Research on the Risk Evaluation and Prevention Strategy of Cross-Border Merger and Acquisition Projects of Energy Enterprises Under the New Situation

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Abstract: At present, the world is undergoing profound changes unseen in a century, and the international political and economic governance system is undergoing profound changes. Protectionism and anti-globalization are on the rise, and the normalization of COVID-19 prevention and control has intensified international investment and economic and trade frictions. The domestic and foreign environment faced by the overseas investment and merger of Chinese power enterprises is increasingly complex, and the potential risks and uncertainties are increasing. Combing the energy industry key risk points of transnational mergers and acquisitions, this paper analyse the energy industry transnational M&A project political risk and legal risk evaluation method, and put forward the company transnational M&A project political risk and legal risk prevention strategy.

1. THEORY AND METHODS RELATED TO CROSS-BORDER M&A RISKS

1.1 Comprehensive Risk Management Theory

With the outbreak of the financial crisis and the failure of various kinds of enterprise venture capital, people found that the risk is not caused by some independent factor, but in the form of compound. Therefore, risk management needs to be a comprehensive management of all risk factors from a holistic perspective. COSO Committee timely proposed a global risk management framework, aiming to provide a complete risk management operation process for enterprises in the process of production and operation. COSO framework lists the concept, content, characteristics and methods of risk management as the core content of enterprise comprehensive risk management theory. The framework will enterprise risk according to the goal of risk management is divided into the enterprise development strategic objectives, resources, core competitiveness and enterprise benefit of strategic risk, related to the enterprise profit level change management risk, financial risk related to enterprise financial activities and legal risks related to the use of laws and regulations, etc. COS The O framework uses the quantitative analysis methods such as risk assessment, risk preference and internal risk control to provide theories for the internal risk management and control of enterprises.[1]

1.2 Risk Control Theory

Risk control theory is an emerging discipline developed in the practice of international trade and enterprise management in the early 20th century. Later, with the use of mathematical probability theory and metrological analysis tools in the field of risk management, the relevant research of risk management tends to be systematic and standardized, and has become an important part of enterprise risk management.[2] In general, the main purpose of risk management is to determine the types of risks that do not bring favorable effects, and to diversify and transfer the risks. Hedges Think that insurance can be used as an important tool for risk management to resolve risks. Similarly, insurance also plays an important role in the risk management of Chinese enterprises going out.

1.3 Dynamic Risk Control Theory

The dynamic risk control theory is put forward by domestic scholar Shi Hongyan on the basis of in-depth research study on financial risks in mergers and acquisitions. The theory emphasizes the influence of information asymmetry on various uncertain factors. Because financial risks exist at any time, it is necessary to effectively supervise financial risks in mergers and acquisitions. [3]Under the "Belt and Road" enterprises in international mergers and acquisitions and influenced by various unpredictable factors cause all kinds of financial risk, need the different stages of mergers and acquisition of effective regulation and prevention, and mergers and

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acquisitions enterprises need to fully aware of the interests differences between the enterprise, in the merger and conceal information analysis of the financial situation and also need to have a comprehensive understanding of the financial situation, to gradually improve the initiative of mergers and acquisitions, and mergers and acquisitions companies need to understand the country's market operation mechanism and relevant laws and regulations.

1.4 Risk diversification theory

Markowitz Put forward the portfolio theory for the first time. From the perspective of return and risk, the theory uses quantitative analysis to study the characteristics of the portfolio, explains the risk avoidance behavior of investors, and proposes the optimal method of risk diversification portfolio. Therefore, R.E. Caves and G.V. Stevens proposed the risk dispersion theory from the portfolio theory.[4] R.E. Caves It is believed that diversified investment in different countries and regions reduces the correlation of enterprise investment returns, which is the best way for enterprises to avoid investment risks. When Chinese enterprises make diversified foreign investments abroad, the risk characteristics of different types of assets and their correlations will change with time, so they need to estimate and evaluate the investment projects regularly to reduce the occurrence of risks.

1.5 Risk hedging theory

With the continuous development of the financial market, credit derivatives have also made great progress, and risk hedging has also been widely used in credit risk management. Risk hedging can not only manage the risks within the system, but also change the occurrence probability of the risks outside the system according to the actual situation, and reduce the risk pressure of investors. Therefore, risk hedging strategy is a quick and efficient way to deal with interest rate risk and exchange rate risk. Operational risk hedging strategies and financial risk hedging strategies are the main management tools of risk hedging. Among them, the operational risk hedging strategy is mainly used in the long-term strategic management process of enterprises to improve the overall strength of the enterprise, enhance the competitiveness of the enterprise and prevent market risks. Financial hedging strategy can enable enterprises to use relevant financial instruments to avoid their exchange rate risks and interest rate risks in the process of foreign investment.

