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CHINA BUSINESS 商 LAW JOURNAL 法

September 2010 | Volume 1, Issue 8

2010年9月 | 第1辑第8期

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纽约：中国想尝一口 的“大苹果”

China takes a bite at the Big Apple

尽管受高成本和治安问题困扰，纽约光环依旧，不仅吸引了无数想在美国市场站稳脚跟的中国公司，众多中国律师也在这里谋求职业发展。看起来，美国法律之都的魅力不减当年

Though hamstrung by high costs and security worries, New York retains an aura that draws Chinese companies seeking a foothold in the US market and Chinese lawyers seeking to further their careers.

George W Russell reports on the undiminished allure of America's capital of law

By George W Russell

对于北京万通地产来说，很难在美国找到比纽约更具代表性、更适合开展旗舰项目的地方了。这家颇有实力的大型房地产开发公司将租用世贸中心1号楼自由塔（2001年遭恐怖袭击被毁的世贸中心双子塔的重建项目）即办公楼共计5层，占地面积约 17,650 平方米（约 190,000 平方英尺）。

这个名为“纽约中国中心”的项目旨在为中国企业架设一座通往纽约的桥梁，同时为开展中国业务的美国企业提供帮助。2001年以来，尽管经济持续低迷、成本居高不下、恐怖阴影挥之不去，但纽约仍然是中国企业投资的主要目的地。即将于2014年在纽约设立的上述“纽约中国中心”就充分说明了这一点。

万通签署的租约为期23年，租金每平方英尺80美元。万通的这一决定反映出中国企业和纽约之间的商业合作在不断加强。双方的合作可以追溯到19世纪50年代，来自中国广州的商人阿Ken

Beijing Vantone Real Estate, a large and well-connected property development group, couldn't have chosen a more symbolic location for its flagship project in the United States. Vantone will occupy about 17,650 square metres (190,000 square feet) on five floors of 1 World Trade Center, the building that will replace the twin towers destroyed by terrorists in 2001.

The project, called China Center New York, is intended to be a bridge to the city for Chinese businesses as well as to help US companies engage with China. The location, to which the centre will move in 2014, is a strong signal that despite a prolonged economic downturn, high costs and a lockdown security mentality since 2001, the city of New York maintains its place as a major destination for Chinese investment.

Vantone's decision – it signed a 23-year lease at US\$80 per square foot – reflects deepening ties between corporate China and New York, a partnership that has flourished since

纽约和中国之间的关系深厚，互惠互利

The relationship between New York and China is both strong and reciprocal



Kathryn Wylde
纽约市伙伴合作组织
主席
President and CEO
Partnership for New
York City

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当时在 Park Row 街开设了纽约第一家雪茄折扣店。“纽约和中国之间的关系深厚，互惠互利，”商业促进机构“纽约市伙伴合作组织”（Partnership for New York City）的主席兼首席执行官

Ah Ken, an immigrant merchant from Canton (Guangzhou), opened the city's first discount cigar store on Park Row in the 1850s. “The relationship between New York and China is both strong and reciprocal,” says Kathryn Wylde, president and chief executive officer of the Partnership for New York City, a business lobby group.

These days, Chinese investment is more likely to be from large corporations such as Vantone than from individuals selling cigars. “We chose New York City seven years ago because it is the world's commercial centre,” says Xue Ya, president of China Center New York. “It is a ‘must-be-in’ city for many Chinese companies seeking international expansion.”

The city's still-massive financial infrastructure is a huge draw. More than 40 Chinese companies are listed on the New York Stock Exchange (NYSE) and an additional 100 are listed on Nasdaq, including Baidu, which is part of the Nasdaq 100 index. “Nasdaq is the exchange of choice for innovative, growth-oriented companies across all key sectors of China's economy,” says Eric Landheer, head of Asia-Pacific at Nasdaq OMX.

China is also building up its financial infrastructure in New York. China Construction Bank opened its first US branch on Sixth Avenue last year. A few months earlier, in October 2008, China Merchants Bank became the first major Chinese bank with a New York presence when it began trading from a Madison Avenue office. Industrial and Commercial Bank of China set up its US headquarters on Park Avenue weeks later.

专家策略

通过并购重组从OTCBB转板纳斯达克

为了适应不同资本需求，美国证券市场分为证券交易所市场和柜台交易市场。前者主要是为在美国乃至全球有影响的大型公司筹集资金服务；后者主要是为处于发展早期、无法达到主板上市要求的企业提供筹集资金服务。

OTCBB 是全美证券商协会监管的一个电子化报价和交易联网系统，属于柜台交易市场，设立于1990年。经过20年的发展，OTCBB已经确立了它在美国非主板市场的霸主地位。目前，全球有超过3300家企业的证券在OTCBB进行交易，其中有535家企业来自中国（包括香港和台湾地区）。

OTCBB和纳斯达克虽然同属于柜台交易市场，但是二者有明显的区别。首先，OTCBB并没有严格的挂牌条件和标准，相当于美国的初级创业板。中小企业只要具有健全的财务报表，在其财务报表及申报文件经会计师、律师审定签名后可直接找做市商（Market Maker）要求上市；与此相反，获准在纳斯达克上市的股票必须满足严格的财务要求；其次，OTCBB不提供自动交易系统，仍保持电话委托形式，主要通过做市商使用电脑网络输入报价及交易报告。目前，OTCBB大约有400家做市商为企业提供各种类型的做市服务。

OTCBB的上市程序比较简单。公司在OTCBB上市，只需通过以下程序：第一，财务报表及申报文件经会计师、律师审定签名，然后由做市商提供上市推荐。第二，通过美国证监会审核的具有在OTCBB上市资格的股票，应填写表格211，并在注册三个营业日内开始报价。此外，公司在OTCBB公开报价前三天内，必须向纳斯达克场外交易市场法律部门提交两份必备的发行人公司资料。

虽然在OTCBB挂牌的程序相对简单，但是仍然需要花费大量时间和财力。对于中国的企业而言，还需要同时符合国内法律有关境外上市的条件和程序。根据1994年国务院颁布的《关于股份有限公司境外募集股份及上市的特别规定》以及中国证券监督管理委员会发布的《关于企业申请境外上市有关问题的通知》，国内企业申请境外上市的主要审批机构是中国证券监督管理委员会。国内企业申请境外上市，必须满足以下主要条件：1）筹资用途符合国家产业政策、利用外资政策及国家有关固定资产投资立项的规定；2）净资产不少于4亿元人民币，过去一年税后利润不少



肖金泉

Kathryn Wyld 表示。

当然，时至今日，中国的投资将更多地来自万通这样的大公司，而非当初卖雪茄的个体商人。纽约中国中心的总裁薛娅表示：“七年前我们选择了纽约，就是看中了它作为世界商业中心的地位。很多中国公司在寻求国际扩张，对他们来说纽约绝对不容错过。”

凭借依旧雄厚的金融基础设施根基，纽约对投资者仍具有巨大的吸引力。40多家中国公司在纽约证券交易所（NYSE）上市，还有100多家在纳斯达克上市，百度更是入选纳斯达克100指数。纳斯达克-OMX集团（NASDAQ OMX）亚太地区负责人蓝博文（Eric Landheer）先生表示：“对于中国经济各重要领域中的创新成长型企业，纳斯达克交易所称得上是他们的首选。”

中国的金融机构也正逐步在纽约布点经营。2008年10月，中国招商银行位于麦迪逊大街的纽约分行开张，招商银行也因此成为第一家在纽约开设分行的中国大型商业银行。在此之后的几个月，中国建设银行在纽约第六大道开设了在美国的第一家分行。几周后，中国工商银行在纽约派克大街设立美国总部。

法律服务价格不菲

在律师事务所看来，中国企业在纽约的投资无疑是赚钱的大好

于6000万元人民币，并有增长潜力，按合理预期市盈率计算，筹资额不少于5000万美元；3）具有规范的法人治理结构及较完整的内部管理制度，有较稳定的高级管理层及较高的管理水平；4）上市后分红派息有可靠的外汇来源，符合国家外汇管理的有关规定。与此同时，境内公司还必须获得所在地省级人民政府或国务院有关部门同意公司境外上市的文件，以及境外投资银行对公司发行上市的分析推荐报告。

