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Legal Dilemmas in the Regulation of Mergers and Acquisitions of Chinese Multinational Corporations in the Context of Comparative Law and Its Response

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Abstract: The global economy is in a sustained recession due to the impact of the new epidemic. As one of the few economies 'bucking the trend', Chinese companies have been presented with new opportunities to invest and merge overseas. However, decades after the 'going out' strategy was implemented, China still suffers from over-regulation, lack of regulations and inadequate protection for its cross-border Mergers and Acquisitions companies, resulting in frequent failures. How to address the risks of overseas Mergers and Acquisitions by Chinese companies from a national perspective is an urgent issue. This paper compares Chinese Mergers and Acquisitions regulations with those of other countries and examines the problems, causes, advantages of other countries and solutions for China. It is concluded that "imperfect legal norms", "restrictions between China and other countries" and "lack of fluent legal information on enterprises" are the factors that lead to the problems. The reason for this is that China is an emerging market economy that lacks the time to accumulate experience and improve. Through this analysis, recommendations are made to the Chinese government to improve regulations, taxes and remedies.

Keywords: overseas M&A, Chinese companies, law, regulation

1. Introduction

Since the reform and opening-up in 1978, China's economy has undergone a great transformation from a planned economy to a market economy. By 2022, China's economy had reached a total of RMB 114 trillion, accounting for more than 18% of the world total [1]. Investment, as one of the three driving forces of economic development, has played an indispensable role in China's economic development. 2021 saw China's outward investment of RMB 936.7 billion, the highest in the world. However, this is not matched by the fact that China is still in an immature and incomplete stage in terms of legal regulation of outbound Mergers and Acquisitions of enterprises due to being an emerging market economy entity, which is full of tax risks, labor risks, etc. Meanwhile, the incomplete Mergers and Acquisitions regulations and the lack of remedy mechanisms and offshore assistance have brought risks to Chinese enterprises in outbound Mergers and Acquisitions. The decline in global productivity, the slowdown in cross-border contacts and lower consumption levels that accompanied the epidemic has also dealt a heavy blow to Mergers and Acquisitions. This paper draws on the best foreign regulatory experiences and practices to provide an analysis and summary

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that will have implications for the direction of future action by the Chinese government and companies.

Research on legal risk prevention in cross-border mergers and acquisitions is seen in a comparison between research in other countries and research in China. The number of publications and journals in other countries is slightly more than that in China. However, because of the factors of the social system with Chinese characteristics, research on overseas Mergers and Acquisitions by Chinese enterprises is typical, and there is less research on the legal regulation of Mergers and Acquisitions by Chinese enterprises in countries outside China. On the issue of cross-border mergers and acquisitions by Chinese companies, the main view of the academic community is that the dilemma lies in regulation, anti-monopoly and political risk [2-4]. This article draws on the views of Dr Wang Renrong of Fudan University on the lack of a systemic approach to regulatory law, the Tsinghua Financial Review article "Chinese enterprises' cross-border Mergers and Acquisitions in danger under the new epidemic" and the book "Mergers and Acquisitions in China: Law and Practice" by Kristin Wolfe, which provides predictions and insights into the future development of Chinese Mergers and Acquisitions law.

This article analyses the legal dilemmas faced by multinational corporations from a comparative law perspective, and further analyses the causes of the dilemmas from different perspectives. By summarizing the strengths of legal regulation in other countries, it offers solutions to the problem. Suggestions are given for solving the legal dilemma of cross-border Mergers and Acquisitions regulation of Chinese enterprises.

2. Legal Dilemmas Faced by Chinese Mncs in Mergers and Acquisitions

2.1. Imperfect Legal Norms

China has a supportive attitude towards overseas Mergers and Acquisitions by companies. The relevant legal norms have been improving in general, but there are still some problems.

