

Bribery & Corruption

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China

Hui Xu, Sean Wu & Chi Ho Kwan
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Brief overview of the law and enforcement regime

China's anti-corruption laws have been stringent for many years. On 1 January 1980, the *Criminal Law of the People's Republic of China* (the "**PRC Criminal Law**") containing the criminal offences of bribery and corruption came into effect, and later underwent a significant shift in 1997 with enhanced provisions on bribery and corruption offences. Further amendments to the *PRC Criminal Law* were enacted in 2015 and 2020 to update bribery and corruption provisions, respectively.

The enforcement of anti-corruption laws has become increasingly vigorous in recent years, particularly following President Xi Jinping's commitment to curbing and eliminating corruption since coming to power in 2013. This commitment triggered the beginning of a new era, which champions an enhanced focus on and appreciation for the strength and breadth of Chinese anti-corruption laws.

President Xi's continued commitment to fighting corruption has reached even the highest echelons of power. According to statistics in a March 2021 report by the Procurator-General of the Supreme People's Procuratorate (the "**SPP**"), Zhang Jun, to the National People's Congress, 15,346 persons were charged for corruption or dereliction of duty in 2020 and 12 state functionaries at the provincial/ministerial level were investigated in 2020,¹ which is indicative of the severity of the government's anti-corruption campaign. In total, the State Supervisory Committee of the People's Republic of China (the "**State Supervisory Committee**") and local supervisory agencies transferred 19,760 state functionaries to the SPP or different levels of procuratorates for prosecution in connection with corruption or dereliction of duty in 2020, of which only 662 (representing less than 3.4%) were not prosecuted.² According to the statistics provided in a March 2021 report by the Chief Justice of the Supreme People's Court (the "**SPC**"), Zhou Qiang, to the National People's Congress, around 22,000 persons were sentenced for corruption or dereliction of duty in 2020. Notably, compared to no death penalty reported in the 2020 report, two senior state functionaries were sentenced to death for corruption in the March 2021 report, of which one has been executed, and the other was commuted to life imprisonment.³

The State Supervisory Committee, which was established in March 2018, has taken a leading role in honouring China's commitment to anti-corruption enforcement. In a press release in June 2021, the Deputy Director of the State Supervisory Committee noted that from December 2012 to May 2021, different levels of discipline inspection committees and supervisory agencies of China had investigated 392 state functionaries at the provincial/ministerial level.⁴ According to a January 2021 report issued by the Standing Committee of the Central Commission for Discipline Inspection of the Chinese Communist Party,

discipline inspection committees and supervisory agencies throughout China investigated approximately 618,000 cases in 2020.⁵

A State Supervisory Committee publication released in June 2021 noted that, between 2014 and June 2020, the PRC authorities successfully sought the extradition of 8,663 people suspected of committing corruption-related offences from more than 120 countries and regions, and recovered criminal proceeds of RMB 21.5 billion (USD 3.29 billion).⁶ Notably, after the formation of the State Supervisory Committee, more than half of the suspects were brought back to China and more than half of the criminal proceeds were recovered.⁷ To further ensure and reinforce the functions of the State Supervisory Committee, the *Law of the People's Republic of China on State Supervisors* (the “**PRC State Supervisors Law**”) was adopted in August 2021, and will take effect on 1 January 2022, to regulate the selection and oversee the administration of officials in State Supervisory Committee and local supervisory agencies.

As another example, banquets for representatives of the National People's Congress have given way to self-service and alcohol-free buffets. The issuance of the Administrative Measures on Conferences of Central and State Departments (the “**Measures**”) and the Provisions on Administration of Domestic Official Reception by Party and Government Organs (the “**Provisions**”) in September and December 2013, respectively, echo this development, with the aim of cutting expenditure on central government department officials' meetings. The Provisions contain strict and detailed requirements and standards on where a business meal may take place and what must be excluded from a business meal. These developments are part of President Xi's overall efforts to eliminate opportunities for corruption and extravagance in connection with official meetings and receptions.

Notably, the Chinese government proactively attended the annual Conference of the States Parties to the United Nations Convention Against Corruption from 2006 to 2019,⁸ where it expounded China's continuous implementation of the Convention.⁹ This attendance indicated the Chinese government's commitment to its anti-corruption campaign.

Currently, the primary pieces of anti-bribery and anti-corruption legislation in China are: (i) the *PRC Criminal Law*; and (ii) the *PRC Anti-unfair Competition Law* (the “**AUCL**”). The *PRC Criminal Law* applies to both “official bribery” (where government officials and state functionaries are involved) and “commercial bribery” (where private enterprises and/or their staff are involved), whereas the AUCL prohibits “commercial bribery”.

In addition to the above primary legislation, various government departments' administrative rules (such as the *Interim Regulations on Prohibiting Commercial Bribery*) and judicial interpretations issued by the SPC and the SPP (such as the *Opinion on Issues concerning the Application of Law in the Handling of Criminal Cases of Commercial Bribery* (the “**2008 Commercial Bribery Opinion**”) and, most recently, *Interpretations of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery* (the “**2016 Judicial Interpretation**”)) also contain anti-bribery provisions.

The Communist Party of China (the “**CPC**”) and the State Council have also issued internal disciplinary rules governing corruption or bribery of Communist Party members and Chinese government officials.

The PRC Criminal Law

The *PRC Criminal Law* prohibits: (a) “official bribery”, which applies to a “state functionary” or an “entity”; and (b) “commercial bribery”, which applies to a “non-state functionary”.

The term “state functionary” is broadly defined, and includes civil servants who hold office in

state organs, persons who perform public duties in state-owned entities or semi-government bodies, persons who are assigned to non-state-owned entities by state organs or state-owned entities to perform public duties, and persons who otherwise perform public duties according to the law.¹⁰ The term “entity” includes state organs, state-owned companies, enterprises, institutions, and people’s organisations.¹¹

The term “non-state functionary” means any person or entity that is not a “state functionary” or an “entity” as defined in the *PRC Criminal Law*. Generally speaking, the criminal sanctions for bribery offences involving state functionaries are more severe than those involving non-state functionaries.

