

HONG KONG'S ANTI-GRAFT COMMISSIONER WARNS OF CORRUPTION ON BELT AND ROAD

06 July 2018 | Greater China
Legal Briefings

The head of Hong Kong's Independent Commission Against Corruption (ICAC) has warned local investors to beware of rampant corruption in some Belt and Road countries.

ICAC commissioner Simon Peh Yun-Lu pledged the support of the agency, one of the world's most respected and effective anti-corruption agencies, in helping investors and Belt and Road countries themselves with graft training.

Concern at corruption is far from new; President Xi Jinping highlighted the need for international counter-corruption cooperation at China's Belt and Road Forum in May 2017.

However, Peh's recent statement highlights the ICAC's scrutiny of deals in certain countries where bribery and corruption are widespread. Companies and investors should ensure that they exercise best-practice ABC and AML risk-management when engaging in deals in these jurisdictions.

CORRUPTION AND THE BELT AND ROAD

The Belt and Road crosses more than 70 countries in Asia, the Middle East, Africa and Europe, all with vastly different legal and economic systems and understanding. Many are also judged to be "high risk" by Transparency International's Corruption Perceptions Index.

Belt and Road projects will attract trillions of US dollars in investment over the coming decade. This scale of investment, largely targeted at developing countries with low governmental transparency, increases the corruption risk.

Projects are also being developed at speed and under pressure, often with limited oversight from head offices in distant cities, increasing the temptation to engage in corrupt behaviour.

Lastly, Belt and Road is a high-profile project grounded on significant state-to-state agreements and understanding; the impact of corruption could extend far beyond the reputation of a single company in such a complex geopolitical environment.

ABC RISK MANAGEMENT

Whilst many Belt and Road states have signed the UN Convention against Corruption, adherence is patchy. In the absence of a single, multi-lateral treaty governing all Belt and Road projects, investors must take an ad-hoc approach to risk management. Key steps will include:

- establishing and maintaining appropriate overseas compliance and ethical standards policies;
- choosing local partners carefully, and ensuring they fully understand, and are contractually obliged to comply with, these policies;
- ensuring internal teams (both domestic and overseas), as well as local partners and contractors, are properly trained and able to identify ABC risks;
- conducting effective due diligence on counterparties; and
- seeking support from legal and accountancy firms where appropriate.

It will also be important to ensure sufficient monitoring, encourage whistleblowing, and follow up on any tip-offs.

OTHER COMPLIANCE RISKS

In addition to bribery and corruption, other key categories of risk that must be managed in Belt and Road projects include:

- foreign investment restrictions;
- regulatory challenges;
- political risks (which differ from country-to-country);
- commercial and contractual risks against counterparties;
- litigation in local courts; and
- language and cultural differences.

The factors above will influence all aspects of the transaction, from the investment decision itself, through structuring the investment, to drafting the project documentation.

Careful and considered attention must be paid when negotiating project documentation to mitigating the significant risks involved.

WHERE NEXT?

President Xi Jinping has made his campaign against graft one of the centrepieces of his presidency. Having made considerable progress in stamping out domestic corruption, it is unlikely that the Chinese government will tolerate the tainting of China's flagship global development project by corruption and graft.

The sheer scale and risk profile of the Belt and Road has led to calls for its own independent ICAC-like body. It remains to be seen whether this idea will gain traction. Assessing which projects fall within the purview of a Belt and Road super-graft agency would be a challenge but, as with [dispute resolution](#), the Chinese government is not adverse to creating bespoke bodies to support the Belt and Road.

The spectre of US enforcement action under the Foreign Corrupt Practices Act adds to the urgency for China to manage the corruption risk along the Belt and Road quickly and effectively. FCPA investigations commonly focus on conduct in Asia, particularly China, and the US is unlikely to hesitate to take action.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



KYLE WOMBOLT
PARTNER, GLOBAL
HEAD - CORPORATE
CRIME AND
INVESTIGATIONS,
HONG KONG
+852 21014005
kyle.wombolt@hsf.com



ROBERT HUNT
PARTNER, LONDON

Robert.Hunt@hsf.com



HELEN TANG
PARTNER, MAINLAND
CHINA
+86 21 2322 2160
Helen.Tang@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE
Close