

**ADVANT** Altana | Beiten | Nctm

**WELCOME TO ADVANT**  
**欢迎来到昂帆**

We guide you through European market entry  
我们为您进入欧洲市场提供引导

April 2024 | 2024年4月



# INTRODUCTION

## 介绍



## ADVANT AT A GLANCE – 昂帆概览

- A **distinctly European** law firm association  
一家旗帜鲜明的欧盟律师事务所联盟
- **600+ professionals**, including 145 equity partners  
拥有超过600名专业人士，包含145名权益合伙人
- Three member firms in **Europe's largest markets**: ADVANT Beiten (Germany), ADVANT Altana (France) and ADVANT Nctm (Italy)  
欧洲最大市场中的三家成员律师事务所：昂帆百达（德国）、昂帆Altana（法国）和昂帆安启建（意大利）
- Global reach through **15 offices** across Europe and beyond, including Beijing and Shanghai  
通过在欧洲和其他地区的15个办事处实现全球覆盖网络，包括北京和上海
- **Best-in-class advice** to both corporates and strategic investors – in Europe as well as across continents  
为企业和战略投资者提供顶尖的法律咨询 – 在欧洲以及各大洲均是如此

## THE GO-TO EUROPEAN ALLIANCE – 启航欧洲的联盟

FROM A CHINESE POINT OF VIEW: THREE MAJOR REASONS FOR CHOOSING ADVANT  
从中国的视角出发：选择昂帆的三大理由

- 1 Our team are experienced industry experts. We don't waste time learning the ropes. So you can concentrate on the business.  
我们的团队由经验丰富的行业专家组成。我们不会在了解行业规矩上浪费时间，因此您只需要专注于业务本身。
- 2 We speak the language of owner-managed companies like no other law firm and have advised on numerous transactions with foreign participation.  
我们能够与业主自身管理的企业以其使用语言进行交流，并且已经为许多有外资参与的交易提供了咨询建议，这是其他律师事务所不具备的。
- 3 We get the deal done. We provide solutions when we identify a problem – rather than just point out the risks. Our goal is to move your business forward.  
我们力求完成交易。当发现问题时，我们能够向您提供解决方案，而不是仅仅指出风险。我们的目标是推动您的业务发展。

## OUR SELECTED CHINESE CLIENTS - 我们的中国客户精选

**CATL**

 **TALESUN**

 国家电网公司  
**STATE GRID**  
CORPORATION OF CHINA

 **泰豪迈能**  
**MEINERGY**

 居然之家  
**Easyhome**

 **上海电气**  
SHANGHAI ELECTRIC

 **ZTT**  
中天科技

**SUNON®**  
建準電機

 **Keyvia**  
凯发电气

 **VITAL**

**TZTEK 天准®**

 **CENTROSOLAR**

 **COSIC**

*sun*  **WE**  
PHOTOVOLTAIC

**NEXTEV**  
蔚来汽车

  
**盛德基业**  
**SEDANT**

## OUR SELECTED CHINESE CLIENTS - 我们的中国客户精选



HUAWEI



ICBC

中国工商银行



# **GREENFIELD PROJECT FOR CHINESE COMPANIES**

## **中国企业的绿地投资项目**

### **COMMON PROCEDURE OF A GREENFIELD PROJECT AND RELEVANT PRACTICE GROUP INFORMATION**

#### **绿地项目流程及相关业务组信息**



# PROJECT OVERVIEW - 项目流程概览

TIME FRAME; FROM DECISION-MAKING TO START OF OPERATIONS: 3-6 YEARS

时间线—从做出决定到开始运营：3至6年



## DECISION 决定

- Corporate objective  
营业范围
- Location  
地点



## PLANNING 计划

- Establishing a Team of Advisors (Legal, Technical, Tax)  
选择服务团队（法律、技术、税务）
- Set up of a Corporate Entity  
设立公司主体



## EXECUTION 执行

- Acquisition of Real Estate  
购买不动产
- Planning and authorization process  
规划和审批过程
- Construction process  
建筑过程

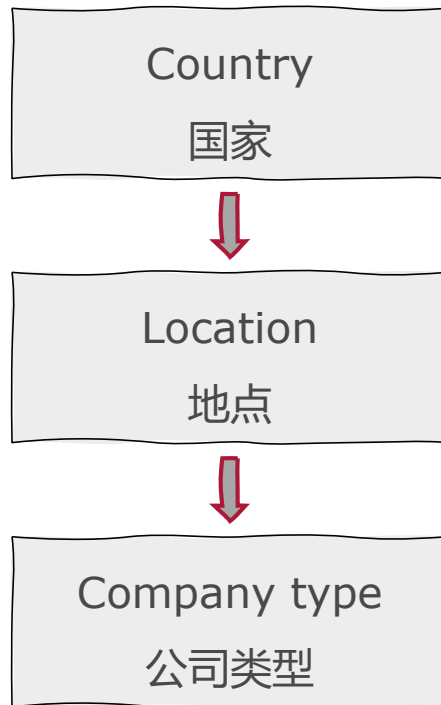


## OPERATION 运营

- Equipment  
机器设备
- Personal  
人员
- Operating permits  
运营许可
- Corporate governance  
企业治理



