



AGILE STRATEGY FOR FOREIGN EXECUTIVES IN CHINA

Avoid Personal Liabilities



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THE SPEAKER



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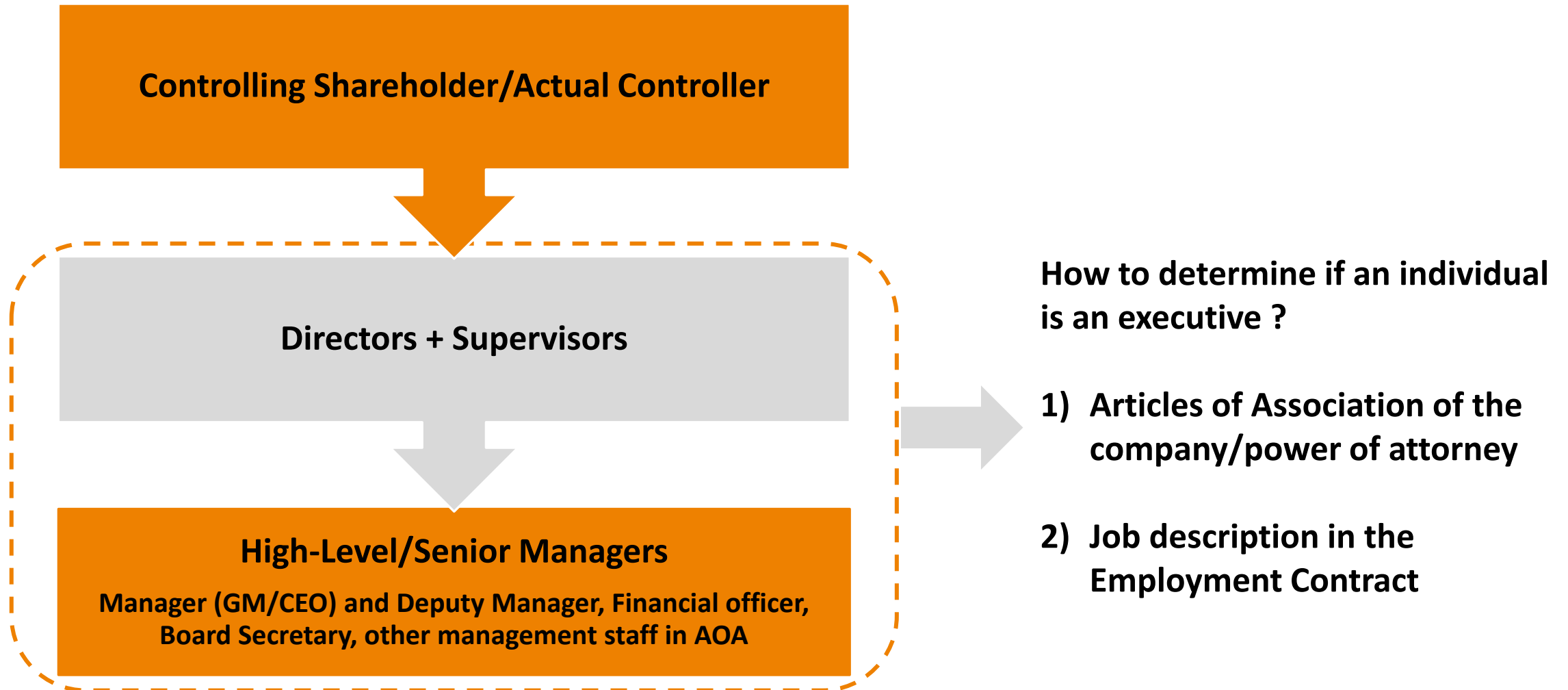
LEGAL FRAMEWORK

- **Who is personally liable ?**
- **What are the liabilities ?**
- **How to avoid/mitigate such liabilities ?**

