

# CHINA

## Little or no enforcement

10.7% of global exports

### Investigations and cases

In the period 2016-2019, China opened no investigations, commenced no cases and concluded no cases.<sup>1</sup>

There have been a number of investigations and enforcement actions against Chinese entities and

individuals in other jurisdictions in connection with alleged bribery of foreign officials (some of these are listed in Table 2 below). As courts or regulatory bodies in relevant jurisdictions have not always adjudicated the allegations, they have not always been proven. There is no evidence that Chinese authorities have pursued action against the implicated Chinese entities and individuals in these foreign matters.

**TABLE 3: SELECTED REPORTS ON FOREIGN BRIBERY INVESTIGATIONS OR CASES CONCERNING CHINESE COMPANIES AND BUSINESSPEOPLE**

No.	Chinese company and employees	Bribery of foreign official	Brief summary	Report date	News sources
1	China Communications Construction Company (CCCC), a state-owned enterprise, China Harbour Engineering Company (CHEC), subsidiary of CCCC	Mahinda Rajapaksa (former president of Sri Lanka)	A Sri Lankan investigation was reported of bribery allegations involving China Harbour Engineering Company (CHEC). The investigation is reportedly looking into whether the company paid 149 million rupees (US\$797,000) through proxies to Rajapaksa for his re-election campaign, in return for a US\$1.4 billion deal to build a port city in Colombo. The project was reportedly suspended in 2015. In January 2018, it was reported that CHEC signed a memorandum of understanding with the Sri Lankan government on funding for the same project.	July 2015 January 2018	<a href="https://www.reuters.com/article/sri-lanka-rajapaksa/rajapaksa-comeback-bid-checked-by-sri-lanka-bribery-probe-idUSL3N1043EF20150724">https://www.reuters.com/article/sri-lanka-rajapaksa/rajapaksa-comeback-bid-checked-by-sri-lanka-bribery-probe-idUSL3N1043EF20150724</a> ; <a href="https://www.reuters.com/article/us-sri-lanka-china-portcity/china-harbour-engineering-to-invest-1-billion-in-sri-lankas-port-city-minister-idUSKBN1ER1DX">https://www.reuters.com/article/us-sri-lanka-china-portcity/china-harbour-engineering-to-invest-1-billion-in-sri-lankas-port-city-minister-idUSKBN1ER1DX</a>
2	Tang Ju and Liu Yabin, senior managers of China Roads and Bridge Construction Company, a state-owned enterprise	Highway authority officials of Kenya	Liu was accused of offering 30,000 Kenyan shillings (US\$275) and Tang of offering KS100,000 (US\$918) to Kenyan highways authority officials to avoid charges for overloaded trucks belonging to the China Roads and Bridge Construction Company. Both pleaded guilty and were fined KS380,000 (US\$3,487) by the Kenyan court.	September 2015 to October 2015	<a href="http://www.fcpablog.com/blog/2015/9/28/kenya-arrests-two-chinese-construction-company-executives-fo.html">http://www.fcpablog.com/blog/2015/9/28/kenya-arrests-two-chinese-construction-company-executives-fo.html</a> ; <a href="http://www.scmp.com/news/china/diplomacy-defence/article/1857073/two-chinese-state-firm-officials-face-bribery-charges">http://www.scmp.com/news/china/diplomacy-defence/article/1857073/two-chinese-state-firm-officials-face-bribery-charges</a> ; <a href="http://www.scmp.com/news/china/diplomacy-defence/article/1863452/managers-chinese-state-owned-enterprise-building-us38b">http://www.scmp.com/news/china/diplomacy-defence/article/1863452/managers-chinese-state-owned-enterprise-building-us38b</a>
3	David Ng Lap Seng, chairman of the Sun Kian Ip Group (Macau), member of the National Committee of the	Two UN ambassadors, including former UN General Assembly	From 2010 to 2015, Ng paid US\$1.7m in bribes to two UN ambassadors, including John Ashe, to build a UN centre in Macau, which was never built. Ashe was charged in 2015, but was later found dead in his home from neck injuries. Ng was subject to bail of	October 2015 to July 2017	<a href="http://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case">http://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case</a> ; <a href="http://www.jiemian.com/article/394420.html">http://www.jiemian.com/article/394420.html</a> ; <a href="http://www.epochtimes.com/gb/15/10/8/n4545684.htm">http://www.epochtimes.com/gb/15/10/8/n4545684.htm</a> ;

<sup>1</sup> This is based on searches in major Chinese legal databases and related databases, including <http://caseshare.cn> (maintained by the Peking University Research Center); <http://law.wkinfo.com.cn/>; <http://wenshu.court.gov.cn/>; <https://splcgk.court.gov.cn/gzfwwww/>; <http://zhixing.court.gov.cn/>; the websites of relevant Chinese government or party agencies, and search engines (Google, Baidu and Lexis Advance News).

