



Anti-Corruption Regulation

in 51 jurisdictions worldwide

2011

Contributing editor: Homer E Moyer Jr



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Contributing editor:

Homer E. Moyer Jr
Miller & Chevalier Chartered

Business development managers

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George Ingledew
Robyn Hetherington
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Sarah Walsh

Marketing assistants

Alice Hazard
William Bentley
Sarah Savage

Subscriptions manager

Nadine Radcliffe
Subscriptions@
GettingTheDealThrough.com

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Jonathan Allen

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Kathryn Smuland

Subeditor

Davet Hyland

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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China

Daniel F Roules and Zijie (Lesley) Li

Squire, Sanders & Dempsey (US) LLP

1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

China is a signatory to the United Nations Convention against Corruption. China made a reservation under article 66 paragraph (2), declining to accept jurisdiction by the International Court of Justice over disputes between China and other member states concerning the Convention's interpretation or application.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Foreign bribery laws

On 25 February 2011, China adopted Amendment No. 8 of the PRC Criminal Law, which criminalises bribery of foreign government officials and of international public organisations in order to secure illegitimate business benefits. The penalties associated with this crime are the same as those involving bribery of commercial parties in China, hereinafter referred to as 'commercial bribery'. As of 13 April 2011, no judicial interpretation or administrative regulations regarding the implementation of this provision have been promulgated.

Domestic bribery laws

The PRC Criminal Law criminalises bribery whether involving State officials, who are defined as persons with public authority either by law or by due authorisation of government agencies, or involving non-officials (commonly referred to as 'commercial bribery'). The value of the bribes as well as possible punishments differ between these two crimes. The Supreme People's Court has adopted two key binding judicial interpretations relevant to bribery-related cases: one, the Opinion on Several Issues regarding Application of Laws in Respect of Commercial Bribery Criminal Cases adopted in 2008, providing guidance in determining criminal bribery cases in commercial contexts, and the Opinion on Several Issues regarding Application of Laws in Respect of Criminal Cases of Accepting Bribes in 2007, which provides guidance in determining criminal cases involving officials charged with accepting bribes. In addition, various judicial interpretations adopted by the Supreme People's Court and rules adopted by the Supreme People's Procuratorate (the equivalent to the prosecutor or district attorney in the United States system) and the Ministry of Public Security regarding the investigation and prosecution of crimes also provide rules regarding bribery-related crimes.

The PRC Anti-Unfair Competition Law prohibits unfair conduct in commercial settings, including bribery by one party to a commercial transaction of the other party or its employees. The Provisional Regulation regarding Prohibition of Commercial Bribery adopted by the State Administration of Industry and Commerce in 1996, the main government agency enforcing the Anti-Unfair Competition

Law, provides guidance on, among other things, what constitutes a bribe and what does not, as well as penalties for misconduct.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Amendment No. 8 of the PRC Criminal Law criminalises the offering of money and property to foreign officials and international public organisations to secure illegitimate business benefits. The bribery of foreign officials and of international public organisations prohibits securing illegitimate business benefits, unlike other bribery-related crimes in the PRC which focus on the receipt by the briber of 'illegitimate benefits'. Prior to promulgation of a judicial interpretation regarding what constitutes 'illegitimate business benefits', the current legal understanding of what is 'to secure illegitimate benefits' in other bribery-related crimes may provide a reasonable basis for understanding this element. Please refer to question 22, 'To secure illegitimate benefits', for details.

4 Definition of a foreign public official

How does your law define a foreign public official?

The law refers to 'officials of foreign countries and international public organisations,' but does not define this reference.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

Other than Amendment No. 8 of the PRC Criminal Law which criminalises the offering of money and property to foreign officials and to international public organisations to secure illegitimate business benefits, no rules regarding gifts, travel, expenses, meals or entertainment provided to foreign officials are applicable.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

No law or regulation permits facilitation or 'grease' payments to foreign officials.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

China has not adopted laws addressing payments through intermediaries or third parties to foreign public officials.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Yes, both individuals and companies may be held liable for bribery of a foreign official.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

There is only criminal enforcement of the law prohibiting bribery of foreign officials.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

There is only criminal enforcement of the law prohibiting bribery of foreign officials. Such crime is subject to investigation by the police and prosecution by the procuratorate before a PRC court holding jurisdiction over the subject matter.

