#### **Table of Contents**

#### PART I. BACKGROUND

## CHAPTER 1. THE EARLY DEVELOPMENT OF CHINA'S ECONOMY AND THE ORIGIN OF M&A ACTIVITY

#### I. ECONOMIC GROWTH SINCE 1979

- § 1:1 The economy
- § 1:2 —Economic structure
- § 1:3 —Economic plans and development
- § 1:4 —Economic reforms
- § 1:5 The transformation to a Soviet planned economy (1949–1978)
- § 1:6 State planning and the functioning of the economy
- § 1:7 The Open Door Policy (1979–2012); stages of evolving policy
- § 1:8 —The origin of foreign investment
- § 1:9 —Intended and unintended changes

#### II. EARLY EXAMPLES OF M&A ACTIVITY

- § 1:10 In general
- § 1:11 Foreign investment through joint ventures
- § 1:12 The contract management system
- § 1:13 Hong Kong Compensation Trade investment
- § 1:14 State restructuring to form group companies

### III. THE UNINTENDED DEVELOPMENT OF M&A LAW

- § 1:15 In general
- § 1:16 The Company Law
- § 1:17 The regulation of acquisitions by foreigners

#### IV. PRESENT M&A LAW IN CHINA

§ 1:18 Summary of present M&A law

## CHAPTER 2. THE CURRENT STATE OF M&A ACTIVITY IN CHINA

§ 2:1 Introduction

#### A. THE ACQUIRERS

- § 2:3 State-Owned Assets Supervision and Administration Commission (SASAC)
- § 2:4 State Holding Companies
- § 2:5 China publicly listed companies
- § 2:6 Foreign investors
- § 2:7 —Strategic investors
- § 2:8 —Private equity investors
- § 2:9 —Venture capital development
- § 2:10 —Progress toward opening private equity in China
- § 2:11 —Foreign managed RMB funds

#### B. THE DISPOSERS

- § 2:12 SASAC and local entities
- § 2:13 Asset management companies
- § 2:14 Private entrepreneurs
- § 2:15 Foreign companies with China subsidiaries

#### C. THE REGULATORS

- § 2:16 National Development and Reform Commission (NDRC)
- § 2:17 Ministry of Commerce (MOFCOM)
- § 2:18 State Administration of Industry and Commerce (SAIC)
- § 2:19 State Administration of Foreign Exchange (SAFE)
- § 2:20 China Securities Regulatory Commission (CSRC)
- § 2:21 Anti-monopoly authority
- § 2:22 Industry specific regulators
- § 2:23 Function specific regulators
- § 2:24 —Tax Bureau
- § 2:25 —Customs
- § 2:26 —Labor

#### II. TRENDS IN DOMESTIC M&A ACTIVITY

- § 2:27 Consolidation of state-owned enterprises under SASAC
- § 2:28 Foreign M&A activity
- § 2:29 Factors inhibiting foreign acquisitions by private equity
- § 2:30 The renminbi fund
- § 2:31 Joint venture and cooperative enterprise acquisitions

#### TABLE OF CONTENTS

- § 2:32 Foreign acquisition of a domestic enterprise
- § 2:33 Takeovers of listed companies
- § 2:34 Foreign investment to restructure state-owned enterprises

### PART II. TYPES OF ACQUISITIONS

### CHAPTER 3. EXAMINING THE TARGET

#### I. INTRODUCTION

- § 3:1 Due diligence
- § 3:2 Common issues in due diligence
- § 3:3 Multiple sets of books

### II. PUBLICLY AVAILABLE MATERIAL ON CHINESE COMPANIES

- § 3:4 In general
- § 3:5 Limited companies
- 2:6 Limited companies without foreign investment
- § 3:7 Limited companies with foreign investment
- § 3:8 Public companies

