THE INTERNATIONAL INVESTIGATIONS REVIEW

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Editor
Nicolas Bourtin

THE LAWREVIEWS

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PREFACE

In its second year, the Biden administration has made clear its prioritisation of white-collar prosecutions. This includes changes in policy and guidance, such as a renewed focus on individual accountability, an increased concern with corporate recidivism, and greater scrutiny of the use, and repeated use, of deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs). The administration has announced plans not only to redistribute existing resources to prosecutions of corporate crime but to increase resources, particularly through the hiring of more white-collar prosecutors and investigative agents. Although recovery from the covid-19 pandemic and more recently the consequences of the Russia–Ukraine war have slowed the administration's implementation of these corporate enforcement priorities, US and non-US corporations alike will continue to face increasing scrutiny by US authorities.

The trend towards more enforcement and harsher penalties has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in several countries increasingly compound the problems for companies, as conflicting statutes, regulations, and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence or, conversely, have their own rivalries and block the export of evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. Of course, nothing can replace the considered advice of an expert local practitioner, but a comprehensive review of corporate investigative practices around the world will find a wide and grateful readership.

The authors who have contributed to this volume are acknowledged experts in the field of corporate investigations and leaders of the Bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage the delicate interactions with employees whose conduct is

at issue? *The International Investigations Review* answers these questions and many more, and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its 12th edition, this publication features two overviews and covers 15 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gifts of time and thought. The subject matter is broad and the issues raised are deep, and a concise synthesis of a country's legal framework and practice was challenging in each case.

Nicolas Bourtin
Sullivan & Cromwell LLP
New York
July 2022

Chapter 5

CHINA

Alan Zhou, Jacky Li and Jenny Chen[1]

I INTRODUCTION

Government investigations in China can be generally divided into two major categories: criminal investigations and administrative investigations, with the investigative power being vested among multiple authorities. From a criminal perspective, authorities with criminal investigative powers include:

a public security bureaus (PSBs), responsible for investigations, criminal detentions, the execution of arrests and preliminary inquiries in criminal cases;[2]

b the people's procuratorates (procuratorates), responsible for prosecutions, the approval of arrests and conducting investigations into criminal violations relating to judicial functionaries' infringement on citizens' rights or judicial justice;

c supervisory commissions, which supervise all public officials, investigate duty-related illegal activities and offences, and carry out anti-corruption work;

d national security authorities, which investigate and handle cases of crimes that compromise national security, performing the same functions and with the same powers as PSBs;

e military security authorities, which may exercise the right to investigate criminal cases occurring in the military;

f the China Coast Guard, a law enforcement body that safeguards marine rights and exercises the right to investigate criminal cases occurring at sea; and

g prisons.

From an administrative perspective, authorities with investigative powers include:

a the State Administration for Market Regulation (SAMR), which oversees market regulation, food safety, healthcare compliance, advertisement violations, competition violations, commercial bribery, anti-monopoly, etc.; and its subsidiary bureaus, including administrations for market regulations (AMRs) at the provincial, municipal and county levels;

b the National Development and Reform Commission and its subsidiary bureaus, responsible for overall planning and control of the national economy, and investigating price-related violations;

c the China Securities Regulatory Commission (CSRC) and its subsidiary bureaus, responsible for the administration of securities and investigating securities fraud;

1 Alan Zhou and Jacky Li are partners and Jenny Chen is of counsel at Global Law Office.

2 PSBs are empowered with dual investigative authorities at both criminal and administrative levels.

d PSBs, which are also responsible for investigating administrative violations impacting public security;
e the People's Bank of China (PBOC) and its subsidiaries, responsible for carrying out monetary policy and regulation of financial institutions in mainland China, and regulating money laundering activities; and
f other administrative authorities, such as the State Taxation Administration, the Customs, and the Environmental Protection Bureaus.

For criminal investigations, the authorities are empowered to:
a interrogate the criminal suspect;
b interview with the witnesses;
c inspect or examine the sites, objects and persons relevant to a crime (including dawn raids);
d search the criminal suspect and their belongings and residence, and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places;
e seal up or seize the property and documents; and
f access or freeze a criminal suspect's deposits, remittance, bonds, stocks, shares, funds or other property.

