



# CHINA REGULATORY ENFORCEMENT QUARTERLY

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# EXECUTIVE SUMMARY



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The first quarter of 2015 marked a continuation of the high level of regulatory enforcement by PRC authorities that we witnessed throughout 2014. However, we are seeing a marked shift in enforcement patterns, with several major Chinese state-owned enterprises (“**SOEs**”) and highly-regulated sectors coming under fire. Chinese entities, in particular, in the finance and banking, automobile, aerospace and aviation, and military-related sectors are increasingly under probe. We are also continuing to see increased regulations and oversight in the life sciences and healthcare sectors. This current shift in enforcement focus does, however, place foreign multinational corporations (“**MNCs**”) who conduct business with SOEs and domestic companies in reach of potential risk areas. We are seeing MNCs further scrutinize their joint venture partners, SOE customers, and third-party vendors to evaluate if their due diligence of these business partners and third parties are sufficient given the current changing enforcement climate.

In addition to the domestic enforcement crackdowns, PRC authorities are following through with their enforcement agendas abroad. Under the Central Government’s “Fox Hunt” initiative, it has been widely reported by Chinese media that some 680 former Chinese government officials living abroad have been repatriated back to China to face potential investigations. The vast majority of these suspects are alleged to have been involved in economic crimes in China before they took flight from China, sometimes in connection with the domestic investigations described above.

## WHAT TO EXPECT IN Q2 2015 AND BEYOND

We see several developments from the first quarter of 2015 which will affect China regulatory enforcement in Q2 2015 and beyond:

- The Central Commission for Discipline Inspection (“**CCDI**”) announced its focus on investigating central SOEs for bribery allegations, including investigating 26 major central SOEs in the first round of inspection in 2015.
- The State Council promulgated new regulations to strengthen the supervision of government procurement and drug procurement for public hospitals.
- A new multi-agency operation was launched, codenamed “Sky Net,” with the objective of repatriating suspected corrupt Chinese officials abroad. “Sky Net” may be viewed as an improved version of last year’s “Fox Hunt” operation, with increased collaboration between government agencies.

In light of these and other developments, it is likely that the number of SOEs in industries such as banking, energy, telecommunications, transportation, and construction that will be subject to government investigations will increase. Additionally, increased enforcement of new regulations, especially in the healthcare, life sciences, and food and beverages sectors, will require companies to keep abreast of the latest legal and regulatory updates as well as enforcement trends relevant to their businesses.

We hope you enjoy this Q1 2015 edition of DLA Piper’s China Regulatory Enforcement Quarterly.



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This information is intended as a general overview and discussion of the subjects dealt with and is up-to-date as of April 1, 2015. However, laws and/or updates may have changed since this date. Some information contained in this report is based on media reports and public announcements, some of which may be considered secondary sources. This information is not legal advice, and should not be used as a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this information.



# PRC LEGAL AND REGULATORY UPDATES

## **2015 Anti-Corruption Plan Includes Investigating All Major SOEs Directly Managed by the Central Government And Other Significant Initiatives**

January 12 – During the 5th Plenum of CCDI's 18th Session, the Standing Committee reviewed the CCDI's anti-corruption work in 2014 and set forth new and strengthened objectives for 2015. The four main objectives are:

- (1) inspect all major SOEs directly managed by the central government;
- (2) emphasize the importance of Communist Party rules and the accountability of officials;
- (3) implement the "Eight Rules" regarding official behaviors; and
- (4) strengthen international cooperation in the hunt for former Chinese officials suspected of corrupt conduct who have fled from China.

What are the "Eight Rules"?

Established in 2012 by a politburo meeting of the Communist Party of China's ("CPC") Central Committee, the "Eight Rules" are requirements applicable to CPC officials in order to improve their work style and relationships, focusing on eight aspects:

- (1) keep close relationships with the people;
- (2) strictly regulate the organization of meetings and events;
- (3) reduce the unnecessary issuing of official documents;
- (4) regulate arrangements of official visits;
- (5) improve arrangements for security guards;
- (6) improve media reporting;
- (7) restrict publication of personal writings; and
- (8) uphold integrity and thrift.

## **National Health and Family Planning Commission ("NHFP") Issues Regulations for the Newly Established Bureau to Increase Supervision of Medical Institutions**

January 28 – The NHFP issued the *Regulations on the Main Responsibilities and Personnel Arrangements for the NHFP Guidance Center for Health Service Management* ("**Regulations on Guidance Center**"). Established at the end of 2014, the Guidance Center is responsible for the management of the medical service data center and the supervision of and guidance to medical institutions. The Guidance Center monitors the quality of medical care, and evaluates appropriate usage of medicine, medical devices, and high-value clinical consumables.