为了规避上述条件和程序，大部分境内企业采用反向并购的方式实现在OTCBB上市。在OTCBB上存在着许多趋于零资产、零负债和无法律纠纷的所谓的干净“壳公司”。境内企业可以在通过资本安排和契约设计将境内资产或权益注入壳公司，以壳公司的名义在OTCBB上市筹资，按照美国证券交易委员会的要求申报8K/A、10KSB、10QSB及14F等表格，并进行相关信息披露。通过反向并购实现借壳上市，既能够享受税收优惠，也规避了中国政府对于企业海外上市的严格审批规制。相对于首次公开募股（IPO）方式，借壳上市不仅成本更低，而且所需时间大大缩短。完成一个典型的OTCBB板上市壳公司的反向并购大约只需要4到6个月的时间。

成功在OTCBB上市后，公司将会新增以下两项义务：第一，OTCBB 维持报价义务。所有OTCBB发行公司至少需有一家做市商对其报价，维持在OTCBB交易。如果无任何做市商为该公司报价，则该公司将被OTCBB除名。第二，交易信息充分披露义务。公司必须按时向美国证交会上报季报和

纽约的律师事务所本身在经济领域占有举足轻重的地位

Law firms comprise their own significant industry segment



Stephen Younger
纽约州律师协会
主席
President
New York State Bar
Association

Legal services, at a price

For law firms, China's engagement with New York could prove particularly lucrative. Ya says one of China Center's first major decisions was to engage legal counsel to advise it on real estate services, and operational and management issues. This was not

经过审计的年报。

近年来，OTCBB已经成为中小企业走向纳斯达克的一块跳板。企业从OTCBB转板到纳斯达克的主要条件是：1）企业的净资产达到500万美元或年税后利润超过75万美元或市值达5000万美元；2）流通股达100万股；3）最低股价为4美元；4）股东超过300人；及5）有3个以上的做市商等。在满足这些条件后，企业只需要花费数月完成相应的申请工作，就可以从OTCBB转板到纳斯达克。

自从经济危机爆发以来，保持稳定、快速增长速度的中国企业在美国资本市场获得了前所未有的关注。对于希望在美国上市的中国中小企业而言，借助OTCBB市场无疑是最高效的选择路径。即使是已经成功在OTCBB上市的企业，也可以进一步与国内优质公司进行资产和股权的重组，利用中国概念转板美国主板。在过去6年中，共有超过30家中国企业从OTCBB转板到纳斯达克、美国证券交易所和纽约证券交易所等主板市场。仅2009年，就有12家中国企业成功转板。

通过并购重组的方式在OTCBB上市，进而转板到纳斯达克，已经逐渐为国内企业进军国际资本市场的一条有效通道。

肖金泉律师为大成律师事务所高级合伙人和全球化战略负责人，资深投资并购专家，致力于推动中美经济深度合作。有关美国资本市场的咨询，可联系肖律师。他的联系方式是 +86 10 13910161818 及 jinqian.xiao@dachengnet.com

对于推行全球战略的律师事务所来说，纽约不可或缺

New York is essential to any law firm pursuing a global strategy



Ward Bower
Principal
Altman Weil



机会。薛娅说：“纽约中国中心”当初所作的第一个重要决定就是要聘请律师为中心提供地产服务、业务经营和管理等方面的

a decision taken lightly. “It is no secret that New York law firms are expensive,” she says. “It is often a tough choice for Chinese companies to juggle between selecting a top-service law firm and paying their fees.” Nevertheless, China Center settled on New York-based Milbank Tweed Hadley & McCloy as its lead counsel.

Despite their high cost, New York law firms have always been at the forefront of the US’s business with China. The ties that many law firms have with China date back to the 1970s – soon after president Richard Nixon’s administration recognized the People’s Republic. Many lawyers working on pioneer China deals in that period continue to work in New York. “I was one of the first lawyers to do a deal in China in 1979,” recalls Alice Young, chair of the Asia practice at Kaye Scholer in New York.

To be sure, some law firms insist that today’s clients require a global presence and no one location can provide all the necessary services. “Clients now require a diverse array of sophisticated legal services to help them meet the challenges of succeeding in the post-downturn global economy,” says Jeffrey Kohn, managing partner of O’Melveny & Myers’s New York office.

New York continues to be a global legal hub. “Law firms comprise their own significant industry segment, creating

励精图治

正式来讲，纽约市包含集中位于哈德逊河河口的五个区：曼哈顿区、布朗克斯区、布鲁克林区、皇后区和史泰登岛区。然而实际上，纽约大都会区则远远不止这个范围，还包括周边的拿骚、萨福克（在长岛）、韦斯特切斯特、费尔菲尔德（康涅狄格州）等四个县以及新泽西州的五个热闹的郊县——博根、艾塞克斯、哈德逊、百塞克、友联。在大都会区居住着1800多万人口。

第二次世界大战后，纽约市脱颖而出成为全球最富有的城市，联合国总部也于1951年迁至纽约。然而此后，工业衰退、城郊化进程和不断升级的种族矛盾使纽约市的社会结构和经济基础遭受了重重危机。

长期以来，纽约市一直试图实现财政收支平衡。1898年，几个区正式合并为纽约市，部分原因就是为节约开支。1975年，纽约市面临债务违约的困境，当时的市长 Abraham Beame 被迫前往华盛顿请求援助。福特总统拒绝了他的要求。《每日新闻报》基于这一事件刊登了头版头条，标题赫然是《福特对纽约说：去死吧》。

到了1977年，治安恶化和基础设施崩溃使纽约陷入了历史最低谷：闪电导致的停电引发了大规模的骚乱和抢劫；连环杀人恶魔“山姆之子”逍遥法外。20世纪80年代，华尔街的崛起让纽约经济得以复苏，但犯罪率和失业率仍居高不下，直至90年代情况才有所好转。纽约从此开始繁荣发展，直至这次金融危机爆发。期间，尽管纽约市颁布的新治安法规使犯罪率大幅下降，但贫富差距问题却日益凸显。

纽约市经济开发公司公共事务副总裁 Julie Wood 认为纽

约市能凭借其金融行业的声誉摆脱困境，重归繁荣。“过去10年里，纽约作为全球首屈一指的商业中心地位不断提升，优势明显。”她说。根据彭博资讯（Bloomberg News）最近对全球投资者、交易人和分析师进行的一项调查的结果来看，29%的调查对象认为未来几年内最适合金融行业发展的地点为纽约。（排名第二和第三的城市分别为：新加坡，支持率17%；伦敦，支持率16%）。

法律界也认为纽约市的重要地位无可替代。美国GT国际律师事务所纽约和上海办事处合伙人王勇表示：“纽约在公司法方面的重要地位，在美国各州中仅次于特拉华州。虽然特拉华州是大公司注册地的首选，但纽约才是各类大型交易和业务开展的地方。”

尽管1999-2000年互联网泡沫的破灭对曼哈顿 Flatiron 和SoHo地区的众多硅谷型科技企业造成了严重打击，但纽约市的支持者们仍然认为纽约的竞争对手不足为惧。商业促进机构“纽约市伙伴合作组织”主席兼首席执行官 Kathryn Wyld 表示：“纽约市有着非常成熟的风险投资技术行业，我认为我们的竞争对手波士顿的胜算很小。”

Wyld 称纽约市的下一个挑战对象将是硅谷，因为纽约市市长 Michael Bloomberg 对发展硅谷型经济有着浓厚的兴趣。作为市长的亲密盟友，怀尔德说：“在过去八年里，他作为市长一直致力于推动高新技术创业。如今，我们很欣慰地看到纽约市的高新技术企业已有所成就。”

2010年8月，纽约市东河科技园的首期工程开始动工，该科技园是专门建立的生物科技产业集群，目的是与硅谷、波士顿剑桥城竞争，吸引了众多投资者前来纽约投资。

咨询。这可不是件容易事，半点马虎不得。“纽约的律师事务所很贵，这一点大家都知道。”她说，“既想聘用顶级律师事务所，又对其高昂费用望而却步，中国公司为此往往面临艰难的选择。”不过该中心最终还是选择了总部位于纽约的美国美邦律师事务所担任其首席法律顾问。

