Research on the Role of Legal Advisers in the Legal Risk Prevention and Control of SMEs

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***Abstract**: The legal risks of SMEs arise and survive in the general environment of rule of law. If SMEs want to achieve real sustainable and healthy development, they must incorporate the prevention and control of corporate legal risks into their daily operation and management. The role of legal advisors in the development of SMEs is becoming more and more significant as they can provide legal advice, legal risk prevention and control, legal dispute resolution and other services to avoid or reduce the legal risks of SMEs to the greatest extent.*

***Key words**: legal adviser; legal commissioner; external lawyer; enterprise legal risk; legal risk prevention and control*

Introduction

SMEs are an important part of China's market economy, and the sustainable development of SMEs is particularly important as they provide a large share of the economy in terms of jobs and tax revenue. With the increasing improvement of the legal environment, the sustainable development of SMEs depends on the prevention and control of legal risks, and the effective prevention and control of legal risks depends on the improvement of the legal adviser system.

Overview of Legal Adviser for Small and Medium-sized Enterprises

There are two types of legal advisors for SMEs, one is the internal legal advisor, i.e., a legal specialist is established within the enterprise. The second is the external legal adviser of the enterprise, which is the way of external lawyers of the enterprise (Wei, 2020). The following section describes in detail the two types of legal adviser systems for SMEs.

Internal Legal Adviser

Internal legal adviser, also known as special legal adviser, is recruited through recruitment to employ people with the ability to handle legal practice and have legal expertise to be responsible for the daily legal affairs of the enterprise. Small and medium-sized enterprises generally set up at least 2-3 legal specialists within

the enterprise according to their scale of operation. For example, assisting the business operator to correctly implement national laws and regulations, giving legal opinions on major business decisions; managing the enterprise's credit and debt relationships; participating in drafting important company rules and regulations; reviewing the enterprise's contracts, etc. The advantage of a special legal advisor is that, as an employee of the company, he or she has high loyalty and stability and can work exclusively, continuously and long-term on the daily legal affairs of the enterprise. Most importantly, because they participate in the daily management and business decisions of the company, they are familiar with the internal legal environment of the company and have a better understanding of the legal risks of the company, so they can prevent the legal risks of the company and quickly reflect the internal legal risks of the company. However, the disadvantage of special legal adviser is that as an internal employee, the company needs to pay social security and salary for them. And special legal adviser as an internal staff in making choices and judgments easily by the interpersonal relationship invisible restrictions. Most of their work is focused on general knowledge legal affairs, once involved in highly specialized legal areas such as intellectual property rights, international trade, etc. will be difficult to perform. In addition, when the enterprise encounters litigation, the legal specialist is not good at litigation business due to its lack of litigation experience, so it is difficult to act as an agent to handle litigation matters, so it is necessary to hire additional lawyers to handle related matters.

External Legal Adviser for Enterprises

The external legal advisor of an enterprise, also known as permanent legal advisor, is a law firm that accepts the commission of an enterprise to assign a lawyer as the legal advisor of the enterprise (Han & Fu, 2009). Generally, the lawyer will agree on the term of employment based on the commission of the enterprise, and the enterprise will pay the remuneration on an annual basis. The entrusted lawyers provide contract drafting and revision services, legal consulting services, commercial negotiation services, professional litigation-related representation services, and review of the company's articles of incorporation or internal rules and regulations for legal compliance. The advantage of using a permanent legal advisor is that the remuneration is more flexible and saves the company's human capital compared to setting up a legal specialist within the company, and professional advice can be obtained by paying only for the advisor's fee. In order to maintain customers, SMEs generally maintain a friendly relationship with their customers. When a client defaults on a contract, it is difficult for the company to step in due to sentiment, and legal adviser can step in to negotiate from the perspective of a third party, which can maintain the relationship between the two sides and take care of the sentiment of both sides. In addition, the due diligence of a full-time lawyer allows SMEs to avoid units with very poor performance capabilities, and can also play a certain deterrent role in the event of a client's default in its capacity as a lawyer. On the one hand, it can prevent legal risks to a certain extent, and on the other hand, it can quickly solve legal risks when they arise, so this model is mostly adopted by SMEs nowadays. The disadvantage of permanent legal adviser is that they are not employees of the company, so it is difficult to be managed by the company like employees. Due to the need to be on call, lawyers usually serve several business units and individual businesses at the same time. Secondly, since the lawyer is not involved in the day-to-day business activities of the company, he or she lacks knowledge of the principles and terminology of different fields of science and technology.

