
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

FOURTH EDITION

EDITOR

MARK F MENDELSON

LAW BUSINESS RESEARCH

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

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MARK F MENDELSON

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EDITOR'S PREFACE

This fourth edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour.

Over the past year, a growing number of countries enacted or amended significant anti-corruption and anti-bribery legislation and, perhaps more importantly, increased their enforcement of those laws. This volume touches upon a wide range of such legislative developments. A few highlights include: the March 2015 enactment of regulations supplementing Brazil's Clean Company Act; China's August 2015 amendments to its Criminal Law that add monetary penalties for corruption-related crimes; the South Korean legislature's March 2015 approval of a new anti-corruption law expected to enter into force in October 2016; and the Mexican Congress's March 2015 approval of an anti-corruption law that will create a special court to oversee all corruption-related issues.

In the United States, enforcement authorities continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA) and other anti-corruption laws. In May 2015, US prosecutors announced a 47-count indictment charging nine FIFA officials and five sports marketing firm executives with non-FCPA corruption-related offences including racketeering, wire fraud, money laundering, tax evasion and obstruction of justice. Subsequently, seven of the FIFA officials were prominently arrested in Switzerland and are currently the subject of formal US extradition requests.

The past year's FCPA cases show both a continued focus on corporate conduct as well as an increase in the number of charges against individuals. As this edition of *The Anti-Bribery and Anti-Corruption Review* goes to print, the Justice Department has recently issued a memorandum formally addressing the agency's determination to prioritise investigating and prosecuting individuals for corporate conduct. The FCPA investigation and enforcement focus over the past year has cut across a range of industries including: natural resources and energy, defence contracting, engineering and construction and the automotive industrial sector. In December 2014, the Justice Department announced criminal plea agreements with subsidiaries of French power company Alstom SA that

included a US\$772,290,000 criminal fine, the largest resolution, by dollar amount, in Justice Department history in the FCPA context. Meanwhile, the Securities and Exchange Commission (SEC) has settled a steady stream of corporate FCPA enforcement actions. In so doing, the SEC has continued to make use of in-house administrative proceedings – in addition to filing civil complaints in federal district courts – to effectuate its FCPA enforcement mandate.

Self-reporting by companies has continued to be a trend in the US, and, as in previous years, we have continued to see the uncovering of bribery in mergers and acquisitions diligence as well as an increase in private litigation related to FCPA investigations.

The foreign bribery landscape grows increasingly complicated for multinational companies, as the United Kingdom, China, Brazil, Argentina, Norway, Algeria and India, among other countries, have each launched significant investigations and brought a substantial number of anti-corruption actions in the past year related to international business transactions. The growing number of enforcement actions around the world are supported by a significant trend toward greater international cooperation in anti-corruption enforcement efforts. In a 17 June 2013 keynote address, the Justice Department Acting Assistant Attorney General Mythili Raman commented: “Through our increased work on prosecutions with our foreign counterparts and our participation in various multilateral fora like the OECD and United Nations, it is safe to say that we are cooperating with foreign law enforcement on foreign bribery cases more closely today than at any time in history”. This sentiment was echoed in a 17 April 2015 keynote address by Assistant Attorney General Leslie R Caldwell, who noted that the Justice Department’s fraud and corruption-related investigations ‘are increasingly global in nature’.

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners and their clients in navigating the corruption minefield that exists when conducting foreign and transnational business.

Mark F Mendelsohn

Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2015

Chapter 2

CHINA

*Susan Munro*¹

I INTRODUCTION

The People's Republic of China (PRC or China, excluding Hong Kong, Taiwan and Macau) does not have a uniform law on anti-corruption and bribery; instead the legal regime is contained in various laws, administrative regulations, judicial interpretations and disciplinary guidance. Additionally, if a member of the Communist Party of China (CPC) accepts a bribe, special CPC disciplinary rules may apply to that member.

