

Bribery & Corruption

2021

Eighth Edition

Contributing Editors: **Jonathan Pickworth & Jo Dimmock**

Global Legal Insights

Bribery & Corruption

2021, Eighth Edition

Contributing Editors: Jonathan Pickworth & Jo Dimmock

Published by Global Legal Group

GLOBAL LEGAL INSIGHTS – BRIBERY & CORRUPTION

2021, EIGHTH EDITION

Contributing Editors
Jonathan Pickworth & Jo Dimmock, White & Case LLP

Head of Production
Suzie Levy

Senior Editor
Sam Friend

Production Editor
Nicholas Catlin

Publisher
Jon Martin

Chief Media Officer
Fraser Allan

*We are extremely grateful for all contributions to this edition.
Special thanks are reserved for Jonathan Pickworth and Jo Dimmock of White & Case LLP
for all of their assistance.*

Published by Global Legal Group Ltd.
59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 207 367 0720 / URL: www.glggroup.co.uk

Copyright © 2020
Global Legal Group Ltd. All rights reserved
No photocopying

ISBN 978-1-83918-090-3
ISSN 2052-5435

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations. The information contained herein is accurate as of the date of publication.

Printed and bound by TJ Books Limited, Treceus Industrial Estate, Padstow, Cornwall, PL28 8RW
December 2020

CONTENTS

| | | |
|------------------------------|--|-----|
| Preface | Jonathan Pickworth & Jo Dimmock, <i>White & Case LLP</i> | |
| General chapter | | |
| Asia-Pacific Overview | Phillip Gibson, Dennis Miralis & Rachel Le Bransky, <i>Nyman Gibson Miralis</i> | 1 |
| Country chapters | | |
| Australia | Tobin Meagher & Richard Abraham, <i>Clayton Utz</i> | 16 |
| Brazil | Rogério Fernando Taffarello, <i>Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados</i> | 33 |
| China | Hui Xu, Sean Wu & Esther Zheng, <i>Latham & Watkins</i> | 45 |
| France | Ludovic Malgrain, Grégoire Durand & Jean-Pierre Picca, <i>White & Case LLP</i> | 63 |
| Germany | Dr. Thomas Helck, Karl-Jörg Xylander & Dr. Tine Schauenburg, <i>White & Case LLP</i> | 75 |
| Greece | Ovvdias S. Namias & Vasileios Petropoulos, <i>Ovvdias S. Namias Law Firm</i> | 84 |
| India | Aditya Vikram Bhat & Shantanu Singh, <i>AZB & Partners</i> | 94 |
| Italy | Roberto Pisano, <i>Studio Legale Pisano</i> | 106 |
| Japan | Hui Xu, Catherine E. Palmer & Junyeon Park, <i>Latham & Watkins</i> | 117 |
| Kenya | Nikhil Desai & Elizabeth Kageni, <i>JMiles & Co.</i> | 129 |
| Liechtenstein | Simon Ott & Husmira Jusic, <i>Schurti Partners Attorneys at Law Ltd</i> | 137 |
| Mexico | Luis Mancera & Juan Carlos Peraza, <i>Gonzalez Calvillo</i> | 146 |
| Netherlands | Jantien Dekkers & Niels van der Laan, <i>De Roos & Pen</i> | 154 |
| Romania | Simona Pirtea & Mădălin Enache, <i>ENACHE PIRTEA & Associates S.p.a.r.l.</i> | 164 |
| Switzerland | Marcel Meinhardt & Fadri Lenggenhager, <i>Lenz & Staehelin</i> | 181 |
| Turkey | Burcu Tuzcu Ersin & Burak Baydar, <i>Moroğlu Arseven</i> | 191 |
| Ukraine | Dr. Svitlana Kheda, <i>Sayenko Kharenko</i> | 197 |
| United Arab Emirates | Rebecca Kelly & Laura Jane Shortall, <i>Morgan, Lewis & Bockius LLP</i> | 211 |
| United Kingdom | Jonathan Pickworth & Jo Dimmock, <i>White & Case LLP</i> | 218 |
| USA | Douglas Jensen & Ashley Williams, <i>White & Case LLP</i> | 235 |

PREFACE

We are pleased to present the eighth edition of *Global Legal Insights – Bribery & Corruption*. This book sets out the legal environment in relation to bribery and corruption enforcement in 20 countries and one region worldwide.

This edition sees the addition of new chapters relating to Kenya, Liechtenstein and Turkey.

In addition to addressing the legal position, the authors have sought to identify current trends in enforcement, and anticipated changes to the law and enforcement generally.

Incidents of bribery and corruption often involve conduct and actors in several different jurisdictions. As enforcement activity increases around the world, attention is being focused on particular problems companies face when they seek to resolve cross-border issues. This focus has been disrupted by the coronavirus pandemic which has caused many countries to cut costs and redirect resources.

Coordinating with multiple government agencies can be challenging at the best of times, and can be even more difficult when dealing with bribery and corruption laws that have been amended or have just entered into force. Sometimes a settlement in one jurisdiction can trigger a further investigation in another. The recent Deferred Prosecution Agreement with Airbus SE saw a global settlement between the company and authorities in the US, the UK and France following a joint investigation conducted by authorities in each jurisdiction. This is a good illustration of what cooperation between authorities can achieve. Stewarding a company through these sorts of crises involves not only dealing with today's challenges, but thinking about the next day, the next week, the next month, and beyond, on a global stage.

We are very grateful to each of the authors for the contributions they have made. We hope that the book provides a helpful insight into what has become one of the hottest enforcement topics of current times.

Jonathan Pickworth & Jo Dimmock
White & Case LLP
November 2020

China

Hui Xu, Sean Wu & Esther Zheng
Latham & Watkins LLP

Brief overview of the law and enforcement regime

China has had strong anti-corruption laws for many years. On 1 January 1980, the *Criminal Law of the People's Republic of China* (the “**PRC Criminal Law**”), containing the criminal offences of bribery and corruption, came into effect. The *PRC Criminal Law* later underwent a sea change to modernise and rejuvenate the laws in 1997, with enhanced provisions on bribery and corruption offences.

The laws have now become even more vigorous, with sustained enforcement following the coming to power of President Xi Jinping in 2013. President Xi has made the curbing and elimination of corruption one of his main goals. This has kickstarted the beginning of a new era, bringing a new focus on and appreciation of the strength and breadth of the Chinese anti-corruption laws.

