

**International  
Comparative  
Legal Guides**



Practical cross-border insights into business crime law

**Business Crime  
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# China

Global Law Office



Alan Zhou



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## 1 General Criminal Law Enforcement

### 1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

The People's Procuratorates ("Procuratorate(s)") are specifically responsible for prosecutions.

The Procuratorates are hierarchically structured and supervised, with the Supreme People's Procuratorate leading the local Procuratorates at all levels.

### 1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

Criminal investigation authorities include the Public Security Bureau ("PSB"), the Procuratorates, the Supervisory Commissions and other authorities. The PSB is responsible for investigating the majority of criminal cases. The Procuratorates are responsible for investigating criminal cases in which judicial staff are suspected of infringing civil rights and damaging judicial justice by taking advantage of their positions and powers. The Supervisory Commission is responsible for investigating duty-related crimes committed by supervised individuals. The Military Security Department is responsible for investigating criminal cases within the army. The Customs Anti-Smuggling Bureau is responsible for investigating criminal cases such as tax-related smuggling crimes within the customs territory and non-tax-related smuggling crimes within the customs supervision area.

In terms of territorial jurisdiction, a criminal investigation shall be handled by the investigation authority in the place where the crime was committed. If the place of residence of a suspect is more appropriate from a jurisdiction perspective, the place of residence of the suspect could be used. If more than one region can assert jurisdiction, in principle, jurisdiction of the region in which the case is filed first shall prevail. Disputes on jurisdiction can usually be settled through negotiation. If the negotiation fails, the common superior authority shall designate the jurisdiction.

If the same suspect is suspected of crimes governed by several different authorities, communication and consultation between different authorities is required, or a higher authority can

be involved. In general, the investigation of the Supervisory Commission shall take precedence over the PSB and the Procuratorate. Between the PSB and the Procuratorate, the investigation shall be handled by the authority that has the jurisdiction over the main crime, with the other authority cooperating with the investigation.

For jurisdiction issues between military and other authorities, if the suspect has military status or the case occurs inside a barracks, the Military Security Department then shall have the jurisdiction.

In terms of prosecution, the Procuratorates shall prosecute the crimes.

### 1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

In China's judicial system, although the PSB is categorised as an administrative authority, it has the power to investigate business crimes. For example, the economic investigation departments of the PSB are responsible for investigating 78 types of economic crimes such as bribery, money laundering, tax evasion, false advertising and illegal business. The Customs, National Security Bureau and other administrative authorities may also investigate criminal cases within the scope of their duties. Although other administrative authorities cannot conduct criminal investigations, the evidence obtained during administrative law enforcement can be used as evidence in criminal proceedings, and they are obliged to cooperate with the PSB or other investigating authorities in the criminal investigation and provide technical support or advisory assistance.

### 1.4 Have there been any major business crime cases in your jurisdiction in the past year?

According to the 2022 Work Report of the Supreme People's Court, the courts have concluded 23,000 cases (involving 27,000 individuals) related to corruption, bribery and dereliction of duty. The courts have severely punished 4,098 criminal cases related to infringement upon citizens' personal information, including the first case related to face recognition in China. In addition, the courts have severely punished citizens'

livelihood security-related crimes, and have concluded 2,031 criminal cases related to major liability accidents, 6,002 criminal cases of endangering food and drug safety, 79,000 criminal cases (involving 149,000 individuals) related to network fraud, etc.

According to the 10 Major Events of Economic Crimes Prosecution in 2022 released by the Supreme People's Procuratorate, the Supreme People's Procuratorate has severely punished drug safety crimes and supervised the handling of 29 criminal cases of endangering drug and medical devices safety in a special campaign in the aesthetic medicine industry. The Supreme People's Procuratorate has severely punished major cyber-related crimes and supervised the handling of eight major criminal cases related to cross-border network fraud. In addition, the Procuratorates prosecuted 1,059 individuals for self-launching crimes in 2022.

## 2 Organisation of the Courts

### 2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?

China's People's Court system is divided into four levels, namely, the basic People's Court, the intermediate People's Court, the higher People's Court and the Supreme People's Court, along with specialised People's Courts including the Military Courts, Maritime Courts, Intellectual Property Courts, Railway Transportation Courts, etc.

Among them, the Military Courts handle criminal cases in military barracks and criminal cases committed by military personnel. The Railway Transportation Courts usually handle railway related cases, but in recent years, they also tend to handle criminal cases related to environmental resources, food and drug safety in certain areas. In general, the Maritime Courts do not handle criminal cases, but one Maritime Court in Ningbo has begun to handle Maritime Criminal Cases on a pilot basis. Among the four Intellectual Property Courts in China, only the Intellectual Property Court of Hainan free trade port handles criminal cases related to intellectual property.

