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China

White Collar Crime

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in China.

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China: White Collar Crime

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

In the Chinese mainland, all crimes are stipulated in the *Criminal Law*. The criminal charges related to the fields listed in the examples mainly include:

1. Related to fraud: the crime of fraudulent issuance of securities; the crime of illegal disclosure or failure to disclose important information; the crime of malfeasance out of favoritism in undervaluing shares or selling corporate/enterprise assets at a low price; the crime of breaching faithful duty to harm the interests of listed company; the crime of fraudulent fund-raising; the crime of loan fraud; the crime of bill fraud; the crime of financial certificate fraud; the crime of letter of credit/credit card fraud; the crime of insurance fraud; the crime of obtaining loans, bill acceptances, or financial instruments by fraud; the crime of false bankruptcy; the crime of breach of faithful duty in using entrusted property; the crime of collusive bidding; the crime of contract fraud, etc.
2. Related to money laundering: the crime of money laundering; the crime of concealing or covering up proceeds of crime and benefits derived from proceeds of crime.
3. Related to falsifying accounts: the crime of obstructing liquidation; the crime of concealing or intentionally destroying accounting vouchers, accounting books, or financial and accounting reports.
4. Related to tax evasion: the crime of tax evasion; the crime of defrauding export tax refunds; the crime of falsely issuing special VAT invoices or invoices used for defrauding export tax refunds or offsetting taxes; the crime of falsely issuing invoices; the crime of illegally selling special VAT invoices; the crime of illegally purchasing special VAT invoices or purchasing forged special VAT invoices; the crime of illegally manufacturing or selling illegally manufactured invoices used for defrauding export tax refunds or offsetting taxes; etc.
5. Related to abuse of market position: the crime of unauthorized issuance of stocks, corporate or enterprise bonds; the crime of insider trading or

leakage of inside information; the crime of manipulating securities or futures markets.

6. Related to corruption: the crime of embezzlement; the crime of accepting bribes; the crime of misappropriating public funds; the crime of offering bribes; the crime of duty-related embezzlement; the crime of misappropriating funds; the crime of accepting bribes by non-state functionaries; the crime of offering bribes to non-state functionaries; the crime of offering bribes to foreign public officials or officials of international public organizations; the crime of offering bribes to persons with influence; the crime of offering bribes to units; the crime of introducing bribes; the crime of offering bribes by units; the crime of illegally operating the same kind of business; the crime of illegally profiting for relatives and friends.
7. Others: the crime of aiding terrorist activities; the crime of funding criminal activities endangering national security.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Under the framework of China's *Criminal Law*, companies may be held criminally liable. According to the General Provisions of China's *Criminal Law*, where an act endangering society is committed by a company, enterprise, institution, government agency, or organization, and such act is stipulated by law as a unit crime, the unit shall bear criminal liability. For a unit crime, a fine shall be imposed on the unit, and criminal penalties shall be imposed on the directly responsible persons in charge and other directly responsible personnel.

According to the Specific Provisions of China's *Criminal Law*, a company may be held criminally liable in two scenarios:

1. The provisions of the Specific Provisions of the *Criminal Law* explicitly stipulate that the crime can constitute a unit crime. In such cases, it is generally stated in the last part of the provision, such as: "Where a unit commits the crime stipulated in this Article, a fine shall be imposed on the unit, and the directly responsible persons in charge and other directly responsible personnel shall be punished in accordance with the provisions of each paragraph of

this Article." Or it may be stated in the last part of the section to which the crime belongs, such as: "Where a unit commits any of the crimes stipulated in Articles 140 to 148 of this Section, a fine shall be imposed on the unit, and the directly responsible persons in charge and other directly responsible personnel shall be punished in accordance with the provisions of the respective Articles."

2. The Specific Provisions of the *Criminal Law* stipulate that only units can constitute the crime. For example, Article 190 of the *Criminal Law* provides: "Where a company, enterprise, or other unit, in violation of state regulations, unlawfully deposits foreign exchange outside the territory, or illegally transfers domestic foreign exchange out of the territory, if the amount is relatively large, a fine of not less than 5% and not more than 30% of the amount of foreign exchange evaded shall be imposed on the unit, and the directly responsible persons in charge and other directly responsible personnel shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge or there are other serious circumstances, a fine of not less than 5% and not more than 30% of the amount of foreign exchange evaded shall be imposed on the unit, and the directly responsible persons in charge and other directly responsible personnel shall be sentenced to fixed-term imprisonment of not less than five years."

In addition, according to the provisions of the Specific Provisions of the *Criminal Law*, there is another scenario where a company constitutes a crime, but only the directly responsible persons in charge and directly responsible personnel are punished, without holding the company criminally liable. For example, the crime of false bankruptcy as stipulated in Article 162- of the *Criminal Law*.

