

The Dilemmas and Improvements of Criminal Compliance for Private Enterprises: Insights from the Introduction of the Criminal Law Amendment (XII)

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Abstract. In recent years, amendments to the Criminal Law have progressively broadened the scope of regulation and introduced a significant number of administrative offenses, thereby escalating criminal risks for private enterprises. In order to alleviate the negative consequences of this expansion while safeguarding the legitimate rights of these enterprises, it is crucial to implement proactive governance and preventive measures, establishing a "path to redemption" rooted in criminal law theory. Once a business is implicated in criminal proceedings, its conduct should be assessed through the three-tier theory of culpability, evaluating the degrees of unlawfulness and responsibility. Preventive compliance measures should be adopted to reduce the occurrence of offenses and facilitate the introduction of diverse sanction mechanisms within private enterprises. Furthermore, institutional reforms are necessary—legislation must distinguish between different circumstances within the same offense, taking into account the severity of harm to legal interests, personal risk, and the likelihood of recidivism. A thorough evaluation of the effectiveness of criminal law should be conducted to achieve a balance between regulatory enforcement and the sustainable development of enterprises.

Keywords: Entrepreneurial crime; Private enterprises; Ex-ante compliance; Legal effect.

1. Introduction

In 2024, Chinese courts concluded 30,000 cases involving corruption, bribery, and other duty-related offenses, affecting 33,000 individuals—representing a year-on-year increase of 22.3%. Among these, 2,873 individuals were prosecuted for offering bribes, while 10,873 individuals faced charges for accepting bribes as non-state actors or for crimes such as embezzlement. All categories demonstrated a notable upward trend. In parallel, prosecutorial authorities handled 27,000 duty-related cases transferred by supervisory commissions at all levels, initiating prosecutions against 24,000 individuals. Of particular note, 5,081 individuals were prosecuted for corruption offenses in key sectors such as finance, energy, healthcare, and infrastructure construction; 3,068 for bribery; and 3,298 for corruption committed by employees holding key positions in private enterprises.

These statistics highlight the escalating risk of duty-related and bribery offenses encountered by entrepreneurs in the course of market activities. Within enterprises, issues such as internal power rent-seeking, illicit benefit transfers, and inadequate financial management are increasingly prevalent, underscoring the critical need for enhanced corporate compliance mechanisms. Following the expansion of enterprise-related criminal provisions under the Twelfth Amendment to the Criminal Law, internal corporate corruption has become a central focus of regulatory efforts, and the entrepreneurial community now faces mounting compliance pressures. In response to the expanding criminal risks, it is essential to reassess the challenges involved in identifying enterprise-related offenses, and to leverage the foundational principles of criminal law as analytical tools—enabling the regulation of criminal conduct while effectively safeguarding the rights and interests of private enterprises and entrepreneurs, and mitigating the adverse effects of criminal penalties.

2. Criminal Risks Faced by Private Enterprises and Entrepreneurs under the Twelfth Amendment to the Criminal Law

2.1. Expansion of Criminal Subjects: Heightened Risks Due to Equal Application to Private and State-Owned Enterprises

The Twelfth Amendment to the Criminal Law, passed on December 29, 2023, expands the scope of several corporate-related offenses—including "illegally engaging in competing business," "seeking unlawful profits for relatives or friends," and "committing favoritism in undervalued equity transfers or asset sales"—from state-owned enterprise (SOE) personnel to include individuals in private enterprises. This amendment significantly broadens the regulatory reach of criminal law.

In contrast to SOEs, private enterprises often feature more flexible governance structures with less clearly delineated boundaries of authority and responsibility. In private companies, managers typically hold both control and operational roles, which makes them more vulnerable to criminal liability due to conflicts of interest or the misuse of authority for personal gain. Drawing upon Article 61 of the Company Law [1], which mandates a duty of diligence, the amendment explicitly designates directors, supervisors, and senior executives as responsible parties. While this extension seeks to enhance the protection of property rights in the private sector, it also notably increases the criminal risks for private enterprises.

