

Evolution of international and Chinese anti-bribery and corruption compliance programs

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Abstract

Purpose – The purpose of this study is to explore the regulatory framework in China and the extent to which Chinese multinationals have implemented and disclosed their anti-bribery and corruption (ABC) compliance practices. This is done against the backdrop of the evolving international ABC compliance standards.

Design/methodology/approach – This study is based on detailed reviews of the ABC compliance standards of international organizations; legislation passed by the USA, the UK and Chinese Governments; seven semi-structured interviews with leading experts in the field; and comparisons of ABC program disclosures of four Chinese with four best-in-class western multinational corporations.

Findings – A high level of convergence was found in the ABC standards published by the international organizations. Several positive features were found in the Chinese ABC regulatory frameworks but our findings indicate that there is minimal disclosure around ABC compliance program practices. This paper shows that a transparent disclosure would represent an easy win for Chinese multinational corporations and contribute to raising their reputations internationally.

Research limitations/implications – While there are numerous studies in the law literature on ABC compliance standards and the extent to which they are effective in achieving their objectives, this is an emergent area in management research, to which our study makes a contribution. Future research could explore how other emerging economies are tackling this important issue.

Practical implications – By proactively adopting ABC compliance practices, corporations can seize the ethical high ground and build solid reputations with their stakeholders.

Originality/value – It is believed that this study is the first academic study that compares Chinese and international ABC standards.

Keywords Corporate governance, Corruption, Risk management, Code of conducts, Corporate ethics

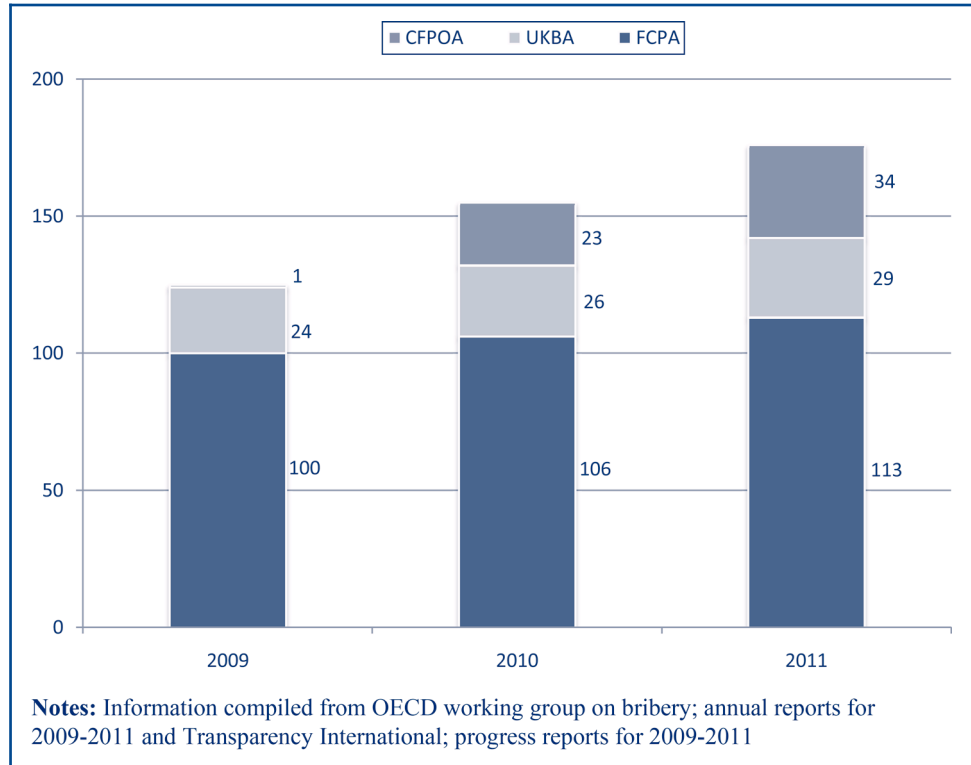
Paper type General review

1. Introduction

The number of corruption investigations involving multinational corporations (MNCs) has increased significantly over the past several years (Figure 1). Costly regulatory fines, placement of compliance monitors within a company's operations and other debilitating sanctions have had significant operational and reputational implications on the organizations at fault. The Siemens bribery scandal led the company in 2008 to agree to US\$1.6bn in legal settlements to the US and European authorities, and required the new CEO to replace 80 per cent of the top-tier, 70 per cent of the second-tier and 40 per cent of the third-tier executives (Watson, 2013). These penalties have no doubt inspired other commercial establishments to take action, motivating them to raise their own standards for business conduct.

Over the past three decades, the business case for preserving a company's reputation has been enhanced due to the creation of numerous anti-bribery and corruption (ABC) laws and conventions. While commercial enterprises invest significant resources in implementing these programs, there continues to be uncertainty as to the operational

Figure 1 Cumulative number of ongoing CFPOA/FCPA/UKBA investigations, 2009-2011



requirements for their implementation. Considering the ample literature on the subject, it is no wonder that many MNCs struggle with what features should be implemented.

