

中国公民购买美国矿业权益 Chinese Person Buying US Mineral Interests



中国企业真的不能够购买美国矿业权益吗？
Chinese firm cannot buy U.S. mineral interests?

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罗战先生除了是一名律师，注册会计师之外，还在美国丹佛大学法学院任兼职教授。他的观点被包括《福布斯》，《投资人新闻》，《街》《丹佛商业期刊》，《石油天然气投资人》，《苏瀑商业期刊》在内的著名期刊杂志引用过。在成为律师以前，罗战在美国四大会计事务所任职。罗战先生目前任罗战律师事务所的合伙人。

罗战先生每年都在全美范围内的研讨会上公开演讲多次，他受邀演讲过的组织机构包括：

- Regis Campfield's Notre Dame 税收和遗产规划研究所(2007)和(2009)
- Lonnie McGee 南加州税法及遗产规划论坛(2006)，(2007)，(2009-2011)
- 芝加哥律师协会 (2004)，(2007-2010)。

罗战先生还在《美国遗产规划杂志》，《美国实用遗产规划期刊》，以及《史蒂夫·雷姆博格信息服务速递》(Leimberg LISI)上分别发表了系列文章。同时他也和其他作者联合出版过以下著作：

- 《资产保护规划指导》，CCH 出版；
- 《资产保护战略》，美国律师协会出版；
- 《资产保护战略二》，美国律师协会出版

美国外商投资委员会 Committee on Foreign Investment in the United States (CFIUS)

- 美国外商投资委员会对国家安全的考虑
Reviews foreign investment for U.S. national security concerns



A. 美国外资投资委员会

在中国的投资界，一直存在一个误区，认为中国企业是不能够购买美国矿产权益的。造成这个误区的一个很大的原因是美国外资投资委员会在过去很多案例上的介入。美国外资投资委员会是美国跨部门的政府机构，它负责审查会对美国国家安全造成隐患的外商投资。

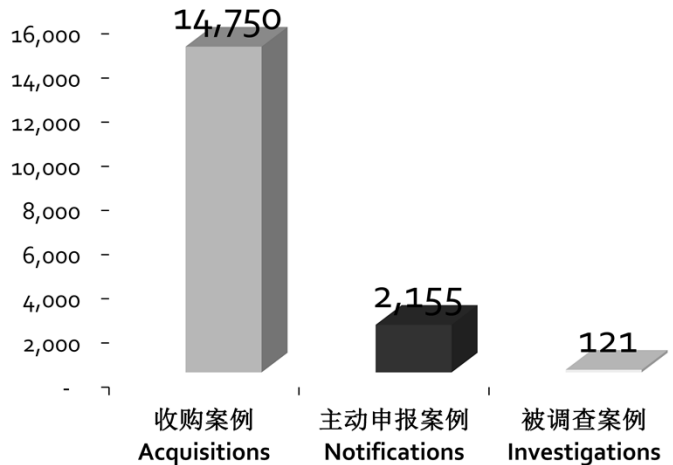
当一个美国公司被一个外国公司计划收购时，它可以汇报给美国外资投资委员。对于大的交易，这是比较明智的做法，因为美国外资投资委员会之后如果发现该收购会对美国国家安全造成威胁，它会要求收购计划停止。从提交收购计划书开始，美国外资投资委员会需要 30 天时间来批准收购交易或者开始法律上的准予程序。

A. Committee on Foreign Investment in the U.S.

In China, there is a general misperception that a Chinese firm cannot buy U.S. mineral interests. Much of this misperception has been generated by several key high profile cases involved the Committee on Foreign Investment in the U.S. (“CFIUS”). CFIUS is a U.S. interdepartmental governmental agency that reviews foreign investments that may have an impact on U.S. national security.

A U.S. company proposing to be acquired by a foreign company may voluntarily notify CFIUS of the proposed acquisition. For large transactions, this may well be the most prudent course of action, because the U.S. government may require that an acquisition be divested if later they find such acquisition is a threat to U.S. national security. From submission of the proposed acquisition, CFIUS has a 30 day period to either authorize the transaction or begin a statutory approval.