Under the *PRC Criminal Law*, both offering and receiving bribes constitute serious criminal offences in China. The statutory offences are usually categorised as “bribe-giving” or “bribe-accepting” offences and include:

- (i) offering of a bribe to a state functionary;¹²
- (ii) offering of a bribe to a non-state functionary;¹³
- (iii) offering of a bribe to a foreign official or an officer of a public international organisation;¹⁴
- (iv) offering of a bribe to an entity;¹⁵
- (v) offering of a bribe by an entity;¹⁶
- (vi) offering of a bribe to a close relative of, or any person close to, a current or former state functionary;¹⁷
- (vii) introduction of an opportunity to receive a bribe to a state functionary;¹⁸
- (viii) acceptance of a bribe by a state functionary;¹⁹
- (ix) acceptance of a bribe by a close relative of, or any person close to, a current or former state functionary;²⁰
- (x) acceptance of a bribe by a non-state functionary;²¹ and
- (xi) acceptance of a bribe by an entity.²²

The Ninth Amendment to the *PRC Criminal Law* (the “**Ninth Amendment**”), which was promulgated by the National People’s Congress on 29 August 2015 and came into effect on 1 November 2015, focuses on empowering judicial organs to combat corruption more effectively. In addition to introducing a new offence of “offering a bribe to a close relative of, or any person close to, a current or former state functionary”, these amendments:

- (i) expand the scope of monetary penalties as punishment for bribery offences (see the table below, outlining the penalties for various offences, under the heading “Penalties under the *PRC Criminal Law*”);
- (ii) add monetary fines to almost all corruption/bribe-related offences;
- (iii) replace specific monetary thresholds for sentencing considerations with more general standards, such as “relatively large”, “huge”, and “especially huge”; and
- (iv) raise the bar for mitigating circumstances to apply for reduced sentencing.

On 18 April 2016, the SPC and the SPP jointly issued the 2016 Judicial Interpretation on bribery, corruption, and misappropriation of official funds. The 2016 Judicial Interpretation became effective immediately and provides further clarification to the Ninth Amendment regarding corruption and bribery crimes. In principle, the 2016 Judicial Interpretation:

- (i) expands the definition of bribes to include certain intangible benefits;
- (ii) adjusts monetary thresholds for bribery prosecutions and sentencing, including raising the thresholds for bribes involving government officials and non-government officials;
- (iii) clarifies that a thank-you gift after improper benefits are sought still constitutes bribery; and

- (iv) clarifies when leniency may be given and provides additional details on the requirements and benefits of voluntary disclosure.

On December 26, 2020, the Standing Committee of the National People's Congress passed the Eleventh Amendments of the *PRC Criminal Law* (the “**Eleventh Amendment**”). The Eleventh Amendment revised the penalties for the crime of accepting bribes by non-state functionaries.²³ These amendments:

- (i) increase the maximum imprisonment term from 15 years to life;
- (ii) replace two-tier penalties in the previous version with three tiers supplemented by aggravating factors; and
- (iii) change the monetary penalty from optional confiscation of property to mandatory criminal fines.

The Eleventh Amendment aims to standardise the penalties for the crime of accepting bribes by non-state functionaries and those for the crime of accepting bribes by state functionaries (except the death penalty), reflecting the goals of the *PRC Criminal Law* to equally protect state and private property.

Jurisdiction of the PRC courts

Foreigners or foreign entities are subject to the same legislation when doing business in China.²⁴ Chinese criminal laws apply to crimes that take place within the territory of China, whether committed by Chinese nationals or foreigners.

Accordingly, the PRC courts would have jurisdiction over:

- (i) bribery and other crimes that are committed by PRC or foreign individuals or entities within China;
- (ii) bribery and other crimes that are committed by PRC or foreign individuals or entities on board PRC ships or PRC aircraft;
- (iii) bribery and other crimes that are committed outside China with the intention of obtaining improper benefits within China;
- (iv) bribery by PRC individuals of foreign officials or officers of a public international organisation outside China;
- (v) bribery and other crimes committed by PRC nationals outside China that are punishable under the *PRC Criminal Law* by a fixed-term imprisonment of three years or longer; and
- (vi) bribery and other crimes committed outside China by PRC state functionaries or military personnel.

“Bribe-giving” offences

The *PRC Criminal Law* generally prohibits an individual or entity from giving “money or property” to a state functionary, a close relative of, or any person close to, a current or former state functionary, a non-state functionary or an entity for the purpose of obtaining “improper benefits”.

Previously, “money or property” included cash and in-kind objects, as well as various “proprietary interests that can be measured by money”, such as the provision of: home decoration; club membership; stored-value cards; travel expenses; shares in, or dividends or profits from a company without corresponding investments in the company; payment through gambling; and payment for services that have not been provided, etc.²⁵

The 2016 Judicial Interpretation reaffirms the definition of bribes to include certain intangible benefits. It defines “money and property” to include money, in-kind objects and proprietary interests for the crime of bribery, and “proprietary interests” to include material benefits that can be converted into money, such as home renovation, debt relief, etc., and other benefits that

need to be paid using money, such as membership service, travel, etc.²⁶ Previously, the 2008 Commercial Bribery Opinion provided that the amount of such intangible benefits should be calculated on the amount actually paid, whereas the 2016 Judicial Interpretation states that the amount concerned can also be calculated on the amount payable. This calculation is designed to address situations in which services, travel, or other intangible benefits may have been deliberately undervalued by bribe-givers.

In “bribe-giving” cases, a violation occurs when a party pays a bribe with the intent to seek “improper benefits”, which include: (a) seeking benefits from a state functionary, non-state functionary or entity which would be a breach of law, regulations, administrative rules, or policies for that state functionary, non-state functionary or entity to provide; or (b) requesting a state functionary, non-state functionary or entity to breach the law, regulations, administrative rules or policies to provide assistance or facilitating conditions. For commercial activities related to bidding and government procurement, giving money or property to a relevant state functionary in violation of the principle of fairness to secure a competitive advantage is considered as giving money or property for the purpose of obtaining an “improper benefit”.²⁷ Further, if “money or property” has been offered with an intent to seek “improper benefits” but the offence of giving a bribe is not consummated because of factors independent of the said intent, such action may nevertheless constitute a criminal attempt offence under PRC law.²⁸

A person who gives money or property to a state functionary due to pressure or solicitation from that state functionary, but who receives no improper benefit, shall not be regarded as having committed the crime of offering a bribe.²⁹

As interpreted by the SPP and the SPC, bribery may be distinguished from a gift by reference to the following factors:³⁰

- (i) the circumstances giving rise to the transaction, such as the relationship between the parties, the history of their relationship, and the degree of their interaction;
- (ii) the value of the property involved in the transaction;
- (iii) the reasons, timing, and method of the transaction, and whether the party giving money or property has made any specific request for favour; and
- (iv) whether the party receiving money or property has taken advantage of his/her/its position to obtain any benefit for the party giving money or property.

