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

Li Lei

Partner, Sidley Austin LLP Beijing

September 16, 2014

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

Li Lei

Partner, Sidley Austin, Beijing

lei.li@sidley.com

010 – 5905 5505