The domestic laws on Mergers and Acquisitions in China are concentrated in Chapter 4 of the Company Law and Chapter 9 of the Securities Law, as well as the relevant provisions on major asset restructuring in the Administrative Measures on Major Asset Re-organization of Listed Companies. There are no domestic legal provisions on outbound Mergers and Acquisitions by Chinese companies, but the four major regulatory authorities in charge of outbound investment by Chinese companies - the State Council, the Development and Reform Commission, the Ministry of Commerce and the Foreign Exchange Bureau - have all issued corresponding measures or temporary regulations. In 2014, each of the major regulatory authorities issued a series of administrative measures. The NDRC issued the Administrative Measures for the Approval and Filing of Overseas Investment Projects, which lowered the regulatory threshold and relaxed supervision; the State Council issued the Opinions on Further Optimizing the Market Environment for Corporate Mergers and Acquisitions, which aimed to encourage Chinese companies to conduct Mergers and Acquisitions transactions; the Ministry of Commerce issued the draft Measures for the Administration of Overseas Investment for public consultation, which was intended to lower the regulatory standards; and the Foreign Exchange Administration issued Circular 29 on Cross-border Guarantees and Circular 37 on Foreign Exchange Registration for Domestic Residents. Residents' overseas investment foreign exchange registration No. 37, hoping to encourage outbound investment activities. From the above approaches and opinions, it is clear that the government has significantly less regulatory control or explicit constraints on overseas Mergers and Acquisitions, but in the post-2019 epidemic era, the government's focus has shifted and the pace of regulation development has subsequently slowed [5].

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Table 1: New legislation in China.

	Compliance documents	Publishing Agency	Release Date
1	Regulations Governing Foreign Direct Investment by Domestic Institutions	The State Administration of Foreign Exchange	2009
2	Offshore Investment Management Measures	Ministry of Commerce	2014
3	Circular on Further Improvement and Adjustment of Foreign Exchange Management Policies for Capital Projects	The State Administration of Foreign Exchange	2014
4	Circular on Issues Relating to Foreign Exchange Management of Overseas Investment and Financing and Return Investment by Domestic Residents through Special Purpose Companies	The State Administration of Foreign Exchange	2014
5	Circular on Further Simplification and Improvement of Foreign Exchange Management Policy for Direct Investment	The State Administration of Foreign Exchange	2015
6	Measures for the Administration of Overseas Investment by Enterprises	National Development and Reform Commission	2017
7	Notice on Furthering Foreign Exchange Foreign Exchange Management Reform to Improve Authentic Compliance Audit	The State Administration of Foreign Exchange	2017
8	Measures for the Administration of Overseas Investment by Central Enterprises	SASAC	2017
9	Guiding Opinions on Further Guiding and Regulating the Direction of Overseas Investment	Joint release by three or more departments	2017
10	Outbound Investment Sensitive Catalogue	National Development and Reform Commission	2018
11	Interim Measures for Foreign Investment Filing Report	Joint release by three or more departments	2018
12	Notice on the work related to the abolition of the preliminary approval for domestic enterprises to invest and set up enterprises abroad	Ministry of Commerce	2018
13	Foreign investment filing report implementation protocol	Ministry of Commerce	2019

The above chart is a breakdown of China's outbound investment regulatory documents in recent years, from which it can be seen, although these documents are intended to promote overseas investment, they are regulated by too many authorities and formulated in different directions. The level of regulation is "notifications" and "decisions" and the level of regulation is not high.

Overall, the level of legislation on cross-border Mergers and Acquisitions is low and too principled. China does not have an overseas investment promotion law was similar to that of

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developed countries, and the overseas approval system is scattered among departmental regulations made by various departments and has not been elevated to the level of national law, which is not in line with China's goal of becoming a major or strong outbound investment country. In addition, many of the existing regulations stipulate the conditions for approval of cross-border investments in an overly principled manner, lacking supporting implementation and operational rules, thus leading to excessive discretionary power in practice by various functional departments and the inability of enterprises to accurately grasp the authority of government departments [6].