## **Limitations for Family Members' Participation in Certain Business Operations**

February 27 – According to various media reports, the *Opinion Concerning Further Regulations on Business Establishment and Operation by the Spouses and Children and Children's Spouses of Leaders and Cadres in Shanghai City* ("**Shanghai Opinion**") was passed during the 10th meeting of the Central Leading Team for Comprehensively Deepening Reform which was led by President Xi Jinping and will come into effect in the second quarter of 2015. The Shanghai Opinion is a pilot program for the city of Shanghai which sets forth requirements and limitations for CPC leaders' spouses, their children, and their children's spouses to participate in business operations which may take advantage of CPC officials' positions to seek improper interests. The Shanghai Opinion aims to prevent corruption involving family members of CPC officials such as family members who accept bribes while the CPC official is not directly involved.

## **New Guidance on Improving Centralized Drug Procurement for Public Hospitals**

February 28 – The *Guiding Opinions on Improving Centralized Purchasing of Drugs for Public Hospitals* (“**Drug Procurement Opinion**”) was published by the General Office of the State Council, proposing to reduce artificially high drug prices, prevent corruption in the drug procurement process, and promote fair competition. Specifically, the Drug Procurement Opinion outlines a categorized procurement system which applies different procurement procedures, such as tendering and bidding, negotiation, direct purchasing, and designated manufacturing to different categories of drugs. It also encourages hospitals to settle payments directly with pharmaceutical companies to further reduce the use of middlemen. The Drug Procurement Opinion also requires that a credibility tracking system for pharmaceutical companies be created and made available to the public on a timely basis.

## **Government Procurement Requirements Strengthened**

March 1 – The *Regulations on the Implementation of the PRC Law of Government Procurement* (“**Government Procurement Regulations**”) came into effect on March 1, 2015. The Government Procurement Regulations aim to further standardize the government procurement process, promote fair competition, and increase supervision. For example, information in connection with a government procurement project, such as bidding results and procurement contracts, shall be published by media designated by the provincial level government or above.

## **Amended Food Safety Law Likely to Be Effective in the First Half of 2015**

March 8 – The Vice Head of the Department of Legal Affairs of the China Food and Drug Administration stated that the amended Food Safety Law is expected to come into effect in the first half of 2015 at the earliest. There are two major changes to be introduced by the proposed amendments to the existing law:

- (1) the implementation of administrative detention as a potential punishment as well as monetary fines for serious offenses in the production of food such as use of recycled food, banned food additives, or highly toxic pesticides; and
- (2) newly added provisions for web-based businesses to set up real name registrations for online food providers.

## **New Rules to Prevent Chinese Officials From Interfering with the Courts**

March 18 – The *Regulations on Recording, Reporting and Responsibility of Leaders' Intervention of Judicial Activities and Interference with the Handling of Specific Cases* (“**Regulations on Preventing Judicial Intervention**”) became effective, requiring that conduct by CPC officials which interferes with judicial activities be recorded. Five types of illegal intervening conducts shall be reported and if necessary, made available to the public. They are:

- plead or intercede for any party in a case during the stages of investigation, prosecution, trial, and/or enforcement;
- request the personnel who handles a case or person in charge of law enforcement authorities to privately meet individuals who have interests in the case;
- instruct or indulge people who work with the officials or the officials' relatives to plead or intercede for any party;
- overstep authorities to create biases or specific requirements regarding the handling of a case for the interests of local administration or departments; and
- other acts which intervene and/or hinder judicial activities or obstruct justice. The Regulations on Preventing Judicial Intervention also provide that officials who illegally intervene in judicial activities or retaliate against judicial personnel will face disciplinary actions including potential criminal liability.

# IN NUMBERS

26

Number of central SOEs under inspection by inspection teams dispatched by the CCDI in the first round of special inspections in 2015.

50

China requested assistance from the U.K. government to repatriate 50 former Chinese government officials who are suspected of embezzlement and/or corruption.

150

As widely reported by the Chinese media, the U.S. government received from Chinese authorities a priority list of 150 former Chinese officials who are suspected of corruption and believed to be at large in the United States. The Chinese authorities have requested the U.S. government's cooperation in the repatriation of these suspects.