1988-2012年数据统计 Statistics



1. 数据统计

据统计数据表明，大部分的收购计划都在 30 天内被批准。事实上，自 1988 年以来，美国外资投资委员会对 121 例外资收购进行了调查。一旦开始调查，委员会会另外用 45 天决定批准还是不批准。如果不被批准，那么委员会会要求欲收购的外商撤资。

1. Statistics

Most acquisitions are authorized in this 30 day period. In fact, since 1988, CFIUS has investigated 121 potential foreign acquisitions. Should a proposed acquisition be investigated, CFIUS has an additional 45 days to either approve the acquisition or deny the acquisition. If a denied acquisition has already taken place without approval, then CFIUS will order the divestment of such acquisition.

审查数据

Investigation Statistics



- 只有121收购被调查 Only 121 investigations
- 89个通过；18个主动放弃收购
89 allowed to proceed; 18 withdrawn
- 剩下14个经由总统决定，一半被最终否决
14 decided by the President – ½ denied
- 被否决的大约有一半为中国企业
Approximately ½ denied firms Chinese

其中有 89 个案子的调查通过，也就是说收购计划被批准继续进行，有 18 个主动放弃收购，剩下 14 个经由美国总统判定，大约有一半被否决继续进行。

2. 审查数据

不幸的是，在失败的案例中，大约有一半收购方为中国企业。

Eighty-nine of the investigations were allowed to proceed, eighteen applications withdrawn, meaning that the acquisition was allowed to move forward. The President of the United States made a decision whether the acquisition would be allowed in only 14 cases. Of approximately one-half were denied to proceed forward.

2. Chinese Statistics

Unfortunately, in the denied cases, approximately one-half of the firms denied were Chinese firms.

失败的中国案例回顾

Review of Some Chinese Cases

- 2003年 和记黄埔有限公司 - 环球电讯的光纤通信网络业务
2003 Hutchinson Whampoa Ltd. of Global Crossing's Fiber Optic Network
- 2005年 中国海洋石油公司一竞购美国石油巨头尤尼科
2005 China's National Offshore Oil Corporation of Unocal
- 2011华为技术
2011 Huawei Telecommunications
- 2013年 劳斯集团
2013 Ralls Corporation

3. 重要案例回顾

2003 年香港和记黄埔有限公司被拒绝收购美国环球电讯的光纤网络业务。理由是这会威胁到美国的网络监听。在 2005 年，中国海洋石油公司计划收购美国石油巨头尤尼克，美国外资投资委员会表达了对石油过分集中的担忧，很多评论家质疑了委员会的立场。但最终尤尼克接受了另一家美国公司的低价收购。在 2011 年中国华为技术有限公司计划以 200 万美金收购美国三叶系统公司的专利受阻。另外在 2013 年中国劳斯集团在收购了美国俄勒冈州的一些风力发电项目公司后被要求剥除其中的四家，理由是发电项目的地点和美国军事基地太靠近了。

3. Review of Some of the Cases

In 2003 Hutchinson Whampoa Ltd. was not allowed to acquire Global Crossing's fiber optic network. The concern was that the U.S. would not be able to implement wiretaps. In 2005, China's National Offshore Oil Corporation attempted to acquire Unocal. CFIUS expressed a concern that there would be too much concentration of oil. Many commentators have highly questioned CFIUS's findings. Anyway, due to the publicity in this case, Unocal accepted a lower offer from a U.S. firm. In 2011 Huawei telecommunications was prevented from buying \$ 2 million of patents. Finally, in 2013, Ralls Corp. acquired some wind farms in Oregon and being ordered to divest four of them because they were too close to military bases.