Corruption has been a key political issue in China in recent years. According to a press release on former President Hu Jintao's speech at the CPC's 90th anniversary in 2011, China's leaders regard corruption as 'a grave crisis that determines the Party's life and death'. Following on from this, China's current President, Xi Jinping, has described fighting corruption as a 'key task' of the CPC and emphasised that anti-corruption enforcement must be conducted 'regularly' and 'in the long term'. President Xi has committed to combatting corruption by targeting both 'tigers' and 'flies', referring to prosecution of senior political figures as well as low-level perpetrators. At a CPC meeting in June 2015, President Xi indicated that preliminary results had been achieved so far in the anti-corruption campaign, and emphasised that anti-corruption activities will continue.

¹ Susan Munro is a partner at Steptoe & Johnson LLP. The author wishes to thank Amy Wang, associate, and Lin Yang, China associate, for their assistance with the preparation of this chapter.

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

i Domestic official bribery law and its elements

Articles 389, 390, 391 and 393 of the PRC Criminal Law, promulgated in 1997 and most recently amended in 2015² (the Criminal Law), prohibit giving domestic state functionaries (either individuals or entities), and in some circumstances their relatives or individuals who have close relationships with state functionaries, bribes in order to obtain illegitimate benefits.

Under Article 389, any individual who bribes a state functionary commits the crime of offering a bribe. A bribe is constituted by giving property to a state functionary for the purpose of seeking ‘illegitimate benefits’, which include giving a state functionary ‘a relatively large amount’ of property, rebate or handling fee in any form in the course of a business transaction. According to the Regulations of the Supreme People’s Procuratorate on Standards for Filing Cases of Bribery Crimes (2000) (the 2000 Standards), ‘a relatively large amount’ means a value of 10,000 yuan or more.

Under Article 390, any individual who bribes a former state functionary, close relative of, or other persons who have close relationships with a current or former state functionary, for the purpose of seeking ‘illegitimate benefits,’ commits the crime of offering bribes. There is no monetary amount attached to this crime and punishments are determined according to the seriousness of the circumstances.

Under Article 393, any entity that offers a bribe, or gives a kickback or pays a commission to a state functionary for the purpose of seeking ‘illegitimate benefits’ in the context of ‘serious circumstances’ commits the crime of bribery by an entity. According to the 2000 Standards, ‘serious circumstances’ means a situation where any bribe, kickback or handling fee of 200,000 yuan or more is offered to a state functionary, although the threshold can be as low as 100,000 yuan if certain circumstances are satisfied.

Under Article 391, any person or entity giving property, kickbacks or handling fees to a state organ, state-owned company or enterprise (SOE), public institution or people’s organisation in the course of a business transaction in violation of state regulations in order to obtain ‘illegitimate benefits’ commits the crime of offering bribes to a (state) entity. According to the 2000 Standards, a criminal violation occurs if any property, kickback or handling fee is offered to a state entity by an individual and the value of such property, kickback or handling fee is 100,000 yuan or more. If the briber is an entity, a bribe of 200,000 yuan or more constitutes a crime.

ii Prohibitions on receiving bribes

The Criminal Law prohibits state functionaries (either individuals or entities) from accepting bribes. Under Article 385, any state functionary who demands money or property from others, or illegally accepts money or property from another and gives favours to

2 On 29 August 2015, the 16th Session of the Standing Committee of the National People’s Congress adopted and promulgated the Ninth Amendment to the Criminal Law of the People’s Republic of China, which is effective as of 1 November 2015. This chapter is based on the Ninth Amendment to the Criminal Law.

such a person, commits the crime of accepting bribes. Additionally, any state functionary who, in the course of a business transaction, accepts any form of kickback or handling fee for personal use may be culpable under this provision.

Article 163 of the Criminal Law provides that if an employee who performs public duties in a SOE, or who is assigned to a non-state-owned entity to perform public duties, accepts bribes in any official capacity, he or she commits a violation under Article 385. Under Article 387 of the Criminal Law, any state organ, SOE, public institution or people's organisation that accepts a bribe as described above commits the crime of taking bribes by a state entity.

iii Definition of state functionary

Chinese law uses the term 'state functionary' rather than public official. In the Criminal Law, 'state functionaries' refers to persons who (1) engage in public service in state organs, SOEs or enterprises, institutions or people's organisations; (2) are assigned by state organs, state-owned companies or enterprises or institutions to non-state-owned companies, enterprises, institutions or social organisations to engage in public service; or (3) are engaged in public service in accordance with relevant laws.

iv Participation by state functionaries in commercial activities

State functionaries include civil servants, who are subject to the PRC Civil Servant Law (2006), which prohibits officials from engaging or participating in profit-making activities, or holding positions in companies or other profit-making organisations, except for when a civil servant is assigned by a state organ or the CPC to a profit-making enterprise or organisation.

