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Research on the Formulation of China's "Anti-Cross-Border Corruption Law" from a Comparative Law Perspective

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Abstract. This paper systematically examines the formulation path for China's Anti-Cross-Border Corruption Law from a comparative law perspective. It analyzes the core provisions and dual enforcement mechanisms of the US Foreign Corrupt Practices Act (FCPA), the commercial organization "failure to prevent bribery" liability model under the UK Bribery Act 2010, and the five core mechanisms (prevention, criminalization/law enforcement, international cooperation, asset recovery, monitoring) established by the UN Convention against Corruption (UNCAC), distilling commonalities and national characteristics in international cross-border corruption governance. The research identifies core dilemmas in China's current foreign-related anti-corruption legal system, including the absence of specialized legislation, fragmented and inadequate preventive measures, and insufficient international applicability of rules, necessitating urgent enactment of a dedicated law. Simultaneously, by integrating international conventions with Chinese wisdom, it will demonstrate China's responsible major country image. Actively sharing legislative experiences (e.g., "prevention priority") and participating in international rule negotiations will promote building a fairer, more inclusive new global anti-corruption order, significantly enhancing China's discourse power in international rule of law

Keywords: Anti-Cross-Border Corruption Law, Comparative Law, United Nations Convention against Corruption, Legislative Recommendations

1. Introduction

The emergence and development of anti-cross-border corruption legal systems have a unique historical context. The phenomenon of multinational enterprises bribing officials in host countries during their overseas expansion is an objective yet highly controversial reality. Between 1975 and 1976, the United States was successively exposed to scandals involving its domestic enterprises bribing foreign officials. For example, in the Lockheed bribery scandal, Lockheed paid $22 million to officials in West Germany, the Netherlands, and other countries to secure government contracts for military aircraft procurement. According to investigations by the US Securities and Exchange Commission (SEC) at the time, over 400 US companies engaged in illegal or questionable bribery overseas, involving more than $300 million. The exposure of these scandals led to the resignation or even suicide of corporate executives. Against this backdrop, the United States enacted the Foreign

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Corrupt Practices Act (FCPA) in 1977, which in principle prohibits US enterprises from paying anything of value to foreign officials [1,2].

As the world's first law targeting cross-border corruption, the FCPA initially only bound US enterprises. Consequently, while reducing cross-border corrupt behavior, it also placed US companies at a competitive disadvantage in overseas markets. To address this issue, when amending the FCPA in 1988, the US required the President to take action to encourage other countries to adopt similar laws. This led to the US proposing recommendations to the Organisation for Economic Co-operation and Development (OECD) in 1989 to address the issue of cross-border bribery, ultimately resulting in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter referred to as the Anti-Bribery Convention) [3]. Currently, the Anti-Bribery Convention has 46 State Parties. Signatory states are obligated to hold companies bribing foreign government officials legally accountable and to cooperate with law enforcement agencies of other countries in jointly combating cross-border corruption.

Influenced by international treaties such as the FCPA and the Anti-Bribery Convention, other countries have successively enacted similar anti-cross-border corruption legislation. Among these, the most significant is the UK Bribery Act 2010 [4, 5]. These laws have played a positive role in reducing commercial bribery and establishing a sound global market order.

Since the 18th National Congress of the Communist Party of China (CPC), China has continuously promoted international anti-corruption cooperation, achieving remarkable and widely recognized results that have won broad international acclaim. From a practical standpoint, the current [situation of cross-border corruption (data, cases)], yet China's relevant systems for combating cross-border corruption are imperfect, lacking a specialized law to regulate cross-border corrupt behavior. Therefore, formulating an anti-cross-border corruption law is already urgent. In 2024, China adopted the CPC Central Committee Decision on Further Comprehensively Deepening Reform and Advancing Chinese Modernization, which explicitly proposed within "Improving the Party and State Supervision System" to "advance national anti-corruption legislation, amend the Supervision Law, and introduce an Anti-Cross-Border Corruption Law." This reflects China's high importance attached to cross-border corruption governance and underscores the significance and urgency of formulating foreign-related anti-corruption laws.

