

Article

Regulatory Competition and the World Bank's Doing Business Reports: Taiwan's Liberalization of the Minimum Capital Requirement for Incorporation as an Example

Chang-Hsien Tsai *



元照出版提供 ABSTRACT 請勿公開散布

In 2009 Taiwan repealed the minimum capital requirement for incorporation (MCR), owing to the World Bank (WB)'s Doing Business (DB) reports. This article presents regulatory/jurisdictional competition as an analytical framework for convergence towards the liberalization of the MCR, especially in the case of Taiwan. To analyze the dynamics producing the regulatory change as a type of legal transplants promoted by intergovernmental organizations (IGOs) like the WB, this article compares the United States, the European Union (EU) and Taiwan and explores how regulatory competition creating a "law market" led to convergence towards the reduction or abolishment of the MCR. In the case of Taiwan, this article illustrates how the WB, via its DB reports, has promoted international regulatory competition leading to the domestic lobbying by anti-regulatory and exit-affected interest groups and how the law market forces may have driven the Taiwanese government to enact the legal transplants, thus converging towards the liberalization of the MCR. The findings have significant implications. Specifically, similar law market dynamics behind inter-jurisdictional regulatory competition has

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* Chang-hsien TSAI (LL.B., LL.M., National Taiwan University; LL.M. in Corporate Law, New York University School of Law; J.S.D., University of Illinois College of Law) is a Professor of Law and Business at National Tsing Hua University in Taiwan, where he specializes in corporate law, financial market regulations, and securities regulation. E-mail address: chstai@mx.nthu.edu.tw.

been at work in a federal nation like the United States, a supranational federal system like the EU, and internationally. Moreover, the Taiwanese case study demonstrates that such an IGO as the WB would take initiatives in acting as a public actor to diffuse its preferred legal model such as liberalization of red tape like the MCR across national borders, by promoting jurisdictional competition sparked by its DB indicators and rankings.

Keywords: *Convergence Theory, Legal Transplant, Regulatory Competition, Jurisdictional Competition, Minimum Capital Requirement, World Bank, Law Market*



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I. INTRODUCTION

In 2009, Taiwan repealed the minimum capital requirement for incorporation (MCR) that served as an entry barrier to new firms;¹ this abolishment was apparently influenced by the World Bank (WB)'s Doing Business (DB) reports. This article provides a regulatory/jurisdictional competition framework for explaining convergence towards the liberalization of the MCR, especially in Taiwan. Specifically, this article argues that the WB, through its annual DB survey, has been promoting inter-jurisdictional regulatory competition leading to convergence towards liberalization of the MCR;² this competitive mechanism compelled Taiwan to abolish statutory MCR in 2009.³

To consider the dynamics affecting the change as a type of legal transplants promoted by intergovernmental organizations (IGOs) like the WB, this article compares the United States, the European Union (EU) and Taiwan and explores how jurisdictional competition contributed to the reduction or abolishment of the MCR. Specifically, firm mobility has been strengthened in the United States, the EU and Taiwan to allow entrepreneurs to choose the jurisdiction of incorporation. Firm mobility enables firms to opt out of the company law of their home jurisdictions and instead to avail themselves of the company law of another jurisdiction. Thus, because company laws in some jurisdictions offer less restrictive rules, legal constraints on company formation in regulating jurisdictions are not strictly binding. Put simply, firm mobility feeds business demands for legal flexibility and for quality regulatory products worldwide.⁴ This is an

1. The MCR demands that an entrepreneur seeking to set up a corporation pay or promise to pay equity fund of a certain amount for doing the business.

2. According to the original convergence theory proposed by Hansmann and Kraakman, corporate rules around the world will eventually reach a high level of uniformity. *See generally* Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, in CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE 33, 33-68 (Jeffery N. Gordon & Mark J. Roe eds., 2004). However, according to the path dependence approach proposed by Bebchuk and Roe, corporate rules in practice are dependent on distinct local social and economic contexts. *See* Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, in CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE, *id.* at 69, 72-73.

3. *See infra* Part IV (discussing this central case in full detail).

4. Andrew Morriss and Clifford Henson argue that offshore financial centres (OFCs) offer regulatory or tax competition against onshore jurisdictions. A Citibank official's comment illustrated this competition:

[L]eading international financial institutions, such as Citi, have become essentially agnostic with respect to where their primary place of business is. Citi is well established in financial centers throughout the world--wherever the regulatory system is, in our view, sufficiently developed to protect our interests and to foster investor confidence. We no longer have a built-in preference for New York or Zurich or Frankfurt or London, and our institutional clients are prepared to invest billions of dollars in companies listed only in Hong Kong, or Brazil, or Western Europe Because of the general improvement in global regulatory quality, business considerations rather than physical location increasingly delineate where we execute transactions.

example of how governments' capacity for enforcing preferred laws and regulations may be constrained by competition among states for economic activity through the "law market". The market for law is the competitive mechanism through which governing laws can be chosen by people and firms rather than mandated by states. This choice is created by the mobility of at least some people, firms, and assets and the incentives of at least some states to compete for people, firms, and their assets by creating desired laws.⁵

The demand side of the market for corporate law spurs foreign jurisdictions to provide a competitive legal product.⁶ As a result, the foreign or international supply of law poses a competitive threat to domestic legislatures in the regulating jurisdictions. This competitive force (the reforms adopted in foreign jurisdictions) then promotes the need for domestic legal reforms (i.e., the domestic supply of law).⁷

Professors Erin O'Hara and Larry Ribstein explain that jurisdictional competition generating the market for law provides a significant check on governments.⁸ By comparing company-law reforms for statutory minimum capital among the United States, the EU and Taiwan in different times, the opportunity for testing the O'Hara-Ribstein law market theory is provided in the international dimension. This comparison also furnishes a fresh look from the angle of legal transplants at the interaction of jurisdictional competition and legal restrictions, showing how jurisdictional competition would lead to convergence of company law reforms, particularly towards the reduction or abolition of the MCR.⁹ Taiwan's case is an example of how

Andrew P. Morriss & Clifford C. Henson, *Regulatory Effectiveness & Offshore Financial Centers*, 53 VA. J. INT'L L. 417, 418-19 (2013). Taiwan's experience with restrictions on outward investment in China in the late 1990s and 2000s also illustrated this regulatory competition or jurisdictional competition through changes in laws and regulations. See generally Chang-Hsien Tsai, *Exit, Voice and International Jurisdictional Competition: A Case Study of the Evolution of Taiwan's Regulatory Regime for Outward Investment in Mainland China, 1997-2008*, 39 SYRACUSE J. INT'L L. & COM. 303 (2012).

5. ERIN A. O'HARA & LARRY E. RIBSTEIN, *THE LAW MARKET* 65 (2009).

6. Scholars studying competitive or corporate federalism also compare the law to the product a jurisdiction offers. See, e.g., Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225 (1985).

7. See *infra* Part II.A (where Figure 1 illustrates the law market dynamics of jurisdictional competition).

8. O'HARA & RIBSTEIN, *supra* note 5, at 13-14.

9. IGOs can serve as both the destination and source for legal transplants, generating and disseminating global rules including formal law and legal institutions. See Jodi L. Short, *Transplanting Law in a Globalized World: Private Transnational Regulation and the Legal Transplant Paradigm*, in *COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS* 430, 431-32 (Francesca Bignami & David Zaring eds., 2016). In addition, IGOs like the United Nations would enlist private, non-state actors such as multinational corporations (MNCs) as transmitters of global rules. *Id.* at 433; see, e.g., Chang-Hsien Tsai & Yen-Nung Wu, *What Conflict Minerals Rules Tell Us about the Legal Transplantation of Corporate Social Responsibility Standards without the State: From the United Nations to the United States to Taiwan*, 38 NW J. INT'L L. & BUS. 233 (2018).

IGOs or international development agencies such as the WB act as public actors to diffuse liberalization of red tape like the MCR across national borders, by promoting jurisdictional competition via the DB indicators and rankings. Specifically, Taiwan's legislative development illustrates that the WB as an IGO stimulates regulatory competition via its DB rankings, which leads to the domestic lobbying by anti-regulatory and exit-affected interest groups, pressuring the Taiwanese government to enact the legal transplants, thus converging towards the liberalization of the MCR.

Generally speaking, firm or capital mobility spurs jurisdictional competition by offering a more efficient legal product. Foreign jurisdictions may find it in their interest to market their company law to domestic firms in the regulating jurisdictions (the "offensive" regulatory competition). At the very least, regulating jurisdictions may avoid losing firms to foreign jurisdictions by supplying less restrictive rules to defend against the "sale" by foreign jurisdictions (the "defensive" regulatory competition). As a result, either type of regulatory competition creating a "law market" may encourage development of company law that is more attractive to entrepreneurs and firms.¹⁰ This development can be seen in comparing the competitive mechanisms of United States, European and Taiwanese law that relax the MCR.

Part II.A of this article explains the theory of the operation of jurisdictional competition and extends the O'Hara-Ribstein law market framework to include international jurisdictional competition. Part II.B then explains why the MCR is inefficient, laying the foundation for the analysis of the decline of the MCR presented in Parts III and IV. Parts III compares the United States and the EU in the first place, along with the case study of Taiwan in Part IV, to show how jurisdictional competition galvanized the abolition or reduction of the MCR, which has been deemed mostly outdated and inefficient. In particular, the WB would encourage legal transplantation of liberalizing the MCR, through jurisdictional competition for capital, talent, firms and other production factors because IGOs like the WB can assume a role similar to the role of the federal government in a federal system such as the United States or the EU, by promoting regulatory competition that, under certain conditions, can improve social welfare. Part V concludes by drawing implications from Taiwanese reforms in the shadow of the WB's annual DB reports.

(using the Taiwanese case study to illustrate how MNCs transmit conflict minerals-related disclosure rules through global supply chains as the creation of the rules can be attributed to the promotion of global political and scholarly concerns over conflict minerals by the United Nations.).

