

## 7 DAY FORECAST

25.5°C



Sun	Mon	Tue	Wed	Thu	Fri	Sat
18° 29°	16° 25°	17° 27°	18° 29°	16° 25°	17° 27°	17° 27°
SUNSET	SHOWERS	MOSTLY CLOUDY	SCATTERED THUNDERSTORMS	SHOWERS	MOSTLY CLOUDY	MOSTLY CLOUDY



# 冷暖自知

## Hot and cold

北美对于中国投资来说仍然是热点地区，不过总体投资环境仍然风云变幻。中美关系趋暖的同时，加拿大的冷锋却遮挡了中国投资者的艳阳天，Vanessa Ip为您报道

*North America continues to be a hot spot for Chinese investment, but the overall investment forecast remains changeable. Sino-American relations are warming, but in Canada a cold front has descended for Chinese investors, writes Vanessa Ip*

中国与美国和加拿大的关系一直变幻无常，这主要是因为政治旋风带来的天气时而是晴天时而是暴风雨。中国公司在美国的投资环境似乎直至最近随着投资的增多才从不稳定趋于平静；与此同时，加拿大正在寒风肆虐，既然加拿大拥有丰富的能源资源，这种寒风会持续多久呢？

2013年中国总体的境外并购活动并没有打破任何记录，但与过去几年相比，仍然在健康发展。据报道，2013年进行了两百笔

China's relationships with the US and Canada have a history of running hot and cold, depending mostly on the swirling winds of politics for the fine or stormy atmospheres that intermittently prevail. The until very recently volatile investment climate for Chinese companies in the US appears to be clearing as investment is on the uptick, while frosty winds prevail in Canada, but for how long, given that nation's wealth of desirable energy resources?

Chinese overall outbound M&A didn't break any records in 2013 but remained healthy, comparing well with the past few

交易, 2012 年则有 191 笔, 不过公布的交易价值从 2012 年的 660 亿美元下降到了 2013 年的 515 亿美元。但是随着更大规模交易的进行, 中国投资者的日益成熟以及全国性的政府支持, 预计 2014 年会成为中国境外投资的创纪录年度。

专长于处理中国相关并购业务的年利达律师事务所上海代表处合伙人方健说: “由于许多顶级公司的参与、市场的广度和深度、美元和加元的相对疲软、最近在北美地区大量页岩储备的发现以及美国经济复苏的良好迹象, 美国和加拿大对于中国投资者来说仍然非常具有吸引力。在过去的大约一年中, 有好几个中方投资项目在美国得以成功实施和完成, 这也向中国投资者发出了积极的信号并增强了他们克服法律和监管障碍的信心, 这些障碍在以往几年曾使许多中国投资者更青睐欧洲等其他市场。”

今年早些时候, 中国放松了一些对境外投资的限制。根据新规定, 只要不涉及敏感国家地区或行业, 中国公司投资 10 亿美元以下的项目不再需要取得政府核准。此前, 几乎所有的中方投资都需要取得国家发展和改革委员会 (发改委) 以及商务部的核准, 这使得中国投资者处于不利的地位。

“需要取得中国政府的核准使得中国投资者很难与其他不需要进行 (国家) 审批的竞标者站在同一起跑线上竞争,” 瑞格律师事务所香港办公室合伙人和全球并购业务负责人 Jim Lidbury 说。“这些新规定将大幅放宽对境外并购的审批要求。我们仍然在等最终的实施条例出台, 可以预见其将会使中国投资者更加容易参与竞争。”

盛德国际律师事务所上海代表处合伙人陈永坚将近期的投资自由化改革形容为“朝着正确方向迈进的一步”, “随着时间的推移, 这定会鼓励并促进中国更多境外的投资活动”。

然而, 东道国在多大程度上欢迎中国投资却不那么确定。中国正在不断将资金注入到美国的并购交易中, 尤其是科技和创新的热门领域, 据报道, 2014 年有价值 100 亿美元的交易正在进行中。不过, 当涉及科技、知识产权保护和国家安全等因素时, 中美两国在监管和执法方面的关系仍然紧张。

穿过美国边境进入加拿大, 更加严格的外国并购法规因为国家

## 中国在保护自己的地盘方面 变得更加咄咄逼人

*China has become a lot more  
aggressive in protecting its  
own turf*



**Jamie Barr**  
霍金路伟律师事务所  
合伙人  
香港  
Partner  
Hogan Lovells  
Hong Kong

## 中国政府的核准使得中国投资者 很难……站在同一起跑线上竞争

*Approvals from China have made  
it hard for Chinese investors to  
compete on an even playing field*



**Jim Lidbury**  
瑞格律师事务所  
合伙人  
香港  
Partner  
Ropes & Gray  
Hong Kong

years. There were 200 deals announced in 2013 versus 191 in 2012, however the announced deal value fell from over US\$66 billion in 2012 to US\$51.5 billion in the following year. But it's predicted that 2014 will be a record year for China outbound investment, driven by bigger deals, the increasing sophistication of Chinese investors, and national government support.

According to Fang Jian, a partner specialising in China-related M&A at Linklaters, Shanghai: “The US and Canada remain attractive M&A jurisdictions for Chinese investors, given the presence of leading players, the width and depth of the market, the relatively weaker American and Canadian currencies, the recent discovery of huge shale reserves in the North America region, and the promising signs of recovery of the US economy.

“The successful execution and completion of a few Chinese investments in the US during the past year or so also send positive signals to Chinese investors and raise their confidence level in overcoming the legal and regulatory obstacles that drove many Chinese investors to favour other markets such as the EU in the past few years.”

Earlier this year, China eased some restrictions on outbound investment. Under the new rules, Chinese companies no longer have to obtain government approval for foreign investments under US\$1 billion, provided they do not involve sensitive countries or industries. Previously, approvals from the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) were required for almost all outbound investments, putting Chinese investors at a disadvantage.

“Approvals from China have made it hard for Chinese investors to compete on an even playing field against other bidders that don't have to go through a [state] approval process,” says Jim Lidbury, a partner at Ropes & Gray in Hong Kong and co-leader of the firm's global M&A practice. “The new rules will substantially loosen the outbound M&A approval requirements. We're still waiting on the final implementing rules, but this will make it a lot easier for Chinese investors to compete.”

Joseph Chan, a partner at Sidley Austin in Shanghai, describes the recent liberalisation reforms as “a step in the right direction”, which “over time should encourage and facilitate more successful outbound activities in China”.

