



# Issues of Acquisitions and Defenses in China

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# Agenda:

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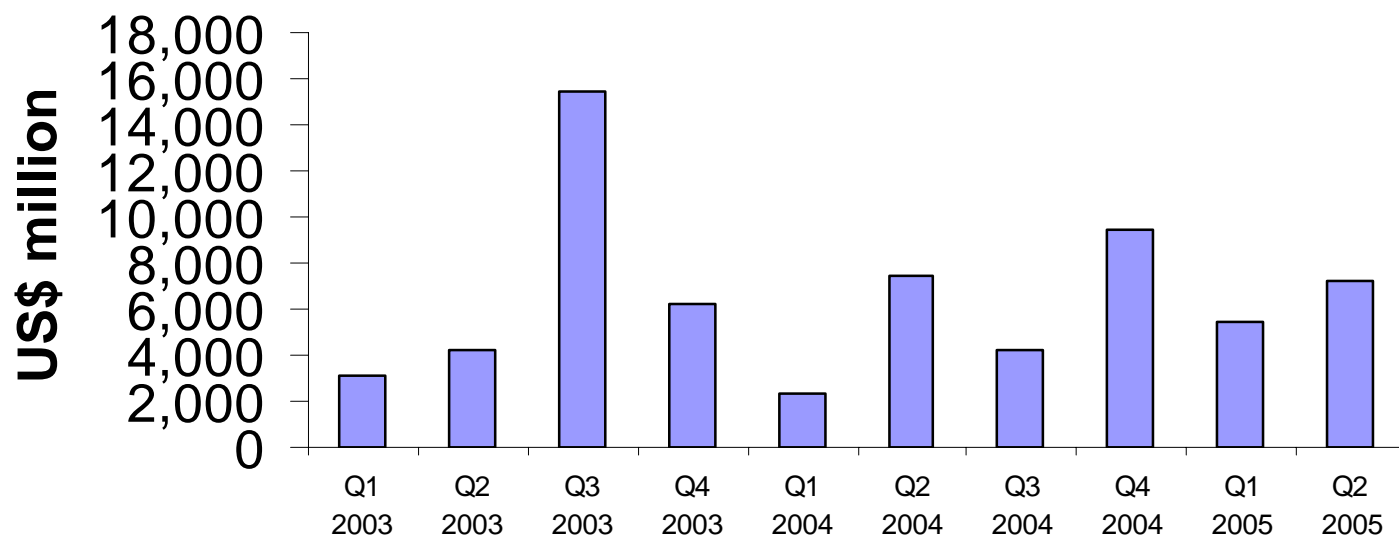
**A. Overview of M&A in China**

