

Takeover Law in the New Era of Globalisation: A UK and China Perspective

全球化新时代下的并购法：中英视角解读

Moot Court, School of Law, Tsinghua University
Saturday, 20 May 2017

清华大学法学院模拟法庭
2017年5月20日 周六

Takeovers have been an efficient method for corporate competition, consolidation, and restructuring. China has come to embrace takeovers as a market practice and is seeking directions for further reform in its law, regulatory model, and banking system. Researchers and policy-makers are currently developing options in response to these needs. Work in this area requires a fresh look at other related areas, such as the role of intermediaries, investment banks, funds, custodians, and stock exchanges. This seminar will focus on the policy choices for China by looking, in particular, at the frameworks of the UK Takeover Code and the EU Takeover Directive.

The aim of this seminar is to review:

- The underlying policy for encouraging hostile takeovers in China;
- Whether the UK Takeover Code and the EU Takeover Directive may provide an optimal model for China;
- How China may adapt these models to its specificities.

Programme 日程安排

Time	Topic & Speaker
08.30-09.00	Registration 嘉宾报到
09.00-09.20	Opening Speech 开幕致辞 Speaker 1: Professor Ciyun Zhu, Tsinghua University, China 朱慈蕴教授, 清华大学 Speaker 2: Chairman Wei Lidong, China Mergers & Acquisitions Association 尉立东会长, 中国并购公会 Speaker 3: Ma Weifeng, Director of China Outbound, China-Britain Business Council 麻伟锋先生, 中国境外投资总监, 英中贸易协会
09.20-10.50	Panel I: The Development of M&A Legal System and the Prevention of Legal risks 单元一: 公司并购法律制度发展与法律风险防范

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In the UK, the Takeover Code is the primary law governing takeovers, and the Takeover Panel is the primary agency for adjudicating takeover disputes and enforcing the Code. This differs from the regulatory model in the US and Japan. The Code is a principle-based instrument while also prescribing detailed conduct rules based on the guiding principles. The principle-based approach in the enforcement of the Code allows the Panel to play an important role in allocating risks between offeror and target. The constitution of the Takeover Panel further provides necessary market expertise for guiding the takeover market. Litigation in China may not be the most efficient way to resolve disputes in takeovers. As such, this UK model provides a policy choice for China in administering takeover processes.

Transparency is an important element in takeovers. It maintains market integrity and also levels the playing field between the offeror and the target. Disclosure rules are aimed at maintaining transparency. However, different disclosure rules have specific regulatory objectives. Breaches of these rules should also have different sanctions in order to best achieve their regulatory objectives. For example, disclosure rules on shareholdings regulate the abuse of 'creeping control', however, the sanctions for the breach of these rules may not effectively prevent this abusive conduct. Should the acquired shares be disqualified from exercising voting powers? Should a market abuse regime with criminal sanctions be used to prevent creeping control?

Moderator & Commentator 主持及评议人:

Mr Ge Ming, Chief Supervisor of CMAA, Independent Director of Ping An Insurance (Group) Company of China

葛明先生, 中国并购公会监事长、中国平安集团独立董事

Ms. Zhang Yue, Partner of Guantao Law Firm

张悦律师, 观韬中茂律师事务所合伙人

Speaker 1: Professor Tang Xin, Tsinghua University, China

汤欣教授, 清华大学商法研究中心副主任

发言题目: Emergence of Hostile Takeover in China: Perspectives of Securities Law and Financial Regulation