安全问题阻挡着并购活动的进行, 并且对战略资源流失的担忧导致了近期中国的投资冷却。这些紧张局面能否得到缓和, 还是说投资仍然会如履薄冰?

## 美国

位于北加州的美国 Womble Carlyle Sandridge & Rice 律师事务所合伙人 Randy Hanson 表示, 中国对美国投资是势在必行。Hanson 是 Womble Carlyle Sandridge & Rice 律师事务所全球商事业务主管, 他代理许多在美国特别是大西洋东南部和中部地区进行商业活动的中国公司。“由于希望在美国市场中取得一定声望, 也由于美国经济的规模和实力, 许多中国企业都有在美国开展商业活动的强烈愿望,” 他表示。

不过, 中美关系最近“在许多领域都充满了紧张气氛并出现恶化”, 霍金路伟律师事务所香港办事处合伙人和公司业务主管 Jamie Barr 说。

“中国在保护自己的地盘方面变得更加咄咄逼人, 尤其是在科技领域——美国在该领域有许多针对中国人盗取和非正当取得公司信息的行为提起的诉讼。很难说这是否为报复行为, 但我们看到, 中国竞争主管机关越来越有兴趣整顿在其看来可能会影响中国和其他地区竞争情况的协议,” Barr 说。

Less certain, however, is how receptive host countries are to incoming Chinese investment. China is pumping money into US acquisitions, notably the hot sectors of technology and innovation, with a reported US\$10 billion worth of deals in the pipeline for 2014. However Sino-American relations over regulation and enforcement involving technology, intellectual property (IP) protection and national security continue to be strained.

Across the US border into Canada, stricter foreign takeover rules have blocked takeovers on national security grounds, and concerns over the loss of strategic resources are being blamed for the recent Chinese investment chill. Can these tensions be tempered, or will investment remain on ice?

## The state of the union

Randy Hanson, a partner at Womble Carlyle Sandridge & Rice in North Carolina, says China's participation in the US is a given. Hanson is a leader in the firm's global business practice, which represents Chinese companies in the US, particularly in the southeast and mid-Atlantic regions. “[There is] a strong desire on the part of many Chinese businesses to be in the US, based on their perception of achieving a certain cachet at home of being in our market, and due to the size and strength of the US economy,” he observes.

However, the Sino-American relationship has recently been fraught with “a number of tensions in a number of areas, and



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- 能源和项目
- 国际仲裁, 反垄断和反贿赂
- 国际贸易

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私营企业进行的许多投资都是瞄准了美国的成熟技术。联想集团以 29 亿美元收购了谷歌旗下的摩托罗拉移动手机业务成为今年已公布的中国在北美地区进行的最大笔境外交易。随着阿里巴巴参与了对拼车软件 Lyft 2.5 亿美元的投资，中国还将继续开拓道路进军硅谷。

方健认为这种趋势可能会继续下去。“如今，中国潜在的投资者从重点关注自然资源和基础设施交易的国企扩大到了希望得到外延式

has deteriorated”, observes Jamie Barr, partner and head of the corporate practice at Hogan Lovells in Hong Kong. “China has become a lot more aggressive in protecting its own turf. Particularly in the area of technology, there have been claims brought in the US against the Chinese for spying and improper access to company information. Whether it is retaliatory is hard to say, but we’ve also seen Chinese competition authorities become increasingly interested in policing agreements that they feel may impact competition in China and elsewhere.”

A significant portion of the investments coming from privately owned enterprises has been targeted at established technologies in the US. The largest announced China outbound deal in North America so far this year was the US\$2.9 billion purchase of Google’s Motorola Mobility unit by Lenovo Group. China also continues to carve out inroads into Silicon Valley with Alibaba’s eyes set on the US\$250 million acquisition of ride-sharing app developer Lyft.

According to Fang, this is a trend that is likely to continue. “Potential Chinese investors have now expanded from state-owned enterprises focusing mainly on natural resources and infrastructure deals, to also include private enterprises driven by the desire for inorganic growth, increase in overseas market share, and opportunities to acquire technologies and innovative businesses. Some of the bigger private enterprises include Shuanghui, Tencent, Fosun, Lenovo and Wanda, who are pursuing investment opportunities in myriad sectors ... a significant proportion of China’s outbound investments in terms of deal value are foreseeably still likely to be in the natural resources, technology and infrastructure sectors”, he says.

Hogan Lovells is one of the sell-side advisers in the US\$2.3 billion IBM-Lenovo deal involving the sale of IBM’s x86 server unit to Chinese PC maker Lenovo. The deal was recently approved by US regulators, but had previously drawn national security concerns among US officials over the possibility that the servers could be abused by Chinese hackers. Hogan Lovells advised IBM on global antitrust issues with regards to the necessary approvals required by Chinese regulators.

On the increasing sophistication of Chinese investors, Barr says: “The Chinese corporates acquiring non-resource assets have had a reputation for asset stripping, in that they have been looking to acquire know-how, technology, intellectual property, which they then use to upgrade their own businesses in China. I think we’re going to see more corporates going into markets and really operating those businesses in those markets.”

Thomas Chan, a partner at Fox Rothschild in Los Angeles who specialises in helping Chinese companies set up operations in the US, notes that Chinese investors are learning to protect their industries and interests by utilising the US legal system. “For example, they recently began to use antitrust laws against US pharmaceutical companies, tech companies and even major auto companies,” he says. “They are also using the Western legal system to grow their IP base and foster indigenous IP development. Currently they file more anti-piracy lawsuits in China against Chinese entities than we file against them here in the US.”

