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Trends and prospects of overseas business investment and financing environment

Gutnicki, LLP

December 7, 2019

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HOW TO DO BUSINESS IN THE U.S.

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THREE WAYS TO ENTER THE U.S.

- Sell products into the US (import duties) *
- Raise capital through IPO, RTO or SPAC
 - OFAC
 - Anti-money laundering
- Set up enterprise in the USA through direct investments or acquire existing US businesses
 - Committee on Foreign Investment in the United States ("CFIUS")/Foreign Investment Risk Review Modernization Act ("FIRRMA")
 - Greenfield (not subject to FIRRMA, but careful with site selection)
 - Antitrust

* 25% additional duty on Chinese articles included on List 1 – \$34 billion in imports

25% additional duty on Chinese articles included on List 2 – \$16 billion in imports

25% additional duty on Chinese articles included on List 3 – \$200 billion in imports

15% additional duty on Chinese articles included on List 4A and 4B (effective 12/15/2019) - \$300 billion in imports

GREENFIELD

- Step 1: liaison office – investigate US market, provide information to headquarters, contact US customers
- Step 2: foreign office – official foreign office of Chinese company; can carry out various business on behalf of the Chinese company
- Step 3: US subsidiary – to carry out US and international businesses
 - Business forms: corporation, partnership, limited liability companies and sole proprietorship
 - Each of 50 States and D.C. has its own constitution and laws
 - To also consider federal, legislative and judicial laws
 - Site selection
 - Local tax credit and incentive
 - Construction, environmental and various permits
 - Labor union

ACQUISITION (PRE-DEAL)

- Step 1: Determine acquisition criteria and US strategy
 - Industry (niche/product/technology/know-how)
 - Location (US, EU, APAC)
 - Size (EBITDA multiple)
 - Financing/Funding (cash/PE-backed/bank facility)
- Step 2: Hire buy-side M&A and legal advisers
 - Bulge-bracket bank (e.g., Goldman, JP Morgan)
 - Middle-market investment bank (e.g., William Blair, Houlihan)
 - Boutique China-focused investment bank and M&A advisors (e.g., XMS, Centauri Capital) and boutique sector-specific banks (e.g., Livingstone Partners - healthcare)
- Step 3: Identify potential acquisition targets
 - Background information (Capital IQ, proprietary information)
 - Access to PE fund managers and industry/company key persons
 - Testing the water (prior relationship often necessary)

ACQUISITION (AUCTION)

- Step 1: Review teaser and sign NDA to receive confidential information memorandum (CIM)
 - Does not disclose the identity of seller or other confidential information about business
- Step 2: Review CIM and form initial view on valuation
 - Detailed information about seller, often 50 or more pages; provides basic historical financials and projected financials
 - Form initial view on valuation with assistance of buy-side M&A advisor
- Step 3: Review initial bid process letter
 - Sets forth deadline for prospective bids as well as any other requirements that are demanded by seller (e.g., transaction structure, funding source, consideration currency)
- Step 4: Attend management presentation
 - Provides potential bidder with opportunity to ask questions and to explain information in the CIM
 - Needs to be carefully orchestrated to create favorable impression – asks appropriate questions
- Step 5: Prepare indication of interest (IOI)
 - Non-binding
 - Provides anticipated range of pricing – “Bid the book”
 - Financial ratio, comparable transactions, DCF, premium ratio, sum of parts
 - Often includes term sheet and occasionally includes financing commitments

ACQUISITION (AUCTION) – CONT'D

- Step 6: Seller and its M&A adviser select prospective bidders (typically 3-5) to move forward - phase I due diligence review
 - Seller to open limited data room to selected bidders – often does not include sensitive information (e.g., customer/supplier names, detailed pricing structure, etc.)
 - M&A advisor/lawyer acts as gatekeeper between seller and selected bidders
- Step 7: Review final bid process letter
 - Selected bidder may adjust price up/down based on due diligence review
 - Seller typically provides a draft definitive agreement with the final bid process letter
 - Seller's investment banker may offer stapled financing - requires complete banker disclosure to seller's board/special committee
- Step 8: Final bid placement
 - Firm purchase price (not a range)
 - Intended form of payment (if financing, includes commitment letter from bank)
 - Markup to the draft definitive agreement – may provide markup memo
- Step 9: Select winner and sign the definitive agreement

ACQUISITION (ONE-ON-ONE)

- Step 1: Informal early communication
 - Typically initiated by investment banker with prior relationship with seller
 - Buyer to develop "trust" with seller
- Step 2: Sign NDA and conduct phase 1 due diligence
 - Buyer to conduct preliminary due diligence review of seller information
- Step 3: Prepare indication of offer
 - Investment banker to assist seller in valuation and initial pricing negotiation
- Step 4: Phase 2 due diligence, management presentation and on-site visits
 - Investment banker to manage and on-site visits with target
 - Investment banker manage various aspects of due diligence with target's management
 - Investment banker to guide buyer in the investment decision process
- Step 5: Deal execution
 - Seller often ask for "go-shop" provision
 - Buyer often asks for "no-shop" provision
 - Public company seller must have fiduciary out and will often require "go-shop" as well

