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Amendment VIII to the Criminal Law of the People's Republic of China

中华人民共和国刑法修正案(八)

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正文

**Order of the President of the People's Republic of China
No. 41**

The Amendment VIII to the Criminal Law of the People's Republic of China, adopted at the 19th session of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on February 25, 2011, is hereby promulgated and shall come into effect on May 1, 2011.

President of the People's Republic of China Hu Jintao
February 25, 2011

中华人民共和国主席令

第四十一号

《中华人民共和国刑法修正案(八)》已由中华人民共和国第十一届全国人民代表大会常务委员会第十九次会议于2011年2月25日通过,现予公布,自2011年5月1日起施行。

中华人民共和国主席 胡锦涛

2011年2月25日

Amendment VIII to the Criminal Law of the People's Republic of China

中华人民共和国刑法修正案(八)

1. One article is added after Article 17 as Article 17(a), which read: "A person who has reached the age of 75 may be subject to lesser or mitigated punishments against intentional crimes committed, and shall be given lesser or mitigated punishments against negligent crimes."

一、在刑法第十七条后增加一条,作为第十七条之一:“已满七十五周岁的人故意犯罪的,可以从轻或者减轻处罚;过失犯罪的,应当从轻或者减轻处罚。”

2. One paragraph is added as Paragraph 2 of Article 38, which reads: "Where a criminal is sentenced to public surveillance, he/she may also be prohibited, during the term of public surveillance, from engaging in certain activities, entering certain regions or premises, or meeting with certain persons, depending on the circumstance of crimes committed. "

The original Paragraph 2 is amended to be Paragraph 3, which reads: "Community correction shall apply, in accordance with the law, to a criminal sentenced to public surveillance."

One paragraph is added as Paragraph 4, which reads: "A criminal in violation of the prohibition order stipulated in Paragraph 2 shall be punished by the relevant public security organ in accordance with the Law of the People's Republic of China on Public Security Administration Punishments."

二、在刑法第三十八条中增加一款作为第二款：“判处管制,可以根据犯罪情况,同时禁止犯罪分子在执行期间从事特定活动,进入特定区域、场所,接触特定的人。”

原第二款作为第三款,修改为:“对判处管制的犯罪分子,依法实行社区矫正。”

增加一款作为第四款:“违反第二款规定的禁止令的,由公安机关依照《中华人民共和国治安管理处罚法》的规定处罚。”

3. One paragraph is added as Paragraph 2 of Article 49, which reads: "Death penalty shall not apply to a person who has attained the age of 75 at the time of trial, except where the person has caused the death of others by especially cruel means."

三、在刑法第四十九条中增加一款作为第二款:“审判的时候已满七十五周岁的人,不适用死刑,但以特别残忍手段致人死亡的除外。”

4. Article 50 of the Criminal Law is amended to read: "Where a criminal sentenced to death penalty with probation commits no intentional crime within the period of probation, his/her sentence shall be commuted to life imprisonment upon the expiration of the two-year probation. If he/she has indeed rendered major meritorious service, his/her sentence shall be commuted to fixed-term imprisonment of 25 years upon the expiration of the two-year probation. If it is verified that he/she has committed an intentional crime, the death penalty shall be executed upon verification and approval of the Supreme People's Court.

"With regard to a recidivist sentenced to death penalty with probation and a criminal so sentenced for committing intentional homicide, rape, robbery, kidnapping, arson, explosion, spreading hazardous materials, or organized violent crimes, a people's court may impose restrictions on commutation depending on the circumstance of the crimes."

四、将刑法第五十条修改为:“判处死刑缓期执行的,在死刑缓期执行期间,如果没有故意犯罪,二年期满以后,减为无期徒刑;如果确有重大立功表现,二年期满以后,减为二十五年有期徒刑;如果故意犯罪,查证属实的,由最高人民法院核准,执行死刑。

“对被判处死刑缓期执行的累犯以及因故意杀人、强奸、抢劫、绑架、放火、爆炸、投放危险物质或者有组织的暴力性犯罪被判处死刑缓期执行的犯罪分子,人民法院根据犯罪情节等情况可以同时决定对其限制减刑。”

5. Paragraph 1 of Article 63 of the Criminal Law is amended to read: "If the circumstances of a crime call for a mitigated punishment in accordance herewith, the criminal shall be sentenced to a punishment less than the prescribed punishment. If there are several scales of prescribed punishments hereunder, the criminal shall be sentenced to the punishment less than the lowest scale of prescribed punishment. "

五、将刑法第六十三条第一款修改为：“犯罪分子具有本法规定的减轻处罚情节的,应当在法定刑以下判处刑罚;本法规定有数个量刑幅度的,应当在法定量刑幅度的下一个量刑幅度内判处刑罚。”

6. Paragraph 1 of Article 65 of the Criminal Law is amended to read: "If a criminal who is sentenced to fixed-term imprisonment or heavier punishments commits another crime punishable by fixed-term imprisonment or heavier punishments within five years after serving his/her sentence or receiving a pardon, he/she is a recidivist and shall be subject to a heavier punishment, with the exception of negligent crimes and crimes committed by a criminal under the age of 18."

六、将刑法第六十五条第一款修改为：“被判处有期徒刑以上刑罚的犯罪分子,刑罚执行完毕或者赦免以后,在五年以内再犯应当判处有期徒刑以上刑罚之罪的,是累犯,应当从重处罚,但是过失犯罪和不满十八周岁的人犯罪的除外。”

7. Article 66 of the Criminal Law is amended to read: "A criminal who endangers State security, commits terrorist activities, engages in organized crimes committed by a group with the nature of criminal syndicate shall be treated and sentenced as a recidivist if he/she commits a crime under any of the abovementioned category at any time after serving his/her sentence or receiving a pardon."

