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Practical cross-border insights into private equity law

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions?

The most common types of private equity transactions in the People's Republic of China (PRC) are mergers and acquisitions (M&A) and growth investments. The leveraged debt financing market is becoming more common, especially in M&A.

1.2 What are the most significant factors currently encouraging or inhibiting private equity transactions in your jurisdiction?

During the first half of 2022, the private equity market has been relatively quiet due to COVID-19 restrictions, geopolitical tension, PRC regulatory uncertainty over the regulation of offshore initial public offerings (IPOs), U.S. regulatory uncertainty over the regulation of U.S. investments in the PRC, and PRC and U.S. regulatory uncertainty over the continued viability of U.S. listings for PRC companies.

1.3 Have you observed any long-term effects for private equity in your jurisdiction as a result of the COVID-19 pandemic? If there has been government intervention in the economy, how has that influenced private equity activity?

No, the general trend has been a steady increase in private equity activity in the PRC market, with a shifting focus towards M&A as growth companies mature. The PRC's regulatory regime on offshore IPOs, combined with U.S. regulatory uncertainty, however, has created a new dynamic that will be different from the immediate past. Differences include the primary IPO exit being in Hong Kong, the adjustment or transaction structures with more weight given to PRC structures, and increased awareness of new regulatory items such as cybersecurity, antitrust, and export controls compliance.

1.4 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

The PRC market has international private equity investors and a burgeoning group of local or Asia-focused private equity investors who have raised USD, RMB, or USD and RMB funds. The practice of local or Asia-focused private equity investors differs slightly from international private equity investors in terms of the level of flexibility they have with terms and legal risk. We notice that both of these types of private equity investors are beginning to reach equilibrium with each other in terms of practice. In the immediate past, big PRC Internet companies were also active in the private equity space, but that activity is now subject to heightened regulatory scrutiny, in particular, antitrust.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

There are a diverse range of transaction structures for PRC private equity transactions. The most straightforward structures for private equity investors are non-PRC parent structures, which allow investors to use structures they are familiar with in other jurisdictions, such as a U.K.-style merger or Silicon Valley-style growth documents. However, asset acquisitions and PRC structures are becoming prevalent (and we suspect will become more so) as target companies adjust their group structures for regulatory reasons.

2.2 What are the main drivers for these acquisition structures?

The main driver for an acquisition structure, whether the transaction is an acquisition or a growth investment, is the current group structure of the target. If the group structure has a parent entity outside of the PRC (typically in the Cayman Islands), then transaction structures available in other jurisdictions are possible. If, however, the group structure has a parent entity in the PRC, then transaction structures available in other jurisdictions such as mergers are no longer possible.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

If the purchaser is a USD fund, whether controlled by general partners who are PRC nationals or non-PRC nationals, the economics of a fund are similar to other jurisdictions in terms of management and carried interest. If the purchaser is a non-USD fund, the terms are similar but not exactly the same. For example, certain limited partners that may have government affiliations may demand more rights over the procurement of investment opportunities.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

The structuring considerations are generally the same for a growth investment as they are for a transaction resulting in a change of control. A unique consideration in growth investments is whether the rights granted to the investor would result in "control", as defined by the PRC's updated Anti-Monopoly Law that will take effect on 1 August 2022, necessitating a merger review filing if new updated thresholds are also met. There has been substantial enforcement by PRC authorities over prior growth investments where a merger review filing was not submitted by the transaction parties under the old Anti-Monopoly Law; the maximum fine was RMB500,000, whereas it can be up to 10% of global turnover under the new law.

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

The typical range for equity allocated to management, and the terms of such equity, varies significantly in the PRC and depends on the nature of the fund (e.g. international, Asia-focused, PRC-focused), the general partner (PRC or non-PRC), and the extent to which local teams have autonomy. Transaction-specific management equity is common in the PRC market, and can be found even at international private equity funds. We have also started to see Management Equity Plans (MEPs) adopted post-completion in relation to management equity for a particular target.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

The reasons are determined by contract and not by law as it relates to management equity. The distinctions are generally tied to length of service and compliance with employment-related undertakings, such as confidentiality and non-competition (which is permitted in the PRC as long as the employee receives compensation during the non-competition period). In some cases with local funds, good leaver and bad leaver distinctions were not set forth in management equity plans with specificity, which has led to disputes.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

In an offshore structure where the target's parent entity is located in the Cayman Islands, corporate decisions are made by the board of directors except for special resolution items such as amending the articles of association that have to be approved by two-thirds of the shareholders. The register of members, register of directors, register of chargers, and memorandum and articles of association are not publicly accessible.

