

Legal Risk Problems and Countermeasures of Contract Management in State-owned Enterprises

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Abstract: Firstly, this paper combs and analyzes the relevant literature on the legal risk of contract management in state-owned enterprises, identifies and analyzes the legal risk of contract management from the two aspects of contract conclusion and contract performance, further studies and analyzes the difficulties faced by contract management in state-owned enterprises, and finally from the aspects of system improvement, system construction, personnel improvement From the aspects of legal risk transfer, this paper puts forward countermeasures and suggestions for the prevention and control of legal risk in contract management of state-owned enterprises, which provides a certain reference value for the research of contract management of state-owned enterprises.

1. Introduction

Market economy is developed on the basis of free contract spirit. Contract is the most representative product of market economy. All equal subjects restrict each other by contract in cooperative transactions. At the same time, contract is also an important tool for enterprises to ensure transaction security and prevent risks. According to China's enterprise internal control standard, contract management is not only an important means and tool of enterprise internal control, but also a basic work for enterprises to safeguard their legitimate rights and interests, ensure the safety of economic operation, control financial risks and improve management ability. The quality of contract management is directly related to the long-term and stable development of enterprises. Many enterprises in highly market-oriented areas generally attach great importance to contract management, fully integrate contract management with various business processes of enterprises, and enhance the effect of contract management. However, the contract management mode of many state-owned enterprises is relatively backward. Because most state-owned enterprises retain many management modes left over from the era of planned economy, they are still used to taking oral agreement or enterprise reputation as the guarantee, and fail to strengthen control, approval and supervision in contract management, resulting in a large number of oral agreement contracts and lack of information in contracts Some of the problems of non serious contract

performance have also led to breach of contract and economic losses caused by poor contract management, and even serious consequences such as loss and bankruptcy. As shown in Figure 1.

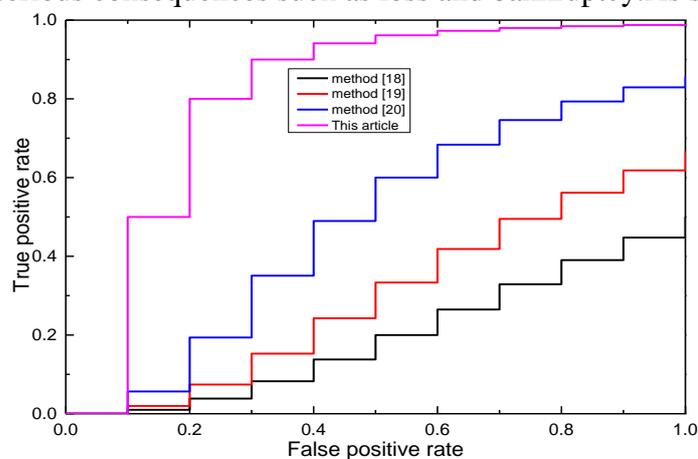


Figure 1 Comparison of ROC curves

Therefore, how to strengthen the contract management of enterprises, improve the internal control construction of each business process of contract management, prevent business risks, improve the efficiency of business management and promote the realization of enterprise strategic objectives has become a realistic and urgent task for enterprises, especially state-owned enterprises.

2. Literature Review

The research on the theory and application of risk management in China started late, and the knowledge of risk management officially entered China in the late 1980s and early 1990s. "The symbol of beginning to pay attention to the study of legal risks of state-owned enterprises is the convening of the legal risk prevention forum and conference of key state-owned enterprises in March 2005 and the ranking analysis of legal risk environment of China's top 100 enterprises proposed at the conference, which points out that contract management, intellectual property rights and corporate governance are three important ways and means to prevent legal risks." Therefore, many fields in China began to systematically study the theory of contract risk management. LV Lishan (2005) proposed that the legal risk of enterprise contract refers to the possibility that the enterprise "must bear legal liability and cause damage to the enterprise due to the difference between the future actual results and the expected objectives in the process of concluding and performing the contract." Contract risk management is to manage and control transaction risk, which is the first step of enterprise risk control. Other risk management in comprehensive risk management is carried out on this basis. Different from general risks, contract legal risks have strong predictability and contractility because the causes and results of contract legal risks are statutory and agreed, and guided by legal provisions.

