Discussion the Urgency of Implementing Compliance Management Systems Guidelines Standard in China

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Abstract. It seems increasingly important to study, promote and establish compliance management systems conforming to the situation of China, for the rapid and continuous economic development and increasing internationalization. Compliance is not only necessary for enterprises’ long term development, but also the only way for them to be integrated into the international economic system. ISO 19600: 2014 Compliance Management Systems Guidelines standard helps enterprises establish compliance management systems, as well as provides guidance for developing, implementing, evaluating, maintaining and improving the compliance management systems. The standard belongs to ISO’s management system standard family, as a general guideline, which provides guidance for meeting the compliance requirements of other management system standards. The compliance management of Chinese enterprises still have many problems, such as insufficiently systematic and sound compliance management systems, lack of effective operating and management mechanisms, failure to effectively execute reporting and investigating mechanisms, so that enterprises are exposed to compliance risks and take a heavy toll. Considering China’s actual situation, the Compliance Management Systems Guidelines is urgently needed to guide compliance management of Chinese enterprises.

Introduction

In the international context of enhanced compliance operation, China is paying more and more attention to compliance management. China carries out compliance management mainly in fields such as finance, securities and insurance. China Insurance Regulatory Commission, China Banking Regulatory Commission and China Securities Regulatory Commission released relevant administrative regulations such as Guidelines for the Compliance Management of Insurance Companies, Interim Provisions on Compliance Management of Securities Companies, and Basic Standard for Enterprise Internal Control. The practice of compliance management has been somewhat carried out in China, while standardization of compliance management is relatively lagging behind. In addition to some international corporations (such as Siemens and Sony) in China, some Chinese transnational enterprises (e.g., CNOOC and Wuhan Iron & Steel Group Co.) have also carried out compliance management and avoided legal disputes in overseas business and increased the international competitiveness through implementation of compliance measures[1-5]. In contrast, some Chinese transnational enterprises that have never implemented compliance management are apparently very passive and disadvantageous in global competition, for example, being prohibited by World Bank to undertake projects funded by it due to noncompliance. So far, there are no general compliance management system standards to provide guidance for compliance management of enterprises. In order to systematically control organizational compliance risks and increase the opportunity of achieving success by organizations, it is required to strengthen organizational compliance management. The paper analyzes main problems in China’s compliance management and sets forth the necessity and urgency of implementing ISO 19600 standard Compliance Management Systems Guidelines[1-3,6-7].
Compliance Management Is an Effective Way to Implement Rule by Law

Domestically, the Fourth Plenary Session of the 18th CPC Central Committee has proposed to comprehensively promote the strategy of law-based governance. In June 2014, the State Council issued two documents in succession, i.e., Social Credit System Construction Planning and Several Opinions on Promoting Fair Market Competition and Maintaining Normal Market Order, stressing at the national level the effects of credit construction and market environment featured by good faith management and fair competition[3,8-10]. Only if each organization is compliant can market environment featured by fair, competition be built and rule by law be effectively implemented.

Compliance Management Is an Inevitable Requirement for Enterprises to Go Out

Internationally, developed countries such as the USA and Britain have strengthened compliance management. Foreign Corrupt Practices Act and Sarbanes-Oxley Ac of the USA, and UK Bribery Act have all increased punishment for violations. In order to carry out the going out strategy, China has to abide by laws and regulations in relevant countries. At present, several Chinese enterprises have been included in the blacklist of the World Bank, including China Geo-Engineering Corporation, China Road and Bridge Corporation, China State Construction Engineering Corporation and China Wu Yi Co., Ltd, and dozens of Chinese enterprises listed in the USA have been suspended due to violations. These companies have paid a great cost for their own violation operations[2-6]. Therefore, the analysis of both domestic and overseas situations indicates that if enterprises want to maintain long-term development and go out, they must be compliant. However, because of lack of understanding of procedures, methods and principles to establish compliance management systems, enterprises often suffer from unsystematic and unsound compliance management systems, absence of operating and management mechanisms for compliance management as well as unsound reporting and investigation mechanisms, so that they are exposed to compliance risks. Thus, it is required to develop the standard of Compliance Management Systems- Guidelines, so as to provide guidance for different types of organizations to establish, implement, assess, maintain and improve compliance management systems[8].