Home to the world's second largest and fastest-growing economy, the economic influence of Chinese MNCs outside China's borders cannot be ignored. The largest exporter in the world has recently become a significant investor abroad, with Chinese outbound foreign direct investment (FDI) surpassing inbound FDI for the first time in 2015. However, despite an increasing presence in foreign markets, there is a perception that Chinese business practices are misaligned with Western-based governance models. Until these perceptions are negated, the Chinese will continue to experience mistrust. This may limit business opportunities, especially from governments, business leaders and citizens based in Western countries.

The results of Ernst and Young's (Ernst and Young, 2013) Asia Pacific Fraud Survey indicate that while the Chinese "Government's commitment to fight corruption is a significant stride in the right direction", concerns remain (Ernst and Young, 2013, p. 16). Chinese companies included in the survey believe that commitment from top leaders is lacking, with 34 per cent considering that "company management is likely to take shortcuts when economic conditions are tough" (Ernst and Young, 2013, p. 2). One way of reducing this mistrust is to have the leaders of Chinese MNCs demonstrate their commitment to international ABC compliance standards. This could be accomplished by disclosing ABC compliance practices on corporate websites and in annual reports. In this study, we seek answers to two specific research questions:

RQ1. What are China's legal and regulatory requirements for ABC compliance?

RQ2. To what extent have Chinese MNCs adopted international ABC compliance standards and how have they disclosed their practices?

2. Literature review

Gordon and Miyake (2001, p. 166) explored the role of corporate codes of conduct in combating bribery, noting the “growing compliance pressures emanating from a legal environment that is evolving rapidly, as many countries enact or seek to extend their anti-bribery laws”. Cleveland *et al.* (2009) provided comprehensive documentation of the evolution of international “hard law” mechanisms such as the US Foreign Corrupt Practices Act (FCPA); “soft law” mechanisms such as the codes of conduct promulgated by the United Nations and the Organization for Economic Cooperation and Development (OECD); and enforcement mechanisms (Department of Justice, Securities and Exchange Commission, etc.) over time. They discussed the situation in the BRIC countries (Brazil, Russia, India and China) and called for a particular emphasis on Transparency International’s (TI) high Bribe Payer Index countries. Wanyama *et al.* (2013) examined how stakeholders view the issue of corporate governance in a developing country, specifically Uganda, and found that they take a broad view of the topic, with a particular emphasis on how it should address endemic corruption. Adegbite (2012) studied the issue of corporate governance within the unique institutional landscape of Nigeria and urged greater attention to institutional context within each country in the implementation of corporate governance codes.

As a first step, our study constitutes an important update on the work of Cleveland *et al.* (2009), both with respect to the evolution of international ABC compliance standards. More importantly, it examines their adoption and enforcement in China, where there have been several important recent developments. Our study is also the first, to our knowledge, to make explicit comparisons on the disclosure practices of leading Chinese MNCs and their Western counterparts.

3. Research methods

Our data are primarily of a qualitative nature, although quantitative information has been drawn from survey results, regulatory enforcement actions and other statistical findings. We began by documenting the evolution of international anti-bribery legislation, starting with the FCPA in 1977, and codes of conduct introduced by multilateral organizations. We then augmented our data with materials published by international organizations focused on evaluating ABC compliance standards, primarily within a business context. Subsequently, we conducted seven semi-structured interviews with leading experts in the area of ABC compliance (Table I), with regards to expectations for Chinese MNCs.

All interviews were conducted via phone and lasted approximately 1 h in length. The intention of the interview was to facilitate dialogue and gather opinions and personal knowledge relating to the area of Chinese support for ABC compliance practices. A notification email and an interview guide were provided to all of the interviewees (Appendix). The interviews were not recorded verbatim, but notes were taken by one of the

Table I List of interviewees

<i>Organization</i>	<i>Name and title of interviewee</i>
Trace International Chinese State-owned Enterprise Ethics and Compliance Officer Association United Nations Global Compact	Associate, Advisory Services–China Two interviewees Tim Mazur, (Past) Chief Operating Officer Anti-Corruption Expert Transparency and Anti-Corruption Board Member
Transparency International Directorate for Financial and Enterprise Affairs, OECD Austrian International Standards Institute (ISO Delegation)	Analyst Anti-Corruption–China Subject Matter Expert, Austria

researchers. Finally, we conducted a comparison of the ABC disclosure practices of four Chinese MNCs with four best-in-class Western counterparts.

4. Evolution of international anti-bribery and corruption compliance standards

4.1 The early history of anti-bribery and corruption compliance

Compliance elements were first introduced in the early 1990s when the USA Sentencing Commission submitted the *Federal Sentencing Guidelines for Organizations (FSGO)* to Congress. The guidelines were established to set standards for sentencing by federal judges. The *FSGO* includes a *Guidelines Manual (GM)* which became effective on November 1, 1991. The inclusion of Chapter 8 (*Sentencing of Organizations*) was partially a response to corporations that violated the 1977 US *FCPA*. Its roots lie in the discovery in the early 1970s of a “widespread pattern of corrupt payments to foreign government officials by USA companies” (Moyer, 2014, p. 3).

