

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

时间: 2009-03-09 作者: 新闻来源:

From the web of lawinfochina 2009-2-28

I. Paragraph 3 of Article 151 of the Criminal Law is amended as: "Whoever smuggles rare plants or their products or any other goods or articles that are prohibited by the state from being imported or exported shall be sentenced to fixed-term imprisonment not more than five years or criminal detention, and/or be fined; or if the circumstances are serious, shall be sentenced to fixed-term imprisonment not less than five years and be fined."

II. Paragraph 1 of Article 180 of the Criminal Law is amended as:

"Whoever has inside information on securities or futures transactions or illegally obtains inside information on securities or futures transactions, and prior to the release of the information that involves the issuance of securities or securities or futures transactions or other information that has a material effect on the transaction price of securities or futures, buys or sells the said securities, engages in the futures transaction related to the inside information, leaks the said information, or explicitly or implicitly advises others to engage in the aforesaid transaction activities shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than five years or criminal detention, and/or be fined 1 to 5 times the illegal gains; or if the circumstances are extremely serious, shall be sentenced to fixed-term imprisonment not less than five years but not more than ten years, and be fined 1 to 5 times the illegal gains."

A paragraph is added as paragraph 4:

"Where any practitioner of a stock exchange, a futures exchange, a securities company, a futures brokerage company, a fund management company, a commercial bank, an insurance company or any other financial institution or any staff member of the relevant regulatory department or industry association uses any undisclosed information obtained by taking advantage of his position other than the inside formation to engage in the securities or futures transaction activities related to the said information or explicitly or implicitly advise others to engage in the relevant transaction activities in violation of the relevant provisions, and the circumstances are serious, he shall be punished under paragraph 1."

III. Article 201 of the Criminal Law is amended as:

"Where any taxpayer files false tax returns by cheating or concealment or fails to file tax returns, and the amount of evaded taxes is relatively large and accounts for more than 10 percent of payable taxes, he shall be sentenced to fixed-term imprisonment not more than three years or criminal detention, and be fined; or if the amount is huge and accounts for more than 30 percent of payable taxes, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined.

Where any withholding agent fails to pay or fails to pay in full the withheld or collected taxes by cheating or concealment, and the amount is relatively large, he shall be punished under the preceding paragraph.

Where either of the acts described in the preceding two paragraphs is committed many times without punishment, the amount shall be calculated on an accumulated basis.

Where any taxnaver who committed the act as described in paragraph 1 has made un

...where any taxpayer who committed the act as described in paragraph 1 has made up the payable taxes and paid the late fine after the tax authority sent down the notice of tax recovery according to law, and has been administratively punished, he shall not be subject to criminal liability, except one who has been criminally punished in five years for evading tax payment or has been, twice or more, administratively punished by the tax authorities.”

IV. An Article is inserted after Article 224 of the Criminal Law as Article 224 (A):

“Whoever organizes or leads the pyramid selling activities to cheat the participants of property and disturb the economic and social order, in which, in the name of marketing commodities, providing services or any other business operation, the participants are required to obtain the qualification for participation by paying fees, purchasing commodities or services or any other means, the participants are classified into different levels according to a certain order, the calculation of remunerations or kickbacks to participants is directly or indirectly dependent on the number of persons recruited, and the participants are induced to continue or coerced into continuing recruiting others to participate, shall be sentenced to fixed-term imprisonment not more than five years or criminal detention, and be fined; or if the circumstances are serious, shall be sentenced to fixed-term imprisonment not less than five years, and be fined.”

V. Subparagraph (3) of Article 225 of the Criminal Law is amended as:

“illegally operating the business of securities, futures or insurance, or illegally engaging in fund payment and settlement business, without the approval of the relevant competent departments of the state;”

VI. Article 239 of the Criminal Law is amended as:

“Whoever abducts another person for extortion or abducts another person as a hostage shall be sentenced to fixed-term imprisonment not less than ten years or life imprisonment, and be fined or be sentenced to confiscation of property; or if the circumstances are less serious, shall be sentenced to fixed-term imprisonment not less than five years but not more than ten years, and be fined.

Whoever commits the crime as described in the preceding paragraph and causes the death of the abducted person or kills the abducted person shall be sentenced to death and confiscation of property.

Whoever steals an infant for extortion shall be punished under the preceding two paragraphs.”

