JUNHE
SPECIAL REPORT

February 13 2020

Criminal Risks for Business Operations during the Coronavirus Outbreak

In December 2019, a new type of coronavirus (*i.e.*, 2019-nCov) causing novel coronavirus pneumonia ("**NCP**") broke out in Wuhan city, Hubei Province, and NCP then became an epidemic disease in many provinces in China and was detected in some countries and regions all over the world. While the Chinese government, healthcare institutions and personnel have been trying their best to control the epidemic situation, from a legal perspective, the 2019-nCov not only causes labor law issues for companies operating in China, it also brings criminal risks[1] to the daily business operation of companies. For companies to understand these criminal risks better so as to minimize such risks, we have summarized several hypothetical scenarios, which may occur in different industries with preliminary legal introductions and analysis, as follows:

Abbreviations:

- **CL**: the *Criminal Law of the People's Republic of China*

- **03Int**: the **Interpretation** *on Several Issues regarding Law Application in Handling Criminal Cases in relation to Obstructing Prevention of and Controlling the Disasters including Breakout of Infectious Diseases* (issued by the Supreme Court and the Supreme Procuratorate of the People's Republic of China in 2003)

- **08Pro**: the *First Provision on Thresholds for Filing and Pursuing Criminal Cases by Public* **Security** *Bureau* (issued by the Supreme Procuratorate and Ministry of Public Security of the People's Republic of China in 2008)

- **13Int**: the *Interpretation on Several Issues concerning the Application of Law in Handling* **Criminal** *Cases involving Defamation and Other Offences Committed through Information Networks* (issued by the Supreme Court and the Supreme Procuratorate of the People's Republic of China in 2013)

- **A**: **Article**

1. Medicare Industry

[1] Pursuant to the criminal laws and administrative laws and regulations of the People's Republic of China, for many types of crimes, if the violation of law does not meet the criminal threshold, such violation may still be regarded as illegal conduct under the administrative laws and regulations (*e.g.*, the *Public Security Administration and Punishment Act of the People's Republic of China*, the *Advertisement Act of the People's Republic of China, etc.*). Please be informed that in this article, we only focus on and discuss criminal law-related issues, and leave administrative law issues untouched and to be fully discussed in subsequent article(s).

Scenario	Crime	Law
Product liability-related crime		
● Manufacturing fake/ungraded products ● Selling fake/ungraded products	Crime of manufacturing or selling fake/ungraded products ("**catch-all article**")	CL-A140 03Int-A2
● Manufacturing fake drugs ● Selling fake drugs	Crime of manufacturing or selling fake drugs	CL-A141 03Int-A2
● Manufacturing ungraded drugs ● Selling ungraded drugs	Crime of manufacturing or selling ungraded drugs	CL-A142 03Int-A2
● Manufacturing substandard medical devices ● Selling substandard medical devices ● Knowingly purchasing substandard medical devices for compensable use	Crime of manufacturing or selling substandard medical devices	CL-A145 03Int-A3
IP violation-related crime		
● Faking a registered trademark	Crime of faking a registered trademark	CL-A213
● Selling products with a fake registered trademark	Crime of selling products with a fake registered trademark	CL-A214
Business operation-related crime		
● Raising prices to an unreasonably high level during	Crime of operating business unlawfully	CL-A225

the infectious disease breakout		03Int-A6

2. Manufacturers

Scenario	Crime	Law
Epidemic disease-related crime		
● Restarting business operations ahead of the time scheduled by the government	Crime of obstructing the prevention and treatment of an epidemic disease	CL-A330 08Pro-A49
Environmental protection-related crime		
● Discharging, dumping or disposal of wastes containing pathogens of epidemic diseases or toxic substances, or other hazardous wastes to land, water or air	Crime of environmental pollution	CL-A338 03Int-A13

3. Retailers

Scenario	Crime	Law
Business operation-related crime		
● Raising prices to an unreasonably high level during an epidemic disease breakout	Crime of operating business unlawfully	CL-A225 03Int-A6

4. Advertising Industry

Scenario	Crime	Law
False advertising related crime		
● Advertiser, advertisement operator or publisher releases false advertisements to promote its products or services in the name of	Crime of releasing false advertisements	CL-A222 03Int-A5

preventing epidemic diseases		

5. Operators and Managers of Hotels, Malls, and Office Buildings

Scenario	Crime	Law
Epidemic disease-related crime		
● Providing drinking water that does not conform to the hygienic standards prescribed by the state ● Refusing to sterilize the sewage, filth and faeces contaminated by the pathogens of epidemic diseases in accordance with the hygiene requirements prescribed by the health and anti-epidemic disease authorities ● Permitting or conniving epidemic disease patients, pathogen carriers and suspected epidemic disease patients to engage in work which they are prohibited from engaging in by the health administration department of the State Council because of the likelihood of causing the spread of epidemic diseases ● Refusing to implement preventive and control measures proposed by the health and anti-epidemic disease authorities in accordance with the *Law on Prevention and Treatment of Epidemic Diseases of the People's Republic of China*	Crime of obstructing the prevention and treatment of epidemic disease	CL-A330 08Pro-A49