撇开费用不谈，纽约的律师事务所一直处于中美商贸相关法律服务业务的最前沿。许多纽约律师事务所与中国的关系可以追溯到20世纪70年代，也就是尼克松政府承认中华人民共和国政府后不久。这批最早从事中国事务的律师中有很多律师还在纽约执业。“我是1979年第一批与中国打交道的律师，”纽约凯寿律师事务所亚太区主席杨一美回忆道。

有些律师事务所坚持认为：现在的客户需要的是分支遍布全球的国际律师事务所，安于一隅是无法提供客户所需的服务的。“客户如今需要复杂、专业且多样化的法律服务，以协助他们应对全球金融危机后的种种挑战，”美迈斯律师事务所纽约办公室的管理合伙人 Jeffrey Kohn 说。

最近资本市场活动频繁，而纽约为此提供了一个很好的平台

New York is serving as a platform for the recent increase in capital markets activity



”
Samuel Seymour
纽约市律师协会
主席
President
Association of the
Bar of the City of
New York

Stopping the rot

Officially, the city of New York comprises the five boroughs – Manhattan, Bronx, Brooklyn, Queens and Staten Island – clustered around the mouth of the Hudson River. For practical purposes, however, the metropolitan area encompasses the suburban counties of Nassau, Suffolk (on Long Island), Westchester, Fairfield in Connecticut, and the bustling New Jersey counties of Bergen, Essex, Hudson, Passaic and Union. More than 18 million people live in the wider region.

After emerging from World War II as the richest city in the world – the United Nations moved there in 1951 – industrial decline, migration to suburbia and gathering racial tensions picked holes in the city’s social fabric and economic underpinnings.

New York has long struggled to balance its books. The consolidation in 1898 of several local authorities into the city of New York was prompted partially by a desire to rationalize spending. In 1975, the city came close to defaulting on its debts, inducing then-mayor Abraham Beame to go to Washington and beg for a bailout. President Gerald Ford turned him down, prompting the *Daily News* front-page headline: “Ford to City: Drop Dead”.

By 1977, the city was at its nadir as crime soared and the infrastructure fell apart: a lightning-induced electrical blackout resulted in an orgy of violence and looting, and the “Son of Sam” serial killer roamed at will. While the Wall Street boom of the 1980s restored the economy, lawlessness and unemployment continued unabated until the 1990s, when the city began a period of prosperity that lasted until the current downturn. New policing methods sharply reduced the crime rate, although the rich-poor divide has grown.

Julie Wood, vice-president of public affairs at the New York City Economic Development Corporation, says the city can

still build upon its financial reputation. “New York City has improved its status as the world’s premier business centre in the past decade,” she says, citing a recent Bloomberg News global poll of investors, traders and analysts that showed 29% favouring New York as the best place for financial services for the next several years (compared with 17% for Singapore and 16% for London).

Lawyers say New York remains very important. “New York is among the most important states for corporate law, second only to Delaware,” says James Yong Wang, a partner in Greenberg Traurig’s New York and Shanghai offices. “And unlike Delaware, the leading state of incorporation for major corporations, New York is where major transactions actually occur and business is done.”

City boosters say New York can see off competition from rival regions, despite the implosion of the “Silicon Alley” technology entrepreneurs centred on Manhattan’s Flatiron and SoHo districts during the 1999-2000 dotcom bust. “New York has an incredibly robust venture capital technology sector,” says Kathryn Wylde, president and chief executive officer of the Partnership for New York City, a business lobby group. “I think Boston is out of the running.”

Wylde says the next challenge to address is competing with Silicon Valley, a sector in which Mayor Michael Bloomberg has shown particular interest. “Over the past eight years of his administration, he has worked very hard to encourage high-tech entrepreneurial activity,” says Wylde, a close ally of the mayor. “And now we have seen it blossom in New York.”

In August, the city saw the opening of the first major facility at the East River Science Park, the city’s purpose-built biotechnology cluster designed to lure investment away from Silicon Valley and the Boston-Cambridge corridor.

纽约仍然是全球的法律中心。纽约 Patterson Belknap Webb & Tyler 律师事务所合伙人、纽约州律师协会主席 Stephen Younger 表示：“纽约的律师事务所本身在经济领域占有举足轻重的地位，在高档写字楼办公，创造了成千上万的就业机会。各家律所与包括科技公司甚至办公用品供应商在内的纽约各行各业积极开展业务往来，保证了各自的持续发展。”

该协会表示，获得纽约律师资格的人数超过25万，其中超过15万人在纽约工作或居住。根据2007年的最新数据，纽约市律师事务所和其他法律服务机构的整体创收达380亿美元，发放工资120亿美元以上。

此外，法律服务市场还推动了相关行业的发展，例如法律教育、办公文印和文件管理、法院和翻译服务、招聘以及其他商业和专业服务。“法律服务业确实是纽约经济的重要组成部分

thousands of jobs, occupying high-end real estate and conducting business with the thousands of other business in New York active in keeping the business of law firms running, from technology companies to providers of offices supplies,” says Stephen Younger, president of the New York State Bar Association and a partner with the New York firm Patterson Belknap Webb & Tyler.

According to the association, more than 250,000 attorneys are licensed in New York, with more than 150,000 of them working or residing within New York. In 2007, the last year for which figures are available, lawyers and legal services in the city generated nearly US\$38 billion in revenue, with a payroll of more than US\$12 billion.

In addition, the legal market drives related industries such as legal education, corporate printing and document management, court and translation services, recruiting and other business and professional services. “The provision of legal services is a critical sector of New York’s economy on several levels,” Younger adds.

Practitioner's perspective

Transferring from the OTCBB to Nasdaq

In order to meet differing capital requirements, the US securities market is split between the stock exchanges and the over-the-counter trading market. The former predominantly serve the capital-raising needs of large US or even global companies, while the latter offers fund-raising services for companies that are in the early stage of development and are unable to satisfy the requirements for a listing on a main board.

Established in 1990, the Over-The-Counter Bulletin Board (OTCBB) is an electronic online quotation and trading system and an over-the-counter trading market regulated by the National Association of Securities Dealers. After 20 years of development, the OTCBB has established a dominant position in the US market outside the main boards. The securities of more than 3,300 enterprises are currently traded on the OTCBB, and among these, 535 are from China (including Hong Kong and Taiwan).

Although the OTCBB and Nasdaq are both over-the-counter trading markets, there are distinct differences between the two. Firstly, the OTCBB does not have strict listing conditions and standards, being equivalent to a junior second board. As long as a small or medium-sized company has sound financial statements it may, after its financial statements and submission documents have been reviewed and signed off by an accountant and a lawyer, directly find a market maker to seek listing. Conversely, for a share to receive approval to list on Nasdaq, it must satisfy stringent financial requirements. Secondly, the OTCBB does not offer an automatic trading system, but still uses the telephone instruction method, with quotations and trading reports entered by market makers via a computer network. At present, the OTCBB has approximately 400 market makers providing various types of

market-making services to companies.

The OTCBB listing procedure is relatively simple. To list on the OTCBB, a company need only: 1) have a market maker make a market recommendation after the review and signing of its financial statements and submission documents by an accountant and a lawyer; and 2) fill out a Form 211 for a stock that has been reviewed by the Securities and Exchange Commission and is qualified for trading on OTCBB. Having taken these steps, it may be quoted within three business days of registration. The company must submit two copies of the necessary issuer information to Nasdaq’s OTC market legal department within three days before publicly quoting on the OTCBB.

