

Strengthening Enterprise Compliance Operation from Writing Compliance Report

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A couple of years ago, the main responsibility of enterprise in some MBA courses was about maximizing shareholder value. But since entering the new century, more and more multinationals have been emphasized the enterprise economic responsibilities and strengthened the social and environmental responsibilities. The enterprise responsibility is a whole, indivisible system about economy, society and environment.

In recent years, with the development of economic globalization, the enterprise responsibility strengthening in the world has been raised. The responsibility philosophy of world firms has been on the new level from strengthening overall economic, social and environmental responsibilities to strengthening compliance and anti-corruption enterprise responsibilities. This new trend in world enterprises is a new challenge to the Chinese enterprises.

I think that the Chinese enterprises, especially those that invest in foreign countries, are supposed to adapt themselves to such a trend by keeping strengthening their overall and global responsibilities. To compile compliance and anti-corruption reports is imperative to strengthen enterprise compliance operation.

I. New Trend of Enterprise Responsibility Strengthening of World Companies

In recent years, there is a new trend in the enterprise responsibility strengthening of multinationals. And such a trend is about the compliance operation strengthening of multinationals.

The English word “compliance” usually has three meanings: 1) Observe laws and regulations. This means observance of the laws and regulations of the countries where the company’s headquarter is and where it operates; 2)

Observe rules and regulations. This means that the internal rules and regulations of a company include the rules of business conduct of enterprise; 3) Observe codes. This means occupational ethics and moral standards. Compliance is the systematic process of adopting standardized operation for a company. The generalized “compliance” refers to the compliance in all segments of operation process of a company. And the specific “compliance” focuses on the forms to fight business corruption.

At the end of 2008, Siemens was reconciled with law enforcements of the US and Germany with US \$ 1.4 billion due to business bribery. This is the milestone of compliance and anti-corruption of global companies. By investigating and studying the compliance issues of multinationals in China, we came up with the book *“Compliance – Primary Responsibility of a Company”* at the end of 2009. Since then, there have been new developments in the compliance and anti-corruption of global companies.

In recent years, developed countries, like America and Britain, and international organizations like the UN and OECD are strengthening the enterprise compliance and anti-corruption across the world. The United Nations Global Compact established the expert team of the 10th principle and promotes the compliance and anti-corruption of global companies each year. On December 26, 2009, the OECD council passed the *Suggestions to Fight against Official Bribery in Business Intercourse*. On February 18, 2010, it passed the *Optimal Behavior Guide of Inner Control, Morality and Compliance*. And at the end of May 2011, it promulgated the *revised Code of Conduct of Multinationals of OECD*, in which the most important alteration is about strengthening the compliance management of supply chain.

In 1977, America made *the Foreign Corrupt Practices Act* (FCPA for short). In recent couple of years, by updating theories and approaches of law enforcement, the American authorities have strengthened law practices. From July 1, 2011 on, Britain started *the Anti-bribery Act*. The Act classifies the

bribery-related crimes as three types: ordinary bribery crime (including crime to accept bribery and crime to bribe), crime of bribing foreign public officials, and crime of dereliction of duty of business sectors to prevent bribery. The crime of dereliction of duty to prevent bribery is a creation, which reflects the change in law enforcement idea from emphasizing disposal to emphasizing prevention.

It is in such a background that the multinationals have strengthened the compliance and anti-corruption.

Since the reconciliation of the business corruption, Siemens has perfected the code of business conduct, which is a framework for the overall compliance system. Over 200,000 employees have been trained in the compliance. Committee members responsible for law and compliance are added to its managing board and the strong compliance team is thus established. There are 650 fulltime qualified members across the world, while there were not more than 100 part-time members in the past. The compliance has been an indispensable factor in the salary assessment system. Siemens has revised and integrated a bunch of compliance policies, covering bank account management, cash control, present and reception, anti-corruption in merger acquisition, and donation and sponsorship.

Since 2010, we have investigated the world headquarters of about 10 multinationals, the headquarters of over 20 multinationals in China and some 10 Chinese enterprises in terms of experiences and lessons in compliance and anti-corruption. At present, the compliance management system is set up in many multinationals. For corporate governance, many multinationals have established CCO (Chief Compliance Officer) in parallel with CEO and CFO. The CCO is very high in rank and independent. Some are part of the board of directors and some are directly under the leadership of the board chairman, responsible for preventing, supervising and tackling with violations in the company.