For administrative investigations, the authorities are generally empowered to:
a conduct on-site inspections (including dawn raids);
b interview the parties involved in the suspected violation;
c require the parties involved in the suspected violation to produce relevant supporting documents;
d review and reproduce documents and materials;
e seal up or seize property; and
f access bank accounts.

Government investigations may be triggered by routine inspections, whistle-blowing reports, accusations, complaints, self-disclosure, transfers of cases between authorities or even media exposure related to certain types of misconduct. Once a government investigation has commenced, the responsible authorities will exercise their discretion as to the investigation methods, depending on the nature of the alleged misconduct and the resources available for investigation.

Among the enumerated investigation methods, dawn raids are adopted quite frequently by government authorities. A dawn raid may be carried out if the authorities believe that prior notice or warning could possibly lead to the destruction or falsification of evidence. During a government dawn raid, the officers will show up without prior notice, usually in the morning at the start of the working day at the predetermined sites. Several sites can be targeted simultaneously within or across provinces and a dawn raid can last for several days. Government authorities may have already collected evidence through peripheral investigations before initiating a dawn raid or sometimes a dawn raid could be triggered under exigent circumstances.

The time frames for government investigations are usually set in the respective laws and regulations of the different authorities. Companies under investigation are obliged

to cooperate with the authorities and it is crucial to timely evaluate the potential legal implications and conduct necessary interactions with the authorities to contain the legal risk exposures and to achieve a favourable result.

II CONDUCT

i Self-reporting

Article 110 of the Criminal Procedure Law imposes a general obligation on individuals and entities to report any suspected crimes or criminal activity, but on literal interpretation and from a general public perspective, the requirement is construed to mean reporting the criminal activities of others, rather than self-reporting, and no legal consequences are clearly stipulated for failing to self-report. Article 67 of the Criminal Law to some extent encourages self-reporting of criminal activity by stipulating mitigation or even exemption from the criminal penalties under circumstances of voluntary confession. Similar principles could also be reflected in some other provisions prescribed in the Criminal Law. For example, Article 164 of the Criminal Law provides that 'any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment'. Article 28 of the Counter-Espionage Law provides that:

> *whoever joins a hostile or espionage organisation abroad under duress or inducement to engage in activities compromising the national security of China, but that honestly states the fact to a mission of China abroad in a timely manner or, after his or her return from abroad, honestly states the fact directly, or through his or her employer, to a national security authority or a public security authority in a timely manner and shows repentance, may be exempted from legal liability.*

From the administrative law perspective, self-reporting obligations are scattered in various laws and regulations, mostly related to violations that might have impact on social security and public welfare, such as food and drug safety, environmental protection and cybersecurity. For example, Article 47 of the Food Safety Law requires food manufacturers or business operators to cease food manufacturing or food business operations, and report to the food safety supervision and administration departments in the event of a food safety incident with potential risks. For other administrative violations, self-reporting is now appearing more often as a prerequisite in certain leniency programmes for companies to receive self-disclosure or cooperation credit. A typical situation is a horizontal monopoly agreement case, where business operators could choose to self-disclose the violation and provide important evidence in exchange for lenient treatment.

ii Internal investigations

In general, conducting internal investigations is not a statutory obligation in China, unless prescribed in the applicable industry-specific legislation (mostly in response to safety incidents). For instance, the Administrative Measures for Medical Device-Related Adverse Event Monitoring and Re-evaluation provides that, after identifying a medical device-related adverse event, marketing authorisation holders must immediately cease sales and operations, notify the user, in parallel with conducting an investigation and self-inspection of manufacturing quality control systems, and report the findings to the supervision authorities.

In addition, Chinese authorities (often industry supervision authorities) may initiate enforcement actions and require companies to conduct self-inspections and report

non-compliant activities. For instance, in an ad hoc enforcement against commercial bribery in the healthcare industry, initiated by the AMRs in Tianjin in 2017 and 2018, companies and medical institutions were required to conduct self-inspections on commercial bribery and take corresponding remedial actions in this regard.

In practice, internal investigations are incorporated into the internal control mechanism by companies for compliance purposes. The cause of the actions varies in each company but white-collar crime and fraud (e.g., commercial bribery, bid-rigging and embezzlement) are usually among the focuses for the majority of companies in China.

