Corporate crime, fraud and investigations in China: overview
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FRAUD
Regulatory provisions and authorities

1. What are the main regulatory provisions and authorities responsible for investigating corporate or business fraud?

The main regulations relating to corporate or business fraud are the:

- Advertisement Law, effective as of 1 February 1995.
- Criminal Law, effective 1 October 1997, last amended on 1 May 2011.
- Contract Law, effective as of 1 October 1999.
- Law on Tendering and Bidding, effective as of 1 January 2000.
- Securities Law, effective as of 1 January 2006, last amended on 29 June 2013.
- Regulation on Futures Trading, effective as of 15 April 2007, last amended on 18 July 2013.

Practice guidelines issued by the relevant industry associations include the:

- Code of Conduct of Futures Industry Practitioners issued by China Futures Association, effective as of 30 April 2008. This code is mandatory.
- Code of Conduct of Securities Industry Practitioners issued by Securities Association of China, effective as of 19 January 2009. This code is mandatory.
- Code of Conduct of Insurance Industry Practitioners issued by China Insurance Regulatory Commission, effective as of 28 February 2009. This code is mandatory.
- Guidance of Conduct of Banking Practitioners issued by China Banking Regulatory Commission, effective as of 12 January 2011. This code is mandatory.

The State Administration for Industry and Commerce (SAIC) and the China Securities Regulatory Commission (CSRC) are the main authorities responsible for investigating corporate or business fraud. For more information on the regulatory authorities, see box: The regulatory authorities.

Offences

2. What are the specific offences relevant to corporate or business fraud?

Criminal Law
There are no strict liability offences, as a person cannot be criminally charged unless intent or negligence is found under the Criminal Law.

The offences relevant to corporate or business fraud are:

- **Fraudulently issuing shares or bonds (Clause 160, Criminal Law)**. This offence consists of:
  - issuing shares or company/enterprise bonds;
  - disguising material facts or making materially false statements in prospectuses, share subscription or bond raising documents; and
  - where the amount is significant or the consequences or circumstances are sufficiently serious.

- **Misusing client's funds or assets under management or trust (Clause 185, Criminal Law)**. This offence consists of:
  - a commercial bank, stock exchange, futures exchange, securities company, futures brokerage company, insurance company or other financial institution;
  - using the client's fund or assets under management or trust without authorisation,
  - in breach of its fiduciary duty; and
  - where the circumstances are sufficiently serious.

- **Financial deceit (Clauses 192, 194 and 195, Criminal Law)**. This offence consists of a person or a company:
  - illegally raising funds;
  - wrongfully using financial instruments (such as the use of fake or abandoned cheques, blank cheques and so on); or
  - wrongfully using letters of credit (such as the use of fake or abandoned letters of credit or attached documents);
  - for the purpose of illegally obtaining a significant amount of property by deceit.

- **False advertisement (Clause 222, Criminal Law)**. This offence consists of making a false advertisement of any product or service, where the circumstances are sufficiently serious.
• Bid rigging (Clause 223, Criminal Law). This offence consists of bidders conspiring with each other in offering their quotes to damage the interest of the bid inviter or other bidder, or consists of the bid inviter and the bidder conspiring with each other to damage the interest of the state, a collective or any other third party, where the circumstances are sufficiently serious.

• Contractual deceit (Clause 224, Criminal Law). This offence consists of a person or a company entering into or performing a contract by deceit, for the purpose of illegally obtaining a significant amount of property, such as:
  - signing the contract in the name of a non-existent company;
  - using non-existent property to provide surety;
  - knowingly entering into a contract without any ability to perform it;
  - disappearing after receipt of the counterparty's payment or delivery.

Securities Law
A securities company and its personnel are prohibited from committing any of the following fraudulent activities (Securities Law):
• Purchasing or selling securities in violation of the client's instructions.
• Failing to provide written confirmation to the client within a specified time.
• Misappropriating securities or funds in the client's account.
• Purchasing or selling securities for or in the name of its client without authorisation.
• Soliciting unnecessary securities trading for the purpose of receiving commissions.
• Using media or other means to provide or spread false or misleading information.
• Other activities that contradict the client's true intentions or interests.

Regulation on Futures Trading
Under the Regulation on Futures Trading, a futures company is prohibited from committing any of the following fraudulent activities:
• Guaranteeing profits or failing to show a risk statement to the client.
• Sharing interests or assumed risk with the client in brokerage business.
• Trading futures contracts in violation of the client's instructions.
• Hiding material facts or using other improper means to solicit the client to enter into trades.
• Providing false closing reports to the client.
• Failing to forward the client's instruction to the futures exchange.
• Misappropriating the client's funds.
• Failing to open the deposit account with a qualified bank, or illegally transferring the client's deposit.
• Any other fraudulent activities specified by CSRC.

Investigation powers
In general terms, SAIC has the authority to investigate, enforce and prosecute an administrative case of general corporate or business fraud and CSRC has the authority to investigate, enforce and prosecute administrative securities- and futures-related cases.

SAIC has the power to (Article 43, Interim Rules on SAIC Enforcement Actions, last amendment effective on 1 January 2012):
• Investigate the law-breakers, suspects, interested parties and witnesses, and to require them to provide evidence or other materials related to the illegal activities.
• Inspect objects related to the illegal activities, order the relevant persons to disclose the sources of the objects, and when necessary, order them to suspend sales, wait for inspection, not transfer, hide or destroy the relevant objects, or, if allowed by law, to seal or seize the objects.
• Investigate all the circumstances relating to the illegal activities.
• Examine, duplicate or, if allowed by law, seize the contracts, invoices, books and accounts, instruments, records, documents, licences, business correspondence and other materials related to the illegal activities.
• Investigate or apply for a court order to freeze the bank accounts of the law-breakers.
• Exercise any other powers authorised under the laws and regulations.

When investigating cases of securities fraud, CSRC has the power to (Article 180, PRC Securities Law):
• Carry out on-site inspections of issuers, listed companies, securities companies, securities investment fund management companies, securities service institutions, stock exchanges and securities registration and clearing institutions.
• Enter premises where illegal activities are suspected to have taken place to collect evidence.
• Make enquiries of the parties and the entities and persons related to the matter under investigation, and require them to provide explanations in respect of the matter under investigation.
• Examine and duplicate the property right registration documents, correspondence and other materials related to the matter under investigation.
• Examine and duplicate the securities trading records, registration and transfer records, financial and accounting materials and other relevant documents and materials of the parties, and the entities and persons related to the matter under investigation.
• Seal any documents and material that may be transferred, hidden or destroyed.
• Examine the fund accounts, securities accounts and bank accounts of the parties, and the entities and persons related to the matter under investigation. The CSRC can freeze or seal such accounts, if the evidence proves that the illegal fund,
Where government authorities have Saunders or CSRC can impose administrative penalties but if the fraud cases.

Articles 48 and 57 of the Regulation on Futures Trading provide results and suits on behalf of the state. The People’s Court proceeding. The prosecutor’s office reviews the investigation. The public security bureau performs the investigation in a criminal penalty.