### 2.2 Is there a right to a jury in business crime trials?

China operates a people's juror system. Under specified circumstances, e.g., in the civil, criminal and administrative trial of first-instance cases involving social interests and public interests with a large social impact, people's jurors shall participate in a three-member collegial panel or seven-member collegial panel. Among these, for criminal cases in which the suspects may be sentenced to more than 10 years of fixed-term imprisonment, life imprisonment, or the death penalty, or which have a significant social impact, or in major cases involving land requisition and relocation, ecological environmental protection, food and drug safety, a seven-member panel shall be formed. A defendant in a criminal case of first instance may also apply for people's jurors to be included in the collegiate panel, and the court may decide whether to approve the application.

Notably, for a three-member collegial panel, a jury shall have the right to determine the facts and apply the law, to express their opinions independently and to exercise their voting rights. For a seven-member collegial panel, a jury shall have the right to express their opinions on the factual findings independently but have no right to express opinions on the application of the law.

## 3 Particular Statutes and Crimes

### 3.1 Please describe any statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

#### • Securities fraud

Securities fraud mainly includes fabricating and spreading false information of securities, and manipulating securities or futures market, as stipulated under the *Criminal Law*.

Fabricating and spreading false information of securities refers to the conduct of fabricating and spreading false information affecting securities and futures trading, resulting in the disruption of the securities and futures trading market and causing serious consequences. Manipulating securities or futures markets may manifest in different forms, including conspiring with others to trade securities and futures with each other at a pre-agreed time, price and manner, and making frequent or substantial declarations to buy or sell securities or futures and withdrawing the declarations without the purpose of closing the transaction.

Both crimes require the mental state of intent, and can be committed by either individuals or entities.

#### • Accounting fraud

Accounting fraud refers mainly to illegally disclosing or failing to disclose important information, as stipulated under the *Criminal Law*, which refers to the conduct of providing financial statements that are false, concealing material facts to the shareholders and the public by listed companies, or failing to disclose other material information that is required to be disclosed by law, resulting in serious damage to the interests of shareholders or others, or having other serious circumstances. The crime requires the mental state of intent, and can only be committed by entities.

#### • Insider trading

Insider trading is stipulated under the *Criminal Law*, which refers to the conduct of buying or selling securities or engaging in futures trading related to insider information, or leaking such information or expressing or implying that others could engage in trading activities, resulting in serious circumstances. This crime requires the mental state of intent, and can be committed by either individuals or entities.

#### • Embezzlement

Embezzlement is stipulated under the *Criminal Law*, which refers to the act of an employee of an entity who uses the convenience of his position to illegally appropriate the property of the entity for himself in a large amount. The crime requires the mental state of intent, and can be committed by individuals only.

#### • Bribery of government officials

Bribery of government officials includes the crime of offering bribes and the crime of offering bribes committed by an entity under the *Criminal Law*. Bribery refers to the act of offering bribes for the purpose of securing illegitimate benefits or, in violation of state regulations, giving rebates or service charges to any state functionary, resulting in serious circumstances. Both crimes require the mental state of intent.

#### • Criminal anti-competition

Crimes related to unfair competition may include the crime of counterfeiting registered trademarks, the crime of offering bribes, the crime of infringing upon trade secrets, the crime of false advertising, the crime of colluding in bidding, etc. Such crimes all require the mental state of intent, and can be committed by either individuals or entities.

#### • Cartels and other competition offences

Cartels are regulated by the *Anti-Monopoly Law*, which are administrative violations.

#### • Tax crimes

Common tax crimes include the crime of tax evasion, the crime of resisting tax, the crime of evading recovery of outstanding taxes, etc. Such crimes all require the mental state of intent, and can be committed by either individuals or entities.

#### • Government-contracting fraud

There is no specific statute prohibiting government-contracting fraud. However, defrauding property of the government may constitute criminal fraud and bid rigging in relation to a government contract constitutes a crime under the *Criminal Law*.

#### • Environmental crimes

Common environmental crimes include the crime of environmental pollution, the crime of illegal disposal of imported solid wastes, the crime of importing solid wastes without authorisation, etc. Relevant criminal acts may include discharging, dumping, or disposing of any radioactive waste, any waste containing pathogens of any infectious disease, any toxic substance or any other hazardous substance in violation of state regulations, and importing solid wastes for use as raw materials without permission, causing serious environmental pollution accidents, etc. Most environmental crimes require the mental state of intent, and can be committed by either individuals or entities.

