



# INTERNATIONAL ANTI-CORRUPTION CONFERENCE (IACC)

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The Papers

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## A. Necessity of the Modernization of Anti-Corruption and Antibribery Work

The modernisation of the anti-corruption and anti-bribery work is necessary in the new reform and open situation. Since the third Plenary Session of the Central Committee of C.P.C., great progress has been made in China's socialist democracy and legal system and the procuratorial system for anti-corruption and anti-bribery has been being perfected. Nevertheless there are many inadequacies in nowadays China's anti-corruption and anti-bribery working system, set-ups, regulations functions and also the equipments and measures. The continuously developing situation makes it necessary to speed up the building of the modernisation of the anti-corruption and anti-bribery work.

The modernisation of anti-corruption and anti-bribery work is necessary in the economic construction, the defending and strengthening of the flesh and blood connection between the government and the people. The people strongly hate the corrupt and bribery crimes. Grafters and bribery offenders avail themselves, by every possible means, of loopholing the reform and opening and development of commodity economy, embezzle the national property unscrupulously, disrupt socialist economy, and grievously corrupt the government's image among the people. Thus, during the period which centralising the economic construction, speeding up of the modernisation of anti-corruption and anti-bribery work makes it more effective to crack down on and contain serious corruption and bribery crimes.

The modernisation of anti-corruption and anti-bribery work is of the real necessity to bring the struggle against corruption and bribery into profoundness. China's government has always been attaching importance to the

suppression of corruption and bribery. Never has the struggle against corruption and bribery stopped both during the revolutionary warring times, and since the foundation of the new China. Especially in the over ten years from the reform and opening, China's government has stuck to the principle of "work with two hands" initiated by Deng Xiaoping. With the development of the reform and opening and commodity economy, corruption and bribery crimes have their new peculiarities as the following. The first is that their range is getting wider and wider. The crimes happen in almost all the realms, all the professions and all the administrative levels of the society. Judging from the corruption and bribery cases prosecuted in the past few years, the offenders are of the economic realm, of the political realm, and also of cultural realm; they are of different enterprises like factories, mines and farms; they are of different departments like commerce, finance, food, forestry, communications and transportation, water-conservancy and construction; they are of cultural, educational, hygiene, research institutions and organs of the Party and the government, and even judicial offices; they are of ordinary officials, staff members of collective economic organs, other personnel controlling public property and important leaders at country rank, department rank, and even province rank. The second is that the number of the offenders is increasing. The third is that the money amount of bribery is becoming greater and greater. The fourth is that the criminal means have been diversifying and intellectualising. Many grafters use more new means and tricks besides continuing to use the "habitual tricks" more ingeniously, such as, altering bills, falsifying accounts, and making a fraudulent application and claiming.

Some contract enterprises, naming it autonomously managing. In fact, they are embezzling public property; some take forcible possession of public property by setting up such items as drawing business fee, prize, temporary salaries (in fact vacant salaries). Some embezzle the interests by means of trans-loaning and depositing public money in their own accounts; hold back running money in their own accounts; some raise prices illegally, conceal running accounts, hold back running money or other funds by colluding with others. They practice bribery and accept bribe unscrupulously under the cover of "promoting economy", under the signboard of "Legality", by setting up different items as service fees, monetary rewards, business fees, prized, rebates and presents. In the recent years, many grafters and bribery offenders have committed crimes with modern advanced tools and by means of high technology, leaving no signs. Facing the above new peculiarities of corruption and bribery, the procuratorial organs anti-corruption and anti-bribery work must be modernised as soon as possible. Otherwise, it is difficult for them to fit in with the actual needs of carrying on the anti-corruption struggle.

