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From Civil Breach of Contract to Criminal Breach of Trust-The Double Limit of Conviction Standard

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Abstract. The 'Criminal Law Amendment (12)' expands the subject of several kinds of breach of trust crimes to the internal personnel of private enterprises. Its breach of trust behavior is often difficult to distinguish under the dual regulation of civil default and criminal breach of trust, and the threshold of conviction needs to be particularly cautious. From the perspective of behavior, only those illegal acts that are based on a high degree of trust, abuse of power in a more subtle way, and subjectively have specific malicious acts such as profit or harm, can have the basis of criminal punishability. In terms of the result elements, we should strictly grasp the scale of major losses, requiring that the harm be actual and significant, with a direct causal link to the breach of trust. At the same time, the step-by-step measurement method of civil punishment after punishment can type the abstract double limit standard and reasonably explain the conditions of conviction for breach of trust crime.

Keywords: private enterprises, civil breach, criminal breach of trust, civil penalty cross

1. Introduction

The adoption of the "Criminal Law Amendment (12)" extends the criminal subject of articles 165,166 and 169 of the "Criminal Law" from the traditional state-owned enterprises and companies to the category of private enterprises, and responds to the development of the private economy. The profound requirements of the urgent need for equal protection of the legal substance to enhance the confidence of private enterprises in the development of private enterprises.

This expansion has aroused extensive discussion in the academic circle. The perspective of criminal law focuses on the similarities and differences between the nature of legal interest infringement, the interpretation of constitutive elements and the traditional crime of breach of trust. For example, Professor Bai Langtao points out that China's legal provisions are different from those of Germany, so it is not necessary to draw lessons from its typed practices of "abuse of authority" and "breach of trust," but should adopt the typed practices of "improper agency behavior" and "non-agency behavior." [1]; civil and commercial law scholars focus on the supplementary application of the "Company Law" under the existing provisions of the "Civil Code." Professor Ye Lin pointed out that the duty of loyalty is a specific rule derived from the principle of good faith. When explaining the duty of loyalty, judges should not only pay attention to the interaction between Article 147 and Article 148 of the "Company Law" in China, but also pay attention to the interaction between the duty of loyalty and the principle of good faith [2]. The discussion of the connection between the two

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also emphasizes their respective differences and independent values, but rarely answers the ladder and comprehensiveness of the above three types of crimes in terms of 'breach of duty of loyalty' and 'subjective intention' from the perspective of civil and criminal law.

In view of this, this article will try to construct a double-limited framework from civil breach of contract to criminal breach of trust, that is, only when the behavior essentially breaks through the general trust relationship in civil law and there is a clear subjective intention (the first limit), and the result is wrongful. The degree of significant loss worthy of punishment (the second limit) can realize the leap from general civil violation to criminal crime. The purpose of this study is to provide a theoretical reference for the accurate application of the 'Criminal Law Amendment (12)' and prevent the improper intervention of criminal means.

2. First restriction: substantive judgment of illegal behavior

Conforming to a specific behavior is the primary premise and core content of judging whether an act constitutes a criminal crime. In this paper, the 'behavior' is understood in a broad sense, that is, it includes not only the objective behavior and consequences, but also the subjective purpose and intention of the actor, so as to adhere to the criminal law principle of the unity of subjective and objective in the first normative limit. Accordingly, the establishment of the crime of breach of trust in private enterprises depends on the premise of a high degree of special trust relationship at the behavioral level, with the objective performance of abuse of disciplinary authority or breach of trust obligations, and with the subjective intention of profit or harm as the necessary intention.