The US Securities and Exchange Commission established a voluntary disclosure program whereby companies that admitted to making these off-the-book payments could escape prosecution, on the condition that the corporations agreed to implement a corporate compliance program. In total, 400 companies admitted to having paid approximately US\$300m in illicit payments to foreign officials, including political parties (Moyer, 2014).

4.2 International compliance standards

A number of other international conventions were also instrumental in helping to focus greater attention on these issues. The first of these, the *Inter-American Convention against Corruption*, was passed in 1996 and signaled the start of a series of ratifications of international anti-corruption conventions, with two being of international significance.

The first came into force on February 15, 1999 and is called the *OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (OECD Convention)*. By 2015, 41 countries (34 members and 7 non-members) signed and ratified the *OECD Convention*. It is the first and only international anti-corruption instrument that focuses on the *supply side* of the bribery transaction (OECD, UNODC, and World Bank, 2013). China is neither an OECD member nor has it signed the convention as a non-member country. In February 2010, the *Good Practice Guidance on Internal Controls, Ethics and Compliance (GPG)* was published by the OECD (OECD GPG, 2010).

The OECD, in conjunction with the United Nations Office on Drugs and Crime (UNODC) and the World Bank, also released in 2013 its *Anti-Corruption Ethics and Compliance Handbook for Business (OECD Handbook)*. Its strength lies in its guidance on how to conduct ABC risk assessments (Section B of the Handbook) as well as its review of the various ABC compliance publications issued over the past decades. “A comparison of these instruments reveals that they all largely include the same basic anti-corruption ethics and compliance elements” (OECD, UNODC, and World Bank, 2013, p. 3). It does not however provide much guidance on how to implement the standards within a multinational context.

The second influential international convention that was passed during the 1996 to 2005 time period is the *UN Convention against Corruption (UNCAC)*. It entered into force on December 14, 2005. It is considered to be the most aggressive and all-encompassing of all international conventions. Article 12 focuses on the role of the private sector in fighting corruption. The OECD, UNODC, and World Bank (2013) shows its unerring commitment to the role the private sector must play in the anti-corruption campaign.

4.3 The UK Bribery Act, 2010

The UK Bribery Act 2010 (UKBA) came into effect on July 1, 2011 and is one of the most noteworthy pieces of domestic bribery legislation passed in recent years, having raised the bar on other countries' standards. The UK business community initially expressed concern

over its extraterritoriality jurisdiction, business hospitality, vicarious liability and corporate compliance requirements. The Act does contain an “affirmative defense under which corporations may demonstrate that they have in place adequate procedures to prevent such conduct”. There is nothing in the UK legislation however that differs significantly from guidelines proposed by the US authorities or other international organizations.

4.4 Other standard setters

In September 2010, the World Bank's Integrity Vice-Presidency appointed an Integrity Compliance Officer who monitors entities sanctioned by the World Bank, helping them to clean up their operations and restore them to good standing. Other standards worthy of note include TI's *Business Principles for Countering Bribery*, the World Economic Forum's *Partnering against Corruption Initiative* and the International Chamber of Commerce's *Rules on Combating Corruption*. An earlier publication by the Foundation of the Ethics and Compliance Officers Association (ECO) followed a similar intention when it too published its *Ethics and Compliance Handbook: A Practical Guide from Leading Organizations* (Ethics and Compliance Officers Association, 2008). Table II provides a high-level comparison of the principal international conventions and domestic anti-bribery laws.

5. Anti-bribery and corruption compliance – China's regulations

5.1 Corruption and China

According to Transparency International's 2014 Corruption Perceptions Index (CPI), China received a score of 36 out of a possible 100 points (Transparency International, CPI, 2014),

Table II High-level comparison of international conventions and domestic bribery laws					
Element description	OECD convention	UNCAC	FCPA	UK Bribery Act, 2010	China
International Business Transactions	✓	Broader focus	✓	Broader Focus	✓
Bribery Prohibited	Giving	Giving and receiving	Giving	Giving and receiving	Giving and receiving
Bribery Entities	To public officials	Public and private sector individuals	To public officials	Public and private sector individuals	Public and private sector individuals
Advantage Sought	Obtain business or other improper advantage	Undue advantage	Improper advantage to obtain or retain business	Improper Action of more concern than advantage	A payment in the form of property
Corrupt Intent	✓	✓	✓	✓	✓
Books, Records & Controls	✓	✓	✓	✓	Accounting and Unfair Competition Law
Facilitation Payments	Silent	Prohibits	Silent	Prohibits	No exemptions or affirmative defenses
Payment Types	Offer, promise or give undue pecuniary or other advantage	Trading in influence, misappropriation of assets + embezzlement	Paying, offering or promising to pay \$ or anything of value	Offers, promises or gives a financial or other advantage	Not much guidance - must be in the form of property & a relatively large amount
Payment Purpose	In order that officials act or refrain	In order that official act or refrain from acting in relation to official duties	Corrupt intent/Misuse position	Induce to person to performance improperly relevant function or activity	Obtaining an improper commercial benefit
Unique Aspects of the Law or Specific References	Tax deductibility money laundry extradition	Enhance transparency of activities in fight against corruption	Reduced penalties for existence of strong compliance program	Offense is failing to prevent bribery-adequate procedures	Minimal enforcement to date