55,000

During the 5th Plenum of CCDI's 18th Session, the Secretary of the CCDI, Wang Qishan, announced that the Procuratorate authorities have opened cases and investigated 55,000 individuals nationwide in 2014 in connection with suspected duty-related crimes such as embezzlement, bribery, and dereliction of duty. The announcement does not clarify whether this number of 55,000 is a precise measure or a rough estimate.

41

NHFPC announced that it plans to conduct inspections into 41 large hospitals across China from 2015 to 2017, with a focus on potential corrupt conduct and/or practices.

70

Since 2014, 70 Chinese companies listed on various public exchanges in mainland China, Hong Kong, and/or overseas (e.g. New York Stock Exchange) have been involved in corruption investigations by Chinese authorities. The 70 listed companies cover 22 industries, around half of which relate to the energy sector.

204

Number of Chinese government officials disciplined and/or investigated by the CCDI in the first quarter of 2015. This is a 24% increase from the total recorded in the fourth quarter of 2014.

6,088,000,000

A leading technology company was fined CNY 6.088 billion (approx. USD 975 million) by the National Development and Reform Commission ("NDRC") for violations of China's anti-monopoly laws. The company was found to have abused its dominant position in the market. The amount of the fine is equivalent to 8% of the company's 2013 sales revenue in China. The maximum fine for abuse of dominant position under the PRC's Anti-Monopoly Law is 10% of sales revenue. The NDRC stated that its fine was reduced by 2% due to the company's cooperation. The NDRC further ordered the company to reduce certain licensing fees in China.



# MAJOR ENFORCEMENT NEWS

## PRC REGULATORS

### China Repatriated 680 Chinese Officials in “Fox Hunt” Operation

January 8 – According to the Ministry of Public Security, last year’s “Fox Hunt” operation successfully repatriated 680 former Chinese officials suspected of committing economic crimes from 69 countries. 208 of the suspects are alleged to have been involved in economic crimes in China of over CNY 10 million (approx. USD 1.6 million) each and 117 had been at large for over a decade.

### Large Hospitals to be Inspected for Bribery by the NHFPC

January 29 – The NHFPC announced that it plans to inspect 41 large hospitals in eleven provinces from 2015 to 2017, including both general and specialized hospitals. The inspection will focus on corruption issues such as commercial bribery in the sale and purchase of pharmaceutical products, potential kickbacks, and “red envelopes.” A detailed list of the 41 hospitals and corresponding year of inspection can be found on the NHFPC’s website.

### Several Chinese Banks Targeted in Anti-Corruption Crackdown

February 4 – Three major Chinese banks have been targeted in CCDI’s anti-corruption crackdown. It has been widely reported in the media that the President of a major commercial bank is under investigation in connection with the on-going investigation of LING, Jihua, the former head of the CPC’s United Front Work Department and Deputy Chairman of the Chinese People’s Political Consultation Conference. Separately, a director of another

Chinese bank was put under investigation for suspected serious disciplinary violations. Finally, during the same month, the former vice president of a major state-owned bank was sentenced to life imprisonment for accepting bribes.

### Son of Retired Vice Chairman of China’s Top Military Council Detained

February 10 – According to several media sources, GUO, Zhenggang, the son of GUO, Boxiong, the former Vice Chairman of the Central Military Commission, was detained and put under investigation for suspected violations of law and crimes. GUO was promoted to Major General less than a month prior to being detained. This investigation, together with the investigations into other high-level military personnel widely reported by media sources, suggests that the Central Government is determined to tackle corruption in the military, which the CPC views as a serious threat to its military capabilities and strength.

### CCDI’s First Round of Inspections Target 26 Central Government SOEs

March 6 – The CCDI announced that the CPC’s Central Committee has approved the first round of special inspections for 2015, focusing on 26 central SOEs including key players in the oil and energy, electricity, telecommunications, transportation, materials and minerals, and construction industries. The inspections will not only focus on the holding companies directly supervised by the State-owned Assets Supervision and Administration Commission, but also the listed companies controlled by the holding companies as well as its executives. A full list of the central SOEs under inspections can be found on the CCDI website.



