

### Principles and spirit of legislation

In accordance with the Constitution of the People's Republic of China, the country operates a socialist market economy in which all market entities engaging in economic activities are equally protected by law. Corruption and bribery undermine fair competition in the business arena. This may infringe intellectual property rights of both public and private property, and undermine the integrity of the civil service.

Although quite distinct from the common law in Hong Kong and the European legal traditions in Macao, stringent written laws have been put in place in mainland China to combat corruption and bribery so as to maintain social prosperity and the rule of law. The *Criminal Law of the People's Republic of China* (CLPRC) specifies penalties for various corruption and bribery offences. The *Criminal Procedure Laws of the People's Republic of China* lay down the procedures for case-establishment, investigation, arrest, prosecution and trial of corruption and/or bribery related incidents. To enhance international cooperation in combating corruption, mainland China signed and ratified the United Nations Convention Against Corruption (UNCAC) on 27 October 2005. The UNCAC provides a legal basis under international law for mainland law enforcement authorities to prevent corrupt officials from fleeing the country. The UNCAC was put into force in mainland China in February 2006 and was simultaneously extended to cover the Hong Kong Special Administrative Region and the Macao Special Administrative Region.

## Summary of the law

### Corruption and bribery are different offences under the CLPRC

Corruption and bribery are different offences in mainland China. Identical acts may constitute different offences depending on the capacities of the offenders. For instance, if a State functionary takes advantage of his/her office to misappropriate, steal, deceive

— or by any illegal means — take possession of the property of a company, he/she commits a corruption offence. However, for an employee of a non-State-owned company or enterprise committing the same criminal act, the offence would be embezzlement through dereliction of duty. The same distinction is drawn between the offences of misappropriation of public funds and misappropriation of a private party's funds; and also between State functionaries accepting bribes and non-State employees accepting bribes.

Corruption can thus be viewed as either any criminal act committed by a State functionary who takes advantage of his/her office to misappropriate, steal, deceive or — by any illegal means — take possession of the public money or property. Any individual or private party that conspires with State functionaries to commit such corrupt acts are also considered accomplices.

Bribery is broadly defined as occurring when State functionaries abuse their official status to solicit or accept money and/or property. Any individuals or private parties that offer or introduce bribes to State functionaries are also deemed to have committed the offence of bribery.

As with the laws of Hong Kong and Macao, offering and accepting bribes in commercial dealings is also prohibited under the CLPRC. The party accepting a bribe in a commercial activity may be any employee of a company, enterprise or any other unit; while the offeror can be any person.

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## **Division of work between State Procuratorate and Public Security Bureau**

As far as legal procedures are concerned, corruption and bribery cases involving State functionaries and their accomplices are handled and investigated by the State Procuratorate. Cases of embezzlement — involving dereliction of duty, misappropriation of funds, and/or acceptance and offering of bribes by non-State functionaries — are handled and investigated by the Public Security Bureau (PSB). If, in the course of business, a businessperson discovers any party is involved in corruption, bribery, embezzlement or misappropriation of funds, he/she should first distinguish the capacities of the offenders and then report the case, as appropriate, to either the State Procuratorate or the PSB.

## Corruption and bribery

In the course of investment and business, investors and business managers should ensure they have a thorough understanding of the CLPRC and the judicial interpretations given by the Supreme People's Court and the Supreme People's Procuratorate concerning corruption and bribery offences. They should know how to protect their legal interests against unlawful infringement and stay alert to avoid any involvement in cases of corruption or bribery.

### 1. Corruption, embezzlement and misappropriation offences

| Offence and related provisions of the Criminal Law of the PRC                          | Summary of the law  | Points for businesspersons  |
|--|---|---|
| <b>Embezzlement by State functionaries</b><br><b>Articles 382, 183(2), 271(2), 394</b> | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>by taking advantage of his/her office</li> <li>by illegal means</li> <li>takes public money or property into his/her own possession (Article 382(1))</li> </ul>   | <ul style="list-style-type: none"> <li>Non-State functionaries involved in the appropriation of public money or property are regarded as accomplices to the crime of corruption, even if they have not gained any benefit.</li> </ul> |
|  | <ul style="list-style-type: none"> <li>Any person authorised by State organs, State-owned companies, enterprises, institutions or people's organisations to administer or manage the State-owned property</li> <li>by taking advantage of his/her office</li> <li>by illegal means</li> <li>takes State-owned money or property into his/her own possession (Article 382(2))</li> </ul> |   |
|  | <ul style="list-style-type: none"> <li>Any employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company which is not owned by the State to engage in public service</li> <li>by taking advantage of his/her office</li> </ul>   |   |

| Offence and related provisions of the Criminal Law of the PRC | Summary of the law   | Points for businesspersons  |
|---|--|---|
|   | <ul style="list-style-type: none"> <li>deliberately fabricates the occurrence of an insured accident and falsely settles a fictitious claim</li> <li>swindles and takes into possession of the insured amount</li> </ul> <p>(Article 183(2))</p>   |   |
|   | <ul style="list-style-type: none"> <li>Any employee engaging in public services in a State-owned company, enterprise or any other State-owned unit, or any person assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit which is not owned by the State to engage in public service</li> <li>by taking advantage of his/her office</li> <li>unlawfully takes possession of money or property of his/her own unit</li> </ul> <p>(Article 271(2))</p> |   |
|   | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>when having an official dealing or having a dealing with a foreigner, accepts a gift</li> <li>involved relatively large amount</li> <li>and fails to hand the gift over to the State as required by the State regulations</li> </ul> <p>(Article 394)</p>  | <ul style="list-style-type: none"> <li>For the mainland case-establishment standard on the definition of 'involved relatively large amount', please refer to 'The regulations regarding placing a case on file for direct handling by the People's Procuratorate (trial)' issued by the Supreme People's Procuratorate</li> </ul> |