Source: Compiled by authors

indicating that the country continues to be perceived as a corrupt region of the world[1]. From 2008 to 2012, 20 per cent of FCPA enforcement actions involved businesses conducted in China (Zwisler and Yoost, 2013). Deloitte's Forensics Center reported that 55 per cent of executives said they were worried about corruption issues when conducting business in China (Zwisler and Yoost, 2013). Others (Pei, 1999) estimate that corruption may cost China 4 per cent of its annual gross domestic product (GDP).

Wedeman (2004) takes a contrary view saying that "while corruption started to accelerate in the mid-1990s, the country is still not exceptionally corrupt either in global terms or by historical standards". Ernst and Young's (2013, p. 16) Asia Pacific Fraud Survey however indicates that a more positive outlook than perceived in prior years appears to be emerging:

Within China, regulators appear to be effectively improving their efforts to tackle fraud and corruption with 35 per cent of our survey respondents believing that government efforts against bribery have had a substantial impact [. . .] only 9 per cent of companies said that using bribery to win contracts is common practice.

With a population of over 1.35 billion, China has the second largest economy in the world with a 2013 GDP of US\$9.240 trillion (World Bank 2014a, 2014b), and is soon expected to become the largest. From a global business perspective, an increased presence of Chinese corporations in foreign markets is clear[2]. China will need to demonstrate compliance with international and its own foreign bribery laws, including holding offenders accountable for both foreign and domestic offences. Furthermore, Chinese MNCs will be expected to adopt international ABC compliance standards, including disclosure of their compliance practices. Greater transparency will lend support in changing global perceptions about the business practices of Chinese MNCs. "Chinese ABC legislation is in its nascent phase; there is no unified code like the USA FCPA [or the UKBA], only a collection of laws that taken together, function as ABC legislation" (Control Risks Group, 2014, p. 1).

5.2 China's foreign bribery statutes

The People's Republic of China (PRC) has been a signatory to the UNCAC since 2003, with ratification occurring in 2005. Effective May 1, 2011, China amended Article 164 of its Criminal Law (the Foreign Bribery Article) which prohibits the giving of bribes to foreign officials (also known as the Eighth Amendment). "This amendment brought the PRC into line with Article 16(1) of the UNCAC" (Fry, 2013). Article 164 specifies that "where an [organization] violates [the commercial bribery provision or Foreign Bribery Article], [that organization] shall be subject to criminal fines and the management personnel and other personnel directly responsible shall be subject to [both imprisonment and criminal fines]" (Fry, 2013, p. 60). To date, there has never been a publicly disclosed case relating to bribery of foreign officials under China's Foreign Bribery Article.

Several Chinese MNCs have been debarred by the World Bank for bribery-related actions as listed on the *World Bank's Listing of Ineligible Firms and Individuals* (World Bank, 2014a, 2014b).

Spalding (2011) cites that Chinese FDIs rose from \$3bn in 1991 to \$35bn in 2003 and that these were deployed to "maximize the benefits to the state [. . .] focusing on energy security, geopolitical positioning and national competitiveness" (Spalding, 2011; see also endnote [2]). The article concludes that the Chinese FDI has been driven by a focus on profits and not necessarily on compliance with the law. Similarly, while Fry (2013) acknowledges China's accomplishment in adopting the *Foreign Bribery Article*, "something very few Asia Pacific countries have managed", he questions "the country's commitment toward enforcement of the amendment to the PRC's Criminal Law" (Fry, 2013, p. 61). He concludes that the "amendment falls far short of being an FCPA for the PRC" and that it is "indeed a small step [. . .] [that] does not even address the core mandates of the [OECD]"

Convention” (Fry, 2013, p. 62). He concludes that the eighth amendment is a “worthwhile addition to the PRC’s Criminal Law” but that describing it “as anything other than a first step [. . .] is rather a stretch” (Fry, 2013, p. 84).