The Role of Legal Adviser in the Prevention and Control of Legal Risks of SMEs

Legal Risk Assessment

In terms of legal risk assessment, there is a big difference between the assessment of legal risks by lawyers and internal legal specialists. The internal legal specialist assesses the legal risks of the company based on the company's main business scope and labor relations, but lacks practical experience in the corresponding remedial measures, and the assessment is not comprehensive. After the lawyer becomes the legal advisor through the enterprise's commission, he/she will first map out the company's financial and taxation management mechanism, employment mechanism and contract management system. Through in-depth investigation, the legal advisor will check whether there are legal risk loopholes, what loopholes exist and remedial measures, etc., and conduct a big "check" on the enterprise law. At the same time, the legal advisor will enhance the ability of SMEs to resist legal risks according to their current situation, and build a system to prevent legal risks in various aspects of enterprise production, finance and taxation, contracts and personnel employment (Liang, 2011).

Ex-ante Prevention of Potential Risks

For SMEs, by preventing legal risks beforehand, they can eliminate legal risks at source or try to avoid legal risks from being transformed into legal crises, so prevention beforehand is often more effective than remedies afterwards. As the legal adviser of the enterprise, it is necessary to analyze the potential legal risks in the daily business activities of the enterprise in advance and make corresponding preventive measures and remedies in advance to reduce the occurrence of various disputes.

First of all, for the purpose of profitability of enterprises, for example, the most important is the external economic behavior, mainly reflected in the signing of external contracts, the contract risk prevention is very important. Many small and medium-sized enterprises operate products that involve many scientific and technical principles. The legal specialist within the enterprise, because of his participation in the daily operation of the enterprise, will understand in which links there will be potential risks according to the principles of the product to make an advance analysis, and which legal risks can be exempted by reasonable advance notice. Lawyers, on the other hand, will review whether the client subject is eligible, whether the contract terms are legal and complete, and whether there are legal loopholes based on their specialized experience and expertise, and finally summarize the risk tips (Fang, 2015). Secondly, enterprises are also restricted by administrative laws and regulations, mainly in the fields of taxation, industry and commerce, labor and employment, and production safety. If enterprises violate the provisions of administrative laws and regulations, they will be subject to administrative penalties, which will not only bring property losses to enterprises, but also cause negative impacts to enterprises. Lawyers can give professional advice to enterprises according to their professional knowledge, while legal officers of enterprises as employees of the company can supervise and prompt the violations. Finally, the most stringent criminal law norms, the consequences of breaking the criminal law is not only to punish the enterprise directly responsible for the

penalties, but also to impose a fine on the enterprise, which is a heavy blow to the enterprise. Lawyers and corporate legal officers should always remind enterprises from their professional point of view to operate in compliance with the law and not to violate criminal penalties.

Help Establish a Good Corporate Image

Setting up a legal commissioner within an enterprise can set up an image of an enterprise with standardized management and good awareness of the rule of law to customers, which not only helps maintain the cooperative relationship with customers, but also enhances the trust of customers and the reputation of the enterprise. The employment of lawyers as legal advisors by enterprises reflects that the enterprise operators and managers have high legal literacy and have the legal consciousness of putting the operation under the legal framework (Zhong & Mao, 2013). Lawyers can also enhance the legal awareness of enterprise employees through giving training or legal publicity activities, and improve the legal literacy of the whole company employees and the awareness of protecting the interests of the company. Especially nowadays, when the self media is so developed, the style of compliance with the law and standardization in daily operation and labor employment can both convey the corporate attitude to the outside and bring a lot of positive influence to the company, and also motivate the partners to perform seriously.

