The Institute of Legislation and Comparative Law
Under the Government of the Russian Federation

LEGAL REGULATION OF COMBATING CORRUPTION IN CHINA

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ИНСТИТУТ ЗАКОНОДАТЕЛЬСТВА И СРАВНИТЕЛЬНОГО ПРАВОВЕДЕНИЯ ПРИ ПРАВИТЕЛЬСТВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ

ЗАКОН

ИЗиСП

The Institute of Legislation and Comparative Law
under the Government of the Russian Federation

V.V. Sevalnev, Yu.V. Truntsevsky, A.M. Tsirin

Legal Regulation of Combating Corruption in China

Monograph

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Academician of the Russian Academy of Sciences, Doctor of Law, Professor,
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(Venice Commission of the Council of Europe)

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The monograph is devoted to the formation and development of the anti-corruption policy in China, including sources of anti-corruption legislation and practice of its application, the modern state approach to implementing anti-corruption policies, the role of national authorities responsible for investigating and combating corruption. The authors analyze in detail concepts and content of offenses related to corruption, the bans, restrictions and duties established for anti-corruption, procedures of disclosure of information on corruption manifestations, directions of international anti-corruption cooperation between China and the other states.

Particular attention is given to the organizational and legal measures of combating corruption in the special administrative regions of the People's Republic of China (Hong Kong, Macau) and in the Republic of China (Taiwan).The edition uses materials from the Review of the Implementation of the United Nations Convention against Corruption in the People's Republic of China (including the above-stated special administrative regions) as well as official reports and the results of numerous foreign studies.

The monograph is dedicated to scholars, workers of state government bodies, post-graduate students, and for all those who is interested in the subject of anti-corruption.

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Contents

List of Abbreviations

ACA — Anti-corruption agency

AUCL — Law of the People’s Republic of China Against Unfair Competition, adopted at the 30th Session of the Standing Committee of the Seventh National People’s Congress on February 22, 1993

CBRC — China Banking Regulatory Commission

CCAC — Commission Against Corruption (Comissariado Contra a Corrupgao)

CIRC — China Insurance Regulatory Commission

CSRC — China Securities Regulatory Commission

FCPA — The Foreign Corrupt Practices Act

NKMA — Hong Kong Monetary Authority

OSCO — Organized and Serious Crimes Ordinance

PSB — Public Security Bureau

SARA — Special Administrative Region of the People's Republic of China (Aomen, Macao)

SFC — Securities & Futures Commission of Hong Kong

SPP — Supreme People's Procuratorate of China

SPC –Supreme People's Court of China

MLA — Mutual legal assistance

NPC — National People's Congress

SAIC — State Administration for Industry and Commerce

CPC — Communist Party of China

UNCAC — The United Nations Convention against Corruption

MSS — Ministry of State Security

MPS — Ministry of Public Security

PBOC — People's Bank of China

ICAC — The Independent Commission Against Corruption

NGO — Non-governmental organization
HKBL — Hong Kong Basic Law
JFIU — Hong Kong S.A.R., China — Joint Financial Intelligence Unit
OECD — Organisation for Economic Co-operation and Development,
HKBO — Hong Kong Banking Ordinance
NLACMO — Mutual Legal Assistance in Criminal Matters Ordinance (Hong Kong, China)
WPO — Witness Protection Ordinance of the Hong Kong
FDI — Foreign Direct Investment
NPCSC — Standing Committee of the National People's Congress
LCAML — Law of the People's Republic of China on Anti-money Laundering
OSCO — Organized and Serious Crimes Ordinance
PBO — Prevention of Bribery Ordinance
HKPF –Hong Kong Police Force
OFC — Ordinance on Fugitive Criminals Hong Kong
ORCP –Ordinance for the Regulation of Criminal Proceedings
SAR –Special Administrative Region
HKSAR — Hong Kong Special Administrative Region
CC — Criminal Code
CCP — Code of Criminal Procedure
CPG –Central People's Government of the People's Republic of China
CCDI — Central Commission of the Communist party of China on discipline
ILCL — the Institute of Legislation and Comparative Law under the Government of the Russian Federation
IL of the CASS — the Institute of Law of the Chinese Academy of Social Sciences
PRC — People’s Republic of China

Preface

According to the 2016 Foreign Policy Concept of the Russian Federation Russia's interest is active participation in integration processes within Asia-Pacific region, usage its capabilities to implement programs for the socio-economic development of Siberia and the Far East, as well as creating a transparent and equitable security and cooperation architecture on collective basis.

This year marks the 40th Anniversary of the reform and openness policy proclaimed by the outstanding Chinese statesman Deng Xiaoping. Its promotion laid the foundations for the implementation of a state systematic anti-corruption policy in the People's Republic of China. In 2012, Chinese President Xi Jinping formulated three key elements of the state anti-corruption policy, which are to ensure that public and private sector stakeholders are afraid, do not have the capacity and do not want to engage in corrupt activities. In the Russian Federation important milestones in countering corruption are the implementation of the Concept of Administrative Reform in the Russian Federation for 2005-2010, the adoption of the basic Federal Law from December 25, 2008 No. 273-FZ "On Combating Corruption" and the approval in 2010 by the Decree of the President of the Russian Federation the National Anti-Corruption Strategy.

For our countries anti-corruption enforcement takes a form of a long-term government task. In this regard the need for scientific and methodological support of anti-corruption activities, which should be adequate according to modern challenges and threats generated by the negative social phenomenon of corruption, is steadily growing.

Based on the decision of the Presidium of the Council of the President for Countering Corruption the Institute of Legislation and Comparative Law under the Government of the Russian Federation acts as an interdisciplinary centre for coordinating scientific and educational support of anti-corruption enforcement.

The research of the Institute in this field is in high demand not only in Russia, but also in foreign countries. The monographic study "Corruption: nature, manifestations, counteraction", which became a kind of quintessence of doctrinal approaches to countering corruption, was translated into Chinese language and published in China in September 2014. The monograph "Countering Corruption: New Challenges", revealed modern approaches to countering new threats and factors that contribute to the spread of corruption was published in 2016 and been translated into English.

A monographic research on the anti-corruption standards of the Organization for Economic Cooperation and Development and their implementation in the Russian Federation, abovementioned monographs and other researches of the Institute were presented at the UN Conference against Corruption (St. Petersburg 2–6 November 2015). These works were officially delivered to the libraries of the International Anti-Corruption Academy (IACA) and to the Institute of Law of the Chinese Academy of Social Sciences for incorporation into their research and educational processes.

Over the past few years China has managed to achieve notable successes in countering corruption, also by means of a large-scale anti-corruption campaign initiated by the President of the People's Republic of China, Xi Jinping. The accumulated positive experience is of interest for carrying out wide range interdisciplinary researches of legislation of the People's Republic of China in the sphere of combating corruption and its application practice.

The monograph, offered to the reader is devoted to the analysis of anti-corruption issues relevant for the People's Republic of China, including the modern state approach to the anti-corruption enforcement, the role of national authorities in the implementation of anti-corruption policies; anti-corruption cooperation of China with foreign countries, sources of anti-corruption regulation and the practice of their application. A feature of the monograph is a detailed review of organizational and legal measures to combat corruption in special administrative regions of the PRC (Hong Kong, Macau) and in the province of Taiwan.

The authors express the hope that the publication gets researchers, experts, employees of the competent state bodies and legal practitioners interested, as well as specialists interested in issues of legislative support for combating corruption in the People's Republic of China.

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Introduction

The international community has long come to the conclusion that corruption as a common negative social phenomenon can be effectively countered only by the combined efforts of state and international organizations. The preamble of the UN Convention against Corruption of 2003 states that corruption no longer represents a local problem, but has become a transnational phenomenon that affects the society and economy of all countries, which underlines the significance of international cooperation in preventing and combating corruption .

The International Monetary Fund (IMF) estimated that "Every year, the world economy loses from 1.5 to 2 trillion dollars, due to corruption". According to the head of the IMF Christine Lagarde, that is comparable to 2% of world GDP and "represents only the tip of the iceberg." Developing countries are not the only ones facing corruption — the developed ones are also struggling. If we consider the fact that poverty and unemployment may be symptoms of chronic corruption, the priority of this problem becomes clear [1][1].

According to a survey conducted by Ersnt & Young, 63% of the 1.7 thousand employees of large companies in 14 countries in the Asia-Pacific region reported widespread corruption in their countries. In 2013, there were 32%. More than a third of respondents considered bribery a common practice for obtaining a profitable contract in their field [2].

The investigation of corruption crimes affecting the interests of several states requires constant improvement in interaction between law enforcement services, which is impossible without improving the legal framework, forms and methods of joint action, in cases

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[1] See Footnotes.

when information exchange or criminal extradition are not enough. In this regard, an improvement in the field of international cooperation in this sphere is one of the top priorities of Russia's foreign policy [3].

According to the Russian Federation`s Foreign Policy Concept of 2016, Russia is interested in actively participating in the integration processes of the Asia-Pacific region, in applying its experience of implementing social and economic development programs in Siberia and the Far East, and in creating a transparent and equitable security architecture and cooperation on a collective basis. The most important direction of Russia's foreign policy is the development and strengthening of good friendly relations with China [4].

Over the past few years, China has made remarkable progress in countering corruption. A large-scale anti-corruption campaign, in which many high-ranking officials were convicted, began in 2012 with the arrival of the new head of state, Xi Jinping. When announcing the launch of the campaign, Xi promised to "beat both tigers and flies" (老虎 苍蝇 一起 打), that is, to combat the abuse of power by officials at all levels, regardless of rank.

In particular, after the XVIII Congress of the Communist Party of China (CPC) (November 2012), 240 party leaders were under investigation. The country's audit and disciplinary bodies of all levels have opened more than 1.1 million cases of corruption offenses over the past six years [5].

As a result, in 2017 the 71,600 people who violated the "Eight rules for improving the style of work and strengthening ties with the public masses" were punished in a disciplinary and administrative manner. The Eight Rules were adopted in December by the new Political Bureau staff of the CPC`s Central Committee and were designed to improve the work of the state apparatus and reduce wastefulness of government representatives. The perpetrators were convicted of, among other things, illicit distribution of subsidies and grants, the receipt or donation of gifts and money, the organization of feasts at public expense, the abuse of office vehicles, the organization of luxury weddings and funerals, traveling around the country and abroad at public expense, etc [6].

In recent years, China's law enforcement agencies are actively working to return corrupt officials who have fled abroad. In 2017, about 1.3 thousand individuals involved in corruption cases were returned to the PRC, including 347 members of the CPC and officials of the state apparatus. Among these criminals are 14 people out of the 100 most dangerous corrupt people hiding abroad. As a result of these efforts about 980 million yuan (151 million dollars) were returned to the treasury However, the total amount of budget funds stolen and withdrawn from the country is estimated at 126 billion dollars [7].

In March 2018, the Constitution amended the creation of a single anti-corruption agency in the country, which will unite separate units of the Chinese government, the prosecutor's office and the Central Commission of Discipline Inspection of the CPC. This commission is responsible for the credibility of the members of the top echelons of the CPC. At the same time, the new department will be granted with a broad spectrum of powers, such as conducting investigative actions, seizing property and bank accounts, and detaining suspects. The creation of a nationwide non-partial body aimed at combating corruption is an important step in countering bribery at all levels including the highest ones. [8].

This monograph uses materials from the Review of the Implementation of the United Nations Convention against Corruption in the People's Republic of China (including the Hong Kong Special Administrative Region and the the Macao Special Administrative Region [9] as well as official reports and the results of numerous foreign studies).

Chapter 1
Historical development of the anti-corruption policy in China

In today's world due to globalization, most countries, including the Russian Federation and the People's Republic of China [10], pay close attention to the sphere of combating corruption as one of the key courses for state bodies and institutions. Legal norms which regulate anti-corruption activity exist in virtually all existing legal systems: general, precedent, religious and socialist law. In the international legal space, a number of universal and interstate anti-corruption conventions have been adopted.

The Russian Federation and the People's Republic of China, along with participation in international and regional organizations such as G20, BRICS, SCO, APEC, and some others, are actively forming their own anti-corruption legislation. Various factors including international agreements, belonging to a certain legal system and features of the national legal family have a serious impact on its formation [11]. Many domestic experts, as well as scientists specializing in various fields of science, conduct analyses of social processes taking place in the People's Republic of China. A great variety of studies has been carried out: historical, cultural, political, sociological and even legal [12]. However, the issues of legal regulation of anti-corruption activities in Russia and China have not yet been sufficiently studied in a comparatively legal way by domestic comparativists [13].

China is a country with more than 5000 years of history. Chinese officials are a special, well-structured and self-replicating group, belonging to which gives certain privileges. As early as 605 AD in ancient China, examinations for officials were introduced.

There was a special system of examinations, according to which the candidates occupied various positions in the bureaucratic hierarchy. The applicant, who successfully passed the exam of the established form, was given the right to take the appropriate position. Thus, in China, in ancient times, a certain system was built that allowed exams to select the most worthy candidates for work in state structures. The system of examinations (tests) for admission to the civil service has been preserved up to the present time, however it is important to note that this did not lead to the eradication of corruption manifestations, both in imperial and modern China. In our opinion, one of the factors in the emergence of the revolutionary situation in China and the subsequent changes was the extreme level of power abuse by officials, especially during the last Qing dynasty.

It`s been proposed to divide the process of establishing legislation in the field of combating corruption in the PRC into four stages [14].

The first stage — after the foundation of the PRC in 1949, the Communist Party and the government focused on fighting corruption and creating an incorrupt government structure. State procuratorial bodies, government control bodies and discipline inspection bodies in the ranks of the CPC were formed, the first Constitution of the PRC of 1954 and the Penalty Correction Rules of April 18, 1952 were drafted and adopted. These Rules became the first normative legal document devoted to counteracting corruption in the PRC`s legal system. A *de jure* document is called the Rules, but *de facto*, it had the status of law. It is noteworthy that the Rules were adopted two years earlier than the first Constitution of the PRC. The document lost its validity due to the decision of the NPC Standing Committee on November 24, 1987 "On the revision of legislation adopted before 1978".

The second stage — the beginning of reforms and the attraction of external investments. The late 1970's in China were the beginning of the implementation of a new course: the transformation of state and public institutions from a planned and closed system to an open one was carried out. This required new approaches to counteracting corruption because the number of its occurrences increased dramatically. For this purpose, special audit bodies were formed, and the Criminal Code of the PRC was adopted at the legislative level (Article 155 "Corruption", Article 185 "Bribe", etc.) and China`s CCP (1979). The legal structure of the articles of the Criminal Code related to corruption were relatively imperfect and of a rather declarative character.

The third stage — the construction of a socialist market economy with Chinese specifics and the strengthening of the processes of globalization. The creation of a socialist market economy in China was carried out in the 1990s. Foreign investments were actively attracted. Due to this, the old and new legislative acts had been amended, and statures of international conventions in the sphere of combating corruption and money-laundering were implemented. In particular, on October 27, 2005, at the 18th meeting of the 10th National Standing Committee of the National People's Congress, the document on China's accession to the UN Convention against Corruption was ratified. The Convention was ratified by the PRC, unlike other countries, completely and without the exception of any individual articles. In 2006, the laws of the PRC "On combating money-laundering" were adopted, which created the legislative framework for preventing and suppressing money laundering and related crimes, "On Civil Servants", etc. Special prosecution units were created in the prosecutor's office to fight against corruption: prevention and prevention of misdemeanors. Measures have been taken to prohibit government, police and military structures from engaging in business activities.

The fourth stage — from 2010 to present day. According to the claims from leaders of the PRC, the socialist legal system with Chinese specifics was generally formed by the end of 2010 — the beginning of 2011, including the main sub sectors, branches and institutions of law. In October 2014, at the 5th Conference of the States Parties to the United Nations Convention against Corruption in Vienna, the State Strategy for Combating Corruption of the

PRC was presented [15]. The content of the Strategy is relatively small compared to the Russian analog: the document consists of 5 items. The CPC of China has developed policy documents on combating corruption — the Work Plan for the Creation and Improvement of the Prevention and Combating corruption Prevention System for 2008–2012 [16] and the Work Plan for the Creation and Improvement of the Prevention and Counteracting Corruption System for 2013–2017 [17]

The intensification of the fight against corruption in the PRC is rightfully associated with the new leader of the country, Xi Jinping. In late 2012, Xi Jinping said that the fight against corruption is becoming a priority of state domestic policy, calling it the most dangerous threat to the unity of the party and the whole country. At the same time, it was announced that there would be no mercy for "tigers", that is, officials of the highest rank, seen in corruption, nor "flies", that is, those who steal at a minor level.

Since the 1990s in China, work has been conducted to develop a single law on corruption, but so far such a law has not been adopted [18]. In March 2015, at a meeting of the 3rd session of the 12th convocation of the NPC, five draft laws on combating corruption (Nos. 187, 265, 295, 386, 404) by various groups of people's deputies were submitted for approval (19); and in December 2016, at the meeting of the 4th session of the National People's Congress of the 12th convocation, two sample laws were drafted on a law against corruption or a law on criminal prosecution of bribery. The process of adopting new laws in the legal system of the PRC is extensive: it takes a lot of approvals in subcommittees and committees, public discussions, etc. [20].

Rulemaking in the area of combating corruption in the PRC for the most part is focused on the in-party level. Normative statures are contained in various disparate acts of law-making, in numerous by-laws, departmental orders, instructions, CPC rules and various ministries and departments. A certain part of the documents regulating the issues under consideration is adopted by local government authorities.

In 2016, at the 6th Plenum of the Central Committee of the CPC of the 18th convocation, two new normative documents of the inner-party nature were adopted: certain norms of inner-party political life in the new situation and the CPC's position on internal control [21]. In these documents, a total of more than 200 points concern the regulation on the conduct of managers, especially high-ranking officials. The documents specifically state that "high-level officials should properly build relationships with their relatives and subordinate employees, consciously preserve the purity of public relations, the everyday environment, the circle of friends; it is strictly forbidden to bring commodity-money exchange relations into political life and official activity". Such documents in China are examples of local normative acts of the party, but, given that almost 100% officials are members of the Communist Party of China, they can be considered to be normative acts of national character.

Another document worth mentioning is "Eight rules for improving the style of work and strengthening relations with the community" [22], which was adopted by the Chinese authorities in 2012 and became the ethical norm of behavior for officials in various areas, including such spheres as trips, meetings, experience exchange with a host country, etc. However, there are multiple real life examples of officials conducting small deviations from these rules (visiting expensive closed clubs, organizing luxurious weddings for their children, etc.). These occurrences don`t necessarily mean that these people are automatically suspected of corruption, but discipline inspection and control units have the right to have a clarifying talk and let them go with a warning. In case serious evidence is revealed, some officials are offered the choice to resign at will . The study of corruption cases in China shows that many corrupt officials usually start small, namely with such simple matters as being treated to dinner, accepting expensive gifts, etc., and then step by step they "submerge" into corruptive relations .

Hence, the Chinese authorities seek to regulate daily activities of officials and eliminate the causes and conditions that give rise to corruption through adopting measures including various restrictions and prohibitions. Moreover, special programs are being implemented in China to track and return officials escaping justice i.e. "Skynet”. Since the launch of the program, the PRC authorities have been able to return 2,566 former officials and deputies suspected of various corruption offenses to the country. Among the returned criminals, 39 were on the list of so-called "100 of the most corrupt officials of China". 1283 criminals surrendered to the Chinese authorities voluntarily with a confession. Together with corruption officials, officials of the PRC also managed to return about $ 1.25 billion in corruption assets to the budget. This program contributed to the decrease in the number of "runaway" civil servants: from 101 corrupted officials in 2014 to only 19 in 2016 [23].

Nowadays, China has become a popular place for laundering illegal money. The close relationship between transnational bribery and international money laundering schemes poses another challenge: in a place where money is laundered to corrupt officials from around the world, it is much easier to conceal illegally obtained riches and, ultimately, to benefit from them. Counteraction to this phenomenon requires great efforts not only from OECD on containing transnational bribery, but also China itself — to combat the dishonesty of its own bureaucracy.

China has become one of the global centers for money laundering for several reasons. Firstly, a loose, liberal attitude to financial activity turned China into an "Eldorado" for international criminal elements. The "hot" cash flows between mainland China and Hong Kong — one of the best financial centers in the world — increase the "appeal" and accessibility of China for criminal financial activities on a global scale [24]. The problem of combating money laundering in China has deepened due to the unprecedented volume of barely controlled shadow banking operations and the rapid growth of opaque digital crypto-currency markets (for example, those related to bitcoin). Even the largest state-owned Chinese banks have repeatedly (intentionally or unintentionally) appeared in money laundering scandals, including some related to the financing of criminal activities in Europe [26].

One of the serious problems, especially typical for China, is the lack of transparency regarding beneficial ownership: "China does not recognize the principles of the G20" [26]. The new evidence presented in March of 2016 in the Research Report of the Associated Press — one of the largest international news and information agencies — on Hong Kong's leading role in global money laundering [27], further intensified international pressure on Chinese leadership to make the state more cooperative in this sphere. Despite China's official denial of such claims, signing an anti-money-laundering agreement with Australia in November 2016, along with the PBOC's efforts to intensify regulation and effectively control money laundering in numerous bit coin markets, nevertheless, indicate the growing concern of the Chinese leadership over these issues .

Chapter 2
Legislation of the People's Republic of China in the sphere of combating corruption

It must be noted, that since the 1990s, a single law on corruption has been in development in China, but so far such a legislative act has not been adopted [28]. Separate rules on combating corruption are contained in separate acts of law-making, numerous by-laws, departmental orders, instructions, CPC rules and various ministries and departments. A certain part of the documents regulating the issues under consideration is adopted by local state authorities and management.

One of the main reasons for the absence of a single legislative act on combating corruption in the PRC is, in our opinion, the extreme complexity of its development with regards to the legal space of the PRC. In particular, a number of technological problems has not been resolved under the normative regulation: firstly, in the jurisdiction of the PRC, the system for declaring incomes of officials is not clearly defined, and different rules are applied in different departments; secondly, the maximum amount of monetary value of gifts to officials is not legislatively defined; thirdly, combining several job positions and the existence of a so-called "second" job is common for a large number of civil servants.

Traditionally, Chinese legislators don`t adopt new laws in a rush. In 2011, China developed the current Constitution and 240 effective laws, 706 local administrative regulations, more than 8,600 local normative acts etc. [29]. This approach to the adoption of new laws is unique to the Chinese socialist legal system [30]. The Chinese legislators believe that only by clearly specifying all the important provisions in the text of the laws, it is possible to achieve an effective law enforcement practice. Therefore it is common for the legal system of the PRC to apply the experimental approach, which means the implementation of legal regulations through the adoption of a subordinate regulatory legal act with an unlimited duration. An analysis of its practical application is then periodically carried out; and on the basis of the obtained data, an authorized body decides on legally adopting or turning down a tested experimental model of such a legal regulation [31]

An important part in the system of anti-corruption measures is the interaction of civil institutions with the state. Taking into account the socialist nature of the state, the PRC public authorities are actively engaged in exploring anti-corruption issues. Thus, on December 29, 2010, the press office of the State Council of the PRC published the White book — "Counteracting Corruption and the Formation of an Incorrupt Party and Government Office in China". The level of approval by the citizens of the PRC of the activities of the party and government on combating corruption and building an incorruptible government apparatus increased from 51.9% to 70.6% during 2003–2010, respectively [32]. While in 1980–1990 the number of officials of central and provincial departments suspected of corruption was a little more than 100 people, during the period of 2002–2007 about 30,000 officials from 32 different ministries and departments were accused of corruption. These statistics, including the increased rates of solving corruption cases, demonstrate the consistent nature of the party's and the country's anti-corruption policies, which is undoubtedly supported by the Chinese society. Moreover, the state organs of the PRC involve representatives of the public in the fight against corruption. Thus, the Central Commission for Discipline Inspection of the CPC (CCDI, 中央 纪律 检查 委员会) and the Ministry of Control of the PRC created a unified information portal (http://www.12388.gov.cn) and a unified helpline (12388), where everyone can leave information on known occurrences of corruption [33]. While anonymous messages are also accepted, priority is given to messages with the contact details of the applicant. An allegation of corruption sent through the information portal receives an identification number, according to which the applicant can track the process of its consideration and the measures taken [34]. In our opinion, such experience may be an interesting option to consider and possibly implement in the Russian Federation.

The legislative acts adopted by the NPC and its Standing Committee are the origin of China`s criminal law.

Judicial decisions aren`t required to be judicial precedents, but courts at all levels must adhere to the judicial interpretation of the SPC and the documents on judicial interpretation issued jointly by the SPC and SPP.

According to the Constitution of China [35] and the basic laws of the special administrative regions of Hong Kong and Macau, these areas are granted considerable autonomy and have independent executive, legislative and judicial powers.

China has had strong anti-corruption regulatory legal acts for a long time. In particular, on January 1, 1980, the Criminal Code of the PRC came into power. It defined criminal offenses related to bribery and corruption. In 1997, changes were introduced and extended provisions on bribery and corruption crimes were added in order to modernize and upgrade the Criminal Code of the PRC [36].

The actions of Chinese authorities, including the legislative sphere, became more active after President of China Xi Jinping came to power in 2013.

On October 18, 2017, Xi Jinping made a presentation at the 19th Congress of the CPC, in which he noted that "... in the fight against corruption there should be no restricted areas; full coverage and zero tolerance are required; we persistently attacked both the tigers and the flies and hunted down the foxes. The initial stage goal has been implemented: no one dares to engage in corruption. The "cage" of power restriction tightened, designed to contain corrupt impulses of officials. Moreover, we are constructing a "dam" designed to prevent anyone from engaging in corruption. In the fight against corruption, the overwhelming odds are already on our side, and this dominance is reinforced and developed " [37].

In the beginning of 2018, China launched a new campaign against organized crime and officials who harbor criminal organizations — on January 24, 2018, the CPC Central Committee and the cnp [38] made a statement that the action will focus on sectors and areas subject to banditry and organized crime which cause "the strongest social reaction". [39]

Social stability is vital for preserving peace, security and public support for the government at a base level. "We must maintain a tough stance against all types of organized crime," the document said. Gu Shengkun (member of the Political Bureau of the CPC Central Committee and head of the Political and Legal Affairs Committee) called prostitution, gambling, drug dealing, financial pyramids and human trafficking — targeted areas.

A number of common characteristics of organized crime in China suggest that local traders are forced to pay criminal groups money for protection. In China, an organized criminal group, as a rule, includes no more than 200 people who operate in a certain area, for example, in villages. They take advantage of the patronage of local corrupt politicians, government officials and police. They "don`t step out" outside their "own district", as this will immediately attract the attention of central government bodies.

The fight against organized criminal groups in China is hindered by strong corruption links between criminals and officials which makes it difficult for the police to confront them. "Banditization" in Chinese villages is due to the fact that rural communities fall under the control of bandits often with the support of local officials. That is why the central authority of the PRC isn`t able to control these events.

Chinese criminal groups are actively engaged in the trafficking of drugs, weapons, people and endangered animals and plants, financial fraud, software piracy, prostitution, gambling, robbery and high-tech thefts around the world. The most common and profitable types of criminal activity are drug and human trafficking.

Such criminal groups are transnational in the literal sense. Their members may be born in China (including Hong Kong and Macau), in Taiwan or in one of the many foreign Chinese communities. Despite being so spread out around the world, Chinese immigrants do not lose connection with their "home" base.

Most transnational Chinese criminal groups differ in the membership model or their structure from traditional triads (the form of criminal organization in the Chinese diaspora). For example, drug distribution syndicates can include both members and non-members of a triad, and these groups are dispersed and changed over time, making it difficult to detect them.

Other types of ethnic Chinese criminal groups have also emerged. Thus, the Taiwan organized gang originated in Taiwan in the 1950s and adopted some rituals and structural features characteristic of the triad. As the most powerful ethnic group in the international Chinese organized crime sphere, the Taiwan-based group is actively involved in the transnational trade of arms, drugs and people, as well as financial crimes. In the US, for example, there are two groups of such kind — "Bamboo" and "Four Seas".

Economic reforms and a policy of openness which have been applied since the 1980s, have contributed to the increase in the influence of criminal groups based in Hong Kong, Macao and Taiwan as well as the southern provinces of China — Guangdong, Fujian, Zhejiang and Yunnan. They have also organized and are currently in control of drug trafficking in the "golden triangle" which borders with the Yunnan province, while providing a high demand for migrant trafficking in the provinces of Fujian and Zhejiang.

Organized crime is closely linked to corruption, and special attention is paid to reducing its scope in China. Thus, in the joint statement of the CPC Central Committee and the State Council of the PRC mentioned above, it is noted that the campaign against organized crime should include the fight against corruption at any level, including "umbrellas" covering illegal actions.

Disciplinary political and legal bodies of all levels should investigate corruption cases regardless of the status of the participants (even if they are members of the CPC involved in organized crime).

The basic legal acts related to counteracting corruption in China include the Criminal Code of the PRC and the Law of the PRC of December 1, 1993 "On Combating Unfair Competition" (AUCL).

The Criminal Code of the PRC extends its validity to acts involving both official (with the participation of government officials and employees) and commercial bribery (involving private enterprises and / or their personnel). AUCL prohibits commercial bribery.

In addition to these laws, administrative regulations have also been adopted by various government departments that contain provisions on combating bribery (Interim Regulations on Prohibiting Business Bribery), judicial interpretations issued by the SPC and SPP (for example, Explanations on issues related to the application of the law in the field of criminal cases of bribery for commercial purposes ("Commercial Conclusion on Bribery of 2008")), as well as clarifications regarding the application of the law in relation to criminal cases related to bribery ("Judicial explanations of 2016").

The CPC and the State Council have also issued internal disciplinary anti-corruption rules that regulate corruption or bribery of CPC members and Chinese officials. These rules and regulations do not apply to bribers. They are used as a guide for determining restrictions on gift value and business hospitality.

The Criminal Code prohibits: a) "official bribery", which applies to government officials and legal entities; b) "commercial bribery", which refers to non-governmental officials.

The term "government official" includes: civil servants who hold positions in state bodies; individuals performing public duties in state bodies or semi-governmental bodies; individuals who are appointed by government officials who are not enlisted in state bodies, for the performance of public duties; and individuals who perform public duties in accordance with the law [40]. The term "entity" refers to state bodies, state companies, enterprises, institutions and public organizations [41].

When considering the legal basis for combating corruption in China, it is important to define the scope and interpretation of the term "official" used in the legal space. According to art. 2 of the Law of the PRC of January 1, 2006 "On Civil Servants" [42] civil servants are understood to be officials performing functions of civil service that are included in the state administrative register and receiving monetary payments from the state budget. This category includes the majority of members of the CPC, the NPC, the administration, the CPPCC (the Chinese People's Political Consultative Council), the courts, the police, representatives of democratic parties and groups — all state-administrative structures of the PRC. Persons occupying the above positions are subject to punishment if convicted of bribery or other violations of the law. It's not just about criminal responsibility, but also civil, administrative and disciplinary responsibility [43].

The uncertainty of the overall composition of the list of Chinese civil servants is to a certain extent due to the traditional informational secretiveness of the Chinese society and its government structures. Nevertheless, according to the report on the main results of the sixth general population census conducted by the State Administration of Statistics of the PRC in 2010, the country's population is 1,370,536,875 people, excluding the population of Taiwan and the SAR of Hong Kong and Macau [44].

In 2009, the State Council of the PRC issued a White Book on the state of human rights in China, which reported that, as of 2009, there are more than 2,900,000 officials belonging to national minorities, accounting for 7.4% of the total number of officials in the country [45]. Using the data of the sixth population census, by simple mathematical calculations, it is possible to determine the number of officials in the country and their ratio with the population: officials — more than 39 million, and the ratio of officials to the population — 1 to 35. In Russia in the same period, this ratio was — 1 to 85 (the number of officials as of 2009 was 1 640 000 people [46]).

A large number of civil servants in absolute and relative terms complicates combating corruption in the PRC and is a significant corruption promoting factor that prevents the increase in clarity and transparency in this sphere. This situation is typical not only for the PRC: the smaller the population of the country, the fewer officials there are. Therefore, it is easier to establish control over their activities, property and achieve a low level of corruption, i.e. Singapore, Norway, Denmark. In countries with a large population and, consequently, large number of officials, for example, China, Russia and India, as a rule, the level of corruption is much higher because supervising numerous "sovereigns" comes with objective difficulties.

The fight against corruption is not limited to the public sector and extends over the activities of public personnel assigned to the private sector to perform public tasks.

The public sector. Revenue. To combat crimes in the public sector, "state personnel" includes:

– employees of state bodies;

– employees of state enterprises, institutions and public organizations;

– other employees engaged in public services in accordance with the law.

In the absence of a legal definition of the notion of "public service", according to the protocol of the meeting of the Conference of National Courts on Commercial Crimes conducted by the Supreme People`s Court in 2003; such activities include establishing a certain role in the organization, control and management of state enterprises and other areas, connected with state service.

The term "non-governmental functionary" means any individual or legal entity who is not a "public official" or "legal entity " as defined in the Criminal Code of the PRC.

A state enterprise can:

– completely belong to the state;

– be under the absolute control of the state (i.e., the state owns more than 50% of the shares);

– be under the relative control of the state (i.e., the state owns less than 50% of the shares, but it is the largest shareholder or controls the company under an agreement or contract).

The receipt of bribes by civil servants, implies that the following acts are committed:

– the demand or approval of illegal benefits and the receipt of illegal proceeds through the abuse their position;

– approval of illegal "remuneration" or payment for services requiring violation of official standards of conduct;

– intermediation in the above actions, with serious circumstances of the violation.

According to the Criminal Code of the PRC, both the proposal and acceptance of a bribe is a serious criminal offense. The acts that qualify as crimes of giving and receiving bribes include:

– transfer of property to a civil servant in order to obtain an unlawful profit (Article 389);

– offering a bribe (Article 390);

– the transfer of property to state bodies, state companies, enterprises, manufacturing institutions and people's unions; or issues of various nominal commissions, and agency fees that violate state regulations, in order to obtain illegal benefits (Article 391);

– mediation in the process of giving a bribe to a civil servant under aggravating circumstances (Article 392);

– giving a bribe as an organization for the purpose of obtaining an illegal gain or in violation of state regulations; issuing a commission to a government official; and agent`s remuneration under serious circumstances (Article 391).

The ninth amendment to the Criminal Code of the PRC, which was published by the NPC on August 29, 2015 and came into power on November 1, 2015, is aimed at empowering the juridical branch to better combat corruption. In addition to introducing a new offense — "offering a bribe to a close relative or any close person of an existing or former civil servant", this amendment also:

– increases the enforcement of fines as punishment for crimes related to bribery;

– adds fines as a punishment to almost all crimes related to corruption / bribery;

– replaces certain amount thresholds for sentencing with more common definitions of crimes such as "relatively large", "huge" and "especially huge";

– expands the list of circumstances that mitigate punishment.

On April 18, 2016, the SPC and SPP of China issued a joint Clarification "On Bribery, Corruption and Illegal Adoption of Government Funds" (hereinafter "Clarification"). It specifies the provisions of the Ninth Amendment, regarding crimes related to corruption and bribery. In particular:

– the definition of "a bribe" was expanded (some non-material benefits were included);

– threshold monetary values for bribery prosecution and sentencing (including, the threshold values for bribes with the participation of government officials and non-state officials are increased) were adjusted;

– it was specified that a thank you gift after receiving inadequate benefits still represents bribery;

– it was also specified when indulgence can be made; and additional grounds for voluntary remorse were given.

When bribery is considered, the Criminal Code of the PRC does not contain a minimum bribe amount for the government sector. In the private sector, only benefits related to "an obviously greater value" relate to bribery. However, there is no legislative or judicial provision establishing their criteria.

In the opinion of the SPC and SPP, in cases of commercial bribery, the following factors can be taken into consideration when determining the legal status of the payment / gift / benefit:

– the relationship between the person offering and the one receiving a bribe (for example, relatives or friends);

– the amount;

– whether the person offering the bribe is pursuing any personal interest, while offering the bribe-taker an advantage;

– can it be assumed that the beneficiary will indeed use his official position in the interest of the "briber".

Monetary thresholds for bribe amounts in the government sector. The legislation of the PRC has set minimum thresholds for the bribe amounts to initiate an investigation of criminal offenses related to bribery in the government sector. For example, such crimes as bribing civil servants.

For an individual, the threshold for the amount of a bribe is more than 10,000 yuan; or less than 10,000 yuan in case of the following exceptions:

– a bribe for "illegal benefits";

– a bribe was offered to more than three civil servants;

– a bribe was offered to civil servants, judicial personnel, or personnel of administrative enforcement agencies;

– interests of the state or society are harmed.

For legal entities, the minimum threshold for a bribe amount to initiate an investigation of a criminal offense related to bribery is as follows: if the bribe amount is more than 200,000 yuan; the bribe amount is from 100,000 yuan and up to 200,000 yuan, but small bribe amounts were provided regularly, which ultimately amounted to the minimum threshold.

Bribery in the private sector. A bribe entails criminal liability only if it is "relatively large". As long as there are no legislative acts or judicial decisions specifying this concept, the above bribery investigation guidelines are implemented if the minimum amount threshold of 10,000 yuan (for an individual) and 200,000 yuan (for a legal entity) is exceeded.

Accepting gifts for the performance of official functions related to foreigners is allowed, if the value of the gift does not exceed 200 yuan (about $ 30).

In accordance with the provisions of the AUCL, two exceptions are made regarding the general ban on commercial bribery:

a) discounts or commissions may be granted to intermediaries if they are correctly presented in the financial statement of the company;

b) presenting low-cost souvenirs (for example, stationery with the company's name) is allowed, in accordance with an accepted commercial practice.

Thus, the PRC Law prohibits an individual or legal entity from transferring money or property to a civil servant, his relative or any close person of a working or former public official, a non-governmental official or a legal entity, in order to obtain illegal benefits.

Articles 30 and 31 of the Criminal Code of the PRC include the criminal liability of legal entities, in contrast to Russian criminal law. These norms apply to companies, enterprises, public institutions, state bodies and organizations: "§ 4. Corporate crime: companies, enterprises, organizations, institutions, collectives carrying out activities that are dangerous to society, proceeding from the provisions established by this Code for crimes committed by organizations or institutions, should be criminally liable (Article 30); for organizations committing crimes, a penalty is imposed in the form of a fine, but the supervisors and other responsible employees are criminally liable. These cases are established by this Code and other laws that should be applied (Article 31) ".

Corporations can be held accountable for the actions of their employees, management and officials in accordance with the criminal, administrative and civil legislation. Any crimes committed by employees and agents of the organization can be considered committed by this organization, if the crime was committed on behalf of a legal entity, in the interests of a legal entity and illegal income was received. Article 43 of the General Principles of Civil Law of the PRC stipulates that "an enterprise as a legal entity bears civil liability for the activities of its legal representatives and other employees". According to Art. 63 corporations should also be responsible for the actions of their designated agents. The Provisional Rules of the State Administration for Industry and Commerce, containing a ban on commercial bribery, state: "Implementation of commercial bribery by employees of a business operator for the purpose of selling or buying goods should be regarded as unlawful behavior of a business operator."

Legal entities can be brought to legal civil liability, according to Art. 106 of the General Provisions of the Civil Law of the PRC, as well as to administrative liability under Art. 22 AUCL, and also the provisions of Art. 72 (2) of the Law of the PRC "On Purchases" and Art. 39 of the Regulations on Administrative Measures for the Registration of Forensic Expert Institutions Concerning Passive Bribery. Measures of administrative punishment also include the revocation of licenses and the prohibition of certain activities. Provisions regarding the liability of legal entities do not exclude the criminal liability of individuals that work there and have committed corruption crimes.

In particular, corporations may be prosecuted for bribing a civil servant, foreign officials (or officials of international public organizations) or employees of non-state organizations.

Corporate criminal liability, as a rule, extends to bribery with "corporate will" (the decision to participate in illegal actions was taken by a group of persons or by a manager).

If a legal entity is found guilty of committing a crime involving bribery, it may be fined an unlimited amount.

In accordance with the AUCL and its comments, and the SAIC, the term "property" applies to cash, assets and hidden shares, as well as benefits such as offers of employment, free travel or entertainment.

Corruption intentions can be identified when evaluating:

– the relationship between the one who gives and one that receives a bribe (for example, relatives or friends);

– the value of the proposed advantage;

– the purpose, duration and order of obtaining an advantage;

– willingness of the recipient of illegal benefits to use their official position.

In some cases, such evidence will be unnecessary, in particular, if fees / commissions are paid to a civil servant.

The concept of "money or property" used to include cash, physical items, as well as various "property interests that can be measured in money" (for example, expensive repairs of a house or apartment, granting a membership in a club, discount cards, shares or dividends; part of the profit from a company without having invested in it, "winning" in gambling, payment for services that were not provided, etc.) [47].

Previously, it was considered that the amount of such intangible benefits should correspond to the actually paid amount, whereas according to the 2016 Recommendation such an amount may equal to the amount of the benefit. This applies to situations where the cost of, for example, tourist services or other intangible benefits may be intentionally understated by the bribe-taker.

In cases of "bribery" the bribe-giver intends to receive "improper privileges" in return, including: a) preferences from a civil servant, non-state official or organization in violation of law, administrative rules or codes of conduct; b) violation of the law, administrative rules or codes of conduct of conduct by a civil servant, non-state official or organization to assist or facilitate the bribe-giver. For commercial activities related to trade and public procurement, the transfer of money or property to a public official in violation of the principle of equity to ensure a competitive advantage is considered as an intention to receive "improper benefits" [48]. In addition, in cases where money or property was offered with the intention of receiving "improper privileges", but giving a bribe did not take place, in spite of unforeseen circumstances, such an act could be considered an attempted crime [49].

However, a person who transfers money or property to a public official under the pressure or demand of that employee, but does not receive any improper benefit, is not convicted of committing a bribe and is not subject to criminal liability[50].

According to the SPC and SPP of China, bribes can be distinguished from gifts using the following criteria [51]:

– the circumstances of the transaction, such as the relationship between the parties, the history of their relationship and the degree of their interaction;

– the value of the property which is the subject of the transaction;

– the reasons, timing and method of the transaction and establishing the fact whether the party that transferred the money or property had any specific requests for assistance;

– the use of its official position by the party receiving money or property, to obtain any benefit for the party transferring money or property.

In other words, a person who transfers money or property to a government official, non-state employee or legal entity without any specific request for assistance, cannot be considered as a bribe-giver.

According to Art. 5, 61 and 62 of the Criminal Code of the PRC, judges should take into account the nature and circumstances of the crime. Imposed penalties must correspond with the degree of the crime. Severe penalties connected with active and passive bribery of public officials include life imprisonment for active bribery (Article 390 of the Criminal Code of China) and the death penalty for passive bribery and embezzlement (Article 383 (1) of the Criminal Code of the PRC).

Prohibition of commercial bribery. On May 1, 2011, China expanded the subject of commercial bribery by including illegal payments to foreign officials. The Criminal Code now also criminalizes the "provision of money or property to any foreign official or official of a public international organization" in order to obtain "improper commercial benefits" [52]. This widens the scope of the fight against corruption outside the country, although the difference between "improper commercial benefits" and "improper benefits" means that the amount of punishable actions involving foreign officials is somewhat smaller than with Chinese recipients of a bribe.

Receiving a bribe. State officials, non-state officials, their relatives and organizations are prohibited from accepting money or property for providing improper privileges to the person requesting it.

Thus, the provision or receipt of "improper benefits" is the determining factor of a bribe. It must be proved that the party taking the bribe used its authority or position to provide benefits to the party offering the bribe under the following circumstances:

– Any person (whether a public official or a non-state functionary) who uses their official authority to obtain a "commission" or "service fee" is considered to have received a bribe under any circumstances [53];

– Any state functionary who has received a bribe exceeding 30,000 yuan from his subordinate while being in the position to influence the performance of their duties [54].

Threshold bribe amounts. As mentioned above, under the Ninth Amendment to the Criminal Code of the PRC, threshold bribe amounts were changed to "significant size", "large" and "extra-large" in order to initiate investigations of general crimes. The 2016 Recommendation sets new bribe amounts to initiate prosecution and sentencing for bribery [55]. Thus, the minimum threshold for giving a bribe to state functionaries was raised from 5,000 yuan to 30,000 yuan, and giving a bribe to a non-state official — from 5,000 yuan to 60,000 yuan.

Criminal sanctions differ depending on whether the party offering or accepting a bribe is an individual or a legal entity; and in case it`s an individual, whether it`s a state or a non-state functionary. As indicated above, criminal sanctions for crimes of bribery involving government officials tend to be more severe than for non-state employees.

If a person has received more than one bribe, they will all be summed up in order to determine the amount of the fine.

AUCL is focused on regulating business activities, which can lead to unfair competition. It particularly forbids "commercial bribes".

"Business operators" in AUCL are defined as legal entities or other business entities and individuals, engaged in business or providing commercial services.

In accordance with the temporary provisions on the prohibition of commercial bribery, approved by the SAIC ("Regulations on Combating Commercial Bribery"), the term "property" means “cash and tangible assets, as well as advertising fees, sponsorship fees, commissions, compensation costs , paid for the selection or purchase of goods” [56]. The term "other benefits" can mean “the organization of tours and trips within China or abroad” [57].

Article 8 of the AUCL provides that any commission that is secretly provided to an individual or entity is treated as a bribe, and its acceptance as a one of a bribe.

However, AUCL offers a certain degree of discretion for business operators, as they can provide or use discounts or commissions in transactions, provided that this is reflected in the financial statements. The party receiving the commission must have legal qualifications necessary to provide the relevant services, as well as register the amount on its accounts.

On November 4, 2017, the NPC Standing Committee adopted amendments to the AUCL, specifying what constitutes commercial bribery.

The amendments came into force on January 1, 2018. This shows that the anti-corruption campaign in China is continuing. These changes create potentially greater risks for criminal elements that carry out commercial bribery in China, including increased penalties. This reflects the progressive approach of the China`s legislator to solving the problems of countering commercial bribery, which has become a global trend.

Commercial bribery is aimed at "finding an opportunity for a deal or a competitive advantage." A counterparty in the transaction which is not explicitly designated as a potential beneficiary of a bribe, is now clearly considered the third party. It may be assumed that commercial bribery with the mediation of third parties will be the subject of future investigations in China, as well as in the United States, Britain and Brazil. The table provides an overview of the changes affecting the concept of commercial bribery in the AUCL.

Table 1

Changes affecting the concept of commercial bribery in AUCL

	AUCL 1993	**Amendment 2017**
1. Definition of commercial bribery	Clearly not established and is given on the basis of temporary rules prohibiting commercial bribery, where the goal was limited to "the acquisition or sale of goods."	Specifies the amount of the commercial bribe: – the purpose of bribery is formulated as "finding an opportunity to conclude a transaction or a competitive advantage", while it becomes bigger than simply buying or selling goods or services; – there is a reliance on payments to third parties of the transaction; – the counterparty of the transaction is not directly named as a potential bribe payee
2. Subsidiary responsibility of the employer	Is not clearly defined, although the temporary rules provide general principles.	It is confirmed that the commission of bribery as a commercial activity of an employee is regarded as the employer's action.
3. Fines	From 10 thousand to 200 thousand Chinese Yuan (from 1,500 to 30 thousand US dollars) with the confiscation of illegally obtained income	Increase: from 100 thousand to 3 million yuan (from 15 thousand to 450 thousand USD) with the confiscation of illegally obtained income; – cancellation of a business license if the violation is considered serious

Thus, the key changes in the concept of commercial bribery are the following:

1. A new definition of commercial bribery

The revised definition of commercial bribery provides that an entrepreneur uses money, property or other means when concluding a transaction or obtaining a competitive advantage by bribing any of the following legal or natural persons:

a) employees of the counterparty to the transaction;

b) a legal entity or an individual contracted by the counterparty to the transaction in order to resolve certain cases (for example, a subcontractor, an agent, etc.); or

c) a legal entity or an individual who use their authority or influence on the transaction.