ACQUISITION – DOs AND DON'Ts



- Dos:
 - Consider group strategy and post-closing integration issues
 - Follow the requirements set forth in the process letter
 - Rehearse with buy-side investment banker before attending "informal" or formal meetings with management
 - Engage an investment banker as early in the process as possible
 - Let your investment banker handle the communication with seller or seller's investment banker
 - Engage legal and accounting professionals early in the process
 - Appoint the right people at top and within each business unit to review target
 - Say only what you plan to do, and do what you have said
- Don'ts:
 - Don't send "cold" emails to potential target
 - Don't be late in providing IOI, comments to definitive agreement or any other time-sensitive information
 - Don't re-trade on pricing or any other material deal terms without having a good reason
 - Don't hide key information from your bankers, lawyers or accountants

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HOW TO OBTAIN FINANCING IN THE U.S.

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TWO WAYS TO OBTAIN FINANCING

- **DEBT FINANCING**
- **EQUITY FINANCING**

DEBT FINANCING

- **Term Loans**
 - Frequently trenches into A, B and C tranches, with 5, 6 and 7 year maturities
 - May benefit from security and/or guarantees
 - Margin-based pricing
 - Benefits from financial covenants (EBITDA related)
- **Revolving Loans**
 - Committed facility that can be borrowed, repaid, and reborrowed (like a credit card)
 - Margin-based pricing
 - Term typically matches that of term loan, but may be shorter
 - Revolver generally provides sublimits for i) Letters of credit/guarantees; ii) Swingline facility
 - Availability may be tied to borrowing base
- **Mezzanine Debt**
 - Term loan facility that is contractually and/or structurally subordinated
 - Term longer than for senior debt (e.g. 8+ years)
 - Many different flavors – ranging from second-lien loan ranking just after senior debt to deeply subordinated equity-like instrument
 - Investors look for equity-like returns

DEBT FINANCING (CONT'D)

- **Bridge Loan**
 - typically one-year initial term with ability to “roll” into longer term after one year if not refinanced
 - Has tighter covenants limiting a) additional debt, b) distributions, and c) acquisitions/dispositions
 - Margin step-up every three months
 - Ability for banks to make securities demand if not refinanced within the specified period
 - After one year, ability for banks to request exchange notes in exchange for rollover loans
- **High Yield Bonds**
 - Fixed coupon debt securities offered to institutional investors under Reg S/Reg D and Rule 144A and outside the U.S. under Regulation S
- **Asset-Based Financing (ABF)**
 - Basic idea is that financing is supported by priority recourse to specified assets. E.g. receivables-based financing using special purpose vehicle
 - Benefits: a) may increase quantum of financing available; b) may reduce cost; c) ability to substitute different credit for issuer credit
 - Need to consider a) commercial context (which assets are available) and b) impact on other financing

DEBT FINANCING (CONT'D)

Debt Financing Market Participants

- Banks
- Mutual funds
- Insurance companies
- Pensions/endowments
- High yield funds
- Hedge funds
- Collateralized Loan Obligations ("CLO") funds: pool groups of loans and sell securities based on cash flows from loans to investors in separate tranches

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FOREIGN INVESTMENTS IN THE U.S.

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REAL ESTATES

TYPES OF REAL ESTATE INVESTMENTS

- Raw Land
- Single-Family Homes and Duplex/Triplex/Quads
- Small Apartments - 5 to 50 units
- Large Apartments - > 50 units
- REITs (Real Estate Investment Trust)
 - Private – not SEC registered and not listed
 - Public non-traded – SEC registered but not listed on a national exchange (OTCBB or pink slip)
 - publicly trade – SEC registered and listed on a national exchange
- Commercial/Core
 - Target stabilized, fully leased, secure investments in major core markets.
 - Long term leases (often double or triple net leases) in place to high credit tenants
- Commercial/Value Add
 - Existing cash flow but potential to increase with improvements or repositioning of property
 - Nursing home
 - Senior Housing/ Assisted living
 - CFIUS/FIRRMA
- Commercial/Opportunistic/Special Situation
 - Often fully vacant; high risk



