

Enterprise Compliance Supervision Framework Based on Financial Law

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Abstract: *With the enterprise as one of the main bodies of market, its compliance operation has had a direct impact on its stable development. Recently, the internal compliance of the enterprise has remained the focus of the government. In 2021, the State Council issued the Outline for Building a Law-Based Government (2021–2025), stipulating that the administrative bodies shall build a law-based government in an all-round way. The Ministry of Civil Affairs and the National Development and Reform Commission (NDRC) formulated and promulgated the 14th Five-Year Plan for Civil Affairs, stipulating that the communities shall improve the basic management system. The Supreme People's Procuratorate (SPP) issued the Guiding Opinions on Third-party Supervision and Evaluation Mechanism of the Enterprise Compliance, making requirements for the establishment of a strict compliance supervision system. It can be obviously seen that the establishment of compliance supervision system is inevitable. Based on the financial law, this paper is an attempt to strengthen the establishment of compliance supervision framework by analyzing the role of compliance supervision, the importance of compliance supervision framework, as well as the basic principles for enterprises to establish the compliance supervision framework.*

Keywords: *financial law; compliance supervision; conceptual framework*

1. Introduction

In April 2021, the SPP issued the Plan on Carrying out the Pilot Work of Enterprise Compliance Reform, officially launching the pilot work of enterprise compliance reform. Obviously, this is a favorable signal for the development of the enterprise, and such measures are taken by the government mainly out of consideration for protecting the interests of the enterprise and the steady development of small and medium-sized enterprises. However, the mere use of judicial power is far from enough to achieve the compliance development of the enterprise. With the complicated operation and the changeable market economy, the compliance operation not only requires the guidance and constraints of the legal system, but also gives full play to the daily functions of related departments. All departments need to coordinate and various measures need to be adopted to achieve the positive development of market economy.[1]

2. The Role of compliance supervision

(1) The compliance supervision can effectively help avoid risks, promote the compliance operation of financial institutions, and avoid the asset impairment and property loss, which belongs to the creation of productivity in reverse. Meanwhile, the compliance supervision is the driving force for financial institutions to innovate, which can help broaden their business channels.

(2) Keeping close track of laws, regulations and market rules, the compliance supervision carries out a timely and effective evaluation of the impact of laws and regulations on the financial business. Financial institutions can design different products to satisfy higher demands by making use of transaction rules, laws and regulations of the market economy in a broader scope and a deeper extent, and can create huge economic benefits by innovating businesses. Meanwhile, good compliance supervision can help improve the reputation of financial institutions, thus resulting in an increase in their intangible assets and further continuously bringing economic benefits.

(3) The compliance culture is not a direct productivity, however, as the soft power of financial institutions, it can react upon the economic basis, which is conducive to ensuring their stable operation, and enhancing their execution and competitiveness.

3. Basic principles for building the compliance supervision framework

3.1 Independence

The core principle for the Compliance Supervision Organization is independence, which is firstly manifested in the reporting path. The reporting path should be vertical, that is, the inferior Compliance Supervision Organization shall vertically report and communicate with the superior Compliance Supervision Organization, the Compliance Supervision Organization vertically the Compliance Council, and the Compliance Supervision Committee vertically the Council. The independent organization should also be given adequate power. By thinking about the formulation and implementation of policies and regulations, as well as the administrative accountability for compliance investigation and law enforcement disciplines, it can be seen that the essence of an organization is the management of people and work, therefore, organization lacking in authority cannot carry out the compliance work.

3.2 Specialization

The compliance specialization is mainly reflected in the laws and regulations. First, the sources of compliance obligations must be included in laws, regulations and working standards. Merely the compliance departments specializing in laws and regulations can accurately grasp and reasonably implement them. Second, there exists a strong law-based nature in the construction of compliance management system. The construction of compliance management system is equivalent to that of the “enterprise’s internal regulations”, which must internalize the external system requirements and have the corresponding “legislative experience”.

3.3 Appropriateness

The establishment of compliance supervision framework should be related to the real scale of the enterprise. If too complicated, it might cause huge management cost; if too simple, it might fail to prevent the operation risks. The compliance supervision system must be consistent with the operation mechanism of the enterprise.