#### • Campaign-finance/election law

The crime of sabotaging elections is stipulated under the *Criminal Law*, which prohibits the act of sabotaging an election or obstructing the free exercise of the right to vote and to be elected by voters and representatives by means of violence, threats, deception, bribery, falsification of election documents, or misrepresentation of the number of votes cast in the election of deputies to the People's Congresses and leaders of state organs at all levels. The crime requires the mental state of intent, and can be committed by individuals only.

#### • Market manipulation in connection with the sale of derivatives

The crime of manipulating securities or futures markets is stipulated under the *Criminal Law*, which prohibits the act of manipulating securities and futures markets include hoarding spots, influencing market quotations of specific futures varieties and conducting relevant futures transactions, etc. The crime requires companies to act intentionally, and individuals to have the mental state of intent; it can be committed by either individuals or entities.

#### • Money laundering or wire fraud

The crime of money laundering is stipulated under the *Criminal Law*. The upstream crimes of money laundering include drug crimes, crimes of organisations relating to the triads, crimes of terrorist activities, smuggling crimes, corruption and bribery crimes, crimes against the order of financial management, and financial fraud crimes. The crime of money laundering requires the perpetrator to have the purpose of concealing or concealing the source and nature of the proceeds of the crime and the proceeds generated by it. It could be committed by individuals or entities.

#### • Cybersecurity and data protection law

Crimes against cybersecurity and data protection law include the crime of sabotaging computer information system, the crime of refusal to perform the obligation of safety administration on information networks, the crime of illegal use of information networks, the crime of assistance in cyber-criminal activities, and the crime of infringement upon citizens' personal information.

There are various types of criminal acts, for example, using information networks to set up websites used to commit fraud and teach criminal methods, providing Internet access, server hosting, network storage, communication transmission and other technical support for others to commit crimes, knowing that they are using information networks to commit crimes. Such crimes all require the mental state of intent, and they can be committed by either individuals or entities.

#### • Trade sanctions and export control violations

Smuggling and export control crimes are stipulated under the *Criminal Law* as the crime of smuggling ordinary goods and other related crimes such as the crime of smuggling weapons and ammunition, the crime of smuggling nuclear materials, and the crime of smuggling counterfeit currencies. All such crimes require the mental state of intent, and can be committed by either individuals or entities.

#### • Any other crime of particular interest in your jurisdiction

The *Criminal Law* sets up a clear division between the bribery of a state functionary and the bribery of a private person. For example, an individual offering bribes to an executive in a private entity would be convicted of the crime of offering bribes to a non-state functionary, and subject to criminal liabilities. The crime requires the mental state of intent, and can be committed by either individuals or entities.

**3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?**

Perpetrators of inchoate crimes are criminally responsible regardless of whether the crime is completed or not.

## 4 Corporate Criminal Liability

**4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?**

Criminal acts of an entity or an entity's employee could be regarded as either an individual crime, or a unit crime, depending on a variety of considerations, including the entity's involvement in the bribery act (e.g., whether it is the entity's decision to conduct the bribery), the possession of the illegal gains, and whether the bribes are offered in the name of the entity or the individual employee. If the charge is raised against the individual employee, then the entity would not be held accountable for the crime. However, if the charge is against the entity as a unit crime, the dual punishment system would then apply, which means that not only would the entity be punished by a monetary penalty, but also the responsible persons (e.g., the legal representative, and other persons in charge) could be sentenced to criminal detention or imprisonment.

**4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?**

Where there has been a unit crime, responsible persons such as the legal representatives, managers, officers and directors may also be liable for the crime depending on their involvement and substantial knowledge of the charged crime.

#### 4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

Law enforcement authorities often pursue individuals for the misconduct committed by an entity. For example, in January 2018, the Ministry of Public Security and former China Food and Drug Administration jointly issued the Provisions on Intensifying Law Enforcement Concerning Food and Drug Safety and Fully Implementing the Requirement of Imposing Punishment against All Individuals Held Liable for Food and Drug Violations to emphasise the enforcement on individual liabilities for related violations or crimes.

In practice, whether to pursue an entity or an individual would mostly depend on specific case facts, especially whether the element of the unit crime could be established and the detailed facts to support the determination. Taking commercial bribery as an example, bribery committed by the employees is generally presumed to be the behaviour of the unit (unless there is clear evidence to the contrary), and it is difficult for employers to prove that they are not responsible in reality. If an employee is being prosecuted for misconduct related to his or her duty, such as offering bribes to a state functionary in exchange for business opportunities without substantial evidence of the entity's involvement, the situation will often get complicated owing to the stakeholders' conflicts of interest. It is likely that the employee will raise the defence that the misconduct was under the instruction, approval or with the knowledge of the entity to be acquitted from the individual crime of offering bribes, because the individual criminal liabilities for the unit crime of offering bribes are much lighter compared with the individual crime of offering bribes.

