



CHINA REGULATORY ENFORCEMENT QUARTERLY

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EXECUTIVE SUMMARY

Legal and regulatory developments in Q4 2015 continue to reflect attempts by the Chinese government to respond to the significant challenges presented by the slowing market economy and other domestic crises, while the country aspires to transition into a more consumption-driven, innovative, and diversified economy.

For example, the Shanghai Stock Exchange, which crashed in Q3 and made a small recovery in Q4, collapsed to a 52-week low in the first week of 2016. The government implemented a number of reforms aimed at preventing future crashes which, ironically, may have in some cases compounded the problem. One such reform was the introduction of a “circuit breaker system” which halted the trading of Chinese stocks that made gains or losses of more than seven percent on any given trading day. The circuit breaker system may have contributed to the crash as anxious investors looked to quick sell when markets began to tumble. The China Securities Regulatory Commission (“**CSRC**”) suspended the system within three trading days, having publicly admitted that the measure was unsuccessful in achieving its aim.

Furthermore, the central government’s stance against corruption remains steadfast as evidenced in its propensity to investigate, arrest, and prosecute individuals responsible for such crimes. Disaster struck in Shenzhen on December 20 when a dumpsite of construction debris collapsed toppling dozens of buildings and apartments. Official reports state that 69 people were killed while eight remain missing. Ongoing investigations revealed that the dumpsite was known to be unstable and had been reported to government officials who declined to act. According to Chinese media reports, Chinese authorities charged 42 people in connection with the collapse, among whom 12 were government officials. A former official whose office had overseen approvals for the dumpsite reportedly jumped to his death.

China’s legal and regulatory landscape continues to adapt to these macro-economic shifts and crisis management issues, having unexpected consequences for multinational companies operating in China. Companies have reacted by looking to mitigate critical risks to business and infrastructure by, for example, the implementation of robust compliance programs, strengthening internal controls, and increasing the visibility of the legal team on issues such as cyber security, data protection, and data transfer.

This newsletter also considers new anti-terrorism laws, regulatory reforms in the healthcare sector as well as other major enforcement highlights of Q4 2015. We wish you a Happy Chinese New Year and much luck and well-being in the Year of the Monkey!



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TOO MUCH POWER? CHINA'S ANTI-TERRORISM LAW

China's new *Anti-Terrorism Law* (“**ATL**”), which came into effect on January 1, 2016, gives sweeping powers to government authorities to pursue and combat the threat of terrorism. Under the ATL, a national counter-terrorism body is established and charged with identifying terrorists and terrorist threats. A national intelligence center coordinates departmental and trans-regional efforts to gather intelligence.

These agencies are granted broad and controversial powers to collect information, undertake surveillance and conduct investigations on companies operating across a wide-range of sectors and industries in China including telecommunications, internet and technology, banking and finance, transportation and logistics, hotels and hospitality, aviation, motor vehicle leasing, and handlers of hazardous chemicals or controlled instruments.

What is “terrorism”?

Article 3 of the ATL defines “terrorism” as any activity or proposition that (i) by means of violence, sabotage or threat (ii) generates social panic, undermines public security, infringes upon personal and property rights, or menaces state authorities and international organizations (iii) with the aim of realizing a political, ideological, or other purpose. “Terrorism” is therefore a broad concept which need not involve any threat of danger to human life but may comprise any activity promoting a political or ideological agenda which is deemed to be a threat to public or private interests. Critics of the ATL fear that some of these discretionary powers may be used to oppress dissidents and ethnic minorities in China.

Obligations under the ATL

Under the ATL companies and individuals are obliged to cooperate with a government investigation and provide information, access, and support as necessary. Specifically, telecommunications and internet service providers are required to provide decryption services and other technical support and assistance for both the prevention and investigation of terrorist activities. Such companies are also prohibited from disseminating information with any terrorist or extremist content.

Failure to comply with these obligations may result in fines of up to CNY 500,000 being imposed on the company and/or responsible employees. Individuals also risk being detained for a period of up to 15 days, depending on the seriousness of the violation. Other stipulations under the ATL require that mandatory identity checks are conducted on customers, users and vendors by financial institutions and other companies, such as long-distance passenger businesses, motor vehicle leasing companies and internet companies.