5.3 China’s domestic bribery laws

As Chow (2012) points out, China has two sets of domestic anti-bribery laws: one for official corruption (payment to state officials) and the other for commercial bribery (bribes between private enterprises). Official corruption is covered under Articles 389-395 of the PRC Criminal Law, whereas commercial bribery is governed by Article 8 of the Anti-Unfair Competition Law. Chow (2012) points out that the two sets of laws are applied differently. Because most senior state officials in China are members of the Communist Party, the Party’s internal disciplinary system first investigates and then decides how to dispose of cases of official corruption. The cases are then handed over to the courts, whose role is to confirm the decisions reached by the Party. On the other hand, commercial bribery cases (those that do not involve state officials) are handled independently by the legal system. In August 2013, the State Administration for Industry and Commerce announced that it was enhancing the enforcement of commercial corruption laws (Control Risks Group, 2014).

5.4 Securities regulations and corporate governance

China’s securities regulator, the China Securities Regulatory Commission was established in 1992. The key legal framework for corporate governance in China consists of the *Company Law* (1993), the *Securities Law* (1998) and the *Code of Corporate Governance for Listed Companies* (2002). Tam (2000) suggests that: “it is perhaps ironic that in a land where the rule of law is still rudimentary at best, the governance structures that the country’s newly corporatized or privatized enterprises are required to adopt through highly prescriptive laws and regulations are replicated primarily from a model based on competitive markets”.

China’s governance practices have evolved rapidly in recent years. These improvements may have been motivated by the country’s 2001 entry into the World Trade Organization (Lin, 2004). A publication by the *World Economic Forum* (2014) suggests that 125 Chinese Globalizers have reached some level of operational success, despite having faced complex issues in a globalized operating environment[3]. The publication focuses on survey results for four key areas of success, one of which includes corporate governance practices.

Based on the results of the survey, over half of the companies were identified as “significantly ahead of their peers in establishing robust global presences” and as such the *World Economic Forum* (2014) has labeled these companies as Chinese Globalization Champions. The survey indicates that important business information is relayed to headquarters faster than other Chinese Globalizers, indicating the importance of keeping senior management (and presumably the board) apprised of key business decisions and operating results. The study also recognizes other key governance attributes including internal control frameworks, authorization levels and reporting and organizational structures (World Economic Forum, 2014). Despite on-going governance challenges within the Chinese business community, the report highlights that many Chinese MNCs have achieved success in this area.

Lin’s (2004) research on corporate governance in China indicated that since 1992, substantial progress had been made in seven areas of corporate governance. Two of these address the responsibilities of directors and their fiduciary duties (Lin, 2004). Lin’s (2004) research called for 11 improvements to Chinese corporate governance practices. One of these was at least a partial fulfillment of international ABC compliance standards insofar as it pertained to the leadership requirement (board oversight) for setting the appropriate ethical *tone from the top*. Another was to implement CEO certifications and publish a corporate code of business conduct for directors, officers and employees. This

recommendation was substantially met on May 22, 2008 by the Ministry of Finance of the PRC when it issued a circular titled *The Basic Standard for Enterprise Internal Control* (nicknamed *China-SOX* or *C-SOX*). This standard, which must be met by listed companies from July 1, 2009 and is recommended for non-listed companies, has 7 chapters and 50 articles in total. It has become China's version or equivalent of the *Sarbanes-Oxley (SOX) Act 2002*, the US federal law whose intent is to improve the quality of financial reporting practices for publicly traded enterprises, including internal controls. The Chinese equivalent (C-SOX) legislation was issued in 2008, with *Supplementing Guidelines* issued in 2010 and coming into effect on January 1, 2011, for those companies concurrently listed on the domestic Chinese and overseas markets and from January 1, 2012 onward for those listed on the *Shanghai or Shenzhen Stock Exchanges* (Ku, 2012).

C-SOX and its *Supplementing Guidelines* basically followed the requirements of the USA legislation. *C-SOX* however requires companies to focus on 18 aspects of internal controls, one element of which is to assess the corporate culture of an enterprise (Ku, 2012). It is evident that Chinese securities regulations are supporting a strong system of internal controls and compliance practices.

We were unable to locate any other Chinese legal or regulatory requirements that specifically call for the adoption of international ABC compliance standards. Our interviewees were neither aware of any other Chinese-led ABC compliance initiatives/related regulations nor of any Chinese MNC that had a particularly robust ABC compliance program. It remains to be seen how long it will take the Chinese regulators to initiate further guidance in this area, especially as the adoption of ABC compliance practices by an MNC could serve as a defense against corruption-related prosecutions.

6. Anti-bribery and corruption compliance – the Chinese perspective

6.1 Compliance requirements

We will review the current state of ABC compliance within the Chinese business context and primarily draw from materials published in the *Business Integrity Handbook* [published by the Chinese Business Leaders Forum (CBLF)] and *Transparency International's 2013 Report on Transparency in Corporate Reporting: Assessing Emerging Market Multinationals*. We will also include feedback from subject matter experts on Chinese ABC compliance. The intention of this discussion is to assess the extent to which Chinese MNCs have adopted and disclosed their ABC compliance practices.