七、将刑法第六十六条修改为：“危害国家安全犯罪、恐怖活动犯罪、黑社会性质的组织犯罪的犯罪分子,在刑罚执行完毕或者赦免以后,在任何时候再犯上述任一类罪的,都以累犯论处。”

8. One paragraph is added as Paragraph 3 of Article 67, which reads: "Notwithstanding the fact voluntary surrender as prescribed in the preceding two paragraphs does not apply to a criminal suspect, he/she may still be given a lesser punishment if he/she confesses his/her crime truthfully. In addition, the criminal suspect may be given a mitigated punishment if his/her truthful confession has prevented especially serious consequences from occurring."

八、在刑法第六十七条中增加一款作为第三款：“犯罪嫌疑人虽不具有前两款规定的自首情节,但是如实供述自己罪行的,可以从轻处罚;因其如实供述自己罪行,避免特别严重后果发生的,可以减轻处罚。”

9. Paragraph 2 of Article 68 of the Criminal Law is deleted.

九、删去刑法第六十八条第二款。

10. Article 69 of the Criminal Law is amended to read: "If a person commits several crimes before a judgment is pronounced, his/her term of punishment shall, as the case may be, be decided in such a way that it is not longer than the total of the terms for all the crimes and is not shorter than the longest of all the terms for the crimes, unless he is sentenced to death penalty or life imprisonment. However, the term of public surveillance may not exceed three years, that of criminal detention may not exceed one year, and fixed-term imprisonment may not exceed 20 years if the total of all terms is less than 35 years, and may not exceed 25 years if the total is more than 35 years." "If supplementary punishments are imposed on any of the several crimes, the supplementary punishments shall still be executed, among which those of the same category shall be executed concurrently, and those of different categories shall be executed separately."

十、将刑法第六十九条修改为：“判决宣告以前一人犯数罪的,除判处死刑和无期徒刑的以外,应当在总和刑期以下、数刑中最高刑期以上,酌情决定执行的刑期,但是管制最高不能超过三年,拘役最高不能超过一年,有期徒刑总和刑期不满三十五年的,最高不能超过二十年,总和刑期在三十五年以上的,最高不能超过二十五年。”

“数罪中有判处附加刑的,附加刑仍须执行,其中附加刑种类相同的,合并执行,种类不同的,分别执行。”

11. Article 72 of the Criminal Law is amended to read: "A suspension of sentence may be granted to a criminal who is sentenced to criminal detention or fixed-term imprisonment of not more than three years and satisfy the following conditions; and a suspension of sentence shall be granted if the said criminal is under the age of 18, a woman who is pregnant or a person who has attained the age of 75:

"(1) The circumstances of the crime are relatively minor;

"(2) The criminal has demonstrated repentance;

"(3) The criminal will not commit any crime again; and

"(4) Granting suspension of sentence will not result in significant adverse impact on the

community of his/her residence.

"Where a criminal is granted with suspension of sentence, he/she may also be prohibited from engaging in certain activities, entering certain regions or premises, or meeting with certain persons during the probation period depending on the circumstances of the crime."

"Supplementary punishments, if any, imposed on a criminal granted with suspension of sentence shall still be executed."

十一、将刑法第七十二条修改为：“对于被判处拘役、三年以下有期徒刑的犯罪分子，同时符合下列条件的，可以宣告缓刑，对其中不满十八周岁的人、怀孕的妇女和已满七十五周岁的人，应当宣告缓刑：

“（一）犯罪情节较轻；

“（二）有悔罪表现；

“（三）没有再犯罪的危险；

“（四）宣告缓刑对所居住社区没有重大不良影响。

“宣告缓刑，可以根据犯罪情况，同时禁止犯罪分子在缓刑考验期限内从事特定活动，进入特定区域、场所，接触特定的人。

“被宣告缓刑的犯罪分子，如果被判处附加刑，附加刑仍须执行。”

12. Article 74 of the Criminal Law is amended to read: "Suspension of sentence shall not apply to recidivists and ringleaders of criminal groups."

十二、将刑法第七十四条修改为：“对于累犯和犯罪集团的首要分子，不适用缓刑。”

13. Article 76 of the Criminal Law is amended to read: "A criminal granted with suspension of sentence shall be subject to community correction in accordance with the law within the probation period. In the absence of the circumstances stipulated in Article 77 herein, the punishment originally meted out against the criminal shall not be executed upon expiration of the probation period, which shall be made public."

十三、将刑法第七十六条修改为：“对宣告缓刑的犯罪分子，在缓刑考验期限内，依法实行社区矫正，如果没有本法第七十七条规定的情形，缓刑考验期满，原判的刑罚就不再执行，并公开予以宣告。”

14. Paragraph 2 of Article 77 of the Criminal Law is amended to read: "If, within the probation period for suspension of sentence, a criminal whose sentence has been suspended violates laws, administrative regulations or provisions of relevant departments of the State Council on supervision and administration of suspension of sentence, or violates the prohibition order rendered in the judgment of the people's court, and the circumstance of the violation is grave, the suspension shall be cancelled and the punishments originally meted out shall be executed. "

十四、将刑法第七十七条第二款修改为：“被宣告缓刑的犯罪分子,在缓刑考验期限内,违反法律、行政法规或者国务院有关部门关于缓刑的监督管理规定,或者违反人民法院判决中的禁止令,情节严重的,应当撤销缓刑,执行原判刑罚。”

15. Paragraph 2 of Article 78 of the Criminal Law is amended to read: "After commutation, the term of punishment to be actually executed may not be less than: "(1) Half of the term of punishment originally decided in the case of public surveillance, criminal detention or fixed-term imprisonment; "(2) 13 years in the case of life imprisonment; and "(3) 25 years, applicable where the criminal is sentenced to death penalty with probation and is restricted for commutation by the people's court in accordance with Paragraph 2 of Article 50 herein, and he/she is commuted to life imprisonment upon expiration of the probation period; or 20 years if he/she is commuted to fixed-term imprisonment of 25 years upon expiration of the probation period."