2.1. Behavior premise: there is a special trust relationship

There is no unified conclusion on the concept and essence of breach of trust at home and abroad, but a consensus premise is that the addition of breach of trust crime against private enterprises must take 'the person handling affairs for others' as the main element. Therefore, whether it is a civil breach of contract or a criminal breach of trust in the perspective of 'company law', there is a certain contract integrity, that is, there is a certain trust relationship between the subjects. First of all, this relationship is refined into the duty of loyalty of directors, supervisors and senior managers in Article 180, paragraph 1, of China's "Company Law," and in paragraph 3, the subject of obligation is extended to the controlling shareholder and the actual controller who does not serve as a director of the company but actually performs the company's affairs. The academic community generally believes that the duty of loyalty refers to the fact that directors, supervisors and senior managers are honest and trustworthy when performing their duties in the company, and always take the best interests of the company as the standard to measure their performance. When their own interests, including the interests of the third party who has an interest in themselves, conflict with the interests of the company, directors, supervisors and senior managers must focus on the interests of the company and must not put their own interests or the interests of the third party who has an interest in themselves above the interests of the company [3]. This is in line with the subjective disregard of the agreement between the two parties under the punishable intentional breach of trust, improper performance of obligations, and damage to the interests of others [4]. The subjective mentality and objective results are highly homogeneous. Secondly, as the premise of breach of trust, the trust relationship is mainly established through two ways: one is the direct authorization and regulation of the law, such as the loyalty obligation of the company law to the special subject of the board of directors and supervisors ; the second is the special contract agreement between the parties. The former constitutes a legal trust requirement for a specific identity subject, which is usually

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mandatory ; the latter can extend the fiduciary duty to a wider range of civil subjects, which can be created according to the company's articles of association, principal-agent and other procedures.

Although both of them have exceeded the trust of ordinary traders as the basis of personal relations, the degree of trust required to constitute the crime of breach of trust is higher, and the damage caused by violation is greater. Otherwise, its accountability will be tantamount to the norms of the pre- 'company law' . On the basis of fully paying attention to the content of the above-mentioned 'Company Law' provisions, based on the differences in the legislative purposes of different departmental laws, we should still adhere to the independent judgment position of criminal illegality [5]. The legal responsibilities of breach of contract and breach of trust are different, and the key lies in the higher degree of dependence of breach of trust on the obligation of trust. On the one hand, the reliance interest regulated in the criminal field has strong personal attributes and unilateral entrustment. It is difficult to meet the basic principle of equivalence of crime and punishment by relying solely on the filling and interpretation function of the principle of good faith in the civil code. On the other hand, respecting and, if necessary, assisting the implementation of the agreements reached voluntarily by the parties with the state's coercive force is crucial to building an honest trading environment, reducing transaction costs and achieving market prosperity [6]. It can be seen that relying solely on civil compensation and internal accountability of private law cannot meet the needs of the development of social and economic order. Violating this trust is a direct impact on the basic principal-agent structure of society. As mentioned above, although the connotation of the duty of loyalty is similar to that of breach of trust, only the degree of serious breach of the duty of loyalty can reach the threshold of three types of breach of trust, but the basic relationship on which the crime of breach of trust is based is compared with the trust in the field of private law, which touches on the high trust of identity attribute.

2.2. Behavior: abuse of disposition authority or breach of trust obligation

The typical behavior of the crime of breach of trust is controversial, and the representative ones are 'breach of trust', 'abuse', 'transaction processing' and so on. The provisions of the crime of breach of trust in Germany's current 'criminal law' synthesize the theory of abuse of authority and the theory of breach of trust. Article 266, paragraph 1, stipulates that: 'If the actor abuses the authority to control the property of others or to make others obligated by law, official entrustment or legal relationship, or infringes on the obligation to manage the property interests of others assumed by law, official entrustment, legal act or trust relationship, resulting in the loss of the property interests of the principal, he shall be sentenced to freedom of up to 5 years or a fine [7].' Whether it is a violation of the duty of loyalty or a violation of the fiduciary duty, the core is that the actor, as an extension of his own transaction processing, does not process the transaction with his own best interests as the goal, and does not obey his own interests when the interests of himself or a third person conflict with his own interests [8]. The three breach of trust crimes added to the 12th Amendment to the Criminal Law vary in specific behavior patterns, but the structure of the three acts is centered on the abuse of disciplinary authority or breach of trust obligations. Similarly, the 'Company Law' clearly clarifies that the subject of the duty of loyalty of directors, supervisors and senior managers should avoid engaging in acts that conflict their own interests with the interests of the company in a prohibitive manner. It can be seen that the commonness of the two lies in the violation of the special trust relationship.

