



**GLOBAL MARKETPLACE — EYE ON CHINA:
WORKSHOP SERIES**

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GLOBAL MARKETPLACE — EYE ON CHINA: WORKSHOP SERIES



**Building Company Value Through
Global Partnerships**
通过全球合作构建公司价值

Executive Workshop 经理人专题研讨会
Guangzhou, China
April, 14, 2010

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Welcome 欢迎

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■ Discussion Topics :

讨论议题:

– Building Intellectual Asset Value Within Collaborations - 以合作构建知识产权的价值

■ Stephen A. Bent, Partner, Foley & Lardner LLP

■ James F. Ewing, Partner, Foley & Lardner LLP

– Attracting Strategic Partners and Investors

吸引策略伙伴与投资者

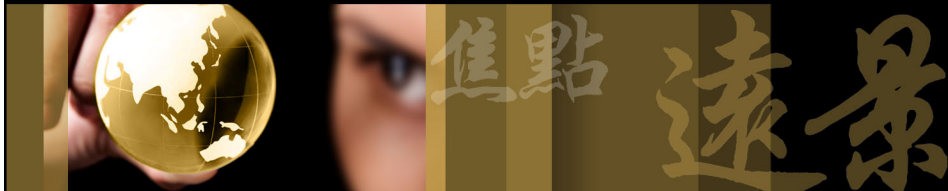
■ James C. Chapman, Partner, Foley & Lardner LLP



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Building Intellectual Asset Value Within Collaborations 以合作构建知识产权的价值

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Differences Between PRC and US Laws 中美之间的法律差异



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- Ownership of IP Assets
知识产权资产的所有权
- Inventorship and Inventor Compensation
发明人与发明人报酬
- Safeguarding Key Personnel and Information
保护关键人员和信息
- Licensing and Other Tech Transfer
许可证和其他技术转让

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Differences Between PRC and US Laws 中美之间的法律差异



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- Patent Office Requirements 专利局要求
 - US “duty of candor”
美国“坦率义务”
 - Elements of descriptive completeness
描述完整性的要素
 - SIPO stance on working examples
中国知识产权局在工作例子上的立场
 - US PTO requirement for “best mode”
美国知识产权局对最佳模式的要求

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Capturing Value from Joint Innovation: Value Creation 从联合创新中捕获价值： 创造价值



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- Primary Goal - 首要目标
 - To fully integrate R&D goals and IP strategy to advance the common commercial objectives of the collaborators
充分整合研发目标和知识产权战略，以推进合作者共同的商业目标



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Capturing Value from Joint Innovation: Promoting Harmonious Relations 从联合创 新中捕获价值：促进和谐的关系



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- Clearly defining the roles and obligations of the parties
明确界定当事人的作用和义务
- Top-down understanding of objectives, milestones and obligations of each partner
自上而下的理解每个伙伴的目标，里程碑和义务
- Appropriate governance structure
适当的管理结构
- Leadership in key positions
在关键岗位的领导



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Capturing Value from Joint Innovation: Promoting Harmonious Relations 从联合创 新中捕获价值：促进和谐的关系



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- Inclusive decision-making and teamwork
包容性的决策和团队精神
- Decision-making based on data
基于数据的决策
- Importance of trust/Emphasis on relationships
信任的重要性/重点在于关系
- Recognize and celebrate successes
认可并庆祝成功
- Evaluate the partnership continually
不断评价伙伴关系



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Capturing Value from Joint Innovation 从联合创新中捕获价值



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- Agreed upon procedures and formats for documentation and invention disclosure
根据商定的程序和格式建立文档和发明披露
- Education of “bench-level” team members of documentation procedures
对“基准级”小组成员的文件程序教育
- Routine for reporting and evaluation of developments/invention disclosure
建立一个报告和发展评价的常规/发明披露
- Verified and continuous documentation of project developments - 项目发展的核实和持续记录



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Capturing Value from Joint Innovation 从联合创新中捕获价值



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- Procedures to: - 如下程序:
 - prioritize invention disclosures
确定发明披露的优先次序
 - determine inventorship and ownership
确定发明权和所有权
 - oversee patent preparation - 监督专利准备
 - determine filing strategy - 决定申请战略
 - oversee prosecution - 监督专利申请
 - resolve disputes efficiently - 有效解决争端



