
China's Emerging Social Credit System and the Role of the Courts

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The General Office of the Central Committee of the Communist Party and the General Office of the State Council on September 25, 2016 jointly issued the Opinions Concerning Acceleration of the Advancement of the Construction of the Institution of the Social Credit Supervision, Warning and Punishment System Against Persons Disciplined for Loss of Credit (the "Social Credit Opinions").¹ The Social Credit Opinions are intended to advance a policy which can be traced back to the Party's 13th Congress in 2012 and was further explicated in the State Council's Guiding Opinions on Establishing and Perfecting the Integrated Encouragement for Gaining Trust and Integrated Punishment for Loss of Trust promulgated on May 30, 2016.²

The Social Credit Opinions mandate the full-establishment by 2018 of a comprehensive government-wide and society-wide social monitoring system. The 2018 target marks an acceleration of the plan previously set for completion in 2020 under the Planning Outline for Construction of the Social Credit System (2014-2020) published on June 14, 2014.³

Persons (both individuals and companies) who are determined in a judicial administrative law proceeding to be socially uncreditworthy will be subject to prohibitions and other restrictions on their commercial, residential and family activities. The system purports to incorporate the principle of "once untrustworthy, always restricted" (*yi chu shi xin, chu chu shou xian*). The system will function through public and governmental databases which will maintain and share information on persons found to be socially uncreditworthy to enable discipline to be imposed against such persons wherever they may be in China. Precisely how social credit will be scored remains unclear, but the scope of data gathered and the breadth of the social credit system exceeds that generally associated with a credit bureau, securities analysis or commercial advertising.

The social credit system functions in part as a government-wide debarment system, i.e., persons determined to have lost social credit will be restricted and may be denied eligibility for government procurement, government-funded investment projects, government support and subsidies, membership in the Party, positions in government and state-owned enterprises, and acquisition or utilization of state assets. This will apply not just to particular government programs where a violation may be directly relevant but to government programs throughout the country and across all

government departments.

But the system goes far beyond a government-wide debarment system. It is intended to create a trust-based economy and harmonious society by gathering, analyzing and disseminating information on the conduct of persons in the interest of making the economy more efficient and social relations more amicable. This differs from the Party's historical reliance on ideological indoctrination and political campaigns to implement social change. It is intended to harness big data to go beyond earlier efforts to monitor persons through neighborhood monitors and less elaborate data collection efforts, as well as programs to limit access to unapproved sources of information. No reference is made, however, to the role of the Party and government in reducing efficiency by limiting competition and in disrupting social harmony through class struggle or such policies as the one-child family.

The system can be analyzed along several dimensions. First, the criteria for evaluation of social credit are not confined to violating particular government regulations or laws. Instead, social credit is to be scored and then determined in administrative law proceedings. The proceedings will address a wide range of political and social criteria, including not just violation of laws and regulations but also breach of contract (referred to by the softer and more traditional term *qi yue* rather than the more modern term *he tong*). The legal proceedings in this sense will amplify the consequences of a civil law default, unrelated administrative law violations, or an unrelated criminal conviction. The leadership role to be exercised by the Party over the courts further indicates that the courts are not intended to act in a politically neutral manner.

Second, the disciplinary measures will extend to social activities and personal consumption, including restrictions on participation in social associations (i.e., NGOs), higher-class train travel, air travel, real estate purchases for personal use, and tuition expenses for children. Persons in positions of special trust, namely lawyers and bankers, are singled out for particular attention, although the focus on law firms and lawyers may also be intended to dissuade challenges to the social credit system or how it is applied.

Third, the supervision or monitoring of persons determined to be socially uncreditworthy will be conducted on a continuous, daily basis and not just by public security and other enforcement personnel but also by social associations.

This indicates that the social credit system is intended to serve as a society-wide disciplinary mechanism enabled by the collection and computerized analysis of data on all of society in potentially all spheres of activity. The appendix to the Social Credit Opinions identifies the food and drug industry as the system's first focus. Producers of foodstuffs (including additives), drugs, cosmetics and medical devices which are found to have a major loss of social credit will be subject to coordinated punishment by at least 28 separate government departments and Party-led federations ranging from the National Development and Reform Commission to the All-China Federation of Industry and Commerce.

Although primarily directed at Chinese persons, the social credit system presents complications for foreign business. First, their subsidiaries and personnel in China will also be subject to the social

credit system. Second, the restrictions on personal association and movement may affect sales of particular products in which they may have a competitive advantage, e.g., luxury hotels, foreign travel, private school education and high benefit cash-value life insurance, all of which are expressly listed in the Social Credit Opinions. Third, even businesses in industries that are not Internet-intensive may be required to make more of their data available to the authorities.

The ultimate purpose of the social credit system is to realize what Party Chairman and President Xi Jinping has referred to as the Four Comprehensives (*si ge quan mian*): A Healthy Society, the Deepening of Reform, Rule by Law, and Party Discipline; and the Five Into One (*wu wei yi ti*), i.e., a unified country. The ambition is great—the wisdom of the means and the ability to realize the ambition is uncertain.

¹ See http://news.xinhuanet.com/politics/2016-09/25/c_1119620719.htm.

² See http://www.gov.cn/zhengce/content/2016-06/12/content_5081222.htm.

³ English translation is available at

<https://chinacopyrightandmedia.wordpress.com/2014/06/14/planning-outline-for-the-construction-of-a-social-credit-system-2014-2020/>.

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