Although the OTCBB listing procedure is relatively simple, it nevertheless requires the expenditure of a great deal of time and financial resources. PRC enterprises are also required to satisfy the conditions and procedures of PRC laws relating to offshore listings. Pursuant to the *Offshore Share Offerings and Listings by Joint Stock Limited Companies Special Regulations* issued by the State Council in 1994 and the *Issues Relevant to Applications by Enterprises to List Offshore Notice* issued by the China Securities Regulatory Commission, the main approval authority for domestic enterprises applying to list offshore is the China Securities Regulatory Commission. When applying to list offshore, a domestic enterprise must satisfy the following main conditions: 1) the purpose of the proceeds must comply with state industrial policy, policy on the use of foreign investment and state regulations on investments in and proposals for fixed assets; 2) it must have net assets of not less than RMB400



Xiao Jinquan

部分。” Younger 补充道。

把纽约打造为跨国公司和金融机构向往的迷人之都，是纽约市长 Michael Bloomberg 自2002年上任以来的基本执政理念。“吸引国际金融服务机构是布隆伯格市政府金融服务计划的重中之重。”主管纽约市经济发展工作的副市长 Robert Lieber 表示。

在纽约市看来，纽约众多的律师事务所是吸引国际金融服务机构的重要筹码。“越来越多的中国企业想在全球拓展业务，纽约市的律师事务所能够提供很好的服务，帮助他们在美国开展业务。”纽约市经济开发公司是一家市政机构，其公共事务副总裁 Julie Wood 表示，“纽约的律师事务所能够根据这些公司的注册地所在国家、行业和市场战略而提供有针对性的服务，这是纽约律师事务所的优势。”

million, after-tax profits in the previous year of not less than RMB60 million, growth potential and, calculated based on a reasonable anticipated price to earnings ratio, projected proceeds of not less than US\$50 million; 3) it must have a compliant corporate governance structure and relatively sound internal control systems, relatively stable senior management and a relatively advanced management level; and 4) it must have a reliable source of foreign exchange complying with relevant state regulations on exchange control for the payment of bonuses and dividends after listing. Additionally, a domestic company is required to obtain a document from the provincial level people's government in the place where it is located, or gain the consent of the relevant authority of the State Council to its offshore listing, and it must obtain an analytical and recommendation report from an offshore investment bank in respect of its offering and listing.

With a view to circumventing the foregoing conditions and procedures, the great majority of domestic enterprises realize an OTCBB listing through a reverse takeover. Numerous so-called clean “shell companies” that have almost no assets or liabilities and are free of legal disputes exist on the OTCBB. A domestic enterprise can inject domestic assets or equity into such a shell company by way of a capital arrangement and appropriate contractual provisions, list and raise capital on the OTCBB in the name of the shell company, submit 8K/A, 10KSB, 10QSB and 14F forms in accordance with SEC requirements and carry out relevant information disclosures. By realizing a back-door listing through a reverse takeover, the domestic enterprise is not only eligible for tax breaks, but is able to circumvent the PRC government's stringent approval rules and regulations for overseas listings by companies. In contrast to IPOs, not only are the costs of a back-door listing lower, but the time required is also considerably reduced. The completion of a typical reverse takeover of an OTCBB-listed shell company requires only about four to six months.

Once a company has successfully listed on the OTCBB, it is subject to two new obligations. The first of these is maintaining its OTCBB quotation obligation. Each OTCBB issuing company is required to have at least one market maker entering quotes for it and maintaining trading on the OTCBB. If the company has no market maker entering quotes for it,

The positioning of New York as an attractive destination for multinational corporations and financial institutions has been a cornerstone of the administration of Mayor Michael Bloomberg, in office since 2002. “Attracting international financial services institutions is central to the Bloomberg administration's financial services initiatives,” says Robert Lieber, the city's deputy mayor for economic development.

The city views its pool of law firms as a key to reeling in those companies. “As an increasing number of Chinese companies seek to expand internationally, New York City law firms are well positioned to offer services helping them to set up operations in the US,” says Julie Wood, vice-president of public affairs for the New York City Economic Development Corporation, a municipal agency. “Being able to customize services according to those companies' native country, sector, and entry strategy would position New York City law firms at an advantage.”

it will be removed by the OTCBB. Second, there a requirement of full disclosure of trading information. The company must punctually submit quarterly reports and audited annual reports to the SEC.

In recent years, the OTCBB has become a springboard for small and medium-sized enterprises wishing to list on Nasdaq. The principal conditions for an enterprise to transfer from the OTCBB to Nasdaq are as follows: 1) having net assets of at least US\$5 million or after-tax profits exceeding US\$750,000 or a market value of at least US\$50 million; 2) having at least one million tradable shares; 3) having a minimum share price of US\$4; 4) having more than 300 shareholders; and 5) having at least three market makers. After satisfying these conditions, the enterprise only needs to expend a few months' time to complete the relevant application work before it can transfer from the OTCBB to Nasdaq.

Since the eruption of the financial crisis, the eyes of American capital markets have, as never before, been on PRC companies that have maintained stable and rapid growth. For small and medium-sized PRC companies wishing to list in the US, riding on the back of the OTCBB market is without a doubt the most effective option. Even if it has successfully listed on the OTCBB, a company can further carry out an asset and equity restructuring with a quality domestic company, and then use the China concept to transfer to an American main board. In the past six years, more than 30 PRC enterprises have transferred from the OTCBB to such main boards as Nasdaq and the New York Stock Exchange. In 2009 alone, 12 PRC enterprises successfully made the jump.

Listing on the OTCBB by way of a takeover and restructuring then transferring to Nasdaq has become an effective route for PRC enterprises wishing to tap the international capital markets.

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纽约大成所开业及大成所的全球化战略

2010年8月18日，纽约华尔街2号的21层挂上了纽约大成律师事务所的牌子。这是在华尔街成立的第一家具有中国背景的律师事务所。六年前，大成律师事务所就制定了全球化的发展战略。目前，大成在境内共设立了28家分所，在新加坡、香港地区、台湾地区、巴黎、洛杉矶设立了境外直管分所，包括刚刚开业的纽约大成律师事务所。在欧洲，大成与艾佐之彼律师事务所建立了正式合作关系，后者在欧盟地区有18个分支机构；在澳洲，大成与铭德律师事务所建立了正式合作关系，后者在南亚、南美和非洲地区拥有强大的法律服务网络。通过设立自办所以及与国外大所联盟，大成已经初步建立了为中国客户提供全球化法律服务的网络。

纽约大成所的筹建工作从2010年年初启动，并在7月份得到美国纽约律师公会和相关机构的正式批准。纽约大成所的办公地址选择了位于华尔街2号的21层整层。有趣的是，摩根史坦利最早也是从华尔街2号的21层起家，而美国前总统罗斯福也曾在华尔街2号的15层从事律师实习。

纽约大成所是根据美国纽约当地法律设立的提供本地业务的律师事务所，主要业务是并购、私募、证券、知识产权以及国际贸易保护（反垄断和反倾销）的相关诉讼。纽约大成所拥有近20名具有美国执业资格的律师，其中10名以上有超过10年以上的在美执业经验。这些资深律师均毕业于美国著名法学院，在美国大型律师事务所工作多年，可以利用其娴熟的法律技能为中国客户提供优质法律服务。

与此同时，来自全球的20多位大成所的高级合伙人组成了纽约大成所的外国法律专家委员会，负责为纽约大成所提供各国家和地区的法律信息和资源支持。通过外国法律专家委员会的建立，大成所在中国、亚洲甚至全球建立的网络和客户资源优势将成为纽约大成所业务发展的重要支撑。

虽然华尔街金融风暴对美国经济造成了一定的影响，但是华尔街和纽约仍然是全球金融、资本和资源的配置中心。它在全球的金融和市场中的地位短期内无法被替代。和华尔街在全球经济中的地位类似，纽约大成所也在大成所全球化法律服务网络中占据重要的地位。大成纽约所的开业和做强正是大成所全球化网络完善的重要标志。纽约大成所将致力于把大成所在中国、亚太地区的优势与华尔街的资源进行整合，为大成的全球法律服务网络提供信息和资源的有效沟通和配置。

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中国：纽约的未来

据纽约市官员透露，中国自2000年以来一直是纽约最大的出口市场，“中国是纽约众多国际性行业实现未来增长的最大市场，” Wylde 说，“纽约是全球领先的国际大都市和金融中心，而维护中国与纽约的贸易投资关系对保持纽约的这一地位起到非常关键的作用。”