As discussed in academic analyses, the complex internal structures and ambiguous accountability mechanisms within private enterprises often result in senior management inadvertently crossing legal boundaries during routine business operations. In judicial practice, "nominal directors"—though formally meeting the criteria for criminal liability—may lack genuine decision-making power; conversely, "de facto directors," despite lacking formal appointments, can still be held criminally accountable due to their de facto control over corporate affairs.

2.2. Expansion of Criminalized Conduct: Broad Application of Breach-of-Trust Offenses

The Twelfth Amendment to the Criminal Law introduces new provisions criminalizing breach of trust, specifically targeting "insiders" who exploit their positions to harm corporate interests. However, in practice, these provisions may inadvertently increase legal risks for private enterprises. On one hand, the statutory language is broad and vague, leaving room for over-application in the absence of clear judicial guidance. Actions carried out for legitimate business purposes—such as assisting relatives or friends in acquiring equity through standard procedures, or transferring non-core assets at a discounted price—could be wrongly classified as criminal conduct due to unclear determinations of personal benefit or conflict of interest.

On the other hand, executives in private enterprises often hold dual roles as both managers and controlling shareholders, complicating the distinction between corporate and personal interests. Without clear legal boundaries, even decisions that are commercially sound may be misinterpreted as acts of disloyalty or breaches of fiduciary duty.

While the breach-of-trust provisions aim to safeguard corporate assets and prevent internal misconduct, their application could unintentionally criminalize routine business practices. For instance, in evaluating the legality of a "profit-generating business," it is common for private enterprises to establish multiple sub-brands to segment markets and expand their customer base—an ordinary competitive strategy that might be misinterpreted as "avoiding regulation through deceptive structures" or "engaging in illegal business practices." Such misinterpretations elevate the risk of criminal liability, potentially resulting in severe consequences such as asset freezes and operational disruption.

Of even greater concern, these provisions may be exploited as a tool to suppress founders, de facto controllers, or their family members, potentially exacerbating internal power struggles and undermining corporate governance.

2.3. Expansion of Legal Consequences: Potential Impact on Enterprise Development and Individual Rights

The Twelfth Amendment not only broadens criminal liability in terms of both subjects and conduct but also significantly heightens the severity of regulatory oversight by expanding the scope of legal consequences. Offenses such as “illegally engaging in competing business” and “seeking unlawful profits for relatives or friends” stipulate that the enterprise or the state must incur “substantial losses.” However, the lack of clear quantitative standards or precise definitions for indirect losses creates ambiguity in enforcement, increasing the risk of civil disputes being criminalized and placing disproportionate burdens on entrepreneurs.

In the case of “illegally engaging in competing business,” courts often face challenges in distinguishing between actions undertaken in an official capacity versus those conducted in a personal capacity. This challenge is particularly evident in private enterprises, where the interests of the business and those of its executives are often deeply intertwined. As a result, courts may mistakenly classify legitimate personal gains as illicit profits, leading to unjust criminal liability and excessive penalties for entrepreneurial conduct.

3. Practical Dilemmas in the Application of Enterprise-Related Crimes

The financial sector constitutes a high-risk area for entrepreneurial criminal liability. In a representative case, the chairman of a private enterprise was convicted of the crime of fraudulent bankruptcy for fabricating debts exceeding 28 million yuan to apply for bankruptcy protection. This case highlights how improper financing practices and irregular debt handling can easily trigger criminal prosecution and exacerbate bankruptcy risks [2].

At present, the handling of enterprise-related crimes still faces several conceptual and doctrinal dilemmas. These include unresolved issues in the selection of legal principles and the criteria for determining criminal liability, all of which require further clarification and refinement.

