Association of
Corporate Counsel
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Compliance and Internal Investigations

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OVERVIEW

1. Why Compliance matters - LR
2. Effective Compliance programs – LR
3. The rise of Artificial Intelligence as investigation tool - LR
4. Example Compliance Framework - JL
5. Use of technology in Reporting Channels - JL
6. Effective Internal Investigations Program - JL
7. Use of technology in Case Management - JL
8. Technology in Compliance & Investigations - BS
9. Managing internal investigations - LR

Why Compliance matters

Definition. Compliance programs are:

Examples of 'voluntary governance'	• Commitment to ethical rules and values • Compliance as part of an organization's culture
Internal policies designed to	• Raise awareness of the importance of complying with regulations • Educate management and employees to refrain from misconducts
A Method to	• Anticipate, detect, react to misconduct at an early stage

Why Compliance matters

Increasing regulation scrutiny

Significant number of investigations

Expanding legal requirements

E.g. GDPR

Increasing level of fines

Potential consequence of NON-COMPLIANCE:

- Administrative fines
- Criminal sanctions
- Civil Damages Litigations
- Reputational damage
- Illegal agreements may be void and unenforceable
- Business disruption

Why Compliance matters

Benefits of Having a Compliance Program

Avoid an infringement in the first place

- Anticipate potential breaches of law
- Adopt measures to eliminate or mitigate risks
- Avoid the risk of recidivism

Mitigating circumstance (e.g. competition law investigations)

Potential fine reduction for effective and tailored programs, depending on the jurisdiction, e.g.:

UK: Up to 10% of the fine exposure

Italy: Up to 15% of the fine exposure (2018 AGCM Guidelines)

EC: Does encourage compliance programs, but its mere existence will not amount to an attenuating circumstance

Effective Compliance Programs
Core Elements of an Internal Compliance Program

- No 'one size fits all' policy. Customized compliance programs:

  - Based on market and company's business and industry
  - Including concrete examples of the typical risks
  - Based on geography (general policy & peculiarities of several jurisdictions)

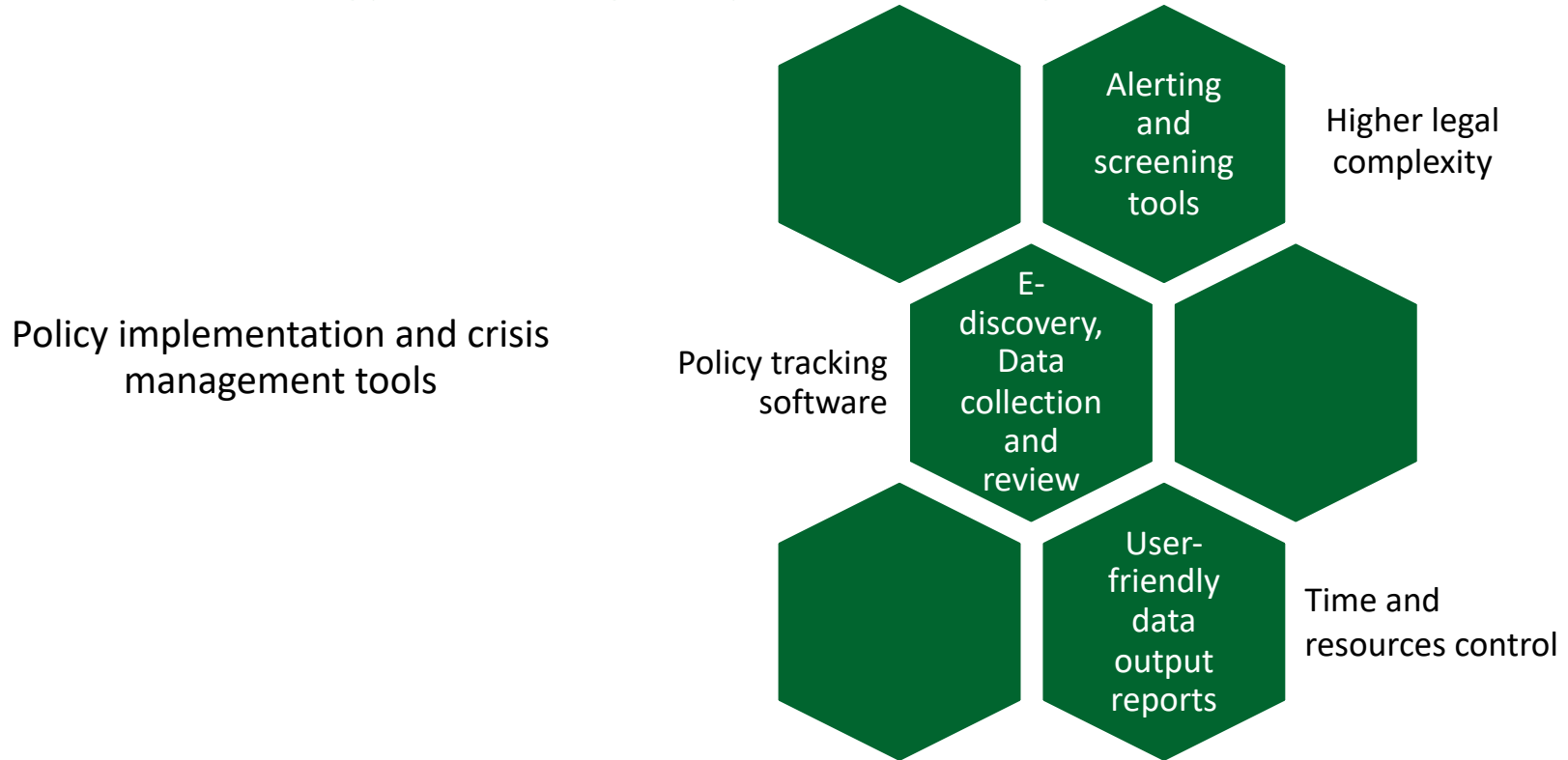- Main steps of an effective compliance program:

| 1. Design | 2. Training | 3.Monitoring and audit | 4. Adoption of measures |

Effective Compliance Programs

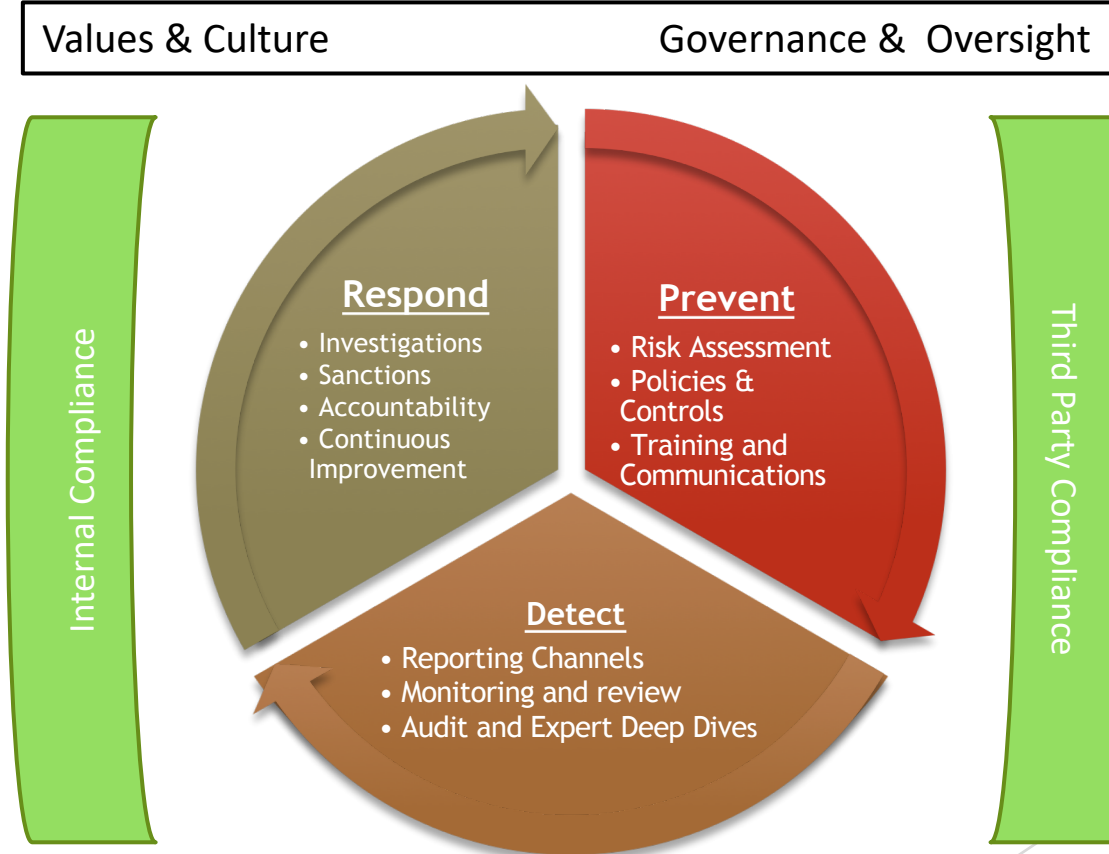Role of technology in handling compliance challenges

Alerting and screening tools

Higher legal complexity

Policy implementation and crisis management tools

Policy tracking software

E-discovery, Data collection and review

User-friendly data output reports

Time and resources control

Artificial Intelligence as investigation tool
A view on Public Enforcement

Examples of predictive analysis in the public tender space:

- ➢ **UK** Competition and Markets Authority (CMA) bid-rigging algorithm-based digital detection

- ➢ **U.S.** Securities and Exchange Commission (SEC) "Robocop" data analytics program

- ➢**Korea** "BRIAS" (Bid Rigging Indicator Analysis System)

Other WW enforcement agencies approaching AI investigative solutions and increasing the use of e-discovery tools (e.g. EC latest trends)
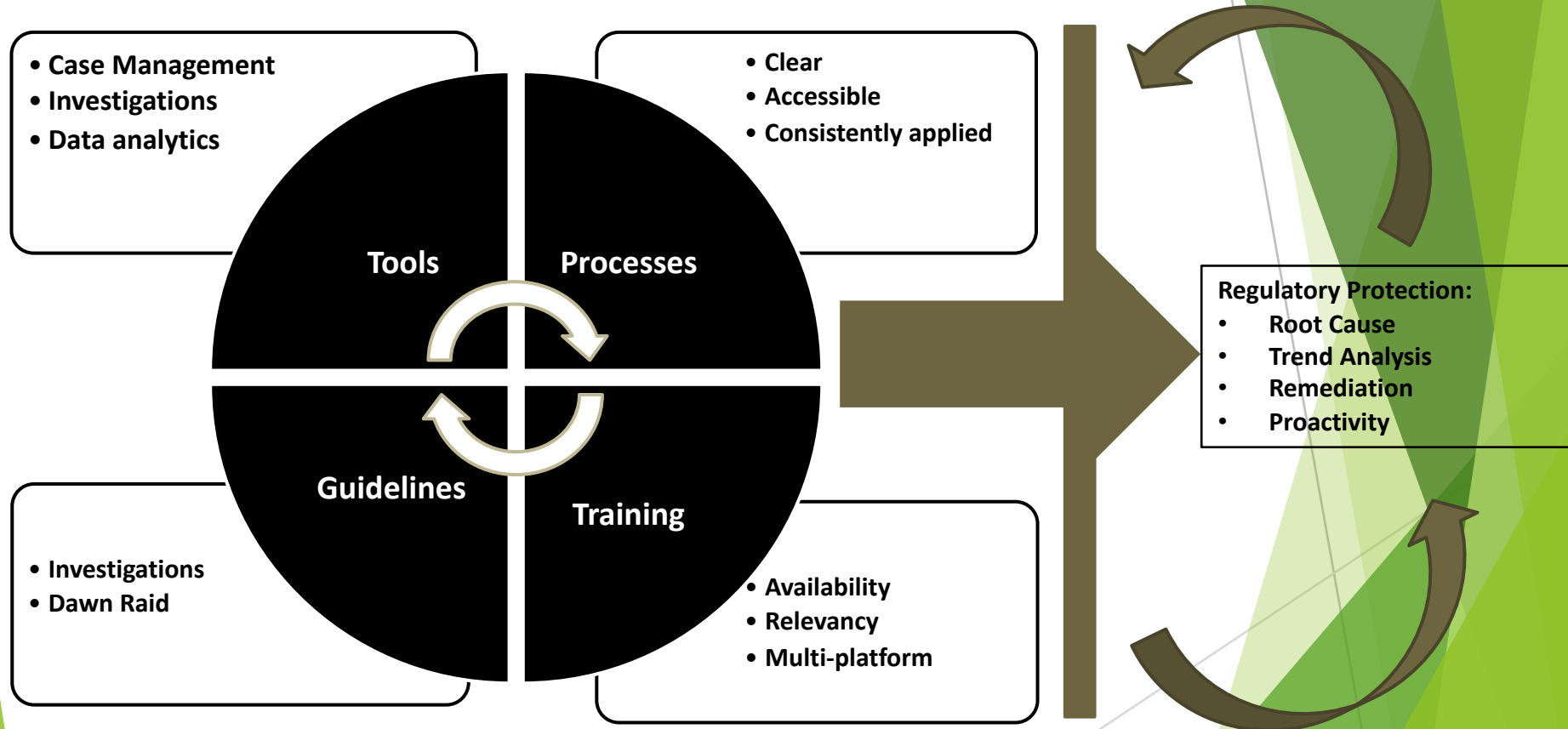
EXAMPLE OVERVIEW OF COMPLIANCE FRAMEWORK

