



Client Briefing

China Anti-Corruption Landscape



China Snapshot

Governing legislation	The primary legislation governing corruption include the <i>Criminal Law of the PRC, effective 1 July 1979 (and as subsequently amended)</i> ("Criminal Law") and the <i>Anti-Unfair Competition Law of the People's Republic of China 1994</i> ("AUCL").
Prohibited conduct	The offering of property to incumbent or former state personnel, their close relatives or persons close to them ¹ for improper benefits is prohibited. In the commercial context, bribery by the giving of property or use of other methods for selling or purchasing merchandise is prohibited.
Public sector bribery	Official bribery takes place when property is given to incumbent or former state personnel, their close relatives or persons close to them in return for a benefit, or for the assistance to obtain a benefit.
Private sector bribery	Commercial bribery takes place when property or other methods are utilised to bribe opposite units or individuals for the purpose of selling or purchasing merchandise.
Extraterritorial effect	The prohibition against public sector bribery applies to acts taking place within China or elsewhere. For commercial bribery, offers of bribery to employees of Chinese enterprises or companies (including foreign invested companies) outside China and acceptances by Chinese companies and their employees outside China would attract extraterritorial liability. The Criminal Law was also revised in 2011 to prohibit bribery of foreign public officials or officials of international public organizations. Potentially, this could extend to foreign-invested Chinese companies operating outside of China together with PRC nationals who are their employees.
Penalties or sanctions	Individuals found guilty of official bribery can face up to life imprisonment while those found guilty of the criminal offence of commercial bribery may face up to ten years imprisonment. The courts may also impose fines upon individuals or companies, and confiscate property. In addition, companies can be subject to administrative sanctions by the relevant government agencies.

1. Who can be prosecuted?

- 1.1 Both offerors and recipients of bribes may be prosecuted under the Criminal Law and sanctioned under the AUCL.
- 1.2 A corporate entity who is found to be engaged in bribery activities may face administrative sanctions, including fines and penalties administered by the relevant government agencies. Officers or employees of the company or organisation who were directly responsible for commissioning the offence may be punished in the same way as private individuals.
- 1.3 The monetary threshold for prosecuting the criminal offence of giving a bribe is RMB200,000 where a company is involved, and RMB10,000 if an individual is involved.

2. What constitutes "property" or "other methods"?

- 2.1 Property offered can include money, property in kind, travel expenses and payments disguised as "promotional fees, consulting fees, commissions or reimbursement of expenses". Benefits which have a monetary value such as the provision of housing decoration or club membership cards could also fall within the definition.
- 2.2 "Other methods" could include the provision of travel opportunities under the pretence of conducting business feasibility studies or leisure trips.

¹ The Ninth Amendment to the PRC Criminal Law has added the crime of offering bribes to close relatives or persons close to incumbent or former state personnel, effective on 1 November 2015

3. Are facilitation payments exempt?

3.1 There are no exemptions for facilitation payments in China. Any form of property would be assessed according to the elements of the offence under the Criminal Law or AUCL.

4. What are some red flags to be aware of?

4.1 Hospitality

(a) Business meals or entertainment could be a potential red flag if they are considered to be lavish and offered as part of the pursuit of business opportunities.

4.2 Festive gifts

(a) In China, it is a tradition to give red packets known as "hong bao" during the Lunar Chinese New Year or to exchange moon cakes during the mid-autumn festival. Such activities could constitute bribery if given for improper benefits.

(b) As the government continues to crackdown on the activities of state officials, festive occasions provide opportunities for increased scrutiny by Chinese authorities.

(c) Chinese law also requires government officials to turn over corporate gifts from foreign guests worth more than RMB200 to their agency.

4.3 Third party agents

(a) Foreign businesses may not always be in a position to handle transactions directly, and may need to outsource certain activities and payments to consultants, event organising companies and other agents.

(b) However, the use of third parties can give rise to problems, for example, recent cases have shown travel agents being used to funnel bribes or circumvent legitimate procedures.

5. Are there any defences?

5.1 Punishment against a corporate bribe-giver can be mitigated or waived if the company "voluntarily confesses" its bribe-giving activities. A bribe-giver can similarly be eligible to have the punishment mitigated or waived if it reports on other non-bribery related crimes of a bribe-taking state functionary. In addition, recent changes to the law require the underlying crime to be relatively minor and offenders to assist with exposing corrupt activities which lead to successful investigations².

5.2 Leniency for voluntary disclosure will not be available in certain circumstances, such as when bribes are offered to more than three persons, or when the bribery results in "harmful consequences".

5.3 For commercial bribery, reasonable business expenditures may be a defence as long as it is supported by a genuine underlying transaction. Similarly, low-value promotional gifts may be acceptable depending on the purpose of the gift and its value.

6. Who is the enforcement body and what are their powers?

6.1 Under the Criminal Law, the Supreme People's Procuratorate and its local organs are responsible for investigating official bribery while the public security organs are responsible for investigating commercial bribery. After the investigation is concluded, prosecution of the crime will be conducted by the People's Procuratorate.

6.2 For commercial bribery, the State Administration for Industry and Commerce or its local bureaus are responsible for imposing administrative sanctions. They have the power to fine and confiscate income illegally obtained as a result of commercial bribery.

7. Is there any reporting or disclosure obligation?

7.1 While there is no obligation to disclose bribery-related offences, the PRC Criminal Procedure Law provides that individuals or companies have a general duty to report a case upon discovering facts of a crime or a criminal suspect. However, there are no provisions providing for penalties or sanctions for failure to report such case under the PRC law.

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² Added by the Ninth Amendment to the PRC Criminal Law, effective 1 November 2015.