

Research and Institutional Construction of Corporate Compliance Administrative and Criminals Involved in the Case

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Abstract: In the second half of the development of the compliance and rectification system for the companies involved in the case in my country, the poor connection between executions hindered the compliance and rectification system of the companies involved in the case from playing a greater practical role. The two main reasons for the dual illegality of the corporate administrative offenders involved and the independence of our country's execution agencies make the connection of executions a unique practical problem in China. In the illegal investigation, case filing, investigation and prosecution, as well as the compliance extension stage after the end of the criminal process, there are institutional gaps in the connection between executions. Existing problems can be solved one by one by promoting execution agencies to strengthen exchanges and cooperation in the stages of illegal investigation, reconnaissance, review and prosecution, mutual recognition of compliance results, relay compliance rectification, optimizing third-party mechanisms and attaching importance to big data empowerment.

Keywords: Case Involved Corporates, Corporate Compliance, Convergence of law Enforcement, Compliance Mutual Recognition, Criminal Compliance

1. Introduction

1.1. The background and significance of the topic selection

In the wave of economic globalization, if companies want to develop healthy and long-term development, and want to effectively respond to various unknown risks and challenges, they will inevitably cannot turn around the important topic of corporate compliance. The rise and fall of enterprises in different scale directly affects the people's livelihood and economic situation in regions and even one country. In the initial stage of the corporate compliance reform involved in the case, the theory and the practical community mainly focused on hot topics such as corporate criminal compliance and non-prosecution of corporate compliance. In the second half of the system of the system, the reform of the depth and practical effects need to pay more attention to the deeper breadth and practical effect. Therefore, the junction in compliance is particularly important.

1.2. literature review

In recent years, the country has also attached great importance to the issue of corporate compliance. In July 2023, the highest prosecution "Opinions on Promoting the two-way connection of punishment and the supervision of administrative violations to build a system of procuratorial supervision and administrative law enforcement connection system" pointed out that it is necessary to adjust and optimize internal division of labor. In the theoretical community, Some scholars introduce foreign theories and propose the possibility of the construction of criminal parallel law enforcement procedures[1]; Some scholars emphasize the need to build the dominant compliance with procuratorial organs with Chinese characteristics;[2]Some scholars believe that administrative supervision is the source.[3]In terms of specific measures, Some scholars start from the principle of humility of the criminal law, emphasize the extension of judicial to law enforcement.[4]Some scholars point out on the basis of responsibilityism that compliance rectification needs to promote the integration of administrative and criminal compliance plans.[5]

2. Discussion value of execution connection in corporate compliance rectification

Enterprise crimes are mostly administrative prisoners, and their dual illegality is the root cause of the issue of execution in corporate compliance rectification. In my country, the optimization of corporate compliance torture is also facing the unique problem of independence of the criminal organs.

2.1. The root cause of the company's execution problem involved in the case

Corporate criminals are generally administrative prisoners and have dual illegality, that is, the unity of administrative violations and criminal criminals. Many of the provisions of the two laws are used in the blank guilt legislative mode, which need to be cited in front of laws and regulations. At the same time, there is a certain vagueness in judging the boundaries of illegal and crimes. The content of administrative law and criminal law cannot be stripped. After identifying the crime of corporate acts, it is also facing the problem of administrative and criminal responsibility. In China, my country adopts a "integrated penalty concept" when identifying responsibilities.

As an imported product, corporate compliance has occurred in the process of localization in my country. As a recognized country of compliance of corporate compliance, the United States has more domestic regulations on the parallel law enforcement of administrative organs and judicial organs.[6] However, in the independent state of my country's administrative organs and judicial organs, although there will be coordinated cooperation, it is essentially divided.

2.2. The necessity of promoting torture in the compliance of the enterprise involved in the case

First of all, corporate compliance cases are inseparable from the professional knowledge of administrative organs. Administrative law involves a wide range of fields and a large number of norms, and is continuously updated and improved with social changes. It is a rapid reflection of national policies and social trends. Secondly, in terms of investigation and collection of evidence, administrative law enforcement agencies also have the natural advantages of professionalism and front-line action.

Enterprise compliance is an overall and systematic project. To promote the development of compliance, it is necessary to do a good job of connection work in each part. part.

