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Voice

Hot News

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May 2010 Sees Active M&As with Trading Scale Surging

Released by Mike Wu, Zero2IPO Research Center

According to the statistics from Zero2IPO Research Center, China's M&A market saw a total of 41 completed M&A transactions in May 2010, up 28.1% quarter-on-quarter. The total transaction value for the 30 M&A deals with a disclosed value reached US $4.6B, up 234.6% quarter-on-quarter or an average deal value of US$153M. The M&A market activities saw stronger momentum in May, with total deal value quadrupled over April. A deal worth US$3.1B in Energy & Mineral sector has boosted the overall transaction value in May.

Specifically, there were a total of 32 domestic M&As in May, accounting for 78.0% of the total M&A value. The value of the domestic deals totaled up to US $705M, accounting for 15.3% of the total deal value in May. There were a total of six overseas M&A transactions, accounting for 14.6% of the total deal volume. The value of outbound deals stood at US $3.87B, accounting for 84.2% of the total deal value in May. Separately, there were three inbound M&As initiated by foreign companies, accounting for 7.3% of the total, contributing a combined US $21M and accounting for 0.5% of the total.

China's M&A Market Saw A Total of 41 Deals in May, with Strong Activities Seen in Energy & Mineral and Real Estate Sectors

In terms of industry breakdown, the M&A transactions were widely distributed in 15 Grade 1 sectors, including Energy & Mineral, Real Estate, Internet, Machinery Manufacturing, Bio/Healthcare, etc. In terms of transaction volume, the Energy & Mineral sector saw the most active transactions, with a total of nine M&A deals completed, accounting for 22.0% of the total M&A value in May. It is worth noting that M&A transactions in Real Estate sector continued to increase, with 8 deals completed in May, accounting for 19.5% of the month's total and doubling the volume over the previous month. The Internet sector came in third, with a total of four deals completed, accounting for 9.8% of the total volume. Each of the sectors like Automobiles, Finance, Telecom & Value-added Services, and Logistics saw one M&A deal.

In terms of deal value, the Energy & Mineral sector saw the highest total M&A transaction value of US $4.22B, equivalent to 91.9% of May's total transaction value. On May 5, CNOOC Limited announced that it has closed a deal to buy a 50% stake in Argentine's leading oil and gas producer Bridas Corp. for about US $3.1B, marking the largest M&A transaction for the month and pushing the total M&A deal value in the Energy & Mineral sector significantly higher.

Table 1 Comparison of M&As on Chinese Market in May 2010 by Type

Type	No. of Deals	% of Total	No. of Deals with Disclosed Value	M&A Value(US$M)	% of Total
Domestic M&A	32	78.0%	25	705.20	15.3%
Outbound M&A	6	14.6%	3	3,869.05	84.2%
Inbound M&A	3	7.3%	2	20.90	0.5%
Total	**41**	**100.0%**	**30**	**4,595.15**	**100.0%**

Source: Zero2IPO Database

The Real Estate sector saw the second largest total M&A deal value of US $241M, accounting for 5.3% of the total deal value in May and lagging far behind the Energy & Mineral sector. The Automobiles sector ranks the third, with an M&A deal value of US $147M, accounting for only 0.3% of the total in May.

In terms of average deal value, the Energy & Mineral sector still ranked No.1, as the average size of the eight M&A deals with a disclosed value stood at US $528M. The Real Estate sector came in second, with an average M&A deal value of US $302M, followed by US $147M in the Automobiles sector.

Strong Overseas M&A Activities, with Six Deals in Total, Including Three deals with Disclosed Value of US$3.87B.

According to the statistics from Zero2IPO Research Center, there were six outbound M&A deals in May, including three deals with disclosed value totaling US $3.87B. The deals were mainly distributed in three Grade 1 sectors, including Energy & Mineral, Textiles & Clothing, and IT. Specifically, there were three deals in the Energy & Mineral sector while Textiles & Clothing sector and IT sector each saw one deal.

Separately, there were three inbound M&A deals imitated by foreign companies in May, which were mainly distributed in three Grade 1 sectors, namely, Chain Retail, Logistics and Internet. There were two deals with a disclosed value. Specifically, the Philippine's largest fast food chain Jollibee Foods Co. announced its acquisition of a 55% stake in San Pin Wang, a chain of Chinese rice noodles restaurant, for RMB30M, as part of its long-term overseas expansion plan. Mitsui & Co. bought a 38.33% stake in Shanghai Jinjiang International Cold Logistics Development Co. from the latter's two major shareholders, Shanghai Jin Jiang International Industrial Investment Co. and Shanghai Jin Jiang Auto Service Co., for more than RMB89M and then raised its stake in Jinjiang International Cold to 49% via a capital injection of RMB23M.

