



Capital Associates PRC Lawyers

天咨律师事务所

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## GSK Case in China



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# About Myself

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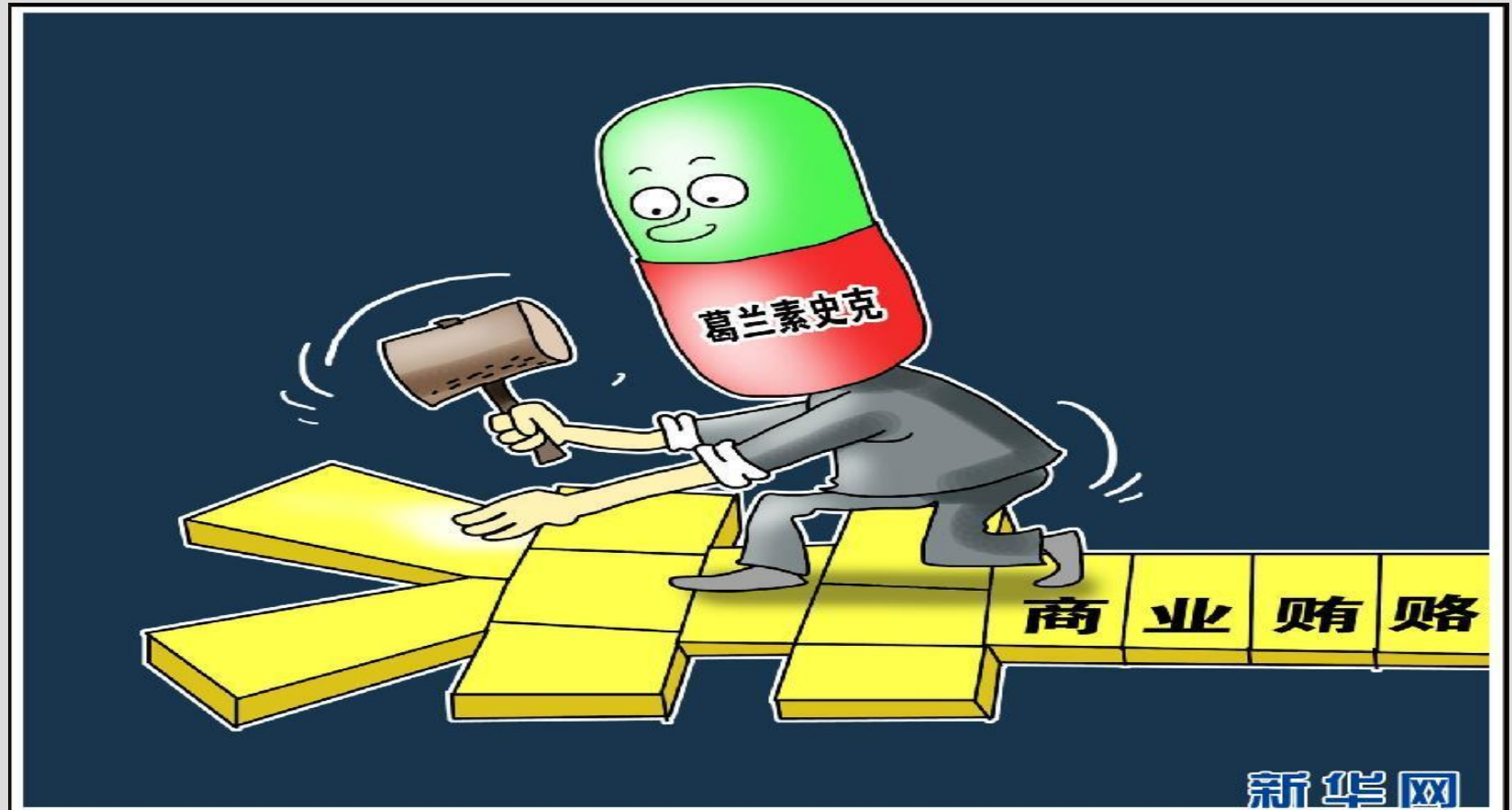
- ❑ Chinese lawyer, have been practicing Chinese law for about 20 years.
- ❑ Mainly working for foreign investors in China, including most of the major Danish companies in China.
- ❑ Married to a Dane, with three children



