

China – Service Providers

Globalization, Information And The Business Law Marketplace In China

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Think about the world's key business markets, and New York and London probably come to mind. But as the globalization of business continues to accelerate, you also need to include the explosively growing financial centers in other regions of the Americas, Asia and elsewhere.

Consider what is happening in the People's Republic of China (PRC), both Mainland and Hong Kong, for example. Combined, they represented one of the highest-volume mergers and acquisitions (M&A) markets in the world for most of 2009. This is a dramatic shift from a few years ago. Moreover, in the second and third quarters of 2009, China and Hong Kong assumed a *leading* role in helping the global M&A market emerge from the recession.

This resurgent China-related M&A activity has involved a wide range of industries, including real estate, metals, technology, finance and food. While inbound cross-border deals still make up most of the activity, outbound deals are fast increasing in both volume and value – with Canadian and Australian assets emerging as major outbound acquisition targets for Chinese firms. As part of this outbound investment push this year, more Chinese state-owned enterprises are going outside of the country for mergers and acquisitions. And this comes on the heels of the general and rapid rise of China as the “manufacturer for the world” in the 10 or 15 years that preceded the recession.

At the same time, competition among major law firms for China-related business is increasing. In the past, most of their business in China relied on multinational companies based overseas. Now the emphasis is shifting increasingly to focusing on large enterprises (many of them state-owned) in China – and to the public offering and M&A activity in Chinese financial centers.

U.S.-based general counsel (GC) and in-house lawyers, as strategic advisers, can help their businesses by providing sound, China-related strategic advice. But to do so, they have to understand the basics of China and its norms for business, deal making and law. At a minimum, that means an understanding of two things:

The players and the resources they bring to do business in China. Whether entering the China market via trading relationship, joint venture or outright M&A, access to company-level information and a legal understanding of one's trading partners is required.

Laws and standards. No matter what the transaction, it is important to understand Chinese standards. These range, for example, from what the Ministry of Commerce says about inbound and outbound M&A rules, to knowing about

contractual standards that come from precedent, like sample Chinese employment, credit or investment agreements.

Globalization Leading To The Need For More Professionalization

In beginning to grasp this understanding, it's useful to take a quick look at how this market have evolved to this point.

The increase in global trade and transactions has occurred alongside the increasing growth of the Chinese legal system. While there were only three law schools in China in 1978, today there are nearly 650. An estimated 150,000 lawyers and 14,000 law firms now exist in China, with clear expectations for continued growth by leaps and bounds.

Driving the increase in Chinese deals is the relative strength of China's economy and its “balance sheet.” The Chinese experience with the global recession was shallower and shorter than what the Western economies experienced. Emerging from the recession, because of being a longtime net exporter, Chinese businesses have abundant cash to invest and put to work. Regulators have comparatively more control over what that cash can be spent on, and they control both inbound and outbound M&A through different arms of the government. This sets up China as a very strong player in commercial marketplaces.

China's increased prominence in the global economy is not just an M&A phenomenon. For the moment, much of the world's major public offering activity is happening in greater China. Many of the large, China-related deals that happen in the U.S. have to do with private entities, so a private equity fund taking a company public will probably still do so in New York. The large state-owned Chinese companies, however, due to proximity and differences in disclosure, will transact in Shanghai or Hong Kong.

There are two major Chinese public equity markets (with several other smaller players). One is Hong Kong, which operates with rules and standards that are familiar to those in the West. The other is Shanghai, which is the dominant domestic Chinese market, operating under a different set of rules with different regulators and disclosure standards. In either market, companies typically have to divulge less with regard to business information and trade secrets when disclosing than they would in the U.S.

Supporting Chinese-Related Deal Making

Typically, in supporting clients in Chinese-related business deals, lawyers in large international and domestic corporations have relied on what have been the best available sources for the company information needed to facilitate successful transactions. But these resources have had limitations. They may have involved an intermediary

that's been one or two steps removed. It has sometimes been difficult to know whether the information is relevant or current. And there has usually been no ability to benchmark transactions against other deals or to know how they were negotiated.

Fundamentally in M&A, securities and corporate finance, the workflows for Chinese lawyers are essentially the same as those in the West. Researching and advising, drafting, reviewing and negotiating, complying with governing authorities, disclosing to shareholders – all of those steps have to happen just as they do in the U.S. Chinese professionals can see how legal information and workflow technology can help them achieve professional goals, but the tools and resources have been lacking.

Overall, the process of gathering information has been laborious, resource-intensive and sometimes of limited value. And with the professional standards and practices of the Chinese legal industry likely to equal those of the U.S. before the next decade is out, a clear need has emerged in China for the kinds of technologically advanced tools already available to business law professionals in the world's more established business centers.

Emerging Business Law Information Resources In China And Hong Kong

One such offering is Westlaw Business, which offers company- and transaction-level information and workflow tools. Thomson Reuters recently extended this platform into the China and Hong Kong markets. Westlaw Business contains more than 500,000 specialized documents, providing comprehensive legal, financial, regulatory and current-awareness perspectives of complex legal matters and business transactions relevant to the Asia Pacific market.

With its focus on capital market transactions and M&A facilitation, Westlaw Business is the only platform to combine filings, law and guidance with tools designed for business law professionals. It also leverages the established presence of Westlaw China – the bilingual legal research and legal information platform serving litigation research and practice – launched in 2008. Westlaw China covers more than 30 legal topics and 500,000 laws and regulations – more than three decades of Chinese legal coverage.

Westlaw Business Senior Vice President Kevin Ritchey sees how the economic strength and importance of China has been underscored by the country's global mergers and acquisitions activity, which has continued throughout the recession.

“China is an emerging force in business law and it is a particularly impactful time to be involved with M&A there, especially as the country helps lead the global market rebound,” Ritchey said. “Regardless of whether they work in a corporation, law firm or

government agency, lawyers providing transactional guidance and conducting deals in China want comprehensive global information that reflects market standards there and around the world.”

Because of the speed of Chinese lawmaking and multiple layers of legislation, there is no single government or official source to promulgate all the laws and regulations. So it's Westlaw Business' plan, Ritchey says, to continue to bring together updated and comprehensive content and process tools that help business law professionals minimize risk and provide competitive advantage.

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Unprecedented And Useful Information Access

Many professionals in China aren't used to having a business law product that makes such a wide range of critical information available to lawyers and their clients at every stage of a transaction.

“We've talked with one customer, a large energy company that is in the midst of cross-border acquisitions,” said Stephen Yao, CEO China, Thomson Reuters, Legal. “Normally they would get information from legal firms, CPA firms or investment banks. But it's information that's never in their control because they have to get everything from a third party.”

With Westlaw Business, Yao said, they can have direct access to crucial information, help eliminate potential risks associated with acquisitions, establish a sense of precedent based on similar deals already completed, and lower their costs.

“Or consider a government agency,” he added. “They like the idea of being able to perform better monitoring of companies doing business overseas, making the capital markets more transparent and credible to the world, and attracting more activity and liquidity to the markets. They can see Westlaw Business as a valuable tool for advancing these goals.”

A Continuing Evolution

For U.S.-based GCs and in-house lawyers, the implications are becoming increasingly clear. If you're not working with Chinese-related deals now, the likelihood that you one day will be growing. Using business law workflow tools that continue to evolve with the changing global market will help keep you one step ahead of your competition whether it is for deals in China or elsewhere around the globe.