In addition, when a securities company is ordered to suspend its business, is in administration, liquidation, or a takeover process, or is regarded as having significant risks, the CSRC, with the approval of the central level CSRC, can take the following actions against the directly in-charge directors, supervisors, senior management and other directly responsible persons (Article 154, PRC Securities Law):

- Notify the exit bureau to prevent him from leaving China.
- Apply for a court order to prohibit him from assigning, transferring or otherwise disposing of the relevant property or creating encumbrances on the property.

Articles 48 and 57 of the Regulation on Futures Trading provide similar powers that CSRC can exercise when investigating futures fraud cases.

SAIC or CSRC can impose administrative penalties but if the company does not co-operate or pay the penalty, SAIC or CSRC must apply to the People’s Court to enforce the administrative penalty.

The public security bureau performs the investigation in a criminal proceeding. The prosecutor’s office reviews the investigation results and sues on behalf of the state. The People’s Court adjudicates the case and decides on the defendant’s guilt. The authorities have extensive investigation powers, including (in accordance with the due process required by law):

- Detaining or arresting the suspect.
- Sealing up, seizing or freezing the suspect’s property.
- Restricting the suspects movements or prohibit the suspect from going abroad.

**Consequences of non-compliance**

Generally, if any person hinders the law enforcement actions of government officials (including SAIC and CSRC) without violent or threatening means, the public security bureau may issue an official warning or impose a fine of up to RMB200, or if the violation is severe, detain him for five to ten days and impose a fine of up to RMB30,000 (Article 50, PRC Law on Penalties for Administration of Public Security). If any person hinders the law enforcement actions of government officials with violent or threatening means, such person may be subject to imprisonment for up to three years or a criminal fine (Article 277, PRC Criminal Code). In addition, SAIC can impose a fine of up to three times the illegal income (capped at RMB30,000) or where there is no illegal income, a fine of up to RMB10,000 on anyone refusing to comply with SAIC’s order to suspend sales, wait for inspection, not transfer, hide or destroy the relevant property (Article 43, Interim Rules on SAIC Enforcement Actions).

**Available protections**

Under PRC laws, when the authorities carry out law enforcement actions, they must follow statutory due process. For example, the parties being investigated have the right to:

- Require the officials to produce their enforcement certificates evidencing that they have the enforcement powers.
- Refuse any investigation if there is only one official on-site.
- Review and revise written interview or interrogation notes before signing the notes.
- Require the officials to issue a list of sealed or seized materials.
- Require the officials to produce the special approval or court order for any seizure or freezing if it is required by law.
- Require the authorities to return the seized materials or to release the frozen accounts if any statutory time limit has expired.

**Extra-territorial jurisdiction**

In an administrative investigation, government authorities such as SAIC or CSRC only have the power to investigate cases occurring in China, unless this is specifically provided for by statute (such as under Section 2 of the Anti-monopoly Law, where the Ministry of Commerce has jurisdiction to review overseas mergers and acquisitions). As a matter of practice, Chinese Government authorities rarely interact with foreign authorities in case investigations carried out in China. They rely more on their domestic powers of investigation and the voluntary co-operation of the parties under investigation.

In a civil suit, the Chinese court has jurisdiction if either:

- The contract in dispute is entered into or performed in China.
- The property subject to dispute is located in China.
- The defendant has property in China that can be seized.
- Tortious activity is committed in China or its result occurs in China.
- The defendant has a representative office in China.
- The defendant accepts the jurisdiction by responding to the court subpoena without any objection to the jurisdiction.

Unless one of these conditions applies, the Chinese court does not have the jurisdiction to hear cases that have no connection with China.

In criminal proceedings, Chinese authorities have jurisdiction to investigate crimes:

- Committed in China, or Chinese ships or aircraft, or crimes whose result occurs in China.
- Committed by Chinese citizens outside China.
- Committed by foreigners against China or Chinese citizens outside China, the minimum penalty of which is three years imprisonment or above, unless the relevant activity is not penalised under the law of the jurisdiction where the crime occurs.
- Under international treaties, where China has the obligation to exercise its jurisdiction.

**Court orders available in civil cases**

In a civil corporate or business fraud suit, the applicant can apply to the People’s Court for the following court orders:

- Property preservation. An applicant can ask the court to seal up, seize or freeze the property of the counterparty if any future adjudication may not be enforceable without this. The applicant must provide sufficient surety for the frozen property. In emergency cases, the court determines whether to order preservation within 48 hours. Where the application is made before the initiation of a suit, the preservation order is void if the applicant does not sue the counterparty within 30 days of the order being granted.
- Evidence collection. Where government authorities have evidence that involves state secrets, trade secrets or private
A corporate body would receive a criminal fine. The corporate body would receive a criminal fine. The corporate body would receive a criminal fine. The corporate body would receive a criminal fine. The corporate body would receive a criminal fine. The

Country Q&A

For breaches of the Securities Law (see Question 2) the CSRC can:

- have their business licences revoked.
- participate in any mandatory bidding for one to two years, or
- In severe situations, the bidders may also be prohibited from

In a bid rigging case (Law on Tendering and Bidding):

- The result of the bidding is void.
- The conspiring bidders receive a fine of 0.5% to 1% of the awarded contract amount.
- The directly responsible in-charge person and other directly responsible persons receive a fine of 5% to 10% of the fine imposed on the bidders.
- Any illegal income is confiscated.

In severe situations, the bidders may also be prohibited from participating in any mandatory bidding for one to two years, or have their business licences revoked.

For breaches of the Securities Law (see Question 2) the CSRC can:

- Confiscate the illegal income.
- Impose a fine on the futures company of up to 500% of the illegal income.
- Impose a fine on the directly responsible in-charge person and other directly responsible persons of up to RMB300,000.
- Suspend or revoke the licence of the securities company or the qualifications of the relevant persons.

Civil suits

Where a contract is entered into by fraud of one party, the other party has the right to ask the People's Court or the arbitration tribunal to amend or cancel the contract (Clause 54, Contract Law).

In cases of corporate or business fraud, the victims can bring civil suits against the fraudulent party for compensation for losses. Class actions are allowed. In a class action, the plaintiffs must appoint two to five representatives to participate in the lawsuit on their behalf (Clauses 54 and 55, Civil Procedure Law).

BRIBERY AND CORRUPTION

Regulatory provisions and authorities

The main regulations related to bribery and corruption are the:

- Anti-unfair Competition Law, effective from 1 December 1993.
- Interim Measures on Prohibition of Commercial Bribery Activities, effective from 15 November 1996.
- Criminal Law, effective from 1 October 1997, last amended on 1 May 2011.
- Opinions on Application of Law in Corruption Cases issued by the Supreme People’s Court, effective from 8 July 2007.
- Opinions on Application of Law in Commercial Bribery Cases issued by the Supreme People’s Court, effective from 20 November 2008.
- Interpretations on Several Issues regarding Specific Application of Law on Criminal Bribing Cases issued by the Supreme People’s Court and the Supreme People’s Procuratorate, effective from 1 January 2013.
- Provisions of the Supreme People’s Procuratorate on Bribery Case File Inquiry, effective from 6 February 2013.

Criminal Law defines a "public official" as a person who performs public services in a state organ, including:

- A person who performs public services in a state-owned company or enterprise, institution or people’s organisation.
A person who is assigned by a state organ, state-owned company, enterprise or institution to a company, enterprise or institution that is not owned by the state or a person's organisation to perform public services.

Any other person who performs public services under the relevant laws.