**B. Transactions and Regulations**

**C. Restrictions and Defenses**

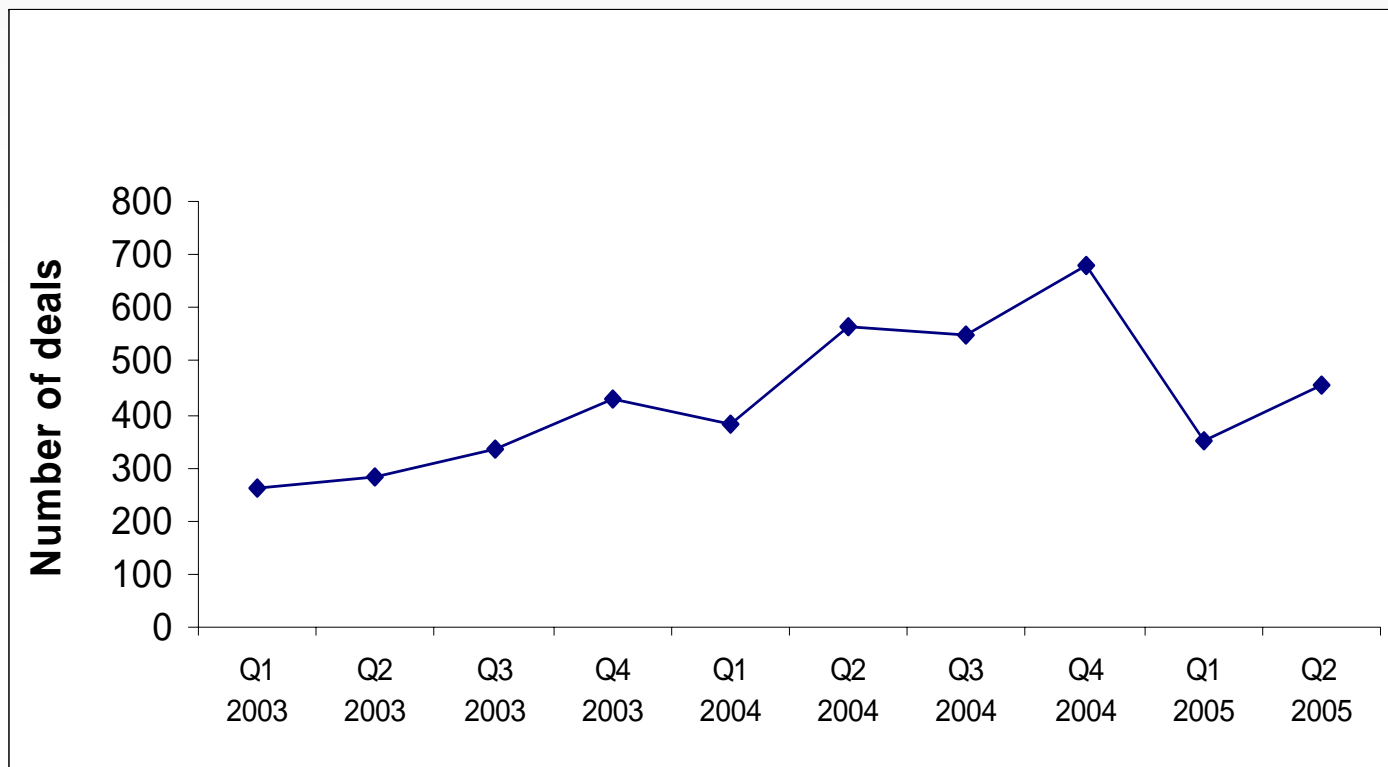
## M&A by Foreign Investors

### Value of Announced inward M&A PRC deals



## M&A by Foreign Investors

### Number of Announced M&A PRC deals



## M&A by Foreign Investors — Key Deals in 2006

- **Carlyle Group – Xugong Construction Machinery** 凯雷并购徐工
- **SEB – Suboer** 法国赛博 (SEB) 并购苏泊尔
- **InBev – Fujian Sedrin** 比利时英博啤酒集团收购对福建省雪津啤酒有限公司
- **Holcim – Huaxin Cement** 全球第二大水泥企业Holcim入股华新水泥
- **Morgan Stanley & IFC – Conch Cement**, 摩根斯坦利与IFC参股中国水泥业老大海螺水泥
- **Goldman Sachs – Henan Shineway** 高盛收购双汇

## **Law and Regulations:**

- ***PRC Company Law (Amended in 2005)***
- ***PRC Securities Law (Amended in 2005)***
- ***Catalogue of Industries for Guiding Foreign Investment ( Amended in 2004 )***
- ***Catalogue of Priority Industries for Foreign Investment in the Central-Western Region (Amended in 2004 )***
- ***Provisions on the Takeover of Domestic Enterprises by Foreign Investors (promulgated on 8 August 2006)***
- ***Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors (promulgated on 31 December 2005)***
- ***Measures for the Administration of the Acquisition of Listed Companies (promulgated on 31 July 2006)***

# Anti-Takeover Measures:

## **A Share Trading Strategy**

- a. Share Repurchase**
- b. Pac-man**
- c. White Knight**

## **B Management Strategy**

- a. Poison Pill**
- b. Scorched Earth Policy**
- c. Shark Repellents including provision of staggered board election, super-majority , fair price provision and other anti-ACQUISITION clause in AOA.**
- d. Dual Class Recapitalization**
- e. Cross shareholding**
- f. Sought for support from institutional investors and minority shareholder**
- g. Golden/Silver/Tin Parachutes**
- h. Greenmail (generally prohibited by regulatory authorities of various countries)**

## **C Legal proceedings based on anti-trust, disclosure, or other requirements.**

## Legal Restrictions in China:


- Share repurchase is restricted by the PRC Company Law.
- Scorched earth policy and most poison pill plans are highly restricted by the Company Law, Securities Law and the *Measures for the Administration of the Acquisition of Listed Companies*.
- Dual Class Recapitalization cannot be adopted due to articles 104 and 132 of the PRC Company Law.
- Golden/Silver/Tin Parachutes: Validity depending on the resolution made by the shareholders assembly
- Shark repellents: Staggered board election, super-majority, restriction on qualification of directors are permitted if agreed among shareholders and provided in the Articles of Association
- Restriction on the voting rights of majority shareholder difficult to adopt
- Fiduciary duties of directors and management not to stop an acquisition for their own interest or out of bad faith

## Other Defenses:

- **Market Access Restrictions: foreign ownership, shareholding percentage, etc.**
- **Economic security: control power in critical industry, which may affect the security of national economy; e.g. Carlyle vs Xugong**
- **Old and famous national trademarks or brand names, e.g. Quan Ju De roast duck**
- **Stated Assets: special approval needed**
- **Anti-privatization: MBO prohibited or restricted**
- **Anti-trust review**

## Anti-Trust Filing:

- If a party has a turnover in the Chinese market exceeding Rmb1.5 billion during the current year;
- The foreign investor has acquired 10 or more enterprises in related industries in China within one year;
- Any party to the takeover already has a market share of 20% in China;
- The acquisition will cause any party to have a market share of 25% in China.
- At the request by competing domestic enterprises, relevant functional department, or industrial associations for concerns of serious concentration or impact on market competition, subject to discretion by MOC and/or SAIC

A white, three-dimensional question mark is mounted on a black, cylindrical stand with a flat, circular top. The question mark is positioned on the left side of the stand. The entire scene is set against a dark, almost black background. The lighting creates soft shadows and highlights the edges of the white question mark and the black stand.

**Thank you!**