其他国家的失败案例 Other Country Denials

不



- 法国汤姆逊半导体公司-收购美国LTV missile公司
Thomson CSF France – acquiring LTV Corps missile business
- 2005年迪拜环球港务集团收购大英轮船公司
2005 Dubai Ports of the World acquiring Peninsular and Oriental Steam Navigation Company

4. 其他国家收购案例回顾

和其他国家相比，中国公司在收购美国企业的历史上有更多被美国外资委员会拒绝的比例，不过也有一些重要的失败案例的收购公司是来自其他国家的。其中一个法国汤姆逊半导体公司被拒绝收购美国 LTV missile 公司，另一个是印度迪拜环球港务集团在 2005 年的大英轮船公司收购计划，尽管美国外资投资委员会一开始批准了迪拜环球港务收购大英轮船，但由于国会对收购强烈的反对，大英轮船最后卖给了美国国际集团的资产管理部门。美国国会反对的理由是大英轮船管理着美国 22 个主要港口，收购会对港口造成潜在的恐怖威胁。

4. Review of Some Other Country Denials

While Chinese companies have had a statistically larger percentage of denials when compared to all other countries, there have been some key cases where companies from other countries were denied acquisitions. For example, Thompson CSF France was not allowed to acquire LTV Corps missile business. Also, while CFIUS initially granted Dubai Ports to acquire Peninsular and Oriental Stream Navigation Company, congressional reaction was so strong against the acquisition that it was sold to American International Group's asset management division. Peninsular and Oriental Stream Navigation managed 22 major U.S. ports. The concern was possible terrorist attacks on these ports.

被美国外商投资委员会通过的案例

Some CFIUS Approvals

通过



- 2005年联想收购微软个人电脑业务
2005 Lenovo acquisition of IBM's personal computer line
- 2005年印度维第什•桑切•尼干姆有限公司收购美国泰科国际有限公司海底光纤电缆业务
2005 Videsh Sanchar Nigam Ltd. acquisition of Tyco International's undersea fiber optic cable

5. 一些通过的案例

2005年，美国外资投资委员会批准了中国联想公司对美国微软个人电脑业务的收购。同年，印度维第什•桑切•尼干姆有限公司也被批准收购了美国泰科国际有限公司的海底光纤电缆业务，但为何委员会认为这次收购不会对美国监听系统造成影响却不得而知。

5. Some CFIUS Approvals

In 2005, CFIUS approved Lenovo's acquisition of IBM's personal line of computers. Also, In 2005, Videsh Sanchar Nigam Ltd. was allowed to purchase Tyco International's undersea fiber optic cable. It is uncertain why this acquisition did not also present an issue regarding the U.S.'s ability to wire tap the system.

易被美国外商投资委员会 否决的领域

CFIUS Probably Would Deny



铀
Uranium



萤石
Fluorite



钯
Palladium

- 稀土金属 Rare Earth Metals
- 靠近军事基地的投资 Close to a Military Base

6. 美国外资投资委员为通常会拒绝的案例情况

虽然大部分的中国公司被允许购买美国矿业权益，但美国外资投资委员会通常会对三种情况做否决。首先是铀，因为铀是用来生产化学武器的金属。

其次是稀土金属。稀土金属主要被用于生产电，手机电板，汽车的催化转换器，以及炼油仪器。目前，中国政府和中国企业大约占有了世界 95%到 97%的生产力。有 7 种稀土矿物是由 17 种稀土元素组成的，它们是易解石、氟碳铈矿、含镧硅酸盐矿物、萤石、独居石、钯、锆石。其中最重要的一种是钯，它主要被用于汽车催化转换器，牙科治疗和珠宝生产。美国斯蒂尔沃特矿业公司是美国目前唯一一家生产钯的公司。但由于对环境问题的考虑，它的开采运作在被削减。因此，在它的生产量恢复以前，美国政府基本上不会允许其他国家购买该稀土金属。

最后，如果矿业基地距离美国军事基地很近的话，购买权益也不太会被允许。2009 年中国西北有色金属投资有限公司的 2600 亿美元竞购美国优金公司的一个金矿，理由是金矿距离美国的一个军事基地只有 50 英里不到。