2. ANALYSIS OF THE KEY RISK POINTS OF CROSS-BORDER MERGERS AND ACQUISITIONS IN THE ENERGY INDUSTRY

2.1 Political Risk

At present, Chinese enterprises' outbound investment is facing increasingly strict security reviews and even political obstacles, which are mainly manifested in the increasingly strict regulations on foreign investment by the host government. In particular, the review of foreign investment in strategic and sensitive industries such as energy and electricity is tightening, and the investment threshold triggering the review is constantly lowered. National security reviews have always been the focus of foreign investors in major economies such as the United States, the European Union and Australia. These reviews in many cases have obvious industry discrimination, country discrimination and ownership discrimination. Such as the commission on foreign investment in the United States focus on defense, important infrastructure, core technology, energy and key resources related transactions and may be controlled by foreign governments, has the right to veto foreign investors in the United States, if necessary, may affect national security deals to the President to make a final decision. As of June 1,2020, a total of 13 EU member states have established a foreign investment security review mechanism.[5]

2.2 Legal Risks

Foreign anti-monopoly laws are relatively sound, and Chinese companies are vulnerable to scrutiny.Due to the great differences in the laws and systems at home and abroad, some Chinese enterprises, including the power grid industry, do not understand the laws of the countries and regions where the acquired enterprises are located, so the enterprises will inevitably encounter many legal risks in the process of merger and acquisition. For the pursuit of excess profits, multinational companies often ignore the environmental regulations of the host country, but this comes at a price. Exxon Mobil, for example, paid $4 billion in the 1989 oil spill; Chevron was accused of dumping toxic wastewater in Ecuador, and local authorities demanded $1 billion for damages and $1.5 billion for environmental damage in the Niger Delta.

The concentrated embodiment of the negative effect of multinational corporations is monopoly. Foreign capital monopoly will control the market of the host country, destroy the original economic order of the host country, restrict the growth and development of the host country industry, affect the independence of the national industry of the host country, and even control the national economic lifeline of the host country, and threaten the industrial security and national economic security of the host country.

2.3 Exchange Rate Risk

Exchange rate risk is the impact of exchange rate changes on the assets, liabilities, income and expenditures of enterprises denominated in foreign currencies. The pandemic has put global financial markets in a more volatile environment, and sharp exchange rate fluctuations are the most direct problem facing cross-border mergers and acquisitions. In particular, the United States, the European Union and other major economic developed entities in the West have not escaped the impact of the epidemic, and the exchange rate conflict between major currencies around the world has intensified, making it difficult to effectively predict the exchange rate trend. With the increase of the scale and distribution range of cross-border mergers and acquisitions of China's power grid enterprises, the currencies involved gradually increase, and the situation of exchange rate risk is grim. At present, the currencies of Brazil, the Philippines and other developing countries have great depreciation pressure, and the company faces a large exchange rate risk in the conversion of overseas assets of developing countries into US dollars or RMB, which is not conducive to the expansion of EPC, equipment export and other businesses in the market of developing countries.

2.4 Compliance Risk

Transnational investment projects in the power grid industry often have large investment scale and long cycle. Host laws and regulations on environmental protection, labor relations, taxation, production safety, and laws on anti-corruption, intellectual property rights, export control and other laws of host countries, third countries and even international organizations may cause compliance risks of power investment enterprises.

With the implementation of the global carbon neutral target policy and the deepening of the green "Belt and Road" construction, how to properly handle and undertake the responsibilities of ESG (Environment, Social and Governance, namely environmental, social and corporate governance), for international project development and operation, and the sustainable and high-quality promotion of overseas business activities has become a key topic. In the international business disputes reported in recent years, the conflicts between Chinese enterprises and local workers, communities and the environment are worth thinking about, especially the disputes caused by oil and gas exploration, mineral exploitation and project construction, which are not only the economic disputes of traditional partners. In particular are the risks of environmental compliance. Due to the impact of COVID-19 and protectionism in various countries, environmental compliance risks have become a global concern, and have further increased from the traditional environmental pollution problem to the impact on the sustainable development of low-carbon cycle. The cross-border merger project of the power grid involves the ESG responsibility of the investor and the investor, so it faces potential environmental compliance risks.