3.1. Conceptual Foundations of Equal Protection of Property Rights: Formal Equality vs. Substantive Equality

At a symposium on private enterprises, General Secretary Xi Jinping emphasized that “The Party and the State uphold fundamental policies to support the development of the private economy, ensuring that all forms of ownership have equal rights to utilize production factors, compete fairly in the market, and receive equal legal protection.” [3] However, in judicial practice, criminal cases involving enterprises still suffer from issues such as “selective enforcement” and the “use of criminal law to suppress private enterprises,” which undermine entrepreneurs’ expectations for legal certainty and stability. Only by adhering to the principle of equal protection, ensuring the impartial application of criminal law, can the business environment truly be optimized and private enterprises encouraged to proactively enhance their internal compliance systems.

Equality comprises two dimensions: formal equality and substantive equality. In China, current legislation on the equal protection of private enterprises tends to adopt a formalist approach [4]. The Twelfth Amendment to the Criminal Law, for example, applies uniform standards of criminalization and sentencing to both private and state-owned enterprises (SOEs), embodying this formal equality.

Nevertheless, some scholars contend that a strictly formal approach is inappropriate, as there are fundamental differences in ownership structures between private enterprises and SOEs. Private enterprises, compared to SOEs, bear fewer social responsibilities and are inherently more profit-driven [5]. Thus, applying identical legal standards to both types of enterprises may result in substantive inequality. While the misuse of state-owned assets for personal gain or for engaging in competing businesses is justifiably prohibited, imposing the same level of restrictions on private enterprises may be excessively rigid.

Although the property rights of both SOEs and private enterprises should be equally protected, such protection should be nuanced and context-sensitive, taking into account the differences between them. Since private enterprises are privately owned, actions such as benefiting relatives or engaging in similar lines of business are not only understandable but may, in some cases, even serve as internal drivers of sustained business growth. Therefore, substantive equality—rather than rigid formal equality—should serve as the appropriate foundation for the equal protection of corporate property rights.

3.2. Institutional Dilemma of Corporate Compliance: The Problem of Interpretation in the Absence of Legal Grounds

Corporate compliance, as a basis for reducing criminal liability, lacks a solid theoretical foundation and remains contentious in practice. First, the attribution of responsibility between the organization and individual actors is unclear: it remains ambiguous whether corporate compliance applies exclusively to the legal entity or can extend to individuals such as senior management and other responsible parties. Second, its position within the criminal law theoretical framework is uncertain—while compliance may influence the severity of punishment, its peripheral nature introduces potential instability. In the context of China's criminal law system, compliance is neither a statutory duty nor a legally recognized mitigating circumstance, complicating the application of compliance as a basis for leniency. Third, while the Anglo-American legal tradition emphasizes punishing individuals while allowing companies to avoid liability, this approach does not align with China's legal realities, where penalizing individuals may still result in the liability of the enterprise itself.

3.3. Theoretical Dilemma of Corporate Compliance: Lack of Theoretical Support for Conviction and Sentencing

Corporate compliance, as a basis for mitigating criminal liability, lacks solid theoretical foundations and remains controversial in practice. First, there is ambiguity in the attribution of responsibility between the organization and individuals: it is unclear whether corporate compliance applies solely to the legal entity or may also extend to responsible persons such as senior management. Second, its position within the theoretical framework of criminal law is ambiguous—while it may influence the severity of punishment, its marginal status introduces potential instability. In China's criminal law system, compliance is neither a statutory obligation nor a legally defined mitigating factor, which increases the difficulty of applying compliance as a basis for leniency. Third, although the Anglo-American legal tradition supports punishing responsible individuals while allowing enterprises to escape liability, this concept does not align with China's legal reality, where punishing individuals may ultimately still implicate the enterprise itself.

3.3.1. Conviction.

The application of "non-prosecution" based on post-event compliance is difficult to reconcile with traditional criminal law theories of offense establishment. To rationalize the reduction of criminal liability through corporate compliance, it must be examined across three dimensions: the constituent elements, unlawfulness, and responsibility. From the perspective of traditional crime theory, the enterprise itself clearly exhibits criminal facts and actions. Therefore, relying solely on post-event compliance measures cannot reduce the behavior in question to a "minor circumstance." As such, the logic of corporate compliance as a ground for exemption from prosecution or leniency remains unresolved.

