

Analysis of the Administrative Guidance Function in the Enterprise Compliance

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Abstract: Enterprise compliance is a new governance mode for enterprises to be exempt from legal liability. Compared with criminal compliance, administrative compliance has more utilization space, but the practical application effect is not good. Starting from the perspective of enterprise administrative compliance, this paper examines the function of administrative guidance in enterprise compliance, in order to clarify the theoretical status of enterprise compliance administrative guidance, return to the encouragement mechanism of guiding compliance, and provide a Chinese-style solution path. This paper analyzes the meaning boundary of enterprise administrative compliance and administrative guidance through literature analysis and points out the shortcomings of compliance guidance through case analysis and comparative analysis. This paper proves that the basic principle of administrative guidance in enterprise compliance is flawed, and the effect of administrative guidance in the enterprise compliance field needs to improve the system and system completion.

Keywords: enterprise administrative compliance, administrative guidance, compliance practice, functional analysis

1. Introduction

Enterprise administrative compliance is a compliance system in the field of administrative law, administrative guidance as its important part in the theory and law enforcement practice are developed, but the present stage of enterprise compliance administrative guidance in theory because of the "overall-constitute" perspective lost independence analysis, for the mandatory effect in practice. It is forward-looking and realistic to clarify the functions of administrative guidance in enterprise compliance and build a supporting system in line with China's reality. This paper takes the theoretical connotation of "enterprise administrative compliance" and "administrative guidance" as the theoretical support, analyzes the connotation and characteristics of both; focuses on the practice of enterprise administrative compliance guidance, analyzes the current situation, analyzes the crux of the basic principles, and constructs the tripartite system of "government-enterprise-supervision". This paper is based on the literature analysis to complete the concept discussion of enterprise administrative compliance and administrative guidance, uses the case analysis to provide example materials, and puts forward improvement ideas through the comparative analysis, to realize the functional analysis of compliance guidance. To some extent, this paper provides a reference direction for administrative organs to implement compliance guidance, enterprises to comply with compliance

guidance and social understanding of compliance guidance, and the thinking of enterprise administrative compliance guidance can also be broadened and promoted together.

2. Analysis of the Guiding Theory of Enterprise Compliance Administration

2.1. Enterprise Administrative Compliance

Enterprise administrative compliance is a subordinate concept of enterprise compliance. Enterprise administrative compliance limits enterprise compliance (to avoid or reduce illegal management suspected of legal liability and using the way of corporate governance) to reduce to "administrative" responsibility. Enterprise administrative compliance adopts the logic in the field of administrative law, allowing enterprises to establish the compliance mechanism for administrative liability, and for the enterprise survival in the administrative law enforcement level open space [1].

The "less punishment" and "no punishment" of enterprise administrative compliance contain factors contrary to the administration according to law, indicating the transition from strict legal to substantial correct value [2]. The legal exercise of administrative power restricts the legitimacy consideration, and the incorrect "punishment" will be implemented in the view of the traditional administrative law. The old thinking of administrative punishment such as "law priority" and "legal reservation" has brought the dilemma of law-abiding. The new administrative compliance considers the malignant violation and rectification facts, and replaces the rigid post-punishment with the substantive supervision of the front level, providing reasonable and correct guarantees for the development of enterprises.

2.2. Administrative Guidance

Administrative guidance is mostly used in the field of flexibility in government administrative acts. Different from compulsory measures such as punishment, administrative guidance pursues the consent of counterparts, adopts suggestions, demonstrations, norms and other behaviors, has non-mandatory and positive administrative attributes, and produces legal consequences with indirect incentives [3]. In essence, administrative guidance is a kind of understanding. Although the administrative supervision department will make guidance and other behaviors when performing their duties, it does not directly affect the rights and obligations of the administrative counterpart. The unconstrained and conceptual facts give administrative guidance flexibility and voluntary [4].

