Compliance and Anti-Bribery-China Enterprise Practice

Submitted by: China
COMPLIANCE & ANTI-BRIBERY-CHINA ENTERPRISE PRACTICE

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Corporation Compliance & Anti-Bribery in China

01 SDIC Profile
02 Laws & Regulations
03 Corporation Mechanism on Compliance Management
04 Practice & Experiences
05 New Challenges

Equity Investment, Management & Operation
- Total Assets RMB 600 bn.
- Managing Capital Assets RMB 1.2 tn.
- Consol. Revenue RMB 136 bn.

Group Company
- 8 listed out of 18 subs. and 145 holding companies
- 45,000 employees
Diversification
- Conventional Industries
- Strategic & Emerging Industries & Founds
- Financial & other Services
- International Business

Overseas involvement
- Over 100 Countries & Economies
- Investment, Engineering, Financing, Trades, etc

Soundness
- CSR – Annually Released for Public Scrutiny
- Balance – Shareholder, Society, Employees
- Operation – 15 A Grades, 4 Tenure Excellencies
Overview

• Focus & Drive from Top
  President Xi Jinping explicitly emphasized that “To regulate overseas operation of enterprises, it calls for strengthening compliance system construction for overseas operation of enterprises.”

• Active Promotion of Government Departments
  Step up efforts on legislations & law enforcements. Popularizing laws & helping enterprise compliance.

• Actions of Enterprises
  Awareness increased. Compliance improved.
Legal & Administrative Authorities (incl.)

- The National Supervision Commission (NSC)
- The Supreme People's Court
- The Supreme People’s Procuratorate
- The Ministry of Public Security
- The Ministry of Justice
- The Ministry of Commerce
- The State-owned Assets Supervision & Administration Commission (SASAC)
- The People’s Bank of China
- The National Audit Office
- The State Administration of Market Regulation
Related Laws, Regulations & Guidelines

- The PRC Criminal Law
- The PRC Anti-unfair Competition Law (the “AUCL”)
- The PRC Company Law
- The PRC Foreign Trade Law
- Propositions on Regulating Overseas Operations of Enterprises
  examined and approved by the Central Leading Group for Comprehensive Deepening Reform, May 2017
- Guidelines for Central Enterprise Compliance Management
  SASAC, Nov. 2017
- Operative Norm on Overseas Investments & Operations of Private Enterprises
  by NDRC, MFA, MOC, the People's Bank and ACFIC, Dec. 2017
- Compliance Management Systems-Guidelines
- Guidelines for the Compliance Management of Overseas Operations of Enterprises
  7 Departments & Authorities, Dec. 2018
Anti-Bribery and Compliance

- Laws define, identify, classify, address, and discipline/penalize bribery. Exposed bribery-suspected behavior or deed is subject to legal adjudication.
- “Inadvertent” offences.
- Good practice or implementation of enterprise compliance management prevents or mitigates commercial briberies.
Guidelines for the Compliance Management of Overseas Operations of Enterprises Dec. 29, 2018

- Jointly issued by NDRC, MFA, MOC, the People’s Bank, SASAC, SAFC, and ACFIC.
- Applies to both state-owned & private enterprises.
- Focuses on fields of goods & services trade, ODI, engineering and routine operations.
- 7 essential elements:
  - Thorough identifying of all compliance requirements
  - Organizational structure
  - Constitution of rules
  - Operating mechanism
  - Risk prevention & control
  - Continuous improvement
  - Culture construction
SASAC’s Policy & Movement

  Urged to strengthen enterprise compliance system.


- Selected five pilot firms to build compliance management system, Mar. 2016.
  Petro China, China Mobile, China Merchants Group, China Railway Group and China Dongfang Group

  Clearly listing anti-bribery & anti-unfair competition as key areas of compliance management.
Enterprise Compliance Management System

1. Identify internal and external problems
2. Identify relevant requirements
3. Clarifying areas, setting up compliance system
4. Establishing Compliance Policies
5. Identifying Compliance Obligations and Evaluating Compliance Risks
6. Leadership commitment, independent compliance team, management responsibilities, support
7. Plan to deal with compliance risks and achieve goals
9. Operation Planning and Compliance Risk Control
10. Improving
11. Maintain
12. Formalize
13. Establish

Good Governance Principal
SDIC’s Compliance Management System as per SASAC Regulatory Requirements