For instance, according to the "three-tiered crime theory," criminal liability is established when an individual's behavior satisfies the criteria of the constitutive elements, unlawfulness, and responsibility. This should equally apply to corporate crimes. In theory, an exemption from prosecution can be framed as follows: First, the actions of the enterprise clearly fulfill the constitutive elements of a crime, which is indisputable. Second, regarding unlawfulness, compliance measures are unlikely to directly align with legal defenses such as "self-defense" or "emergency avoidance," as

stipulated in the law. Lastly, in terms of responsibility, the enterprise is undoubtedly the appropriate subject of criminal responsibility. Therefore, relying solely on the establishment of post-event compliance within an enterprise, and applying traditional criminal law theory, makes it difficult to justify a "non-prosecution" decision. To resolve this, a more nuanced interpretation of the three-tiered crime theory is required.

3.3.2. Sentencing.

In current criminal justice practice, there is a distinction between statutory sentencing factors and discretionary sentencing factors. Corporate compliance clearly falls within the realm of discretionary sentencing. However, the extent to which compliance influences sentencing remains unclear. One view holds that, particularly in addressing the governance challenges of corporate crimes, especially in private enterprises, the introduction of a criminal compliance program is a practical and feasible approach [6]. However, there are dissenting opinions, suggesting that corporate compliance requires a comprehensive and systematic evaluation, distinct from the simpler act of individual plea bargaining, and therefore deserves further consideration [7].

Another perspective advocates for establishing corporate compliance as a relatively independent factor for sentence reduction. In judicial practice, prosecutors often lack a clear legal basis for reducing sentences based on corporate compliance, leading to arbitrary judicial discretion. As such, it is necessary to clarify the role of compliance in sentence reduction through legislation, thus limiting judicial discretion and ensuring objective and consistent sentencing [8].

Moreover, the introduction of compliance as a sentencing factor remains contentious. Should it be considered a mitigating factor within plea bargaining, or should a distinct compliance reduction system be implemented as a basis for sentencing? Opinions are divided, each with its merits and drawbacks. However, it is essential to recognize that the incorporation of corporate compliance into criminal law differs fundamentally from the plea process: the latter requires only the signing of a plea agreement, while corporate compliance involves a comprehensive, systematic evaluation process [9].

4. Theoretical Approaches to the Prevention and Control of Entrepreneurs' Criminal Risks

4.1. Positioning in the Prevention of Entrepreneurial Crime in China

To explore appropriate analytical tools, it is essential first to define the expected outcomes and choose a position that fits the situation. Therefore, the controversies mentioned above must be addressed by providing clear answers that align with China's national conditions and the development status of private enterprises.

4.1.1. Choice of Principle for the Equal Protection of Property Rights.

Between formal equality and substantive equality, the latter should be chosen. A mere textual consistency does not reflect the inherent differences between state-owned and private enterprises in terms of their nature, responsibilities, and other factors. The pursuit of formal equality is unjust and unfavorable to the development of private enterprises. It is crucial to focus on achieving substantive equality in the protection of both types of enterprises.

4.1.2. Choice of Criminal Law Theoretical Framework.

And holds significant theoretical importance for supporting non-prosecution based on compliance.

The construction of a criminal law theory must not only rely on existing legal provisions but also select an appropriate logical reasoning model to position corporate compliance within criminal law theory and interpretation. It is important to recognize that the traditional "four-element theory" struggles to accommodate compliance factors, as it provides no space for interpretation after the behavior is established as meeting the elements of a crime. In contrast, the "three-tier theory of crime" offers greater flexibility in evaluating unlawfulness and culpability. Under this framework, the proactive establishment of a compliance program prior to the commission of a crime can be

interpreted as a statutory ground for mitigating unlawfulness or responsibility, which distinguishes it from legal defenses. This provides corporate compliance with a special function in reducing liability and supports non-prosecution based on compliance.

