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PRC Amends Criminal Law As It Relates to Bribery and Corruption

On August 29, 2015, the Standing Committee of the National People's Congress enacted the *Ninth Amendment to the Criminal Law of the People's Republic of China* (the "Amendment"), following two rounds of public consultation. The Amendment becomes effective on November 1, 2015. While the changes are not sweeping, there are significant amendments to provisions relating to corruption-related crimes, which appear to bring PRC criminal law more in line with international standards, including the U.S. Foreign Corrupt Practices Act ("FCPA"). Specifically, the Amendment (1) adds the crime of providing bribes to state functionaries' close relatives or other persons closely related to them; (2) adds monetary penalties in addition to other punishments for corruption-related crimes for individuals; (3) replaces specific monetary figures that trigger different levels of punishments with more general standards such as "relatively large," "huge," and "especially huge" and (4) restricts the circumstances in which bribe-givers will be exempted from punishment.

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Offering Bribes to Close Relatives of Current and Former State Functionaries

A new paragraph was added in Article 390 of the PRC Criminal Law to impose liability on persons who offer bribes to close relatives of, or any person close to, current or former state personnel. The Criminal Law already contained a provision under which the scope of bribe-*receivers* included close relatives and individuals with close relationships with state functionaries and former state functionaries.¹ However, those provisions did not impose criminal punishments on bribe-*givers*. Giving bribes to close relatives or associates of state-functionaries is now punishable pursuant to the Amendment by imprisonment and fines.

Monetary Penalties for Corruption-Related Crimes

In addition to other punishments, the Amendment adds monetary fines for all individuals that are convicted of engaging in corruption and bribery offenses. For instance, employees in charge of a business unit will now be responsible for bribe payments made by the unit, even if the employee did not provide the bribe him/herself. Previously, individuals were generally only subject to imprisonment for serious individual offenses, with fines imposed on individual bribe-givers in only very limited circumstances.²

Modification of Sentencing Standards for Embezzlement Convictions

The Amendment creates three levels of sentencing for embezzlement convictions that use vague, undefined terms rather than the previously used specific monetary amounts:³ (1) a person who embezzles a "relatively large" amount,

¹See Amendment VII to the Criminal Law, February 28, 2009, Art. 13, available [here](#).

²Under the preexisting law, fines are imposed for corrupt activities only on legal entities, with one exception: fines are imposed on individual bribe-givers only when (a) bribing an employee of a company or enterprise, or a foreign party performing official duties or an official of international public organizations; and (b) the amount involved is huge (Art. 164).

³Under the current PRC Criminal Law, a person committing the crime of receiving bribery will be punished depending on the amount of bribes s/he has taken; i.e., if below RMB 5,000, s/he may be sentenced to up to two years' criminal detention (if circumstances are minor, may be given administrative sanctions); if between RMB 5,000 and RMB 50,000, s/he will receive at least one year imprisonment and may be sentenced to up to 10 years' imprisonment; if between RMB 50,000 and RMB 100,000, s/he will receive not less than five years imprisonment and may be sentenced to life imprisonment; and if over RMB 100,000, s/he will receive not less than 10 years or life imprisonment, and may receive the death penalty.

or if there are “relatively serious” circumstances, shall be sentenced to a fixed-term imprisonment of not more than three years or criminal detention with a fine imposed concurrently; (2) a person who embezzles a “huge” amount, or if the circumstances are “serious,” shall face a fixed-term imprisonment of not less than three years but not more than 10 years, and he shall also be fined or his property shall be confiscated; and (3) a person who embezzles an “especially huge” amount, or if the circumstances are “especially serious,” shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined or his property shall be confiscated; if the amount is especially huge, and the interest of the State or the people suffers heavy losses, that person shall be sentenced to life imprisonment or death and also to confiscation of property. In this way, the Amendment affords increased discretion to authorities in making sentencing determinations.

Exemption from Punishment More Difficult

Before the Amendment, voluntary disclosure alone could be sufficient for complete exemption from punishment, at least under the letter of the law.⁴ Going forward, in order to mitigate punishment, a bribe-giver must voluntarily disclose his/her crimes before prosecution. Moreover, a bribe-giver may be exempted from punishment entirely only if his or her crimes are “relatively minor” and “if by exposing corrupt activities of others he provided crucial information leading to the successful investigation of a major case, or he performed other major meritorious service.”⁵

Conclusion

Though it remains to be seen how it will be implemented and interpreted by judicial authorities, the Amendment extends the scope of criminal liabilities under Chinese law, making the criminal law broader, and offers more discretion to prosecuting authorities. At the same time, it brings the PRC Criminal Law more in line with international anti-corruption laws and demonstrates the Chinese government’s determination and continuing efforts to fight bribery.

If you would like to learn more about the issues in this Alert, please contact [Mimi Yang](#) or your usual Ropes & Gray attorney.

⁴Article 390 of the preexisting Criminal Law provides that “[a]ny briber who, before he is investigated for criminal responsibility, voluntarily confesses his act of offering bribes may be given a mitigated punishment or exempted from punishment.” Criminal Law, Art. 390, para. 2 (“行贿人在被追诉前主动交待行贿行为的，可以减轻处罚或者免除处罚。”).

⁵Amendment, Art. 45, para. 2.