



White paper

[antares RiMIS® Compliance - Design and establishment of a compliance organization

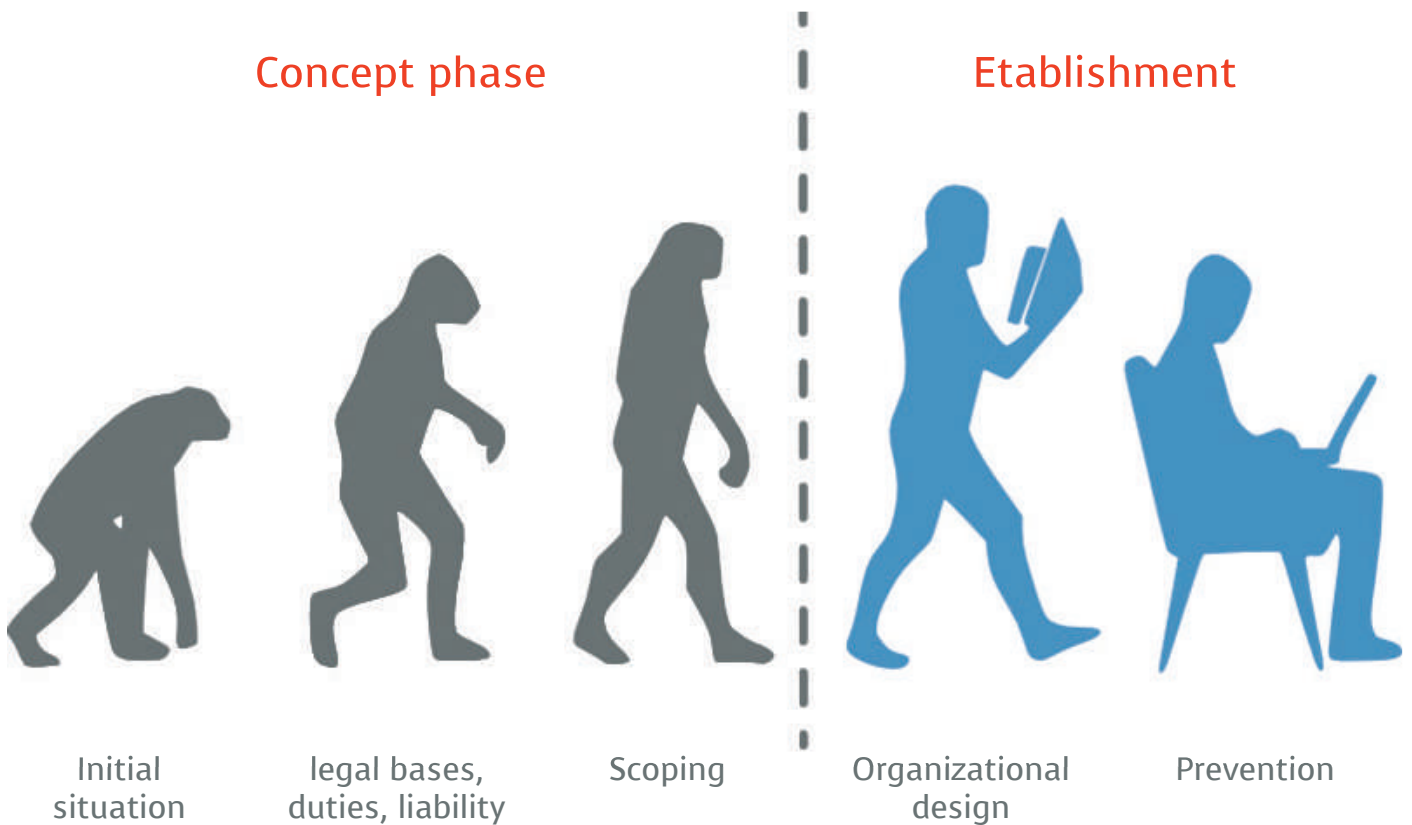
[Introduction

Compliance involves a multidisciplinary extension due to the different industries and their equally divergent legal requirements.

Against this background, it is important to understand compliance as a company-wide and integrated organizational model with processes and tools.

This model is intended to ensure compliance with legal provisions, regulatory standards and other key stakeholders' requirements, as well as conformity with social guidelines, values, morals and ethics.

The following is a brief outline of the design and establishment of a compliance organization.



[1. Legal basis

With the exception of the financial sector, German law does not contain any legal provisions that require the management of a (capital) company to implement systematic compliance measures or to set up a compliance organization or function.

With the new auditing standard of the Institute of German Certified Public Auditors - IDW PS 980 - there is now at least an initial collection of requirements for compliance management, which provides an overview of criteria to be observed, but is not legally binding.

The German Corporate Governance Index (GCGC), which in its section 4.1.3 requires the management board of a corporation to observe applicable law (compliance), is merely a recommendation. German corporate law, in particular stock corporation law, nevertheless provides central points of reference for the compliance discussion. First of all, there are two provisions that represent a kind of general clause for the behavioral obligations of the management board.

