

The exploration of practical problems and solution strategies in connection with enterprise compliance execution

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Abstract: Under the background of economic globalization and increasingly fierce market competition, enterprise compliance has become a key factor for enterprise survival and development. Enterprise compliance is not only an essential requirement for enterprises to comply with laws and regulations but also an essential means for enterprises to enhance their competitiveness and maintain a good reputation. In the practice of enterprise compliance, the connection of execution plays a vital role, aiming to realize the seamless connection between administrative punishment and criminal punishment and form a joint force to crack down on illegal and criminal behaviors of enterprises. Promoting compliance, such as program failure, standards, and fuzzy entity cohesion, can solve the cohesion dilemma, find "execution" cohesion "reasonable," and optimize the entity, procedures, and supervision level cohesion closely to strengthen the enterprise's internal compliance management and promote its healthy development.

Keywords: enterprise compliance; execution cohesion; practical problems; solution strategies

1. Introduction

Corporate compliance is not only an integral part of the modernization of social governance but also an internal driving force for promoting the modernization of social governance. Since 2018 marks the first year of enterprise compliance, the prelude of enterprise compliance management construction has officially opened. By 2020, the Supreme People's Procuratorate has launched the compliance reform of the enterprises involved in the case, aiming to promote the deep combination of enterprise compliance and judicial practice so as to improve the law-based business environment. The connection of the enterprise compliance execution not only makes up the important basis for the deficiency of the enterprise compliance system but also is the necessary extension of the meaning and logic of the execution connection in the context of the enterprise compliance. Effective execution cohesion mechanism is the enterprise compliance reform's positive effect, important guarantee, and essential system content, but since the enterprise compliance reform, the execution cohesion in the entity level is not clear, the program level of cohesion standards and supervision level of cohesion object are unknown, and cannot really realize the advantages of the enterprise compliance system and efficiency. Therefore, it is of enormous practical significance to strengthen the compliance execution of enterprises to promote the standardized development of enterprises, maintain the order of the market economy, and promote the construction of the rule of law.^[1]

2. The necessity of enterprise compliance execution connection

The enterprise compliance system refers to the way to prevent and reduce the same kind of illegal and criminal behaviors by filling in and repairing the loopholes related to the system that are easy to lead to similar illegal and criminal behaviors. The connection of execution is also defined as "connection of two law" refers to the working mechanism of the two-way transfer mechanism of administrative law enforcement organs. The purpose of execution connection is to break the barrier between "action" and "punishment", realize the effective connection between administrative punishment and criminal punishment, avoid the phenomenon of "punishment for punishment" or "punishment for punishment", ensure the unity and correct implementation of the law, so as to maintain the order of market economy and social and public interests.

In the field of enterprise compliance, the execution connection is of great significance. ^[2]From the perspective of "execution compliance", it mainly covers the transformation from administrative

compliance to criminal compliance, and from criminal compliance to administrative compliance. Administrative compliance and criminal compliance each have different goals, the former aims to meet the requirements of criminal regulations, while the latter is more focused on compliance with administrative regulations. However, these two systems are not completely independent. In fact, in view of the characteristics of administrative illegal enterprise crimes in China, there is a close connection between them. If the effective connection between administrative compliance and criminal compliance cannot be realized, leading to the two independent governance and mutual recognition, then the effect of compliance will be greatly affected, and may even cause the aversion of enterprises to the compliance system, making the compliance system become in name only. Therefore, in order to ensure the implementation effect of the compliance system, the connection between administrative and criminal compliance is particularly necessary.^[3]

3. The practical problem of enterprise compliance execution connection

3.1. Entity cohesion problem

3.1.1. The boundary between administrative violations and criminal crimes is blurred

At the entity level, there is a blurred boundary between administrative violation and criminal crime in the connection between enterprise compliance and execution. Due to the dual attributes of enterprise crimes and the overlapping and overlap of administrative violations and criminal crimes in China's current laws and regulations, it is difficult to accurately and clearly distinguish them in practice. For example, the current normative documents in the criminal field are not comprehensive, and it is difficult to meet the practical needs of administrative law enforcement and criminal law enforcement. Despite the clear provisions of the People's Republic of China's law on administrative punishment and the State Council, the administrative law enforcement organs, the administrative organ, the public security organ, and the criminal suspect case remain unclear. This is because the enterprise's illegal case, which is influenced by economic development indicators, social stability, and local policy factors, often results in the local administrative organ failing to transfer the investigation. This ambiguity not only increases the uncertainty of law enforcement and justice, but also easily leads to controversy.^[4]