Due to this broad definition, it is prudent for multinationals to proceed carefully when dealing with the managerial staff of state-owned enterprises, as actions perceived as bribery of public officials may trigger severe criminal liability.

The main authorities responsible for investigating bribery and corruption include the:

- SAIC.
- Supreme People's Procuratorate (SPP).
- Ministry of Public Security (MPS).
- Commission for Discipline Inspection (CPI) of the China Communist Party.

For more information on the authorities, see box: The regulatory authorities.

6. What international anti-corruption conventions apply in your jurisdiction?

The UN Convention against Transnational Organised Crime 2000 has been effective toward China since 23 October 2003, with Article 35(2) (disputes under the Convention to be submitted to the International Court of Justice) being reserved.

The UN Convention against Corruption 2003 has been effective toward China since 12 February 2006, with Article 66(2) (disputes under the Convention to be submitted to the International Court of Justice) being reserved.

Offences

7. What are the specific bribery and corruption offences in your jurisdiction?

Chinese law applies monetary thresholds to all bribery and corruption offences, which vary according to whether the bribery involves a private person or a public official, and whether it is committed by an individual or by a corporate body. Both paying and receiving a bribe is prohibited, but to impose a criminal charge on the perpetrator, the perpetrator must be aware of the bribery.

Bribery of foreign public officials

The main offence relevant to foreign public officials is bribery of foreign public officials or officials of international public organisations (Clause 164, Criminal Law). This consists of offering bribes to foreign public officials or officials of international public organisation for the purposes of acquiring an improper commercial interest.

Bribery of domestic public officials

Bribery of domestic public officials refers to bribery where the recipient of the bribe is a domestic public official. The offences in relation to domestic public officials are:

- **Bribery of a public official by an individual (Clauses 380 and 390, Criminal Law)**. This offence consists of offering bribes to public officials by an individual for the purposes of acquiring improper interest.
- **Bribery of a public official by a corporate body (Clause 393, Criminal Law)**. This offence consists of offering bribes to public officials by a corporate body for the purposes of acquiring an improper interest.
- **Bribery of a public organisation (Clause 391, Criminal Law)**. This offence consists of offering bribes to government authorities, wholly state-owned companies or enterprises or institutions, or registered public organisations for the purposes acquiring an improper interest.
- **Introducing for the purposes of bribery (Clause 392, Criminal Law)**. This offence consists of introducing a briber to a public official, where the facts are sufficiently serious.
- **Receipt of bribes by public officials (Clauses 385 and 386, Criminal Law)**. This offence consists of a public official asking for or receiving bribes and taking advantage of his duties in order to help the briber acquire an interest.
- **Receipt of bribes by public organisations (Clause 387, Criminal Law)**. This offence consists of a government authority, wholly state-owned company or enterprise or institution, or registered public organisation asking for or receiving bribes in order to help the briber acquire an interest.

Private commercial bribery

Private commercial bribery refers to the following offences where the recipient of the bribe is a private person:

- **Bribery of private persons (Clause 164, Criminal Law)**. This consists of offering bribes to a person of a company, enterprise or other entity for the purposes of acquiring an improper interest.
- **Receipt of bribes by private persons (Clause 163, Criminal Law)**. This consists of a person of a company, enterprise or other entity asking for or receiving bribes and taking advantage of his duties in order to help the briber acquire an interest.

Defences

8. What defences, safe harbours or exemptions are available and who can qualify?

The following specific defences may be used in bribery cases:

- **Blackmailed bribery**. If the bribes are offered due to any blackmail of the officials, and the briber does not actually receive any improper interest, it may not constitute a crime due to the lack of a real intent to bribe.
- **No improper interest**. Whether any improper interest is acquired would affect the length of imprisonment or amount of penalty, although this is not guaranteed.

Indirect payment of bribes through an intermediary is not a defence and both the intermediary and the briber would be criminally prosecuted. There is also no exemption for “facilitation payments”. Such payments may be deemed bribery if the facilitation of the relevant government procedures constitutes an “improper interest” acquired by the briber. In practice, prosecutors interpret “improper interest” in a broad way.

For general defences, see Question 28.

9. Can associated persons (such as spouses) and agents be liable for these offences and in what circumstances?

Even if a public official does not know of the existence of the bribes, if a close relative or a person who is closely associated with the public official asks for or receives bribes from the briber in order to help the briber acquire an improper interest from the public official’s activity (or that of another public official) due to the public official’s duty or position, the associated person would be
The corporate body would be liable for introducing for the purposes of bribery, or, if the agent assists in the payment of the bribes for the briber, he would be prosecuted for bribery as an accomplice.

**Enforcement**

10. What are the regulator’s powers of investigation, enforcement and prosecution in cases of bribery and corruption and what are the consequences of non-compliance?

AIC has authority to investigate, enforce and prosecute commercial bribery cases in an administrative proceeding. Once the bribery constitutes a crime, SAIC transfers the case to the public security bureau or the prosecutor’s office for further criminal investigation.

For details of investigation powers, consequences of non-compliance, available protections, extra-territorial jurisdiction related issues and common forms of court orders, see Question 3.

The Ministry of Supervision (MOS) has the power to investigate public officials’ violations of administrative matters, including bribery and corruption (Administrative Supervision Law). During the investigation, MOS has powers to:

- Review, duplicate and seal up the relevant documents and financial records.
- Order the suspected department or person not to sell or transfer any property related to the case.
- Order the suspect to explain the relevant matters at a time and place designated by MOS.
- Advise the relevant department to suspend the suspect’s official duties and inspect the bank account of the suspect.

In addition, most public officials are members of the Chinese Communist Party (CCP). The CCP has the power to investigate members’ violations of CCP regulations, including bribery and corruption.

**Penalties**

11. What are the potential penalties for participating in bribery and corruption?

**Civil/administrative proceedings or penalties**

If a company offers bribes for the purpose of selling or purchasing goods or services, but has not triggered any criminal offence, SAIC has the power to confiscate the illegal income from the bribery and impose a government fine of between RMB10,000 and RMB200,000 (Anti-unfair Competition Law).

**Criminal proceedings or penalties**

The sanctions for major offences related to bribery and corruption are:

- **Bribery of a foreign public official or official of an international public organisation.** The corporate body would be liable to a criminal fine and the directly responsible in-charge person and other directly responsible persons would face imprisonment for between one month and ten years, and may also receive a criminal fine.
- **Bribery of a public official by an individual.** The individuals would face imprisonment for between one month and life, and their personal property may be confiscated where the circumstances are sufficiently serious.
- **Bribery of a public official by a corporate body.** The corporate body would be liable to a criminal fine, and the directly responsible in-charge person and other directly responsible persons would face imprisonment for between one month and five years.
- **Receipt of bribes by public officials.** The officials would face imprisonment for between one month and life or a death penalty, and their personal property may be confiscated where the circumstances are sufficiently serious.
- **Receipt of bribes by public organisations.** The organisation would be liable to a criminal fine, and the directly responsible in-charge person and other directly responsible persons would face imprisonment for between one month and five years.
- **Bribery of a public organisation.** The corporate body would be liable to a criminal fine and the directly responsible in-charge person and other directly responsible persons would face imprisonment for between one month and three years.
- **Receipt of bribes by an associated person.** The associated person would be liable to a criminal fine and would face imprisonment for between one month and three years.
- **Bribery of private persons.** The corporate body would be liable to a criminal fine and the directly responsible in-charge person and other directly responsible persons would face imprisonment for between one month and ten years, and may also be liable to a criminal fine.
- **Receipt of bribes by private persons.** The individual would face imprisonment for between one month and 15 years, and his personal property may be confiscated if the amount of the bribes is very large.