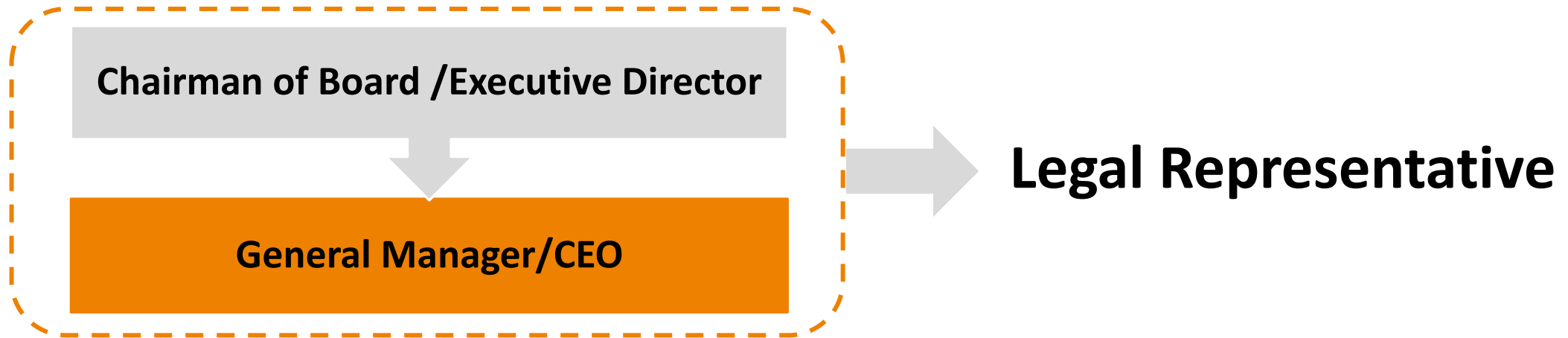


I - Mapping “Executives” under Chinese Law

“EXECUTIVES” UNDER CHINESE LAW



EXECUTIVE VS. LEGAL REPRESENTATIVE

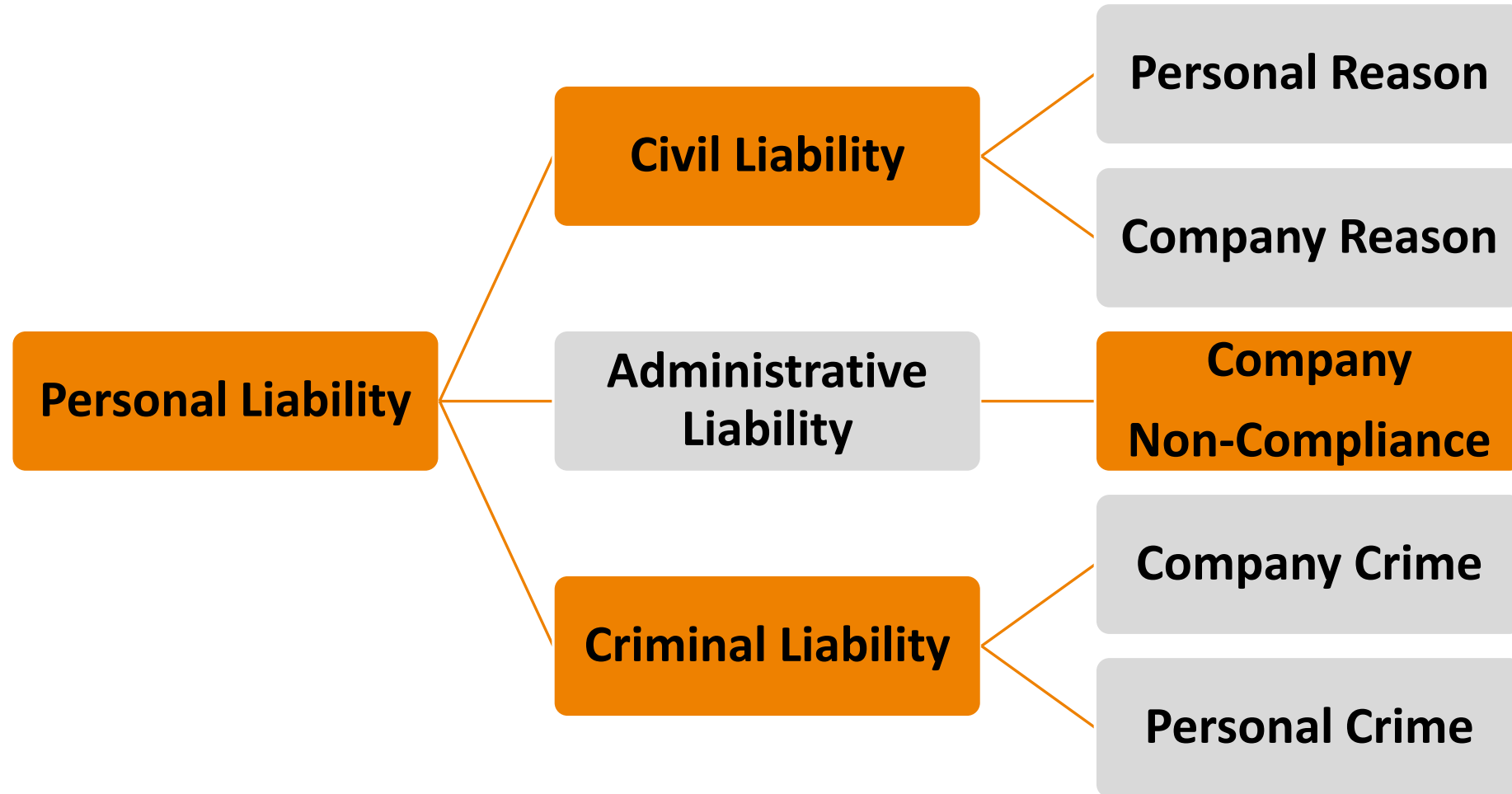


- Is Legal Rep. an executive ?
- Is there presumption of liability for Legal Rep. ?
- Is not being the Legal Rep. a good strategy to avoid liability ?



