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## From Policy to Practice: China's Procuratorate is Protecting Private Businesses

In recent years, the Supreme People's Procuratorate (SPP) of China has prioritized the protection and promotion of private economic development as a critical goal. It has issued a series of policy documents, launched targeted campaigns, and guided local procuratorates to implement tailored measures. Local procuratorates, in turn, have further refined the SPP's directives. These efforts collectively reflect a shift toward proactive governance, blending legal rigor with policy flexibility to balance crime prevention, fair market, and the protection of entrepreneurial innovation—a critical step in fostering a stable, predictable business environment for China's private economy.

### I. Procuratorial Guidance on promoting private economy

#### Background

On October 23, 2023, the SPP issued the Opinions on Fully Carrying out Procuratorial Functions to Promote the Development and Growth of the Private Economy ("Opinions"), providing a general guidance on facilitating private economy. It's a significant and overarching guidance for regional People's Procuratorates to take more specific and practical measures to maintain the development of private economy.

#### Highlights:

The Opinions introduces 23 articles to provide policy measures on State Council's Opinions on Promoting the Development and Growth of the Private Economy. The Opinions spans from the following five aspects:

#### 1. Critical performing principles

(1) Equal protection. Treat all kinds of market entities and enterprises of all forms of ownership equally and providing equal protection in accordance with the law.

(2) The criminal policy of combining leniency with severity. In criminal cases, for private enterprises who admit guilt and accept punishment, have relatively little subjective malignancy, and the criminal circumstances are minor, the procuratorial organs shall treat them with leniency. On the other hand, the organs shall crack down on crimes with great subjective malignancy, which seriously infringe upon the interests of the state, the collective, and others, and disrupt the market environment.

(3) Handling cases with high quality and efficiency. The organs shall deal with cases involving private enterprises effectively, and achieve an organic unity of the quality, efficiency, and effect of procuratorial case handling in fairness and justice.

#### 2. Fully Carrying out Procuratorial Functions

Procuratorial organs are required to exert four kinds of supervision functions, including civil, criminal, administrative, and intellectual property procuratorial supervision.

(1) Procuratorial organs are required to cracking down on crimes infringing upon the legitimate rights and interests of private enterprises, such as

- A. Mafia-like crimes like :  
illegal usury, market monopolization, and forced buying and selling;
- B. Crimes that disrupt market order, like :  
financial fraud, contract fraud, and collusive bidding;
- C. Commercial bribery;
- D. Law job-related crime cases in which judicial personnel abuse their powers, bend the law for personal gain, and render unjust judgments.

- (2) Carry out accurate civil procuratorial supervision. Procuratorial organs shall enhance the protection of compliant and honest behaviors, stabilize the expectations of investors, ensure the safety of transactions and punish acts of false litigation.
- (3) Strengthen administrative procuratorial supervision. Procuratorial organs are required to intensify the supervision over administrative illegal acts such as "multiple law enforcement entities", "repeated penalties", "different penalties for the same case", and "abuse of discretionary power". They shall safeguard the property rights and business operation rights of private enterprises, and prevent administrative organs from interfering in civil and economic disputes by administrative means, exercising their powers illegally, or failing to exercise their powers which may damage the legitimate rights and interests of private enterprises.
- (4) Deepen the procuratorial work on public interest litigation. Procuratorial organs shall promote the supervision of procuratorial public interest litigation cases involving enterprises in the fields of ecological environment and resource protection, food and drug safety, national land and national finance, work safety, etc. They should handle public interest litigation cases of anti-monopoly in accordance with the law, and promote the refinement of the institutional framework and policy implementation mechanism for fair competition.
- (5) Intensify the supervision on intellectual property. Procuratorial organs shall boost the crackdown on IP infringement crimes that affect the innovative development of enterprises, such as counterfeiting registered trademarks and patents, enhance the protection of the original innovation of private SMEs, and strengthen the protection of trade secrets.

### **3. Enrich the methods of legal supervision**

Procuratorial organs should strengthen the supervision of case-filing and investigation activities, accurately apply the conditions for examination and approval of arrest and examination and prosecution of cases, enhance the supervision of criminal trials and enforcement, fortify the connection between administrative law enforcement and criminal justice, and build up the mechanisms such as complaints in cases involving enterprises.

### **4. Discern the boundaries of laws and policies**

The boundaries between crime and non-crime need to be strictly distinguished. Prosecutors should grasp the identification standards for crimes related to production and operation, as well as the standards for frequently occurring crimes in private enterprises, such as crimes related to illegal fundraising, loans, and taxation.

