

Construction and Improvement of the “Criminal-Administrative-Civil” Coordinated Accountability Mechanism for Financial Fraud

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Abstract: *Financial fraud in the capital market has become increasingly chained and covert. Relying solely on a single accountability method of administrative, criminal, or civil liabilities can hardly simultaneously achieve the goals of punishing illegal acts and relieving investors' losses. Constructing a three-dimensional coordinated accountability mechanism integrating administrative, criminal, and civil liabilities is a practical choice to improve capital market governance. China has now established a legal and policy system for the administrative, criminal, and civil accountability of financial fraud, but judicial practice still faces practical problems such as inconsistent standards for entity determination, blocking points in procedural connection, diluted cross-departmental coordination mechanisms, and insufficient rules for disposing of property involved in cases. Combined with judicial practice, this paper briefly sorts out the existing institutional foundations, focuses on analyzing the practical dilemmas of coordinated accountability, and proposes targeted improvement paths, so as to promote the formation of a closed loop among the three types of accountability mechanisms, implement the orientation of “pursuing the primary wrongdoers and punishing the accomplices”, and provide practical references for resolving securities disputes and protecting the rights and interests of small and medium investors.*

Keywords: Financial Fraud, Coordinated Accountability of Administrative, Criminal and Civil Liabilities, Three-dimensional Accountability, Investor Protection.

1. Introduction

Financial fraud severely disrupts the normal operation of capital markets, and its fraud patterns have gradually become chain-based with more concealed means. Relying solely on a single type of accountability among administrative, criminal, or civil liability cannot achieve full-chain crackdown, nor can it fully compensate for the losses suffered by small and medium-sized investors. The *Opinions on Further Improving the Comprehensive Punishment and Prevention of Financial Fraud in the Capital Market* jointly issued by six departments and forwarded by the General Office of the State Council has provided policy support for promoting the coordinated accountability of administrative, criminal and civil mechanisms. At present, the framework of various accountability systems in the securities sector has basically taken shape, but the problems of poor connection and insufficient coordination among the three types of accountability procedures still exist in practice. Existing studies mostly focus on the connection between administrative and criminal accountability, while the overall discussion on the integrated coordinated accountability of administrative, criminal and civil liability is still insufficient. Accordingly, this paper combines judicial practice, sorts out the existing institutional practice briefly, analyzes the practical dilemmas faced by coordinated accountability with emphasis, and proposes corresponding improvement paths, aiming to build a closed-loop accountability system, maintain the order of the capital market, and protect the legitimate rights and interests of small and medium-sized investors.

2. Institutional Foundation and Practical Status of the “Administrative - Criminal - Civil” Collaborative Accountability Mechanism for Financial Fraud

2.1 Functional Orientation and Internal Logic of Administrative-Criminal-Civil

Accountability Administrative accountability is enforced by securities regulatory authorities, with a focus on promptly halting financial fraud. It swiftly penalizes illegal acts through measures such as fines and market bans to stop the continuous spread of illegal activities. Criminal accountability focuses on cracking down on core actors including those who plan and organize fraud, and achieves strong legal deterrence through criminal penalties. The core of civil accountability is to compensate for the actual losses incurred by small and medium-sized investors and provide judicial remedies for injured parties. The three functions complement each other, and there exists a concurrence of liabilities among them. Factual materials obtained through administrative investigations can serve as the evidential basis for criminal and civil accountability. Collaborative accountability is not a simple superposition of liabilities, nor does it equal repeated punishment. In judicial practice, we should distinguish between liability aggregation and concurrence of liabilities. When multiple legal liabilities arise from the same illegal act, we must abide by the principle of proportionate punishment, avoid improperly increasing the legal liability of actors, and jointly achieve the governance goals of punishing illegal acts, cracking down on crimes, and compensating for losses.

