

# Rödl & Partner

COMPLIANCE IN CHINA

## THE RELEVANCE OF WHISTLEBLOWING SYSTEMS FOR COMPANIES

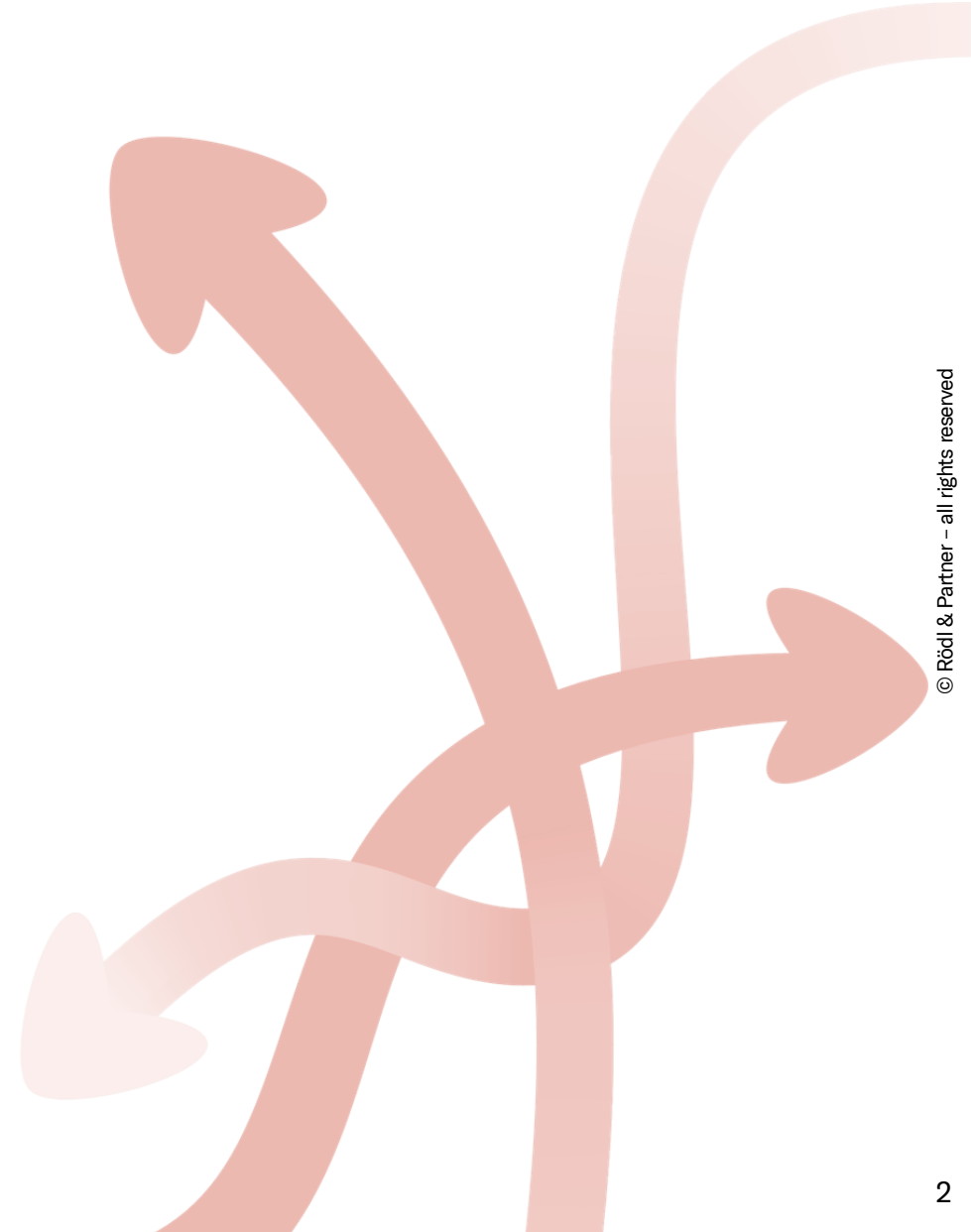
**Sebastian Wiendieck,**  
Rödl & Partner Shanghai  
Beijing, 30 August 2023