Commonly, internal investigations are undertaken by in-house counsels in the company or external local counsels depending on the nature and severity of the issues under investigation. The methodology and process for these internal investigations usually include document review, financial review and interviews with employees and other personnel. The key issues during internal investigations involve the legal issue identification, design and implementation of the investigation process analysis based on the findings and determining the solutions. Notably, due process and evidence preservation are often overlooked by companies, as it is very likely that the facts and evidence gathered under internal investigation may end up in labour arbitration tribunals or court for litigation purposes or be submitted to the Chinese authorities. Therefore, how to preserve the integrity of the internal investigation and ensure the admissibility of the evidence should be carefully evaluated during the preparation and implementation of the internal investigation.

Companies in China also commonly conduct internal investigations in relation to foreign law considerations, such as the Foreign Corrupt Practices Act (FCPA), but this practice has been substantially impacted by the newly enacted International Criminal Judicial Assistance Law (ICJAL) in October 2018, which expressly stipulates that institutions, organisations and individuals in China must not provide to foreign countries evidence materials or assistance provided for in this Law without the consent of the competent Chinese authority. The ICJAL applies to criminal proceedings with a wide coverage of activities potentially deemed as assisting the crimes provided for. Analysis of different types of FCPA investigations in China indicates that, as long as the investigation could potentially lead to a criminal resolution with the US authorities, the investigation remains within the zone of danger; further, the likelihood of the applicability of the ICJAL on the current FCPA investigations is substantially high with legal implications to be ascertained. Therefore, it is suggested that companies consult with competent local counsel in advance to access the legitimacy of internal investigations and to properly interact with the relevant Chinese authorities.

iii Whistle-blowers

Companies in China are now being exposed to the risks arising from the high frequency of whistle-blower complaints. The right to report crimes and other legal violations by citizens is well established in principle in the laws and regulations, such as the Constitution, the Criminal Procedure Law and the Anti-Unfair Competition Law. Although there is currently no consolidated legal regime to regulate whistle-blowing reports, various authorities have respectively promulgated legislation to regulate whistle-blowing reports against certain types of misconduct in their domain. For instance, the former China Food and Drug Administration (now the SAMR) promulgated the Measures for Rewarding Whistle-Blowing Reports Against Food and Drug Violations in 2013, which was later revised in 2017 to increase the award amount and clarify the relevant procedures and scope.

In practice, to encourage reporting misconduct, multiple authorities have set up reporting hotlines and online gateways to receive whistle-blowing reports from the public. For instance, the State Supervisory Commission is now operating an ad hoc online channel and hotline (12388)[3] for receiving whistle-blowing reports against government officials' duty-related crimes or misconduct either by real name or anonymity (real-name reporting is highly encouraged). The national security authorities also encourage whistle-blowing reports made to the designated online platform and hotline (12339).[4] Similarly, AMRs at all levels have provided online and offline channels to encourage the public to report leads regarding company misconduct, and the handling procedures and specific timelines are published and well implemented. On 30 July 2021, the SAMR and the Ministry of Finance jointly issued the Interim Measures for Rewards for Whistle-blower Reports of Major Violations in the Field of Market Regulation (effective since 1 December 2021) to improve the system of rewarding whistle-blowing against major violations in the market regulation field.

With respect to whistle-blowers' protection, some specific rules, such as the Rules of the Supreme People's Procuratorate on Protecting the Citizens' Tip-off Rights, were formulated to provide a comprehensive mechanism on both substantive and procedural levels, and the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Finance jointly issued the Several Provisions on Protecting and Rewarding Whistle-Blowers of Duty Crimes in 2016.

Strict confidentiality throughout the handling process is the foundational requirement imposed on authorities that receive any reporting. Further, the authorities need to take measures (i.e., restricting physical access to the reporter by those being reported) to ensure the safety of reporters and their close relatives whenever necessary. Retaliation towards whistle-blowers is forbidden and incurs liability for the imposition of legal penalties such as administrative sanctions, criminal detention or imprisonment.

III ENFORCEMENT

i Corporate liability

Administrative and criminal corporate liabilities are stipulated in the Criminal Law and relevant administrative laws and regulations. For criminal liabilities, among the 469 crimes prescribed by the Criminal Law, there are approximately 150 unit crimes for which a company could be qualified as the perpetrator, and for these unit crimes a company will be held criminally liable if:

a a collective decision has been made by the management of the company, or an individual decision by the relevant responsible personnel on behalf of the company, such as the legal representative; and

b the crime is committed in the name of the company and the illegal proceeds go to the company.