## MATTERS TO BE CONSIDERED – 注意事项



- shareholding structure – 持股结构
- capital – 资金
- public perception – 公共认知
- governance – 治理
- decision and representation powers – 决定权和代表权
- supervisors – 监督 (监事)
- setup formalities – 设立手续

## ENVIRONMENTAL LAW (1) - 环境法

- Our environmental law experts advise on any approval procedures as well as the sale and purchase of companies, facilities and real estate, and on the acquisition, establishment and operation of commercial and agricultural companies. We develop commercial solutions, often in close co-operation with the relevant authorities, environmental consultants, technical advisors and architects.

我们的环境法专家能够对所有的审批程序以及公司、设施和不动产的买卖，以及商业和农业公司的收购、建立和运营提供咨询建议。我们长期与有关当局、环境顾问、技术顾问和建筑师开展紧密合作，为客户制定商业解决方案。

## ENVIRONMENTAL LAW (2) - 环境法

- We identify and evaluate the risks of liability associated with contaminated sites, including soil or ground water pollution, and determine the financial and other obligations under the relevant regulation, e.g. for emissions, waste disposal and sewage, from building pollutants or from the use of hazardous materials. Our team is well-versed at drafting contracts which clearly allocate any identified risks in of our clients' best interests.

我们会识别和评估与污染场地相关的责任风险（包括土壤或地下水污染）并确定相关法规规定的财政和其他义务，例如对排放物、废物处理和污水、建筑污染物或危险材料的使用。我们的团队专长于起草合同，明确分配任何已识别的风险，以维护客户的最佳利益。

## ENVIRONMENTAL LAW (3) - 环境法

### AT A GLANCE 概览

- Plant approval procedures  
工厂审批程序
- Compliance, including with future legal requirements  
合规，包括遵守今后的法律要求
- Waste disposal, sewage collection and treatment  
废物处理、污水收集和处理
- Defence against measures taken by authorities, such as retroactive conditions, site closures and reconstruction orders  
对政府当局采取的措施进行辩护，如追溯性条件、场地关闭和重建令等
- Public law contracts with authorities, e.g. reconstruction agreements  
与政府当局签署的公法合同，如重建协议

# ENVIRONMENTAL LAW (4) - 环境法

## AT A GLANCE 概览

- Enforcement of recourse claims  
追索权的强制执行
- Emissions trading  
排放权交易
- Conservation law  
保护性法律
- Industry requirements, e.g. REACH Regulation, WEEE Directive, RoHS Directive/ElektroG (Electrical and Electronic Equipment Act), Battery Act, Packaging Ordinance  
行业要求, 如化学品注册、评估、许可和限制的法规、欧盟关于废弃电子电气设备的指令、在电子电气设备中限制使用某些有害物质指令/电子电气设备法、电池法、包装条例。
- Defence against intrusive projects, e.g. emitting facilities in the neighbourhood  
对干预性项目的防御, 例如附近的排放设施

