Evolving with China

An Introduction to Significant Developments in China’s Judiciary and Enforcement Actions

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Main Topics

On-Going Judicial Reform

Significant Regulatory Developments

Anti-corruption

Anti-trust
On-Going Judicial Reform
Reform of Court

- Previous reform acts as a background:
  - *The petition system*
  - *The "reeducation through labor" system*

- Objectives of the on-going reform: to "reduce politicization and localization"
Current Problems in the Judiciary System

- Politicization within the court
- Problems caused by the judicial committee system
- Courts of lower level request guidance from courts of higher level on case trial
- Connections, “guanxi”, corruption
- A collegiate bench does not function as a group
Reform Actions

- Deepen judicial transparency
- Reform the mechanism of adjudicative power
- 5 pilots: certain courts of 5 provinces/cities
  - Shanghai
  - Jiangsu
  - Zhejiang
  - Guangdong, and
  - Shaanxi
Reform efforts of High Courts

- Jilin and Liaoning
- Guangdong
- Chongqing
- Henan
Professional Reform of Judges in Shenzhen Courts

- Categorization of staff
- Admission of judge
- Rank of judge
- Exit mechanism
Expected Further Reform

- Centralized management of human resource, finance, and assets of courts
- Separation of jurisdiction system from administrative divisions
- Establishment of intellectual property courts
Significant Regulatory Developments

Anti-corruption

Anti-trust
Anti-corruption Main Topics

- Commercial Bribery
- GSK Case
Commercial Bribery

What’s Commercial Bribery?
Commercial Bribery (PRC Anti-bribery laws)

Commercial Bribery on the Narrow Sense

Purpose: In order to sell or purchase goods (for achieving the business purpose) through bribery to acquire a better competitive position than other business operator

Subject: Business Operator

Methods: Properties, cash, assets, benefits other than properties such as travelling and business tour

Object: The opposite enterprise or person

Employees’ acts deemed as business operator’s acts
Subject: Issuers, domestic concern (any officer, director, employee, or agent of such domestic concern or any stockholder acting on behalf of such domestic concern), etc.

Behavior: Offer, give or promise to give any money or anything of value

Purpose

Object: Foreign officials, international public organization officials, etc.

Exception:
- (facilitating payments)
- (action authorized by written foreign law)
- (reasonable and bona fide expenditure)
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<td>2) Civil fine</td>
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<td>3) Disgorgement of any ill-gotten gains</td>
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<td><strong>Individuals</strong></td>
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<td>1) Criminal fine</td>
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<td>2) Prison: up to 5 years</td>
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Types of Penalties (PRC Anti-bribery Laws)

Illegal activities of commercial bribery

- Administrative Punishment
  - Revoke Business License
  - Revoke Permit
  - Revoke Qualification
  - Fine (around USD1,500 to USD35,000)
  - Confiscating the illegal gain

- Disciplinary Action
  - Party Disciplinary Action
  - Administrative Disciplinary Action

- Civil Liability
  - Contract to be invalidated due to bribery ("Wang Lo Kat" Case)

- Criminal Liability
  - Offering bribes
  - Taking bribes
  - Offering bribes by non-government officials
  - Taking bribes by non-government officials
  - etc.
GSK Case

June 28, 2013
GSK was reported being investigated by Public Security Authority

July 1, 2013
GSK admitted being visited by governmental authority

July 7, 2013
Ministry of Public Security announced to investigate economic crime of GSK

July 11, 2013
Police disclosed 4 senior executives had been arrested

July 14, 2013
Police disclosed involved senior executives of GSK and 4 travel agencies

July 15, 2013
GSK said “these allegations are shameful and we regret this has occurred”

September 2, 2013
More involved suspects confessed

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**GSK Case** Source of the Money for Bribes

- **Source of big dollar bribery**
  Senior executives fraudulently cash out conference fund (launder money) approved by headquarters via travel agencies as a conduit

- **Source of small dollar bribery**
  GSK allows or acquiesces medicine sales to get reimbursement by providing false bills
GSK Case

Offer Bribes

- GSK
  - Senior Executives
  - Medicine Sales
  - Government Officials
  - Sponsorship
  - Doctors
  - Experts
GSK Case: Senior Executives Offer Bribes

4 senior executives involved obtain money from UK headquarters

Launder money via travel agencies and transfer it to travel agencies’ account

Objects:
- government authorities and hospitals

Boss of travel agency

Money in travel agencies’ account used for offering bribes
GSK Case  Medicine Sales Offer Bribes

- 3 types of doctors in medicine sales’ eyes

1. Academic-based
2. Relationship-based
3. Resource-based

GSK Case
GSK Case  Medicine Sales Offer Bribes

Reimbursement Items

Lecture Fee  Meal Fee

Use

Offer business dinner and entertainments to doctors

GSK Case Medicine Sales Offer Bribes
GSK Case

Senior Executives Take Bribes

- Cash and property (e.g. GC)
- Reimbursement from travel agencies
- 5% kickback
- Luxury travel at low price
- Sexual bribery

Not yet officially recognized as bribery by court, but may influence court decisions

Senior executives (e.g. General Counsel)
Introduction to the Anti-Monopoly Law System of China

- The legislations
- The history of the Anti-Monopoly Law (AML)
- The enforcement authorities
- Monopolistic acts
Types of Sanction

- Corporate liabilities
  - ceasing the illegal act
  - confiscating the illegal income
  - imposing a fine ranging from 1% to 10% of the sale amount of the preceding year
  - companies that have entered into but have not implemented a monopoly agreement will be subject to a fine of not more than RMB 500,000

- Personal liabilities?

- Criminal liabilities?
Enforcement Developments

- **2008**: Area of focus: MOFCOM's review of concentration
- **2010**: Area of focus: SAIC’s and NDRC’s review of operational violation
- **2013**: Area of focus: NDRC’s review of price monopoly
- **Now**: 6 industries are on the radar of NDRC
- **Near future**:
Targets of Recent Enforcement Actions
(Monopoly Agreements and Abuse of Market Dominance Cases)

Jan. 2013
- LCD makers (Samsung, LG, etc.)

Feb. 2013
- Moutai and Wuliangye

Jun. 2013
- IDC

Jul. 2013
- Tetra Pak

Aug. 2013
- Milk firms (Biostime, Mead Johnson Nutrition, etc.)

Nov. 2013
- Qualcomm
Questions?
Thank You!

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