

China's SASAC Releases Guidance on Compliance Management for Central Stated-Owned Enterprises

The pilot guidance may help multinational companies address certain challenges they have previously faced when doing business with Chinese SOEs.

Key Points:

- Following extensive research and consultation, the SASAC has released pilot guidance for Central Enterprises to better comply with local, national, and international laws and regulations in their business operations, in order to effectively prevent and manage risks associated with compliance.
- With a total of 31 provisions, the guidance outlines specific responsibilities for directors, supervisors, and other individuals at the management level of Central Enterprises. The guidance also requires Central Enterprises to appoint a head of compliance and a compliance committee.
- Chinese and international companies seeking to form joint ventures with, invest into, or acquire Chinese SOEs should apply the provisions highlighted in the guidance to strengthen the compliance capabilities, systems, and management of such SOEs.

On November 2, 2018, the State-owned Assets Supervision and Administration Commission (SASAC) of the People's Republic of China (PRC), released pilot Guidance on Compliance Management for Central Enterprises (the Guidance). The SASAC manages and supervises a group of the largest and most influential Chinese state-owned enterprises (SOEs), which are referred to as "Central Enterprises". China currently has [96 Central Enterprises](#) under the direct supervision of the SASAC, which cover the most critical industries and sectors for Chinese economy and society. The SASAC released the Guidance in order to promote and strengthen compliance management, and to ensure continued development of state-level central enterprises.

Background

During the last decade, Chinese and multinational companies have increasingly been required to take a proactive role in establishing and implementing effective compliance management systems. These systems not only strengthen companies' supervision and governance at the management level, but also reduce and mitigate liability and risks posed by the stringent requirements in international treaties, as well as domestic laws and regulations — such as the United Nations Conventions against Corruption treaty, the US Foreign Corrupt Practices Act, and the UK Bribery Act.

The growing importance of compliance management and the challenges it presents to domestic Central Enterprises prompted the Chinese government to introduce the Guidelines. The Guidelines aim to assist Chinese Central Enterprises in aligning the compliance standards for their business operations, institutional mechanisms, and responsibilities with those of multinational companies overseas.

Compliance Guidance: An Introduction

General Principles

To achieve compliance under the Guidance, enterprises must harmonize their operational and management behavior with relevant laws, regulations, industry practices, enterprise charters and policies, and international treaties and rules. Compliance management involves organizing and supervising activities to prevent and control compliance risks. These activities include formulating policies, identifying risks, investigating accountability, and conducting compliance trainings.

The Guidance sets out four general principles for how Central Enterprises should establish and improve their compliance management systems, including:

1. Ensuring compliance management systems cover all business areas, departments, subsidiaries, branches, and personnel, as well as all decision, execution, and supervision procedures.
2. Strengthening the accountability of compliance personnel for implementing effective compliance management systems.
3. Achieving cohesive cooperation and collaboration between the compliance function and other functions, such as legal, risk management, auditing, and internal controls.
4. Carrying out compliance responsibilities independently and objectively

Compliance Responsibilities

The Guidance also outlines detailed compliance responsibilities based on the functions and structures of Central Enterprises. Specific compliance responsibilities are allocated to the board of directors, board of supervisors, and individuals at the management level. These responsibilities include identifying key compliance issues and determining policies to manage employees who have violated the Central Enterprise's compliance rules and procedures.

The general counsel or a senior executive of a Central Enterprise should also serve as head of compliance. This role is responsible for overseeing the Central Enterprise's overall formulation and strategic compliance management planning, reporting major compliance issues, and drafting annual compliance management reports. Central Enterprises should also establish a compliance committee that works with the legal group or risk control committee to organize and coordinate compliance management, hold routine compliance meetings, and determine or advise on important issues, as well as to guide, supervise, and evaluate compliance management efforts.

The Guidance further covers certain key compliance areas that Central Enterprises must observe. For example, in deals and transactions, Central Enterprises are required to improve their transaction management systems, strictly execute their decision-making and approval process, and focus on the rules of antitrust and preventing commercial bribery, in order to decrease overall compliance risks effectively. Central Enterprises are also required to conduct compliance due diligence on key business partners and facilitate the signing of compliance agreements and commitments by such partners. In

relation to procedural implementation, operations, and safeguards, the Guidance mandates formulating compliance policies, establishing a professional compliance management team, continuously promoting compliance trainings, and launching a compliance report system to report high-risk compliance issues to the SASAC and relevant government departments.

The Guidance highlights the need to supervise overseas investment and the operational behavior of overseas personnel. In particular, the Guidance requires Central Enterprises to study the regulations of jurisdictions in which they invest, and to understand prohibitive provisions in order to identify the bottom lines of overseas investment and operations. Further, Central Enterprises should seek to improve their overseas compliance systems (e.g., by conducting due diligence when launching projects and strengthening control of overseas institutions). Central Enterprises should also regularly conduct checks and risks analyses on all overseas investments and operation businesses. Furthermore, they should report issues as soon as they arise to contain problems and prevent the occurrence of new ones.

Implications for Multinational Companies Seeking to Do Business with Chinese SOEs

Although an official implementation deadline has not yet been set, the Guidance will undoubtedly have a significant impact on Central Enterprises, their numerous subsidiaries and affiliations, and millions of their employees.

Historically, many multinational companies have encountered difficulties when seeking to form joint ventures with, invest into, acquire, or partner with Chinese SOEs. The introduction of the Guidance — if fully and faithfully implemented — may help address these challenges by encouraging Chinese SOEs to align their compliance management standards with those of their multinational business counterparties. In fact, many Central Enterprises have already started to build or adjust their compliance functions to the standard presented in the Guidance.

Local SOEs will likely be required in the near future to follow compliance guidelines issued by provincial or local SASACs, as the Guidance encourages provincial and local SASACs to adopt their local compliance guidelines by using the Guidance as a point of reference. For example, an SOE owned or controlled by the Shanghai or Beijing municipal government may be required to adhere to the compliance guidelines issued by the Shanghai or Beijing SASAC.

The Guidance provides high-level direction for how SOEs should conduct compliance management, without including implementation details. An SOE should implement compliance management based on the characteristics of its own business and the particular compliance issues posed at that particular time, before expediently adjusting its goals. For example, if the SOE has a particular weakness in safety and environmental protection, the SOE should focus its resources on strictly implementing national safety production and environmental protection directives, and on rectifying any potential violations.

Notably, the Guidance was formulated in accordance with the Company Law and State-Owned Assets Law of the PRC, as well as other relevant PRC laws and regulations. Therefore, businesses should strictly adhere to the relevant PRC laws and regulations when considering implementation rather than view the Guidance as a standalone piece of procedural regulation.

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