The enterprise responsibility strengthening of multinationals is a growing process. In the past, multinationals emphasized that the primary goal for a

company is to “maximize the shareholder’s value”. The UN launched the Global Contract in 2000. It is since this year that multinationals universally have strengthened economic, social and environmental responsibilities. Since 2008, with the Siemens case as a mark, more and more multinationals have gradually strengthened their global responsibilities with the compliance and anti-corruption as the key point.

Laws, regulations and guides, such constant revision of code of conduct for multinationals by FCPA and OECD and the tenth principle of anti-corruption of business added in the 2004 global contract, are to regulate the overseas operation of enterprises. Therefore, we can regard the strengthening of compliance and anti-corruption in recent years as the global responsibilities of companies. This reflects the update in responsibility idea of global companies from shareholder’s responsibility to overall responsibility and to global responsibility.

II. Challenges in Compliance Risks Faced by Chinese Enterprises

In the 1990s, the Chinese market economy was still in its early stage. Some Chinese enterprises that just got involved in market competitions followed the competitive rules of early market economy. Behaviors of seeking nothing but profits and unfair competition in the early market economy were considered by some managers as the rules or competition. The modern enterprise management theory was popular and evolving in China in the 1990s. The maximization of shareholder’s value was then widely accepted. We should admit that the emphasis of shareholder’s value is a great leap for the Chinese enterprises.

The new century saw the promotion of the overall responsibilities, including social and environmental responsibilities, in China by multinationals. Under the support of the Central Government, Chinese enterprises quickly accepted and recognized such a world trend. Since 2006, many companies

have published their social responsibility report or enterprise responsibility report. In 2011, there are 531 listed companies in Shanghai and Shenzhen stock exchanges disclosed their social responsibility reports and there are 57 out of the 120 central enterprises issued their social responsibility reports. The Chinese enterprises have strengthened their overall responsibilities by making social and environmental responsibility reports.

In recent years, multinationals have been trying to strengthen compliance and anti-corruption on the basis of reinforcing the social and environmental responsibilities of enterprises. To strengthen compliance operation has been the new trend of global enterprise development. Chinese enterprises, including foreign-funded enterprises, state-owned enterprises and private enterprises, are facing harsh challenge of compliance risks.

Scandals of business bribery of many multinationals in China are exposed. According to the disclosed information on the website of Securities and Exchange Commission, there have been some 70 multinationals that are punished or reconciled according to the Law of Anti-overseas Corruption, one third of which have committed the crime in China. Some Chinese authorities have also uncovered and fought against some foreign-funded enterprises that were involved. In 2009, media disclosed that senior managers of Rio Tinto accepted bribes of Chinese enterprises. The Rio Tinto case is a case in point in multinational corruption in China.

Though the Rio Tinto case reveals its serious corruption as a world-known multinational corporation, it also exposes the corruption of some Chinese enterprises induced by "hidden rules". By virtue of the documents of the Rio Tinto case disclosed from the open court, some media discloses a list of Chinese enterprises, where up to 20 enterprises are suspicious of having bribed the original personnel of Rio Tinto. Obviously, the Rio Tinto case is not alone. According to a large amount of information disclosed by the media, business bribery is frequently seen in highway construction, real estate and drug purchase. Some state-owned enterprises and private enterprises are

exposed to have engaged in business bribery. The Chinese enterprises still have a long way to go in strengthening business responsibilities.

With the overseas extension of Chinese enterprises, the compliance issue of them is also uncovered outside China.

It is reported that in March 2006, the CEO of China National Aviation Fuel (Singapore) was sentenced to jail for 51 months and a fine of 330,000 Singapore dollars by the Singapore court due to illegal operation. The CEO was charged with fake performance release, violation of duties as a board chairman of a listed company, not disclosing colossal losses to the bourse, deceiving the German bank, and doing internal transaction. This is a famous case of punishment of Chinese enterprise due to illegal overseas operation.

Recently, the World Bank released the list of enterprises that are not allowed to accept World Bank funded projects for a certain period due to deception and bribery (including directly or indirectly controlled companies). Twelve Chinese enterprises are found in this list. Enterprises on this list are obviously in passive and adverse positions in world competition.