Speaker 2: Dr Joseph Lee, Law School, University of Exeter, UK

发言题目: The Allocation of Risks Between Offeror and Target in UK Takeover Law

Speaker 3: Professor Ciyun Zhu, Tsinghua University, China

朱慈蕴教授, 清华大学商法研究中心主任, 中国商法学研究会常务副会长

发言题目: 敌意并购中的信息披露违规的法律应对

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	Panel Discussion and Q & A 讨论及问答
10.50-11.10	Tea & Coffee 茶歇
11.10-12.40	<p>Panel II: Takeovers and Competition Law 单元二：收购交易以及竞争法</p> <p>Competition law can prevent a successful takeover. The investigation by a competition authority can cause an offer to lapse. In the UK, an offer can be made conditional on the clearance by a competition authority. In some jurisdictions, an offer conditional on competition clearance may not be allowed. Hence, the competition law risk can be high. This can act as a disincentive for the offeror to commence a takeover in the country. Furthermore, competition law can impose a ‘standstill’ requirement whereby the acquirer of the shares (offeror) may not exercise voting powers and control.</p> <p>Moderator & Commentator 主持及评议人： Professor Xiao Jiangping, Peking University 肖江平副教授，北京大学法学院 Mr Zhang Xiaosen, Senior Partner at Zhongzi Law Office 张晓森律师，中咨律师事务所高级合伙人</p> <p>Speaker 1: Professor Zhang Chenying, Tsinghua University 张晨颖教授，清华大学 发言题目：经营者集中申报审查中的问题</p> <p>Speaker 2: Associate Professor Dai Long, School of International, China University of Political Science and Law (CUPL), China 戴龙副教授，中国政法大学国际法学院副教授 发言题目：中国反垄断法经营者集中审查制度的修改</p> <p>Speaker 3: Professor Renato Nazzini, King’s College London, UK 发言题目：Takeovers and Competition Law in the European Union</p> <p>Panel Discussion and Q & A 讨论及问答</p>
12.40-13.30	Lunch 午餐
13.30-15.10	<p>Panel III: Takeovers and Finance 单元三：收购与融资</p> <p>Finance is a critical element in takeovers and the the regulation of finance in takeovers can allocate risks between the offeror and the target. If the offer is a cash offer, one option is to require the funds to be</p>

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	<p>deposited in an account. This will be costly to the offeror. Less onerous rules may require the advisor of the offeror to make sure that there is a sufficient cash facility. However, there is a risk that offeror may not complete the deal due to the withdrawal of the facility. In such a case, who should be liable for the damages caused? In a non-hostile takeover, should the target board have the responsibility to ensure the availability of the funds of the offeror while deciding whether or not to recommend the offer to the shareholders?</p> <p>If the adviser is also providing finance to the parties, this can also raise the issue of conflicts of interest. Should the offeror's adviser provide a bridge loan? In a hostile takeover, should the target be allowed to provide financial assistance to the shareholders who will make a competing offer?</p> <p>Moderator & Commentator 主持及评议人: Mr. Zhang Shixue, Vice-Chairman of CMAA, Secretary to the Board of Directors, Planning Director and Head of Board of Directors Office of China Great Wall Asset Management Corporation 张士学先生, 中国并购公会副会长、中国长城资产管理公司董事会秘书、策划总监兼引战上市办公室主任 Mr Wang Junjie, Partner at Ernst & Young 王俊杰先生, 安永合伙人</p> <p>Speaker 1: Mr. Bao Yue President of Heaven-sent Capital Management Group Co., Ltd. (HSC) 鲍钺先生, 硅谷天堂资产管理集团股份有限公司总裁 发言题目: 并购逻辑</p> <p>Speaker 2: Timothy Democratis, partner at Clifford Chance 高伟绅律师事务所合伙人 发言题目: Key financing considerations in UK and European public acquisitions</p> <p>Speaker 3: Armstrong Chen, partner at KWM 陈胜先生, 金杜律师事务所合伙人 发言题目: 中国银监会颁布的《商业银行并购贷款风险管理指引》以及中资银行及其海外分行为跨境并购提供的金融服务种类介绍</p> <p>Panel Discussion and Q & A 讨论及问答</p>
15.10-15.30	Tea & Coffee 茶歇
15.30-16.30	Panel Discussion and Q & A 讨论及问答

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	<p>Moderators: Professor Zhu Ciyun, Tsinghua University, China; Dr Joseph Lee, Law School, University of Exeter, UK. 主持人: 朱慈蕴教授, 清华大学商法研究中心主任; Dr Joseph Lee, Law School, University of Exeter, UK.</p> <p>Participants: (TBC) Li Wen, Partner of Guantao Law Firm; Su Helen, Partner of Alston & Bird LLP; Timothy Democratis, partner at Clifford Chance.</p> <p>参与讨论人: (持续邀请) 李雯律师, 观韬中茂律师事务所合伙人; 苏慧伦律师, 奥斯顿律师事务所合伙人; Timothy Democratis, 高伟绅律师事务所合伙人。</p>
16:30-17:00	Networking 自由交流

