Study on the optimization path of improving criminal compliance system in China

En Wang*
College of Law and Political Science, Zhejiang Normal University, Zhejiang, China
*Corresponding author, e-mail: 305030426@qq.com
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Abstrct: *In the post-epidemic era, China has begun to explore the localization of the criminal compliance system in order to promote enterprises to operate in accordance with the law and maintain social stability under the rule of law. As an imported product, it is important to summarize the construction experience of British and American countries to improve our criminal compliance system. Our country can learn from relevant experiences and combine with the needs of our country to improve our criminal compliance system by improving legal norms, smoothing the path of administrative-criminal intersection, reforming the way of criminal incentive and implementing executive's obligation. In the future, the criminal compliance system will become an important path to build a law-based society in our cuntry.*
Key words: *Criminal Compliance; Corporate Compliance; Construction of the Rule of Law*

Introduction

The criminal compliance system originated in the United States and plays an important role in preventing the legal risks of enterprise operation and maintaining the stability of the social rule of law. Since the launch of the criminal compliance system construction pilot in 2020, criminal compliance has become a hot topic in academia and practice in China. By the end of May 2022, the number of compliance cases of Chinese enterprises had reached 1, 777, and the third-party supervision and evaluation mechanism has been basically established, indicating that China's pilot reform has achieved initial results.

However, if the reform time is calculated and divided into each pilot unit on average, then each pilot unit can undertake less than 100 criminal compliance cases per year. Under the situation of inexperience in practice, by learning the construction path of the criminal compliance system in Britain and the United States, it is of great significance to summarize the experience to help improve the criminal compliance system in China.

Experience of criminal compliance system construction in British and American countries

In order to curb the corruption of domestic enterprises, maintain the reputation of the country and the enterprise, and maintain the legal stability of the society, the British and American countries combined with their

own conditions, through the construction of criminal compliance system, use the rule of law to strengthen their judicial sovereignty, maintain the stability of the national rule of law, and promote enterprises back to the track of legal and compliant operation.

The criminal compliance system in the US

The criminal compliance system can be traced back to the 1977 enactment of the Foreign Corrupt Practices Act(FCPA) in the United States, a criminal statute designed to prevent companies from engaging in corrupt practices in international business activities. The FCPA actively guides enterprises to abide by relevant laws and regulations, cultivates a clean corporate culture, and thus protects the reputation of American enterprises and creates a favorable business environment. After the promulgation of FCPA, there were not many cases that used FCPA as the applicable legal basis to punish enterprises. Therefore, in 1991, the Federal Sentencing Commission of the United States included the enterprise compliance plan into the Federal Sentencing Guidelines, which greatly promoted the process of enterprise criminal compliance plan. In 1998, the FCPA Amendment expanded the scope of the FCPA, even if a foreign enterprise or a natural person commits a corrupt act in the United States, it will still be included in the scope of the FCPA. This will also provide a legal basis for US courts to continue the "long-arm jurisdiction" over foreign companies in the future, and protect the rights and interests of US companies overseas. In addition, in order to better protect enterprises, the United States released the Principles of Federal Prosecution of Business Organizations, which clarified the applicable conditions for prosecutors to make non-prosecution decisions against enterprises. That is, whether the enterprise develops and conscientiously implements the criminal compliance plan will be an important factor for the enterprise to commit a crime. After the FCPA, 99 per cent of cases have reached agreements with US prosecutors, and few have reached proceedings.

In order to better promote and improve the criminal compliance system, the United States takes national supervision, mandatory self-regulation of enterprises and criminal incentive as the starting point, and works with supervision agencies and government departments to solve the problem of market failure and promote the process of building criminal compliance of domestic enterprises. With FCPA as the guiding document of criminal compliance, the United States has issued numerous memoranda and other relevant policies and regulations, and coordinated management by multiple departments, forming a complete set of criminal compliance planning process, which lays the foundation for the clean, legal and compliant operation of American enterprises and the creation of a good social environment under the rule of law.