4.1.3. Choice of Legal Basis for Compliance.

The General Principles or specific provisions of the Criminal Law should clearly stipulate that the establishment and implementation of corporate compliance programs can serve as statutory grounds for sentence mitigation or leniency. Referencing the leniency system for guilty pleas introduced in the 2018 Criminal Procedure Law, provisions specifically addressing corporate compliance should be enacted. Additionally, supporting sentencing guidelines should be formulated to further clarify the mitigating effects of compliance and ensure its broader application in judicial practice. Currently, corporate compliance should continue to be integrated into the existing leniency framework to enhance its mitigating function.

4.1.4. Distinction Between Pre-Offense and Post-Offense Compliance.

A clear distinction should be made between pre-offense and post-offense compliance, emphasizing the preventive function. These two forms of compliance differ significantly in both legal effects and the degree of criminal risk they reflect. According to the principle of legality, post-offense compliance is rarely sufficient to eliminate the unlawfulness or responsibility of the enterprise or institution [10]. Therefore, post-offense compliance should not be justified by theoretical grounds applicable to pre-offense compliance. The two must be distinguished in their legal application, emphasizing the preventive function of pre-offense compliance to avoid encouraging enterprises to use post-offense compliance to escape criminal liability.

4.1.5. Integration of Organizational and Individual Responsibility.

Clear rules are necessary for handling individual liability after non-prosecution decisions based on corporate compliance. The exemption of an enterprise from liability should not automatically exempt individuals, nor should the relationship between corporate and individual liability be completely separated. Specifically, whether and how an individual can also receive mitigated or exempted criminal responsibility due to corporate compliance remains uncertain [11]. It is worth considering situations where an individual could not reasonably avoid committing a crime due to the absence of corporate compliance, or where the individual's conduct poses minimal social harm and thus warrants discretionary mitigation. A balance must be struck between the social dangerousness of the individual's behavior and the enterprise's compliance efforts. Corporate compliance should not be used to unjustly exonerate responsible individuals, nor should individual fault be entirely disregarded. Exempting individuals from criminal liability solely on the basis of corporate compliance violates the principle of legality; however, individual circumstances should still be considered for sentence mitigation. Further research is required to appropriately address the relationship between corporate compliance and individual criminal liability.

4.2. The Doctrinal Approach of Criminal Law: A Three-Tier Analytical Framework

This paper adopts the "three-tier theory" of crime as the basic analytical framework, which holds that the establishment of a crime requires an individual's conduct to simultaneously meet three conditions: conformity to the statutory elements of the offense, unlawfulness, and culpability. Applied to corporate crime, each tier can be analyzed as follows:

4.2.1. Tier of Element Conformity.

The interpretation of the statutory elements concerning corporate conduct should be narrowly construed to prevent overextension of criminal liability due to overly formalistic interpretations. For instance, in the crime of "illegal engagement in competing business," relying solely on business registration to determine what constitutes a "competing business" can lead to mechanical application. In practice, companies often register multiple business activities without engaging in all of them. Therefore, judicial practice should focus on the company's actual business operations,

comprehensively assessing the conduct's social harmfulness, rather than mechanically relying on registration information. This approach enables more precise and proportionate application of criminal regulation.

4.2.2. Tier of Unlawfulness.

The core of the unlawfulness tier lies in whether the conduct causes substantial harm to public interest or corporate order. If an act merely conforms to the formal elements of a crime but does not cause actual harm to society or the market, it should not be readily deemed punishable. For example, in the offense of engaging in competing business, the "illegality" should not only examine whether the business exceeds the permitted scope but also evaluate its impact on market competition.

Corporate compliance measures play a critical role in mitigating unlawfulness. If a company has implemented comprehensive preemptive compliance mechanisms—such as clearly defined operational rules and internal oversight procedures—that reduce the likelihood of unlawful conduct, the degree of unlawfulness may be considered lower. For example, in an insurance company, if internal regulations prohibit fraudulent sales and the company trains its employees, even if an individual employee engages in fraud, the company may show that it fulfilled its duty of care through these compliance measures, thus reducing the unlawfulness assessment.