If the employee is convicted for the unit crime as the responsible person for the offence, he or she shall be sentenced to a fixed-term imprisonment of up to five years or criminal detention, and concurrently sentenced to a fine. In comparison, if the employee is convicted for the individual crime of offering bribes, the severest punishment could be life imprisonment with confiscation of property. Under such circumstances, the entity has to provide evidence to prove its ignorance of the employee's conduct and such bribery is not related to efforts of seeking a transaction opportunity or competitive advantage for the entity.

#### 4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply?

On the criminal level, as long as an entity that assumes the rights and obligations of that entity exists, the criminal liability of the predecessor and the relevant responsible persons shall still be pursued. The predecessor shall still be listed as the defendant, and the legal representative or the person chiefly in charge of the successor shall be the litigation representative. Even though the successor did not participate in the crime, the successor shall bear the criminal liability of the predecessor entity to the extent of the inherited property.

## 5 Statutes of Limitations

#### 5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

The statute of limitations in the *Criminal Law* is stipulated according to the gravity of the maximum legally prescribed

punishment, and shall begin running from the date when the crime is completed. The maximum period is 20 years and shall apply to crimes for which the maximum legally prescribed punishment is life imprisonment or the death penalty. For example, the crime of offering bribes to state functionaries can be divided into three levels based on severity of the conduct; correspondingly, the period is further divided into three grades: five years, 10 years, and 20 years, depending on the maximum legally prescribed punishment.

Expiry of the limitation period does not render prosecution entirely impossible. For example, for a crime in which the maximum statutory punishment is life imprisonment or the death penalty, even if 20 years have elapsed, the criminal suspect may still be prosecuted upon the approval of the Supreme People's Procuratorate. Under the circumstances where the criminal suspect escapes after the case is filed by the relevant judicial authority or where the victim brings a complaint against the criminal suspect, the limitation period shall not apply. In addition, where a criminal suspect commits a new crime after the occurrence of a crime but before the expiry of the limitation period, the limitation period of the former crime shall also be re-calculated from the date of the new crime.

#### 5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

In general, crimes outside the limitations period cannot be prosecuted. However, under the circumstances where the Supreme People's Procuratorate has approved or the suspect has evaded prosecution after a case has been filed, or the victim has filed a private prosecution while the judicial authority should file the case on file but did not, they shall not be subject to the limitations period.

For pattern or practice, it may be recognised as a continuous crime or multiple independent crimes. For a continuous crime, the limitations period shall be calculated from the date when crime ends. And for multiple independent crimes, if the latter crime occurs within the limitations period of the former crime, the limitations period of the former crime shall be calculated from the date of the latter crime. In such cases, all former crimes can be prosecuted as long as the last crime occurs within the limitations period.

For ongoing conspiracy, that is, in a joint crime, one person has withdrawn from the crime, but the joint crime of others continues to this day. If the person who has withdrawn from the crime is the principal leader who organised and led the criminal group, he shall be punished according to all the crimes committed by the group. To be more specific, even if he has withdrawn from the crime, he will still be investigated for all the crimes committed by the group. If the person who has withdrawn from the crime is not the principal leader of the crime, the commonly adopted view and judicial practice is to calculate the limitations period for each individual separately.

#### 5.3 Can the limitations period be tolled? If so, how?

The limitations period can be tolled. In accordance with Article 89 of the *Criminal Law*, the limitations period for prosecution shall be counted from the date the crime is committed. If the criminal act is continual or continuous, it shall be counted from the date the criminal act is terminated. If a further crime is committed during the limitations period for prosecution, the limitations period for prosecution of the former crime shall be counted from the date the latter crime is committed.

## 6 Initiation of Investigations

**6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?**

The *Criminal Law* mainly adopts the principle of territorial jurisdiction over criminal offences, supplemented by the extraterritorial jurisdiction over the circumstances where the perpetrator is a Chinese citizen or a foreign national commits a crime against China or a Chinese citizen. Article 10 of the *Criminal Law* states that any Chinese citizen who commits a crime outside China may still be investigated for his criminal liabilities under Chinese law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated punishment. Article 8 further states that the *Criminal Law* may be applicable to any foreigner who commits a crime outside the territory of China against China or against any Chinese citizens, if for that crime the *Criminal Law* prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

Chinese judicial authorities may, in accordance with the *International Criminal Judicial Assistance Law* ("ICJAL"), request the relevant foreign authorities to assist in serving documents, investigating and collecting evidence, arranging for witnesses to testify or assist in investigations, seizing, detaining and freezing the property involved in the case, confiscating and returning the illegal proceeds and other property involved in the case, transferring the sentenced person and other assistance. It is also possible to extradite or take compulsory measures against foreign persons in accordance with the *Extradition Law*.

