

# **RISK PREVENTION AND CONTROL AND CONSTRUCTION PATH OF CRIMINAL COMPLIANCE OF CONSTRUCTION ENGINEERING CORPORATES**

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## **ABSTRACT**

The corporate compliance system, an internal control mechanism to prevent, detect and stop illegal and criminal offence within a corporate, can serve to effectively solve potential criminal compliance risks in construction projects. The construction projects are characterized by its long-term, continuous and concealed nature. In addition, the system design of construction projects is limited by many factors, including the limitation of traditional centralized administrative mode, the absence of process supervision mechanism and reciprocal motivation mechanism, the complicated setting of supervision matters, the lack of reciprocity of the motivation mechanism and the dislocation of the main body in regulatory responsibilities. Such that, numerous violations of rules and regulations, including quality-centered disputes and safety accidents, keep coming up in construction industry in China. Under the context of the co-development of economic and legal globalization, in order to prevent and control the potential criminal compliance risks of construction engineering corporates, it is necessary to construct compliance rules centered on supervision activities, form a corporate criminal

offence and compliance identification mechanism, improve the corporate criminal liability system, establish corporate obligation and rules of criminal compliance, formulate measures for the dual models of punishment and incentive, and promote the construction and implementation of the corporate compliance system of construction industry.

**Keywords:** Construction Engineering Corporates, Corporate Compliance System, Compliance Identification, Criminal Compliance Risk

## INTRODUCTION

As an organic component of social operation, corporates have played an essential role in the domains of economy, culture and even politics. However, it is inevitable that corporates have to bear a wide variety of legal risks when acting differently in these domains in society. For a long time, most of the legal risks of the corporates regulated by China's rules and regulations have focused on civil and administrative aspects and few are related to the criminal aspects of corporate. The traditional crime prevention method that focuses on subsequent punishment can no longer meet the needs of the current crime prevention. Therefore, it is necessary to prevent and punish crimes in a coordinated way to comprehensively prevent and control criminal risks.

“Compliance risk” is explained as “the possibility of the state-owned key enterprises and their staff causing legal responsibility, being punished accordingly and causing economic or reputation losses as well as other adverse impacts because of non-compliant behaviors”, as it is stipulated in *Guidelines on Compliance Management for Central State-owned Enterprises (for Trial Implementation)*.<sup>i</sup> This legal term is explained on the basis of the overall compliance risk of corporate, and the criminal compliance risk of corporate can be explained in two aspects: first, the positive aspect, i.e. the specific criminal offence risk should be prevented and controlled for corporate criminal compliance; second, the criminal offense risks are generated by corporate for not performing criminal compliance behaviors.<sup>ii</sup> The malpractices are obviously shown in construction engineering area of China. Important engineering construction and urban infrastructure construction have been performed during the process of economic development and urbanization of China, during which China has invested large

amount of fund in such fields. However, it also made some corporates more probable to abuse their power for profit or to seek power renting; the construction engineering has become a high incidence area of crime. As a result, the illegal criminal activities in construction become more and more frequent; the construction industry has become a “high risk industry” in terms of security incidents. After ZTE incident and Huawei incident in 2018, the governments and corporates have been aware of the positive effects of corporate compliance to its development.<sup>iii</sup> In order to improve the internationalization level of corporate, enhance its ability of compliant operation and prevent the criminal compliance risk of the corporate, China has released *Guidelines on Compliance Management for Central State-owned Enterprises (for Trial Implementation)* and *Guidelines on Compliance Management of Overseas Business of Corporates*, thus bringing benefits to resolve the global compliance operation risks for corporate development the Chinese corporates are facing. The system of corporate compliance is a relatively new kind of corporate management, and it requires to pay more attention to criminal risks. In order to prevent and control such risks, we need not only exterior adjustment through criminal law, but also corporate self-inspection, and the latter is just the key point for corporate compliance institution; however, it hasn't been paid attention to theoretically and practically. In the epoch when economic globalization and global value chain are developing constantly, it is a global mode to practice corporate compliance institution in construction engineering, implement criminal responsibility of corporate and define the criminal responsibility of corporate and its judicial realization through compliance institution.

## **ORIGIN OF THE PROBLEM: RESEARCH AND IDENTIFICATION OF CRIMINAL COMPLIANCE RISKS IN THE FIELD OF CONSTRUCTION ENGINEERING**

Criminal compliance risk is a common situation for construction engineering corporates when carrying out engineering construction. If such risks are not detected and handled in time, corporates and employees are often caught into quagmire of legal disputes, including civil, administrative and even criminal legal disputes that cause economic losses and bring damage to corporates' reputation at the same time. Construction corporates should strengthen the self-examination of representative criminal compliance risks and take positive actions to deal with them, thereby avoiding these serious legal risks and promoting stable operation of corporates.<sup>iv</sup>

### ***Research and Identification of Compliance Risks of Engineering Fraud Crimes***

The connotation of engineering fraud crimes is the behavior that bidders use the means of forging the seals of relevant organizations or colluding with tenderers to get price quote, which damages the legitimate rights and interests of other tenderers and bidders. At present, the bidding for construction projects serves as the only way for most construction projects to issue and contract. In order to ensure the “openness, justice and fairness” of the tendering and bidding in construction project, the systemized construction of tendering and bidding shall be standardized. Due to the influence of various factors, the illegal acts of “false bidding” and “collusive bidding” often occur in the bidding process of construction engineering corporates, which have already violated rules and regulations stipulated in *Criminal Law*.

The meaning of “false bidding” is that unit A with no construction project has signed a contract with unit B with no real construction intention on a specific construction project, or after unit B has partially constructed the project, but has not obtained the bidding project according to law, considering that unit A can obtain the bidding permit for false start-up of construction, it directly bids for the project of unit A, and generally conducts bidding activities through the unit with the non-existing bidding project, including failing to publish false information on social media and network, etc., so that unit A can complete the tendering or Unit B can win the bidding. Generally speaking, all kinds of situations that do not meet the principle of “openness, justice and fairness” are categorized as “false tendering”.

