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Research on Legal Procedural Functions of Forensic Accounting

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Abstract

Since its emergence in America, forensic accounting has become an utmost concern of scholars in different countries. Since the introduction of forensic accounting into China in the late 1990s, most scholars have done research on forensic accounting from the perspective of accounting, but few of them have done it from multiple perspectives like legal science. On the basis of localizing forensic accounting in China, creating forensic accounting profession, and promoting the joint development of accounting and legal profession, we should explore the basic theory of forensic accounting, such as its values and functions. Forensic accounting is socio-professional activities which blend accounting and law and has its specific values and functions. Its ultimate goal is to safeguard the property of a legal subject. Forensic accounting can implement powerful legal, economic, social, and political functions. This paper explores the legal procedural functions of forensic accounting to provide a basic clew for establishing a forensic accounting function system with Chinese characteristics.

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1. Introduction

Since its emergence in America, forensic accounting has become an utmost concern of scholars in different countries. Since the introduction of forensic accounting into China in the late 1990s, forensic accounting research has become an upsurge in the accounting school of China. Hundreds of papers have been published, but most of them have done research on forensic accounting from the perspective of accounting instead of from multiple perspectives, including legal science. On the basis of localizing forensic accounting in China, creating forensic accounting profession, and promoting the joint development of accounting and legal profession, we should explore the basic theory of forensic

accounting, such as its values and functions. Forensic accounting is socio-professional activities which blend accounting and law and has its specific values and functions. Its ultimate goal is to safeguard the property of a legal subject. Forensic accounting can implement powerful legal, economic, social, and political functions. This paper explores the legal procedural functions of forensic accounting to provide a basic clew for establishing a forensic accounting function system with Chinese characteristics.

2. Basic connotation of forensic accounting

It is universally considered both home and abroad that forensic accounting takes courts as its working goal and criminal or civil lawsuits as its basic service orientation. Its goals are limited to giving expert advice, that is, an expert report or accounting expert evidence, through investigations or identification. Expert advice is presented to a court and used as expert evidence or court evidence. After cross-examination, expert evidence is adopted as referee evidence by judges to determine whether the defendant should bear legal liability. Expert advice provides litigation support. In this sense, forensic accounting is equivalent to lawsuit accounting or court accounting. It does not reveal the nature of forensic accounting. On the basis of localizing forensic accounting, promoting scientific development, creating a new profession, and developing economy, we should define the basic connotation of forensic accounting as follows: forensic accounting is socio-professional activities in which a specific legal subject uses law, accounting, audit, and assessment to handle and solve the problems of illegal encroachment, damages, value maintaining, and value adding.

2.1. Forensic accounting is socio-professional activities

Accounting has evolved from ancient accounting into modern accounting in the 1950s. Respective requirements for accounting information inside and outside an enterprise make accounting gradually split into two subsystems, that is, financial accounting and management accounting. Both of them are socio-professional activities. Audit is the deepening and fragmentation of accounting supervision. Law reflects the will of the state to establish, manage, and develop social, economic, and political order. Forensic accounting is a compound discipline which merges accounting, audit, and law. Forensic accounting practices are property maintenance and supervision behavior. They aim to maintain and add the value of a legal subject's property, take the legal system as the criterion, and take economic business facts as the basis. They are socio-professional activities.

2.2. Forensic accounting is socio-professional activities of a specific legal subject

Forensic accounting practices should be implemented by specific professionals (that is, forensic accounting personnel or forensic accountants) who have acquired a complex knowledge of law, accounting, audit, and assessment. They include judicial subjects, administrative subjects, organization subjects, intermediary subjects, and international subjects. Forensic accounting subjects take up forensic accounting work by taking complex knowledge structure as the basis, relying on multiple tools and taking laws and regulations as the basis.

2.3. Professional activities of forensic accounting must employ multiple tools, including law, accounting, audit, and assessment

Forensic accounting practices must rely on multiple tools. First, they must employ legal tools, such as lawsuits, arbitration, consultation, mediation, and negotiation, to govern false accounting, recover the encroached property and claim damaged. Second, they must employ accounting tools, such as certificate preparation, record books and reports, to truly reflect a subject's accounting information, financial

conditions, business results, and physical property. Third, they must employ audit tools, such as government audit, organization audit and social audit, to fully audit the truth, legality and benefits of a subject's financial accounting information and reflect and supervise the truth of the subject's property. Fourth, they must employ assessment tools, such as value assessment, damage assessment and credit assessment, to assess the value, losses, damages, value maintaining, and value adding of a subject's property and fully reflect the objective state of the subject's property.

2.4. Professional activities of forensic accounting aim to safeguard the order of social property

Forensic accounting practices provide expert evidence and lawsuit evidence for a court, but this is not its ultimate goal. The ultimate goal of forensic accounting is to recover the encroached property of a subject, to claim damages, to renew the legal property status of the subject and to safeguard the harmonious and effective order of social property by providing expert advice and lawsuit evidence.

2.5. Professional activities of forensic accounting handle and solve the problems of illegal encroachment, damages, value maintaining, and value adding of a subject's property

With the fast development of market economy, there are more and more forms and means of property encroachment crimes. Consequently, it is more difficult for courts and arbitral institutions to investigate them. In this case, forensic accounting experts must offer help to make a comprehensive analysis of specific cases and non-litigation services and issue lawsuit evidence and loss measurement reports. Lawsuit evidence and loss measurement reports will be taken as an important basis for courts and arbitral institutions to judge cases and to solve the problem of illegal encroachment and damages of a subject's property. A market subject's property keeps flowing in its normal state and aims to maintain and add its values. By employing multiple tools, forensic accounting experts protect different subjects' property from investment risks, operating risks, accounting risks, and legal risks to maintain and even add the values of their property.