同样，与中国有关的业务成了很多纽约律师事务所的摇钱树：尽管香港近几十年来一直扮演着外国律所进入中国内地的跳板的角色，但50多家纽约律师事务所已先后在北京和上海开设了办事处。相应地，几家中国律师事务所最近也在纽约开设了办事处，同时，专门指导中国律师考纽约州律师执照的中小机构也随之兴起。

纽约律师不大担心一些地区经济中心的崛起会削弱纽约的影响力。“大量国际金融中心崛起，彼此之间赖以依存，这为经济和商业的发展以及提供专业服务的律所的成长创造了机会。”美国凯威莱德国际律师事务所北京代表处合伙人兼亚太事务负责人李大诚认为，这些中心的崛起“既不会削弱纽约金融市场的重要性，也不意味着纽约律师事务所会因此衰落。”

不仅如此，大量以纽约州法律为准据法起草的国际合约（其中就包括涉及中国企业和机构的合约）为纽约律师界提供了得天独厚的条件，这一点很少有其他城市能够比拟。Altman Weil 是一家总部位于宾夕法尼亚州纽敦广场的律所管理咨询公司，其负责人 Ward Bower 称：“对于推行全球战略的律师事务所来说，纽约不可或缺。”律师界认为勉强能与纽约比肩的只有伦敦，原因是英国法律扮演的全球角色与纽约州法律类似。而且，与纽约相比，很多公司更青睐英国的资本市场监管制度。

资本市场和公司并购

尽管竞争越来越激烈，资本市场融资仍然不失为纽约的一项重要产业。2009年第四季度，金融危机后低迷的经济局势出现回暖迹象。“纽约律师事务所在金融服务方面有明显竞争优势，” Bower说，“它是美国其他地方的律所比不上的。”

100 多家在纳斯达克上市的中国公司中，有30多家是在去年发行上市的，包括网络视频游戏开发商盛大游戏。盛大在2009年9月首次公开发行中筹集资金10亿美元。“最近资本市场活动频繁，而纽约为此提供了一个很好的平台。”纽约市律师协会主席暨美国苏利文·克伦威尔律师事务所合伙人 Samuel Seymour 表示，“现在首次公开发行股票的业务已经恢复到全球金融危机爆发以来从未有过的水平，这其中就有很多首次公开发行股票的中国企业。”

融资性反向收购（APO）业务的大幅增长也为纽约带来了福音。在融资性反向收购过程中，往往一边进行反向收购交易，一边由投资者对目标公司进行私募投资。“很多新兴的中国公司达不到中国的证券交易所、纽约证券交易所和纳斯达克

China: New York's future

City officials say China has been New York industry's largest export market since 2000. "China is the largest market for the future growth of many of New York's international businesses," says Wylde. "The trade and investment relationships between China and New York are critical to New York City's status as a leading world city and financial capital."

Similarly, China-related business is a critical practice area for many New York law firms: while Hong Kong was the gateway to China for decades, more than 50 Big Apple firms have now opened offices in Beijing and Shanghai. In return, several Chinese firms have recently opened New York offices, while a cottage industry has emerged to guide Chinese lawyers through the popular New York state bar examination.

Lawyers doubt that the rise of regional economic hubs can diminish New York's influence. "The rise of numerous international financial hubs and the substantial interdependence among them give rise to opportunity for economic and business development and the growth of professional service firms," says Rocky Lee, a partner and head of the Asia-Pacific practice at Cadwalader



中国金融机构正逐步在纽约布点经营
China is building its financial infrastructure in New York

严格的上市要求，只好另辟蹊径，这是融资性反向收购业务在过去5到6年里呈现大幅增长的主要原因。”美国GT国际律师事务所上海及纽约合伙人王勇表示。王律师是跨境公司法律事务和私募股权投资方面的专家。

中国公司在美国的兼并收购和融资法律业务也迫切需要专业熟练的法律服务机构。在律师们的心目中，纽约律师事务所是处理这类业务的不二选择。Seymour 表示：“只有少数总部位于纽约的国际顶级律师事务所拥有该领域的业务专长和实践经验，他们在世界各地都有自己的办事处，并且具备相应的资源和能力，能够满足中国企业的复杂需求。”

有律师指出，中国公司在美国开展业务并非易事。“人们认为在美国进行收购业务还是比较困难。”王律师说，“虽然过去几年里中国公司的海外收购业务增长迅猛，但大都是来自大型国企和资源性企业，而且很多都是在美国境外进行的，例如南美或非洲等地。”

然而，王律师注意到这些并购活动的增长主要集中于某些特定行业。“我在帮助资金雄厚的中国私营企业从事海外收购业务。”他说，“这些公司中有一类是出口型的中国制造企业，他们非常想收购美国的品牌和分销渠道来销售自己的产品。”而且为了除去“中国制造”这一印记，中国制造企业纷纷设法在美国开设工厂。

Wickersham & Taft in Beijing. Their rise “neither diminishes the relevance of the New York financial markets nor suggests the eclipse of New York firms”.

In addition, many international contracts, including those involving Chinese entities, are written under New York state law, creating a commercial interdependence that few cities can rival. “New York is essential to any law firm pursuing a global strategy,” says Ward Bower, a principal at Altman Weil, a strategic adviser to law firms based in Newtown Square, Pennsylvania. Only London comes close, say lawyers, as English law plays a similar global role, and the UK’s system of regulation of the capital markets is favoured by many companies over New York’s.

Capital markets, M&A

Despite growing competition, the raising of money on capital markets is still a key New York industry. The last quarter of 2009 saw the beginning of a revival after the most recent economic downturn. “The clear competitive strength of New York firms is in financial services,” says Bower. “Nowhere else in the US comes close to the concentrated strength of New York firms in this area of expertise.”

More than 30 of the 100-plus Chinese companies on Nasdaq listed only last year, including videogame developer Shanda Games, which raised US\$1 billion in its September 2009 initial public offering. “New York is serving as a platform for the recent

专家策略

美国并购的成功之道

彼得·纽曼，王勇和安明道

中国公司看好美国市场寻求潜在并购目标公司和合作伙伴是有许多原因的，包括战略利益以及美国经济衰退导致部分行业估值持续走低带来的投资机会。总体上，就外国人收购公司控制权而言，美国是最为开放的市场之一。与中国相比，使用竞价拍卖的方法在美国更为常见，而收购方也需行动更快捷。中国收购方需对美国法律和并购交易文化的主要方面有所了解，并事先进行认真准备。本文将对美国并购实践中潜在的一些复杂问题，简述如下：

妥善处理各方认知。即便完成一项美国收购不存在法律障碍，围绕对外国收购方的恐惧而产生的负面宣传也会减少来自海外的潜在收购方的吸引力，当该收购涉及历史悠久的消费品牌或涉及在美裁员的情况下，这个问题尤为严重。如果出售方认为中国（或其他外国）收购方不甚了解美国交易实践、较难打交道或者成交的可能性较低，便也会对此类收购方近而远之。中国公司可以通过和美国投资方共同设立一家特殊目的公司，并在公司董事会层面安排经验丰富的美国人，以便控制此类业务风险。这些手段在减少对外资的偏见方面很有用处。

尽职调查和商业文化。当目标公司是一家美国上市公司



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安明道

时，收购方通常很看重向公众披露的文件。而非上市公司则需要更多地进行实地调查。为避免出售方出现“交易疲劳”而取消一项很有希望的交易，外国收购方应精选其尽职调查的问题，事先尽可能多地了解美国的行业。

美国海外投资委员会(CFIUS)。尽管对美国贸易保护主义存有顾虑，CFIUS有一项明确的使命就是保护美国国家安全利益（狭义上的）。中国收购方可以通过各种方式，如确认目标公司是否有敏感性业务，事先开展与 CFIUS 的非正式协商，成交前安排剥离涉及美国国家安全问题的任何资产，及限制外国收购方在经营管理敏感型业务中的角色，成功地应对CFIUS。虽然 CFIUS 的备案是自愿性的，但中国国有企业应预见其美国交易将会被审查，故无论如何都应进行备案。非国有企业也应考虑事先予以备案。