“Collusive bidding” refers to the communication between the tenderee and the intended bidder to form the following “consensus” in advance: the tenderee and the bidder who has confirmed the intention in private first, and then the corporates who intend to bid won the bid through direct bidding. Specifically, the bidder’s collusive bidding behavior is usually divided into three categories: firstly, the manufacturer and the bidder jointly increase or decrease the cost of the bidding project by means of contract; secondly, in order to recruit two or more bidders to win the bid at higher or lower prices in similar bidding; thirdly, to win the bid by improper means that harm the interests of the society. According to the provisions stipulated in the *Law of the People's Republic of China on Tenders and Bids*, the following results of winning the

bid shall be void and invalid, including collusion among bidders, collusion among bidders and tenderers, winning the bid by false bidding, and criminal responsibility should be investigated if the case constitutes a crime.

It is stipulated in Article 223 of the *Criminal Law* that where bidders submit tenders in collusion and harm the interests of persons inviting tenders or other bidders, and when the circumstances are serious, they shall be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine. Where bidders and persons inviting tenders harm the legitimate interests of the state, collectives, and the public by colluding in the bidding, they are to be punished in accordance with the stipulations stated in the preceding paragraph. In addition, according to the provisions set in Article 231 of the *Criminal Law*, a fine shall be imposed when an organization or above constitutes a crime of inviting tenders and bidding.

### ***Research and Identification of Compliance Risks of Engineering Corruption and Bribery Crimes***

Corporate compliance management was originally carried out to deal with commercial corruption and bribery crimes, the risk of which, together with abuse of power, naturally become focus of this management process. In these crimes, state functionaries in position of power engage in embezzlement, stealing, and/ or defrauding of state-owned property during engineering construction. Among those, the crime of corruption, the crime of acceptance of bribes, and the crime of acceptance of bribes by an entity are most commonly seen in the engineering construction fields. Article 168 of the *Criminal Law* stipulates that, “People directly in charge of state-owned companies or enterprises who cause their companies or enterprises to go bankrupt or suffer serious losses through the practice of favoritism and thus cause great damage to national interests shall be sentenced to not more than three years in prison or criminal detention. If heavy losses to the interests of the state is incurred by acts committed by personnel of a public institution as stipulated in the preceding paragraph, he shall be punished in accordance with the provisions of the preceding paragraph. Personnel of state-owned enterprises, public institutions, who commits irregularities for favoritism or commit the

crimes stipulated in the preceding two paragraphs, shall be severely punished in accordance with the provisions of the first paragraph.” In chapters regarding the crime of embezzlement and bribery, the Criminal Law specifies definitions for the crime of embezzlement, the crime of offering bribes, the crime of bribing as an intermediary, the crime of acceptance of bribery by an entity, and the crime of privately dividing state-owned assets, with an intention to punish corruption and bribery crimes. On the one hand, construction projects contracting is typically “buyer-oriented”; on the other, against ever more intensified market competition, some construction engineering companies are soliciting illegitimate interests, through bribery, corruption, and other means, at the expense of breaking the law, just to win contracting projects with good promises. This may bring them steep revenue climb with continuously sealed contract awards in the short run; as time extends, these unlawful behaviors will, however, not only harm the enterprises, but also will drive the construction engineering sector into further deterioration.

### ***Research and Identification of the Criminal Compliance Risks in Engineering Accident Type***

Although many different types of crimes are presented in construction projects, engineering accident crimes can be regarded as the most commonly-seen type. This is defined in terms of its connotation as personal injury, death and property damage occurred in the project construction due to non-compliance with safety management regulations. The typical representative crime pattern of corporate crimes in the field of construction engineering are major liability accident crimes, major labor safety accident crimes, major engineering safety accident crimes and crimes of failing to report safety accident or making a false report. Despite the fact that construction safety has never been regarded as a matter of importance in construction projects, safety accidents are still accident-prone and troublesome. It is stipulated in Article 45 of the *Construction Law* that Construction enterprises are responsible for the safety at construction sites. As to a construction project under an overall contract, the overall contractor is responsible for safety at construction sites. Subcontractors shall hold themselves responsible to the overall contractor and be subject to the administration of the overall contractor concerning safe operation at construction sites.” In this regard, *the Criminal Law* identifies the crime of major safety liability accidents, major labor safety accidents and major

engineering safety accidents in its provisions, in order to prevent and deal with construction activities that violate safety regulations. Construction engineering corporates shall continue to strengthen construction safety, formulate specifications that are in line with construction safety, strictly manage the operation activities of construction personnel. In addition, management personnel are required to comply with safety management regulations, self-examination and handling of production safety issues. Otherwise, if a safety accident occurs, the construction corporate will be held direct responsibility, and once a major production safety accident, the construction corporate and relevant persons in charge will also bear criminal responsibility. Otherwise, in the event of a major safety accident, the corporate implementing the construction still needs to bear criminal responsibility.

### ***Research and Identification on Compliance Risks of Engineering Malfeasance Crimes***

Engineering malfeasance crimes refer to acts in which the administrative organ in charge fails to perform its statutory duties in place during the construction of a project, thus resulting in serious consequences of personal injury or death or serious damage to public and private property. As the law enforcement department, the construction project administrative authority shall perform the obligations and responsibilities of administration according to law. The huge amount of construction project subject matter induces the emergence of power rent-seeking, which is mainly reflected in the crime of illegally approving the expropriation, occupation of land and the crime of dereliction of duty in environmental supervision.

First, failure to issue construction permits in accordance with regulations. Construction work without construction permit, a solid prerequisite, constitutes a violation of the law. Article 4 of the Measures for the Administration of Construction Permits for Construction Projects clearly stipulates conditions for obtaining construction permits for construction projects. If a construction entity meets the conditions, its administration department should issue construction permit accordingly. In reality, permits are, however, now and then approved for unqualified projects, facilitated by failure to execute law-regulated duties by administrative law enforcement officers. Cases are always seen with some major construction projects or those targeted for investment seeking by local governments, where requirements for start of work are

always not met due to incomplete preliminary planning and land use procedures. Nonetheless, permits are often signed off by competent construction authorities in violation of applicable regulations, just to expedite construction progress. Moreover, additional thresholds for obtaining approvals are sometimes imposed by abuse of power. For instance, some regions may order to put up PSA on fences around ongoing project sites, in the process of application for civilized cities, constituting non-mandatory administrative guidance. These regions also further abuse their power by setting this order as a prerequisite for getting permit approval, a serious violation by engineering law enforcement authorities.