4. General concept of building compliance supervision framework

Currently, the main references are the compliance management system of enterprises in China, and three guidelines, namely, the Guidelines on Compliance Management for Central State-owned Enterprises (for Trial Implementation) issued by State-owned Assets Supervision and Administration Commission (SASAC), the Guidelines on Compliance Management of Enterprises’ Overseas Operations issued by the National Development and Reform Commission (NDRC), and Compliance management systems - Guidelines jointly issued by the the State Administration for Market Regulation (SAMR) and the National Standards Commission (NSC). These three guidelines respectively make different statements on the hierarchy of compliance supervision organization (as shown in table 1).[2]

Table 1. General concept of building compliance supervision framework

	SASAC’s guidelines	NDRC’s guidelines	SAMR’s and NSC’s guidelines
Compliance supervision framework	In Chapter Two “Management Responsibilities”, the compliance management departments can be divided into the Committee of Urgency, the Board of Supervisors, the Manager, the Compliance Committee, the Compliance Management, the Compliance Department and the Operating Department.	In Chapter Three “Compliance Management Framework”, the enterprise can establish a comprehensive management structure with clear rights and responsibilities based on the development needs, dividing the corresponding compliance management responsibilities at the three levels, namely, decision-making, management and execution."	In the chapter 5.3 The Role, responsibility and authority of the organization, the compliance responsibilities of the governance, the top management, the compliance team, the management and the employees are respectively elaborated.

To facilitate the research, this paper introduces the classification method used by the NDRC, dividing the compliance work and the work of supervision departments into three levels, that is the decision-making, the management and the execution. The decision-making is composed of the Board of Directors, the Board of Supervisors and the Compliance Committee. The management is composed of

the managing director and compliance officers. The execution is composed of the compliance departments. Meanwhile, due to different positioning, each level plays a different role in the compliance system. The compliance responsibilities at the three levels can be summarized in table 2.

Table 2. The compliance responsibilities

	The decision-making	The management	The execution
Main Responsibilities	<ol style="list-style-type: none"> 1. Approve the compliance strategic plan; 2. approve the basic compliance rules; 3. improve the compliance management system; 4. decide on the appointment and removal of compliance personnel; 5. decide on the functions of the organization; 6. put forward suggestions for supervision and removal; 7. decide on the treatment of violators. 	<ol style="list-style-type: none"> 1. Establish compliance organizational framework; 2. formulate compliance strategic plan; 3. approve specific compliance rules; 4. clarify the compliance management procedures; 5. stop and correct violations; 6. put forward decision-making compliance opinions; 7. lead the lead departments to work; 8. report major compliance matters; 9. draft annual compliance reports. 	<ol style="list-style-type: none"> 1. Draft specific planned rules; 2. carry out risk identification and early warning; 3. conduct compliance review of major projects; 4. participate in major risk responses; 5. organize and carry out inspection and assessment; 6. guide the work of subordinate units; 7. accept the investigation of violation reports; 8. organize and assist in the training.

5. Conceptual framework of compliance supervision organization

5.1 The decision-making: Board of Directors, Board of Supervisors, and Compliance Committee

The decision-making of the enterprise must shoulder the ultimate responsibilities for the compliance supervision system. The decision-making must have a full grasp of the formulation and implementation of compliance system, and effectively supervise its implementation. According to the above-mentioned three guidelines, the top decision-making of compliance management system is divided into the Board of Directors, the Board of Supervisors and the Compliance Committee.

On the basis of the above-mentioned guidelines, the decision-making of compliance system is mainly composed of the Board of Directors, the Boards of Supervisors and the Compliance Supervision Committee. According to the SASAC's guidelines on the compliance supervision, their main responsibilities are shown in the following table 3:

Table 3. the SASAC's guidelines on the compliance supervision

	Board of Directors	Board of Supervisors	Compliance Supervision Committee
Main Responsibilities	<ol style="list-style-type: none"> (1) Approve the development strategy, basic management system and annual report of compliance supervision; (2) promote the establishment of a compliance risk supervision system; (3) decide on the appointment and removal of the person(s) in charge of compliance risk supervision; (4) decide on the establishment and functions of the lead department for compliance risk supervision; (5) study and decide on important matters related to compliance risk supervision; (6) decide on the disposal of illegal employees according to the authorization. 	<ol style="list-style-type: none"> (1) Supervise the compliance decision-making and operation of the Board of Directors; (2) supervise the performance of directors and senior executives in the execution of their compliance supervision duties; (3) submit opinions on dismissal of directors and senior executives who bear important social responsibilities due to serious compliance management and operation risks; (4) submit opinions to the chairman of Board of Directors on the removal of important person(s) responsible for the compliance management. 	<p>Central enterprises usually establish the Legal Compliance Council, which works with the Leading Group for the Legal Work of Central Enterprises and Enterprise Risk Management Committee, 1. to undertake coordination work between person(s) in charge of the government compliance management and related departments; 2. to convene meetings on a regular basis; 3. to discuss and decide important matters related the compliance operation and propose suggestions; 4. to guide and supervise the compliance management of prices; 5. to ensure that the enterprise's internal management system and compliance system can accurately and reasonably reflect the requirements of laws and regulations relevant to enterprise operation, so as to take effective control of the corresponding compliance risks; 6. to take control of the organizational structure, business scales, financial budgets, talent allocations and execution of functions of the main compliance supervision departments, including their independence, authority and reporting abilities; 7. to examine the appointment, replacement and dismissal of compliance officers, review the responses to major compliance policies, work, process and opinions of the management, as well as the compliance reports on criminal risks and potential ones; 8. to control the major internal compliance inspections on the board of directors, shareholders, senior executives, employees and persons entrusted by the enterprise.</p>

