

Compliance in Troubled Times

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The Nortel Story

- **Founded in 1895 as Northern Electric and Manufacturing, Nortel traces its history back to the mechanical department of Bell Telephone of Canada.**
- **Nortel has a long record of innovation in the telecommunications industry, developing the first digital PBX (private exchange), the first digital key telephone system, and pioneering fibre optics. Nortel's current strategy on "hyper-connectivity" aims at a true broadband experience for users of any application on any device in any location.**
- **Headquartered in Toronto, Nortel does business in 150 countries.**
- **Listed on the Toronto Stock Exchange and the NYSE with revenue in 2007 of \$10.95 billion.**
- **Early adopter of a Corporate Code of Conduct.**
- **In Q3 2003, Board Audit Committee raises first questions on quarterly filings, suspecting reserves had been used to adjust revenue. The Board commenced an independent investigation which ultimately resulted in four restatements and investigations by the SEC and Ontario Securities Commission.**

INVESTIGATION INITIATED BY THE BOARD

The Story Continues....

- **April 2004, the CEO, CFO, Controller and senior finance executives were terminated. The business unit presidents and the president of global operations were ultimately terminated along with 2 regional controllers and 5 business unit finance leaders. Other employees involved in the accounting irregularities were moved and/or disciplined.**
- **Finance function restructured and US GAAP skills strengthened in Finance and Internal Audit. Extensive mandatory training program implemented.**
- **New Office of Compliance created with Chief Compliance Officer reporting directly to the Audit Committee of the Board and to the CEO.**
- **In 2007, Nortel settles all claims of the shareholders, the OSC and SEC. Moody's recognizes the Compliance structure as "best practice" and notes that the settlements indicate the regulators accept the company has taken "comprehensive and substantive" steps to reduce risk of future violations.**
- **January 14, 2009, Nortel files for creditor protection.**

Compliance challenges define the Corporate Compliance structure and its objectives

- **Scope of the Program**
 - **Limited to FCPA or other particular industry risk?**
 - **Broader Compliance program including fraud, corporate governance, competition, conflicts of interest, etc.?**
- **Risk Assessment**
- **Focusing on highest risks**
- **Where does Compliance add the greatest value?**
- **Helping to bridge the gaps between other functions**
- **What requires continuous monitoring?**

Build a “Virtual” Compliance Team

- As cost constraints increase, it is even more important to leverage the “virtual” team
- Many functions have a role to play in Compliance:
 - Legal
 - Finance, Control, Tax, Treasury
 - HR, Employee Relations, Works Councils
 - Procurement
 - Logistics

Co-ordinating a “Virtual” Compliance Team

- Compliance Committees bring the support functions together with people from the business units and sales & marketing.
- Communicate, Communicate, Communicate!
- Functions like Finance and HR are more likely to have people on the ground than Legal and can be a good early warning system as well as allies in monitoring and enforcement.
- Other functions must “buy in” to objectives and priorities

Case Category	Ethics	Corporate Security	HR	Compliance	Legal
Anti-trust and Competition Laws					
Code of Business Conduct					
Competitive Information Gathering/Confidential Information					
Compliance/Regulatory					
Conflicts of Interest					
Corruption					
Discrimination or Harassment					
Fraud					
Gifts & Entertainment					
IPR Infringement					

Clear Allocation of Resources and Responsibility

Working with Legal

- Partnership – identify areas of overlap and agree clear accountability
- Monitoring and approval of transactions – identify areas of significant compliance risk
- Collaboration on investigations – Privilege
- Employment Legal – partnering on initiatives, navigating among local regulations
- Anticipate that restructuring increases compliance risks!

Emphasis on reporting complaints

- Call volume on the Action Line will probably fall during restructuring
 - Employees may be concerned about retaliation or simply drawing unwanted attention to themselves
 - Employees may be alienated by the process
- So senior management needs to be very visible in supporting compliance



Corporate Compliance - A Global Challenge -

Dr. Stefan Heissner

Association of Corporate Counsel Europe
Geneva, June 2009

 **ERNST & YOUNG**
Quality In Everything We Do

What we are hearing about compliance



The traditional mindset of 'keep us out of trouble' is changing to include the expectation of 'make our business better'

What we are hearing about compliance

Global viewpoint

Among the top seven “megatrends” of 2009:

- ▶ A move toward greater, more globally consistent regulation
- ▶ Increasing environmental, social and ethical obligations

Source: Ernst & Young Global Megatrends, 2009

Analyst viewpoint

Compliance rated 2nd most critical business risk for 2009, based on views of 100+ analysts and 20+ academic disciplines.

