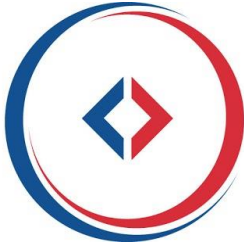


Managing Anti-bribery Compliance in China

By the US-China Business Council
December 2017





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Executive Summary

- Although companies surveyed in the US-China Business Council (USCBC) 2013 Compliance Report said China's anti-corruption campaign was unlikely to have a significant impact on operations, US companies now note that the campaign has improved the business environment in China. Officials are less likely to request special treatment or favors, and state-owned enterprises (SOEs) are increasingly aware of the importance of compliance. On the negative side, companies note that the campaign has slowed bureaucratic decision making and made officials overly cautious in engaging with the private sector.
- US Foreign Corrupt Practices Act (FCPA) compliance remains an essential priority for companies doing business in China. The US Securities and Exchange Commission (SEC) and Department of Justice (DOJ) have significantly increased enforcement in China over the past several years. Compliance with China's domestic anti-bribery and anti-corruption policies also has become increasingly important as enforcement attitudes change and new laws are released.
- Most companies have a global compliance policy with country-specific rules for China, supervised by dedicated local compliance teams that adapt policies to the China market. Companies have also increased hiring for these teams since 2013 to reflect business growth and local enforcement efforts. Management structures used by companies vary, but respondents said maintaining supervision of compliance teams through an executive in the Asia-Pacific region or through the corporate offices is useful to maintain a degree of independence from local leadership.
- Nearly all companies use mandatory thresholds on meal and entertainment expenses. The average spending threshold for gifts was RMB 365 (\$53), and the threshold for meals RMB 414 (\$60), about the same as in USCBC's 2013 Compliance Report. Companies restrict gifts to centrally purchased, low-cost items that bear the company logo. No companies reported using gift cards or other cash equivalents, and many have stopped the custom of giving mooncakes during China's Mid-Autumn Festival.
- Frequent training – along with support from top-level management – is critical for instilling a culture of compliance. Companies report a range of best practices for training including adjusting frequency based on risk assessments, combining online and interactive training, in-person education, using real-world examples, and localizing content to address China-specific issues.
- Sales and business development teams are the leading source of compliance-related risk, according to companies. Government affairs teams are the second-highest risk.
- New technology and software systems offer companies new methods to monitor and approve business expenses, as well as new channels to communicate with employees. Less than 10 percent of companies reported using software tools to log and approve expenses in 2013; by 2017, more than half reported using some form of online approval or tracking.

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Introduction

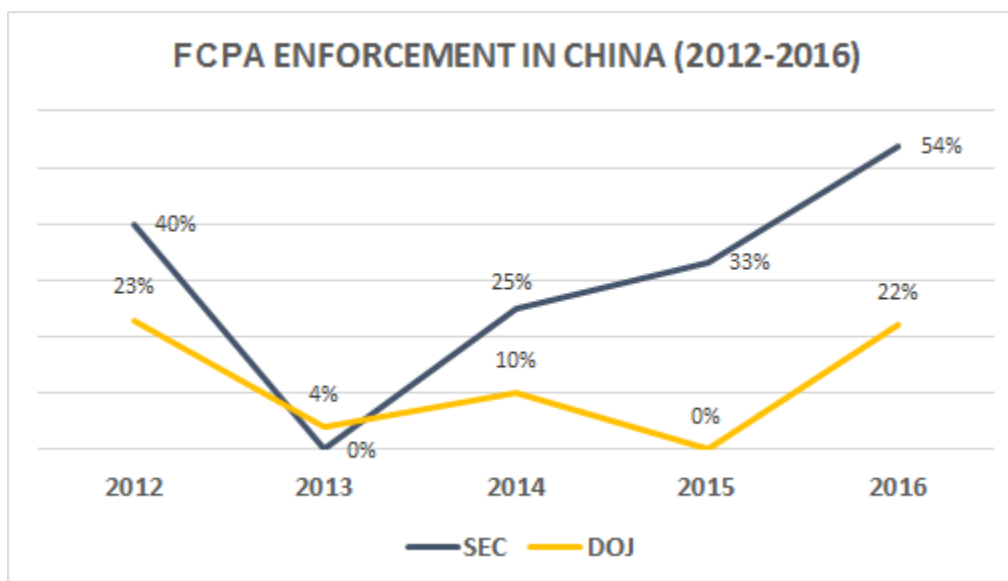
Despite the launch of China's anti-corruption campaign in 2012 and a subsequent modest improvement in the compliance environment, US-China Business Council (USCBC) member companies continue to face local business practices and perspectives that make adherence to global compliance programs essential. USCBC's [2013 Compliance Report](#) examined many of the challenges companies faced before the campaign. Today, as companies work to ensure compliance with Chinese and international laws, they cite familiar challenges: adapting global policies to regional issues; managing stricter expense approvals and gift-giving thresholds; and building comprehensive compliance training programs. New challenges have also emerged: tracking new Chinese anti-bribery laws and regulations; managing communication tools outside of corporate email servers; and operating in a more aggressive enforcement environment. Although many of these challenges are thorny, companies have identified some best practices for maximizing success.

