

To: Our Clients and Friends

September 27, 2011

[China Announces Legal Changes That May Broaden Power to Investigate Bribery](#)

On August 30, 2011, the National People's Congress of the People's Republic of China ("PRC") released the draft Criminal Procedure Law Amendment ("Draft Amendment") to the public for comment. If passed, the Draft Amendment is expected to provide additional protection to the civil rights of accused parties, including the right to privately confer with an attorney and blocking evidence collected through coercion. However, critics say that the Draft Amendment would also provide authorities legal cover to utilize secret locations to detain subjects suspected of engaging in acts involving national security, terrorism, or other serious crimes which may include serious bribery.

The critics focus on two aspects of the Draft Amendment. First, the Draft Amendment requires the authorities to notify the suspect's family of the reason and location of the detention or arrest within 24 hours, except when the suspect is involved in activities related to national security, terrorism, or other serious crimes which may include serious bribery, if the notification could hinder the investigation.

Second, the Draft Amendment specifies that residential surveillance, a form of house arrest, may be performed at the residence of a suspect or defendant, unless the suspect or defendant has no residence, or if residence surveillance at a suspect's house hinders an investigation for crimes involving national security, terrorism, or serious bribery, then the authorities may perform the surveillance at a designated location. Under the Draft Amendment, the authorities are required to notify the suspect's family of the reason and location of the residential surveillance, except when the suspect is involved in activities related to national security, terrorism, or other serious crimes which may include serious bribery, if the notification could hinder the investigation.

Among other revisions, the Draft Amendment also proposes adding a section on approvals necessary to conduct technical investigations in cases involving national security, terrorism, narcotics, corruption, bribery, and violations of social order and civil rights. The investigators are required to protect secret national, commercial or personal information. Furthermore, in cases involving corruption or bribery, terrorism and other serious crimes, the authorities may apply to the courts to confiscate illegal incomes if the suspect is missing for more than a year.

The state media justified the revisions as improving individual rights, and conveyed that such secret detentions, arrests, or residential surveillance would only be limited to extraordinary circumstances. However, critics identify the lack of definitions of certain key terms such as national security, terrorism, serious crimes or serious bribery as possibly allowing the authorities too much discretion.

Despite the criticism, foreign companies doing business in China should view the Draft Amendment as providing additional tools for Chinese authorities to investigate and prosecute bribery and corruption.

The public may provide comments on the Draft Amendments until September 30, 2011.

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