

# Restrictions on the Employment Qualifications of Citizens with Criminal Records in China

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## Abstract

*There are many statutes that restrict the employment qualifications of the citizens with the criminal records in current China. The restriction is broad and strict. It is very difficult for the citizens with the criminal records to find a job. They are forced to commit the crime again because of no job. China should modify or abolish the present statutes that restrict the employment qualifications of the citizens who have the criminal records step by step.*

**Key Words:** Restriction; Employment Qualification; Criminal Records

## 1. Restrictions on the Employment Qualification of the Citizens with Criminal Records in current Chinese Laws and Regulations

In order to determine the scope of the laws and regulations being investigated, I think we should define the scope of the criminal records. Although the words “criminal records” are used commonly, there is no accurate definition of this term in China’s laws and regulations. Article 100 of China’s Criminal Law says “anyone who has been suffered criminal punishment, when apply for servicing in army or in employment, should truthfully report the relevant issues to relative people without concealing”. Although this clause clearly defined the criminal records report system, it does not define the scope of the criminal records accurately. Most scholars in China agree with the following definition: criminal records are the facts of committing a crime and convicted by the courts. From the perspective of criminal law, the definition is no problem. But from the point of view of discrimination law, the scopes of criminal records are too narrow. In practice, discrimination against the citizens with the criminal records not only based on the criminal history

but also based on the general illegal behaviors such as the administrative sanction or administrative penalty. In view of this, I think that, from the point of view of employment discrimination, the definition of the criminal record should be comparatively broad. It would be better defined as the facts for violation of any laws and disciplines.<sup>1</sup>

Based on the broad definition of criminal records, we find that, in addition to the provisions of article 100 of the criminal law, there are still a number of employment qualification restrictions to the citizens with the criminal records in many other laws and regulations. In the following discussion, I will classify the restrictions according to the nature of the offences.

### 1.1 Restrictions based on criminal punishment

Some laws and regulations impose the restrictions to the citizens with criminal records in many professions. As long as he or she is subjected to the criminal punishment, whatever the reason, he or she would be deprived of some employment qualifications. According to the time limitation on the deprivation of employment qualifications, it could be further divided into lifelong deprivation and regular term deprivation. Lifelong deprivation means depriving a job qualifications for ever, and regular term deprivation means depriving the job qualifications within the prescribed time limit.

#### 1.1.1 Lifelong deprivation

This is the strictest restrictions on employment qualifications. (See table 1)

**Table 1**

Laws /Regulations	Articles	Restrictions
Judges law	Article 10	The following persons shall not hold the post of a judge: (1) to have been subjected to criminal punishment for commission of a crime
Law of the Public Procurators	Article 11	The following persons shall not hold the post of a judge: (1) to have been subjected to criminal punishment for commission of a crime
Civil Servant law	Article 24	Anyone under the following circumstance shall not be employed as a civil servant: (1) having been imposed a criminal punishment
Police law	Article 26	Anyone shall not be served as a policeman if ever subjected to criminal punishment
The Measures for the Administration of press cards	Article 12	Anyone shall not be qualified to acquire press certificate if ever subjected to criminal punishment
Provisional Regulations of Publishing Professional and technical Personnel Occupation qualification Examination	Article 13	Anyone can not apply for the professional qualification examination in publishing if ever subjected to criminal punishment

<sup>1</sup> See Wang Bin, *the Investigation of Citizens Equal Right in Employment-Take the City of shanghai as the Example, the Jurisprudence*, 2008,2

### 1.1.2 Regular term deprivation

This kind of restriction sets a certain period of deprivation of the employment qualifications based on the criminal records. (See table 2)

**Table 2**

<b>Laws/Regulations</b>	<b>Articles</b>	<b>Restrictions</b>
Certified Public Accountant Act	Article 10	It would be rejected for registration in 5 years for criminal punishment from the date of completion of the punishment to the registration date
Practicing physicians law	Article 15	Those who fit one of the following circumstances shall not be registered: (2) Having been punished for criminal offences, and the period between the date of the completion of the penalty period and the date of application for registration is less than two years
Regulations on the administration of the practice of Rural doctors	Article 11	It would be rejected for registration in 2 years for criminal punishment from the date of completion of the punishment to the registration date
Measures for the administration of the qualifications of securities practitioners	Article 10	Anyone can apply for a practice certificate if without being subject to any criminal punishment in the last 3 years

### 1.2 Restrictions based on the records of intentional crime

This kind of restrictions limits the citizens' employment qualifications based on the intentional crime records.