The Top 10 Risks For Business

1. Credit crunch
2. Regulation and compliance
3. Deepening recession
4. Radical greening
5. Non-traditional entrants
6. Cost cutting
7. Managing talent
8. Executing alliance and transactions
9. Business model redundancy
10. Reputation risks

Source: Ernst & Young and Oxford Analytica 2009 – The Top 10 Risks for Business

Government viewpoint

“When a company cuts compliance, violations will occur. And if violations occur, punitive actions should and will be taken. In the current environment, that is true now more than ever. There will be no favor granted because a company made a cost-cutting decision to minimize their compliance budget.”

Source: Address by SEC Chairman to the 2008 CCO Outreach National Seminar, November 13, 2008

Internal and external stakeholders continue to demand effective compliance and ethics risk management

Compliance Risk Universe*

LEGAL / REGULATORY REQUIREMENTS

COMPETITIVE PRACTICES (FTC, DOJ)

Antitrust
Customer, Competitor, Supplier Relations

CORPORATE GOVERNANCE (SEC)

Board Structure and Processes
Audit Committee Structure and Processes
Ethics

EMPLOYMENT (EEOC, DOL)

Executive Compensation
Compensation
Benefits
Hiring
Employee Info Privacy
Reductions in Force
Whistleblower Protection
Harassment Prevention
Accommodation (Discrimination Prevention)
Workplace Violence
Global Migration (Immigration)
Contingent Workforce
Labor
Leave
Employment Torts

ENVIRONMENTAL (EPA)

Management Systems
Reporting
Hazardous Material Management
Laboratory Practices
Permit Management

FINANCIAL (SEC)

Tax
Treasury

FRAUD and CORRUPTION (DOJ)

Insider Transactions
Anti-Money Laundering
Foreign Corrupt Practices Act (FCPA)
Financial Statement Fraud
Occupational Fraud (Intellectual Property, Trade Secrets)
Corruption
Revenue and Expense Recognition

GOVERNMENT CONTRACTS (DOD, OMB)

US Government Contracts
Other Jurisdictions (State and Country)

INFORMATION MANAGEMENT

Data and Record Classification
Information Access
Information Availability and Recovery
Information Management Monitoring
Information Disposition
Litigation Discovery Rules
Data Protection and Privacy

INTELLECTUAL PROPERTY (DOC)

Copyright
Trademark
Trade Secret
Patent

INTERNATIONAL DEALINGS/TRADE (FTC, DOC)

Boycott
Import
Export

WORKPLACE HEALTH/SAFETY (OSHA)

Employees
Contractors

PRODUCT QUALITY/LIABILITY

Quality Management System

INDUSTRY SPECIFIC

ASSET MANAGEMENT

AUTOMOTIVE

BANKING AND CAPITAL MARKETS

BIOTECHNOLOGY

CONSUMER PRODUCTS

INSURANCE

MEDIA AND ENTERTAINMENT

OIL AND GAS

PHARMACEUTICAL

REAL ESTATE

TECHNOLOGY

TELECOMMUNICATIONS

UTILITIES

STANDARD SECTORS

Many industries are regulated by one or more agencies that mandate specific compliance requirements. In some industries, these requirements can be more complex than general legal and regulatory risks

** Illustrative US example (note: US regulatory agency listing)*

BUSINESS REQUIREMENTS

INTERNALLY-FOCUSED REQUIREMENTS

Mission
Values
Code of Conduct
Policies and Procedures
Quality Management Certifications (ISO, Six Sigma)
Crisis Preparedness

EXTERNALLY-FOCUSED REQUIREMENTS

Corporate Social Responsibility
Sustainability
Public Commitments
Contractual Obligations
Vendor Management
Exchange Listings

