

Overall Score:

60 - Weak

Legal Framework Score:

76 - Moderate

Actual Implementation Score:

43 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵⁵Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

References:

On Oct. 25, 1998, then-Premier Zhu Rongji ratified Statute No. 250, the Regulation of Social Organizations, dealing with the right to form civil society organizations (CSOs). Article 1 recognized this right. However, Articles 3 and 9 require that ruling organizations provide permission to form CSOs, and this is extremely difficult to get.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

There are many restrictions on this right in practice. For instance, it's extremely sensitive to receive funds from some foreign sources.

References:

According to the Accounting Rules of Civil Society Organizations issued by the Ministry of Civil Affairs on Jan.1, 2005, CSOs are allowed to establish one bank account of foreign currencies, implying that they are allowed to accept foreign funds.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

Article 21 of the Registration and Administration Rules of Private, Non-Enterprise Organizations (Statute No. 251), issued by the State Council of China, requires CSOs, including anti-corruption/good governance CSOs, to disclose sources of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

17

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Among all NGOs in China, about 10 percent received formal registration. All other NGOs are operating illegally.

References:

1. Zhao Xiaogang, Government Should Release Control Over Charity — An Interview with Mao Yushi, Founder of Fuping School, Southern Weekly, p.C16 & C17, Dec. 6, 2007
2. He Liu, 2009, The Survival Situation of a Typical NGO In China,” China.com.
http://www.eedu.org.cn/ngo/research/power/200902/ngo_33399.shtml
3. Xinhua News, 2008, “There are over 400,000 NGOs in China Working on Human Rights Issues,” Dec. 3.
http://news.xinhuanet.com/newscenter/2008-12/03/content_10450109.htm

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

It's hard to see the systematic influence of CSOs on the policy-making process. A 25 score is given simply because a few CSOs for example, the China Song Qing Ling Foundation and the Red Cross have some influence on policy-making, although it is extremely limited.

References:

Liu Yu, How to Protect Underprivileged Group,” Southern People's Magazine, Fairbank Center of Harvard University, July 17, 2007

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

See the report for more detail.

References:

Tania Branigan, 2009, China officials shut legal aid center," July 19, Guardian.

<http://www.guardian.co.uk/world/2009/jul/18/china-shuts-legal-aid-centre>

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

33

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

1, Tania Branigan, 2009, Chinese police detain human rights lawyer", July 30, Guardian.

<http://www.guardian.co.uk/world/2009/jul/30/china-human-rights-lawyer>

2, Ullrich Fichtner, 2009, "China's Broken Olympic Promises: Detained Activist's Kafkaesque Nightmare," Special Online International ,August 3.

<http://www.spiegel.de/international/world/0.1518.640109.00.html>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

Many people may believe the existence of such cases. However, the problem with this question is that such suspicion is not supported with solid cases.

In some cited examples, it's not possible to get a definitive conclusion that these journalists are jailed or harmed because of investigating corruption. However, given the experience of living in China, there may be some journalists who are harmed because of investigating corruption, not because of failure to complying with ethical codes.

References:

various websites

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

Suspicions exist but nothing has been proven in verifiable cases.

References:

various media reports

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Article 35 of the Chinese Constitution recognizes the right to form associations, including trade unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions in China are closely supervised by the government. There are very few independent trade unions, except in some developed areas. But many of these trade unions do not actively participate in making policy. Furthermore, this is very difficult to get a license for a trade unions without government background.

References:

1. Wang Huitong, The Development of CSOs in "Studies on Economic Rights," edited by Mao Yushi, 2007.
2. Regulation on Registration and Administration of Social Organizations.
<http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=21051>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

No private ownership of media is allowed.

References:

Chapter 2 of the Chinese Constitution

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

The Chinese constitution does allow freedom of speech in general but there are exceptions. In China, speech related to anti-socialist topics, anti-communist topics are not allowed in law. Given the fact that freedom of speech is subject to interpretation in different religious and political context, thus, there may be no a clear-cut answer to this question.

References:

Article 35 of the Chinese Constitution

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

1. The Restrictions of Media Should Be Lifted," China Youth Daily, June 26, 2007.
<http://www.cnci.gov.cn/>
2. Regulations on the Administration of Publication.
<http://vip.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=38118>
3. Measures for the Administration of Foreign-Funded Distribution Enterprises of Books, Newspapers and Journals.
<http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=45127>
4. Some Decisions of the State Council on the Entry of Non-public-owned Capital into the Cultural Industry.
<http://vip.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=58403>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

Generally, people must initiate a formal appeal to the General Administration of Press and Publication of China, which should respond to this appeal within a given period of time. If this channel fails, then going to court is the last resort.

References:

The Regulation of Publications, issued by the General Administration of Press and Publication of China and the State Council in 2001, prescribes the right of print media to be free from illegal interference by the government.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is extremely difficult to get a license because the media outlet must find one mother organization that used to be a government agency. However, no government agencies are willing to do this. Licensing really depends. If someone can find connections within government, this license can be obtained quite soon. Of course, bribery sometimes is necessary. Thus, in theory it is possible. However, in reality, it is extremely difficult.

Private sectors can get license by the so-called red-hat" approach, finding a sponsor. Unirule in 2005 did have one private media, affiliated with a Heilongjiang organization. Thus, the more accurate description of this situation is "extremely difficult, but possible if appropriate approach is taken". Sometimes, the approach means bribing the sponsors, or some other connections (Guanxi in Chinese).

References:

Some Decisions of the State Council on the Entry of the Non-public-owned Capital into the Cultural Industry.
<http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=58403>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It's extremely difficult for citizens to obtain a license if he or she is not able to find a mother organization, which is generally a government-sponsored organization.

References:

Some Decisions of the State Council on the Entry of the Non-public-owned Capital into the Cultural Industry.
<http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=58403>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

25

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

According to Article 10 of the Regulation of Radio and Broadcast, issued by the State Council on Sept. 1, 1997, entities other than the government are prohibited from establishing a broadcast media entity.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

According to the Administrative License Law, radio and TV stations can appeal to the State Administration of Radio, Film and Television or go to court,. But there is no record of such cases having ever happened, because in China only the government is allowed to establish radio and TV stations.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

According to law, only the government is eligible to establish radio or TV stations.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

According to law, only the government is eligible to establish radio or TV stations.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

25

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are many restrictions on Internet topics. For example, searching for Xu Zhiyong, a famous human rights activist, produces zero results. Some other websites, such as VOA, cannot be opened.

References:

1. David Bandurski, China's Guerrilla War for the Web," Far Eastern Economic Review, July 2008.

<http://www.feer.com/essays/2008/august/chinas-guerrilla-war-for-the-web>

2. Leanne Mezrani, "China tightens control over Web media," IT News, April 7, 2008.

http://www.itnews.com.au/News/73414_china-tightens-control-over-web-media.aspx

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are able to post some sensitive information, however, it will soon be deleted. In some cases, people cannot post information containing certain words or expressions.

References:

1. David Bandurski, China's Guerrilla War for the Web," Far Eastern Economic Review, July 2008.

<http://www.feer.com/essays/2008/august/chinas-guerrilla-war-for-the-web>

2. Leanne Mezrani, "China tightens control over Web media," IT News, April 7, 2008.

http://www.itnews.com.au/News/73414_china-tightens-control-over-web-media.aspx

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Chapter 2 of the Chinese Constitution

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

1, Rob Gifford and Melissa Block, "China Tightens Control on Corruption, Quake Stories," NPR, June 12, 2008.

<http://www.npr.org/templates/story/story.php?storyId=91441616>

2, Frederik Balfour, "China Censors Google Foreign Internet Searches," Business Week, June 21, 2009.

http://www.businessweek.com/globalbiz/blog/eyeonasia/archives/2009/06/china_censors_g_1.html

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is a reviewing panel in government whose main responsibility is to monitor news and select sensitive information, then issue a decree to the media. Media will not allowed to touch this information, or any story about it has to be approved before publication. For some minor corruption cases, the media are able to publicize the information.

References:

Li Datong, A letter to Editor in Chief of China Youth Daily," 2005, CEO&CIO

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

35

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Measures for the Administration of Foreign-Funded Distribution Enterprises of Books, Newspapers, and Journals

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

References:

All broadcast media are government owned.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

There are at least two situations in which journalists don't adhere to professional practices. One situation is that some journalists choose not to report certain news owing to political pressure from the Communist Party of China (CPC) and government organs, or the offer of monetary benefits from the concerned companies and individuals. The other situation is that some journalists deliberately misrepresent information to the audience in order to attract more readers.

References:

Gady A. Epstein, "Dark Journalism," *Forbes*, July 21, 2008

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

In China, elections are managed by the ruling party. Independent candidates are not an effective political force.

References:

Yin Donghua, Independent Candidates: Walking ahead with Difficulties," China Elections & Governance, June 1, 2007

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

In China, elections are managed by the ruling party. Independent candidates are not an effective political force.

References:

Yin Donghua, Independent Candidates: Walking ahead with Difficulties," China Elections & Governance, June 1, 2007

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

The name of reporter is Li Min, who once worked for CCTV.

References:

China News Agency, 2009, CCTV Reporter Convicted of Crime, Sentenced to 3 Years In Prison," August 4.
<http://news.sohu.com/20090804/n265709342.shtml>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

There may be some cases, but domestic news gets no coverage. and many foreign websites are blogged, thus, not able to trace it.

References:

I examined the all key search engines and found no such record.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

No such record was found.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

30
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Regulations of Disclosing Government Information was passed by the State Council on Jan.17, 2007, and recognized the right of access to government information.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Article 33 of the Decree of Government Information Disclosure, passed by China's State Council

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Citizens can request government records through the Information Opening Office. According to the law governing access to information, these requests should be acknowledged and reasons should be given in cases in which they are denied. If citizens are not satisfied with the result, they can go to court.

References:

Articles 15 and 16 of the Decree of Government Information require disclosure.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

63

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This area has seen improvement, mostly in the implementation sector. On average, this response should be within 15 days. If exceptions happen, the government should provide an explanation, according to the law. Almost all government agencies are required to disclose information and provide accessible forms for citizens to access these information.

References:

1. Unirule Center for Governance Studies, The Chinese Public Governance Indicators," Unirule Studies, 2009
2. Xinhua News Agency, "China Protects the Information Rights of the Public," April 30, 2008

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Generally, government information is cheap to obtain, such as on a website or a bulletin board. Occasionally, citizens must visit an office for more detailed information.

References:

1. Unirule Center for Governance Studies, The Chinese Public Governance Indicators," Unirule Studies, 2009
2. Xinhua News Agency, "China Protects the Information Rights of the Public," April 30, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Access to information is one area with obvious improvement. Of course, there is still room for improvement, mostly by restricting the definition of sensitive information and improving information quality. But it may take a long time to see improvements in these issues.

References:

1. Unirule Center for Governance Studies, The Chinese Public Governance Indicators,” Unirule Studies, 2009
2. “Resident suing government agency for denying information access,” Jinghua News, June 19, 2008.
<http://news.sohu.com/20080619/n257593358.shtml>
3. “Tianjin Industrial Park Residents Are Able to Check Government Documents”, China News, August 7, 2009.
http://news.022china.com/2009/08-07/124338_0.html

100: Responses to information requests typically address the requestor’s questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to law, relevant agencies must respond to appeals immediately. If extra time is required, approval from the director of the agency is needed, and the applicants must be informed. The maximum delay cannot exceed 15 working days.

Some agencies don’t respond to appeals following the protocols. see
<http://news.enorth.com.cn/system/2010/01/12/004425632.shtml>

References:

- 1, Chen Jiaying, From Weng’an event to look at information disclosure,” Renmin Wang, July 4, 2008.
http://news.xinhuanet.com/comments/2008-07/04/content_8486416.htm
- 2, Yuan Yang, “A case study of Haidian government information disclosure,” Di Yi Cai Jing Ri Bao, June 11, 2008.
<http://news.sohu.com/20080611/n257409220.shtml>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Generally, it can be achieved at very low cost. However, there do exist some cases in which higher costs exist.

References:

- 1, Chen Jiaxing, From Weng'an event to look at information disclosure," Renmin Wang, July 4, 2008.
http://news.xinhuanet.com/comments/2008-07/04/content_8486416.htm
- 2, Yuan Yang, "A case study of Haidian government information disclosure," Di Yi Cai Jing Ri Bao, June 11, 2008.
<http://news.sohu.com/20080611/n257409220.shtml>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

This issue still needs improvement.