2.2 Sorting Out the Current Institutional Norms

At the level of administrative accountability, the Securities Law of the People's Republic of China (hereinafter referred to as the “Securities Law”) and the Accounting Law of the People's Republic of China (hereinafter referred to as the “Accounting Law”) have increased the administrative penalties for financial fraud. The six departments' “Opinions on Further Improving the Comprehensive Punishment and Prevention of Financial Fraud in the Capital Market” adhere

to the combination of “pursuing the ringleaders” and “cracking down on accomplices”, and strengthen the investigation and punishment of actual controllers and intermediary institutions. At the level of criminal accountability, the 11th Amendment to the Criminal Law of the People’s Republic of China adjusts the statutory penalties for the crimes of fraudulent issuance of securities, illegal disclosure, and non disclosure of important information, and the Supreme People’s Procuratorate’s “Answers to Relevant Issues on Handling Financial Fraud Crime Cases” refines the criteria for criminal identification. At the level of civil accountability, the “Several Provisions of the Supreme People’s Court on the Trial of Civil Compensation Cases for False Statements Infringement in the Securities Market” (hereinafter referred to as the “Judicial Interpretation on False Statements”) and the “Rules for Litigation of Special Representatives in Securities Disputes” have been implemented, establishing the principle of priority for civil compensation. The existing documents only provide principle arrangements for three-dimensional accountability, and practical rules such as clue circulation and evidence utilization still need to be supplemented.

2.3 Overview of Collaborative Accountability Practice Operation

Regulatory and judicial authorities continue to increase their efforts in handling financial fraud cases. Regulatory authorities have investigated and dealt with multiple cases of illegal information disclosure, and suspected criminal clues have been transferred to judicial authorities in accordance with the law. The Kangmei Pharmaceutical case and the Zeda Yisheng case rely on special representative litigation to implement compensation for tens of thousands of investors. This system has become an important channel for investors to protect their rights. The traditional theory of party suitability considers the implementation rights of parties in litigation from the perspective of substantive law, attributing the basis of party suitability to the plaintiff’s management or disposal rights over the subject matter of litigation. This does not conform to the practical development and judicial goals of modern litigation, and relying solely on the traditional theory of party suitability cannot properly resolve group disputes [1]. The Jin Tongling case is a typical case of coordinated criminal and civilian accountability. The regulatory authorities imposed administrative penalties first, and the judicial authorities simultaneously carried out criminal prosecution and representative litigation trials, ordering the listed company to compensate a large number of investors. The current three-dimensional accountability pattern in the capital market has initially taken shape, but practical problems such as fast criminal and slow civil procedures, lagging civil procedures, and conflicts in the disposal of property involved are still prominent, which have become the basis for the analysis of practical difficulties in the following text.

3. Practical Dilemmas in the Operation of the “Criminal-Administrative-Civil” Coordinated Accountability Mechanism for Financial Fraud

3.1 Discrepancies in Entity Determination Standards and

Imbalanced Allocation of Liabilities

Administrative, criminal, and civil litigations have respectively set different standards of proof for the subjective fault of perpetrators and the establishment of illegal facts in cases of financial fraud. Criminal litigation applies the standard of beyond reasonable doubt, which sets the highest threshold for determining the subjective intent of perpetrators; administrative penalties adopt the standard of preponderance of the evidence, leading to relatively lenient criteria for fact determination; civil litigation, by contrast, applies the standard of high probability. When confronting the same instance of financial fraud, the three sets of accountability procedures are highly likely to yield different factual judgment results, which directly lays hidden dangers of divergence for subsequent liability determination.

In practice, the prominent problem of misaligned accountability logic also exists. In many cases, the targets of punishment are limited solely to the listed company as a legal person, while the accountability for natural persons such as actual controllers and core senior executives who actually dominate and control the fraudulent conducts is insufficient. Due to the lack of unified tiered accountability rules, conflicts in liability determination across different procedures will be further exacerbated. Although existing laws have established the principle of priority of civil compensation, the supporting detailed substantive rules are not complete. When a concurrence of liabilities occurs among fines, confiscated funds and civil compensation, it is prone to the realistic situation that the involved property is preferentially used to turn over fines and confiscations, making it difficult for investors to obtain actual compensation even if they win the judgment. The shortcomings at the level of substantive rules directly restrict the release of the overall governance effectiveness of the collaborative accountability system across administrative, criminal and civil proceedings [2].

3.2 Poor Interconnection of Procedures and Obstacles in Evidence Conversion

At present, the one-way working channel for securities regulatory authorities to transfer case clues to judicial organs such as public security and procuratorial organs has been operating relatively maturely, but the institutional construction for the reverse flow is significantly lagging behind. After the criminal procedure issues a handling conclusion of non-filing or non-prosecution, the reverse transfer procedure where the case is returned to the administrative organ to continue the administrative penalty process has not yet formed binding and rigid institutional norms. Meanwhile, the current system has not established a normalized channel for transferring case clues from administrative and criminal procedures to civil adjudication departments. In most cases, civil litigation can only be initiated by investors proactively, who need to collect relevant case materials on their own.