According to Peter Thomas, managing partner at Simpson Thacher’s Washington DC office, “it is no secret that there is some trepidation in US society, and among US politicians, about China’s growing economic clout, especially when manifested by direct investments in US assets”. But Barr believes the recent announcement that China and the US will sign up to a Model

中国企业赴美国、加拿大并购 - 国际律所前20强 (排名基于交易金额) Top 20 international law firms for China outbound US & Canada deals (by deal value)			
排名 Ranking	律师事务所 Law firms	金额 (百万美元) Value (US\$m)	交易数量 No. of deals
1	佳利律师事务所 Cleary Gottlieb Steen & Hamilton	5,210	2
2	世达律师事务所 Skadden Arps Slate Meagher & Flom	3,296	5
3	威嘉律师事务所 Weil Gotshal & Manges	2,910	1
4	美迈斯律师事务所 O’Melveny & Myers	2,525	4
5=	AZB & Partners	2,300	1
5=	Cravath Swaine & Moore	2,300	1
5=	霍金路伟律师事务所 Hogan Lovells	2,300	1
8	司特曼律师事务所 Stikeman Elliott	1,120	1
9	达维律师事务所 Davis Polk & Wardwell	980	2
10	伟凯律师事务所 White & Case	313	2
11	Katten Muchin Rosenman	188	2
11=	麦启泰律师事务所 McCarthy Tétrault	188	1
13	The Giannuzzi Group	166	1
14	瑞格律师事务所 Ropes & Gray	143	1
14=	盛德律师事务所 Sidley Austin	143	1
16	盛信律师事务所 Simpson Thacher & Bartlett	120	1
17	摩根路易斯律师事务所 Morgan Lewis & Bockius	70	1
18	普凯律师事务所 Pryor Cashman	41	1
19=	Brown Rudnick	22	1
19=	Polsinelli Shughart	22	1

基于2013年8月21日至2014年8月21日期间公布的交易  
Based on announced deals between 21 August 2013 and 21 August 2014

资料来源：并购市场资讯 Source: Mergermarket

发展、增加海外市场份额并获得收购技术和创新公司机会的私营企业。例如双汇、腾讯、复星、联想和万达等大型私营企业正在各个领域寻求投资机会……但从交易金额来说，预计中国大部分的境外投资可能会继续进入自然资源、科技和基础设施领域。”他说。

霍金路伟律师事务所联想以 23 亿美元收购 IBM 业务的交易中担任卖方 IBM 的法律顾问，该笔交易是 IBM 向中国电脑制造商联想出售 X86 服务器业务。美国监管当局最近批准了这笔交易，尽管此前由于担心中国黑客可能会滥用服务器，美国官员对国家安全表示了担忧。霍金路伟律师事务所就全球反垄断问题并就取得中国监管者的必要审批为 IBM 提供了法律服务。对于中国投资者的日益成熟，Barr 认为：“中国公司有利用非资源类资产收购实则进行资产剥离的名声，因为他们一直把目光放在取得技术诀窍、科技和知识产权上面，然后用其升级自己在中国的业务。我想我们会看到越来越多的公司进入市场，而且是名副其实地在那些市场经营那些业务。”

位于洛杉矶的福罗律师事务所合伙人陈德华专长于帮助中国公司在美国开始经营活动，他指出中国投资者正在学习如何通过美国的法律制度保护自己的产业和利益。“比如，他们最近开始运用反垄断法应对美国制药公司、科技公司甚至大型汽车公司，”他说。“他们还运用西方法律制度发展他们的知识产权库并培育知识产权自主开发。最近，他们在中国针对中国公司提起的反盗版诉讼比我们在美国提起的更多。”

盛信律师事务所华盛顿办公室管理合伙人 Peter Thomas 说：“美国社会和政客对中国日益增长的经济影响力，特别通过对美国资产进行直接投资展现的影响力有些许恐惧感已经不再是秘密了。”不过，Barr 认为近期宣布的中美两国将在今年年底将就信息交换签署的“《海外账户纳税法案》政府间协议模式一”可能标志着两国之间更大的妥协或者至少是更加务实的态度。不过，众说不一。

美国一家专注于中国业务的中型律师事务所 Foley & Mansfield 明尼阿波利斯办公室合伙人 Seymour Mansfield 介绍说，《海外账户纳税法案》由美国国会于 2010 年 3 月制定，旨在使美国纳税人更难隐瞒其离岸账户的资产。Mansfield 是该律所国际商事法律部

## 美国社会和政客对中国日益增长的经济影响力……有些许恐惧感

*It is no secret that there is some trepidation [in US] about China's growing economic clout*



**Peter Thomas**  
盛信律师事务所  
管理合伙人  
华盛顿  
Simpson Thacher & Bartlett  
Managing Partner  
Washington DC

## 为了获取有关离岸账户的信息，FATCA 规定了严格的通报义务

*To discover information about offshore accounts, FATCA imposes significant reporting obligations*



**Seymour Mansfield**  
Foley & Mansfield  
合伙人  
明尼阿波利斯  
Partner  
Foley & Mansfield  
Minneapolis

1 Foreign Account Tax Compliance Act (FATCA) agreement on exchanges of information by the end of the year, may signal greater accommodation, or at least pragmatism, between the two countries. Opinions, however, are divided.

FATCA was enacted in March 2010 by the US congress to make it more difficult for US taxpayers to conceal assets in offshore accounts, explains Seymour Mansfield, a partner in the Minneapolis office of Foley & Mansfield, a mid-sized US firm with a China focus. Mansfield is chair of the firm's international business law group, with a specific focus on Sino-US business deals and disputes. "In order to discover information about offshore accounts, FATCA imposes significant reporting obligations on both non-US foreign financial institutions and non-US non-financial entities to identify and disclose their US account holders," he observes.

The goal, says Hanson, is to promote the global sharing of tax information, however, "FATCA has without a doubt created unwelcome business tensions between the US and other countries, as well as further animosity over the proliferation of US laws with extensive extra-territorial application, such as FCPA [Foreign Corrupt Practices Act]."

Mike Burke, a partner at Arnall Golden Gregory in Washington, agrees. Burke has experience advising clients on FCPA compliance, in particular with China-related direct investments. "FCPA and US export controls, taken together, can be a major challenge," he warns. "Foreign investors sometimes do not realize that investments in the US could cause the 'parent' company to be subject to US law, including the FCPA and export controls. With that jurisdiction, penalties are potentially high, as China remains a jurisdiction of concern for bribery, as well as US export control compliance."