4.2.3. Tier of Culpability.

In applying corporate compliance, the degree of blameworthiness must be comprehensively assessed. If, after establishing conformity to the statutory elements and unlawfulness, the enterprise has implemented a sound compliance program and exercised reasonable diligence, its subjective fault may be mitigated or even excluded. For example, in the case of embezzlement, if an individual exploits management loopholes to harm corporate interests, the enterprise, as the victim, should not bear criminal liability. Judicial focus should instead be placed on determining individual responsibility.

Moreover, the assessment of individual culpability should consider the company's governance structure and actual circumstances. If a controlling person undertakes certain commercial actions to advance the company's development, their liability may be mitigated due to the specific purpose and context of their conduct. A comprehensive review of both the personal conduct and institutional safeguards allows for a more nuanced and fair attribution of responsibility at the culpability tier, benefiting both the enterprise and the entrepreneur.

Incorporating a narrowly tailored interpretation across the three tiers—element conformity, unlawfulness, and culpability—aligns with the principle of criminal law restraint. This approach reduces the overall criminal liability risk faced by enterprises and promotes rational corporate governance in conjunction with a healthy interaction with criminal law enforcement.

5. Normative Pathways for Preventing and Controlling Corporate Criminal Risks

5.1. System Construction: Improving the Preventive and Sanctioning Effects of Corporate Risk Control

5.1.1. Classification of the Effectiveness of Pre-Offense Compliance.

The core of China's modern corporate system lies in the improvement of governance structures to prevent criminal risks arising from governance disorder and supervisory failure. As General Secretary Xi Jinping emphasized at the symposium on private enterprises: "It is essential to improve corporate governance structures in line with the requirements of the modern enterprise system with Chinese characteristics, regulate shareholder behavior, strengthen internal supervision, and establish robust risk prevention mechanisms." Effective risk prevention requires identifying the real risk points within enterprises rather than mechanically replicating formalistic institutional systems. Risk points vary depending on the enterprise type, sector, and position. The key to reducing liability through corporate

compliance is to establish a pragmatic, enterprise-specific, and effective pre-offense compliance system.

1) Risk Point Classification by Enterprise Type

Different types of enterprises face distinct primary criminal risks. State-owned enterprises (SOEs) often involve issues related to the loss of state-owned assets. In contrast, private enterprises are more likely to encounter risks such as commercial bribery and tax violations. Listed companies are particularly susceptible to securities crimes due to insufficient information disclosure, while sole proprietorships and family businesses, which tend to have weaker governance structures, are more prone to occupational crimes.

2) Risk Point Classification by Enterprise Scale

Large enterprises, while having well-established governance and internal control mechanisms, face heightened risks when engaged in cross-border operations, such as violations of antitrust laws or international anti-corruption treaties. Small and medium-sized enterprises (SMEs), constrained by limited resources, often have gaps in financial and tax compliance. Sole proprietorships and family businesses, with centralized decision-making, face increased criminal risks in areas such as shareholder dividends and related-party transactions.

3) Risk Point Classification by Business Process Stage

There are multiple high-risk stages within business processes, including routine operations, financial management, product manufacturing, trade transactions, financing arrangements, payroll distribution, and project contracting. In particular, in sectors such as financing and engineering, improper conduct can trigger crimes such as embezzlement, corruption, or commercial bribery.

Table 1. [12] Statistics on Incident Stages of Involved Enterprises

	2017-2021		2022	
	Count	Percentage	Count	Percentage
Daily Operations Stage	5319	42.22%	597	32.97%
Financial Management Stage	1624	12.89%	351	19.38%
Product Manufacturing Stage	413	3.28%	55	3.04%
Trade Stage	731	5.80%	71	3.92%
Financing Stage	2462	19.54%	403	22.25%
Payroll Management Stage	757	6.01%	80	4.42%
Engineering Contracting Stage	957	7.60%	183	10.10%

4) Risk Point Classification by Job Function

The sales department faces a higher risk of commercial bribery due to direct customer interaction; the human resources department may encounter risks related to torts or illegal dismissal in labor contract management; the finance department is a high-risk area for crimes such as tax evasion and embezzlement.

