

The Development of Qualification Penalty under the Property Punishment Expansion

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Abstract

In criminal law, property-oriented penalties and disqualification penalties serve as two primary categories of sanctions, widely adopted globally for their distinct proactive roles in preventing crime, compared to capital and incarceration penalties. After several amendments, China's criminal law has gradually broadened the application of property-oriented penalties from covering traditional property crimes to including non-traditional ones, showing a clear trend of expansion. Presently, the Criminal Law Amendment (IX) continues to expand the list of offenses subject to property-oriented penalties, a trend not mirrored in the development of disqualification penalties. While "occupational prohibition", a new addition in the Criminal Law Amendment (IX), stands out as a key example of disqualification penalties, marking its special significance, the evolution of disqualification penalties has not been sufficient, especially against the backdrop of expanding property-oriented penalties in China, where it remains somewhat immature. Therefore, by expanding the types of disqualification penalties and refining their detailed provisions on the existing basis, their potential in effectively controlling and preventing crime could be significantly improved.

Keywords

Property-oriented penalty; Disqualification penalty; Professional ban

Introduction

Since the implementation of the Criminal Law Amendment (IX), China's criminal law has seen ten rounds of amendments. From establishing fundamental principles for crimes and punishments in 1997 to continuously refining these concepts through nine amendments by 2015, there's been a clear focus on adjusting the scope of criminal activities and the severity of sentences. Each amendment builds upon the prevailing criminal behaviors, addressing new challenges as they arise. The appropriateness and effectiveness of sentencing, especially from a preventive perspective, have become key considerations. In step with global trends towards lighter sentencing, China has increasingly restricted the use of capital and imprisonment penalties while broadening the definitions and applications of property-oriented and disqualification penalties. Notably, the expansion in property-oriented penalties now includes non-economic crimes, signifying a shift in the penal system's focus and a major move towards a preventive approach. However, this emphasis on property-oriented penalties has somewhat limited the growth of disqualification penalties. Relative to property-oriented penalties, disqualification penalties remain in their infancy, not just in terms of their scant presence in Chinese criminal law but also in their practical effectiveness. As crimes involving specific qualifications become more complex and varied, the need for carefully applying disqualification penalties to manage existing and potential criminal acts becomes evident. Moreover, "occupational prohibition", introduced in the Criminal Law Amendment (IX), highlights disqualification from certain professions, serving as a clear example of a disqualification penalty. Yet, the range and rules for disqualification penalties

should be more extensive. Thus, against the backdrop of expanding property-oriented penalties, advancing the development of disqualification penalties to achieve a balanced enforcement strategy becomes an essential progression for ensuring well-measured punishments within China's penal framework.

Expansion of Property-Oriented Penalties in China

With the global shift towards lighter sentencing and the integration of preventive punishment goals, China's penal system has adapted through reform. This adaptation involves limiting capital and incarceration penalties while extending the application of property-oriented and disqualification penalties across a wider range of offenses, thereby aligning with the trend towards lighter penalties and shifting from a retributive to a preventive punishment philosophy. However, the focus has been more on the expansion of property-oriented penalties, with less emphasis on disqualification penalties. So, how has the property-oriented penalty expanded?

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The Nature of Property-Oriented Penalty Expansion

Property-oriented penalties, typically defined as “penalties that deprive an offender of their property” (X. Chen, 2011), primarily target the criminal’s assets, inherently embodying a lighter form of punishment compared to capital and incarceration penalties. Beyond their fundamental punitive aspect, property-oriented penalties also boast advantages such as economic measurability, additivity, and reversibility. Particularly amid reforms towards more lenient penalties, the significance of property-oriented penalties has grown. Globally, while criminal laws vary, the approach to property-oriented penalties largely centers around fines and confiscation, a practice mirrored in China. The 1979 Criminal Law of China initially established fines and property confiscation as penalty types, with legal provisions specifying fines for 24 crimes and confiscation for 25. Subsequent legal amendments have broadened the scope of crimes subject to fines and confiscation. Today, the law prescribes fines for over 200 crimes and confiscation for more than 70, showcasing a clear trend of expansion.

