

## **China's Corporate Social Credit "System"**

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## **China's Corporate Social Credit "System"**

### **Outline**

- Social Credit as Part of China's Regulatory Approach
- PBOC Financial Credit Reporting System
- SPC Judgment Debtor Joint Punishment Enforcement System
- SAMR Corporate Credit Information Publicity System
  - Corporate Credit Assessments
- State Council/NDRC Social Credit Publicity and Enforcement Systems
  - Central database
  - Departmental and Local Systems and databases
  - Blacklists and Redlists
  - Joint Punishment and Incentive Mechanism
- Safeguards and Remedies

### Social Credit as Regulatory Mechanism

- Building on earlier market-oriented social credit initiatives, in June 2014 State Council published a framework (Outline) for establishing a comprehensive and well-regulated **social credit system (SCS)** by 2020
- Concept and evolution of the SCS is tied to streamlining and reducing regulation to create better business environment, improve efficiency of regulation – 监管
  - Move from reliance on using market entry approvals (*ex ante* regulation) to liberalizing entry while strengthening interim and *ex post* regulation
  - Key concept adapted from West-- “*regulation through disclosure*”: publishing corporate regulatory information to help consumers make informed decisions, incentivize corporate compliance
  - *Credit-based regulation* to help optimize business environment: using *classified/categorical management*, *2 randoms-1 disclosure*, *credit commitments* and other market regulatory innovations that reduce burdens on law-abiding entities and target resources on non-compliant participants

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### Social Credit as Regulatory Mechanism

- A related goal was to build trust in society and an economy riddled by fraud, counterfeiting and illegality: “market economy is a trust economy” (2007 State Council Social Credit Opinions; 2014 Outline)
  - “Trust” is same term in Chinese as “credit” - *xinyong*, 信用

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### Social Credit as Regulatory Mechanism

- 2014 Outline foresaw establishing a social credit system based on laws, regulations, standards and contracts to cover the entire society
- The Outline advocated for a credit reporting (征信) –type system covering all society, providing credit-related information about counter-parties to facilitate transactions between strangers
  - People’s Bank of China established nationwide financial credit reporting system for banks in early 2000s covering individuals and enterprises, viewed as mechanism to address social trust problem
  - But coverage was incomplete and information not publicly available
- In contrast, the broader SCS relies on making much regulatory information publicly available, based on State Council Open Government Information Regulations, so both regulators and the public know more about the entities and responsible individuals with which they deal

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### What is Social Credit?

- “**Social credit**” (社会信用) is not defined in the Outline or any other national document governing the SCS; Chinese regulators recognize this leads to misunderstandings and some errors in implementation
- Shanghai and other provincial-level social credit regulations define it to mean “the status of *compliance*:
  - by natural persons with full civil capacity, legal persons and non-legal persons (“Information” or “Credit” Subjects)
  - with *legally prescribed obligations or performance of contractual obligations* in social and economic activities”
- Shanghai and other regulations define “**Social Credit Information**” to mean *objective data and materials* that can be used to identify, analyze and judge the status of a person’s compliance with law and performance of agreements
- Several provincial and local social credit regulations divide Social Credit Information into **Public** (regulatory, produced by government, courts, other public entities) and **Market** (produced by business, financial, NGO and other entities in course of their work) Credit Information

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### What is the Social Credit “System” (SCS)?

- The social credit “**system**” is also not defined in national law or policy
- It is a patchwork of diverse information collection, sharing, publicity, and incentive and penalty systems, with relevant information shared among government authorities and, to a more limited extent, with the public, and accessible centrally and locally
- Established by **government authorities** at different levels
- Designed to improve governance and market order through:
  - **Compiling records** on compliance with laws, regulations, court orders and contractual and other commitments
  - **Recording** the information under **unified social credit codes** for individuals and entities
  - **Sharing** that information among government agencies
  - **Disclosing** “public credit information” to the public
  - **Blacklisting and collective punishment** pursuant to inter-agency joint punishment agreements to impose additional consequences on non-compliant entities
  - Regulatory **incentives and conveniences (redlisting)** for good compliance records
- System is still evolving; 2020 is not the start, or a deadline for completion, but a target to have a regulatory system basically in place

