

Client Alert

September 2015

Anti-Graft Reform in China: Ninth Amendment to the PRC Criminal Law Imposes Tougher Sanctions on Corruption

Recent Developments

China's Ninth Amendment to the PRC Criminal Law ("the **Ninth Amendment**") was adopted on 29 August 2015 and becomes effective on 1 November 2015. The Ninth Amendment introduces stricter measures on bribe-givers. Under this new regime, individuals and organizations involved in corrupt activities will also be subject to tougher sanctions.

Implications for Companies

The Ninth Amendment provides for a new crime of offering bribes to close relatives of or any person close to the incumbent or former public officials, or former public officials. This can be committed by both individuals and units.

"Unit" includes a company, enterprise, institution, PRC state organ, or organization. Companies may thus be found guilty of the offence of providing money or property to former public officials, or close relatives of or any person close to the public officials or former public officials in order to secure any illegitimate benefits. Such act was not previously considered a criminal offence. This means that companies and their business relationships with the relatives of or persons close to public officials will be under greater scrutiny.

Persons in charge of a company or directly responsible for its business activities can also be subject to criminal sanctions by way of a fine by the PRC court (in addition to other punishments) for the corrupt offences committed by the company. Previously, such fine only applied to the company.

Key Features of the Ninth Amendment

The following are some of the key changes from the Ninth Amendment.

1. ***New crime of offering bribes to close relatives of or any person close to the public officials*** - The Ninth Amendment has increased the scope of criminal liability against bribe-givers by introducing a new offence of persons and units offering bribes to close relatives of or any person close to incumbent or former public officials, or the former public officials.
2. ***Monetary fines against individuals convicted of corruption and bribery crimes*** - In addition to sanctioning the units involved, the Ninth Amendment sanctions individuals in charge of the units or directly responsible for the corrupt activities. Individuals convicted of

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engaging in corruption and bribery offences will also be subject to monetary fines.

Under the former PRC Criminal Law, fines were generally imposed on the units. Further, fines were only imposed on individual bribe-givers when bribing an employee of a company or enterprise, a foreign party performing official duties or an official of international public organizations; and the amount involved is huge.

3. *Raised bar for bribe-givers to be exempted from punishment* - The former PRC Criminal Law provided an exemption or mitigation of punishment for bribe-givers (under the official bribery crime) who voluntarily confess their acts of offering bribes. The Ninth Amendment retains the voluntary confession requirement but raises the threshold for exemption or mitigation by including additional criteria where the underlying crimes are relatively minor and the offenders assist with exposing corrupt activities of others leading to successful investigations.

4. *Modified sentencing standards for crimes of embezzlement and receiving bribes* - The sentencing standards under the former PRC Criminal Law imposed prison sentences based on the specific value of the property embezzled or received.

The Ninth Amendment removes the amount-based standards and imposes punishment based on criteria such as 1) "relatively large" amount or "relatively serious" circumstances, 2) "huge" amount or "serious" circumstances, and 3) "especially huge" amount or "especially serious" circumstances. However, the Ninth Amendment does not define or clarify how the new criteria should be applied.

5. *No commutation or release on parole for those who commit serious crime of embezzlement* - Offenders convicted of embezzling an extremely huge amount or who fall under other extremely serious circumstances will be prevented from a commutation of their sentence. Criminals sentenced to a death penalty with two-year-probation may, upon the decision by the court according to the circumstances of crimes, be imprisoned for life and prevented from any other commutation or release on parole if the suspended death penalty has been commuted to life imprisonment.

Actions to Consider

In view of the continuing anti-graft campaign and the stricter measures imposed by the new legislation, companies doing business in China should review their compliance policies and business practices to avoid any potential violation of the amended PRC Criminal Law. We recommend that organisations put into place stringent controls and regular training for its executives and relevant staff.

In view that certain criteria of the amended and new provisions still need to be clarified (e.g. the criteria for the sentencing standards for crimes of embezzlement and receiving bribes), we will be keeping a close watch on how the courts will apply the Ninth Amendment after it becomes effective on 1 November 2015.

Conclusion

The Ninth Amendment demonstrates the PRC government's determination to continue or escalate the anti-graft campaign in China. The anti-corruption landscape has become more stringent than ever, with an increased focus on bribe-givers and the introduction of additional compliance risks for executives in responsible positions.

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