

KIRKLAND ALERT

May 2017

Individuals with Ties to China Targeted in FCPA Enforcement in 2016

In 2016, both the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) increased enforcement against individuals for FCPA violations. The DOJ and SEC targeted 18 individuals for FCPA violations in total, an increase from charges against individuals in either 2014 or 2015. Of the 18 individuals targeted for FCPA enforcement, 12 (or two-thirds) were either foreign nationals or naturalized citizens of the U.S. with strong ties to foreign countries. Further, U.S. citizens who worked in China *and* Chinese citizens who worked for multinational companies with a presence in the U.S. were targeted in a significant percentage of enforcement actions by both the DOJ and SEC.

The DOJ and SEC targeted 18 individuals for FCPA violations in total, an increase from charges against individuals in either 2014 or 2015.

Below is a summary of 2016 FCPA enforcement actions against Chinese citizens and individuals with ties to China.

- *Yu Kai Yuan* — a Chinese citizen, was the subject of the SEC's first deferred prosecution agreement with an individual. Yuan was a sales executive at PTC's Chinese subsidiaries who allegedly provided improper travel, gifts and entertainment to state-owned enterprise employees in China. The deferred prosecution agreement was, according to the SEC, a result of the significant cooperation Yuan provided during the SEC's investigation of the company.
- *Jun Ping Zhang* — a U.S. citizen and the CEO of Hunan CareFx Information Technology, LLC ("CareFx"), a Chinese subsidiary of Harris Corporation, a U.S. company. Zhang was alleged by the SEC to have knowingly approved the giving of improper gifts to officials at Chinese state-owned hospitals. The gifts were improperly recorded in CareFx's books and records. Harris was not charged by the SEC or DOJ after it self-disclosed the alleged FCPA violations. Ping, however, paid a civil penalty of \$46,000.
- *Ng Lap Seng* — a Chinese citizen and the owner and chairman of a Macau real estate group was charged with FCPA violations in a superseding indictment filed in November 2016. The superseding indictment alleged that Ng paid bribes to the former president of the U.N. General Assembly and a deputy ambassador of the Dominican Republic to obtain official U.N. support for a conference center in Macau that Ng's company planned to construct. Ng has pleaded not guilty to the charges.
- *Jeff Yin* — a naturalized U.S. citizen who served as the principal assistant to Ng Lap Seng was charged with FCPA violations for assisting Ng's bribery scheme. Yin has pleaded not guilty to the charges.

These cases demonstrate that the possibility of being held individually liable for FCPA violations is no longer as remote as once thought for U.S. citizens working in China *and* Chinese citizens working for multinational companies and their subsidiaries. This includes individuals at all levels, from senior- to mid-level management to sales representatives. They may be charged for providing bribes directly or for approving improper payments. As China remains a key target for FCPA enforcement by the DOJ and SEC, the likelihood of more enforcement against individuals with ties to China is likely to continue in 2017.

These cases demonstrate that the possibility of being held individually liable for FCPA violations is no longer as remote as once thought for U.S. citizens working in China and Chinese citizens working for multinational companies and their subsidiaries.

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Tiana Zhang
Kirkland & Ellis International LLP
11th Floor, HSBC Building, Shanghai IFC
8 Century Avenue, Pudong New District
200120 Shanghai
P.R. China
www.kirkland.com/tzhang
+8621 3857 6305

Jodi Wu
Kirkland & Ellis International LLP
11th Floor, HSBC Building, Shanghai IFC
8 Century Avenue, Pudong New District
200120 Shanghai
P.R. China
www.kirkland.com/jwu
+8621 3587 6337

Chang Liu
Kirkland & Ellis International LLP
11th Floor, HSBC Building, Shanghai IFC
8 Century Avenue, Pudong New District
200120 Shanghai
P.R. China
www.kirkland.com/cliu
+8621 3587 6329

This communication is distributed with the understanding that the author, publisher and distributor of this communication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, this communication may constitute Attorney Advertising.

© 2017 KIRKLAND & ELLIS INTERNATIONAL LLP. All rights reserved.

www.kirkland.com