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Anti-Corruption 2025

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China: Law and Practice

Alan Zhou, Jacky Li, Weiwei Gu, Steven Zhu and Jenny Chen
Global Law Office

CHINA

Law and Practice

Contributed by:
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Contents

Global Law Office dates back to the establishment of the Legal Consultant Office of China Council for the Promotion of International Trade (CCPIT) in 1979, when it became the first Chinese law firm ever approved by the PRC government, and has retained the privilege of clients' trust in various areas over four decades. The firm has offices in Shanghai, Beijing, Shenzhen and Chengdu, with 160 partners and over 600 lawyers across China. The firm is experienced in meeting all aspects of public and private enterprises' regulatory compliance needs, including risk assessment, compliance policy, reporting, training and investigation. The firm has resolved dozens of government investigation cases relating to anti-corruption, antitrust, promotion and advertising, insider trading, and food and drug safety by the Chinese authorities, as well as cross-border investigations in multiple jurisdictions.

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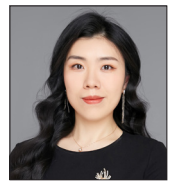

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1. Legal Framework

1.1 International Conventions

In December 2000, the Chinese government signed the United Nations Convention against Transnational Organized Crime (the "Convention"), which took effect in China on 23 October 2003. While the Convention is universally applicable to all transnational organised crimes, corruption is one of its main focuses, requiring states to take measures through legislation and enforcement to promote anti-corruption.

As for the international conventions specially regulating corruption that China has signed up to, the United Nations Convention against Corruption (the "Anti-Corruption Convention") officially took effect in China on 12 February 2006. China was actively involved in the formation stage of the Anti-Corruption Convention and was among the first countries to ratify it, except for one reservation on paragraph 2 of Article 66 regarding a dispute settlement channel. The Anti-Corruption Convention is the first and only legally binding universal anti-corruption instrument with the framework established on five pillars: Preventive Measures, Criminalisation and Law Enforcement, International Co-operation, Asset Recovery, and Technical Assistance and Information Exchange. Ten years on from China's ratification of the Anti-Corruption Convention, in 2016, the United Nations Office on Drugs and Crime issued a status review report on China's implementation of the Anti-Corruption Convention, and China's efforts in and dedication to combating corruption through active law enforcement, successive international co-operation and sustainable good practices have been well recognised.

1.2 National Legislation

There is currently no independent and consolidated statute in China that is similar to, for example, the US Foreign Corrupt Practices Act (FCPA) or the UK Bribery Act. Bribery and corruption in China are governed by multiple authorities in accordance with various laws and regulations.

The legal framework can be divided into three levels, depending on the severity of the offences and the identity of the individuals involved. Firstly, the Anti-Unfair Competition Law (AUCL) and other laws and regulations in the civil, administrative and economic spheres are the

foundations for the widespread administrative enforcement against commercial bribery in China. Secondly, the Criminal Law and the corresponding legislative and judicial interpretations, such as the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling of Criminal Cases of Embezzlement and Bribery and the Circular of the Supreme People's Court and the Supreme People's Procuratorate on Issuing Opinions on Issues concerning the Application of Law in Handling of Criminal Cases of Commercial Briberies, stipulate criminal violations and criminal offences. Thirdly, there are disciplines and regulations promulgated by the Central Committee of the Communist Party of China (CPC) which are binding on all CPC members and set a much lower threshold for the constitution of corruption-related violations.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

There are no official guidelines on the interpretation and enforcement of anti-corruption laws in China.

Supervisory authorities in various industries publish certain notices and working plans for enforcement actions.

1.4 Recent Key Amendments to National Legislation

From the administrative perspective, the most significant change in the past few years is possibly the revision of the AUCL that came into effect on 1 January 2018 and its follow-up amendments. In general, the revision to the AUCL has increased the maximum fine for commercial bribery from CNY200,000 to CNY3 million and specified the constitutive elements of commercial bribery. On 22 November 2022, the China State Administration for Market Regulation (SAMR) proposed an AUCL revision for consultation by adding transaction counterparties at the entity level as the receivers of bribery, reflecting a stricter attitude against commercial bribery. The subsequent draft amendments to the AUCL newly released on 25 December 2024 for public opinions did not directly reflect such proposal, but introduced a new provision regarding commercial bribery stating that entities and individuals shall not accept bribes in business transactions, which reflects the trend of adhering to the principle of "investigating both bribe-takers and bribe-givers" from a legislative perspective.

From the criminal law perspective, on 29 December 2023, the National People's Congress issued Amendment XII to the Criminal Law ("Amendment XII") which came into force on 1 March 2024. Amendment XII mainly enhances punitive provisions and reinforces criminal liability for commercial bribery crimes, and expands criminal liability for corruption-related offences on bribery and bribe-offering acts in private sector. These revisions signify a rigorous commitment to combat and penalise corruption and bribery-related offences through legislative improvements.

2. Bribery and Corruption Elements

2.1 Bribery

Definition of a Bribe

The current administrative law and criminal law have different definitions of bribery, and the connotation of bribery varies from the criminal law and administrative law perspectives.

