Current outbound investment climate in China

INTRODUCTION

China’s outbound investment has undergone three stages of development over the past few decades. The first being an exploratory stage from 1982 to 1991; the second being a developing stage with a degree of instability from 1992 to 2001; and currently the sustainably and rapidly growing stage from 2002 until now.

In 2014, China’s outbound investment reached US$116 billion, an increase of 15.5% year on year since 1982. The total amount of outbound investment as at the end of 2014 reached US$646 billion. Chinese companies have invested in over 170 countries and regions, mostly in Asia and Latin America. There are over 250,000 Chinese companies with businesses abroad and their total overseas assets is estimated at nearly US$3 trillion.

Outbound and inbound investment is now nearly balanced. The amount of outbound investment was only US$3.6 billion less than that of inbound investment at the end of 2014. Mergers and acquisitions account for nearly half of China’s total outbound investment, mainly in energy, resources, real estate, financial services and telecommunications. There have been some very large scale investments by Chinese companies, including the acquisition of Peru Las Bambas copper mine by Minmetals Resources and the purchase of the 14% equity stake in Peugeot-Citroen by Dongfeng Automobile. While the outbound competitive capabilities of Chinese private companies have become stronger, state-owned-enterprises (SOEs) are still the main players in outbound investment. However, the scale of China’s outbound investment is expected to continue to expand in the future at a rapid rate but with private enterprises expected to make a larger contribution.

ONE BELT ONE ROAD STRATEGY

In 2013, China’s leadership announced the “One Belt One Road” initiative as part of its international development strategy. This strategy, which is a combination of the “Silk Road Economic Belt” and “21st Century Maritime Silk Road”, envisages interconnection and economic cooperation between the countries along the One Belt One Road region. There are over 60 countries along the One Belt One Road region, which account for two-thirds of the global population and one-third of the global economy by GDP. China, together with other participating countries, have established the Asian Infrastructure Investment Bank (AIIB) to finance the One Belt One Road initiative. China is expected to contribute around US$29.8 billion and, holding 26% of the voting rights in AIIB, China is expected to be its largest shareholder. Infrastructure projects in countries along the One Belt One Road region are more likely to receive financing from the AIIB, since infrastructure is the prime focus of the One Belt One Road initiative and the AIIB.

It is expected that there will be more collaboration between countries along the One Belt One Road region in energy infrastructure. Participating countries will be expected jointly to maintain safety of transportation corridors such as oil and gas pipelines, and jointly to carry out construction of telecommunication networks. China also will work with countries along the One Belt One Road region in the agricultural, energy and resources sectors, as well as in other emerging industries. It is also expected that overseas economic trade and cooperative zones will be established to facilitate the initiative.
China’s outbound investment in countries along the One Belt One Road region currently only accounts for 13% of China’s total outbound investment. The China Development Bank has established a project database recording over 900 projects in 60 countries along the One Belt One Road region. It is understood that the total investment involved in these projects is likely to exceed US$890 billion. Many provinces in China are also formulating their own regional implementation plans in response to the One Belt One Road initiative.

**PRINCIPAL GOVERNMENT AGENCIES AND REGULATORY BODIES**

The main government agencies and regulatory bodies overseeing outbound investment are the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC) and the State Administration of Foreign Exchange (SAFE).

The One Belt One Road initiative is a further development of the Chinese government’s “going global” strategy. MOFCOM is responsible for organising and co-ordinating the implementation of the “going global” strategy. It is tasked to guide, monitor and manage those Chinese companies which engage in outbound investment. It is also responsible for drafting laws and regulations on outbound investment and economic cooperation.

Approval by MOFCOM is required if the proposed outbound investment is in "sensitive countries and regions" or "sensitive industries". “Sensitive countries and regions” refer to countries which do not have diplomatic relations with China, or which are under international sanction, undergoing war or civil strife. A list of the "sensitive countries and region" can be found on the websites of the Chinese Ministry of Foreign Affairs and the United Nations. "Sensitive industries" refer to industries dealing with the export of products and technologies that are restricted to be exported from China, and industries affecting more than one country’s interests. A list of the "sensitive industries" can be found on MOFCOM’s online application system. In relation to other outbound investments, only enterprises directly under the central government control (central enterprises) will be required to submit a filing to MOFCOM and local companies will only be required to submit a filing to their respective provincial MOFCOM.