Contradictions at the level of evidence conversion are also prominent. Testimonial evidence obtained during the administrative investigation stage, restricted by the subjects and procedures of evidence collection, cannot be directly used as evidence in criminal proceedings, and case-handling

organs need to carry out re-investigation and evidence collection. Repeated evidence collection not only consumes a large amount of limited judicial resources, but also poses a risk that some key physical evidence and witness testimony may be lost over time. In addition, there is a lack of clear and enforceable rule guidance on what legal effect the case facts confirmed by effective criminal judgments have in subsequent securities civil litigation. Furthermore, the three types of accountability procedures are under the jurisdiction of different competent authorities, with varying case-filing and trial cycles. The misalignment of procedural sequences occurs from time to time, which easily leads to contradictions in fact-finding between civil and criminal judgments [3].

3.3 Insufficient Cross Departmental Collaboration and Lack of Connection in Property Disposal

The collaboration between various agencies involved in handling financial fraud cases mostly relies on temporary consultation triggered by individual cases, without establishing a statutory and long-term operational mechanism for regular collaborative work. The sharing of case information is mostly temporary communication at the individual case level, and there is no standardized or institutionalized mechanism for pushing case node information. The time for each unit to obtain case progress is not uniform. The overall control of the involved property is in a fragmented state, and the principle of prioritizing civil compensation only stays in the expression of legal provisions. There is a lack of supporting rules for practical aspects such as property investigation and control, value assessment, fund distribution, and compulsory enforcement. Different law enforcement agencies have separately sealed and seized the property involved in the case, and the information between them cannot be synchronized in a timely manner, which can easily lead to information asymmetry in property disposal. Once the listed company involved enters bankruptcy proceedings, the damages arising from false statements in securities can only be classified as ordinary bankruptcy claims, with a relatively lower priority for repayment. Even if investors have obtained effective winning judgments, the final achievable compensation ratio is often at a low level, making it difficult to truly achieve the goal of protecting investors' rights and interests that legislation wants to achieve, and also greatly reducing the expected governance effect of the criminal civil collaborative accountability system.

4. Specific Approaches to Improving the “Administrative-Criminal-Civil” Collaborative Accountability Mechanism for Financial Fraud

4.1 Unify Substantive Judgment Standards and Optimize Hierarchical Liability Allocation

Regulatory and judicial authorities may jointly issue law enforcement and judicial guidelines for financial fraud cases, which set unified identification criteria for subjective fault, material illegality and the severity of fraud, so as to reduce discrepancies in fact-finding across different procedures. In addition to regulating listed companies, the guidelines should also refine the fault grading standards for intermediaries that

act as “accomplices”, clarify the liability boundaries of external third parties that assist in fraud, implement the governance requirement of “pursuing the primary culprit and punishing accomplices”, and allocate corresponding liabilities based on each subject's role in the fraud, so as to avoid the situation that only the listed company is punished while the actual perpetrators are let go. In practice, it is also necessary to distinguish the boundary between overlapping liabilities and repeated punishment, and refine the rules for offsetting administrative fines against criminal fines for the same illegal act, to prevent excessive punishment against the same subject [4]. At the same time, the substantive rule of priority for civil compensation should be improved, the order of compensation with the property of different liable subjects should be clarified, and the joint liability of controlling shareholders and actual controllers should be strengthened, so as to resolve the practical problem of “no money left to compensate investors after punishment” from the level of substantive rules.