10. MATHIAS SIEMS, *COMPARATIVE LAW* 228-29 (2014).

II. THEORETICAL PERSPECTIVE ON JURISDICTIONAL COMPETITION AND THE MINIMUM CAPITAL REQUIREMENT

A. *How Inter-jurisdictional Regulatory Competition Impacts Local Regulation*

The increase of the international factor mobility caused by globalization lowers firms' exit costs, which in turn intensifies the inter-jurisdictional regulatory competition for mobile resources. Out-flowing capital and emigrating labor compel regulatory jurisdictions to improve the quality of laws and regulations. As a result, domestic interest groups demand that policy makers within a regulating jurisdiction liberalize costly laws and regulations.

This article focuses on the positive aspect of how jurisdictional competition brought about by firm mobility would provoke changes in local company law (e.g. the MCR) to attract incorporations of foreign firms (offensive regulatory competition) and to prevent the departure of domestic firms for foreign jurisdictions (defensive regulatory competition).

Laws and institutions are important types of government-provided goods, and globalization has galvanized inter-jurisdictional regulatory competition for mobile production factors with states seeking to lure economic activity by offering better laws and institutions.¹¹ Where a regulation might be costly, jurisdictional competition can push the regulating jurisdiction to improve the substantive content of local laws.¹² Further, "[l]egal changes would be provoked by firms' increasing need for legal flexibility."¹³ In other words, the feedback mechanisms underlying jurisdictional competition, options of exit (choice of location) and voice (political action) can be "transmitted through interest groups to political decision-makers" and translated into the regulatory evolution or the liberalization of costly regulation.¹⁴

Globalization promotes mobility of capital, talent and firms and reduces their costs of exit from a country. This, in turn, helps materialize the rise of inter-jurisdictional regulatory competition or the international market for law; even countries with large local markets are affected by the law market forces underlying inter-jurisdictional regulatory competition.¹⁵ Therefore, if

11. See WOLFGANG KASPER, GLOBAL COMPETITION, INSTITUTIONS, AND THE EAST-ASIAN ASCENDANCY 4-11 (1994); WOLFGANG KASPER & MANFRED E. STREIT, INSTITUTIONAL ECONOMICS: SOCIAL ORDER AND PUBLIC POLICY 345 (1998).

12. See O'HARA & RIBSTEIN, *supra* note 5, at 191-99.

13. *Id.* at 110.

14. See Larry E. Ribstein, *Cross-Listing and Regulatory Competition*, 1 REV. L. & ECON. 97, 99 (2005).

15. See Mihir A. Desai, *The Decentering of the Global Firm*, 32 WORLD ECON. 1271, 1282

a country's regulation on firms is so inefficient, it would be disciplined by the international market for law and thus inevitably pressured to moderate the regulation to some degree. Professors Butler and Ribstein, in their analysis of the impact of the US "Sarbanes-Oxley" (SOX) regulations, emphasized that this understanding "would involve regulators appreciating the significant limitations on government's ability . . . to anticipate the full consequences of regulation."¹⁶ The law market dynamics of inter-jurisdictional regulatory competition under globalization can be summarized in Figure 1.

B. *The Decline of the Minimum Capital Requirement*

This part shows how justifications of the MCR became weaker and why the MCR came to be seen as inefficient. Next, it shows how these requirements have been declining internationally. This discussion lays the foundation for examples of how jurisdictional competition led to convergence towards the relaxation of these requirements.

Administration costs of the MCR that are part of the entry regulation are costly and they discourage entrepreneurship.¹⁷ The MCR serves as an entry barrier to new firms,¹⁸ thus reducing innovation and serving the interests of existing firms. Therefore, politicians favour the MCR, and the jurisdictional competition sparked by firms' "exit" (jurisdictional choice) is necessary as a way to avoid the power of the political "voice" of existing firms as a pro-regulatory interest group.¹⁹

(2009) (arguing that the United States' limits on firms' ability to change their legal domicile "will surely fail in the long run as the global market for corporate control can circumvent local efforts to retain ownership").

16. HENRY N. BUTLER & LARRY E. RIBSTEIN, *THE SARBANES-OXLEY DEBACLE: WHAT WE'VE LEARNED; HOW TO FIX IT* 96 (2006).

17. See generally Simeon Djankov et al., *The Regulation of Entry*, 117 Q.J. ECON. 1 (2002). See also *Business and Bureaucracy: Snipping Off the Shackles*, THE ECONOMIST (UNITED KINGDOM), at 71-73 (Nov. 6, 2010) [hereinafter *Bureaucracy*] (using a Nigerian example to explain why the WB published DB reports to push through liberalization of the entry regulation).

18. PAUL L DAVIES, GOWER AND DAVIES' *PRINCIPLES OF MODERN COMPANY LAW* 229 (7th ed. 2003).

19. Jurisdictional competition led to convergence towards the liberalization of the MCR in the EU, which afterwards appeared to encourage entrepreneurship. Reiner Braun et al., *Does Charter Competition Foster Entrepreneurship? A Difference-in-Difference Approach to European Company Law Reforms*, 51 J. COMMON MKT. STUD. 399, 413-14 (2013). See also REINIER KRAAKMAN ET AL., *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 130-31 (2nd ed. 2009) ("[T]he reduction or abolition of minimum capital rules throughout Europe appears to be associated with an increase in entrepreneurship."). As discussed in Part IV.A, it may also be the WB's original intention and desired outcome of publishing DB surveys that the slashing of regulatory costs of incorporating would increase the expected value of doing business. See Sam Schueth, *Winning the Rankings Game: The Republic of Georgia, USAID, and the Doing Business Project*, in *RANKING THE WORLD: GRADING STATES AS A TOOL OF GLOBAL GOVERNANCE*, 151, 151-53, 176-77 (Alexander Cooley & Jack Snyder eds., 2015).

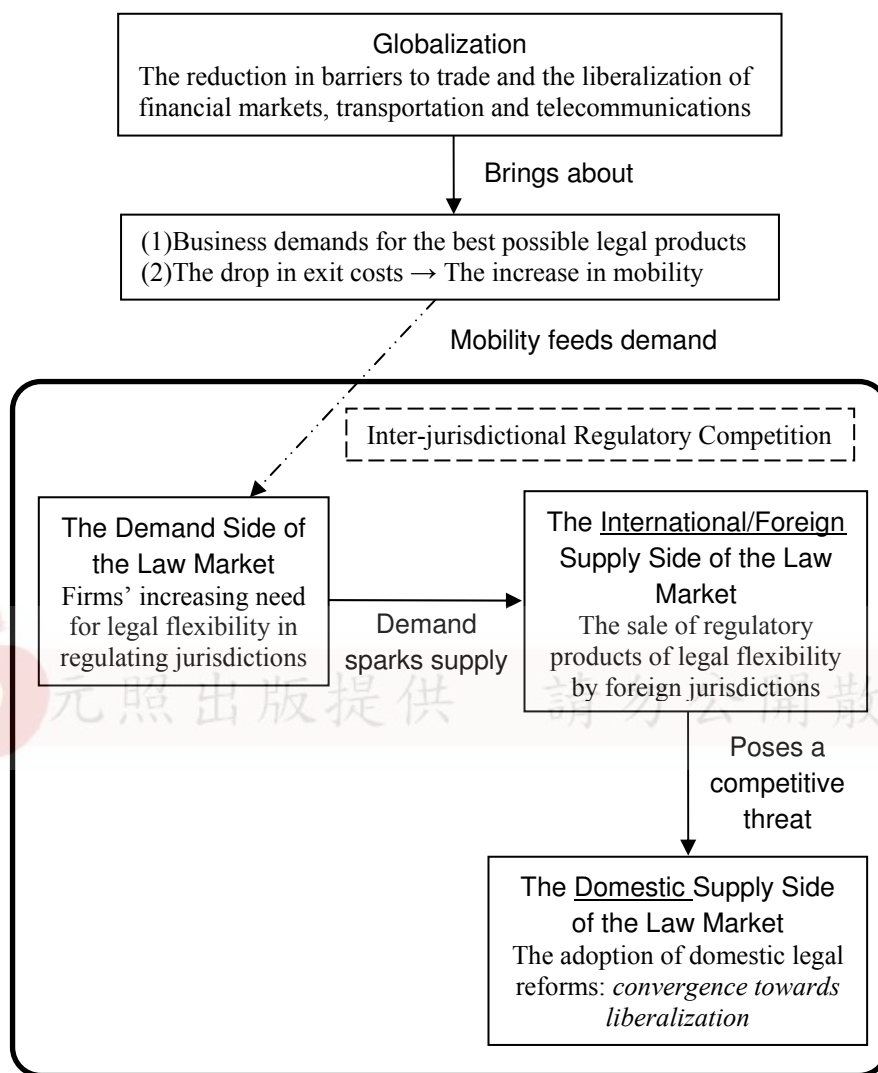


Figure 1 The Law Market Dynamics of Inter-jurisdictional Regulatory Competition under Globalization

Over time, the statutory minimum capital did not actually protect creditors.²⁰ Critics of legal capital argued the MCR was inefficient for several reasons.²¹ On the one hand, they contended the one-size-fits-all

20. See Simon Djankov, *The Regulation of Entry: A Survey*, 24 WORLD BANK RES. OBSERVER 183, 188 (2009); DAVIES, *supra* note 18, at 229-30; KRAAKMAN ET AL., *supra* note 19, at 131; Note, *Statutory Minimum Capitalization Requirements*, 5 WILLAMETTE L.J. 331, 343 (1969).