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

Amendment No. 8 of the PRC Criminal Law provides that, if the individual or entity providing bribes makes disclosure before being charged, penalties may be reduced or waived.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

China has not adopted laws addressing plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

To date, there has been no shift in the enforcement patterns, but the adoption of Amendment No. 8 of the PRC Criminal Law could signal a change is coming.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Whether branches of foreign companies registered in China may also be subject to jurisdiction under the PRC Criminal Law is unclear. It is possible that a court may decide that jurisdiction exists because a branch registered in the PRC exists in accordance with its law.

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

Individuals who are found guilty may be subject to up to 10 years' imprisonment, depending on the value of bribes involved; entities that are found guilty are subject to a minimum criminal penalty of 1,000 renminbi and the supervisor chiefly responsible and other directly responsible personnel of the company may be subject to up to 10 years' imprisonment, depending on the value of bribes involved.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

As of 13 April 2011, there are no decisions or publicly announced investigations involving foreign bribery.

Financial record keeping**17 Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The key laws and regulations concerning accounting practices and internal controls are as follows:

- The PRC Accounting Law requires that accounting records and books be accurate and complete and sets forth penalties administered by the Ministry of Finance where forged accounting documents or untrue financial statements are prepared.
- The Enterprise Accounting Principles apply to all PRC-listed companies, and other entities may elect to follow them; additionally, for ordinary enterprises, financial enterprises and small businesses defined in related rules, each has a relevant Enterprise Accounting System applicable to it. Unlike US GAAP, which is not determined by the government, the Enterprise Accounting Principles and the Systems are adopted by the Ministry of Finance as authorised under the PRC Accounting Law and are legally binding as administrative regulations.
- The PRC Company Law, section 8 'Corporate Finance, Accounting', article 164 requires companies to develop accounting policies in accordance with laws, regulations and rules of the Ministry of Finance. Article 165 also requires that every company prepare financial statements as of the end of every fiscal year and have them audited by accredited auditors.
- The PRC Criminal Law criminalises a company's delivery of untrue financial statements or statements with material omissions to shareholders causing severe losses to the shareholders or third parties.
- The Provisional Regulation regarding Prohibition of Commercial Bribery adopted by the State Administration of Industry and Commerce in accordance with the PRC Anti-Unfair Competition Law provides guidance on how commissions, discounts and expenses should be accounted for, for the purposes of prohibiting commercial bribery.
- All PRC-listed companies must comply with the Enterprise Internal Control Basic Rules as jointly issued by the Ministry of Finance, the China Securities Regulatory Commission, the China Bank Regulatory Commission, the China Insurance Regulatory Commission and the Audit Bureau. Non-listed middle-to-large companies defined in related rules are voluntarily encouraged to comply with these rules.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

No laws or regulations require companies to self-disclose violations of anti-bribery laws or associated accounting irregularities. No laws or regulations provide incentives, eg, lesser penalties, for self-disclosure of bribery or associated accounting irregularities, except that the PRC Criminal Law encourages offenders to surrender by applying lesser punishment within or even below the range provided by law or, for minor offences, by waiving punishment.

Listed companies must comply with the Administrative Measures on Listed Companies Information Disclosure and associated disclosure guidance of the China Securities Regulatory Commission and the disclosure rules of the Stock Exchange, where they are listed

to disclose material lawsuits and arbitrations, resolved criminal punishments or material administrative penalties, and investigations by government agencies into the company or its senior officers.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

PRC laws regarding financial record-keeping requirements are not intended to be used to prosecute bribery. Improper records of payments may be used to prove the existence of a bribe, as the Provisional Regulation regarding Prohibition of Commercial Bribery, adopted by the State Administration of Industry and Commerce, reflects. This regulation provides that cash and property given to the other party in a transaction, even if recorded as ‘promotion fees’, ‘marketing fees’, ‘sponsorship fees’, ‘R&D fees’, ‘service fees’, ‘consulting fees’, ‘commission’ or reimbursement items, should be considered to be bribes: in other words, there are only very limited bases for providing cash or property to the other party to a transaction. For example, promotional allowances from a manufacturer to a distributor may be considered a bribe, unless for supported reimbursements. ‘Kickbacks’, which are defined as a refund of part of the price in the form of cash or property that are not recorded in corporate books or not recorded in the proper account or are recorded with falsified information, should be deemed as bribes. Accurately recorded discounts and commissions given to properly licensed intermediaries are allowed.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Chinese law does not provide for specific penalties for violations of accounting rules associated with the payment of bribes.

