

# Chasing Foxes: What the Chinese Anti-Corruption Hunt Means for Australian Business



Chinese President Xi Jinping has announced the largest crackdown on corruption that China has seen. Under the recently named “Operation Fox Hunt” initiative, China has sought out Australia’s assistance in its quest to boost anti-corruption efforts, and in particular to identify and repatriate the proceeds of corruption. With renewed G20 commitments on anti-corruption and the Australia-China Free Trade Agreement both confirmed in November 2014, such requests are likely to become easier, more frequent and have direct implications for Australian businesses.

In this article, FTI Consulting considers the current state of play in multinational corruption investigations, the likely directions for the future and what the hunt may mean for Australia.

## Operation Fox Hunt

The current Chinese government response to the illicit outpouring of capital from China is a crackdown named “Operation Fox Hunt.” Launched in mid-2014 and driven by the dual needs of improving domestic perceptions of the government – which is currently seen as infected with endemic corruption – and reassuring outsiders of China’s standing as an attractive target for investment and trade, Fox Hunt has the mandate to identify and prosecute those responsible for corruption at all levels of government.

As the Chinese middle-class grows and more people aspire to improved socioeconomic positions, they have less tolerance for unnecessary bureaucracy driven by officials that are generally perceived as corrupt. This growing discontent has

underpinned President Xi’s important decision to prioritise the fight against corruption high on the country’s political, social and economic agenda. Furthermore, China’s strong commitment to realising its ambitious targets for economic growth means ‘the hunt’ is definitely on, bringing with it renewed emphasis on co-operation in multi-jurisdictional investigations.

Since the beginning of Operation Fox Hunt Chinese authorities have made a number of high-profile arrests based on allegations of corruption, many of which have involved very public trials and lengthy prison terms, or even death sentences, being handed down to the convicted. The trials have targeted corrupt officials at all levels of the Chinese government and have been covered closely by the Chinese state media. The overseas component of Fox Hunt has also started to see results. In October 2014, *Beijing News* reported the successful arrest and repatriation of two people from Thailand and one from Nigeria, all now to face trial. Meanwhile, the Chinese government has publicly offered leniency to those suspected of corruption who return voluntarily.

Given the favourable response these events have received among the Chinese people, as signs of government commitment to stamp out graft, the efforts are likely to continue.

Until recently, extradition to China from countries like Australia, the UK and Canada had been complicated by the use of the death penalty in some Chinese corruption cases and the lack of existing extradition treaties. Death penalties have traditionally hindered law enforcement and mutual legal assistance co-operation for prosecutions and subsequent extradition processes. To avoid these problems the focus has been concentrated on the pursuit of corrupt funds via quasi-criminal, proceeds of crime or civil legal mechanisms. The work of the G20 Anti-Corruption Working Group has been central to these efforts.

## Anti-Corruption and the G20

At the St. Petersburg G20 meeting in 2013, the leaders declared ongoing commitment and co-operation in tackling corruption through the Anti-Corruption Working Group. This body, originally established in 2010, has continued to meet regularly throughout the years with the aim of advancing the prevention, detection and prosecution of corruption in co-operation with the Organisation for Economic Co-operation and Development and the World Bank.

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Under the G20 2013-2014 Anti-Corruption Action Plan, member states agreed, "To strengthen international co-operation to assist our own and others' efforts to tackle corruption and bribery and *facilitate asset recovery*" (author's emphasis). Under this broad heading, the members agreed to share information on technical aspects of asset recovery, communicate and share best practice experience, and increase the sharing of information between domestic and international organisations.

One important outcome of these agreements, led by Australia, was the publication of step-by-step asset recovery guides for each member state. Freely available, the guides outline how asset recovery requests can be made to each member country and the domestic legal procedures involved. While the document demonstrates a commitment to the agreement, it remains to be seen how effective the current frameworks are in practice.