The Criminal Compliance System in the UK

In response to the growing corruption problem, the UK was determined to enact the Bribery Act 2010 (UKBA). UKBA unified and integrated the chaotic corruption crime system in the past in the UK, and learned from the relevant legislation system construction in foreign countries. According to the country's own situation, UKBA formulated the most severe anti-corruption system in history. In order to improve the anti-corruption efforts overseas, UKBA has formulated relevant charges to provide a substantive legal basis for the prevention of overseas corruption, so as to improve the integrity of business organizations. While improving the basis of substantive law, it also provides a certain path for decriminalization in procedure. UKBA

has established strict liability and not guilty plea. As long as an enterprise can establish and implement an effective compliance system to prevent the occurrence of corruption, it can use this as a defense to obtain decriminalization results. Accordingly, UKBA adopts strict liability for this. If other people or enterprises associated with the enterprise engage in corrupt acts for the benefit of the enterprise, then the enterprise will still be liable for this criminal responsibility. The UK continued to use the Deferred Prosecution Agreement (DPA) into Crime and Courts Act 2013. While Britain's use of the DPA process is less expansive than the United States' extraterritorial jurisdiction for robust compliance governance, However, in combination with DPA Code for Prosecutors and SFO Operational Handbook -DPA 2020 the UK has made detailed provisions on DPA application conditions, agreement content, evaluation standards, etc. , to improve the normative mode of prosecution discretion. Based on the UK's strict anti-corruption legal system and perfect procedural rules, British enterprises have to pay attention to their own anti-corruption compliance construction, so as to avoid being involved in anti-corruption litigation and suffering devastating blows

Above - mentioned experience to our enlightenment

By analyzing the experience of criminal compliance system in Britain and the United States, it will play an important role in improving the construction of criminal compliance system in the future and also help our country to establish a criminal compliance system which conforms to international practice and adapts to domestic needs.

Improve the legal basis of criminal compliance, pay attention to the unity of entities and procedures

In the process of British and American national development and perfecting criminal compliance, attaches great importance to the legal guarantee of system and guidance role, in the aspect of substantive law to establish and perfect the corresponding system of crimes, which especially attaches importance to enterprise anti-corruption crimes regulation, enterprise anti-corruption as a key link in the domestic criminal law compliance system, and thus extended to other fields. In the aspect of procedural law, the enterprise should be given the appropriate path of decriminalization. British and American countries combine and unify the substantive law and procedural law in the criminal compliance system, further promote the criminal compliance system, promote the legal compliance operation of enterprises, and maintain the stability of the rule of law of their societies, which has an important enlightenment for the subsequent reform of criminal compliance system.

Multi-department coordination governance, jointly promote the construction of criminal compliance

Corporate criminal compliance in Britain and the United States usually follows the overall system reform of "criminal integration". Internally, prosecutorial organs, courts and other departments cooperate with each other, and externally, they cooperate with third-party supervision agencies and tax departments. In criminal compliance cases, the investigation, prosecution and trial departments of British and American countries all participate in different degrees, cooperate with each other, coordinate with each other, and carry out dy-

namic compliance management, so as to promote the standardization and institutionalization of enterprise criminal compliance. In the reform process of criminal compliance in China, whether the government departments represented by SASAC or the judicial organs headed by the procuratorial organ are promoting the development of compliance system within their respective functions and powers. Our country can promote the connection between supervision departments, government departments and judicial departments, smooth the path between administrative-criminal intersection, and insist on procurator-led and multi-department coordination to promote the construction of our enterprise criminal compliance system.

Improve the incentive of criminal procedure and improve the willingness of enterprises to participate

The criminal compliance system can be used as a good tool for the state to control enterprises economically and socially. By increasing the criminal incentive, it is beneficial to increase the willingness of enterprises to participate in the criminal compliance program. For example, the United States proposed in the Federal Sentencing Guidelines revised in 1991 that enterprises could be encouraged to reduce the penalty and suspend the sentence. At the same time, whether the criminal compliance plan of the enterprise meets the contents stipulated in the domestic compliance documents will also become an important standard for whether the enterprise can be suspended or even not prosecuted. For example, UKBA stipulates that the completion of the criminal compliance plan in the contract of the enterprise involved can be regarded as the reason for preventing criminal punishment. Most of the foreign enterprises involved in the case are multinational enterprises with a high volume. In order to continue operations in local countries and maintain a high market share, they usually choose to actively complete the reform of criminal compliance to reach the target of the agreement. China can further improve the criminal incentive procedure in the criminal compliance system so as to increase enterprises' participation intention and maintain the stability of the social rule of law.

