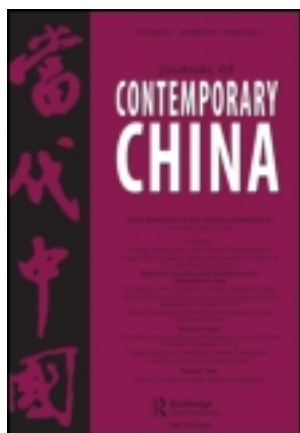


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# Hard Rules and Soft Constraints: regulating conflict of interest in China

TING GONG and JIANMING REN\*

*The initial paragraphs of this article outline the broad themes of this special section, drawing attention to changing perceptions and definitions of corruption and to corruption prevention practices in Greater China. The remainder of the article focuses on a particular theme: the relationship between conflicts of interest and corruption in both theoretical terms and in its application in mainland China. Conflicts of interest are conceptualized as the incompatibility between the public interest associated with official duties and interests derived from the private domain. Such conflicts do not always necessarily lead to corruption and may be distinguished from it. By examining the way in which they are regulated in China, we argue that although an intricate web of rules has been established, regulations alone cannot guarantee ethically sound behaviour if there is no supportive value framework of like-minded civil servants. Rules require interpretation and if this discretion means that civil servants choose to follow an administrative culture and personal values that conflict with the regulations, they will have little effect. Hard rules may mean soft constraints.*

No part of the Greater China region has been immune from serious problems of corruption or from the need for governments to devise and implement effective anti-corruption strategies.<sup>1</sup> In mainland China, despite 30 years of government efforts, corruption has become increasingly rampant. There is a widespread perception that corruption in the public sector is endemic and that attempts to reform and improve bureaucratic practices by introducing measures such as fiscal decentralization may cause even more corruption at the local level.<sup>2</sup> In the private sector, commercial

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2. Kilkon Ko and Hui Zhi, 'Fiscal decentralization: guilty of aggravating corruption in China?', *Journal of Contemporary China* 22(79), (2013), DOI: 10.1080/10670564.2012.716943.

bribery seemingly remains largely unchecked.<sup>3</sup> In Taiwan, the three major forms of corruption—vote-buying, illegal lobbying and the practice of bribing officials by giving them ‘red envelopes’—are still prevalent and may have become worse in recent years.<sup>4</sup> In Hong Kong, where the Independent Commission Against Corruption has waged a highly successful campaign against bribery, there remain issues relating to conflicts of interest and the integrity of public officials and to cross-border corruption;<sup>5</sup> and in Macao, which appeared to be making progress in combating corruption, the conviction of a senior government minister in 2007 for accepting hundreds of millions of dollars in bribes has affected public confidence and fuelled suspicions that more wrongdoing has yet to be uncovered.<sup>6</sup>

In seeking solutions to many different forms of corruption, the governments of Greater China are attempting to make policy and devise rules in what is also a changing and dynamic situation. Public values and perceptions of what corruption is and what it is not interplay with the governments’ own expanding, and sometimes contradicting, definitions of what they regard as inappropriate and punishable behaviour. In a context in which the nature of the problem is constantly being redefined against a backdrop of rapid economic and social change, corruption prevention strategies themselves may sometimes imperceptibly, sometimes explicitly, shift focus moving, for example, from more rule-based to more value-based approaches or vice-versa. To create appropriate and effective anti-corruption agencies and to promulgate rules and regulations which can be enforced under these circumstances presents problems of institutional design which may, in turn, be compounded by resistance from bureaucracies which see new practices as potential threats or as undermining long-established traditions. In this special section, we seek to evaluate how corruption prevention strategies work (or are supposed to work) in Greater China, how they relate to public perceptions of corruption and what problems they involve in terms of institutional design. We cover the whole region with three articles relating to mainland China and one each on Taiwan, Hong Kong and Macao.

The present article focuses on the government’s intensified but reoriented anti-corruption strategy in mainland China. In recent years, evident changes have taken place in the Chinese government’s approach to corruption. While ‘anti-corruption’ (*fanfu*) remains a catchword in government rhetoric, in practice, more emphasis has been placed on prevention through a broad range of ex ante pre-emptive measures. Corruption control has evolved from sporadic campaign-style enforcement to the holistic building of rules and institutions aimed at preventing corruption and an impressive variety of rules and regulations has emerged. Each of these rules and regulations has its own idiosyncratic content and specific scope, but collectively they share a salient concern about a major underlying cause of corruption—conflict of interest in public life. Conflict of interest is regarded as being a prelude to, or even

3. Andrew Wedeman, ‘The challenge of commercial bribery and organized crime in China’, *Journal of Contemporary China* 22(79), (2013), DOI: 10.1080/10670564.2012.716942.

4. Chilik Yu, Chung-Ming Chen and Min-Wei Lin, ‘Corruption perception in Taiwan: reflections upon a bottom-up citizen perspective’, *Journal of Contemporary China* 22(79), (2013), DOI: 10.1080/10670564.2012.716944.

5. Ian Scott, ‘Institutional design and corruption prevention in Hong Kong’, *Journal of Contemporary China* 22(79), (2013), DOI: 10.1080/10670564.2012.716945.

6. Eilo Yu Wing-yat, ‘Anti-corruption approaches in Macao: lawmaking and legal enforcement’, *Journal of Contemporary China* 22(79), (2013), DOI: 10.1080/10670564.2012.716946.

overlapping with, corruption. Effective corruption control is seen to be contingent on how and to what extent conflict of interest in public life can be successfully contained.