What can a company do?

While the authorities have broad powers to conduct an investigation, companies should understand the scope of any investigation and be alert to how company information and materials are handled and processed. Information and materials gathered in the context of an anti-terrorism investigation may only be used for the purposes of that investigation and not for any other purpose. Government bodies handling that information must keep confidential any state secrets, trade secrets and personal privacy matters. Anyone who divulges state secrets, trade secrets, or personal privacy matters in violation of applicable PRC law may be liable for an offense.

Companies operating in China, and telecommunications and internet service providers in particular, would be wise to ensure they are familiar with the scope of the powers granted by the ATL and to ensure relevant company procedures are implemented in order to comply with their obligations under the law, and are sufficiently prepared in case they are requested to provide assistance to a government investigation.



NEW MEASURES ON HEALTHCARE DONATIONS

On October 20, 2015, The National Health and Family Planning Commission (“**NHFPC**”) publicly announced and put into effect the Administrative Measures on Accepting Donations for Public Welfare by Healthcare Entities (for Trial Implementation) (“**Healthcare Donation Measures**”). This replaced the prior Interim Measures for the Administration of the Acceptance of Social Donations and Financial Aids which was issued in 2007. The Healthcare Donation Measures affect healthcare institutions, which include hospitals, public welfare social groups, foundations, and other organizations, and set out detailed guidelines for evaluating, accepting, and utilizing the donations they receive from companies and individuals.

For limited purposes

The Healthcare Donation Measures allow healthcare entities to accept donations for the limited purposes of reducing fees for medical treatment, providing public health services and education, training healthcare faculties, academic and scientific research, the construction of facilities and provision of equipment, as well as other non-for-profit activities.

The Healthcare Donation Measures explicitly prohibit healthcare entities from accepting donations where the purpose is for-profit commercial activities or the procurement of goods, where the donor maintains certain rights to economic interests, intellectual property, and/or industrial data, if it is associated with political purposes, if the donation would damage public interest or legal rights of others, or if the donation would violate PRC laws such as unfair competition or commercial bribery, or quality standards.

A transparent process

The Healthcare Donation Measures outline a vetting process to increase the transparency of donations. This requires the management team of the receiving healthcare institution to issue a pre-evaluation opinion on the donation. It includes requirements for proper financial management, accurate accounting records, and certain contractual language.

The Healthcare Donation Measures also include an information disclosure mechanism which requires that details about donations be published on official websites and/or major media outlets. Donations will also be subject to an economic responsibility audit.

If your company is considering donating money, equipment, products, and/or services to a Chinese healthcare institution it is important to ensure that the local institution to which you are donating complies with the procedures prescribed by the Healthcare Donation Measures before accepting your donation. These measures should also ensure that your donation is put to proper and good use.



MAJOR ENFORCEMENT NEWS

Former director of State-owned Assets Supervision and Administration Commission receives prison sentence

October 12 – JIANG Jiemin, the former director of the State-owned Assets Supervision and Administration Commission of the State Council (“**SASAC**”) who was responsible for managing and supervising SOEs and state-owned assets, pleaded guilty to accepting bribes and was sentenced by the Hanjiang Intermediate Court of the Hubei province to 16 years imprisonment. Property valued at CNY 1,000,000 was also confiscated. JIANG has said that he will not appeal the judgment.

Central Inspection Team focused on aviation, railway and financial sectors

October 22 – The Central Inspection Team of the Chinese Communist Party’s Central Commission for Disciplinary Inspection (“**CCDI**”) completed the second round of inspections for 2015 which focused on 26 central units and SOEs from various industries including aviation, transportation, manufacturing and others. It reported that serious corruption issues had been identified within China Railway Corporation, as well as within the civil aviation industry. In respect of the latter, it discovered that a director of a major SOE civil aviation company had established his own company to compete against the SOE civil aviation company. The official report can be found on the CCDI website.