The expansion of property-oriented penalties has effectively elevated their status within the penal system to a level comparable with incarceration penalties. The expansion mainly breaks traditional boundaries of property crimes to cover non-traditional, open application areas. In simple terms, the scope of property-oriented penalties has expanded from profit-driven crimes to non-profit-driven crimes, from property crimes to personal safety crimes, and from individual to national and social public legal interests violations. Moreover, the application of property-oriented penalties encompasses both negligent and intentional crimes, light and some serious crimes (Song & Ding, 2014). Currently, based on the existing Criminal Law, property-oriented penalties apply to eight categories of crimes, notably occupying a significant portion of China’s criminal law divisions. “The arrangement of crime types in the criminal law is rationally organized, adhering to the principle of specificity required by the legality of crimes and punishments” (Wu, 2009). Therefore, the specifics of property-oriented penalty expansion can be clearly identified from the provisions of successive criminal law amendments. A brief summary of the nine amendments regarding property-oriented penalties includes adjustments and additions ranging from manipulation of securities prices to regulations against illicit land occupation, support for terrorist activities, smuggling waste, credit card information theft, false bankruptcy, bribery not involving state employees, organizing pyramid schemes, kidnapping, dangerous driving, environmental pollution, to modifications directly addressing fines in the general principles of criminal law and adding crimes related to terrorism, extremism, and cyber offenses, accompanied by fines or confiscation in over 34 provisions.

The provisions regarding property-oriented penalties within the criminal law amendments essentially reflect an adjustment in China’s legislative approach to property-oriented penalties. By broadening the application of property-oriented penalties for crimes, it’s clear that their proportion within the overall structure of punishments has been enhanced. Furthermore, the legislative provisions for

property-oriented penalties, serving as a prerequisite for judicial practice, become a practical guide in the judicial process. Thus, the evolution of fines and confiscation towards an ideal regulatory path becomes inevitable. However, observing the gradual expansion of the scope of property-oriented penalties inevitably prompts the question: What are the implications of such expansion?

The Suitability of Expanding Property-Oriented Penalties

The current Criminal Law on property-oriented penalties unmistakably reflects China’s deliberate approach to widening their scope. This strategy isn’t a fleeting impulse from lawmakers or a quickly realized notion; it’s grounded in justified reasons supporting the expansion of these penalties. On one hand, the broadening of property-oriented penalties aligns with the global shift towards lighter sentencing. Initiated during the Enlightenment in the West, this trend has evolved over centuries to profoundly influence most countries today. It champions a movement towards more lenient punishments, seeking to optimize social benefits with the least severe penalties by tailoring the penalty system to moderate its strictness (Zhao, 2012). Essentially, the drive towards leniency necessitates that legislation and judicial practices favor lighter penalties. Thus, aligning with the trajectory of global penal evolution, China is compelled to undertake necessary reforms within its penal system. Expanding the scope of property-oriented penalties becomes a crucial component of China’s journey towards leniency, capitalizing on the inherent advantages of non-incarceration penalties in this inevitable reform process. On the other hand, the expansion of property-oriented penalties serves as a suitable response to China’s shift from a retributive to a preventive approach to punishment. Moving from primitive vengeance to legal retribution, China has transitioned away from absolute retribution, albeit without achieving optimal punishment outcomes. “Modern criminal law theory universally acknowledges crime prevention as the rightful goal of punishment”, aiming not only to deter potential offenses but also to prevent imminent ones (Zhou, 2012). This preventive approach emphasizes punishment effects tied to societal integration, striving to prevent the re-occurrence or occurrence of crimes through the interplay of individual and societal conditions. Therefore, as China pursues preventive outcomes, adjusting the penal framework to increase the shares of fines and confiscation becomes an apt manifestation of this shift towards a preventive perspective on punishment (Zhang, 2015). Consequently, the trend of progressively expanding property-oriented penalties is consistent with the development trajectory fitting China’s criminal law reforms.

Certainly, it’s undeniable that the gradual expansion of property-oriented penalties still introduces some unavoidable issues or, more specifically, discomforts arising from their expansion in China. Fundamentally, property-oriented penalties indeed have their drawbacks, notably their inequality and challenges in enforcement. The inequality of property-oriented penalties stems from targeting the offender’s property, which can vary significantly among individuals, making it difficult to achieve substantive

equality and thus diminishing the effectiveness of the penalty. Additionally, enforcing property-oriented penalties poses significant challenges, from the ability to enforce and pay to the potential for evasion, making execution a major issue. Currently, China lacks a comprehensive and perfected solution to these problems related to property-oriented penalties. The continuous expansion of these penalties and their application thus creates a disconnection between reality and the ideal, leading to awkward dilemmas. Despite the unresolved issues associated with property-oriented penalties, their beneficial effects cannot be overlooked. Moreover, the direction of reform towards expanding property-oriented penalties is undoubtedly correct and should be continued.

