



## Research on Legal Risk in Enterprise Management

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**Abstract:** During the process of the human society development, the problem of risk exists in any person or thing, which refers to people's subjective cognition of the decisions they make or the unpredictable consequences caused by their own actions. The same is true for enterprises. In the process of management, there will be some problems that need to be solved, and all kinds of risks will be encountered in the process of decision-making. It is said that there are certain risks in any decision, and the problem that enterprises should consider when making decisions is how to reduce the risk to a minimum. This requires enterprises to pay attention to risk management. Establishing a reasonable legal risk management system, standardizing the enterprise risk management system and doing a good job of risk prevention measures are the reasonable management strategies of enterprise legal risk management at present. In view of this, this paper expounds the basic theory of legal risk in enterprise management, analyzes the factors leading to the legal risk in enterprise management, and studies the prevention mechanism of legal risk in enterprise management, which may serve as a reference for strengthening enterprise management.

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### 1 Basic Theory of Legal Risks in Enterprise Management

On June 6, 2006, the State-owned assets Supervision and Administration Commission of the State Council issued the guidelines for the Comprehensive risk Man-

agement of Central Enterprises, which divides enterprise risks from strategic, financial, market, operational and legal aspects, and requires enterprises to widely collect cases in which foreign enterprises ignore legal factors and suffer losses in terms of legal risks and also the relevant political, legal environment and new laws and regulations related to enterprises. According to the guiding documents, the legal risk of an enterprise is that the enterprise neglects to fulfill its legal obligations and intentionally evades the supervision of the law, which leads to the violation of policies or laws and regulations in the course of business, and the enterprise has to bear the relevant legal liability.

### 2 The Main Tasks of Legal Risk Management

Enterprise legal risk management mainly carries out comprehensive management activities for all kinds of risks borne by enterprises in order to help enterprises avoid risks, standardize management activities, and crack down on adultery and crime, and then create greater economic and social value for enterprises. Specifically, the main tasks of enterprise risk management are as follows:

#### 2.1 THE GOVERNANCE OF ENTERPRISE LEGAL PERSON

The governance of enterprise as a legal person includes whether the shareholder structure of the audit enterprise, the establishment of equity, the establishment of legal person and so on. The corresponding actual business activities, such as contract conclusion, internal control, personnel promotion management, the establishment of subordinate departments and the management of functions and powers, as well as whether the rules and regulations issued by the enterprise can be implemented, and so on.

## **2.2 Contract Management of Enterprise**

The formulation of contracts between employers and employees or partners is one of the basic contents of enterprise management activities. The contract management of enterprise risk management includes the conclusion, performance, entry into force and change of contracts, transfer and so on, as well as the legitimacy of the contract management system within the enterprise to restrict and supervise.

## **2.3 Intellectual Property Risk Management**

Intellectual property risk management includes the protection of trademarks and technology patents related to the core competitiveness and reputation of enterprises, as well as legal sanctions for corresponding violations.

## **2.4 Financial and Tax Risk Management of Enterprise**

Financial tax risk management of enterprise includes the establishment and implementation of financial management system in the actual operation process of the enterprise, the flow of funds and the legitimacy of borrowing or loan activities, and so on.

## **2.5 Policy Risk Management**

Under the market economy, the government often adjusts and guides the commercial field through strong policy regulations, market mechanism and benefit mechanism. Because of the instability of policies, the operating risks of enterprises with strong dependence on policies will be greatly increased. For example, in June 2018, the US government imposed tariffs on the import of about \$50 billion of goods, causing a big impact on enterprises in related industries and nearly 100 listed companies.

## **3 The Present Situation of Enterprise Legal Risk Management**

The research on legal risk management of enterprises is carried out relatively late, the related theories of legal risk management of enterprises are relatively few. There is a lack of practice, and the managers of enterprises are also insufficient in the awareness of legal risk. The corresponding technical means and tools are insufficient, and the overall level of enterprise legal risk management is not high. At present, there are many deficiencies

in the practice of legal risk management in enterprises. It is mainly reflected in the following aspects:

### **3.1 The Awareness of Preventing Legal Risks in Enterprises is Insufficient**

Most enterprises still position the legal work of enterprises at the level of legal affairs of enterprises. There is a serious lack of awareness of the prevention and control of legal risks in the internal management of enterprises, and the prevention and control of legal risks of enterprises are often disregarded when making enterprise management decisions. These hidden risks often have great hidden dangers to enterprises, and may even cause serious consequences to enterprises.

### **3.2 Lack of Specialized Agencies to Deal with Legal Risks**

There is a serious shortage of legal staff of specialized agencies dealing with legal risks, and the legal staff of most enterprises are not full-time, and the legal work is done by external legal advisers or lawyers in response to litigation. They do not understand the internal situation of the enterprise, do not know the relevant links involving legal risks, and only solve the problem on a case-by-case basis. The daily operation and management activities of enterprises cannot be effectively integrated with the risk management mechanism of the law. Once there are legal disputes, they often only talk about the law. It has not been able to give full play to the role of corporate legal risk management and control on the part of enterprises.

