POHLMANN & COMPANY

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Our "International Compliance Update" portrays current developments and trends in international compliance legislation, jurisdiction and practice with a focus on their relevance for Germany.

Comment

The ideal composition of the Supervisory Board

Dr. Andreas Pohlmann

- On 5 May 2015, the Government Commission German Corporate Governance Code ("**Commission**") decided on three material amendments to the German Corporate Governance Code ("**Code**") which above all aim at the ideal composition of the Supervisory Board.
- The ideal mixture of expertise, professional experience, age and gender as well as internationality of the members of the Supervisory Board is indeed the decisive factor of success for an effective Supervisory Board activity.
- It is, however, doubtful, whether the amendments of the Code which are referred to as "significant" in order to ensure the best possible composition of a Supervisory Board – will really meet the expectations.

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Standard-period of membership in the Supervisory Board

The determination of a company-specific standard-period of membership in the Supervisory Board of a listed company may even have a counterproductive effect: There is reason to fear that a suboptimal composition of a Supervisory Board will be kept for exactly such standard-period and therefore block preferable dynamics and necessary amendments. The constantly changing strategic and operational challenges for companies in the global competition however require great vigilance and high flexibility in selecting the correct Supervisory Board "team". What makes sense in times of growth by mergers and acquisition may quickly become obsolete in a pathological situation of restructuring or even crisis.

Time requirements for Supervisory Board's activities

Almost trivial seems the Commission's recommendation that the Supervisory Board shall make sure that the candidates standing for election have adequate time at their disposal to fulfill their mandate. One should assume, that a future Supervisory Board member will – in his/her own interest and particular in light of the significantly increasing personal officers' liability – responsibly and thoroughly perform its very own due diligence of the company as well as the specific requirements of his/her mandate and logically synchronize this with his/her actually available time budget. Numerous current company crises with subsequent liability of executive bodies have significantly raised the awareness of the persons involved. Therefore, the Commission should not assume hara-kiri due to thoughtless acceptance of Supervisory Board mandates.

Transparency regarding the meeting presence

The third so-called substantial amendment of the Code aims at improving transparency regarding the Supervisory Board members' meeting presence. In future, the Supervisory Board report should note if within the previous financial year a board member has participated in only half or less of the Supervisory Board meetings and/or the Supervisory Board committee meetings to which it belongs. In its press release dated May 11, 2015 the Commission states, that "it is a matter of particular importance for a member of the Supervisory Board to participate in the passing of resolutions, not only on the basis of written documents but also by contributing to an open and balanced communication process that weighs up differing points of view". This is certainly right; however, does such obvious matter of course require the explicit reference at all?

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Germany

No management liability for cartel fines imposed on a company (Decision of the Labor Court Dusseldorf on the "international rail cartel")

Nicole Willms

- Number and amount of fines imposed on companies due to infringement of competition regulations are continually increasing. In 2014, the German Federal Cartel Office alone imposed fines amounting to more than 1 billion euros. The constantly growing pursuit pressure increases the companies' interest in obtaining indemnity by passing on fines to their wrongful acting management.
- At first sight, it seems quite obvious to connect fine-relevant events to the violation of duties by responsible management bodies, i.e. management board members, managing directors and even supervisory board members. The key question is however whether a penalty or fine that has directly been imposed on a company can ever form part of the damages to be reclaimed from such management members.
- In a recent decision, the Labor Court Dusseldorf denied this question. It argued that the intended addressee of the cartel fine in question had clearly been the company and that a refund of such fine by the managing director would have defeated its purpose to reprimand the company and its shareholders.

Background

For several years now, we can observe growing enthusiasm in the pursuit and sanctioning of criminally relevant corporate behavior and, hence, increasing fines imposed on companies in this context. Still German politics and practice demand the introduction of a corporate criminal law and already discussed specific drafts.