With respect to PRC subsidiaries in offshore structures and an onshore structure where the target's parent entity is located in the PRC, corporate decisions are made by the board of directors, documents are executed by the legal representative, the general manager or managers direct the day-to-day management of the entity, and these appointees are supervised by a supervisor or a board of supervisors independent from the board, legal representative, and the general manager or managers. In an onshore structure where the target's parent entity is located in the PRC, shareholder approval is required to amend the articles of association. The particulars of the shareholders, board of directors, and other legally appointed persons are publicly accessible. The articles of association and incorporation documents are not publicly accessible but PRC lawyers have the authority to request them from the local registration office.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

In growth transactions, the existence of individual veto rights is generally more prevalent in the PRC compared with other jurisdictions where there may be class voting by preferred shareholders or certain classes of preferred shareholders. The individual veto rights typically extend to economic rights, such as IPO, trade sale, and amending the articles of association. Operational veto rights also exist depending on the level of control an investor seeks to exert.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

Under the PRC's merger review standards, an individual veto right over the budget and business plan and/or the appointment or dismissal of officers would be deemed "control", thereby necessitating a merger review filing if the merger review thresholds are met, even though the underlying transaction is a growth transaction. "Control" in other contexts may also be deemed to exist where the investor exerts substantial influence over the target. While merger review applications may be filed in simplified and expedited form, transaction parties typically attempt to avoid adding rights that may trigger a merger review filing.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

Directors appointed by the private equity investor have a fiduciary duty to act in the best interests of the company, whether the entity in the group structure is incorporated in the PRC or Cayman Islands. Generally speaking, acting in its capacity as a shareholder, absent specific contexts in a PRC liquidation, such shareholder does not owe any fiduciary duties to other shareholders in the PRC or Cayman Islands.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

In an offshore structure where the target's parent entity is located in the Cayman Islands, the governing law is typically Hong Kong law and Hong Kong arbitration at the Hong Kong International Arbitration Centre (HKIAC). In 2019, Mainland China agreed to allow litigants in a HKIAC arbitration to pursue interim relief in the PRC, which is an enforcement advantage that has led to transaction parties electing arbitration at the HKIAC. In an onshore structure where the target's parent entity is located in the PRC, generally speaking the governing law cannot be moved outside of Mainland China as there is no sufficient "foreign element" in the transaction, even if the private equity investor is incorporated outside of the PRC.

Non-compete and non-solicitation provisions are typically enforceable in the PRC so long as the employee receives consideration during the period of the non-compete. The amount of minimal consideration varies by province but in general it is at least 30% of the most recent compensation provided to the departing employee.

In an onshore structure where the target's parent entity is located in the PRC, a redemption provision is generally unenforceable as to the company. Transaction parties do frequently attribute joint and several liability for the redemption onto the founders, though this provision is infrequently invoked in practice.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

There are no nationality restrictions for board appointees of PRC entities (either operating subsidiaries in an offshore structure or onshore structure). Generally speaking, the legal representative, a legally appointed person who has the power to execute documents on behalf of PRC entities, is the first line of defence if a governmental authority requests documents or information from a PRC entity. Director liability is generally limited to the obligation to act in the best interests of the company. Shareholders are generally not liable unless they are held by a court to be one and the same with the entity itself, roughly analogous to the standards for "piercing the corporate veil" in other jurisdictions.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

Apart from exercising their general fiduciary obligations to the company, the articles of association in a PRC operating entity or a Cayman Islands entity in an offshore structure may contain specific provisions pertaining to the handling of potential director conflicts of interest and corporate opportunities.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