### **3.3 Lack of Preventive Mechanism for Legal Risk of Enterprises**

At present, although some enterprises have set up special legal departments and full-time legal staff, an effective corporate legal risk prevention mechanism has not been established. Therefore, the prevention of legal risks and the ability to deal with them are obviously inadequate.

## **4 Legal Risk Prevention Mechanism in Enterprise Management**

### **4.1 The Construction of the Modern Enterprise's Governance System**

The construction of a good corporate governance structure can reduce the occurrence of various risks in the

process of enterprise management. Nowadays, there are two main categories of corporate governance models in the world, namely, market-oriented model and bank control model. With the acceleration of the process of world economic integration, the two models tend to be the same. And the enterprise also actively absorbs the desirable experience in the corporate governance in the external development and carries on the reform. There are three kinds of existing ownership structure: first, the ownership is highly dispersed, which basically separates the management right and ownership of the enterprise; secondly, the equity is highly concentrated, and the major shareholders have the absolute control of the enterprise; The last is that the equity between the above two is relatively concentrated, and the relative controlling shareholders and other large shareholders own the shares of the company, which is generally a listed company. The long-term development of an enterprise depends on its own governance, so it is necessary to design the ownership structure of the company scientifically and reasonably to give full play to the role of the corporate governance mechanism. In the actual governance process, what kind of ownership structure depends on the industry characteristics of the enterprise, and in the equity design, there should be a comprehensive analysis of the number of shareholders, shareholding share, equity changes and shareholder types and other elements.

#### **4.2 Perfecting the Follow-Up System of Risk Prevention and Control**

To revise the job description and add the legal risk prevention and control provisions of the post according to the list of legal risks of enterprises; To embed the legal risk point and business process as a tree, to supplement and comment in the quality system file. To establish a dynamic monitoring mechanism of legal risk, through regular self-inspection, mutual investigation, year-end inspection and other means, monitor the legal risks of various positions and important management activities dynamically, and continuously follow up, analyze and evaluate. It is important to timely supplement, adjust and improve prevention and control measures, avoid possible legal risks, and update the list of legal risks of enterprises annually, and normalize and continue the work of legal risk prevention and control. In addition, it is also necessary to establish early warning and emergency response mechanism in order to achieve early detection, early prevention, early resolution of legal risk.

To strengthen the legal consciousness of the legal personnel of the enterprise, the legal advisers and legal workers in the enterprise have a strong legal consciousness, but having the legal consciousness does not mean that they can accurately understand the legal risks existing in the operation of the enterprise. The business activities of enterprises are professional. If they do not participate in the management directly, they can only understand the basic situation of the enterprises from the system, and it is difficult to make a correct assessment of the risks formed in the operation of the enterprises. In the cultivation of legal risk awareness, internal professional legal personnel should pay attention to maintaining the awareness of information communication and research. 1 Professional legal personnel should be able to understand the relevant legal system of the industry accurately and comprehensively, and pay attention to the changes of the system. In order to transmit it to enterprise leaders and employees in a timely manner. 2 the internal legal staff should form corresponding management suggestions according to the comprehensiveness of legal risks, and gradually improve the enterprise system. 3 legal personnel should study the problems according to the actual situation. Especially when the legal risk is converted into the actual dispute, the corresponding negotiation, mediation or litigation should be carried out if necessary.

To construct the legal risk supervision mechanism of the enterprise, the enterprise may establish the legal risk supervision mechanism according to its own situation. The construction of legal risk mechanism should include the following aspects: first, the establishment of corporate legal risk decision-making organs as well as examination and approval organs to audit and approve the major affairs of the enterprise; second, the establishment of major transaction handling institutions; third, the establishment of the system of employing legal advisers. In this regulatory mechanism, there is a need for corporate decision-making bodies, heads of legal affairs and external legal advisers, and are accountable to the heads of corporate decision-making bodies.

To sum up, with the development of social market economy and the continuous improvement of market economy system, the legal risks faced by the traditional management mode of enterprises are more prominent in this new environment which requires enterprise managers to conform to the trend of the times. This paper deeply studies the problem of legal risk prevention, strengthens the cultivation of legal risk prevention con-

sciousness from top to bottom in enterprises, so as to lay a good foundation for effective control of legal risk and promote the development of enterprises.

## References

- [1] Yu Deyue. Research on legal risk consciousness and its cultivation Strategy in Enterprise Management[J]. Small and medium-sized Enterprise Management and Science and Technology (late issue), 2017(05):35-36.
- [2] Zeng Xianwei. Analysis of legal risk Prevention in the Operation of small and medium-sized Enterprises[J]. Small and medium-sized Enterprise Management and Science and Technology (Mid-issue), 2017(01):29-30.
- [3] Cheng Xiangyang. Exploration on the Construction of legal risk Management system of Group Company[J]. Economist, 2015(10):94-96.
- [4] Guo Yuanping. Research on legal risk Prevention in Group A Enterprise Management[D]. Kunming University of Science and Technology, 2013.