The majority of civil servants and SOE leaders are CPC members, therefore restrictions specified in various internal regulations of the CPC Central Committee and the CPC Central Commission for Discipline Inspection (CCDI) apply to them. Such persons are prohibited from engaging in any business activities or personal business activities, including setting up an enterprise in China or overseas, or investing in existing enterprises. Additionally, a CPC member cannot, within three years following retirement or departure from an official post, accept employment from a company in the same region or industry sector as his or her official post, or otherwise act for a company in the same industry sector.

v Gifts, gratuities, travel, meals and entertainment

Under the Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Commercial Bribery Cases (2008) (the 2008 Opinions), 'property' is defined as money or physical objects, benefits that have a monetary value, including the provision of housing renovation, membership cards and gift cards with a monetary value and travel expenses. Gifts, gratuities, travel, meals and entertainment are generally deemed property, and therefore should not be provided to state functionaries for the purpose of obtaining illegitimate benefits.

According to the 2008 Opinions, a comprehensive analysis and assessment should be made to distinguish a bribe from a permissible gift. Relevant considerations

include: (1) the background to the property exchange (including friendship or family relationships), and the circumstances and level of interactions in the past; (2) the value of the property; (3) the reasons, occasions or manner of giving, and whether the provider has made any request in relation to the position of the recipient of the gift; and (4) whether the recipient, by taking advantage of his or her position, provides any benefit to the provider.

Based on the above, a gift will most likely not be regarded as a bribe if the following conditions exist: (1) the gift provider has maintained a normal relationship with the gift recipient in accordance with arm's-length commercial arrangements, which are either known to, or approved by the relevant government authority; (2) the value of the gift being provided or accepted is relatively small; (3) gifts are given to the recipient during normal commercial activities only for reasons of courtesy and hospitality; and (4) the gift provider does not expect any position-related favour from the recipient.

Under various regulations, government officials and CPC members generally are permitted to accept gifts with a value of 200 yuan or less. Therefore, presenting low-value promotional gifts (such as hats, pens, or calendars with a company's logo) is generally not prohibited or regarded as a bribe.

vi Political contributions

Chinese laws and regulations are silent on political contributions.

vii Private commercial bribery

Both the Criminal Law and the PRC Anti-Unfair Competition Law (1993) (AUCL) prohibit giving and accepting bribes by private individuals and companies.

Article 164 of the Criminal Law prohibits any person or entity from giving a 'relatively large' amount of property to an employee of a private entity for the purpose of seeking 'illegitimate benefits'. According to the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on Standards for Filing Cases for Prosecution in respect of Criminal Cases under the Jurisdiction of Public Security Organ (Part 2) (2010) (the 2010 Standards), a 'relatively large' amount means 10,000 yuan or more if the bribe is given by an individual, or 200,000 yuan or more if the bribe is given by an entity.

Under Article 163 of the Criminal Law, if employees or directors of entities take advantage of their position to demand property from others, or illegally receive property from others in exchange for benefits and if the amounts are relatively large, such persons commit the crime of taking bribes by a non-state functionary. Additionally, persons who in the course of business transactions receive personal kickbacks or handling fees in violation of state rules commit the same crime. According to the 2010 Standards, employees who accept bribes commit a crime if the value of property is 5,000 yuan or more.

Under Article 8 of the AUCL, a business operator must not (1) use property or other means to bribe to sell or purchase commodities, or (2) give implicit, off-the-books rebates, kickbacks, discounts or commissions in the course of a commercial transaction. The State Administration for Industry and Commerce (SAIC) and its local counterparts oversee commercial transactions to ensure compliance.

viii Penalties

Under the Criminal Law, penalties for bribery include: criminal fines, confiscation of personal property, criminal detention, fixed-term imprisonment, life imprisonment or death. These penalties may be imposed separately or accumulatively.