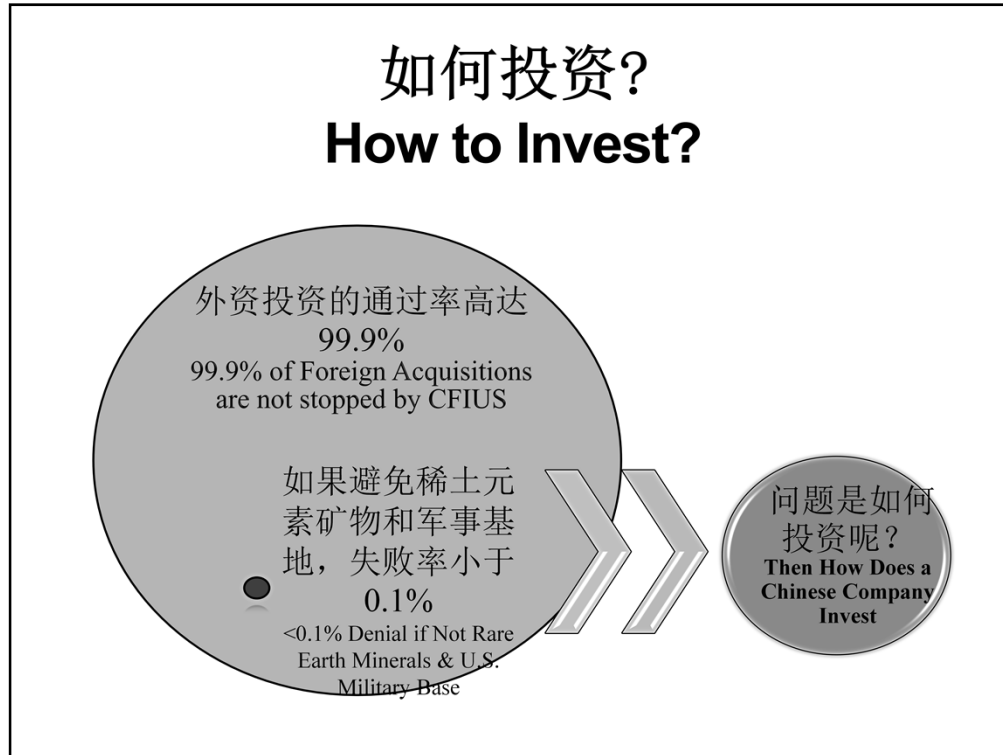
6. CFIUS Most Likely Would Deny

While in almost all cases, a Chinese firm may purchase U.S. mineral interests, there are certain acquisitions that CFIUS would probably not allow. Naturally, uranium would be a concern as it is used in the production of nuclear weapons.

Also, rare earth metals would probably be a concern. Rare earth metals are primarily used for manufacture of electronics, batteries for cell phones, catalytic converters for automobiles, and certain equipment for oil refining. Currently, China and Chinese companies hold approximately 95% to 97% of world production. Six of the seventeen rare earth minerals are aegyrine, bastnasite, cerite, fluorite, monazite, palladium, and zircon. One of the most important of the seventeen rare earth minerals is palladium that is used in the catalytic converters, dentistry, and jewelry. Stillwater Mining Company is the only U.S. company producing palladium. However, its mining operations have been curtailed by environmental concerns. Therefore, until production resumes in the U.S., it is unlikely that any country would be able to acquire any U.S. rare earth minerals.

Finally, if a mineral interest is close to a U.S. base, most likely a foreign purchase will not be approved. In 2009, Norwest Non Ferrous International Investment Company was precluded from purchasing a mere \$26 million acquisition in a gold mine from First Gold. The gold mine was within 50 miles of a military base (Fallon base).

如何投资? How to Invest?



B. 如何投资购买美国矿产权益

如果避免购买稀土元素矿物和距离美国军事基地较近的矿产, 那么会遭到美国外资投资委员会阻挠的可能性将会低于 0.1%。接下来对于中国企业来说, 问题就变成了如何去投资购买美国矿产权益。

B. How to Invest in U.S. Mineral Interests

Assuming that the proposed acquisition is not in the 0.1% of acquisitions that CFIUS has concerns with (i.e. it is not the acquisition of uranium, rare earths, or minerals close to a military base), then the question becomes how does a Chinese acquire a U.S. mineral interest?