II - Executives' Personal Liability Overview

EXECUTIVES' PERSONAL LIABILITY OVERVIEW



CIVIL LIABILITY - PRINCIPLES

Art. 61 - Civil Code

- *Where the legal representative engages in civil activities on behalf of a legal person, all legal consequences incurred shall be undertaken by the legal person*

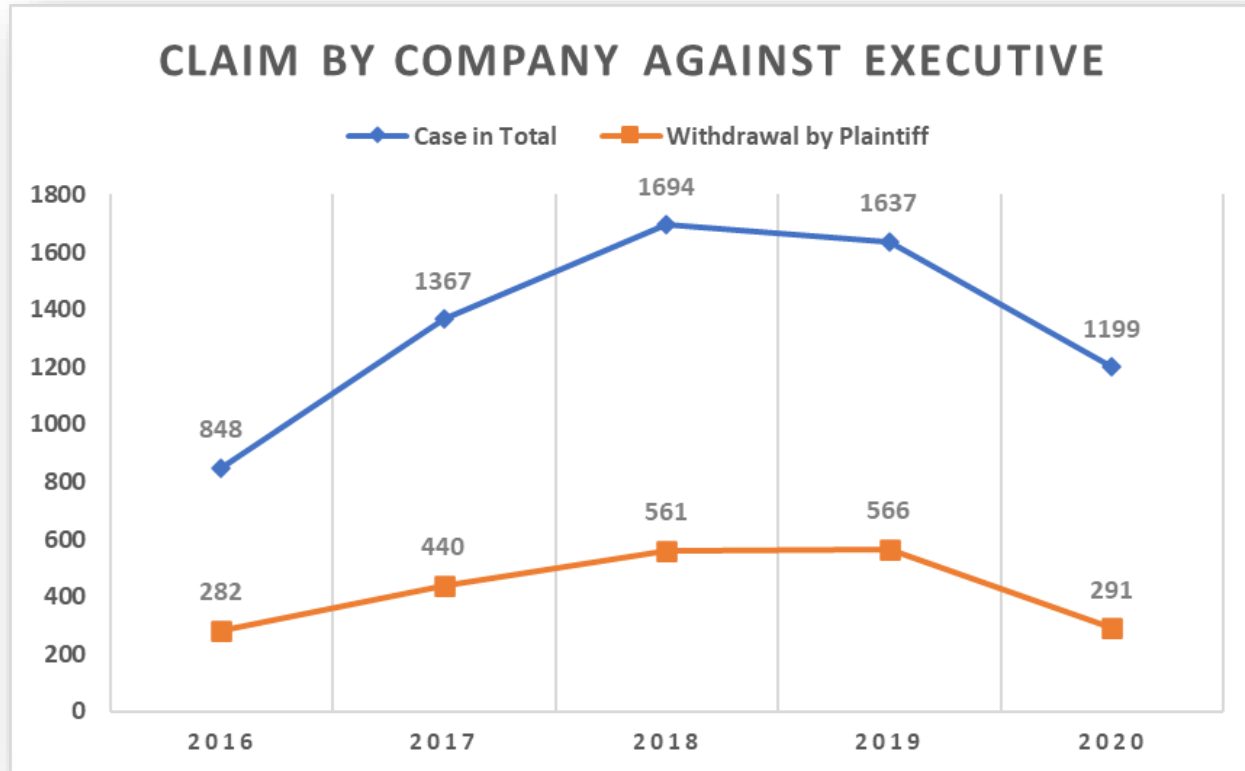
Art. 62 - Civil Code & Art.149 - Company Law

