

## Outline of Talk

Session II, 14:00 - 15:30, September 5, 2014 at China America Legal Forum

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I am a partner based in Beijing of White & Case, a global law firm, in charge of our China practice. A key practice of the firm's China practice for the past 10 years is representing Chinese banks in financing Chinese companies' outbound activities, including sales of equipment, EPC contracting, mergers and acquisitions and privatization (e.g., delisting). Sectors involved include telecommunications, mining, energy, technology, real estate, automobile, shipping and agriculture.

### Risks and challenges.

1. The health and strength of Chinese banking sector is a relatively recent phenomenon. As recent as 2003, the entire sector was near technical insolvency. Most Chinese banks have limited experience and geographic coverage to carry on cross-border lending transactions.
2. Many Chinese companies, particularly large SOEs, are highly leveraged or highly regulated (as in the case of listed companies). As a result, projects are often "forced" to be financed on a "project finance" basis as lending at the group level is not an option.
3. In the meantime, the speed of Chinese companies' outbound drive outpaces Chinese banks' resources to identify, analyze and resolve risks.
4. Herein lies the dilemma. Some banks require existence of "China component" to justify lending, which in turn further reduces their competitiveness as banks. Some resort to seeking guarantee or comfort letter from Chinese companies at their group level which may give them political cover or an opportunity to justify their lending decision in front of the government.
5. Cost of funding, particularly in US dollars, is on the rise for Chinese banks which reduces their competitiveness vis-a-vis their foreign counterparts.
6. At the same time, long maturity and lack of secondary market for Chinese banks' outbound loans weigh on their balance sheet and increase their risk exposure.
7. "China component" sometimes has the unintended effect of "hijacking" banks. Problem loans are often dressed up as "patriotic" and "political".
8. Litigation risks are on the rise. Chinese banks have been accused for providing unfair competitive edge to Chinese companies. They have been sued in foreign courts on the basis of lenders' liability theory and anti-terror legislations.