In practice, the identification of a unit crime generally requires three conditions: (1) A decision made by the unit in accordance with its management structure and procedures; (2) Implementation by the unit's personnel under such decision; (3) The proceeds/benefits arising from the relevant crime belong to the unit.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

The crimes listed in Question 1 are all applicable to company directors and senior executives. According to our observations, the commonly prosecuted crimes are as follows:

1. Related to corruption: the crime of duty-related embezzlement; the crime of accepting bribes by non-state functionaries; the crime of illegally operating the same kind of business; the crime of illegally profiting for relatives and friends.
2. Related to abuse of market position: the crime of insider trading or leakage of inside information; the crime of manipulating securities or futures markets.
3. Related to fraud: the crime of illegal disclosure or failure to disclose important information; the crime of breaching faithful duty to harm the interests of listed company; the crime of collusive bidding; etc.
4. Related to tax evasion: the crime of defrauding export tax refunds; the crime of falsely issuing special VAT invoices or invoices used for defrauding export tax refunds or offsetting taxes.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

According to China's *Criminal Procedure Law*, criminal proceedings are divided into three stages: the investigation stage, the procuratorial examination and prosecution stage, and the trial stage. The investigation stage is generally undertaken by public security organs; the procuratorial examination and prosecution is undertaken by procuratorial organs; and the trial is undertaken by people's courts. In addition, in accordance with the *Supervision Law*, supervisory organs are responsible for investigating job-related violations of law and job-related crimes involving suspected embezzlement and bribery, abuse of power, neglect of duty, power rent-seeking, interest transfer, malfeasance out of favoritism, and waste of state assets. In this process, accomplices in and related crimes linked to the involved financial crimes may also be investigated together. Therefore, with regard to financial crimes, the organs responsible for investigation include public security organs and supervisory organs, and the procuratorial organs are responsible for prosecution.

Their respective responsibilities are as follows:

1. Public security organs: Decide whether to accept and register for criminal cases; conduct investigations into cases after registration. Investigation measures include:
 - i. Compulsory measures that can be taken against criminal suspects: summon by force, release on bail pending trial, residential surveillance, detention, and arrest.
 - ii. Investigative measures include: interrogating criminal suspects; questioning witnesses and

victims; conducting inspections or examinations; searching; sealing up and seizing; inquiring and freezing; conduct appraisals; identification, adopting technical investigation measures in accordance with the law, and issuing warrants for fugitives, etc.

2. Procuratorial organs: Responsible for reviewing and prosecuting criminal cases, and appearing in court to support public prosecution for cases decided to be prosecuted; determining whether to approve arrest for cases under investigation by public security organs; supervising the legality of public security organs' case registration and investigative activities; and supervising the correctness of criminal judgments and rulings made by people's courts as well as the legality of judicial activities.
3. Supervisory organs: Investigate cases involving suspected duty-related crimes. During the preliminary verification, supervisory organs may, in accordance with the law, take measures such as talking, inquiring, querying, collecting, conducting inspections and examinations, carrying out investigative experiments, and making appraisals; after registered a case, they may adopt measures including interrogating, compelling appearance, ordering to wait for investigation, custody and protection, retaining in custody, confinement, freezing, searching, sealing up, seizing, and issuing a warrant for arrest. If major safety risks such as escape or suicide are found, and custody and protection measures are taken in accordance with the law before register a case against the persons specified in Items 1 and 2 of the first paragraph of Article 25 of the *Supervision Law*, the case shall be registered in a timely manner if it meets the conditions for registration. Where technical investigation measures or exit restriction measures need to be taken, they shall be submitted to the relevant authorities for implementation in accordance with the law as prescribed.

5. Which courts hear cases of financial crime? Are they determined by tribunals, judges or juries?

1. Regarding Case Jurisdiction

China has no special provisions for the trial of financial crime cases. In accordance with the *Criminal Procedure Law*, basic people's courts have jurisdiction over the first instance of ordinary criminal cases; intermediate people's courts have jurisdiction over the first instance of criminal cases involving endangering national security, terrorist activities, and cases where the defendant may be sentenced to life imprisonment or the death penalty; high

people's courts have jurisdiction over the first instance of major criminal cases of a provincial (autonomous region, municipality) nature; and the Supreme People's Court has jurisdiction over the first instance of major national criminal cases.

2. Regarding the Composition of Judicial Personnel

For the trial of first-instance cases in basic people's courts and intermediate people's courts, a collegial panel shall be formed consisting of three judges, or three or seven members including both judges and people's jurors. However, in basic people's courts, cases applying summary procedures or quick trial procedures may be tried by a single judge alone.