The Criminal Law does not specify the minimum or maximum amount of the criminal fine for bribery cases. In practice, it is left to the discretion of the judges and may vary from case to case.

**Tax treatment**

12. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

Generally speaking, all such payments cannot be tax-deductible as a business expense. Under the Enterprise Income Tax Law and its implementing rules, tax-deductible expenses must be actually incurred by the enterprise, related to income and reasonable.
Illegal payments are not reasonable and therefore cannot be deducted. Being blackmailed or extorted may be used as a defence to mitigate the liability of the briber but cannot change the fact that the payment is illegal.

Government fines, criminal fines and confiscated property due to any law enforcement action cannot be deducted when calculating taxable income (Clause 10, Enterprise Income Tax Law).

INSIDER DEALING AND MARKET ABUSE

13. What are the main regulatory provisions and authorities responsible for investigating insider dealing and market abuse?

The main regulations related to insider dealing and market abuse are:

- **Criminal Law** from 1 October 1997, last amended on 1 May 2011.
- **Supreme People’s Court’s Interpretations on Securities Market False Statement Cases in Civil Procedures**, effective from 1 February 2003.
- **Securities Law**, effective from 1 January 2006.
- **CSRC’s Guidelines on Determination of Securities Market Insider Dealing Activities (Trial)**, effective from 27 March 2007 (these are mandatory).
- **CSRC’s Rules on Determination of Administrative Liabilities for Illegal Activities Related to Information Disclosure**, effective from 29 April 2011.
- **Interpretations on Several Issues on Application of Law in Insider Dealing and Leakage of Inside Information Cases**, issued by Supreme People’s Court and Supreme People’s Procuratorate, effective from 1 June 2012.

CSRC is responsible for the investigation of illegal activities on the securities and futures market, see box: The regulatory authorities.

**Offences**

14. What are the specific insider dealing and market abuse offences?

The following offences are relevant to insider dealing and market abuse:

- **Insider dealing (Clause 180, Criminal Law)**. This offence is committed when a person with knowledge of (or that illegally acquires) inside information with a potential material effect on securities or futures trading, then trades expressly or impliedly instructs others to trade the relevant securities or futures, or otherwise leaks the information, before that information is published.
- **Market manipulation (Clause 182, Criminal Law)**. This offence is committed when a person either:
  - independently or with others takes advantage of concentrated funds, shares, positions or information, in order to manipulate the trading price or volume of the securities or futures through allied or continuous trading;
  - conspires with others as to the time, price and method of trades in securities or futures in order to affect the trading price or volume of the securities or futures;
  - trades securities among different self-controlled accounts, or trades futures contracts with himself, to affect the trading price or volume of the securities or futures; or
  - manipulates the securities or futures market in any other way.
- **False disclosure (Clause 161, Criminal Law)**. This offence is committed when a company or enterprise that is required by law to disclose information significantly damages the interests of the shareholders or other people by either:
  - providing a financial report to the shareholders and the public that is false or that disguises material facts; or
  - failing to duly disclose other material information that is required by law to be disclosed.
- **Making and disseminating false information (Clause 181, Criminal Law)**. This offence consists of making and disseminating false information that may affect securities or futures trading in order to disturb the securities or futures market, where the consequences are serious.
- **Fraudulently soliciting securities or futures trading (Clause 181, Criminal Law)**. This offence is committed when the person of a stock exchange, futures exchange, securities company, futures brokerage company, securities association, futures association or securities regulatory commission intentionally provides false information or fabricates, alters or destroys trading records in order to fraudulently solicit investors to trade securities or futures contracts, where the consequences are serious.

**Defences**

15. What defences, safe harbours or exemptions are available and who can qualify?

For general defences that can be used to mitigate criminal liabilities, see Question 28. Following the Supreme People’s Court opinions, there may be valid defences in insider dealing cases if the inside information does not actually cause the execution of the trade, such as where:

- Natural persons, corporate bodies or other organisations, individually or in aggregate together with others by agreement or other arrangement, hold 5% or more of the shares of a listed company, and acquire shares in the listed company.
- The relevant securities are traded in accordance with a previously signed written contract, instruction or plan.
- The relevant securities are traded using information that has already been disclosed by others.
- The trade has a proper basis or is made due to a proper source of information.

Generally, a good defence can be established if it can be proved that a specific activity does not constitute an insider dealing, market manipulation or false statement/non-disclosure under the detailed CSRC rules.

**Enforcement**

16. What are the regulator’s powers of investigation, enforcement and prosecution and what are the consequences of non-compliance?

CSRC has authority to investigate insider dealing and market abuse cases through administrative proceedings. During investigation of any suspected illegal activity or daily regulatory
supervision CSRC has extensive powers, including without limitation, to:

- Carry out on-site inspection.
- Interview relevant persons.
- Review, duplicate, freeze and seal up the relevant certificates, trading records, financial documents, securities, deposits, cash and accounts.
- Prohibit further trading of the suspect’s securities or futures contracts, for not more than 15 trade days (which can be extended for another 15 trade days).
- Discuss regulations with the relevant management.
- Order remedies including public statements, training sessions, submission to regular reports, removing or replacing any management person, and so on.
- Impose market prohibitions on the relevant person(s).
- Request the relevant entity to make explanations and submit the relevant work documents.
- Record and publish the illegal activity.
- Decide not to approve any further application made by that listed company.
- Suspend a specific business of the perpetrator.

For details of the investigation powers, consequences of non-compliance, available protections, extra-territorial jurisdiction related issues and common forms of court orders, see Question 3.

Penalties

17. What are the potential penalties for participating in insider dealing and market abuse?

Civil/administrative proceedings or penalties

The following penalties apply:

- **Insider dealing in securities.** CSRC can:
  - order the disposal of the illegally acquired securities,
  - confiscate any illegal income; and
  - impose a fine of either:
    - 100% to 500% of the illegal income or,
    - RMB100,000 to RMB500,000, where there is no illegal income or the illegal income is less than RMB100,000.

Where the insider dealing is conducted by an entity rather than a specific individual, the directly responsible in-charge person and other directly responsible persons would be officially warned and face a fine of RMB100,000 and RMB300,000.

- **Insider dealing in futures.** CSRC can:
  - confiscate any illegal income; and
  - impose a fine of either:
    - 100% to 500% of the illegal income or,
    - RMB100,000 to RMB500,000, where there is no illegal income or the illegal income is less than RMB100,000.

Where the insider dealing is conducted by an entity rather than a specific individual, the directly responsible in-charge person and other directly responsible persons would be officially warned, and face a fine of between RMB30,000 and RMB300,000.

- **Futures market manipulation.** CSRC can:
  - order the rectification of the results of the manipulation;
  - confiscate any illegal income; and
  - impose a fine of either:
    - 100% to 500% of the illegal income or,
    - RMB200,000 to RMB1,000,000, where there is no illegal income, or the illegal income is less than RMB200,000.