The flexibility of administrative guidance coincides with the concept of enterprise administrative compliance and prevention in advance. The administrative guidance is introduced into enterprise supervision, and the advocacy direction guidance is combined with active compliance, which is conducive to the practice of the principle of proportion and the elimination of enterprise conflicts. The administrative guidance orders the government organs to shift from legal to legitimate and guarantee the acceptability of the measure to the maximum extent; the administrative guidance does not require endorsement, the administrative guidance does not abuse the authority, and the enterprise meets the necessary proportion. Justification, voluntariness and necessity are the basic principles of administrative guidance, and also the necessary principles of enterprise compliance guidance.

3. Current Situation and Disadvantages of Enterprise Compliance Administrative Guidance

3.1. Current Situation of Enterprise Compliance Administrative Guidance

3.1.1. List of Enterprise Administrative Compliance Guidance

The list of enterprise administrative compliance guidance is an important means of administrative guidance in the field of enterprise administrative compliance. It lists compliance matters, illegal performance, legal basis and illegal responsibilities, compliance suggestions and guidance departments, etc., and provides guidelines for prevention and avoidance in advance.

Since the full implementation of the list system in Zhangjiagang city and the release by Suzhou city of the first guidance list covering city and county levels, the pilot work of the list has been implemented in many places; but the terms are empty, most of the terms are simple negative of the illegal behavior and the legal basis for the compliance direction, and it is difficult to reflect the practical effect.

The following table (table 1) takes the specific list of Zhangjiagang, Suzhou and other places as an example to list the specific terms, capture the typical defects, and highlight the shortcomings of the compliance list with examples.

Table 1: Overview of the Administrative Compliance Guidance List of Enterprises in some provinces and cities (2021-2023).

Release time	Submitted to provinces and cities	List name	For the direction	Terms presented	Inventory analysis
In September, 2021	Zhangjiagang City, Jiangsu Province (Suzhou City)	Enterprise Administrative compliance and guidance list of the Municipal Human Resources and Social Security Bureau	Employers recruitment and employee rights and interests protection	Only denied the common administrative violations	The terms are empty and general, lack of operational specific measures, employee welfare treatment lack of quantitative standards no specific direction and avoidance measures, such as no clear standards for the purchase of teaching hardware; Object-oriented range is wide and the industry boundaries are blurred
In November, 2021	Suzhou City, Jiangsu Province	Suzhou Municipal Education Bureau Bureau of enterprise administrative compliance guidance list	Private education industry	Simple negation of common administrative violations	

3.1.2. Compliance Instructions for Enterprise Administrative Punishment

The compliance guidance on enterprise administrative punishment is an additional product of administrative punishment, which means the administrative instruction issued by the administrative organ when investigating and punishing illegal enterprises. It has nothing to do with the conventional fine in nature, but is actually a compliance rectification opinion guided after the fact[5]. The State Administration for Market Regulation issued the Administrative Guidance to Alibaba, requiring anti-monopoly rectification and self-inspection compliance; after the interview on unfair competition, the financial management department ordered the establishment of a compliance team to guide the rectification plan.....However, the administrative instructions and compliance rectification opinions are only written opinions, the substantive constraints are limited, and the consequences are blank. Without compliance acceptance systems, it is impossible to know the compliance effectiveness of enterprises.

3.1.3. Guidelines for Enterprise Compliance Management

The enterprise compliance management guidelines favor administrative compliance management in a strict sense, but the guidelines themselves are not disciplinary violations. In essence, they can still be regarded as "administrative guidance for enterprises to establish or improve the compliance management system" [6]. Following the issuance of the Guidelines on Compliance Management of Central Enterprises in 2018, the Guidelines on Compliance Management of Enterprises clarifying the compliance mechanism of overseas Enterprises and the management guidelines in the financial and securities sector have emerged. However, both general guidelines for comprehensive risks and specialized guidelines for specific industries are faced with emptiness and broad forms, and "paper compliance" lacks operational effectiveness.

