

Has the Panda Finally Come in From the Cold?

After years of a traditionally isolated approach, the indications are that the PRC is embracing international law enforcement cooperation in the anti-corruption arena. Has the Panda finally come in from the cold, and if so, why?

In May of this year, Hong Kong's Independent Commission Against Corruption hosted its 6th International Symposium ("the Symposium"). The Symposium was attended by anti-bribery and corruption enforcement agencies from around the world, and its theme was "*A future without Corruption: One Vision, Multiple Strategies.*" At the heart of the event was the notion that without increased international cooperation between anti-corruption agencies, corruption (which is increasingly international) will never be brought to heel.

There has long been both formal and informal cooperation amongst the enforcement agencies of certain countries (notably those within the common law and EU worlds), and this trend has been increasing in recent years. Law enforcement officials in different jurisdictions share tips with one another and regularly host training seminars with the aim being to create "more cooks in the kitchen" during investigations (according to the U.S. SEC's Chief FCPA enforcer Kara Brockmeyer). This has been recently highlighted with the investigation into allegations of bribery at FIFA.

A U.S. DOJ official, Marshall Miller, recently said, "We're frequently working in parallel with foreign prosecutorial law enforcement and regulatory partners. And through those relationships that we've developed with our foreign partners, we are able to ensure that the fact multiple jurisdictions are engaging in parallel investigations doesn't somehow render the investigation either unfair in some way or slow it down by having conflicting requests."

Historically, however, there has been a perception that the PRC has not fully embraced the concept of international cooperation, despite having ratified the United Nations Convention against Corruption in 2005. This appears to have changed in recent years.

The Deputy Director General of the PRC National Bureau of Corruption Prevention, Fu Kui, gave one of the keynote speeches at the Symposium. He noted: "the fight against transnational corruption crimes has become a serious challenge faced by the international society. China has attached great importance to international anticorruption cooperation and included it into the overall strategy of fighting corruption and building clean governance."

Mr. Fu highlighted that the Communist Party's Central Commission for Discipline Inspection and Ministry of Supervision had carried out friendly exchanges with anti-corruption and oversight agencies in 89 countries and regions and established anti-corruption law enforcement cooperative mechanisms with its counterparts in the U.S. and Canada.

Key issues

- Cooperation between international anti-bribery and corruption enforcement agencies is on the rise.
- The PRC has been increasingly vocal about international cooperation in this area, following on from its own internal anti-corruption campaign.
- It remains to be seen whether the PRC will fully cooperate with other countries' investigations in future, beyond its own interest in the return of suspects who have fled abroad.

APEC Cooperation

On November 8, 2014, the Asia-Pacific Economic Cooperation (APEC) Economic Leaders' meeting endorsed the "Beijing Declaration on Fighting Corruption" (which was signed by the PRC, U.S., Australia and Canada, amongst others) and launched the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET). The Declaration states that the ACT-NET was to be developed as "an informal network for sharing information and exchanging best practices and techniques between anti-corruption and law enforcement authorities in the Asia-Pacific region, to assist in the detection, investigation and prosecution of corruption, bribery, money laundering and illicit trade."

In connected meetings with U.S. President Barack Obama and Canadian Prime Minister Stephen Harper, President Xi Jinping specifically mentioned international cooperation in anti-corruption measures such as hunting down fugitives and recovering their assets.

G20 Cooperation

In November 2014, at the G20 Leaders' Summit held in Brisbane, Australia, G20 leaders (including President Xi Jinping) endorsed the Anti-Corruption Action Plan, pledging to build cooperation and networks, including enhancing mutual legal assistance, recovery of the proceeds of corruption and denial of safe havens to corrupt officials. Observers expect China to steer the G20's agenda toward anti-corruption when it holds the group's presidency in 2016.

Organisation for Economic Cooperation and Development (OECD)

The PRC announced in June 2015 that it is considering joining the anti-corruption panel of the OECD. It has recently taken part as an observer in the OECD anti-corruption panel's meetings, but joining as a full member would highlight its commitment.

China and the USA

During the seventh China-U.S. Strategic and Economic Dialogue that took place in June 2015 in Washington D.C., the two sides agreed to enhance communication on anti-corruption work and reaffirmed their G20 commitments to tackle foreign bribery, denial of safe haven and asset recovery.

China and the UK

In one of the few publicly confirmed examples of the PRC authorities assisting a western agency in an anti-corruption case, the head of the UK's Serious Fraud Office, David Green, confirmed that his agency had been working with PRC prosecutors in relation to the GlaxoSmithKline investigation. He said: "Certainly, so far as I am aware, it is the first time we have had cooperation with the Chinese on an SFO case."

What is the rationale for the PRC's new approach?

While it is clear that the PRC has taken significant steps forward in terms of entering the sphere of global cooperation against corruption, their motivation is less clear. Some have said that the PRC's focus seems to be on fugitive repatriation and asset recovery in relation to its own citizens.

Since the 18th National Congress of the Communist Party in November 2012 (at which Xi Jinping became General Secretary of the Party), the PRC has instigated a well-publicized anti-graft campaign, with the stated intention to "hunt tigers and swat flies," under "Operation Fox Hunt." This operation saw the arrest of 680 officials in 2014.

In April 2015, Interpol (which the PRC joined in 1984) launched "Operation Sky Net," issuing arrest warrants for the 100 most wanted Chinese officials, who had allegedly fled overseas.

In the pursuit of its “tigers,” the PRC has engaged in efforts to return them to the country by negotiating extradition treaties with 39 countries and mutual criminal and judicial assistance treaties with 52 countries. It has also signed 124 agreements or memoranda of understanding in cooperation with 91 countries, regions and international organizations. In addition, the PRC has entered police cooperation with 189 countries and sent 62 police liaison officers to 36 PRC embassies in 31 countries. Most of this cooperation has been with countries in Asia. However, most of the PRC’s highest profile targets are believed to have fled to the U.S., Australia and Canada, none of which have extradition treaties with the PRC.

In the absence of any extradition treaty, the PRC has resorted to alternative measures such as repatriation or suing suspects in foreign courts. Since many fugitives reportedly fled using counterfeit identity documents, China may be able to appeal to the USA or Canadian authorities on the grounds that the fugitives are illegal immigrants.

Conclusion

The mutual law enforcement cooperation in which many nations are now engaged, by way of informal information, training exchanges and formal assistance, highlights the need for multinationals to take a global approach in developing their compliance systems. This approach should take the PRC into consideration.

The PRC’s interest in securing the return of their overseas “most wanted” may further incentivize the PRC to engage more fully in genuinely mutual cooperation going forward, including assisting foreign countries with investigations involving PRC nationals. When this happens, then it may truly be said that the Panda has finally come in from the cold.

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