



旧大陆 新金主

Old world, smart money

随着投资目标领域的拓宽和对当地情况的深入了解，中国投资者在西欧开始了新的征程。

作者: George W Russell

A wider field of investment interest and a deeper understanding of place denotes the new Chinese presence in Western Europe, writes George W Russell

中国投资正在呈现新的面貌。中国投资者的形象总是与精明冷静的管理者、自然资源的“贪婪”掠夺者以及大批输出的中国劳务分不开的。但如今，中国内地公司在物色并购目标时已开始涉足更广泛的行业领域，而且大多采取较为温和的方式。

近期，一家中国公司在收购意大利北部某中型工业机械制造商时，派出了一支由核心管理人员和工程师组成的小规模团队，考察意大利公司的管理层和员工情况并倾听他们的意见。买方团队还将遍尝当地美食作为一项重点任务，令东道主十分高兴。

Chinese investment has a new face. Often seen as hard-headed managers and rapacious consumers of natural resources, prone to sending Chinese labourers en masse, mainland companies seeking mergers and acquisition targets have diversified into a wider range of industries, and in many cases have adopted a less confrontational approach.

When one Chinese company took over a medium-sized industrial machinery manufacturer in northern Italy recently, it sent in a small team of key managers and engineers who spent time watching and listening to the Italian management

据律师介绍,随着中国收购方对西欧诸目标公司所在国家的了解日益加深,上述现象会越来越常见。“中国公司对意大利的投资兴趣确有迅速升温之势,”米兰安启建律师事务所上海代表处管理合伙人 Hermes Pazzaglini 指出。

中国企业投资于意大利的目的还在于,获得汽车、电动与电子设备、纺织与服装、机械及家用电器等行业的本土竞争优势。

“来自中国等新兴国家的跨国公司正在努力提升自身的生产和技术能力,构筑其在这些行业的全球优势地位,”罗马 SQ Law 律师事务所合伙人兼共同创始人 Luca Pagliaro 分析称。

中国律师界的看法与之不谋而合,认为内地客户有意投资的领域在迅速拓宽。“仅举几例,如高端汽车零部件、电子、精密机械、高科技材料和可再生能源,”中伦律师事务所伦敦办公室合伙人薛海滨说。

中国投资者对西欧的兴趣久已有之,现如今中国投资者的选择也日趋成熟。中国投资者的投资目标呈现多元化,已不再限于原材料等传统领域。“在过去几年间,中国投资热潮大多涌向澳大利亚、加拿大和非洲,而且主要是大型国有企业在自然资源领域的投资。而如今,西欧显然已成为中国公司的投资热点区域,”金杜律师事务所北京办公室合伙人徐萍指出。

外国律师也持相同看法。“中国对外投资总体上正在从资源主导型演变为更广泛、更复杂的商业活动,”荷兰史特博律师事务所香港办公室合伙人 Alexander de Neree tot Babberich 如是评述。

不过,石油、采矿等冶炼工业在中国投资者心中的重要地位依然稳如泰山。

据毕马威华振会计师事务所预测,中国今年在美国、加拿大和澳大利亚的并购交易额有望超越其在欧盟国家的并购交易额,这在很大程度上归因于资源和能源方面的交易。不过,中国与欧盟国家之间的交易仍将稳步增长,而拟议中的中欧投资协定也有望进一步刺激投资的增长。

在中国对欧洲的投资交易中,自然资源项目仍将占据一席之地。近期达成的此类交易包括:中国石油化工集团公司通过其百慕大控股公司中石化冠德控股有限公司收购 Vesta Terminals 的 50%

仅举几例, [中国有意投资]...
电子、精密机械、高科技材料...

*[China's fields of interest include]
electronics, precision machinery,
high-tech materials ... to name a few*



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来自中国等新兴国家的跨国公司
正在努力提升其生产和技术能力

*[Chinese] multinationals ... are
trying to upgrade their production
and technological capabilities*



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and employees. A priority was to extensively sample the local cuisine, to the delight of locals.

Lawyers say they are seeing more of such behaviour as Chinese acquirers take a deeper look into target countries in Western Europe. “We are definitely seeing a very sharply increasing interest in investments into Italy from Chinese companies,” notes Hermes Pazzaglini, a partner who runs the Shanghai office of NCTM Studio Legale Associato, a Milan-based law firm.

Chinese enterprises also are investing in Italy to gain access to local competitive advantages in sectors such as vehicles, electrical and electronic appliances, textiles and clothing, and machinery and home appliances.

“Multinationals from emerging countries such as China are trying to upgrade their production and technological capabilities and build their own global champions in these industries,” says Luca Pagliaro, a partner and co-founder of SQ Law in Rome.

Chinese law firms concur, saying their mainland clients are rapidly broadening their fields of interest. “High-end automobile components, electronics, precision machinery, high-tech materials and renewable energy, to name a few,” recounts Xue Haibin, a partner with Zhong Lun Law Firm in London.

The interest in Western Europe marks not so much a shift as a new level of sophistication. China is widening its focus way from traditional targets such as raw materials. “In the past few years most interest was centred on Australia, Canada and Africa, and was predominantly large state-owned enterprises [SOEs] securing natural resources,” notes Xu Ping, a partner with King & Wood Mallesons in Beijing. “Now, Western Europe has clearly become a very hot topic for Chinese companies.”

Foreign lawyers agree. “Chinese outbound investments are, by and large, recalibrating from being primarily resource-driven to aiming at a wider and more sophisticated range of business activities,” says Alexander de Nerée tot Babberich, a partner with Dutch firm Stibbe in Hong Kong.

Still, extractive industries such as petroleum and mining will remain important.

