

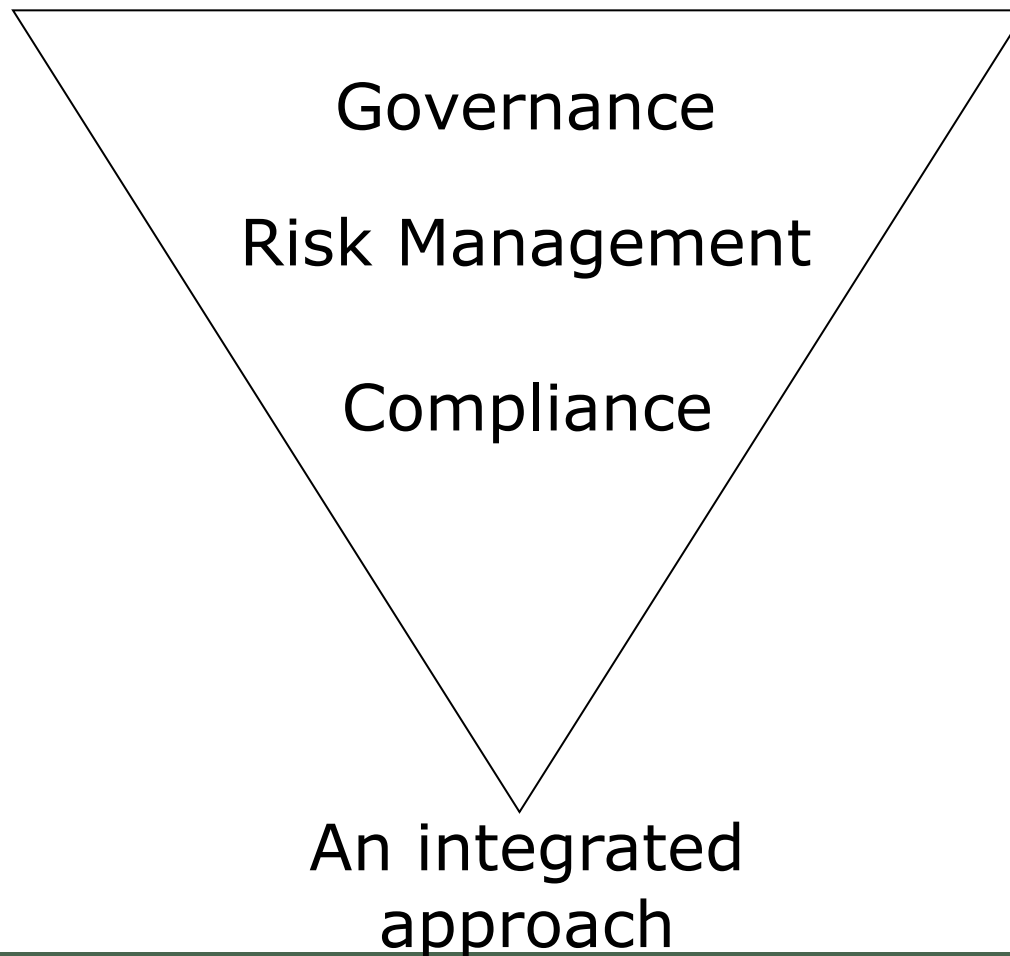
The Legal Affairs Department and Risk Management