### Leader of a Major State-Owned Automobile Company Under Investigation

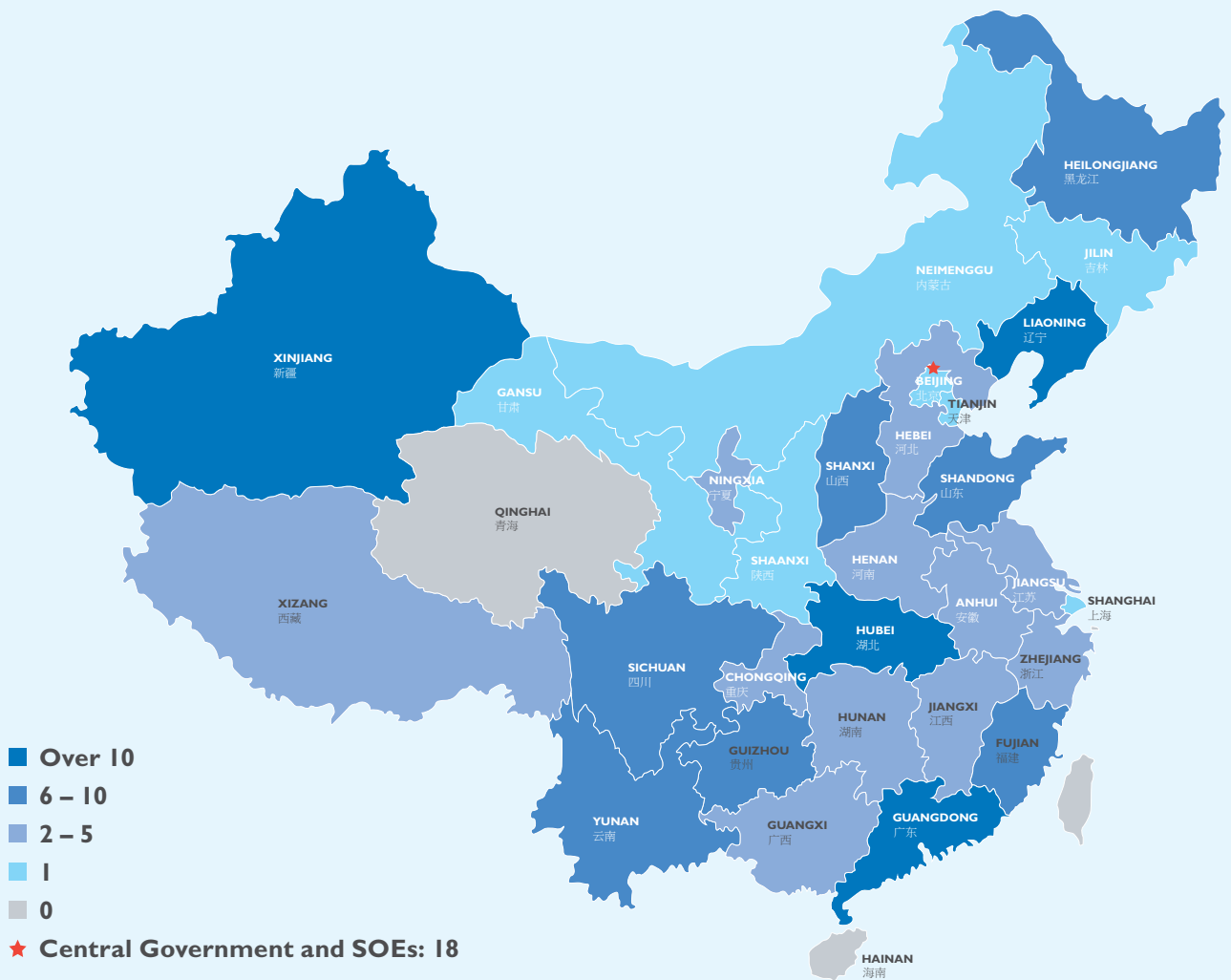
March 15 – The Chairman and Secretary of the Party Committee of a leading central state-owned automobile manufacturing company was put under investigation for suspected serious violations of law and CPC party discipline. In the past three years, more than six executives from this automobile company and its associated companies were investigated and/or sentenced for corruption-related conducts such as accepting bribes from distributors in automobile sales.

### China Launched “Sky Net” Operation to Catch Corrupt Officials Overseas

March 26 – In an effort to repatriate suspected fugitive Chinese officials from abroad, the Chinese government has launched a new multi-agency operation codenamed “Sky Net.” The four governmental authorities working together under the “Sky Net” operation are the Organization Department of the CPC Central Committee, the Supreme People’s Procuratorate, the Ministry of Public Security, and the People’s Bank of China.