Values & Culture | Governance & Oversight

Internal Compliance

Third Party Compliance

Respond
- Investigations
- Sanctions
- Accountability
- Continuous Improvement

Prevent
- Risk Assessment
- Policies & Controls
- Training and Communications

Detect
- Reporting Channels
- Monitoring and review
- Audit and Expert Deep Dives

Use of technology in reporting channels

▶ Speak up hotlines – the traditional method

▶ Web based reporting – the current method

▶ App based reporting – emerging landscape

▶ Chat bot based reporting – AI landscape

Effective Internal Investigations Program

- **Case Management**
- **Investigations**
- **Data analytics**

- **Clear**
- **Accessible**
- **Consistently applied**

Tools

Processes

Guidelines

Training

- **Investigations**
- **Dawn Raid**

- **Availability**
- **Relevancy**
- **Multi-platform**

Regulatory Protection:
- **Root Cause**
- **Trend Analysis**
- **Remediation**
- **Proactivity**

Use of technology in Case Management

▶ **Integrated solutions**

  ▶ Hotline through to lessons learned

  ▶ Ethics/Integrity reporting

  ▶ Security incident reporting

  ▶ Safety incident reporting

▶ **Data Analytics**

  ▶ Bespoke dashboard capability

  ▶ Insights and benchmarking

  ▶ Trend analysis

  ▶ Root cause and remediation tracking

Technology assistance in compliance & investigations

May 2019

Table of Contents

Emerging trends and existing challenges

Mega trends shaping the future

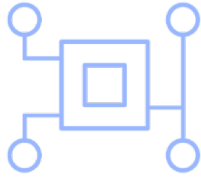Mobile and real-time data

Embedded systems and IoT

Cognitive computing and AI
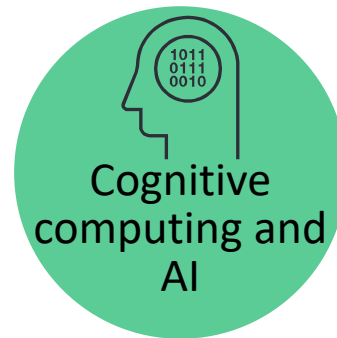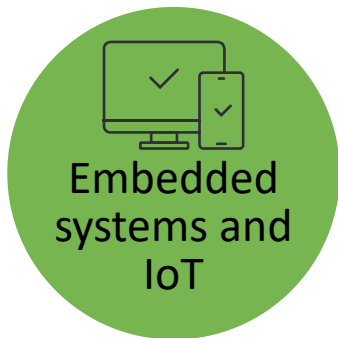
"There is no room for complacency in the fast-moving digital world"

-Neelie Kroes, EU Commissioner for Digital Agenda

"Life critical" data

Security and privacy

Companies are facing unprecedented challenges

Cognitive/AI and automation
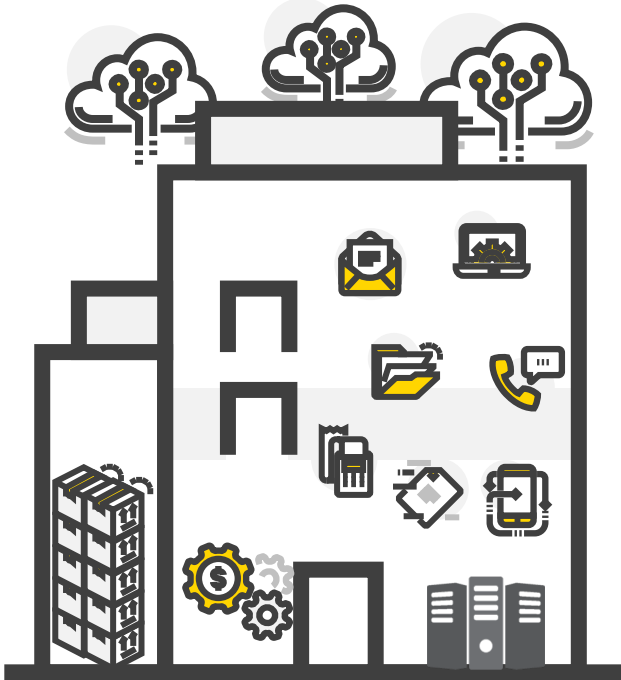
Privacy

Globalization

Cybersecurity

Data integrity

Rising sanctions

Dealing with Data

Technology challenges

Data diversity and dispersion

Cost containment

► Difficult to identify practical ways to take advantage of the potential benefits

► Increasing volume, velocity and variety of data

Data protection & privacy concerns

► Changing legal requirements (GDPR, Cybersecurity Law, Privacy Amendment)

