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I. Amendment XII to the Criminal Law

On December 29, 2023, the Seventh Session of the Standing Committee of the Fourteenth National People's Congress passed the "Amendment XII to the Criminal Law of the People's Republic of China" (hereinafter referred to as "Amendment XII"), which has come into effect since March 1, 2024. For a detailed interpretation of this amendment, please refer to the following text.

● Enhancement of Regulations on Corruption among Private Enterprise Personnel

Prior to the implementation of Amendment XII, Articles 165, 166, and 169 of the Criminal Law already stipulated crimes such as (i) illegal operation of similar businesses by personnel of state-owned companies, (ii) profiteering for relatives and friends, and (iii) selling state-owned assets illegally. The main feature of Amendment XII is the addition of a second paragraph to each of these three articles, expanding the scope of punishment to include personnel of private enterprises. This highlights the principle of "equal protection for state-owned and private enterprises". The amendment specifies three types of criminal behavior commonly observed within private enterprises: (i) illegal operation of similar businesses, (ii) profiteering for relatives and friends, and (iii) insider trading and selling of assets at low prices. Taking into consideration practical circumstances, Amendment XII focuses on aligning with relevant laws, incorporating changes in corporate law, and refining the definition of offenders of the crime of illegal operation of similar businesses by expanding the scope of perpetrators from "directors and managers" to "directors, supervisors, and senior management personnel".

● Enhancement of Regulations on Bribery and Graft Crimes

This amendment aims to further clarify and increase criminal liability for certain severe cases of bribery, as well as to strengthen the legislation in this regard. In Article 390 of Amendment XII, it is specified that acts of

bribery identified by the Party Central Committee for key investigation shall be subject to heavier penalties under the law. Specifically, there are seven circumstances outlined for aggravated punishment, including: repeated bribery or bribery of multiple individuals; bribery of state officials; bribery in key national projects or major initiatives; bribery for the purpose of seeking promotion, rank adjustment, or appointment; bribery of supervisory, law enforcement, or judicial personnel; bribery in areas such as ecological environment, finance, safety production, food and drug safety, disaster prevention and relief, social security, education, and healthcare, involving the commission of illegal activities; and the use of illegal gains for bribery.

Article 391 adjusts and increases the penalties for the crime of bribery by entities as stipulated in Article 393 of the Criminal Law. The draft adjusts the penalties for bribery by entities from the original maximum sentence of up to five years of imprisonment to two categories of penalties: "up to three years of imprisonment or detention, and a fine" and "imprisonment of more than three years but less than ten years, and a fine."

- **Conclusion**

The main focus of Amendment XII is to intensify the punishment for bribery crimes and to introduce provisions aimed at addressing corruption among personnel within private enterprises. It purports to strengthen the protection of property rights and the rights of entrepreneurs in private enterprises, with an emphasis on equal protection for these enterprises. This amendment builds upon the amendments made to bribery crimes in the Criminal Law passed in 2015 (Amendment IX), representing another significant revision in this area. The amendment maintains the principle of investigating both bribery and graft together and targets severe instances of bribery with "heavier penalties," thereby enhancing criminal accountability.

II. Interim Regulations on Carbon Emission Trading Management

To establish a basic framework for the management of carbon emission trading and to promote low-carbon transition strategies, the Premier of the State Council of China recently signed a State Council Decree to promulgate the "Interim Regulations on Carbon Emission Trading Management" (hereinafter referred to as the "Regulations"), which will come into effect on May 1, 2024. This article will interpret and summarize the key contents of these regulations.

● Severe Punitive Measures for Illegal and Irregular Behaviour

To prevent and deter actions that disrupt the carbon market order, the Regulations have established strict penalties. Key emitting enterprises found engaging in fraudulent activities or significant deficiencies in greenhouse gas accounting and reporting, failure to pay carbon emission quotas as required, or obstruction or refusal of lawful supervision and inspection by government departments, may face heavy fines, production suspension for rectification, or even criminal liability. For instance, in cases where enterprises use false data or engage in other fraudulent activities during the preparation of annual emission reports, the ecological environment authorities may confiscate illegal gains and impose fines ranging from five to ten times the amount of illegal gains obtained. If there are no illegal gains or the illegal gains are less than 500,000 RMB, fines ranging from 500,000 to 2,000,000 RMB may be imposed. Additionally, public officials engaging in favouritism or corruption during supervision and certain specific institutions (such as regulatory agencies, registration agencies, trading institutions, etc.) that violate regulations by participating in carbon emission trading without authorization will also be disciplined according to the law.