Although both of them are based on the premise of violating their tasks, the author believes that the key to distinguish the two is that the breach of trust behavior regulated by the 'Company Law' is mostly unauthorized disposition or fraud, while the behavior punished by the criminal law focuses

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on the right but abuses the trust relationship, which has strong concealment and deception, and causes more damage to the direct company loss and indirect market transaction order. As a civil and commercial law, the breach of trust regulated by the 'Company Law' is more directed at the abuse or fraud of relatively explicit rights, such as typical unauthorized disposition, self-dealing or usurpation of corporate opportunities. These acts are often identifiable in form, and their remedies are mainly through civil compensation, the exercise of disgorgement and other measures. In contrast, the typical feature of the crime of breach of trust is that the perpetrator abuses his fiduciary status and authority by virtue of legal authorization and position trust. This kind of behavior is deeply integrated in normal business decision-making or complex transaction structure, which is highly professional and hidden. Specifically, Article 165 and Article 166 of the unamended Criminal Law require the perpetrator to 'take advantage of his position' .Although the second paragraph of Article 165 and the second paragraph of Article 166 do not explicitly mention 'take advantage of his position', combined with system interpretation and literal interpretation, 'take advantage of his position' is still an indispensable element of establishment [9]. According to the semantic interpretation and systematic interpretation, the "directly responsible person in charge" in article 169 also includes the use of position convenience as an essential element. This means that the criminal law excludes other acts of breach of trust that are not based on the nature of power. First, it avoids the suspicion of excessive interference in market transactions by improperly expanding the scope of punishment ; the second is the embodiment of the principle of culpability. The decision-making generated by the use of authority is mostly manipulative. It is this characteristic that makes it not only directly cause significant losses to the company's property, but also fundamentally erode the trust foundation on which corporate governance depends. The transaction security and efficiency of the entire market will be systematically threatened.

2.3. Subjective elements: the purpose of profit or harm for others to deal with affairs

In addition to the objective behavior, the subjective aspects of the general civil breach of contract and breach of trust crime cannot be ignored. First of all, criminal breach of trust requires a rise from a large number of civil negligence or business risks contained in the pre-existing company law to intentional crimes, with stronger subjective malignancy. What is closely related to this is that there is no clear provision on whether the specific purpose of profit or harm is one of the elements of the crime of breach of trust in China, and the academic circles at home and abroad have not formed a general theory. The author agrees with the inclusion of specific purpose elements. First, it is conducive to the application of the ladder of civil and criminal cohesion. The specific purpose elements have made appropriate restrictions on the conditions of constituting a crime from both formal and substantive aspects, effectively avoiding the new charges from becoming pocket crimes. Specifically, first, Article 165, Article 166 and Article 169 of the Criminal Law exclude the possibility of major negligence in the pre-civil and commercial norms, requiring that the perpetrator must be aware that his breach of trust will harm the interests of the company, and hope or allow the result to occur, which is the first step. Secondly, taking the specific purpose as the threshold of conviction means that the criminal law focuses on the most despicable and most impure active betrayal. The mere intentional damage to the company is not enough to constitute a criminal offence. It is also necessary to find out whether the perpetrator is to profit a particular third party or to damage the company, that is, the second step. This is also the key to distinguish criminal breach of trust from general business risks, judgment errors and even intentional breach of trust regulated by some company laws.