劳工和工作场所的有关事宜。一家美国公司的价值很大程度上可能取决于它的员工，包括高质量的管理层、技术和创

“另外一类则是瞄准国内市场的中国企业，他们对中国国内新兴行业很感兴趣，包括酒店住宿、高档医院的管理、医疗保险、私人疗养院的管理和资产管理等。而这些中国企业只有通过收购、投资这些行业内成功的外国公司（或采取其他合作方式）才能获得相应的经验和经营技巧，”王律师补充说。

律所中的“中国城”

多年以来一直是纽约律师事务所在中国开设代表处，不过最近似乎风向有所转变。大成律师事务所成为最新一家在纽约开业的中国律师事务所。“纽约是全球最显赫的资本中心，大成作为一家全球性的律师事务所在这里开展法律服务是非常必要的。”大成律师事务所洛杉矶办事处（大成的首个海外办事处）合伙人兼负责人律师肖玲表示。

肖律师说，与在美国的大多数中国律所策略不同，大成洛杉矶办事处一开始就以聘用外国律师为主。“我们的律师以及工作人员的背景、经验和文化各不相同。”她补充道，“在美国严谨的法律环境下执业，最重要的是拥有一个来自不同文化背景，并能够提供客户所需的专业水平和技巧的律师团队。”

新团队的能力。但同时，在收购完成后有可能需要裁员并削减成本。中国收购方应认识到在美国劳动法的执行通常比中国更严格，尤其在有关职业安全和工作场所的条件方面。工会有明确的法定权力。养老金和终止雇用引起的相关义务可能会对目标公司造成沉重的负担。

特定的管理方面限制性规定。尽管美国对于外国投资者的限制比中国少得多，但一些关键性行业仍然限制或禁止投资，例如国内航运、无线电和广播以及发电和电力传输。

反垄断。通常对价不少于6,340万美元的美国并购交易需要进行 Hart-Scott Rodino (HSR) 法项下的备案。并购双方可以与监管机构协商，通过预先剥离特定业务来减少监管机构的担忧，当收购将进一步整合仅有几个主要竞争者的行业时尤应如此。同时，反垄断监管机构要求收购方和目标公司在成交前仍需作为独立实体相互竞争。成交前过度的信息交换、协作或控制权转移会引发对“抢跑”行为的彻查。

折价或破产目标公司。折价的资产可能具有极大的投资价值。然而，由于美国经济中债权联合认购和证券化的水平，存在着传统的银行贷款之外多种多样的各类债权人和其他利益相关方。外国收购方应全面了解相关法律程序，以及经验丰富的债权人（例如对折价债权进行投资的对冲基金）和其他利益相关方将会如何主张他们的权利。

股东诉讼。在绝大多数涉及美国上市公司的收购案中，不可避免地会有股东提起诉讼来质疑交易程序或估值。该等主张通常由激进的原告方律师提出，但他们旨在达成和解，而非针对交易本身的问题。外国收购方应对该等常见诉讼有所

increase in capital markets activity,” says Samuel Seymour, president of the Association of the Bar of the City of New York and a partner with Sullivan & Cromwell. “IPOs have returned to levels not seen since the start of the global financial crisis, and a number of Chinese companies have joined the ranks.”

New York has also benefited from the sharp growth in alternative public offerings (APOs). An APO is often a combination of a reverse merger with a simultaneous private investment in public equity. “APOs have grown significantly in the past five or six years, largely driven by the demand from emerging Chinese companies that were not able to meet the more stringent listing requirements of China’s stock exchanges or NYSE and Nasdaq,” says James Yong Wang, a partner with Greenberg Traurig’s Shanghai and New York offices who specializes in cross-border corporate and private equity matters.

Chinese companies also have a significant need for sophisticated legal representation in connection with mergers and acquisitions and banking activity in the US that, lawyers say, is best suited to New York-based firms. “Only a few high-end, New York-based international firms have the sophisticated practice, range of offices around the world, and resources to address the complex needs of Chinese companies,” says Seymour.

Other lawyers point out that the US is far from the easiest jurisdiction in which Chinese companies can operate. “The US is still perceived to be a more difficult market to do acquisitions,” says Wang. “While the volume of overseas acquisitions by Chinese

准备，并确保在交易过程中采取适当的防范措施。

融资选择。通常美国法律并不限制外国收购方为在美收购融资而从美国银行贷款，并将目标公司的资产用作抵押。中国收购方（无论是在中国或是海外上市的公司）还可考虑以美国存托凭证的方式将其自身的股票作为收购“货币”提供给美国股东。

证券法。如果目标公司是上市公司，上市的中国收购方需满足的披露要求可能与美国公司的披露要求并不一致。为了达成交易，一方可能需要与其挂牌上市的股票市场的监管机构就披露豁免进行谈判。如果成交后目标公司仍然是上市公司，中国收购方应当认识到，美国在披露与合规方面的要求比中国要严格得多。

税务。中国收购方应当考虑在一个对源于美国的股息具有优惠税率的国家、地区设立其收购的载体公司。其它重大美国税务问题包括收购融资中债权和股权的比例，美国对于收购债务的利息扣除等。对于免税交易，各方应密切关注适用于外国收购方所进行的收购的特殊税务规定。

整体而言，除能源行业之外的中国公司在其全球化进程中尚处于初期阶段。通过充分的准备并在经验丰富的法律、财务和商业顾问的协助之下，这些公司可以有效地实施其美国并购战略，这将很大程度上提高并加快真正意义上的中国本土跨国公司的出现和发展。

彼得·纽曼是美国GT国际律师事务所上海代表处的管理合伙人，王勇是该代表处的合伙人。安明道是资深跨境并购项目顾问、现居于中国。在加盟美国GT国际律师事务所前，他曾于纽约的 Wachtell Lipton Rosen & Katz 任职律师

中伦律师事务所是中国最大的综合型律所之一。其管理合伙人张学兵在最近的公开声明中表示，中伦也正计划进驻纽约并拓展美国市场。届时，中伦将加入在纽约开设分所的中国律所“俱乐部”：2008年9月，金杜律师事务所在纽约开设分所；1998年，小耘律师事务所落户纽约，成为第一家在纽约设分所的上海律所；还有君合律师事务所，早在1994年就在纽约设立了一家小规模办事处。

但是和大成律所一样，并不是所有的中国律所都将纽约看作进驻美国的第一站。德恒律师事务所在美国的总部就设在芝加哥，金杜的第一家美国分所则选在了旧金山。大成律所的肖玲律师表示，之所以将其首家办事处选在加州洛杉矶完全是出于客户的缘故。“洛杉矶的新闻媒体和娱乐行业的发展得天独厚，这恰好是中国公司感兴趣的两个领域。”她又补充说，这个办事处的选址还考虑到了对能源、矿产资源、太阳能、石油和天然气公司感兴趣的中国客户。

律师心向往之

很多中国律师都承认纽约在他们心目中有着特殊的地位。随便翻开一本中国律师名录，都能看到许多拥有纽约律师资格的中国律师，比如前欧华律师事务所反垄断业务律师刘成（2010年

companies has risen significantly in the past few years, those were still dominated by large state-owned enterprises and resource players, and many of them occurred outside of the US, in places such as South America or Africa.”

However, Wang does see a trend towards M&A activity in specific sectors. “I'm working with major private Chinese conglomerates on overseas acquisitions,” he says. “One type of such companies are export-oriented Chinese manufacturers, who are most interested in acquiring US brands and distribution channels for their products.” Also, Chinese manufacturers are increasingly exploring setting up manufacturing operations in the US in order to remove the “Made in China” tag.

“Another type of such companies are domestic-market-oriented companies that are interested in opportunities in new, growing areas in China such as hospitality, high-end hospital management, healthcare insurance, nursing home management or asset management, and such experience and skills can only be gained through acquisitions or investments in, or other types of collaboration with, successful foreign companies in such areas,” Wang adds.

