Analysis of Compliance Management of Private Enterprises Involved in Cases from the Perspective of Criminal Law

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Abstract. In recent years, with the increasingly close relationship between criminal law and enterprise compliance management, China has achieved certain results in the practice of compliance management of involved enterprises in the field of criminal law, providing effective legal support for compliance management of involved enterprises and receiving unanimous attention from all sectors of society. In this study, taking criminal law as the background and private enterprises as the object, based on the analysis of the relationship between compliance and legal risks of private enterprises, as well as the compliance of involved enterprises under the theories of crime and punishment, targeted measures are proposed to prevent and curb compliance management of involved private enterprises, providing a solid foundation for future compliance management of private enterprises.

Keywords: Criminal Law; Private enterprises involved in the case; Enterprise compliance management; commit a crime

1 Introduction

As of the end of 2024, the number of private enterprises in China has increased from 12.539 million at the end of 2013 to 57 million, an increase of nearly 4.5 times[1]. However, the development of private enterprises is not in a "greenhouse". In addition to grasping macroeconomic policies, predicting market development trends, and responding to international economic fluctuations, private enterprises also face severe criminal and legal risks. For corporate compliance systems, the original intention is to prevent corporate crime. As long as the criminal incentives of corporate compliance systems are well utilized, it can help private enterprises prevent crime to a certain extent[2]. However, guided by the background of criminal law, private enterprises strive to achieve effective compliance standards, but the practical results are not ideal. This article aims to analyze the compliance situation of private enterprises involved in criminal cases under the conditions of criminal theory and punishment cycle, and based on this, propose criminal law legislative suggestions for compliance management of

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private enterprises involved in cases, in order to benefit the reform, development, and institutional improvement of compliance of enterprises involved in cases[3].

2 Concept of Compliance for Private Enterprises Involved in the Case

2.1 Compliance of Private Enterprises

Compliance of state-owned enterprises actually refers to the management and production behavior of private enterprises' operators, managers, and employees, which must comply with national laws and regulations, relevant industry standards, regulatory provisions of regulatory agencies, the company's articles of association, and international organization treaties. Under these conditions, a complete set of enterprise compliance systems should be established to effectively prevent, identify, and respond to possible compliance legal risks. Specifically, national laws and regulations, including laws, administrative regulations, administrative rules, local regulations, judicial interpretations, etc[4]. all normative documents with legal source qualifications are subject to compliance. For compliance of private enterprises, it should be carried out around compliance risks, so it is necessary to have a deep understanding of the levels of compliance risks and conduct a thorough comprehension of them.

3 The Relationship between Compliance and Legal Risks in Private Enterprises

The compliance risk of private enterprises refers to the possibility that state-owned enterprises and their employees may be held legally responsible, subject to relevant penalties, cause economic or reputational losses, and other negative impacts due to non compliant behavior. For private enterprises, in order to better avoid compliance risks, the first thing to clarify is the relationship between compliance system risks and legal risks[5]. Traditional legal risk refers to the legal liabilities or consequences arising from a company's non-standard behavior or significant changes in the external legal environment during business activities, due to statutory or contractual terms. Compliance risk refers to the punishment, financial damage, or reputational damage suffered by a company due to violating laws or relevant regulations. The compliance risk and legal risk of state-owned and private enterprises are also independent of each other, neither equivalent nor covering each other. If a company suffers such damage due to violating the principle of integrity or other industry norms and ethical standards, then this is a compliance risk, not a legal risk. On the contrary, if the loss is caused by disputes over the contract or the inability to perform the contract, it is purely a legal risk rather than a compliance risk. From this point, it can be seen that there is a mutual integration between compliance risk and legal risk. There is a close relationship between the two, but they are not completely the same. Relatively speaking, legal risk can lead to civil liability for private enterprises, while compliance risk can lead to administrative, criminal, and moral liability for private enterprises[6].

4 Compliance of the Involved Enterprises Under the Theory of Crime

4.1 Theory of Unit Crime Attribution

The theory of unit crime attribution is of great significance for the compliance of enterprises involved in the case. The core of this theory is to explore how to attribute criminal responsibility to the collective entity of enterprises. In the modern criminal law system, enterprises, as non natural persons, have special characteristics in their criminal behavior and responsibility attribution. The establishment and implementation of corporate compliance mechanisms is a practical manifestation of the theory of unit crime attribution. Its goal is to reduce illegal behavior of enterprises through institutionalized internal control and risk management, thereby providing a certain degree of legal protection for enterprises in criminal issues[7]. This accountability mechanism not only emphasizes the legal responsibility of enterprises, but also reflects the norms and constraints on corporate behavior. The relationship between the theory of unit crime attribution and the principle of organizational subject responsibility is particularly important. The principle of organizational subject responsibility emphasizes that the enterprise as a whole is legally responsible for the actions of its members. This is closely related to the compliance model of the involved companies, as the compliance model was developed under the guidance of this principle, aiming to prevent crime and reduce corporate responsibility by ensuring the legality of the behavior of internal members of the company. The analysis and practice of this theory provide important legal basis and practical guidance for understanding and implementing the compliance of the involved enterprises[8].

