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# U.S., Chinese business practices becoming more compatible

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Much attention has been paid, appropriately enough, to the difficulties faced by U.S. companies seeking to capitalize on the "China miracle." Apart from the challenges inherent in tapping into a labor, consumer or supply market in a country on the other side of the world, Chinese "capitalism" -- and the set of general business practices and protocols that are part of it -- is relatively new and evolving. Many U.S. executives and their Chinese counterparts have struggled with reconciling business practices borne out of two very different historical and cultural contexts. However, as foreign investment continues to flow into China and Chinese businesses look abroad for their own opportunities, the gap is narrowing. U.S. businesses still need to be careful and vigilant in their business practices in China, but this is slowly becoming more manageable.

The concept of guanxi, loosely translated as "relationships," is a concept oft-misunderstood by Westerners, but critical to Chinese business culture: In the United States, many businesspeople develop personal relationships as a result of business interactions. In China, it is much more common to develop the personal relationship before doing business. Guanxi is sometimes explained to Westerners as providing the business framework which in the West is instead reflected in, and supported by, settled principles of contract law.

One of the difficulties that U.S. companies face in doing business in China is that they will generally be subject, in their Chinese operations, to the Western-oriented ethical and business standards reflected within the Foreign Corrupt Practices Act. Very serious consequences can result from violations of the FCPA.

The FCPA is made up of two sections: the anti-bribery provisions and the books-and-records provisions. The anti-bribery provisions of the FCPA make it unlawful for a "domestic concern," "issuer" or any person to bribe a foreign government official with anything of value for the purpose of "obtaining or retaining business" for or with, or directing business to, any person. The U.S. Securities and Exchange Commission and the U.S. Department of Justice both take the position that employees of state-owned enterprises (or SOEs) are government officials for FCPA anti-bribery purposes. A "domestic concern" is defined as an individual who is a citizen, national or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship that has its principal place of business in the United States, or which is organized under the laws of a state of the United States.

The FCPA is a reflection of basic principles of Western business ethics that seek to separate business dealings from the government officials with jurisdiction over those dealings. Yet these broad concepts can seem awkward within China, because (a) given the economic and government structure in place in China, government involvement -- as a principal party, not as a regulatory body -- is much, much more typical in Chinese transactions than in U.S. deals; and (b) gift-giving is a recognized and acceptable business practice in China.

Many Chinese executives have seen the failure (or refusal) by U.S. professionals to understand and accept that guanxi and corruption are not synonymous and that business practices that are not "Western" are not necessary immoral, illegal or inappropriate within China. This parochial attitude is often viewed by Chinese executives as, at best, evidence of inexperience and naivete with regard to Chinese business or, at worst, offensive and bigoted. This cultural sensitivity must be integrated, however, within the specific and overriding legal framework of the FCPA. As a general observation, many of the basic and common types of FCPA violations are also likely to be illegal under Chinese law.

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