Chinese firms move in

While New York law firms have been setting up in China for many years, more recently the trend has been in the other direction. Dacheng Law Offices is the latest Chinese law firm to

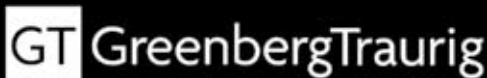
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钱伯斯全球律师排名, 年度最佳美国律所

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融资性反向收购业务在过去5到6年里呈现大幅增长

APOs have grown significantly in the past five or six years



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加入北京金杜律师事务所国际贸易部担任顾问律师)、方达律师事务所合伙人齐轩霆、锦天城律师事务所高级合伙人李东力(曾担任纽约市律师协会亚洲事务委员会委员)等。

open in New York. "It is vital for Dacheng as a global law firm to establish the firm's legal footprint in New York, one of the most significant capital centres of the world," says Xiao Ling, a partner and managing attorney of Dacheng's Los Angeles office, which was its first international outpost.

Xiao says the New York office will initially be staffed mainly by non-Chinese lawyers, a departure from the tactics of most Chinese firms in the US. "Its attorneys and staff are diverse in background, experience and culture," she adds. "In operating within the strictures of US law, the emphasis will be on maintaining a balance of culturally diverse lawyers able to provide the high level of service and skill demanded by its clientele."

Zhong Lun, one of the largest full-service law firms in China, is also looking to expand into the US via New York, according to recent public statements by managing partner Zhang Xuebing. The firm will join an established community in the city: King & Wood opened a New York office in September 2008, while Richard Wang & Co became the first Shanghai firm with a New York presence in 1998 and Jun He Law Office has maintained a small New York office since 1994.

As Dacheng shows, not all Chinese firms see New York as a first stopping point. Deheng Law Firm's US headquarters is in Chicago, while King & Wood opened first in San Francisco. Xiao says the decision to open in California first was client-driven. "Los Angeles is a prime location for access to its media and entertainment industry. Both are areas of big interest to Chinese companies." The

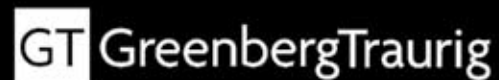


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抛开表面不谈，中国律师对纽约州律师资格趋之若鹜其实有着更实际的原因。“律师们通常喜欢拿纽约州的执业证，一方面是看中了纽约律师这个头衔的声誉，另一方面则是因为纽约州是美国不需要三年法律博士学位即可参加律师资格考试的少数几个州之一。”美国GT国际律师事务所的王律师表示。

与此同时，美国的法学院也正在为外国学生提供诸多方便。赫福斯特拉大学（Hofstra University）位于纽约长岛以西的亨普斯特德，其法学院的院长兼法学教授 Nora Demleitner 表示：“我们为国际学生开设了讲授美国法律的法学硕士课程，包括14个专业方向，例如商业法、公司证券法和知识产权法等。一旦取得这个学位，外国学生就可以参加纽约州律师考试，并在通过考试后在美国执业。”

美国GT国际律师事务所的王勇律师先后在北京大学法学院和纽约的哥伦比亚大学进修，像他这样在国际律所的纽约办公室做到合伙人的中国律师并不多。“中国律师喜欢先在纽约积累几年的工作经验后再回国。”他补充说，“而且人们通常认为纽约律所的公司法业务培训是最先进的。”

office was also strategically located for clients interested in energy resources, solar energy and oil and gas companies, she adds.

A magnet for lawyers

Many Chinese lawyers acknowledge that New York has a special significance to them. A scan of any China legal directory will show dozens of lawyers with New York bar admissions, such as Liu Cheng, a former DLA Piper antitrust lawyer who joined King & Wood in Beijing as counsel for its international trade group in 2010, Michael Qi, a partner with Fangda Partners in Shanghai, and Donna Li, a senior partner with Allbright Law Offices who was once a member of the Asian Affairs Committee of the Association of the Bar of the City of New York.

It's not just appearances: there are practical reasons to be admitted to the New York state bar. "They usually prefer to get licensed in New York partly because of the prestige associated with being a New York attorney, and partly also because New York is one of the very few states that do not require a three-year juris doctorate degree in order to sit for its bar exam," says Wang at Greenberg Traurig.

Practitioner's perspective

Achieving Success in US M&A

Peter Neumann, James Yong Wang and Aref Amanat

Chinese companies have many reasons to look to the US for potential M&A targets and partners, including strategic benefits and continuing low valuations in some sectors due to the US economic downturn. Overall, the US represents one of the most open markets for acquisition of corporate control by foreigners. As compared to China, however, the use of competitive auctions is much more common, and buyers need to be prepared to move quickly. Chinese buyers need to understand key aspects of US law and M&A deal culture, and prepare carefully in advance. A number of potentially complex aspects of US M&A practice are discussed below.

Managing perceptions. Even if there are no legal barriers to completing a US acquisition, negative publicity surrounding fears of foreign buyers can reduce the attractiveness of a potential buyer from overseas. This problem can be particularly acute where long-standing consumer brands or downsizing of US operations is involved. Sellers may also shy away from Chinese or other foreign buyers they perceive as being out of touch with the realities of US deal practice, and therefore more troublesome to deal with or less likely to get the deal closed. Chinese companies can manage these risks by establishing a special purpose vehicle with US co-investors and bringing in seasoned US persons at the board level. This will go far to reduce any anti-foreign bias.

Due diligence & business culture. Where the target is a US



Peter Neumann



Aref Amanat

public company, buyers typically rely heavily on public disclosure documents. While private targets require more hands-on investigation, to avoid sellers suffering "deal fatigue" and calling off a promising transaction, foreign buyers should be selective about their questions, and learn as much as they can in advance about the US industry.

Committee on Foreign Investment in the United States (CFIUS). Despite concerns over US protectionism, CFIUS has a clearly defined mission to protect US national security interests, defined narrowly. Chinese buyers can manage CFIUS by identifying the sensitive operations of a target, initiating informal discussions with CFIUS in advance, arranging for pre-closing divestiture of any assets that raise US security concerns, and arranging for a restricted role of the foreign buyers in the management of sensitive US operations. Although CFIUS filings are voluntary, state-owned Chinese enterprises (SOEs) should assume their US deals will be reviewed and make a filing in any event. Non-SOEs should also consider filing preemptively.

Labour and workplace issues. Much of the value of a US company may reside in its people: the quality of management, technical and creative teams. At the same time it may be necessary to downsize and cut costs after an acquisition has

魅力不减

下一代律师显然也无法抗拒纽约的吸引力。Demleitner教授说：“很多志向远大的律师都非常看好在纽约州的法学院进修的前景。”年利达国际律师事务所美国联合执行合伙人 Nick Rees 指出，很多年轻律师之所以选择在纽约开始自己的职业生涯，是因为想接触高端且有影响力的业务。“很多律师认为，早期在纽约律所的磨练对他们今后去别处发展有很大的帮助。”Rees 说。

随着越来越多的中国律师加入考取纽约州律师执照的行列，一个新兴产业也随之兴起：纽约州律师考试培训。Pieper Bar Review 是位于纽约米尼奥拉的一家教育培训公司，该公司的 Lori Sandstedt 透露说：“无数中国律师来到美国，读完法律硕士（LLM）后就在我们的帮助下准备纽约律师考试。”她补充道，“纽约律师资格证可以给律师的简历增光添彩。”

郭林军是北京九州丰泽律师事务所的高级律师，他就拥有美国纽约律师执照。“有纽约州的律师执照意味着：我们在提供法律咨询和处理客户法律事务时能够充分利用纽约州法律、美国法律以及广义

Law schools are trying to make it easier for foreign students. “Hofstra offers a masters of law in American legal studies for non-residents with subject specializations in 14 areas such as commercial law, corporate and securities law, and intellectual property law,” says Nora Demleitner, dean and professor of law at Hofstra University School of Law in Hempstead, Long Island. “Upon completion of this degree, foreign students can sit for the New York state bar exam and practice law in the United States.”