6.2 The Chinese Business Leaders Forum's Business Integrity Handbook

The CBLF's *Business Integrity Handbook* (BIH), published in 2012, suggests that "in addition to domestic laws, Chinese companies are increasingly exposed to enforcement actions taken by overseas regulators for breaching overseas anti-corruption laws" (China Business Leaders Forum, 2012, p. 21). The publication also highlights how in recent years, due to difficulties in obtaining domestic financing, many Chinese companies have chosen to list on overseas stock markets, particularly in the USA. "Given relatively weak corporate governance and internal control frameworks, these companies have become targets for USA enforcement actions for alleged violations of the *FCPA*" (China Business Leaders Forum, 2012, p. 21).

The document cites the World and Asian Development Banks' debarment (blacklist) statistics for Chinese entities that have engaged in "fraudulent, corrupt, collusive, coercive or obstructive practices" (China Business Leaders Forum, 2012) and submits that the 2011 amendments to China's Criminal Law (Article 164) should signal to "Chinese-based companies that the bribery of public officials, whether inside or outside of China, is not acceptable and [that] they have to *do good and play fair* in the international marketplace, or else they will be subject to criminal sanctions in China [and abroad]" (BIH 2012, p. 21).

The BIH has several strengths, not least of which is that it was prepared by a number of contributing authors who all have China-based compliance experience. One of the elements that make the document unique is its focus on compliance-related vocabulary and definitions, with an emphasis being placed on those terms that might be unfamiliar to Chinese business persons (*China Business Leaders Forum, 2012*, p. 23). It likewise describes the necessary elements for an ABC compliance program, one “that would assist in helping to prevent bribery and could subsequently be utilized as a defence, should a company be accused or found guilty of corruption” (*China Business Leaders Forum, 2012*, p. 37). The document also provides a self-assessment toolkit that allows its users to assess their compliance risk (*China Business Leaders Forum, 2012*, p. 45).

6.3 Anti-bribery and corruption compliance, the Chinese way

The BIH provides an overview of ten key principles that should be adopted by all companies (*China Business Leaders Forum, 2012*, p. 37):

1. top-level commitment;
2. written policies, management procedures and codes of conduct;
3. ongoing education and training programs;
4. effective communication lines and anonymous reporting channels;
5. identification of problem areas through independent monitoring, reviews of business relationships and auditing of finance and operations;
6. a screening and due diligence model before entering contractual relationships with any business partner or intermediary;
7. regular risk assessments;
8. investigative and disciplinary action for violations;
9. documentation; and
10. continual improvement (*China Business Leaders Forum, 2012*).

For the most part, these elements align with the compliance requirements as issued by the OECD and the UK and the US regulators.

6.4 Learnings

Several sources have suggested that the ABC compliance programs for the Chinese MNCs should be set up in China, “under the direction of a senior compliance officer who is permanently stationed in China” (*Chow, 2012*, p. 1036). Stephan Rothlin, general secretary of Beijing’s Center for International Business Ethics, stated that “if you want to talk about business ethics in China, don’t set yourself up as the western expert imposing foreign models on the Chinese” (*Shulman, 2014*).

Another factor for ensuring the success of a China-led ABC compliance program is to ensure that clear written rules are provided with specific examples of what is prohibited and make it clear that violations will result in termination of employment (*Chow 2012*, p. 1036). *Chow (2012)* writes that most employees appear to believe [. . .]:

[. . .] that bribes are commonly used and are harmless. The cultural attitude that there is nothing wrong with petty commercial bribery is so deeply ingrained that attempting to teach employees a different attitude could be futile and will probably be met with ridicule and derision. However, what employees do care about is losing their jobs, so an effective tactic would be a clear rule that giving bribes of any kind will result in immediate dismissal and in appropriate cases, a report of the incident to the PRC enforcement authorities.

Tim Mazur, the former Chief Operating Officer of the ECOA[4], commented that the Chinese Government delegates who visited ECOA in 2013 and 2014 were clear that creating their own ECOA-type organization would serve Chinese companies better than partnering with

a Western-focused group such as the ECOA. As Mazur summarized, “while no Chinese MNC had yet approached the ECOA for guidance in the area of ethics and compliance, the Association (i.e. the ECOA) felt it was a grand compliment that they were visited by the Chinese officials”. Mazur also commented that “as with so many other Chinese led initiatives, the Chinese will learn from the west and adopt practices that will likely exceed initial expectations”.

7. Anti-bribery and corruption compliance disclosures in China

According to TI, “the first line of defence against the risk of bribery and corruption must be a comprehensive anti-corruption program which is fully implemented and monitored on a regular basis” (Transparency International, 2013, p. 14). TI suggests that the recommended elements of such a program are as described in its 2009 publication titled *Business Principles for Countering Bribery*. TI also “believes that public disclosure of measures to counter corruption is critical to improving corporate transparency” (Transparency International, 2013) and recommends that disclosure of these measures should incorporate at a minimum seven basic reporting elements as outlined in its 2009 publication *Reporting Guidance on the 10th Principle against Corruption* (Transparency International, 2013, p. 12).