In other words, a person who gives money or property to a state functionary, non-state functionary or entity without requesting any specific favour may not be regarded as offering a bribe.

Effective from 1 May 2011, China extended the scope of commercial bribery to include illicit payments to foreign officials. The *PRC Criminal Law* now also criminalises the “giving of money or property to any foreign official or officer of a public international organisation” for the purpose of seeking “improper commercial benefits”.³¹ The inclusion of foreign officials in the definition extends the reach of China’s anti-corruption laws beyond the country’s borders, although the distinction between “improper commercial benefits” and “improper benefits” means that the scope of punishable actions involving foreign officials is slightly narrower than those where personnel of Chinese entities, as defined in the *PRC Criminal Law*, are the recipients of bribes.

“Bribe-accepting” offences

State functionaries, close relatives of, or any persons close to state functionaries, non-state functionaries and entities are all prohibited from accepting money or property or making use of their position to provide improper benefits to a person seeking such improper benefits.

In general, “improper benefits” are key to a “bribe-accepting” offence, and evidence must be shown that the party accepting the bribe has used its power or position to seek a benefit for the party giving the bribe, except in the following circumstances:

- (i) any person (whether a state functionary or non-state functionary) who takes advantage of his/her position to accept and keep for themselves a “kickback” or “handling fee” under any circumstances shall also be regarded as having committed the crime of accepting a bribe;³²
- (ii) any state functionary who receives bribes exceeding the amount of RMB 30,000 from his/her subordinate and which may affect the performance of his/her duty;³³ or
- (iii) a promise to seek benefits for others should be regarded as “seeking benefits” for others. If an official clearly knows that a person offering a bribe has a specific request in mind seeking the official’s help, the official will be considered to be “seeking benefits” for others.³⁴ This circumstance is intended to address situations in which officials accept money or property from bribers who do not request help explicitly, but have some unspoken understanding with the officials regarding benefits sought.

In addition, the provision of money or property does not have to occur sequentially prior to “seeking benefits” for others.³⁵ The 2016 Judicial Interpretation clarifies that bribes include payments given after benefits are received; i.e., a thank-you gift received after benefits are sought or received still constitutes bribery. Hence, if nothing has been requested from an official in the performance of his duties but that official later accepts money or property from others based on such performance, that official will be considered to be “seeking benefits for others”.

Monetary thresholds for enforcement

As mentioned above, the Ninth Amendment replaced the then-existing monetary thresholds for commencing an investigation into offences with more general standards such as “relatively large”, “huge”, and “especially huge”.³⁶ The 2016 Judicial Interpretation re-establishes the monetary thresholds and standards for bribery-related prosecution and sentencing.³⁷ In essence, the minimum bar for most prosecutions of offering bribes to state functionaries has been raised from RMB 5,000 to RMB 30,000, and that of offering bribes to non-state functionaries has been raised from RMB 5,000 to RMB 60,000.³⁸ Below is a comparison of the previous monetary thresholds and the new monetary threshold:

Offence	Previous Thresholds	New Threshold
<i>“Bribe-giving” cases</i>		
Offering of a bribe to a state functionary	RMB 10,000	RMB 30,000, or RMB 10,000 if it also has an aggravating factor specified in Art. 7 of the 2016 Judicial Interpretation
Offering of a bribe to a non-state functionary	RMB 100,000 if the person offering the bribe is an individual, and RMB 200,000 if the person offering the bribe is an entity	RMB 60,000 if the person offering the bribe is an individual, or RMB 20,000 if it also has an aggravating factor specified in Art. 7 of the 2016 Judicial Interpretation

Offence	Previous Thresholds	New Threshold
Offering of a bribe to an entity	If an individual offers bribes to an entity, the threshold is RMB 100,000, or less than RMB 100,000 when it also has an aggravating factor specified in the SPP 2000 Opinions on Prosecution Thresholds of Bribe-giving Offences (the “ SPP 2000 Prosecution Standards ”). If an entity offers bribes to an entity, the threshold is RMB 200,000, or RMB 100,000 when it also has an aggravating factor specified in the SPP 2000 Prosecution Standards	Not applicable
Offering of a bribe by an entity	RMB 200,000, or RMB 100,000 when it also has an aggravating factor specified in the SPP 2000 Prosecution Standards	RMB 200,000 if the offer is made to an individual who can wield influence over others
Offering of a bribe to a foreign official or an officer of a public international organisation	Not applicable	RMB 60,000 if the person offering the bribe is an individual, or RMB 20,000 if it also has an aggravating factor specified in Art. 7 of the 2016 Judicial Interpretation
Offering of a bribe to a close relative of, or any person close to, a current or former state functionary	Not applicable	RMB 30,000, or RMB 10,000 if it also has an aggravating factor specified in Art. 7 of the 2016 Judicial Interpretation
Introduction to a state functionary of the opportunity to receive a bribe	RMB 20,000 if the introducer is an individual or RMB 200,000 if the introducer is an entity	Not applicable
Acceptance of a bribe by a state functionary	RMB 5,000	RMB 30,000, or RMB 10,000, if it also has an aggravating factor specified in Art. 1 of the 2016 Judicial Interpretation
Acceptance of a bribe by a non-state functionary	RMB 5,000	RMB 60,000
Acceptance of a bribe by an entity	RMB 100,000, or less than RMB 100,000 when it also has an aggravating factor specified in the SPC 1999 Interpretation on Prosecution Thresholds for Cases Directly Handled and Initiated by the Procuratorate	Not applicable
Acceptance of a bribe by a close relative of, or any person close to, a current or former state functionary	Not applicable	RMB 30,000, or RMB 10,000 if it also has an aggravating factor specified in Art. 1 of the 2016 Judicial Interpretation

Penalties under the PRC Criminal Law

Criminal penalties vary depending on whether the party offering or accepting a bribe is an individual or an entity and, if the party is an individual, whether he is a state functionary or non-state functionary. As explained above, the criminal sanctions for bribery offences involving state functionaries are generally more severe than those involving non-state functionaries.