Main Problems in China’s Compliance Management

Insufficient Emphasis on Compliance Management

Chinese enterprises lay insufficient emphasis on compliance management and still have a mentality of taking shortcuts, as evidenced by Chinese enterprises’ concern for compliance management. China Compliance Management Survey Report (2015) initiated by Compliance in China shows that among 142 questionnaires, 73 people in enterprises paying attention to compliance management come from foreign-funded enterprises, accounting for 51%[7]. By comparison, both private and state-owned enterprises account for a low proportion, with the former accounting for 20% and the latter 18%. From this perspective, Chinese enterprises pay insufficient attention to compliance management.

Moreover, in Chinese enterprises focusing on compliance, the problem of “indifference of company leaders” still exists. The precondition to good compliance work is attention from leaders, or it is difficult to form compliant corporate culture, employees can hardly achieve integrity and compliance, and compliance work will be an impossible mission.

The Idea of Compliance Culture to Be Urgently Set up

Enterprises lacking compliance culture and systems share a characteristic that they wish to succeed by taking shortcuts. Undeniably, many enterprises have taken shortcuts and made a fast buck, which are very lucky. But the problem is will such enterprises be always lucky[7,8,11-15]. I don’t think so, as these enterprises will sooner or later be punished by the law for their violations, with fines, decrease in business volume, closedown or suspension for rectification and even being put in prison coming along. From this perspective, compliance is an indispensable guard or shield for a company or enterprise. Organizations committed to long-term development need to maintain integrity and
compliance cultures, which are not only the basis for organizational success and sustainable development, but also the opportunity for enterprise development[2,3,15-16].

**Unsound Management System and Lack of Enforceability**

At present, compliance management systems in most Chinese enterprises are insufficiently sound and unenforceable. For example, legislation and law enforcement in our country have problems of “arbitrary law enforcement” and “obscure legal basis”, it is impossible to make effective and sound compliance management systems, increasing the difficulty in enterprise compliance. Compliance management systems established on this basis must be unsound and unenforceable. Furthermore, compliance management systems developed by Chinese enterprises have problems such as insufficient systematicness and soundness, lack of effective operating and management mechanisms as well as failure to effectively implement reporting and investigating mechanisms, which are important reasons for unenforceable management systems.

**Construction of Professional Compliance Management Teams to Be Urgently Strengthened**

Compliance will be nothing without compliance of people and the construction of human resources will concern whether a compliance system can be executed by the right person[7,8,15]. It will also concern construction of compliance teams and reeducation (e.g., training) of compliance professionals. Professionals engaged in compliance in our country have the following problems: too insufficient compliance management talents in our country to meet the increasing compliance management demands; uneven qualities of people engaged in compliance, who are not professional enough; a small number of compliance projects in which compliance personnel participate and insufficient empirical guidance provided. So it is especially important to strengthen the construction of professional compliance management teams.

**The Standard of Compliance Management Systems Guidelines**

**Applicability**

Compliance Management Systems-Guidelines, developed by ISO Project Committee of Compliance Management System, has been published as an international standard in December 2014. The standard includes good compliance management practices of different types of organizations worldwide and represents the advanced international level. Meanwhile, the standard has a wide range of application and is applicable to nearly all types of organizations regardless of whether corporate or not, public or private, which also applies to our country. One of the advantages in equating and transforming the standard to a national standard is that it enables China to keep consistent with international practices and provides convenience for implementing the going out strategy; another advantage lies in that it enables China to make standards via quick procedures and can satisfy the demand of different organizations for compliance management system standards as soon as possible.

**Main Problems that Can Be Solved by the Standard**

It can establish flexible and responsive compliance management systems for organizations and provide guidance for implementation, assessment, maintenance and improvement of management systems to reduce organizational compliance risks to a controllable range; when there is no compliance risk, it can provide a framework and guidance for satisfaction of other management system compliance requirements of organizations; upon occurrence of any violations, the standard can also be taken as the criterion for regulators and judicial organs to judge organizational compliance commitments and decide the degree of punitive measures for organizational violations according to the degree of compliance management practice by such organizations.

**The Role of the Standard**

Standard implementation can supervise and urge organizations to fulfill their corresponding duties, so as to avoid or minimize illegal activities. By integrating compliance management into
organizational culture and staff’s behaviors and attitudes, the standard becomes a sustainable spirit and helps form organizational compliance culture.