It should be noted that the previous version of AUCL on transactions including counterparties as bribe-takers caused complaints and bewilderment among the business community. However, in the absence of official explanations regarding clauses "b" and "c", it is possible that the counterparty to the transaction, under certain circumstances, may in practice still be considered as a recipient of a bribe.

Thus, the counterparty to the transaction will be determined *de facto*. For example, when buying school uniform from a specific supplier, students are *de facto* buyers. By imposing the duty to buy this uniform on students the school falls under the action of clause "b" as the recipient of a bribe.

A measured approach in providing any benefit to counterparties of a transaction is particularly important when the counterparty to the transaction is public, such as an educational institution or a hospital.

2. Increase in administrative penalties

The amount of fines has increased significantly — from 100 thousand to 3 million yuan with the confiscation of illegally obtained income. The authorities also have the right to revoke the license in cases of serious violations — with a large and especially large bribe amounts.

These amendments were made in accordance with the temporary rules for publicity of administrative fines, mentioned earlier. Disclosure of information on giving and receiving bribes affects the reputation of participants in such transactions, and hence the possibility of their subsequent participation in government contracts.

While the punishment for the beneficiaries of commercial bribery in the amendment is not mentioned, the perpetrators can be punished in accordance with other laws of the PRC.

3. Expansion of the investigative power

The 1993 AUCL did not allow the SAIC to authorize the seizure of money and property in connection with violations of this legislation. In this regard, the investigators of the SAIC were forced to follow the rules of the provinces. However, after the 2012 publication of the PRC Law "On Administrative Compulsion" the possibility of using coercive measures in investigating unfair competition was excluded from provincial rules. This meant that the SAIC was limited to investigating bribery.

The amendment corrected the situation described above and gave SAIC the necessary powers to arrest money and property. SAIC also provided additional powers to investigate bank accounts of business entities suspected of unfair competition. For execution of these powers, permission must be obtained from the supervisory and control authorities of the municipal level and above.

4. Penalty for interference in the activities of supervision and investigation bodies.

A fine of up to 5,000 yuan was imposed for individuals, and up to 50,000 yuan for legal entities. This punishment extends beyond bribers or bribe-takers. Any legal entity or individual who has evaded cooperation with the investigation may be punished.

5. Confirmation of subsidiary liability of enterprises and the possibility of penalty reduction

The amendment confirms the subsidiary liability imposed by the provisional rules, if the employee of the organization is engaged in commercial bribery, his actions will be seen as actions of the organization itself.

This amendment provides an opportunity for an organization to prove that an employee's misconduct is not related to obtaining any preferences or other competitive advantages for that entity. Such organizations can avoid subsidiary liability if they provide evidence that they:

a) have adopted the correct anti-corruption policy;

b) apply effective management and control measures for employees;

c) did not encourage the bribery by their employees openly or in secret.

The amendments also provide for the possibility of mitigating administrative punishment, if the perpetrators quickly eliminated or reduced the negative consequences of the offense, or if the offense is insignificant, did no harm and was timely prevented.

6. Compensation for damage in civil proceedings

The amendment provides that victims of unfair competition (including commercial bribery) may demand compensation from the guilty business operator in civil proceedings.

The amount of damage will be determined on the basis of the actual losses incurred by the claimant, including the costs of their reasonable attempts to prevent the defendant from doing wrongfully. This rule provides the company with reimbursement of costs for internal investigation (for example, legal services, audit and court fees) against employees who have been convicted of commercial bribery.

Due to significant changes in the definition of commercial bribery, Chinese companies should analyze their work in terms of business risks and compliance control in order to prevent violations of the new rules. In particular, companies need to take the following steps:

– Review existing compliance policies and programs, including policies on third parties, to fill gaps, and provide training for high-level managers and staff;

– analyze signed business agreements related to counterparties of the transaction and third parties, such as agents, distributors and other intermediaries;

— conduct inspections prior to engaging a third-party vendor to facilitate the transaction with the counterparty;

— to include effective conditions for compliance with third parties, including audit, periodic inspections and the preparation of third parties to comply with these requirements;

— the implementation of internal control and policies regarding the provision or receipt of gifts, payments, hospitality and other incentives for the employee, taking into account the risk of subsidiary liability.

Crimes related to bribery. Article 271 of the Criminal Code of the PRC provides for criminal liability for theft / misappropriation of property in the private sector when "the amount of stolen money or property is significant." In particular, Art. 397 of the Criminal Code criminalizes the abuse of power. For criminal prosecution in connection with such a crime it is necessary to establish the fact of "significant damage to public funds or property or to the interests of the state and the people".

Article 395 of the Criminal Code of the PRC refers to illegal enrichment. Article 307 of the Criminal Code of China provides for the bribery of witnesses and obstruction of justice by any other means. Article 382 of the Criminal Code criminalizes theft of property by public officials (including misuse of property). Article 384 of the Criminal Code refers to the misuse of public funds.

The Criminal Procedural Law provides for a general obligation for individuals and legal entities to report any suspicious transactions or criminal activities. A number of provisions deal with the penalties of individuals providing false information, impeding the investigation or refusing to facilitate it.

A person interfering with the performance of state body`s duties is subject to an administrative fine in accordance with the law, and in more serious cases administrative arrest (with the payment or cancellation of an administrative fine), and if a person applies violence or threats against other persons — they are subject to criminal responsibility and punishment in the form of public supervision, criminal arrest, imprisonment or a fine (Article 277 of the Criminal Code of the PRC).

A person deliberately giving a false testimony to protect a criminal or concealing circumstances of great importance in criminal proceedings or committing a criminal offense for the purpose of concealing such evidence shall be punished by public supervision, arrest or imprisonment (Article 305 and 310 of the Criminal Code of the PRC).

A person hiding or destroying evidence or providing false testimony and information that impedes the work of administrative law enforcement bodies is subject to administrative detention and a fine (Article 60 of the PRC Law "On penalties for violations of public order").

An individual / legal entity who knowingly hides the proceeds of a crime (and any benefits derived from it) commits a criminal offense and is liable to punishment in the form of imprisonment, arrest, public supervision and (or) criminal penalties. A legal entity is sentenced only in the form of a criminal penalty. Nevertheless, some individuals who are part of a legal entity are individually liable (Article 312 of the Criminal Code of China). Administrative liability is applied in the event of the absence of a criminal offense.

A person who hides, sells, deliberately destroys or damages anything sealed, arrested or "frozen" by the justice authorities under aggravating circumstances, may be subjected to administrative arrest, imprisonment or a fine (Article 314 of the Criminal Code of the PRC).

In cases where legal entities interfere with the performance of the state body`s duties (for example, by concealing or destroying evidence, giving a false testimony about the case, and manipulating frozen and confiscated property), certain individuals who are part of this legal entity, will be found guilty and may be subject to an administrative penalty and detention.

The anti-money laundering legislation obliges financial institutions to report large or suspicious transactions. Any director, senior manager or employee who is directly responsible for the performance of these obligations can be personally punished by a fine in the amount of 50,000 to 500,000 yuan (approximately 6,500 to 65,000 USD), and (or) they may be disciplined, or dismissed from their position, or prohibited from engaging in activities related to finance.

Protection of witnesses and individuals, reporting information. The Chinese Criminal Procedure Law provides for the protection of witnesses, experts and victims in cases involving national security, terrorism, organized crime and drug-related crimes (Article 62). Witnesses, experts and victims in cases of corruption offenses may also be taken under protection on the basis of special requests from courts or law enforcement agencies.

Some measures to protect witnesses and persons reporting information are also provided for in other administrative supervision acts on the protection of informers and indictors, labor certificates.

While many government agencies have established an institution of denunciation (websites, hotlines, special applications for mobile phones), the actual protection of informants is not strong enough and repression of informants in China is not uncommon [58].

And although the Chinese Criminal Code, the Code of Criminal Procedure and some normative legal acts of the SPP contain certain protection measures for persons who report criminal activities and cooperate with the police, such protection is usually formal and not fully implemented.

Some local administrations of the SAIC financially encourage informants of commercial bribery. However, these amounts are insignificant (from several hundred to several thousand yuan) and do not attract potential informants.

In the course of the national anti-corruption campaign after the XVIII National Congress of the CPC in 2012, many government agencies created their own websites, hotlines or special informative applications for mobile phones to stimulate informers. China is taking steps to improve the system of remuneration and informant protection.

In 2013 the CCDI launched an official website for informers of corruption and other violations made by civil servants. In 2015 and 2016 an application for mobile phones and an official social network account on WeChat were created.

On March 30, 2016, the SPP, the Ministry of Public Security of the PRC, and the Ministry of Finance of the PRC issued several regulations on the protection of informers of grave crimes (new provisions), aimed at combating corruption, bribery, embezzlement and misconduct of officials. In accordance with these provisions, informants are granted social benefits and a monetary reward of up to 500,000 yuan. The informer who has made the "important message" can count on a higher reward with the approval of the SPP.

In accordance with these provisions, "acts of revenge" are prohibited against informers (not only threats to the safety of informers and their close relatives or their property, but also other illegal acts such as slander, job dismissal, demotion, non-payment of wages or premiums or their delay without good reason).

With regard to economic crimes, including commercial bribery, the PRC Ministry of Public Security opened online access to its accounts and announced a monetary reward of 500 yuan to 50 thousand yuan for informants. Some local administrations of the SAIC financially encourage informants to provide valuable information on commercial bribery. In some Chinese cities, the compensation of informers, proposed by local authorities, may amount to 300,000 yuan.

Public officials are not entitled to any immunities or jurisdictional privileges in China.

The People's Procuratorate generally adheres to the principle of mandatory criminal prosecution (Article 172 of the CCP of China). The decision against prosecution can be made only in cases when the circumstances of the crime are recognized as insignificant and the criminal sanction is not necessary or punishment may not be imposed (Article 173 of the CCP of China).

A state accusation may be imposed by the SPP under certain circumstances in case there is evidence of guilt. However, the prosecutor's office and the public security bureau cannot impose any sanctions on their own.

When a crime related to corruption is committed by a civil servant, the punishment varies from a disciplinary sanction of the body to which it belongs (in case of a minor violation), to a death penalty (in extreme cases). Administrative penalties can be imposed in the event that the action is not recognized as a criminal offense. This may be an order for warning, reprimand or dismissal. Confiscation of property and illegally obtained income can also be applied.

Criminal sanctions for individuals convicted of bribery include imprisonment up to 10 years. Courts may also impose fines on individuals or companies and confiscate their property. Administrative sanctions in accordance with the provisions of the AUCL include fines of 10,000 yuan (about 1,600 dollars), up to 200,000 yuan (about 32,000 US dollars), depending on the severity of the act. Administrative authorities can also confiscate the proceeds from all illegal business.

Aggravating factors affecting the prosecution and punishment. In the last decade, both the National People's Party and China's SPP jointly and individually published several judicial explanations in order to further specify the recommendations for lower courts and prosecutors on decisions on bribery and corruption-related crimes. In the clarification of 2016, the SPC and SPP list "aggravating circumstances", which must be taken into account when passing sentence to persons offering or accepting bribes.

In Art. 7 of the PRC Law "On Judicial System" lists "aggravating circumstances" that apply to persons who commit the following crimes:

– giving bribes to three or more persons;

– giving bribes for obtaining illegal benefits;

– giving a bribe to encourage a promotion;

– giving a bribe to a civil servant who has administrative and supervisory powers regarding food, drugs, production safety, environmental protection, etc. and commits unlawful acts;

— giving bribes to any judicial officer who can influence judicial proceedings;

— causing damage in the amount of 500 thousand to 1 million yuan.

Art. 1 of the Law of the PRC "On the Judicial System" contains aggravating circumstances applicable to persons who have committed crimes related to bribery:

— obtaining party or administrative disciplinary sanctions and reprimands for bribery or misappropriation of public funds;

— criminal prosecution for international crimes;

— use of appropriated funds and goods for illegal activities;

— refusal to explain the location of the appropriated funds and goods or reimburse of the cost of funds and goods that cannot be restored;

— the occurrence of adverse effects or other damage;

— multiple bribe offers;

— the provision of illegal benefits to others, which caused damage to state property, to the interests of the state and society;

— promotion of bribe-takers

In 2000, the SPP published the threshold values of bribes or proposals for prosecution. Such a threshold will be reduced from 200 thousand to 100 thousand yuan, if one of the following aggravating circumstances is established [59]:

— obtaining illegal benefits by bribery;

— bribery of more than three people;

— bribery of leaders of the party or government, officials of the judiciary and administrative officers of law enforcement agencies;

— causing significant damage to the state or people.

Extenuating circumstances. According to Art. 68 of the Criminal Code of China, any criminal who provides significant assistance to law enforcement agencies may receive a less severe punishment or exemption from punishment and the same protection as witnesses.

In accordance with the Ninth Amendment to the Criminal Code of the PRC, in 2016, a person who offers or gives a bribe that voluntarily confesses his crime (s) before their persecution, may receive a softer sentence. In addition, a person offering or giving a bribe may be exempt from prosecution or get a lighter punishment if they play a key role in resolving a significant matter [60].

The Prosecutor may decide not to prosecute any person under circumstances exempting such prosecution (including the degree of cooperation of persons suspected of committing criminal offenses) and those specified in art. 173 of the CCP of the PRC.

The statutory limitation depends on the maximum statutory sentence applicable in regards with a particular crime (Article 87 of the Criminal Code of the PRC) and is not applied in cases where the alleged criminals are hiding from an investigation or a court (Article 88 of the Criminal Code of the PRC).

The statutory limitation for prosecution in China is as follows [61]:

– 5 years, if the maximum penalty for this crime is imprisonment for less than 5 years;

– 10 years, if the maximum penalty for this crime is imprisonment for 5 to 10 years;

– 15 years if the maximum punishment for this crime is imprisonment for more than 10 years;

– 20 years (and may be renewed at the discretion of the SPP) if the maximum penalty for this crime is life imprisonment or the death penalty.

The rules concerning mitigation of punishment or parole are contained in art. 78–86 of the Criminal Code of China and in Art. 262–263 CCP of the PRC.

According to art. 38 of the Regulations on Disciplinary Measures for Administrative Staff and Art. 25 on provisional regulations on disciplinary measures in connection with misconduct of employees of public institutions; public officials shall be removed from the performance of their duties for the period of investigation against them.

Any individual who encountered criminal punishment regarding any crime cannot be recruited as a civil servant under art. 24 (1) of the PRC Law "On Civil Service". Any person convicted of embezzlement cannot occupy a leading position in a state-owned enterprise under art. 73 of the PRC Law "On state-owned assets of enterprises". Courts may also prohibit any individual from holding positions in public institutions and state-owned enterprises as an additional punishment under art. 37 and art. 54 (3)–(4) of the Criminal Code. Disciplinary measures can also be taken and a criminal investigation conducted in all cases involving public officials.

Consequences of corruption and damage compensation. Any unlawful property benefits obtained through corruption must be returned to the victims in accordance with art. 64 of the Criminal Code of China and art. 11 of Provisions on the interpretation of the SPC and SPP on certain issues related to the specific application of the law in criminal cases involving active bribery. Civil acts or contracts concluded through corruption are invalid according to art. 58 of the General Provisions of Civil Law and Art. 52 (5) of the PRC Law "On Contracts". Administrative licenses obtained as a result of bribery are annulled (Article 69 of the Law of China "On Administrative Licensing").

Criminals pay compensation to the victims for their losses under Art. 36 and 37 of the Criminal Code of China. According to Art. 99 of the CCP, victims can file civil lawsuits against criminals.

Suspension of operations ("freezing"), seizure and confiscation; bank secrecy. Confiscation (including value-based) of proceeds from crime and means of committing crimes is provided for in Art. 64 of the Criminal Code of China. At the same time, "all illegally obtained property" is confiscated as well as "prohibited items and assets of the offender used in the commission of the crime". The Chinese authorities explain that the meaning of the concept of "income", according to the UN Convention against Corruption, is phrased as "withdrawal of all illegally obtained property". In addition, Art. 282, the CCP of China establishes that "illegal proceeds" or "other property relevant to the case" is confiscated.

The confiscation of proceeds of crime as described in Art. 44 of the Provisions on the People's Procurator's Office, regarding the arrest and suspension of operations with money and property, related to criminal cases.

Article 280 of the Chinese CCP authorizes the use of a special procedure for the confiscation of illegal proceeds in cases involving embezzlement and bribery if the suspect or accused is hiding and cannot be brought to trial within one year of the issuance of the warrant for his arrest or if that person has died.

Law enforcement authorities can access bank accounts and other assets, arrest them or suspend operations with them under art. 142 and 234 of the CCP. Banks are obliged to provide the requested information in accordance with Art. 142 of the Code of Criminal Procedure of the PRC and art. 29 and 30 of the PRC Law "On Commercial Banks". Bank secrecy is not an obstacle to accessing such information. Administrative supervision institutions, such as the Ministry of Control (MC), can also access banking and financial reports in the investigation of corruption cases and petition the court to seize assets (Article 21 of the PRC Law on Administrative Supervision). The management of arrested and confiscated property is carried out by law enforcement agencies and people's courts under Art. 234 of the Code of Criminal Procedure of the PRC and the Regulations of the People's Procurator's Office on the management of property related to criminal proceedings.

Rights of *bona fide* persons are protected on the basis of Art. 106 of the PRC Law "On Property", and from the procedural point of view — Art. 280 and 281 of the CCP.

Article 280 of the Chinese CCP provides for confiscation of proceeds of corruption, art. 64 of the Criminal Code of China — the return of property confiscated from the perpetrator (the victim). Article 36 of the Criminal Code of the PRC — states the obligation of the offender to compensate crime-induced economic losses to the victim.

The PRC has positive examples of anti-corruption practices:

– Law enforcement agencies have established specialized bureaus and anti-corruption departments;

– The Ministry of Control undertook an important function to prevent corruption and serves as the national coordination center for combating corruption;

– The principle of active national jurisdiction being applied to government officials without any restrictions.

Jurisdiction of the PRC courts. Foreigners or foreign entities in China are required to follow the national legislation when doing business [62]. Chinese criminal laws apply to all crimes committed in China — regardless of whether they are committed by Chinese citizens or foreigners.

Accordingly, the courts of the PRC have jurisdiction over the following types of crimes:

– bribery and other crimes committed by Chinese nationals or foreign individuals or legal entities in China;

– bribery and other crimes committed by Chinese nationals or foreign individuals or legal entities on board of ships or aircrafts of the PRC;

– bribery and other crimes committed outside of China in order to obtain improper benefits in China;

– the bribery of representatives of the PRC, foreign officials or officials of a public international organization outside of China;

– bribery and other crimes committed by Chinese nationals outside of China, which are punishable, according to the Criminal Code of China, for a period of three years or more;

– bribery and other crimes committed outside of China by public officials of the PRC or military.

China has established territorial jurisdiction under Art. 6 of the Criminal Code of the PRC and national jurisdiction with the possibility of exemption from criminal liability, if the crime entails the punishment of imprisonment for less than three years (Article 7 of the Criminal Code of China). This does not apply to Chinese public officials. China also has jurisdiction in case the corresponding crime meets the criteria of mutual recognition of a criminal offense; and is punishable by imprisonment for a period of three years (Article 8 of the Criminal Code of China). With regard to money laundering, China has jurisdiction as long as the crime is connected with its territory (Article 6 of the Criminal Code of the PRC).

Laws on combating money laundering. The internal instructions of the Government and the CPC; and the legislation in the field of combating money laundering, impose the duty to fight this phenomenon on financial institutions.

The PRC Law "On Combating Money Laundering" (hereinafter referred to as "AML") and the Criminal Code of the PRC constitute the main legislative basis for the prevention of such crime, its investigation and punishment.

Articles 191 and 312 of the Criminal Code of the PRC on laundering of monetary funds, recognize such actions as punishable acts. Article 191 criminalizes the concealment of proceeds from such crimes as illicit drug trafficking, organized crime, terrorist crime, smuggling, corruption, bribery and financial fraud. Such criminal actions include, among other things, providing access to bank accounts; facilitating the conversion of illicit proceeds into cash, financial instruments and negotiable securities; assisting in the transfer of proceeds through a bank transfer or otherwise; assisting in the transfer of funds abroad.

Article 312 deals with the proceeds of "all crimes". In the interpretation of the SPC on a number of issues related to the specific application of legislation in the course of lawsuits on money laundering and other criminal cases, the application of relevant provisions of the Criminal Code of the PRC is explained.

Mutual recognition of the act as a criminal offense is a requirement in case foreign citizens commit major offenses abroad, but this is not required for Chinese citizens.

China does not criminalize the laundering of its own funds as a separate part of the crime. However, acts of money laundering will be taken into account during the trial of the underlying offense.

The main executors of the LCAML law are China`s financial institutions, which must fulfill certain relevant duties (including customer identification, verification, transaction monitoring, reporting on suspicious transactions, record keeping and internal management of the LCAML control systems). In accordance with the Administrative Measures for Reporting on Large and Suspicious Transactions of Financial Institutions Adopted by the PBOC, which came into force on July 1, 2017, such responsibilities for combating money laundering may be imposed on non-financial institutions that participate in particular financial activities of the PBOC.

Prevention. Effective control program (compliance). An effective compliance program includes a strict anti-bribery policy and comprehensive internal control measures that reflect a clear position on corruption defined by the board and senior management; and helps the early detection of corruption risks. Such program covers the company's procedures for gifts, entertainment, hospitality, as well as relations with agents and business partners, which must ensure compliance with the anti-corruption requirements.

Compliance function (employees of compliance-control units) and auditors periodically check corporate practices regarding corruption risks and supervise the implementation of the anti-corruption program which is crucial for early detection and prevention of corruption manifestations in the company. Confidential reporting channels, such as the hotline, through which employees can safely report problems, have also proven to be effective in identifying these risks. Informing about corruption should not be accompanied by persecution — this, as well as the encouragement of compliance with company policies and legislation, should be known on all levels of the organization. The compliance program should be updated periodically to stay up to date with changes in laws and regulations on combatting bribery in China.

An internal investigation is a quick and adequate response to allegations of corruption.

Corporations should be prepared to conduct internal investigations of allegations of corruption, regardless of whether they were obtained as a result of compliance programs, law enforcement activities, the media or informers.

It is important to choose the right department in the organization to be responsible for carrying out the internal investigation. In some cases, an independent investigation may be required. Cases involving senior management or investigations requiring specialized skills should ideally be conducted by independent external consultants.

The unit conducting the investigation must be provided with the necessary resources. Any investigation in China should be conducted with respect to state secrets and the labor legislation.

Rehabilitation (sanitation) is a set of appropriate measures to minimize the consequences of corruption in the company, correcting its anti-corruption activities.

If an internal investigation confirms the fact of corruption, the company must take appropriate adequate corrective measures under the supervision of the board of directors.

The company must identify and address the gaps detected in corporate policies and compliance programs. Furthermore, it is recommended to evaluate whether the identified problems affect internal control over financial reporting, and if so, take appropriate corrective measures.

It is also important to consider whether the identified problems of misconduct within the company should be disclosed to public authorities, with respect to the company's obligations to disclose information in accordance with Chinese and (or) foreign law.

The fight against corruption is becoming increasingly global. As shown above, China is actively fighting corruption, which extends not only to Chinese citizens and companies, but to foreign companies and individuals.

With appropriate training and sufficient resources, companies can effectively avoid risks. Companies operating in China should have adequate preventive measures, well-functioning internal investigation procedures, recovery measures to mitigate any financial and reputational risks. However, these measures will prove useless, if steps are not taken to eliminate the risks faced by employees as a result of the fight against corruption in China and violations of the foreign anti-corruption legislation.

An analysis of the anti-corruption legislation of the PRC made it possible to propose the following measures to improve it:

– ensuring that legal entities are brought to justice for their participation in corruption crimes;

– taking into account the degree of cooperation with law enforcement agencies and personal reasons for the commission of a crime when appointing a less severe punishment to guilty persons who give confessions;

– the extension of the protection provided for in Art. 62 CCP of the PRC over witnesses, experts and victims related to corruption cases.

Chapter 3
Bodies in the area of combating corruption in China

There are numerous law enforcement agencies in China, and they are increasingly focusing on countering corruption. The law enforcement activities reflect the goals of the Chinese government in the fight against corruption on all levels of government, including the private sector.

The Chinese leadership attaches increasing importance to the fight against corruption after the XVIII Congress of the Communist Party of China, held in November 2012. The highest level of commitment of the Chinese authorities to combating corruption has led to an increase in the number of successfully prosecuted corruption cases in recent years [63].

In our opinion, the main bodies that carry out anti-corruption measures in the PRC include discipline inspection commissions in the structure of the CPC, judicial and prosecutorial bodies, law enforcement agencies, and the National Bureau for the Prevention of Corruption, created in 2007

1. *Commissions for the discipline inspection of the CPC on all levels*, formed in accordance with the party's statute. The head body is the Central Commission for Discipline Inspection of the CPC, and corresponding commissions have been set up at various party levels. The composition of commissions is formed on an elective basis among the deputies of the corresponding level. The main task of such commissions is to control the members of the CPC. Such commissions check compliance with the requirements of the party's statute and other party documents, and assist party committees in strengthening the fight against corruption. In everyday practice,

the commissions carry out educational activities to increase the sense of justice among party members, monitor the performance of head party members, investigate cases of discipline violations by party members, and consider complaints against members of the party of the designated level. Such mechanism to a certain extent can be related to the efforts of the commissions to meet the requirements for the official conduct of public servants of state bodies and the resolution of conflicts of interests in Russia created under Art. 19 of the Federal Law of July 27, 2004, No. 79-FZ "On the Civil Service of the Russian Federation".

2. *The bodies of the People's Court and the People's Procuratorate*, which implement judicial power and prosecutor's supervision. According to Art. 123 of the Constitution of the PRC, the People's Courts of the PRC are the basis of state judicial bodies. The legal status of the judicial bodies is established in six articles of the Constitution and the Laws of the PRC "On the Organization of People's Courts" of 1973 (with amendments to 1983 and 2006) and "On the Judges" of 1995 (amended 2001). The bodies of the people's court, within their jurisdiction, render judicial decisions on various criminal cases, including cases related to corruption, bribes and other misdemeanors.

Article 129 of the Constitution of the PRC determines that the supervision over the legality in the PRC is entrusted to the organs of the People's Procuratorate. According to the Constitution and the provisions of the laws of the PRC "On the organization of prosecutor's offices at various levels" in 1979 (with changes in 1983 and 1986) and "On the Prosecutors" in 1995 (since 2001), the People's Procurator's Office is responsible for investigating criminal cases, conduct investigations on corruption-related cases, bribes and other misconduct committed by civil servants. Also, prosecutors' offices conduct activities to prevent official crimes and, on behalf of the state, support the prosecution in court.

For example, in 2014, prosecutors' offices across the country conducted investigations into 41,487 cases involving various crimes related to the duties of public officials and affecting 55,111 people;

courts of all instances heard and completed 31,000 cases of embezzlement and corruption involving 44,000 people, including a number of notorious cases involving high-level officials. As part of the effort to eradicate corruption in the government, 537 ministerial decisions were cancelled or their execution was delegated to a lower level.

3. *The bodies of government control* which perform supervisory functions shall verify the activities of state administrative bodies and their employees, as well as other employees appointed by state administrative bodies, state organizations that implement laws and regulations, and their employees, organizations that have been given the power to carry out public activities by state administrative institutions, and their employees — for compliance with law implementation, honesty and efficiency (Article 2 of the PRC Law "On Administrative Control" of 1997). In Russia, such bodies include the Ministry of Control and its administration in the field.

4. *Control and audit bodies.* These are the structures created on the basis of the Constitution of China, carrying out financial audits and control of various departments of the State Council and local people's governments of all levels, state financial bodies and state enterprises and institutions. Such bodies in the PRC include the Ministry of Finance, the State Audit Office and their regional divisions. If we compare them to state bodies in Russia, it can be seen that similar functions are grated to the Ministry of Finance of the Russian Federation, the Accounts Chamber of the Russian Federation and others.

5. *The National Bureau for the Prevention of Corruption*, established in 2007 by the Chinese government as a special body to coordinate and conduct the necessary measures to counter corruption and promote international cooperation in this field. As the first head of this bureau, Ma Wen, noted, one of the main tasks of this organization is the "... implementation of the UN Convention on Combating Corruption ... building up international exchange and cooperation in this area." [64] The main functions of the bureau are organization and coordination of activities to prevent corrup-

tion, general planning, development of tactics for corruption prevention, prevention of corruption in enterprises, non-production units, public organizations, intermediary structures and other social organizations, international cooperation and technical support in the field of preventing corruption. In Russia, there is no specialized body, but there is a number of empowered agencies, for example, the Federal Financial Monitoring Service of the Russian Federation and the Presidential Anti-Corruption Directorate.

6. *The bodies for ensuring public order and security* that operate within their authority to carry out work to counter corruption and build an incorrupt government apparatus, based on laws. The functions of these anti-corruption bodies are different, they perform independent tasks according to their authority, while at the same time closely interacting with each other. Such bodies include the Ministry of Public Security, the Ministry of State Security, etc. In Russia, such functions are assigned to the Federal Security Service of the Russian Federation, the Ministry of Internal Affairs of Russia, the Investigative Committee of Russia, and others.

Certain functions to counter corruption are assigned to the SAIC and its units at a local level.

In the field of investigation and combating money laundering and the financing of terrorism, bodies such as:

– PBC (The People's Bank of China);
– CBRC (China Banking Regulatory Commission);
– CSRC (China Securities Regulatory Commission);
– CIRC (China Insurance Regulatory Commission).

The bodies of the People's Procuratorate, the judiciary body, the supervisory bureau and the SAIC are state bodies, while discipline inspection commissions are a subdivision of the CPC's disciplinary body. Any of these bodies may initiate an investigation if it receives information about a violation of China's anti-corruption legislation within its jurisdiction. It is not rare for several institutions to be involved in this process. These law enforcement agencies have broad powers to conduct investigations, but in different fields.

Only the prosecutor's office has the right to supervise. If investigations conducted by overseen bureaus or public security bodies give sufficient ground to bring charges, the materials are forwarded to the prosecutor's office.

Regional People's Procuratorates are responsible for investigating cases of embezzlement of state property and bribe receipt by civil servants and "public functionaries".

The bodies of the People's Procuratorate and Public Security have the authority to:

– interrogate suspects;

– interview witnesses;

– search individuals, property and places of residence of criminal offense suspects and any individuals, possibly concealing the offender;

– inspect property, buildings and premises, people and corpses, on cases of embezzlement and bribery;

– demand and seize material and documentary evidence;

– appoint experts to inspect securities;

– seize necessary accounting documents for embezzlement and bribery cases;

– take all reasonable steps to repatriate the suspect, in case the suspect left the country, and demand assistance from international organizations if necessary;

– demand the return of stolen money or goods.

In accordance with the Criminal Procedure Act, detained individuals have certain rights, such as the right to notify family members and the right to legal assistance.

The length of detention from the moment of official arrest, as a rule, is two months, but the period may be extended depending on the circumstances of the case. After the period of detention expires, the arrested individual can be placed under house arrest or released from custody on bail.

Article 134 of the Chinese CCP allows investigators of public security organs and People's Procuratorate to conduct a broad search and collect evidence relevant to criminal offenses.

In accordance with Art. 139 of China`s CCP and procedural rules that are applicable to investigators of public security organs and the People`s Procuratorate, these persons are authorized to seal or seize any property and documents found during the investigation that can be used as proof of guilt / innocence of suspects, or help investigate the circumstances of the crime.

According to Art. 142 of China`s CCP (and notes to this article from the legislative committee), public security investigators and People's Procuratorate during the investigation are authorized to obtain access to information about deposits, money transfers, bonds and shares of the suspect as well as other property that could be obtained as a result of , bribery or other corruption offenses; that could be used to commit a crime; or otherwise related to an investigation or a suspect. The Prosecutor's Office and the Public Security Bureau also have access to information transmitted through technical communication channels and conduct covert surveillance.

Public security bodies have the general authority over criminal investigation and the investigation of economic crimes (such as criminal offenses, bribery in the private sector and bribery of foreign officials) using investigative units established under the PSB.

Public security investigators and the People's Procuratorate are required to maintain the confidentiality of the following information:

– the identity of the person who filed an application for an offense;

– the identity of all suspects;

– the identity of all witnesses;

– any state secrets, commercial secrets and inviolability of personal life.

Moreover, investigators are not allowed to disclose any details of the investigation to witnesses during the interrogation. A suspect who has been released on bail or who has received permission to live under supervision has no right to disclose any details of the investigation. This obligation to preserve the confidentiality of information does not apply to witnesses (except for state secrets).

When disclosing confidential information about the investigation, a person may violate Art. 50 of the Law of the PRC of August 28, 2005 "On punishments for violations of public order". This article provides punishment for those who interfere with the state body`s execution of duties (including various investigative bodies). If a legal entity has violated Art. 50, its representative will bear personal responsibility.

The suspect is required to honestly answer all questions of the investigator which are related to the investigation. The suspect has the right to refuse to answer any questions that are irrelevant. The suspect has the right to seek the assistance of a lawyer, but only after the first interrogation. The lawyer cannot be present during the interrogation.

In cases involving state secrets, the activities of an attorney can be limited in the course of an investigation.

Meetings of the lawyer and the suspect, occurring in prison, may not be private and can be controlled if it is perceived to be necessary by relevant authorities.

The Party Disciplinary Commission and the monitoring bureau can interrogate suspects / witnesses during the investigation; provide information; seize relevant documents, property and illegal income; access information and "freeze" the suspect's accounts.

The SAIC investigates potential violations related to commercial bribery and sanctions that are applied to business operators but are not considered a criminal offense. This enables it to convey investigations and request for necessary information. It is common for the employees of this department to seize evidence that may be relevant to the investigation without any warning (field visits). Supervisory bureaus and the Discipline Inspection Commission, which oversee civil servants and members of the CPC, investigate allegations of bribery of state personnel / members of the CPC before the cases (if Criminal Code violations are found) are sent to the SPP for further investigation and trial.

The financial and insurance sectors in China are serviced by the Banking Regulatory Commission, the Securities Regulatory Commission of China, the Insurance Regulatory Commission of China and the People's Bank of China.

The People's Bank of China has been empowered by the State Council to control and manage the campaign against the issue of money laundering by financial institutions.

CBRC, CIRC and CSRC also perform supervisory and administrative functions in their areas (banking, security and insurance). If a crime is detected, its files are transferred to public security organs for investigation.

Discipline inspection committees can detain members of the CPC who are suspected of committing any criminal offense, including corruption or bribery.

The CDDI is responsible for overseeing the preservation of discipline in the CPC. The MSS supervises administrative institutions.

In 1993, the CCDI and MSS were combined to carry out complex disciplinary inspections and exercise control over the government. CCDI / MSS can conduct internal investigations and apply disciplinary / administrative measures. If evidence of a criminal offence is found, the cases are referred to judicial authorities. The CCDI / MSS also coordinate internal anti-corruption efforts undertaken by various government and law enforcement agencies.

In China, necessary professional training is provided regularly in order to increase the potential of law enforcement officers to investigate and prosecute corruption offenses.

According to Art. 108 of the CCP of China, any organization or individual is required to report the facts on a committed crime or suspicions of its possible commission to law enforcement agencies. According to Art. 20 AUCL financial institutions are required to report suspicious transactions. The provisions of the SPP concerning reports of crimes provide for the possibility of a monetary incentive for informing citizens.

The authorities of the SPP and public security bodies have hot lines and websites for citizens to report suspicious criminal activities. CCDI / MSS also have online platforms and hotlines for reporting such facts.

The changes in these systems of double investigation are probably due to the creation of a new State Control Commission (国家监察 委员会) in January 2017 aimed to deepen the cooperation on corruption between disciplinary bodies that are headed by parties and state prosecutors. The new supervising authority should consolidate and institutionalize anti-corruption efforts under the leadership of the CPC [65].

The effectiveness of China's anti-corruption agencies (ACA) is widely discussed in literature. For example, Quah [66] came to the conclusion that such agencies in Taiwan and Singapore are more successful at containing corruption than in China, Japan and the Philippines, mainly due to the political support of the government towards unbiased independent agencies. However, the motives for such coercion may not always be due solely to the desire to fight corruption. They can also be combined with other goals, such as political cleansing or internal solidarity [67].

During their study of the ACA of China, researchers found that investigation of crimes by allegedly corrupt officials is largely determined by the Central Commission for Discipline Inspection and its local branches — party bodies responsible for the ethics of party members [68]. Most of the investigations are first inspected by local party leaders, which then decide whether to transfer the cases of corrupt officials to the SPP or the local court for further investigation [69]. However, due to budget constraints and legal loopholes, prosecution is selective and not controlled.

Thus, the peculiarity of the fight against corruption in China is that it is headed by the party body — the CPC's Commission for Discipline Inspection. The algorithm for exposing officials is as follows: as a result of an investigation, the leader is accused of embezzlement, immoral behavior and violation of party discipline. It may result in a reprimand, demotion or expulsion from the party and removal from the office. After that, the corrupt official is transferred to the People's or military prosecution: they are then charged, arrested, and the investigation begins. It can last for quite a long time (for example, Bo Silay was removed from all posts in March 2012, and was convicted only in September 2013).

As for the effectiveness of departments that verify party discipline, which operate at different levels within the government, in 2015 they investigated over 330,000 cases of alleged corruption. In 317,000 cases, the charges were confirmed by convincing evidence. Party punishments for corruption activity were enforced on more than 336,000 officials, and cases of 14,000 corrupt officials were transferred to court. Since 2012, corruption cases have been examined in a total of 31 administrative institutions of the PRC (provinces, autonomous regions, municipality). The growth in the number of corruption cases was noted in such economic sectors as the entertainment industry, sports, state enterprises, financial and commercial organizations.

In January 2017, the research center of the Chinese Academy of Social Sciences published a report on "Fighting corruption and building an honest and incorruptible government", which states that in 2016 the CPC Central Committee tightened its anti-corruption measures by adopting stricter moral and ethical rules for party members; demanding to limit administrative powers and strengthen the fight against the "four evil mores" — bureaucracy, formalism, the desire for luxury and hedonism. This was done to ensure the introduction of a system in which personnel employees and members of the party "would not dare, weren`t able to and would not want to engage in corruption." [70]

Chapter 4
China`s law enforcement practice in the field of combating corruption

According to the results of the 2015 analysis of China`s law enforcement practice in the area of countering corruption, the total number of identified corrupt officials was 33,966. Out of which 8,200 were found guilty of using their official position for personal purposes; 5,400 — of receiving valuable gifts, including large sums of money; 5,400 — of the use of official transport for personal needs; and 4,600 were accused of paying for banquets with the state budget. More than 4,400 officials were punished for organizing lush family events, including weddings and funerals; and 2,600 — for paying for personal trips around the country from the state budget. However, only 235 officials were punished for the same violation regarding personal trips abroad. In addition, 531 officials were disciplined for organizing outings to entertainment facilities and clubs, and 2.300 for other crimes. A criminal investigation was launched against more than 30 officials of the ministerial level, and 40 high-ranking party leaders were forced to resign [71]. As a result of cooperation with law enforcement agencies of several countries, 738 people were extradited to China, 96 of which were suspected of corrupt activities. The total amount of funds confiscated from corrupt officials added up to 1.2 billion yuan, which corresponds to about 180 million USA dollars.

China has been conducting an unprecedented anti-corruption campaign since the end of 2012 at all government levels. As stated at the XIX Congress of the CPC in October 2017, over the past five years, more than 1.5 million Chinese civil servants and party members suffered disciplinary and administrative penalties for violating party discipline. About 58 thousand officials appeared before the court with charges of corruption. The majority of persecuted officials were the so-called "flies" — corrupt functionaries from administrations and party organizations of county or lower (rural) level. "Tigers" (大 老虎) — corrupt officials from upper echelons of power were in the minority. In particular, 43 members and a candidate member of the CPC Central Committee and 9 members of the Commission for Discipline inspection were sentenced for corruption. For example, Zhou Yongkang, Standing member of the CPC Central Political Committee, Bo Xilai, Guo Bosyong, Xu Caihou, Sun Zhengcai — members of the CPC Central Political Committee. It was noted that the latter was expected to become a Standing member of the CPC Central Political Committee. In total, 440 provincial executives, more than 8,900 officials from the management level of the administration and 63,000 executive officers of the county level, were prosecuted, including criminal prosecution [72].

According to the CPC's Commission for Discipline inspection, in 2014–2016, China has recovered 2,566 fugitive economic criminals from more than 70 countries, and seized 7.6 billion yuan or 1.14 billion USA dollars. Out of all the fugitive criminals, 1238 returned to China voluntarily, after issuing a confession; 410 had previously been members of the CPC, and held various posts in the state apparatus. In addition, the Chinese authorities managed to extradite 39 out of 100 "most wanted" corrupt officials. The anti-corruption campaign has noticeably reduced the number of officials who are trying to escape abroad with their capital. In 2014, 101 such cases were noted, while in 2016 — only 19 [73].

As of March 31, 2017, a total of 946 high level civil servants who are suspected of corruption, abuse of power, bribery and other crimes related to their positions, haven`t been arrested or subjected to justice. Out of which, 365 are hiding abroad and their whereabouts are determined. The locations of the remaining 581 officials are unknown. In April 2015, the National Central Bureau of the Interpol in the PRC distributed the "Red Circular" — the 100 most wanted individuals, suspected of corruption. At the end of 2017, 49 people out of the "red hundred" have not appealed being present on the wanted list and did not reveal themselves [74].

As mentioned by the Chairman of the SPC of the PRC, Zhou Qiang, in 2016, courts of various levels reviewed 45,000 corruption cases with 63,000 figurants. This number has increased by one third [75] compared to 2015. Law enforcement agencies were able to return from abroad 44 officials who are suspected of committing various economic crimes. Along with them, assets amounting to 550 million yuan (about $79 million) were found and returned from 19 countries. Out of the 44 runaway corrupt officials that were returned to the country, 15 were from the "Red Circular" [76].

Despite the fact that a broad anti-corruption campaign (AUCL 1993, as well as laws against money laundering, active and passive bribery) [77] made corruption more risky than ever before, local and party officials of China still practice the so-called "payments for simplification of formalities" against foreign companies that seek to easily overcome bureaucratic barriers. The situation becomes more complicated when it comes to foreign competitors of Chinese companies in local politics. Even mandatory provisions on investment protection in bilateral investment agreements in many cases do little to help foreign companies. The lack of a transparent and reliable judicial system, which foreign companies can apply in case of unfair competition, determines the survival of only those foreign companies that accept bribery on the market [78]. A number of high-level cases reviewed by the US Securities and Stock Exchange Commission in recent years, including the charges of Glaxo Smith Kline, JP Morgan and Goldan Sachs, showed how common bribery and nepotism [79] are in China despite the large-scale anti-corruption campaign.

In the period of 2013–2015, bodies of the SPP conducted investigations on more than 160,000 officials regarding their official crimes. Compared to 2012, when the anti-corruption campaign had begun, in 2013, the number of inspected officials increased by 8.4% — this is the highest rate in the last five years. Some party leaders, in particular, Bo Xilai and Zhou Yongkang, who held high government positions for a significant time, were prosecuted for corruption offenses. Not so long ago, such high-profile legal proceedings were virtually impossible.

In the past, high-profile corruption cases were transmitted to the provincial prosecutor's office only after they were reviewed and approved by local party leaders. At the moment, information on the majority of corruption cases is public.

At the end of 2012, the Chinese government launched an unprecedented campaign to fight corruption in the country, led by President Xi Jinping and the so-called party "whip" — Wang Qishan [80]. Officials of all levels of the state system were under their inspection, including some high-ranking officials, the so-called "tigers" (Bo Xilai, Ling Zhihua, Zhou Yongkang and Bai Enpei, etc.). What was the reason for the sudden wave of corruption scandals? One of the theories is, that the provinces, where the persecuted "tigers" once were in charge of local authorities, were subjected to a more serious inspection than the other provinces [81]. In the period from 2010 to 2016, in such provinces (Shanxi, Sichuan, Chongqing, Liaoning and Yunnan, etc.), much more corruption incidents were investigated against local officials than in the rest.

The effectiveness of the anti-corruption campaign depends on the political influence of higher officials — the "tigers". In particular, an anti-corruption campaign was carried out in cases where these "tigers" worked and created extensive local networks of corruption. The provinces of the "tigers" are truly facing "destructive corruption" (this term was used by the Chinese media in describing the effectiveness of local corruption investigations after the fall of the "tigers").

Researchers pay extra attention to the fundamental logic of the anti-corruption campaign of President Xi Jinping. Some believe that this campaign is nothing more than a political purge of his rivals within the party, who oppose his reform plans. This point of view is popular with the Western media and Chinese dissidents abroad. For example, the liberal Chinese writer Murong Xuekun argues in a New York Times publication, that in the period up to 2015, several corrupt "tigers" were identified in the provinces of Fujian and Zhejiang, where Xi Jinping was once the governor and party secretary. Meanwhile, many more "tigers" were persecuted in the provinces of Sichuan, Jiangxi and Shanxi; and these provinces were considered controlled by "tigers" who opposed Xi Jinping [82].

However, other scientists reject the theory of political cleansing. For example, Cheng Li argues that although Xi Jinping`s campaign against corruption helped him consolidate his power by "cleaning" high-ranked officials, the idea that the campaign is mainly determined by factional politics is "inaccurate and misleading" [83], since some accused officials belonged to the same political faction as Xi Jinping. Lou and Lorenzen conclude that repression is "primarily dominated by the efforts to reduce widespread corruption" [84] in order to help the government build a meritocratic system. These authors do not agree that Xi and his team is just getting rid of his opponents and protecting his allies.

The relationship between local corruption and promotion within the Chinese bureaucratic system has been studied before. It was thought, that in order to get the promotion, a close personal relationship with the bribe-taking officials was necessary. Moreover, if high ranked officials, in charge of local authorities, accepted bribes, lower-ranking officials were usually "forced to follow their example," [85] otherwise they could not get a promotion themselves.

For example, Ma and Tan, came to the conclusion that selection mechanisms based on merit and guanxi-orientation (personal relationships) [86] are interrelated and affect the choice of candidates for promotion. Establishing personal relationships with the most influential politicians is still a step towards promotion. Therefore, the "tigers" created large corrupt political networks at different levels of local government.

It is believed that Chinese efforts to combat corruption are linked to local economic indicators and foreign direct investment (hereinafter — FDI). Dong and Torgler show the relationship between local income and the number of corruption cases investigated [87]. For example, Cole and Elliott, concluded that the provinces, where the greatest number of corruption cases is identified, have the highest inflow of FDI. These researchers argue that corrupt local officials often receive bribes paid by foreign investors, seeking to overcome official paperwork that limits their business. Thus, in provinces with a higher inflow of FDI, corruption cases should be investigated more thoroughly [88].

Jinhui Gao believes that the effectiveness of the anti-corruption campaign in each province depends on the political factor — the "tigers", who occupy positions in the Standing Political Committee of the CPC [89]. Thus, Bo Xilai, Zhou Yongkang and Ling Zhihua were the most influential figures during Xi's anti-corruption campaign so their personal corruption network (塌 方式 腐败) was investigated. For example, the exposure of Ling Zhihua, who worked in the Shanxi Province, led to a wave of corruption cases against local officials at various levels [90]. The same occurred in the cases of Bo Xilai in the Liaoning Province [91] and Zhou Yongkang in the Sichuan Province [92].

It is noted that political circles are associated with corruption, especially with bribery in order to obtain government positions. Out of the 2,800 corruption cases investigated in 2012, more than 10% of corrupt officials were engaged in the "sale" of government positions. Many "tigers" participated in such deals to promote their people.