3. The real dilemma of the company involved in the case involved

The process of execution through the entire process of corporate compliance rectification. In the

process of entering the criminal judicial procedure involved in the case, and then in the process of compliance, there are still many practical problems to be resolved.

3.1. Cases in the process of illegal investigation are not connected smoothly

The case of poor cases is the "big difficulty" problem of torture. First of all, for administrative agencies, whether to transfer the case involving the issue of judgment of the nature of the company's behavior involved. The dangers in the environment, securities, intellectual property rights and other fields not only have the distinction between illegal and criminal physical law. Administrative regulations in related fields are also complicated and easy to change. Secondly, the administrative organs are the first investigation organs after the enterprise involved in the case. After the enterprise violates laws and regulations, the administrative organs will be investigated and punished by the administrative organs. In terms of objective conditions, the manual strength, technical conditions, and personnel quality of the administrative organs will affect the smoothness of the case transfer. Third, the types and standards of evidence are also a major obstacle in the junction.

3.2. The connection system during the review and prosecution is unknown

In the session of the review and prosecution, the execution connection mainly involved the two parts of the launch supervision and evaluation and acceptance of the corporate compliance rectification of the case. Whether or not to rectify the compliance of enterprises involved in the case cannot make a decision by relying on one of the procuratorates. In the process of compliance rectification, some compliance results were directly accepted by the procuratorial organs, but most of them were inspected by third -party supervision and evaluation agencies. The administrative organs are included in a third -party institution, and often lead the acceptance work. If the procuratorial organs directly "play", the supervision of the acceptance process will also cause corresponding hidden dangers. In addition to regulatory acceptance issues, the sources of funding and rectification of third -party supervision and evaluation mechanisms in practice also have inadequate.

3.3. The vacancy of administrative measures after the end of the criminal procedure

The connection between criminal justice to administrative law enforcement must continue to be deepened, not just staying in the connection link.

First of all, the crime of corporate compliance itself is an incentive means of criminal compliance, and it does not mean that the enterprise will not be punished by administrative penalties. But at the same time, if the administrative organs do not consider the situation of corporate compliance rectification, it is likely to cause compliance incentives to lose its effect. Similar administrative penalties such as discontinuation of production and suspension, cancellation of franchise qualifications, and revoking business licenses are equivalent to or focusing on the impact of punishment to enterprises to some extent.

Secondly, the ultimate goal of "de -crime" is to "go illegalization". The assessment results of the case cannot reflect the "de -illegalization" situation of the enterprise, and the corporate problem exposed by the case may be the common hidden danger of the entire industry. If it is not further advanced, it may even occur to evade responsibility for using the inspection period, and it will not really implement rectification.

4. Construction of a two-way system for compliance and execution of enterprises involved in the case

Optimizing the compliance and rectification of the companies involved in the case requires the systematic construction of a two-way connection system for executions. The two-way connection requires smooth mechanisms and strengthened communication to prepare for the good and healthy development of our country's enterprises.

4.1. Pay attention to two-way cooperation in investigation and prosecution procedures

In the illegal investigation process, if the administrative agency has difficulty making independent judgments, it can proactively ask the investigative agency or procuratorial agency to intervene in advance during the investigation. Under certain circumstances, the administrative agency may also consult with the procuratorate to provide opinions and guidance on the compliance plan that has been carried out by the enterprise involved, thereby advancing the time for compliance rectification to the administrative investigation stage. When compliance conditions are met and the enterprise voluntarily Under certain circumstances, administrative compliance and criminal compliance rectification will be integrated to achieve integrated compliance rectification.[7]When applying for compliance cases involved in the case, due to the restrictions on their professional ability, the results of the investigation and evidence collection of public security organs sometimes cannot meet the standards for subsequent compliance cases. Therefore, it is also necessary to improve the involvement system for the public security organs to ask the procuratorial organs or procuratorial organs to actively conduct guidance. In the review and prosecution, procuratorial organs must actively listen to the opinions of the administrative organs before opening the component rectification procedures.