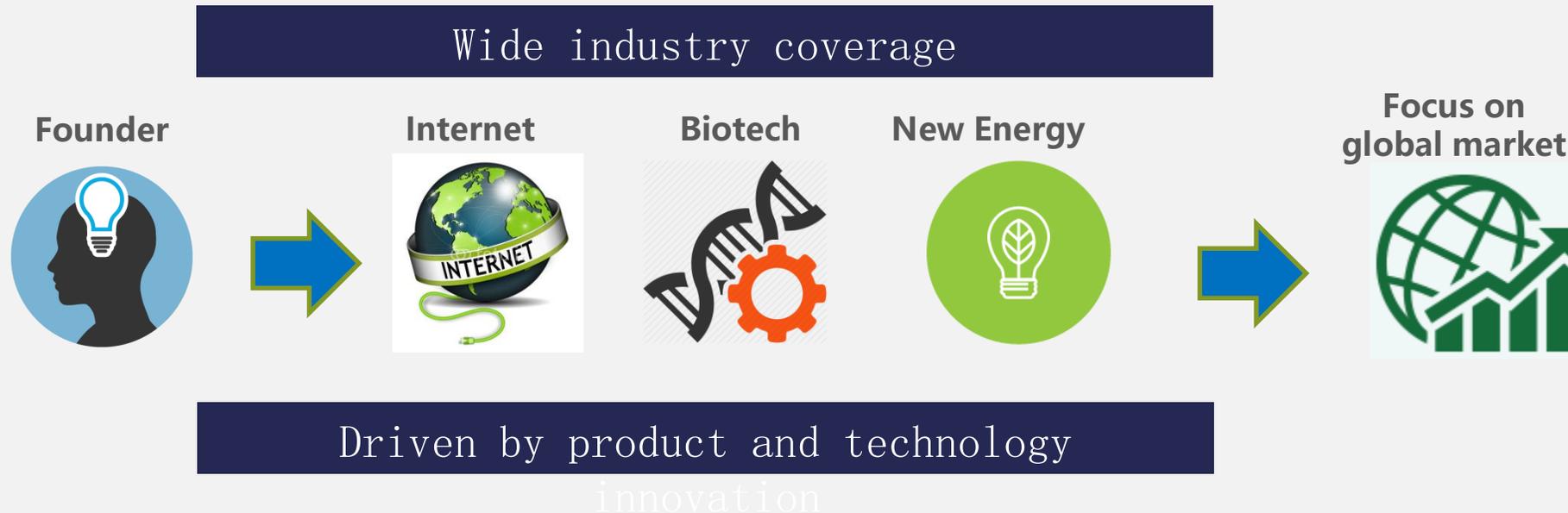
VENTURE CAPITAL PRIVATE EQUITY

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VENTURE CAPITAL INVESTMENTS

An asset allocation, but also a strategic industry allocation:

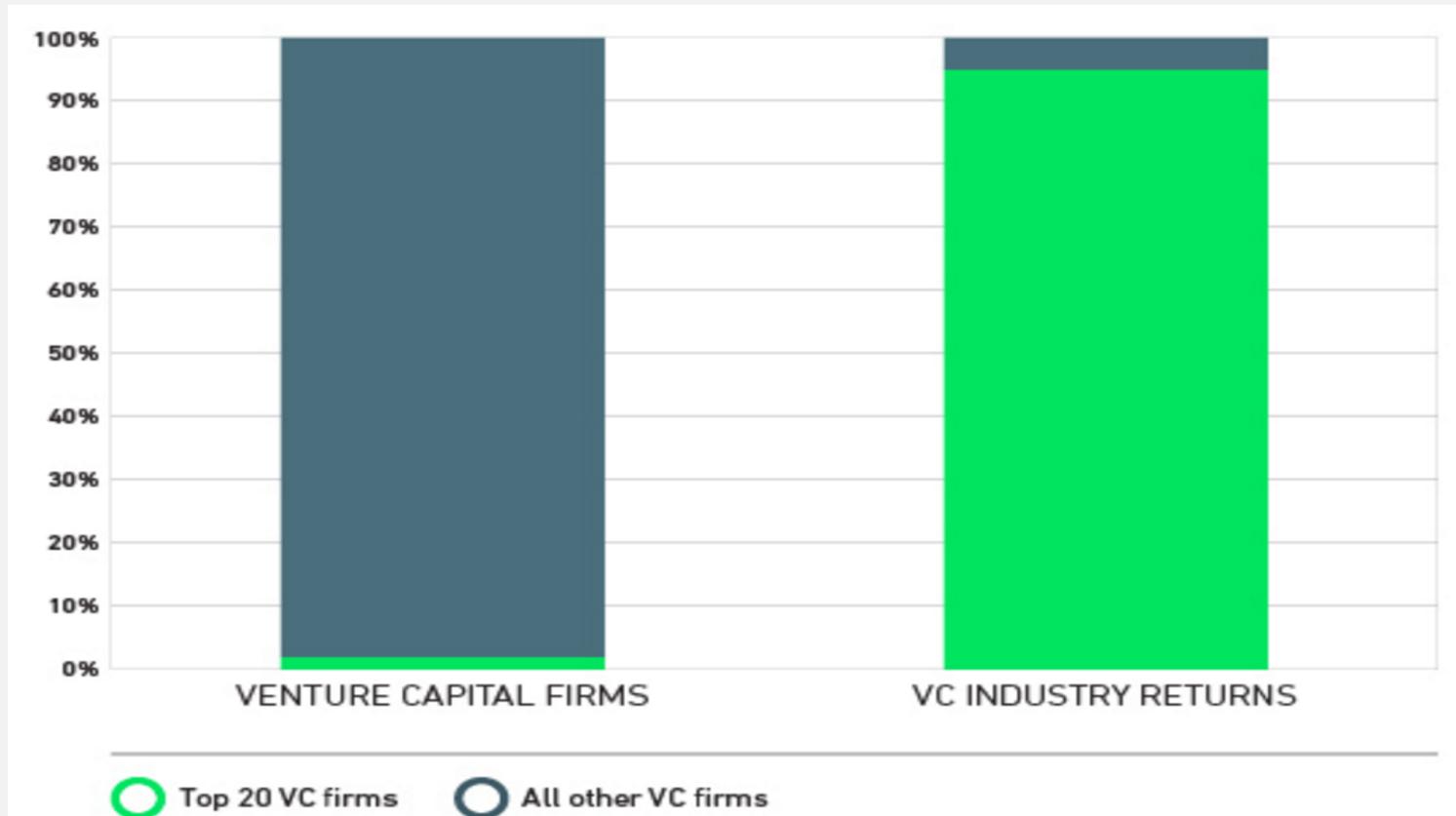
- Focus on internet, SaaS, biotech, new energy
- Good at product and technology innovation
- Features on globalization, and high technology
- Even there are existing giant companies, unicorns are consistently emerging
- Wearing Failure Like a Badge of Honor - encourage trail & error, and innovation



