

# Research on the Problems and Countermeasures of Legal Service Companies' Compliance Construction

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## Abstract

The legal service market is sinking, and the number of legal service companies is mushrooming like bamboo shoots. Although legal service companies have made important contributions in promoting economic development, their operation should strictly abide by various laws and regulations and regulations of regulatory departments, so as to realize the standardized construction of the company. Based on this, this paper analyzes the legal problems in the operation process of legal service companies, and then puts forward the concrete measures of company compliance construction, hoping to promote the sustainable and healthy development of legal service companies and legal service industry.

## Keywords

Legal Service Market; Legal Service; Corporate Compliance.

## 1. The raising of problems

In recent years, with the continuous growth of the demand for legal services, legal service companies mushroomed in the legal service market. Due to the lack of regulatory responsibility, some irregular behaviors of legal service companies have seriously disturbed the market order and affected the image of the legal industry. In fact, the lack of effective standardized management of legal service companies is not a new problem. In 2004, after the Decision on the Repeal of three normative Documents including the Provisions of the Ministry of Justice and the State Administration for Industry and Commerce on Strengthening the Management of Legal Consulting Service Institutions (Si Fatong [2004] No.117) was issued, The establishment of legal service companies no longer requires the approval of the judicial administrative department, resulting in the establishment of legal consulting service companies at will and chaotic operation. In response, Zhongwei, Changde, Xi 'an and other local departments have carried out rectification and regulation activities on legal service companies. In May 2022, Liaoning Provincial Department of Justice and other seven departments jointly issued the Special Action Plan on Reorganizing and standardizing the Order of the Legal Service Market and Optimizing the Legal Environment (hereinafter referred to as the Plan), in which it was clearly pointed out that the illegal behaviors of legal consulting (service) institutions should be rectified and the market activities of legal consulting (service) institutions should be regulated. This rectification action is also the first joint rectification action on legal service companies led by the judicial administration department at provincial level. The standard construction of legal service companies can not only better maintain the legal service market environment, but also meet the people's legal service needs in the new era.

## 2. The main problems in the compliance construction of legal service companies

### 2.1. Lack of regulatory subjects for legal service companies

The establishment of legal service companies can first be seen in the Notice of The General Office of the State Council forwarding the Ministry of Justice's Request for Instructions on Strengthening the unified management of legal service agencies (State Office Development [1985] No. 82), which stipulates that the establishment of legal service agencies must be submitted by the competent unit and approved by the Ministry of Justice or the Department of Justice (bureau) of the province, autonomous region and municipality directly under the Central Government. <sup>[1]</sup> On July 15, 1989, the Ministry of Justice and the State Administration for Industry and Commerce jointly issued the "Provisions on strengthening the management of legal consulting service institutions" (hereinafter referred to as the "Provisions") will be the "application - examination and approval" process in the form of department norms fixed down, "Provisions" on the establishment of legal service companies to adopt the "examination and approval system", The competent department that established the agency shall examine and apply to the judicial administrative organ for establishment, and it is stipulated that the legal advisory service agency shall be jointly managed by the judicial administrative organ and the administrative organ for industry and commerce.

In 1990, the Notice on Further Cleaning up and Re-Examining Legal Consulting Service Institutions and the Notice on Further Strengthening Relevant Issues concerning the Management of Legal Services further regulated that legal service companies should be established in strict accordance with the procedures of prior examination and approval by judicial administrative organs and registration by industrial and commercial registration administration organs. Legal service companies must be established They must consciously accept the management and supervision of the judicial administrative organs and the administrative organs for industry and commerce, and shall not expand their business scope without authorization. With the Decision of The State Council on the Third Batch of Cancellation and Adjustment of Administrative examination and Approval Items (State Council [2004] No. 16) of April 2004 cancelling the Notice of The General Office of the State Council Forwarding the Request for Instructions from the Ministry of Justice on Strengthening the Unified Management of Legal Service Institutions (State Council [1985] No. 82) on the establishment of "Examination of the Establishment of Social Legal Consultation Service Institutions", Means that the establishment of "legal service companies" no longer need to be approved by the judicial administrative department. <sup>[2]</sup> Later, in August 2004, the Ministry of Justice issued three normative documents concerning the management of social legal consulting service institutions, including the Provisions of the Ministry of Justice and the State Administration for Industry and Commerce on Strengthening the Management of Legal Consulting Service Institutions, jointly issued by the Ministry of Justice and the State Administration for Industry and Commerce (Sifatong (2004) No.117). To provide for follow-up supervision measures concerning social legal consultation service institutions, which will be separately formulated by the State Administration for Industry and Commerce. Therefore, the approval and establishment of legal service companies will be changed from the two-tier procedure of pre-approval by judicial administrative organs and registration by industrial and commercial registration authorities to the one-tier procedure of examination and approval by industrial and commercial registration authorities (currently market supervision and administration departments); Regulatory bodies from the judicial administrative organs and industrial and commercial administrative organs of the joint supervision into industrial and commercial registration administration organs (market supervision and administration department) of the separate management and supervision.