三种拥有方式 Three Types of Ownership



私人所有
Privately Owned



州政府所有
State Owned



联邦政府所有
Federally Owned

┌
 租赁
 Leased
└

C. 三种矿产所有权

一个外国公司投资购买美国矿产权益的具体方式取决于这些矿产是以何种方式被拥有的。在美国，有三种矿产所有权。第一种是被个人或者实体私人拥有，第二种是被州政府所有，第三种是被联邦政府所有。对于被州政府或者联邦政府所有的矿产，实行的是租赁而非购买政策。

C. Three Types of Ownership

How a foreign business invests in U.S. mineral interests depends on how the minerals are owned. There are three types of ownership of U.S. mineral interests. First, the mineral interests may be owned privately by an individual or an entity. Second, the mineral interests may be owned by a state government, or third, the mineral interests may be owned by the federal government. If the mineral interests are owned by state or federal governments, the mineral interests are not sold. Rather, they may be leased.

私人地上及地下财产的绝对所有权

Private Ownership & Fee Simple



1. 土地绝对所有权

美国、加拿大和特立尼达岛部分地区和世界上其他国家拥有不同的政策，当土地绝对所有权被购买时，购买者将拥有地上财产所有权和地下矿产所有权。土地绝对所有权的拥有者可以分割销售地下矿产所有权，而仅仅保留地上财产所有权。在其他国家，矿产所有权是为政府所有的。土地私有者只拥有地上财产所有权。

1. Fee Simple

The U.S., Canada, and parts of Trinidad have different property law than most nations. When a person purchases a fee simple interest, they own both the surface rights (the surface and above the land) and the mineral rights (everything below the land). An owner that has a fee simple interest may split the ownership and sell the mineral interest but retain the surface rights. In almost all other countries, the government owns all of the mineral interests. A private land owner only owns the surface rights.

无销售或租赁限制 No Restriction on Sale or Lease



- 对私人拥有的矿产 Privately Owned
- 不限制外国公司购买矿产权益
No restriction on a foreign company purchasing
the mineral interest

1. 无销售或租赁限制

对于私人或者企业拥有的矿产，美国外资投资委员会不做外资投资购买或者租赁的限制。外国企业可以通过美国实体，例如股份制公司或者责任有限公司或者合伙制企业，或者通过外国实体来购买或者租赁。

1. No Restriction on Sale or Lease

Subject to CFIUS issues, there are no restrictions on a foreign business purchasing or leasing U.S. mineral interests that are privately owned. The foreign business may purchase or lease the privately held U.S. mineral interests through a U.S. entity (e.g., corporation, limited liability company, or partnership) or through a foreign entity.

州政府所有 State Owned Mineral Interests



- 需要查看具体每一个州的法律
Check state law
 - 科罗拉多州的法律允许外国公司在州内注册开展业务（手续简单）
Colorado law – foreign entity can register as a domestic entity

2. 州政府所有的矿产权益

对于州政府所有的矿产，权益将以租赁的方式被投资。大部分的州政府允许外国企业投资租赁它们所拥有的矿产权益。和科罗拉多州的法律相似的是，外国企业一般必须在该州境内注册营业。

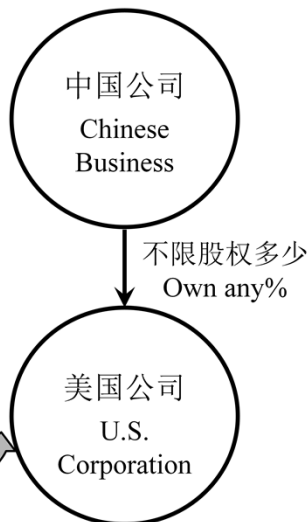
2. State Owned Mineral Interests

State owned mineral interests are leased from the state. Most states allow a foreign business to lease state mineral interests. Similar to Colorado, usually the foreign business must register in the state as a domestic entity.

租赁联邦政府所有的矿业 Leasing Federal Minerals

➤ 必须为美国实体

U.S. Entity
Requirement



3. 联邦所有矿业的租赁要求--必须为美国实体的要求

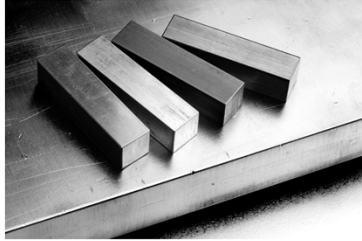
对于联邦政府拥有的矿业权益租赁，美国颁布了两个相关法律，并且这两部法律都要求购买者为美国法人。美国法人包括某一些美国实体。虽然法律要求该美国法人和美国政府就矿业权益租赁事宜签署合同，但法律并不要求美国实体必须为美国法人所有。因此一个中国企业可以拥有一个美国股份制公司（不论是否 100% 股权所有），然后该股份制公司可以从联邦政府租赁矿业权益。