In addition, in accordance with the *Cybersecurity Law*, the *Anti-Espionage Law*, the *Anti-Terrorism Law* and other laws, Chinese authorities can impose sanctions on foreign institutions and individuals, pursue legal responsibilities, and go abroad to carry out work for some violations.

**6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.**

The initiation of criminal investigation includes the procedures of case acceptance, investigation and verification, case filing and review, etc. The sources of cases may include criminal reporting, accusation and surrender, cases transferred by administrative authorities, and criminal clues found by the PSB, the Procuratorate and the Supervisory Commission.

Taking the PSB as an example, the relevant provisions for investigation initiation include the *Provisions on the Procedures for Handling Criminal Cases by the PSB* and the *Provisions on the Division of Criminal Cases under the Jurisdiction of the Ministry of Public Security*. According to relevant regulations, written records shall be made for cases involving reporting, accusation and voluntary surrender, and audio and video recordings can be made when necessary. For cases transferred by other administrative authorities, they shall be examined within three days. If the facts or

clues of the case are found to be unclear, further investigation and verification could be conducted with the approval of the person in charge. If, after examination, it is considered that there are criminal facts that need to be investigated for criminal responsibility and belong to its own jurisdiction, the case shall be filed with the approval of the person in charge of the PSB. If the case is beyond the PSB's jurisdiction, it shall be transferred to the relevant authorities.

Other authorities have similar provisions, including the *Rules of Criminal Procedure of the Procuratorate*, the *Rules for the Supervision and Discipline Enforcement of the Discipline Inspection Organs of Communist Party of China*, the *Regulations on the Case Inspection of the Discipline Inspection Organs of the Communist Party of China*, etc.

**6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?**

China has been actively promoting international and regional judicial cooperation. It has not only combatted crimes relating to cybersecurity, corruption, money laundering, terrorism and drugs, but also joined international conventions, and signed bilateral judicial assistance and extradition treaties. In 2018 alone, China signed extradition treaties and mutual legal assistance treaties on criminal matters with 16 countries, and the enactment of ICJAL in 2018 further established the fundamental framework of international cooperation on criminal justice.

According to the Work Report of the Supreme People's Procuratorate during the First Session of the 14<sup>th</sup> National People's Congress ("NPC"), the Procuratorates have handled 885 criminal judicial assistance-related cases over the past five years, safeguarding the legitimate rights and interests of Chinese and foreign parties.

As was reiterated by China's President during the Second Plenary Session of the Central Commission for Discipline Inspection in January 2023, international cooperation in combatting bribery and corruption should be further strengthened.

## 7 Procedures for Gathering Information from a Company

**7.1 What powers does the government have generally to gather information when investigating business crimes?**

For criminal investigations, the PSB, the Procuratorate and the Supervisory Commission are empowered to:

- (a) interrogate the criminal suspect;
- (b) interview the witnesses;
- (c) inspect or examine the sites, objects and persons relevant to a crime (including dawn raids);
- (d) search the criminal suspect and his or her belongings and residence, and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places;
- (e) seal up or seize the property and documents;
- (f) access or freeze a criminal suspect's deposits, remittance, bonds, stocks, shares, funds or other property; and
- (g) implement technical investigation measures.

## Document Gathering:

**7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?**

Before filing a case, the PSB may, when necessary, investigate and verify the criminal clues and obtain evidence materials, but may not seal up or detain the property of the investigated object. The Supervisory Commission may also adopt a similar preliminary verification method.

After filing a case, the PSB, the Procuratorate, and the Supervisory Commission may request relevant entities to submit any relevant documents. Entities have the obligation to hand over evidence such as material evidence, documentary evidence, audio-visual material, etc., to the extent of proving that the suspect is guilty or innocent. In addition, with the approval of the person in charge of the PSB, the procurator general and other persons in charge, they can search the sites of relevant entities and take the initiative to obtain relevant documents. A search warrant is required for a search, except in case of emergency during arrest or detention.

The evidence obtained through the above-mentioned methods can be further sealed up and detained. The property and documents sealed up or seized shall be clearly checked with the presence of the witnesses and the holders of the property and documents, and a list shall be made on the spot in duplicate, which shall be signed or sealed by the investigators, witnesses, and the holders. One copy shall be given to the holders and the other copy shall be attached for future reference.

