

# Cross-border M&A: 跨境并购

## *Process and Structural Considerations* 流程及交易考虑因素

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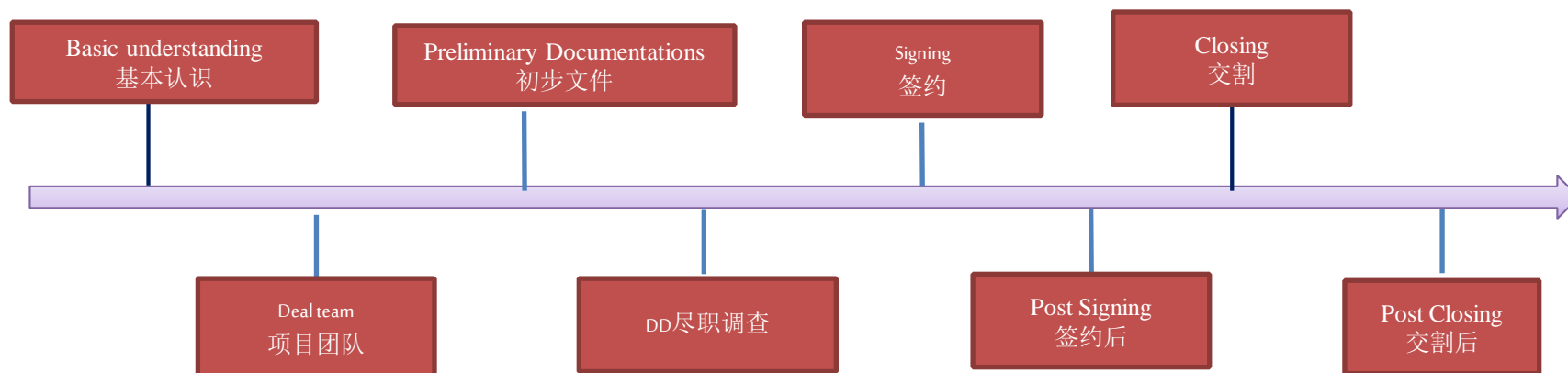
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# Process: Key Milestones

## 流程：重要里程碑



# Process: Key Milestones

## 流程：重要里程碑

- Basic Business Understanding of the Parties

各方对业务的基本了解

- Building of the Deal Team

组建交易团队

- Business team; financial advisors; legal advisors; accountants; other consultants

业务团队，财务顾问，法律顾问，会计师，其他顾问

- Coordination and communication are critical

协调和沟通是关键

- Preliminary Documentation

初步文件

- Letter of Intent / Term Sheet / Non-disclosure Agreement (NDA) / Exclusivity Agreement

意向函/条款清单/保密协议/排他协议

# Process: Key Milestones

## 流程：重要里程碑

- Due Diligence

尽职调查

- Signing of Definitive Agreements / Public Announcement

签署最终协议/公告

- Post-Signing Activities

签约后的工作

– Third Party Consents, Regulatory Approvals, Shareholder Approval

第三方同意，监管审批，股东批准

- Closing

交割

- Post-Closing Activities / Transition Period (if applicable)

交割后的工作/过渡期（如适用）



# Types of Transaction – Equity vs Assets

## 交易类型 — 股权收购 vs 资产购买

### Equity 股权收购

- **Advantage 优势**
  - ✓ The transaction is relatively simple – equity transfer 交易相对简单— 股份转让;
  - ✓ Obtain the targets current permits and contracts 获得目标公司现有许可、合同。
- **Disadvantage 劣势**
  - ✓ Target's liabilities 目标公司负债
  - ✓ Detailed due diligence 详细尽调

### Assets 资产购买

- **Advantage 优势**
  - ✓ Flexibility of choice 灵活选择
  - ✓ No concerns over bearing the target's liabilities 不用担心承担目标公司负债
  - ✓ Eases due diligence 尽调相对容易
- **Disadvantage 劣势**
  - ✓ Unable to obtain target's licences and permits 不能取得目标公司的许可
  - ✓ Need to enter into commercial contracts 需重新签订商业合同

