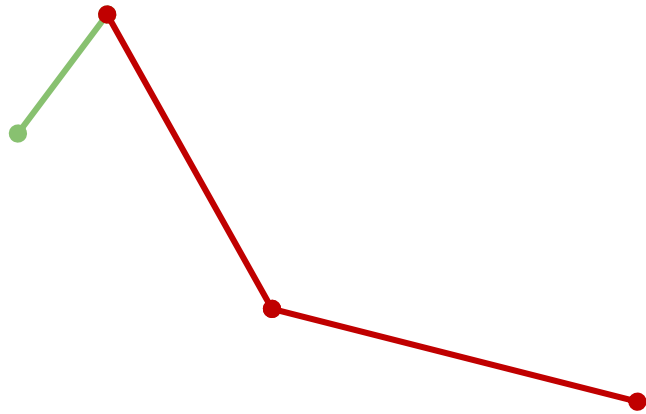


# Case Study

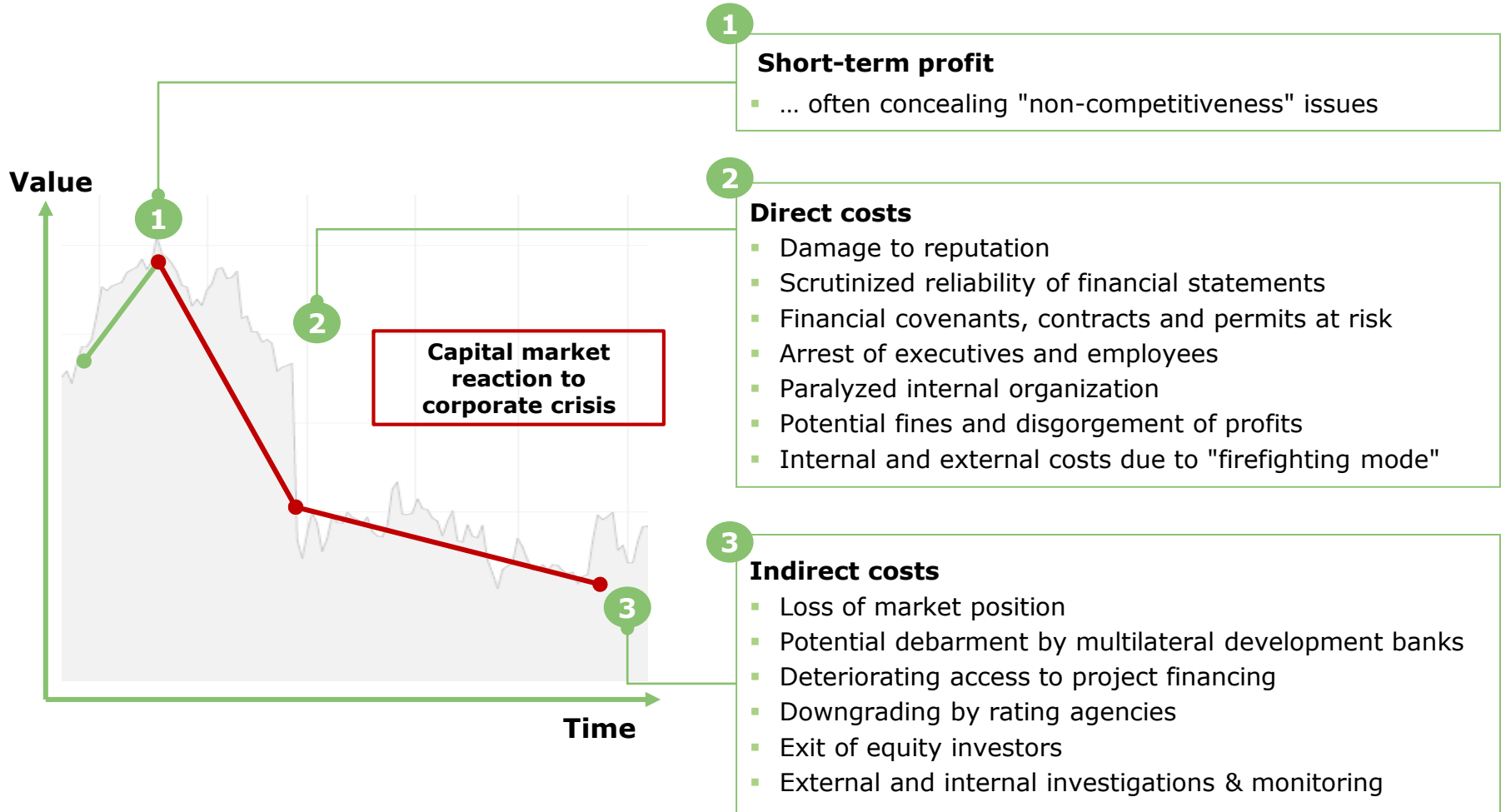
## Compliance Certification – A Monitor's Perspective