十五、将刑法第七十八条第二款修改为：“减刑以后实际执行的刑期不能少于下列期限:

“(一)判处管制、拘役、有期徒刑的,不能少于原判刑期的二分之一;

“(二)判处无期徒刑的,不能少于十三年;

“(三)人民法院依照本法第五十条第二款规定限制减刑的死刑缓期执行的犯罪分子,缓期执行期满后依法减为无期徒刑的,不能少于二十五年,缓期执行期满后依法减为二十五年有期徒刑的,不能少于二十年。”

16. Article 81 of the Criminal Law is amended to read: "Parole may be granted to a criminal sentenced to fixed-term imprisonment who has served more than half of the term of his/her original sentence, or a criminal sentenced to life imprisonment who has served not less than 13 years of his/her term, provided that he/she observes prison rules, accepts education and reform, shows true repentance and will not commit any new crime. Under special circumstances and with verification and approval of the Supreme People's Court, the above restrictions relating to the term served may be disregarded.

"Recidivists and criminals who are sentenced to fixed-term imprisonment of more than ten years or life imprisonment for intentional homicide, rape, robbery, kidnapping, arson, explosion, spreading hazardous materials or organized violent crimes may not be granted parole."

"The decision on granting parole to a criminal shall take into consideration the impact on the community of his/her residence after he/she is granted with parole."

十六、将刑法第八十一条修改为：“被判处有期徒刑的犯罪分子，执行原判刑期二分之一以上，被判处无期徒刑的犯罪分子，实际执行十三年以上，如果认真遵守监规，接受教育改造，确有悔改表现，没有再犯罪的危险的，可以假释。如果有特殊情况，经最高人民法院核准，可以不受上述执行刑期的限制。”

“对累犯以及因故意杀人、强奸、抢劫、绑架、放火、爆炸、投放危险物质或者有组织的暴力性犯罪被判处十年以上有期徒刑、无期徒刑的犯罪分子，不得假释。”

“对犯罪分子决定假释时，应当考虑其假释后对所居住社区的影响。”

17. Article 85 of the Criminal Law is amended to read: "A criminal who is granted with parole shall be subject to community correction in accordance with the law within the probation period for parole. In the absence of the circumstances stipulated in Article 86 herein, the punishment originally meted out against the criminal shall not be executed upon expiration of the probation period for parole, which shall be made public. "

十七、将刑法第八十五条修改为：“对假释的犯罪分子，在假释考验期限内，依法实行社区矫正，如果没有本法第八十六条规定的情形，假释考验期满，就认为原判刑罚已经执行完毕，并公开予以宣告。”

18. Paragraph 3 of Article 86 of the Criminal Law is amended to read: "If, within the probation period for parole, a criminal who is granted parole violates the laws, administrative regulations or provisions of relevant departments of the State Council on supervision and administration of parole, and the said violation does not constitute a new crime, the parole shall be cancelled according to the statutory procedures and the criminal shall be summoned to prison to serve the unexecuted punishments. "

十八、将刑法第八十六条第三款修改为：“被假释的犯罪分子，在假释考验期限内，有违反法律、行政法规或者国务院有关部门关于假释的监督管理规定的行为，尚未构成新的犯罪的，应当依照法定程序撤销假释，收监执行未执行完毕的刑罚。”

19. One paragraph is added to Article 100 as Paragraph 2 thereof: "A person who has not attained the age of 18 at the time of committing and is sentenced to fixed-term imprisonment of not more than five years shall be exempted from the reporting obligation prescribed in the preceding paragraph."

十九、在刑法第一百条中增加一款作为第二款:“犯罪的时候不满十八周岁被判处有期徒刑以下刑罚的人,免除前款规定的报告义务。”

20. Article 107 of the Criminal Law is amended to as: "If an agency, organization or individual within or outside the territory of China provides funding to a crime under Article 102, Article 103, Article 104 or Article 105 of this Chapter, the person subject to direct liabilities shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years."

二十、将刑法第一百零七条修改为:“境内外机构、组织或者个人资助实施本章第一百零二条、第一百零三条、第一百零四条、第一百零五条规定之罪的,对直接责任人员,处五年以下有期徒刑、拘役、管制或者剥夺政治权利;情节严重的,处五年以上有期徒刑。”

21. Article 109 of the Criminal Law is amended to read: "A State functionary who, while discharging his/her official duties at home or abroad, leaves his/her post without permission and defects to another country, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years."

"A State functionary who holds State secrets shall be sentenced to heavier punishments in accordance with the provisions of the preceding Paragraph if he/she commits the crime prescribed in the preceding Paragraph."