If the individual has received more than one bribe, the amount of each bribe will be aggregated for the purpose of determining the appropriate penalty. The table below sets out the factors taken into consideration and the corresponding penalties for the relevant offences under the legislation.

Offence	Relevant Factors	Penalty
<i>"Bribe-giving" cases</i>		
Natural person offering a bribe to a state functionary	If the total bribes exceed RMB 30,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor	Criminal detention, or up to five years' imprisonment, and monetary penalties
	If the total bribes range between RMB 1,000,000 and RMB 5,000,000, or the total bribes range between RMB 500,000 and RMB 1,000,000 if it also has an aggravating factor	Five to 10 years' imprisonment and monetary penalties
	If the total bribes exceed RMB 5,000,000, or the total bribes range between RMB 2,500,000 and RMB 5,000,000 if it also has an aggravating factor	10 years' to life imprisonment, in combination with monetary penalties, or confiscation of property
	If the offender volunteers information on the bribery before prosecution	A punishment may be waived or lessened from the stipulated range, or a lighter punishment within the stipulated range may be imposed
Natural person offering a bribe to a close relative of, or any person close to, a current or former state functionary	If the total bribes exceed RMB 30,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor	Criminal detention, or up to three years' imprisonment, and monetary penalties
	If the total bribes range between RMB 1,000,000 and RMB 5,000,000, or the total bribes range between RMB 500,000 and RMB 1,000,000 if it also has an aggravating factor	Three to seven years' imprisonment, and monetary penalties
	If the total bribes exceed RMB 5,000,000, or the total bribes range between RMB 2,500,000 and RMB 5,000,000 if it also has an aggravating factor	Seven to 10 years' imprisonment, and monetary penalties
Natural person offering a bribe to a non-state functionary or to a foreign functionary or to an official of an international public organisation	If the total bribes exceed RMB 60,000, or the total bribes range between RMB 20,000 and RMB 60,000 if it also has an aggravating factor	Criminal detention, or up to three years' imprisonment, and monetary penalties
	If the total bribe ranges between RMB 2,000,000 and RMB 10,000,000, or the total bribes range between RMB 1,000,000 and RMB 2,000,000 if it also has an aggravating factor	Three to 10 years' imprisonment and monetary penalties

Offence	Relevant Factors	Penalty
Natural person offering a bribe to an entity	Not applicable	Criminal detention or up to three years' imprisonment, plus monetary penalties
Entity offering a bribe to a state functionary	In respect of such entity	Imposition of a fine
	In respect of the employees of such entity who are directly in charge of the matter in question and the employees who are directly responsible for the crime (collectively, " Responsible Personnel ")	Criminal detention or up to five years' imprisonment, plus monetary penalties
Entity offering a bribe to a non-state functionary	In respect of such entity	Imposition of a fine
	In respect of its Responsible Personnel	Refer to the sentence guidance regarding the offence of a "natural person offering a bribe to a non-state functionary or to a foreign functionary or to an official of an international public organisation"
Entity offering a bribe to another entity	In respect of such entity	Imposition of a fine
	In respect of its Responsible Personnel	Refer to the sentence guidance regarding the offence of a "natural person offering a bribe to an entity"
Introducing an opportunity to a state functionary to receive a bribe	If the offender volunteers information on the bribery before prosecution	Criminal detention, or up to three years' imprisonment, and monetary penalties
		A punishment may be waived, or reduced from the stipulated range
State functionary accepting a bribe	If the total bribes range between RMB 30,000 and RMB 200,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor	Criminal detention or up to three years' imprisonment and monetary penalties
	If the total bribes range between RMB 200,000 and RMB 3,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor	Imprisonment for between three and 10 years, monetary penalties or confiscation of property
	If the total bribes exceed RMB 3,000,000, or the total bribes range between RMB 1,500,000 and RMB 3,000,000 if it also has an aggravating factor	10 years' to life imprisonment or the death penalty, and monetary penalties or confiscation of property
	A bribe involving an extremely large monetary amount and serious damage to the interests of the state and the people	Life imprisonment or the death penalty and confiscation of property

Offence	Relevant Factors	Penalty
Non-state functionary accepting a bribe	If the total bribes range between RMB 60,000 and RMB 400,000	Criminal detention, or imprisonment of up to three years, and monetary penalties
	If the total bribes range between RMB 400,000 and RMB 6,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor	Imprisonment for between three and 10 years, and monetary penalties
	If the total bribes are in an “especially huge” amount or with an aggravating factor <i>(The monetary thresholds and aggravating factors are currently unclear)</i>	10 years’ to life imprisonment, and monetary penalties
Entity accepting a bribe	In respect of such entity	Imposition of a fine
	In respect of its Responsible Personnel	Criminal detention, or up to five years’ imprisonment
A close relative of, or any person close to, a current or former state functionary accepting a bribe	If the total bribes range between RMB 30,000 and RMB 200,000, or the total bribes range between RMB 10,000 and RMB 30,000 if it also has an aggravating factor	Criminal detention or up to three years’ imprisonment and monetary penalties
	If the total bribes range between RMB 200,000 and RMB 3,000,000, or the total bribes range between RMB 100,000 and RMB 200,000 if it also has an aggravating factor	Imprisonment for between three and seven years, and monetary penalties
	If the total bribes exceed RMB 3,000,000, or the total bribes range between RMB 1,500,000 and RMB 3,000,000 if it also has an aggravating factor	Fixed-term imprisonment for more than seven years, monetary penalties or confiscation of property

“Aggravating factors” affecting prosecution and sentence

In the last decade, the SPC and the SPP, either jointly or individually, published several judicial interpretations to give further clarification and more concrete guidance to the lower courts and procurators for the prosecution and adjudication of bribery and corruption-related crimes. The 2016 Judicial Interpretation, which is the latest judicial interpretation from the SPC and the SPP, sets out the “aggravating factors” that shall be taken into account in connection with the prosecution and sentencing of individuals offering or accepting bribes. The “aggravating factors” specified in Art. 7 of the 2016 Judicial Interpretation apply to individuals who committed the offences of offering bribes by:

- (i) offering bribes to three or more persons;
- (ii) using illegal gains to offer bribes;
- (iii) seeking promotion or adjustment of positions through offering bribes;
- (iv) offering bribes to any state functionary who has supervisory and administrative responsibilities in terms of food, drugs, safe production, environmental protection, etc., to conduct illegal activities;
- (v) offering bribes to any judicial functionary to influence judicial justice; and/or
- (vi) causing economic losses in the amount of no less than RMB 500,000 and less than RMB 1,000,000.

