

Links Client Alert - Anti-Corruption

March 2020



Shanghai · Beijing · Hong Kong · London

LINKS
Law Offices
通力律师事务所

I. Highlights

Tianjin Administration for Market Regulation issued the *Circular on the Key Tasks for Anti-unfair Competition in 2020*

An Employee of a Joint Stock Bank was Convicted of Accepting Bribes by a Non-state Functionary

Cardinal Has Agreed to Pay More Than \$8 Million to Resolve Charges That It Violated the Books and Records and Internal Accounting Controls Provisions of FCPA

Herbalife Set Aside \$40 Million for Bribery Settlement

A Medicinal Product Group Company Accepted Guidance After Its IPO was Rejected Due to Commercial Bribery

Two Companies were Disqualified from Online Purchase and Distribution for 2 Years Due to Commercial Bribery in Medicine Purchase and Sale

II. Legislation

1. On February 26, 2020, Hainan Province issued ***Administrative Measures for the Management of Public Resources Transactions in Hainan Province (Revision)***, which will be implemented on April 1, 2020. Those that win a bid by collusion, bribery or other illegal means shall be investigated, penalized and ordered to make corrections by the public resource transaction supervision department or supervisory authority. Hainan credit authority shall record the information in public resource transaction credit records. Visit the link below for more information (available in Chinese only):

<http://www.hainan.gov.cn/hainan/szfwj/202003/f5f5926c903b4c41aeebfc2fb6bc6d55.shtml>

2. **On March 2, 2020, Tianjin Administration for Market Regulation (TAMR) issued the *Circular on the Key Tasks for Anti-unfair Competition in 2020*.** TAMR will focus on the investigation and punishment of commercial bribery in a wide range of industries and fields, which are closely related to people's livelihood, such as purchase and sales of pharmaceuticals (medical devices), education, public enterprises and institutions. Visit the link below for more information (available in Chinese only):

<http://scjg.tj.gov.cn/zwgk/gzwyj/50947.html>

3. **The Department of Housing and Urban-Rural development of Anhui Province issued a notice on *Soliciting Opinions on the Administrative Measures for Survey and Design of Construction Projects in Anhui Province (Revised Draft)*,** which stipulates that the contract-awarding unit and its personnel shall not accept or solicit bribes, kickbacks or other benefits in project survey and design. The contractor and its personnel shall not offer bribes, kickbacks or other benefits in project survey and design. Visit the link below for more information (available in Chinese only):

http://dohurd.ah.gov.cn/ahzjt_front/tjgz/20200306/019949c0-990f-44e5-bc55-7d0787c57da8.html

4. **On March 10, 2020, Sichuan Certified Tax Agents (SCTAA) issued the *Interim Measures for Punishment against Members' illegal practice*.** Any member of the SCTAA that has committed commercial bribery will be disqualified if the circumstance is serious. The rating of tax agent firms may be cancelled. The firms being punished shall not reapply for the rating within 2 years. Visit the link below for more information (available in Chinese only):

<http://www.scctaa.com/show-16-1103-1.html>

III. Domestic bribery cases

(I.) Acceptance of bribes

1. **[Internet] An employee of Creative Video Department of a Company was Sentenced for Accepting Bribes by a Non-State Functionary**



The (2019) Jing 0108 Xing Chu No.2245 Criminal Judgment published on March 17, 2020 shows that in June 2013, Zhao joined the creative video department of a company and began to be the head of the department in 2016. Zhao took advantage of his position to assist two public relations advisory companies in Beijing to obtain his company's projects. The two advisory companies successfully contracted the new product launch building projects (three times) and the annual meeting show project, after which Zhao collected RMB 240,000 from the two companies. Charged with taking bribery by a non-state functionary, Zhao was sentenced to 8 months in prison. Visit the link below for more information (available in Chinese only):

<http://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=1338fc66bd144a52ac03ab7d000c9754>

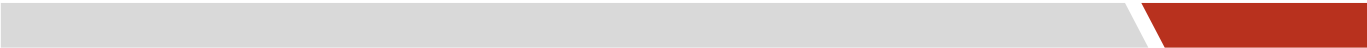
2. [Bank] An Employee of a Joint Stock Bank was Convicted of Accepting Bribes by a Non-State Functionary