For the trial of first-instance cases in high people's courts, a collegial panel shall be formed consisting of three to seven judges, or three or seven members including both judges and people's jurors.

For the trial of first-instance cases in the Supreme People's Court, a collegial panel shall be formed consisting of three to seven judges.

For the trial of appeal and protest cases in people's courts, a collegial panel shall be formed consisting of three or five judges.

The number of members in a collegial panel shall be an odd number.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

Case registration is a symbolic measure marking the initiation of an investigation. Sources of cases include the surrender, reporting, accusation, or tip-off by any unit or individual to the competent authority, the voluntary surrender of criminal suspects, as well as the transfer by other competent authorities, etc.

After a public security organ registers a case, investigative measures against criminal suspects usually do not require prior notification, including compulsory measures, interrogation to criminal suspects, search, sealing up, seizure, and other measures. However, for the questioning of witnesses and victims, collection of evidence, inspection and examination, and other investigative measures not targeted at criminal suspects, the enforcing authority generally contacts and communicates with the relevant parties in advance.

When taking the above-mentioned measures, law enforcement officers are required to present relevant certificates and supporting documents, and there must be no fewer than 2 law enforcement officers. They also need to abide by relevant regulations, such as having witnesses present during inspection, examination, and search, etc.

7. What powers do the authorities have to conduct interviews?

Public security organs have the authority to interrogate criminal suspects and question witnesses and victims.

1. When interrogating a criminal suspect, they may be summoned or brought in by compulsory summons to a designated place or their residence for interrogation; if the criminal suspect is already detained in a detention center, the interrogation must be conducted there. During the interrogation, law enforcement officers shall present their work certificates or supporting documents, with no fewer than two investigators participating and an interrogation record shall be made, and the duration of the interrogation generally shall not exceed 12 hours; for major or complex cases, it shall not exceed 24 hours.
2. Witnesses and victims may be questioned at the scene, at their workplaces, residences, or at a location proposed by themselves. When necessary, witnesses and victims may be notified in writing, by phone, or on the spot to come to the public security organ to provide testimony. During the questioning, law enforcement officers shall present their work certificates or supporting documents, and a questioning record shall be made. Investigators must not disclose details of the case to witnesses or victims, express opinions on the case, or use illegal methods such as violence or threats to question them.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

1. Criminal Suspects been interrogated

A criminal suspect being interrogated has the right to food and rest, the right to refuse to answer questions irrelevant to the case, and the right to review the interrogation record and request supplements or corrections to it. From the date of the first interrogation

by the investigation organ or the adoption of compulsory measures, the criminal suspect has the right to entrust a lawyer as a defender. The lawyer may learn about the details of the case from the public security organ, put forward opinions, apply for changing the compulsory measures against the criminal suspect, and meet with the detained criminal suspect, among other things.

Legally, lawyers are not entitled to be present during the interrogation of suspects.

A criminal suspect shall truthfully answer the investigators' questions and has no right to remain silent; however, they may refuse to answer questions irrelevant to the case.

In general, the public security organ will not disclose details of the case to the suspect before the interrogation.

The public security organ may record the interrogation process by audio or video. For cases where the suspect may be sentenced to life imprisonment or the death penalty, or other major criminal cases, audio or video recording of the interrogation is mandatory. In addition, regardless of the type of case, an interrogation record will be made, which the criminal suspect will be asked to read and sign. The criminal suspect has the right to supplement or correct the interrogation record.

2. Witnesses and Victims been questioned

Witnesses and victims shall truthfully answer questions during questioning. They have the right to review and verify the questioning record and request supplements or corrections to it.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

According to the *Criminal Law*, the provisions concerning extraterritorial effect are as follows:

1. If either the criminal act or its result occurs within the territory of the People's Republic of China, the crime shall be deemed to have been committed within the territory of the People's Republic of China.
2. If a citizen of the People's Republic of China commits a crime specified in this *Law* outside the territory of the People's Republic of China, this *Law* shall apply. However, if the maximum penalty prescribed by this *Law* for such a crime is fixed-term imprisonment of three years or less, criminal liability may be exempted.