USCBC interviewed more than 30 executives at member companies across a range of industries this year to better understand the compliance environment and companies' best practices in the fifth year of China's anti-corruption campaign. Compliance managers in China, global compliance executives, in-house lawyers, outside counsel, and representatives from government affairs and business development provided input. These respondents represented companies from a range of industries including manufacturing, healthcare, legal services, retail, chemical, and energy.

FCPA Enforcement

Although there are a range of Chinese and US laws and regulations related to corruption, companies said their top focus is compliance with the United States' Foreign Corrupt Practices Act (FCPA). The Department of Justice (DOJ) and Securities and Exchange Commission (SEC) had their busiest FCPA enforcement year in 2016, which included four of the top 10 largest monetary settlements in FCPA history (for a fuller list of FCPA settlements, see Appendices 1 and 2).

After a temporary drop in the number of FCPA cases involving China in 2013, the country re-emerged as a significant focus of FCPA enforcement actions and investigations. In 2016, 54 percent of civil resolutions by the SEC and 22 percent of resolutions by DOJ involved company operations in China.



Sources: US Securities and Exchange Commission Enforcement Actions: <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>;
US Department of Justice, Related Enforcement Actions: <https://www.justice.gov/criminal-fraud/related-enforcement-actions>

The trajectory of future FCPA enforcement remains unclear. Attorney General Jeff Sessions said in April that the [federal government would continue to enforce the FCPA](#) and other anti-corruption laws, but the trend of increased enforcement is unclear under the Trump administration. According to a [report by the Wall Street Journal](#), penalties levied against firms and individuals by the SEC, the Commodity Futures Trading Commission, and the Financial Industry Regulatory Authority in the first half of 2017 were down nearly two-thirds compared with the first half of 2016.

China's Anti-Fraud, Anti-Bribery, and Anti-Corruption Enforcement Environment

Development of Chinese Domestic Laws and Regulations

While FCPA compliance is a legal requirement for all US companies anywhere they operate, full compliance with US law does not guarantee compliance with China's domestic laws. Since the 2012 start of the anti-corruption campaign, the Chinese government has introduced a variety of new or revised fraud, bribery, and corruption regulations. This new legal environment complicates corporate compliance efforts and changes established business practices for domestic and foreign companies. Almost all interviewees reported the need for increased attention and resources dedicated to Chinese laws, enforcement, and compliance.

China does not have a single comprehensive piece of anti-corruption legislation like the FCPA, but the Anti-Unfair Competition Law and Criminal Law contain many anti-corruption provisions. The former prohibits unfair conduct in commercial settings, while the latter criminalizes bribery in the public sector, extortion, and money laundering. Relevant Chinese laws include:

- **The Anti-Unfair Competition Law (AUCL)** In November of 2017, the National People's Congress (NPC) revised and adopted the [Anti-Unfair Competition Law](#). Revisions to the anti-commercial bribery provision outline types of behavior that are and are not permitted, which might increase the effectiveness of companies' internal compliance measures. The government can fine companies up to RMB 3 million (\$436,170) for AUCL violations or revoke their business licenses. Violators can also face criminal charges and have their violations recorded in a credit record system.
- **The Criminal Law** Released in 1997 and revised in 2011, Articles 389 to 391 and Article 393 prohibit bribes given to state officials, state agencies, state-owned enterprises (SOEs), or civil organizations in order to receive improper benefits. Violators can be fined or imprisoned. More specifically, [Amendment \(IX\)](#) to the Criminal Law was revised in 2015 to increase the penalty for offering bribes to officials. Commercial bribery that violates the Criminal Law includes not only the offering bribes to government officials, but also the offering bribes to relatives and other individuals affiliated with government officials. Individuals and companies are both punishable under the law.
- **State Administration for Industry and Commerce (SAIC) Interim Provisions on the Prohibition of Commercial Bribery Activities** [SAIC interim provisions](#) released in 2016 serve as implementing regulations for the AUCL. The interim provisions outline proper accounting procedures in business transactions and specify examples of commercial bribery. Depending on the case, violators can face a combination of administrative fines, confiscation of illegal gains, and criminal prosecution.
- **The Company Law** First issued in 1994, and revised in 1999, 2005, and 2013, the [Company Law](#) marked a significant step in building a modern corporate legal system in China. Article 147 prohibits individuals convicted of bribery or receiving illegal income from holding senior management positions.

The Supreme People's Court interpretations of these laws are significant for understanding anti-corruption enforcement.

- **Interpretation of Law in Criminal Cases of Corruption and Bribery** The Supreme Court issued an [interpretation of](#) the revised Criminal Law in April 2016 that clarifies what is considered accepting and offering bribes by expanding the definition to include certain intangible benefits. It also details the corresponding penalties: imprisonment of the bribe recipient, fines ranging from RMB 100,000 to two times the illegal gains, or confiscation of his or her assets.
- **Provisions on the Protection and Reward of the Whistleblower** The Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Finance in April 2016 [issued provisions](#) to protect and encourage whistleblowing by strictly prohibiting the disclosure of information relating to whistleblowers.