VOLUNTARY STANDARDS

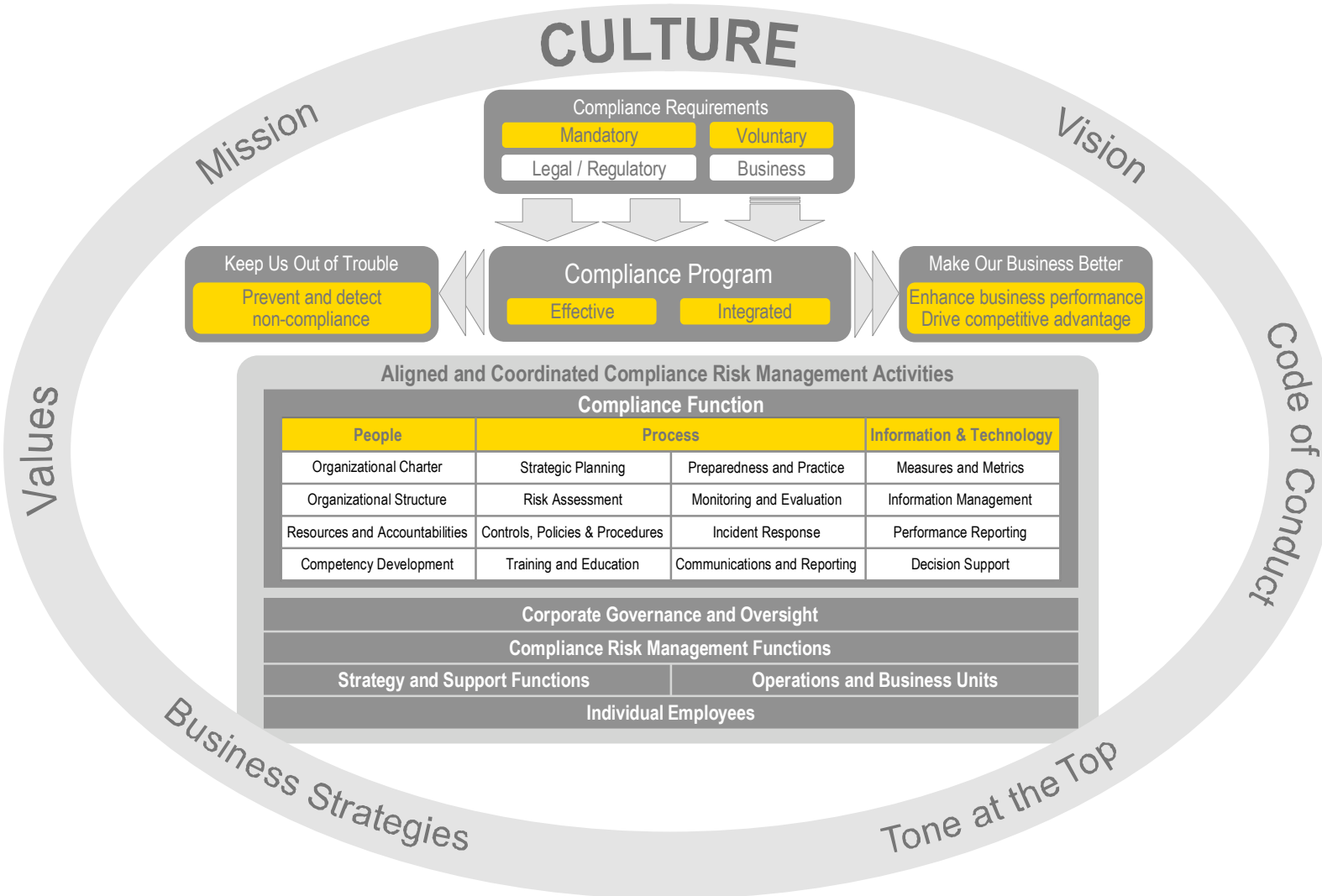
US Federal Sentencing Guidelines
Industry Codes
Trade Associations

EMERGING ISSUES

Aside from mandatory requirements, organizations make choices regarding their brand, their values, and the commitments they make to customers, business partners, employees, and other stakeholders. Although voluntary, consequences for non-compliance could be more serious than non-compliance with mandatory requirements