In the light of this development, affected companies search for possibilities to indemnify themselves by passing on fines to the actually wrongful-acting individuals. Management board members, managing directors and even supervisory board members appear as suitable candidates for any such recourse. As part of their comprehensive duties of care, organization and control such board members particularly have to ensure that their companies behave lawfully and comply with their public obligations, including relevant antitrust requirements. Board members who violate such "duty to legality" are generally liable to their company for any resulting damages.

As management liability procedures are continuously increasing, a debate on restricting the existing liability regime has been ignited. Representatives in legal literature strongly promote to limit board members' internal liability vis-à-vis their companies which is sometimes even referred to as economically destructive. In this context, the decision of the Labor Court Dusseldorf deserves attention: As far as can be seen, for the first time a German superior court had to deal with the question of whether a fine imposed on a company for infringement of competition regulations can be passed on to such company's management by way of regress.

Facts

Background of the labor law proceeding has been the so called "international rail cartel" between various steel industry companies and its sanctioning by the Federal Cartel Office. In this context, the Federal Cartel Office imposed cartel fines totaling 191 million euros on a Thyssen group company in 2012 and 2013 for entering into an exclusivity agreement with a

rail supplier as well as into agreements on quotas and price fixing with competitors and towards Deutsche Bahn AG.

Thyssen then filed a labor court suit against one of its former managing directors claiming for damages that based on the establishment of the international rail cartel, including the imposed cartel fines in the amount of 191 million euros.

The Decision of the Labor Court Dusseldorf

While, in first instance, the Labor Court Essen held – in an *obiter dictum* only – that cartel fines like the ones in question could generally be covered by a management liability claim, however limited to the maximum amount of 1 million euros which is the amount provided by law for directly sanctioning individuals (sec. 81 para. 4 of the German Act against Restraints of Competition (GWB)), the Labor Court Dusseldorf rejected Thyssen's appeal based on the argument that passing on any cartel fines imposed on a company to its board members is ruled out from the outset.

Mainly, the Labor Court Dusseldorf argued as follows: The imposition of a cartel fine is based on the principle of fault; its explicit purpose is to sanction the company and to move its shareholders towards the establishment and maintenance of an adequate organization and control of the responsible management or even supervisory bodies. Would it be possible for the company to pass on the fines, such preventive purpose of the sanction would be in vain. According to the Labor Court Dusseldorf, this logic in any event applies to cartel fines which according to the law could generally be imposed – in varying amounts – upon both, the actually wrongful-acting individual and the company (sec. 81 para 4 GWB).

Outlook

Thyssen appealed against the described decision to the Federal Labor Court and it still remains to be seen whether the Federal Labor Court will confirm or reject Labor Court Dusseldorf's ruling. In fact, legal literature and practitioners raise valid reasons for considering company fines like the ones in dispute to form part of damage claims against board members.

Management liability follows the principles of general tort law, meaning that the wrongful-acting board member hast to put the injured company in the economic situation that would have existed without the harmful event. The law does not provide for any limitations or liability privileges concerning fines imposed on a company. The argument that the possibility of passing on fines would defeat the purpose to reprimand the company does not convince either. The successful enforceability of a refund claim does not only require a board member having culpably and casually acted in breach of its duties, but moreover imposes on the company the litigation as well as the recovery risk. Moreover, imposing a severe fine on a company is likely to cause reputational damages which are not at all amenable to any compensation by board members.

In practice the decision of the Federal Labor Court is therefore eagerly awaited. However, it will not bring final legal security regarding this controversially discussed topic, as the civil courts generally responsible for board members' liability claims are not bound by any labor court decisions. And there are already notable indications that the civil courts may take a different view: Not only have civil courts intensified board members' compliance-related duties over the last years; according to the rulings of the Federal Court of Justice (BGH) fines which are imposed on a company as a consequence of following an incorrect expert advice form without any question part of the damage claim that could be raised against the wrongful-acting consultant.