In the entire process of investigation, investigation, review and prosecution, attention must be paid to the mutual independence of agencies. When procuratorial organs or public security organs intervene in illegal investigations in advance or when procuratorial organs intervene in investigation procedures in advance, they must be careful not to exceed the boundaries of their powers. There is no right without relief. During the compliance and rectification process of the enterprise involved, the autonomy and voluntariness of the enterprise must be respected, and rights protection work must be done to prevent the harm to the enterprise's rights due to the joint intervention of multiple agencies.

4.2. Optimize third -party supervision and evaluation mechanism

After the procuratorial organs confirm that after opening the compound rectification procedures, an effective mechanism needs to be established to monitor, evaluate the compliance rectification plan of the enterprise, and implementation. The establishment of a third -party supervision and evaluation mechanism effectively solves this problem. First of all, given the complexity of the third -party mechanism to participate in members, the division of labor and functions of the leadership of different stages need to be clarified. When starting the procedures for rectification of the regulations, the procuratorial organs should be dominated. In the process of compliance rectification, the current situation should be dominated by administrative organs. Administrative agencies have professional and mandatory supervision, and are more likely to carry out supervision and inspection in practice. Secondly, it is necessary to clarify the source of the third -party mechanism. In my opinion, the financial burden should be the main. Finally, we must improve the power supervision mechanism. Internal supervision and external supervision work together to prevent the occurrence of power search and false compliance.

4.3. Improve the mutual recognition mechanism of criminal compliance

Mutual compliance of criminal compliance needs to be wide and strict. On the one hand, if the enterprise does formulate an effective compliance plan in the compliance rectification and make practical actions, after the procuratorial organs make a compliance decision, the administrative organs need The efforts paid during the regular reform process. Later, you can also continue to promote the normalization response mechanism of administrative organs to procuratorial recommendations, and timely inform the procuratorate's results of administrative penalties for the procuratorate, and strengthen two -way communication. On the other hand, in the general low judicial practice of fines and punishments, it is necessary to carefully and apply the mutual recognition and exemption of property penalties.[2]

4.4. Promote compliance rectification horizontal vertical extension

The first is to attach importance to the daily supervision of the enterprises involved. The daily compliance supervision requires the connection between the administrative organs and pays attention to the supervision of the daily compliance system of compliance companies. Secondly, the parent - child company, upstream and downstream companies, or other related companies may also have the same problems, and they need to pay attention to compliance supervision. Only by the administrative agencies in the subsequent supervision measures, can the group enterprises truly achieve compliance from points and face. Finally, the in -depth development of compliance rectification needs to extend from cases to cases, individuals to industry. Procuratorate, administrative agencies, and industry associations, as the most critical trilateral subject in industry compliance, need to actively cooperate, jointly formulate special compliance standards for the industry, and explore the establishment of a joint law and special hearing system.

4.5. Accelerate the application of integrated information platform

In the process of compliance rectification of the enterprise involved, the application of the electronic information platform can effectively connect the transfer of the case, the transfer of evidence, and the feedback of the situation. In order to optimize the torture connection in Yiwu City, Zhejiang Province, it has built a digital platform for "execution and closure of loop management". The Tianjin Third Intermediate People's Court and Tianjin Economic Development Zone jointly established a special corporate compliance construction judicial service platform, online and offline linkage promoting compliance construction, practicing capable judicial, and launching special modules such as compliance guidelines, judicial suggestions, etc. In the third batch of typical cases released by the Supreme Procuratorate, in the "Shanghai Company Z, Chen Moumou and others illegally obtaining computer information system data cases", due to the epidemic, the procuratorial organs flexibly use the smart platform to conduct online "cloud hearing" to ensure guarantee Fairness also improves efficiency.[8]

5. Conclusion

The compliance reform of the companies involved in the case has entered a stage of deepening development. The excellent practices of each pilot will be promoted, while some common problems need to be improved. These problems can be solved one by one by promoting execution agencies to strengthen exchanges and cooperation at different stages, mutual recognition of compliance results, relay compliance rectification, optimizing third-party mechanisms and paying attention to big data empowerment. Next, with the completion of the revision of the Criminal Procedure Law and the accumulation of experience in the pilot areas, it is believed that the issue of the connection between

executions of the companies involved in the case will be solved to a greater extent.

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