The Criminal Law adopts a dual punishment system for unit crime, which means both the company and the responsible persons are subject to criminal liability, with only a few exceptions otherwise prescribed in the Criminal Law.

3 See www.12388.gov.cn.

4 See www.12389.gov.cn.

As for administrative corporate liability, this derived from the provisions of the relevant administrative laws and regulations, such as the Unfair Competition Law, the Anti-Monopoly Law and the Advertisement Law, covering violations such as commercial bribery, monopoly, company illegal operation and illegal advertising.

Notably, for the same misconduct committed by a company, the criminal and administrative regimes are mutually exclusive. The Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Agencies promulgated by the State Council in 2001 set the regulatory framework for the conversion between administrative and criminal cases. A series of other regulations have been promulgated in the following years to further address the procedure of conversion. According to these regulations, while investigating an administrative case, if the agency suspects that the case should be prosecuted as a criminal case based on elements such as the monetary amount involved, the specific fact patterns or the consequences, then the case must be transferred to a PSB and the PSB will examine the cases transferred. If criminal fact patterns are identified and the PSB decides to investigate the case for criminal liability, it shall notify the administrative agency that transferred the case in writing. If there is no criminal fact pattern or the facts are insignificant and the agency decides not to prosecute the case, it will state the reasons, notify the administrative agency and return the case. On the other hand, if a PSB discovers that a case it is investigating should not be criminally prosecuted but there may be administrative liability, it shall transfer the case to the relevant administrative law enforcement agency.

ii Penalties

Under the Criminal Law, the only sanction applicable to a company is the monetary penalty, but an individual's liabilities for a unit crime include public surveillance, criminal detention, imprisonment, the monetary penalty, the deprivation of political rights, deportation (in the case of foreign nationals) and even the death penalty.[5]

Penalties for administrative corporate liabilities generally include disciplinary warnings, monetary fines, the confiscation of illegal gains or unlawful property, the suspension of production or business, and the temporary suspension or rescission of a permit or licence.[6] The range of penalties varies. Taking commercial bribery as an example, a fine could range from 100,000 yuan to 3 million yuan, as well as the confiscation of illegal gains and the revocation of the business licence.[7] The amount of illegal gains is calculated based on revenue with the corresponding cost being deducted, which could easily add up to 10 million yuan or more and, therefore, in practice, create a larger concern for companies. Other restrictions, such as being banned from participating in government procurement, might also be imposed depending on the nature and severity of the violations. For example, the National Health Commission has established a recording system, which functions as a blacklist, specifically to track commercial bribery activities committed by pharmaceutical companies during drug procurement. Companies committing commercial bribery will be disqualified or severely disadvantaged in public procurement.

Both criminal and administrative penalties are, in principle, made public through the internet, with some exceptions, such as where these cases involve state secrets or trade secrets, the personal information of minors or infringe on an individual's privacy, subject to the

5 Articles 31, 33 and 34 of the Criminal Law.

6 Article 8 of the Administrative Punishment Law.

7 Article 19 of the Unfair Competition Law.

discretion of the relevant authorities that issue the penalties. Additionally, companies will be included on the publicly available blacklist administrated by the AMRs under certain circumstances (i.e., if a company has been subject to administrative sanction on three or more occasions within three years for unfair competition or distribution of false advertisements) pursuant to the Interim Measures for the Administration of the List of Dishonest Enterprises Committing Serious Illegal Activities, and will therefore be subject to stringent supervision by the AMRs and restrictions such as being disqualified for certain commercial transactions or relevant honorary titles for five years.

iii Compliance programmes

Although there is no regulatory requirement for compliance programmes, many companies in China have already incorporated compliance efforts into their internal control mechanisms to ensure compliance with a variety of laws designed for commercial bribery prevention and detection, anti-monopoly, employment and personal information protection. Specific compliance roles and responsibilities within a company are becoming increasingly prominent.

A practical reason for implementing compliance programmes is mitigating and reducing liability for legal violations. For example, in criminal cases where employees are committing crimes in the name of the company, a well implemented compliance programme is likely to negate the company's involvement and knowledge of the criminal conduct to some extent, and be used to corroborate evidence in the company's favour. In addition, for administrative violations such as commercial bribery, AMRs will consider a compliance programme to be an important factor when evaluating the company's legal liabilities.