Second, accept unqualified projects with qualified standards. Construction units shall be subject to the supervision of the competent construction authority when conducting the completion acceptance after the completion of the construction project, and then the completed project can be put into use only after acceptance. In practice, there are many derelictions of duty conducted by law enforcement personnel. For example, the law enforcement officers conducting the inspection and supervision of project completion believe that as long as the construction project is generally free of defects, other small quality defects can be ignored. Therefore, problems may arise therefrom in terms of the acceptance of unqualified projects with qualified standards and the failure of law enforcement personnel to seriously perform their supervisory duties, failure to carefully review the materials of completion acceptance or negligence and failure to find quality problems, etc.

Third, covering up criminal acts without referring cases for prosecution. This type of malfeasance is concentrated in the authorities responsible for administrative inspection and administrative penalties. In the field of construction projects, the violations that constitute criminal offenses usually include failure to report or misrepresentation of safety accidents, production and selling of counterfeit products, collusion in bidding, and major safety accidents in construction. Normally, the administrative counterparts are more willing to “reconcile” with the law enforcement agencies than to refer the illegal acts to criminal cases and bribe relevant law enforcement personnel in order to replace the penalties with fines. Some of the bribed law enforcement officers intentionally omitted the materials about the criminal acts, or even



tampered with and falsified the evidence so that the criminal acts of the administrative counterparts would not be discovered by the judicial authorities. Subjectively, this kind of malfeasance can only be regarded as intentional. In reality, the negligent non-transfer conduct of law enforcement personnel due to their insufficient law knowledge is insufficient to constitute malpractice.

### ***Research and Identification of Compliance Risks of Engineering Ecological Crimes***

Engineering ecological crimes are mainly reflected in the crime of environment pollution and illegal occupation of agricultural lands. It specifically refers to that during the process of construction projects, the construction subject fails to occupy arable lands, forest lands and other agricultural lands in accordance with the provisions, violate land management regulations, and change the land use in a wide range, thus causing extensive damage to the arable lands, forest lands and other agricultural lands. Or the construction subject violates other relevant regulations of national environmental protection and ecological protection, by dumping, discharging, disposing toxic substances, waste containing infectious disease pathogens, radioactive wastes or other harmful substances, which cause significant damage to the environment.

The so-called dust pollution of construction refers to the pollution that pollutes the air due to the exposure of mud or the powder particles produced in the process of construction, building demolition and stacking. The dust from construction not only contains carbon, hydrogen, and oxygen, but also contains heavy metal such as sulfur and chlorine, which affects the normal photosynthesis and respiration of surrounding plants, resulting in the stagnation of plant growth and even its withering and death. In addition, the dust pollution caused by construction has posed great hidden threats to human health and even life. The number of diseases caused by the environmental pollution in China is increasing every year, most of which are related to particulate matters in the air. Since the construction site is close to people's habitat, it will cause more serious damages to the human body after mixing with the toxic and harmful substances in the chemical materials on the construction site.

Globally, China's cultivated land per capita remains at a low level. However, the phenomenon of illegal land occupation and cultivated land destruction occurs. According to Article 342 of the *Criminal Law*, illegal occupation of agricultural land refers to the act of unlawfully occupying cultivated land such as cultivated land and forest land, changing the purpose of the occupied land, causing huge damage to agricultural land such as cultivated land and forest land, which is in violation of the rules or regulations on land administration. Many builders occupy a large amount of agricultural lands to build construction sites and factories for its own profit. Due to the blind pursuit of political achievements, some local governments do not punish land violations or even abuse land. Corporates do not need to pay or only need to pay a very small amount of land use fees for building factories, which makes the cost of construction projects very low. Some local governments always try to provide protection for economic development by any means. As a result, many local governments have occupied lands for a long time through renting instead of collection or occupation before approval and suppressed the use of agricultural land in violation of rules and regulations.

## **WHY IT MATTERS: THE INSTITUTIONAL ADVANTAGE OF CRIMINAL COMPLIANCE IN CONSTRUCTION ENGINEERING FIELD**

Risk management and control serves as one of the most effective functions of the criminal compliance system.<sup>v</sup> This means that the identification, analysis and avoidance of risks can regulate the operation and management of corporates based on rules and regulations, relevant policies, and ethical standards. The operation and development of modern construction engineering corporates shall be vigilant against criminal compliance risks, and being able to identify compliance risks in a timely manner and effectively resolve them, which serves as a top priority in all aspects of undertaking and carrying out projects. Therefore, corporates shall effectively implement criminal compliance management.

### ***Reducing Criminal Offence Risks of Corporates***

As a new type of risk, criminal compliance risk are unavoidable in the process of operation and development of modern corporates. This new type of risk occurs when corporates violate rules

and regulations, relevant policies, and ethical standards in its business management activities, thereby assuming legal responsibility, and resulting in adverse consequences, such as loss of property and reputation, etc. Compared with other business risks, if criminal compliance risks cannot be dealt with effectively, the blow to corporates will undoubtedly be devastating. Therefore, it brings an urgent demand for specific management methods to address this issue in construction engineering corporates. In order to enhance the ability to prevent criminal risks, construction engineering corporates need to adjust the allocation of rights and obligations. The obligation to prevent criminal risks should be transferred from the outside to the inside of the corporate by criminal compliance, which not only improves the standardization of corporate business operations, but also enhances its security. Most of the national rules and regulations are formulated for general needs but are not applicable to every specific company in certain situations. It is necessary to carry out risk management within the company in order to maximize the prevention and control of risks. The crime prevention and control function of criminal compliance has brought procedural rather than consequential impacts on construction engineering corporates. By reviewing potential criminal legal risks to avoid or reduce the damage incurred by criminal risks, the barriers that various crimes may pass through are strictly, meticulously and reasonably blocked. Nowadays, corporates review and manage the risks of legal prevention and control, including civil and commercial legal risks and economic risks, but they do not pay attention to the possibility of devastating losses caused by criminal legal risks.<sup>vi</sup> Even if we realize the importance of preventing criminal legal risks, the criminal legal risks cannot be avoided without implementing effective criminal risk review and management measures. Any 1% negligence in the criminal field will result in 100% failure of the business. Therefore, the establishment of a criminal compliance system in China's construction engineering corporates can greatly reduce criminal legal risks, refine the governance of construction engineering companies, ensure the realization of corporate business goals, and maximize the realization of corporate interests.

