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Business Investment from China

Where is the money?

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Thanks to its strategic location, vibrant entrepreneurial spirit, business environment and the wildly popular movie *Beijing Meets Seattle*, the Puget Sound area has quickly become one of the most popular destinations for Chinese investment.

Individual Chinese buyers are contributing to the booming housing market in our region. Several major Chinese corporations, including Alibaba and Huawei, have chosen the Puget Sound area to start or expand their United States operations. An increasing number of Chinese companies are actively exploring investment opportunities in industries such as medical research, information technology, real estate development, hospitality and clean technology.

This raises an interesting question: How are these Chinese investors getting their investment funds out of China? The Chinese government has long imposed rigid foreign currency restrictions to prevent sudden currency outflows and to slow down the depletion of its foreign currency reserves. In fact, with the recent depreciation of the Chinese Yuan and the turmoil in China's stock markets, the Chinese government has been further tightening enforcement of its currency control rules, including the well-known annual individual limit of $50,000. Late last year, China's foreign-exchange regulator, SAFE, placed restrictions on cash withdrawal from overseas ATMs.

Chinese businesses, on the other hand, have had a comparatively easier time obtaining foreign currency for their overseas investment needs, thanks to a series of rules and regulations promulgated in recent years, particularly the 2014 Administrative Measures for the Verification and Record-filing on Outbound Direct Investments, known as the No. 9 Regulation.

> Sending money into the U.S. has become more difficult for Chinese companies as China tries to slow the outflow of foreign currency.

No. 9 Regulation simplified administrative review procedures for a variety of outbound investments made by Chinese companies. Many outbound investments under $2 billion are no longer subject to as comprehensive verification and review by the government as before. Further, under No. 9 Regulation, overseas investments made by a foreign subsidiary of a Chinese company are typically not subject to the registration requirement, unless such investment involves the provision of credit support by the Chinese parent company.

Under the new regulatory regime, Chinese companies interested in making foreign investments will often form a foreign subsidiary and then submit project information such as a contract, letter of intent, board resolutions approving the investment, appraisal report and audit report, to the appropriate Chinese government agency, which may be at the national or provincial level, for "registration," aka "record filing." For investment projects more than $300 million but less than $2 billion, or investments by centrally administered state-owned enterprises, the registration must take place with China's national level government. Registrations for smaller investment projects can be processed by provincial-level governments. Upon receipt of the government's acceptance of the registration, the Chinese company will be permitted to transfer funds from China for purposes of the investment.

We have learned from our corporate clients that their requests have historically been processed within a week of submission as long as they submit a concrete project plan. However, recent reports show that it is taking much longer for Chinese companies to secure the required confirmation. Sending money from China into the United States has become increasingly difficult for Chinese companies as China tries to slow the outflow of foreign currency. Problems include delayed wire transfers, longer-than-usual registration processing times, increased scrutiny of foreign-currency transactions and repeated requests for additional project documents by the reviewing authority.

Such trends may continue given the increasing signs of economic slowdown in China. For businesses interested in obtaining capital investments from Chinese investors, it is prudent to conduct due diligence to confirm well in advance that the Chinese investor has sufficient funds that are either already in the United States or have received the proper Chinese government confirmation for transfer. Failure to do so may lead to an unanticipated delay in closing a transaction.

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