Megan Mehalko, a partner at Benesch in Cleveland, also warns of fallout that could impact China investment activity. Benesch assists US companies in the establishment of China-related strategic alliances and joint ventures for manufacturing, distribution and business operations, and Mehalko is chair of the firm's corporate and securities practice group, and also active in its China practice group. "It is certainly possible that this [FATCA] co-operation will chill some Chinese investment in the US as information regarding these foreign holdings and investments will be shared with the Chinese tax authorities,

十大中国境外并购交易 (以美国和加拿大为目的地)  
Top 10 China outbound deals targeting US and Canada

公布日期 Announcement date	收购方 Bidder	收购方法律顾问 Bidder legal adviser	收购目标 Target	目标所在行业 Target industry	目标所在国家 Target dominant country	出售方 Seller	收购目标 / 出售方 法律顾问 Target/Seller legal adviser	金额 (百万美元) Value (US\$m)
29/1/2014	联想集团 Lenovo Group	威嘉律师事务所 Weil Gotshal & Manges	摩托罗拉移动控股公司 Motorola Mobility Holdings	电信硬件 Telecom Hardware	美国 US	谷歌公司 Google	佳利律师事务所 (代表出售方) Cleary Gottlieb Steen & Hamilton (advising seller)  世达律师事务所 (代表财务顾问) Skadden Arps Slate Meagher & Flom (advising financial adviser)	2,910
23/1/2014	联想集团 Lenovo Group	AZB & Partners; 佳利律师事务所 Cleary Gottlieb Steen & Hamilton	IBM (x86 服务器业务) IBM (x86 server business)	电脑硬件 Computer Hardware	美国 US	IBM 公司 IBM Corporation	Cravath, Swaine & Moore (代表目标公司 advising target);  霍金路伟律师事务所 (代表出售方) Hogan Lovells (advising seller)  美迈斯律师事务所 (代表出售方) O'Melveny & Myers (advising seller)	2,300
17/4/2014	凤凰能源控股 Phoenix Energy Holdings	司特曼律师事务所 Stikeman Elliott	Athabasca Oil Corporation (Dover 商业项目 Dover Commercial Project) (40% 股权 40% stake)	能源 Energy	加拿大 Canada	Athabasca Oil Corporation		1,120
12/5/2014	方源资本 FountainVest Partners		百利得汽车安全系统公司 (67.5% 股权) Key Safety Systems (67.5% stake)	汽车 Automotive	美国 US	Crestview Partners	达维律师事务所 (代表出售方) Davis Polk & Wardwell (advising seller)	700
26/12/2013	海普瑞 (美国) Hepalink USA	伟凯律师事务所 White & Case; 中伦律师事务所 Zhong Lun Law Firm	Scientific Protein Laboratories	制药、医疗及生物科技 Pharma, Medical & Biotech	美国 US	American Capital		313
20/3/2014	阿里巴巴集团 Alibaba Group Holding		TangoMe	电脑软件 Computer Software	美国 US		达维律师事务所 (代表目标公司) Davis Polk & Wardwell (advising target)	280
2/4/2014	阿里巴巴集团 Alibaba Group Holding Third Point		Lyft	互联网 / 电子商务 Internet/ E-commerce	美国 US			250
29/7/2014	颖泰嘉和生物科技 有限公司 Nutrichem	世达律师事务所 Skadden Arps Slate Meagher & Flom	Albaugh (20% 股权 20% stake)	化工业及材料 Chemicals & Materials	美国 US			
20/12/2013	万丰奥特控股集团 Wanfeng Auto Holding Group 山西联合镁业有限公司 Shanxi United Magnesium Industry	Katten Muchin Rosenman	Meridian Lightweight Technologies	汽车 Automotive	加拿大 Canada		麦启泰律师事务所 (代表目标公司) McCarthy Tétrault (advising target)	188
14/7/2014	红牛维他命饮料 有限公司 Red Bull Vitamin Drink Company		All Market (25% 股权 25% stake)	消费品 Consumer	美国 US		The Giannuzzi Group (代表目标公司 advising target)	166

基于 2013 年 8 月 21 日至 2014 年 8 月 21 日期间公布的交易  
Based on announced deals between 21 August 2013 and 21 August 2014

资料来源: 并购市场资讯 Source: Mergermarket

**FATCA下的合作肯定有可能使在美国的某些中国投资冷却下来**

*It is certainly possible that this [FATCA] co-operation will chill some Chinese investment in the US*



**Megan Mehalko**  
Benesch  
合伙人  
克利夫兰  
Benesch  
Partner  
Cleveland



的主管，尤其专长于中美商业交易和争端。“为了获取有关离岸账户的信息，《海外账户纳税法案》规定了严格的通报义务，要求外国金融机构和外国非金融实体必须确定并报告其美国账户持有人，”他说道。

something that some Chinese investors may have been trying to avoid by making an investment in the first place, or sending funds out of China in anticipation of making an investment,” she says.

Still, Nicholas Molan, of counsel for Vinson & Elkins in Beijing, says the anticipated entry into a Model 1 Intergovernmental Agreement between the US and China “is being viewed favourably by many companies as a barometer of broader relations between the countries”. And Phillip Mills, a partner at Davis Polk in New York specialising in M&A, agrees that a US-China FATCA agreement would be an important development in terms of co-operation between the two governments. However, he adds that “it is of no consequence to Chinese outbound M&A activity into the US. Co-operation on the sharing of tax-related information will not alleviate the national security or cybersecurity concerns which are much more fundamental to M&A regulatory review”.

From a political and regulatory perspective, one of the main concerns for Chinese investors is the stringent review requirements of their potential acquisitions in the US by the Committee on Foreign Investment in the United States (CFIUS). “In most cases there are no serious social, political or regulatory issues preventing Chinese investment in US assets,” says Thomas, “but certain issues, such as close proximity of assets to sensitive military facilities, have repeatedly presented problems for certain Chinese investors.”



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Key Practice Areas	主要业务领域
General Corporate and Business	公司及商业法律事务
Disputes Resolution	争议解决
M&A	企业重组和兼并收购
Employment and Labor	人事和劳动
Education	教育
Capital Market	资本市场
Anti-trust and Competition Law	反垄断及反不正当竞争
Tax Law	税法
Banking and Finance	银行及金融
Intellectual Property	知识产权

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# 在美国实施私有化需要考虑的因素

## What to consider about going private in the US

中国的公司过去曾热衷于在美国上市，且往往是通过反向合并的方式进行。但是如今，中国公司却正在退出美国的资本市场，另寻其他的司法管辖区上市。

在截至 2014 年 8 月为止的过去 58 个月中，已有 26 家公司成功完成了私有化。许多中国公司由于股价被低估、空头攻击及 / 或战略调整而已经进行了私有化。

有些公司能顺利完成私有化，但另一些公司的私有化进程却碰到障碍，甚至最终失败。环球天下教育科技集团仅用 30 天便完成了私有化，相较之下，同济堂药业和哈尔滨电气却耗时超过一年。作为估值近 10 亿美元的亚洲首家在纳斯达克上市的保险中介公司，泛华保险甚至都未能实现私有化。一旦遭遇小股东反对，而要约人又没有充足的收购资金，私有化便会以失败告终。