- Respect Market, regard compliance as cornerstone.
- Four Principals. Comprehensiveness; Accountability; Interoperability; Objective independence.
- Requires to comply with Laws, regulations, professional codes, enterprise constitutions/rules/regulations, international treaties and conventions, etc.
- Applies to all fields, departs., entities, staff.
- Consists of all essential elements from organization, stipulations, risk management, scrutiny/review, performance appraisal, training, whistle-blowing, investigation & accountability, reporting, MIS, culture, to key areas.
SDIC Organizational Structure of Compliance Management

Board of Directors
  ↓
General Manager
  ↓
Deputy General Manager
  ↓
General Counsel
  ↓
Depts. involved
  ↓
Dept. of Legal Affairs & Compliance (Department in charge)
  ↓
All Staff
  ↓
Subsidiary Companies
  ↓
Board of Supervisors

Every-one
Every-where
Every-thing
Every-time

Compliance Committee
- Periodic meeting
- Top-down design
- Review risk assessments
- Regulation evaluation & revision
- Maintaining effectiveness of system
Illustation of Compliance Management System of SDIC

Building up of Compliance Management System
Dept. in charge: Dept. of Legal Affairs & Compliance
Responsible for all the compliance managements, incl. setting up fundamental regulations, coordinating between depts. & units, systematic checking & examining compliance management system, organizing compliance trainings and fostering compliance cultural, etc.

Operation & Evaluation of Compliance System
Dept. for specialized management: Dept. of Legal Affairs & Compliance
Managing Directors
Examining & approval of regulations & rules of compliance management.
Dept. of Audit
Evaluating the adequacy of compliance management system in connection with internal auditing assessments.
Dept. of Operation Management
Monitoring all specialized managements like safety, environment protection, etc.
Dept. of Supervision
Investigation & penalizing all irregularities.
Dept. of Human Resources
Performance appraisal & feedback, file recording of irregularities, emolument & promotion in relation to personal compliance performance.

Investigation of Violations
All Depts. & Business Units involved
Responsible for compliance operations of the dept/unit, incl. setting up relevant regulations/standard/process chart, ensuring smooth operation, ensuring full compliance of entire personnel by training & over-sighting, allocating responsibilities to all posts, etc.

Appraisal and Feedback
Individualities & Examples

SDIC Compliance Handbook

the Oath

- Philosophy, Principals & Framework
- Corporate Compliance
- Company and Employees
- Company and Society
- Reporting and Investigation
- Explanation and Revision
Individualities & Examples

- Entire Personnel Commitment
  Acceptance under oath & Signing pledge
Individualities & Examples

A Routine Operation – Contract Signing Procedure of SDIC Trade

1. **Business departments**
   - Draft; inquiry
   - The intention of Commodity purchase and sale
   - The price of purchase and sale

2. **Business departments**
   - Price negotiation; credit survey
   - Contract negotiation record
   - Customer credit survey

3. **Business departments**
   - Price negotiation; credit survey
   - Contract meets demand; Customer meets credit requirements

4. **Business departments**
   - Draft, Compose
   - Trade contract

5. **Company standard contract**
   - Yes
   - No

6. **Legal affairs department**
   - Compliance and legal audit
   - Trade contract
   - Yes
   - No

7. **Director of business departments**
   - Audit
   - Trade contract

8. **Financial Management Department**
   - Audit financial related content
   - Trade contract

9. **Trade management department**
   - Audit Trade operation related content
   - Trade contract

10. **Contract/agreement signing process**
    - Execute the approval process of company’s leadership according to the requirements of contract authorization and fund management

11. **End**
Individualities & Examples

In-advance Considerations – Commissions Management of SDIC Trade
VUCA – the Coming Future

- V - volatility
- U - uncertainty
- C - complexity
- A - ambiguity

Uncertainty is the most, maybe the only, certain thing about future.
Imminent Challenges

• International Consensus
  Mature technology, financial nature, digitally "physical", limited benefit
  DeFi, economies vary from forbidden, confined use to permission with different definitions.

• New Technologies
  AI/BiomedicalEng/Compt./AreoSpace/Communique, etc.
  legal/social/ethic impact, Compliance Challenges
  Quantum-computer vs. Blockchaining

• Compliance Improvement
  Domestic based, in short of experience/personnel/expertise, incompliance, trying to improve
Thank You!