At the same time, Xi Jinping's policy also affected the higher echelons of power. According to statistics, provided in the report of the General Attorney of the SPP, Cao Jianming, in the NPC of March 2016 [93], 40,834 cases were registered and involved 54,249 people, accused of corruption or violation of official duty. The seriousness of the anti-corruption campaign is indicated by the criminal investigation of 4,568 state district officials, including 769 officials at the bureau level and 41 state officials at the provincial / ministerial level. A total of 13,210 officials were punished for bribery, and 8,217 people for bribing civil servants.

For anti-corruption purposes, banquets for representatives of the NPC were replaced by a "buffet". In this regard, Administrative measures at conferences of central and state departments ("Measures") and Regulations on the administration of internal official reception by party and government bodies ("Regulations") were published in September and December 2013, respectively. The requirements and standards established by these documents are aimed at reducing costs for official meetings of central government bodies (where business lunches can be held, and should be in the "anti-corruption menu"). This is only one of the results of the anti-corruption strategy of President Xi Jinping.

Chapter 5
International cooperation of the People's Republic of China in the field of countering corruption

In Western industrialized countries, the growing awareness of the detrimental effects of transnational bribery (not only for developing countries but also for Western companies through unfair competition in third country markets) has led to the adoption of international anti-corruption standards. Thus, according to the FCPA of 1977, the provisions on the criminalization of bribery of foreign officials are successfully applied in accordance with the 1997 OECD Convention on combating bribery of foreign officials in international business transactions and the 2003 UNCAC.

The FCPA prohibits bribery of "foreign officials". The extraterritoriality of this law extends to individuals in all US companies, foreign companies and individuals issuing securities on the American Stock Exchange, or otherwise participating in activities promoting bribery in the United States. It is important to note that, in accordance with the FCPA, the US Department of Justice has adopted the definition of "committing bribery" in the US, which allows for tracking the transfer of money through US bank accounts.

The provisions of the FCPA also state that the issuers should maintain detailed records and reflect all transactions with the issuer's assets in financial documentation. In addition, the internal control provision in the FCPA requires issuers to develop and maintain internal accounting, aimed at preventing and timely detecting FCPA`s violations. Such provisions apply to all companies — both American and non-American, which have their securities issued on the US stock exchange; and are used in the prosecution of companies in cases where bribes were received by individuals.

The UK bribery act of 2010 (hereinafter — UKBA) also has an extraterritorial nature. For example, it is prohibited to give or receive bribes outside the UK if the offender has close ties with Great Britain; or for individuals who are related to the UK (citizens of the country and employees of organizations, operating in any part of it). Similarly, the responsibility for corporate crimes in the UKBA, in cases where the organization is not able to prevent bribery, is borne not only by organizations registered under UK law, but also by any other companies or their affiliates doing business in the UK, regardless of where the act of bribery occurs.

The fact that certain corruptive behavior may not be recognized as an offense under the local laws of the PRC does not mean that it is allowed under the FCPA or UKBA law. Companies doing business in China are recommended not only to comply with national legislation, but also with the FCPA and UKBA which have an extraterritorial effect.

Since the beginning of the XXI century, western countries, including the OECD member states, can not independently determine the rules and standards of a transnational business policy. Given the orientation of China's economic and diplomatic policy toward the BRICS countries, international institutions controlled by the West must adapt and become more integrative [94]. Thus, on the one hand, the Chinese leadership strengthens the international fight against corruption — Beijing actively promotes its own agreements and priorities in this area and thus significantly influences the changing of existing international anti-corruption norms and standards. On the other hand, China's need for closer cooperation also provides new opportunities for other states to engage in dialogue.

The OECD`s standards for combating transnational bribery have received international recognition, but law enforcement practice cannot yet be considered successful.

Transnational bribery, which is usually defined as bribery by an individual or a legal entity from one country of a public official of another country, has been ignored in international trade and investment relations for decades; in recent years it has been the focus of attention of both international institutions and scientists around the world [95]. The reason for this is probably not the spread of corruption manifestations, but the successful development of the agenda: by international and non-governmental organizations. New corruption indexes, such as the Transparency International's Bribe Payers Index (BPI) of 1999, have helped direct attention to the export of transnational corruption by revealing the extent to which transnational companies from the world's largest exporting countries are involved in transnational bribery [96].

The OECD Convention on Combating Bribery and the procedure for its implementation of 1999 reflect the need for technical changes in the national criminal law of the signatory states [97]. However, the implementation of international "good practices" into the national legislation did not, in many cases, achieve the desired results or a significant identification and reduction of transnational bribery [98]. Despite the expert review mechanism, which made the OECD Convention effective in terms of establishing international norms [99], judicial cooperation is still insufficient even among the signatory states, not to mention other countries [100]. Law enforcement data, published in November 2016 show that in the 41 countries that signed the Convention, less than 400 people were punished for foreign bribes, an average of 0.6 cases of transnational corruption were identified per country per year. In 24 out of the 41 states, no individual or legal entity was punished [101]. This suggests that the formal use of anti-bribery provisions only within the framework of national criminal law is not sufficient due to the lack of effective judicial cooperation in most cases, and the fact that many governments are not active in introducing foreign anti-crisis and anti-corruption measures regarding "their own" companies [102].

Chinese companies are strengthening "corrupt competition" in the markets of third countries. The spread of corruption cases associated with the foreign actions of Chinese (often state-owned) companies has become an international problem [103]. According to the BPI (2017), China ranks 27th among the 28 largest economies in the world. While China's total of outgoing investments remains low compared to many OECD countries, in recent years there has been a significant increase in its share, along with geographical and sectoral diversification [104]. Moreover, in the developing countries of Southeast Asia and Africa, Chinese companies have become tough competitors for European or American transnational corporations. While the development institutions (good governance standards) of Western countries are becoming increasingly difficult to implement (including preventive measures against corruption and bribery), the Chinese alternatives on the market are usually "not tied to anything." [105]

The overall effect of the growth of Chinese investments in developing countries is controversial [106], bribery is most common precisely in the form of large-scale infrastructure transactions, which are characteristic of China's development strategy both domestically and abroad [107]. Moreover, not even small legal sanctions are enforced on Chinese companies for international bribes within the country. Political support for large-scale transactions in order to provide Chinese companies access to resources or arable land in Africa or Central Asia further exacerbates the problem of political "kickbacks" from corrupt local elites [108]. From the perspective of the OECD countries, the growing Chinese competition in these areas reduces incentives for maintaining anti-bribery standards, as this harms the competitiveness of their own companies. Multinational companies from OECD countries find new justifications for continuing foreign bribery, despite the fact that it was clearly condemned by international conventions and codes of conduct for transnational enterprises (for example, the Code of Conduct for Fighting Corruption for Business in the APEC). Governments of the OECD countries [109] consider competition with Chinese companies one of the main obstacles to the effective implementation of anti-corruption policies.

Although China's contribution to the international efforts of terminating transnational bribery is necessary, the PRC's commitment to this task to this day is limited only by the formal incorporation of certain international norms without their explicit application in the field. However, the far-reaching campaign against corruption, which has been led at the highest level since 2012, inspires hope for an increase in China's role regarding this area.

China's efforts to combat corruption and Beijing's willingness to comply with international standards regarding some issues need to be linked to the internal context. This means defining both structurally different manifestations of corruption in China, and, consequently, various "recipes" for combating them. We shall review a variety of management structures and the interests of the CPC`s leadership, in order to explain why the Chinese concepts on fighting corruption significantly differ from anti-corruption norms and principles of the OECD.

In our opinion, China's domestic anti-corruption policy still contradicts the OECD standards.

Similar to the anti-corruption norms supported by other international institutions, controlled by the West [110], the OECD standards are based on the fact that transnational bribery, like other forms of corruption, "undermines good governance and economic development; and distorts the international competition" (preamble of the 1997 OECD Convention).

At the international level, China promotes punitive measures and intergovernmental cooperation in the field of combating corruption. During the first decade of the XXI century, China's participation in the international fight against corruption mainly consisted in showing interest in this area, including compliance with international norms, like the UNCAC or the 1997 OECD Convention

The international index of perception of corruption in the PRC, has not significantly improved. In 2015, the country was ranked 83rd out of 168 countries, evaluated on the index of corruption perceptions by an international organisation — Transparency International (CPI). The indicator remained practically unchanged [111], compared to 2013.

The Chinese government sharply criticized the objectivity and usefulness of these indices, arguing that the government's efforts to combat corruption were not taken into account [112].

According to the CPI, out of 176 countries in 2016, China was on the 79th place, receiving 40 points [113].

China signed the UN Convention against Corruption (hereinafter referred to as the Convention) on December 10, 2003, but ratified it only on January 13, 2006. The Convention entered into force on February 12, 2006 in accordance with Art. 68 (2).

The Convention requires signatories to promote the fight against corruption, including extradition, law enforcement and transport of accused criminals. China recognizes the UN Convention against Corruption [114] as the legal basis for international cooperation.

In order to promote the full implementation of the Convention, China amended the Criminal Code of the PRC and China`s CCP and issued a number of documents on their judicial interpretation. All the basic requirements established in Ch. III and IV of the Convention, are embodied in the legal and judicial practice of China [115].

Until 2014, China participated in several international institutions. From the OECD's point of view, cooperation with the state and judicial authorities of China will help China adapt its legislation to international standards to counteract transnational bribery. Beijing ratified the UNCAC in 2006 and in 2007 became a special observer of the OECD Working Group on Bribery in International Business Transactions [116]. In 2011, China, in accordance with international standards defined by the UNCAC and the OECD Convention, amended the Criminal Code of China by criminalizing bribes to foreign individuals. However, this provision was criticized [117] because there were no significant sanctions against Chinese companies for crimes abroad. In general, China is cautious about adopting transnational standards of combating bribery to its legislation.

However, since many illegally wealthy officials fled China in search of a safe residence abroad, it is necessary to intensify international cooperation in this area in order to prevent the weakening of the anti-corruption struggle inside the country. Thus, international efforts to combat corruption in China are an extension of domestic campaigns to enforce laws, aimed at the repatriation of "corrupt fugitives". A key date in this respect is July 2014, when the Ministry of Public Security of the PRC initiated a high-profile operation “Foxhunt” (猎 狐 行动) to track and repatriate such "fugitives" and their assets abroad. Operation Skynet (天网 行动) [118] was its extension. These events radically changed the attitude of the Chinese towards international cooperation in the fight against corruption.

Since the government of the PRC considers international cooperation in the fight against corruption a priority of its foreign policy, it is also interested in achieving its own goals — extradition of bribe takers and the return of stolen assets, now more firmly than ever. This is expressed in the new emphasis in Chinese diplomacy — the bilateral cooperation of law enforcement agencies of the PRC and the OECD countries, where the majority of "corrupt fugitives" are hiding from the Chinese justice. [119] These "safe havens" are the goal of operation Skynet, because, despite praising China's success in cooperation with the West, Western countries point out the need to respect human rights, thereby demonstrating "double standards".

Meanwhile, China began to influence global norms in relevant formats of multilateral cooperation, such as the United Nations, the G20, Interpol and others. Faced with the need for application of international legal mechanisms, Beijing is increasingly trying to dictate its own "rules of the game". The growing confidence in its own strengths is reflected in the concept of "Two Guides" (两个引导), first introduced by Xi Jinping in February 2017, which reflects China's leadership role in establishing a "new world order" and "international security". For example, China is expanding cooperation with Interpol by adding 500 notifications for the search of

Chinese corrupt officials to the "Red Circular" of the Interpol. The election of former Vice-Minister of Public Security Meng Hongwei as the first ever Chinese head of Interpol in November 2016 and the increase in Chinese staff at Interpol headquarters confirm the growing importance that Beijing attaches to international police cooperation, which could be related to the "Foxhunt" and "Skynet" operations.

Beijing's desire to use extradition as a tool of choice leads to closer attention towards punitive measures through preventive, institutional approaches to fighting corruption. Thus, the APEC Beijing Declaration on Combating Corruption of November 2014 is closely aligned with these priorities of China's domestic policy, as well as the G-20 High-Level Principles on Cooperation for Individuals Affected by Corruption and Return of Assets, which took place as a result of the Hangzhou Summit in September 2016. The return of stolen assets may be a potential issue of common interest to many OECD countries, however, Beijing is still focused on mutual legal assistance in some cases, rather than on the promotion of financial disclosure systems and capacity-building initiatives, which are necessary for achieving a more comprehensive solution to the problem [120]. Lastly, China's growing influence is reflected in the re-evaluation of intergovernmental cooperation for the implementation of multilateral conventions (UNCAC) and multilateral approaches that are reflected in the "OECD's integrative, targeted cooperation." [121]

Even if Beijing continues to focus exclusively on the extradition of criminals and the return of assets, increased judicial and police cooperation will help China fully integrate into the international fight against bribery, and thus increase the trust of the OECD countries towards China.

OECD countries have so far reacted to China's achievements in the sphere in question quite controversially, and although some EU member states, for example Germany, continue to reject extradition because of insufficient legal guarantees of China's national judicial system, Beijing has made significant progress in international cooperation on its top priority problems along with other European countries. Thus, China has signed new treaties on the extradition of persons suspected of corruption, with France and Italy in 2015, as well as with a number of other states (Spain, Greece, etc.).

China has adopted the Law on Extradition of Criminals (hereinafter — EL), but does not have a law on mutual legal assistance (hereinafter — MLA). The provisions of Ch. IV of the UN Convention against Corruption are considered as an existing multilateral treaty with other participating states on international cooperation in the absence of bilateral treaties. China has provided and will provide MLA based on the Convention. China uses this Convention as the legal basis for extradition, in relations with the participating states on reciprocal conditions.

Mutual recognition of the act as a criminal offense is a strict requirement under Art. 7 (2) of the EL with a minimum threshold of punishment of one year. However, art. 7 (2) permits for accessory extradition, the definition of which is given in Art. 44 (3) of the Convention. The compositions of crimes, presented in the Convention, are not considered political crimes. China may issue extradition on the basis of bilateral agreements or applying by the principle of reciprocity (Article 15 of the Law). Relations between China and foreign states regarding extradition are carried out through diplomatic channels by the Ministry of Foreign Affairs of China (Article 4 of the Law). Upon the receipt of a request for extradition from a requesting state, the Ministry of Foreign Affairs of the PRC examines whether the letter with the extradition request and the supporting documents/materials comply with the provisions of section 2 Ch. II of the said law and the provisions of international extradition treaties. The High People's Court, appointed by the Supreme People's Court, considers the extradition request submitted by the requesting state in terms of acceptability of the conditions for its gratification. The decision that`s rendered by the High People's Court shall be subject to review by the SPC of the PRC (Article 16 of the Law). Upon receipt of the decision, made by the SPC of the PRC, that this request meets the conditions for extradition, the Ministry of Foreign Affairs delegates this issue to the State Council for taking a decision on the implementation of extradition. If the Council of State doesn`t consider it appropriate to satisfy a request for extradition, the Ministry of Foreign Affairs shall promptly notify the requesting state, and the SPC of the PRC shall notify the public security authority of the need to stop the use of coercive measures against the requested person (Article 29 зВ).

China received and considered two extradition requests under the Convention. It must be noted, that China does not have an expedited extradition procedure, although in practice such requests under the Convention are given the highest priority.

China does not extradite its citizens (Article 8 (1) of the Law), instead presenting the case to its competent authorities with powers of criminal prosecution under Art. 44 (11) of the Convention. China cannot enforce foreign sentences from Art. 44 (13) of the Convention.

Fair treatment guarantees, established in Art. 23, 25 and 34 of this law, include the right to a lawyer and the right for an appeal.

China adheres to the practice of consulting with the requesting countries before extradition, although this issue is not regulated. At present day, China has signed bilateral extradition treaties with 41 countries, as well as agreements on the transfer of prisoners with 13 countries.

China is considering the transfer of criminal proceedings, if necessary, in accordance with Art. 47 of the Convention.

China grants MLA on the basis of international treaties or the principle of reciprocity (Article 17 of the Chinese CPC) and in accordance with the applicable provisions of the domestic law (the Criminal Code of the PRC, the Chinese CPC and the Criminal Procedure Code). China is developing a law on MLA in criminal cases. It will apply provisions 9-29 art. 46 of the Convention on MLA procedures with other states in the absence of bilateral MLA treaties.

China received four and sent three requests for MLA on the basis of the Convention. However, China notes difficulties in obtaining help, when MLA requests are submitted under the Convention.

China can provide all forms of legal assistance listed in Art. 46 (3) of the Convention. At present, China is unable to provide information to competent authorities of other participating States on its own initiative, as provided in Art. 46 (4) of the Convention, but this issue will be resolved in the MLA Criminal Law bill. China respects information confidentiality in accordance with its treaty obligations, as required by Art. 46 (5) of the Convention. The restriction of the use of information obtained through MLA is regulated by international treaties and is reflected in the MLA Criminal Law bill.

China generally adheres to the principle of mutual recognition of criminal offenses regarding requests for MLA, but this principle is applied flexibly and in practice, assistance may be provided if there is no consensus on this matter, including non-coercive measures, as required by Art. 46 (9) (b) of the Convention.

China`s CCP does not contain specific provisions on issues covered by Art. 46 (10-12) of the Convention, but such provisions are included in separate bilateral treaties.

China indicated that the SPP is the central body of the Chinese government to provide MLA for the purposes of Art. 46 (13) of the Convention. Requests should be sent in Chinese, and they can be obtained through the International Criminal Police Organization (Interpol).

The Ministry of Justice, in most bilateral treaties, is appointed by the authorized (central) body, which conducts preliminary consideration of requests and the subsequent application of measures with the participation of requesting States and relevant national authorities.

On the basis of Art. 682 of the SPP Rules on Criminal Procedures (for the purposes of litigation), requests for MLA may be denied if that assistance can cause damage to China's sovereignty, security or social and public interests, or violates its laws.

China has concluded bilateral MLA contracts on criminal matters with 54 countries and can deny extradition / request extradition of fugitives, as well as request / offer GDP in a number of countries.

Bilateral agreements include mutual assistance in obtaining evidence, searching for assets, confiscating them and in preparing documents. In this regard, the PSB and the SPP are investigating corruption-related issues in accordance with requests from foreign law enforcement and judicial authorities and vice versa. Most bilateral legal assistance agreements contain provisions on tracing, freezing, confiscating, separating and repatriating criminal proceeds.

Based on the principle of reciprocity, China can request or provide legal assistance to countries that have not entered into agreements to provide it with legal assistance. Currently, the Chinese authorities are cooperating with the executive authorities of Hong Kong and Macao (ICAC) in dealing with transnational corruption issues, mainly in accordance with the scheme of mutual assistance and its application by the executive authorities of the PRC and Hong Kong / Macau.

Australia, New Zealand and Canada are engaged in a debate about judicial cooperation with China at various stages of negotiations, signing or ratification of official extradition agreements. At the same time, the United States is considering requests for the extradition of Chinese corrupt officials on a case-by-case basis, mainly in terms of their further use as a diplomatic "currency" for other than anti-corruption purposes (for example, to exchange Chinese "fugitives" for illegal USA migrants — quid pro quo).

However, this approach to cooperation carries serious risks for partner countries, depriving the OECD members of potential benefits of coordinated participation. A number of Chinese extradition agreements with Asian countries (Thailand, Kazakhstan, Afghanistan) indicate that, by pursuing such a "flexible" policy in bilateral negotiations, China implements its own priorities regardless of the standards that it must follow after the signing of multilateral conventions. The most pressing problem for the OECD governments is the principle of non-expulsion, as set in the Geneva Convention of 1951, which prohibits extradition if there is a serious risk that the person in question may be subject to the death penalty, torture or other inhumane treatment.

China is provoking other countries to disregard international anti-corruption norms. The task of the OECD countries is to promote constructive cooperation with China, while honoring mutually accepted standards. In any case, liberal democracies cannot completely abandon cooperation of their law enforcement agencies with China. Due to the specific understanding of "corruption" and the non-transparent investigations of the CPC after the suspects are returned to China, the observance of human rights, from the point of the OECD, is significantly complicated. Nevertheless, the OECD member countries are not interested in providing shelter to corrupt Chinese officials and their illegally obtained assets. Moreover, China's key role in the global economy makes cooperation necessary to improve the standards of "clean management", both for businesses and for governments.

The anticorruption campaign of China can be considered successful not because of its directness and application of methods that are far from the standards of the anti-corruption policy of the OECD, but because of the personal authority of Xi Jinping. Thus, China's top leadership has a dual interest in closer cooperation with the OECD countries. Firstly, they need to reduce the flow of fugitives suspected of corruption and assets they have stolen, thus demonstrating that China receives international respect for its dedicated fight against corruption. Secondly, officials fighting against corruption in China will benefit from the international experience, since China's anti-corruption efforts should not be limited to high-profile corruption exposures of individual criminals, but should become more institutionalized over time.

Expansion of cooperation requires serious consideration of China's internal priorities regarding its partners. Aside from the justified fears about China's legal system, the goals of China and the OECD are mutually complementary in many ways. The OECD, inviting China to cooperate more closely, emphasizes the advantages of Conventions in facilitating "effective legal assistance in conducting cross-border investigations of bribes and proceedings, including the confiscation of bribery proceeds" [122].

It should also be noted that the Chinese government has invited participating States, in accordance with the UN Convention against Corruption, to verify China's compliance with the treaty in 2010-2015, which demonstrates the seriousness of China's efforts in combating corruption.

Investigations and allegations of corruption can also be initiated against foreign organizations in China. In the summer of 2013, the British pharmaceutical company GlaxoSmithKline (GSK), listed on the London and New York stock exchanges, was at the center of the largest corruption scandal in China involving a foreign company. The investigation of GSK was launched regarding e-mails, in which the company was accused of bribing doctors in order to promote GSK medical products. In September 2014, the People's Court of Changsha City, Hunan Province, China, was accused of offering money or other property to non-government personnel to obtain non-targeted commercial benefits and was found guilty of bribery. By decision of the Court, GSK was ordered to pay the Chinese government a fine of 3 billion yuan (297 million pounds sterling). Five former top managers of GSK were sentenced to prison for a term of two to three years [123].

After the scandal with GSK, the SAIC of the PRC stated that local industry and trade administrations should pay more attention to sectors in which public interests are concerned (including the pharmaceutical industry), in order to strengthen the supervision of sales conducted by industry representatives, and to thoroughly investigate every case of commercial bribery during sales [124].

China notes that it regards the Convention as a legal basis for mutual cooperation on law enforcement issues regarding corruption crimes.

The CCP of the PRC, the SNC acts of interpretation of its application, the rules of the SPP on criminal matters (for the purpose of conducting a trial), and the regulations for review procedures of criminal cases by public security organs — all touch upon issues of international cooperation between law enforcement agencies. China emphasizes that cooperation between law enforcement agencies will be fully expressed in the law on mutual legal assistance in criminal matters.

The SPP has signed 127 cooperation agreements and memorandums on mutual understanding with 91 foreign prosecutors and ministries of justice; and has developed cooperation mechanisms for attorney generals attending the ASEAN and the SCO summits led by China.

The International Association of Anti-Corruption Authorities (IAACA) was officially established in October, 2006 in China. It consists of 300 member organizations from law enforcement and national institutions, with the task of combating corruption. The SPP has been the secretariat of the IAACA since 2006.

The MPS of the PRC has established cooperation with 189 countries and regions. There are 75 round-the-clock communication channels with law enforcement bodies, such as internal affairs agencies, police, migration authorities and prosecutors in more than 60 countries with over 300 cooperation documents signed. The MPS assigned 62 police liaison officers to 31 foreign countries.

The PBOC signed memorandums on cooperation and the exchange of operational financial information with 33 countries.

In August 2014, anti-corruption bodies and law enforcement agencies from 21 APEC countries set up the APEC Anti-Corruption and Law Enforcement Network (APT-NET) in Beijing to exchange information on transnational affairs related to corruption and asset recovery. The AST-NET Secretariat is located in the Ministry of Control (MC) in Beijing. APEC members adopted the Beijing Declaration on Combating Corruption, according to which they are obliged to combat corruption through extradition and MLA, and simplify the return procedure for proceeds of corruption through the expansion of bilateral cooperation based on the application of the Convention and other international instruments.

China conducts joint investigations with foreign partners in accordance with the provisions of China`s CCP and the Rules of the SPP related to criminal matters (in order to hold a trial).

The use of special investigative techniques is regulated in art. 148-152 of the CCP of the PRC and is possible regarding corruption cases that "put society in grave danger" (Article 148 of the CCP). Special investigative techniques may include electronic surveillance, controlled delivery and agency operations.

Thus, the application of the Convention as a legal basis for extradition, MLA and law enforcement cooperation contributes to the successful implementation of international cooperation through:

– an effective system for collection and compilation of statistical information on extradition and MLA;

– 75 round-the-clock communication channels with the departments of internal affairs and police authorities of 44 countries;

– ACT-NET of the APEC.

China is recommended to consider the possibility of adopting the procedure for accelerated extradition (Article 44 (9)) of the Convention and to increase efforts aimed at adopting a law on mutual legal assistance in criminal matters to ensure the regulation and development of this process by a domestic legislation.

China is encouraged to continue to provide non-coercive measures to MLA in the absence of dual criminality, which is consistent with the basic concepts of its legal system under paragraph 9 (b) of Art. 46 of the Convention, as well as to further build the capacity of the central authority to provide MLA by providing adequate resources and training.

A ceremonial meeting dedicated to the opening of the APEC summit was held on August 15, 2014 in Beijing under the Asia-Pacific Economic Cooperation (APEC) forum. Representatives of law enforcement agencies from the APEC countries shared information and experience in the field of criminal investigations and prosecution [125]. To unite the efforts of anti-corruption services and law enforcement officers, "Clean Law" was developed to increase both the informal international cooperation of structures engaged in investigations and prosecutions of corruption, bribery, money laundering, illegal trade, identification, and the return of proceeds of these crimes. This activity will be coordinated from Beijing, and monitored by the Ministry of Supervision of China.

On November 9, 2014, during the APEC Ministerial Meeting, the Beijing Declaration on Combating Corruption was adopted. According to it, corrupt officials would not be granted asylum in the countries that signed it. The Ministry of Foreign Affairs of the PRC concluded negotiations on signing 10 bilateral treaties aimed at extradition and judicial assistance in criminal cases. In countries such as the United States, which do not have agreements with China on extradition, trials will be initiated in the courts of those countries where the crime was committed, in order to return the proceeds of corruption.

China's anti-corruption policy structurally differs from liberal concepts and in some ways they even contradict one another. The model of China's economic development of the 1980s contradicts the widespread assumption that high level of corruption prevents economic growth [126]. Nevertheless, China's development took place on a highly corrupt "administrative market" [127], where political influence was systematically used to promote business. The state capitalist model of China is based, on this form of corruption [128]. Large-scale abuse of power for personal gain reduces the legitimacy of the CPC's one-party rule [129]. Concern about the legitimacy and stability of the system, rather than human rights or economic efficiency, lays at the heart of the CPC's efforts to combat corruption.

Since the 18th Party Congress in 2012, top-level leaders have repeatedly recognized that fighting corruption is important for the CPC, which makes it a vital priority. The Central Commission of Discipline Control of the CPC led the most strict campaign in recent decades, which resulted in more than a million people being convicted [130]. It is important to note that the so-called "Eight Rules" (八项 规定), which are usually regarded as a trigger for Xi

Jinping's [131] anti-corruption campaign, mainly refer to disciplinary offenses within the party (significant expenses, unreasonable trips abroad, etc.).

Such a broad disciplinary definition of corruption clearly contradicts criminal law definitions, common in OECD countries. Despite the use of international legal concepts in Chinese laws, the understanding of intra-party disciplinary inspectors about what constitutes "corrupt" or "immoral" behavior prevail over what prosecutors and judges consider to be true. The anti-corruption efforts of the CPC remain moralistic and are oriented towards individual responsibility, that is, punishment and public repentance of immoral party and state officials, rather than institutional flaws and the need for systemic reforms [132].

The limited interest of the Chinese leadership in best international practice is also expressed by the use of the Shuanggui system (双规): priority is given to a secret inner-party disciplinary investigation on the suspects. Statistics show that, although the number of such investigations has increased since 2012, only 4–5% of such cases are transferred to the prosecutor's office by CPC investigators. "Secret Prisons" and torture are still common practice within the Shuanggui system, despite its public condemnation even by high-ranking party officials [133].

Another clear contradiction with the standards of the OECD and the EU is the fact that the death penalty continues to be applied for corruption offenses in "extreme cases" [134], although in cases involving international crimes, when the death penalty violates the non-refoulement extradition obligation of the country, an exception is made.

Thus, in order to overcome transnational bribery, China has to take the following steps:

– strengthen the control over the ethical behavior of Chinese (state) companies abroad. China should follow the OECD principles on bribery regarding official assistance for the development of cooperation; and promote internal and independent external audit services of the activities of Chinese transnational corporations abroad. In the most corrupt developing countries, China should impose transparency within extractive industries and the construction industry;

– make cooperation at the working level within the country more effective than simply exchanging information with the prosecutor's office. It is necessary to maintain the standards of combating bribery, instead of only amending laws. For this purpose, direct channels of communication with the new National Supervisory Commission have been created. The exchange of experience between the OECD countries themselves should be structured in a way that China could be accountable to them;

– be more specific on directing the general requirements of the OECD countries to "better market access" in China to fit anti-corruption standards in the field of procurement and investment (procurement transparency at the local level, favoring transnational corporations with a good anticorruption reputation, introduction of anonymous complaint mechanisms for foreign companies);

– with a goal of minimizing the harmful global consequences of money laundering, ensure the effective application of the rules for combating transnational financial crimes, increase the transparency of property rights, implement preventive measures and institutional reforms presented in the G20 declarations.

In order to fulfill at least some of these steps, multilateral cooperation formats should become a higher priority for China than the further expansion of the bilateral cooperation between law enforcement agencies. Signing an extradition agreement between the EU and China may serve to expand anti-corruption cooperation with it. Canada, Australia, and New Zealand can coordinate anti-corruption activities with the EU countries; otherwise they risk being under Beijing`s pressure for negotiating an extradition treaty. The EU and other OECD countries can also monitor the compliance of Chinese companies with the anti-corruption standards in OECD`s markets. The credit mechanism would be most effective within the framework of the Chinese “Belt and Road” initiative, since such projects require large-scale investments in infrastructure.

For the sake of full cooperation between OECD and Beijing, and not just the OECD's desire to "tie" China to the Convention on Combating Bribery in the OECD in the short term, priority should be given to China's full participation in the OECD Working Group on Bribery and its adherence to appropriate mechanisms that will contribute to China's progress in overcoming domestic problems of fighting corruption. Finally, the joint actions of the OECD countries within the framework of the G20 are another step forward. The G-20 summit and the meeting of the Working Group on Combating Corruption can be a platform for the realization of common intentions. If China complies with the G20's initiatives on financial transparency and anti-money laundering, its requirements for asset recovery will also be met. Progress in this area depends on the political will of OECD countries and their desire to effectively combat transnational bribery and money laundering around the world.

Chapter 6
Cooperation between the People's Republic of China and Russia in the field of combating corruption

International cooperation between the Russian Federation and the PRC in the field of combating corruption is one of the most important courses of implementing the foreign policies of the two strategic partners and gives a powerful impulse to the development of an anti-corruption cooperation within the international regional organizations — the Shanghai Cooperation Organization (SCO), BRICS, APEC, G20, etc.

The SCO is competent in security issues, including joint counteraction to terrorism, separatism and extremism in all their manifestations, combating illicit drug and weapon trafficking, other types of transnational criminal activity, and illegal migration. Counteracting corruption can become an important functional course of the SCO and will increase its effectiveness, since without proper international anti-corruption legal regulation, combating the challenges and threats that the SCO does not appear to be fully comprehensive.

Thus, international anti-corruption cooperation between Russia and China can become the main area for the development of mechanisms for evaluating corruption manifestations, which can be objectified at the level of an international bilateral treaty with the further development of its provisions at the regional level under the auspices of the SCO.

The Chinese side may support this approach, because, according to Chinese scientists, a mechanism of international cooperation is imperative to prevent and combat corruption [136]. Multilateral and bilateral international treaties are the legal basis for creating such a mechanism.

Signing a bilateral international treaty on the fight against corruption, and the evaluation of corruption manifestations, may be one of the steps to develop anti-corruption standards under one of the organizations listed above, which currently play an important role in the world under difficult international conditions.

However, one must take into account the specifics of the current legislation of the PRC, which contains provisions that consolidate the standard of the norms of international treaties over Chinese law, in the event of contradictions between them. If international treaties signed or joined by China, establish rules other than those provided by civil law (Part 2, Article 142 of the General Provisions of Civil Law of the PRC); civil procedure (Article 238); administrative-procedural (Article 72), then such rules of international treaties are adopted. However, this does not apply to treaty provisions for which the PRC has made clauses [137].

An important step in the development of mechanisms for evaluating corruption manifestations that meet the interests of the Russian Federation and the PRC is the development of an institutional structure of an international anti-corruption cooperation, both bilaterally and multilaterally, for example, under the auspices of the SCO. In this regard, positive experience was gained in the Commonwealth of Independent States, under which the agreement on the formation of the Interstate Council for Combating Corruption of 25 October 2013 came into force. It seems that both at the bilateral Russian-Chinese level, and under the auspices of the SCO, an institutional system of combating corruption and evaluating its manifestations should be developed through the establishment of special international legal acts that determine the status, tasks, powers and organization of activities between international bodies in the field of combating corruption.

Moreover, one of the channels for developing mechanisms for evaluating corruption manifestations, that would meet the interests of Russia and China and protect them, could be the development of an appropriate course regarding the APEC.

For example, the Declaration on the results of the 22nd meeting of the leaders of the participant economies of the November 11, 2014 APEC forum, states that the APEC member states intend to jointly fight corruption and deny asylum to corrupt officials and illegally obtained assets. This reaffirms the importance of strengthening cooperation and coordination regarding the extradition of corrupt officials, as well as seizing corruption proceeds, through the application of anti-corruption mechanisms and platforms, such as the APEC Anti-Corruption and Law Enforcement Network.

APEC can become the main platform for developing mechanisms for evaluating corruption manifestations in the interests of Russia and China. At the same time, it is necessary to take into account that the US, Australia, Canada, Japan, that is, such states, that often negatively evaluate the anti-corruption policy implemented in the Russian Federation, also participate in APEC. In this regard, unlike the SCO, the development of new international anti-corruption standards that meet the interests of Russia and China within the APEC may be difficult.

On June 25, 2016 in Beijing negotiations of state leaders took place, along with the meeting of V.V. Putin with the Premier of the State Council of the PRC — Li Keqiang and Chairman of the SC of the NPC`S Congress — Zhang Dejiang, after which a joint statement between Russia and China was adopted. The statement of the government emphasized the positive activities of the SCO and the BRICS, which made a big step forward in the diversification and institutionalization of the cooperation, particularly in the field of combating corruption.

For effective cooperation of the BRICS countries in the fight against corruption, it is necessary to explore the potential of the information technology sphere in order to form the civilian anti-corruption protection of the BRICS countries. The importance of cooperation in this sphere is determined by the course of Chinese reforms, in which a set of measures to combat corruption in the highest echelons of power is expected to reduce the scale of the shadow market of the country, partially through the development of mass media.

The G20 summit in Hangzhou of September 2016, was a breakthrough in the field of combating corruption: it was reported that a special center was being created in China to investigate this issue, and the G20 participating countries adopted a plan to combat corruption for 2017-2018.

In May 2017, the CPC`s delegation, headed by Zhao Hongzhu, paid a three-day visit to Moscow. Mr. Zhao, members of the Secretariat of the CPC Central Committee and the deputy head of the CPC Central Committee conducted negotiations with the head of the Presidential Anti-Corruption Directorate — O.A. Plohoi.

During the meeting, Mr. Zhao noted that in recent years the China-Russia comprehensive relations of strategic cooperation and partnership are developing rapidly through high-level contacts. Mr. Zhao stressed that China is ready to continue working with Russia to maintain the consensus, reached by the leaders of both countries, to continue strengthening mutual trust and reinforcing a mutually beneficial cooperation in various fields. During the negotiations, Mr. Zhao updated Russian officials on major initiatives and achievements in the sphere of inner-Party management. Since the 18th National Congress of the CPC, held in late 2012, there has been progress in this area. As the head of the Chinese delegation noted, both countries should strive to strengthen the fight against corruption in order to reinforce bilateral ties.

The Russian side highly appreciates the dialogue that took place between the leaders of China and Russia. Russia expressed readiness to deepen cooperation between the governments of the two countries, as well as to strengthen ties on anti-corruption issues.

Possible priority prospects and specific forms of international cooperation between the Russian Federation and the PRC in the field of combating corruption include the following:

1. *Identification, search and return of assets obtained as a result of corruption offenses*. This problem is typical not only for the Russian Federation, but also for other countries, including economically developed countries. For example, for the PRC, which has repeatedly stated the relevance of the issue at international venues.

Thus, China is implementing a special program to coordinate the process of tracking the locations and capital of corrupt officials hiding abroad.

This project is implemented by the employees of the Central Commission of Discipline Inspection of the CPC, the Ministry of Public Security, the SPP and the PBOC. The main goal of this program is "interception of corruption elements, action against clandestine banks, return of assets and persuasion of the refugees who fled abroad of the" advantages "of their return. According to the program, the personnel of the Ministry of Security will look for officials who have fled abroad, the PBOC — for the off-shores and underground banks, and the Organizational Department of the CPC`s Central Committee will be tracking the foreign travels of Chinese officials.

Within the framework of the bilateral cooperation, officials prepared drafts of international legal documents, aimed at raising awareness of the international community of the need to identify, search and return assets derived from corruption; and suggested an international legal mechanism which would allow to defend the interests of China, Russia and other Eurasian states during repatriating corruption incomes from abroad.

In particular, the draft international agreement "On international cooperation in the field of the search and return of assets obtained by criminal means" can be developed for the following tasks:

1) the promotion of adoption and consolidation of measures, aimed at developing a more effective international cooperation in the search for and recovery of assets obtained with criminal means;

2) repatriation of confiscated assets and their equitable use.

Subsequently, separate elements of this agreement can be proposed for approval at the level of a special UN resolution.

2. *Prevention of corruption in private sector organizations.* Modern international legal approaches to the regulation of anti-corruption issues in organizations are associated with the development of preventive measures, that is, with the prevention of corruption. The 2003 UN Convention against Corruption, which establishes the basis for the creation of a system of consistent anti-corruption measures in state (Article 7 "Public Sector") and non-state spheres (Article 12 "Private Sector"), is aimed at implementing this approach.

One of the current tendencies in the development of foreign legislation on combating corruption is the involvement of corporate entities in the anti-corruption regulation [138].

Many states significantly expand the limits of their intervention in the private sphere. Thus, the US and UK legislations require commercial companies to organize the proper order of their activities, which does not allow corrupt practices [139].

At the same time, organizations are considered not only as potential violators of the anti-corruption regulation — potential bribe-givers and recipients of unjustified illicit benefits as a result of bribery of an official, but also as allies ensuring the effectiveness of the application of anti-corruption legislation.

In general, the adoption of an anti-corruption legislation, on the one hand, makes it necessary to increase transparency in the activities of legal entities in general and corporate organizations in particular.

On the other hand, the improvement of corporate regulation, in turn, allows to form new requirements that establish rules of proper behavior for bodies and employees of organizations, the implementation of which either makes it difficult or practically impossible to commit corruption offenses.

Currently, a new standard ISO in the field of anti-corruption — ISO / CD 37001 has been prepared. The standard is aimed at implementing rational and adequate anti-corruption measures, including:

– the leading role of management (tone at the top);

– training;

– risk assessment;
– ensuring due diligence;
– financial and commercial means;
– reporting;
– audit;
– procedures for internal investigations.

This standard will allow organizations that adhere to the principles of ethics in their work to demonstrate that they are carrying out relevant activities aimed at combating corruption of the organization, its intermediaries or in relation to the organization [140].

In addition to common standards, standards that extend to more specific issues of anti-corruption activities are being actively introduced. For example, universal approaches of the UN Global Compact [141] and the risk assessment standards ISO 31000: 2009 [142] and FERMA [143], BSI [144] are applied in the field of assessing corruption risks.

In the Russian Federation, a system of anti-corruption measures covers new levels of management. In the past, the main focus was centered on individuals, who were substituting state and municipal titles, state and municipal employees. Nowadays, the anti-corruption ban was broadened to include executives and employees of state companies; corporations and organizations, that were created to carry out instructions of federal state bodies; and employees of state institutions and private organizations that are obliged to take measures to prevent corruption. This is directly stated in Art. 13.3 of the Federal Law of 25 December 2008 No. 273-FZ "On Counteracting Corruption".

Traditionally, the Russian legislation focuses on the system of anti-corruption bans, restrictions and duties, established for certain categories of individuals or spheres of activity. This tendency is reflected in practice: priority is given to prohibitive methods of legal regulation, and insufficient attention is given to positive mechanisms that stimulate lawful behavior.

The latter may be associated with favorable conditions to promote the individual's own interests (the promise of providing values, reducing the penalty, etc.), expanding the freedom boundaries and thereby influencing the positive legal motivation and positive activity of the individual.

The development and implementation of standards and procedures to ensure the fair work of the organization, as well as the adoption of a code of ethics and employee conduct of the organization's employees, are stated in the subpar. 3 and 4 part 2 of Art. 13.3 of the Federal Law "On Counteracting Corruption" and are an important element of the corporate culture of the organization.

The development and implementation of national anti-corruption standards for organizations while taking into consideration the specifics of Russia and China will allow to:

– increase the credibility of companies in the international arena through the adoption of additional obligations on combating corruption;

– optimize the system of state control and supervision in the field of combating corruption by introducing a risk-oriented approach in determining the objects of inspections;

– stimulate organizations to develop corporate anti-corruption policies and organize anti-corruption activities by reducing the administrative burden, facilitating access to government funding and optimising corporate reporting;

– present additional requirements for the implementation of the national anti-corruption standard of organizations to foreign companies that conduct business in the sphere of interests of the PRC and the Russian Federation;

– improve algorithms for determining the culpability of the organization for illegal remuneration on behalf of a legal entity by introducing appropriate justifications for mitigating administrative responsibility to the legislation;

– optimize the system of informing the management of organizations and law enforcement agencies about corruption risks in the activities of organizations.

3. *International monitoring of corruption manifestations.* In order to increase the effectiveness of international monitoring of cor-

ruption, implementation of the Monitoring of Corruption (MONCOR) [145] is proposed. It was developed by the Institute of Legislation and Comparative Law under the Government of the Russian Federation (ILCL) as part of the National Anti-Corruption Strategy, and represents the means for conducting monitoring studies of corruption manifestations and the effectiveness of international and national anti-corruption policies.

The MONCOR program includes several indexes that establish such indicators as : the implementation of international obligations; the anti-corruption image in the world; the development of an anti-corruption legislation and law enforcement practice; the immunity to corruption risks; conditions promoting the growth of corruption [146].

Currently, ILCL conducts its approbation in a number of states of the Eurasian region, which allows to conclude that the ranking of states on the corruption scale is flawed [147].

4. *Development of forms of cooperation of Russian scientific and expert organizations with specialized scientific institutions of the PRC.* To implement the anti-corruption cooperation with the PRC, closer interaction on the part of Russian scientific and expert organizations is required.

As a positive example of such cooperation, the activities carried out by the Institute can be noted.

Thus, on April 20, 2016, within the framework of the Fifth Eurasian Anti-Corruption Forum "Law and Order: Modern Challenges", a memorandum of cooperation was signed between the ISTIP and the Anti-Corruption Center of the Institute of Sociology of the Chinese Academy of Social Sciences (CASS). On behalf of the Institute, the document was signed by its director, vice president of the Russian Academy of Sciences, member of the Council on Combating Corruption under the President of the Russian Federation, Academician of the Russian Academy of Sciences, Doctor of Law — Professor T.Ya. Khabrieva. On behalf of the Anti-Corruption Center of the Institute of Sociology CASS —

Vice-President of the Center for Anti-Corruption Studies of the Institute of Sociology, CASS — Sun Zhuangzhi.

In the context of development of an international cooperation and implementation of this memorandum on September 7, 2016, ILCL in collaboration with CASS held a round table (international scientific conference) on "National legislation in the field of combating corruption and creating transparent state mechanisms in the PRC and the Russian Federation", chaired by the deputy director of the Institute, Doctor of Law I.I.Kucherov and the director of the CASS Anti-Corruption Center, Zhang Yingwei. The conference discussed issues related to the specifics and effectiveness of national anti-corruption legislation in China and Russia and measures to resolve and prevent conflicts of interest in these countries. It also conducted a comparative analysis of national legislations and investigated problems that occurred in the process of drafting laws in different countries and on different stages of development. Both sides agreed that an effective and high-quality national legislation plays an important role in counteracting corruption; helps contain corruption, and create transparent state mechanisms.

On April 26, 2018, the ILCL and the Institute of Law of the Chinese Academy of Social Sciences (IL of the CASS) held a round table (international conference) on the topic: "New technologies for combating corruption under the laws of the Russian Federation and the PRC", chaired by the Deputy Director of the Institute, N.N. Chernogor and adviser to the director of IL of the CASS, Professor Zhou Hanhua. The conference discussed issues related to legislative approaches in the field of combating corruption, the status and competence of bodies which are responsible for the prevention of corruption, criminal liability for corruption-related crimes (including criminal liability of legal entities), and the training of qualified personnel.

In light of the above, it can be noted that the international cooperation between Russia and China in the field of combating corruption, the foundations and the level of bilateral contractual regulation of which can be established in international legal documents and within the framework of international organizations, in particular it will allow to:

– consolidate the efforts of Russia and China with the involvement of an expert community, including leading scientific centers, in order to develop mutual science-based mechanisms for evaluating corruption manifestations;

– provide for unified international legal approaches to identifying property that was obtained through corruption and legalization (laundering) of proceeds, and the return of such assets;

– carry out assistance (legal assistance) upon request in investigative activities in cases involving corruption, as well as the exchange of necessary information.

Chapter 7
Combating corruption in special administrative regions of the People's Republic of China (Hong Kong – Xianggang, Macao – Aomen) and the Republic of China (Taiwan)

§1. Hong Kong Special Administrative Region of the People's Republic of China (Xianggang)

A very effective example of overcoming corruption is considered to be the experience of the special administrative region of the PRC — Hong Kong (SARS). It took Hong Kong more than 40 years to achieve a radical change in the situation in the area of countering corruption.

In the corruption perception index published by Transparency International in 2016, Hong Kong took the 15th place out of 176 countries / territories [148].

Hong Kong was not always one of the least corrupt places on the planet. In the late 1950's — early 1960's. corruption fully covered both the public and private sectors of the country. This, perhaps, is the uniqueness of the Hong Kong experience, because at that time corruption was a style of life recognized by the majority of the population as the only and necessary means for survival. For example, the "ambulance" required a "tip" to take the patient to the hospital; the fireman refused to put out the burning house without "a small reward" [149]. A that time there used to be sayings like "get on the bus", (if you accept corruption, join us); "run next to the bus" (even if you are against corruption, most importantly — do not interfere); "never stand in front of a bus" (if you try to report the fact of corruption, the "bus" will run you over) [150].

Thus, in the early 1970s, corruption in Hong Kong was enormous.

The fight against corruption in Hong Kong began with the police. In the 1970s, the Hong Kong police were among the most corrupt institutions of power and in fact were the center of corruption. Corrupt officials in the police department have set up their own illegal syndicate to generate income. They were closely connected with drug dealers, owners of gambling houses and brothels who paid police for the "cover" and collected money from them through intermediaries. The police promoted the spread of corruption in other government bodies, creating an atmosphere of distrust towards the government. As a result, corruption jeopardized the flow of investments in the economy and trade relations with Hong Kong's foreign partners, making it impossible to implement reforms. Despite all the measures taken by the city administration, corruption flourished. This confirmed the conclusion that when corruption is systemic, traditional approaches to solving this problem do not work [151].

