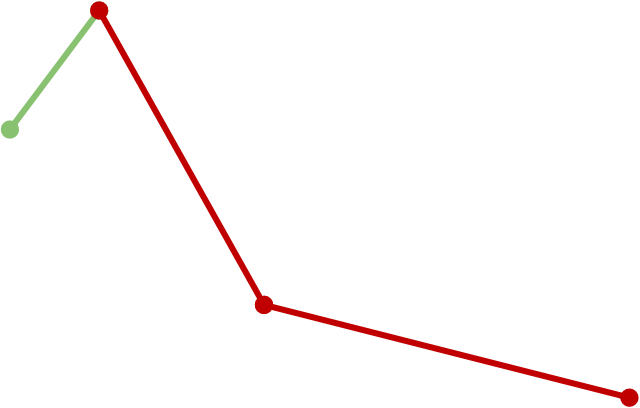


Case Study

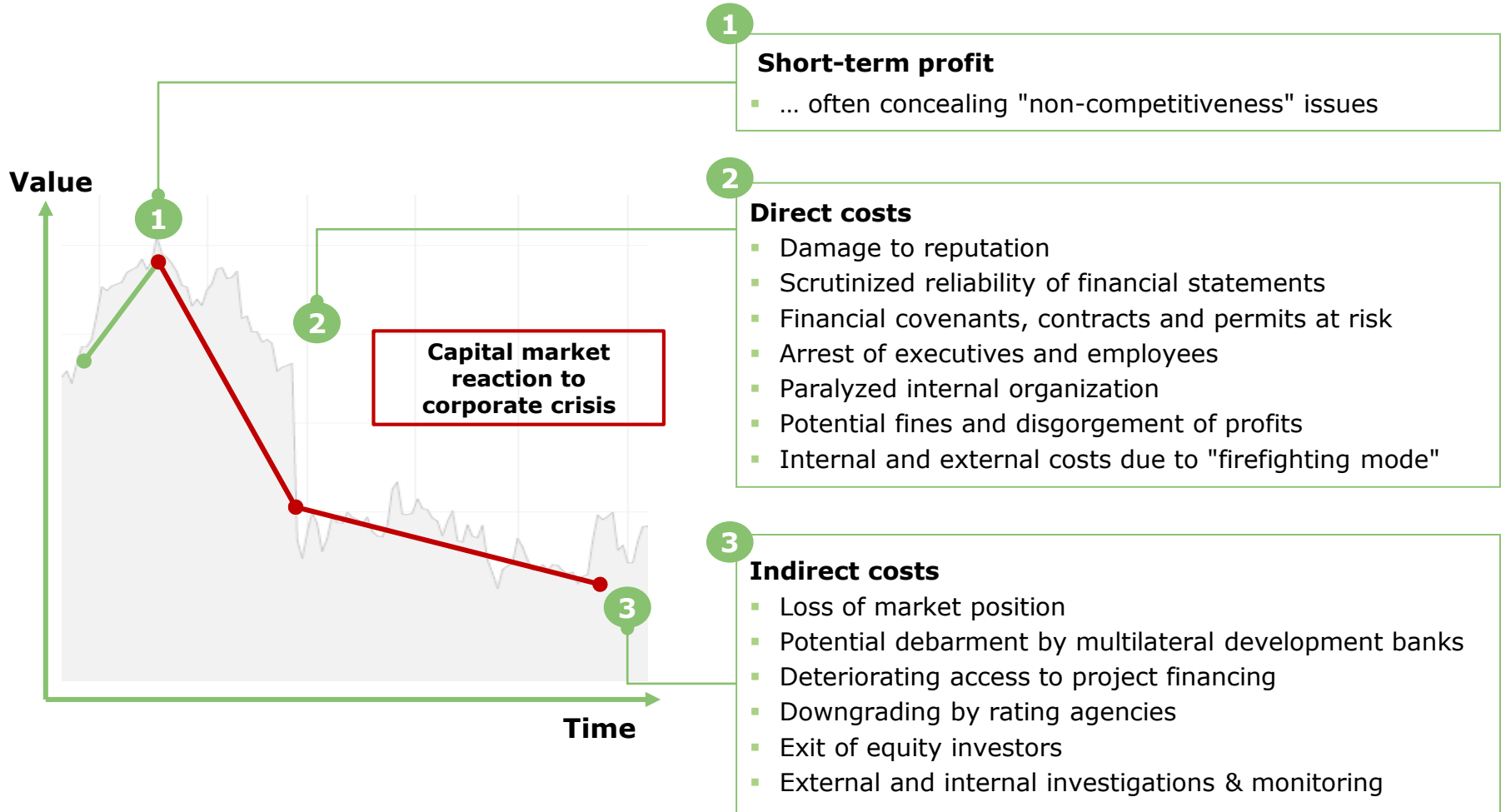
Compliance Certification – A Monitor's Perspective

Julia Kahlenberg, Partner at Pohlmann & Company





Typical Patterns of Corporate Crises





"It takes **20 years** to build a reputation
and **5 minutes** to ruin it!"