#### 1.2.1 Lifelong deprivation (see table 3)

**Table 3**

<b>Laws/Regulations</b>	<b>Articles</b>	<b>Restrictions</b>
Act of lawyer	Article 9	lawyer qualification certificate shall not be issued to anyone who subjected to criminal punishment, except the negligent offenses
Auction law	Article 15	Anyone shall not serve as auctioneers who has the intentional crime records
Public Notarization Law	Article 20	Anyone shall not serve as a notary public who has the intentional crime records or the negligent crime records related to the work.
Pawn management measures	Article 16	Pawnshop shall provide no intentional crime record of their legal representatives, individual shareholders and other senior management personnel, issued by the security organs of their local government at or above the county level, if applied for the <i>special trade license</i> .

Guide's personnel management regulation	Article 5	Anyone shall not be issued tourist certificate if subjected to criminal punishment, except the negligent offenses
Regulations on Direct Selling Administration	Article 19	Training teachers for direct sellers shall not have the records of the intentional crime

### 1.2.2 Regular term deprivation (see table 4)

**Table 4**

Laws /regulations	Articles	Restrictions
Insurance seller regulations	Article 11	Anyone shall not be issued <i>insurance agency personnel qualification certificate</i> whose intentional criminal punishment expires within 5 years
Measures for the administration of land appraisers qualification test	Article 5	Anyone could not sign up for land appraisers qualification test for intentional crime subjected to criminal punishment, which in the punishment or within 5 years after expiration

### 1.2.3 Restrictions based on the work-related criminal records

#### 1.2.3.1 Lifelong deprivation (see table 5)

**Table 5**

Laws/Regulations	Articles	Restrictions
Accounting Act	Article 40	Anyone may not acquire or reacquire accountant's qualification certificates for providing false financial and accounting reports, accounting fraud, conceal or intentionally destroying accounting vouchers, account books, financial and accounting reports, corruption, embezzlement, job occupation, etc, which lead to criminal punishment.
The measures for the administration of the stock exchange	Article 28	Anyone would not employed by stock exchange and act as a stock exchange senior management personnel for embezzlement, bribery, misappropriation of property, divert property crime or destroy the social and economic order which lead to criminal punishment.
Entertainment management regulations	Article 5	Anyone would not be allowed to engage in places of entertainment if have ever organized, force, seduce, shelter or introduce a prostitution sin, production, selling, spread pornographic materials crime, rape, forced obscene, insult women crime, crime, money laundering crime, organizing, leading, and participate in the underworld property organization.
commercial bank law	Article 27	Anyone would not be allowed to hold the post of the commercial bank directors and senior management personnel because of embezzlement, bribery, misappropriation of property, divert property crime or destroy the social and economic order sin.

**1.2.3.2 regular term deprivation** (see table 6)**Table 6**

<b>Laws/regulations</b>	<b>Articles</b>	<b>Restrictions</b>
Company Law	Article 147	Anyone would not be allowed to hold the post of directors, supervisors, and senior management personnel of the company because of corruption, bribery, misappropriation of property, divert property or disruption of the socialist market economic order, which implementation expires not more than 5 years.
Registered Surveyors System Interim Provisions	Article 23	Anyone shall be rejected for registration if punished in the surveying and mapping activities, in which the implementation dates to the date of registration within 3 years.

**1.2.4 Restrictions based on the specific criminal punishment**

This kind of restrictions limits the employment qualifications based on the criminal records of being deprived of political rights.

**1.2.4.1 Lifelong deprivation** (see table 7)**Table 7**

<b>Laws/Regulations</b>	<b>Article</b>	<b>Restrictions</b>
Conscription law	Article 3	Anyone shall not serve in the army if deprived of political rights
Commercial Bank law	Article 27	Anyone is not allowed to hold the post of directors and senior management personnel of commercial bank if deprived of political rights because of crime
Fund management regulations	Article 23	Anyone is not allowed to hold the post of a foundation's chair and vice chair or secretary if someone is depriving political rights or was ever deprived
The Measures for the Administration of the Stock Exchange	Article 28	Anyone would not serve in the stock exchange or hold the post of senior management personnel in it if deprived of political rights because of crime
Entertainment Management Regulations	Article 5	Anyone would not be allowed to run places of entertainment or work in it if deprived of political rights

**1.2.4.2 regular term deprivation** (see table 8)**Table 8**

<b>Laws/Regulations</b>	<b>Article</b>	<b>Restrictions</b>
Company Law	Article 147	Anyone would not be allowed to hold the post of directors, supervisors and senior management personnel of the company if deprived of political rights, which implementation expires not more than 5 years
Fund Management Regulations	Article 23	Anyone would not serve as a foundation's chair and vice chair or secretary if sentenced to public surveillance, criminal detention or imprisonment, which implementation expires not more than 5 years.

