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China

Catherine E. Palmer & Viola Jing
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Introduction

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 was further amended in 1997, with enhanced provisions on bribery and corruption offences.

The laws have now become 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 kick-started the beginning of a new era, which has brought 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 most highest echelons of power. According to the statistics provided in a speech given by the head of the Supreme People’s Procuratorate, Cao Jianming, to the National People’s Congress in March 2014, there were almost 40,000 cases and more than 50,000 persons under investigation for corruption or dereliction of duty, representing an increase of around 10% and 8% respectively. Indicative of the seriousness of the anti-corruption campaign, 2,871 state functionaries above the county level, including 253 state functionaries at the bureau level and eight state functionaries at the provincial level, were investigated in these cases. 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. And 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.

It is also noteworthy that the Chinese government invited the State Parties under the United Nations Convention Against Corruption to inspect China’s compliance with the treaty during the review period from 2010 to 2015. This is indicative of the seriousness of the Chinese government’s efforts in its anti-corruption campaign.

Recent developments show that foreign entities operating in China also face the potential
of being investigated and charged in connection with this 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.¹ GSK allegedly made use of certain sham travel agencies to facilitate its illegal sales practices. The total amount of money involved has been estimated to more than RMB 3bn.² Four GSK executives suspected of corruption, along with 46 other individuals, have been arrested to date. As of May 2014, the investigation had been completed and the case was moved to the prosecution stage.³ In September 2014, GSK was fined RMB 3bn by the Changsha Intermediate People’s Court for bribing non-state functionaries in China. It was found that GSK had offered money or property to non-state functionaries for the purpose of obtaining improper commercial benefits. Mark Reilly (former head of GSK China Operations) was given a three-year suspended sentence and a deportation order, and four Chinese GSK employees were also given suspended sentences.⁴ 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.⁵ Four other foreign drug manufacturers – AstraZeneca PLC, Bayer AG and Sanofi SA, and Eli Lilly – were subsequently visited by the Chinese authorities.⁶ Recently, in May 2014, the authorities also visited Roche Holding AG’s offices in Hangzhou.⁷ The primary pieces of anti-bribery and anti-corruption legislation in China are: (i) the PRC Criminal Law; and (ii) the PRC Law Against Unfair Competition (the “PRC Competition Law”). 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 PRC Competition Law 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 and Supreme People’s Procuratorate (such as the Opinion on Issues concerning the Application of Law in the Handling of Criminal Cases of Commercial Bribery) also contain anti-corruption provisions. The Communist Party of China 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. The term “entity” includes state organs, state-owned companies, enterprises, institutions, and people’s organisations. 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;
(ii) offering of a bribe to a non-state functionary;
(iii) offering of a bribe to an entity;
(iv) offering of a bribe by an entity;
(v) introduction to a state functionary of an opportunity to receive a bribe;
(vi) acceptance of a bribe by a state functionary;
(vii) acceptance of a bribe by a non-state functionary; and
(viii) acceptance of a bribe by an entity.

The “bribe-giving” offence

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

“Money or property” includes cash, 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; payment for services that have not been provided, etc.

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 giving money or property for the purpose of obtaining an “improper benefit”. 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.

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.

Under PRC law, bribery may be distinguished from a gift by reference to the following factors:

(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 organization” for the purpose of seeking “improper commercial benefits”.

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.

The “bribe-accepting” offence

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

Any state functionary forcibly seeking or soliciting and accepting cash or property shall be regarded as having committed the crime of accepting a bribe whether or not he or she ultimately provides an improper benefit to the offering party. Further, any person (whether a state functionary or non-state functionary) who takes advantage of their 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.

Again, “improper benefits” is also a key to the “bribe-accepting” offence, and it 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.

