

Overall Score:

64 - Weak

Legal Framework Score:

78 - Moderate

Actual Implementation Score:

47 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁵⁴Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

The current regulation is quite general and short. There is no limitation for NGOs to focus on anti-corruption or good governance issues, but anti-corruption remains a sensitive issue in China.

References:

Regulation of Social Organization Registration Management,
<http://www.chinaacc.com/new/63/74/1998/10/ad3371211152018991736.htm>

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

There is no limitation in the regulation. Some NGOs experienced hardship when they received funding from abroad.

References:

Regulation of Social Organization Registration Management,
<http://www.chinaacc.com/new/63/74/1998/10/ad33712111152018991736.htm>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

Article 21 requires NGOs to disclose the source of their funding to the supervision department.

References:

Section 5, Article 29, The Social Organizations' Financial Management,
<http://www.chinaacc.com/new/63/74/1998/10/ad33712111152018991736.htm>

Article 21, Registration and Administration Rules of Private, Non-Enterprise Organizations (Statute No. 251), issued by the State Council of China,
<http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=21052>

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

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

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

50

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

There are some unofficial barriers to the operation of NGOs. It is not easy to get the data and accurate information without

government cooperation. Although there is regulation of information disclosure and public participation, the implementation is still weak.

References:

Phone interview with anonymous NGO and civil society representatives in Beijing, Oct. 20, 2011.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Anti-corruption/good governance NGOs in China cannot yet operate 100 percent freely. Implementation is still weak today.

For example, Change Think Tank worked on governance issues in recent years. Its staff had been involved in the consultation process before the information disclosure process. Although they state that implementation is weak, for them, that is a very promising signal for the next step. They are becoming increasingly more active and engaged in the political and policy-making process.

References:

Interview with NGO and civil society representatives in Beijing, Oct. 20, 2011. Deng Qing, project officer, and HanYu, lead researcher, Change Think Tank.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

There is no accurate information on this issue, but if NGOs worked on corruption-related issues during the study period too actively, their organization could not be registered. In other instances, NGOs could not get the cooperation/funding from the government that is needed for NGOs to operate smoothly.

References:

Interviews with anonymous civil society and NGO representatives in Beijing, Oct. 20, 2011.

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

0

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

In China, the most common case is that NGO activists are "lost" for a certain period of time. Once the NGO activists are back in their normal life, they usually do not want to provide detailed information about their "lost" period.

References:

Media report, <http://xzs.2000y.com/mb/1/guestbook.asp?depid=13701&page=2>

Interviews with anonymous civil society and NGO representatives in Beijing, Oct. 20, 2011.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

A prosecutor from a local court said that in theory it is safe to work on anti-corruption issues, but she does not suggest that anyone work on these issues in China. The prosecutor stated that the most challenging aspect of her work is regional protectionism, which forces her to balance the public power and private power all of the time.

References:

Media report, <http://xzs.2000y.com/mb/1/guestbook.asp?depid=13701&page=2>

Interviews with anonymous civil NGO representatives in Beijing, Oct. 20, 2011.

Phone interview with prosecutor, Oct. 20, 2011.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | **No**

References:

Interviews with civil NGO representatives in Beijing, Oct. 20, 2011.

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

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

References:

Section 1, Article 1, China Trade Union Regulation, http://machong.dg.gov.cn/index/zw_bs_one.asp?id=69

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions are common but do not play an important part in the political process and political discourse. Trade union organizers have limited understood rights.

References:

Zhang Baolong, director of China Economic Reform Foundation, Beijing, Oct. 21, 2011.

Liu Keqin, officer of China Economic Reform Foundation, Beijing, Oct. 21, 2011.

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

0

05a. In law, freedom of the media is guaranteed.

Yes | **No**

Comments:

A draft media law has been discussed in China for several years, but no action has been taken.

References:

No sources guarantee the freedom of the media.

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.

05b. In law, freedom of speech is guaranteed.

Yes | **No**

References:

No sources protect free speech of the media.

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?

31

06a. In practice, the government does not create barriers to form a print media entity.

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

Comments:

A media expert who has worked in the Chinese media system for around eight years states that during her career she did not know any citizens who had formed print media entities. Similarly, a representative from an NGO stated that his organization has difficulties in publishing the reports because the content might affect social harmony.

References:

Phone interview with Mr. Luo, a NGO representative in Beijing, Nov. 7, 2011.

Phone interview with Ms. Xiao, a media representative in Beijing, Nov. 7, 2011.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

According to the regulation released by General Administration of Press and Publication of the P.R. China, there is an appeals process for denied media licenses.

References:

General Administration of Press and Publication of the P.R. China,
<http://hi.baidu.com/xiwenjin/blog/item/dd91f6510cc8978a8c5430e3.html>

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In Mr Luo's experience, his NGO obtained a print media license eventually. The license process was quite complicated, so it took almost a year to get the license. This organization's experience is common.

References:

Phone interview with NGO representative Mr. Luo Yalong, deputy director of China Research Center of Public Policy, Nov. 7, 2011.

Phone interview with media representative Ms. Sun Xiaobai, media editor at CCTV 14 in Beijing.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr. Luo Yalong, deputy director of CRCPP, at its Beijing office, Nov. 7, 2011.

Ms. Deng Qing, program manager of CRCPP, at its Beijing office, Nov. 7, 2011.

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?

0

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not able to form broadcast (radio and TV) media entities, according to the regulations, but might be able to lease some programs with permission from central/local governments.

References:

Ms. Sun Xiaobai, media editor at China Central Television, Channel 14, Beijing, Nov. 8, 2011.

Jack Wong, technical manager at CCTV 14, at Costa Coffee in Xizhimen, Beijing, Nov. 8, 2011.

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.

07b. 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**

Comments:

No resources support this question.

References:

No resources support this question.

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

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

Comments:

Citizens cannot obtain a broadcast (radio and TV) media license.

References:

Regulations on Broadcasting and Television Administration.

Ms. Sun, manager from China Central Television, Channel 14.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot obtain a broadcast (radio and TV) media license.

References:

Regulations on Broadcasting and Television Administration.

Ms. Sun, manager from China Central Television, Channel 14.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Internet users are prevented by the government from reaching online content in some cases. Government tactics include firewalls preventing access to networks in other countries, and manipulating search engine results to exclude politically sensitive topics. For example, Chinese citizens are unable to connect to Facebook or YouTube websites for national security reasons. But if citizens want to visit those websites, there is a way to buy a special VPN online that grants access.

References:

Ms. Sun Xiaobai, media editor from China Central Television, Channel 14, Beijing, Nov. 8, 2011.

Jack Wong, technical manager at CCTV14, at Costa Coffee in Xizhimen, Beijing, Nov. 8, 2011.

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government censors citizens' online content. Sometimes citizens have difficulty uploading some articles or speeches due to the government restrictions on citizens' political speech on the Internet. Sometimes the content is blocked even when citizens successfully uploaded information.

References:

Interview with Shaochen Lee and Mi Le, Sinopoll website managers, at their Beijing office, Nov. 8, 2011.

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?

58

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

No such law prohibits this. Chapter 2 grants general rights to citizens, including freedom of speech, the press, assembly, association, procession and demonstration.

References:

Chinese Constitution, Chapter 2, the Fundamental Rights and Duties of Citizens

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There are lots of articles written on corruption. This shows that the Chinese government allows media reports on corruption.

References:

China Daily, "China tightens corruption supervision," Jan. 14, 2010, http://www.chinadaily.com.cn/china/2010-01/14/content_9317579.htm

The Guardian, "China launches corruption inquiry into railway minister," Feb. 13, 2011, <http://www.guardian.co.uk/world/2011/feb/13/china-corruption-inquiry-railway-minister>

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government censors broadcast media. An anonymous program officer stated that his NGO is afraid to put certain words in

policy briefs. The government sometimes prevents publication of controversial corruption-related materials. A media expert, Ms. Sun is afraid to talk about specific examples.

References:

Interview with the program officer (anonymous) at the Asia Foundation Beijing office, Oct. 28, 2011.

Phone interview with Ms. Sun Xiaobai, manager at CCTV 14, Nov. 8. 2011.

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?

55

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

Yes | No

References:

Regulation on the Administration of Publication, Section II, Article 11,
<http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=147043>

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:

Regulations on Broadcasting and Television Administration,
<http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=18601>

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:

In practice, journalists and editors are not able to adhere to strict, professional practices in their reporting. In the event that they attempt to do so, their reports might be made unavailable to the public, depending on the type of coverage of a particular issue, event or person.

References:

Ms. Sun Xiaobai, and Jack Wong, manager at CCTV, and colleagues, Beijing, Nov. 8, 2011.

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:

Independent candidates are not able to join the election in China’s current political system. All the media have to report about one party, the ruling party, during the election. The ruling party owns the media.

References:

Ms. Sun Xiaobai, Jack Wong, manager at CCTV, and colleagues, Beijing, Xizhimen Costa Coffee, Nov. 8, 2011.

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:

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 might occasionally discriminate against particular parties or candidates and advertising rates might be confusing or nontransparent.

References:

Ms. Sun Xiaobai, Jack Wong, manager at CCTV, and colleagues, Beijing, Xizhimen Costa Coffee, Nov. 8, 2011.

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?

0

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

Yes | **No**

Comments:

Many journalists were jailed because of their work covering corruption during the study period.

References:

Ms. Sun Xiaobai, Jack Wong, manager at CCTV, and colleagues, Beijing, Xizhimen Costa Coffee, Nov. 8, 2011.

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:

Journalists investigating corruption have been physically harmed.

References:

Ms. Sun Xiaobai, Jack Wong, manager at CCTV, and colleagues, Beijing, at Xizhimen Costa Coffee, Nov. 8, 2011.

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**

Comments:

In the past year, a journalist who investigated the food safety corruption issue was killed. While the exact circumstances of the journalist's death are unknown, it is widely believed that his death must be related to the corruption issue the journalist was investigating.

References:

Ms. Sun Xiaobai, Jack Wong, manager at CCTV, and colleagues, Beijing, at Xizhimen Costa Coffee, Nov. 8, 2011.

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.

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

Regulation of the People's Republic of China on the Disclosure of Government Information, Article 1, gives citizens, legal persons and other organizations the legal access to government information. It improves the transparency of government work, promotes the administration according to the law and gives full effect to the role of government information in serving the people's production, living and social and economic activities. However, the right to request information is still in the primary stages. It is not easy for citizens to request information, even if China has legal documents.

References:

Regulation of the People's Republic of China on the Disclosure of Government Information, Article 1.

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

Regulation of the People's Republic of China on the Disclosure of Government Information, Article 33, states: "Where any citizen, legal person or any other organization believes that an administrative organ fails to fulfill its obligation of government information disclosure according to law, he/she may inform the superior administrative organ, supervisory organ or the competent department of government information disclosure. The informed organ shall investigate and handle it according to law. Where any citizen, legal person or any other organization believes that a specific administrative act committed by an administrative organ in carrying out government information disclosure work has infringed upon his/its legal rights and interests, he/she may apply for administrative reconsideration or bring an administrative lawsuit according to law."

Administrative Reconsideration Law of the People's Republic of China, Article 2, states, "This Law is applicable to a citizen, legal person or any other organization who considers that his or its lawful rights and interests have been infringed upon by a specific administrative act, and applies for administrative reconsideration to an administrative organ which accepts the application for administrative reconsideration, and makes a decision of administrative reconsideration."

However, according to research, only 1 percent of Chinese citizens appeal if a request for a basic government record is denied. Most of the time, citizens could not get the information through the appeal process.

References:

Regulation of the People's Republic of China on the Disclosure of Government Information, Article 33.

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:

As stated in Article 3 of the Regulation of the People's Republic of China on the Disclosure of Government Information, all levels of the Chinese government have information disclosure offices. They are responsible for promoting, guiding, coordinating and supervising the government information disclosure work of their region of administration.

Article 15 states: "An administrative organ shall disclose the government information that shall be voluntarily disclosed through government bulletins, government websites, news releases, newspapers and periodicals, broadcasting, television or any other means easy for the general public to access."

Article 16 states: "The people's governments at various levels shall set up a place for consulting government information at national archives and public libraries and equip with corresponding facilities and equipments to provide convenience for citizens, legal persons or other organizations to access government information."

References:

Regulation of the People's Republic of China on the Disclosure of Government Information, Articles 3, 15, 16.

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 to information requests effective?

67

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

100 | 75 | 50 | 25 | 0

Comments:

As stated by the director of the Open Government Information Office, "The key problem here is that there is no clear boundary between the basic government records and national secrets. Thus, the government often refuses requests to open information due to the Law of the People's Republic of China on Guarding State Secrets limitation." For example, a journalist sent 31 applications to 31 provinces in China to request the data of PM 2.5 and its linkage to air pollution. The journalist received only 10 responses during the time period allowed according to the Government Information Disclosure regulation. However, Chen Xi said this should be a special case, given that PM 2.5 is a new issue to face for most provinces. They might not have the capacity to provide the data yet.

References:

Southern Metropolis Daily, "10 responses received among 31 applications," Wang Xing, Jan. 11, 2011, <http://tech.qq.com/a/20120111/000157.htm>

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of requesting information is quite low, generally under 5 RMB. Moreover, most information is online and free to the public.

References:

Government requirement from Ministry of Finance and National Development Reform Commission.

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

Responses to information requests are of low quality for two main reasons. First, only three years have passed since China

passed information disclosure requirements, and the work in this area is still at an initial stage. The government needs more time to prepare before opening information. Second, government officers who are responsible for disclosing information are limited by the Guarding State Secret Law and Archives Law. For example, based on a media report, a journalist received only 10 responses to 31 requests for information from 31 provinces, and only one of the responses was of high quality.

References:

Southern Metropolis Daily, "10 responses received among 31 applications,"
Wang Xing, Jan. 11, 2011, <http://tech.qq.com/a/20120111/000157.htm>

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can resolve appeals to information requests within a reasonable time period as long as the citizens clarify the purpose of requesting information at the right place.

References:

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

Phone interview with Song Dawei, officer, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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:

The cost has never been considered a problem during the process. Most citizens even would like to pay more if it gave them access to the information. Some applications are free, while some special applications cost 5RMB, less than \$1 USD.

References:

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

Phone interview with Song Dawei, officer, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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:

The reasons the government gives for denying an information request include "state secret," but it is unclear what constitutes a state secret.

References:

Phone interview with ChenXi, director, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

Phone interview with Song Dawei, officer, Open Government Information Office, Beijing Municipal Government, Dec. 13, 2011.

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.

2.1. ⁴¹Voting and Party Formation

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

Comments:

Article 3 of the Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses states: "All citizens of the People's Republic of China who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence. Persons who have been deprived of political rights according to the law shall not have the right to vote and stand for election."

References:

Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses, Article 3.

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

Comments:

In the Constitution of the People's Republic of China, Article 60 states: "The National People's Congress is elected for a term of five years. The Standing Committee of the National People's Congress must ensure the completion of election of deputies to the succeeding National People's Congress two months prior to the expiration of the term of office of the current National People's Congress. Should extraordinary circumstances prevent such an election, it may be postponed and the term of office of the current National People's Congress extended by the decision of a vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such extraordinary circumstances."

Article 66 states: "The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it shall exercise its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress. The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms."

References:

Constitution of the People's Republic of China, Articles 60, 66, 79.

