

Compliance—

# 企业的首要责任

First Priority of Corporate Responsibilities

王志乐 / 主 编  
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規

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20世纪80年代我有幸访问了位于慕尼黑的西门子博物馆,从此开始了与西门子公司多年的接触。西门子公司从1847年创立时仅有几个帮工的小作坊发展到今天拥有数十万员工、上千亿美元年销售额的著名跨国公司。我深深地被西门子公司成长史所吸引。但是,就是这样一家颇受人们尊敬的企业,却因为商业贿赂被美国和德国司法部门追究责任。2008年底,西门子公司与美国和德国有关部门以14亿美元的代价取得和解。西门子公司因此创造了美国实施《反海外腐败法》有史以来因商业贿赂赔付的最高纪录。

西门子为什么会被美、德司法部门追究责任并罚款?中国企业可以从西门子案例中借鉴什么?带着这些问题,2009年6月我再次访问位于慕尼黑的西门子公司总部。通过此次访问,我对西门子公司在贿赂问题披露后重建合规体系的努力留下了极为深刻的印象。

2009年7月,中国国内媒体大量报道一些跨国公司在华商业贿赂的问题。其中最具有爆炸性的案例是力拓公司中国办事处的工作人员因涉嫌行贿和收受贿赂而被中国执法当局逮捕。其他跨国公司因在华贿赂而被美国司法部门追究的案例也被纷纷披露。一时间跨国公司在华商业贿赂问题成为社会关注的热点。

为此,我研究所成立专门的研究小组,研究跨国公司强化合规反对商业贿赂的意义,探讨我国企业如何借鉴跨国公司的经验遏制商业贿赂。

我们访问了西门子、戴姆勒等20余家跨国公司中国总部,了解他们在合规经营方面的经验和教训。我们召开了3次关于合规经营的座谈会。在此基础上我们就合规问题举行了两次近百人参加的研讨会。

通过这些调研讨论以及研究分析,我们发现,反对商业贿赂强化合规经营已经成为全球企业发展的一个新趋势。我国企业正处在全球化加速发展的背景下,我们应当高度重视国际企业界这一动向,借鉴跨国公司反对商业腐败的经验和教训,遏制商业贿赂,净化我国的商业环境。

基于这样的认识,我们决定编写一本关于跨国公司强化合规管理的专著。摆在读

者面前的这本书,就是我们与一批中外企业和学者共同努力的结果。

遏制商业贿赂强化合规经营是企业可持续发展的基石。随着社会发展和文明的进步,人们越来越认识到,企业仅仅追求股东利益最大化是不够的,还要承担包括社会责任和环境责任在内的全面的责任,作为跨国公司还要承担包括在母国和在经营所在国的全球责任。合规则是跨国公司承担的企业全面责任和全球责任中首要的责任,或者说企业责任不可逾越的底线。这就是本书想要传递的核心观点。

经过 30 多年的改革开放,中国企业已经走到一个新的发展阶段。为了把企业做大、做强和做久,需要进一步遏制商业贿赂强化合规经营。

我们建议从以下几个方面努力加强合规建设和遏制商业贿赂。

## 1. 把合规经营作为企业首要的责任

自 2006 年中央领导明确提出“企业要向社会负责,并自觉接受社会监督”以来,许多企业越来越积极参与到社会慈善捐助、节能减排等活动中。但是,不少企业对强化合规经营遏制商业贿赂还认识不足、措施不力。承担社会和环境责任的底线就是合规。我们应该回归企业责任的底线——合规经营。

我国一些企业在商业贿赂违规经营方面存在相当严重的问题。首先,外资企业在中国进行商业贿赂时有发生,有的还相当严重。其次,不少内资企业也存在严重的商业贿赂问题。如中石化陈同海、核工业集团康日新和中移动的张春江案都涉及严重的商业贿赂。房地产行业以及包括高速路在内的基础设施领域成为商业贿赂的重灾区。这些问题严重毒化了我国商业环境,干扰了社会主义市场经济的完善和健康发展。

一个企业如果经营不善导致亏损,往往还可以拖几年而不垮,甚至还有机会改善经营转亏为盈。但是,一个企业如果涉及商业贿赂或其他严重违规,往往一朝覆亡。三鹿覆亡、德隆系垮台等案例正说明了这一点。历史证明,企业做大做强难,但是做久更难。长盛不衰的“百年老店”都是合规经营和负责任的企业。