私有化完成后，有的公司在其他司法管辖区再次成功上市。例如，中国金属资源利用有限公司于 2014 年 2 月在香港成功再上市，募集资金约 9,600 万美元。该公司早先在纽约证交所上市，名称为“古杉环境能源”，其于 2012 年 10 月从纽交所退市。

### 何为“私有化”？

“私有化”是指在美上市公司的全部或大多数股份被收购而归为私人所有。股份的收购人可以是私募股权机构、本公司的大股东或管理层，或者该公司的关联方。上市公司的在册股东若少于 300 名（若该公司无重大资产，则这一数字为 500 名），就可以向美国证券交易委员会（SEC）申请注销其股权证券，此后就无须遵守美国证券法的定期报告要求。

在美上市的公司可以通过不同的途径实施私有化。

- **合并：**在美上市公司与收购集团所有的新设私人公司合并，或者将全部或绝大部分资产出售给该新设公司；
- **要约收购：**收购集团发出收购要约，收购在美上市公司的全部或大部分公众持有的普通股；或者
- **缩股：**在美上市公司宣布缩股，将小股东持有的股份减少至不足一股，随后该公司赎回此类股份，从而减少在册股东的人数。

### 一步式合并

在美上市公司可以通过一步式合并实现私有化。该步骤一般涉及下列文件：

- **合并建议书：**收购集团向在美上市公司的董事会发出合并建议书，其中应表明拟收购该公司公众普通股的价格；
- **合并协议：**该协议由收购集团、上市公司及其董事会的

While it was popular for Chinese companies to list their stocks in the US in the past, often via reverse mergers, Chinese companies are now exiting US capital markets and re-listing in other jurisdictions with 26 having been successfully privatised in the last 58 months up until August 2014. Many Chinese companies have been privatised because of undervaluation of stock prices, attacks by short sellers, and/or strategic adjustment.

Although the privatisation process for some companies has gone smoothly, others encountered obstacles and even failed eventually. Compared with Global Education & Technology Group, which spent 30 days to complete its privatisation process, Tongjintang Chinese Medicine Company and Harbin Electric spent over a year. Even CNinsure, the first Asian insurance intermediary company listed in Nasdaq with a valuation of nearly US\$1 billion, failed. A privatisation bid fails if there is rejection by minority shareholders and insufficient buyout funds from the offeror.

After privatisation, some companies have successfully re-listed in other jurisdictions. For instance, China Metal Resources Utilization successfully relisted in Hong Kong in February 2014, and raised roughly US\$96 million. It was formerly listed on the NYSE as Gushan Environmental Energy and was delisted in October 2012.

### What is ‘going private’?

“Going private” means all or most of the stock of a publicly listed company in the US is bought out and ends up in private hands. The stock may be bought out by private equity firms, by the major shareholders or management of the company, or by affiliates of the company. A listed company, if held by less than 300 shareholders of record – or 500 shareholders of record if the company does not have significant assets – can deregister its equity securities from the US Securities and Exchange Commission (SEC) and will from then not be subject to the periodic reporting requirements of the US securities laws.

There are different ways for a US public company to go private.

- **Mergers:** where a US public company merges with or sells all or substantially all of its assets to a newly formed private company owned by the buyout group;
- **Tender offer:** where a buyout group makes a tender offer to buy all or most of the company’s publicly held common stock; or
- **Reverse stock split:** where a US public company declares a reverse stock split that reduces the shares owned by small shareholders to less than one share, which will then be redeemed by the company and hence reduces the number of shareholders of record as a result.

### One-step merger

A US public company may be privatised in a one-step merger. This will generally involve the following:





陆志明 Simon Luk

特别委员会(后文详述)三方商定,以确保合并条款及整个合并过程的公平性;

- **表 13E-3 备案:** 若合并建议书中涉及上市公司自身或其关联方,则必须根据《1934 年证券交易法》在 13E-3 表格上作出说明,包括解释交易的目的,以及就非关联股东是否受到公平对待发表观点并说明理由等;以及
- **股东委托书:** 上市公司必须呈交股东委托书,在特别会议中征求股东批准合并交易,并获得股东同意普通股的注销及/或退市。股东委托书应包括董事会、特别委员会及特别委员会独立财务顾问对本次交易的意见。

### 要约收购后的简易收购

要约收购和合并经常用于确保能成功向小股东收购全部普通股。如果在简易合并前发出收购要约,另需提供的文件还包括收购集团向在美上市公司股东发出的收购要约书以及邀请股东接受该收购要约的转送函。

### 特别委员会、公平性和独立性

在所有私有化交易中,尤其是一步式合并中,确保交易公平非常重要,因为收购集团与上市公司之间肯定会产生利益冲突。因此,在美上市公司的董事会将设立由无利害关系的独立董事组成的特别委员会,以协商确定最佳的交易方案,保障小股东的利益。该特别委员会必须独立运作。该委员会自行聘用财务和法律顾问,随时充分了解决策流程,并有权独立地与收购集团进行谈判。倘若原告的律师提出质疑,则证明交易不公平的举证责任就会因为特别委员会的存在而转移给质疑者,即原告方。

在美上市公司的董事会对股东负有受信责任,在批准出售公司前应当首先考虑采取其他交易方式实现股东价值的最大化。

### 私有化的益处和结论

考虑到 SEC 严格的监管制度,加上美国当前的投资气候差强人意,私有化对在美上市的中国公司而言未尝不是一个好的选择。一旦私有化,它们就能调整业务发展的精力与资源投向,亦可避免空头的突袭。私有化也能让公司有机会考虑在其他融资条件更好的资本市场重新上市,并能促进与当地投资者的沟通交流。

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Simon Luk is a partner and chairman of Asia practice at Winston & Strawn. He can be contacted at +852 2292 2222 or by email at sluk@winston.com

- **Merger proposal:** the buyout group makes a merger proposal to the board of directors of the US public company, with an indication of the price it will pay to acquire the company's common stock in public hands;
- **Merger agreement:** it will be negotiated between the buyout group, the company and the special committee of the board (discussed later) to ensure that the terms of the merger and the entire process of merger are fair;
- **Schedule 13E-3 filing:** if an affiliate of the company, or the company, is involved in the merger proposal, a statement on schedule 13E-3 is required pursuant to the Securities Exchange Act of 1934, with discussions of the purpose of the transaction, and views and reasons as to fairness to the unaffiliated shareholders; and
- **Proxy statement:** the company has to file a proxy statement to seek shareholders' approval of the transaction in a special meeting, and obtain their consent for deregistering and/or delisting the common stock, which will include views on the transactions of the board, the special committee and the independent financial adviser to the special committee.