2.2. Chinese Companies Face Internal and External Pressure for Approval

This issue needs to be explored both internally and externally, one being our approval and the other being the approval of foreign parties. With the global economic recession caused by the new epidemic and the increasing choice of Chinese companies' Mergers and Acquisitions targets in isas such as energy and high technology, which are of national importance, the barriers to Mergers and Acquisitions and "anti-monopoly investigations" imposed by other countries on Chinese companies are becoming increasingly strict. The developed countries in Europe and the US have basically given "national treatment" to foreign investment based on market economy, but most of them still have strict approval systems. In recent years, there has been a lot of cases of Chinese companies going to the US for Mergers and Acquisitions that have been directly or indirectly affected by US legal issues, resulting in the collapse of the Mergers and Acquisitions. The US legal system for reviewing foreign Mergers and Acquisitions has attracted a great deal of attention from the Chinese government and enterprises. Among them, US national security review and antitrust review has become the biggest challenges affecting Chinese companies' Mergers and Acquisitions in the US [7].

In terms of cross-border Mergers and Acquisitions approvals, China still retains some elements that are characteristic of the "planned economy" phase, which is characterized by many restrictions, steps and irregularities, making companies that need to complete Mergers and Acquisitions repeatedly suffer. In the case of the approval system, for example, the NDRC's Decree No. 9 of 2014 on the Administrative Measures for the Approval and Filing of Overseas Investment Projects stipulates that for overseas acquisition projects by domestic enterprises and overseas bidding projects by domestic enterprises with an investment of USD 300 million or more, before any substantive work can be carried out outside China

After obtaining the major road permit, it is necessary to obtain the minor road permit in the province where the enterprise is located, and then submit it to the NDRC for a second approval together with the competent unit in the province. There are many levels of approval, many cycles of approval, and the NDRC often intervenes in all aspects of Mergers and Acquisitions.

For example, the NDRC once implemented a Chinese bidder's policy of issuing only one "road permit" to a bidder. There have been a few instances where this policy has been violated (Sany Heavy Industries extorting Zoom lion to acquire German Putzmeister), but it is more common for the NDRC to designate bidders, for example by appointing Minmetals Resources rather than Chinalco Mining International, to remove Chinese competitive pressure from the Canco sale. Such behavior affects the autonomy of firms in terms of Mergers and Acquisitions [8].

Based on the above discussion, the main problems in terms of approval in China are the following. Firstly, there are multiple administrations that take too long. In addition, some of these authorities have been delegated to local authorities, resulting in multiple administrations and a hierarchical system of central and local approvals. At the same time, some of the provisions of various departments are multi-pronged, repetitive and verbose, lacking unity and coordination of departmental functions; many enterprises making overseas investments are critical to the accuracy of investment timelines, but suffer from the cumbersome submission of approval materials and the long wait for approval, missing the best time to invest.

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Secondly, the importance of prior approval and neglect of post-event supervision. Throughout the various sectoral regulations, the legal level attaches exceptional importance to pre-approval, such as the submission of various materials before outbound investment mergers and acquisitions, but one day to obtain approval, the daily behavior of enterprises operating abroad is not heeded, the lack of tracking and post-supervision system.

2.3. Other Dilemmas

In the process of cross-border Mergers and Acquisitions, the resolution of 'tax' and 'labor' issues is an inevitable focus. These two key issues are also challenging for Chinese companies in the process of cross-border Mergers and Acquisitions, as the level of economic development and political system in China is different from that of most countries in the world, and the regulation of corporate taxation and labor protection is different from that of many countries in the world.

Chinese overseas mergers and acquisitions are mainly geared towards developed countries, where labor protection is relatively mature and adequate, and basically there are corresponding regulations on minimum wage standards for labor, working hours, layoff of employees, etc. After the acquisition of the target enterprise, issues such as labor wages, compensation and adjustment may be involved. Labor rights may sometimes conflict with the development goals of the enterprise, and the enterprise may face the risk of violating local laws regarding employment.

In terms of past cases, there is a lack of transnational public relief cases in China in terms of public relief. There are several reasons for this. Firstly, at the policy level, China has always maintained an attitude of "non-interference" and "neutrality", preventing cases of "interference in the internal affairs of other countries" from occurring. At the policy level, there is not much enthusiasm for public remedies. Secondly, in the process of cross-border mergers and acquisitions, companies are less likely to apply for public remedies due to a combination of factors.

