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China's Renewed Focus on Anti-Corruption Efforts Highlighted by a New Interpretation on Criminal Offense of Paying Bribes

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In the three months since the Communist Party of China (the "CPC") convened its 18th National Congress in November 2012, the CPC's new leaders, including newly appointed CPC General Secretary and China's incoming president Xi Jinping, repeatedly have emphasized the important policy goal of combatting corruption. In several speeches since Mr. Xi took over the reins of the CPC, he cautioned that corruption could lead to "the collapse of the Party and the downfall of the state,"¹ and has stressed that anti-corruption efforts need to target both "flies" and "tigers," meaning both low and senior level officials.²

In keeping with this theme, new regulations from the Political Bureau of the CPC Central Committee and the Central Military Commission have restricted practices such as ostentatious floral displays and luxury banquets for officials.³ More recently, the Xinhua state news agency reported in advance of the Spring Festival holiday that Chinese radio and television stations were to ban advertisements for expensive gifts such as watches and gold coins,⁴ and the *People's Daily* even warned that Valentine's Day had become an opportunity for fraud and corruption among some party members.⁵ High-profile stories of corruption—often fed by the burgeoning Chinese blogosphere, including 400 million users of Weibo's microblog and countless exchanges over QQ's instant messaging service—have become mainstays in both Western and Chinese media outlets.⁶

1 See Jaime A. FlorCruz, *Corruption as China's Top Priority*, CNN (Jan. 7, 2013), <http://edition.cnn.com/2013/01/06/world/asia/florcruz-china-corruption>.

2 See An Baijie, *Xi Jinping vows 'power within cage of regulations'*, China Daily (Jan. 23, 2013), available at http://www.chinadaily.com.cn/china/2013-01/23/content_16157933.htm.

3 See Hannah Beach, *China's Anti-Corruption Toolkit: No Flowers, Expensive Booze, or 'Empty Talk'*, Time (Dec. 26, 2012), available at <http://world.time.com/2012/12/26/Chinas-anti-corruption-toolkit-no-flowers-expensive-booze-or-empty-talk/>.

4 See *China bans ads for pricey gifts in anti-corruption push*, Reuters (Feb. 6, 2013), available at <http://www.reuters.com/article/2013/02/06/us-china-tv-corruption-idUSBRE91505N20130206>.

5 See Xu Donghuan, *People's Daily denounces Valentine's Day 'debauchery of decadent cadres'*, The South China Morning Post (Feb. 13, 2013), available at <http://www.scmp.com/news/china/article/1149676/peoples-daily-denounces-valentines-day-debauchery-decadent-cadres>.

6 See, e.g., *China Ex-Housing Official Probed for Corruption, Xinhua Reports*, Bloomberg News (Jan. 5, 2013), available at <http://www.bloomberg.com/news/2013-01-05/china-ex-housing-official-probed-for-corruption-xinhua-reports.html> (a whistle-blower's blog post reporting that the immediate family of a former housing official in Zhengzhou City, Henan Province, owned several residences quickly led officials to initiate an investigation that uncovered that the family owned a total of 29 houses); Jonathan Kaiman, *Chinese anti-corruption drive nets official with 47 mistresses*, The Guardian (Jan. 5, 2013), available at <http://www.guardian.co.uk/world/2013/jan/05/chinese-corruption-crackdown> (blog post accused party secretary from Yunnan province of purchasing 10 SUVs); Andrew Jacobs, *Chinese Officials Find Misbehavior Now Carries Cost*, The New York Times (Dec. 25, 2012), available at <http://www.nytimes.com/2012/12/26/world/asia/corrupt-chinese-officials-draw-unusual-publicity.html?pagewanted=all> (head of Public Security Bureau in the Xinjiang region removed from his post after being accused online of arranging for police department jobs for two mistresses and housing them in an apartment paid for by public funds); William Wan, *China's new leaders discuss fight against corruption, but some are skeptical of action*, The Washington Post (Dec. 28, 2012), available at http://www.washingtonpost.com/world/asia_pacific/chinas-new-leaders-focus-on-fighting-corruption/2012/12/27/9953e00a-4f77-11e2-950a-7863a013264b_story.html (online postings lead to a local official being given a suspended death sentence for accepting \$7.5 million in bribes); *Party*

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This recent public emphasis on fighting corruption in China should not overlook the fact that China's Criminal Law long has penalized both giving and receiving bribes by government officials. Now, however, new interpretation regarding China's criminal prohibition on paying bribes may prove to be particularly important in China's effort to combat corruption.

On December 26, 2012, the Supreme People's Court and Supreme People's Procuratorate issued the *Interpretation on Issues Concerning the Specific Application of Laws in Handling Criminal Cases of Paying Bribes* (the "Interpretation"), which took effect on January 1, 2013. The Interpretation reiterates and further clarifies a number of key terms and issues under the Criminal Law of China with respect to paying bribes and punishment of this crime.