3. Contract Legal Risk Identification

3.1 Legal Risk of Contract Conclusion

"The conclusion of a contract is a dynamic process from the selection of the contracting counterpart to the success of the contract. The consequences of the establishment of the contract in this process are the premise of the effectiveness of the contract, as well as the concrete embodiment of the contracting parties' contractual rights and obligations and the main basis for dispute resolution." If the opposite party of the contract is carefully selected, its legal subject qualification is

understood, its performance capacity is verified, and the contract terms are fully and completely formulated, the legal risks can be effectively prevented and the disputes between the parties on the terms and the final legal disputes can be reduced.

First, the legal risk of the contract subject. When an enterprise concludes a contract, the first consideration is who to sign the contract with. Generally speaking, enterprises usually consider the impact of the reputation, business status and credit status of the contract object on the contract, but are not sensitive to the qualification, capacity, authorization and corporate governance structure of the legal subject. Once these potential legal risks break out, the losses to the enterprise are often huge. In particular, contract fraud will have a fatal impact on enterprises. As shown in Figure 2.

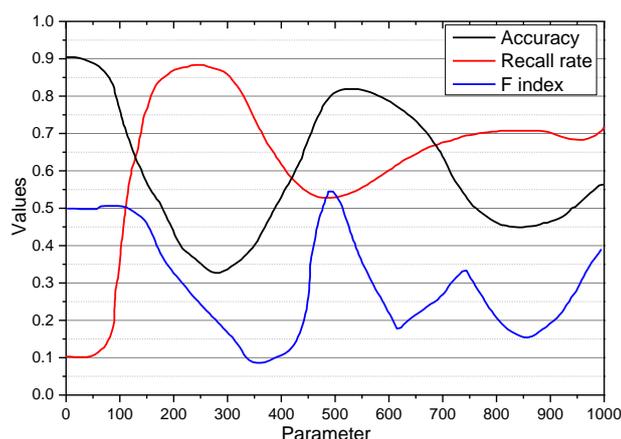


Figure 2 Results of the improved Hidden Markov Model algorithm

Secondly, the legal risk of contract establishment. The establishment of a contract is the premise for the effectiveness of the contract. After the transaction object of the contract is established, it is necessary to draft the text, make an offer to the transaction object, and get the acceptance of the other party. Therefore, in the process of contract establishment, there are mainly legal risks of offer, acceptance, nature of contract and legal risks under the system related to contract conclusion.

3.2 Legal Risks in Contract Performance

First, the legal risk of disputes over contract terms. Contract terms are the fundamental basis for determining the rights and obligations of the parties. Although the contents and terms of the contract are described as detailed as possible when the contract is signed, disputes may occur in the process of contract performance or due to lack of terms, ambiguity, change of circumstances or different understanding of the parties.

Second, the legal risk of Contract non performance (improper performance). According to the classification of contract performance status, "breach of contract can be divided into inappropriate contract performance and Contract non performance, and Contract non performance can be divided into refusal to perform and inability to perform." There are various reasons for non performance, such as the loss of the subject matter, which will not be described in detail here. For the legal risk management of non performance of the contract, the methods of suspension of performance, exercise of uneasy defense right, termination of the contract, investigation of liability for breach of contract, etc. can be adopted. Refusal to perform itself does not mean a breach of contract (such as the right of defense after performance), nor does it mean that the contract has been terminated. However, in practice, there are always some enterprises that have subjective faults and fail to perform the contract, which requires the observant party to make careful judgment and correctly choose reasonable means to safeguard their rights and interests. The legal risk management of

refusal to perform can be handled by means of urging, defense, termination of contract and investigation of liability for breach of contract.

