity. Working with the executive branch to set reciprocity terms and seek similar provisions with other countries to align approaches.

Congress also may consider:

- How common are Evergrande's accounting and investment practices among Chinese firms? What is the full scope of Evergrande's liabilities and potential direct and indirect exposure for U.S. and other firms?
- What do PRC government efforts to restructure Chinese firms show about the role of the state in China's companies? Are there risks of PRC government overreach or miscalculation?
- How open, transparent, and accountable are China's financial markets to U.S. investors? Do U.S. investors have the same rights in China that PRC investors have in the United States?
- What international rules may exist and how should they be reformed, strengthened, or leveraged to ensure more reciprocity, transparency and accountability in financial services?