

Luxembourg

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SECTION 1: General outlook

1.1 Please summarise the broad trends and patterns in Chinese investment into your jurisdiction, citing any recent specific examples.

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Luxembourg has developed as major entry jurisdictions for China outbound M&A transactions into the European Union. Although only a few final M&A targets are located in Luxembourg the country has benefitted from its reputation as platform jurisdiction for cross-border investments. The deal flow was strong in 2016 and slowed down in 2017 mostly due to the capital control measures put in place by the Chinese government in late 2016. Transactions in 2017 included the acquisition of one of the biggest Luxembourg banks (Banque Internationale à Luxembourg) by a Chinese investor. Also, the Luxembourg cargo airline Cargolux was enhancing its shareholder base seeing a Chinese investor taking over a stake of 35% from a previous Qatar investor as well. Such activities build on previous M&A transactions that have run through Luxembourg or targeted Luxembourg companies (e.g. the acquisition of IEE or the acquisition of Energy from Waste EEW).

1.2 How would you summarise your jurisdiction's attitude towards Chinese investment?

Luxembourg has a forthcoming attitude to Chinese investment. This is characterised by a strong business and political exchange between both countries. Such continuing and growing political and business ties enable the business to grow incrementally. Luxembourg hosts already the European headquarters of seven Chinese banks, which increase their business activities and balance sheet year by year. These Luxembourg headquarters have been opening and continue to open branches in other EU



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Prior to GSK Luxembourg, Peter worked for a Luxembourg law firm from 2004 to 2016. Since 2017 he has been a partner at GSK Stockmann in Luxembourg. Peter is an expert in Luxembourg investment funds and private equity law, M&A, corporate and real estate law. He speaks German, English, French and Russian.

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jurisdictions further underlining the importance of the Luxembourg banking sector. The Chinese banks are involved in financing M&A deals, which originate by Chinese investors.

1.3 What is your outlook for Chinese investment into your jurisdiction over the next 12 months?

The outlook is optimistic. Despite the above-mentioned capital control measures deal flow will grow compared to 2017. This is due to the continuing high interest by Chinese investors in EU targets and the prominent position that Luxembourg has gained as a platform jurisdiction. Given the capital control measures, a Chinese investor has to ensure that the M&A target fits into its overall and core business strategy. This might hinder certain private investors from carrying out expensive M&A deals going forward. However, normal-priced deals will go ahead and private investors will become more sophisticated in asset selection and transaction processing. On the other hand, Luxembourg will see a growing number of deals from Chinese state-owned enterprises (SOEs). These SOEs have already used Luxembourg as an investment platform for M&A investments and they are now starting to open their own premises in Luxembourg. This was recently done by China Three Gorges and by Beijing Enterprises Holdings Limited. These

developments are a clear sign that more M&A activity will be carried out using Luxembourg structures.

SECTION 2: Investment approval

2.1 Explain the process and timings for foreign investment approval.

In general, in Luxembourg no specific prior approval process exists. Mergers and acquisitions may however be made subject to an a posteriori control by the competent Luxembourg authority.

2.2 Briefly explain the investment restrictions for any specially regulated/restricted sectors, including whether the government is entitled to any special rights in those sectors.

Generally, no restrictions exist. However, with view to specific sectors certain separate rules apply. For example, in case of acquisitions in the financial sector (banks / asset managers) it the investor must notify its intention to acquire a certain threshold in the Luxembourg bank or financial sector entity to the regulator: *the Commission de Surveillance du Secteur Financier*

(CSSF). The CSSF has the right to oppose the transaction based on reasonable grounds and certain legal criteria. Other restrictions apply with view to certain industries and with view to the acquisition of companies the shares of which are listed at the Luxembourg stock exchange. The requirements are clearly established by takeover laws.

2.3 Which authority oversees competition clearance?

The Luxembourg law on competition of October 23 2011 determines the Competition Council as competent control authority to scrutinise and analyse merger and acquisition transactions taking place in Luxembourg and involving Luxembourg entities.

2.4 Briefly explain the merger clearance process.

It is a post-closing merger clearance process (kindly refer to the above). However, the Competition Council has indicated its readiness to encourage market participants to run a pre-merger control check by the Competition Council where feasible. This possibility therefore exists for investors looking to acquire a Luxembourg-based target entity.