The NDRC conducts analysis on outbound investment by Chinese companies and formulates strategies and policies generally in relation to outbound investment. In particular, prior approval from the NDRC is required for overseas investment projects in energy development or projects involving a substantial amount of foreign exchange. Further, investment projects involving “sensitive countries and regions” or “sensitive industries”, and investments by any Chinese company exceeding US$1 billion, are required to be approved by the NDRC. Otherwise, only a filing with the NDRC is required for investments by central enterprises and for investments by local Chinese investors exceeding US$300 million in any overseas project. Other investment projects require only a filing to the relevant provincial NDRC.

SAFE monitors China’s balance of payments and the external credit and debt of the nation. It supervises the foreign exchange market and the settlement and sale of foreign exchange. It is also responsible for implementing foreign exchange administration. Approval from SAFE is no longer required for outbound investment foreign exchange registration as SAFE now monitors a company’s foreign exchange registration through local banks.
A Chinese company may directly, or through the relevant provincial MOFCOM, submit an application to MOFCOM. MOFCOM will consult the Economic and Commercial Department of the relevant Chinese embassy and focus on whether the industry, technology and countries in which the company proposes to invest falls in the sensitive list. If it does, the company will need to submit a letter from the relevant government agency of authorization before the investment can be approved by MOFCOM. Upon receipt of a properly completed and satisfactory application, MOFCOM will generally grant its approval for the proposed outbound investment within 20 working days. The application should include the formal application report, the outbound investment application form, any relevant overseas investment contracts or agreements, business license and letter from the relevant government agency of authorisation if the outbound investment involves products or technology that are restricted for export.

A Chinese company may directly, or through the relevant provincial NDRC, submit an application for an outbound investment project to NDRC. NDRC will then consult the relevant authority and engage a qualified consulting agency (usually China International Engineering Consulting Corporation (CIECC)) to conduct an assessment of the project. The proposed investment must comply with PRC laws, regulations, any relevant industry policies and outbound investment policies. It must satisfy the principles of mutual benefit and development and should not harm the nation’s sovereignty, security and public interest nor violate any international treaties that China is a signatory to. The company is required to demonstrate that it has sufficient financial strength. If these requirements are complied with, NDRC will generally grant its approval within 20 working days.
Once relevant approvals have been obtained, the Chinese company may apply for foreign exchange registration to open a bank account for payment of the investment amount in foreign currency. The bank will require supporting documents issued by the NDRC and MOFCOM. Once a bank account is opened, the Chinese company may then purchase foreign currency for investment overseas.

Generally, the above approval process is conducted in the following order: NDRC/MOFCOM, and then bank account opening. The application to NDRC, and MOFCOM can be sent at the same time. It is hard to generalise the overall time for all the approval since the time for opinion soliciting and project assessment is not included in the 20 working days. Usually it will take around 5-9 weeks to go through the approval process with NDRC and MOFCOM respectively.

**CONDITIONALITY OF INVESTMENT AGREEMENTS**

Chinese companies are encouraged to engage in early consultation with NDRC and MOFCOM on any proposed outbound investment prior to submitting a formal application.

It is also generally the case that MOFCOM and NDRC want to see the terms of the proposed investment agreement prior to providing final approval. This generally means that PRC companies will prefer to negotiate and sign their investment or purchase agreements with final approvals as a condition to closing. This will cause difficulties however for PRC companies wishing to participate in purchases of business by way of auction sale or acquisitions of public companies in Europe under the public takeover rules where such conditionality may well not be acceptable to the local European regulator in a public takeover. In such circumstances early dialogue between the seller and the Chinese company and the Chinese company and the PRC regulators will be necessary in order to try and obtain firm approvals to the transaction so an unconditional offer can be made.

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