Wang at Greenberg Traurig, who trained at both Peking University Law School in Beijing and Columbia University in New York, is among only a few Chinese who have made partner in the New York office of an international law firm. “Chinese lawyers also prefer to get a few years of work experience in New York before going back to China,” he adds, “and corporate training at New York law firms is generally perceived to be the most sophisticated.”

Continuing appeal

New York is unlikely to lose its magnetism to the next generation of lawyers, either. “The prospect of attending school in

been completed. Chinese buyers should be aware that US labour laws are typically more strictly enforced than in China, particularly with respect to occupational safety and workplace conditions. Unions have clear legal powers. Pension and severance-related obligations may pose a heavy burden.

Certain regulatory bars. Although the US imposes far fewer restrictions on foreign investors than China, certain key industries such as domestic shipping, broadcasting, and power generation and transmission remain restricted or prohibited.

Antitrust. Generally speaking, US M&A deals involving consideration of \$63.4 million or more require Hart-Scott Rodino filings. It may be possible to negotiate in advance divestiture of certain parts of a business to allay concerns of regulators, particularly if an acquisition would serve to consolidate an industry with only a few main players. Also, antitrust authorities require that, until closing, a buyer and target compete as separate and independent entities. Excessive pre-closing information sharing, coordination or transfer of control can trigger scrutiny for “gun-jumping”.

Distressed or bankrupt targets. There can be exceptional value in distressed assets. Given the level of debt syndication and securitization in the US economy, however, creditors and other stakeholders are now much more varied than traditional bank lenders. Foreign purchasers should thoroughly understand relevant legal procedures and how sophisticated creditors (such as hedge funds investing in distressed debt) and other stakeholders will assert their rights.

Shareholder litigation. In most acquisitions involving US public companies, there will inevitably be shareholder litigation challenging the deal process or valuation. The claims are often driven by an aggressive culture of plaintiff-side lawyers seeking a settlement rather than actual problems with the deal. Foreign buyers should be prepared for this routine litigation and ensure that, during the deal process, appropriate precautionary measures are followed.

Financing options. As a general matter, foreign buyers are

unrestricted by US law or practice from borrowing money from US banks to fund a US acquisition, and may use assets of the target as collateral. A Chinese buyer (listed in China or overseas) may also consider using its own shares, made available to US shareholders by way of American depositary receipts, as a form of acquisition “currency”.

Securities law. In the case of publicly listed targets, a publicly listed Chinese buyer’s disclosure requirements may be inconsistent with those of the US company. To get the deal done, it may be necessary for one party or another to negotiate waivers from the stock market regulators where they are listed. Where the target will remain publicly listed post-closing, Chinese buyers should be aware that the US likely represents a much more stringent disclosure and compliance environment than found in China.

Tax. Chinese buyers should consider choosing a jurisdiction for the acquisition vehicle with favourable tax rates for US-sourced dividends. Other issues with significant US tax implications include the proportion of debt and equity used in financing the acquisition, and US interest deductions on acquisition indebtedness. In the case of tax-free transactions, the parties should pay close attention to special tax rules applicable to acquisitions by foreign buyers.

Chinese companies in non-resource industries, on the whole, are at an early stage in their globalization. With adequate preparation and seasoned legal, financial and business advisers, they can position themselves well to execute an effective US M&A strategy. This will greatly enhance and accelerate the development of true China-based multinational companies.

Peter Neumann is the managing shareholder, and James Yong Wang is a shareholder, in the Shanghai office of Greenberg Traurig. Aref Amanat is an experienced adviser in cross-border M&A. Now living in China, he previously worked as an attorney at Wachtell Lipton Rosen & Katz in New York



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上的普通法相关的法律知识和经验。”他说。

Sandstedt 也同意这一点，称律师在纽约州法律方面的经验和专长会给客户留下深刻印象。“对于希望同美国公司（或者依据纽约州法律）开展国际业务的潜在客户来说，律师虽然本人不在纽约却对纽约州实体法和法律程序掌握娴熟，侃侃而谈，这样的律师非常有吸引力。”

与众不同

中国本土律所的发展壮大和光鲜业绩并没有给纽约律师造成多大困扰。美国凯寿律师事务所的杨女士说：“中国律师事务所的发展是个积极的信号。不过，纽约律所长期处理国际性法律事务，经验丰富，在这方面与中国律所相比仍然占有比较优势。”

有律师还指出美国法律中许多技术层面的规定需要有实践经验才能掌握，例如杨女士就提到了萨班斯法案（《公众公司会计改革和投资者保护法（2002）》）、《海外反腐败法（1977）》（FCPA）以及联邦通信委员会（FCC）和反垄断法等法案。她还指出：“与此形成对照的是，中国的反垄断法最近才刚刚颁布，其中很多细节尚未完善。”

当然，纽约州法律的复杂性似乎并无弱化的可能。Wylde 认为最新通过的《多德-弗兰克华尔街改革和消费者保护法案（2010）》（Dodd-Frank Act）就是一个很好的例证。“随着金融监管改革的启动，大量相关的利益和交易会随之进行。”她说，“纽约法律界这下有的忙了。”

分析人士认为，中国这样的新兴市场不足以影响到纽约对全球法律市场的掌控地位。美国加州的律师事务所策略顾问 Peter Zeughauser 认为：“哪怕中国和印度最终在经济规模上超越美国，纽约在很长一段时间内将仍然是世界上最出类拔萃、最具有吸引力的法律市场和根据地。”他说，“在推动全球化的两个重要因素——人才集中度以及与资本的历史联系——这两个方面，纽约的资源 and 实力远比世界其他任何地方更加丰富和巩固。” ■

New York is a big draw for aspiring lawyers,” says Demleitner. Nick Rees, the New York-based co-managing partner of US offices for Linklaters, points out that many young attorneys choose to start their careers in New York specifically because they want to work on sophisticated and high-profile matters. “There is definitely a perception among many lawyers that receiving their early training at a firm in New York will put them in good stead for a move elsewhere later on in their careers,” says Rees.

More Chinese lawyers are pursuing New York state bar certification and, as a result, one emerging industry is bar certification preparation. “So many Chinese lawyers come to the US, receive their LLM and then rely on us to prepare them for the New York state bar examination,” says Lori Sandstedt, a coordinator with Pieper Bar Review, an educational preparation company in Mineola, New York. “Holding a licence to practice here is a valuable addition to any lawyer’s credentials,” she adds.

One lawyer who uses his New York certification is Lawrence Linjun Guo, a senior attorney at Jade & Fountain PRC Lawyers in Beijing. “Being a New York-licensed attorney means that, in rendering legal advice and handling clients’ legal matters, we can leverage our legal knowledge and experience in connection with the laws of New York state and the US, and the common law system in a broad sense,” he says. Sandstedt agrees, saying clients are impressed by New York credentials. “A non-New York-based lawyer’s ability to navigate and speak intelligently on New York law and procedure can only enhance that lawyer’s attractiveness in the eyes of potential clients seeking to conduct international business with US companies and/or under New York law.”

The New York difference

New York lawyers are unfazed by the growth – and burnished credentials – of indigenous Chinese law firms. “The growth of these law firms is a positive sign,” says Young at Kaye Scholer, “but New York law firms still have an edge in that they have the international long-term experience in dealing with transactions in various jurisdictions.”

Lawyers point to the technical aspects of US law that require hands-on experience. Young points to the Sarbanes-Oxley Act of 2002, the Foreign Corrupt Practices Act of 1977 and Federal Communications Commission and antitrust regulations as examples. “In China, antitrust laws have only recently been enacted and have not been fully developed as yet,” she says.

The complexity is unlikely to disappear. Wylde points to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 as a more recent example. “As financial regulatory reform takes hold, there will be a huge amount of interest and activity,” she says. “The New York legal community will be more than busy.”

Analysts don’t expect large emerging markets such as China to loosen New York’s hold on the legal world. “New York, in particular – even as China and India ultimately eclipse the size of the US economy – will long be a stronghold as the world’s preeminent and most attractive legal market,” says Peter Zeughauser, a strategic adviser to law firms based in Newport Beach, California. “The concentration of talent and historic relationships with money sources that fuel globalization are deeply entrenched and more plentiful in New York than anyplace else.” ■