Table 2 Industry Breakdown of M&As in May 2010 (By Target)

Industry	No. of Deals	%of Total	No. of Deals with Disclosed Value	M&A Value(US$M)	%of Total	Average Scale of Deals with Disclosed Value (US$M)
Energy & Mineral	9	22.0%	8	4221.72	91.9%	527.72
Real Estate	8	19.5%	8	241.25	5.3%	30.16
Internet	4	9.8%	1	8.79	0.2%	8.79
Machinery Manufacturing	2	4.9%	2	3.53	0.1%	1.77
Bio/Healthcare	2	4.9%	1	0.79	0.0%	0.79
Chain Retail	2	4.9%	2	9.96	0.2%	4.98
Food & Drinks	2	4.9%	0	N/A	N/A	N/A
Textile & Clothing	2	4.9%	0	N/A	N/A	N/A
Automobiles	1	2.4%	1	14.65	0.3%	14.65
Finance	1	2.4%	1	12.65	0.3%	12.65
Telecom & Value-added Services	1	2.4%	1	5.23	0.1%	5.23
Agr/Forestr/Fish	1	2.4%	1	2.20	0.0%	2.20
Logistics	1	2.4%	0	N/A	N/A	N/A
IT	1	2.4%	0	N/A	N/A	N/A
Others	4	9.8%	4	74.38	1.6%	18.60
Total	**41**	**100.0%**	**30**	**4595.15**	**100.0%**	**153.17**

Source: Zero2IPO Database

A Total of Three VC/PE-backed M&A Deals in May

Within the coverage of Zero2IPO Research Center, there were a total of three VC/PE-backed M&A deals in May, including two deals with disclosed value totaling US $160M. The deals were distributed in three Grade 1 sectors including Energy & Mineral, Bio/Healthcare and Internet.

On May 27, Wuhan Jianmin Pharmaceutical Groups Co. said in a statement that its majority-owned subsidiary Wuhan Jianmin Venture Capital Co., Ltd. sold its 51% stake in Chengdu Rongjin Pharmaceutical Trading Co., Ltd. to Chengdu Rongyao Industrial Group Co., Ltd. for RMB5.4M. Data shows that Wuhan Jianmin Venture Capital bought the 51% stake in Chengdu Rongjin Pharmaceutical for RMB5M in 2008.

Social game company Zynga announced on May 21 that they are acquiring Beijing-based social gaming publisher XPD Media. As one of the largest international social game publishers in China, XPD Media has produced many games for the international markets on Facebook, MySpace, Renren and Orkut. XPD Media is backed by True Ventures and other venture capital firms.

Table 3 List of Outbound M&As in May 2010

Acquirer		Target		M&A Value (US$M)
Company	Industry	Company	Industry	
CNOOC Ltd.	Energy & Mineral	Bridas	Energy & Mineral	3,100.00
Jilin Jien Nickel Industry Co., Ltd.	Energy & Mineral	Canadian Royalties Inc.	Energy & Mineral	139.42
Tongling Nonferrous Metals Group Holdings Co. China Railway Construction Co.	N/A	Corriente Resources	Energy & Mineral	629.63
China National Petroleum Corporation	Energy & Mineral	Syria Shell Petroleum Development	Energy & Mineral	N/A
Shandong Jining Ruyi Woolen Textile Co.	Textile & Clothing	Renown Inc.	Textile & Clothing	N/A
CDC Software Corporation	IT	TradeBeam	IT	N/A

Source: Zero2IPO Database

Table 4 List of Inbound M&As in May 2010

Acquirer		Target		M&A Value (US$M)
Company	Industry	Company	Industry	
Jollibee Foods Co.	Chain Retail	San Pin Wang	Chain Retail	4.39
Mitsui & Co.	Energy & Mineral	Shanghai Jinjiang International Cold Logistics Development Co.	Logistics	16.51
Zynga Game	Internet	XPD Media Inc.	Internet	N/A

Source: Zero2IPO Database

Table 5 List of VC/PE-listed M&As in May 2010

Acquirer			Target			M&A Value(US$M)
Company	Industry	VC/PE	Company	Industry	VC/PE	
Beijing Haohua Energy Resource Co., Ltd.	Energy & Mineral	Gold Stone Investment Limited	Hanggin West Energy Development Co	Energy & Mineral	-	158.95
Chengdu Rongyao Industrial Group Co., Ltd.	Bio/Healthcare	-	Chengdu Rongjin Pharmaceutical Trading Co., Ltd.	Bio/Healthcare	Wuhan Jianmin VC	0.79
Zynga Game	Internet	-	XPD Media Inc.	Internet	True Ventures	N/A