	Chinese People's Political Consultative Conference	president John Ashe	US\$50 million and convicted of bribery, conspiracy and money laundering charges by a federal court in July 2017.		<a href="http://www.bbc.com/zhongwen/trad/china/2015/10/151007_profile_david_ng">http://www.bbc.com/zhongwen/trad/china/2015/10/151007_profile_david_ng</a> ; <a href="http://www.bbc.com/zhongwen/simp/china/2015/09/150930_macau_estate_developer_arrest">http://www.bbc.com/zhongwen/simp/china/2015/09/150930_macau_estate_developer_arrest</a>
4	Sam Pa, President of China International Fund (CIF) and China Sonangol International Ltd., and associated with over 30 companies registered to the address 88 Queensway in London	Mahmoud Thiam, former Minister of Mines and Geology, Guinea	Thiam, a US citizen and resident, was sentenced to seven years imprisonment in December 2016 for receiving and laundering US\$8.5 million in bribes from executives of China Sonangol International Ltd. and China International Fund, SA, when he was Guinean Minister of Mines and Geology in 2009-2010. In return, the Chinese companies were awarded lucrative mining rights in Guinea. Thiam was also found to have laundered the bribes by making false claims to banks in Hong Kong and the United States.	December 2016 to August 2017	<a href="https://www.justice.gov/opa/pr/former-guinean-minister-mines-sentenced-seven-years-prison-receiving-and-laundering-85">https://www.justice.gov/opa/pr/former-guinean-minister-mines-sentenced-seven-years-prison-receiving-and-laundering-85</a> ; <a href="http://www.fcpablog.com/blog/2016/12/14/former-guinea-mining-minister-charged-in-us-with-laundering.html">http://www.fcpablog.com/blog/2016/12/14/former-guinea-mining-minister-charged-in-us-with-laundering.html</a> ; <a href="http://www.p5w.net/news/gncj/201612/t20161215_1667420.htm">http://www.p5w.net/news/gncj/201612/t20161215_1667420.htm</a> ; <a href="https://theinitium.com/article/20151126-hongkong-xujinghua01/">https://theinitium.com/article/20151126-hongkong-xujinghua01/</a>
5	Patrick Ho Chi-ping, chairman of China Energy Fund Committee, and Cheikh Tidiane Gadio (former foreign minister of Senegal)	President of Chad, the Ugandan foreign minister, and President of Uganda	Ho and Gadio were arrested in New York on bribery and money laundering charges. The authorities allege bribery in the amount of US\$2.9 million to obtain business advantages including oil rights from the Chadian government for a "Shanghai-headquartered multibillion-dollar conglomerate that operates internationally in the energy and financial sectors". Arrested in 2017, Ho was denied bail. The case is expected to proceed to trial.	November 2017 to present	<a href="https://www.justice.gov/opa/press-release/file/1012531/download">https://www.justice.gov/opa/press-release/file/1012531/download</a> ; <a href="https://edition.cnn.com/2018/02/09/world/patrick-ho-corruption-china-africa/index.html">https://edition.cnn.com/2018/02/09/world/patrick-ho-corruption-china-africa/index.html</a> ; <a href="https://player.fm/series/the-china-in-africa-podcast-108224/hong-kong-millionaires-arrest-exposes-problem-of-chinese-corruption-in-africa">https://player.fm/series/the-china-in-africa-podcast-108224/hong-kong-millionaires-arrest-exposes-problem-of-chinese-corruption-in-africa</a> ; <a href="http://www.fcpablog.com/blog/2017/11/20/doj-charges-two-in-chinese-plot-to-bribe-africa-officials.html">http://www.fcpablog.com/blog/2017/11/20/doj-charges-two-in-chinese-plot-to-bribe-africa-officials.html</a> ; <a href="http://world.huanqiu.com/exclusive/2017-11/11393298.html">http://world.huanqiu.com/exclusive/2017-11/11393298.html</a> ; <a href="http://www.ndtv.com/xtr/gb/2017/12/02/a1353388.html">http://www.ndtv.com/xtr/gb/2017/12/02/a1353388.html</a> ;
6	China Harbour Engineering Company (CHEC)	Communication Secretary (road transport and bridges ministry) of Bangladesh government	CHEC had previously won a contract for expansion of the Dhaka-Sylhet Highway in Bangladesh. The Minister of Finance told the media that CHEC offered bribes worth 50 lakh (5 million) in an unknown currency, so officials would permit the company to misappropriate money. The officials refused the bribes and informed the government. According to the Bangladeshi Finance Minister, CHEC has been blacklisted for all government projects in Bangladesh.	January 2018	<a href="http://www.thedailystar.net/frontpage/no-job-china-harbour-future-1520917">http://www.thedailystar.net/frontpage/no-job-china-harbour-future-1520917</a> ; <a href="http://www.dailymail.co.uk/wires/afp/article-5280767/Bangladesh-blacklists-Chinese-firm-alleged-bribe.html">http://www.dailymail.co.uk/wires/afp/article-5280767/Bangladesh-blacklists-Chinese-firm-alleged-bribe.html</a> ; <a href="http://www.epochtimes.com/gb/18/1/20/n10074672.htm">http://www.epochtimes.com/gb/18/1/20/n10074672.htm</a> ; <a href="https://hk.news.appledaily.com/china/realtime/article/20180120/57730902">https://hk.news.appledaily.com/china/realtime/article/20180120/57730902</a>
7	Zhiyuan "Aaron" Cui	Officer in Charge of the Gordons Police Station Minor Crimes Unit, Papua New Guinea	Cui was charged with attempted bribery in Papua New Guinea and police are investigating whether he is running an illegal immigration scheme for workers for Chinese state-owned companies. Police were quoted saying he offered 10,000 Kina (US\$2,800) to the Officer in Charge as inducement for the police to stop ongoing investigations and release confiscated documents.	May 2018	<a href="https://www.abc.net.au/news/2018-05-07/chinese-businessman-charged-with-attempted-bribery-in-png/9733708">https://www.abc.net.au/news/2018-05-07/chinese-businessman-charged-with-attempted-bribery-in-png/9733708</a>
8	ZTE Corporation	Suspected bribes paid to foreign officials to gain advantage in the company's international operations	ZTE is currently under investigation for violating the settlement. Reliable news outlets have reported that the US government is investigating ZTE for possible bribes of foreign officials, involving potential violations of the US Foreign Corrupt Practices Act. However, ZTE claims it has not received notices from the relevant government departments.	2020-present (investigation ongoing)	<a href="https://www.wsj.com/articles/u-s-probes-chinese-telecom-giant-zte-for-possible-bribery-11584130936">https://www.wsj.com/articles/u-s-probes-chinese-telecom-giant-zte-for-possible-bribery-11584130936</a> ; <a href="https://www.reuters.com/article/us-usa-zte-justice/chinas-zte-subject-to-new-u-s-bribery-investigation-nbc-news-says-idUSKBN2102BW">https://www.reuters.com/article/us-usa-zte-justice/chinas-zte-subject-to-new-u-s-bribery-investigation-nbc-news-says-idUSKBN2102BW</a>