KPMG China, an accounting firm, expects the value of Chinese acquisitions in the US, Canada and Australia to exceed those made in EU countries this year, largely due to

中国对外投资总体上正在…变为更广泛、更复杂的商业活动

Chinese outbound investments are ... aiming at a wider, more sophisticated range of business activities



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股权, Vesta Terminals 是一家散装液态石油和化学品仓储运营商, 在荷兰和爱沙尼亚都设有仓储码头。中国投资有限责任公司以 23 亿欧元 (合 30 亿美元) 收购法国燃气苏伊士集团全球勘探生产业务 30% 的股权。

根据毕马威的资料, 进行对外投资的大部分中国公司, 包括国有企业和私营企业, 都意在对外出售产品和服务, 而一小部分公司 (虽然数量较少但其重要性不容忽视) 的目标是获得技术、专长和品牌。“中国在欧盟的投资前景一片大好,” 毕马威北京办公室合伙人罗德曼 (Thomas Rodemer) 表示。

在欧盟成员国中, 意大利是中国并购投资第四大目标国家, 仅次于德国、英国和法国。“意大利虽然经济发达, 商业环境却充斥着官僚习气, 外商来此投资时有碰壁,” Pagliaro 指出。在世界银行一年一度的经商便利度评比中, 意大利的排名甚至低于许多新兴国家。

但据律师介绍, 欧元区持续的金融危机使意大利的态度有所转变。“在意大利, 有很多公司都陷入危机, 亟需资金, 而中国投资人手中就有资金。这里的许多企业处境都极其艰难, 除了卖掉企业之外别无他法,” 罗马 SQ Law 律师事务所律师 Federica Combariati 分析说。

此外, 意大利银行近期的一项调查显示, 中国内地投资者看中的是意大利国内市场的规模和相对其他欧盟大国而言较低的劳动力成本。

意大利集群式的产业专业化发展模式对于中国投资者也是一个吸引点, 与中国的经济模式有相似之处。从地域上说, 中国对意投资高度集中于更为富庶繁荣的意大利北部。“伦巴第大区, 特别是米兰, 是中国公司热衷的投资目的地,” Pagliaro 介绍说。

中国银行在意大利现有的唯一一家分行就设在米兰, 第二家分行计划开设在米兰规模较小但发展迅速的唐人街。同时, 都灵所在的皮埃蒙特大区是意大利的汽车工业中心, 而白色家电集中于威尼托区, 机械集中于艾米利亚 - 罗马涅大区。物流主要集中于利古里亚区中部和坎帕尼亚区南部, 是少数几个分布于意大利北部地区以外的现代型产业中的一例。

中国市场的奢侈品热也是推动中国投资于意大利并购项目的因素之一。普华永道会计师事务所去年公布的一份报告预测, 至

resource and energy deals. However, China-EU deals have been growing steadily and a formal investment pact is likely to spur them further.

Resources deals will continue to be signed in Europe, too. Recent examples include the acquisition by China Petroleum & Chemical Corporation, through its Bermuda holding company Sinopec Kantons, of a 50% stake in Vesta Terminals, a liquid bulk petroleum and chemicals storage operator with terminals in the Netherlands and Estonia. The sovereign wealth fund China Investment Corporation, meanwhile, paid €2.3 billion (US\$3 billion) for a 30% stake in French-owned GDF Suez's global exploration and production division.

According to KPMG, most Chinese companies, both state-owned and private, are looking to sell products and services but a smaller, though significant, number are seeking to acquire technology, expertise and brands. “The future outlook for Chinese investment in the EU is overwhelmingly positive,” says Thomas Rodemer, a KPMG partner in Beijing.

Italy is the fourth-largest EU target country for Chinese M&A behind Germany, Britain and France. “Although it is advanced in its industries, Italy has a highly bureaucratic business environment, which often works against foreign investment,” Pagliaro notes. It ranks lower than many emerging countries in the World Bank's annual survey of the ease of doing business.

However, lawyers say the continuing euro zone financial crisis is changing Italian attitudes. “In Italy, there are a lot of companies in crisis, capital is needed and China has that capital,” says Federica Combariati, an associate at SQ Law in Rome. “Many entrepreneurs here are in extreme difficulties, and do not see an alternative solution to selling.”

In addition, a recent Bank of Italy survey reported that potential mainland investors are attracted by the size of Italy's domestic market and its lower labour costs relative to other large EU countries.

Italy's “cluster” system of industrial specialisation is also an attraction and reminiscent of the Chinese economic model. Geographically, Chinese investments are strongly concentrated in the more prosperous north of Italy. “Lombardy, and especially Milan, is the favourite destination of Chinese firms,” says Pagliaro.

在意大利很多公司都陷入危机, 亟需资金, 而中国手中就有资金

In Italy, there are a lot of companies in crisis, capital is needed and China has that capital



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以专家眼光看瑞士房地产购置

Keeping an expert Swiss watch on real estate acquisitions

瑞士位于西欧的心脏地带，因其稳定繁荣的经济、统一的法律体系、诱人的税收制度、高水平的教育和研究、一流的基础设施、优异的生活品质及其他有利条件，吸引了大批国际投资者前来投资。

瑞士的商业及私人投资经常涉及房地产购置。在瑞士购买房地产受联邦及州法规的管辖。主要法规包括但不限于：1907年12月10日通过的《瑞士民法典》，其中确立了瑞士物权法的原则（所有权及物权的类型）；和《瑞士债法典》，其中特别对股份交易以及公证和土地登记处报备作出了规定。

购买房地产的限制

具体而言，境外人士在瑞士购买房地产受到《境外人士购买房地产联邦法》（即《雷克斯-科勒法》，本文简称《外国人购房法》）及《境外人士购买房地产条例》（简称《外国人购房条例》）的严格限制。此外，州法律以及某些城市和乡村的市政法律法规还规定了进一步的限制条件。