From the criminal law perspective, there are a total of ten crimes relating to bribery, which generally forbid the act of offering a bribe to any

state functionary or non-state functionary, and the receiving of that bribe by any state functionary or non-state functionary. For example, any state functionary who extorts property from others by taking advantage of his or her position or illegally accepts others' property in return for securing benefits for them shall be convicted of acceptance of bribes.

From the administrative law perspective, in a broad sense, bribery refers to offering or taking money or goods and other acts conducted for the purpose of offering or obtaining trading opportunities or other economic benefits, in violation of the fair competition principle.

Public Officials

The law distinguishes between the bribery of a public official and bribery of an ordinary individual. There is a specific term for a public official in China, which is "state functionary", which means persons who perform a public service in state organs, state-owned enterprises and institutions, and other persons who perform a public service according to law. The Criminal Law defines the boundary between crimes relating to the bribery of a state functionary and the bribery of an ordinary individual, and also stipulates different crimes, depending on the involvement of duty or influence of the state functionary. For example, an individual offering bribes to a state functionary will be convicted of the crime of offering bribes to a state functionary and will be subject to criminal liabilities of up to lifetime imprisonment, along with confiscation of property. The act of offering bribes to an executive in a private entity will constitute the crime of offering bribes to a non-state functionary and will be subject to criminal liabilities ranging from criminal detention (a less punitive form of imprisonment, involving incarceration at a police station for up to six months with occasional home visits) to imprisonment of up to ten years, along with a monetary fine where the amount of the bribes is large.

Bribery of Foreign Public Officials

Further, according to the Criminal Law, anyone giving any property to a functionary of a foreign country or an official of an international public organisation for any improper commercial benefit will be convicted of the crime of bribery of foreign public officials and international public organisation officials, and will be subject to imprisonment of up to ten years and a monetary fine.

Hospitality Expenditures, Gifts and Promotional Expenditures, and Facilitation Payments

Hospitality and promotional expenditures would not necessarily constitute bribery if they were incurred in ordinary business circumstances, such as maintaining a client relationship or promoting products and services, and are reasonable in scope and accurately recorded in the books and records.

For gifts, small advertising gifts with a value of less than CNY200 are permitted under the Provisional Regulations on the Prohibition of Commercial Bribery and are generally permitted by the enforcement authorities in practice.

There is no official definition for facilitation payments in China. In practice, any payment that is made in exchange for illegal business opportunities, advantages or other interests could potentially be deemed as bribery.

2.2 Influence-Peddling

From a criminal law perspective, with respect to influence-peddling practices, there are several crimes stipulated in the Criminal Law, the con-

viction for which needs to take various considerations into account, such as whether the person conducting the influence-peddling is a state or non-state functionary or any person who has a close relationship with the state functionary, and the specific manifestations of the influence on decision-making. For example, any close relative of the state functionary, or other person closely related to that state functionary, who secures illegitimate benefits for an entrusting person through that state functionary's performance of his or her duties or through another state functionary's performance of his or her duties by taking advantage of that state functionary's functions, powers or position, and extorts from the entrusting person or accepts the entrusting person's money or property, shall be convicted of the crime of accepting bribes via influence. Anyone who, for the purpose of securing illegitimate benefits, offers bribes to any of the close relatives of the state functionary or other persons closely related to that state functionary, or any state functionaries who have been removed from their positions, their close relatives, or other persons closely related to them, shall be convicted of the crime of offering bribes to persons with influence.

From the administrative law perspective, influence-peddling is prohibited because it is categorised as a form of commercial bribery in violation of the fair competition principle. A business operator bribing organisations or individuals who take advantage of their functional authority or influence to impact a transaction may face a fine of up to CNY3 million, confiscation of illegal gains, and revocation of its business licence where circumstances are severe.

2.3 Financial Record-Keeping

Inaccurate Corporate Books and Records

With respect to inaccurate corporate records, the Criminal Law stipulates multiple different crimes. For example, anyone who conceals or intentionally destroys account books or financial reports that are required to be kept in accordance with the law, if the circumstances are severe (eg, the money involved is more than CNY500,000), shall be sentenced to fixed-term imprisonment of up to five years, and/or a fine of up to CNY200,000. Entities committing the aforesaid crime shall also be fined, with the directly accountable persons being punished. Moreover, if, during the process of its liquidation, an enterprise records false information in its balance sheet or inventory of assets, causing serious harm to the interest of the creditors (eg, causing economic losses of more than CNY500,000), that enterprise shall be convicted of the crime of impairing liquidation and shall have a fine of up to CNY200,000 imposed, with its directly accountable persons to be sentenced to fixed-term imprisonment of up to five years. It should be noted that the aforementioned crimes do not necessarily relate to corruption, and are separately and independently stipulated under the Criminal Law.

From the perspective of administrative law, companies forging or tampering with accounting documents, account books and other accounting materials, or providing false financial accounting reports, shall be criticised by a notice and may have a fine of up to CNY100,000 imposed, with their directly accountable persons subject to a fine of up to CNY50,000. Likewise, the foregoing legal liabilities exist independently and are not necessarily involved with acts of corruption. In addition, in accordance with the AUCL, where a business operator gives a discount to its transaction counterparty or pays a commission to an intermediary, it shall truthfully record that

discount and commission in its account books. The same requirements also apply to the counterparty or intermediary receiving the discount or commission.

