January 2019

China M&A Round-Up
Cross-border investment trends

What's the Deal?

National borders and borderless business

Where borders are vanishing

In the midst of the tensions between the US and China, new regulations and laws are being put in place by both sides that are likely to have long-term impact on MNC compliance activities and growth strategies. In our view, behind these changes are three forces: a more explicit competition for economic growth and technology dominance, the leapfrogging of new fintech capabilities related to investment and cross-border money flows that are beyond current regulations, and the expanding regional and global footprints of leading MNCs. Relevant regulations for financial activities are under the authority of individual national regulators. In pursuit of national interests, some new regulations and laws will improve global regulation of financial activities, but some might possibly impede it. All will change compliance requirements.
Pivotal for regulators are the frictions and scope differences between truly global business models, wherein financial services, trade in goods and services, and equity investments flow almost without borders, on one hand, whereas diverse, evolving national regulatory models and practices are largely delineated in hard-edged sovereign entities. National regulators must balance many interests of the state as a whole and their national champion companies. A recent example, Blockchain and crypto-currencies, may be among the most obvious challenges to national regulators, but they are probably a small part of a massive network of existing and more mundane channels for transactions. In 2016, assets in the fastest growing off-shore havens, Luxembourg and the Caymans, grew by 46 percent to US$15.7 trillion and 23 percent to US$7.3 trillion respectively. That represents money moving, and those numbers are overwhelmingly for non-bank financial companies.

To support the productive dynamics of globalization and coordinate the specific interests of national regulators, stable Key International Economic Organizations (KIEOs) have been influential over the long term in promoting rules and promoting standardization of certain business practices. But more recently, the status quo has been disrupted by technology-enabled commercial innovation in areas broadly under the rubric of fintech that facilitate currency trading and large, international capital transactions.

As economic competition heats up globally, which includes fierce competition for investment money, consumer markets, core technology dominance, etc., there is commonly a debate on two points. Are KIEOs losing ground against narrow national interests, and are major national moves trending toward strengthening critical international systems and standards, or trending toward impeding them. We can explore three examples, one impacting IP asset acquisition, one financial reporting, and one impacting control of cross-border economic crime. These are examples of recent laws or practices that at least in the short term can complicate transactions.

**Where borders are tightening**

Protectionism, by definition, is a tightening of national borders in response to domestic economic and political stresses. But tensions exist between protecting national interests and at the same time facilitating orderly global industry and commerce. Every major economy must find some balance points between domestic activity they would like to protect, the expanding activities of their own globalizing enterprises, and the pressures to cooperate across borders with major trade and investment partners on a range of regulatory and legal issues. Regulatory changes relevant to cross-border M&A and cross-border access to capital markets are arguably at the center of some of the most pressing concerns today.

**CFIUS-FIRRMA**

In previous editions of “What's the Deal” we have explored the evolution of the Committee on Foreign Investment in the United States (CFIUS). The FIRRMA update, which was signed
into law in August 2018, expanded CFIUS authority in two ways. Previously focusing on acquisition of US business assets in the US that arguably had national security value, either specifically military or dual-use, the FIRRMA update authorizes CFIUS to review activities anywhere in the world that involve such technology assets and their transfer. Secondly, FIRRMA expands the scope of what is included in national security, primarily to include technology beyond military and dual-use, technology that is important for commercial competitiveness and geopolitical influence.

CFIUS operates under the US Department of Treasury with broad participation of other agencies in the US government. A pilot program announced by Treasury in October 2018 defined 27 business sectors, including some in biotechnology, mobile electric power, and natural language processing, for which any transfer of technology to a foreign party will require a formal declaration. It is early in implementation, but the declaration will likely be the basis for a decision by CFIUS as to whether further examination of a particular transaction is warranted. While the changes mandated by FIRRMA are in the early stages of implementation, they coincide with if not influence a significant drop-off in levels of inbound, technology focused M&A through 2018 and into the present.