References:

- 1, Chen Jiaxing, From Weng'an event to look at information disclosure," Renmin Wang, July 4, 2008.
http://news.xinhuanet.com/comments/2008-07/04/content_8486416.htm
- 2, Yuan Yang, "A case study of Haidian government information disclosure," Di Yi Cai Jing Ri Bao, June 11, 2008.
<http://news.sohu.com/20080611/n257409220.shtml>
- 3, "Vague disclosure is a challenge in government information disclosure system," Jiancha Ribao, June 26, 2009.
<http://gxjc.gov.cn/article.php?articleid=8200>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁴⁴Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES

NO

References:

Chapter 1 of China's election law of the National People's Congress and various levels of local congresses.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES

NO

References:

Article 58 of China's Organic Law; various levels of local congresses and governments.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

15. Can all citizens exercise their right to vote?

58

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Several points to note. First, universal voting rights are guaranteed by both election law and by the Constitution. Second, voting rights are based on a Household Registration Certificate. Even if a migrant worker has worked over many years in cities, he is not entitled to vote in cities unless he successfully obtains a Household Registration Certificate in a city. By law, he can vote in his home region. Thus, many migrant workers simply choose not to vote. A 50 score is given because the low participation rate or indifference of voters is not the result of deliberate vote-rigging. On the contrary, it's a result of election law, which needs systematic reform, most notably the Household Registration System. It's not purely an election problem.

References:

1. Zhao Ying, On the Rights of Voters and Why Some Voters Don't Vote," Renda Yanjiu No 4, 2007.
<http://www.rdyj.com.cn/2007/rdqk-04-06.html>
2. "The Independent Candidate Accusing Chinese Authorities of Rigging Elections."
http://www.rfi.fr/actucn/articles/083/article_1052.asp

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Voting technique is improving fast, both in terms of technology and institutional arrangement, to guarantee the safety of ballots. At the village level, results are generally announced right after voting, thus there is little room for manipulation. Second, the most problematic issue concerning voting is that candidates may not represent voters' true desires. Candidates are appointed by the government. But we should also acknowledge the fact that those representatives with a very good social image and reputation are usually also listed.

References:

1. Tu Zhenyu, "A survey of voting studies," Renda Yanjiu, No 6.
2. Liu Jianping, "The Voting by Clapping Is Disappearing," Nanfang Weekend, Feb. 5, 2007.
3. The Standing Committee of the National People's Congress in 2006 issued one order requiring that all voting be secret.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | **75** | 50 | 25 | 0

Comments:

Elections are held according to a regular schedule in China. The biggest problem is that candidates may not represent voters' true desires.

References:

1. Zhang Xiaojing, Bai Xu, "Sense of Chinese-Styled Democracy Germinated at the Grass-Root Level," Xinhua News, Aug. 17, 2007.
2. Cai Youqun, "The Keyword of 2006: Election," Shaowu People's Congress, Sept. 7, 2006.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

30

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

It's illegal to form political parties in China. Only the ruling party and several approved parties are allowed to operate. Other parties in China are in no sense opposition" parties; they are in alliance with, rather than opposition to, the ruling party.

References:

It's not allowed.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Chapter 1 of the Electoral Law of the National People's Congress and people's congresses at local levels.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

It's absolutely illegal to form political parties in China.

References:

1. It Is Illegal to Organize Opposition Parties," The Beijing News.

http://news.xinhuanet.com/newscenter/2003-12/05/content_1214821.htm

2. White Book, "The Development of Chinese Democratic Politics," News Agency of State Council, Oct. 19, 2005.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

According to law, an individual must receive at least 10 nominations from voters to be able to run for political office. The score is given based on the following considerations: 1) There are some places, particularly in urban areas, where the leaders were elected by voters, not by the government; 2) In the upper levels beyond county levels, it is extremely difficult to copy this model; 3) There are manipulations in some areas to control the candidacy; 4) Most political offices are filled by candidates nominated and approved by the ruling party; 5) There is some sort of quota limit in political office, which generally requires a certain percentage of political offices be filled by candidates without any political party affiliation. Of course, these positions are not primary positions.

References:

1. Liu Zhiming and Fang Huahai, "Some Thoughts about Improving the Structure of Local Representatives," 2006.
http://www.hsrddw.gov.cn/news_view008.asp?id=832
2. Xinhua News, "China is progressing in protecting human rights," April 21, 2008.
http://news.xinhuanet.com/newscenter/2008-04/21/content_8021679.htm

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Opposition parties are illegal in China.

References:

- 1) Xin Jing Bao, "It Is Illegal to Organize Opposition Parties."
- 2) White Book, "The Development of Chinese Democratic Politics," News Agency of State Council, Oct. 19, 2005.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

35

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES

NO

Comments:

Various laws stipulate that all elections should be under the leadership of CPC. Because the election monitoring agency is absolutely under the control of the ruling party, it is not protected from political interference.

References:

Election committees are set up at various levels of government and direct and monitor deputy elections. They are under the leadership of the Standing Committee of the National People's Congress and the standing committees of the people's congresses at various levels. However, they are all under the leadership of the Communist Party of China (CPC).

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party controls important elections as well as the election-monitoring agency.

References:

1. Cong Yaping, Social Transition and the Qualifications of Representatives," Xinhua Wang, March 12 , 2005.
2. "The Quality of Representatives Is Improving," Guangming Daily, March 8, 2006.
3. BBC, "The independent candidate and election law of China," Feb 20, 2008.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In law, the People's Congress is the supreme power in China. However, in reality, the leadership of standing committees of the People's Congress are filled with retired government officials. Their function covers a wide spectrum of affairs, including monitoring elections, approving government reports and many other things. Thus, qualification is problematic.

References:

1. Cong Yaping, Social Transition and the Qualifications of Representatives," Xinhua Wang, March 12 , 2005.
2. "The Quality of Representatives Is Improving," Guangming Daily, March 8, 2006.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

There are improvements, but a 100 is not merited because the reporting schedule and quality have defects.

References:

- 1, Yang Guanglu, Li Bingyuan, 2009, Government activities must report to people," Yulin Renda Wang, Feb. 24. http://www.yjrdw.gov.cn/yjrdwhtml/rdxw/2009-2/24/17_00_26_426.html
- 2, Tian Biyao, "The Evolution of People's Congress," Renmin Daily, March 17, 2004.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In China, the standing committee of the national congress may penalize offenders. However, several factors hinder its effectiveness. First, it is not independent. Second, its staff is not professional. In most cases, the standing committees are filled with retired government officials. They are not politically neutral. But at the same time, there are signs that the People's Congress is playing a more and more important role. One indicator of this is that it vetoes more and more officials' nominations and government reports. Of course, this checks-and-balances effect is still limited and should be examined within the context of one-party system.

References:

1. Zhu Yingping, Judiciary Sector Should Be Involved in Elections Monitoring," China Elections, May 2006.
2. Wang Weixing, "Enhancing Prosecutors' Power and People's Congress' Supervision Capacity," Zhongguo Jiancha Wang, Aug. 2, 2007.
- 3, Li Junjie, 2009, "A survey on the veto of construction bureau chief," April 1. <http://www.efaw.cn/html/fzzb/200941/B87029674.html>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

63

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There are no direct elections above the county level in China. Citizens have to select representatives, and these representatives vote on behalf of the public. However, the voter registration system is relatively good.

References:

1. Tang Min, Several Law Issues on Voters Registration in Villages Committee Election—A Comparative Analysis on One Aspect of Provincial Villages Committee Election Rules,” The Journal of Huazhong Normal University, No. 1, 2004
2. “Suspecting that Voter Registration Rigged, One Candidate Withdrew,” Nanfang City News, Sept. 27, 2006
3. “China’s political system—election system,” China Com.
<http://www.china.com.cn/ch-zhengzhi/zhengzhi10.htm>
3. “Notice about voters registration.” This is an example about the procedure of voter registration.
<http://www.gj.gov.cn/site/lfsq/ArticleShow.aspx?articleid=75684>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Chapter 15 of the Procedural Law of China

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Candidates can appeal to the People's Court or the People's Congress at various levels for any irregularities in elections. If there are corruption-related irregularities, candidates can report them to anti-corruption agencies and higher-level government. However, whether to respond to appeals is another story: sometimes, it's acted upon, but the People's Court decides not to hear some specific cases because of procedural limitations.

References:

1. Zhao Xicheng, Zhang Denglian, Diagnosis and Policy Suggestion Concerning Elections at the Village Level," (Second prize for Elections and Autonomy in the village-level paper contest, Sun Qinghai)
2. "Should Complainers Be Jailed?" a special report by Xinhua News Agency.
http://news.xinhuanet.com/focus/2003-04/16/content_833579.htm
- 3, Editorial: "Why insulted lawyers are cowards," Modern News, June 26, 2008.
http://big5.china.com.cn/law/txt/2008-06/26/content_15889742.htm

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

All military and security forces are under the absolute leadership of Communist Party of China (CPC). The military forces may

favor or disfavor specific candidates, however, the candidates are decided by the Standing Committee of the CPC. Second, there are no recorded military coups or related actions that express political favors by military forces.

References:

1. Zong Chengkang, Opposing the Nationalization of the Army,” Liberation Army Newspaper, June 19, 2007
2. “Fulfilling the Army’s Role in the New Century,” Qiushi Magazine, July 16, 2007

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

There is no law explicitly addressing this issue, but no law prohibits it. In practice, election observers do exist.

References:

<http://www.newshs.com/html/200908/28/20090828110930.htm>

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The role of election observer should not be exaggerated. In most cases, their influence is minimal.

References:

1. Zhu Yingping, Judiciary Sector Should Be Involved in Elections Monitoring,” China Elections, May 2006
2. Wang Weixing, “Enhancing Prosecutors’ Power and the People’s Congress’ Supervision Capacity,” Zhongguo Jiancha Wang, Aug. 2, 2007

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES

NO

References:

The standing committee of the people’s congresses at various levels can supervise elections.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

66 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

All expenditures concerning the running of the ruling party and democratic parties are covered by the government. Because there are no real opposition parties, expenditures of all political parties are covered by government.

References:

none cited

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Because there are no real opposition parties, expenditures of all political parties are covered by government.

References:

No such laws exist.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

References:

No such laws exist.

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

No such laws exist.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

Agencies audit government offices but not political parties.

References:

No such laws exist.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

No such agencies exist.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

YES

| NO

Comments:

Generally, political financing is not a real problem in China because there are no opposition parties. Related expenditures are covered by the government.

References:

No such laws exist.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES

| NO

References:

No such laws exist.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

No such laws exist.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | **NO**

References:

There are no such requirements.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

No related agencies monitoring political financing exist.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

4

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

This is not an issue in China. Expenditures of the ruling party and eight other small parties are covered by public funds. At the same time, political offices are generally filled by those appointed by upper-level officials; the eight small parties cannot in any sense compete against the ruling party. There is no need at all for them to raise funds for election campaigns.

References:

1. Zhang Jianjun, "The Political Strategies of Chinese Private Enterprises," PKU Business Review, 2005

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

This is not an issue in China. Expenditures of the ruling party and eight other small parties are covered by public funds. At the

same time, political offices are generally filled by those appointed by upper-level officials; the eight small parties cannot in any sense compete against the ruling party. There is no need at all for them to raise funds for election campaigns.

References:

1. Zhang Jianjun, The Political Strategies of Chinese Private Enterprises,” PKU Business Review, 2005

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.



Comments:

This is not an issue in China. Expenditures of the ruling party and eight other small parties are covered by public funds. At the same time, political offices are generally filled by those appointed by upper-level officials; the eight small parties cannot in any sense compete against the ruling party. There is no need at all for them to raise funds for election campaigns.

References:

1. Zhang Jianjun, The Political Strategies of Chinese Private Enterprises,” PKU Business Review, 2005

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Generally, political financing is not a problem in China because almost all elections and political parties are funded by government. There is no need for fundraising. However, there are indeed some audits that are not specifically for political financing but treat general issues of government expenditures.

References:

1. Sun Guoliang, Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no way for the audit office to punish political parties. All government agencies are under the direct leadership of the ruling party. The existence of eight other small parties is based on their acknowledgement by the leadership of the ruling party.

References:

1. Sun Guoliang, Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

This is an untouchable area.

References:

1. Sun Guoliang, "Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007
2. Peng Zhe, "China's Political Reform Should Start with Separating Party Affairs from Government Running," Xindao Global, March 29, 2007
3. Li Delong, "Several Points on the Relationship Between Government and Party," Study Times, July 17, 2007

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

10

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

This is not an issue in China. Expenditures of the ruling party and eight other small parties are covered by public funds. At the same time, political offices are generally filled by those appointed by upper-level officials; the eight small parties cannot in any sense compete against the ruling party. There is no need at all for them to raise funds for election campaigns.

References:

1. Zhang Jianjun, "The Political Strategies of Chinese Private Enterprises," PKU Business Review, 2005

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

This is not an issue in China. Expenditures of the ruling party and eight other small parties are covered by public funds. At the same time, political offices are generally filled by those appointed by upper-level officials; the eight small parties cannot in any sense compete against the ruling party. There is no need at all for them to raise funds for election campaigns.

References:

1. Zhang Jianjun, "The Political Strategies of Chinese Private Enterprises," PKU Business Review, 2005

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Although election-related expenditures are covered by the government, some candidates (candidates are those who have clear support from upper level officials; thus, a candidate with bright prospects may receive money.) It's not political financing but rather a form of bribery. If exposed, the monitoring agency may initiate investigations. However, this probability is very small and usually viewed as a way of getting rid of competitors.