- Executives' Obligation of compensation
 - ✓ violate laws, regulations or the company's articles of association while performing their duties
 - ✓ Cause damages to the Company (directly or indirectly)

Art. 147 &148 - Company Law

- Duty of Diligence & Duty of Loyalty by executives

CIVIL LIABILITY - PERSONAL REASON

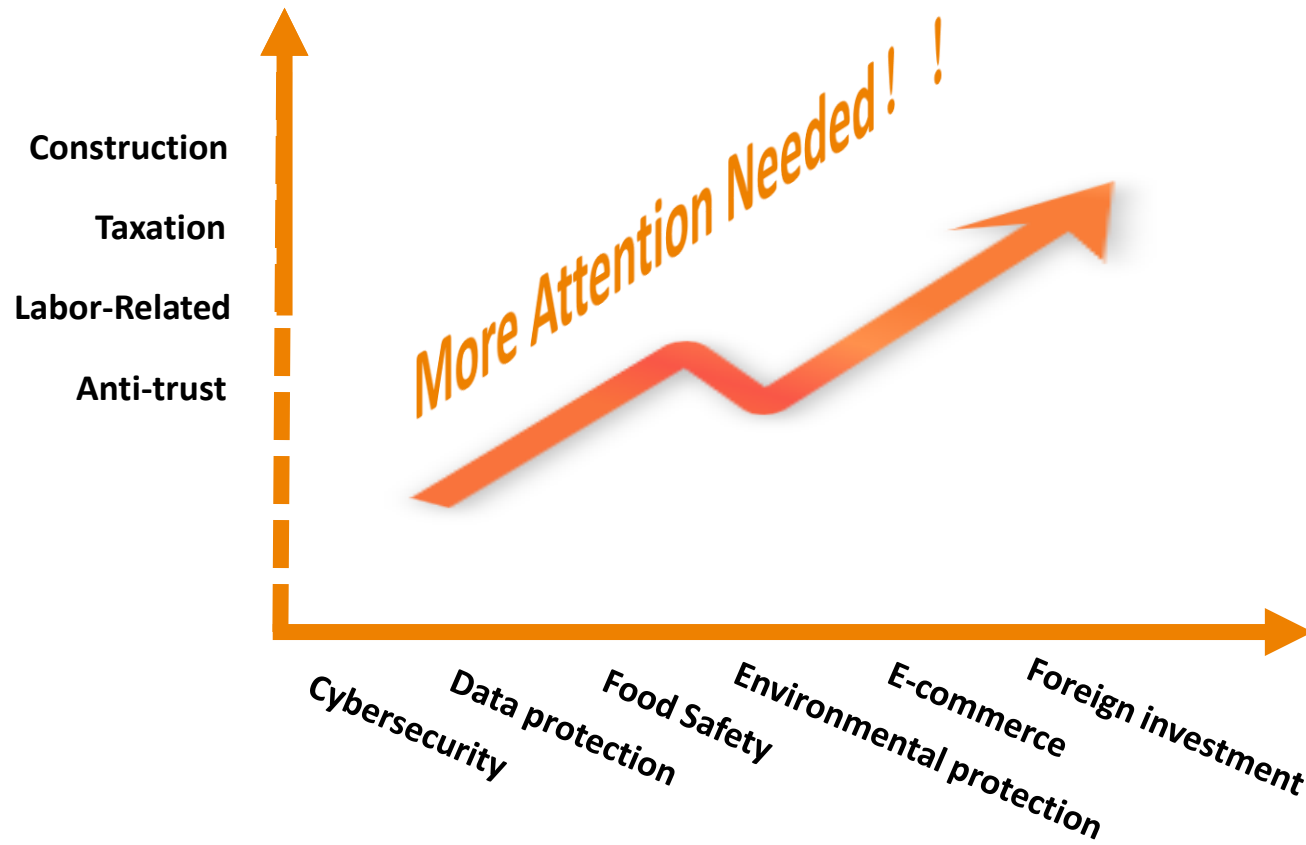


- Violation of Duty of Diligence & Duty of Loyalty by executives :
 - Affiliated transactions
 - Misappropriation of funds
 - Embezzlement
 - Disclosure of secrets
- A growing trend of litigation against Executives
- High Rate of withdrawal : **30%**

CIVIL LIABILITY - COMPANY REASON

Examples	Personal liabilities	Executives Potentially liable
Ongoing court proceeding against a foreign invested company	<ul style="list-style-type: none"> • Restriction on international travel 	Legal representative, person in charge
Failure to execute a court decision	<ul style="list-style-type: none"> • Restriction on luxury consumption • Restriction on international travel • Fines • Judicial detention 	Legal representative, person in charge, person directly responsible for the performance of the obligation

ADMINISTRATIVE LIABILITY - REGULATION AXIS



- Industry-specific laws and regulations are being updated frequently
- New sources of personal liability for executives
- Increasing focus on personal liability by the authorities

ADMINISTRATIVE LIABILITY - CONSEQUENCES

- **Personal administrative sanctions :**
 - ◆ Fines or administrative detention imposed on legal rep. or the person in charge

- **The executive's future career prospects may be affected:**
 - ◆ No director/supervisor/manager position in other companies for 3 years if he/she is personally responsible for revocation of business license
 - ◆ No future position as person in charge in certain industry, e.g. food industry
 - ◆ lose the chance to hold any management position in a listed company

CRIMINAL LIABILITY - CORPORATE CRIMES

“Dual-penalty” Principle :

- ◆ The company as an independent legal person
- ◆ The person directly in charge/directly responsible :

Legal representative, managers or staff directly participating in the criminal activities