# WHISTLEBLOWING CHINA (1/9)

## Increasing importance of whistleblower systems in China

- Importance of whistleblowing is steadily increasing in China. Three years of separation between foreign parent companies and their Chinese subsidiaries due to restrictive COVID measures in China have certainly contributed to this;
- China does not generally provide for a legal obligation to establish a general whistleblower system in private companies. However, there are numerous legal and administrative regulations that stipulate rights of whistleblowers or require establishment of corresponding systems;
- What are the pros & cons of an established whistleblowing system or to encourage employees to become a whistleblower and what should companies observe.



# WHISTLEBLOWING CHINA (2/9)

## Typical exposures

Tax Evasion

New: Counter-Espionage Law

Bribery / Anti-Unfair Competition Law

Termination of Employments

New: Data Security / Data Protection

Sexual Harassment

IP Infringements

Customs

Misleading Business Information

## Typical motivation of whistleblower

Personal Conflict

Compliance

Obsession

Reward

Revenge

Commitment



## Legal regulation of whistleblower systems

- In 2019 China's State Council published guidelines calling on both the central and provincial governments to set up whistleblower protection systems;
- In parallel, a series of regulations were issued that create financial incentives for whistleblowers;
- Already in 2016, Shanghai implemented a reward policy promising whistleblowers who report food-safety violations as much as RMB 300,000; Shenzhen government launched a similar policy awarding food-safety whistleblowers as much as RMB 600,000;
- Of key importance in this regard are the ***Interim Measures for Rewarding Whistleblowing of Major Violations in the Field of Market Regulation*** issued by the Chinese Ministry of Finance and the State Administration for Market Regulation, which came into force in December 2021;
- Measures aim to encourage public to report "major violations" of laws and regulations. Whistleblowers can receive a reward of up to RMB 1 million for reporting compliance violations under certain conditions;



## Legal regulation of whistleblower systems

- Conditions to receive award:
  - (1) whistleblowing must be related to a major violation of law (e.g., violations leading to substantive punishments, revocation of licenses, cessation of production, criminal prosecution),
  - (2) authorities are not already aware of violation; and
  - (3) whistleblowing will be confirmed upon investigation.



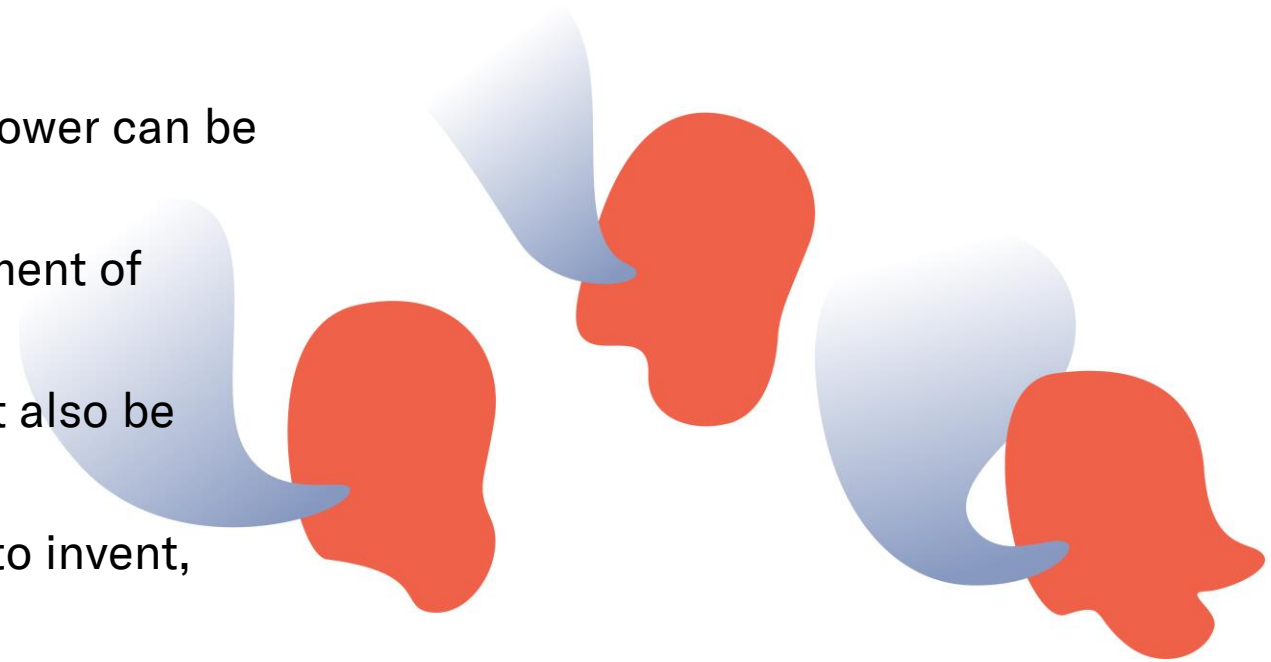
# WHISTLEBLOWING CHINA (5/9)