4.2 Streamlining Case Transfer Procedures and Standardizing the Conversion and Application of Evidence

A two-way clue transfer system for securities illegal cases should be improved, with the transfer time limit and the list of materials to be transferred along with the case clearly specified. The existing channels for administrative organs to transfer clues to judicial organs should be consolidated, and the process of reversing to administrative handling after criminal non-recognition of a case and non-prosecution should be perfected. It is also necessary to add channels for administrative and criminal authorities to transfer clues to civil trial departments. When encountering major financial fraud cases with great social impact, regulatory authorities and judicial organs shall synchronize information on key nodes of the case to the court accepting the civil cases. Distinguish objective evidence from verbal evidence at the evidence level, refine the admissibility conditions for evidence collected by administrative organs in criminal and civil proceedings, improve the rule of reinforcement and conversion for verbal evidence, and delimit the boundary of the preclusive effect of facts confirmed by effective criminal judgments in civil proceedings. A synchronous handling mechanism shall be implemented for major cases. Synchronous handling does not mean simultaneous conclusion of the three types of procedures. Its focus is to unblock information exchange channels, reasonably coordinate the pace of case handling, and alleviate the common problem of procedural sequence dislocation in practice.

4.3 Improving the Collaborative Guarantee System and Streamlining the Connection of Property Disposal

Securities regulatory departments, public security organs, procuratorial organs and people's courts shall establish a regular consultation and judgment mechanism for major financial fraud cases, set up a stable case information sharing channel, and clarify the specific requirements for mutual notification of case node information, so as to change the previous situation where most collaborative mechanisms are only principled provisions and lack practical operation procedures. To address the problem of fragmented disposal of

case-related properties, a unified case-related property list system shall be implemented for major financial fraud cases. The information on sealing and seizure by various case-handling organs shall be exchanged in real time, so as to realize the overall investigation and control of case-related properties, and solve the problem that different organs control properties separately with no information exchange with each other [5].

In addition, the operation procedures for the implementation of the principle of civil compensation priority shall be detailed, the distribution rules of case-related properties in the execution stage shall be improved, and the mechanisms related to the declaration of investor compensation claims and property distribution in the bankruptcy proceedings of listed companies shall be straightened out. These efforts will implement the legal requirement that case-related properties shall be prioritized for investors' civil compensation, properly resolve property distribution conflicts among administrative confiscation, criminal fine and civil compensation, truly put the principle of civil compensation priority stipulated in legal provisions into practice in the execution link, and ensure that the coordinated accountability through administrative, criminal and civil approaches finally achieves the dual goals of punishing illegal acts and compensating investors.

4.4 Strengthening Supporting Supervision and Accountability Constraint

Mechanisms To implement the coordinated accountability involving criminal punishment, administrative penalty and civil liability in practice, full-process supervision and constraint as well as relevant supporting systems are indispensable as support. First, an internal supervision and assessment mechanism for coordinated performance of duties shall be established, and accountability arrangements shall be set for such circumstances as failure to transfer clues that should be transferred, refusal to cooperate when information should be shared, and neglect of duty in property investigation and control, so as to force each case-handling organ to perform its coordination obligations and prevent various cooperation rules from remaining on paper. Second, the ways of right remedy for interested parties shall be improved, and standardized review and feedback procedures shall be set up for objections raised in the process of clue transfer and disposal of case-related properties, so as to protect the procedural rights of investors and parties involved in the case. Financial fraud cases involve a large number of professional accounting issues. The expert assistant system and expert juror system can be well utilized to make up for the professional shortcomings of case-handling personnel and help accurately ascertain case facts. In addition, typical cases of coordinated accountability can be released on a regular basis, which helps unify adjudication ideas through cases and remedy the shortcoming of insufficient detailed rules in written laws.

5. Conclusion

The coordinated pursuit of liability for financial fraud through administrative, criminal and civil channels is not a simple superposition of the three types of liabilities, but requires the mutual adaptation of systems in multiple dimensions

including entity identification, case procedures, and inter-departmental collaboration. The current legal framework has established the basic prototype of three-dimensional liability pursuit, but the lack of practical operating rules limits the release of the governance efficiency of the whole mechanism. Starting from the current status of the system, this paper sorts out various blocking points in the practice of coordinated liability pursuit, and correspondingly proposes improvement directions of unifying the substantive adjudication standards, straightening out the case transfer procedures, and improving the cross-departmental collaborative guarantee system, so as to promote the connection between different liability investigation links and remove the practical obstacles in the disposal of property involved in cases. This will not only help implement the regulatory orientation of pursuing the main perpetrators and punishing accomplices, strengthen the legal deterrence against financial fraud, but also put the principle of priority of civil compensation into practice, balance the two goals of securities illegal punishment and rights relief for small and medium-sized investors, and provide judicial thinking for the capital market to build a governance environment where fraud is dared not, cannot and will not be committed.

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