References:

1. Sun Guoliang, Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007
2. Zhou Cheng, "The Fate of Reform," Huang Hua Gang Magazine, Issue 4, 2005.
3. Audit Law of China

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

1. Sun Guoliang, Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007
2. Zhou Cheng, "The Fate of Reform," Huang Hua Gang Magazine, Issue 4, 2005
3. Audit Law of China

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

1. Sun Guoliang, "Establishing a Formal Management System of Party Member Charges," China Elections and Governance, April 3, 2007
2. Zhou Cheng, "The Fate of Reform," Huang Hua Gang Magazine, Issue 4, 2005
3. Audit Law of China

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is at the center of politics: all primary roles in government are filled by a party member. A huge problem is that party politics are not independent from government affairs; they are highly interlinked, and the latter is subordinate to the former. Thus, there is no sense in monitoring party politics. Party affairs can be reviewed only by the party itself, not by government agencies.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is at the center of politics: all primary roles in government are filled by a party member. A huge problem is that party politics are not independent from government affairs; they are highly interlinked, and the latter is subordinate to the former. Thus, there is no sense in monitoring party politics. Party affairs can be reviewed only by the party itself, not by government agencies.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is at the center of politics: all primary roles in government are filled by a party member. A huge problem is that party politics are not independent from government affairs; they are highly interlinked, and the latter is subordinate to the former. Thus, there is no sense in monitoring party politics. Party affairs can be reviewed only by the party itself, not by government agencies.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is at the center of politics: all primary roles in government are filled by a party member. A huge problem is that party politics are not independent from government affairs; they are highly interlinked, and the latter is subordinate to the former. Thus, there is no sense in monitoring party politics. Party affairs can be reviewed only by the party itself, not by government agencies.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

Comments:

There is no need to disclose these data, because all expenditures are covered by the government. In China, only village-level elections are direct elections by voters. All other levels of elections are voted by representatives. Thus, for village-level elections, there is no need for financial support because villagers have good knowledge of the candidates, and these elections are held in villages. Villages and towns provide the necessary funds for elections. For other levels of elections, accommodations, travel, meetings rooms and all other expenditures are covered by government budgets. Corporations or individuals may favor or disfavor a specific candidates, but they generally manipulate results by colluding with higher-level officials, not through political financing.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

Comments:

There is no need to disclose these data, because all expenditures are covered by the government. In China, only village-level elections are direct elections by voters. All other levels of elections are voted by representatives. Thus, for village-level elections, there is no need for financial support because villagers have good knowledge of the candidates, and these elections are held in villages. Villages and towns provide the necessary funds for elections. For other levels of elections, accommodations, travel, meetings rooms and all other expenditures are covered by government budgets. Corporations or individuals may favor or disfavor a specific candidates, but they generally manipulate results by colluding with higher-level officials, not through political financing.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no need to disclose these data, because all expenditures are covered by the government. In China, only village-level elections are direct elections by voters. All other levels of elections are voted by representatives. Thus, for village-level elections, there is no need for financial support because villagers have good knowledge of the candidates, and these elections are held in villages. Villages and towns provide the necessary funds for elections. For other levels of elections, accommodations, travel, meetings rooms and all other expenditures are covered by government budgets. Corporations or individuals may favor or disfavor a specific candidates, but they generally manipulate results by colluding with higher-level officials, not through political financing.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no need to disclose these data, because all expenditures are covered by the government. In China, only village-level elections are direct elections by voters. All other levels of elections are voted by representatives. Thus, for village-level elections, there is no need for financial support because villagers have good knowledge of the candidates, and these elections are held in villages. Villages and towns provide the necessary funds for elections. For other levels of elections, accommodations, travel, meetings rooms and all other expenditures are covered by government budgets. Corporations or individuals may favor or disfavor a specific candidates, but they generally manipulate results by colluding with higher-level officials, not through political financing.

References:

1. Why Is It So Difficult to Access Government Information?" Procuratorial Daily, June 12, 2006
2. "Violating the Right to Information by the Excuse of Sensitivity," Xinhua Daily, Nov. 16, 2006

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁴⁶Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

63

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

There has been some improvement. In recent years, more and more officials are increasingly accountable for their decisions. Some of them even take a more active approach to explain policies. But there is still room for improvement, for example, by enhancing clarity.

References:

1. Jiao Yang, Establishing a Government News Briefing Mechanism," Center for International Communication Studies of Tsinghua University, 2007
2. "Officials talk about environmentally friendly car manufacturing policy," Renmin Wang, Aug. 27, 2009.
<http://www.stockcity.cn/gupiao/hy/hywx/200908/2068714.html>
3. "Ministry of Industry and Information officials talk about procuring Lvba firewall," CCTV, June 11, 2009.
<http://tech.sina.com.cn/it/2009-06-11/01303168350.shtml>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized

process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Administrative Procedure Law recognizes the right of the judiciary to review the actions of the executive.

References:

Administrative Procedure Law

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There is no judiciary-review system or constitutional court, but this does not mean that the judiciary has no right to review actions of the executive. It is called min gao guan" (citizens sue the officials). The Administrative Procedure Law of China recognizes the right of the judiciary to review actions of the executive, although in reality the judiciary is not independent. Usually, these cases are resolved by negotiation: the executive offices correct mistakes and citizens withdraw cases. The judiciary plays a mediator role.

References:

To understand the increase of min gao guan cases, see Liaowang Magazine, April 22, 2006.

To have a thorough knowledge about related cases, see the special report of min gao guan.

http://www.legalinfo.gov.cn/gb/special/2003-02/19/content_14633.htm

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

A recent example is that China's medical system reform proposal doesn't go through the national People's Congress. But the trend is that the People's Congress is beginning to play a more and more active function.

References:

1. Abolishing Executive Orders to Establish Rule of Law in China," Xinhua News, March 27, 2007
2. "China Will Examine 'Red Head Documents,'" China Youth Daily, March 22, 2007
3. "Why Is Medical System Reform Bypassing the National People's Congress?" Xinhua News, March 13, 2009.
http://news.xinhuanet.com/comments/2009-03/13/content_11003207.htm

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

1. Article 5 of the Constitution.
2. Criminal Procedure Law of China

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

1. Article 5 of the Constitution
2. Criminal Procedure Law of China

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

31

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

This is an issue that the public has called for for many years.

References:

No such laws exist.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

In 1995, the Rule on Income Disclosures was enacted, but it deals only with salary and honorarium, which are already transparent because they are dependent on the ranks. However, the most important part is about officials' assets. There are no laws requiring officials to disclose their total assets.

References:

No such laws exist.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Rules about cadres accepting gifts, stocks and coupons were enacted by the Central Disciplinary Committee in 2001.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

An auditing law exists, but ministers and heads of state and government are not subject to this law.

References:

No such requirements exist.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

The Civil Servants Law, effective since Jan. 1, 2006

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

It's quite common for junior officials to join the private sector either after retirement or after quitting government positions. However,, it is not common for heads of state or ministry-level officials. This isn't because of relevant regulations; there are other reasons. First, ministry-level officials and heads of state are generally in their 50s or 60s when they take their job. After serving two terms (10 years), they are too old to take any private position. Second, retired government officials keep all welfare compensations provided by the government until their death, including almost all costs, such as medical care, housing, car, drivers, bodyguards, etc. They have little incentive to take private jobs. On the contrary, they may take quasi-government positions, such as some joining associations. Thus, although it's rare for heads of state and high rank officials to take private job, a 25 score is still merited.

References:

1. Cui Jie, Xiao Shuijin, Reemployment of retired government officials beget corruption," Jiancha Daily, Aug. 12, 2007
2. Li Mengjuan, "Shadow corruption of retired officials," Xinhua News, July 22, 2008

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving

government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Since China has no asset-disclosure requirements, it's hard to evaluate the regulation of gifts and hospitality. But we can have some rough idea by looking at the assets of corrupt officials who have been charged: the assets involved are generally huge. So we can say that this regulation is not effective.

References:

1. Zhang Zhe, 2008, "Offering gifts? How much?" Nanfang Weekend, July 31
2. Wang Yuchu, 2008, "China should make paid lectures by government officials illegal," Xinhua News, July 3

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES

NO

References:

No such laws exist.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100

75

50

25

0

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt an asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

Comments:

Citizens can use the Administrative Procedural Law of China to sue the government.

References:

Administrative Procedural Law of China

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100

75

50

25

0

Comments:

This is really a serious problem in China. The ruling party is not separated from government functions. All government functions are under the direct leadership of the ruling party and all important appointments are made by the ruling party.

References:

1. Sun Guohua, On the Relationship between the Party and Executive Branches," China Jurisdiction Research, August 2005
2. "Several Issues Concerning the Rule of Law," Study Times, October 2005

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

33

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

There is no judiciary-review system.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The People's Congress is the nominal supreme power; the judiciary can only explain the laws. Revisions of the law have to be made by the People's Congress, and there is no record of review of constitutionality. As a matter of fact, the Constitution has no

or little practical implication. Some legal scholars and lawyers are advocating for the real supreme status of Constitution, but there is still a long way to go.

References:

1. Yang Xingyi, A Comparison Study Between America's and China's Judiciary-Review Systems," China Court, Dec.13, 2006
2. Ji Weidong, "On the Function of the Highest Court," Law Thinker, November 2006

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Chapter 5 of the Law of the People's China on Deputies to the National People's Congress and local people's congresses at various levels prescribe that members of the national legislature can be subject to criminal proceedings

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

7

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

China has no full-time congressmen. Members of the national legislature are said to represent different demographics, geography, industry, etc.

References:

No such laws exist.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

China has no full-time congressmen. Some national legislators are private entrepreneurs. According to China's laws, national legislators should come from a wide demographic, including government officials, military officers, policemen, businessmen, academics, farmers, workers, etc.

References:

No such laws exist.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

China has no full-time congressmen. Members of the national legislature are said to represent different demographics, geography, industries, etc.

References:

No such laws exist.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

No such laws exist.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | **25** | 0

Comments:

Generally, there are no such regulations because China has no full-time congressman. But some members of the legislature are government officials, and they are subject to relevant regulations on post-government employment. Many other members of the legislature are private entrepreneurs, so there is no sense to post-government employment. Thus, a 25 score is given.

References:

1. Cui Jie, Xiao Shuijin, Reemployment of retired government officials begets corruption," Jiancha Daily, Aug. 12, 2007
2. Li Mengjuan, "Shadow corruption of retired officials," Xinhua News, July 22, 2008

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Generally, there are no such regulations because China has no full-time congressman. But some members of the legislature are government officials, and they are subject to relevant regulations on post-government employment. Many other members of the legislature are private entrepreneurs, so there is no sense to post-government employment. Thus, a 25 score is given.

References:

1. Zhang Zhe, Offering gifts? How much?" Nanfang Weekend, July 31, 2008
2. Wang Yuchu, "China should make paid lectures by government officials illegal," Xinhua News, July 3, 2008

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The status of asset disclosure is almost unchanged. First, regulations about post-government employment are not meaningful, as many legislators are businessmen. Second, China has no asset-disclosure requirement, so it makes no sense to audit.

China should have take some steps, because increasing accountability is claimed to be a priority of government. More strict criteria should be adopted. Still, there are loud voices on the web and even in the National People's Congress seasonal discussion of asset disclosure. But the government has not take meaningful steps to follow this practice.

References:

1. When will China adopt asset -disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, 2008, "It's time to adopt an asset-disclosure system" Hua Shang News, March 4

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Questions of this sub-indicator are generally not applicable in China. The main problem is that members of the Chinese national legislature number more than 2,500 and almost all are employed elsewhere besides in the legislature. There are no full-time legislators in China.

References:

No such laws exist.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This indicator is not really applicable in China, where asset-disclosure forms are not filed.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This indicator is not really applicable in China, where asset disclosures are not filed.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Questions of this sub-indicator are generally not applicable in China. The main problem is that members of the Chinese national legislature number more than 2,500 and almost all are employed elsewhere besides in the legislature. There are no full-time legislators in China.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES

NO

References:

Regulations for disclosing government information were passed by the State Council on Jan. 17, 2007, and recognized the right of access to government information.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100

75

50

25

0

Comments:

Practices concerning government-information disclosure are improving, but a 100 score is still not merited.

References:

1. The Chinese Public Governance Indicators," Unirule Center for Governance Studies, 2008
2. Xinhua News Agency, "China Protects the Information Rights of the Public," April 30, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. The Chinese Public Governance Indicators,” Unirule Center for Governance Studies, 2008
2. Xinhua News Agency, “China Protects the Information Rights of the Public,” April 30, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

31 III-3. Judicial Accountability

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

All newly appointed judges have to pass state-administered Judicial Examination, this is quite transparent, and it's a prerequisites. Without passing this examination, there is almost no chance of being selected as judges.