Table 2. [12] Distribution of High-Frequency Crimes Committed by Entrepreneurs in 2022

No.	Crime Name	Frequency of Offenses	Proportion (%)
1	Illegal Absorption of Public Deposits	329	16.94%
2	Embezzlement (or Misappropriation of Property by an Employee)	292	15.04%
3	Misappropriation of Funds	111	5.72%
4	Bribery by Non-State Personnel	94	4.84%
5	Bid Rigging	75	3.86%
6	Fraud	71	3.66%
7	Contract Fraud	66	3.40%
8	Fundraising Fraud	66	3.40%
9	Corruption	66	3.40%
10	Refusal to Pay Labor Remuneration	65	3.35%

5) Risk Point Classification by Different Legal Systems

Enterprises must comprehensively consider compliance requirements imposed by various legal frameworks beyond criminal law, including environmental protection law, antitrust law, tax law, intellectual property law, and advertising law, which impose significant constraints on day-to-day operations. Additionally, party regulations, administrative rules, and industry-specific guidelines set higher standards for enterprises, overlapping with criminal law and imposing stricter compliance demands on internal management systems.

5.1.2. Punitive Basis of Post-Offense Compliance.

Post-offense compliance by enterprises can be seen as a manifestation of diversified criminal sanctions. Essentially, it involves enterprises investing time, human resources, and financial capital to rectify damages and prevent recidivism. Compared to single penalties, scholars generally agree that diversified sanctions better reflect the individualization and preventive functions of criminal law, aligning more closely with the operational characteristics of businesses. Specifically, compliance mechanisms help reduce the personal danger and likelihood of reoffending, achieving effects comparable to formal penalties.

From the perspective of substantive criminal law, criminal punishment should only be applied to behavior deserving of punishment. In other words, only conduct that meets the threshold of punishability constitutes substantive unlawfulness [13]. In practice, the role of compliance in mitigating penalties lies in transforming and innovating corporate crime governance methods to maximize crime prevention functions. Since the purpose of criminal penalties is crime prevention, if corporate compliance measures themselves achieve this objective, the necessity of punishment is significantly diminished.

Furthermore, treating compliance as a non-penal sanction—such as administrative penalties, compensation, or apologies—can apply to relatively minor crimes, allowing exemption from punishment. This not only reflects the mitigating effect of compliance on sentencing but also underscores its role as a non-penal sanction, wherein enterprises bear certain costs. The theory of substantive sanction, originating from substantive justification doctrine, advocates for the restraint of criminal penalties and encourages the use of diversified criminal sanctions as alternatives. Accordingly, corporate compliance can, to some extent, replace criminal penalties to achieve crime prevention, thus reducing the necessity of imposing criminal liability on enterprises.

5.2. Incentive Policies: Pathways to Promote Standardized Corporate Governance

5.2.1. Concurrent Amendments to Criminal Law and Criminal Procedure Law.

Corporate compliance involves both substantive law—reducing or exempting criminal liability—and procedural law, especially in relation to the plea bargaining and leniency systems. Criminal law and criminal procedure law should be amended in a coordinated manner to grant legal effect to corporate compliance from both substantive and procedural perspectives, reflecting a systematic regulatory framework and enhancing institutional synergy.

Regarding amendments to the Criminal Procedure Law, expanding the interpretation or flexibly applying the plea bargaining and leniency system will undoubtedly pave the way for compliance frameworks for culpable enterprises [14]. Some scholars propose adding specific provisions, such as Articles 182-1 and 182-2 after Article 182, to regulate the conditions and review procedures for conditional non-prosecution of enterprises [15]. Others suggest establishing special procedures for corporate crimes within the "Special Procedures" chapter of the law, creating an independent deferred prosecution mechanism tailored to enterprises [16].