### Tender offer followed by short-form merger

Tender offer and mergers are often used to ensure that all common stock is purchased from the minority shareholders. If there is a tender offer prior to a short-form merger, additional documents will include a tender offer statement from the buyout group to the shareholders of the US public company and a letter of transmittal, which invites the shareholders to tender their shares.

### Special committee, fairness and independence

In all going-private transactions, and in particular in one-step mergers, it is important to ensure that the transactions are fair, as conflict of interests between the buyout group and the company will invariably arise. Hence, the board of directors of a US public company will set up a special committee, comprising disinterested and independent directors, to negotiate the best deal to protect minority shareholders. The special committee must operate independently. It retains its own financial and legal advisers, remains fully informed in the decision-making process, and has the power to negotiate with the buyout group at arm's length. The use of the special committee will, in the event of challenges by plaintiffs' lawyers, shift the burden of proof of unfairness to the challengers.

The board of directors of a US public company owes fiduciary duties to the shareholders and should consider alternative transactions to maximise the value for the shareholders before approving the sale of the company.

### Benefits and conclusion

Under the stringent regulatory regime of the SEC and considering the current investment climate in the US, going private may be a viable option for US-listed Chinese companies to refocus their energy and resources in developing their business, as well as to avoid surprise attacks by short-sellers.

It presents a good opportunity for companies to consider relisting on other stock markets where they may obtain better financing terms, and communications with local investors may be facilitated.

Hanson 表示该法案旨在促进全球的税务情报交换, 不过, “《海外账户纳税法案》无疑造成了美国和其他国家之间不受欢迎的商业紧张气氛, 并且引起了对如《反海外腐败法》等美国法律超法域适用的更大反感。”

Arnall Golden Gregory 律师事务所华盛顿办公室合伙人 Mike Burke 表示同意。Burke 在为客户就《反海外腐败法》合规问题提供法律服务方面拥有丰富经验, 特别是与中国有关的直接投资。“《反海外腐败法》加上美国出口管制会构成重大挑战,” 他提醒道。“外国投资者有时候没有意识到在美国进行投资可能会使其‘母公司’受到《反海外腐败法》和出口管制等美国法律的管辖。由于中国仍然存在着令人关注的腐败问题, 并且是美国出口管制对象国, 一旦受到这些法律的管辖, 就非常有可能受到处罚。”

Benesch 国际律师事务所 Megan Mehalko 也提醒道, 这些负面作用可能会影响中国的投资活动。Benesch 律师事务所协助美国公司在制造、分销和商业运营方面建立与中国相关的战略联盟和合营企业。驻克利夫兰的 Mehalko 是 Benesch 国际律师事务所公司和证券业务主管, 同时也参与中国业务部的工作。“《海外账户纳税法案》下的合作肯定有可能使在美国的某些中国投资冷却下来, 因为这些外国持股和投资的信息将与中国税务机关进行分享, 而这可能是某些中国投资者从投资开始或者将资金送出中国以期进行投资时就力图尽量避免发生的事情,” 她说道。

不过, 美国文森·艾尔斯律师事务所北京代表处顾问 Nicholas Molan 表示, 许多公司认为美国与中国即将签订政府间协议模式一是两国关系更为开放的晴雨表, 因而对此表示欣然接受。达维律师事务所纽约办公室合伙人 Phillip Mills 专注于并购交易, 他认为中美签订《海外账户纳税法案》协议将会成为两国政府合作的一个重大发展。不过, 他补充道, “……这对于中国在美国进行境外并购活动没有影响。税务情报交换不会减轻美国并购监管者对于国家安全或者网络安全问题的担忧, 这对于并购监管审查来说更为重要。”

从政治和监管角度来看, 中国投资者最大的一个担心是美国外国投资委员会 (CFIUS) 对其在美国并购活动的严格审查要求。

### 从短期来看, [关于CFIUS]中国商人仍然会感到不安

*In the short term, Chinese businessmen and women still have an uneasiness [regarding CFIUS]*



**Thomas Stiebel Jr**  
Quarles & Brandy  
合伙人  
芝加哥  
Partner  
Quarles & Brandy  
Chicago

### [中国投资者]最近开始运用反垄断法应对美国制药公司……

*[Chinese investors] recently began to use antitrust laws against US pharmaceutical companies*



**陈德华**  
**Thomas Chan**  
福罗律师事务所  
合伙人  
洛杉矶  
Partner  
Fox Rothschild  
Los Angeles

### Ralls v CFIUS

“There is a sense that the Chinese investors are particularly targeted by this set of rules,” adds Lidbury. There is speculation as to whether the recent decision in *Ralls v CFIUS* may signal a sea change in the level of scrutiny Chinese firms face when acquiring US assets. In July this year, A US Court of Appeals ruled for the first time that the US government must provide access to some of the evidence relied upon on when conducting national security reviews of foreign acquisitions of US businesses, and that the affected party must be given an opportunity to rebut that evidence.

In 2012, US President Barack Obama blocked the Ralls Corporation’s wind farm transaction “because the terms proposed by CFIUS to mitigate its national security considerations were unacceptable to the parties”, says Seymour. Ralls was never given access to the relied upon evidence, or the opportunity to respond, which the court held to be unconstitutional.

“The Ralls decision is helpful, I believe, in showing to the Chinese buyer community the rule of law is well established in the US, such that even actions of the executive branch are subject to scrutiny,” says Joseph Chan. “It is historic in that this is the first time a challenge of this nature has been made by a foreign buyer and prevailed.”

Traditionally, says Thomas Chan, “Chinese investors have been gun shy in using the US court system because of their dramatic losses in the past, when they should have won – or lost less. The Chinese government has been urging its citizens to vigorously defend themselves in the US, and this surprising win will encourage them to push for litigation”.