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Building an International Patent Portfolio Cost-Effectively: When and What to File (cont.) 构建一个高效低成本国际专利组合：何时申请和申请什么(续)



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- Central Inquiry - 中心调查
 - Would the IPRs to a new technical development add value to and advance the common commercial objectives of the collaborators?
一个新技术发展的知识产权将会增值和推进合作者共同的商业目标吗?
- Pioneering advance vs. incremental improvement - 开拓性进展与逐步改善



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Building an International Patent Portfolio Cost-Effectively: When and What to File (cont.) 构建一个
高效低成本国际专利组合：何时申请和申请什么(续)

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- Alignment with business objectives
与商业目标一致
- Patenting vs. trade secret vs. defensive publication
专利与贸易秘密与防御性出版
- Status of invention development
发明发展的现状
- Provisional vs. nonprovisional vs. utility mode
临时与非临时与实用新型
- PCT application
PCT申请

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Building an International Patent Portfolio Cost-Effectively: When and What to File (cont.) 构建一个
高效低成本国际专利组合：何时申请和申请什么(续)

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- First to invent vs. first to file
第一个发明与第一个申请
- National laws regulating first filing
第一个申请的国家法律规则
- Foreign filing license requirements
外国申请许可证的要求
- Technology export licensing requirements
技术出口许可证的要求
- Commercial markets
商业市场
- Economics of filing
申请的经济学

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Building and Managing an International Patent Portfolio Cost-Effectively: Claim Strategy 构建与管理一个高效低成本国际专利组合: 权利要求策略



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- Diversified claiming strategy: who is your audience? - 多样化的权利要求策略: 你的对象是谁?
- Types of claims (composition, methods of treatment; apparatus; etc.)
权利要求种类 (成分, 治疗方法, 仪器等等)
- Independent versus dependent claims
独立与从属权利要求经济索赔
- Economics of claims - 权利要求的经济学



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Building and Managing an International Patent Portfolio Cost-Effectively: Use of the PCT System 构建与管理一个高效低成本国际专利组合: 使用 PCT 体系



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- Patent Cooperation Treaty (PCT) was signed in June 1970, in Washington, D.C., and became operational in June 1978 with 18 States - 专利合作条约(PCT)于1970年6月在华盛顿特区签署的, 并于1978年6月在18个国家开始运作
- As of September 28, 2009, there were 142 contracting states to the PCT
截至2009年9月28日, 共有142个PCT的缔约国
- PCT establishes a procedure for the filing and processing of a single application for a patent which has legal effect in the countries which are Treaty members
PCT 确立了单一一项专利申请和处理在条约成员国的国家都有法律效力的程序



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Building and Managing an International Patent Portfolio Cost-Effectively: Use of the PCT System (cont.) 构建与管理一个高效低成本国际专利组合: 使用 PCT 体系(续)

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■ Advantages - 优势

- Postpones the major costs associated with internationalizing a patent application (translations; official fees; service fees)
推迟与国际化的专利申请有关的主要成本（翻译，官方费，服务费）
- Provides a basis for patenting decisions
提供专利决定的一个基础
- Accepted and widely used system for patent protection
被接受并广泛使用的专利保护制度



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Harmonizing the IP Strategy with its Business Plan 协调知识产权战略与商业计划

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■ Integrate R&D Goals with Business Plan

整合研发目标与商业计划

- Identify commercialization target(s) and time frame
确定商业化目标和时限
- Link market projections with IP potential
连接市场预测与IP的潜力
 - Crowded prior art? - 拥挤的现有技术?
 - Timing/content of patent filings - 专利申请的时定/内容?
 - Freedom to operate? - 自由运作?



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Case Studies – What Does and Doesn't Work in Strategic Collaborations 案例分析 - 可行和不可行的战略合作

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- **Roche - Genentech: Efficient Sales/Management Combines With Innovation Culture**
高效的销售/管理与创新文化结合
- **Amgen – Kirin: Early-Stage Research Transitions to Experienced Product Development**
早期研究过渡到经验丰富的产品开发
- **Fujisawa/Astellas – Sucampo: Misconceptions Over Roles and Capabilities Sinks Partnershi**
对作用和能力的误解沉毁合伙关系

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Case Study I – Roche-Genentech 案例分析一

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- **March 2009 Roche Holding's acquires full ownership of Genentech for \$46.8 billion**
2009年3月Roche Holding's以\$468亿美元收购Genentech的全部所有权
- **Roche owned a majority of Genentech since 1990**
Roche自1990年拥有大多数的Genentech
- **Roche's three best-selling drugs come from Genentech (Avastin®, Herceptin® and Rituxan®)**
Roche的三个最畅销的药物来自Genentech (Avastin®, Herceptin® and Rituxan®)

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Case Study I – Roche-Genentech (cont.)

