



## **How to Navigate the United States Government Committee on Foreign Investment in the United States (CFIUS) Review Process**

如何正确对应美国外资投资委员会对中国投资方的审查

Violet Ho, Senior Managing Director

October 2016

# Introduction to Kroll

- Kroll is the leading global provider of risk solutions.
- For more than 40 years, Kroll has helped clients make confident risk management decisions about people, assets, operations and security through a wide range of investigations, due diligence and compliance, cyber security, physical and operational security, and data and information management services.
- At our core, is the provision of information to clients, from which they can make decisions.
- Headquartered in New York with more than 50 offices across 30 countries, Kroll has a multidisciplinary team of nearly 2,000 employees and serves a global clientele of law firms, financial institutions, corporations, non-profit institutions, government agencies and individuals.
- In the last three years, Kroll has been engaged by:
  - 100% of the top 15 global banks
  - 100% of the top 20 private equity firms
  - 77% of top global 100 corporations
  - 89% of top global 100 law firms

# Global Coverage

Over 2,000 employees in more than 50 offices across nearly 30 countries



# 40+ Years of Experience

Kroll has been helping clients make high-risk, high-value decisions for over 40 years

## Investigations & Disputes

- » Litigation & Dispute Advisory
- » Fraud & Financial Investigations
- » Cyber Investigations

## Transaction Intelligence & Compliance

- » Due Diligence
- » Anti-Money Laundering & Anti-Bribery Compliance
- » Third Party & Vendor Screening
- » Business, Market Entry & Transaction Intelligence

## Information Security

- » Information Assurance & IT Security Compliance
- » Network Security & Data Breach Response
- » Data Breach Resolution

## Physical Security

- » Vulnerability & Threat Assessment
- » Incident Management
- » Security Design & Engineering
- » Policy and Procedure Development

## Diverse Expertise

- » A largely multi-lingual staff with backgrounds covering law enforcement, the legal profession, forensic accounting, intelligence, investigative journalism, strategy consulting, regulatory affairs, and financial institutions

## Comprehensive Resources

- » Access to a fully comprehensive set of global databases, and a network of external investigation specialists providing unique expertise in specific industries and geographies

## Global Reach

- » Kroll operates from more than 50 offices in nearly 30 countries, with over 2,000 employees, with global hubs in London, New York, Hong Kong, and Miami

## Emerging Markets Expertise

- » We are at our best in more challenging jurisdictions, and the component of our work which takes place in emerging and frontier locations continues to grow

# Violet Ho – Senior Managing Director



Senior Managing Director,  
Greater China  
+852 2884 7788 (HK)  
+86 10 5964 7600 (Beijing)

[vho@kroll.com](mailto:vho@kroll.com)

1701-02 Central Plaza  
18 Harbour Road  
Wanchai, Hong Kong

Unit 805, Tower I  
China Central Place  
No.81 Jianguo Lu,  
Chaoyang District,  
Beijing 100025  
China

Violet Ho is a senior managing director of Kroll's Greater China operations. With over 19 years of professional experience in investigations, and an in-depth understanding of China's business environment, Violet has successfully advised on numerous complex investigative projects in China and beyond.

Violet has led a wide range of risk consulting projects across Greater China, ranging from fraud prevention to investigating instances of white-collar crime and distribution scams. Violet also manages investigative due diligence inquiries and assignments regarding business controls, intellectual property protection, employee risks, corporate security, and crisis management.

Violet is a Certified Fraud Examiner (CFE) and member of the Association of Certified Fraud Examiners (ACFE), the world's leading anti-fraud educator and association for anti-fraud professionals. She has published a number of articles on the topic of managing business risks in China and is frequently quoted by international and Chinese media on related issues.