Under Article 390, an individual who offers bribes is potentially subject to fixed-term imprisonment of not more than five years or criminal detention and criminal fines. If the circumstances are serious or if heavy losses are caused to the interests of the state, the sentence can be increased to fixed-term imprisonment of not less than five years but not more than 10 years, and criminal fines. If the circumstances are especially serious, the sentence can be increased to fixed-term imprisonment of not less than 10 years or life imprisonment, along with criminal fines or confiscation of property. Any briber who voluntarily confesses before prosecution commences, may be given a mitigated punishment. If the briber's voluntary confession is crucial for solving a major case, or he or she performs major meritorious services that assist the state, the briber may be exempted from punishment completely. Under the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of Several Issues Concerning the Specific Application of the Law in the Handling of Criminal Bribe Giving Cases (2013), post-prosecution, a briber convicted of bribery may still be eligible for leniency in sentencing if the briber truthfully confesses to the criminal conduct.

The sentence for a state functionary who is proven to have accepted a bribe depends on the size of bribe that has been accepted. The Amended Criminal Law modifies the standards applied to determine the penalties for bribery of state functionaries, removing references to monetary amounts and replacing them with more general standards. Penalties start with fixed-term imprisonment of no more than three years if the amount is relatively large, and life imprisonment or the death penalty, along with confiscation of property may be imposed if circumstances are severe and the amount is 'especially huge'. Acceptance of bribes by state organs, SOEs, public institutions or state organisations can result in criminal fines for the state entity, whereas senior managers or directly responsible persons may be sentenced to imprisonment for not more than five years.

Article 393 of the Criminal Law provides that an entity offering bribes to obtain illegitimate benefits, or which, in violation of state regulations, gives rebates or handling fees to a public official, will be fined, and directly responsible persons or senior managers will be sentenced to fixed-term imprisonment of not more than five years or criminal detention, along with criminal fines, if the circumstances are serious. Any person who keeps illegal gains derived from bribery by an entity will be convicted and punished in the same way as individuals who commit the offence of offering bribes.

An intermediary in the commission of an act of bribery is subject to fixed-term imprisonment of not more than three years or criminal detention, with criminal fines. Any person who introduces a bribe but voluntarily confesses before prosecution commences may be given a mitigated punishment or exempted from punishment.

In relation to private commercial bribery, any business operator that commits commercial bribery in violation of the AUCL may be subject to administrative penalties. Under Article 22 of the AUCL and Article 9 of the Interim Provisions on Prohibition of Commercial Bribery (1996), administrative penalties include fines between 10,000 yuan

and 200,000 yuan and confiscation of illegal gains. If an offence is serious enough to trigger criminal liability, the SAIC may refer the case for criminal prosecution.

III ENFORCEMENT: DOMESTIC BRIBERY

Recent anti-corruption enforcement initiatives in the private sector have focused on industries that are closely related to people's livelihoods, especially the health-care and pharmaceutical sectors. On 11 July 2013, the Chinese government confirmed that it was investigating several executives of GlaxoSmithKline (China) Investment Co, Ltd (GSK) for commercial bribery, and alleged that GSK had bribed government officials, doctors, pharmaceutical trade associations and hospitals either directly, or through third parties, such as travel agencies. The investigation into GSK was the most high-profile corruption investigation in connection with a foreign-invested company undertaken by Chinese authorities. In addition to giving bribes, executives in China were alleged to have taken bribes from travel agents in return for directing business to them. On 19 September 2014, the Changsha Intermediate People's Court fined GSK 3 billion yuan for bribery offences.

