

China Criminalizes Foreign Bribery

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August 4, 2011

The People's Republic of China has joined the growing number of nations to criminalize bribery of foreign officials through recent amendments to its Criminal Law, which took effect May 1, 2011. Though the PRC had already criminalized payment of bribes to Chinese governmental officials, the amendment represents the first time that the PRC has prohibited PRC residents and companies from paying bribes to foreign officials.

The pre-existing provision of the Criminal Law had criminalized "giving money or property to any employee of a company or enterprise or other entity" "for the purpose of seeking illegitimate benefits." The amendment simply adds that "[w]hoever, for the purpose of seeking illegitimate commercial benefit, gives property to any foreign public official or official of an international public organization" shall be punished in the same manner as one who bribes a PRC governmental official. There appear to be no defenses or exceptions to the provisions.

The jurisdiction of the Criminal Law—and as a result, these provisions—is rather broad. The Criminal Law applies to all PRC citizens—whether they are located within the PRC or elsewhere—anyone of any nationality located within the PRC, and all companies, enterprises, and institutions organized under PRC law. Generally, that would include domestic companies, Sino-foreign joint ventures, wholly foreign-owned enterprises, and representative offices.

The penalties provided for violations of these provisions are severe. Depending on the amounts involved, the sentence may be a fixed-term of imprisonment of not more than three years or criminal detention, or when larger amounts are involved, the sentence is a fixed-term of imprisonment of not less than three but not more than ten years, in addition to a fine. If an entity is involved, it may be fined, and the persons directly involved may be imprisoned.

The significance of the terms used in the amendment remains to be seen. For example, the terms "illegitimate commercial benefit," and "international public organization" are not defined within the Criminal Law. And of course, many countries have laws criminalizing bribery of foreign officials but do not enforce those provisions uniformly. Thus, until judicial interpretations or administrative regulations regarding these provisions are promulgated, parties must rely upon the remainder of the Criminal Law to provide guidance as to how the provisions are to be interpreted.

The impact of the law on companies that do business in China, of course, depends on how the business is structured. Though the law does not directly affect non-PRC companies, it certainly could reach a joint venture organized under PRC law between a PRC-company and a foreign company, or a company with a representative office within the PRC. As such, companies that do business in China—particularly through a wholly-owned entity or representative office should take note of these amendments and continue to monitor their interpretation and enforcement.