References:

Chapter 5 of the Judges Law of China

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | **75** | 50 | 25 | 0

Comments:

Since 2002, candidates have to pass the national judicial exam in order to become judges. This rule is quite rigid and only in extremely exceptional cases is it violated.

References:

1. Improving the Judge Selection Mechanism," Xinhua News Agency, April 26, 2007
2. Qian Wenjuan, Liu Wenjuan, "On the Judge Management System of China," China Court, June 11, 2007

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

In China, all judges have to pass the national-level exam. This is the prerequisite. After passing this exam, new judges have to be confirmed by the high court of each province.

References:

Chapter 5 of the Judges Law of China

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

58

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES

NO

References:

1. Judge's Law of China
2. The Supreme People's Court's Opinions on Strengthening the Work on Judicial Openness in the People's Courts
3. Public Procurators Law of China

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100

75

50

25

0

Comments:

In the past, judges could issue decisions without detailed explanation. Since the turn of this century, the Supreme People's Court requires judges to issue detailed explanations. One direct result is that decisions are about 20 to 30 pages in length, in comparison to less than 10 pages in the past.

References:

1. Huo Gang, 2009, Improving the quality of judgement," Ping Xing Court, June 26.
<http://hnpxyfy.chinacourt.org/public/detail.php?id=42>
2. Dou Jun et. al., 2009, "The quality of judgement and judiciary justice" China Court, July 21.
<http://hnfy.chinacourt.org/public/detail.php?id=85363>
3. Dong Zhaohong, Fang Hengzu, "On the Reform of Judgement Reasons," Journal of Zhejiang University, 2007
4. Chen Ruihua, "The Trial Should Be Public," Caijing Magazine, June 19, 2007

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Disciplinary Committee of the Chinese Communist Party, Criminal Law of China

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

On one hand, China has disciplinary agencies. On the other hand, all these agencies are controlled by the ruling party. Thus, the agencies are not independent.

References:

None cited.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In China, People's Prosecutors are entitled to monitor judges. Furthermore, in law, the People's Congress is the ultimate source of monitoring power. The party's disciplinary committee in most cases plays an effective role in monitoring judges.

References:

1. Xi Mingqiang, "On supervising judges," Beida Yinghua, June 2008
2. Qiao Xinsheng, "Introducing the jury system to monitor judges," Jin Yang Wang, 2007

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In China, members of judiciary sectors are subject to investigations by People's Prosecutors, the Disciplinary Committee of the Communist Party of China. If corruption is involved, anti-corruption agencies, generally under the authority of People's Prosecutors, initiate investigations.

References:

1. Xi Mingqiang, "On supervising judges," Beida Yinghua, June 2008
2. Qiao Xinsheng, "Introducing the jury system to monitor judges," Jin Yang Wang, 2007.

Also see many cases documented at <http://www.law-star.com/zt/zt0041/>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

36

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

No such laws exist.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Regulations on the Punishment of Leaders at Various Levels Giving and Receiving Cash, Negotiable Securities and Payment Instruments

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The general public wants assets of officials to be disclosed and audited, however, it's still not supported by the central government. There are no laws concerning asset-disclosure and audits.

References:

No such requirements exist.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

1. Civil Servants Law of China
2. Judges Law of China

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Relevant regulations are not strong enough. Actually, some judges have various kinds of connections with law firms or other private businesses, even during their government-service period.

References:

1. Cui Jie, Xiao Shuijin, Reemployment of retired government officials begets corruption," Jiancha Daily, Aug. 12, 2007
2. Li Mengjuan, "Shadow corruption of retired officials," Xinhua News, July 22, 2008

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Regulations concerning gifts and hospitality offered to judiciary members are not strong. We usually know how much a corrupt judge has acquired from sources illegally only after he is accused and convicted.

References:

1. Zhang Zhe, Offering gifts? How much?" Nanfang Weekend, July 31, 2008
2. Wang Yuchu, "China should make paid lectures by government officials illegal," Xinhua News, July 3, 2008

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

Comments:

Asset-disclosure requirements are not effective in China, although the public asks for it.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

No asset disclosure records exist.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt an asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no asset disclosure at all.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

58

40a. In law, the legislature can amend the budget.

YES

NO

References:

Chapter 3 of the Chinese Constitution

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

Comments:

In China, significant public expenditures require approval from the State Commission of Development and Reform, which then reports them to State Council. If everything is OK, expenditure requests go to the People's Congress for review. There may be several rounds of negotiations and revisions before the final voting. Generally, the proposal will then be passed.

China's legislature in some sense is a rubber stamp: the legislature seldom vetoes a proposal. But there are some signs that changes may be coming. The public calls for proper functioning of legislature and there are some cases in which the legislature does veto government proposals.

References:

1. Xu Di, 2009, "China's legislature vetoes government budget," Liao Wang Dong Fang Weekly, April 13.
<http://www.cqkx.com/html/200904/13/232810511.htm>
2. Yang Mingzhou, 2007 "China Should Establish One Mechanism to Supervise Major Projects," Liaowang Weekly, March 15.
3. Cao Lin, "Why must be built?" Renmin Daily, April 9, 2008

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

Comments:

Because there are no full-time legislators, the capacity is doubted. But proposals may be changed during the pre-review process. Thus, a 25 score is given.

References:

1. Zhou Hua, 2008, "Shanghai People's Congress teaches legislators to supervise government budget," Nan Feng Chuang, Feb. 25
2. Zhang Binyu, 2007, "On the People's Congress Supervising the Budget Process," People's Congress Study, No 5

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

33

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Chinese practice in terms of the budgetary process is that the government proposes a budget to the People's Congress standing committee, then the standing committee members respond to the budgets and require the government to revise them if needed. After several rounds of negotiations, the formal budget plans go to the People's Congress meeting, but there is still some risk that the budget may be vetoed. Vetoes are rare and happen mainly at the local level. Negotiations and discussions during the meeting period may be disclosed to the public, particularly because TV, radio and newspapers cover it a lot. But discussions still need to be improved.

References:

1. Wu Junliang, 2008, The driving force of a budget transparent to the public," Economic Observers, Dec. 28. <http://finance.sina.com.cn/roll/20081228/01155693468.shtml>
2. Zhou Hua, "Shanghai People's Congress teaches legislators to supervise government budget," Nan Feng Chuang, Feb. 25, 2008
3. Zhang Binyu, "On the People's Congress Supervising the Budget Process," People's Congress Study, No 5, 2007

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Budget allocations can be affected by public opinion. In fact, some government-related civil service organizations (CSOs) may participate in the budgeting process. Other CSOs and individuals are able to influence the budget through publications, meetings and demonstrations. Take, for instance, the social welfare network covering farmers. In the past, farmers were by and large neglected by the central government in social security plans. But many CSOs and individuals publicly and strongly advocated for them, and there have been some obvious improvements in including farmers in the social welfare network.

References:

1. Guo Zhengang, "It's a good sign of letting the public be involved in budgeting," *Gongren Daily*, Aug. 24, 2007
2. Li Fan, "Citizens' involvement in the budget process should be institutionalized," *The World and China Institute*, Oct. 18, 2007

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

Citizens can access budget allocations. During the annual session of People's Congress, the budget will be published publicly. However, budgets are overly simple and abstract.

References:

1. Wu Junliang, 2008, "The driving force of a budget transparent to the public," *Economic Observers*, Dec. 28.
<http://finance.sina.com.cn/roll/20081228/01155693468.shtml>
2. Zhou Hua, "Shanghai People's Congress teaches legislators to supervise the government budget," *Nan Feng Chuang*, Feb. 25, 2008
3. Zhang Binyu, "On the People's Congress Supervising the Budget Process," *People's Congress Study*, No 5, 2007

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

These reports are very abstract and overly simple, and lack details.

References:

1. Li Peng, People's Congress should strengthen budget monitoring and supervising," Caijing Wang, Aug. 29, 2008
2. Xinhua News Agency, "People's Congress report on budget implementation," March 11, 2008

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

There are no opposition parties in China.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The People's Congress has authority over all budget implementation, and it is able to initiate investigations. However, the effect is limited, mainly because it seldom investigates central government expenditures. On the contrary, the National Audit Office frequently audits the budget implementation of government agencies.

One recent case is People's Congress starts examining the the expenditure of fiscal stimulus funds. see <http://gb.cri.cn/27824/2009/03/04/2625s2446629.htm>

References:

1. Zhu Fuhui, "The Investigation Power of the People's Congress," China Papers Center, 2008
2. Zhang Jingyong, "Interviewing four members of the Standing Committee of the People's Congress," April 28, 2008

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

The Finance and Economic Committee of the Standing Committee of National People's Congress by Organic Law of National People's Congress of China

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

IV-1. Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Civil Servant Law of the People's Republic of China

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The regulations apply to all levels of civil service.

References:

Chapters 7 and 12 of the Rules of Civil Servants

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There are several agencies, such as State Administration of Civil Service, the People's Court, and the Ministry of Supervision of the People's Republic of China, to handle related cases.

References:

Law of the People's Republic of China on Administrative Supervision

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Article 24 of the Civil Servants Law of China

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

42

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is no distinction between civil servants and politicians. Not all civil servants are protected from political interference.

References:

1. On the problems of China's public servant system," Lunwen Zhongxin
2. "Chongqing Pengshui Poet Case," Southern City News, Oct. 19, 2006

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

This case is very similar to the selection mechanism of judges. All new public servants are required to take a written exam. Only those passing the written exam are given interview opportunities. This rule is quite strict. However, in most cases, nepotism and cronyism are common. But neither professionalism or nepotism is a sufficient condition. Both are necessary conditions. If someone with some degree of professional quality also has personal connections with higher-level officials, he is very likely to get the job.

References:

1. Liu Shushu, Examination should not be the only method to select public servants," Shangbao Shipping, March 7, 2008
2. Du Xiao, 2009, "Selling positions," Legal Daily, May 27
<http://news.eastday.com/c/20090527/u1a4400390.html>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

For an example of corrupt officials who sell positions on massive scale, see Fuyang of Anhui Province: <http://focus.chubei.com/original/200907/t747986.shtml>. There are many other relevant cases that are not as bad as this one.

References:

1. Liu Shushu, Examination should not be the only method to select public servants," Shangbao Shping, March 7, 2008
2. Du Xiao, 2009, "Selling positions", Legal Daily, May 27.
<http://news.eastday.com/c/20090527/u1a4400390.html>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

This is an improvement. Most offices are required to write specific guidelines or job descriptions, which can either be publically obtained on the web or published internally within the office. But there are some problems with job descriptions, as detailed in the score criteria, thus, a 50 score is given.

References:

1. Interview with Ms. Zeng Min, civil servant at CAAC, July 19

Descriptions can be found on the web.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

This is an improvement. In the past, legal bonuses constituted a significant fraction of take-home pay. However, since late 2006, many rules and regulations have been enacted to try to curb this. In my discussion with several civil servants, these rules are very well implemented. Of course, this does not include illegal income, made mostly by those who are leaders and those who serve in the powerful government agencies, such as Development and Reform Commission of each level.

References:

1. Yue Gongzheng, Su Hainan, Shadow Incomes of Officials Pose a Big Threat to Welfare Reform," People's Forum, July 4, 2007
- 2, "Many civil servants cannot receive gray payments", Dec. 29.
http://opinion.southcn.com/southcn/content/2008-12/29/content_4802490.htm
3. Interviews with civil servants in various branches of the General Administration of Civil Aviation and the State Commission of Develoement and Reform

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government publishes a list of vacant positions, but it's hard to get a list of the positions actually filled. Thus, a 50 score is given.

References:

- The Job Positions of Civil Servants,; 2009.
<http://www.gjgwy.org/html/ArticleShow/20081013/8424.htm>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

An independent redress system exists but it is not independent of political influence, as the ruling communist party influences all levels of government. The rights of some ordinary public servants are not well protected. The redress mechanisms that do exist are handled mainly through appealing or going to court.

Another problem with the redress mechanism is that courts may not handle some politically sensitive cases.

References:

1. Regulations on the appeals of civil servants, enacted by the Ministry of Human Resources and Social Security, 2008. <http://www.cnca.gov.cn/rjwbgs/ztxx/dgzfbz/40810.shtml>
2. Feng Xingwu and Zhou Zhongsheng, "On the Redress Mechanism of Civil Servants," Fa Xin Wang, August 2006
3. Song Shiming, "Inspection of the public servant system," Study Times, Oct. 29, 2007

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Generally, civil servants are paid on time because they have a large voice in allocating government resources. But this phenomenon does exist, particularly in rural areas, as the second reference shows.

References:

1. Jiangsu advancing public servants payment reform," Zhejiang Zaixian, March 27, 2008
2. "Liaoning province pays rural public servants late," China News July 31, 2009.
<http://liaoning.yooshi.cn/2009/07/3115719.html>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | **50** | 25 | 0

Comments:

Generally, according to the Civil Servants Law, civil servants convicted of crimes are prohibited from future employment in government agencies, and most of them will have to leave government service, but there are some exceptions. For instance, the former chief of the State Bureau of Statistics, Dr. Qiu Xiaohua, took a position in state-owned enterprises even after being convicted of a crime.