Unlike domestic anti-corruption legislation that constrains activities within one country, the characteristic of anti-cross-border corruption legislation lies in its regulation of bribery behavior targeting foreign individuals and organizations, which inevitably affects the interests of both the home country and the host investment country. Therefore, the legislative process for an anti-cross-border corruption law must coordinate domestic rule of law with foreign-related rule of law, carefully define the law's jurisdictional scope and application scenarios, and enhance the foreign-related law enforcement capabilities of enforcement agencies. In light of this, this paper researches the formulation issues of China's anti-cross-border corruption law from a comparative law perspective, providing legislative recommendations and possible directions for China's anti-cross-border corruption efforts.

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2. General content of cross-border corruption laws in major countries and regions

2.1. US FCPA

2.1.1. Two sources of liability under the US FCPA

The US Foreign Corrupt Practices Act (FCPA) primarily regulates cross-border corrupt behavior through two core provisions. The Anti-bribery Provisions directly prohibit bribing foreign government officials to obtain or retain business, constituting prohibitive norms. The Accounting Provisions mainly apply to US-listed companies (issuers), requiring them to maintain books and records that accurately and fairly reflect transactions and to establish and maintain an effective system of internal accounting controls, while also prohibiting the deliberate falsification of records or circumvention of internal controls, combining obligatory and prohibitive norms.

2.1.2. Applicable entities under the FCPA

The Anti-bribery Provisions and Accounting Provisions of the FCPA govern distinct entities. The Anti-bribery Provisions possess a broad scope of application, encompassing: (1) Issuers (U.S. and foreign companies listed on U.S. securities exchanges or required to file SEC periodic reports), along with their representatives (officers, directors, employees, agents, or shareholders acting on their behalf); (2) Domestic concerns (U.S. individuals and business entities), and similarly, their representatives; (3) Other persons whose actions fall within U.S. territory under the territorial principle. Historically, the 1977 Anti-bribery Provisions were limited to issuers and domestic concerns. Criticism arose during the FCPA's early enforcement, as observers argued that binding only U.S. companies failed to constrain foreign competitors, thereby placing U.S. firms at a competitive disadvantage in overseas markets. Consequently, the 1988 amendments expanded the reach of the Anti-bribery Provisions. This extension now covers foreign individuals or foreign non-issuer entities if they, directly or via agents, conduct acts within U.S. territory to further corrupt payments (or offers, promises, or authorizations thereof). Representatives acting for such entities may also face liability under these provisions. In contrast, the Accounting Provisions' scope is limited primarily to issuers and does not extend to non-listed companies.

However, since an issuer's financial records must consolidate its subsidiaries and affiliates, the issuer bears responsibility for ensuring that entities under its control, including foreign subsidiaries and joint venture partners—comply with the Accounting Provisions.

2.1.3. Two enforcement bodies under the FCPA

As the FCPA involves amendments to both securities laws and criminal law rules, both the US Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) have enforcement authority under the FCPA. Specifically, the SEC exercises civil enforcement authority over "issuers" and their officers, directors, employees, agents, or shareholders acting on their behalf. The SEC's Division of Enforcement has the duty to investigate and prosecute FCPA violations. The DOJ exercises criminal enforcement authority over "issuers" and their officers, directors, employees, agents, or shareholders acting on their behalf. Furthermore, it is noteworthy that violating the FCPA may simultaneously give rise to both criminal and civil liability; these are complementary, and bearing one type of liability does not necessarily absolve the other.

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2.2. United Nations Convention against Corruption (UNCAC)

2.2.1. Main content of UNCAC

Comprising seventy-one provisions organized within an octatextual architecture, the United Nations Convention against Corruption delineates substantive domains encompassing Foundational Principles, Proactive Safeguards, Illicit Conduct Criminalization and Judicial Enforcement, Cross-Border Collaborative Frameworks, Repatriation of Illicit Assets, Capacity-Building Support and Intelligence Sharing, Operational Procedures for Execution, alongside Concluding Stipulations [6-8]. Transcending introductory declarations, this seminal legal architecture constitutes a transformative advancement throughout supranational integrity governance frameworks, emerging as the foundational multilateral treaty codifying quintessential counter-graft operational modalities.