From the perspective of international private equity investors, the first consideration in any M&A or growth transaction is an examination of whether the underlying business is subject to foreign investment restrictions in the PRC. The major industries restricted to foreign investment are Internet content services, which require an Internet content provider (ICP) licence, with a 50% foreign investment limit. The major industries prohibited to foreign investment are online videos, cloud computing, news and streaming services, and online private education. The variable interest entity (VIE) structure has been a mature structure in existence for over 20 years, which allows foreign investors to invest in restricted or prohibited sectors through an arrangement where the key licences are held by an entity under contractual control as opposed to shareholding control. Major PRC Internet companies have used the structure to attract private equity investment and then list in Hong Kong or the U.S. However, recent regulatory developments in the PRC and in the U.S. on offshore IPOs of PRC companies (including those using an offshore structure) may change the continued viability of VIE structure, especially in the context of an offshore IPO.

The PRC recently updated its Anti-Monopoly Law, which raises filing thresholds but also the consequences of non-compliance, from RMB500,000 to up to 10% of global turnover. PRC antitrust authorities have in the past two years conducted a series of retroactive reviews under the old Anti-Monopoly Law of transactions that were not filed even though they met regulatory thresholds. Under the new Anti-Monopoly Law, expedited review where a decision is made in as little as one to two months is possible. Furthermore, antitrust authorities now accept applications where one or more of the transaction parties has a VIE structure, whereas previously those applications were not accepted even if the transaction parties wanted to file.

4.2 Have there been any discernible trends in transaction terms over recent years?

The offshore IPO rules by the PRC and the delisting law by the U.S. have the potential to fundamentally alter the *status quo* from the last 20 years. As such, transaction terms over the last two to three years have accounted for these risks, in particular as they relate to redemption provisions tied to regulatory enforcement of the VIE structure and the inability of the portfolio company to complete a qualified IPO within a set time period.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

The most common public-to-private transactions involving PRC companies are take-privates of U.S. listed PRC companies, which may be forced to list pursuant to the U.S. delisting law, and the acquisition of PRC companies listed on the Stock Exchange of Hong Kong. The market for the takeover

of companies listed in Mainland China is still at a nascent stage. For take-privates, the major hurdle is not necessarily shareholder approval as the companies almost always have unweighted voting arrangements, but rather the composition of the special committee and the inevitable class action lawsuits filed for the purposes of increasing price. The most time-consuming item is the adjudication of these class action lawsuits. For the acquisition of Hong Kong listed companies, Hong Kong has a takeovers regime requiring over 30% shareholders to tender shares to all other shareholders and attain 75% or more of the votes of independent shareholders in order for the acquisition to proceed. The existence of these requirements should be considered when negotiating the timing of the acquisition and discussions with selling shareholders. Antitrust merger review filings would also apply for the above take-privates and acquisitions of Hong Kong listed companies.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

For take-privates of PRC companies listed in the U.S., the most common deal protection for an acquirer is to set a deadline for completion, after which the acquirer is entitled to terminate the transaction. For the acquisition of Hong Kong listed companies, the most common deal protection is the assurance that the requisite takeover thresholds (namely attaining 75% or more of the votes of independent shareholders) can be met.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

The preferred consideration structure for both sell-side and buy-side tends to be cash without other forms of consideration. An exchange of shares is also present for portfolio companies that merge. Consideration paid to a target incorporated in the PRC may be paid in USD.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

The typical package of warranties will relate to all aspect of the target's business. PRC-specific warranties relate to foreign exchange and cybersecurity. As very few PRC targets are perfectly compliant, holdbacks and indemnification escrows exist but are being replaced by warranty and indemnity (W&I) insurance.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

For growth transactions, covenants tend to be both broad (general compliance with law) and specific (items of non-compliance identified in legal due diligence). For M&A, the covenants tend to be limited unless the founding team remains with the target, although transition services are also present.

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

W&I insurance is becoming more common in the PRC market, especially for sellers who are private equity investors. In addition to international insurers, there are also local PRC insurers active in the W&I insurance market. Exclusions typically cover market factors such as changes to the law and the regulatory environment in various jurisdictions that may impact the target's business, although these can also be negotiated. The cost of W&I insurance varies significantly depending on sector and corporate structure. A target with a VIE structure will have higher W&I insurance costs.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

The most common limitations are an indemnity basket and liability exclusions for matters disclosed in a data room. In the PRC market, however, there are special indemnity items to account for potential regulatory action for past non-compliance.