4.2 Reasons for Liability Obstruction

Under the framework of corporate compliance, the concept of reasons for liability avoidance is particularly crucial. This mainly involves under what circumstances, even if there is illegal behavior, a company may still obtain a reduction or exemption of responsibility due to specific conditions. For example, if a company can prove that it has established an effective compliance system and that the illegal behavior occurred in unforeseeable or uncontrollable circumstances, this may constitute a situation of liability avoidance. This mechanism plays an important role in preventing corporate crime, as it motivates companies to establish and maintain effective compliance systems to prevent potential illegal activities internally. Through such institutional arrangements, corporate compliance not only becomes a necessary condition for complying with the law, but also transforms into an important component of corporate governance and risk management. The application of reasons for liability obstruction is closely related to the compatibility with the principle of organizational responsibility.

In the compliance model of the involved enterprise, the principle of organizational subject responsibility requires the enterprise as a whole to be responsible for the actions of its members. This means that if a company can demonstrate that it has taken proactive and effective measures to prevent and manage potential illegal activities, it may be legally mitigated for its criminal liability. This concept is gradually being recognized and applied in criminal law and enterprise management practice, providing important support for promoting the establishment and strengthening of corporate compliance culture.

5 Compliance of the Involved Enterprises Under the Theory of Punishment

5.1 Criminal Penalties and Corporate Compliance

Corporate compliance under criminal penalties emphasizes the development of a system for preventing illegal activities, early detection, and reporting by enterprises and other organizations within the legal framework, taking into account their own cultural development and decision-making structure, in order to achieve the goal of reducing criminal liability. In terms of controlling corporate crime, relying on the autonomy of the enterprise itself is a more efficient and advantageous approach. The criminal compliance system requires that after a company discovers its own illegal or criminal behavior, its internal compliance department should promptly identify the problem and fulfill its reporting obligations, and assist the judicial authorities in conducting investigations. Although this behavior may face dissatisfaction from internal management towards the compliance department, it has important practical significance in promoting corporate autonomy, improving internal governance mechanisms, preventing criminal risks, and stimulating innovative vitality of market entities. It also has significant strategic significance in creating a favorable legal business environment and ensuring the sustained, healthy, and stable development of China's economy and society.

5.2 Principles of Punishment for Unit Crimes

The principle of punishment for unit crimes plays a key role in promoting corporate compliance. This principle emphasizes the serious handling of illegal activities by enterprises, while also taking into account the efforts made by enterprises in compliance. In this situation, if the enterprise can demonstrate its effective compliance mechanism and prove that reasonable preventive measures have been taken when the illegal behavior occurred, it may obtain a certain degree of reduction in punishment. This institutional arrangement not only reflects the punishment and deterrence of illegal behavior, but also encourages enterprises to establish and maintain a strong internal compliance system. In this way, the principle of punishment for unit crimes promotes the practice of corporate compliance and helps to create a more responsible and transparent corporate governance environment. The principle of equal protection of private enterprises in accordance with the law is also reflected in the punishment of unit crimes. This means that when dealing with enterprises involved in cases, courts and procuratorial organs should take into account the differences in enterprise size, nature, and compliance efforts, ensuring fair and reasonable treatment of different types of enterprises within the legal framework. This consideration helps to avoid unnecessary impact on the normal operation of enterprises due to criminal justice processing, while ensuring that the legal protection for all enterprises is fair and equal, thereby better promoting the implementation and development of enterprise compliance.