根据《外国人购房法》，境外人士在瑞士购买房地产，原则上必须得到事先批准。如果满足下列全部条件，则交易必须经过批准方为合法：

- **购房人是《外国人购房法》所管辖的境外人士。**
《外国人购房法》所称的“境外人士”，是指在瑞士境外居住的自然人，以及居住在瑞士境内，但既非欧洲共同体（欧共体），亦非欧洲自由贸易协会（欧自协）成员国的公民，且不持有有效定居许可（定居许可 C）的人士。
法律实体若是在境外成立，则视为境外人士。另外，具备法人资格的法律实体，以及不具备法人资格，但能够拥有在瑞士境内注册的资产的法律实体，如果对瑞士公司具有重大影响，亦视为境外人士。在实务中，如果某瑞士公司超过三分之一的资本或表决权属于某境外人士，或若该境外人士给予公司大量贷款，则推定该境外人士具有重大影响。
此外，代境外人士购买房地产的人士亦受《外国人购房法》管辖，不论其主体资格为何（如受信交易）。
- **交易对象必须是需批准的房地产。**
交易符合《瑞士民法典》定义的房地产需要得到批准。批准的具体要求取决于房地产的使用目的。
- **作为购买标的的法律权利必须在《外国人购房法》管辖的房地产购买交易范围内。**
须经批准的房地产交易不仅包括所有权转让的交易，也涉及使得境外人士对房地产拥有控制权的其他交易。因此，获得房地产的租地造屋权、居住（占用）权或用益权可以是《外国人购房法》

Situated in the heart of Western Europe, Switzerland attracts a great number of international investors due to, besides other things, its stable and prosperous economy, consistent legal system, attractive taxes, high level of education and research, first-class infrastructure and exceptional quality of life.

Business, as well as private investments in Switzerland, frequently are in connection with the acquisition of real estate. The acquisition of real estate in Switzerland is governed by both federal and cantonal regulations.

The Swiss Civil Code of 10 December 1907 defines the principles of Swiss property law (types of ownership and *in rem* rights), while the Swiss Code of Obligations governs in particular share deals, as well as the requirements of notarisation and filing with the land registry.

Restrictions on real estate purchases

The acquisition of real estate by persons abroad is, in particular, firmly restricted by the Federal Law on the Acquisition of Real Estate by Persons Abroad (FLA) and the Ordinance on the Acquisition of Real Estate by Persons Abroad (OA). Additionally, cantonal law and, for some cities and villages, municipal laws and regulations stipulate further conditions.

According to the FLA, as a matter of principle the acquisition of real estate by persons abroad is subject to prior authorisation. A legal transaction is subject to authorisation if the following conditions are met cumulatively:

- **The person acquiring is a person abroad within the meaning of the FLA.**
The term “person abroad” applies to natural persons who reside outside Switzerland and to people who are domiciled in Switzerland and are neither citizen of a European Community (EC) nor of a European Free Trade Association (EFTA) member state, and do not hold a valid settlement permit (settlement permit C). Legal entities are considered as persons abroad if they are incorporated abroad.
Furthermore, legal entities with legal personality and legal entities without legal personality but capable of owning property incorporated in Switzerland are regarded as persons abroad, if persons abroad have significant influence over the Swiss company. In practice, significant influence by persons abroad is presumed if more than one-third of the entity’s capital or voting rights belong to a person abroad, or if the person abroad has granted substantial loans to the company.
In addition, persons acquiring real estate on behalf of persons abroad are considered subject to the FLA, irrespective of their personal qualification (e.g. fiduciary transactions).
- **The object of the transaction must be real estate for which authorisation is required.**
Authorisation is required concerning real estate pursuant to



Dr Fritz Rothenbuehler



Nina Hagmann

中所指的购买房地产交易；参股及投资于在瑞士拥有房地产的公司亦是如此。

外国人购房交易获得批准的机会非常小，仅在少数情况下可根据充分而得到政府批准。在实务中，外国投资者必须符合法律规定的豁免情形之一，才能成功开展房地产交易。

豁免情形

具体而言，如果房地产由永久性业务机构（如生产场所、仓储设施、办公场所、医生执业场所等）构成，则其交易无须批准。购买该等房地产以及投资于拥有该等房地产的公司无须经过批准便可得到许可。

但是，住房的建造或租赁不被认为是永久性业务，因此仍须批准。此外，购买适量的土地储备以便在中期扩大原有或规划的业务机构无须经过事先批准。另外，如果境外自然人计划将瑞士作为自己的主要居住地，则其购房交易也无须事先获批。

批准程序

《外国人购房法》适用于资产交易和股份交易。违反上述规则会导致房地产交易的相关合同失效。境外人士必须从房地产所在地的州政府相关主管部门获取批准。在瑞士联邦，主要由州政府有关部门负责执行《外国人购房法》。

结论

境外人士购买或投资瑞士房地产会面临非常复杂的情况。因此，他们必须深入了解相关法规，以及瑞士地方政府实施这些法规的做法。此外，他们还应当咨询该领域的瑞士专家，防止出现延迟和代价高昂的错误，以便顺利开展房地产交易。

the definition of the Swiss Civil Code. The authorisation requirements depend on the purpose for which the real estate is used.

- **The legal right which is the subject of the acquisition must be an acquisition of real estate within the scope of the FLA.**

An acquisition of real estate requiring authorisation involves not only the transfer of ownership but also any transaction that gives a person abroad control over real estate. So acquisitions of a building lease, rights of residence (occupancy) or usufruct rights on real estate can be an acquisition of real estate in terms of the FLA, as well as participation and investments in companies that own real estate in Switzerland.

Chances for being granted an authorisation are very limited and only few reasons justify an approval by the authorities. A foreign investor must in practice fall under one of the exemptions provided by the law to successfully proceed with a real estate transaction.

Exemptions from requirements

Exempted from the authorisation requirements are, in particular, transactions if the real estate consists of a permanent business establishment (for example manufacturing premises, warehouse facilities, offices, and doctors' practices). Acquisitions of such real estate and investments in companies owning such real estate are permitted without prior authorisation.

However, the construction, rental or leasing of housing is not recognised as a permanent business, and therefore not exempted from the authorisation requirements. In addition, the purchase of reasonable land reserves for the medium-term expansion of an existing or planned business establishment does not require prior authorisation. Further, no authorisation is needed if a natural person abroad plans to establish his or her main residence and domicile in Switzerland.

