Conviction Of Private Investigators In China Further Complicates Anti-Corruption Compliance Efforts

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The recent convictions of Peter Humphrey and his wife and business partner Yu Yingzeng demonstrate the risks corporate investigation firms face in China when they obtain or pass on information on Chinese citizens. But perhaps even more alarming for U.S. companies is the effect of such prosecutions on their efforts to comply with the Foreign Corrupt Practices Act and other anti-corruption laws, as these types of convictions stand to have a chilling effect on both companies' due diligence efforts and their internal investigations into allegations of bribery and fraud in China. Mr. Humphrey, a British citizen, and Ms. Yu, a Chinese citizen, were convicted of trafficking in personal information of Chinese citizens between 2009 and 2013 through their company ChinaWhys. ChinaWhys, which still operates an up-to-date website, markets itself as "an international business risk advisory firm with eyes in China." It offers services from "due diligence and the discreet gathering of timely business intelligence, to the vetting of partners and the screening of employees." It specifically references corruption investigations on its website. Mr. Humphrey, himself a Certified Fraud Examiner, has written extensively on the issues facing companies in China, including under the anti-corruption laws, and the ways forensic firms can assist companies to comply with their legal obligations. ChinaWhys is one of many firms in China that seeks to assist companies in conducting background checks and other due diligence, which can be more difficult in China than in other jurisdictions. Chinese officials claimed that Mr. Humphrey and Ms. Yu had, through ChinaWhys, illegally obtained the "personal household registrations" of Chinese citizens, or "hukous," as well as other personal information, for a price of $130 to $163 for each item, which they packaged into reports they sold at great profit. While it was not discussed at trial, ChinaWhys boasted many large multinational corporations as clients and may have been assisting those clients in Foreign Corrupt Practices Act compliance or investigations work. Mr. Humphrey was sentenced to two and one half years in prison (including one year served while awaiting trial) and a fine of £20,000, while Ms. Yu was sentenced to two years in prison and a £15,000 fine. The convictions reflect the challenges companies can face in conducting and maintaining appropriate due diligence in China under the FCPA or other

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anti-corruption laws. Those laws require companies to investigate potential third-party consultants, agents and business partners to ensure, among other things, that they are not (and do not have improper relationships with) government officials. Companies are also encouraged to investigate allegations of anti-corruption violations swiftly and completely, and to self-report them to the authorities. The public prosecution of individuals and companies in China for violating laws related to the collection of personal information is a deterrent to this type of diligence and reporting, because companies are now not only going to be hesitant to reach out to companies like ChinaWhys to assist in conducting due diligence, but they may also find that there are fewer companies out there in China that are willing to assist them. By enforcing laws against the collection and disclosure of personal information (allegedly often at the behest of Chinese individuals or companies that stand to lose from such a disclosure), China is imposing yet another roadblock for companies seeking to do business there. In this way, preventing access to background information may actually make it easier for individuals and entities get away with fraud, despite claims by Chinese authorities that the enforcement of privacy laws is meant to combat and root out corruption.