Disseminating False Information

In respect of the offence of false information dissemination, from the criminal law perspective, whoever fabricates and spreads false information that adversely affects securities or futures trading, thus disrupting the securities or futures trading market, if the consequences are severe (eg, losses caused to investors exceeding CNY50,000), shall be sentenced to fixed-term imprisonment and shall have a fine of up to CNY100,000 imposed.

From the perspective of administrative law, the legal liabilities relating to the dissemination of false information are mainly regulated in the Securities Law. Specifically, according to Article 55 of the Securities Law, making use of false or uncertain significant information to induce investors into securities trading is strictly prohibited as a market-manipulating practice, and Article 192 of the Securities Law stipulates that the violator shall be ordered to dispose of the illegally held securities pursuant to the law, with illegal gains being confiscated and a fine imposed. If the aforesaid violator is a company or other organisation, the directly accountable persons shall receive a warning together with a fine of up to CNY5 million. In addition, anyone disseminating fraudulent information to disrupt the order of the securities market shall be subject to legal penalties such as imposition of a fine together with confiscation of illegal gains.

2.4 Public Officials

Misappropriation of public funds by any state functionary as a result of taking advantage of his or her position would result in that state functionary being convicted of the crime of misappropriation of public funds. The crime of misappropriation of public funds contains three specific categories, namely (i) appropriation of public funds for the state functionary's own use or for conducting illegal activities, (ii) appropriating a relatively large amount of public funds for profit-making activities, and (iii) appropriating a relatively large amount of public funds without returning it after the lapse of three months. The state functionary in question who is convicted of the crime shall be sentenced to imprisonment of up to a term of life. Where the aforesaid misappropriated funds or materials were allocated for significant public purposes, such as disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and women and the families of revolutionary martyrs and servicemen and women, aid to the poor, migration or social relief, the criminal shall be given a heavier punishment.

In accordance with the Criminal Law, any state functionary who extorts or accepts money or property from another person by taking advantage of his or her position in order to seek benefits for that person, or by illegally accepting rebates or service charges of various descriptions, shall be convicted of accepting bribes.

In accordance with the Criminal Law, any state functionary who unlawfully takes public property into his or her possession by embezzlement, theft, fraud or any other means, by taking advantage of his or her position, shall be convicted of corruption; and, where the amount involved is extremely large (over CNY3 million) and extremely severe losses are caused to the interests of the state and the people, the maximum punishment shall be the death penalty.

Under the Criminal Law, favouritism is an aggravating factor (but not an independent crime) when state functionaries commit the crime of abusing power or the crime of negligence of duty. The crime of abusing power refers to state functionaries taking decisions on and handling matters beyond their authority in violation of the law, and the crime of negligence of duty refers to negligence of duty by state functionaries who are seriously irresponsible and fail to perform or fail to conscientiously perform their duties. State functionaries who commit the crime of abusing power or the crime of negligence of duty, thereby causing heavy losses to the interests of the state and the people, could be sentenced to fixed-term imprisonment of up to seven years. With the aggravating factor of favouritism, the term of imprisonment could be up to ten years. In addition, the Criminal Law stipulates several crimes committed by state functionaries in specific government functions through practising favouritism, such as the crime of failing to collect or collecting insufficient tax by practising favouritism.

2.5 Intermediaries

With respect to the commission of bribery through an intermediary, depending on the identity of the intermediary and how the intermediary works, the Criminal Law generally stipulates the following three kinds of crimes: (i) the crime of mediatory bribery, (ii) the crime of accepting bribes by using influence, and (iii) the crime of introducing bribes.

The crime of mediatory bribery is a subcategory of the crime of accepting bribery, and its key characteristic is that, when conducting the crime of mediatory bribery, the state functionary, by taking advantage of his or her own powers or position, secures illegitimate benefits for an entrusting person through another state functionary's performance of duties (instead of his or her own performance of duties). In this regard, it should be noted that the state functionary whose performance of duties has been taken advantage of should not be aware of the existence of bribery, otherwise he or she would also be convicted of the crime.

The crime of accepting bribery by using influence is an independent crime, the key characteristic of which is that the person accepting the bribery is not a state functionary but the state functionary's close relative or any other person who has a close relationship with that state functionary. As a person who has a close relationship with the state functionary, by using his or her influence, the perpetrator seeks improper benefits through the performance of any duty of the state functionary or any other state functionary.

The crime of introducing a bribe is also an independent crime. 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. In practice, where the intermediary is neither a state functionary nor someone who has a close relationship with the state functionary, he or she shall be convicted of the crime of introducing bribery by introducing and facilitating a bribery-related transaction.

From the perspective of administrative law, explicitly paying the intermediary a commission which has been truthfully recorded into account books does not fall within the scope of commercial bribery. However, anyone who offers bribery to a third party who has influence on the transaction counterparty, for the purpose of seeking transaction opportunities or competitive advantages, shall be subject to administrative penalties, as this would constitute commercial bribery.