Ernst & Young Compliance Framework

Our point of view on sustainable compliance

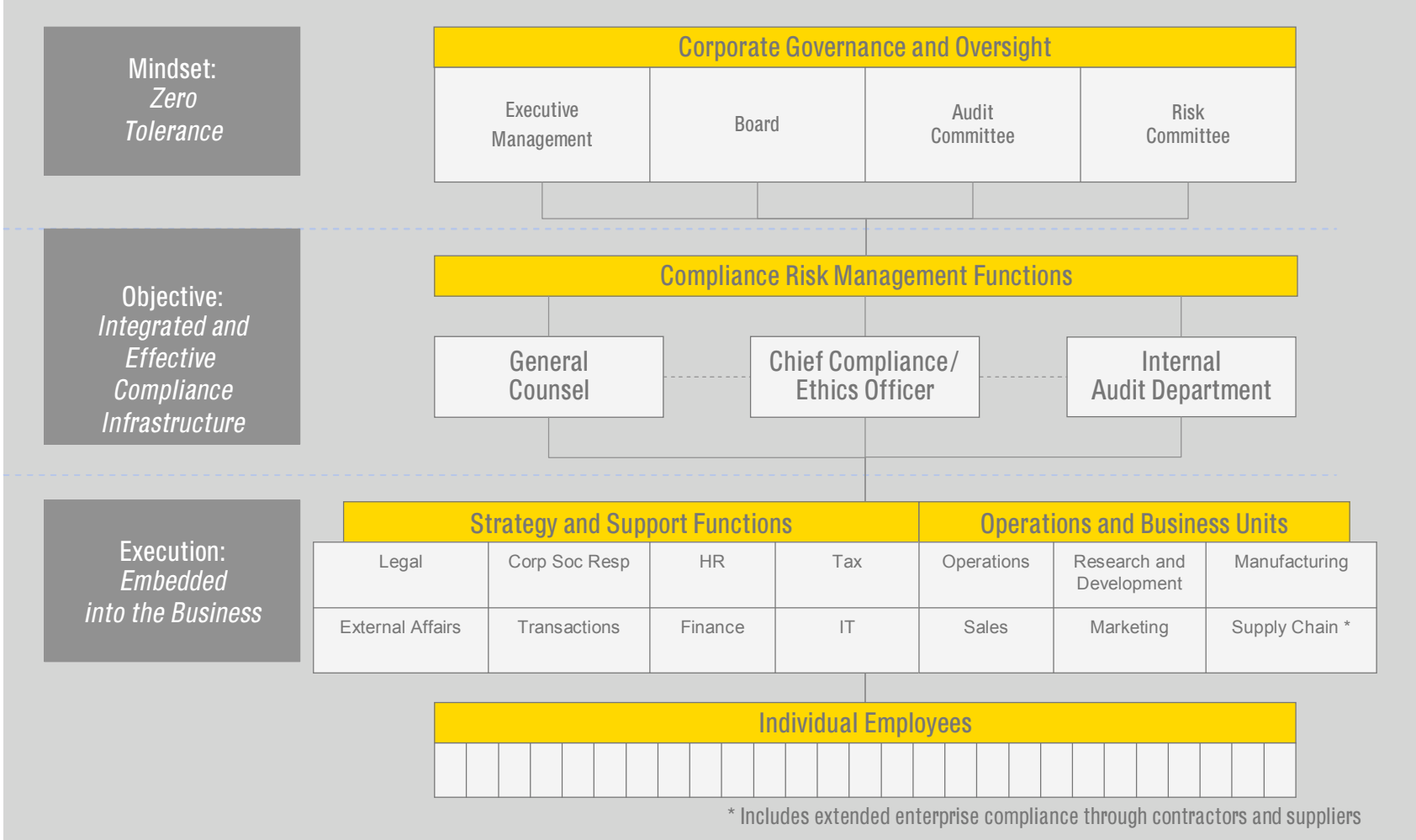


Additional materials

- ▶ Compliance role model
- ▶ Roadmap for achieving sustainable compliance
- ▶ EY's Fraud Investigation & Dispute Practice
- ▶ Your Speaker

Compliance role model

Who is responsible?



Roadmap for achieving sustainable compliance

A practical approach

Ernst & Young recommends performing a compliance risk assessment and reviewing current compliance risk management performance levels to determine areas where incremental improvements in compliance risk management would provide greater benefit to the business



Roadmap for achieving sustainable compliance

Compliance Risk Assessments

Assess

Compliance Risk Assessment

Assess and prioritize key risks to achieve business objectives

Compliance Risk Assessment

Objectives

Identify and prioritize the significant enterprise and functional compliance risks, and emerging compliance issues

Assess the extent to which Compliance Risk Assessment outcomes are integrated into strategic, internal audit, and compliance monitoring and evaluation planning and implementation plans

Compliance Risk Assessments:

- **Provide insights** on significant compliance risks from an industry perspective and link these to objectives, initiatives, and business processes
- **Validate and prioritize key risks** and define opportunities for improvements to compliance processes and controls and for testing and monitoring controls
- **Assess resource allocation** to validate that resources and control activities adequately address the more significant compliance risks identified from the risk assessment
- **Serve as the foundation** for aligning and coordinating compliance risk management processes across the business (e.g., strategic planning, ERM, internal audit plan, compliance training)

Roadmap for achieving sustainable compliance

Compliance Performance Assessments

Assess

Compliance Performance Assessment

Evaluate the organization's compliance infrastructure and processes for managing its compliance risks

Compliance Performance Assessment *Objectives*

Assess the design and operation performance of the compliance infrastructure - including the compliance function and processes - relative to legal/regulatory requirements and leading practices

Provide insight into overall effectiveness of activities for assessing, monitoring, and improving the way compliance risk is managed across the organization