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Secondly, for the criminal law itself, the purpose elements fit the protection of the legal interests of the crime of breach of trust, and then play the function of distinguishing this crime from that crime. On the one hand, the crime of breach of trust in private enterprises is set in the third chapter of criminal law, that is, under the crime of destroying the order of socialist market economy. According to the interpretation of the system, the purpose of protecting private enterprises'breach of trust crimes should include a certain degree of order legal interests in addition to the core of property interests. Therefore, it is better to clarify the legal interests infringed by the crime for the purpose of dealing with the affairs of others for the purpose of profit or harm than the simple intention. On the other hand, there is a crime of duty encroachment in China's criminal law, which is highly coincident with the crime of breach of trust in the subject, objective aspect and object of crime. If the crime of breach of trust cannot be effectively distinguished from other crimes at the level of constitutive elements, the concurrence of laws and the problem of imaginative concurrence in judicial practice will lead to the adverse consequences of judicial conviction confusion [10]. The judgment with specific purpose as the element is undoubtedly more conducive to the judgment and application of judicial practice, and to distinguish the charges from the formal standard.

Thirdly, because there is no clear standard for the judgment of subjective purpose, which is not conducive to the determination of judicial practice, it is still necessary to combine the presumption of objective behavior. Typical profit-seeking purposes are often presented as a high degree of synchronization and correspondence between breach of trust and third-party benefits in objective behavior. This correspondence is not only reflected in the close connection of time, but also in the shift of economic interests. In addition, the construction of complex transaction structures to cover the flow of final interests, and the acquisition of indirect returns from third parties after the implementation of breach of trust, can provide an objective factual basis for the presumption of profit. The typical purpose of injury, its objective behavior can be characterized by self-destruction and destructiveness. For example, without any reasonable commercial reason, maliciously destroy or divulge the company's core business secrets or key technical information ; or when the company is facing operational difficulties, take a management decision that significantly aggravates the crisis and deviates from common sense. Such behavior is often difficult to explain with business mistakes or risk appetite. It needs to be clear that the purpose of profit and the purpose of harm are the constituent elements of choice, and there is no need to make a strict distinction between the two in normative evaluation. In practice, the two often show a close relationship or even intertwined state: the act of seeking illegal interests for a specific third party directly damages the interests of the company ; the behavior aimed at damaging the company may also indirectly benefit third parties such as competitors. In practice, this requires the court to make a comprehensive judgment based on the company's operating conditions, industry practices, the actor's responsibilities and cognitive level, and adhere to the principle of unity of subjectivity and objectivity.

3. The second limit: the measurement of the degree of wrongfulness of the result

In addition to the special requirements of the way of behavior, most of the breach of trust crimes are based on the occurrence of specific damage results. When evaluating the damage results of breach of trust, we should adhere to the principles of prudence and modesty, build a step-by-step identification standard based on direct and substantial property damage, limit the expected and indirect interests, take into account other comprehensive hazards according to external objective behaviors, and strictly test the causal relationship between behavior and results, so as to achieve a reasonable division with civil and commercial tort liability.

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3.1. Substantive measurement of property damage

In the legal evaluation system of breach of trust, the identification of damage results is an important part of connecting behavior and responsibility. The three new breach of trust crimes in the "Criminal Law Amendment (12)" have the result elements of "causing significant losses to the interests of companies and enterprises." Among them, the distinction between direct economic loss and indirect available interest not only involves the calculation of damage, but also profoundly reflects the fundamental differences between civil liability for breach of contract and criminal breach of trust in terms of legislative purpose, standard of proof and functional orientation. The crime of criminal breach of trust should focus on cracking down on acts that cause direct, significant and quantifiable economic losses, while maintaining a highly cautious attitude towards the loss of indirect benefits.

In order to further clarify the gradient relationship between criminal consequences in civil and commercial law and criminal law, it is necessary to briefly explain the connotation characteristics of direct economic losses and indirect available benefits. Direct economic loss refers to the reduction or destruction of the victim's existing property or rights and interests, which is direct and definite. Indirect available benefits point to future property income. It is characterized by indirectness and probability. Therefore, according to the characteristics of the above-mentioned different types of property losses, it can be seen that the two are significantly different in the difficulty of identification. The impairment of real property is relatively easy to identify, and the reduction of expected income needs to be judged more carefully [11]. This means that the two will be different in the standard of proof, and the proof of indirect loss of profits should be more stringent evidence to be included in the scope of consideration.