The PRC Accounting Law prohibits improper changes in accounting methods, which may lead to imposition of fines on the company of 3,000 to 50,000 renminbi and of 2,000 to 20,000 renminbi on the supervisor chiefly responsible and other directly responsible personnel of the company. It also prohibits forged accounting vouchers, books or untrue financial statements, which may lead to fines of 5,000 to 100,000 renminbi on the company and 3,000 to 50,000 renminbi on the supervisor chiefly responsible as well as on the other directly responsible personnel of the company.

If a company provides untrue financial statements or statements with material omissions to shareholders causing severe losses to the shareholders or third parties, according to the PRC Criminal Law, the supervisor chiefly responsible in charge and other directly responsible personnel may be subject to up to three years’ imprisonment and fines of 20,000 to 200,000 renminbi.

21 Tax-deductibility of domestic or foreign bribes

Do your country’s tax laws prohibit the deductibility of domestic or foreign bribes?

According to the PRC Enterprise Income Tax Law, only reasonable expenses associated with the generation of revenue may be deducted before tax. Illegal payments, including bribes, such as amounts improperly given to customers as described in the response to question 19, are not ‘reasonable expenses’ and thus cannot be deducted from taxable income.

Domestic bribery

22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Providing money or property to domestic public officials (the term used in the PRC is ‘state functionaries’) to secure illegitimate benefits, or giving ‘kickbacks’ or ‘service charges’ or property to an official both constitute official bribery as defined by the PRC Criminal Law.

State functionary

According to article 93 of the PRC Criminal Law the term ‘state functionaries’ refers to:

- officials in a position of public authority in a government agency;
- a person in a position of public authority in a wholly state-owned company, enterprise, institution or organisation;
- a person assigned by a government agency or wholly state-owned enterprise, company, institution or organisation to a position of public authority in a non-wholly-state-owned company, enterprise, institution or organisation;
- other persons in a position of public authority granted by law.

According to the Meeting Notes on the Nationwide Court Meeting regarding Economic Criminal Cases of 16 December 2003, which possesses the binding power of a judicial interpretation, in respect of a wholly state-owned company or enterprise, all its directors, supervisors, management members and other personnel who function to manage and supervise state property, including accountants, are considered ‘employees in a position of public authority’ and therefore each is an ‘official.’ Personnel whose services do not involve management and supervision or who are without authority in public affairs would typically not be considered as ‘officials’, eg, sales persons, administrative staff or labourers. Nevertheless, a case decided by the Shanghai High People’s Court found that a sales person of a wholly state-owned company was an ‘official’ on the grounds that he could decide the price of sale of products as well as having the power to collect receivables and therefore served the function of ‘managing and supervising state-owned property’. Therefore, a court may look into the actual role of the relevant person, instead of merely his title, to decide whether the relevant person is an official or not and the definition of ‘public authority’ could be broad.

For partly state-owned companies and enterprises, only employees who are ‘assigned by a government agency, wholly state-owned enterprise, company, institution or organisation’ will be considered ‘officials’, eg, directors, managers appointed by the parent wholly state-owned company. Any other employees who are employed and engaged directly by the partly state-owned entity itself do not qualify as ‘officials’.

Judicial interpretations indicate that the term ‘other persons in a position of public authority granted by law’ as used in article 93 includes, for example, representatives of various levels of the People’s Congress and jurors.

In the US legal framework, whether a person is an official (and in the case of the FCPA a ‘foreign official’) is a key baseline question. PRC law criminalises not only official bribery but also bribery of private entities and individuals (‘private commercial bribery’). Accordingly, whether the individual receiving bribes is an official or not is not determinative of whether a criminal offence exists. For more details regarding private bribery, please refer to question 28, ‘Private commercial bribery’.

Bribe

The PRC Criminal Law provides that both money and property may constitute bribes. The Opinion on Several Issues regarding Application of Laws in Respect of Commercial Bribery Criminal Cases, a

judicial interpretation issued by the Supreme People's Court and the Supreme People's Procuratorate, clarifies that 'money and property' given as bribes also encompasses gifts of property-related benefits having monetary value, including offers of home renovation, pre-paid membership cards, gift cards or coupons, payment of travel expenses and bank cards with credit pre-paid. This definition is broad enough that almost anything of value could be considered 'money and property'. An earlier related judicial interpretation had previously clarified other behaviour that involve improper transfers of money and property, such as sales of property at unreasonably low prices, transfers or grants of equity interest in enterprises without consideration, payment by means of gambling (ie, intentionally losing at gambling games), or bribes given to 'special related persons' including close relatives, mistresses and other persons having common interests with covered state functionaries.