The (2019) Hu 0115 Xing Chu No.3094 Criminal Judgment published on March 5, 2020 shows that from April 2012 to March 2019, while serving as a senior manager of Labor Union and secretary of the Youth League Committee of a joint stock bank, Yu took advantage of his position to organize labor competition, employee care, employee home, health hut, happiness index and other projects to seek benefits for other business units. He solicited and accepted a total of more than RMB10 million in bribes. Visit the link below for more information (available in Chinese only):

<http://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=8c139ba010a4461cad9aab7500feae11>

3. [Internet] A Senior Manager of the Food Import Department of a Beijing Company was Convicted of Accepting Bribes by a Non-state Functionary

The (2020) Jing 02 Xing Zhong No.47 Criminal Ruling published on March 17, 2020 shows that from November 2016 to November 2017, while serving as a senior manager of the food import department of a Beijing company, Yan took advantage of his position to receive a total of RMB 900,000 in cash from Wang, the legal



representative of an aquatic product company. Yan was convicted of accepting bribes by a non-state functionary and sentenced to 2 years and 6 months in prison. Beijing Second Intermediate People's Court sustained the original judgment. Visit the link below for more information (available in Chinese only):

<http://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=c2db2f45b2484078baddab73000c3bb0>

(II.) Offering Bribes

[Construction] Ma was Convicted of Offering Bribes by Yongren People' s Court of Yunan

The (2019) Yun 2327 Xing Chu No.64 Criminal Judgment published on March 6, 2020 shows that in order to obtain the contracting right and convenient in the implementation of the project, Ma gave Tan (state functionary) three times in total of RMB 1.1 million. Ma was convicted of offering bribes and was sentenced 5 years in prison with a fine of RMB 200,000. Visit the link below for more information (available in Chinese only):

<http://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=8ce7360af0a54701ba01ab7600954434>

(III.) Misappropriation

[Trade] A salesman was Convicted of Misappropriation by Huadu People' s Court of Guangzhou

The (2019) Yue 0114 Xing Chu No.764 Criminal Judgment published on March 18, 2020 shows that from October 2010 to April 2018, the defendant Xi took advantage of his position in a Guangzhou new material company to possess the company's payment of RMB 234,000 by self-made documents or understatement of sales quantity. Xi was convicted of misappropriation and was sentenced to 1 year and 9 months in prison. Visit the link below for more information (available in Chinese only):

<http://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=2363224e2f1f43cea936ab82001e0067>

IV. Foreign Anti-Corruption Cases

1. Cardinal Has Agreed to Pay More Than \$8 Million to Resolve Charges That It Violated the Books and Records and Internal Accounting Controls Provisions of FCPA

Employees of Cardinal China directed payments to government-employed healthcare professionals and to employees of state-owned retail companies who had influence over purchasing decisions. Cardinal's internal accounting controls were not sufficient to detect and control improper payments made by employees of its former Chinese subsidiary. In addition, Cardinal China did not subject the marketing employees to its full internal accounting controls, such as providing FCPA and anti-bribery training, or providing any oversight of their interactions with third parties in China. Visit the link below for more information:

<https://www.sec.gov/litigation/admin/2020/34-88303.pdf>

2. Herbalife Set Aside \$40 Million for Bribery Settlement

Herbalife was reported to set aside \$40 million to resolve foreign bribery probes centered on its business in China. The Department of Justice has accused two former executives of conspiring to bribe Chinese government officials, and tried to cover up the facts by giving false affidavits to the SEC and deleting computer files. They offered bribes in order to obtain a sales license and influence the government's investigation. Herbalife also offered bribes to Chinese media to reduce negative coverage. Since 2007, the Herbalife's Chinese subsidiary has reimbursed its employees more than \$25 million for entertainment and gift fees. Visit the link below for more information (available in Chinese only):