China is also considering adopting elements of international standards for corporate anti-corruption compliance. ISO 19600, an international standard for compliance management systems, establishes a four-step “Plan-Act-Do-Check” framework for managing external engagements. China’s National Institute of Standardization (CNIS) sent three delegates to participate in the international ISO standards-setting process in 2014, and, in 2017, CNIS released the [Compliance Management System Guidelines](#) for public comment. The compliance guidelines, explicitly based on ISO 19600, suggest adoption of this standard as a national recommended standard. Although in its infancy, adoption of a national compliance standard could allow international companies to better leverage their global best practices in the China market. This initiative remains in draft form, making it impossible to measure the effect of these guidelines at this time.

Some of these laws delegated new oversight and enforcement authorities to specific government agencies. Regulators charged with enforcing these laws include the Public Security Bureau (PSB) and the SAIC. (See chart of enforcement responsibilities in Appendix 3).

No public data on commercial bribery enforcement actions are available on the SAIC or NDRC websites. However, SOEs have been subject to more commercial bribery administrative penalties than foreign and private companies, according to the [2015-2016 China Anti-Commercial Bribery Report](#) by the China Institute of Corporate Legal Affairs affiliated with the CCP Central Committee on Politics and Law. The report states that foreign companies are often reviewed because of illegal behavior by affiliated third parties, improper promotion discounts, or cash rewards. According to the report, healthcare, finance and investment, fast-moving consumer goods (FMCG), and food were among the industries most heavily fined in China.

The Anti-corruption Campaign's Effects on Business

China’s anti-corruption campaign began after China’s 18th Party Congress in 2012. Although companies in 2013 thought the campaign was unlikely to have a significant impact on company operations, it has introduced direct and indirect benefits as well as challenges for company operations in China.

The central government’s crackdown has made officials at all levels more risk averse and wary of engaging with either domestic or multinational companies. One reason for this is increased central government monitoring and enforcement. The number of disciplinary actions against Chinese government officials has increased markedly since the start of the anti-corruption campaign. According to the Central Commission for Discipline Inspection (CCDI), more than one million party and government officials have been punished for violating “party discipline rules” -- a euphemism for engaging in corrupt activities -- since the beginning of the campaign, including over 200 senior officials.

The campaign has also alleviated some challenges in interacting with government officials. In USCBC’s 2013 report, companies cited examples of special requests they received from government officials including an expectation to give gifts and requests for paid visits to the US to inspect company headquarters. USCBC’s recent interviews suggest that while such requests continue to occur, often with officials outside of large “first tier” cities, there is a marked decrease in the frequency of such requests.

The anti-corruption campaign has also increased scrutiny of commercial activities. Company representatives interviewed for this report indicate that despite the challenges arising from risk-averse government officials, the anti-corruption campaign has had a net positive effect on the business environment, leveling the playing field between foreign and domestic companies. For example, companies note an improved awareness of compliance principles in state-owned enterprises because of the increased scrutiny that has come with the anti-corruption campaign. Domestic Chinese firms are now more concerned than before with creating a culture of compliance, and fewer companies report that losing business to non-compliant competitors is their leading concern.

The rapid creation of new rules and laws as part of the anti-corruption campaign has increased pressure on companies to closely monitor changes in China's emerging regulatory enforcement and compliance system. US compliance teams face greater operational uncertainties as they seek to abide by new and often insufficiently transparent rules in an environment of intensified enforcement. Whereas DOJ and SEC publish information about FCPA enforcement actions online, Chinese authorities publish less information on the processes of commercial bribery and anti-corruption investigations, or the outcomes. Moreover, companies are concerned about a lack of clarity as to what constitutes commercial bribery. [USCBC's 2017 comments on the revisions to the AUCL](#) note that Article 7 of the law could be interpreted to include ordinary business activities such as giving and accepting discounts, commissions, and complimentary benefits -- even when done for lawful commercial purposes and properly accounted for -- as commercial bribery.

Adopting Local Culture to a Global Compliance Framework

Most companies have a global compliance policy, but find it important for a local compliance team to adapt global practices to China; two-thirds of companies have additional region-specific policies. Policies that diverge from global practices tend to take into account local conditions. For example, China-specific policies can target customs like the gifting of "red envelopes" during weddings, economic realities like operating in a market with negotiated prices, or practices like the need to do business over meals.

Local and global compliance representatives underscored the necessity of extensively consulting local teams when revising corporate compliance policies. Rationales include:

- Need for "buy-in" by local teams
- Need to accommodate local cultures and practices in a diverse range of markets
- Need to account for local domestic laws and regulations

Company Examples: Managing US vs. China Ethics Standards

A company in the retail space takes part in exhibitions where their new products are on display. These exhibitions are attended by members of the media, and it is common practice both in the US and in other markets to include "swag bags" of branded content for journalists who attend these events.

This practice was complicated for their China team because journalists for state-owned media outlets play a dual role as government employees. Their headquarters initially recommended either restricting gifts to non-government, foreign media or stopping the practice of giving out swag bags at all. These suggestions would be out of sync with common practice in the market, so the China team worked out an exception that lowered the value of the branded content and excluded cash equivalents like gift cards.

The remaining third of companies have a generalized, global compliance policy adapted to different regional operations. Companies with global-only compliance rules note that a unified set of rules strengthens enforcement and reduces the legal risks of adopting separate local policies.