案例分析一（续）

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- Cost savings of more than \$750 million per year not the main goal of the deal - 每年超过75亿美元的成本节约不是交易主要目标
- Goal was improved coordination on product development - 目标是改进产品开发的协调
- Challenge is integrating Swiss business culture with Genentech's free-wheeling and innovative culture - 挑战是瑞士商业文化与Genentech的自由运作和创新文化的整合



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Case Study I – Roche-Genentech (cont.)

案例分析一（续）

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- Genentech's research and early clinical trial operations will retain autonomy to preserve culture – Genentech的研究和早期临床试验运作将保留自主权而维护企业文化
- Combined commercial business based at Genentech's headquarters in South San Francisco, Calif. – 联合商业基于Genentech在加利福尼亚州南旧金山的总部



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Case Study II – Amgen-Kirin 案例分析二



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- Amgen, Inc. is the largest US biotech company
Amgen, Inc. - 是美国最大的生物技术公司
- Amgen transitioned from a drug development company to a pharmaceutical manufacturer while maintaining steady sales - Amgen从一个药物开发的制药公司过渡为药品生产商并保持稳定的销售
- Amgen owes its transformation mostly to Neupogen® and Epogen® - Amgen的转化主要归功于Neupogen®和Epogen®



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Case Study II – Amgen-Kirin (cont.) 案例分析二（续）



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- 1984 Kirin Brewery Co., Ltd. of Japan and Amgen, Inc of the United States launch joint venture company Kirin-Amgen, Inc. (Kirin-Amgen)
1984年日本的Kirin Brewery公司与美国的 Amgen 公司创建Kirin-Amgen合资公司
- Epogen® and several other Amgen products were developed through Kirin-Amgen
Epogen® 与其他一些Amgen的产品通过 Kirin-Amgen开发



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Case Study II – Amgen-Kirin (cont.) 案例分析二（续）



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- Kirin-Amgen grants exclusive manufacturing, patent and marketing rights to Amgen in the U.S.
Kirin-Amgen公司授予 Amgen公司在美国独家生产及营销权
- Amgen pays Kirin-Amgen royalties on sales.
Amgen 公司支付 Kirin-Amgen公司销售的专利费
- Kirin-Amgen reimburses Amgen for R&D expenses
Kirin-Amgen 报销 Amgen公司研发费用



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Case Study III – Fujisawa/Astellas – Sucampo 案例分析三



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- 1998 - Sucampo enters into a Development Agreement with Fugisawa/Astellas (“Astellas”) for Sucampo to develop tacrolimus eye drops containing Astellas's compound, FK506 ("FK506") for the treatment of dry eye syndrome
1998 - Sucampo 与 Fugisawa/Astellas (“Astellas”) 达成一个发展协议, Sucampo 将开发 tacrolimus 含有 Astellas FK506化合物的眼药水, 用于治疗干眼症



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Case Study III – Fujisawa/Astellas – Sucampo (cont.) 案例分析三（续）



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- Parties later contract for the exchange of safety information relating to FK506 (“Safety Agreement”)
后来缔约双方签订有关FK506的安全信息交流合同(“安全协议”)



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Case Study III – Fujisawa/Astellas – Sucampo (cont.) 案例分析三（续）



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- February 2005-- United States Food and Drug Administration ("FDA") issued two alerts regarding a link between cancer and the use of Protopic®
2005年2月 - 美国食品和药物管理局(“FDA”)发布两项关于使用Protopic®和癌症相连的警讯
- March 2005-- FDA requires that Protopic® carry a black box warning due to cancer risk.
2005年3月 - FDA 由于癌症的风险要求 Protopic® 携带黑框警告



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Case Study III – Fujisawa/Astellas – Sucampo (cont.) 案例分析三（续）