The state guides enterprises to set up a criminal compliance system and improve their ability to resist compliance risks

British and American countries promulgates corresponding laws and regulation systems to guide enterprises to formulate criminal compliance plans according to their own conditions, and at the same time strengthen the extraterritorial jurisdiction of criminal compliance with their own strong economic strength and legal export ability. In this way, enterprises can be encouraged to set up criminal compliance system in time to improve their ability to resist compliance risks, while in the external world, "long-arm jurisdiction" is used to protect the legitimate rights and interests of domestic enterprises overseas and administer the suspected illegal acts of foreign enterprises. Every year, the United States obtains billions of dollars of "economic benefits" through the criminal compliance system, and thus imposes strong punishments on the companies involved, thus prompting multinational enterprises to attach importance to the establishment of the criminal compliance system. Our country can draw lessons from the relevant experience, to use criminal compliance system within the framework of international law to expand the extraterritorial jurisdiction of our country. . On the one hand, this can urge enterprises to build criminal compliance system and improve our enterprises' ability to resist the compliance risk; on the other hand, it can meet the needs of our judicial organs for enterprise criminal crime governance and promote the construction of our country under the rule of law society.

Criminal compliance system in China can be improved in the future

During the construction of our criminal compliance system, China can refer to the experience of the criminal compliance systems in Britain and the United States to promote the healthy development of our economy on the track of rule of law by improving the criminal compliance system, and get through a new path for the construction of our social construction of rule of law.

Improve laws and norms and facilitate the reform of the criminal compliance system

Under the guidance of "scientific legislation, strict law enforcement, fair justice and law abiding by all", the improvement of legislation has become the guidance of the construction of the rule of law in China. Focusing on the unity of entities and procedures, the entity level can set the contents such as the negligence crime of enterprise executives in supervision and the compliance criminal law obligation of enterprises against corruption, so that Chinese enterprises are strictly constrained by laws and forced to return to the track of lawful and regulated operation. In view of the problems of current criminal compliance, China should respond to reality with legislation in a timely manner. The unit crime applicable to enterprises should be clear and specific, and the expansion of the provision for the bottom line should be avoided as far as possible, so as to give play to the foreseeable possibility that the law should have. Reduce the number of blank charges as much as possible, and specify the laws that should be applied to corporate crimes, rather than blindly applying vague terms such as "violation of relevant laws and regulations". In terms of procedures, the implementation of the enterprise's criminal path can be further improved and clarified in terms of the enterprise test period, non-prosecution of compliance, the application of the guilty plea system and other legislative contents, so as to make the procuratorial organ strictly implement the law within the framework of the law, rather than unlimited expansion of the procuratorial organ's discretion. By improving laws and regulations, the reform of criminal compliance can have enough legal protection to promote the construction process and reform of criminal compliance system.

Smooth the path of administrative-criminal intersection and improve the criminal compliance supervision system for enterprises

In the daily operation and management of an enterprise, the administrative organ is the one that has the most dealings with it, and is also the one that is most familiar with the operation status and commercial laws of the enterprise. Enterprises generally violate civil or administrative regulations, not directly involved in criminal offenses. As an important means to prevent corporate crimes, criminal compliance system can better supervise enterprises by smoothing the path of administrative-criminal intersection, so as to achieve the purpose of general and special prevention of penalty. At the legal level, under the guidance of the Provisions on Procuratorial Suggestions of the People's Procuratorates and the Provisions on Promoting the Connection Between Administrative Law Enforcement and Criminal Justice and other documents, documents related to the connection between execution in the field of criminal compliance can be issued, so as to guide the execution

organs to strengthen cooperation and mutual cooperation in the process of criminal compliance. On the basis of the existing provisions on evidence transformation, relevant legal provisions or judicial interpretations should be issued to strengthen the coordination of evidence identification and application between procuratorial organs and administrative organs. Administrative organs are encouraged to provide their own professional opinions and technical means for case evidence, and procuratorial organs can implement the mechanism of intervening in advance in the investigation and handling process of administrative organs to help administrative organs collect evidence and realize the legalization of evidence specifications.

The standard of the crime and decriminalization also a key connection of administrative law enforcement and criminal justice procedures. The cases involving criminal crimes should be transferred to the judicial organs in time. After the reform of the criminal compliance plan, even if there is no criminal penalty, the administrative penalty can be handed over to the administrative organs to replace the criminal charge. Smoothing the path of administrative-criminal intersection can strengthen the supervision of criminal compliance of enterprises, protect the legitimate rights and interests of enterprises, urge enterprises to realize self-regulation, and provide help for the construction of a society ruled by law.

