This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in China.

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1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

The key financial crime offences/white collar crimes for the legal entities and their directors and officers are mainly regulated in Chapter III ‘Crime of Disrupting the Order of the Socialist Market Economy’, Chapter V ‘Crime of Property-related Violations’ and Chapter VIII ‘Crime of Corruption and Bribery’ of the Criminal Law of the People’s Republic of China. According to the latest version of the White Paper on Crimes Committed by Employees of Financial Institutions in China, the main types of financial crimes with high frequency are as follows:

i. Illegal Absorption of Public DepositsWhoever illegally raises funds by fraudulent means for the purpose of illegal possession shall, if the amount involved is relatively large, be sentenced to imprisonment of not less than three years nor more than seven years and a fine; or if the amount involved is huge or there is any other serious circumstance, be sentenced to imprisonment of not less than seven years or life imprisonment and a fine or forfeiture of property.

ii. FraudIn the context of Chinese law, fraud offences may constitute different crimes under the Criminal Law of the People’s Republic of China, including the crime of financial fraud in Articles 192-198, the crime of contract fraud in Article 224, and the crime of fraud in Article 266, among which the crime of financial fraud is not a single crime but a category of crimes, including crime of fundraising fraud, crime of loan fraud, crime of financial bill fraud, crime of financial voucher fraud, crime of letter of credit fraud, crime of credit card fraud, crime of securities fraud, crime of insurance fraud. Whatever the form it takes, the core of fraud is the criminal’s intention to illegally occupy other people’s property by fraudulent means.

iii. Illegal Issuance of LoansWhere an employee of a bank or other financial institution issues loan in violation of the relevant provisions of the state, with a huge amount or serious losses that have been resulted, he/she shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, together with a fine of not less than RMB 10,000 nor more than RMB 100,000. And if the amount is extremely huge or extremely serious losses have been resulted, he/she shall be sentenced to fixed-term imprisonment of more than five years, together with a fine ranging from RMB 20,000 to RMB 200,000.

iv. Embezzlement and Misappropriates Corporate FundsIn the event that an employee unlawfully takes possession of the money or property of any company by taking advantage of his/her position, he/she shall be sentenced to a maximum life imprisonment together with a fine, based on the involved amount. Where an employee misappropriates the funds of the company for personal use or for lending to others by taking advantage of his/her position, he/she shall be sentenced to fixed-term imprisonment of not more than fifteen years.

v. Commercial BriberyUnder current PRC laws and regulations, commercial bribery crime refers to a series of crime in relation to bribery. Based on different subject and object of the bribery, commercial bribery crime offences may trigger 8 specific crimes, including crime of accepting bribes by a non-state functionary, crime of offering bribes to a non-state functionary, crime of acceptance of bribes, crime of taking bribes by an entity, crime of offering bribes, crime of offering...
bribes to an entity, crime of introducing bribery and crime of offering bribes by an entity.

vi. Others
For some special entities like a listed/public company which has the duty of information disclosure, provides any financial and accounting report which is false or conceals any important facts to its shareholders and to the general public, or fails to disclose any other important information that shall be disclosed in accordance with the provisions, the person directly in charge and other directly liable persons in the company shall be sentenced to fixed-term imprisonment of not more than 10 years together with fine.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Yes, corporates can be held with criminal liabilities under the PRC Criminal Law. In PRC jurisdiction, entity crime should be committed by the company/enterprise, public institution, state organ/authorities, or organizations. In principle, the ‘double punishment system’ is adopted when punishing the corporate crimes. That is, where any entity commits a crime, it shall be fined, and the person who is directly in charge and other persons who are directly liable for the crime shall be imposed criminal penalty. In addition, it is worth mentioning that the entity crime is not the will of a member within the entity, nor the simple sum of the will of each member. It is an unitary will of management members or the members who represents the overall interests of the entity in the process of leadership, command, decision-making and execution, e.g., through an effective board resolution, via discussion and decision by the whole management team etc.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

Within the territory of PRC, the white-collar crimes occur with high frequency are commercial bribery, embezzlement and misappropriates corporate funds, financial fraud etc. in practice.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

Generally, under PRC laws and regulations, the investigation and prosecution of financial crimes are administered by two state organs. Public security organs (i.e., the Chinese police) shall be responsible for investigation, criminal detention, execution of arrests and preliminary inquiry in criminal cases. People’s procuratorates shall be responsible for pro curatorial work, approval of arrests and initiating public prosecution of cases.