Section 76 of the German Stock Corporation Act (AktG) governs the management duties of the board. This also includes the maintenance of the necessary diligence in the management of the company as required by Section 93 of the German Stock Corporation Act (AktG), which also relates to the legally compliant conduct of the company and its employees. Thus, a duty of care applies irrespective of the sector, which is also extended to the supervisory board (Section 116 AktG). In order to fulfill this duty of care, structures and processes are required to ensure that the company and its employees act in accordance with the law.

Depending on the business model, however, there are a large number of laws, guidelines and standards to be observed for this task, which have a corresponding influence on the design of a compliance organization.

In contrast to other industries, the financial sector has very detailed compliance requirements. Section 25a of the German Banking Act (KWG), for example, requires credit institutions to establish a proper organization to comply with the statutory provisions they must observe. Section 64 of the German Insurance Supervision Act (VAG) contains a similar provision for insurance companies. Section 33 German Securities Trading Act (WPHG) establishes just such organizational obligations for securities service companies. In connection with the direct and indirect legal requirements for corporate compliance, it is imperative to consider the liability of corporate bodies.

Management board members and now also supervisory board members can be held liable under civil and criminal law. In particular, the liability requirements for members of the supervisory board have changed. With the entry into force of the German Accounting Law Modernization Act (BilMoG), the scope of duties of the supervisory boards of German capital companies has been further concretized and they are required, among other things, to monitor the effectiveness of the internal control system and risk management. If individual members of the supervisory board culpably neglect this duty, they may be liable to pay damages to the company.

[2. The scoping process

Compliance management can only achieve its full effectiveness and efficiency if it is tailored to the risks associated with the company's business model. The basis of a suitable and company-specific compliance organization is therefore the identification of the relevant risks threatening the company (scoping). The methodical approach to identifying and assessing risks in the company must be designed accordingly. Once identified, the risks are to be assessed in accordance with the company's internal target benchmark.

This assessment results in the package of measures required to manage and control the risks. Since the introduction of the BilMoG, we see more and more holistic approaches to risk management by companies, which no longer separate business and compliance risks. The Sarbanes Oxley Act (SOX) as international legislation, as well as the introduction of the BilMoG in Germany, created a departure from where once compliance risks were hardly or sometimes not at all the focus for risk managers.

[3. Organizational design

The result of the scoping process usually shows how complex the subject area of compliance is and the extent of the interdisciplinary demands it places on function holders. There is an observable trend towards no longer viewing compliance in isolation, but consistently in conjunction with risk management.

Particularly in medium-sized companies, this results not only in the merging of interlocking processes, but also in the design of a resource-saving matrix organization. The advantage of the matrix organization is that the necessary activities can be distributed flexibly, making this a justifiable expense even for smaller companies.

The main advantage of this type of organization is the possibility of relying on existing processes and process owners, as well as the underlying organizational structures and workflows.

This gives rise to the possibility of drawing on existing structures, which has the advantage that compliance is perceived in the form of process networking and not as an isolated process. The perception of the importance of compliance in the company is essential to the organizational design decision.

[4. Prevention

Compliance is understood as active risk prevention in the company. In addition to many individual organizational measures that compliance management requires, it also demands a compliance culture that is broadly anchored in the company and actually lived by both management and staff.

The essential prevention aspect consists of building such a compliance culture. This culture is created by developing the intrinsic motivation of employees to build and maintain a positive attitude toward the company's ethical leadership principles. This results in a value system that creates the conditions for legally compliant behavior and forms the basis for a compliance system.

[5. Conclusion

If you currently (as of 07/01/21) enter the term compliance in Google, you will receive over 690 million hits. This should give you an idea of the quantity of comments on this term and the prominent role compliance now plays. It is an art to grasp and implement the wide spectrum of this subject area in such a way that it is tailored to the respective company and its individual culture. To achieve this, it is essential to identify all risks of the business model at all levels and to evaluate them within the framework of an internal target benchmark. Risks are managed by introducing countermeasures, which in turn are monitored by management as part of a functioning internal control system (ICS).

This system must be suitable for ensuring extensive immunity against conduct harmful to the company in the broadest sense. In this sense, the company's managers are put to the challenge.

They must make an outstanding contribution to functioning and sustainable compliance in the company by communicating to their employees at all levels the values, standards and virtues of a compliance culture geared to prevention and by maintaining these values, standards and virtues over the long term. This process must be accompanied by strategically designed communication.

The proof of effectiveness is essential. This should demonstrate and prove the effectiveness of the controls and the countermeasures. The management of the company plays a major role in the functioning of compliance. Compliance will always remain a challenge. The legal framework will continue to evolve both nationally and internationally, irrespective of the industry, and will thus necessitate constant adjustments to the compliance organization.

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