6. Network operators

Scenario	Crime	Law
Infringement on citizen rights-related crime		
● Conniving users to conduct defamation through an internet platform run by the operator	Crime of defamation	CL-A246 13Int-A8

Obstruction of social management-related crimes		
● Refusing to perform information security management obligations provided by laws and administrative regulations	Crime of refusing to perform obligations in respect of information network security management	CL-A286.1
● Conniving users to fabricate or deliberately spread false information through internet platforms run by the operator	Crime of fabricating or deliberately spreading false information	CL-A291.1 13Int-A1
● Conniving users to conduct provoking behavior through the internet which causes public disorder	Crime of conducting provocation acts	CL-A293 13Int-A5

7. Entities receiving donations

Scenario	Crime	Law
Corruption-related crime		
● Misappropriating funds and/or materials donated for the prevention and treatment of epidemic diseases	Crime of misappropriation of special funds and property	CL-A273
● State staff embezzling funds and/or materials donated for the prevention and treatment of epidemic diseases	Crime of embezzlement by state staff	CL-A382 03Int-A14
● Staff of non-state entities embezzling funds and/or materials donated for the prevention and treatment of epidemic diseases	Crime of embezzlement by non-state staff	CL-A271 03Int-A14

In addition to the aforementioned crimes closely relating to the epidemic disease breakout, please note that the following criminal risks may also be triggered by market players due to the lack of awareness of criminal compliance, as follows:

8. Crime of infringing citizens' personal information

During the special period of the NCP prevention and control, concerning public health and safety, governments, the medical industry, transport industry and other relevant industries may need to collect and use the personal information (*e.g.*, health information, diagnosis and treatment information, whereabouts, personal address, *etc.*) of the patients and people who have been to the NCP breakout areas. However, such collection and use of personal information should be compliant with the laws and regulations.

Scenario	Crime	Law
Personal information-related crime		
● Illegally obtaining citizens' personal information ● Selling/providing citizens' personal information to others in violation of laws and regulations	Crime of infringing citizens' personal information	CL-A253.1

9. Crimes related to securities market

The NCP may also cause a huge impact to the securities market, and we suggest that listed companies and security practitioners focus on the following potential criminal risks, including but not limited to:

Scenario	Crime	Law
Securities market-related crime		
● Providing shareholders and the public with false financial statements or statements concealing important facts ● Failing to disclose other important information which is required to be disclosed by law	Crime of illegally disclosing or failing to disclose important information	CL-A161
● Trading securities or futures upon insider information ● Disclosing insider information to others ● Advising others explicitly or implicitly to engage in securities or futures transactions by taking advantage of insider information	● Crime of conducting insider trading or leaking insider information ● Crime of trading securities or futures by taking advantage of undisclosed information	CL-A180
● Carrying out combined or successive purchases or sales by taking advantage of funds, shareholding or information, thereby manipulating the trading prices of securities or futures ● Collaborating with another person to mutually trade securities or futures at a pre-arranged time and price and by pre-arranged means,	Crime of manipulating securities or futures market	CL-A182

thereby affecting the price or volume of the securities or futures traded ● Carrying out securities trading between accounts under the actual control of the same person, or taking the person himself/herself as the trading counterparty, buying and selling futures contracts from and to himself/herself, thus effecting the trading price or volume of securities and futures		

10. Crimes related to raising funds

The NCP will have a grave negative impact on the economy, and some small or medium-sized enterprises will inevitably be faced with a series of problems including but not limited to financial difficulties, capital chain break, *etc*. In such cases, some enterprises may be faced with criminal risks because of their prior non-compliant funds-raising process, *etc*.

Scenario	Crime	Law
Funds raising-related crime		
● Issuing stocks or corporate bonds without the approval of the relevant state departments	Crime of issuing stocks or corporate bonds without due approval	CL-A179
● Raising funds through fraudulent methods with the purpose of unlawful possession	Crime of funds-raising fraud	CL-A192
● Obtaining loans from banks or other financial institutions by fraudulent means with the purpose of unlawful possession	Crime of loan fraud	CL-A193
● Obtaining loans from banks or other financial institutions by fraudulent means, causing huge losses to the banks or other financial institutions	Crime of defrauding loans	CL-A175.1
● Obtaining another party's property through defrauding means in the process of signing or performing the contract with the purpose of unlawful possession	Crime of contract fraud	CL-A224

Lei WU	Partner	Tel：86 21 2208 6316	Email：wul@junhe.com
Benjamin YIN	Partner	Tel：86 21 2208 6342	Email：yinx@junhe.com
Tong YANG	Associate	Tel：86 21 2283 8323	Email：yangt@junhe.com

Legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”