二十一、将刑法第一百零九条修改为:“国家机关工作人员在履行公务期间,擅离岗位,叛逃境外或者在境外叛逃的,处五年以下有期徒刑、拘役、管制或者剥夺政治权利;情节严重的,处五年以上十年以下有期徒刑。

“掌握国家秘密的国家工作人员叛逃境外或者在境外叛逃的,依照前款的规定从重处罚。”

22. One article is added after Article 133 of the Criminal Law as Article 133(a), which reads: "A person who chases with other automobiles when driving on the road or commits drunk-driving shall be sentenced to criminal detention and be concurrently given a fine, provided that the circumstances are grave."

"A person who commits any of the acts under the preceding Paragraph, thus constituting any other crime, shall be convicted of and punished by the crime carrying a heavier punishment."

二十二、在刑法第一百三十三条后增加一条,作为第一百三十三条之一:“在道路上驾驶机动车追逐竞驶,情节恶劣的,或者在道路上醉酒驾驶机动车的,处拘役,并处罚金。

“有前款行为,同时构成其他犯罪的,依照处罚较重的规定定罪处罚。”

23. Paragraph 1 of Article 141 of the Criminal Law is amended to read: "Whoever manufactures or sells fake drugs shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and be concurrently given a fine. Where serious harm to human health is caused or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and be concurrently given a fine. If death is caused to another person or there are other especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death penalty and be concurrently subject to a fine or confiscation of property."

二十三、将刑法第一百四十一条第一款修改为:“生产、销售假药的,处三年以下有期徒刑或者拘役,并处罚金;对人体健康造成严重危害或者有其他严重情节的,处三年以上十年以下有期徒刑,并处罚金;致人死亡或者有其他特别严重情节的,处十年以上有期徒刑、无期徒刑或者死刑,并处罚金或者没收财产。”

24. Article 143 of the Criminal Law is amended to read: "Whoever produces or sells food not up to food safety standards, thus sufficient to cause serious food-poisoning accidents or any other serious disease caused by food-borne bacteria, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and be concurrently given a fine. If serious harm to human health is caused or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently given a fine. In the case of especially serious consequences, he/she shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and be concurrently subject to a fine or confiscation of property. "

二十四、将刑法第一百四十三条修改为：“生产、销售不符合食品安全标准的食品,足以造成严重食物中毒事故或者其他严重食源性疾病的,处三年以下有期徒刑或者拘役,并处罚金;对人体健康造成严重危害或者有其他严重情节的,处三年以上七年以下有期徒刑,并处罚金;后果特别严重的,处七年以上有期徒刑或者无期徒刑,并处罚金或者没收财产。”

25. Article 144 of the Criminal Law is amended to read: "Whoever mixes the food to be produced or sold with toxic or harmful non-food raw materials, or knowingly sells food mixed with toxic or harmful non-food materials, shall be sentenced to fixed-term imprisonment of not more than five years and be concurrently given a fine. If serious harm to human health is caused or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and be concurrently given a fine. If death is caused to another person or there are other especially serious circumstances, he/she shall be sentenced in accordance with Article 141 herein. "

二十五、将刑法第一百四十四条修改为：“在生产、销售的食品中掺入有毒、有害的非食品原料的,或者销售明知掺有有毒、有害的非食品原料的食品的,处五年以下有期徒刑,并处罚金;对人体健康造成严重危害或者有其他严重情节的,处五年以上十年以下有期徒刑,并处罚金;致人死亡或者有其他特别严重情节的,依照本法第一百四十一条的规定处罚。”

26. Article 151 of the Criminal Law is amended to read: "Whoever smuggles weapons, ammunition, nuclear materials or counterfeit currency shall be sentenced to fixed-term imprisonment of not less than seven years and shall concurrently be subject to a fine or confiscation of property. In the case of especially serious circumstances, he/she shall be sentenced to life imprisonment or death penalty and be concurrently subject to confiscation of property. If the circumstances are relatively minor, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, and be concurrently subject to a fine.

"Whoever smuggles cultural relics, gold, silver and other precious metals, the export of which is forbidden by the State, or precious and rare species of wildlife as well as the products thereof, the import and export of which are forbidden by the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and shall be concurrently fined. In the case of especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life-imprisonment and shall concurrently be subject to confiscation of property. If the

circumstances are relatively minor, he/she shall be sentenced to fixed-term imprisonment of not more than five years and be concurrently subject to a fine.

"Whoever smuggles precious and rare species of plants and the products thereof, and other goods and articles, the import and export of which are forbidden by the State, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and be concurrently or separately subject to a fine. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years and be concurrently fined.

"Where an entity commits the crime as prescribed in this Article, the entity shall be fined and the persons directly in charge and other persons subject to direct liabilities shall be punished, respectively, in accordance with the provisions of the paragraphs in this Article."

二十六、将刑法第一百五十一条修改为：“走私武器、弹药、核材料或者伪造的货币的,处七年以上有期徒刑,并处罚金或者没收财产;情节特别严重的,处无期徒刑或者死刑,并处没收财产;情节较轻的,处三年以上七年以下有期徒刑,并处罚金。

“走私国家禁止出口的文物、黄金、白银和其他贵重金属或者国家禁止进出口的珍贵动物及其制品的,处五年以上十年以下有期徒刑,并处罚金;情节特别严重的,处十年以上有期徒刑或者无期徒刑,并处没收财产;情节较轻的,处五年以下有期徒刑,并处罚金。

“走私珍稀植物及其制品等国家禁止进出口的其他货物、物品的,处五年以下有期徒刑或者拘役,并处或者单处罚金;情节严重的,处五年以上有期徒刑,并处罚金。

“单位犯本条规定之罪的,对单位判处罚金,并对其直接负责的主管人员和其他直接责任人员,依照本条各款的规定处罚。”