The following factors will be considered when evaluating a bribe as opposed to a gift:

- the circumstances by which the property transaction occurred, eg, the relationship between the parties,
- the amount or value of the property,
- the cause, time and means by which the property was presented, and
- whether the official uses his or her official position to obtain benefits for the offering party.

To secure illegitimate benefits

Offers of property or items of value will be improper, and therefore unlawful, where they are made for the purpose of obtaining benefits that are in violation of laws, regulations, rules and state policies (ie, where the recipient is not entitled to the benefit or the benefit involves something illegal), or obtaining benefits that are legitimate, but which are obtained as a result of violation of law, regulations, rules and state policies by the bribed persons (eg, where an applicant is entitled to a business license, but pays a bribe to an official to obtain it in advance of a specified legal approval period). In commercial activities including bidding and government procurement, benefits provided to officials to secure unfair advantage in competition are also 'improper'. Note any offers of kickbacks, service charges and rebates to officials constitute bribery – regardless of the purpose for which they are made – and are per se unlawful. Payments and gifts made to influence the decisions of the officials may readily be construed as being provided for the purpose of 'securing illegitimate benefits.'

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes, both the PRC Criminal Law and the Provisional Regulation regarding Prohibition of Commercial Bribery that implements the bribery-related clause of the PRC Anti-Unfair Competition Law prohibit the payment and receipt of a bribe:

PRC Criminal Law

- Crime of Company and Enterprise Personnel Accepting Bribes: article 163 prohibits employees of companies and enterprises who are not government officials from soliciting or accepting bribes;
- Crime of Offering Bribes to Personnel of Companies and Enterprises: article 164 prohibits entities or individuals from offering bribes to employees of companies and enterprises who are not government officials;
- Crime of Offering Bribes to Officials of Foreign Countries and International Public Organisations: article 164 prohibits entities and individuals from offering bribes to officials of foreign countries and international public organisations to secure illegitimate business benefits;

- Crime of Accepting Bribes: articles 385, 386 and 388 prohibit state functionaries from accepting or soliciting bribes;
- Crime of Entity of Accepting Bribes: article 387 prohibits government agencies, state-owned companies, enterprises, institutions and organisations from accepting or soliciting bribes;
- Crime of Accepting Bribes Taking Advantage of Influence: article 388-1 prohibits close relatives of state functionaries or persons closely related to state functionaries from accepting or soliciting bribes;
- Crime of Offering Bribes to State Functionaries: articles 389 and 390 prohibit individuals from offering bribes to state functionaries;
- Crime of Offering Bribes to Entity: article 391 prohibits offering bribes to state-owned companies, enterprises, institutions and organisations;
- Crime of Brokering Bribes: article 392 prohibits arranging payment of bribes to state functionaries; and
- Crime of Entity Offering Bribes: article 393 prohibits any domestic entity from offering bribes to state functionaries.

Provisional Regulation regarding Prohibition of Commercial Bribery

Although the focus of the PRC Anti-Unfair Competition Law is not on punishing private entities and individuals accepting bribes, the Provisional Regulation regarding Prohibition of Commercial Bribery does subject private entities and individuals accepting bribes to the same penalty as parties who offer bribes.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

Please see the answer to question 22, 'Legal framework', under the sub-heading 'State Functionary'.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

According to the PRC Civil Servants Law, civil servants are prohibited from engaging or participating in business activities or undertaking positions in enterprises or other profit-earning organisations. In addition, depending on the civil servant's position, within two to three years after departure from his or her position or retirement, a civil servant may not take a position in an enterprise or other profit-earning organisation engaged in business directly related to his or her former post or undertake business activities directly related to his or her former post.