2.6 Lobbyists
This is not applicable in China.

3. Scope of Application

3.1 Limitation Period
The statute of limitations in the Criminal Law is stipulated according to the gravity of the maximum legally prescribed punishment and shall be calculated from the date when the crime is completed. The maximum period is 20 years, which shall apply to crimes for which the maximum legally prescribed punishment is life imprisonment or the death penalty. For example, for the crime of offering bribery to a state functionary, the period is further divided into three grades: five years, ten years and 20 years, depending on the maximum legally prescribed punishment. Expiry of the limitation period does not render prosecution entirely impossible. For example, for a crime for which the maximum statutory punishment is life imprisonment or the death penalty, even if 20 years have elapsed, the criminal suspect may still be prosecuted upon the approval of the Supreme People's Procuratorate. In addition, where a criminal suspect commits a new crime after the occurrence of a crime but before the expiry of the limitation period, the limitation period of the former crime shall also be recalculated from the date of the new crime. Under circumstances where a criminal suspect escapes after the case is filed by relevant judicial authorities or where a victim brings a complaint against a criminal suspect, the limitation period shall not apply.

From the perspective of administrative law, where an act in violation of the administrative law is not discovered within two years from the date when the illegal act is ended, no administrative penalty shall be imposed. The aforementioned time limit shall be extended to five years when matters pertaining to the life, health or safety of citizens or their financial security are involved and when the acts have resulted in harmful consequences, unless otherwise provided by law.

3.2 Geographical Reach of Applicable Legislation
The Criminal Law mainly adopts the principle of territorial jurisdiction over criminal offences, supplemented by extraterritorial jurisdiction in circumstances where the perpetrator is a Chinese citizen or a foreign national commits a crime against China or a Chinese citizen. Article 10 of the Criminal Law stipulates the principle of Passive Recognition of Foreign Criminal Judgments, stating that any Chinese citizen who commits a crime outside the territory of China may still be investigated for his or her criminal liabilities under Chinese laws, even if he or she has already been tried in a foreign country. However, if he or she has already received criminal punishment in the foreign country, he or she may be exempted from punishment or given a mitigated punishment. Article 8 further specifies the principle of Protective Jurisdiction, indicating that the Criminal Law may be applicable to any foreigner who commits a crime outside the territory and territorial waters and space of China against China or against any Chinese citizens if, for that crime, this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it was committed.

There is generally no extraterritorial application from an administrative law perspective.

3.3 Corporate Liability
On a criminal level, bribery committed by an employee of a company could be deemed

as either an individual crime or a unit crime, depending on various factors, including whether the company is engaged in the bribery (specifically, whether it is the company's decision to conduct the bribery), the possession of illegal gains, and whether the bribes are offered in the name of the company or the individual employee. If the charge is raised against the individual employee, the company would not bear legal liabilities. However, if the charge is against the company as a unit crime, the so-called "dual punishment system" would apply – ie, not only would a monetary penalty be imposed on the company, but also the main responsible persons (ie, the legal representative and other persons in charge) could be subject to criminal detention or imprisonment.

The administrative enforcement differs, as there is a default mechanism in place; namely, the acts of bribery committed by a company's employees shall be deemed as the acts of the company, unless the company has evidence to prove that such acts of its employees were not made in search of transaction opportunities or competitive advantages for the company. Furthermore, under Article 33 of the Administrative Penalty Law, where the company concerned has sufficient evidence to prove that it has committed no subjective fault, no administrative penalty shall be imposed on the company. The company would only have administrative liabilities imposed on it, including a fine ranging from CNY100,000 to CNY3 million, confiscation of illegal gains, and revocation of its business licence where circumstances are severe.

With respect to whether the corporate's legal liabilities will be pursued when it is merged or divided after committing an offence, on the criminal level, as long as an entity that assumes the rights and obligations of that predecessor entity exists, the criminal liability of the predecessor entity and the relevant responsible persons shall still be pursued. The predecessor entity shall still be listed as the defendant, and the legal representative or the person chiefly in charge of the new entity that succeeds the rights and obligations of the predecessor entity shall be the litigation representative. As for the successor entity, it shall bear the criminal liability of the predecessor entity to the extent of the property it inherited.

In terms of administrative liability, the general principle may be found in the Implementation Regulations of the Customs of the People's Republic of China on Administrative Penalties, which specify that the predecessor entity shall be the liable subject, and the successor entity that assumes the rights and obligations shall be the person subject to the property penalty. Based on law enforcement practice, this principle may also be applicable in other areas.

4. Defences and Exceptions

4.1 Defences

For the criminal offence of bribery, the Criminal Law explicitly stipulates that any person who provides benefits to a state functionary as a result of extortion by the state functionary, and does not obtain an undue advantage, would not be criminalised for bribery. In addition, any briber who, before he or she is investigated for criminal liabilities, voluntarily confesses his or her act of offering bribes may be given a mitigated punishment or be exempted from punishment. Even without voluntary surrender, as previously mentioned, a criminal suspect who truthfully confesses his or her crimes may be given a lighter penalty and may be given a mitigated penalty if any extremely severe consequence is avoided due to his or her truthful confession.