Scholarship on conflict of interest is relatively scarce compared to that on corruption. Even less theoretical attention has been paid to the nexus between conflict of interest and corruption. How should conflict of interest be conceptualized? What is its relationship with corruption? More importantly, to what extent can managing conflicts of interest contribute to corruption prevention? In China's case, how and why has the intensification of corruption exacerbated the concern over conflicts of interest and led to unprecedented efforts to regulate such conflicts? How can the effectiveness of the regulatory regime for dealing with conflicts of interest be gauged? By examining the way conflicts of interest are regulated in China, we argue that although an impressive and intricate web of rules has been established to regulate various types of conflict of interest, rules and regulations alone cannot guarantee ethically sound behaviour among public officials if they are merely imposed from above without strong social foundations. Rules require interpretation and implementation and the normative dimension of the regulatory framework consequently becomes critically important. If there is neither an administrative culture of integrity supported by personal values nor a transparent process that allows public access to the regulatory process and its outcomes, hard rules may only contain soft constraints.

### **Conflict of interest and corruption: a conceptual framework**

In the academic discourse, the concept of 'conflict of interest' tends to be 'significantly vague and in flux'.<sup>7</sup> Its meaning seems broad yet amorphous, making it conceptually difficult to pinpoint what it is. As a result, people often attempt to 'describe' rather than 'define' it. For example, in his analysis of conflict of interest as an ethical dilemma in politics, Williams refers to conflict of interest as a 'situation' where officials have a private financial interest sufficient to influence, or appear to influence, the exercise of their public duties and responsibilities.<sup>8</sup> According to Guzzetta, conflict of interest takes place when an individual's pursuit of private interest is in actual or potential conflict with a public interest which he or she not only has the entitlement (and 'power'), but also the 'obligation', to discharge.<sup>9</sup> Defining conflict of interest is difficult also because the term is closely related to those non-figurative terms, such as interests, fiduciary relationship and professional responsibility, which are often subject to different interpretations. For example, according to the OECD, in the definition of conflict of interest, 'private interests' are not limited to financial or pecuniary interests or to other direct personal benefits; personal affiliations or relationships, debts and other obligations, religious or ethnic associations, professional and party-political alignments, and family interests may

7. Wayne Norman and Chris MacDonald, 'Conflict of interest', in George G. Brenkert and Tom L. Beauchamp, eds, *The Oxford Handbook of Business Ethics* (Oxford and New York: Oxford University Press, 2010), p. 451.

8. Sandra Williams, *Conflict of Interest: The Ethical Dilemma in Politics* (Aldershot, Hants: Gower, 1985), p. 6.

9. Giovanni Guzzetta, 'Legal standards and ethical norms: defining the limits of conflicts regulations', in Christine Trost and Alison L. Gash, eds, *Conflict of Interest and Public Life: Cross-national Perspectives* (Cambridge and New York: Cambridge University Press, 2008), p. 23.

also come within the scope of the definition if these interests *are considered* likely to improperly influence the performance of public duties [emphasis added].<sup>10</sup> The concept of conflict of interest is thus further complicated by what Stark describes as ‘two ships passing’: the effort of seeking an *objective* understanding of conflict is often accompanied by a deeply *subjective* understanding of interest [emphasis added].<sup>11</sup>

Consequently, it is not surprising to find different understandings of the relationship between conflict of interest and corruption in the existing literature. Some scholars contend that the two are different terms but denote closely related phenomena. Their relationship may be depicted as a continuum with the least level of conflict of interest at one end and corruption at the other. Conflict of interest, when handled inappropriately, can easily evolve into corruption.<sup>12</sup> Both corruption and conflict of interest are often loosely defined as the conflict between private interest and public duty with conflict of interest shading off into corruption, but it is difficult to tell where one ends and the other begins.<sup>13</sup> This relationship is illustrated in Figure 1.

In the ‘situation’ described above, conflict of interest ‘develops’ into corruption at the point where an official seeks personal gains at the cost of his or her public duties. This evolution from a latent conflict of interest into a corrupt act may take place instantly or over a long time.<sup>14</sup> Hence, the two concepts, conflict of interest and corruption, overlap, or at least no clear-cut demarcation can be easily discerned between them.<sup>15</sup> That is to say, conflict of interest is the beginning phase of corruption.

Other scholars hold somewhat different views and treat the two concepts as completely separate phenomena. Conflict of interest is seen as a common occurrence because it is present in all professional, organizational and political life. For instance, a retired government official may accept a job offer from a company which his former office regularly deals with; a senior member of a company may leave to take a job at a competing firm; a lawyer who regularly provides legal advice to the government on business–government relations; or a search committee for a university post has to choose among several highly qualified applicants, one of whom happens to be their former student. However, having clashing interests does not always have negative connotations. Conflict of interest may exist without involving any wrongdoing or harmful effects if it does not result in actions which show partiality. The incompatibility of various interests causes corruption only if it is under-regulated and mismanaged.

We concur with the second view about the relationship between conflict of interest and corruption. We conceptualize conflict of interest in public life as the

10. OECD, *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (Paris: Organisation for Economic Co-operation and Development, 2003).

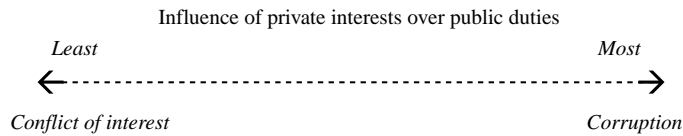
11. Andrew Stark, *Conflict of Interest in American Public Life* (Cambridge, MA: Harvard University Press, 2000), p. 6.

12. Francesco Kjellberg, ‘Conflict of interest, corruption or (simply) scandals?’, *Crime, Law and Social Change* 22(4), (1995), pp. 339–360.

13. See Williams, *Conflict of Interest*, p. 16.

14. Deshui Zhuang, *Fangzhi liyichongtu yu lianzhengjianshe yanjiu* [*Conflict of Interest and Anti-corruption Research*] (Beijing: xi yuan chubanshe, 2010), p. 26.