### Chinese Government/SOE Officials Under Investigation for Q1 2015

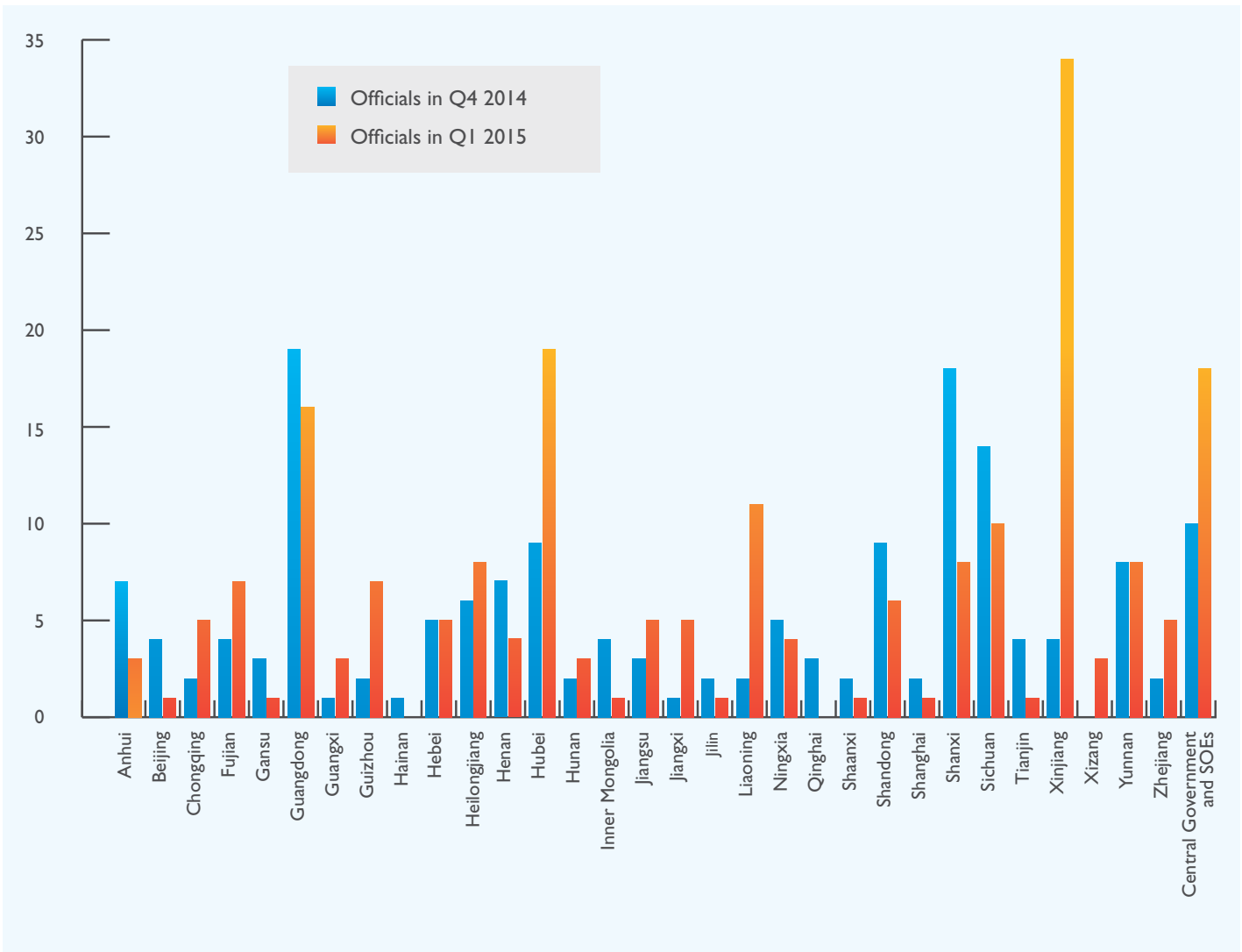
Based upon data published by the CCDI, the following visual map of China highlights the provinces which have been targeted the most during the first quarter of 2015. It is important to be aware of the status and trend of China’s anti-corruption enforcement activities, especially when companies may have business interests in those targeted areas.





## Comparing Q4 2014 with Q1 2015

Breakdown by practice of officials under investigation when compared with the prior quarter.



## OVERSEAS REGULATORS RE: CHINA

### SEC Imposes Sanctions Against China-Based Members of Big Four Accounting Firms for Refusing to Produce Documents

February 6 – The U.S. Securities and Exchange Commission (“**SEC**”) imposed sanctions against China-based members of the “Big Four” accounting firms who refused to turn over audit work papers and related documents in connection with the SEC’s investigations into potential fraud against China-based companies listed in the United States. The firms each agreed to pay USD 500,000 and produce audit documents to satisfy the SEC’s document production requests. The SEC retains authority to impose additional remedial measures against the firms such as a six-month bar on performance of certain audit work, commencement of a new proceeding, or the resumption of the current proceeding, should any non-compliance arise in the future.

