

Client Alert

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Baker McKenzie FenXun
A Leading Chinese and
International Law Joint Platform



For further information, please contact:

Mini vandePol
Partner
+852 2846 2562
mini.vandepol@bakermckenzie.com

Simon Hui
Partner
+86 21 6105 5996
simon.hui@bakermckenzie.com

Vivian Wu
Partner
+86 10 6535 3860
vivian.wu@bakermckenziefenxun.com

Harry Zhu
Associate
+86 21 6105 8536
harry.zhu@bakermckenziefenxun.com

China's new era of graft-busting promises a tougher regime ahead

On 20 March 2018, China's National People's Congress ("**NPC**") passed the Supervision Law detailing the powers and responsibilities of the National Supervision Commission (the "**New Commission**"). The New Commission is China's highest anti-graft agency and was established at the first session of the 13th NPC.

Under the new law, the New Commission provides a centralized supervisory system for anti-corruption enforcement and merges the Ministry of Supervision under the State Council and the department of anti-corruption investigation of the Supreme People's Procuratorate ("**SPP**"). It will also carry out the responsibilities of the Communist Party of China's Central Commission for Discipline Inspection ("**CCDI**").

Our alert discusses the implications of this important development and some of the highlights of the reform.

What does this mean for Companies doing business in China?

The new law entrusts supervision commissions to oversee individuals across public sector entities including party organs, legislatures, governments, courts, procuratorates, political advisory bodies, as well as their own staff, executives of state-owned enterprises, management staff of public institutions and mass organizations (collectively referred as "**Officials**").

We expect to see increased scrutiny and enforcement in the near future. Whilst the new law targets Officials with public responsibilities, parties doing business in China, including foreign companies, are also at increased risk of being implicated if their business falls within the investigation conducted under the Supervision Law. Specifically, the New Commission can detain individuals who commit official bribery or who jointly commit the crime of misconduct in office pursuant to the Supervision Law. Such individuals can include those from the private sector.

Investigators now have increased investigation and surveillance powers such as wiretapping, when they are investigating severe violations. Of interest is that the new law does not expressly restrict the target of such measures to Officials.

The new law also clearly requires the New Commission to be responsible for global assistance and information exchange in relation to anti-corruption enforcement. It envisages cooperation between the New Commission and foreign law enforcement bodies, such as the US Department of Justice and the UK's Serious Fraud Office.





Highlights of the Reform

1. The National Supervision Commission

The establishment of the New Commission follows the local pilot administrative reform which began in Beijing, Shanxi and Zhejiang provinces in December 2016. The New Commission is deemed to be an institutionalization of Beijing's anti-corruption campaign in recent years.

It has the same administrative ranking as the State Council, Supreme People's Court and SPP, and is expected to mitigate potential improper influence or interference from the government. The New Commission assumes the investigation function from the SPP, which will focus on public prosecution.

The New Commission inherits duties from the former supervision department and the procuratorate. These include the ability to take administrative disciplinary actions against Officials who have violated the law, investigate official corruption and transfer the case to procuratorates for prosecution. The latter is similar to the duties of police for other criminal violations.

2. The Supervision Law

The new law also provides broad investigative powers to the New Commission, including the power to freeze assets and accounts, issue subpoenas, search persons or residential premises, and restrict suspects and relevant persons from travelling abroad. Among others, the New Commission replaces the practice of *shuanggui* and *shuangzhi*¹ with the power to detain a corruption suspect. *Shuanggui* or *shuangzhi* was a frequently criticized secret disciplinary detention mechanism of the Chinese Communist Party.

Although the new law is silent on the right to have access to lawyers or clear redress mechanisms for detainees, compared to *shuanggui*, it provides a certain degree of transparency and clarity during the anti-corruption investigation. For example, the detention has to be approved with caution and cannot continue for longer than six months. Also, in general cases, the family of the detainees have to be notified within 24 hours after the detention.

Actions to Take

Although it may take time to establish provincial and district-level supervision commissions in the short term, we recommend that companies doing business in China take steps to proactively review their existing operations and assess the risks under the new law. In particular, such review should identify whether there is any interaction with government bodies, public entities and SOEs, when such interaction is conducted using a third-party liaison vendor.

We will be closely monitoring how anti-corruption investigations and enforcement are carried out under the new regime. Meanwhile, companies should remain vigilant and continue to monitor and improve their compliance controls.

¹ *Shuanggui* refers to intra-party disciplinary practice that requires a Communist Party member to cooperate with questioning at a set time and set place. *Shuangzhi* is a similar practice against a governmental official who is not a party member.

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www.fenxunlaw.com

Baker McKenzie FenXun (FTZ)
Joint Operation Office
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC

Tel: +86 21 6105 8558
Fax: +86 21 5047 0020

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