References:

1. Li Fang, Can Citizens with Criminal Records Become Civil Servants?: Analysis of and Suggestions for Article 6 of the Law to Civil Servants," Journal of Guangxi Administrative Cadre, Institute of Politics and Law, No. 3, 2006
2. "Qiu Xiaohua joins China National Offshore Oil Company after being convicted of a crime" Aug. 29, 2009
<http://business.sohu.com/20080829/n259262286.shtml>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

42

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

No such requirements exist.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Chapter 11 of the Civil Servants Law of China

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Article 102 of the Civil Servants Law of China

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

1. Criminal Law of China
2. Civil Servant Law of China
3. Regulation on the Punishment of Civil Servants of Administrative Organs
4. Regulations on the Punishment of Leaders at Various Levels Giving and Receiving Cash, Negotiable Securities and Payment Instruments

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

No such requirements exist.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is a severe problem in China. Many civil servants take positions in the private sector. However, it's not fair to say that relevant regulations are rarely or never enforced. For instance, the Chinese government has already strengthened relevant regulations; see <http://gov.people.com.cn/GB/10027534.html>

References:

1. Cui Jie, Xiao Shuijin, Reemployment of retired government officials begets corruption," Jiancha Daily, Aug. 12, 2007
2. Li Mengjuan, "Shadow corruption of retired officials," Xinhua News, July 22, 2008

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

1. Zhang Zhe, 2008, Offering gifts? How much?” Nanfang Weekend, July 31
2. Wang Yuchu, 2008, “China Should make paid lectures by government officials illegal,” Xinhua News, July 3

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

It's a serious problem in China. Nepotism and cronyism are obvious flaws of many government agencies, and there are many situations of conflicts of interests where officials should have recused themselves, particularly in public procurement and construction projects.

References:

1. Zhu Daqin, 2009, Glimpse of the system of our country 's existing civil service s avoidance," China Value, June 19.
<http://www.chinavalue.net/Article/Archive/2009/6/19/181572.html>
2. "Wen Zhou adopts recusal regulations," Qianjiang Evening News, July 25, 2009.
<http://www.zgjrjw.com/news/gdxw/2009725/9251765377.html>

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no asset disclosures at all.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

No asset disclosure exists.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no asset disclosures.

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset-disclosure system," Hua Shang News, March 4, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt asset-disclosure systems?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset disclosure system," Hua Shang News, March 4, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

1. When will China adopt asset-disclosure systems,?" Development Forum, March 14, 2008
2. Gao Yifei, "It's time to adopt an asset disclosure system," Hua Shang News, March 4, 2008

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Chapter 2 of the Civil Servants Law of China
Criminal Procedure Law of China

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There is some institutional setup to guarantee the safety of a whistle-blower. During the study period, there are indeed cases showing that whistle-blowers are protected.

References:

1. The chief who threatened the whistle-blower was moved," Nanhai Wang, Aug. 6, 2009.
<http://www.law580.net/article/sort82/18466.htm>
2. "Chongqing institutionalizes secret whistle-blowing and protects whistle-blowers," Chongqing Evening News, June 25, 2008.
<http://jxq.cq.gov.cn/news/newscontent.aspx?cid=8017>
3. "Rules of Protecting Whistle-blowers," issued by the Central Disciplinary Committee.
4. "The death of a whistle-blower," Development Forum, May 3, 2008

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

References:

1. Criminal Procedural Law of China
2. Rules Protecting Whistle-blowers," issued by Central Disciplinary Committee

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

- 1, The chief who threatened the whistle-blower was moved," Nanhai Wang, Aug. 6, 2009.
<http://www.law580.net/article/sort82/18466.htm>
- 2, "Chongqing institutionalizes secret whistle-blowing and protects whistle-blowers" Chongqing Evening News, June 25, 2008.
<http://jxq.cq.gov.cn/news/newscontent.aspx?cid=8017>
3. "Rules Protecting Whistle-blowers," issued by the Central Disciplinary Committee
4. "The death of a whistle-blower," Development Forum, May 3, 2008

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

1. Public prosecutors protect whistle-blower," Chongqing Evening News, June 24, 2008
2. National Bureau of Corruption Prevention of the People's Republic of China, established in May 2007

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Anti-corruption agencies receive regular funding each year, although it may be not enough. There is no clear guideline about how much funding is enough.

References:

- 1, Xiao Yang, 2009, Anti-Corruption Reports, : Prosecutorate Daily, Aug. 24, 2009.
<http://fanfu.people.com.cn/GB/145746/9915362.html>
2. "The report of an anti-corruption chief," Justice Web, Jan. 14, 2008.
http://www.jszf.gov.cn/art/2008/1/4/art_75_14444.html

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Comments:

Some public whistle-blowing cases are not acted upon because they are too vague to be valid; for example they lack of details or the whistle-blower cannot be reached to verify information. Among 287 major cases, 44.3% were from whistle-blowers in Tianjin in 2008. See http://www.china.com.cn/news/law/2009-06/23/content_17996274.htm.

References:

1. Chen Shu, 2009, China's Anti-Corruption Hotline is Overloaded," VOA News, Jan. 14.
http://203.208.37.132/search?q=cache:Jqa4nXjyIP8Jwww.voanews.com/chinese/w2009-06-24-voa59.cfm+%E5%8F%8D%E8%B4%AA%E7%83%AD%E7%BA%BF&cd=9&hl=zh-CN&ct=clnk&gl=cn&st_usg=ALhdy29Ec1nKJWtssSbpkvvgk8IHxhRbrKg
2. Wang Keqing, Liu Sikun, "1359 Complaints in the Past Six Years from Yongquan Village, Daqing," China Rural Areas Research Network Working Paper, 2007

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

As evidence in reference No. 3, 60 percent anti-corruption sources are from whistle-blowers. The Chinese government requires the anti-corruption chief to disclose his cell phone number publicly, and a national hotline has been established. It's fair to say that this system is quite effective.

References:

1. Zhang Jiangang, 2009, Case study of a lower level prosecutor's anti-corruption experience in the past 10 years," Dazhong Daily, May 6.
http://news.jcrb.com/xwj/200905/t20090506_215672.html
2. Lin Ruochuan, 2009, "Anti-corruption bureau is acting," Southern Monthly, Aug. 18.
<http://www.nfyk.com/sh/ShowArticle.asp?ArticleID=1956>
3. "60 percent of anti-corruption sources are from whistle-blowers," Southern Daily, June 23.
http://big5.citygf.com/FSNews/FS_002008/200906/t20090623_69657.html

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES

NO

References:

Letters Center at the Central Disciplinary Committee

State Council Supervisory Organ

National Bureau of Corruption Prevention and its branches at the provincial, municipal and county levels

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

79
IV-3. Procurement

51. Is the public procurement process effective?

83

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES

NO

References:

Article 12 of the Government Procurement Law of China

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES

NO

References:

Article 62 of the Government Procurement Law of China

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100

75

50

25

0

Comments:

Enforcement of these regulations is the same as civil-service conflict-of-interest regulations.

References:

1. Intermediaries participating in corruption chain," Liaowang, June 5, 2009.

http://news.ifeng.com/society/5/200906/0615_2579_1202992_1.shtml

2, "The corruption case of the Guangdong government-procurement center," Xin Kuai Bao, March 5, 2008.

<http://news.sohu.com/20080305/n255527365.shtml>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

No such regulations exist.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Chapters 3 and 4 of the Government Procurement Law of China

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Chapter 6 of the Government Procurement Law of China

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Chapter 6 of the Government Procurement Law of China

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Chapter 6 of the Government Procurement Law of China

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Article 77 of the Government Procurement Law of China

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

No record was found that violators of procurement regulations have participated in government procurement during this study period.

References:

Decisions on 7 companies violating procurement regulations,” Qidong Lianzheng, Aug. 4, 2008

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Chapter 2 of the Decree of Government Information Openness

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Chapter 2 of the Decree of Government Information Openness
Chapter 4 of the Government Procurement Law of China

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

1. Provisions of China on the Disclosure of Government Information, valid through May 1, 2008
2. The irregularities in government procurements of Shan Men Xia city." Da He News, Dec. 3, 2008.
http://daily.dahe.cn/special/t20081203_1440743.htm

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. Provisions of China on the Disclosure of Government Information, valid through May 1, 2008

2, The irregularities in government procurements of Shan Men Xia city,” Da He News, Dec. 3, 2008.
http://daily.dahe.cn/special/t20081203_1440743.htm

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

A website managed by the Ministry of Finance of China publishes all relevant information about government procurement, both by the central government and local governments, including products categories, rules, record announcements, etc. See <http://www.ccgp.gov.cn/new/>.

References:

1. Categories of bidding products of central government affiliated agencies (2009),” Aug. 25.
<http://www.ccgp.gov.cn/cgbx/zybx/2009/978240.shtml>
2. “Government Procurements Should Be Advertised, Otherwise Punished,” China Government Procurements, July 23, 2007

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

These results can be found on a website managed by the Ministry of Finance of China.

References:

1. Categories of bidding products of central government affiliated agencies (2009)," Aug. 25
<http://www.ccgp.gov.cn/cgbx/zyb/2009/978240.shtml>
- 2 "Government Procurements Should Be Advertised, Otherwise Punished," China Government Procurements, July 23, 2007

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

References:

Chapter 1 of the Management Interim Procedures of Enterprises' State-Owned Property Right Transfer

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Chapter 9 of the Rules on the Evaluation and Management of State Assets

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Irregularities in the privatization process are quite common and are usually in the form of selling state-owned assets well below their market value to management and contacts of officials. Larry Lang at the Chinese University of Hong Kong has a lot of publications on this issue.

References:

1. Chang Kai, 2009, Privatization should be implemented in legal ways," Ban Yue Tan, Aug. 28.
<http://www.wyxsx.com/Article/Class4/200908/101501.html>
2. Zhang Liwei, 2009, "Cautious about the irregularities in city-development program," 21st Century Economic Report, Aug. 24.
<http://sd.house.sina.com.cn/news/2009-08-24/084649558.html>
3. Luo Zhongwei, "Studies on the transfer of state-owned assets," Chinese Academy of Social Sciences paper, Jan. 29, 2008
4. Cheng Shihua, "A case study of Gu Jing Gong's MBO," Xinhua News, July 28, 2008

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

80

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Chapter 2 of the Decree of Government Information Openness

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Relevant information can be obtained from the Database of State-Owned Assets at http://www.guozhi.org/data/gzgg_b/index.php?modules=list&categoryid=1&classid=2.

References:

- 1, Chang Kai, 2009, Privatization should be implemented in legal ways," Ban Yue Tan, Aug. 28. <http://www.wyxsx.com/Article/Class4/200908/101501.html>
- 2, Zhang Liwei, 2009, "Cautious about the irregularities in city development program," 21st Century Economic Report, Aug. 24 <http://sd.house.sina.com.cn/news/2009-08-24/084649558.html>
3. Luo Zhongwei, "Studies on the transfer of state-owned assets," Chinese Academy of Social Sciences paper, Jan. 29, 2008
4. Cheng Shihua, "A case study of Gu Jing Gong's MBO," Xinhua News, July 28, 2008

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Chapter 2 of the Decree of Government Information Openness

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The rules of the state owned assets supervision commission of each level can be obtained easily on the web.

References:

1. Shan Dan, Studies on government information disclosure," Degree Thesis, 2007.

<http://www.cnki.com.cn/grid20/detail.aspx?filename=2007035331&dbname=CMFD2007>

2. Provisions of the People's Republic of China on the Disclosure of Government Information, valid through May 1, 2008

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. Shan Dan, Studies on government information disclosure," Degree Thesis, 2007.

<http://www.cnki.com.cn/grid20/detail.aspx?filename=2007035331&dbname=CMFD2007>

2. Provisions of the People's Republic of China on the Disclosure of Government Information, valid through May 1, 2008

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷⁶National Ombudsman

56. Is the national ombudsman effective?

55

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law on Administrative Supervision

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

There are many agencies able to act as the ombudsman, including the Bureau of Letters and Calls, the Disciplinary Committee, the courts, the People's Congress, and many others. But one common characteristic of these agencies is that they are not independent and their behavior is subject to political influence.

References:

- 1, Jamil Anderlini, 2009, "The pain of China's appeal activities," Financial Times March 18.
<http://www.ftchinese.com/story.php?storyid=001025317>
- 2, "Villagers who petitioned in Beijing were detained after returning home," Nanfang Wang, May 19, 2009.
<http://news.sina.com.cn/s/2009-05-19/034517840941.shtml>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

Generally, the head of the ombudsman agency has a defined term, which is 5 years. But he may be removed from office because China's ombudsman agencies are not independent from political influence or from executive powers.