With the growth of overseas investment, the compliance risks confronting the overseas Chinese enterprises are closing in. Since April of this year, dozens of Chinese enterprises that have entered the American market are encountering escalating credit crisis. It is said that over 20 of them have been suspended or de-listed.

In recent years, employees of overseas Chinese enterprises are often taken as hostages in local armed political conflicts, making the risks of overseas investment soar up. Though kidnapping does not occur in some places, the investments of Chinese enterprises in these places are suspended due to intensification of local conflict. For instance, the Myitsone dam project in Burma stopped in September 2011. Enterprises of any scale always face big troubles in risky places. Despite this, many troubles can still be overcome by active measures in early stage. A responsible conduct is especially important

to a company if it operates in such places. The compliance operation should be particularly strengthened to resist business corruption.

III. Defusing Compliance Risks through Strengthening Compliance Operation

In the age of globalization, the competition between multinationals has gone from hardware to software, from technology and product to responsibility idea and morality. The advanced responsibility idea has been the indispensable soft power to win. To adapt to such a situation of global competition, the Chinese enterprises should strengthen their responsibilities and soft power. We should strengthen the responsibility of the Chinese enterprises in the trend of strengthening the responsibilities of multinationals, thus enhancing the soft power.

In such a time, the compliance and anti-corruption has been the common risks confronting the enterprises in globalization. We should follow this trend by accepting the experiences of foreign enterprises and world organizations to strengthen the compliance operation of Chinese enterprises. Those enterprises that operate overseas face big challenges in compliance operation strengthening and compliance risk reduction.

Since China's entering the WTO in December 2001, the Chinese enterprises are active in investing and operating overseas. By August 2012, the total direct overseas investment amounts to US\$ 430 billion; there are nearly 20,000 overseas Chinese enterprises that are scattered in 180 countries and regions; and the overseas assets are close to US\$ 1.6 trillion. As more and more enterprises go overseas, there are increasing economic activities. The Chinese enterprises are so influential that the world community starts to give more attentions. World organizations require the Chinese enterprises to undertake social and environmental responsibilities, as well as compliance operation.

In the early stage, foreign multinationals did not undertake social and environmental responsibilities. Not long ago, some countries even acquiesce multinationals to bribe for foreign projects through intermediates. As the Chinese enterprises started to invest overseas, these countries required us to undertake full responsibilities and to conduct strict compliance operation. These requirements and rebukes are unfair. But in such a globalization, world organizations and all countries require them to do so as per the highest standards. So complaint is not the answer. The only way out is to face the challenge by strengthening enterprise responsibilities and compliance operation.

In effect, the Chinese governments have taken actions. On April 9, 2012, *the Opinions about the Construction of Firm Culture of Overseas Chinese Enterprises* was jointly promulgated by the Ministry of Commerce, the Central Publication Office, the Ministry of Foreign Affairs, the National Development and Reform Commission, the State-owned Assets Supervision and Administration Commission of the State Council, the National Bureau of Corruption Prevention, and the All-China Federation of Industry & Commerce. Its purpose is to encourage and support the Chinese enterprises to better adapt to the new situation, intensify the core values, build up good images, play bigger role in implementing the strategy of mutual benefits, win-win and opening and in building a harmonious world, and realize the sustainable development of overseas Chinese enterprises.

The adhering to legal compliance is taken as the main content of the Chinese overseas enterprise's culture construction in this document. The document indicates that it is an important part of the enterprise's culture construction to strictly observe the laws and regulations of the countries and regions where the enterprises are. These enterprises should study and be familiar with the local laws and regulations for their legal existence and development there. They should strictly fulfill the contract, actively pay taxes, protect the legal rights of laborers, and strictly carry out environment

regulations to ensure legal compliance. They should insist on fair competitions, resist business bribery, and forbid bribes to local public officers, world organization officers and related enterprise staff. They should not seek commercial benefits by illegal bidding behaviors.

The document also stresses that moral standards are important to culture construction. The enterprise morality embodies the enterprise culture. Overseas Chinese enterprises should strengthen the moral education of the employees, stick to the balance between morality and benefits, and integrate the morality and ethics into the operation and management.