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World

Minimum requirements for authorizing business partner compliance due diligences

Eric Mayer

- A recent OECD study reveals that in three out of four foreign bribery cases third parties such as sales intermediaries are involved.
- This clearly emphasizes the importance of business partner compliance due diligences for the implementation and operation of a Compliance Management System ("**CMS**") within corporations.
- *How* to organize such due diligence processes will be subject of the following analysis.

Corporations are not only exposed to company-internal compliance risks. A recent OECD study[1] demonstrates that in 75% of all reviewed cases of bribing foreign officials third parties such as for instance sales intermediaries had been involved. This underscores once again that business partner compliance due diligence processes must be treated with highest importance in the context of the implementation and operation of a Compliance Management Systems ("**CMS**"). The execution of business partner compliance due diligences has become a requirement of both international legislation as well as judicature. In addition, a tendency towards increasing cross-border cooperation between international law enforcement agencies can be observed in the fight against corruption. As a first case in point serves the successful cooperation between U.S. – and German law enforcement in the Siemens case. In May 2013 Canada, the U.S., the UK and Australia joined forces in the *International Foreign Bribery Taskforce* ("**IFBT**")[2]. Against this background the question whether business partner compliance due diligences were necessary in the first place does no longer have to be answered. Yet it must be analyzed *how* to organize such due diligences processes within a given corporate governance framework.

German Law

The German company law does not provide for explicit rules on business partner compliance due diligence processes. However, section 91 subsection 2 of the German Stock Corporation Act[3] stipulates the duty of executive management to implement an organization dedicated to controlling risk and to preventing damage in the sense of an early-warning system. Moreover, the general managements' duty of care under sections 76 and 93 of the Stock Corporation Act[4] governs the legality obligation of senior management which requires adherence to all laws in all company matters. In consequence, there is also the obligation to control legality according to the prevailing opinion. Executive management must ensure that all employees are observing all laws applicable. This corporate law obligation can only be satisfied by implementing compliance measures. This obligation is also repeated in number 4.1.3 of the German Corporate Governance Codex[5]. Regarding the implementation of the compliance measures executive management enjoys a wide range of discretion.

[1] OECD Foreign Bribery Report – An Analysis of the Crime of Bribery of Foreign Public Officials vom 02.12.2014 http://www.fcpablog.com/blog/2014/12/2/oecd-most-bribes-are-paid-by-big-companies-with-senior-manag.html

[2] RCMP, New international taskforce combats foreign bribery, 11.06.2013; http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2013/0611-ifbt-gtice-eng.htm

[3] § 91 II. Aktiengesetz ("**AktG**")

[4] §§ 76 I., 93 I. AktG

[5] Deutscher Corporate Governance Kodex ("**DCGK**")

According to the *Business Judgement Rule* – incorporated in section 93 of the Stock Corporation Act[6] – executive management can exculpate itself when the implemented measures and the diligently conceived CMS have been targeted to the company's specific interests. In particular situations of e.g. globally operating conglomerates the discretion can, however, be reduced to zero. A group-wide compliance risk analysis represents in such instances a compulsory measure according to the prevailing opinion. In the absence of explicit regulations on business partner compliance due diligence processes judicature, international guidelines and best practices must be taken into account.

The "Neubürger"- verdict of the District Court Munich I. of December 10, 2013[7] is groundbreaking: For a very first time a German court stated in considerable detail the compliance obligations of executive management – and all this with explicitly mentioning questionable payments to business partners in critical countries. In this case the former CFO of a German blue-chip conglomerate was charged with neglecting his duty of care. The judges of the Munich District Court I. held in their reasoning that it is the corporate law obligation of every single member of executive management to perform their duty of care in such way that systematic violations of laws are to be avoided by adequate organization and monitoring. International law must be considered as well. The individual member of executive management is meeting the compliance obligation only when a compliance organization was implemented on the basis of the company's particular risk profile and continuously monitored and improved in terms of effectivity and efficiency. This compliance obligation is deemed not only as a responsibility, but moreover as a permanent task of the entire executive management. If a member of executive management obtains knowledge about concrete indications pointing towards misconduct, he or she is obliged to investigate and to respond immediately.

