KAUFMAN DOLOWICH

Mansfield Rule Certified 2022-2023

Chinese Anti-Bribery Law May Be Changing, *Law360, by Chang Liu*

On April 12, 2016, Law360 published an article written by **Chang Liu regarding Chinese anti-bribery law changes.**

On Feb. 25, 2016, the Legislative Office of the State Council issued a draft of the amendment to the Anti-Unfair Competition Law of China (AUCL). The draft closed for public comments on March 25, 2016, and there is no timetable on when it will be officially passed by the legislators.[1] If passed, the new AUCL will significantly expand the existing anti-bribery provisions and provide a potentially greater penalty. Changes In Anti-Bribery Provisions In a pertinent part, Section 7 of the draft provides that it is bribery if a company:

(1) Takes advantage of public services to obtain private or personal profits;
(2) Provides payments to another business without reflecting the transaction in accounting records and contracts; or
(3) Provides payments to third-parties who have influence on the transaction, and such influence causes injuries to other businesses or consumers.

In comparison, Section 8 of the existing AUCL only prohibits companies from providing payments to other businesses without reflecting such transaction on accounting records. Thus, the draft has a broader scope because sections (1) and (3) remove "accounting reflection" as a necessary requirement of violation. Furthermore, Section 20 (Section 22 in the existing statute) provides a penalty of 10-30 percent of the total transaction amount, which could be potentially much greater than the existing number (¥10,000 to ¥200,000, which is approximately $1,543.52 and $30,875.16.) Finally, Section 7 of the draft adds vicarious liability to a company for its employees' violations, but also provides an affirmative defense for the company if it can prove that the employee's action does not benefit but damages the company.

© 2024 Kaufman Dolowich. All Rights Reserved. | www.kaufmandolowich.com