## Recent developments

There were several new developments in China's legal framework. The amendment of the Anti-Unfair Competition Law, which came into effect on 1

January 2018, defines commercial bribery as the giving of something of value to three categories of persons in order to secure a business opportunity or competitive advantage. The categories are employees of a counterparty to a transaction, any person a counterparty uses or any person who can influence a transaction. The amendment assumes vicarious liability of the company where its employees are found to have committed bribery.<sup>1</sup> Where a business bribes another person in violation of Article 7 of the statute, income generated from the bribery will be confiscated and a fine imposed. The amended Law has increased the financial penalties from the range of RMB10,000-200,000 (US\$1,400-29,000) to the range of RMB100,000-3 million (US\$14,000-429,000).<sup>2</sup> It further adds the possible penalty of suspension or revocation of a business licence.<sup>3</sup> If a business operator is found to have engaged in commercial bribery and receives an administrative penalty, this will be recorded in the business operator's credit record as a matter of public record.<sup>4</sup>

The amendment of the International Criminal Judicial Assistance (ICJA) Law came into effect on 26 October 2018. It governs mutual legal assistance (MLA) between China and foreign countries in criminal cases. No individual or entity within the Chinese territory can provide foreign countries with such evidence or assistance without the consent of the Chinese government. In 2018, the National People's Congress established an anti-corruption agency, the National Supervision Commission (NSC), the remit of which includes the bribery of foreign public officials.<sup>5</sup>

The State-Owned Assets Supervision and Administration Commission of the State Council has promulgated regulations on supervision and management of overseas investment by central

enterprises, and guiding opinions on strengthening risk prevention and control of integrity in overseas enterprises. Since 2018, the Chinese government has held many training courses with the World Bank, Tsinghua University and other institutions focusing on corporate compliance under "The Belt and Road Initiative", as well as seminars on compliance management and other activities.