## **B. Main Contents of the Modernization of Anti-Corruption and Antibribery Work**

The modernisation of the anticorruption and anti-bribery work is that the anticorruption work must have a scientific working system, high-effective organs, high quality professional procuratorial staff and advanced investigatory means and technical equipments. Its main contents include the following:

1. Scientific System: A working system of anti-corruption and anti-bribery must be set up that coincides with China's situations, fits the socialist system and fits in with the development of the reform and opening and the socialist economic construction. The system should be a high-effective working system, supervised by the People's Congress and its Standing Committee. It should be a system inside which the procuratorate at a certain level directs the anti-corruption and anti-bribery organ at the same level and the higher-level anti-corruption and anti-bribery organs direct the lower level ones. It should be a system with close co-ordination, internal definite duties, reasonable division, and scientific and unitary working procedure.
2. Standardised Organs: The organs of the anti-corruption and anti-bribery work must be standardised unitedly in their names ranks. Internal set-ups, personal numbers, duties and powers. The principle is that they must fit in with the needs of reform and opening and the socialist economic construction and fit in with the needs of crack-downing and containing corruption and bribery crimes.
3. Professional Procuratorial Staff. High-quality political and high-professional ability staff must be set up. The staff should consist of excellent members with good political and professional quality, and with high law consciousness and modern professional skills.
4. Co-ordinated Investigation: A "one-continuous-line" system of accusation, primary investigation, placing a case on file, investigation and preliminary hearing must be set up on economic criminal cases of corruption and bribery. The division should be clear and concrete, making it a "fist" for the good of suppressing crimes.
5. Regularised Authorities: The duty, task scope of office powers, form of exercising authorities and post ensuring of anti-corruption and anti-bribery work must be regularised and followed clearly and in detail by means of laws, regulations, and rules.
6. Advanced Equipments: Criminals of corruption and bribery, different from other criminals, are mostly persons with higher education, politics and social levels. They have rather strong ability to counter investigation. Their tools and measures to commit offences are modernising and intellectualising. That is why the equipments for carrying on anti-corruption and anti-bribery work, including vehicles, communication, investigation, records storage and supervising and controlling installations, must be advanced and modernised.

### C. Primary Ideas for the Modernization of Anti-Corruption and Anti-Bribery Work

The general train of thought on the construction of the modernisation of anticorruption and anti-bribery work, I think, should be sticking to the functions and tasks with which the law vests the procuratorial organs; starting from the actual necessities of the struggle of anti-corruption and anti-bribery; following the principles of legality, having the whole situation in mind, keeping up entirety and linking up the society; embodying the exceeding consciousness, enabling the work with compatibility compounds, systems, science and advantage.

1. Setting up Authoritative Organs of Anti-Corruption and Anti-bribery. The current systems and organs of anti-corruption and anti-bribery are not perfect. They are not unified not only in names and ranks, but also in internal duty division and working procedure. The direction is sometimes not effective from the higher organs to the lower ones. There is serious local protection. When investigating a case meets with obstruction, the investigation is often difficult to be continued, making procurators have more and more worries. In consideration of the above, suggest three points should be settled in organ-setting: The first is that the names and ranks of the organs must be unified to form a co-operating net in the whole country. All the organs should be directed by the Supreme People's Procuratorate. Now a working bureau of anti-corruption and anti-bribery has been set up in almost each province and district, but not in each county (city). Some of the bureau's are at department level, some, vice-department level, and some, sanction level. The second is that working units of accusation, primary investigation, investigation (an investigation brigade can be set up) and preliminary hearing should be set up in the organ. Units for case filing, examining and co-operating investigations should set up in the organs of anti-corruption and anti-bribery above districts. The third is that the duties and the divisions are definite. There should be suitable relationships between each other. All the accusations against corruption, bribery and other economic crimes should be received, accepted, first investigated, and transferred by the units of accusation-reception in the organs of anti-corruption. The investigation to economic crimes must be done by the investigation brigades. When the case is broken through, it should be transferred to the section of preliminary hearing to have a first-trial, and then transferred to the criminal procuratorial units to approve arresting and suing the criminals. The organs of anti-corruption and anti-bribery not only receive the leadership of the procuratorates at the same levels, but also are directed in professional work by the higher organs of anti-corruption at different levels, procedures of handling a case, and the co-operative investigation between districts and provinces must be further defined by lawn(s). That will do good to the professionalisation of anti-corruption work and centralised direction, and co-operative investigation, making the organs against corruption all over the country a unified body which is highly professionalised, divided definitely, working in good order, directed effectively, fast reacting, close-connected, highly effective and of authoritativeness.
2. Setting up a Professionalised Investigation Staff. Based on the actual needs of the current struggle against corruption and bribery and the requirements of the modernisation of anti-corruption work, a investigation staff with special investigation skills must be set up. Its members should break away from the long-time formed examination consciousness and fast-finding consciousness. They should have strong investigatory consciousness and skills. They should not only be able to find facts, question, make view of scene and take evidence, but also learn to use different kinds of open, secret and high scientific and technical measures, and also be able to determine countermeasures and strategies, be good at making out different kinds of investigatory plans and schemes, seize investigation opportunities in stages and take different investigation measures effectively. Based on the requirements to build a modern investigation staff, its members should not only know the laws well, but also know accounting, psychology, sociology, politics economics and different relevant natural sciences. In a word, modern anti-corruption investigators should both have rich knowledge of laws, and have comprehensive scientific mind and strong professional investigatory skills.