Source: Zero2IPO Database

CVCF 2010
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10th

Time: July 14th-15th, 2010
Venue: Shenzhen, China

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Forming a Foreign-invested RMB Fund in China (II)
Legal Options after Foreign-invested Limited Partnership

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Legal Structures of Onshore RMB Funds

Current practice in relation to formation of a RMB Fund in China is different. When structuring a RMB Fund, fund sponsors often take into account such factors as the incentive policies, the intended business sectors to invest on the deal level, the need of foreign exchange conversion, tax efficiency, the need of raising domestic fund, possible exit routes etc..

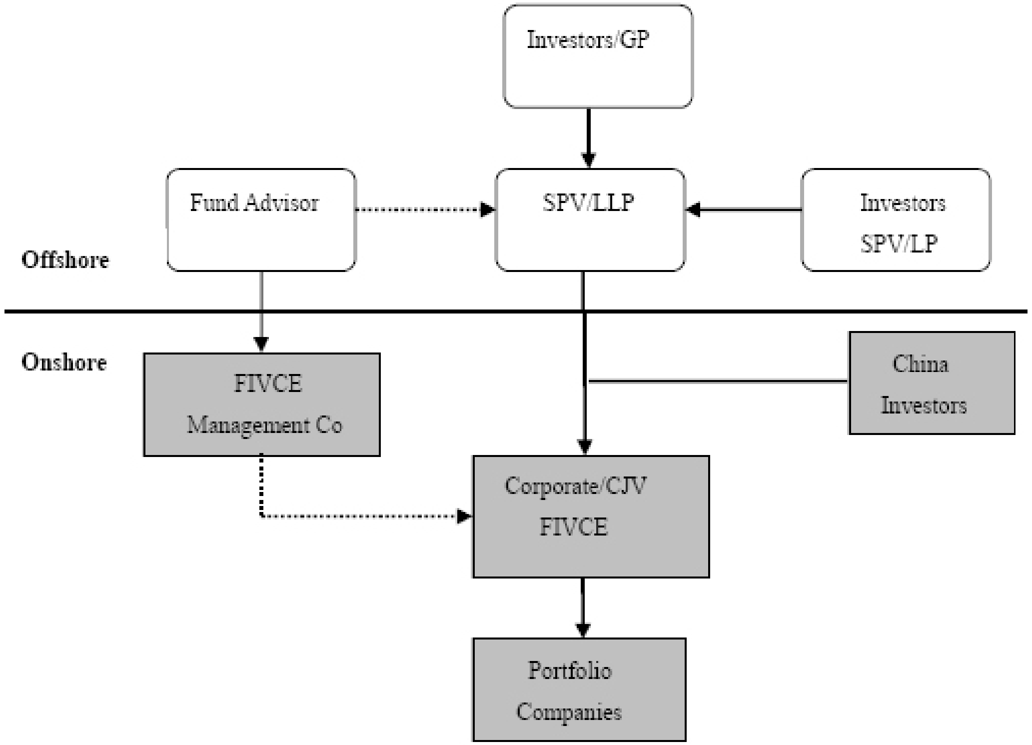
To launch a RMB Fund, fund company (or partnership), GP and management entities must all be established within China. Broadly speaking, fund sponsors or mangers currently have three legal options in structuring an onshore RMB Fund and its management enterprise, i.e. to set up a FIVCIE and/or FIVCIE management enterprises, an FIE or partnership with onshore FIE as GP and its management enterprise, and a FILP without onshore GP and its management enterprise.

Structure A: Corporate/Cooperative Joint Venture ("CJV") FIVCIE

The FIVCIE model was provided in Administrative Provisions on Foreign Invested Venture Capital Investment Enterprises issued in January 2003. To form a FIVCIE, the investors and the contemplated FIVCIE must meet various requirements, including the number of investors, qualified mandatory investor, number of qualified professionals, satisfactory compliance record and required number of qualified professionals of the mandatory investors etc.. The investors must apply for approval from MOFCOM (who will consult MOST) and then register the FIVCIE with SAIC.

Under the FIVCIE model, foreign investors may set up either a company with legal person status or a CJV FIVCIE with non-legal person status. If a FIVCIE is incorporated with legal person status, the FIVCIE is required to have at least US$5 mil as the registered capital, and there must be, among other things, at least one qualified "mandatory investor" contributing no less than thirty percent of the total registered capital. If a FIVCIE is set up as an entity with "non-legal-person" (i.e. "CJV"), US $10 mil is required as the minimum registered capital. FIVCIE must have at least one mandatory investor undertaking to contribute no less than one percent of the registered capital and assuming joint liabili ties with FIVCIE. FIVCIE is permitted to pool Chinese or foreign capital but is only allowed to invest in high-tech or new-tech companies. In addition, a FIVCIE is only allowed to invest with its self-owned cash. Debt financing, investing with borrowed capital, investment in securities or non-self-use real property are all prohibited.