Reform criminal incentive mode, maintain social stability by law

Criminal incentive can enable enterprises to obtain the path of misdemeanors or even exonerations, which is conducive to motivate enterprises to complete criminal compliance plans, protect the survival and development of enterprises, and maintain the stability of social rule of law. China can adopt the dual path of unit responsibility and individual responsibility to construct the criminal compliance incentive model under the Chinese model. For example, our criminal compliance plan could also introduce a system of penal discretion, that is, a system of corporate probation. With reference to the individual probation system, set a certain probation period for the enterprise. If an agreement is reached to complete the reform of criminal compliance, the enterprise may be exempted from criminal punishment, and the fine may be reduced or reduced according to the circumstances. This can not only avoid the damage to enterprises, but also improve the enthusiasm of enterprises to participate in criminal compliance, promote the process of internal compliance reform of enterprises, and reflect the appropriate function of criminal law.

In our country, enterprise executives often represent the image of their enterprises. The arrest of them will affect the reputation of the enterprise involved in the case, so the pertinently modified in the system of arrest necessity can be appropriately carried out. According to the provisions of the law of our country and the actual situation, the responsible person in charge of enterprise involved in case with misdemeanor and good attitude take non-custody measures. This not only reflects the guiding ideology of "less arrest and punishment" penalty, but also is beneficial to strengthening judicial protection for enterprises and creating a good social atmosphere under the rule of law. Enterprises need to consume a lot of manpower and material resources to complete the reform of criminal compliance, and the cost of third-party supervision is relatively high, which is easy to become a burden for enterprises. Therefore, our country can explore the path of local financial support for enterprise criminal compliance reform, give financial reward or subsidy to enterprises with good compliance plans, and bear the cost of the third-party supervision subject. This is also conducive to reducing the pressure on enterprises, encouraging more enterprises to participate in the process of criminal compliance

reform, realizing self-regulation of enterprises, and jointly participating in the process of building a society ruled by law.

Implement the obligations of senior executives and give play to the power of industry organizations

Enterprise executives enjoy the daily management right of the enterprise and master the business direction and development track of the enterprise. Implementing the obligations of enterprise executives is conducive to urging the enterprise to abide by the law and complete the reform of criminal compliance. China's relevant laws stipulate that company directors have the duty of loyalty and diligence, but the existing legal provisions and judicial interpretations have not written the compliance obligation into the obligations of company directors. China can include the compliance obligation into the connotation of the duty of diligence by expanding the interpretation, or adopt the system connotation specifically stipulating the compliance obligation as one of the three major obligations of Chinese enterprise executives, so as to implement the obligations of enterprise executives to participate in criminal compliance and implement criminal compliance plans.

China's industry organizations can become an important bridge of communication between the state and business organizations, such as Zhejiang Province Overseas Investment Enterprise Service Alliance, China Enterprise Anti-Fraud Alliance and other industry organizations play an important role. The government strengthens the management and control of industrial organizations, so that industrial organizations can play a social function, and the professional characteristics of industrial organizations can make the government governance ability more modern and systematic. Under this interactive mechanism, industry organizations can translate abstract laws into industry autonomy regulations, so that enterprises can better understand and enforce relevant laws. Through the procuratorial organs - industry organization, enterprise benign interactive mechanism of three parties, is helpful to develop industry group synergy, large enterprise in industry organizations to provide support to help smaller companies, with a "big with small" mode can reduce the pressure of a small micro enterprise, concentrate the power of enterprise, to deepen the understanding of criminal compliance system, jointly provide power for construction of the rule of law society.

Conclusion

Under the background of the rule of law and the construction of the rule-of-law society, how to ensure the development of the society by the rule of law has become an increasingly important issue. The construction of criminal compliance can promote Chinese enterprises to construct a legal, scientific and efficient operation and management system, realize the modernization and rule of law of enterprise governance, avoid the occurrence of criminal behaviors, and boost the construction of legal society in our country. Criminal compliance plays an important role in a society ruled by law or in economic development. In the reform pilot process, some problems are normal. China should combine the actual situation and draw lessons from other countries' experience to find out a Chinese criminal compliance system which is suitable for China's judicial practice and conforms to international practice.

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