

Client alert

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China's revised Criminal Procedure Law expands powers for corruption trials

On 26 October 2018, the Standing Committee of the National People's Congress passed the revised PRC Criminal Procedure Law ("**CPL**") which introduces, among other things, the "default judgment" and "immediate judgment" procedures in criminal trials.

The default judgment procedure penalizes defendants who have absconded overseas in respect of bribery and corruption offenses as well as activities that severely endanger national security (e.g., terrorist activities). The immediate judgment procedure expedites prosecution of defendants who plead guilty and accept penalty proposals. These are significant developments that enhance anti-bribery enforcement by the Chinese authorities and impose greater deterrence to bribery and corruption offenses. They also echo global anti-corruption trends and reflect the continuous escalation of China's anti-corruption campaign.

What it means for companies in China

Tracking down corrupt officials who have escaped overseas is an important component of China's current anti-corruption enforcement regime. The new default judgment procedure provides a more powerful means for Chinese enforcement bodies to track down and recover illegal gains from such bribe recipients.

Although the primary purpose of the CPL reform is to strengthen the government's fight against official bribery, the new procedures potentially apply to all suspects involved in corruption and bribery-related crimes under PRC law, regardless of their nationality and even if they are outside of China at the time of prosecution. Companies and employees doing business in China need to remain vigilant as they can still be implicated if involved in bribery-related activities. For example, PRC authorities may discover sources of alleged bribes and the identity of bribe givers during their investigations against government officials or state-owned enterprises. Such information may also be disclosed in court (and thus be available to the public) during the relevant default judgment hearing. This may have serious consequences for companies and their employees.

Meanwhile, the immediate judgment procedure expedites the prosecution process. This reflects efforts by the Chinese authorities in facilitating litigation efficiency as part of the on-going judicial system reform in China. We expect to see an increased number of speedy trials for clear-cut corruption and bribery cases.

The revised CPL also codifies leniency rules in criminal cases and affirms the existing *quasi*-plea bargaining practice. This should encourage individual or corporate suspects to cooperate in government investigations or voluntarily confess in exchange for lesser charges or the possibility of non-prosecution. Under the current enforcement environment, companies doing business in





China should regularly monitor employee compliance with anti-bribery and corruption policies and procedures, and conduct credible and timely investigations if wrongdoing is suspected. This will allow a company to properly evaluate and mitigate potential risk exposures and facilitate opportunities to seek leniency.

Key amendments to the CPL

A. Introduction of default judgment procedure

1. The default judgment procedure applies to the prosecution of suspects or defendants who stay overseas and are involved in the following offenses:

- a) corruption or bribery;
- b) severely endangering national security; or
- c) terrorist activities.

The application of the procedure to the latter two types of crimes, namely b) and c), require approval from the Supreme People's Procuratorate and evidence of urgency.

- 2. Courts are required to examine the circumstances upon which the default judgment procedure can apply to a case, such as whether appropriate approvals have been received, in addition to examining whether the offenses charged in the indictment is clear and specific.
- 3. If a court decides to proceed with a trial in the absence of the defendant, a subpoena and a copy of the indictment paper should be delivered through the relevant channels, including judicial assistance provided in the relevant international treaties or diplomatic channels, or other means permitted by the laws of the place where the defendant is located.
- 4. More stringent rules apply to default judgment in terms of the trial court. While primary courts have jurisdiction for normal cases, the revision requires that only relevant intermediate courts have jurisdiction for default trials.
- 5. The procedural rights of a defendant are still legally protected. The suspect has the right to an attorney and has the right to appeal, which could be exercised by a person entrusted by the defendant or his or her close relatives, or assigned by legal aid agencies.
- 6. If the defendant appears in court during the trial, the court shall rehear the case. If the defendant appears in court after the judgment or ruling is issued and before its execution, the defendant has the right to raise an objection, upon which the court shall rehear the case.

B. Establishment of immediate judgment procedure

- 7. The immediate judgment procedure applies to the prosecution of defendants who meet each of the following conditions:
 - a) a penalty of not more than three years' imprisonment may be imposed; and



- b) the defendants plead guilty, accept penalty proposals and agree with the application of the immediate judgment procedures.
- 8. A case where the immediate judgment procedure applies shall be tried by a single judge. Generally, the court shall adopt the offenses and penalties proposed by the procuratorate.
- 9. The court shall conclude the case within 10 days upon its acceptance. The period may be extended to 15 days if an imprisonment of more than one year may be imposed. This time limit is considerably shorter than that of summary procedure (i.e., 20 days to one and a half months) or ordinary procedure (i.e., normally 2 to 3 months).

C. Affirmation of quasi-plea bargaining in criminal cases

- 10. The revised CPL affirms the judicial practice that leniency could be offered to criminal suspects in cases where suspects agree to plead guilty and accept penalty proposals.
- 11. In a case where a criminal suspect makes a voluntary confession, and performs major meritorious services or the case involves significant national interests, the procuratorate may decide not to prosecute or not to commence prosecution for one or multiple counts. Previously, in criminal cases, only lighter or mitigated penalties may be offered to suspects who plead guilty and accept penalty proposals.

Actions to take

In the face of the new default judgment system and recent anti-corruption enforcements in China, companies doing business in China should remain alert and ensure that their local, regional and global compliance programs are implemented and monitored.

In particular, companies should ensure that employees are subject to close supervision and strict internal controls. We recommend that companies doing business in China take the following steps:

- Strengthen internal controls and supervision on employee conduct, including approval procedures, payment controls and monitoring in relation to the giving or receiving of gifts, payments, properties, hospitality and other incentives.
- Review existing anti-corruption policies and internal controls to ensure that an appropriate and robust compliance system has been established and is operationally implemented, especially where the business requires interactions with government authorities or official and government-affiliated individuals or entities.
- Deliver regular compliance training including introducing key legislation updates to employees based in China and overseas.

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