

China Amends Criminal Procedure Law, Creating More Anti-Bribery Prosecution Tools

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Anti-corruption/FCPA

China recently amended its Criminal Procedure Law (CPL) to codify rules encouraging cooperation in government investigations, align with the new national supervision system, and introduce trials in absentia for certain crimes, including bribery and corruption.

The CPL amendments were passed and took effect immediately on October 26, 2018. This is the third time (after 1996 and [2012](#)) that the CPL has been amended since enactment in 1979. The most recent revisions are closely aligned with the Party and government's ongoing anti-corruption drive and will likely impact domestic anti-corruption enforcement. Key changes related to corruption and bribery include:

1. Codified leniency rules in criminal guilty pleas.

The CPL Amendments codify existing practice that leniency may be offered when suspects (individuals or entities) plead guilty and accept punishment. In such circumstances, the People's Procuratorate, the principal agency that prosecutes crimes, may suggest leniency in its filings, which are generally accepted by the People's Court. Further, in cases where a suspect makes a voluntary confession, if they demonstrate significant "meritorious service," or significant national interests are involved in the case, the People's Procuratorate may decide not to prosecute one or multiple counts.

(In China, "meritorious service" includes informing against other suspects, preventing others from committing crimes, or providing significant information for solving other criminal investigations.)

These leniency rules have been a practice in criminal investigations for several years; a pilot program for a formalized leniency system was implemented in certain areas of China starting in September 2016 and was viewed as yielding positive results. The CPL Amendments do not specify the terms or degree of leniency that may be offered, which is left to prosecutorial discretion.

The net effect of these codified changes may be additional pressure on individual or corporate suspects to cooperate in government investigations -- particularly individual suspects under investigation for giving or receiving bribes -- to plead guilty and hope for leniency, especially given the official conviction rate above 99.9 percent.

2. Revised procedures for investigating cases of corruption involving government-affiliated individuals.

In March 2018, the [launch](#) of the National Supervision Commission (NSC) consolidated the supervision and enforcement powers public-sector corruption from three agencies: the People's Procuratorate, the Ministry of Supervision, and the National Bureau of Corruption Prevention.

Prior to establishment of the NSC, the People's Procuratorate investigated and prosecuted most crimes involving government officials. Now, the NSC will investigate crimes, particularly corruption and malfeasance, involving government-affiliated individuals (traditional government officials and certain officials at SOEs and public institutions), but the Procuratorate will continue to prosecute such cases. The recent CPL Amendments make conforming revisions to the CPL by removing references to the authority of the People's Procuratorate to investigate crimes of embezzlement and bribery and malfeasance of government-affiliated individuals in most cases.

The old CPL included certain rights for suspects in bribery and corruption cases, such as limited rights to meet with counsel. Because investigations into government-affiliated individuals involving bribery have been transferred to the NSC, the CPL Amendments removed those rights.

(The NSC, which possesses expansive investigative rights, is not subject to provisions providing for a right to meet with counsel during the investigation phase, which seems to mean that officials no longer have such rights.)

The Public Security Bureau will continue to investigate, and the People's Procuratorate will continue to prosecute, criminal cases against private companies and individuals for paying bribes to government officials.

3. Trial in absentia.

The CPL Amendments added a new chapter addressing trial in absentia, which applies to three types of crimes: corruption or bribery, national security, and terrorism. When a corruption or bribery case is transferred from the NSC or the Public Security Bureau to the People's Procuratorate for prosecution, and the suspect is outside of mainland China, the People's Procuratorate may prosecute the case at the People's Court. If the Procuratorate believes the case has clear facts and sufficient evidence and receives appropriate approvals, the case may proceed to trial and sentencing even though the suspect will not be present.

China's ongoing anti-corruption campaign includes a significant component to apprehend allegedly corrupt officials outside of China and recover illegal proceeds. The 2012 [amendments](#) to the CPL added a procedure to confiscate illegal proceeds of escaped criminal suspects. Trial in absentia is a further effort to reach criminals via provisions in the United Nations Convention against Corruption, of which China is a party, to "extradite or prosecute" and "extradite or enforce" a sentence.

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The CPL Amendments provide more tools to law enforcement to prosecute corruption, particularly public-sector corruption. The most immediate impact of the CPL Amendments will be on government-affiliated individuals under investigation. But more investigations into government-affiliated individuals means more people who tell enforcement agencies (and sometimes speak publicly in courts) about the sources of bribes they (allegedly) took. Government officials may be particularly motivated by newly codified leniency rules to share information about the source of bribes, which may include private companies and individuals. These developments caution for continued vigilance in compliance and investigations in China.

This summary first appeared as a [post](#) on the FCPA Blog.

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