27. Paragraph 1 of Article 153 of the Criminal Law is amended as: "Whoever smuggles goods or articles not specified in Article 151, Article 152 and Article 347 herein shall, depending on the severity of the circumstances, be punished in accordance with the following provisions respectively:

"(1) If he/she smuggles goods and articles to evade or dodge the payable duties to a larger amount or commits smuggling again after being given administrative penalties twice against smuggling within one year, he/she shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and be concurrently

subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged;

"(2) If the amount of payable duties evaded or dodged for smuggling goods and articles is huge or there are other serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and shall be concurrently subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged; and

"(3) If the amount of payable duties evaded or dodged for smuggling goods and articles is especially huge or there are other especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and shall be concurrently subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged or confiscation of property."

二十七、将刑法第一百五十三条第一款修改为：“走私本法第一百五十一条、第一百五十二条、第三百四十七条规定以外的货物、物品的,根据情节轻重,分别依照下列规定处罚:

“(一)走私货物、物品偷逃应缴税额较大或者一年内曾因走私被给予二次行政处罚后又走私的,处三年以下有期徒刑或者拘役,并处偷逃应缴税额一倍以上五倍以下罚金。

“(二)走私货物、物品偷逃应缴税额巨大或者有其他严重情节的,处三年以上十年以下有期徒刑,并处偷逃应缴税额一倍以上五倍以下罚金。

“(三)走私货物、物品偷逃应缴税额特别巨大或者有其他特别严重情节的,处十年以上有期徒刑或者无期徒刑,并处偷逃应缴税额一倍以上五倍以下罚金或者没收财产。”

28. Paragraph 1 of Article 157 of the Criminal Law is amended to read: "Whoever shields smuggling with arms shall be subject to a heavier punishment in accordance with the provisions of the Paragraph 1 of Article 151 herein."

二十八、将刑法第一百五十七条第一款修改为：“武装掩护走私的,依照本法第一百五十一条第一款的规定从重处罚。”

29. Article 164 of the Criminal Law is amended to read: "Whoever, for the purpose of seeking unjustified benefits, gives money or property in relatively large amount to any employee of a company or enterprise, or any employee of other entities, shall be

sentenced to fixed-term imprisonment of not more than three years or criminal detention. If the amount involved is huge, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall be concurrently fined.

"Whoever, for the purpose of seeking unjustified business interests, gives money or property to any foreign party performing official duties or officials of international public organizations shall be punished in accordance with the provisions of the preceding Paragraph.

"Where an entity commits the crimes as mentioned in the preceding two paragraphs, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be punished in accordance with the provisions of Paragraph 1.

"Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment."

二十九、将刑法第一百六十四条修改为：“为谋取不正当利益，给予公司、企业或者其他单位的工作人员以财物，数额较大的，处三年以下有期徒刑或者拘役；数额巨大的，处三年以上十年以下有期徒刑，并处罚金。

“为谋取不正当商业利益，给予外国公职人员或者国际公共组织官员以财物的，依照前款的规定处罚。

“单位犯前两款罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照第一款的规定处罚。

“行贿人在被追诉前主动交待行贿行为的，可以减轻处罚或者免除处罚。”

30. Article 199 of the Criminal Law is amended to read: "Whoever commits a crime specified in Article 192 of this Section, if the amount involved is especially huge and causes especially huge losses to the interests of the State and the people, shall be sentenced to life imprisonment or death penalty and be concurrently subject to confiscation of property."

三十、将刑法第一百九十九条修改为：“犯本节第一百九十二条规定之罪，数额特别巨大并且给国家和人民利益造成特别重大损失的，处无期徒刑或者死刑，并处没收财产。”

31. Article 200 of the Criminal Law is amended to read: "Where an entity commits the crimes prescribed in Article 192, Article 194 or Article 195 of this Section, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be sentenced to fixed-term imprisonment of not more than five years or

criminal detention, and may be concurrently fined. If the amount involved is huge or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and be concurrently fined. If the amount involved is especially huge or there are other especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment and be concurrently fined."

三十一、将刑法第二百条修改为：“单位犯本节第一百九十二条、第一百九十四条、第一百九十五条规定之罪的,对单位判处罚金,并对其直接负责的主管人员和其他直接责任人员,处五年以下有期徒刑或者拘役,可以并处罚金;数额巨大或者有其他严重情节的,处五年以上十年以下有期徒刑,并处罚金;数额特别巨大或者有其他特别严重情节的,处十年以上有期徒刑或者无期徒刑,并处罚金。”

32. Paragraph 2 of Article 205 of the Criminal Law shall be deleted.

三十二、删去刑法第二百零五条第二款。

33. One article is added after Article 205 of the Criminal Law as Article 206(a):
"Whoever falsely makes out invoices other than those specified in Article 205 herein, if the circumstances are grave, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance, and be concurrently fined. Under especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years, and be concurrently fined.

"Where an entity commits the crime prescribed in the preceding Paragraph, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be punished in accordance with provisions of the preceding Paragraph."

三十三、在刑法第二百零五条后增加一条,作为第二百零五条之一:“虚开本法第二百零五条规定以外的其他发票,情节严重的,处二年以下有期徒刑、拘役或者管制,并处罚金;情节特别严重的,处二年以上七年以下有期徒刑,并处罚金。

“单位犯前款罪的,对单位判处罚金,并对其直接负责的主管人员和其他直接责任人员,依照前款的规定处罚。”

34. Paragraph 2 of Article 206 of the Criminal Law shall be deleted.

三十四、删去刑法第二百零六条第二款。

35. One article is added after Article 210 of the Criminal Law as Article 210(a):
"Whoever knowingly holds a forged invoice involving a larger amount shall be

sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance and be concurrently fined. If the amount involved is huge, he/she shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and be concurrently fined.