- **Chinese Civil Code** (in force since January 2021) provides that companies must **issue and implement internal regulations to protect against sexual harassment**;
- These obligations are substantiated by the amended **Law on the Protection of Women's Rights and Interests** (in force since January 2023). According to this law employers are obliged to set up an internal complaints system with a responsible contact person;
- There is also a need for action against the background of the draft **German Whistleblower Protection Act** (HinSchG) based on the **EU Whistleblower Directive**. The HinSchG will affect the entire group of companies, including Chinese subsidiaries of German companies:
  - Companies with generally at least 50 employees are required to set up internal reporting offices;
  - From 2025, companies will also have to introduce an anonymous reporting procedure;
- **German Supply Chain Act**, which came into force on January 1, 2023, is also of importance for German companies that have subsidiaries in China or do business here. The law provides for the establishment of a complaints procedure with regard to human rights violations within the supply chain.



## Protection of whistleblowers

- In China, too, there are now mechanisms to protect whistleblowers;
- An employer who takes reprisals against a whistleblower can be prosecuted under administrative and criminal law;
- The whistleblower may also be entitled to reinstatement of his/her employment or compensation;
- All information submitted by the whistleblower must also be treated confidentially;
- On the other hand, whistleblowers are required not to invent, distort facts or make false accusations.



# WHISTLEBLOWING CHINA (7/9)

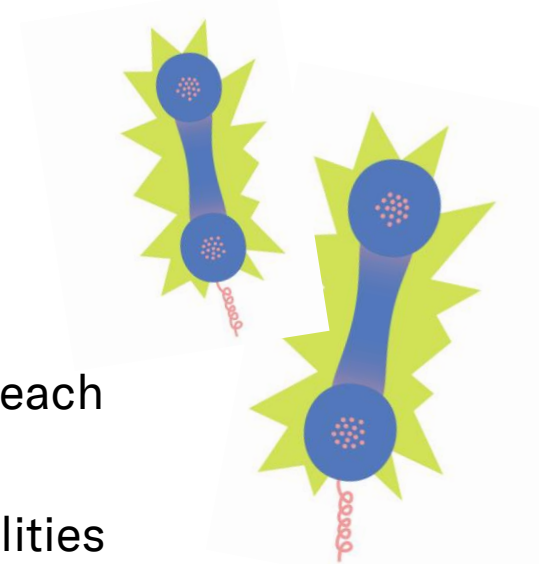
## Advantages / Disadvantages of Whistleblowing

Disadvantages	However, advantages clearly prevail...
Whistleblowers use system for own interest (e.g., revenge, financial gains, personal conflicts)	Empower staff speak up about wrongdoing
Can create culture of mistrust	Enable early detection and correction of wrongdoing committed, within your own organization (avoid disclosure to public authorities and/or investigations)
False claims and accusations/unrealistic and unreasonable expectations of whistleblower	Prevent and minimize damage to your organization (e.g., legal liability, financial losses, loss in reputational)
Additional administrative burden and costs	Establish a process to protect whistleblowers and third parties at risk of detrimental conduct
Broken “chain of command”	Enable your organization to learn and remediate
	Foster an organizational culture of trust, transparency and accountability



