

CEP Magazine – March 2020 The financial compliance risks of business with China

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This is the second article of a three-part series on managing your company's compliance risk with China.

In the first part of this series, we discussed how China's exports have, for decades, created steady work for US trade and product safety compliance professionals. More recently, China's economic strength, combined with its state capitalist economic and political systems, creates political compliance risk for Western companies operating there.

Here we will look at an entirely separate and growing compliance risk for people and companies doing business with China: financial compliance risk. The risks can be grouped into two broad categories: (1) risks under domestic law arising from a company's business dealings with Chinese individuals and corporations, and (2) risks to your company related to its operations in China.

US law and China's outbound riches

For the last 30 years, wealthy and connected Chinese individuals and businesses didn't need to leave home to find attractive investment opportunities. Steadily rising property prices made thousands of politically connected real estate developers fabulously rich. The world's insatiable appetite for Chinese-made goods, combined with free trade, built enormous industrial and consumer product fortunes, particularly in the southern cities of Shenzhen and Guangzhou.

But over the last ten years the game changed, sending Chinese investors out into the world looking for growth. It has been a "perfect storm" for capital flight: a trade war, a rapidly slowing Chinese economy, a weakening national currency, wealth with sometimes questionable or even corrupt origins looking to get "clean," and strict limits on how much money Chinese people can legally take out of the country. All these forces have converged to push money out of China and spawn new cross-border financial compliance risks for people and companies dealing with China. If you are a compliance professional in the financial services industry and your company does substantial business with Chinese companies or investors, your risk radar should be ringing.

Wealthy Chinese investors, and their bankers, lawyers, and accountants, have devised many creative—but not always entirely legal—methods for getting money out of China and into attractive foreign investments. This is not to say that your company's Chinese partners, customers, or investors are out to break the law. They may not, however, have knowledge of and respect for the laws and regulations operating in their target country. It is up to you, the global compliance professional, and your company's financial and legal teams, to be at the table to manage those risks.

Many laws come to bear upon cross-border investment flows and overseas business operations. The following discussion is a selection of important laws, but is certainly not intended to cover all points of global financial

regulation and compliance risk management across multiple countries. The laws and regulatory regimes referenced here have spawned their own legal and accounting subspecialties. Risk management arising from these laws, therefore, should be addressed in partnership with specialists in your company's finance and legal departments long before a deal starts to come together.

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