The “aggravating factors” specified in Art. 1 of the 2016 Judicial Interpretation apply to state functionaries who committed the offences of accepting bribes by:

- (i) having received party or administrative disciplinary sanctions due to graft, taking bribes, or misappropriating public funds;
- (ii) having been subject to criminal prosecution for international crimes;
- (iii) using grafted (i.e., embezzled) funds and goods for illegal activities;
- (iv) refusing to explain the whereabouts of grafted (i.e., embezzled) funds and goods or to cooperate with recovery work, resulting in the funds and goods being unable to be recovered;
- (v) causing adverse effects or other serious consequences;
- (vi) asking for bribes multiple times;
- (vii) seeking illegitimate benefits for others, resulting in loss to public property, the interests of the state, and the people; and/or
- (viii) seeking promotion or adjustment of positions for others.

Notably, the Eleventh Amendment dated December 2020 revised the penalties for non-state functionaries accepting bribes. It is unclear whether the 2016 Judicial Interpretation remains applicable to the provisions in the *PRC Criminal Law* that were revised by the Eleventh Amendment.

With respect to bribes accepted or offered, the SPP in 2000 issued its opinion specifying the prosecution thresholds. The threshold of prosecuting entities for accepting or offering bribes is lowered from RMB 200,000 to RMB 100,000 if one of the following “aggravating factors” is present:³⁹

- (i) gaining unlawful benefits through bribery;
- (ii) bribery of more than three persons;
- (iii) bribery of Party or government leaders, judicial officers, and administrative enforcement officers; or
- (iv) causing significant damage to the state or the people.

Mitigating factors

Pursuant to the Ninth Amendment and the 2016 Judicial Interpretation, a person who offers or pays a bribe, who then voluntarily confesses to his or her crime(s) before prosecution, may receive a mitigated sentence or a lighter sentence within the stipulated range. Further, a person who offers or pays a bribe may be exempted from prosecution or may receive a mitigated sentence if he/she plays a key role in resolving a significant case, or performs meritorious deeds.⁴⁰

Statute of limitations

The limitation periods for the prosecution of a crime are:⁴¹

- (i) five years if the maximum penalty for that crime is a term of imprisonment of less than five years;
- (ii) 10 years if the maximum penalty for that crime is a term of imprisonment of between five and 10 years;
- (iii) 15 years if the maximum penalty for that crime is a term of imprisonment of no less than 10 years; and
- (iv) 20 years (which may be extended on approval by the SPP) if the maximum penalty for that crime is life imprisonment or death.

Combat against “bribe-giving”

In September 2021, the State Supervisory Committee, SPP, SPC, and several organs of the

Chinese Communist Party jointly published the Opinions on Further Promoting Investigation into the Acceptance and Giving of Bribes on the Same Level (the “**Opinions**”).⁴² According to the press release dated 8 September 2021 published on the State Supervisory Committee’s official website, the Opinions reinforce the combat against “bribe-giving” activities. In particular, the Opinions view “bribe-giving” as the root cause of bribery crimes, and condemn “bribe-giving” activities in the same manner as “bribe-accepting” activities, in contrast to the previous practice of imposing lighter punishments for “bribe-giving” activities.

The Opinions require law enforcement authorities to investigate “bribe-giving” and “bribe-accepting” activities together, take various factors into consideration when punishing “bribe-givers”, and form standards for enforcement actions through issuing guidelines and publishing sample cases. In addition, the Opinions urge increasing penalties on briber-givers, especially property penalties including confiscation, recovery, and refunds to victims. Enforcement authorities will also coordinate with other government agencies to further deter “bribe-giving” activities by establishing a “blacklist” to ban and/or restrain offenders from entering the markets.

The full texts of the Opinions are currently not available to the public. According to the press release, the Opinions list five types of significant “bribe-giving” activities against which the authorities would take more enforcement actions:

- (i) giving multiple bribes, of large amounts, or to multiple persons;
- (ii) where “bribe-givers” are members of the Chinese Communist Party or state functionaries;
- (iii) “bribe-giving” in the course of important state projects;
- (iv) “bribe-giving” in certain critical areas or industries (e.g., human resource management of the Chinese Communist Party, the Chinese Communist Party’s disciplinary enforcements and judicial enforcements and proceedings, environmental protection, treasury and finance, product safety, food and drugs, poverty alleviation and disaster relief, pension and social security, education, and medical care, etc.); and
- (v) major commercial bribery.

The Opinions require enforcement authorities to protect legitimate rights of people or companies involved in bribes, and to make a particular effort to avoid abusing the authorities’ restrictive powers.

Some practitioners have highlighted that the Opinions will significantly increase the number of enforcements against bribe-giving activities, including criminal enforcements. Therefore, companies are advised to improve internal compliance programmes to reduce the bribe-related risks.⁴³

The AUCL

A major legislative change in recent years was the revision of the AUCL, which was first released in 1993. In the past 24 years, the AUCL has played an essential role in encouraging and protecting fair commercial competition in China; however, economic development has necessitated revisions to the legislation.

On 4 November 2017, the 30th Session of the Standing Committee of the Twelfth National People’s Congress passed important amendments to the AUCL, and the new AUCL took effect on 1 January 2018. In April 2019, the AUCL’s articles on business secrets were amended.

Definition of commercial bribery under the current AUCL

The AUCL is intended to regulate business activities that may lead to unfair competition. It prohibits, *inter alia*, “commercial bribery”, which is defined as:⁴⁴

- (i) the use by a business operator;
- (ii) of the means of giving money, property or other benefits;
- (iii) to four categories of recipients;
- (iv) in order to obtain business transaction opportunities or other competitive advantages.

Compared with the previous version of the AUCL, the current AUCL clarifies the definition of commercial bribery by listing three categories of entities or individuals who could be the recipients of bribes, including: (1) an employee of the other party to a transaction; (2) the entity or individual authorised by the other party to a transaction to handle relevant affairs; and (3) an entity or an individual that uses power or influence to affect a transaction.⁴⁵

A significant change introduced in the current version of the AUCL is that the transaction counterparty has been excluded from the categories of potential bribe recipients, which effectively narrows the scope of commercial bribery. Notably, while individual employees of transaction counterparties are included in the categories of potential bribe recipients, transaction counterparties themselves are excluded. On this basis, one potential interpretation is that beneficial payments made between the two transactional parties, such as transactional rebates, may be excluded from the scope of commercial bribery.