In December 2012, as a specific measure to support anti-corruption enforcement in the public sector, the CPC issued 'Eight Requirements on Improving the Style of Work and Maintaining Close Ties with the Masses (2012)' (the Eight Provisions). The Eight Provisions focus on promoting probity and prohibiting lavish activities, requiring CPC members to 'be rigorously diligent and thrifty'. The CCDI compiles and publishes enforcement statistics monthly on its website. As of the end of July 2015, 124,768 officials had been disciplined for violating the Eight Provisions. A significant number of violations appear to have involved extravagant meals and entertainment, domestic or international travel and acceptance of gifts.

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

i Foreign bribery law

In 2011, Article 164 of the Criminal Law was amended to add a criminal offence of bribing officials of foreign governments or international public organisations (Foreign Bribery Article). The Foreign Bribery Article is treated as commercial bribery under the Criminal Law.

A violation under the Foreign Bribery Article requires that: (1) the purpose is to obtain an 'illegitimate commercial benefit'; (2) the recipient is a 'foreign government official' or 'international public organisation official'; (3) bribery in the form of property must be offered and accepted; and (4) a relatively large amount should be involved. For the definition of 'relatively large' under the 2010 Standards, see Section II, *supra*.

ii Definition of foreign public official

No guidance or implementing legislation has been issued regarding the definition of a 'foreign government official' or 'international public organisation official'.

iii Gifts and gratuities, travel, meals and entertainment

The Foreign Bribery Article references property, but does not specifically address gifts, gratuities, travel, meals or entertainment. For the definition of ‘property’ under the 2008 Opinions, see Section II, *supra*.

iv Facilitation payments

The Foreign Bribery Article is silent on the issue of facilitation payments. Generally, facilitation payments are not permitted under Chinese law.

v Payments through third parties or intermediaries

The Foreign Bribery Article is silent regarding making payments to foreign public officials through third parties, although bribes made using third parties or intermediaries are criminalised elsewhere in the Criminal Law.

vi Individual and corporate liability

Both individuals and entities, including companies, can be held liable for bribery of a foreign public official. Under Article 164 of the Criminal Law, an organisation that violates the Foreign Bribery Article is subject to criminal fines, and relevant management personnel and other personnel directly responsible for the offence are subject to criminal fines and imprisonment.

vii Civil and criminal enforcement

Violations of the Foreign Bribery Article are punishable under the same criminal penalty guidelines as criminal commercial bribery, which are discussed in Section II, *supra*. China has not promulgated administrative provisions in relation to foreign bribery.

viii Agency enforcement

Foreign bribery crimes are investigated by the Ministry of Public Security and its provincial and local counterparts, while the Supreme People’s Procuratorate and its provincial and local counterparts undertake prosecutions.

ix Defences

The Criminal Law is silent on defences to charges brought under the Foreign Bribery Article and detailed information regarding investigations and prosecutions by Chinese authorities are not disclosed to the public.

x Leniency

In certain circumstances voluntary disclosure of a violation can lead to leniency in sentencing in relation to commercial bribery. Under Article 164 of the Criminal Law, penalties may be reduced or exempted if a person giving bribes voluntarily discloses such conduct to authorities before prosecution commences.

xi Plea-bargaining

Currently, there are no published guidelines in relation to the resolution, including by means of plea bargain, of violations under the Criminal Law. The Supreme People's Procuratorate, and its local counterparts, generally have very broad discretion as to how they pursue criminal prosecutions and decision-making processes are not disclosed.

xii Prosecution of foreign-invested companies

The Criminal Law and its amendments apply to all criminal conduct in China. Foreign-invested companies could be prosecuted if they are responsible for any part of a domestic or foreign bribery act that occurs within China.

xiii Penalties

According to Article 164 of the Criminal Law, where a bribe is given by an individual, including in the context of a Foreign Bribery Article prosecution, and the amount is 'relatively large', a sentence of up to three years' imprisonment or detention and criminal fines may be imposed, and where the amount is 'very large', a sentence of more than three years, but no more than 10 years of imprisonment and criminal fines may be imposed. If the bribe is given by a legal entity, in addition to criminal fines imposed on the entity, key management persons of the entity or persons directly responsible for the violation are subject to the same penalties.