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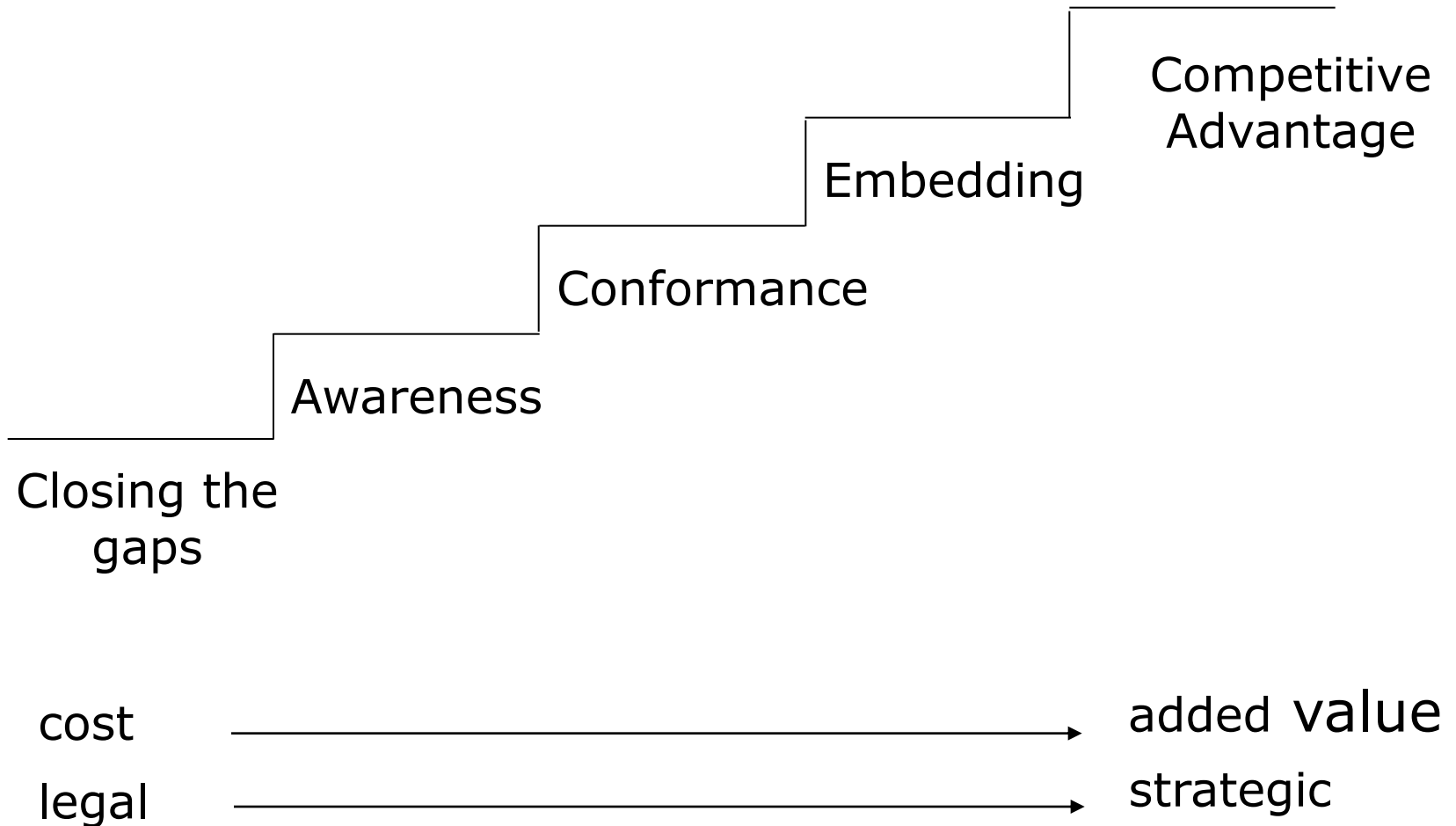
Compliance management? Risk Management?

- Compliance management implies organising and implementing processes to increase compliance with rules or principles (issued by legislators or regulators, professional associations or internally) within an organisation
- Compliance management aims above all at protecting the company and its employees against legal sanctions (prohibition to perform activities, invalid contracts, contractual, civil or criminal liability,...)
- Risk management implies the process of assessing risk and acting in such a manner, and/or prescribing policies and procedures, so as to avoid or minimize loss associated with such risk.