Warren Buffet
CEO Berkshire Hathaway Inc.

Top Ten FCPA Enforcement Actions



1. **Telia Company AB** (Sweden): \$965 million in 2017.



2. **Siemens** (Germany): \$800 million in 2008.



3. **VimpelCom** (Holland) \$795 million in 2016.

4. **Alstom** (France): \$772 million in 2014.



5. **KBR / Halliburton** (United States): \$579 million in 2009.



6. **Teva Pharmaceutical** (Israel): \$519 million in 2016.

7. **Och-Ziff** (United States): \$412 million in 2016.



8. **BAE** (UK): \$400 million in 2010.



9. **Total SA** (France) \$398 million in 2013.

10. **Alcoa** (United States) \$384 million in 2014.



Our Experience and Projects

Assessment and Certification Mandates

SEC / DoJ
Monitorship



Counsel to
the US Monitor



Special
Committee



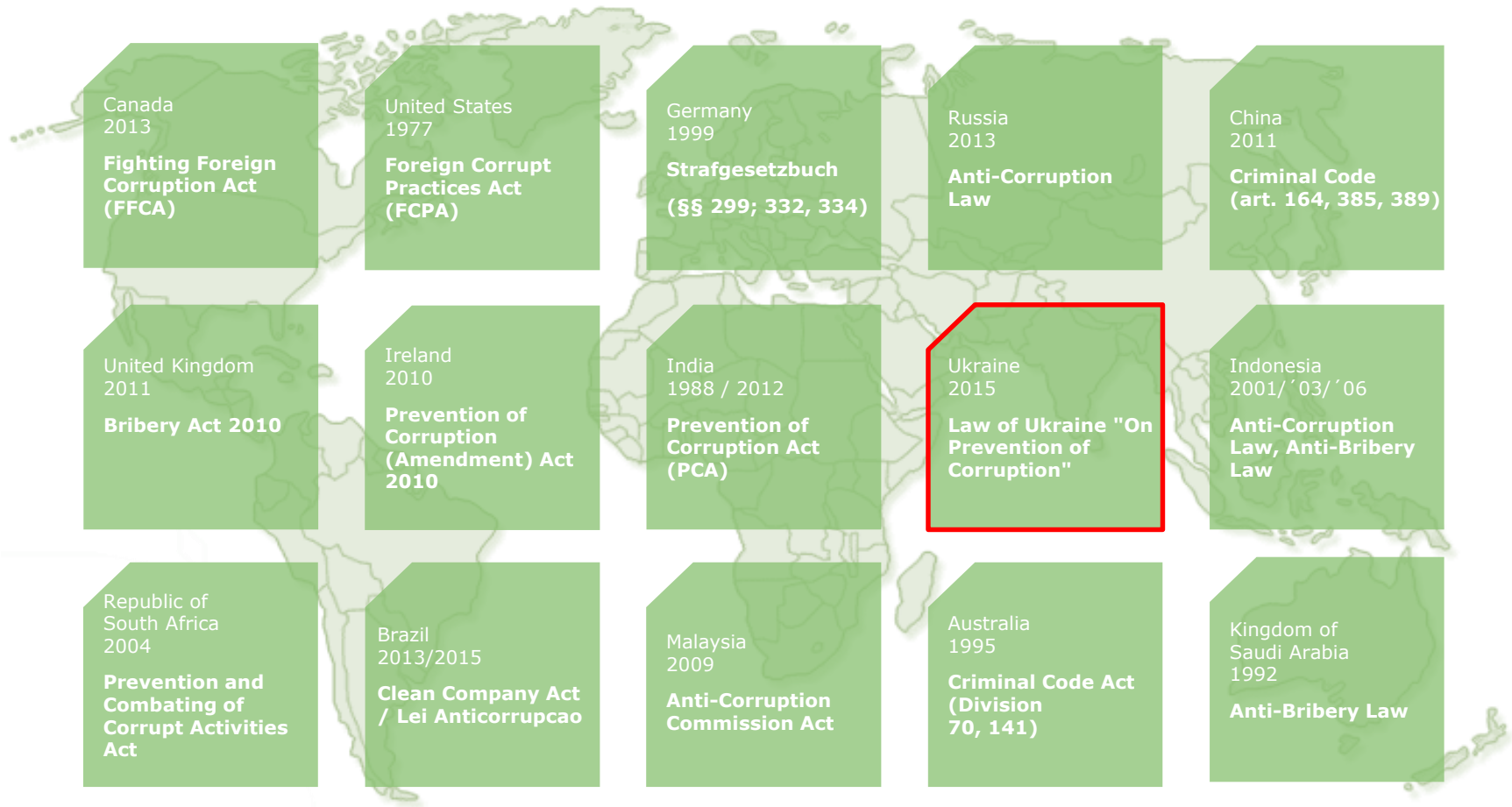
World Bank
Monitorship



Preventative Mandates








The Global Trend towards Convergence



Further Major Compliance Standards

- **ICC** Rules on Combating Corruption
- **OECD** Convention on Combating Bribery and Good Practice Guidance on Internal Controls, Ethics, and Compliance
- **United Nations** Convention against Corruption
- **United Nations** Global Compact (10. Principle)
- **COSO** Framework
- **Italian Decree** No. 231/2001 Sections 6 and 7
- **Australian Standard** AS 3806-2006, Compliance Programs
- **German Attestation Standard** for Compliance Programs (**IDW PS 980**)
- **ISO** 19600 and 37001
- ...

Comparable Criteria for Compliance Programs

|  US FCPA* Resource Guide |  US Sentencing Guidelines |  UK Bribery Act Guidance |  WBG Integrity Compliance Guidelines |  Law “On Prevention of Corruption” |
|---|--|--|---|--|