Procedure

The FLA regulations apply to both asset and share deals. Violation of those rules leads to invalidity of the contract over the real estate.

The authorisation must be obtained from the competent cantonal authority where the real estate is located. In the federal state of Switzerland, it is the cantonal authorities that bear primary responsibility for enforcing the FLA.

Conclusion

The situation for acquiring or investing in real estate in Switzerland as a person abroad is highly complicated. A thorough knowledge of statutory provisions and their application by Swiss local authorities is indispensable. It is essential to seek the advice of a Swiss expert to prevent delays and costly mistakes, and to succeed with the real estate transaction.

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…相关[中国投资]活动较之以往有明显增长

There is significantly more [Chinese investment] activity than previously



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2015年，中国将取代美国，成为世界上最大的奢侈品市场。“以中国为首的新兴市场占到全球奢侈品销量的半壁江山。奢侈品零售业的增长主要源自于在中国新设了多家门店，”普华永道米兰办公室合伙人 Nicola Anzivino 称。

近期引人瞩目的奢侈品领域并购交易之一是山东重工集团以7500万欧元收购意大利游艇制造商法拉帝集团。中国金杜律师事务所、意大利 Bonelli Erede Pappalardo 律师事务所和美国 Akerman Senterfitt 律师事务所担任山东重工的法律顾问，佳利律师事务所担任法拉帝债权人的法律顾问。

中国买家的性质正在发生嬗变，Pazzaglini 称。“过去，收购方主要是那些在欧洲开启国际化步伐的大型企业，通常是国有企业。去年，来自私营企业和个人的咨询业务的增长尤其明显。”

Pazzaglini 认为，中国内地的私营企业要在并购市场上大展身手还有很长一段路要走。他们过于小心谨慎，即使聘请了意大利的律师，也不愿意披露重要文件、确定目标或潜在竞争对手，甚至不愿意对自身作出明确定位。“这就难以建立互信，律师也难以有效估算交易费用，”他指出。

政局稳定

意大利国内的政治乱局在三月大选结束后是否会进一步恶化仍然有待观察。但在中国公司看来，欧盟国家的政局相对而言较为稳定。“在许多中国公司的心目中，欧洲是高科技和品牌中心，而且不存在投资于美国可能会遇到的政治障碍，”中伦律师事务所的薛海滨律师说。

例如，中国在德国进行的收购项目总体上比较顺利。去年，中国汽车和设备制造商潍柴动力以7.38亿欧元投资德国叉车制造商凯傲集团，潍柴动力的法律顾问团队包括德国恒乐律师事务所、中国金杜律师事务所和美国普衡律师事务所。富而德律师事务所、Gleiss Lutz 律师事务所和中伦律师事务所则担任凯傲的法律顾问。

“在最近两年，更多的中国战略投资者开始关注德国企业。虽然交易统计数据尚未显示来自中国的投资在绝对数值上有突出表现，但相关活动较之以往有明显增长，”Gleiss Lutz 律师事务所法兰克福

The only Bank of China branch is in Milan, and a second branch is planned for Milan's small but burgeoning Chinatown. Meanwhile, Piedmont, based around Turin, is Italy's automotive hub, while whitegoods are concentrated in Veneto, machinery in Emilia Romagna. Logistics, largely based in central Liguria and southern Campania, is one of the few modern sectors outside the north.

China's booming appetite for luxury goods is also fuelling interest in Italian brand acquisitions. A PricewaterhouseCoopers report last year forecast that China would overtake the US as the world's largest luxury goods market by 2015. "Half of luxury goods sales are made to customers in emerging markets, led by China," says Nicola Anzivino, a PwC partner in Milan. "Retail expansion is mainly driven by new openings in China."

Recent high-profile luxury deals include the €375 million acquisition last year by Shandong Heavy Industry Group of 75% of Ferretti Group, an Italian yacht manufacturer. King & Wood Mallesons in China, Bonelli Erede Pappalardo in Italy and Akerman Senterfitt in the US acted for Shangong Heavy, while Cleary Gottlieb Steen & Hamilton advised Ferretti's creditors.

The nature of Chinese acquirers is evolving, says Pazzaglini. "In past years, we saw mainly large, often state-owned enterprises beginning their internationalisation in Europe," he says. "In the past 12 months, we have noted a particularly visible growth in the number of enquiries coming from privately owned companies and individuals."

Pazzaglini notes that private mainland companies have a long way to go before they turn into successful M&A players. Their excessive caution means that, even after they find an Italian lawyer, they are reluctant to disclose key documents, identify targets or potential rivals, or even identify themselves. "This makes it difficult to establish mutual confidence or for the lawyer to provide a meaningful estimate of costs," he points out.

No drama

It remains to be seen if Italy's domestic political environment, following the March general election, descends into further chaos. However, Chinese companies see the EU countries as relatively free of political drama. "Many Chinese companies see Europe as a centre for high technology and brands without the political difficulties that an investment in the US might pose," notes Xue at Zhong Lun.

Acquisitions in Germany, for example, have been largely smooth. Last year, Hengeler Mueller of Germany, King & Wood Mallesons, and Paul Hastings of the US advised Chinese automotive and equipment manufacturing company Weichai Power on its €738 million investment in German forklift truck maker Kion Group. Freshfields Bruckhaus Deringer, Gleiss Lutz and Zhong Lun advised Kion.

"Over the past two years we have seen many more Chinese strategic investors looking at German businesses," says Jan Bauer, a partner at Gleiss Lutz in Frankfurt who led the firm's involvement in the Kion deal. "While the deal statistics might not yet show much inbound investment from China in absolute numbers, there is significantly more activity than previously."