Company Example: Unified Global Principles and Regional Procedures

One company in the healthcare industry maintains a page-long list of unified global compliance principles. This company previously had a long code of conduct that addressed a range of practices with specific remedies. However, they found it too unwieldy to adapt to new circumstances, and instead simplified the compliance rules to a set of simple principles such as “we do not buy business.” The local team then set up country-specific procedures, which were reviewed and approved by regional compliance staff. In this way, the company is able to keep a degree of autonomy under the umbrella of unified global principles. They noted that this type of policy tests the judgment of employees and supervisors who must make create new procedures, but that their principles-based approach is more flexible for dealing with new situations and fosters a culture of employees taking ownership of compliance.

Growth, Structure, and Reporting Lines

The majority of companies reported significantly expanding headcount since 2013 for their China-based compliance teams. For these companies, their decision to hire more people was based on business growth; often additional personnel were hired to manage the increased risks associated with larger operations. The proliferation of domestic regulations and increased scrutiny also contributed to the expansion of companies’ local compliance teams.

In 2013, less than half of companies interviewed reported having a full time compliance officer in China; now, nearly three-fourths of companies interviewed have one. Creating a dedicated compliance officer position in China as the single point of contact for all compliance-related matters, allows other staff to focus on their specific responsibilities. Companies without a dedicated compliance person instead assign compliance responsibilities to other company functions, such as the legal, finance, or human resources (HR) departments, or in rare cases, to operational leadership. But, there are some specific skills, for example experience with investigations, that general legal staff may not possess.

Some common reporting structures for China compliance teams include:

- **Reporting to a regional compliance officer who reports to headquarters** A China compliance team directly reports to a regional compliance officer, often located in their Asia-Pacific regional headquarters. This person may or may not be located in China. A few compliance teams noted that their direct supervisor was in Singapore. This structure allows compliance teams to easily communicate with someone in their time zone who is familiar with region-specific challenges. Reporting to a regional compliance head also establishes a degree of independence from the China team, by separating the compliance manager from the organizational hierarchy that they are supposed to supervise and monitor. Companies noted this can be useful for ensuring high quality monitoring and enforcement.
- **Directly reporting to the US compliance head with dotted line reporting to China leadership** In this structure, there is usually not a dedicated Asia-Pacific region compliance head, and senior staff responsible for compliance in China report directly to the compliance leader in the United States with a dotted line to the China executive. This structure tends to restrict the scope of activities in which employees are allowed to engage, as headquarters’ compliance offices are often less familiar with local challenges than regional offices. Further, this structure lengthens the time between request submission and approval, as time zone differences and a global portfolio of responsibilities delay responses.

However, respondents also noted that this structure can ensure that headquarters maintains stronger control over local practices throughout its global operations.

- **Directly reporting to local operational leaders** A small number of interviewees reported that their China compliance teams directly report to regional leadership, such as an executive director or regional president, and indirectly report to the US compliance head. Some companies used this structure when compliance responsibilities were delegated to the local legal department on a part-time basis, while others used this structure to maintain a stronger degree of local autonomy. However, other companies noted that this structure limits the degree of independent oversight that a compliance team can maintain, particularly with regards to oversight over local management.
- **Multifunction committee** Some companies have no dedicated compliance personnel, instead dividing responsibilities among government affairs, human resources, audit, and finance teams. Select individuals from each function may serve on a compliance committee or board. These groups conduct risk assessments and coordinate as the need arises. For example, one manufacturing company employs a global and regional compliance board that includes representatives from the legal, finance, and government affairs functions. The regional board meets weekly in China to work on specific compliance issues. Their China CEO occasionally attends, allowing for additional buy-in and support from the local leadership.

The most common structure among companies surveyed was that of a China compliance team reporting to a regional compliance head. Companies are increasingly choosing to build regional reporting structures at the Asia-Pacific regional level instead of having local compliance teams report directly to the US office. This may reflect increased demands due to business growth, as well as the degree of specialization needed to meet those demands.

Assessing Risks

Risk assessments are a key tool in designing strong compliance programs. Companies report that internal and external risk assessments helped them design internal protocols and effectively allocate resources to address challenges employees face during the course of their work. Companies discern which functions face the greatest compliance risks via a range of methods, including third-party audits, data analysis from compliance report hotlines, and incorporating risk assessment exercises into regular compliance trainings.

In the 2013 Compliance Report, USCBC reported that employees directly interacting with government agencies tended to be at higher risk for non-compliant behavior. In that survey, interviewees identified government affairs to be the leading risk, followed by sales. In 2017, more than half of companies identified sales and business development as the most significant source of risk, and government affairs ranked second. This may indicate the increasing focus on commercial bribery and unfair practices, which brings greater attention to sales and business development teams' interactions with distributors and private companies who may or may not be government officials. Additionally this focus on sales and business development as a source of risk may indicate that the regulators and higher-level government officials with whom GA teams interact are increasingly cautious to avoid behaviors perceived as corrupt, such as asking for special treatment or favors, so as not to fall afoul of anti-corruption authorities as the anti-corruption crackdown continues.

Company Example: Targeted Trainings Based On Risk Profiles

Many companies use internal risk assessments to focus trainings and effectively use resources. In one example, a retailer determined its corporate and government affairs team was its highest risk through interviews and an analysis of hotline complaints. In response, the retailer transitioned from a system of

frequent company-wide trainings to a tiered system: lower-risk teams completed computer trainings with less frequent in-person trainings, while higher-risk teams participated in more intensive, instructor-led trainings that focused on compliance principles. This approach allowed them to more effectively use their compliance budget and brought improved results.

