Chinese Investment in the United States – Prospects for the Trump Presidency

By: Greg Burch

An important thing for people interested in U.S.-China commercial and financial relations to consider in connection with Donald Trump's victory in the presidential election on November 8, 2016 is that no one can know with certainty at this point how a Trump Administration will affect these things. However, there are considerations that people working in this area should look out for as early signs of how the Trump Administration may impact U.S.-China business.

RHETORIC and REALITY

There is no question that 'anti-China' rhetoric featured in the Trump campaign. ‘China’ was often used by Trump and his supporters as a kind of shorthand to communicate the negative impact an increasingly globalized economy has had on working-class Americans. However, if you look a little more closely, Trump's campaign trail speeches concerned ‘trade’ – buying and selling goods and services – and outbound investment from the United States, especially ‘outsourcing jobs.’ Noticeably absent from Trump’s rhetoric was much, if any mention of inbound investment into the U.S. To those who work in the business and legal interface between China and the United States, Trump’s focus on trade and the outsourcing of jobs is ‘yesterday’s news.’ The most important elements of the current new business and legal activity in this arena is outbound investment from China, including into the U.S. The reality is (and has been for a few years now) a complete reversal of the capital flows between the U.S. and China. Trump had nothing to say about this subject.

During his campaign, Trump did specifically talk about China as a ‘currency manipulator’, and the Renminbi has been losing value relative to the dollar since late 2013. If the Trump Administration does take action as he promised to do, it will take some time for any measures put in place to actually take effect. In the short term, this could create a window of increased interest in Chinese investment into the U.S. over the already high level that existed before the election.

Among the more attractive prospects of a Trump presidency is at least the possibility of decreased tax rates and, perhaps, an over-all simplification of complex U.S. tax laws. One thing Trump did identify as a specific keystone of his economic policy prescriptions was lowering U.S. corporate tax rates. This is potentially good news for Chinese investors looking to the U.S. market. Corporate tax in the U.S. (the highest in the developed world) has been a major factor lawyers have had to address in facilitating the growing wave of Chinese investment into the U.S. economy. Decreasing the rates and complexity of U.S. taxes could make inbound mergers and acquisitions a more attractive prospect to Chinese and other foreign investors.

On this and Trump’s general platform of reinvigorating the American economy, only time will tell how the Trump Administration’s specific policies may develop and affect U.S.-China business and financial relations.

INCREASED SCRUTINITY

As a simple matter of Trump’s political base ‘holding his feet to the fire,’ it is likely that new investment into the U.S. from overseas (and perhaps especially from China) will face at least some increased scrutiny. The legal mechanisms for this kind of scrutiny are well known to the lawyers and investors who have already been involved in the great shift in capital flows across the Pacific over the last few years. These include CFIUS (Committee on Foreign Investment in the United States) and various technology export control laws and regulations, including ITAR (International Traffic in Arms Regulations).
Chinese investors interested in mergers and acquisitions activity in the U.S. should bear two things in mind regarding this factor.

- Firstly, the trend over the last few years has already been in the direction of increased scrutiny. But deals that have been blocked or otherwise negatively impacted by these kinds of rules get a disproportionate amount of coverage in both the general and the business press. For every deal that is blocked, many pass through the process and are concluded successfully.

- Secondly, the actual restrictions on investment into the U.S. are of exactly the same kind that U.S. companies navigated – usually successfully – when the capital flows ran in the other direction for many decades. Investments that potentially involve national security and ‘critical infrastructure’ drew (and continue to draw) close scrutiny from the Chinese government. Sometimes the level of that scrutiny was higher, sometimes lower. The same has and will continue to be true in the U.S. for Chinese investors.

Investors with a sound business case and who understand that there will be transaction costs associated with complying with relevant laws and regulations can succeed even when political winds shift from time to time. It has always been wise to pay the cost and do the work to get through these kinds of reviews early in the process of a proposed deal, rather than to face problems after substantial amounts have been spent on other transaction costs.

**The ART of the DEAL**

One key factor that Chinese investors looking at the U.S. market should pay special attention to is selling their deal to the public in the U.S. In the early days of the current period of increased Chinese investment in the U.S., little attention was paid to how potential mergers and acquisitions would be perceived by the public and by politicians in the U.S. This sometimes resulted in negative public and political attention that could have been avoided with earlier attention to this important point.

Potential buyers of U.S. business or real property assets should consider whether their plans are large enough to attract public or political attention. If so, they should take competent advice from people who know how to sell their deal as an investment that will benefit U.S. workers. Japanese investors learned this lesson when they went on a ‘U.S. buying spree’ in the mid-1980s. Some of the larger early Japanese investments and corporate acquisitions in the U.S. attracted negative publicity and troublesome political inquiries. Before long, though, Japanese investors learned to pitch their deals as adding value – and jobs – to the American economy. In most cases, this approach ultimately paid off. Very large businesses owned and controlled by major Japanese companies have now come to be seen as integral parts of communities across the United States. Chinese investors can do the same, but they must face the challenge head-on.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the author.

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