■ Loo Choon Chiaw

"THERE HAVE BEEN MUCH TALKS ABOUT THE PERCEIVED DECLINE OF CHINA AS A FDI HOT SPOT AND THE EMERGENCE OF THE CHINESE AS A GLOBAL INVESTOR"

Discussions with Loo Choon Chiaw, Managing Partner of Loo & Partners

ALB1: **As a specialist practitioner, who has been advising both foreign investors investing into China and Chinese investors investing abroad, could you please share with us the issues which are much discussed currently concerning those areas?**

LCC1: With pleasure. In respect of in-bound investments into China, there have been much talks about the perceived decline of China as a foreign direct investment (FDI) hotspot and whether the foreign investors should look elsewhere for investment opportunities. In the opposite direction, tongues have certainly been wagging after the recent overseas acquisition spree pursued by the Chinese investors. Those who are sinophobic are, of course, fearful of the emergence of the Chinese as a global investor on security grounds. In contrast, those who are looking to divest their investments certainly view the Chinese investors favourably, and hope wishfully that one of the Chinese investors will become the predator who acquires their investments, for a high price!

ALB2: **Has China lost its lustre as a FDI hotspot?**

LCC: Admittedly, FDI in China has been declining for quite a long while. In 2012, the total FDIs recorded was USD 111.7 billion, representing a fall of 3.7% as compared to 2011. However, the FDI data in June this year registered USD 14.4 billion, an impressive jump of 20.1% compared to June last year. The total FDIs for the first half of 2013 totaled USD 62 billion, an increase of 4.9% year on year. Only time will tell if the June data will usher in a strong recovery or a gradual renewal or was it merely a technical rebound of the FDIs. Be that as it may, the June data clearly indicated that the overseas investors have not abandoned China as a FDI destination.

ALB3: **Which are the sectors that attracted the FDIs?**

LCC: FDIs into China's services sector in the first half of this year stood at USD 30.6 billion, a rise of 12.4% year on year. FDIs into the media sector, including radio, film and television registered an increase of 121% year on year. Similarly, FDIs into the cultural and arts sector saw an increase of 154% year on year. In stark contrast, FDIs into the manufacturing sector in the first half of this year, totaled only USD 26.4 billion, a drop of 2.1% year on year. Quite clearly, the June data has confirmed again that the FDIs flowing into the service sector have been outperforming the manufacturing sector.

ALB4: **Has the Chinese government been supportive of FDIs into China?**

LCC: 'Supportive' may be too mild a word to describe the intensive efforts which the Chinese government have mobilised to attract FDIs. China shaped its economy via a series of social and economic development initiatives contained in the Five-Year Plans (FYPs). The latest FYP was the 12th FYP released on 14 March 2011. They focused on the need to upgrade industries, grow domestic consumption, develop the service sector, reduce income disparities and increase health, education and social welfare coverage. The plans further specified certain promoted industries, i.e., environment protection, new-generation information technology & services, strategic new industries, which would enjoy favourable tax treatment. The 12th FYP was clearly aimed at attracting more FDIs into China. Indeed, with effect from 13 May 2013 and with a view to expediting FDIs into China, the State Administration of Foreign Exchange (SAFE) of China had further simplified the foreign exchange administration policies on foreign exchange registration, account opening, account usage, fund remittances, and foreign exchange settlements.

ALB5: **What are some of the concerns which have been raised by foreign investors concerning FDIs into China?**

LCC: The serious concerns which have been raised include, (1) the perceived inadequate protection of intellectual property rights; (2) the perceived unfair treatment frequently received by foreign-invested firms when they bid for public procurement projects; (3) the outright limitations or restrictions on equity ownership, imposed on foreign investment in a wide range of sectors; (4) the perceived lack of transparency in rule-making, eg, the MOFCOM's rejection of Coca Cola Company's proposed buyout of Huiyuan in 2009.

ALB 6: **As a specialist practitioner having an extensive Greater China practice, what advice would you give to any foreign investor who is contemplating a FDI in China?**

LCC: Whilst there is certainly a general decline in the total value of FDIs in China, one must note that the specific sector which has recorded the most significant decline related to labour intensive manufacturing sector. Indeed, the more capital intensive space relating to financial services, technology, technical services, transportation retail and distributions, and lifestyle services

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appears to be moving in the opposite direction. The current leadership is aware of the decline and has sent clear signal to prospective investors in its intention to improve the investment environment and in attracting FDIs. There are still selective sectors in China with enormous potential which the investors need to be aware of. A prudent and shrewd investor will just have to do his home work and cherry-pick. China is not an easy market to enter. The investors will need good advisers so as to navigate through the legal and regulatory minefield.

