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# 中华人民共和国刑法修正案（七）

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

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主席令第十号

Presidential Decree No. 10

《中华人民共和国刑法修正案（七）》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七次会议于2009年2月28日通过，现予公布，自公布之日起施行。

The Amendment VII to the Criminal Law of the People's Republic of China, which was adopted at the 7th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on 28 February 2009, is hereby promulgated and shall come into effect on the date of promulgation.

中华人民共和国主席 胡锦涛

President Hu Jintao

二零零九年二月二十八日

28 February 2009

中华人民共和国刑法修正案（七）

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

（2009年2月28日第十一届全国人民代表大会常务委员会第七次会议通过）

(Adopted at the Seventh Meeting of the Standing Committee of the 11th National People's Congress on 28 February 2009)

一、将刑法第一百五十一条第三款修改为：“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。”

1. 3rd paragraph of Article 151 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 imprisonment of not more than five years or criminal detention and/or a fine; or if the circumstances are serious, be sentenced to imprisonment of not less than five years and a fine."

二、将刑法第一百八十条第一款修改为：“证券、期货交易内幕信息的知情人员或者非法获取证券、期货交易内幕信息的人员，在涉及证券的发行，证券、期货交易或者其他对证券、期货交易价格有重大影响的信息尚未公开前，买入或者卖出该证券，或者从事与该内幕信息有关的期货交易，或者泄露该信息，或者明示、暗示他人从事上述交易活动，情节严重的，处五年以下有期徒刑或者拘役，并处或者单处违法所得一倍以上五倍以下罚金；情节特别严重的，处五年以上十年以下有期徒刑，并处违法所得一倍以上五倍以下罚金。”

II、 Paragraph 1 of Article 180 of the Criminal Law is amended to as: "If, before any information regarding the issuance of securities or the trading in securities or futures and other information that may have a major effect on the trading price is announced, any person with knowledge of the inside information regarding securities or futures trading or any person who illegally obtains such information buys or sells the said securities, engages in the futures trading which the inside information concerns, or divulges the said information, or explicitly or implicitly advises any other person to engage in the aforesaid trading activities, and if the circumstances are serious, he shall be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and/or shall be imposed upon to a fine of not less than 1 time but not more than 5 times the illegal gains. If the circumstances are particularly serious, he shall be sentenced to not less than 5 years but not more than 10 years in prison, and shall be imposed upon to a fine of not less than 1 time but not more than 5 times the illegal gains."

增加一款作为第四款：“证券交易所、期货交易所、证券公司、期货经纪公司、基金管理公司、商业银行、保险公司等金融机构的从业人员以及有关监管部门或者行业协会的工作人员，利用因职务便利获取的内幕信息以外的其他未公开的信息，违反规定，从事与该信息相关的证券、期货交易活动，或者明示、暗示他人从事相关交易活动，情节严重的，依照第一款的规定处罚。”

A new paragraph shall be added as Paragraph 4, which shall read: "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 other than the insider information he has obtained by taking advantage of his position to engage in the securities or futures trading activities relating to such information or explicitly or implicitly instruct any other person to engage in the relevant trading activities in violation of the relevant provisions, and the circumstance is serious, he shall be punished in accordance with Paragraph 1."

三、将刑法第二百零一条修改为：“纳税人采取欺骗、隐瞒手段进行虚假纳税申报或者不申报，逃避缴纳税款数额较大并且占应纳税额百分之十以上的，处三年以下有期徒刑或者拘役，并处罚金；数额巨大并且占应纳税额百分之三十以上的，处三年以上七年以下有期徒刑，并处罚金。

III、 Article 201 of the Criminal Law is amended to read: "If a taxpayer files false tax returns or fails to file tax returns by fraud or concealment 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 of not more than three years or criminal detention, and be fined; if the amount is huge and accounts for more than 30 percent of payable taxes, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, and be fined.

“扣缴义务人采取前款所列手段，不缴或者少缴已扣、已收税款，数额较大的，依照前款的规定处罚。

"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.

“对多次实施前两款行为，未经处理的，按照累计数额计算。

"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.