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### Regulation of the Social Credit “System” (SCS)

- The SCS is to date regulated by **Party** and **State Council, NDRC** policy documents and regulations, supplemented by central departmental rules and policies, and local government regulations and policies
  - No national law governs the SCS specifically, although drafting of a Social Credit Law is on the National People’s Congress current 5-year legislative plan
  - Various national laws and regulations apply to aspects of the system, e.g., Administrative Penalties and Licensing Laws, State Council OGI Regulations, etc.
- Central departments issue measures on what violations of their rules are deemed serious and may lead to blacklisting and joint punishment
  - They then negotiate MOUs with other relevant departments to impose specified punishments on those who violate the identified regulations

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### Regulation of the Social Credit “System” (SCS)

- Provinces to establish uniform credit information sharing platforms
  - Several provinces have published SCS-related local regulations: Shanghai, Hebei, Hubei, Zhejiang, Henan, Guangdong coming soon
  - Cover what information can be collected, what can be disclosed (“public credit information”), what is considered untrustworthy behavior, punishment measures, notice obligations and how to challenge incorrect information and repair their credit
- Some city-level pilots famously exploring use of “citizen scores”
  - Any scores are to be used to provide benefits, not to impose punishments, per NDRC

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### How is the SCS Structured?

Party first raised social credit in late 90s, and State Council established **Inter-Ministerial Joint Committee on Social Credit** in 2007, currently composed of 46 Party and central government departments to oversee development

Work office established in **National Development and Reform Commission (NDRC)**, which set up **National Public Credit Information Center (NPCIC)**, with main duties

- To collect, share and disclose social credit information, through:
  - the internal **National Credit Information Sharing Platform (NCISP)**, online as of October 2015, and
  - its public-facing portal, the national **Credit China** website, <https://www.creditchina.gov.cn>
- To regulate national, cross-departmental and cross-regional joint incentives for trustworthy (守信 - compliant) and joint punishments (联合惩戒) for untrustworthy (失信 - non-compliant)

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### How is the SCS Structured?

- **People's Bank of China** oversees a related personal and corporate credit reporting database through its Credit Reference Center
- **Supreme People's Court** administers a blacklist and joint punishment mechanism for those who have not complied with court decisions (judgment debtors)
- **State Council/NDRC** regulate publicity on compliance, blacklists and red lists, and joint punishments and incentives
  - Central **department** and **provincial/local systems and databases**
- Corporate (enterprise) SCS also regulated by **State Administration of Market Regulation**
- **Trade associations** encouraged to establish internal industry credit information collection and restraint systems
- **Private credit service firms and platforms:** to assist with credit assessments, etc., but not part of official SCS

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### People's Bank of China (PBOC) Credit Reporting System

- The PBOC on personal and enterprise credit reporting system initially served only financial institutions, run by its **Credit Reference Center (CRC)**, <http://www.pbccrc.org.cn>, seen as central part of social credit
  - Credit reporting information and services are frequently referenced in national policy SCS documents
  - Credit reporting(征信), sometimes translated as “credit investigation,” and often mis-translated as credit “scoring” (评分) or credit “rating” (评级)
- Credit reporting industry is regulated and licensed by PBOC under 2013 State Council regulations
  - 2 personal credit reporting agencies (CRAs) – CRC and Baihang Credit Reporting Ltd
  - Over 200 licensed corporate CRAs
- PBOC credit reporting system now covers 1 billion individuals, more than 28 million enterprises

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### People's Bank of China (PBOC) Credit Reporting System

- In addition to specific mentions of “credit reporting,” social credit documents refer to developing “credit service industry,” which includes 3d party companies ( credit service institutions) other than licensed CRAs
- China also has a “credit rating” (信用评级) industry to rate bonds and financial instruments, regulated under recent interim measures issued by PBOC, NDRC, Finance and the securities regulator
- It appears PBOC is not sharing data and credit reports with the SCS/NDRC to date

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### SPC Judgment Debtor Blacklist 失信被执行人名单