| Offence and related provisions of the Criminal Law of the PRC                                  | Summary of the law   | Points for businesspersons  |
|--|--|---|
| <b>Embezzlement through dereliction of duty by employees of enterprises<br/>Article 271(1)</b> | <ul style="list-style-type: none"> <li>Any employee of a company, enterprise or any other unit</li> <li>by taking advantage of his/her position</li> <li>unlawfully takes possession of the money or property of his/her unit</li> <li>the amount involved is relatively large</li> </ul>  | <ul style="list-style-type: none"> <li>Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, can be the subject of the offence</li> </ul> |
| <b>Illicit division of State-owned assets<br/>Article 396(1)</b>                               | <ul style="list-style-type: none"> <li>Any State organ, State-owned company, enterprise, institution or people's organisation</li> <li>violates the State regulations</li> <li>in the name of the unit, secretly dividing up State-owned assets collectively among the individuals of the unit</li> <li>the amount involved is relatively large</li> </ul> | <ul style="list-style-type: none"> <li>Businesspersons should never take part or assist any State functionary in dividing up State-owned assets, money or property</li> </ul>             |
| <b>Illicit division of fines and confiscated money or property<br/>Article 396(2)</b>          | <ul style="list-style-type: none"> <li>Any judicial or administrative law enforcement organ</li> <li>violates the State regulations</li> <li>secretly dividing up fines or confiscated money or property which should be turned over to the State</li> <li>among individuals of the organ, in the name of the organ</li> </ul>                             |   |

| Offence and related provisions of the Criminal Law of the PRC                  | Summary of the law   | Points for businesspersons   |
|--|--|--|
| <b>Misappropriation of public funds</b><br><b>Articles 384, 185(2), 272(2)</b> | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>by taking advantage of his/her position</li> <li>misappropriates public funds for his/her own use for conducting illegal activities</li> <li>or misappropriates a relatively large amount of public funds for profit-making activities</li> <li>or misappropriates a relatively large amount of public funds and fails to repay them within three months</li> </ul> <p>(Article 384)</p>   | <ul style="list-style-type: none"> <li>Businesspersons conspiring, directing or plotting a scam with a fund appropriator to misappropriate public funds will be charged and, if convicted, punished as an accomplice to the crime of misappropriation of public funds</li> </ul> |
|  | <ul style="list-style-type: none"> <li>Any employee of a State-owned financial institution or any person assigned by a State-owned financial institution to a financial institution which is not owned by the State</li> <li>by taking advantage of his/her position</li> <li>misappropriates money of his/her unit or client</li> </ul> <p>(Article 185(2))</p>   |  |
|  | <ul style="list-style-type: none"> <li>Any employee engaging in public services in a State-owned company, enterprise or any other State-owned unit, or any person assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or other unit which is not owned by the State to engage in public service</li> <li>by taking advantage of his/her position</li> <li>misappropriates the funds of his/her own unit for personal use, and the amount involved is relatively large and not repaid within three months</li> <li>or, if less than three months, but the amount involved is relatively large and used for profit-making</li> <li>or illegal activities</li> </ul> <p>(Article 272(2))</p> | <ul style="list-style-type: none"> <li>Businesspersons having contact with non-State-owned units may also have dealings with staff of State functionaries</li> </ul>   |

| Offence and related provisions of the Criminal Law of the PRC               | Summary of the law   | Points for businesspersons  |
|---|--|---|
| <b>Misappropriation of a unit's funds</b><br><b>Articles 272(1), 185(1)</b> | <ul style="list-style-type: none"> <li>• Any employee of a company, enterprise or any other unit</li> <li>• by taking advantage of his/her position</li> <li>• misappropriates the funds of his/her unit for personal use, and the amount involved is relatively large and not repaid within three months</li> <li>• or, if less than three months, but the amount involved is relatively large and is used for profit-making</li> <li>• or illegal activities<br/>(Article 272(1))</li> </ul> | <ul style="list-style-type: none"> <li>• Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, can be the subject of the offence</li> </ul> |
|   | <ul style="list-style-type: none"> <li>• Any employee of a commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other financial institution</li> <li>• by taking advantage of his/her position</li> <li>• misappropriates money of his/her unit or client<br/>(Article 185(1))</li> </ul>  |   |

## 2. Bribery offences

### (I) Offences of accepting, offering or introducing bribes relating to State functionaries or units

| Offence and related provisions of the Criminal Law of the PRC                           | Summary of the law   | Points for businesspersons   |
|---|--|--|
| <b>State functionaries accepting bribes</b><br><b>Articles 385, 163(3), 184(2), 388</b> | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>by taking advantage of his/her position</li> <li>extorts money or property from another person</li> <li>or illegally accepts money or property from another person for securing benefit for that person</li> </ul> <p>(Article 385(1))</p>   | <ul style="list-style-type: none"> <li>Businesspersons should explicitly turn down any request for bribes and report to the authorities concerned immediately</li> </ul> |
|   | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>when engaging in economic activities</li> <li>violates the State regulations</li> <li>by illegally accepting rebates or service charge of various description and taking them into his/her own possession</li> </ul> <p>(Article 385(2))</p>   |  |
|   | <ul style="list-style-type: none"> <li>Any employee who is engaged in public services in any State-owned company, enterprise or any other State-owned unit or anyone is assigned by any State-owned company or enterprise or any other State-owned unit to any non-State-owned company or enterprise or any other unit to engage in public services</li> <li>by taking advantage of his/her position</li> <li>demands or illegally accepts money or property from another person</li> <li>for securing benefit for that person</li> <li>the amount involved is relatively large</li> <li>or when engaging in economic activities, violates the State regulations by accepting rebates or service charge of various descriptions and taking them into his/her own possession</li> </ul> <p>(Article 163(3))</p> |  |



