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西进!

企业海外投资面临的法律、经营、政治和文化障碍

China targets the West

Overcoming the obstacles to outbound investment



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本地律所伸出橄榄枝

中国本地的事务所反驳说，他们也在拓展他们的国际化视野。北京主要的律师事务所如金杜律师事务所已设立海外办事处，而其它事务所如国浩律师集团已与外国事务所签订了转介协议。北京君泽君律师事务所也与法国 **Kahn & Associés** 事务所建立了合作关系。

另一家北京事务所，权亚律师事务所，已经与澳大利亚的 Freehills 和加拿大的 Torys 达成战略联盟，以帮助前者进入澳大利亚和加拿大这两个重要的市场。北京权亚律师事务所执行合伙人张贞熙表示：“我们的国企客户告诉我，他们听说我们作为一家国内律师事务所却具有处理国际业务的能力，因此慕名而来。”

然而，外国同行表示，中国律师事务所通常没有处理复杂的跨境并购交易的国际经验深度。总部位于美国明尼阿波利斯的斐格律师事务所上海合伙人严瑜说：“如果收购目标是海外机构，中国律师显然无法提供有关该外国法律的建议。”

严律师补充说，聘请中国律师还是国际律师取决于客户心态。她说：“这取决于客户的内部文化。如果是一家成熟的企业，他们倾向于使用国际律师。反之，作为境外投资新手的企业可能会愿意依赖中国律师。”

尽管这两批律师间存在分歧，他们都尽量做到井水不犯河水。西班牙马德里 **Uría Menéndez** 事务所北京办事处管理合伙人 Juan Martín Perrotto 表示：“我们比其它外国事务所更亲近中国事务所，因为我们没有也不会聘请中国律师去与中国律师事务所竞争。相反，我们与他们一起合作，通过整合我们的专业知识和国际资源来弥补他们在国际业务能力上的欠缺。”

一些律师说，中国本地律师和国际律师合作有助于弥合双方在沟通上存在的鸿沟。容律师回忆起最近处理的一起针对中国客户的美国诉讼。他说：“在我们与客户的电话会议中，我们的中国合作律师事务所也出席了会议，他们不仅提供翻译协助，还帮助解释美国的法律概念。这样的关系使我们能够更有效地代理我们的中国客户。”

市场由小变大

对于那些来自于国内市场小于美国的其他国家的律师事务所而言，中国境外投资已经占了其业务的大部分。加拿大麦启泰律师行中国组主席及温哥华合伙人李欣恩说：“我得说我们 85% 的中国事务涉及到就中资机构投资北美提供咨询。”

加拿大 Torys 事务所的中国业务主要是针对中资机构对加拿大公司的投资和并购提供咨询。该事务所曾代表中投公司完成了对加拿大泰克资源公司 17 亿加元的投资。该所多伦多合伙人 Michael Amm 表示：“在过去 5 年，中国海外投资呈现加速增长的趋势，这印证了我们着重关注中国境外交易做法的正确性。”

英国其礼律师事务所上海代表处首席代表张逸伟估计，该事务所至少一半的中国事务涉及到向其中国企业客户的境外交易

中国企业很不愿意在美国收购，
因为实在太麻烦了

*Chinese companies are very
reluctant to buy in the US. It's too
much trouble*



肖勇
合伙人
文森·艾尔斯
律师事务所
Xiao Yong
Partner
Vinson & Elkins

assist with the transaction and, to, for example, understand market terms.”

The Chinese market is very different from other major markets in terms of how local companies seek foreign legal representation. “Chinese companies rely heavily on referrals from other service providers and professionals such as investment bankers and consultants,” says John Yung, a partner in Sacramento, California, with the Seattle-based firm Bullivant Houser Bailey. “We will continue to actively market to Chinese companies through maintaining and expanding such relationships.”

International firms believe they are the obvious candidates to guide Chinese clients making their first pass through the maze of North American and European regulatory issues. “Part of the role of international counsel is to assist the client in effectively managing these issues in a way that allows the client to remain competitive,” Strecker adds.

Local firms reach out

Local Chinese firms counter that they are broadening their horizons. Major Beijing-based firms such as King & Wood have opened overseas offices while others, such as Grandall Legal Group, have entered into referral pacts with foreign firms. JunZeJun, a Beijing firm, has a relationship with **Kahn & Associés**, a French firm.

Another Beijing firm, TransAsia Lawyers, has forged strategic alliances with Freehills in Australia and Torys in Canada to help it access those two key destinations. “I am informed by our SOE clients that they are attracted by our reputation as a local law firm with an international flair,” says TransAsia partner Jesse Chang in Beijing.

However, Chinese law firms often don't have the depth of international experience for complex cross-border M&A transactions, their foreign counterparts say. “If the acquisition target is an overseas entity, it's quite clear that Chinese counsel are not able to advise,” says Wendy Yan, a partner in Shanghai with Minneapolis-based Faegre & Benson.

Yan adds that the choice between whether to hire a Chinese or international law firm can hinge on the client's mindset. “It depends on the culture of the client,” she says. “If it's a mature company, they're inclined to use international counsel.

和争议提供咨询。他说：“这个比例在过去18个月肯定又有所增加，因为中国企业相对来说资金仍然充裕，同时也渴望收购对其业务具有战略意义的海外企业。”

至少有一家英国事务所将境外投资视为其中国业务的唯一强项。伦敦泰勒乐信事务所中国组主席及公司业务合伙人Richard Bursby说：“我们只专注于为中国企业在英国、法国和德国设立企业提供咨询，并为那些已在那里成立的企业提供协助。我们提供服务的中国企业占从事境外投资的全部中国企业的相对比例可能不会增加，但在绝对数量上已有所增加，因为愈来愈多的中国企业开始向境外发展。”

几家欧洲律师事务所的中国业务也显示出境外交易占其业务大多数这一局面。瑞典斯德哥尔摩Delphi律师事务所律师Jonas Rogberg说，中国客户委托的业务在该所的中国业务中占80%。而丹麦哥本哈根Magnusson律师事务所的斯德哥尔摩分所合伙人Carl-Fredrik Hedenström表示，该所的比例更是达到了90%。另一家瑞典律师事务所Vinge的上海合伙人Karen Grauers表示，该事务所在2009年签下了几个新的中国客户。

此外，据其在米兰的联合管理合伙人 Vittorio Nosedà 说，意大利律师事务所NCTM的中国业务中客户有三分之二是中国企业。西班牙马德里的嘉里盖思律师事务所表示，对华投资等业务仍然多过中国的境外法律业务，但后者正呈上升之势。该所

On the other hand, a new participant might want to rely on Chinese counsel.”

Despite their differences, the two groups go out of their way not to antagonize each other. “We tend to be closer to Chinese firms than other firms, as we have not and will not hire Chinese lawyers to compete with Chinese firms,” says Juan Martín Perrotto, managing partner in the Beijing office of Madrid-based Uría Menéndez. “Instead, we work with them and supplement their international capabilities by adding our expertise and cross-border resources.”

Some lawyers say a combination of local and international lawyers can help bridge the communication gap. Yung recalls a recent litigation in the US against a Chinese client. “During our conference call with our client, our Chinese alliance law firm also attended a board meeting not only to provide translation assistance but also to explain US legal concepts,” he says. “These relationships allow us to more efficiently and effectively represent our Chinese companies.”

Smaller markets loom large

With law firms from smaller markets, outbound Chinese investment already accounts for a majority of transactions. “I would say 85% of our China practice involves advising Chinese entities on investment into North America,” says Joyce Lee, a Vancouver partner and chair of the China Group at Canadian



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