### ***Promoting Corporates to Reasonably Assume Social Responsibilities***

It is stipulated in Article 5 of the *Company Law* of China regarding the obligations of a company that “In conducting its business, a company must abide by laws and administrative rules and regulations, observe social morals and business ethics, conduct businesses in good

faith, subject itself to the supervision of the government and the public and fulfill social responsibilities.”. When participating in social activities, construction engineering corporates mainly undertake two aspects of social responsibilities, one is the management responsibility of creating social and economic wealth and the second is the social management responsibility to ensure the stability of the overall social order. Criminal compliance significantly contributes to the above two types of social responsibilities. First, criminal compliance can play a preventive role for crime. The construction of a high-quality criminal compliance system can not only stabilize the construction of engineering corporates for a long time, but also realize the value of corporates themselves. The “production and operation” and “risk prevention” are integrated together to realize the separation of interests and risks.<sup>vii</sup> Construction engineering corporates should establish a sound criminal compliance system, which can serve as a “measuring instrument” for all corporates. In the process of review, potential risks are excluded, prevented, and controlled in advance, thus safeguarding the production and operation of the corporate and realizing the benign separation of rising interests and risk reduction of the corporate. Secondly, the establishment of the compliance system of construction engineering corporates highlights the “red line consciousness” of corporates to prevent crimes, plays a warning role, and shares the corresponding social responsibilities while preventing their own internal crimes. The establishment of an internal compliance system is conducive to the cultivation of a sense of responsibility among the corporate members. The “sharing of various responsibilities to households” allows the personnel of each division to consciously avoid relevant legal risks and enhance the prevention awareness, which is also one of the manifestations of the corporates to actively share social responsibility. In addition, the over-negligence of construction engineering corporates in the prevention of criminal risks will result in the corporates bearing related criminal liabilities, which will not only seriously damage their reputation, but also bring about other adverse consequences. The realization of the corporate value of the construction engineering corporate and the maintenance of its corporate reputation are significantly reflected in the prevention of corporate crimes in the criminal compliance system.

***Optimize the Compliance Management and Foster Compliance Culture in Construction Engineering Corporates***

Compliance management cannot generate direct profits for construction engineering corporates, but it can optimize the management mode and improve management efficiency, thereby optimizing the management system of engineering corporates. The concept of “great compliance” throughout the compliance management can effectively ensure that all aspects of the construction engineering corporates are covered by the compliance management construction, including all departments, projects, branches, employees, etc. and integrate compliance construction into the four major links of decision making, implementation, supervision and evaluation. Compliance management construction has brought new challenges to the management system, organization and team of construction engineering corporates. But the effective implementation of compliance management can realize the integration of various parts of the corporate and break the obstacles in the connection of different links. In addition, compliance culture serves as an important element of corporate culture. Therefore, construction engineering corporates should firmly establish the concept of compliance and create a good atmosphere of acting in accordance with regulations. Compliance management construction and compliance culture are both on the same track and progress. On the one hand, compliance management construction deepens the cultural concept, enriching cultural content and injecting impetus into the development of the corporate. On the other hand, the cultural concept of acting in accordance with the law and compliance management can be well accepted by employees, thus strengthening the corporate compliance awareness. It can effectively avoid the criminal compliance risk when violations occur in the process of corporate operation and development and help the construction engineering corporates reduce relevant losses.

### ***Accelerate the Pace of “Going Global” of Construction Engineering Corporates***

At present, with the increasing saturation of the relevant market, increasingly fierce competition also keeps emerging in the field of construction engineering. Its related projects are in short supply, and companies compete for bidding, resulting in a sharp drop in the profit growth point of related companies in China. China's timely implementation of the “Belt and Road” Initiative and its “going global” strategy have become favorable conditions for construction and engineering corporates to enter the international market. However, opportunities and challenges coexist. To go out of the domestic “game circle” and enter the “large playground” for the international market, the corporate shall accept the rules of the game

formulated by different countries, which include rules and regulations, policies of various countries, market ethics and even customs. As a result, greater compliance risks are facing the construction companies in the process of entering the international market.<sup>viii</sup> In recent years, the number of Chinese companies and individuals have been increasing on the World Bank's blacklist, which undoubtedly exposes a relatively low level of compliance management of Chinese companies. In order to have a firm footing in the international market, construction corporates should pay sufficient attention to compliance risks while dealing with other traditional business risks. The identification and prevention of compliance risks is undoubtedly the priority among priorities in risk prevention and control work. If the construction corporates want to achieve success in the international market, they should respect the "the rules" set by different countries.<sup>ix</sup> If the construction engineering corporates want to follow the local customs, effective help can be provided for compliance management, by identifying and preventing related risks, so as to facilitate the smooth undertaking and implementation of projects. As a result, the strategic pace of "going global" for China's construction engineering corporates will be accelerated in order to grasp the opportunity based on the international market globally.

## **ANALYSIS OF THE REASONS: THE CAUSES OF THE CRIMINAL COMPLIANCE RISKS IN CONSTRUCTION ENGINEERING CORPORATES**

### ***Absence of Procedural Supervision Mechanism***

Compared with other types of economic activities, construction engineering activities possess the characteristics of long-term, continuity and concealment. The objective laws of construction projects show that the formation of project quality is based on each part of the project in a long period of time. Only by achieving the purpose of effective control of each construction link, can the safety for the quality of the project be guaranteed at last. Currently, two traditional supervision endeavors, prior administrative approvals and post-penalties, are adopted for engineering activities, setting both thresholds and punishments.<sup>x</sup> In reality, serious imbalance between large number of construction projects and limited administrative resources,

however, exists. Administrative authorities cannot reach their hands far into all construction activities due to limited human resources. Regulations can only be achieved through mandatory standards such as design specifications, construction specifications and supervision specifications. Lack of prevention and control awareness with the absence of whole-process supervision can easily lead to quality and safety accidents caused by construction activities in violation of laws or regulations. The reason for high rate of duty crimes in the field of construction engineering is that relevant supervision system is not fully implemented, resulting in power vacuum. For one thing, internal supervision remains merely on paper. The right to make decisions on important matters such as successful bidders or contract signing is usually at the hands of certain department or even certain management personnel. Secondly, supervisions carried out by upper authorities are not to the point. Competent departments usually require written reports of state-owned companies, but seldomly visit sites, which merely involves compliance checks. Thirdly, public supervision has blind spot. Duty crimes often occur through under table deals between “community of interests” formed among construction personnel, subcontractors, and material suppliers. All that happens as a result of engineering professionalism and complexity, as well as their tricks, making it all hard to be revealed or overseen. At present, there exist some problems of unsound management systems in preliminary management, construction management as well as completion and acceptance of construction projects. In addition, rules and regulations always suffer human intervention in operation process, which includes bidding, project contracting, construction, quality acceptance, settlement payment, fund allocation and project supervision after winning the bid. Some management personnel make use of their power to influence the results of bidding evaluation. They don’t follow rules of open bidding but solicit attempts like competitive negotiation or even issuing LOA without bidding. Or in other ways, although bidding is carried out, secret collusions are made between the tenderer and the applicant, rubber-stamping the bidding process. Or the construction project is roughly divided into several subcontract works. Since the current system is not fully implemented, people with authority in the field of construction engineering often conduct power rent-seeking in various practices like subcontracting, supervision, acceptance, and appropriation, which leads to frequent occurrence of bribery. The issue of inadequate communication of information stands seriously prominent. Administrative organs only rely on their own strength to supervise construction engineering activities, making it difficult to meet huge supervision demands. Then, they, plagued by huge