To professionalise and betterise investigators, procuratorates at all levels above districts should train a group of regular investigators. Considering that there are few professionals at present, I suggest the Central Procurator Managing Institute chooses a group of investigators with practical experience to train. The time can be a bit long so that high-standard investigators are trained.

3. Make clear Special Offices and Ranks of Investigation. In some Eastern European countries, the procuratorates have important-case investigators, senior investigators and investigators at a number of ranks. In Japan, to investigate intelligent economic crimes is considered to need special skills. But at present the investigators in our procuratorial organs are only set ranks of procurators, assistant procurators and secretaries, which does not show professional division. I think, considering professionalisation of investigation, investigators against corruption should differ from procurators. They can be set ranks as (1) special-grade investigator (department level); (2) senior investigator (vice-department level); (3) first-grade investigator (county level); (4) second-grade investigator (vice-county level); (5) third-grade investigator (section level); (6) fourth-grade investigator (vice-section level); (7) fifth-grade investigator (section-member level). At the same time, I suggest reforming personal appointment and removal rules and professional title rating rules to encourage the investigators' enterprising spirit for them to strengthen their investigation ability.

4. Strengthen Investigation Consciousness of Anti-Corruption and Anti-Bribery. One is to strengthen time consciousness. That is, at the point of time, investigation should be made quickly. When a case is discovered, investigators should reach the scene very quickly, make examinations and check-ups in time, enlarge the clue as soon as possible and take evidences. Analyses and judgements on the case, formulation of investigation scheme, and disposition of investigators should be made very quickly.

The other is to strengthen tactical consciousness. That is, on tactics, investigation design should be made and plans should be made with care. Corruption, bribery and other economic crimes are called serious intelligent crimes" in criminal investigation science. To it, Japanese textbooks of criminal investigation advocate "planned investigation of internal situation". Especially lay stress on careful and cautious investigation tactics. Therefore, high-intelligent investigatory measures must be taken to handle intelligent crimes. Investigators should have clear and proper division to each case. They should make a plan before starting investigation, and determine the orientation, aims methods, steps, measures, countermeasures and time limit of investigation. The cadres who lead the investigation must keep a breast of the progress of the investigation, seize the opportunities and revise the plan and countermeasures according to the developments.