Where the manipulation is conducted by an entity rather than a specific individual, the directly responsible in-charge person and other directly responsible persons would be officially warned, and face a fine of between RMB10,000 and RMB100,000.

- **False statement/non-disclosure.** Where an issuer, listed company or other entity obliged to disclose information fails to duly disclose information or submit relevant reports (or the information disclosed/report submitted contains false or misleading statements or material omissions):
  - the issuer, the listed company or other entity or its controlling shareholder or actual controller who instructs the wrongdoing would be officially warned and face a fine of between RMB30,000 and RMB600,000; and
  - the directly responsible in-charge person and other directly responsible persons would be officially warned and face a fine of between RMB30,000 and RMB300,000.

Criminal proceedings or penalties

Criminal penalties include:

- **Insider dealing.** The corporate body faces a criminal fine, and the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and five years.

- **Market manipulation.** The corporate body faces a criminal fine, and the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and three years, and/or a criminal fine.

- **False disclosure.** The corporate body itself would not face any criminal fine; the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and three years, and/or a criminal fine.

- **Making and disseminating false information.** The corporate body faces a criminal fine, and the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and five years.

- **Fraudulently soliciting securities or futures trading.** The corporate body faces a criminal fine, and the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and five years.

global.practicallaw.com/corporatecrime-mjg
Civil suits

Investors are permitted to claim for compensation for losses due to any insider dealing or market manipulation (Securities Law). However, in practice, due to the lack of detailed rules, and taking into account the difficulty of determining the price-sensitive period and proving causation between the insider dealing or market manipulation and the loss, we are not aware of any case precedent for investors successfully doing so.

In false statement or non-disclosure cases, investors can claim for compensation of losses against the issuer or the listed company (Securities Law). The directors, supervisors, senior management and other directly responsible persons and the sponsors and underwriters of the issuer or the listed company assume joint and several liability unless they can prove that they are without fault. The controlling shareholder or the actual controller of the issuer or listed company assumes joint and several liability if the investors can prove that they are at fault. According to the Supreme People’s Court’s opinions, in a false statement or non-disclosure civil case, the relevant activity must have been either:

- Penalised by CSRC or another authority.
- Found to be criminal by a court.

Class actions are allowed, and in case of a class action, the plaintiffs need to appoint two to five representatives to participate in the lawsuit on their behalf.

**MONEY LAUNDERING, TERRORIST FINANCING AND FINANCIAL/TRADE SANCTIONS**

**Regulatory provisions and authorities**

18. What are the main regulatory provisions and authorities responsible for investigating money laundering, terrorist financing and/or breach of financial/trade sanctions?

The main regulations related to anti-money laundering, terrorist financing and financial/trade sanctions are set out below:

- **Criminal Law**, effective from 1 October 1997, last amended on 1 May 2011.
- **Administrative Measures on Reporting of Large or Suspicious Transactions by Financial Institutions**, effective from 1 March 2007.
- **Administrative Measures on Client Identification and Record Keeping of Client Identification Materials and Trading Records by Financial Institutions**, effective from 1 August 2007.
- **Supreme People’s Court’s Interpretations on Application of Law in Money Laundering Cases**, effective from 11 November 2009.
- **Measures for the Anti-money Laundering Work in the Securities and Futures Sectors**, effective from 1 October 2010.
- **Measures for the Administration of Anti-money Laundering Work in the Insurance Sector**, effective from 1 October 2011.
- **Decision of the Standing Committee of the National People’s Congress on Anti-Terrorist Issues**, effective from 29 October 2011.

- **Circular on Strengthening Anti-money Laundering Efforts in Cross-Border Fund Remittance**, issued by the People's Bank of China, effective from 12 August 2012.
- **Measures on Administration of Freezing of Assets Involving Terrorist Activities**, effective from 1 January 2014.
- **Guidance on Anti-money Laundering Works of Securities Companies issued by Securities Association of China**, effective from 28 April 2014. This is a mandatory industrial guidance.

The People's Bank of China (PBOC) and the Ministry of Public Security (MPS) are the main authorities responsible for investigating money laundering and terrorist financing. For more information, see box: The regulatory authorities.

**Offences**

19. What are the specific money laundering and terrorist financing offences? What are the specific offences relating to money laundering, terrorist financing and breach of financial/trade sanctions?

The following criminal offences are relevant to money laundering and terrorist financing:

- **Money laundering (Clause 191, Criminal Law)**. This crime is committed where a person or an entity, knowing that the income is earned or derived from a drug crime, organised crime, terrorism, smuggling, corruption or bribery, a crime damaging the financial regulatory order, or financial deceit, in order to disguise or hide its source and nature, either:
  - provides a cash account;
  - assists in the transformation of any property into cash, financial instruments or securities;
  - assists in the transfer of money by bank transfer or any other settlement method;
  - assists in the remittance of money abroad; or
  - disguises or hides the source and nature of the illegal income by any other method.

- **Financing terrorist activities (Clause 120, Criminal Law)**. This crime is committed where a person or an entity provides financing to a terrorist organisation or a person committing any terrorist activity. The “provision of financing” is broadly understood as raising funds for or providing money, goods, locations or other help to a terrorist organisation or person. A “person committing any terrorist activity” includes persons planning or preparing for as well as actually committing a terrorist activity. “Terrorist activity” means an activity:
  - resulting or intended to result in severe harm to society (such as personal injury and death, material property damage, destruction of public facilities or disorder);
  - by way of violence, destruction or threats;
  - for the purpose of terrorising the public, endangering public security or threatening government authority or international organisations; and
  - any encouragement, financing or assistance in these activities.
Again, the law does not recognise strict liability offences in criminal cases. The perpetrator must have the intent to commit the crime, and the criminal activity must have taken place (or at least the perpetrator must have substantially started to prepare for the crime (for example has set up the account or signed any financial instrument to be used to launder the money), rather than only think of the method or strategy of the crime). A financial institution’s failure to fulfill its obligations in respect of anti-money laundering, anti-terrorist financing or financial/trade sanctions (such as any failure to report a suspected transaction or run a client identification check) would only lead to administrative penalties and does not trigger any criminal liabilities under PRC law, unless the failure is found to be an intentional act to facilitate any money laundering or terrorist financing crimes.

To constitute money laundering, the upstream crimes listed in Clause 191 of the Criminal Law must be established, but to constitute the crime to finance terrorist activities, there is no need to prove that the terrorist activity to be financed has actually taken place.

**Defences**

**20. What defences, safe harbours or exemptions are available and who can qualify?**

There are no special defences available. For general defences used to mitigate criminal liabilities, see Question 28.

**Enforcement**

**21. What are the regulator’s powers of investigation, enforcement and prosecution and what are the consequences of non-compliance?**

PBOC has powers to:

- Interview the employees/management of the financial institution concerned.
- Review and duplicate the account information, transaction records and other hard copy, electronic, audio and visual materials related to the suspected transaction.
- Seal up materials that could be transferred, modified, destroyed or hid.
- Temporarily freeze the account under investigation for 48 hours and report the case to the public security bureau for criminal investigation where the client attempts to transfer abroad funds from the account.

For details of investigation powers, consequences of non-compliance, available protections, extra-territorial jurisdiction related issues and common forms of court orders, see Question 3.

