

Corporate Governance and Compliance in China

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Agenda

- Why do corporate governance and compliance matter in China?
- What laws and regulations may apply?
 - more than you thought...
- Preventive measures
 - very cost-effective
- Responsive measures
 - less cost-effective...
- Q&A

Why bother in China?

Is it different?

- Stock market in China
- Focus on FIE
- Internal fraud – „à la Chinoise“
- Environmental issues – „à la Chinoise“
- Food issues – „à la Chinoise“
- Small customs issues – „à la Chinoise“

Why bother in China?

In other words:

“what could 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, sociology and game theory behind GC and Compliance issues

- Cultural and social setting in a rapidly evolving society
- „guanxi“ as cornerstone of business model?
- Lack of enforcement by judicial apparatus
- Immature HR market: Positions of power combined with low salary
- ... and the opposite
- The poker game under the table

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 (food, drugs)

Laws and Regulations (2) Some Keywords

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

Preventive Measures (1)

One million dollar question: How do the Chinese do it?

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, surprise visits, electronic surveillance, etc.
- Whistle blower / hotline
- Just because you're paranoid doesn't mean they're not out there to get you...

Comprehensive Compliance:

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

Responsive Actions 1: GC hits the fan

- 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
- Legal actions: use strategy, combinations, staggered attacks

Responsive Actions 2: Should I involve PRC authorities?

- Know thy authority!
- Know the media!
- 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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