Weichai acquired 25% of Kion and lawyers believe such minority stakes will become more common. "Instead of outright acquisitions, we see a trend of Chinese companies acquiring

福办公室合伙人 Jan Bauer 表示。他在凯傲交易中担任该所律师团队的负责人。

潍柴动力收购了凯傲集团 25% 的股份，律师们认为，类似这样的少数股权收购将成为更常见的交易类型。“中国公司收购欧洲目标公司的部分股权而非全部股权已成为一种趋势，” 年利达律师事务所上海代表处合伙人方健说。方健曾担任武汉钢铁（集团）公司的法律顾问，为其收购德国巨头公司 ThyssenKrupp 旗下激光拼焊子公司的项目提供法律服务。ThyssenKrupp 一方的法律顾问是 CMS 德和信律师事务所。

“这样的结构有利于中国公司熟悉新环境，并在卖方仍然介入运营的情况下充分利用卖方的业务经验。中国公司日后也可以通过增持股权选择权，来实现 100% 控股。” 方健分析说。

律师认为，财力雄厚的中国公司与深谙并购之道的私募股权投资基金之间的合作渐趋增多。例如，去年三一集团联手中信投资基金投资德国建筑工业混凝土泵车制造商普茨迈斯特集团。“这种结构能否圆满成功仍需拭目以待，因为合作双方各怀不同的目的，一方着眼于长远发展，而另一方则侧重短期目标，” 方健如是评述。

尽管如此，三一集团法律顾问团队成员之一谢尔曼·思特灵律师事务所法兰克福办公室合伙人 Thomas König 认为，三一集团和普茨迈斯特的交易将成为“见证中国投资者成功竞购热门目标的标志性交易”。

中国公司收购少数战略性权益是最近几年才出现的现象。在 2010 年，上海综合性产业集团复星国际斥资 2338 万欧元收购法国度假村运营商地中海俱乐部 7.1% 的股权。

谋求新发展的地中海俱乐部希望到 2015 年能拥有 20 万中国消费者，需要借助复星国际在人力资源、会议管理、媒体和沟通方面的本地投入。而复星一方则希望通过此次交易，借国际品牌“上位”，从中国兴盛的国内旅游业中分得一杯羹。

“在这个战略合作项目中，复星获利颇丰。复星能够利用对方的优质品牌形象和自身的本土专长，把握中国繁荣的旅游经济所蕴藏的商机，” 信安国际律师事务所北京代表处合伙人兼公司和商业交易业务部成员曾英分析说。

**欧洲对于中国投资非常友好，
但是阻碍依然存在**

*Europe is quite friendly to
Chinese investment, but
obstacles still exist*



曾英
Sarah Zeng
信安国际律师事务所
合伙人
北京
Partner
SNR Denton
Beijing

**中国公司收购欧洲目标公司的
部分股权…已成为一种趋势**

*We see a trend of Chinese
companies acquiring partial
interests in targets in Europe*



方健
Fang Jian
年利达律师事务所
合伙人
上海
Partner
Linklaters
Shanghai

partial interests in targets in Europe,” says Fang Jian, a Shanghai-based partner with Linklaters who advised Wuhan Iron and Steel Company on its acquisition of the tailored blanks subsidiary of German giant ThyssenKrupp. CMS Hasche Sigle advised ThyssenKrupp.

“This structure allows Chinese companies to ease into a new environment and exploit the seller’s knowledge of business when the seller remains involved,” says Fang. “Chinese companies may also seek equity step-up rights to obtain 100% control in the future.”

Lawyers say they see more co-operation between cash-rich Chinese companies and acquisition-savvy private equity funds. Examples include last year’s investment by Sany Heavy Industry Company alongside CITIC in Putzmeister Group, a German maker of concrete pumps for the construction industry. “The full success of this structure remains to be seen, given the different goals of the two parties in the partnership, one being long-term focused and the other taking a relatively short-term view,” says Fang.

Nevertheless, Thomas König, a partner at Shearman & Sterling in Frankfurt and a member of the team that advised Sany, says the Sany-Putzmeister transaction will be remembered as a “landmark deal for the ability of Chinese investors to act successfully in a competitive sales process for an attractive target”.

The acquisition of small strategic stakes by Chinese companies is a relatively new phenomenon. In 2010, Shanghai industrial conglomerate Fosun International paid €23.38 million to acquire 7.1% of French holiday resort operator Club Med.

Club Med, seeking new growth, hoped to attract 200,000 Chinese customers by 2015 and sought Fosun’s local input regarding human resources, conference management, media and communications. Fosun, for its part, saw the Club Med deal as a way to cash in on booming domestic tourism in China through positioning itself with a suitable international brand.

“This strategic partnership has worked to great benefit for Fosun, which has been able to utilise both the company’s premium brand image as well as domestic expertise to take advantage of China’s booming tourism economy,” says Sarah Zeng, a partner and member of the corporate and business transactions practice at SNR Denton in Beijing.

中国律师认为，在西欧开展并购的好处之一，是官僚主义程度较低，虽然欧盟一向以繁文缛节和晦涩难懂的法规著称。“面临的监管问题更少，”君合律师事务所北京办公室合伙人许蓉蓉表示。

“我认为，就德国的情况而言，几乎不存在任何[监管障碍]。很少涉及反垄断问题，因为并购双方的市场份额不存在互相重叠的情形。买方的市场范围主要在中国和亚洲，而卖方则在欧洲，”Jan Bauer指出。“外贸审查也基本不是问题，除非涉及国防和能源等行业，”他补充说。

不过，对于参与中国投资欧洲项目的律师而言，交易的日趋复杂化加大了处理的难度。曾英律师提到了收购不良资产可能遭遇的潜在“雷区”。“在以低价收购不良资产时，确定所有的风险和陷阱对中国公司而言仍是一项挑战，”曾律师说。在潍柴动力通过债务重组收购法拉帝的控股权益的项目中，曾律师担任潍柴动力的总法律顾问。

中国公司应始终留意在投资欧洲之路上时或存在的监管障碍。“欧洲对于中国投资非常友好，但是阻碍依然存在，”曾英律师指出，并补充说，最大的障碍似乎来自于国家层面，而非欧盟层面。“在欧盟成员国之间，许多大国——如英国、法国和德国——都设有各自的投资安全审查体系。”