On 2 November 2018, the State-owned Assets Supervision and Administration Commission of the State Council, which is the governing authority for all the state-owned enterprises in China, released compliance guidance for all state-owned enterprises. Although this compliance guidance is mainly applicable to state-owned enterprises, other companies could benefit from using it as a major reference for establishing a solid compliance system. A wider range of compliance issues are identified as the key focuses, including anti-corruption and bribery, and anti-unfair competition. Specific requirements include policymaking, establishing risk identification and response systems, compliance review, strengthening accountability, regular compliance trainings, compliance evaluation and continuous improvements.

In addition, since March 2020, the Supreme People's Procuratorate has been promoting pilot programmes on corporate compliance reforms, including 'non-arrest based on compliance', 'non-prosecution based on compliance', and 'leniency application based on pleading guilty'. In the pilot regions, the People's Procuratorates can conduct compliance visits to the companies involved in the case, reach compliance supervision agreements with the companies, request the companies to establish or improve their compliance systems within a certain period of time, and review and evaluate the results. Based on the circumstances of the case and the review results, the People's Procuratorates would determine whether to arrest, prosecute or propose a lighter punishment.

iv Prosecution of individuals

Where there has been a unit crime, persons such as legal representatives, general managers or directors could be charged for the crime by the procuratorate depending on their involvement and substantial knowledge of the charged crime. Law enforcement authorities often pursue individuals for misconduct committed by a company. For example, in January 2018, the

Ministry of Public Security and former China Food and Drug Administration jointly issued the Provisions on Intensifying Law Enforcement Concerning Food and Drug Safety and Fully Implementing the Requirement of Imposing Punishment against All Individuals Held Liable for Food and Drug Violations to emphasise the enforcement on individual liabilities for related violations or crimes.

From another perspective, if an employee is being prosecuted for misconduct related to their duty, such as offering bribes to a state functionary in exchange for business opportunities without substantial evidence of the company's involvement, the situation will often get complicated owing to the stakeholders' conflicts of interest. It is likely that the employee will raise the defence that the misconduct was under the instruction, approval or with the knowledge of the company to be acquitted from the individual crime of offering bribes, because the individual criminal liabilities for the unit crime of offering bribes are much lighter compared with the individual crime of offering bribes. If the employee is convicted for the unit crime as the responsible person for the offence, they shall be sentenced to a fixed-term imprisonment of up to five years or criminal detention, and concurrently sentenced to a fine. In comparison, if the employee is convicted for the individual crime of offering bribes, the severest punishment could be life imprisonment with confiscation of property. Under these circumstances, the company has to provide evidence to prove its ignorance of the employee's conduct and that the bribery is not related to efforts in seeking a transaction opportunity or competitive advantage for the company. Further, it is important for the company to demonstrate compliance efforts in preventing employees' misconduct, such as the internal control mechanisms in place, trainings regularly provided to the employees and disciplinary actions imposed on violations, to negate the wilful intent and mitigate the legal risk exposures for the company.

IV INTERNATIONAL

i Extraterritorial jurisdiction

The Criminal Law mainly adopts the principle of territorial jurisdiction over criminal offences, supplemented by the extraterritorial jurisdiction over the circumstances where the perpetrator is a Chinese citizen or a foreign national commits a crime against China or a Chinese citizen. Article 10 of the Criminal Law states that any Chinese citizen who commits a crime outside the territory of China may still be investigated for their criminal liabilities under Chinese law, even if they have already been tried in a foreign country. However, if they have already received criminal punishment in the foreign country, they may be exempted from punishment or given a mitigated punishment. Article 8 further states that the Criminal Law may be applicable to any foreigner who commits a crime outside the territory of China against China or against any Chinese citizens, if for that crime this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

ii International cooperation

China has been actively promoting international and regional judicial cooperation in combating crimes relating to cybersecurity, corruption, money laundering, terrorism and drugs; joined international conventions; and signed bilateral judicial assistance and extradition treaties. In 2018 alone, China signed extradition treaties and mutual legal assistance treaties

on criminal matters with 16 countries, and the enactment of the ICJAL in 2018 further established the fundamental framework of international cooperation on criminal justice, clarifying the required process for China to raise requests to, or accept requests from, foreign judicial authorities regarding criminal judicial assistance.