Given the significant sums involved, asset recovery will remain a key discussion point for international bodies such as the G20 and other regional forums. Recent reports have brought home the point of China's efforts and aspirations in this area. Recently Australian media reported on at least one instance where the proceeds of corruption may have been used to purchase several properties in Australia, while other commentaries have long identified Australia and Canada as destinations for the investment of corrupt funds.<sup>1</sup> In response the Chinese government recently requested and received agreement from Australian Federal Police, assistance in the seizure and repatriation of assets of corrupt officials in Australia in line with the G20 agreements.<sup>2</sup>

While in its infancy, this operation could have real impacts on investments in Australia. Recent reports in the Australian media have emphasised the investment of corrupt funds in the local residential property market, however, considering Australia's Significant Investor Visa program, it is likely funds have also been invested in other assets including businesses, developments or infrastructure works. These investments could be significantly impacted or they could have negative on-flow effects for related businesses and investors. Many Australian companies have been the beneficiaries of external investment or joint partnerships that, if shown to involve the proceeds of corruption, bribery, fraud and/or misappropriation, could be subject to seizure and the repatriation of their value under the asset recovery provisions.

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Recent signs and activities indicate that the Chinese government won't stop at asset recovery. As reported in the *Australian Financial Review*, leaders at the APEC Summit in Beijing signed on to the Beijing declaration on anti-corruption. China has requested that an extradition treaty be part of the agreement and the Australian government is, among others, considering the request carefully. Such an agreement with China would be a first and complicated by several factors. Like extradition treaties with other countries, including the U.S., Australia will probably stipulate that no extradition can occur where the death penalty is involved. In actually executing the agreement, differences between the Australian and Chinese legal process will likely lead to protracted legal proceedings in Australia in relation to any extradition request, with no guarantees on the outcome.

### What's Next?

At the recent G20 meeting in Brisbane, the leaders committed to the 2014-2015 Anti-Corruption Action Plan to further the implementation and ratification of the United Nations Convention Against Corruption. Advancing on the previous actions, the plan agrees to improved beneficial ownership transparency; the criminalisation of bribery as well as the solicitation of bribes; greater public sector integrity; and transparency and increased focus on international co-operation and information sharing arrangements. In addition, the agreement designated a number of sectors, including extractives, customs, fisheries, forestry and construction, that are at a higher risk for corruption and has furthermore committed to identifying best practice methods, including increased due diligence, to detect and prevent instances of corruption in these areas.

Over the coming year, the practical form of these agreements will become clearer. The agreement made under the 2013-2014 Action Plan has facilitated the recent co-operative agreements on asset recovery and this trend is likely to continue. On this issue, China is ahead of the pack, but other developing economies are also seeking international support in retrieving the funds stolen from their countries due to corruption. The Indian government, for instance, has recently sought Swiss co-operation to identify and repatriate illicit funds.<sup>3</sup> Success in the retrieval of proceeds of corruption by one country is likely to encourage similar efforts by others.

<sup>1</sup> [http://www.afr.com/p/world/afp\\_follows\\_chinese\\_fugitive\\_money\\_cdttdEcm00Q2FxWLixWc6qI](http://www.afr.com/p/world/afp_follows_chinese_fugitive_money_cdttdEcm00Q2FxWLixWc6qI)

<sup>2</sup> <http://www.smh.com.au/world/australia-set-to-seize-assets-of-corrupt-chinese-officials-20141020-118kl3.html#ixzz3IA0wPgWd>

<sup>3</sup> <http://timesofindia.indiatimes.com/india/Black-money-Switzerland-agrees-to-help-India-with-time-bound-information/articleshow/44829662.cms>

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Retrieving even a fraction of the billions of dollars lost to corruption each year could be critical to the ambitions of growth highlighted by many emerging economies.

In terms of Australia's cooperation with China, the recent signing of the Free Trade Agreement between the two parties only

strengthens this incentive. Australia has increased motive to assist the Chinese government in their fight against corruption in order to protect the competitiveness of the new export market.

The agreements are not, however, without some sticking points. Despite committing to the plan surprisingly quickly, there remain some questions about China's willingness to open up to greater transparency. In the area of beneficial ownership, the Chinese government has sought to decrease the public availability of corporate records and information on Chinese companies making it difficult for businesses in Australia to verify, validate and substantiate Chinese investors' backgrounds and the origins of funds. As with all multinational agreements, the results are likely to differ significantly from the intent.



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