Third, the legal risk of contract change. The legal risk of contract change is generally divided into the risk of contract subject change and the risk of contract content change. As an important means of economic transaction, it is necessary to maintain its relative stability, and "contract change is an embodiment of corresponding instability." For example, the market has changed, the policy has changed, the content of the contract has changed, and so on. Generally speaking, as long as the relevant procedures are performed and the parties agree, the contract change can be based on the special provisions of the law, such as the transfer of the beneficiary's beneficial right of the policy beneficiary needs the consent of the insured, etc. As shown in Figure 3

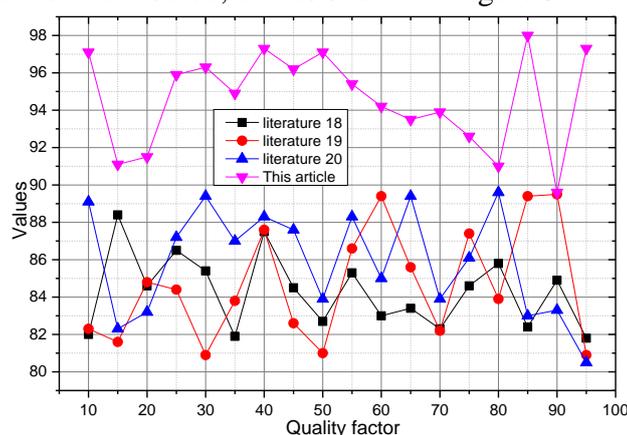


Figure 3 AP Comparison

Fourth, the legal risk of contract supervision. The tracking supervision of the contract is an essential link for the performance of the contract. The supervision of contract performance is a long-term continuous process. Only when the supervision is in place can it provide guarantee for the realization of the purpose of the contract.

4. Difficulties Faced by Contract Management of State-Owned Enterprises

4.1 The Contract Per-Approval Procedure is not Transparent and Open Enough

The contract approval process is divided into pre-approval and post approval. In the pre-approval process, the approval procedure is easy to be opaque and not open. The main reasons for this phenomenon are: first, there are various ways to establish contracts, including financial planning, internal decision-making and so on. Some projects take a long time and delay the work progress. Therefore, many projects can not well adapt to the high-speed competitive environment in the market. Second, the bidding time for some suppliers is too long and the bidding procedures are cumbersome, resulting in a long supply time after the contract is signed, affecting the transaction, resulting in damage to the economic benefits of the enterprise. Third, it is necessary to negotiate the terms and contents of the contract before signing the contract. However, the invitation to negotiation suppliers is limited, and it is impossible to invite all suppliers in place, so it can not promote market competition to the greatest extent.

4.2 The Information Communication between Departments is not Smooth Enough

In management, information communication is divided into upward communication, downward communication and horizontal communication. In enterprise management, it is easy for various departments to have weak communication awareness and poor communication. Contract

management needs to involve multiple departments. Contract drafting is usually in the business department, and contract review is usually in the financial department and legal department. Each department works independently, so departments need to cooperate with each other. However, in reality, many state-owned enterprises have not established a perfect communication mechanism and corresponding assessment system, and the horizontal communication between departments has not been included in the department work plan, as well as the responsibilities of relevant departments, resulting in no binding force on the contract drafting department and audit department in the process of contract management. The contract drafting department believes that contract review is the business of the legal department, so there will be arbitrary drafting of contract terms. However, the contract review department usually does not understand the specific work of the business department, does not understand the project initiation and pricing process of the contract, and does not understand the professional terms of the business, which will lead to low efficiency of contract review and prone to legal risks. At the same time, poor communication between departments can easily lead to a long time for contract drafting and review, resulting in the failure to complete the contract signing on schedule.

4.3 Contract Review Departments Prevaricate with Each Other, and the Review is not Strict

Contract review is very important in contract management. Often a small legal detail may have risk problems due to lax review, resulting in huge losses to the enterprise, and these risks can be prevented in advance through contract review. The contract review is usually not completed by one department independently. It often requires the cooperation and joint review of multiple departments, including the legal department, business department, technical department and financial department of the enterprise. They need to use their own professional knowledge to review whether the contract is perfect and whether there are omissions from their own perspective. However, in some state-owned enterprises with imperfect systems, there will be mutual prevarication and wrangling between audit departments, so that a contract has not been comprehensively evaluated and reviewed, and it is difficult to play the role of prior supervision on contract review, which is easy to lead to loopholes in contract terms and can not effectively prevent and control legal risks.