**7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?**

In China, there is a general duty of confidentiality stipulated in the *Law on Lawyers*, which is imposed on lawyers to keep confidential any state secrets, trade secrets, and privacy obtained in the course of practising law, although there is no equivalent regime of legal privilege which prevents confidential communications between a client and their lawyer being disclosed to third parties. The *Criminal Procedure Law* further provides the defence attorney with the right to refuse to disclose the relevant information of the client in criminal investigations and proceedings; however, this is subject to a few exceptions where national security, public security, or an individual's personal security are endangered.

Please note that in-house legal counsels or foreign-licensed lawyers are not within the protected scope; the above communication confidentiality under PRC law only applies to PRC-licensed lawyers while practising law in a PRC law firm.

Therefore, neither legal privilege or communication confidentiality would be applicable in China for investigations led by in-house legal counsels or foreign-licensed lawyers without the involvement of PRC-licensed lawyers, especially under certain circumstances confronting Chinese authorities.

**7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact**

**the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?**

The *Cybersecurity Law*, the *Civil Code* and the *Personal Information Protection Law* regulate the collection, processing, or transfer of personal information (including employees' personal information located in company files). The *Cybersecurity Law* and the *Personal Information Protection Law* stipulates certain restrictions on cross-border transfer of personal information under various circumstances.

**7.5 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?**

After the criminal case has been established, the authorities can require a company employee to provide documents for the evidence collection. If the authorities have reason to believe that the employee's home or office may hide criminal evidence, they can search such places and seize the documents. Generally, a search warrant shall be presented before the search, except in case of emergency during arrest or detention.

**7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?**

Please see the answer to question 7.5 above.

## Questioning of Individuals:

**7.7 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?**

The *Criminal Procedure Law* distinguishes two procedures: interrogation of suspects and interview with witnesses. Therefore, the employees, managers or directors of a company may be subject to two procedures based on their involvement in the alleged crime.

For an interrogation, it could be conducted in jail, the suspect's residence or any designated place in the city or county where the criminal suspect resides.

For an interview, it could be conducted on the crime scene, at the place of the witness's employer or residence, or at a place proposed by the witness, and, when necessary, the authorities may notify a witness to provide testimony at the offices of investigating authorities.

**7.8 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?**

Please see the answer to question 7.7 above.

**7.9** What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

A suspect shall be informed of his right to engage an attorney at any time from the first interrogation or compulsory measures taken by the investigating authorities, while there is no right to be represented by an attorney during the interrogation. No one may force the suspect to conduct self-incrimination and, thus, obtaining confessions by torture and collecting evidence by other illegal methods are strictly prohibited. Article 12 of the *Criminal Procedure Law* stipulates that no one shall be convicted without a court judgment, which reflects the principle of presumption of innocence; accordingly, the exercise of this right shall not result in the inference of guilt.

## 8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

**8.1** How are criminal cases initiated?

All criminal cases for public prosecution need to be examined and decided by the Procuratorate. When examining cases, the Procuratorate should interrogate the suspect and hear the opinions of the defence lawyers. The Procuratorate may request the investigation authorities to supplement the evidence materials and investigation. If the Procuratorate considers that the facts are adequate, the evidence is reliable and sufficient, and the criminal liabilities should be pursued according to law, the Procuratorate shall decide to prosecute and bring the case to a court having jurisdiction. In addition, in private prosecution cases, the victims have the right to bring a lawsuit directly to the court.

**8.2** What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

The *Criminal Law*, its amendments and relevant judicial interpretations govern the decision to charge an entity or individual with a crime.

**8.3** Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

Since March 2020, the Supreme People's Procuratorate has been promoting pilot programmes on corporate compliance reforms, including "non-arrest based on compliance", "non-prosecution based on compliance", and "leniency application based on pleading guilty". In the pilot regions, the Procuratorates can conduct compliance visits to the companies involved in the case, reach compliance supervision agreements with the companies, request the companies to establish or improve their compliance systems within a certain period of time, and review and evaluate the results. Based on the circumstances of the case and the results of the review, the Procuratorates determine whether to arrest, prosecute or propose a lighter punishment.

On April 2, 2022, the Supreme People's Procuratorate held a meeting to summarise the two-year pilot reforms and to announce the full implementation of the corporate compliance reforms. The detailed guidelines mainly include the *Guiding Opinions on Establishing a Third-Party Supervision and Evaluation Mechanism for the Compliance of Enterprises Involved in Cases (for Trial Implementation)* along with the implementation rules, and the *Measures for the Compliance Construction, Evaluation and Examination of Enterprises Involved in Criminal Cases (for Trial Implementation)*.