It is inevitable that criminal breach of trust focuses on combating direct economic losses. First, direct economic loss is a real harm to the existing legal interests of the company's property rights, and its infringement is determined and serious. Taking it as the main standard of conviction is in line with the basic position of criminal law to protect major and specific legal interests. Secondly, the identification of direct losses depends on objective evidence such as financial documents and asset evaluation. The standard of proof can meet the strict requirements of criminal 'facts are clear, the evidence is true and sufficient', avoiding the judicial determination into speculation and assumption, in line with the principle of legality. In addition, the criminal law does not completely exclude the consideration of indirect losses, but its determination must be subject to extremely strict restrictions. When the expected interest has a high degree of reality and certainty, it can be identified as a significant loss.

In contrast, norms in the civil and commercial fields such as 'company law' assume the function of filling the damage more comprehensively at the level of legislative purpose, and try to restore the complete rights and interests of the parties by compensating for direct and indirect losses. Secondly, the standard of proof of civil litigation 'high probability' can accommodate this uncertainty. The looseness of civil identification is also the full embodiment of the principle of private law autonomy.

3.2. Comprehensive measurement of harmful consequences

As mentioned above, at the level of judging the illegality of the result, although the amount of property loss is important, it is not the only standard. Criminal strikes should still consider other comprehensive circumstances to measure significant losses. On the one hand, only taking the reduction of the amount of property as the result of criminal breach of trust is not conducive to the complete realization of the purpose of criminal law protection. Whether the loss is significant or not can be considered separately through the two dimensions of economic amount and the degree of

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damage to the business order. The composite evaluation system also fits the complexity of the content of legal interests in the three crimes [12]. For example, the actor sells assets to relatives and friends at a price slightly lower than the market price. Although the amount of book loss may not be large, its behavior seriously damages the fair trading rules and internal supervision order of the market, corrodes the management foundation, and thus also has criminal illegality.

On the other hand, comprehensive consideration of factors such as market factors, business difficulties, and decisions made through the company's legal procedures can be used as grounds for criminalization, and it is not appropriate to attribute all of them. Taking the procedure made by the company's legal and legal procedures as an example, the collective decision-making made through the shareholders'meeting, the board of directors and other legal procedures means that the business risk has been known and accepted by the company as a legal entity. The potential loss of decision-making has been absorbed by legal persons and is no longer the product of individual breach of trust. For another example, although the perpetrator has implemented a breach of trust, the company's economic losses are not caused by its breach of trust, but by other market factors. Then, the company's damage results cannot be attributed to the perpetrator. At the same time, although the actor has committed breach of trust, if the company's business activities are not competitive and lose market share, the actual situation should be fully considered when determining that the actor has obtained illegal benefits [13]. To sum up, when cracking down on breach of trust, the criminal law should not only keep the bottom line of property protection, but also accurately point to its illegal nature of destroying economic order, so as to realize the unity of modesty and effectiveness of criminal law.

3.3. The measurement of causality between behavior and result

There must be a logical correlation between the behavioral elements and the result elements in the criminal law, and the causal relationship is the core content of the review of the result crime. The following two conditions need to be met.

First of all, there should be a direct causal relationship between the behavior and the result of criminal breach of trust. The direct causal relationship here does not mean that the behavior must be the only reason for the result, but emphasizes that the causal behavior in the criminal law has a dominant or high contribution to the generation of harmful results, and its causal chain should not be interrupted by excessive intervention of other independent factors. Correspondingly, indirect factors should be excluded. If the loss is mainly caused by other subsequent, independent decisions or events, it may cut off the direct causal relationship between the initial breach of trust and the final loss, and the initial breach of trust may only establish a general degree of civil default.