- The **Supreme People's Court (SPC)** judgment debtor blacklist one of earliest and best known example of using disclosure as an incentive, uses joint departmental punishment as means of tackling long-standing difficulty of enforcing judgments
- 2010: SPC provisions ordered restrictions on high consumption by judgment debtors upon petition of person seeking enforcement, provided courts could serve Notice Demanding Assistance on relevant departments to help enforce
- 2013: SPC issued rules on and first public blacklist with 32,000 names of persons that had the ability but failed to satisfy legally effective court judgments; judgment debtor list: <http://jszx.court.gov.cn/front/zxxx.jspx> and database: <http://zxgk.court.gov.cn/zhzxgk>
  - Subsequently arranged with other regulators like CSRC, PBOC to link respective blacklists and regulatory databases, including NECIPS
- January 2016: SPC signed MOU on with 43 authorities on joint punishment – the largest MOU to date
- Party and State Council issued opinions in September 2016 specifically to regulate SPC joint punishment system and blacklist -- an “important part” of social credit information

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### National Enterprise Credit Information Publicity System (NECIPS) 国家企业信用信息公示系统

- **NECIPS (国家企业信用信息公示系统)** was established by State Council Enterprise Information Publicity Interim Regulations, effective October 2014
  - Now operated by SAMR, <http://www.gsxt.gov.cn/index.html>
  - Part of SCS yet operated autonomously
- **Enterprises** to submit annual reports by June 30 for publication
  - Unlisted companies need not make public employee and financial information, but must be reported
- **Enterprises** also to report within 20 business days:
  - Capital contributions, equity transfers and changes
  - Secured transactions (mortgages, pledged assets)
  - Regulatory information (administrative punishments, licensing)
- **Government departments** to report regulatory information, including registration and recordation information, chattel mortgage and equity pledge registration information, administrative punishment and license information, inspection results, within 7 business days of collection
  - To be published within 20 business days
  - And sent to **NCISP** and **Credit China**
  - Later documents urge NECIPS interconnection with local government affairs platforms as well

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### National Enterprise Credit Information Publicity System 国家企业信用信息公示系统

- SAMR manages two lists pursuant to Regulations and related rules
- **Abnormal Operations List (经营异常名录):**
  - Failures to disclose required information, or to do so truthfully, accurately and timely,
  - Repeated punishments (per 2016 rules)
- **Enterprise Serious Illegal and Untrustworthy Acts List (严重违法失信企业名单) (“Serious List”):**
  - Continued failure to disclose properly for 3 years
  - Had registration revoked due to fraud
  - Been punished 3 or more times within 2 years for listed serious market violations
- Enterprise information to be shared with other departments, taken into account for regulatory purposes like access to public procurement, etc.
  - Those on Serious List subject to “key supervision” (重点关注)
  - Legal rep/person in charge of enterprise on Serious List cannot serve in similar position in another enterprise for 3 years

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### National Enterprise Credit Information Publicity System 国家企业信用信息公示系统

- SAMR issued proposed revised Regulations for public comment June 2019 that:
  - Expand types of regulatory information to be disclosed by **government** instead of companies, including entry & removal from blacklists, judicial enforcement and inspection results; reduce those by enterprise;
  - Add failure to cooperate with investigations to Abnormal Operations List
  - Add violations to Serious List and other relatively minor amendments
  - More detailed procedures for getting off the 2 Lists, including credit repair and credit commitments
  - Expand personnel barred from serving at other enterprises to include directors, supervisors and senior management
  - Encourage “social forces” including industry associations, platform operators and CRAs to use enterprise information to provide credit services to public

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### National Enterprise Credit Information Publicity System 国家企业信用信息公示系统

- In July 2019, SAMR also issued proposed revision of 2016 Serious List Joint Punishment Measures for public comment that clarify:
- Standards for inclusion:
  - If violation doesn't create serious harm it should not lead to listing
  - Subjective malice, circumstances, degree of harm and social impact, and other such factors should be taken into account
  - 36 examples provided
- Procedures for entry and removal upon application from the List
  - Decision to list to be announced on NECIPS
  - If entity on Abnormal List for 3 years without performing obligations must get 60 days' notice through NECIPS before put on Serious List
  - Entities have right to file objection, seek reconsideration or litigate decisions concerning entry on the List within 30 days of the announcement
- Clarifying information sharing with other departments, industry associations, etc. and potential punishments (see overview at <https://www.chinalawtranslate.com/en/marketplace-regulation-blacklist-overview>)
- Credit repair measures: apply for removal from List after one year if satisfied obligations, make credit commitments, no especially serious considerations, etc.