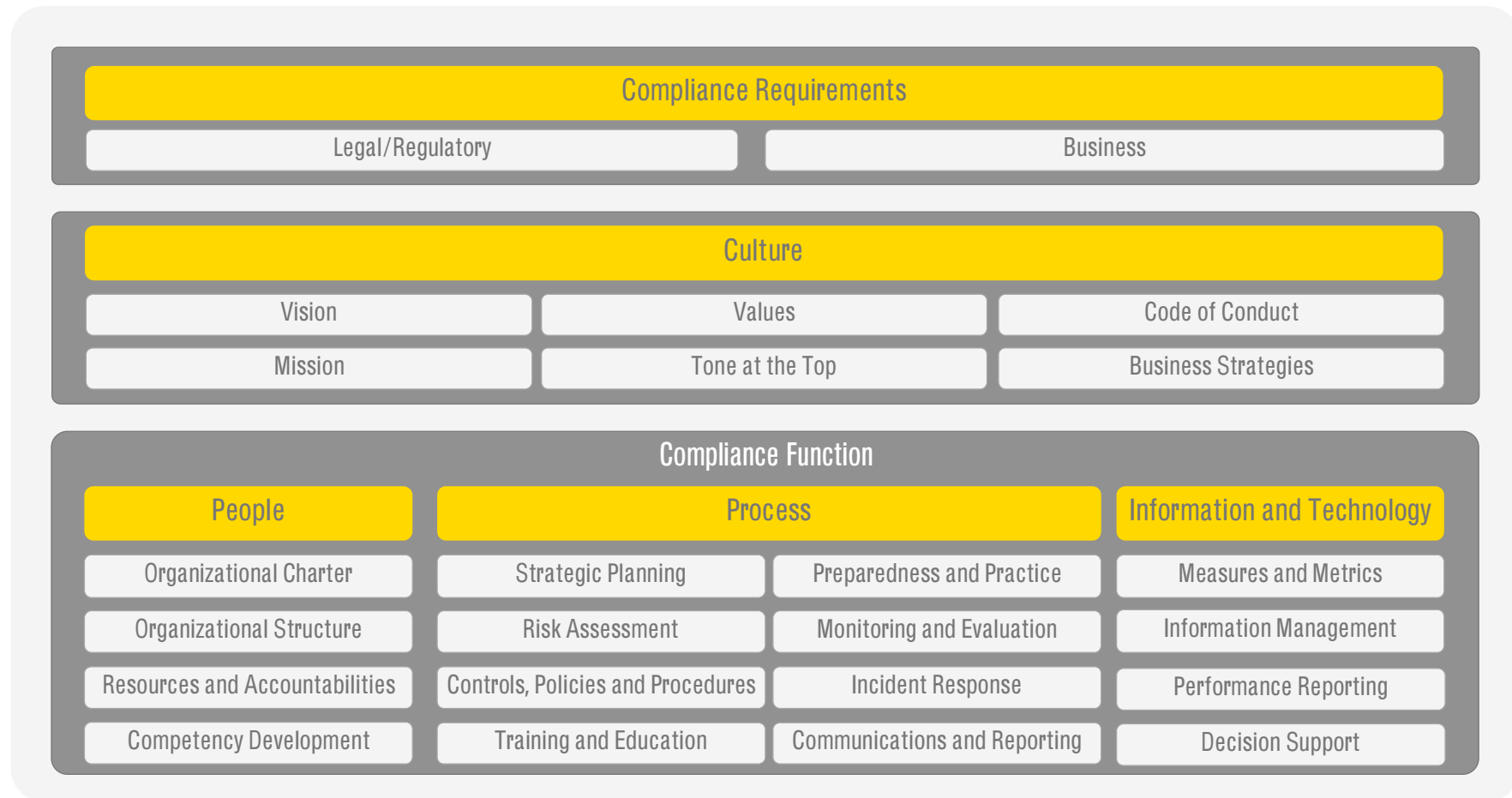
Compliance Performance Assessments:

- **Offer a review of responsibilities for key compliance risks** across functional activities and business processes
- **Help management identify opportunities** to embed and sustain risk management activities throughout the organization
- **Help management to identify and prioritize opportunities** to enhance an organization's compliance infrastructure
- **Establish a baseline** for assisting management with ongoing compliance monitoring and continuous improvement
- **Help management to identify opportunities** for greater compliance infrastructure integration, alignment, and coordination across organizational boundaries

