

## A watershed in the availability of corporate information in China?

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In March 2014, the State Administration for Industry and Commerce ("SAIC") launched the National Company Credit Information System (the "NCCIS"). This online database, once established, will bring China in line with numerous other jurisdictions in holding a wide range of publically available information on corporate enterprises registered in China.



Given that, up to this point, proof of intention to initiate legal proceedings was required to be submitted to the local Administration, this marks an important step in accountability and transparency. The most prominent example of this is that all penalties imposed on companies will have to be disclosed and listed whereas such information was routinely not available prior to this.

With such a broad vision, it is clear that the most important question will be the obligations imposed on all disclosing bodies. To this end the NCCIS is governed by the Interim Regulation on Enterprise Information Disclosure (the "Regulations"), issued on 7 August 2014 and which came into force on 1 October 2014.

The Regulations establish a range of duties under which disclosures by enterprises, local Administrations for Industry and Commerce ("AICs") and other government bodies will result in a continuously updated database. We consider the duties upon each body below:

## Enterprises

As may be expected, the greatest obligations fall upon enterprises themselves. The most prominent of these, under Article 8, is the requirement for annual returns to be filed between 1 January and 30 June each year in relation to the previous year's activities.

The annual report must include general information such as a postal address, email, website address and telephone number. However, Article 9 also requires disclosure of the amounts and forms of capital contributions by shareholders of limited liability companies or sponsors of joint stock limited companies, notification of any equity transfer by shareholders and information on any investment in, or the formation of, other enterprises. Any information that includes state secrets, details on state security, or information that would be in the public interest must be reported to, and approved by, the relevant state security department, or other department dealing with confidential information, before being disclosed.

An enterprise may exercise its discretion as to whether to also disclose further information such as its workforce, total liabilities, profits and tax payments. Should this information not be disclosed, citizens and organisations may still apply to review such information subject to the consent from the enterprise.

However, Article 18 requires government agencies to take into account the amount of information submitted through the enterprise system when supervising tender processes, government procurement or a range of other functions. Therefore, it may be in an enterprise's interests to disclose this information.

In addition to the annual report, enterprises are under an ongoing obligation to disclose further information within 20 working days of such information being created. This duty extends to capital or equity transfers by shareholders and sponsors, as above, and also goes further, to include the provision of administrative licenses and penalties, and registration of intellectual property rights.

AICs will perform random inspections to ensure compliance, the results of which will be made publicly available and, under Article 13, 'tip offs' to AICs are condoned. Following a tip-off an investigation will take place within 20 working days and the veracity of the information established. Enterprises are obliged to cooperate with investigations, and serious instances of non-compliance will be made public.

The threat of public sanction is extended under Article 17 to the provision of false information or a breach of a disclosure requirement, including failing to comply with the relevant deadlines. Following such circumstances the defaulting enterprise will be included on a publically available list of enterprises with 'abnormal operations', and where losses have been suffered in a serious incident a compensation order could be made. An enterprise can apply to be removed from this list if the disclosure obligation is subsequently completed.

Should an enterprise included on this list fail to disclose information within the following three years, they will be named and shamed on a further publically available list of enterprises guilty of serious violations. Upon listing of a serious violation, the legal representative of the enterprise or 'person in charge' of that company will not be permitted to hold such a role for any other enterprise for three years. Where an enterprise on the list subsequently and consistently complies with its disclosure obligations during a period of five years, it will be removed from the list of serious violations by the relevant AIC.

The effect of such consequences is made clear in Article 18, as stated above. Government bodies are required to take into account compliance with the disclosure obligations and the failure to do so could exclude the enterprise

from government tenders and procurement contracts and from benefitting from the distribution of state land as well as other benefits.

## AICs

Whilst state, provincial and regional government are intended to lead implementation of the NCCIS under Article 4 of the Regulations, the AICs appear to carry the main weight of governmental disclosure obligations.

Under Article 6 AICs are required to disclose registration information, including mortgage and equity pledge details as well as information on any administrative punishments levied. As with enterprises, such information must be made available on the NCCIS within 20 working days of being generated and the AICs will be held responsible for authenticity, accuracy and compliance with the relevant time limits.

In an important concession to enterprises, where an AIC is required disclose either information containing an enterprise's trade secrets or the private information of individuals, then such the disclosure of such information must be approved by a superior competent department.

Should AICs fail to adhere to the Regulations, corrective measures can be imposed from above and, if deemed a serious breach, then the responsible individuals will be made subject to administrative sanctions or criminal liability.

## Other government agencies

Finally, there is an ongoing obligation on those administrative bodies that hold relevant information regarding enterprises, such as details of licensing arrangements and which have imposed administrative penalties. The information held by such bodies is expected to be less, under Article 7, but can be supplemented where possible by relevant but more general disclosures, including information that may also be held by the AICs.

As above, if any disclosure is to contain trade secrets or private information about individuals then the disclosure must be approved by a superior competent government body.

## Summary

The Regulations, and the NCCIS itself, have the potential to stand as a clear turning point in the transparency of corporate administration. Not only will information be increasingly available on companies registered across China, but regulation of companies will also be visible.

Such a wide-ranging series of obligations will take time to implement fully, and the vast majority of information is still to be uploaded since the Regulations came into effect on 1 October, but it is foreseeable that the transparency of administrative process with regards to licensing, and punitive measures, will create a more secure and predictable corporate environment, where regional idiosyncrasies are increasingly ironed out.

Such aims would appear to tie in with the stated focus on the Rule of Law during this October's Central Committee Plenary Session, and the wider anti-corruption focus adopted by the government.

Furthermore, these goals have been given an initial boost by the Shanghai High Court, which announced in July 2014, that information disclosed and held by the NCCIS could be admitted as evidence both as to an enterprise's identity and more generally.

However, it is also clear that both government bodies and companies face potentially onerous obligations, with significant sanctions where this duty is not met and no defined distinction between what constitutes a normal breach, and what should be considered 'serious'. With those running state procurement and tender processes required to consider a company's disclosure history, public listing and potentially compensation orders threatened for any breach, and a prohibition against holding office possible against management, companies will be wise to ensure that they are prepared for the first annual disclosure deadline, on 30 June 2015, and are aware of information which will fall within the ongoing duty of disclosure to avoid incurring any sanctions.

With the NCCIS now launched, it will prove an interesting nine months while all relevant bodies begin to submit information, and we do not expect a lot of the information to be provided far in advance of the relevant deadlines. More interesting, however, will be the extent to which the government authorities are willing to implement and act on the Regulations, and consequently the extent to which this move will be seen in future as a contribution to a more transparent, accountable and stable corporate environment in China.

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