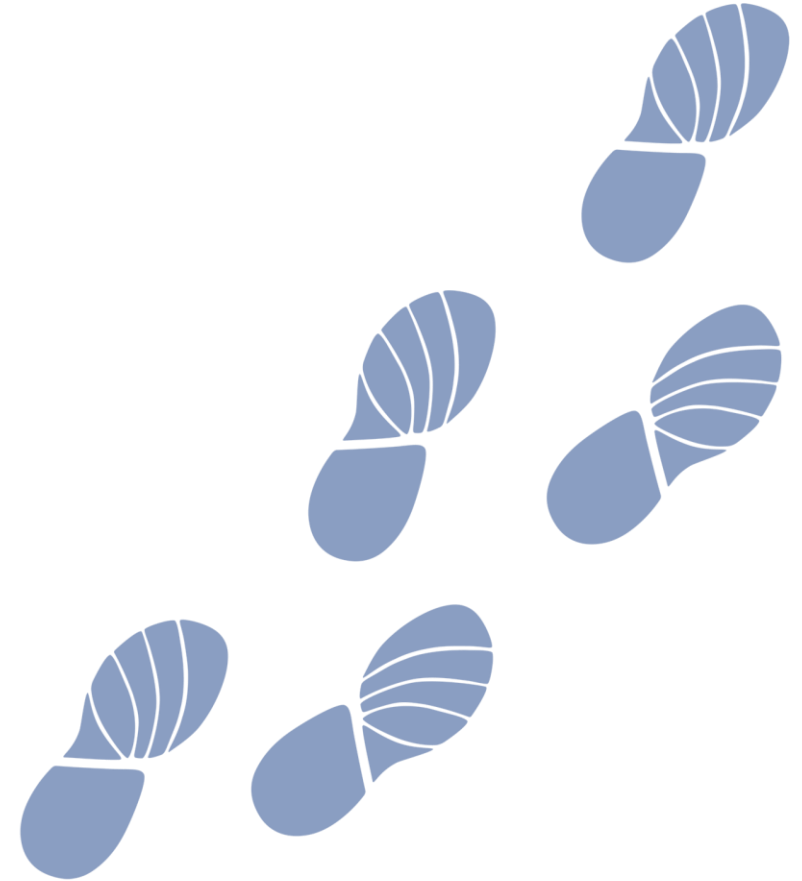
## Considerations for a proper Internal Whistleblowing System

- Understand motivation / (self)interest of whistleblower;
- Manage expectations of whistleblower;
- Take whistleblowing seriously – on the other hand you must not become active in each event;
- Establishment special reporting channels as well as the corresponding responsibilities (within own organization vs. third party);
- Create and communicate internal company whistleblower policies that help whistleblowers to address their tips to the company and ensure their complaints are handled confidentially and anonymously;
- Establish a remediation system that defines actions to be taken, responsibilities, form of response, response deadlines, some of which are required by law, to facilitate timely follow-up or further communication with whistleblowers;
- Conduct regular training on the internal whistleblower system to raise employee awareness and create compliance culture;