For the most part, MNCs, especially those that are signatories to the United Nations Global Compact, have embraced these recommendations and have provided disclosures for at least the seven basic elements. These disclosures are generally made in either a company’s annual corporate social responsibility (sustainability) report or on their corporate websites.

It could be argued that reporting on a company’s ABC compliance practices does not necessarily provide assurance that its actual business practices are corruption-free. Nevertheless, TI believes that:

The information a company reports about its anti-corruption systems is an indicator of its awareness and commitment on combating corruption. While robust disclosure practices do not reduce all risk of corruption, they are a sign of the right tone from top management, reflecting an awareness of corruption risks and a commitment to manage them effectively (Transparency in Corporate Reporting, TI 2013).

In October 2013, TI published the results of its research into the public reporting practices of 100 emerging market companies. The publication is titled *Transparency in Corporate Reporting: Assessing Emerging Market Multinationals*. The research was performed on 100 companies from the list of 2011 Global Challengers[5]. The “results show[ed] that companies from China lag behind in every dimension with an overall score of 20 per cent [...] considering their growing influence in markets around the world, this poor performance is of concern” (Transparency International, 2013, p. 4). On October 17, 2013, The *Times* highlighted that “eight of the ten worst-performing companies, all with scores below one, were Chinese” (*The Times*, 2013). Based on the results of the Transparency International, 2013, findings for Chinese MNCs and their ABC program disclosure practices, we compared the TI disclosure ratings of the top-, bottom- and (two randomly selected) middle-scoring Chinese companies[6]. We then reviewed the corporate websites of each of these companies with the intention of evaluating their ABC program disclosure practices. The results of this review are summarized in Table III and for the most part suggest that improvements could be made in terms of disclosure of the relevant ABC compliance elements for each of the four (Chinese) companies. In most cases, disclosures of ABC practices were minimal with content obscured in governance documents or executive leadership messages, most of which were difficult to locate on the website. Table IV provides an overview of four comparator (Western-based) companies in similar industries to the four Chinese companies reviewed in Table III. All of the ABC disclosure practices of these four (Western-based) companies exceeded those of their Chinese comparators. We believe that all four are excellent examples of *best-in-class* ABC

Table III ABC compliance program disclosures—four Chinese MNCs

Company name (All are SOE's)	Lenovo Group	Huawei Technologies	CNOOC	Shanghai Electric Group
<i>TI Anti-corruption program disclosure score</i>	73%	62%	23%	15%
<i>Disclosure of code of conduct</i>	✓	Huawei business conduct guidelines + suppliers guidelines (referred to but not found on website)	Only the code of conduct for directors and senior officers was disclosed on the website	No
Whistle blowing helpline	✓		Called complaints and reporting line	
Externally administered	✓	Nothing was noted regarding hotline reporting capabilities	Administered by audit and supervision department	No
Non-retaliation clause	✓			
Anti-Bribery and corruption compliance commitment stated	✓	✓	CSR 2014—operates in compliance with law and regulations + adhering to a high standard of business ethics and corporate governance	No
<i>Website disclosure of AC program</i>	✓	✓	No	No
<i>Disclosure of performance</i>	No	No	No	No
<i>Anti-Corruption commitment</i>	✓	Noted in sustainability report	No	No

Source: Compiled by authors from the webpages of the companies between August and November 2014

disclosure practices. These could easily be adopted by Chinese MNCs. We are confident that by enhancing transparency in this area of reporting, Chinese MNCs could easily exceed [Transparency International's \(2013\)](#) assessment scores.

8. Conclusion and future research directions

In summary, it is apparent that Chinese MNCs have room for improvement in their ABC compliance programs and related disclosure practices. In our opinion, this is an easy win for Chinese companies. At the very least, Chinese MNCs could influence change by enhancing their ABC compliance program disclosures. It will be interesting to observe whether Chinese MNCs perceive this to be of importance, especially in light of the recent crack-down on corruption by their political leaders.

Our study updates the important work of [Cleveland et al. \(2009\)](#), who conducted an extensive survey of how international ABC compliance standards were evolving and converging. We have shown that the trend toward convergence has continued. We have also documented in detail how China, the second largest economy in the world, has responded with hard laws (legislation) and soft mechanisms (such as the CBLF's BIH) to address the serious problem of corruption in its corporate sector. Our conclusion is that there has been significant progress in a very short time. We also show that the leading Chinese corporations could register some easy wins by improving transparency through better disclosure of the compliance standards they have adopted and the related mechanisms and procedures they have implemented.