4.4 Lack of Supervision and Evaluation Mechanism During Contract Performance

The contract performance stage is a process in which the parties to the contract complete their obligations according to the contents and terms agreed in the contract, so as to realize the rights stipulated in the contract. This stage is related to the interests of the parties. The contract handler is generally the person in charge of the specific contract project of the company. He is the most direct person in charge from the initiation, signing and performance of the contract. However, contract managers often have no legal professional background, weak legal awareness and poor contract risk prevention ability. This can easily lead to contract disputes in economic exchanges and put enterprises in trouble. On the other hand, due to the lack of practical supervision mechanism and evaluation mechanism and the lack of performance evaluation of the contract operator, the behavior of the contract operator can not be effectively restrained and supervised, resulting in the operator's attitude is not serious. Therefore, it is necessary to establish a supervision and assessment mechanism for the contract handler, and investigate the responsibilities of relevant personnel in case of major errors in the contract.

5. Countermeasures and Suggestions on Contract Legal Risk Prevention of State-Owned Enterprises

Preventing possible legal risks in the process of contract management and fully understanding its important role in the process of production and operation are of great significance to the healthy development of state-owned enterprises and creating greater economic benefits.

5.1 Improve the Legal Concept of State-Owned Enterprises

Improving and strengthening the legal risk awareness of state-owned enterprises "is the ideological basis for establishing and improving the company's legal risk prevention system", "it is also the prerequisite for identifying and resolving legal risks and an important guarantee for realizing the sustainable development of enterprises. In terms of enterprise concept, only by establishing legal awareness, perfecting legal concept, and understanding and paying attention to enterprise legal risk management from the strategic height related to the survival of the enterprise, can we finally establish the management position of contract legal risk prevention and control in the enterprise. The latent and hidden characteristics of contract legal risk determine that it exists in every link of the contract cycle. The understanding of legal risk should be improved from "fire fighting" to "fire prevention"; From the awareness of safeguarding rights according to law to the awareness of governing enterprises according to law. Under this concept, only by taking precautions, adjusting measures before rain and establishing a legal "firewall", can the legal risk be eliminated in the bud and outside the contract! as shown in Figure 4.

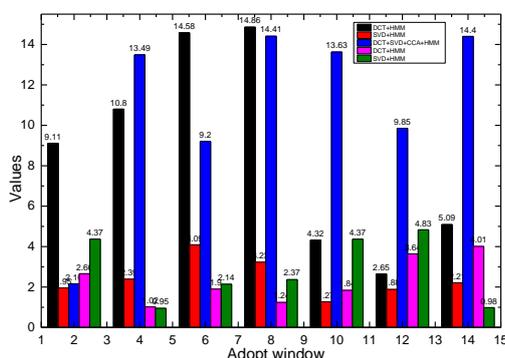


Figure 4 Comparison of recognition time before and after fusion

5.2 Improve the Contract Legal Risk Prevention and Control System

First, build a perfect contract legal risk prevention and control system. One of the main contents of legal risk prevention is to improve enterprise rules and regulations. The first topic of risk management is to strengthen system construction, pay attention to a series of risk management and control systems including project risk and contract risk, standardize behavior and restrict management by system, and form a standardized legal risk prevention environment by means of system management and control risk ", Constructing a perfect contract legal risk prevention and control system is the core content of the legal risk prevention of state-owned enterprises.