amount of work, have to turn to administrative approvals, which lacks sufficient process supervision. Such that, high occurrence of illegal practices and quality and safety accidents inevitably keep popping up.

### ***The Complicated Setting of Regulatory Matters***

Construction projects involve so many procedures, such as land development and utilization, municipal planning, environmental protection, project quality and safety, fire safety and so on. Various functional administrative organs operate independently within the scope of their functions and powers, making administrative examination and approval activities segmented into several stages. Meanwhile, some of the administrative supervision measures for construction projects are interdependent with entangled relations. Each functional department defines their own administrative approval matters for construction engineering activities ex officio, and the division of governmental functions may result in the segregation among those matters in terms of continuity and unity of engineering activities. Take the energy conservation review of fixed-asset investment projects as an example, according to Article 5 of the 2016 NDRC *Measures for the Energy Conservation Evaluation and Review of Fixed-Asset Investment Projects*, construction units are required to obtain energy conservation review comments from provincial energy conservation review organs before submitting feasibility study reports. However, the commencement of energy conservation review requires measurement of energy consumption of buildings based on architectural design plans, while the architectural design is supposed to be the work carried out after feasibility study. This naturally results in logical problems between energy conservation review, feasibility study and approval of the project design. It is estimated that there are at least 65 scenarios of confusion in the administrative approval of construction projects. In addition, administrative organs tend to take mandatory measures for their purposes in the administration and supervision of construction projects so that quality and safety are effectively guaranteed due to despite of complexity of administrative and supervision items in this field. Therefore, power dislocation often happens. Periodic occurrence of quality and safety accidents does not completely indicate system failures. Absolute denial of supervision fruits and complete suspension of construction works just by some rare accidents not only violates the rule of proportion, but also incurs cost rise on administration, supervision, and even compliance.



### ***The Lack of Reciprocity of the Motivation Mechanism***

Reciprocity, which means that each subject can obtain corresponding benefits through cooperation, is the motivation for each subject to carry out cooperative governance. In the practice of cooperative governance, the “benefits” obtained by administrative organs are reflected in the reduction of regulatory costs and the improvement of regulatory effects, which gives them sufficient motivation to carry out cooperative governance; while the “benefits” obtained by social subjects are reflected in the reduction of regulatory measures or the reduction of regulatory intensity. “Self-regulation can be successful only when the regulated object believes that the standard imposed on him or his industry is in his best interest.”<sup>xi</sup> In the field of construction engineering, as the reciprocal cycle of motivation mechanism needs to be realized in the practice of the administrative compliance system of decentralized engineering projects, the cooperative relationship between the administrative organs and the main bodies of the construction project are intentionally fragmented and segregated. In the engineering administrative compliance system, the reciprocity between the administrative organs and the main bodies of the construction project is shown as follows: the administrative organs rely on the management and technical advantages of the main bodies to carry out regulations, and at the same time, with legitimacy reserved, they relax the supervision of the construction units and mitigate the penalty as a “reward”.<sup>xii</sup> The “reward” given by the administrative organs in a decentralized engineering project is usually project-oriented. Under the influence of decentralized interests, the construction units are the ultimate recipients of a large number of interests, and other main bodies of the same project cannot obtain benefits through cooperation. Therefore, apart from the construction units, other main bodies are less motivated to actively participate in cooperative governance, which is, however, very necessary. So, when the administrative organs force their involvement, the relationship between the two is no longer cooperative, but has actually degenerated into a collaborative relationship or even a repressive administrative one in essence. In addition, the decentralized structure will lead to fragmentation of construction engineering behaviors in regulatory field. Organic and continuous construction engineering behaviors will be divided into separate components based on the implementation entities. This will directly lesson the benefits that administrative organs can obtain, descending into further reduction in the “return” that they can offer. This defect and the aforementioned regression caused by the lack of motivation stimulate each other, resulting in continuous deterioration of the motivation mechanism in the practice of the engineering administrative

compliance system, and constantly reducing the possibility of cooperation between the administrative organs and the main bodies of the construction project.

### ***Misplacement of the Main Body of Regulatory Responsibilities***

Under the direct administration of the administrative organ, counterparts' consciousness of quality and safety responsibilities is weak, which leads to the dislocated responsibilities of both in performing the obligation to guarantee the quality and safety of a project. As far as the current administration and supervision pattern is concerned, "Command & Control" stands out as the most direct way for an administration and supervision organ to administrate and supervise a construction project, while shouldering the responsibility to supervise the affairs related with the project; as the leading roles of the construction project, the counterparts shall work in accordance with applicable regulations, take safeguard and prevention measures against all potential quality and safety risks of the project during construction. However, the direct supervision by "Command & Control" makes the contradiction all the more outstanding between the administrative organ and the counterparts, resulting in less enthusiasm and lower requirements on quality and safety with restricted time and cost in specific circumstances. According to the investigation report, the employer, the contractor, and the consultant violate certain regulations given tightened construction duration, which eventually leads to accidents. Therefore, we can conclude that the employer, the construction entity and the consultant company lack consciousness of responsibilities and seriously violate safe operation procedures without the administration organ's direct supervision, and the accident is a consequence where all parties act negatively to mandatory administration measures from the administration organ. Normally, the probability of an accident caused by the leading roles' improper operation in the construction project is very low. So that, if no accident occurs, the project will be completed as scheduled, with less cost. Therefore, it is the pressure from actual conditions that lead to improper operation.

