China Law Update: Judicial Interpretation on Corruption and Bribery Crimes

June 7, 2016

On April 18, 2016, the Chinese Supreme People's Court and the Chinese Supreme People's Procuratorate jointly issued the Interchange (the "Judicial Interpretation"). It became effective immediately. The Judicial Interpretation provides further clarification to the 2015 Amendment IX to the Chinese Criminal Law (the "Amendment IX") regarding corruption and bribery crimes. This Judicial Interpretation is important in that it adjusts the monetary thresholds for bribery prosecutions and sentencing, includes "intangible benefits" in the crime of official bribery, clarifies that a thank-you gift after improper benefits are sought still constitutes bribery, and clarifies when leniency may be given. These changes have important implications for the compliance policies of companies operating in China.

Adjusts Monetary Thresholds for Bribery Prosecutions and Sentencing

The Judicial Interpretation raises the monetary threshold for most prosecutions for the crime of accepting bribes by state functionaries from RMB5,000 (approximately US$760) to RMB30,000 (approximately US$4,600). This does not mean that an amount below RMB30,000 is a safe harbor. If the amount of accepted bribes is between RMB10,000-30,000 (approximately US$1,500-4,600), criminal liability may still occur if
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As for the crime of offering bribes to state functionaries, the Judicial Interpretation raises the monetary threshold for criminal prosecution from RMB10,000 (approximately US$1,500) to RMB30,000 (approximately US$4,600), unless certain circumstances are involved, such as bribing three or more state functionaries; giving bribes with illegal gains, etc.[4] The monetary threshold for prosecution of the crime of offering bribes to non-state functionaries is set at two times the amount of the threshold for the crime of offering bribes to state functionaries.

In addition, the Judicial Interpretation further clarifies certain terms used in the Amendment IX for sentencing standards, such as “relatively large amount,” “huge amount,” “especially huge amount,” “serious circumstances,” and “especially serious circumstances,” etc. Amendment IX is intended to change the previous practice of determining sentencing merely based on the amount of improper payments, which resulted in some cases where the amount of bribes was the same but the sentencing was drastically different. The Amendment IX puts emphasis on both the amount of improper payments and some specific factors. The Judicial Interpretation provides further implementation rules in this regard. This is intended to make sentencing fairer and to reflect the more complex economic and social circumstances that have come into play since the Chinese Criminal Law was first revised in 1997.

Clarifies definition of bribes to include certain intangible benefits

The Judicial Interpretation clarifies that for the crime of bribery, “money and property” includes money, articles, and property interests.[5] “Property interests” include material benefits that can be converted into money, such as home renovation, debt relief, etc., and other benefits that require the payment of money, such as membership service, travel, etc.[6] This is the first time that the judicial authority clarifies that intangible benefits are a type of bribe for the crime of official bribery. The judicial interpretation “Opinion Concerning Several Issues in the Application of Law in Cases of Commercial Bribery” issued in 2008 provides that bribes in the context of commercial bribery include intangible benefits.[7] The Judicial Interpretation bridges the gap and provides prosecutors and judges with a clear basis for prosecuting and adjudicating official bribery cases in which intangible benefits are involved. Also, the 2008 judicial interpretation only provides that the amount of such intangible benefits should be calculated at the amount actually paid. The Judicial Interpretation adds that the amount actually paid shall include the fair market value of the intangible benefits.
The Judicial Interpretation clarifies the situations in which officials can be considered to be “seeking benefits for others” when determining the crime of accepting bribes by state functionaries. Under the Judicial Interpretation, promise to seek benefits for others should be considered as “seeking benefits for others.”[9] This is similar to how the U.S. Foreign Corrupt Practices Act is applied in some cases.[10] In addition, if an official clearly knows that a person offering a bribe has in mind a specific request seeking the official’s help, the official will be considered to be “seeking benefits for others.”[11] This is intended to address situations in which officials accept money or property from bribers who do not raise requests for help explicitly but have some unspoken understanding with the officials regarding benefits sought. Also, if nothing has been requested from an official in the performance of his or her duties but that official afterwards accepts money or property from others based on such performance, that official will be considered to be “seeking benefits for others.”[12] In practice, there have been arguments in some cases that gifts given to officials after the officials performed their duties should not be considered as bribes. The Judicial Interpretation targets such situations and clarifies that a thank-you gift received after benefits are sought or received still constitutes bribery. This new rule has implications for companies’ compliance policies. Usually, companies pay more attention to the prohibition on gift giving to officials while an important regulatory application or decision is pending before the officials. Now it becomes more important for companies to also pay attention to establishing or improving policies on gift giving and entertainment to officials after a regulatory decision is made or approval is rendered.

Furthermore, the Judicial Interpretation provides that an official should be considered to have the intent of accepting bribes if the official does not return or turn in the bribes solicited or accepted by a person specially related to the official (the “Specific Interested Person”) after the official knows such fact.[13] Such Specific Interested Person includes close relatives, lovers, or anyone who has a common interest with an official. This signals that companies should also consider setting rules for gift giving and entertainment to people specifically related to officials in the compliance policies.

**Leniency and voluntary disclosure**

Amendment IX tightened the conditions for punishment to be reduced or waived for the crime of giving bribes to state functionaries. Specifically, Article 390 of the PRC Criminal Law provides that if the circumstances of
crime are relatively minor and the briber plays a critical role in detecting a major case or if he/she performs any major meritorious services, he/she may be given a mitigated punishment or be exempted from punishment.

[15] The Judicial Interpretation further defines “relatively minor crime” and “major case” and illustrates the circumstances considered as “playing a critical role in detecting a major case,” as mentioned in the foregoing Criminal Law provision. The determination of “relatively minor crime” and “major case” mainly will depend on the term of imprisonment and influence of the case.[16] As for determining what constitutes “playing a critical role in detecting a major case,” the Judicial Interpretation lists four circumstances that mainly focus on the voluntary confession important for investigating a major case.[17]


[4] Interpretations on Several Issues Concerning Application of Law for Handling Criminal Cases of Bribe Offering (关于办理行贿刑事案件具体应用法律若干问题的解释), released by the Supreme People’s Court and the Supreme People’s Procuratorate on December 26, 2012 and effective on January 1, 2013, Article 1, and the Judicial Interpretation Article 7.


[6] Id.

[7] Opinion Concerning Several Issues in the Application of Law in Cases of Commercial Bribery (关于办理商业贿赂刑事案件具体应用法律若干问题的意见), released by the Supreme People’s Court and the Supreme People’s Procuratorate on November 20, 2008 and effective upon release, Article 7.


[10] For example, See U.S. v. Monsanto (D.D.C. 2005) and SEC v. Monsanto Co., No. 05-0014, (D.D.C. 2005), where a $50,000 bribe was authorized by a Monsanto officer to pay to a senior Indonesian environment official who promised to revoke a government decree, but was ultimately unsuccessful as the official never actually authorized the revocation.


[12] Id.

[13] Id. Article 16.

[14] Opinions on Issues relating to the Application of Law in the Handling of Criminal Cases Involving the Acceptance of Bribes (关于办理受贿刑事案件具体应用法律若干问题的意见), released by Supreme People’s Court and
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