

E-ALERT | Anti-Corruption

November 6, 2014

**DRAFT AMENDMENTS TO CHINA'S CRIMINAL LAW WOULD BROADEN
LEGAL TOOLS IN FIGHT AGAINST CORRUPTION**

On November 3, 2014, China's legislature [released for public comment](#) draft amendments to China's Criminal Law ("the Draft Amendments"), a number of which broaden and strengthen crimes and penalties related to bribery and corruption.

The public comment period ends on December 3, 2014, and China's legislature is expected to vote on these amendments thereafter. Commentators do not expect significant changes before enactment. This e-alert summarizes the key proposed amendments related to bribery and corruption.

- 1. Raise the bar for bribe-givers to be exempted from punishment.** Article 390 of the current 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."¹ The Draft Amendments would retain the voluntary confession requirement and add other requirements for exemption from punishment: "one whose crimes are relatively minor may be exempted from punishment, 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."²
- 2. Add a new crime of offering bribes to close relatives of State functionaries.** The Draft Amendments would add a crime (as Article 388b) of offering bribes to "any of the close relatives of a State functionary or other persons closely related to that State functionary; or any ex-State functionary, their close relatives or other persons closely related to them."³ In 2009, the Criminal Law was amended to expand the scope of bribe-receivers to include close relatives and individuals with close relationships with State functionaries and ex-State functionaries.⁴ However, that amendment did not impose criminal penalties on the bribe-givers. The Draft Amendments would expand the categories of bribe-givers to parallel the categories of bribe-receivers.
- 3. Add monetary fines to various corruption/bribery-related crimes.** Under the current version of the Criminal Law, fines are imposed for corrupt activities only on legal entities, with one exception:⁵ fines are imposed on individual bribe-givers only when (1) bribing an employee of a company or enterprise, or to a foreign party performing official duties or an official of international public organizations; and (2) the amount involved is huge. The Draft Amendments would impose monetary fines against nearly all individuals that are convicted of engaging in corruption and bribery offences, in addition to other punishments.⁶ Fines as punishment for individuals are added to:
 - Article 164, when the amount involved is "relatively large";
 - Article 383, which criminalizes the acts of embezzlement;
 - Article 388b, a new provision proposed by the Draft Amendments as described above;
 - Article 390, which criminalizes the acts of offering bribes;
 - Article 391, which criminalizes any person or legal entity who gives money or property to a State organ, State-owned company, enterprise, institution or people's

organization, or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions;

- Article 392, which criminalizes any person who introduces a bribe to a State functionary; and
- Article 393, which criminalizes any legal entity that offers bribes for the purpose of securing illegitimate benefits or, is in violation of State regulations, gives rebates or service charges to a State functionary.

- 4. Modify the sentencing standards for the crimes of embezzlement and receiving bribes.** The existing sentencing standards (Articles 383 and 386) impose prison sentences based on the specific value of the property that they embezzled or received. The amounts are divided into four categories: (1) more than RMB 100,000 (ten years to death penalty), (2) more than RMB 50,000 but less than RMB 100,000 (more than five years), (3) more than RMB 5,000 but less than RMB 50,000 (one to ten years), and (4) less than RMB 5,000 (less than two years).⁷ The Draft Amendments would eliminate the amount-based standards and allocate punishment on more general criteria: (1) a “relatively large” amount or “relatively serious” circumstances (less than three years); (2) a “huge” amount or “serious” circumstances (three to ten years), and (3) an “especially huge” amount or “especially serious” circumstances (ten years to death penalty).⁸ The Draft Amendments do not include guidance on how courts should apply the new standards, and a judicial interpretation may later be issued with clarifications. Some commentators have noted that the current amounts, which were first established in 1997, did not reflect changes in inflation or cost of living, and that the proposed changes would also give prosecutors and courts more discretion.
- 5. Possible employment bans for corruption convictions.** In situation where one received criminal punishment for “taking advantage of his/her position” or “violating the obligations of one’s profession,” a court has the discretion to bar him/her from engaging in related profession for five years after completing his/her prison sentence, or for five years after release on parole.⁹

The chart attached below compares the existing Criminal Law and corruption-related modifications proposed by the Draft Amendments.