Then, what about disqualification penalties, which hold an equally important position as property-oriented penalties (at least at the same level of classification in the types of punishments, without subjective bias)? Given that disqualification penalties represent the mildest method of punishment within the penal system, under the principles of preventive punishment and the trend towards leniency, have they developed as rapidly as property-oriented penalties in China?

The Legislative Status of Disqualification Penalties in China

Disqualification penalties have a long historical background and are generally considered as a collective term for punishments that deprive offenders of certain rights and qualifications (Ma, 2009). Their purpose is to prevent potential or imminent crimes by stripping specific rights and abilities from criminals. Particularly for those already convicted, it involves taking away their rights or qualifications to continue or potentially engage in certain activities as a preventative measure against re-offending. Like property-oriented penalties, disqualification penalties possess distinct economic, humane, and leniency characteristics, reflecting the progressiveness of the times (Ma, 2007). Therefore, the position and role of disqualification penalties within the entire criminal law system and penalty structure have garnered attention from penal theory scholars. Today, “disqualification penalties are stipulated in the criminal codes of the vast majority of countries worldwide, holding a significant position”. However, the specific types and contents of disqualification penalties vary from country to country. In China, the current Criminal Law includes the deprivation of political rights among its additional penalty types and stipulates expulsion for foreigners, showcasing the legislative presence of disqualification penalties in the country.

The Two Types of Disqualification Penalties in China

In China’s criminal law, the deprivation of political rights exists as a form of additional penalty, while expulsion is not explicitly listed among the types of additional penalties. However, it is widely recognized in theory that additional penalties include expulsion. Compared to each other, deprivation of political rights is applied more broadly and deeply than expulsion. Deprivation of political rights

is akin to the deprivation of public rights seen in foreign jurisdictions, whereas expulsion is similar to the deprivation of the right to residency.

Specific Provisions In essence, deprivation of political rights is defined as “a penal method that deprives the offender of the right to participate in state governance and political activities” (Gao & Ma, 2011). According to Article 54 of the current Criminal Law of China: “Deprivation of political rights includes the deprivation of the following rights: (1) The right to elect and be elected; (2) The rights to freedom of speech, publishing, assembly, association, procession, and demonstration; (3) The right to hold positions in state organs; (4) The right to hold leadership positions in state-owned companies, enterprises, institutions, and people’s organizations”. Deprivation of political rights is the primary form of disqualification penalty in China, targeting specific rights of the offender to reduce the risk of committing crimes using one’s power or qualifications.

Expulsion, on the other hand, is a type of disqualification penalty applied to foreign nationals who commit crimes, essentially forcing them to leave China’s territory. This means that any foreigner sentenced to expulsion loses the right to remain in China. Article 35 of China’s Criminal Law explicitly states: “For foreign nationals who commit crimes, expulsion may be applied independently or in addition to other penalties”. In practice, expulsion is a restriction placed on foreigners within China’s territory, aiming to enforce compliance with Chinese laws and regulations, lest they lose the qualification to stay.

Applicable Targets Under the dominant influence of preventive and educative punishment concepts, the application of disqualification penalties varies across different crimes. China has diverse applicable targets for its disqualification penalties. Since expulsion inherently targets foreign nationals within China’s territory without much controversy, the focus here is on differentiating the legislative provisions applicable to the deprivation of political rights within China.

According to Articles 56 and 57 of the General Provisions of China’s Criminal Law, as well as specific provisions and related regulations, the deprivation of political rights applies to the following five categories of individuals: First, criminals endangering national security should be deprived of their political rights regardless of the principal punishment imposed. From a national security perspective, “criminals who endanger the state’s sovereignty, territorial integrity, security, and the socialist system must be deprived of their political rights for a certain period to safeguard national security (Qu, 2011)”. Second, criminals sentenced to death or life imprisonment should be permanently deprived of their political rights. “This determination is made based on the type of principal punishment, regardless of the nature and type of the crime (Zhang, 2011)”. Third, criminals who commit serious offenses disrupting social order, such as intentional homicide, rape, arson, explosion, poisoning, and robbery, may also be deprived of their political rights. Fourth, “for other serious crimes disrupting social order like intentional injury and theft, where the criminal’s subjective malice is deep, the circumstances are severe, and the crime is grave, deprivation of political rights may also be legally added (“Reply of the Supreme People’s Court on whether

additional deprivation of political rights can be imposed on criminals who seriously disrupt social order such as intentional injury or theft”, 1997)”. Fifth, for those with lighter offenses and less severe crimes but related to the enjoyment or exercise of political rights, deprivation of political rights can be applied independently. This is often implemented through specific crime provisions in the Special Provisions of the Criminal Law.