3. If a state functionary or serviceman of the People's Republic of China commits a crime specified in this Law outside the territory of the People's Republic of China, this Law shall apply.
4. If a foreigner commits a crime against the People's Republic of China or its citizens outside the territory of the People's Republic of China, and the minimum penalty prescribed by this Law for such a crime is fixed-term imprisonment of three years or more, this Law may apply, except where the act is not punishable under the law of the place where the crime was committed.
5. For crimes specified in international treaties concluded or acceded to by the People's Republic of China, when the People's Republic of China exercises criminal jurisdiction within the scope of its obligations under such treaties, this Law shall apply.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

1. The *Criminal Procedure Law* stipulates that, in accordance with international treaties concluded or acceded to by the People's Republic of China, or on the basis of the principle of reciprocity, Chinese judicial organs and foreign judicial organs may mutually request criminal judicial assistance.
2. The *International Criminal Judicial Assistance Law* specifies the procedures and details for initiating, accepting, and handling requests for international criminal judicial assistance, as well as specific tasks such as serving documents, investigating and collecting evidence, having witnesses testify, sealing up, seizing, and freezing property, and transferring sentenced persons.
3. The *Extradition Law* provides that extradition between the People's Republic of China and foreign countries shall be conducted through diplomatic channels. The Ministry of Foreign Affairs of the People's Republic of China is the designated contact authority for extradition. If an extradition treaty contains special provisions on the contact authority, such provisions shall prevail.

11. What are the rules regarding legal professional privilege? What, if any, material is protected from production or seizure by financial crime authorities?

The *Criminal Procedure Law* stipulates that lawyers have certain rights, mainly including:

1. During the investigation stage, a criminal suspect may only entrust a lawyer as their defender.
2. A lawyer may meet and communicate with a criminal suspect or defendant in custody or under residential surveillance, and such meetings shall not be monitored.
3. From the date when the procuratorial organ begins to review and prosecute the case, a lawyer may consult, extract, and duplicate the case files and materials.
4. With the consent of a witness or other relevant units or individuals, a lawyer may collect materials related to the case from them; they may also apply to the people's procuratorate or people's court to collect or obtain evidence, or apply to the people's court to summon a witness to testify in court. With the permission of the people's procuratorate or people's court, and with the consent of the victim, their close relatives, or the witnesses provided by the victim, a lawyer may collect materials related to the case from them.
5. A lawyer has the right to keep confidential the relevant circumstances and information about the criminal suspect that they have learned. However, this does not apply to circumstances and information known to the lawyer regarding the client or others preparing or committing crimes endangering national security, public security, or seriously endangering others' personal safety.

In addition, the *Lawyers Law* stipulates that lawyers shall keep confidential the relevant circumstances and information that clients and others are reluctant to disclose, which they learn during their practice. However, this does not apply to the facts and information about crimes endangering national security, public security, or seriously endangering others' personal safety that the client or others are preparing or committing.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

According to the *Criminal Procedure Law*, the *Criminal Procedure Rules of the People's Procuratorates*, the *Regulations on the Handling of Criminal Cases by Public Security Organs*, for matters involving corporate or personal privacy and trade secrets, the right holder may request judicial organs to keep them confidential, conduct non-public hearings, and adopt relevant protective measures during legal proceedings (such as using pseudonyms, not disclosing identities, etc.).

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

There is no issue of succession for the criminal liability of natural persons. For unit crimes, the following circumstances shall be distinguished:

1. If only the shareholders of a company change, but the company itself remains unchanged (at least the organization code remains unchanged), the criminal liability incurred before the shareholder change shall still be borne by the current company after the shareholder change, and a change in the company's name shall not affect this.
2. Where a new legal entity emerges due to the division, merger, or major asset restructuring of a company, the following circumstances shall be distinguished:
 - i. If the defendant unit merges or splits during the trial, the original unit shall be listed as the defendant unit, with a note on the merger or split. The fine imposed on the defendant unit shall be limited to its property and proceeds in the new unit.
 - ii. If a merger, split, or restructuring occurs after the unit crime but before the trial:
 - a. For smuggling crimes: If, after a unit commits a smuggling crime, the unit undergoes division, merger, or other asset restructuring, as long as the unit that succeeds to its rights and obligations exists, the unit's criminal liability for smuggling shall be pursued. If the original smuggling unit undergoes division, merger, or other asset restructuring and its name is changed, the original unit (under its original name) shall still be regarded as the defendant unit. The legal representative or person in charge of the unit that succeeds to the original unit's rights and obligations shall act as the litigation representative. When the people's court imposes a fine on the original smuggling unit, the unit that succeeds to the original unit's rights and obligations shall be the person subject to execution. If the fine exceeds the property assumed by the new unit, the excess may be deducted during execution.
 - b. For other crimes, there are currently no clear provisions.

14. What factors must prosecuting authorities

consider when deciding whether to charge?

1. Jurisdiction

People's procuratorates at all levels shall initiate public prosecutions in conformity with the trial jurisdiction of people's courts. Where a case does not fall under the jurisdiction of the procuratorate itself, it shall be transferred to the people's procuratorate that has jurisdiction over the case.

