

Law of the People's Republic of China on Anti-Cross-Border Corruption (Draft)

Chapter I General Principles

Article 1

This Law is enacted in accordance with the Constitution to prevent and punish acts of cross-border corruption, deepen international cooperation in the anti-corruption, protect the lawful rights and interests of organizations and individuals, and safeguard national sovereignty, security and development interests.

Article 2

Efforts against cross-border corruption shall adhere to the leadership of the Communist Party of China; adhere to the principles of no off-limits areas, comprehensive coverage and zero tolerance in anti-corruption; adhere to addressing both the symptoms and root causes and pursuing systematic treatment; and adhere to actively participating in global anti-corruption governance.

Article 3

For the purposes of this Law, “cross-border corruption” refers to the following acts:

- (a) acts of offering bribes to foreign public officials or officials of public international organizations committed by citizens within the territory of China or by enterprises and other organizations within the territory of China and their branches and subsidiaries, or such acts committed within the territory of China by persons outside the territory of China or by enterprises and other organizations outside the territory of China and their branches;
- (b) acts of offering bribes, committed by persons outside the territory of China or by enterprises and other organizations outside the territory of China and their branches, to public officials within the territory of China or their specific related persons, or to state organs, state-owned enterprises, public institutions or people's organizations, as well as associated acts of accepting bribes;
- (c) duty-related malfeasance or duty-related crimes such as embezzlement, bribery, abuse of power, dereliction of duty, rent-seeking, transfer of benefits, malpractices for personal gain,

and waste of state assets, other than those specified in the preceding two subparagraphs, committed outside the territory of China by citizens within the territory of China or by enterprises and other organizations within the territory of China and their branches and subsidiaries;

- (d) other acts of corruption of the same nature as those specified in the preceding three subparagraphs, where the acts were committed wholly or partly outside the territory of China, and the results arise wholly or partly within the territory of China;
- (e) acts of persons suspected of corruption escaping or hiding outside the territory of China or transferring the proceeds of corruption across the border.

Article 4

The People's Republic of China upholds respect for sovereignty, equality and mutual benefit, fairness and justice, and the punishing of evil and the promotion of good; advocates the principal role of the United Nations Convention against Corruption in international anti-corruption cooperation, practices multilateralism, and honors its commitment to cooperate in anti-corruption; prevents and punishes the cross-border flow of persons involved in corruption and the proceeds of corruption; opposes providing, under any pretext, safe havens for persons involved in corruption or the proceeds of corruption; and pragmatically and efficiently carries out international cooperation in pursuing fugitives, recovering proceeds of crime, securing the return of assets and other matters.

Article 5

Efforts against cross-border corruption shall be conducted in accordance with the law, maintain the normal order of cross-border business operations, equally protect the legitimate rights and interests of all types of business entities, and foster a world-class business environment that is market-oriented, law-based and internationalized.

Article 6

Where a foreign state, in violation of international law and the fundamental principles of international relations, uses anti-corruption as a pretext or improperly applies its domestic laws extraterritorially to contain or suppress China, or takes discriminatory restrictions and other improper measures against Chinese citizens, enterprises and other organizations, thereby endangering China's national sovereignty, security and development interests, China shall have the right to adopt countermeasures, blocking measures and other corresponding measures in

accordance with the Law of the People's Republic of China on Countering Foreign Sanctions and other relevant state provisions.

Chapter II Duties and Mechanisms

Article 7

The state shall establish a working mechanism for anti-cross-border corruption to organize, coordinate and guide efforts in this regard, and shall perform the following duties:

- (a) conducting comprehensive analysis and assessment of the overall situation regarding anti-cross-border corruption, researching and drafting relevant policies, and formulating and issue guidelines on anti-cross-border corruption;
- (b) coordinating the development of relevant systems for anti-cross-border corruption;
- (c) coordinating law enforcement and judicial work in anti-cross-border corruption;
- (d) guiding relevant departments and local authorities in carrying out work against cross-border corruption;
- (e) urging the relevant competent authorities and other entities to improve their integrity and compliance management systems, and to provide guidance on the identification, assessment, early warning and response to cross-border corruption risks; and
- (f) examining and resolving other major issues arising in the work of anti-cross-border corruption.