律师认为，中国投资者对于这种本地监管一般表示理解，但反对设立欧盟级别的安全审查制度，因为这会使投资者通过审批的难度大大增加。

中国投资于欧盟国家还关系到政治敏感问题。“值得注意的一个问题是，欧洲的目标公司起初总会担忧中国买家会将到手的工厂拆解，然后将业务输回中国，”中伦律师事务所的薛海滨律师指出，言语间流露出些许困惑。“就我们所知，实际情况并非如此，如果中国公司购买的企业运行良好的话。”

律师指出，公平来讲，北京方面设置的关卡要多于目标公司所在国家设置的关卡。“除却基于国家安全理由的潜在障碍和一般的反垄断审查，中国投资者面临的监管问题大部分是中国当局的层层审批体制所产生的，”中伦律师事务所薛海滨律师表示。

外商投资交易的主要审批机构是国家发展和改革委员会、商务部和国家外汇管理局，这些部门在审批时限方面的规定带有不可预测性。

“从欧洲卖方的角度而言，这带来了交易的不确定性，继而会导致买方不得不支付更高的收购价款作为补偿，”荷兰百思通律师事务所北京代表处常驻合伙人普志平(Geert Potjewijd)分析说。

对于通过拍卖方式进行的非公开交易而言，中国对外投资的审批时限问题尤为复杂。“中国公司越来越积极地参与比利时和荷兰目标资产的拍卖竞标活动。遗憾的是，中国买家在某些拍卖活动中距离成功仅咫尺之遥，但目标资产却最终花落他家，”普志平律师介绍说。一些律师指出，法律要求的条件在现实中并非每一项都必须执行。比如，有一项行政程序是，中国投资者收购目标公司超过25%的股份必须获得公安部批准。“至今为止，这个规定在中国投资项目中从来就只停留在文字上，”诺尔律师事务所法兰克福办公室合伙人赵辉说。

中国和欧洲之间日趋旺盛的投资活动的一个主要受益者是香港。“中国投资者经常以设在香港的子公司作为海外并购的投资控股工具，”贝克·麦坚时国际律师事务所法兰克福办公室合伙人兼欧

中国投资者经常以设在香港的子公司作为…投资控股工具

Chinese investors often use subsidiaries in Hong Kong as investment holding vehicles



Thomas Gilles

贝克·麦坚时律师事务所
合伙人
法兰克福
Partner
Baker & McKenzie
Frankfurt

One advantage of acquisitions in Western Europe, say China lawyers, is the relatively low level of bureaucracy despite the EU's reputation for red tape and arcane regulations. “There are fewer regulatory issues faced,” says Xu Rongrong, a partner at Jun He Law Offices in Beijing.

“I think there are hardly any [regulatory issues] from a German perspective,” says Bauer at Gleiss Lutz. “Antitrust is seldom an issue because the market shares typically do not overlap,” he notes. “The buyer is strong in China and Asia, the target in the Old World.” Foreign trade clearance is rarely an issue, except for industries such as defence and energy, he adds.

However, increasingly complex deals have set higher bars for lawyers involved in China-Europe deals. Zeng points to the potential minefields that might be encountered when purchasing distressed assets. “In acquiring underperforming assets for a bargain, identifying all the risks and pitfalls remains a challenge for Chinese firms,” says Zeng, who served as general counsel to Weichai when it acquired a controlling interest in Ferretti through debt restructuring.

Chinese companies should remain on the lookout for the occasional regulatory bump in the road. “Europe is quite friendly to Chinese investment, but obstacles still exist,” Zeng notes, adding that the highest barriers appear to be at the national, not EU level. “Among the EU's member states, many of the larger countries – Britain, France and Germany, for example – have their own system of security clearance for investments.

Lawyers say Chinese investors are generally understanding of such local regulations but are opposed to the creation of an EU bloc security review, as it would make the approval process for businesses much more difficult.

EU nations are also subject to political sensitivities. “One interesting issue is that the European targets initially have fears that the Chinese buyer may dismantle the factory and export the jobs back to China,” Xue at Zhong Lun notes with some bemusement. “This has not been the case as far as we can tell in respect of healthy companies that the Chinese companies have acquired.”

To be fair, lawyers note, Beijing tends to put up more barriers than governments in the target country. “Apart from potential

洲、中东和非洲及中国业务部主管 Thomas Gilles 分析说。在三一集团收购普茨迈斯特集团的交易中, Thomas Gilles 是卖方 Karl Schlecht Stiftung 和 Karl Schlecht Familienstiftung 的法律顾问团队的负责人。

Gilles 补充说, 在此情况下, 如何设计适宜的收购结构一般取决于现有的结构和税务因素, 还可能涉及在推行优惠税务政策的国家(如卢森堡或荷兰)设立控股公司。

“从统计数据中也可以明显地看出, 有些交易涉及税务结构设计, 就这点而言, 卢森堡似乎是一个具有吸引力的投资中心。卢森堡似乎在中国投资者心目中享有盛誉。” 品诚梅森律师事务所上海代表处合伙人 Bernd-Uwe Stucken 指出。

布鲁塞尔德沃福律师事务所上海办公室管理合伙人 Philippe Snel 认为, 中国公司在比荷卢地区(比利时、荷兰和卢森堡)的投资活动显总体增长态势, 但并不仅仅是出于税务结构方面的原因。

“中国投资者关注汽车行业、光伏发电等能源领域以及拥有雄厚知识产权资产的公司,” Snel 指出。他同时也是比荷卢商会上海办事处主席。

Snel 介绍说, 德沃福律师事务所协助了数家中国公司在比利时、卢森堡、德国、意大利、希腊和法国从事并购交易, 这些项目中, “采用或不采用卢森堡并购工具的兼而有之”。

但比荷卢地区的律师认为, 中国客户企业显然正日渐认识到通

barriers based on national security grounds and the general anti-competition clearances, most of the regulatory issues faced by Chinese investors are imposed by the Chinese authority through the layers of official approvals,” notes Xue at Zhong Lun.

