



## Update China Desk China Law Brief

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English Version

### GSK Scandal: Bribery Law and Corporate Crime in China

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#### **GSK under suspicion of bribery in business operations in China**

In this month July 2013, the British pharmaceutical giant GlaxoSmithKline (“GSK”) embroiled in a criminal investigation in China over bribery allegations. It is alleged that GSK has, for the purpose of prompting its sales and pricing, offered bribes to government officials, medical associations, hospitals and doctors. According to the Chinese police, the company has paid over a period of six years since 2007 about 370 million euros to almost 700 middlemen, mainly in travel agencies and consulting firms, to facilitate bribes. The financial director of GSK China has been banned from leaving China, while four Chinese executives have been detained.

The main legal basis on the criminality of bribery as a corporate crime in business areas is the Chinese Criminal Code, according to which eight offenses are generally distinguished:

1. Taking bribes by an employee of a business entity (Section 163 Criminal Code);
2. Offering bribes to an employee of a business entity (Section 164 Criminal Code);
3. Taking bribes by an employee of a governmental body (Section 385 Criminal Code);
4. Taking bribes by a governmental body (Section 387 Criminal Code);
5. Offering bribes to an employee of a governmental body (Section 389 Criminal Code);
6. Offering bribes to a governmental body (Section 391 Criminal Code);
7. Introducing a bribe (Section 392 Criminal Code);
8. Offering bribes by a governmental body (Section 393 Criminal Code)

Accordingly, the employees may face imprisonment sentence with possible penalties, while a business entity shall be imposed on with fines and its major persons in charge would be convicted to imprisonment and fines.

#### **Criminal Code and Offenses**

A business entity is generally to be interpreted broadly and includes both permanently operated business organizations as well as temporary facilities for economic activities, e.g. a committee for a sporting event or a working group for preparation of a theater production.

In order to distinguish legal gifts from criminal bribery, the following factors shall be taken into consideration in particular, namely the context and background of property transfer, the value of the transferred property, the possible benefit claims or unjustified agreement and last but not least the unfair preferential result. Regarding the criminal investigation, the public prosecutor is in charge of governmental bodies and their employees, while the police are in charge of business entities and their employees.

Beyond the criminal law, the rules against bribery and corruption can also be found in other laws and some regulations for specific industries. For instance, according to the Anti-Unfair Competition Law ("AUCL"), the hidden discounts or kickbacks in prices that are granted to a business entity or its employees without lawful accounting shall be considered as bribery. The acceptance of such hidden discounts will be charged as taking bribes. The penalties for such offenses which do not reach the threshold of criminality shall be fines and confiscation of illegal profits. The governmental agency in charge is the State Administration for Industry and Commerce or its counterparts at the provincial and city levels.

In some industries, e.g. pharmaceutical industry, food, education, lots of legal rules have been adopted to fight against bribery. In this respect, a legal interdisciplinary approach is necessary. For instance, in addition to AUCL, the Law on Donations to Charitable Activities as of June 28, 1999 is relevant, too. And now the Regulation on Social Donations to Healthcare Institutions, which was adopted by the Ministry of Health in 2007, also contains many stipulations which are of significance to distinguish lawful donations from illegal bribery.

The Chinese legal rules regarding bribery and corruption are becoming more complex and complicated. Both the domestic and foreign companies are facing the increasing challenge in anti-corruption compliance.

## **Legal Definition: A Business Entity**

## **Lawful Gifts or Illegal Bribery?**

## **Rules in the Anti-Unfair Competition Law**

## **Sector Specific Regulations and Interdisciplinary Approach**

## **Challenges in Corporate Anti-Corruption Compliance**

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