- i. For first-instance cases under the jurisdiction of a superior people's court, the case shall be submitted to the superior people's procuratorate, and the public security organ that transferred the case for prosecution shall be notified simultaneously; for first-instance cases under the jurisdiction of other people's court at the same level, the case shall be transferred to the competent people's procuratorate or submitted to the common superior people's procuratorate for designation of jurisdiction, and the public security organ that transferred the case for prosecution shall be notified simultaneously.
- ii. Under the jurisdiction of an inferior people's court, it may refer the case to the inferior people's procuratorate for review, the inferior people's procuratorate shall initiate a public prosecution to the same level people's court, and notify the public security organ that transferred the case for prosecution simultaneously.
- iii. For cases where a single person commits multiple crimes, joint crimes, or other cases requiring joinder of trials, if any one person or any one crime falls under the jurisdiction of a superior people's procuratorate, the entire case shall be subject to review for prosecution by the superior people's procuratorate.
- iv. For cases transferred for prosecution by public security organs that require designation of trial jurisdiction in accordance with the provisions of the *Criminal Procedure Law*, the people's procuratorate shall, prior to the transfer of the case by the public security organ, consult with the same level people's court to handle matters related to the designation of jurisdiction.
- v. For cases transferred for prosecution by supervisory organs that require designation of trial jurisdiction in accordance with the provisions of the *Criminal Procedure Law*, the people's procuratorate shall, 20 days prior to the transfer of the case by the supervisory organ, consult with the same level people's court to handle matters related to the designation of jurisdiction.

2. Decide to Prosecute

i. If a people's procuratorate deems that the criminal facts of a suspect have been clarified, the evidence is reliable and sufficient, and criminal liability should be pursued in accordance with the law, it shall make a decision to prosecute. The criminal facts may be deemed as clarified under any of the following circumstances:

- a. For cases involving a single crime: the clarified facts are sufficient for conviction and sentencing, or the facts related to conviction and sentencing have been clarified, while facts irrelevant to conviction and sentencing remain unclear.
- b. For cases involving multiple crimes: some crimes have been clarified and meet the conditions for prosecution, while other crimes remain unclear.
- c. The whereabouts of the instruments of crime or stolen property cannot be clarified, but there is other evidence sufficient to convict and sentence the defendant.
- d. The main details in witness testimonies, the suspect's statements and pleadings, and the victim's statements are consistent, with only minor inconsistencies that do not affect conviction.

For cases meeting the above circumstances, prosecution shall be initiated based on the clarified crimes.

- ii. In handling cases transferred by public security organs for prosecution, if a people's procuratorate discovers omitted crimes or co-suspects who should be transferred for prosecution in accordance with the law but have not been transferred, it shall require the public security organ to conduct supplementary investigation or make supplementary transfer for prosecution. For cases where the criminal facts are clear and the evidence is reliable and sufficient, it may also initiate public prosecution directly.
- iii. During the review for prosecution, if a case transferred by a public security organ is found to be under the jurisdiction of a supervisory organ, or a case transferred by a supervisory organ is found to be under the jurisdiction of a public security organ—yet the facts are clear, evidence is reliable and sufficient, and the case meets prosecution conditions—the procuratorate may directly prosecute after consulting with the supervisory organ or public security organ and receiving no objections. If objections are raised, or if the facts are unclear or evidence is insufficient, the case shall be returned to the transferring authority with reasons stated, and it shall be recommended to transfer the case to the competent authority.

3. Non-prosecution

- i. If a people's procuratorate, in handling a case transferred for prosecution by a supervisory organ or public security organ, finds that the criminal suspect has no criminal facts or that the case falls under any of the circumstances specified in Article 16 of the Criminal Procedure Law, it shall make a non-prosecution decision upon approval by the chief procurator.
- ii. If the criminal facts are not committed by the criminal suspect and a re-investigation or re-inquiry is required, the people's procuratorate shall, after making the non-prosecution decision, explain the reasons in writing, return the case files to the supervisory organ or public security organ, and recommend a re-investigation or re-inquiry.
- iii. For cases that have been returned twice for supplementary inquiry or supplementary investigation, if the people's procuratorate still deems the evidence insufficient and the case does not meet the conditions for prosecution, it shall make a non-prosecution decision in accordance with the law upon approval by the chief procurator.
- iv. For a case that has been returned once for supplementary inquiry or supplementary investigation, if the people's procuratorate deems the evidence insufficient, the case does not meet the conditions for prosecution, and there is no need for another return for supplementary inquiry or supplementary investigation, it may make a non-prosecution decision upon approval by the chief procurator.
- v. Under any of the following circumstances, it cannot be determined that the criminal suspect has committed a crime and needs to be pursued for criminal liability, it shall be deemed as having insufficient evidence and failing to meet the conditions for prosecution:
 - a. The facts constituting the crime lack necessary evidence for proof.
 - b. The evidence used for conviction is questionable and cannot be verified as true.
 - c. Contradictions between the evidence for conviction, or between the evidence and the case facts, cannot be reasonably excluded.
 - d. Conclusions drawn from the evidence have other possibilities, and reasonable doubts cannot be ruled out.
 - e. The determination of case facts based on evidence is inconsistent with logical and empirical rules, and the conclusions drawn are obviously against common sense.
- vi. For cases where the circumstances of the crime are minor, and no criminal punishment is needed or punishment may be exempted in accordance with the *Criminal Law*, the people's procuratorate may make a non-prosecution decision upon approval by the chief