Standard implementation is a powerful tool to put organizational compliance into practice, which is significant to create a market environment featured by fair competition and both for Chinese enterprises to go out and for transnational enterprises to come in.

The Importance of the Standard

The ISO 19600 Compliance Management Systems Guidelines standard has incorporated global good practices of organizations in compliance management based on Australian AS 3806-2006Compliance Programs, and represents the advanced international level.

The preface of the standard makes clear the position of the ISO 19600 standard Compliance Management Systems- Guidelines in ISO management system standards. ISO management system standards are classified into general guidelines, specific guidelines, general standards and specific standards. The ISO 19600 standard Compliance Management Systems Guidelines and ISO 31000Risk Management, as general guidelines among management system standards, have important effects. The compliance management system standard provides a framework for executing compliance requirements of other management system standards [7,8,10-13].

Implementation of this standard by organizations enables organizations to prove that they meet mandatory requirements (including relevant laws and regulations) and voluntary commitments (including relevant standards, contracts, effective governance principles or code of ethics) to be abided by organizations, and reduces organizational compliance risks to a controllable range, protecting organizations from great property and reputation losses resulting from violations. Meanwhile, the standard can also be considered the criterion for regulators and judicial organs to judge organizational compliance commitments and decide on this basis the degree of punitive measures for organizational violations.

Analysis of the Urgency of Implementing Compliance Management Systems Guidelines in China

Why should we transform the standard? The reason is that there is such a demand in China. Chinese transnational corporations developing overseas need this standard, as these companies have to observe laws and regulations in relevant countries, where we have suffered in that several enterprises are included in the blacklist of the World Bank and dozens of Chinese enterprises listed in the USA have been suspended for violations.

Listed companies need this standard since their compliance is supervised by third parties; as they become active from being passive, they need the standard. Government departments are also paying attention to this. State-owned Assets Supervision and Administration Commission is preparing to develop the Guidance for Construction of Compliance Management Systems in Central Enterprises, and has picked 5 central enterprises as pilot enterprises, with 15-20 more central enterprises to be selected as pilot ones, so as to make the guidance according these pilot enterprises[1-5,8-14].

However, owing to lack of understanding of the methods, procedures and principles to establish compliance management systems, enterprises tend to suffer insufficient systematic and sound compliance management systems, absence of effective operating and management mechanisms as well as failure to effectively execute reporting and investigating mechanisms, so that organizations are exposed to compliance risks and great property and reputation losses resulting from violations[3,13-16]. Consequently, it is necessary to develop Compliance Management Systems-Guidelines to provide guidance for different types of organizations to establish, implement, assess, maintain and improve compliance management systems.
Conclusion

With constant deepening of economic globalization, international organizations, e.g., the United Nations, and governments in quite a few developed countries have made laws and regulations to strengthen enterprise compliance operations, for example, the American Foreign Corrupt Practices Act and the UK Bribery Act; these intensified laws and regulations have exerted increasing effects not only in developed economies, but also in developing countries. At present, most famous transnational corporations have established compliance management systems, such as Siemens and Microsoft. At the same time of compliance management development, compliance standardization appears and gradually develops.

In the international context of strengthened compliance operations, China pays increasing attention to compliance management and has carried out compliance management in fields such as finance, securities and insurance. China Insurance Regulatory Commission, China Banking Regulatory Commission and China Securities Regulatory Commission released relevant administrative regulations such as Guidelines for the Compliance Management of Insurance Companies, Interim Provisions on Compliance Management of Securities Companies, and Basic Standard for Enterprise Internal Control. In addition to some international corporations in China (such as Siemens and Sony), some Chinese transnational enterprises (e.g., CNOOC and Wuhan Iron & Steel Group Co.) have also carried out compliance management and avoided legal disputes in overseas business and increased the international competitiveness through implementation of compliance measures. In contrast, some Chinese transnational enterprises that have never implemented compliance management, such as China Geo-Engineering Corporation and China Road and Bridge Corporation, are prohibited by World Bank to undertake projects funded by it due to violation operations, so that they are apparently very passive and disadvantageous in global competition.

Therefore, in order to increase the international competitiveness of Chinese enterprises, especially transnational enterprises, protect them from great property and reputation losses resulting from violations, it is urgently required to develop the national standard of Compliance Management Systems Guideline to guide enterprises to systematically carry out compliance management.

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