

FOR COMPLIANCE'S SAKE

DANIEL EE

Over the past decade, compliance has become a major area of concern for boards and management of companies.

Thirty years ago, it was evident mainly among financial institutions. Today, companies across all industries have to posit a framework to manage their compliance amid the increasing number of rules and regulations.

Apart from the Companies Act, a listed company in Singapore has to observe the provisions of the Securities and Futures Act, and the rules of the SGX Listing Manual. Those operating in certain industries are further subject to regulations applicable to those sectors, such as the Banking Act for banks, the Telecommunications Act for telecom companies and the Newspaper and Printing Presses

Act for newspaper companies.

In addition, the Monetary Authority of Singapore has issued a Code of Corporate Governance that listed companies must comply with, or explain the instances where they have not and the reasons for doing so.

BURDENSOME RULES

Whenever a new rule is introduced, it tends to be received as just another burdensome requirement for companies, with some rules being viewed as more burdensome than others.

For example, one recently introduced rule that was viewed as particularly problematic was Rule 1207(10) of the SGX Listing Manual. This rule requires the board to express “an opinion on the adequacy of internal controls, addressing financial, operational and compliance risks”. Given the broad implication of the rule, boards, together with their professional legal and accounting advisers, spent much time and energy to work out acceptable responses.

Rule 1207(10) came into effect in September 2011 and made mandatory what was previously recommended good practice by the Code of Corporate Governance. The Code’s recommendation in this area (Guideline 11.3) was also updated in May 2012 for the board to comment on both “the adequacy and effectiveness of the internal controls”.

A recent *ISCA-KPMG Risk Management Study* found that compliance with the non-mandatory Code shot up from 23 per cent to 98 per cent after the mandatory Rule 1207(10) was introduced.

While regulations clearly drive compliance – and perhaps anxiety and angst for directors and management – the question is whether it should be so.

LAW OR DOING WHAT IS RIGHT?

There are perhaps two ways to view regulations: as laws to be followed otherwise there will be heavy penalties, or as the right things to do.

Take, for example, littering. In Singapore, litterbugs can be fined up to \$1,000 for the first conviction and up to \$5,000 for repeat convictions. In addition, litterbugs can be ordered to pick up litter in public for up to 12 hours. Some observers have wondered whether Singapore will be as clean if there are no such harsh penalties for littering – and if there is no army of street sweepers to clear the streets daily.

Japan, which also boasts very clean streets, seems to depend less on anti-littering laws. A Japanese movie, *Departures*, which I saw a few years ago, perhaps illustrates the psyche of the Japanese in this respect. In one scene, a mortician is seen stuffing his cigarette into a portable mini ashtray that he carries in his jacket instead of simply flipping the stub onto the ground. It was a three-second scene, but it spoke volumes of the Japanese attitude towards littering. The average Japanese does not litter because it is the right thing to do, and not because there is a penalty for doing so.

RIGHT COMPLIANCE TO THE RIGHT RULES

In this light, boards and management should therefore examine the underlying value of specific rules instead of just viewing them as burdensome requirements to be complied with.

If a rule does not appear to make sense, then directors and management could add their voice and weight to having the rules removed or moderated.

SID seeks to assist in this respect. For example, when Rule

1207(10) was introduced, SID organised feedback sessions with its members, hosted several seminars on the revised Code, and made representations to the authorities. Following such feedback, the SGX issued clarifications and a practice note on Rule 1207(10) to provide more practical guidance on its compliance.

Once boards and management accept that a rule represents guidance as to the right thing to do, they would have internalised the requirement; and compliance then comes naturally.

In summary, the right spirit towards compliance is for boards and management to, first, want to do the right thing, and then to work with the regulators, the industry and SID to ensure that the rules actually encompass those right things. Companies should then comply with the rules from the standpoint of alignment with them and not just because the penalties for not doing so can be harsh. ■