► Increasing level of cross-border data transfers

Start with getting the right data

- Unstructured data
  - Email
  - Instant messages
  - Text/mobile device messages
  - Phone records
  - Voice data
  - Social media
  - Trade press and commentary
- Structured data
  - Financial records
  - Time and expense
  - Claims data
  - Purchase orders
  - Inventory records
 - Employee and vendor lists
  - Public databases
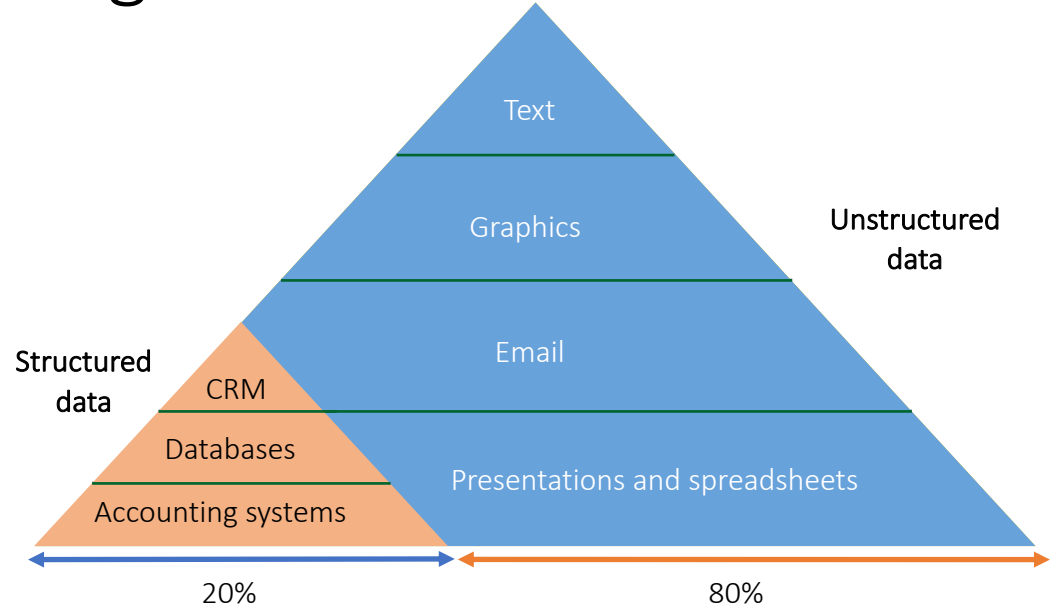
- Most company analysis focuses on the 20% structured data, although 80% of enterprise data is unstructured in nature.

- Few organizations have the methodologies or technologies to efficiently address structured and unstructured data together.

Source: Gartner Research

Data integration and analysis

- ▶ Sentiment and emotive tone analysis
- ▶ Document classification
- ▶ Topic modeling
- ▶ Concept induction
- ▶ Entities and relationships extraction
- ▶ Social network and actor analysis

- ▶ Fraud scenario tests
- ▶ Temporal analysis
- ▶ Anomaly detection
- ▶ Cluster analysis

Unstructured data

Integrated

Structured data
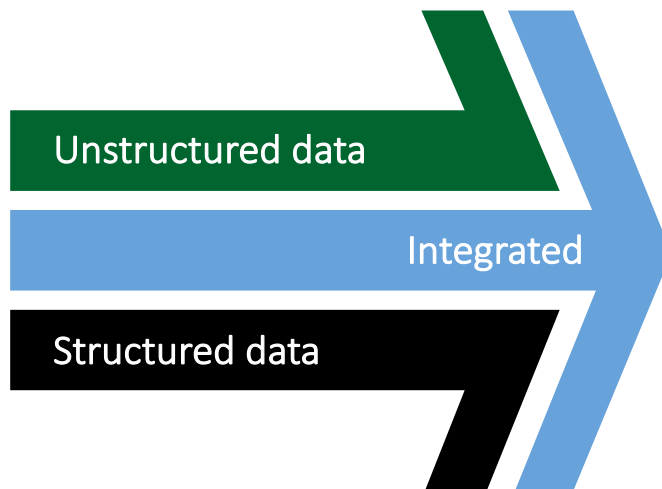
- ▶ Predictive modeling
- ▶ Combined transaction analytics
- ▶ Behavior modeling
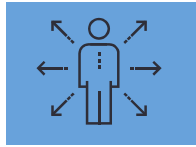- ▶ Machine learning

Data Analytics

Who benefits from Analytics?

Top management
- ▶ Macro level view of exceptions
- ▶ Real time measure of accounting risk and how it affects their income and balance sheet