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VENTURE CAPITAL INVESTMENT

In the past 10 years, top 25% VC funds have brought their LPs 22.9% IRR, among which top 20 VCs brought even higher returns in IRR. Top 20 VCs would take 95% of the proceeds from total venture capital investment in the U.S. Top 20 VCs, requires at least \$10 million threshold in order to get in, and they do not take “walk in” money



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TYPES OF PRIVATE EQUITY FUNDS

- Distressed Debt
- Industry-Specific
 - Real Estate
 - Energy, Oil and Gas
 - High Technology
 - Healthcare
 - Financial and Business Services/SaaS
 - Telecommunication
- Equity Buyout

TYPES OF PE INVESTMENT

- Control/Buyout
 - Lead the transaction
 - Maintain operational control post-closing
- Distressed Buyout
 - Could be purchase of target company out of bankruptcy ("363 Auction")
- Direct Co-Invest alongside Buyout Lead Investor
 - Typically following the terms set out by the lead investor
- Direct Co-Invest in Operating Company (minority VC investment)
 - Protect investment through "negative covenants"

HOW TO BECOME INVOLVED

- Direct Investment in companies
 - Require sophistication in deal sourcing and making investment judgement
 - Outsiders are difficult to get into high quality startups
 - Top tier deal flows only shared within closed VC community networks
- Investment in VC/PE funds
 - Top VC/PE firms are selective and normally do not take “walk-in” money
 - High threshold to get in. Top 10 VC firms have \$10 million – 20 million threshold to become their LPs.
 - Some may offer co-investment opportunities with LPs
- Investment in Fund of Fund
 - FoF formed by HNWI's or family offices who are sophisticated in making investments in the U.S.
 - Existing relationships with VC/PE funds to access top funds and top deal flow
 - Some may offer co-investment opportunities with LPs



MERGERS AND ACQUISITIONS IN THE U.S.

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CHECKLIST FOR FOREIGN ACQUIRORS



- Transaction Structure
- Acquisition Holding/Tax Structure
- Acquisition Finance
- Legal Due Diligence
- Regulatory Approvals - PRC and U.S.
- Labor Union / Employee Classification Issues
- Environmental
- Intellectual Property
- Employment – Key Employee Retention Measures
- Bankruptcy/Distressed Asset Issues

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HOW TO FIND POTENTIAL ACQUISITION TARGET

- Reach out directly
 - Many funds are selective and will not take "walk ins"
- Placement Agents
 - Control deal flow
 - Easy source for introductions
- Investment Banker Introductions
 - Oftentimes leading auction processes
 - Regularly meeting with companies
 - Keeping an eye and ear on various industries
- Ecosystem Players
 - Lawyers, accountants, lenders

GENERAL M&A DEAL STRUCTURE

- Asset Purchase
- Stock Purchase
- Merger
 - All assets and liabilities of target are vested in survivor
 - Private companies often use merger structure in friendly deals where a Target has a large number of shareholders
- Stock Acquisition by Tender Offer
 - Tender or Exchange Offer, can be friendly or unsolicited
 - Private company tender offers to be avoided
 - Often followed by 2nd step "Squeeze Out" merger

TYPES OF MERGER CONSIDERATION

Cash Merger

Target shareholders receive cash in consideration for their Target shares

Stock Merger

Target shareholders receive Acquirer shares in consideration for Target shares

Mixed Consideration Merger

Target shareholders receive, pro rata, some Acquirer shares and some cash in consideration for Target shares. Buyer notes and earnout are also possible.