5. Build up a Set of Investigatory Measures and Equipment Keeping up with Modern Crimes. With the development of the market economy, busy economic association at home and abroad, and the continuous development of science and technology, corruption, bribery and other economic crimes have been modernised. Many criminals organise, direct and carry on their offences with modern communication equipments; some with computers, some destroy evidences by modern means, make false appearances, and set up offensive and defensive alliances when their cases are discovered; some divert their evidences, illicit money and bribes and even abscond with the money. Therefore, the work against corruption must be modernised against that "modernisation". In the past many years, procuratorates have mostly taken, in investigation, ordinary open measures, such as, investigation, questioning, checking accounts. The technology of science investigation and determination of evidences has been far backward, let alone such secret measures as follow tracks and espionage. The technical equipments of procuratorates investigation have, on the whole, stayed at the level of "one pen, one mouth and two legs" in the 1950's and 1960's, criminals often move about in special cars or by air. However, our investigators investigate, take evidences and pursue criminals by taking crowded buses or even on foot. In order to fit in with the needs of anti-corruption work in the new times, a full set of investigation measures and technical equipments keeping up with the criminal modernisation must be set up. On one hand, investigators must learn to use different kinds of open, secret, highly scientific and technical measures to ensure investigation effects. On the other hand, technical equipments for anticorruption investigation must be modernised. I suggest that the government appropriates funds to buy technical equipments for anti-corruption work, and places the fund into the financial budget and settles the problem year by year. At present, "two-leg" policy, can be taken -"the central government and local governments" policy, modernising and advancing the investigation equipments, vehicles, communication net, and office installations of anti-corruption and anti-bribery work.

#### **D. Further Perfecting Laws to Ensure the Realization of the Modernization of Anti-Corruption Work**

1. Perfect the Criminal Law. I think that the Criminal Law in force, the regulations, opinions and judicial explanations of the Standing Committee of the National People's Congress, the regulation on corruption, bribery and other economic crimes are relatively backward to the development of the current reform and opening situation. That is revealed at: (1) With the deep development of reform and opening, many new forms of economic entities have come out, and many new things and changes have come out in economic association. The current laws against corruption and bribery and other economic crimes have not caught up with the situation. That makes it difficult to judge guilty or innocence in the enforcement practice against corruption and bribery.
2. Some of the accounts in the current laws and judicial explanations to the factors about corruption and bribery and other economic crimes are not scientific and clear enough. Some are too principles than general. The regulations about "circumstances" are specially too ambiguous. That often causes different understandings in enforcement practice. (3). Of the regulations about the punishment on corruption and bribery and other economic crimes in the current laws and judicial explanations some are too lenient in extent for measurement punishment; some do not agree with the current situation. That causes confusions in enforcement, and the current laws and judicial explanations only lay stress on punishments of deprivation of freedom and life, but overlook economic punishments which are relevant to the peculiarities of economic crimes. That causes weak suppression of corruption and bribery and other economic crimes not taking due deterrent and warning effect. In consideration of the above, I suggest that the Criminal law should be revised as soon as possible, or a special law about suppression of corruption and bribery should be made to make up for the insufficiency of the current laws and to speed up the realisation of the modernisation of anti-corruption work.

3. Perfect law of Procedure. I think that the Code of Criminal Procedure in forced and other judicial explanations about contentious procedure do not stipulate clearly and specifically the jurisdiction about corruption and bribery and other economic criminal cases, coercive measures in investigation, other investigative measures that can be arranged and used, and the Cupertino and restraint of investigation and accusation. This often blocks clearing up a case fast, and sometimes misses the opportunity. I suggest perfecting contentious procedure laws in the following three respects:

The first is to fix clearly the jurisdiction scope of the People's Procuratorates at different levels of corruption and bribery and other economic crime cases. I suggest fixing about corruption and bribery cases that (1) cases which reach the case registering standard (based on the economic condition in China now, the standard should be altered from Y2000 to Y5000), should be handled by the people's procuratorates. This regulation will prevent other organs and enterprises from withholding a case when it is discovered, and also prevent other law enforcement agencies from blocking the case instead of transferring it to the procuratorate, and prevent them from punishing grafters or offenders in the Parity's discipline, administrative discipline, or by economic punishment instead of by criminal punishments. (2) cases below Y50,000 and cases committed by cadres below county rank should be handled by the procuratorates at basic level; cases from Y50000 to 100, 000 and cases committed by cadres at county rank should be handled by the procuratorates of districts; cases above Y100,000 and cases committed by cadres at department rank should be handled by the procuratorates of provinces; and cases committed by cadres at province rank and other national affected serious cases should be handled by the Supreme People's Procuratorate. Fixing in this way will make procuratorates at different levels have clear authorities and breaking cases fast.