21. See WILLIAM T. ALLEN, REINIER KRAAKMAN & GUHAN SUBRAMANIAN, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 140 (3rd ed. 2009); KRAAKMAN ET AL., *supra*

regulation was not always efficient for each firm.²² For example in the United States, many state corporate act used to require that the minimum capital be paid in prior to commencing business. The amounts of the statutory minimum capital have mostly disappeared. Presumably the disappearance might be due to “the recognition that it is impossible to specify one minimum level of capital which will not be unnecessarily large for corporations conducting very small operations, but not ridiculously small for corporations conducting more substantial ventures.”²³ On the other hand, some commentator argues that “minimum capital requirements are not the best means to meet its declared goals”,²⁴ and that “[t]he strongest arguments why minimum capital requirements are simply not necessary are . . . that personal sanctions on the controllers of companies are far more efficient.”²⁵

note 19, at 131; BERNHARD UMFÄHRER, *THE REFORM OF EUROPEAN LEGAL CAPITAL RULES-ITS IMPACT ON UK AND AUSTRIAN COMPANY LAW* 41 (2009).

22. See Andreas Engert, *Life without Legal Capital: Lessons from American Law*, in *LEGAL CAPITAL IN EUROPE* 646, 650 (Marcus Lutter ed., 2006). As Paul Davies similarly maintains, company laws normally set only one or a small number of minimum capital rules (for example, one for private and another for public companies), but in fact, to be effective, the minimum capital requirement ought to be related to the riskiness of the business which the company undertakes. General minimum capital requirements tend either to be too low effectively to protect creditors (as in the case of the current British requirement) or too high, in which case they simply reduce competition (by discouraging new entrants into the field) whilst over-protecting creditors.

DAVIES, *supra* note 18, at 229. Likewise, from an economic perspective, Easterbrook and Fischel reason:

[Minimum capital requirements] have problems of their own. One is the obvious administrative cost associated with determining what amount of capital firms should raise. Another is the cost of error. If capital requirements are set too high, this will impede new entry and permit the existing firms to charge monopoly prices. Still another is the question of how firms must satisfy their capitalization requirements. For such requirements to be effective, the corporation must post a bond equal to its highest expected liability or hold sufficient funds in the corporate treasury and invest them in risk-free assets. The total held in this way will far exceed the expected risk created by firms as a group (because not all firms go bankrupt or incur the maximum possible loss). Under either alternative, the rate of return on equity investments will decrease. Thus at the margin people will shift capital away from equity investment in risky industries. This too represents a social cost.

FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 60 (1991) (alteration in original).

23. FRANKLIN A. GEVURTZ, *CORPORATION LAW* 129 (2nd ed. 2010). This problem has long been highlighted by Manning and Hanks before:

The question of what amount of assets must be paid in to an enterprise by its shareholders before it will be permitted to enter the market place has never been candidly addressed in American corporate law. For a governmental agency to prescribe minimum capital standards for particular enterprises or economic sectors has been considered wholly impractical as well as antithetical to the way in which we go about our economic process. There are exceptions to this statement, and they are significant ones; banks, insurance companies, and corporate trustees offer instances of enterprises where, as we have learned painfully, undercapitalization can be a public menace and in those instances a combination of statutes and regulations compels a minimum pay-in of equity assets. But the only fields of endeavor in which our law seriously undertakes to set minimum standards of capitalization are those we view as industries affected with a special public interest, and which we regulate in a number of other ways as well.

BAYLESS MANNING & JAMES J. HANKS, JR., *LEGAL CAPITAL* 21 (3rd ed. 1990).

24. UMFÄHRER, *supra* note 21, at 85.

25. *Id.* at 69.

This is because, in the English system for example, “the important cases for ex post remedies . . . [demonstrate that] the courts’ decisions [are] thus quite predictable and so offers overall a well balanced system that is at least more efficient to serve the encouragement of new businesses and creditor protection at the same time than compulsory minimum capital requirements.”²⁶ Andreas Pentz and others second this view by asserting that “[w]aiving the requirement of minimum capital as the necessary (minimum) provision of assets for commercial activities could be substituted by the personal liability of the shareholders or members of the management board.”²⁷ Put simply, the costs of the MCR may not be justified.²⁸

Therefore, the abolition of the MCR might be taken into consideration. Initially, for instance, the EU corporations adopting the public corporate form were required to have minimum capital of at least Euro 25,000; likewise, the Japanese MCR ranged from roughly US\$30,000 to US\$100,000, depending on the type of corporate form.²⁹ As criticism mounted, the MCR was reduced not merely in Japan and Europe but internationally as well; it was found across jurisdictions there was a convergence toward liberalizing the statutory minimum capital.³⁰ To date, an increasing number of jurisdictions have adopted this deregulatory approach to corporate finance.

III. JURISDICTIONAL COMPETITION AND THE MINIMUM CAPITAL REQUIREMENT IN THE US AND EU FEDERAL SYSTEMS

The corporate law market is part of the broader market for law.³¹ Generally, a market for corporate law is based on the parties’ choice, through incorporation, of the law of a specific state or nation. This market, as a self-ordering phenomenon, can impose discipline on lawmaking by forcing states or nations to compete with one another. Additionally, recognizing the

26. *Id.* at 66.

27. Andreas Pentz, Hans-Joachim Priester & André Schwanna, *Raising Cash and Contributions in Kind When Forming a Company and for Capital Increases*, in *LEGAL CAPITAL IN EUROPE*, *supra* note 22, at 42, 56.

28. See UMFÄHRER, *supra* note 21, at 41. See also KRAAKMAN ET AL., *supra* note 19, at 131 (“Most entrepreneurs appear to invest some capital in newly formed firms, even in the absence of minimum capital rules. This may indicate that the presence of capital is a rough-and-ready proxy for the ‘seriousness’ of entrepreneurs, by showing that they commit a non-trivial amount of money to their project.”).

29. REINIER KRAAKMAN ET AL., *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 84 (2004).

30. ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 21, at 139-40 (describing that Japan abolished the MCR in May 2006, while the European Commission also considered relaxing the MCR at that time).

31. Larry E. Ribstein & Erin A. O’Hara, *Corporations and the Market for Law*, *U. ILL. L. REV.* 661, 665 (2008).

incorporation of a locally based foreign corporation can encourage legal improvements to evolve more rapidly. With firms' ability to move among states or nations, the market for corporate law arises not only in the US and EU federal systems³² but also in the international context³³ (as shown in the case of Taiwan), despite local officials' efforts to protect their lawmaking authority.³⁴

A. *The United States*

The MCR in state statutes was quite common before the 1950s. The most common minimum amount of capital specified in these statutes was US\$1,000. Today, most states have abolished such requirements.³⁵

State competition in providing company law to attract firms to incorporate locally ("charter competition") has been part of the US legal system for more than a century. The rise of the charter competition can be attributed to the fact that "[t]he increasing mobility of the corporation in the latter part of the 19th century was an important factor in developing the [Internal Affairs Doctrine (IAD)],"³⁶ or the "Incorporation Theory."³⁷ This rule holds "that the law of the state of incorporation governs the relationship between the managers, the shareholders, and the corporation. Corporations

32. This article's classification of the EU as a federal system is based on the argument made by O'Hara and Ribstein:

The US federal system enables competition across the states for the provision of state law. Other countries are bound into various kinds of federations that facilitate comparable markets. Most important, the European Union has been moving toward a legal system that has some elements of US federalism.

O'HARA & RIBSTEIN, *supra* note 5, at 12.

33. Ribstein and O'Hara make a similar comparison between law market forces operating within federal systems and those in the international setting, arguing that law market forces function ubiquitously:

International securities regulation . . . operates on the national level rather than within a federal system like the United States or Europe. However, recent developments in international securities regulation show that forces similar to those operating on corporate law within federal systems are also operating on international securities laws.

Ribstein & O'Hara, *supra* note 31, at 710.

34. See O'HARA & RIBSTEIN, *supra* note 5, at 66, 217.

35. See ROBERT W. HAMILTON & RICHARD A. BOOTH, *CORPORATION FINANCE: CASES AND MATERIALS* 62 (3rd ed. 2001); ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 21, at 139-40; CHARLES R. T. O'KELLEY & ROBERT B. THOMPSON, *CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS: CASES AND MATERIALS* 568-70 (1999); MANNING & HANKS, *supra* note 23, at 21. See also Richard A. Booth, *Capital Requirements in United States Corporation Law*, in *LEGAL CAPITAL IN EUROPE*, *supra* note 22, at 620, 622-23 (describing that after states gradually started to permit free incorporation in the late nineteenth century, the provisions included in states statutes or constitutions usually prohibited the corporation from commencing business unless it had received a specified minimum amount of capital).

36. Ribstein & O'Hara, *supra* note 31, at 675 (alteration in original).

37. Christian Kirchner, Richard W. Painter & Wulf A. Kaal, *Regulatory Competition in EU Corporate Law after Inspire Art: Unbundling Delaware's Product for Europe*, 2 *EUR. COMPANY & FIN. L. REV.* 159, 160 (2005).

can choose their place of incorporation without having any other connection with the state of incorporation.”³⁸ Despite the different opinions among scholars, a fundamental assumption shared among these scholars is that the charter competition was driving the production of corporate law in recent time.³⁹ To be sure, states either changed their corporation law to “compete for incorporations on a national stage” (i.e. the offensive regulatory competition), or “aimed merely to produce laws that were sufficiently attractive that they would dissuade local corporations from reincorporating elsewhere.”⁴⁰

With the benefit of a contemporary perspective, it is apparent that the corporate law market or the jurisdictional competition for corporate charters fuelled by firm mobility drove the movement for moderation of strict legal capital rules (including the MCR).⁴¹ The history of the changes made by leading industrial states is illustrative because the limitations upon the size and powers of business corporations were removed due to the conviction that it was useless to maintain them in the sense that local legal restrictions would be evaded by firms incorporating in a specific state, say, New Jersey.⁴² The charter competition, therefore, led to convergence towards the liberalization of legal capital rules that could be proven inefficient.⁴³

The evolution of the abolition or reduction of the MCR by states fits the law market hypothesis well. If a state from which firms exit is unwilling to moderate the regulation on minimum capital to lessen the outflow of firms and capital (or to engage in defensive regulatory competition), the

38. Ribstein & O'Hara, *supra* note 31, at 662 (footnote omitted). However, as discussed below in Part III.B, until the *Centros* case, Europe has long applied the so-called “real-seat” rule, under which the applicable law is that of the jurisdiction where the firm’s headquarters are located, but European case law after the *Centros* ruling has changed to adopt a type of the IAD. *Id.* at 706.