15. Sulin Xu, ‘Special interest groups breed collective corruption’ [‘Teshu liyijituan cuisheng jiti fubai’], *Jiancha fengyun* 8, (2007), p. 31.



**Figure 1.** Relationship between conflict of interest and corruption. *Source:* Compiled by the authors.

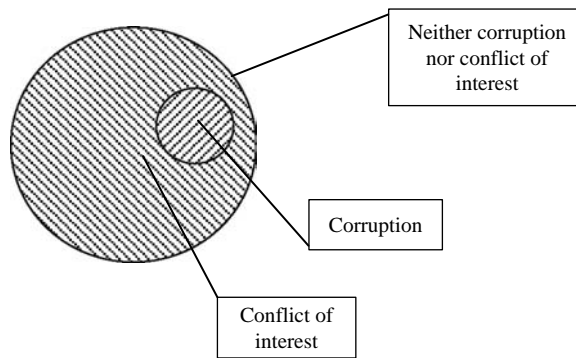
incompatibility between the public interests associated with one's official duties and interests deriving from the private domain. Such incompatibility occurs frequently in real life but does not have to develop into corruption. Conflict of interest leads to corruption under two necessary conditions: first, one's personal interest and the public interest associated with his official duty are mutually exclusive and the person must make a choice between the two; and second, facing the ethical dilemma, one decides to pursue private benefits at the expense of public interest. For analytical purposes, we depict this relationship between conflict of interest and corruption in the way shown in Figure 2. Outside the circles is the 'ideal-type' situation where there is neither conflict of interest nor corruption. The large circle points to the existence of conflict of interest, which is nonetheless free of corruption due to effective conflict-of-interest management and successful anti-corruption enforcement. The small circle indicates the situation, perhaps typical of most corruption cases, where uncontrolled conflicts of interest have progressed into corruption.

Conceptualized in this way, conflict of interest differs from corruption and may or may not develop into corruption. It constitutes a necessary rather than sufficient condition of corruption. This conceptual framework suggests that the relationship between conflict of interest and corruption is less of a continuum and more of a movement from one category of behaviour to another. As Davis correctly points out, 'one can have a conflict of interest without being in the wrong'.<sup>16</sup> Williams also argues that conflict of interest does not invariably imply resolution in favour of personal advantage because the conflict can be resolved in different ways. 'Corruption, on the other hand, can be viewed as a particular method of resolving this conflict, whereby personal financial interest overcomes or distorts the exercise of an official's public duties and responsibilities'.<sup>17</sup> That is to say, a conflict of interest is not always, in and of itself, the cause of corruption. By saying so, however, we do not mean that conflict of interest and corruption are completely distinct. Conflict of interest can be the cause of corruption under specific circumstances relating to the mindset of the individual. The significance of this conceptual framework lies in that it allows us to see corruption risks associated with conflict of interest and yet reminds us that corruption is preventable through managing conflict of interest because conflict of interest does not have to develop into corruption. It also sheds light on the importance of regulating conflict of interest beyond the sole purpose of controlling corruption. Effective conflict-of-interest management not only contributes to the building of individual integrity of government officials but also enhances public trust in government, which may otherwise be damaged due to the blurred boundary between public and private interests resulting from conflict of interest.

16. Michael Davis, 'Conflict of interest', *Business and Professional Ethics Journal* 1(4), (1982), p. 17.

17. Williams, *Conflict of Interest*, p. 16.





**Figure 2.** Relationship between conflict of interest and corruption. *Source:* Compiled by the authors.

### The development of a conflict-of-interest regulatory regime in China

The efforts to regulate conflict of interest in China are embedded within a broad context in which corruption has continued to spread despite the government's prolonged war against it.

As has been often noted, China has been engaged in an intense war against corruption for decades, since the onset of the reform era. The formation of the Central Discipline Inspection Commission (CDIC) of the Chinese Communist Party (CCP) in 1979 marked the initial move against corruption.<sup>18</sup> In the early years, the newly created CDIC and its local branches mainly focused on reconsolidating the Party's rank and file, which was in disarray after the devastation of the Cultural Revolution. The CCP leadership was concerned that, having barely survived the turmoil and torture of the 'revolution', veteran government officials might have lost their revolutionary zeal and that their morale might be low, while newly recruited members were vulnerable to capture by private interests as they did not fully understand the Party's rules and discipline. The government subsequently launched a number of organizational rectification campaigns in the 1980s against the 'unhealthy tendencies' of taking advantage of one's position and power to seek personal gains. These unhealthy tendencies ranged from relatively minor offences, such as 'taking advantage of one's power to occupy more housing' and 'using connections to find jobs for relatives', to rather more serious ones such as 'taking and offering bribes' and 'conniving with and protecting criminals'.<sup>19</sup> Although these activities all fit Joseph Nye's well-known definition of corruption as 'behaviour which deviates from the formal duties of a public role because of private-regarding (close family, personal, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence',<sup>20</sup> they were not explicitly identified as corruption at that time for fear of tarnishing the CCP's public image. Nor were they considered as problems stemming from conflicts of interests because,

18. For a detailed discussion of the CDIC, see Ting Gong, 'The CCP's discipline inspection in China: its evolving trajectory and embedded dilemmas', *Crime, Law and Social Change* 49(2), (2008), pp. 139–152.

19. Zhenzhong Ji, *Lun dangnei buzhen zhifeng* [On Unhealthy Tendencies within the Party] (Qingdao: Qingdao chubanshe, 1991).

20. Joseph Nye, 'Corruption and political development: a cost-benefit analysis', *American Political Science Review* 61, (1967), pp. 417–427.

according to Communist orthodoxy, such conflicts should normally never have existed within a vanguard party which exclusively embodied the public interest. As a result, organizational purges and harsh punishments were employed as the dominant strategies in these rectification campaigns.