'Civil servants' are defined as personnel who perform public duties pursuant to laws, are included in the state administrative system and receive salary and social security benefits paid from the state treasury. Note, based on this definition, the scope of the definition of 'civil servant' is narrower than the scope of 'state functionary' as defined by the PRC Criminal Law because 'state functionary' also includes persons who are not civil servants but perform public duties authorised by government agencies or in accordance with law. Please also see the answer to question 22, 'Legal framework', under the sub-heading 'State functionary'.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

In accordance with the Measures Regarding Registration and Disposal of Gifts Accepted or Received from Contacts in China by Personnel of Party and Government Agencies jointly issued by the

Administrative Office of the State Council and the Administrative Office of the Central Committee of the Communist Party of China (CPC) in 1995, any gifts that may influence the performance of public duties of an official within the government or the CPC must be handed over, regardless of value. Other gifts valued above certain amounts as provided in related provincial rules must be registered or registered and handed over. For example, in Beijing, gifts that are not intended to influence the performance of one's public duties and that have a value over 100 renminbi must be registered, while those over 200 renminbi must be registered and handed over to the municipal treasury. In a related rule, 'gifts' are interpreted to include 'any present, cash, coupon or any item purchased at unreasonably low prices'. Arguably, this interpretation of 'gifts' is so broad as to include intangible benefits and not just tangible items of property. Note, the prohibitions contained in these Measures apply to the officials receiving the gifts and not directly to the would-be donors.

The Regulations Regarding Offer and Acceptance of Gifts in Foreign-Related Activities issued by the State Council in 1993 require officials of government agencies at various levels to report and hand over any gifts accepted in foreign-related activities exceeding 200 renminbi to the employer or the state treasury depending on the nature and value of the gifts. Note, this is the regulation that many foreign companies refer to when discussing a 200 renminbi limitation, but as mentioned above in the case of the Measures, the regulation applies to the officials and not to those providing the gifts. Also, the 200 renminbi limit was set at a time when 200 renminbi was a substantially higher amount in purchasing terms than it is today, so query whether it is reasonable to use this as a cut-off for entertainment expenses.

In the case of rules applicable to not only receivers but donors of gifts and benefits, the relevant regulations are the Provisional Regulation regarding Prohibition of Commercial Bribery, which generally prohibit benefits given to the other party in a transaction, regardless of the nature of the person/entity receiving such benefits and regardless of the value, with the exception discussed in the response to the next question.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

From the perspective of the receiving officials, under the Measures Regarding Registration and Disposal of Gifts Accepted or Received from Contacts in China by Personnel of Party and Government Agencies and the associated provincial implementing rules, small-value gifts (ie, under the applicable limits in that locality) received by an official within the government or the CPC are allowed (assuming the official registers their receipt as required), unless such gifts may influence his or her performance of public duties.

In the commercial context, the Provisional Regulation regarding Prohibition of Commercial Bribery permits small-value promotional gifts in accordance with 'commercial custom'; however, no definition of what is a 'small-value' gift is provided.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Yes. In accordance with the PRC Criminal Law, giving money or property to employees of companies and enterprises who are not state functionaries for the purpose of securing improper benefits could be a criminal offence if the value of the involved bribes is large. In accordance with relevant rules issued jointly by the Supreme People's Procuratorate and the Ministry of Public Security, if the payor is an entity, a criminal charge should be brought if the value of the bribes exceeds 200,000 renminbi; if the payor is an individual, a criminal charge should be brought if the value of bribes exceeds 10,000 renminbi. On the other hand, it could also be a criminal offence for employees of companies and enterprises who are not

state functionaries to solicit or accept money and property taking advantage of their positions and securing benefits for others if the value of the involved bribes exceeds 5,000 renminbi. The elements of 'money and property' and 'for the purpose of securing improper benefits' are similar to those involved in an official bribery.

Private commercial bribery, if the amount involved does not trigger a criminal offence, is a violation of the PRC Anti-Unfair Competition Law and the Provisional Regulation regarding Prohibition of Commercial Bribery which prohibit accepting or offering bribes in purchase and sale transactions. In particular, these rules prohibit accepting or offering kickbacks which are not recorded in the company's books, ie, off-book kickbacks, or are not recorded correctly, and prohibit forging records in connection with bribes. Offering or receiving bribes no matter whether described as promotion fees, marketing fees, research fees, service fees, consulting fees, commission or reimbursement of expenses or providing other benefits including travel or field visits to the opposing party in a transaction is also prohibited. When an employee offers bribes for the benefits of his or her employer, such acts will be regarded as a violation by the employer. Violators can be fined by the Administration of Industry and Commerce in an amount between 10,000 renminbi and 200,000 renminbi, and all illegal gains arising from the bribes will be confiscated. Notwithstanding the above, discounts for goods, commissions payable to intermediary companies that are booked correctly and promotional gifts of small value in accordance with commercial customs are permitted.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