39. Harwell Wells, *The Modernization of Corporation Law, 1920-1940*, 11 U. PA. J. BUS. L. 573, 575 (2009). Wells argues that there were also other drivers—that drafters for state corporate laws designed the new laws, “not merely to attract corporations, but to protect shareholders”, that “they aimed less to attract out-of-state incorporators than to retain incorporations of corporations already located there”, and that “[i]nterest groups were certainly involved in drafting and adoption—the laws gained great support from state bar associations—but alongside these local interest groups worked legal reformers . . .” *Id.*

40. *Id.* at 627. The latter type is the aforementioned “defensive regulatory competition”, which will also be discussed in the EU case. *See infra* Part III.B.

41. *See* William J. Carney, *The Political Economy of Competition for Corporate Charters*, 26 J. LEGAL STUD. 303, 321 (1997). He adds that the statutory minimum capital was merely “an anachronism still present in a few U.S. state laws.” *Id.* at 324. *See also* Booth, *supra* note 35, at 622; Charles M. Yablon, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*, 32 J. CORP. L. 323, 328 (2007).

42. *Louis K. Liggett Co. v. Lee*, 288 US 517, 560-64 (1933) (Brandeis, J., dissenting).

43. O'HARA & RIBSTEIN, *supra* note 5, at 110 (using par value rules to exemplify the liberalization of legal capital rules). *See also* Carney, *supra* note 41, at 324 (“Par value appears to be taken as seriously in Europe as it was in the United States in the late nineteenth and early twentieth centuries, although American lawyers have come to believe such protections are largely illusory.”) (footnote omitted).

underlying supply and demand forces in the market for law may contribute to deregulation in non-competing states to keep local corporations from incorporating elsewhere. For instance, if firms avoid states with stringent MCRs, exit-affected interest groups, such as lawyers, may lose potential clients and litigation business. Therefore, ignoring business demands for legal flexibility (abolition or reduction of the MCR as applied to local firms) could deter firms from making significant local investments, possibly stimulating local anti-regulatory and exit-affected interest groups to take action against the MCR.⁴⁴

Jurisdictional competition for corporate charters led to convergence towards the changed MCR in state statutes. This can be summarized by stating: the American corporate federalism possibly initiated the charter competition because states started this competition by enacting laws to attract firms to incorporate and with the beginning of the competition states could not but continue to update their laws in order to stay competitive.⁴⁵ As a result, the competitive dynamic drove states to offer a more efficient legal product in corporate law, that is, the abolition or reduction of the MCR.

B. *The European Union*

Initially, most European countries except the United Kingdom and the Netherlands applied and followed the so-called “real-seat” (*siège réel, siège social*) choice-of-law rule, which requires the law of a “company’s real or effective seat”, its “central administration”, or its “brain or nerve centre” where the main operational decisions are made, is to be followed rather than the rules of the company’s statutory domicile (registered office).⁴⁶ Nevertheless, increased firm mobility provoked by liberal trade rules within the EU put pressure on the choice of law rule. The revolution took place in 1999 with the *Centros* case⁴⁷ and was affirmed by the decisions in the

44. See O’HARA & RIBSTEIN, *supra* note 5, at 113.

45. Wells, *supra* note 39, at 628.

46. See ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 132 (1993); ERIC STEIN, HARMONIZATION OF EUROPEAN COMPANY LAWS: NATIONAL REFORM AND TRANSNATIONAL COORDINATION 29-31 (1971).

47. Case C-212/97, *Centros Ltd. v. Erhvervs-og Selskabsstyrelsen*, [1999] E.C.R. I-1459. What should be emphasized is the seminal *Centros* case, in which the ECJ held that *Centros Ltd.*, incorporated in the UK, could not be denied registration in the Danish Business Register even though the company operated entirely within Denmark and was incorporated in the UK merely in order to avoid more stringent Danish incorporation requirements for minimum capital. Marco Becht, Colin Mayer & Hannes F. Wagner, *Where Do Firms Incorporate? Deregulation and the Cost of Entry*, 14 J. CORP. FIN. 241, 246 (2008). The founders of the pseudo-foreign corporation publicly acknowledged they intended to circumvent the Danish minimum capital rules, and the ECJ prevented the Danish regulators from interfering. Christian Kersting, *Corporate Choice of Law-A Comparison of the United States and European Systems and a Proposal for a European Directive*, 28 BROOK. J. INT’L L. 1, 74 (2002).

Überseering and *Inspire Art*⁴⁸ cases. These cases changed the EU law to allow a full-fledged Delaware-type corporate charter competition for “tramp” or, in European parlance, “brass plate” corporations.⁴⁹

The *Centros* ruling suggested that even though a pseudo-foreign corporation simply wanted the more favourable and flexible law of the incorporation jurisdiction, the European Court of Justice (ECJ) would enforce the Incorporation Theory or the IAD because the real seat doctrine violated the “freedom of establishment” set out in Article 43(1) of the Treaty Establishing the European Community.⁵⁰ Because these rulings prevented EU Member States from imposing local corporate law on pseudo-foreign corporations, entrepreneurs began taking advantage of the new development and chose to incorporate their businesses in the UK.⁵¹ In *Inspire Art*, the ECJ allowed a UK-incorporated private company to evade Dutch rules, even though incorporating in the UK was simply to evade the Dutch MCR.⁵²

These cases created a European version of the IAD or the Incorporation Theory. Evidently, *Centros* and its progeny galvanized European competition in the form of “tramp” UK incorporations by firms based somewhere else in Europe and regulatory responses by other European countries to slash the minimum capital for limited liability companies (LLCs) and reduced costs of incorporations.⁵³ The ECJ's exposure of European jurisdictions to competitive pressure from the UK private LLCs drove various European jurisdictions to engage in jurisdictional competition through company law reforms, particularly the reduction or abolition of the MCR.⁵⁴

Thus, *Centros* allowed some regulatory arbitrage to escape rules on minimum capital for private corporations. This action has already produced defensive regulatory competition, leading France and Germany to relax the

48. Case C-167/01, *Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art Ltd.*, [2003] E.C.R. I-10155. In 2003, the ECJ further confirmed the decision made by *Inspire Art Ltd.*—a private company incorporated in Folkestone, England—to incorporate there while having its main business extensively within the Netherlands. The Dutch government maintained that while the company was able to legally operate in the Netherlands, it was necessary for it to abide by existing laws provided for real foreign corporations, which among other things required that the firm have minimum capital meeting the MCR for Dutch firms. Becht, Mayer & Wagner, *supra* note 47, at 246.

49. Ribstein & O'Hara, *supra* note 31, at 707.

50. See Jens C. Dammann, Note, *The Future of Codetermination after Centros: Will German Corporate Law Move Closer to the U.S. Model?*, 8 FORDHAM J. CORP. & FIN. L. 607, 614-18 (2003).

51. Luca Enriques & Martin Gelter, *How the Old World Encountered the New One: Regulatory Competition and Cooperation in European Corporate and Bankruptcy Law*, 81 TUL. L. REV. 577, 580 (2007).

52. Becht, Mayer & Wagner, *supra* note 47, at 243.

53. Ribstein & O'Hara, *supra* note 31, at 707.

54. See Enriques & Gelter, *supra* note 51, at 600-01; Federico M. Mucciarelli, *Freedom of Reincorporation and the Scope of Corporate Law in the U.S. and the E.U.* 46 (NYU Law and Economics Research Paper No. 11-07, 2011), <http://ssrn.com/abstract=1783607> (reporting that France, Italy and Germany amended the related legal capital rules).

requirements.⁵⁵ Also, the regulatory arbitrage might in part account for a convergence towards the liberalization of the MCR in some countries.⁵⁶ Specifically, European countries respond to the influx of new incorporations to the UK by decreasing or abolishing the statutory minimum capital and costs of incorporation. In particular, any competition that is modelled after UK standards is fundamentally similar to the jurisdictional competition provoked by firm mobility in the United States⁵⁷ even though the phenomenon in the EU is different in appearance from that within American federalism.

Before the corporate charter competition was unleashed in Europe by *Centros*, the legal system creating the US common market, where there are no tariffs, had already made it possible for US firms to exit from costly legal regimes in various states. This explains the competitive difference between Europe and the United States prior to *Centros*.⁵⁸ The “real-seat” rule obstructed jurisdictional competition in the EU before *Centros*. Studying the difference between US state corporation laws and those of EU Member States, William Carney found a large percentage of the mandates in the EU company law directives that do not exist in any US state laws. In effect, these mandates that were codified in US state codes have been abolished for several decades since they are not favourable for contemporary business practices.⁵⁹ This evidence supports the proposition that the ongoing jurisdictional competition for corporate charters in Europe is, after *Centros*, nudging European corporate law, at least for private LLCs, in the direction of legal flexibility.⁶⁰ This convergence towards the reduction or abolition of the MCR can also be explained by applying the same US general supply and demand law market forces to European firms’ business demands for legal flexibility.⁶¹ Furthermore, after *Centros*, all Member States in the EU have been required essentially to adhere to business demands for regulatory products of legal flexibility, which have been driving the European market for corporate law.