Cash Election Merger

Target shareholders can elect between all cash, all Acquirer shares or a combination

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M&A KEY CONSIDERATIONS

- Deal Process
- Due Diligence
- Acquisition Structure
- Acquisition Terms
- Regulatory Approval

ASSET PURCHASE

- Asset Purchase Overview:
 - Buyer purchases some or all of Target's assets. Target may or may not remain in existence
 - Includes divisional carve-out (buyer purchases assets of a given division or business unit held across multiple legal entities)
 - Liabilities stay with target except to the extent agreed otherwise
 - Generally favored by buyer
- Advantages:
 - Ability generally to select liabilities to assume/leave behind
 - stepped-up tax basis for Buyer in acquired assets
 - May not require shareholders vote / no dissenter's right
- Disadvantages:
 - Purchased assets and assumed liabilities must be identified with great care
 - Seller may pay increased tax if tax basis in assets is low, and Seller shareholders may pay “double tax” on any distribution; leaves Seller with excluded liabilities
 - potentially more assignment / transfer consent issues

STOCK PURCHASE

- Stock Purchase Overview:
 - Buyer purchases all of Target's stock from Target's shareholders. Target to be a wholly owned subsidiary of Buyer
 - All assets and liabilities of Target become indirectly vested in Buyer
- Advantages:
 - Deal documents and procedures may be quicker than an asset sale or merger
 - Fewer assignment/consent issues
 - No dissenters' rights
 - Retention of employees
- Disadvantages:
 - No basis step-up unless Section 338(h)(10) election is made (treat as asset purchase)
 - Potential shareholder hold outs
 - Typically only practical where there are only a handful of shareholders

MERGER

- Merger Overview:
 - All assets and liabilities of Target are vested in survivor corporation
 - Private companies often use merger structure in friendly deals where a Target has a large number of shareholders
- Advantages:
 - Relatively simple documentation
 - No single shareholder can block and no minority interest remains
 - Avoids problem of identifying liabilities/assets
 - Possible to structure as tax-free transaction for sellers if buyer stock used
- Disadvantages:
 - All liabilities of Target continue
 - Shareholder vote required
 - Non-consenting shareholders of Target may have dissenters' appraisal rights requiring purchase of their shares at court-determined fair market value
 - Allocation of consideration among various classes of equity securities can be complex
 - Absent a Section 338(h)(10) election, no basis step up

ACQUISITION HOLDING/TAX STRUCTURE

- Each acquisition form can be structured to be a taxable or “tax-deferred” transaction
- Taxable Asset Purchase
 - Target's Net Operating Losses do not carry over
 - Offset Target's gain on sale of assets
- Tax-Deferred Stock Purchase
 - Net Operating Losses generally stay with Target, but subject to potentially onerous limitations
- Tax Considerations for PRC Acquirors of U.S. Entities
 - Minimize U.S. Withholding Taxes on Dividends and Interest
 - Use of Tax Treaties
 - Avoiding Application of “Conduit” Rules in Multi-Party Financing
- Maximize U.S. Tax Deductions to Reduce U.S. Taxable Income
 - Use Leverage
 - Use Section 338(h)(10) Election to Treat Acquisition of Stock of a U.S. Corporation as an Asset Acquisition to Increase Basis of Tangible Assets
 - Maximize Amortization of Intangibles Via Section 338(h)(10) Election
- Minimize U.S. and Foreign Taxes on exit from U.S. Investment

DEAL PROTECTIONS

- Deal certainty
 - Seller wants fewer conditions to closing, so it knows Buyer will be required to close
 - Buyer does not want to be forced to close if circumstances change adversely
- Deal protection
 - Buyer wants to protect its bargained-for agreement from other purchasers (lock-ups)
 - Seller wants (and, to some extent, is required to maintain) ability to accept better deal (fiduciary out)



COMPLIANCE : THE PEOPLE, THE PRODUCTS AND THE DEAL

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COMPLIANCE REGIME

- Economic Sanctions
- Committee on Foreign Investments in the United States (CFIUS)
- Export Controls
- Antitrust

ECONOMIC SANCTIONS

- U.S. Treasury Department - Office of Foreign Assets Control (OFAC)
 - Enforces the majority of sanctions applicable to “US persons” and “US Assets” (Primary Sanctions)
 - Power comes from statutes
 - Enforced through presidential power and delegated authority
 - Executive Orders
 - Regulations
- U.S. Department of State
 - Enforces extraterritorial sanctions (Secondary Sanctions)
 - Asserts indirect jurisdiction over non-US entities or conduct
 - Deprives violators of certain privileges in the U.S.
 - Purpose: To further national security and foreign policy goals. Therefore, they change over time & sometimes very quickly

ECONOMIC SANCTIONS – PRIMARY SANCTIONS

Civil Penalty
(Fines and Seizure
and Forfeiture)

+

Criminal Penalty
(Fines and
Imprisonment)



- Country sanctions
 - Prohibit U.S. Persons from engaging in most activities with or for the benefit of a sanctioned country or government
 - Cuba
 - Iran
 - Syria
 - Crimea region
- List-based sanctions
 - Prohibit U.S. Persons from engaging in activities with or for the benefit of designated individuals, entities, and organizations
 - OFAC’ s List of Specially Designated Nationals and Blocked Persons (the “SDN List”).

