

Taking a stand in China!

The Cambridge International Symposium on Economic Crime is now in its 37th year. It attracts over 1,800 participants from around the world and has the support of many governments and institutions. Over the years a number of regional programmes have taken place in many parts of the world. Although regular conferences took place in Hong Kong and Taipei, until this May, none had been hosted in China. Notwithstanding China's long and serious concern about economically motivated and relevant crime an effective vehicle for international collaboration proved difficult to identify. Of course, there have been many conferences in China on issues relevant to economic crime and President Hu Jin Tao established in the International Association of Anti-Corruption Authorities. However, interest has tended to be sectorised and lacking the level of diversity that is required for effective discussion of the threats posed by economic crime and misconduct. This is particularly the case in China where there has tended in recent years to be an over-focus on tackling certain forms of corruption but not other issues that may harm the development of the markets. Indeed, no other than President Xi in his address to the 19th People's Congress emphasised the important to China addressing wider issues of integrity than just corruption. The importance of stewardship and governance were also recently emphasised by Premier Li in his report to the People's Congress on developments over the previous year in implementing the decisions of the 19th Congress.

Consequently, the Organising Institutions of the Cambridge International Symposium were delighted to receive an invitation to co-host the first Beijing Seminar of the Symposium which took place at the Beijing International Arbitration Centre on 27 and 28 April 2019. A number of leading Chinese universities and organisations were involved in the two day programme which was chaired by Mr Saul Froomkin QC, who has chaired the Cambridge International Symposium for the past 36 years. The driving force behind this important initiative was Mr Qi Lai, of the London Education Group, who with Professor Barry Rider, the founder of the Cambridge Symposium, Mr Michael Ash QC SC and Sir Ivan Lawrence QC served as co-chairman. Although the preponderance of participants were naturally from China, a number of other jurisdictions were represented including Canada, Australia, Sri Lanka, the Philippines, Norway, Estonia and the Republic of Ireland. The seminar took place at the same time as the Belt and Road Forum which was attended by over 40 countries including a number of leaders and senior ministers. In fact, concern about legal security and fighting corruption were discussed at the forum giving added emphasis to the deliberations in the International Arbitration Centre. China's one belt and one road initiative has been a focus in the Cambridge International Symposium and a one-day dedicated conference on legal and related risks has been included in the previous two annual programmes. This year it will focus on the importance of sound legal principles and institutions in maintaining stability along the road.

The first China seminar was primarily concerned with identifying new strategies in combating the threats posed by economically motivated crime and the implications for those doing business in China particularly in the financial sector. Consequently, a great deal of attention was focussed on the importance of compliance systems and the new legal and regulatory risks that have been placed on those who manage institutions concerned with handling other people's wealth. Although China has not been slow to enact anti-money



laundering laws, there have been concerns inside and outside China as to their effectiveness and an increasing amount of attention is being focussed on the adequacy and efficacy of compliance. Indeed, Professor Rider in his opening keynote address underlined the concern of the Chinese Communist Party to promote better governance and compliance and strengthen management in these areas, particularly in China's banks and financial sector. It is still the case, however, that rather like in many Western countries until a couple 15 or so years ago, compliance is seen as a cost in China and certainly not an investment!

As China has, until very recently, pursued its "opening" strategy with great commitment and enthusiasm, considerable emphasis was placed in the Belt and Road Initiative summit and the seminar on the importance of effective international co-operation. Mr Li Shulei, Deputy Secretary of the CPC Central Commission for Discipline, in a special working group of the forum, underlined the practical importance of the network of international arrangements that China has entered into. It now has over 120 mutual assistance agreements with 77 countries to assist in the identification and seizure of ill-gotten gains. It has a further 64 full mutual legal assistance treaties and over 55 extradition agreements.

However, it was also recognised that the more formal institutions for international co-operation did not always achieve speedy and effective results. Professor Barry Rider and in particular Professor Mads Andenas QC, a former UN mandate holder and chair of the UN Committee on Unlawful Detention, both emphasised the practical utility of procedures outside the traditional criminal justice system and especially the civil law. Indeed, Professor Rider referred to his experience in acting for the Chief Prosecutor of China over ten years ago in using the civil law in Hong Kong, Singapore and Italy to trace corrupt and misappropriated funds from a state enterprise in Jilin. Since then, there have been other more or less successful cases in a number of common law jurisdictions, including the USA and Australia. Professor Huang Feng, Director of the International Criminal Law Institute of Beijing Normal University and a judge, while recognising the practical and political limitations for effective international action highlighted the fact that under Chinese law – the competent authorities which include both the police and the Supreme People's Procuratorate do not need a foreign court order before they can freeze suspect foreign assets and this is a power which is increasingly being used. Indeed, even high level intelligence may well be sufficient for the Chinese authorities to intervene. On the other hand Professor Huang and several senior prosecutors pointed out that Chinese judges were wedded to the presumption of innocence and often considered such proceedings as involving the imposition of penalties rather than as the Supreme People's Court and Supreme People's Procuratorate had indicated in an official guidance notice in 2016 that it was more appropriate to consider freezing orders as rather more related to restitution. Indeed, the supreme court has stated that all that is required is proof of a high probability of illegality' the civil standard. A senior official emphasised the importance of more judicial education and commended the seminar on this basis.