### **5. Bolster organizational leadership**

To guarantee the implement of the Opinions, procuratorial organs should establish a long-term working mechanism, and actively carry out legal popularization education.

## **II. Model cases issued by SPP**

On April 1, 2024, the SPP released **ten model cases about civil procuratorial supervision promoting the development of private economy**, offering an important guidance to regional People's Procuratorates.

This batch of cases are recently concluded by the procuratorial organs. In terms of the prosecutorial functions involved, there are cases of supervising the case-filing and withdrawal of cases (case supervision), cases where public prosecution was initiated to combat internal corruption crimes within enterprises, cases where a decision not to prosecute was made following corporate compliance rectification, cases where legal appeals led to retrials and revised judgments, and cases involving integrated performance of criminal prosecution and public interest litigation functions.

In terms of the fields involved, these cases cover the punishment of internal corruption crimes within private enterprises, compliance rectification of enterprises involved in intellectual property rights infringement, illegal fundraising, and environmental pollution crimes, the distinction between economic disputes and criminal offenses, as well as the use of digital empowerment to promote industry governance.

## **III. SPP Initiates "Prosecutorial Protection of Enterprises" Special Action**

On February, 25, 2024, the SPP decided to launch special action of to provide prosecutorial protection for private enterprises which lasts from February to December. This action aims to further strengthen the equal protection of all types of market entities in accordance with the law, promote the healthy

development of private enterprises, create a law-based business environment, and contribute to the high-quality development of the economy and society.

- **Key work measures in the Action Plan**

The Action Plan specifies that the special action mainly includes 14 key work measures, which are as follows:

- (1) Severely punish crimes that disrupt fair competition;
- (2) Severely punish internal corruption crimes within private enterprises;
- (3) Conduct supervision and governance of acts by company actual controllers and senior executives that violate their fiduciary duties and harm the interests of the company;
- (4) Carry out a special crackdown and governance of "shell companies" (companies without active business operations or significant assets);
- (5) Using the clearance of "suspended cases" as a starting point, strengthen the supervision of the initiation of cases involving enterprises;
- (6) Legally and prudently apply coercive measures;
- (7) Conduct a special supervision of the enforcement of property-related judgments against criminal units and the execution of property-related parts of criminal judgments involving crimes that infringe upon the legitimate rights and interests of enterprises;
- (8) Strengthen the supervision of effective civil judgments and enforcement cases involving enterprises;
- (9) Strengthen the supervision of administrative litigation and effective administrative judgments involving enterprises, as well as the supervision of administrative illegal acts;
- (10) Conduct public interest litigation supervision;
- (11) Increase the handling of complaints and petitions;
- (12) Strengthen the protection of property rights of private enterprises;
- (13) Deepen the comprehensive performance of intellectual property rights prosecution functions;
- (14) Deepen the compliance reform of enterprises involved in cases.

### **Interim achievements of the protection action**

On August 8, 2024, the SPP issued **the Circular on the Main Measures and Interim Achievements of the "Prosecutorial Protection of Enterprises" Special Action** ("Notice"), summarizing the achievements of the special action.

According to the Notice, in the first half of 2024, 62,000 individuals were prosecuted for crimes disrupting the order of the market economy, a year-on-year increase of 36.5%. Additionally, 5,827 individuals in key positions of private enterprises were prosecuted for corporate-related crimes such as embezzlement of position, misappropriation of funds, and bribery committed by taking advantage of their official positions, marking a year-on-year increase of 41.1%. The procuratorial organs have been safeguarding the accelerated development of new-quality productive forces. A total of 8,894 individuals were prosecuted for intellectual property rights (IPR) infringement crimes, up by 45.5% year-on-year; 1,837 civil and administrative litigation supervision cases related to IPR were handled, up by 74% year-on-year; and 480 public interest litigation cases in the field of IPR were processed.

The Notice also summed up the main measures and achievements:

- (1) The SPP strengthened its leadership and guidance over the people's procuratorates of all provinces, and intensified legal supervision targeting prominent issues that affect the business environment.
- (2) Efforts were increased to supervise false litigation cases involving enterprises, using information technology to comprehensively review case facts and employing methods such as data-driven leadership and focused review to thoroughly identify clues of false litigation cases.
- (3) Procuratorial organs enhanced the supervision of civil execution activities, focusing on correcting illegal acts of sealing up, seizing, or freezing assets that are obviously beyond authority, scope, amount, or time limit, thereby revitalizing corporate assets and stimulating corporate vitality.
- (4) The action also focused on preventing and correcting the intervention in economic disputes through administrative or criminal means.