The scope of disqualification penalties in China is limited to the deprivation of political rights and expulsion. Deprivation of political rights negates and restricts rights or qualifications and safeguards the corresponding reputation; expulsion serves as a prohibition and preventive measure against foreigners’ actions in China, protecting the nation and its people. However, compared to the richer content of disqualification penalties abroad, China’s provisions appear overly simplistic and rudimentary, failing to adapt well to the penal system’s evolving trends. Especially in the context of the ongoing expansion and reform of property-oriented penalties, indicating a direction for adjusting the structure of punishments, disqualification penalties merit greater attention. Thus, addressing the shortcomings of China’s disqualification penalties becomes a priority.

Deficiencies in China’s Disqualification Penalties Compared to International Standards

In comparison to international criminal codes, China’s legislation on disqualification penalties seems relatively straightforward. This simplicity is evident both in the limited variety and scope of these penalties and in their somewhat indistinct application to specific targets, leading to a lack of precision. As a result, the implementation of disqualification penalties in China demonstrates notable areas for improvement.

Limited Range of Disqualification Penalties China’s Criminal Law currently specifies only two forms of disqualification penalties: deprivation of political rights and expulsion. Compared to the broader array seen internationally, China’s approach to deprivation of political rights is narrowly focused on the loss of “political rights” without extending to other rights restrictions. Expulsion, due to its specific target group, lacks general applicability. As a result, the palette of disqualification penalties within China’s legal framework appears notably thin. Disqualification penalties fundamentally punish offenders by limiting or removing certain “qualifications”. Beyond political rights, the scope of “qualifications” is extensive, including eligibility for specific professional and operational activities such as “rights to business operations, financial management, medical practice, educational engagement, and motor vehicle (boat) operation (Hu, 2015)” and more. Therefore, the variety of disqualification penalties in China is exceedingly simplistic. Moreover, the application range of disqualification penalties in China is narrowly defined. Crimes that involve or exploit “qualifications” are not met with disqualification penalties but only with incarceration or financial penalties, potentially undermining the preventive effect of disqualification penalties.

At present, the specificity and application breadth of disqualification penalties are inadequate in addressing crimes

closely tied to qualifications. Besides the simplicity and narrowness of the overall disqualification penalties, deprivation of political rights, China’s foremost disqualification penalty, presents its set of issues.

Issues with Deprivation of Political Rights Deprivation of political rights uniquely characterizes China’s penal system. It specifically targets “political rights”, bearing significant political implications while simultaneously suffering from a lack of precise focus and a tendency towards a uniform application approach.

- (1) *Political Nature of Relevant Crimes* The crimes subjected to deprivation of political rights are intrinsically linked to national governance and political activities, giving the penalty a pronounced political dimension. This connection inherently intensifies its severity, making deprivation of political rights a strict political sanction. Moreover, restricting the penalty to political rights or qualifications narrows the range of applicable crimes.
- (2) *Insufficient Specificity* The application of deprivation of political rights shows a notable lack of specificity in targeting. Particularly for individuals sentenced to death or life imprisonment, imposing this penalty is largely symbolic and lacks meaningful impact. Additionally, the criteria for applying this penalty to crimes severely disrupting social order are vague, lacking explicit standards and resulting in inconsistent enforcement across judicial practices.

The penalty also shows a lack of specificity concerning its targets. For example, certain public officials who abuse their positions to commit crimes are not subjected to political rights deprivation. In contrast, crimes like insult, defamation, and swindling are subjected to this penalty, diluting its targeted efficacy (Li, 2007b). Furthermore, the application of this penalty to legal entities remains unclear. In an era of rapid socio-economic development, where corporations and organizations increasingly emerge as significant perpetrators, a meticulous evaluation of their qualifications is crucial.