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

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

58

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

100 | 75 | 50 | 25 | 0

Comments:

In practice, people who have been deprived of political rights according to the law shall not have the right to vote and stand for election. For example, when a man was sentenced to several years with deprivation of political rights for three years, he had no right to vote for three years.

References:

Chinese Newspaper, "Man Convicted of Espionage and Sentenced to 10 Years in Prison, Deprived of Political Rights for Three Years and Fined 50,000 yuan," <http://dflf.banzhu.net/article/dflf-55-1476338.html>, Aug. 25, 2010.

Nan Wang, student, Peking University, Beijing, Feb. 14, 2012.

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:

The election of deputies to the national and local people's congresses at various levels shall be conducted by secret ballot without exception. Secret ballot booths shall be set up for elections.

References:

Dazhong News, "The election of mayor shall be conducted by secret ballot," Jan. 23, 2010, Qiang Luo. http://www.dzwww.com/rollnews/news/201001/t20100123_5522915.htm.

Nan Wang, student, Peking University, Beijing, Feb. 14, 2012.

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, according to the Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses and Constitution of the People's Republic of China.

References:

Chinese Newspaper, The election of Tianhe District, Sep.16, 2011, http://www.thnet.gov.cn/zxzx/ztxx/ztlb/hjxj/2011/hjxjdt/201109/t20110920_451426.htm

Nan Wang, student, Peking University, Beijing, Feb. 14, 2012.

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?

25

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

Yes | No

Comments:

Although the law allows freedom of association, in China freedom of association does not mean the freedom to form political parties. It is impossible to form political parties in China.

References:

Constitution of the People's Republic of China, Article 35 (Citizens of the People's Republic of China enjoy freedom of speech, the press, assembly, association, procession and demonstration).

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

Comments:

The Constitution Law allows citizens to enjoy freedom of association, but such association does not include formation of political parties.

References:

Constitution Law, Article 34.

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:

Citizens may enjoy the freedom of association, but are not allowed to form political parties.

References:

Study on democratic committee, Shanghai Minjian, April 15, 2011, <http://www.mjshsw.org.cn/shmj2011/node558/node562/u1a19866.html>

Nan Wang, student, Peking University, Beijing, Feb. 14, 2012.

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:

In China, if someone wants to run for political office, he must work for the government before being eligible as a candidate. For example, lawyers cannot run for office.

References:

Anhui Daily, "Election of mayor," Jan. 15, 2011, <http://ah.anhuinews.com/system/2011/01/15/003669159.shtm>

Nan Wang, student, Peking University, Beijing, Feb. 14, 2012.

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:

There is no opposition party in China against the Communist Party. According to the Constitution of the People's Republic of China, the system of the multiparty cooperation and political consultation led by the Communist Party of China will exist and develop for a long time. In other words, this indicator is not applicable in China.

References:

Liaowang News Weekly, "Leading of China Communist Party," Feb. 13, 2012, <http://cpc.people.com.cn/GB/64093/64387/17096110.html>.

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

Article 34 of the Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses states: The election of the deputies to the National People's Congress and local people's congresses at various levels shall be conducted under strict legal procedures, and be subject to supervision. No organization or individual shall interfere in any way with the voters' or deputies' free exercise of their electoral right."

Article 46 states: "All deputies to the national and local people's congresses shall be subject to the supervision of the voters and the electoral units which elect them. Both the voters and electoral units shall have the right to recall the deputies they elect."

References:

Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses, Articles 34 and 46.

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.

18. Is the election monitoring agency effective?

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

Yes | **No**

Comments:

Article 34 of the Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses states: "The election of the deputies to the National People's Congress and local people's congresses at various levels shall be conducted under strict legal procedures, and be subject to supervision. No organization or individual shall interfere in any way with the voters' or deputies' free exercise of their electoral right."

Article 46 states: "All deputies to the national and local people's congresses shall be subject to the supervision of the voters and the electoral units which elect them. Both the voters and electoral units shall have the right to recall the deputies they elect."

References:

Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses, Articles 34 and 46.

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**

References:

People.com.cn, "Supervision of the election," April 26, 2011, <http://npc.people.com.cn/GB/14487450.html>.

Nan Wang, student, Peking University, Beijing, Feb.15, 2012.

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 China, the supervising authority has other functions besides supervising the election.

References:

Zhongshan City Government Net, "The supervision of the election," Nov. 2, 2011, http://www.shaxi.gov.cn/zhengwu/news_detail.aspx?newsId=5948.

Nan Wang, student, Peking University, Beijing, Feb. 15, 2012.

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

References:

Jie Sun, "Election report of Jiangxi Province," Nov. 30, 2011, <http://jxrd.jxnews.com.cn/system/2011/12/22/011858666.shtml>.

Eva Yang, lawyer, law firm in Beijing, Feb. 15, 2012.

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

References:

People.com.cn, "The supervision of election," Aug. 24, 2011, <http://legal.people.com.cn/GB/15492296.html>.

Eva Yang, lawyer, law firm in Beijing, Feb. 15, 2012.

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?

46

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

100 | 75 | 50 | 25 | 0

References:

China Daily, "The registration of voters," Sept. 15, 2011, http://www.chinadaily.com.cn/hqgj/jryw/2011-09-15/content_3784749.html.

Demi Li, lawyer, law firm in Beijing, Feb. 15, 2012.

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**

Comments:

There is no way to contest election results in the judicial system, but the recall procedure of a deputy is regulated by the Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses.

References:

There is no way to contest election results in the judicial system.

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:

In China, the judicial system has no right to do such things, except for the confirmation of voters' qualifications.

References:

Longyan Tong Before the Village: Election Results Report Card, Nov. 28, 2009, <http://qq1556188365.blog.163.com/blog/static/1665191982009102810170656/>

Eva Yang, lawyer, law firm in Beijing, Feb. 15, 2012.

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.

Comments:

In China, the military also can be involved in elections, but it has its own procedures.

References:

Chinamil.com.cn, "The election of military," Dec. 6, 2011, http://www.chinamil.com.cn/fjfbmap/content/2011-12/06/content_73322.htm.

Eva Yang, lawyer, law firm in Beijing, Feb. 15, 2012.

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 overly 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 are election committees established to direct the work of electing deputies. There are no rules regarding international monitoring.

References:

Electoral Law of the People's Republic of China on the National People's Congress and Local People's Congresses, Article 34.

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.

Comments:

In practice, the election committees play an important role in election procedures, especially for most local elections.

References:

Sina.com, "Supervision of election," June 2, 2011, <http://news.sina.com.cn/o/2011-06-02/051622573079.shtml>

Nan Wang, student, Peking University, Beijing, Feb. 15, 2012.

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.

59
2.3. Political Financing Transparency

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:

There are no regulations concerning individual donations to political parties.

References:

No regulations concern individual donations to political parties.

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:

No law exists.

References:

No law exists.

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**

Comments:

No law exists. China has a one-party system.

References:

No law exists.

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**

Comments:

There is no such donation system in China, thus no disclosure regulations are required.

References:

No law exists.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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 communist party membership but not political parties. China has a one-party system.

References:

No law exists.

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**

Comments:

No law exists to regulate political parties. China has a one-party system. The Communist Party has regulations on its membership.

References:

No law exists.

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 non-governmental 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**

References:

No such law exists in China.

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:

There are no such laws in China.

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**

Comments:

There is no system for individual donations to political candidates, thus there are no requirements mandating the disclosure of contributions to them.

References:

No law exists.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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:

No such law exists in China.

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**

Comments:

No law exists.

References:

No law exists.

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 non-governmental organizations.

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

0

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:

There is no donation system in practice, and the political party does not depend on individual contributions.

References:
Not applicable.

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:
There is no donation system in practice, and the political party does not depend on individual contributions.

References:
Not applicable.

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.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations on the total expenditures of China's single political party.

References:

Not applicable.

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:

No such law exists.

References:

Ningning Zhang, lawyer, law firm in Beijing, Feb. 15, 2012.

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:

No such law exists.

References:

Ningning Zhang, lawyer, law firm in Beijing, Feb. 15, 2012.

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:

There are no contribution or donation systems for political parties in China.

References:

Not applicable.

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?

0

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:

There is no donation system in practice, and political candidates do not depend on individual contributions to the party.

References:

Not applicable.

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:

There is no donation system in practice, and political candidates do not depend on individual contributions to the party.

References:

Not applicable.

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:

No such law exists.

References:

Ningning Zhang, lawyer, law firm in Beijing, Feb. 15, 2012.

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, though 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

Comments:

No such law exists.

References:

Ningning Zhang, lawyer, law firm in Beijing, Feb. 15, 2012.

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

Comments:

This indicator does not apply to the situation in China.

References:

Ningning Zhang, lawyer, law firm in Beijing, Feb. 15, 2012.

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?

25

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 Congress of the Communist Party of China sometimes discloses financial situations and expenditures, and citizens can get this information through media reports.

References:

Chinese links:

http://www.hsw.cn/news/2007-01/10/content_6031673.htm

<http://www.infzm.com/content/trs/raw/43021>

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:

There are no specific statistics regarding the time period of receiving such documents, but once the Communist Party Congress releases this information, citizens can get it from the media and government websites within one day.

References:

Chinese Network, Xinhua News Agency, Government Work Report in the third meeting of the 11th National People's Congress Premier Wen Jiabao, March 15, 2010 http://www.china.com.cn/policy/txt/2010-03/15/content_19612372.htm

"Wen Jiabao's 'Government Work Report' at the Second Session of the Eleventh National People's Congress," May 15, 2011, <http://wenku.baidu.com/view/9e7925136c175f0e7cd137f3.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 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:

Access to such reports is often through the media or online, so it is hard to estimate the real cost of access.

References:

China Network, Xinhua News Agency, Premier Wen Jiabao's 'Government Work Report' at the 3rd Meeting of the 11th National People's Congress, March 15, 2010, http://www.china.com.cn/policy/txt/2010-03/15/content_19612372.htm

Wenku, Wen Jiabao's "Government Work Report" at the Second Session of the Eleventh National People's Congress, May 15, 2011, <http://wenku.baidu.com/view/9e7925136c175f0e7cd137f3.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 NGOs. 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 NGOs 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:

Once a report is received, it is subject to evaluation and discussion by deputies and citizens. Every citizen can access these reports through various ways, such as the Internet, libraries and government publications. The report is in a uniform format and of good quality. Flaws detected include inconsistency of financial statistics.

References:

China Network, Xinhua News Agency, Premier Wen Jiabao's 'Government Work Report' at the 3rd Meeting of the 11th National People's Congress, March 15, 2010, http://www.china.com.cn/policy/txt/2010-03/15/content_19612372.htm

Wenku, Wen Jiabao's "Government Work Report" at the Second Session of the Eleventh National People's Congress, May 15, 2011, <http://wenku.baidu.com/view/9e7925136c175f0e7cd137f3.html>

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.

100 | 75 | 50 | 25 | 0

Comments:

There is no political campaign system in China, thus no such record could be made or received.

References:
Not applicable.

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.

100 | 75 | 50 | 25 | 0

Comments:

There is no political campaign system in China, thus no such record could be made or received.

References:
Not applicable.

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 political campaign system in China, thus no such record could be made or received.

References:
Not applicable.

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 NGOs. 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 NGOs 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 political campaign system in China, thus no such record could be made or received.

References:

Not applicable.

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁵¹Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

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

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

Yes | No

Comments:

According to the Constitution of the People's Republic of China (2004), Article 33:

"All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. The state respects and protects human rights. Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law."

References:

Constitution of the People's Republic of China (2004), Article 33.

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.

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:

The chief executive seldom talks and usually does so only after preparation or being taught what to say or do. This is done to avoid adverse consequences.

References:

Yongnian Zheng, Asian Survey, China in 2011: Anger, Political Consciousness, Anxiety, and Uncertainty, Vol. 52, No. 1, pp. 28-41, 2012, <http://www.jstor.org/stable/10.1525/as.2012.52.1.28>

Michael Scherer, Time, Hu Jintao's Press Conference: A Controlling Leader Meets An Open Press, January 19, 2011, <http://swampland.time.com/2011/01/19/hu-jintaos-press-conference-a-controlled-leader-meets-an-open-press/#ixzz1qSI4LWX6>

Christopher Bodeen, Hu Jintao-U.S. Press Q&A To Go Ahead, Huffington Post, January 18, 2011, http://www.huffingtonpost.com/2011/01/18/hu-jintao-us-visit_n_810183.html

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:

Article 2 of the Administrative Procedure Law of the People's Republic of China states: "A citizen, a legal person or other organizations have the right to litigate a lawsuit in the people's courts in accordance with this law once they consider that a concrete administrative action by administrative organs or personnel infringe their lawful rights and interests."

Article 3 states: The people's courts exercise judicial power independently with respect to administrative cases, and shall not be subject to interference by any administrative organ, public organization or individual. The people's courts shall set up administrative divisions for the handling of administrative cases."

Article 5 states: "In handling administrative cases, the people's courts shall examine the legality of specific administrative acts."

The court will examine the executives according to people's lawsuits.

References:

Administrative Procedure Law of the People's Republic of China.

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:

Normally, the judiciary and the chief executive are treated as components of the government, which has almost identical interests. It can be predicted that the judiciary might shield the chief executive unless there is an irreconcilable conflict of interest.

References:

Peter Foster, The Telegraph, China 'Will Never Be a Multiparty Democracy', March 10, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/china/8373060/China-will-never-be-a-multiparty-democracy.html>

China Media Project, Three Supremes, 2010, <http://cmp.hku.hk/2010/11/12/6603/>

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:

Usually, there is a big gap between the law and the practice.

References:

Decree of the President of the People's Republic of China, No. 36, 28 October 2010, <http://conflictoflaws.net/News/2011/01/PIL-China.pdf>

Amendment to the Individual Income Tax of the PRC [by Decree of the President of the People's Republic of China, No. 48 on June 30, 2011], Ernst and Young, [http://www.ey.com/Publication/vwLUAssets/HRTA201107_en/\\$FILE/HR%20&%20Tax%20Alert%20%28ENG%29.pdf](http://www.ey.com/Publication/vwLUAssets/HRTA201107_en/$FILE/HR%20&%20Tax%20Alert%20%28ENG%29.pdf)

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

Comments:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 5, states: "Where any civil servant in the administrative organ is suspected of being involved in a crime, he shall be transferred to the judicial organ for criminal liabilities."

References:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 5.

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

Comments:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 5, states: "Where any civil servant in the administrative organ is suspected of being involved in a crime, he shall be transferred to the judicial organ for criminal liabilities."

References:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 5.

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?

44

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

Yes | No

Comments:

A draft Regulation of Asset Declaration has been officially listed in the legislative plan since 1994.

References:

No law exists.

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:

A draft Regulation of Asset Declaration has been listed in the legislative plan since 1994.

References:

No law exists.

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

Comments:

The Central Disciplinary Committee regulates misconduct in receiving gifts and hospitality.

References:

Jurisdiction of the Committee, <http://www.12388.gov.cn/xf/know.html>

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:

A draft Regulation of Asset Declaration has been listed in the legislative plan since 1994.

References:

No law exists.

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

Comments:

Article 102 of the Civil Servant Law of the People's Republic of China states: "Where a civil servant resigns his post or retires and if he is a leading member before resignation, he shall not take any post in an enterprise or any other profit-making organization that is directly related to his original post, or shall not engage in any profit-making activity directly related to his prior work within three years after he leaves his post. For any other civil servant, the time limit is two years.