With the deepening of market reform, the government shifted the focus of its anti-corruption crusade from the 'unhealthy tendencies' within the Party to the profit-making activities of public officials. Due to the then dual-track economy, some state officials profiteered by selling state quotas of scarce resources or re-leasing government-leased land to enrich themselves. These profiteering activities were epitomized by the term 'official speculation' and were perceived as corruption. They became the targets of several large-scale 'clean-up' campaigns in the late 1980s and early 1990s. Stringent prohibitions were imposed on public officials to disengage them from business activities. For example, government officials were not allowed to set up companies by themselves or jointly with other people; state officials were prohibited from taking money for participating in social and economic activities; retired state cadres were not allowed to use their previous work connections or their influence to satisfy personal needs or take up any management positions in state-owned companies or foreign enterprises; and even the immediate family members of public officials were banned from engaging in profit-making activities. These regulations and others stated firmly that under no circumstances should government agencies and individual officials be allowed to engage in profit making. Following these regulations, the government ordered the shutdown of tens of thousands of 'administrative enterprises' which were run by government units to earn money for the benefit of their employees because some of these enterprises actually provided avenues for individual officials to seek personal gain.

Underlying these moves was the central leadership's deep concern about conflicts of interest resulting from the business connections between state personnel and the private sector. However, nowhere in the official documents or speeches during this period was the phrase 'conflict of interest' mentioned. At the time, conflict of interest was essentially regarded as being identical to corruption and therefore as something that should and could be eliminated with an iron fist. On 15 August 1989, to demonstrate the 'iron fist' approach to corruption prevention, the two major anti-corruption organs at the national level (the Supreme Court and the Supreme People's Procuratorate) publicized a circular calling for state officials who had engaged in economic speculation, embezzlement or other types of misconduct in pursuit of personal interest to surrender themselves to the judicial organs within 78 days or face severe punishment. During this period, the propaganda machines were all mobilized to call for self-screening and confessions of corruption. National and local procuratorial and supervisory organs also established 'report centres' (*jubao zhongxin*) for the general public to inform the government of illicit economic activities, particularly those involving state officials. By the end of the confession period, it was estimated that more than 50,000 officials had surrendered and that a total of 257,255 reports had been received by more than 4,000 reporting centres.<sup>21</sup>

21. Xian Qi, *Lianzheng fengbao* [The Storm for an Honest and Clean Government] (Chengdu: Sichuan renmin chubanshe, 1995).



Clearly, against the backdrop of market-driven reform, the Chinese government was fighting on both an economic and a moral front. As economic reform brought about numerous money-making opportunities for people to get rich, it became all the more important for the government to restrain its officials from seeking private gain while holding public power. This was no easy task. Driven by an anxiety to rein in increasingly rampant corruption without jeopardizing economic growth, the anti-corruption efforts of the Chinese government in the early reform period relied more on campaign-style enforcement to seek quick results, as was demonstrated by the launch of frequent—yet sporadic—clean-up campaigns and harsh sanctions. During these campaigns, there was no clear distinction between corruption and conflict of interest.<sup>22</sup> Both were subject to a comprehensive range of clean-up and elimination measures. Conflicts of interest, real or potential, were managed in a top-down manner by forbidding government officials from engaging in various activities and imposing harsh punishments on those who breached these restrictions.

This campaign-style integrity management did not achieve the desired effect. Despite frequent campaigns and harsh penalties, corruption continued to grow. The government slowly began to realize that a successful battle against corruption had to rely more on ex ante preventive measures than on ex post prosecutions and sanctions. Consequently, the official terminology in relation to corruption began to change, with the term ‘preventing and fighting corruption’ gradually replacing ‘fighting corruption’ as the catchphrase in the 1990s. As ‘prevention’ was prioritized, the central leadership put more emphasis on rule-guided anti-corruption enforcement and on institutional building toward integrity management in its efforts to control corruption. It also called upon the sub-level government units to adopt multifaceted preventive measures and to work ‘innovatively’ to promote government integrity.

This ‘strategic turn’ from campaign-driven anti-corruption enforcement to rule-based integrity management indicates a clear recognition by the Chinese government that only through effective regulation of conflict of interest would corruption prevention become possible. Specifically, since corruption often results from situations involving a conflict of public duties with private interests, successful regulation of conflicts of interest contributes to corruption prevention. As Ren and Du argue, regulating conflicts of interest helps to build a ‘firewall’ between public interest and private interest so as to keep them from clashing with each other; only by doing this can corruption be avoided.<sup>23</sup>

The Chinese government began to make greater efforts toward conflict-of-interest management in the mid-1990s as a result of its amended anti-corruption strategy. The importance of integrity management was officially discussed for the first time at the second plenary session of the CDIC in 1993. The CDIC identified three core tasks to be carried out in the next stage of the anti-corruption crusade: strengthening integrity management among leading officials; investigating particularly serious cases; and controlling a number of unhealthy tendencies that had led to strong complaints from the public. Identifying integrity management as a core task marked

22. For example, the profiteering business activity of a leading official’s relatives by taking advantage of his influence was regarded as corruption. See Zhuang, *Fangzhi liyichongtu yu lianzhengjianshe yanjiu*, p. 235.