Of course, it is also important for the Chinese authorities to be able to better locate suspects who have "escaped" to overseas territories – including Taiwan. In January 2019, China launched its SKYNET programme, which is designed to identify and track in a robust manner those suspected of serious crime and in particular corruption in China. It builds on the relative success that China has already achieved in informal "collaboration" with foreign immigration services – including those of Taiwan and the USA. The emphasis that China has placed on administrative and disciplinary procedures for members of the party has not always at comfortably with the criminal justices system and has led to concerns about the visibility and proportionality of actions. Indeed, it was partly to foster better legal co-

ordination at home and overseas that the Chinese Government established the Central Commission.

Professor Xiumei Wang, the Presiding Judge of the Beijing Court and a leading international expert of criminal procedure in the seminar, referred to the numerous new laws promulgated in China to address economically relevant crime. Indeed, this was also a point of emphasis in the report of Premier Li to the People's Congress on implementation of the resolutions of the 19th People's Congress. Indeed, he specifically referred to the risks to China's stability caused inter alia by the threat of organised crime and corruption. Several leading practitioners voiced concern that notwithstanding the efforts that are being made in China to address the threat of serious corruption, there was clearly an issue along the road that China is building through some very "uncertain" jurisdictions. They recommended that far more attention be given to the legal and other threats presented along the belt and road – an issue that has been addressed on several occasions in the Cambridge International Symposium on Economic Crime specifically at the request of the UK Sichuan Business Association. Professor Rider in this regard referred to several initiatives by the Chinese Government to assist its neighbours along the road and the work currently being undertaken by Chinese universities including Renmin Law School. However, all agreed that this was a major challenge to the long term success of the strategy.

The threat posed to all by cybercrime was emphasised by numerous Chinese officials and in particular Mr Richard Parlour, the chair of the European Union's special task force on cybercrime and the former chair of the UK Home Affairs Committee of the Federation of Small Businesses. The coming together of advanced technology and the financial sector in China has created profound problems in protecting especially more speculative investors. Various Ponzi, bucket and boiler room operations abound in many areas of China. A senior prosecutor for one of the most vulnerable areas of Beijing be moaned the lack of resources to properly investigate let alone prosecute such cases. Although it was accepted that there was real concern at all levels and in particular at the political level, in practice there were limits as to how effective the law could be in protecting gullible and greedy investors from themselves. Several prosecutors and investigators emphasised the importance of investor education. On the other hand, Mr Zaikui Wang, a former Chief Judge warned that there was a need to be careful in using the "sledge hammer" of the criminal law in regard to conduct that was on the border. He pointed to the pace of economic development in China and the uncertainties that this had given rise to both in relation to what is acceptable and the application of the law. Several lawyers and businessmen pointed out that a too ready intervention of the criminal law had caused honest businesses serious problems and care needed to be taken in the sensitive administration of economically sensitive laws. There was clearly a feeling that Chinese regulators in particular has some way to go in acquiring and exercising this sensitivity. Mr Sun Xueli, a senior prosecutor, emphasised the importance of a better working relationship between those in the criminal justice system and those concerned with early interventions through regulation to protect investors. The point was made that by the time the criminal justice system can properly intervene the damage in economic terms – especially to investor confidence, will almost certainly have occurred – and this is an especially sensitive issue in the modern political reality of China.

These concerns underlined the importance of better compliance systems and, as Mr Michael Ashe QC pointed out, there being real consequences for those who break the rules. Dr Jiaming Zou, senior partner of King and Capital Law firm and a former senior prosecutor considered that the development of effective compliance was vital for the stability of China's financial sector. Discussion centred on the problems that China had in addressing insider abuse, an offence, as Professor Rider pointed out – first became a crime in China in 1921. The

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inter-relationship of administrative interventions and the criminal law is in the view of a number of practitioners problematic in China. Indeed, one senior judge thought the law was ill conceived and often unworkable. The involvement of compliance in preventing the abuse of inside information and for that matter opportunity is limited and one compliance officer claimed almost discouraged. Another compliance official, from a leading bank, in discussing anti-money laundering procedures said that those employed in compliance were often given target number of suspicion based reports to file regardless of the realities. Consequently there was a danger that the system was become discredited. Mr Henry Lai, in his summing up, focussed on the need for more attention to be given to improving both the way in which compliance was structured and provided within many Chinese businesses – and not solely those in the financial sector. Focussing on President Xi’s concern that China should be more able and willing to address wider issues of integrity and stability he announced a major initiative to foster education and training in this area and emphasised his personal commitment to making sure that this highly constructive forum became an annual event for the benefit of China.

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