However, in certain circumstances, people’s procuratorates may also take part in the investigation of financial crimes. According to Article 175 of the Criminal Procedure Law of the People’s Republic of China, the people’s procuratorates may remand the case to a public security organ for supplementary investigation or conduct such supplementary investigation itself. Besides, based on Article 204 and 205 thereof, during a trial, the procurators may also make a proposal to conduct supplementary investigation, and the people’s procuratorates shall finish such supplementary investigation in a month.

5. Which courts hear cases of financial crime? Are trials held by jury?

In PRC, the people’s courts are divided into four levels, ranking from high to low: the Supreme People’s Court, the Higher People’s Court, the Intermediate People’s Court and the Basic-level (lowest level) People’s Court. According to PRC Criminal Law, as a principle, a criminal case shall be under the jurisdiction of the people’s court in the place where the crime was committed. If it is more appropriate for the court of where the defendant resides to handle, then that court may have jurisdiction over the case. For the ordinary financial criminal cases, a basic-level people’s court shall have jurisdiction of the first instance. If a financial crime is likely punished with life imprisonment or death penalty, an intermediate people’s court shall have jurisdiction of the first instance.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

Before launching the investigation, the public security organ shall, within the scope of its jurisdiction, promptly examine the materials provided by a reporter, accusant or informant and the confession of an offender who has voluntarily surrendered. If it believes that there are facts of a crime and criminal liability should be investigated, it shall accept the filing of a case. Raids are very common. There are compulsory document production and evidence taking powers for the public security organ.
7. What powers do the authorities have to conduct interviews?

After a criminal case has been filed, the public security organ shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave. For the flagrante delicto or the major suspects, the public security organ have power to detain them first. If the criminal suspects who meet the conditions for arrest, they shall be arrested according to the law.

When interrogating a criminal suspect, the investigators may keep an audio or visual record of the interrogation process. But if a case would be punished with life imprisonment or death penalty, the investigators shall keep an audio or visual record of the interrogation process.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

During the interrogation, there must be no fewer than two investigators participating. If a criminal suspect is not necessary for arrest or detention, he/she may be summoned to a designated place in the city or his/her residence for interrogation. The credentials from public security organ shall be shown to the criminal suspect. The duration of interrogation by summons or forced appearance may not exceed 12 hours. If it is necessary to detain or arrest a criminal suspect in an extraordinarily significant or complicated case, the duration of interrogation may not exceed 24 hours. During the period of interrogation, the meals and necessary rest time of the criminal suspect shall be ensured.

When interrogating a criminal suspect, the investigators shall inform the criminal suspect of his/her litigation rights, as well as the legal provisions allowing for lenient punishment for those who truthfully confess their crimes and possible legal consequence of plea of guilty and punishment acceptance. The criminal suspect shall answer the investigators’ questions truthfully, but he/she shall have the right to refuse to answer any questions that are irrelevant to the case. In addition, the written record of an interrogation shall be shown to the criminal suspect for checking after interrogation; if the criminal suspect cannot read, the record shall be read to him.

A criminal suspect shall have the right to entrust a defender from the day of interrogation for the first time or from the day when a compulsory measure is taken against. During the period of investigation, a criminal suspect may only entrust a lawyer as a defender. However, there isn’t a right to be represented by a lawyer at an interview.

9. Do the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

There are some principles of jurisdiction under the PRC Criminal Law. The extraterritorial effect is mainly under the nationality jurisdiction and protective jurisdiction. If a PRC citizen who commits a crime prescribed in this law outside the territory of the PRC, the law shall be applicable. However, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years, he/she may be exempted from the criminal liability.

Regarding the protective jurisdiction, any foreigner who commits a crime outside the territory of PRC against the country or against any of its citizens, if the punishment is prescribed with a fixed-term imprisonment of not less than three years. The law shall be applicable. However, if the crime is not punishable according to the laws of the place where it is committed, the criminal may be exempted from the criminal liability.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

International criminal judicial assistance under relevant PRC laws are carried out in accordance with the principle of equality and reciprocity and should be coordinated through the foreign relations agencies. If there is no criminal justice assistance treaty between and PRC and a foreign country, the contact shall be made through diplomatic channels.

