

财务尽职调查 - 美国公司的高风险领域

AUTHOR 作者



游天羽

Tyrone You

CPA, Manger

注册会计师, 经理

tyou@uhy-us.com

212 381 4658



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对于中国投资者来说, 收购或投资一家美国公司是一个有挑战性的过程。尽管中国投资者可能了解相应的行业, 目标公司的业务及其管理团队, 但财务尽职调查是对投资者提供谈判砝码和控制投资风险的非常必要和有效的步骤。由于中美之间会计实务和法律体制存在巨大差异, 中国投资者对美国公司存在的部分高风险领域缺乏深入的了解。这些高风险领域往往是由于中国不存在类似的规定或类似的问题, 导致中国投资者对此类问题的忽视从而产生严重的后果。

中国投资者经常会忽略的一个领域是与环境相关的负债 (Environmental Liability)。对于属于石油, 自然资源开采和化学等行业的美国公司来说, 资产退废负债 (Asset Retirement Obligation) 是一项重要的负债。该类负债每年需由环境专业人员进行评估并在流动负债和长期负债中列示。不正确的评估和列示可能导致高估的营运资金及并购价款。

另外一个高风险的领域是采用固定收益计划的养老金类负债 (Defined Benefit Plan)。该固定收益计划要求使用复杂的会计规则来列示预估的养老金类负债 (Pension Liability)。此类负债的准确性依赖于预估的薪金涨幅, 预估的自然死亡率和精算师的准确计算。虽然目前大部分并购都将目标公司的长期负债排除在外, 但是养老金类负债中有一部分属于流动负债, 未准确估算的流动负债可能会导致高估的营运资金及并购价款。

第三, 美国公司在涉及外国投资者的并购时需要通知美国外资投资委员会 (The Committee on Foreign Investment in the United States, 简称“CFIUS”)。美国外资投资委员会要求对此类并购进一步调查的比例可能会高达40%。该委员会的主要顾虑是并购目标公司的技术或资金可能会在并购后转移到受制裁的国家。中国投资者应事先考虑美国外资投资委员会的批准对并购完成时间的影响。因此, 中国投资者应将美国外资投资委员的批准作为签署并购协议的前提条件之一, 并要求卖方承担相应的支出和延误所造成的损失。

最后, 虽然美国有成熟的会计规则和法律制度, 但是法律并不要求私人拥有的公司 (Private Companies) 每年做审计或向政府管理部门提供规范的年度财务报表。因此, 很多中小型公司缺乏规范的会计政策和财务流程。中国投资者往往需要在收购后利用内部资源和外部顾问来帮助建立内控流程并实施必要的会计政策。

作为控制上述风险的一个有效手段是在投资谈判中要求设置共管账户 (Escrow Account) 并将一部分收购款暂时存放在这个账号里由中立的第三方控制, 以补偿在并购交割之前未发现的负债及/或低估的负债。财务尽职调查的过程就是分析估计这些潜在负债, 一方面帮助投资人降低收购价, 另一方面充分合理的估计潜在负债, 为投资人提供依据且说服目标公司就共管账户的金额达成一致。

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