2.2.1.1. Prevention mechanism

UNCAC is the first to treat the prevention of corruption crimes as equally important as combating them, proposing a series of specific measures to prevent their proliferation. These include formulating effective preventive anti-corruption policies and laws, establishing specialized anti-corruption prevention bodies, strengthening the management of all public officials performing duties according to law, highlighting governance over public financial expenditures like government procurement and investment, simplifying administrative approval procedures, strengthening supervision over corruption in the private sector, promoting societal participation in anti-corruption governance, enhancing financial supervision, and combating money laundering.

2.2.1.2. Criminalization and law enforcement mechanism

As the most significant part of UNCAC, the Criminalization and Law Enforcement Mechanism regulates the punishment of corruption crimes from both substantive and procedural law perspectives. It incorporates excellent anti-corruption legislative achievements from countries worldwide, reflecting the most advanced anti-corruption rule of law concepts. From a substantive law angle, UNCAC encompasses almost all known corruption-related offenses and continues to expand. It also provides relevant regulations on elements of crimes, forms of crime, and corporate liability. From a procedural law angle, UNCAC stipulates jurisdiction over, prosecution, trial, and sanctions for corruption crimes, grants specialized anti-corruption agencies the power to use special investigative techniques, strengthens the protection of whistleblowers, witnesses, experts, and other litigation participants, and clarifies compensation liability for damages caused by corrupt acts.

2.2.1.3. International cooperation mechanism

As an international anti-corruption treaty, UNCAC mandates that State Parties engage in extensive international cooperation to combat corruption crimes, including extradition, mutual legal assistance, and law enforcement cooperation. Particularly regarding extradition, UNCAC builds upon the advantages of existing extradition systems while making breakthroughs tailored to the severe challenges of international anti-corruption, aiming to reduce legal obstacles to extradition cooperation among State Parties and further improve and develop the extradition legal system.

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2.2.1.4. Asset recovery mechanism

To improve the effectiveness of recovering illicit assets transferred abroad, UNCAC established a novel Asset Recovery Mechanism based on a comprehensive consideration and comparative analysis of the legal systems of various countries. This mechanism includes preventing and monitoring the transfer of proceeds of corruption crimes, direct and indirect measures for recovering assets located abroad, the return and disposal of recovered assets, and bilateral or multilateral agreement arrangements. As a core component of UNCAC, this mechanism, addressing the globalization of corruption, views cutting off the economic sources of corruption crimes as key to curbing such crimes, thereby achieving the ultimate goal of combining punishment with prevention.

2.2.1.5. Implementation monitoring mechanism

To monitor the fulfillment of UNCAC obligations by State Parties, UNCAC specifically establishes the Conference of the States Parties mechanism, responsible for overseeing the Convention's implementation. It enhances the implementation capacity of State Parties through systematic and professional training of their officials. Concurrently, peer review among State Parties promotes learning and experience exchange, ultimately encouraging State Parties to establish necessary anti-corruption collaboration mechanisms.

2.2.2. Main features of UNCAC

UNCAC emphasizes a comprehensive, broad, and systemic preventive strategy based on improving the effectiveness of combating corruption crimes, while advocating a government-led, society-participated anti-corruption governance model. Its main features include the following aspects:

2.2.2.1. Emphasizing prevention while combating corruption

Prioritizing prevention is a fundamental concept of UNCAC and its most distinctive feature compared to other UN crime-fighting conventions. UNCAC devotes significant space to elaborating the importance of preventing corruption and effective and efficient prevention through establishing cooperation mechanisms and adopting concrete preventive measures.

2.2.2.2. Promoting public participation while enhancing administrative transparency

Recognizing that combating corruption constitutes a system-wide endeavor, UNCAC underscores the necessity for State Parties not only to bolster administrative transparency within their governments and public sectors, but also to foster active civic engagement in administrative decision-making processes. Such public involvement serves as a vital external oversight mechanism. Moreover, to guarantee the efficacy of this supervision, measures must be taken to expand and facilitate channels for public participation, alongside the widespread implementation of awareness-raising campaigns.