## **THE WAY TO COMPLIANCE: THE LEGAL PATH TO CRIMINAL COMPLIANCE OF CONSTRUCTION ENGINEERING CORPORATES**

### ***Build Compliance Rules Centering on Oversight Activities***

The objective elements of the administrative compliance system in the field of construction engineering are determined through established rules, and the process of formulating rules is the core of system construction. The rules refer to the compliance system standards followed by the construction project management organization, that is, the result of embedding a regulatory measure system in the engineering project management system. Based on the project management system, a project administrative compliance system is constructed. Management interaction and information exchange of the supervision unit as the core is indispensable. Ultimately, supervision activities serve as a bridge linking legal norms and engineering practices. On the one hand, an important way to realize management of construction projects is supervision activities. Through the regulation and supervision activity system, the project management system can instruct the implementation of administrative compliance while conforming to applicable laws. As one of the important means of supervision of construction projects, the establishment of a supervision activity system is put in place as a basis to ensure that administrative organs carry out law-abiding supervision and implementation feedback. Therefore, the construction of an integrated project administrative compliance system shall be based on the regulation of supervision activities as the center.

Essentially, rulemaking can be defined as the issue where the project management organization integrates measures and regulations into management system. As various restrictions existing in administrative compliance, it could be seen that there are also obvious differences in the process of rule-making classified in the same nature. As for mandatory compliance, restatement of mandatory norms in legal system of construction projects could be the main form of rulemaking. A complete system of rules and regulations for construction projects was established long before, where statutory management standards have been fully mapped out and mandatory standards have grown ever more sophisticated.<sup>xiii</sup> To some extent, there is nothing left to be further discussed in the administrative compliance system. Project management entities should strictly abide by mandatory construction rules and regulations. Given full consideration above, as for mandatory compliance, project management entities shall take provisions of supervision activities as the basis for project management as well as internalize norms of supervision activities and standards of the project management system as

implementation conditions vary. This is fixed and laid out step by step: when formulating rules, engineering project management organization takes features of the project into deliberate consideration, fixing and amending loopholes or ambiguities within scope of mandatory regulations. It is worth mentioning that ground rules are set when formulating mandatory compliance regulations. First, rules are established in accordance with mandatory regulations, with intervention measures trying to transfer or suspend legal liabilities by construction engineering units strictly prohibited. Secondly, compliance details shall be confined to consultants' scope of work. The administrative law defines the consultant entity as a private person in the legal nature of compliance. Therefore, compliance supervision obligations imposed on the consultant shall not be arbitrarily increased, as the compliance system basically infringes on the basic rights of the consultant.

In the case of induced compliance, engineering project management organizations enjoy appropriate freedom in rule making. In other words, the management organizations voluntarily make compliance commitments induced by the administrative authority. To simplify work and increase efficiency, the administrative authority can promise to offer engineering project management organizations administrative certification, licensing, penalty alleviation and other preferential treatments to convince it to make and fulfill compliances. Compared with mandatory compliance, induced compliance not only bestows organizations with greater liberty, which allows different engineering project management organizations to choose whether to make such compliance commitments based on specific practical situations. Moreover, consultation is further improved as well. On the premise of mutual agreement between the two parties, the management organizations can make compliance commitments that are higher than current legal standards, which are not limited to the scope of legal regulations. In induced compliance, for the part of compliance commitments whose standards are higher than those stipulated by law, the administrative authority can obtain additional rights, and the project manager shall be subject to its supervision and receive implementation feedback. In addition, induced compliance should also face a certain degree of restrictions. On the one hand, when inducing the project management organization to make compliance commitments, the administrative authority shall set limits on inducing measures and shall not use coercive effects on the project management organization. On the other hand, contractual

administrative discretion serves as the substantive expression of the commitment made by both parties, and administrative discretion, as an important way for the administrative authority to implement administrative management, shall be restricted by the “liberalization” of administrative discretion.

### ***Formation of the Compliance Identification Mechanism of Criminal Offenses***

The lack of a mechanism for identifying compliance risks makes it impossible for the Chinese corporates to effectively implement compliance self-inspection and violation reporting internally, and the timeliness and effectiveness of the reporting of violations by the compliance department to the highest decision-making level has also been overridden. In Western countries, corporate employees can report violations to the compliance department or top management to maximize corporate compliance. While in China, it is difficult to implement the reporting system by corporate employees, largely due to our unique corporate culture. The lack of guaranteed mechanism within the corporate results in a lack of motivation for corporate employees to pay attention to corporate compliance risks. Even if the employees have the idea of reporting, they will be suspended because the company lacks the ability to stop retaliation against reporters.

The effectiveness of the compliance plan lies in whether the whole-process pre-warning is available in the contents of the compliance mechanism, whether the whole-process behavior of the corporate and its employees can be accurately identified as compliance and the corresponding protection mechanism and reporting standard guidance process are given to the whistleblower to effectively encourage corporate employees to actively identify violations to realize maximized compliance. Regarding the definition of the compliance risk, it is pointed out in the Guidelines for the Compliance Management of Corporate Overseas Operation that it refers to the possibility that an enterprise or its employees will suffer from a series of negative impacts including but not limited to sanctions, losses, penalties, and other violations. The ways to identify compliance risks are mainly promoted from both internally and externally. Internally, it is promoted through compliance consulting, examining, and verifying, check, violation investigated, etc. Externally, to identify compliance risks by obtaining new

regulations of such industry for legal consulting and for obtaining relevant information of the regulatory institution. The compliance risk in the construction domain refers to the possibility of a series of negative impacts caused by corporate or their employees for violating the regulations of the construction. In the process of building the identification mechanism of compliance risks, the construction corporate shall effectively combine the corporate itself and the actual situation of the construction to realize accuracy and effectiveness of identification mechanism and shall be better not to make the mechanism be too detailed. Overly-detailed identification mechanism may increase the burden to the corporate. And it is also inappropriate to set up the mechanism roughly. Rough compliance identification mechanism will directly influence the effectiveness of the compliance risk identification.