"Where a civil servant has any violation of the provisions in the preceding paragraph after resignation or retirement, the administrative department of civil servants at the same level as the original organ he works for shall order him to correct within a prescribed time limit; where he fails to correct, the administration for industry and commerce above the county level shall confiscate the illegal proceedings generated from his business, order the entity concerned to dismiss him, and according to the seriousness of circumstances, impose the receiving entity a fine of one-to-five times of that as imposed on the person punished."

References:

Civil Servant Law of the People's Republic of China, Article 102.

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:

Sometimes it is reported that a public officer has had an indirect influence on a company or industry.

References:

Source 1:

<http://mnc.people.com.cn/BIG5/9969579.html>

Source 2:

<http://www.scxsls.com/a/20110701/7794.html>

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:

The Central Disciplinary Committee is in charge of these fields and has raised several investigations during 2010-2011 of party members accepting gifts and hospitality.

References:

Positive Times Online, “Central Commission for Discipline Inspection is Investigating Senior Officials of Liu Zhijun, Tianxue Ren, Huang Sheng, January 7, 2012, http://www.northnews.cn/2012/0107/631429_3.shtml

SZNews.com, The Central Commission for Discipline Inspection to investigate the three major telecom operators, May 31, 2011, http://jfb.sznews.com/html/2011-05/31/content_1595090.htm

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

Comments:

Regulation of the People’s Republic of China on the Disclosure of Government Information, including financial disclosure requirements, has been put into practice since 2007. There are still many aspects to clarify, especially with respect to more detailed information or figures related to the flow of financial funds.

References:

Legal Daily, "Citizens can apply to the administrative department for executive branch asset disclosures," July 2011, http://www.legaldaily.com.cn/index_article/content/2011-07/24/content_2807701.htm?node=5958

2010 Annual Report on China's Fiscal Transparency Report by Public Policy Research Center of Shanghai University of Finance and Economics, April 2011.

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**

Comments:

In practice, citizens cannot access key asset disclosure records of the heads of state and government.

References:

There are no laws explicitly indicating reports concerning the head of government's financial situation.

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**

Comments:

No laws covering this exist at the federal level. In recent years, some officers in some provinces have voluntarily disclosed their asset situation.

References:
Not applicable.

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

Comments:
The heads of state and government do not file disclosure reports.

References:
Not applicable.

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 NGOs. 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 NGOs 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

Comments:
The heads of state and government are not required to file financial disclosure reports.

References:
Not applicable.

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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

Theoretically, all the Chinese people are part of the ruling political party, but in practice the official government is not kept separate and distinct from the functions of the ruling political party. The official government is the ruling political party.

References:

China Daily, "How to Remedy the Public Trust to the Official Government and Political Party?" Shang Guan Jiu Rui, November 2008, <http://www.chinaelections.org/newsinfo.asp?newsid=217827>

The Journal of Yunnan Administration College, "The Comparative Analysis of Official Government and Political Party," Shang Ailing, Zhou Zhentao, October 2008, http://d.wanfangdata.com.cn/Periodical_ynxzyxb200804005.aspx

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

50

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

Yes | **No**

Comments:

Judicial review is not in China's law system.

References:

No law exists.

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:

According to the Administrative Reconsideration Law of the People's Republic of China and Regulation on the Implementation of the Administrative Reconsideration Law of the People's Republic of China, an applicant who believes a provision or administrative act is unconstitutional may lodge an application for a review of the provision or specific administrative action. The applicant may lodge an application for a review of such a provision with the administrative reconsideration organ before the administrative reconsideration organ makes an administrative reconsideration decision.

References:

Legal Daily Blog, "The Value of Judiciary Reviews," Xiehui, December 2011,
<http://blog.legaldaily.com.cn/blog/html/25/2443325-20502.html>

Sabrina Zhang, manager of China Society of Economic Reform, Beijing, Feb. 15, 2012.

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

Comments:

According to the relevant regulations on Criminal Procedure Law, an NPC member of a higher level may have some privileges in cases of arresting or questioning. Article 4 states that everyone is equal before the law in committing crime. No one is permitted to have privileges to transgress the law.

References:

Constitution of the People's Republic of China, Article 58: The National People's Congress and its Standing Committee exercise the legislative power of the state.

Criminal Law of the People's Republic of China, Article 4: Everyone is equal before the law in committing crime. No one is permitted to have privileges to transgress the law.

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?

14

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

Yes | No

Comments:

No law mandates that the National People's Congress and its standing committee disclose their assets.

References:

No law exists.

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:
No law exists.

References:
No law exists.

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:
No law exists.

References:
No law exists.

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**

Comments:
No law exists.

References:
No law exists.

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:

The “cooling off” periods for most officials are strict and uniformly enforced, but there are a few cases indicating that indirect influences are imposed on private sectors within the period.

References:

http://www.chinalawedu.com/news/20800/212/2004/2/li802421734162240027968_84798.htm

<http://www.cnki.com.cn/Article/CJFDTotal-RMJC201105020.htm>

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:

A certain number of officials are reportedly investigated by Disciplinary Inspection every year. The Central Disciplinary Committee raises investigations according to governmental regulations rather than laws.

References:

<http://www.12388.gov.cn/xf/know.html>

Tan YING, prosecutor of Baiyun Procuratorate.

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 professors said the central government and its departments are legislative branches along with the NPC. The government revenues and expenditures of all the departments of the State Council, of the local people's governments at various levels and their departments, the financial revenues and expenditures of state-owned financial institutions, enterprises and public institutions, as well as other government revenues and expenditures and financial revenues and expenditures are subject to the audit supervision.

References:

Phone interview with Professor Wang Xixin, Peking University School of Law, Feb. 15, 2012.

Phone interview with Assistant Professor Li Yuanyuan, Peking University School of Law, Feb. 15, 2012.

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:

No law exists.

References:

No law exists.

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, non-governmental 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:

No records exist.

References:

Not applicable.

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:

No records exist.

References:

Not applicable.

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 NGOs. 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 NGOs 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:
No records exist.

References:
Not applicable.

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?

67

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

Yes | No

Comments:
Articles 9 and 13 of the Regulation of the People's Republic of China on the Disclosure of Government Information grant citizens access to legislative documents and processes.

References:
Regulation of the People's Republic of China on the Disclosure of Government Information, Articles 9, 13, <http://en.pkulaw.cn/display.aspx?cgid=90387&lib=law>

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:

In practice, some records and documents can be accessed through media right after the NPC meeting is held, but politically sensitive information might not be available immediately.

References:

The Information Disclosure Principle in the Legislative Processes, Baidu WenKu, February 2012, <http://wenku.baidu.com/view/1d833fc68bd63186bcebbc4c.html>

Phone interview with Wang Canfa, professor at China Political and Law University, February 2012.

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

Comments:

In practice, the records and documents can be accessed through media right after the NPC meeting, e.g., a press conference, so the cost is relatively low for most citizens. But there are still some costs; for example, the cost to access the Internet. The cost is less than \$3 U.S.

References:

The Information Disclosure Principle in the Legislative Processes, Baidu WenKu, February 2012, <http://wenku.baidu.com/view/1d833fc68bd63186bcebbc4c.html>

Phone interview with Wang Canfa, professor at China Political and Law University, February 2012.

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 NGOs. 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 NGOs trying to access this information.

33

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

100

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

Yes | No

Comments:

Judges Law of the People's Republic of China, Article 11, states: "A judge shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the Constitution and laws."

Article 12 states: "Persons to be appointed judges for the first time shall be selected through strict appraisal and in accordance with the standards of having both ability and political integrity, and shall be selected from among those who have obtained the qualification through the uniform judicial examination of the state and are best qualified for the post."

References:

Judges Law of the People's Republic of China, Articles 11, 12.

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:

Selected national-level judges have relevant professional qualifications, such as formal legal training, experience as a lower court judge or a career as a litigator.

References:

Xinhua, 57 New Cadres of Posts in the Supreme Court Public Difference Between the Selection of Personnel, November 19,

2010, http://news.xinhuanet.com/politics/2010-11/19/c_12795752.htm

Kunming Lawyer, Supreme People's Court Will Select Lawyers as Judges, June 6, 2006, <http://www.kunminglawyer.com/readnews.asp?D1=1739>

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:

Article 11 of the Judges Law of the People's Republic of China states: "A judge shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the Constitution and laws.

"The President of the Supreme People's Court shall be elected or removed by the National People's Congress. The vice presidents, members of the judicial committee, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the Standing Committee of the National People's Congress upon the recommendation of the President of the Supreme People's Court."

References:

Judges Law of the People's Republic of China, Article 11.

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?

88

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

Yes | No

Comments:

Organic Law of the People's Courts of the People's Republic of China, Article 33, the Supreme People's Court gives interpretation on questions concerning specific application of laws and decrees in judicial proceedings.

References:

Organic Law of the People's Courts of the People's Republic of China, Article 33.

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:

The People's Court gives interpretations on questions concerning specific application of laws and decrees in judicial proceeding. Judgments and punitive awards are released on the court's website.

References:

Awards of the court at Baidu Wenku in February 2012, <http://wenku.baidu.com/view/cbf1ad2658fb770bf78a55c4.html>

Communications for citizens, at the government court website in February 2012, <http://www.court.gov.cn/>

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

Comments:

Judges Law of the People's Republic of China, Article 7, states: "Judges shall perform the following obligations: accept legal supervision and supervision by the masses."

Organic Law of the People's Courts of the People's Republic of China, Article 14, states: "If the president of a people's court finds in a legally effective judgment or order of his court, some definite error in the determination of facts or application of law, he must submit the judgment or order to the judicial committee for disposal.

"If the Supreme People's Court finds some definite error in a legally effective judgment or order of the people's court at a lower level or if the people's court at a higher level finds such error in a legally effective judgment or order of the people's court at a lower level, it has the authority to review the case itself or to direct the lower-level people's court to conduct a retrial.

"If the Supreme People's Procuratorate finds some definite error in a legally effective judgment or order of a people's court at any level or if the people's procuratorate at a higher level finds such error in a legally effective judgment or order of any people's court at a lower level it has the authority to lodge a protest in accordance with the procedure of judicial supervision.

"The people's courts at all levels shall hold themselves responsible for seriously handling a petition lodged by a party to a case against a legally effective judgment or order."

Article 17 states: "The Supreme People's Court is responsible to and reports on its work to the National People's Congress and its Standing Committee. Local people's courts are responsible to and report on their work to the local people's congresses at corresponding levels and their standing committees."

References:

Judges Law of the People's Republic of China, Article 7.

Organic Law of the People's Courts of the People's Republic of China, Articles 14, 17.

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:

Organic Law of the People's Courts of the People's Republic of China, Article 4, states: "The people's courts shall exercise judicial power independently, in accordance with the provisions of the law, and shall not be subject to interference by any administrative organ, public organization or individual."

References:

Organic Law of the People's Courts of the People's Republic of China, Article 4.

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:

As stated by Carl F. Minzner in his article: "The People's Procuratorates and the Judicial Committee of the Supreme People's Court aggressively start investigations into judicial misconduct. They are fair in the application of this power. The paper told us local Chinese courts commonly use responsibility systems (mubiao guanli zeren zhi, zeren zhuijiu zhi) to evaluate and discipline judges. Judges receive sanctions under these systems for a wide range of behavior, such as illegal or unethical dealings with parties and lawyers, inappropriate courtroom behavior, and neglect of duty.

"Many local court Chinese responsibility systems also discipline judges for simple legal error. Judges may face sanctions linked to the number of cases that are reversed on appeal, simply because the interpretation of law made by a higher court differs from that of the original trial judge. Sanctions include monetary fines and negative notations in a judge's career file. Such practices violate Chinese Supreme People's Court (SPC) judicial interpretations specifically barring the use of responsibility systems to sanction judges for simple legal error. Local Chinese courts, however, have continued to promulgate such systems.

"Court responsibility systems that discipline judges for simple legal error create a perverse set of incentives for Chinese judges. In order to avoid appellate reversal, lower Chinese judges rely on an ill-defined system of advisory requests (qingshi) to solicit the views of higher courts and judges regarding how to decide pending cases. As Chinese judges themselves note, excessive resort to qingshi practices has many negative effects. It undermines appellate review, since the court or judge who reviews the case on appeal can be the same one who responded to the initial qingshi request regarding how to decide the case in the first place. It creates a relatively passive Chinese judiciary reliant on top-down direction. Last, it contributes to an overload of higher-level judicial authorities forced to handle a myriad of requests for guidance from lower-level courts."

References:

"Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On," Carl F. Minzner of Fordham Law School, *New Mexico Law Review*, Vol. 39, 2009, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1811021

Xinhua News, "Discipline inspection agencies handled 139,621 corruption cases in 2010," editor Ann, June 22, 2011, <http://news.xinhuanet.com/english2010/china/2011-06/>

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:

The paper told us local Chinese courts commonly use responsibility systems (mubiao guanli zeren zhi, zeren zhuijiu zhi) to evaluate and discipline judges. Judges receive sanctions under these systems for a wide range of behavior, such as illegal or unethical dealings with parties and lawyers, inappropriate courtroom behavior, and neglect of duty.

As stated by Carl F. Minzner in his article: "Many local court Chinese responsibility systems also discipline judges for simple legal error. Judges may face sanctions linked to the number of cases that are reversed on appeal, simply because the interpretation of law made by a higher court differs from that of the original trial judge. Sanctions include monetary fines and negative notations in a judge's career file. Such practices violate Chinese Supreme People's Court (SPC) judicial interpretations specifically barring the use of responsibility systems to sanction judges for simple legal error. Local Chinese courts, however, have continued to promulgate such systems.

"Court responsibility systems that discipline judges for simple legal error create a perverse set of incentives for Chinese judges. In order to avoid appellate reversal, lower Chinese judges rely on an ill-defined system of advisory requests (qingshi) to solicit the views of higher courts and judges regarding how to decide pending cases. As Chinese judges themselves note, excessive resort to qingshi practices has many negative effects. It undermines appellate review, since the court or judge who reviews the case on appeal can be the same one who responded to the initial qingshi request regarding how to decide the case in the first place. It creates a relatively passive Chinese judiciary reliant on top-down direction. Last, it contributes to an overload of higher-level judicial authorities forced to handle a myriad of requests for guidance from lower-level courts."

References:

"Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On," Carl F. Minzner of

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?

43

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

Yes | **No**

Comments:

There are no existing laws requiring the asset disclosure of judiciary members, but when the members of national-level judiciary are suspected of bribery or financial misconduct, they are required to prove the legality of their assets.

References:

There are no existing laws requiring the asset disclosure of judiciary members.

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

Comments:

This regulation regulates the misconduct of receiving gifts and hospitality by members of the national-level judiciary.

References:

Regulations on the Punishment of Leaders at Various Levels Giving and Receiving Cash, Negotiable Securities and Payment Instruments, Articles 6, 7, <http://wenku.baidu.com/view/abd1372fed630b1c59eeb539.html>

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:

There are no regulatory requirements for the asset disclosure forms of members of the national-level judiciary, thus there is no independent auditing system for such forms.

References:

There are no regulatory requirements for the asset disclosure forms of members of the national-level judiciary, thus there is no independent auditing system for such forms.

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

Comments:

According to Article 17 of the Judges Law of the People's Republic of China, a former judge may not be the law agent or the defender as a lawyer within two years after leaving his post from the People's Court. A former judge may not be the law agent or the defender in the cases handled by the court he belonged to. The spouse or children of a judge may not be the law agent or defender in the cases handled by the court that judge belongs to.