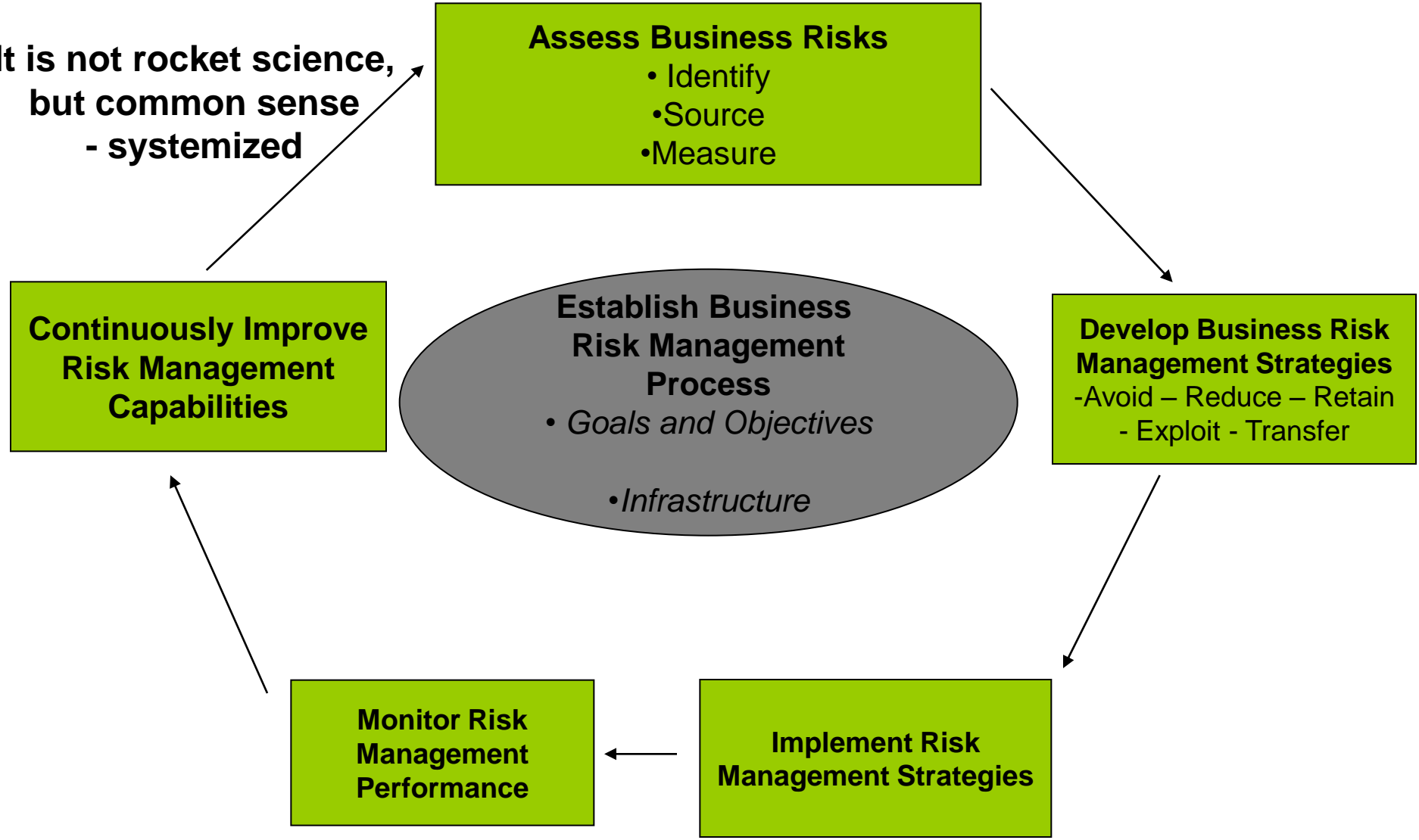
Risk Management is a part of GRC



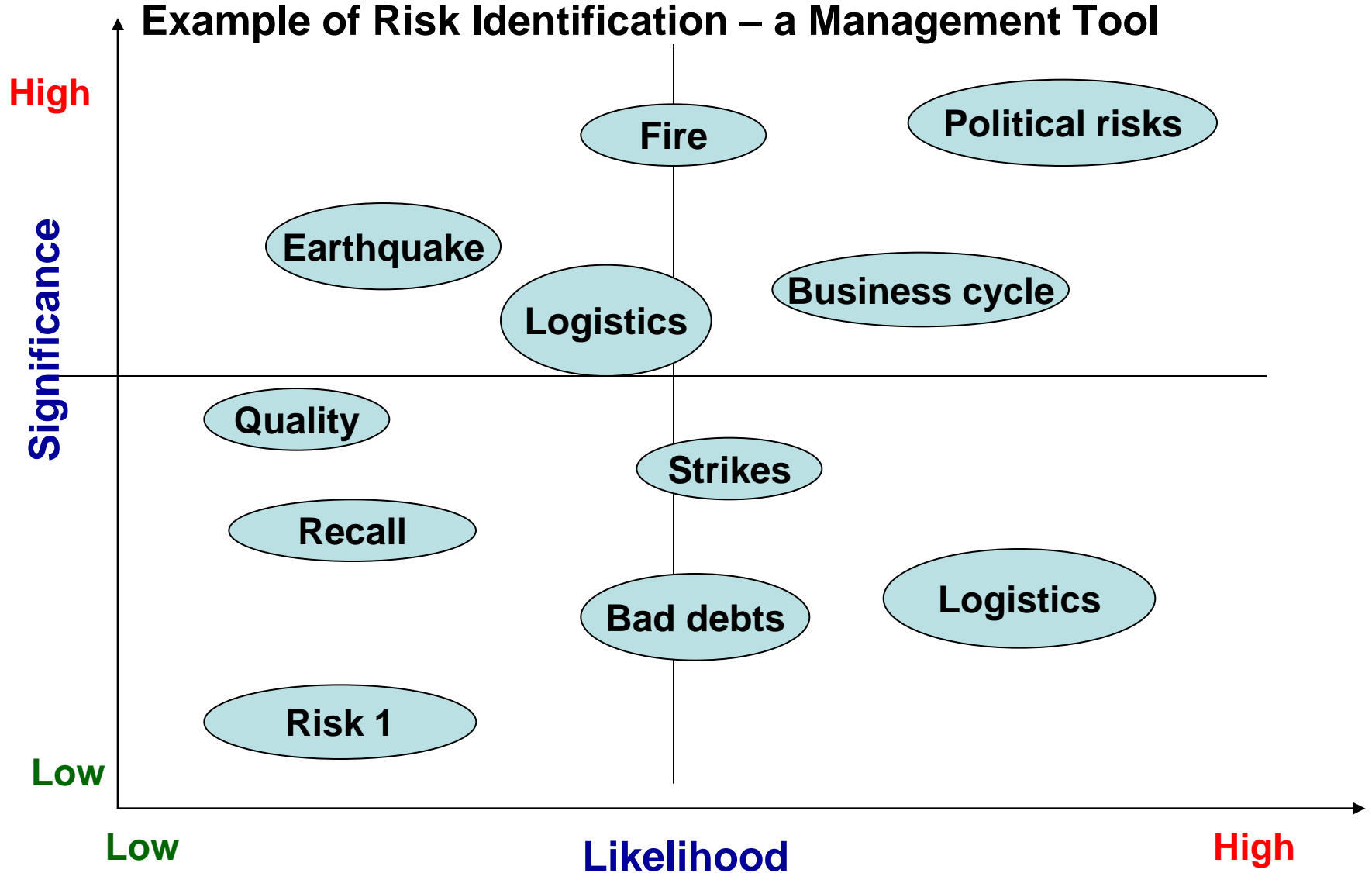
Risk Management: the various steps



Risk Management Process



Example of Risk Identification – a Management Tool



Assess Likelihood of Occurrence

- **A:**
 - The risk **will certainly come up** with limited time (this year)
 - 76-100%
- **B:**
 - The risk **will probably come up** (this year or next year)
 - 51-75 %
- **C:**
 - The risk **will probably come up medium term** (2-4 years)
 - 26-50 %
- **D:**
 - The risk **will probably not come up** or very long term (5 years or above)
 - 0-25 %

Assess Consequence & Severity

- **A: Severe**
 - Extensive management time spend on solving issue
 - Severe financial consequence
 - Destroys brand value immediately (international brands)
- **B: High**
 - Management involvement on ad hoc basis
 - Some financial consequence
 - Has potential for destroying brand value at short term (international brands) or immediate effect on local brands
- **C: Limited**
 - Limited management involvement
 - Limited financial consequence
 - Has potential of destroying brand value of local brands
- **D: Low/None**
 - No Management involvement, no direct financial consequence in short term

Risk Leads to Following Exposures

- Financial Exposure
- Personal Exposure
- Combination
- Reputational Exposure

Ownership

Assign responsibilities of risks

- Who (from legal) owns the risk?

Prepare action plans – one for each of top 10 risks

- What should be done?
- Who should do it?
- What are the early warning signals to look for?
- How and who will monitor the risks and look for early warnings?

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Legal Risk Management

**Regulatory &
Compliance**

**Counseling
&
Training**

**Contract & Matter
Management**

**Claim & Dispute
Resolution**

**Governance &
Company Secretarial**

**Who & What; Prioritize; Need & Requirements; Outside Counsels
Management; Communication & Reports; Objectives & Measures;
Database; Professional Development; Knowledge Sharing**

What is Expected from EMEA Legal?