As for the self-remedy of enterprises, at this stage, in the process of cross-border Mergers and Acquisitions. "This is also due to the fact that China has not established an effective Mergers and Acquisitions insurance system due to the lack of foundation in the insurance industry. The result of this is that companies have no effective means of getting out of a Mergers and Acquisitions impasse, which affects the process of cross-border Mergers and Acquisitions by Chinese companies.

The impact of the epidemic on Chinese companies will be a significant reduction in willingness to engage in cross-border mergers and acquisitions, a halt or postponement of the timetable for transactional mergers and acquisitions, the possibility of disputes over signed agreements or delivery projects, a revaluation of companies and a tightening of foreign investment review policies [9].

One of the main legal dilemmas lies in the area of agreement disputes. In overseas Mergers and Acquisitions transactions, due diligence is carried out by the acquiring company in a number of forms, but despite this, it is often inevitable that matters or circumstances are discovered after the transaction is completed that are not as expected or as perceived at the time of the negotiations. An epidemic may have a negative impact on the short-term cash flow of the target company and, if the warranty or indemnity provisions in the equity acquisition agreement are triggered, there is uncertainty as to how the Mergers and Acquisitions parties will continue to honor the equity acquisition agreement that has been signed [10].

3. Causes of Regulatory Legal Dilemmas

3.1. From the Perspective of Enterprises

The first problem is information asymmetry, as Mergers and Acquisitions firms have a more accurate grasp of the laws of the Mergers and Acquisitions firm's location, a higher level of awareness of legal risks, and are encouraged by their government's financial support or policies in their home country,

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so the possibility of legal risks in the Mergers and Acquisitions firm's host country is virtually non-existent.

The opposite is true in terms of knowledge of the laws of the target company's location. If local lawyers or legal personnel are not hired to help you understand the laws of the host country, assuming that they are the same or similar to the laws of the Mergers and Acquisitions company's location, there is a high risk of misunderstandings and bias in the future, which could eventually lead to disastrous consequences. At the same time, the laws of some countries are extremely unstable and the legal provisions are vague when they are formulated, leaving a lot of room for the government authorities to operate, which may pose legal risks to the Mergers and Acquisitions companies.

Secondly, it is easy to ignore legal risks. Many enterprises, especially Chinese private enterprises, think and act in a very simple way when carrying out cross-border Mergers and Acquisitions. They neither carry out due diligence nor employ any neutral third-party intermediaries to conduct feasibility studies in order to supposedly save "expenses and costs". The legal awareness is low. In addition, shareholders or executives of Mergers and Acquisitions companies take it for granted that as long as they have the money, they will be able to carry out successful cross-border Mergers and Acquisitions. This creates a great deal of potential legal risk for future cross-border Mergers and Acquisitions, not realizing that cross-border Mergers and Acquisitions is a complex legal act and that there are legal risks everywhere, including before, during and after the Mergers and Acquisitions, as well as financial and fiscal risks.

Finally, other risks are transformed into legal risks. Political, cultural and national security risks can be transformed into legal risks during the implementation of cross-border Mergers and Acquisitions [11].

3.2. From a Global Perspective

The reasons for the policy-level dilemma faced by Chinese companies in overseas Mergers and Acquisitions are that the speed of legal and policy iteration has not been able to adapt to the needs of overseas Mergers and Acquisitions demand brought about by fierce economic growth.

Firstly, the legislative process has been slow, as the need for a comprehensive set of large-scale laws and regulations to guide companies in their Mergers and Acquisitions abroad has not received sufficient attention. Taken the insurance system for Mergers and Acquisitions as an example, firstly, the legislative process is slow. At present, China's insurance system for overseas investments is mainly composed of bilateral or multilateral treaties to which it is a party and domestic laws. In terms of treaties, Firstly, China has signed bilateral investment insurance agreements with many countries; secondly, China has acceded to the Multilateral Investment Guarantee Convention and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States respectively. In terms of domestic laws, the State Council formulated and promulgated the Provisional Regulations on Insurance Enterprises in 1985, and the People's Insurance Company of China, which is a state-owned enterprise, separately formulated the Foreign Investment Insurance The Insurance Law of the People's Republic of China, promulgated by the Standing Committee of the National People's Congress in 1995 and amended in 2009, these laws only provide foreign investors and our legal persons, natural persons and other organizations in China with It was not until the establishment of China's government-owned policy export credit insurance company in 2002 that the gap in the provision of insurance services for overseas investment and mergers and acquisitions by Chinese enterprises was filled。 However, the legal status of the China Export and Credit Insurance Corporation established in China is unclear, and it does not have the insurer's right of subrogation to claim compensation, which makes it difficult to meet the needs of the expanding Chinese overseas investments[12].