| <ul style="list-style-type: none"> ▪ Commitment of management ▪ Risk-based approach ▪ Business partner due diligence ▪ Autonomy of the corporate compliance function and adequate resources ▪ Mechanisms for incentives and sanctions ▪ Code of Conduct and compliance policies ▪ Reporting and internal investigations ▪ Compliance training ▪ Pre-Acquisition Due Diligence and post-acquisition integration ▪ Continuous improvement (remediation) | <ul style="list-style-type: none"> ▪ Compliance communication ▪ Continuous risk assessment ▪ Compliance training and information material ▪ Clear organizational responsibilities ▪ Adequate authority and resources of the corporate compliance function ▪ Anonym whistleblowing system ▪ Mechanisms for incentives and sanctions ▪ Due diligence ▪ Monitoring and control | <ul style="list-style-type: none"> ▪ Commitment of management ▪ Continuous risk assessment ▪ Transparent and practical guidelines ▪ Internal and external communication of compliance efforts ▪ Compliance policies ▪ Compliance training ▪ Compliant and accurate selection of business partners ▪ Compliance monitoring and continuous improvement | <ul style="list-style-type: none"> ▪ Top-level management commitment ▪ Internal Compliance Policy ▪ Clearly articulated prohibition of misconduct ▪ Comprehensive risk assessment ▪ Reporting obligation in case of suspected corruption or fraud ▪ Risk-based due diligence on business partners ▪ Independent right of review ▪ Disciplinary actions including fund reclamation and exclusion | <ul style="list-style-type: none"> ▪ Yearly corruption self-assessments and regular risk assessments ▪ Implementation of a CoC ▪ Internal procedures to protect employees who blow the whistle on internal violations ▪ Train and instruct personnel on ABC laws ▪ Appoint authorized person to become the Company’s Officer ▪ provisions on obligatory compliance in employment agreements as well as the company’s internal regulations ▪ Compliance DD with contracting companies ▪ Mechanisms for monitoring implementation of a CCP |