October 23 – The Central Inspection Team began its third round of inspection for 2015 which focuses on 31 central units and SOEs and on key players in the financial sector, such as financial regulatory organizations, major banks, and insurance companies. The Shanghai Stock Exchange and Shenzhen Stock Exchange have been listed for inspection.

A full list of the companies and agencies under inspection for the third round can be found on the CCDI website. These inspections are ongoing.

Non-executive director of a Hong Kong-listed pharmaceutical company charged with corruption

November 27 – A non-executive director of a Hong Kong-listed pharmaceutical company was arrested by the Independent Commission Against Corruption of Hong Kong for potential corruption charges, but was later released without charge. The arrest comes in the context of the company’s suspension from trading on the Hong Kong Stock Exchange (“**HKEx**”) on March 27, 2015 for failing to disclose certain information in its annual report. The company’s Audit Committee began investigating several allegations made against the company, including alleged inflation of sales prices, inappropriate payments to distributors, and bribery conduct. The HKEx has required that an independent forensic investigation be conducted, and that the company publish adequate financial reports. The company must satisfy these requirements before it can resume trading.

China stock market continues to be a focus for potential bribery crackdown

November 13 – YAO Gang, the former vice chairman of the China Securities Regulatory Commission (“**CSRC**”), is being investigated for suspected serious violations of party discipline – which is a standard phrase that refers to potential corruption allegations. YAO was one of CSRC’s most senior officials in charge of approving initial public offerings.

November 26 – Three major Chinese securities investment firms and their senior executives are being formally investigated by the CSRC for allegedly manipulating stock

prices and engaging in insider trading. Several media sources have reported that FU Zhenghua, the Deputy Minister of Public Security who brought down one of China's top Communist Party officials, ZHOU Yongkang, has been put in charge of corruption and insider trading probes related to the securities industry in the wake of the stock market crash.

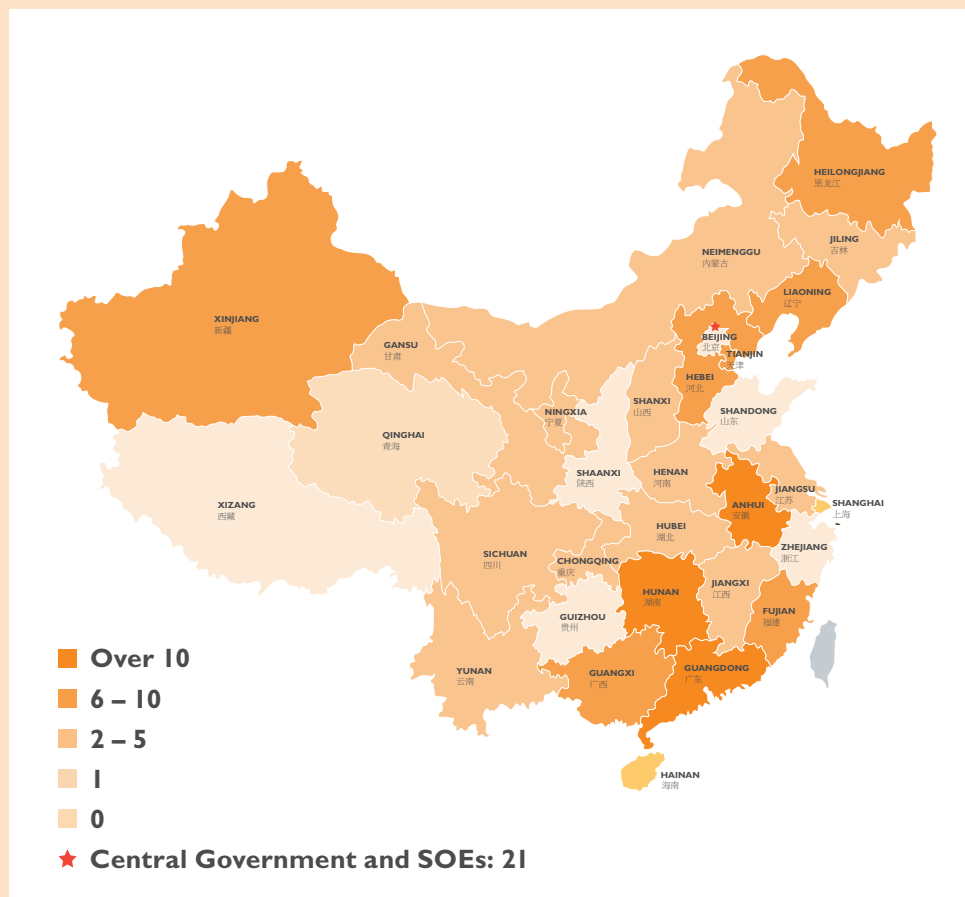
Repatriation of Chinese fugitive officials continues