Compliance / Chief Risk Officer
- ▶ Greater reliability and confidence on the data
- ▶ Assess the health of your organization's compliance efforts
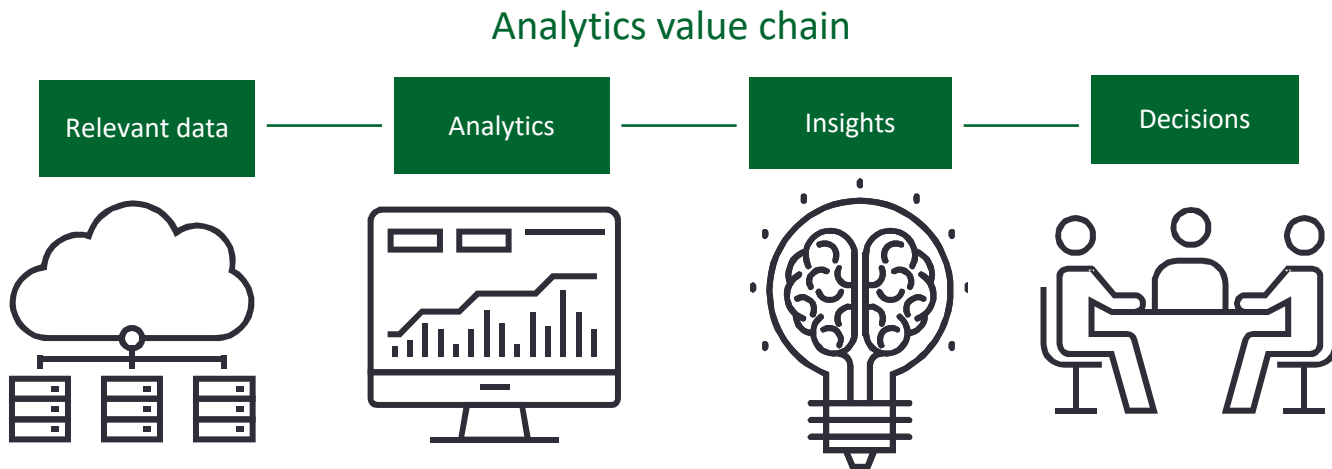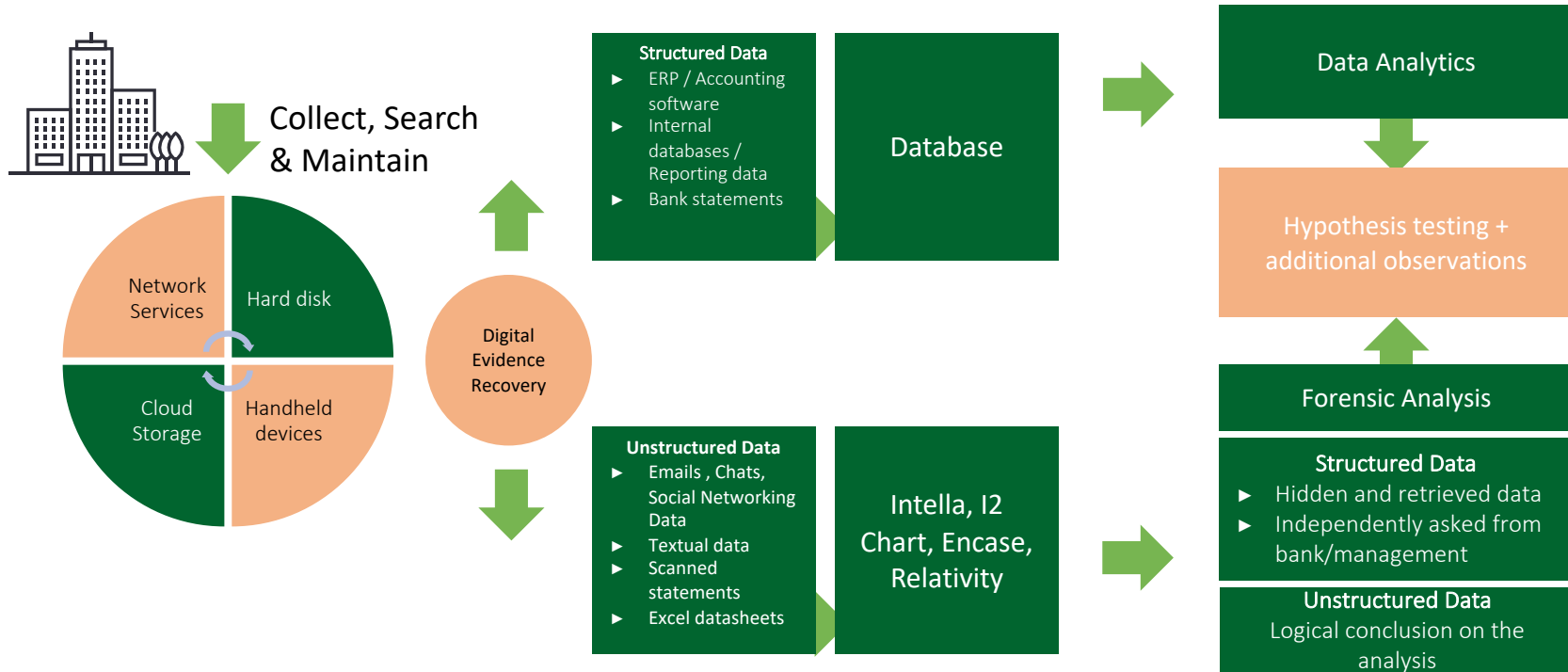- ▶ Measure effectiveness of preventive measures

Internal Audit Departments
- ▶ Auto alert to audit professionals on trigger of critical exceptions
- ▶ Measure and report on control effectiveness
- ▶ Ability to effectively manage and improve processes
- ▶ Prevent and detect fraud/error/misuse at an early stage
- ▶ Potential savings

From Analytics to **Insights**

▶ **Analytics** is the discovery of patterns and trends gleaned through the systematic computation analysis of data or statistics.

▶ **Insights** from data are used to recommend action or to guide decisions to manage legal, risk and compliance.

Analytics value chain

| Relevant data | Analytics | Insights | Decisions |

High Level Approach – How data science and technologies can assist compliance & investigations

Collect, Search & Maintain

Network Services

Hard disk

Cloud Storage

Handheld devices

Digital Evidence Recovery

Structured Data
- ► ERP / Accounting software
- ► Internal databases / Reporting data
- ► Bank statements

Database

Unstructured Data
- ► Emails , Chats, Social Networking Data
- ► Textual data
- ► Scanned statements
- ► Excel datasheets

Intella, I2 Chart, Encase, Relativity

Data Analytics

Hypothesis testing + additional observations

Forensic Analysis

Structured Data
- ► Hidden and retrieved data
- ► Independently asked from bank/management