3.2. Disadvantages of Enterprise Compliance and Administrative Guidance

3.2.1. Non-mandatory "Trap"

The non-mandatory nature of enterprise administrative compliance guidance means that it has the same flexibility that is different from the mandatory behavior, and it is easy to obtain the acceptance and cooperation of enterprises, but the violation without facts indicates the two-way hidden danger of falling into the "non-mandatory trap". On the one hand, the government controls the overall market, and the resources and energy allocated to the administrative compliance are limited, and the administrative guidance affects the rights and obligations on the other hand, the enterprise compliance guidance does not deny the attitude, and the rules do not fail to follow or follow the form becomes the norm, and the compliance construction has become a posterior option.

3.2.2. Lack of Incentive Mechanism

Administrative guidance does not take public power as an endorsement and does not set adverse consequences for violations. The implementation of guidance relies on the obedience and cooperation of enterprises. Therefore, incentive mechanisms and policy dividends should and need to be set up. It is difficult to meet the development goals and deep-seated needs of enterprises only by giving them the direction of expectation, and it will only lead to negative resistance from enterprises. The lack of incentive mechanisms and the hidden disappearance of policy dividends lead to the lack of administrative compliance of enterprises, which is an attractive sign of the insight and acceptance of administrative counterparts. The long-term benign development and explicit operating profits are out of balance in the market economy. Enterprises are not informed The long-term benefits of regulatory

management, the short-term benefits of expansion operations are in line with the characteristics of profit-making, and enterprises are on the opposite side of compliance.

3.2.3. Lack of Tracking and Supporting System

Administrative guidance to paper policy and theoretical mechanism, compliance list, compliance guidelines and compliance guidelines, after the guidance document issued by the administrative organ compliance guidance work is temporary, violations of the rectification results or the construction of the enterprise cannot directly reflect and lack of acceptance criteria, lack of feedback and supervision channels. In the enterprise compliance guidance on the basis of no mandatory backing, the loss of the actual construction accompanied by monitoring encourages the enterprise to evade the inertia of compliance responsibility and fluke, the other makes the enterprise compliance direction lose escort, and it is difficult to guarantee the quality.

4. Analysis of the Crux of the Difficult Implementation of Enterprise Compliance Administrative Guidance

"Administrative guidance" contains necessary and voluntary requirements for the guiding acts done by administrative organs; the three principles of administrative guidance (legitimacy, necessity and voluntary), which is the difficulty of implementing the system in the field of enterprise compliance.

4.1. The Crux of the Difficulty of Implementing the Principle of Legitimacy: Insufficient Protection of Trust Interests

Justification is linked to the protection of the trust and interests of the administrative counterpart. The principle of legitimacy is intended to make administrative guidance ensure the acceptability of administrative counterparts. As rational economic people, enterprises are often associated with increased interests, that is, enterprises out of trust in the administrative subject, trust follows the guidance to maximize the profit, so as to implement in accordance with the compliance guidance [7]. On this basis, the trust interest has the legitimacy of protection, but the administrative compliance guidance policy issued by the government is an optional advocacy measure, and the government cannot violate the behavior that the guidance will not be punished.

4.2. The Crux of the Difficult Implementation of the Necessity Principle: The Formulation of Guidelines Is Perfunctory and Vague

The principle of necessity means that the administrative subject adopts administrative guidance for the subjective purpose of promoting the benefit and considering the input-output ratio in the objective choice, that is, the connotation of the principle of proportion. The benchmark of government compliance guidance is to give enterprises space for compliance development, but the compliance guidance lacks a unified standard formulation system, the provisions are empty and broad, and the formulation is perfunctory. The pilot operations in various regions are blocked in the general direction, reflecting the dilemma of functional waste and deduction. The cost of public resources and the empty current situation of policy violate the principle of necessity.

4.3. The Crux of the Principle of Voluntary Nature Is Difficult to Implement: The Dividend of the Policy Is Hidden and Unknown

The principle of voluntariness includes the theoretical requirement that the administrative guidance is accepted by the administrative counterpart. Administrative guidance is not a specific act that administrative organs expect to produce an inevitable legal effect, and there is no restriction and

restriction on the relative person in the law. The absence of national coercive force makes it necessary to seek the active cooperation and spontaneous recognition of the counterpart; the fundamental purpose of compliance operation is the rapid development of operation, and the establishment of a compliance control system will increase the operating cost of the enterprise and the immediate output; the policy protection tilt and incentive dividend give the current situation, it is difficult to mobilize the participation enthusiasm and voluntary attribute.