The actions taken by President Xi have been felt even at the highest echelons of power, and the fight against corruption has been continuously making progress. According to the statistics provided in a report by the Procurator-General of the Supreme People's Procuratorate (the “**SPP**”), Zhang Jun, to the National People's Congress in March 2020, 18,585 persons were charged for corruption or dereliction of duty in 2019, almost twice as many as in 2018.¹ Indicative of the seriousness of the anti-corruption campaign, 16 state functionaries at the provincial/ministerial level were investigated in 2019.² In total, 24,234 state functionaries were transferred by a new authority, the State Supervisory Committee of the People's Republic of China (the “**State Supervisory Committee**”), to the SPP and investigated for corruption or dereliction of duty in 2019, an increase of more than 50% compared with 2018.³

As further evidence of China's focus on and commitment to anti-corruption enforcement, the State Supervisory Committee, established in March 2018, has joined the task force of anti-corruption enforcement. According to a January 2020 report issued by the Standing Committee of the Central Commission for Discipline Inspection of the Chinese Communist Party, in 2019 the State Supervisory Committee investigated 45 mid-level state functionaries, and local supervisory agencies investigated approximately 619,000 cases.⁴ In August 2020, the Director of the State Supervisory Committee reported that, between 2014 and June 2020, PRC authorities successfully brought back 7,831 people suspected of committing corruption-related offences from more than 120 countries and regions, and recovered criminal proceeds of RMB 19 billion (USD 2.8 billion).⁵ Notably, more than half of the suspects were brought back and more than half of the proceedings were recovered after the formation of the State Supervisory Committee.⁶

As another example, banquets for representatives of the National People's Congress have given way to self-serve and alcohol-free buffets. This focus is also evidenced by the issuance

of the Administrative Measures on Conferences of Central and State Departments (the “**Measures**”) and the Provisions on Administration of Domestic Official Reception by Party and Government Organs (the “**Provisions**”) in September and December 2013, respectively. The Measures aim at cutting expenditure on official meetings by central government departments. The Provisions contain strict and more detailed requirements and standards on where a business meal may take place and what must be excluded from a business meal. These developments are part of President Xi’s overall efforts to eliminate opportunities for corruption and extravagance in connection with official meetings and receptions.

Notably, the Chinese government actively attended the annual Conference of the States Parties to the United Nations Convention Against Corruption from 2006 to 2019,⁷ where it expounded China’s continuous implementations of the Convention.⁸ This was indicative of the seriousness of the Chinese government’s efforts in its anti-corruption campaign.

Currently, the primary pieces of anti-bribery and anti-corruption legislation in China are: (i) the *PRC Criminal Law*; and (ii) the *PRC Anti-unfair Competition Law* (the “**AUCL**”). The *PRC Criminal Law* applies to both “official bribery” (where government officials and state functionaries are involved) and “commercial bribery” (where private enterprises and/or their staff are involved), whereas the AUCL prohibits “commercial bribery”.

In addition to this primary legislation, various government departments’ administrative rules (such as the *Interim Regulations on Prohibiting Commercial Bribery*) and judicial interpretations issued by the Supreme People’s Court (the “**SPC**”) and the SPP (such as the *Opinion on Issues concerning the Application of Law in the Handling of Criminal Cases of Commercial Bribery* (the “**2008 Commercial Bribery Opinion**”) and, most recently, *Interpretations of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery* (the “**2016 Judicial Interpretation**”)) also contain anti-bribery provisions.

The Communist Party of China (the “**CPC**”) and the State Council have also issued internal disciplinary rules governing corruption or bribery of Communist Party members and Chinese government officials.

The PRC Criminal Law

The *PRC Criminal Law* prohibits: (a) “official bribery”, which applies to a “state functionary” or an “entity”; and (b) “commercial bribery”, which applies to a “non-state functionary”.

The term “state functionary” is broadly defined, and includes civil servants who hold office in state organs, persons who perform public duties in state-owned entities or semi-government bodies, persons who are assigned to non-state-owned entities by state organs or state-owned entities to perform public duties, and persons who otherwise perform public duties according to the law.⁹ The term “entity” includes state organs, state-owned companies, enterprises, institutions, and people’s organisations.¹⁰

The term “non-state functionary” means any person or entity that is not a “state functionary” or an “entity” as defined in the *PRC Criminal Law*. Generally speaking, the criminal sanctions for bribery offences involving state functionaries are more severe than those involving non-state functionaries.

Under the *PRC Criminal Law*, both the offering and receiving of bribes constitute serious criminal offences in China. The offences are usually categorised as “bribe-giving” or “bribe-accepting” offences. The statutory offences are:

- (i) offering of a bribe to a state functionary;¹¹

- (ii) offering of a bribe to a non-state functionary;¹²
- (iii) offering of a bribe to a foreign official or an officer of a public international organisation;¹³
- (iv) offering of a bribe to an entity;¹⁴
- (v) offering of a bribe by an entity;¹⁵
- (vi) offering of a bribe to a close relative of, or any person close to, a current or former state functionary;¹⁶
- (vii) introduction of an opportunity to receive a bribe to a state functionary;¹⁷
- (viii) acceptance of a bribe by a state functionary;¹⁸
- (ix) acceptance of a bribe by a close relative of, or any person close to, a current or former state functionary;¹⁹
- (x) acceptance of a bribe by a non-state functionary;²⁰ and
- (xi) acceptance of a bribe by an entity.²¹

The Ninth Amendment to the *PRC Criminal Law* (the “**Ninth Amendment**”), which was promulgated by the National People’s Congress on 29 August 2015 and came into effect on 1 November 2015, focuses on empowering judicial organs to more effectively combat corruption. In addition to introducing a new offence of “offering a bribe to a close relative of, or any person close to, a current or former state functionary”, these amendments:

- (i) expand the scope of monetary penalties as punishment for bribery offences (see the table setting out the penalties for various offences under the heading “Penalties under the PRC Criminal Law” below);
- (ii) add monetary fines to almost all corruption/bribe-related offences;
- (iii) replace specific monetary thresholds for sentencing considerations with more general standards, such as “relatively large”, “huge”, and “especially huge”; and
- (iv) raise the bar for mitigating circumstances to apply for reduced sentencing.

On 18 April 2016, the SPC and the SPP jointly issued the 2016 Judicial Interpretation on bribery, corruption, and misappropriation of official funds. The 2016 Judicial Interpretation became effective immediately and provides further clarification to the Ninth Amendment regarding corruption and bribery crimes. In principle, the 2016 Judicial Interpretation:

- (i) expands the definition of bribes to include certain intangible benefits;
- (ii) adjusts monetary thresholds for bribery prosecutions and sentencing, including raising the thresholds for bribes involving government officials and non-government officials;
- (iii) clarifies that a thank-you gift after improper benefits are sought still constitutes bribery; and
- (iv) clarifies when leniency may be given and provides additional details on the requirements and benefits of voluntary disclosure.