3. POLITICAL RISK AND LEGAL RISK PREVENTION STRATEGIES FOR CROSS-BORDER MERGERS AND ACQUISITIONS

3.1 Perform Detailed due Diligence on Cross-Border M&A Projects

Combine on-site and desk investigation to carry out in-depth and comprehensive due diligence on overseas merger and acquisition projects. In addition to carrying out the data review related to the project, we attach importance to the site investigation, such as in-depth interviews with the management and employees of the project company, and interviews with the government departments of the investment host country, so as to find the problems that may exist in the project itself and can not be found through simple written data review. Through detailed due diligence, try the best to understand the assets, financial history, debt, labor and other problems, and the possible litigation situation of the target company itself. In the face of the constantly changing international situation, in the process of due diligence, we should attach importance to dynamic analysis and evaluation, evaluate the possible impact of potential environment and situation changes on the project, and consider the feasibility evaluation and bid quotation of the project to avoid compliance disputes or economic losses or even penalties in the future.

3.2 Strengthen Research on International Investment Rules and National Policies and Laws

We will closely follow the latest developments in the international political and economic situation and strengthen our analysis. Follow up and collect information related to compliance risks, such as investment and operation rules of host countries and international organizations, bilateral and multilateral investment and economic and trade agreements, study and strictly abide by overseas laws and regulations, and reserve relevant compliance knowledge. We will conduct in-depth studies on the laws, regulations and regulatory requirements of the target countries and regions on foreign investment access, investment review, industry regulation, corporate governance, environmental protection, and intellectual property rights, as well as the multilateral and bilateral investment and trade agreements signed with the Chinese government. At the same time, we should attach importance to the relevant rules of the WTO, conduct in-depth studies on relevant agreements and agreements on trade in the WTO, trade in goods and services, fully grasp the prohibitive provisions, and clarify the red line and bottom line of overseas investment and business operations, so as to ensure the compliance of investment and business operations when conducting specific business.

3.3 Strengthen the Construction of Overseas Compliance Management System

First, establish and improve compliance management organizations, and pay close attention to compliance risk training and related system construction. In the preparatory work, it is clear that key risk areas are the premise of carrying out compliance management work, and a compliance management organization with clear responsibilities should be established to provide organizational guarantee for compliance management. Second, it is to establish the whole life cycle of compliance risk control mechanism. In the whole life cycle of the project, the compliance risks are irregularly identified and fed back through the overseas project development subjects and the overseas institutions of enterprises, the compliance risk assessment is decomposed and refined, and the control points in key risk areas are continuously supplemented.

3.4 Pay Close Attention to and Actively Respond to the Investment and Management Concepts Related to Green Development

In the process of carrying out overseas projects, we should firmly establish the concept of green and sustainable business operation and development, pay attention to energy conservation, environmental protection and consumption reduction, learn from the carbon asset management experience of leading foreign enterprises, abide by the operation rules of the carbon trading market in the countries and regions where the projects are located, and improve the carbon emission performance capacity of overseas project companies. Due to the development of electricity, international engineering (such as green construction and EPC engineering construction) in the power industry is greatly affected by local social conditions in the implementation process due to the characteristics of large investment, long cycle and fixed location. Therefore, in the process of engineering construction and management, we should uphold the flat.

4. CONCLUSION

The key risk points of cross-border mergers and acquisitions in the power grid industry mainly include political risk, legal risk, exchange rate risk, compliance risk, etc. Among them, the political risks mainly include the risk of political transition, political protest risk, government review risk and so on. Legal risks mainly include long-arm jurisdiction risk, trade embargo risk, etc. Exchange rate risk is mainly due to the impact of violent exchange rate fluctuations, thus on the value of overseas assets and financing costs. Compliance risk mainly refers to the potential risks caused by the legal provisions on environmental protection, labor relations, taxation, production safety and other aspects, and the laws and regulations of the host country, third countries, and the cross-border mergers and acquisitions of the power grid industry.

This paper studies and puts forward the main strategies for political risk and legal risk prevention of cross-border mergers and acquisitions, mainly including: detailed due diligence of overseas projects, strengthening international investment rules and national political and legal research, building a compliance management system covering the control before and after the event, and studying the exit mechanism of overseas investment. In the process of overseas investment operations, should pay attention to overseas due diligence, make national compliance risk reserve research, improve the overseas compliance risk management system, strengthen cooperation and communicate with the relevant parties, pay close attention to and actively response to green development related investment management idea, combined with the RMB internationalization process to promote overseas project RMB settlement, overseas investment exit mechanism.

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