Expenses and Gift-giving Thresholds

Providing gifts or having meals with distributors, clients, and government officials is traditionally an important part of doing business in China. At the same time, these activities pose compliance risks. To mitigate these risks, companies establish limits on the amount, frequency, and manner in which funds can be spent on gifts or meals.

While monetary limits on meals, entertainment, and gifts have seen little change since 2013, many companies have set stricter parameters on the types of meals, entertainment, and gifts that employees can give.

Meals and Entertainment

Nearly all companies report using mandatory thresholds to limit meal and entertainment expenses. Although food prices have increased since 2013, spending on meals with government officials has not increased commensurately. The current average limit for meal expenses in China based off of USCBC interviews is RMB 414 (\$60) per person, down from an average of RMB 443 (\$72) in 2013. Most companies set a uniform, countrywide limit on meal expenses, although some also report allowing a graduated scale based on local costs – for example increasing meal thresholds for more expensive cities like Hong Kong or Shanghai.

Companies are defining more stringent parameters for the types of meal and entertainment expenses employees can make. Some companies work with third-party partners using technology that only allows purchases of meals and entertainment from pre-approved vendors within a defined monetary threshold. For example, one company reports working with Dianping – a popular restaurant booking platform – to create accounts for employees that only allow expenses at pre-approved venues.

Gift Giving

Gift giving remains an important part of business culture in China, but international companies increasingly view gift giving as more of a legal risk than an asset. As a result, companies have set up a number of procedures to limit and control gift giving to government officials, vendors, and suppliers.

Nearly all companies maintain a threshold value of any gifts given to government officials. The average threshold for gifts is RMB 365 (\$53), with about half of all companies reporting that their threshold is RMB 300 (\$45). One company with a strict global policy bans gift-giving altogether. Approximately half of all companies surveyed responded with the figure RMB 300 (\$45). These figures are roughly equivalent to the 2013 average of RMB 354 (\$57).

The majority of companies require that gifts be related to the company's business, and stipulate that all gifts bear a company logo. Companies have entirely banned cigarettes, alcohol, and cash as gifts since these types of gifts are more likely to be viewed as inappropriate; and unlike in 2013, all companies reported that gift cards or other cash equivalents are considered inappropriate under all circumstances. Some companies go a step further and have a stockroom where employees can pick out a small, pre-approved gift – often something like a pen, phone charger, notebook, toy, or product sample – to give to a government official. This practice further restricts and simplifies gift giving, as all gifts are pre-approved and under a set value; there is no need for a time-consuming process verifying payments for gifts purchased by individual employees. Substantially fewer

companies also report giving holiday and seasonal gifts such as mooncakes for Mid-Autumn Festival than in 2013.

Pre- and post-expense approval processes

Approval processes for meals, gifts, and other government-related expenditures are a key tool of an effective compliance program. These processes fall into three main categories:

1. **Pre-approval for any government related expenses** This process requires employees to submit an application for a government-related expense to their manager or a dedicated compliance person for approval. Almost half of interviewed companies require pre-approval for any government expense. Typically, the direct manager handles approvals, but a growing number of companies require approval from the legal team or a compliance person.

Pre-approval allows companies to further control risks, as employees must proactively justify expenses, but it can also result in a lack of flexibility. Chance opportunities to partner with government officials might be missed because of the need for pre-approval for a meal or gift. Several companies allow for instant approval in urgent situations through a direct call or text message to a compliance officer or other approval authority. This approach has drawbacks. It puts pressure on the approval authority to make a quick decision, and the party requesting approval must wait as the approval authority makes a decision.

Company Example: Using Pre-approved Vendors with a Third Party

One company in the healthcare space maintains a two-tier approval process involving a third-party approver for any meal with distributors or government officials. The employee planning a meal expense is required to seek approval from his or her manager as well as the compliance team. Then the employee is obligated to choose from a list of vendors pre-approved by a third party. The cost of the meal is paid to the third party, which then transfers the funds to the restaurant. This arrangement allows this company to cut down on possible fraud related to the issuance of itemized receipts, disincentivize frivolous expenditures, and more closely control and monitor transactions.

2. **Pre-approval for any expenses exceeding a predetermined monetary threshold** This approach simplifies procedures by allowing blanket approval of small expenses after the fact, but requiring pre-approval for expenses above a certain threshold. Roughly one-third of companies take this approach, which allows flexibility for unscheduled meetings, while also flagging significant expenses for the compliance team. Pre-approved larger expenses generally require more time-consuming approval processes, including sign-offs from senior company leadership – sometimes a regional general counsel or president, or even the global compliance leader or a compliance committee at headquarters.
3. **Post-expense approval required** Only a few companies use this approach, which allows the greatest flexibility for employee expenditures – although it also leaves employees liable for non-approved expenses. Companies with this model tend to have other checks on expenses such as mandating that employees only give gifts from a pre-chosen selection of items, or rigorous post-expense approval scrutiny. This approach can also allow time for compliance officers to scrutinize expenditures, as there is not necessarily a business imperative forcing rapid decision-making.

Companies use different approval structures based on their needs, but a small plurality of companies require pre-approval for all government expenses and a slightly smaller number only require pre-approval for

expenses exceeding the company’s expense threshold. A minority of companies rely on post-approval for all expenses. This is roughly consistent with the findings of USCBC’s 2013 report.