[6] Introduced in 2005 in § 93 I. 2. AktG
[7] Landgericht ("**LG**") München I, Verdict of December 10, 2013, 5 HK O 1387/10; see Pohlmann & Company International Compliance Update 2/2014

Otherwise this duty is violated and the respective member of executive management acts in negligence. The verdict also draws clear lines limiting the delegation of compliance tasks to subordinates. Selecting and monitoring international business partners must not be passed on to remote management layers – especially when there are already concrete hints towards misconduct.

U.S. Law

The *Foreign Corrupt Practices Act* ("**FCPA**") enacted in 1977 arguably is the first legislation with exterritorial reach and relevance for business partner compliance due diligence. Details are provided in the *FCPA Resource Guide* issued end of 2012 by the U.S. Department of Justice and the U.S. Securites and Exchange Commission[8]. When assessing the effectiveness of a CMS in the context of enforcement activities, risk-based business partner compliance due diligence is particularly important. While the degree of appropriate due diligence can differ based on industry, country, size and nature of the transaction and historical relationship with the third-party, several guiding principles always apply according to the FCPA Resource Guide:

- Knowledge about concrete business partner assignment needs
- Definition of precise payment terms
- Comparison with typical market conditions for business partner remuneration
- Duration of business partner relationship
- Monitoring
- Communication of own compliance efforts to business partner

[8] http://www.justice.gov/criminal/fraud/fcpa/guide.pdf

Beyond these guiding principles there are no minimum requirements provided regarding appropriate authorization levels. But important information can be retrieved from the guide's section on third party payments.

As the U.S. legislators anticipated the use of third-party agents in bribery schemes — for instance to avoid actual knowledge of a bribe in the very first place — they defined the term "knowing" in such way that individuals and corporations are to be prevented from avoiding liability by putting business partners between themselves and any foreign officials. Under the FCPA, one's state of mind is "knowing" with respect to conduct, a circumstance, or a result if one is aware that one is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or one has a firm belief that such circumstance does exist or that such result is substantially certain to occur. Thus, one has the requisite knowledge when one is aware of a high probability of the existence of such circumstance, unless one actually believes that such circumstance does not exist. The U.S. legislators intended to impose liability not only on those with actual knowledge of wrongdoing, but also on those who purposefully avoid actual knowledge. Therefore a FCPA-robust business partner compliance due diligence process can only create a meaningful defense for corporations and their executive management when knowledge can reliably and timely passed on to senior decision makers – already in case of suspected misconduct of questionable business partners. This describes another compelling reason for the necessity of direct leadership involvement in business partner compliance due diligence processes.

The *U.S. Federal Sentencing Guidelines* ("**Sentencing Guidelines**")[9] complement the material criminal law and clarify that corporations are liable for the conduct of third parties. At the same time the Sentencing Guidelines provide legal incentives for the implementation of internal mechanisms for preventing, detecting and reporting of criminal behavior. According to section 8 B 2.1. (a)(1) effective compliance programs must generally comprise regular due diligence. Section 8 B 2.1. (b) provides explicit minimum requirements on how to organize such due diligences. First, corporations must define compulsory standards and appropriate processes. Next, corporations must also adhere to those standards and processes as well as monitoring and continuously reviewing them for effectiveness.