International criminal judicial assistance refers to the assistance provided mutually between the PRC and foreign countries in such activities as criminal inquiry, investigation, prosecution, trial and execution, including the service of documents, investigation and evidence collection, arrangement of witnesses to testify or assist in investigations, seizing, detaining, or freezing the property involved, confiscate or return illegal income and other property involved, transfer the sentenced person, and other assistance.
11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

According to the current PRC laws, a defence lawyer shall have the right to keep confidential the conditions and information of the client. However, if a client or any other person is preparing for or is committing a crime damaging the national security, public security or seriously damanging the personal safety of others, the defence lawyer shall inform a judicial authority in a timely manner.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

The people’s courts, people’s procuratorates and public security organs shall have the authority to collect or obtain evidence from the entities and individuals in the criminal cases. But if the evidence involving any trade secret or personal privacy, the relevant authorities shall keep them confidential.

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

According to the Reply of the Research Office of the Supreme People’s Court on How to Prosecute Criminal Liability of Enterprises Merged After Committing Crimes, if the original enterprise which had committed a crime has been merged into a new enterprise at the time of prosecution by the people’s procuratorate, the criminal liabilities of the original enterprise, its person directly in charge and other directly liable personnel shall still be prosecuted according to law. During the trial, the people’s court shall list the name of the original enterprise as the defendant and indicate that it has been merged into the new enterprise, and the amount of fine sentenced to the defendant shall be limited to the property and proceeds merged into the new enterprise.

14. What factors must prosecuting authorities consider when deciding whether to charge?

Under the PRC laws and regulations, all cases requiring initiation of a public prosecution shall be examined for decision by the people's procuratorates. In examining a case, a people's procuratorate shall ascertain: (i) whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined; (ii) whether there are any crimes that have been omitted or other persons whose criminal liability should be investigated; (iii) whether it is a case which criminal liability should not be investigated; (iv) whether the case has an incidental civil action; (v) whether the investigation of the case is being lawfully conducted.

If the criminal suspect pleads guilty and accepts punishment, the people’s procuratorate shall listen to the opinions of the criminal suspect, the defence lawyer, the victim on the following matters, and record such opinions in the case files: (i) the corpus delicti, charged crimes and applicable legal provisions; (ii) recommendations on lightened or mitigated punishment or exemption from punishment; (iii) procedures applicable to trials after plea of guilty and punishment acceptance etc.

15. What is the evidential standard required to secure conviction?

Under the PRC Criminal Procedure Law, all the evidence must be verified before being used as a basis for deciding a case. It shall be strictly prohibited to extort confessions by torture, collect evidence by threat, enticement, deceit, or other illegal means, or force anyone to commit self-incrimination. Such kind of evidence shall be excluded. The solid and sufficient evidence is: (i) all facts for conviction and sentencing are supported by evidence; (ii) all evidence used to decide a case has been verified under legal procedures; and (iii) all facts found are beyond reasonable doubt in consideration of all the evidence of the case.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

According to the PRC Criminal Law, there are the statutory limitation period for prosecution of criminal cases in different scenarios. When the maximum punishment prescribed is the fixed-term imprisonment of less than five years, the limitation period is five years. When the maximum punishment is the fixed-term imprisonment between five years and ten years, the limitation period is ten years. When the maximum punishment is the fixed-term imprisonment over ten years, the limitation period is fifteen years. When the
maximum punishment prescribed is life imprisonment or
death penalty, the limitation period is twenty years.