### III. PRIVATE INVESTIGATORS AND BACKGROUND CHECKS

§ 3:9 In general

#### IV. DUE DILIGENCE INVESTIGATION TOPICS

- § 3:10 In general
- § 3:11 Organization and establishment of target
- § 3:12 —Business license
- § 3:13 —Joint venture contracts
- § 3:14 —Feasibility study
- § 3:15 —Articles of Association
- § 3:16 —Capital verifications
- § 3:17 ——Investment certificates
- § 3:18 —Annual inspections
- § 3:19 Structure of the company and affiliates
- § 3:20 Accounting statements
- § 3:21 Taxation
- § 3:22 —Multiple sets of books
- § 3:23 —Transfer payment schemes
- § 3:24 —Under-reporting of salaries

xxi

§ 3:25	—Unauthorized local incentives
§ 3:26	—Senior officer underpayment of tax
§ 3:27	—Corporate entertainment and government relations
§ 3:28	Customs
§ 3:29	Financing
§ 3:30	—Registration of foreign debt
§ 3:31	—M&A transactions financing
§ 3:32	Property
§ 3:33	—Land and buildings
§ 3:34	— — Urban land
§ 3:35	———Allocated land
§ 3:36	———Grant land
§ 3:37	——Collectively owned land
§ 3:38	— Private land
§ 3:39	———Condominium ownership
§ 3:40	—Intellectual property registrations
§ 3:41	——Copyrights
§ 3:42	——Patents and trademarks
§ 3:43	—Intangible assets
§ 3:44	——Patented technology
§ 3:45	——Trade secrets
§ 3:46	——Categorization of technology
§ 3:47	Operational considerations
§ 3:48	—Labor contracts and labor rules and regulations
§ 3:49	——Noncompete agreements
§ 3:50	——Lay-offs
§ 3:51	——Severance pay
§ 3:52	— — Open-ended contracts
§ 3:53	———Special training
§ 3:54	———Collective contracts
§ 3:55	——Labor dispatch agencies
§ 3:56	—Social welfare benefits schedule
§ 3:57	—Labor bureau or labor union disputes
§ 3:58	—Contracts with key persons and managers
§ 3:59	—Industry related licenses
§ 3:60	—Material contracts
§ 3:61	—Related party transactions
§ 3:62	—Suppliers and customer lists
§ 3:63	—Product warranty claims
§ 3:64	—Insurance
§ 3:65	Disputes, arbitration, and litigation
§ 3:66	Environmental protection investigation
§ 3:67	Anti-monopoly investigation and reporting

#### CHAPTER 4. JOINT VENTURE METHOD TO ACQUIRE A CHINA BUSINESS

§ 4:1 Structure of transaction

I.	THE JOINT	<b>VENTURE</b>	LAW:	DISCUSSION	ANI
	ADOPTION				

- § 4:2 Discussion § 4:3 Adoption
- § 4:4 Nature of joint ventures in China
- § 4:5 Feasibility study
- § 4:6 Joint venture implementing regulations and standard forms

#### II. PRINCIPAL DOCUMENTS AND TERMS

- § 4:7 In general
- § 4:8 Feasibility study
- § 4:9 Joint venture contract
- § 4:10 Articles of Association
- § 4:11 Other documentation
- § 4:12 —Land use contract
- § 4:13 —Technology transfer agreement
- § 4:14 —Labor contract
- § 4:15 —Trademark license contract(s)
- § 4:16 —Management services contract
- § 4:17 —Assets purchase agreement
- § 4:18 —Other agreements

### III. GOVERNMENT INVOLVEMENT IN THE PROCESS

- § 4:19 In general
- § 4:20 Determining the governmental approval authority
- § 4:21 —MOFCOM and provincial approval authorities
- § 4:22 Negative list experimentation
- § 4:23 Determining the governmental approval authority— Administration of Industry and Commerce

### IV. STANDARD STRUCTURES: MAJORITY, MINORITY, AND 50/50

- § 4:24 What determines equity ownership
- § 4:25 —Catalogue for the Guidance of Foreign Investment in Industries
- § 4:26 Comparison of subsidiaries and joint ventures
- § 4:27 Current preference

#### V. FOREIGN INCORPORATED JOINT VENTURES

- § 4:28 In general
- § 4:29 Use in acquisitions: round-tripping joint ventures

### CHAPTER 5. ACQUIRING AN INTEREST IN AN EXISTING FIE

T WT A	EZERCITIVO I III
§ 5:1	Introduction
§ 5:2	Rules governing equity transfers
§ 5:3	—Equity joint ventures
§ 5:4	—Cooperative joint ventures
§ 5:5	—Wholly foreign owned enterprises
§ 5:6	Transfers to affiliates and third parties
§ 5:7	—Procedure for transfer
§ 5:8	Purchase price, appraisals, and equity/asset exchanges
§ 5:9	Purchase price, appraisals and equity/asset exchanges—Equity and asset exchange
§ 5:10	Exception for joint venture interests
§ 5:11	—Required documentation
§ 5:12	Other transfer methods
8 5.13	Pledge