Article 8

The national mechanism for anti-cross-border corruption shall be led by the National Supervisory Commission, with the Ministry of Foreign Affairs, Ministry of Public Security, Ministry of Justice, Ministry of Finance, Ministry of Commerce, the administrative department in charge of anti-money laundering, the National Audit Office, the State-owned Assets Supervision and Administration Commission of the State Council, the National Financial Regulatory Administration, the China Securities Regulatory Commission, and the Cyberspace Administration of China, as well as other relevant authorities, jointly carrying out work against cross-border corruption in accordance with their respective responsibilities and division of tasks.

The National Supervisory Commission shall be responsible for the day-to-day operations of the working mechanism, organize and coordinate the investigation and handling of major cross-

border corruption cases in accordance with the law, and carry out international cooperation on anti-cross-border corruption in conjunction with relevant authorities.

The Supervisory Commissions of provinces, autonomous regions and municipalities directly under the Central Government shall take the lead in anti-cross-border corruption work within their respective administrative regions. Provinces, autonomous regions and municipalities directly under the Central Government may, in light of work needs, establish local work mechanisms for anti-cross-border corruption.

Supervisory bodies and supervisory commissioners dispatched or assigned by supervisory commissions at all levels shall, in accordance with the authorization granted by the dispatching bodies and in accordance with their administrative powers, lawfully carry out work relating to anti-cross-border corruption.

Article 9

Supervisory authorities, public security organs, procuratorial organs and judicial organs shall, in their work against cross-border corruption, perform their functions of state supervision, investigation, prosecution and adjudication in accordance with the law. Where, in the course of handling cases, they discover problems in the work of relevant competent authorities in anti-cross-border corruption, they may submit written opinions and recommendations to promote improved governance and institutional reform. The relevant competent authorities shall address these matters in a timely manner and provide written feedback.

Article 10

Departments such as commerce, state-owned asset supervision and administration, market supervision and administration, and financial supervision and administration shall, in conjunction with supervisory authorities and public security organs, establish and improve long-term mechanisms against cross-border corruption in their industries, monitor, analyze and provide early warning of risks regarding cross-border corruption in the relevant industry sectors, and strengthen supervision and administration of industry sectors prone to cross-border corruption.

Relevant industry associations, chambers of commerce and similar bodies shall, in accordance with laws, regulations and their articles of association, play a coordinating and self-regulatory role; guide their members in strengthening integrity and compliance; provide members with services such as information and advice, and the protection of their rights and interests; and promote lawful cross-border business operations within the industry.

Article 11

The authorities and organizations responsible for the appointment and removal of public officials shall, in accordance with their respective management powers, strengthen the education, management and supervision of public officials, and prevent and address acts of cross-border corruption by public officials in accordance with the law.

Article 12

Supervisory authorities shall, together with the relevant authorities, strengthen the supervision and rectification of public officials' acquisition, in violation of applicable provisions, of foreign nationality or of permanent residence status or long-term residence permits outside the territory of China; improve the reporting system for public officials' deposits and investments outside the territory of China; and establish and improve early-warning mechanisms, blocking mechanisms and accountability mechanisms for preventing escapes and the cross-border transfer of the proceeds of corruption.

Article 13

The administrative department in charge of anti-money laundering and other departments and institutions legally responsible for anti-money laundering supervision and management shall, in accordance with the law, guide financial institutions and specified non-financial institutions to strengthen the monitoring of cross-border funds.

Where the competent administrative authority of anti-money laundering under the State Council, or any of its dispatched offices at or above the level of a city divided into districts, discovers any suspicious transaction activity related to cross-border corruption, it may conduct an investigation in accordance with the law, and shall promptly transfer the clues and relevant evidentiary materials of cross-border corruption to the supervisory authorities and public security organs.