procurator.

15. What is the evidential standard required to secure conviction?

According to the *Criminal Procedure Law*, the requirements for sentencing in criminal cases are as follows:

1. Evidence shall be authentic and sufficient. All facts used for conviction and sentencing shall be supported by evidence; the evidence on which the case is decided shall be verified as true through legal procedures; and, based on a comprehensive review of all case evidence, reasonable doubts about the established facts shall be excluded.
2. Confessions of criminal suspects or defendants collected through illegal means such as torture, and witness testimonies or victim statements collected through illegal means such as violence or threats shall be excluded. If physical or documentary evidence is collected in a manner that violates legal procedures and may seriously affect judicial justice, it shall be corrected or a reasonable explanation shall be provided; if no correction or reasonable explanation can be made, such evidence shall be excluded. If evidence that should be excluded is discovered during investigation, review for prosecution, or trial, it shall be excluded in accordance with the law and shall not be used as a basis for prosecution opinions, prosecution decisions, or judgments.
3. Witness testimonies may be used as the basis for deciding a case only after they have been cross-examined by the public prosecutor, the victim, the defendant, and the defender in court and verified as true.
4. A defendant cannot be found guilty or sentenced solely based on their confession without other evidence; if there is no defendant's confession but the evidence is authentic and sufficient, the defendant may be found guilty and sentenced.

Under the above general requirements, people's courts, procuratorates, public security organs at all levels, etc., have also formulated targeted evidence rules and standards for certain charges and cases through guidelines, evidence guidelines, and other documents.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

According to the *Criminal Law*, a crime shall no longer be prosecuted after the expiration of the following periods:

1. If the maximum statutory penalty is fixed-term imprisonment of less than five years, the period is five years.
2. If the maximum statutory penalty is fixed-term imprisonment of not less than five years but less than ten years, the period is ten years.
3. If the maximum statutory penalty is fixed-term imprisonment of not less than ten years, the period is fifteen years.
4. If the maximum statutory penalty is life imprisonment or the death penalty, the period is twenty years. If it is deemed necessary to prosecute after twenty years, the matter must be reported to the Supreme People's Procuratorate for approval.

Where a case is under investigation by a people's procuratorate, public security organ, or state security organ, or has been accepted by a people's court, and the offender evades investigation or trial, the limitation period for prosecution shall not apply.

Where a victim files a complaint within the limitation period for prosecution, but the people's court, people's procuratorate, or public security organ fails to file the case when it should have done so, the limitation period for prosecution shall not apply.

The limitation period for prosecution shall be calculated from the date of the crime; if the criminal act is continuous or ongoing, it shall be calculated from the date when the criminal act ends.

If a person commits another crime within the limitation period for prosecution of a previous crime, the limitation period for prosecution of the previous crime shall be calculated from the date of the subsequent crime.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

In China, no such mechanism exists. For matters concerning whether to initiate a prosecution, please refer to Question 14.

18. Is there a mechanism for plea bargaining?

There is no plea negotiation mechanism in China, but there is a system of lenient treatment for those who

confess their crimes and accept punishment.

According to the *Criminal Procedure Law*, if a criminal suspect or defendant voluntarily and truthfully confesses their crimes, acknowledges the alleged criminal facts, and is willing to accept punishment, they may be dealt with leniently in accordance with the law.

The confession of guilt and acceptance of punishment apply to all criminal cases and all stages of criminal cases. When making a decision on whether to approve an arrest, the procuratorial organ will also take into account the circumstances of the criminal suspect or defendant confessing their guilt and accepting punishment.

If a criminal suspect confesses their guilt and accepts punishment, the procuratorial organ will generally put forward suggestions for lenient treatment such as lighter or mitigated punishment, or exemption from punishment when initiating a public prosecution. However, it requires the criminal suspect to voluntarily confess their guilt, agree to the sentencing suggestion and the application of procedures, and sign a written statement of confession and acceptance of punishment in the presence of a defender or duty lawyer.