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ECONOMIC SANCTIONS – PRIMARY SANCTIONS

- “U.S. Persons” must comply
 - U.S. companies:
 - any company incorporated/maintaining a principal place of business in the U.S.; and
 - Non-U.S. branches.
 - Individuals:
 - U.S. citizens (regardless of location in the world);
 - U.S. permanent residents (regardless of location in the world); and
 - Any persons located in the U.S. (regardless of nationality).
- By statute, sanctions targeting Cuba and Iran also apply to all foreign subsidiaries of U.S. companies and other entities owned or controlled by U.S. Persons.
 - General License Exceptions
- Currently, the remaining programs do not apply to foreign subsidiaries of U.S. companies, but dealings may still be prohibited if they involve U.S. Persons (e.g., U.S. parent company) or control by U.S. Persons.

US NATIONAL SECURITY REVIEW – CFIUS

- Inter-agency committee authorized to review “covered transactions” to determine effect on U.S. national security
- National Security: broad concept that is not defined and is applied on a case-by-case basis
- Certain items highlighted as raising national security concerns such as critical infrastructure & energy resources
- Covered transactions are those that could result in control of a U.S. business by a foreign person
- CFIUS staff are located within the Department of the Treasury
- Act as interlocutor between petitioners and Committee members
- CFIUS may enter into an agreement with, or impose mitigation conditions on the transaction parties
- If mitigation agreements are not sufficient to address the risks, CFIUS may refer the case to the President to suspend or unwind the transaction.

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CFIUS REVIEW – COVERED PERSON

- CFIUS to have jurisdiction to review any transaction that could result in the control of a U.S. business by a Foreign Person, or any non-controlling investment into a U.S. business by a Foreign Person where such transaction or investment poses national security concerns.
- **“Foreign Person”**: any foreign national, foreign government or foreign entity, includes any entity over which a foreign national, foreign government or foreign entity exercises, or has the power to exercise control, including a foreign-owned US subsidiary or investment fund*.
- **“U.S. business”**: any entity engaged in interstate commerce in the United States, regardless of who owns it or where it is formed or headquartered. This includes i) foreign-to-foreign deals in which the target has one or more US subsidiaries or significant interstate commerce in the United States, regardless of who owns it or where it is formed or US assets or operations (e.g., merger of a French company with a German company, if the German company has subsidiaries or sales office in the United States); ii) the formation of joint ventures in which one party contributes an existing US business iii) Deals involving long-term leases of US assets that operate as de facto transfers of US businesses.

* Foreign person become the limited partner of an investment fund without accessing to management power of the fund or crucial data of portfolio companies, will not subject the fund as a “foreign person”

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CFIUS REVIEW – COVERED TRANSACTION

- CFIUS to have jurisdiction to review i) any transaction results in foreign control of any U.S. business or ii) any other non-controlling investment by a foreign person in any U.S. business involves a) critical technologies, b) critical infrastructure or c) sensitive personal data, as well as d) certain real estate transactions that is in close proximity to military or other sensitive national security facilities.
- **“Critical Technologies”**: U.S. business that produces, designs, tests, manufactures, fabricates, or develops a “critical technology” that is: (1) utilized in connection with the U.S. business’s activity in one or more 27 Pilot Program Industries (listed below); or (2) designed by the U.S. business specifically for one or more 27 Pilot Program Industries.
- **“Critical Infrastructure and Sensitive Personal Data”**: U.S. business that i) Owns, operates, manufactures, supplies, or services "critical infrastructure"; or ii) Maintains or collects sensitive personal data of US citizens that may be exploited in a manner that threatens national security.
- **“Non-Controlling Investment”**: CFIUS has the authority to review any investment by a foreign person in any U.S. business, regardless of the investment size, that provides the foreign person:
 - a) Access to any material non-public technical information possessed by the target US business;
 - b) Membership or observer rights on the board of directors of the US business or the right to nominate board members;
 - c) Any involvement, other than through voting of shares, in substantive decision-making of the US business regarding critical infrastructures, sensitive personal data, or the use, development, acquisition, or release of critical technologies.