Company Example: Central Processing Center Model

One large manufacturer that recently self-disclosed an FCPA violation to US authorities decided to restructure their compliance system on the advice of a third party. Their new system funneled all expenses through a central expense approval processing center. This independent, off-site center was removed from immediate association with employees and analyzes all incoming expense requests to identify irregular patterns indicating non-compliant behavior. The company requires the use of a company card for government-related expenses, providing additional data beyond what a *fapiao* -- an official state sales invoice -- provides. This model requires additional information including the relevant official’s name, their position, an itemized list of purchases, and other data. Centralizing the approval process created a more efficient, neutral process for managing expense approvals for employees in China.

In processing approvals, companies require a similar range of information as in 2013, including: names, titles, and affiliation of attendees; projects associated with the expense; goal of the expense; and requested approval amount. One new addition is that many companies now require an itemized receipt describing the expenses in addition to the formal Chinese *fapiao*. For meals, this may include a list of dishes ordered. For gifts, this may include a description of the gift in an itemized receipt, in order to prevent the use of false *fapiao*.

Company Example: Compliance is in the Details

During the course of an internal audit, a company’s compliance team noticed a series of meals logged with the name of the same government official on an employee’s expense report. Upon questioning, the employee stated that these expenses were not with the same government official, but rather with several different officials who have the same name in romanized *pinyin* spelling, but with different Chinese characters. Because the company only required the romanized name, the compliance team could not prove wrongdoing. While the company initially encountered some difficulty in explaining this challenge to their headquarters, as well as pushback from their business development team, they eventually changed reporting requirements to include Chinese characters as well as official titles.

Companies are moving toward online forms to approve and log expenses. In 2013, USCBC found that companies infrequently used online systems like Concur – a business expense management software – because “in China, where most expenses are paid with cash, expenditures are more difficult to track.” Since then, the technology has changed, and many companies use software and mobile applications in their compliance practices. While true corporate credit cards are still not as common as in the United States, transactions are nonetheless becoming cashless, with bank cards and online payment apps increasingly common. Now, some vendors send official *fapiao* electronically, which may help increase compliance traceability and integration into software platforms.

Common Expense Approval Application Methods		
	2013	2017
Paper	32%	15%
Email	57%	31%
Online	<10%	

Training

Frequent and continuous training – along with top-level management support – is critical for instilling a culture of compliance. Internal compliance or legal teams typically conduct trainings for employees. Some companies reported using external trainers, generally when there was a lack of staff capacity or to provide specialized education. China-specific training often includes units on gift giving, entertainment, and engagement with government officials, as well as overviews of relevant international anti-bribery regulations and local laws.

About three-quarters of companies have customized training with different stakeholders and departments based on company needs and risks. High-risk functions like sales, procurement, supply chain, and government affairs are likely to receive frequent training. About half of companies reported compulsory training for new employees or distributors, and companies generally have training sessions twice a year for all employees.

Companies note that the most effective training method is in-person, with online and printed materials providing important support. Companies with successful training programs emphasized the usefulness of real-world examples to illustrate the importance of good business ethics. Some include compliance training as a part of sales conferences or other large-scale meetings when all members of a team are present. In addition to programming from the compliance team, senior company leadership give speeches stressing the importance of compliance to set the tone of the training, and to indicate the importance a company assigns to effective compliance practices. Upon completion of training, most companies require employees to sign an affirmation that they understand the content and agree to abide by company policy, which is filed with the human resources or legal team.

Localizing Training Programs

Adapting training to local market conditions is critical for helping employees understand and internalize best practices in compliance. For example, explaining that the US government may bring charges under FCPA is less persuasive than providing case studies of employees convicted of corruption, either under FCPA or Chinese law, in China. Additionally, stressing and providing real examples of how an employee can engage in appropriate relationship-building while staying within prescribed compliance policies helps lessen employee concerns. It is also important that employees understand that it is not only the company that is liable for compliance violations, but that there are also direct consequences for individual violators.

Company Best Practices: Catching Audience Attention

- **Use case examples** A company found that in-person training using case studies and storytelling through video and animation is the most effective tool. They also require employees to pass a quiz that emphasize that there are consequences for the individual as well as the company, with questions like: if I do XYZ, what are the consequences? (1) The company may be fined; (2) I will need to report it; (3) My employment contract may be terminated and I may face jail time.
- **Senior leadership support** A company said that when conducting training, they make sure that the most senior person at the office or factory gives a speech stressing the importance of compliance. They call them the “sponsor” of the session and play a video from their Asia-Pacific president. This highlights that that leadership is serious about compliance.
- **Simpler rules** Another company condensed their 1,800 compliance policies to 140 items. They noted that having many rules did not ensure compliance, as the sheer number of rules made them hard to remember and new situations test any set of rules. They eventually moved from a rules-based culture to a simpler, principles-based compliance culture, which was easier for employees to digest.

Managing Compliance with Joint Ventures

Most companies report challenges in ensuring that state-owned joint venture (JV) partners understand compliance risks and are willing to obey internal compliance rules, despite an increase in awareness due to the anti-corruption campaign. A US company may be liable under FCPA for actions undertaken by their JV partner, even if the company is a minority partner.

