

Reading the Tea Leaves: Expansion and Interpretations of PRC Anti-Corruption Legislation

The first half of 2016 has seen a more proactive role taken by the PRC legislative and judicial bodies to provide more guidance on anti-corruption law enforcement, following on from the Chinese government's continued effort to crack down on corruption.

On 25 February 2016, the State Council published its draft amendments (the Draft Amendments) to the PRC Anti-Unfair Competition Law (the Competition Law) for public comment, the first time in 23 years since its promulgation in 1993.

The following month, on 16 March 2016, the National People's Congress voted 2,636 to 131 in favour of a major piece of legislation on charity and not-for-profit organisations, the PRC Charity Law (Draft) (the Charity Law).

Finally, on 18 April 2016, the Supreme People's Court and the Supreme People's Procuratorate released a joint judicial interpretation on bribery, corruption, and misappropriation of official funds (the Graft and Bribery Interpretation).

Taken together, these three pieces of legislation and interpretation represent a significant push in the Chinese government's anti-corruption drive.

Competition Law Amendments

The Competition Law was originally passed at a time when the Chinese

economy was undertaking the transition from a planned economy to a market economy. There have been enormous developments in China's economic reality and market environment since then, which have rendered many provisions in the Competition Law obsolete. The Draft Amendments touch on 30 articles of the 33 articles of the Competition Law.

With respect to commercial bribery, the Draft Amendments propose to change the following:

- The definition of bribery is expanded explicitly to prohibit *promising* to offer or give bribes, in addition to the pre-existing prohibition on giving or accepting bribes. In addition, the Draft Amendments expand the concept of recipients in commercial bribery, to include those who have influence on a transaction, as well as those already covered as counterparties in a particular transaction.
- The Draft Amendments provide for employers' vicarious liability, adding a provision that an employer shall be liable for bribery undertaken by its employees for the purpose of

Key issues

- The Competition Law Amendments expand the definition of bribery and provide for vicarious liability on the part of employers. They hold a person or entity liable for inaccurate accounting and increase the penalties for commercial bribery.
- The Charity Law encourages more charitable giving for the relief of poverty in China partially through easing concerns regarding potential corruption in the charity sector.
- The Graft and Bribery Interpretation expands the definition of "money and property" as forms of bribery.

seeking business opportunities or a competitive advantage for the employer. As an exception to this principle, an employer is not liable for its employees' accepting or receiving bribes which is against the employer's interest.

Remarkably, the employer's knowledge of the employee's actions is not listed as a precondition for the imposition of vicarious liability.

- The Draft Amendments contain an accounting provision, holding a person or entity liable if there has been inaccurate recording of an economic interest in the books or accounting documents of the company.
- The Draft Amendments increase the potential penalties for commercial bribery. For violation of the commercial bribery provision, the Competition Law currently provides for an administrative fine between RMB10,000 and RMB200,000 (USD1,530 – USD30,740) or the confiscation of illegal proceeds. Under the Competition Law Amendments, the fine would be between 10 and 30 percent of the illegally obtained business revenue.

The Draft Amendments were open for public comment between 25 February and 25 March 2016 and are currently under consideration by the State Council.

The Charity Law

The Charity Law had been under consideration for more than a decade before its promulgation in March this year. It generally loosens the restrictions on the registration of not-for-profit groups and their fund-raising activities. At the same time, it encourages more charitable giving by providing tax incentives and making it

easier for the wealthy to establish charitable trusts.

The Charity Law is aimed at producing more charitable giving in order to ease poverty in China. Historically, wealthy people in China have found it difficult to share wealth, due to the limited number of trustworthy partners and few rules governing how donations can be made. The Chinese government's recent anti-corruption campaign worsened the situation somewhat as many local officials are reluctant to respond to donation offers from the wealthy, to avoid any perception of potential corruption.

Perhaps equally importantly, the Charity Law aims to fill a legal void that has led to potential corruption and driven people to refrain from giving. One notable example is that of Meimei Guo who in 2011 identified herself as a manager of the government-backed Chinese Red Cross while boasting online about her opulent lifestyle. Donations to the Red Cross plummeted in the wake of the revelations. The Charity Law seeks to address these concerns by providing guidance on the making and processing of donations.

The Graft and Bribery Interpretation

The Graft and Bribery Interpretation, formally titled *"Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery"*, was published in April 2016 and took immediate effect.

The Interpretation expands the

definition of *"money and property"* as forms of bribes provided in the PRC criminal law. The definition now includes benefits that can be measured or obtained by money, such as home renovation, debt relief, membership services, and travel. The value of the bribe is calculated as the money actually paid or the market price of the benefits.

The Interpretation raises the minimum threshold for the prosecution of bribing state officials from RMB5,000 to RMB30,000 (USD770 – USD4,600), in the absence of specific circumstances (such as the involvement of three or more people or bribing state officials, in which case the minimum threshold is RMB10,000 (USD1,530)).

The Interpretation clarifies the meaning of certain aggravating factors in the sentencing for bribery, such as *"relatively large amount"*, *"huge amount"*, *"causing heavy loss to State interest"* and various *"serious circumstances."*

These new legislative developments signal the Chinese government's intention to further tighten its tough stance on corruption in the context of a maturing economy.

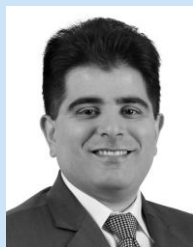
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