3. U.S. Entity requirement

There are two federal leasing statutes and both of them require a U.S. person to lease the mineral interests. A U.S. person includes certain types of U.S. entities. While a U.S. person is required to contract with the U.S. government regarding the leasing to develop the mineral interests, there is no requirement that the U.S. entity be owned by a U.S. person. Therefore, a Chinese business may wholly own the U.S. corporation, and the U.S. corporation may lease mineral interests from the U.S. government.

矿产类型

Types of Minerals



硬矿物
Hard Minerals

1872年采矿法
Mining Law of 1872



软矿物
Soft Minerals

1920年矿产租赁法
Mineral Leasing Act of 1920

D.两部采矿法

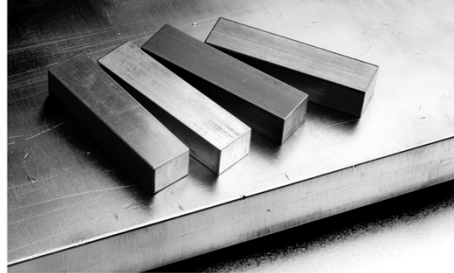
在美国主要有两部采矿法根据矿产的类型对租赁矿产权益作出规定。硬矿产由 1872 年的采矿法执管，而软矿产由 1920 年的矿产租赁法执管。

D. Two Different Mining Acts

There are primarily two different mining laws that regulate the leasing of U.S. mineral interests based on the type of minerals. Hard minerals are governed by the Mining Act of 1872. Soft minerals are governed by the Mineral Leasing Act of 1920.

1. 1872年采矿法

Mining Law of 1872



➤ 必须为美国实体

U.S. Entity Requirement

美国公司或者有限责任公司

Entity may be a U.S. Corp.

or a U.S. Limited Liability Company

(not same as Chinese Limited Liability Company)

1. 1872年的采矿法

1872年的采矿法执管包括金、银、铜、铂、铅、锌、铀和钨在内的硬矿产。起初，该法律只允许外国公司通过美国外资企业来租赁美国矿产权益，后来法律被修改为允许美国责任有限公司租赁土地。我们会在之后的部分讨论到关于利用美国责任有限公司租赁土地来减少收入税。

1. Mining Law of 1872

The Mining Law of 1872 deal with hard minerals such as gold, silver, cooper, platinum, lead, zinc, uranium, and tungsten. Originally, the Mining Law of 1872 held that a foreign business could only lease U.S. mineral interests through a U.S. foreign corporation. However, the regulations were changed to allow a U.S. limited liability company to lease land under the Mining Law of 1872. The income tax savings of allowing a U.S. limited liability company to lease land under this section will be discussed later in this outline.

2. 1920年矿业租赁法 Mineral Leasing Act of 1920



石油和天然气
Oil & Gas



煤矿
Coal



钾肥
Potash



天然碱盐
Trona-Salt

- 美国实体必须为公司
U.S. Entity must be a corp.
- 如果出售资产可能会有不利的税赋
Possible negative tax position if assets sold

2. 1920 年的矿产租赁法

该法执管的范围包括煤、石油、天然气、其他碳氢化合物以及磷酸盐、碘、硫、钾。煤、油页岩、磷酸盐和钾的租赁年限一般为 20 年。

和 1872 年采矿法不同的是，该法要求外国租赁公司拥有美国股份公司，但美国股份公司在抛售资产时会处于一个不利的税收位置。

2. Mineral Leasing Act of 1920

The Mineral Leasing Act of 1920 covers minerals such as coal, petroleum, natural gas and other hydrocarbons, as well as phosphates, sodium, sulfur, and potassium. Leases for coal, oil shale, phosphate, and potassium are typically for 20 year period of time.

Unlike the Mining Act of 1892, the regulations for the Mining Leasing Act of 1920 require that the foreign business own a U.S. corporation. A U.S. corporation has a negative tax effect if the assets of the U.S. corporation are sold.