Assessment Methodology



Assessment Objects

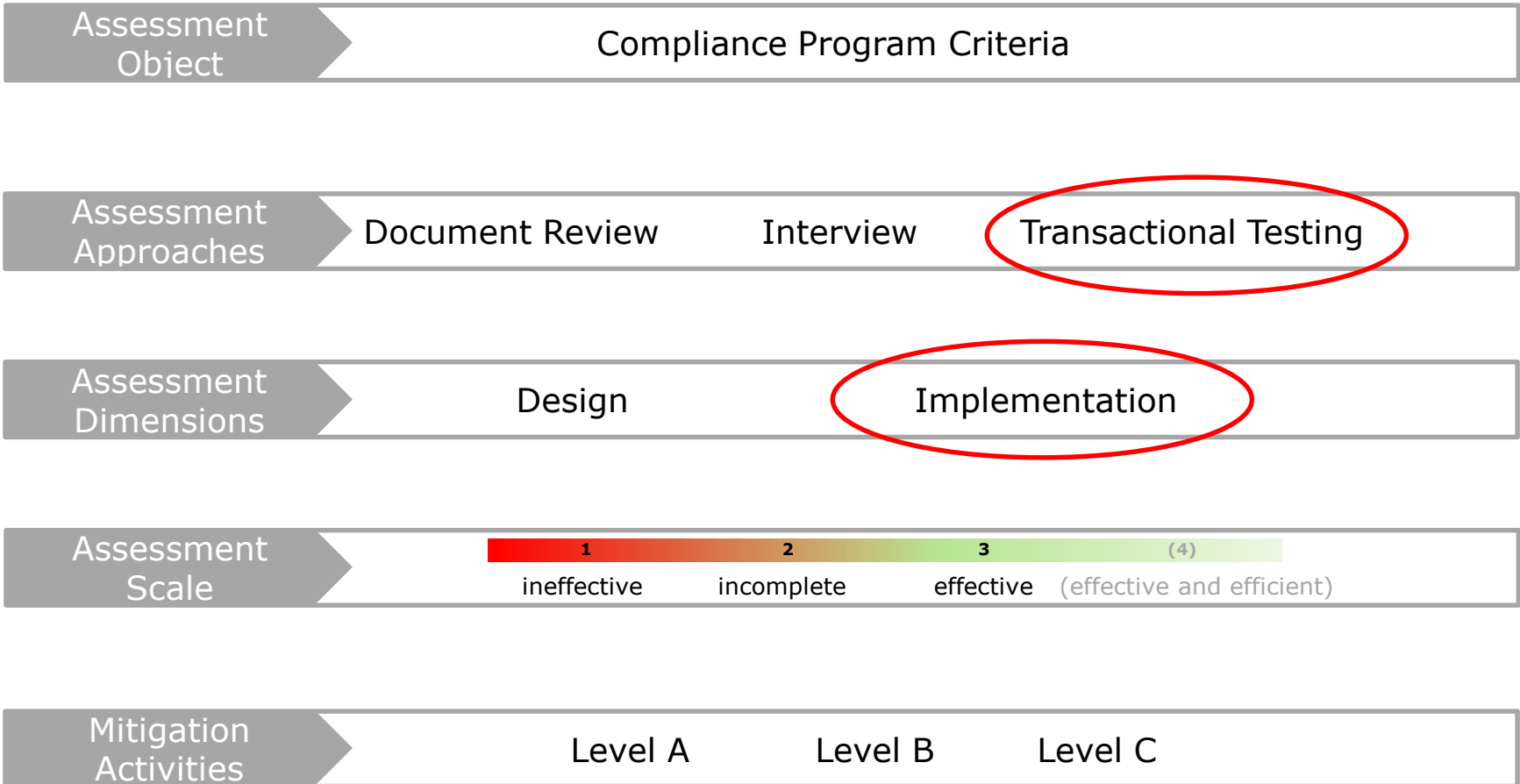
Compliance Program Criteria

- 1) High level commitment
- 2) Policies and procedures
- 3) Periodic risk based review
- 4) Proper oversight and independence
- 5) Training and guidance
- 6) Internal reporting and investigation
- 7) Enforcement and discipline
- 8) Third party relationships
- 9) Mergers and acquisitions
- 10) Monitoring and testing

Internal Control Procedures

- 1) Books and Records Provisions
- 2) Books and Records Controls
- 3) Internal Audit

Assessment Methodology



Compliance Program Criteria: Example “High Level Commitment”

| Topic | 1 | High Level Commitment |
|--------|----|---|
| Aspect | 1a | Tone-from-the-top and walk-the-talk <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i> |
| Aspect | 1b | Tone-from-the-middle and walk-the-talk <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i> |
| Aspect | 1c | Compliance and integrity embedded in the company's value system and overall strategy <i>(break down of values, anchor compliance in business strategy, employee survey)</i> |
| Aspect | 1d | Compliance communication to external stakeholder <i>(publish compliance reports, participate in rankings (e.g. DJSI), promote certificates)</i> |

Plus:

a review of **internal efforts to regularly monitor and test the effective implementation** of the underlying processes.