# U.S. National Security Review of Inbound Investments

## Committee on Foreign Investment in the United States (CFIUS)

- United States regulatory body that considers whether inbound investments create “national security concerns” to the United States
- Authority to review transactions that result in foreign “control”
- CFIUS reviews are subject to strict confidentiality
- CFIUS operates under a tight statutory timeline (initial 30 days followed by an optional 45 day investigation period)
- Can review transactions pre or post closing
- Can approve transactions, order divestment, or approve subject to conditions

# Increasing Scrutiny of Chinese Investments

## 3 Primary Drivers:

1

Increased Chinese investments in American businesses

2

Highest number of CFIUS reviews are of Chinese investments

3

Pressure from United States lawmakers and the public

## Increased Chinese Investments in American Businesses

- \$20-\$30B expected in Chinese investment in U.S. businesses in 2016
- Up from \$15B in 2015 and \$11.9B in 2014
- Trend expected to continue over next 10 years
- Significant investment across numerous sectors, including manufacturing, technology, transportation, agriculture, and energy
- Example: planned investment in over \$150B over 10 years in semiconductors



## 2

# Highest number of CFIUS reviews are of Chinese investments

- Most recent publicly available report from CFIUS:
  - For 2014, CFIUS reviewed 147 transactions; 24 from China (16%)
    - Next highest were from the United Kingdom (21%) and Canada (15%)
  - From 2012-2014, 68 Chinese investments of 358 CFIUS reviews (19%)

### **Some cases which were rejected after review of CFIUS include:**

- CFIUS disapproval of Huawei-3Leaf Systems deal puts new focus on US controls over cloud computing technology.
- Philips transfer of its LED component and automotive lighting business Lumileds to Go Scale Capital was abruptly halted by CFIUS over national security concerns.

### **Successful clearance of CFIUS examples include:**

- CNOOC's buyout of Canada's oil and gas company Nexen Inc.
- Sany Investment in a Colorado wind farm after structuring the investment through ownership by U.S. citizens.
- The international arm of China Aviation Industry Corporation, the largest aviation company in China, obtained clearance in its acquisition of two subsidiaries of Teledyne Continental, US general aviation engine manufacturer.

# 3

## Pressure from United States Lawmakers and the Public

- United States lawmaker pressure –
  - Increased calls for CFIUS reviews of Chinese investments
    - Recent public call from 45 U.S. lawmakers for CFIUS to review bid by Chongqing Casin Enterprise Group to purchase the Chicago Stock Exchange
    - Recent public call from 50 U.S. lawmakers for CFIUS to review bid by the China Railroad Rolling Stock Corporation and Majestic Legend Holdings to purchase Vertex Railcar Corporation
    - Independent congressional review underway of CFIUS given growing congressional concern regarding Chinese investments
  - Increased criticism of CFIUS for approving certain Chinese transactions
    - Influential Senator Charles Grassley raised concerns (has held hearing and called for legislation) following CFIUS's clearance of ChemChina's purchase of Syngenta, a seed and agrichemical company
- Public pressure –
  - Numerous trade organizations and businesses raising public concerns regarding a variety of Chinese investments in American businesses

# Best Practices for Future Chinese Investments in American Businesses

Be Proactive

Be Transparent

Be Collaborative

# Be Proactive:

## Conduct CFIUS-Focused Due Diligence

- CFIUS considers the intent and capabilities of the acquirer, and aspects of the U.S. business that could impact national security
- CFIUS does not share its concerns with the parties, but they are often knowable
- Transaction parties should engage in concerted CFIUS-focused due diligence, focused on the types of issues of greatest concern to CFIUS
  - Technical sensitivity of the products and knowledge base of the U.S. company, backgrounds of the acquirer, etc.
- Doing so enables for better-informed decisions about whether to continue to pursue the transaction and, if so, whether to file with CFIUS and what to include in the filing

# Be Transparent:

## Provide Information to CFIUS Early

- Because CFIUS relies on the United States intelligence community for information, it will learn all they want regarding the transaction
- Thus, being transparent with CFIUS from the start:
  - Provides CFIUS information it will learn over the course of its review
  - Forcefully conveys parties' sole interest in the investment opportunity
  - Helps reassure CFIUS and serves as a confidence building measure
  - Enables the parties to suggest ways of mitigating any potential national security concerns
  - Provides the parties and CFIUS with added and invaluable negotiating time to find a way forward that addresses CFIUS concerns in a way that is acceptable from a business operations perspective