Thus, despite the fact that Europe and the United States have distinct

55. See Enriques & Gelter, *supra* note 51, at 600; Mucciarelli, *id.* at 46 (numerous EU Member States, “in recent years, perhaps as a form of defensive regulatory competition, have relaxed the mechanism for creditors’ protection of ‘private’ limited liability corporations”). Defensive regulatory competition denotes that jurisdictions that do not aggressively engage in charter competition at least try to avoid losing their own firms to foreign jurisdictions or keep domestic firms from using foreign law. Therefore, this competitive pressure compels them to offer less restrictive rules in corporate law or facilitate incorporations, particularly by cutting the statutory minimum capital.

56. Enriques & Gelter, *supra* note 51, at 613.

57. Becht, Mayer & Wagner, *supra* note 47, at 252.

58. Carney, *supra* note 41, at 303.

59. *Id.* at 319-24.

60. Braun et al., *supra* note 19, at 404.

61. See O’HARA & RIBSTEIN, *supra* note 5, at 117.

competitive environments,⁶² the same forces of the law market reign in both situations.⁶³ Domestic legislators in both federal systems seek to regulate corporate governance under the support of local pro-regulatory interest groups, just as they deal with other types of contracts. However, the ECJ rulings in *Centros* and its progeny have created an active incorporation market in the European Union. Small firms' mobility feeds the demand side of the law market and sparks competition for the supply of law by foreign jurisdictions.⁶⁴ Those firms thus attempt regulatory arbitrage in other EU Member States to satisfy their demands for legal flexibility. For example, from 2003 to 2006 more than 40,000 German entrepreneurs incorporated their firms in the UK.⁶⁵ On the intra-regional supply side, the UK has catered to this market, at least to the extent of lowering incorporation costs for small firms. Moreover, the exits of small firms have strengthened their voices on the domestic supply side to petition for less costly regulation of incorporation. There is evidence that the governments of some European jurisdictions made reforms with a view to facilitating the establishment of small firms and entrepreneurship in their own countries or preventing the loss of jurisdictional control of considerable portions of their economies.⁶⁶ Put differently, the demand side of the market for law, or the economic exit in the intra-regional environment signalled by small firms, bolsters such firms' voices in the political process in the domestic context, and this domestic supply side then pressures politicians or lawmakers within respective regulating states to enable the relaxation of the outdated MCR. In brief, the ECJ ruling in *Centros*, by supporting corporate mobility, unleashed law market forces behind the horizontal competition which were leading local governments to converge towards liberalization of the MCR, that is, providing less costly corporate law and alleviating rules on minimum capital, at least for private LLCs.⁶⁷

C. *A Comparison between the United States and the EU*

What drove the corporate charter competition in the nineteenth century in the United States and in contemporary Europe? Why was there a convergence towards legal flexibility or liberalization of the costly MCR? Ribstein and O'Hara argue the IAD sprang from the general law market

62. Mucciarelli, *supra* note 54, at 62.

63. Ribstein & O'Hara, *supra* note 31, at 709.

64. See Marco Becht, Luca Enriques & Veronika Korom, *Centros and the Cost of Branching*, 9 J. CORP. L. STUD. 171, 172 (2009).

65. *Id.*

66. Becht, Mayer & Wagner, *supra* note 47, at 243, 252.

67. SIEMS, *supra* note 10, at 230.

forces.⁶⁸ In the EU *Centros* unleashed these forces, even if legal and cultural conditions in the EU differed from those in the United States.⁶⁹

It emerges that the jurisdictional competition in the EU occurred later than that in the United States by nearly a century, following the rash of American business mergers beginning in the 1880s. Even if the breeding grounds of these two phenomena differ in appearance, the underlying competitive dynamics are almost the same. Responding to similar law market supply and demand forces, jurisdictional competition in both federal systems was spurred by business demands for legal flexibility and it drove the provision of increasingly cost-effective corporate law.⁷⁰ As a result, jurisdictional competition in the US and EU federal systems galvanized a convergence of company law reforms towards legal flexibility, particularly the reduction or abolition of the MCR.

IV. INTER-JURISDICTIONAL REGULATORY COMPETITION AND THE MINIMUM CAPITAL REQUIREMENT: THE CASE OF TAIWAN

A. *Globalization, National Competitiveness, and Jurisdictional Competition*

International trade and the movement of production factors such as capital, know-how and firms across national borders can impair local jurisdictions' regulatory capacity. Kasper and Streit have asserted that openness gives people and firms that were formerly subject to national jurisdictions the exit option, thus weakening the power of rulers or governments.⁷¹ We can observe that local powerful pro-regulatory interest groups that advocate protection from international competitors can push governments to interfere with international trade and the movement of capital, talent and even knowledge, and that to maintain openness across jurisdictions, IGOs such as the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD) may implement foreign investment codes to restrain the extent of intentional local interventions in international exchanges.⁷²

Therefore, globalization, by strengthening the influence of openness,

68. O'HARA & RIBSTEIN, *supra* note 5, at 109.

69. *Id.* at 123.

70. See Ribstein & O'Hara, *supra* note 31, at 710.

71. See KASPER & STREIT, *supra* note 11, at 342; SIEMS, *supra* note 10, at 242; Tsai, *supra* note 4, at 334-37. See also Short, *supra* note 9, at 434-44 (noting states' ability to legally control the transnational business activities of MNCs is severely limited in a globalized world; these constraints "have fostered the proliferation of private, transnational rule-diffusing actors").

72. See KASPER & STREIT, *supra* note 11, at 342.

promotes jurisdictional competition.⁷³ Stated differently, globalization has generated “institutional (or systems) competition”, or jurisdictional competition in offering the best possible legal products.⁷⁴ Because laws and regulations affect cost levels, they can serve as crucial factors in international competition for the private sector.⁷⁵ As a result, local governments in different jurisdictions compete more or less directly with each other by providing better and cost-effective laws and regulations.⁷⁶

Furthermore, since globalization increasingly illuminated issues of national competitiveness, corporate governance regimes among different jurisdictions seem to compete in a way like product market competition.⁷⁷ Local governments try to bring in corporate governance regimes with comparable competitive advantages.⁷⁸ More cost-effective laws and regulations would thus exert a positive influence on entrepreneurial activity and, ultimately, national competitiveness. For example, the WB's DB reports directed the attention of governments to fostering national competitiveness by stifling unnecessary regulatory barriers to new firm creation.⁷⁹ In concrete terms, law and finance scholars have focused on the “regulation of entry” while arguing more stringent regulation may suppress start-up activity.⁸⁰ The WB has played a leading role in formulating a strategy of regulatory reform to boost economic development.⁸¹ More importantly, the WB's DB project appeared to succeed in making various jurisdictions, Asia-Pacific countries for example, embrace reforms such as simplifying business start-up red tape as a way to boost economic growth.⁸²

Also, international agreements and IGOs aiming to stifle barriers to trade produce increasing pressure on local regulations. Professor Andrew Morriss asserts: “The General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) are examples of measures designed, albeit imperfectly, to reduce the opportunities available to domestic politicians to insulate areas of their economies from competition.”⁸³ More

73. See *id.* at 381. Tsai, *supra* note 4, at 305-07.

74. KASPER & STREIT, *supra* note 11, at 403.

75. *Id.* at 381.

76. See *id.* at 345, 399.

77. Donald C. Clarke, “Nothing But Wind”? *The Past and Future of Comparative Corporate Governance*, 59 AM. J. COMP. L. 75, 83 (2011).

78. *Id.* at 84.

79. Braun et al., *supra* note 19, at 399. Law and finance scholars seek to find a connection between legal and regulatory conditions in various jurisdictions and economic performance. La Porta and others' law and finance literature mainly refers to the following articles: Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. FIN. 1131 (1997); Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113 (1998).

80. See generally Djankov et al., *supra* note 17; Djankov, *supra* note 20, at 199-200.

81. See Braun et al., *supra* note 19, at 399; Djankov, *id.* at 200.

82. *Bureaucracy*, *supra* note 17, at 73.

83. Andrew P. Morriss, *The Role of Offshore Financial Centers in Regulatory Competition*, in

importantly, Morriss states:

Regulatory competition can similarly limit such rent-seeking because it facilitates exit by those harmed by the rent-seeking. To the extent that it reduces the ability of domestic interest groups to rent-seek by making it more difficult to insulate areas of the economy from competition, *international regulatory competition* serves a valuable role in reducing deadweight losses due to rent-seeking.⁸⁴

Accordingly, this article argues that IGOs such as the WB encourage international regulatory competition among various jurisdictions in offering the best possible legal products.⁸⁵ This, in turn, reduces the opportunities available to domestic politicians to insulate areas of their economies from competition. For instance, the WB regularly publishes DB surveys, a type of national competitiveness ranking report.⁸⁶ Since the publication of the WB's DB reports, the most enthusiastic reforming jurisdictions have continually loosened their regulatory barriers to business start-ups.⁸⁷ Professor Sarfaty notes that IGOs "like the Work Bank are indirectly shaping domestic law through country rankings that are based on indicators" and that "[c]ountries are therefore motivated to reform their laws in order to rank higher and garner more foreign aid".⁸⁸ Regardless of the acquisition of foreign aid, Taiwan's convergence towards liberalization of the MCR can still illustrate this movement against the red tape.⁸⁹ This phenomenon appears to demonstrate

OFFSHORE FINANCIAL CENTERS AND REGULATORY COMPETITION 102, 117 (Andrew P. Morriss ed., 2010). On the flip side, as dominant countries may create a regulatory cartel through IGOs like the OCED to resolve regulatory arbitrage across borders, this would impede jurisdictional competition. See Andrew P. Morriss & Lotta Moberg, *Cartelizing Taxes: Understanding the OECD's Campaign Against "Harmful Tax Competition"*, 4 COLUM. J. TAX L. 1, 3-4 (2012) (As the OECD evolved into "a cartel aimed at restricting competition among states", "[d]omestic policy decisions constrained by competition among jurisdictions to attract capital [would] be transformed into international decisions dominated by a cartel of wealthy nations.") (alteration in original).