Such standards and processes must contain rules of conduct and internal controls that are functionally capable in the first place to minimize the event of criminal behaviour. In addition, section 8 B 2.1. (b)(2)(A) requires unmistakably, that the ultimate governing body of a corporation is duly informed about content and operation of the compliance program. Its actual implementation status and the effectiveness must be monitored, too. Moreover, section 8 B 2.1. (b)(2)(B) requires that senior management ensures the actual existence of an effective compliance program in the corporation. Especially members of the senior management ranks should be entrusted with the operational management responsibility for such compliance programs. These responsibles must regularly report to the ultimate governing body and be bestowed with ample means, decision-making authority and direct access to the ultimate governing body. Individuals with known prior misconduct cannot belong to the ranks of senior management in this regard according to section 8 B 2.1. (b)(3). The special scoring model of the Sentencing Guidelines honours an appropriately implemented CMS with a 3-point-deduction of the overall culpability score following § 8 C 2.5 (f) (1). However, if the manager responsible

[9] Sentencing Guidelines, November 1, 2014; Chapter 8, Introductory Comment, P. 495; http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/CHAPTER_8.pdf

for a business unit is involved in the alleged misconduct, 3 points will be added. When the same manager also belongs to the corporation's senior management, 4 points will be added. This demonstrates that acts of omission – or willful blindness, conscious disregard or head-in-the-sand situations – by executive – and senior management members provoke higher sanctions. In other words, especially members of the highest management ranks of a corporation should strive for direct control of compliance processes such as business partner compliance due diligences – including affected overseas business units.

WEF/PACI Guidelines

The *Partnering Against Corruption Initiative* ("**PACI**") of the World Economic Forum ("**WEF**") published guidelines on conducting third party due diligences in 2013[10] which are detailing the PACI principles on combating corruption already introduced in 2009.[11]

PACI principle 5.2 demands that corporations extend their compliance programs on all external business relationships. Business partner compliance due diligences carry high importance in this context and require a specific process for the stage of authorizing a business partner relationship as well as for the stage following the authorization. For both stages the WEF/PACI guideline recommends in section 4. a strong partnership between the business unit that wants to engage a business partner and the responsible compliance department – clearly emphasizing the principle of functional separation. Detailed provisions in section 4.A. prescribe the necessary distinction of business partners carrying low risk against such third parties with medium- or higher risk propensity. While it would be sufficient that the management of the respective business unit authorizes business partners with low risk, cases involving medium- or high risk business partners must be decided by the management of at least two business units. The second unit should be independent from direct advantages potentially resulting from the business partner relationship in question – such as for instance a compliance department. The PACI principles of 2009 clarify that beyond a functional separation between authorizing units the highest possible seniority of a compliance department must be ascertained within a corporation's governance structure.

PACI principle 5.1.1 requires that the ultimate governing body has not only the obligation to design and implement an effective compliance program. The chief executive officer himself has the duty to take personal care of sustainable execution and clear responsibilities in the compliance program. The task of implementing a CMS comprising business partner compliance due diligence- and authorization process could hence be delegated to a member of senior management with a direct reporting line to the CEO.

Conclusion

Following this analysis there is no globally applicable legal standard to be observed yet regarding minimum requirements for authorizing business partner compliance due diligences.

But the "Neubürger"-verdict of the Munich District Court I., the granular legal definitions of the U.S. Sentencing Guidelines and the detailed WEF/PACI provisions on business unit management responsibility for business partner compliance due diligence processes yield the result that both the responsibility as well as the task of conducting business partner compliance due diligence- and –authorization processes cannot be delegated arbitrarily.

[10] http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf

[11] http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf

Executive managers of stock corporations or limited liability companies bear the responsibility for the implementation, operation, monitoring and continuous improvement of an effective CMS without the possibility to relieve themselves from that responsibility. Taking into account specific conditions a delegation of particular compliance tasks can yet become feasible. Assuming that there are no indications towards repeated misconduct, the task of authorizing business partner compliance due diligences might be delegated to the management of an overseas unit for instance.

Ultimately a business partner compliance due diligence process rigorously implemented across the entire corporation will create tangible business benefits, too. The day-to-day cooperation with a multitude of different business partners will be significantly enhanced by the increased transparency and controllability resulting from the business partner compliance due diligence process.

