

## **The New Anti-Unfair Competition Law – a new era of curbing commercial bribery in China?**

The PRC Anti-Unfair Competition Law has been revised and promulgated by the Standing Committee of the National People's Congress on November 4, 2017 (the "**2017 Version**"), and will become effective on January 1, 2018.

In a nutshell, comparing to the 1993 PRC Anti-Unfair Competition Law (the "**1993 Version**"), the 2017 Version brings in new criteria for constitution of commercial bribery as well as the legal consequences thereof. However, although intended to be more precise the 2017 Version still keeps various questions open.

### **I. Commercial bribery constitution (Article 7 of the 2017 Version):**

1. Recipients of commercial bribery are specified as:

- Staff of the counterparty;
- The entity/entities or individual/individuals that are entrusted by the counterparty for relevant businesses;
- The entity/entities or individual/individuals who take advantage of duty or influence to affect the transaction.

Comparing to the 1993 Version, the list of recipients as reflected above in the 2017 Version indicates, that, at least if such list is interpreted literally, the counterparty being an entity, i.e., the corresponding business operator, is no longer qualified as possible recipient of commercial bribery but only an individual staff could be qualified under the 2017 Version. However, whether this was indeed the intention of the legislator and on how the authorities understand Article 7 during implementation is yet to be seen.

Compared to the first paragraph of Article 7 the second and third paragraph are much clearer. The 2017 Version explicitly expands the recipients of commercial bribery for the first time to those receiving treatments but not being staff of the counterparty itself. Such typical case of involving intermediaries has not been regulated in the 1993 Version.

2. Similar to the 1993 Version, in principle, bribery conducted by the staff of a business operator shall be deemed as act of the operator.

However, the 2017 Version provides a rather vague exception to the above, i.e., where the business operator has evidence to the effect that the conducts of the staff are irrelevant for pursuing of business opportunities and/or competitive advantages by the business operator.

### **II. Legal consequences of commercial bribery (Article 19 of the 2017 Version)**

The 2017 Version leaves out the criminal penalty implications for bribery which are subject to the Criminal Law anyway.

In the meantime, it has increased the administrative penalty range for offering commercial bribery to an administrative fine from RMB 100,000 to RMB 3,000,000, and added the revocation of business license for serious violations. Comparing to the current fine range from RMB 10,000 to RMB 200,000, this change indicates much severe administrative liabilities for commercial bribery misconducts in the future.

It is worth noticing that the 2017 Version is silent on administrative penalties for the bribe recipients. However, this doesn't mean automatically that any recipient would be safe if the pursuing thresholds for a criminal case are not fulfilled.



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