The broad scope of prohibition

The term “business operators” is broadly defined as legal persons, or other economic organisations or individuals, who deal with commercial businesses or profitable services.

Pursuant to the Interim Provisions on Prohibition of Commercial Bribery issued by the State Administration for Industry and Commerce (the “**Anti-Commercial Bribery Provisions**”), “property” means cash and tangible assets, and includes promotional fees, advertising fees, sponsorship, research and development fees, consultancy fees, commissions, and expense reimbursements paid in order to see or buy goods.⁴⁶ The term “other benefits” can include things such as the provision of tours and travel within China or abroad.⁴⁷

Special provision for commercial bribery conducted by employees under the current AUCL

The previous version of the AUCL did not specifically address whether unauthorised conduct of commercial bribery by an employee is attributable to the business operator. In practice, however, the authorities typically regarded any commercial bribery carried out by an employee as an instance of commercial bribery carried out by the individual’s employer.

The current AUCL clarifies that bribery committed by an employee of a business is deemed to have been committed by the business.⁴⁸ However, the current AUCL provides an exception that if the business has evidence that the act of the employee is irrelevant to seeking a transaction opportunity or competitive edge for the business, the business will not be liable.⁴⁹ The burden is on the employer to provide such evidence.

Safe harbour provisions for the provision of rebates and commissions

The current AUCL retains the safe harbour provisions that allow a business to explicitly pay a discount to the other party to the transaction, or pay a commission to an intermediary, as long as both parties faithfully make a record in their accountancy book.

Under the Law of the PRC on Donations for Public Welfare (the “**Donation Law**”), donations are to be made voluntarily and without charge. Any monetary or goods contributions that are made as donations, but with the commercial purpose of seeking economic benefits or transaction opportunities, will be deemed commercial bribes.⁵⁰ The Anti-Commercial Bribery Provisions also provide that business operators shall not provide gifts in the form of cash or articles to counterparties, except for small-amount advertising gifts in accordance with business practices.⁵¹

Penalties under the current AUCL

There are three levels of penalties provided by the current AUCL. If an administrative offence of commercial bribery is found to have taken place, but does not constitute a criminal offence, the authorities will confiscate illegal gains resulting from the offensive conduct, and, depending on the severity of the conduct, impose a fine of between RMB 100,000 and RMB 3,000,000. Further, the authorities are empowered to revoke the business licence of the business operator in question if the situation is sufficiently serious.⁵² Whether an act of commercial bribery is considered sufficiently serious will be determined on a case-by-case basis.

Furthermore, according to Art. 26 of the current AUCL, if a business receives an administrative penalty for engaging in commercial bribery, the supervision and inspection authority will record the penalty in the business operator's credit record as a matter of public record.

When the violation in question is minor, the business operator will not face administrative penalties if it corrects such misconduct in a prompt and timely fashion. This change, introduced in the current AUCL, appears to address concerns from the business community that the previous version of the AUCL did not credit business operators for maintaining effective compliance programmes and/or taking steps to discover and rectify misconduct.

The current AUCL additionally provides that business operators that carry out commercial bribery and cause damage to third parties are liable to pay compensation. Art. 17 of the current AUCL clarifies that the amount of compensation payable is determined as per the actual loss of the business incurred for the infringement or, if it is difficult to calculate the actual loss, as per the benefits acquired by the tortfeasor from the infringement. Moreover, the amount of compensation shall also include reasonable disbursements made by the business to prevent the infringement.

The enforcement by the State Administration for Market Regulation

Since its establishment on 10 April 2018, the State Administration for Market Regulation (the "SAMR") has launched enforcement programmes to implement the amended AUCL that cover various industries, including healthcare⁵³ and e-commerce.⁵⁴ In November 2019, the SAMR announced that, in a "100-day Enforcement Programme" for the healthcare industry, which commenced in January 2019, it had worked with 12 other agencies and investigated 28,287 cases involving a total value of RMB 13.7 billion, resulting in total fines of RMB 960,000,000.⁵⁵ Industry experts commented that continuously intensive enforcement of this anti-corruption campaign would help to promote the reform and development of the PRC healthcare system.⁵⁶ Notably, the SAMR, along with eight other agencies, issued the *2021 Notice on the Issuance of Main Working Points regarding the Correction of Malpractices in the Field of Pharmaceutical and Medical Industry*. The notice, enacted in April 2021,⁵⁷ indicates that the SAMR and other agencies will continue to enhance enforcement actions in the healthcare and pharmaceutical industries.

Local market administration authorities have proactively taken enforcement actions under the anti-bribery provisions of the amended AUCL. Research by *Wolters Kluwer* and a PRC law firm shows that in 2020, the total number of commercial bribery enforcements brought by market administration authorities at various levels increased to 61, compared to 52 in 2019.⁵⁸

SAMR's responses to questions in connection with commercial bribes

On 6 September 2021, the SAMR published on its website the responses to a question from an anonymous user on the scope of commercial bribery. The question asked whether the following two types of activity would constitute commercial bribery:

1. A medical device operator provides medical equipment to hospitals for free or at a low price, if the agreement restrains the supply of corresponding medical consumables.
2. When a medical device operator sells medical devices or consumables to hospitals, two parties agree that the medical device operator will provide rebates or free products of equivalent value.

According to the SAMR, a business operator is allowed to provide legitimate discount or sales commissions expressly, but is not allowed to provide money, property, or other benefits that are (i) off-book, (ii) improperly recorded in business books and records, or (iii) otherwise given in a secret way. The SAMR's explanation is consistent with the current AUCL, which allows one party to explicitly give a discount to the other party to the transaction, or pay a commission to an intermediary, as long as both parties truthfully record the discounts or commissions in their books and records.

In practice, the healthcare industry is a hotspot in which the enforcement authorities have issued administrative penalties against commercial bribery, especially in the cases of bundling sales of medical devices and consumables. According to the penalty decisions included in a well-known case database, 20 of the 60 administrative penalties against commercial bribery issued by local administrations for market regulation (“**local AMRs**”) in 2020 related to the healthcare industry, and 10 of the 20 cases involved bundling sales of medical devices and consumables.⁵⁹ In the year to August 2021, local AMRs fined at least six medical device operators for engaging bundling sales of medical devices and consumables. These decisions show that the parties have explicitly agreed the terms and documented them in the agreements, and the none of the decisions analysed the accounting issue in their rationale.