## ENVIRONMENTAL LAW - 环境法

**Odours**  
异味

**Noise**  
噪音

**Power**  
电力

**Sewage  
discharge/treatment**  
污水的排放和处理



**Waste**  
废品

**Groud water  
contamination**  
地下水保护

**Ground contamination**  
地表污染

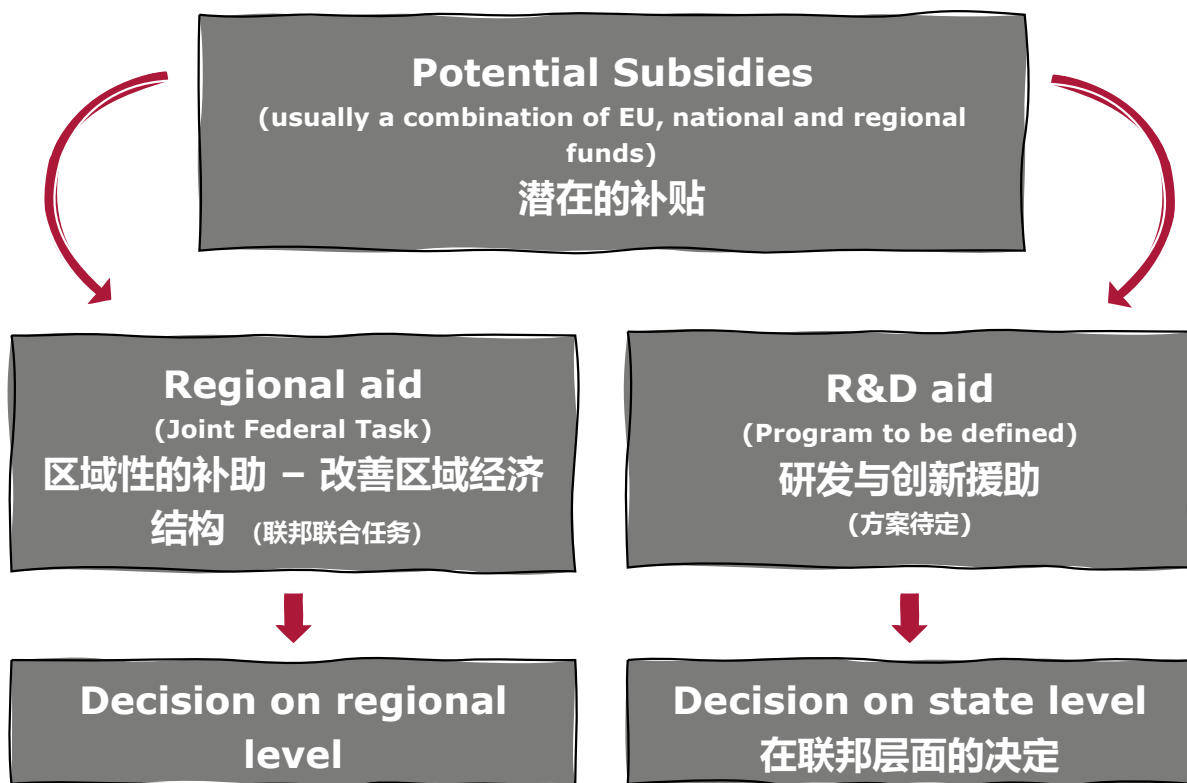
**Water supply**  
水利供应

## ENERGY LAW - 能源法

- Connection to the energy infrastructure (grid)  
能源基础设施（电网）的连接
- Negotiation with grid operator on capacity and on enhancement of the grid  
与电网运营商就容量和加强电网的问题进行谈判
- Regulatory implications in the event of sharing energy infrastructure or selling energy  
在共享能源基础设施或出售能源的情况下的监管问题
- analysis of potential energy subsidies  
对潜在能源补贴的分析

# SUBSIDIES FOR GREEN -/BROWN-FIELD INVESTMENT

## 绿地投资（创建投资）/ 褐地投资（跨国并购）的补贴



### Define relevant measure 界定相关的措施

- Analysis of possible measures on regional, state and EU-level  
分析国家、联邦和欧盟层面的可能措施
- Obtain political backing  
获得政治上的支持
- Coordination with authorities „fitting the investment into the program“  
分析国家、联邦和欧盟层面的可能措施

### Define competent authority 界定主管的部门

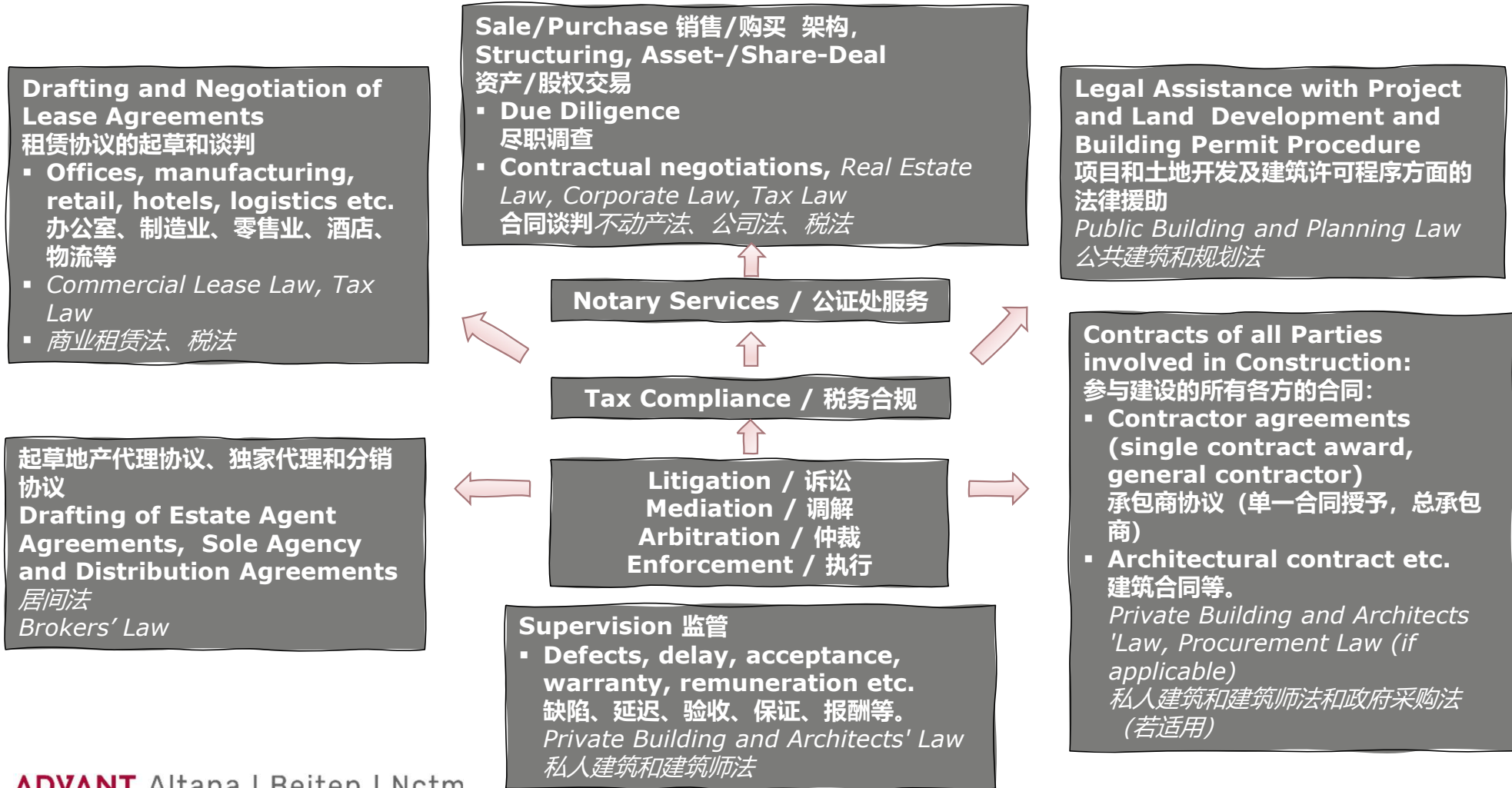
- Coordination with relevant authority on working level  
在工作层面上与有关当局协调
- Preparation of formal filing documents  
准备正式的申报文件
- Dealing with claims of competitors  
处理竞争对手的申诉