The degree to which these partnerships are an issue depends in part on the type of JV partner. Companies reported that SOE JV partners are now significantly more aware of compliance risks, because as government employees they were more likely to be targeted by the anti-corruption campaign and laws. Respondents noted that smaller private companies are less likely to have a strong understanding of compliance risks, and that these JV partnerships often require enhanced due diligence. It can be challenging to require JV partners to fully comply with the parent company's internal rules. Each JV agreement is different, but companies reported a number of practices to ensure compliance including: sharing information about parent company policies; creating a compliance working group with staff from the US and Chinese companies; including clauses in the JV agreement mandating external audits; and linking compliance practices to the compensation of senior JV executives.

Company Example: Working with Joint Venture Leadership

One company reported challenges in persuading their JV partner to adopt their compliance policies. Instead of forcing this alignment, the foreign company agreed to allow the JV partner to have their own management system and code of conduct policies, but included compliance as a top criterion in the performance review of the JV's chairman. They also set up a working group with the JV partner to determine the specific issues they need to work on together, such as goals and risk assessment. They found this combination of cooperation and autonomy to be an effective way to cooperate with their JV partner to meet their global compliance standards.

New Frontiers in Compliance: Technology

Business communication, including communication with government officials, has increasingly moved from email to the online social media platform WeChat – a popular Chinese messaging platform used by more than 963 million active users. This shift from storing communications on a company-managed email server to an individual's privately-managed cellphone and third-party messaging system creates new compliance challenges.

Although new rules about using WeChat records as evidence in criminal investigations [came into effect in October 2016](#), companies do not have a legal right to access the WeChat records of employees. Companies report that this can complicate internal investigations of wrongdoing by limiting company access to business data. Companies also report that WeChat can be a business risk through leakage of sensitive information that is stored both on individual's phones and also on Tencent's servers, the Chinese company that owns WeChat. One law firm suggested that this risk may be mitigated by purchasing a work cell phone for some employees on the condition that communications from the phone are reviewable by the employer.

However, companies also report that WeChat has business uses that can have a positive effect on a company's compliance program. WeChat has a business functionality wherein employers can communicate to employees using the platform and vice versa. Some companies use this functionality to send out reminders about compliance trainings, note policy changes, and send out regular updates to employees. Refunds for expenses can also be sent through WeChat, making the reimbursement process for expenses more seamless.

There are a number of other software services designed to support company compliance programs through digitizing, and in some cases even automating, monitoring and expense approvals. Governance, risk, and compliance (GRC) software systems are increasingly common ways for company headquarters to integrate and manage data from multiple sources around the world. Research firm [Technavio forecasts](#) that the market for these services will grow at a compound annual growth rate of more than 13 percent by 2021. [According to a report by Deloitte](#), the GRC software market is dominated by players like IBM, RSA Archer, Thompson Reuters, SAP, and Oracle, but there are also other players with services tailored to China that integrate into platforms like WeChat and Dianping. It is important to note that the cybersecurity law and regulations governing the transfer of Critical Information Infrastructure may have an effect on how companies store and monitor this data in the future. Other concerns exist generally with these systems including a patchwork quilt of systems used across many offices, problems with ease of use, and generally adding layers of complexity in reporting.

Company Example: WeChat Supporting a Corporate Compliance Program

One medium-sized manufacturer reported that WeChat was a positive complement to their compliance program. In addition to being able to send out short articles and instructional modules to employees from time to time, the company also used WeChat as a way to report data to their HR department. Since implementation, this has become the dominant way to communicate with human resources. While the company received 10 calls to its whistleblower hotline in 2017, it received about 250 communications through the WeChat channel that same year. The compliance manager noted that the hotline was still the dominant way to report serious concerns, and that most issues being reported through WeChat were relatively minor HR questions. Nonetheless, this compliance manager found it a useful source of intelligence for risk assessments.

Appendix 1: Largest US FCPA Fines

No.	Company	Total resolution	Year
1	Siemens(Germany)	\$800 million	2008
2	Alstom (France)	\$772 million	2014
3	KBR / Halliburton (USA)	\$579 million	2009
4	Teva Pharmaceutical (Israel)	\$519 million	2016
5	Odebrecht / Braskem (Brazil)	\$419.8 million	2016
6	Och-Ziff (USA)	\$412 million	2016
7	BAE (UK)	\$400 million	2010
8	Total SA (France)	\$398 million	2013
9	VimpelCom (Holland)	\$397.6 million	2016
10	Alcoa (U.S.)	\$384 million	2014

Sources: United States Securities Exchange Commission Enforcement Actions: FCPA Cases, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>; United States Department of Justice Enforcement Actions <https://www.justice.gov/criminal-fraud/related-enforcement-actions>