84. Morriss, *supra* note 83, at 117-18 (emphasis added) (footnote omitted).

85. See Djankov, *supra* note 20, at 184. See also Clarke, *supra* note 77, at 97 (observing that "[a]n interesting development in recent years has been the explicit promotion of a corporate governance agenda by international financial institutions such as the World Bank, the International Monetary Fund, and the Asian Development Bank.").

86. *Bureaucracy*, *supra* note 17, at 71. See also Galit A. Sarfaty, *Regulating through Numbers: A Case Study of Corporate Sustainability Reporting*, 53 VA. J. INT'L L. 575, 577 (2013) (noting that "the World Bank's Doing Business indicators produce a ranking of developing countries based on the quality of their business laws and legal institutions. The Bank's classification then influences its allocation of foreign aid. . . .").

87. *Bureaucracy*, *supra* note 17, at 71.

88. Sarfaty, *supra* note 86, at 586. See also Short, *supra* note 9, at 434 (noting that "IGOs induce countries to adopt their preferred legal models by offering incentives like financial aid or membership in lucrative trading blocs").

89. See *infra* Part IV.B.

that the ranking reports published by IGOs like the WB can drive a variety of jurisdictions to compete with each other in improving national competitiveness, which may be helpful for attracting internationally mobile factors of production. By improving and updating regulatory systems, inter-jurisdictional regulatory competition may thus spur the relaxation of the MCR. In other words, the WB's DB project has led governments to keep an eye on their national competitiveness in order to boost economic development. This, in turn, brought about jurisdictional competition through the supply of the less costly regulation for entry, including the MCR.

Globalization contributes to more exchange and transfer of legal knowledge, therefore encouraging regulatory competition among jurisdictions for production factors such as foreign direct investment (FDI) and business, in improving laws and regulations, such as relaxing the entry regulation on new firms.⁹⁰ This article argues that the WB also built up the inter-jurisdictional regulatory competition through its DB reports, hence assisting in the accomplishment of relaxing the MCR among states worldwide. In other words, the DB reports may be playing a pivotal role in the worldwide reform of facilitating incorporations and contributing to the liberalization of the MCR internationally.⁹¹ Specifically, these reports are deregulation measures designed to limit domestic rent-seeking, which activates inter-jurisdictional regulatory competition for capital, know-how and firms. These reports boost various jurisdictions' incentives to compete by supplying cost-effective laws and may lead to the quest for more legal flexibility or bring about the domino-effect convergence globally towards the abolition or reduction of the MCR. This article takes advantage of Taiwan's experience to test how inter-jurisdictional regulatory competition under globalization can produce company law reforms, especially in terms of the systematic liberalization of the statutory minimum capital, a regulatory barrier to new firm creation.

90. See Rafael La Porta, Florencio Lopez de Silanes & Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285, 327 (2008); Nuno M. Garoupa & Tom Ginsburg, *Economic Analysis and Comparative Law*, in THE CAMBRIDGE COMPANION TO COMPARATIVE LAW 57, 69 (Mauro Bussani & Ugo Mattei eds., 2012). In the context of comparative corporate governance, Donald Clarke seems to liken this kind of explanation to the theory of economic Darwinian selection. Clarke, *supra* note 77, at 96-97. Therefore, if jurisdictions fail to adopt efficient corporate governance rules, businesspeople may plausibly exit or threaten to exit (or not to come). *Id.* at 97. See also Franklin A. Gevurtz, *The Globalization of Corporate Law: The End of History or a Never-Ending Story?*, 86 WASH. L. REV. 475, 479 (2011) ("Key to convergence predictions typified by the 'End of History' article is the notion that forces of economic competition will drive corporations and corporate laws toward an equilibrium point marked by maximum efficiency--a sort of *economic Darwinism*." (emphasis added) (footnote omitted)).

91. Djankov, *supra* note 20, at 188-89.

B. *The Convergence towards the Liberalization of the Minimum Capital Requirement*

Taiwan's Company Act follows the legal capital rules and civil law approach of requiring a minimum paid-in capital not only for a company limited by shares (an equivalent of an EU public corporation) but also for a limited company (an equivalent of an EU private corporation). Since 1966, the Taiwanese MCR regulator, which is the Ministry of Economic Affairs (MOEA), has generally required a company limited by shares to have a minimum paid-in capital. This requirement was based upon the wording of Paragraph 3 of Article 156 of the Company Act that stated "the amount of minimum capital for a company limited by shares may, with due regard to the different nature of the company and in the light of conditions, be prescribed by the competent authority by decree."⁹² The MOEA prescribed respective minimum capital levels for different companies limited by shares in specific industries, such as the tourism hotel industry and the coach industry.

Before the tightening amendment to Taiwan's Company Act of 1980,⁹³ according to the Official Comment to this amendment, only a company limited by shares was subject to the MCR whereas a limited company not. As a result, some entrepreneurs took advantage of the loophole, operating businesses by forming limited companies instead of companies limited by shares to reduce costs of minimum capital. For example, the then-amount of minimum capital for companies limited by shares that were authorized to construct affordable housing for rent and for sale to ordinary citizens in the construction industry was NT\$5 million, while that for limited companies doing the same business was usually between NT\$0.1 million and 1 million. As Taiwan's government sought to prevent businessmen from using regulatory arbitrage to do business in the form of a limited company,⁹⁴ Paragraph 2 was added to Article 100 of the Company Act to explicitly stipulate MCR for a limited company, and the new paragraph provided "the amount of minimum capital for a limited company may, with due regard to the different nature of the company and in the light of conditions, be prescribed by the competent authority by decree." Under this authorization, the MOEA likewise required a minimum capital of NT\$500,000 generally.⁹⁵

92. Gongsì Fa (公司法) [Company Act] § 156, para. 3 (promulgated Dec. 26, 1929, effective July 1, 1931, as amended Nov. 1, 2018) (Taiwan).

93. Company Act § 100, para. 2.

94. In other words, they formed a limited company to avoid the MCR for a company limited by shares.

95. Lin Kuo-Chuan (林國全), *Erling Lingjiu Nian Shang Bannian Gongsì Fa Sanci Xiuzheng Pingxi* (二〇〇九年上半年公司法三次修正評析) [*A Comment on Three Amendments to Taiwan's Company Act in the First Half of 2009*], 137 TAIWAN FA XUE ZA ZHI (台灣法學雜誌) [TAIWAN L. J.]

The Company Act was majorly overhauled in 2001.⁹⁶ The original wording of the MCR provisions for both limited companies and companies limited by shares, stating that “*may*, with due regard to the different nature of the company and in the light of conditions, be prescribed by the competent authority by decree”, was replaced with the following text: “*shall* be prescribed by the central competent authority by decree.” (Emphases are added by this author.) Specifically, “*may*” was changed to “*shall*”, while “*central*” was added in order to clarify which competent authority was being referred to. Also, Taiwan’s legislature decided it was more appropriate for respective competent authorities over different industries to decide whether the minimum capital should be prescribed in accordance with the nature of each industry, so that the wording “with due regard to the different nature of the company and in the light of conditions” was deleted.⁹⁷ Since 2001, the Company Act has not distinguished what kind of business a company operates but simply prescribes the one-size-fits-all minimum capital respectively for limited companies and for companies limited by shares. Subsequent to the legislative amendment in 2001, the MOEA explicitly prescribes that the minimum capital for limited companies is NT\$500,000 and that minimum capital for companies limited by shares is NT\$1 million.⁹⁸ Nonetheless, these requirements did not work well in Taiwan for two reasons. First, they have not been enforced effectively due to the fact that the competent authority did not have enough manpower or resources to check whether the registered capital for all the enterprises was accurate.⁹⁹ Second, the minimum thresholds of NT\$1 million and 500,000 have not been adjusted for a long time. Consequently, effective thresholds for commencing a non-financial business have actually been decreased over time.¹⁰⁰

Having felt the pressure for an inevitable reform from the WB’s DB reports published since 2003, the MOEA in 2008 lowered the statutory minimum capital both for a limited company and for a company limited by shares.¹⁰¹ The minimum capital for a company limited by shares changed

1, 11 (2009).

96. Company Act §§ 100 & 156.

97. See LAI YUAN HE ET AL. (賴源河等), XIN XIUZHENG GONGSI FA JIEXI (新修正公司法解析) [THE ANALYSIS OF THE NEWLY AMENDED COMPANY LAW] 123 (2002).

98. Xingzheng Yuan Jingji Bu Jing Shang Zi Di 09002253490 Ling (行政院經濟部經商字第 09002253490 號令) [Order of the Ministry of Economic Affairs, Executive Yuan, Jing-Shang-Zi No. 09002253490] (promulgated Dec. 5, 2001).

99. See Lin, *supra* note 95, at 13.

100. Lawrence S. Liu, *Global Markets and Local Institutions: Corporate Law System and Financial Reform Debates in Taiwan* 14 (Oct. 8, 2001), <http://ssrn.com/abstract=293082>.