EXPANDING "IMPROPER BENEFITS" UNDER THE DEFINITION OF "PAYING BRIBES"

The Criminal Law treats the crime of payment of bribes differently from that of receiving bribes. Article 389 of the Criminal Law defines individuals' "paying bribes" as giving money or property to any government official for the purpose of seeking an improper benefit. The Interpretation reconfirms and enlarges the following terms on a crime of paying bribes, including that:

- "Improper benefit" refers to any benefit obtained through a violation of any law, administrative regulation, rule or policy, or demanding that a government official provide assistance or facilitation in a way that violates any law, administrative regulation, rule, policy or industrial norm. In addition, for the first time, the Interpretation provides that seeking competitive advantage in a way that violates the principle of equity and fairness in connection with economic activities or personnel management activities shall also be deemed as "seeking improper benefit."
- Whoever, for the purpose of seeking an improper benefit, gives money or property worth RMB10,000 or more to any government official shall be guilty of bribing government officials.⁷
- In calculating the amount of bribes paid, multiple bribes shall be aggregated (excluding previously adjudicated bribes).

CLARIFICATION ON PENALTIES

Under the Criminal Law, the severity of punishment of individuals for bribing government officials depends on the degree of culpability. Specifically, according to Article 390:

- Payment of bribes is punishable by imprisonment of one month to five years.
- If the circumstances are severe or if severe damage has been caused to the interests of the State, punishment is increased to between 5 and 10 years of imprisonment.
- If the circumstances are extraordinarily severe, the defendant is subject to imprisonment of more than 10 years or life imprisonment and all of his/her property may also be confiscated.

officials are urged to come clean about their wealth, The Economist (Dec. 8, 2012), available at <http://www.economist.com/news/china/21567947-party-officials-are-urged-come-clean-about-their-wealth-life-and-death-struggle> (Xinhua, China's official news agency, describes "miraculous" microblogs as "an inescapable snare for corrupt officials.").

⁷ The Interpretation is silent on the following non-monetary triggers for liability set forth in the two interpretations issued by the Supreme People's Procuratorate in 1999 and 2000, respectively, and whether any of them remain effective: (i) the bribe is paid to three or more government officials; (ii) the purpose of the bribe is to secure an illegitimate benefit; (iii) the bribe is paid to a Party or government leader, judicial official, or administrative law enforcement official; or (iv) the bribe results in severe damage to national or social interest.

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The Interpretation for the first time clarifies that any of the following circumstances shall be deemed as “severe”:

- The amount of bribes paid is greater than or equal to RMB200,000, but less than RMB1 million.
- The amount of bribes paid is greater than or equal to RMB100,000, but less than RMB200,000, and the defendant has paid bribes:
 - to three or more people;
 - using the proceeds of illegal activity;
 - to government officials who are responsible for supervising and administering matters in relation to food, pharmaceuticals, manufacturing safety or the environment, etc. that endanger public health or the security of public property; or
 - to a government official at a judicial or administrative authority, thereby interfering with administrative law enforcement and judicial justice.
- Other severe circumstances.

Severe damages shall be deemed to have been caused to the interests of the State if the direct economic losses are more than RMB1,000,000.

The Interpretation also for the first time clarifies that any of the following circumstances shall be deemed as “extraordinarily severe”:

- The bribe amounts to RMB1,000,000 or more.
- The bribe is greater than or equal to RMB500,000, but less than RMB1,000,000, and the defendant has paid bribes:
 - to three or more people;
 - using the proceeds of illegal activity;
 - to government officials who are responsible for supervising and administering matters in relation to food, pharmaceuticals, manufacturing safety or the environment, etc. that endanger public health or the security of public property; or
 - to a judicial or administrative authority, thereby interfering with administrative law enforcement and judicial justice.
- The bribe has caused direct damages which amount to RMB5,000,000 or more.
- Other extraordinarily severe circumstances.

If an activity in the pursuit of an improper benefit itself constitutes a crime, such crime shall be combined with the bribery charge and those two crimes are considered together in determining the sentence.

Further, improperly obtained property derived from paying bribes shall be immediately subject to forfeiture or returned to an aggrieved party. With respect to improperly obtained benefits other than property derived from bribery, such as

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operating licenses, qualifications or job promotions, the Interpretation recommends that relevant authorities take actions according to applicable laws and regulations. For example, other governmental authorities may further seize, cancel or revoke such benefits, licenses or qualifications along with imposing applicable administrative penalties.

LENIENCY FOR ACKNOWLEDGMENT OF RESPONSIBILITY

The Interpretation has confirmed that the general leniency rules apply to the crime of paying bribes. A briber may be excused from or receive a reduced punishment if he/she voluntarily confesses before being prosecuted, and if such a confession leads to the successful discovery of the corresponding crime of receiving bribes. A briber who has been prosecuted and later confesses truthfully to his or her crimes may be sentenced with lighter punishment. If the briber is an entity, and the entity or the person responsible for the entity confesses before being prosecuted, the entity and the responsible person may receive a lighter punishment or be excused from punishment altogether.

IMPLICATIONS FOR ENFORCEMENT

On one hand, the joint issuance of the Interpretation by China's judicial and legislative entities signals intent to streamline and intensify enforcement of China's Criminal Law against bribery. On the other hand, it remains to be seen whether the Interpretation—or the newly issued civilian and military regulations—will have a significant effect on the giving and receiving of bribes and the day-to-day conduct of government officials. One test will be whether judicial authorities independently act to enforce the Interpretation before an incident of corruption has been so widely reported and re-blogged at the grassroots level that it becomes politically charged. A second and more telling test would be the dismissal of a high level official revealed through enforcement of the Interpretation to have accepted bribes. Significantly, the Interpretation addresses the paying but not the receipt of bribes, which can be interpreted both as representing China's intention to more vigorously pursue instances of bribery as well as an indication that private individuals may increasingly bear the brunt of the campaign against government graft.

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