ALB 7: What prompted the Chinese investors to pursue their overseas acquisition spree?

LCC: The Chinese government has shown its strong support for the internationalisation drive of the Chinese enterprises via the promulgation of regulations. As early as 16 March 2009, the Ministry of Commerce has issued regulations primarily designed to encourage Chinese enterprises to go international. The timeline to process an overseas investment application has been shortened. The review procedures have also been simplified and streamlined. The RMB has also been strong compared to other currencies. The recent economic downturn has presented a window of opportunities for these Chinese enterprises to exploit the low market value of quality businesses and assets abroad as their oversea counterparts are busy deleveraging and in great need of refinancing. China's outbound investment activities have also been driven by the country's need for natural resources to secure long term strategic supplies for its growing population. The enterprises in the China are relatively less exposed to the sub-prime crisis. There is an abundance of lowly-geared, well capitalised and well managed enterprises in the China constantly looking for overseas acquisitions.

ALB 8: Can you provide examples of some China overseas FDIs done recently?

LCC: Certainly. The notable China overseas FDIs completed in the last two year, include: (1) the USD 19.1 billion takeover of Nexen Inc, a global energy company based in Canada, by China National Offshore Oil Corporation; (2) the USD 4.2 billion acquisition of 80.1% stake in International Lease Finance Corp., a major leasing company in the US, by the Investor Group; (3) the USD 4.2 billion acquisition of Eni East Africa Spa, an energy company in Mozambique, by China National Petroleum Corporation; (4) the USD 2.5 billion acquisition of Caspian Investments Resources Ltd, Mansarovar Energy Colombia Ltd and Taihu Ltd, natural resources companies in Kazakhstan, by Sinopec International Petroleum E&P Hong Kong Overseas Ltd, (5) the USD 2.6 billion takeover of AMC Entertainment Holdings Inc., the second largest movie theater company in the US, by Dalian Wanda Group Corporation Ltd; (6) the USD 2.5 billion acquisition of significant stakes in Devon Energy Corporation's exploratory oil projects in the US by Sinopec Group; (7) the USD 2.5 billion acquisition of 20% stakes and operating right in OML, 138 Block oil field in Nigeria from Total Nigeria PLC, a leading Nigerian oil and gas company, by Sinopec Group; (8) the USD 2.2 billion acquisition of EnCana Corp, a major oil and gas company in Canada, by China National Petroleum Corporation; (9) the USD 2.2 billion takeover of LME Holdings Limited, the parent company of the London Metal Exchange Limited, by Hong Kong Exchanges and Clearing Ltd; (10) the USD 1.9 billion acquisition of Weetabix Ltd, a cereal maker in the United Kingdom, by Bright Food (Group) Company Ltd; (11) the USD 1.7 billion acquisition of ING Management Holdings (Malaysia) Sdn Bhd, a major insurance company in Malaysia, by American International Assurance Group Ltd based in Hong Kong; and (12) the USD 1 billion acquisition of MGN Gas Network (UK) Ltd, a major gas-distribution company in the United Kingdom, by Investor Group. For the sake of completeness, the proposed USD 4.7 billion takeover of Smithfield Foods, the largest pig farmer in the US, by Shuanghui International is currently pending. Should clearance be given by all the relevant authorities, including the US Treasury department, this acquisition would be the largest ever Chinese takeover of a US company.

ALB 9: How should any person who aims to cash out and exit from his investment in a business makes the prospective target more appealing to the Chinese predator?

LCC: It will be timely to remember the teaching of Sun Tzu <孙子>, the famed ancient strategist and tactician, and author of the military treatise the Art of War <孙子兵法>, who advocated "know your enemy and know yourself, a hundred battles bring a hundred victories" <知己知彼，百战百胜>. The prospective Chinese Predator, same as any others, may view the acquisition as a means to improve its own financial performance (which will happen if the acquisition will have an accretive effect on the predator's share price), or to gain competitiveness for the predator via economies of scale, or to expand its distribution channels, or to gain advanced technologies or brand or other IP rights of the target, or to secure lawful immigration status for the controlling shareholder of the predator or educational opportunities for his children. The prospective vendor must do thorough home work to ensure that he understands the real needs of the prospective predator so as to give the predator (or help the predator to get) what he wants. This approach will also be in line with the teaching contained in the Strategies of the Warring States <战国策>, the classic Chinese text on strategies and diplomacy, which stated ' to take, one must first give' <将欲取之，必先与之>.