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- March 2005 (2005年3月)
 - Sucampo suspends its tacrolimus eye drops development program
Sucampo中止其 tacrolimus 滴眼液发展计划
 - Sucampo sues Astellas alleging breach of a Safety Agreement by failing to disclose the FDA's expressed safety concerns over Protopic®
Sucampo 控告 Astellas 没有透露 FDA 对 Protopic® 的关注而违反安全协议的行为



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Questions & Answers 提问与答疑



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Attracting Strategic Partners and Investors 吸引策略伙伴和投资者

Jim C. Chapman



Positioning Your Business and IP Portfolio with Potential Partners and Investors 与潜在的合作伙伴和投资者定位您的业务和IP组合

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- The Company has a solution or potential solution to a big problem in the market
公司有解决市场上大问题的方案或潜在方案
 - Unique Technology - 独特的技术
 - Protectable - 可受保护
- The Company has a management team uniquely gifted to solve the problem
公司拥有独具天赋的管理团队来解决问题
 - Personnel with a strong track record of success
有良好成功记录的人事



Positioning Your Business and IP Portfolio with Potential Partners and Investors (cont.)

与潜在的合作者和投资者定位您的业务和IP组合(续)

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- Have key relationships necessary for success
有成功所需的主要关系
- Strong domain expertise - 强大的专业技术
- The Company has Customers that Buy or are Committed to buy the Product
公司拥有购买或已承诺购买产品的客户
 - High quality customers that are reputable
高品质的客户，具有良好的声誉
 - Which will give references
进而提供关系照应



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Positioning Your Business and IP Portfolio with Potential Partners and Investors (cont.)

与潜在的合作者和投资者定位您的业务和IP组合(续)

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- The Company is Operating in a Large Market
公司在一个大市场中运营
 - Capable of supporting large companies
能够支持大型企业
 - The market is rapidly growing or is ready to take off
市场正在快速增长或准备起飞
- Clean Up the Company - 公司清理
 - Financial/Accounting Systems
财务/会计系统
 - Unorthodox Practices
不正当的做法



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Best Practices for Successful Joint Ventures and Strategic Partnerships 成功的合资企业和战略伙伴关系的最佳作法



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■ Carefully Select the Partner

慎重选择合作伙伴

- Experience - 经验
- Integrity - 诚信
- Expertise - 专业技能
- Strong track record of collaboration
良好的合作记录
- A bad partner can make a good project fail
糟糕的合作伙伴可以让一个好项目失败



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Best Practices for Successful Joint Ventures and Strategic Partnerships (cont.) 成功的合资企业和战略伙伴关系的最佳作法(续)



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■ Understand Each Party's Interests and Work to Keep Them Aligned

了解每个合作伙伴利益和工作使他们保持一致

- Why is a Joint Venture or SP a preferred option?
为什么合资企业或 SP 是一个首选的方案?
- Short Term vs. Long Term - 短期与长期
- Profitability vs. Market Share - 盈利与市场份额
- Tong Chuang Yi Meng - 同床异梦



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Best Practices for Successful Joint Ventures and Strategic Partnerships (cont.) 成功的合资企业和战略伙伴关系的最佳作法(续)



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■ Build and Maintain the Relationship 建立和保持关系

- Communication - 沟通
- Face-to-face meetings - 面对面会议
- Honesty and integrity - 正直与诚信
- Facing problems - 正面问题
- Understand your partner - 了解你的合作伙伴



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Best Practices for Successful Joint Ventures and Strategic Partnerships (cont.) 成功的合资企业和战略伙伴关系的最佳作法(续)



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■ Make sure the Project is Economically Viable 请确保该项目经济上可行

- Analysis should be based upon sound economic criteria
分析应基于良好的经济标准
- Be able to reach profitability in the foreseeable future
可以在可预见的未来盈利



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Best Practices for Successful Joint Ventures and Strategic Partnerships (cont.) 成功的合资企业和战略伙伴关系的最佳作法(续)



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- Know and Follow the Rules -了解并遵守规则
 - Obey all Chinese laws and regulations
遵守所有中国的法律和规定
 - Comply with the US Foreign Corrupt Practices Act
遵从美国的外国腐败行为法案
- Create a Strategy to Deal with Problems
创建一个应对问题的策略
 - Develop a government relations strategy
制定政府关系战略
 - Milestones for projects -项目里程碑
 - Escape strategies for different stages of a project
一个项目在不同阶段的逃逸策略