The legislative changes proposed by the Draft Amendments support the Chinese government’s ongoing campaign against corruption, bribery, and graft.

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Existing Criminal Law	Draft Amendments
<p>None currently (<i>Would be added as Article 37a</i>)</p>	<p>“Where one receives criminal punishment for taking advantage of his/her position or violating the obligations of one’s profession, the People’s Court can, according to the situation and the need of preventing repetition of crimes, bar him/her from engaging in related professions for five years after completing his/her sentence, or for five years after release on parole.</p> <p>“Whoever violates the decision of the People’s Court prohibiting the person from engaging in related professions based on the previous paragraph, shall be punished by public security organ; where the circumstances are serious, the person shall be convicted and punished according to Article 313 of this Law.</p> <p>“Where prohibitions or restrictions are otherwise provided by other laws or administrative rules and regulations, those provisions shall prevail.”</p>
<p>“Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company, enterprise or other entity, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.”</p> <p>(Article 164, paragraph 1)</p>	<p>“Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company, enterprise or other entity, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.”</p>
<p>“Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:</p> <p>“(1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.</p> <p>“(2) An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be</p>	<p>“Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:</p> <p>“(1) Where the amount embezzled is relatively large or the circumstances are relatively serious, the person shall be sentenced to a fixed-term imprisonment of not more than three years or criminal detention, and shall also be fined. If the act does not constitute a crime, the person shall be subject to administrative sanctions by his work unit or by the competent authorities at a higher level.</p> <p>“(2) Where the amount embezzled is huge or the circumstances are serious, the person shall</p>

Existing Criminal Law	Draft Amendments
<p>sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property.</p> <p>“(3) An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment or be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.</p> <p>“(4) An individual who embezzles less than 5,000 yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.</p> <p>“Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.”</p> <p>(Article 383)</p>	<p>be sentenced to a fixed-term imprisonment of more than three years but not more than ten years, and shall also be fined or sentenced to confiscation of property .</p> <p>“(3) Where the amount embezzled is especially huge or the circumstances are especially serious, the person shall be sentenced to a fixed-term imprisonment of more than ten years or life imprisonment, and shall be fined or sentenced to confiscation of property; where the amount is especially huge and causing especially heavy losses to the interests of the State and the people, the person shall be sentenced to life imprisonment or death penalty, and shall be sentenced to confiscation of property .</p> <p>“Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.</p> <p>“Whoever commits the crime described above, but truthfully confesses, sincerely regrets, voluntarily hands over the illicit gains and avoids or mitigates the damage caused, in the situation described in (1), may be given a lighter punishment, or mitigated punishment, or be exempted from punishment; in the situation described in (2) and (3), the person may be given a lighter punishment.”</p>
<p>None currently (<i>Would be added as Article 388b</i>)</p>	<p>“Whoever, for the purpose of securing illegitimate benefits, offers bribes to any of the close relatives of a State functionary or other persons closely related to that State functionary, or to any of the leaving State functionaries, their close relatives or other persons closely related to them, shall be sentenced to a fixed-term imprisonment of not more than two years or criminal detention, and shall also be fined; if the circumstances are serious or heavy losses are caused to the interests of the State, then the person shall be sentenced to a fixed-term imprisonment of more than two years but not more than five years, and shall also be fined; if the circumstances are especially serious or</p>

Existing Criminal Law	Draft Amendments
	<p>especially heavy losses are caused to the interests of the State, then such person shall be sentenced to a fixed-term imprisonment of more than five years but not more than ten years, and shall also be fined.</p>
<p>“Whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property .</p> <p>“Any 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.”</p> <p>(Article 390)</p>	<p>“Whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall also be fined; whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years, and shall also be fined; if the circumstances are especially serious or especially heavy losses are caused to the interests of the State , he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or sentenced to confiscation of property .</p> <p>“Any briber who, before he is investigated for criminal responsibility, voluntarily confesses his act of offering bribes may be given a lighter or mitigated punishment. One whose crimes are relatively minor may be exempted from punishment, 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.”</p>
<p>“Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organization or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.”</p> <p>(Article 391, paragraph 1)</p>	<p>“Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organization or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall also be fined.”</p>
<p>“Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.”</p> <p>(Article 392, paragraph 1)</p>	<p>“Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall also be fined.”</p>
<p>“Where a unit offers bribes for the purpose of</p>	<p>“Where a unit offers bribes for the purpose of</p>