“有第一款行为，经税务机关依法下达追缴通知后，补缴应纳税款，缴纳滞纳金，已受行政处罚的，不予追究刑事责任；但是，五年内因逃避缴纳税款受过刑事处罚或者被税务机关给予二次以上行政处罚的除外。”

"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."

四、在刑法第二百二十四条后增加一条，作为第二百二十四条之一：“组织、领导以推销商品、提供服务等经营活动为名，要求参加者以缴纳费用或者购买商品、服务等方式获得加入资格，并按照一定顺序组成层级，直接或者间接以发展人员的数量作为计酬或者返利依据，引诱、胁迫参加者继续发展他人参加，骗取财物，扰乱经济社会秩序的传销活动的，处五年以下有期徒刑或者拘役，并处罚金；情节严重的，处五年以上有期徒刑，并处罚金。”

IV、 There is an article added to the end of Article 224 of the Criminal Law as Article 224 (I): "If anyone organizes or leads any pyramid selling activity under the pretext of selling any goods, providing services or any other business activity and requests the participants to obtain the qualification for participation by means of paying fees or purchasing the goods, services or any other means, and on the basis of a certain order, directly or indirectly takes the number of persons recruited as the basis for calculating remuneration or returning profits, or induces or coerces the participants to continuously recruit others to participate in the pyramid selling activity, thus defrauding money or property and disturbing the economic and social order, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall be fined."

五、将刑法第二百二十五条第三项修改为：“未经国家有关主管部门批准非法经营证券、期货、保险业务的，或者非法从事资金支付结算业务的；”

V、 Item 3 of Article 225 of the Criminal Law is amended to read: "Illegally operating securities, futures and insurance businesses or illegally engaging in capital payment and settlement businesses without the approval of the relevant competent departments of the state;"

六、将刑法第二百三十九条修改为：“以勒索财物为目的绑架他人的，或者绑架他人作为人质的，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；情节较轻的，处五年以上十年以下有期徒刑，并处罚金。

VI、 Article 239 is amended as: "Whoever abducts another person for extortion or abducts another person as a hostage shall be sentenced to imprisonment of not less than 10 years or life imprisonment and a fine or forfeiture of property; or if the circumstances are minor, be sentenced to imprisonment of not less than 5 years but not more than 10 years and a fine.

“犯前款罪，致使被绑架人死亡或者杀害被绑架人的，处死刑，并处没收财产。

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.

“以勒索财物为目的偷盗婴幼儿的，依照前两款的规定处罚。”

Whoever steals a baby or an infant for extortion shall be punished in accordance with the provisions of the preceding two paragraphs. "

七、在刑法第二百五十三条后增加一条，作为第二百五十三条之一：“国家机关或者金融、电信、交通、教育、医疗等单位的工作人员，违反国家规定，将本单位在履行职责或者提供服务过程中获得的公民个人信息，出售或者非法提供给他人，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。

VII、 There is an article added to the end of 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, transport, education or medical treatment, in violation of the state provisions, sells or illegally provides to others the personal information of any citizen, which is obtained during the organ's or entity's performance of duties or provision of services, shall, if the circumstances are serious, be sentenced to fixed-term imprisonment not more than three years or criminal detention, and/or be fined.

“窃取或者以其他方法非法获取上述信息，情节严重的，依照前款的规定处罚。

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

“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，依照各该款的规定处罚。”

"Where an entity commits a crime as provided for in the preceding two paragraphs, a fine shall be imposed on it, and its directly responsible person and other directly liable persons shall be punished according to the respective provisions of the preceding two paragraphs."

八、在刑法第二百六十二条之一后增加一条，作为第二百六十二条之二：“组织未成年人进行盗窃、诈骗、抢夺、敲诈勒索等违反治安管理活动的，处三年以下有期徒刑或者拘役，并处罚金；情节严重的，处三年以上七年以下有期徒刑，并处罚金。”

VIII、 There is an article added to the end of Article 262 (I) as Article 262 (II): "Whoever organizes minors to commit theft, fraud, snatch, extortion or any other activity in violation of the public security administration shall be sentenced to imprisonment of not more than three years or criminal detention and a fine; or if the circumstances are serious, be sentenced to imprisonment of not less than three years but not more than seven years and a fine."