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CFIUS REVIEW – PILOT PROGRAM

- The U.S. industries subject to the Pilot Program Rules (“Pilot Program Industries”) are largely aligned with the priority industries under “Made in China 2025” plan. Investments from China in these industry sectors are expected to face increased restriction and regulatory scrutiny.
- Any investment in the following 27 industries are enumerated as Pilot Program Industries under the Pilot Program Rules will be under CFIUS review:
 - Aircraft Manufacturing
 - Aircraft Engine and Engine Parts Manufacturing
 - Alumina Refining and Primary Aluminum Production
 - Ball and Roller Bearing Manufacturing
 - Computer Storage Device Manufacturing
 - Electronic Computer Manufacturing
 - Guided Missile and Space Vehicle Manufacturing
 - Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
 - Military Armored Vehicle, Tank, and Tank Component Manufacturing
 - Nuclear Electric Power Generation
 - Optical Instrument and Lens Manufacturing
 - Other Basic Inorganic Chemical Manufacturing
 - Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
 - Petrochemical Manufacturing
 - Powder Metallurgy Part Manufacturing
 - Power, Distribution, and Specialty Transformer Manufacturing
 - Primary Battery Manufacturing
 - Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
 - Research and Development in Nanotechnology
 - Research and Development in Biotechnology (except Nanobiotechnology)
 - Secondary Smelting and Alloying of Aluminum
 - Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
 - Semiconductor and Related Device Manufacturing
 - Semiconductor Machinery Manufacturing
 - Storage Battery Manufacturing
 - Telephone Apparatus Manufacturing
 - Turbine and Turbine Generator Set Units Manufacturing

CFIUS FILING AND REVIEW PROCESS

Mandatory Declaration:

Parties to any covered transaction must submit to CFIUS either (1) an abbreviated “declaration” describing the transaction and the parties; or (2) a full written notice pursuant to the existing CFIUS regulations. If the parties decide to submit a declaration in lieu of a full written notice, it must be submitted *at least 45 days before the completion date of the transaction*. Any party that fails to comply with the mandatory declaration requirements may be liable to the U.S. government for a civil penalty not to exceed the value of the covered transaction.

Upon receiving a declaration, CFIUS may request that the parties to the transaction file a full written notice, initiate a unilateral review of the transaction, notify the parties that the Committee is unable to complete action on the basis of the declaration alone and invite the parties to the transaction to file a written notice, or notify the parties that CFIUS has *cleared the transaction*. The Committee is required to take action in respect of a declaration within 30 days following receipt. CFIUS may not request or recommend that a mandatory declaration be withdrawn and refiled, except to permit the parties to correct material errors or omissions.

The CFIUS review process consists of a 45-day initial review period, potentially followed by a 45-day investigation period, CFIUS is authorized to extend the investigation period by an additional 15 days in “extraordinary circumstances”.

CFIUS COMPOSITION

CFIUS Members

CFIUS成员

(always participate) (必须参与)



Observing Members 观察员



EXPORT CONTROL

- Follow the Export/Reexport
 - Export – an actual shipment or transmission of items out of the United States or certain releases.
 - Reexport – an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country or certain releases.
 - Item – Commodities, software or technology.
- Compliance Assessment
 - What is my item?
 - Where is it going?
 - Who will receive it?
 - What will be the end-use?

EXPORT CONTROL

- U.S. Department of Commerce - Bureau of Industry and Security (BIS)
 - Controls commercial items including “dual-use” items (items that may have both commercial and military applications)
 - Export Administration Regulations – EAR
- U.S. Department of State - Directorate of Defense Trade Controls (DDTC)
 - Controls items specifically designed, developed, configured, modified or adapted for a military application
 - International Traffic in Arms Regulations (ITAR)
- Other regulatory agencies – such as Dept. of Treasury, Dept. of Energy, Nuclear Regulatory Commission

EXPORT CONTROL

- What is Subject to the EAR?
 - Items in the U.S.
 - Certain items located outside the U.S.
 - Activities of U.S. persons.
 - Releases of source code or technology to foreign nationals in the United States or abroad (“Deemed” exports and reexports).
- Deemed Exports
 - Release of technology or source code subject to the EAR to a foreign national in the U.S. or abroad
 - Considered to be an export or reexport to that person’ s home country
 - Does not apply to U.S. Citizens, individuals granted permanent resident status, protected individuals

EXPORT CONTROL

- License Requirements
 - What is my item? ECCN
 - Where is it going? Destination
 - Who is involved? End User
 - What are they doing with it? End-use
- Commerce Control List (CCL) / Export Control Classification Number (ECCN)
 - Items generally listed in terms of technical parameters
 - ECCN identifies “Reason For Control” – e.g. national security (NS), nuclear nonproliferation (NP), Anti- terrorism (AT), etc.
 - If not on CCL, EAR99
- Commerce Country Chart
 - Used with the ECCN to determine if you need a license based on item & destination
 - Compare destination and item’s reason for control - e.g. national security (NS), nuclear proliferation (NP), regional stability (RS), crime control (CC)



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Gutnicki是一家位于芝加哥的精品律师事务所，拥有来自Am Law 100律所的专业律师团队，致力于为全球客户提供以商业为导向的专业法律服务。动态技术，生命科学和医疗保健服务等行业的公司，大小型投资集团，金融机构，初创公司，或者行业市场领导企业均向Gutnicki寻求专业的法律知识，为创新，和商业活动提供保障。拥有13名兼并收购律师的核心团队，外加5人诉讼业务团队，Gutnicki多元化的律师背景以及专业经验，足以处理最复杂的交易，并解决跨多个司法管辖区的重大纠纷。律所致力于提供以商业为导向的解决方案，可以为客户提供与全球最大知名律所相媲美的服务。