In 1971, the Ordinance "On Prevention of Bribery" (The Prevention of Bribery Ordinance) [152] was adopted, which increased the responsibility for corruption crimes. This law criminalized actions that were not previously considered to be corruption, in particular, illegal enrichment (in accordance with Article 20 of the UN Convention Against Corruption), that is, a significant increase in assets exceeding the legitimate income of a person that they cannot formally explain . This measure fully justified itself (for example, the "Godberg case").

Peter Godberg served in the Department of Material and Technical Support of the Police. For two years, members of the Hong Kong Police Corruption Department investigated the reason for the discrepancy between the lifestyle of Godberg and the salary he received. It turned out that the official's capital averaged 4.3 million Hong Kong dollars in banks of six different countries. This amount was six times higher than his aggregate income for 20 years of "impeccable service." June 4, 1973 P. Godberg was issued an order to explain the origin of his capital in seven days. Three days later, he used his connections and position and disappeared in another country, which caused a wave of protests. Citizens demanded the creation of an independent, dedicated, influential agency whose activities would be aimed solely at combating corruption, whose chief would be directly subordinate to the Governor of Hong Kong [153].

The Governor of Hong Kong, in turn, prepared a detailed report, which described the shortcomings of the anti-corruption service of the Ministry of the Interior of Hong Kong (which was abolished in 1973). The report concluded that corruption covered many areas of Hong Kong's public life, and most of all the police [154]. The report emphasized the inability of the Office for Combating Corruption to effectively exercise its powers, if it is not separated from the police. The Governor made conclusions from the report himself: on October 17, 1973, one of the most effective specialized anti-corruption bodies was established — the Independent Commission Against Corruption (ICAC) [155].

In accordance with Art. 153 of the Fundamental Law of Hong Kong of the PRC (hereinafter — FL), the Convention is applicable to Hong Kong. According to the FL, Hong Kong applies common laws. The Convention is implemented in Hong Kong through the use of local legislation.

Hong Kong was established on July 1, 1997 in accordance with Art. 31 and 62 (13) of the Constitution of the PRC. The FL, which was adopted by the NPC, was signed by the PRC Chairman on April 4, 1990. It came into power at the time of the establishment of Hong Kong in order to be implemented within the legal system in Hong

Kong according to the principle of "one country — two systems". The NPC granted Hong Kong the right to extended self-government along with executive, legislative and independent judicial powers, including the power to make final judgments, in accordance with the provisions of the FL. The legislation that operated in Hong Kong prior to the establishment of Hong Kong (general law, justice, proclamations, sub law normative legal acts and common law) was preserved, except for those legal acts that are inconsistent with FL or amended by the Legislative Council of Hong Kong.

The political structure in Hong Kong is an executive power system. The head of administration reports to the Central People's Government and Hong Kong (Article 43 of the FL). The legislative body of Hong Kong is the Legislative Council.

The independence of the judiciary bodies is established in Art. 85 of the FL. Hong Kong courts include the Court of Final Appeal, the High Court (the Court of Appeal and the Court of First Instance), the District Court, the Magistrates' Courts and other special courts.

The system of Hong Kong`s government bodies in the fight against corruption. The system of institutions fighting corruption in Hong Kong includes the following:

The Independent Commission Against Corruption (ICAC);

The Commercial Crime Bureau, The Narcotics Bureau and the Organized Crime and the Triad Bureau of the Police;

The Customs Drug Investigation Bureau of the Hong Kong;

The Hong Kong Monetary Authority and the Securities and Futures Commission are developing guidelines for financial institutions due to their obligation to prevent money laundering.

The financial and insurance sectors in Hong Kong are controlled by the National Monetary Administration of Hong Kong (NKMA), the Securities and Futures Commission (SFC) and the Office of Insurance Representatives. These regulators issue guidelines and recommendations that relate not only to bribery but also to the full range of anti-money laundering obligations. They have broad powers to investigate corruption cases, and violation of established rules can lead to disciplinary liability in the form of private or public reprimand, financial penalty and (or) full or partial license suspension (all the way up to its revocation). The NKMA and the SFC implement a wider range of coercive measures and sanction the activities of the ICAC. The police also play an important role in the fight against corruption.

The powers of the ICAC were established by the Law on the ICAC in 1988 [156], while the autonomy of the Commission is established in Art. 57 of the FL. The Commissar of the ICAC is directly accountable to the head of the Hong Kong administration. According to Art. 48 of the FL the head of the administration nominates the candidate of the commissioner of the ICAC and informs the ICAC about their designation. The Commissioner of the ICAC shall perform their duties within the established period. The head of the administration has the right to recommend the ICAC to remove the Commissioner of the ICAC from their post.

Article 16 of the Prevention of Bribery Ordinance [157] (PBO) establishes the statutory duty of public servants to assist the ICAC, and any person who interferes with an authorized officer during an investigation or during a search is found guilty of committing a crime and is punished in the form of a fine of $ 20,000 and one year imprisonment.

Financial institutions should follow instructions and guidelines and report any discovered facts, which may lead to corruption and other illegal activities, to law enforcement and regulatory bodies as soon as possible. The ICAC has established channels of communication with all major banks, insurance and financial companies, institutions and private organizations. The Joint Division for the Collection of Operational Financial Information (hereinafter — JDCOF) and the relevant law enforcement and regulatory bodies responsible for combating money laundering, ensure the implementation of awareness-raising and educational programs.

It is recommended that representatives of the public be notified of suspicious corruption acts either through the information center of the ICAC, or through one of its seven regional offices;

anonymous messages are accepted as well. The information center operates 24/7 throughout the year. The ICAC conducts informational events in order to encourage the reports of corruption cases.

Since February 1974, the ICAC has been carrying out its activities in three main areas: prevention of corruption, investigation and education. In order to ensure the effectiveness of its activity, the ICAC was initially granted broad powers to conduct investigative activities such as the arrest, search, seizure of documents, access to financial information and asset confiscation.

The ICAC pays special attention to measures aimed at gaining public trust, and increasing its credibility and effectiveness. One of its first cases was the detention and conviction of a high-ranking police officer who was caught with bribery, and who then hastily left Hong Kong and turned into a symbol of corruption and ineffectiveness of the law enforcement system in the public eye. During that year he was extradited back to Hong Kong where an investigation was conducted and he was sentenced to prison. A year later, the ICAC uncovered the activities of a corruption syndicate, which included police officers. These first successes of the Commission significantly increased public confidence in the work of the police and by 1977 the number of signed communications (complaints) about corruption cases entering the ICAC was significantly higher than the number of anonymous authors. From 1974 to 1977, the Commission contributed to the conviction of 260 police officers, and the result of its activities was the eradication of the corruption network in the police.

Currently, the ICAC is the main body responsible for investigating and preventing corruption in Hong Kong.

The regulatory framework for combating corruption is built in accordance with the peculiarities of the legal system of Hong Kong [158]: the well-known political and legal concept "one state — two systems" [159].

The so-called ordinances ("tiaoli") and by-laws ("fushu lifa") [160] are of particular importance in the legislation of Hong Kong, and are considered the written acts of law created by the Hong Kong legislator [161].

The PBO (Chapter 201 "On Special Administration of the Hong Kong Area") (POBO) establishes a list of corruption-related factors, as well as specific crimes related to bribery in public procurement, tenders, bidding and illegal enrichment of officials.

Employees of the banking sector also comply with the provisions of the Regulation on banks (Chapter 155) (hereinafter — the RB), which regulates the receipt of benefits under certain circumstances. RB applies to directors and employees of authorized institutions, that is, licensed banks and depository institutions.

The Company Regulations (Chapter 622) are aimed at ensuring the transparency of the company's accounts and preventing conflicts of interest between contracting directors. The resolution on theft (Chapter 210) prohibits any distortion of financial statements. Finally, the Law "On Organized and Serious Crimes" (Chapter 455) (OSCO) provides for criminal liability for money laundering and unconfirmed extra profits.

It is a crime to give a bribe to a person performing state functions, or to a person who demands a bribe or doesn`t refuse it.

With regard to financial institutions, these violations can be considered in terms of compliance with the code of conduct for the NKMA and the SFC.

The ICAC is a specialized body for combating corruption and is independent from civil service bodies, other law enforcement agencies or investigative bodies. It carries out complex tasks of conducting investigative, preventive and educational activities. The independence of the ICAC is guaranteed by the Basic Law — the Hong Kong mini-constitution [162], where it is established that the Commission is directly accountable to the head of the executive branch. In addition, the ICAC is given special powers and functions, which are established in two other legislative acts — the PBO and the Ordinance "On Elections" (on Election Ordinance) [163].

The Commission maintains extensive contacts in the public and private sectors to exchange information and promote cooperation

[164]. The ICAC actively cooperates with law enforcement agencies such as the Commercial Crime Bureau, the Police Department for combating drugs, organized Crime and triads, the Department of Drug Investigation at the Customs of Hong Kong, the Hong Kong Finance and Credit Department, the Security and Transactions Commission, etc.

The organizational structure of the ICAC includes the Office of the Chairman of the Commission and three departments — The Operation Department, The Corruption Prevention Department and The Community Relations Department.

The Department of Operational Work investigates complaints on allegations of corruption. This department is the largest in the structure of the ICAC. In the recent years departmental staff has begun to use the tactics of proactive investigation to identify corruption cases that could`ve otherwise gone unnoticed. In order to accomplish this, a strategy of conducting various investigative activities under cover is used and information technology is widely applied. As a result of the application of such measures, a large number of serious corruption cases have been disclosed.

The Department of Corruption Prevention studies the practices and procedures of government departments and government agencies in order to limit the spread of corruption and prepare recommendations for its prevention in response to requests from private organizations. The Department annually conducts about 300 studies to assist the government and government agencies in identifying and eliminating "weaknesses" in the organizational and management structure, where corruption-related offenses are most often committed. There is also joint work with the Civil Service Bureau, which manages the issues of policies regarding state personnel, and develops programs aimed at shaping the public image of an incorruptible civil servant in state institutions. Thus, in 2006, the Ethical Leadership Programme was implemented to maintain a culture of trustworthiness within the public service [165].

The Department of Public Relations conducts educational and explanatory work among the population in order to inform the public about the danger posed by corruption and increase the activity of citizens in the anti-corruption struggle. The Department includes the Witness Protection Unit, the International Relations Division, the Financial Investigation Division and the Computer Forensics and Research Department.

The ICAC closely works with relevant public institutions and non-governmental organizations, using different methods in order to educate them on preventing corruption and create a social intolerance to this phenomenon [166]. For example, tests on understanding the risks of corruption are used [167]. They consist of a series of video materials, accompanied by questions, with the purpose of identifying corruption factors [168]. Anti-corruption education with the use of mobile Internet is widespread [169]. The system of anti-corruption education [170] is constantly being improved while taking into account foreign experience [171]. The state encourages scientific research on relevant topics [172]. In addition to the main website of the ICAC (www.icac.org.hk), there are Internet pages on ethics standards: for the business community (www.icac.org.hk/hkedc); for youth — "Teensland" (www.icac.org.hk/teensland) and for teachers (www.icac.org.hk/me).

The Independent Commission Against Corruption (ICAC) has broad powers. The Commission can investigate any alleged or committed offense (or concealment of an offense) in accordance with the orders "On the Independent Commission Against Corruption", "On Preventing Corruption" and "On Elections" or any alleged corrupt acts committed by a public servant. Articles 13 and 14 of the PBO also establishes the power to collect financial or other information (including unprivileged documents from lawyers) in the context of corruption investigations.

During the investigation, the Commission may:

– demand the provision of information or documents from a witness, based on the warrant of the court;

– arrest and demand for the interrogation to take place in compliance with security measures;

– demand that the suspect declare property, expenses and debt, based on the warrant of the court;

– conduct a search with the sanction of the court and seize the evidence without a sanction;

– demand that the suspect presents their travel documents, based on the warrant of the court.

On August 9, 2006, the Resolution "On Interception of Information in Communication Channels and Monitoring" came into force. In the event of an investigation, various regulatory (executive) bodies, including the Commission, the Customs and Excise Department, and the Hong Kong Police Force can:

– in exceptional circumstances (for example, due to unforeseen circumstances) save the results of interception of information, based on the warrant of the court;

– monitor the privacy with the use of a listening or optical device, and record the activities of the person, with the consent of the supervising party;

– monitor the privacy, using an eavesdropping or optical device, without the intrusion into the building or internal movement;

– carry out all forms of supervision over suspects` private life with the sanction of the judge.

Any individual, who opposes or obstructs the commission officer in the performance of their duties commits an offense and will be charged a fine of 5,000 Hong Kong dollars along with imprisonment for a period of six months. Any person who deceives the Commission or neglects what it requires of him also commits an offense and is therefore punished with a maximum fine (20,000 Hong Kong dollars) and imprisonment for up to one year.

An officer of the Commission may, without the court`s decision, arrest a person if there is sufficient reason to believe that they are guilty of an offense, provided for in the Decree on the Independent Commission on Fighting Corruption, on Prevention of Corruption or On Elections. Moreover, an officer of the Commission may arrest a person if in the course of an investigation it is reasonably suspected that they are guilty of any offense and that this offense was connected with an offense provided for in the Decree "On an Independent Commission Against Corruption", "On Preventing

Corruption" or "On Elections ", Or with any of the offenses under Art. 10 (5) of the Decree "On Independent Commission Against Corruption".

According to Art. 10 of the Decree "On the Independent Commission Against Corruption" or the decree "On the Prevention of Bribery" (hereinafter — the Decree on the ICAC) it may arrest a person without a warrant if they are reasonably suspected of committing a crime. In addition, an employee of the ICAC can arrest a person if during the investigation they are reasonably suspected of any other crime related to the crime being investigated, according to the resolution "On the Independent Commission Against Corruption", the decree "On the Prevention of Bribery"; or of obstructing justice , blackmail, fraud, deception, setting (creating) a false record in documents and accounts (Article 10 (5)). The ICAC has additional powers under Art. 10AA of the resolution "On the Independent Commission for Combating Corruption" on the arrest of individuals previously released on bail.

Article 110 (2) of the Decree "On Criminal Proceedings" (Chapter 221), art. 9 and 72 of the Decree of the Judges (Chapter 227), and the Decree "On the Independent Commission against Corruption" establish the procedures followed after the arrest, after the subject was taken to the police station or to the ICAC. In this regard, the courts interpreted the word "may" as permission for the ICAC to participate in interrogations before the suspect was arrested.

The duration of the arrest under art. 10C of the Decree "On the Independent Commission Against Corruption" is limited to 48 hours. If the detainee is arrested under art. 10AA of the said decree on suspicion of violating the conditions of temporary release, they must be handed over to the judge within 24 hours or as soon as possible.

A detained individual has certain rights: communication with a legal adviser, access to case materials in the presence of a legal adviser, visits for family or friends.

The arrested person can be released under a written undertaking not to leave the country, provided that their release was provided with the necessary bail. After being released on bail, they must periodically visit the Independent Commission on Fighting Corruption or the World Court.

Various provisions authorize the ICAC to justify prosecution. Article 17 of the decree "On the Prevention of Bribery" and Art. 10B of the Decree "On the ICAC" provide the ICAC the right to participate in the process. The authorized officer of the ICAC also has the right to search the suspect, if they have reason to do so.

In accordance with Art. 10C of the decree on the ICAC, the members of the Commission have the right to arrest and detain suspects of bribery or another crime. Confiscation is possible if there is reasonable evidence. The ICAC can keep the seized documents for as long as necessary for the staff during investigating potential crimes, but the property must be returned as soon as it becomes no longer necessary for investigative purposes.

According to Art. 14 orders "On the prevention of bribery" ICAC has the right to apply unilaterally to a court in order to seize property, which may be an income from corruption offenses. This can be done before the conclusion of the investigation or sentencing.

The prohibition on the use of property owned or controlled by a suspect, as well as property held by a third person, usually lasts 6-12 months, depending on who manages the property: the suspect or the third person. The ban can be extended until the case against the suspect is closed. The parties managing the property are prohibited from utilizing or distributing it. The ban can be canceled if the court finds that this can cause excessive damage, or if there was a misunderstanding of the law.

According to Art. 25A (5) of the Decree on the ICAC, the investigation should be kept secret. The leakage of information can obstruct or significantly complicate it.

Violation of art. 30 is punishable by a court sentence of up to one year of imprisonment and a fine of up to 20,000 Hong Kong dollars. This article establishes a ban on disclosure of the secrecy of the investigation and the obligation to prevent the suspect from engaging in their business and destroying documents while an investigation is underway — this will be considered a violation of the law. The same article refers to the need to protect the reputation of suspects, since the investigation can be lengthy, and allegations and suspicions may ultimately prove to be unreasonable. However, this provision does not provide legal rights to those who were suspected, and does not entail responsibility of the person who reported unconfirmed information to the ICAC.

The importance of confidentiality of reports on corruption, as the ICAC stresses, is one of the main principles of its work.

According to Art. 14 of the decree "On Organized and Serious Crimes", if a person, disclose information to any person that may hinder the investigation, while knowing or suspecting that the report on money laundering was sent to the appropriate authorities, they are committing a crime and are punished with a fine of up to 500 thousand Hong Kong dollars and imprisonment for up to three years.

Individuals questioned by the ICAC are entitled to a lawyer during the interrogation. The ICAC does not require documents proving the competence of the lawyer. Documents drafted in accordance with the instructions of legal advisers (lawyers) can be considered the basis for the practice of lawyer duties. Thus, legal advisers and lawyers can be permitted to the investigation.

As an investigative body, the Commission has no right to impose any sanction or sentence itself. The activities of the individual being investigated by the Commission will be considered in the court of Hong Kong regarding the offense, if the Department of Justice finds that there is undeniable evidence to initiate the case; and if public interest requires legal prosecution.

A person that`s found guilty of a corruption offense by the court may file an appeal and also complain of any unlawful action of the Commission. A person who files a complaint that is not related to the actions of the Commission may apply to the Complaints Committee of the ICAC.

Directives of the ICAC "On Preventing Corruption" and "On Elections" do not provide for any obligations related to denunciation. According to the Directive on Organized and Serious Crime, a person who knows or suspects that any property is the result of a criminal act or that such property was or will be used to commit a crime must notify the Hong Kong police officer or an employee of the Excise or Customs Department of Hong Kong. In practice, such communication is usually done through a joint financial intelligence office that identifies suspicious transactions for the benefit of the police and customs. This obligation is established by the decree "On Drug Trafficking": if a person suspects or knows that some property is the result of drug trafficking, they must report this.

Violation of these orders is a crime and is punished with imprisonment for up to three months and a fine of 50 thousand Hong Kong dollars. Moreover, reporting obligations are assigned to accountants and financial institutions licensed by the financial and credit institution and the Commission on Security and Transactions.

While China imposes a death penalty for corruption [173], in Hong Kong, the maximum sentence according to the Ordinance "On the Prevention of Bribery" is up to 10 years in prison and (or) a fine of 500 thousand Hong Kong dollars (approximately 65 thousand dollars). Hong Kong's courts only extend to severe sentences of imprisonment.

Thus, on December 7, 2015, a former police constable was sentenced to two years in prison in a district court. He was charged with three misdemeanors, as well as knowingly giving a false testimony. When sentencing him, the judge stressed that the defendant inflicted damage on the reputation of the police, discredited its activities, abused his official position for committing crimes that are classified as serious, for which he will be punished by imprisonment.

It should be noted that the case was initiated by a communication (complaint) about corruption. The investigation of the ICAC confirmed this information. At the time of the case, the defendant was a police constable of the local city district of Kowloon. In early 2009, the accused, using his official powers, provided the necessary information about debtors to a bank employee. In addition, he gave false oaths to the court that the inquiries about debtors were related to criminal investigations. In 2010, the accused incited a woman not to testify against her son for forgery of her signature in the sales contract of her apartment. He persuaded the woman to sell her half of the share of an apartment worth $ 1 million US dollars to a bank employee in exchange for the fact that her son will not be held responsible for the forgery of the signature [174].

In 2017, the former head of Hong Kong, D. Tsang, was sentenced to 20 months in prison for corruption. The Supreme Court of Hong Kong found the official guilty of receiving a three-story apartment in Shenzhen. The gift was made by the shareholder of the company, which was filing for a license for broadcasting in Hong Kong. The head of Hong Kong hid information about the "gift". The case also included information on D. Tsang using private aircrafts and yachts of billionaires. However, in this part the investigation did not have sufficient evidence to raise charges. D. Tsang became the highest-ranking official in Hong Kong, who was imprisoned on charges of corruption [175].

Success in the investigation of such crimes largely depends on the ability and willingness of witnesses to testify during the criminal process. The witness protection programs have been protecting the persons whose personal safety or well-being can be endangered as a result of witnessing for the ICAC since 2000 in accordance with the Witness Protection Ordinance (Chapter 564) [176]. The Commission has a special department and specially trained staff to address issues of witness protection [177].

Annual surveys of the ICAC, including in 2016, showed that 96.2% of respondents support the ICAC. These people are associates of the ICAC in the fight against corruption, as well as the driving force of anti-corruption work [178].

Compared to 1975, in 2016, the number of complaints filed against the actions of officials, especially police officers, has significantly decreased, but at the same time, the number of complaints concerning abuse in other government institutions and in the private sector has increased. The department that receives such messages from citizens works 24/7.

The Department received a total of 2,798 complaints of corruption in 2015, which is 18% more than in 2014. The number of requests amounted to 1950, or 70% of the total, an increase of 25% compared to 1,561 complaints registered in 2014. As for the complaints related to the elections in 2015, 619 appeals (566 cases subject to prosecution) were received. Of these, 134 were associated with bribery [179].

It should be noted that all the tasks of the ICAC are implemented in accordance with the "standards of activity", according to which each employee of the Commission is obliged: 1) to respond to a report on the case of corruption within 48 hours; 2) respond to a message that is not related to corruption, within two working days; 3) respond to a request for recommendations on the prevention of corruption within two working days; 4) respond to a request to conduct educational work or provide information related to corruption, within two working days [180].

The activities of the Commission are supervised by civil advisory committees, which were formed simultaneously with the establishment of the ICAC itself on instruction of its first leader, who reasonably feared the possibility of turning this body into a closed, non-transparent and, therefore, corrupt structure.

The Commission maintains extensive contacts in the public and private sectors to exchange information and promote cooperation. The ICAC works with local law enforcement agencies and public authorities, including police, correctional institutions, customs and excise, immigration, as well as a joint financial intelligence unit (the focal point for reports on suspicious transactions in conjunction with the police, customs and excise offices). The Futures and Securities Commission and the Hong Kong Monetary Authority also cooperate with the ICAC to combat corruption and bribery within financial services.

Under the provisions of the UN Convention against Corruption, the police, customs, excise departments and the ICAC are responsible for investigating the cases.

Thus, at present, Hong Kong is one of the most "clean" places not only in Asia(181), but also in the world and, what is very important, 99% of citizens trust the ICAC. More than 90% of all complaints and reports are received by the Commission from the public, two thirds of respondents do not hide their personal data (in 1974, only about one third of the appeals were not anonymous). And this is a huge achievement. The quality of the services provided to the population by the administrative sector has improved. The number of complaints against officials was reduced to a minimum, compared with 86% in 1974.

International cooperation in the fight against corruption. The ICAC has established channels of communication with law enforcement and anti-corruption bodies of various foreign jurisdictional systems. The ICAC conducts the exchange of information and participates in visits, meetings and training events with foreign colleagues and international organizations, including the APEC, the Anti-Corruption Initiative for Asia and the Pacific, ADB / OECD and the Network for Fighting Economic Crime. The special operational communication group of the ICAC maintains close contacts with law enforcement and anti-corruption bodies around the world.

In order to combat money laundering, which is revealed in the course of anti-corruption investigations, the ICAC uses its channels of communication with foreign law enforcement agencies, and also interacts with Joint Financial Intelligence Unit (JFIU). The investigation bodies of the HKPF use the channels of the Egmont Group to exchange operational financial data with foreign law enforcement agencies.

The HKPF has established channels of communication with foreign partners through the Interpol and liaison officers of foreign law enforcement agencies.

The HKPF directs and receives law enforcement officials in order to establish links and organize training along with other states. The HKPF has sent staff abroad to facilitate the exchange of police personnel and experts between the competent authorities.

Hong Kong views the UN Convention against Corruption as the basis for cooperation in the field of mutual legal assistance. The HKPF has signed memorandums on mutual understanding with foreign law enforcement agencies for the purpose of cooperation in combating transnational crime, and the exchange of intelligence, personnel and personnel training. The ICAC exchanges operational data on the basis of the UN Convention against Corruption, without signing any official agreements.

Hong Kong has carried out joint investigations regarding crimes provided for by the UNCAC. The ICAC and the HKPF carry out such investigations under the Hong Kong legislation.

Law enforcement authorities may use special investigative techniques in accordance with the Decree on the “Interception of Information in Communication Channels and Monitoring” (Section 589) and the principles of common law; as well as carry out surveillance, intelligence operations, controlled supplies and other special measures.

The Ordinance "On Fugitive Criminals" (Section 503) (OFC) provides the legal basis for the transfer of fugitives. Arrangements for such fugitives are implemented according to the regulations issued under art. 3 of the OFC. The transfer from Hong Kong should be carried out on the basis of agreements that are the subject of the regulation under art. 3.

The term "extradition", used in the UN Convention against Corruption in Hong Kong, is referred to as "the transfer of fugitives" to designate the transfer of fugitives from a quasi-state establishment (Hong Kong), as opposed to their transfer from one state to another. The HKBL provides that with the help or permission of the ICAC, Hong Kong may sign relevant agreements with foreign states in order to provide legal assistance on a reciprocal basis (Article 96). Such assistance may include cooperation in the transfer of fugitive criminals and mutual legal assistance in criminal matters.

Hong Kong recognizes the UNCAC as the legal basis for the transfer of fugitives. The decree on fugitive criminals (Corruption) (section 503AB) was adopted according to art. 3 of the OFC for the purpose of implementing Art. 44 of the Convention. Thus, any participating State of the Convention may send a request to Hong Kong for the transfer of such individuals, even if a bilateral agreement with Hong Kong has not been concluded.

According to the order "On Mutual Legal Assistance in Criminal Matters ", the Hong Kong Government has signed agreements on mutual legal cooperation in criminal cases with more than 20 countries (including the United Kingdom and the United States). Governments interact during the process of evidence collection, the conduct of searches and seizures, while obtaining permits and orders to seize documents. The Commission cooperates with the authorities of the PRC to identify cross-border corruption under the agreement on the "Mutual Cooperation Scheme" between the ICAC, the SPP and the provincial People's Procuratorate of the Guangdong Province.

Mutual recognition of an act as a criminal offense is a fundamental principle for the transfer (Article 2 (2) of the OFC). At the same time, the underlying behavior of the act is the determining factor.

Terms of transfer are discussed through relevant agreements, as well as art. 2 (2), 5, 10 (6) (b), 13 and 24 (3) of the OFC.

Although the citizenship of the accused is a discretionary reason for refusal (Article 13 (4) of the OFC), Hong Kong has never refused to transfer such individuals. The OFC does not follow the principle "extradite or judge", but nonetheless Hong Kong adheres to the Convention and fulfills its obligations under international agreements. The domestic legislation of Hong Kong does not provide for a mechanism to enforce a sentence instead of the transfer.

Measures of defending fair treatment are of a legislative nature (for example, Articles 4, 35, 38, 39 and 41 HKBL, Articles 12 and 14 of the OFC).

Hong Kong requires the provision of *prima facie* evidence in order for the transfer to be carried out (Article 10 (6) (b) of the OFC). When announcing charges, only the evidence of the fact of conviction or (the process of) sentencing is needed. Evidence is applied in a flexible and reasonable manner.

The Secretariat for Justice is the central authority for the transfer of such individuals. The statutory procedures for the transfer of such individuals are established in the OFC. A request for transfer may be sent against a person that is sought for criminal prosecution or with the intent to sentence or enforce the sentence (Article 4 of the OFC). In the event of arrest, the individual is brought to the court that is reviewing their case under the chairmanship of the magistrate (Article 10 of the OFC). It decides whether the act is an offense for with which the request for transfer of the offender can be granted, and also passes a decree regarding the sufficiency of the evidentiary mass.

In the period of 2003–2012 Hong Kong had transferred eight fugitives guilty of theft, money laundering and corruption. Since the Convention came into force, Hong Kong has received one request (it was still under consider at the time of the review) and sent one request under the Convention. So far, Hong Kong has not refused to comply with requests made under the Convention.

Requests for the transfer of such individuals are generally considered within two to three months, but if the requested individual disputes the reasonableness of the transfer request, it takes much longer.

The transfer of convicted individuals is carried out in accordance with the Decree on the Transfer of Sentenced Individuals (Section 513) and bilateral agreements with 15 countries. Hong Kong has considered 68 such cases in 1997–2012.

On matters relating to the referral of legal proceedings, Hong Kong holds consultations with foreign authorities to determine whether criminal prosecution should be stopped in order to provide evidence to facilitate foreign criminal prosecution.

Even in the absence of an agreement or Convention, the Decree on Mutual Legal Assistance in Criminal Matters (Article 525) (OFC) allows assistance on the condition of reciprocity.

The OFC provides for a variety of MLA types in relation to crimes that affect the interests of individuals or legal entities, including financial institutions. For example, during the collection of evidence, the issuance of search warrants, warrants for the seizure of documents, the transfer of individuals to assist in the investigation and prosecution, and also during the prohibition and seizure of criminal proceeds (Articles 10, 12, 15, 16, 17, 23, 27, 28 and 31 OFC, Table 2 of the OFC). Hong Kong can exchange information on its own initiative and has done so multiple times.

The OFC contains provisions that allow to refuse confidentiality when issuing orders for the seizure of documents regarding bank statements (Article 15 (9) (c)). Employees of banks may be called into court according to art. 10 of the OFC or art. 74-77B of the Resolution on Evidence (Article 8) for presenting bank statements and giving a testimony.

Although dual criminality is required to impose coercive measures under the OFC, the requirement for such mutual recognition is favorably considered in terms of the criterion of behavior, rather than the elements of the crime. Hong Kong applies the UN Convention against Corruption directly in cases where no relevant agreement has been signed.

The Secretariat for Justice is the central authority on MLA matters (C.N.51.2006.TREATIES-3). Requests are sent to to legal consultants for advice and execution in the MLA Sector (MLAS). They must respond to all incoming requests within 10 working days in accordance with the Regulation on the operation of the MLA and issue all subsequent recommendations duly.

The Justice Secretary of Hong Kong can take steps to move consenting individuals from Hong Kong, regardless of whether they are detained or not, to provide assistance outside Hong Kong (Article 23-24 of the OFC).

Hong Kong provides assistance in accordance with the procedures that are specified in the request, as long as they do not conflict with its domestic law.

Hong Kong can provide assistance in hearing the witnesses who are in Hong Kong via video link (Article 10 (1) (b) of the OFC). As a practical matter and in accordance with the concluded agreements, Hong Kong complies with the restrictions on the use of information or evidence obtained according to the received request.

Restrictions in terms of ensuring confidentiality are respected in accordance with the procedures established by the requesting states (Article 8 (2) of the OFC). Any refusal is motivated, and consultations are held before the execution of the request for assistance is postponed. Hong Kong regularly provides updated information to requesting States on the status of the received requests.

Hong Kong bears the regular costs for the execution of requests. If expenses are of an extraordinary nature, Hong Kong will consult with the requesting party.

An analysis of international cooperation of Hong Kong in the field of combating corruption allows us to single out the following successful practical approaches:

– the Secretariat for Justice`s website includes a comprehensive list of agreements on the transfer of fugitive criminals, MLA and other issues related to international cooperation, as well as the guidelines for sending MLA requests;

– Hong Kong applies the usual approach when assessing the requirements for dual criminality (Article 44 (1));

– Hong Kong hasn`t denied the execution of requests made under the Convention regarding corruption-related crimes (Article 46 (9));

– measures to enforce the order of both a seizure based on a conviction and a civil law arrest for the purposes of MLA. These measures are broader than the internal confiscation regime, which is generally based on conviction. They allow for the provision of a wide range of MLA types and the return of assets, which the international cooperation should facilitate (Article 46 (3));

– assistance is provided in the absence of dual criminality in order to apply non-coercive measures. Mutual recognition of the act as a criminal offense is interpreted flexibly, based on behavior, as opposed to every element defining a crime in Hong Kong (Article 46 (9));

– developed the guidelines of the OFC regarding the consideration MLA requests and relevant deadlines (Article 46 (24));

– the exchange of experience and personnel of law enforcement bodies of Hong Kong with their foreign partners, including the provision of technical assistance (Article 48).

Legal liability for corruption crimes in Hong Kong. The term "appointed official", contained in Art. 2 The Prevention of Bribery Ordinance (Section 201) (PBO) covers most categories of individuals listed in Art. 2 (a) of the Convention. Individuals on payroll, who hold public positions are defined as "public authorities".

Hong Kong criminalized active and passive bribery of public officials (Articles 4, 5 and 8 of the PBO). Article 2 of the PBO contains definitions of the terms "advantage", "favor", "appointed official", "public servant", "agent", "principal" and "public authority".

Hong Kong applies Art. 9 of the PBO (on corrupt transactions with agents) to combat active and passive bribery of foreign public officials. According to Art. 2 of the PBO, the term "agent" includes "any individual hired by another individual or acting on behalf of another individual". The term "agent" means a public official working outside of Hong Kong. Article 9 (2) does not have an extraterritorial effect, and for this reason the offense is limited to the bribery of an agent in Hong Kong (does not apply to the bribery of agents outside of Hong Kong).

Hong Kong follows general provisions on bribery in cases involving abuse of influence for personal gain (Article 3, 4, 5 and 8 of the PBO). Abuse of real or perceived influence is covered by Art. 4. Bribery in the private sector is recognized as a criminal offense in art. 6, 7 and 9 of the PBO.

Elements of crime in the form of money laundering are reflected in art. 25 of the OSCO. Although it is established that the extraterritorial application of the OSCO applies only to "an act that is a prosecuted offense, if committed in Hong Kong" (Article 25 (4)). However, it covers all the prosecuted offenses under the Convention. Article 3 of the PBO (on extortion or acceptance of any advantage without permission) regards an offense that is not provided for in the Convention, but this composition is used in practice for criminal prosecution of extortion, as well as obtaining advantages by appointed officials. This crime is complex in nature and is not considered the main offense under art. 25. Article 25A of the OSCO provides for an exception for individuals who personally report the commission of a crime in the form of money laundering without intent.

The action of Art. 25 The OSCO also applies to individuals who conceal the proceeds of crime, but did not participate in acquiring it.

Theft, misappropriation and misuse of property are reflected in the provisions of the Theft Ordinance (Section 210) (LC) (articles 9, 16A, 17, 18, 18D and 19). Cases of embezzlement by public officials may also be considered within the framework of crimes of common law: "conspiracy in order to commit fraud" and "misconduct in a public position" (MPP).

The offense of the MPP in common law was applied in cases involving the abuse of official positions and authority by public officials for personal interest or in the interests of others [182].

Illegal enrichment is recognized as a criminal offense (Article 10 of the PBO).

Hong Kong has established criminal, civil and administrative liability of legal entities, which is different from the responsibility of individuals. Civil liability is applied to companies, such as trustees, under the law according to common law on the basis of the concept of "receiving knowingly" [183]. As for administrative liability, contractors may be excluded from the list of approved contractors for public work and other measures may be applied to them in case of corruption.

Acts in the form of participation are covered by the provisions of the general law relating to joint ventures, incitement, collusion

(Article 159A of the LC), and the acts of the individual as an accomplice, adviser or instigator — art. 89 ORCP. Article 159G of the LC provides for a crime in the form of an attempt. Acts that are exclusively preparatory in nature are not criminalized.

Hong Kong has established penalties for corruption-related offenses, taking into account the degree of the crime (for example, Article 2 of the PBO, Article 27 of the OSCO). The maximum term of imprisonment according to the PBO is 7 years for crimes under Art. 4, 7 and 9, or 10 years for crimes under Art. 5, 6 and 10, and 14 years according to the OSCO.

Officers of Hong Kong are not granted criminal immunities or jurisdictional privileges (Article 25 of the HKBL). The head of the Hong Kong administration is directly responsible for the corruption crimes under Art. 4 (2B), 5 (4) and 10 (1) PBO.

The Secretariat for Justice of Hong Kong oversees the prosecution, eliminating any outside interference. The Code of Conduct for prosecutors establishes guidelines on the procedures for criminal prosecution and practices in this area (Article 63 of the HKBL). Any individual may request for judicial supervision in the High Court to against the decision of the Director of Public Prosecutions not to prosecute, if that individual believes that they have suffered from this decision. In practice, this kind of petition for judicial supervision is very rare. Private criminal prosecution can be initiated under art. 14 of the Decree on the Magistrates (Section 227) (DM).

Hong Kong took steps to ensure the presence of the accused in criminal proceedings and investigation. After the accused is presented with the indictment and delivered to the court, the accused has the right to be released on bail under certain conditions if there are no strong grounds for believing that the accused can evade the punishment, commit a crime or interfere with the administration of justice (Article 9D and 9G of the ORCP).

According to the Ordinance on Prisoners (release under supervision) (Section 325) (OP (RUS)), the Council on release under supervision has been established to consider the applications of prisoners who have the right to participate in two early release under supervision programs. According to the Ordinance on the review of long term sentences (Section 524), a long-term prison sentencing review Council has been established to conduct regular reviews of sentences. It may recommend the head of the Hong Kong administration to mitigate a particular conviction of an accused individual or a conviction of prisoner, which could be replaced by a certain sentence. These two statutory councils evaluate the degree of the crimes when considering the possibility of early release of prisoners.

Disciplinary measures may be taken against civil servants convicted of corruption or other criminal offenses in accordance with the Public Service Ordinance or in accordance with the relevant legislation on types of public service (for example, Article 11 PSO (A)). These officials may be dismissed from service if this is in accordance with public interests (for example, Article 13 of the PSO (A)).

Articles 33 and 33A of the PBO and Art. 79 (6) of the HKBL basically oversee the prohibition of convicts from holding public office positions, whereas Art. 168E of the Decree on Companies (Section 32) provides for the disqualification of convicted individuals for promotion, training, company management, etc.; this applies to companies that are wholly or partly owned by the state [184].

Article 2 of the Rehabilitation of Criminals Ordinance (Section 297) (RCO) provides for the rehabilitation of criminals convicted for the first time for minor offenses. In addition, the Department for the Execution of Sentences oversees certain released and rehabilitated criminals in accordance with various legislative provisions.

The punishment can be mitigated for criminals that cooperate with the investigation [185].

Accused individuals which cooperate with the investigation are entitled to the same protection as witnesses, including the right to participate in the witness protection program.

A number of legislative provisions establish the procedure for giving a testimony by witnesses, including the creation of a safe atmosphere. Courts practice witness testimonies behind a "screen" [186] and limiting the disclosure of personal data [187]. According to Art. 122 and 123 of the ORCP, the court session and all criminal proceedings can be closed. HKPF and the ICAC have established special units for witness protection.

Article 79B of the ORCP provides that witnesses who fear for their safety or the safety of their families will not have direct contact with the accused or ordinary public and can testify remotely [188] through writing (Article 65C of the PUP) or through having their testimonies read by other individuals during a judicial meeting (Article 65B of the ORCP).

According to Art. 8 of the Witness Protection Ordinance (Section 564) (WPO), the witness, participating in the witness protection program may be provided with new personal data. If necessary, physical protection is provided, including relocation, use of safe places, 24/7 escorting by a law enforcement officer (Article 7 of the WPO).

Experts and victims are provided with protection in the same way as witnesses and their relatives according to the WPO. They are also provided with additional protection measures in accordance with the Charter of Victims of Crimes and Art. 27 of the OSCO.

Hong Kong has not signed any agreements on the relocation of witnesses.

Article 30A of the PBO and Art. 26 of the OSCO prohibits the disclosure of information about the personal information of informers. At the same time, no laws were signed that are directly aimed at protecting individuals that report information from further persecution.

Hong Kong has established a confiscation regime based on a conviction (Article 8, 10, 13, 15-18 of the OSCO and Articles 12, 12AA and 14C of the PBO). Confiscation of criminal proceeds is assigned by a judge as part of the process of conviction. Confiscation based on cost is also possible (for example, Article 12AA of the PBO, 12 (6) of the OSCO). According to the OSCO (Article 8 (4)), the prohibition and exemption are limited to cases that amount to under 100,000 Hong Kong dollars.

The OSCO, PBO and ICAC have provisions that allow for the identification, monitoring, freezing and seizure of the proceeds of crime and the means to commit them. According to the OSCO, in the event of a conviction, the Secretariat for Justice can address the court for a confiscation request of the alienable property of the accused, including all valuable means of committing crimes, regardless of whether the court, the police, the ICAC, or customs agencies have taken possession of them.

Although the funds that are intended for use during the commission of crimes can be confiscated, art. 102 (1) (c) of the ORCP contains a specific reference regarding only the property that was "used" in the commission of a crime. The court may apply the powers provided for in this article if it considers that the property was used in this way. In addition, Art. 103 of the ORCP gives the court authority to arrest funds and items that were allegedly provided / prepared for the purpose of committing a crime in connection with which an indictment may be filed, and these funds or items will be subject to alienation by the court, according to art. 102 (1) (c).

Officials that were appointed in accordance with Art. 17 of the OSCO, manage the property that is subject to confiscation prior to its alienation and are responsible for arrest and liquidation of the seized property in accordance with the confiscation order issued according to Art. 8 of the OSCO.

The issuance of warrants for procedural actions (Article 4 of the OSCO), search warrants (Article 5 of the OSCO, Article 10B of the ICAC and permits (Article 13 of the PBO) allow for the seizure of bank and financial documents for review [189].

The injunction regulations under the Illicit Drug Trafficking Ordinance(Return of Income) (IDTO (RI)) and the OSCO regulate the disclosure of information by the accused about assets under their control.

Bank secrecy is not an obstacle to the investigation and prosecution of internal criminal offenses.

The statute of limitations for criminal prosecution regarding crimes for which an indictment may be filed under art. 4-9 of the PBO, has not been established. The statute of limitations is applicable only to minor crimes defined as summary offenses. Article 31A of the PBO extends the statute of limitations for the prosecution of summary offenses provided for by the PBO.

Foreign data on criminal records can be considered part of the general information on the accused (Article 54 (1) (f) of the ORCP.

Hong Kong has established jurisdiction over crimes committed on its territory and on board its ships and aircrafts (for example, Article 23A-23C of the Criminal Code). Hong Kong has not established jurisdiction over crimes committed either against its citizens, by its citizens, by stateless persons living in Hong Kong, or committed against Hong Kong.

Hong Kong has not established the obligation "extradite or judge", but it may resort to the direct application of art. 44 (11) of the Convention.

The rules relating to civil liability for bribery, including the principles of cancellation of contracts, are contained in case law. The issues of revocation of licenses, the right of the government to terminate contracts based on corruption and the exclusion of contractors from the list of approved bidders are provided for in the regulations of administrative law.

In addition to initiating civil proceedings, relevant legislative provisions can provide assistance to victims in claiming damage compensation, compensation and restitution, namely Art. 12 and 12AA of the PBO, art. 73, 84 and 84A of the ORCP and Art. 98 of the CC of HK.

Thus, the successful results of Hong Kong in the field of implementing legal liability for corruption are the following:

– extraterritorial sphere of application of the Art. 4 of the PBO, as well as a broad definition of the notion of "benefits" in the PBO;

– the possibility of case-law cases, in which courts have made decisions against legal entities related to corruption, to encourage concerned individuals to receive compensation in such situations;

– the existence of a statement on criminal prosecution policy and practice — the Code for Prosecutors [190] and an Independent Complaints Committee of the ICAC, which monitors and supervises complaints against the ICAC or its staff, including those due to insufficient investigation, and makes recommendations for follow-up actions;

– taking measures to promote the re-socialization of convicts in society, including the Rehabilitation of Criminals Ordinance (RCO) and the two programs under the OP (RUS) related to early release under supervision;

– adopting decisions on the arrest and seizure of assets set for confiscation at the same time as the decision on the criminal prosecution against the suspects;

– the application of evidentiary presumptions during the hearings on the confiscation, including: a) questionable sources of assets and the criminal's knowledge of them; b) the existence of any property that has been transferred to the accused within six years prior to the initiation of the criminal proceedings and which represents the proceeds of crime; c) the existence of any expenses during this period, which were covered by proceeds from criminal activity (Article 9 OSCO);

– the establishment and functioning of the ICAC, including a well-designed system of checks and balances with regard to its operations, political will and resources, including specialized training of staff (Article 36);

– effective cooperation between relevant law enforcement agencies, in particular the ICAC, the HKPF, JFIU and other institutions, for example through liaison groups established between the ICAC and other law enforcement agencies (Article 38);

– coordinated actions between national authorities and private sector organizations (Article 39 (1)).

In order to further tighten the measures taken to combat corruption in Hong Kong, the following steps were proposed for the evaluation of the implementation of the UN Convention against Corruption in 2017:

– in the absence of a relevant case law relating to officials of public international organizations, development of legislative provisions on bribery involving agents for the specific determination of the offense in the form of bribery of foreign public officials and officials of public international organizations, that would also cover the proposal, provision or promise of advantages to officials outside of Hong Kong (Article 16) of the UNCAC;

– consideration of the possibilities of reclassification of the acts provided for in Art. 3 of the PBO, to crimes that can be prosecuted, in order to qualify them as the main offense regarding money laundering (Article 23 of the UNCAC);

– cancellation of the threshold (Article 8 (4) of the OSCO), according to which the ban and confiscation are limited to cases involving the obtained benefit of at least 100,000 Hong Kong dollars (Article 31 (1)) of the UNCAC;

– considering the possibility of signing agreements on the relocation of witnesses (Article 32 (3)) of the UNCAC);

– considering the possibility of extending the actions under the legislation to ensure the protection of individuals reporting information from unfair treatment (Article 33 of the UNCAC) in Hong Kong;

– considering the possibility of establishing jurisdiction over crimes committed against Hong Kong citizens, by Hong Kong citizens, by stateless individuals living in Hong Kong, or against Hong Kong (Articles 42, 42 (2) (a), (2) (b) and 2 (d)) of the UNCAC;

– despite the fact that the UN Convention against Corruption has direct application as a legal basis for the transfer of fugitive criminals, considering the possibility of establishing legislative obligations of "extradite or judge" (Articles 42 (3) and 44 (11)).

§ 2. Macao Special Administrative Region of the People's Republic of China (Aomen)

On December 20, 1999, Macau ceased to be a Portuguese colony and became a special administrative region of the PRC (SARA) in accordance with the provisions of Art. 31 and 62 (13) of the Constitution of the PRC and the Basic Law of the SARA. PRC (Basic Law). PRC ratified the UNCAC on January 13, 2006. In accordance with notification No. 5/2006, sent by the head of administration on February 20, 2006, the Convention entered into force in SARA.

According to the Basic Law and the "one country-two systems" policy, SARA has executive, legislative and independent judicial powers, including a final judicial decision. The Basic Law enshrines the principles of the SARA legal regime, which is still based on Portugal's civil law system.

In accordance with the Basic Law, two independent supervisory institutions were established in SARA, namely the Commission Against Corruption (Comissariado Contra a Corrupgao — CCAC) and the Criminal Police under the direction of the Prosecutor (Policia Judiciaria — Criminal Police).

