



LEGAL ALERT

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What kind of M&A transactions can obtain the merger loans from Chinese commercial banks?

Q:

What kind of M&A transactions can obtain the merger loans from Chinese commercial banks?

A:

Articles 2, 3 and 22 of Guidelines for Risk Management of the Merger and Acquisition Loans of Commercial Bank stipulate that the M&A transactions shall satisfy the following requirements for the purpose of obtaining loans from Chinese commercial banks:

1. Parties to M&A

The acquiring party shall be a domestic enterprise, whose operation shall be in compliance with laws and regulations, with good credit, but with no fault records such as breach of loan agreement or bank debt default.

The target enterprise shall be already established and continuously operating. Furthermore, following two issues need to be explained with respect to the target enterprise:

- (1) Whether the target enterprise must be a domestic enterprise or can be a foreign one?

The substance of this question is actually whether the M&A transaction can be a cross-border transaction. Nevertheless the Guidelines don't make it clear. The legislative draft once mentioned the provision of M&A loans for cross-border transactions, however, this issue wasn't adopted in the Guidelines. Therefore, whether the target enterprise can be a foreign enterprise, namely whether loans can be applied for cross-border transaction with Chinese commercial banks, is not clear yet.

- (2) Any special requirements, if the target enterprise is a foreign invested

enterprise?

If the target enterprise is a foreign invested enterprise, it shall first of all be an already established and continuously operating enterprise, besides, it shall fulfill additional requirement in accordance with Article 9 of Provisions on Merging and Splitting of Foreign-Funded Enterprises, namely the investors of the target enterprise shall have paid up the capital contributions in accordance with the Contract and Articles of Association and Contract of the enterprise.

2. M&A Mode

The M&A transaction between the acquiring party and the target enterprise may be achieved by means of buying current equity in the target enterprise, subscribing to its new equity, taking over its assets, or succeeding to its debts, where the acquiring party may eventually merge the target enterprise or control such enterprise.

3. M&A Content

(1) Compliance

The M&A transaction shall comply with laws and regulations. Where national industrial policy, industry access, anti-trust, state-owned assets transfer and etc. are concerned, approvals shall be obtained from the corresponding authorities and relevant procedures shall be carried out pursuant to applicable laws and regulations and policies.

(2) Strategy

The acquiring party and the target enterprise have a relatively high degree of industrial and strategic relatedness, and the acquiring party can, through the M&A, obtain the R&D capacity, key technology and technique, trademarks, patent rights, supply or distribution networks, or other strategic resources of the target enterprise, whereby the core competitiveness of the acquiring party may be increased.

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