Secondly, the causality should distinguish between market risk, business failure and criminal breach of trust, which is also a reference for distinguishing general civil breach of contract and criminal punishment. First, the losses caused by force majeure, such as earthquakes, wars, public health emergencies, or completely unforeseen accidents, are completely beyond the actor's ability to foresee and control, and can be used as a ground for exemption or mitigation of liability in the civil field. It does not constitute a civil breach of contract, and there is no reason to become a threshold for criminal offenses. Secondly, due to their own fault, strategic mistakes and other circumstances, although the objective behavior is in line with the constituent elements of the breach of trust crime of private enterprises, and the actor has subjective fault, but there is no direct and decisive causal relationship with major losses, civil litigation should be given priority to pursue its liability. This requires that, combined with the subjective and objective elements and the strength of the

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relationship between behavior and results, the general management negligence and misjudgment should be attributed to the category of civil or administrative regulation.

4. Double limited judicial integration and rule construction

In the crime of breach of trust, the application of double limits should be a complete demonstration closed loop from the construction of entity standards to the application of specific scenarios, and then to the protection of procedural mechanisms. First of all, in the construction of rules, we should follow the system logic of judging whether the behavior has the illegal core first, and then evaluating whether the damage result reaches the criminal level. Secondly, in the application of judicial type, through the development of related party transactions ; high-risk investment ; three typical behavior patterns of unauthorized misappropriation and disposal of company property transform abstract principles into operable judgment rules. Finally, it puts forward the supporting guarantee in the procedural law, and advocates the review order of civil punishment before punishment, so as to avoid the improper intervention of judicial power in the space of enterprise autonomy, so as to achieve the balance between accurately combating breach of trust crime and fully protecting the business vitality of private enterprises.

4.1. The logical relationship and applicable rank of double standards

The establishment of the crime of criminal breach of trust must be combined with the double limitation of the above behavior and result, so as to effectively distinguish the illegality from civil breach of contract to criminal breach of trust. Specifically, we should follow the rank system of first-in-first-outcome.

First determine whether to meet the core of the behavioral level. The feasible review order is: on the premise that the company has a special trust relationship with a specific individual, it is clear that its behavior meets the circumstances of violating the trust obligation or abusing the disposition authority, and finally integrates the subjective malicious intention of the actor. Only when the above three steps are met at the same time, the behavior can have the core of the crime of criminal breach of trust and obtain the qualification to enter the next stage of examination. If any step is not met, the case should be excluded from the criminal field, and may only involve civil compensation or internal accountability.

Then judge whether the damage harm reaches the order of magnitude. After confirming that the act has the core of criminal illegality, it is also necessary to examine whether the objective harm caused by it has reached the severity of the need for criminal sanctions. At this stage, most of the views based on the content of the legal interests of breach of trust crime can clearly define that the direct and actual major losses in property losses should be the primary standard, and the indirect expected losses should be strictly limited to be included in the evaluation ; in general, it is also necessary to consider non-quantitative factors such as market risk and operating errors, so as to fully and objectively complete the interpretation of the results.

4.2. The typological development of the standard of conviction

In view of the complexity of commercial activities, a single standard of conviction is difficult to cover all situations. In order to prevent the false or abuse of standards, it is necessary to combine the occurrence field and behavior pattern of breach of trust, type the 'double limit' standard, and provide

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more operational guidance for judicial practice. The following is an application of three representative types of breach of trust.