2.2.2.3. Balancing substantive and procedural justice while constructing a rigorous legal framework

Compared to existing regional anti-corruption conventions and current national criminal legislation, the Criminalization and Law Enforcement Mechanism established by UNCAC innovates by

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incorporating the latest developments in criminal legislation, significantly expanding the connotation and extension of corrupt behavior. Adhering to the concept of giving equal weight to substantive and procedural law, UNCAC maintains a balanced proportion of substantive and procedural norms, paying equal attention to both substantive and procedural justice.

2.2.2.4. Strengthening supervision of the private sector while focusing on government and public sector corruption

UNCAC emphasizes that preventing corruption involves not only preventing corruption in government and the public sector but also strengthening supervision over the private sector, particularly commercial activities. To prevent private sector corruption, State Parties should take effective legal measures, strictly enforce accounting and auditing standards in the private sector, and establish effective sanctions for violations.

2.2.2.5. Strengthening anti-corruption cooperation while respecting national legal systems

UNCAC emphasizes that international cooperation should be based on respect for the legal systems of States and should not be confined only to law enforcement cooperation. It should include broader cooperation in criminal, civil, administrative, preventive, and enforcement fields, among others.

3. Legislative recommendations for China's anti-cross-border corruption law

3.1. Implications of international foreign-related anti-corruption laws and regulations for China

3.1.1. Enacting specialized foreign-related national anti-corruption legislation has become an international common practice

The global proliferation of cross-border corruption has prompted nation-states to develop specialized legislative frameworks aligned with domestic legal systems, while international bodies have concurrently formulated corresponding guidelines and conventions. As previously referenced, the United States implemented the Foreign Corrupt Practices Act (FCPA) in 1977, subsequently revised in 1988, 1994, and 1998. This legislative evolution progressively broadened its jurisdictional scope, extending beyond initial coverage of domestic entities and citizens to encompass foreign enterprises and individuals, thereby establishing extraterritorial enforcement mechanisms. Similarly, the United Kingdom’s Bribery Act 2010 not only prescribes penalties for conventional bribery offenses but introduces corporate liability for failures to prevent bribery, imposing heightened compliance obligations on businesses. Brazil’s 2013 Clean Companies Act further exemplifies this trend, explicitly imposing strict administrative and civil penalties on legal persons for bribery conducted under their designation or for their benefit [9].

Complementing national efforts, multilateral instruments such as the UN Convention against Transnational Organized Crime (2000) and the OECD Anti-Bribery Convention (1997) have significantly fostered international consensus on combating transnational corruption and stimulated proactive national responses. Consequently, enacting dedicated legislation to regulate cross-border corrupt practices has emerged as a globally established norm. Given China’s substantial governance experience accumulated since the 18th CPC National Congress, coupled with escalating challenges in transnational corruption, expediting the enactment of specialized anti-cross-border corruption legislation is now critically imperative and urgent.

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3.1.2. Foreign-related anti-corruption laws and regulations need to increase preventive measures against cross-border corruption

Within China's current cross-border corruption governance system, the emphasis lies more on punishing corrupt acts, while constraints on prevention are scattered across different regulations, lacking centralized legal provisions. Due to the lack of targeted constraints on cross-border corrupt behavior, varying degrees of limitations often exist in the process of governing cross-border corruption and international anti-corruption cooperation. UNCAC explicitly requires State Parties to take measures, in accordance with the fundamental principles of their domestic law, to prevent corruption involving the private sector, enhance private sector accounting and auditing standards, and, as appropriate, provide effective, proportionate, and dissuasive civil, administrative, or criminal penalties for non-compliance. The UK Bribery Act 2010 stipulates that a relevant commercial organization commits an offense if a person associated with it bribes another person intending to obtain or retain business or a business advantage for the organization, aiming to make the associated commercial organization bear liability for failing to prevent bribery. From a practical perspective, anti-cross-border corruption legislation needs not only provisions to punish corruption but also clear requirements for enterprises to prevent corruption.