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Speakers 演讲人嘉宾

Professor Zhu Ciyun 朱慈蕴
Tsinghua University, China

清华大学法学院教授，博士生导师，清华大学商法研究中心主任，中国法学会商法学研究会常务副会长。主要研究领域：商法基础理论、公司法、证券法、破产法、经济法等。

Full profile in English:

http://www.tsinghua.edu.cn/publish/lawen/3562/2010/20101220005335820900180/20101220005335820900180_.html

Professor Tang Xin 汤欣
Tsinghua University, China

清华大学法学院教授、清华大学商法研究中心副主任、《清华法学》副主编，汤姆森路透集团“中国商法”丛书编辑咨询委员会成员。曾兼任中国证券监督管理委员会第一、二届并购重组审核委员会委员，现兼任上海证券交易所上市委员会委员、中国上市公司协会独立董事专业委员会主任。

Full profile in English:

http://www.tsinghua.edu.cn/publish/lawen/3562/2010/20101218001652858393256/20101218001652858393256_.html

Professor Zhang Chenying 张晨颖
Tsinghua University, China

清华大学法学院副教授、博士生导师，清华大学法学院竞争法与产业促进研究中心主任。中国经济法研究会理事、中国财税法学教育研究会理事。研究方向是经济法理论、企业法、竞争法学。

Full profile in English:

http://www.law.tsinghua.edu.cn/publish/law/3563/2010/20101220200733837935667/20101220200733837935667_.html

Associate Professor Xiao Jiangping 肖江平
Peking University, China

北京大学法学院副教授，研究领域竞争法（反垄断法、反不正当竞争法）、能源法、经济法总论。

Full profile in English:

<http://en.law.pku.edu.cn/faculty/faculty1/11772.htm>

Associate Professor Dai Long 戴龙
School of International, China University of Political Science and Law (CUPL), China

中国政法大学国际法学院副教授，竞争法研究中心执行主任。安徽省六安市人，日本名古屋大学法学博士，法学博士后。兼任中国工业经济学会竞争政策专业委员会委员，中国世界贸易组织研究会竞争政策专业委员会副秘书长，中国法学会经济法学研究会理事、世界贸易组织法研

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究会理事和中国国际经济法学研究会理事。主要从事反垄断法、WTO 法与国际经济法的相关研究，用中、英、日文在国内外主流学术期刊上发表论文 30 余篇。著有《滥用市场支配地位的规制研究》（中国人民大学出版社 2012 年版）、《日本反垄断法研究》（中国政法大学出版社 2014 年版）、《反垄断法域外适用制度》（中国人民大学出版社 2015 年版）等著作。

Full profile in English:

http://web.cupl.edu.cn/html/gjfxy_en/gjfxy_en_1344/20150922165502638787203/20150922165502638787203.html

Dr Joseph Lee
University of Exeter, UK

Joseph Lee is a senior lecturer in law at Exeter Law School. Joseph specialises in company law, securities regulation, commercial law and arbitration and conducts research on the use of distributed ledgers technologies (DLTs) in the securities market, smart contract in IPO, financial market infrastructures (FMI) interconnections, cyber security in financial services, dispute resolution mechanism for securities disputes, and regulatory sandbox. He teaches company law, commercial law, transnational commercial law.

Joseph regularly acts as a consultant. He advised a central bank and government agencies and provides training to the judiciary. He is fellow of the European Law Institute and a member of the International Bar Association.

He currently holds a research grant awarded by the UK Economic and Social Research Council (ESRC) to investigate interconnections between stock exchanges.

Full profile: <http://socialsciences.exeter.ac.uk/law/staff/jlee/>

Professor Renato Nazzini
King's College London, UK

Professor Nazzini joined King's College London as Professor of Law in 2012. Previously, he was Professor of Competition Law and Arbitration at the University of Southampton, which he joined from the Office of Fair Trading, then the UK competition authority (now the Competition and Markets Authority), where he was Deputy Director of the Legal and Policy Department and led or advised on major areas of enforcement and policy. His work included the review of the policy on abuse of dominance under Article 102 TFEU, which led to the adoption of the Commission Guidance Paper on Article 102 TFEU, and on the formulation of the policy on actions for damages for competition infringements, which led to major reforms in the UK and in the EU. Professor Nazzini is currently a non-governmental adviser to the International Competition Network (ICN), where he has been particularly active on the Unilateral Conduct Working Group and on the Merger Working Group.