23. Jianming Ren and Zhizhou Du, *Fubai yu fanfubai lilun moxing he fangfa* [Corruption and Anti-corruption: Theory, Model and Approach] (Beijing: Qinghua daxue chubanshe, 2009).

the onset of intensified efforts to regulate conflicts of interest in China. The phrase ‘conflict of interest’ began to appear more frequently in official speeches and documents. Some situations were identified as the most obvious examples of conflicts of interest; for instance, a situation where the spouse or children of a leading official worked in an institution over which the official had power or jurisdiction. In an official reply to an inquiry into whether a retired senior manager of a state-owned enterprise could serve as advisor to a Hong Kong-based business corporation, the CDIC indicated that such a post-retirement arrangement would constitute a case of conflict of interest.<sup>24</sup>

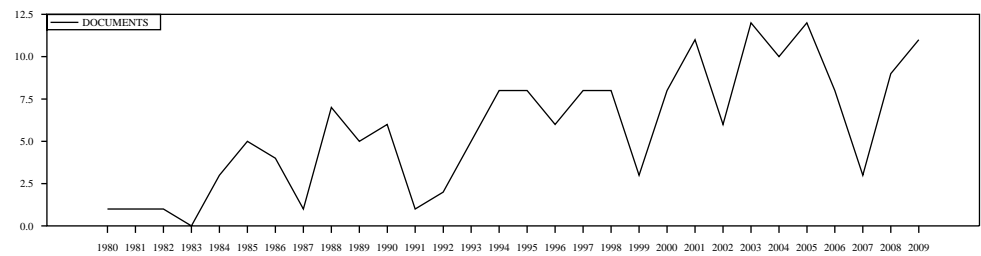
The Chinese government has gradually broadened its interpretation of conflict of interest through the promulgation of voluminous provisions intended to regulate various types of conflict of interest. For example, rules and regulations were made to prevent government officials from engaging in the following activities: (1) participating in profit-making activities or making preferential arrangements for their relatives to do business; (2) concurrently holding positions in business organizations or getting personal expenses reimbursed through these organizations; (3) making stock transactions with public funds; (4) accepting honoraria, gifts or gift vouchers in connection with public duties; and (5) using public funds for lavish consumption and extravagant entertainment. Using sharply worded rhetoric, the government made it clear that these activities must be ‘completely rectified’ and ‘put to a full stop’.

### Regulatory patterns and characteristics

Facing the urgent need for corruption prevention, the Chinese government has been anxious to build a new integrity regulatory framework. It has therefore not been surprising to see a vast array of new conflict-of-interest regulations emerging in recent years. A rough estimate indicates that 173 regulatory provisions have been adopted in the past three decades. This means that, on average, about five or six new provisions came into effect each year. Figure 3 provides a summary of the number of official regulations on integrity management introduced during the period 1980–2009. It shows a clear upward trend, indicating the intensification of integrity management. While in the 1980s, a total of 28 regulations were enacted, the number increased to 55 in the 1990s and then jumped to 90 in the past decade.

These provisions form a complex regulatory framework for managing conflict of interest for the purpose of preventing corruption. In terms of specific content, they may be roughly classified into four major categories: those against bribery, illegal gratuities and improper gains; those on disclosure of information about conflicts of interest which may put organizational and personal integrity at risk; those that set forth specific procedures for dealing with situations of conflict of interest; and those specifying accountability mechanisms and penalties to ensure compliance. Table 1 shows the classification and number of provisions in each category. The overwhelmingly large number of regulations in the first category is further broken down into a few subcategories.

24. Zhuang, *Fangzhi liyichongtu yu lianzhengjianshe yanjiu*, p. 237.



**Figure 3.** Number of official regulations enacted each year, 1980–2009.

*Source:* Database compiled by the authors.

*Provisions against bribery, illegal gratuities, and improper gains*

The provisions on bribery, illegal gratuities and improper gains account for the majority of the rules and regulations that the Chinese government has enacted in the past decades. Bribes, illegal gratuities and improper gains are ‘things of value’, tangible or otherwise, which public officials receive in exchange for favours. While bribes are usually offered in advance, illegal gratuities and improper gains are typically paid after the fact. They take various forms—money or benefits in kind.

More than 100 regulations fall into this category, and these manifest themselves in a laundry list of prohibitions that attempt to insulate public officials from expediency and improper influence. They identify and proscribe a variety of circumstances that are believed to involve real or potential conflicts of interest. These situations and activities

**Table 1.** Classification of integrity regulations, 1980–2009

Regulations	Number
I. Provisions against bribery, illegal gratuities, and improper gains	137
Provisions on:	
General requirements	(7)
Duty-related consumption	(37)
Engagement in profit-making activities	(32)
Accepting gifts or other personal benefits	(12)
Post-retirement activities	(10)
‘Small treasuries’ and off-budget revenues	(9)
Accepting social posts	(8)
Overseas trips	(7)
State enterprise management	(6)
Personnel matters	(2)
Others	(7)
II. Provisions on reporting information about potential or actual conflicts of interest	7
III. Provisions setting forth specific procedures for dealing with conflict-of-interest situations	10
IV. Provisions specifying accountability mechanisms and penalties to ensure compliance	15
V. Others	4
Total	173

*Source:* Compiled by the authors.

include, but are not limited to, the following: holding posts or performing functions in the management and supervision of profit-based companies; accepting gifts and other personal benefits for engaging in extra-occupational activities; undertaking secondary employment without permission; performing commissioned assignments for outside parties; keeping 'small treasuries' (*xiaojinku*) at the institution to hide extra- and off-budgetary revenues from the upper-level government; receiving vacation trips, shares of stock and housing property from private parties; making overseas investments; accepting post-retirement employment with commercial entities related to one's former government duties; engaging in luxurious banquets or voluptuous recreational activities while performing public duties; and using non-public information for personal benefit.

These and many other prohibited situations and activities are deemed unacceptable because they involve actual, apparent or potential conflicts between public duties and private interests. If unbridled or mismanaged, they will adversely influence the judgment and integrity of public officials and damage public trust in government organizations. Take public officials' connections with business activities as an example: this has been an increasing concern of the Chinese government in recent years as the rapidly changing interface between the public and private sectors and the rise of new and expanded forms of government–business collaboration create more possibilities for conflicts of interest.

