Supreme Court issues judicial interpretation on China’s new anti-bribery law

Two judicial agencies in China, the Supreme People’s Court and the Supreme Procuratorate, jointly issued a judicial interpretation in April 2016, clarifying some of the anti-bribery provisions in China’s Criminal Law. The judicial interpretation follows the amendments to the anti-bribery provisions on which we reported in October 2015. The judicial interpretation provides guidance in understanding last year’s amendments. The amendments to the Criminal Law, the judicial interpretation and the proposed amendments to the commercial bribery provisions in the Anti-Unfair Competition Law, which we reported on in our previous In context edition, show that the crackdown on corruption is still at the top of the political agenda in China. We recommend that companies active in China continue giving priority to internal anti-corruption initiatives.

The recently issued judicial interpretation clarifies a number of concepts in the anti-bribery provisions in China’s Criminal Law.

Definition of bribe includes intangible benefits

China’s Criminal Law prohibits giving money and property in exchange for improper benefits. The judicial interpretation provides that “money and property” includes intangible benefits, that is, benefits that you normally have to pay for. These may include different kinds of services provided for free or at a discount.

Payment after receiving benefits is also bribery

The judicial interpretation clarifies that providing money or property to a government official after receiving the improper benefits also qualifies as bribery. This clarification follows previous misunderstandings that “thanking” an official after having received the benefit would be acceptable since the official was not induced to provide the benefit. A corrupt intent behind a payment or a gift of a property is, however, sufficient to constitute bribery. This is in line with the proposed amendments to the commercial bribery provisions in the Anti-Unfair Competition Law.

Increased thresholds for prosecution

The monetary threshold for prosecution of bribery of a government official has been raised. Previously, a bribe with a value of RMB 5,000 was subject to prosecution, whereas now the bribe should have a value of at least RMB 30,000, subject to certain exceptions. The
monetary threshold for prosecution of bribery not involving a governmental official has been set at RMB 60,000.

The increased thresholds are not meant to signal that smaller bribes are acceptable. The thresholds were increased to take into account inflation, because the previous thresholds were set almost twenty years ago.

**Higher penalties**

The judicial interpretation imposes higher penalties on both bribers and recipients. The highest penalty is life imprisonment or the death penalty, plus monetary penalties. In addition to the confiscation of illegal gains, a serious offence may lead to confiscation of personal assets or substantial fines ranging from RMB 100,000 to two times the illegal gains.