The Commission against Corruption is the body that has been specifically authorized to investigate and combat corruption in Macau in the public and private sectors, and also act as an ombudsman. It oversees the program to prevent corruption and investigate criminal acts of corruption and fraud. The commission operates within the powers of the criminal police authorities. The management of the Commission, its functions and the limits of its powers are defined by the Law No. 5/2000 and an Administrative Instruction No. 3/2009.

The criminal police (under the direction of the prosecutor) is responsible for investigating and combating money laundering and terrorism. Powers of the police is defined by Law No. 5/2006.

The CCAC can investigate any alleged crime of corruption committed by public servants or private enterprises / individuals in accordance with laws related to bribery in the public sector, the private sector and foreign trade. The CCAC may also investigate the activities of financial institutions, in particular:

– check public services or departments with or without warning, examine documents, interview employees and request any information that is necessary for the investigation;

– request for permission to conduct and conduct comprehensive investigations, take any other measures aimed at establishing the legality of administrative acts, as well as hearings on public enterprises and individuals;

– involve the society to participate, demand a thorough investigation; make inquiries, inspections, studies, analyzes or take any other necessary measures;

– have access to the information contained in the databases of any public enterprise, which is considered useful for investigation and for the purpose of criminal prosecution, as well as the database of concessionaires or licensees of telecommunication services related to the identity of telecommunications service users;

– demand the production of records and documents;

– invite and interview witnesses;

– Prosecutor's sanction to interrogate the defendant (except for the first interrogation);

The powers of the commission on corruption and criminal police is delineated. During the performance of their duties, the Commission may ask for cooperation of any public institutions or any regulatory body. They give the Commission all the required documentation and information. The Commission also has access to the information database of all public services and institutions, as well as telecommunications companies.

Investigations of the Commission are supervised by a special commissioner who has the same powers as a prosecutor for issuing permits for searches and seizures. Investigations by criminal police is supervised by the prosecutor. Refusal to provide evidence, like any attempt to delay or interfere with the investigation, is considered an insult to the authorities and is punished with the maximum punishment — two years of imprisonment.

The criminal police is responsible for investigating and combating the activities of money laundering and terrorist financing in Macau. The duties and authority of the police is set out in Act No. 5/2006.

According to the established rules, the Commission on Corruption and the criminal police may be arrested and detained only with the permission issued by the court or (in some cases) by the prosecutor. This is generally the case unless the individual is caught "at the crime scene" by the CCAC or the police, or when the offense provides for imprisonment: (a) there is a suspicion that the suspect can escape; and (b) a warrant from a judge or prosecutor is required. Under these circumstances, the CCAC / police can arrest and detain without a warrant.

During the course of the investigation, the Commission may withdraw the property, which may be the result of a corruption offense, or any other property that may be used as evidence of guilt under an order issued by a special authority,.

The CCAC`s Commissioner, as a rule, has the power to search and confiscate under the direction of the prosecutor in accordance with the procedure of criminal law. Articles 163-171 of the Criminal Code allow confiscation of evidence before trial if it is suspected that it is related to the crime. With the permission of the CCAC`s Commissioner, real estate and suspected firms are searched (except for law firms, medical institutions, banking premises or permanent residences — in these cases, a personal presence or permission of the judge is required), and confiscation and anything may be temporary seized if the CCAC has reason believe that this is evidence of bribery or other crimes (with the exception of correspondence — this requires the permission of the judge).

By order of a judge or a prosecutor, the police can search both real estate and the suspects themselves (with the exception of the above cases). Police is required to produce a warrant issued by the prosecutor before the beginning of the search.

If a individual is detained by the CCAC or the police during a crime, for which a prison term is provided, or any delay may interfere with the administration of justice, or the suspect does not object to confiscation and a search, the warrant of a commissioner, public prosecutor or judge (depending on the case) is not required.

According to the Criminal Code, any information collected by the CCAC or the police during the criminal investigation is confidential until the court hearing. Act No. 10/2000 prescribes that the investigation should be held confidential by the CCAC`s commissioner, deputy commissioners, consultants, technical advisers, investigators, assistants, and all those who cooperate with the CCAC. This applies to the facts that have become known to them in the course of performing their official functions. In exceptional cases, with the permission of the Commissioner, confidentiality may not be observed.

In accordance with Art. 335 of the CC, violation of the secrecy of the investigation is a crime. In addition, those who disclose facts and information and at the same time interfere with the work of the CCAC,

The individual under investigation is entitled to the services of an lawyer-interpreter, if necessary. Any individual against whom an investigation is being conducted may refuse to answer questions because they have the right not to testify against themselves.

According to the Macau law, there is a general concept of legal immunity covering a wide range of communications and documents, including communication of between a client and a lawyer. Immunity is the right (and duty) of a lawyer, not the client. Indeed, all documents, communications and information provided to legal advisors are a legal secret. They can only be disclosed with the permission of the Law Society (*Associagao dos Advogados de Macau)*. Moreover, documents that are granted immunity by law and communications for the lawyer are usually exempt from disclosure for law enforcement or monitoring bodies. This does not apply to the client's documents and communications, which must be disclosed. The supervisory authority may transfer such documents and communications to third parties.

The commission and the criminal police do not have exclusive rights, and only have the legislatively established powers to conduct an investigation. Upon completion of the investigation, the case is sent to the prosecutor for indictment and further to the court to determine the punishment.

The Anti-Corruption Law (L14 / 87 / M) was repealed, and currently the punishment for corruption crimes is assigned in accordance with the Macau's Penal Code in three categories: Art. 3370 — "passive corruption for a legal action", art. 3380 — "passive corruption for an illegal action", art. 3390 — "active corruption".

The disciplinary responsibility of civil servants is established by the by-laws of civil servants *Estatutodos Trabalhadores da Administragao Publica de Macau* — (Civil Servants By-Laws) .The document contains a list of punishments — from suspension of duties to pay cuts and dismissals.

The corruption offenses of foreign officials are punishable in accordance with Law No. 10/2014, which came into power on 1 January 2015.

Act No. 11/2003 for the employees of the public administration, establishes a duty to disclose their income and hereditary interests (as well as the income of their spouses or partners). This is done before the beginning of duty and after that, every five years. Distortion of this data or its late delivery is punishable. The same law establishes a criminal penalty for "unjustified enrichment" if the employee is unable to explain the origin of their extremely high incomes.

Executive Order No. 112/2010 and the Administrative Decision No. 24/2010 prohibit senior government employees from accepting gifts, paying entertainment, or enjoying other benefits, except for symbolic gifts given during official events. In addition to criminal liability, civil servants may be subject to disciplinary measures for corruption offenses in accordance with civil service laws — from temporary suspension from duty to complete dismissal.

Receiving any benefits by civil servants due to their official position (other than those permitted by law) is prohibited. The CCAC issued Recommendations to civil servants for professional ethics and conduct (hereinafter — the CCAC Recommendation), which gives examples of gifts and entertainment that can be accepted, but all of which should be reflected in special documentation. Courts apply the CCAC Recommendations, and civil servants must follow them. They are also applicable in the private sector.

Corruption crimes in private businesses are regulated by Law 19/2009.

Money laundering is criminalized by Law No. 2/2006 and Act No. 6/197 (the Organized Crime Act), and also by Act No. 17/2009 (the Narcotics Act), including the Administrative Decision No. 7/2006. The financing of terrorism is criminalized by Law No. 4/2002 and Law No. 3/2006. The responsibility for the accounting of money laundering transactions lies with financial institutions, insurance companies, currency exchange offices, gambling companies, pawnshops, luxury sellers, real estate agencies, lawyers, notaries, registrars, auditors, accountants and tax advisers.

Act No. 3/2001 (on Elections) provides for specific violations related to corruption during public elections.

Bribery of individuals, as well as civil servants, is also recognized as corruption.

The Criminal Code provides for the offenses related to bribery committed by civil servants, such as the:

– employees of the public administration, or any public institution, or public authority;

– Executive Directors;

– secretaries;

– Vice-Chairmen of the Legislative Council;

– judges and prosecutors;

– members of the CACC;

– members of the Government of Macau;

– employees of the department, or any other body, public company, state company, or a company in which the administration has a controlling interest, as well as a public service concessionaire, a public property concessionaire or a monopoly company in rendering any services.

The general definition of a public official is contained in Art. 336 of the SARA Criminal Code in accordance with Art. 2 (a) of the United Nations Convention against Corruption.

Active bribery according to Art. 339 of the Criminal Code extends to acts in the form of providing or promising an undue advantage, but not directly in the form of a "proposal". The authorities of the SARA explained that the Portuguese verb "dar", used in Art. 339, covers the concepts of "supply" and "provision", as required under the United Nations Convention against Corruption.

Active bribery (Article 339) is a proposal (or promise to offer) directly or through a third individual an undue advantage in monetary or other form to a civil servant with regard to the performance (or non-performance) of their official duties.

According to this provision, if active bribery concerns the commission of a legal act, the penalties applied are softer than if it concerned the commission of an illegal act. The requirements of the Convention apply to active bribery when a public official "commits any act or inaction in the performance of their official duties", and, in substance, art. 339 (2) of the CC of the SARA complies with the requirements of proportionality of sanctions and the degree of the crime under art. 30 (1) of the Convention.

Passive bribery is provided for in Art. 338 of the Criminal Code, which defines it from the point of the commission of legal acts as the conduct of a civil servant directly or through a third individual applying for an illegal advantage in monetary or other form for someone or receiving personal gain in the performance of their official duties. Mild penalties are applied in this case.

With regard to the bribery of foreign public officials and officials of public international organizations, SARA adopted Law

No. 10/2014 on the regime for preventing and combating corrupt acts in foreign trade, which properly provides for the offense of active bribery of a foreign public official outside the CAPA or official of any public international organization. The definitions of foreign public officials outside SARA and officials of public international organizations correspond to art. 2 (b) and (c) of the United Nations Convention against Corruption. SARA decided not to directly criminalize passive bribery of foreign public officials and officials of public international organizations. Under certain circumstances, relevant acts may be subject to the provisions of Act No. 19/2009 on bribery in the private sector.

No specific provisions on abuse of influence for mercenary purposes have been adopted, however criminals may under certain circumstances be punished as accomplices of active or passive bribery.

A crime related to public bribery has an extraterritorial nature. Regardless of where the bribe was promised, demanded or approved, the offense is deemed committed in Macau. Bribery committed by a civil servant off the coast of Macau is also considered to have been carried out in Macau and is punishable under SARA law. This also applies to bribery in the private sector.

In accordance with Art. 3 of the Law No. 10/2014, bribery of foreign officials is a crime under the Macau law if the provider is located in Macau.

Crimes in the form of active and passive bribery in the private sector are covered by art. 3 and 4 of Law No. 19/2009, in particular:

active bribery — the offer or promise of an illegal advantage in monetary or other form, directly or through a third party, to anyone who works or performs services for a private legal entity, including directors and management personnel, with regards to the performance (non-performance) of any act in violation of their official responsibilities;

passive bribery — a request by an employee of a private legal entity to any individual for an illegal advantage or obtaining such benefit in cash or another form, personally or through a third person, in regards with the performance (non-performance) of any act in violation of their official duties.

Hiding the commission of the above crimes is also a crime.

The crimes of bribery in foreign trade are classified as criminal offenses under Act No. 10/2014 and include the commission of the following acts: the offer or promise of an illegal advantage in monetary or other form directly or through a third person to a civil servant from a jurisdiction outside Macau or to an employee of any "public international organization " with regards to the performance (non-performance) of their duties in order to obtain or maintain an illegal advantage in foreign trade.

If a civil servant rejects or returns the offered benefit, even if they accepted it at first, punishment towards them is not applied.

"Advantage" in accordance with the CCAC Recommendations, in particular, includes money, gifts, hospitality, banquets or entertainment. Factors that can be taken into account when determining whether the obtained may be considered an "advantage" are:

– the price and essence of the advantage;

– the post of the recipient;

– the relationship between the donor and the recipient;

– the relationship between the donor and the department or institution for which the recipient performs services;

– purpose of the donation;

– the attachment of any obligation with a resulting "advantage".

According to Law No. 19/2009 on the bribery in the private sector, in relation to passive bribery, punishment cannot be imposed if an individual, prior to the performance (non-performance) of the act in question, voluntarily rejects the offer or promise, accepts, but returns "advantage" (or, in the case interchangeable assets, its value). This reflects the passive protection against bribery in accordance with the SARA Criminal Code.

Law No. 10/2014 on bribery in foreign trade does not provide for exceptions.

The CCAC recommendations do not set any limits on the value of the thresholds in terms of benefits — even being "ordinary" does not change their essence.

Nevertheless, the CCAC Recommendations allow civil servants to accept gifts and souvenirs of symbolic value on official occasions. A civil servant must assess its value and relevance in each specific case before accepting a gift. Such gifts / souvenirs are considered received on behalf of the department or institution where the civil servant works, and they must immediately notify their supervisor and transfer them the received.

Hospitality can also be accepted during official trips on behalf of the department or institution, but should be evaluated by the civil servant from the point of its correspondence to the purposes, the occasion, etc. In accordance with the CCAC Recommendations, unreasonably generous or frequent hospitality which can lead to difficulty in performing official duties or adversely affect the reputation of a public institution should be denied, especially when it turns out to be provided by people who hide their relationship with this department or institution.

According to the Criminal Code for bribery, with the authorization (at the direction of) the head or employer, it is not classified as a criminal offense, the punishment of a civil servant can be mitigated or they can avoid disciplinary liability, according to the Code of Conduct for Civil Servants.

In accordance with the CCAC Recommendations, a request for permission to receive any benefit should be sent by the civil servant to their direct manager in written form, before it is accepted, and if the benefit is taken prior to authorization, the manager should be contacted as soon as possible.

A civil servant is also obliged to consult a supervisor if they are not sure of the acceptability of the gift or service and implement their recommendations. The CCAC`s recommendations do not apply to issues related to bribery in the private sector or in foreign trade.

In accordance with Art. 10 of the CC, the companies cannot be held responsible for this violation, unless specific provisions state otherwise. The same restriction applies to bribery in the private sector (Article 8 of Law No. 19/2009). Moreover, even in cases where individuals act on behalf of (or in the interests of) the company, the company will not be liable.

SARA established criminal liability of legal entities for crimes in the form of money laundering in art. 5 of Law No. 2/2006 and art. 10 of Law No. 6/97 / M, as well as for the active bribery of foreign public officials outside the jurisdiction of SARA or officials of public international organizations (Article 5 of Law No. 10/2014). However, the corporations are not liable if the civil servant acted contrary to the expressed order or instruction of the head of the organization or representative of the company.

Civil liability for offenses provided for by the UN Convention against Corruption, established in art. 477 of the Civil Code of SARA, in which the right to seek compensation for damage caused by individuals and legal entities is secured.

Most elements of the offense of money laundering are covered by Art. 3 of Law No. 2/2006 on the Prevention and Suppression of Money Laundering. This law defines the main offenses related to money laundering as those provided for by the Convention, the maximum penalty for which is enforced in the form of imprisonment for more than three years. Exceptions are possible.

Moreover, although the special provisions of Art. 227 and 228 of the Criminal Code establish the offenses in accordance with Art. 23 (1) (b) of the United Nations Convention against Corruption, the offence of concealment appears to be too narrow and concerns only proceeds from crimes against property, rather than any criminal proceeds.

Theft and related crimes are defined in art. 340 (on embezzlement or appropriation of monetary funds by a public official), art. 341 (on the misuse of property by a public official) and art. 342 (on the exchange of economic benefits through the commission of lawful actions) of the CC.

The norms of Art. 347 of the CC relate to the abuse of an official position, the provisions of Art. 343 — to the intrusion into a property by a public official, art. 344 –to the unlawful receipt, art. 345 — to the abuse of an official position to prevent law enforcement, art. 346 — to the refusal to cooperate.

The offense in the form of illegal enrichment is established in Art. 28 of Law No. 11/2003.

The penalty for property theft in the private sector is provided for in art. 197-199, 211 and 217 of the CC (theft, theft under aggravating circumstances, abuse of trust, fraud).

According to the SARA CC, maximum penalties for public bribery are: 8 years of imprisonment for passive corruption — an illegal action; 2 years of imprisonment or a fine of 2,4 million patacas (Macau currency) for passive corruption — a legal action; 3 years of imprisonment for active corruption — an illegal action; 6 months of imprisonment or a fine of 600 thousand patacas for active corruption — a legal act.

In addition, in the event of conviction, the court may confiscate proceeds from bribery.

Maximum sentences under Law No. 19/2009 for private corruption offenses: up to 3 years of imprisonment for passive corruption and up to 2 years of imprisonment for active corruption. Imprisonment may be replaced by a fine of up to 3.6 million patacas.

The maximum penalty under Act No. 10/2014 for bribery in foreign trade is up to three years for active corruption. In the case of corporations, a fine and (or) judicial liquidation may be applied. In addition, the following measures may be applied: a ban on the performance of certain actions for a period of 1 to 10 years; deprivation of the right to grants or subsidies provided to public enterprises; temporary or terminal closure of the enterprise, as well as other injunctions.

Crimes of money laundering are punishable by imprisonment for up to 8 years (up to 12 years if the crime is committed by a group of individuals) and a fine for corporations. Criminal liability does not abolish civil or disciplinary liability.

Moreover, fines may be applied instead of imprisonment. For example, active bribery committed by a "secret association or society" (as established in Law No. 6/97), may be punishable by imprisonment for a term of 5 to 12 years while theft, as defined by the Convention ("in the commission of a lawful act or in the performance of official duties [of a public official] ") — for a period of up to 6 months or a fine.

In accordance with the CC, persecution does not follow if the civil servant voluntarily rejects the proposed advantage before performing (not performing) the act or has accepted, but returns it (or reimburses its value) (Article 337 (3)). This does not apply to the bribe-offerer.

In accordance with Art. 68 (1) the individual that is guilty of offering a bribe in order to perform a certain legal action or avoid punishment, if the unlawfulness of the action is insignificant, must compensate the illegally appropriated — and in this case punishment is not needed. Partial protection from active bribery is provided (Articles 339 (3) and 328 (b)). The amount of the fine may be reduced for the individual who offered a bribe, if they did so in order to avoid criminal punishment for their close relative or themselves.

Confiscation of proceeds from crimes obtained by a criminal or a third party is possible in accordance with Art. 103 of the CC. Confiscation of funds used or intended for use during the commission of offenses, described under the UN Convention against Corruption is established by Art. 101 of the CC. It contains the provision that "such funds may be used to violate the security of individuals or public order, or to commit criminal offenses. Measures taken to track and seize proceeds of crime and the means for its commission are specified in art. 163 of the CCP and in art. 103 of the CC. The seizure and confiscation of assets is also provided when they are substantially greater than the official incomes of officials that are required to submit declarations in accordance with Law No.11/2003.

According to the Code of Criminal Procedure (Article 170), law enforcement authorities, including the CACC, issue legal orders for the alleged sale, destruction or use for the benefit of society of arrested or confiscated perishable or dangerous items.

Bank secrecy may be violated with the consent of the client of the bank or under a court order in accordance with the Decree / Law No. 32/93 / M (act of the financial system) and art. 8 (2) of the Organic Law on the Commission against Corruption (Law No. 10/2000).

Limitation periods are specified in art. 110 of the CC, which also provides for the suspension of their duration in a number of cases (Article 112) and a break during such period (Article 113 of the CC), if the alleged offender evades justice. Given the relatively mild penalties for most of the crimes specified under the UN Convention against Corruption, limitation periods are not long.

Article 69 of the CC extends to the consequences of a relapse, and Law No. 6/2006 on mutual legal assistance in criminal matters provides information on the conviction of suspects, accused or convicted individuals.

Article 4 of the CC establishes jurisdiction over the acts committed within the boundaries of SARA, regardless of the nationality of the individual who commits the act, or on board ships or aircrafts registered in the SARA. Article 5 defines the principles of active and passive legal identity in relation to acts committed outside its borders under certain circumstances. Article 3 of Law No. 10/2014 also extends jurisdiction over the active bribery of foreign public officials or officials of public international organizations that is committed abroad when the wanted criminal is physically within the boundaries of the SARA.

Paragraph 2 of Art. 5 of the CC allows SARA to establish jurisdiction on the basis of international treaties and MLA agreements. This provision allows SARA to exercise its jurisdiction extensively and apply the principle of "extradite or judge". Despite the fact that extradition is not practiced in Macau as it is a Special Administrative Region of the People's Republic of China. Art. 33 of Law No. 6/2006 provides grounds for refusing to transfer fugitives from justice. In addition, Art. 33 (2) establishes that in the event of a refusal to transfer, relevant evidence is required from the requesting State in order to advance the initiation of court proceedings.

SARA takes measures to terminate contracts, or to withdraw concessions in accordance with the relevant provisions of its Code of Administrative Offences and the Civil Code.

Individuals who have suffered as a result of a corrupt act have the right to initiate proceedings against those responsible for causing damage by presenting a separate or additional civil claim in order to request a compensation.

An individual that is found guilty of an offense related to corruption or money laundering has the right to appeal to the Court of Appeal (*Tribunal de Segunda Instancia*) and the Supreme Court (*Tribunal de Ultima Instancia*).

During the investigation, the accused can argue with the law enforcement measures applied to them if they were pressured and no warrant for temporary seizure of property was presented.

Civil servants are obliged to report all the offenses known to them during the performance of their official duties (subparagraph b of item 1 of article 225 of the CCP). According to Law No. 2/2006 and the administrative instruction No. 7/2006, this duty, in order to identify money laundering and financing of terrorism, is imposed onto employees of financial institutions, insurance companies, foreign exchange offices, gambling enterprises, credit institutions, merchants of high-value goods, realtors, lawyers, legal advisers, notaries, registrars, auditors, accountants and tax advisers. Relevant companies, institutions and individuals are required to inform the Financial Intelligence Unit within two days after the commission of an act deemed suspicious and related to money laundering. This body is responsible for the analysis, compilation and transfer of relevant information to the prosecutor's office for investigation.

Regulatory bodies oversee such companies, institutions and individuals: the Monetary Authority of Macau, the Gaming Inspection and Coordination Bureau, the Solicitors Independent Disciplinary Commission, the Justice Affairs Bureau, the Economy Services Bureau. All of them are responsible for taking preventive measures and for providing information within their companies. They are also obliged to inform the prosecutor about the facts that have become known to them, which give grounds for suspecting money laundering or activities related to the financing of terrorism.

Failure to comply with this obligation is punishable by a fine of up to 500,000 patacas for a private individual and 5 million patacas for corporations. If the violator has benefited from such a violation — the income is higher than the one for which the maximum appropriate punishment is provided, then the punishment rises to the maximum equivalent of the double value of the income.

CCAC's investigative powers are complemented by the right to impose a fine or an imprisonment of up to 2 years on individuals who refuse to help or impede the investigation, in cases when the individual must, but refuses to testify without serious reasoning, they may be found guilty of a crime of insubordination;

an individual who deliberately obstructs the performance of CCAC tasks;

an individual who is required to provide CCAC with information, documents or materials in his possession, or fulfill the CCAC`s requirement before a certain date, but fails to do so.

Criminal liability does not abolish civil action and (or) disciplinary measures.

Third parties that report corruption and help the investigation with other subjects involved in the investigation, are ensured with confidentiality. A witness protection system in Macau does not officially exist, but in practice, protection measures are applied.

The CCAC is responsible for the investigation of corruption crimes, the prosecutor — for the prosecution. Prosecutors do not have discretionary powers to initiate and prosecute cases.

In accordance with the Staff Statute of the State Administration of Macau, public officials may be subject to administrative penalties — from written reprimands, fines and temporary dismissals to forced retirement or dismissal after proper disciplinary proceedings, during which a criminal act is also considered a violation discipline. Suspension of the practice of political rights; the prohibition to hold a public office for a period of 10 to 20 years; and the prohibition to perform administrative or supervisory functions of any kind in public legal entities or corporations with a public majority in the share capita,l or concession companies that provide public services or supply goods for a period from 2 to 10 years — are all included in the number of additional penalties provided for in Law No. 6/97 / M (on Organized Crime).

Article 40 (1) of the CC provides that the purpose of criminal penalties and steps to ensure the security of punitive measures is to protect legitimate interests and reintegrate criminals into society. In accordance with Art. 52 of the CC, an individual social reintegration plan is being developed, to the extent possible, by agreement with the convicted individual, while providing his participation in special social programs.

Exemption from punishment in the case of effective cooperation with law enforcement bodies is provided for by art. 23 and 24 of the CC and art. 262 of the CCP, in order for collective or individual offenders to be interested in providing information to the Commission against Corruption. Article 7 of the Macau Organic Law also stipulates the circumstances under which criminals can be exempted from punishment for providing effective assistance to investigative bodies.

An individual under investigation by the CCAC may be prosecuted for a relevant crime by the Macau court if the prosecutor believes that during the investigation sufficient evidence has been obtained, which proves that the crime was committed and the identity of the criminal is established.

The suspect may escape prosecution or get a softer sentence if they actively help in the search for substantial evidence, which may be crucial for the disclosure of a crime (in particular, other responsible individuals). Such provisions apply to the public sector, the private sector and to foreign trade. In practice, they are applied to mitigate the conviction.

A judge may take into account the mitigating factors for all bribe takers the punishment may be reduced or cancelled for the defendant, who actively assists in the search for material evidence and in the identification of perpetrators.

Civil servants are legally obliged to report all crimes in connection with the performance of their duties in accordance with Art. 225 of the CC. There are no specific obligations on reporting in connection with corruption and bribery.

Reporting obligations in connection with money laundering operations under Law No. 2/2006 and Regulation 7/2006 are imposed upon financial institutions, insurance companies, currency exchange offices, gambling establishments, pawnshops, luxury sellers, real estate agencies, lawyers, notaries, registrars, auditors, accountants and tax advisers. Such companies, institutions and private individuals are required to report to the Financial Analysis Office (an independent entity established in 2006) within two days of conducting operations that are suspected to involve money laundering. The financial analytical department is responsible for the analysis, compilation and processing of relevant information before submitting it to the prosecutor for investigation.

Various regulatory bodies oversee the activities of companies, institutions and individuals that can participate in money laundering. These are the Macau financial institutions, the Office for Verification and Coordination of Gambling Facilities, the Macau Legal Society, the Independent Disciplinary Commission of Advocates, the Bureau of Justice and the Bureau of Economic Services. They develop preventive measures and hearings of exposure, and verify compliance. They are also required to report directly to the prosecutor about the facts that arouse suspicion of money laundering and were discovered during the checks.

The failure to report a bribe under Act No. 2/2006 is punishable by a fine of up to 500,000 patacas, if that person is an individual and up to 5 million if it is a corporation.

SARA has not adopted specific provisions on the protection of witnesses, experts and victims, although in practice physical protection is provided to witnesses and to those who are an interested party under art. 57 of the CCP. The Anti-Corruption Commission has the competence to coordinate any work to ensure the protection of witnesses under Art. 18 of the Administrative Regulation No. 3/2009. In the protection of witnesses, the staff of the Commission is allowed to use firearms (Regulation on the Commissioner for Combating Corruption No. 86/2000). Article 28 of Law No. 6/97 / M on organized crime can also be applied to protect the identity of witnesses under certain circumstances.

The following successful practices of combating corruption in Macau can be highlighted:

– Law of SARA No. 2/2006 provides that an act in the form of transformation or transfer of proceeds of crime is permissible, even if the underlying offense was committed outside the SARA;

– in SARA, all public servants, including the head of administration, declare their assets and property rights, while the submission of false declarations or possession of unjustified assets is considered a criminal offense;

– in accordance with Art. 8 of Law No. 10/2000 and the Decree-Law No. 32/93 / M, the obligation to cooperate with the Commission against Corruption takes precedence over the obligation to respect the confidentiality of any individual or legal entity, in particular, bank secrecy can be violated with the consent of the bank's customer or an order of the court;

– in accordance with Art. 5 (2) Criminal liability is enforced when an obligation to prosecute acts committed outside the SARA is established in international treaties or MLA agreements that apply to SARA.

With the goal of further strengthening the fight against corruption in Macau, authors of the review of the implementation of the UN Convention against Corruption in 2017 [191] proposed the following measures:

– adapt the data collection system to enable it to provide such information in relation to criminal prosecution and conviction for crimes;

– continue the work to ensure the implementation of Art. 15, 16 (1) and 21 of the UNCAC, in particular with regard to the criminalization of the proposal of undue advantage;

– consider the possibility of criminalizing passive bribery of foreign public officials and officials of public international organizations (Article 16 (2));

– consider the possibility of amending the legislation on the punishment of individuals who abuse influence for mercenary purposes, into an independent crime in accordance with the requirements of the Convention (Article 18);

– change the scope of the offense of money laundering to ensure that all crimes provided for in the Convention are considered to be the main offenses, including the acquisition, possession or use of proceeds from all crimes covered by the UN Convention against Corruption (not only property crimes) (Article 23);

– consider the possibility of extending the offense of concealment to all crimes provided for by the UN Convention against Corruption (Article 24);

– consider extending the criminal liability to legal entities in connection with active and passive bribery, as well as with other related crimes (Article 26);

– consider the possibility of amending the law on punishing an attempt preparation for any crime recognized as such under the Convention (Article 27);

– establish a longer limitation period or provide for the suspension of the limitation period in cases where the alleged offender evades justice (Article 29);

– consider the set of penalties for crimes recognized in accordance with the UN Convention against Corruption and amend the law so that the severity of the crimes is taken into account when determining the penalties (Article 30) of the UNCAC;

– consider the appointment of public officials who are accused of committing offenses established in accordance with the Convention (Article 30) of the UNCAC to a different post;

– amend the legislation in order to eliminate the requirement that "the means of committing crimes created a threat to the security of individuals or for public order or could be used for the subsequent commission of criminal offenses" as a condition for the arrest and confiscation (Article 31) of the UNCAC;

– establish a specific and comprehensive legal regime for the protection of victims and witnesses (Article 32) of the UNCAC;

– consider the possibility of taking measures to protect individuals reporting information on corruption in the criminal, administrative and labor spheres (Article 33);

– consider the possibility of improving the systems that allow the accumulation of data on the removal of bank secrecy in cases of cooperation with the Commission against Corruption (Article 40) of the UNCAC.

International cooperation in the fight against corruption. Law No. 6/2006 provides that judicial cooperation in criminal matters is governed primarily by international conventions or their provisions, in cases when international conventions on the issue under consideration are not available or are insufficient.

The Commission cooperates with the anti-corruption authorities of mainland China and participates in several joint operations with the Independent Commission against Corruption of Hong Kong. The Commission is also a member of the International Ombudsman Institute and the Asian Ombudsman Association and the Asia-Pacific Anti-Corruption Initiative Group. Macau is not a member of the Financial Action Task Force, but is a member of the Asia-Pacific Groupon Money Laundering as a full-time member. Macau also signed agreements on legal cooperation with various countries.

Macau is a party to the UN Convention against Corruption, which was signed by 140 countries, and cooperates in the fight against corruption by investigating and prosecuting offenders.

Extradition is not practiced in Macau as a PRC Special Administrative Region. However, the transfer of fugitives is regulated by Law No. 6/2006 on judicial cooperation in criminal matters, and interaction with foreign governments is carried out with the permission of the Central Government of the PRC.

Act No. 6/2006 provides for measures to accelerate the process of transfer in addition to a simplified transfer procedure (Article 41). Aside from the general grounds for refusal (Articles 7-9, 19), Art. 32 and 33 also contain possible additional grounds for refusal.

According to Art. 4 of Law No. 6/2006, offenses established in the Convention can possibly result in the extradition or transfer of fugitives. However, Art. 32 (2) of Law No. 6/2006 provides that the transfer of fugitives may be done only regarding acts punishable under both the SARA law and the law of the requesting State, with the maximum penalty of imprisonment for at least one year. Thus, for a crime in the form of active bribery of public officials for the purpose of committing an illegal act (Article 339 (1) of the CC), the transfer of fugitives from a legal point of view is permissible, but a crime in the form of active bribery of public officials for the purpose of committing a lawful act (Article 339 (2) of the CC) does not allow for the transfer; and the crime in the form of active bribery in the private sector allows only the transfer of fugitives if there is a threat of "harming the health or safety of others" (Article 4 (3) of Law No. 19/2009).

The law establishes the requirement of mutual recognition of the act as a criminal offense (Article 6). It also permits the transfer on the basis of reciprocity (Article 5), as has been shown by the practice of recent times. In this regard, although SARA can refer fugitives under the Convention, it is also able to transfer fugitives in the absence of a special international treaty.

The Office of the Secretary for Administration and Justice of SARA was created by China as the competent body for cooperation on the transfer of fugitives for the purposes of Art. 44 of the United Nations Convention against Corruption.

SARA has not signed bilateral agreements on the transfer of fugitives, but it has made efforts to sing bilateral agreements in accordance with Art. 213 of the CCP. However, such agreements are not a prerequisite for all cases of transfer of fugitives.

SARA has so far not denied requests for the transfer of fugitives in connection with their corruptive acts.

As for the transfer of convicted individuals, SARA has concluded such an agreement with Portugal, and is also in the process of considering the possibility of concluding additional agreements with that country. In addition, Law No. 6/2006 regulates to a large extent the transfer of prisoners (Article 106-115), as well as criminal proceedings (Articles 75-88).

The procedure for granting MLA is regulated in SARA by Law No. 6/2006 on judicial cooperation in criminal matters, according to which the general grounds for refusal are applied as provided in Art. 7-9. Such grounds do not include tax concerns. The requirement of dual criminality is also applied to MLA, and the only exception when providing assistance in the absence of dual criminality is the presentation of evidence of the validity of the non-recognition of the wrongful nature of the criminal act or the guilt of the accused.

In accordance with Art. 132 (2) of Law No. 6/2006, MLA may be provided in accordance with foreign law, on demand of the requesting State ,unless it contradicts with the fundamental legal principles of the SARA or causes serious damage to the proceedings.

In appliance with Law No. 6/2006, the Office of Public Prosecutions is responsible for receiving, maintaining and reviewing MLA requests as well as developing recommendations to the head of administration to help determine whether such assistance should be provided. The Office of the Secretary for Administration and Justice is a governmental body with the purpose of international cooperation, it also redirects relevant requests to the Office of Public Prosecutions.

According to Art. 24 (3) of Law No. 6/2006, if SARA believes that the information contained in a foreign request is incomplete, then its authorities may request additional information, taking temporary measures immediately.

The confidentiality of the requests is regulated by art. 134 of this law. Although there is a provision in the SARA legislation on the removal of bank secrecy upon a judicial order, there is no provision to ensure that requests for MLA are not rejected in regards with bank secrecy.

In terms of the period of time required to comply with such requests, the SARA legislation does not set specific time limits, however, the process usually lasts no more than six months. In an urgent case, the adoption of immediate measures is possible in accordance with Art. 30 of Law No. 6/2006, including directly communicating with the judicial authorities of SARA, appealing to the Interpol and sending requests for assistance through applying other means to create a written record.

In the absence of an agreement with the requesting State or region, MLA is generally provided free of charge, except for the reimbursement of the remuneration expenses for witnesses and experts, including their transportation costs and living expenses, the shipment or delivery of items, transportation of individuals, as well as other costs that are considered acceptable by the requesting party, taking into account the human and technological resources required for the execution of the request.

So far, SARA has not refused to comply with requests for MLA regarding corruption, although requests under the UN Convention against Corruption have not been received.

SARA considers the UN Convention against Corruption as a legal basis for mutual cooperation in law enforcement, but so far it has not been applied to this regard.

International cooperation between law enforcement agencies, including sending arrest warrants, can be carried out through the office of the Chinese National Central Bureau of Interpol in Macau under the judicial police. The SARA Financial Intelligence Unit has signed 15 memorandums of understanding / cooperation agreements with other financial intelligence units; it is a member of the Asian Pacific Group on Money Laundering.

The SARA legislation does not directly provide for joint investigations. Articles 172-174 of the CCP regulate the interception of telephone messages under a court order, which can only be carried out in relation to corruption crimes, which are punished by imprisonment for at least three years. Certain forms of agent operations are possible under of Art. 7 of the Organic Law on the Commission against Corruption. Despite the absence of agreements or arrangements for the use of special investigative techniques at the international level, SARA stands ready to consider the possibility of establishing such cooperation in each individual case.

The achievements in the field of international cooperation of the country in the fight against corruption include the following:

– to accelerate the transfer proceedings Act No. 6/2006 provides for non-compliance with certain formalities in obtaining a request for the transfer of a fugitive criminal and for the immediate adoption of temporary measures until additional information is provided (Articles 24 (3) and (4)); it is not required to certify the documents attached to the request (Article 24 (2)), and the respective work does not stop even on public holidays (Article 74) (Article 44 (9) of the Convention);

– although the cooperation should be based on international conventions or Law No. 4/2006, SARA is also able to apply the laws of the requesting State if they are more favorable for the "individuals participating in this process" (the accused and other participants, including victims and witnesses) , in accordance with the legal principles of SARA and on demand of the requesting State, as provided for in Art. 132 of Law No. 6/2006.

To strengthen the fight against corruption in accordance with the UNCAC, SARA [192] has proposed the following measures:

– to consider the possibility of permitting extradition related to corruption crimes in the absence of dual criminality (Article 44 (2) of the Convention);

– to amend the legislation in order for it to recognize all transfer-related offenses covered by the Convention which are subject to review of penalties recommended by the Convention (Article 44 (7));

– do not exclude the possibility of signing bilateral or multilateral agreements for the transfer of fugitives, the transfer of convicted individuals and the provision of MLA (Articles 44 (18), 45 and 46 (30));

– to consider the issue of direct regulation of the possibility to provide assistance in the return of assets (Article 46 (3) (j) and (k));

– do not reject requests for MLA, referring to bank secrecy (Article 46 (8));

– to expand legal assistance as far as possible and consider providing it in the absence of dual criminality (Article 46 (9));

– to consider the possibility of legal reasoning for facilitating joint investigations with other states (Article 49);

– to intensify efforts in international cooperation between states in the fight against corruption crimes committed through modern technologies (Article 48 (3));

– to consider the possibility of detailed regulation of the use of monitored supplying and other special investigative techniques, as well as the possibility of the use of appropriate evidence in courts (Article 50).

§ 3. Republic of China (Taiwan)

According to the 2016 Corruption Perceptions Index of the International Anti-corruption Organization *Transparency International*, Taiwan was ranked 31st out of 176 countries / territories [193].

The main authorities responsible for investigating and combating corruption, money laundering and terrorist financing in Taiwan are:

– the Investigation Task Force for Criminal Profiteering Crimes, Taiwan High Prosecutors;

– the District Court Prosecutors Offices;

– the Government Ethics Office;

– the Investigation Bureau of the Ministry of Justice;

– the Financial Supervisory Commission.

The Investigation Task Force for Criminal Profiteering Crimes focuses on the analysis of facts and investigations of organized crime, corruption and bribery in elections, and along with the district prosecutors — the investigation of corruption in various industries (construction, large purchases, industrial and commercial registration, planning of the suburbs, banking, security, taxation, customs, police, courts, administrative activities, environmental protection, health care and education). District offices of judicial prosecutors are responsible for the investigation and prosecution of all types of crimes.

The Government ethics office was established in all government departments to detect and prevent corruption, and to address corruption-related complaints.

The Investigation Bureau of the Ministry of Justice conducts criminal investigations of corruption and money laundering, leads the anti-corruption department and the center for the prevention of money laundering, presents relevant intelligence information to the district prosecutor offices for further investigation or prosecution.

The Financial Supervisory Commission is responsible for the supervision and control of financial institutions. It is authorized to impose an administrative fine on any financial institution which has violated the Money Laundering Control Act of 1996.

The CC punishes corruption in order to prevent public officials from the violation of their duties imposed on them by the state.

The Taiwan Anti-Corruption Act [194] of 1963 (see Annex 2) as part of the CC provides for a more strict liability for a corruption crime.

The CC and the Taiwan Anti-Corruption Act contain a list of corruption offenses. Taiwan's law on the fight against corruption provides for more severe penalties than the CC.

According to the Criminal Code, a corruption offense is any of the following:

— a public official or their intermediary require, agree to approve or approve a bribe or another unlawful gain in exchange for the execution of a state act;

— a public official or their intermediary require, agree to approve or approve a bribe or other unlawful gain in exchange for neglect of his / her official duties;

– an individual proposes, promises or provides a bribe or grants another illicit benefit to a public official or their intermediary for neglecting their official duties;

– the public individual realizes that their behavior is contrary to the law, but directly or indirectly receives illegal income for themselves or others, related to their duties or supervisory powers.

According to the Anti-Corruption Law, a "corrupt official" is any public official or any individual acting in conspiracy with a public official that:

– commits theft or abuse of public property;

– makes demands or seeks an opportunity to obtain or appropriate something of value through coercion, extortion, sale, donation or collection;

– distorts information on the amount of public property or goods delivered and received under an invalid authorization for delivery, or engages in other corruption-related activities related to government construction projects or the delivery of equipment or materials to government agencies;

– uses public vehicles to smuggle goods without paying taxes;

– unlawfully demands, extorts, receives, approves or agrees to receive any bribe or other improper enrichment in exchange for execution or failure of execution of any action in violation of their official duties or other specific duties;

– illegally spends or appropriates budgetary funds, collects taxes, buys out or sells government liabilities with the intent of obtaining income;

– fraudulently (using fictitious legal authority) receives money or property;

– unlawfully demands, extorts, obtains, approves or agrees to receive a bribe or another unjust benefit in exchange for assistance in processing of official acts;

– retains budget funds that should be legally distributed with the intent of earning income;

– unlawfully demands, extorts, receives or agrees to receive in the future something valuable in exchange for their assistance in the allocation of money or the confiscation of private property for public use;

– is engaged in theft or abuse of private property or equipment that is administered by the government;

– directly or indirectly receives, approves or agrees to receive anything valuable personally or on behalf of another individual or legal entity in order to influence the performance of any official act within their official authority.

Bribery in the private sector is not a crime if committed between legal entities. Punishment is possible if the bribe took place between representatives of the private sector and the state.

Government employees in Taiwan are individuals who work in national or local government institutions, as well as individuals performing the functions of state bodies, those who represent power.

Taiwan's anti-corruption law has an extraterritorial effect. A public official of Taiwan who has committed an offense outside of Taiwan will be held criminally responsible for it.

Taiwan's anti-corruption law also provides that a person that offers a bribe or an unreasonable reward or promises to provide something of value to a Taiwanese public official, or a Taiwanese individual that offers a bribe to a public official of mainland China, Hong Kong, Macao or a foreign state for the execution of their request, instructions, etc., contrary to their official duties, will be punished, included cases where the deed is committed outside of the territory of Taiwan.

Corresponding anti-corruption measures are applied to public officials and private individuals. A private individual can be prosecuted if they are involved in conspiracy with an official in committing a bribery / corruption offense established under the CC and the Taiwan Anti-Corruption Law.

Criminal Code considers public officials to be the following: 1) to be of service to the state or departments of local governments in accordance with laws / rules of the legislature or carrying out public activities in accordance with the laws / rules of the legislature;

2) to be authorized by the state or department of the local government to carry out public activities within the granted authority.

If the evidence obtained by the prosecutor in the course of the investigation is considered enough for a criminal charge, a public prosecution is initiated.

The corruption sentences differ depending on the actions of the accused. The maximum sentence under the Taiwan Law on Combating Corruption is life imprisonment and a fine of a hundred million Taiwanese dollars. The minimum penalty under this law is seven years of imprisonment and a fine of a hundred million Taiwanese dollars.

According to the Taiwan Anti-Corruption Law, any individual that voluntarily surrenders to officials after committing any of the offenses and returns all criminal proceeds may expect a reduced sentence or release from imprisonment. Such an individual will be exempted from punishment, if as a result of their admission of guilt and cooperation with the police, other accomplices are arrested.

According to the Taiwan Anti-Corruption Law, any direct executive (in a higher position) who has direct evidence that their subordinate has committed one or more acts of corruption is required to inform the authorities. Otherwise, they themselves may be sentenced to imprisonment from one to seven years.

Similarly, any official who has direct proof that an unlawful manipulation of official documents has been committed for mercenary purposes should do so. This also applies to public officials who are responsible for accounting, audit, criminal investigation, inspection, as well as government, ethical or internal affairs, which have direct evidence of another corruption offense. Violation of this requirement is punished by imprisonment for a period from six months to five years.

The Law on the Control of Money Laundering requires financial institutions associated with currency transactions exceeding a certain amount to identify customers, retain transaction information as evidence and provide information on the financial transaction and customer identification to the Investigative Bureau of the

Ministry of Justice. Also if there is a suspicion of money laundering regarding any financial transaction, financial institutions should identify its parties, keep the transaction details as evidence and provide this information to the authorities. Any financial institution that violates the above requirement will be fined from 200,000 to 1 million Taiwanese dollars.

Investigators of the special investigative commission on corrupt criminal offenses and district offices of judicial prosecutors can invite, interrogate and arrest suspects, as well as go to court for permission to arrest a suspect, if necessary. In order to find evidence, the prosecutor's office can authorize searches and confiscations.

Officials of the government Ethics Office can interrogate corruption suspects, while the investigators of the Investigative Bureau of the Ministry of Justice can also interrogate suspects of money laundering.

The Financial Supervisory Commission is authorized to impose administrative fines in case of any arising difficulties, refusals or evasions from inspections or the presentation of accounting records, documents, electronic files or other materials, as well as in cases of unjustified refusal to answer questions or report suspicious financial transactions of money laundering.

Prosecutors can ask the court for permission to intercept communication messages. In practice, after the court issues an order, prosecutors supervise the investigators of a special bureau that intercepts information on communications. However, the Taiwanese law allows the police as well as the investigators of the Bureau to track and monitor suspects in order to prevent potentially criminal behavior.

Both prosecutors and investigators of the Bureau are authorized to arrest suspects, however prosecutors have to go to court for a detention warrant.

According to the Law on Money Laundering, if the prosecutor receives irrefutable evidence that the suspect deliberately conceals property or conceals their interest in property obtained from corruption / bribery, the prosecutor may apply for a court order to freeze the money laundering transaction in order to prevent the waste, transfer, payment, delivery, distribution, placement or any other property- or asset-related action.

According to § 1 of art. 245 of the CCP — "the investigation is not public". In § 3 of the same article it is said that the prosecutor, the official who examines the case in court, the police, the lawyer, the representative of the plaintiff or any other individuals performing their official duties in accordance with the law during the investigation, should not disclose any of the received information, except in cases permitted by law, or when disclosure is necessary to protect public or other legitimate interests.

In Taiwan, the defendant is protected during the investigation — they have the right:

– to be informed of accusations / suspicions;

– not to testify or make statements against their will;

– to hire a lawyer;

– to demand that evidence be taken into account in their favor;

– to meet with a witness;

– to appeal to the prosecutor for a search, seizure, examination, inspection, witness examination and other necessary measures to be carried out if the evidence of their innocence can be destroyed, falsified, concealed, changed and there is a difficulty with its use.

A witness who is or was a doctor, a pharmacist, an obstetrician, a priest, a legal adviser, a lawyer, a notary, an accountant or is or was an assistant to one of these individuals and, by virtue of their profession, studied the confidential materials of the accused, can refuse to testify against them when they are interrogated, with the exception of cases where permission to disclose such information is obtained from this person.

The executive power also carries out legal regulation of the anti-corruption measures. For example, the Ethics Guide Regarding Incorruptibility of Public Officials prohibits public officials from benefiting from any party for the performance of their duties, but allows them to receive gifts given to them according to public etiquette. The cost of such a gift should not exceed 3 thousand Taiwanese dollars. The total value of gifts received from the same donor should not exceed 10 thousand Taiwanese dollars within one year.

According to this direction, a gift can be given in regards with an engagement, a wedding, a birthday, relocation, promotion, retirement, leaving work, as well as an illness, injury or death of an official, their spouse (and) or direct relatives. The directive is applied as an internal regulation of public authorities.