§ 5:14 —Transfer by operation of law § 5:15 —Replacement of FIE investor

§ 5:16 Converting a joint venture into a subsidiary

§ 5:17 Converting a joint venture into a domestic enterprise § 5:18 Mergers of foreign invested enterprises; acquisition of one FIE by another

§ 5:19 —Merger procedures § 5:20 —Notice to creditors

§ 5:21 —Capitalization and rights and obligations

§ 5:22 —Documentation requirements

§ 5:23 —Consent and approval

§ 5:24 Acquiring an Interest in an FIE with Equity

§ 5:25 Effect of amendments to the Company Law

## CHAPTER 6. ACQUIRING AN INTEREST IN A LIMITED LIABILITY COMPANY

### I. NATURE OF A LIMITED LIABILITY COMPANY FORMED UNDER THE COMPANY LAW

§ 6:1 In general

### A. COMPARISON BETWEEN LIMITED LIABILITY COMPANIES AND JOINT VENTURES

§ 6:2 Term of existence

#### TABLE OF CONTENTS

§ 6:3	Transfer of shares
§ 6:4	Director liability and election
§ 6:5	Organizational structures
§ 6:6	The supervisory board
86:7	Capital structures

#### B. SPECIAL TYPES OF COMPANIES

§ 6:8	In general
§ 6:9	Wholly state-owned companies
§ 6:10	Single shareholder limited liability companies
§ 6:11	Scope of business

### II. ACQUISITION OF DOMESTIC ENTITIES BY FOREIGN INVESTORS

§ 6:12 In general

#### A BASIC SYSTEM OF REGULATION

§ 6:13	In general
8 6:14	Enterprises with less than 25% foreign investment
§ 6:15	MOFCOM as approval authority
§ 6:16	Key industry and famous trademark qualification
§ 6:17	Expatriation of domestic companies
§ 6:18	Notice to sellers' creditors
§ 6:19	Appraisal
§ 6:20	Payment of purchase price, contributed capital and total investment
§ 6:21	Debt-equity rules
10	DIVARIATION ADDDONAL AND

### B. EXAMINATION, APPROVAL, AND REGISTRATION

§ 6:22	Approval authority
§ 6:23	Form of agreement

#### C. ANTI-MONOPOLY EXAMINATION

§ 6:24 Rules applicable to foreign acquisitions § 6:25 Guidelines

#### III. THE ASSET PURCHASE AGREEMENT

§ 6:26 In general

### A. PRELIMINARY MATTERS PRIOR TO DOCUMENTATION

§ 6:27 In general

MERGERS AND ACQUISITIONS IN CHINA State appraisal § 6:28 Employee settlement plan § 6:29 State and local tax bureau liaison § 6:30 Customs' review Anti-monopoly report § 6:32 § 6:33 Due diligence B. THE STRUCTURE OF AN ASSET PURCHASE AGREEMENT § 6:34 General structure and sample index C. ASSET PURCHASE AGREEMENT CLAUSES AND PROBLEMS § 6:35 In general

§ 6:36 Notice to creditors Purchase price and payment § 6:37 § 6:38 Effectiveness of closing conditions Equity/asset exchanges § 6:39

#### § 6:40 Non-competition agreements

§ 6:41 In general

A. PRELIMINARY MATTERS PRIOR TO DOCUMENTATION

IV. THE SHARE PURCHASE AGREEMENT

§ 6:42 Overview

B. THE APPROVAL PROCESS

§ 6:43 General procedure

C. THE STRUCTURE OF A SHARE PURCHA AGREEMENT

Minimum requirements

D. COMMON REPRESENTATIONS AND WARRANTIES

§ 6:45 In general Organization § 6:47 Financial statements § 6:48 Taxes § 6:49 Inventory § 6:50 Intellectual property