6.6 Do (i) private equity sellers provide security (e.g., escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Holdbacks and indemnification escrows are gradually being replaced with W&I insurance, although they are still present in the market. There are still milestone-related earn-outs tied to financial metrics that occur after completion.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buyer (e.g., equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

The most common protection for sellers is an equity commitment letter from the buyer or another affiliate parent entity of the buyer with significant assets. The right of specific performance is the most common remedy for a seller in the event of a breach by the buyer. Sellers also may require assurances of debt financing being secured prior to even signing.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees and break fees generally are not very common in the PRC market. However, they can be used to account for overseas direct investment (ODI) approval risk (see question 11.1) and completion risk associated with not obtaining antitrust approval.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

The PRC has recently enacted rules regulating offshore IPOs that previously did not apply to PRC companies with offshore structures (including VIE structures). For Hong Kong listings, the listing applicant will have to produce to the China Securities Regulatory Commission (CSRC) a compliance certificate from its primary regulator. This requirement does not actually deviate from the "material non-compliance" requirement of the Stock Exchange of Hong Kong. For any other listing outside of Hong Kong (e.g. U.S./Singapore) listings, in addition to the compliance certificate, listing applicants who hold personal information of 1 million or more PRC persons will also require prior approval from the Cybersecurity Administration of China (CAC). Neither the compliance certificate nor the CAC approval were previously required for U.S. or Singaporean listings. In addition, the U.S. has implemented its delisting law, the Holding Foreign Companies Accountable Act, and has stated in a speech released on the website of the Securities and Exchange Commission on 24 May 2022 that U.S. listed PRC companies will be delisted starting in March 2023 if the PRC authorities do not soon accede to U.S. demands on audit inspections in the PRC. As of the date of this guide, no such agreement has been reached by U.S. and PRC authorities. Target companies whose parent entities are incorporated in the PRC may list in Hong Kong through the "H shares" arrangement, but in practice cannot list anywhere else outside of Mainland China.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

In a Hong Kong IPO, a controlling shareholder holding 30% or more of the listed company's voting rights is subject to a six-month statutory lock-up period. For non-controlling shareholders and U.S. listings, underwriters will typically require a six-month lock-up period.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

Dual-track potential exits are less common in the PRC market. When exploring an exit, sellers usually select an exit option over the other. The typical time period for a Hong Kong IPO from start to finish is around six months.

7.4 Do private equity sellers seek potential mergers with SPAC entities as an alternative to an IPO exit? What are the potential market and legal challenges when considering a "de-SPAC" transaction?

De-SPAC transactions are still in a nascent stage in the PRC, even though the Stock Exchange of Hong Kong has allowed special purpose acquisition companies (SPACs). Regulatory headwinds in the U.S. over the delisting law has caused many potential de-SPAC transactions involving PRC companies to be delayed or not completed.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high-yield bonds).

The most common form of debt financing for private equity transactions is borrowing from traditional banks, either on a singular or inter-creditor basis. The use of debt instruments for PRC transactions tends to follow trends first used by international private equity investors in other jurisdictions. The market for high-yield bonds is still at a nascent stage.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

The provision of security by PRC persons or the use of PRC assets as security are both subject to registration requirements from the State Administration of Foreign Exchange and the National Development and Reform Commission. In practice, PRC individuals cannot in practice complete the required registration, complicating enforcement. The registrations made by PRC entities to provide security and the security of PRC assets can be completed in practice.

8.3 What recent trends have there been in the debt-financing market in your jurisdiction?

The use of debt financing for private equity transactions involving PRC target companies has tended to follow developments in other jurisdictions. It is still fairly uncommon in growth transactions but is gaining tracking in M&A.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

Whether a target company has an offshore or onshore structure, private equity investors typically use an offshore entity as the holding vehicle. The most common form of tax structuring is to use a Singapore holding vehicle in order to enjoy the benefits of the double taxation treaty between the PRC and Singapore.

9.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

Generally speaking, asset acquisitions would involve a higher tax burden for the sellers, but they are still used by strategic buyers. Typically incentive shares, however structured, would result in the same tax liability for PRC beneficiaries. One vehicle used by management is a trust that allows the management to pay a lower tax on the exercise and roll over of the option shares to the trust, in anticipation of a future exit through an IPO or M&A.