Resolving Corporate Legal Disputes

Small and medium-sized enterprises carry out legal risk prevention and control through risk assessment, potential risk prevention in advance, etc. Sometimes legal risks can be avoided, but some legal risks are difficult to avoid. When an enterprise is inevitably involved in a lawsuit, the legal commissioner of the enterprise has to dock with the lawyer at the first time, and the lawyer has to use its professional legal ability to formulate targeted litigation response strategies and measures to safeguard the legitimate rights and interests of the enterprise. Lawyers use their litigation experience, professional legal knowledge and communication and coordination ability to help solve the litigation-related problems of enterprises. If an enterprise hires a lawyer as a legal advisor, it can entrust him/her to participate in the litigation after the special authorization procedure through the assistance of the enterprise legal affairs commissioner in the first time of the litigation, which reduces the time cost of seeking help from the lawyer. The lawyer of the consulting unit can provide free services or lower fees than the lawyers of non-consulting units in specific cases, which can save the enterprise's financial resources to a certain extent. The degree of involvement in business operation and familiarity with litigation- related cases of the lawyers of the consulting unit are greater than those of other lawyers who have not been involved in business operation, thus reducing the cost of human docking.

Participate in Corporate Business Negotiations

When SMEs want to transform their business negotiations with investors or important proposed partners, they need to conduct a detailed investigation of the other party's business information, the situation involving lawsuits, the presence of security collateral, which involves the interests of the enterprise, in case the other party is unable to perform or business fraud. And this time lawyers can play an important role.

During business negotiations, corporate legal specialists show the other side the different points of the company based on their involvement and understanding of the company's daily operations. Lawyers, on the other hand, can use their sophisticated negotiation experience and flexible negotiation skills, combined with rigorous legal logic and multidisciplinary knowledge, to create greater benefits for the company based on its principles and bottom line. Analyze the pros and cons from an objective perspective and formulate feasible countermeasures for new issues that arise at any time during the negotiations. After the negotiation, we are able to draft an agreement immediately with the matters reached in the negotiation, and facilitate both parties to sign to confirm the negotiation results, so as to obtain time and economic benefits for the enterprise.

Mitigating Risks and Avoiding Litigation

In order to resolve conflicts and legal risks, small and medium- sized enterprises will generally take the premise of maintaining friendly relations, first through the operator or sales staff friendly collection method, if this method does not work, and then through the collection method of the enterprise legal specialist. If a company starts a lawsuit to protect its own interests, it is generally a last resort for the company and the last line of defense to protect its rights, because going to court is not only labor-intensive, but also time-consuming. However, if the consultant entrusts the lawyer's intervention to a certain extent, it can resolve the risk and avoid litigation. In practice, enterprises will choose litigation as a last resort to resolve conflicts and risks, and litigation is not the best solution to resolve conflicts and risks (Duan, 2010). For example, if the customer is late in fulfilling the claim, if the lawyer sends a letter to make the defaulting party fulfill the claim in time, it will avoid the situation that the two sides will be confronted with each other and no more cooperation because of going to court. By sending a lawyer's letter, the client is informed of the alleged breach of contract and the legal consequences to be borne by the defaulting party. Sending a lawyer's letter is both a reminder and a deterrent, the defaulting unit will pay more attention and accelerate the performance, which also to a certain extent reduces the labor, financial resources and time spent by the enterprise due to litigation. If the other party does not perform in time after receiving the lawyer's letter, the lawyer can inform the management of the enterprise in advance of the advantages and disadvantages of litigation as a last resort, the fixing of evidence, the focus of the dispute and the legal provisions involved, so that it can ultimately decide whether to proceed with litigation.