### Sri Lanka Government Halted a China-backed Construction Project Due to Potential Corruption

March 5 – Sri Lanka’s new government halted a USD 1.4 billion construction project between the former Sri Lanka government and a Chinese company citing that the China-backed luxury port construction project lacked transparency in the approval process as well as required approvals in accordance to local laws. Sri Lanka’s new leadership explained that such action was not targeted directly at China but the construction project was one of a number of projects currently under review for potential corruption.



# CHINA COMMUNIST PARTY TITLES 101

As shown on the maps and diagrams on pages eight and nine of this newsletter, there are 204 Chinese officials who have been investigated in Q1 2015. A considerable proportion of these former officials held the posts of Party Committee Secretary (28), Deputy Party Committee Secretary (8), Party Branch Secretary (9) or Deputy Party Branch Secretary (6), representing 25% of the total number of investigated officials. Below is a brief introduction of the main roles and duties of these posts:

## Party Committee Secretary (党委书记)

A Party Committee Secretary is the principal leader of the CPC organization in a province, city, or other administrative region and is the de facto highest political office of the area, in charge of the allocation and management of political and organizational resources. The post also refers to the CPC's leadership in state-owned institutions and companies, such as SOEs, public universities and hospitals.

The Party Committee Secretary is in charge of determining the direction of policies and personnel changes, arranging the Party Committee meeting, implementing the decisions of the Party Committee, coordinating and supervising the implementation and approving and issuing policies. The corresponding government leader (such as the Provincial Governor, the City, County, or District level Mayor) is responsible for its routine execution.

## Deputy Party Committee Secretary (党委副书记)

A Deputy Party Committee Secretary is responsible for assisting the work of the Party Committee Secretary. There are usually two Deputy Party Committee Secretaries in most provincial, municipal, and prefecture-level jurisdictions.

The higher-ranked Deputy Party Committee Secretary is often the head of the corresponding government of the Party Committee's area of jurisdiction (e.g. the Governor). The lower-ranked Deputy Party Committee Secretary generally holds no other concurrent position and is sometimes known as the Specifically-designated Deputy Party Committee Secretary (党委专职副书记).

## Party Branch (党组)

A Party Branch or Party Group can be formed in the leading body of a central or local state organ, people's organization, economic or cultural institution, or other non-Party unit. These organizations are created by mandate of a Party Committee to:

- (1) implement the Party's principles and policies;
- (2) determine the major matters of the unit;
- (3) conduct cadre management;
- (4) fulfill the tasks assigned by the Party; and
- (5) provide guidelines to the Party organization of the unit and those directly under it.

They may also gather for ad hoc meetings to study Party documents or speeches at their respective institutions. Unlike Party Committees, which report to Party Committees at a higher level of jurisdiction, Party Branches must accept the leadership of the Party Committee that mandated its creation. A Party Branch Secretary (党组书记) may be assisted by one or multiple Deputy Party Branch Secretaries (党组副书记).



# AIC PENALTIES INCREASE RISK OF DUAL ENFORCEMENT ACTIONS

A new online information disclosure system is now available to check if administrative penalties had been imposed on any particular company in China. Article 6 of the *Interim Regulations on the Public Disclosure of Enterprise Information*<sup>1</sup> (“**Disclosure Regulations**”), which came into effect on October 1, 2014, provides that Administrations of Industry and Commerce (“**AICs**”) shall publish the administrative sanction information generated during the performance of their functions through the Enterprise Credibility Information Publicity Systems (“**Publicity System**”) within twenty working days from the date when the information is generated.

Concurrently, the *Interim Provisions on the Publication of Information about Administrative Sanction Decisions Imposed by Administrative Authorities for Industry and Commerce*<sup>2</sup> (“**Interim Provisions on Publication of Administrative Sanction Information**”) came into effect on October 1, 2014 to further regulate the disclosure

of administrative sanction information on the Publicity System. It provides that AICs shall publish relevant information on an administrative sanction decision made under the general procedure,<sup>3</sup> including the decision letter for the administrative sanction and a summary which shall include basic information of the party being sanctioned, nature of illegal act, content of the administrative sanction, etc., excluding information involving state secrets, trade secrets and personal information.<sup>4</sup> The Publicity System allows searches by an enterprise’s name or registration number and displays whether any administrative sanction decision had been imposed against the enterprise, together with the enterprise’s basic registration information. The Disclosure Regulation, together with the Interim Provisions on Publication of Administrative Sanction Information, have increased both the quantity and quality of information available regarding AIC enforcement actions across China.