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CREDIT CHINA	NECIPS
<b>Basic information 基本信息</b> CREDIT CHINA: legal representative, date of foundation, address, company type, registration authority. NECIPS (more detailed): information in CREDIT CHINA; plus business license, shareholding status, intellectual properties, trademarks, real estate etc.; annual reports and other information provided by the company.	
<b>Administrative licensing 行政许可</b> Various licenses and approvals from different authorities required to do business in China, and their revocation	
<b>Administrative punishment 行政处罚</b> Records of administrative punishments	
<b>Priority Watch 重点关注 OR Abnormal Operations Information 列入经营异常名录信息</b> Records of abnormal operations 异常经营 include failure of compliance with government disclosure as well as with other regulations	
<b>Information on incentives for trustworthiness 守信激励</b> Such as "A-level taxpayer" (Redlists)	
<b>Punishments for untrustworthiness 失信惩戒 (Blacklist)</b> (Cause of punishment includes delay of salary payment to employees, delay on the enforcement of court decisions, etc.)	<b>Information on Serious Illegal and Untrustworthy Acts (Blacklist)</b> 列入严重违法失信企业名单 (黑名单) 信息
<b>Qualifications 资质资格</b>	
<b>Risk warnings 风险提示</b>	
<b>Other 其它</b>	

## Comprehensive Credit Assessments (公共信用综合评价)

- September 2019 NDRC announced comprehensive public credit appraisals of 33 million companies on trial basis
  - To be sent to provincial government for inclusion in provincial credit information sharing platforms and for distribution to departments and lower government levels
  - To be included as an important part of companies' credit information
  - To be used "for reference" and combined with industry, local public comprehensive, and market (3d party credit service entities) credit appraisal results
  - In support of hierarchical and categorical regulation (分级分类监管): lighter regulation for compliant, stricter regulation for non-compliant
- Companies to be classified/graded as excellent (优), good (良), average (中) or poor (差)
  - Excellent and good companies encouraged to further improve credit profile; average advised how to improve; poor informed of non-compliant conduct, how to repair credit, with advice recorded in credit record and NCISP
- Provinces to collect suggestions and feedback on the pilot appraisal methodology and report back to NDRC Finance Dep't and NPCIC

### How does SCS apply to FIEs?

- *Foreign Investment Law (FIL)*, its *Implementing Regulations* and *MOFCOM Reporting Measures for Foreign Invested Enterprises (FIEs)* call for reporting of investment information, including annual reports, through SAMR's online Enterprise Registration System [企业登记系统], <http://wsdj.samr.gov.cn>, and NECIPS
  - SAMR to push [推送] investment information to commerce authorities
  - Some information shared, disclosed through MOFCOM Foreign Investment Information Reporting System (FIIRS) [外商投资信息报告系统] and publication platform
  - Investment information that FIEs must, or that FIEs agree to, publish shared through NECIPS and FIIRS
- FIL art. 38 provides FIE violations of laws and regulations to be entered in the “credit information system” – NECIPS?
  - FIL does not mention “social credit” *per se*
- Administrative punishments for violating FIE reporting requirements also to be entered into the “credit information system”

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### State Council Joint Incentive and Punishment Mechanism

- Central departments (ministries) and local governments to report basic regulatory information (registration, licensing, penalties, secured transactions, etc.) into NCISP, most of which is published on Credit China, and into NECIPS
- In addition, central departments and local governments are to issue **rules on what constitutes “serious violation”** (e.g., seriously endangering health, life and safety, disrupting fair competition and market order) that might lead to listing on credit blacklist, and **procedures for such listing**
- New regulatory mechanism, to enhance enforcement/negative incentives to come into and remain in compliance, is inter-departmental joint punishment system, raised in 2007 State Council Social Credit Opinions
- May 2016: State Council Opinions called for establishing cross-departmental, trans-regional, and cross-sectoral joint incentive and punishment mechanisms as part of:
  - New market regulatory system with the credit as its core
  - Using credit information disclosure and sharing
  - In accordance with laws and regulations