Appendix 2: US FCPA Enforcement Actions involving China in 2016

Company Name	Enforcement Activity	Date
General Cable Corporation	The Kentucky-based wire and cable manufacturer agreed to pay more than \$75 million to resolve SEC and DOJ cases related to improper payments to win business in Angola, Bangladesh, China, Egypt, Indonesia, and Thailand.	12/29/2016
Rolls-Royce PLC	The United Kingdom-based manufacturer agreed to pay the United States nearly \$170 million to resolve bribes given to government officials in China, India, Indonesia, Malaysia, Nigeria, Russia, and Thailand.	12/20/2016
JPMorgan	The firm agreed to pay \$264 million to settle charges that it improperly influenced government officials in the Asia-Pacific region by giving jobs and internships to their relatives and friends.	11/17/2016
GlaxoSmithKline	The UK-based pharmaceutical company agreed to pay a \$20 million penalty to settle charges that it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales.	9/30/2016
Nu Skin Enterprises	The Provo, Utah-based skin care products company agreed to pay more than \$765,000 for an improper payment to a charity related to high-ranking Chinese officials in order to influence the outcome of a pending provincial regulatory investigation.	9/20/2016
AstraZeneca	The UK-based biopharmaceutical company agreed to pay more than \$5 million to settle FCPA violations resulting from improper payments made by subsidiaries in China and Russia to foreign officials.	8/30/2016
Johnson Controls	The company agreed to pay more than \$14 million to settle charges that its Chinese subsidiary used sham vendors to make improper payments to employees of Chinese government-owned shipyards and other officials to win business.	7/11/2016
Akamai Technologies	SEC announced a non-prosecution agreement (NPA) with Akamai in which the company will surrender more than \$650,000 in profits connected to bribes paid to Chinese officials by a foreign subsidiary. Akamai promptly self-reported the misconduct and cooperated extensively with the SEC's investigation.	6/7/2016
Nortek	SEC announced a non-prosecution agreement (NPA) with Nortek in which the company will surrender nearly \$300,000 in profits connected to bribes paid to Chinese officials by a foreign subsidiary. Nortek promptly self-reported the misconduct and cooperated with the investigation.	6/7/2016
Las Vegas Sands	The casino and resort company agreed to pay \$9 million to settle charges that it failed to properly authorize or document millions of dollars in payments to a consultant facilitating business activities in China and Macao.	4/7/2016

Novartis AG	The Swiss-based pharmaceutical company agreed to pay \$25 million to settle charges that it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales.	3/23/2016
Qualcomm	The San Diego-based company agreed to pay \$7.5 million to settle charges that it violated the FCPA when it hired relatives of Chinese officials deciding whether to select the company's products.	3/1/2016
PTC	The Massachusetts-based tech company and its Chinese subsidiaries agreed to pay more than \$28 million to settle FCPA cases involving bribery of Chinese government officials to win business.	2/16/2016
SciClone Pharmaceuticals	The California-based pharmaceutical firm agreed to pay \$12 million to settle SEC charges when international subsidiaries increased sales by making improper payments to healthcare professionals employed at state health institutions in China.	2/4/2016

Sources: United States Securities Exchange Commission Enforcement Actions: FCPA Cases, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>; United States Department of Justice Enforcement Actions <https://www.justice.gov/criminal-fraud/related-enforcement-actions>

Appendix 3: Enforcement Agencies for China’s Anti-corruption Laws and Regulations

Enforcement Agency	Scope of authority	Main Law or Regulation
CPC Central Commission for Discipline Inspection (CCDI)	Internal party discipline and authority to investigate government officials and senior leadership of SOEs	Regulation of the Communist Party of China on Disciplinary Actions (2015) ; Standards on Integrity and Self Discipline of the Communist Party(2015) ; Regulations of the Communist Party of China on Internal Oversight(Trial) 2016
Ministry of Public Security (MPS)	Authority to investigate crimes not concerning government officials	The Criminal Law Amendment (IX) 2015
People’s Procuratorate	Authority to investigate and prosecute all crimes	Interpretation on the Application of Law in Criminal Cases of Corruption and Bribery
State Administration for Industry and Commerce (SAIC)	Authority to conduct administrative investigations and inspections	Anti-Unfair Competition Law(draft) 2017 SAIC Interim Provisions on the Prohibition of Commercial Bribery Activities

Law or Regulation	Date into Effect	Responsible Enforcement Agency
The Anti-Unfair Competition Law (AUCL) (The 2017 Amended Version)	<p>Revised and adopted November of 2017.</p> <p>The law will go into effect on January 1, 2018.</p>	<p>The AUCL does not specify which agencies will enforce the law, however responsible agencies could include: SAIC, NDRC, as well as:</p> <ul style="list-style-type: none"> • The State Council under the Tendering and Bidding Law • Agencies responsible for the administration of information and industry under the telecommunication regulations • State administration of commodity prices • Government agencies responsible for standardization under the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ).
The Criminal Law Amendment (IX)	<p>Released in 1997 and revised in 2011.</p> <p>The revised Criminal Law took effect February 25, 2011.</p>	<p>The People’s Court, Ministry of Public Security (MPS), People’s Procuratorate</p>
SAIC Interim Provisions on the Prohibition of Commercial Bribery Activities	<p>Went into effect November 11, 1996.</p>	<p>SAIC, MPS, People’s Court, and People’s Procuratorate</p>
The Company Law	<p>Went into effect March 1, 2014.</p>	<p>No specific enumerated enforcement authority. The law is broadly enforced by government agencies and courts.</p>
Interpretation on the Application of Law in Criminal Cases of Corruption and Bribery	<p>Went into effect April 18, 2016.</p>	<p>People’s Courts</p>
Provisions on the Protection and Reward of the Whistleblower	<p>Went into effect June 30, 2016.</p>	<p>CCDI, People’s Procuratorate, MPS, Ministry of Finance (MOF)</p>