References:

- 1, Zhang Hai, 2009, "On the independence of administrative supervision," New West, Dec. 14.
<http://xxb.cnwest88.com/read.php?table=artic&articid=1683>
- 2, Cheng Longke, "Chinese Style Disciplinary System," Beijing Daily, May 14, 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

References:

1. Gao Tianshan, Shang Boren, 2009, Some thoughts on the lower level supervision organs," Gong Chan Dang News, July 13.
<http://www.hefei.gov.cn/n1105/n32915/n234797/n4142667/11335500.html>
2. "Why establish a Letters and Calls degree at Shenyang University," Xin Jing Bao, June 8, 2009.
http://www.gmw.cn/content/2009-06/08/content_931270.htm

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

Comments:

Ombudsman agency staff are treated as public servants. Thus, all new appointments must pass the national exam first, which greatly enhances the professionalism of the staff. However, as we have noted in other questions, all agencies are under the leadership of the ruling party.

References:

1. Zhang Hai, 2009, On the independence of administrative supervision," New West, Dec. 14.
<http://xxb.cnwest88.com/read.php?table=artic&articid=1683>
2. Cheng Longke, "Chinese Style Disciplinary System," Beijing Daily, May 14, 2007
3. "China's public servant system is improving," Fazhi Daily, Oct. 10, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All public agencies receive regular funding. Government budgets don't change significantly except for an annual increase based on the increase of total revenue.

References:

1, Fa Xuan, A review of Qinghai's anti-corruption activities," Qinghai News, June 3. 2008
<http://news.sina.com.cn/c/2008-06-04/071315677608.shtml>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Prosecutors make reports publicly available each year. They are usually submitted to the National Congress. The Ministry of Supervision seldom publishes an annual report, and its annual report is extremely incomplete.

References:

The annual report of the Ministry of Supervision, 2008.
<http://www.12388.gov.cn/Template/article/display0.jsp?mid=20090407030854>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

People's Prosecutors are the main agency initiating investigations, The Letters and Petition Office receives complaints and forwards them to relevant agencies, but it seldom initiates investigations itself. The People's Congress is able to initiate investigations, but in most cases does so by giving orders to People's Prosecutors. Anti-corruption agencies are affiliated with People's Prosecutors.

References:

1. Supreme Procuratorate initiates investigations in Ping Ding Shan mine explosion," Henan Daily, Sept. 9, 2009.
<http://view.szonline.net/Channel/content/2009/200909/20090909/184345.html>
2. "Ministry of Supervision initiates investigations about the corruption activities in the Tunlan accident," Dazhong Wang, March 9, 2009.
http://www.dzwww.com/2009/2009lh/zxbd/200903/t20090310_4330796.htm

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Penalties may be imposed first by the disciplinary committee. Discipline usually consists of deposing officers to get rid of obstacles, then disregarding the agency handling the case, People's Prosecutors will step in to file cases in the People's Court.

References:

1. Central Disciplinary Committee and Ministry of Supervision impose penalties on officers involved in Sanlu case," Zhong Guang Wang, March 20, 2009.
http://www.cnr.cn/gundong/200903/t20090320_505277837.html
2. "Working in different areas to avoid punishment?" Sichuan News, April 9, 2009.
http://comment.scol.com.cn/html/2009/04/011004_707466.shtml

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

Citizens often seek action at the national level because local officials and agencies do not act on citizens' complaints.

References:

1, Central Disciplinary Committee and Ministry of Supervision impose penalties on officers involved in Sanlu case," Zhong Guang Wang, March 20, 2009.

http://www.cnr.cn/gundong/200903/t20090320_505277837.html

2, "Working in different area to avoid punishment?" Sichuan News, April 9, 2009.

http://comment.scol.com.cn/html/2009/04/011004_707466.shtml

3, "Supreme Prosecutorate initiates investigations in Ping Ding Shan mine explosion," Henan Daily, Sept. 9, 2009.

<http://view.szonline.net/Channel/content/2009/200909/20090909/184345.html>

4, "Ministry of Supervision initiates investigations about the corruption activities in the Tunlan accident," Dazhong Wang, March 9, 2009.

http://www.dzwww.com/2009/2009lh/zxbd/200903/t20090310_4330796.htm

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

We can see a snapshot of this problem through the petition phenomenon in China. Generally, the public feels mistreated because local governments don't listen to their appeals. So they go to higher level government agencies to appeal. Most often, they will go to Beijing to visit the National Petition Office in the hope that government officials will listen to their cases. According to one famous public figure, Li Chang Ping, no one would spend so much to go to Beijing if their appeals could be solved by local governments' petition offices. See <http://snzg.cn/article/show.php?itemid-15702/page-1.html>.

References:

1. China establishes state petition office," Renmin Wang, April 13, 2009.
<http://www.022net.com/2009/4-13/511959232569438.html>
2. Bi Ke, "Expecting accountability campaign after audit campaign," Yan Zhao City News, June 28, 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

83

57a. In law, citizens can access reports of the ombudsman(s).

YES

NO

References:

Chapter 2 of the Decree on Government Information Openness

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100

75

50

25

0

Comments:

Under the Information Disclosure Act, government agencies are required to disclose information. The act facilitates the public's rights to information.

References:

1. Provisions of China on the Disclosure of Government Information, valid through May 1, 2008

2. Xinhua News Agency publishes the annual report of the Supreme Procuratorate," Xinhua News, March 17, 2009.
http://202.123.110.5/2009lh/content_1260986.htm

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. Provisions of China on the Disclosure of Government Information, valid through May 1, 2008
2. Xinhua News Agency publishes the annual report of the Supreme Procuratorate," Xinhua News, March 17, 2009.
http://202.123.110.5/2009lh/content_1260986.htm

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

There is no specific national ombudsman system. The relevant tasks are enforced by several agencies, including the People's Court, People's Prosecutors, the People's Congress, the Petition Office, the anti-corruption agency, and the Ministry of Supervision. Even higher level officials occasionally act as ombudsman. The rule of law is flawed in China. Many people still rest their hopes on some officials, not the system.

References:

1. Ministry of Supervision of China
2. Administrative Procedure Law of China
3. Law on Administrative Supervision

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES

NO

References:

Article 91 of the Chinese Constitution

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There is little trace of the head of the audit agency who was removed without relevant justification. Usually, audit agency heads serve a defined term even though the agency may cause a lot of trouble for other government agencies. I gave a 75 score because of the possibility that audit agencies may not touch some extremely sensitive cases and may avoid investigating some most powerful officials.

References:

Li Jinghua leaves, however auditing goes on," Guangzhou Daily, March 18, 2008

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

1. Yang Huayun, "The expansion of the auditing bureau," Xin Jing Bao, Aug. 11, 2008
2. Chen Xiao, "Liu Jia Yi directs State Bureau of Auditing," 21st Century Economic Report.
<http://news.tom.com/static/404.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

Comments:

Audit agency staff have to pass the national exam to obtain the necessary qualifications for further interviews or job offers. This rule is quite strict and transparent. Each year, the audit office publishes a list of vacant positions and then publishes the list of who passed the exam and will go to the interview round. The admission record also is published.

References:

Liu Shushu, Examination should not be the only method to select public servants," Shangbao Shaping, March 7, 2008

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

Comments:

Funding to the audit office is allocated according to its regular share, and there is no dramatic change year to year. Of course, we can only say that it receives regular funding; we are not in a position to judge whether the funding is sufficient because of the potential rent-seeking activities of audit offices.

References:

1, Auditing the audit bureau,"Sina News Sept. 2, 2009.
<http://www.wj001.com/html/guonei/2009-9-2/1240043520.html>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Full audit reports are disclosed to the public. Each year, the national audit office issues general reports about government expenditures, which cover a wide range of government agencies. The agency also issues some special reports directed at some specific agencies, such as ministry level government agencies and some government funded projects. Both types of reports are less complete in comparison to older reports that were published under the leadership of. Li Jinhua.

References:

1, Audit reports are criticized by the National People's Congress," Shidai Weekly, July 2, 2009.

<http://news.sohu.com/20090702/n264914338.shtml>

2, "Audit office audits itself," China Youth Daily, Sept. 2, 2009.

<http://news.qq.com/a/20090902/000625.htm>

3, "Audit office discloses government-information disclosure situations in 2008," Yearly Report, National Audit Office, April 3, 2009.

http://202.123.110.5/gzdt/2009-04/03/content_1277023.htm

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

1. Audit reports should be acted on," Xibu Shangbao, Sept. 4, 2009.

http://gs.xinhuanet.com/comment/2009-09/04/content_17607458.htm

2. Qu Zhengzhou, 2009, "Audit reports should be transferred into accountability," Huang He Pinglun, Sept. 3, 2009.

<http://xbsb.gansudaily.com.cn/system/2009/09/03/011253584.shtml>

3. "When will the audit storm be stopped," China Youth Daily, Aug.29, 2008.

http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm

4. Feng Haining, 2009, "The enthusiasm for audit reports is fading," Worker's Daily, Sept. 3, 2009.

http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

This does happen. For instance, the National Audit Office started auditing the funds allocated for earthquake relief and initiated auditing of the fiscal stimulus program. However, audit report quality is decreasing under the new head, one indicator is that new reports are very vague in terms finger pointing to violations of specific agencies. The reports supervised by Mr. Li Jinhua were more direct in pointing out violations of specific agencies.

References:

1. Audit reports should be acted on," Xibu Shangbao, Sept. 4, 2009.
http://gs.xinhuanet.com/comment/2009-09/04/content_17607458.htm
2. Qu Zhengzhou, 2009, "Audit reports should be transferred into accountability," Huang He Pinglun, Sept. 3, 2009.
<http://xbsb.gansudaily.com.cn/system/2009/09/03/011253584.shtml>
3. "When will the audit storm be stopped," China Youth Daily, Aug.29, 2008.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm
4. Feng Haining, 2009, "The enthusiasm for audit reports is fading," Worker's Daily, Sept. 3, 2009.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Chapter 2 of the Decree on Government Information Openness

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

1. Audit reports should be acted on," Xibu Shangbao, Sept. 4, 2009.
http://gs.xinhuanet.com/comment/2009-09/04/content_17607458.htm
2. Qu Zhengzhou, 2009, "Audit reports should be transferred into accountability," Huang He Pinglun, Sept. 3, 2009.
<http://xbsb.gansudaily.com.cn/system/2009/09/03/011253584.shtml>
3. "When will the audit storm be stopped," China Youth Daily, Aug.29, 2008.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm
4. Feng Haining, 2009, "The enthusiasm for audit reports is fading," Worker's Daily, Sept. 3, 2009.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. Audit reports should be acted on," Xibu Shangbao, Sept. 4, 2009.
http://gs.xinhuanet.com/comment/2009-09/04/content_17607458.htm
2. Qu Zhengzhou, 2009, "Audit reports should be transferred into accountability," Huang He Pinglun, Sept. 3, 2009.
<http://xbsb.gansudaily.com.cn/system/2009/09/03/011253584.shtml>
3. "When will the audit storm be stopped," China Youth Daily, Aug.29, 2008.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm
4. Feng Haining, 2009, "The enthusiasm for audit reports is fading," Worker's Daily, Sept. 3, 2009.
http://www1.china.com.cn/economic/txt/2009-09/03/content_18458389.htm

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

References:

The National Audit Office of China was established by the State Council.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

84
V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100

75

50

25

0

Comments:

This problem is similar to that of audit personnel: there are no clear criteria. Almost all tax collection agencies are claiming a shortage of staff. However, China's tax revenues are increasing by 20 percent annually, much faster than the GDP growth rate. Historically, the tax collection agency is treated as a lucrative agency and the demand for its positions is quite high. My research indicates that it has enough staff.

References:

- 1, "One-station service has good social impact," Hainan Tax, Aug. 27, 2009.
<http://tax.hainan.gov.cn/webpublish/block.1209.view.detail.newsdetail?key=717520>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All tax agencies receive regular government funding each year based on the budget, which does not change dramatically. Tax agencies generally keep a certain percentage of the total taxes collected as commissions. Thus, funding is not a major problem.

References:

1. Wang Zongbao, "An analysis of tax collection in the catering industry," He Fei Tax Bureau, Dec. 11, 2007
2. "The Exemplary Tax Agency Employee," People's Daily Internet Version, July 30, 2007

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Overstaffing is a serious phenomenon. I don't give 100 because government agencies have too many staff that are not equal to the perfect implementation of their job. Overstaffing and low efficiency coexist.

References:

Wei Wenbiao, 2008, Curbing the overstaffing phenomenon is crucial to the proper functioning of government," Study Times, Sept. 16.

<http://www.ccps.gov.cn/dxrd.php?col=161&file=6477>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Like all other government agencies, customs receives regular funding from government, which is allocated according to the budget.