Aspect 1a: Tone from the Top

Topic 1: High Level Commitment

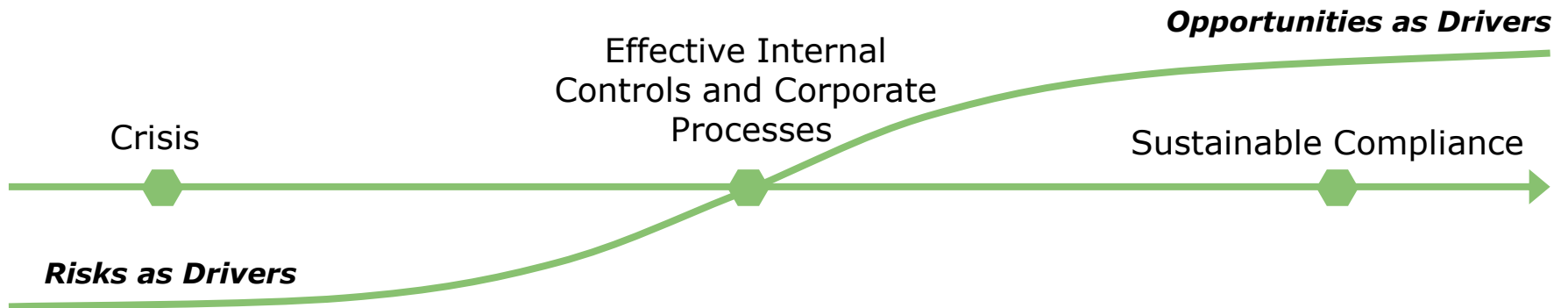
| Aspect | Tone-from-the-top and walk-the-talk <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i> | |
|--------|--|---|
| 1a) | Document Review | <ul style="list-style-type: none"> ▪ Compliance Communication plans ▪ Communication material ▪ Documentation used for ABC information sessions with employees ▪ ... |
| | Interview | <ul style="list-style-type: none"> ▪ Executive Management ▪ Shareholders ▪ Supervisory Board Members ▪ Head of Communications ▪ Head of Legal ▪ Head of Compliance ▪ Head of HR ▪ Middle Management representatives ▪ Random interviewees ▪ ... |
| | Testing | <ul style="list-style-type: none"> ▪ Reviews, updates and approvals of Communication Plan ▪ Activity trackers and examples of tone-from-the-top communication ▪ Participation in executive leadership meeting ▪ Protocols of attended executive leadership meeting ▪ Attendance of (e.g. townhall) meetings ▪ Compliance statements made by the shareholders ▪ ... |

Minimum Standards and Behavioral Examples

| Topic 1 High Level Commitment | | | | |
|-------------------------------|---|---|---|---|
| Aspect | Tone-from-the-top and walk-the-talk <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i> | | | |
| Behavioral examples | Top management does not at all, or at least not in a credible manner, communicate regarding compliance and integrity. | Top management rarely communicates regarding compliance and integrity. There is no systematic approach and no plan to communicate the value of compliance and integrity throughout the entire organization. | Top management communicates regularly and credible in regards to compliance and integrity. High Level Commitment is part of the company's communication plan. | Next to the systematic and credible communication regarding compliance and integrity, top management acts as multiplier (through speeches, in meetings, in townhalls, on the website, etc.) for compliance and integrity. |
| Assessment Design | | | | |
| | 1 | 2 | 3 | 4 |
| Assessment Implementation | | | | |

From Crisis Response to Sustainable Compliance

Effective and efficient compliance management is enhancing critical internal controls and corporate processes and is a key lever to establish a sustainable culture of integrity.



- Investigation and remediation ("fix it")
- Addressing and resolving immediate requirements (e.g. reliability of financial statements)
- Establishing and monitoring key internal controls and processes



- From "firefighting" to strategic decisions and effective execution
- Implementing an effective compliance management system
- Systematic prevention and detection of illegal behavior



- Determined improvement of reputation
- Collective Action against Corruption (**e.g. UNIC**)
- Outreach to company stakeholders
- Listing in relevant indices (**e.g. DJSI**)

Utilize Sustainable Compliance as Competitive Gain

Of course, there will be costs associated with starting or enhancing a compliance program. However, from a cost/benefit stand point, investing in compliance drives both **competitive advantage and shareholder value**, and just makes good business sense, as

a best-practice Compliance Program can...

... **reduce risk** of prosecution, **avoid financial penalties** and **mitigate sentencing**

... **boost the bottom line** via supply chain due diligence

... mean **better decisions** by improved information management

... increase **customer confidence** by demonstrating compliance leadership

... attract **world-class potentials**

... mean the difference between losing or **winning the business**

... be a **decisive factor for investors**

→ **drive revenue, increase performance and foster organizational resilience!**

**DONE IS
BETTER
THAN
PERFECT**



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