

# Operating in China Anti-Corruption Laws

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# *China's Anti-Corruption Laws and Practices*

# China's anti-corruption laws and practices

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- Similar to FCPA
- Various Chinese laws and regulations include anti-corruption provisions
- Chinese anti-corruption provisions have very low payment thresholds
- Chinese anti-corruption provisions contain a distinction between:
  - “Official bribery” and
  - “Commercial bribery”
- Strict gift rules

# China's anti-corruption law and practice

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- What is prohibited as “official bribery offering”?
  - For the purpose of securing illegitimate benefits, giving money or property to a state functionary or a state organization
  - Even though no direct cash payment to a state functionary or a state organization, sufficient to be prosecuted if giving bribes:
    - Through offering unreasonable higher margins during commercial transactions
    - Through offering the corporate shares without asking the consideration
    - In the name of cooperative investment
    - In the name of entrust financing
    - Through gambling
    - Through the specific concerned persons
  - If taking advantage of the position of an official to secure illegitimate benefits but giving the bribes to that official after he or she leaves his or her position

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- Thresholds for triggering criminal investigation for offering official bribery
  - Over RMB 10,000 given to a state functionary
  - Over RMB 100,000 given to a state organization
  - Or if things of value given in exchange for illegitimate interest or to more than three state functionaries or state organizations, or to the communist party, judicial departments or government agencies

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- Criminal Penalties for offering bribes:
  - Offering bribes to a State functionary
    - criminal detention
    - fixed-term imprisonment up to 15 years
    - life imprisonment
    - confiscation of property can also be imposed simultaneously
  - Offering bribes to a State organization
    - criminal detention
    - fixed-term imprisonment up to 3 years

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- What is prohibited as “commercial bribery”?
  - The employee (s) of a company or enterprise or any other entity other than state functionary or state organization who, taking advantage of his position, demands money or property from another person or illegally accepts another person's money or property in return for the benefits he seeks for such person.
  - For the purpose of seeking illegitimate benefits, giving money or property to any employee of a company or enterprise or any other entity other than state functionary or state organization.
  - giving or taking off-the-book kickbacks.
  - giving gifts of cash or things of value to a business counterpart or to individuals acting on behalf of the business counterpart except gifts of a promotional nature and of an insignificant value as a matter of commercial usage.

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- Criminal penalties for taking commercial bribes:
  - Criminal detention
  - Fixed-term imprisonment up to 15 years
  - Fines can also be imposed
- Criminal penalties for offering commercial bribes:
  - Criminal detention
  - Fixed-term imprisonment up to 10 years
  - Fines can also be imposed
- Civil penalties for commercial bribery:
  - Fines of more than RMB 10,000 and less than RMB 200,000
  - Illegal income can be confiscated



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- China beefs up its battle against bribery in recent years:
  - Legislations Strengthened
    - The 6th Amendment to the Criminal Law issued in June 2006 expanded the definition of the bribed party for “commercial bribery ” from pure commercial entity /individual to non-state functionary/state organization
    - New Circular on the Opinions to Address the Issues in Handling Criminal Cases Involving Bribery Taking and Offering issued in July 2007 further addressed the indirect bribery taking and offering issues
    - Opinion regarding Law Application when Handling Criminal Cases of Commercial Briberies issued in November 2008 provides new definition for things of value in commercial bribery
      - Cash and property
      - Property benefits, the value of which may be calculated in money (e.g. providing housing decoration, membership cards, vouchers and travel expenses)

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- China beefs up its battle against bribery in recent years:
  - Enforcement Increased
    - Severe penalties imposed on both bribe-takers and bribe-givers
      - Former Head of SFDA Zheng Xiaoyu, for taking bribes - death penalty
      - Former Shanghai Party Chief Chen Liangyu, for taking bribes and other charges - 18 years jail
      - Former Head of Jiangsu Provincial Communications Department Zhang Junyuan, for offering and taking bribes – 20 years jail
      - For offering bribes and other charges, Nongkai Group Co., Ltd – fine RMB 3.35 million; and its senior manager Zhou Zhengyi – 16 years jail
      - For offering bribes, organizing criminal gangs and other crimes, Chongqing's gang leader Chen Mingliang was sentenced to death penalty after the first instance criminal trial
      - Huang Guangyu, former Chairman of Board of Gome Electrical Appliances was prosecuted for being involved in the crime of offering bribes by an organization and other crimes and sentenced to 14 years in jail
    - Establishment of government bodies to specifically fight corruption
      - The National Bureau of Corruption Prevention of China was established on September 13, 2007

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## ■ Gift Rules

- Even if an act does not violate the bribery rules, it also may be governed by the “gift” rules
- “Gift” defined as cash, or anything of value or benefit
- Gift rules only apply to recipients of gifts and not to providers of gifts
  - Governmental officials or communist party members
- The limitations under “Gift Rules”:
  - Under central government rules, gifts or things of value over RMB100 must be registered.
  - Gifts or things of value over RMB200 must be surrendered to the State.
  - Individual officials should not receive more than RMB600 worth of “gifts” in a single year.

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- According to Opinion regarding Law Application when Handling Criminal Cases of Commercial Briberies issued in November 2008, the following elements should be considered when distinguishing bribery from gifts:
  - Background of the offering and acceptance of things of value
  - Value of the things of value
  - Cause, timing and method for offering and acceptance of things of value
  - Whether the offeror requires the recipient to take the advantage of his/her position to seek benefit for the offeror and the recipient did so