“Piercing the Corporate Veil” from the perspective of criminal law

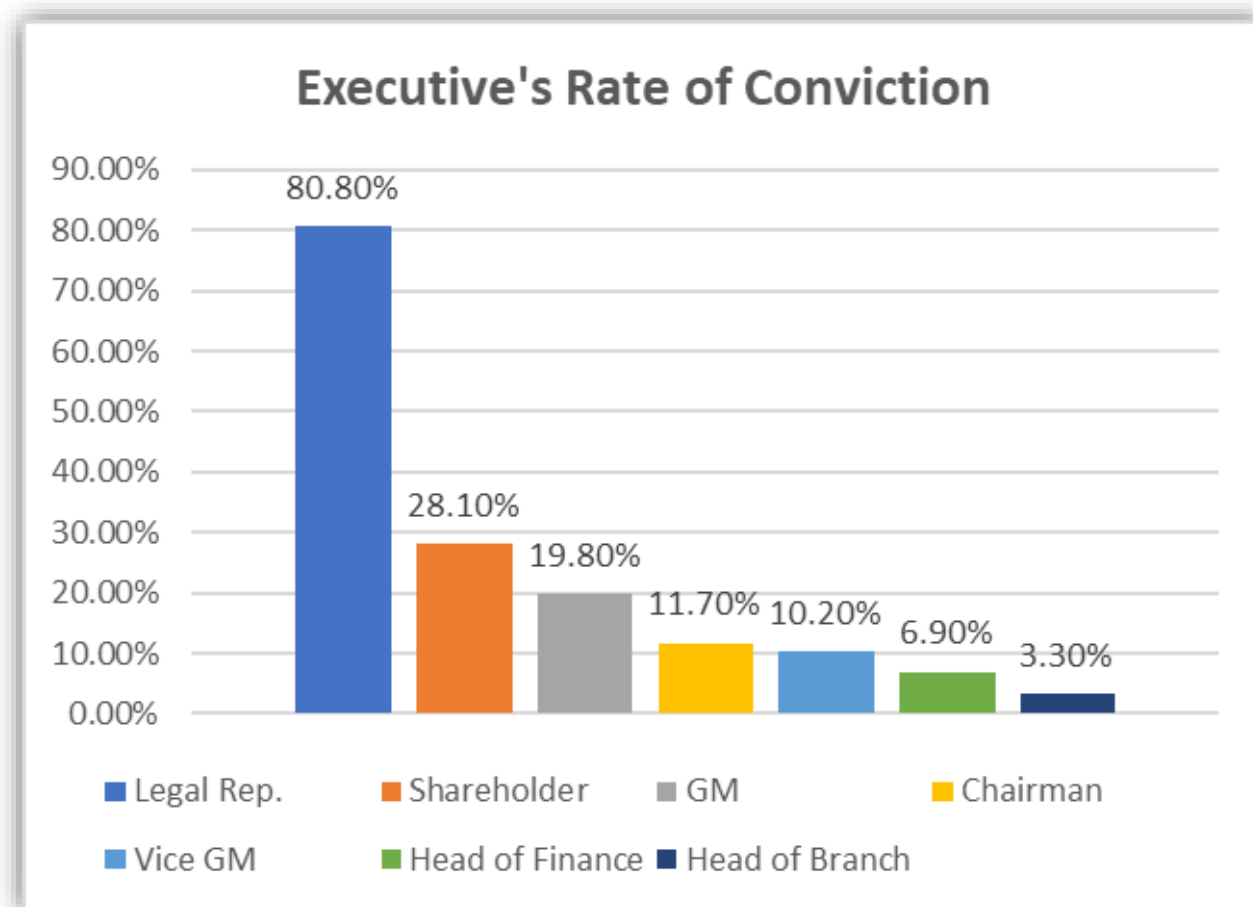
CRIMINAL LIABILITY - CORPORATE CRIMES

Criminal penalties :

- ◆ Monetary penalties on the company
- ◆ Criminal penalties on the person directly in charge/directly responsible :
 - Detention, imprisonment or even death penalty
 - Fine or confiscation of property
 - Deportation may be applied to foreign executives

*** *Enforcement measures during investigation process*

CRIMINAL LIABILITY - LESSONS FROM 2019



Source: www.itslaw.com

- Legal Rep. has the highest rate of conviction in corporate crimes.
- Shareholder's liabilities shall not be underestimated.
- The chance of GM and Chairman being charged is quite high.
- Financial manager is more likely to be charged than other senior managers.

CRIMINAL LIABILITY - WHITE-COLLAR CRIMES

- ◆ Embezzlement
- ◆ Misappropriation of funds
- ◆ Commercial bribery (offering or taking)
- ◆ Illegal fundraising
- ◆ Making illegal profits for relatives and friends
- ◆ Contraband
- ◆



III – Avoid/Mitigate Personal Liabilities

PREVENTIVE MEASURES

For executives of top management/holding level

- Keep updated on laws and regulations specific to the company's industry, establish and implement effective compliance policies and procedures
- Review and update regularly the organization structure and the chain of responsibilities of the company
- Define and keep documentation of detailed powers and duties of other executives and key employees, such as power of attorneys, board resolutions, internal regulations and employment contracts
- Prepare contingency plan to ensure the continuity of operations in the event that local management is under investigation

PREVENTIVE MEASURES

For other executives

- Understand your position as an executive from a legal perspective by looking deep into your responsibility both as an employee and as part of the corporate management structure
- Be aware of laws and regulations specific to your industry, follow company compliance policies
- Keep written records of any objections throughout the decision making process in case non-compliant behavior is identified
- Remain diligent and loyal to the company, be careful with any situation that may present a conflict of interest



Questions & Answers



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