Roadmap for achieving sustainable compliance

Compliance Performance Assessments

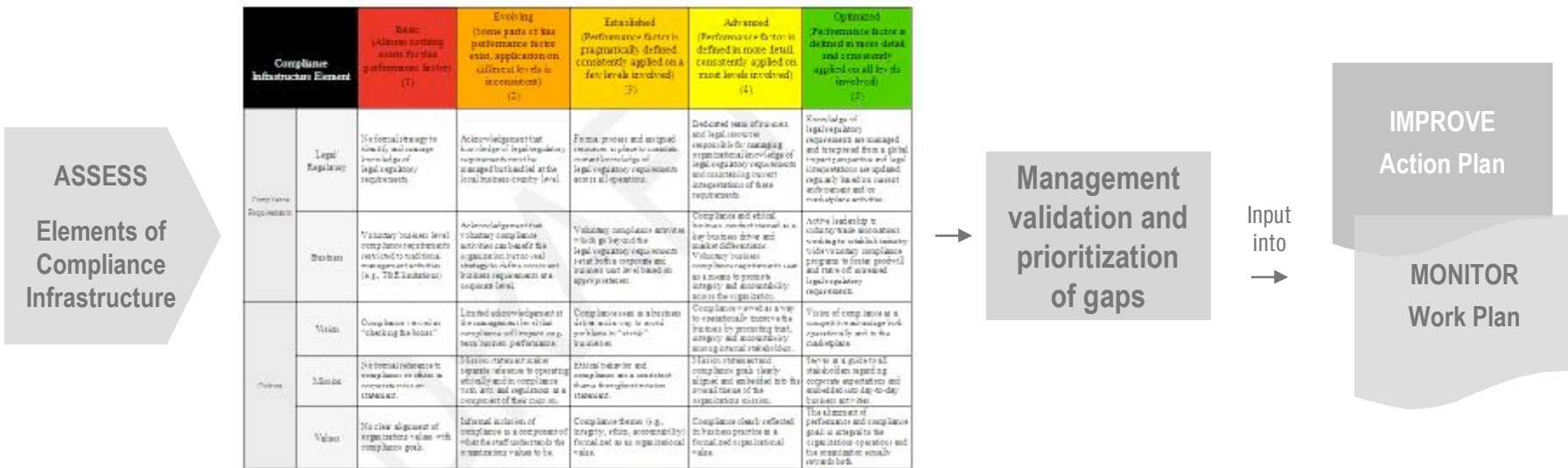
The Framework focuses on five areas that affect compliance program effectiveness: Compliance Requirements, Culture, People, Process, and Information and Technology



Roadmap for achieving sustainable compliance Compliance Performance Assessments

For each element of the compliance infrastructure, we have developed varying levels of maturity based on our global compliance experience.

Maturity Model



Roadmap for achieving sustainable compliance

Compliance Improvement and Remediation

Improve

Improve the Effectiveness and Efficiency of Compliance Processes and Controls

Define and prioritize opportunities to improve the effectiveness of compliance processes and controls

Compliance Improvement and Remediation Objectives

Focus on risk mitigation by enhancing the effectiveness and efficiency of compliance processes and controls

Assist management to develop and implement a written plan to mitigate specific compliance risks and/or enhance an organization's compliance infrastructure

Compliance Improvement and Remediation:

- **Assist management to deliver improvements** by working with the business as an advisor, facilitator of change, and source of industry knowledge and experience
- **Help to align operational performance** with compliance risk and control requirements
- **Assist management to enhance the design and operating effectiveness** of a company's existing compliance infrastructures, processes, and controls
- **Assist with the integration of compliance risk and performance assessment outcomes** into other corporate risk management activities (e.g., strategic planning, ERM, ongoing monitoring, and periodic evaluation)

Roadmap for achieving sustainable compliance

Compliance Evaluation and Monitoring

Monitor

Monitor the Ongoing Effectiveness and Efficiency of Compliance Controls

Conduct real-time, ongoing monitoring of compliance processes and controls for ongoing relevance and effectiveness