Rigid application Disqualification penalties in China are applied in two ways: partial and total revocation. The current Criminal Law employs a total revocation approach, meaning once a disqualification penalty is imposed, it strips the offender of all specified rights. This approach treats the contents listed under the deprivation of political rights as an inseparable whole, interconnected and indivisible. However, this method is too mechanistic in application, lacking individualized consideration and rationality. The significance of certain rights or qualifications varies across different times, conditions, and individuals, making the revocation inconsequential for some offenders and potentially leading to “excessive punishment”, thereby diminishing the effectiveness of disqualification penalties.

Observing the shortcomings of disqualification penalties, it’s evident that China’s legislative framework in this area is still immature, not as developed as the regulations concerning property-oriented penalties. It requires broader and deeper theoretical exploration and legislative refinement. The Criminal Law Amendment (IX) explicitly includes “professional ban”, marking a significant step in the

development of disqualification penalties in China. By legislating the expansion of disqualification penalties from deprivation of political rights and expulsion to include career prohibitions, “professional ban” with its unique connotations and significance will further expand the application of disqualification penalties within China’s criminal penalty system.

The Scope of “Professional Ban”

The concept of “professional ban,” introduced in Article 37 of the current Criminal Law through the Ninth Amendment, represents a novel penal measure within Chinese legal practice. This measure aims to prevent specific criminal behaviors by restricting or revoking individuals’ rights to engage in particular professions, thus serving a specialized preventative purpose within the penal system.

The meaning of “Professional Ban”

“Professional ban” aligns with disqualification penalties found in Western jurisdictions, focusing on denying the right to practice certain professions to those convicted of crimes. This legislative addition marks a significant step in integrating profession-related disqualification penalties into Chinese law, which traditionally has not included such measures as explicitly as seen in international practices (Huang, 2011).

In essence, the “professional ban” elevates certain administrative measures to penal sanction (Shi et al., 2015). While China does not explicitly feature a system of administrative penalties known as “security measures” found in some legal systems, it employs measures akin to these, particularly for individuals who have committed crimes or acts deemed significantly wrongful (Shi, 2013). The introduction of “professional ban” as a legal sanction signifies a shift towards recognizing the necessity of punitive measures for certain professional misconduct, expanding the scope of disqualification penalties.

Applicable to both intentional and negligent crimes, the “professional ban” necessitates a conviction for its enforcement. It exclusively applies to natural persons, not entities, with a maximum duration of five years. Upon expiry, the individual’s professional qualifications are reinstated, though lost positions or offices due to the disqualification cannot be recovered (J. Chen, 2009). Judicial discretion plays a crucial role in applying and determining the duration of the “professional ban”, based on the specifics of the crime and the need to prevent recidivism.

Furthermore, the “professional ban” does not conflict with other legal or regulatory provisions on professional restrictions. Laws such as the Judges Law of PRC (Revision 2019) and the Public Procurators Law of PRC (Revision 2019) include crime as a basis for professional disqualification, making additional “professional ban” rulings unnecessary. Thus, the primary application of the “professional ban” within the Criminal Law targets professions not covered by specific legal or regulatory disqualifications, enhancing the penal system’s capacity to address professional misconduct comprehensively.

The Strengths and Weakness of “Professional Ban”

The introduction of the “professional ban” represents a significant evolution in Chinese criminal law, transitioning from a punitive to a preventative legal framework. Influenced by the recognition of crime as an inevitable phenomenon (Lu & Jiang, 2015), a rational approach to crime has become a unified direction for legal reform. The “professional ban” specifically targets and restricts certain professional qualifications of convicted individuals, continuing the development of non-custodial penalties and aligning with the trend towards leniency. Furthermore, this measure is not based on personal guilt or responsibility but aims to ensure safety (Hans & Zhao, 2014), indicating a proactive approach to mitigating potential risks and emphasizing its effectiveness and rationale. The “professional ban” not only signifies the incorporation of concepts from foreign legal systems into Chinese law, albeit not as a disqualification penalty, but also represents a step towards implementing a preventative legal philosophy, showcasing the evolution of legislative norms to meet contemporary needs.

However, the “professional ban” has its imperfections, notably its absence as a classified disqualification penalty, which might be seen as a missed opportunity given its established role in other jurisdictions. Additionally, the restriction of its applicability solely to individuals, excluding legal entities or organizations, marks a significant limitation. In the current societal context, the potential harm caused by corporations or organizations can sometimes exceed that of individuals, and the exclusive reliance on financial penalties for these entities is insufficient to deter corporate crime effectively. Conversely, imposing restrictions or prohibitions on their operational qualifications could yield a unique deterrent effect. Furthermore, challenges such as “excessive punishment” and enforcement difficulties may arise in its application.