5. Enterprise Compliance and Administrative Guidance Defect Solutions

The improvement direction of the enterprise compliance administrative guidance system takes the premise of respecting the "administrative guidance is not mandatory", introducing rigid standards to make up for the soft administration, formulating guidelines to ensure the guidance, constructing the incentive mechanism to guide enterprises to follow the unified industry standard and enterprise-style special guidance; establish the third party supervision and evaluation mechanism, track the compliance guidance operation, timely feedback and intervene in supervision, and provide non-interest investigation.

5.1. Industry-style Compliance Guidance and Specifications

The industry-style compliance guidance specification aims to refine the general enterprise compliance documents into formal standards close to industrial policies, and reduce the applicable objects from various economies of enterprises and institutions to operating units in specific directions, so as to realize the point-point process from typical local to overall promotion.

According to the existing financial securities guidance example, the government should establish the characteristics of compliance standards with national authority documents to establish a model, and complete the "package" to "rules" pattern gradually--such as distinguishing between export-oriented enterprises, the market whether foreign import and export control risk with ordinary competition risk, etc.

5.2. Enterprise-style Special Guidance Plan

The "Enterprise-style Special Guidance Plan" can be compared to the "Special Compliance Plan for Enterprise Compliance Rectification" in enterprise criminal compliance, it transforms the administrative compliance guidance into special compliance guidance, and urges enterprises to establish special guidance plans based on their characteristics. The plan mainly focuses on the internal management of compliance rectification and risk prevention, including the basic compliance elements and the same specialized compliance elements [8]. The former refers to the general factors of enterprise operation, such as government agencies and corporate representatives; the latter refers to specific illegal elements, like tax mechanisms, import and export trade. Combining generality and particularity can strive to avoid the risk of administrative violation in advance, make up for the illegal management loopholes in the event, strengthen the rectification effect and review afterward.

5.3. Third-party Supervision and Tracking Mechanism

The administrative guidance system of enterprise compliance not only involves the administrative organs and administrative counterparts but also involves huge public influence and public recognition. In addition to the internal supervision and control of enterprises and the external tracking of administrative supervision, the third-party supervision and management mechanism is legitimate and necessary to introduce. No interested individual involvement in the evaluation is conducive to

weakening the identity contradiction between the government's "judge" and "executor", and grafting social benefits.

In compliance guidance, the third party shall cooperate with government departments or be determined by the administrative authority. The personnel selection mechanism and regional expert database mentioned in the Third-party Supervision and Evaluation Mechanism of the Enterprise involved (Trial) provide a connection model for administrative compliance guidance [9]; It should empower the third-party evaluation subject, clarify the independence of supervisory authority and control the authority outside the administrative power to consolidate the interventional acceptance and objective evaluation without interference.

6. Conclusion

This paper mainly analyzes the concept and function of the administrative guidance system from the perspective of enterprise compliance. This paper turns to system construction after clarifying the crux of practice. This paper draws the following conclusions: non-mandatory flexible guidance makes the compliance guidance must be equipped with incentive dividend to guide enterprises to participate, and the tracking feedback mechanism must be constructed to ensure the implementation of the guidance and the relative rigidity; the violation of the basic principles of administrative guidance creates the superficial results of compliance guidance, hence, the implementation of the enterprise compliance administrative guidance system should be complete the guidance to formulate norms and practical operating system. In this paper, there is still room for mining to clarify the concept of enterprise administrative compliance and administrative guidance, as well as in-depth exploration in the determination of nature, principle boundary and instance investigation of administrative guidance in enterprise compliance. The functional analysis and system construction of enterprise administrative compliance guidance can consider to broaden the cross perspective of execution connection and integrate Chinese enterprise compliance with the frontier of world administrative compliance in the community field.

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