In a commercial context, the criteria commonly used by the administrative enforcement agencies for substantiating commercial bribery mainly focus on (i) whether there is any lure of improper interests, and (ii) whether there is any illegal intention to obtain business opportunities or competitive advantages. The key for differentiating between legitimate exchange of interests and inducement for illegitimate interests lies in whether the interests exchanged have potential influence on fair competition in the market or on the interests and benefits of the consumers. Notably, the AUCL has adopted a new method that lists all the possible examples of statutory bribery-receiving parties, including (i) "employee of a transaction counterparty", (ii) "any entity or individual entrusted by the counterparty" and (iii) "any entity or individual that is likely to take advantage of powers or influence to affect a transaction", which in its literal meaning excludes the counterparty itself as the bribery-receiving party. Therefore, considering the above-mentioned, the corresponding defences for the company could be based on the nature of the bribery-receiving party, the non-existence of the exchange of illegitimate interests, or the lack of potential influence on fair competition or consumers' interests. In addition, another possible defence for the company could be sustained in the AUCL if a company has evidence to prove that such acts of the employee are irrelevant to seeking transaction opportunities or competitive advantages for the company, and under the Administrative Penalty Law, where a company has evidence to prove that it has no subjective fault.

4.2 Exceptions

Although, under the AUCL, the counterparty of a transaction does not fall within the scope of the definition of a bribery-receiving party, due to the stricter requirements in some industry-specific laws and regulations such as Article 88 of the Drug Administration Law, offering unlawful interests to the counterparty, such as the offering of interests to public hospitals by a pharmaceutical company, could still be deemed as bribery.

In respect of voluntary surrender or confession of crimes, the court is also empowered not to mitigate the penalty in cases where the circumstances of the crime are severe or flagrant.

4.3 De Minimis Exceptions

The Criminal Law sets forth the threshold for prosecuting bribery and corruption offences. For example, the threshold amount for bribing a non-state functionary is CNY60,000 (approximately USD8,500) and the threshold amount for bribing a state functionary is CNY30,000 (approximately USD4,250).

In comparison, the AUCL does not stipulate the threshold of the bribery amount. One relevant exception is in regard to small promotional gifts, which are permitted by the Provisional Regulations on the Prohibition of Commercial Bribery and are usually worth less than CNY200 in practice. Other than that, Article 97 of the newly revised Discipline Rules for the Communist Party of China stipulates that payment, cash or shopping cards that might potentially influence the execution of duty of CPC members are strictly prohibited, which seems to set aside an exception for such a payment in a relatively small amount, with less likelihood of it being deemed as bribery.

4.4 Exempt Sectors/Industries

There are no sectors or industries exempt from the aforementioned offences.

4.5 Safe Harbour or Amnesty Programme

According to the AUCL, the bribery of employees of a company shall be deemed as the act of the company, unless there is evidence to prove that the bribery of employees is not related to seeking transaction opportunities or competitive advantages for the company. However, no specified regulations or judicial interpretations regarding what evidence would be most valid have been made available. In practice, some multinational and local companies have already implemented compliance programmes and preventive measures such as providing regular compliance training and requiring employees' written compliance commitment letters in preparation for any potential legal liability concerns. Furthermore, it has been suggested by the enforcement authorities that, if a business operator has formulated legal, compliant and reasonable measures, and has taken effective measures for supervision, and does not connive in the staff's bribery, or do so in a disguised form, the company could be relieved of legal liabilities.

5. Penalties for Violations

5.1 Penalties on Conviction

From the perspective of administrative law, where a business operator bribes any other party in violation of the AUCL, the supervision and inspection authority shall confiscate its illegal gains, and impose on it a fine of between CNY100,000 and CNY3 million. Where the circumstances are severe, its business licence shall be revoked. Moreover, there is a general article in the AUCL stipulating that business operators that have caused damage to others shall be subject to civil liabilities, but without any further specification of the details. Unlike other jurisdictions such as the USA where the enforcement authorities would implement the civil penalties on the offenders, civil consequences in China are generally resolved through civil disputes where the aggrieved party of the bribery could bring a lawsuit in court or use alternative dispute resolution channels.

From the perspective of criminal law, there are ten different crimes regarding commercial bribery stipulated in the Criminal Law, with corresponding criminal penalties for each one. In brief, the consequences of crime include deprivation of liberty and property. For individuals, the consequences include criminal detention or life imprisonment, as well as fines or confiscation of property. Similarly, for crimes committed by an entity, a fine is imposed on the entity itself and criminal detention is imposed on its responsible persons.

5.2 Guidelines Applicable to the Assessment of Penalties

The guidelines by which to assess criminal liability are mainly based on the provisions of the Criminal Law and relevant judicial interpretations, while, in respect of administrative liability, the assessment guidelines are mainly based on the discretion benchmarks for administrative penalties formulated by each province and municipality.