<sup>1</sup> Qiye Xinxi Gongshi Zhanxing Tiaoli (企业信息公示暂行条例), The full text of the Disclosure Regulation (promulgated by the St. Council., Aug. 7, 2014, effective Oct. 1, 2014), PRC Central People’s Government website, [http://www.gov.cn/zhengce/2014-08/23/content\\_2739774.htm](http://www.gov.cn/zhengce/2014-08/23/content_2739774.htm).

<sup>2</sup> Gongshang Xingzheng Guanli Xingzheng Chufa Xinxi Gongshi Zhanxing Guiding (工商行政管理行政处罚信息公示暂行规定), The full text of the Interim Provisions on Publication of Administrative Sanction Information (promulgated by the St. AIC, Aug. 19, 2014, effective Oct. 1, 2014), PRC State AIC website, [http://www.saic.gov.cn/wzj/zcfg/gfxwj/201502/t20150228\\_152257.html](http://www.saic.gov.cn/wzj/zcfg/gfxwj/201502/t20150228_152257.html).

<sup>3</sup> Generally, if an administrative decision was made under summary procedure, it is not mandatory for AICs to publish the information in the Publicity System. See [http://www.saic.gov.cn/gsl/d/llyj/xxb/201412/t20141223\\_150767.html](http://www.saic.gov.cn/gsl/d/llyj/xxb/201412/t20141223_150767.html). Summary procedure applies to violations that have well-attested factual and legal basis and for which administrative penalty capped at CNY 50 for individuals or CNY 1,000 for entities may be made immediately in court. See Article 33 of the PRC Administrative Penalty Law.

<sup>4</sup> The Interim Provisions on Publication of Administrative Sanction Information, Articles 2, 4, 5, 6.

## AICs of First-Tier Cities Are Publishing First

Our research indicates that the level of implementation of the Disclosure Regulations has varied across different cities across China. Generally speaking, the AICs of first-tier cities such as Beijing, Shanghai, Guangzhou, and Shenzhen have already been publishing administrative sanction decisions on the Publicity System. We understand that the details of administrative penalties in respect of some MNCs have already been published on the system, and can be searched against their business names. The published details include the date of the sanction, the authority that made the decision, specific penalties imposed, and the nature of the illegal act(s) such as commercial bribery or misrepresentation in advertisement. At the time of writing, we have also identified decision letters posted on the Publicity System in Beijing and Shanghai however not in Guangzhou and Shenzhen. We see a continuing trend where second and third-tier cities' AICs are following suit.

## Publicity System as a Due Diligence Tool

According to the *Resource Guide to the U.S. Foreign Corrupt Practices Act* ("**FCPA Resource Guide**"),<sup>5</sup> third parties including agents, consultants, and distributors, could be considered high-risk parties who may be used to conceal payment of bribes to foreign officials in overseas business operations. Risk-based due diligence with third parties is a particularly important indicator of the effectiveness of a company's compliance program. An effective due diligence program shall at least help the company to:

- Understand the qualifications and associations of its third-party partners;
- Understand the business rationale for including the third-party in the transaction; and
- Undertake some form of on-going monitoring of third-party relationships.

The Publicity System is a useful tool for MNCs to conduct further due diligence on their existing and potential Chinese business partners, agents, consultants and other third parties in order to identify potential red flags such as whether any bribery-related administrative sanctions have been imposed on these entities.

## Dual Enforcement Actions on the Rise as Ripple Effect Increases

With the increasing number of disclosures on the Publicity System in China, MNCs should be more vigilant with its due diligence of business partners, other third-parties in China, as well as its own operations in China. Bribery-related administrative penalties could slip under the radar of the headquarters' legal department since it could be mistakenly deemed a "local law" matter only. Reference to bribery and other similar offenses in an AIC decision letter could catch the attention of overseas regulators such as the U.S. Department of Justice ("**DOJ**"), the SEC, and/or the U.K.'s Serious Fraud Office.

Both the DOJ and SEC place a high premium on self-reporting, cooperation, and remedial efforts in determining the appropriate resolution on FCPA matters.<sup>6</sup> Voluntary and timely disclosure and a company's willingness to provide relevant information and evidence are taken into account as mitigating factors by these U.S. regulators.<sup>7</sup> If an MNC chooses not to self-report a bribery-related AIC administrative penalty and that penalty is subsequently published on the Publicity System, the MNC may put itself in a difficult position with an overseas regulator who later discovers this information on its own.