References:

Judges Law of the People's Republic of China, Article 17.

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

References:

"Restricting post-government private sector employment for national-level judges," Law time, <http://www.lawtime.cn/zhishi/faguanfa/huibi/2007033049585.html>

Phone Interview with Zhang Xu, retired judge from Supreme Court, March 10, 2012.

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:

Judges mostly are honest and clean, faithful in performing their duties, and abide by discipline and professional ethics, but there are reports regarding major corruption by Huang Song You this past year.

References:

March 18, 2010, <http://wenku.baidu.com/view/8ff62b3710661ed9ad51f3df.html>

KU6.com, Supreme Court Senior Officials: The Central Commission for Discipline Inspection is Investigating Ponderosa Merits, http://v.ku6.com/show/Rq3_Si40VYIGi3vI.html?loc=youce_tujjian

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.

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

Comments:

There are no regulatory requirements for the asset disclosure forms of members of the national-level judiciary, thus there is no independent auditing system for such forms.

References:

There are no regulatory requirements for the asset disclosure forms of members of the national-level judiciary, thus there is no independent auditing system for such forms.

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**

Comments:

There is no asset disclosure record system for members of the national-level judiciary, thus there are no access requirements.

References:

There is no asset disclosure record system for members of the national-level judiciary, thus there are no access requirements.

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

Comments:

There is no asset disclosure record system for members of the national-level judiciary, thus there is no access time requirement.

References:

There is no asset disclosure record system for members of the national-level judiciary, thus there is no access time requirement.

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

Comments:

There is no asset disclosure record system for members of the national-level judiciary, thus there are no access cost requirements.

References:

There is no asset disclosure record system for members of the national-level judiciary, thus there are no access cost requirements.

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 NGOs. 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 NGOs 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 record system for members of the national-level judiciary.

References:

There is no asset disclosure record system for members of the national-level judiciary.

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.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

50

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

Deputies may raise proposals to any items of the national government budget.

The Rules of Procedure of the Standing Committee of the National People's Congress of the People's Republic of China, Article 22, states that the plenary meeting of the Standing Committee shall hear the special work reports of the State Council, the Supreme People's Court and the Supreme People's Procuratorate, the national economic and social development plans and the budgetary performance reports, the final reports and the audit reports, the law enforcement inspection reports of the law enforcement inspection group of the Standing Committee and other reports.

Law of the People's Republic of China on Deputies to the National People's Congress and to Local People's Congresses at Various Levels, Article 3, grants deputies the following rights:

1. Attending sessions of the people's congresses at the corresponding levels, participating in the deliberation of all bills and proposals, reports and other issues, and putting forward their opinions.
2. Jointly submitting bills and proposals, proposals for addressing inquiries, proposals of recall, etc., in accordance with law.
3. Putting forward proposals, criticisms and opinions concerning any aspect of work.

References:

Rules of Procedure of the Standing Committee of the National People's Congress of the People's Republic of China, Article 22.

Law of the People's Republic of China on Deputies to the National People's Congress and to Local People's Congresses at Various Levels, Article 3.

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.

100 | 75 | 50 | 25 | 0

Comments:

The plenary meeting of the Standing Committee hears the special work reports of the State Council, the national economic and social development plans and the budgetary performance reports, the final reports and the audit reports for every year's NPC. However, approval from the National Development and Reform Commission (NDRC) is not legislative approval.

The reports are at the national level; enforcement at the local level depends on the region.

References:

China Government Reform website, Oct. 8, 2010,
http://www.rmlt.com.cn/News/201110/201110081058256111_4.html

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

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.

100 | 75 | 50 | 25 | 0

Comments:

There has long been processes for examining public expenditures by deputies. In recent years, inputs and changes have been put forward by local-level NPCs, but not at the national level.

References:

China Government Reform website, Oct. 8, 2010, http://www.rmlt.com.cn/News/201110/201110081058256111_4.html

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

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?

42

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:

There are limited requirements for formal budget debate in China. Cases usually are that the budget report is submitted to the NPC for discussion and final approval.

References:

China Government Reform website, Oct. 8, 2010, http://www.rmlt.com.cn/News/201110/201110081058256111_4.html

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

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:

Some cities had just established the budget hearing system in 2010 according to national requirements. It is a positive signal that the budget hearing system would be applied at the national level.

References:

Ministry of Finance, Sanya set up the budget hearing system on Ministry of Finance, October 2011, http://www.mof.gov.cn/xinwenlianbo/hainancaizhengxinxilianbo/201110/t20111028_603161.html

Sina, The suggestions to improve the public finance system and promote the harmonious Jiaozuo construction, December 2010, <http://henan.sina.com.cn/city/cb/2010-12-08/175-7067.html>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

The budget report reviewed and published in the NPC every year contains itemized lists of budget allocations. This information is easily available and up-to-date. The public can easily access it through the media.

References:

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

Feng Chujun, director of Sinopoll Research Center, Beijing office, November 2011.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Rules of Procedure of the Standing Committee of the National People's Congress of the People's Republic of China, Article 22, states: "The plenary meeting of the Standing Committee shall hear the special work reports of the State Council, the Supreme People's Court and the Supreme People's Procuratorate, the national economic and social development plans and the budgetary performance reports, the final reports and the audit reports, the law enforcement inspection reports of the law enforcement inspection group of the Standing Committee and other reports."

References:

Rules of Procedure of the Standing Committee of the National People's Congress of the People's Republic of China, Article 22.

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

When the report is submitted to the committee, members of the committee review it and give opinions on it.

References:

Source 1: Wenku Baidu, Committee members deliberating the report.
<http://wenku.baidu.com/view/c7d24ed226fff705cc170af6.html>

Source 2:
China's National People, Guangdong Provincial People's Congress Deliberating the Government Work Report, January 17, 2012, http://www.npc.gov.cn/npc/xinwen/dfrd/guangdong/2012-01/17/content_1686350.htm

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

Comments:

The China Communist Party is the ruling party, and no other opposition parties exist. The committee acts fairly toward the budget expenditure issue.

References:

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

Feng Chujun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

When irregularities are discovered, the committee is aggressive in investigating the government, and the regulations are strictly enforced, but it occasionally is unable to enforce its judgments due to some political or system issues.

References:

Annual report on China Fiscal Transparency, published by Public Policy Research Center of Shanghai University of Finance and Economics, June 2010.

Feng Chujun, director of Sinopoll Research Center, Beijing office, November 2011.

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.

Category 4. Public Administration and Professionalism

4.1. ⁷⁸Civil Service: Conflicts of Interest Safeguards and Political Independence

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

Comments:

The Civil Servant Law of China, Chapter 17, Article 101, regarding legal responsibility, states that public service departments must comply with the law and correct mistakes or declare what they have done invalid.

References:

Civil Servant Law of the People's Republic of China, Regulation on the Punishment of Civil Servants of Administrative Organs.

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 Civil Servant Law of the People's Republic of China, Article 68, states: "Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the persons concerned shall not assume posts immediately subordinate to the same leading member in the same organ or hold posts with a relation of immediate superior and subordinator, or take such work as organization, human resource, disciplinary investigation,

supervision and inspection auditing and finance in the organ where one party concerned holds a leading post. Where there is any need to avoid taking posts due to the peculiarities of region or work features, the avoidance shall be decided by the administrative department of public security above the provincial level.”

Article 69 states: “Where a civil servant assumes the leading post of an organ at the township level or county level or the relevant department thereof, a regional avoidance shall be carried out, unless it is otherwise prescribed by law.”

Article 70 states: “When a civil servant performs his duty, in any of the following circumstances, he shall avoid:
(1) When any of his personal interests is involved; (2) When any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or (3) Any other circumstance that may have any impact on the impartiality of duty performance.”

Article 71 states: “Where a civil servant shall avoid, he shall apply for avoidance by himself. Any interested party shall have the right to apply for the avoidance of the civil servant concerned. Other people may report to the organ the circumstances under which a civil servant shall avoid.
The organ shall, according to the application of a civil servant himself or any interested party, decide whether or not the civil servant shall avoid after making examination or may make a direct decision on avoidance without the civil servant’s filing an application.”

References:

Civil Servant Law of the People’s Republic of China, Articles 68-71.

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:

The Law of the People’s Republic of China on State Compensation provides an independent redress mechanism for the civil service.

References:

Law of the People’s Republic of China on State Compensation.

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

Comments:

The Civil Servant Law of the People’s Republic of China, Article 24, states: “Anyone as listed below shall not be employed as a

civil servant: (1) Having been given a criminal punishment; (2) Having been removed from public office; and (3) Any other circumstance as prescribed by law under which one shouldn't be employed as a civil servant."

Article 101 states: "In any of the following circumstances of violation of the present law, the leading organ or the administrative department of civil servants above the county level shall, according to the power limit of administration and in light of the different situations, give an order for correction or announces it to be invalid; gives a criticism and education or punishment to the leading member who is held to be responsible and the person who is held to be directly responsible according to the seriousness of the circumstances; where the violation constitutes a crime, he shall be subject to criminal liabilities according to law:

- (1) Failing to conduct recruitment, deployment, post transfer, employment and promotion for civil servants according to the staffing quota, number of posts or the requirements for the qualification of post assumption.
- (2) Failing to carry out rewards, punishments, avoidance and retirement formalities according to the requirements.
- (3) Failing to conduct recruitment, deployment, post transfer, employment, promotion and competitive post bidding, open selection and examination and rewards and punishments according to the prescribed procedure.
- (4) Violating the provisions of the state by altering the standard of wage, welfare, insurance treatment of civil servants.
- (5) Leaking test questions in the recruitment, competitive post bidding or open selection, breaching the disciplines of the examination room or any other act that has any severe impact on the openness and impartiality.
- (6) Failing to accept or handle any appeal or accusation of a civil servant.
- (7) Any other circumstance of violation of the provisions of the present law."

References:

Civil Servant Law of the People's Republic of China, Articles 24, 101.

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?

61

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Many cases involve citizens suing the departments of local government and few of them can win unless the matter disputed has great significant and is closely related to daily life.

References:

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

There are two kinds of civil servants in China, generally distinguished by the employment method. Most of the civil servants in China need to take a professional and comprehensive national examination, which very few pass. The rest of the civil servants are the professional experts in specific areas. The government will sign an appointment agreement with them, which is different from the one signed with civil servants who pass the exam.

References:

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

There are two kinds of civil servants in China, which generally are distinguished by the employment method. Most of the civil servants in China need to take a professional and comprehensive national examination, which very few pass. The rest of the civil servants are the professional experts in specific areas. The government will sign an appointment agreement with them, which is different from the one signed with civil servants who pass the exam.

Once someone becomes a member of the public service, there are lots of regulations on promotion and management action. However, since the whole system is not very transparent, it generally is believed that exceptions exist.

References:

Public Servants Promotion System, <http://china.findlaw.cn/info/guojiafa/gwyf/khzw/zsgz/>

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

In practice, civil servants have clear job descriptions but usually no base pay information.

References:

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants, though exceptions exist in which some civil servants' bonuses represent a significant part of total pay thanks to performance.

References:

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled. This is in accordance with the law, the Provisions on Recruitment of Civil Servants (Articles 4 and 12).

Article 4 states: "Where anyone is to be recruited as a civil servant, that shall be within the prescribed staffing quota and there shall be a corresponding post vacancy."

Article 12 states: "A recruiting organ shall, on the basis of vacant posts and the requirements for such vacant posts, put forward posts, quota of persons and qualification requirements for signing up for the examination, and draft the recruitment scheme."

References:

Public Servants System in China,

<http://210.46.97.180/zonghe/book/37-%E5%85%AC%E5%8A%A1%E5%91%98%E8%8B%B1%E8%AF%AD-%E5%A4%A9%E6%B4%A5%E7%A7%91%E6%8A%80%E7%BF%BB%E8%AF%91%E5%87%BA%E7%89%88%E5%85%AC%E5%8F%B>

Feng Chunjun, director of Sinopoll Research Center, Beijing office, November 2011.

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:

In recent years, increasingly more people are registering to be civil servants. The laws on governing the administration and civil service really work in practice, but there is still room for improvement. Increasingly, more cases are reported by the media that civil service redress cases are in proceedings. Successful cases are accumulating.

References:

Cases for the redress mechanism, Liu Weimin v. Department of Education of Fujian Province, the Administrative Handling of Disputes, April 22, 2009, <http://www.110.com/ziliao/article-132211.html>

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:

Increasingly more people in China register to take the national civil servant exam because, although they might not earn much money, it would be stable and the benefits are enough for life.

References:

Interviews with Tan Ying, prosecutor of Baiyun Procurate, http://www.xsnet.cn/news/gn/2010_11/1227211.shtml

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.

Comments:

The Ministry of Human Resource and Social Security is in charge of the criteria and process for employment of civil servants.

References:

Human Resources of the People's Republic of China and Social Security, The Mohrss recruiting page, <http://www.mohrss.gov.cn/page.do?pa=40288020244cba3501244cd420ea00ee>

Human Resources of the People's Republic of China and Ministry of Social Security, The system to examine the criteria of civil servant candidates, <http://bm.scs.gov.cn/2012/UserControl/Student/StudentIndex.aspx>

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?

47

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | **No**

Comments:

No law exists.

References:

There is no such regulation.

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

Comments:

The Civil Servant Law of the People's Republic of China, Article 68, states: "Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the persons concerned shall not assume posts immediately subordinate to the same leading member in the same organ or hold posts with an relation of immediate superior and subordinate, or take such work as organization, human resource, disciplinary investigation, supervision and inspection auditing and finance in the organ where one party concerned holds a leading post. Where there is any need to avoid taking posts due to the peculiarities of region or work features, the avoidance shall be decided by the administrative department of public security above the provincial level."

Article 69 states: "Where a civil servant assumes the leading post of an organ at the township level or county level or the relevant department thereof, a regional avoidance shall be carried out, unless it is otherwise prescribed by law."

Article 70 states: "When a civil servant performs his duty, in any of the following circumstances, he shall avoid: (1) When any of his personal interests is involved; (2) When any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or (3) Any other circumstance that may have any impact on the impartiality of duty performance."

Article 71 states: "Where a civil servant shall avoid, he shall apply for avoidance by himself. Any interested party shall have the right to apply for the avoidance of the civil servant concerned. Other people may report to the organ the circumstances under which a civil servant shall avoid. The organ shall, according to the application of a civil servant himself or any interested party, decide whether or not the civil servant shall avoid after making examination or may make a direct decision on avoidance without the civil servant's filing an application."

References:

Civil Servant Law of the People's Republic of China, Articles 68-71.

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

Comments:

The Civil Servant Law of the People's Republic of China, Article 102, states: "Where a civil servant resigns his post or retires and if he is a leading member before resignation, he shall not take any post in an enterprise or any other profit-making organization that is directly related to his original post, or shall not engage in any profit-making activity directly related to his prior work within three years after he leaves his post. For any other civil servant, the time limit is two years."

References:

Civil Servant Law of the People's Republic of China, Article 102.

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

Comments:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 23, states: "Where a civil servant in the administrative organ is corrupt, asks for or takes bribes or offers or introduces other persons to offer bribes, misappropriates public money or take advantage of the post to seek private gains for himself or others, has an enormous property without lawful sources, or commits any other act in violation of disciplines regarding honest and clean government, he shall be given a demerit or gross demerit; if the circumstances are relatively serious, he shall be given the disciplinary action of demotion or dismissal from office; and if the circumstances are serious, he shall be given the disciplinary action of expulsion."

References:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 23.

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

Comments:

No law exists.

References:

There is no such requirement yet.

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:

Many adverse cases happen every year. Explanations and examples are provided in the links above.

References:

Media reports on the restrictions for employment, <http://cq.qq.com/a/20100112/000870.htm>

Adverse case of this restriction, <http://www.eeo.com.cn/2011/1101/214786.shtml>

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

Comments:

Many such cases occur every year. In these cases, the criminal justice system investigates severe misconduct regarding civil servant conflict of interest regulations.

References:

Effective to civil servant to render the gifts, <http://epaper.tynews.com.cn/shtml/tyrb/20090120/194870.shtml>

Suqian Municipal Discipline Inspection Commission, Suzhou City: investigate and deal with a number of leading cadres accepting gifts cases, <http://www.sqjw.gov.cn/default.php?mod=article&do=detail&tid=185905>

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:

The requirements that civil servants recuse themselves from policy decisions in which their personal interests are affected are followed by most civil servants, but exceptions exist.

References:

Interview with Judge Qian Ma, Baiyun People's Court.

Indirect influence case, <http://www.ilaw360.com/anli/shownews.asp?newsid=6436>

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:

Judge Qian Ma said the major expenditure inventory is mainly focused on funding travel abroad, purchase of official vehicles and running costs, and official reception fees according to the state council's requirement. At the time of this report, there were three departments that had not disclosed their inventory. 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.

References:

Interview with Judge Qian Ma, Baiyun People's Court.

Major Expenditure Inventory of the Central Departments, <http://money.163.com/special/consumption/>

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**

Comments:

No law exists, and it is obvious that asset disclosure records of senior civil servants are not listed among information that should be public.

References:

No law 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:

Senior civil servants do not file financial disclosures, so citizens have nothing to access.

References:

N/A

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**

Comments:

Senior civil servants do not file asset disclosures.

References:

Not applicable.

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 NGOs. 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 NGOs 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

Comments:

Senior civil servants do not file asset disclosures.

References:

Not applicable.

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.

4.2. Whistle-blowing Protections

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

Comments:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 25, states: "Where a civil servant in the administrative organ commits any of the following acts, he shall be given a demerit or gross demerit; if the circumstances are relatively serious, he shall be given the disciplinary action of demotion or dismissal from office; and if the circumstances are serious, he shall be given the disciplinary action of expulsion:

- (1) Infringing on the personal rights of citizens by assault and battery, physical disciplinary action or unlawful imprisonment, etc.
- (2) Repressing criticism, conducting retaliation, withholding or destroying whistle-blowing letters, or disclosing details in the whistle-blowing letters to the person being reported against."

References:

Regulation on the Punishment of Civil Servants of Administrative Organs, Article 25.

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 might be negative consequences for civil servants who report corruption. The consequences actually depend on the position of the civil servants being reported on and the relationship between that person and the discipline inspection organs.

References:

Case for not being protected, http://www.yanjin.gov.cn/news_show.asp?newsid=1913

Commission for Discipline Inspection of the CPC Shaanxi Province, Shaanxi Provincial Supervision Department, Petition Report, http://www.qinfeng.gov.cn/jbzx_xfjb.asp

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.

Yes | No

Comments:

By law, private sector employees who are citizens of China should be protected from retaliation. The Constitution states: "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law."

References:

Constitution of the People's Republic of China, Article 41.

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

Comments:

Whistle-blowers sometimes suffer punishment by the employee or the relative companies. And for a criminal offense, the whistleblower has no immunity for the crime he or she committed.

References:

Academic publication on this issue, <http://www.cnki.com.cn/Article/CJFDTotal-LDKI201131005.htm>

Case for not being protected, http://www.yanjin.gov.cn/news_show.asp?newsid=1913

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49a. 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

Comments:

The 12309 anti-corruption hotline and website were set up by the Supreme Procuratorate in 2009. On the first day, the site was paralyzed by an excessive number of visitors and telephone calls, making it difficult to get through.

References:

Impeaching Center of Supreme Procuratorate of P.R. China, <http://www.12309.gov.cn/>

Gradually Petition System to Report Corruption, <http://www.zlxjd.gov.cn/zldq/ShowArticle.asp?ArticleID=477>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

After the "12388" hotline number was in operation for one year, the Chinese procuratorial organ changed it to "12309" and made it available 24 hours a day. However, you can get staff service only during work hours. The rest of the time, you can only record your report. The hotline is operated by full-time staff.

References:

Ministry of Supervision Report Center, Central Commission for Discipline Inspection Petition Room Functions Introduced, <http://www.12388.gov.cn/xf/index.html>

SINA Corporation, Discipline Inspection and Supervision Organs 12388 Unified Hotlines Opened, June 26, 2008, <http://news.sina.com.cn/c/2008-06-26/060015818168.shtml>

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:

The Central Commission for Discipline Inspection of the CPC and the Ministry of Supervision are in charge of the corruption and bribery issue. These two governmental departments receive regular funding from the Ministry of Finance.

References:

Ministry of Finance, 2010 National Public Financial Expenditure, August 2011, http://www.mof.gov.cn/zhengwuxinxi/caizhengshuju/201108/t20110803_583781.html

Ministry of Finance General Office, Three Funding Expenditure Accounts and the Budget for 2011", July 14 2011, http://www.mof.gov.cn/zhengwuxinxi/caizhengshuju/201107/t20110714_576352.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.

100 | 75 | 50 | 25 | 0

Comments:

The hotline was overloaded the day it was set up. Processing time is unknown, but media reports indicate that the mechanism works for most cases.

References:

Procuratorate Daily, "Why is the Supreme People's Procuratorate's 12309 and the phone SO HOT on the first day?" June 2009, <http://view.news.qq.com/a/20090626/000028.htm>

Jingtai, Gradually Petition System, August 21, 2008, <http://www.zlxjdj.gov.cn/zldq/ShowArticle.asp?ArticleID=477>

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.

100 | 75 | 50 | 25 | 0

Comments:

The Central Commission for Discipline Inspection of the CPC and the Ministry of Supervision, which are the internal mechanisms, are in charge of investigating corruption and bribery. These two governmental departments aggressively commence investigations of alleged and reported corruption.

References:

Procuratorate Daily, "Why is the Supreme People's Procuratorate's 12309 and the phone SO HOT on the first day?" June 2009, <http://view.news.qq.com/a/20090626/000028.htm>

Gradually Reporting System, <http://www.zlxgj.gov.cn/zldq/ShowArticle.asp?ArticleID=477>

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.

83

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

83

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Civil Servant Law of the People's Republic of China, Article 70, states: "When a civil servant performs his duty, in any of the

following circumstances, he shall avoid: (1) When any of his personal interests is involved; (2) When any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or (3) Any other circumstance that may have any impact on the impartiality of duty performance.”

References:

Civil Servant Law of the People’s Republic of China, Article 70.

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

Comments:

Civil Servant Law of the People’s Republic of China, Article 60, states:

“An organ shall, when the functions and duties of civil servants or the need to improve the quality of civil servants so requires, carry out categorized and rank-based trainings to civil servants.

“The state has established a special institution for the training of civil servants. The organs may, where necessary, entrust any other training institution to undertake the training of civil servants.”

Article 61 of the same law states: “The organs shall carry out a training for those newly-employed civil servants who assume their posts for the first time. Those civil servants who have been promoted to leading posts shall be given a training before assuming their post or within one year after assuming their post. Those civil servants who are engaged in special work shall be given special trainings. In-service trainings shall be carried out to all civil servants so as to upgrade their knowledge and improve their working capacity. In particular, those civil servants in posts of special technologies shall, according to the requirements of further education for special technical personnel, be given special technical trainings.

“The state shall reinforce the training of reserve leading personnel in a planned manner.”

References:

Civil Servant Law of the People’s Republic of China, Articles 60, 61.

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:

The regulations are enforced most of the time, but some exceptions might occur when the procurement officials have indirect connections and interests. In this case, the effect of rules is mitigated.

References:

Li Gang, YNET.com, Indictment of Those Responsible for Government Procurement Bribery of Ten Million, August 23, 2011, <http://bjyouth.ynet.com/article.jsp?oid=80591132>

Procuratorate Daily, Yangzhou Municipal Government Procurement Center Staff Sentenced to 11 Years for Bribery of 30,560,000, September 25, 2010, http://www.tianjinwe.com/rollnews/gn/201009/20100925_1889648.html

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**

Comments:

No such mandate exists.

References:

No such mandate exists.

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

Comments:

Government Procurement Law of the People's Republic of China, Article 34, states: "Where the procurement of goods or services is to be made by means of invitation-based call for bids, the purchaser shall select randomly no fewer than three providers from the eligible ones and send letters of invitation for bids to them."

Article 38 states: "Where a procurement is to be made by way of competitive negotiations, the following procedures shall be observed:

- a. Forming a negotiating group. The negotiating group shall consist of no fewer than three representatives or relevant experts designated by the purchaser in odd numbers, among whom the proportion of experts shall not be smaller than two-thirds of all the group members;
- b. Formulating negotiation documents. The negotiation documents shall clearly specify the procedures for and content of the negotiations, the clauses of the draft contracts, and the criteria for appraising the conclusions of transactions, etc.;
- c. Determining the providers to negotiate with. The negotiating group shall select no fewer than three providers from those that have met the corresponding qualifications to hold negotiations to whom negotiation documents shall be provided;
- d. Negotiations. All the members of the negotiating group shall negotiate with a single provider at a time. During the negotiations,

neither party may disclose the technical materials, prices or other information of any other provider that is connected with the negotiations. In case substantial changes have been made to the negotiation documents, the negotiating group shall inform all the participating providers in written form.

e. Deciding the provider to conclude transactions. After negotiations, the negotiating group shall request all the participating providers to make their final quotations within the prescribed time period.

"The purchaser shall select a provider to conclude transactions from the candidates suggested by the negotiating group according to the principles of "conforming to the requirements of procurement, the quality matching the services, and the quotations being the lowest", and inform all the participating providers that have failed of the result."

Related regulations:

Measures for the Administration of Tenders and Invitations to Bid in Government Procurement of Goods and Services. Opinions of the General Office of the State Council on Further Strengthening the Management of Government Procurement. Measures for the Qualification Accreditation of Government Procurement Agencies.

References:

Government Procurement Law of the People's Republic of China, Articles 34, 38.

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

Comments:

Government Procurement Law of the People's Republic of China, Article 31, states: "In any of the following circumstances, the goods or services may be procured by means of single-source procurement according to the provisions of the present law:

- a. The goods or services can only be procured from a sole provider;
- b. Unpredictable emergencies have happened so that the goods or services cannot be procured from other providers;
- c. The goods or services have to be in consistency with the originally procured goods or services so that they have to be procured from the original providers and the total value of the new procurement is no more than 10 percent of the procurement value as stipulated in the original contract."

References:

Government Procurement Law of the People's Republic of China, Article 31.

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

Comments:

Measures for the Administration of Tenders and Invitations to Bid in Government Procurement of Goods and Services, Article 63,

states: "Where a bidding supplier has any objection against the announcement on winning the bid, it shall, within seven working days as of the promulgation of the said announcement, raise queries in writing to the bid-invitation procurement entity. The bid-invitation procurement entity shall make a reply on the queried contents within seven working days after receipt of the bidding supplier's written queries.

"Where a querying supplier is not satisfied with the reply of the bid-invitation procurement entity or the bid-invitation procurement entity fails to make a reply within the stipulated time, it may, within 15 working days after expiration of the period for reply, make a complaint to the finance department of the people's government at the same level in accordance with the relevant provisions. The finance department shall, within 30 working days after receipt of the complaint, make a decision on handling the matter complained about.

"During the period when the matter complained about is handled, the finance department may, according to the specific situation, notify the bid-invitation procurement entity in writing to suspend concluding the contract or carrying out other activities, provided that the time of suspension may not exceed 30 days."

References:

Measures for the Administration of Tenders and Invitations to Bid in Government Procurement of Goods and Services, Article 63.

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

Comments:

The procurement decision is an administrative act that can be deemed to be eligible for appeal.

Measures for the Administration of Tenders and Invitations to Bid in Government Procurement of Goods and Services, Article 63, states: "Where a bidding supplier has any objection against the announcement on winning the bid, it shall, within seven working days as of the promulgation of the said announcement, raise queries in writing to the bid-invitation procurement entity. The bid-invitation procurement entity shall make a reply on the queried contents within seven working days after receipt of the bidding supplier's written queries.

"Where a querying supplier is not satisfied with the reply of the bid-invitation procurement entity or the bid-invitation procurement entity fails to make a reply within the stipulated time, it may, within 15 working days after expiration of the period for reply, make a complaint to the finance department of the people's government at the same level in accordance with the relevant provisions. The finance department shall, within 30 working days after receipt of the complaint, make a decision on handling the matter complained about."

Administrative Procedure Law of the People's Republic of China, Article 11, states: "The people's courts shall accept suits brought by citizens, legal persons or other organizations against any of the following specific administrative acts: (8) cases where an administrative organ is considered to have infringed upon other rights of the person and of property. Apart from the provisions set forth in the preceding paragraphs, the people's courts shall accept other administrative suits which may be brought in accordance with the provisions of relevant laws and regulations."

References:

Measures for the Administration of Tenders and Invitations to Bid in Government Procurement of Goods and Services, Article 63.

Administrative Procedure Law of the People's Republic of China, Article 11.

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

Comments:

Measures for the Qualification Accreditation of Government Procurement Agencies, Article 41, states: "Where an applicant conceals relevant information or offers any false materials, the Ministry of Finance or the public finance department of the provincial people's government concerned shall reject or disapprove its qualification accreditation or extension application and shall give the applicant a warning."

Article 42 states: "Where an applicant obtains a qualification as a government procurement agency by deceiving, bribery or other illegal means, the public finance department that accredited its qualification shall revoke its qualification, take back its Certificate, and, if it is suspected of being involved in any crime, transfer the case to the judicial organ."

Article 43 states: "Where a government procurement agency falls under any of the following circumstances, it shall be ordered to correct within a certain time limit and given a warning. If the circumstances are serious, its qualification shall be suspended for three to six months; if the circumstances are extraordinarily serious or it fails to correct within the prescribed time, its qualification shall be cancelled, its Certificate shall be taken back and, if it is suspected of being involved in any crime, it shall be transferred to the judicial organ:

1. It lends, leases, transfers or alters the Certificate;
2. It undertakes government procurement beyond the approved scope of business or by any illegal means;
3. It violates Article 10 of these Measures;
4. It violates the agency agreement by divulging any information about the procurement it is conducting;
5. It alters the procurement document or the bid evaluation result without approval;
6. It falls under any of the illegal circumstances prescribed in Articles 71, 72 and 76 of the Government Procurement Law of the People's Government in the process of undertaking government procurement; or
7. It commits any other illegal act prescribed by any law, regulation or rules.

"Where a government procurement agency which has been given a warning or whose qualification has been suspended falls under any of the circumstances listed in Paragraph 1 of this Article again within the three years thereafter, its status as a government procurement agency shall be cancelled, its Certificate shall be taken back and, if it is suspected of being involved in any crime, it shall be transferred to the judicial organ."

References:

Measures for the Qualification Accreditation of Government Procurement Agencies, Articles 41-43.