That said, the SAMR's explanation might provide additional guidance for local AMRs when assessing whether certain business arrangement would constitute commercial bribery. It remains to be seen how the SAMR's explanation would take effect in practice.

Local implementations of the new AUCL

Some provinces and municipalities (including Beijing, Shanghai, etc.) have published local regulations to implement the commercial bribery provisions of the current AUCL.

As an example, according to the case database on *Wolters Kluwer*, the Shanghai local AMR imposed the highest number of administrative penalties against commercial bribery throughout China from January 2018 to August 2021, which makes Shanghai AMR the most active local enforcement agency when it comes to commercial bribery. On 27 October 2020, the Shanghai Municipal People's Congress adopted the amendment to the Shanghai Regulation Against Unfair Competition (the “**Shanghai RAUC**”) to align the Shanghai version of the RAUC to the newly amended AUCL and the amended *PRC Criminal Law*. The Shanghai RAUC took effect on 1 January 2021.

Law and policy relating to issues such as facilitation payments and hospitality

There is no exception under Chinese laws for facilitation payments or hospitality as there is under the US Foreign Corrupt Practices Act of 1977 (the “**FCPA**”). Therefore, to determine whether facilitation payments and hospitality constitute a violation or offence in China, it is essential to determine the “money or property” for the purpose of obtaining “improper benefits” under the *PRC Criminal Law* and “commercial bribery” under the AUCL, as discussed above.

Key issues relating to investigation, decision-making, and enforcement procedures

The risks discussed in the sections above are global, and companies operating in China

and in the global environment should implement policies and procedures to help prevent violations and remediate them as soon as any potential issue surfaces. Such policies and procedures should include elements of prevention, investigation, and remediation.

Prevention – effective compliance programme

An effective compliance programme, which incorporates tough anti-bribery policies and comprehensive internal control measures reflecting a strong stance against corruption from the board of directors and senior management, can lead to early identification of corruption risks. Such a programme should focus on the company's policies and procedures with respect to gifts, entertainment, and other hospitality, and on dealings with third-party representatives and business partners, who should undergo due diligence to ensure compliance, sign anti-corruption representations, and be subject to anti-corruption training as appropriate.

A compliance or audit function that periodically reviews company practices for their risk of corruption and a group that oversees the implementation and maintenance of the anti-corruption programme are critical to early detection and prevention. Confidential reporting channels – for example, a private hotline through which employees can feel safe to report issues – have also proven effective in detecting risks. Such reporting avenues must be accompanied by assurances that no retaliation will result from reporting corruption. Appropriate training for all levels of the organisation, as well as positive incentives that promote compliance with company policy and the law, should be prescribed. Periodically updating the programme is vital, to ensure it keeps pace with continuing developments in anti-bribery laws and regulations in China.

Investigation – quick and adequate response to corruption allegations

Corporations must be prepared to conduct internal investigations of corruption allegations, whether raised because of the compliance programme or raised by enforcement agencies, the media, or whistle-blowers.

It is important and prudent to carefully choose the body responsible for conducting any internal investigation. There may be instances in which an independent investigation is required, and allegations involving senior management, or investigations requiring specialist skills, should ideally be handled by independent, external counsel.

The designated investigative body should be properly resourced and the scope of the investigation should be proportionate to the scope of the allegations. Any investigation in China should be conducted in accordance with Chinese privacy, labour, and other local laws. Attorney-client privilege should also be maintained to provide confidentiality and protect against retaliation.

Remediation – appropriate corrective measures

Should an internal investigation corroborate corruption allegations, corporations must implement appropriate and adequate remedial measures, with appropriate oversight from the board of directors.

Corporations should examine and correct gaps identified in the existing corporate policies and compliance programmes. Corporations are advised to assess whether the identified issues affect its internal controls over financial reporting, and take appropriate remedial steps accordingly.

Consideration should also be given to whether the identified issues should be disclosed to authorities, having regard to the improper conduct and practices identified, the company's legal obligations, and disclosure obligations under local and/or foreign laws.

Pilot Program on Corporate Compliance Reform

In April 2021, the SPP announced a *Pilot Program on Corporate Compliance Reform* (the

“**Pilot Program**”).⁶⁰ The Pilot Program provides that in criminal cases involving enterprises, before the defendants are prosecuted, the procuratorate can encourage enterprises to give and execute compliance commitments. The procuratorate/court may make decisions of non-detention, non-prosecution, or mitigated penalties based on the effects of the compliance commitment. The Pilot Program has been executed in 10 provinces and municipalities.⁶¹

According to local implementations publicly available⁶² under the Pilot Program, when the procuratorate prepares to file a charge against a crime committed by an enterprise, or a crime committed by managers or key personnel in connection with production and/or operation of an enterprise, the procuratorate can grant a grace period (usually three to five months) and, as supported by other relevant administrative authorities (depending on various crimes), guide the enterprise to design and implement a compliance programme to address the weaknesses reflected in the committed crime. At the end of the grace period, the procuratorate will consider all the facts and circumstances in connection with the crime, as well as the completion of the compliance programme and the compliance assessment by other administrative authorities on the enterprise, to decide whether they will bring a charge against the enterprise or the individuals involved. The Pilot Program usually does not apply to serious crimes (e.g., crimes against national security, terrorism crimes, crimes with a statutory penalty over 10 years’ imprisonment, or crimes involving casualties).⁶³

In June 2021, the SPP, Ministry of Justice, Ministry of Finance, SAMR, Ministry of Ecology and Environment, State-owned Assets Supervision and Administration Commission of the State Council, State Tax Administration, All-China Federation of Industry and Commerce, and China Council for the Promotion of International Trade (the “**Assessment Authorities**”) jointly issued the *Pilot Guidance on the Establishment of Third-party Monitoring and Evaluation Mechanism for Compliance of Enterprises Involved in Crimes* (the “**Pilot Guidance**”). According to the Pilot Guidance, the Assessment Authorities will form an independent committee of supervision and evaluation (the “**Supervision and Evaluation Committee**”) that can further engage a pool of experts, including lawyers, auditors, and tax accountants. The Supervision and Evaluation Committee randomly selects experts from the expert pool to form a team, which will assess the effectiveness of, and prepare a written assessment report on, a compliance programme that an enterprise establishes under the Pilot Program.⁶⁴ However, it is unclear whether any administrative authorities, other than the team or the Assessment Authorities, can also assist in the assessment.