"Where an entity commits the crime prescribed in the preceding Paragraph, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be punished in accordance with the provisions of the preceding Paragraph."

三十五、在刑法第二百一十条后增加一条,作为第二百一十条之一:“明知是伪造的发票而持有,数量较大的,处二年以下有期徒刑、拘役或者管制,并处罚金;数量巨大的,处二年以上七年以下有期徒刑,并处罚金。

“单位犯前款罪的,对单位判处罚金,并对其直接负责的主管人员和其他直接责任人员,依照前款的规定处罚。”

36. Article 226 of the Criminal Law is amended to read: "Whoever commits any of the following acts by violence or intimidation, if the circumstances are grave, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and be concurrently or separately fined. In the case of especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently fined.

"(1) Buying or selling commodities by violence and intimidation;

"(2) Compelling another person to provide or receive services;

"(3) Compelling another person to participate in or withdraw from bidding or auction;

"(4) Compelling another person to transfer or acquire shares, bonds or other assets of a company or enterprise; or

"(5) Compelling another person to participate in or withdraw from specific business activities."

三十六、将刑法第二百二十六条修改为:“以暴力、威胁手段,实施下列行为之一,情节严重的,处三年以下有期徒刑或者拘役,并处或者单处罚金;情节特别严重的,处三年以上七年以下有期徒刑,并处罚金:

“(一)强买强卖商品的;

“(二)强迫他人提供或者接受服务的;

“(三)强迫他人参与或者退出投标、拍卖的;

“(四)强迫他人转让或者收购公司、企业的股份、债券或者其他资产的;

“(五)强迫他人参与或者退出特定的经营活动的。”

37. One article is added after Article 234 of the Criminal Law as Article 234(a):
"Whoever organizes others to sell human organs shall be sentenced to fixed-term imprisonment of not more than five years and be concurrently fined. Under grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than five years and be concurrently subject to a fine or confiscation of property.

"Whoever removes the organs of a person without the content thereof, or removes the organs of a minor, or compels or cheats another person to donate organs shall be convicted and punished in accordance with the provisions of Article 234 and Article 232 herein.

"Whoever removes the body organs of a deceased person against his/her wish made when he/she was alive, or whoever removes the body organs of a deceased person where the person has never consented to the removal when he was alive, or in violation of State provisions, or against the wish of the deceased persons' immediate relatives, shall be convicted and punished in accordance with Article 302 herein. "

三十七、在刑法第二百三十四条后增加一条,作为第二百三十四条之一:“组织他人出卖人体器官的,处五年以下有期徒刑,并处罚金;情节严重的,处五年以上有期徒刑,并处罚金或者没收财产。

“未经本人同意摘取其器官,或者摘取不满十八周岁的人的器官,或者强迫、欺骗他人捐献器官的,依照本法第二百三十四条、第二百三十二条的规定定罪处罚。

“违背本人生前意愿摘取其尸体器官,或者本人生前未表示同意,违反国家规定,违背其近亲属意愿摘取其尸体器官的,依照本法第三百零二条的规定定罪处罚。”

38. Article 244 of the Criminal Law is amended to read: "Whoever compels other persons to work by violence, intimidation or by means of restricting their personal freedom shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and be concurrently fined. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall ,be concurrently fined.

"Whoever, with clear knowledge that another person is engaging in an act specified in the preceding Paragraph, recruits or transports personnel therefor or otherwise renders assistance in compelling others to work shall be punished in accordance with the preceding Paragraph.

"Where an entity commits the crimes as prescribed in the preceding two paragraphs, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be punished in accordance with the provisions of Paragraph 1."

三十八、将刑法第二百四十四条修改为：“以暴力、威胁或者限制人身自由的方法强迫他人劳动的，处三年以下有期徒刑或者拘役，并处罚金；情节严重的，处三年以上十年以下有期徒刑，并处罚金。

“明知他人实施前款行为，为其招募、运送人员或者有其他协助强迫他人劳动行为的，依照前款的规定处罚。

“单位犯前两款罪的，对单位处罚金，并对其直接负责的主管人员和其他直接责任人员，依照第一款的规定处罚。”

39. Article 264 of the Criminal Law is amended to read: "Whoever steals a relatively large amount of public or private property, or commits theft repeatedly, or commits burglary, or steals or pickpockets with a lethal weapon, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and be concurrently or separately fined. If the amount is huge or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and be concurrently fined. If the amount is especially huge or there are other especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and be concurrently subject to a fine or confiscation of property."

三十九、将刑法第二百六十四条修改为：“盗窃公私财物，数额较大的，或者多次盗窃、入户盗窃、携带凶器盗窃、扒窃的，处三年以下有期徒刑、拘役或者管制，并处或者单处罚金；数额巨大或者有其他严重情节的，处三年以上十年以下有期徒刑，并处罚金；数额特别巨大或者有其他特别严重情节的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产。”

40. Article 274 of the Criminal Law is amended as: "Whoever extorts relatively large amount of publicly-owned or privately-owned money or property by blackmail, or does so repeatedly, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and be concurrently or separately fined. If the amount is huge or there are other grave circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and be concurrently fined. If the amount is especially huge or there are other especially serious circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years and be concurrently fined."