Jurisdiction of the PRC courts

Foreigners or foreign entities are subject to the same legislation when doing business in China.²² Chinese criminal laws apply to crimes that take place within the territory of China, whether committed by Chinese nationals or foreigners.

Accordingly, the PRC courts would have jurisdiction over:

- (i) bribery and other crimes that are committed by PRC or foreign individuals or entities within China;
- (ii) bribery and other crimes that are committed by PRC or foreign individuals or entities on board PRC ships or PRC aircraft;
- (iii) bribery and other crimes that are committed outside China with the intention of obtaining improper benefits within China;
- (iv) bribery by PRC individuals of foreign officials or officers of a public international organisation outside China;

- (v) bribery and other crimes committed by PRC nationals outside China which are punishable under the *PRC Criminal Law* by a fixed-term imprisonment of three years or longer; and
- (vi) bribery and other crimes committed outside China by PRC state functionaries or military personnel.

“Bribe-giving” offences

The *PRC Criminal Law* generally prohibits an individual or entity from giving “money or property” to a state functionary, a close relative of, or any person close to, a current or former state functionary, a non-state functionary or an entity for the purpose of obtaining “improper benefits”.

Previously, “money or property” included cash and in-kind objects, as well as various “proprietary interests that can be measured by money”, such as the provision of: home decoration; club membership; stored value cards; travel expenses; shares in, or dividends or profits from a company without corresponding investments in the company; payment through gambling; and payment for services that have not been provided, etc.²³

The 2016 Judicial Interpretation reconfirms the definition of bribes to include certain intangible benefits. It defines “money and property” to include money, in-kind objects, and proprietary interests for the crime of bribery and “proprietary interests” include material benefits that can be converted into money, such as home renovation, debt relief, etc., and other benefits that need to be paid using money, such as membership service, travel, etc.²⁴ Previously, the 2008 Commercial Bribery Opinion provided that the amount of such intangible benefits should be calculated on the amount actually paid, whereas the 2016 Judicial Interpretation states that the amount concerned can also be calculated on the amount payable. This calculation is to address situations in which services, travel, or other intangible benefits may have been deliberately undervalued by bribe-givers.

In “bribe-giving” cases, a violation occurs when a party makes a bribe with the intent to seek “improper benefits”, which include: (a) seeking benefits from a state functionary, non-state functionary or entity which would be a breach of law, regulations, administrative rules, or policies for that state functionary, non-state functionary or entity to provide; or (b) requesting a state functionary, non-state functionary or entity to breach the law, regulations, administrative rules or policies to provide assistance or facilitating conditions. For commercial activities related to bidding and government procurement, giving money or property to a relevant state functionary in violation of the principle of fairness to secure a competitive advantage is considered as giving money or property for the purpose of obtaining an “improper benefit”.²⁵ Further, where “money or property” has been offered with an intent to seek “improper benefits”, but the offence of giving a bribe is not consummated because of factors independent of the said intent, such action may nevertheless constitute a criminal attempt offence under PRC law.²⁶

However, a person who gives money or property to a state functionary due to pressure or solicitation from that state functionary, but who receives no improper benefit, shall not be regarded as having committed the crime of offering a bribe.²⁷

As interpreted by the SPP and the SPC, bribery may be distinguished from a gift by reference to the following factors:²⁸

- (i) the circumstances giving rise to the transaction, such as the relationship between the parties, the history of their relationship, and the degree of their interaction;
- (ii) the value of the property involved in the transaction;
- (iii) the reasons, timing, and method of the transaction, and whether the party giving money or property has made any specific request for favour; and

(iv) whether the party receiving money or property has taken advantage of his/her/its position to obtain any benefit for the party giving money or property.

In other words, a person who gives money or property to a state functionary, non-state functionary or entity without requesting any specific favour may not be regarded as offering a bribe.

Effective from 1 May 2011, China extended the scope of commercial bribery to include illicit payments to foreign officials. The *PRC Criminal Law* now also criminalises the “giving of money or property to any foreign official or officer of a public international organisation” for the purpose of seeking “improper commercial benefits”.²⁹ The inclusion of foreign officials in the definition extends the reach of China’s anti-corruption laws beyond the country’s borders, although the distinction between “improper commercial benefits” and “improper benefits” means that the scope of punishable actions involving foreign officials is slightly narrower than those where personnel of Chinese entities, as defined in the *PRC Criminal Law*, are the recipients of bribes.

“Bribe-accepting” offences

State functionaries, close relatives of, or any persons close to state functionaries, non-state functionaries and entities are all prohibited from accepting money or property or making use of their position to provide improper benefits to a person seeking such improper benefits.

In general, “improper benefits” is key to a “bribe-accepting” offence, and evidence must be shown that the party accepting the bribe has used its power or position to seek a benefit for the party giving the bribe, except in the following circumstances:

- (i) any person (whether a state functionary or non-state functionary) who takes advantage of his/her position to accept and keep for themselves a “kickback” or “handling fee” under any circumstances shall also be regarded as having committed the crime of accepting a bribe;³⁰
- (ii) any state functionary who receives bribes exceeding the amount of RMB 30,000 from his/her subordinate and which may affect the performance of his/her duty;³¹ or
- (iii) a promise to seek benefits for others should be regarded as “seeking benefits” for others. If an official clearly knows that a person offering a bribe has a specific request in mind seeking the official’s help, the official will be considered to be “seeking benefits” for others.³² This circumstance is intended to address situations in which officials accept money or property from bribers who do not request help explicitly, but have some unspoken understanding with the officials regarding benefits sought.

In addition, the provision of money or property does not have to occur sequentially prior to “seeking benefits” for others.³³ The 2016 Judicial Interpretation clarifies that bribes include payments given after benefits are received; i.e., a thank-you gift received after benefits are sought or received still constitutes bribery. Hence, if nothing has been requested from an official in the performance of his duties but that official later accepts money or property from others based on such performance, that official will be considered to be “seeking benefits for others”.