The principal gatekeepers for foreign investment deals are the National Development and Reform Commission, the Ministry of Commerce and the State Administration of Foreign Exchange, which can be capricious with their approval timelines.

“This creates deal uncertainty from the perspective of the European seller, which in turn can result in a higher price being paid by way of compensation,” says Geert Potjewijd, resident partner in Beijing for De Brauw Blackstone Westbroek.

The timing of Chinese outbound investment approvals is especially complicated in private deals that are done by way of an auction. “We have seen increasing interest by Chinese parties as bidders in auction procedures relating to Belgian and Dutch targets,” says Potjewijd. “Unfortunately, even though some went quite far into the process, ultimately other bidders were successful in acquiring these targets.”

Some lawyers point out that not all conditions required by law are actually enforced. One administrative procedure is Public Security Ministry approval required for every transaction involving a Chinese investor who acquires more than 25% of the shares of a target. “This has never been a real issue for Chinese investments so far,” says Hui Zhao, a partner at Noerr in Frankfurt.

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过适当的法律结构来尽可能降低自身责任风险和税务负担的好处。“在过去，中国投资者会直接投资于目标公司，以为在欧洲设立控股公司会增加其运营成本，”史特博律师事务所律师 de Neree tot Babberich 说。

中国投资者现在逐渐熟悉在将欧洲投资收益汇回本国的过程中如何通过控股公司减少税负。“依托广泛的避免双重征税和投资保护协议网络，卢森堡和荷兰成为设立中间控股结构的首选国家，比利时次之，” de Neree tot Babberich 补充说。

律师指出，中国投资者的目光还投向英国资产。史特博律师事务所担任 Gingko Tree Investment (中国外汇管理局在英国注册的子公司) 的法律顾问，帮助该国有企业以 5.5 亿英镑 (合 8.25 亿美元) 收购巴克莱银行集团持有的英国学生公寓开发商 University Partnerships Programme 40% 股份。

从直接投资角度而言，荷兰也是中国投资者属意的投资目的地。“具有科技和专有技术优势的荷兰颇受关注，”荷兰百思通律师事务所律师普志平称，并介绍了北京海纳川汽车部件股份有限公司 2011 年收购 Inalfa Roof Systems 公司 (位于 Venray, 临近艾恩德霍芬) 的交易。百思通律师事务所担任卖方 AAC Capital Partners 的法律顾问。

普志平介绍的另一个交易案例是中日合资的萨博公司去年收购荷兰交通管理软件公司 HITT。“我们还注意到，荷兰的食品和农业也是投资者关注的领域，”他补充说。

困厄之中的欧盟边缘国家

欧盟官员希望中国更多地投资于陷入困境的欧盟边缘国家——塞浦路斯、希腊、爱尔兰、西班牙和葡萄牙。例如，希腊就在向中国投资者大力宣传本国的 500 亿欧元私有化计划。

但希腊萎靡不振的经济形势使中国投资者的热情有所减弱。“中国投资者十分关注希腊总体的经济政治环境，”雅典 AVG Law 律师事务所管理合伙人 Yannis Avgerinos 表示。“他们担忧的是希腊对企业实行的高税率和税收体系的不稳定。目前吸引中国投资者的领域是可再生能源、港口、铁路、机场等基础设施建设，以及电信行业。”

卢森堡似乎在中国投资者心目中享有盛誉

Luxembourg appears to have a good reputation among Chinese investors



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One major beneficiary of increased Europe-China activity is Hong Kong. “Chinese investors often use subsidiaries in Hong Kong as investment holding vehicles for overseas acquisitions,” notes Thomas Gilles, a partner in Frankfurt and head of the EMEA-China group at Baker & McKenzie, who led the team advising Karl Schlecht Stiftung and Karl Schlecht Familienstiftung on the sale of Putzmeister to Sany.

Gilles adds that preferred acquisition structures will then typically depend on the existing structure and tax considerations, and may include further holding companies in tax-friendly jurisdictions such as Luxembourg or the Netherlands.

“From the statistics it is also obvious that some tax structuring takes place, and in this respect Luxembourg seems to be an attractive investment hub,” says Bernd-Uwe Stucken, a partner with Pinsent Masons in Shanghai. “Luxembourg appears to have a good reputation among Chinese investors.”

Philippe Snel, partner in charge at the Shanghai office of Brussels-based De Wolf & Partners says there is an overall increase in investment by Chinese companies in the Benelux (Belgium, Netherlands and Luxembourg) bloc, but not just for tax structuring reasons.

“They are interested in the automotive industry, energy such as photovoltaic, and companies with strong intellectual property assets,” says Snel, who is also chairman of the Benelux Chamber of Commerce in Shanghai.

He says De Wolf has assisted several Chinese corporations in their M&A projects in Belgium, Luxembourg, Germany, Italy, Greece and France “with or without a particular Luxembourg acquisition vehicle”.

But Benelux lawyers note a clear trend among Chinese clients of a growing awareness of the advantages of a proper legal structure that minimises their exposure to liabilities and their tax burden. “In the past, Chinese investors would invest directly from China into the country of the target under the assumption that a holding company in Europe would add to their operational costs,” says de Neree tot Babberich, of Stibbe.

Chinese investors are now becoming familiar with the tax savings when upstreaming profits from their investment in Europe by using a holding company. “Because of the vast network of double tax and investment protection treaties, both Luxembourg and the Netherlands, and to a lesser degree Belgium, are preferred countries for setting up intermediary holding structures,” de Neree tot Babberich adds.

The lawyer notes that Chinese interests extend to picking up British assets. Stibbe lawyers advised mainland state-owned fund Gingko Tree Investment on the acquisition from Barclays bank group of its 40% stake in British student housing provider University Partnerships Programme for more than £550 million (US\$825 million).