## Be Collaborative:

### Offer Mitigation Measures to Address Anticipated CFIUS Concerns

- CFIUS will propose mitigation measures to address its national security concerns
- But given CFIUS's lack of awareness as to the business operations of the parties, its proposal could be difficult to implement or financially burdensome
- Offering mitigation reinforces the parties' sole interest in the success of the transaction and willingness to adopt measures to address CFIUS concerns
- It enables the parties to conceive of mitigation that works from a business operations perspective
- It sets the baseline for negotiation with CFIUS

# Kroll Can Help

- Kroll experts have significant first-hand experience within the United States government working on CFIUS
  - DJ Rosenthal served at the White House and the Department of Justice, where he was a senior advisor on CFIUS matters
  - Nicole Lamb-Hale served on CFIUS as the designated representative from the United States Department of Commerce
- Kroll helps clients navigate their interactions with CFIUS:
  - Comprehensive CFIUS-focused due diligence to enable companies to make better-informed decisions about whether and how to interact with CFIUS
  - Collaborate with parties leveraging our world-class cyber expertise to ensure that any CFIUS-imposed terms are compatible with existing business practices
  - Independent third-party monitoring to provide a level of confidence and impartiality often essential to CFIUS in approving complex transactions

# Kroll's International CFIUS Team



## **Dan Karson**

Daniel E. Karson is Chairman of Kroll, based in the New York office. Dan has more than 40 years' experience directing investigations of business crimes and due diligence investigations. His practice areas include major fraud investigations, the Foreign Corrupt Practices Act, litigation support, contests for corporate control, Internet crimes, financial crimes, asset searches, product counterfeiting, international investigative due diligence, and third-party auditing in complex and high-stakes matters before CFIUS.



## **DJ Rosenthal**

Daniel ("DJ") Rosenthal is an Associate Managing Director in Kroll's Investigations and Disputes practice, based in the Washington, D.C. office. DJ served in various senior roles within the United States government, including with the White House, U.S. Department of Justice, and the Intelligence Community. During his time in government, DJ served as a senior adviser on CFIUS matters, and license applications pending before the Federal Communications Commission and subject to review by relevant national security agencies ("Team Telecom"), as well as matters involving the imposition of mitigation to address national security risks posed by foreign ownership, control, or influence (FOCI).



## **Nicole Lamb-Hale**

Nicole Y. Lamb-Hale is a Managing Director in Kroll's Investigations and Disputes Practice, based in the Washington, DC office. She is the former U.S. Assistant Secretary of Commerce for Manufacturing and Services in the International Trade Administration at the U.S. Department of Commerce. In this role, she led the Department's participation on CFIUS and was a decision maker in some of the most significant transactions considered by CFIUS. Before serving as an Assistant Secretary, Nicole served as Deputy General Counsel in the U.S. Department of Commerce. Prior to her government service, Nicole was a Managing Partner of an international law firm.



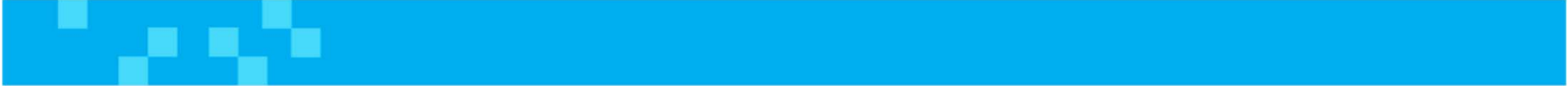
## **Violet Ho**

Violet Ho is a Senior Managing Director and leads the General Investigations practice for Greater China, including Beijing, Shanghai, and Hong Kong. With over 16 years of professional experience in investigations, and an in-depth understanding of China's business environment, Violet has successfully advised on numerous highly complex investigative projects in China and beyond.





# Questions?



Violet Ho  
Senior Managing Director  
[vho@kroll.com](mailto:vho@kroll.com)