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### **State Council Joint Incentive and Punishment Mechanism**

- Departments are to negotiate MOUs with other cooperating departments on appropriate punishments to be imposed by each on blacklisted persons to help enforce/obtain compliance
  - Both compulsory and recommended punishments/measures
- When joint punishment imposed on enterprises, institutions and NGOs, “responsible persons” may also be punished, in accordance with relevant laws, regulations and policies
- Some departments also negotiate basis and procedures for including individuals and entities on “redlists” to reward good record of compliance with laws, regulation, policies, but focus here is on punishments

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### **State Council Joint Incentive and Punishment Mechanism**

- Joint Enforcement MOU punishment (Blacklist) examples:
  - Restrictions or greater scrutiny of market entry, professional credentialing, or licensing
  - Restrictions on participation in government procurement, projects, resource trading
  - Reduced access to government benefits, e.g., financing and grants
  - Higher level of regulatory scrutiny, e.g., inspections
  - Public identification (shaming)
  - Restrictions on personal spending, serving as director, supervisor or senior management of comparable enterprise or entity
  - Most extreme: exclusion/debarment from sector, temporarily or for life
- Joint Incentives MOU targeted rewards (Redlists) examples:
  - Less frequent investigations, reporting
  - Streamlined procedures or priority handling
  - Preference for bidding, procurement, purchase state-owned land, etc.

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### State Council Joint Incentive and Punishment Mechanism

- Stipulated basic safeguards:
  - objection and complaint, with correction or deletion of offending information, non-listing or removal from blacklist
  - credit repair to otherwise get off blacklist
  - administrative appeals and litigation
- Reportedly over 51 different MOUs between multiple national departments to punish violations in different sectors set forth in rules published by the sector regulatory department
- Rules typically establish 2 lists:
  - untrustworthy entities subject to joint punishment for serious breaches - list is public
  - priority/key watch lists [重点关注名单] for less serious infractions – generally not public

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### Available Safeguards and Remedies

**Public participation:** Draft laws, regulations and standards, including relating to social credit matters, generally made public for comment

- Under FIL and State Council regulations, departments are to consult trade associations, chambers of commerce, companies when drafting rules that will impact business
- Normal rule is 30-day comment period

**Notice:**

- Recent local regulations provide that authorities must notify credit subject before putting on a blacklist, including basis and reasons
  - In other cases, remedy is raising objection to erroneous information/blacklisting after the fact
- SPC judgment debtors listing also requires advance notice (SPC provisions, 2016 CCP-State Council Opinions)

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### Available Safeguards and Remedies

- **Objection (信用信息异议投诉)** and correction or deletion of erroneous, incomplete or outdated information
  - Procedural guide to filing objections on Credit China – offered as option when searching a person's or company's credit file;  
[https://www.creditchina.gov.cn/home/yyss/201910/t20191025\\_171699.html](https://www.creditchina.gov.cn/home/yyss/201910/t20191025_171699.html)
  - Local procedural guides as well
  - Draft Enterprise Serious List Measures give 30 days from blacklisting to raise objections
- **Exit/de-listing** mechanisms
- **Credit repair (信用修复)**
  - NDRC July 2019 Administrative Punishments Credit Repair Notice
  - Guide to Credit Repair on Credit China;  
<https://www.creditchina.gov.cn/xyxf/xfzn/>
  - Local procedural guides as well
- **Administrative complaints and appeals**
- **Administrative litigation**

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### Questions and Comments

- **Contact** [Jamie.Horsley@yale.edu](mailto:Jamie.Horsley@yale.edu)
- **Source for general information about Social Credit:**  
Compilation and unofficial translations of many SCS documents, and Jeremy Daum articles and explainers, at:  
<https://www.chinalawtranslate.com/en/social-credit-resources/>

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