The Foreign Bribery Article does not specifically prohibit parties convicted of bribery from participation in government contracting; however, blacklisting policies can impact qualifications for domestic government procurement projects. For example, the Provisions on the Establishment of Commercial Bribery Black List in the Drug Sales Industry (2014), provide that drug manufacturers and their representatives on the blacklist will be banned from contracting with public medical institutions for a certain period. In addition, for domestic official bribery crimes, the Supreme People's Procuratorate has issued Provisions on Bribery Case File Inquiry (2013), which provide that government agencies, companies and individuals may file applications with procuratorates to enquire about bribery case information for the purpose of qualification review of suppliers for procurement operations.

V ASSOCIATED OFFENCES: FINANCIAL RECORD-KEEPING AND MONEY LAUNDERING

i Financial record-keeping laws and regulations

Under the Amended PRC Company Law (2013), all companies in China are required to prepare financial reports at the end of each fiscal year, which must be audited by external auditors.

Companies in China are required to adopt financial record-keeping and accounting practices that ensure accounts are recorded truthfully and completely. The Amended PRC Accounting Law (1999) (the Accounting Law) sets forth basic accounting requirements for keeping accurate and complete books and records and implementing internal controls. Publicly listed companies are subject to additional accounting requirements

in accordance with the Amended PRC Securities Law (2014). Medium and large-sized companies are also subject to the Basic Norms for Internal Control of Enterprises (2008) and Guidelines for Internal Controls of Enterprises (2010), which contain detailed system requirements for companies' internal controls and risk management.

ii Disclosure of violations or irregularities

Chinese anti-bribery laws do not contain specific provisions regarding disclosure of books and records violations or irregularities in connection with bribery-related violations; however, under the Accounting Law, accounting firms and personnel must handle accounting irregularities in accordance with China's accounting regime in a timely manner, or report to the person in charge and request further investigation if they do not have such authority themselves.

iii Prosecution under financial record-keeping legislation

No public information is available to determine whether financial record-keeping laws and regulations have been relied on to prosecute bribery-related conduct.

iv Sanctions for record-keeping violations

Companies that fail to keep accurate books and records in accordance with legal requirements, and the individuals responsible for keeping those books and records, may be subject to administrative sanctions, as well as criminal penalties. Criminal fines and imprisonment can result from intentionally falsifying books or using forged receipts. Under Article 43 of the Accounting Law, if the relevant conduct does not constitute a crime, a company may still be subject to an administrative fine of between 5,000 yuan and 100,000 yuan, and any individual responsible for a violation may be subject to an administrative fine of between 3,000 yuan and 50,000 yuan.

v Tax deductibility of domestic or foreign bribes

China's tax laws do not specifically set forth tax consequences for domestic or foreign bribery.

vi Money laundering laws and regulations

The PRC Anti-Money Laundering Law (2007) (the AML Law) prohibits money laundering activities, including attempts to conceal or disguise the sources of illicit income and the subsequent proceeds of criminal activities, including bribery.

vii Prosecution under money laundering laws

Money laundering activities will trigger criminal liability when combined with other predicate offences. The Criminal Law contains a list of seven predicate offences, including bribery. It is an offence to provide funds accounts, assist in converting money or goods into cash or financial instruments, assist in transferring funds, assist in remitting funds out of China, or otherwise cover up or conceal the nature or source of illegally obtained proceeds, if it is known that those funds are the illegally obtained proceeds of a predicate offence.

viii Sanctions for money laundering violations

Under Article 119 of the Criminal Law, individuals found guilty of money laundering may be imprisoned for up to 10 years, and be subject to confiscation of illegal gains and interest from money laundering and fines of up to 20 per cent of the laundered funds. Companies can also be punished under this clause, and directly responsible management or other directly responsible persons may be imprisoned for up to five years.

ix Disclosure of suspicious transactions

Financial institutions established in China are subject to a number of anti-money laundering obligations specified in the AML Law and related rules and regulations. The Measures for the Administration of Financial Institutions on Reporting Large Amount Transactions and Suspicious Transactions (2007) contains a list of 48 examples of suspicious transactions to be reported by financial institutions. The list is not exhaustive and does not specify transactions associated with payment of bribes, and most of the examples are activities that appear legitimate but are unusual in certain aspects. Financial institutions and their staff must assess the amount, frequency, funds flow and nature of transactions. If a transaction is found to be suspicious, it should be reported to the China Anti-Money Laundering Monitoring and Analysis Centre, even if the transaction is not included in the list of examples.