December 10 – According to media reports, operation “Sky Net” has successfully repatriated 738 fugitives from over 68 foreign countries since its inception in April 2015. Under the “Sky Net” campaign, Chinese authorities collaborate with various law enforcement agencies around the world to repatriate alleged fugitive Chinese officials. As of November 30, “Sky Net” successfully repatriated 18 of China's most wanted Chinese fugitives from abroad, including HUANG Yurong, a former party director at the highway

agency in Henan province. HUANG voluntarily returned to China after 13 years in the U.S. She was accused of accepting bribes and embezzling public funds. Her husband, former Henan transportation department chief, was sentenced to life imprisonment in 2005 for accepting bribes totaling CNY 19 million (approximately USD 3 million). HUANG was ranked No. 4 on China's 100 most wanted list and she was also the highest ranking official among the 18 most wanted Chinese fugitives who had been repatriated.

“Sky Net” is a multi-agency operation involving the collaboration of four Chinese government entities: Organization Department of the Communist Party of China's Central Committee, Supreme People's Procuratorate, Ministry of Public Security, and the People's Bank of China.

Chinese government/SOE officials under investigation for Q4 2015



Notable individuals put under investigation in Q4 include:

- **SU Shulin**, former governor of Fujian province
- **ZHOU Benshun**, former Communist Party Secretary and the top official of Hebei Province
- **WANG Wei**, Director of the National Development and Reform Commission, Social Policy and Development Division
- **AI Baojun**, the Deputy Mayor of the city of Shanghai



OVERSEAS REGULATORS

U.S. based technology firm reserves funds for settlement of FCPA offenses in connection with China sales

November 23 – A U.S. computer software company stated in its securities filing that it had reserved USD 28.2 million in anticipation of a potential settlement with the U.S. Department of Justice (“**DOJ**”) and U.S. Securities Exchange Commission (“**SEC**”) for violations of the U.S. Foreign Corrupt Practices Act (“**FCPA**”) in China. The FCPA investigation relates to payments made for travel and entertainment for employees of Chinese SOEs. The investigation began in May of 2014.

U.K. Serious Fraud Office agrees to first deferred prosecution agreement

November 30 – A London-based bank agreed to a deferred prosecution agreement (“**DPA**”) with the U.K. Serious Fraud Office (“**SFO**”) in order to end an investigation into alleged bribes by the bank to Tanzanian government officials. Under the DPA, the bank will pay fines totaling USD 25.2 million as well as USD 7 million in compensation to the Government of Tanzania, and the SFO’s reasonable costs. In addition to the financial penalties imposed, the bank has agreed to continue to cooperate fully with the SFO and submit to an independent review of its existing anti-bribery and corruption controls, policies and procedures.

The SFO worked alongside the DOJ and SEC throughout this process. A separate civil penalty of USD 4.2 million was also imposed on the bank by the SEC.

China and U.S. strengthen cooperation to combat money laundering

December 11 – The China Anti-Money Laundering Monitoring and Analysis Center signed a Memorandum of Understanding with the U.S. Treasury Department’s Financial Crimes Enforcement Network to strengthen cooperation between both nations’ financial intelligence units. This allows for the sharing of information in relation to suspected money laundering cases and terrorist financing in order to prevent offenders abusing either country’s financial systems. According to a press release by the U.S. Treasury Department, this will be extremely valuable in helping thwart illicit activity in the vast and interconnected global economy.

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