| Offence and related provisions of the Criminal Law of the PRC | Summary of the law  | Points for businesspersons |
|---|---|----------------------------|
|   | <ul style="list-style-type: none"> <li>• Any employee of a State-owned financial institution or any person assigned by a State-owned financial institution to a financial institution which is not owned by the State</li> <li>• when engaging in financial activities</li> <li>• demands or illegally accepts money or property from another person</li> <li>• for securing benefit for that person</li> <li>• or violates the State regulations by accepting rebates or service charges of various descriptions and taking them into his/her own possession<br/>(Article 184(2))</li> </ul> |                            |
|   | <ul style="list-style-type: none"> <li>• Any State functionary</li> <li>• by taking advantage of his/her own functions and powers or position</li> <li>• through another State functionary's performance of his/her duties</li> <li>• for securing illegitimate benefit for an entrusting person</li> <li>• extorts or accepts money or property from the entrusting person<br/>(Article 388)</li> </ul>  |                            |

| Offence and related provisions of the Criminal Law of the PRC                            | Summary of the law   | Points for businesspersons |
|--|--|----------------------------|
| <b>State functionary using influence to accept bribes</b><br><b>Article 388 – Part 1</b> | <ul style="list-style-type: none"> <li>• Any close relative of or any other person who has a close relationship with a State functionary</li> <li>• through the official act of the said State functionary by using the advantages generated from the authority or position of the said State functionary</li> <li>• or through the official act of any other State functionary by using the advantages generated from the authority or position of the said State functionary</li> <li>• for securing illegitimate benefit for a requester</li> <li>• asks or accepts money or property from the requester</li> <li>• the amount is relatively large or there is any other relatively serious circumstances<br/>(Article 388 – Part 1 (Paragraph 1))</li> </ul> |                            |
|  | <ul style="list-style-type: none"> <li>• Any former State functionary or his/her close relative or any person closely related to him/her</li> <li>• through the said State functionary by using the advantages generated from the former authority or position of the said State functionary</li> <li>• or through the official act of any other State functionary by using the advantages generated from the authority or position of the said State functionary</li> <li>• for securing illegitimate benefit for a requester</li> <li>• asks or accepts money or property from the requester</li> <li>• the amount is relatively large or there is any other relatively serious circumstances<br/>(Article 388 – Part 1 (Paragraph 2))</li> </ul>              |                            |

| Offence and related provisions of the Criminal Law of the PRC        | Summary of the law   | Points for businesspersons   |
|--|--|--|
| <b>Unit accepting bribes</b><br><b>Article 387</b>                   | <ul style="list-style-type: none"> <li>Any State organ, State-owned company, enterprise, institution or people's organisation</li> <li>extorts or illegally accepts money or property from another person</li> <li>for securing benefit for that person</li> <li>and the circumstances are serious (Article 387(1))</li> </ul>                 | <ul style="list-style-type: none"> <li>Businesspersons should turn down any request for bribes, rebates or service charges of various descriptions from State organs or State-owned units and report to the authorities concerned immediately</li> </ul>   |
|  | <ul style="list-style-type: none"> <li>Any State organ, State-owned company, enterprise, institution or people's organisation</li> <li>in economic activities</li> <li>secretly accepts an off-the-book rebate or service charges of various descriptions (Article 387(2))</li> </ul>  |  |
| <b>Offering bribes to State functionaries</b><br><b>Articles 389</b> | <ul style="list-style-type: none"> <li>Any person</li> <li>for the purpose of securing illegitimate benefits</li> <li>gives money or property to a State functionary (Article 389(1))</li> </ul>   | <ul style="list-style-type: none"> <li>Never bribe State functionaries to secure illegitimate benefits</li> <li>It may still be an offence if a person is being blackmailed into bribing; however, it does not amount to offering a bribe if no illegitimate benefit is obtained</li> <li>A bribe giver who confesses the bribery voluntarily prior to prosecution may receive a mitigated penalty or be exempted from punishment</li> </ul> |
|  | <ul style="list-style-type: none"> <li>Any person</li> <li>in economic activities</li> <li>violates the State regulations</li> <li>by giving a relatively large amount of money or property to a State functionary</li> <li>or by giving rebates and service charges of various description to a State functionary (Article 389(2))</li> </ul> |  |

| Offence and related provisions of the Criminal Law of the PRC | Summary of the law  | Points for businesspersons   |
|---|---|--|
| <b>Offering bribes to a unit</b><br><b>Article 391</b>        | <ul style="list-style-type: none"> <li>Any person</li> <li>for the purpose of securing illegitimate benefits</li> <li>gives money or property to a State organ, State-owned company, enterprise, institution or people's organisation</li> <li>or in economic activities, violates the State regulations by offering rebates and service charges of various description to the above units</li> </ul> | <ul style="list-style-type: none"> <li>Offering an advantage to State organs, State-owned companies, enterprises, institutions or people's organisations may also constitute the offence of offering bribes</li> </ul> |
| <b>Introducing a bribe</b><br><b>Article 392</b>              | <ul style="list-style-type: none"> <li>Any person</li> <li>introduces a bribe to a State functionary</li> <li>the circumstances are serious</li> </ul>  | <ul style="list-style-type: none"> <li>Any person who lines up any bribery racket commits the offence</li> </ul>   |
| <b>Unit offering bribes</b><br><b>Article 393</b>             | <ul style="list-style-type: none"> <li>Any unit</li> <li>offers a bribe for securing illegitimate benefits</li> <li>or violates the State regulations by giving rebates and service charges to a State functionary</li> <li>the circumstances are serious</li> </ul>  | <ul style="list-style-type: none"> <li>A bribe offered to a State functionary in the name of a company or an enterprise remains an offence</li> </ul>  |