Since the release of this document, the Ministry of Commerce has taken the compliance operation as an important task. According to the information on the website of the Ministry of Commerce, from May 2 to May 10, 2012, a work team led by the discipline inspection team leader Wang Hemin and composed of people from the Financial Department, Cooperation Department and Europe Department of the Ministry of Commerce, went to Russia and Heilongjiang for investigation on compliance operation. They investigated the Tomsk Wood Industry and Trade Cooperation Zone and visited 20 Chinese enterprises.

IV. Strengthen Compliance Operation through Compliance and Anti-corruption Reporting

Any work needs a focus point to push. It is also true with compliance operation. From experiences of domestic and foreign companies, we find that compliance and anti-corruption reports are important to strengthen compliance operation. The compliance and anti-corruption reports mentioned here are independent reports in parallel with social responsibility reports or sustainable development reports of the company, or a part of annual reports, social responsibility reports or sustainable development reports of the company.

Compliance and anti-corruption reports contribute to pushing forward compliance and anti-corruption. In writing compliance and anti-corruption report, we shall have a full review and prospect of the policies, past practices

and remaining problems in compliance and anti-corruption of the company. It is actually a training of compliance and anti-corruption given to all departments and staff members. Annual update of such reports will make the company pay more and more attention to compliance and anti-corruption.

The release of compliance and anti-corruption reports contributes to the transparency of compliance and anti-corruption. In such an atmosphere of strengthening compliance and anti-corruption, the enterprises that adopt standardized operation often choose the enterprise of compliance to have cooperation. Compliance and anti-corruption reports help suppliers and customers have an insight into the compliance and anti-corruption of the company, which contributes to the external cooperation of the company. The reports also help the communities and general public understand the policies and resolution of compliance and anti-corruption, which strengthens the company's trusts.

The release of compliance and anti-corruption reports enables the authorities to understand that the company has started to "prevent bribery", which helps protect the company's image even if a certain employee is punished for compliance. This will make the company more competitive.

So in recent years, the United Nations Global Compact is active in encouraging enterprises to write and release compliance and anti-corruption reports. In December 2009, the United Nations Global Compact and the Transparency International jointly stipulated *the Guide for the 10th Principle Report of Anti-Corruption*. According to the experiences of multinationals, the guide puts forward a framework for compliance and anti-corruption report compilation.

The guide divides the report framework into three parts – promise and policy, implementation, and monitoring. Each part has several elements. Considering the fact that the compilation of a report is a process of development and improvement, the guide divides the elements into basic report elements (what is most needed to report) and ideal report elements

(elements of higher standards and perfection).

In 2009, the United Nations Global Compact conducted a significant research. They arranged the compliance and anti-corruption reports of the top 500 enterprises on the Fortune Magazine in 2008. This arrangement is based on the annual reports, sustainable development reports, social responsibility reports and reports to the UN Secretary General as a member of the Global Compact. The researchers extracted the parts about compliance and anti-corruption from these reports. They gave an objective introduction so that how these companies understand compliance and anti-corruption and how they strengthen them are understood. This makes people pay more attention to compliance, perfects the compliance system and reduces compliance risks.

In 2007, 26 Chinese enterprises entered the Top 500 in Fortune Magazine. According to this research, only 8 out of the 26 Chinese enterprises have compliance and anti-corruption in their reports. But 75% of the Top 500 has compliance and anti-corruption in their reports. It is evident that the 26 biggest Chinese enterprises were far behind other world enterprises in terms of compliance and anti-corruption in 2007.

Last year, my research institute studied the compliance and anti-corruption reports of the Chinese enterprises in Top 500 of the Fortune Magazine in 2011. Fortunately, only 8 out of the 57 Chinese enterprises in the Top 500 have no compliance and anti-corruption reports in 2011, and the other 49 enterprises have compliance and anti-corruption reports.

Recently, we have studied the 69 Chinese enterprises on the Top 500 in the year 2012. We found that most enterprises have compliance and anti-corruption reports. Some reports are fairly complete, having high transparency and manipulation.

We suggest that Chinese enterprises, especially the Chinese multinationals, strengthen their compliance operation by starting from writing compliance and anti-corruption reports. Only in this way will our enterprises be stronger, more competitive and sustainable in the tide of economic

globalization.