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## *The Fourth Asia Pacific Pharmaceutical Compliance Congress: Chinese Criminal Law Issues for Companies and Executives*

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# Bribery as a Criminal Offence in China

- **Bribery, i.e., Bribery of State Employees**
- **Bribery of Non-state Employees**
  - Criminal form of “Commercial Bribery” under the Anti-
- **Bribery of Entities**
- **Bribery by Entities**
- **Mediation in Bribery**

# Commercial Bribery: Civil v. Criminal Offence

- Anti-unfair Competition Law

- “An activity by which a business operator *bribes* the other party to the transaction, either an entity or an individual, in the form of property or other means for *the purpose of selling or purchasing products*”

- Criminal Law

- Bribery of Non-state Employees: “giving money or property to employees of corporations, enterprises or other entities *for the purpose of obtaining unjustifiable benefits*”

# Criminal Enforcement: the Standards

- **Standards in criminal cases:**
  - Police
  - Prosecutors
  - Courts
  - Media

# Criminal Enforcement: Corporate Crime

## ■ Corporate Crime

- Definition: crimes committed by “entities”, such as companies or organizations
- All bribery-related crimes could be corporate crimes
- Double penalty
  - Corporation: monetary fines
  - Individuals: personal liabilities, such as imprisonment

# Criminal Enforcement: Corporate Crime

- **Individuals that are liable**
  - “Individuals in charge that are directly responsible”; and
  - “Other individuals that are directly responsible”
  - Criteria: “directly responsible”
- **Scope of “directly responsible” individuals**
  - Law: no definition or further explanation
  - Enforcement: very little guidance
  - Common understanding: a case-specific, fact-based analysis
    - “Individuals in charge that are directly responsible”:  
**senior management personnel**
    - “Other individuals that are directly responsible”:  
**key handling people**

# Criminal Enforcement: Corporate Crime

## ▪ Supreme Court, Minutes on Trial of Financial Crimes (2001)

- This non-binding document explains court's views
- **"Individuals in charge that are directly responsible"**
  - People that decide, approve, authorize, connive at, and/or command the crime
  - Usually people "in charge of" the entities

### **Analysis:**

- Knowledge of crime is an important factor
- May *not* cover entire senior management team
- But may also include *multiple* senior management members
- Senior managers responsible for functions directly relating to the corporate crime may have higher risks

- **"Other individuals that are directly responsible"**
  - People that actually *implement* the crime and play a major role
  - May be managers or other employees of the entities
  - Do *not* include all employees participating in the crime

# How to Mitigate Corporate Crime Risks?

**What is the fundamental challenge in corporate crime defense?**

- 1. Solid anti-corruption compliance program**
- 2. Handle compliance incidences properly**
  - Immediate, public corrective actions
  - Disciplinary actions against wrong-doers



# How to Mitigate Corporate Crime Risks?

**4. Handling whistle-blower cases properly**

**5. Internal documentation and record-keeping system**

**6. Compliance training**

- Internal training
- Training of third parties

# Discussion

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