Anti-corruption is a priority for China in its international cooperation efforts, as evidenced by claims of a zero-tolerance approach to corruption, and its work on strengthening international cooperation with a focus on deterrence should help achieve this goal. On 30 November 2018, the State Supervisory Commission successfully extradited a suspect from Bulgaria accused of taking bribes, which was also the first time that China extradited a suspect from the European Union. On 13 November 2018, the State Supervisory Commission and the Australian Federal Police signed a cooperation memorandum regarding anti-corruption enforcement. All these efforts demonstrate China's commitments in international cooperation to combat corruption.

In 2020, China raised six requests for extradition and judicial assistance in criminal cases, and 32 requests for law enforcement cooperation, and it accepted 10 requests for judicial assistance in criminal cases and 15 requests for law enforcement cooperation from foreign parties. It has also been reported that during 2020, China's implementation of the 'Skynet' surveillance project resulted in the successful arrest of 1,421 fugitives overseas and the recovery of 2.95 billion yuan in illegal profits.

As was reiterated by China's President during the Sixth Plenary Session of the Central Commission for Discipline Inspection in January 2022, international cooperation in combating bribery and corruption should be further strengthened.

iii Local law considerations

Under the circumstances where a government investigation involves multiple jurisdictions, conflicting law issues might arise. This is particularly true when a foreign government initiates an investigation into conduct occurring in China and attempts to carry out an investigation and collect evidence without the proper approval from the Chinese authorities. The ICJAL clearly prohibits any unauthorised criminal investigation by any means, either conducted directly by the foreign authorities or collaterally by instructing companies in China to collect evidence through internal investigation.

Restriction on cross-border data transfer is another pitfall of which companies need to be aware. The Cyber Security Law, which was promulgated in 2016 and took effect in 2017, establishes the basic framework of data localisation obligations in China. The Data Security Law and the Personal Information Protection Law were promulgated and took effect in 2021, further imposing certain controls over cross-border data transfer. So far, China has promulgated a series of legislation prohibiting the cross-border transfer of certain categories of data in specific industries, such as healthcare and financial industries, and the general legislation and enforcement trend indicates a more restrictive approach by the Chinese authorities. An additional layer of risk in state secret protection is imposed on highly sensitive industries such as telecommunications and infrastructure, for which cross-border data transfer might constitute the crime of supplying state secrets or intelligence for an organ, organisation or individual outside the territory of China, as any information concerning

political sensitivity or national security could be retrospectively labelled as a state secret by the Chinese authorities. An individual's criminal liabilities for violation are clearly stipulated in the Criminal Law.[8]

V YEAR IN REVIEW

Although conditions have been challenging during the coronavirus outbreak, AMRs at all levels were still able to accomplish their duties. Published statistics show that, in 2021, AMRs have substantially strengthened antimonopoly enforcement and concluded 176 antimonopoly cases, with fines totalling 23.58 billion yuan. The key industry sectors for antimonopoly enforcement include construction, automobiles, public utilities, healthcare, e-commerce and industries related to the livelihood economy. In April 2021, the SAMR issued a decision against one e-commerce platform for abuse of dominant market position, imposing a fine of 18.2 billion yuan. Also in April 2021, the SAMR issued a decision penalising a pharmaceutical company for abuse of market dominant position with fines totalling 764 million yuan.

With respect to securities fraud, in 2021, the CSRC concluded 609 cases, which included 201 cases of insider trading, 163 cases of misrepresentation, 110 cases of market manipulation, 20 cases in private equity institutions, 10 cases in the bond market, five cases in the futures field and nine cases of rat trading, triggering 371 administrative sanction decisions with fines of 4.553 billion yuan in total.

With respect to anti-money laundering enforcement in 2021, the PBOC has published 476 administrative sanction decisions against 383 entities, with fines totalling approximately 512 million yuan. The violations mostly involved failure to fulfil the obligations of identifying customer identity, maintaining customer identity information and transaction records, and reporting suspicious transactions, as well as cases of leaking of customers' information. The entities punished included banks, credit cooperative unions, securities institutions, insurance companies, payment institutions, and asset management companies.