TABLE OF CONTENTS

§ 6:51 Real property § 6:52 Employees Environmental matters § 6:53 Product liability § 6:54

#### E. VARIOUS APPROVALS

§ 6:55 In general § 6:56 Tax Customs § 6:57 Governmental \$ 6:58 § 6:59 Anti-monopoly

#### F. USING FOREIGN LISTED SHARES TO ACQUIRE A DOMESTIC ENTERPRISE

§ 6:60 In general Use of advisors § 6:62 Required approvals

#### V. SPECIAL PURPOSE VEHICLES

Special purpose vehicle companies

#### TAX TREATMENT OF ACQUISITIONS

§ 6:64 In general

#### CHAPTER 7. ACQUISITION OF SHARES IN LISTED COMPANIES

#### THE COMPANY LIMITED BY SHARES

§ 7:1 In general General characteristics of the stock company § 7:2 § 7:3 Corporate management -Shareholders \$ 7:4 -Board of Directors § 7:5 § 7:6 -Supervisory Board § 7:7 -Managers Stock company shares § 7:8 § 7:9 Domestic and foreign listings Domestic securities markets; Shanghai Stock \$ 7:10 Exchange Domestic securities markets; Shenzhen Stock Exchange Types of domestic shares

#### MERGERS AND ACQUISITIONS IN CHINA

§ 7:13	Completion	of restructuring	of major	SOEs	into	stock
	companies					

#### § 7:14 Corporate debt

#### II. SHARE PURCHASE AGREEMENTS

333	2742	942	
8	7:15	In	general
2	4.10	111	Scholar

- § 7:16 Purchase of listed shares
- § 7:17 —B Shares
- § 7:18 —QFIIs
- § 7:19 —FIE investment companies
- § 7:20 —Strategic investors
- § 7:21 Purchase of non-tradable, unlisted shares
- § 7:22 Form for subscription/shareholder agreements
- § 7:23 —Corporate subscription
- § 7:24 —Private placements
- § 7:25 —Special provisions in a subscription agreement
- § 7:26 ——Board of directors and cumulative voting
- § 7:27 ——Legal representative
- § 7:28 ——Board of directors voting procedures
- § 7:29 —Majority ownership
- § 7:30 —Advantages and disadvantages of corporate subscription method
- § 7:31 —Shareholder agreement
- § 7:32 —Investments of less and more than 25%
- § 7:33 —Offshore transfers

#### III. VOTING TRUST ARRANGEMENTS

§ 7:34 Control through a voting trust

#### IV. SHARE ACQUISITIONS BY TENDER OFFER

- § 7:35 Takeovers; gradual acquisition of shares
- § 7:36 —Takeover by offer

### V. LIKELIHOOD OF STRATEGIC INVESTORS AND FOREIGN TAKEOVERS

§ 7:37 In general

#### VI. ASSET SALES BY LISTED COMPANIES

- § 7:38 In general
- § 7:39 Listed companies acquisition and restructuring review committee

### VII. FOREIGN INVESTMENT JOINT STOCK COMPANIES

§ 7:40 In general

#### Table of Contents

- § 7:41 Nature of companies
- § 7:42 Promotion method; formation by promoters
- § 7:43 —Approval procedure
- § 7:44 —Registration procedure
- § 7:45 Transformation method; formation by investors
- § 7:46 —Approval procedure
- § 7:47 —Registration procedure
- § 7:48 —Future prospects for the FIJSC

### VIII. PUBLIC ISSUE OF SHARES BY A FOREIGN INVESTMENT JOINT STOCK COMPANY

- § 7:49 Types of shares
- § 7:50 —Requirements for an A share issue by an FIJSC
- § 7:51 —Additional requirements for an FIJSC to issue B shares
- § 7:52 —Effect of an FIJSC share issue
- § 7:53 Listing procedures
- § 7:54 Future of FIJSCs as M&A vehicles