# GSK in China

- Presently, GSK is one of the largest multi-national pharmaceutical companies in China.
- Total investment has been over US\$500 million.
- Having more than 5000 employees, a global scaled full-featured R&D center, and 6 manufacturing facilities in China;
- There major business areas: prescription medicine, vaccine and consumer health care products

# Outbreak of Commercial Bribery



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# Background of the GSK Case

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- ❑ On June 13, Wall Street Journal released an employee in GSK (China) reporting commercial bribery of GSK China to the GSK headquarter.
- ❑ On June 27, government officers visited Beijing and Shanghai offices of GSK to start the investigation.
- ❑ Ministry of Public Security started the case and arranged local police in Shanghai, Changsha and Zhengzhou etc. to carry out investigation.
- ❑ On June 28, the online news released that all the four major senior executives in GSK (China) were investigated for involving in commercial bribery.

# Background of the GSK Case

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- ❑ On July 10, the police seized the books of a tourist company which GSK has used.
- ❑ Four senior executives were under arrest including legal department director, vice president, general manager of the business operation department and director of human resource.
- ❑ So far, more than 30 people from GSK China has been arrested. The CEO has run back to UK.

# GSK's Commercial Bribery

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It is reported that:

- Tourist companies have been used (i) to organize trips inside China and outside China (ii) organize conferences for doctors (iii) fake the number of participants in order to receive more money from GSK and put a separate account for this excessive costs as a cash box for GSK to use as kickbacks for doctors and kickbacks to the executives of GSK China.
- GSK sales representatives paid lecturing fee to the doctors for training and the training is either a formality or has never been carried out.

# GSK's Commercial Bribery

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- It was reported that GSK reimbursed the bill for the doctors to use prostitution. It was also said the owner of the travel agency use sex as bribery to the executives of GSK China.
- When the cases was first started, GSK was trying to bribe the officers in order to stop the investigation.



# GSK's Commercial Bribery

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- Based on GSK case, bribery cost takes a comparative large proportion of the operational cost and also about 10 to 20 percent of the drug price.

# The Escalation of GSK Case – Earthquake in Pharmaceutical Industry

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- ❑ Following GSK case, UCB (a Belgium pharmaceutical company) became the second foreign-invested pharmaceutical company to be investigated for bribery.
- ❑ On July 19, a sales employee from AstraZeneca was taken away by the police and on July 24, two sales line managers were taken away by the police for investigation.
- ❑ It is said that representative offices of Pfizer Pharmaceutical in Wuhan has been investigated by local AIC, but no exact official news about the investigation.



# The Escalation of GSK Case – Earthquake in Pharmaceutical Industry

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- Novartis is under investigation.
- Roche is under investigations.



# The Escalation of GSK Case – Earthquake in Pharmaceutical Industry

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- According to internal news, all foreign pharmaceutical companies are checked by local PSB (Public Security Bureau) and other authorities.
- Any companies that has done any business transactions with GSK is checked by PSB to see whether there are any illegal transactions. Quite a few people have been arrested due to this.
- The GSK is a special case taken by the Ministry of Public Security.

# Influence in Pharmaceutical Industry

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- Since GSK case, there has been an open debate that the high price of drugs are due to costs of bribery by the pharmaceutical companies.
- The healthcare industry in China is very troublesome and has been under a few times reforms but most of them has been failed so far. So the GSK case is like putting petro into the fire.



# The Big Picture - Cracking down corruption by the New Leaders

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- Since the new leaders in board last year, they have started a series campaigns against corruptions. Every week there is a minister level official/SOE head arrested.
- Government officials are not allowed to go to banquet and invited to dinners/lunches, and taken gifts. This has affected a lot of the entertainment business in China.
- Old good days are gone, everyone is nervous and worried.