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Secondly, the government cannot take it for granted that overseas Mergers and Acquisitions by Chinese enterprises is only the business of intermediaries and enterprises themselves, and that the government itself has nothing to do with it. However, the government is responsible for providing information services, personnel training services, tax concessions, Mergers and Acquisitions financing, foreign exchange, customs, immigration and so on. At present, the government is not doing a good job in the following areas. In terms of investment information and intelligence gathering, although the Ministry of Commerce, the Ministry of Foreign Affairs and the National Development and Reform Commission issued the "Country-specific Industrial Orientation Catalogue for Outbound Investment (I)(II)(III)" in 2004, 2005 and 2007 respectively, requiring central enterprises, embassies and consulates abroad to immediately adjust their relevant functions and strengthen their work in gathering investment information and intelligence in terms of the economy, legislation and policies of the countries where they are based. However, the information collected by foreign-based institutions is rather abstract, with very little valuable and actionable information, not least of which is lagging investment information, and enterprises that rely on this information are likely to suffer the ill-effects of extinction. In addition, as the above-mentioned directory is only a guiding wording, it is more arbitrary [13].

4. Comparative Regulatory Advantages of Cross-border Mergers and Acquisitions by Foreign Enterprises

4.1. Well-established System

From the 19th century to the present day, the United States has experienced five major waves of mergers and acquisitions, and with the rise of economic globalization, the legal system of merger and acquisition regulation has become increasingly sophisticated. The US Mergers and Acquisitions law is characterized by a two-tier system, with federal statutory regulations on the one hand, and state laws on the other. This approach ensures that Mergers and Acquisitions regulation in different places is tailored to the characteristics and trends of companies in the region. At the same time, the United States pays more attention to case law than China in the regulatory process, which on the one hand can maintain the stability of its own regulatory implementation for enterprises, and on the other hand is also convenient to leave a reference for problem solving.

The main ones in the area of public company regulation are as follows. The first is the law specifically regulating takeovers of listed companies. The Williams Act, passed by Congress in 1968. This Act regulates the gradual acquisition through the stock exchange and the issuance of a takeover bid through

The Act sets out detailed provisions for one-off acquisitions. This is the primary legal basis for takeover activities of listed companies. The second is the Securities Act. The Securities Act was passed by Congress in 1933. At that time, the law only provided for the registration of a share-for-share offer with the SEC. A year later, Congress passed the Securities Exchange Act to supplement the Securities Act. Since then, the US Congress has passed the Securities Act Amendments in 1975 and the Government Securities Act in 1986, which further supplemented and amended the Securities Act of 1933. Once again, it is the corporate law. Detailed provisions for the acquisition of listed companies were made in Chapters 11 to 13 of the Standard Corporation Law, which was enacted in 1950. Over the years, this model law has now been accepted and recognized by most states in the US, and therefore in practice it has become one of the key bases for corporate takeovers.

In terms of state legislation, Delaware's merger laws and California's merger laws are one lax and one strict, with each state having a strong degree of autonomy. In addition to this, there are many industry-specific special laws that are widely applied to the shipping industry media industry and financial industry, etc. In terms of anti-trust mergers, since the Clayton Act and the Sailor's Kevorkian

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Anti-Merger Act, which not only combat monopolies but also provide that competition in an industry cannot be lessened in a merger, these laws set limits on horizontal, vertical and heterogeneous mergers.