3. Function of forensic accounting to assist in investigations

Investigation is the initial stage of punishing criminals and investigating into the criminal responsibility. The faster the market economy develops, the more and more property encroachment crimes there will be. Besides, such crimes have new characteristics. First, there are more and more criminal means. It is hard for accounting professionals and audit professionals to identify and find out such crimes by using the knowledge of a single speciality. It is harder for investigators lacking in audit and accounting knowledge to judge such crimes. Only forensic accounting professionals with a complex knowledge structure can identify and judge such crimes and help investigators find out the accounting facts which involve crimes. Second, the objects of crime are constantly alternating. Such crimes are aimed at state-owned assets, collective assets, organization assets, and personal assets. Specific professional advantages of forensic accounting can, at any time, guarantee the overall exercising of investigative organizations' functions with the alternating of objects of crimes and find out the facts. Third, the paths of crimes continuously change. Suspects trade property at a low price, apply for reimbursement by using legal bills which have varying content but comply with accounting regulations, accept property bribes by using influence, and help register a company and accept bribes after retirement. It is hard to verify these crimes by relying on traditional investigation means. Forensic accounting can help find out the criminal facts from multiple perspectives, such as accounting and law.

4. Lawsuit assessment functions of forensic accounting

4.1. Assessment of litigation risks

Litigation risks refer to the possibility of adverse consequences arising from litigation. They include criminal lawsuit risks, civil lawsuit risks, and administrative lawsuit risks. Criminal lawsuit risks include the following: the defendant and his defender or the victim and his agent participate in the first instance, appeal, complaint, and protest of a criminal lawsuit. The following consequences may occur, such as criminal judgments adverse to the defendant or victim, incidental civil judgments adverse to the defendant or victim, weak or no enforcement of judgments. The guiltless defendant is convicted; the defendant who commits a minor offense is given a heavy sentence; the accusation of the defendant is wrong; the penalty is too heavy; the victim requests for a heavy sentence, but the defendant is given a light sentence; the victim requests for the conviction of the defendant, but the defendant is judged as guiltless; the victim requests for a severe punishment, but the defendant is given a light penalty; civil compensation is too small. Civil litigation risks include the following: the litigant and his law agent participate in the first instance, appeal, complaint, and protest of a lawsuit. They may encounter some risk factors irrelevant to disputed facts which may influence the trial and enforcement of cases and make legal rights and interests unable to be safeguarded. They include the risk of improper claims, that of being unable to provide sufficient evidence, that of being unable to provide original evidence, that of not appearing in a court on time or withdrawing from the court, that of one party having no property, and that of litigation interests less than litigation costs. Administrative litigation risks include the following: the litigant and his law agent participate in the first instance, appeal, complaint, and protest of a lawsuit. They may encounter some risk factors irrelevant to disputed facts which may influence the trial and enforcement of cases and make legal rights and interests unable to be safeguarded. Specifically speaking, they include the risk of improper claims, that of unworthy litigation, and that of litigation being impossible.

4.2. Measurement of litigation values

Forensic accounting professionals can employ a mathematic model, measurement technology and assessment method to quantify possible time costs, capital costs, in-kind costs, energy costs, and opportunity costs in the prosecution, appeal, complaint, and protest. They predict possible litigation interests, judge whether a lawsuit is worthy, assess various risks in the prosecution, appeal, complaint, and protest, help the litigant make decisions and control blind litigation.

4.3. Risk prevention

Upon starting a prosecution, appeal, complaint or protest, the litigant and his agent and defender will necessarily encounter various risks. Forensic accounting professionals may help the litigant and his agent and defender provide litigation risk prevention plans and avoidance strategies to increase lawsuit winning chances and lawsuit interests and guarantee that a lawsuit is highly worthy.

5. Preservation of evidence function of forensic accounting

Evidence is the life of litigation and arbitration. Any litigation and arbitration needs to accurately determine loss items and calculate the amount of losses. The cases which involve accounting facts require that forensic accounting evidence, including accounting, audit, and assessment, should be provided. Improper forensic accounting evidence or no forensic accounting evidence at all will constitute the biggest risk of litigation and arbitration. When improper practices, such as false accounting, fraud, cheating and encroachment, occur, we should promptly employ the technology and method unique to

forensic accounting to collect and preserve forensic accounting evidence, including accounting data, documents, kind, audit, and assessment, according to evidence rules and provide them to the litigant and his agent, a court or an arbitral tribunal in a legal form or a way non-professionals can easily understand. When forensic accounting professionals cannot obtain relevant evidence, we should help the litigant and his agent to apply to a court for preservation of forensic accounting evidence in order to avoid losing evidence. This ensures that the principle of “taking facts as the basis and the law as the criterion” can be fully followed in litigation and arbitration.

6. Loss measurement function of forensic accounting

Litigation and arbitration generally involve damages. At present, the following problems exist in the litigant’s damages: First, there is a great difference between the litigant’s claim and the amount of damages confirmed by the judge; second, the litigant has a wrong understanding of loss item determining, which makes compensation request items unable to be supported; third, the litigant does not have a good grasp of the loss standard stipulated by the legal system, which results in the difference between the measurement standard of the claim and the judgment. This is because the litigant and his law agent are lacking in complex knowledge structure and unfamiliar with loss measurement. Loss measurement is a basic function of forensic accounting. With increasingly complex economic relationships involved in law and accounting standards, the problem of loss measurement involves a large number of professional technical methods, including the spread method, discount method, system risk method, average price method, net value method, opportunity loss substitution method, and opportunity profit substitution method, together with a large number of accounting data, documents, and legal documents. With a professional advantage, forensic accounting professionals can quantify various types of damages.

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