



Internal Fraud in China

Legal Actions & Legal Measures

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Agenda

- What is White Collar Crime?
 - and a bit of criminology
- What laws and regulations may apply?
 - more than you thought...
- Preventive measures
 - very cost-effective
- Responsive and reactive measures
 - less cost-effective...
- Q&A



What is White Collar Crime?

In other words:

“what can happen to your company?”

- Inventory theft
- Accounting fraud
- Fraud at POS
- Kickbacks to suppliers
- Kickbacks from customers
- Competing activities
- Breach of confidentiality
- Tax and customs fraud



Some criminology behind White Collar Crime

- There was an opportunity
- Long-term relationships, „guanxi“
- Gender issues
- Positions of power combined with low salary
- There was a reason:
 - Dismissal or other problems at the work place
 - Private and family problems

Laws and Regulations (1)

- PRC Criminal Code, and...
- Criminal Code of Switzerland, Germany, etc.
- Listing Rules in Switzerland and the US
- Money Laundering Acts of Switzerland and Hong Kong
- US Foreign Corrupt Practices Act
- Industry specific laws and regulations



Laws and Regulations (2) Some Keywords

- „Auslandsbestechung“
- OECD Convention
- Hong Kong ICAC
- Specific industries: construction, pharma, food, logistics, etc.
- Government contracts, public biddings
- Listed companies



Preventive Measures (1)

Due Diligence:

- targets: employees, suppliers, customers, (JV) partners
- verify SAIC, TM, domain names and similar registration documents
- Within M&A deals, focus on „Compliance“ of target/partner

Documentary:

- Employment agreements & Sales Contracts:
 - Confidentiality, IPR, Non-competition



Preventive Measures (2)



Organizational:

- guidelines and agreements for chops (regular) external controls, audit, etc.
- Whistle blower / hotline

Comprehensive Compliance:

- (regular) interviews
- (regular) training
- Sign-offs

Responsive Actions 1: where do I start?

- Speed & Coordination
- facts and information gathering
- Coordination with service investigators, (external/internal) CPA, attorneys, (external/internal) IT personnel
- Once the facts are clear, establish the law...
- then prepare options and scenarios, game plan



Responsive Actions 2: What legal actions can I take?

- civil actions
- criminal proceedings
- Police involvement
- Preliminary measure (1): attachments
- Preliminary measure (2): discovery/evidence
- FESCO, tax, customs authorities etc.



Responsive Actions 3: Should / can I involve PRC authorities?

- Know thy authority!
- Know thy law!
- Know thy enemy!
- Use competent external help and specialists
- Strike a balance: formal and informal actions
- In China: use „administration-friendly“ tactics



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Thank you for your attention!
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