**8.4** If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.

In China, the corporate compliance reforms are mainly led by the Procuratorates. According to the *Measures for the Compliance Construction, Evaluation and Examination of Enterprises Involved in Criminal Cases (for Trial Implementation)*, the third-party supervision and evaluation organisation shall first assess the effectiveness of the compliance rectification plan and compliance management system of the enterprise involved in criminal cases, and then the Procuratorates shall examine the comprehensiveness, objectiveness, legality and effectiveness of the assessment results of the enterprise's compliance construction.

**8.5** In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.

Under the *Criminal Procedure Law*, if the victim suffers material damage due to the defendant's criminal conduct, he or she has the right to bring an incidental civil action in the course of criminal proceedings. If the victim dies or is incapacitated, the victim's legal representative or close relatives have the right to bring an incidental civil action. In addition, if the loss is suffered by the state property or collective property, the Procuratorates may bring an incidental civil action when filing a public prosecution.

**8.6** Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

An individual or entity may commence a private prosecution related to certain types of crimes including defamation, physical abuse, embezzlement, battery, etc.

## 9 Burden of Proof

**9.1** For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Generally speaking, under the *Criminal Procedure Law* and the Supreme Court's judicial interpretations, the burden of proof for the guilt of the defendant in a public prosecution case is on the public prosecutors, and the burden of proof for the guilt of

the defendant in a private prosecution case is on the individual or entity that commenced the private prosecution.

For special crimes, the burden of proof is shifted, and the defendant needs to provide evidence to prove some constituent elements. For example, in the crime of an unidentified source of a huge amount of property, the defendant needs to prove the legal source of the property. For the crime of illegally holding state top secret and confidential documents, materials and articles, the defendant needs to prove the source and purpose of the relevant documents and articles. In addition, the defendant has the right to raise any affirmative defences and shall bear the burden of proof in this respect. For example, the defendant has a certain burden of proof for circumstances that can reduce the punishment or result in the defendant being found innocent or charged with a misdemeanour, such as justifiable defence, emergency avoidance, exceeding the limitations period, and being incapable of criminal responsibility.

### 9.2 What is the standard of proof that the party with the burden must satisfy?

Pursuant to the *Criminal Procedure Law*, the standard of proof is confirmative and adequate evidence, which means: (1) the facts of the conviction and sentence are proved by evidence; (2) the evidence on which the case is based has been verified by legal procedures; and (3) the facts found have been proved beyond reasonable doubt.

### 9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The People's Court is the arbiter of fact and shall determine whether the party has satisfied its burden of proof.

## 10 Conspiracy / Aiding and Abetting

### 10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

Two or more people committing an intentional crime jointly constitutes joint crime and shall be held criminally liable. Even during the preparation of a crime, a person who conspires with another to prepare the instruments or create conditions for a crime would be held criminally liable.

If a person assists another to commit a business crime, playing a secondary or auxiliary role in a joint crime, the person shall be deemed as an accessory, and be imposed with a lighter or mitigated penalty or be exempted from a penalty, depending on his or her involvement in the crime as well as the nature and severity of the crime.

## 11 Common Defences

### 11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

For intentional crimes, it is a defence to criminal charges if the

defendant did not have the requisite intent to commit the crime. The burden of proof with respect to intent in a public prosecution case is borne by the Procuratorate, and the burden of proof in a private prosecution case is borne by the person who commences a private prosecution.

### 11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

In principle, ignorance of the law would not be a defence to criminal charges. However, under special circumstances, for example, if the suspect fails to correctly perceive the illegality of his or her actions due to being underage or mental illness, then, depending on his or her specific condition, he or she may not commit an offence, or may mitigate, minimise, or be exempt from punishment. The defendant shall bear the burden of proof in this respect.

### 11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

Mistake of facts may be a defence under certain circumstances, i.e., if it negates the requisite intent of a crime. For such defence, the public prosecutor still bears the burden of proof with respect to the defendant's intent to commit the crime.

## 12 Voluntary Disclosure Obligations

### 12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

The *Criminal Procedure Law* stipulates that any entity or individual who discovers a criminal fact or a criminal suspect has the obligation to report the crime to the PSB, the Procuratorate or the People's Court. Nevertheless, the *Criminal Procedure Law* does not provide for the legal consequences of failing to make a report. However, if the person who knows about the crime provides the suspect with hidden premises and property, helps him or her to escape or makes a false certificate to hide, the person would be guilty of the crime of harbouring.