➤ Regulatory and Compliance

1. Competition law

1. Direct business/contacts with competitors (including trade associations, OEM business,...)
2. Pricing (discounts/rebates, bonus systems,...)
3. Vertical agreements (block exemption)

2. Environmental law (e.g. sites, REACH)

3. EU Privacy regulations

4. GVT affairs (consumer rights, tire labeling,...)

5. Export control & FCPA

6. Code of Business Conduct

7. Reporting & Certification (activities, claims,...)

8. Fraud

9. Compliance training

➤ Claim and Dispute Resolution

1. Restructurings (including tax, HR, ...)

2. Product liability

3. Insurance (claims notification, broker relationships,...)

4. Dispute resolution / Litigation, Arbitration

➤ Contract and Matter Management

1. Projects

2. Brand positioning & protection (IP, trademarks)

3. Advertising

4. Contract management (database, legal approvals)

5. Standard agreements

6. General terms & conditions (sale & purchase)

7. Distribution networks (retail & franchise networks)

8. M&A & divestitures

9. Outsourcing

➤ Governance and Company Secretarial

1. Shareholders Agreements

2. Company structures

3. Companies set up with competitors

4. Directors / Officers and Company Secretarial duties

5. Delegations of authority, authorized signatures

6. Board-related activities (appointments, governance guidelines, ...)

7. D&O liability insurance

What is Expected from the Business?

➤ Regulatory and Compliance

1. **KNOW THE BASIC LEGAL REQUIREMENTS AND THE COMPANY POLICIES APPLICABLE TO YOUR BUSINESS AREA**
2. **COMPLY WITH CODE OF BUSINESS CONDUCT AND CONDUCT ANNUAL FORMAL REVIEWS**
3. **SEEK FOR TRAINING**
4. **REPORT NON-COMPLIANCE or DOUBTS**
5. **LEAD BY EXAMPLE**

➤ Governance and Company Secretarial

1. **KNOW YOUR RESPONSIBILITIES**
2. **TAKE BOARD MEMBERSHIP SERIOUSLY**
3. **THE LOCAL ENTITY BOARD, NOT THE EXECUTIVE MANAGEMENTTEAM, IS LIABLE TOWARDS THIRD PARTIES.**
4. **THE BOARD IS RESPONSIBLE FOR ALL ACTIVITIES WITHIN THE LEGAL ENTITY**
5. **DO NOT UNDERESTIMATE THE COST AND PERSONAL CONSEQUENCES OF NON COMPLIANCE**

➤ Contract and Matter Management

1. **YOU SHOULD KNOW AND UNDERSTAND ANY COMMITMENT STATED IN AGREEMENTS OR EXPRESSED OTHERWISE (INCLUDING IN E-MAILS!)**
2. **YOU ARE RESPONSIBLE FOR ANY SUCH COMMITMENT**
3. **USE STANDARD AGREEMENTS PROVIDED BY EMEA LEGAL AND, WHERE AVAILABLE, CONTRACT MANAGEMENT SYSTEM**
4. **PROVIDE SUFFICIENT DETAIL AND PUT EFFORT IN ANY DRAFT SUBMITTED TO EMEA LEGAL**
5. **SEEK ADVICE IN THE EARLIEST STAGE OF NEGOTIATIONS**
6. **BE AWARE OF THE IMPORTANCE AND VALUE OF BRANDS AND OTHER INTANGIBLE ASSETS OF THE COMPANY**
7. **ASSESS RELEVANT LEGAL ENTITY AND BUSINESS APPROVER**

➤ Claim and Dispute Resolution

1. **DO NOT TAKE A POSITION ON LIABILITY WITHOUT PRIOR LEGAL CONSULTATION (EARLY INVOLVEMENT OF LEGAL REQUIRED)**
2. **CONSULT AND COMPLY WITH ADJUSTMENT & CLAIMS HANDLING POLICY**
3. **REPORT MATERIAL CLAIMS IMMEDIATELY TO LEGAL AND MANAGEMENT**

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Claim/Risk Description

Plaintiff / Third Party	
Defendant / Legal Entity involved	
Risk areas	
Date of filing / of occurrence	
Court (if any)	
Next step	
Decision	
Option(s)	
Basis for the risk	
Consequences	
Likelihood	
Significance	
Counsel	

Outline of Legal Risk Categories

Regulatory & Compliance	<ul style="list-style-type: none"> Competition law Privacy Export control FCPA Environmental New laws + regulations Diversity of legal systems/Laws Health & Safety Employer/Employee
Contractual	<ul style="list-style-type: none"> JV Contract management system Standard agreements/clauses Contract database contractual liability/risks Contractual policies + guidelines
Operational	<ul style="list-style-type: none"> Corporate memory Product liability Understanding of legal requirements Policies + guidelines Advertising/marketing Sales + distribution JV IP/trademarks
Corporate Governance	<ul style="list-style-type: none"> Roles + responsibilities of BOD Liability exposure of BOD members empowerment to represent the company Maintenance of corporate company books/records
Legal Function	<ul style="list-style-type: none"> Resources/location Outside counsel management Knowledge sharing Communication Prioritization Budget Skills processes/systems