**PCAOB and working papers**

Since the global financial crisis, China has significantly increased its presence in global financial markets, in many cases listing equities, marketing corporate bonds, or borrowing from foreign banks in geographies where the company has little in ways of operations or market presence.

At the same time, China has considered a range of financial and operational information to be protected and not available for examination by foreign regulators. There are some apparent reasons. This would not be surprising for State-owned Enterprises, as their governance and performance are intimately related to government planning, operations, and resources. But the same sentiment has extended to private companies seeking capital abroad. While such companies are obligated to comply with reporting requirements at home and abroad, China has generally argued that auditor working papers, asset valuation techniques and details, and the like cannot be shared with foreign regulators like the SEC or non-government oversight entities like the Public Company Accounting Oversight Board (PCAOB) in the US.

The issue of access to working papers has engaged the US, China, and Hong Kong in negotiations for nearly a decade. Incidents related to failed Chinese listed companies and subsequent inspections go back to 2010, with negotiations and reports in the news up to the present day. As recently as September 2018 the PCAOB updated a statement on limited access and a list of identified clients, almost all of which were Chinese or Hong Kong domiciled entities. This is a primary example of cross-border access to capital markets and the national boundaries within which market regulators have authority to operate.
Some of China's most prominent listed companies in areas like telecommunications and ecommerce operate within networks of hundreds of related entities. While on the surface translation between different accounting systems like US GAAP and China's authorized version of the International Standards of Auditing (ISA) and International Financial Reporting Standards (IFRS) is generally not problematic, and has been studied in numerous publications, unavoidably the financial reports of such complex entities will raise numerous judgement, classification, and confirmation issues for which access to working papers would be helpful to market regulators and investors.

*International Criminal Judicial Assistance Law*

As the US Treasury department was finalizing the FIRRMA pilot program in October, China's National People's Congress (NPC) passed a law that specified new, formal domestic approval processes as a requisite to providing information, evidence, witnesses, or any other form of support to criminal investigations by authorities outside of China.

This legislation essentially updates a bilateral agreement between China and the US signed in Beijing in June 2000. Article 1 of that agreement states, “In accordance with this Agreement, the Parties shall provide mutual assistance in investigations, in prosecutions, and in proceedings related to criminal matters” The most apparent change resulting from the new legislation is that it is not bilateral but broadly applicable to any investigation outside the Mainland.

In introducing this, China's official media described it as facilitating cross-border assistance in criminal investigations by defining a consistent formal process. In contrast, some external experts examining the new law's articles see the new regulation as an effort to curtail assistance and make investigation of cross-border infractions, such as money laundering, securities fraud, FCPA violations, and embezzlement, more difficult.

Actual cooperation in implementation and enforcement of judicial decisions has existed for decades. Recently there have been good examples of the previous agreement in action, with the US extraditing to China a subject of a Chinese criminal investigation, and Chinese courts enforcing a US civil judgement. That is not to say the process has always worked to the satisfaction of all parties. The principal of a massive smuggling operation through the ports of Xiamen in the 1990s fled to Canada in 1999. He was finally extradited at Canada's request in 2011, 12 years after the process was initiated.

**Having it both ways**

It is sound to argue that the examples we raised clarify rules of engagement and ultimately serve both parties to a cross-border transaction as well as restrict them. In the cases of FIRRMA and the new Chinese judicial assistance legislation, we will have to await further publications on implementation rules and actual examples to ascertain their impact on cross-border financial transactions. And, as the recent back and forth of business-related
arrests inside and outside China suggest, beyond the letters of these new laws, the broader background of unresolved trade and investment negotiations will likely be a major influence.