Type 1: breach of trust in related party transactions. In the context of company law, related party transactions are transactions formed between affiliated enterprises or affiliated persons, generally speaking, transactions formed between a particular company or its affiliated companies and its affiliated enterprises or affiliated persons [14]. This kind of transaction itself has commercial necessity and efficiency value, but because of the special relationship between the two parties, it is easy to break away from the normal market fairness principle, so it has become the focus of legal regulation. First of all, according to the first limit, the focus is on whether the actor takes advantage of information superiority and control status, which violates the core obligations of 'fair trade' and 'loyalty to the company', not just procedural flaws. Therefore, a simple procedural violation usually only constitutes a civil breach. This mainly refers to the failure to perform or improperly perform the internal decision-making procedures stipulated by laws and regulations and the company's articles of association, such as the approval of the shareholders'meeting or the board of directors. Although such violations undermine the order of corporate governance, they mainly violate the established procedural rules. The transaction itself may not be unfair in essence, and the subjective mentality is not for the purpose of profit or harm. However, if the behavior has gone beyond the procedural flaws and risen to the abuse of substantive control or information advantage, the company's interests are illegally transferred to related parties or individuals and have a specific purpose, it can enter the next limit for further evaluation. Secondly, according to the second limit, the calculation of damage should not be limited to book losses, but also include hidden damages such as loss of opportunity interests and depreciation of the company's market reputation. In this case, the key to the distinction between general civil breach of contract and criminal breach of trust lies in whether the actor simply violates the disclosure procedure or uses related party transactions for interest transmission.

Type 2: high-risk investment or business decision-making errors. Normal business risk decision-making is an uncertain business or investment decision made by the company's managers for the company's interests based on reasonable business judgment on the basis of sufficient information and procedural compliance. Market policy encourages this kind of healthy operation mode with civil operation autonomy. However, the actor uses his position convenience and control position to place the company's assets in extremely high and unnecessary risks in pursuit of personal self-interest. This behavior has been separated from the scope of general business risks and constitutes a fundamental violation of the duty of care and the duty of loyalty. In order to accurately distinguish the two, it is also necessary to adopt a double-limit step-by-step judgment. First of all, in the first redefinition, the spirit of 'business judgment rules' is introduced to examine whether the decision-making process is reasonable. If the decision obviously violates the authorization of the company's articles of association, ignores the basic risk assessment, or even for personal purposes, it constitutes a serious violation of the duty of care. The business judgment rule is an important valve to regulate the authority and explanation obligation of the board of directors. Its important value lies in encouraging operators to optimize the allocation of resources [15]. Therefore, if a decision does not collect sufficient information, the risk and the income are extremely mismatched, or the established procedure is seriously violated, it can indicate that the actor has seriously deviated from its due prudent management obligation, and the so-called business judgment defense cannot be established. Secondly, under the second limit, the reality and certainty of the damage should be emphasized, and the floating profit and loss based on market fluctuations should be excluded. Only when the illegal operation directly leads to the loss of assets or the formation of irreparable losses, it enters the

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criminal evaluation. This shows that the abnormal intervention factors can be prevented from illegality according to the comprehensive evaluation of damage or the direct and dominant causal relationship elements, so as to effectively avoid the improper expansion of the scope of punishment. In this type, the boundary between civil breach of contract and criminal breach of trust is to distinguish between normal business risks and gambling speculation carried out by abuse of power.

Type 3: unauthorized misappropriation and disposal of company property. First of all, the core of the first limit is to find out whether the actor has the purpose of illegal use or possession subjectively through the appearance of capital transfer, and to prove it objectively according to whether the act sufficient to reflect the purpose is implemented. Specifically, through the circumstances of the actor's misappropriation of funds, the willingness to return, and whether to set up a secret account, it is judged whether it seriously deviates from its fiduciary duties of custody and proper use of funds. Taking the use of misappropriated funds as an example, whether the funds are used for the company's temporary turnover, emergency affairs, or for the actor's personal consumption, debt repayment, high-risk investment, or other private areas that are clearly unrelated to the company's business can initially prove the actor's subjective willingness to repay. Secondly, the core of the second limit needs to examine the reality and significance of the damage, and determine the degree of damage in combination with the duration of misappropriation and the consequences of capital chain rupture. At this time, the boundary between civil breach of contract and criminal breach of trust is to distinguish between general illegal borrowing and misappropriation with intention of illegal possession.