**(II) Offences of offering and accepting bribes by employees of companies or enterprises in the course of business**

| Offence and related provisions of the Criminal Law of the PRC   | Summary of the law  | Points for businesspersons  |
|---|---|---|
| <b>Non-State<br/>functionaries<br/>accepting bribes<br/>Articles 163(1),<br/>163(2)</b>   | <ul style="list-style-type: none"> <li>Any employee of a company, enterprise or any other unit</li> <li>by taking advantage of his/her position</li> <li>demands or illegally accepts money or property from another person</li> <li>for seeking benefit for that person</li> <li>the amount involved is considerably large (Article 163(1))</li> </ul>             | <ul style="list-style-type: none"> <li>Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, should not solicit or accept bribes by taking advantage of his/her position</li> </ul> |
|   | <ul style="list-style-type: none"> <li>Any employee of a company, enterprise or any other unit</li> <li>in economic activities</li> <li>by taking advantage of his/her position</li> <li>violates the State regulations</li> <li>by accepting kickbacks or commissions in any disguise</li> <li>taking them into his/her own possession (Article 163(2))</li> </ul> |   |
| <b>Offering bribes<br/>to non-State<br/>functionaries<br/>Article 164(1)</b>  | <ul style="list-style-type: none"> <li>Any person</li> <li>for the purpose of seeking improper interests and benefits</li> <li>offers money or property to any employee of any company, enterprise or any other entity</li> <li>the amount involved is relatively large</li> </ul>  | <ul style="list-style-type: none"> <li>Offering bribes to any employee of a company or enterprise in mainland China may constitute an offence</li> </ul>  |
| <b>Offering bribes<br/>to foreign<br/>public officers<br/>or international<br/>public organisation<br/>officials<br/>Article 164(2)</b> | <ul style="list-style-type: none"> <li>Any person</li> <li>for the purpose of seeking improper commercial interests and benefits</li> <li>offers money or property to foreign public officers or international public organisation officials</li> <li>the amount involved is relatively large</li> </ul>  |   |

| Offence and related provisions of the Criminal Law of the PRC                      | Summary of the law  | Points for businesspersons   |
|--|---|--|
| <b>Submission of documents containing false testimony</b><br><b>Article 229(2)</b> | <ul style="list-style-type: none"> <li>Any member of an intermediary organisation, whose duty includes making, verifying or validating capital assessments, accounting, auditing; and/or to providing legal service</li> <li>demands or illegally accepts money or property from another person</li> <li>deliberately provides documents containing false testimony</li> <li>the circumstances are serious</li> </ul> | <ul style="list-style-type: none"> <li>Do not follow any illegal advice given by intermediaries</li> </ul> |

### 3. Others

| Offence and related provisions of the Criminal Law of the PRC                                 | Summary of the law   | Points for businesspersons  |
|---|--|---|
| <b>Holding a huge amount of property with an unidentified source</b><br><b>Article 395(1)</b> | <ul style="list-style-type: none"> <li>Any State functionary whose property or expenditure obviously exceeds his/her legitimate income</li> <li>the difference involved is enormous or extremely enormous</li> <li>and he/she fails to explain the source</li> </ul> |   |
| <b>Concealing savings outside the country</b><br><b>Article 395(2)</b>                        | <ul style="list-style-type: none"> <li>Any State functionary</li> <li>violates the State regulations</li> <li>by deliberately concealing bank savings outside the territory of China</li> <li>the amount involved is relatively large</li> </ul>                     | <ul style="list-style-type: none"> <li>Businesspersons should not rashly provide their personal or their companies' bank accounts to State functionaries for handling their finances</li> </ul> |

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## Terms and definitions

### State functionaries

By law, the following parties are all regarded as State functionaries:

- a) persons performing public duties in State bodies;
- b) persons performing public duties in State-owned companies, enterprises, institutions or people's organisations;
- c) persons who are assigned by State bodies, State-owned companies, enterprises or institutions to companies, enterprises, institutions or people's organisations which are not owned by the State to engage in public services; and
- d) other persons performing public services.

### Violation of State regulations

Violation of State regulations includes violation of any of the following:

- a) laws enacted or decision made by the National People's Congress and its Standing Committee;
- b) administrative rules and regulations formulated by the State Council;
- c) administrative measures adopted and decisions or orders promulgated by the State Council.

### Taking advantage of office

Concerning the offence of corruption, the term 'taking advantage of office' applies to any person:

- a) taking advantage of power involving property he/she is in charge of; and
- b) managing, or dealing with, and taking advantage of his/her office and any favourable conditions involving property he/she is managing or dealing with.

The offence of 'accepting a bribe' refers to:

- a) any person taking advantage of his/her authority involving certain public affairs that he/she is in charge of, responsible for or dealing with; and
- b) taking advantage of the office of another State functionary subordinate to, or supervised by, him/her.

### Taking advantage of the convenience arising from one's own official position or authority

This term applies to any person taking advantage of influence or work connections relating to his/her position or authority even though he/she and the State functionary used by him/her have no subordinate-supervisor or other relationship in respect of his/her duties. For example, they may be State functionaries working in different departments of a unit; or State functionaries working in different units with close ties.