## Transparency of enforcement information

The NSC and the Communist Party of China's Central Commission for Discipline Inspection released statistics in 2019 on domestic corruption cases being investigated, and sanctions imposed, where applicable.<sup>6</sup> However, no statistics on foreign bribery enforcement have been released. There are no statistics published in relation to MLA.

China generally publishes court cases and related information in three public databases which it maintains.<sup>7</sup> No foreign bribery cases or enforcement actions were identified in the relevant databases, but it is unclear how comprehensive these are.

## Beneficial ownership transparency

There is no central register of beneficial ownership information in China.

Relevant provisions of the People's Bank of China include the "Notice on strengthening the identification of anti-money laundering customers" (Yin FA 2017-235) and the "Notice on the further identification of beneficial owners" (Yin FA 2018-164). Their coverage includes trust institutions and foreign corporate bodies in China. Regulatory

<sup>1</sup> Article 7 of the amended Anti-Unfair Competition Law (AUCL). If a business operator is able to provide evidence that the act of the employee is irrelevant to seeking a transaction opportunity or competitive edge for the business, the business will not be found liable. The business operator bears the burden to provide such evidence, <https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn011en.pdf>

<sup>2</sup> Article 19 of the amended AUCL.

<sup>3</sup> Article 19 of the amended AUCL.

<sup>4</sup> Article 26 of the amended AUCL.

<sup>5</sup> National Supervision Commission Governing Rules of Jurisdiction, [www.scmp.com/news/china/policies-politics/article/2136757/china-sets-new-super-agency-fight-corruption?\\_escaped\\_fragment\\_=&edition=hong-kong](http://www.scmp.com/news/china/policies-politics/article/2136757/china-sets-new-super-agency-fight-corruption?_escaped_fragment_=&edition=hong-kong)

<sup>6</sup> [http://www.xinhuanet.com/english/2019-12/30/c\\_138667313.htm](http://www.xinhuanet.com/english/2019-12/30/c_138667313.htm); It is unknown whether the NSC and CCDI propose to publish this information annually.

<sup>7</sup> These include <http://wenshu.court.gov.cn> (reflecting court cases), <https://splcgk.court.gov.cn/gzfwwww/> (reflecting case status and procedural matters) and <http://zhixing.court.gov.cn> (reflecting enforcement of judgments).

authorities and business organisations can inquire about beneficiary information through the relevant information system of the People's Bank of China. Registration information includes the legal representative and shareholder information of the legal person.

In early 2020, the China Banking and Insurance Regulatory Commission<sup>8</sup> adopted Interim Measures for the Equity Management of Trust Companies, which came into effect in March 2020.<sup>9</sup> These require the equity structure of a trust company to be traced back to ultimate beneficiaries level by level. The relationship between such parties and the controlling shareholder and actual controller must be clear and transparent.<sup>10</sup> There are no requirements regarding the accurate record-keeping of beneficial ownership information for domestic civil trusts or for foreign legal arrangements operating in China.<sup>11</sup>

Otherwise, current laws and regulations do not require Chinese legal entities to maintain information on beneficial ownership. The Financial Action Task Force (FATF) 2019 Mutual Evaluation Report on China notes that China is non-compliant with its beneficial ownership-related requirements.<sup>12</sup> Basic registered information on a business operator, such as its legal owner or shareholder information, can be accessed publicly through the National Enterprise Credit Information Publicity System.<sup>13</sup> However, this only reveals beneficial ownership information when the legal owner or shareholder and the beneficial owner are the same. Financial institutions are only required to take reasonable measures to identify beneficial ownership. FATF's 2019 report highlights the need for guidance and training to be provided to China's financial institutions and designated non-financial

businesses and professions, to enhance their understanding of FATF's beneficial ownership standards.

Law enforcement agencies may gain access to information held by a legal person or its representative. However, this is of limited use, as there is no legal requirement for such persons to maintain beneficial ownership-related information.