# GSK Case is a Sign of Increased Application of National Anti-corruption Rules in China (I)

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## Legal frame on anti-corruption in China:

- ❑ There is no unified statute on anti-corruption.
- ❑ Anti-corruption is stipulated in different provisions of laws and regulations:
  - Anti-unfair Competition Law
  - Criminal Law
  - Provisional Rules on Commercial Bribery Promulgated by Different Authorities (e.g. provisions promulgated by AIC; provisions of *PRC Drug Administration Law*)



# GSK Case is a Sign of Increased Application of National Anti-corruption Rules in China (II)

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## □ What is commercial bribery in PRC?

According to law, commercial bribery refers to bribing the company/organization or individuals for the purpose of purchasing or selling products.

## □ Property can be in kind or cash including:

- Promotion fee
- Advertisement fee
- Sponsorship fee
- R&D fee
- Service fee
- Consulting fee
- Commission
- Reimbursements





# GSK Case is a Sign of Increased Application of National Anti-corruption Rules in China (III)

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- Strictly forbidden:
  - Kickbacks
  - Discounts
  - Commissions
  - Cash
  - Without properly recorded in the accounting book



# GSK Case is a Sign of Increased Application of National Anti-corruption Rules in China (IV)

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- China ratified United Nations Convention Against Corruption (UNCAC) in 2005.
- In 2008, the Central Committee of the Communist Party promulgated “2008-2012 Work Plan on Establishment and Perfection of the System on Punishing and Preventing Corruption”, especially emphasizing to strengthen the investigation and punishment of foreign enterprises’ commercial bribery in China.
- The GSK case is not merely to be seen as “setting an example” or “killing the chicken to scare the monkey”, but a sign of increased application of national anti-corruption rules in China in general in the future.



# GSK Case is a Sign of Increased Application of National Anti-corruption Rules in China (IV)

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- However, there are still a lot of grey area in the legislations on anti-corruption. Many pharmaceutical companies use the approach of organizing conferences for doctors, is this legal or illegal?



# Influence of the GSK Case – More compliance

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- GSK case is reflection of the healthcare industry reform in China
  - Recently 80% of the pharmaceutical sales relied upon the hospitals.
  - 8 foreign pharmaceutical enterprises in the top 10 of the market share in the first class hospitals.
  - 6 foreign pharmaceutical enterprises in the top 10 of the market share in the second class hospitals.
  - Foreign pharmaceutical enterprises occupy more than 50% of the market share.



# Influence of the GSK Case – More compliance

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- ❑ The healthcare industry reform shall be carried out.
- Operation cost and sale price shall be urged to reduce by NDRC.
- Operation cost now can be proportioned as 20% to 30% of the sale price.
- The “Super National Treatment” of the Reference Listed Drug (RLD) is going to be canceled.
- Since 1993, China has implemented the pharmaceutical patent protection policy
- Foreign pharmaceutical enterprises could get the government subsidy to encourage the introduction of new medicines
- In recent 30 times of reducing the drug price, the RLD seldom became the target of price adjustment
- The separate pricing policy on the RLD has been questioned for a long time
- The government is going to cancel this policy



# Why foreign companies?

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- The attitude and policy towards foreign investment shall be changed.
- Chinese is tightening the control of the foreign-invested enterprises
- The governors are becoming mighty and showing their strength on the international stage – more national treatment



# More Compliance

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- ❑ Establish a sound and effective internal control and compliance mechanism.
- ❑ Have a clear and practical code of conduct and do training for your staff.
- ❑ Make sure that you are updated with the legislation and policies in China.
- ❑ Do not take “monkey see and monkey do” approach.

# Conclusion

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**China is no longer a paradise due to low entrance, non-compliance and low costs.**

**Compliance is the key to long term success in China.**



# Thank You

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