Monetary thresholds for enforcement

As mentioned above, the Ninth Amendment replaced the then-existing monetary thresholds for commencing an investigation into offences with more general standards such as “relatively large”, “huge”, and “especially huge”.³⁴ The 2016 Judicial Interpretation re-establishes the monetary thresholds and standards for bribery-related prosecution and sentencing.³⁵ In essence, the minimum bar for most prosecutions of offering bribes to state functionaries has been raised from RMB 5,000 to RMB 30,000, and that of offering bribes to non-state functionaries has been raised from RMB 5,000 to RMB 60,000.³⁶ A summary comparing the previous monetary thresholds and the new ones is set out as follows:

| Offence | Previous Thresholds | New Threshold |
|---|---|--|
| <i>“Bribe-giving” cases</i> | | |
| Offering of a bribe to a state functionary | RMB 10,000 | RMB 30,000, or RMB 10,000 if it also has an aggregate factor specified in Art. 7 of the 2016 Judicial Interpretation |
| Offering of a bribe to a non-state functionary | RMB 100,000 if the person offering the bribe is an individual, and RMB 200,000 where the person offering the bribe is an entity | RMB 60,000 if the person offering the bribe is an individual, or RMB 20,000 if it also has an aggregate factor specified in Art. 7 of the 2016 Judicial Interpretation |
| Offering of a bribe to an entity | If an individual offers bribes to an entity, the threshold is RMB 100,000, or less than RMB 100,000 when it also has an aggregate factor specified in the SPP 2000 Opinions on Prosecution Thresholds of Bribe-giving Offences (the “SPP 2000 Prosecution Standards”). If an entity offers bribes to an entity, the threshold is RMB 200,000, or RMB 100,000 when it also has an aggregate factor specified in the SPP 2000 Prosecution Standards | Not applicable |
| Offering of a bribe by an entity | RMB 200,000, or RMB 100,000 when it also has an aggregate factor specified in the SPP 2000 Prosecution Standards | RMB 200,000 if the offer is made to an individual who can wield influence over others |
| Offering of a bribe to a foreign official or an officer of a public international organisation | Not applicable | RMB 60,000 if the person offering the bribe is an individual, or RMB 20,000 if it also has an aggregate factor specified in Art. 7 of the 2016 Judicial Interpretation |
| Offering of a bribe to a close relative of, or any person close to, a current or former state functionary | Not applicable | RMB 30,000, or RMB 10,000 if it also has an aggregate factor specified in Art. 7 of the 2016 Judicial Interpretation |
| Introduction to a state functionary of the opportunity to receive a bribe | RMB 20,000 if the introducer is an individual or RMB 200,000 if the introducer is an entity | Not applicable |
| Acceptance of a bribe by a state functionary | RMB 5,000 | RMB 30,000, or RMB 10,000, if it also has an aggregate factor specified in Art. 1 of the 2016 Judicial Interpretation |

| Offence | Previous Thresholds | New Threshold |
|---|---|--|
| Acceptance of a bribe by a non-state functionary | RMB 5,000 | RMB 60,000, or RMB 20,000 if it also has an aggregate factor specified in Art. 1 of the 2016 Judicial Interpretation |
| Acceptance of a bribe by an entity | RMB 100,000, or less than RMB 100,000 when it also has an aggregate factor specified in the SPC 1999 Interpretation on Prosecution Thresholds for Cases Directly Handled and Initiated by the Procuratorate | Not applicable |
| Acceptance of a bribe by a close relative of, or any person close to, a current or former state functionary | Not applicable | RMB 30,000, or RMB 10,000 if it also has an aggregate factor specified in Art. 1 of the 2016 Judicial Interpretation |

Penalties under the PRC Criminal Law

Criminal penalties vary depending on whether the party offering or accepting a bribe is an individual or an entity and, if the party is an individual, whether he is a state functionary or non-state functionary. As explained above, the criminal sanctions for bribery offences involving state functionaries are generally more severe than those involving non-state functionaries.

If the individual has received more than one bribe, the amount of each bribe will be aggregated for the purpose of determining the appropriate penalty. The table below sets out the factors taken into consideration and the corresponding penalties for the relevant offences under the legislation.

| Offence | Relevant Factors | Penalty |
|--|--|--|
| <i>“Bribe-giving” cases</i> | | |
| Natural person offering a bribe to a state functionary | If the total bribes exceed RMB 30,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor | Criminal detention, or up to five years' imprisonment, and monetary penalties |
| | If the total bribes range between RMB 1,000,000 to RMB 5,000,000, or the total bribes range between RMB 500,000 and RMB 1,000,000 if it also has an aggravating factor | Five to 10 years' imprisonment and monetary penalties |
| | If the total bribes exceed RMB 5,000,000, or the total bribes range between RMB 2,500,000 and RMB 5,000,000 if it also has an aggravating factor | 10 years' to life imprisonment, in combination with monetary penalties, or confiscation of property |
| | If the offender volunteers information on the bribery before prosecution | A punishment may be waived or lessened from the stipulated range, or a lighter punishment within the stipulated range may be imposed |

| Offence | Relevant Factors | Penalty |
|--|--|--|
| Natural person offering a bribe to a close relative of, or any person close to, a current or former state functionary | If the total bribes exceed RMB 60,000, or the total bribes range between RMB 20,000 and RMB 60,000 if it also has an aggravating factor | Criminal detention, or up to three years' imprisonment, and monetary penalties |
| | If the total bribes range between RMB 1,000,000 and RMB 5,000,000, or the total bribes range between RMB 500,000 and RMB 1,000,000 if it also has an aggravating factor | Three to seven years' imprisonment, and monetary penalties |
| | If the total bribes exceed RMB 30,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor | Seven to 10 years' imprisonment, and monetary penalties |
| Natural person offering a bribe to a non-state functionary or to a foreign functionary or to an official of an international public organisation | If the total bribes exceed RMB 60,000, or the total bribes range between RMB 20,000 and RMB 60,000 if it also has an aggravating factor | Criminal detention, or up to three years' imprisonment, and monetary penalties |
| | If the total bribe ranges between RMB 2,000,000 to RMB 10,000,000, or the total bribes range between RMB 1,000,000 and RMB 2,000,000 if it also has an aggravating factor | Three to 10 years' imprisonment and monetary penalties |
| Natural person offering a bribe to an entity | Not applicable | Criminal detention or up to three years' imprisonment, plus monetary penalties |
| Entity offering a bribe to a state functionary | In respect of such entity | Imposition of a fine |
| | In respect of the employees of such entity who are directly in charge of the matter in question and the employees who are directly responsible for the crime (collectively, "Responsible Personnel") | Criminal detention or up to five years' imprisonment, plus monetary penalties |
| Entity offering a bribe to a non-state functionary | In respect of such entity | Imposition of a fine |
| | In respect of its Responsible Personnel | Refer to the sentence guidance regarding the offence of a "natural person offering a bribe to a non-state functionary or to a foreign functionary or to an official of an international public organisation" |
| Entity offering a bribe to another entity | In respect of such entity | Imposition of a fine |
| | In respect of its Responsible Personnel | Refer to the sentence guidance regarding the offence of a "natural person offering a bribe to an entity" |
| Introducing an opportunity to a state functionary to receive a bribe | If the offender volunteers information on the bribery before prosecution | Criminal detention, or up to three years' imprisonment, and monetary penalties |
| | | A punishment may be waived, or reduced from the stipulated range |