Accordingly, since the first two regulations were promulgated in 1984,<sup>25</sup> the Chinese government has issued about 30 more which relate to the business interests and activities of public officials in the non-profit and private sectors. These rules and regulations prohibit government officials from holding a wide range of positions and from many kinds of activities, including: concurrently holding positions in profit-making or non-profit organizations; remunerated participation in other government or non-government institutions; sitting on advisory or supervisory boards of companies with profit-making aims; possessing shares in a company which falls into the realm of the official's managerial jurisdiction; and holding investments in companies which could directly or indirectly compromise the official's public duties. The 'revolving-door' syndrome of post-retirement arrangements is dealt with by a 'three-year' rule: no government officials are permitted to engage in a business which is related to their former official duties within the three-year period following the cessation of their active service.

However, some problems remain unsolved. For example, it was discovered that some officials continued to invest in coal mining companies under their jurisdiction, despite repeated warnings by the central government. This was one of the major reasons for frequent mining accidents because officials turned a blind eye to safety violations or gave companies permits to extract more coal or to expand their scale of operations beyond the real capacity of production. In 2005, the CDIC issued a specific notice on *Cleaning up the Problems with the Investments of Public Officials and State Enterprise Managers in Coal Mines*. This regulation resolutely mandated that all state employees, including state enterprise managers, must withdraw their investments (except legally purchased shares of listed companies) from the coal mining companies within roughly a month or face disciplinary action.

25. *The Notice on Prohibiting Serving Party and Government Cadres from Running Enterprises Jointly with the General Public* (1984) and *The Decision on Prohibiting Party and Government Institutions and Officials from Conducting Business or Setting up Enterprises* (1984).

*Provisions on the disclosure of information about conflicts of interest which may put organizational and personal integrity at risk*

Such disclosures require public officials to identify and report relevant private interests that might potentially conflict with their official duties. After disclosure, the nature of the private interests is subject to review and monitoring. Thus, when conflicts of interest arise, they can be effectively managed or eliminated. A case in point is the disclosure of assets, which is a Chinese government requirement for all officials. As early as 1995, the central government issued the first disclosure regulation, *Provisions on the Declaration of Income by Leading Cadres of Party and Government Organs at and above the County (Department) Level*. These provisions required officials to report not only the salaries and benefits they received in connection with official duties but also other income resulting from providing personal services. However, the disclosure requirement applied only to personal income. A second important regulation, *Provisions on the Disclosure of Family Assets by Leading Cadres at the Province Level*, came out in 2001. This regulation extended the contents of disclosure from individual income to family assets. Leading government officials were asked to disclose, in addition to various kinds of income, family finances such as real property, land use rights, savings, investments, things of value over 10,000 yuan, or other financial assets. However, this newer regulation was only applicable to a rather small number (roughly a few thousand) of 'leading officials' at or above the provincial level.

A more comprehensive edict, *Regulations on Reporting Personal Information of Leading Cadres*, was enacted in July 2010. The use of such a broad term – 'personal information' – in the document title indicates its wide-ranging coverage. According to the new rules, all officials at and above the county level must continue to report their salaries, allowances, assets and liabilities. At the same time, they are required to report the following: changes in their marital status; overseas trips made using a private passport; children's marriages to foreigners; spouses or children living overseas; and investments in stocks, privately held companies, futures, mutual funds and insurance products held by their family members. The employment of spouses and children is also included as a reporting item. The new regulation also clearly states that those who submit false or incomplete information or fail to make a timely report will be subject to disciplinary action. The evolution of these regulations from only requiring the reporting of income to requiring the disclosure of assets and then a declaration of important personal and family information indicates that more stringent moral standards have been forced on public officials by the government, although these disclosure regulations have failed to make a breakthrough in terms of making officials' assets transparent and open to public surveillance.

*Provisions setting forth specific procedures for dealing with conflict-of-interest situations*

These provisions lay down guidelines and procedures for handling potential or real conflicts of interest, so that public officials not only know what to do but also how to do things correctly within predefined boundaries. It is expected that clearly and appropriately established procedures will promote a good understanding of

one's ethical responsibilities, and, as a result, potential conflicts of interests may be controlled in advance in order to prevent more costly mistakes. Therefore, the purpose of these provisions is to require government officials to act pre-emptively, rather than reactively, against corruption. It is hoped that if these guidelines and procedures are properly followed, there will be no need for constant anti-corruption enforcement.

More than a dozen provisions have been enacted to establish procedural requirements. These provisions are mainly concerned with personnel matters, such as the appointment, promotion and assessment of public officials. For example, two official documents concerning the procedures of appointments and duties of civil servants were enacted in 1996 and 2006, respectively. They stipulate that kinship relations should be avoided in the civil service's personnel appointments. Members of the same family should not be appointed as leading officials in the same work area unless the benefits of such appointments outweigh the risk of a conflict of interest. The perceived potential risks in allowing immediate family members to work under the same leadership or to have supervisor–subordinate working relations include the undue influence family members may have on each other, the unfair advantages that may be gained by family members, and the adverse impact such a situation may have on the morale of other staff. Based on concerns about nepotism, the 2006 document also states clearly that, in general, an official is not supposed to serve as the principal leader in the region where he or she was born or grew up. In all cases, voluntary avoidance is encouraged, but the higher authorities have the power to request such avoidance when deemed necessary. To avoid conflict-of-interest situations, actions may be taken to transfer the official concerned to a different post, or to rearrange his/her duties and responsibilities, or to restrict the official from becoming involved in the decision-making process of the affected matters.

It is interesting to note, however, that the avoidance requirement only applies to high-level government officials. In addition, the avoidance requirement is applicable to kinship relations but not to relationships based on other social relations, such as relations with former schoolmates, trusted friends or fellow townspeople. It has therefore very limited coverage.