5.2 The management: managers and compliance officers

The management is usually composed of the senior managers led by the CEO and chairman of the

Board of Directors, and chief compliance officer and compliance officers. The management functions as a link within the framework of the compliance supervision system: the decision-making is responsible for major investment through the regulatory and the compliance enforcement system; and the president is responsible for the construction of organizational framework, the formulation of strategic planning, compliance review, compliance policy suggestions and lead work (as shown in table 4). [3]

Table 4. Managers and compliance officers

	Managers	Compliance officers
The management	(1) Establish and improve the organizational framework of compliance supervision according to the decision of the Board of Directors; (2) approve the specific system provisions of compliance supervision; (3) approve the compliance supervision plans and take measures to ensure the effective implementation of the compliance provisions; (4) clarify the compliance supervision procedures to ensure the compliance requirements are integrated into business areas; (5) timely cease and correct non-compliant business behaviors, hold violators accountable or put forward handling suggestions according to the authority; (6) be responsible for other matters authorized by the Board of Directors.	(1) Organize the formulation of strategic planning for compliance management; (2) participate in major decisions of the enterprise and put forward compliance opinions; (3) lead the lead departments of compliance management to carry out work; (4) report major compliance management matters to the Board of Directors and the general manager; (5) organize the drafting of annual compliance management report.

5.3 The execution: the Compliance Department

The functions of compliance departments change with the natures and scales of enterprises. The SASAC’s and the NDRC’s guidelines respectively introduce the general compliance and supervision functions of Chinese central State-owned enterprises, as well as the compliance and supervision functions of Chinese enterprises operating overseas (as shown in table 5).

Table 5. SASAC’s compliance guidelines & NDRC’s compliance guidelines

	SASAC’s compliance guidelines	NDRC’s compliance guidelines
Compliance management department	Article 10: As the lead department of compliance management, the legal affair organizations or other relevant organizations shall organize, coordinate, and supervise the compliance management, as well as provide compliance support to other departments. Their main responsibilities include: (1) studying and drafting the compliance management plan, basic regulations and specific provisions for regulations; (2) showing continuous attention to changes in laws, regulations and others, actively organizing the identification and early warning for compliance risks, and actively participating in the evaluation and crisis management of important matters of small and medium-sized enterprises; (3) organizing the compliance evaluation inspection, carrying out evaluation of legality of rules, regulations and business processes, and promoting the rectification and continuous improvement of violations; (4) guiding the compliance management of subordinate units; (5) accepting reports of violations within scope of responsibilities, actively organizing or participating in the investigation of violations of small and medium-sized enterprises, and proposing handling suggestions; (6) organizing or assisting the business department and HR department to carry out compliance training.	Article 11: The enterprise can establish a full-time compliance management department based on the actual situations, or relevant departments with compliance management functions shall assume the responsibilities of compliance management. The compliance management shall perform the following: 1. show continuous attention to the latest development of laws, regulations, regulatory requirements and international rules in China and other countries (regions), and provide timely compliance suggestions; 2. formulate the compliance management system and promote its implementation; 3. review and evaluate the legality of enterprise rules and procedures, organize, coordinate and supervise the formulation of rules and procedures of all enterprise’s departments; 4. organize or assist the business departments and personnel departments to carry out the compliance training, and provide compliance consultation to clients; 5. actively identify and evaluate the compliance risks related to the enterprise’s overseas operation, and supervise the compliance risks related to third parties such as suppliers, agents, distributors, consultants and contractors (hereinafter referred to as "third parties"). Provide necessary compliance review and testing for the development of new products and businesses, determine and evaluate the compliance issues caused by the development of new business and service, and the formation or change of the customer relationship, as well as propose countermeasures; 6. conduct comprehensive and representative compliance evaluation and testing, and carry out corresponding investigation. In terms of the compliance risks that have occurred or the compliance defects found in the compliance testing, propose the rectification opinions and supervise the relevant departments to carry out rectification; 7. propose adjustment measures and carry out investigations according to compliance reports; 8. promote the incorporation of compliance responsibilities into the job responsibilities and employee performance management process. Build a compliance performance indicator system, monitor and evaluate compliance performance, and determine improvement targets; 9. establish a unified platform for managing compliance statements and data, and a standard process for compliance data management; 10. establish and maintain daily work contact with domestic and foreign regulatory agencies, track and evaluate the implementation of regulatory opinions and requirements.

6. Conclusion

In Conclusion, a sound corporate compliance supervision and management framework is the key to the construction of a corporate compliance system. Only when the functions, roles, responsibilities and market positioning of the enterprise meet the needs of compliance work, and when the reporting paths between government departments are consistent and the coordination system is smooth, can the compliance work of the enterprise be carried out smoothly.

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