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sup4 https://www.reuters.com/article/china-audit-timeline/timeline-u-s-hk-regulators-struggle-to-get-china-audit-papers-idUSKBN1EE0HT

4 https://pcaobus.org/International/Inspections/Pages/IssuerClientsWithoutAccess.aspx

4 https://www.ifac.org/about-ifac/membership/country/china. CICPA reports that initiatives are underway to converge with ISA 610. See also https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/china

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Trends to watch

China posts slowest economic growth since 1990, CNN, 1/21/2019
Chinese investment in North America and Europe slumped in 2018, Bloomberg, 1/14/2019
Outbound M&A from China

**Consumer**
SoftBank Vision Fund, Alibaba lead $1.1 bln Tokopedia round, Bloomberg, 12/11/2018
Chinese group Joyvio buys Australis Seafoods for $880 mln, Fishfarming Expert, 11/20/2018
China’s leading dairy company Yili buys Thailand’s largest local ice cream enterprise, accelerating its internationalization, PR Newswire, 11/30/2018

**Energy, resources & industrials**
Pilbara Minerals: Funding package set for Pilgangoora growth, Mining Business Media, 1/3/2019
Mineral Resources, Gangfeng pick up Neometals’ Mt Marion lithium stake, The West Australian, 12/23/2018
Rio Tinto sells stake in Namibia uranium mine to China for $107 mln, Reuters, 11/26/2018

**Financial services**
Zhejiang Crystal-Optech to buy equipment from Japan's Optorun for about 39.6 mln CNY, Reuters, 1/7/2019
Hong Kong jeweler sees sparkle in $315 mln Melbourne tower, Commercial News, 12/06/2018

**Life sciences and healthcare**
China’s Jangho makes $1.2 bln bid for Australian medical center owner Heals, Reuters, 1/2/2019
Shanghai RAAS in tie-up talks with US blood products arm of Spain's Grifols, Reuters, 11/22/2018

**Technology, media & telecommunication**
Steadview Capital invests more in Ola as valuation soars, VCCircle, 1/10/2019
Woowa Brothers becomes ‘unicorn’ after raising $320 mln, The Investor, 12/21/2018
Shanghai Moons’ Electric to acquire Technosoft Motion, SECA, 12/26/2018

Inbound M&A into China

**Consumer business**
The Face Shop to buy AVON’s factory in China, Business Korea, 1/10/2019
Mitsui Sugar pours $20 mln into Chinese processor, Nikkei, 12/29/2019
Akzo Nobel acquires Chinese decorative paints joint venture, European Coatings, 12/14/2018
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CapitaLand enters 50:50 joint venture to acquire prime office building in Shanghai’s Lujiazui CBD for 2.75 bln CNY, CapitaLand, 1/7/2019
Keppel Land China acquires commercial property in China’s Silicon Valley for $111 mln, TheEdge, 1/1/2019
AXA to buy remaining 50% stake in AXA Tianping for China growth, Insurance Journal, 11/28/2018

Life sciences and healthcare
Fujifilm becomes a strategic partner of Yestar Healthcare by investing not less than HK$411.7 mln, Business Insider, 11/30/2018

Technology, media & telecommunications
Citic Envirotech to acquire 65 percent stake in Nantong Guoqi, ShentonWire, 1/2/2019

China domestic M&A and industry consolidation

Energy, resources & industrials
Shanghai Xinmei Real Estate’s share trade to resume, plans acquisition via asset swap, share issue, Reuters, 1/7/2019

Financial services
CITIC Ltd updates on the proposed restructuring of Daye Special Steel, Reuters, 1/2/2019
New World Development unit buys Hong Kong insurer FTLife in record $2.74 bln deal, SCMP, 12/27/2018
CITIC Securities plans to acquire Guangzhou Securities, SWFI, 12/27/2018
Petrus HK submits HK$21.26 bln privatization offer for Hopewell Holdings, S&P Global Market Intelligence, 12/6/2018
New World Development unit to buy 65% stake in Chinese project for 4.78 bln CNY, S&P Global Market Intelligence, 11/27/2018
Wanda selling its insurance holdings for $390 mln, Asia Times, 12/18/2018

Dbriefs China Issues webcasts

Evolution in China’s health care sector: Adapting to a new environment
March 14 | 11 a.m. ET
As China’s population continues to age and costs rise, the country’s rapidly transforming health care sector has been a significant area of focus for many
decision makers in the public and private sectors. What are the key dynamics to understand in assessing the current situation and future outlook?

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