



U.S. Enforcement Against the PRC: Preparing for the Next Wave

The U.S. government has made its intentions clear that it will investigate and prosecute PRC-based companies and individuals that it believes employ illegal tactics to compete with U.S. companies in key sectors. Below, representatives from our Government Enforcement Defense team — which includes multiple former federal prosecutors from the U.S. Department of Justice — explain how to effectively prepare and respond for the next wave of enforcement.

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In recent weeks, the U.S. government made its intentions clear: it will investigate and prosecute PRC-based companies and individuals that it believes employ illegal tactics to compete with U.S. companies in key sectors.

While recent events are currently making international headlines, the U.S. approach was not wholly unexpected. For instance, the U.S. Department of Justice (DOJ) [announced its “China Initiative”](#) on November 1. What is not known for many Chinese companies and their executives and legal representatives, is how the U.S. government’s actions will develop – and who will be the next target.

Future U.S. actions could come from any number of directions:

They could utilize a variety of U.S. criminal laws, perhaps related to economic sanctions against Iran, North Korea, Venezuela or Russia; fraud and corruption; trade secret protections; or economic espionage directed at commercial secrets of another company; They could target key technology companies or Chinese competitors in different sectors; The next arrests of Chinese citizens could occur in any nation where the U.S. believes it can secure extradition; And along with criminal enforcement, the U.S. could seize any assets that it claims are related to the alleged criminal conduct.

Amidst this uncertainty, many executives and high-net-worth individuals in China are feeling understandably anxious.

For future defendants, it will be of paramount importance to understand the strategies and tactics of the U.S. agencies in charge of national security and fraud investigations.

The trouble is, this is a potentially sensitive area for some law firms headquartered in the U.S. No matter when, where and who the U.S. government strikes next, the first and perhaps most difficult challenge could be finding counsel not only with the relevant cross-border criminal law expertise, but also a willingness to fight U.S. authorities aggressively on behalf of PRC clients — without expending time worrying about whether that counsel’s other U.S. clients will become upset.

After all, when an individual is detained in a third country for violations of U.S. law, the circumstances will call for immediate action, not deliberation. For example, counsel will need to:

Navigate extraordinary geopolitical pressures: The next arrest of a Chinese citizen is likely to be extremely high profile all over the world, and any legal strategy will need to be paired with a public relations (and perhaps government relations) strategy that considers potential diplomatic factors and the role the defendant will play in the global narrative.

Align and coordinate global counsel: An effective defense will need to consider the legal and cultural dynamics in China, where the arrestee is a citizen; in the country of arrest, where local laws will determine detention and extradition; and in the U.S., including across the various districts where criminal charges and spin-off actions, such as sanctions proceedings, could be filed.

Leverage local laws to fight detention: Depending on local laws, legal creativity might be required to demonstrate that the defendant is not a “flight risk” and to secure a release on bond.

Deploy knowledge of cross-border laws to prevent extradition: To avoid extradition to the U.S., the defense team should point to discrepancies between laws in the U.S. and the country of arrest, or demonstrate that the U.S. charges are politically motivated.

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Defend against the full scope of exposure: U.S. law offers prosecutors powerful tools to seize certain assets at the onset of a criminal case. Counsel must not only defend the individual, but also put into effect a layered strategy to protect and defend continued access to property and accounts.

Similarly, if a Chinese citizen is in the PRC when U.S. charges come down, he or she must quickly establish an attorney-client relationship with experienced counsel (or co-counsel), to communicate candidly about what comes next in a way that is protected under U.S. law.

Whatever action comes next from U.S. agencies — and there is little doubt it will come — this cross-border perspective, not to mention a willingness to represent clients on the PRC side of the dispute, will be essential to helping clients respond quickly and effectively.

About Kobre & Kim's Government Enforcement Defense Team

Kobre & Kim is an Am Law 200 global law firm that focuses exclusively on disputes and investigations, often involving fraud and misconduct.

Frequently working with other law firms as special counsel, Kobre & Kim regularly represents China-based clients in cross-border government enforcement actions. The Shanghai-based team includes the only former U.S. prosecutor in China from the DOJ division that handles sanctions, and frequently works with the other U.S. agencies that enforces these controls, including the Bureau of Industry and Security (BIS) at the Department of Commerce and the Office of Foreign Assets Control (OFAC) at the Treasury Department. The Shanghai team also offers native language skills including Mandarin, Cantonese and Shanghainese.

The firm's broader Asia-based government enforcement defense and investigations team is led by several former U.S. government lawyers who have served in relevant U.S. agencies.