101. The MOEA recognized that halving the MCR in 2008 was aimed at improving Taiwan’s “doing business” environment, that is to say, to improve Taiwan’s ranking in the WB’s DB survey. Memorandum from the Ministry of Economic Affairs on Whether to Abolish the Minimum Capital Requirement to the Council for Economic Planning & Development 2 (Nov. 27, 2008) [hereinafter *Memorandum*] (on file with the author).

from NT\$1 million to NT\$500,000 and for a limited company from NT\$500,000 to NT\$250,000.¹⁰² In April 2009, all of these minimum capital rules in Taiwan's Company Act were repealed.¹⁰³ To illustrate how Taiwanese political decision-makers were influenced by the rankings and how they then urged legislative abolishment, the two meetings convened by the MOEA in 2008 to discuss how to moderate the MCR were decisive. The following major Taiwanese local chambers of commerce, as anti-regulatory interest groups, pushed for the abolishment: the Chinese National Federation of Industries (CNFI),¹⁰⁴ the National Association of Small and Medium Enterprises Republic of China (NASME R.O.C.),¹⁰⁵ and the General Chamber of Commerce of the R.O.C. (ROCCOC).¹⁰⁶ In addition, the Association of Certified Public Accountants of the R.O.C. (ROCCPA),¹⁰⁷ as an exit-affected interest group, strongly supported substantial moderation of the MCR. As a result, the MOEA decided to propose a resolution to abolish the MCR to Taiwan's legislature.¹⁰⁸ These meetings turned interest groups' complaints about Taiwan's poor rankings into a strong voice in the political process and the meetings provided major anti-regulatory and exit-affected interest groups with an efficient arena where they, together with entrepreneurs, exerted pressure on the government to liberalize the MCR. The aforementioned legislative development illustrates that the WB as an IGO spurs regulatory competition via its DB rankings, which brings about the domestic lobbying by anti-regulatory and exit-affected interest groups, pressuring the Taiwanese government to enact the legal transplants, therefore converging towards the liberalization of the MCR.¹⁰⁹ Specifically, since globalization increases the mobility of production factors across borders, without improving the rankings, it would be difficult for Taiwan to retain local entrepreneurs with threats of exit to incorporate companies in Taiwan and attract out-of-state incorporators and the FDI. The meetings and results fit in with how general demand and supply forces underlying

102. Xingzheng Yuan Jingji Bu Jing Shang Zi Di 09702407950 Ling (行政院經濟部經商字第09702407950號令) [Order of the Ministry of Economic Affairs, Executive Yuan, Jing-Shang-Zi No. 09702407950] (promulgated Apr. 24, 2008).

103. After these dramatic amendments by the Taiwanese government, the WB's website has noted this reform: "DB2010: Starting a Business: Taiwan eased the business start-up process by abolishing the minimum capital requirement, and introducing time limits. . . ." See WORLD BANK, BUSINESS REFORMS IN TAIWAN, CHINA

<http://www.doingbusiness.org/reforms/overview/economy/taiwan-china> (last visited Apr. 6, 2017).

104. CNFI, <http://www.cnfi.org.tw/front/bin/home.phtml> (last visited Apr. 6, 2017).

105. NASME R.O.C., <http://www.nasme.org.tw/front/bin/home.phtml> (last visited Apr. 6, 2017).

106. ROCCOC, <http://www.roccoc.org.tw/english/> (last visited Apr. 6, 2017).

107. ROCCPA, <http://www.roccpa.org.tw/home.php> (last visited Apr. 6, 2017).

108. *Memorandum*, *supra* note 101, at 3-6.

109. See SIEMS, *supra* note 10, at 231-32. The legal transplant literature suggests that states "engaged in rational, intentional, interest-driven action" would often "enact the transplants they receive through legislative action". Short, *supra* note 9, at 434.

inter-jurisdictional regulatory competition operate as discussed in Part II.A, where we found that the local interest groups worked with Taiwanese politicians and were involved in the liberalization of the MCR. In this case, the feedback mechanisms of exit and voice that interplay under jurisdictional competition were transmitted through interest groups to political decision-makers in Taiwan.

As one commentator argued, “[t]he repeal was made to ‘enhance Taiwan’s competitiveness’, because these minimum capital rules put Taiwan’s rankings for this topic in the World Bank’s ‘Doing Business’ survey in an extremely unfavorable position”.¹¹⁰ In particular, it was the very WB’s DB report of 2007 that pushed Taiwan’s executive and legislative branches to collaborate to halve the MCR in 2008 and then to abolish it in 2009.¹¹¹ This abolishment moved Taiwan to a co-ranking of first in the category of “Paid-in Minimum Capital (% of income per capita)”, along with 69 other countries in the world.¹¹² This change should be regarded as an

110. Lawrence S. Liu, Executive Vice President, China Development Financial Holdings, Taipei, Taiwan, Legal Rules for Financial Conglomerates: Taiwanese Perspectives on Post-Crisis Financial Regulation, Address at International Conference on Financial Law Reform, NTU College of Law 7 (June 4, 2010) (transcript available in the Center for Corporate and Financial Law, NTU College of Law).

111. What pushed the executive branch of Taiwan’s government to seriously deliberate whether to abolish the MCR was the WB’s DB report of 2007. According to this report, Taiwan’s world ranking of the environment for doing business was falling far behind the major neighbouring competitors—Hong Kong and Singapore. The Council for Economic Planning and Development (“CEPD”, currently renamed as the National Development Council), the official think tank of Taiwan’s government, concluded from this 2007 report that the major cause for this poor ranking was the inefficiency for incorporation in Taiwan. According to this report, 69 countries worldwide did not require the minimum capital. Among those countries that did require the minimum capital, the minimum capital required in Taiwan was two times Taiwan’s average income per capita, which was apparently on the high side compared to the average of the minimum capital in those OECD countries with the MCR—0.8 times the average income per capita. Taiwan was embarrassingly ranked as No. 157 worldwide in this category. *Taiwan: Gongsu Zuidi Ziben E Guiding Yanni Songbang* (台灣—公司最低資本額規定研擬鬆綁) [*Taiwan: The Minimum Capital Requirement Are Scheduled to Be Liberalized*], 27 GUOJI GONGSI ZHILI FAZHAN JIANXUN (國際公司治理發展簡訊) [THE NEWSLETTER ON DEVELOPMENT OF INTERNATIONAL CORPORATE GOVERNANCE] (TWSE, TPEx, SFI & TCGA, Taipei, Taiwan), Mar. 15, 2008, at 1-2, http://weblinesfi.org.tw/download/resh_ft/CG/cgmsg27.pdf. Accordingly, the MOEA promulgated a decree in 2008 to reduce the MCR by half, which had been in practice for years. Moreover, the amendment to the Company Act in 2009 was another radical overhaul because it abolished the MCR. It is expected that entrepreneurs can thus incorporate companies rapidly with reasonable cost, instead of leaving spare capital unused. This can encourage start-ups and accelerate economic activity. See Lin, *supra* note 95, at 13-14.

112. Officials of the MOEA expressed that Taiwan’s MCR ranking for this category was No. 157 and its overall ranking was No. 61. Given this embarrassing ranking, the MOEA proposed abolishing two provisions in the Company Act regarding the statutory minimum capital. This abolition could advance the ease of starting up a business without the concerns for minimum capital. Fayuan Pienchi Shih (法源編輯室) [Lawbank’s Editorial Room], *Gongsu Zuidi Ziben E Xianzhi Quxiao Xingzheng Yuan Tongguo Cao'an* (公司最低資本額限制取消 行政院通過草案) [*The Executive Yuan Passed a Draft Amendment to Abolish the Minimum Capital Requirements*], FAYUAN FALU XINWEN (法源法律新聞) [LAWBANK’S LEGAL NEWS] (Jan. 23, 2009),

improvement in Taiwan's national competitiveness for two reasons. First, it was not appropriate for the central competent authority (i.e. MOEA) to prescribe one-size-fits-all minimum capital standards.¹¹³ Second, Taiwan's paid-in minimum capital was more than 100% of income per capita. Since a prerequisite to achieving corporate status in terms of the amount of equity capital of a company is an audit and certification by a certified public accountant, the statutory minimum capital is redundant and should be repealed in order to improve Taiwan's "doing business" environment and to encourage business start-ups.

To be sure, one might further inquire why Taiwan complied with the DB indicators' pressure; what would be Taiwan's rationality of taking the WB ranking so seriously? According to rationalist views of international law,

a state needs a good reputation to enjoy the benefits of international cooperation because the international system lacks a centralized mechanism of enforcing agreements and violations of international law are difficult to deter in the current decentralized system. Consequently, the state's reputation for compliance with international law determines whether the state is considered a useful treaty partner. Without a good reputation, the international community will cut the state out of international agreements. The state will be isolated when it needs the cooperation of other states to achieve its goals. In short, a state that ignores its reputation in the short run will face greater costs in the long run.¹¹⁴

In the case of Taiwan, if Taiwan did not follow the same model of legal rules preferred by DB rankings (a quasi-violation in one of the DB's policy realm, i.e. high levels of the MCR), there would be some reputation loss of this action to Taiwan.¹¹⁵ Taiwan's reputational costs are quite large in the international system especially in that Taiwan is isolated from IGOs and international networks. A commentator indicates Taiwan's concerns with its reputation:

In today's world, sovereignty can be understood as "status"—"the vindication of the state's existence as a member of the international

<https://www.lawbank.com.tw/news/NewsContent.aspx?NID=66945>.

113. According to the Global Competitiveness Report of the World Economic Forum (WEF) and the WB's DB survey, Taiwan's ranking of national competitiveness and the environment to do business finally bounced back in 2009, thanks to its legislature's abolishing the MCR in April 2009. See Lin Shang-Zuo (林上祚), *Zhidie Fantan Quanguo Jingzheng Li Taiwan Paiming Di Shi'er* (止跌反彈 全球競爭力台灣排名第12) [*Taiwan's Global Competitiveness Ranking Stops Falling and Bounces Back to No. 12*], ZHONGGUO SHIBAO (中國時報) [CHINA TIMES], Sep. 9, 2009, at A12.