四十、将刑法第二百七十四条修改为:“敲诈勒索公私财物,数额较大或者多次敲诈勒索的,处三年以下有期徒刑、拘役或者管制,并处或者单处罚金;数额巨大或者有其他严重情节的,处三年以上十年以下有期徒刑,并处罚金;数额特别巨大或者有其他特别严重情节的,处十年以上有期徒刑,并处罚金。”

41. One article is added after Article 276 of the Criminal Law as Article 267(a):
"Whoever dodges labor remuneration payable to laborers by transferring property or escaping, or refuses to pay laborers although he/she has the capacity to make payment, if the amount is relatively large, and if he/she still refuses to pay after being so ordered by relevant government departments, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and be concurrently or separately fined. If serious consequences are caused, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently fined.

"Where an entity commits the crime prescribed in the preceding Paragraph, the entity shall be fined, and the persons directly in charge and other persons subject to direct liabilities shall be punished in accordance with the provisions of the preceding Paragraph.

"Whoever commits the crime mentioned in the preceding two paragraphs but has not yet caused serious consequences may be given a mitigated punishment or be exempted from punishment, provided that he/she, prior to public prosecution, pays labor remuneration to laborers and bear the corresponding compensation liabilities in accordance with the law."

四十一、在刑法第二百七十六条后增加一条,作为第二百七十六条之一:“以转移财产、逃匿等方法逃避支付劳动者的劳动报酬或者有能力支付而不支付劳动者的劳动报酬,数额较大,经政府有关部门责令支付仍不支付的,处三年以下有期徒刑或者拘役,并处或者单处罚金;造成严重后果的,处三年以上七年以下有期徒刑,并处罚金。

“单位犯前款罪的,对单位判处罚金,并对其直接负责的主管人员和其他直接责任人员,依照前款的规定处罚。

“有前款行为,尚未造成严重后果,在提起公诉前支付劳动者的劳动报酬,并依法承担相应赔偿责任的,可以减轻或者免除处罚。”

42. Article 293 of the Criminal Law is amended to read: "Whoever commits any of the following acts of causing disturbances, thus disrupting public order, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance:

"(1) Beating another person at will and to a flagrant extent;

"(2) Chasing, intercepting or hurling insults to and threatening another person to a flagrant extent;

"(3) Forcibly taking or demanding, willfully damaging, destroying or occupying publicly-owned or privately-owned money or property to a serious extent; or

"(4) Creating disturbances in a public place, thus causing serious disorder in the place.

"Whoever musters others to repeatedly commit any act mentioned in the preceding paragraph and seriously undermines social order shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and may be concurrently fined."

四十二、将刑法第二百九十三条修改为：“有下列寻衅滋事行为之一，破坏社会秩序的，处五年以下有期徒刑、拘役或者管制：

“（一）随意殴打他人，情节恶劣的；

“（二）追逐、拦截、辱骂、恐吓他人，情节恶劣的；

“（三）强拿硬要或者任意损毁、占用公私财物，情节严重的；

“（四）在公共场所起哄闹事，造成公共场所秩序严重混乱的。

“纠集他人多次实施前款行为，严重破坏社会秩序的，处五年以上十年以下有期徒刑，可以并处罚金。”

43. Article 294 of the Criminal Law is amended to read: "Whoever forms or leads organizations in the nature of criminal syndicate shall be sentenced to fixed-term imprisonment of not less than seven years and be concurrently subject to confiscation of property. Whoever actively participates in the criminal syndicate shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, and may be concurrently subject to fine or confiscation of property. Other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights, and may be concurrently fined.

"Members of overseas criminal syndicates who recruit members within the territory of the People's Republic of China shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years.

"Any State functionary who harbors an organization in the nature of criminal syndicate or connives at such organization's illegal or criminal acts shall be sentenced to

fixed-term imprisonment of not more than five years. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years.

"Whoever commits any other crimes in addition to those prescribed in the preceding three paragraphs shall be punished in accordance with the provisions on combined punishment for several crimes.

"An organization in the nature of criminal syndicate shall have the following features:

"(1) It has formed a stable criminal organization with a larger number of participants and definite and stable organizers, leaders and key members;

"(2) It gains economic benefits through organized illegal and criminal activities or by other means, and has certain economic strength to support its activities;

"(3) It repeatedly commits organized illegal and criminal activities through violence, intimidation or by other means, perpetrating outrages, riding roughshod over or cruelly injuring or killing the people; and

"(4) By way of committing illegal and criminal acts, or taking advantage of the protection and connivance by State functionaries, it plays the bully over an area, and exercises illegal control and wields illegal and enormous influence over a certain area or industry, thus seriously disrupting the economic order and people's daily activities."