### 1.2.5 Restrictions based on the administrative penalties

This kind of restrictions limits the employment qualification of the citizens who have the records of the administrative penalties. Administrative penalty is refers to the specific administrative sanction which relative person (citizens, legal persons or other organizations) suffered from the administrative entity for violating the administrative order but not yet constitute a crime.<sup>2</sup> According to the provisions of article 8 of the Law on Administrative Punishments, there are seven forms of it: warning, fine, confiscate, order to suspend production out of business, short duration confiscate licenses or revoked licenses, administrative detention and other forms regulated by laws and regulations. Most of this kind of restrictions are the regular term deprivation. The lifelong deprivation can only be found in the provisions of article 5 of Entertainment Management Regulations, which provides that anyone is deprived qualification of running entertainment places if have ever being administration detention for prostitution and whoring. (See table 9)

**Table 9**

Laws/Regulations	Article	Restrictions
Company Law	Article 147	Anyone would not be allowed to hold the post of directors, supervisors and senior management personnel where he was the legal representative of a company or enterprise, and the business license of this company or enterprise was revoked and this company or enterprise was ordered to close due to violation of the law, and he is personally liable for the revocation, three years have not passed since the date of the revocation of the business license thereof.
Insurance Seller Management Regulations	Article 11	Anyone shall not be issued the insurance agency personnel qualification certificate if ever punished for fraud and other dishonest behavior by administrative punishment, which implementation expires not more than 3 years
Entertainment Management Regulations	Article 5	Anyone would not be allowed to run places of entertainment or work in it if ever punished for prostitution by administrative detention
Practicing physicians law	Article 15	Those who fit one of the following circumstances shall not be registered: (2) Having been put to the administrative punishment of revocation of the certificate of practicing doctors, and the period between the date of the decision of the penalty and the date of application for registration is less than two years.
Measures for the Administration of Land Appraisers Qualification Test	Article 5	Anyone would not be allowed to attend land appraisers qualification test if ever subjected to administrative penalty or administrative sanction above cancel in the evaluation or related issues, which from the date of punishment to the date of signing up within 2 years
The Futures Company Directors, Supervisors and Senior Management Personnel Qualifications Management Measures	Article 19	Anyone would not apply for the futures company directors, supervisors and senior management personnel qualifications for illegal behavior punished by the financial supervision department, which implementation expires not more than 3 years

<sup>2</sup> See Hu Jian-miao, *the Administrative Law, the Law Press*, 2003, p289

Securities Investment Fund Industry Senior Management Measures for the Administration of the Office	Article 6	Anyone would not apply for senior management personnel qualifications if ever punished by securities, bank, industry and commerce and tax departments in the last 3 years
Securities Company Directors, Supervisors and Senior Management Personnel Qualifications Regulatory Measures	Article 7	Anyone would not be allowed to hold the post of directors, supervisors and senior management personnel of securities company if ever punished for major illegal behavior by the financial regulatory department, which implementation expires not more than 3 years

### 1.2.6 Restrictions based on other illegal behaviors and indiscipline

In China, citizen's employment qualifications limitation or deprivation have been expanded to illegal behaviors and indiscipline. (See table 10)

**Table 10**

Laws/Regulations	Article	Restrictions
Securities Act	Article 109, Article 132	Anyone shall not recruit for securities company's and stock exchange employees for violation of law or discipline by civil servant
Insurance Seller Management Regulations	Article 11	Anyone shall not be issued insurance agency employees qualification certificate for being prohibited to the field by the financial regulatory authorities, which stands period has not expired
The Measures for the Administration of the Stock Exchange	Article 28	Anyone would not be allowed to serve in a stock exchange as a senior management personnel if relieved from the position of securities and other business institutions for illegal or indiscipline behavior, or lawyer, certified public accountants, professionals of legal asset appraisal institution and the capital verification institution, be revoked qualification, the civil servants dismissed, for which it is not more than 5 years since fired
Judges law	Article 10	The following persons shall not hold the post of a judge: (2) to have been discharged from the public employment
Law of the Public Prosecutors	Article 11	The following persons shall not hold the post of a judge: (2) to have been discharged from the public employment
Act of Lawyer	Article 7	Anyone shall not be issued a lawyer's practice certificate for dismissed form the post or lawyer's practice certificate revoked
Civil Servants Law	Article 24	Anyone under the following circumstances shall not be employed as a civil servant: (2) having been dismissed from public office
Public Notarization Law	Article 20	Anyone would not be allowed to serve as a notary public for dismissed from their post

