

The Corporate Social Credit System:

Sanctions & Rewards, Remedies, Contract and Compliance Management

Swiss-Chinese Chamber of Commerce Webinar

Sabine Neuhaus, Associate Shanghai, February 3, 2021



Agenda

1 Sanctions and Rewards

3 Contract Management

2 Remedies

4 Compliance Management

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

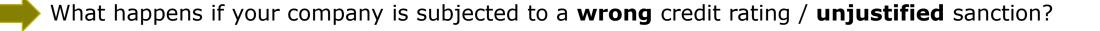
Example: Credit Restoration via Credit China

Administrative Remedies

Sanctions = administrative penalties ("Verwaltungsstrafen")

Remedies under administrative law, i.e.:

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



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?







Your Contact: Sabine Neuhaus

Huamin Empire Plaza 5FWest Yan An Road No. 726200050 Shanghai, PRC

- +86 21 5237 0950 8397 (CN)
- sabine.neuhaus@kellerhals-carrard.ch