#### CHAPTER 8. MERGERS

- § 8.1 In general
- § 8:2 Types of mergers
- § 8:3 —Merger by absorption
- § 8:4 —Merger by new establishment
- § 8:5 —Corporate approval
- § 8:6 —Notification of creditors
- § 8:7 Merger agreement under Company Law
- § 8:8 Merger of foreign invested enterprises
- § 8:9 —Approval authority
- § 8:10 —Merger conditions
- § 8:11 —Successor entity
- § 8:12 —Capitalization rules
- § 8:13 ——Establishment date
- § 8:14 ——FIE mergers with China-owned companies
- § 8:15 —50% limitation
- § 8:16 —Required documentation
- § 8:17 ——Merger agreement
- § 8:18 ——Assumption of debts
- § 8:19 ——Payment in some mergers
- § 8:20 —Resolving contradictions
- § 8:21 Mergers of domestic enterprises with payment in foreign shares
- § 8:22 —Preconditions to the use of shares
- § 8:23 ——Required use of M&A advisors
- 8 8:24 —Approval documentation

	Mergers and Acquisitions in China
0.00	
	—Approval procedure
	<ul> <li>— Domestic company alteration of registration</li> </ul>
§ 8:27	——Payment in shares
§ 8:28	Offshore special purpose vehicles
§ 8:29	—Regulatory scheme
§ 8:30	——CSRC approval to list
§ 8:31	— MOFCOM approval to merge or acquire a
	domestic company
§ 8:32	——Approval implementation
§ 8:33	— —Use of proceeds
§ 8:34	<ul> <li>—Secondary offering proceeds, gains, and dividends</li> </ul>
§ 8:35	—Revival of offshore SPVs
§ 8:36	Mergers of domestic enterprises without foreign involvement
§ 8:37	Reverse mergers of domestic enterprises and VIE
	structures
CHA	PTER 9. REORGANIZATION OF
STAT	TE-OWNED ENTERPRISES BY FOREIGN
	STORS
TIAAT	

Think A A Thin	
§ 9:1	Reorganizing versus joint venture
§ 9:2	—The Xugong case
§ 9:3	——Restructuring
§ 9:4	— — Original plan
§ 9:5	— —First setback
§ 9:6	——Concession to minority shareholding
§ 9:7	——Structuring alternatives
§ 9:8	Investment process
§ 9:9	—Government approval
§ 9:10	—Types of investors
§ 9:11	—Restructuring program
§ 9:12	—Reorganization principles
§ 9:13	—Asset appraisal
§ 9:14	—Labor settlement plan
§ 9:15	—Reorganization procedure
§ 9:16	Likelihood of SOE reorganizations
§ 9:17	Equity and asset exchanges; functions
§ 9:18	—Relationship to SOE reorganizations
§ 9:19	—Asset and equity exchange procedure

#### CHAPTER 10. SHAREHOLDER AGREEMENTS IN ACQUISITIONS

§ 10:1 Introduction

§ 9:20 —Purchasing state assets?

#### TABLE OF CONTENTS

§ 10:2	Continuing use of offshore shareholder agreements
§ 10:3	—Foreign corporate joint ventures
§ 10:4	—United States limited liability company
§ 10:5	Requirement to use PRC law governed shareholder agreements
§ 10:6	Form for shareholder agreements
§ 10:7	—Corporate subscription
§ 10:8	-Board of directors and cumulative voting
§ 10:9	—Legal representative
§ 10:10	Board of directors voting procedures
§ 10:11	—Majority ownership
§ 10:12	—Advantages and disadvantages of the subscription method
§ 10:13	Shareholder agreements with all shareholders
§ 10:14	Investments of less than 25%
	TER 11. ACQUISITION OF RESTS IN CERTAIN REGULATED

## CHINESE ENTERPRISES

§ 11:1	Acquisition of financial institutions
$\S 11:2$	Banks
§ 11:3	-Regulations affecting foreign-funded bank
	expansion
§ 11:4	—Subsidiaries; registered capital
§ 11:5	—Subsidiaries—Asset thresholds
§ 11:6	— Other requirements
§ 11:7	—Acquisitions
§ 11:8	—Approval procedures
§ 11:9	—Branches of a subsidiary bank
§ 11:10	—Branches
§ 11:11	—Foreign bank penetration
§ 11:12	Insurance companies
§ 11:13	—Permissible methods of entry
§ 11:14	——Approval process
§ 11:15	——Penetration of the domestic insurance business
§ 11:16	<ul> <li>—Acquisition of shares in domestic insurance</li> </ul>
	companies
§ 11:17	Securities companies
§ 11:18	—Foreign invested securities companies
§ 11:19	—Securities company subsidiaries
§ 11:20	—Fund management companies
§ 11:21	Acquisitions in publication, news, and other media
§ 11:22	Acquisitions in publication, news and other media—
57/4	Publications
§ 11:23	—Internet supervision