For the same crime, the Criminal Law usually stipulates multiple levels of punishment (with minimum and maximum sentences for each level) according to the gravity of the circumstances – ie, ordinary circumstances, severe circumstances and extremely severe circumstances. Judicial interpretations would provide the details for the level of gravity. To take bribery as an example, the newly amended Criminal Law stipulates that anyone who commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than three years or criminal deten-

tion, with a fine; if illegal gains are obtained and the circumstances are severe, or severe loss is caused to the interests of the state, he or she shall be sentenced to fixed-term imprisonment ranging from three to ten years and a fine; and if the circumstances are extremely severe, or the state has suffered extremely severe loss in its interests, he or she shall be sentenced to fixed-term imprisonment of more than ten years or life imprisonment, a fine and confiscation of his or her property. Further, the judicial interpretation provides the determining factors for "severe circumstances" and "extremely severe circumstances", which mainly refer to the amount of the bribes offered.

In addition, the Criminal Law stipulates the application of heavier or lighter punishment within the limits of the prescribed punishment. For example, Article 390 of the newly amended Criminal Law added factors such as offering bribes more than once or to more than one person and offering bribes to supervisory, administrative law enforcement or judicial personnel as aggravating circumstances, and applies a heavier punishment accordingly. Also, voluntary confession of a crime and adoption of measures actively to reduce the losses caused by the crime would generally be seen as factors for considering a lighter punishment.

As for the administrative punishment, many provinces and cities have formulated their local administrative punishment discretion benchmarks within the scope of administrative punishment stipulated by laws and regulations. Taking Shanghai Municipality as an example, the Discretionary Standards of Administrative Penalty in Market Regulation Enforcement (the "Standards") were issued in 2020 and revised in 2022 by the Shanghai Administration for Market Regulation (AMR), which provides practical metrics on how to determine the level of an administrative penalty for an individual or an entity violating the AUCL and other laws that the AMR is responsible for enforcing. The Standards set out three levels of administrative penalty – ie, low, middle and high. A few factors are taken into account when the AMR evaluates the penalty level, including the number of recipients accepting bribes and the times of that bribery, the duration of illegal acts, the amount of bribery or transaction amount involved, whether such bribery is subject to the risk of causing personal or property damage, and the impact on the whole society.

6. Disclosure Processes

6.1 Disclosure Obligations

From the perspective of criminal law, according to the Criminal Procedure Law, any entity or individual, upon discovering the facts of a crime or a criminal suspect, shall have a duty to report the case or provide information to a public security organ, a people's procuratorate or a people's court.

From the perspective of administrative law, there is no explicit requirement to self-report violations of anti-bribery and anti-corruption provisions. However, if there are administrative or criminal investigations initiated against a listed company, the Securities Law and the Administrative Measures on Information Disclosure by Listed Companies stipulate explicit information disclosure obligations. In addition, the listed company shall disclose and state the cause, the current status and the likely effect of the event in a timely manner.

6.2 Voluntary Disclosure Incentives

From the perspective of criminal law, according to Article 67 of the Criminal Law, voluntary self-disclosure of criminal activity is generally encouraged by stipulating mitigation or even exemption from the criminal penalties under such circumstances. Similar principles and approaches may also be found in some other provisions prescribed in the Criminal Law. For example, Article 164 of the Criminal Law provides that any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

From the perspective of administrative law, according to Article 32 of the Administrative Penalty Law and Article 13 of the Guiding Opinions on Regulating the Discretion over Administrative Penalty for Market Regulation (the "Guiding Opinions"), mitigated or reduced administrative punishment shall be imposed under the circumstances of voluntary self-disclosure of an illegal act which is not yet known to the market regulatory authority. Similar principles may also be found in some provincial regulations, such as the Standards issued by Shanghai AMR.

6.3 Self-Disclosure Procedures

There is no explicit process.

6.4 Protections Afforded to Whistle-Blowers

For the protection of whistle-blowers, some specific rules such as the Rules of the Supreme People's Procuratorate on Protecting the Citizens' Tip-Off Rights have been formulated to provide a comprehensive mechanism on both substantial and procedural levels. Enforcement authorities are required to keep confidential the identity of the whistle-blowers throughout the reporting handling process. In addition, the authorities are required to take measures to ensure the safety of the whistle-blowers and their close relatives whenever and wherever necessary. Retaliation against the whistle-blowers is entirely prohibited by law, and legal liabilities such as administrative punishment, criminal detention or imprisonment can be imposed.

6.5 Incentives Provided to Whistle-Blowers

On 9 April 2016, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Finance jointly issued Several Provisions on the Protection and Reward of Whistle-Blowers of Duty-Related Crimes (the "Provisions"), improving the protection and reward system for whistle-blowers, who do not do so anonymously, in relation to duty-related crimes. According to the Provisions, rewards for non-anonymous whistle-blowers of duty-related crimes shall be granted by the People's Procuratorates. Generally, the amount of reward for each case shall not exceed CNY200,000; where the informant has made significant contributions, upon approval, a reward of more than CNY200,000 (but not exceeding CNY500,000) may be granted. Where the informant has made particularly significant contributions, upon approval of the Supreme People's Procuratorate, the amount of reward shall not be limited by the aforementioned amount.