Unstructured Data
Logical conclusion on the analysis

Data Reviews – for Compliance & Investigations
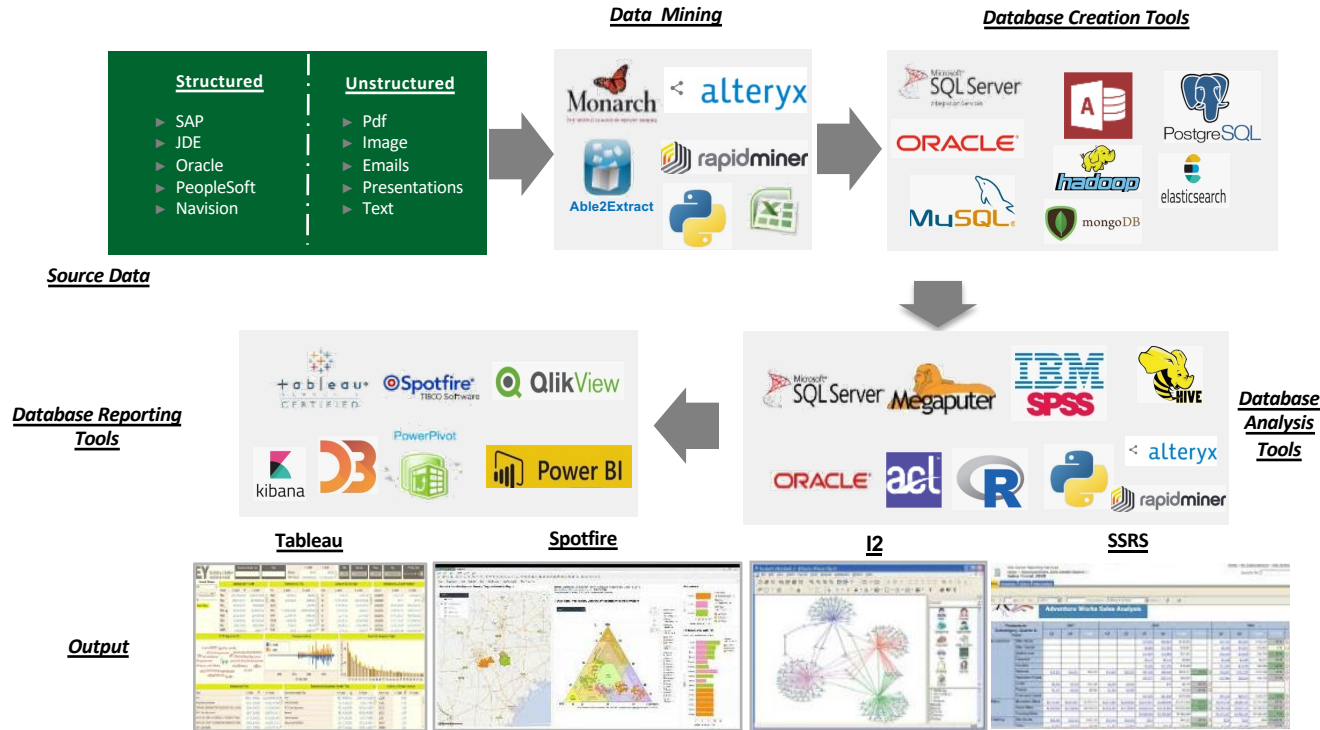
Compliance Program

Objective - Organizations face legal, operational and reputation risks that could obstruct their ability to operate and grow. Compliance programs seek to align the activities and actions of employees with external expectations to mitigate these risks.

Regulatory: Pan-Sector

Brexit
Trade & Export Controls
Anti-Trust
Anti-Money Laundering
Consumer Protection
Intellectual Property
Data Privacy

Regulatory: Sector Specific

Automotive Emissions
Product Safety
Medicines Controls
Food Safety
Financial Services
Financial Crime
HIPAA
Healthcare Professional Sales

Conduct

Ethical Breaches
Fraud
Economic Crime
Bribery & Corruption
General Criminal Laws
Conflicts of Laws

Financial

Accounting Change
Financial Reporting
Capital Adequacy
Tax Transparency and Compliance
Anti-tax Evasion

Operational

Third Party Risk
Cyber Security
Responsible Sourcing
Physical Security
Supply Chain Transparency

Environmental & Social

Conflict Minerals
Environmental Impact
Health, Safety and Wellbeing
Modern Slavery
D&I Reporting
Employment Law

Compliance Data Lake

The Board, C-suite, GC & Legal, Compliance, Finance, Head of Risk, GBS, Internal Audit & Investigations

Scale of risk impact

Confidence in control   ● High   ● Medium   ● Low

Automated Compliance

Automation – The process of performing a task or procedure with minimal human assistance

Compliance – the fact of obeying a particular law or rule, as per an agreement

Automated compliance – The process of aiding compliance with minimal human assistance

Automated Compliance is here

Investigation

Remediation

Incident Management

Management Review

Consultation

Risk Event

Laws & Regulations

Compliance Management

Policies & Procedures

Controls

Transactions

Preventing recurrence through Data-Driven Monitoring
► What would have been the early warning signs of the behaviour?
► Can those warning signs be converted into a signals from data?
► Can you place sensors in the systems to generate those signals?
► How frequently do you need to review those signals for insight?
► How will you review those signals?

Compliance Monitoring tools include:
► Economic Crime
► Bribery & Corruption
► Sales Force Compliance

Analytics process flow & tools

Data Mining

Database Creation Tools

Source Data

Structured	Unstructured
► SAP	► Pdf
► JDE	► Image
► Oracle	► Emails
► PeopleSoft	► Presentations
► Navision	► Text

Monarch · alteryx · rapidminer · Able2Extract · Python · Excel

Microsoft SQL Server Integration Services · Access · PostgreSQL · ORACLE · hadoop · elasticsearch · MySQL · mongoDB

Database Reporting Tools

tableau CERTIFIED · Spotfire TIBCO Software · QlikView · kibana · D3 · PowerPivot · Power BI

Database Analysis Tools

Microsoft SQL Server · Megaputer · IBM SPSS · HIVE · ORACLE · acl · R · Python · alteryx · rapidminer

Output

Tableau   **Spotfire**   **I2**   **SSRS**

Areas of Interest

Data Science – unlocking forensic insights with complex statistical models

Artificial Intelligence – automating tasks, running AI bots to check for critical risks in business functions

Blockchain – identifying use cases in supply chain management, and other forensic applications like counterfeit product identification

Data processing, review and analysis

Using a technology experienced team to digest a large volume of unstructured data from diverse possible formats to effectively manage, organize and mine relevant information.

Action

Case example

A medical device manufacturer to sift through terabytes of data to identify documents requested in multiple government subpoenas.

Using a combination of early case assessment and advanced search technologies, the client's data set was cut down rom 130 million records to fewer than 700,000 records. Applied analytics tools to reduce the population even further and created a final production set consisting of only 120,000 records.