PRC Criminal Law

- Crime of Company and Enterprise Personnel Accepting Bribes: article 163 prohibits employees of companies and enterprises who are not government officials from soliciting or accepting bribes – depending on the value of the bribes involved, imprisonment for up to five years to imprisonment for more than five years and confiscation of property;
- Crime of Offering Bribes to Personnel of Companies and Enterprises: article 164 prohibits entities or individuals from offering bribes to employees of companies and enterprises who are not government officials – if the payor is an individual, depending on the value of the bribes, imprisonment for up to three years to imprisonment from three to 10 years; if the payor is an entity, criminal penalties are imposed against the violating entity and imprisonment for up to three years to imprisonment from three to 10 years for the supervisor chiefly responsible and other directly responsible personnel of the violating entity; penalties may be reduced or waived if the violating individual or entity discloses the crime before being charged;
- Crime of Offering Bribes to Officials of Foreign Countries and International Public Organisations: article 164 prohibits entities and individuals from offering bribes to officials of foreign countries and international public organisations to secure illegitimate business benefits – if the payor is an individual, depending on the value of the bribes, imprisonment for up to three years to imprisonment from three to 10 years; if the payor is an entity, criminal penalties are imposed against the violating entity and imprisonment for up to three years to imprisonment from three to 10 years for the supervisor chiefly responsible and other directly responsible personnel of the violating entity; penalties may be reduced or waived if the violating individual or entity discloses the crime before being charged;

Update and trends

Within the CPC, there seems to be stricter enforcement efforts targeted at cracking down corruption; however, owing largely to the judiciary's dependence on the Party for funding and individual career advancement, these efforts are not as strong as they would be if the Party and the judiciary were independent forces. At the same time, concerns about whether intra-Party efforts may be driven by political factors rather than the pursuit of justice also weaken the effectiveness of these efforts. Accordingly, significant reduction in corruption is still likely to be a long way off.

At the same time, in the commercial arena there seems to be stronger enforcement targeting commercial bribery in the pharmaceutical and medical device industries.

During the past year, disclosures on the Internet posted by ordinary citizens regarding corruption by local officials which have aroused resentment regarding the legitimacy of the CPC have also put pressure on the CPC and the country's leaders to crack down further on corruption.

- Crime of Accepting Bribes: articles 385, 386 and 388 prohibit state functionaries from accepting or soliciting bribes depending on the value of the bribes involved and other circumstances – criminal punishment ranges from imprisonment for up to two years to the death penalty and confiscation of property;
- Crime of Entity Accepting Bribes: article 387 prohibits government agencies, state-owned companies, enterprises, institutions and organisations from accepting or soliciting bribes – criminal penalties may be imposed against the violating entities with a minimum of 1,000 renminbi and imprisonment for up to five years for the supervisor chiefly responsible and other directly responsible personnel of the violating entities;
- Crime of Accepting Bribes Taking Advantage of Influence: article 388-1 prohibits close relatives of state functionaries or persons closely related to state functionaries from accepting or soliciting bribes – depending on the value of the bribes and other circumstances, criminal punishment ranges from imprisonment for up to three years to imprisonment above seven years and criminal fines or confiscation of property;
- Crime of Offering Bribes to State Functionaries: articles 389 and 390 prohibit individuals from offering bribes to state functionaries – depending on the value of the bribes and other circumstances, criminal punishment ranges from imprisonment for up to five years to imprisonment above 10 years or permanent imprisonment and confiscation of property;
- Crime of Offering Bribes to Entity: article 391 prohibits offering bribes to state-owned companies, enterprises, institutions and organisations – if the payor is an individual, imprisonment for up to three years; if the payor is an entity, criminal penalties imposed against the violating entity and imprisonment of the supervisor chiefly responsible and other directly responsible personnel of the violating entity for up to three years;
- Crime of Brokering Bribes: article 392 prohibits facilitating bribes paid to state functionaries – imprisonment for up to three years; and
- Crime of Entity Offering Bribes: article 393 prohibits any domestic entity offering bribes to state functionaries – a minimum 1,000 renminbi in criminal penalties imposed on the violating entities and imprisonment for up to five years for the supervisor chiefly responsible and other directly responsible personnel of the violating entities.