<https://mp.weixin.qq.com/s/gKyaSIQemHy9XUMnrB132Q>

V. Others

1. A Shanghai Cultural Media Company was Punished for Commercial Bribery

In November 2018, in order to obtain the advertising business, a Culture Media Company (hereinafter referred to as the Company) in Shanghai implied that it could pay about 5% of the contract amount to the employees of a Shanghai technology company. The two companies subsequently entered into two service contracts, with a total contract amount of more than RMB 1.1 million. On May 24, 2019, the Company paid RMB 50,000 to the technology company through an individual bank account held with the Company's Media Director. The Company had obtained a total illegal income of more than RMB 500,000. On March 4, 2020, Shanghai Putuo Administration for Market Regulation made a penalty decision to confiscate the illegal gains and imposed a fine of RMB 400,000. Visit the link below for more information (available in Chinese only):

<https://law.wkinfo.com.cn/administrative-punishment/detail/MkUwMTMxNjYxMDU%3D?module=anti-bribery&module=anti-bribery&fromType=qrcode>

2. A Shanghai Concrete Company was Punished for Commercial Bribery

A Shanghai Concrete Company (hereinafter referred to as the Company) is mainly engaged in the business of production and sale of commercial concrete. In order to obtain the transaction opportunity of a construction company's river improvement project, the Company promised a payment of RMB 25,000 to an employee of the construction company. The payment was completed on March 29, 2019. The illegal income obtained by the Company is more than RMB 270,000 in the above-mentioned projects. On February 20, 2020, the Shanghai Chongming Administration for Market Regulation made a penalty decision to confiscate the illegal gains and imposed a fine of RMB 150,000. Visit the link below for more information (available in Chinese only):

<https://law.wkinfo.com.cn/administrative-punishment/detail/MkUwMTI5OTM2Mjk%3D?sarchId=c6ae037672b249b991d527f3559d5951&index=1&q=%E6%B2%AA%E5%B8%82%E7%9B%91%E5%B4%87%E5%A4%84%E3%80%942020%E3%80%95302019001561%20%E5%8F%B7&module=>

3. A Medicinal Product Group Accepted Guidance After Its IPO was Rejected Due to Commercial Bribery

Group Company A has received the Guidance Letter from Jiangxi Securities Regulatory Commission on February 12, 2020, and has accepted guidance for IPO. Over the past 5 years, Group Company A has tried twice to IPO, both ended in failure. The audit results released on July 11, 2019, by Securities Regulatory Commission announced five major issues of the Group Company A, including its "lack of internal control" and "commercial bribery". Visit the link below for more information (available in Chinese only):

http://www.csrc.gov.cn/pub/jiangxi/jxfdqyxx/jxfdqyjbqk/202002/t20200212_370698.htm

4. Two Companies were Disqualified from Online Purchase and Distribution for 2 Years Due to Commercial Bribery in Medicine Purchase and Sale

Xinyu Chuangsheng Trading Company and Lianyungang Zhengdatianqing Pharmaceutical Company engaged in commercial bribery in the purchase and sale of drugs and medical devices in Xinyu City, Jiangxi Province. The two companies and related personnel have been listed in the bad record of commercial bribery in the field of medicine purchase and sale by Jiangxi Health Committee. At the same time, Jiangxi Medical Procurement Service Center cancelled the online procurement and distribution qualification of the two companies and their personnel for 2 years. Visit the link below for more information (available in Chinese only):

<http://www.jxyycg.cn/view-c3779f2ddfef40e1879337514eb75e2c-bf851f4d3ed649b1b9d4c460a001e4cb.html>



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To meet clients' ever-growing needs in anti-corruption compliance, Llinks assembled a team consisting of experienced anti-corruption compliance experts. The anti-corruption compliance team is comprised of former general counsels and compliance heads of fortune 500 companies and other leading Chinese companies, former administrative officers, as well as lawyers specialized in drugs and health, automobiles and auto parts, consumer products, energy and chemicals, and finance and insurance, and professional lawyers specialized in labor law and company law.

It is necessary to have a deep insight and accurate grasp of laws and policies to provide professional services. It is further required to be familiar with the law enforcement procedures and recognition standards of the regulatory authorities, as well as the corporate culture, organizational structure and workflow with different national backgrounds, to provide customers with operational opinions. Llinks team is capable of utilizing its profound knowledge and experience in serving all kinds of anti-corruption compliance needs of clients, assisting clients to establish internal anti-corruption compliance system, coordinating the investigation from the supervision department, dealing with the fraud and illegal behavior of internal staff, and successfully maintaining the enterprise reputation and reducing the economic loss for the enterprise.

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