The common structure of the FIVCIE structure is illustrated in the flowchart below (variations may be needed in practice):



Main pros and cons of structuring a RMB Fund as a FIVCIE include:

Pros:

● an onshore entity can be formed to raise domestic and foreign capital;

● FIVCIE is allowed to convert the investment fund in foreign exchange into RMB or the other way when repatriating fund;

● MOF COM approval power is delegated to its provincial counterparts for FIVCIE with total capital of US$100 mil or less;

● capital reduction/repatriation needs no prior government approval, rovided the remaining capital is sufficient for committed in vestment;

● invest ment by FIVCIE needs to file only with MOF COM office at the location of the target company, which is of the authority to approve the investment Processing of the filing will take no more than fifteen days (in contrast, ninety days in an ordinary inbound direct foreign investment case), provided the investment projects falling into the "encouraged" or "permitted" industry categories;

● injection of capital into FIVCIE may be made in accordance to the progress of the investment plan within five years from the registration date, which is longer comparing to other types of FIEs;

● pass-through taxation is allowed for FIVCIE with non-legal-person status and withholding taxation basis at the rate of ten percent or less may be granted to foreign investors in a non-legal person FIVCIE subject to the approval of tax authority;

● FIVCIE may be qualified for deduction at seventy percent of its equity investment amount against its taxable income on the third year after holding the relevant equity;

● FIVCIE management enterprises are allowed to establish either in the form of a partnership or company to manage FIVCIE, which may help foreign investors to diversify revenue streams;

● no onshore layer of GP/wholly foreign-owned enterprises ("WFOE") is needed, which may offer preferred tax advantages;

● according to the Opinions, China will allow more FIEs to be listed in its domestic stock ex changes.

Cons:

- FIVCIE is a legal vehicle mainly invest in high-tech or new tech enterprises;
- establishment of FIVCIE needs approval from MOST, which may prolong and complicate the approval process;
- to be the mandatory investor of FIVCIE struc tured as a company, it must contribute at least thirty percent of the registered capital of the FIVCIE; or it shall contribute one percent of the registered capital and assume joint liabilities with FIVCIE;
- no pass-through taxation for the FIVCIE structured as an onshore company;
- portfolio investments are subject to invest ment restrictions generally applied to foreign investment;
- FIVCIE is unable to provide debt financing (except legally issued orporate bond) or hold other non-self-use assets in its own name.

Structure B: a FILP without For-

the Provisions, the route for foreign GP to directly set up an onshore RMB Fund in the form of FILP becomes clear, despite some clarifications remain needed with respect to procedures. It was made clear by Article 5 of the Provisions that SAIC at the provincial level are responsible for registering FILPs primarily engaging in investment business, though SAIC is required to actively consult with other authorities in registering investment FILP where needed.

Whilst it is still not entirely sure about the approval required for the portfolio investments, the Measures generally require the FILP to conform to relevant industrial policies guiding foreign investment. The Provisions also reiterate that the investors shall obtain all the relevant approvals before applying for setting up the FILP, provided that the investment is subject to the government approval under a law, a regulation or a provision of the State Council. In addition, if the FILP is established to carry out an investment project in China that requires the government approval, the investors of the FILP shall obtain such an approval before setting up the FILP. Given the restrictions on foreign investment still apply to FILP, some approving or filing requirements,

With respect to the foreign exchange conversion restrictions applied to FIE under Circular 142 of State Administration of Foreign Exchange ("SAFE") (see p. 14 for the restrictions under Circular 142), the new regulations does not offer a welcoming clarification. The FILP investors are required to pay the capital contribution to the FILP in accordance with the partnership agreement. Theoretically, this should be understood as that conversion of foreign exchange to be contributed by the foreign partner is allowed. However, for an investment FILP, it is not yet clear whether SAFE would set any conditions on the conversion.

It was reported that Shanghai will soon adopt a quota system (similar to the foreign exchange control system applied to Qualified Foreign Institutional Investors) to allow foreign-invested GP to convert its investment capital and to participate into RMB Fund. How the foreign exchange restrictions will be dealt with by SAFE and the local governments encouraging private equity investment remain a question.

Below the chart shows the common structure of a FILP organized with no onshore GP