美国资产销售 Sale of U.S. Assets

- 购买者通常愿意购买资产
Purchaser will want to buy assets
- 因为资产可以折旧
Depreciate the purchase price

a. 购买资产

相比于购买股权，购买者通常更愿意购买资产本身。

主要有三个理由，首先，按照美国现行法律，资产购买者可以以购买价格来折旧资产，即使是商誉也能折旧 15 年。

其次，大部分的股份公司都有一些不明确的债务，如果购买资产的话，这些债务不会从出售资产的公司转移到购买者身上。但由一个例外是在环境保护责任方面，房地产的购买者将负有责任清理资产。

第三，购买股票的人同时也会面临将来他们出售时的税务问题。对于大部分的矿产权益，该税收问题通常会高达销售价格的 25%到 30%，这将迫使出售者降低销售价格 25%到 30%来出售股权而非资产本身。

美国资产销售

Sale of U.S. Assets

- 购买者通常愿意购买资产
Purchaser will want to buy assets
 - 因为资产可以折旧
Depreciate the purchase price
 - 并且，不会涉及不明确的债务
Does not buy unknown liabilities
- 再者，购买股票会带来额外的20%-30%税赋
Income Tax Problem 20%-30% of sales price



购买者 Purchaser



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出售资产税赋的解决方案 Possible Solution

➤ 美国代理人公司

U.S. Nominee Corporation

- 为美国责任有限公司所有
Owned by a U.S. Limited
Liability Company



100%拥有



100%拥有



c. 解决方案

对于中国公司来说，一种应对资本收益被转变成普通收益的解决方案是成立一个美国责任有限公司，美国责任有限公司的税赋转由合伙人缴纳。该美国责任有限公司然后再成立一个美国代理人企业来执有软矿产权益。这里我们用“代理人”一词是指美国公司只掌握所有权，而所有的交易都将以美国责任有限公司名义开展。

利用美国代理人公司的办法来降低税收这个方法较为复杂，同时当涉及的数额高达百万美金时，律师提供的规划服务费用也是相当昂贵的。首先律师要和美国政府谈判是否允许成立一个以执有软矿产权益为目的的美国代理人公司。然后律师还要从美国税务局处申请私信判定，看这样的“代理人”公司是否在税收目的会上被通过。

c. Possible Solution

A possible solution to the conversion of capital gain to ordinary income may be for the Chinese firm to form a U.S. limited liability company that is taxed as a flow through entity. The U.S. limited liability company would form a U.S. nominee corporation to hold the soft mineral interest. The word “nominee” in this context means the U.S. corporation only holds title. All operating transactions are done in the name of the U.S. limited liability company.

While the tax savings by using a U.S. nominee corporation may be quite significant, many times in the millions of dollars, the attorney planning costs are also expensive. First, the attorney must negotiate with the U.S. government that they will allow a U.S. nominee corp. for the purpose of the soft mineral lease. Second, the attorney should try to obtain a private letter ruling from the Internal Revenue Service that it will accept the nominee arrangement for tax purposes.