Monetary thresholds for enforcement

The monetary thresholds for commencing an investigation into offences under the PRC Criminal Law are relatively low, ranging from RMB 5,000 to RMB 200,000. A summary of the monetary thresholds is set out as follows:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offering of bribe to a state functionary</td>
<td>RMB 10,000</td>
</tr>
<tr>
<td>Offering of bribe to a non-state functionary</td>
<td>RMB 100,000 where the person offering the bribe is an individual RMB 200,000 where the person offering the bribe is an entity</td>
</tr>
<tr>
<td>Offence</td>
<td>Threshold</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Offering of bribe to an entity</td>
<td>RMB 10,000 where the person offering the bribe is an individual</td>
</tr>
<tr>
<td></td>
<td>RMB 200,000 where the person offering the bribe is an entity</td>
</tr>
<tr>
<td>Offering of bribe by an entity</td>
<td>RMB 200,000</td>
</tr>
<tr>
<td>Introduction to a state functionary of opportunity to receive bribe</td>
<td>RMB 20,000 where the introducer is an individual</td>
</tr>
<tr>
<td></td>
<td>RMB 200,000 where the introducer is an entity</td>
</tr>
<tr>
<td>&quot;Bribe-accepting&quot; cases</td>
<td></td>
</tr>
<tr>
<td>Acceptance of bribe by a state functionary</td>
<td>RMB 5,000</td>
</tr>
<tr>
<td>Acceptance of bribe by a non-state functionary</td>
<td>RMB 5,000</td>
</tr>
<tr>
<td>Acceptance of bribe by an entity</td>
<td>RMB 100,000</td>
</tr>
</tbody>
</table>

**Jurisdiction of the PRC Courts**

Foreigners or foreign entities are subject to the same legislation when doing business in China. 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.

**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.

Where 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:
<table>
<thead>
<tr>
<th>Offence</th>
<th>Relevant factors</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>&quot;Bribe-giving&quot; cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural person offering bribe to a state functionary</td>
<td>Where there is neither aggravating factor nor serious damage to the interests of the state</td>
<td>Criminal detention, or up to 5 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>Where there is either aggravating factor or serious damage to the interests of the state</td>
<td>5 to 10 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>Where the aggravating factor(s) are particularly serious</td>
<td>10 years’ to life imprisonment, and confiscation of property</td>
</tr>
<tr>
<td></td>
<td>Where the offender volunteers information on the bribery before prosecution</td>
<td>A lesser penalty may be imposed or penalty may be waived</td>
</tr>
<tr>
<td>Natural person giving bribes to a non-state functionary or to a foreign functionary or to an official of an international public organisation</td>
<td></td>
<td>Criminal detention, or fixed-term imprisonment for up to 10 years, or fixed-term imprisonment for up to 10 years plus imposition of a fine</td>
</tr>
<tr>
<td>Natural person offering bribe to an entity</td>
<td></td>
<td>Criminal detention, or up to 3 years’ imprisonment</td>
</tr>
<tr>
<td>Entity offering bribe to a state functionary</td>
<td>In respect of such entity</td>
<td>Imposition of a fine</td>
</tr>
<tr>
<td></td>
<td>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, &quot;<strong>Responsible Personnel</strong>&quot;)</td>
<td>Criminal detention, or up to 5 years’ imprisonment</td>
</tr>
<tr>
<td>Entity offering bribe to a non-state functionary</td>
<td>In respect of such entity</td>
<td>Imposition of a fine</td>
</tr>
<tr>
<td></td>
<td>In respect of its Responsible Personnel</td>
<td>Up to 10 years’ imprisonment</td>
</tr>
<tr>
<td>Entity offering bribe to another entity</td>
<td>In respect of such entity</td>
<td>Imposition of a fine</td>
</tr>
<tr>
<td></td>
<td>In respect of its Responsible Personnel</td>
<td>Criminal detention, or up to 3 years’ imprisonment</td>
</tr>
<tr>
<td>Introducing an opportunity to a state functionary to receive bribe</td>
<td>Where there is an aggravating factor</td>
<td>Criminal detention, or up to 3 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>Where the offender volunteers information on the bribery before prosecution</td>
<td>A lesser penalty may be imposed, or penalty may be waived</td>
</tr>
<tr>
<td>Offence</td>
<td>Relevant factors</td>
<td>Penalty</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>&quot;Bribe-accepting&quot; cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State functionary accepting bribe</td>
<td>Less than RMB 5,000</td>
<td>Administrative penalties to be imposed by his employer or a superior entity</td>
</tr>
<tr>
<td></td>
<td>Less than RMB 5,000 where there are aggravating factors</td>
<td>Criminal detention (for 1-6 months), or up to 2 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>RMB 5,000-50,000</td>
<td>1 to 7 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>RMB 5,000-50,000 where there are aggravating factors</td>
<td>7 to 10 years’ imprisonment</td>
</tr>
<tr>
<td></td>
<td>RMB 5,000-RMB 10,000 and the offender shows remorse and actively returned or handed in the bribes</td>
<td>A lesser penalty may be imposed, or administrative penalties may be imposed by his employer or a superior entity in lieu of criminal prosecution</td>
</tr>
<tr>
<td></td>
<td>RMB 50,000-100,000</td>
<td>At least 5 years’ imprisonment and/or confiscation of property</td>
</tr>
<tr>
<td></td>
<td>RMB 50,000-100,000 where there are aggravating factors</td>
<td>5 years’ to life imprisonment and/or confiscation of property</td>
</tr>
<tr>
<td></td>
<td>RMB 100,000 or more</td>
<td>10 years’ to life imprisonment and/or confiscation of property</td>
</tr>
<tr>
<td></td>
<td>RMB 100,000 or more where there are aggravating factors</td>
<td>10 years’ to life imprisonment, confiscation of property, and/or death penalty</td>
</tr>
<tr>
<td>Non-state functionary accepting a bribe</td>
<td>In respect of such entity</td>
<td>Administrative penalties to be imposed by his employer or a superior entity</td>
</tr>
<tr>
<td>Entity accepting a bribe</td>
<td>In respect of its Responsible Personnel</td>
<td>Criminal detention, a fixed-term imprisonment of up to 15 years depending on the amount involved, and/or confiscation of property</td>
</tr>
</tbody>
</table>