### Compliance with conditions 遵守条件

- Understand and comply with conditions for spending subsidies and avoid claw-back  
理解并遵守支出补贴的条件，避免出现拿回扣的情形
- Procurement law can apply when choosing contractors  
选择承包商时可能会适用政府采购法



# BUILDING AND PROPERTY LAW - 建筑和财产法



## **FULL RANGE OF SERVICES - 全方位服务**

**Inter-company  
Agreements**  
企业内部协议

**Compliance Policy**  
合规政策

**General terms**  
格式条款

**Employment / Service  
Contract**  
劳动/服务合同

**Incorporation Law**  
公司法

**Data Protection**  
数据保护

**Commercial Agreements**  
商业合同

**Residence Law Issues**  
居留法事宜

**IP Protection**  
知识产权保护

# **DISTRESSED M&A**

## **收购困境中的企业**

演讲人：马丁·哈珀博士  
Speaker: Dr. Martin Rappert

# 1. DISTRESSED M&A - GENERAL REMARKS

## 收购困境中的企业 – 概览

### 1.1 DEFINITION, UNDERLYING RATIONALE

#### 定义、基本原理

- Acquisition of companies or parts of companies that are heading for insolvency or are already undergoing insolvency proceedings.  
收购濒临破产或已进入破产程序的公司或公司的部分资产。
- Advantageous for purchasers, as their own market position can be expanded at favorable conditions, new markets can be opened up, technologies or know-how can be acquired.  
对于购买者而言是有利的，因为其可以在有利的条件下扩大自己的市场地位，开辟新的市场，以及获得技术或诀窍。
- Advantageous for the company in crisis, as the business and jobs can be secured.  
对处于困境中的公司也是有利的，因为可以保障其业务和工作岗位。

# 1. DISTRESSED M&A - GENERAL REMARKS

## 困境中的并购 – 概览

### 1.2 TRANSACTION STRUCTURE: ASSET DEAL OR SHARE DEAL

#### 交易结构: 股权交易或资产交易

- Share deal: purchase of all shares in the target company while maintaining the target company as the operating legal entity  
股权交易: 购买目标公司的所有股份, 同时保留目标公司作为运营的法律实体
- Asset deal: Transfer of assets and contracts to a new legal entity while separating from the previous legal entity.  
资产交易: 将资产和合同转移到与原法律实体分离的新法律实体中
- Whether share deal or asset deal is the suitable transaction structure depends on the individual case.  
适用股权交易或是资产交易需取决个案的具体情况

# 1. DISTRESSED M&A - GENERAL REMARKS

## 困境中的并购 – 概览

### 1.2 TRANSACTION STRUCTURE: ASSET DEAL OR SHARE DEAL

#### 交易结构: 股权交易或资产交易

- Decision Criteria:

决定标准:

- Point of time of the transaction 交易的时间节点
- Preservation of the identity of the legal entity 是否保留法律实体的身份
- Liability issues 责任事宜
- Tax considerations 税收考量