On 30 July 2021, the State Administration for Market Regulation and the Ministry of Finance jointly issued the Interim Measures for Rewards for Whistle-blower Reports of Major Violations in the Field of Market Regulation (the "Measures") to improve the system of rewarding whistle-blowing against major violations in the field of market regulation. The Measures took effect on 1 December 2021. According to the Measures, rewards for whistle-blowing against major viola-

tions in the market regulation field shall be given by market regulatory authorities at all levels. The rewards for whistle-blowing are classified into three grades, based on the facts of the violation, relevant evidence and consistency between the content of the whistle-blowing and the facts, as well as the severity of the whistle-blowing matters. Whistle-blowers shall be rewarded with 1%, 3% or 5% of the confiscated fines respectively, depending on the grade. For cases without fines or confiscated funds, the amounts of rewards from Grade I to Grade III shall not be less than CNY5,000, CNY3,000 or CNY1,000 respectively. For any matter reported by employees, the reward criteria may be increased correspondingly. The upper limit of the reward for whistle-blowing for each case is CNY1 million. Compared with the Provisions issued on 9 April 2016, the Measures increase the amounts of rewards for whistle-blowing to encourage the public further actively to report major violations.

7. Enforcement Trends

7.1 Enforcement

There is criminal and administrative enforcement of anti-bribery and anti-corruption in China; civil prosecution of such offences is not applicable in China.

7.2 Enforcement Bodies

From the perspective of administrative law, offences with respect to bribery and corruption are mainly investigated and penalised by the SAMR. The SAMR was established on 21 March 2018, and undertakes the merged responsibilities previously held by multiple authorities.

From the perspective of criminal law, illegal acts not involving state functionaries shall be investigated and handled by the Public Security Bureau (PSB) and transferred to the prosecution department of the People's Procuratorate (the "Procuratorate") for prosecution. Criminal cases involving state functionaries were previously investigated and prosecuted by the Procuratorate (of which the anti-corruption division was responsible for investigations, and the prosecution division was responsible for prosecution). The authority for criminal investigation has been transitioned to the Supervisory Commission in accordance with the Supervision Law that entered into force on 20 March 2018 and the amendments will take effect on 1 June 2025, with the prosecution duty still being performed by the Procuratorate.

It is worth noting that, for the same misconduct committed by a company, the criminal and administrative regimes are mutually exclusive. The regulatory framework for the conversion between administrative and criminal cases is established by the Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Agencies and the Guidelines for the Reverse Conversion between Administrative Law Enforcement Agencies and Criminal Cases by People's Procuratorates released in December 2024 and other relevant regulations. According to these regulations, while investigating an administrative case, if the administrative agency suspects that the case should be prosecuted as a criminal case, based on the required elements, such as the amount involved and the conduct patterns or the consequences, the case must be transferred to a PSB and the PSB will examine the cases transferred. Likewise, if a PSB discovers that a case should not be criminally prosecuted but may be potentially subject to administrative liability, it shall transfer the case to the relevant administrative agency for further investigation and handling.

7.3 Jurisdictional Reach of Enforcement Bodies

Investigation in criminal cases shall be conducted by the PSB, except for a case regarding a crime committed by a state functionary, by taking advantage of his or her functions, and will be investigated by the Supervisory Commission according to the Criminal Law and the Supervision Law.

With respect to administrative cases, the investigation shall be generally conducted by the Administration for Market Regulation of county level and above. However, administrative violations involving state functionaries shall also be investigated by the Supervisory Commission in accordance with the Supervision Law. Other industrial supervision authorities such as the China Banking and Insurance Supervision and Regulatory Commission are empowered with the investigating powers for specific industries that do not involve state functionaries. Unless the violation is escalated to criminal level upon investigation, it will not involve any further prosecution process.

7.4 Discretion for Mitigation and Aggravation

Discretion for Mitigation

Article 67 of the Criminal Law generally encourages self-reporting of criminal activity by stipulating mitigation or even exemption from the criminal penalties under voluntary confession circumstances. Similar principles and approaches may also be found in some other provisions prescribed in the Criminal Law. For example, Article 164 of the Criminal Law provides that any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

For administrative cases, Article 32 of the Administrative Penalty Law provides that any party who eliminates or reduces the harmful consequences of the illegal behaviour, was coerced or tricked by others to commit illegal acts, confesses the illegal behaviour voluntarily, or has performed meritorious service, may be given a mitigated punishment or be exempted from punishment.

Discretion for Aggravation

According to Article 65 of the Criminal Law, aggravated penalty shall be imposed within the limits of the statutory penalty under the circumstance of repeated misconduct.

For administrative cases, Article 15 of the Guiding Opinions provides that any party who violates emergency response measures during the period of a major infectious disease epidemic or any other emergency shall be given an aggravated administrative penalty. Under other circumstances, such as causing serious harmful consequences such as personal injury or death or major property loss of others, or instigating, coercing or inducing others to commit illegal acts, an aggravated administrative penalty may be imposed according to Article 16 of the Guiding Opinions.

7.5 Recent Landmark Investigations or Decisions

Over the past few years, as regularly reiterated by China's top leadership, China has had zero tolerance for corruption and bribery, and anti-corruption has been and will be a key area for law enforcement.

