



## GLOBAL CONNECTION

September 2011



### **Chinese Version of the Foreign Corrupt Practices Act?**

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The Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. (FCPA), makes it illegal to make payments to foreign government officials to assist in obtaining or retaining business. The FCPA specifically prohibits a person or company from making a bribe to a foreign official to influence that official to violate his or her lawful duties or to secure an improper advantage in obtaining or retaining business. The FCPA applies to all U.S. persons and businesses, as well as foreign persons or businesses that cause an act related to a bribe to occur in the U.S. or its territories.

In May 2011, an amendment to the Chinese Criminal Law took effect that criminalizes paying bribes to foreign government officials and officials of international public

organizations. The amendment, which is modeled after the United Nations Convention Against Corruption, contains the following language:

“Whoever, for the purpose of seeking illegitimate commercial benefit, gives money or property to any foreign public official or official of an international public organization, shall be punished in accordance with the provisions of (Article 164.)”

When the bribe is paid by an individual and the amount is relatively large, the penalty is imprisonment or detention of up to three years. When the bribe is paid by an individual and the amount is very large, the penalty is imprisonment or detention from three to 10 years. When the bribe is paid by a company or entity, criminal penalties will be imposed against the entity, the responsible supervisor and other directly responsible personnel. The amendment does provide for a potential reduction or waiver of penalties if the violator reports the violation before being charged.

Only time, and cases from the Supreme People’s Court, will tell how certain terms are defined and implemented. Nevertheless, it appears the new law applies to all Chinese citizens, wherever located; all persons located in China regardless of nationality; and all entities organized under Chinese law. Unlike the U.S. FCPA, the Chinese law does not apply to foreign political parties, officials of foreign political parties or political candidates.

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