Police Act	Article 26	Anyone would not be allowed to serve as a policeman for ever expelled from the government
The Publishing Specialized Technical Personnel Vocational Qualification Test Interim Provisions	Article 13	Anyone shall not apply to join the publishing professional qualification test for severely in violation of publishing laws and regulations
Auction Law	Article 15	Anyone shall not serve as auctioneers for dismissed from their post or auctioneer qualification certificate revoked less than 5 years
The Futures Company Directors, Supervisors and Senior Management Personnel Qualifications Management Measures	Article 19	Anyone can not apply for the futures company directors, supervisors and senior management personnel if discharged from the principal post of futures exchanges, securities exchanges, securities registration and clearing institutions or the above company's directors, supervisors and senior management personnel, be revoked qualification of lawyers, registered accountants, or professionals of investment consulting organizations, financial consultants, the credit rating agency, asset appraisal institution, verification institutions for illegal or indiscipline behaviors, be fired of employees in futures exchanges, securities exchanges, securities registration and clearing institutions, securities service agencies, futures companies, securities companies for illegal or indiscipline behavior. For all which it is not more than 5 years

## **2. The Characteristics and the Consequences of China's restrictions on the employment qualifications of the citizens with the criminal records**

### **2.1 The characteristics of China's restrictions on the employment qualifications of the citizens with the criminal records**

#### **2.1 .1 Wide restricted Profession**

Although China's Prison law provides that any released persons enjoy equal rights with other citizens, at the same time the state deprives many employment qualifications of the citizens with the criminal records in many other statutes. From the above simple classifications, we can conclude that the types of professions being restricted is widely, like judges, prosecutors, civil servants, police, lawyers, the auctioneer, journalist, publishing professional and technical personnel, public notaries, accountants, physicians, securities practitioners, guide, marketing personnel, insurance marketing personnel, land appraisers, commercial bank senior management personnel, the company directors, supervisors and senior management personnel, registered surveyors, etc., among which some professions would be forbidden for life based on criminal records, such as the judges, civil servants, etc.



The scary thing is that this kind of restrictive provisions has a trend of increase. And the restriction is not limited to the laws, regulations and rules, some local regulations also have the similar provisions.

### **2.1.2 Most of the statutes strictly restrict the employment qualifications of the citizens with the criminal records.**

China has no provisions about the criminal records destroy system, and most of the statutes on the qualification restrictions have not consider the nature of the crime. By contrast, many countries' regulations often combined the restricted employment qualifications with the related crimes.<sup>3</sup>

Generally speaking, the employment qualification restrictions based on criminal records are mostly strict in China, in spite of a few laws and regulations which considering the properties and severity of the crime. The restricted employment qualifications include the records of criminal punishment, administrative penalties and general illegal indiscipline, in many restrictions, the time for limitation is for life.

This kind of employment restriction even has extended to the relatives of the citizens with criminal records. If the relatives of the job applicant had illegal crime experience, he or she would lose the job. The case of Lan Rui-Feng of Zhe Jiang University is a typical example, in which he can not be accepted as a civil servant because of his uncle's crime records.

## **2.2 The consequences of strict restriction of employment qualifications on the citizens with the criminal records: serious occupational segregation**

One of the consequences of strict employment restriction is serious occupational segregation. The citizens with the criminal records are deprived nearly most of the promising ideal jobs once committing a crime. In addition to the prejudice and discrimination against them, once the criminal record disclosed, the employer would choose not to hire the citizens with the criminal records with no hesitation, even though the law having no restrictions. Therefore, there is only limited professions which the citizens with criminal records could be engaged in, what's more, most of the jobs for them are the low technical, poor working environment, low salary or some public welfare jobs, which making a serious occupational segregation.

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<sup>3</sup> See Zhang Ge-jun, the Constitutional Thinking in Employment Discrimination, Suzhou University Equivalent Personnel Master's Degree Thesis, 2008, p13.