<sup>5</sup> FCPA Resource Guide, Crim. Div. of the DOJ, Enfnt. Div. of the SEC (2012), page 60.

<sup>6</sup> Id. at page 54.

<sup>7</sup> Id.





# FREQUENTLY ASKED QUESTIONS

## What is State Work Personnel according to PRC Criminal Law?

In the PRC, there is no specific definition of what a “government official” is. Instead, the PRC has a legal concept of State Work Personnel (“**SWP**”) who consist of: (1) people who perform public services in the legislative, administrative, or judicial agencies or the military; (2) people who perform public services in SOEs, institutions, or civil organizations; (3) people assigned by the government, SOEs or institutions to non-state-owned enterprises, institutions, or civil organizations to perform public services (such as a deputy general manager of a Sino-foreign joint venture company who has been sent to the joint venture by the Chinese party which is an SOE); and (4) people who perform public services according to law. For example, positions such as “directors, managers, supervisors and cashiers” of state-owned companies who are in a position to manage or supervise the state’s assets would likely be considered as “performing a public service.” In contrast, employees whose functions do not reflect authorities’ duties and power and are related to labor and technical skills (such as salespersons and ticket office clerks) would likely not be considered “a person performing a public service.” Of particular significance, a recent pharmaceutical case decided by the Changsha court in China ruled that certain healthcare providers working in medical institutions who received bribes for drug sales were not considered SWPs in accordance to the PRC Criminal Law definition.

## How do I prepare for unannounced visits by a local Chinese bureau?

In the past two and a half years, we have seen an increase in unannounced visits by PRC government authorities. PRC law has no mandatory requirement that government officials must give notice prior to visiting a business premise. Aside from calling your lawyer immediately, you may consider adopting a “dawn raid protocol” to properly implement and train your employees to respond in an orderly and effective manner:

- Train employees to remain calm and treat the officers with courtesy and respect.
- Have a procedure in place to contact relevant individuals and develop a crisis management team.
- Implement procedures to properly identify the government officer, search warrant, and/or authorization documents to ensure that the matter is handled properly.
- Educate leadership on the basics of evidence preservation, proper documentation, confidentiality, making copies of seized materials, and how to communicate with the officers.

**What is the current threshold for meals, gifts, and entertainment in China? Can you give me a dollar amount?**

There is no “magic number” in terms of a threshold for meals, gifts, and entertainment in China. This is due to the challenge of analyzing a company’s specific anti-bribery and anti-corruption (“**ABAC**”) risk profile in connection with applicable laws both locally and in the jurisdictions where the company does business (e.g. PRC, U.S., and U.K.) as well as varying industry-specific rules and enforcement practices of local authorities. The best practice is to (i) perform a risk assessment of the company’s business and work out its risk profile in the markets that it operates, (ii) then based on this, develop customized policies and procedures that are reflective of such risk profile and applicable ABAC laws both in China and other applicable jurisdictions, and (iii) continue to monitor and revise these procedures based on evolving enforcement trends where appropriate.

Some of the Chinese ABAC law considerations should include:

- CPC party rules and code of ethics applicable to party officials and state work personnel at SOEs who are potential suppliers or business partners;
- Monetary thresholds for criminal bribery offenses which are different from administrative bribery offenses (where there is no specific defined minimum amounts and may vary from one administrative regulatory authority to another); and
- In terms of implementation, what are the procedures and controls to put in place to ensure that spending is not abused and sufficient supporting documentation is provided to explain the purpose of the meal, gift, and/or entertainment?

**I suspect that one of our employees has been bribing one of our SOE customers with gift cards, meals, and possibly even under-the-table payments. How do I address this situation? Do I fire him?**

Since the suspicious conduct is in connection with a possible bribery issue and certain overseas laws (e.g. U.S. and U.K.) may apply to your company, you will want to have legal involved early to ensure that your inquiry is protected under legal privilege.

Bribery concerns are serious and if true, may have serious consequences for the company both with respect to Chinese regulators as well as applicable overseas authorities. As such, before terminating the employee, the company should take steps to assess whether or not the suspicion is supported by concrete evidence, for example, by conducting an investigation to determine the full extent of the facts, issues, and employees involved.

Upon completing the investigation, the company should implement remedial actions where improper practices and/or employee misconduct have been identified. Such remedial actions may include terminating employees who engaged in misconduct, designing specific policies and procedures to prevent future violations, and enhancing legal compliance training within the company. In doing so, the company should also bear in mind the corrective actions required by applicable regulators as the degree and extent of the remedial action expected may vary.

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