## Inadequacies in legal framework

The inadequacies set out in the *Exporting Corruption Report 2018* remain. The Criminal Law does not define several key terms, such as "foreign public official" and "official of an international public organisation". The 2016 UN Convention against Corruption (UNCAC) review stated that China should ensure that "the similarities of bribery of foreign and national public officials are taken into account in order to maintain necessary consistency in the criminalisation of these two types of acts".<sup>14</sup>

While the amended Anti-Unfair Competition Law (AUCL) clarifies the liability of a business operator for the unauthorised conduct of commercial bribery by an employee, it remains silent on liability for the acts of a business operator's subsidiary where a subsidiary involved in an act of bribery was used as an agent by the parent company. There is also no legal requirement for business operators in China to have anti-bribery compliance procedures in place, nor is it a statutory defence under either the Criminal Law or the AUCL.<sup>15</sup>

## Inadequacies in enforcement system

There have been no significant developments since the *Exporting Corruption Report 2018*. There is no

<sup>8</sup> Formerly the China Banking Regulatory Commission and China Insurance Regulatory Commission.

<sup>9</sup> [www.simmons-simmons.com/en/publications/ck6g8w6lh1u2g0961gx88d34a/cbirc---the-interim-measures-for-equity-management-of-trust-companies](http://www.simmons-simmons.com/en/publications/ck6g8w6lh1u2g0961gx88d34a/cbirc---the-interim-measures-for-equity-management-of-trust-companies)

<sup>10</sup> Article 9 of the Interim Measures for the Equity Management of Trust Companies, <http://en.pkulaw.cn/display.aspx?cgid=497b41b7f3793843bdfb&lib=law>

<sup>11</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>

<sup>12</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>

<sup>13</sup> <http://www.gsxt.gov.cn/index.html>

<sup>14</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1609720e.pdf>

<sup>15</sup> As discussed in the Recent Developments section, an act of bribery by an employee may be deemed an act of bribery by a business operator unless the business operator can show that the employee's action is irrelevant to seeking business opportunities or competitive advantages for the employer. In practice, regulators are likely to take into consideration the adequacy of a business operator's compliance procedures when assessing evidence, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/china>

evidence of cases or investigations brought by the Chinese authorities against Chinese nationals or companies for bribery of foreign officials.<sup>16</sup> Given the robust enforcement against domestic corruption, it would appear that priority is not given to foreign bribery enforcement. At the same time, Transparency International China reports that China faces difficulty in foreign bribery investigations, in that requests from Chinese law enforcement agencies for relevant criminal judicial assistance often fail to receive timely feedback.

The FATF 2019 report notes that the effectiveness of China's Financial Intelligence Unit to properly analyse and share intelligence relevant for law enforcement is inhibited by incomplete sharing of information, inconsistent reporting practices in relation to suspicious transaction reports, and either limited or non-existent beneficial ownership information.<sup>17</sup>

While the FATF report rated the financial intelligence unit's co-operation with its domestic competent authorities as generally good, it notes there is a lack of international cooperation requests to foreign financial intelligence units. It is unclear whether international cooperation efforts will be hindered by the recently enacted ICJA Law and how this interplays with existing MLA agreements between China and other countries.

## Recommendations

- Establish laws and regulations requiring legal entities in China to identify, verify and maintain beneficial ownership information and to establish a beneficial ownership register allowing authorities a gateway to access such information on a timely basis
- Define and clarify key terms in Article 164 of the Criminal Law (or explicitly link them to the corresponding UNCAC definitions)
- Expand the scope of conduct covered in Article 164, in particular to explicitly cover the promising and offering of bribes, indirect bribery, and bribery committed by companies' subsidiaries, joint venture partners and agents, among others
- Eliminate the criminal threshold for foreign bribery, so law enforcement officials and prosecutors can investigate and prosecute the offence, regardless of the value of a

- Substantially increase the size of penalties for violations of anti-money laundering law
- Give priority to foreign bribery enforcement and allocate any additional resources required
- Continue to provide training to law enforcement officials, prosecutors and judges about Article 164 and relevant UNCAC provisions, and in conducting investigations
- Increase collaboration with foreign governments, Interpol and international anti-bribery organisations
- Provide guidance and training to financial institutions and designated non-financial businesses and professions on beneficial ownership and ongoing due diligence
- Clarify the penalties for violations of the ICJA Law and the procedure for obtaining government permission to oblige with foreign court orders.

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<sup>16</sup> For example, <https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-Lang-China-transnational-bribery.pdf>; <https://globalanticorruptionblog.com/2018/05/14/its-time-for-china-to-show-its-foreign-bribery-law-is-not-a-paper-tiger/>

<sup>17</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>