Moreover, there are some exceptions for the above-mentioned limitation period. If a criminal escape from
investigation or trial after the case is filed, the case will
not be subject to the period of limitation for prosecution.
And for the cases of which the limitation period if twenty
years, the application for prosecution shall be submitted
to the Supreme People’s Procuratorate for examination
and approval after the period.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Since 2020, the PRC Supreme People’s Procuratorate has
been carrying out the first phase of pilot work on
corporate compliance reform in six grassroots courts in
cities such as Shanghai and Shenzhen. 2021, the
Supreme Procuratorate issued the Work Plan for
Launching the Pilot Program of Enterprise Compliance
Reform and the Guiding Opinions on Establishment of a
Third-party Supervision and Evaluation Mechanism for
the Compliance of Enterprises Involved in Cases (for Trial
Implementation) (hereinafter referred to as the
“Guiding Opinions”) reflecting the beginning of the
second phase pilot work. Then on April 2, 2022, after an
in-depth review of the work of the pilot program of
corporate compliance reform by prosecuting authorities
in the past two years, the Supreme People’s
Procuratorate, together with the All-China Federation of
Industry and Commerce, announced that the pilot
program of enterprise compliance reform shall be rolled
out across the country in the prosecuting authorities.
Enterprise compliance non-prosecution system refers
to the prosecuting authorities for criminal cases
involving enterprises, in accordance with the law to
make a decision not to approve the arrest, not to
prosecute or under the plea system of leniency to
propose a lighter sentence, etc., for enterprises
suspected of specific crimes, combined with the actual
case, to urge the enterprises involved to make
compliance commitments and actively rectify, to
promote compliance and law-abiding business, to
protect the development of private enterprises and
promote business environment. The application of the
enterprise compliance non-prosecution system includes
both corporate crime cases and individual crime cases
related to the production and operation of enterprises.

According to the Guiding Opinion, a third-party supervision and evaluation mechanism for the compliance of enterprises involved in cases (hereinafter referred to as the “third-party mechanism”) refers that when the People’s Procuratorate handles an enterprise-related criminal case, which meets the applicable conditions for the corporate compliance reform, a third-party supervision and evaluation organization (hereinafter referred to as the “third-party organization”) selected and appointed by the Administration of the Third-Party Supervision and Assessment Mechanism (hereinafter referred to as the “Administration of the Third-Party Mechanism”) investigates, evaluates, supervises and inspects the compliance commitment of the enterprise involved in cases. The investigation results shall serve as an important reference for the People’s Procuratorate to handle the case in accordance with the law.

The third-party mechanism is applicable to the financial crimes and duty-related crimes involved in the production and operation activities of the market players such as companies and enterprises, which not only include the crimes committed by companies and enterprises, but also include the crimes committed by actual controllers, operation and management personnel and key technical personnel of companies and enterprises that closely related to the production and operation activities.

For an enterprise-related criminal case that meets all of
the following conditions, the People’s Procuratorate may apply the Guiding Opinions as the case may be:

(I) The enterprise or individual involved in the case
pleads guilty and accepts punishment; (II) The enterprise
involved in the case can carry out normal production and
operation, makes a commitment to establish or improve
the corporate compliance system, and meets the basic
conditions to launch the third-party mechanism; and

(III) The enterprise involved in the case voluntarily
applies the third-party mechanism.

18. Is there a mechanism for plea bargaining?

First of all, if the criminal suspect pleads guilty and
accepts punishment, the people’s procuratorate shall
listen to the opinions of the criminal suspect, the
defence lawyer, the victim on the following matters, and
record such opinions in the case files: (i) the corpus
delicti, charged crimes and applicable legal provisions;
(ii) recommendations on lightened or mitigated
punishment or exemption from punishment; (iii) procedures applicable to trials after plea of guilty and punishment acceptance etc. Any criminal suspect who voluntarily pleads guilty, accepts punishment, and agrees on the sentencing recommendation and applicable procedures shall sign an affidavit on plea of guilty and punishment acceptance in the presence of his/her defence lawyer.

Secondly, where the defendant pleads guilty and accepts punishment, the chief judge shall examine the voluntariness of his/her plea of guilty and punishment acceptance, as well as examine the authenticity and legitimacy of the contents of the affidavit. When rendering a judgement, the people’s court usually will adopt the charged offence and sentencing recommendations proposed by the people’s procuratorate in accordance with law.

Thirdly, for the cases that the defendant pleads guilty and agrees to the application of the expedited procedures, and the case might be sentenced to a fixed-term imprisonment of less than three years under the jurisdiction of the basic-level people’s court, the court can apply the expedited procedures. The expedited procedure shall be tried solely by one judge and announced the judgement at court.

Besides, where the defendant pleads guilty and accepts punishment and the case that meets the other necessary conditions, including: (I) The enterprise or individual involved in the case pleads guilty and accepts punishment; (II) The enterprise involved in the case can carry out normal production and operation, makes a commitment to establish or improve the corporate compliance system, and meets the basic conditions to launch the third-party mechanism; and (III) The enterprise involved in the case voluntarily applies the third-party mechanism, the third-party mechanism as mentioned in the above Q17 may be applied by the government authority according to the Guiding Opinions.