Professor Nazzini is the author of *Competition Enforcement and Procedure* (Oxford, OUP 2016), *The Foundations of European Union Competition Law: The Objective and Principles of Article 102* (Oxford, OUP 2011), and *Concurrent Proceedings in Competition Law: Procedure, Evidence and Remedies* (Oxford, OUP 2004). He is the General Co-editor of *Global Competition Litigation Review* and is a member of the editorial board of the *European Business Law Review*.

Full profile: <http://www.kcl.ac.uk/law/people/academic/rnazzini.aspx>

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Mr. Wei Lidong 尉立东会长、尚融资本管理合伙人、总裁
Chairman of CMAA, General Partner and President of Shang Finance

先后在新天域资本、Unicredit Group、中国华融资产管理公司等单位任职。拥有丰富的股权投资工作经验：负责和参与协鑫硅业、喜得龙国际、皓月股份、光阳蛋业、中升半导体等项目的股权投资和投后管理；拥有丰富的资产管理工作经验：负责和参与华融公司不良资产管理和处置操作规程的起草；华融公司接收不良资产处置计划及考核；华融公司 136 亿元不良资产境外出资方式处置；华融公司数百亿元不良资产国际招标处置；中国工商银行、中国建设银行、中国银行改制过程中可疑类贷款尽职调查及投标；中国工商银行改制过程中 2,460 亿元损失类贷款的接收和处置；拥有丰富的股权托管工作经验：负责和参与华融债转股股权资产管理和处置、德隆系资产的托管和处置。清华大学工学学士、全国金融系统业务创新能手。

Bao Yue 鲍钺
President of Heaven-sent Capital Management Group Co., Ltd. (HSC).

President of Heaven-sent Capital Management Group Co., Ltd. (HSC). With the EMBA degree from Renmin University of China, Mr. Bao is specialized in capital market and private equity investment. He is also a professional lecturer invited by many domestic government institutions, banks and colleges. Mr. Bao was the Securities and Trust Director of Hunan Province Branch's Finance Management Department of the People's Bank of China, Secretary of Zhonglian Construction Corporation Co., Ltd., Vice President of Century Securities Co., Ltd., and Managing Director and Secretary of HSC.

硅谷天堂资产管理集团股份有限公司总裁，中国人民大学 EMBA。鲍钺先生在金融和资本市场有丰富的从业经验，熟谙私募股权投资，是国内政府部门、银行、高校等机构聘请的专家级讲师。他曾历任中国人民银行湖南省分行金融管理处证券信托主任、中联建设股份有限公司董事会秘书、世纪证券有限责任公司副总裁、硅谷天堂资产管理集团股份有限公司董事兼总经理兼董事会秘书。

Mr. Zhang Shixue 张士学
Vice-Chairman of CMAA, Secretary to the Board of Directors, Director of pre-IPO and IPO affair office of China Great Wall Asset Management Corporation

现任中国并购公会副会长，中国长城资产管理股份有限公司董事会秘书、策划总监兼引战上市办公室主任。

湖北襄阳市人，硕士研究生，高级经济师，中共党员。1976 年参加工作，从事金融工作 40 年。曾在人行县支行和农行县、市、省行和总行管理干部学院工作多年，历任县、市、省办公室副主任、主任。2000 年至今供职中国长城资产管理公司，历任总公司办公室副主任、研发与市场拓展部副总经理（主持工作）、发展研究部总经理、贵州分公司党委书记、总经理。现任公司策划总监兼战略发展部总经理、公司改制引战（上市）办公室主任、博士后管理办公室主任，长城（天津）股权投资基金董事长，博士后指导老师。

Mr. Ge Ming 葛明
Chief Supervisor of CMAA, Independent Director of Ping An Insurance (Group) Company of China

现任中国并购公会监事长，中国平安保险集团独立董事。

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1985 年，加入财政部下属中华财会咨询公司与安永会计师事务所在香港成立的合资咨询公司，并担任执行董事；1992 年，发起成立与安永会计师事务所在北京的合资事务所——安永华明会计师事务所并任董事长。在与安永会计师事务所共同合作的二十多年时间中，参与并负责过多家中国概念和国有企业的上市与并购业务。自 1983 年在财政部财政科学研究所西方会计专业研究生毕业后，一直在中国注册会计师行业的第一线工作，拥有丰富的实践经验和同国际会计师事务所合作的宝贵经历。