According to the Law on the Control of Money Laundering, authorities can, on the basis of the principle of reciprocity, enter into joint agreements and other international treaties related to the prevention and eradication of money-laundering activities with foreign governments, institutions or international organizations.

In addition to the requests of foreign governments, institutions or international organizations for cooperation, even is not specified in the relevant agreements or treaties, information can be provided to them on the basis of the principle of reciprocity.

§ 4. Efficiency of anti-corruption measures

In February of 2018, the international organization *“Transparency International”* published another Corruption Perceptions Index (CPI). According to the CPI-2018, China has slightly improved its performance over the past year, and rose from the 79th to the 77th line, gaining 41 points out of 100. In comparison, Russia dropped from the 131st to the 135th place, picking up the same number of points — 29 for the third consecutive year. Strengthening of China's position in the rating is due to the ongoing anti-corruption company [195].

In March 2018, at the session of the NPC of the 13th convocation, an amendment to the third chapter of the country's Constitution was approved. It provided for the creation of a new anti-corruption body — the State Committee for Supervision. At present, the functions of the Central Anti-Corruption Commission are exercised by the Central Commission for Discipline Inspection, which is, however, a party body, not a state body. The commission conducts an internal party investigation, after which it makes the decision to refer the matter to the court. The new department will, presumably, first conduct an independent investigation (like the existing commission) and then forward cases to the prosecutor's office [196].

The new body will have the right to detain suspects of official misconduct, such as bribery and corruption, for the period of the investigation of up to 6 months. The committee can resort to such a measure due to the complexity of the investigated case, or fears that the suspect may escape, commit suicide, or attempt to destroy evidence [197].

The Anti-Corruption Control Law, which is part of the reform of China's supervisory institutions, should become the key tool in the fight against corruption. Moreover, it will strengthen the influence of the CPC leadership in carrying out anti-corruption measures. According to the law, all the departments for supervising, preventing and combating corruption, which currently exist under various authorities (disciplinary bodies of the CPC, administrative supervision bodies and prosecutors), will be merged into new supervisory commissions. Party disciplinary inspectors will become mandatory members of such commissions. Supervisory commissions will be given the authority to supervise the activities of ordinary party workers, legislative and executive bodies, courts, prosecutors and heads of state enterprises and institutions [198].

Another notable feature is the legislative regulation of the fight against corruption in the special administrative regions of the PRC — Hong Kong, Macau and Taiwan, which has also been analyzed in this monograph.

According to the Transparency International (TI) Corruption Perceptions Index, Taiwan was ranked 29th among 180 countries, receiving 63 points out of a 100, which is 2 points higher than last year. This is its highest result over the past 5 years. As a result, Taiwan was ranked higher than South Korea (51st) and mainland China (77th), but lower than Hong Kong (13th) and Japan (20th). According to the Anti-Corruption Department (ACD) attached to the Ministry of Justice, the improvement in Taiwan's indicators in the Index proves the effectiveness of the government's efforts to increase transparency and conduct a judicial reform [199].

In March 2018, the first national report on the implementation of the 2003 UNCAC was published in Taiwan.

Although the Republic of China (Taiwan) is not a signatory and a party to this convention, the government supports its goals, is determined to follow its provisions and aims for increase Taiwan’s feasible contribution to the eradication of corruption in the world. The report examines the progress that Taiwan has made in five main areas: preventive measures, criminalization of corruption and law enforcement, international cooperation, the return of illegally obtained assets and technical assistance along with information exchanges.

Specific measures listed in the report include: amendments to the Money Laundering Control Act aimed at combating tax fraud which were enacted in June 2017; improvements to the Law on Commercial Companies, approved by the Executive Yuan in December 2017 and aimed at preventing illegal transactions; and the draft law on mutual assistance in the investigation and prosecution of cross-border criminal activities currently under consideration by members of the Legislative Yuan [200].

In early 2018, the Anti-Corruption Center at the Chinese Academy of Social Sciences published the Blue Book on Anti-Corruption and the Promotion of Integrity. As noted by its authors, as of March 31, 2017 a total of 946 senior civil servants who are suspected of corruption, abuse of position, bribery and other misdemeanors, had not been not arrested. Out of which , 365 are hiding abroad. In April 2015, the National Central Bureau of Interpol in China issued a "red circular" of the 100 most wanted suspects of corruption. As of December 2017, 49 people from the "red circular" had not appealed their search and did not reveal themselves. To improve the situation, the authors of the Blue Book put forward the following proposals:

– Strengthen the integration of the prevention and prosecution processes in order to exclude the possibility of escape of corrupt officials abroad.

– Improve the mechanisms for international cooperation in the search, arrest and return of funds and other assets acquired through criminal means, as well as the detention and extradition of the corrupt officials themselves [201].

"The fight against corruption will continue to increase. The zero tolerance for corruption policy certainly won't change. The masses hate corruption more than anything, and we must act in order to allay their fears. As the anti-corruption campaign expands, we're trying to form an institution and mechanism that would not allow the possibility of daring or wanting to participate in corruption. Fighting it will not affect the economy, but, on the contrary, will help build a clean government, remove obstacles that impede market activities, promote the establishment of fair rules and create a more favorable environment for investments and business" — said Xi Jinping in an interview [202].

Conclusion

1. According to the Russian Federation`s Foreign Policy Concept of 2016, Russia is interested in actively participating in the integration processes of the Asia-Pacific region, in applying its experience of implementing social and economic development programs in Siberia and the Far East, and in creating a transparent and equitable security architecture and cooperation on a collective basis. The most important direction of Russia's foreign policy is the development and strengthening of good friendly relations with China.

2. Rulemaking in the area of combating corruption in the PRC for the most part is focused on the in-party level. Normative statures are contained in various disparate acts of law-making, in numerous by-laws, departmental orders, instructions, Communist Party of China rules and various ministries and departments. A certain part of the documents regulating the issues under consideration is adopted by local government authorities. In these documents, a total of more than 200 points concern the regulation on the conduct of managers, especially high-ranking officials. The documents specifically state that "high-level officials should properly build relationships with their relatives and subordinate employees, consciously preserve the purity of public relations, the everyday environment, the circle of friends; it is strictly forbidden to bring commodity-money exchange relations into political life and official activity". Such documents in China are examples of local normative acts of the party, but, given that almost 100% officials are members of the Communist Party of China, they can be considered to be normative acts of national character.

3. Traditionally, Chinese legislators don`t adopt new laws in a rush. In 2011, China developed the current Constitution and

240 effective laws, 706 local administrative regulations, more than 8,600 local normative acts etc. This approach to the adoption of new laws is unique to the Chinese socialist legal system. The Chinese legislators believe that only by clearly specifying all the important provisions in the text of the laws, it is possible to achieve an effective law enforcement practice.

4. One of the main reasons for the absence of a single legislative act on combating corruption in the PRC is, in our opinion, the extreme complexity of its development with regards to the legal space of the PRC. In particular, a number of technological problems has not been resolved under the normative regulation: firstly, in the jurisdiction of the PRC, the system for declaring incomes of officials is not clearly defined, and different rules are applied in different departments; secondly, the maximum amount of monetary value of gifts to officials is not legislatively defined; thirdly, combining several job positions and the existence of a so-called "second" job is common for a large number of civil servants.

5. The CPC and the State Council have also issued internal disciplinary anti-corruption rules that regulate corruption or bribery of CPC members and Chinese officials. These rules and regulations do not apply to bribers. They are used as a guide for determining restrictions on gift value and business hospitality. The Criminal Code prohibits: a) "official bribery", which applies to government officials and legal entities; b) "commercial bribery", which refers to non-governmental officials. The term «government official»" includes: civil servants who hold positions in state bodies; individuals performing public duties in state bodies or semi-governmental bodies; individuals who are appointed by government officials who are not enlisted in state bodies, for the performance of public duties; and individuals who perform public duties in accordance with the law. The term "entity" refers to state bodies, state companies, enterprises, institutions and public organizations.

6. Modern researches show that investigation of crimes by allegedly corrupt officials is largely determined by the Central Com-

mission for Discipline Inspection and its local branches — party bodies responsible for the ethics of party members. Most of the investigations are first inspected by local party leaders, which then decide whether to transfer the cases of corrupt officials to the SPP or the local court for further investigation. However, due to budget constraints and legal loopholes, prosecution is selective and not controlled.

7. International cooperation between the Russian Federation and the PRC in the field of combating corruption is one of the most important courses of implementing the foreign policies of the two strategic partners and gives a powerful impulse to the development of an anti-corruption cooperation within the international regional organizations — the Shanghai Cooperation Organization (SCO), BRICS, APEC, G20, etc. Possible priority prospects and specific forms of international cooperation between the Russian Federation and the PRC in the field of combating corruption include the following:

– identification, search and return of assets obtained as a result of corruption offenses.

– prevention of corruption in private sector organizations.

– international monitoring of corruption manifestations.

– development of forms of cooperation of Russian scientific and expert organizations with specialized scientific institutions of the PRC.

8. In order to increase the effectiveness of international monitoring of corruption, implementation of the Monitoring of Corruption (MONCOR) is proposed. It was developed by the Institute of Legislation and Comparative Law under the Government of the Russian Federation as part of the National Anti-Corruption Strategy, and represents the means for conducting monitoring studies of corruption manifestations and the effectiveness of international and national anti-corruption policies.

9. China is implementing a special program to coordinate the process of tracking the locations and capital of corrupt officials hiding abroad. This project is implemented by the employees of the

Central Commission of Discipline Inspection of the CPC, the Ministry of Public Security, the SPP and the PBOC. The main goal of this program is "interception of corruption elements, action against clandestine banks, return of assets and persuasion of the refugees who fled abroad of the" advantages "of their return. According to the program, the personnel of the Ministry of Security will look for officials who have fled abroad, the PBOC — for the off-shores and underground banks, and the Organizational Department of the CPC`s Central Committee will be tracking the foreign travels of Chinese officials.

In light of the above, it can be noted that the international cooperation between Russia and China in the field of combating corruption, the foundations and the level of bilateral contractual regulation of which can be established in international legal documents and within the framework of international organizations, in particular it will allow to:

– consolidate the efforts of Russia and China with the involvement of an expert community, including leading scientific centers, in order to develop mutual science-based mechanisms for evaluating corruption manifestations;

– provide for unified international legal approaches to identifying property that was obtained through corruption and legalization (laundering) of proceeds, and the return of such assets;

– carry out assistance (legal assistance) upon request in investigative activities in cases involving corruption, as well as the exchange of necessary information.

10. Hong Kong is one of the most "clean" places not only in Asia, but also in the world and, what is very important, 99% of citizens trust in the Independent Commission Against Corruption (ICAC). More than 90% of all complaints and reports are received by the Commission from the public, two thirds of respondents do not hide their personal data (in 1974, only about one third of the appeals were not anonymous). And this is a huge achievement. The quality of the services provided to the population by the administrative sector has improved. The number of complaints

against officials was reduced to a minimum, compared with 86% in 1974.

11. In accordance with the Basic Law, two independent supervisory institutions were established in Special Administrative Region of the PRC Macau (SARA), namely the Commission Against Corruption (CCAC) and the Criminal Police under the direction of the Prosecutor.

International cooperation between law enforcement agencies, including sending arrest warrants, can be carried out through the office of the Chinese National Central Bureau of Interpol in Macau under the judicial police. The SARA Financial Intelligence Unit has signed 15 memorandums of understanding / cooperation agreements with other financial intelligence units; it is a member of the Asian Pacific Group on Money Laundering. The SARA legislation does not directly provide for joint investigations. Articles 172-174 of the CCP regulate the interception of telephone messages under a court order, which can only be carried out in relation to corruption crimes, which are punished by imprisonment for at least three years. Certain forms of agent operations are possible under of Art. 7 of the Organic Law on the Commission against Corruption. Despite the absence of agreements or arrangements for the use of special investigative techniques at the international level, SARA stands ready to consider the possibility of establishing such cooperation in each individual case.

12. Taiwan's anti-corruption law provides that a person that offers a bribe or an unreasonable reward or promises to provide something of value to a Taiwanese public official, or a Taiwanese individual that offers a bribe to a public official of mainland China, Hong Kong, Macao or a foreign state for the execution of their request, instructions, etc., contrary to their official duties, will be punished, included cases where the deed is committed outside of the territory of Taiwan.

According to the Taiwan Anti-Corruption Law, any individual that voluntarily surrenders to officials after committing any of the offenses and returns all criminal proceeds may expect a reduced sentence or release from imprisonment. Such an individual will be exempted from punishment, if as a result of their admission of guilt and cooperation with the police, other accomplices are arrested.

Taiwan Anti-Corruption Law establishes that any direct executive (in a higher position) who has direct evidence that their subordinate has committed one or more acts of corruption is required to inform the authorities. Otherwise, they themselves may be sentenced to imprisonment from one to seven years.

Appendix

Anti-Corruption Action Plan for Asia and the Pacific[1] (Combating Corruption In the New Millennium) Tokyo, 30 November 2001 PREAMBLE[2]

WE, governments of the Asia-Pacific region, building on objectives identified at the Manila Conference in October 1999 and subsequently at the Seoul Conference in December 2000;

CONVINCED that corruption is a widespread phenomenon which undermines good governance, erodes the rule of law, hampers economic growth and efforts for poverty reduction and distorts competitive conditions in business transactions;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption is a complex undertaking and requires the involvement of all elements of society;

CONSIDERING that regional co-operation is critical to the effective fight against corruption;

RECOGNIZING that national anti-corruption measures can benefit from existing relevant regional and international instruments and good practices such as those developed by the countries in the region, the Asian Development Bank (ADB), the Asia-Pa-

1 Endorsed on 30 November 2001 in Tokyo by Bangladesh, Cook Islands, Fiji, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, and Vanuatu. Other ADB member countries from Asia and the Pacific are invited to endorse the Action Plan.

2 The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles and standards towards policy reform which interested governments of the region politically commit to implement on a voluntary basis.

cific Economic Co-operation (APEC), the Financial Action Task Force on Money Laundering (FATF), the Organization for Economic Co-operation and Development (OECD), the Pacific Basin Economic Council (PBEC), the United Nations and the World Trade Organization (WTO)[1].

CONCUR, as governments of the region, in taking concrete and meaningful priority steps to deter, prevent and combat corruption at all levels, without prejudice to existing international commitments and in accordance with our jurisdictional and other basic legal principles;

WELCOME the pledge of representatives of the civil society and the business sector to promote integrity in business and in civil society activities and to support the governments of the region in their anti-corruption effort;

WELCOME the pledge made by donor countries and international organizations from outside and within the region to support the countries of the region in their fight against corruption through technical cooperation programmes.

PILLARS OF ACTION

In order to meet the above objectives, participating governments in the region endeavour to take concrete steps under the following three pillars of action with the support, as appropriate, of ADB, OECD and other donor organisations and countries:

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1 In particular: the 40 Recommendations of the FATF as supported by the Asia/Pacific Group on Money Laundering, the Anti-Corruption Policy of the ADB, the APEC Public Procurement Principles, the Basel Capital Accord of the Basel Committee on Banking Supervision, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Revised Recommendation, the OECD Council Recommendation on Improving Ethical Conduct in the Public Service, the OECD Principles on Corporate Governance, the PBEC Charter on Standards for Transactions between Business and Government, the United Nations Convention on Transnational Organised Crime and the WTO Agreement on Government Procurement.

Pillar 1 — Developing effective and transparent systems for public service

Integrity in Public Service

Establish systems of government hiring of public officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity through:

• Development of systems for compensation adequate to sustain appropriate livelihood and according to the level of the economy of the country in question;

• Development of systems for transparent hiring and promotion to help avoid abuses of patronage, nepotism and favouritism, help foster the creation of an independent civil service, and help promote a proper balance between political and career appointments;

• Development of systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions;

• Development of personnel systems that include regular and timely rotation of assignments to reduce insularity that would foster corruption;

Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity through:

• Prohibitions or restrictions governing conflicts of interest;

• Systems to promote transparency through disclosure and/or monitoring of, for example, personal assets and liabilities;

• Sound administration systems which ensure that contacts between government officials and business services users, notably in the area of taxation, customs and other corruption-prone areas, are free from undue and improper influence.

• Promotion of codes of conduct taking due account of the existing relevant international standards as well as each country's traditional cultural standards, and regular education, training and supervision of officials to ensure proper understanding of their responsibilities;

• Measures which ensure that officials report acts of corruption and which protect the safety and professional status of those who do.

Accountability and Transparency

Safeguard accountability of public service through effective legal frameworks, management practices and auditing procedures through:

• Measures and systems to promote fiscal transparency;

• Adoption of existing relevant international standards and practices for regulation and supervision of financial institutions;

• Appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on performance and decision making;

• Appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity, and adequate simplified administration procedures.

• Enhancing institutions for public scrutiny and oversight;

• Systems for information availability including on issues such as application processing procedures, funding of political parties and electoral campaigns and expenditure;

• Simplification of the regulatory environment by abolishing overlapping, ambiguous or excessive regulations that burden business.

Pillar 2 — Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take effective measures to actively combat bribery by:

• Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat the offence of bribery of public officials;

• Ensuring the existence and effective enforcement of anti-money laundering legislation that provide for substantial criminal penalties for the laundering of the proceeds of corruption and crime consistent with the law of each country;

• Ensuring the existence and enforcement of rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities; these authorities should be empowered to order that bank, financial or commercial records be made available or be seized and that bank secrecy be lifted.

• Strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons helping the authorities in combating corruption, and by providing appropriate training and financial resources.

• Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by developing systems which — in accordance with domestic legislation — enhance (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching and discovering of forfeitable assets as well as prompt international seizure and repatriation of these forfeitable assets.

Corporate Responsibility and Accountability

Take effective measures to promote corporate responsibility and accountability on the basis of existing relevant international standards through:

• Promotion of good corporate governance which would provide for adequate internal company controls such as codes of conduct, the establishment of channels for communication, the protection of employees reporting corruption, and staff training;

• The existence and the effective enforcement of legislation to eliminate any indirect support of bribery such as tax deductibility of bribes;

• The existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery, in respect of the books, records, accounts and financial statements of companies;

• Review of laws and regulations governing public licenses, government procurement contracts or other public undertakings, so that access to public sector contracts could be denied as a sanction for bribery of public officials.

Pillar 3 — Supporting Active Public Involvement

Public discussion of corruption

Take effective measures to encourage public discussion of the issue of corruption through:

• Initiation of public awareness campaigns at different levels;

• Support of non-governmental organizations that promote integrity and combat corruption by, for example, raising awareness of corruption and its costs, mobilizing citizen support for clean government, and documenting and reporting cases of corruption;

• Preparation and/or implementation of education programs aimed at creating an anti-corruption culture.

Access to information

Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals, through:

• Establishment of public reporting requirements for justice and other governmental agencies that include disclosure about efforts to promote integrity and accountability and combat corruption;

• Implementation of measures providing for a meaningful public right of access to appropriate information.

Public participation

Encourage public participation in anti-corruption activities, in particular through:

– Co-operative relationships with civil society groups such as chambers of commerce, professional associations, NGOs, labor unions, housing associations, the media, and other organizations;

– Protection of whistleblowers;

– Involvement of NGOs in monitoring of public sector programmes and activities.

IMPLEMENTATION

In order to implement these three pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms.

Participating governments of the region further commit to widely publicize the Action Plan throughout government agencies and the media and, in the framework of the Steering Group Meetings, to meet and to assess progress in the implementation of the actions contained in the Action Plan.

IMPLEMENTATION PLAN

1. INTRODUCTION

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of the Asia-Pacific region (hereinafter: participating governments) voluntarily commit to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in Asia and the Pacific, it remains open to ideas and partners. Updates of the Action Plan will be the responsibility of the Steering Group.

This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by countries of the region and international organisations such as the Asian Development Bank (ADB), the Asia-Pacific Economic Co-operation (APEC), the Organisation for Economic Co-operation and Development (OECD) and the United Nations.

2. CORE PRINCIPLES OF IMPLEMENTATION

The implementation of the Action Plan will be based upon two core principles: i) establishing a mechanism by which overall reform progress can be promoted and assessed; ii) providing specific and practical assistance to governments of participating countries on key reform issues.

The implementation of the Action Plan will thus aim at offering participating countries regional and country-specific policy and institution-building support. This strategy will be tailored to policy priorities identified by participating countries and provide means by which participating countries and partners can assess progress and measure the achieved results.

Identifying Country priorities

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific.

To address these differences and target country-specific technical assistance, each participating country will endeavour, in consultation with the Secretariat of the Initiative, to identify priority reform areas which would fall under any of the three pillars, and aim to implement these in a workable timeframe.

The first consultation on these priorities will take place in the framework of the Tokyo Conference, immediately after the formal endorsement of the Action Plan. Subsequent identification of target areas will be done in the framework of the periodical meetings of the Steering Group that will be set up to review progress in the implementation of the Action Plan's three pillars.

Reviewing progress in the reform process

Real progress will primarily come from the efforts of the governments of each participating country supported by the business sector and civil society. In order to promote emulation, increase country responsibilities and target bilateral and international technical assistance, a mechanism will be established by which overall progress can be promoted and reviewed.

The review process will focus on the priority reform areas selected by participating countries. In addition, there will be a thematic discussion dealing with issues of specific, cross-regional importance as identified by the Steering Group.

Review of progress will be based on self-assessment reports by participating countries. The review process will use a procedure of plenary review by the Steering Group to take stock of each country's implementation progress.

Providing assistance to the reform process

While governments of participating countries have primary responsibility for addressing corruption related problems, the regional and international community as well as civil society and the business sector have a key role to play in supporting countries' reform efforts.

Donor countries and other assistance providers supporting the Action Plan will endeavour to provide the assistance required to enhance the capacity of participating countries to achieve progress in the priority areas and to meet the overall policy objectives of the Action Plan.

Participating governments of the region will endeavour, in consultation with the Initiative's Secretariat, to make known their specific assistance requirements in each of the selected priority areas and will co-operate with the assistance providers in the elaboration, organisation and implementation of programmes.

Providers of technical assistance will support participating governments' anti-corruption efforts by building upon programmes and initiatives already in place, avoiding duplications and facilitating, whenever possible, joint ventures. The Secretariat will continue to support this process through the Initiative's web site (www.oecd.org/daf/ASIAcom) which provides information on existing and planned assistance programmes and initiatives.

3. MECHANISMS

Country Representatives

To facilitate the implementation of the Action Plan, each participating government in the region will designate a contact person. This government representative will have sufficient authority as well as adequate staff support and resources to oversee the fulfilment of the policy objectives of the Action Plan on behalf of his/her government.

Regional Steering Group

A Steering Group will be established and meet back-to-back with the Initiative's annual conferences to review progress achieved by participating countries in implementing the Action Plan. It will be composed of the government representatives and national experts on the technical issues discussed during the respective meeting as well as representatives of the Initiative's Secretariat and Advisory Group (see below).

The Steering Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing cross-regional issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Consultations in the Steering Group will take place on the day preceding the Initiative's annual meeting. This shall allow the Steering Group to report on progress achieved in the implementation of the policy objectives laid out in the Action Plan, present regional good practices and enlarge support for anti-corruption efforts among ADB regional member countries.

Secretariat

The ADB and the OECD will act as the Secretariat of the Initiative and, as such, carry out day-to-day management. The role of the Secretariat also includes to assist participating governments in preparing their self-review reports. For this purpose, in-country missions by the Secretariat will be organised when necessary.

Advisory Group

The Secretariat will be assisted by an informal Advisory Group whose responsibility will be to help mobilise resources for technical assistance programmes and advise on priorities for the implementation of the Action Plan. The Group will be composed of donor countries and international donor organisations as well as representatives of civil society and the business sector, such as the Pacific Basin Economic Council (PBEC) and Transparency International (TI), actively involved in the implementation of the Action Plan.

Funding

Technical assistance programmes and policy advice in support of government reforms as well as capacity building in the business sector and civil society aiming at implementing the Action Plan will be financially supported by international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

Decision of the Standing Committee of the National People's Congress on Ratifying the United Nations Convention Against Corruption (Adopted on October 27, 2005)

全国人大常委会关于批准《联合国反腐败公约》的决定

It was decided at the 18th session of the Standing Committee of the Tenth National People's Congress to ratify the United Nations Convention Against Corruption, which was adopted at the 58th United Nations General Assembly on October 31, 2003; meanwhile, it was declared that the People's Republic of China is not bound by Paragraph 2 of Article 66 of the United Nations Convention Against Corruption.

The decision of the Politburo of the Central Committee of the CPC on December 4, 2012 "Eight rules to improve the work style and strengthen ties with the people"

(adopted on December 4, 2012
at the meeting of the Politburo of the CPC Central Committee
chaired by General Secretary Xi Jinping)

Attention was brought to the fact that senior officials, especially top managers, have a significant influence on the work style of the party and the government, as well as on society as a whole. Improving the work style must begin with the Politburo of the CPC Central Committee: when demanding something from others, we need to begin with ourselves; and when forbidding others to do something — never do it ourselves. It is necessary to introduce a positive work style of the party into the government and people's circles in order to gain the support and confidence of the masses. It is also necessary to commit to improving the work style, effectively resolving issues of greatest interest to the people, and constantly maintaining close ties with the masses.

The participants of the meeting unanimously agreed with the Eight rules for improving the style of work and strengthening ties with the masses:

1) it is necessary to improve the process of conducting surveys and research by beginning from the grass-roots level in order to deeply understand the current state of affairs, sum up the overall experience; investigate the problems, deal with difficulties and direct work; learn from the masses on practical examples; hold more discussions with the people; expand communication with the leaders of the lower levels, increase the number of consultations and discussions, increase the frequency of analyzing typical cases, regularly visit regions with acute problems, contradictions and discontent of the masses; prohibit formalism; it is also necessary to reduce the level of entitlement on trips around the country, reduce the number of accompanying persons, to simplify the reception, to eliminate various posters and banners, formal meetings and seeing off celebrations with the participation of specially invited representatives of the people and banquets, not decorate the receptions with special carpets or flowers;

2) it is necessary to simplify the procedure of conducting meetings through increasing their effectiveness; strictly monitor the all-China meetings held under the auspices of the center; avoid meetings with indefinite content and meetings, without the consent of the center, discussing demands to not attend various ceremonies related to cutting ribbons and laying the foundations at solemn events, anniversaries, meetings on recitation, exhibitions, seminars and various forums; to improve the practical effectiveness of meetings, to shorten the meetings, speeches, to refrain from empty words and stencil expressions;

3) it is necessary to simplify official documents and bulletins, improve their style, avoid publishing irrelevant documents and documents without specific content, as well as documents or bulletins that do not require immediate publication;

4) it is necessary to organize the activities related to travels: if the trip is related to diplomatic issues, its budget for its organization should be within reasonable limits, the accompanying persons should be closely monitored, only the set vehicles should be used, as a general rule, representatives of Chinese companies and institutions, emigrants of "huaqiao", Chinese citizens, exchange students, etc. should not be involved in airport receptions;

5) it is necessary to improve work related to security measures; adhere to the principles that facilitate communication with the masses; avoid limiting the traffic flow or blocking the traffic; do not close or "clear" the places where events are held.

6) it is necessary to improve the effectiveness of the media; news about meetings of members of the Politburo of the CPC Central Committee should be published with regard to the presented information and the overall public benefit; the amount of news, its size and duration should be regulated;

7) control over the publication of articles and texts of speeches should be toughened, except for occasions when they are presented by the center; the publication of monographs and compilations of speeches is prohibited; it is forbidden to issue congratulatory letters and telegrams, anniversary or congratulatory speeches, autographs;

8) it is necessary to continuously implement the regime of economy; strictly adhere to anti-corruption requirements for state activities, as well as regarding official and personal housing conditions and automobile transport.

Notice of the National Development and Reform Commission, Ministry of Industry and Information Technology, Ministry of Public Security, Ministry of Supervision, Ministry of Civil Affairs, Ministry of Finance, Ministry of Land and Resources, Ministry of Environmental Protection, Ministry of Housing and Urban-Rural Development, Ministry of Transport, National Audit Office, General Administration of Quality Supervision, Inspection and Quarantine, State Council Office for Rectifying Business Misconducts, and National Bureau of Corruption Prevention on Controlling and Regulating the Charges Related to Enterprises

(No. 794 [2010] of the National Development and Reform Commission)

国家发展改革委、工业和信息化部、
公安部等关于开展治理和规范涉企收费工作的通知

The development and reform commissions, price bureaus, competent departments of industry and information technology, public security departments (bureaus), supervision departments (bureaus), civil affairs departments, public finance departments, land and resources departments, environmental protection departments, departments (commissions or bureaus) of housing and urban-rural development, transport departments, audit departments, inspection and quarantine bureaus, quality and technical supervision bureaus, and offices for rectifying business misconducts of all provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning, capital cities at the sub-provincial level and Xinjiang Production and Construction Corps; and Shenzhen Market Supervision Administration, The CPC Central Committee and the State Council have always attached great importance to the alleviation of the burdens on enterprises. The CPC Central Committee and the State Council issued the Decision on Solving the Problems of Arbitrary Charges, Fines and Apportions Imposed on Enterprises (No. 14 [1997] of the CPC Central Committee) in 1997, and remarkable results have been achieved through continuous and centralized clean-up and rectifications. However, the phenomena of arbitrary imposition of enterprise-related charges have rebounded in recent years: some local regions have issued policies on charges related to enterprises beyond their authorities, increased charging items related to enterprises without authorization, enhanced charging standards and expanded charging coverage. Some public institutions, industry associations, market intermediary organizations, etc. compulsorily charged operational and service fees by attaching to administrative power. The problems of arbitrary imposition of charges by some local government departments are hard to be banned despite every effort, which seriously damaged the development vitality of enterprises, endangered the survival of small and medium enterprises, and are strongly complained about by enterprises. In order to implement the important instructions of the leaders of the State Council and the spirit of the national working reference on rectification, we decided to carry out nationwide control and regulation on charges related to enterprises according to the Opinions of the General Office of the State Council on Division of Duties in Formulating Measures for Control and Regulation of Charges Related to Enterprises, and hereby notify the relevant issues as follows:

I. Unifying ideas and fully understanding the significance of the control and regulation on charges related to enterprises

To control and regulate charges related to enterprises is not only an important task of the economic work of this year, but also one of the focuses of the special control campaign initiated by the CPC Central Commission for Disciplinary Inspection to rectify business misconducts. It is of great significance to the creation of a favorable environment for the development of enterprises, acceleration of the steady and rapid national economic development, strengthening of the management of inflation expectations, and promotion of the transformation of economic development mode. All localities shall, from the height of practicing the important thought of "three represents", implementing the scientific concept of development, and building a harmonious socialist society, fully understand the importance of the control and regulation of charges related to enterprises. All localities shall attach great importance to this work, earnestly arrange it, carefully organize it, improve their sense of responsibility and urgency, and take effective measures to do a good job in this regard, so as to make the enterprise-related charging activities more standard and significantly alleviate the burdens on enterprises.

II. Increasing efforts and doing a good job in various work on the control and regulation of charges related to enterprises

All regions and all relevant departments shall adhere to the guideline of solving the problem in a thorough and comprehensive manner, and actively carry out the work on the basis of conducting in-depth research and finding out the truth and by closely focusing on regulating the enterprise-related charging acts.

(1) Seriously cleaning up administrative charges related to enterprises. The provincial competent departments of public finance and price shall, according to the division of duties, conduct a thorough investigation on the current status of charges related to enterprises, and find out the types, standards, scope, amount and basis of charges. They shall earnestly clean up the items and standards of enterprise-related administrative charges within their respective administrative regions, cancel all charging items which do not comply with the provisions on management of charges and those which do not conform to the current actualities, and resolutely reduce the excessively high charging standards. The items of enterprise-related administrative charges reserved after the cleaning-up shall be reported to the Ministry of Finance and the National Development and Reform Commission for examination and approval.

(2) Regulating the operational and service charges related to enterprises. The competent price departments at all levels shall

comprehensively clean up the operational and service charges related to enterprises imposed by public institutions and social organizations. All provincial competent price departments shall, according to the actualities of their respective regions, formulate administrative measures for the operational and service charges within their respective administrative regions as soon as possible, so as to improve management systems, regulate charging acts and alleviate the burdens on enterprises.

(3) Strictly controlling the social group enrollment and managing charges. The collection of membership dues by social groups shall be strictly governed by the Notice of the Ministry of Civil Affairs and the Ministry of Finance on Adjusting the Policies on Membership Dues of Social Groups (No. 95 [2003] of the Ministry of Civil Affairs) and the Notice on Further Clarifying the Policies on Membership Dues of Social Groups (No. 123 [2006] of the Ministry of Civil Affairs). Compulsory enrollment shall be prohibited unless otherwise provided by laws or administrative regulations. The departments of price, public finance and civil affairs at all levels shall examine the reasonableness of the items and standards of enterprise-related charges imposed by social groups, hold hearings where necessary and cancel and adjust the unreasonable items and standards of enterprise-related charges.

(4) Accelerating the separation of industry associations and market intermediary organizations from administrative departments. The disciplinary inspection and supervision organs at all levels shall organize and help the relevant functional departments to rectify the prominent problems existing in the industry associations and market intermediary organizations affiliated to the government departments, actively and steadily do a good job in the separation of the government from industry associations and market intermediary organizations, effectively promote the separation of government departments from industry associations and market intermediary organizations with respect to organization, place, work and finance, cut the interest relations between government departments and industry associations and market intermediary

organizations, break down monopoly and promote the orderly competition in the intermediary service market.

(5) Effectively strengthening the supervision and inspection on charges related to enterprises. The departments of price and public finance at all levels shall strengthen the supervision on charges related to enterprises, organize and carry out a special inspection on charges related to enterprises, specially inspect the charges collected by the departments of quality supervision, inspection and quarantine, land and resources, housing and urban-rural development, transport, environmental protection, etc. where more enterprise-related charges are involved, seriously punish the acts of imposing arbitrary charges found according to the relevant provisions, order the relevant departments to return overcharged fees to enterprises and turn over to the state treasury the illegal incomes which are unable to be returned to enterprises. They shall carry out inspections on charges collected by industry associations and market intermediary organizations, and regulate the enterprise-related charging order of industry associations and market intermediary organizations. The departments of civil affairs and public finance at all levels and the competent departments in charge of the business of social groups shall strengthen the supervision and inspection on membership dues of social groups and resolutely rectify the acts of compulsory enrollment.

(6) Actively carrying out special control on alleviation of the burdens on enterprises. The disciplinary inspection and supervision organs at all levels shall seriously investigate and punish the acts of arbitrary imposition of enterprise-related charges in violation of regulations and disciplines, urge the relevant departments to resolutely rectify the unhealthy tendency of increasing the burdens on enterprises in accordance with the deployment of the 5th plenary session of the 17th CPC Central Commission for Disciplinary Inspection and the national working conference on rectification, and shall, for the entities with serious circumstances and a severe nature and which arbitrarily charge fees from enterprises in violation of the disciplines with no regard to this Notice, seriously investigate the liability of relevant liable persons. The departments

of development and reform, price, public finance, and industry and information technology at all levels shall fully implement the Several Opinions of the State Council on Further Promoting the Development of Small and Medium Enterprises (No. 36 [2009] of the State Council) to effectively alleviate the tax burdens on small and medium enterprises. The inter-ministerial joint meeting of the State Council for alleviating the burdens of enterprises shall further and deeply research the alleviation of burdens on enterprises under the new situation, and urge and inspect the implementation of all kinds of policies favoring enterprises issued already.

III. Effectuating responsibilities and effectively strengthening the leadership in the control and regulation of charges related to enterprises

The control and regulation of charges related to enterprises is policy-oriented and difficult. All regions and all relevant departments shall closely cooperate with each other, be truthful and practical, and ensure that substantial results be achieved in the control and regulation of charges related to enterprises.

(1) Strengthening leadership, coordination and cooperation. In accordance with the Opinions of the General Office of the State Council On Division of Duties in Formulating the Measures for Control and Regulation of Charges Related to Enterprises, the National Development and Reform Commission shall be responsible for the overall planning and coordination of the control and regulation of charges related to enterprises, urge all departments to do a good job in the implementation thereof, and timely summarize and report the completion of all kinds of work thereupon. The competent price departments of all provinces, autonomous regions and municipalities directly under the Central Government shall, jointly with the relevant departments, report the control and regulation of charges related to enterprises to the leaders of the government, so that the leadership of the government may be effectively strengthened. They shall strengthen coordination and cooperation, establish linkage mechanisms, give full play to the functional role of all departments, cooperate with each other on the basis of clear division of duties, and work together to promote the in-depth car-

rying out of the control and regulation of charges related to enterprises and ensure the achievement of substantial results.

(2) Working out work plans. All regions and all relevant departments shall, according to the requirements of this Notice, work out specific work plans, clarify tasks, objectives and requirements, determine work focuses of various stages and deadlines for completion, and assign all kinds of tasks to specific persons. The relevant departments of the State Council shall timely organize joint supervision and inspection to supervise and inspect the carrying out of the control and regulation of charges related to enterprises and the existing problems, and urge all regions and all relevant departments to effectively implement the work.

(3) Establishing and improving a long-term effective mechanism. The central and provincial departments of public finance and price shall strictly implement such provisions that the new enterprise-related administrative charging items shall be reported to the Ministry of Finance and the National Development and Reform Commission for approval, and regularly announce the list of administrative charging items to the general public. The departments of price, public finance, and audit at all levels shall strictly implement the registration system of charges related to enterprises and the registration system on the cards for paying fees by enterprises, improve the system of purchase of services by government, announcement system on charges, and audit system on charges by government departments. All departments shall strengthen the management, audit and supervision of internal charges, consummate the self-discipline mechanism, and supply deficiencies with respect to the problems existing in the imposition of charges related to enterprises; improve the management system on charges related to enterprises, and establish a long-term effective mechanism combining prevention, supervision and punishment.

(4) strengthening publicity and social supervision. All regions and all relevant departments shall, through news media, government websites and other means, timely announce to the public the policies and documents on cleaning up enterprise-related charging items and reducing charging standards, expose typical illegal cases,

smooth complaint channels for enterprises, and strengthen social supervision. They shall make public the progress in the control and regulation of charges related to enterprises, earnestly listen to the suggestions of enterprises on alleviation of burdens, and enhance the confidence of enterprises in overcoming difficulties. The social groups and market intermediary organizations shall announce the charging items, charging nature, charging standards, and specific service contents of the operational and service charging items, and accept social supervision.

(5) Earnestly doing a good job in the summarization of the work. The provincial competent price departments shall, jointly with the relevant departments, summarize the organization of the work, achievements, problems, and measures and suggestions for the work of next stage, and submit written summaries to the National Development and Reform Commission (Department of Price Supervision and Inspection) before December 31, 2010, and other provincial competent departments shall respectively report the work to the competent state departments according to the affiliation relations.

National Development and Reform Commission
Ministry of Industry and Information Technology
Ministry of Public Security
Ministry of Supervision
Ministry of Civil Affairs
Ministry of Finance
Ministry of Land and Resources
Ministry of Environmental Protection
Ministry of Housing and Urban-Rural Development
Ministry of Transport
National Audit Office
General Administration of Quality Supervision, Inspection and Quarantine
State Council Office for Rectifying Business Misconducts
National Bureau of Corruption Prevention

April 15, 2010

Notice of the Ministry of Finance, Ministry of Foreign Affairs, Ministry of Supervision, National Audit Office, and National Bureau of Corruption Prevention on Issuing the Interim Measures for Strengthening the Administration of Funds for the Party and Government Officials' Going Abroad on Business

(No. 230 [2008] of the Ministry of Finance)

财政部、外交部、监察部等关于印发《加强党政干部因公出国(境)经费管理暂行办法》的通知

The relevant departments of the Central Committee of the Communist Party of China (CCCPC), all ministries and commissions of the State Council, all institutions directly under the State Council, the General Logistics Department, the Headquarters of Chinese People's Armed Police Force, the General Office of the Standing Committee of the National People's Congress (NPC), the General Office of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), the Supreme People's Court, the Supreme People's Procuratorate, the relevant people's organizations, the public finance departments (bureaus), foreign affairs offices, supervision departments (bureaus or commissions) and auditing departments (bureaus) of all provinces, autonomous regions, municipalities directly under the Central Government and municipalities under the separate state planning, and the Finance Bureau, Foreign Affairs (Tourism) Bureau, Disciplinary Inspection Commission & Supervision Bureau and Auditing Bureau of Xinjiang Production and Construction Corps:

For the purposes of implementing the Provisions on Further Strengthening the Administration of Going Abroad on Business (No. 9 [2008] of the General Office of the CCCPC) issued by the General Office of the CCCPC and the General Office of the State Council, regulating activities of going abroad on business, and strengthening the approval and budgetary administration of funds for going abroad on business, we have formulated the Interim Measures for Strengthening the Administration of Funds for the Party and Government Officials' Going Abroad on Business, which are hereby issued to you. Please implement them in earnest in consideration of the actual situation.

Annex: Interim Measures for Strengthening the Administration of Funds for the Party and Government Officials' Going Abroad on Business

Ministry of Finance

Ministry of Foreign Affairs

Ministry of Supervision

National Audit Office

National Bureau of Corruption Prevention

August 5, 2008

Annex:

Interim Measures for Strengthening the Administration of Funds for the Party and Government Officials' Going Abroad on Business

Article 1 These Measures are formulated for the purposes of carrying out the spirit of the directives of the CCCPC and the State Council on strengthening the administration of going abroad on business, practically regulating the activities of going abroad on business by the Party and government officials, rigorously enforcing the approval and supervisory administration of funds for going abroad on business, strengthening the budgetary constraint, and improving the use efficiency of financial funds.

Article 2 In their activities of going abroad on business, including but not limited to visit, investigation, training and participation in international activities, the Party and government organs at various levels shall strictly implement the Provisions on Further Strengthening the Administration of Going Abroad on Business (No. 9 [2008] of the General Office of the Central Committee of the Communist Party of China) issued by the General Office of the Central Committee of the Communist Party of China and the

General Office of the State Council, shall strictly observe the laws and administrative regulations on budgetary administration, and shall not arrange funds for groups unqualified for going abroad on business.

Article 3 The public finance departments at all levels shall further strengthen the budgetary administration of funds for going abroad on business. They shall arrange the budgetary limits of funds for going abroad on business in a scientific and reasonable way as permitted by their financial strength and bring all funds for going abroad on business into the budgetary administration, and an organ which has no budget arranged for such funds shall be deemed as having no arrangement of tasks of going abroad. They shall strictly control the budget scale of the funds for going abroad on business, and implement a zero growth budget of the funds for going abroad on business for the Party and government organs at all levels.

Article 4 The public finance departments at all levels shall further strengthen the administration of the limits of foreign exchange used for going abroad on business. They shall arrange the limits of foreign exchange to be used according to the budgetary scale of funds for going abroad on business by the Party and government organs at all levels, take practical measures to strengthen the administration of the foreign exchange used for going abroad on business by the Party and government organs, and control the funds for going abroad on business in both budget and limit of foreign exchange to be used.

Article 5 The Party and government organs at all levels shall practically reinforce the administration of the funds for going abroad on business. They shall verify the plans for going abroad within the annual budget of funds for going abroad on business and limits of foreign exchange approved by the public finance departments, organize and arrange the activities of going abroad and determine the number and scale of groups going abroad as needed by work, and if any adjustment is necessary, shall make adjustments within the budget. The Party and government organs at all level shall not arrange groups going abroad beyond or without a budget, accept subsidies from enterprises and public institutions or do so in a disguised form, or apportion or transfer expenses to departments at the same or a lower level or to subordinate institutions.

Article 6 The Party and government organs at all levels shall carry out the guideline of "handling foreign affairs in a hardworking and thrifty way", strengthen the financial discipline education of the groups going abroad on business. A group going abroad on business shall strictly implement the expenditure standards for all expenses, work under the principle of practicality, high efficiency, simplification and frugality, and strive to improve the work efficiency and quality.

Article 7 The Party and government organs at all levels shall establish a system of advance examination and approval of funds for going abroad on business. The approving authorities of funds for going abroad on business and the approving authorities of tasks shall implement an interactive approval mechanism to control the activities of going abroad on business from the very sources and firmly prevent the activities of going abroad for tourism with public funds. The approving authorities of funds for going abroad on business and the approving authorities of tasks shall participate in the interactive approval of going abroad on business according to their respective duties, and the specific principles for examination shall be as follows:

1. When a Party or government organ at any level applies for a budget of funds for going abroad to a public finance department at the same level under the departmental budgetary administration procedures, it must provide at the same time the information on the implementation of funds budget for going abroad in the previous year.

2. The approving authority of foreign affairs and the public finance department at any level shall timely exchange information on the plans for going abroad on business. The public finance department at any level shall determine the budget limits of funds for going abroad of all departments based on the state and local finan-

cial strength and the applications for funds budget for going abroad, and control the total amount.

3. When any region or department submits a plan for going abroad by personnel at the provincial or ministerial level in the current year to the Leading Group Office of Central Foreign Affairs and the Ministry of Foreign Affairs before the end of January each year, it shall make it clear that the budgetary arrangement can satisfy the expenditures of the groups going abroad.

4. After the budget of a Party or government organ at any level is approved by the people's congress at the same level, the approving authority of foreign affairs at the same level and the finance department of the dispatching organ shall carry out one by one the interactive task-fund examination of the specific tasks of going abroad which are brought into the plans for going abroad in accordance with the funds budget for going abroad, timely exchange information, make rigid checks and stop loopholes.

5. When the approving authority of foreign affairs at any level examines the tasks of going abroad on business, the finance department of the dispatching organ shall provide opinions on funds arrangement, and for a member of a cross-region or cross-department group, the finance department of the organ where the member works shall give the funds examination opinions, so as to ensure the task of going abroad is implemented within the limit of funds budget for going abroad as determined by the departmental budget.

6. When the Leading Group Office of Central Foreign Affairs and the Ministry of Foreign Affairs examine the tasks of going abroad on business by the groups at the provincial or ministerial level, the finance departments of the central organs or the local public finance departments where the group members work shall give opinions on the funds arrangement.

7. For an application for a group going abroad on business which has no arrangement of budget funds for going abroad in the departmental budget and requests the use of other funds (including the administrative operating funds of the organ, the apportioned funds, the funds donated by enterprises, etc.), it shall be deemed that no

funds budget for going abroad has been arranged, and no finance department shall give consent opinions. No approving authority of foreign affairs at any level shall approve an application for going abroad on business in the absence of the consent of the finance department after funds examination.

Article 8 For an overseas training group arranged by the State Administration of Foreign Experts Affairs, the State Administration of Foreign Experts Affairs shall provide the funds examination opinions for the personnel going abroad who have been brought into its plan and financially supported by it, and for other members of the group, the finance departments where they work shall give the funds examination opinions.

Article 9 The finance departments shall further strictly administer the write-off of the funds for groups going abroad on business. They shall carefully verify the official documents of approval of a task of going abroad, photocopies of passports (including visas and records of entry and exit) and valid bills for the detailed expenses provided by a group going abroad on business, shall conduct the write-off strictly according to the approved number of persons, days, route, funds plan and relevant expenditure standards of the group going abroad, and shall not write off any expenditure irrelevant to the official business, any unplanned cost or any false bill.

The finance departments at all levels shall not reimburse the Party and government officials for expenses of going abroad with the passports for private purposes, except under the special circumstances as stipulated by the relevant Central documents.

Article 10 The Party and government organs at all levels shall establish and improve an internal supervision and inspection mechanism for the groups going abroad on business. The finance departments of these organs shall carry out regular and irregular inspection of the groups going abroad on business and the use of funds, and report the use of funds and foreign exchange for going abroad on business in the last year to the public finance departments at the same level in the first quarter of each year.