2.5 Are there approval requirements when a foreign investor increases or exits its investments?

No specific requirements exist for foreign investors either increasing or exiting investments, except as stated above for certain industries and types of target entities.

SECTION 3: Investment techniques

3.1 What are the most common legal entities and vehicles used for Chinese investment into your jurisdiction?

The most common legal entities are the private limited liability companies (SARL) or the joint-stock company (SA). Both are commonly used as companies to establish an acquisition structure. The SARL has a lower minimum share capital and seems to be used more often than then SA. With view to investment activities by funds established by Chinese investors in Luxembourg, the most common structure seems to be the new fund vehicle RAIF (Reserved Alternative Investment Fund) and partly also the SIF (specialised investment fund) both set up in the form of a limited partnership (SCS or SCSp).

3.2 What are the key requirements for establishment and operation of these vehicles which are relevant to Chinese investment?

The key requirements are the establishment of a certain entity in Luxembourg to operate the vehicle. Furthermore, a

minimum share capital needs to be provided to the Luxembourg vehicle and management procedures need to be put in place. With a view to setting up investment funds that carry out M&A activities, it is necessary to verify the set-up with view to the scope of the regime of alternative investment fund managers and subject to the approval of the CSSF, as applicable.

SECTION 4: Dispute resolution

4.1 Does your jurisdiction have a bilateral investment protection treaty with China or other jurisdictions commonly used for investing into the country?

Luxembourg is party to over 100 bilateral investment protection treaty including a treaty with China the latest version of which entered into force in 2009.

4.2 How efficient are local courts' enforcement and dispute resolution proceedings, and are there any procedural idiosyncrasies foreign investors must be aware of?

Luxembourg courts are bound by the rule of law and will review disputes in a fully neutral and independent manner. The courts typically would review cases in normal duration time and issue titles for enforcement useable in Luxembourg and abroad (as far as covered under respective regulations and treaties). Dispute resolution proceedings by way of arbitration are also possible if such arbitration in Luxembourg was agreed on in the respective agreements. The Luxembourg arbitration courts are more and more used in international agreements given Luxembourg increasingly becomes a platform for cross-border investment and also joint-venture vehicles and investment funds carrying out M&A activities worldwide.

4.3 Do local courts respect foreign judgments and are international arbitration awards enforceable?

Yes, provided treaties and EU legislation allow such enforceability. In general, this is the case.

4.4 Are local judgments and arbitration awards from your jurisdiction generally enforceable in other jurisdictions?

Yes, provided treaties and EU legislation allow such enforceability.

SECTION 5: Forex controls and local operations

5.1 What foreign currency or exchange restrictions should foreign investors be aware of?

In general, no restrictions apply. Even the Luxembourg vehicles mentioned above may have their share capital established in other currencies than the euro.

SECTION 6: Tax

6.1 Are there tax structures and/or favourable intermediary tax jurisdictions that are particularly useful for foreign direct investment (FDI) into the country?

Luxembourg benefits from an extended network of double taxation treaties. This is advantageous for FDI into and out of Luxembourg. Also, Luxembourg offers a large panel of investment vehicles, allowing profit repatriation free of withholding taxes.

6.2 What are the applicable rates of corporate tax and withholding tax on dividends?

Due to the application of the European legislation on the parent / subsidiary relationship, typically no withholding tax applies on dividends. The applicable rate is generally 15%. Unless an exemption applies (e.g. the EU parent/subsidiary exemption), the aggregate corporate income tax rate is 26.01 %. Dividends are subject to a domestic withholding tax of 15%. Such rate is either reduced or the dividends are exempt from withholding taxes either under a domestic exemption or under the applicable double tax treaty.

6.3 Does the government have any FDI tax incentive schemes in place?

No specific scheme is in place.

6.4 Are there any reciprocal tax arrangements between your jurisdiction and China? If so, how can they aid investors?

Luxembourg and China have signed a double tax treaty allowing companies to avoid double taxation in the case of profit repatriation to Chinese investors. For example, under this treaty the dividend withholding tax is reduced to 5%.