Leveraging analytics in review procedures improved the appropriate identification of responsive documents and significantly enhanced outside counsel's review efforts. As a result, there was reduced the time and cost associated with review and case management of the matter.
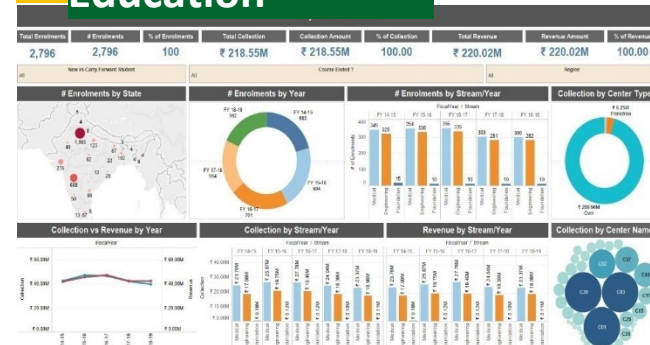
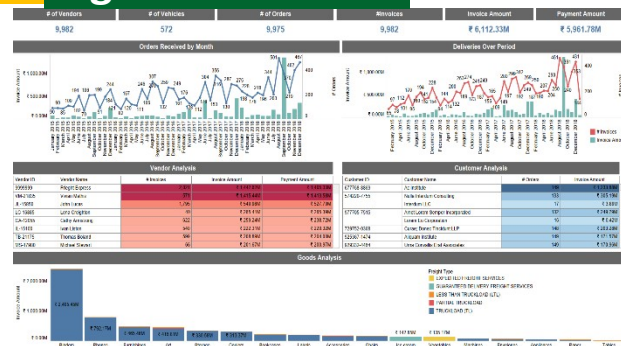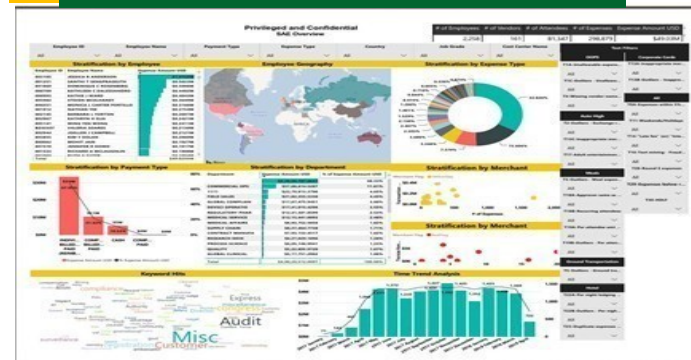# Output examples - Visualization across industries

Output - Visualization across industries (cont)
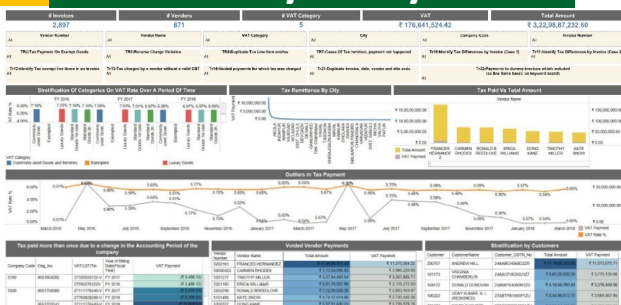
5 Logistics

6 Travel & Entertainment

8 Tax recovery Analysis

7 Accounts Payables

Artificial Intelligence

How AI is changing risk & compliance management?

Understanding Unstructured Data
Organisations are complex in structure, holding 80% of the data in unstructured format. AI can help unlock insights from this data identifying potential risks

Enterprise Level Risks
Various studies account human error as a major cause for loss of data. This data may hold sensitive information, leakage or loss of which poses risk to a firm. AI is eliminating these errors

Cognitive Analytics
AI is helping workforce in **making better decisions**. Cognitive analytics allow businesses to reduce subjectivity in decision making

Financial Services - Risk Mgt & Money Laundering identification etc.

Business Context

❖ **$2.1 trillion** – The amount International Monetary Fund (IMF) has estimated is laundered illegally.

❖ **$900 million** – the amount Dutch Bank was fined for failing to spot Money Laundering.

❖ **$23 billion** – The amount in fines that have been levied on U.S. Banks alone in the last year.

The solution

• AI-enabled platforms help in reducing human dependency that is prone to missing out on mandatory transaction checks.

• AI-enabled platforms identify patterns in transactions that suggest unusual activity.

• False alerts are reduced by taking more data into the account.

Implementation challenges

• Lack of transparency into how AI and ML models make decisions.

• Not understanding why an algorithm identifies something as a risk can prove risky for a company with compliance concerns.
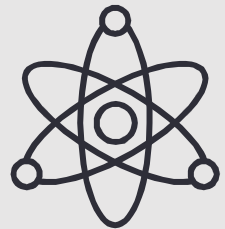
1. Tools – E.g. Digital Managed & Data Tracking Platform

Data tracking platform provides the capabilities to create your own matters that are relevant to your organisation and provide insight into tasks that can be assigned to different stakeholders.
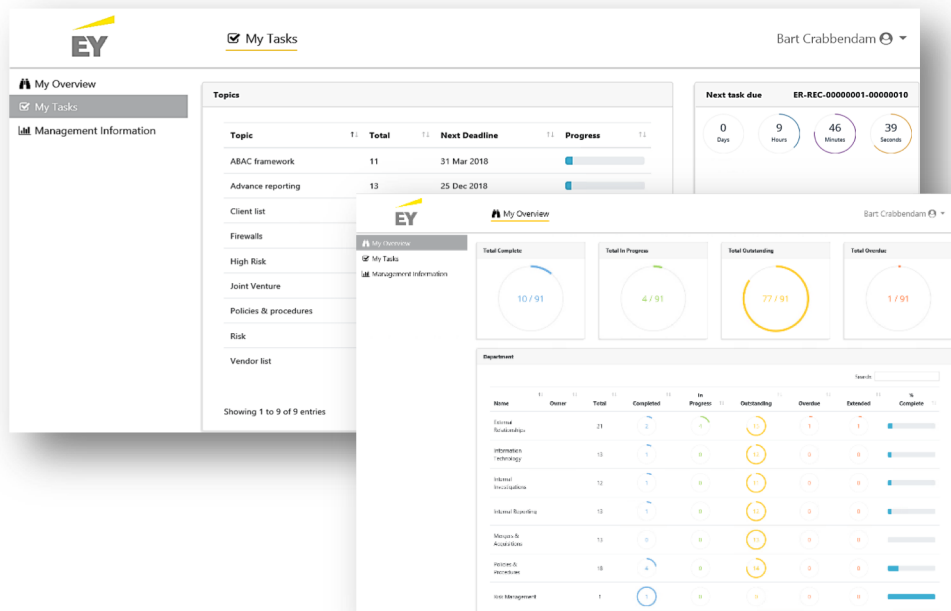
Digital Tracking Platform
A digital tracking platform enables you to efficiently store and manage ongoing matters within your organisation and provides you with transparency by viewing each step accomplished towards a goal - regardless of your global footprint.
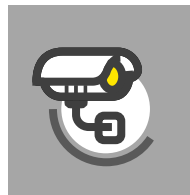
Monitoring
Increase the quality control of your ongoing matters by restricting accessibility to the appropriate users within your organisation, while also facilitating live progress reports to your key stakeholders.