19. Is there any obligation to disclose discovered misconduct to prosecuting authorities, or any benefit to making a voluntary disclosure? Is there an established route or official guidance for making such disclosures?

According to the *Criminal Procedure Law*, any unit or individual that discovers a criminal fact or a criminal suspect has the right and obligation to report the case or provide information to a public security organ, people's procuratorate, or people's court. However, there are no penalties stipulated for failing to fulfill this obligation.

Under the *Criminal Law*, voluntary surrender after committing a crime and truthful confession of one's own crimes constitutes a voluntary surrender. For criminals who voluntarily surrender, a lighter or mitigated punishment may be given; among them, those who have committed relatively minor crimes may be exempted from punishment. If a criminal suspect or defendant under compulsory measures, or a criminal serving a sentence, truthfully confesses other crimes of their own that the judicial organ has not yet grasped, it shall be regarded as voluntary surrender. If a criminal suspect does not have the circumstances of voluntary surrender as specified in the preceding two paragraphs but truthfully confesses their own crimes, a lighter punishment may be given; if the truthful confession avoids particularly serious

consequences, a mitigated punishment may be given.

Criminals who expose the criminal acts of others, which are verified as true, or provide important clues leading to the solving of other cases or other meritorious performances may be given a lighter or mitigated punishment; those with major meritorious performances may be given a mitigated punishment or exempted from punishment.

Voluntary surrender or reporting can be made directly to judicial organs such as public security organs, procuratorial organs, courts, prisons, and detention centers. All police stations of public security organs have reception windows, and some county-level public security organs or municipal public security organs at the prefecture level also have reception windows. County-level or municipal procuratorial organs at the prefecture level generally have external reception windows. The aforesaid reception windows and external reception windows of public security organs and procuratorial organs can all be inquired about through official websites or the publicly available hotlines of public security and procuratorial organs.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

In China, in the trial of criminal cases, courts follow systematic rules and guidelines when sentencing and have in place policies for leniency and sentence reduction.

The General Provisions of the *Criminal Law* stipulate that when determining penalties for criminals, the sentence shall be imposed in accordance with the relevant provisions of this *Law* based on the facts of the crime, the nature of the crime, the circumstances, and the degree of harm to society. It also specifies the conditions for heavier, lighter, or mitigated punishment.

The Specific Provisions of the *Criminal Law* regulate the constitutive elements and sentencing for various crimes. In addition, legislative organs issue legislative interpretations, and the Supreme People's Court and high people's courts formulate detailed provisions on sentencing for most crimes through judicial interpretations and related regulations. However, in specific individual cases, judges still have a certain degree of discretion.

The *Criminal Law* provides for several leniency or sentence reduction policies. For example, voluntary

surrender may result in a lighter or mitigated punishment; exposing others' criminal acts that are verified as true, or providing important clues leading to the solving of other cases or other meritorious performances may lead to a lighter or mitigated punishment; and major meritorious performances may result in a mitigated punishment or exemption from punishment. Voluntary surrender or meritorious acts need to be presented to the judicial organs handling the case.

Under the above provisions, people's courts and procuratorates at all levels have also formulated various sentencing guidelines or guiding opinions. For example, there are the *Guiding Opinions on Sentencing for Common Crimes (for Trial Implementation)* issued by the Supreme People's Court and the Supreme People's Procuratorate; the *Opinions on Several Issues Concerning the Standardization of Sentencing Procedures* issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice; and the *Guiding Opinions of the Supreme People's Court on Sentencing for Common Crimes (II) (for Trial Implementation)*, etc.

21. How are compliance procedures evaluated by the prosecuting authorities and how can businesses best protect themselves?

At present, in criminal proceedings, procuratorial organs no longer conduct separate evaluations on enterprise compliance. However, if an enterprise does a good job in compliance on its own, it can not only prevent the occurrence of criminal risks to the greatest extent but also, when criminal risks occur, avoid the possibility of the enterprise being identified as a unit offender to a certain extent.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

1. For penalties imposed on individuals, most charges prescribe fixed-term imprisonment, criminal detention, or fines, except for the following crimes:
 - i. The maximum penalty for embezzlement and bribery can be life imprisonment or the death penalty.
 - ii. The maximum penalty for crimes such as the crime of fraudulent fund-raising; the crime of loan fraud; the crime of bill fraud; the crime of financial certificate fraud; the crime of letter of credit/credit card fraud; the crime of contract fraud, the crime of defrauding

export tax refunds; the crime of falsely issuing special VAT invoices or invoices used for defrauding export tax refunds or offsetting taxes; the crime of illegally selling special VAT invoices; the crime of misappropriating public funds; the crime of offering bribes; the crime of duty-related embezzlement; and the crime of accepting bribes by non-state functionaries can be life imprisonment.