### Public property

Public property includes:

- a) any State-owned property;
- b) any property collectively-owned by working people; and
- c) any public donation or special fund used to help alleviate poverty or on other community welfare projects.
- d) any private property that is managed, used or transported by any State body, State-owned company, enterprise, collective enterprise or public organisation — is also construed as public property.

### Money or property

The term 'money or property' refers to any money and/or articles of worth including, but not limited to: any currency, gold, silver and other items with any intrinsic value.

### Seeking illegitimate benefits

This term refers to those seeking assistance, favour or benefit against any law, regulation, policy or rule formulated by any department of the State Council.

### Profit-making activity

This term refers to activities including, but not limited to, trading, operating an enterprise, investing in stocks and money lending.

### Secret acceptance of off-the-book payments

This term refers to failure to keep truthful records of any financial account established under the accounting system — as required by law.

### Company, enterprise or any other unit

- 'Company' means any non-State-owned company or holding company with limited liability set up in accordance with the *Companies Law of the People's Republic of China*.
- 'Enterprise' refers to any non-State-owned economic organisation, other than a company, engaging in any business activity lawfully.
- 'Other unit' refers to any non-State-owned social or economic organisation other than a company and enterprise.



# Maximum penalties for committing corruption and bribery offences

| Offence  | Maximum penalty        |
|--|------------------------|
| Embezzlement by state functionaries; State functionaries accepting bribes                                      | Death penalty          |
| Misappropriation of public funds; offering bribes to State functionaries                                       | Life imprisonment      |
| Embezzlement through dereliction of duty by employees of enterprises; non-State functionaries accepting bribes | 15 years' imprisonment |
| Submission of documents containing false testimony   | 10 years' imprisonment |
| Misappropriation of a unit's funds; offering bribes to non-State functionaries                                 | 10 years' imprisonment |
| Holding a huge amount of property with an unidentified source  | 10 years' imprisonment |
| Illicit division of State-owned assets; illicit division of fines and confiscated money or property            | 7 years' imprisonment  |
| Unit accepting bribes; unit offering bribes  | 5 years' imprisonment  |
| Offering bribes to a unit; introducing a bribe   | 3 years' imprisonment  |
| Concealing savings outside the country   | 2 years' imprisonment  |

The above information is only a summary of the *Criminal Law of the People's Republic of China* concerning corruption and bribery offences. Please refer to Appendix 2 for an English translation of the relevant sections of the law.

Please refer to Appendix 3 for the documents concerning interpretations of the *Criminal Law of the People's Republic of China* given by the Standing Committee of the National People's Congress, the Supreme People's Court and the Supreme People's Procuratorate of the People's Republic of China.

# Case studies

## 1. Corruption offences

**Case 1** Mr Lee was employed by a State-owned trust and investment company as the Deputy General Manager of the Securities Trading Department. One day, he asked his subordinates, Mr Chiu and Ms Cheung, to conspire to execute secret stock transactions.

By making bogus transfer transactions, purporting to increase the account balances of certain clients, Mr Chiu and Ms Cheung created overdrafts totalling some RMB20 million against funds that should have been used for stock trading on behalf of their clients. Moreover, they made RMB9.8 million profit by selling RMB10 million worth of 7-year national bonds that the investment company had, in fact, only borrowed from a bond services institution. Later, they earned a further RMB170,000 by selling the stocks kept under another company's account.

With the above funds, Mr Chiu and Ms Cheung secretly used 14 accounts held by the company's clients to speculate in the stock market and eventually reaped a profit of over RMB8.6 million. Mr Lee further instructed Mr Chiu and Ms Cheung to withdraw these profits and deposit them into their own bank accounts. The RMB5 million profit garnered in this way was then shared out between the trio.