We believe that there are interesting opportunities for future research comparing corporate governance in general and ABC compliance in particular in emerging economies. For example, there have been some recent studies examining the role of formal and informal institutions in the corporate governance practices of firms in BRIC countries (Estrin and Prevezer, 2011). These suggest that informal institutions can play complementary, accommodative, competing or substitutive roles *vis-à-vis* formal institutions. Given that relationships are central to informal institutions, it would be interesting to study whether

Table IV ABC compliance program disclosures—four best-in-class comparator companies

Company name (vs Chinese comparator company)	Apple (Lenovo)	Cisco (Huawei)	BP (CNOOC)	Siemens (Shanghai Electric)
<i>Code of conduct disclosure:</i>	Apple Business Conduct Policy	Code of Business Conduct + Financial Officer Code of Ethics	BP Code of Conduct (The Code)	Siemens Business Conduct Guidelines
Director/Officers	×	✓	✓	×
Employees	✓	✓	✓	✓
Suppliers	✓	✓	✓	Information for Business Partners
Multiple languages	×	✓	✓	✓
<i>ABC program disclosure</i>	Anti-Corruption Policy	Global Anti-Corruption and Bribery Policy	BP Code of Conduct-B&C	Part of Business Conduct Guidelines
ABC policy on website	✓	✓	×	✓
Public statement against B&C	✓	✓	✓	✓
Compliance with all AC laws	✓	✓	✓	✓
Zero tolerance for B&C	✓	✓	×	✓
<i>Whistle-blowing Policy:</i>	Business Conduct Hotline	Cisco Ethics Line	Open Talk Helpline	Compliance Helpdesk Tell Us
Reporting options disclosed	✓	✓	✓	✓
Externally administered	✓	✓	✓	✓
Non-retaliation clause	✓	✓	✓	✓
Multiple languages	?	✓	✓	✓
Multiple reporting options	✓	✓	✓	✓
<i>Performance results disclosed:</i>		Refer 2013 CSR Report	Refer Website ABC Workshop	Management and Facts (refer website)
Training statistics	×	✓	✓	✓
Helpline cases and statistics	×	×	✓	✓
Employee dismissals code violations	×	×	✓	✓
<i>Political donations and lobbying</i>	Yes	Yes	Yes	Yes
<i>Annual (periodic) review/renewal of code of conduct</i>	2013 CEO email + code of conduct video	Annual Code Certification	Annual Code Certification	November 2013 CEO email and code of conduct video
<i>Participation in voluntary ABC initiatives (UNGC/EITI/PACI)</i>	?	Multiple Ethics and Compliance Initiatives Disclosed + Awards	Multiple Ethics and Compliance Initiatives Disclosed	Refer Collective Action disclosures on www.siemens.com

Source: Compiled by authors from the webpages of the companies between August and November 2014

ABC compliance is fundamentally undermined by them. At a more philosophical level, it would be interesting to explore whether national culture should be given due consideration at the time of formulating and implementing ABC compliance standards.

Notes

1. According to [Transparency International, 2014 CPI Index](#), China ranked 100th out of 177 countries; it dropped by 20 places from the 2013 publication. TI's (2011) Bribe Payer Index ranked China as 27th out of 28 countries with a score of 6.1.
2. By 2012, China was ranked third in the world as a source of FDI with approximately 16,000 Chinese investing entities establishing approximately 22,000 overseas enterprises in 179 countries and regions ([World Economic Forum, 2014](#)).
3. Chinese Globalizers are defined as Chinese MNCs, largely SOEs, which are expanding globally to reach new markets and increasingly to acquire new capabilities.
4. The Ethics and Compliance Officers Association (ECO) is exclusively for individuals responsible for their organization's ethics, compliance and business conduct programs. The ECOA is credited

with formally founding the ethics and compliance field in 1991 and has a global membership of organizations (www.theecoa.org).

5. The selection of companies was based on the Boston Consulting Group's list of Global Challengers of 2011.
6. According to TI's 2013 Transparency in Corporate Reporting: Assessing Emerging Market Multinationals, the top scoring Chinese MNC was the Lenovo Group, with a rating of 73 per cent, the lowest scoring was Shanghai Electric Group with 15 per cent. Two other companies were selected which included Huawei Technologies (62 per cent) and CNOOC (23 per cent).

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Appendix

1. Obtain information about the interviewees' contact details and qualifications including:
 - Name/Title/Organization they work for or are affiliated with.
 - Contact Details – phone number/email address/etc.
 - Professional qualifications.
 - Length of tenure working in the area of ABC compliance.
2. Assess level of familiarity with anti-bribery and corruption (ABC) compliance standards including whether they:
 - Understand the key elements of a corporate ABC compliance program.
 - Believe there is a general consensus as what constitutes international standards for ABC compliance program.
3. Assess the level of familiarity working with Chinese MNC including:
 - How much experience they have had working with Chinese MNC.
 - Their knowledge around which Chinese MNC have implemented international ABC compliance program standards.
 - Their opinions as to which of these companies have a *best-in-class* ABC compliance program.
4. Assess perceptions around the challenges Chinese MNCs face with respect to adopting international ABC compliance standards and/or cultural implications.

Allow interviewee to express other opinions about Chinese multinationals and their business conduct and/or adoption of ABC compliance standards.

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