4.2. Focus on Protecting Domestic Cross-border Mergers and Acquisitions Firms

From the summary of the CCPIT Representative Office in the US in 2007 on US OFDI. The US OFDI domestic legislation adopts a model of indirect and comprehensive legislation, with the Foreign Assistance Act, which is the basic law on OFDI, regulating not only the OFDI insurance regime but also other related issues indirectly. These laws cover various aspects of OFDI insurance, tax incentives, credit support and even information services, providing financial assistance to qualified investments, while indirectly regulating overseas investment and the industrial layout of the country through measures such as denial of insurance coverage and concessions for investment projects that are not conducive to the development of the US economy [14].

After 1960, the attitude of the US government has been to restrict capital outflows in order to ensure that the balance of payments deficit would not increase in the future. The US government issued regulations such as the Foreign Trade and Foreign Investment Act of 1972, which were all restrictive measures on outward investment, and under the influence of global integration, the US cross-border Mergers and Acquisitions policy gradually tended to be liberalized. The U.S. government has promoted outbound investment and cross-border Mergers and Acquisitions by establishing SME development centers, providing financial assistance to high-tech enterprises and implementing technology transfer programs.

After the 21st century, the focus of US anti-monopoly concerns shifted from size to the impact on technology and innovation brought about by it, and the government could accept Mergers and Acquisitions that did not threaten competition in the market to enhance the strength and competitiveness of US companies. As a result, the United States has begun to invest in the world and the government has entered into various bilateral and multilateral agreements to protect the interests of its enterprises in the implementation of foreign investment and cross-border mergers and acquisitions. The US Mergers and Acquisitions industry is characterized by the importance it attaches to the formulation of global development strategies, with the headquarters of major US companies basically located in their home countries and a global strategy research department set up to investigate the development of international markets in the industry and to adjust and propose new market development strategies in due course.

China's regulatory priorities are relatively vague, and apart from a focus on areas of national security, it often organizes legislation to regulate whatever comes to mind. There is no unified deployment and planning. It can be said that China does not have a clear understanding of what should be the focus in the re-regulation process and what can be appropriately relaxed in scale. In addition, China, due to its immature view of foreign investment, is sometimes too eager to make quick gains and sometimes too timid to clarify the positive and negative effects of foreign investment".

The state's protection of its cross-border enterprises can also be reflected in the setting up and taxation of foreign establishments. The regulations of the Korean Ministry of Foreign Affairs provide for the embassies abroad to carry out the necessary supervision of projects and to inform the President of the Bank of Korea of their results. In addition to this, Korea has established a series of protection agencies, consisting of government agencies such as the Small and Medium Enterprises Agency, semi-governmental public agencies such as KOTRA and the Small and Medium Enterprises Promotion Corporation, and private organizations such as the Korea Trade Association and the Central Business Central Association. KOTRA has established a worldwide network of Korean overseas trade work, which includes trade information, market research services, cross-border investment, technical cooperation and business contacts.

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France offers tax incentives. In the first four years of operation, if an enterprise carrying out foreign investment has a loss, it can make a tax-free provision in its taxable income, and then include the provision in its taxable income on a pro rata basis every year for 10 years; the financial consolidation system allows multinational companies to consolidate their global investment gains and losses in their financial statements; the tax deferral system allows all enterprises, upon approval, to reduce their parent company's tax base by 50% and 100% of their total foreign equity investment, respectively, over a period of five years. tax base for domestic tax purposes, increasing annually from the sixth year onwards to pay back tax to the state [14].

4.3. Streamlined and Flexible Regulation

In Japan, the regulatory advantage lies in the fact that the Ministry of International Trade and Industry (MITI) is the main body responsible for Mergers and Acquisitions. This body takes the lead in policy formulation and coordination and regulates the macro situation. In China, this function is dispersed among the central bank, the Ministry of Foreign Trade and Economic Cooperation, the Ministry of Commerce, the Development and Reform Commission and many other agencies. The number of agencies reflects the importance that China attaches to trade, but this has led to a lack of co-ordination and slow legislative process.

