

Alerts & Publications

Amendment IX to the Chinese Criminal Law

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On August 29, 2015, the National People's Congress Standing Committee passed Amendment IX to the Chinese Criminal Law ("**Amendment IX**"), which will become effective on November 1, 2015. The current Criminal Law, first adopted in 1979 and later revised in 1997, had been previously modified by eight amendments to keep up with the rapidly changing social and economic landscape. Since the release of the draft Amendment IX on November 3, 2014 for public comments, this amendment has been widely discussed and viewed as particularly important for further strengthening anti-corruption laws. This alert will discuss key provisions in Amendment IX that reflect important developments in anti-bribery criminal rules.

Strengthening rules on bribe giving

Chinese law has traditionally placed more focus on prosecuting bribe-receivers. In recent years, the Chinese government has gradually shifted this focus by issuing more rules and prosecuting more cases regarding bribe giving. Amendment IX includes provisions that are aimed at enhancing and clarifying prosecution and punishments on acts of giving bribes. Amendment IX imposes a monetary fine on individuals convicted of giving bribes to state functionaries or to employees of companies, enterprises or other entities. This is intended to be a financial deterrent for bribe givers. Previously, a monetary penalty in form of confiscation of property or a fine would only be imposed on individuals if there were particularly serious circumstances in cases of giving bribes to state functionaries or if the amount involved was large in cases of giving bribes to employees of companies, enterprises or other entities.

Amendment IX also narrows the circumstances under which an offender who is accused of giving bribes to state functionaries and confesses his/her act of bribery prior to being investigated can be exempted from punishment. A confessor can only be exempted from punishment if the confessor commits a relatively minor crime, plays a crucial role in the successful investigation of a major case, or performs some major meritorious service. This revision may have potential implications for whistle-blowers who, if involved in bribe giving, may not easily seek exemption by just reporting a crime.

Amendment IX also provides that people found guilty of giving bribes to close relatives of state functionaries or other persons closely related to state functionaries, or any former state functionaries, their close relatives or other persons closely related to them, will be held criminally liable for the crime of giving bribes. Previously, Amendment VII in 2009 expanded the scope of bribe-receivers to include close relatives of a state functionary and other persons closely related to a state functionary. However, it did not provide that people giving bribes to such close relatives or closely-related friends would be considered as having committed the crime of giving bribes. Amendment IX bridges this gap. However, it is worth noting that the scope of such close relatives and closely-related people are not yet clearly defined under the current law. Some judicial interpretations suggest that closely-related people may refer to people who have close common interest with a state functionary, but this still needs to be further tested and clarified by judicial practices.

More flexible sentencing standards for bribe takers

The Amendment IX adopts more flexible sentencing standards for the crime of taking bribes by state functionaries. As first adopted in 1988, the monetary amount involved in a bribe was the primary consideration for determining the sentencing. For example, under the current Criminal Law, a state functionary who takes bribes in an amount no less than RMB100,000 would be sentenced to fixed-term imprisonment of no less than ten years, or life-imprisonment. The seriousness of circumstances would also be considered, but would not be a primary focus. Amendment IX revises the foregoing scheme and provides the following sentencing guidelines for the crime of taking bribes by state functionaries: (i) imprisonment of less than three years or criminal detention, plus monetary fine, in case of a relatively large amount of bribery or other relatively serious circumstances; (ii) imprisonment of more than three years but less than ten years, plus monetary fine or confiscation of property, in case of a huge amount of bribery or other serious circumstances; (iii) imprisonment of more than ten years or life imprisonment, plus monetary fine or confiscation of property, in case of a particularly huge amount of bribery or other particularly serious circumstances. Amendment IX raises the threshold for, but does not abolish the death sentence for the crime of taking bribes by state functionaries. Under Amendment IX, causing particularly huge losses to the interests of the State and its people, instead of just particularly serious circumstances, may lead to the death penalty. The new sentencing guidelines may give judicial authorities more discretion in rendering sentences. It will be important to see how judicial authorities will interpret the different sets of circumstances in practice.

In addition, Amendment IX tightens the rules on sentence reduction for state functionaries convicted of the crime of taking bribes. If such state functionaries are sentenced to death with a two-year reprieve, their sentence can be reduced to life imprisonment after they have served two years of their sentence but the sentence cannot be further reduced and no paroles can be granted.

Restrictions on employment

Amendment IX adds a new restriction that if a person takes advantage of his or her profession to commit a crime, then the person will be prohibited from engaging in the relevant profession during a period ranging from three to five years after serving the jail term or after being released on parole. This employment restriction is meant to be a deterrent especially for white collar professionals. It is worth watching how the judicial authorities will interpret the scope of the term “relevant profession.”

Amendment IX further demonstrates the Chinese government’s determination and continuing efforts to fight bribery. It provides the anti-corruption campaign with more institutional and legal support. It remains to be seen how it will be implemented and interpreted by judicial authorities.

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