Accurately identifying the source of risks can be regarded as an important means to effectively curb the occurrence of compliance risks. Only by cutting off the source can the losses be stopped in time before the interests of the corporate are actually affected by the compliance risks. The source of compliance risks is the misconduct of the company or its employees. However, compliance risks only represent a possibility of negative effects. Therefore, not all violations will trigger bad consequences. Generally speaking, when the core powers of a corporate are exercised improperly, in other words, when the corresponding powers that can directly affect the normal operation of the corporate are improperly exercised by the corporate or its employees, the adverse consequences of compliance risks will be triggered. Scholar Fan Guangzhong believes that the source of compliance risks is the improper exercise of the “eight powers” that closely affect the development of a corporate during its operation. Therefore, the important means to effectively suppress the occurrence of compliance risks should focus on these eight powers, by taking the exercise of the eight powers as the breakthrough point to accurately identify the source of compliance risks. Focusing on the corresponding rules and regulations, corporate rules, and regulatory mechanisms of the eight powers, the normative tracking of the compliance exercise of the eight powers is conducted around the corresponding rules and regulations, corporate rules, and regulatory mechanisms for the eight powers. An early warning line should be set up before the compliance risks are triggered, so as to efficiently detect and promptly correct behavioral deviations during the exercise of the eight powers,

thereby realizing the dual benefits of improving the level of corporate compliance management and ensuring the smooth operation of the compliance risk identification mechanism.

### ***Improving the Corporate Criminal Liability System***

Given upgraded the corporate crime constitution system, the corporate criminal liability system also needs to be amended and supplemented accordingly. In general, we will mainly start from following two aspects. On the one hand, we try to introduce the corporate probation system into the criminal legislation. As discussed above, corporate probation brings not only distinct forms of sanction for corporate crimes, but also traditional penalties based on deterrence, as well as ability and opportunity to implement reforms within the corporates with defect measures.<sup>xiv</sup> The application of corporate probation is regarded as one of the innovative initiatives in corporate crime control, which requires both cooperative agreement between the law enforcement agency and the corporates, as well as development of compliance program and implementation of reforms within the corporates. According to Article 72 of the Criminal Law of the People's Republic of China, the probation system cannot be applied to unit crimes, with its context limited to crimes committed by natural persons. In terms of judicial practice, the imposition of probation on individuals is an important prerequisite for the application of probation to a corporate. To help corporates with internal governance reforms and to stimulate their motivation to effectively implement internal compliance, one of the measures is to try with a probation system, which regulates corporate criminal behaviors. For example, it can be added after Article 72 of our Criminal Law, which states: "The court may impose a suspended sentence on a corporate that undertakes to actively implement internal governance reforms and establish and implement corporate compliance." The corporate probation system is established through legislation, and when the corporate in question complies with the probation requirements, it provides an opportunity for internal reform of the criminal corporate to prevent crime from the inside out, while avoiding long-term damage of criminal penalties for the corporate in question. On the other hand, the amount of fines for unit crimes should be increased to a certain extent, and the statutory sentences for fines should refer to availability and effectiveness of compliance programs. The penalty of fines is a liability penalty subordinate to preventive penalty which also serves as threat and prevention. Increasing the amount of unit fines can enable effective execution of the Criminal Law's behavior guidance

function, so as to better guide and control corporate behavior.<sup>xv</sup> In order to encourage and guide corporates to actively establish their compliance programs, Article 31 of the Criminal Law has been further amended and upgraded: if a unit commits a crime, it shall be sentenced with a fine. The penalty may be lightened or mitigated for corporates boasting effective corporate compliance. At the same time, based on the principle of legislative simplicity and judicial uniformity, the connotation of an “effective compliance program” is defined by legislative interpretation.

### ***Establishing the Rules of Criminal Obligation for Corporate Compliance***

From the perspective of effect, the coercive and deterrent nature of criminal law promotes corporate compliance to a large extent. In view of the various periods of the evolution of the corporate compliance criminalization and based on the purpose of guiding and encouraging the establishment and implementation of corporate compliance, today the criminal obligations of corporates and their executives to establish and implement corporate compliance are stipulated in the legislation of various countries to varying degrees. In addition, the impact of corporate compliance is considered as a statutory factor when the prosecution, sentencing and probation of corporate crimes are applied. Corporate compliance shall be connected with criminal law practice. On the premise of the aim for “criminalization” of corporate compliance, the planning and implementation of corporate compliance will be transformed from a risk management schedule that is optional to a criminal obligation with compulsory guarantee. In the practice of rule of law in various countries, the planning and implementation of corporate compliance mechanism has become one of the important practices for corporates to implement criminal rules and regulations. Bearing in mind why China firstly wants to establish and implement corporate compliance management system, we can learn from established foreign experiences, introduce their rules into our country, promote corporate self-regulation, and drive corporates to actively participate in crime governance. While passing pressure to corporates externally, we create a reasonable legal environment inside corporates. Therefore, I think we can work towards the following directions: First, clarify establishment and implementation of compliance criminal obligations of corporates. For instance, the criminal obligation of establishing and implementing corporate compliance is added to Article 31 of *Criminal Law of the People’s Republic of China*. Specifically, it can be amended as: “If a company commits a



crime, the company may be fined, and its responsible person in charge and other responsible personnel may be punished. If a company formulates and implements an effective compliance plan aimed at discovering, preventing, and stopping crimes, the company may be given a lighter, mitigated, or exempted punishment.” Second, specify the list of corporate executives’ compliance criminal obligations. Specifically, the second paragraph should be added to Article 31 of *Criminal Law of the People’s Republic of China*: “Company leaders and senior managers should actively promote the formulation and implementation of compliance plans. If the company does not actively formulate and implement the compliance plan, company leaders and senior managers may be imposed with fines and imprisonment.” To sum up, the list of compliance criminal obligations of corporates and their executives shall be listed by law, and an internal control mechanism shall be set up within corporates based on the mandatory and deterrent nature of criminal law and penalty. Corporates and their executives shall take the initiative to supervise, eliminate and stop crimes within corporates.