In addition, when the MPS issues the name list of terrorist organisations and terrorists, it concurrently orders the freezing of the funds and other assets of the organisations and persons. In addition, when the financing of terrorist activities is under investigation, unlike other criminal cases, the lawyer cannot meet the suspect unless it is approved by the MPS and the bureau has the right not to inform the family members of the suspect of his detention or arrest.

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**Penalties**

**22. What are the penalties for participating in money laundering, terrorist financing offences and/or breach of financial/trade sanctions?**

**Money laundering**

**Civil/administrative proceedings or penalties.**

Money laundering is per se, a criminal offence. There are no administrative sanctions. If the financial institution fails to fulfill its anti-money laundering due diligence obligations, the PBOC can order it to rectify the situation and, if the circumstances are sufficiently serious, impose a fine of (Anti-Money Laundering Law):

- RMB200,000 to RMB500,000 on the financial institution.
- RMB10,000 to RMB50,000 on directly responsible directors, senior management and other directly responsible persons

Failure to meet anti-money laundering due diligence obligations may include:

- Failure to duly run a client identification check.
- Failure to duly store client identification materials and transaction records.
- Failure to duly report significant or suspect transactions.
- Transacting with unidentified client or opening anonymous or fake accounts for clients.
- Leaking information in violation of confidentiality obligations.
- Refusing or blocking anti-money laundering inspections or investigations.
- Refusing to provide inspection materials or intentionally providing fake materials.

If any of the above activities actually results in money-laundering activity:

- The financial institution faces a fine of RMB500,000 to RMB5 million.
- Directly responsible directors, senior management and other directly responsible persons face a fine of RMB50,000 to RMB500,000.
- PBOC may, if the situation is particularly serious, send official advice to the relevant financial regulatory body to:
  - suspend or revoke the company’s financial licence;
  - impose disciplinary sanctions on, or revoke the qualifications of, the directly responsible directors, senior management and other directly responsible persons, or prohibit them from participating in the financial industry in future.

**Criminal proceedings or penalties.** If it is found to be an individual crime, the illegal income acquired from committing the crime and the relevant benefits derived from it, are confiscated, and the individual can face a criminal fine of 5% to 20% of the laundered amount and imprisonment for between one month and ten years. If it is found to be a corporate crime, the company faces an unlimited criminal fine and the directly responsible in-charge person and other directly responsible persons face imprisonment for between one month and ten years.
Terrorist financing

Civil/administrative proceedings or penalties. Terrorist financing is per se a criminal offence. There are no administrative sanctions.

Criminal proceedings or penalties. If it is found to be an individual crime, the individual faces:
- Imprisonment for between one month and 15 years, criminal restrictions or deprivation of political rights.
- A criminal fine or confiscation of personal property.

If it is found to be a corporate crime, the company faces an unlimited criminal fine and the directly responsible in-charge person and other directly responsible persons face the same penalties as above.

Breach of financial/trade sanctions

Financial institutions must (Circular on Strengthening Anti-money Laundering Efforts in Cross-Border Fund Remittance, 2012):
- Carefully study prevailing international anti-money laundering practices with respect to implementation of directional financial sanctions determined by the United Nations (although there are no penalties under the Circular for violation of any directional financial sanction determined by the United Nations).
- Take responsive strategies to effectively control the risks.

In 2011, the Standing Committee of the National People's Congress promulgated the Decision on Anti-Terrorist Issues. This authorises the State Anti-terrorist Leading Group to determine and amend the Decision on Anti-Terrorist Issues. This provides that the:

- Obligation to “freeze” means to take necessary measures to prevent the relevant assets held, managed or controlled by the financial institutions or specified non-financial institutions from being transferred, transformed or disposed of, including without limitation:
  - terminating the financial transactions;
  - rejecting withdrawal, transfer or transformation of any assets;
  - preventing the opening, changing, revoking or using of any financial accounts.
- Scope of “assets” includes without limitation:
  - bank deposits;
  - funds being remitted;
  - travellers' cheques;
  - bank cheques;
  - postal orders;
  - insurance instruments;
  - bills of lading;
  - warehouse receipts;
  - stocks;
  - bonds;

- bills of exchange and letters of credit;
- houses, vehicles, ships, cargo, and other legal documents or certificates evidencing the ownership or other interest of assets in electronic or digital form.

It is notable that the Measures expressly provide the following special requirements:
- If any assets to be frozen are jointly owned by any terrorist organisation or terrorist and the shares of the terrorist organisation or terrorist cannot be separated or determined, all the assets are frozen.
- The information to be reported to the authorities includes details of the amount, ownership, location and transaction information. The financial institutions and specified non-financial institutions must not notify the owner, controller or manager of the assets to be frozen in advance and the authorities have the right to require the financial institutions and specified non-financial institutions to continue not to notify the clients after the assets are frozen.
- If any foreign authority requires any financial institution or specified non-financial institution located in China to freeze the relevant assets or to provide client identification information or transaction information, the financial institution or non-financial institution must inform the authority to make such request through diplomatic or judicial channels and must not decide by itself to take freezing measures or provide the client identification information or transaction information.
- If any foreign branch or subsidiary of a financial institution or specified non-financial institution takes freezing measures over the terrorism assets in accordance with the laws and regulatory requirements in that country (or region), the branch or subsidiary must, in a timely manner, report the relevant situation to the headquarters. The headquarters must similarly forward the situation to MPS and the Ministry of State Security.

If any of the Measures are breached, the financial institutions or specified non-financial institutions or their staff can be penalised for failure to fulfil the anti-money laundering due diligence obligations (see above, Money laundering). In addition, criminal liability may be imposed if any intentional involvement in money laundering or terrorist financing activities is found.

FINANCIAL RECORD KEEPING

23. What are the general requirements for financial record keeping and disclosure?

The major requirements for financial record keeping are:
- Financial records must be true and complete.
- A company must not set up a second record other than the statutory record.
- The financial records of all entities in China (including both private companies and public companies) must be contained in China.

The law requires a company to provide true and complete accounting vouchers and other financial records to the accountant it engages, without any disguise.

The shareholder has the right to review and duplicate the company's financial report. However, to review and duplicate financial records such as accounting vouchers, the shareholder must have a justifiable purpose. The shareholder of a company may request to review the company's financial record by submitting a written application to the company specifying the purpose of the review. If the company reasonably believes that the purpose of the review is improper and may damage the interest of the company, it
may reject the request, in which case the shareholder can sue the company to ask the court to order the company to provide the financial records for review.

24. What are the penalties for failure to keep or disclose accurate financial records?

The major penalties for failure to keep or disclose accurate financial records are:

- If a company sets up a separate financial record other than its statutory record, the Ministry of Finance or its local counterpart has the power to order it to rectify the situation and to impose a fine of between RMB50,000 and RMB500,000.

- If a company makes a false statement or disguises any material fact in the financial report submitted to the relevant authority, the authority can impose a fine of between RMB30,000 and RMB500,000 on the directly responsible in-charge person and other directly responsible persons.

- Where no criminal offence is triggered, the Ministry of Finance or its local counterpart can impose a fine of between RMB50,000 and RMB300,000 on the directly responsible in-charge person and other directly responsible persons. The accounting person’s qualification certificate would be revoked, if a company either:
  - forges or alters its accounting vouchers or financial records or makes false statements in its financial report; or
  - disguises or intentionally destroys its accounting vouchers or financial records and reports that are legally required to be kept.