114. Rachel Brewster, *Unpacking the State's Reputation*, 50 HARV. INT'L L.J. 231, 266 (2009).

115. *Id.* at 268.

system.” Status is an intangible asset valued by states for its own sake as well as for its potential to strengthen the state’s political and economic relations with other countries. The strong desire for good inter-national standing is therefore not exclusive to states like Taiwan that are isolated from intergovernmental organizations and networks. States generally desire a strong reputation in order to increase their influence on the world stage. This is particularly true for states that are insecure about their influence, including those that have a marginalized role in international politics and those that are embroiled in domestic turmoil. Therefore, there is a powerful political incentive for prioritizing status concerns in their national agenda.¹¹⁶

Chen focuses on Taiwan’s ratification of the United Nations (UN) human rights covenants as a non-UN member state, intending to send a signal to international audience. Nevertheless, we can expand her analysis to the pressure of the DB indicators on the Taiwanese government. Even though the DB project is formally less binding when compared with international human rights norms to be ratified, the compliance with the preferred legal model such as liberalization of red tape like the MCR behind the DB rankings is promoted by such an IGO as the WB. Therefore, Taiwan’s taking the enforcement of the WB ranking seriously would meanwhile help the state present a respectable vision of its role to international society.

C. *Jurisdictional Competition as an Analytical Framework for Taiwan’s Legal Transplants in the Shadow of the World Bank*

The competitive pressure from inter-jurisdictional regulatory competition under globalization led to the abolition of the MCR. In particular, the goal of advancing Taiwan’s ranking in the DB surveys published by the WB played a major role. This case study reveals that the WB’s direction of global attention to the issue of national competitiveness improved the legal infrastructure. The publication of the DB reports by such an IGO as the WB was thus intended to drive countries to compete internationally in offering the best possible regulatory products, such as the convergence towards the abolition of the MCR in Taiwan’s case.¹¹⁷ This was

116. Yu-Jie Chen, *Isolated but Not Oblivious: Taiwan’s Acceptance of the TWO Major Human Rights Covenants*, in TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION 1, 21 (Jerome A. Cohen, William P. Alford & Chang-Fa Lo eds., 2018), <https://ssrn.com/abstract=3227711> (footnotes omitted).

117. See SIEMS, *supra* note 10, at 232 (noting that “international organizations will usually advise

similar to the European case where the ECJ's rulings drove intra-regional regulatory competition among EU Member States in facilitating incorporations, reducing the MCR among other things. An important aspect of the international law market is how IGOs interact with jurisdictional competition for mobile resources. Taiwan's case illustrates IGOs or international development agencies such as the WB might play a decisive role in the international setting as a federal government does in a federal system such as those in the United States or the EU, in promoting inter-jurisdictional regulatory competition.

Taiwan's story implies that law market forces similar to those working as to charter competition within federal systems also function in the international context. Figure 2 outlines how inter-jurisdictional regulatory competition sparked by the WB's DB surveys produced Taiwan's abolition of the statutory minimum capital. This regulatory evolution demonstrates that the WB as an IGO spurred regulatory competition via its DB rankings, contributing to the domestic interest group competition; this domestic supply side of the law market eventually pressured the Taiwanese government to enact the legal transplants, converging towards the liberalization of the MCR.

V. CONCLUDING REMARKS

This article discusses how the pressure of inter-jurisdictional regulatory competition drove the United States, the EU and Taiwan to converge towards the liberalization of the MCR. In particular, the case of Taiwan demonstrates how competition within federal systems such as the United States and the EU can be generalized to competition among nations or jurisdictions boosted by such an IGO as the WB with its DB reports. This international competition across local policymakers in national jurisdictions compelled Taiwan to abolish the statutory minimum capital in 2009, since Taiwan was pressured to raise its ranking with a view to attracting FDI by demonstrating its commitment to business-friendly policies. Just as Charles Tiebout's 1956

(or urge) countries to follow the same model of legal rules"). *See also* Schueth, *supra* note 19, at 151 ("[The World Bank's Ease of Doing Business Index] works by fostering international competition between policymakers to raise their state's ranking, thereby demonstrating to international investors a commitment to business-friendly policies.") (alteration in original). Further, Chung-Ying Hu, then CEPD Vice Chairman, noted that the abolition of the MCR through the amendment to Taiwan's Company Act would help Taiwan attract FDI. *See* Lin Shang-Zuo (林上祚), *Jiangdi Waishang She Gongsu Menkan Ni Xiufa* (降低外商設公司門檻擬修法) [*Taiwan Plans to Amend Its Company Law to Lower Thresholds of New Firm Creation for Foreign Businesses*], *ZHONGGUO SHIBAO* (中國時報) [CHINA TIMES], Nov. 29, 2008, at B2. Therefore, Taiwan can be said to engage in the regulatory competition where it might find it in its interest to market its Company Act to domestic and foreign firms.

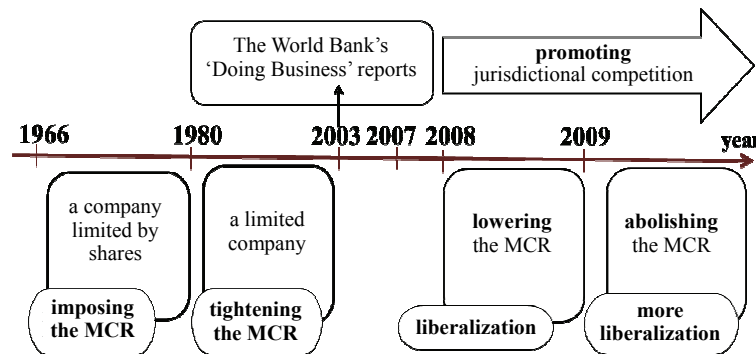


Figure 2 Inter-jurisdictional Regulatory Competition Sparked by the World Bank's Doing Business Reports Led to Taiwan's Convergence towards the Liberalization of the Minimum Capital Requirement from 1966 to 2009

seminal article suggested, competitive incentives drove local policies.¹¹⁸ In these three cases regarding liberalization of the MCR, jurisdictional competition drove changes in parochial legal restrictions to become more flexible.

The findings in this article have important implications. First, by illustrating the impact of jurisdictional competition on the MCR, this article shows jurisdictional competition works within a federal nation such as the United States, a supranational federal system such as the EU, and internationally. Additionally, this author used to compare the impact of the US SOX regulations on foreign private issuers¹¹⁹ to the case of Taiwanese firms' overseas listings to avoid Taiwan's restrictions on outward investment in Mainland China. This comparison tested how law market demand and supply forces (or underlying exit and voice) interacted with inter-jurisdictional regulatory competition. In brief, both the SOX and Taiwan cases implied that, with some disparate differences from the corporate law market in the United States, general law market forces functioned internationally.¹²⁰ This article likewise demonstrates that while there are some differences among them, similar law market dynamics underlie jurisdictional competition, whether under federalism or in the international setting.

118. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 424 (1956).

119. In this case, the SOX drove away foreign issuers and then their physical exit provoked a change in the US regulation for non-US issuers.

120. See generally Chang-Hsien Tsai, *International Jurisdictional Competition under Globalization: From the U.S. Regulation of Foreign Private Issuers to Taiwan's Restrictions on Outward Investment in Mainland China*, 2 ASIAN J.L. & ECON. ART. 5 (2011).

Second, analogizing the argument made by O'Hara and Ribstein that jurisdictional competition provides a significant check on governments, this article argues that jurisdictional competition serves as a restraint on jurisdictions that ignore business demands for legal flexibility. Specifically, imposing outdated regulations such as the MCR would not necessarily work because of jurisdictional competition--in that there are many other jurisdictions for which the would-be regulated firms can leave. Since costly regulations drive out the most mobile residents and investors, the potential exit of firms (or threats of exit) is a powerful way to discipline a jurisdiction where political discipline is weak.

Third, the Taiwanese case study illustrates that such an IGO as the WB would take initiatives in acting as a public actor to diffuse its preferred legal model such as liberalization of red tape like the MCR across national borders, by promoting jurisdictional competition sparked by its DB rankings.

In particular, the WB as an IGO spurs inter-jurisdictional regulatory competition via its DB rankings; as regulatory competition creates a market for law, the demand side of regulated firms seeks less strict rules by way of feedback mechanisms of exit and voice that may be transmitted via anti-regulatory and exit-affected interest groups to local political decision-makers. The domestic lobbying would pressure the regulating jurisdiction like Taiwan into the competition among jurisdictions for capital and firms in supplying less strict legal restrictions, enacting the legal transplants, and converging towards the liberalization of the MCR.

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論規範競爭與世界銀行經商環境 報告：以臺灣公司最低資本額限制 之鬆綁為例

蔡 昌 憲

摘 要

由於世界銀行經商環境報告（下稱「世銀報告」）之出版，臺灣於2009年廢除公司設立之最低資本額限制（下稱「最低資本制」）。本文透過規範競爭／法域競爭之理論架構，分析臺灣個案所揭示之鬆綁最低資本制之國際上趨向走向。前開管制變遷可視為一種以世銀為例之政府間國際組織（intergovernmental organizations, IGOs）所推動之法律移植；為研析導致上開管制變遷背後之諸力量間之互動，本文對美國、歐盟及臺灣進行比較法研究，探討規範競爭所產生之「法律市場」係如何導致最低資本制朝向降低或廢除之趨向方向發展。在臺灣之例中，本文說明世銀如何透過其經商報告之出版，推動國際規範競爭，進而導致反對管制之利益團體與受外移影響之利益團體在國內遊說政策制定者鬆綁最低資本制；同時，法律市場力量可能如何促使臺灣政府從事法律移植，因而趨向於最低資本制之鬆綁方向。前開研究發現有其重要意涵。詳言之，在如美國之聯邦國家、如歐盟之超國家類似聯邦體制、以及國際場域中，法域間所進行之規範競爭背後運行之法律市場力量，均相似地發揮作用。再者，臺灣個案印證，如世銀此等政府間國際組織或超國家組織會主動扮演國際上的公部門角色，以促使其所偏好之法制模式發生跨國擴散，諸如鬆綁最低資本制此類之繁文縟節規範之趨向現象。其推動前開法律移植所採取之方式乃引發法域競爭，而法域競爭之發動則係藉由發布經商環境指標與排名來達成。

關鍵詞：趨同理論、法律移植、規範競爭、法域競爭、公司設立最低資本規定、世界銀行、法律市場