#### *Provisions specifying accountability mechanisms and penalties to ensure compliance*

At least 15 provisions fall into this category, including a very important one enacted in 2009—*The Interim Provisions on the Implementation of the Accountability System for the Leaders of the Party and Government*. Accountability is an indispensable component of any effective regulatory framework. It generally denotes a power relationship based on 'the capacity to demand that someone justify his or her behavior and the capacity to impose a penalty for poor performance'.<sup>26</sup> Two important pillars—answerability and sanctions—underpin accountability relationships. Accountability is not only a political issue but also a technical one because it requires effective mechanisms, processes and sanctions to ensure answerability.

The making of these accountability provisions has been considered a major move 'for combating corruption, advocating clean government and improving the code of

26. Rob Jenkins, 'The role of political institutions in promoting accountability', in Anwar Shah, ed., *Performance Accountability and Combating Corruption* (Washington, DC: World Bank, 2007), p. 137.



conducts for leaders’.<sup>27</sup> The provisions specify who should be held to account, how and under what circumstances. For example, the above Interim Provisions stipulate that local leading cadres must be held responsible for any incident or situation that involves one of the following elements: a huge financial loss or a baneful impact on society; a grave accident or heavy casualties; a large-scale mass protest due to official malpractice; an escalation of public grievances; and the misuse or abuse of personal power. After allegations have been substantiated, there are five different ways of dealing with public officials who are held accountable, depending on the nature of the breach. In order of severity, these sanctions include public apology, suspension from duty, voluntary resignation, ordered resignation and dismissal. The most serious cases may be referred to judicial organs for further action. On the other hand, after accountability penalties have been imposed, the Interim Provisions also allow the officials concerned to be transferred to other jobs or to receive appropriate post-resignation treatment on the basis of their administrative expertise or long-term performance. In any case, those who are subject to sanctions can appeal in writing against accountability decisions, within 15 days of receiving them, to a decision-making organ; the latter should respond to an appeal within a 30-day period. Although Article 20 of the Provisions states that accountability decisions shall generally be made known to the public, this has not always been the case.

### Putting regulations into practice: two challenges

The proliferation of conflict-of-interest regulations indicates that China faces many new challenges in managing the integrity of its public officials. Just as in other developing countries, an increasingly commercialized public sector that works closely with the business and non-profit sectors gives rise to potential and real conflicts of interest, many of which are new forms of conflict.<sup>28</sup>

The possibilities for ethical lapses, not necessarily corruption, among public officials have increased: ‘Actual or apparent conflict, or convergence, of public duty with private interest has been the cause of many scandals in the public eye’.<sup>29</sup> To a large extent, the Chinese government is still at the stage of seeking regulatory remedies by updating its conflict-of-interest policy and adding new regulations and guidelines. Such efforts are necessary because the existing integrity framework appears weak and ineffectual in China’s fast-changing economic and social environment. The increased variety and complexity of the public–private sector interface requires the government to clarify or upgrade its ethical standards and procedures from time to time, as is evident from the escalation of ethics regulation in China in recent years.

Certainly, the burst of integrity regulations regarding conflict of interest shows that the Chinese government is more determined than ever to use legal and regulatory resources to build a clean government. After several decades of effort, a redoubtable

27. Notice of the General Office of the CCCPC and the General Office of the State Council on Printing and Distributing the Interim Provisions on the Implementation of the Accountability System for the Leaders of the Party and Government (No.25 [2009] of the General Office of the CCCPC, 30 June 2009).

28. OECD, *Managing Conflict of Interest in the Public Service*, p. 13.

29. Williams, *Conflict of Interest*, p. 1.

edifice of conflict-of-interest regulations looms on the horizon. Both the scope and the pace of development are impressive. There is certainly no lack of regulations on paper, nor is there a shortage of concrete measures. A pivotal issue, however, is to what extent these rules and regulations are enforceable and effective in implementation. More needs to be done in terms of hard rules that embody hard constraints in practice. The Chinese government's efforts to manage conflicts of interest face at least two major challenges: one is how to pursue a transparent approach toward conflict of interest management so as to engage the public and enhance downward accountability, and the other is to place more emphasis on value-based integrity rather than simply crafting rules for compliance.

Admittedly, no rule has been characterized as being the most effective in regulating conflicts of interest. Some mechanisms, however, may prove to be more important than others, especially in the process of designing and institutionalizing a new integrity management framework. The two types of mechanisms identified by the OECD are those that ensure transparency and those which raise awareness about conflicts of interest.<sup>30</sup> Transparency in the disclosure of personal interests allows public scrutiny and surveillance to keep real or potential conflicts in check and thereby enhances the downward accountability of government officials for any wrongdoing. Awareness, on the other hand, enables public officials to recognize the need to avoid or resolve conflicts of interest impartially out of an 'inner sense of duty'.

Transparency is the first challenge facing Chinese rule makers. In a wave of ethics reforms, new and multifarious regulations tend to proliferate, as China's case shows. There are two main reasons for this. On the one hand, the increasingly complex interface between government and society challenges the existing regulatory framework and ushers in new ethics measures. On the other hand, as conflict of interest manifests itself in various and often intricate forms, there is no one-size-fits-all solution to it. Technically, a holistic and coordinated approach to integrity management is necessary. However, this is not enough. Given that the issue of conflict of interest is socially embedded, conflict regulations cannot fare well without strong social foundations. Rule making and implementation need to be transparent and open to various forms of civil engagement. This entails public access to both anti-corruption processes and outcomes. Otherwise, the panoply of ethical rules is nothing but showcasing and, even worse, constitutes a plethora of rules and regulations which will prove counterproductive. As Mackenzie observes, '[T]he expansion of ethics regulations and enforcement agencies and personnel has not produced a concomitant rise in public confidence in government ... They have usually done the opposite'.<sup>31</sup> He points out that this is usually because such expansion tends to raise public expectations about the moral conduct of officials, but the air is often filled with just the opposite, namely caustic and depressing news about government ethics. Rules themselves cannot warrant public trust; the issue is how to engage the public in the process of regulating and monitoring conflicts of interest in public life. Without transparency, such engagement will not be possible.