## Key features

State-owned trust and investment company

Mr Lee,  
Deputy General Manager,  
Securities Trading Department

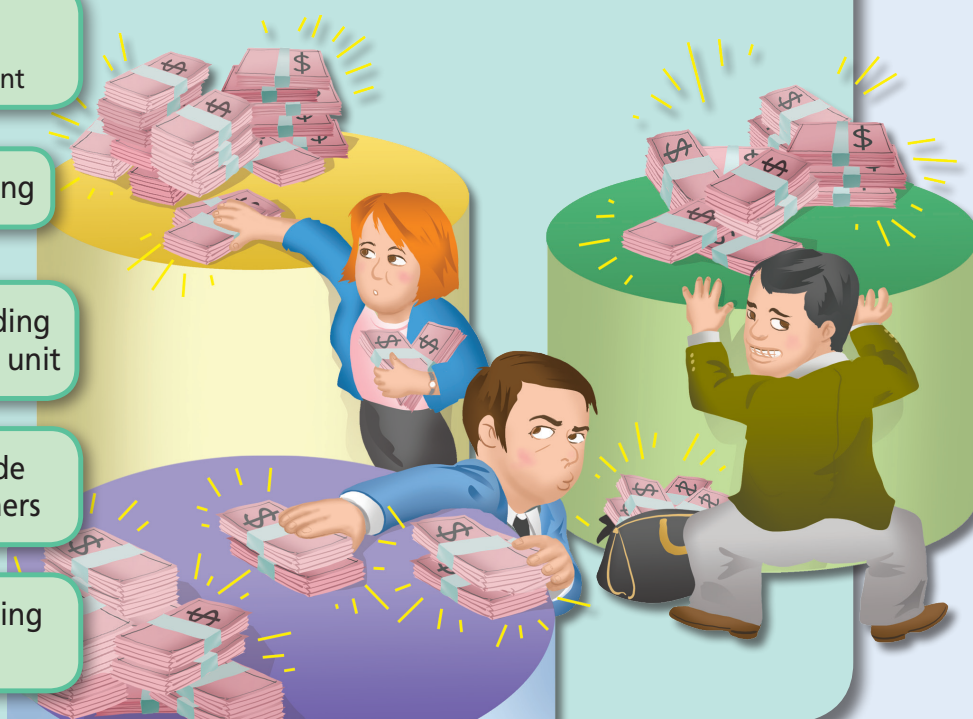
Mr Chiu

Ms Cheung

Raising funds for stock trading  
in the name of the business unit

Falsely purporting to trade  
stocks in the names of others

Secretly sharing stock trading  
profits



## Analysis and key legal points

*Mr Chiu and Ms Cheung raised funds for trading stocks as instructed by their manager, Mr Lee. Since the funds were raised in the name of the business unit, any profits derived from stock trading should go directly to the Securities Trading Department.*

*The stock trading funds, in fact, came from clients' money and National Bond funds borrowed in the name of the department. According to the CLPRC, any property being managed, used or transported by a State body, State-owned company, enterprise, collective enterprise or public organisation shall be construed as public property. As the trio's stock trading funds primarily came from overdrafts drawn against clients' funds, and hence public property, their stock trading funds were also entirely public property. Moreover, the profits generated from such stock trading were also public property.*

*The trio violated the Securities Law of the PRC in falsely purporting to trade stocks in the names of others and unlawfully engaging in stock trading in their personal names. They also made bogus transfers purporting to inflate the balances of client accounts and engaged in unlawful financial transactions. The profits derived from these activities were 'illegal gains' subject to confiscation under the law. Before they were disposed of by law, such profits, which were temporarily managed by the trading department, were still categorised as public property. Hence, the trio committed offences of corruption by secretly sharing the profits derived from the department's unlawful stock trading activities.*

**Case 2** Mr Tien was a branch manager of a State-owned nuclear enterprise. He instructed Ms Lee, an accounting officer in the Finance Department, to transfer RMB650,000 from the enterprise to a real estate development company (Company A) under the pretext of 'business dealings'. He also asked her to issue a document in the name of the enterprise to certify that 'The payment is made by Mr Tien to Company A for purchasing one unit of a residential estate'.

Close to the end of the financial year, Mr Tien again instructed Ms Lee to use other project sums to cover the said expense of RMB650,000 for purchasing the unit. Ms Lee first established a 'Company A current account' to repay RMB200,000 back to the enterprise: of this RMB100,000 was, in fact, funds given to a subsidiary as 'hot weather allowances', and the remaining RMB100,000 was allocated as funds 'used for setting up a subsidiary'. She further made a fictitious payment of RMB460,000 for a 'special project' which was subsequently transferred to Mr Tien's personal account. After withdrawing RMB450,000 from his account, Mr Tien gave the money to Ms Lee who first repaid RMB200,000 to the company via Company A's current account. The next day, she repaid RMB250,000 in the same way as before — issuing a receipt to prove that the account now balanced. Eventually, Mr Tien lined his own pocket with the RMB650,000.

## Key features

*Balancing the account with payment for a bogus project, the subsidiary's hot weather allowances and the balance of funds specified for use in setting up a subsidiary*

Branch of State-owned nuclear enterprise

*Misappropriating RMB650,000*

Mr Tien,  
Manager

Ms Lee,  
Accounting Officer, Finance Department

*Transferring RMB650,000 to pay for property purchased by Mr Tien*

Company A  
(a real estate development company)



## Analysis and key legal points

### Misappropriation of State-owned property by taking advantage of office

*In judging whether an act performed by a State functionary constitutes corruption, a key element to be considered is whether he/she has taken advantage of his/her office to misappropriate State-owned property. A State functionary is considered to have taken advantage of his/her office under two situations:*

- 1. Taking advantage of his/her office involving public property that he/she is in charge of, managing or dealing with.*
- 2. Taking advantage of his/her office involving State-owned property that he/she has been appointed to manage or operate. If the offender is a State functionary who has taken advantage of his/her office to misappropriate State-owned property, he/she shall be guilty of corruption.*

*To ascertain an offender's capacity and duty, a key factor is whether he/she has actually exercised his/her authority in handling and/or managing such public property.*

*In this case, Mr Tien was clearly a State functionary. As manager of a State-owned enterprise, he was given authority to control the public property of the State-owned enterprise. He committed corruption as his act, namely misappropriation of RMB650,000, was closely related to his duties.*