### ***Identifying the Establishment of Double Punishment and Incentive Model***

First, a compliance program should be included as one of the bases for not prosecuting or suspending the prosecution of a corporate. Whether or not the compliance plan is formulated and effectively implemented, if this can serve as an important factor in determining whether or not to prosecute, it will urge the company involved in the crime to build and improve its professional standards, compliance with legal programs and internal control systems, thereby producing the same results as those brought about by criminal penalties.<sup>xvi</sup> In the current situation, it is possible to include the compliance program as a basis for consideration of not prosecuting or suspending prosecution. Today, the *Criminal Procedure Law* of China is largely based on the regulation of natural person, and the design of the system for organization crimes has not been adequately considered in the formulation of the rules of criminal procedure. In the newly-revised *Criminal Procedure Law* of China, although there are some provisions on the leniency system of guilty plea and punishment, it only applies to natural persons. Therefore, we should relax the conditions of application of the relevant sentencing system of the Criminal Procedure Law, that is, taking corporates as one of the objects. Specifically, on the one hand, expand the scope to corporates about the applicable objects of the existing leniency system of guilty plea and punishment in China’s criminal procedure law, and give the procuratorates and

corporates the possibility of sentencing consultation on whether an effective compliance plan is available; On the other hand, in view of the three forms of legal non prosecution, discretionary non prosecution and doubtful non prosecution in the *Criminal Procedure Law*, it is appropriate to consider whether it can also be applied to the organization. The author believes that in the future, efforts should be made to gradually regard the effective compliance plan as one of the forms of discretionary non-prosecution, and absorb it into China's Criminal Procedure Law, and at the same time, consider it as an applicable situation of discretionary non-prosecution for corporates that the crime is minor enough to cause huge economic losses and an effective internal compliance plan is available. Thus, when the compliance system continues to develop and mature, we can also try to supplement the *Criminal Procedure Law*, that is, to increase the special criminal procedure for corporates constituting criminal cases, which can be used to guide and regulate corporates to establish a compliance system. In addition, we may consider adding a probation system for corporates. For example, a test period should be set for corporates, during which the corporate deposit is collected, and the corporates are supervised to fulfill the compulsory compliance obligations, thus reducing the possibility of second crimes committed by the corporate.

Second, the effective compliance plan of a corporate can be identified as a ground for mitigating criminal penalties, which also serves as one of the important ways to establish an incentive mechanism in criminal penalties. Nowadays, the types of penalties for enterprises in China are relatively simple. Therefore, the author believes that it is possible to try to add types of penalties to corporates in criminal legislation, such as confiscation, expropriation, or the introduction of qualification-related penalties applicable to corporates from administrative law. In terms of the original fines, the amount of fines for corporate crimes can be gradually increased. The next step is to identify whether the company has an effective compliance plan as a legal reason for the corporate to obtain a reduction in the types and amount of penalties. In view of the application conditions of fines, whether a corporate has an effective compliance plan or not can be further linked to the fines and penalties of the corporate. Specifically, measures can be taken in trying to reasonably incorporate the consideration of corporate compliance plans into the sentencing form of the corporate fines, thus promoting the

standardization of the compliance sentencing of fines, so as to guide and encourage corporates to further promote compliance.

## ENDNOTES

- <sup>i</sup> State-owned Assets Supervision and Administration Commission of the State Council, 'Notice on Issuing the Guidelines for the Compliance Management of Central Enterprises (for Trial Implementation)' <[www.sasac.gov.cn/n2588035/c9804413/content.html](http://www.sasac.gov.cn/n2588035/c9804413/content.html)>, accessed 29 June 2021.
- <sup>ii</sup> Ruihua Chen, 'Corporate Criminal Liability Issues from the Perspective of Compliance', (2020) 1, *Global Law Review*, 23-40.
- <sup>iii</sup> Peng Liu, 'Countries Pay More Attention to Compliance Issues After the ZTE Incident', <<http://finance.sina.com.cn/meeting/2018-06-30/doc-ihespqrx4686449.shtml>>, accessed 2 July 2021.
- <sup>iv</sup> Hong Li, 'Compliance Plans and Corporate Criminal Liability', (2019) 9 *Journal of Law*, 9-19. DOI:10.16092/j.cnki.1001-618x.2019.09.002.
- <sup>v</sup> Ruihua Chen, 'Three Dimensions of Corporate Compliance System—Analysis from the Perspective of Comparative Law', (2019) 3 *Comparative Law Research*, 61-77.
- <sup>vi</sup> Bencan Li, 'The Reference of Compliance Plan System in Corporate Crime Prevention', (2015)5 *China Law*, 177-205. DOI:10.14111/j.cnki.zgfx.2015.05.012.
- <sup>vii</sup> Philip Weller, 'Effective Compliance Programs and Corporate Criminal Litigation', Fang tr, (2018) 3 *Wan Financial Law*, 27-39.
- <sup>viii</sup> According to the relevant statistics, the data on June 31, 2015 showed that there were less than 40 Chinese corporates and individuals on the "blacklist" published by the World Bank; while the data on June 31, 2018 showed that there were 88 corporates and individuals on the World Bank's blacklist when the data on June 31, 2018 showed, among which the Chinese corporates and individuals included in the sanctions list in 2016 were Among the 53 companies on the list in 2015, engineering and related consulting and technology companies accounted for a relatively large proportion.
- <sup>ix</sup> Sean J. Griffith, 'Corporate Governance in an Era of Compliance in 57 *Social Science, William & Mary Law Review*, vol.57 (May, 2016), p.2088.
- <sup>x</sup> Youyong Zhou, 'Construction of Enterprise Compliance Agreement System under the Concept of Contract Administration—From the Perspective of Engineering Construction Field', (2021) 5 *Law Forum*, 49-61.
- <sup>xi</sup> Robert Baldwin and others, 'Oxford Manual of Regulations' (Song Hualin and others, 3rd edn, Shanghai Sanlian Publishing House 2017) ,p.180.
- <sup>xii</sup> Zhai Dong, 'Construction of Project-Oriented Administrative Compliance System for Integrated Engineering', (2021) 3 *Law Forum*, 79-90.
- <sup>xiii</sup> Wei Cui, 'Social Participation in Criminal Justice: Subjects, Models and Improvement Approaches', (2018) 6 *China Criminal Law Journal*, 129-142.DOI:10.19430/j.cnki.3891.2018.06.008.
- <sup>xiv</sup> Yanan Shi, 'Compliance Program Implementation and Criminal Attribution of Units', 2019(9) *Journal of Law*, 20-33.DOI:10.16092/j.cnki.1001-618x.2019.09.003.
- <sup>xv</sup> Ji Wen, 'An Empirical Study on the Legislation for Balancing the Crime and Penalties of Fines in Unit Crimes,' 2018(1) *Journal of Chinese Criminal Law*, 54-73.DOI:10.19430/j.cnki.3891.2018.01.005.
- <sup>xvi</sup> Yuhua Li, 'Criminal Litigation Incentives for Corporate Compliance in my country', (2020) 1 *Comparative Law Research*, 19-33.