Article 14

Where auditing, finance, taxation, and financial supervision and management departments, in the course of conducting supervision and inspection over relevant organizations and individuals in accordance with the law, discover that the inflow and outflow of funds and transfer of assets are suspected of involving cross-border corruption offences, they shall promptly transfer the relevant clues and evidentiary materials to the supervisory authorities and public security organs.

Where the information reported by the customs to the competent administrative authority for anti-money laundering in accordance with the law, concerning cash and bearer payment instruments carried by persons entering or leaving the country, is suspected of involving cross-border corruption offences, the competent administrative authority for anti-money laundering shall promptly transfer the relevant clues and evidentiary materials to the supervisory authorities and public security organs.

Article 15

In their work against cross-border corruption, the relevant authorities shall, in accordance with the law, utilize information technology tools such as big data and artificial intelligence, integrate various types of supervisory information resources, strengthen comprehensive data analysis and assessment, and promote the timely early warning of risks and the precise identification of problems.

Article 16

The relevant authorities shall organize and carry out publicity and education campaigns against cross-border corruption through means such as legal education and the use of case studies to illustrate the law, thereby enhancing the whole of society's awareness and capabilities.

Organizations such as news agencies, radio and television stations, cultural institutions and internet information service providers shall carry out targeted public awareness and education campaigns on anti-cross-border corruption.

The State encourages and supports qualified institutions of higher education, scientific research institutions, and other organizations to conduct basic research on anti-cross-border corruption and to strengthen the education and training of personnel.

Chapter III Case Handling and International Cooperation

Article 17

Any organization or individual shall have the right to report cross-border corruption acts. The relevant organs shall promptly handle such reports in accordance with law, keep the identities of the reporting persons confidential, and reward and protect reporting persons who provide effective information in accordance with applicable provisions.

Article 18

In the course of handling cases of cross-border corruption, relevant authorities such as supervisory authorities and public security organs shall have the right, in accordance with the law, to seek information from relevant organizations and individuals and to collect and obtain evidence. The relevant organizations and individuals shall actively cooperate and provide relevant evidence materials truthfully.

In the course of handling major cross-border corruption cases, supervisory authorities, public security organs and other relevant authorities may, in accordance with the principle of reciprocity, request foreign enterprises and other organizations to cooperate in accordance with the law.

Article 19

Supervisory authorities, public security organs, and other relevant authorities may, in order to prevent persons suspected of committing acts of corruption from escaping or hiding outside the territory of China, decide to take exit restriction measures in accordance with the conditions and procedures prescribed by law, which shall be enforced by the immigration authorities in accordance with the law.

Article 20

Where necessary for work against cross-border corruption, supervisory authorities, public security organs and other relevant authorities may, in accordance with relevant national regulations, request inspection authorities such as customs and immigration authorities to facilitate customs clearance for the persons concerned. The relevant inspection authorities shall provide assistance in accordance with the law.

Article 21

Supervisory authorities, public security organs and other relevant authorities shall, in accordance with the laws of the People's Republic of China, international treaties and agreements concluded or acceded to by the People's Republic of China, or in accordance with the principles of equality, reciprocity and consensus, carry out law enforcement and judicial cooperation and mutual legal assistance with relevant authorities outside the territory of China in matters such as the recovery of fugitives and stolen assets, joint investigations, evidence collection and exchange of information, so as to jointly prevent and punish acts of cross-border corruption.

Article 22

Supervisory authorities, public security organs, and other relevant authorities may, in handling cross-border corruption cases, in accordance with the law, request relevant authorities outside the territory of China to provide the following forms of mutual legal assistance:

- (a) locating and identifying relevant persons;
- (b) inquiring about and verifying information relating to property and financial accounts involved in the case;
- (c) obtaining and providing testimony or statements from relevant persons;
- (d) obtaining and providing relevant documents, records, electronic data and items;
- (e) obtaining and providing expert opinions;
- (f) conducting an inquest or examination;
- (g) searching persons, articles, premises and other relevant locations;
- (h) arranging for witnesses to give evidence or assist with the investigation;
- (i) sealing, seizing or freezing property related to the case;
- (j) confiscating and returning illegal gains and other property involved in cases;
- (k) serving legal documents;
- (l) other matters relating to mutual legal assistance.