| Offence | Relevant Factors | Penalty |
|--|---|---|
| State functionary accepting a bribe | If the total bribes range between RMB 30,000 and RMB 200,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor | Criminal detention or up to three years' imprisonment and monetary penalties |
| | If the total bribes range between RMB 200,000 and RMB 3,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor | Imprisonment for between three and 10 years, monetary penalties or confiscation of property |
| | If the total bribes exceed RMB 3,000,000, or the total bribes range between RMB 1,500,000 and RMB 3,000,000 if it also has an aggravating factor | 10 years' to life imprisonment or the death penalty, and monetary penalties or confiscation of property |
| | A bribe involving an extremely large monetary amount and serious damage to the interests of the state and the people | Life imprisonment or the death penalty and confiscation of property |
| Non-state functionary accepting a bribe | If the total bribes range between RMB 60,000 to RMB 400,000, or the total bribes range between RMB 20,000 and RMB 60,000 if it also has an aggravating factor | Criminal detention, or a fixed-term imprisonment of up to five years depending on the amount involved |
| | If the total bribes range between RMB 400,000 to RMB 6,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor | Fixed-term imprisonment of more than five years, and/or confiscation of property |
| Entity accepting a bribe | In respect of such entity | Imposition of a fine |
| | In respect of its Responsible Personnel | Criminal detention, or up to five years of fixed-term imprisonment |
| A close relative of, or any person close to, a current or former state functionary accepting a bribe | If the total bribes range between RMB 30,000 to RMB 200,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor | Criminal detention or up to three years' imprisonment and monetary penalties |
| | If the total bribes range between RMB 200,000 and RMB 3,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor | Imprisonment for between three and seven years, and monetary penalties |
| | If the total bribes exceed RMB 3,000,000, or the total bribes range between RMB 1,500,000 and RMB 3,000,000 if it also has an aggravating factor | Imprisonment for between seven and 10 years, monetary penalties or confiscation of property |

“Aggravating factors” affecting prosecution and sentence

In the last decade, the SPC and the SPP, either jointly or individually, published several judicial interpretations to give further clarification and more concrete guidance for lower courts and procurators to follow when they prosecute and adjudicate on bribery and corruption-related crimes. The 2016 Judicial Interpretation, which is the latest judicial interpretation from the SPC and the SPP, enumerates the “aggregating factors” that shall be taken into account in connection with the prosecution and sentencing of individuals offering or accepting bribes.

The “aggregating factors” specified in Art. 7 of the 2016 Judicial Interpretation apply to individuals who committed the offences of offering bribes by:

- (i) offering bribes to three or more persons;
- (ii) using illegal gains to offer bribes;
- (iii) seeking promotion or adjustment of positions through offering bribes;
- (iv) offering bribes to any state functionary who has supervisory and administrative responsibilities in terms of food, drugs, safe production, environmental protection, etc., to conduct illegal activities;
- (v) offering bribes to any judicial functionary to influence judicial justice; and/or
- (vi) causing economic losses in the amount of no less than RMB 500,000 and less than RMB 1,000,000.

Whereas the “aggregating factors” specified in Art. 1 of the 2016 Judicial Interpretation apply to individuals who committed the offences of accepting bribes by:

- (i) having received party or administrative disciplinary sections due to graft, taking bribes, or misappropriating public funds;
- (ii) having been subject to criminal prosecution for international crimes;
- (iii) using grafted (i.e., embezzled) funds and goods for illegal activities;
- (iv) refusing to explain the whereabouts of grafted (i.e., embezzled) funds and goods or to cooperate with recovery work, resulting in the funds and goods being unable to be recovered;
- (v) causing adverse effects or other serious consequences;
- (vi) asking for bribes multiple times;
- (vii) seeking illegitimate benefits for others, resulting in loss to public property, the interests of the state, and the people; and/or
- (viii) seeking promotion or adjustment of positions for others.

With respect to bribes accepted or offered, the SPP in 2000 issued its opinion specifying the prosecution thresholds. The threshold of prosecuting entities for accepting or offering bribes is lowered from RMB 200,000 to RMB 100,000 if there is one of the following enumerated “aggregative factors”:³⁷

- (i) to gain unlawful benefits through bribery;
- (ii) bribery of more than three persons;
- (iii) bribery of Party or government leaders, judicial officers, and administrative enforcement officers; or
- (iv) to cause significant damage to the state or the people.

Mitigating factors

Pursuant to the Ninth Amendment and the 2016 Judicial Interpretation, a person who offers or pays a bribe who voluntarily confesses to his or her crime(s) before being prosecuted may receive a mitigated sentence or a lighter sentence within the stipulated range. Further, a person who offers or pays a bribe may be exempted from prosecution or receive a mitigated sentence if he/she plays a key role in resolving a significant case, or performs meritorious deeds.³⁸

Statute of limitations

The limitation periods for the prosecution of a crime are:³⁹

- (i) five years if the maximum penalty for that crime is a term of imprisonment of less than five years;
- (ii) 10 years if the maximum penalty for that crime is a term of imprisonment of between five and 10 years;

- (iii) 15 years if the maximum penalty for that crime is a term of imprisonment of no less than 10 years; and
- (iv) 20 years (which may be extended on approval by the SPP) if the maximum penalty for that crime is life imprisonment or death.

The AUCL

A major legislative change in recent years was the revision of the AUCL. The previous version of the AUCL was released in 1993. Over the course of the past 24 years, the AUCL has played an essential role in encouraging and protecting fair commercial competition in China. However, economic development has necessitated revisions to the legislation.

On 4 November 2017, the 30th Session of the Standing Committee of the Twelfth National People's Congress passed important amendments to the AUCL, and the new AUCL took effect on 1 January 2018. In April 2019, the AUCL's articles on business secrets were amended.

The definition of commercial bribery under the current AUCL

The AUCL is intended to regulate business activities which may lead to unfair competition. It prohibits, *inter alia*, "commercial bribery", which is defined as follows:⁴⁰

- (i) the use by a business operator;
- (ii) of the means of giving money, property or other benefits;
- (iii) to four categories of recipients;
- (iv) in order to obtain business transaction opportunities or other competitive advantages.

Compared with the previous version of the AUCL, the current AUCL clarifies the definition of commercial bribery by listing three categories of entities or individuals who could be the recipients of bribes; these categories include: (1) an employee of the other party to a transaction; (2) the entity or individual authorised by the other party to a transaction to handle relevant affairs; and (3) an entity or an individual that uses power or influence to affect a transaction.⁴¹

A significant change in the current AUCL, compared to the previous version, is that the transaction counterparty itself has been excluded from the categories of potential bribe recipients, which effectively narrows the scope of commercial bribery. Notably, while individual employees of transaction counterparties are included in the categories of potential bribe recipients, transaction counterparties themselves are excluded. On this basis, one of the potential interpretations could be that beneficial payments made between the two transactional parties, such as transactional rebates, may be excluded from the scope of commercial bribery.

