

## Building bridges

In the pages of this journal and our sister publication the *Journal of Financial Crime*, we have often referred to the initiatives that have taken place and are on track in China to address not only corruption but also economically relevant crime. China has had a long history of addressing crime and misconduct relating to the operation of its economy. Indeed, some of the earliest market-related laws can be found in the various Chinese codes. Anti-insider dealing legislation focussing on public officials was enacted in 1921 by the Nanjing Government. Indeed, some of the earliest laws in China, nearly 3,000 years ago, addressed issues related to corruption. The problem in China has generally not been an absence of appropriate law, or for that matter clear moral precepts, but rather the problems of effective enforcement and standardisation of enforcement across such a wide and in some respects, diverse country.

We have referred to the important initiatives that have been taken, in recent years, by President Hu Jintao and more recently by President Xi Jinping against corruption (Li Hong Xing 20 JMLC (2017) 218; see also Comment 38, *The Company Lawyer* (2017) 333). Indeed, there are those who would argue that, while commendable in many respects, issues of proportionality and even focus have arisen (refer to the earlier editorial). There have been concerns that the crucial role played in the detection, investigation and sanctioning of corruption by the Chinese Communist Party (CCP) has occurred outside the traditional Chinese legal system. There have been cases, particularly involving matters outside China, where the emphasis that has been placed on Party discipline rather than prosecution by the Supreme People's Procuratorate (SPP) through the People's Court, has complicated procedures and compromised the ability of other countries to afford meaningful judicial assistance. We reported last year in the pages of this journal that given these concerns and the desire to make available to CCP investigations the panoply of legal powers possessed by the SPP and police, the Government intended to establish for the first time in China an overarching agency. This has now been established, and the Central Commission for Discipline and Inspection (CCDI) is now in place and developing its operating systems and procedures.

At the 19th National People's Congress in October 2017, attention was focussed not just on corruption, but wider issues related to economic crime and, in particular, financial crime. In large measure, this was a result of concerns particularly within the CCP about the numerous examples and allegations of misconduct during and after the stock market crash of 2015. The laws relating to market abuse and insider dealing were not, in the view of many, adequately enforced. There has also been a growing concern, especially in the provinces such as Shenzhen and GuangZhou, about "boiler room" operations and "get rich quick" schemes. The situation has been compounded by allegations of corruption, self-dealing and manipulation by some senior officials in the regulatory authorities – including the China Securities Regulatory Commission and the China Insurance Regulatory Commission. There have also been grave concerns in the banking sector and a number of senior officials in some of China's leading banks and financial houses have been placed under investigation. At the same time, there is also a perception that China has quite strict anti-money laundering laws, which have not been adequately enforced, and there is a general lack of effective co-ordination in policing irregularities and, indeed, serious crime – some organised, within the financial sector. President Xi Jinping was outspoken in his



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criticism and warned that unless such issues were dealt with, China's economic development and stability are at risk.

The National People's Congress has in response to these issues established a super-regulator for the financial sector – the Financial Stability and Development Committee. This body has authority over all existing financial regulators in China – no matter at what level. It will be primarily concerned with setting policy, but it does have the power to examine and, some argue, direct other regulatory authorities. Of course, much will depend on the resources that are allocated to it and, in particular, staff with the appropriate knowledge and experience. The Ministry of Public Security also published a new strategy in addressing financial crime and the abuse of China's financial system. While the Public Security Bureau has been concerned to pursue cases of fraud, it has not focussed so much in the past, on what many in China see as more technical financial crimes, including money laundering. These have tended to be pursued in association with the investigation of substantive offences under China's Penal Code. The SPP has understandably also tended to focus on the matters of concern for law enforcement, although it has on occasion used its own investigative resources to pursue more sensitive cases.

The new national strategy, which has been endorsed by the Congress and senior organs of the state, will focus on improving enforcement of the existing law, particularly relating to money laundering, but also shadow banking, the proper management of financial institutions and what are termed new risks. These include, in particular, crypto-currencies, peer-to-peer lending and certain aspects of the insurance market. The concern that has already been mentioned about high pressure selling of securities and various "get rich quick" schemes are also going to be targeted, especially where the internet is involved. It should also be noted that the Amended Anti-unfair Competition Law came into effect in January 2018. This significantly extends the Chinese law relating to bribery in the private sector and in effect creates a new corporate offence, which is likely to resemble in its application Section 7 of the UK's Bribery Act 2010.

Britain has been keen to use the area of legal reform to promote further co-operation with China, and there are several initiatives under the Prosperity Initiative established by David Cameron (B. Rider 21 JMLC (208) 2). Advice and technical assistance has been offered to the Chinese Government in developing effective laws to address issues related to integrity not only in the financial and banking sectors, but also in the wider commercial and corporate arena. There are also important initiatives designed to foster within China a greater understanding of, what some argue, are the benefits of the common law approach to such issues. While politically these are associated with the rule of law, there is also clearly an agenda to encourage China to ensure that there is a level playing field for those who wish to engage in business within China. This in recent months has become all the more important. That China at the highest levels of Government manifestly wants to see the issue of integrity taken seriously presents an important opportunity – not least for promoting further co-operation and mutual respect.

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