

## FURTHER GUIDANCE ON CRIMINAL GRAFT AND BRIBERY RELEASED BY CHINESE JUDICIAL AUTHORITIES

On April 18, 2016, two Chinese judicial authorities released an interpretation that provides further guidance on how criminal cases related to graft and bribery are handled in China effective immediately. The Supreme People's Court and Supreme People's Procuratorate of China jointly released the *Interpretation on Graft and Bribery of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery* (关于办理贪污贿赂刑事案件适用法律若干问题的解释) (**Interpretation on Graft and Bribery**). In summary, the Interpretation on Graft and Bribery: 1) raises the monetary threshold and standards for certain bribery prosecutions; 2) expands the definition of a bribe to include "property-like benefits" and expressions of gratitude; and 3) outlines specific circumstances in which a voluntary disclosure can lead to a lighter penalty or non-prosecution.

### New monetary thresholds and standards for bribery prosecutions

Before the Interpretation on Graft and Bribery, the monetary threshold for prosecuting someone who attempted to bribe a state-work personnel<sup>1</sup> (**SWP**) was CNY 10,000 (approx. USD 1,540)<sup>2</sup> while the monetary threshold for prosecuting a SWP for accepting bribes was CNY 5,000 (approx. USD 770).<sup>3</sup> Furthermore, the monetary threshold for prosecuting bribery crimes - whether involving SWPs or non-SWPs - was the same.<sup>4</sup>

The Interpretation on Graft and Bribery increased the monetary threshold required to prosecute individuals who offer bribes to SWPs to CNY 30,000 (approx. USD 4,620). If a bribe falls below this monetary threshold but is above CNY 10,000 (approx. USD 1,540), the Procuratorate will consider additional factors in determining whether to prosecute the bribe offeror, including: 1) whether the bribe involved three or more people; 2) whether "unlawful gains" were used to commit the bribe; 3) whether the bribe was for a promotion or other employment-related adjustment; 4) whether the bribe was given to officials of certain government agencies, such as those responsible for food supervision, drug safety, or

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1 "State-work personnel" includes officials who perform public services in State offices (such as government authorities); people who perform public services in State-owned enterprises ("SOEs"), institutions (such as hospitals), or civil organizations; people assigned by the government or SOEs to non-SOEs to perform public services; and those who perform public services according to law (such as political representatives).

2 In accordance with the Provisions of the Supreme People's Procuratorate on the Standards for Filing Cases of Offering Bribe issued on December 22, 2000.

3 In accordance with the Provisions on the Standards for Filing Cases Directly Accepted, Filed and Investigated by the Supreme People's Procuratorate (Trial) issued on September 16, 1999.

4 Prosecution thresholds for non-SWPs are also CNY 10,000 and CNY 5,000 as stated above. In accordance with the Provisions (II) of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution issued on May 7, 2010.



environmental protection; and 5) whether the economic loss resulting from the bribe is between CNY 500,000 (approx. USD 77,000) to CNY 1 million (approx. USD 154,000).

Furthermore, the monetary threshold for prosecuting a SWP who accepts bribes was increased from CNY 5,000 (approx. USD 770) to CNY 30,000 (approx. USD 3,080). However, a SWP may still be prosecuted if the bribe amount exceeds CNY 10,000 (approx. USD 1,540) and other factors are present, including whether; 1) the SWP has a record of prior disciplinary punishment for accepting bribes; 2) the SWP has demanded bribes more than once; 3) the bribe caused loss of public property; 4) the bribe affects a national and/or public interest; or 5) the bribe seeks to promote or change someone's employment position. The Interpretation on Graft and Bribery does not, however, specifically articulate prosecution thresholds for non-official bribery.

The Interpretation on Graft and Bribery also provides further clarity into the sentencing criteria introduced by the Ninth Amendment to PRC Criminal Law, that took effect back on November 1, 2015. For example, it is considered an "extremely serious circumstance" when an individual offers more than CNY 5 million (approx. USD 770,000) in bribes to a SWP, and the bribe offeror could be sentenced up to life imprisonment.<sup>5</sup> When a SWP receives an aggregate of more than CNY 3 million (approx. USD 462,000) in bribes, this is considered an "extremely large amount" according to the Interpretation on Graft and Bribery. As such, the SWP could be exposed to the death penalty. Similar examples are given for several other sentencing criteria introduced by the Ninth Amendment, including: "relatively large amount," "large amount," "relatively serious circumstances," "serious circumstances," "causing heavy loss to State interests," etc.<sup>6</sup>

### **Property-like benefits and expressions of gratitude after the fact**

In order to be prosecuted under the PRC Criminal Law bribery provisions, "money or property" must be given to a SWP or to a business counterpart in exchange for an improper benefit. The Interpretation on Graft and Bribery further defines "money and property" to include "property-like benefits," which includes benefits that can be monetarily quantified, such as a home renovation, debt relief, membership services, travel arrangements, etc.<sup>7</sup>

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<sup>5</sup> See Article 45 of the Ninth Amendment to PRC Criminal Law.

<sup>6</sup> For further details and examples, please contact DLA Piper and/or see the Interpretation on Graft and Bribery.

<sup>7</sup> A similar definition of "money and property" which includes "property-like benefits" dates back to the Opinion on Issues Concerning the Application of Law in the Handling of Criminal Cases of Commercial Briberies issued by the Supreme People's Court and the Supreme People's Procuratorate in 2008.



The Interpretation on Graft and Bribery also explicitly states that a SWP who accepts money or property after an improper benefit(s) is sought or received would also fall within the new interpretation of the law. This eliminates prior ambiguity by making clear that expressions of gratitude after the fact, such as giving money or property to a SWP, can still induce the SWP to provide the improper benefit thereby constituting a bribe.

### **Voluntary disclosure**

According to the Ninth Amendment to PRC Criminal Law, a bribe giver who proactively confesses his or her crimes prior to the commencement of a prosecution may be given a lighter or reduced sentence. A bribe giver who commits a relatively minor offense but plays a crucial role in investigating a major case or performs significant meritorious services in assisting the authorities may be given a lighter penalty or may be exempt from punishment altogether. For example, if the bribe giver is accused of an offense and sentenced to no more than three years in prison and he/she provides important new information to investigative authorities in relation to a suspect of a major case (where the sentence may be more than 10 years), then he/she could be eligible for an exemption from punishment.<sup>8</sup> That said, those considering whether or not to take advantage of the new voluntary disclosure provision should first consider all the factual circumstances of any potential offense - how serious are the circumstances surrounding the case in question? If the facts involved reveal a potentially serious offense, then greater care should be exercised in assessing how useful the information at hand will be to the authorities and whether the facts to be confessed are already known to the authorities.

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<sup>8</sup> According to Article 14 of the Interpretation on Graft and Bribery, a "relatively minor" offense includes offenses that may result in no more than a three years sentence. Also, "major cases" refer to cases that have resulted or could result in more than a 10 years sentence based upon relevant facts and circumstances, or have relatively significant impact within a province, region, city or nation.

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