

GlaxoSmithKline (“GSK”) Investigation in China – News Update

September 23, 2014

A Chinese intermediate court found GSK’s China subsidiary guilty of commercial bribery and fined the company a record RMB 3 billion (USD 490 million). Five of GSK China’s top managers, including Mark Reilly, the China CEO, were convicted of bribery-related charges and received suspended prison sentences.¹ Notably, the Chinese court finding of *commercial bribery* suggests that Chinese authorities do not consider the healthcare professionals who received the bribery payments to be *government officials*. This, however, does not preclude potential FCPA liability under the same facts.

- On September 19, 2014, after a one-day closed hearing, Changsha Intermediate People’s Court in Hunan province imposed upon GSK the largest ever fine handed down by a Chinese court.
- The court found that Mark Reilly, with the support of other GSK executives, set up sales units that gained billions of yuan in illegal income by bribing doctors, hospitals and health officials to increase drugs sales. Mark Reilly was given a three-year prison sentence, subject to a four-year suspension and deportation from China. The court took into account Mark Reilly’s voluntary return to China to cooperate with Chinese authorities and had “truthfully recounted the crimes of his employer.”
- GSK China’s former human resources director, former vice president and operations manager, former business development manager, and former legal affairs director were each given two to four years of suspended sentences. All five pleaded guilty and would not appeal their sentences.
- GSK stated that it has cooperated fully with the authorities and has taken steps to rectify the issues identified at the operations of the unit. GSK said the Chinese fine would be funded out of existing cash resources, and the charge would be included in its third-quarter update.
- Notably, the Changsha Intermediate Court ruled that GSK violated Chinese laws prohibiting *commercial* bribery, rather than bribery of *government* officials. This suggests that Chinese authorities do not view the relevant healthcare professional to be government officials. However, this position does not preclude U.S. regulators from potentially penalizing GSK for bribery of foreign government officials, under the same facts, in violation of the Foreign Corrupt Practices Act; the U.S. regulators consider local law designations of “government official” status as one of a number of factors when determining FCPA liability.

¹ Sources: *GlaxoSmithKline Found Guilty of Bribery in China*, Wall Street Journal, Sept. 19, 2014; *GSK slapped with record ¥3 billion fine for bribing doctors*, South China Morning Post, Sept. 20, 2014; *China Fines GlaxoSmithKline \$490 Million in Graft Probe*, Agence France-Presse, Sept. 19, 2014; *GSK China hit with record fine, apologizes*, Xinhua, Sept. 19, 2014; *China Fines GlaxoSmithKline Nearly \$500 Million in Bribery Case*, New York Times, Sept. 19, 2014; *GlaxoSmithKline gets record fine, posts an apology*, China Daily, Sept. 20, 2014

- GSK may face further fines in the United States or the United Kingdom. The United Kingdom's Serious Fraud Office opened a criminal investigation into the commercial practices of GSK in May 2014, and the U.S. Securities and Exchange Commission and the Justice Department are also investigating GSK.
- The Changsha Intermediate Court acted as the court of first instance in this case because, among other things, the case involved foreign defendants, the sizeable monetary amount in question, and the social impact of the case. GSK has one opportunity to appeal to the Hunan Provincial People's High Court, though the company has so far expressed no plans to appeal the Intermediate Court's ruling.

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