## 2.2. Lack of regulatory responsibility for legal service companies

(1) The establishment standards of legal service companies are arbitrary. Due to the lack of corresponding standard supervision and industry

access restrictions, legal service companies can only be registered, reviewed and put on record in the Administrative Examination and Approval Bureau in a short time according to the Regulations on the Registration of Market Entities and the Regulations on the Registration of Enterprise Legal Person, which directly leads to the establishment of legal service companies at will. Take Ankang City as an example, the author searched in the enterprise by keyword search "notoriety office" results total 199, "grassroots legal service office" results total 3249, "law firm" results total 786, search enterprise name, brand products, business scope includes "legal service" company results total 25825. In contrast, law firms, grassroots legal service offices, notary offices, judicial appraisal offices and other legal service market players, not only the establishment and daily operation of the judicial administrative organs under the supervision. At the same time, their practitioners must obtain practice certificates in accordance with the law before they can provide paid legal services to society within the legal scope of business. (2) Legal service companies are confused with other legal service subjects

Some legal service companies have the same or similar names with law firms and grassroots legal service offices, which is easy to mislead the public. In fact, Article 44 of the Measures for the Administration of Law Firms (amended in 2018) stipulates that law firms shall carry out business activities within the scope of business prescribed by law, shall not set up enterprises as sole proprietors, joint ventures with others or entrusted stock holders, appoint lawyers as legal representatives or general managers of enterprises, and shall not engage in other business activities unrelated to legal services. Therefore, a law firm cannot set up a legal service company separately. Likewise, a legal service firm is not allowed to set up a law firm. Secondly, some legal service companies solicit business under the banner of law firms or grassroots legal service firms. The public often confuse legal service companies with grassroots legal service firms or law firms and misinterpret those who provide legal services as lawyers, which also gives legal service companies opportunities to take advantage of.

## 2.3. The business scope of legal service companies is confused

The Provisions define the business scope of legal services that legal consulting service institutions can provide as follows: 1. Answering legal inquiries; 2. Drafting, reviewing and revising documents related to legal affairs on my behalf; 3. Acted as legal counsel; 4. Represent non-litigation legal matters. The Provisions have been abolished, and the legal service companies established in accordance with the law define their business scope as: legal consulting services according to the Expression Catalog of Business Scope Registration Standard (Trial) prepared by the State Administration for Market Regulation (hereinafter referred to as "Expression Catalog"); Arbitration and mediation services; Patent and other intellectual property mediation and arbitration services, all use the standard expression "legal advice (excluding law firm business)". In the scope of lawyer's business as stipulated in Article 28 of the Lawyers Law, there are also overlapping contents of "legal advice", "acceptance of arbitration and service". In other words, legal service companies can engage in part of the business of lawyers, but they are not subject to the supervision and constraint of the bar Association or the judicial administrative department, which violates the principle of relative equality of rights and obligations. In addition, in practice, some legal service companies undertake agency litigation business outside their business scope, solicit case sources and then introduce them to lawyers and other legal service personnel to act as brokers. Their behavior is obviously beyond the legal scope of business, in violation of the market supervision and administrative laws and regulations.

## **2.4. The promotion and publicity of legal service companies disturbs market order**

Compared with the strict restrictions on the promotion of lawyers' business in China National Rules of Conduct for the Promotion of Lawyers' Business (Trial), the business publicity of legal service companies is unscrupulous. [3] From the pickup tricycle "lawyers legal debt collection" advertising to flyer card type omnipresent promotion, legal service companies more name settlement of all kinds of arrears, engineering payments, dead debt deadbalance, search and marriage investigation of the banner of publicity, business promotion also from legal counsel, debt processing evolution to deal with bankruptcy overdue, suspended accounts and other matters, It can be said that all kinds of, everything. Second, legal service companies often promise results and brag about their ability to handle cases. On the one hand, for matters within the scope of business, some consulting firms achieve the purpose of receiving business by exaggerating the role of litigation behavior, implying relationship and promising the effect of handling cases. On the other hand, even for the business outside the scope of business, legal service companies will cooperate with law firms by acting as judicial scalpers. Consulting firms are responsible for signing orders and receiving cases, while law firms are responsible for discussing and handling cases. It not only violates the relevant provisions of the Law of Lawyers, but also causes the actual effect of the lawyer handling the case to be different from the high expectation promised by the consulting firm to the client, which eventually leads to a large number of complaints. Finally, some legal service companies compete in price wars to provide cheap services for the purpose of acquiring business, impinge on the ecological environment of the legal service market, violate the law of market value, and easily cause chaos in the legal market.

## **2.5. The illegal cost of legal service companies is low**

Although the judicial administrative departments in many places have cooperated with the market supervision and management departments to rectify the legal service companies, the effect of the crackdown is to cure the symptoms rather than the root cause. Different from the "Law of Lawyers" and "Regulations on the Administration of lawyers" detailed provisions on administrative punishment for lawyers, judicial administrative departments of rectification measures generally include on-site inspection, issued notice or put forward rectification suggestions, not registered approval and illegal business legal service companies can not be effectively banned and punished. Even if the individual legal service companies have been banned or revoked, because of its easy to set up, still can re-register, or do not register directly to the citizenship of the agent case, not only consumers can not find the corresponding competent departments for complaints and penalties, the judicial administrative department can not be thoroughly remedied, so that it does what it wants.

