



TIGHTENING OF CHINESE CORPORATE CRIMINAL LAW

WHAT RISKS ARISE FOR FOREIGN COMPANIES AND THEIR MANAGING DIRECTORS IN CHINA?

I. INTRODUCTION

On 29 December 2023, the National People's Congress (the legislature of the People's Republic of China) made significant amendments to the criminal law.

This change in the law, which has meanwhile come into force, is in line with the central government's promise to sharpen the focus on lawful conduct by private companies in China and to fight corruption with all severity.

In this context, in 2024 it is already apparent in many regions that local authorities are massively expanding their investigative activities with regard to corporate legal violations. The focus here is particularly on manufacturing units.

This also increases the criminal/sanction liability risk for foreign-invested enterprises and their managing directors in China.

II. WHAT CRIMINAL LIABILITY RISKS ARISE FOR MANAGING DIRECTORS IN CHINA IN CONNECTION WITH CORRUPTION CASES?

Previously, Chinese criminal law (in Articles 165, 166 and 169) only provided for criminal offences in corruption cases for directors, managers and legal representatives of state-owned or state-invested companies.

The personal scope of application of these offences has now been extended to include private companies and their directors, managers, legal representatives and senior employees. The following acts are included in particular.

The core problem for managing directors of foreign-invested companies is not necessarily that they themselves commit these offences, but that they can incur joint liability if they fail to adequately prevent such offences by senior managers and implement preventive measures.

1. Obtaining illegal advantages by using business opportunities of the company for private purposes or for the purposes of third parties.
2. Exploiting a position in the company to grant advantages to third parties (relatives, friends, etc.) in the following cases:
 - a. buying goods or services from third parties at prices that are obviously above the market price;
 - b. selling goods or services to third parties at prices that are obviously below the market price;
 - c. buying obviously inferior / defective goods or services from third parties at market prices (for defect-free goods).
3. Sale of the company's assets (or sale of the entire company) at a price that is obviously below the market price.

III. WHAT PENALTIES DO MANAGING DIRECTORS FACE IN CORRUPTION CASES?

If the benefits obtained are a 'large amount', the penalty can be a fine or imprisonment for up to three years (combined with a fine).

If the benefits obtained are of a 'particularly large amount', the penalty can be imprisonment between three and seven years (combined with a fine).



The terms ‘large amount’ and ‘particularly large amount’ are not sufficiently defined by law and are therefore largely subject to the discretion of the judge in charge, as is common in China.

IV. WHAT INCREASED LIABILITY RISKS UNDER CRIMINAL LAW ARISE FOR COMPANIES IN CHINA?

In connection with the amendment of the criminal law at the end of 2023, the central government in Beijing has also issued directives to the local regulatory authorities to intensify their scrutiny of the legality of business activities.

The current focus is particularly on manufacturing units. These companies are subject to increased scrutiny of the validity and conformity of production permits with regard to production safety, environmental compatibility, and working conditions.

In these areas, there have been a large number of legislative changes and tightening of requirements / conditions in recent years. In our advisory practice, we regularly experience that in particular manufacturing units of our clients that were established before 2020 have not correctly implemented these legislative changes (apparently because at that time the local authorities did not pay much attention to these areas).

Companies that seriously violate these regulations face the threat of shutdown of production, administrative fines and registration of the violations in the ‘Social Credit Point System’. In the case of particularly serious violations, the management may also face personal criminal liability.

In this respect, we strongly recommend that manufacturing units have their licensing status checked for up-to-dateness and compliance.

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