In comparison with the UK, the UK's cross-border M&A regulation is a flexible approach to a liberal framework that is not dogmatic, although it can have the disadvantage of having a large element of subjective influence. We analyse this from two perspectives: strict and liberal. From a liberal perspective, the UK has no specific laws governing or restricting foreign investment. At the same time, the UK does not in theory require prior notification and approval for cross-border mergers and acquisitions, but from a strict perspective: its overall regulation of acquisitions is also concerned with managing national security and corporate profitability. Amongst other things, there are restrictions on the high-technology sector of shipping vessels, a management system of senior management appointments and rate of return requirements. This ensures freedom for the vast majority of national companies to acquire companies and the ability to curb potential losses in the event of such acquisitions.

5. Suggestions on the Evolution of China's Regulatory Laws

5.1. Constructing and Improving a Unified Legal Regime for Outbound Investment and Mergers and Acquisitions

As China's current legal system for outbound investment and mergers and acquisitions suffers from multiple administrations, fragmented legislation, low legislative ranking, principle-based provisions, weak operability, lengthy approvals and lack of supervision, there is a need to develop a legal system similar to the one widely used in the United States to promote overseas investment and mergers and acquisitions, with a complete legislative system covering mainly tax incentives, foreign exchange control, investment guarantees, regulatory approvals and other basic elements. Although the Ministry of Commerce promulgated the Measures for the Administration of Overseas Investment on 16 March 2009, which is the most authoritative and comprehensive departmental regulation promulgated in recent years, some of its provisions are relatively new, decentralizing approval authority and simplifying approval procedures, the disadvantages of China's low level of overseas Mergers and Acquisitions legislation and cumbersome approval procedures have not yet been fundamentally changed. The existing legal system for overseas Mergers and Acquisitions has long been at odds with China's fast-growing overseas Mergers and Acquisitions situation and has seriously dampened the enthusiasm of Chinese companies for overseas Mergers and Acquisitions. Therefore, it is a matter of urgency for the Chinese legislature to build a comprehensive law regulating overseas investment that

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applies to all investment entities and investment methods. After learning from the existing legislation of the United States and other countries, it is also possible to organically combine China's 1999 Law on Economic Contracts, the Law on Foreign-related Economic Contracts and the Law on Technology Contracts into a unified Law on Overseas Mergers and Acquisitions as a basic law to co-ordinate China's overseas Mergers and Acquisitions service system by absorbing the essence of the three existing laws.

In terms of taxation, the Chinese legislature can draw on the mature financial management systems of developed countries and, based on the principles of the corporatization of management accounting and the intermediation of financial accounting, adhere to the spirit of external audit supervision and internal accounting control of enterprises, and formulate financial laws and regulations required by the financial accounting systems of Chinese enterprises that are in line with the world. In addition, China can take the initiative to strengthen professional and operational communication and cooperation with the competent accounting and financial departments of the US and Europe, and strive to reach relevant memoranda or cooperation agreements for mutual recognition of each other's national accounting and auditing standards, so as to reduce the legal risks of Mergers and Acquisitions between enterprises due to differences in financial and accounting systems between countries. At the same time, in order to avoid double taxation of overseas Mergers and Acquisitions enterprises, China should sign agreements on tax credits, tax concessions, tax deferral and other tax preferences with relevant countries.

The second recommendation is to establish an approval mechanism based on a filing system, supplemented by an approval system. At this stage, the government departments in charge of overseas Mergers and Acquisitions are mainly the Ministry of Commerce and the National Development and Reform Commission, and there are great similarities in the approval procedures and processes of the two departments, and the approval authority is similar, which not only wastes administrative resources but also greatly delays the filing process. The State Council should take the lead in setting up a joint or one-stop approval service department.

Secondly, an approval mechanism based on a filing system, supplemented by an approval system, should be established. Although the Ministry of Commerce promulgated the Regulations on the Approval of Overseas Investment Start-up Enterprises and the Measures for the Administration of Overseas Investment in 2004 and 2009 respectively, which address the issue of decentralization or relaxation of approval authority, the current approval model is still based on an approval system, supplemented by a filing system. The globalization or internationalization of the market economy, coupled with the inherent requirements of the reform of the separation of government and enterprises, the regulatory mechanism of government departments should make appropriate adjustments in line with the requirements of the times. "Therefore, it is urgent to turn the management system of the approval system as the main system and the filing system as a supplement into the management mode of the filing system as the main system and the approval system as a supplement, so as to return the decision-making power to enterprises and the market.