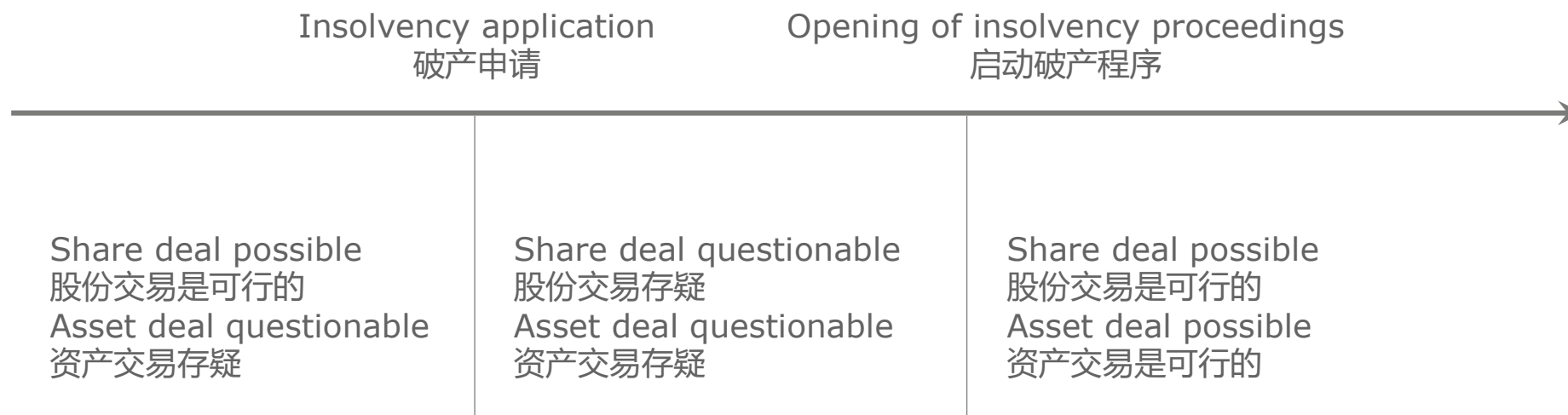
# 1. DISTRESSED M&A - GENERAL REMARKS

## 困境中的并购 - 综述

### 1.2 TRANSACTION STRUCTURE: ASSET DEAL OR SHARE DEAL

#### 交易结构交易结构: 股权交易或资产交易

#### Points of time for a transaction 交易时间点



## 2. SHARE DEAL PRIOR TO AN INSOLVENCY APPLICATION 提交破产申请之前进行股权交易

### Essential aspects 基本方面

- Liabilities of the target company remain unchanged  
目标公司的债务将继续存在
- Purchase price determination in consideration of the liabilities  
在考虑负债的前提下确定购买价格
- Negotiation of a guarantee catalogue  
进行担保目录的谈判



## 2. SHARE DEAL PRIOR TO AN INSOLVENCY APPLICATION 提交破产申请之前进行股权交易

### Essential aspects 基本方面

- Sustainable avoidance of insolvency after closing through sustainable financing of the target company by the purchaser  
通过收购方对目标公司的可持续融资，长期避免交易结束后的公司破产
- Share deal only recommended if insolvency risks can be eliminated by purchaser with very high probability and in the short term.  
只有当收购方能够在短期内以非常高的概率消除破产风险时，才建议进行股权交易

## 3. ASSET DEAL PRIOR TO AN INSOLVENCY APPLICATION 提交破产申请前进行资产交易

### 3.1 Essential aspects 基本方面

- Restructuring of the business only, not of the business owner.  
只对公司进行重组，而非对公司所有者进行重组。
- Quite considerable risks for purchaser and seller, as the usual risks from the acquisition of a company are increased by insolvency law risks.  
对收购方和卖方而言都具有相当大的风险，因为除去公司收购时常见的风险又参入了破产法下的风险。
- Purchaser usually has no control over the further fate of the seller, in particular with regard to insolvency developments.  
收购方通常无法控制卖方之后的命运，特别是在破产发展方面。
- In the event of subsequent insolvency of the seller, risks of legal challenges (Anfechtungsrisiko).  
在卖方随后破产的情况下，可能遇到法律挑战的风险（撤销风险）。

## 3. ASSET DEAL PRIOR TO AN INSOLVENCY APPLICATION 提交破产申请之前进行资产交易

### 3.1 Essential aspects 基本方面

- If the sale purchase agreement has not been completely fulfilled by both contracting parties when the insolvency proceeding is declared opened, the insolvency administrator may refuse to fulfil the agreement (section 103 para.2 InsO); claims of the purchaser would then only be insolvency claims.

如果在破产程序开始时，合同双方没有完全履行公司收购协议，破产管理人可以拒绝履行该协议（《德国破产条例》第103条第2款）；这种情况下收购方的索赔将仅限于破产索赔。

- Enforcement of warranty claims against seller often difficult.  
针对卖方违背保证行为的索赔，其执行往往很困难。

## 3. ASSET DEAL PRIOR TO AN INSOLVENCY APPLICATION 提交破产申请之前的资产交易

### 3.2 Individual aspects 个别方面

- Pursuant to § 75 AO, purchaser is liable with the assets taken over for operating taxes (eg. trade tax, VAT, payroll taxes) which arose in the last year prior to the takeover and which are determined or filed by the purchaser up to the expiry of one year after the registration of the business.  
根据《德国税收准则》第75条，收购方对收购前一年发生的且由收购方进行评估或申报的营业税负有缴付责任，直至新企业注册后一年期满。
- Pursuant to § 613a of the German Civil Code (BGB), the purchaser assumes the rights and obligations arising from employment relationships existing **at the time** of the transfer of the business.  
根据《德国民法典》第613a条的规定，收购方应承担在企业**转让时**存在的雇佣关系所产生的权利和义务。

## 4. NO ASSET DEAL BETWEEN INSOLVENCY APPLICATION AND OPENING OF AN INSOLVENCY PROCEEDING 在提交破产申请后至启动破产程序之前无法进行资产交易

- Sale in the preliminary insolvency proceeding by the preliminary insolvency administrator is excluded.