四十三、将刑法第二百九十四条修改为：“组织、领导黑社会性质的组织的，处七年以上有期徒刑，并处没收财产；积极参加的，处三年以上七年以下有期徒刑，可以并处罚金或者没收财产；其他参加的，处三年以下有期徒刑、拘役、管制或者剥夺政治权利，可以并处罚金。

“境外的黑社会组织的人员到中华人民共和国境内发展组织成员的，处三年以上十年以下有期徒刑。

“国家机关工作人员包庇黑社会性质的组织，或者纵容黑社会性质的组织进行违法犯罪活动的，处五年以下有期徒刑；情节严重的，处五年以上有期徒刑。

“犯前三款罪又有其他犯罪行为的，依照数罪并罚的规定处罚。

“黑社会性质的组织应当同时具备以下特征：

“（一）形成较稳定的犯罪组织，人数较多，有明确的组织者、领导者，骨干成员基本固定；

“(二)有组织地通过违法犯罪活动或者其他手段获取经济利益,具有一定的经济实力,以支持该组织的活动;

“(三)以暴力、威胁或者其他手段,有组织地多次进行违法犯罪活动,为非作恶,欺压、残害群众;

“(四)通过实施违法犯罪活动,或者利用国家工作人员的包庇或者纵容,称霸一方,在一定区域或者行业内,形成非法控制或者重大影响,严重破坏经济、社会生活秩序。”

44. Article 295 of the Criminal Law is amended to read: "Whoever teaches another person how to commit a crime shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years. If the circumstances are especially serious, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment. "

四十四、将刑法第二百九十五条修改为:“传授犯罪方法的,处五年以下有期徒刑、拘役或者管制;情节严重的,处五年以上十年以下有期徒刑;情节特别严重的,处十年以上有期徒刑或者无期徒刑。”

45. Paragraph 1 of Article 328 of the Criminal Law is amended to read: "Whoever excavates and robs a site of ancient culture or ancient tomb of historical, artistic or scientific value shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and be concurrently fined. If the circumstances are relatively minor, he/she shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and be concurrently fined. Under any of the following circumstances, he/she shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and be concurrently subject to a fine or confiscation of property:

"(1) Excavating and robbing a site of ancient culture or ancient tomb designated as a major site to be protected at the national or provincial level for its historical and cultural value;

"(2) Being a ringleader of a gang engaging in excavating and robbing sites of ancient culture or ancient tombs;

"(3) Repeatedly excavating and robbing sites of ancient culture or ancient tombs; or

"(4) Excavating and robbing a site of ancient culture or ancient tombs, and robbing valuable cultural relics therein or causing serious damage to such relics."

四十五、将刑法第三百二十八条第一款修改为：“盗掘具有历史、艺术、科学价值的古文化遗址、古墓葬的，处三年以上十年以下有期徒刑，并处罚金；情节较轻的，处三年以下有期徒刑、拘役或者管制，并处罚金；有下列情形之一的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产：

“（一）盗掘确定为全国重点文物保护单位和省级文物保护单位的古文化遗址、古墓葬的；

“（二）盗掘古文化遗址、古墓葬集团的首要分子；

“（三）多次盗掘古文化遗址、古墓葬的；

“（四）盗掘古文化遗址、古墓葬，并盗窃珍贵文物或者造成珍贵文物严重破坏的。”

46. Article 338 of the Criminal Law is amended to read: "Whoever, in violation of State provisions, discharges, dumps or disposes of radioactive waste, waste containing pathogen of infectious diseases, toxic substances or other hazardous waste, thus causing serious environmental pollution, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and be concurrently or separately fined. If the consequences are especially serious, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently fined."

四十六、将刑法第三百三十八条修改为：“违反国家规定，排放、倾倒或者处置有放射性的废物、含传染病病原体的废物、有毒物质或者其他有害物质，严重污染环境的，处三年以下有期徒刑或者拘役，并处或者单处罚金；后果特别严重的，处三年以上七年以下有期徒刑，并处罚金。”

47. Paragraph 1 of Article 343 of the Criminal Law is amended to read: "Whoever, in violation of the Mineral Resources Law, mines without a mining license, enters, without authorization, a mining area under State planning, or a mining area of great value to national economy or another person's mining area for mining, or mines specified minerals subject to protective mining prescribed by the State without authorization, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and be concurrently or separately fined. If the circumstances are especially serious,

he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently fined."

四十七、将刑法第三百四十三条第一款修改为：“违反矿产资源法的规定，未取得采矿许可证擅自采矿，擅自进入国家规划矿区、对国民经济具有重要价值的矿区和他人矿区范围采矿，或者擅自开采国家规定实行保护性开采的特定矿种，情节严重的，处三年以下有期徒刑、拘役或者管制，并处或者单处罚金；情节特别严重的，处三年以上七年以下有期徒刑，并处罚金。”

48. Paragraph 3 of Article 358 of the Criminal Law is amended to read: "Whoever recruits or transports personnel for a person organizing prostitution, or otherwise assists in arranging for another person to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years and be concurrently fined. If the circumstances are of a grave nature, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and be concurrently fined."

四十八、将刑法第三百五十八条第三款修改为：“为组织卖淫的人招募、运送人员或者有其他协助组织他人卖淫行为的，处五年以下有期徒刑，并处罚金；情节严重的，处五年以上十年以下有期徒刑，并处罚金。”

49. One article is added after Article 408 of the Criminal Law as Article 408(a): "A State functionary with food safety supervision and management duties shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention if he/she abuses powers or neglects duties, thus causing a major food safety accident or resulting in other serious consequences. If especially serious consequences are caused, he/she shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years.

"Any person who commits the foregoing crime and engages in malpractice for personal gains shall be subject to a heavier punishment."

四十九、在刑法第四百零八条后增加一条，作为第四百零八条之一：“负有食品安全监督管理职责的国家机关工作人员，滥用职权或者玩忽职守，导致发生重大食品安全事故或者造成其他严重后果的，处五年以下有期徒刑或者拘役；造成特别严重后果的，处五年以上十年以下有期徒刑。

“徇私舞弊犯前款罪的，从重处罚。”

50. This Amendment shall come into force from May 1, 2011.

五十、本修正案自 2011 年 5 月 1 日起施行。