3.1.2. Problem of administrative penalty and criminal penalty offset

The issue of administrative and criminal punishments poses a practical challenge in the context of implementing enterprise compliance. When an enterprise with the same illegal act is subject to administrative punishment but also to be investigated for criminal responsibility, it involves the administrative penalty and criminal penalty discount situation. The administrative and criminal are different, in the execution cohesion, the discount standards and procedures have become important issues that hinder the cohesion. For example, if the Administrative Punishment Law of the People's Republic of China stipulates that when an illegal act constitutes a crime and the people's court sentences criminal detention or fixed-term imprisonment, if the administrative organ has given administrative detention to the party concerned, it shall offset the corresponding sentence according to law. However, in the specific operation, the lack of clear provisions on the discount ratio and calculation method led to differences in the implementation of different regions and organs. In addition, the discount procedure is not standard, and there is a lack of a clear operation process and supervision mechanism. In addition, the lack of effective communication and coordination between administrative organs and judicial organs leads to the discount of administrative penalties and criminal penalties not being carried out in time, and enterprises may face the risk of repeated punishment, which damages the legitimate rights and interests of enterprises.

3.2. Procedure cohesion problem

3.2.1. The case transfer is not smooth

In the enterprise compliance reform, the poor transfer connection can easily lead to the low efficiency of case handling. Among them, the transfer standard is not clear, which leads to a transfer procedure that is not smooth. China's current laws on the transfer of suspected criminal cases by administrative law enforcement organs are more principled and vague, lacking in specific quantitative indicators and clear judgment basis. For instance, in the domain of economic crime, the laws are more principled and vague. Different laws, regulations, and judicial interpretations regarding the amount involved, illegal income, and the severity of the circumstances cause the administrative law enforcement authorities to determine whether to transfer the case; the absence of the transfer period also brings difficulties to the case transfer

procedure. Without clear transfer period requirements, the administrative law enforcement organs may delay the transfer process after discovering suspected criminal cases. This delay in case handling can negatively impact the intensity of the crackdown on criminal behavior. In the process of pursuing administrative efficiency, some administrative law enforcement organs may first impose administrative punishment on the case and then consider whether to transfer it to the criminal judicial organs. This not only violates the basic principles of execution connection but also easily leads to the loss of evidence and the escape of criminal suspects.

3.2.2. There are barriers to evidence conversion

There are different standards and requirements between administrative evidence and criminal evidence. Administrative evidence is to meet the needs of administrative authorities, whose proof is relatively low and pays more attention to the relevance and legality of evidence; while criminal evidence requires high "clear facts, true evidence, and sufficient evidence," but also requires high authenticity and exclusivity. Due to the differences in the standards and requirements of administrative evidence and criminal evidence, the administrative evidence is often needed to be re-examined and supplemented when converted into criminal evidence, which increases the difficulty and complexity of evidence conversion.^[5]

3.3. Supervision mechanism problems

3.3.1. Lack of supervision of the transfer cases

The lack of supervision over the transfer cases leads to a lack of transparency and standardization in the case handling process. In the transfer of suspected criminal cases by administrative organs, the supervision mechanism is obviously insufficient, and the lack of a supervision subject and effective supervision methods makes it difficult to guarantee the fairness and legality of the case transfer and easy to breed corruption and abuse of power. In practice, although the legal provisions stipulate the obligation of administrative law enforcement organs to transfer cases, there is a lack of clear supervision and accountability mechanisms for whether they are fulfilled, resulting in insufficient enforcement strength. Additionally, the absence of a supervision mechanism leads to information asymmetry in the case transfer process, impacts the collaborative efficiency of each link, heightens the arbitrariness of case handling, and ultimately undermines the foundation of judicial justice.

3.3.2. Lack of continuous supervision

In addition to the lack of effective supervision of cases transferred by law enforcement agencies, the case tracking and feedback mechanism for cases after transfer is not perfect, which leads to the difficult to get timely feedback and evaluation of the case handling results, which affects the consistency and effect of case handling. This not only makes the case handling inefficient but also may lead to the recurrence of similar problems, which further weakens the deterrence of the law and encourages the spread of illegal and criminal acts. However, due to the lack of guidance in the industry compliance construction and the gradual deepening of the enterprise compliance reform, it has gradually developed from individual cases to the industry compliance direction. The problems revealed by corporate crime are usually also a common legal risk in the industry. If these potential legal risks are not eliminated in time, it will eventually violate the legal red line and bring a heavier work burden to the administrative and criminal judicial organs.