VII. An Article is inserted after Article 253 of the Criminal Law as Article 253 (A):

“Where any staff member of a state organ or an entity in such a field as finance, telecommunications, transportation, education or medical treatment, in violation of the state provisions, sells or illegally provides personal information on citizens, which is obtained during the organ’s or entity’s performance of duties or provision of services, to others shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years or criminal detention, and/or be fined.

Whoever illegally obtains the aforesaid information by stealing or any other means shall, if the circumstances are serious, be punished under the preceding paragraph.

Where any entity commits either of the crimes as described in the preceding two paragraphs, it shall be fined, and the direct liable person in charge and other directly liable persons shall be punished under the applicable paragraph.”

VIII. An Article is inserted after Article 262 (A) of the Criminal Law as Article 262 (B):

“Whoever organizes minors to commit theft, fraud, snatch, extortion or any other activity in violation of the public security administration shall be sentenced to fixed-term imprisonment not more than three years or criminal detention, and be fined; or if the circumstances are serious, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined.”

IX. Two paragraphs are inserted into Article 285 of the Criminal Law as paragraphs 2 and 3:

“Whoever, in violation of the state provisions, intrudes into a computer information system other than that prescribed in the preceding paragraph or uses other technical means to obtain the data stored, processed or transmitted in the said computer information system or exercise illegal control over the said computer information system shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years or criminal detention, and/or be fined; or if the circumstances are extremely serious, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined.

Whoever provides special programs or tools specially used for intruding into or illegally controlling computer information systems, or whoever knows that any other person is committing the criminal act of intruding into or illegally controlling a computer information system and still provides programs or tools for such a person shall, if the circumstances are serious, be punished under the preceding paragraph.”

X. A paragraph is inserted into Article 312 of the Criminal Law as paragraph 2:

“Where any entity commits the crime as described in the preceding paragraph, it shall be fined, and the direct liable person in charge and other directly liable persons shall be punished under the preceding paragraph.”

XI. Paragraph 1 of Article 337 of the Criminal Law is amended as:

“Whoever, in violation of the relevant state provisions on animal and plant epidemic prevention and quarantine, causes a serious animal or plant epidemic or the risk of a serious animal or plant epidemic shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years or criminal detention, and/or be fined.”

XII. Paragraph 2 of Article 375 of the Criminal Law is amended as:

“Whoever illegally produces, buys, or sells uniforms of the armed forces shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than

three years, criminal detention or public surveillance, and/or be fined.”

A paragraph is added as paragraph 3:

“Whoever forges, steals, buys, sells, or illegally provides or uses license plates of vehicles or other special signs of the armed forces shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years, criminal detention or public surveillance, and/or be fined; or if the circumstances are extremely serious, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined.”

The former paragraph 3 is changed into paragraph 4 and is amended as:

“Where any entity commits the crime in paragraph 2 or 3, it shall be fined, and the direct liable person in charge and other directly liable persons shall be punished under the applicable paragraph.”

XIII. An Article is inserted after Article 388 of the Criminal Law as Article 388 (A):

“Where any close relative of a state functionary or any other person who has a close relationship with the said state functionary seeks any improper benefit for a requester for such a benefit through the official act of the said state functionary or through the official act of any other state functionary by using the advantages generated from the authority or position of the said state functionary, and asks or accepts property from the requester for such a benefit, and the amount is relatively large or there is any other relatively serious circumstance, he shall be sentenced to fixed-term imprisonment not more than three years or criminal detention, and be fined; if the amount is huge or there is any other serious circumstance, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined; or if the amount is extremely huge or there is any other extremely serious circumstance, shall be sentenced to fixed-term imprisonment not less than seven years, and be fined or be sentenced to confiscation of property.

Where any state functionary who has left his position, any close relative of him or any other person who has a close relationship with him commits the act as prescribed in the preceding paragraph by using the advantages generated from the former authority or position of the said state functionary, he shall be convicted and punished under the preceding paragraph.”

XIV. Paragraph 1 of Article 395 of the Criminal Law is amended as:

“Where the property or expenditure of any state functionary obviously exceeds his legitimate income, and the difference is huge, he shall be ordered to explain the sources. If he fails to do so, the difference shall be determined as illegal income, and he shall be sentenced to fixed-term imprisonment not more than five years or criminal detention; or if the difference is extremely huge, shall be sentenced to fixed-term imprisonment not less than five years but not more than ten years. The difference of the property shall be recovered.”

XV. This Amendment shall come into force on the date of promulgation.