Existing Criminal Law	Draft Amendments
<p>securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this Law.”</p> <p>(Article 393)</p>	<p>securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall also be fined. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this Law.”</p>

¹ *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。”

² *Draft Amendments*, Art. 41, para. 2: “行贿人在被追诉前主动交代行贿行为的，可以从轻或者减轻处罚。其中犯罪较轻的，检举揭发行为对侦破重大案件起关键作用，或者有其他重大立功表现的，可以免除处罚。”

³ *Draft Amendments*, Art. 40: “为谋取不正当利益，向国家工作人员的近亲属或者其他与该国家工作人员关系密切的人，或者离职的国家工作人员或者其近亲属以及其他与其关系密切的人行贿的，处二年以下有期徒刑或者拘役，并处罚金；情节严重的，或者使国家利益遭受重大损失的，处二年以上五年以下有期徒刑，并处罚金；情节特别严重的，或者使国家利益遭受特别重大损失的，处五年以上十年以下有期徒刑，并处罚金。”

⁴ See *Amendment VII to the Criminal Law*, February 28, 2009, Art. 13, available at http://www.gov.cn/flfg/2009-02/28/content_1246438.htm.

⁵ See *Criminal Law*, Arts. 164, 390–393.

⁶ The Draft Amendments would not add monetary penalties to Article 163 (receivers of commercial bribes).

⁷ *Criminal Law*, Art. 383: “对犯贪污罪的，根据情节轻重，分别依照下列规定处罚：（一）个人贪污数额在十万元以上的，处十年以上有期徒刑或者无期徒刑，可以并处没收财产；情节特别严重的，处死刑，并处没收财产。（二）个人贪污数额在五万元以上不满十万元的，处五年以上有期徒刑，可以并处没收财产；情节特别严重的，处无期徒刑，并处没收财产。（三）个人贪污数额在五千元以上不满五万元的，处一年以上七年以下有期徒刑；情节严重的，处七年以上十年以下有期徒刑。个人贪污数额在五千元以上不满一万元，犯罪后有悔改表现、积极退赃的，可以减轻处罚或者免于刑事处罚，由其所在单位或者上级主管机关给予行政处分。（四）个人贪污数额不满五千元，情节较重的，处二年以下有期徒刑或者拘役；情节较轻的，由其所在单位或者上级主管机关酌情给予行政处分。”

Criminal Law, Art. 386: “对犯受贿罪的，根据受贿所得数额及情节，依照本法第三百八十三条的规定处罚。索贿的从重处罚。”

⁸ *Draft Amendments*, Art. 39: “对犯贪污罪的，根据情节轻重，分别依照下列规定处罚：（一）贪污数额较大或者有其他较重情节的，处三年以下有期徒刑或者拘役，并处罚金。尚不构成犯罪的，由其所在单位或者上级主管机关给予处分。（二）贪污数额巨大或者有其他严重情节的，处三年以上十年以下有期徒刑，并处罚金或者没收财产。（三）贪污数额特别巨大或者有其他特别严重情节的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产；数额特别巨大，并使国家和人民利益遭受特别重大损失的，处无期徒刑或者死刑，并处没收财产。对多次贪污未经处理的，按照累计贪污数额处罚。

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⁹ *Draft Amendment*, art. 1, para. 1: “因利用职业便利实施犯罪，或者实施违背职业要求的特定义务的犯罪被判处刑罚的，人民法院可以根据犯罪情况和预防再犯罪的需要，禁止其自刑罚执行完毕之日或者假释之日起五年内从事相关职业。”