But the decision is unlikely to influence the decision making process for Chinese companies investing in the US, “with CFIUS remaining a major ‘black box’ concern in any US acquisition”, says Thomas Stiebel Jr, a partner at Quarles & Brandy in Chicago and chair of the firm’s China law group and chief representative of the firm’s Shanghai Representative Office. “In the short term, Chinese businessmen and women still have an uneasiness, with not knowing how or if CFIUS will be an issue with any given transaction, and there seems to be an opinion that the decision making process is too vague and ambiguous and will remain so for the foreseeable future.”



“在大部分交易中都没有严重的社会、政治或者监管问题阻碍中国投资美国资产，” Thomas 说道，“但是，资产的位置靠近敏感军事设施之类的特定问题不断为部分中国投资者带来麻烦”。

## Ralls 诉 CFIUS 案

“从某种意义上说，中国投资者是这套规定的特别目标，”Lidbury 说道。罗尔斯 (Ralls) 诉美国外国投资委员会 (CFIUS) 案近期的判决是否标志着中国公司并购美国资产时面临的审查要求会发生重大变化？

今年七月，美国上诉法院作出一审判决，认定美国政府在就外国公司并购美国公司进行国家安全审查时必须公开相关决定所依据的部分证据，并给予受影响的一方对该证据作出回应的机会。

2012 年，美国总统奥巴马下令禁止罗尔斯公司风电项目，“由于当事人无法接受美国外国投资委员会提出的减少国家安全问题的条件”，Seymour 说道。罗尔斯未曾有机会了解作出该决定所依据的证据，也没有机会进行回应，法院认定这是违宪行为。

“我认为罗尔斯案有助于向中国买方展示美国完善的法治，即使是行政机关的行为也会受到审查，”陈永坚说道。“这是外国买方历史上第一次提出这种挑战并且获胜。”

陈德华说道，过去，“中国投资者十分顾忌使用美国法院系统，

Burke, at Arnall Golden Gregory, says the decision does not change: (i) what transactions must be reported to CFIUS; (ii) the national security and other considerations CFIUS reviews in connection with a specific transaction; or (iii) the US president's authority to issue a final decision as to a specific transaction.

“The decision does not affect the substance of a CFIUS review, just the process,” he says. “I don't think the case changes the level of scrutiny faced by Chinese purchasers, or purchasers from any other jurisdiction. The decision addresses process, not substance, so CFIUS's focus will remain on the national security questions implicated by a specific transaction.”

## Cold Canadian winds

The climate for investment from China in Canadian industries, particularly mining, has grown colder of late following the imposition of government restrictions, in late 2012, on state-owned enterprise (SOE) investments in the Canadian energy sector. “These stricter rules have impacted FDI [foreign direct investment] from China, which dropped dramatically in recent years, from C\$21.5 billion (US\$19.6 billion) in 2012 to C\$220 million in 2013” notes Cameron Mingay, a partner at Cassels Brock in Toronto and head of the firm's China mining group.

According to Dentons' partners Mark Mahoney in Toronto and Wei Shao in Vancouver: “CNOOC's acquisition of Nexen in February 2013 did result in the tightening up of certain

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因为他们曾经在本该获胜或者少输一些的案件中输的太多了。中国政府一直大力鼓励中国公司在美国保护自己的权益，这次出人意料的获胜将鼓励他们利用诉讼”。

不过，该案判决不大可能影响中国公司在美国进行投资的决策过程，“美国外国投资委员会仍然是在美进行任何并购交易时令人担心的主要‘黑匣子’，”芝加哥 Quarles & Brandy 律师事务所合伙人兼中国法律业务部主管和上海办事处首席代表 Thomas Stiebel Jr 表示。“从短期来看，中国商人仍然会感到不安，不知道美国外国投资委员将如何或者是否会在特定交易中成为障碍，似乎有观点认为其决策过程过于含糊不清，并且在可预期的将来依然会这样。”

Arnall Golden Gregory 律师事务所 Burke 表示该判决没有改变如下事实：(1) 必须向美国外国投资委员会进行申报的交易类型；(2) 美国外国投资委员会在特定交易审查中的国家安全和考虑因素；或者 (3) 美国总统对特定交易作出最终决定的权力。

“这个判决不会对美国外国投资委员会审查的实质内容产生影响，只会影响其审查过程，”他说道。“我认为本案不会改变中国买方或者其他国家买方所面临的审查标准。这个判决解决了程序问题，而非实质问题，因此美国外国投资委员会的重点关注仍然是特定交易中的国家安全问题。”

## 加拿大寒风

中国在加拿大各行业特别是采矿业的投资环境随着 2012 年底加拿大政府对国有企业投资加拿大能源行业的限制逐渐转冷。“这些更加严格的规定影响了来自中国的外商直接投资，投资金额从 2012 年 215 亿加元急剧下降到 2013 年 2 亿加元，” Cassels Brock 律师事务所多伦多办公室合伙人和中国采矿业部门主管 Cameron Mingay 提到。

Dentons 律师事务所多伦多办公室合伙人 Mark Mahoney 和温哥华办公室合伙人邵威表示：“中海油在 2013 年 2 月收购 Nexen 公司确实引起了许多加拿大外资并购规定的收紧，并加大了国有企业收购会受到加拿大监管者更严厉监管的可能性。特别是加拿大政府决定，将来如果国有企业继续收购油砂产业的控制权益，就只有在特殊的情况下才会获得批准。”

“这些变化影响了大型国有企业的资金流以及在加拿大进行投资的决策，因此重大交易越来越少。不过，这些变化似乎没有影响到进入加拿大的私有资金。”

加拿大政府最近澄清了外资并购法规中对“国有企业”的定义。国有企业现在的定义不仅包括按照外国政府指令、或直接或间接受到外国政府影响的企业，还包括这样的个人。这种扩大的定义给予了工业部很大的自由裁量权，并且会涵盖多种类型的中国投资。Mingay 认为“这使得大家开始研究其他方式的外商直接投资，包括收购纯勘探财产，这种收购不受到加拿大外商投资审查并且不受到并购限制，因此完全由国有企业控制是可行的。”

新的金融审查标准也开始实施，按照新标准，与非国有企业相比，国有企业更有可能受到审查。“特别是在中等到大额交易中，当资产出售方对中国投资者完成交易所需取得的审批进行影响评估时，中国投资者在投标中会遇到竞争挑战，” McCarthy Tetraut 律师事务所多伦多办公室合伙人 Ian Michael 和温哥华合伙人 Joyce Lee 说。

## [在加拿大]还有许多投资机会不会遭遇同样的挑战

*There are lots of opportunities for investment [in Canada] which do not pose the same challenges*



**Peter Mendell**

戴维斯·菲利普律师事务所  
合伙人  
蒙特利尔  
Partner  
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Vineberg, Montreal

Canadian foreign takeover rules and has raised the prospect that acquisitions by SOEs would be subject to greater scrutiny by Canadian regulators. In particular, the Canadian government has determined that continued acquisitions by SOEs of controlling interests in the oil sands industry will only be approved on an ‘exceptional basis’ going forward.