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:

When companies are found guilty of corruption, they are not able to apply for future bids. The regulations are strictly enforced. The companies convicted of corruption would be on the blacklist and would be forbidden to apply for future bids.

References:

China International Competitive Bidding, Microsoft won the bid process violation Beijing government software procurement project is canceled, November 29, 2004, <http://www.chinabidding.com/zxzx-detail-327396.html>

People's Daily, Ministry of Finance: Part of the Government Procurement Agency's Revise Their Process, December 7, 2010, <http://news.qq.com/a/20101207/000148.htm>

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?

100

52a. In law, citizens can access public procurement regulations.

Yes

No

Comments:

Administrative Measures for Government Procurement Information Announcements, Article 8, states: "The following government procurement information must be announced unless it relates to the state secrets, commercial secrets of the suppliers, or unless it is the government procurement information that shall be kept confidential under the relevant laws and administrative regulations:

(1) Relevant laws, regulations, bylaws and other regulatory documents governing the government procurement;
(2) The central procurement lists, government procurement quotas and bid quotas as announced by the province-level people's governments or above... ."

References:

Administrative Measures for Government Procurement Information Announcements, Article 8.

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

Comments:

Administrative Measures for Government Procurement Information Announcements, Article 3, states: "All purchasers or procurement agencies shall make announcements about the government procurement information in accordance with the laws and administrative regulations on government procurement and the present measures. The term "procurement agencies" as mentioned in the preceding paragraph refers to the central purchasing institutions and other lawfully accredited purchasing institutions."

Article 4 states: "The government procurement information announcements shall comply with the principles of timely information announcements, standard and uniform content, relatively central channels and convenience for obtaining and searching."

References:

Administrative Measures for Government Procurement Information Announcements, Articles 3, 4.

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

Comments:

In practice, all information is released online and can be accessed in one day. As laws and regulations are enacted the day they are announced, and the full text is uploaded to the governmental media and websites, it is very convenient to access.

References:

The People's Republic of China Government Procurement Law officially came into effect in January 1, 2003, June 29, 2002, <http://www.people.com.cn/GB/jinji/20020629/764316.html>

The releasing time of these laws, August 31, 2011, <http://www.tudui.net/a/20110831/420011.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. 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

Comments:

The government procurement information announcements are convenient for obtaining and searching. The government procurement information is announced through the government information release media, as designated by the Ministry of Finance, and is free to access.

References:

People's Republic of China Government Procurement Law (Full Text), The Ninth National People's Congress Standing Committee adopted at the twenty-eighth meeting of June 29, 2002, <http://www.people.com.cn/GB/jinji/20020629/764316.html>

Chinese Network, The State Council Legislative Affairs Office of the People's Republic of China Government Procurement Law, Implementation of the Regulations (Draft) for public comment notice, January 11, 2010, http://www.china.com.cn/policy/txt/2010-01/11/content_19215879.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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The government procurement information announcements comply with the principles of timely information announcements, standard and uniform content, relatively central channels and convenience for obtaining and searching. Websites, newspapers and magazines are major sources for these announcements.

References:

The official website for the government procurement, <http://www.ccgp.gov.cn/>

The government procurement website of provincial level, <http://www.sczfcg.com/>

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:

Major results are announced online.

References:

Central State Organs Government Procurement Center, <http://www.zycg.gov.cn/>

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

All businesses are equally eligible to compete for privatized assets once the following requirements are met:

Measures for the Qualification Accreditation of Government Procurement Agencies, Article 14. states: "A government procurement agency of Grade B shall meet the following conditions:

1. It has the corporate status and its registered capital reaches 1 million or more;
2. It has no subordinate relationship or any other interest relationship with the administrative organs;
3. It has a sound organizational structure and a sound internal control system;
4. It has a fixed business premise, a bid opening premise, electronic monitoring equipment and other office equipment or facilities necessary for the government procurement agency service;
5. It has not received any criminal penalty or the administrative penalty of disqualification due to any violation of laws or regulations in its business activities in the three years before it applies for the qualification of a government procurement agency;
6. It has legal, economic and technical professionals who have accepted the required government procurement trainings and are familiar with the government procurement laws and regulations as well as the government procurement business; where a parent company and a subsidiary company make applications separately, their professionals for government procurement shall not be the same;
7. It has at least 10 full-time workers, among whom those with qualifications for intermediate professional and technical positions or above shall account for at least 40 percent of the total; and
8. Other conditions as set forth by the Ministry of Finance."

Article 15 states: "A government procurement agency of Grade A shall meet the following conditions in addition to those mentioned in Items 2 through 6 of Article 14 of these Measures:

1. It has corporate status and its registered capital reaches 5 million or more;
2. It has at least 30 full-time workers, among which those with qualifications for intermediate professional and technical positions or above shall account for at least 60 percent of the total;
3. It has obtained the Grade B qualification for one year or more, and the cumulative total of its bid-winning amount or business volume of government procurement projects reaches 100 million yuan or more for the last two years; or it has been engaged in the bidding agency business for two years or more, and the cumulative total of its bid-winning amount reaches 1 billion yuan or more for the last two years;
4. Other conditions as set forth by the Ministry of Finance."

References:

Measures for the Qualification Accreditation of Government Procurement Agencies, Articles 14, 15.

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

Comments:

Civil Servant Law of the People's Republic of China, Article 70, states: "When a civil servant performs his duty, in any of the following circumstances, he shall avoid:

- (1) When any of his personal interests is involved;
- (2) When any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or
- (3) Any other circumstance that may have any impact on the impartiality of duty performance."

References:

Civil Servant Law of the People's Republic of China, Article 70.

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:

The regulations are enforced only in some of the cases, but there are exceptions when officials have indirect connections and interests in the privatization process. These indirect connections are hard to inspect but sometimes have significant influence.

References:

China News, Indirect influence imposing on the process, January 21, 2012,
<http://www.chinanews.com/fz/2012/01-21/3620250.shtml>

ENet.com, News revealing the conflict in interest, October 17, 2007,
http://www.enet.com.cn/article/2007/1017/A20071017873407_2.shtml

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?

95

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Article 10 of the Regulation of the People's Republic of China on the Disclosure of Government Information mandates that the people's governments at or above the county level and their departments must voluntarily disclose the following government information:

- (1) Administrative regulations, rules and normative documents;
- (2) Development planning for national economy and social development, special planning, regional planning and the relevant policies;
- (3) Statistical information on national economy and social development;
- (4) Fiscal budget report and final report;
- (5) Items, charging basis and charging rates of administrative fees;
- (6) Catalog of centralized government procurement items, standards and the implementation.

The following rules are open to the public: (1) Notice of the General Office of the State Council on Forwarding the Implementation Opinions of the State-owned Assets Supervision and Administration Commission about Further Standardization of the Work Relating to the Reconstructing of State-owned Enterprises, (2) Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the SASAC about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises, (3) Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment, (4) Notice of the State-owned Assets Supervision and Administration Commission of the State Council on Issuing the Some Advice on Further Strengthening the Supervision and Administration of Local State-owned Assets, and (5) Interim Measures for the State-owned Assets Management of Public Institutions.

References:

Notice of the General Office of the State Council on Forwarding the Implementation Opinions of the State-owned Assets Supervision and Administration Commission about Further Standardization of the Work Relating to the Reconstructing of State-owned Enterprises.

Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the SASAC about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises.

Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment.

Notice of the State-owned Assets Supervision and Administration Commission of the State Council on Issuing the Some Advice on Further Strengthening the Supervision and Administration of Local State-owned Assets.

Interim Measures for the State-owned Assets Management of Public Institutions.

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.

Comments:

The privatization, known as Reconstructing State-Owned Enterprises, is the main theme of recent NPC and other national-level congress. There is a formal process of advertising privatizations, including a government website, and in newspaper advertisements and magazines.

References:

Fushun News, 2011: Liaoning Province, a total of 596 state-owned enterprises to complete the restructuring, February 6, 2012, <http://fushun.nen.com.cn/74874607252799488/20120206/2573762.shtml>

State-Owned Enterprises, An official website tailored for the privatization, <http://www.cnpre.com/SOE/>

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 and regulations governing the restructuring of state-owned enterprises are available online and easy for citizens to access.

References:

State-owned Assets Supervision and Administration Commission, State-owned Assets to Assess the Interim Measures, August 25, 2005, <http://www.sasac.gov.cn/gzjg/cqgl/200508310116.htm>

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

Comments:

Rules are free to access online by all citizens. Records can be obtained at little cost, such as by mail or online. Using a database might have some cost, but other resources are free.

References:

State-owned Assets Supervision and Administration Commission, State-owned Assets to Assess the Interim Measures, August 25, 2005, <http://www.sasac.gov.cn/gzjg/cqgl/200508310116.htm>

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

The Constitution Law is the basic law specifying the national ombudsman, public protector or equivalent agencies.

References:

The Supreme People's Court, the Supreme People's Procuratorate, the People's Congress, the Petition Office, the PRC National Audit Office and the Ministry of Supervision.

The Constitution Law, http://www.gov.cn/gongbao/content/2004/content_62714.htm

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.

56. Is the national ombudsman effective?

52

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Law of the People's Republic of China 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:

In China, the ombudsman is basically protected from political interference legally, but in practice their activities always receive pressure from government authorities and other authorities.

References:

Cyol.net, "The court is under pressure by government authorities," Aug. 2, 2010, http://zqb.cyol.com/content/2010-08/02/content_3353561.htm

Andrew Zhang, lawyer, law firm in Beijing, Nov. 11, 2011.

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:

The executives usually have a term of five years in China, with a successive term of another five years.

References:

www.gov.cn, "Term of the 11th chairman of the Supreme People's Court," March 25, 2008, http://www.gov.cn/test/2008-03/25/content_927959.htm

Andrew Zhang, lawyer, law firm in Beijing, Nov. 11, 2011.

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.

100 | 75 | 50 | 25 | 0

Comments:

The number of staff audits is still very small compared to the large population. Moreover, the audit authorities are also engaging third-party professionals for assistance and service.

References:

Interview with the general auditor, Dec. 27, 2010, http://sjj_zjj.gov.cn/govmach/sjj/2010122743467.shtml

Andrew Zhang, lawyer, law firm in Beijing, Nov. 14, 2011.

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).

100 | 75 | 50 | 25 | 0

Comments:

In China, there is only one ruling party, so its executives usually are members of the ruling party.

References:

The Audit Bureau: Enhance the Independence of the Audit Authorities, Sept. 10, 2008, http://www.china.com.cn/policy/txt/2008-09/10/content_16428944.htm

China Daily, "The appointment of vice president of the Supreme Court," Zhaojun Zhou, Oct. 29, 2011, http://www.chinadaily.com.cn/hqgj/jryw/2011-10-29/content_4210980.html

Daolong Yang, "The Path to the Independence of Auditing," Oct. 28, 2011, <http://www.audit.gov.cn/n1992130/n1992150/n1992576/2842272.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.

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:

In China, the funds necessary for such bodies to perform their functions shall be included in the budgets of the governments and guaranteed by the people's governments at the corresponding levels. Such funding is consistent.

References:

Ministry of Finance, The 2011 Budget Plan, March 2011, http://yss.mof.gov.cn/2011zhongyangyusuan/201103/t20110325_515994.html

Ningning Zhang, lawyer, law firm, Nov. 15, 2011.

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:

The audit reports are sometimes available on the website of the National Audit Office of the PRC.

References:

Sohu.com, The 2010 Audit Report, 2011, <http://news.sohu.com/s2011/shenji11/>

National Audit Office of the People's Republic of ChinaThe results of audit reports, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

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

References:

Several opinions of regulating retrial procedures of Supreme Court (Trial), http://www.law-lib.com/law/law_view.asp?id=41961

Eva Yang, lawyer, law firm in Beijing, Feb. 2, 2012.

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:

Guangdong Province audited illegal amount of RMB 1.428 billion and deposed 11 people. Moreover, a big case was discovered from the audit of PetroChina and relevant people have been sentenced.

References:

Sina.com, Oct. 27, 2011, <http://finance.sina.com.cn/china/dfjj/20111027/084210701641.shtml>

Shenyang Audit Bureau, Nov. 10, 2008, <http://www.audit.gov.cn/n1992130/n1992150/n1992546/2303649.html>

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:

In practice, some politically sensitive ombudsman reports are not publicly available. Generally, the public knows nothing about such cases.

References:

Xinhuanet.com, "The 2011 Report of Supreme Court," March 19, 2011, http://news.xinhuanet.com/politics/2011lh/2011-03/19/c_121206611.htm

Eva Yang, assistant, law firm in Beijing, Nov. 14, 2011.

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:

It is difficult to know of complaints as they are known only to the audit authorities. The case mentioned in the sources are about an Internet user, Guo Meimei, an official of a foundation, who bought lots of luxury items. The article drew the attention of the National Audit Office, which usually pays more attention to foundations than individuals.

References:

Sina.com, "The National Audit Office of the PRC Initiated Audit of Henan Soong Ching Ling Foundation After the Media Report of Guo Meimei, Sept. 4, 2011, <http://finance.sina.com.cn/roll/20110904/114910429618.shtml>

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

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?

75

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

In China, the working reports are generally available to the public.

References:

The 2011 report of the National Congress, March 18, 2011, http://www.gov.cn/2011lh/content_1827143.htm

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:

Certain audit reports are available online, but for political reasons, not all the audit reports are made available to the public.

References:

National Audit Office of the People's Republic of China, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>.

Central Government Portal, Xinhua New Agency, National People's Congress Standing Committee Work Report, March 18, 2011, http://www.gov.cn/2011lh/content_1827143.htm.

Ningning Zhang, lawyer, law firm in Beijing.

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

Comments:

When the reports are made available, they are accessible online for free.

References:

National Audit Committee, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 15, 2011.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The PRC laws have explicitly provided for such an agency.

National Audit Office of the PRC states: "Pursuant to Article 91 of Constitution of the PRC, the State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at various levels, and the revenue and expenditure of all financial and monetary organizations, enterprises and institutions of the State."

Pursuant to Article 7 of the Audit Law of the PRC, the State Council establishes the National Audit Office to take charge of the audit work throughout the country under the leadership of the Premier of the State Council.

References:

National Audit Office of the PRC.

Article 91 of Constitution of the PRC.

Article 7 of the Audit Law of the PRC.

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.

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Pursuant to Article 91 of Constitution of the PRC, under the direction of the Premier of the State Council and in accordance with the provisions of law, the auditing body independently exercises its power of supervision through auditing, subject to no interference by any other administrative organ or any public organization or individual.

Pursuant to Article 5 of the PRC Audit Law, audit institutions shall, in accordance with the law, independently exercise their power of supervision through auditing, subject to no interference by any other administrative department or any public organization or individual.

References:

Article 91 of Constitution of the PRC.

Article 5 of the PRC Audit Law.

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:

According to PRC laws, the auditor general has a term of five years.

References:

Sina.com, March 7, 2008, <http://finance.sina.com.cn/review/20080307/09474593455.shtml>

Andrew Zhang, lawyer, law firm in Beijing, Nov. 10, 2011.

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

Comments:

According to the report of the interview with the auditor general, the audit staff is still very small compared to the large population. Moreover, the audit authorities engage third-party professionals for assistance and service.

References:

Dec. 27, 2010, <http://sjj.zjj.gov.cn/govmach/sjj/2010122743467.shtml>

Andrew Zhang, lawyer, law firm in Beijing, Nov. 14, 2011.

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.