Suggestions for Further Development of the Role of Legal Adviser

In the Mode of Legal Adviser, a Combination of Internal Legal Specialist and External Lawyers is Adopted

If an enterprise only adopts the mode of external lawyers and pays the legal consultant fee on an annual basis, SMEs are mostly production-oriented enterprises and sign more contracts. If each contract requires external lawyers to review and then integrate the cases that the enterprise may be involved in, the cost of legal consultant fee will be higher. Moreover, in addition to completing the legal affairs of the consultant, the outside lawyer also has to take care of his own affairs, so he cannot participate in the daily operation of the enterprise and is not familiar with the internal structure and operation process of the enterprise. Compared with outside lawyers, corporate legal affairs can understand the legal risks of the enterprise in

a timely and comprehensive manner, and can deal with the risk prevention and control of general contract documents in the daily operation of the enterprise, which can reduce the cost of legal adviser fees to a certain extent. However, they lack experience in dealing with litigation business, for example, they are more or less influenced and limited by "favors" on the legal risk of employment in enterprises. Therefore, based on their own small capital scale and limited investment cost in legal risk prevention and control, SMEs should establish their own legal adviser model, i.e., combining the internal establishment of "legal commissioner + external lawyer" model, combining the enterprise legal commissioner to prevent beforehand and the external lawyer to litigate afterwards, to establish a low-cost, operational legal risk prevention model. The legal risk prevention and control system with low cost and strong operability.

Optimize the Professional Ability and Work Quality of Internal Legal Specialists

On the one hand, the recruitment of legal specialists within the enterprise should be strictly controlled to avoid the emergence of related households, because the legal specialists are involved in the internal risk prevention and control of the enterprise, the recruitment of legal specialists must have the professional ability and expertise to deal with legal practice. For the entry of the legal commissioner, should also regularly strengthen the professional training. The enterprise should support the legal commissioner's further education, participate in legal exchange meetings, legal lectures, etc. to improve their professional ability of legal knowledge. On the other hand, a supervision mechanism and an assessment method should be set up for legal commissioners (Wang, 2019). Taking the registration of the company's debt management as an example, the legal commissioner can be checked regularly whether the claims are regularly collected, whether the debts are fulfilled as scheduled, etc. For this item, an annual assessment is set up and the legal commissioner should be given certain rewards if there is no condition of not timely collection and not timely fulfillment. Through internal supervision combined with rewards and penalties to strengthen the work of the legal commissioner's quality of work.

Improve the Awareness of Legal Risk Prevention and Control of All Employees of the Enterprise

The external lawyer conducts training for all employees to improve their awareness of risk prevention and control, and the consultation process for enterprises encountering difficult and complex legal issues can be simplified for their external lawyers (Zhang, 2019). In the consultant contract, it can be agreed that the external lawyer will carry out legal training several times a year, and through the training method, the awareness of legal risk prevention and control of the enterprise employees can be improved, especially the enterprise executives, sales personnel and procurement personnel, who are involved in the major operation of the enterprise, so that the employees can form the mindset of acquiring benefits according to the law, correctly exercising rights and safeguarding legal interests according to the law, and the enterprise employees can gradually develop the The company will gradually develop the habit of operating according to the regulations, so that the company can prepare in advance for the links that are prone to legal risks and secure the foundation of risk prevention and control in the process of development.

Conclusion

A good legal adviser system can not only promote the smooth completion of cooperation, avoid legal risks in finance and taxation, prevent the potential risks of SMEs in the process of operation in advance, and quickly resolve disputes to avoid litigation to the greatest extent. In summary, the important role of legal adviser in modern enterprise management system should not be underestimated, not only in the traditional litigation field, but also in the restructuring and mergers and acquisitions of enterprises, the issuance and listing of securities, bankruptcy and liquidation and other non-litigation areas are increasingly emphasized.

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