破产程序预备期期间，临时破产管理人无权进行公司的出售。

- Section 22 para 1 sentence 2 no. 2 InsO only gives the administrator the right to continue or close down the debtor company, but not to sell it.

《德国破产条例》第22条第1款第2句第2项仅赋予临时管理人继续运营或关闭债务人公司的权利，而不包含出售的权利。

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.1 REGULAR TRANSACTION PROCESS 常规的交易流程

- M&A process often initiated by the provisional insolvency administrator.  
并购程序通常由临时破产管理人启动
- First draft contract usually comes from the insolvency administrator.  
合同初稿通常来自破产管理人
- Negotiation of the APA often already in the opening proceedings.  
通常在启动程序时就已经开始谈判资产收购协议
- However, the APA is only concluded from the opening of insolvency proceedings (transfer of power of disposal to the insolvency administrator).  
只有在破产程序开始时（将处置权移交给破产管理人），才能签订资产收购协议

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.1 REGULAR TRANSACTION PROCESS 常规的交易流程

- Insolvency administrator requires the consent of the creditors' committee or creditors' meeting: condition precedent.  
破产管理人需要债权人委员会或债权人会议的同意：先决条件
- Merger control and FDI process are unchanged.  
合并控制和外国直接投资审查程序不变
- Formal requirements unchanged, i.e. notarization may be required.  
形式上的要求不变，即可能需要公证

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.2 ESSENTIAL ASPECTS 要点

- Insolvency administrator generally gives no guarantees: careful DD required and findings of the DD must therefore be taken into account for determining the purchase price.  
破产管理人一般不提供担保：因此，在确定购买价格时必须考虑到尽职调查的结论。
- As a rule, exclusion of the insolvency administrator's personal liability for material defects and defects of title.  
通常情况下会排除破产管理人对实质性缺陷和产权缺陷的个人责任。
- No liability of the acquirer under § 75 (1) AO for operating tax liabilities (e.g. trade tax, VAT, payroll taxes) of the insolvency debtor (§ 75 (2) AO).  
根据《德国税收准则》第 75 条第 1 款，收购人对破产债务人的经营税负（如贸易税、增值税、工资税）不承担责任。（《德国税收准则》第 75 条第 2 款）。



## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.3 THE OBJECT OF ACQUISITION 收购的对象

- Exact examination necessary as to whether the individual object belongs to the insolvency assets or whether it is subject to the right to segregation pursuant to § 47 InsO.  
需要严格审查出售项是否属于破产财产，或者是否依据《德国破产条例》第47条的规定属于别除取回权的范畴。
- Examples: Retention of title, leased property, leased assets.  
例如：保留所有权，租赁不动产，租用资产。
- In the case of retention of title, payment of the outstanding instalments by the insolvency administrator or – to be deducted from the purchase price - by the purchaser.  
在保留所有权的情况下，由破产管理人支付未付的分期付款，或由买方从购买价中扣除。

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.3 THE OBJECT OF ACQUISITION 收购的对象

- Generally, no account receivables are acquired. These are collected by the insolvency administrator for the benefit of the insolvency assets.  
通常情况下，不会收购应收账款。破产管理人会将其充盈破产财产。
- Liabilities will not be assumed in general.  
负债一般不会被转让。
- Catch-all clauses safeguard the acquisition of forgotten or overlooked items.  
兜底条款保障了被遗忘或被忽视的资产的收购。

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易 (转移重组)

### 5.3 THE OBJECT OF ACQUISITION 收购的对象

- Purchaser is free to assume contracts.  
收购方可以自由决定是否接手原有的合同。
- The consent of the contractual partner is regularly required for the takeover.  
接管合同通常需要征得原合同当事人的同意。

## 5. ASSET DEAL AFTER THE OPENING OF AN INSOLVENCY PROCEEDING (TRANSFERRING REORGANISATION) 破产程序启动后的资产交易（转移重组）

### 5.4 LABOR LAW ISSUES 劳动法事宜

- § 613a BGB remains applicable in principle, but is modified.  
《德国民法典》第 613a 条原则上仍然适用，但作出了修改。
- Employee claims up to the opening of insolvency proceedings remain insolvency claims and are not transferred (quota payment).  
在破产程序开始前的雇员债权仍然作为破产债权，不会被转移（定额支付）。
- Employee claims **from the opening of insolvency proceedings** are transferred.  
从破产程序开始的雇员债权被转移。
- Termination employment contracts by the insolvency administrator is possible according to general regulations pursuant to KSchG, but with a special notice period of 3 months.  
根据《德国解雇保护法》的一般规定，破产管理人可以解除雇佣关系，但须遵守3个月的特别通知期。