- If a company has destroyed its financial records, its financial records are disordered or the accounting vouchers have missing pages, the tax bureau can directly assess the tax due (Clause 35, PRC Law on the Administration of Tax Collection).

- A company prohibitions on money laundering.

25. Are the financial record keeping rules used to prosecute white-collar crimes?

The violation of financial record keeping rules itself may constitute a crime. In addition, such violations may be used as evidence and trigger the prosecution of other crimes, such as bribery and/or tax evasion.

DUE DILIGENCE

26. What are the general due diligence requirements and procedures in relation to corruption, fraud or money laundering when contracting with external parties?

There are no special legal requirements for due diligence conducted on external parties in relation to corruption, fraud or money laundering. In addition, the following issues apply in relation to due diligence in China:

- A third party’s employees’ right of privacy is protected by law, so any personal information of the employees collected from the due diligence must not be disclosed without the employee’s consent.

- Due diligence should be conducted in a fair and independent way so that information collected can be admitted as evidence before the government authorities and the People’s Court (for instance, it is preferable to interview individuals in their native language and to require the interviewee to sign on the interview notes).

- A company must not disclose or infringe any external party’s trade secrets and any document containing state secrets must not be taken outside China.

- Many Chinese companies are state-owned enterprises (SOEs) and most SOE officers are members of the CCP and have their own political career. Therefore, before engaging in a due diligence exercise the company must dispel any concerns that it could endanger the state’s or the SOE’s commercial secrets, or have adverse political implications.

Due diligence should involve:

- Checking the internal rules of both the company and the external party to be investigated to see whether there is any special requirement to be complied with.

- Determining the scope of the investigation and formulate a detailed questionnaire.

- Understanding the mechanism and process that the external party applies to keep and manage its documents (in both hard copy and electronic copies).

- Reviewing the documents and performing the interview in a friendly and professional way.

It is normal market practice for a multinational company to request to include rights of audit and inspection in a contract with a Chinese counterparty. To negotiate and conclude such a clause, the company should:

- Carry out advanced education and training for officers of the Chinese counterparty on compliance requirements and their importance.

- Try to use plain language for the contract clauses and avoid merely citing the Foreign Corrupt Practices Act or any other statute.

- Understand the Chinese regulatory or compliance requirements applicable to the counterparty, and use international standards in the contract.

- Put a liability clause in the contract for the rights of audit and inspection, such as the right to terminate the contract in case an investigation is rejected.

CORPORATE LIABILITY

27. Under what circumstances can a corporate body itself be subject to criminal liability?

A corporate body can be subject to criminal liability if both (Criminal Law):

- The law expressly provides that the offence can be used to prosecute a corporate body (for example the law does not say that a corporate body can be prosecuted for murder, so even if the board of a company reaches a resolution to kill a person, the company itself would not be prosecuted for murder).
The crime is conducted by the company (for example, in a bribery case where the bribes are paid from the company’s account) and the benefit belongs to the company (the company would not be prosecuted if the crime is committed in the name of the company but the benefit is finally shared by some individuals of the company).

Where the company is established by an individual for the purpose of committing crimes, these are deemed to be the individual’s personal crime.

Chinese law does not have an offence of corporate manslaughter. Under the Criminal Law, neither murder nor manslaughter can be used to prosecute a corporate body. However, there are some similar concepts. For example, if a project owner, construction firm, design firm or project supervision firm reduces quality in a project in violation of the laws and regulations, and which results in a severe accident (such as a death), the firm would be criminally guilty of causing a significant accident and the directly responsible persons would face imprisonment for between one month to ten years (Clause 137, Criminal Law).

**IMMUNITY AND LENIENCY**

28. In what circumstances is it possible to obtain immunity/leniency for co-operation with the authorities?

If a perpetrator co-operates with the administrative authority in investigating illegal activities and contributes to the investigation, its penalty can be lowered or reduced (Law on Administrative Penalty). However, generally speaking, there is no immunity/leniency for co-operation with the authorities in relation to the investigation itself rather than the penalty. All persons and companies must fulfill an authority’s requirements (no matter in administrative or criminal proceeding) made in accordance with the law and due process (except for diplomatic or consular immunity).

Depending on the specific facts of the case, the following defences are generally used for all criminal offences (including bribery and corruption):

- **Voluntary confession.** If the perpetrator voluntarily confesses his crime before the prosecutor’s office or the police discover the crime, the perpetrator may reduce his criminal liabilities or be exempt, although this is not guaranteed.

- **Contribution to other cases.** If the perpetrator discloses another crime to the police or prosecutor’s office, or provides clues so that the authorities successfully discover another crime, the perpetrator may have a chance, though not guaranteed, to reduce his criminal liabilities or even become exempt.

**CROSS-BORDER CO-OPERATION**

29. What international agreements and legal instruments are available for local authorities?

**Obtaining evidence**

In relation to judicial (civil/criminal) proceedings, China is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention), effective in China from 8 December 1997. The Department of Justice is the central Chinese authority for receipt of Letters of Request under the Convention. China has announced two reservations to this Convention:

- If a Letter of Request is sent from a common law country for assistance in pre-trial evidence collection, China will only assist in those requests that are expressly listed in the Letter of Request and that are directly and closely connected with the relevant case.

- China does not accept the terms of Chapter 2 (that is, collection of evidence by a diplomatic representative or consulate), except for Article 15 (where a diplomatic representative or consulate of a country can collect evidence from the citizen of its own country within the area of its duties in China without any compulsory actions).

In addition, China has entered into mutual treaties on judicial (civil, commercial and/or criminal) assistance with 63 countries according to the information available on the official website of the Department of Judicial Assistance and Foreign Affairs.

In relation to administrative proceedings, CSRC has entered into 58 memorandums of understanding on mutual regulatory co-operation with 54 countries or regions, whereby CSRC and the securities regulatory body of the relevant countries will co-operate on evidence collection and other matters during an investigation.

**Seizing assets**

China is a party to the UN Convention against Transnational Organised Crime 2000. Under the Convention, a party state can request another party state to:

- Seize the criminal income, property, equipment or other tools located in the other state’s territory.

- Request judicial assistance in any inspection, seizure or freezing.

China may also be obliged to assist in enquiries, inspections and freezing or seize requests under judicial assistance treaties that China has entered into with other countries.

**Sharing information**

It is not the known practice of any PRC authority to notify authorities in other jurisdictions regarding an actual or suspected case of corruption.

30. In what circumstances will domestic criminal courts assert extra-territorial jurisdiction?

Please refer to Question 3, Extra-territorial jurisdiction.

31. Does your jurisdiction have any statutes aimed at blocking the assertion of foreign jurisdictions within your territory?

From the legislative perspective, PRC laws are silent on the issue of blocking the assertion of foreign jurisdictions within the territory of China. From the perspective of inter-government co-operation, foreign civil or criminal courts or criminal investigation or prosecution authorities must submit a request to the corresponding PRC authorities for judicial assistance in accordance with the treaties or conventions to which China is a member or based on the principle of reciprocity (Article 276, PRC Civil Procedure Law and Article 17, PRC Criminal Procedure Law, both effective from 1 January 2013). In these cases, any assistance must not prejudice the sovereignty, security or common interest of China.