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



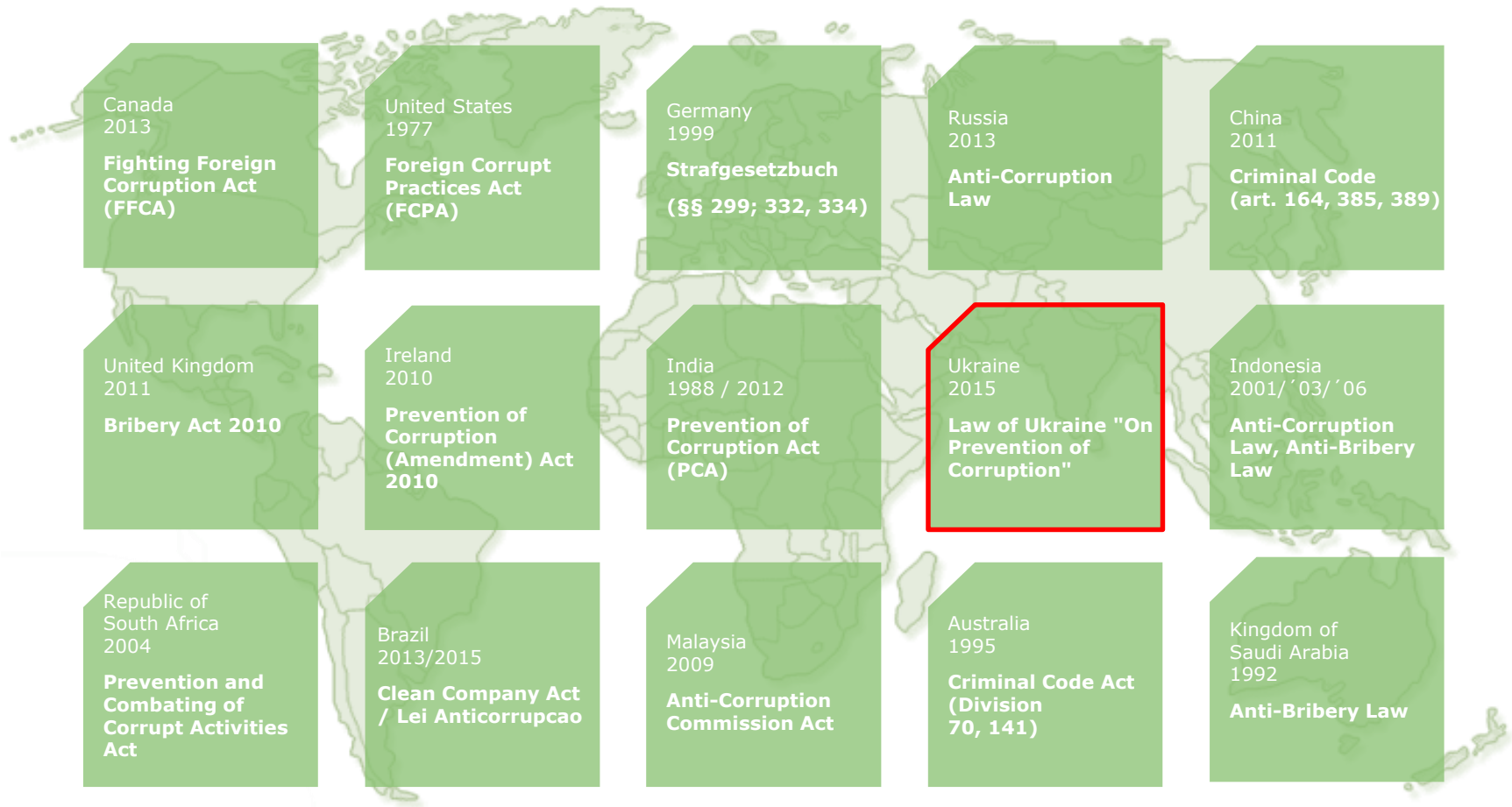
World Bank  
Monitorship



## Preventative Mandates



# The Global Trend towards Convergence








## Further Major Compliance Standards

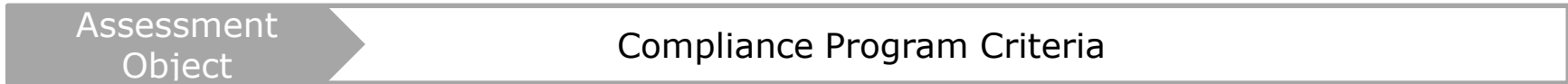
- **ICC** Rules on Combating Corruption
- **OECD** Convention on Combating Bribery and Good Practice Guidance on Internal Controls, Ethics, and Compliance
- **United Nations** Convention against Corruption
- **United Nations** Global Compact (10. Principle)
- **COSO** Framework
- **Italian Decree** No. 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"> <li>▪ Commitment of management</li> <li>▪ Risk-based approach</li> <li>▪ Business partner due diligence</li> <li>▪ Autonomy of the corporate compliance function and adequate resources</li> <li>▪ Mechanisms for incentives and sanctions</li> <li>▪ Code of Conduct and compliance policies</li> <li>▪ Reporting and internal investigations</li> <li>▪ Compliance training</li> <li>▪ Pre-Acquisition Due Diligence and post-acquisition integration</li> <li>▪ Continuous improvement (remediation)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Compliance communication</li> <li>▪ Continuous risk assessment</li> <li>▪ Compliance training and information material</li> <li>▪ Clear organizational responsibilities</li> <li>▪ Adequate authority and resources of the corporate compliance function</li> <li>▪ Anonym whistleblowing system</li> <li>▪ Mechanisms for incentives and sanctions</li> <li>▪ Due