#### **CHAPTER 13. THE TAXATION OF MERGERS AND ACQUISITIONS**

8	13:1	Tax	administration
o	10.1	- 44	addition and

§ 13:2 Principal taxes affecting mergers and acquisitions

#### TABLE OF CONTENTS

	§ 13:3	Income taxes
	§ 13:4	—Resident and non-resident enterprises
	§ 13:5	Capital gains taxes
	§ 13:6	Transfer and ad valorem taxes
	§ 13:7	Application to business transactions
	§ 13:8	Mergers
	§ 13:9	Reorganization tax treatment
	§ 13:10	—Ordinary reorganizations
	§ 13:11	—Special reorganizations
	§ 13:12	——Enterprise debt restructurings
	§ 13:13	——Stock to stock
	§ 13:14	——Mergers
	§ 13:15	— — De-Mergers
	§ 13:16	—Boot
	§ 13:17	——Cross-Border transactions
	§ 13:18	— — Treatment of existing tax incentives
	§ 13:19	Equity transfers
	§ 13:20	Asset acquisitions—VAT
	§ 13:21	—Business tax
	A CONTRACTOR OF THE PARTY OF TH	—Land appreciation tax
		—Deed tax
6	$\S 13:24$	—Stamp duty
,	§ 13:25	Tax perspective on acquisition of a PRC busine
	~	

#### CHAPTER 14. LABOR LAW EFFECTS ON **MERGERS AND ACQUISITIONS**

§ 14:1	Introduction
§ 14:2	Labor Law
§ 14:3	Labor law—The Labor Contract Law
§ 14:4	— —The legislative process
§ 14:5	— — The FIE reaction
§ 14:6	— —The legislators' game plan
§ 14:7	—Significant features of the law—Noncompete
	agreements
§ 14:8	— —Lay-offs
§ 14:9	——Severance pay
§ 14:10	— — Open-ended contracts
§ 14:11	——Special training
§ 14:12	— — Collective contracts
§ 14:13	——Labor dispatch agencies
§ 14:14	Other new labor laws
§ 14:15	—The Employment Promotion Law
§ 14:16	-Regulation on the employment of the disabled
§ 14:17	-Effect on M&A transactions
8 14.18	—The Labor Dispute Law

	MERGERS AND ACQUISITIONS IN CHINA
§ 14:19	Trade unions in the PRC
§ 14:10	—Development of the trade union law
§ 14:21	—Effect of labor unions on M&A activities
§ 14:22	—Labor unions in foreign investment enterprises
§ 14:23	—Organization of unions
§ 14:24	——Nature and implications of required
3 14.24	contributions by companies
§ 14:25	——Expenditure of union funds
§ 14:26	——Increased efforts to unionize
§ 14:27	— — Unrest in domestic enterprises
§ 14:28	——Increasing difficulty in controlling workers in
3	FIEs
§ 14:29	—Mandatory formation of FIE labor unions
§ 14:30	—Effect on acquisition of FIE
§ 14:31	Worker bonus and welfare fund
§ 14:32	—One of three funds
§ 14:33	The Company Law and social welfare
§ 14:34	Worker bonus and welfare fund—Liquidation
§ 14:35	Company Law eliminates the worker bonus and
•	welfare fund
§ 14:36	Worker bonus and welfare fund—The Company Law
	and the Joint Venture Law
§ 14:37	—M&A activity
CHAD	TER 15. FOREIGN CORRUPT
	Color - Maria
§ 15:1	Introduction
§ 15:2	Bribery
§ 15:3	—Crime of bribery of a state functionary
§ 15:4	—Bribery of enterprise employees
§ 15:5	Commercial bribery
§ 15:6	—Concurrent criminal and commercial bribery
§ 15:7	Enforcement of China's domestic corruption laws
§ 15:8	Discip dase me mquiry
§ 15:9	The Foreign Corrupt Practices Act
§ 15:10	—Accounting standards
§ 15:11	—Foreign corrupt practices
§ 15:12	—Application to foreign entities
§ 15:13	——Knowledge
§ 15:14	——Affirmative defenses
§ 15:15	——Payments for routine governmental action
§ 15:16	——Penalties
§ 15:17	—OECD Convention
§ 15:18	Anti-corruption and FCPA effects on M&A