## 2. 针对不同企业采用多种方式推进合规经营

### 首先,在批评外资企业违规同时借鉴他们强化合规经营的经验

一些跨国公司在华企业的违规行为影响恶劣。政府有关部门以及社会舆论应当对此严厉批评。同时,我们也应该看到这些违规问题多数是跨国公司自己揭露和纠正的,有的案件虽然是别人检举揭发但是涉案公司都痛定思痛进行了全面整改。例如西门子公司通过全面整改,建立了被美国司法部评价为“超一流的合规体系”。许多跨国公司在遏制商业贿赂合规经营问题上积累了丰富的经验和教训。因此,我们在批评和处罚跨国公司违规经营问题同时,应当借鉴跨国公司经验,强化我国企业的合规经营。

跨国公司遏制商业贿赂强化合规经营的许多做法值得中国企业学习借鉴,例如,设立有权威的合规管理的组织机构;建立并完善全公司合规管理制度;加强对供应商和客户的合规管理,使企业整个价值链各个环节合规经营;强化合规体制的执行力度,抓好合规经营的预防、监察和应对三大环节等等。

### **其次,加强我国“走出去”企业的合规管理**

随着全球反对商业腐败力度加强,中国“走出去”企业违规问题已经面临越来越多的批评。“走出去”企业的违规行为往往牵涉我国的国家形象,而且直接影响企业在全中国范围可持续发展。因此“走出去”的企业应当特别加强合规经营,遏制商业贿赂。

### **再次,在国有企业中倡导企业合规经营**

近年来,从整体看国有企业管理越来越规范。银监会和保监会出台的合规管理指引有效地推进了我国金融企业合规经营。房地产业是商业贿赂重灾区,据业内同行反映,万科公司却能够坚守道德底线。

我们应该表彰这些合规经营的企业,推广他们成功的经验。与此同时,我们也应该加大对违规企业的处罚力度。应当借鉴国际经验,对于商业贿赂行为处以高额罚金,并且在一定时期和一定范围限制这些企业进入相关市场,金融机构对于从事商业贿赂的企业降低信用等级甚至不予进入相关市场。

## **3. 把强化企业合规经营与全社会反腐倡廉结合起来**

企业强化合规经营遏制商业贿赂是全社会反腐倡廉的有效措施。这是因为,商业贿赂是社会各类腐败的资金的主要来源,遏制商业贿赂将有效地遏制其他各类贿赂行为。

我们建议立法部门制定专门的《反商业贿赂法》。借鉴欧美国家的经验,在立法中不仅保护而且高额奖励检举揭发人;不仅严厉打击受贿,而且也严厉处罚行贿;不仅打击在我国国内的商业贿赂,而且打击我国企业在海外的商业贿赂。

借鉴国际经验促进政府部门合规行政。政府合规行政的关键是公开行政程序,公正执行法规,促进公平竞争。与此同时加大惩治官员腐败的力度。

以上就是我们编写本书过程中形成的一些建议。

在编写这本书时,非常感谢一批中外企业给我们提供了支持和帮助。他们有的热情接待我们的访问和调查,给我们提供公司强化合规经营的经验和教训;也有的为我们提供资料甚至提供书稿。这些企业既有西门子、通用电气、摩托罗拉、戴姆勒、巴斯夫、毕马威、卡特彼勒、诺华、壳牌、BP、罗德公关、3M等来自国外的跨国公司,也有中海油、中国工商银行、万科等内资企业。

作为主编,我感谢参加调查研究以及撰稿和编辑工作的同事。感谢江小平等人为



我们的研究工作提出宝贵建议。同时也感谢中国经济出版社的编辑。大家的共同努力使我们这本书能够按计划出版。

我希望这本书在推进中国企业遏制商业贿赂强化合规经营方面起到一点作用。我也希望大家对我们的研究提出批评和建议,以便我们完善对于合规问题的研究。

王志乐

于北京新世纪跨国公司研究所

2010年1月17日

## Preface

I first visited the Siemens Museum in Munich in the 1980's, which led to my relationship with Siemens that continues to this day. The company, founded in 1847 as a small workshop hiring a few men, is now a well-known transnational corporation (TNC) with hundreds of thousands of employees and over a hundred billion US dollars of annual sales. I am deeply intrigued by its growth.