The broad scope of prohibition

The term "business operators" is broadly defined as legal persons, or other economic organisations or individuals, who deal with commercial businesses or profitable services.

Pursuant to the Interim Provisions on Prohibition of Commercial Bribery issued by the State Administration for Industry and Commerce (the "**Anti-Commercial Bribery Provisions**"), "property" means cash and tangible assets, and includes promotional fees, advertising fees, sponsorship, research and development fees, consultancy fees, commissions, and expense reimbursements paid in order to see or buy goods.⁴² The term "other benefits" can include things such as the provision of tours and travel within China or abroad.⁴³

Special provision for commercial bribery conducted by employees under the current AUCL

The previous version of the AUCL did not specifically address whether unauthorised conduct of commercial bribery by an employee is attributable to the business operator. In

practice, however, the authorities typically regarded any commercial bribery carried out by an employee as an instance of commercial bribery carried out by the individual's employer. The current AUCL makes it clear that bribery committed by an employee of a business is deemed to have been committed by the business.⁴⁴ However, the current AUCL provides an exception that if the business has evidence that the act of the employee is irrelevant to seeking a transaction opportunity or competitive edge for the business, the business will not be liable.⁴⁵ The burden is on the employer to provide such evidence.

Safe harbour provisions for the provision of rebates and commissions

The current AUCL retains the safe harbour provisions which allow a business to explicitly pay a discount to the other party to the transaction, or pay a commission to an intermediary, as long as both parties faithfully make a record in their accountancy book.

It is important to note that under the Law of the PRC on Donations for Public Welfare (the "Donation Law"), donations are to be made voluntarily and without charge. Any monetary or goods contributions that are made as donations, but with the commercial purpose of seeking economic benefits or transaction opportunities, will be seen as commercial bribes.⁴⁶ The Anti-Commercial Bribery Provisions also provide that business operators shall not provide gifts in the form of cash or articles to counterparties, except for small-amount advertising gifts in accordance with business practices.⁴⁷

Penalties under the current AUCL

There are three levels of penalties provided by the current AUCL. If an administrative offence of commercial bribery is found to have taken place, but which does not constitute a criminal offence, the authorities will confiscate illegal gains resulting from the offensive conduct, and, depending on the severity of the conduct, impose a fine of between RMB 100,000 and RMB 3,000,000. Further, the authorities are empowered to revoke the business licence of the business operator in question if the situation is sufficiently serious.⁴⁸ Whether an act of commercial bribery is considered sufficiently serious will be determined on a case-by-case basis.

Furthermore, according to Art. 26 of the current AUCL, where a business receives an administrative penalty for engaging in commercial bribery, the supervision and inspection authority will record the penalty in the business operator's credit record as a matter of public record.

Where the violation in question is minor, the business operator will not face administrative penalties if it corrects such misconduct in a prompt and timely fashion. This change, introduced in the current AUCL, appears to address concerns from the business community that the previous version of the AUCL does not credit business operators for maintaining effective compliance programmes and/or taking steps to discover and rectify misconduct.

The current AUCL additionally provides that business operators that carry out commercial bribery and cause damage to third parties are liable to pay compensation. Art. 17 of the current AUCL clarifies that the amount of compensation payable is determined as per the actual loss of the business incurred for the infringement or if it is difficult to calculate the actual loss, as per the benefits acquired by the tortfeasor from the infringement. Moreover, the amount of compensation shall also include reasonable disbursements made by the business to prevent the infringement.

Law and policy relating to issues such as facilitation payments and hospitality

There is no exception under Chinese laws for facilitation payments or hospitality as there is under the US Foreign Corrupt Practices Act of 1977 (the "FCPA"). Therefore, to

determine whether facilitation payments and hospitality constitute a violation or offence in China, it is essential to determine the “money or property” for the purpose of obtaining “improper benefits” under the *PRC Criminal Law* and “commercial bribery” under the AUCL, as discussed above.

Key issues relating to investigation, decision-making and enforcement procedures

The risks discussed above are global, and companies operating in China and in the global environment should implement policies and procedures to help prevent violations and remediate them as soon as any potential issue surfaces. Such policies and procedures should include elements of prevention, investigation and remediation.

Prevention – effective compliance programme

An effective compliance programme, which incorporates tough anti-bribery policies and comprehensive internal control measures reflecting a strong stance against corruption from the board of directors and senior management, can lead to early identification of corruption risks. Such a programme should focus on the company’s policies and procedures with respect to gifts, entertainment and other hospitality, and on dealings with third-party representatives and business partners, who should undergo due diligence to ensure compliance, sign anti-corruption representations, and be subject to anti-corruption training as appropriate.

A compliance or audit function that periodically reviews company practices for their risk of corruption, and a group that oversees the implementation and maintenance of the anti-corruption programme, are both critical to early detection and prevention. Confidential reporting channels – for example, a private hotline, through which employees can feel safe to report issues – has also proven effective in detecting risks. Such reporting avenues need to be accompanied with assurances that no retaliation will result from reporting corruption. Appropriate training for all levels of the organisation, as well as positive incentives that promote compliance with company policy and the law, should be prescribed. Periodically updating the programme is vital to ensure it keeps pace with continuing developments in anti-bribery laws and regulations in China.

Investigation – quick and adequate response to corruption allegations

Corporations must be prepared to conduct internal investigations of corruption allegations, whether raised because of the compliance programme or raised by enforcement agencies, the media, or whistle-blowers.

It is important and prudent to carefully choose the body responsible for conducting any internal investigation. There may be instances where an independent investigation is required. Allegations involving senior management, or investigations requiring specialist skills, should ideally be handled by independent, external counsel.

The designated investigative body should be properly resourced and the scope of the investigation should be proportionate to the scope of the allegations. Any investigation in China should be conducted in accordance with Chinese privacy, labour and other local laws. Attorney-client privilege should also be maintained to provide confidentiality and protect against retaliation.

Remediation – appropriate corrective measures

Should an internal investigation corroborate corruption allegations, corporations must implement appropriate and adequate remedial measures with appropriate oversight by the board of directors.

Corporations should examine and correct gaps identified in the existing corporate policies and compliance programmes. Corporations are advised to assess whether the identified

issues affect its internal controls over financial reporting, and take appropriate remedial steps accordingly.

Consideration should also be given to whether the identified issues should be disclosed to authorities, having regard to the improper conduct and practices identified, the company's legal obligations, and disclosure obligations under local and/or foreign laws.

Conclusion

Anti-corruption enforcement is increasingly global in scope. As summarised, China has been aggressively enforcing its own anti-corruption laws on a sustained basis. China's approach to enforcement has and will continue to mean vigorous multinational anti-corruption enforcement, targeting domestic and foreign companies and individuals.