References:

Public servants' income should be more equal," Zhejiang Zaixian, April 26, 2008.

http://news.xinhuanet.com/politics/2008-04/26/content_8055635.htm

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

YES | NO

References:

State Administration of Taxation, established by the State Council of China

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

China has adopted a new tax rate, valid since January 2008. Under this rule, all investments, without regard to ownership, face the same tax rate. This is a huge improvement. However, it is possible that some local governments still give preferential treatment to FDI or local investments connected to officials. Another problem is that poor people pay the majority of total tax revenues. Finally, in rural areas, tax collection is quite arbitrary: some small businessmen who have connections with officials are able to evade taxation.

References:

1. Ma Guangyuan, 2009, "Comprehensive tax system is beneficial to social equity," Xinwen Chenbao, June 19.
<http://finance.jrj.com.cn/opinion/2009/06/1906535280731.shtml>
2. "Experts call for tax system reform," Xinhua News, Aug. 15, 2009.
<http://money.163.com/09/0815/17/5GPBJIRA00253B0H.html>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

General Administration of Customs set by the State Council of China

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Some businessmen bribe customs officials and pay less or no customs fees. Some traces of this are available on the web.

References:

1. Dongguan Customs was found to be corrupt," Da Yang Wang, June 24, 2008.

http://news.jinghua.cn/351//c/200806/25/n1233607_2.shtml

2. "Xishuang Banna Custom was found to be corrupt," Yunnan Xinxu Bao, Jan. 10, 2009.

<http://news.sohu.com/20090110/n261671978.shtml>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

It's not dependent.

References:

None cited.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Overstaffing is common in China's government agencies.

References:

1. State owned asset supervision and the administration's admission rate is 0.5 percent," website of SASAA.

http://www.gov.cn/gzdt/2008-10/29/content_1135105.htm

2. State-owned Assets Supervision and Administration Information Center, "Proceedings of communications with new officials," June 11, 2008.

<http://www.sasac.gov.cn/n1180/n1566/n259790/n265436/4905026.html>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

1. A review of the operation of SASAC's work in past 5 years," June 6, 2008.

<http://www.sasac.gov.cn/n1180/n1566/n259805/n265691/4931892.html>

2, "The speech of Li Shousheng on handling extra budget issues," May 26, 2009.

<http://www.sasac.gov.cn/n1180/n1566/n259805/n265676/6411593.html>

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

1. The effectiveness of SASAC's investigation of business corruption is questioned," Jing Ji Can Kao Bao, Aug. 25, 2009.

<http://news.sina.com.cn/c/2009-08-25/075418505144.shtml>

2. "SASAC investigates cases where foreign companies bribed Chinese state-owned enterprises," Cai Jing, Aug. 22, 2009. <http://www.caijing.com.cn/2009-08-22/110228363.html>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

1. Three measures on state owned assets regulation," Jin Yang Wang, Sept. 11, 2008.

http://www2.ycwb.com/misc/2008-09/11/content_1971320.htm

2. Interim Measures for the Liabilities of Central Enterprises for Asset Losses, effective since Oct. 1, 2008, by order of the Stated-owned Assets Supervision and Administration Commission of the State Council

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

25

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Only publicly listed state-owned firms should disclose their financial record publicly.

References:

None cited

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of state-owned companies are generally flawed and incomplete, even for publicly listed firms.

References:

1. Wang Yong, The distribution of state owned assets' profits and the establishment of social security system," Baidu Finance, Feb. 26, 2008

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Since 2008, SASAC, as the regulator, started requiring all state-owned enterprises to adopt new accounting standards, which are accepted internationally. However, since this is the first year of using the new accounting standards, their implementation will be an open question until the end of this fiscal year, when all firms are required to write their financial reports. There may be further upward revision in the future, but a 50 is suitable for this year's situation.

References:

1. Kai Li, 2009, An analysis of new accounting standards on state-owned enterprises," Xian Dai Shangye, Issue 3.
http://d.wanfangdata.com.cn/Periodical_syjlr200903167.aspx
2. "SASAC urges state-owned enterprises to use new accounting standards," Zheng Quan Shibao, June 6, 2008

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

1. Cheng Meiying, 2009, Some thoughts about state-owned enterprises' financial records management," Studa.net, April. 6, 2009.
<http://www.studa.net/caiwuqita/090406/14055680.html>
2. Zhang Tong, 2008, "On guaranteeing the accuracy of financial information of state-owned enterprises," Shangye Xiandaihua, Issue 10.
<http://scholar.ilib.cn/A-QCode~scxdh200810253.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

1. Cheng Meiying, 2009, "Some thoughts about state-owned enterprises' financial records management," Studa.net, April. 6, 2009.
<http://www.studa.net/caiwuqita/090406/14055680.html>
2. Zhang Tong, 2008, "On guaranteeing the accuracy of financial information of state-owned enterprises," Shangye Xiandaihua, Issue 10.
<http://scholar.ilib.cn/A-QCode~scxdh200810253.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES

NO

References:

State-Owned Assets Supervision and Administration Commission, established by the State Council

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

62
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

70a. In law, anyone may apply for a business license.

YES | NO

References:

Chapter 1 of the Company Law of China

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Chapter 1 of the Company Law of China

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It's not difficult, and generally one month is enough time. It's quite easy and highly efficient, and there is no need to bribe officials. In this year, the efficiency was even higher and restrictions even less because the government encouraged college graduates to start businesses. Incentives included reducing initial capital reserve requirements, reducing fees and expenditures, and shortening the time needed for licensing. Generally, for ordinary licenses, it's very easy to obtain a license. This is partly the effect of changes in Administrative Procedural Law of the People's Republic of China, which was passed in 2003.

References:

1. Articles published by the China Investment Climate Forum.
<http://www.chinaicf.org.cn/>
2. Bureau of Industry and Commerce improving investment environment," Beifang Wang, April 5, 2009
3. Beijing Administration for Industry and Commerce, "Instructions on how to apply for a license."
<http://www.baic.gov.cn/wsbs/bszn/qydjzc/>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It's quite easy and highly efficient, and there is no need to bribe officials. In this year, the efficiency was even higher and restrictions even less because the government encouraged college graduates to start businesses. Incentives included reducing initial capital reserve requirements, reducing fees and expenditures, and shortening the time needed for licensing. Generally, for ordinary licenses, it's very easy to obtain a license.

References:

1. Articles published by the China Investment Climate Forum.
<http://www.chinaicf.org.cn/>
2. Bureau of Industry and Commerce improving investment environment," Beifang Wang, April 5, 2009
3. Beijing Administration for Industry and Commerce, "Instructions on how to apply for a license."
<http://www.baic.gov.cn/wsbs/bszn/qydjzc/>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Chapter 1 of the Product Quality Law of China

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Product Quality Law of China
Environmental Protection Law of China

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Product Quality Law of China

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

1. Government strengthens food-safety standards," Renmin Ribao, Sept. 3, 2009.
<http://www.cphc.org.cn/Article.asp?ClassID=12&ArticleID=8445>
2. "Local governments initiate public health service," Jiankang Bao, Aug. 26, 2009.
<http://www.hyey.com/Article/dongtai/200908/164672.html>
3. "Qiqihaer second medicine factory incident provides a good timing for medicine regulatory reform," Zhejiang Gonggong Weisheng, May 26, 2008.
<http://www.zjggs.com/Html/YaoPAQ/2008-5-26/200805260932167271.html>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

1. Ministry of Environmental Protection, 2008, The 11th five-year plan in environmental protection is approved."
http://www.mep.gov.cn/xcyj/zwhb/200804/t20080415_121163.htm
2. "China's environmental protection opens a new chapter," Huanjing Bao, July 2, 2009.
<http://www.chinacitywater.org/hyfx/hyzs/70052.shtml>

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

1. The rural public safety net is forming," Yinzhou News, Aug. 17, 2009.
http://www.nbyz.gov.cn/art/2009/8/17/art_5125_206659.html
2. Wu Hangmin, 2008, "The public safety system still needs improving," Hong Kong, July 4, 2008.
<http://hlj.rednet.cn/c/2008/07/04/1542999.htm>
3. Zhu Zhongyuan, "From Environmental Protection Campaign to Corruption," China Reform No 7, 2008.
<http://www.xschina.org/show.php?id=12667>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

78

73a. In law, attempted corruption is illegal.

YES | **NO**

References:

No such regulation exists.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Many lawyers, advocates and prosecutors propose adding bribing a foreign official to the crime category, but it has not gone into legislation yet.

References:

No such laws exist.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Chapter 8 of the Criminal Law of China

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

6th Amendment to the Criminal Law of China

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Chapter 2 of the Criminal Law of China

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

53

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES

NO

Comments:

The anti-corruption agencies in China are either part of the central committee of China's Communist Party or an organ under the Supreme People's Procuratorate of China, which is under absolute control of the leadership of the ruling party.

References:

None cited.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100

75

50

25

0

References:

1. Anti-corruption in the past 30 years," Renmin Daily, Aug. 31, 2009.

http://news.china.com/zh_cn/focus/guoging60/11075000/20090831/15620226.html

2. Zhao Lei, Liang Jialin, 2009, "Xiao Yang and his anti-corruption reports," Aug. 25, 2009.

<http://epaper.xplus.com/papers/wzzb/20090825/n1.shtml>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

1. Anti-corruption in the past 30 years," Renmin Daily, Aug. 31, 2009.
http://news.china.com/zh_cn/focus/guogqing60/11075000/20090831/15620226.html
2. Zhao Lei, Liang Jialin, 2009, "Xiao Yang and his anti-corruption reports," Aug. 25, 2009.
<http://epaper.xplus.com/papers/wzzb/20090825/n1.shtml>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Like other government agencies, the anti-corruption agency recruits staff from those who have passed the national exam, which is quite transparent and competitive. Thus, professional quality is improving.

References:

1. Qingchuan prosecutor is preparing for hard times," Sichuan Zaixian, Dec. 29, 2008.
<http://www.scol.com.cn/NSICHUAN/gyxw/20081229/2008122962849.htm>
2. China established the National Bureau of Corruption Prevention in December 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

1. Qingchuan prosecutor is preparing for hard times,” Sichuan Zaixian, Dec. 29, 2008.
<http://www.scol.com.cn/NSICHUAN/gyxw/20081229/2008122962849.htm>
2. China established the National Bureau of Corruption Prevention in December 2007.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

1. Reporting an anti-corruption prosecutor,” Yunxi Public Prosecutor, Jan. 17, 2008.
<http://www.yunxi.jcy.gov.cn/jgsz/ShowArticle.asp?ArticleID=35>
2. “Jiangsu public prosecutor uses unexpected measures to fight corruption,” Jiangsu Fazhi Bao, April 14, 2009.
http://js.jcrb.com/suzhou/jwujiang/wjmtbb/200904/t20090414_206231.shtml
3. China established the National Bureau of Corruption Prevention in December 2007.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Each year, the anti-corruption agency (an affiliate of the prosecutor's office) must report to the National People's Congress. Its reports are available, although they may not be clear and detailed. However, as in the listed source above, the NPC has started to use voting machines. The possibility that the reports are rejected is pretty high.

References:

The annual report of the Supreme People's Procuratorate," Xinhua News, March 17, 2009.
http://news.xinhuanet.com/newscenter/2009-03/17/content_11025262.htm

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Generally speaking, anti-corruption agencies are able to fulfill their mandate but with some exceptions, which is understandable in a country where a checks-and-balances system is lacking.

References:

1. Guangdong prosecutors initiate investigations of 1000 officials," Jiancha Ribao, July 31, 2009.
<http://news.eastday.com/c/20090731/u1a4546611.html>
2. "The performance of Guangdong prosecutors," Nanfang Ribao, Aug. 8, 2009.
<http://www.nanfangdaily.com.cn/nfjx/200908180028.asp>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Anti-corruption agencies can and do initiate investigations. However, it's an affiliated agency of the People's Prosecutors, including funding, staffing, etc.

References:

1. Guangdong prosecutors initiate investigations of 1000 officials," Jiancha Ribao, July 31, 2009.

<http://news.eastday.com/c/20090731/u1a4546611.html>

2. "The performance of Guangdong prosecutors," Nanfang Ribao, Aug. 8, 2009.

<http://www.nanfangdaily.com.cn/nfjx/200908180028.asp>

Also see an interview with Luo Ji, the first chief of China's anti-corruption bureau.

<http://news.sina.com.cn/c/2004-03-02/14032985447.shtml>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

Comments:

The anti-corruption bureau and the People's Prosecutors generally depend on whistle-blowers to report cases of corruption. The majority of cases are established based on whistle-blowers' complaints. Of course, many cases are not acted upon, and anti-corruption bureau officers see this as the result of low-quality information, which is quite common in the anonymous system. Now, the People's Prosecutors are calling for whistle-blowers to provide contact details so that further information necessary for filing a case can be gathered.