The Second Plenary Session of the 20th Central Commission for Discipline Inspection reaffirmed the importance of maintaining a strong and persistent crackdown on corruption. The importance of the following actions and sectors was explicitly

emphasised: rigorously investigating and punishing corruption, continuously promoting corruption governance in key sectors of concentrated power, capitals and resources, distinguishing the key targets, strengthening special rectification of corruption that jeopardises the interests of the masses, and firmly investigating and dealing with corruption in new and disguised forms. In addition, the insistence on investigating bribe-paying and bribe-taking as a whole was strengthened. The enhancement of international co-operation was also mentioned in this plenary session.

Notably, starting from May 2023, a collaborative effort involving 14 ministries and administrations has been initiated based on the Key Points for Crackdown on Malpractice in Pharmaceutical Purchasing and Sales and Medical Services in 2023. This concerted action aims to address misconduct and irregularities prevalent in the medical product industry. Building upon this foundation, in July 2023, ten ministries/administrations announced their intention to launch a year-long nationwide campaign dedicated to combating corruption within the industry.

Continuing into 2024, the healthcare industry's anti-corruption campaign persisted, with a focus on addressing ongoing misconduct and irregularities within the medical product sector. Enforcement authorities have launched nationwide investigations, paying particular attention to academic meetings and service fee payments to healthcare professionals, sponsorship and donations, irregular practices of foundations and association, etc.

7.6 Level of Sanctions Imposed

From the criminal law perspective, based on the relevant statistics, the length of a sentence for the crime of offering bribes in the healthcare industry ranges from probation to imprisonment of up to ten years. The sentence for the crime of offering bribes to a non-state functionary ranges from probation to imprisonment of up to three years. For the crime of the offering of bribery by an entity, the majority of the persons in charge would have probation imposed upon them and the minority would be sentenced to criminal detention or imprisonment of up to five years.

From the administrative law perspective, the sanctions imposed on companies in the healthcare industry, for example, have usually included a fine ranging from CNY100,000 to CNY3 million and confiscation of illegal gains. Revocation of a business licence is rarely imposed in practice.

8. Compliance Expectations

8.1 Compliance Obligations

Duties to set up a compliance programme are set out in various regulations and guidelines in various levels and industries, such as the Measures for Compliance Management of Central State-Owned Enterprises effective as of 1 October 2022, the Guidelines for Comprehensive Risk Management of Central State-Owned Enterprises, the Guidelines for Compliance Risk Management of Commercial Banks, and the Guidelines for Enterprises on the Compliance Management of Overseas Operations, etc.

In terms of contents, for example, the Measures for Compliance Management of Central State-Owned Enterprises provide that a compliance programme must include the following elements:

- improvement of the organisation structure and definition of the roles and responsibilities;
- establishment of sound compliance management systems, which include a fundamental policy for the overall management and spe-

cific guidance for key areas and businesses, and inspection of the implementation;
- establishment of an operating mechanism with multiple functions regarding compliance and risk management, including identification, evaluation, early warning, review, reporting, whistle-blowing, rectification, accountability of violations, etc;
- development of compliance culture and awareness; and
- enhancement of information technology.

The failure to prevent bribery is not a standalone offence distinct from the act of bribery; rather, it may result in the entities involved losing the ability to defend against allegations of having a subjective intent to commit bribery.

8.2 Compliance Guidelines and Best Practices

Multiple regulatory bodies have issued directives on establishing compliance programmes across different sectors. For instance, within the healthcare sector, on 11 October 2024, the SAMR issued Compliance Guidelines for Pharmaceutical Enterprises to Prevent Commercial Bribery Risks (Draft for Comments), providing guidance for pharmaceutical enterprises to prevent commercial bribery risks from the perspectives of establishment of compliance management systems, risk identification and prevention, and risk disposal.

8.3 Compliance Monitorships

This is not applicable in China.

9. Assessment

9.1 Assessment of the Applicable Enforced Legislation

Each year, the Supreme People's Court and the Supreme People's Procuratorate issue a working report to the National People's Congress, which includes a summary of the number of anti-corruption cases and the focus of their work in the previous year.

According to the publicly available working reports issued throughout the past few years, the general trend of anti-corruption law enforcement has been to maintain an assertive attitude in order to punish corruption and accurately reflect the criminal policy of combining punishment with leniency. In general, importance will be attached to the mechanism for the connection between national supervision and criminal justice, and insistence on the principle of investigating both bribe-paying and bribe-taking as a whole. In addition, attention will be paid to cases involving people's livelihoods, such as embezzlement and land requisition compensation, subsidies for dilapidated houses and subsidies for agricultural supplies. The enforcement authorities aim to intensify the investigation and punishment of offences related to bribing. Especially, those who offer multiple bribes or huge amounts or intend to target governmental cadres in the long term will be punished much more severely.

9.2 Likely Changes to the Applicable Legislation of the Enforcement Body

The main legislative efforts that are foreseeable would be refining the stipulations relating to corruption and bribery as reflected in the draft revision to the AUCL (see **1.4 Recent Key Amendments to National Legislation**). In addition, according to the legislation plan released by the Standing Committee of the National People's Congress, an Anti-cross-border Corruption Law is also in the draft stage.

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