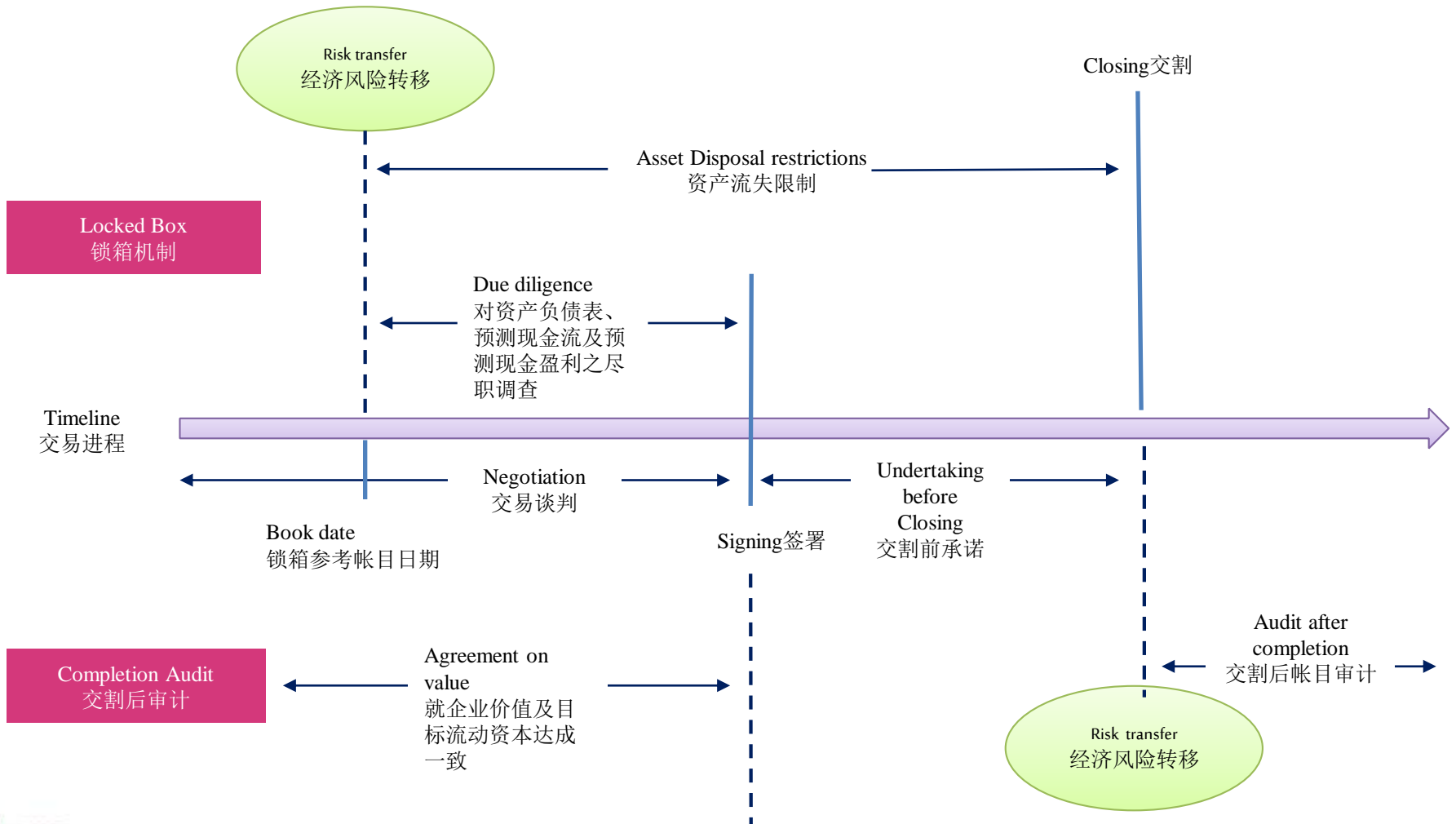


# Buyer – Domestic entity vs offshore entity

## 收购主体 — 境内实体 vs 境外实体

Consideration 考虑因素	PRC entity as Buyer 利用境内实体	Offshore entity as buyer 利用境外实体
Dividends 利润的处置	从目标公司所获得的利润，可以股息方式派给境内实体；如果将来需要将股息用于境外其他投资，则须取得相关中国政府机关批准	从目标公司所获得的利润可以保留于境外并用于其他境外投资
Overseas platform 海外平台的建立	No overseas platform 利用境内实体作为收购方，未能在集团内建立一个海外平台	Overseas platform may simplify approval procedures 可把境外实体打造成为海外平台，以后通过其进行海外收购，可以相应简化每一个新的境外投资项目向有关中国政府机关提出申请和审批的程序
Tax 税务负担	PRC shareholder is subject to dividends tax and income tax 境内实体需要就股息和有关退出所得的利润纳税	It may be structured to reduce tax liabilities 如境外实体有实质性经营业务满足中国企业所得税法中反避税条款的要求，则可以减少税务责任
Exit 退出的灵活性	PRC governmental approval will be required 退出时需要商务部及/或其他有权机构批准，并办理相应的外汇登记程序	PRC governmental approval may not be necessary 境外实体所持目标公司股份的转让，视受让方性质及具体交易结构，无需境内审批或所需境内审批程序较为简化
Risk insulation 限制风险	PRC shareholder may be affected by risks on the target company 如果出现违约的情况，或者是目标公司出现问题以至影响股东，则境内实体会直接受到影响，并直接承受风险	PRC entity can be insulated from risks of the target company 如果出现违约的情况，或者是目标公司出现问题以至影响股东，则由境外实体来承担，境内实体可避免直接承担风险