VI ENFORCEMENT: FOREIGN BRIBERY

Currently, there have not been any published cases, decisions, enforcement actions or investigations under the Foreign Bribery Article.

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

China became a signatory to the United Nations Convention against Corruption (UNCAC) in 2003 (approved in 2005), a member of the Asian Development Bank (ADB)/ Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention in 2005, a signatory to the United Nations Convention against Transnational Organized Crime (UNTOC) in 2003, and a member of the Financial Action Task Force (FATF) in 2007. In 2014, China signed the Beijing Declaration on Fighting Corruption with 20 countries in the Asia Pacific Economic Cooperation (APEC) Summit, pledging to eliminate corruption through extradition and judicial assistance. Currently, China is not a member of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, although it attends meetings of this convention as an observer.

VIII LEGISLATIVE DEVELOPMENTS

Currently, there is no pending or expected anti-corruption legislation at national level. However, various local authorities and legislative bodies have promulgated rules to prohibit and punish corruption.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

i Attorney-client privilege

Chinese law does not include the concept of attorney-client legal privilege, although attorneys in China have certain obligations to keep information obtained during their engagements confidential. Under the Amended PRC Law of Lawyers (2013) and the Code on Professional Ethics and Practice Discipline of Lawyers (2002), attorneys are required to keep confidential state information, client confidential commercial information and client private information obtained during their engagement. However, confidentiality obligations do not cover information relating to criminal activities that will harm the security of the state, the general public or impact the safety of other people or property that a client or other persons have committed or will commit.

ii Data protection

China does not have a comprehensive law governing data privacy or the handling of personal information. A draft Personal Information Protection Law was released in 2005 but has not been promulgated. Provisions relating to an individual's personal information can be found in various subject-specific laws and certain general individual rights pertaining to privacy and reputation. Chinese authorities have formulated various privacy protection rules, standards and policies, including the Several Provisions on Regulating the Market Order of Internet Information Services (2012), the Decision of the Standing Committee of the National People's Congress on Strengthening Online Information Protection (2012), the Provisions on Protecting the Personal Information of Telecommunication and Internet Users (2013) and the Information Security Technology – Guidelines for Protection of Personal Information within Information Systems for Public and Commercial Services. The Amended Criminal Law strengthens the protection of personal information by criminalising certain behaviours, such as counterfeiting and trading personal identification documents (identity cards, passports, social security cards, and driver's licences, etc.). Internet service providers can be penalised if, as a result of their failure to fulfil obligations imposed by laws and administrative regulations, they cause leaks of users' information that have serious consequences.

iii State secrets

The state secrets legal framework is codified in the PRC State Secrets Protection Law (2010) (the State Secrets Law) and the Implementing Regulations of PRC State Secrets Protection Law (2014) (State Secrets Regulations) and various provisions promulgated by the State Secrets Bureau. Relevant provisions can also be found in the Criminal Law, the Amended PRC Criminal Procedure Law (2012) and certain Supreme People's Court Interpretations. All Chinese government agencies, army, political parties, social groups, enterprises and citizens have an obligation to protect state secrets.

iv Employment environment

Chinese laws and regulations provide robust protections for employees. As a result, terminating employees for cause in China can be problematic; however, generally employers can terminate an employee for cause if he or she engages in corrupt conduct,

provided that there is sufficient evidence of the violation. Corruption generally constitutes serious dereliction of duty or malpractice for personal gain under the PRC Labour Contract Law (2013). Additionally, corruption is often specifically prohibited in a company's employee handbook or company policies.