For cases where a fine is imposed concurrently, the amount of the fine is divided into three situations:

- i. A fixed amount, which is within 500,000 yuan.
 - ii. A certain percentage or multiple. For crimes involving insider information and tax-related crimes, the maximum can be up to 5 times.
 - iii. No specified amount, which is determined by the judge based on the specific circumstances of the case.
2. A certain amount of fine is imposed on the unit, which is at the discretion of the presiding judge based on the circumstances of the case.

23. What rights of appeal are there?

According to the *Criminal Procedure Law*, defendants, private prosecutors, and their legal representatives have the right to appeal to the people's court at the next higher level in writing or orally against the judgments or rulings of the first instance made by local people's courts at all levels. Defenders and close relatives of a defendant may file an appeal with the defendant's consent. The right of appeal of a defendant shall not be deprived of on any pretext.

24. How active are the authorities in tackling financial crime?

In China, over the past few decades, with economic development, the deepening of opening up to the outside world, especially the vigorous development of the internet economy and the continuous deepening of foreign investment introduction in recent years, Chinese judicial organs have been continuously and thoroughly cracking down on financial crimes in order to maintain market order and protect the legitimate rights of enterprises and entrepreneurs. The legislative organs have revised the *Criminal Law* to increase the punishment for crimes such as the crime of duty-related embezzlement and the crime of accepting bribes by non-state functionaries; procuratorial organs and people's courts have lowered the prosecution standards for such crimes in judicial practice; and procuratorial organs have strengthened the

supervision over public security organs in the investigation and handling of such cases.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

1. Governance of Corruption Crimes. Key attention is paid to corruption in fields such as finance, energy, pharmaceuticals, and infrastructure projects, as well as corruption among staff in key positions of non-publicly owned enterprises.
2. Handling crimes endangering tax collection and administration, financial fraud, and crimes undermining financial management order is prioritized, especially in the private equity fund sector, crimes of illegally absorbing public deposits, fund-raising fraud, and securities-related crimes such as financial fraud and insider trading.
3. Intellectual property protection is emphasized, with increased efforts to crack down on crimes such as infringement of trademark rights, patent rights, copyrights, and trade secrets.
4. A relatively large proportion of crimes committed using the internet are prosecuted, focusing on telecom and internet fraud, crimes of assisting in information network crimes, and online gambling crimes.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

In the field of corruption governance, the handling of cases in the football sector and commercial bribery is worthy of attention. For example, the series of corruption cases in the football sector; the case of Yan and Sun, non-state functionaries accepting bribes: as directors of a private enterprise, the two accepted bribes of 560 million yuan, the court sentenced them to more than 14 years in prison and confiscated all the illegal gains; the case of Liao, contract fraud case: he inflated the company's valuation by 2.42 billion yuan through financial fraud and was sentenced to life imprisonment, this is a landmark case of "financial fraud-type crimes", with a focus on recovering stolen assets and compensating losses (1.9 billion yuan was recovered and returned to the victimized enterprise), the case of Wang,

virtual currency fund-raising fraud and money laundering case, who was sentenced to life imprisonment; the case of Ji, manipulate the securities market case, who colluded with others to control 97 securities accounts, was sentenced to 6 years in prison and was fined for 45 million yuan.

In addition, the ongoing trial of the commercial bribery case involving former relevant personnel of GroupM China is also a case of great significance.

At the same time, the governance of fraud and corruption in China's leading internet enterprises is also of a weathervane significance.

27. Are there any pending or proposed changes to the legal, regulatory and/or enforcement framework?

In the past year, the *12th Amendment to the Criminal Law* was formally implemented. Focusing on the governance of corruption in private enterprises, it added relevant charges for harming private enterprises and increased penalties for corruption, bribery, and commercial bribery crimes. The revision of the *Anti-Unfair Competition Law* was adopted on June 27, 2025, which strengthens the governance of commercial bribery and adheres to the principle of "investigating both bribers and bribees". The revised *Anti-Money Laundering Law* has been formally implemented since January 1, 2025. All pending or proposed matters related to financial crimes have been voted through or put into effect.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

Since the formal implementation of the *12th Amendment to the Criminal Law*, the newly added or revised crimes in the field of corruption—such as the crime of duty-related embezzlement, crimes of corruption and bribery, crimes of offering and accepting bribes, the crime of illegally operating the same kind of business, the crime of illegally profiting for relatives and friends, and the crime of malfeasance out of favoritism in undervaluing shares or selling corporate/enterprise assets at a low price—need to be refined in judicial practice. Corresponding judicial interpretations should be formulated to clarify the standards for evidence, conviction, and sentencing.

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