Article 23

Evidence obtained by relevant authorities, such as supervisory authorities and public security organs, through channels including international law enforcement and judicial cooperation and mutual legal assistance, may be used as evidence if, upon examination, it meets the statutory requirements, except where international treaties or agreements, or commitments made by the People's Republic of China, stipulate that such evidence shall not be used.

Article 24

Where, in the course of handling cross-border corruption cases, supervisory authorities, public security organs and other relevant authorities discover that a person under investigation or a suspect has escaped or hidden outside the territory of China, they may cooperate with relevant authorities outside the territory of China through means such as extradition, the transfer of sentenced persons, repatriation or prosecution abroad, to apprehend the fugitive and bring them to justice in accordance with the law.

Article 25

Supervisory authorities, public security organs and other relevant authorities may, in accordance with the law, recover assets derived from cross-border corruption through procedures such as law enforcement and judicial cooperation, mutual legal assistance and the confiscation of proceeds of crime, as well as through measures such as ordering restitution and accepting voluntary surrender.

Supervisory authorities, public security organs and other relevant authorities may, in accordance with the laws of the People's Republic of China, international treaties and agreements concluded or acceded to by the People's Republic of China, or in accordance with the principles of equality, reciprocity and consensus, cooperate with relevant authorities outside the territory of China on the return and sharing of assets.

Article 26

Relevant authorities shall, on the basis of the laws of the People's Republic of China or international treaties and agreements concluded or acceded to by the People's Republic of China, or in accordance with the principles of equality, reciprocity and consensus, handle requests submitted by relevant institutions outside the territory of China for law enforcement and judicial cooperation and mutual legal assistance in cross-border corruption matters.

Without the consent of the relevant Chinese authorities, agencies, organizations and individuals outside the territory of China shall not, either on their own or through others, conduct investigations into cross-border corruption or other law enforcement activities within the territory of China; nor shall institutions, organizations and individuals within the territory of China provide evidence, materials or other relevant assistance to institutions, organizations or individuals outside the territory of China. Where the provisions of the laws of the People's Republic of China are violated, relevant measures, such as blocking, shall be taken in accordance with the relevant national regulations, and legal liability shall be pursued in accordance with the law.

Article 27

In respect of cross-border corruption cases where China is currently conducting investigations, prosecutions or trials; where a final judgment has already been rendered; where criminal proceedings have been terminated; where the statute of limitations for prosecution of the crime has expired; or where there are other circumstances under which judicial assistance may lawfully

be withheld, the relevant authorities may refuse to provide assistance to the relevant institutions outside the territory of China.

Article 28

The relevant authorities shall engage in in-depth international exchange of information and sharing of experience on anti-corruption with relevant institutions outside the territory of China; share professional knowledge and technical resources; provide, directly or by supporting international organizations, technical assistance and training on anti-corruption to relevant countries and regions; and assist in strengthening anti-corruption capacity building.

Chapter IV Integrity and compliance

Article 29

Enterprises engaged in cross-border business operations shall comply with the requirements of the laws and regulations of China, regulatory provisions, and relevant international treaties and agreements; observe business ethics, professional ethics, industry standards and codes of conduct; operate with integrity and in compliance with law; and urge and guide their branches and subsidiaries outside the territory of China to comply with the relevant legal provisions of the countries in which they are located.

For the purposes of this Law, “enterprises engaged in cross-border business operations” refers to enterprises within the territory of China that have established branches, subsidiaries or undertake investment activities outside the territory of China, as well as branches and subsidiaries established within the territory of China by enterprises outside the territory of China.