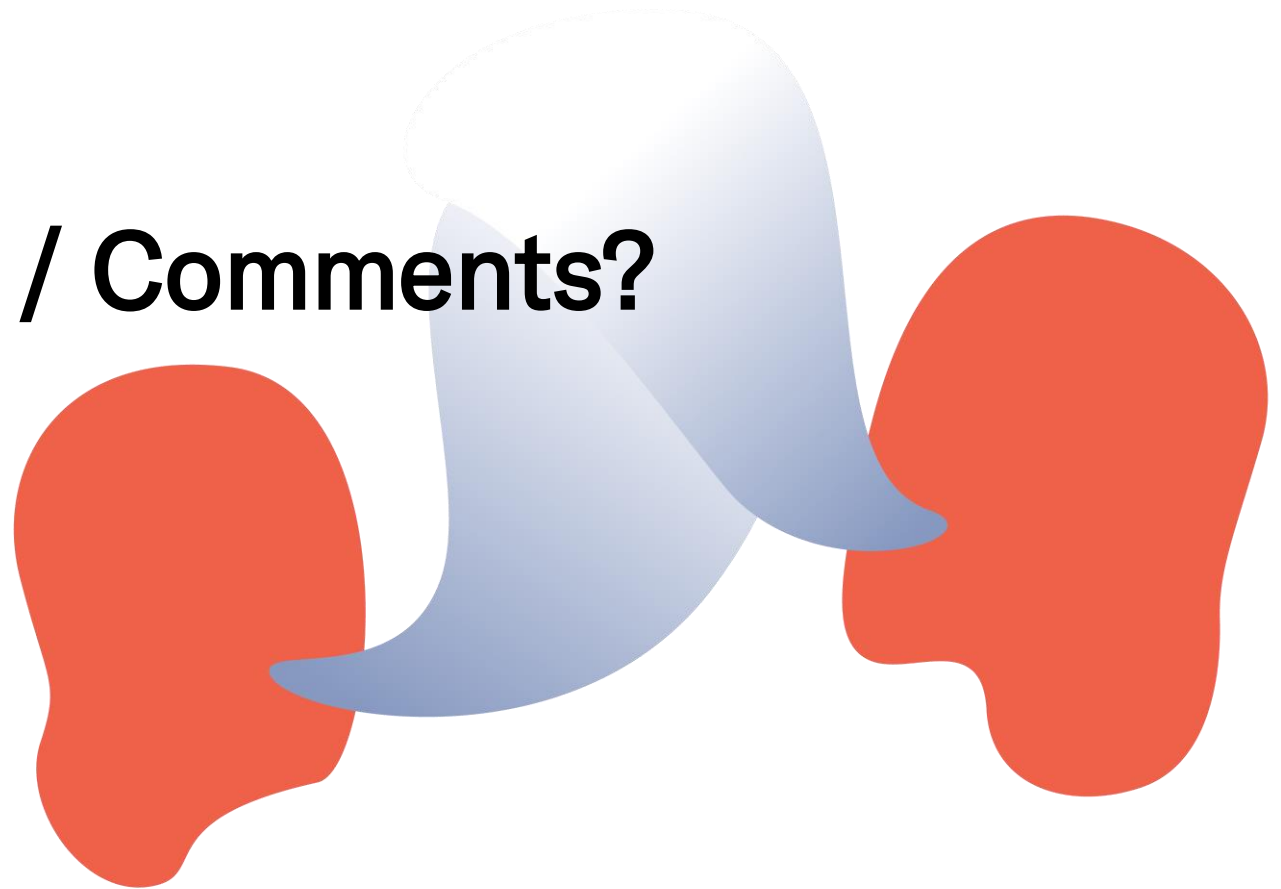


## Considerations for a proper Internal Whistleblowing System

- Regular as well as ad hoc review of the reporting process;
- Regular (usually annual) report on measures taken; storage and accessibility of the report in accordance with legal requirements);
- Finally, it is particularly important to pay attention to data protection and security. Here, *EU GDPR* as well as *Chinese Data Security Law* and *Personal Information Protection Law* play a central role. In particular, there are significant restrictions on the cross-border transfer of personal information from a Chinese perspective. Special attention must also be paid to *New Counter-Espionage Law*, which will take effect on July 1, 2023.



**Questions / Comments?**



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A tall, cylindrical lighthouse with alternating black and white horizontal bands. The top section is illuminated with a warm, yellow-orange glow. The lighthouse stands on a sandy beach with the ocean in the background. The sky is a mix of blue and purple hues, suggesting dusk or dawn. In the distance, a city skyline is visible with lights reflecting on the water.

THANKS FOR YOUR ATTENTION