4. Enterprise compliance execution cohesion solution strategy

4.1. Standardize the entity level of cohesion

We will improve laws and regulations, clarify the specific standards and procedures for execution connections, and standardize the effective connections at the substantive level. First of all, it is suggested that the legislature should specify the boundary between administrative laws and criminal crimes by formulating special laws or revising existing laws and regulations. In the relevant legal provisions, the constitutive elements of all kinds of illegal acts are clearly listed, including the subject of the act, the development mode, the consequences, the subjective intention and negligence, so that the administrative law enforcement organs and criminal judicial organs can have a clearer and more clear basis when judging whether an act constitutes a crime. The highest judicial organ should formulate relevant judicial interpretations in time, further explain and refine the legal provisions, and clarify the distinction standard between administrative violations and criminal crimes. In view of some issues that are easy to dispute in practice, we will give clear guidance through judicial interpretation to unify the judicial standards of law

enforcement. Secondly, it is of great significance to standardize the discount system of administrative punishment and criminal punishment to protect the legitimate rights and interests of enterprises and to realize the fairness and justice of the law. The discount standard for administrative and criminal penalties should be unified. At the legislative level, the specific proportion and calculation method of the discount should be clearly stipulated to avoid differences in the implementation of different regions and different organs. In the case where administrative detention is offset to fixed-term imprisonment or criminal detention, the penalty may be deducted according to the proportion of the fine to the fine.^[6]

4.2. Optimize the procedure cohesion mechanism

Establish a standardized process for case transfer to ensure transparent information sharing. The collection of evidence and the mutual recognition of the identification criteria constitute the basis of the whole mechanism and run through the cohesion of the whole process. In order to solve the case transfer procedure, especially the problem of unsmooth connection of case evidence, the standard, time limit, and responsibility of transfer should be clearly defined. Detailed and specific transfer standards shall be established to quantify the transfer conditions of various enterprises. Determine a clear term system to transfer the criminal judicial organs within a certain period, such as 15 working days; standardize the extension conditions and approval procedures for the transfer period. Meanwhile, the subject and secondary responsibilities shall be defined, and the legal responsibility shall be investigated according to law. Law enforcement personnel can receive administrative sanctions or criminal responsibility through the establishment of an accountability mechanism. Improving the information mechanism plays a crucial role in enhancing procedure connections, ensuring their efficient and seamless execution. Therefore, administrative and criminal organs should establish a unified information platform according to the development of enterprise compliance, realize the real-time sharing of administrative law enforcement and criminal judicial information, and avoid information islands. In addition, cross-departments should strengthen cross-departmental cooperation and development, such as regular joint meetings, and establish feasible evidence transformation rules for problems due to the standards and requirements of evidence in execution connection.

4.3. Strengthening the construction of supervision mechanisms

We will establish a sound two-way oversight system to ensure that law enforcement is fair and transparent. The first is the supervision of the administrative organs. On one hand, we should establish an internal supervision mechanism for the administrative law enforcement organs. It is mainly to transfer the casework of strict internal audit and supervision. Administrative law enforcement organs shall set up posts and departments to supervise the compliance development of enterprises, and examine cases regularly, so as to prevent the problems of handling cases and substituting punishment instead of punishment. At the same time, the establishment of the case transfer record system, after the transfer of the case, the relevant materials should be submitted to the superior competent department for the record, the competent department to review the materials, urge the rectification transfer is not timely or incomplete materials, and other problems. Conversely, the introduction of an external supervision power is necessary. We will strengthen supervision over the cases transferred by administrative law enforcement organs. With the procuratorial organs as the main ones, they should give full play to their supervisory functions and strengthen the supervision of the cases transferred by the administrative law enforcement organs by reading the case files and inquiries of the administrative organs. Secondly, they should enhance their supervision over the criminal judicial organs. Make it clear that the inspection organs are the subject of supervision. The procuratorial organ should establish and perfect the supervision mechanism of the criminal judicial organ and strengthen the supervision and inspection of the case handling process. The criminal judicial organs supervise all their handling activities through advanced intervention and tracking. For example, in the stage of filing and investigation by the public security organs, the inspection organs can reflect the "admission" and intervene in the investigation of cases so as to guide the public security organs to collect and fix evidence according to law and ensure the legality and standardization of the investigation activities.

5. Conclusions

The implementation of enterprise compliance is a crucial topic for optimizing the business environment and enhancing national governance capacity, particularly in light of the modernization of the rule of law. The two-way promotion of administration and criminality is the key to the continuous

deepening of enterprise compliance. It is necessary to improve the entity and procedural rules for the connection of execution through legislation and strengthen the normal cooperation mechanism between administrative organs and judicial organs. In the future, under the development of enterprise compliance, we need to promote under the framework of the government, enterprises, and society, with the concept of dynamic balance optimization execution cohesion path, and finally promote the market order and enterprise sustainable development of dual value goals to build the rule of law and international business environment to provide institutional guarantee.

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