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Subject: Kobre & Kim Update: China's New Graft-Buster and What It Means for Multinational Companies Operating There

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## China's New Graft-Buster and What It Means for Multinational Companies Operating There

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February 23, 2017

As China's anti-corruption campaign continues to make headlines, a new pilot program promises to streamline regulation, foreboding increased scrutiny and harsher punishments for multinational companies operating there. Endorsed by Chinese officials in December, the pilot program establishes China's first anti-corruption authority to oversee all public servants and operate independently of the Communist Party. The program has kicked off in Beijing, Shanxi and Zhejiang ahead of a nationwide rollout.

Here are a few potential implications for multinational companies operating in China:

**A higher level of authority and scrutiny by PRC government officials.** Chinese government officials will now have sweeping powers over the individuals and entities that are investigated and broadened authority to enforce these powers. Executives of state-owned enterprises and administrators in government entities will now fall under the supervision of the regulatory commission, which will exercise the authority to supervise, investigate and render punishment for violations. Furthermore, authorities are now equipped with the powers normally reserved for prosecutors and courts, including the ability to interrogate and detain suspects and freeze assets.

**Gifts, entertainment, donations, conference sponsorships and third-party engagements will come under scrutiny.** It is critical for multinational companies operating in China to pay close attention to the strict implementation of its China compliance policy, especially regarding third-party engagement in the forms of gifts, entertainment, donations and conference sponsorships. Given the expanded investigative powers with which the new authorities are now

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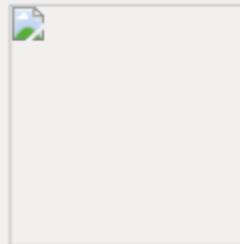
equipped, more attention will be directed to interactions with government officials that involve gifts and benefits.

**Additional regulatory restrictions are likely to follow.** The pilot program is the first step of a larger regulatory overhaul aimed at cracking down on corruption in China. A new national law that is aligned with the pilot program is set to be promulgated, along with amendments to existing legal statutes and possibly even the Constitution of China. The Chinese government's aggressive steps signal a changing regulatory landscape for companies operating there.

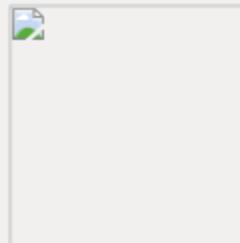
**Running afoul of the Chinese regulations may have consequences abroad.** Given Chinese government officials' broad powers and the increased interest in anti-corruption enforcement worldwide, there is now a heightened risk that an investigation in China could implicate companies under the U.S. Foreign Corrupt Practices Act or the UK Bribery Act. Recent Chinese government enforcement actions into commercial bribery also suggest that the Chinese government has expanded its focus from bribery of public officials to graft in the private sector. As a result, multinational companies should be vigilant in their dealings with Chinese government partners and affiliated enterprises by identifying high-risk business and reassessing their current business models to take into account the implications brought by the new authorities. For example, companies are advised to conduct thorough reviews of their existing incentive or benefits programs, including evaluations of the structure and anti-corruption and anti-bribery compliance of such programs.

The heightened regulatory landscape in China signals an opportunity for multinational companies operating there to revisit their policies and ensure compliance with new requirements. Consulting counsel with knowledge of local regulatory rules, and a nuanced understanding of their cross-border ramifications, can help multinational companies navigate the unique challenges that the new and growing anti-corruption body in China presents.

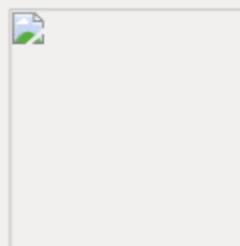
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### About Kobre & Kim's China Government Enforcement Defense Team:

- Focused solely on disputes and investigations.
- We represent Asia-based clients in internal investigations, monitorships, and related cross-border government enforcement actions that involve U.S. authorities.
- Our Asia government enforcement defense team is led by four former U.S. government attorneys who have served as U.S. Department of Justice prosecutors and U.S. Securities and Exchange Commission enforcement lawyers.
- Our team members have native language skills including Mandarin, Cantonese, Korean, Japanese, and Hindi.



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