Article 11 The disciplinary inspection and supervision departments at all levels shall reinforce the effective supervision over the use of funds for going abroad on business. They shall take the supervision over the use of funds for going abroad on business as an important part of the prevention of going abroad for tourism with public funds, and intensify the supervision and inspection.

Article 12 The audit organs at all levels shall strengthen the audit supervision over the use of funds for going abroad on business. They shall take the audit supervision over the administration and use of the funds for going abroad on business as a stress in their auditing work, and conduct special auditing on the administration and use of funds for going abroad on business.

Article 13 The disciplinary inspection and supervision departments and audit organs at all levels shall severely punish, according to the relevant provisions, the violations of financial disciplines occurring in the administration and use of funds for going abroad on business. For any falsification, misappropriation of other funds or apportioning or transfer of expenses for going abroad, the disciplinary inspection and supervision departments at all levels shall hold the organs organizing the groups and the relevant personnel of the groups accountable; for any careless performance of the duties of funds examination and write-off, the relevant personnel of the public finance departments and finance departments shall be held accountable; for any approval of going abroad without the consent of the examination authority of funds, the relevant personnel of the approving authority of foreign affairs shall be held accountable. If any crime is involved, the suspects shall be transferred to the judicial organ for criminal investigation.

Article 14 All regions and departments shall formulate the specific measures for intensifying the administration of funds for going abroad on business and the specific implementing plans for the interactive approval of the tasks and funds for going abroad, according to these Measures and in light of the actual situations.

Article 15 The administration of funds for going abroad on business of public institutions may be governed by these Measures by analogy.

Article 16 The power to interpret these Measures shall remain with the Ministry of Finance.

Article 17 These Measures shall come into force on the date of issuance.

The Law of the Republic of China (Taiwan) of July 15, 1963 "Anti-Corruption Act"

1. The full text of the 20 articles was formulated and promulgated by the President on July 15, 1963.

2. The full text of the 20 articles was revised and promulgated by the President on August 17, 1973.

3. The title of the act and the full text of the 18 articles were revised and promulgated by Presidential Decree, No. (81) Hua Zong (Yi) 3479, on July 17, 1992. (The original title was the Anti-Corruption Statute for the Period of Communist Insurgency.)

4. The full text of the 20 articles was revised and promulgated by Presidential Decree, No. (85) Hua Zong (Yi) 8500251100, on October 23, 1996.

5. Article 6 was revised and promulgated by Presidential Decree, No. (90) Hua Zong Yi 9000217640, on November 7, 2001.

6. The revision of Article 11 and the addition of Article 12-1 were promulgated by Presidential Decree, No. Hua Zong Yi 09200017740, on February 6, 2003.

7. Articles 2, 8, and 20 were revised and promulgated by Presidential Decree, No. Hua Zong Yi 09500075701 and put into effect on July 1, 2006.

8. The revision of Articles 6 and 10 and the addition of Article 6-1 were promulgated by Presidential Decree, No. Hua Zong Yi 09800097661, on April 22, 2009.

9. The revisions of Articles 5, 11, 12, and 16 and the deletion of Article 12-1 were promulgated by Presidential Decree, No. Hua Zong Yi 10000132391, on June 29, 2011.

10. Article 6-1 was revised and promulgated by Presidential Decree, No. Hua Zong Yi 10000259781 on November 23, 2011.

11. Articles 6-1 and 20 were amended and promulgated by Presidential Decree Hua-Zong-Yi-Yi-Zi, No. 10500030051, on April 13, 2016.

12. Articles 10 and 20 were amended and promulgated by Presidential Decree Hua-Zong-Yi-Yi-Zi, No. 10500063111, on June 22, 2016; amendments went into effect on July 1, 2016.

Article 1. The Act is enacted to sternly punish corruption and cleanse the officialdom.

Article 2. Public servants who violate the provisions of the Act shall be dealt with in accordance with provisions of the Act.

Article 3. The accomplices of the corrupt public servants are also dealt with in accordance with the provisions of the Act.

Article 4. Any person who has committed any of the following acts shall be punished by imprisonment for life or a term of no less than ten years and may also be punished by a fine not to exceed NT$100,000,000:

1. Stealing or misappropriating public equipment or properties.
2. Acquiring valuables or property through the use of undue influence, blackmail, forced acquisition, forced seizure or forced collection.
3. Inflating the prices and quantities of, or taking kickbacks from, public works or procurements under his or her charge.
4. Using government vehicles to transport contraband or carry goods for tax evasion.
5. Demanding, taking or promising to take bribes or other unlawful profits by the acts that violate the official duties.

The penalty applies to attempt offenses of paragraphs 1–4.

Article 5. Any person who has committed any of the following acts shall be punished by imprisonment for a term of no less than seven years and may also be punished by a fine not to exceed NT$60 million:

1. Withdrawing or withholding public funds without authorization with an intent to profit, or unlawfully collecting taxes or floating government bonds.
2. Fraudulently making others to deliver personal property or a third person's property under cover of legal authority.

3. Demanding, taking or promising to take bribes or other unlawful profits by an act that belongs to the official duties.

The penalty applies to attempt offenses of Paragraphs 1 and 2 of this article.

Article 6. Any person who has committed any of the following acts shall be punished by imprisonment for a term not less than five years and may also be punished by a fine not to exceed NT$30 million:

1. With the intent to profit, withholding public funds or public property which should be lawfully distributed.

2. Committing malfeasance while raising funds or requisitioning land or other properties.

3. Stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use.

4. Directly or indirectly seeking unlawful gains for oneself or for others in matters under his charge or supervision while clearly knowing the act violates the law, the statutes or orders authorized by the law, the mandate of the position, the self-governance statute, the self-governance regulations, the rules of commission, or the code for regulating unspecified people that have the effect of the law and thereby having gained profits.

5. Using the opportunity provided by one's position or status for unlawful gains for oneself or for others in matters under his or her charge or supervision while clearly knowing the act violates the law, the statutes or orders authorized by the law, the mandate of the position, the self-governance statute, the self-governance regulations, the rules of commission, or the code for regulating unspecified people that have the effect of the law.

The penalty applies to attempt offenses set forth in Paragraphs 1–3 of this Article.

Article 6-1. If a public servant is suspect of violating any one of the following offenses and if the prosecutor has found during the investigation that the said person, his or her spouse or their under-aged children have had inconsistent increase in property or income at the time of the commission to the offense or within three years thereafter, the suspect may be ordered to make an account of the increased property or income. If the person fails to make a account without reasonable excuse, cannot make a credible account or makes a false account, he or she shall be punished by imprisonment for a term of less than five years, detention and may also be punished by a fine not to exceed the amount of the unaccounted-for increase of property or income.

1. The crime set forth in Article 4 and the foregoing article.

2. The crimes set forth in Paragraph 1 of Article 121, Paragraphs 1–3 of Article 122, Articles 123–125, Paragraph 1 of Article 127, Articles 128-130, Paragraph 1 of Article 131, Paragraph 1 of Article 132, Article 133, Paragraph 2 of Article 231, Paragraph 3 of Article 231-1, Article 270, and Paragraph 1–5 of Article 296 in the Criminal Code.

3. The offense of Article 9 of the Organized Crime Control Act.

4. The offense provided for in Paragraph 1 of Article 10 of the Smuggling Penalty Act.

5. The offense set forth in Article 15 of the Drug Hazard Control Statute.

6. The offense of Article 36 of the Human Trafficking Act.

7. The offense set forth in Article 16 of the Weapons and Ammunition Control Statute.

8. The offense of Article 89 of the Medicinal Affairs Act.

9. The offense of covering up the offenders of the Child and Youth Sexual Exploitation Prevention Act.

10. Other offenses committed through the use of the power given by one's official position, the opportunities and means thereof.

Article 7. If a person who is in charge of investigation, pursuit or trial of a case commits the offense of Item 5, Paragraph 1, of Article 4 or Item 3, Paragraph 1, of Article 5, the penalty shall be increased by a half.

Article 8. If the offender of Article 4 to 6 has surrendered himself or herself and spontaneously handed over all the unlawful gains, the penalty is commuted or exempted. If this has led to the uncovering of other principal offenders or accomplices, the penalty is exempted.

If the principal offender against Articles 4–6 has confessed to crime during the investigation and surrendered all the unlawful gains, the penalty is commuted. If this has led to the uncovering of other principal offenders or accomplices, the penalty is commuted or exempted.

Article 9. If the offenses against Articles 4–6 is committed prior to the revision and implementation of the Act, and if the offender surrenders himself within a year of the revision and implementation, the provisions of Paragraph 1 of the above-mentioned article may apply mutatis mutandis.

Article 10. For offenses prescribed in Articles 4-6, suspicious property and valuables of the offender, his/her spouse and their minor children acquired within three years of the offense shall be regarded as criminal gains if the defendant cannot prove the legality of their sources upon the request of the prosecutor during investigation or under the order of the court during the judiciary proceedings.

Article 11. Any person who tenders a bribe or other unjust valuables, promises to give anything of value or gives anything of value to a person subject to the Act in return for that person's performing or omitting against his or her official duties shall be punished by imprisonment for a term of no more than seven years and no less than one year and may also be punished by a fine not to exceed NT$3,000,000.

With regard to persons engaging in an act belonging to his or her duties mentioned in Article 2, such as making unlawful demands, promising or taking bribes or engaging in other malpractices for unjust gains, he or she shall be punished by imprisonment for a term of less than three years, detention, and may also be punished by a fine not to exceed NT$500,000.

If a public servant dealing with a foreign nation, Chinese mainland, Hong Kong, Macao has committed the acts mentioned in the foregoing two paragraphs in trade, investment or other business activities, they shall be punished in accordance with the provisions of the previous two paragraphs.

The provisions of the previous three paragraphs shall apply to persons who do not have the Paragraph 2 status if they commit the offenses of the previous two paragraphs.

The same applies to persons who do not have the Paragraph 2 status when they commit the offenses mentioned in the above-mentioned four paragraphs.

If an offense mentioned in Paragraphs 1–3 is committed outside the territory of the Republic of China, the offender will be dealt with according to the provisions of the Act regardless whether the offense is punishable or not under the law of the land where the crime is committed.

Article 12. For a person who has violated the provisions of Articles 4 through 6, the penalty shall be mitigated if the criminal proceeds or unjust gains do not exceed NT$50,000.

This also applies to a person who has committed the offenses set forth in Paragraphs 1–4 of the preceding article if the money or property demanded, promised or delivered does not exceed NT$50,000 dollars.

Article 12-1. (Deleted.)

Article 13. The immediate superior who has actual or direct proof that a person under their supervision has committed one or more of the acts listed in the Act and has failed to expose case to the competent authorities shall be punished by imprisonment for a term less than seven years and more than one year.

The head of a government agency who has actual or direct proof that a person he or she has been commissioned to handle official matters has committed one or more of the acts listed in the Act and has failed to expose the case to the competent authorities shall be punished by imprisonment for a term of not more than five years and not less than six months.

Article 14. If a person responsible for supervision, accounting, auditing, crime investigation, inspection, or government ethics and internal affairs has actual or direct proof of another person's corrupt acts and has failed to expose the case, he or she shall be punished by imprisonment for a term of not more than seven years and not less than one year.

Article 15. Any person subject to the Act who intentionally accepts, transports, conceals, stores or knowingly purchases property which is known to be the proceeds of any the offenses listed in Articles 4 through 6 shall be punished by imprisonment for a term of no more than seven years and no less than one year and may also be punished by a fine not to exceed NT$3,000,000.

Article 16. Any person who lodges a false accusation against another person for violating the provisions of the Act with an intent to subject that person to criminal penalty shall be punished by a sentence increased by one half.

A person who has fabricated facts with an intent to bring criminal penalty to another person and has then surrendered himself pursuant to the provisions of Paragraph 5 of Article 11 of the Act shall be punished by imprisonment for a term of not more than ten years and not less than three years.

The provisions of the previous two paragraphs are applicable to offenders who do not have the Paragraph 2 status.

Article 17. Any person who is sentenced to a prison term for committing any of the offenses listed in the Act shall also be deprived of his civil rights for a certain period.

Article 18. Any person who exposes the corruption of a public servant to the competent authorities should be awarded and protected.

Relevant regulations for this shall be prescribed by the Executive Yuan.

Article 19. For matters not provided for in the Act, other laws shall govern.

Article 20. The Act shall go into effect on the date of promulgation. Articles amended on May 5, 2006 shall take effect on July 1, 2006. The effective date of articles amended on March 25, 2016 shall be set by the Executive Yuan. Articles amended on May 27, 2016 shall come into force on July 1, 2016.

Independent Commission Against Corruption Ordinance (Hong Kong)

To provide for the establishment of an Independent Commission Against Corruption and matters incidental thereto.

[15 February 1974]

(Format changes—E.R. 1 of 2018)

1.

Short title

This Ordinance may be cited as the

Independent Commission Against Corruption Ordinance.

2.

Interpretation

In this Ordinance, unless the context otherwise requires –

commission (廉政公署) means the Independent Commission Against Corruption established under section 3;

commissioner (廉政專員) means the Commissioner of the Independent Commission Against Corruption appointed in accordance with the Basic Law and includes the Deputy Commissioner appointed under section 6;

(Replaced 1 of 2003 s. 3)

officer (廉署人員) means an officer of the Commission appointed under section 8;

prescribed officer (訂明人員) means –

(a)

any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b)

the following persons (to the extent that they are not persons included in paragraph (a)) –

(i)

any principal official of the Government appointed in accordance with the Basic Law;

(ii)

the Monetary Authority appointed under section 5Aof the Exchange Fund Ordinance (Cap. 66) and any person appointed under section 5A(3) of that Ordinance;

(iii)

Chairman of the Public Service Commission;

(iv)

any member of the staff of the Commission;

(v)

any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary;

(Added 14 of 2003 s. 19)

public body (公共機構) has the meaning assigned to it in section 2of the Prevention of Bribery Ordinance (Cap. 201);

(Replaced 51 of 1987 s. 2)

public servant (公職人員) has the meaning assigned to it in section 2 of the Prevention of Bribery Ordinance (Cap. 201);

(Replaced 51 of 1987 s. 2. Amended E.R. 1 of 2018)

Public Service (Administration) Order (《公務人員(管理)命令》) means –

(a)

the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);

(b)

the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and (c) any other regulation made or any direction given under that Order, as amended from time to time.

(Added 1 of 2003 s. 3)
(Amended 14 of 2003 s. 19)

3.
Establishment of the Commission
There is hereby established the Independent Commission Against Corruption which shall consist of the Commissioner, the Deputy Commissioner and such officers as may be appointed.

4.
Maintenance of the Commission
The expenses of the Commission shall be charged to the general revenue.

(Amended 51 of 1987 s. 3)

5.
Office of Commissioner

(1)

The Commissioner, subject to the orders and control of the Chief Executive, shall be responsible for the direction and administration of the Commission.

(Replaced 1 of 2003 s. 3)

(2)

The Commissioner shall not be subject to the direction or control of any person other than the Chief Executive.

(3)

The Commissioner shall hold office on such terms and conditions as the Chief Executive may think fit.

(4)

The Commissioner shall not, while he holds the office of the Commissioner, discharge the duties of any other prescribed officer.

(Amended 14 of 2003 s. 20)
(Amended 1 of 2003 s. 3)

6.
Appointment of Deputy Commissioner
The Chief Executive may appoint a Deputy Commissioner on such terms and conditions as he may think fit.

(Amended 1 of 2003 s. 3)

7.
Acting Commissioner

(1)

If the office of the Commissioner is vacant or the Commissioner is absent from duty, the Deputy Commissioner shall, save where the Chief Executive otherwise directs, act as Commissioner.

(2)

If both the Commissioner and the Deputy Commissioner are absent from duty, the Chief Executive may appoint another person to act as Commissioner during that absence.

(Amended 1 of 2003 s. 3)

8.
Appointment of officers

(1)

The Commissioner may appoint such officers as the Chief Executive thinks necessary to assist the Commissioner in the performance of his functions under this Ordinance.

(2)

(a)

Subject to paragraph (b), the Commissioner may, if he is satisfied that it is in the interests of the Commission to do so, after consulting the Advisory Committee on Corruption, terminate the appointment of an officer.

(b)

Before terminating an appointment under this subsection—

(i)

the Commissioner shall by notice in writing inform the officer concerned that the termination of his appointment is under consideration and the reasons therefor; and

(ii)

in the notice such officer shall be given a period of not less than 7 days within which to make, and is hereby authorized to make if he so wishes, written representations to the Commissioner as regards such reasons or as to why his appointment should not be terminated or as regards both.

(c)

Where an appointment is terminated under this subsection—

(i)

the Commissioner shall notify the officer in writing of the termination; and

(ii)

the officer may, within the period of 21 days beginning on the date of the notification under subparagraph (i), appeal to the Chief Executive against the termination.

(d)

On an appeal under paragraph (c) the Chief Executive may confirm or set aside the termination.

(e)

Where an appointment is terminated under subsection (2)(a), the termination shall operate forthwith but if on an appeal under paragraph (c)(ii) the termination is set aside, the officer concerned shall be treated in all respects as if the Commissioner had not terminated his appointment.

(Replaced 48 of 1996 s. 19)

(3)

The terms and conditions of employment of officers shall be subject to the approval of the Chief Executive, who may vary any terms or conditions imposed by virtue of subsection (4).

(4)

Subject to this section and section 11(2), the Commissioner and officers shall be employed subject to Public Service (Administration) Order, Government regulations and such administrative rules as apply generally to public officers, except insofar as the application of such Public Service (Administration) Order, Government regulations or rules may be modified by standing orders made under section 11(2).

(Amended 1 of 2003 s. 3)

9.

Warrant card

The Commissioner may issue to such officers as he thinks fit a warrant card which shall be prima facie evidence of the officer's appointment as such.

10.
Power of arrest

(1)

An officer authorized in that behalf by the Commissioner may without warrant arrest a person if he reasonably suspects that such person is guilty of an offence under this Ordinance or the Prevention of Bribery Ordinance (Cap. 201) or the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) or, being a prescribed officer, is guilty of an offence of blackmail committed by or through the misuse of office.

(Amended 27 of 1980 s. 2; 10 of 2000 s. 47; 14 of 2003 s. 21)

(2)

Where, during an investigation by the Commission of a suspected offence under the Prevention of Bribery Ordinance (Cap. 201) or of a suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), another offence is disclosed, any such officer may without warrant arrest a person if he reasonably suspects that such person is guilty of that other offence and—

(Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

(a)

he reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by, the suspected offence under the Prevention of Bribery Ordinance (Cap. 201) or the suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as the case may be; or

(Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

(b)

the other offence is one which is specified for the purposes of this subsection in subsection (5).

(3)

Any such officer—

(a)

may use such force as is reasonable in the circumstances in effecting an arrest under subsection (1) or (2); and

(Amended 18 of 1976 s. 2)

(b)

may, for the purpose of effecting such an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be so arrested.

(4)

No premises or place shall be entered under subsection (3) unless the officer has first stated that he is an officer and the purpose for which he seeks entry and produced his warrant card to any person requesting its production, but subject as aforesaid any such officer may enter any such premises or place by force, if necessary.

(5)

The following offences are specified for the purposes of subsection (2)—

(a)

the offence of perverting or obstructing the course of justice;

(aa)

the offence of theft under section 9 of the Theft Ordinance (Cap. 210);

(Added 27 of 1980 s. 2)

(b)

the offence of blackmail under section 23 of the Theft Ordinance (Cap. 210);

(ba)

the offence of fraud under section 16A of the Theft Ordinance (Cap. 210);

(Added 45 of 1999 s. 5)

(c)

the offence of obtaining property by deception under section 17 of the Theft Ordinance (Cap. 210);

(d)

the offence of obtaining pecuniary advantage by deception under section 18 of the Theft Ordinance (Cap. 210);

(da)

the offence of obtaining services by deception under section 18A of the Theft Ordinance (Cap. 210);

(Added 51 of 1987 s. 4)

(db)

the offence of evading liability by deception under section 18B of the Theft Ordinance (Cap. 210);

(Added 51 of 1987 s. 4)

(dc)

the offence of making off without payment under section 18C of the Theft Ordinance (Cap. 210);

(Added 51 of 1987 s. 4)

(dd)

the offence of procuring a false entry in certain records under section 18D of the Theft Ordinance (Cap. 210);

(Added 51 of 1987 s. 4)

(de)

the offence of false accounting under section 19 of the Theft Ordinance (Cap. 210);

(Added 27 of 1980 s. 2. Amended 51 of 1987 s. 4)

(e)

the offence of assisting an offender under section 90 of the Criminal Procedure Ordinance (Cap. 221);

(ea)

any offence under regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541);

(Replaced 134 of 1997 s. 85)

(eb)

the offence under section 14(1A) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) of dealing with certain property in contravention of section 8A of that Ordinance;

(Added 14 of 2018 s. 12)

(ec)

the offence under section 14(4A) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) of doing certain acts in contravention of section 11K, 11Lor 11M of that Ordinance;

(Added 14 of 2018 s. 12)

(f)

the offence of conspiracy to defraud and the offence of conspiracy to commit any of the offences referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e), (ea), (eb) or (ec);

(Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5; 14 of 2018 s. 12)

(g)

an attempt to commit any offence referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e), (ea), (eb) or (ec) or the offence of aiding, abetting, counselling or procuring any offence so referred to.

(Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5; 14 of 2018 s. 12)

(Replaced 14 of 1976 s. 2)

10A.

Procedure after arrest

(1)

A person arrested under section 10—

(a)

may be taken forthwith to a police station and there dealt with in accordance with the Police Force Ordinance (Cap. 232); or

(b)

may be taken to the offices of the Commission.

(2)

A person arrested under section 10 who is taken to the offices of the Commission may be—

(a)

detained there if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary for the purpose of further inquiries;

(b)

released from custody—

(i)

on his depositing such reasonable sum of money as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or

(ii)

on his entering into such recognizance, with such sureties, if any, as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or

(iii)

on his depositing such a sum of money and entering into such a recognizance.

(3)

A person who has deposited a sum of money for the purposes of subsection (2) and has thereupon been released from custody shall—

(a)

attend at the offices of the Commission at such time as an officer of the rank of Senior Commission Against Corruption Officer or above has specified and, having so attended, shall further attend at such other times thereafter as such an officer may specify; or

(Amended 48 of 1996 s. 20)

(b)

appear before a magistrate at such time and place as an officer of the rank of Senior Commission Against Corruption Officer or above has specified.

(3A)

A person who has been released from custody under subsection (3) and—

(a)

who attends at the offices of the Commission at a further time as shall have been specified; and

(b)

who on such attendance advises an officer of the rank of Senior Commission Against Corruption Officer or above that he will refuse to attend at any further time, whether specified or not,

shall have the sum of money deposited for the purposes of subsection (2) refunded to him and shall not be bound by any recognizance entered into by him with respect to his attendance.

(Added 48 of 1996 s. 20)

(4)

A recognizance entered into for the purposes of subsection (2) shall be conditioned—

(a)

for the attendance of the person at the offices of the Commission at such time as may be specified therein and at such other time thereafter as an officer of the rank of Senior Commission Against Corruption Officer or above may specify; or

(b)

for the appearance of the person before a magistrate at such time and place as may be specified therein.

(5)

If any person fails to attend at the offices of the Commission or to appear before a magistrate in accordance with subsection (3) or a recognizance entered into for the purposes of subsection (2), such sum of money may be forfeited or such recognizance estreated by a magistrate on application by the Commissioner.

(6)

A person who is detained at the offices of the Commission under subsection (2)(a) shall be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest unless he is sooner released, whether under subsection (2)(b) or otherwise.

(7)

(a)

A person who is detained at the offices of the Commission under subsection (2)(a) may be taken in the custody of an officer to and from any other place if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary or desirable to do so.

(b)

Any person who is being taken to and from any such place in the custody of an officer under paragraph (a) shall be deemed to be in lawful custody.

(8)

The Chief Executive may by order make such provision as he considers necessary with respect to the treatment of persons detained at the offices of the Commission, whether under subsection (2)(a) or pursuant to the order of a magistrate under section 20(3) or 79(1) of the Magistrates Ordinance (Cap. 227).

(Amended 51 of 1987 s. 5; 1 of 2003 s. 3)

(Added 14 of 1976 s. 2. Amended 27 of 1980 s. 3)

10AA.

Arrest of persons granted bail

(1)

An officer authorized in that behalf by the Commissioner may arrest without warrant any person who has been released from custody in accordance with section 10A(2), or otherwise admitted to bail following his arrest under section 10 or his appearance on a summons in respect of an offence referred to in that section—

(a)

if the officer has reasonable grounds for believing that any condition on or subject to which such person was so released or otherwise admitted to bail has been or is likely to be broken; or

(b)

on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.

(Amended 56 of 1994 s. 10)

(2)

Any person arrested under subsection (1) shall be brought within the period of 24 hours after his arrest or as soon as practicable after the expiry of that period before a magistrate, except where he was so arrested within the period of 24 hours immediately preceding an occasion on which he is required by virtue of a condition of his release under section 10A(2) or other bail to appear before any court, in which case he shall be brought before that court.

(3)

If it appears to the court before which a person is brought under subsection (2) that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the court may—

(a)

remand that person in custody; or

(b)

admit that person to bail on the same conditions or on such other conditions as it thinks fit,

but if it does not so appear to that court the court shall admit that person to bail on the same conditions.

(4)

Nothing in this section shall derogate from or affect the powers of arrest contained in section 9K of the Criminal Procedure Ordinance (Cap. 221).

(Amended 56 of 1994 s. 10)
(Added 51 of 1987 s. 6)
[cf. 1967 c. 80 s. 23 U.K.]

10B.
Search warrants

Without prejudice to section 17(1) of the Prevention of Bribery Ordinance (Cap. 201), if a magistrate is satisfied by information on oath that there is reason to believe that there is in any premises or place anything which is or contains evidence of the commission of any of the offences referred to in section 10, he may by warrant directed to any officer authorize such officer, and any other officers assisting him, to enter and search such premises or place.

(Added 14 of 1976 s. 2. Amended 48 of 1996 s. 21)

10C.
Power of search and seizure

(1)

An officer authorized in that behalf by the Commissioner may—

(a)

search any person if he reasonably suspects that such person is guilty of any of the offences referred to in section 10;

(b)

search the premises or place in which any person was arrested under section 10, or the premises or place in which a person who evades arrest therein under section 10 was to be arrested, for evidence of any of the offences referred to in that section;

(c)

seize and detain anything which such officer has reason to believe to be or to contain evidence of any of the offences referred to in section 10.

(Amended E.R. 1 of 2018)

(d)

(Repealed 45 of 1992 s. 2)

(1A)

(Repealed 45 of 1992 s. 2)

(2)

A person shall not be searched under subsection (1) except by a person of the same sex.

(3)

The powers conferred by subsection (1) shall not derogate from the power conferred on any officer by section 17 of the Prevention of Bribery Ordinance (Cap. 201) or a warrant issued thereunder.

(Added 14 of 1976 s. 2)

10D.

Power to take finger-prints and photographs

(1)

Where a person has been arrested under section 10 or, has been served with a summons under section 8(2) of the Magistrates Ordinance (Cap. 227) in respect of a section 10offence, any officer may take, or cause to be taken under the supervision of an officer, photographs, finger-prints and the weight and height measurements of that person.

(Amended 48 of 1996 s. 22)

(2)

The identifying particulars of a person taken under subsection (1) may be retained by the Commissioner, except that if—

(a)

a decision is taken not to charge the person with any offence; or

(b)

the person is charged with a section 10 offence but discharged by a court before conviction or acquitted at his trial or on appeal,

the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person.

(3)

Notwithstanding subsection (2), the Commissioner may retain the identifying particulars of a person who has been previously convicted of any section 10 offence.

(4)

In this section—

identifying particulars

(辨別身分資料)

in relation to a person means photographs, finger-prints and the weight and height measurements of that person;

section 10 offence

(第10條罪行)

means any offence for which a person may be arrested under section 10.

(Replaced 21 of 1991 s. 2)

10E.

Taking of non-intimate samples

(1)

In any investigation in respect of an offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if—

(a)

that person is dealt with and detained pursuant to section 10A; and

(b)

an officer of the rank of Senior Commission Against Corruption Officer or above (***authorizing officer***) authorizes it to be taken.

(2)

An authorizing officer may only give an authorization as required under subsection (1)(b) if he has reasonable grounds—

(a)

for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and

(b)

for believing that the sample will tend to confirm or disprove the commission of the offence by that person.

(3)

An authorizing officer—

(a)

subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;

(b)

where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.

(4)

Where an authorization has been given pursuant to subsection (2), an officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken—

(a)

of the nature of the offence in which the person is suspected to have committed;

(b)

that there are reasonable grounds to believe that the sample will tend to confirm or disprove the commission of the offence by that person;

(c)

of the giving of the authorization;

(d)

that he may or may not consent to the taking of the sample;

(e)

that if he does not consent to the taking of the sample, the sample will still be taken from him by using reasonable force if necessary;

(f)

that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence for which a person may be arrested under section 10;

(g)

that he may make a request to an officer for access to the information derived from the analysis of the sample; and

(h)

that if he is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) of the Police Force Ordinance (Cap. 232) and may be used for the purposes specified in subsection (2) of that section.

(5)

The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.

(6)

Any consent given for the taking of a non-intimate sample pursuant to this section must be given in writing and signed by the person giving the consent.

(7)

A non-intimate sample from a person may only be taken by—

(a)

a registered medical practitioner; or

(b)

an officer, or a public officer working in the Government Laboratory, who has received training for the purpose.

(8)

An officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample from a person pursuant to this section.

(9)

In this section, sections 10F and 10G –

DNA means deoxyribonucleic acid;

DNA information (DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample;

intimate sample (體內樣本) means –

(a)

a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;

(b)

a dental impression;

(c)

a swab taken from a private part of a person's body or from a person's body orifice other than the mouth;

non-intimate sample (非體內樣本) means –

(a)

a sample of head hair;

(b)

a sample taken from a nail or from under a nail;

(c)

a swab taken from any part, other than a private part, of a person's body or from the mouth but not any other body orifice;

(d)

saliva;

(e)

an impression of any part of a person's body other than—

(i)

an impression of a private part;

(ii)

an impression of the face; or

(iii)

the identifying particulars described in section 59(6) of the Police Force Ordinance (Cap. 232);

private part (私處) in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman;

serious arrestable offence (嚴重的可逮捕罪行) means an offence for which a person may be arrested under section 10 and for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years.

(Added 68 of 2000 s. 4)

10F.
Limitations on use of samples and results of forensic analysis

(1)

Without prejudice to subsection (4), no person shall have access to, dispose of or use a non-intimate sample taken pursuant to section 10E except for the purposes of—

(a)

forensic analysis in the course of an investigation of any offence for which a person may be arrested under section 10; or

(b)

any proceedings for any such offence.

(2)

Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of a non-intimate sample taken pursuant to section 10E except—

(a)

for the purposes of—

(i)

forensic comparison and interpretation in the course of investigation of any offence for which a person may be arrested under section 10;

(ii)

any proceedings for such an offence; or

(iii)

making the results available to the person to whom the results relate; or

(b)

for the purposes of section 59G(1) and (2) of the Police Force Ordinance (Cap. 232) where the results are of forensic DNA analysis.

(3)

Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(4)

Whether or not a non-intimate sample taken pursuant to section 10E or the results of forensic analysis of the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for an offence for which a person may be arrested under section 10 after—

(a)

it is decided that a person from whom the sample was taken shall not be charged with any offence for which a person may be arrested under section 10;

(b)

if the person has been charged with one or more such offences—

(i)

the charge or all the charges, as the case may be, is or are withdrawn;

(ii)

the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii)

the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.

(Added 68 of 2000 s. 4)

10G.
Disposal of samples and records

(1)

The Commissioner shall take reasonable steps to ensure that—

(a)

a non-intimate sample taken pursuant to section 10E; and

(b)

a record to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,

which may be retained by him or on his behalf are destroyed as soon as practicable after—

(i)

if the person has not been charged with any offence for which a person may be arrested under section 10, the expiry of—

(A)

subject to subparagraph (B), 12 months from the date on which the sample was taken (***the relevant period***); or

(B)

such further period or periods as may be extended under sub-section (2) (***the extended period***);

(ii)

if the person has been charged with one or more offences for which a person may be arrested under section 10within the relevant period and the extended period, if any—

(A)

the charge or all the charges, as the case may be, is or are with-drawn;

(B)

the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(C)

the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.

(2)

An officer of the rank of Assistant Director of the Commission Against Corruption or above may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the record con-cerned be retained.

(3)

Subsection (1) shall not affect any DNA information which has already been permanently stored in the DNA database pursuant to section 59G(1)(a), (b) or (c) of the Police Force Ordinance (Cap. 232).

(4)

Without prejudice to the operation of subsections (1) and (2), if—

(a)

a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or more offences for which a person may be arrested under section 10; and

(b)

there is no other charge against the person—

(i)

in relation to an offence which a person may be arrested under section 10; and

(ii)

which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.

(Added 68 of 2000 s. 4)

11.
Standing orders

(1)

The Commissioner may make orders, which shall be known as Commission standing orders, providing for—

(a)

the control, direction and administration of the Commission;

(b)

the discipline, training, classification and promotion of officers;

(c)

the duties of officers;

(d)

the financial regulation of the Commission;

(e)

such other matters as may, in his opinion, be necessary or expedient for preventing abuse or neglect of duty and for upholding the integrity of the Commission.

(2)

The Commissioner may, with the prior approval of the Chief Executive, by standing order modify the application to officers of Public Service (Administration) Order, Government regulations or administrative rules applicable by virtue of section 8(4).

(Amended 1 of 2003 s. 3)

(3)

No Commission standing order shall be inconsistent with any of the provisions of this Ordinance.

12.

Duties of the Commissioner

It shall be the duty of the Commissioner, on behalf of the Chief Executive, to—

(Amended 1 of 2003 s. 3)

(a)

receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;

(b)

investigate—

(i)

any alleged or suspected offence under this Ordinance;

(ii)

any alleged or suspected offence under the Prevention of Bribery Ordinance (Cap. 201);

(iii)

any alleged or suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

(Amended 10 of 2000 s. 47)

(iv)

any alleged or suspected offence of blackmail committed by a prescribed officer by or through the misuse of his office;

(Amended 14 of 2003 s. 22)

(v)

any alleged or suspected conspiracy to commit an offence under the Prevention of Bribery Ordinance (Cap. 201);

(vi)

any alleged or suspected conspiracy to commit an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); and

(Amended 10 of 2000 s. 47)

(vii)

any alleged or suspected conspiracy (by 2 or more persons including a prescribed officer) to commit an offence of blackmail by or through the misuse of the office of that prescribed officer;

(Replaced 16 of 1991 s. 3. Amended 14 of 2003 s. 22)

(c)

investigate any conduct of a prescribed officer which, in the opinion of the Commissioner, is connected with or conducive to corrupt practices and to report thereon to the Chief Executive;

(Amended 1 of 2003 s. 3; 14 of 2003 s. 22)

(d)

examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;

(e)

instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;

(f)

advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;

(g)

educate the public against the evils of corruption; and

(h)

enlist and foster public support in combatting corruption.

13.

Powers of the Commissioner

(1)

For the purpose of the performance of his functions under this Ordinance the Commissioner may—

(a)

authorize in writing any officer to conduct an inquiry or examination;

(b)

enter any Government premises and require any prescribed officer to answer questions concerning the duties of any prescribed officer or public servant and require the production of any standing orders, directions, office manuals or instructions relating thereto;

(c)

(Repealed 45 of 1992 s. 3)

(d)

authorize in writing any person to perform any of his duties and to exercise such powers under this Ordinance and the Prevention of Bribery Ordinance (Cap. 201) as he may specify.

(Amended 10 of 2000 s. 47)

(2)

The Commissioner or any officer authorized for the purposes of this subsection in writing by the Commissioner shall have the following powers, namely—

(a)

as regards the performance of any of the Commissioner's functions under this Ordinance, access to all records, books and other documents relating to the work of any Government department in the possession or under the control of any prescribed officer;

(b)

in so far as is necessary for the performance of any of the Commissioner's functions under section 12(d) or (f), access to such records, books and other documents in the possession or under the control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of that public body;

(c)

as regards any such records, books and other documents, power to photograph or make copies of them.

(Replaced 48 of 1996 s. 23)

(3)

In this section

documents (文件) has the meaning assigned to ***document*** in section 2 of the Prevention of Bribery Ordinance (Cap. 201).

(Added 48 of 1996 s. 23)
(Amended 14 of 2003 s. 23)

13A.

Resisting or obstructing officers

Any person who resists or obstructs an officer in the execution of his duty shall be guilty of an offence and shall be liable on conviction to a fine of $5,000 and to imprisonment for 6 months.

(Added 14 of 1976 s. 4. Amended 51 of 1987 s. 7)

13B.

False reports to officers

Any person who knowingly—

(a)

makes or causes to be made to an officer a false report of the commission of any offence; or

(b)

misleads an officer by giving false information or by making false statements or accusations, shall be guilty of an offence and shall be liable on conviction to a fine of $20,000 and to imprisonment for 1 year.

(Added 14 of 1976 s. 4. Amended 51 of 1987 s. 8)

13C.

Falsely pretending to be an officer, etc.

Any person who falsely pretends—

(a)

that he is an officer or has any of the powers of an officer under this Ordinance or the Prevention of Bribery Ordinance (Cap. 201) or under any authorization or warrant under either of those Ordinances; or

(b)

that he is able to procure an officer to do or refrain from doing anything in connection with the duty of such officer,

shall be guilty of an offence and shall be liable on conviction to a fine of $20,000 and to imprisonment for 1 year.

(Added 14 of 1976 s. 4)

13D.

Disposal of property connected with offences

Section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply with respect to property in the possession of the Commissioner or any officer as it applies with respect to property in the possession of a court or the police.

(Added 14 of 1976 s. 4)

13E.

Time limit for prosecution of offences under section 13B or 13C

(1)

Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under section 13B or 13C within 1 year from the time when the matter of such complaint or information respectively arose.

(2)

Where a person has, before the commencement of the Independent Commission Against Corruption (Amendment) Ordinance 1980 (27 of 1980), committed an offence under section 13B or 13C and but for subsection (1) would not be liable to prosecution for that offence by reason of section 26 of the Magistrates Ordinance (Cap. 227), he shall, notwithstanding subsection (1), not be liable to be prosecuted for that offence.

(Added 27 of 1980 s. 6)

14.
Estimates

(1)

In each financial year, before a date appointed by the Chief Executive, the Commissioner shall forward to the Chief Executive, for his approval, estimates of the expenditure of the Commission for the next financial year.

(2)

The estimates shall be in such form and contain such information as the Chief Executive may require.

(Amended 1 of 2003 s. 3)

15.
Accounts

(1)

The Commissioner shall maintain proper accounts of such expenditure by the Commission as the Chief Executive may require.

(Amended 1 of 2003 s. 3)

(2)

As soon as may be convenient after the end of each financial year, the Commissioner shall cause a statement of accounts during the previous financial year to be prepared.

16.
Audit

(1)

The Director of Audit shall at any time be entitled to have access to all accounts maintained under section 15(1) and he may require such information and explanation thereon as he thinks fit.

(2)

The Director of Audit shall audit the statement of accounts prepared under section 15(2) and report thereon to the Chief Executive.

(Amended 1 of 2003 s. 3)

17.
Annual report

(1)

The Commissioner shall, on or before 31 March in each year, or by such later date as the Chief Executive may allow, submit to the Chief Executive a report on the activities of the Commission in the previous year.

(2)

The Chief Executive shall cause the report to be laid on the table of the Legislative Council.

(Amended 1 of 2003 s. 3)

17A.
Welfare fund

(1)

There shall be established a fund to be known as the "Independent Commission Against Corruption Welfare Fund".

(2)

The fund shall consist of—

(a)

such donations and voluntary contributions as may be made thereto;

(b)

such sums as may, from time to time, be voted thereto by the Legislative Council; and

(c)

such sums as may accrue by way of dividend or interest from the investment of the fund or any part thereof.

(3)

The fund shall be controlled by the Commissioner and applied to the following purposes—

(a)

procuring for officers of the Commission and other persons employed by the Commission or for former officers or persons so employed who have ceased employment or retired on pension, gratuity or other allowance, comforts, conveniences or other benefits not chargeable to the general revenue;

(b)

granting loans to officers of the Commission and other persons employed by the Commission or former officers of the Commission and other persons formerly employed by the Commission who have ceased to be employed or retired on pension, gratuity or other allowance;

(c)

making grants to persons who were wholly or partially dependent at the time of his death on—

(i)

a deceased officer or a deceased former officer of the Commission who had ceased to be employed or had retired on pension, gratuity or other allowance; or

(ii)

a deceased person employed by the Commission or a deceased person who was at any time employed by the Commission and who had ceased to be employed or had retired on pension, gratuity or other allowance,

and who are in need of financial assistance, whether towards the payment of funeral expenses of the deceased or otherwise.

(Added 27 of 1980 s. 7)

18.

Saving of certain common law privileges

Nothing in this Ordinance shall prejudice any claim to privilege which any person may have at common law in relation to any communication, document or other thing made or given to a solicitor or counsel.

(Added 14 of 1976 s. 5)

18A.
Investigation of pre-1977 offences

(1)

Notwithstanding section 12, the Commissioner shall not act as required by paragraphs (a), (b) and (c) of that section in respect of alleged or suspected offences committed before 1 January 1977 except in relation to—

(a)

persons not in Hong Kong or against whom a warrant of arrest was outstanding on 5 November 1977;

(b)

any person who before 5 November 1977 had been interviewed by an officer and to whom allegations had been put that he had committed an offence;

(c)

an offence which the Chief Executive considers sufficiently heinous to warrant action.

(2)

A certificate under the hand of the Chief Secretary for Administration stating the fact that the Chief Executive considers an offence sufficiently heinous to warrant action shall be conclusive evidence of that fact.

(Amended L.N. 362 of 1997)
(Added 9 of 1978 s. 2. Amended 1 of 2003 s. 3)

Law no. 10/2000 Commission Against Corruption of the Macao Special Administrative Region

(Unofficial translation)

The Legislative Assembly enacts the present law, in accordance with 1) of Article 71 of the Basic Law of the Macao Special Administrative Region:

CHAPTER I
Nature, Status, Scope of Activity and Powers of the Commission Against Corruption

Article 1
Nature

The Commission Against Corruption (hereinafter designated as CCAC) is a public body acting in accordance with the rules under the present law.

Article 2
Status

The Commission Against Corruption functions independently and the Commissioner Against Corruption is accountable to the Chief Executive.

Article 3
Scope of Activity

1. The Commission Against Corruption aims, within its scope of activity, at:

1) taking actions to preventacts of corruption or fraud;

2) carrying out investigation and inquiry with regard to acts of corruption or fraud practised by public servants, with due respect of the penal procedure legislation, and of any powers vested by law to other bodies;

3) carrying out acts of investigation and inquiry with regard to acts of corruption and fraud practised in relation to electoral registration and to the elections of members of the institutions of the Macao Special Administrative Region, with due respect of the

penal procedure legislation, and of any powers vested by law to other bodies;

4) promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals, and ensuring, through the means referred to under Article 4 and other informal means, that the exercise of public powers abides by criteria of justice, legality and efficiency.

2. For the purposes of this Article, public servants are those defined under Article 336 of the Penal Code.

3. The scope of activity of the Commission Against Corruption in reference to its aims under 1) and 2) of Paragraph 1 also relates to the activity of credit institutions.

Article 4

Powers

The Commission Against Corruption is entitled to:

1) investigate any findings or news relating to facts, which may give rise to justified suspicion regarding the carrying out of acts of corruption or fraud, of crimes against public property, of abusive exercise of public functions, of acts damaging to public interests, or of any acts under 3) of Paragraph 1 of the Article above;

2) carry out inquiries and investigations necessary to fulfil its aims;

3) visit for the purpose of inspection, with or without notice, any places of public entities; examine documents; attend to the reporting of respective public servants and request for such information and documents as it deems fit;

4) conduct or request to conduct inquiries, comprehensive investigations, investigation measures or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals;

5) examine the legality and the administrative correctness of acts which involve property entitlements;

6) report any findings of illegal acts after the completion of investigation to the authorities with disciplinary powers;

7) follow up, wherever the circumstances so demand, any criminal or disciplinary proceedings filed with the competent authorities;

8) report the results of its main inquiries to the Chief Executive and inform him of any acts carried out by principal officials and of other posts as referred to under a) of Paragraph 2 of Article 336 of the Penal Code and which may be subsumed in its scope of activity;

9) with regard to any shortcomings it finds in any legal provisions, specially those which may affect rights, freedoms, safeguards or any legitimate interests of the individuals, formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation. Where, however, the Legislative Assembly is the competent entity to legislate, it shall merely inform the Chief Executive in writing on its position;

10) propose to the Chief Executive the enacting of normative acts which may improve the work of the public institutions and enhance the respect for legality in the administration, particularly by eliminating factors which may facilitate corruption and illicit practice or ethically reproachable practice;

11) propose to the Chief Executive the adoption of administrative measures for the purpose of improvement of public services;

12) address recommendations directly to the competent authorities for the purpose of rectifying illegal or unfair administrative acts or procedures;

13) publicize, through mass media or announcement, its points of view arising from the carrying out of the aims enshrined in the several provisions of Paragraph 1 of the Article above, but in conformity with its duty of secrecy;

14) cooperate with the competent bodies and departments to look for solutions which may most adequately defend the legitimate interests of the individuals and improve administrative activity;

15) carry out public awareness activities to prevent the practice of acts of corruption and administrative illegality, motivate the residents to adopt precautious measures or reduce acts and situations that may facilitate the occurrence of criminal conducts;

16) exercise all other legally defined powers.

Article 5

General Duty of Cooperation

All individuals and collective persons are under the duty to cooperate with the Commission Against Corruption, when their own rights and legitimate interests are protected.

Article 6

Special Duties of Cooperation

1. The Commission Against Corruption, within its scope of activity as mentioned under 4) of Paragraph 1 of Article 3, is entitled to cooperation from public entities. It may demand, with regard to the powers of the respective entities, that they carry out investigations, inquiries, comprehensive investigations, expert inspections, analyses, examinations or any other necessary measures.

2. The entities above are under the duty to provide the Commission Against Corruption with information, documents or any other materials they possess, and to attend to any demands put forward by the Commission, in which case a deadline may be fixed by the Commission for the purpose of compliance.

3. The Commission Against Corruption and the criminal police bodies must cooperate within their scopes of activity.

4. The Commission Against Corruption is entitled to access by any means, including the use of information technology, to information contained in files of the Administration and of public and autonomous entities, where necessary to carry out its activity. For the purpose of criminal inquiry, it may also gain access to information contained in files of entities which run telecommunication services so as to establish the identity of the holders of the means of telecommunication.

5. Rules on justice secrecy under the Penal Code and the Penal Procedure Code shall apply to investigations and inquiries, for which the Commission Against Corruption may be held accountable.

Article 7

Non Punishment

1. With regard to crimes of corruption, punishment or accusation may not occur where the actor helps effectively in the search

of evidence which may be decisive in establishing the elements of the crime, esp. the identification of other individuals to be held responsible.

2. For the purposes under 2) and 3) of Paragraph 1 of Article 3, a prior and due authorization is granted to a person by the Commissioner Against Corruption on a reasoned decision to accept illegitimate demands from public servants or any other persons either directly or through a third party. Such acceptance is not punishable when it is used to collect evidence in disclosing any offenders committing any of the crimes under the scope of the current law.

3. Acceptance of bribes may also be authorized where it is instrumental and where such action is adequate to prove that any of the crimes under 2) and 3) of Paragraph 1 of Article 3 of the current law has been committed.