## 6. SHARE DEAL AFTER THE OPENING OF A INSOLVENCY PROCEEDING BY WAY OF AN INSOLVENCY PLAN AND CAPITAL REDUCTION (KAPITALSCHNITT) 在破产程序启动后通过破产计划和减资进行股权交易

### Special option: Share deal by way of an insolvency plan 特别选项: 通过破产计划进行股权交易

- Initial situation: Preservation of the insolvent legal entity required, e.g. in the case of non-transferable licenses or permits or in the case of a large number of legal relationships to be transferred, in particular lease agreements.  
初始情况: 需要保全破产的法律实体, 例如在其执照或许可证不得转让的情况下, 或在有大量法律关系需要转让的情况下, 特别是租赁协议。
- Alternative to transferring restructuring for corporations: Insolvency plan with capital reduction.  
公司转让重组的替代方案: 关于减资的破产计划

## 6. SHARE DEAL AFTER THE OPENING OF A INSOLVENCY PROCEEDING BY WAY OF AN INSOLVENCY PLAN AND CAPITAL REDUCTION (KAPITALSCHNITT) 在破产程序启动后通过破产计划和减资进行股份交易

### Special option: Share deal by way of an insolvency plan 特别选项: 通过破产计划进行股权交易

- In the insolvency plan, the creditors (!) decide to reduce the share capital to zero and at the same time increase it to the target amount.  
在破产计划中, 债权人 (!) 决定将股本减少到零, 同时将股本增加到目标金额。
- Only the investor is authorized to acquire the new shares, excluding the subscription rights of the existing shareholders.  
只允许投资者购买新股, 排除现有股东的认购权
- Investor pays premium, loan or other endowment of the quota for the insolvency creditors.  
投资者为破产债权人支付溢价、贷款或其他份额。

## 6. SHARE DEAL AFTER THE OPENING OF A INSOLVENCY PROCEEDING BY WAY OF AN INSOLVENCY PLAN AND CAPITAL REDUCTION (KAPITALSCHNITT) 在破产程序启动后通过破产计划和减资进行股份交易

### Consequences 后果

- Once the insolvency plan becomes legally effective, the insolvency creditors waive their claims to the extent that the quota is not serviced: Debt relief effect.  
一旦破产计划在法律上生效，破产债权人即放弃其未偿付配额范围内的债权：债务减免效应。
- The legal entity will be continued and will be retained.  
法律实体将继续存在并被保留。
- Legal relationships of the (formerly) insolvent legal entity remain in place, if desired by the investor.  
如果投资者愿意，（之前）破产的法律实体其法律关系仍然存在。
- Insolvency proceedings are usually concluded within a few months.  
破产程序通常在几个月内结束。

## 7. ADVANTAGES AND DISADVANTAGES OF PURCHASE OUT OF INSOLVENCY 破产中收购的优势和劣势

### 7.1 Advantages 优势

- Often attractive low price. 往往是极具吸引力的低价。
- Purchaser bears no risk with regard to old liabilities from taxes and commercial transactions.  
收购方对税收和商业交易方面的原有负债不承担任何风险。
- Purchaser can put together his "Olympic team" of employees by developing an purchaser concept.  
收购者可以通过制定收购概念来组建他的“奥林匹克梦之队”。
- Notice periods for terminating employment contracts are limited to three months.  
解聘的通知期以三个月为限。
- Purchaser may renegotiate contractual relationships with third parties.  
收购方可以就合同关系重新与第三方谈判。



# 7. ADVANTAGES AND DISADVANTAGES OF PURCHASE OUT OF INSOLVENCY

## 破产中收购的优势和劣势

### 7.2 Disadvantages 劣势

- Implementation of the transaction is subject to the approval of the creditors' meeting.  
该交易的实施须经债权人大会批准。
- Business may be weakened by the insolvency.  
公司业务可能因破产而被削弱。
- Stakeholder involvement is crucial, especially employees, suppliers, customers, banks.  
利益相关者的参与是至关重要的，特别是员工、供应商、客户、银行。
- Purchaser must cover all risks via the purchase price; an agreement on guarantees is regularly excluded.  
购买者必须在购买价格中涵盖所有风险；通常排除适用关于担保的协议。

# 7. ADVANTAGES AND DISADVANTAGES OF PURCHASE OUT OF INSOLVENCY

## 破产中收购的优势和劣势

### 7.2 Disadvantages 劣势

- Process often moves faster as in „normal“ M&A.  
相较于常规情况下的企业并购，困境收购的节奏更快。
- Often only limited due diligence possible.  
通常情况下仅能进行有限的尽职调查。
- Higher litigation risk.  
更高的诉讼风险。