3.1.3. Foreign-related anti-corruption laws and regulations require precise applicability

The fundamental reason for the numerous difficulties and blockages in current international anti-corruption cooperation regarding cross-border corruption governance lies in the disconnect between the legal systems of different countries. Due to differences in political systems, historical culture, and social environments, countries vary greatly in their identification and understanding of cross-border corrupt behavior. These differences are even more pronounced in judicial interpretations, standards for case filing, and sentencing scales. How to coordinate responses to these differences in anti-cross-border corruption legislation becomes a key issue. On the one hand, regarding the identification of the subject of corruption, Western countries like the US and UK advocate extraterritorial jurisdiction, covering not only domestic merchants and enterprises but also foreign merchants and enterprises operating within their territory, even entities associated with domestic merchants or enterprises through mail, telephone, etc., leading to an ever-expanding jurisdictional scope. On the other hand, regarding the identification of the object of corruption, UNCAC defines bribe recipients as including foreign public officials and officials of public international organizations, with "foreign public official" interpreted as any person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise. In the interpretation of the US FCPA, employees of state-owned enterprises of other countries are also treated as foreign public officials. These issues require clear stipulations and explanations in anti-cross-border corruption legislation to apply to specific judicial cooperation in international anti-corruption efforts.

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3.2. Countermeasures and suggestions for China's anti-cross-border corruption legislation and practice

3.2.1. Basing legislation on the concept of fair and reasonable international anti-corruption cooperation

UNCAC states that State Parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States. China has also explicitly stated that anti-corruption cooperation must respect the sovereignty, political systems, and legal systems of all countries, respect their right to independently choose anti-corruption paths, and repeatedly opposes abusing "long-arm jurisdiction" under the pretext of anti-corruption, even interfering in other countries' internal affairs. The formulation and introduction of the Anti-Cross-Border Corruption Law must adhere to UNCAC as the primary basis, fully integrate China's national conditions and actual circumstances, summarize and reference the experience of a series of multilateral cooperation mechanisms such as the Beijing Declaration on Fighting Corruption, the G20 High-Level Principles on Cooperation on the Recovery of Proceeds of Corruption, the Beijing Initiative for Clean Silk Road Construction, and the High-Level Principles on Belt and Road Integrity Building, incorporating them into the legal text to provide robust institutional impetus for the high-quality development of international anti-corruption cooperation. Furthermore, advancing cross-border anti-corruption legislation should uphold the principle of international reciprocity. That is, if foreign judicial bodies impose restrictions on the civil litigation rights of Chinese citizens, legal persons, and other organizations, Chinese judicial authorities shall also take corresponding measures to restrict the civil litigation rights of citizens, enterprises, and organizations of that country. Implementing the reciprocity principle is necessary to safeguard national sovereignty and to protect the legitimate rights and interests of domestic citizens, legal persons, and other organizations [10].Therefore, a rigorously binding Anti-Cross-Border Corruption Law will not only help promote market fairness and protect Chinese enterprises from unilateral sanctions but also be more conducive to safeguarding the legitimate rights and interests of Chinese enterprises in cross-border operations.

3.2.2. Making preventive measures the primary aspect of constructing the legislative content system

Cross-border corruption governance practices and international experience indicate that combating cross-border corruption requires not only clear punitive measures but also the construction of a sound prevention system. Combining punishment with prevention is an important principle and goal. The US Principles of Federal Prosecution of Business Organizations stipulate the basic principles for federal prosecutors when prosecuting commercial organizations, considering whether an enterprise had a pre-existing compliance program and whether it was genuinely effective as important factors. If an enterprise has remedial measures, including implementing an effective compliance program or improving an existing one, replacing responsible management, disciplining or dismissing perpetrators of misconduct, providing restitution, and cooperating with government agencies, these can also influence the decision on whether to prosecute. In China, the corporate compliance non-prosecution system is also being piloted and explored. In June 2021, the Supreme People's Procuratorate and eight other departments issued the Guiding Opinions on Establishing a Third-Party Supervision and Evaluation Mechanism for Corporate Compliance in Cases (Trial), providing explanations on relevant issues [11].Anti-cross-border corruption legislation can build

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relatively systematic preventive measures based on the principle of combining punishment with prevention, thereby promoting enterprises to establish adequate procedures for preventing cross-border corruption.