transactions—Inheriting prior problems—The FCPA

#### TABLE OF CONTENTS

§ 15:19 ——Domestic effects

§ 15:20	—Contract negotiation expenses
§ 15:21	—Inheriting prior problems—FCPA concerns
§ 15:22	— — China law concerns
§ 15:23	—Foreign officials
§ 15:24	——Partially state-owned companies
§ 15:25	— —Unions
§ 15:26	——Agents, representatives, and partners
§ 15:27	Avoiding corruption problems in M&A transactions— Agents and intermediaries
§ 15:28	— — Due diligence
§ 15:29	——Contract provisions
CHAI	PTER 16. OUTBOUND M&A ACTIV

#### TVITY

	CILLER	
	§ 16:1	China's outbound investment
	§ 16:2	The regulatory scheme for outbound investment
	§ 16:3	The role of the NDRC
	§ 16:4	Reform of procedural impediments
	§ 16:5	—Effect of Administrative Notice
	§ 16:6	Legal and diplomatic approvals
1	§ 16:7	—MOFCOM diplomatic approval
	§ 16:8	—MOFCOM fair trade approval
	§ 16:9	Approval levels and applicable procedures— Mandatory national approval
	§ 16:10	—Permissible local approval
	§ 16:11	Foreign exchange approval
	§ 16:12	Catalogue on recommended investments
	§ 16:13	Encouragement for NDRC approved projects
	§ 16:14	—Export credit loans
	§ 16:15	—Investment guarantees
	§ 16:16	Chinese rules exported
	§ 16:17	Required MOFCOM forms
	§ 16:18	SASAC control of central enterprises
	§ 16:19	Other related approvals and registration
	§ 16:20	Committee on foreign investment in the United States
	§ 16:21	CFIUS procedure
	§ 16:22	—Membership of committee
	§ 16:23	—Committee review of acquisitions
	§ 16:24	—Informal preliminary review

#### **APPENDICES**

Appendix A. List of Abbreviations for Chinese Laws Appendix B. List of Model Contract Forms

effect

#### MERGERS AND ACQUISITIONS IN CHINA

Appendix C.	Cases and Judicial Opinions
Appendix D.	Due Diligence Checklist

Appendix E. The Company Law of the People's Republic of

Appendix F. Provisions on Foreign Investors' Merger with and Acquisition of Domestic Enterprises

Appendix G. Provisions of the Ministry of Foreign Trade and
Economic Cooperation and the State
Administration for Industry and Commerce on
Merger and Division of Foreign-Invested
Enterprises

Appendix H. Partnership Law of the People's Republic of China

Appendix I. Measures for the Administration of the Establishment of Partnership Enterprises in the Territory of China by Foreign Enterprises or Individuals

Index

#### Part I

#### BACKGROUND

#### Chapter 1

# The Early Development of China's Economy and the Origin of M&A Activity

#### I. ECONOMIC GROWTH SINCE 1979

- § 1:1 The economy
- § 1.2 —Economic structure
- 1:3 —Economic plans and development
- 1:4 —Economic reforms
- § 1:5 The transformation to a Soviet planned economy (1949–1978)
- § 1:6 State planning and the functioning of the economy
- § 1:7 The Open Door Policy (1979–2012); stages of evolving policy
- § 1:8 —The origin of foreign investment
- § 1:9 —Intended and unintended changes

#### II. EARLY EXAMPLES OF M&A ACTIVITY

- § 1:10 In general
- § 1:11 Foreign investment through joint ventures
- § 1:12 The contract management system
- § 1:13 Hong Kong Compensation Trade investment
- § 1:14 State restructuring to form group companies

### III. THE UNINTENDED DEVELOPMENT OF M&A LAW

- § 1:15 In general
- § 1:16 The Company Law
- § 1:17 The regulation of acquisitions by foreigners

#### IV. PRESENT M&A LAW IN CHINA

§ 1:18 Summary of present M&A law