我们的律师秉承高标准，承诺卓越并且高效的法律服务。同时我们也致力以合理的价格服务客户，从而保持持久的关系以及创纪录的业绩。

Gutnicki的律师独具创新，专注于实际业务成果，同时注重费用的合理。我们的律师不仅仅提供法律建议，更是在战壕中，不知疲倦地为我们的客户争取权益最大化。

GUTNICKI LLP

投资与兼并收购业务

Gutnicki LLP为中型企业，私人基金，家族办公室，以及私有企业或上市企业的公司董事会，就企业和资产的收购，重组，企业兼并，合资，战略联盟，股权和债务的投资，融资以及其他公司交易事项，提供专业卓越的法律咨询。本所代表各个行业的初创公司，中型公司，以及大小型的私募基金。我们在工业，区块链技术，医疗服务，HUD-FHA房产项目以及金融技术和服领域尤为突出。

在我们的客户中，有尚未拥有法务团队的小型公司，也有拥有庞大内部律师团队的上市公司。对于一些公司，我们实际上提供所有公司所需的法律服务，而另外一些客户，我们则就特定项目，向现有的内部法律团队补充法律建议。我们会根据客户的需求和情况量身定制我们的服务。

核心优势

- 首要任务始终是优化客户的商业目标，包括财务或非财务目标
- 以合理的价格，提供与全球大型知名律所相媲敌的服务
- 客户可以根据特定需求或情况得到特殊领域的法律服务，比如税法，劳动雇佣法，国家安全法以及环境法
- 所有合伙人律师都曾是Am Law 100律所的律师

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投资与兼并收购业务 (CONT'D)

- 处理复杂诉讼的丰富经验
- 对于现今独特交易情境下量身定制的法律创新和最新流程的深入了解
- 处理有关数字货币相关交易的丰富知识和经验，包括货币架构，货币发行，货币和其他投资，深入了解区块链技术公司所面临的特定法律问题
- 对美国房地产法以及最新HUD-FHA低利率贷款房产项目的丰富知识
- 各个领域融资的内部专家，包括并购融资以及HUD融资
- 拥有各个州法律的专业知识，可为各州客户处理房地产和健康医疗交易
- 能够通过当地语言沟通，书写文件以及谈判，为大中华地区客户提供服务

擅长行业

健康医疗

私募基金

借贷（包括P2P社交借贷）

生物医药

金融机构和金融科技

TMT 数字新媒体科技产业

区块链技术

工业和制造业

房地产

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诉讼业务

在Gutnicki LLP，我们丰富的交易和事务经验使我们能够在涉及民事或刑事诉讼，内部调查，本地和内部仲裁，联邦和州一级的监管机构发起的民事及刑事政府调查，执法行动，以及敏感审计相关事务上，为我们的客户在各个阶段提供战略性和有效的法律服务。我们代表公司和个人处理复杂的民事和刑事案件，涉及虚假索赔，欺诈，税务，反垄断，证券，消费者欺诈，医疗保健，医疗保险补助，合伙和商业纠纷，强制性契约的执行和辩护，购买和出售企业或证券而引发的纠纷，商业估值，以及合同纠纷。我们律师在以下领域具有特殊专长：

擅长行业

商业诉讼

健康医疗

白领犯罪

内部调查

反垄断

股东诉讼

GUTNICKI LLP



ABOUT CHICAGO

GUTNICKI LLP

芝加哥

芝加哥是美国第三大都市，经济强大且多元，拥有人口950万，就业人数430万，地区生产总值6090亿美元。芝加哥是400多家大企业总部所在地（其中财富500强35家），并有两家全球金融交易中心。芝加哥是全球仅次于伦敦、纽约和东京的第四大经济强市（理查·弗洛里达/马丁繁荣研究所）；65家全球大都市区排名第7（科尔尼咨询）；北美交通和基础设施排名第1（城市机遇报告）；北美都市中拥有财富500强企业数排名第2。

根据IBM PLI咨询报告，芝加哥连续数年在企业扩大规模投资的美国大都市排名（2013-2018），以及吸引外国投资项目数排名（2012-2017）均名列第一。

全美领先的制造业，总产值达750亿美金

化学和塑料制品 – 178亿美金	食品加工 – 85亿美金
高精金属制造 – 73亿美金	医疗技术 – 48亿美金
汽车工业 – 34 亿美金	

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芝加哥约有1800家外国企业，其中中国大陆企业100多家。拥有80多家领馆、40多个国际商会、90家外国贸易与投资机构以及29家姐妹友好城市。2017年伊利诺州国际贸易额达2010亿美元，2004年时仅为950亿美元。出口商品中以医疗和光学仪器、工业装备和药品为主。服务出口中以建筑和工程服务、咨询以及物流为主。



THANK YOU

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