100 | 75 | 50 | 25 | 0

References:

Resume of the General Auditor, <http://www.audit.gov.cn/n1992130/n1992165/n1992621/n1992636/index.html>

The Audit Bureau: Enhance the Independence of the Audit Authorities, Sept. 10, 2008, http://www.china.com.cn/policy/txt/2008-09/10/content_16428944.htm

Daolong Yang, "The Path to the Independence of Auditing," Oct. 28, 2011, <http://www.audit.gov.cn/n1992130/n1992150/n1992576/2842272.html>

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.

100 | 75 | 50 | 25 | 0

Comments:

According to the 2011 budget plan, the actual funding given to the National Audit Bureau in 2011 was RMB 772 million.

References:

The 2010 Budget of the National Audit Office, April 1, 2010, <http://www.audit.gov.cn/n1992130/n1992150/n1992515/2443504.html>

Ningning Zhang, lawyer, law firm, Nov. 15, 2011.

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:

The audit reports are generally available on the website of the National Audit Office of the PRC. Since the National Audit Office audits various things, reports are issued very frequently, usually several per month.

References:

Sohu.com, the 2010 Audit Report, 2011, <http://news.sohu.com/s2011/shenji11/>

National Audit Office of the People's Republic of China, The results of audit reports, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

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:

A case posted by the Shenyang Audit Bureau, Nov. 10, 2008, <http://www.audit.gov.cn/n1992130/n1992150/n1992546/2303649.html>

Action of Red Cross Society, http://www.redcross.org.cn/zx/yw/201106/t20110629_42637.html

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

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:

Although the audit authorities frequently initiate investigations, in practice there are still limitations for such authorities to carry out their work.

References:

Fjsen.com, "The PRC Audit Bureau Initiated Audit Investigation of the Henan Soong Ching Ling Foundation," Sept. 4, 2011, http://www.fjsen.com/j/2011-09/04/content_5830482.htm

A case posted by the Shenyang Audit Bureau, Nov. 10, 2008, <http://www.audit.gov.cn/n1992130/n1992150/n1992546/2303649.html>

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?

92

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

According to the PRC Audit Law, the audit institutions may circulate audit reports to the public. Such distribution is not compulsory, and audit institutions must keep state secrets and the business secrets of the auditees, as well as observe the relevant regulations of the State Council.

References:

Article 36 of the PRC Audit Law, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

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

Comments:

Certain audit reports are available online, but for political reasons, not all audit reports are made available to the public.

References:

National Audit Office of the People's Republic of China, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 13, 2011.

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

Comments:

Audit reports are available online for free.

References:

National Audit Office of the People's Republic of China, <http://www.audit.gov.cn/n1992130/n1992150/n1992500/index.html>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 15, 2011.

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 NGOs. 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 NGOs trying to access this information.

92
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The State Administration of Taxation of PRC is the tax collection agency. Pursuant to Article 5 of Law of the People's Republic of China on the Administration of Tax Collection, the competent department for taxation under the State Council shall be in charge of the administration of tax collection throughout the country.

References:

Article 5 of Law of the People's Republic of China on the Administration of Tax Collection.

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.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In China, all staff members of tax collection authorities are full-time employees.

References:

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

Sina.com, "The 2011 hiring plan of the SAT," Oct. 13, 2010, <http://edu.sina.com.cn/official/2010-10-13/1631270618.shtml>

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:

In China, at the beginning of 2011, the budget was reviewed and approved by the government authorities.

References:

Ministry of Finance of the PRC, 2011 budget plan, http://yss.mof.gov.cn/2011zhongyanguyusuan/201103/t20110325_515994.html

Eva Yang, lawyer, law firm in Beijing. Nov. 15, 2011.

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Because of the PRC tax laws, some companies may enjoy preferential tax policy, such as high-technology enterprises. In practice, some companies may take actions to evade tax.

References:

Limei Yan, "Tax authorities claim to collect tax on taxpayers equally," June 30, 2011, Website: <http://tax.hexun.com/2011-06-30/131040089.html>

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

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

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Pursuant to Article 2 of the PRC Customs Law, "the Customs of the People's Republic of China is a State organ responsible for supervision and control over all arrivals in and departures from the Customs territory (hereinafter referred to as the territory in short). It shall, in accordance with this Law and other related laws and administrative regulations, exercise control over the means of transport, goods, travelers' luggage, postal items and other articles entering or leaving the territory (hereinafter referred to as inward and outward means of transport, goods and articles in short), collect Customs duties and other taxes and fees, prevent and suppress smuggling, prepare Customs statistics and handle other Customs operations."

Pursuant to Article 3 of the PRC Customs Law, the State Council sets up the General Customs Administration, which exercises unified administration of the Customs offices throughout the country.

References:

General Administration of Customs of the PRC.

Article 2 of the PRC Customs Law.

Article 3 of the PRC Customs Law.

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.

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:

There is a public servant exam every year after which the government authorities employ new staff, including the General Administration of Customs of the PRC.

The General Administration of Customs of the People's Republic of China report shows that there are 50,000 full-time staff members. However, given that China had a population of 1,338,299,512 in 2010, the agency is not sufficiently staffed (approximately 1 staff member / 26,766 people).

References:

National Customs Office, Notice on the 2012 Civil Service Examination and Related Matters, October 14, 2011, The notice of employing new staff in 2011, <http://www.customs.gov.cn/publish/portal0/tab5046/module94265/info320312.htm>

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

General Administration of Customs of the People's Republic of China,
<http://www.customs.gov.cn/Default.aspx?tabid=38393>

Population, China, www.google.com/publicdata

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:

In China, at the beginning of 2011, the budget was reviewed and approved by the government authorities.

References:

Ministry of Finance of the PRC, 2011 budget plan, http://yss.mof.gov.cn/2011zhongyangyusuan/201103/t20110325_515994.html

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In practice, some companies may take actions to evade customs, so it would be in some cases that discrimination exists.

References:

China Daily, "The 2011 enforcement meeting held," May 12, 2011, http://www.chinadaily.com.cn/dfpd/gd/2011-05/12/content_12500463.htm

Eva Yang, lawyer, law firm in Beijing, Nov. 15, 2011.

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

Pursuant to Article 11 of Law of the People's Republic of China on State-Owned Assets of Enterprises, "State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people's governments pursuant to relevant provisions of the State Council shall, as authorized by the people's government at corresponding level, perform the duties and responsibilities of the capital contributor of a State-invested enterprise on behalf of the said people's government."

References:

Law of the People's Republic of China on State-Owned Assets of Enterprises, Article 11, <http://www.sasac.gov.cn/n1180/index.html>

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

95

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

Pursuant to Article 6 of the PRC Law on State-owned Assets of Enterprises, "The State Council and local people's governments shall perform capital contributor's duties and responsibilities in accordance with the law based on the principles of separation of government functions from enterprise management, separation of public administrative functions and responsibilities of State-owned assets contributors and no interference in enterprises' independent operation under the law."

References:

Article 6 of the PRC Law on State-owned Assets of Enterprises.

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:

Every year, the State-owned Assets Supervision and Administration Commission of the State Council hires new staff, but given the large number of state-owned enterprises, the staff might be not be adequate.

References:

Hiring Plan of the State-owned Assets Supervision and Administration Commission of the State Council in 2012, <http://www.sasac.gov.cn/n1180/n6881559/n11132991/2012index.html>

Ningning Zhang, lawyer, law firm in Beijing. Nov. 17, 2011.

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

Comments:

According to the interview and government study, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding effectively.

References:

Ministry of Finance, budget plan of 2011, http://yss.mof.gov.cn/2011zhongyangyusuan/201103/t20110325_515994.html

Ningning Zhang, lawyer, law firm in Beijing. Nov. 17, 2011.

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

Comments:

In China, if directors, supervisors or senior managerial personnel of a state-invested enterprise engage in certain acts and cause loss of state-owned assets, they shall be subject to disciplinary measures in accordance with the law.

References:

China News, Ta Kung Pao: SAC Action The State-owned Assets Supervision and Administration Commission of the State Council Takes Actions Against Officials of the Oversight State-owned Enterprises, Nov. 8, 2011, <http://finance.qq.com/a/20111108/004818.htm>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 17, 2011.

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

Comments:

In China, if directors, supervisors or senior managerial personnel of a state-invested enterprise engage in certain acts and cause loss of state-owned assets, they shall be subject to disciplinary measures in accordance with the law. Such disciplinary measures include paying compensation and being given a disciplinary sanction, even criminal liability.

References:

China News, The State-owned Assets Supervision and Administration Commission of the State Council may pose penalties to Zhongye Hengtong, Aug. 5, 2011, <http://finance.sina.com.cn/roll/20110805/014510264678.shtml>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 17, 2011.

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?

15

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

No law grants citizens access to financial records of state-owned companies. Pursuant to Article 66 of the PRC Law on State-Owned Assets of Enterprises, the public can know the status of state-owned assets and information only concerning work related

to supervision and administration of state-owned assets. However, if such enterprises are listed companies, their financial information might be available.

References:

No law exists.

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 enterprises are not available.

References:

China News, Financial records of state-owned enterprises should be made public, July 19, 2011, <http://finance.sina.com.cn/g/20110719/160910172834.shtml>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 17, 2011.

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:

In practice, such audits are carried out according to PRC accounting standards, which are different from international standards.

References:

Shanghai Guozi, "The accounting management of state-owned enterprises," Chen Rong, July 29, 2011, <http://bschool.hexun.com/2011-07-29/131865533.html>

Modern Business, "The impact of the new PRC accounting standards," Kai Li, April 16, 2010, <http://www.ltbka.com/html/c36/2010-04/337.html>

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

Comments:

The financial records of state-owned enterprises are not available.

References:

China News, Financial records of state-owned enterprises should be made public, July 19, 2011, <http://finance.sina.com.cn/g/20110719/160910172834.shtml>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 17, 2011.

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

Comments:

The financial records of state-owned enterprises are not available.

References:

China News, Financial records of state-owned enterprises should be made public, July 19, 2011, <http://finance.sina.com.cn/g/20110719/160910172834.shtml>

Ningning Zhang, lawyer, law firm in Beijing, Nov. 17, 2011.

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 NGOs. 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 NGOs trying to access this information.

70 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

In China, when citizens, legal persons and other organizations intend to engage in special activities for which they need to obtain administrative permission according to the law, they shall submit their applications to administrative departments. For the business license, the Company Law provides more specifics.

References:

The PRC Administrative Licensing Law and the Company Law.

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

Comments:

Pursuant to Article 6 of the PRC Administrative Reconsideration Law, "Citizens, legal persons and other organizations may apply for administrative reconsideration according to this Law, if they consider that administrative organs fail to deal with, according to law, their applications for such documents as permits, licenses and qualification certificates, or their applications for examination and approval and registration of affairs concerned, while the applications meet the requirements as prescribed by law."

Pursuant to Article 12 of the PRC Administrative Reconsideration Law, "When refusing to accept a specific administrative act taken by the department of a people's government at or above the county level, the applicant may choose to apply to the people's government at the same level or to the competent department at a higher level for administrative reconsideration."

References:

PRC Administrative Reconsideration Law, Articles 6, 12.

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:

In practice, although the law has specified the exact days, there are always delays. Such delays may be caused by the government authorities or the companies themselves. For instance, the companies might not have submitted all the relevant documents for the application. Also, it varies in different cities because the local government authorities may have their own interpretations.

The World Bank's Doing Business 2012 report states that it takes five days to obtain registration certification ("a business license of enterprise legal person") with SAIC or local equivalent.

References:

Bin Zhang, "Loudi reduced the approval time period," Aug. 13, 2011, Ld.voc.com.cn, <http://ld.voc.com.cn/www/21/2011-08/5360.html>

Eva Yang, lawyer, law firm in Beijing, Nov. 16, 2011.

World Bank, Doing Business 2012, China, <http://www.doingbusiness.org/data/exploreeconomies/china/#starting-a-business>

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:

In practice, citizens can obtain business licenses at a reasonable cost, but different licenses cost differently, so it is hard to tell the exact expense.

References:

Legal Education Network, Administrative Organs to Implement the Administrative License at No Charge, March 4, 2010, http://www.chinalawedu.com/new/15700_169/2010_3_4_jj08602423194301022808.shtml

Eva Yang, lawyer, law firm in Beijing. Nov. 16, 2011.

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?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

No law explicitly addresses public health standards in the PRC, but laws address occupational diseases and food safety.

References:

No law explicitly addresses public health standards in the PRC.

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

Comments:

The PRC Environmental Protection Law is the primary law governing public environmental requirements.

References:

The PRC Environmental Protection Law.

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

Comments:

The PRC Work Safety Law is the primary law providing public safety. The Product Quality Law also addresses public safety.

References:

The PRC Work Safety Law.

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

42

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The enforcement of relevant laws still has to be strengthened, as the food safety issue is a longtime problem.

References:

Feipeng Xu, "Government officials held meetings to discuss food safety issues," Nov. 16, 2011, <http://cpc.people.com.cn/GB/64093/117005/16272576.html>

The Shouroujing Issue, March 15, 2011, http://www.ce.cn/cysc/sp/info/201112/23/t20111223_21089991.shtml

Eva Yang, lawyer, law firm in Beijing. Nov. 16, 2011.

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

Comments:

At the national level, aggressive goals have been set up in the 12th five-year plan, but at the provincial level, the EHS standards still need to be strengthened because some provinces do not have a clear, uniform approach. From the reports, we could see that provinces are actively taking a different approach to reach national EHS standards, such as in training, inspection or law enforcement.

References:

Business China, "The environmental authorities initiated inspections to A-listing companies," Su Yuan, June 16, 2011, Website: <http://www.21cbh.com/HTML/2011-6-16/0OMDAwMDI0NTA0OA.html>

Yan Tai EPA, "Enforcement rules of courts applied by environmental authorities," <http://www.ytepb.gov.cn/html/zcjd/1254.html>.

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

Comments:

The enforcement of work safety laws still needs to be strengthened.

References:

China Economic Net Zhang Xinyu, Food Safety Action Program Throws a Heavy Bomb, Exposure to Shuanghui "Lean" Pork

Used in Food Production, March 15, 2011, http://www.ce.cn/cysc/sp/info/201112/23/t20111223_21089991.shtml

Xinhuanet, Dec. 13, 2010,
http://news.xinhuanet.com/herald/2010-12/13/c_13646826.html

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁷⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

As stated in "Chinese Anti-Bribery Law: An Overview Of The Chinese Laws And Their Importance To Foreign Companies Doing Business In China – Part I," by Spencer S. Griffith and Yuanming Wang, "China maintains a two-layered regime pursuant to the PRC Criminal Law and the PRC Anti-Unfair Competition Law ("AUCL") that apply, inter alia, to activities in China by foreign companies and/or their subsidiaries in China. In addition, the Communist Party of China (CPC) and the State Council have issued internal disciplinary rules governing attempted corruption or bribery of Communist Party members and certain Chinese government officials. These CPC and State Council rules, however, do not create liability for foreign companies."

Article 23 of the Criminal Law of the People's Republic of China states: "Criminal attempt occurs when a crime has already begun to be carried out but is not consummated because of factors independent of the will of the criminal element. One who attempts to commit a crime may, in comparison with one who consummates the crime, be given a lesser punishment or a mitigated punishment."