The third recommendation is that the government should focus more on serving businesses. Whether in the spirit of legislation or at the level of government enforcement, the current overseas Mergers and Acquisitions approval and management mechanism is mainly a regulatory function, lacking the service or encouragement functions of overseas Mergers and Acquisitions as in Europe and the United States, which is contrary to the purpose of establishing a modern service government and limited government. This is contrary to the purpose of establishing a modern service government and limited government.

5.2. Perfect Guarantee and Active Relief

The basic meaning of a Chinese overseas investment guarantee is that the home country, in order to

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avoid or reduce the losses suffered by its enterprises in overseas investments, may subrogate its enterprises to the host country in the event that they incur losses in the host country in accordance with a bilateral investment protection agreement or bilateral investment guarantee agreement, after the host country has fulfilled a certain statutory level of compliance with the guarantee agreement. The risks covered by investment guarantees are generally limited to non-commercial risks such as foreign exchange, strike, civil commotion, war, nationalization expropriation and similar risks. The international community has long noted the great advantages of the investment guarantee system and signed the Multilateral Convention on Investment Guarantees in 1988, which allows for overseas direct investment activities to be carried out among a wider range of countries. China should actively sign treaties on Mergers and Acquisitions guarantees with other countries on an equal footing, enter into various memoranda of cooperation and use its size to become a party to those treaties that have proved beneficial. At the same time, actively plan for the development of third-party guarantee services. This could be piloted by state-owned enterprises to encourage private capital to participate in 'third party' business for cross-border Mergers and Acquisitions. Develop an effective guarantee system for overseas investments.

However, disputes between investors and host countries or target companies are inevitable due to cultural differences, the political situation of the host country, the rule of law and the level of economic development. There are currently two main effective remedies for resolving disputes: one is the legal method; the other is the diplomatic protection method, which should be actively used by the state. The use of diplomatic protection should generally follow the principle of "exhaustion of local remedies", i.e. only after litigation, arbitration and mediation under the laws of the host country where the target enterprise is located, but still unable to resolve the dispute, the investor may seek diplomatic protection from China, and the Chinese government should do its best to support it. Diplomatic protection is also divided into offensive and defensive aspects. From China's experience, the diplomatic authorities often do not pay attention to Mergers and Acquisitions matters, and if they do, they lack effective channels. The author believe that diplomacy should firstly be actively involved, as this will not only solve some of the problems, but will also demonstrate China's determination to defend its interests and give confidence to companies. Secondly, China could learn from the US in creating leverage, for example by establishing an official offshore investment advisory body and creating a "blacklist" so that certain foreign companies that cause losses to Chinese companies will receive less investment from China in the future [15].

6. Conclusion

This paper has focused on the legal regulation of Chinese enterprises in cross-border mergers and acquisitions at this stage. The study found that the current stage of China's cross-border Mergers and Acquisitions process for domestic enterprises is characterize by complex approvals in the early stages, a lack of regulation and assistance in the middle stages, and a lack of remedies in the later stages. This is essentially a result of the imperfect legal system and the lack of attention paid by the government to the work of 'profit-making enterprises'. A unified and comprehensive legal framework is needed to ensure that the remedies and protections are properly utilize.

Since its reform and opening, China has been a fast and stable growing economy. This growth has resulted in the number of more developed industries. In order to an industry to grow, it must broaden its market and acquire high technology. That is why foreign mergers and acquisitions by Chinese companies are inevitable and can even have a negative impact on China's development if they are not carried out smoothly. There is a problem of chaotic regulation and confusing laws on outbound Mergers and Acquisitions in China. This paper is a call to action for the government to take into account a variety of factors and promote sound regulatory laws. In the next 15 years, as more high-tech industries emerge in China and as countries compete for "technological power", the number of

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overseas Mergers and Acquisitions by Chinese companies will increase and become more difficult. This type of research will become an important direction for Chinese Mergers and Acquisitions research, and more and more insightful content will become available.

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