With adequate preparation and resources, companies can effectively avoid costly risks. Corporations with business in China should have appropriate preventative measures, well-functioning investigation procedures and, if necessary, remediation measures so as to mitigate any potential financial and reputational risks. These measures will help to minimise, if not eliminate, the risks that employees fall foul of as a result of China's anti-corruption measures, as well as anti-corruption laws of other jurisdictions. These risks will not go away without the right corporate attitude, resources and attention, and vigilance is key to protecting companies and individuals in this environment of increasing enforcement.

Overview of cross-border issues

Foreign entities operating in China face the potential of being investigated and charged in connection with this aforementioned sustained anti-corruption campaign. In the summer of 2013, GlaxoSmithKline ("GSK"), a British pharmaceutical company listed on both the London and New York stock exchanges, became the focus of the biggest corruption scandal in China involving a foreign company. The GSK chain of events was set in motion by two chains of e-mails accusing GSK of bribing doctors in order to promote GSK's medical products.⁴⁹ In September 2014, GSK was found by the Changsha Intermediate People's Court in Hunan Province, China to have offered money or property to non-government personnel in order to obtain improper commercial gains, and was found guilty of bribing non-government personnel. As a result of the Court's verdict, GSK was ordered to pay a fine of RMB 3 billion (GBP 297 million) to the Chinese government.⁵⁰ Five former GSK senior executives were sentenced to suspended imprisonment of two to three years.⁵¹

Following the GSK bribery investigation, the State Administration of Industry and Commerce stated that local Administrations of Industry and Commerce should pay more attention to industries affecting the public interest (including the pharmaceutical industry), strengthen their supervision over the bidding activities carried out by industry players, and conduct thorough investigations against any commercial bribery arising from the bidding process.⁵² A number of foreign drug manufacturers – UCB, Novartis, AstraZeneca PLC, Pfizer, Bayer AG, and Roche Holding AG – were subsequently visited by the Chinese authorities.⁵³

Recently, further instances of FCPA enforcement have been announced by the Department of Justice and the Securities and Exchange Commission in the technology and manufacturing industries, in addition to the traditional FCPA focus areas such as pharmaceutical and medical devices. Technology and manufacturing industries (especially automobile electronics manufacturing) will also be likely areas of anti-corruption focus for China.

Cross-border issues have become increasingly complicated and challenging since China enacted the *PRC International Criminal Judicial Assistance Law* in October 2018, and amended Art. 177 of the *PRC Security Law* in December 2019. The two pieces of legislation have been serving as “blocking” statutes that restrain foreign countries from exercising extraterritorial jurisdictions over bribery and corruption inside China. Special approvals from the relevant Chinese authorities are now required before any entity or individual within the territory of China can provide evidence or other assistance to any foreign criminal proceedings or investigation into the violation of securities laws.

Another major problem regarding cross-border bribery and corruption issues lies in the jurisdiction of the PRC courts. As discussed, foreigners or foreign entities are subject to the same legislation when doing business in China.⁵⁴

Corporate liability for bribery and corruption offences

The PRC Criminal Law

| Offence | Thresholds | New Threshold |
|--|---|--|
| <i>“Bribe-giving” cases</i> | | |
| Entity offering a bribe to a state functionary | RMB 200,000 if the offer is made to an individual who can wield influence over others | Imposition of a fine on the entity Criminal detention or up to five years’ imprisonment, plus monetary penalties, for the employees of such entity who are directly in charge of the matter in question and the employees who are directly responsible for the crime (collectively, “ Responsible Personnel ”) |
| Entity offering a bribe to a non-state functionary | RMB 200,000 | Imposition of a fine on the entity For Responsible Personnel, refer to the sentence guidance regarding the offence of a “natural person offering a bribe to a non-state functionary or to a foreign functionary or to an official of an international public organisation” |
| Entity offering a bribe to another entity | RMB 200,000, or RMB 100,000 when it also has an aggregate factor specified in the SPP 2000 Prosecution Standards | Imposition of a fine on the entity For Responsible Personnel, refer to the sentence guidance regarding the offence of a “natural person offering a bribe to an entity” |
| Acceptance of a bribe by an entity | RMB 100,000, or less than RMB 100,000 when it also has an aggregate factor specified in the SPC 1999 Interpretation on Prosecution Thresholds for Cases Directly Handled and Initiated by the Procuratorate | Imposition of a fine on the entity For Responsible Personnel, criminal detention or up to three years’ imprisonment and monetary penalties |

The reform of the State Administration for Market Regulation

On 10 April 2018, the State Administration for Market Regulation (“**SAMR**”) was officially established. SAMR is a combined government agency of: the State Administration for Industry and Commerce; the State Administration of Quality Supervision, Inspection and

Quarantine; the State Food and Drug Administration; the Price Supervision and Anti-Monopoly Bureau under the National Development and Reform Commission; the Anti-Monopoly Bureau under the Ministry of Commerce; and the Anti-Monopoly Commission of the State Council.⁵⁵

Since its establishment, SAMR has launched enforcement programmes to implement the amended AUCL that cover various industries, including healthcare⁵⁶ and e-commerce.⁵⁷ In November 2019, SAMR announced that in a “100-day Enforcement Program” for the healthcare industry, which commenced in January 2019, it had worked with 12 other agencies and investigated 28,287 cases involving a total value of RMB 13.7 billion, resulting in total fines of RMB 960 million.⁵⁸

Notably, SAMR, along with eight other agencies, issued the *Notice on the Issuance of Main Working Points regarding the Correction of Malpractices in the Field of Pharmaceutical and Medical Industry*. The notice, enacted in May 2020,⁵⁹ indicates that SAMR and other agencies will further enhance enforcement actions in the healthcare and pharmaceutical industries. Industry experts commented that continuously intensive enforcement of this anti-corruption campaign would help to promote the reform and development of the PRC healthcare system.⁶⁰

Local market administration authorities have proactively taken enforcement actions under the anti-bribery provisions of the amended AUCL. The Shanghai Market Administration Bureau, for example, fined companies in 47 commercial bribery cases in 2019, with an average fine of RMB 194,468, which was a significant increase compared to 2018 as a result of the revised AUCL.⁶¹

* * *

Endnotes

1. https://www.spp.gov.cn/spp/gzbg/202006/t20200601_463798.shtml.
2. *Id.*
3. *Id.*
4. http://www.ccdi.gov.cn/xxgk/hyzl/202002/t20200224_212152.html.
5. http://www.ccdi.gov.cn/toutiao/202008/t20200810_223555.html.
6. *Id.*
7. See “Documentation” – “Final List of Participants” for the eight sessions at <https://www.unodc.org/unodc/en/corruption/COSP/conference-of-the-states-parties.html>.
8. <https://www.fmprc.gov.cn/ce/cgvienna/chn/hyyfy/t1110120.htm>. <https://www.fmprc.gov.cn/ce/cgvienna/chn/hyyfy/t1509495.htm>. <https://www.fmprc.gov.cn/ce/cgvienna/chn/hyyfy/t1727580.htm>.
9. Article 93 of the *PRC Criminal Law*.
10. Article 391 of the *PRC Criminal Law*.
11. Article 389 of the *PRC Criminal Law*.
12. Article 164 of the *PRC Criminal Law*.
13. *Id.*
14. Article 391 of the *PRC Criminal Law*.
15. Article 393 of the *PRC Criminal Law*.
16. Article 391 of the *PRC Criminal Law*.
17. Article 392 of the *PRC Criminal Law*.
18. Article 385 of the *PRC Criminal Law*.