9.3 What are the key tax considerations for management teams that are selling and/or rolling over part of their investment into a new acquisition structure?

The key tax considerations typically involve the amount of cash consideration they will receive at completion and whether future payments are tied to earn-outs. Generally speaking, the roll-over of equity from the seller to the buyer or to a new merger parent company is a taxable event where capital gains tax is due on the premium. Generally speaking, the roll-over of options from the seller to the buyer or to a new merger parent company is a tax-neutral event as long as the vesting terms do not change or accelerate. There have been transactions where the target companies were required to provide limited tax indemnities or reimbursement programmes for shareholders who incurred capital gains tax as a result of a merger.

9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

The PRC already has an established tax regime on indirect share sales of PRC companies with offshore structures. There have been no significant developments since that change was made in 2015.

10 Legal and Regulatory Matters

10.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

The recent offshore IPO rules, the uncertainty over the future of the VIE structure, and U.S. regulatory developments such as the continued implementation of the delisting law and potential "outbound CFIUS" regulation, individually and taken as a whole may very well change the PRC investment landscape from the prior *status quo* of the last 20 years. The rules on the PRC side provide greater clarity on what is and is not permitted, and their continued implementation may result in greater legal certainty for all investors. Hong Kong may be strengthened as a capital markets gateway for PRC companies in the future.

10.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g., on national security grounds)?

Private equity investors are not treated any differently compared with other non-PRC investors. Investments in restricted or prohibited sectors, mainly involving the distribution of content online, are more sensitive than other industries, which the PRC has effectively opened on a broad and unfettered basis. Growth investments in restricted industries up to the 50% ownership threshold should continue in the future. However, investments in prohibited sectors in light of recently regulatory developments are uncertain.

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g., typical timeframes, materiality, scope, etc.)?

Very few, if any, PRC target companies are fully compliant with all PRC legal obligations. As such, legal due diligence in PRC M&A tends to be more detailed and time consuming compared with other jurisdictions. Recent regulatory development on cybersecurity and offshore listings rules have further enhanced the importance of legal due diligence. Some private equity investors prefer a stepped approach to legal due diligence where gateway items such as foreign investment restrictions, offshore listings potential, and structuring issues are handled first prior to other diligence items.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g., diligence, contractual protection, etc.)?

The PRC's anti-bribery and anti-corruption regime has been enforced with more regularity recently and should be viewed alongside other diligence items such as tax and permits. The basic approach to anti-bribery and anti-corruption legal due diligence and contractual protections, however, has remained relatively unchanged.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Shareholder liability under PRC law is rare and will only arise if the shareholder and the underlying portfolio company are held by a PRC court to be one and the same. This situation can arise where all or substantially all of the directors and other legally appointed persons are associated with the private equity investor and not the portfolio company itself, which is a rare arrangement for private equity investors in the PRC. There is no mechanism under PRC law under which one portfolio company can be held liable for the liabilities of another portfolio company.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

One area of unique aspects of PRC practice that may not be present in other jurisdictions is foreign exchange and the fact that the PRC does not yet have an open capital account. This impacts both financial and legal due diligence and involves legal requirements that may be unique to the PRC. For example, in order for a PRC person to hold equity in an entity incorporated outside of Mainland China acting as the parent entity for the business, a special registration with the State Administration of Foreign Exchange is required. In order for investors in the PRC to invest in portfolio companies using funds from the PRC (including converting RMB in the PRC into USD outside of the PRC), an overseas direct investment (ODI) approval is required to convert RMB into USD.

Charles Wu specialises in cross-border venture capital and private equity, M&A, and general corporate matters. Charles was born in Beijing and raised in Mississippi and New Jersey. He leverages the firm's full-service resources to explain "China-specific" issues to international clients in a clear, concise, and digestible manner. When negotiating transactions on behalf of international clients, he connects his understanding of their expectations and priorities with his local knowledge and expertise of international business and legal terms. Charles also represents domestic clients in pre-IPO cross-border venture capital financings and M&A, outbound investments in non-PRC jurisdictions, and compliance matters.

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