References:

1. Fanyu prosecutors act on complaints," Fanyu Prosecutor, June 30, 2009.
<http://www.pyjcy.gov.cn/system/newstemplate/body-after.asp?id=1033>
2. "On the anti-corruption bureau chief," Renmin Ribao, Aug. 31, 2009.
<http://news.sohu.com/20090831/n266329198.shtml>
3. "Weinan anti-corruption chief died in car accident when meeting whistle-blower," Xi'an Wanbao, Nov. 1, 2008.
http://news.xinhuanet.com/politics/2008-11/01/content_10289499.htm

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

There are many cases of punishing the whistle-blowers. However, as the majority of cases are filed based on information provided by whistle-blowers, it's a safe guess that the percentage of recriminations is not high enough to deter whistle-blowers.

References:

1. Shi Fei, 2009, Protecting whistle-blowers is critically important for fighting corruption," Zheng Yi Wang, June 23.
http://www.humanrights.cn/cn/zt/xwgzrd/2009/bhjb/r/20090623_466338.htm
2. "Some questions about punishing whistle-blowers by the Yingquan district chief," Xinhua News, Jan. 6, 2009.
http://news.xinhuanet.com/legal/2009-01/06/content_10616130.htm

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES

NO

References:

1. The Anti-Corruption and Anti-Bribery Bureau, established by the Supreme People's Procuratorate of China
2. Central Disciplinary Committee
3. Ministry of Supervision

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

68
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES

NO

References:

Criminal Procedure Law of China

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reference is the answer prepared by lawyers. Generally, for criminal cases, appeals will be acknowledged and they will be closed within at most two months.

References:

Will an appeal challenging criminal judgments be acknowledged?"
<http://zhidao.baidu.com/question/65654562.html>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Legal aid is provided by the government and some lawyers offer free voluntary service.

References:

Will an appeal challenging criminal judgements be acknowledged?"
<http://zhidao.baidu.com/question/65654562.html>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

Judges are obliged to give full explanations of their decisions, including facts, laws applicable to the case, and establishing a connection between facts, laws and punishments. This is an improvement. However, we should bear in mind that China's judiciary sector is not independent. Some decisions in criminal cases involving government officials and some politically sensitive cases may be affected by political considerations.

References:

1. The 5 musts of criminal judgements," China Court.
<http://www.lawtime.cn/info/xingshisusongfa/xszjshencha/2006090829558.html>
2. Chen Xiaoping, 2004, "The guide to criminal judgements," Tianjin Dianzi Press.
<http://www.hopebook.net/gl/product/16002.htm>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

Comments:

Judicial decisions are enforced by the state, however, enforcement is delayed in some cases

References:

1. 4 measures to guarantee enforcement," Xinhua Wang, March 25, 2009.
http://news.xinhuanet.com/legal/2009-03/25/content_11072978.htm
2. Xi Fengyu, 2009, "To institutionalize the enforcement of judicial decisions," Fazhi Ribao, March 11, 2009.
http://www.npc.gov.cn/npc/xinwen/dbgz/dbzs/2009-03/11/content_1491227.htm

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Chapter 8 of the Judges Law of the People's Republic of China

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

Comments:

This is a serious problem. Also see numerous articles and speeches by Prof. He Weifang at Peking University Law School, who is among the best-known law professors in China.

References:

1. Rights lawyers say China's judicial independence still has a long way to go, VOA News, March 30, 2009.
http://203.208.39.132/search?q=cache:RpfDYEmJyglJ:www.voanews.com/chinese/archive/2009-03/w2009-03-30-voa27.cfm+%E4%B8%AD%E5%9B%BD%E5%8F%B8%E6%B3%95%E7%8B%AC%E7%AB%8B&cd=3&hl=zh-CN&ct=clnk&gl=cn&st_usg=ALhdy29_j_FogAm4TOEZRKxn0ltMEyoPJA
2. Wang Weiguo, 2006, "Judicial independence within the context of globalization," Jinlin Law Review, Issue 12.
http://journal.chinalawinfo.com/Article_Info.asp?Id=104566

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Chapter 2 of the Criminal Procedure Law of China

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Chapter 3 of the Judges Law of China

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

I tried different search engines and different keywords. There are judges who were physically harmed, but it wasn't because they adjudicated corruption cases.

References:

None cited.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

I tried different search engines and different keywords, but couldn't find any information.

References:

None cited.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

57

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are generally not affected by racial bias, but there is some favorable treatment of minority groups, such as Tibetans. This is different from some Western countries.

References:

1. UN urges Chinese government to reduce discrimination against ethnic minority groups," VOA News, Aug. 31, 2009.

http://203.208.39.132/search?q=cache:Qm8UKspZGfYJ:www.voanews.com/chinese/2009-08-31-voa46.cfm+%E5%AE%A1%E5%88%A4+%E6%AD%A7%E8%A7%86+%E5%B0%91%E6%95%B0%E6%B0%91%E6%97%8F&cd=11&CN&ct=clnk&gl=cn&st_usg=ALhdy28HleoK7Wy1ZniY21BHbPN5MqXcEA

2. "China's ethnic minority group: policies and practice," Fsou.com.

http://www.fsou.com/html/text/bwhi/1509949/150994978_1.html

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women have use of the judicial system, and there are special measures in the government, judicial sector and civil service organizations to protect women's rights. Of course, some exceptions exist, particularly in underdeveloped rural areas, where women's rights may be violated.

References:

1. Law of the Peoples Republic of China on the Protection of Rights and Interests of Women
2. HLBE court protects women's rights," HLBE Court, June 22, 2009.
<http://www.hlbrcourt.gov.cn/Html/jicengkuaixun/16031573.html>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | **NO**

References:

Chapter 1 of the Regulations of Legal Aid

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

Comments:

State-provided legal aid is available. The most serious problem is that lawyers who participate in legal aid may be not competent or have less incentive to represent defendants.

References:

1. Chen Jian, Policy Suggestions about Legal Aid in Criminal Cases,” China Court, July 18, 2007
2. China Legal Aid Foundation: in each level of the court, free legal counsel is available to those who cannot afford the legal service.
3. “Over 10,000 poor people are covered by free legal aid,” Xining government website, Jan. 21, 2008
<http://xnnypc.xining.gov.cn/html/1383/52972.html>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

Comments:

Generally, attorneys’ fees are a significant consideration in whether to bring a case to court, but the existence of legal aid helps reduce the litigation costs.

References:

1. Reducing litigation costs to bring justice to the public,” Falv Jiaoyu Wang, Aug. 12, 2008.
<http://china.findlaw.cn/susong/mshsusong/mslw/5110.html>
2. Chen Junxiao, 2009, “An analysis of high litigation costs,” Law Pass, May 30, 2009

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

1. Reducing litigation costs to bring justice to the public,” Falv Jiaoyu Wang, Aug. 12, 2008.
<http://china.findlaw.cn/susong/mshsusong/mslw/5110.html>
2. Chen Junxiao, 2009, “An analysis of high litigation costs,” Law Pass, May 30, 2009

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Although China has had a free legal aid program for several years, legal service in the rural areas — particularly those distant from cities — is not as effective as in urban areas. This is the most severe problem in terms of access to the justice system when compared to discrimination based on ethnic, racial or gender factors.

References:

1. Pan Zhi Hua city advances legal aid to rural areas,” Sichuan Provincial People’s Government Website, Aug. 24, 2009.
http://www.sc.gov.cn/zwgk/zwdt/szdt/200908/t20090824_806438.shtml
2. “Volunteer lawyers offer legal aid service to western part of China,” Sina Gong Yi, Aug. 1, 2009.
<http://news.taojin168.com/gongyi/fr/2009/0801/1535.html>
3. “80 percent of farmers are not aware of legal aid,” Nong Ye Xinxi Wang, Jan. 7, 2009.
<http://www.086ny.com/Article/2009/200901/18930.html>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In China, law enforcement agency staff need to pass either the national judicial exam or civil servants exam. Both exams are quite strict, transparent and competitive.

References:

1. Improving the Judge-Selection Mechanism," Xinhua News Agency, April 26, 2007
2. Qian Wenjuan, Liu Wenjuan, "On the Judge-Management System of China," China Court, June 11, 2007
- 3 Liu Shushu, "Examination should not be the only method to select public servants," Shangbao Shiping, March 7, 2008
- 4, Du Xiao, 2009, "Selling positions," Legal Daily, May 27.
<http://news.eastday.com/c/20090527/u1a4400390.html>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The budget is determined each year, and a certain percentage increase is made proportionate with economic development. Agencies raise funds from other channels as well, such as extortion, corruption, etc. In most cases, agencies raise extra funds not for law enforcement itself but to provide additional benefits to staff, such as building apartments and improving the office building.

Nationally speaking, the budget allocated to law enforcement is increasing year by year. However, there are discrepancies. Some places, particularly in rural and underdeveloped areas, there may be a funding shortage for law enforcement, but it's hard to

judge whether these shortages are because of an actual shortage of funds or because funds are misused by local law enforcement agencies to, for example, build luxury office buildings.

References:

1. Management of central government funding on the court,” Ministry of Finance, People’s Republic of China
2. “Public-safety expenditure increases by 28.5 billion Yuan,” China Youth Daily, March 11, 2009

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

China’s law enforcement sector is not independent. It is not only under the leadership of Communist Party of China but also under the authority of the government’s chief.

References:

1. Anti-corruption in the past 30 years,” Renmin Daily, Aug. 31, 2009.
http://news.china.com/zh_cn/focus/guoging60/11075000/20090831/15620226.html
2. Zhao Lei, Liang Jialin, 2009, “Xiao Yang and his anti-corruption reports,” Aug. 25, 2009.
<http://epaper.xplus.com/papers/wzzb/20090825/n1.shtml>
3. Jin Baoquan, “On the independence of the judiciary sector,” 2008.
<http://www.lwlm.com/html/2008-06/46290.htm>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

A formal process exists in a supervisory organ that oversees the civil service (including police), but its decisions may be affected by political considerations. For instance, citizens can file a case about policemen, but the office in which cases are filed is affiliated with the police even though it reviews the behavior of police. Thus, its impartiality is problematic. A formal process exists in the local courts too.

References:

Administrative Procedure Law of the People's Republic of China
Law of the People's Republic of China on Administrative Supervision

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law enforcement system is not independent, so when complaints are made involving certain officials, a delay is expected. On the other hand, China's government efficiency has improved a lot. This efficiency enhancement mainly comes in ordinary government activities, such as obtaining a license or a passport, filling a tax declaration, obtaining the signature of government agencies. etc. Generally, these kinds of activities can be done in the same building. Low efficiency comes from activities of specific officials.

References:

1. Chen Shu, 2009, China's Anti-Corruption Hotline is Overloaded," VOA News, Jan. 14.
http://203.208.37.132/search?q=cache:Jqa4nXjyTP8J:www.voanews.com/chinese/w2009-06-24-voa59.cfm+%E5%8F%8D%E8%B4%AA%E7%83%AD%E7%BA%BF&cd=9&hl=zh-CN&ct=clnk&gl=cn&st_usg=ALhdy29Ec1nKJWtssSbpkvgk8IHXhRbrKg
2. Wang Keqing, Liu Sikun, "1359 Complaints in the Past Six Years from Yongquan Village, Daqing," China Rural Areas Research Network Working Paper, 2007
3. Ren Hua & Hu Xingdou, "Studies on citizens' complaints in China," 2008.
<http://www.huxingdou.com.cn/xinfang.htm>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Supreme People's Prosecutor's Office and its local branches, established by the Constitution

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The inspectors office is affiliated with police bureau. It's not independent, even though it's able to investigate some ordinary cases. But when it comes to cases involving higher ranked officials, the agency is slow to act. Still, citizens can appeal to the People's Congress, the People's Court or the disciplinary committee of the Communist Party of China.

References:

1. The Supreme People's Court addresses 10 legal issues," China.com, June 3, 2009.
http://www.china.com.cn/policy/txt/2009-06/03/content_17879277.htm
2. "Sichuan acts on law enforcement corruption," Jiancha Ribao, Dec. 28, 2008.
http://newspaper.jcrb.com/html/2008-12/29/content_8126.htm
3. Sun Shaobing, 2006, "Studies on China's law enforcement corruption and policy recommendations," Qunzhong Press.
<http://www.gzcbcs.com/bookview.asp?Bid=1478>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Chapters 8 and 9 of the Criminal Law of China

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

1. The Supreme People's Court addresses 10 legal issues," China.com, June 3, 2009.
http://www.china.com.cn/policy/txt/2009-06/03/content_17879277.htm
2. "Sichuan acts on law enforcement corruption," Jiancha Ribao, Dec. 28, 2008.
http://newspaper.jcrb.com/html/2008-12/29/content_8126.htm
3. Sun Shaobing, 2006, "Studies on China's law enforcement corruption and policy recommendations," Qunzhong Press.
<http://www.gzcbs.com/bookview.asp?Bid=1478>
4. "Fighting law enforcement corruption: punishing 139 officials this year," Xinwen Wanbao, March 11, 2009.
http://newspaper.jfdaily.com/xwwb/page_2/200903/t20090311_566562.html

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