● Higher Requirements for Data Quality Management of Emission-Control Enterprises

The foundation for the healthy operation of the carbon emission trading market lies in genuine and reliable data as well as scientifically accurate

carbon accounting. The Regulations pose challenges for emission-control enterprises in terms of carbon accounting, imposing higher requirements on data quality. This compels enterprises to strengthen their focus on data accounting, report preparation, and ledger management, strictly adhering to the technical specifications set by relevant national departments to carry out thorough carbon auditing and carbon accounting.

- **Clarification of Duties and Responsibilities of Carbon Market Entities**

The Regulations clearly define the responsibilities of three types of entities involved in different aspects such as data submission, verification, and quota trading: national and local government authorities, key emitting units, and third-party technical service organizations. Key emitting units are required to conduct carbon emission data monitoring and reporting, follow prescribed trading methods to sell or purchase quotas, and fully settle carbon emission quotas within specified deadlines. Third-party technical service organizations may assist key emitting enterprises in preparing annual emission reports or conducting technical reviews of reports (but may not engage in both activities simultaneously within the same area), and bear corresponding responsibilities for the reports or review opinions they issue. Government departments are responsible for data submission and market trading supervision to prevent any fraudulent behaviour.

For emission-control enterprises, their ability to commission technical service organizations for emission report preparation partially compensates for their lack of professional expertise in carbon information submission. However, despite of the possible aid that may be offered by technical service organizations, the pressure of fulfilling responsibilities ultimately falls on emission-control enterprises.

- **Conclusion**

As the first regulatory document for China's carbon market, the "Regulations" elevate the legislative level of the previous "Interim Measures for Carbon Emission Trading Management (Trial)" from a "departmental regulation" to an "administrative regulation." This provides clear legal basis for the nationwide operation and management of the carbon market, aiding in preventing market risks and establishing a standardized and transparent carbon emission trading system. It promotes the smooth and orderly operation as well as the high-quality development of the national carbon market.

III. Announcement of the Customs Tariff Commission of the State Council on Releasing the Import and Export Tariff Schedule of the People's Republic of China (2024)

The Announcement of the Customs Tariff Commission of the State Council on Releasing the Import and Export Tariff Schedule of the People's Republic of China (2024) (hereinafter referred to as "Announcement") has come into effect on Jan 1, 2024. In this publication, we will introduce some key contents of the Announcement.

- **The changes in China's import and export tax regulations are mainly in the following areas:**

1. Zero tariffs will be applied to some medicines and raw materials for anti-cancer drugs and drugs for rare diseases, etc., and import tariffs for food products formulated for special medical purposes, etc. will be lowered.
2. Reduced import tariffs on lithium chloride, low-arsenic fluorite, gas diffusion layer for fuel cells and other domestic shortage of resources, key equipment, and parts.
3. Reduced import tariffs on sweet corn, coriander, and burdock seeds.
4. Reduce export tariffs on high-purity aluminium.

- **The impact of the Announcement on import and export enterprises is mainly as follows:**

1. Costs and profits: If the tariffs of raw materials or parts imported by

enterprises are reduced, then the cost of enterprises will be reduced accordingly, and vice versa. At the same time, the adjustment of the tax rate will affect the profit of the enterprise, especially for some export-oriented enterprises, the reduction of export tariffs or the increase of import tariffs may bring more profits or reduce the profit of the enterprise.

2. Purchasing and Sales: Enterprises need to pay attention to the specifics of the changes in tariff rules and adjust their purchasing and sales strategies in a timely manner according to their own business conditions to maximize the use of tariff policies, reduce costs and improve profitability.

3. Trade Relations: The adjustment of tariffs may cause tariff retaliation or trade restrictive measures by trading partners, thus affecting the export business of enterprises. Enterprises need to pay close attention to the international trade situation and policy changes and strengthen communication and coordination with trading partners to safeguard their own interests.

4. Market Competition: Some enterprises may take advantage of the tariff policy to improve the competitiveness of their products, such as, by seeking to apply reduced tariffs to reduce costs, to gain a greater competitive advantage in the market. At the same time, other enterprises may take countermeasures, such as improving product quality and lowering prices, to cope with changes in market competition.

- **Conclusion**

The Announcement has a multifaceted impact on import and export enterprises, and enterprises need to pay close attention to the details of the changes and make timely adjustments to the relevant strategies according to their own operating conditions.

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