6 Suggestions for Criminal Law Legislation on Compliance Management of Private Enterprises Involved in Cases from the Perspective of Criminal Law

6.1 Establish an Incentive Mechanism for Criminal Compliance of Enterprises Involved in the Case

Enterprises need to rely heavily on funding and technical support when building criminal compliance systems. In order to incentivize enterprises to carry out criminal compliance work, the government can provide appropriate leniency policies in criminal penalties. In China's market economy, private enterprises occupy half of the market share, and the typical feature of private enterprises is that they are closely related to their managers. Moreover, a large number of private enterprises are family businesses, and once the managers are criminally punished, the enterprise is very easy to go bankrupt and liquidate. Therefore, it is necessary to separate the examination of enterprises and managers, and compliance can also be considered as one of the factors for making non prosecution decisions against responsible persons. However, the procuratorial organs cannot make non prosecution decisions solely based on this. The ultimate basis for making non prosecution decisions should be the conditions for natural persons to commit crimes after committing them. Ultimately, criminal compliance is also a strategy for businesses to prevent risks. Relevant managers have independent behavioral capacity, and criminal compliance should not be an absolute liability obstacle for managers. They should still bear corresponding criminal or administrative responsibilities. According to the Criminal Law of the People's Republic of China (hereinafter referred to as the "Criminal Law"), corporate criminal compliance is considered as a mitigating circumstance for sentencing, which mainly includes two types of circumstances: statutory sentencing circumstances and discretionary sentencing circumstances. The statutory sentencing circumstances refer to the circumstances that should be considered in sentencing as explicitly stipulated in the Criminal Law, including voluntary surrender, meritorious service, etc. Discretionary sentencing circumstances refer to those that are not explicitly stipulated in the Criminal Law and have been summarized from judicial experiments, which can be flexibly applied. Therefore, although there are no relevant provisions on criminal compliance in the Criminal Law, the criminal compliance system is consistent with the basic concept of China's Criminal Law and can be applied as a mitigating circumstance for sentencing. However, the reduction of sentencing in accordance with criminal compliance should be classified as a discretionary criminal circumstance section.

6.2 Promote Effective Interaction Between Judiciary and Corporate Compliance

The court should actively encourage communication and collaboration between judicial institutions and enterprises to enhance the effectiveness of compliance measures and enterprises' compliance with legal provisions. This interaction can be achieved through various means, such as holding regular compliance seminars, lectures, or workshops, providing opportunities for judges, prosecutors, and corporate compliance departments to exchange ideas and experiences. Judicial institutions can share new legal trends, case analysis, and challenges and experiences in legal enforcement during these activities, helping businesses better understand the legal environment and compliance requirements. In addition, the court may recommend or support companies to cooperate with legal experts to provide professional compliance consulting and training services for companies. This collaboration can help businesses understand complex legal regulations, develop effective compliance strategies, and adjust their compliance measures in a timely manner to adapt to changes in laws and markets. The court can also advocate for the establishment of an information sharing platform, making it easier for businesses to access the latest information on compliance and law. Through this approach, courts and judicial institutions not only act as enforcers of the law, but also become active participants and supporters in promoting corporate compliance and the development of a rule of law culture. Ultimately, these interactions and collaborations will help establish a more transparent and responsible business environment, promoting the overall development of the rule of law in society.

6.3 Strengthening Compliance Considerations in Judicial Enforcement

In the stage of judicial enforcement, the court should give special consideration to the compliance situation of the enterprise, in order to balance the necessity of legal enforcement and minimize interference with the normal operation of the enterprise. This means that when enforcing legal rulings, careful consideration should be given to the compliance measures already taken by the enterprise, such as internal audits, compliance training, and measures to correct illegal behavior. During the execution process, the court should strive to avoid unnecessary intervention in enterprises, especially those that have been proven to have effective compliance systems and proactive corrective measures. For example, if a company faces punishment for past violations, but has significantly improved its compliance system and taken proactive measures to prevent future violations, the court can adopt a more flexible enforcement approach, implementing in stages or providing reasonable enforcement periods to reduce the impact on the normal operation of the company. Moreover, the court should also consider the impact of the enterprise on employees, customers, and society during the execution process. While ensuring the effective enforcement of legal rulings, it is also necessary to consider the improvement and enhancement of the company's compliance system, in order to avoid adverse effects on the long-term sustainable development of the enterprise. Through this method, the law

The institution not only upholds the dignity and effectiveness of the law, but also promotes the deepening and development of corporate compliance culture, thereby having a positive impact on the overall legal environment of society.

7 Conclusion

Overall, this article analyzes from the perspective of criminal law and provides a comprehensive and in-depth exploration of the compliance management of private enterprises involved in the case. In the study, by analyzing the relationship between compliance and legal risks of private enterprises involved in the case, the differences and relativity between the two were clarified. From the perspectives of crime theory and punishment theory, the criminal responsibility theory of organizational structure, reasons for liability obstruction, and the relationship between criminal punishment and corporate compliance were explored. In depth exploration and research were conducted on the compliance risks of private enterprises involved in the case. Based on this, judicial legislative suggestions for compliance management of private enterprises involved in the case were proposed, which effectively improved the existing problems in compliance management of private enterprises involved in the case. In the face of the long-term sustainable development of private enterprises, it has important promoting significance.

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