Tracking Service Specialists
Insights - you can shape the digital tracking platform, provide user training and support, and tailor the service to your specifications or compliance needs.

2. AI business use case – Organizations deploy AI to process critical compliance tax validation

Business Context

An international accounting firm wanted to leverage cutting edge technology to improve their business by automating certain tax forms while adhering to their business rules .

These forms included a standard, fixed page as well as additional supplementary pages that had unfixed formats. The firm had a team which manually keyed in the data from the tax forms and compiled in a specific Excel format in accordance with the firm's business rules.

The high volume of tax forms made this a time-consuming task, limiting the amount of analysis the employees could conduct which was highly inefficient.

The solution
- The firm evaluated a few automation solutions before zeroing on an AI tool that was able to fully customize its solution to meet the firm's specific needs.
- The software processed up to 10 million pages per year.
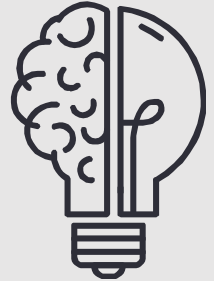
Results
- The software was able to automatically recognize and extract the data from the tax forms.
- Successfully extracted data from the unfixed, supplementary pages, and pushed data into the exact Excel format that the firm wanted.
- Automating its tax forms allowed the firm to reduce costs and increase the productivity of its employees.

Managing internal Investigations

Legal and practical issues

Managing internal Investigations
Legal and practical issues

- Preserving evidence (Legal Hold Notice and document storage)

- Preserving Legal Privilege ("LPP")

- Other Multi-jurisdiction considerations (impacted jurisdictions, applicable law, e.g. Data Privacy, Labour rights)

- What's next? Responsive actions

Managing internal Investigations – LPP

What is Legal Professional Privilege

- A **fundamental right** that grants protection of confidentiality of communications between lawyers and their clients. Intended to promote open communication between lawyers and their clients

- A **shield from forced disclosure** to public bodies and third parties. Counterbalance to investigative powers of regulators and to litigation discovery rights

Increased LLP challenges in light of recent trends of massive internal documents review by enforcement agencies

Managing internal Investigations – LPP

LPP in the context of internal investigations

SCOPE: LPP typically protects communications between clients and their (independent) external lawyers for the purpose of obtaining legal advice

BUT

protection is not absolute and may differ substantially under different national laws:

➢ EU law does not recognize LPP to in-house lawyers (AM&S and Akzo Nobel), while several national laws do
➢ Different notions of client may apply
➢ type of advice covered by LPP: restrictive vs wider approach
  Most common LLP doctrines:

  Attorney-client privilege ("Legal Advice Privilege") / **Work Product doctrine** ("Litigation privilege")

→ deal with the issue at early stage

→ make sure to follow appropriate procedures for preserving LPP during the investigation and protect investigation findings from disclosure

Managing internal Investigations – LPP

Are communications made in internal investigation protected?

Case study

> *Notes of employees interviews and forensic accountants work product created during an internal investigation launched at the company's initiative following a whistleblower*

➢ Recent case law: **ENRC v SFO** (UK):

- LLP (Litigation Privilege) may apply to documents created during an internal investigation for the dominant purpose of not only defending, but also <u>avoiding</u> reasonably contemplated criminal proceedings (e.g. by self-reporting the matter to the Serious Fraud Office)

- notes of interviews with employees and the work product of forensic accountants may be protected

➢ Key takeaways: documenting the purpose and scope of an internal investigation at the outset and during the investigation. Best practices based on applicable LPP law

Managing internal Investigations – LPP
Practical tips

Who conducts the investigation

o Involve (external) legal attorneys at an early stage of the investigation.

o ensure that non-attorney agents (e.g. forensic accountants or subject-matter experts) are appointed and directed by the legal attorney and that they perform functions key to the legal advice

o Interviews should be conducted together with (external) legal attorneys.

o Make clear that interview memoranda are not verbatim transcripts and include the author's impressions

LPP Waiver

o consider LPP implications when providing voluntary investigative information to the government -> possible waiver as to third parties, with potential effects on subsequent civil litigation

o Mark documents as "confidential" and "privilege" to assert the LPP (though simply marking a document does not itself grant privilege). Marked documents easier detectable using e-search tools.

o When circulating privileged documents, make it clear that you are not waiving your LPP rights

Internal Investigations – LPP

Practical tips

Document management and control

o Documents must be preserved from the start of an investigation

o Limit distribution of investigation materials to those who "need to know"

o physical documents should be locked in file cabinets or locked rooms with restricted access (in some jurisdictions, at the outside counsel premises)

o Protect electronic documents preferably by passwords and, where possible, store on "secure" servers

Adapt best practices based on applicable LPP law

Internal Investigations – What's next?

Responsive actions

- Remediation
  - Put an end to the misconduct
  - Disciplinary actions
  - Enhancement of internal compliance policies and procedures

- Consider media statements

- Legal strategy: voluntary self-reporting?
  - Advantages and disadvantages

- Other disclosure obligations (e.g. listed companies)

Thank You