Meaning of “aggravating factors” and “causing serious damage to the interests of the state”

According to the Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes, which was jointly issued by the Supreme People’s Court and the Supreme People’s Procuratorate and took effect as of 1 January 2013, any of the following circumstances shall be deemed as an aggravating factor:25

(i) The amount of bribe paid is more than or equal to RMB 200,000, but less than RMB1m.
(ii) The amount of bribe paid is more than or equal to RMB 100,000, but less than RMB200,000, whereas the bribe is:
   (a) paid to three or more people;
   (b) funded by illegal means;
   (c) paid to state functionaries who are responsible for supervising and administering matters in relation to food, drugs, work safety or environmental protection, etc. that cause serious harm to people’s livelihood and infringe the safety of public life and property; or
   (d) paid to state functionaries at judicial or administrative authorities, thereby affecting administrative enforcement and judicial justice.
(iii) Other serious circumstances.
Any offering of a bribe to seek improper interests, which causes a direct economic loss of RMB 1m or more, shall be deemed as “causing serious damage to the interests of the state”.26

Meaning of “particularly serious aggravating factors”

Any of the following circumstances shall be deemed as a particularly serious aggravating factor:27

(i) The amount of bribe paid is more than or equal to RMB 1m.
(ii) The amount of bribe paid is more than or equal to RMB 500,000, but less than RMB 1m, whereas the bribe is:
   (a) paid to three or more people;
   (b) funded by illegal means;
   (c) paid to state functionaries who are responsible for supervising and administering matters in relation to food, drugs, work safety or environmental protection, etc. that cause serious harm to people’s livelihood and infringe the safety of public life and property; or
   (d) paid to state functionaries at judicial or administrative authorities, thereby affecting administrative enforcement and judicial justice.
(iii) The bribe has caused a direct economic loss of RMB 5m or more.
(iv) Other serious circumstances.

Mitigating factors

Pursuant to Article 8 of the Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate, a person who offers or pays a bribe who truthfully confesses to his or her crime(s) after being prosecuted may receive a mitigated sentence. Further, a person who offers or pays a bribe may be exempted from prosecution or receive a mitigated sentence if he/she discloses any non-bribery offences that are proven to have been committed by the bribe-taker.28

However, the mitigation or exemption may not necessarily apply in the following circumstances:

(i) Offering bribes to three or more people.
(ii) An administrative or criminal punishment has already been imposed for offering bribes.
(iii) The bribe is offered for the purpose of committing a crime.
(iv) A serious consequence has been caused.
(v) Other cases to which mitigation or exemption from criminal punishment does not apply.