外国公司可以投资美国矿产权益 Foreign Business Can Invest in US Mineral Interests



私人所有
Privately Owned



州政府所有
State Owned



联邦政府所有
Federally Owned

┌ ┐
租赁
Leased

E. 外国公司可以购买美国矿产权益

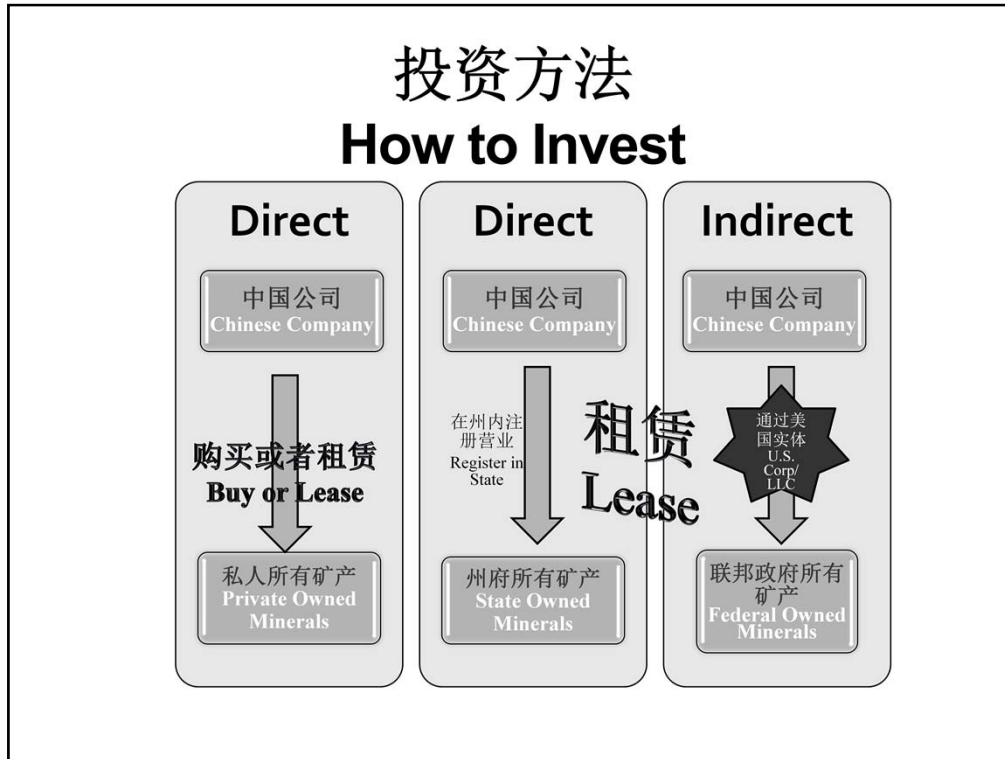
一个外国公司在 99.9%的情况下是可以成功投资收购美国公司或者公司资产的。在剩余 0.1%的情况中，美国外资投资委员会出于美国国家安全的考虑而阻挠收购。在避开这些反面因素的前提下，一个外国公司可以根据三种美国矿产的所有权方式来选择合适的方式投资美国矿产权益。这三种矿产所有权分别是：(1) 私人所有权；（2）州政府所有权；（3）联邦政府所有权。

E. Foreign Business Can Buy a U.S. Mineral Interest

99.9% of the time a foreign business can acquire a company or its assets in the U.S. 0.1% of the time CFIUS may have a security concern with acquisition. Assuming that CFIUS has no concern, the only question becomes how does a foreign business acquire a U.S. mineral interest? How a foreign business purchases a U.S. mineral interest depends on who owns the minerals: (1) private person; (2) state owned; or (3) federal owned.

投资方法

How to Invest



当矿产为美国私人所有时，中国公司可以直接购买矿产权益。如果产权为州政府所有，那么中国公司需要在州内签字注册，但中国公司仍然可以直接租赁矿产权益。在这两种情况中，除了直接投资外，中国公司也总是可以成立一个美国责任有限公司，然后通过该责任有限公司来购买或租赁矿产权益的。

截然不同的是，当矿产权益被美国联邦政府所有时，外国公司，包括中国，必须要成立一个美国实体来租赁矿产权益。如果租赁的是硬矿产权益，那么可以利用成立美国责任有限公司来租赁，因为这会减少税收。如果租赁的是软矿产权益，那么就必须要成立美国股份制公司了，顺应的减税的规划工作也将会变得复杂许多。

When mineral interests are owned privately in the U.S., a Chinese firm may invest directly in the mineral interests. Also, when mineral interests are owned by a state, the Chinese firm needs to register that it is doing business in the state. However, the Chinese firm may still lease the mineral interests directly. It should be noted that rather than a direct investments, the Chinese firm in a private or state transaction may always form a U.S. limited liability company and this entity may purchase or lease the mineral interest.

Conversely, when mineral interests are owned by the U.S. federal government, a foreign firm (including a Chinese firm) must form a U.S. entity to lease the mineral interests. If the U.S. entity is leasing hard minerals, then a U.S. limited liability company may be used, which provides a better U.S. tax result. If the U.S. entity is leasing soft minerals, then a U.S. corporation must be used. The tax planning of minimizing the U.S. taxes of this type of structure become much more complicated.