Legal action was sought, however, by the justice departments of the US and Germany against this well-respected enterprise for commercial bribery. At the end of 2008, Siemens reached a settlement with these departments at a cost of 1.4 billion dollars, which is the largest payment ever of its kind imposed under the *US Foreign Corrupt Practice Act* (FC-PA).

Why was Siemens investigated and fined by the US and German justice departments? What lessons can Chinese companies learn from the Siemens case? With these questions in mind, I paid a visit to the Siemens headquarters in Munich again in June 2009. I was impressed by the efforts of the company in rebuilding its compliance system after its bribery scandal was exposed.

From July 2009, domestic media reported on a lot of commercial bribery conducted by transnational companies in China, among which the most startling news was that employees at Rio Tinto's China office were arrested on suspicion of bribery. Cases of other transnational companies being investigated by the US justice departments over commercial bribery in China have been exposed one after another. TNCs' commercial bribery issue has become a major concern of Chinese society.

Our institute has organized a special research team to study the implications of TNCs' compliance enhancement to fight commercial bribery, and to find out how Chinese compa-

nies can learn from the experience of TNCs to contain and stop commercial instances of commercial bribery.

We have visited regional headquarters of about 20 TNCs based in China, such as Siemens and Daimler, to understand their experiences and lessons learnt regarding compliance management. We held three symposia on compliance management and two workshops with nearly 100 participants.

By conducting this research and engaging in discussions and analyses, we find that fighting commercial bribery and enhancing compliance management has become a new trend for business development worldwide. Facing accelerated globalization, Chinese companies need to attach great importance to this movement to contain commercial bribery and purify the business environment of China by learning from TNCs' experience and lessons in combating commercial bribery.

On the basis of such knowledge, we decided to compile a specialized publication on TNCs' enhancement of compliance management, and this book is the result of our joint effort with companies and scholars at home and abroad.

**Containing commercial bribery and enhancing compliance management is the foundation for sustainable development of companies. With the progress of society and civilization, people are increasingly realizing that it is not enough for companies to merely seek to maximize shareholders' benefits; they shall also take on comprehensive responsibilities including social and environmental responsibility. TNCs shall shoulder extra global responsibilities in both their motherlands and where their operations are located. Compliance is the most important among the comprehensive corporate responsibilities and global responsibilities, or we can say it is the bottom line of corporate responsibility. And this is what the book is going to elaborate.**

**Chinese companies have evolved into a new stage after thirty years of reform and opening up. They need to further contain commercial bribery and enhance compliance management to grow bigger, stronger and remain successful for longer.**

We suggest enhancing compliance construction and combating commercial bribery from the following aspects:

**1. To take compliance management as the primary responsibility of companies.**

In 2006, the Chinese central government explicitly put forward that "companies shall shoulder social responsibility and consciously accept social supervision", since then, many enterprises have been increasingly active in participating social charitable contributions, en-

ergy saving and emission reduction activities. Compliance is the bottom line of shouldering social and environmental responsibilities; but many enterprises haven't been fully aware of the significance of enhancing compliance management and containing commercial bribery and have taken ineffective measures. Therefore, we should return to the bottom line of corporate responsibility - compliance management.

In China, some enterprises have registered very serious commercial bribery and illegal management records. First of all, some foreign-invested enterprises have committed commercial bribery on a frequent basis and some of these instances are quite serious. Secondly, grave problems of commercial bribery exist in many domestic enterprises too, such as the cases of Chen Tonghai from Sinopec, Kang Rixin from China National Nuclear Corporation, and Zhang Chunjiang from China Mobile. Particularly, the real estate industry and infrastructure sector including high-speed roads are the areas hardest hit by commercial bribery. These problems have severely poisoned Chinese business environment, and interfered with the improvement and healthy development of the socialist market economy.

**A company will still be able to run miserably for a couple of years or even have a chance to turn loss into gain if the loss is incurred by poor management. However, if a company is involved in commercial bribery or other serious violations, it will collapse instantly. The fall of Sanlu and the collapse of D'Long Group illustrate this point. History has proved that it is hard for enterprises to grow bigger and stronger, but harder to grow longer. "Century-old shops" are normally all the compliant and responsible enterprises.**

## **2. To advance compliance management of various enterprises using various approaches**

**Firstly, to criticize the illegal operations of foreign-invested enterprises and to draw on their experience in enhancing compliance management.** Violations of some TNCs' branches or subsidiaries in China have very negative influences. Relevant governmental departments and public opinion should criticize them severely. While at the same time we should notice that most of these irregularities have been disclosed and corrected by TNCs themselves. Though some cases were exposed by others, the companies involved have taken comprehensive steps to rectify the situation after gaining a lesson from its bitter experience. For example, Siemens, through comprehensive rectification and reform, has established a "best in class compliance program" commented by the U. S. Department of Justice. Many TNCs have accumulated a wealth of experience and lessons in issues of curbing commercial bribery and enhancing compliance management. Therefore, in addition to criti-

cizing and punishing TNCs on their illegal operation problems, we should also learn from their experience so as to strengthen the compliance management of Chinese companies.