Compliance Evaluation and Monitoring Objectives

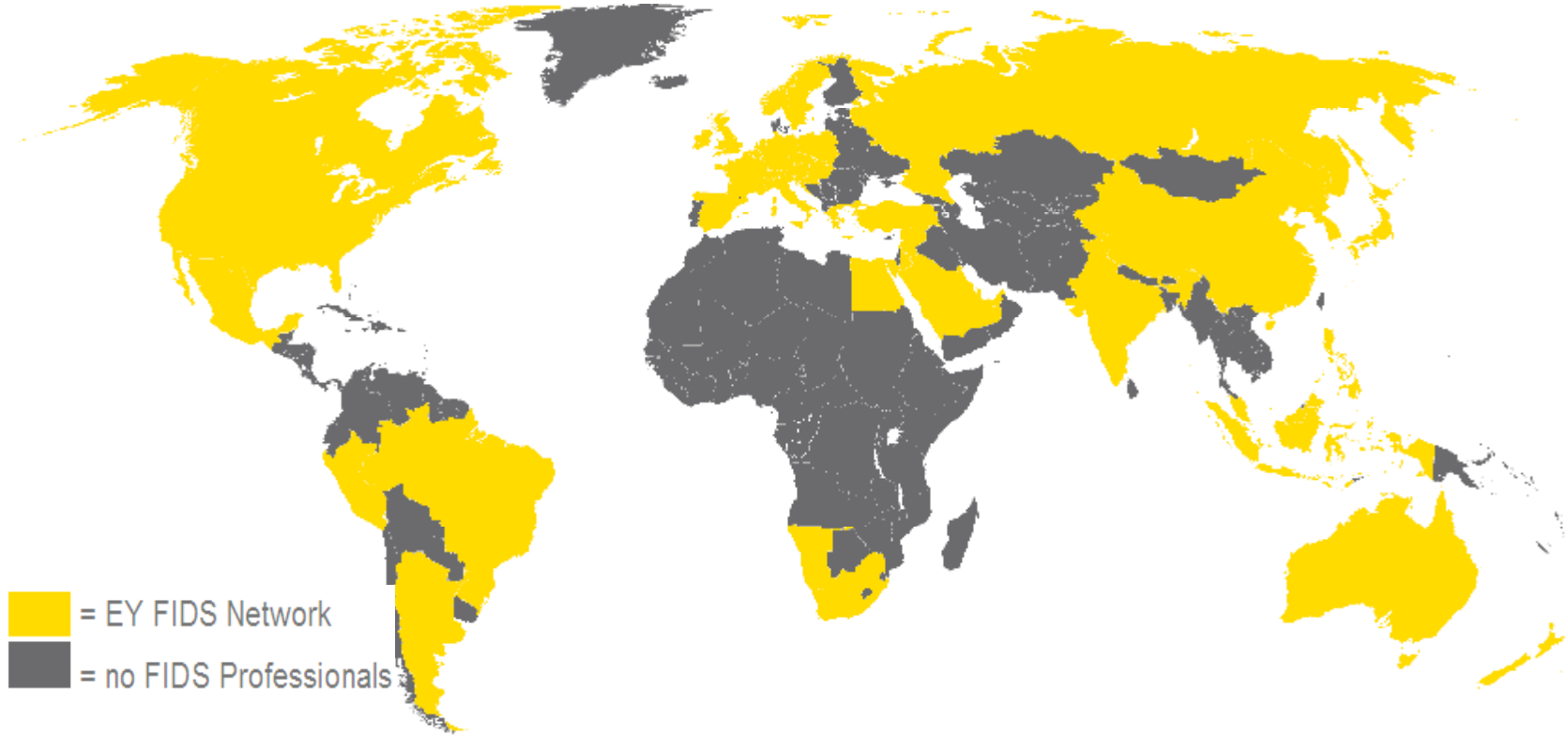
Develop and implement monitoring plans to review the design and operation of compliance processes and controls for ongoing relevance and effectiveness

Develop and implement monitoring plans that consider internal and external changes and influences