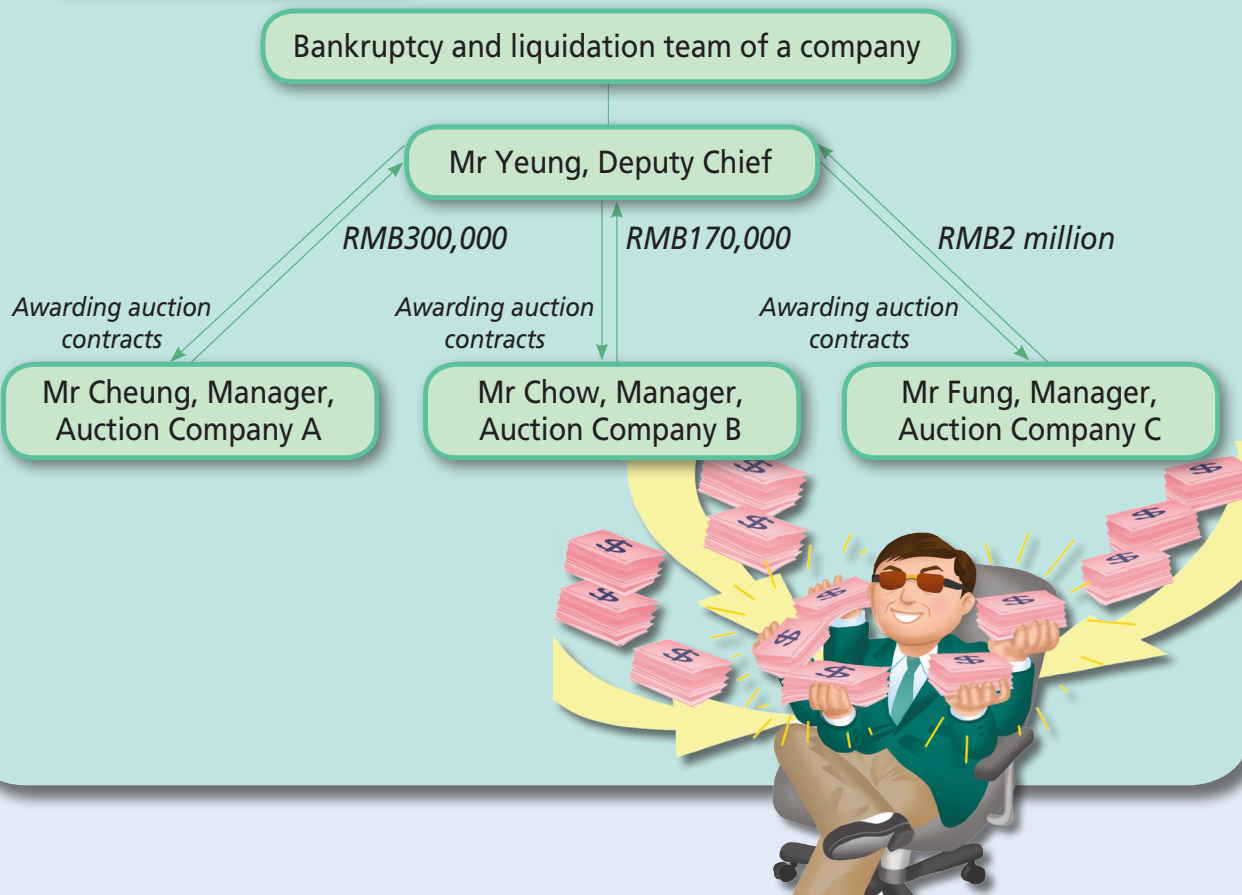
*Ms Lee, an accounting officer in the company, was in charge of keeping the public property in safe custody. She took advantage of her office and assisted Mr Tien in making false accounting entries. Though Ms Lee was not a State functionary, she was an accomplice to the corruption as she conspired with Mr Tien, a State functionary, in the corruption scam.*

## 2. Bribery offences

**Case 3** An insolvent company, having been put into liquidation by the People's Bank of China, was subsequently declared bankrupt by the court. To deal with the bankruptcy and liquidation matters of the company, the court ordered the establishment of a liquidation team. The team comprised officers from various government departments and Mr Yeung was appointed as the Deputy Chief.

Once the company entered the bankruptcy and liquidation process, its assets were arranged ready to be sold by auction. Eager to secure the auction contracts due to be awarded by the liquidation team, the managers of three auction companies A, B and C: Mr Cheung, Mr Chow and Mr Fung, respectively — each offered money to Mr Yeung. On separate occasions, Mr Yeung received RMB300,000, RMB170,000 and RMB2 million, from the three respective managers. In total, Mr Cheung received RMB2.47 million from the trio in return for awarding repeated auction contracts to the three auction companies.

### Key features



## Analysis and key legal points

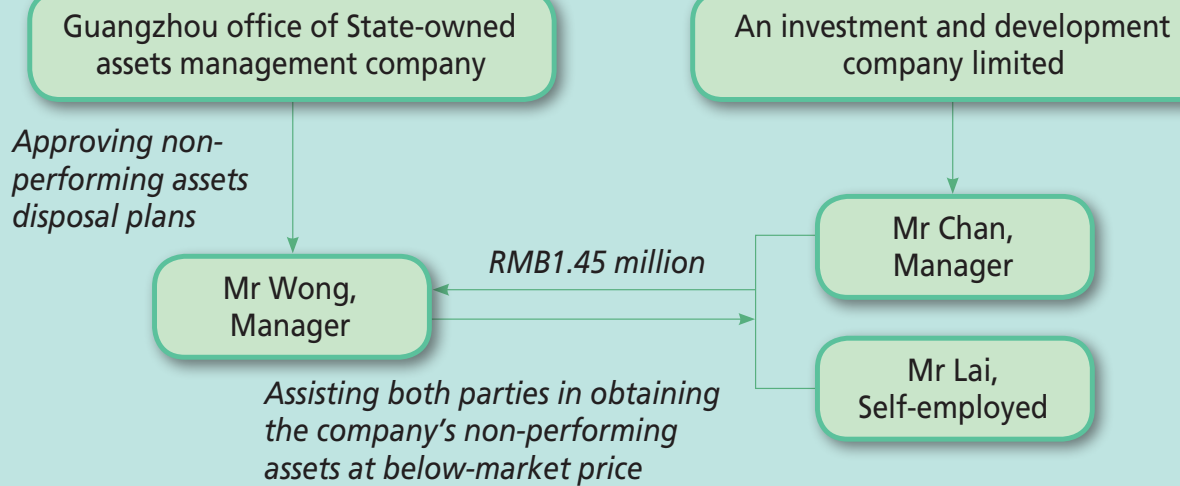
*In accordance with Section 385(1) of the CLPRC, any State functionary who solicits or illegally accepts money or property from any person in return for securing benefit for that person shall be guilty of the offence of accepting a bribe. If the recipient of the bribe is a State functionary, he/she will have compromised the integrity of his/her duties performed as a State functionary. In this respect, he/she will be deemed to have committed the offence by taking advantage of his/her position to solicit or illegally accept money or property from any person in return for securing benefit for that person with a criminal intent.*