From this point of view, through the concrete description of the degree of breach of obligation and the form of damage result in different scenarios, the standard of 'double limitation' is transformed from theoretical principle to perceptible and comparable judgment rules, so as to draw a relatively clear judicial red line between civil breach of contract and criminal breach of trust.

4.3. Supporting guarantee in procedural law

Punishing the breach of trust of private enterprises, maintaining market order and enhancing transaction confidence not only need the interpretation basis of substantive law, but also need the supporting guarantee of procedure.

At the level of civil and criminal cohesion, the order of reviewing criminal breach of trust after reviewing civil breach should be maintained. The main reasons for the rationality of the review idea of "civil punishment after punishment" are as follows. First, the amendment adds the illegal element of 'violation of laws and administrative regulations' to the three types of private enterprises' breach of trust crimes, which requires that the civil and commercial law screening must be applied in advance in the practice process to only constitute a general breach of trust. First of all, it is necessary to judge whether the behavior of the actor constitutes a violation of the legal obligations or contractual obligations such as loyalty and diligence, and the civil liability it should bear according to the civil and commercial laws and regulations such as the "Company Law" of the "Civil Code." Secondly, only on the basis that the act is first identified as a civil and commercial violation, it is necessary to further examine whether the degree of violation is serious enough to require the use of penalties.

Second, private enterprises are different from state-owned enterprises and other enterprises. Under the trend of equal protection of the two, we should pay attention to substantive equality, and the procedural process of civil punishment is conducive to fully respecting the principle of autonomy of private enterprises. Behind the property of state-owned enterprises is state ownership, and the behavior of their managers has the attributes of agency and public service. Criminal

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regulation has more public law color and the purpose of maintaining the safety of state-owned assets. The property rights of private enterprises are private rights in essence, and their internal trust relationship is first adjusted by private law contracts such as the company's articles of association and shareholder agreements. Internal governance, risk-taking and dispute resolution should respect the autonomy of the enterprise to the greatest extent.

At the level of evidence proof, criminal channels should be used again under the condition that civil relief is exhausted or invalid. On the one hand, in civil litigation, through evidence exchange and court investigation, the specific circumstances, subjective state, damage scope, market risk, self-fault and other factors of the actor's breach of obligation can be fully identified. This provides a solid evidence foundation for the subsequent judgment of whether the circumstances are serious enough to constitute a crime. On the other hand, civil remedies are softer than criminal law. Exhaustion means that the parties have actively sought private law channels such as negotiation, arbitration, and civil litigation. It is still difficult to make up for major losses or losses that cannot be recovered, which indicates that the dispute has gone beyond the scope of private law autonomy.

5. Conclusion

This paper makes a systematic analysis of the criminal law applicable boundary of the crime of breach of trust in private enterprises. At the theoretical level, through in-depth analysis of the connotation differences of core elements such as trust relationship and specific purpose in different fields of civil and criminal law, the research innovatively puts forward a double-limited step-by-step judgment standard from behavior core review to damage magnitude evaluation. At the practical level, the research provides clear and operable guidance for judicial practice by typifying and comparing the above abstract standards in three typical situations. At the same time, the concept of civil procedure after criminal procedure provides a rational path for dealing with the crime of breach of trust in private enterprises, which helps to prevent criminal means from over-intervening in the civil field. Looking forward to the future, the civil and criminal connection mechanism of breach of trust still needs to be deepened. On the one hand, with the continuous innovation of business model, the pattern of breach of trust will become more hidden and complex, and judicial practice should interpret the corresponding constituent elements in a case that conforms to the development of the times. On the other hand, legislation can summarize judicial experience and further strengthen the synergy between civil and commercial law and criminal law. Finally, a clear-cut, orderly and orderly legal responsibility system should be constructed to maintain market integrity and stimulate economic vitality in the most appropriate way of rule of law.

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