Some commentators view the Pilot Program supported by the Pilot Guidance as a first step in the so-called “compliance program for non-prosecution” in China, believing that this will lead the trend in the anti-commercial bribery regimes in place in China.⁶⁵

Conclusion

Anti-corruption enforcement is increasingly global in scope. As summarised, China has been aggressively enforcing its own anti-corruption laws on a sustained basis. China’s approach to enforcement has and will continue to mean vigorous multinational anti-corruption enforcement, targeting domestic and foreign companies and individuals. In addition, recent trends suggest that the law enforcement and judicial authorities of China are starting to test the approach of “combining punishment with leniency”, as shown in the Pilot Program.

With adequate preparation and resources, companies can effectively mitigate enforcement risks. Corporations with business in China should have appropriate preventative measures, well-functioning investigation procedures, and, if necessary, remediation measures to mitigate any potential financial and reputational risks. These measures will help to minimise, if not eliminate, the risk of employees falling foul of China’s anti-corruption measures, as well as

anti-corruption laws of other jurisdictions. These risks will not go away without the right corporate attitude, resources and attention, and vigilance is key to protecting companies and individuals in this environment of increasing enforcement.

Overview of cross-border issues

Foreign entities operating in China can and have been investigated and charged in connection with the aforementioned sustained anti-corruption campaign. In the summer of 2013, one of the largest pharmaceutical companies in the world, a British company listed on both the London and New York stock exchanges, became the focus of the biggest corruption scandal in China involving a foreign company. The chain of events was set in motion by two chains of emails accusing the company of bribing doctors in order to promote the company's medical products in China. In September 2014, the company was found by the Changsha Intermediate People's Court in Hunan Province to have offered money or property to non-government personnel in order to obtain improper commercial gains, and was found guilty of bribing non-government personnel. As a result of the court's verdict, the company was ordered to pay a fine of RMB 3,000,000,000 (GBP 297,000,000) to the Chinese government. Five former senior executives of the company were sentenced to suspended imprisonment of two to three years.

Following this investigation, the State Administration of Industry and Commerce stated that local Administrations of Industry and Commerce should pay more attention to industries affecting the public interest (including the pharmaceutical industry), strengthen their supervision over the bidding activities carried out by industry players, and conduct thorough investigations against any commercial bribery arising from the bidding process.⁶⁶ The Chinese authorities subsequently visited a number of foreign drug manufacturers.⁶⁷

Recently, the Department of Justice and the Securities and Exchange Commission have announced further instances of FCPA enforcement in the technology and manufacturing industries, in addition to the traditional FCPA focus areas such as pharmaceutical and medical devices. The technology and manufacturing industries (especially automobile electronics manufacturing) will also be likely areas of focus for anti-corruption efforts in China.

Cross-border issues have become increasingly complicated and challenging since China enacted the *PRC International Criminal Judicial Assistance Law* in October 2018, and amended Art. 177 of the *PRC Securities Law* in December 2019. The two pieces of legislation have been serving as "blocking" statutes that restrain foreign countries from exercising extraterritorial jurisdictions over bribery and corruption inside China. Special approvals from the relevant Chinese authorities are now required before any entity or individual within the territory of China can provide evidence or other assistance to any foreign criminal proceedings or investigation into the violation of securities laws.

Another major problem regarding cross-border bribery and corruption issues lies in the jurisdiction of the PRC courts. As discussed, foreign persons or entities are subject to the same legislation when doing business in China.⁶⁸

Corporate liability for bribery and corruption offences

The PRC Criminal Law

Offence	Thresholds	New Threshold
<i>"Bribe-giving" cases</i>		
Entity offering a bribe to a state functionary	RMB 200,000 if the offer is made to an individual who can wield influence over others	Imposition of a fine on the entity Criminal detention or up to five years' imprisonment, plus monetary penalties, for the employees of such entity who are directly in charge of the matter in question and the employees who are directly responsible for the crime (collectively, " Responsible Personnel ")
Entity offering a bribe to a non-state functionary	RMB 200,000	Imposition of a fine on the entity For Responsible Personnel, criminal detention or up to 10 years' imprisonment, and monetary penalties
Entity offering a bribe to another entity	RMB 200,000, or RMB 100,000 when it also has an aggravating factor specified in the SPP 2000 Prosecution Standards	Imposition of a fine on the entity For Responsible Personnel, criminal detention or up to three years' imprisonment, plus monetary penalties
Acceptance of a bribe by an entity	RMB 100,000, or less than RMB 100,000 when it also has an aggravating factor specified in the SPC 1999 Interpretation on Prosecution Thresholds for Cases Directly Handled and Initiated by the Procuratorate	Imposition of a fine on the entity For Responsible Personnel, criminal detention or up to three years' imprisonment and monetary penalties

The year ahead

We look forward to 2022 with interest as the regulatory and enforcement landscape continues to evolve in the anti-bribery space, in respect of both individuals and entities.

* * *

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60. https://www.spp.gov.cn/xwfbh/wsfbt/202104/t20210408_515148.shtml#1.
61. *Id.*
62. See, for example, *Opinions on Establishment of a Compliance Inspection System for Enterprises Involved in Crimes* published by Liaoning Provincial People's Procuratorate and nine other authorities on 16 December 2020.
63. *Id.* According to the *Opinions on Establishment of a Compliance Inspection System for Enterprises Involved in Crimes*, the compliance programme for non-prosecution cannot be applied to cases with a potential penalty of over 10 years' imprisonment, cases involving casualties, and certain other types of crime.
64. According to the Pilot Guidance, the Third-party Monitoring and Evaluation Mechanism shall only be applied to economic crimes or duty-related crimes committed by enterprises or actual controllers, managers and key technical staff of enterprises, under the situation where the defendants plead guilty, and the enterprises involved agree to accept the Third-party Monitoring and Evaluation Mechanism. The Pilot Program does not go into such details. It is therefore not clear whether the above conditions apply to all enterprises developing and implementing compliance programmes under the Pilot Program.
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