
foreign corrupt practices act lawflash

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Fraudulent Receipts Pose Risks for Multinationals Operating in China

Multinational companies operating in the country should adapt their compliance programs in light of the risk of civil and criminal penalties.

Fraudulent official receipts—or “*fapiao*” (the Chinese word for an official invoice)—pose serious obstacles to multinational corporations operating in China and underscore the need for both flexible compliance procedures tailored to country-specific risks and significant internal investigative responses to travel and entertainment irregularities in Chinese operations.

Recent news reports disclosed that major investigations have been undertaken on allegations that fraudulent *fapiao* are being exploited by employees of multinational corporations to conceal improper payments.¹ Our experience conducting internal investigations and compliance reviews in China has confirmed that fraudulent *fapiao* are widely available in black markets and are used as a means to fraudulently obtain funds from legitimate company operations. Differentiating between fraudulent receipts and legitimate ones can be difficult for both regulators and corporations. As explained by *The New York Times*, “[d]etecting fake or doctored receipts is a challenge for tax collectors, small businesses and China’s state-run enterprises,” and such schemes are “so pervasive that auditors at multinational corporations are also being duped.”² Fake receipts—including travel receipts, lease receipts, and value-added tax receipts—have become “the grease for schemes to bribe officials and business partners.”³

Although these doctored receipts are illegal in China and violators risk capital punishment, the demand for fake records is so strong that a surprising amount of the dealmaking is conducted in public. *The New York Times* reported that “[s]igns posted throughout [Shanghai] advertise all kinds of fake receipts” and that “[p]romotions for counterfeit ‘*fapiao*’ . . . are sent by fax and through mobile phone text messages.”⁴ Recently, PricewaterhouseCoopers issued a report on doing business in China, which noted that “[u]se of fake *fapiao* and supporting documentation is the most common mechanism to extract cash from firms, either as fraud to enrich employees or as a means to fund bribes which may constitute a violation of the [Foreign Corrupt Practices Act] and/or the UK Bribery Act.”⁵

Implications

As evidenced by several U.S. enforcement cases stemming from this practice, multinational corporations operating in China need to be aware of the risks posed by fraudulent receipts and adapt their compliance programs to screen for and prevent such practices. The implementation of global compliance procedures without accounting for country-specific risks, such as counterfeit *fapiao*, can increase companies’ risk of exposure to

1. David Barboza, Coin of Realm in China Graft: Phony Receipts, *N.Y. Times*, Aug. 4, 2013, at A1, available at <http://www.nytimes.com/2013/08/04/business/global/coin-of-realm-in-china-graft-phony-receipts.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. PricewaterhouseCoopers, Doing Business and Investing in China 59 (2013), available at http://www.pwccn.com/webmedia/doc/634940150734265198_iic_full.pdf.

criminal liability and reputational damage both within and beyond China's borders.

The risks posed by fraudulent receipts are heightened for industries "where the target market is constituted largely of individuals who meet the U.S. Department of Justice's definition of 'government officials,'" including the pharmaceutical and medical device industries.⁶ A recent article from the Xinhua News Agency, the official press agency of China, reported that Chinese prosecutors received a record number of bribery inquiries (more than 600,000) during the first six months of 2013 and that the Supreme People's Procuratorate—China's highest national agency for prosecution and investigation—is actively targeting "construction projects, government procurement, public resources use, bank loans, the purchase of pharmaceutical and medical equipment, transportation, commerce, and personnel management" in its fight against corruption.⁷

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6. *Id.*

7. Yang Yi, Inquiries over bribery up in China (July 15, 2013), http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/english/china/2013-07/15/c_125005945.htm.

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