diligence</li> <li>▪ Monitoring and control</li> </ul>	<ul style="list-style-type: none"> <li>▪ Commitment of management</li> <li>▪ Continuous risk assessment</li> <li>▪ Transparent and practical guidelines</li> <li>▪ Internal and external communication of compliance efforts</li> <li>▪ Compliance policies</li> <li>▪ Compliance training</li> <li>▪ Compliant and accurate selection of business partners</li> <li>▪ Compliance monitoring and continuous improvement</li> </ul>	<ul style="list-style-type: none"> <li>▪ Top-level management commitment</li> <li>▪ Internal Compliance Policy</li> <li>▪ Clearly articulated prohibition of misconduct</li> <li>▪ Comprehensive risk assessment</li> <li>▪ Reporting obligation in case of suspected corruption or fraud</li> <li>▪ Risk-based due diligence on business partners</li> <li>▪ Independent right of review</li> <li>▪ Disciplinary actions including fund reclamation and exclusion</li> </ul>	<ul style="list-style-type: none"> <li>▪ Yearly corruption self-assessments and regular risk assessments</li> <li>▪ Implementation of a CoC</li> <li>▪ Internal procedures to protect employees who blow the whistle on internal violations</li> <li>▪ Train and instruct personnel on ABC laws</li> <li>▪ Appoint authorized person to become the Company’s Officer</li> <li>▪ provisions on obligatory compliance in employment agreements as well as the company’s internal regulations</li> <li>▪ Compliance DD with contracting companies</li> <li>▪ Mechanisms for monitoring implementation of a CCP</li> </ul>