References:

PRC Criminal Law, Article 23, <http://www.cecc.gov/pages/newLaws/criminalLawENG.php>

PRC Anti-Unfair Competition Law ("AUCL"), <http://en.chinacourt.org/public/detail.php?id=3306>

Internal rules of the Communist Party of China (CPC) and the State Council

Spencer S. Griffith and Yuanming Wang, The Metropolitan Corporate Counsel, Vol. 18, No. 8, "Chinese Anti-Bribery Law: An Overview of the Chinese Laws and Their Important to Foreign Companies Doing Business in China – Part I," August 2010, <http://www.metrocorp.counsel.com/articles/12959/chinese-anti-bribery-law-overview-chinese-laws-and-their-importance-foreign-companies>

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

Comments:

PRC Criminal Law Article 274 states: "Whoever extorts public or private property by blackmail, and the amount involved is quite large, is to be sentenced to not more than three years of fixed-termed imprisonment, criminal detention, or control; when the amount involved is huge and the other circumstances are serious, the sentence is to be not less than three years but not more than 10 years of fixed-term imprisonment."

References:

PRC Criminal Law Article 274.

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

Comments:

PRC Criminal Law, Articles 398-391, detail the crime of offering bribes. The subject would be determined to have committed the crime of offering a bribe only if illegitimate gains had been received. The subject(s) convicted of the crime of offering bribes can be people or units.

References:

PRC Criminal Law Articles 398-391.

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

Comments:

PRC Criminal Law, Articles 385-388, discuss the crime of receiving a bribe. Both people and units can be convicted of receiving bribes, where the unit is a state organ, state-owned company, enterprise, institution, or people's organization.

References:

PRC Criminal Law, Articles 385-388.

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:

Amendment VIII to PRC Criminal Law, Article 164, states: "Whoever gives any property to a staff member of a company, an enterprise or any other entity for any improper benefit shall be sentenced to imprisonment of not more than three years or criminal detention if the amount of property is relatively large; or be sentenced to imprisonment of not less than three years but not more than 10 years and a fine if the amount of property is huge.

"Whoever gives any property to a functionary of a foreign country or an official of an international public organization for any improper commercial benefit shall be punished according to the provision of the preceding paragraph.

"Where an entity commits a crime as provided for in the preceding two paragraphs, a fine shall be imposed on it, and its directly responsible person and other directly liable persons shall be punished according to the provision of Paragraph 1 of this Article.

"A briber who voluntarily confesses to his bribery before a criminal investigation on him is opened may be given a mitigated penalty or be exempted from penalty."

Amendment VIII to PRC Criminal Law was put into effect on May 1, 2011. It declared bribery of "a functionary of a foreign country or an official of an international public organization," a crime for the first time in China.

References:

Amendment VIII to PRC Criminal Law, Article 164.

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

Comments:

There is no definition of public resources in China. The above stipulations are different kinds of crime that can be deemed as public resources.

References:

PRC Criminal Law, Articles 166, 187, 228, 345.

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

Comments:

Any improper use of confidential state information is illegal in China. PRC Criminal Law, Articles 111, 282, and 287, and the Law of the PRC on Guarding State Secrets, stipulate such crimes.

References:

PRC Criminal Law, Articles 111, 282, and 287.

Law of the PRC on Guarding State Secrets.

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

Comments:

PRC Criminal Law, Article 191, and PRC Anti-Money Laundering Law stipulate such crimes.

References:

PRC Criminal Law, Article 191.

PRC Anti-Money Laundering Law.

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

Comments:

PRC Criminal Law Chapter II, Section 3, stipulates joint crimes.

References:

PRC Criminal Law Chapter II, Section 3.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

The Anti-Corruption Bureau inside the People's Procuratorates is in charge of addressing the crime of corruption.

PRC Criminal Procedure Law, Article 18, states: "Investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law. Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights — committed by State functionaries by taking advantage of their functions and powers — shall be placed on file for investigation by the People's Procuratorates. If cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need to be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level. Cases of private prosecution shall be handled directly by the People's Courts."

References:

PRC Criminal Procedure Law, Article 18.

The People's Procuratorates.

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.

75. Is the anti-corruption agency effective?

72

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

PRC Constitution gives only the general regulation, not practical details.

PRC Constitution, Article 131, states: "The people's procuratorates exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual."

References:

PRC Constitution, Article 131.

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:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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

Comments:

No head of an anti-corruption organ was removed without justification.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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:

All the staff in the anti-corruption agency should pass a certain exam.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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

Comments:

All staff in the People's Procuratorates should pass the national civil servant exam.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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

Comments:

The People's Procuratorate receives its financial allocation from the government of each level.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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:

The Supreme People's Procuratorate and the People's Procuratorate of each province have websites on which they publish their work each year.

References:

Supreme People's Procuratorate of the People's Republic of China, Work Reports, <http://www.spp.gov.cn/site2006/region/00018.html>

Supreme People's Procuratorate of the People's Republic of China, Making Public, <http://www.bjjc.gov.cn/bjoweb/minfo/index.jsp?DMKID=2>

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:

Sometimes the anti-corruption agency is influenced by the ruling party.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

Phone interview with Xu Xianhong, associate of K&W PRC Lawyers, Feb. 7, 2012.

Phone interview with Huang Lili, staff member of Beijing International Trust Company, Feb. 7, 2012.

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:

All investigations of corruption in China are initiated by the anti-corruption agency when it deems it necessary or receives complaints.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

Comments:

Chinese law does not provide a time limit for the anti-corruption agency to deal with a complaint. In practice, not all complaints would be dealt with. Only those complaints with real evidence would be acted upon.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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.

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

Comments:

Most complaints of corruption from citizens are presented as letters to the anti-corruption agency. If the anti-corruption agency were to deal with such complaints, it would not reveal the citizen's name to the public or the one being investigated.

References:

Phone interview with Shasha, deputy chief procurator of Heilongjiang People's Procuratorate, Dec. 6, 2011.

Phone interview with Sunqian, deputy chief procurator of Supreme People's Procuratorate, Dec. 5, 2011.

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.

70
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

Yes | No

Comments:

PRC Criminal Procedure Law, Article 180, states: "If the defendant, private prosecutor or their legal representatives refuse to accept a judgment or order of first instance made by a local People's Court at any level, they shall have the right to appeal in writing or orally to the People's Court at the next higher level. Defenders or near relatives of the defendant may, with the consent of the defendant, file appeals.

"A party to an incidental civil action or his legal representative may file an appeal against that part of a judgment or order of first instance made by a local People's Court at any level that deals with the incidental civil action.

"A defendant shall not be deprived on any pretext of his right to appeal."

References:

PRC Criminal Procedure Law, Article 180.

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:

PRC Civil Procedure Law provides a time limit of the appeal with some exceptions. In practice, most cases would follow the time limit strictly, but in some circumstances, when the cases are complicated, the time limit would not work.

References:

Liu Jia-Liang, On the Civil Jurisdiction Limits System, Legal Education Network, 2002, <http://vip.chinalawinfo.com/newlaw2002/slc/SLC.asp?Db=art&Gid=335570779>

Reuters, Discussions on the Problems and Solutions of the Civil Jurisdiction Limits System, July 2, 2010, <http://hunanfy.chinacourt.org/public/detail.php?id=24726>

Phone interview with Liu Zhumei, chief judge of the Second Civil Chamber of Supreme People's Court, Dec. 7, 2011.

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:

The court would not charge any fee of appeal in criminal cases, but the counsel fee is different, depending on the law firm, lawyers and location.

Attorney fees at first-class law firms in Beijing are about 2,000 yuan per hour.

References:

Phone interview with Xu Xianhong, associate, Beijing King & Wood PRC Lawyers, Dec. 7, 2011.

Phone interview with Chen Guangyu, associate, Beijing Deheng Law Firm, Dec. 7, 2011.

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?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The judges interviewed stated that China has clear written laws and regulations for criminal cases, including PRC Criminal Law, PRC Criminal Procedure Law and so on. All the criminal judgments should provide clear written legal sources to support the judgments. However, there are some exceptional cases due to political interference.

References:

Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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

79a. In practice, are judicial decisions enforced by the state?

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

Comments:

The above-mentioned judges said that enforcement of judgments is a difficult issue in China. The execution division inside each court is responsible for the judgment. Theoretically, the state would not interfere in enforcement, but given that the system is not that independent, the justice procedure is hard to guarantee.

References:

Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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

Comments:

PRC Constitution gives only the general regulation rather than practical details. PRC Constitution, Article 126, provides: "The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual."

References:

PRC Constitution, Article 126 provides: Chapter 8 of the Judges Law of the People's Republic of China

Central People's Government of the People's Republic of China, National People's Congress Standing Committee decision on the amendments to the Judges Law of the People's Republic of China, May 26, 2005, http://www.gov.cn/banshi/2005-05/26/content_1026.htm

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.

100 | 75 | 50 | 25 | 0

Comments:

Judges are not really protected from political interference. National judges are appointed by and responsible to the NPC. In practice, and especially in some sensitive cases, political factors influence judges.

References:

Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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

Comments:

All Chinese courts have prosecution chambers that distribute cases to judges inside the court, but Chinese law does not regulate the case distribution system. In practice, each court could have a rule, but this is not transparent to the public.

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:

National People's Congress Standing Committee decision on the amendments to the Judges Law of the People's Republic of China, [2001 amendment], http://www.gov.cn/banshi/2005-05/26/content_1026.htm

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:

No such record.

References:

Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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:
No such record.

References:
No such record.

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?

64

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:
There is no such bias in judicial decisions.

References:
Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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:

In practice, women have full access to the judicial system.

References:

Phone interview with Liu Zhumen, judge, Supreme People's Court, Dec. 7, 2011.

Phone interview with Wang Lijuan, judge, Shijingshan People's Court, Dec. 7, 2011.

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

Comments:

The government is required by the law to provide legal aid to certain kinds of defendants instead of all defendants.

Regulation on Legal Aid provides the details of the government's obligation to offer legal aid to specific kinds of defendants.

PRC Criminal Procedure Law, Article 34, states: "If a case is to be brought in court by a public prosecutor and the defendant involved has not entrusted anyone to be his defender due to financial difficulties or other reasons, the People's Court may designate a lawyer that is obligated to provide legal aid to serve as a defender. If the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender. If there is the possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender."

References:

Regulation on Legal Aid.

PRC Criminal Procedure Law, Article 34.

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:

The government provides legal aid only to certain kinds of defendants in criminal cases. Each law firm has a mandatory mission to provide legal aid to a certain number of cases. But in rural places, the mandate does not do enough.

For example, Beijing K&W PRC Lawyers should provide free legal aid to four criminal cases assigned by the Lawyers Committee.

References:

Phone interview with Xu Xianhong, associate, Beijing King & Wood PRC Lawyers, Dec. 7, 2011.

Phone interview with Chen Guangyu, associate, Beijing Deheng Law Firm, Dec. 7, 2011.

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:

The fee charged by the court is not significant, but attorney fees are a significant consideration. Attorney fees depend on the law firm, lawyers and location of the firm.

References:

Phone interview with Xu Xianhong, associate, Beijing King & Wood PRC Lawyers, Dec. 7, 2011.

Phone interview with Chen Guangyu, associate, Beijing Deheng Law Firm, Dec. 7, 2011.

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

Comments:

The fee charged by the court is not significant, but attorney fees are a significant consideration. Attorney fees depend on the law firm, lawyers and location of the firm.

References:

Phone interview with Xu Xianhong, associate, Beijing King & Wood PRC Lawyers, Dec. 7, 2011.

Phone interview with Chen Guangyu, associate, Beijing Deheng Law Firm, Dec. 7, 2011.

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:

People's Courts are located in every town in China.

References:

Phone interview with Xu Xianhong, associate, Beijing King & Wood PRC Lawyers, Dec. 7, 2011.

Phone interview with Chen Guangyu, associate, Beijing Deheng Law Firm, Dec. 7, 2011.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

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:

The staff in the Public Security Department of the national and provincial levels should attend the national civil servant exam. Some police officers in a town or village might not have been chosen that strictly. For example, in Shandong province, Linyi town, one police officer was the son of the head of the town.

References:

Phone interview with Cheng Xiaolin, deputy director of the Department of Public Security of Heilongjiang province, Dec. 6, 2011.

Phone interview with Wang Jinbiao, deputy director of the Ministry of Public Security, Dec. 6, 2011.

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:

Although statistics show that 95.9 percent of town-level public security entities have a sufficient financial budget, that it is only an average number. In some remote cities, the financial budget is far behind the average level.

References:

Ministry of Public Security, Public Funds of the County-Level Public Security Organs in Place Rate of 95.9%, November 26, 2008, <http://news.163.com/08/1126/08/4RLOKJID000120GU.html>

Yao Guiren, "The analysis of the situation of the current financial guarantee situation of the public security organs," <http://wenku.baidu.com/view/b48df54ee518964bcf847c76.html>

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:

Due to Chinese history and imperfect law, the public security organ is sometimes influenced by the government or political factors.

References:

Guangming Daily Overview, November 14, 2011, http://www.gmw.cn/lianzheng/2011-11/14/content_2966146.htm#content_2966146.htm

Jian Municipal Public Security Bureau, Ministry of Information, On the public security organs of public security organizations and police station, an independent administrative law enforcement, May 18 2011, <http://news.9ask.cn/gaga/gaga/201105/1195755.shtml>

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.

84. Can law enforcement officials be held accountable for their actions?

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Every public security organ has its own discipline inspection commission and supervision and inspection commission that is responsible for hearing citizens' complaints regarding police actions.

References:

PRC Administrative Procedure Law, Order of the State Council of the People's Republic of China and People's Police Law of the People's Republic of China.

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 response time depends on the kind of complaint. If the complaint concerns criminal action, criminal law provides the detailed time limit for each stage and the public security organ would follow the time limit. If the complaint regards administration, there is no such legal requirement, so it would take months for the public security organ to deal with the complaint.

References:

Phone interview with Cheng Xiaolin, deputy director of the Department of Public Security of Heilongjiang province, Dec. 6, 2011.

Phone interview with Wang Jinbiao, deputy director of the Ministry of Public Security, Dec. 6, 2011.

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

Comments:

People's Procuratorates always have an anti-corruption bureau inside that is responsible for the corruption cases.

The PRC Criminal Procedure Law states: "Investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law. Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights — committed by State functionaries by taking advantage of their functions and powers — shall be placed on file for investigation by the People's Procuratorates. In cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need to be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level. Cases of private prosecution shall be handled directly by the People's Courts."

References:

People's Procuratorates, Criminal Law.

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:

Investigations of law enforcement are not common. In China, the law enforcement organ usually means the public security organ. If it receive any allegation of corruption from citizens, it would transfer such cases to the people's procuratorate to investigate.

References:

Phone interview with Cheng Xiaolin, deputy director of the Department of Public Security of Heilongjiang province, Dec. 6, 2011.

Phone interview with Wang Jinbiao, deputy director of the Ministry of Public Security, Dec. 6, 2011.

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

Comments:

Chapter 9 of PRC Criminal Law regulates the crime of dereliction of duty by all functionaries of a state organ, not only law enforcement officials.

References:

Chapter 9 of PRC Criminal Law.

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

Comments:

The law enforcement officials should follow all regulations to carry out their obligations. If citizens allege abuse of power or other criminal actions, they would face criminal proceedings.

References:

Phone interview with Cheng Xiaolin, deputy director of the Department of Public Security of Heilongjiang province, Dec. 6, 2011.

Phone interview with Wang Jinbiao, deputy director of the Ministry of Public Security, Dec. 6, 2011.

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.