When terminating an employee for cause, an employer must notify the trade union (if any) of the reasons for the termination, which can give rise to issues in relation to legal privilege outside China and can be sensitive in situations where relations between management and employees are strained. If evidence of corruption is insufficient, there is a risk that an employee will file for wrongful termination with a local labour arbitration commission and claim damages or reinstatement. Local labour arbitration commissions are generally employee-friendly; although if they believe that there is evidence of a criminal violation they will refer the case to the Public Security Bureau for criminal investigation.

v Whistle-blowing

Central and local governments, judicial authorities and the CCDI have set up anti-corruption whistle-blowing hotlines or websites that are public and easily accessible. According to media reports, 41.8 per cent of all prosecutions of CPC members for corruption in 2012 were based on whistle-blower reports.

The Constitution of the People's Republic of China (2004) provides for whistle-blower protection, giving citizens the right to report unlawful conduct and prohibiting retaliation. At judicial level, the Amended Provisions of the People's Procuratorates on Reporting of Crimes (2014) (the Provisions of Reporting of Crimes) protect the legitimate rights and interests of whistle-blowers. Additionally, the Basic Norms for Internal Control of Enterprises (2008) requires entities to establish whistle-blower protection systems, and the CPC has established internal rules to protect whistle-blowers and prohibit retaliation.

Official financial incentives for whistle-blowers are limited. The Provisions of Reporting of Crimes provide that whistle-blowers may be awarded up to 10 per cent of any illegal gains recovered based on their report, capped at 500,000 yuan.

vi Blocking statutes

Except for circumstances where the State Secrets Law and related laws and regulations or data privacy laws apply, generally there are no laws or regulations prohibiting a Chinese party from disclosing information in litigation or investigations outside China.

X COMPLIANCE

Chinese laws and regulations generally do not stipulate any defence or mitigating factors in relation to administrative or criminal prosecutions. Furthermore, Chinese authorities do not provide guidance on compliant practices or conduct, although it appears that authorities sometimes exercise discretion and take compliance programmes into account in relation to sentencing. Recent enforcement activities and record fines are likely to stimulate the implementation of enhanced compliance programmes.

XI OUTLOOK AND CONCLUSIONS

China is going through a period of close government scrutiny of corrupt practices and robust enforcement, with record fines being levied upon conviction. While government enforcement activities are by no means focused solely on foreign-invested companies, for the first time authorities are engaging in these activities with regard to such companies, and they have been extended to state-owned enterprises across multiple industries. According to state media, 1,075 employees of state-owned enterprises have been investigated, indicted and sentenced from January 2012 to January 2015 in Guangdong Province alone. This trend is likely to continue for the immediate future and companies should review compliance programmes and their implementation regularly.

In related areas, the implementation of the State Secrets Regulations provides some clarity regarding what constitutes a state secret; however, it remains unclear how Chinese authorities will view foreign corruption investigations that implicate Chinese state activities.

The Chinese legal regime and related enforcement procedures are being strengthened and modernised at a rapid rate and further robust anti-corruption enforcement across most industry sectors can be expected.

Appendix 1

ABOUT THE AUTHORS

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Susan Munro is a partner in the international department of Steptoe & Johnson LLP. She has lived and worked in China and Hong Kong for more than 30 years and has extensive knowledge and experience of Asian business and legal environments. Ms Munro earned a degree in Chinese from the University of London and pursued postgraduate studies in Shanghai before undertaking legal studies in the United Kingdom and Hong Kong. She is fluent in Mandarin Chinese and speaks Cantonese.

Ms Munro is part of a global cross-disciplinary Steptoe team who work on anti-corruption investigations around the world. She also specifically advises on China and Hong Kong compliance matters and has worked with investment banks, insurance companies, IT companies, cosmetics, food, pharmaceuticals and medical equipment companies. She has conducted more than 25 internal investigations involving anti-bribery and books and records issues, and related accounting and disclosure requirements for companies operating throughout Asia.

Ms Munro formerly practised as a barrister and is called to the Bar of England and Wales and to the Bar of the Hong Kong Special Administrative Region. She now practises as a solicitor admitted in England and Wales. She is recommended in the Investigations/Anti-corruption category in *Chambers Asia Pacific*, 2012–2015, and in the Dispute Resolution category in *Chambers Global*, 2012–14, and the Investigations/Anti-corruption section in *Chambers Global* in 2015.

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