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World

Increasing pressure of investigations worldwide – Global Enforcement Report 2014 released in June

Sebastian Bartsch

- Corruption investigations conducted by non-US authorities are further increasing.
- China conducts the most investigations concerning bribery of domestic officials.
- Worldwide focus still on the extractive industries followed by engineering and constuction.

In June 2015, TRACE International, Inc. ("**TRACE**") published the Global Enforcement Report 2014 ("**GER 2014**")[1]. TRACE is a non-profit association of companies and compliance experts aiming at supporting the efforts of companies to fight corruption. The GER 2014 summarizes the international development of investigations and other enforcement actions over a period of 38 years. The focus of the GER 2014 is on investigations and final enforcement actions of courts and other authorities concerning bribery of foreign and domestic officials by foreign companies. The GER 2014 is TRACE's fifth edition of the Global Enforcement Report.

World-wide trend to prosecute corruption and bribery offenses

In 2014, the overall number of enforcement actions concerning alleged bribery of foreign officials increased significantly compared to the previous year. In contrast, this number was decreasing over the past two years 2012 and 2013. However, one of the more remarkable results of the GER 2014 is that the number of enforcement actions by non-US courts and authorities increased for the second consecutive year since 2013. The number even more than doubled in 2014 compared to 2012and even exceeds the number of US enforcement actions. Excluding the US, the United Kingdom and Germany lead by far the list of countries that conduct investigations concerning allegations of bribery of foreign officials. The United Kingdom also leads the list of respective enforcement actions followed by Denmark, the Netherlands and Germany. In fact, the US remains the world-wide leader in enforcement of its anti-corruption and bribery regulations. Excluding US-companies and citizens, the US-focus also remains on companies and individuals from Europe. However, the world-wide trend of an ever increasing prosecution of corruption and bribery offenses abroad seems to be confirmed by this overall picture.

High pressure of investigations in countries with high level of corruption

The increasing pressure of investigations can also be observed in those countries with a perceived high level of corruption. According to the current Corruption Perceptions Index 2014 published by Transparency International ("**TI CPI 2014**") China, India, Brazil and Nigeria, among others, belong to this group of countries.[2] This is also highlighted by Brazil showing the highest TI CPI 2014 score with only 43 points out of a maximum of 100. The scores of India, China and Nigeria are all below 40 points. However, according to the GER 2014, current investigations concerning bribery of domestic officials are particularly carried out by these countries (excluding investigations by US authorities). The majority of such investigations are conducted by China,

[1] Global Enforcement Report 2014, June 2015, TRACE International Inc.: http://www.traceinternational.org/about-trace/publications/

[2] Corruption Perceptions Index 2014, Transparency International: http://www.transparency.org/cpi2014

closely followed by India, Brazil and Nigeria. China also ranks third in terms of enforcement actions. More enforcement actions have only been brought by South Korea (by far) and Nigeria.

Investigations in a multiplicity of industries

Looking at individual industries, the picture remains largely the same. Most investigations and enforcement actions still concern the extractive industries. This is the case with both investigations by US as well as non-US authorities. Investigations are also regularly conducted concerning the engineering and construction industry, manufacturer/service provider and the aerospace/defense/security industry. The same applies to financial institutions that have become the focus particularly of US authorities after only few enforcement actions have been recorded in the past. All in all, however, the results of the GER 2014 suggest that the increasing efforts of investigation authorities are not limited to only a few sectors.

Conclusion

In the overall picture, the development of investigations efforts seems to run parallel to the development of national anti-corruption and bribery legislations. As mentioned in earlier updates, new or revised national anti-corruption and bribery legislation often shows an expansion of scope, extraterritorial reach and a general tendency of convergence. In view of the above, a thorough risk analysis, tailor-made preventive measures and determined and consistent action in the event of detected violations remain first priority for top management.

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China

Tiger spends the rest of his life in prison

Julia Kahlenberg

- A few weeks ago, the former state security strongman Zhou Yongkang was sentenced to life in prison.
- He and his family were said to have received at least a total of 129 million Chinese Yuan (approx. EUR 18) in bribes.
- In the recent past, People's Republic of China calls attention again and again in the worldwide battle against bribery with headlines like these.