19. Is there any requirement or benefit to a corporate for voluntary disclosure to a financial crime authority?

Under PRC relevant laws and regulations, if a company voluntarily disclose a financial crime and confesses truthfully for its violation to the relevant authority, it may be deemed as the voluntary surrender. Any criminal who voluntarily surrenders may be imposed a lighter or mitigated penalty. And if the crime is relatively less serious, the criminal may be exempted from penalty.

Besides, according to the Criminal Law of PRC, a defendant under compulsory measures or a criminal serving a sentence truthfully confesses his other offences that the judicial organ does not know shall be regarded as the voluntary surrender.

If the criminal suspect only truthfully confesses his offence but not be regarded as the voluntary surrender as the above mentioned, he may be imposed a lighter penalty; only any especially serious consequence is avoided due to his truthful confession, he may be imposed a mitigated penalty.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

The general principles of criminal sentencing is that, when deciding on the penalty for a criminal, he/she shall be sentenced according to the facts of the crime, the nature of the crime, the circumstances and the degree of harm to the society. In accordance with PRC Criminal Law, the mitigate penalties are stipulated in the law and should be applied strictly. The mitigate penalties differs from different crimes. In addition, while serving the sentence, if the criminal conscientiously observes prison regulations, accepts education and reform through labor and shows true repentance or performs meritorious services, he/she might be commuted by the decision of the intermediate court.

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

Under the current provisions stipulated by PRC laws and regulations, when launching the third-party mechanism mentioned before, the enterprise involved is required to submit special or multiple compliance plans and specify the promised time limit of completion of the compliance plans. Be specific, the compliance plan submitted by the enterprise involved in the case shall mainly focus on the problems of the enterprise’s internal governance structure, rules and regulations, personnel management and other aspects that are closely related to the suspected crime of the enterprise, develop feasible compliance management specifications, build an effective compliance organisation system, improve the compliance risk prevention and reporting mechanism, make up the loopholes in the corporate system development and supervision and management, and prevent the recurrence of the same or similar crime.
During the period of compliance inspection, the authorized third-party organization may regularly or irregularly inspect and evaluate the implementation of the compliance plan of the involved enterprise, and may require the involved enterprise to regularly report in writing the implementation of the compliance plan, and copy the same to the People’s Procuratorate responsible for handling the case.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

For the crime conducted by an individual, the criminal is commonly imposed with a fixed-term imprisonment together with fine. For the entity crime, the ‘double punishment system’ is adopted as mentioned before. That is, the company shall be fined, and the person who is directly in charge and other persons who are directly liable for the crime shall be imposed criminal penalty such as imprisonment, and/or a fine. But the types of the criminal liabilities, e.g., the duration of imprisonment, the amount of fine etc., varies among different crimes.

23. What rights of appeal are there?

For the defendant, if he/she refuses to accept the judgment or order of first instance made by a local people’s court at any level, he/she shall have the right to appeal in writing or orally to the people’s court at the next higher level. For the victims, if he/she refuses to accept a judgment of first instance, he/she has the right to request a people’s procuratorate to present a protest.

24. How active are the authorities in tackling financial crime?

Financial crimes have always been one of the significant focus of the criminal law enforcement in various jurisdiction, including the PRC. Public security organs insist on actively preventing and defusing financial risks as the main target, severely crack down on all kinds of financial crimes in accordance with the law and spare no effort to maintain economic security and market stable. According to public statistics released by the PRC Ministry of Public Security at a press conference on April 15, 2022, in 2021, the public security organs have cracked down 77,000 cases of economic crimes and recovered RMB 28.12 billion in economic losses. In addition, a large number of illegal financial activities suspected of economic crimes were investigated and handled by public security organs in accordance with the law in 2021, so as to deepen the special rectification against financial risks.

The activity of authorities to tackle financial crime is also reflected in legislation. In 2021, the General Office of the State Council, General Office of the Central Committee of the Communist Party of China, issued the Opinions on Strictly Cracking Down on Securities Illegal Activities in accordance with the Law to crack down on illegal acts in the capital market.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

The financial industry and pharmaceutical industry may be the areas the Chinese government has paid most attention to in the past 5 years.