Many practices by TNCs in curbing commercial bribery and enhancing compliance management are worth learning from for Chinese enterprises. For example, establishing authoritative compliance management organizations; building a sound company-wide compliance management system; strengthening compliance management over suppliers and customers to achieve compliance operation in all links of the enterprise value chain; strengthening enforcement of the compliance system, and enhance management in the three major parts of compliance operations, that is, prevention, surveillance and response.

**Secondly, to strengthen compliance management of the “going global” companies of China.** With increasing global efforts against corporate corruption, irregularities committed by China’s “going global” enterprises have been facing more and more criticism. The behaviors of such enterprises often have a negative impact on the national image of China, and also directly affect enterprises’ worldwide sustainable development. Therefore, those “going global” companies should particularly strengthen their compliance operations and curb commercial bribery.

**Thirdly, to encourage compliance management among state-owned enterprises.** In recent years, the overall management of state-owned enterprises has become increasingly standardized. The Compliance Management Guidelines issued by the China Banking Regulatory Commission and China Insurance Regulatory Commission have been effectively promoting the compliance management of Chinese financial enterprises. The real estate industry in China is the hardest hit sector by commercial bribery, but according to some industry peers, Vanke has been able to keep to the moral bottom line.

We should recognize those compliant businesses and promote their successful experience, as well as increase the punishment for non-compliant enterprises. We should draw on international experience, impose heavy fines on commercial bribery, and limit these enterprises’ entry into relevant markets for a certain period of time and within a certain scope. Financial institutions shall reduce the credit ratings of enterprises engaged in commercial bribery or even not support their entry into a certain market.

### **3. To combine the enhancement of corporate compliance management with fighting corruption and upholding integrity nationwide**

Enhancing compliance management and curbing commercial bribery by enterprises is an effective measure to fight corruption and uphold integrity nationwide. This is because commercial bribery is the major funding source of various types of corruption, and curbing

commercial bribery will be beneficial to the effective containment of other types of bribery.

**We suggest that the legislature enacts specific anti-commercial bribery laws.** To learn from the experience of European and American countries, and protect as well as grant high rewards to the prosecutor in the legislation; not only to combat bribe-taking, but also to severely punish bribe-offering; not only to combat commercial bribery in domestic China but also those conducted overseas by Chinese enterprises.

**We suggest that government agencies draw on international experience to promote compliance administration.** The key to government compliance administration is transparency of administrative procedure, impartial implementation of laws and regulations, and promotion of fair competition. At the same time there is a need to increase the punishment for official corruption.

The aforementioned words are some recommendations we have summarized in the course of preparing this book.

During the process of preparing this book, a group of Chinese and foreign enterprises have provided us with support and help. Some of them gave us warm receptions and accepted our interviews and surveys, generously providing us with their experience and lessons in enhancing corporate compliance management; some of them provided us with information and even manuscripts. These enterprises include both foreign TNCs and domestic-funded companies, such as Siemens, General Electric, Motorola, Daimler, BASF, KPMG, Caterpillar, Novartis, Shell, BP, Ruder Finn, 3M, CNOOC, Industrial and Commercial Bank of China, Vanke, and etc.

As the editor in chief, I am grateful to all colleagues who have taken part in the survey and research, as well as the writing and editing work. Also I would like to say thanks to Mr. Jiang Xiaoping and the editors of the **China Economic Press**. It is the joint efforts made by us all that have enabled the on-schedule publishing of this book.

I hope that this book may play its part in promoting enterprises in China to curb commercial bribery and strengthen compliance management. I also appreciate your advice and suggestions regarding our research so that we can improve our study on compliance issues.

Wang Zhile

At Beijing New-century Academy on Transnational Corporations

January. 17, 2010

本书作者

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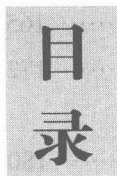
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