Limitation

The limitation periods for the prosecution of a crime are:

(i) 5 years if the maximum penalty for that crime is a term of imprisonment of less than 5 years;
(ii) 10 years if the maximum penalty for that crime is a term of imprisonment of between 5 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 (and may be extended on approval by the Supreme People’s Procuratorate) if the maximum penalty for that crime is life imprisonment or death.
The PRC Competition Law

The prohibition of commercial bribery

The *PRC Competition Law* is intended to regulate business activities which may cause unfair competition. It prohibits, *inter alia*, “commercial bribery”, which is defined as follows:

(i) the use by a business operator
(ii) of the means of giving money, property or other benefits
(iii) to another person
(iv) in order to sell or buy goods or to obtain business transactions or other economic benefits.

Whilst not expressly set out in the relevant legislation, this offence appears to require an element of dishonesty. However, the threshold for the dishonesty is not defined.

The broad scope of prohibition

“Business operators” is broadly defined as legal persons, or other economic organisations and 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*, “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. The term “other benefits” can include things such as the provision of tours and travel within China or abroad.

Kickbacks and rebates

In particular, Article 8 of the *PRC Competition Law* expressly provides that any “off-the-book” kickback which is secretly provided to any individual or entity shall be treated as an offer of a bribe; and any acceptance of such kickbacks by any individual or entity shall be treated as an acceptance of a bribe.

However, the *PRC Competition Law* does offer a degree of leeway for business operators, as they may give or accept discounts or commissions in the course of a transaction, provided that such arrangements are transparent and are clearly recorded in the books of accounts. The party receiving the commission must have the legal qualifications necessary to provide the related services, and must also record the amount in its accounts.

Enforcement and penalties under the PRC Competition Law

If an offence of commercial bribery under the *PRC Competition Law* is sufficiently serious, the respective monetary thresholds to commence an investigation under the *PRC Criminal Law* as set out in Section II above may apply. Whether an act of commercial bribery is considered sufficiently serious will be considered on a case-by-case basis.

Depending on the severity of the situation, acts of commercial bribery under the *PRC Competition Law* may attract fines of between RMB 10,000 and 200,000. All illegal gains will also be confiscated, and prosecution will also be sought if the offence reaches the level of criminal conduct.

Prevention and remediation

The problems discussed above are global, and companies operating in China or 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 a comprehensive anti-bribery policy 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 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.

An audit function that periodically reviews company practices for corruption risk, 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. It is optimal that the programme be updated periodically to ensure it keeps pace with continuing developments in the 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 as a result of the compliance programme or raised by enforcement agencies, the media or whistleblowers.

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 conducted by independent, external counsel.

The designated investigative body should be properly resourced and the scope of the investigation should be proportionate with 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. It is also advisable for corporations 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 securities laws.

Conclusion

Anti-corruption enforcement is increasingly global in scope. As summarised above, China has begun aggressively enforcing its own anti-corruption laws on a sustained basis.
This 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. Those measures will help, if not eliminate, the risks that employees run afoul 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 increasing enforcement environment.

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Endnotes

8. Article 93 of the PRC Criminal Law.
9. Article 391 of the PRC Criminal Law.
10. Article 389 of the PRC Criminal Law.
11. Article 164 of the PRC Criminal Law.
12. Article 391 of the PRC Criminal Law.
13. Article 393 of the PRC Criminal Law.
15. Article 385 of the PRC Criminal Law.
16. Article 163 of the PRC Criminal Law.
17. Article 387 of the PRC Criminal Law.
18. Article 7 of the Opinion on Issues concerning the Application of Law in the Handling of Criminal Cases of Commercial Bribery.
19. Article 9 of the Opinion on Issues concerning the Application of Law in the Handling of Criminal Cases of Commercial Bribery. See also Article 12, Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate.
20. Article 23 of the PRC Criminal Law.
22. Article 164 of the Eighth Amendment to the PRC Criminal Law, effective from 1 May 2011.
23. Thresholds set out in a circular issued by the Supreme People’s Procuratorate in 1999 and a circular jointly issued by the Supreme People’s Procuratorate and the Public Security Bureau in 2010.
25. Article 2 of the *Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate.*

26. Article 3 of the *Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate.*

27. Article 4 of the *Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate.*

28. Article 9 of the *Interpretation on Issues concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes issued by the Supreme People’s Court and the Supreme People’s Procuratorate.*


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