Mr. Zhang Xiaosen 张晓森

Executive Director of CMAA, Senior Partner of Zhongzi Law Office

中咨律师事务所高级合伙人。现任中国并购公会常务理事；中国并购公会并购法律委员会主任；中华全国律师协会公司法专业委员会副主任；中国人民大学法学院、律师学院硕士研究生导师；中诚信托有限责任公司独立董事。

Mr. Wang Junjie 王俊杰

Partner of EY

王先生是安永大中华区并购交易咨询合伙人。在协助中国企业海外投资领域具有丰富的经验。王先生领导了众多中国企业海外收购项目，提供的服务包括并购战略的制定与实施、尽职调查及并购整合等。王先生获得中国并购公会 2016 年年度大奖。

Ms. Zhang Yue 张悦

Partner of Guantao Law Firm

现任观韬中茂国际投资与贸易部合伙人，亦是香港办公室顾问律师。

在过去的十多年中，张律师曾在海外多个法域执业。她擅长的领域有境外投资、并购、海外上市、私募和外商直接投资等。张律师是目前市场上少数对中国法和香港法（普通法）同时有很深理解和丰富执业经验的资深律师。

Timothy Democratris

Clifford Chance 高伟绅律师事务所

Timothy is a partner based in the Beijing office of Clifford Chance LLP and has 14 years of experience of cross-border financing transactions in Europe and Asia, cross-border corporate, leveraged and acquisition financings and other forms of structured and corporate debt, including corporate debt restructurings. Timothy acts for a range of banks, financial institutions, corporate and private equity sponsor clients and in recent years has specialised in advising borrowers and lenders on their cross-border transactions involving China. Timothy was instrumental on many of the key transactions in 2016 including advising CITIC on the financing of ChemChina's landmark \$45bn offer to acquire Syngenta, United Luck Group on the financing of its \$1.1bn acquisition of Outfit7 and roles on a number of other public and private acquisition financings.

Armstrong Chen 陈胜

King & Wood Mallesons 金杜律师事务所

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陈胜律师于2014年加入金杜律师事务所。曾任中国银行业监督管理委员会政策法规部公职律师，先后在中国人民银行和中国银监会从事外资银行管理、创新业务监管、银行业立法、法律审查和法律顾问工作。参与了多项银行业政策法规的制订和银行业监管处罚，对中国金融业的法律法规和政策有较全面深入的了解和研究。

陈胜律师是中国银行业协会首任法律顾问，香港银行学会顾问。他还担任了上海市法学会银行法律实务研究中心主任、中央财经大学金融仲裁与调解研究中心执行主任。

陈胜律师在处理银行法律实物问题上也经验丰富，他拥有国际和国内仲裁经验。担任北京仲裁委员会、上海国际仲裁中心、深圳国际仲裁院、中国国际经济贸易仲裁委员会、中国海事仲裁委员会、巴黎国际商会仲裁院、香港国际仲裁中心等多家仲裁机构的仲裁员，参与审理裁决了两百余起金融、投资、造船业、国际贸易等领域的案件。

Ms. Li Wen 李雯

Partner of Guantao Law Firm

现任观韬中茂律师事务所合伙人。

执业领域为：公司治理、对外投资、跨境并购及重组、国际贸易及反垄断等。

李雯律师曾就职于天津市政府滨海新区管理委员会，专职从事外资招商引资工作。曾驻美国数年，直接参与了多个知名跨国公司的对华投资项目。

Helen Su 苏慧伦

Alston & Bird LLP 奥斯顿律师事务所

现任奥斯顿律师事务所（北京办公室）合伙人（首席代表）。

苏律师长期往返于奥斯顿硅谷和北京办事处之间，从2008年加入奥斯顿至今，其主要执业领域包括：境外诉讼和争端解决，涉及知识产权、保险等领域；并通过知识产权在商业中的应用参与多起跨境融资、兼并、收购的业务。其参与的永业国际私有化项目被China Law & Practice评选为“2015年年度私募股权最佳交易”。

她在代理台湾和中国大陆公司方面积累了丰富的经验，涉足多种多样的行业与科技领域，包括消费电子、稀土制造、医疗设备、发光二极管(LED)、液晶显示(LCD)、半导体、化学产品、医疗保健和保险。

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