Secondly, build a perfect contract legal risk prevention and control process. After the state-owned enterprises build a perfect contract legal risk prevention and control system, the corresponding legal risk management process should be set up in the procedure. According to the research and design, the process re engineering of contract legal risk management system is generally divided into three steps. The first step is to identify and analyze the contract legal risk and

formulate a risk control plan: the second step is to organize the implementation of the legal risk control plan after assessing the legal environment; The third step is to evaluate the implementation of the legal risk control scheme, and the evaluated data will be used as the basis for the adjustment of the prevention and control system. Specifically, after per evaluating and analyzing the potential or existing legal risks, state-owned enterprises should first rank the priority management order of legal risks according to the size of risks and the degree of impact on enterprises, and determine the corresponding legal personnel and managers according to this order; Secondly, put forward preliminary solutions and plan implementation period for the legal risk problems found in the per analysis cycle, and bring the legal risk into the tolerable range of the enterprise; Finally, the specific implementation measures are reviewed in combination with the internal and external legal environment, implemented after the feasibility analysis, and the scheme is dynamically adjusted according to the implementation feedback,as shown in Figure 5

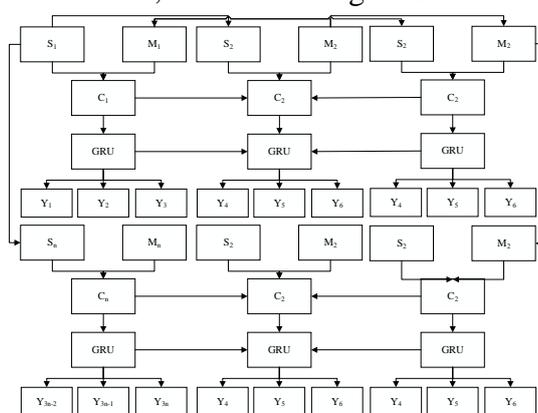


Figure 5 Flow chart of identification

5.3 Improve Personnel Structure and Treatment

The system of contract legal risk prevention mechanism is equivalent to the construction of "hardware facilities", so the contract personnel in the system belong to "software facilities". Firstly, the partners should have a sense of corporate responsibility and sensitive legal risk awareness; Second, enterprise contract personnel are required to have strong professional quality and high professional ethics level, be familiar with relevant national laws and regulations, and improve their professional ability according to the needs of business work under the condition of continuous renewal and development of legal knowledge. This requires the state-owned assets supervision department and the enterprise itself to take a variety of measures to carry out pre job training and on-the-job training for contract related personnel in various ways, so as to strengthen their own legal awareness and responsibility discipline construction while strengthening their professional skills.

5.4 Key Links of Contract Legal Risk Prevention

The research shows that the formulation of contract management rules in state-owned enterprises has generally been established, but there are many loopholes in the implementation of the rules, and the follow-up management of the contract is not fully in place, especially in the preservation of evidence and the performance of the contract. The evidence of the contract is the main basis for proving the responsibility and avoiding risks, and the performance of the contract is the significance of signing the contract. To do a good job in the prevention and control of legal risks, we must overcome the existing tendency of "emphasizing form and neglecting practice" in the management of state-owned enterprises, and do a good job in the management of each contract legal risk item.

5.5 Correct Application of Contract Law and Risk Transfer

One is to "buy insurance" for the performance of the contract parties through the guarantee system, and realize the rights relief of the parties through the guarantee behavior when the contract can not normally achieve its purpose or cause damage; Second, through project outsourcing in the traditional sense, while achieving the purpose of reducing costs, obtaining professional knowledge support or improving core competitiveness, transfer legal risks; The third is to realize the transfer of legal risks overseas in the form of "firewall" through legal means, so as to reduce the impact of the legal environment on contract performance, so as to avoid legal risks.

5.6 Increase Exchanges and Cooperation on Legal Risk Prevention

It is necessary for state-owned enterprises to do a good job in contract legal risk prevention and control and strengthen exchanges and cooperation with all aspects. On the one hand, enterprises, especially those with the same system or similar business, need to learn from each other's experience, jointly study ideas and methods, and mutually restrict the enterprise's contract behavior with the strength of the industry; On the other hand, do more business training and exchange work for enterprise legal advisers and contract staff to learn from each other and improve their personal business level; Finally, the support and help of government departments and legal experts and scholars from all walks of life is very important to the legal affairs of state-owned enterprises. Their understanding and support for enterprise legal work is also a great help for state-owned enterprises to do a good job in legal risk prevention and control.

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