**Relevant regulation should be made on other economic cases investigated by procuratorates.**

The second is to vest organs of anti-corruption work power of complete investigation. It should be clearly fixed that any investigation measures can be taken that do good to breaking cases and that the following powers of investigation should be added to organs of anti-corruption work.

1. Power of deciding detention. According to the laws in force, detaining grafters, bribery offenders, economic criminals or major suspects must be approved and done by the police organs, which is inconvenient and often misses opportunities. I suggest that detention should be decided and done by organs of anti-corruption work in procuratorial organs. The time may be prolonged by thirty days.
2. Power of performing arresting. According to the laws in force, arresting is performed by police organs. In fact the police does not know the case clearly and are limited. They often feel it difficult to do it. I suggest that arresting should be performed by organs of anti-corruption work.
3. Power of distraining and checking. At present, the anti-corruption organs investigation and checking accounts in financial institutions, must be approved by the unit, which blocks the investigation. I suggest distraining and checking should be done by anti-corruption organs. It must not be blocked by any units or organs.
4. Power of wanting. In the recent years, the number of grafters and bribery offenders and other economic criminals who abscond with the money after the commit offences is becoming larger. Some even escape out of the country. This leads to the heavy loss of the national and collective property. According to the Code of Criminal Procedure in force, procuratorial organs have no power to issue wanted circulars for the absconding defendants who commit economic crimes and should be arrested. When it is necessary, wanted circulars should be approved and issued by police organs. But the police does not know the case clearly, they often feel it difficult to decide. based on the requirements of judicial practice and the modernisation of anticorruption work, organs against corruption should be vested with the power of deciding and issuing wanted circulars.

The third is to fix clearly procedures of investigation, preliminary hearing, prosecution and non-prosecution on corruption, bribery and economic criminal cases. At present, procuratorial organs have made an internal restricted system on accepting and investigating cases. But it has not been determined by law, and the procedure is not clear and unified. In order to meet the needs of judicial practice and the modernisation or anti-corruption work, I suggest fixing clearly, as soon as possible, procedures of investigation, prosecution and non-prosecution by law. At the same time, preliminary hearing is added into the train of investigation, and co-operation and restricting should be carried out between the procedures of investigation, preliminary hearing and prosecution.

Make the Identity Guarantee Law for the Staff Against Corruption, bribery and other economic crimes are mostly post crimes. they are different from ordinary criminal crimes. The offenders are mostly staff members of the government, many of whom are leaders at different levels. They have peculiarities of strong power, wide connection, thick "coverings" and close relationship nets. To handle such cases needs a fearless spirit. But many years of judicial practice shows that because the procurators in organs against corruption are lack of identity guarantee and because some leaders have slight sense of law have no moral integrity, even associate with criminals, and often have angry, resentful and even retaliatory ideas against those 'not

work as told to' procurators, some of them are replaced or removed in different kinds of excuses, and some are relieved of their posts without rhyme or reason. Their family members are cold- received or given difficulties on work, employment, entering a higher school and medical care. This causes the procurators to have many worries and fearful feeling. It is obvious that this is opposite to the requirement of the modernisation of anti-corruption work. I suggest an identity guarantee law for the staff against corruption should be made as soon as possible to ensure the identity safely of the staff against corruption by law, and guarantee the realisation of the modernisation of anti-corruption and anti-bribery.

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