“These changes have impacted the flow of capital from major SOEs and their decisions to invest in Canada, thereby resulting in fewer major deals. However, these changes do not appear to have impacted the flow of private capital into Canada.”

The Canadian government recently clarified the definition of SOEs for the purposes of its revised foreign takeover rules. SOEs have now been defined to include not only entities but also individuals acting under the direction, or the direct or indirect influence, of a foreign government. This broadened definition grants the minister of industry a wider range of discretionary powers, and can capture significant numbers, and types of, Chinese investment. This, according to Mingay “has led to other foreign direct investment options being explored. This includes the acquisition of pure exploration properties, which are not subject to Investment Canada review and are exempt from takeover restrictions, making full state ownership still possible”.

New financial review thresholds were also implemented that put SOEs at a higher probability of review compared to a non-SOE entity, based on the threshold criteria. “Especially in connection with medium to larger transactions, Chinese investors can run into competitive challenges in an auction context, when the vendor of the assets assesses the impact of the approvals that the Chinese investor will need to complete its investment,” say McCarthy Tetraut partners Ian Michael in Toronto and Joyce Lee in Vancouver.

Mingay says: “Although the market capitalisations of resource companies have declined dramatically over the past several years, which in ordinary circumstances could be seen to represent a buying opportunity for Chinese companies, the slowing of the Chinese economy and the crackdown on corruption in that country has caused most Chinese companies to act very cautiously in making new investments.” For example, the proposed takeover by oil giant China National

Mingay 表示：“虽然能源公司的市场总值在过去几年中急剧下降，在正常情况下，这对于中国公司来说是买入的有利时机，但是中国经济的放慢以及中国对腐败的大力打击使得大多数中国公司在进行新投资时会非常谨慎。”比如，最近石油巨头中国石油天然气集团公司（中石油）对加拿大 Athabasca 石油公司的收购计划因为政府反腐败调查而重新进行谈判成为了头条新闻，此前双方同意以 12.3 亿加元收购项目 40% 的股权。随后，Athabasca 石油公司的股价开始下降，同时中石油因溢价收购外国能源资源而在国内受到批评。”

达维律师事务所 Mills 表示，在竞争激烈的并购市场中，交易的确定性和价格对于投标者的竞争力非常关键。“一般来说，由于监管要求，中国买方在竞争中不具有优势，他们天生就面临着更大的交易交割风险。中国公司进行并购活动和融资需要同时取得中国的监管审批以及美国国家安全审查和批准，并且对于合同义务的强制执行会有更多的担忧，”他表示。

“为了提高竞争力，许多买方会在宣布取得中国监管审批之前与中国监管者进行沟通，从而获得实质性的宽松条件，这大大增强了他们的竞争实力。此外，中国海洋石油总公司（中海油）成功收购 Nexen 公司展现了中国买方如何以缜密灵活的方式成功通过美国和加拿大复杂的国家安全审查程序。”

铭伦律师事务所温哥华和香港办公室中国业务部联席主席 Stephen Worley 表示，从中加关系来说，“加拿大政府在 2012 年底出台的对国有企业投资加拿大能源领域的限制被媒体认为是对中国和其他外商投资的一种威慑”。此外，Mahoney 和邵威预计“中国在加拿大的绝大部分投资仍然会偏离正常的情况。”

不过，戴维斯-菲利普律师事务所蒙特利尔办事处合伙人 Peter Mendell 认为加拿大对于中国投资者来说仍然充满了机会。“虽然外资投资法规在油砂等某些特定领域会造成挑战，使得一些公司不愿意去投资，但还有许多投资机会不会遭遇同样的挑战。” ■

## 加拿大政府对国有企业投资加拿大能源领域的限制被认为是……一种威慑

*The Canadian government's restrictions ... on SOE investments in the Canadian energy sector has been viewed ... as a deterrent*



**Stephen Worley**  
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温哥华  
Co-chair of China  
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## [FATCA协议]对于中国在美国进行境外并购活动没有影响

*[US-China FATCA agreement] is of no consequence to Chinese outbound M&A activity into the US*



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Partner  
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New York

Petroleum Corp (CNPC) of Canada's Athabasca Oil recently made headlines amid a government-led corruption probe leading to renegotiations over the C\$1.23 billion sum previously agreed for a 40% stake in the project.

Athabasca Oil share prices have dropped and meanwhile, CNPC has been criticised at home for paying premium prices for foreign energy resources.

In the highly competitive M&A market, Mills from Davis Polk says it is vital for bidders to be competitive on deal certainty as well as price. “In general, China-based buyers are at a competitive disadvantage due to the inherently greater closing risk they present as a result of their regulatory requirements – both Chinese regulatory approvals needed to make and fund the acquisition, as well as US national security review and approval – and the greater concern around the enforceability of their contractual obligations,” he says.

“In order to improve their competitiveness, some buyers have been able to work with their Chinese regulators to provide substantial comfort before deal announcement that Chinese regulatory approvals will be obtained, which has improved their competitiveness significantly. In addition, CNOOC's successful acquisition of Nexen has demonstrated that a thoughtful and nimble approach can enable Chinese buyers to work their way through the complexities of the US and Canadian national security processes.”

Stephen Worley, who co-chairs McMillan's China Practice Group from Vancouver and Hong Kong, says in terms of Canada-China relations, “the Canadian government's restrictions in late 2012 on SOE investments in the Canadian energy sector has been viewed in the media as a deterrent for Chinese and other foreign investment”. Moreover, Mahoney and Wei Shao predict “most of the Chinese Investment in Canada is still some time away from positive case flow”.

But Peter Mendell, a partner at Davies Ward Phillips & Vineberg in Montreal, believes Canada is still ripe with opportunity for Chinese investors. “While the regulation of foreign investment can be challenging in certain limited sectors, such as the oil sands, causing certain companies to be reluctant to invest, there are lots of opportunities for investment which do not pose the same challenges.” ■