In the financial industry, offences have emerged one after another in recent year, and usually, once committed, they involve relatively large amounts of money and cause severe social impact, resulting in financial industry being brought into focus of the regulation. This can be reflected in in the White Paper on Crimes Committed by Employees of Financial Institutions in China published in 2022, which shows that there are 424 cases of the crimes committed by employees of financial institutions concluded by courts nationwide in 2021, among which the top crimes were: illegal absorption of public deposits (123 cases, 29.01%), fraud (89 cases, 20.99%), illegal issuance of loans (52 cases, 12.26%), misappropriation (28 cases, 6.60%), bribery (20 cases, 4.72%), misappropriation of funds (19 cases, 4.48%), insurance fraud (13 cases, 3.07%), and fund-raising fraud (13 cases, 3.07%).

Pharmaceutical industry has also been the focus for the authorities to tackle, according to the Research Report on Commercial Bribery Administrative and Criminal Cases in the Pharmaceutical Industry in 2021, there were 20 administrative cases and 21 criminal cases related to pharmaceutical companies in China in 2021. The purchase and sale of medicines and medical devices has been facing high pressure from the Chinese government as it is a matter of people’s livelihood. Besides, it can be observed that the pharmaceutical industry is prone to commercial bribery given a large number of duty-related offences occurred particularly in this sector. In the context of China’s strict enforcement on corruption, the Chinese government has, naturally, stepped up efforts to crackdown on commercial bribery in the pharmaceutical industry.
26. Have there been any landmark or notable cases, investigations or developments in the past year?

From our view, there are 2 notable cases in the past year, which may reflect the attitude of the law enforcement agencies regarding the financial crime:

1. Shanghai Fu Xing Industry Group Co., Ltd., Zhu Yidong, Zhao Zhuoquan, Zhu Chengwei – the crimes of fund raising fraud and manipulation of the securities market

In recent years, private equity market has been experiencing a rapid development phase in China, as of May 2022, there are 24,518 subsistent private equity funds managers in China, and the amount of subsistent private equity funds is RMB 19.96 trillion. In the process of rapid development of private equity funds, a series of problems have been exposed, resulting in the circumstance where certain enterprise and/or individual would use the blind spot of the regulation to commit illegal and criminal acts. In particular, some private equity institutions have trampled on the bottom line of qualified investors, openly or semi-openly engaging in illegal fund-raising activities under the guise of “private equity funds” and even making up fictitious investment projects, to seek private profits in the process of private equity funds operation, which seriously harmed the legitimate rights and interests of investors. This case indicates that the authorities are putting effort on cracking down financial crime offences in the private equity sector.

2. Lai Xiaoming, the former Party Committee Secretary and Chairman of China Huarong Asset Management Co., Ltd. – the crimes of bribery and corruption

This case is the largest bribery case since the founding of New China, which has very important warning significance: a) to further improve the financial laws and regulations and regulatory system, so as to effectively prevent and reject corruption in the system; b) to thoroughly implement the “de-administration” measures for commercial financial institutions, speed up the improvement of the professional manager system of financial institutions, and prevent the recurrence of financial borers; c) to strengthen the legal training of cadres and employees of financial institutions, and cultivate the concept and consciousness of respecting the law in the whole industry; d) financial anti-corruption needs to maintain a moderate high-pressure situation, and the constant ringing of the alarm bell helps to deter potential corrupt elements.

27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

Since 2020, PRC has constructively enacted and promulgated a few laws and regulations to deepen the supervision over the implementation of compliance on the enterprises and individuals within its jurisdiction. The major changes in recent development of PRC legislation are focusing on anti-bribery, export control and trade compliance, third-party mechanism of review and evaluation on compliance system, as well as data security related etc. It could be preliminarily predicted that there would be more detailed measures or guidelines in related to such newly promulgated laws and regulations.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

As previously mentioned, there are still some details that have not been specified in the new laws and regulations. For example, regarding the third-party mechanism in the evaluation and review on the corporate compliance system, due to it has been rolled out nationwide for only 2 months, there are still some more details to be determined by the relevant government authorities. How to better connect the third-party mechanism and non-prosecution system, how a company accurately design or improve its internal compliance, how to effectively operate the system, and whether and to what extent the compliance mechanism be recognized by the government authorities, would be the challenging points.
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