Regardless of these issues, the “professional ban” introduces a new perspective into the Chinese criminal law system. While it contributes positively to the evolution of disqualification penalties in China, it also highlights the need for continuous refinement and expansion of these penalties to fully address the complexities of modern crime. The addition of the “professional ban” not only marks an important development in the landscape of disqualification penalties but also serves as a reminder of the ongoing need to enhance and adapt legal frameworks to better protect and serve society.

Suggestions for Advancing Disqualification Penalties in China

In light of the current inadequacies in the framework of disqualification penalties in China, the introduction of the “professional ban” has indeed provided a positive direction for the development of such penalties. However, it falls short of fully showcasing the potential and effectiveness of disqualification penalties within the Chinese legal system. Therefore, in alignment with the trend towards more lenient sentencing, it’s imperative to further develop and enrich the content and scope of disqualification penalties in China. This

would not only enhance the legal framework but also ensure a more nuanced and effective approach to crime prevention and rehabilitation.

Expansion of Disqualification Penalties

Elevating the “Professional Ban” Within Disqualification Penalties It’s imperative to elevate the status of “Professional Ban” to become a recognized category under disqualification penalties. Its present classification outside the main disqualification penalties in the Chinese Criminal Law, particularly positioned after non-penalty measures, appears misplaced (Beccaria, 1996). Given the principle of proportionality between crimes and punishments, it’s essential to employ the professional ban penalty for offenses committed through professional roles. Thus, it should be officially included in disqualification penalties, aligning it with deprivation of political rights and deportation.

Elevating “Professional Ban” as a distinct disqualification penalty can broaden the scope of disqualification penalties and enhance their preventive impact. This move underscores restrictions and controls over specific professions, warning professionals against engaging in criminal activities or contemplating re-offense, thereby preventing the misuse of professional qualifications for illegal purposes. This strategy acts as a deterrent for potential offenders and contributes to the orderly, healthy, and positive development of professional ethics and practices.

Moreover, integrating extensive regulations on professional prohibitions from outside the Criminal Law into the disqualification penalties framework is crucial. This integration is particularly vital in cases where discrepancies exist between criminal and administrative sanctions, necessitating a harmonized approach to avoid conflicts and dependency issues between penal and administrative jurisdictions (Yin, 2015). Therefore, consolidating all penalties related to professional qualifications under the disqualification penalties section of the Criminal Law, and applying a unified standard regarding eligibility, conditions, and duration, ensures a balanced and proportional application of the professional ban, aligning with the principles of justice and moderation.

Adding Disqualification for Specific Activities Considering “Professional Ban” as part of disqualification penalties, the deprivation of engaging in specific activities represents another vital aspect of disqualification. This right entails prohibiting certain business or commercial activities and other actions. By preventing criminals from engaging in specific activities, it’s aimed to deter re-offense. “In civil law countries, common prohibitions include driving bans, restrictions on engaging in certain commercial activities, and other specific prohibitions (Ma, 2009)”. In contrast, crimes in China are not only related to professions but also to specific behaviors, such as dangerous driving, which has been recognized as a new crime in the “Criminal Law Amendment (VIII)”, highlighting its societal risk. Additionally, crimes involving the use of vehicles also pose societal risks, making such disqualification penalties necessary. At a minimum, these penalties aim to prevent crimes associated with specific actions.

Implementing Disqualification Penalties for Corporate Crimes The current “Criminal Law” primarily addresses

corporate crimes in Articles 30 and 31, limiting penalties to fines. Although fines are conveniently applicable, they are somewhat ineffective against corporate crimes, lacking symmetrical punishment and preventive impact. Financial penalties often fall short in addressing corporate economic crimes. With the increasing frequency and severity of corporate crimes, expanding in scope and infringing on broader rights and interests, it’s essential to modify the penal punishment mechanism for corporations within the law, introducing new penalty types specific to corporate offenses.

In the current legal framework, China already enforces regulations against organizations and their members for illegal activities such as operating without a license, through administrative sanctions like suspending operations, revoking business licenses, and mandatory dissolution. When contemplating the addition of disqualification penalties for corporate crimes, it’s practical to transform these administrative actions into specific categories of disqualification penalties. Aligning with the principle of proportionality in criminal law, this move ensures the punishment fits the corporate misconduct’s severity. Moreover, incorporating disqualification penalties for corporate offenses borrows from the rich jurisprudence of foreign legal systems on penalizing legal entities, thereby addressing local challenges more effectively (Luo, 2003).