30. *Ibid.*, p. 88.

31. G. Calvin Mackenzie, *Scandal Proof: Do Ethics Laws Make Government Ethical?* (Washington, DC: Brookings Institution Press, 2002), p. 112.

In China, conflict-of-interest regulation has largely neglected the importance of social empowerment and public participation, as conflicts of interest are largely ‘managed’ through the state’s own cadre management system. The ‘managed integrity’ resulting from this top-down conflict-of-interest regulation cannot be expected to boost public confidence as its effects remain obscure to outsiders.

The second challenge is to incorporate value-based integrity management into the current regulatory system. Successful conflict-of-interest management depends on the juxtaposing of legal instruments and ethical norms into a single force. Guzzetta depicts the solutions to conflicts of interest as a continuum with the most coercive legal measures at one end and the soft didactic methods at the other.<sup>32</sup> While the rule-based approach is static, based on the assumption that the failure to properly handle conflicts of interest justifies legal or disciplinary actions, the didactic or value-based approach is more dynamic as it acknowledges the fact that conflicts of interest are ubiquitous and that the problem lies in the way in which the person concerned deals with it. The rule-based approach is thus likely to encounter two problems in practice. For one thing, it cannot foresee all sorts of possible conflict of interest situations and include them in the existing legal framework. For another, even for situations that are foreseeable, it will not be able to accurately prescribe remedies because the way of handling a conflict of interest varies from person to person and from case to case. Hence, the effectiveness of integrity management is premised not only on well-fashioned regulations but also on well-inculcated ethical values in the mindset of public officials, so that their compliance with rules and regulations becomes a conscious choice rather than a constraint imposed upon them. Being such responsible ‘moral agents’, they will be able to act ethically and dutifully when confronted with actual or potential conflict-of-interest situations and to make the right moral decisions. As integrity management becomes increasingly institutionalized through a crescendo of building new rules and regulations, it is important to avoid the danger of taking them as imposed obligations or what Cooper describes as objective responsibility—the responsibility to someone else for something.<sup>33</sup> How to cultivate an inner sense of ethical responsibility among its public officials remains an important, but as yet incomplete, task for the Chinese government.

## Conclusion

The increasingly intensified concern with conflict of interest in China echoes the worldwide trend of preventing corruption by managing conflict of interest. The demand for effective conflict-of-interest regulation can be attributed to a number of factors in a fast changing public sector environment, such as the expansion of the role and size of government and the increasingly complex relations between the public sector and the business and non-profit sectors. New forms of the public–private nexus have challenged traditional ethical and legal boundaries and heightened public expectations for responsible, honest and transparent governance. Collaborative governance, such as outsourcing, public–private partnerships and networked

32. Guzzetta, ‘Legal standards and ethical norms’, p. 26.

33. Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics for the Administrative Role* (San Francisco, CA: Jossey-Bass Publishers, 1990), p. 60.

governance, has broken up the government–non-government dichotomy and given rise to new conflict-of-interest situations.

In China, these developments pose even more challenges. In facing these problems, neither traditional corruption control through *ad hoc* political campaigns and organizational purges nor orthodox moral and political education disseminated through the party-state *nomenclature* have proved effective. To complicate the battle against the misuse and abuse of power, unethical problems are more likely to take the form of conflicts of interest rather than corruption and they often fall into ‘grey areas’ which the traditional legal and ethical frameworks do not cover sufficiently.

This article has traced the reasons behind and the development of a conflict-of-interest regulatory regime in China and has analysed its specific patterns and major contents. It shows that the deep concern over corruption as well as the evolving nature of public–private sector relationships triggered a rapid expansion in both the quantity and the scope of conflict-of-interest regulation. Conflict-of-interest regulation enhances institutional integrity in a general sense. Its importance becomes even more palpable when situated in a conceptual framework that distinguishes conflict of interest from corruption, as outlined in the beginning section of this article. An understanding that conflicts of interest frequently exist and develop into corruption only if they are unchecked or mishandled provides a rationale for greater efforts to regulate potential and actual conflicts of interest. The crafting of corruption prevention strategies thus hinges on how conflict of interest is understood and handled.

The desire to make swift and efficient regulatory policies and mechanisms has dominated the anti-corruption endeavours of the Chinese government in recent years. This has contributed to a ‘regulatory proliferation’ where more regulations are being made to govern the actions of public officials but less is being said and done about how to effectively implement them. Guzzetta correctly points to the inability of legal regimes to adequately deal with conflicts of interest and the need for extrajudicial measures as alternatives.<sup>34</sup> This article suggests two possible ways in which the effectiveness of China’s conflict of interest regulatory regime may be enhanced. One is to place more emphasis on value-guided integrity management. As conflicts of interest often mirror people’s moral dilemmas, ethical norms and standards are at least as important as regulatory mechanisms in preventing conflicts of interest from developing into corruption. A second defence along the same lines is to promote the exposure and transparency of conflicts of interest to enable public monitoring. External controls in the form of citizens’ engagement help to ‘sharpen the moral judgments of those who know that against such controls their actions can be challenged’.<sup>35</sup> They also help boost public confidence in the government’s regulatory efforts to prevent the erosion of public trust which, paradoxically, may result from a proliferation of rules and regulations. Only by adopting these measures will hard rules remain rigorous and provide hard constraints on official misconduct.

34. Guzzetta, ‘Legal standards and ethical norms’, p. 27.

35. Stark, *Conflict of Interest in American Public Life*, p. 138.