## **3. Improve the legal service company compliance construction countermeasures and suggestions**

### **3.1. Clarify the nature and business scope of legal service companies**

It shall clarify the nature of legal service companies, law firms and grassroots legal service offices, and distinguish the difference in identity between the staff of legal service companies and lawyers or legal aid workers. First of all, legal service companies are limited companies in nature and bear limited liability; Law firms, on the other hand, are partnerships (or individuals) with unlimited or joint liability. Secondly, the practitioners of the law firm must obtain the legal profession certificate or the lawyer profession certificate; Legal service companies have no corresponding restrictions on access to the industry. Therefore, on the one hand, the market supervision and management department should standardize the examination and approval of

legal service companies, especially the unified standardization of their names, which are different from legal service offices and law firms. On the other hand, the judicial administration department and the market supervision department regularly carry out law publicity, improve the legal awareness of the public, remind the public of the difference between legal service companies and legal service firms, law firms, lawyers and non-lawyers. In addition, the market supervision and management department can publicize to the society through the national enterprise credit information publicity system, so that the public can fully understand the credit and operating conditions of legal service companies. [4]

The legal consulting business of legal service companies falls within the scope of business in accordance with the provisions of the Catalogue of Representations, that is, the activities of legal consulting services for general civil acts do not need to obtain a license, but can only be operated with a business license. The legal consulting business here does not include the business that requires the practice license of law firms according to law. According to the restrictions on the registration of legal consulting services in the "Expression Catalog", the business that legal service companies can engage in only meets the contents of the fifth and seventh paragraphs of Article 28 of the "Lawyers Law", and at the same time excludes the prohibited matters stipulated in Article 13 of the "Lawyers Law": Cannot carry out legal services or engage in litigation and defense business in the name of a lawyer. Therefore, the business scope of a legal service consulting company should be limited to "legal advice" and "accepting commissions to participate in mediation and arbitration activities", and should not include legal counsel, litigation agency and other legal services.

### **3.2. Strengthen the supervision responsibility of legal service companies**

Legal service is a special market, and the practitioners should meet certain functions and the practitioners should meet the corresponding qualification requirements. Legal service companies are engaged in the legal industry, but do not belong to the judicial administrative department for examination and approval, supervision and assessment like law firms and legal service offices. They not only do not meet the requirements of equal rights and obligations, but also are not conducive to promoting the high-quality development of the legal consulting service industry. It is suggested to consolidate the joint management responsibilities of the market supervision and administration department and the judicial administration department for legal service companies, implement the spirit of the normative document [Sifa (2004)117], legal service companies shall still be approved and approved by the market supervision and administration department. On this basis, explore the establishment of a pilot supervision system in which the market supervision and administration department is the main part and the judicial administration organ is the auxiliary part. The implementation of the record registration, for the formation of professional supervision long-term mechanism to lay a solid foundation.

### **3.3. Punish legal service companies for disrupting market order**

First of all, it should be clear that the judicial administrative department has no legal basis to punish the behavior of legal service companies beyond the scope of business, according to the Guangdong Department of Justice "on whether social legal consulting service institutions engaged in litigation agency or defense business can apply the second paragraph of Article 46 for Direct punishment" (Yueji [2008]13) reply. The scope of application of the second paragraph of Article 46 of the Lawyers Law is limited to individuals who do not have a lawyer's practice certificate and engage in litigation agency or defense business for the purpose of seeking economic benefits. In other words, the illegal acts of legal service companies that exceed their business scope need to be punished by the market supervision and administration department in accordance with relevant laws and regulations. Secondly, the market supervision and administration department should strengthen administrative law enforcement

for the illegal behaviors of legal service companies beyond the scope of business, standardize the access of legal service industry, and build a standardized and orderly, professional and honest legal service market. The legal service companies that do not meet the requirements for establishment should be resolutely banned, and the legal service agencies that have not been registered in accordance with the law should be dealt with according to law; Legal service companies that have already been established shall not be changed or cancelled during the period of rectification; Where a registered legal service company obviously exceeds its business scope, conducts activities in the name of lawyers, causes heavy losses to the parties due to incompetence, fails to handle changes, cancel registration, annual inspection and other illegal acts in accordance with relevant laws and regulations, The legal service companies shall be given corresponding administrative punishments such as warning, fine, suspension of business for rectification and confiscation of illegal income; Where the legal service market order is seriously disturbed, the business license shall be withheld or revoked according to the circumstances, and the relevant responsible persons shall be investigated for their criminal responsibilities.

#### 4. Conclusion

The legal service market is an indispensable part of the socialist market economy, and effectively maintaining the order of the legal service market is an inevitable requirement for building a business environment sound under the rule of law. In practice, some legal service companies still have illegal behaviors that disturb the legal service market. By clarifying the nature of legal service companies, strengthening their regulatory responsibilities and increasing the illegal costs, we can promote the sustainable and healthy development of legal service companies and the legal service industry.

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