# Purchase Price Adjustment 交易对价调整机制





# Purchase Price – Earn outs

## 交易对价 – 对赌机制

- Incentive to incumbent management/owners  
对在职的管理者/所有人的激励
- Use as a last resort upon failure to agree on valuation  
建议只有当价格达不成一致时才最后使用
- Based upon the achievement of certain financial and operating targets  
基于某些财务和运营目标的实现与否而确定
- Inherent tension between seller's desire to maximize earnings in earn-out period and buyer's longer-term objectives  
卖方希望在对赌期盈利最大化，和买方的长期目标，之间的冲突

# Other Factors

## 其他因素

- Liability Management

### 责任管理

- Avoidance of liability 避免责任
- Insulate buyer against liability 隔离买方风险
  - Use of subsidiary structures 使用子公司结构
  - Asset acquisitions (with some caveats) 资产收购

- Timing

### 时间进度

- Anti-trust Considerations

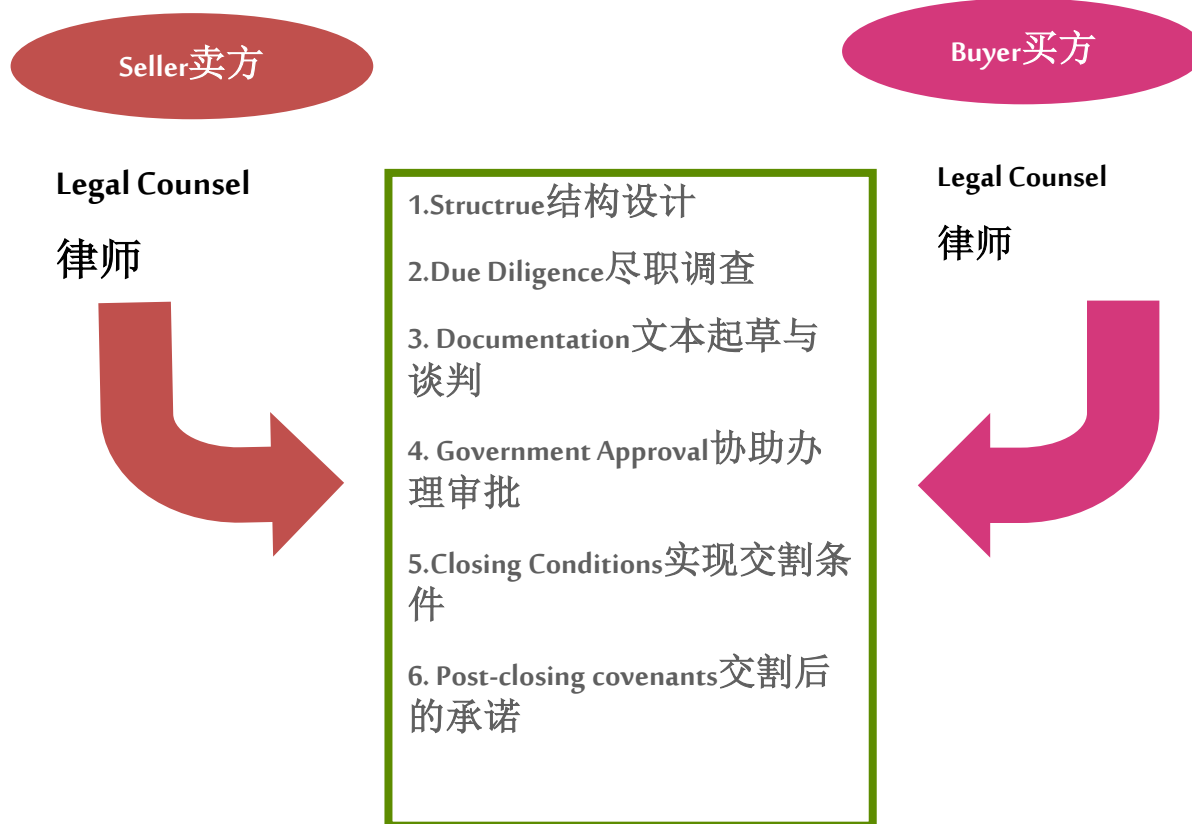
### 反垄断审查因素

- Tax and accounting treatment

### 税务和会计影响

# Legal work

## 律师的工作



# THANKS

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