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Best Practices for Successful Joint Ventures and Strategic Partnerships (cont.) 成功的合资企业和战略伙伴关系的最佳作法(续)



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- Other 其他
 - Use a detailed contract
使用详细的合同
 - Expect tremendous competition
预期巨大的竞争
 - Protect intellectual property
保护知识产权
 - Develop an efficient, workable management and operational plan
发展一个有效的，可行的管理和运作计划

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Negotiating with Americans: Chinese vs. American Negotiation Approaches 与美国人谈判：中美谈判方法



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Cultural Values and Ways of Thinking 文化价值观和思维方式

American 美国人	Chinese 中国人
Individualist 个人主义者	Collectivist 集体主义者
Egalitarian 平等主义者	Hierarchical 等级主义者
Information Oriented 信息导向	Relationship Oriented 关系导向
Reductionist 还原主义者	Holistic 整体观念者
Sequential 顺序性	Circular 循环性
Seeks Truth 求真	Seeks the Way 寻道
Argumentative Culture 穷辩文化	Haggling Culture 讨价还价

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Negotiating with Americans: Chinese vs. American Negotiation Approaches (cont.) 与美国人谈判：中美谈判方法(续)



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Negotiation Approaches 谈判方法

Short Meeting 简短的会议	Long Courting Process 长期追求过程
Informal 非正式	Formal 正式
Full Authority 完全权威	Limited Authority 有限权威
Proposals First 首先建议	Explanations First 首先解释
Aggressive 攻势的	Questioning 询问的
Impatient 无耐性	Enduring 忍耐性
Forging a Deal 促成交易	Forging a Relationship 建立关系

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Leveraging Private and Government Funding Sources Within and Outside of China 在中国国内外利用私人和政府的资金来源

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■ Sources 资金来源

- Chinese Government Agencies. - 中国政府机构
- Chinese Government backed venture capital funds. 中国政府支持的风险投资基金
- Foreign Venture Capital Funds with Chinese operations. 有中国业务的外国风险投资基金
- Foreign Venture Capital funds without Chinese Operations. 没有中国业务的外国风险投资基金
- Domestic Chinese Venture Capital Funds. 中国国内风险投资基金
- Angel investors. - 天使投资者
- Strategic investors. - 战略投资者



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Leveraging Private and Government Funding Sources Within and Outside of China (cont.) 在中国国内外利用私人和政府的资金来源 (续)

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■ Approaching Funding Sources - 接近资金来源

- Use direct relationships - 运用直接关系
- Use intermediaries – “Zhongjian Ren” - 运用中间人
 - Have someone with credibility or “Guanxi” make an introduction 通过有声誉或关系的人介绍
- The role of the Executive Summary 执行摘要的作用



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Leveraging Private and Government Funding Sources Within and Outside of China (cont.) 在中国国内外利用私人和政府的资金来源（续）



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- The Initial Meeting - 首次会议
 - Company explains the problem to be solved, the business, management team, technology, customs and risks
公司说明要解决的问题，业务，管理团队，科技，海关和风险



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Resolving Disagreements Between Partner 解决合作伙伴之间的分歧



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- Communication - The result of building a strong relationship
沟通 - 结果是建立良好的关系
- Negotiation - 谈判
- Mediation - 仲裁
 - Informal - Zhongjian Ren
非正式 - 中间人
 - Formal - Use of dispute resolution mechanism
正式 - 利用争端解决机制



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Questions & Answers 提问与答疑

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Jim C. Chapman
Partner

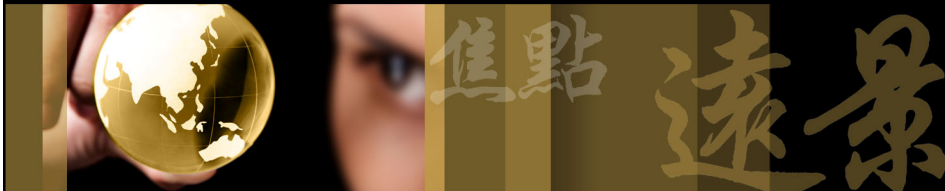
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Thank You! 谢谢!



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