

By Betty L. Louie

CHINESE BUYERS IN EUROPE

How to clear hurdles

Chinese investors looking to make acquisitions in Europe face challenges. But a careful approach can bear fruit



China's footprint as a global investor is expanding at a rapid pace and Europe has emerged as one of the top destinations for Chinese outbound direct investments, which soared in 2016. While there were many success stories of Chinese investments in the continent last year, most notably the UK's approval of CGN and EDF to build a new £18 billion nuclear reactor in the UK and Midea's successful acquisition of the German industrial robot manufacturer, Kuka, some cautionary tales are also emerging. Based on the experiences of Chinese investors in Europe, here are some illustrations of hurdles — and how one can overcome or mitigate them to ensure the success of the transactions.

The European Union is heavily regulated. Chinese investors should first and foremost have a solid understanding of European

regulations before exploring outbound investments on the continent.

When looking to invest in a project, it is often not just a case of competition law and foreign investment approvals, but also of internal market rules. For example, infrastructure may be governed by third-party access rules, and sales by joint ventures can invoke merger rules or investigations into pricing. A failure to understand European regulations and norms at the outset is a common reason for the delay or even failure of deals.

The global regulatory landscape is evolving. Regulatory hurdles can arise from many sides of the transaction, whether on the Chinese side, the European side or even on the US side in cases when the European target company may have sensitive technology in a US subsidiary. This is clear when considering the recent

Syngenta, Aixtron and Osram deals in Europe.

Unless regulatory issues are managed in advance with experienced advisors, they can delay the proposed deal timetable and even jeopardise a transaction. For example, it became evident that a US regulatory block in the Aixtron deal at a late stage ultimately led to Fujian Grand Chip's withdrawal of its voluntary takeover offer.

With China's recent foreign exchange tightening, it is important for Chinese enterprises going outbound to convey to the counterparty if the acquisition funds are onshore or offshore. If the funds are onshore, open discussions on the projected timing of making funds available will build trust in the process with the counterparty, something we saw with a Chinese consortium's recent frank discussions on the timing of procuring available funds for the purchase of the Italian football team, AC Milan.

In an active bidding process, the Chinese enterprise should ensure that funds are available when the final bid is submitted, or else risk the chances of a successful bid. In certain competitive bids, Chinese enterprises were asked to place their funds in the China branch of a selected European or international bank to avoid potential delays — perceived or real — in making funds available. In such cases, Chinese enterprises could consider initiating those contacts

early on in the process.

A sensitive topic for a Chinese enterprise could be its ultimate beneficial ownership. European disclosure and transparency standards are fairly rigorous and a Chinese enterprise should be prepared to respond to ultimate beneficial ownership queries and requests for supporting documents. The diligence on ultimate beneficial ownership could likely extend to any affiliate that becomes a party to the transaction. There should be frank internal discussions with the company's core legal and financial advisers on this topic before substantive engagement with the counterparty.

In terms of ensuring success after the acquisition, hiring some local professionals to assist in integrating the business and navigating the local business climate is helpful. A designation of at least one director with specific veto rights to the new company's board could help maintain control on some of the larger issues. In any case, the managerial powers and director appointments of the Chinese company's designees should be discussed at length with experienced advisors during the course of the transaction — and well before deal documents are signed. **FA**

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