VI CONCLUSIONS AND OUTLOOK

The year 2022 will be a busy year for government enforcement in various areas and companies in China are advised to pay close attention to updates and changes in regulatory enforcement trends, establish and operate well-founded compliance mechanisms and continuously strengthen their compliance status, especially in the high-risk areas of anti-corruption, antimonopoly, anti-money laundering, securities fraud and data protection. As the regulatory compliance environment in China is generally expected to become more and more restrictive, it is always best practice to expend efforts both proactively, by preventing non-compliance issues from occurring, and reactively, by preparing for and handling potential government investigations properly.

8 Article 111 of the Criminal Law: 'whoever steals, spies into, buys or unlawfully supplies state secrets or intelligence for an organ, organisation or individual outside the territory of China shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.'

Appendix 1

ABOUT THE AUTHORS

ALAN ZHOU

Global Law Office

Alan Zhou is the leading partner based in GLO's Shanghai office, with his strong background in life sciences and healthcare (L&H) practice. Mr Zhou has routinely represented multinational corporations, well-known Chinese state-owned and private enterprises, and private equity and venture capital funds in the L&H area.

As a participant or as an external counsel, Mr Zhou has been engaged by local authorities and industry associations to advise on legislation and industry standards in the L&H industry, including the formulation of the Compliance Guidelines for the Healthcare Industry, a textbook on corporate compliance officer professional skill standards, e-healthcare, medial insurance reform, medical representative administration, and other compliance topics. Mr Zhou has also won numerous awards in world leading lawyers rankings, and has been regarded as an expert in the L&H area. Also Mr Zhou's has published books in authoritative journals both at home and abroad.

Mr Zhou has received numerous awards from prestigious global legal ranking institutions. Mr Zhou has been ranked as a tier 1 lawyer in healthcare by *Chambers and Partners* (2012–2022), a tier 2 lawyer in corporate investigation by *Chambers and Partners* (2017–2022), a leading individual in L&H by *The Legal 500* (2018–2022), a recommended lawyer in compliance by *The Legal 500* (2019–2022), and a recommended lawyer in corporate and M&A by *The Legal 500* (2019). Mr Zhou has also been ranked as a leading lawyer in L&H by *Legalband* (2019–2021), as an A-List lawyer by *China Business Law Journal* and as a leading lawyer by *Asialaw Profiles* (2021).

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Jacky Li is a partner at Global Law Office, based in Shanghai. He is an attorney-at-law in the PRC and California, US, and is a US ACFE certified fraud examiner and a contributing expert for the United Kingdom's The Law Reviews. He mainly focuses on regulatory compliance, corporate and government investigations, dispute resolution and litigation, healthcare and life sciences.

Mr Li has practised in regulatory compliance for more than 10 years and has extensive experience. He is well versed in conducting various types of internal investigations and dealing with government investigations, in connection with anti-corruption (including US FCPA), anti-monopoly and anti-money laundering matters, white-collar crime, cybersecurity

and data compliance. He provides a full range of legal and compliance services to many large multinational companies, and state-owned and privately owned enterprises, and he has represented companies in dealings with cross-jurisdictional government authorities.

Before practising as a lawyer, Mr Li worked in the Legal Affairs Office of Shanghai Municipal Public Security Bureau, where he fought against crime on the front line and participated in and led a number of nationally influential cases, accumulating a wealth of judicial practice experience in criminal cases and administrative law enforcement. Mr Li's extensive experience means that, in an era in which enterprises are confronted by complex cross-border legal and regulatory environments, he is adept at providing practical and effective advice encompassing the perspectives of both government authorities and corporate entities, ensuring that legal and commercial risks are minimised for his clients.

Mr Li has received numerous awards from prestigious global legal ranking institutions. Mr Li has been ranked by *The Legal 500* both as a Next Generation Partner and as a 'rising star' for regulatory compliance practice from 2019–2022, and he was also noted as a recommended lawyer for healthcare practice in 2019. Mr Li has also been ranked as a Rising Star by *China Business Law Journal* in 2021. He has also been ranked by *Legalband* as a Top 15 recommended lawyer for criminal compliance practice in 2021. In addition, he also serves as an expert on the corporate compliance third-party monitorship committee endorsed by the Supreme People's Procuratorate of the PRC, a standing member of the Law and Compliance Committee of the Shanghai Bar Association and a director of the Association of China Compliance Professionals. Mr Li lectures on law and compliance-related practice courses for postgraduates.

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