

SCHECHTER + CHOU, INC.

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S+C NEWSLETTER Volume 1, Issue 4, November 4, 2005

GREETINGS...

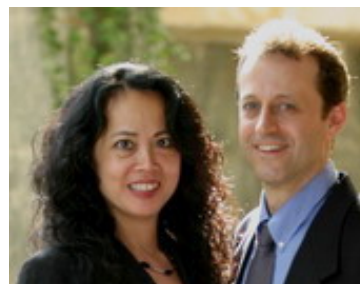
Ni hao and greetings to our Chinese and American friends. Schechter + Chou recently returned from a trip to China. We visited both Shanghai and Beijing where we enjoyed the excellent October weather. Please enjoy the latest copy of our newsletter. Thank you.

Sincerely,
Aaron Schechter and Frances Chou

HOT TOPICS...

Carlyle Group Closing the Deal to Acquire Xuzhou Construction Machinery Group, Inc.

The private-equity firm Carlyle Group recently agreed to pay \$375 Million to acquire an 85% interest in a Chinese construction-equipment manufacturer, Xuzhou Construction Machinery Group, Inc. The transaction took almost two years to close as Carlyle and local Chinese government officials wrangled over issues, including cost cutting and staff reductions. This transaction is significant, because Carlyle is buying a majority interest in a state-owned enterprise.



During the process, Carlyle brought in executives from another Carlyle-owned firm, U.S. based Grand Vehicle Works, a maker of transportation products, whose executives helped the fund to determine what it would take to expand the acquisition's business from just the domestic market in China and into overseas markets in order to make the company an attractive JV partner. Further, the deal was different from leveraged buyouts in the U.S. and Europe, where private-equity groups put up only one-third of the total purchase price and finance the rest with debt on the target company's balance sheet. This deal may be a blueprint for further deals by other firms looking to get into the China market, and may signal an era of bigger deals by foreign private-equity funds.

Update on Textile Quotas....

Many economists initially feared that when global textile quotas expired on January 1, 2005, Chinese garment manufacturers would take over the textile market and would crush the job market in other developing countries and destroy their economies. Starting June, 2005, the "safeguards" quotas were placed on Chinese textiles by the U.S. and others during this past summer, as a way of limiting China's exports and protecting jobs for domestic textile manufacturers, and are allowable to last for a few years per the World Trade organization agreements. The interesting tale regarding the lifting of quotas is that what has transpired so far is far different than many had originally predicted. By eliminating quotas and letting the free market system work, prices dropped, and as is often the case, lower prices led to a stronger demand for goods from consumers and an over 12% increase in total apparel imports in dollar terms year-on-year for the first half of 2005, before the "safeguards" had been put into place. While Chinese garment exports grew a whopping 48% for the first 6 months of 2005 and China remains a powerful force and competitive threat to other competing countries, almost every developing country including Cambodia, Sri Lanka, Indonesia, Pakistan, Thailand, Bangladesh and the Philippines have seen their exports increase as well. Some Chinese manufacturers have moved production over to these countries legally, in anticipation of the "safeguards" and a possible agreement between the U.S. and China to cap the growth in a large variety of Chinese garment imports over several years.

RECENT APPEARANCES....

On September 23, 2005, Frances Chou was the speaker on "Legal Issues Relating to Export into China" at a conference hosted by the U.S. Department of Commerce, West Los Angeles office, on the subject of "Risk Management Issues for Exporters".

On October 17, 2005, Schechter + Chou spoke in Beijing at a seminar hosted by Business Management Review Magazine, a subsidiary of China Business News, on "Business and Legal Issues in Doing Business in the U.S." For more information, please go to <http://biz.163.com/special/s/00020S2P/samerbiz.html>. Please note, that this website is in Chinese.

On October 19, 2005, Aaron Schechter was interviewed on CCTV-9 television news show "Biz China" during the "People in the Biz" segment. To watch the interview, please go to <http://english.cctv.com/program/bizchina/20051026/100572.shtml>.