One of the biggest "stars" and most feared representative of CPC's one-party dictatorship was found guilty for bribery, abuse of power and the intentional disclosure of secrets only nine months after being arrested. Zhou has already been removed from all political offices; his assets have been confiscated by the authorities. Investigations against many of his former employees have been commenced and imprisonments have been announced, respectively. "He wants to fight tigers just like flies" announces the new President of the People's Republic of China Xi Jinping when taking up his new position in 2013. What he meant was the anti-corruption campaign with the official title "New Modesty" in order to get hold of big and small crooks and not even spare those at the very top of the hierarchy of the Party and the government apparatus. The campaign shall also ring-fence the smoldering resentment on all sides of the population vis-à-vis corrupt cadres that is again and again nourished by publications of Western media with respect to tightly filled offshore accounts of numerous prominent Chinese Party heads or with by looking at the offshore leaks data bases.

The harsh actions against bribery are in fact an internal power struggle and a lot is at stake for the Regime. However, this does not impair the fact that in the meantime bribery is detected as strongly economically damaging and is therefore noticeably punished.

"Guanxi" – culture of corruption?

The handling of cosy links, bribes and nepotism in China is indeed more widespread than in many other countries in the world. In the Chinese everyday business life the personal relationships called "guanxi" – informal relationships cultivated with lavish gifts and generous invitations – do play an important role ever since. In case of doubt, this is even more important than to comply with rules and regulations. According to experts, the bribes and similar criminal offenses amount to approx. 15 per cent of the Chinese economic output. Between 2008 and 2013 alone, corrupt Chinese officials were supposed to have brought 800 billion Yuan (more than 100 billion euros) out of the country.

This picture is supported by taking a look at the bribery ranking list, the so-called TICPI which is published by Transparency International every year. According thereto, China ranked 100 in 2014 with an overall of 175 analyzed countries. The recognizable bribery is lowest in Denmark, Finland and New Zealand; Germany came in 12th place. What the Chinese Government should really think about: China did by no means improve compared to the former ranking list. Last year alone, the soon largest economic nation felt twenty places behind and now still ranks far behind countries like Tunisia, Ruanda or Saudi-Arabia with respect to honest business.

However, bribery may not necessarily be conceived as integral part of the Chinese culture contrary to many beliefs as a look at the TI ranking also reveals. Even the former British Crown Colony Hong Kong as well as the city state Singapore which is dominated by the Chinese rank with position 17 and position 7, respectively, among those countries

least affected by bribery. Taiwan is also better off than the People's Republic of China with position 35.

Legal framework and binding rules against traditional mentalities

One may come to the conclusion that the existence of a clear legal framework results in the systematically controlled compliance of rules and if rules are enforced accordingly the impact of traditional mentalities will be lesser. There is hope that Xi Jinping exactly starts from there with his campaigns.

At least, binding rules and requirements for doing business exist for some years now. It can be observed by reading accessible press releases in English that Chinese regulatory authorities take breaches of these rules increasingly serious and initiate official investigations more often. In 2013 alone, in more than 27,000 cases, investigations on officials due to the suspicion of bribery have begun. 108,000 officials have been dismissed or brought before court by reason of bribery.

Against this background, integrity management has become a very important management topic for Chinese companies as well as for foreign companies acting in China. Therefore, a strong Compliance Management Systems becomes increasingly important – whereas Compliance, apart from its general meaning of lawful behavior, primarily serves the prevention of business crimes such as bribery, fraud, money laundering and competition-related violations and focusses on the safeguarding of a sound and transparent business. What sort of framework and special requirements for companies in China are defined, I worked out in an article for the new book "Compliance Management in China", published on June 25 by Haufe, which I would like to recommend to our interested readers.[1]

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[1] http://shop.haufe.de/compliance-management-in-china

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