Article 8

Waiver of Duty of Confidentiality

1. The duty of confidentiality, not expressly protected by law, of any individuals or collective persons may not be invoked against the duty of cooperation with the Commission Against Corruption.

2. The duty of confidentiality governing credit institutions to protect facts or information obtained through the relations with their clients, may be waived by means of a written authorization from the particular client himself recorded at the Commission Against Corruption, in accordance with the Penal Code or the Penal Procedure Code.

Article 9

Initiative

The Commission Against Corruption acts on its own initiative with regard to facts that come to its knowledge by any means.

Article 10

Procedural Autonomy

The activity of the Commission Against Corruption is independent from the judicial or administrative means of action under the law and does not suspend or interrupt the continuity of any terms of time regardless of whatever nature they may be.

Article 11
Proceedings

1. Acts and measures carried out and undertaken by the Commission Against Corruption within its scope of activity as referred to in 2) and 3) of Paragraph 1 of Article 3, must abide, in accordance with this law, by the existing penal procedure rules.

2. The Commissioner Against Corruption is in charge of carrying out the acts and undertaking the measures mentioned in the above provision. The provisions of b) of Paragraph 2 of Article 42 and of Article 246 of the Penal Procedure Code are not applicable.

3. The Commissioner Against Corruption and his deputies enjoy, with regard to penal procedure acts within their scope of activity, the status of criminal police authority.

4. The inquiry run by the Commissioner Against Corruption includes all procedural acts and measures which criminal police authorities and bodies may adopt in accordance with penal procedure legislation. It includes, as well, searches and seizures, which the Procuratorate is empowered to carry out under penal procedure legislation.

5. With regard to inquiries implemented by the Commissioner Against Corruption, Article 228 of the Penal Procedure Code is not applicable, neither is Article 258 of the Penal Procedure Code unless the accused is under arrest.

6. With regard to accusations of crimes within the scope of activity of the Commission Against Corruption, the Commission must be informed of any relevant decisions.

Article 12
Other Acts and Measures

1. Acts and measures carried out and undertaken by the Commission Against Corruption within its scope of activity as referred to in 1) and 4) of Paragraph 1 of Article 3 are not subject to any special formal procedures. In collecting evidence, it may not, however, adopt any procedures which may violate the rights, freedoms, safeguards and legitimate interests of individuals.

2. The Commission may require the testimony of any person where it deems necessary for fact-finding purposes.

3. The Commission may, at any moment and through a reasoned decision, determine that a proceeding be closed and refrain from taking any action against it, in particular where the facts it is dealing with lie outside its scope of activity or where there is insufficient evidence.

4. The entities requiring the intervention of the Commission shall be informed always of the final decision in each proceeding.

5. In case of non-acceptance of any recommendations under 12) of Article 4, the entity concerned shall give its reasoned reply within a period of 90 days.

6. Where a recommendation of the Commission is not accepted, the Commission may reveal the situation to the hierarchical superior of the relative entity. Once it has exhausted the hierarchical chain, it may inform the Chief Executive of the situation.

7. Acts and measures under this Article are exempt from judicial costs and stamp tax.

Article 13

Redirecting to Other Bodies

1. Where the Commission Against Corruption recognizes that matters presented or submitted to it must be subject to administrative or judicial review as specifically regulated under the law, it may merely redirect the parties concerned to the entities empowered for such functions.

2. Irrespective of the above, and wherever there is the necessity, the Commission Against Corruption has the duty to inform the parties coming for consultation of the channels of administrative or judicial review or other available channels.

Article 14

Disobedience

1. Where one is requested to testify as required under Paragraph 2 of Article 12 and such request is rejected, the party concerned will be notified in person or by any other adequate means to render such duty. Any groundless refusal or absence from the subsequent testimony session will subject the party concerned to the penalty for the crime of disobedience.

2. The penalty for the crime of aggravated disobedience is applicable to:

1) those, other than the individuals at whom the activity of the Commission Against Corruption is aimed, who, by any means, intentionally and without justification, intervene and make difficult the execution of tasks of the Commission Against Corruption;

2) those who, under the law, have the duty to fulfil obligations under Paragraph 2 of Article 6 but fail to fulfil them by the deadline fixed for that purpose;

3) public servants under Paragraph 2 of Article 3 or persons in charge or workers of the entities under Paragraph 3 of Article 3, who commit the illegal action laid down in Paragraph 1 of the current article.

3. In the cases referred to under1) and 2) of Paragraph 2 of the current article, criminal proceedings do not affect any possible forms of civil or disciplinary accountability.

Article 15

Annual Report

The Commission Against Corruption shall present to the Chief Executive, by 31 March of every calendar year, a report of its activities in relation to the previous year. Such a report is to be published in the Official Gazette of the Macao Special Administrative Region.

CHAPTER II
Commissioner Against Corruption, Deputy Commissioners and Staff

SECTION I
Commissioner Against Corruption

Article 16

Commissioner

The Commissioner holds all powers of the Commission Against Corruption. He may delegate them onto his deputies and, in accordance with the complementary regulation to the current law, onto his assisting staff, without prejudice to his power to reclaim any delegated power at any time.

Article 17

Appointment

The Commissioner Against Corruption is nominated by the Chief Executive and appointed by the Central People's Government.

Article 18

Incompatibilities

The Commissioner Against Corruption may not exercise any other functions in the public sector or any private activity, whether remunerated or not, and may not occupy any position in any trade union or political organization. He may, however, exercise functions in a public body where it is of a consultation nature.

Article 19

Public Authority

The Commissioner Against Corruption enjoys the status of public authority, without prejudice to the provisions under Paragraph 3 of Article 11.

Article 20

Duty of Confidentiality

The Commissioner Against Corruption shall maintain the secrecy in respect of all facts that come to his knowledge in the course of performing his functions or as a consequence of such performance, except where such duty of confidentiality is deemed not necessary by the nature of the facts themselves.

Article 21

Rights and Benefits

1. The salary of the Commissioner Against Corruption as well as the allowance for entertainment expenses, are defined in specific legislation, without prejudice to the following provision.

2. The Commissioner Against Corruption is entitled to all other rights and benefits as the Secretaries.

3. Status of the Commissioner Against Corruption should not be disadvantaged in regard to career stability, social security regime and other benefits, in particular his seniority of service which should be regarded, for all legal purposes, as from where he originally worked.

Article 22
Immunities

The Commissioner Against Corruption may not be arrested or imprisoned pre-emptively before he is definitively accused or before fixing a date for court session, except for the commission of a crime that carries a prison sentence of over three years, for which he is caught in flagrante delicto.

Article 23
Suspension, Exoneration and Renunciation

1. Suspension of the activity of the Commissioner Against Corruption occurs on the day he is notified of a decision of definitive criminal accusation or of a decision fixing a date for court session, in case of mens rea.

2. Exoneration of the Commissioner Against Corruption follows proposal of the Chief Executive to the Central People's Government.

3. The Commissioner Against Corruption may renounce his post in written request addressed to the Chief Executive.

SECTION II
Deputy Commissioners

Article 24
Deputy Commissioners

1. The Commissioner Against Corruption may nominate two deputies from amongst recognized competent individuals with well-established reputation for integrity and independence as his assistants. The Chief Executive appoints and exonerates them.

2. The appointment decision must be published in the Official Gazette of the Macao Special Administrative Region.

3. Deputy commissioners are entitled to a salary equivalent to 70% of that of the Commissioner Against Corruption as well as all other rights and benefits enjoyed by Directors of Bureau (column 2).

Article 25
Substitution

1. In case of absence or impediment, the Commissioner Against Corruption shall appoint a deputy who shall take over his responsibilities.

2. Where the Commissioner falls vacant, his functions shall be carried out by the deputy with a higher seniority in his term of appointment until a new Commissioner is appointed.

Article 26

Duty of Confidentiality

The deputy commissioners must abide by the duty of absolute confidentiality in respect of all facts that come to his knowledge in the course of performing his functions or as a consequence of such performance. Such duty shall only be waived through an authorization of the Commissioner Against Corruption.

Article 27

Renunciation

Deputy commissioners may renounce their posts in written form addressed to the Commissioner Against Corruption.

Article 28

Remissions

The provisions of Article 18, Article 19, Paragraph 3 of Article 21, Article 22 and Paragraph 1 of Article 23 above shall apply to the deputy commissioners.

SECTION III
Assisting Staff

Article 29

Advisers, Technical Advisers, Investigators and Other Staff

1. The Commissioner Against Corruption shall be assisted by advisers, technical advisers, investigators and other necessary staff, for the purpose of carrying out his functions to the fullest.

2. The career of the criminal investigation personnel under Decree-Law no. 26/99/M, of 28 June, shall apply to the investigation personnel, other than those pertaining to training courses, apprenticeships and maximum age limits for entry into such career.

3. Investigators are to be recruited from amongst individuals with 11 year schooling who have successfully concluded training organized by the Commission Against Corruption for such purpose. Investigation Officers and other staff with an even higher

category are to be recruited from amongst individuals with a degree or investigators recognized as highly competent. Investigators and investigation officer do not necessarily possess the qualification of driving motor-run vehicles.

4. For the purposes of Paragraph 2, principal investigation officer, senior investigation officer, investigation officer, principal investigator, senior investigator and investigator relate to the categories of 1st class inspector, 2nd class inspector, sub-inspector, principal investigator, 1st class investigator and 2nd class investigator, in their respective order.

Article 30

Appointment and Exoneration

Personnel referred to in the Article above are to be freely appointed and exonerated by the Commissioner Against Corruption. It may be summoned, detached or contracted. The commencement date of carrying out its functions, for all purposes, is regarded effective as from the specified date of the appointment decision or the related contract. No other forms of formality are required other than a publication in the Official Gazette of the Macao Special Administrative Region, but the Chief Executive may waive such publication.

Article 31

Authority Guarantees

1. In carrying out their functions, chief personnel and advisers, as well as technical advisers of the Commission Services, enjoy the status of authority agents. Where, in accordance with complimentary regulation to the current law, powers are delegated onto them for directing criminal inquiry, they are considered to be criminal police authorities.

2. When effecting criminal inquiry, investigation personnel enjoy, in carrying out their functions, the status of criminal police body. The other assisting staff may enjoy the status of authority agent.

Article 32

Personnel under Temporary Arrangement

To carry out measures and acts that are within the scope of powers of the Commission, or acts that are required in order to comply with the duty of cooperation, the Commissioner Against Corruption may require the competent public services to assign public servants or agents to work in the Commission as it deems useful or suitable.

Article 33

Services and Confidential Expenses

1. The Commissioner Against Corruption may, in exceptional cases, enter into contracts with public or private entities for training activities, technical and temporary studies and works.

2. Where special needs of prevention and investigation are required, the Commissioner Against Corruption may authorize expenses with no formalities.

3. Expenses under the provision above require a secret registry under the responsibility of the Commissioner Against Corruption and such registry is checked and authorized by the Chief Executive.

Article 34

Remissions

1. The provisions of Article 26 shall apply to advisers, technical advisers, investigators, assisting staff, as well as all those who cooperate with the Commission Against Corruption.

2. Advisers, technical advisers and other assisting staff benefit from the provisions under Paragraph 3 of Article 21.

SECTION IV
Identity Card and Use of Weapons

Article 35

Identity Card

1. The Chief Executive issues a "special identity card" for the Commissioner Against Corruption.

2. The Commissioner Against Corruption issues a "special identity card" for his deputies and a "special identity card" or an "ordinary identity card" for the assisting staff.

3. The "special identity card" entitles the bearer to circulate freely and to have free access to all places of work of the Adminis-

tration of the Macao Special Administrative Region, including internal security entities and services, municipal councils and public law of collective persons.

Article 36

Use of Weapons

1. Deputy commissioners, chief personnel, advisers, technical advisers, investigators and assisting staff of the Commission Against Corruption who effect criminal inquiry may be granted, in particular cases and following the decision of the Commissioner Against Corruption, the right to hold, use and carry a weapon, of a calibre and type approved by the decision of the Chief Executive.

2. The special duties of the personnel mentioned in the above provision, which derive from holding, using and carrying a weapon are defined in a separate regulation, to be published in the Official Gazette of the Macao Special Administrative Region.

CHAPTER III
Services of the Commission Against Corruption

Article 37

Aims, Autonomy and Premises

1. The Services of the Commission Against Corruption are intended to provide the necessary technical and administrative support for the exercise of the aims defined in the current law.

2. The Services of the Commission Against Corruption are autonomous in terms of administration, finance and property.

3. The Services of the Commission Against Corruption shall work in their own premises.

Article 38

Administrative and Disciplinary Powers

1. The Commissioner Against Corruption has the power to carry out all acts relating to the appointment and adjustment of job nature, as well as applying disciplinary action to the personnel of the Commission Against Corruption.

2. Whenever the Commissioner Against Corruption orders to carry out internal investigations, a specific subunit(submit) of the

Services of the Commission Against Corruption shall provide all necessary support.

3. A specialized committee may be created by decision of the Chief Executive to countercheck problems related to complaints filed against disciplinary conduct of the personnel of the Commission Against Corruption.

Article 39

Personnel Rules

The general rules of public services shall apply subsidiarily (subsidiary) to the personnel of the Services of the Commission Against Corruption.

Article 40

Budget

1. The Commission Against Corruption submits its budget to the Chief Executive so that a global item allocated to the Commission Against Corruption can be included in the expenditure of the Macao Special Administrative Region General Budget.

2. Transfers of funds of allocation among the Services of the Commission Against Corruption depend upon approval of the Commissioner Against Corruption.

Article 41

Supervision and Examination

By 31 March of every calendar year, the Commission Against Corruption submits accounts of the previous economic year for supervision and examination by the Chief Executive.

CHAPTER IV
Final and Temporary Provisions

Article 42

Additional Legislation

1. The Chief Executive shall implement the current law, by means of an administrative regulation, determining the personnel framework and its functions, the organization and form of activity of the Services of the Commission Against Corruption.

2. Until entry into force of the regulation mentioned in the provision above, the current personnel framework shall be maintained.

Article 43

Budget Costs

Budget costs for implementation of the current law are to be paid, during the current economic year, in accordance with availability in the Macao Special Administrative Region general budget for the current year or, where necessary, by opening a credit line to be offset with budget balance carried from previous years.

Article 44

Repealing Provision

1. Law no. 11/90/M, of 10 September, in its part adopted as law of the Macao Special Administrative Region under Paragraph 4 of Annexe III of Reunification Law, approved by Law no. 1/1999, Law no. 2/97/M, of 31 March, Decree-Law no. 7/92/M, of 29 January, and Edict no. 8/93/M, of 18 January are repealed.

2. Decree-Law no. 53/93/M, of 27 November, shall apply subsidiarily to the Services of the Commission Against Corruption, save for provisions of the current law ruling otherwise.

Article 45

Entry into Force

The current law enters into force the day after its publication.

Enacted on 7 August 2000.
The President of the Legislative Assembly, Susana Chou.
Signed on 10 August 2000.
To be published.
The Chief Executive, Ho Hau Wah.

Footnotes

1. URL: http://www.imf.org/en/News/Articles/2017/09/18/sp091817-addressing-corruption-with-clarity
2. URL: https://www.bloomberg.com/news/articles/2017-05-23/asian-graft-worsens-and-millennials-pose-a-challenge-ey-survey
3. See: Decree of the President of the Russian Federation of 7 May 2012 No. 605 "On measures to implement the foreign policy course of the Russian Federation".
4. Decree of the President of the Russian Federation of November 30, 2016 No. 640.
5. URL: https://kapital.kz/world/56683/kitaj-obyavil-v-krasnyj-rozysk-100-vysokopostavlennyh-chinovnikov.html
6. URL: http://russian.people.com.cn/n3/2018/0118/c31516-9317083.html
7. URL: http://tass.ru/mezhdunarodnaya-panorama/4859925
8. URL: http://novostivl.ru/msg/22866.htm
9. URL: http://www.unodc.org/documents/treaties/UNCAC/Working-Groups/ImplementationReviewGroup/ExecutiveSummaries/V1609722r.pdf
10. The monograph focuses on the study of anti-corruption activities in the People's Republic of China (mainland China), as well as on coverage of certain aspects in special administrative areas of Hong Kong (returned to the PRC in 1997 after a 99-year lease by the UK), Aomun (Macao) (returned to the PRC in 1999 after 442 years of Portuguese rule) and the Republic of China of Taiwan (actually an independent state, but not recognized by the UN).
11. See more in detail: Sevalnev V.V. Legislation in the sphere of counteracting corruption: Russia and China (comparative legal aspect) // Journal of Foreign Legislation and Comparative Law. 2017. No. 3 (64). Pp. 95–100.

12. See, for example, Tikhomirov, SA. On Some Technologies of Fighting Corruption in the People's Republic of China // Advocate. 2013. № 5. P. 47–52; Gumerov T.A. Criminal Procedural Policy to Combat Corruptible Crime: Foreign Format // Journal of Russian Law. 2015. No. 12. P. 78–86; Sukharenko AN, Truncevsky Yu.V. The Chinese experience of fighting corruption: the state and trends // International public and private law. 2016. № 4. P. 40–42 and others.

13. Requires a high level of Chinese language for a qualitative analysis of the legal material of China. There are not many such researchers in Russia at present (see: Troshchinsky P.V. "The Legal System of China," RAS IFES, Moscow, 2016).

14. See more details: Tsirin A.M., Sevalnev V.V. Management based on the rule of law in China // Journal of Russian Law. 2015. No. 2 (218). Pp. 162–165.

15. China's National Strategy against Corruption (на кит. яз.) / URL: http://jw.fafu.edu.cn/f5/0f/c2137a62735/page.htm

16. Establish a sound work plan for the punishment and prevention of corruption in 2008-2012 (на кит. яз.) / URL: http://cpc.people.com.cn/GB/64093/64371/78117/7410899.html

17. 建立健全惩治和预防腐败体系20013－2017年工作规划 (на кит. яз.) / URL: http://fanfu.people.com.cn/n/2013/1225/c64371-23946476-2.html

18. The main reasons for the absence of a single legislative act on combating corruption in the legislation of the PRC include the extreme complexity of developing such a normative legal act in relation to the legal space of the PRC. In particular, there are a number of technological problems in the normative regulation: first, in the jurisdiction of the PRC, the system of declaring the incomes of officials in various departments is not clearly developed, its rules are applied; secondly, there is no single approach for determining the maximum amount of monetary value of gifts to officials; Thirdly, the problem of combining posts and the existence of so-called "second" work among a large number of civil servants has not been resolved. See: P. Troshchinsky. Development of Chinese legislation in recent years // International Public and Private Law. 2015. № 3. P. 36–40.

19. Report of the Secretariat of the Third Session of the 12th National People's Congress on the resolution of the proposal of the third session of the 12th National People's Congress (на китайском языке). URL:

http://paper.people.com.cn/rmrb /html/2015-03/15/nw.D110000renmrb_20150315_1-04.htm

20. See: Troshchinsky P.V. The fight against crime in China: the regulatory and legal aspect // Journal of Russian Law. 2015. No. 8 (224). Pp. 47–58.

21. The Sixth Plenum of the 18th Central Committee of the CPC opened in Beijing, the main attention will be paid to the issue of inner-Party management. URL: http://russian.news.cn/2016-10/24/c_135776818.htm;

22. CPC Central Committee Political Bureau on improving the work style of close ties provisions of the masses. URL: Http://baike.baidu.com/link?url=cLA6-yp9-KWzY_gDHgY9d8Pn4-oPgYDRS55pr-arhZwMFsY1tvTJRsmfevOX9gIvwPfG1W6yCPSIeguweL4uuLpkS62qTWW4EQwzRm006EfaofQ_f-eCnlR6lxaOShJNLQ1nKj8St5pmVnPoeTVMNxGgASC4zxRHak2ZPTou2tl3cUZyERPuDb2CYdIEN5qf-K-euOH8KP-XgqTIo1pcI6FETr9aY3FeACbbaFysPcr1MA4lJJZhYJXqqL7kBGCSyxOGpUKWpH3Sbvq8kqWsAOjEReW0szSeX6wxWU4kDyNkvf41lw4AjRF_e5ISjmcgiOscKYmMNi2k5Z7QyJSb7eNZLlQ1LxDZjoQu0vq7FAUc-PRl0nam-bhjrccNlWEAv68oiZ5MJAMsSCqoIpQKLtVqVOBjnaXYn5AKJigCyQMJB6ZeoNoIYAifM_cal4jq

23. URL: http://www.aif.ru/money/corruption/vlasti_kitaya_vernuli_v_stranu_2_5_tysyachi_korrupcionerov.

24. Subramanian Kannan (2016). The Money Laundering and Financing of Terrorism Eco-System. Notion Press.

25. See: The Economist (2016): China nostra. In Italy and Spain, Chinese banks are implicated in moneylaundering, 25/02/2016. URL: http://www.economist.com/news/europe/21693633-italy-and-spainchinese-banks-are-implicated-money-laundering-china-nostra.

26. Transparency International (2015). China.Beneficial Ownership Transparency, 12/11/2015. URL: http://www.transparency.org/files/content/publication/2015_BOCountryReport_China.pdf.

27. Kinetz Erika, Kelvin Chan (2016). Hong Kong emerges as hub for creating offshore companies, Associated Press, 10/04/2016. URL: http://bigstory.ap.org/article/4827c1eef1a04814a8ef8d48d522b390/hong-kong-emerges-hubcreating-offshore-companies

28. Cm. More: Sevalnev V.V. Anti-corruption legislation of the Russian Federation and the People's Republic of China: a comparative legal aspect // Journal of Russian Law. 2015. No. 10 (226). Pp. 151–157.
29. See: Socialist legal system with Chinese characteristics / Press Office of the State Council of the People's Republic of China. Beijing, 2011. P. 13–14.
30. See details: Troshchinsky P.V. Features of the socialist legal system with Chinese characteristics / / Journal of Foreign Legislation and Comparative Law. 2012. № 6. P. 125–135.
31. See: Sevalnev V.V. Legal regulation of the taxation of the innovation sector of the People's Republic of China: dis. ... cand. jurid. sciences. M., 2012. P. 12.
32. Press Office of the State Council of the People's Republic of China published the White Paper "Anti-Corruption and the formation of an incorruptible party and government apparatus in China" (in Chinese). URL: http://politics.people.com.cn/GB/1026/13614910.html
33. Cm. more: Sevalnev V.V. Counteraction of corruption: the experience of the PRC / / Journal of Foreign Legislation and Comparative Law. 2014. No. 1 (44). Pp. 89–96.
34. See: Shindyapina E.D., Cherepanova E.V., Dymberova E.D., Belousova O.V. Perfection of legal and institutional bases of counteraction of corruption in subjects of the Russian Federation // Journal of Russian Law. 2013. No. 4. P. 104.
35. The Constitution of the People's Republic of China was adopted on December 4, 1982 (with amendments 1988, 1993, 1999, 2004 and 2007).
36. URL: https://www.globallegalinsights.com/practice-areas/bribery-and-corruption/global-legal-insights---bribery-and-corruption/china
37. URL: http://russian.china.org.cn/china/txt/2017-11/03/content_41842074.htm
38. Gu Liping China to act against organized crime: 2018-01-25. URL: http://www.ecns.cn/2018/01-25/289923.shtml
39. See more in detail: Sevalnev V.V. Legal regulation of the sphere of entry and exit of citizens for private purposes under the legislation of the PRC // International Public and Private Law. 2017. № 5. P. 37–41.

40. Article 93 of the PRC Criminal Law.
41. Article 391 of the PRC Criminal Law.
42. Civil Service Law of the People's Republic of China (in Chinese). URL: http://www.gov.cn/ziliao/flfg/2005-06/21/content_8249.htm
43. See: Troshchinsky P.V. Legal responsibility in the law of the People's Republic of China. Moscow: IFES RAS, 2011. P. 210.
44. 2010年第六次全国人口普查主要数据公报 Main data bulletin for the sixth national census of 2010 (in Chinese). URL: http://www.gov.cn/test/2012-04/20/Content_2118413.htm
45. "2009 年 中国 人权 事业 的 进展» 白皮书 White Paper "On the state of human rights in the PRC" (in Chinese). URL: http://www.gov.cn/zwgk/2010-09/26/content_1709942.ht
46. Medvedev decided to fill the social state with state employees. URL: http://svpressa.ru/all/article/43431/
47. Article 7 of the 2008 Commercial Bribery Opinion.
48. Article 9 of the 2008 Commercial Bribery Opinion.
49. Article 23 of the PRC Criminal Law.
50. Article 389 of the PRC Criminal Law.
51. Article 10 of the 2008 Commercial Bribery Opinion.
52. Article 164 of the PRC Criminal Law.
53. Article 13 of the 2016 Judicial Interpretation.
54. See ibid.
55. Articles 1 and 7 of the 2016 Judicial Interpretation.
56. Article 2 of Anti-Commercial Bribery Provisions.
57. See ibid.
58. For more detail: Spektor E.I., Sevalnev V.V. Issues of legal protection of persons reporting facts of corruption // Journal of Foreign Legislation and Comparative Law. 2015. № 4 (53). Pp. 676–683.
59. Articles 6 and 8 of the SPP 2000 Prosecution Standards.

60. Article 390 of the *PRC Criminal Law* and Article 14 of the 2016 Judicial Interpretation.

61. Article 87 of the *PRC Criminal Law*.

62. Article 6 of the PRC Criminal Law.

63. See more details: Tsirin A.M., Sevalnev V.V. Management based on the rule of law in China // Journal of Russian Law. 2015. No. 2 (218). Pp. 163–165.

64. The National Bureau for the Prevention of Corruption was created in China // URL: http://russian.people.com.cn/31521/6261911.html

65. See: Chen George, Mareike Ohlberg (2017). A national supervision system: the CCP's new permanent anti-corruption campaign, MERICS Blog, 12/01/2017. URL : https://blog.merics.org/en/blogpost/2017/01/12/a-national-supervision-system-the-ccps-new-permanent-anti-corruptioncampaign/

66. Quah J. S. T. (2015). Hunting the Corrupt "Tigers" and "Flies" in China: An Evaluation of Xi Jinping's Anti-Corruption Campaign (November 2012 To March 2015). Baltimore, Maryland. USA: Carey School of Law, University of Maryland.

67. See: Broadhurst R. & Wang, P. (2014). After the Bo Xilai Trial: Does Corruption Threaten China's Future? Survival, 56(3), p. 157–177.

68. The Politics of Corruption in Contemporary China: An Analysis of Policy Outcomes.Westport, Conn: Praeger. Guo, X. (2014).

69. Li F., Deng J. (2016; 2015). The Power and the Misuse of Power by China's Local Procuratorates in Anticorruption. International Journal of Law, Crime and Justice, 45, p. 1–25.

70. URL: http://russian.cri.cn/3060/2017/01/05/1s594441.htm

71. URL: http://ru.gbtimes.com/fokus/borba-s-korrupciey-v-kitae-tolko-cifry

72. URL: https://rg.ru/2017/10/30/kpk-namerena-prevratit-kitaj-v-svobodnoe-ot-korrupcii-obshchestvo.html; http://www.interfax.ru/world/583826

73. URL: https://www.amicusint.org/headlines/2017/4/2/ccdi-shows-progress-in-hunt-for-corrupt-officials-1

74. URL: http://russian.cri.cn/news/homeList/380/20180123/81718.html

75. URL: http://www.interfax.ru/world/553203
76. URL: http://tass.ru/mezhdunarodnaya-panorama/4083230
77. GAN (2016): China Corruption Report, GAN Integrity. URL: http://www.business-anticorruption.com/country-profiles/china
78. Schmidpeter René et al. (eds.) (2015) Sustainable Development and CSR in China: A Multi Perspective Approach, Springer.
79. See: Wedeman Andrew (2014): Xi Jinping's Tiger Hunt and the Politics of Corruption, China Research Center 13(2). URL: http://www.chinacenter.net/2014/china_currents/13-2/xi-jinpings-tiger-hunt-and-thepolitics-of-corruption/
80. Whip — an official of a political party that provides party discipline in party and government bodies.
81. See: Jingyu Gao B.A. The impact of China's anti-corruption campaign have "tigers" harbored more "flies"? Washington, DC April 1, 2017.
82. See ibid.
83. Li C., Mcelveen, R. (2014) Anti-Graft Drive Bolsters Reform. China Daily.
84. Lu Xi and Lorentzen Peter L. Rescuing Autocracy from Itself: China's Anti-Corruption Campaign (November 6, 2016).
85. Zhu J. (2008) Officials' Promotion Likelihood and Regional Variation of Corruption in China.
86. See: Ma L., Tang H., & Yan B. (2015) Public Employees' Perceived Promotion Channels in Local China: Merit-Based or Guanxi-Orientated? Australian Journal of Public Administration, 74(3), p. 283–297.
87. Dong B, Torgler B. (2012) Causes of corruption: Evidence from China. China Economic Review 26, p. 152–169.
88. See: Cole M.A., Elliott R.JR., Zhang J. Corruption, governance and FDI location in China: A province-level analysis. The Journal of Development Studies 45 (9), p 1494–1512.
89. See: JingyuGao, B.A. The impact of China's anti-corruption campaign have "tigers" harbored more "flies"? Washington, DC April 1, 2017.
90. See: Wang Shu. How Shanxi Has Handled Its Collapsing Corruption? The Beijing News, January 27, 2016. URL: http://www.bjnews.com.cn/news/2016/01/27/392960.html

91. Bi Ling. Liaoning's Shortest-term Mayor Investigated. DW News, October 3, 20160. URL: http://china.dwnews.com/news/2016-10-30/59778603.html
92. The Big Tiger Zhou Yongkang. Caixin Special Report. Caixin, July 29, 2014. URL: http://www.caijing.com.cn/140730/
93. URL: http://www.china.com.cn/legal/2016-03/21/content_38072760.htm
94. Breslin Shaun. (2013) China and the global order signalling threat or friendship?, International Affairs 89, p. 615–634.
95. Rose-Ackerman Susan. (2002) Grand" corruption and the ethics of global business, Journal of Banking & Finance 26, p. 1889–1918.
96. Transparency International (2011): Bribe Payers Index Report 2011 // URL: http://www.transparency.org/bpi2011/results.
97. Heidenheimer, Arnold; HolgerMoroff (2007): Controlling Business Payoffs to Foreign Officials.The OECD Anti-Bribery Convention, in Arnold Heidenheimer.
98. Wolf Sebastian, Schmidt-Pfister Diana. International Anti-Corruption Regimes in Europe. Between Corruption, Integration, and Culture. Herausgegeben von, 2010, p. 217.
99. Rose Cecily (2015). International Anti-Corruption Norms Their Creation and Influence on Domestic Legal Systems, Oxford University Press.
100. Stephenson Matthew (2014). Expansion of the OECD Anti-Bribery Convention: A Skeptical View, Global Anticorruption Blog, 25/03/2014. URL: https://globalanticorruptionblog.com/2014/03/25/expansion-of-the-oecd-anti-bribery-convention-askeptical-view/
101. OECD (2016c): Integrity Framework for Public Investment, OECD Public Governance Reviews, OECD Publishing.
102. Transparency International (2012). Exporting Corruption? Country enforcement of the OECD antibribery convention, progress report 2012. URL: http://www.transparency.org/whatwedo/publication/exporting_corruption_country_enforcement_of _the_oecd_anti_bribery_convention
103. Windsor Duane (2017). BRIC Multinational Enterprises: The Role of Corruption and Nationalism, in: Rob van Tulder et al. (eds.): The Challenge of BRIC Multinationals, Emerald Group Publishing.

104. UNCTAD (2016). World Investment Report, United Nations. URL: http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf

105. Raine Sarah (2013). China's African Challenges, Routledge.

106. Freeman Carla P. (2015). Handbook on China and Developing Countries, Edward Elgar Publishing.

107. OECD (2016). Integrity Framework for Public Investment, OECD Public Governance Reviews, OECD Publishing.

108. Raine, Sarah (2013). China's African Challenges, Routledge.

109. Transparency International (2016). How some OECD governments do nothing to stop their companies financing grand corruption abroad, 16/03/2016 // URL: http://www.transparency.org/news/feature/

110. See: Wolf S., Schmidt-Pfister D. (2010). Between corruption, integration, and culture: the politics of international anti-corruption. In S. Wolf & D. Schmidt-Pfister (Eds.), International anti-corruption regimes in Europe. P. 13–21.

111. Transparency International (2016) // URL: http://www.transparency.org/country#CHN

112. Tatlow D.K., Smale A. China Loses Ground in Transparency International Report on Corruption. The New York Times, December 3, 2014 // URL: http://www.nytimes.com/2014/12/04/world/asia/china-loses-ground-in-transparency-international-report-on-corruption.html?_r=0

113. CPI is estimated in the range from minus 100 to plus 100. The higher it is, the more effective the fight is.

114. See: Review of the Implementation of the United Nations Convention against Corruption (CAC / COSP / IRG / I / 4/1 / Add.49) prepared for the Eighth Session of the Conference of the States Parties to the Convention. Trans. Sukharenko A.N. (director of the Center for the Study of New Challenges and Threats to National Security of the Russian Federation (Vladivostok)).

115. See ibid.

116. See: OECD (2012). OECD Working Group on Bribery, 2011 Annual Report, OECD Publishing. URL: https://www.oecd.org/daf/anti-bribery/AntiBriberyAnnRep2011.pdf

117. See: Gintel Samuel (2012). Fighting Transnational Bribery: China’s Gradual Approach, Wisconsin International Law Journal, 31(1).

118. 天网行动 // URL: https://baike.baidu.com/item/%E2%80%9C%E5%A4%A9%E7%BD%91%E2%80%9D%E8%A1%8C%E5%8A%A8/16996528?fromtitle=%E5%A4%A9%E7%BD%91%E8%A1%8C%E5%8A%A8&fromid=16988105

119. Eder Thomas, Bertram Lang, Moritz Rudolf (2017). China's global law enforcement drive: the need for a European response, MERICS China Monitor 36 // URL: https://www.merics.org/en/about-us/mericsanalysis/analyseschina-monitor/merics-china-monitor-no-36/

120. See: Tammar Berger (2016). Getting the Full Picture on Public Officials: A HowTo Guide for Effective Financial Disclosure, World Bank Publications.

121. OECD (2017): Recommendations of the Council on Public Integrity, 26 January 2017.

122. OECD (2016b): Active with the People’s Republic of China, Global Relations Secretariat // URL: http://www.oecd.org/china/active-with- china.pdf

123. See: Wang Shu. How Shanxi Has Handled Its Collapsing Corruption? The Beijing News, January 27, 2016 // URL: http://www.bjnews.com.cn/news/2016/01/27/392960.html

124. See: Bi Ling. Liaoning’s Shortest-term Mayor Investigated. DW News, October 3, 20160 // URL: http://china.dwnews.com/news/2016-10-30/59778603.html

125. See: URL: https://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm

126. Mauro Paolo (1995). Corruption and Growth, The Quarterly Journal of Economics 110(3), pp. 681712.

127. Heilmann Sebastian (ed.) (2016). China’s political system, Mercator Institute for China Studies, Rowman& Littlefield.

128. Cabestan Jean-Pierre (2014). Le systèmepolitiquechinois. Unnouveléquilibreautoritaire, Presses de Sciences Po.

129. Pei Minxin (2016). China's Crony Capitalism. The Dynamics of Regime Decay, Harvard University Press.

130. See: Xinhua (2016). 2013年以来党政纪处分101万人高强度反腐绝非短暂 25/10/2016 // URL: http://news.xinhuanet.com/2016-10/20/c_1119758888.htm

131. Griffin John M., Clark Liu, Tao Shu (2016). Is the Chinese Anti-Corruption Campaign Effective? SSRN, 11 May 2016.

132. Cabestan Jean-Pierre (2014). The Chinese political system. A new authoritarian balance, Presses de Sciences Po.

133. Human Rights Watch (2016). "Special Measures": Detention and Torture in the Chinese Communist Party's Shuanggui System, 06/12/2016 // URL: https://www.hrw.org/report/2016/12/06/special-measures/detention-and-torture-chinesecommunist-partys-shuanggui-system

134. Liang Bin (2016)/ Corruption and the Death Penalty, CPI Analysis, 29/07/2016 // URL: https://cpianalysis.org/2016/07/29/corruption-and-the-death-penalty/

135. See: Truntsevsky Yu.V., Sevalnev V.V. Perspectives for the international cooperation between the Russian Federation and the People's Republic of China in the sphere of combating corruption // International public and private law. 2016. No 6. P. 30–34

136. See: Zhu Xiaoqing. Implementation in China of the United Nations Convention against Corruption. In the book: The Rule of Law and the Fight against Corruption. Beijing, 2015. P. 152.

137. For more detail: Troshchinsky P.V. The legal system of China: a monograph / P.V. Troshchinsky — Moscow: IFES RAS, 2016. P. 56.

138. For more detail: The Role of Entrepreneurial Structures in Counteracting Corruption: A Scientific and Practical Handbook / Gabov A.V., Gaidaenko Sher N.I., Glazkova I.V. et al .; otv. Ed. Semilyutina N.G., Spector E.I. Moscow: ILCL, Contract, 2012.

139. See: Khabrieva T.Ya. Scientific and legal problems of counteracting corruption // Journal of Russian Law. 2012. № 7. P. 7–14.

140. Current problems of technical regulation and standardization. Foreign information. "Russian Scientific and Technical Information Center for Standardization, Metrology and Assessment of Conformity" FSUE "Standardinform". DOR-22-2014.

141. UN Global Compact. Risk Assessment Guide. NY. 2013.

142. URL: http://www.iso.org/iso/ru/catalogue_detail?csnumber=43170; URL: http://protect.gost.ru/document.aspx?control=7&baseC=6&page= 3&month=9&year=-1&search=&id=179229

143. Developed by the Federation of the European Association of Risk Managers in 2002 // URL: http: //www.ferma.eu/app/uploads/2011/11/a-risk-management-standard-russian-version.pdf.

144. J. Paul Dittmann. Managing Risk in the Global Supply Chain // URL: http://www.scmr.com/article/managing_risk_in_the_global_supply_chain

145. See: Program for International Scientific Monitoring of Corruption (MONKOR) / Lafitsky V.I., Emelyantsev V.P., Semykina O.I. and others. aut. col. Khabrieva T.Y. Moscow: Institute of Legislation and Comparative Jurisprudence under the Government of the Russian Federation, 2015.

146. See ibid.

147. See: Lafitsky V.I. Corruption in the Eurasian Economic Union: common heritage, opposition and new challenges // Legislation and economics. 2016. № 8.

148. ICAC. Official website URL: http://www.icac.org.hk/tc/home/index.html

149. URL: http://www.icac.org.hk/new_icac/eng/abou/history/main_2.html

150. Independent Commission Against Corruption (2015) 40 years in the operations department Hong Kong: fighting corruption with the community (1974–2014), Hong Kong: Independent Commission Against Corruption // URL: http://www.icac.org.hk

151. See: Omarov, M.N. Is it possible to successfully combat corruption? The experience of Hong Kong says — yes! // URL: http://www.east-time.ru/analitic/3/9/220.html

152. The Prevention of Bribery Ordinance: official text // URL: http://www.legislation.gov.hk

153. Jean Au Yeung. «Fighting Corruption — The Hong Kong Experience». Presentation Paper for The Seminar on International Experiences on Good Governance and Fighting Corruption // URL:www.tdri.or.th/reports/unpublished/os_paper/auyeung.pdf

154. Zheng Jian. [新中国第一个反贪局诞生的前前后后。肖扬新著《反贪报告》回顾第一个反贪局成立过程 The process of creating the first anti-corruption bureau in the new China. In the recently published book "Report on the fight against corruption," Xiao Yang recalls the process of creating the first anti-corruption bureau] // the newspaper of the Supreme People's Procuracy of the People's Republic of China "Jianchazhibao". 2009. On August, 21st. C. 5.

155. The concept of a specialized anti-corruption body of January 21, 2004 // URL: http://www.nacbez.ru/akmonitor/article.php?id=48

156. The Independent Commission Against Corruption Ordinance: official text // URL: http://www.legislation.gov.hk

157. URL: https://www.elegislation.gov.hk/hk/cap201?xpid=ID_1438402825765_003

158. The legal system of modern Hong Kong refers to a mixed type — it contains elements of the Anglo-Saxon and Continental legal family, traditional Chinese law and the law of the Hong Kong territory itself (See: Troshchinsky, P.V., The Legal System of China: Monograph / P.V. Troshchinsky. : IFES RAS, 2016. P. 345).

159. Deng Xiaoping. One state — two systems. In the book: The main issues of modern China / trans. with a whale. M .: Politizdat, 1988. With. 61.

160. "Tiaoli" — acts adopted by the Legislative Council of Hong Kong since its inception in 1844; "Fushu lifa" — legislative acts adopted by the administrative bodies of Hong Kong for the implementation of ordinances.

161. See: Troshchinsky P.V. Modern legal system of Hong Kong // The work of the Institute of State and Law of the Russian Academy of Sciences. 2016. No. 2 (54). P. 176.

162. See: Troshchinsky P.V. The legal system of China. P. 356.

163. The Elections (Corrupt and Illegal Conduct) Ordinance: official text // URL: http://www.legislation.gov.hk

164. See: Truntsevsky Yu.V., Petrosyan O.S., Sukharenko A.N. Providing combating of corruption in the countries of the Asia-Pacific region: a scientific and methodological guide. M., 2017.

165. See: Annual Report Independent Commission Against Corruption Hong Kong Special Administrative Region 2015 // URL: www.icac.org.hk/tc/home/index.html

166. Wong Andrew (2003) “Anti-Corruption strategy of the Hong Kong Special Administrative Region of the People Republic of China” / Controlling Corruption in Asia and the Pacific, OECD and ADB, Pp. 51–55.

167. See: Butkov, A.V. Foreign experience of increasing the level of anti-corruption legal consciousness of citizens // Current problems of economics and law. 2015. No. 1. P. 225–232.

168. See: Dai N. Exploration of Innovating Anti-Corruption Propaganda Methods // Anti-corruption and Integrity Culture Studies. 2012. No. 1. P. 58–79.

169. URL: http://www.icac.org.hk.en.preventionand education. at.tl.index.html

170. See: Qingshun M. Forms and Characteristics of Anti-corruption Education of Public Servetus in Macao // Anti-corruption and Integrity Culture Studies. 2014. No. 3. P. 36–42.

171. See: Huaiping P. Four Relations Must be Coordinated Wellin Promoting Scientific Construction of Anti-corruption // Anticorruption and Integrity Culture Studies. 2014. No. 4. P. 21–29.

172. See: Preliminary draft Framework Convention on Corruption. Multidisciplinary Group on Corruption. Council of Europe. Strasbourg, 1996. P. 40–42.

173. In China, the ancient stratagem is known to "beat on the grass to scare the snake", according to which the punishment, albeit cruel, of one individual acts as a "beating on the grass", as a result the numerous criminal elements — "scared snakes" — in fear, turn away from crime. See: Zenger H. von. Stratagems. On the Chinese art of living and surviving. The famous 36 stratagems for three millennia / under. gen. ed. V.S. Myasnikov. M., 1995. P. 190; Troshchinsky P.V. The fight against crime in China: the regulatory and legal aspect // Journal of Russian Law. 2015. № 8. P. 49.

174. Ex-policeman charged with misconduct, perjury and perversion 2015-7-24 ICAC // URL: http://www.icac.org.hk.en.preventionand education. at.tl.index.html

175. The former head of Hong Kong was imprisoned on a corruption case // URL: http://en.euronews.com/2017/02/22/former-hong-kong-leader-sentenced-to-20-months-imprisonment-for-misconduct

176. 《证人保护条例》 CAP 564 Witness protection ordinance (in Chinese) // URL: http://www.legislation.gov.hk/blis_pdf.nsf/6799165D-2FEE3FA94825755E0033E532/B2B6B7A6531AE195482575EF001B-9FAE/$FILE/CAP_564_c_gb.pdf

177. See: Andrianov, V. Experience of foreign countries in the fight against corruption / / Society and Economics. 2011. № 01. P. 23–65.

178. URL: http://www.icac.org.hk

179. See: Annual Report Independent Commission Against Corruption Hong Kong Special Administrative Region 2015 // URL: www.icac.org.hk/tc/home/index.html

180. Independent Commission Against Corruption (2015) 40 years in the operations department Hong Kong: fighting corruption with the community (1974–2014), Hong Kong: Independent Commission Against Corruption // URL: www.icac.org.hk

181. See: Tsirin A.M., Sevalnev V.V. Management based on the rule of law in China // Journal of Russian Law. 2015. No. 2 (218). Pp. 162–165.

182. See, i.e.: Sin KamWah& Another v. HKSAR [2005] 8 HKCFAR 192 (FACC 14/2004).

183. Thanakharn Kasi-korn Thai Chamkat (Mahachon) v. Akai Holdings Ltd (No. 2) [2010] 13 HKCFAR 479/

184. See HKSAR v. CHAN Tatchee (DCCC 661A/2006).

185. See, i.e. :, Z v. HKSAR [2007] 10 HKCFAR 183 (FACC 9/2006).

186. HKSAR v. Chan Shu-kwong & Another (DCCC 314/2006).

187. L v. Equal Opportunities Commission & Others [2002] 3 HKLRD 178 (CACV 265/2002).

188. HKSAR v. See Wah-lun&Others [2011] 2 HKLRD 957 (CACC 370/2009).

189. See, HKSAR v. Tong Sui-lun, Franco (DCCC 282/2011), HKSAR v. BHATTY Manoj Chainman Rai (DCCC 1108/2012).

190. URL: http://www.doj.gov.hk/eng/public/pubsoppaptoc.html

191. Implementation Review Group. Eighth session Vienna, 19–23 June 2017 Agenda item 2. CAC / COSP / IRG / I / 4/1 / Add. 49 // URL: http://www.unodc.org/documents/treaties/UNCAC/Working-

Groups/ImplementationReviewGroup/ExecutiveSummaries/V1609722r.pdf

192. URL: http://www.unodc.org/documents/treaties/UNCAC/Working-Groups/ImplementationReviewGroup/ExecutiveSummaries/V1609722r.pdf

193. ICAC. Official website // URL: http: //www.https: //www.transparency.org/news/feature/corruption_perceptions_index_2016#table

194. URL: http://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?P-Code=C0000007

195. URL: https://globalcompliancenews.com/china-transparency-international-2017-cpi-20180223/

196. URL: https://ria.ru/world/20180318/1516615723.html

197. URL: http://biang.ru/ru/news/novyij-antikorrupczionnyij-organ-kitaya-budet-imet-pravo-soderzhat-podozrevaemyix-pod-strazhej.html

198. URL: https://rossaprimavera.ru/news/b05bb455

199. URL: https://taipanorama.tw/news.php?unit=133&post=129987

200. URL: https://taipanorama.tw/news.php?unit=133&post=132157

201. URL: http://russian.cri.cn/news/homeList/380/20180123/81718.html

202. URL: http://russian.people.com.cn/n/2015/0923/c31521-8953777.html

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The scientific and practical guide is devoted to the formation and development of the anti-corruption policy in China, including sources of anti-corruption legislation and practice of its application, the modern state approach to implementing anti-corruption policies, the role of national authorities responsible for investigating and combating corruption. The authors analyze in detail concepts and content of offenses related to corruption, the bans, restrictions and duties established for anti-corruption, procedures of disclosure of information on corruption manifestations, directions of international anti-corruption cooperation between China and the other states.

Particular attention is given to the organizational and legal measures of combating corruption in the special administrative regions of the People's Republic of China (Hong Kong, Macau) and in the Republic of China (Taiwan).The edition uses materials from the Review of the Implementation of the United Nations Convention against Corruption in the People's Republic of China (including the above-stated special administrative regions) as well as official reports and the results of numerous foreign studies.

The scientific and practical guide is dedicated to scholars, workers of state government bodies, post-graduate students, and for all those who is interested in the subject of anti-corruption.