*In the said case, by taking advantage of his position as Deputy Chief of the bankruptcy and liquidation team, Mr Yeung accepted huge payments from the three auction companies during the bankruptcy and liquidation process in return for awarding the auction contracts to them — clearly committing the offence of 'accepting bribes'.*

**Case 4** A State-owned assets management company was holding a considerable amount of non-performing assets. Mr Wong, being Manager of the company's Guangzhou office, was in charge of approving the disposal plans for such non-performing assets. Intending to acquire the non-performing assets at lower prices, two independent parties offered a total of RMB1.45 million to Mr Wong on separate occasions: Mr Chan — manager of an investment and development limited company, and Mr Lai — self-employed. As a result, Mr Wong took advantage of his position to assist both parties in obtaining the non-performing assets at below-market rates.



## Key features



## Analysis and key legal points

Section 385(1) of the CLPRC provides that any State functionary who solicits or illegally accepts money or property from any person in return for securing benefit for that person shall be guilty of the offence of accepting a bribe. In the above case, Mr Wong, as the manager of a State-owned enterprise, took advantage of his position. In approving disposal plans for non-performing assets, he accepted huge payments from others in return for offering them non-performing assets from the bankrupt company at below-market price. Thus, he committed the offence of 'accepting bribes'.

**Case 5** Mr Lam was the Sales Manager of Company A, a foreign air services corporation based in Guangdong. Airline B, a State-owned company, and Company A jointly acted as the chartering and ticket sales agent of State-owned airlines.

To secure more business and maximise profits, Mr Lam offered a total of RMB480,000 to Mr Chow and Mr Kung the General Manager and Deputy General Manager of Airline B, respectively. Subsequently, Mr Lam's company obtained a substantial profit of RMB15 million.

After investigation by the State Procuratorate, it was revealed that the RMB480,000 paid by Mr Lam had been included in Company A's account. Furthermore, the bribe was endorsed by the company's Responsible Person. The State Procuratorate considered the circumstances of the corruption case involving Company A quite serious and Company A was also suspected of committing the offence of 'unit offering a bribe'. As a result, Mr Lam and Company A's Responsible Person were both found guilty of the criminal offences, with Company A also being ordered to pay a substantial fine.

## Key features

Company A, foreign air services corporation

Airline B, State-owned company

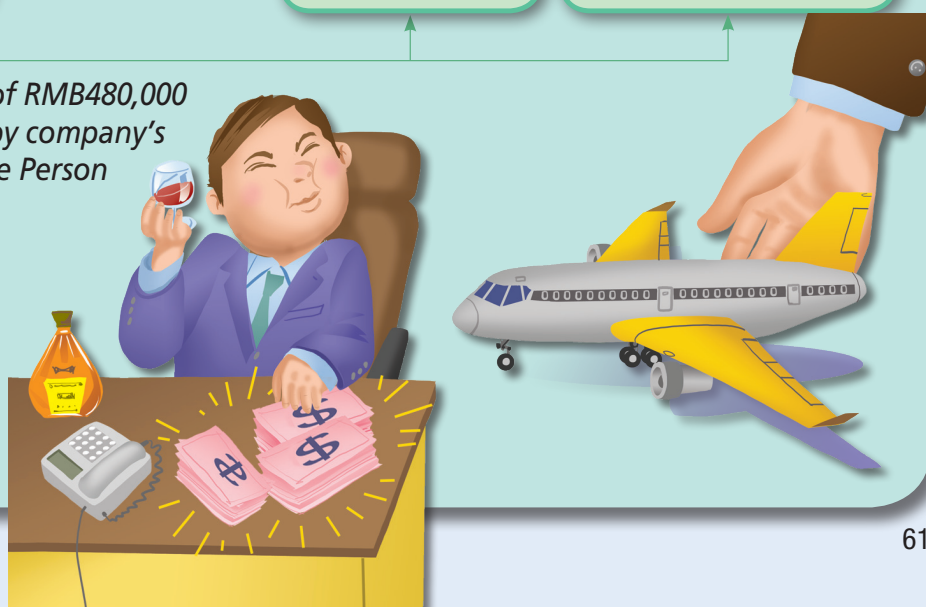
*Gaining profit of RMB15 million from chartering and ticket sales agent business*

Mr Lam,  
Sales Manager

Mr Chow,  
General Manager

Mr Kung,  
Deputy General Manager

*Payments of RMB480,000  
endorsed by company's  
Responsible Person*



## Analysis and key legal points

### Case-establishment requirements for offence of 'unit offering a bribe'

*The offence of unit offering a bribe refers to any company, enterprise, institution, body or organisation offers a bribe or violating State regulations by offering any rebate or service charge to a State functionary with a view to securing illegitimate benefit for the unit and the circumstances involved are serious. In this case, Mr Lam's company bribed State functionaries in order to secure more business and exorbitant profits. In such cases, where the amount of bribes meets case-establishment requirements, this is classed as a 'unit offering a bribe'. The unit, if convicted, will under the law be ordered to pay a fine, and any persons directly in charge of and/or responsible for such criminal acts will also be punished. In this way, Mr Lam and the company's Responsible Person were both punished in accordance with the law and Company A was also ordered to pay a substantial fine.*