九、在刑法第二百八十五条中增加两款作为第二款、第三款：“违反国家规定，侵入前款规定以外的计算机信息系统或者采用其他技术手段，获取该计算机信息系统中存储、处理或者传输的数据，或者对该计算机信息系统实施非法控制，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。

IX、 Two paragraphs are added to Article 285 of the Criminal Law as Paragraphs 2 and 3 thereof which read: "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 computer information system or exercise illegal control over the computer information system, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of no more than 3 years or criminal detention, in combination of fines, or the sentence can be fines alone; if the circumstances are extremely serious, the sentence shall be fixed-term imprisonment from 3 to 7 years, in combination of fines.

“提供专门用于侵入、非法控制计算机信息系统的程序、工具，或者明知他人实施侵入、非法控制计算机信息系统的违法犯罪行为而为其提供程序、工具，情节严重的，依照前款的规定处罚。”

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. "

十、在刑法第三百一十二条中增加一款作为第二款：“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。”

X、 One paragraph is added to Article 312 of the Criminal Law as Paragraph 2 thereof: "When entities commit the crime in the preceding Paragraph, the entities shall be fined, and the persons who are directly in charge and the other persons who are directly liable for the offences shall be sentenced according to the preceding Paragraph."

十一、将刑法第三百三十七条第一款修改为：“违反有关动植物防疫、检疫的国家规定，引起重大动植物疫情的，或者有引起重大动植物疫情危险，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。”

11. 1st paragraph of Article 337 is amended as: "Whoever, in violation of the relevant provisions of the State 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."

十二、将刑法第三百七十五条第二款修改为：“非法生产、买卖武装部队制式服装，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。”

12. 2nd paragraph of Article 375 is amended as: "Whoever illegally manufactures, 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."

增加一款作为第三款：“伪造、盗窃、买卖或者非法提供、使用武装部队车辆号牌等专用标志，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。”

One 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 especially serious, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined."

原第三款作为第四款，修改为：“单位犯第二款、第三款罪的，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，依照各该款的规定处罚。”

The original Paragraph 3 shall be changed into Paragraph 4 and 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."

十三、在刑法第三百八十八条后增加一条作为第三百八十八条之一：“国家工作人员的近亲属或者其他与该国家工作人员关系密切的人，通过该国家工作人员职务上的行为，或者利用该国家工作人员职权或者地位形成的便利条件，通过其他国家工作人员职务上的行为，为请托人谋取不正当利益，索取请托人财物或者收受请托人财物，数额较大或者有其他较重情节的，处三年以下有期徒刑或者拘役，并处罚金；数额巨大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；数额特别巨大或者有其他特别严重情节的，处七年以上有期徒刑，并处罚金或者没收财产。

XIII、 There is an article added to the end of Article 388 of the Criminal Law as Article 388 (I): "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 through the performance of any duty of the said state functionary, or through the performance of any duty of any other state functionary by taking advantage of the authority or position of the said state functionary, and asks or accepts property from the requester for such a benefit, if the amount involved is relatively large or if there are other relatively serious circumstances, he shall be sentenced to fixed-term imprisonment or education detention of not more than three years, and shall be fined; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, and shall be fined; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than seven years, and shall be fined or be sentenced to confiscation of property."

“离职的国家工作人员或者其近亲属以及其他与其关系密切的人，利用该离职的国家工作人员原职权或者地位形成的便利条件实施前款行为的，依照前款的规定定罪处罚。”

"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 taking advantage of the former authority or position of the said state functionary, he shall be convicted and punished under the preceding paragraph."

十四、将刑法第三百九十五条第一款修改为：“国家工作人员的财产、支出明显超过合法收入，差额巨大的，可以责令该国家工作人员说明来源，不能说明来源的，差额部分以非法所得论，处五年以下有期徒刑或者拘役；差额特别巨大的，处五年以上十年以下有期徒刑。财产的差额部分予以追缴。”

14. 1st paragraph of Article 395 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. "

十五、本修正案自公布之日起施行。

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