19. Article 388 of the *PRC Criminal Law*.
20. Article 163 of the *PRC Criminal Law*.
21. Article 387 of the *PRC Criminal Law*.
22. Article 6 of the *PRC Criminal Law*.
23. Article 7 of the 2008 Commercial Bribery Opinion.
24. Article 12 of the 2016 Judicial Interpretation.
25. Article 9 of the 2008 Commercial Bribery Opinion.
26. Article 23 of the *PRC Criminal Law*.
27. Article 389 of the *PRC Criminal Law*.
28. Article 10 of the 2008 Commercial Bribery Opinion.
29. Article 164 of the *PRC Criminal Law*.
30. Article 385 of the *PRC Criminal Law*.
31. Article 13 of the 2016 Judicial Interpretation.
32. *Id.*
33. *Id.*
34. Article 383 of the *PRC Criminal Law*.
35. Articles 1 and 7 of the 2016 Judicial Interpretation.
36. *Id.*
37. Articles 6 and 8 of the SPP 2000 Prosecution Standards.
38. Article 390 of the *PRC Criminal Law* and Article 14 of the 2016 Judicial Interpretation.
39. Article 87 of the *PRC Criminal Law*.
40. Article 7 of the AUCL.
41. *Id.*
42. Article 2 of the Anti-Commercial Bribery Provisions.
43. *Id.*
44. Article 7 of the AUCL.
45. *Id.*
46. Article 4 of the Donation Law.
47. Article 8 of the Anti-Commercial Bribery Provisions.
48. Article 19 of the AUCL.
49. <http://www.businessinsider.com/mark-reilly-gsk-sex-video-and-china-bribery-allegations-2014-6>.
50. <https://www.gsk.com/en-gb/media/press-releases/gsk-china-investigation-outcome>.
51. <http://english.caixin.com/2014-09-22/100731794.html>.
52. “SAIC: Focused Investigation of Commercial Bribery arising from Drug Sales”, *China Business News*, 21 August 2013.
53. <http://www.biodiscover.com/news/politics/105133.html>.
54. Article 6 of the *PRC Criminal Law*.
55. http://www.xinhuanet.com/english/2018-04/10/c_137100989.htm.
56. http://www.samr.gov.cn/jjj/fbzdjz/201911/t20191108_308293.html.
57. http://www.samr.gov.cn/jjj/fbzdjz/201906/t20190624_302695.html.
58. http://www.samr.gov.cn/jjj/fbzdjz/201911/t20191108_308293.html.
59. <http://politics.people.com.cn/n1/2020/0609/c1001-31740462.html>.
60. <https://www.chinacourt.org/article/detail/2020/08/id/5390263.shtml>.
61. <https://www.kwm.com/zh/cn/knowledge/insights/review-of-shanghai-anti-commercial-bribery-20200123>.



Hui Xu

Tel: +86 10 5965 7006 / Email: hui.xu@lw.com

Hui Xu is a partner in the Beijing office of Latham & Watkins and Chair of the Asia Litigation & Trial Department. Recognised as a Compliance MVP by *Law360* 2020, Mr. Xu's practice focuses on advising clients in multijurisdictional white-collar investigations and litigation in the areas of FCPA and Chinese bribery laws, data privacy, export controls and sanctions, and anti-money laundering. Mr. Xu also assists clients in presenting findings to, and negotiating settlements with, regulators in the US and China. Mr. Xu has over a decade of experience in conducting sensitive internal investigations for multinational companies, performing compliance diligence for complex transactions, undertaking risk assessments for companies operating in high-risk regions, and designing global compliance programmes.

Mr. Xu is regularly invited by clients to present bilingual compliance training for senior executives and legal compliance functions, and to provide advice on compliance with the FCPA and Chinese bribery laws. His expertise spans a number of sectors including pharmaceutical, life sciences, high-tech, financial institutions, media/entertainment, manufacturing, and retail and trade associations.



Sean Wu

Tel: +86 21 6101 6013 / Email: sean.wu@lw.com

Sean Wu is an associate in the Shanghai office of Latham & Watkins and a member of the Litigation & Trial Department. Mr. Wu advises clients on government investigations, internal investigations, due diligence, and compliance programmes, in connection with security fraud, fraud, professional standards, FCPA, anti-corruption/anti-bribery, sanctions, and other trade compliance matters in China. Mr. Wu has also advised companies in various cross-border litigations. Mr. Wu has represented and conducted internal investigations, as well as advised in cross-border litigations, for multinational clients across different industries, including e-commerce, internet and technology, pharmaceutical, medical, finance, manufacturing, shipping, and consulting.



Esther Zheng

Tel: +86 21 6101 6036 / Email: esther.zheng@lw.com

Esther Zheng is a consultant in the Shanghai office of Latham & Watkins and a member of the Litigation & Trial Department. Ms. Zheng's practice focuses on advising clients in white-collar investigations in the areas of FCPA and Chinese bribery laws, internal investigations of export controls and financial sanctions, as well as the compliance of data privacy, network security and antitrust. Ms. Zheng also assists clients in performing compliance due diligence for transactions, designing and establishing compliance programmes, updating internal policies, and preparing bilingual compliance training materials for senior executives and legal compliance functions. Her expertise spans various industry sectors including pharmaceutical, energy, life sciences, financial institutions, e-commerce, telecommunications and manufacturing.

Latham & Watkins LLP

18/F, One Exchange Square, 8 Connaught Place, Central, Hong Kong

Tel: +852 2912 2500 / URL: www.lw.com

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

AI, Machine Learning & Big Data

Banking Regulation

Blockchain & Cryptocurrency

Cartels

Corporate Tax

Employment & Labour Law

Energy

Fintech

Fund Finance

Initial Public Offerings

International Arbitration

Litigation & Dispute Resolution

Merger Control

Mergers & Acquisitions

Pricing & Reimbursement