## IV. People's Procuratorate of Beijing notice to promote private economy

On July 9, 2024, People's Procuratorate of Beijing ("PPB") issued the Work Guidelines on Serving and Guaranteeing the Development and Growth of the Private Economy (Trial) ("Guidelines") to implement the documents released by State Council and SPP. In addition to re-emphasizing some of the key points in the Notice issued by the SPP, this Guideline also puts forward fifteen more specific measures. Following are some highlights:

### 1. Strengthen criminal prosecution to maintain market order

Beijing will focus on combating crimes that disrupt market competition, such as contract fraud, false advertising, and bid-rigging. The procuratorate will also continue its anti-gang efforts, targeting organized crime activities that infringe upon private enterprises, including illegal usury and market bullying. Additionally, it will protect private enterprises and entrepreneurs from malicious reporting, online defamation, and false litigation, ensuring a fair business environment.

### 2. Enhance intellectual property protection to support innovation

Priority will be given to safeguarding core technologies in key areas such as platform economy, biomedicine, and artificial intelligence. The procuratorate will intensify efforts to crack down on intellectual property infringement and counterfeiting. It will also strengthen civil and administrative litigation supervision in intellectual property cases, ensuring the implementation of punitive damages for infringement.

### 3. Optimize criminal litigation supervision to protect corporate rights

The procuratorate will enhance supervision over the initiation of cases involving private enterprises, regularly clearing up long-standing "stalled cases" that have not been resolved in a timely manner. It will exercise caution in the use of pretrial detention, conducting regular reviews of the necessity of detention. Moreover, it will supervise the execution of property-related judgments to prevent illegal seizures and attachments of corporate assets.

### 4. Deepen civil prosecution supervision to ensure transaction security

The Guidelines highlights boosting supervision in key areas of civil litigation involving private enterprises, such as financial lending and leasing. The procuratorate will continue to combat false litigation, targeting behaviors that evade debts. It will also explore ways to supervise overreaching or excessive seizures of corporate assets during enforcement proceedings.

### 5. Strengthen administrative prosecution supervision to promote policy implementation

The procuratorate will focus on supervising administrative actions that negatively impact private enterprises, such as excessive penalties for minor offenses and multiple inspections by different authorities. It will also ensure the proper enforcement of administrative judgments involving private enterprises, preventing the misuse of credit punishment measures.

### 6. Advance public interest litigation to protect public interests

The Guidelines introduce measures to address the misuse of subsidies and fraudulent claims of government aid through public interest litigation. The procuratorate will also expand its public interest litigation efforts in digital economy areas, such as platform economy and cybersecurity, to protect the interests of private enterprises and consumers.

### 7. Cross-regional cooperation and foreign-related legal protection

Beijing will establish joint case supervision mechanisms with neighboring regions, such as Tianjin and Hebei, to unify legal application standards. The procuratorate will also enhance legal cooperation to support private enterprises in their international operations, protecting them from foreign-related criminal activities.

### 8. Digital prosecution strategy and source governance

The guidelines emphasize leveraging digital technology to identify legal supervision clues involving private enterprises and combat crimes in the digital economy. The procuratorate will also issue recommendations to help enterprises improve their governance structures and prevent legal risks.

## **9. Boost channels for corporate complaints and appeals**

The Beijing People's Procuratorate will establish a green channel through the 12309 Prosecutorial Service Center, providing legal consultation and judicial relief services for private enterprises. It will also focus on resolving disputes in corporate complaints and appeals, achieving both legal and social harmony.

## **10. Improve the internal crime management of private enterprises**

The procuratorate will legally penalize internal personnel, especially those in key positions such as executives, finance, sales, procurement, approval, and technology, for crimes like embezzlement, misappropriation of funds, non-state employee bribery, and breach of trust that harms corporate interests. Legal responsibilities will be pursued for controlling shareholders or actual controllers who engage in behaviors such as misappropriating corporate assets, conducting improper related-party transactions.

## **Conclusion**

China's judicial steps, led by the SPP and followed by local ones like Beijing's, show a strong effort to make a fairer legal space for private firms. Through releasing guidelines, running campaigns, and sharing model cases, they aim to stop unfair law enforcement, protect business rights, and clear up compliance rules. Such policies signal stronger institutional support, likely boosting investor confidence and reducing operational uncertainties for businesses. In the long run, it can make the market livelier, push innovation, and help the economy grow sustainably, making China more attractive for private business.

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