Compliance in China

A big, but feasible challenge

In the course of the Chinese government's anti-corruption campaign, the requirements for companies in China have increased significantly. The Criminal Code has been tightened, numerous other laws have been amended and administrative measures have been expanded. This also affects the subsidiaries of foreign companies, both directly and through their Chinese partners, with whom they are usually closely intertwined.

The measures are diverse and far-reaching. For example, China's Supreme People's Procuratorate has significantly expanded its system for investigating corruption cases. Whereas searches were previously only possible for sectors that are particularly susceptible to corruption (e.g. construction industry, finance, medicine) due to the severely limited availability of data, it is now possible to apply for a search for any sector. The new system creates extensive transparency, for example when participating in a tender, due diligence of potential suppliers or the hiring of executives.

In 2016, the State Administration of Industry and Commerce (SAIC) introduced a province-wide system for blacklisting companies that have violated laws. Those who violate compliance regulations three times within two years are publicly pilloried, and the listed companies are subject to particularly strict controls five years after being included on the blacklist . In the case of violations by Chinese partners, the penalties can also be massive for a foreign company. In the rotten meat scandal, the American OSI Group was fined more than 24 million RMB (3.6 million USD) and the responsible persons were sentenced to prison terms of between 19 and 36 months. (Read more about the case here.) Foreign companies are adapting to the stricter regulations. The focus is on improving compliance guidelines, introducing or qualifying internal investigations and due diligence by third parties, as well as intensifying and culturally adapting training. In China, comics or game elements are particularly suitable for compliance training.

The due diligence of third parties such as suppliers, joint venture partners or customers is often the biggest challenge. The sheer size of the networks is a hurdle - a mid-sized company has up to

medium-sized company has up to 5,000 external partners. In addition, there is the complexity of third-party governance and internal conflicts of objectives between the demands of time and cost efficiency and the quality of compliance management.

Nevertheless, most Western companies conduct due diligence on third parties in China because they are the main risk drivers in terms of compliance.

China's metropolises attract companies from all over the world. For German compliance officers, Asian business relations are challenging.

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To reduce complexity, partners are often screened on the basis of categorisation. In the case of corruption networks, it is important to identify the key persons. In some cases, it even makes sense to check individual transactions with already qualified partners.

Investigations in the field are not feasible in China, while investigations of external third parties often lead to internal investigations. It is important that all findings are documented in a court-proof manner - including documentation of the business need to work with a particular third party. To ensure that compliance programmes are not circumvented or only formally implemented by Chinese employees and partners, they must not be perceived as an additional and unnecessary burden. Typical pitfalls are long processes, no consideration of Chinese partners' interests, legal gobbledygook in forms and declarations, or avoidable overlap with other processes. Compliance programmes in China should include incentives, such as a points system with sanctions for non-compliance or rewards for compliance excellence.

The new laws and regulations put companies in China under massive pressure. However, compliance officers can welcome the tougher stance: compliance is now receiving more attention from management, and more resources are increasingly being made available for compliance in China.

Evgeniya Vazhova

News

France tightens corruption law

France has passed a new law to fight corruption. German companies with subsidiaries in France are also affected.

At the centre of the new law, called Sapin II, is the obligation to introduce a compliance programme to fight corruption. The requirements for this are strict, so that existing programmes should also be reviewed in the light of the new regulations.

In principle, all companies with at least 500 employees and an annual turnover of 100 million euros are affected - including French subsidiaries of German companies that meet these requirements.

The implementation of the law will be monitored by an anti-corruption agency with far-reaching powers. If companies do not set up a compliance programme or if the programme does not meet certain requirements, the agency can impose heavy fines and make them public. Whether the company in question can actually be accused of corruption is irrelevant.