Anti-Unfair Competition Law

Provisional Regulation regarding Prohibition of Commercial Bribery: violating companies may be fined by the Administration of Industry and Commerce for an amount between 10,000 and 200,000 renminbi and all illegal gains arising from the bribes will be confiscated.

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Chinese law does not provide for a mechanism similar to the FCPA allowing 'grease' payments. Nevertheless, according to the Provisional Regulation regarding Prohibition of Commercial Bribery, promotional gifts of small value in accordance with commercial customs are permitted, although 'small value' is not defined.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

In June 2010, Zhang Jingli, former vice president of the State Food and Drug Administration (SFDA), was removed from his position and was investigated within the CPC for violation of Party discipline. Subsequently, his case has been transferred to the procuratorate for criminal prosecution. According to media reports, Zhang Jingli accepted bribes of over 5 million renminbi during the period he was responsible for construction of the headquarters of the SFDA. Rumours have circulated in the media that Zhang Jingli accepted bribes from certain foreign-invested medical device companies to approve devices in violation of applicable procedures but, as of the date of publication, it has not been publicly confirmed whether the formal criminal charge of Zhang Jingli will include such claims. Five more junior SFDA officials were also arrested and investigated in connection with this case. In 2007, Zheng Xiaoyu, former chairman (and indeed, the founding chairman) of the SFDA was sentenced to death for accepting bribes.

In September 2009, Shanghai Shen-Mei Beverage and Food Company, a joint venture of Coca-Cola and Chinese partners which operates Asia's largest Coca-Cola bottling plant, was investigated for bribery-related offences. According to media reports, certain employees of the company may have accepted bribes of over 10 million renminbi from vendors including advertising agencies. Certain employees have been arrested and their cases transferred to Pudong District Procuratorate in Shanghai for prosecution.

According to a press release issued by the Zhuhai Procuratorate in December 2010, all nine of the city's public hospitals have been investigated and charges of accepting bribery have been brought against the directors of the pharmacy departments. According to the procuratorate, 22 persons who are suspected of receiving bribes in excess of 100,000 renminbi are being investigated and either have been or will be prosecuted. The former directors of the pharmacy departments of Zhongda No. 5 Hospital and the Maternity Hospital, who were found to have accepted bribes of 583,000 renminbi from eleven pharmaceutical companies during the past three years and 396,400 renminbi from fifteen companies during the past six years respectively, were sentenced to five years' and three and a half years' imprisonment respectively.

In September 2010, Toyota Moto Finance China received an administrative penalty hearing notice that the Jianggan Branch of the Hangzhou Administration of Industry and Commerce will impose administrative fines of 140,000 renminbi and confiscate revenue of 420,000 arising from alleged misconduct. Toyota Moto Finance China is charged with paying bribes to automobile sales companies for persuading customers to use Toyota's auto financing services.

In May 2010, Guo Jingyi, former vice director of the Law Department and Director of Investment Law Section of the Ministry of Commerce, was sentenced to death with a two-year reprieve for accepting bribes of over 8.45 million renminbi, as well as to confiscation of personal property. Among other charges, Guo Jingyi accepted bribes to help Beijing Capital Group with approval for the establishment of an overseas subsidiary; approved transfer of 65 per cent of the equity of Guomei Home Appliances Group to its Hong

Kong affiliate for the purpose of Guomei's Hong Kong listing in violation of the then applicable foreign investment regulatory regime; approved Guomei's acquisition of Yongle, another main competitor in the home appliances industry, in an anti-monopoly review process; and also approved acquisition of Zhejiang Supor Company by SEB, a French company, in a related anti-monopoly review. Also, in a related proceeding in May 2010, Huang Guangyu, former Chairman of Guomei, was sentenced to imprisonment of fourteen years and confiscation of 200 million renminbi for providing bribes as the legal representative of Guomei.

As of February 2011, Liu Zhijun, former minister of the Ministry of Railways, was under investigation within the CPC and has been removed from his Party and ministerial posts. According to media reports, Liu Zhijun has accepted bribes in significant amounts in connection to supply contracts for materials and equipment procurement for China's high-speed train projects.



Daniel F Roules
Zijie (Lesley) Li

daniel.roules@ssd.com
zijie.li@ssd.com

Suite 1207 Kerry Centre
1515 Nanjing Road West
Shanghai
China

Tel: +86 21 6103 6300
Fax: +86 21 6103 6363
www.ssd.com

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