Article 30

Enterprises engaged in cross-border business operations shall, in accordance with their scale, scope of business and revenue, formulate integrity and compliance management systems, improve integrity and compliance operational mechanisms, promptly investigate and address non-compliant conduct, and integrate integrity and compliance management throughout the entire process of decision-making, execution and supervision of cross-border business operations.

Enterprises within the territory of China engaged in cross-border business operations shall establish appropriate integrity and compliance management departments or appoint dedicated personnel; they may formulate separate integrity and compliance management systems for their

cross-border business departments and branches or subsidiaries outside the territory of China; and, in accordance with actual circumstances, dispatch integrity and compliance officers to institutions outside the territory of China and develop guidelines and a checklist for the performance of duties by such officers.

Article 31

Enterprises engaged in cross-border business operations shall carry out identification and assessment of integrity risks associated with such operations, improve their internal whistleblowing mechanisms, issue timely warnings and deal appropriately with any identified integrity risks, and implement targeted monitoring and improvement measures. Where suspected cases of cross-border corruption are discovered, they shall report such matters to the relevant authorities, such as supervisory authorities and public security organs, in accordance with the law.

State-owned enterprises shall strengthen the prevention and control of integrity risks relating to key posts, significant funds and major projects outside the territory of China; in accordance with relevant regulations, they shall adopt measures such as the direct appointment of financial officers outside the territory of China, the rotation of staff outside the territory of China and the avoidance of conflicts of interest, and shall strengthen the supervision and management of their employees, funds and projects outside the territory of China.

Article 32

Enterprises engaged in cross-border business operations shall establish and improve their financial and accounting systems in accordance with the law, ensuring that accounting vouchers, accounting ledgers, financial and accounting reports and other accounting materials relating to cross-border operations are true and complete, and shall not use financial and accounting means to commit, conceal or cover up acts of cross-border corruption.

Enterprises within the territory of China engaged in cross-border business operations shall strengthen financial management of their cross-border business departments and branches and subsidiaries outside the territory of China, standardize accounting practices, and reinforce internal audits, and promote improvements in the level of integrity and compliance in business management.

Article 33

Enterprises engaged in cross-border business operations shall conduct due diligence on any third-party organizations or individuals they engage, exercise supervision and management over them,

establish and improve relevant integrity risk prevention mechanisms, and require third-party organizations or individuals acting on behalf of the enterprise to strictly comply with the enterprise's code of conduct on integrity and compliance. They shall not use third-party organizations or individuals to commit cross-border corruption.

Enterprises within the territory of China engaged in cross-border business operations shall require their branches and subsidiaries outside the territory of China to implement the enterprise's supervision and management system regarding third-party organizations or individuals.

Article 34

Enterprises engaged in cross-border business operations shall strengthen integrity education for their staff and promote a heightened awareness of integrity in the workplace.

Enterprises within the territory of China engaged in cross-border business operations shall advocate for and promote the development of a corporate integrity culture, provide integrity and compliance training to staff in their cross-border business departments and to staff in their branches and subsidiaries outside the territory of China, and ensure that they understand and comply with the enterprise's integrity and compliance management systems and risk prevention and control requirements.

Chapter V Legal Liability

Article 35

Where an enterprise, other organization or individual commits a cross-border corruption act that constitutes a crime provided for in the Criminal Law of the People's Republic of China, criminal liability shall be pursued in accordance with law.

Article 36

Where enterprises, other organizations or individuals commit acts of cross-border corruption that violate the order of administrative management and warrant administrative penalties, the relevant competent authorities shall impose administrative penalties in accordance with the law.

Where enterprises or other organizations commit the acts specified in the preceding paragraph, administrative penalties shall be imposed on the persons directly in charge and other persons directly responsible in accordance with the preceding paragraph.

Upon completion of the investigation into a cross-border corruption case by the supervisory authorities or the public security organs, where administrative penalties are to be imposed on the person under investigation or the suspect, the case shall be referred to the relevant competent authorities in accordance with the law.

