



China Adopts Amendment to the Criminal Law to Outlaw Bribery of Foreign Officials

On February 25, 2011 the PRC adopted Amendment No. 8 of the PRC Criminal Law, criminalizing bribery of foreign government officials and "international public organizations" to secure illegitimate business benefits. This amendment goes into effect on May 1, 2011.

The PRC did not have any law addressing cross-border bribery before and this law will be the first law to condemn bribery of foreign officials. This amendment is the PRC's effort to comply with the United Nations Convention Against Corruption to which the PRC is a signatory.

The amendment was made to Article 164 of the PRC Criminal Law prohibiting entities or individuals from offering bribes to employees of companies and enterprises who are not government officials. With the amendment, it is a criminal act to bribe foreign government officials or international public organizations.

According to this Article 164, if the payor is an individual, depending on the value of the bribes, he or she is subject to imprisonment up to 10 years; if the payor is an entity, criminal penalties will be imposed against the violating entity and the supervisor chiefly responsible and other directly responsible personnel may also face imprisonment of up to 10 years. Penalties may be reduced or waived if the violating individual or entity discloses the crime before being charged. According to the PRC Supreme Procuratorate issued in 2001, individuals offering bribes of more than RMB10,000 and entities offering bribes of more than

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RMB 200,000 may be prosecuted under Article 164.

Unlike other bribery-related crimes in the PRC, which focus on the receipt by the briber of "illegitimate benefits," bribery of foreign officials or international organizations prohibits securing illegitimate business benefits. In advance of the release of judicial interpretation of what may be "illegitimate business benefits," the current legal understanding of what is "to secure illegitimate benefits" means in other bribery-related crimes may provide a reasonable basis for understanding this amendment.

The law refers to "officials of foreign countries and international public organizations," but does not define these terms. For example, it is not clear whether international public organization includes foreign non-governmental organizations.

As of this Alert, no judicial interpretation or administrative regulations regarding the implementation of this provision has been promulgated. It is not clear whether foreign companies may also be subject to jurisdiction under the PRC Criminal Law with respect to this new amendment. We will continue to closely monitor future development related to this amendment.

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2011

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