Regarding amendments to the Criminal Law, proposed changes include: (i) reconstructing corporate criminal liability by incorporating pre-established compliance systems as grounds for exemption; (ii) adjusting sentencing factors by introducing principles for leniency based on compliance, leniency for compliance-driven remediation, and special recidivism provisions for corporate units; (iii) reforming corporate criminal sanctions by adding prohibitions on business activities, setting bases for enterprise fines, and introducing compliance-based probation; and (iv) revising relevant provisions in the Criminal Law's substantive sections, such as adding compliance defenses for crimes of dereliction of duty, tax evasion, employment prohibitions for safety-related offenses, and offenses involving failure to fulfill important data security protection obligations [17].

5.2.2. Differentiation between Minor and Major Offenses.

In enterprise-related crimes, distinguishing minor offenses from major ones allows for more precise judicial treatment. According to the principle of proportionality, compliance-based sentence reductions can be reasonably expanded for minor offenses, but should be applied cautiously for serious crimes. Legislation should balance flexibility and authority by appropriately differentiating treatments. For enterprises responsible for relatively minor offenses that actively plead guilty and undertake remediation, conditional non-prosecution within the existing legal framework is generally acceptable. However, for serious crimes, corporate compliance must not serve as a "get-out-of-jail-free card" for enterprises.

5.3. Scope of Application: Moderate Expansion of Corporate Risk Prevention Effects

5.3.1. Differentiated Treatment: Corporate Crime vs. Natural Person Crime.

A fundamental premise in corporate risk prevention is distinguishing between corporate (unit) crimes and natural person crimes. Directly responsible individuals in corporate crimes generally cannot be exempted from liability; however, their conduct should be assessed to determine whether it was driven by corporate decisions or personal gain. In typical corporate crimes, compliance measures can justify a reduction in penalties, while individual responsibility should be addressed separately based on intent.

A reasonable approach is to clarify the boundary between corporate and individual liability, prioritizing the application of compliance-based sentence mitigation for corporate offenses while reserving independent accountability for individuals. This differentiated treatment prevents "free-riding" while ensuring that both corporations and individuals bear their respective responsibilities. For example, in the case of corporate bribery, if the enterprise reduces recidivism risk through a compliance program, it may be eligible for non-prosecution or leniency; however, if the responsible individual acted for personal gain, they must be independently held accountable.

5.3.2. Moderate Expansion: Special Natural Person Crimes.

The relevant provisions in the Twelfth Amendment to the Criminal Law largely focus on natural person crimes but these offenses are closely tied to corporate operations. For instance, the newly added offenses of "illegal engagement in similar businesses" (Article 165) and "seeking illegal benefits for relatives or friends" (Article 166) directly target individuals such as company directors, supervisors, and senior executives. Although these crimes are not classified as corporate offenses, they often involve actual business management and operations, necessitating a more flexible interpretive approach.

In determining liability, while emphasizing individual accountability, it must be recognized that such conduct is often influenced by corporate management or culture. For instance, loan fraud is often driven by corporate demands. If the enterprise can demonstrate the establishment of effective compliance mechanisms—such as prohibiting illegal acts and providing compliance training—the legal interpretation of unlawfulness and liability can be narrowed, thereby easing the corporate burden and enabling more lenient treatment of responsible individuals.

6. Summary

In order to both safeguard the legitimate rights and interests of private enterprises and mitigate the adverse effects of criminal law regulation, a scientifically grounded pathway for corporate criminal liability compliance must be established. First, the substantive definition of the legitimate rights and interests of private enterprises should be clearly outlined, with a clear distinction from state-owned enterprises. Second, the theoretical foundation of corporate criminal liability needs to be clarified, positioning the corporate compliance system within the three-tiered framework of criminal liability. Third, legislative efforts should aim to enhance both the Criminal Law and the Criminal Procedure Law, establishing statutory mechanisms such as compliance-based sentence reduction and non-prosecution. Fourth, a differentiated approach to liability should be adopted, taking into account the gravity of offenses and the timing of compliance implementation. These measures will not only provide private enterprises with institutionalized compliance "escape routes" but also contribute to the continued, healthy development of the economy and society. They are crucial in addressing the current legislative and economic development "dilemma" and in fostering a harmonious balance between criminal regulation and enterprise growth.

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