Article 37

Where a public official commits acts of cross-border corruption, a sanction shall be imposed in accordance with law by the supervisory authority or by the organ or organization responsible for their appointment and removal.

Where enterprises or other organizations commit cross-border corruption, sanctions shall be imposed in accordance with the law to the public officials among the responsible leaders and those directly responsible.

Article 38

Where enterprises, other organizations or individuals commit acts of cross-border corruption, thereby resulting in financial loss or other damage, they shall bear civil liability in accordance with the law.

Article 39

Where enterprises, other organizations or individuals are penalized for violating the provisions of this Law, such penalties shall be recorded in their credit records in accordance with relevant national regulations; where laws or administrative regulations contain prohibitions or restrictions on their engagement in relevant business activities or professions, such provisions shall prevail.

Article 40

Where enterprises, other organizations or individuals commit acts of cross-border corruption, their illegal and criminal gains derived therefrom, and the fruits and proceeds thereof, shall be confiscated or recovered, or subject to an order of restitution, in accordance with law.

Article 41

Where an act of cross-border corruption is committed jointly, the persons concerned shall be penalized or sanctioned separately according to the role each played in the joint violation or joint crime and the legal liability each is to bear.

Whoever instigates or assists another person to commit a cross-border corruption act shall be penalized or sanctioned for the act so instigated or assisted.

Article 42

Enterprises, other organizations and individuals that commit acts of cross-border corruption shall be subject to more severe administrative penalties and sanctions under any of the following circumstances:

- (a) committing cross-border corruption acts on multiple occasions;
- (b) committing a further cross-border corruption act after having been held legally liable for a cross-border corruption act;
- (c) refusing to turn over the illegal gains or to make restitution;
- (d) causing serious harmful consequences to the interests of the State or the public interest by committing cross-border corruption acts; or
- (e) other circumstances in which laws or regulations provide for a heavier administrative penalty or sanction.

Article 43

Enterprises, other organizations and individuals that have committed acts of cross-border corruption may be given a lighter or mitigated administrative penalty or sanction under any of the following circumstances:

- (a) voluntarily surrendering and truthfully confessing the act;
- (b) actively cooperating in the investigation and voluntarily providing relevant materials;
- (c) voluntarily taking remedial measures, actively returning the illegal gains, and effectively reducing or avoiding losses;
- (d) reporting the cross-border corruption acts of other persons, which is verified to be true; or
- (e) other circumstances in which laws or regulations provide for a lighter or mitigated administrative penalty or sanction.

Article 44

Where relevant organizations or individuals violate the provisions of this Law, refuse to provide evidence, conceal, falsify or destroy evidence, or refuse or obstruct investigations into cross-border corruption, they shall be ordered to rectify the situation by their employing organ, competent authority, superior body, supervisory authority or public security organs. Where the conduct constitutes a violation of public security administration, a public security administrative

penalty shall be imposed in accordance with law; where it constitutes a crime, criminal liability shall be pursued in accordance with law.

Article 45

Where an enterprise engaged in cross-border business operations fails to fulfil the integrity and compliance obligations under this Law, the relevant competent authority shall order it to rectify the situation within a specified time limit; where it refuses to rectify, the authority may order the suspension of the relevant business operations or of business operations for rectification, or the revocation of the relevant business license or permit. Where the aforesaid acts also contravene the provisions of other laws and regulations, legal liability shall be pursued in accordance with the law.

Article 46

Staff members of relevant authorities, such as supervisory authorities and public security organs, who, in anti-cross-border corruption, abuse their powers, neglect their duties, engage in malpractices for personal gain, or disclose state secrets, work-related secrets, trade secrets, personal privacy or personal information in violation of provisions, shall be sanctioned in accordance with law. Where the conduct constitutes a crime, criminal liability shall be pursued in accordance with law.

Chapter VI Supplementary Provisions

Article 47

This Law shall come into force on [year] [month] [day].