Compliance Evaluation and Monitoring

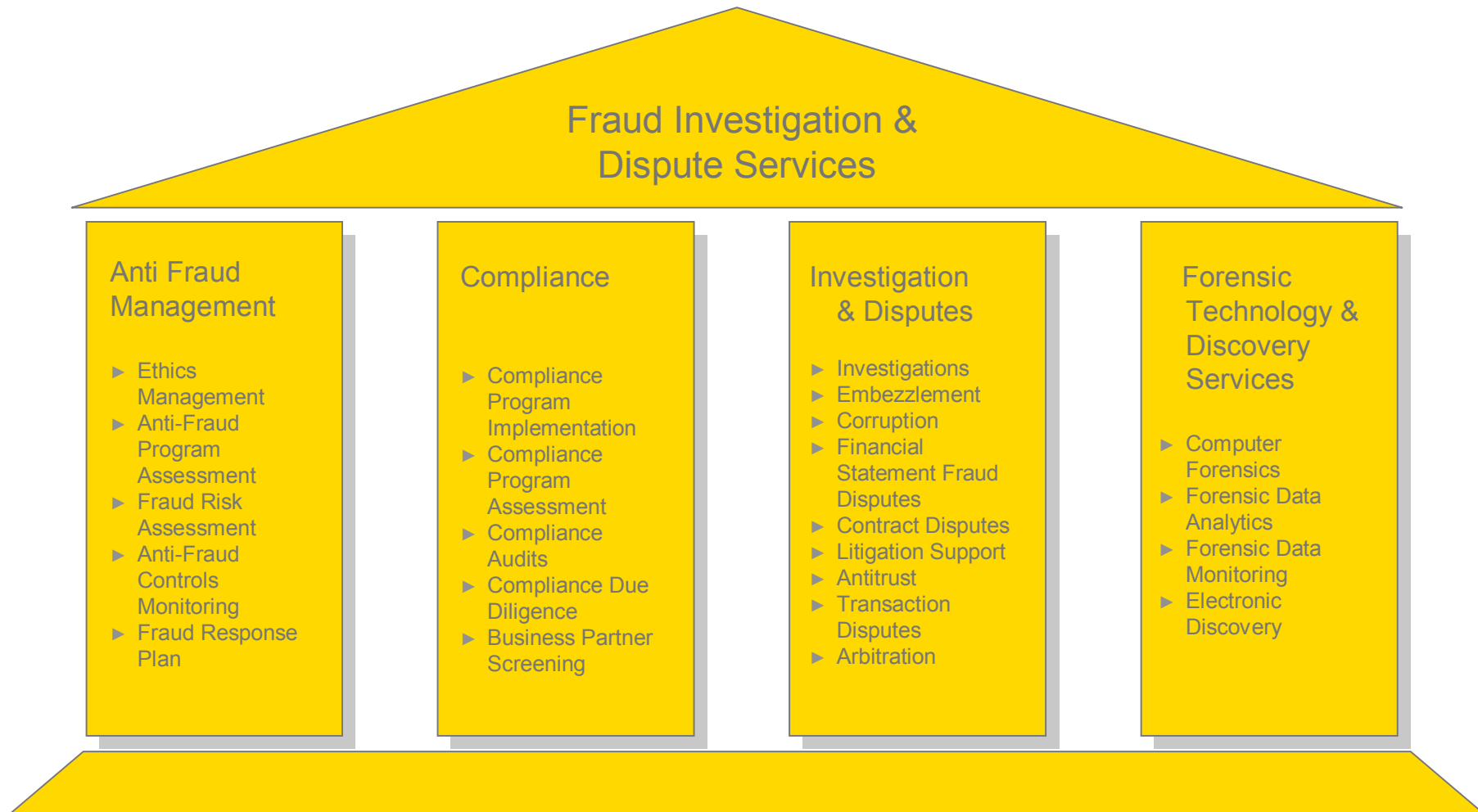
- **Define the review process** used to evaluate compliance with legal, regulatory, and business requirements
- **Define ongoing monitoring activities** to help validate that the program is operating within defined tolerances
- **Facilitate coordination and alignment** with other assessments conducted by the organization (e.g., strategic planning, ERM, ongoing monitoring, and periodic evaluation)
- **Define thresholds for escalating incidents** of noncompliance for investigation, resolution, and remediation

EY's Fraud Investigation & Dispute Services Global Network



- | | | | | | | | | |
|-----------|----------------|-----------|---------|-------------|-------------|--------------|----------------------|----------------|
| Argentina | Canada | Germany | Italy | Luxembourg | Norway | Saudi Arabia | Spain | United Kingdom |
| Australia | China | Greece | Japan | Malaysia | Peru | Singapore | Sweden | United States |
| Austria | Croatia | Hungary | Jordan | Mexico | Philippines | Slovakia | Switzerland | |
| Bahrain | Czech Republic | India | Korea | Namibia | Poland | Slovenia | | 50 Countries |
| Belgium | Egypt | Indonesia | Kuwait | Netherlands | Qatar | South Africa | Turkey | |
| Brazil | France | Ireland | Lebanon | New Zealand | Russia/CIS | South Korea | United Arab Emirates | |

EY's Fraud Investigation & Dispute Services Advisory Service Portfolio



Dr. Stefan Heissner



Dr. Stefan Heissner

Lead Partner
Fraud Investigation & Dispute Services
- Germany, Switzerland, Austria
- Central & Southeast Europe
- Commonwealth of Independent States

Advisory Services

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Education

- ▶ Diplom-Ökonom (diploma in Business and Economics)
- ▶ Dr. rer. Pol. (PhD in Economics)
- ▶ Kriminalkommissar a.D. (detective superintendent ret.)

Professional development

- ▶ 15 years police
- ▶ 10 years forensic accounting at Big 4
- ▶ 5 years Partner

Specialized fields

- ▶ Fraud Investigation
- ▶ Fraud Prevention
- ▶ Compliance Management
- ▶ Dispute Services

Industries

- ▶ Manufacturing industry
- ▶ Banking and Insurance
- ▶ Public Services
- ▶ Media
- ▶ Real Estate

Reference projects

- ▶ Engagement Partner of investigations in international corruption cases in the manufacturing industry on behalf of supervisory boards
- ▶ (Co-) Engagement Partner of investigations in corruption and money laundering cases in the banking industry on behalf of the German Financial regulator and Law Enforcement agencies
- ▶ Co-Engagement Partner of international arbitration and litigation cases, in one case on behalf of the government of a European member state
- ▶ Engagement Partner of several Anti-Fraud & Compliance Management Engagements for mid-size and large multinational Companies



Thank you!