# Assessment Methodology



## Assessment Objects

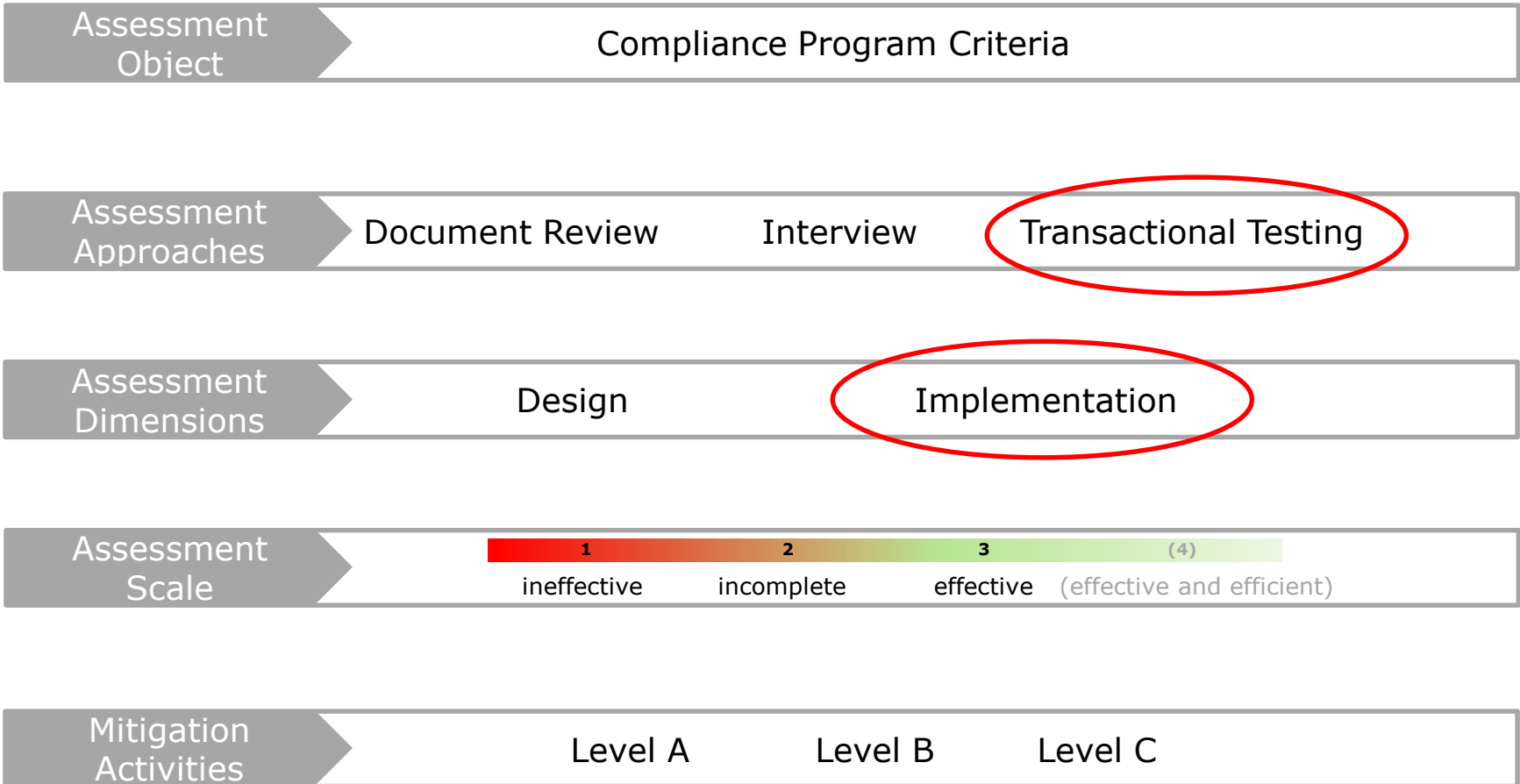
### Compliance Program Criteria

- 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	<b>Tone-from-the-top and walk-the-talk</b> <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i>
Aspect	1b	<b>Tone-from-the-middle and walk-the-talk</b> <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i>
Aspect	1c	<b>Compliance and integrity embedded in the company's value system and overall strategy</b> <i>(break down of values, anchor compliance in business strategy, employee survey)</i>
Aspect	1d	<b>Compliance communication to external stakeholder</b> <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

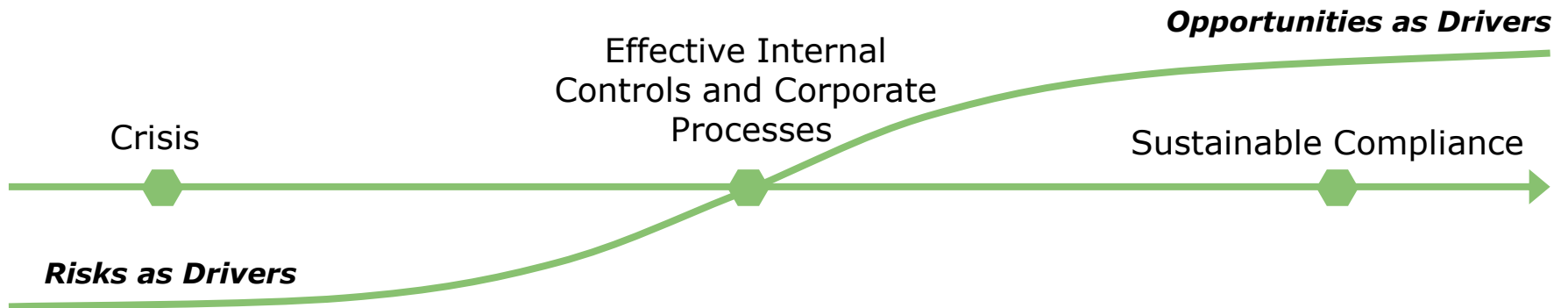
Aspect	<b>Tone-from-the-top and walk-the-talk</b> <i>(clear messages, zero tolerance, leadership by good example, Compliance multiplier)</i>	
1a)	<b>Document Review</b>	<ul style="list-style-type: none"> <li>▪ Compliance Communication plans</li> <li>▪ Communication material</li> <li>▪ Documentation used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

# Minimum Standards and Behavioral Examples

Topic 1	High Level Commitment			
Aspect	<b>Tone-from-the-top and walk-the-talk</b> <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				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
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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