## 8. OUR RECOMMENDATIONS 我们的建议

### Our recommendations for Chinese investors 我们对中国投资者的建议

- Identify opportunities in businesses you know.  
在您熟识的业务范围内寻找机会。
- Show market players that you understand distressed M&A and that your interest is serious.  
向业内人士展现您了解困境企业的收购模式并且是真心愿意收购的。
- Secure financing.  
确保资金支持。
- Have your team ready.  
准备一支熟悉游戏规则的专业团队。

# INCREASING FDI SCRUTINY

## 日益增强的外商直接投资审查



# OVERARCHING EU-WIDE FRAMEWORK FOR FDI CONTROL – 欧盟范围内外商直接投资审核的总体框架

OPERATED BY EU MEMBER STATES 由各欧盟成员国进行运作

- 1 FDI Screening Regulation in force since October 2020  
《欧盟外商直接投资审查条例》自2020年10月生效
- 2 European Commission screened more than 800 transactions and issued opinions on some three percent of cases  
欧盟委员会对800多宗交易进行了审查，并对大约3%的案件发表了意见
- 3 Ultimate decision on prohibition or remedies lies with EU Member States  
关于交易禁止或补救措施的最终决定权在各欧盟成员国手中

## UPCOMING CONTROL OF OUTBOUND INVESTMENTS? – 即将到来的境外投资审核?

- The USA are working on a mechanism to review outbound investments  
美国正在制定一个对外投资的审查机制
- US Departments of Commerce and Treasury have issued reports  
美国商务部和财政部已发布了报告
- Now we hear that the European Commission and Member States consider similar approaches  
有消息说目前欧盟委员会和成员国也在考虑类似的方法

# OVERVIEW OF EU FOREIGN INVESTMENT SCREENING REGULATION – 欧盟外国投资审查法规概述

Regulation (EU)  
2019/452

欧盟2019/452号法规

Framework for FDI  
screening in EU Member  
States

欧盟成员国的外国直接投资审查  
框架

Cooperation and  
information exchange

合作与信息交流

**DISCUSSION:  
THE IMPLEMENTATION OF THE SCREENING  
REGULATION IN ITALY, FRANCE AND  
GERMANY**

**讨论:**

**该审查条例在意大利、法国和德国的实施情况**





## SUBSTANCE - 本质

**1.** What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught? Is internal re-organisation within a corporate group covered? Does the law extend to asset purchases? Does the law extend to incorporations?

哪些类型的外国投资、外国投资者和交易会受到影响？收购少数股权是否受影响？公司集团内部的重组是否包括在内？法律是否延伸至资产购买？法律是否适用于公司的成立？

**2.** Are there specific rules for certain foreign investors (e.g. non-EU/non-WTO), including state-owned enterprises (SOEs)?

对于特定的外国投资者（如非欧盟/非世贸组织），包括国有企业，是否有具体的规则？

## SUBSTANCE – 本质

**3.** Is there a local nexus requirement for an acquisition or investment? If so, what is the nature of such requirement (existence of subsidiaries, assets, etc.)? Are indirect acquisitions of local subsidiaries and/or other assets also caught?

收购或投资是否有当地关系的要求？如果有，这种要求的性质是什么（存在子公司、资产等）？对当地子公司和/或其他资产的间接收购是否也受到限制？

**4.** What conditions must be met for the law to apply? Are there any monetary or market share-based thresholds?

适用该法律的前提条件是什么？是否有任何货币或基于市场份额的门槛？

## PROCEDURE – 流程

**1.** Is there a 'standstill' provision, prohibiting implementation pending clearance by the authorities? What are the sanctions for breach of the standstill provision?

是否有一个“停滞”条款，禁止在行政当局批准之前完成交易？对违反该停滞规定的行为有什么制裁？

**2.** Is there a filing deadline and what is the timeframe of review in order to obtain approval? Is there a two-stage investigation process for clearance? On what basis will the authorities open a second-stage investigation?

针对审批是否有申报期限，如有，审查的时间框架是什么？审批是否为两个阶段的调查过程？行政当局会根据什么来展开第二阶段的调查？

## PROCEDURE – 流程

**3.** Are there any sanctions for not filing (fines, criminal liability, invalidity or unwinding of the transaction, etc.) and what is the current practice of the authorities?

若未进行申报是否有任何制裁（罚款、刑事责任、交易无效或撤销等），政府当局目前的做法是什么？

**4.** What are the main evaluation criteria and are there any guidelines available? Do the authorities publish decisions of approval or prohibition? How is commercial information, including business secrets, protected from disclosure?

主要的评估标准是什么，是否有任何指导方针？政府当局是否公布批准或禁止的决定？如何保护商业信息，包括商业机密不被泄露？

## TRENDS AND RECENT DEVELOPMENTS - 趋势和最新发展

**1.** What is the recent enforcement practice of the authorities and have there been any significant cases? Are there any notable trends emerging in the enforcement of the FDI screening regime? Statistics?

政府当局最近的执法实践是什么，是否有任何重大案件？在执行外商直接投资审查制度方面是否出现了明显的趋势？统计数据？

**2.** Are there any current proposals to change the foreign investment review policy or the current laws?

目前是否有任何对外商投资审查政策或现行法律进行修改的提案？

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