Meanwhile, the Netherlands has drawn interest from a direct investment perspective. “The Netherlands is interesting because of technology and know-how,” says Potjewijd at De Brauw Blackstone Westbroek, citing the 2011 acquisition by Beijing Hainachuan Automotive Parts Company of Inalfa Roof Systems, based in Venray, near Eindhoven. De Brauw advised the seller, AAC Capital Partners.

Another example was last year’s purchase by Chinese-Japanese owned Saab of HITT, a Dutch traffic management software company, Potjewijd points out. “We also notice an interest in the Dutch food and agricultural sectors,” he adds.

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中国投资者十分清楚地意识到了葡萄牙…提供的绝佳投资机会

Chinese investors are very much aware of the excellent opportunities [in Portugal]



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该国政府希望，中国远洋运输集团公司（中远集团）旗下从事码头运营业务的子公司中远太平洋有限公司收购雅典附近比雷埃夫斯港的运营业务这一交易能够带动中国投资者前来希腊投资。本月，中远集团、惠普和希腊铁路垄断企业 TrainOSE 达成一项协议，将通过比雷埃夫斯港向欧洲、中东和北非运销惠普公司的产品。

而里斯本的律师认为，葡萄牙的国债对于中国投资者不失为一大商机，因为许多葡萄牙公司都希望通过外商投资获得新的资金来源。

“我们有理由相信，中国公司和中国银行也会有兴趣投资于贸易、金融、建筑、旅游等行业，”里斯本 Morais Leitão Galvão Teles Soares da Silva 律师事务所合伙人 João Soares da Silva 表示。

去年，中国国有企业三峡集团以 27 亿欧元收购了葡萄牙政府所持有的葡萄牙电力公司 Energias de Portugal (EDP) 21.35% 的股份。这是中国公司在欧洲进行的最大宗投资项目，也是葡萄牙历史上最大规模的私有化交易。Morais Leitão Galvão Teles Soares da Silva 律师事务所担任葡萄牙政府和 EDP 公司的法律顾问。

由于澳门及其他方面的缘故，葡萄牙和中国有着数世纪以来积淀的深厚联系。中葡之间的往来也延伸至法律领域。里斯本的 PLMJ 律师事务所与中国内地知名律所大成律师事务所结成了合作伙伴。

历史上形成的纽带在今天带来了实际价值。在葡萄牙设立公司可使中国投资者享有在资源富饶的原葡萄牙殖民地（如安哥拉、莫桑比克和巴西）开拓市场的优先权，也更有利于他们拓展葡萄牙的市场，派驻大成律师事务所北京办公室葡萄牙事务部的 PLMJ 高级律师 Rita Assis Ferreira 介绍说。

“自从新的居留许可计划在 2012 年 10 月生效以来，中国投资者十分清楚地意识到了葡萄牙在各方面提供的绝佳投资机会，从房地产到旅游业，从农业项目到写字楼等等不一而足。当然，葡萄牙还是适合移居的理想国度，”她表示。

但拥有阿尔加维的度假小屋并不是中国投资者心目中最为远大的目标。

“中国公司如今更加希望向价值链上层攀升，”贝克·麦坚时国际律师事务所北京代表处合伙人贾殿安表示。“他们将着眼于对自身业务构成互补和能够引入新技术的资产。” ■

Troubled waters

EU officials would like to see more Chinese investment directed to the bloc's troubled periphery – Cyprus, Greece, Ireland, Spain and Portugal. Greece, for example, has been heavily promoting its €50 billion privatisation programme to potential Chinese investors.

But Greece's troubled economy has dampened mainland enthusiasm. “Chinese investors have been very much concerned with the general economic and political environment in Greece,” says Yannis Avgerinos, managing partner of AVG Law in Athens. “They worry about the high corporate taxation and the instability of the Greek taxation system. The sectors that currently attract Chinese investors are renewable energy, infrastructure such as ports, railways, airports and telecommunications.”

The government hopes Chinese investors will take the lead of Cosco Pacific, the Cosco Group's terminal operating subsidiary, which took over operations at the Port of Piraeus, near Athens. In March 2013, Cosco, Hewlett-Packard and Greek railway monopoly TrainOSE reached an agreement to distribute HP products in Europe, the Middle East and North Africa from Piraeus.

Meanwhile, Lisbon lawyers say Portugal's public debt is perceived as an opportunity for Chinese investors, since many Portuguese companies are welcoming foreign investment as a form of raising new finance.

“We have reasons to believe that Chinese companies, as well as Chinese banks, are also interested in areas like trade, finance, construction and tourism, among others,” says João Soares da Silva, a partner with Morais Leitão Galvão Teles Soares da Silva in Lisbon.

Last year, China Three Gorges, a state-owned company, acquired the Portuguese state's 21.35% stake in Energias de Portugal (EDP), the Portuguese electricity company, for €2.7 billion. It was the biggest single investment made by a Chinese company in a European country and the largest Portuguese privatisation executed to date. Morais Leitão Galvão Teles Soares da Silva advised the Portuguese government and EDP.

Portugal and China have strong links forged over centuries, lawyers note, largely through Macau. Those ties have extended to the legal sector. Lisbon firm PLMJ works in association with prominent mainland firm Dacheng Law Offices.

The historical connections have practical value today. Setting up a Portuguese company gives priority access to Portugal's resources-rich former colonies such as Angola, Mozambique and Brazil. Chinese investors also have greater access to Portugal itself, says Rita Assis Ferreira, a PLMJ senior associate assigned to the Portuguese desk at Dacheng Law Offices in Beijing.

“Since the new Resident Permit Programme came into force in October 2012, Chinese investors are very much aware of the excellent opportunities, from real estate to tourism, from agricultural projects to office buildings, and of course as a great country for having a second home,” she says.

But holiday cabins in the Algarve might not be uppermost in the minds of Chinese investors. “Chinese companies are now looking more to move up the value chain,” says Stanley Jia, Beijing-based partner at Baker & McKenzie. “They will be concentrating their efforts in buying assets that are complementary to their operations and that provide access to new technology.” ■