3.2.3. Promoting legislative alignment with international standards based on China's legal system

The Third Plenary Session of the 20th Central Committee of the Communist Party of China outlined the blueprint for comprehensively deepening reform, demonstrating China's vision for continued opening-up. Against the backdrop of Chinese enterprises increasingly participating in international competition, enacting a foreign-related anti-corruption law grounded in China's realities is particularly necessary for safeguarding the overseas operations of Chinese enterprises and enhancing China's international discourse power in anti-corruption governance [12]. On the one hand, the work on anti-cross-border corruption legislation must take China's legal system as the foundation, closely linking with the Criminal Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, the Supervision Law of the People's Republic of China, etc., reasonably delineating jurisdictional scope and identification standards, fully considering implementing rules and supporting systems related to the law, especially providing enterprises with more precise and effective integrity and compliance requirements for overseas operations. On the other hand, it is essential to strengthen related theoretical research and publicity guidance, promote internationalized academic research in the anti-corruption field, conduct thorough research for anti-cross-border corruption legislation, and create a favorable atmosphere for legislation and law enforcement; simultaneously enhance the level of corporate integrity and compliance construction from both legal constraints and practical incentives, establish a scientific corporate integrity and compliance evaluation system, and promote enterprises to establish cross-border corruption prevention mechanisms; strengthen public opinion guidance, encourage relevant government departments at all levels, enterprises, and social parties to participate in cross-border corruption governance, thereby continuously enhancing China's discourse power in the international anti-corruption field.

4. Conclusion

Based on a comparative law perspective, this paper systematically reviews the core content and experience of the international legal framework against cross-border corruption, analyzes the current situation and shortcomings of China's foreign-related anti-corruption legal system, and proposes legislative recommendations. By analyzing texts such as the US FCPA, the UK Bribery Act, and UNCAC, it reveals the commonalities and particularities of cross-border corruption governance, providing support for the formulation of China's Anti-Cross-Border Corruption Law.

Drawing on international experience and China's realities, the formulation of this law should adhere to: First, balancing national conditions with international alignment. Taking UNCAC as the benchmark, adhering to sovereign equality, opposing the abuse of "long-arm jurisdiction," and integrating Chinese practices. Second, combining punishment with prevention, prioritizing prevention. Building a rigid punishment system, clarifying criminal elements and liabilities; crucially, listing effective corporate compliance programs as statutory mitigating factors, highlighting the focus on prevention. Third, coordinating domestic and foreign-related rule of law. Precisely defining key concepts; optimizing law enforcement collaboration, clarifying the leading authority and procedures of supervisory and judicial organs, strengthening cross-border capabilities,

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improving international judicial assistance mechanisms; and establishing reciprocal countermeasures.

The enactment of the Anti-Cross-Border Corruption Law is crucial: It will fill the gap in China's specialized foreign-related anti-corruption legislation, provide "going global" enterprises with clear compliance guidance and a risk prevention framework, effectively resist overseas integrity risks and unilateral sanctions, and safeguard the Belt and Road construction. By promoting cross-border integrity governance through rule of law, China can provide public goods to partner countries, enhancing the institutional resilience and attractiveness of the Belt and Road Initiative. This law, integrating the spirit of international conventions with Chinese wisdom, will demonstrate the image of a responsible major country. By sharing experiences such as "prevention priority" and participating in international rule negotiations, China will promote the building of a fairer, more inclusive new global anti-corruption order, enhancing its discourse power in international rule of law.

In summary, formulating an Anti-Cross-Border Corruption Law rooted in national conditions and drawing on international experience is key to addressing cross-border corruption challenges. Adhering to the principle of combining punishment with prevention, prioritizing prevention, and building a scientific legal system will lay a solid rule of law foundation for Chinese modernization, contribute China's solutions to global anti-corruption efforts, and become an important milestone in the process of China's rule of law modernization and global governance participation.

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