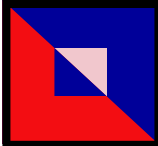
On October 27, 2005, Frances Chou spoke on the topic of "Legal Do's and Don'ts" for the California International Trade Development Center, Riverside branch.

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LEARN THE ROPES....

Our Recent Trip to China..

During our recent trip to China, we deepened and extended our relations with Chinese government officials and agencies, at both the city and central government levels, and discussed with them different ways to work together in order to facilitate cross-border cooperation and business between the U.S. and China. We also met with several Chinese companies who are in the process of pursuing their U.S. business strategy. Further, we met with a Chinese distributor in order to facilitate U.S. companies in selling their products into the China market. Lastly, we engaged in various promotional activities, including interviews with one newspaper and two magazines. Also, Aaron Schechter was interviewed on CCTV-9 television news show "Biz China" during their "People in the Biz" segment.

UPCOMING TALKS....

On November 17, 2005, Schechter + Chou will be speaking on the topic of "Importing Products from China" for the California Center of International Trade Development, Hawthorne branch.

On January 19, 2006, Frances Chou will be the speaker on "Legal Issues Relating to Export into China" at a risk management conference hosted by the West of LA office of U.S. Department of Commerce.

SAVE THE DATE....

Schechter + Chou is a "partnering organization" for the **2005 China Global Conference** on **November 15, 2005**, hosted by the **Asian Pacific-USA Chamber of Commerce**. This conference aims to provide information and resources for developing business successfully in China. There will be **over 32 speakers** from a variety of industries from **both the US and China**. **It is an excellent event**. For more information, please see the attached flyer. To register online, please visit <http://www.gatewaytochina.us/>.

The UC Berkeley, Haas School of business, LA Alumni Chapter will present their China event on February 2, 2006. Aaron Schechter is a co-leader for the event and will serve as the moderator. More details will be provided in Schechter + Chou's January 2006 newsletter.

LEGALLY SPEAKING...

The following is provided by Y.F. Chou, Prof. Corp. For questions, please contact info@yfchou.com.

What Kinds of Deal Protection Clauses Should Be Included in a Merger Agreement?

More and more cross-border merger offers have been, and will be, made to purchase target companies between the US and China. Last year, Lenovo's purchase of IBM's PC unit made headline news, which became one of the first major purchases of a US company by a Chinese company. Most recently, CNOOC made an offer to purchase Chevron, and Haier America also made an offer to purchase Maytag. Each of these two offers was made after the respective target company had announced a merger agreement with somebody else. In general, after the signing of a merger agreement, it will take up to 4 months to close the deal. Therefore, what kinds of deal protection clauses should be included in a merger agreement become a major concerns of a potential buyer.

The most common protection clause is a "no shop clause," which prevents the target company from actively seeking other bids. However, this clause does not prevent the target company from providing information to, or negotiating with, a third party who makes an unsolicited bid, after the target board makes an affirmative finding that the unsolicited bid is superior to the original offer, and that the unsolicited transaction is reasonably likely to close. Another kind of protection is to include a "termination fee," which requires the target company to pay a termination fee, if the target company elects to terminate the merger agreement, if the target board publicly changes its recommendation of the buyer's offer and the buyer elects to terminate the merger agreement, or if the merger agreement is terminated for other specified reasons. Some other common protection clauses to be included involve the voting on the merger agreement by the shareholders, such as a "force the vote" clause, a "quick shareholder vote" clause, a clause relating to shareholder agreements or a clause relating to stockholder rights plan.

A potential buyer should be aware that in general, the board of the target company has a continuing fiduciary duty to its shareholders and shall seek the best course of action for its shareholders. Therefore, if the merger agreement includes too many restrictive clauses, a court may find that the board of the target company breaches its fiduciary duties by accepting too many restrictive clauses and may refuse to enforce the restrictive clauses on behalf of the buyer. The determination of the reasonableness of the deal protection clauses is highly fact-specific for each case.

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