To adequately address corporate crimes, the proposal includes three distinct disqualification penalties: 1. Business Suspension: Temporarily revoking an organization’s right to engage in its business activities, wholly or in part, serves as both punitive and preventative measures, combining accountability with deterrence (Li, 2007a). Following a mandated period for correction, the entity may regain its operational rights. 2. Activity Restrictions: This penalty involves confining the scope of an organization’s operations, including the type of business, geographical reach, and clientele, based on judicial assessments. This is critical in curtailing the potential for criminal misuse of business privileges. 3. Forced Dissolution: The most severe sanction, akin to the death penalty for natural persons, this penalty seeks to eliminate entities engaged in significant harmful activities by dissolving them. It effectively prevents the organization from committing future crimes. Given its severity, this penalty demands cautious application, considering the societal harm and the necessity and effectiveness of such a measure, similar to the rigorous criteria applied to sentencing individuals to ensure against overreach or unjust application to organizations.

Improvement of Disqualification Penalties

Given the inherent political nature, lack of clarity, and rigid implementation associated with the deprivation of political rights as stipulated in China’s existing Criminal Law, it fails to adequately manifest its significance and efficacy within the framework of contemporary penal theory. In the context of modern society, where the deprivation is exclusively focused on negating political rights, it could inadvertently undermine the progression of societal democracy. Thus, the term “deprivation of political rights” itself appears deficient. Additionally, considering the necessity for more targeted content and adaptable application, there is a compelling need

for reform in the articulation of the deprivation of political rights.

Refinement of Specific Rights for Deprivation: In the context of provisions for the deprivation of political rights, which inherently have political implications, it is proposed that the current provisions be de-politicized and disaggregated into “the deprivation of specific rights”, specifying these rights in detail. While maintaining the deprivation of the rights to vote and to stand for election, it should be revised to prohibit holding specific public positions. As for the clause that includes “the rights to freedom of speech, publishing, assembly, association, procession, and demonstration”, given these are fundamental freedoms guaranteed by the constitution, their cancellation is deemed more justified, taking into account their critical importance to civil liberties and the practical challenges in enforcement.

Specification of Applicable Subjects: As mentioned earlier, the provisions for the application of the deprivation of political rights are rather vague and abstract, which hinders the effective use of this penalty. It is proposed to remove such general provisions and directly detail the application of disqualification penalties within the specific crimes listed in the special part of the law. Similar to the approach taken with property penalties, directly specifying the statutory penalty in the text for each specific crime would ensure consistency between disqualification penalties and property penalties within the criminal law framework.

Implementation of a Discrete System for Disqualification Penalties: In light of the challenges presented by China’s current all-encompassing method of imposing disqualification penalties upon conviction, which results in a comprehensive negation of rights, a recommendation is put forward to embrace a segmented approach, inspired by practices in other countries. This approach would entail enumerating specific rights or qualifications within the framework of Chinese criminal law, allowing for a tailored deprivation of particular rights. This adjustment is aimed at enhancing the precision and personalized application of disqualification penalties, promoting a more nuanced, flexible, and effective implementation in line with the principles of targeted sentencing and individualized justice.

Reflecting on the discussions above, it’s clear that the reforms in China’s disqualification penalties will be applicable to both individuals and entities, covering four pivotal categories: (1) Deprivation of electoral rights; (2) Disqualification from holding certain positions; (3) Disqualification from engaging in specific professions or activities; and (4) Expulsion from the territory. This enhancement not only diversifies the scope of disqualification penalties but also amplifies their effectiveness in enforcement.

In the current climate, where penal mitigation trends prevail and the penal system increasingly leans towards preventive justice, Chinese criminal law is undergoing significant evolution and refinement. The expansion of property-oriented penalties exemplifies the dynamic nature of criminal law reform. Disqualification penalties, holding equivalent significance, must also evolve in response to the shifting paradigms of criminal behavior. The introduction of the “professional ban” in the Criminal Law Amendment

(IX), while not yet formally recognized as a specific category of disqualification penalty, signals China’s forward-looking legislative stance towards such penalties. As criminal law regulation continues to broaden, it’s anticipated that disqualification penalties will undergo similar enhancement and refinement, enabling more effective regulation and application.

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