If the person who knows about the crime also commits a crime, he or she would be granted merits if he or she exposes another person's crime and it is proven to be true, or if he or she provides important clues that enable him or her to solve other cases, stop other people's criminal activities, or assist the judicial authorities in arresting other suspects. The penalty can be reduced or mitigated, and the penalty can be reduced or waived for significant meritorious performance. It should be noted that the person cannot obtain the information through bribery, violence, coercion and other illegal means.

### 13 Cooperation Provisions / Leniency

**13.1** If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or “credit” from the government? If so, what rules or guidelines govern the government’s ability to offer leniency or “credit” in exchange for voluntary disclosures or cooperation?

Article 67 of the *Criminal Law* provides that a lighter punishment may be given if a suspect voluntarily truthfully confesses to the crime. If a person or entity truthfully confesses a crime which results in the avoidance of particularly serious consequences, the punishment may be further mitigated.

**13.2** Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.

According to relevant judicial interpretations, an entity may voluntarily surrender. Specific circumstances include that the entity collectively decides to voluntarily surrender or the person in charge of the entity turns themselves in. If it is determined that the entity surrendered, all relevant personnel responsible for the unit crime would be deemed as committing voluntary surrender as long as they truthfully confess to the crime. If voluntary surrender is recognised, a lighter or mitigated punishment may be imposed, and whoever commits a relatively minor crime may be exempted from punishment.

### 14 Plea Bargaining

**14.1** Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?

Yes, a defendant can voluntarily decline to contest criminal charges in exchange for a conviction on mitigated charges, or in exchange for an agreed-upon sentence.

**14.2** Please describe any rules or guidelines governing the government’s ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

Article 15 of the revised *Criminal Procedure Law* provides that a criminal suspect or defendant who voluntarily and truthfully confesses his crime, admits to the alleged criminal facts and is willing to accept punishment may be treated leniently according to the law. Article 174 stipulates that if a criminal suspect voluntarily confesses to the crime and agrees to the sentencing recommendation and application of the procedure, he or she shall sign a plea agreement in the presence of his/her defence lawyer. These two articles provide for the scope and conditions of application of the plea-bargaining system.

The presiding judge shall inform the defendant of his litigation rights and the legal provisions on confession and punishment and examine the voluntariness of confession and punishment and the authenticity and legitimacy of the content of the plea agreement. The final conviction and sentence shall be determined by the

court. Nevertheless, the court should generally adopt the charges and sentence suggestions raised by the Procuratorate, which have been accepted by the defendant by signing the plea agreement, unless there are issues affecting the fairness of the trial, such as where the defendant has not committed a crime or the charges are incorrect, where the defendant pleaded guilty not out of his own will, or where the defendant denied the facts of the crime.

### 15 Elements of a Corporate Sentence

**15.1** After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court’s imposition of a sentence on the defendant? Please describe the sentencing process.

The *Criminal Law* clarifies the sentencing ranges for each crime, and relevant judicial interpretations will further specify the criminal threshold in each sentencing range.

**15.2** Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

The sentence shall be determined by the court based on certain factors, including the facts, nature and circumstances of the crime, and the extent of the harm done to society. In addition, the court shall abide by the principle of legality and the principle of suiting the punishment to the crime during the sentencing process. The principle of legality refers to the fact that no one may be convicted or punished for an act that is not defined as a crime in the specific provisions of the *Criminal Law*. The principle of suiting the punishment to the crime refers to the concept that the punishment shall be adaptable to the nature and the circumstances of the crime.

### 16 Appeals

**16.1** Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Yes, a guilty or a non-guilty verdict is appealable by either the defendant or the government.

**16.2** Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

Yes, a criminal sentence following a guilty verdict is appealable by either the defendant or the government.

**16.3** What is the appellate court’s standard of review?

Pursuant to Article 233 of the *Criminal Procedure Law*, an appellate court shall conduct a comprehensive review of the determined facts and the application of law in the judgment of first instance, without being limited by the scope of appeal.

**16.4** If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

Pursuant to Article 236 of the *Criminal Procedure Law*, the appellate court shall take the actions as following:

- (a) If the appellate court finds that the facts and the application of the law is correct, and the sentence is appropriate, the original judgment shall be upheld.
- (b) If the appellate court finds no error in the facts, but there is an error in the application of the law, or the sentence is improper, the sentence should be revised.
- (c) If the appellate court finds that facts in the original judgment are unclear or the evidence insufficient, it may revise the judgment after ascertaining the facts, or it may rescind the original judgment and remand the case to the trial court for retrial.



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