In addition to judicial proceedings, CSRC may also provide similar assistance in administrative proceedings. See Question 29 for details of the relevant treaties and conventions. In practice, it may be difficult for foreign governmental or judicial authorities to obtain assistance, and without such assistance, foreign authorities may not be able to enforce their laws, orders or judgments directly in China.
WHISTLEBLOWING

32. Are whistleblowers given statutory protection?

Generally whistleblowers are given statutory protection and the MPS, the Prosecutor’s Office and the People’s Court will protect the safety of a whistleblower and his close relatives (Clause 109, Criminal Procedure Law, effective 1 January 1980, last amended 14 March 2012). If the whistleblower is not willing to publicise his name and the whistleblowing, the authorities must keep these confidential. CSRC also has a rule that requires its staff to actively protect whistleblowers’ lawful interests and to keep their identities confidential.

REFORM, TRENDS AND DEVELOPMENT

33. Are there any impending developments or proposals for reform?

New reports indicate that in recent years, there have been an increasing number of terrorist activities in many areas of China. This resulted in the introduction of the Measures on Administration of Freezing of Assets Involving Terrorist Activities to facilitate the investigation of terrorist crimes. In addition, the global economic downturn has not deterred the regulators from taking steps to enhance their law enforcement actions, especially in the anti-corruption area. Both MPS and SAIC have recently initiated various investigations in different cities into multinational companies for commercial bribery cases. In the past, Chinese authorities were rarely reported to investigate commercial bribery cases where such cases had already led to convictions or settlement with foreign authorities. This has changed. Chinese authorities become more active and often commence criminal investigations before foreign authorities, for example, the well-known GSK case. Many local counterparts of SAIC also hope that the National People’s Congress could amend the PRC Anti-unfair Competition Law to provide SAIC with more powers to investigate commercial bribery cases and impose more severe penalties. It is widely believed by the public that the legislation and enforcement practices in these two areas will continue to be a significant feature of the legal environment in the years ahead.

MARKET PRACTICE

34. What are the main steps foreign and local companies are taking to manage their exposure to corruption/corporate crime?

In practice, companies typically take the following steps to prevent corporate crimes:

- Establishing internal rules and regulations for different departments (especially departments that have more communication with the authorities and third parties), such as:
  - procedures to approve agreements and to ensure all payments are recorded in accordance with the accounting rules; and
  - establishing a system to verify compliance with these rules and regulations and for receiving internal reports of suspected violations.

- Establishing a sound decision-making system.

- Directors and senior management must expressly object to any misconduct in writing to avoid personal liability.

- Carrying out training for the employees and counterparties (such as suppliers) on the company’s compliance requirements, and requiring the employees to sign training records.

- Requiring, and including in contracts with, counterparties that they comply with the company’s compliance requirements.

- When receiving any internal report of misconduct, immediately responding to it and if possible carrying out an independent investigation on the suspected employee.
REGULATORY AUTHORITIES

State Administration for Industry and Commerce (SAIC)
W www.saic.gov.cn/
Status. Governmental organisation.
Principal responsibilities. SAIC has an extensive authority to administrate the business operation of companies. The principal responsibilities of SAIC include company registration, investigation of commercial bribery, unfair competition, advertisement, registration of trade marks and food distribution.

Ministry of Public Security (MPS)
W www.mps.gov.cn/
Status. Governmental organisation.
Principal responsibilities. MPS is responsible for the public security of the society. The principal responsibilities of MPS include traffic administration, entry-exit administration, internet security, criminal investigation (other than crimes with respect to public officials), drug control, registration of residence and fire protection.

Supreme People's Procuratorate (SPP)
W www.spp.gov.cn/
Principal responsibilities. The principal responsibilities of SPP include criminal investigation of crimes in relation to public officials, reviews of the MSP's investigation results and prosecuting criminal suspects on behalf of the state.

People's Bank of China (PBOC)
W www.pbc.gov.cn
Status. Governmental organisation.
Principal responsibilities. PBOC is the central bank of China. The principal responsibilities of PBOC include the administration of currency, credit, gold and silver, money markets, foreign exchange and anti-money laundering.

China Securities Regulatory Commission (CSRC)
W www.csrr.gov.cn
Status. Governmental organisation.
Principal responsibilities. CSRC is the regulator of the Chinese securities and futures markets. The principal responsibilities of CSRC include the administration of listed companies, securities companies, futures companies and the practitioners of securities and futures industry, reviews and approvals of public issuances of shares and company bonds and the investigation of illegal activities on the securities and futures market.

Ministry of Supervision (MOS)
Status. Governmental organisation.
Principal responsibilities. MOS investigates and handles violations of administrative rules by administrative organs or public servants of the state or other officials.
# ONLINE RESOURCES

The following resources are published on official websites in Chinese and can be expected to be up-to-date. Where English language versions are provided, they are for guidance only.

**National People's Congress**


**Description.** This is the on-line database of the laws enacted by the National People's Congress and its Standing Committee and administrative regulations by the State Council.

**China Securities Regulatory Commission (CSRC)**


**Description.** This is the website of the CSRC.

**Supreme People's Procuratorate (SPP)**

*W* [www.spp.gov.cn/](http://www.spp.gov.cn/)

**Description.** This is the website of the SPP.

**Ministry of Supervision (MOS) and Commission for Discipline Inspection (CPI)**

*W* [www.ccdi.gov.cn/](http://www.ccdi.gov.cn/)

**Description.** This is the official joint website of the MOS and the CPI.

**Supreme People's Court (SPC)**


**Description.** This is the official website of the SPC.

**China Banking Regulation Commission (CBRC)**

*W* [www.cbrc.gov.cn/index.html](http://www.cbrc.gov.cn/index.html)

**Description.** This is the website of the CBRC.

**People's Bank of China (PBOC)**


**Description.** This is the website of the PBOC.

**Central People's Government**


**Description.** This is the English language website of the Central People's Government.

**State Administration for Industry and Commerce (SAIC)**


**Description.** This is the English language website of the SAIC.
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**Qualified.** New York 2004; China 1995

**Areas of practice.** Anti-corruption and fraud; IP infringement litigation; anti-counterfeiting and trade mark protection; customs disputes and compliance.

**Recent transactions**
- Conducting internal compliance investigations for a leading US nutritional company against its employees regarding commercial bribery and embezzlement.
- Advising a leading US supermarket company on its SAIC anti-commercial bribery investigation case and other SAIC administrative cases in different regions of China.
- Advising a leading US pharmaceutical and nutritional company on its SAIC anti-commercial bribery cases in different regions of China.
- Advising a leading US IT company on anti-commercial bribery and the crime of bribery under PRC laws.
- Advising JGC on China’s anti-bribery law.
- Advising a US listed company on its responses to SEC and DOJ subpoenas with respect to charges of serious securities fraud.
- Advising a world famous auction company on PRC anti-money laundering issues

**Qualified.** China, 1992

**Areas of practice.** Anti-counterfeiting and IP protection; IP infringement litigation; trademark protection

**Recent transactions**
- Advising a large scale enterprise on anti-counterfeiting and IP protection mechanism.
- Advising a chemical enterprise on trademark protection in different regions of China.
- Advising a local college and television company on copyright litigation.
- Acting as a defendant lawyer in defence of business secrets infringement crime in Hubei.