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# **The Corporate Social Credit System:**

## **Sanctions & Rewards, Remedies, Contract and Compliance Management**

Swiss-Chinese Chamber of Commerce Webinar

Sabine Neuhaus, Associate  
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# Agenda

**1** Sanctions and Rewards

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**2** Remedies

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**3** Contract Management

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**4** Compliance Management

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# SANCTIONS & REWARDS



# SANCTIONS & REWARDS



## Possible Sanctions

- “black-listing” // “heavily distrusted entity”
- More inspections / targeted audits
- Import / export restrictions
- Restricted access to loans / public procurement
- Key personnel of a company, e.g. travel restrictions
- Sector-specific credit ratings / sanctions, e.g. suspension on purchase of drugs/medical consumables



## Possible Rewards

- Less inspections (e.g. customs)
- Enhanced access to loans
- Lower taxes
- Fast-track administrative procedures
- “red-listing”
- Example of Financing Platform for SMEs



How to **improve** your company’s credit score?

# REMEDIES



# Negative credit score / sanction – what now?

## Negative Credit Score Restoration

- Different channels
- Few guidelines
- Minimum periods of public record
- Severely distrusted behavior cannot be deleted

**Example:** Credit Restoration via Credit China

## Administrative Remedies

**Sanctions = administrative penalties**  
("Verwaltungsstrafen")

Remedies under administrative law, i.e.:

- Objection
- Application for repeal
- Petition for administrative reconsideration
- Administrative litigation

 What happens if your company is subjected to a **wrong** credit rating / **unjustified** sanction?

# CONTRACT MANAGEMENT



# Key Clauses in your Contracts with Chinese Parties (1/2)

## Supply Chain Agreements

- Environmental / quality standards
- Labor safety
- Sourcing of raw materials
- Reporting obligations (Supplier)
- Inspection rights (Purchaser)
- Reps and Warranties (Supplier)
- Remedies in case of disruption
- Termination clauses and triggering events (e.g. negative credit)
- Etc.

## Distribution Agreements

- Permits and licenses of distributor (e.g. pharma)
- Compliance with import / export regulations (e.g. tools in certain industries [dual-use])
- Quality / complaint management for distributed goods
- Term and termination
- Etc.



# Key Clauses in your Contracts with Chinese Parties (2/2)

## Joint Venture Agreements

- Due Diligence on JV partner
  - Assets, indebtedness, intellectual property
  - Rating (company, legal representative, GM)
  - Past and current litigations
  - Enforcement proceedings
- Reps and Warranties
- JV operations – compliance management!
- Audit / inspection rights (tax / accounting / chop management)
- Senior executives
- Supervisors
- Termination / Exit options

# COMPLIANCE MANAGEMENT



# WHAT IS LEGAL COMPLIANCE IN CHINA?

## Existing Compliance Framework

- Company Law (1993)
- New Foreign Investment Law (2020)
- Other laws and regulations:
  - Employment, social insurance, labor safety
  - Anti-corruption, Anti-Monopoly, Consumer Protection
  - Tax, IP, customs, environmental, (draft) personal information protection
  - Sector-specific regulations (e.g. banking, insurance, securities)
- No “internal control system” (Swiss Code of Obligations)
- “Selective” law enforcement

## Emerging legal framework of the CSCS

- Cluster of local / regional regulations and (trial) practices
- No harmonized “CSCS-law” yet – expected entry into force: 2022

# WHAT ADJUSTMENTS ARE NECESSARY TO YOUR CHINA-BUSINESS?

## Governance 2.0

- Additional **reporting obligations**
- Familiarize yourself with the **local regulations** and (trial) policies
- **Due diligence** (before signing!)
  - Know your contract / trade partners
  - HR: Do your homework before hiring and beyond
- Ongoing **monitoring** of operations
- Assign **dedicated personnel** / define **processes**
- Increased **transparency** (external and internal)
- **Reputation / brand** management
- Become an **industry-leader**, get red-listed!



**Your Contact: Sabine Neuhaus**

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📍 Huamin Empire Plaza 5F  
West Yan An Road No. 726  
200050 Shanghai, PRC

☎ +86 21 5237 0950 - 8397 (CN)

✉ [sabine.neuhaus@kellerhals-carrard.ch](mailto:sabine.neuhaus@kellerhals-carrard.ch)