

GKW COMPLIANCE IN BRIEF

Part I

Awareness and Background

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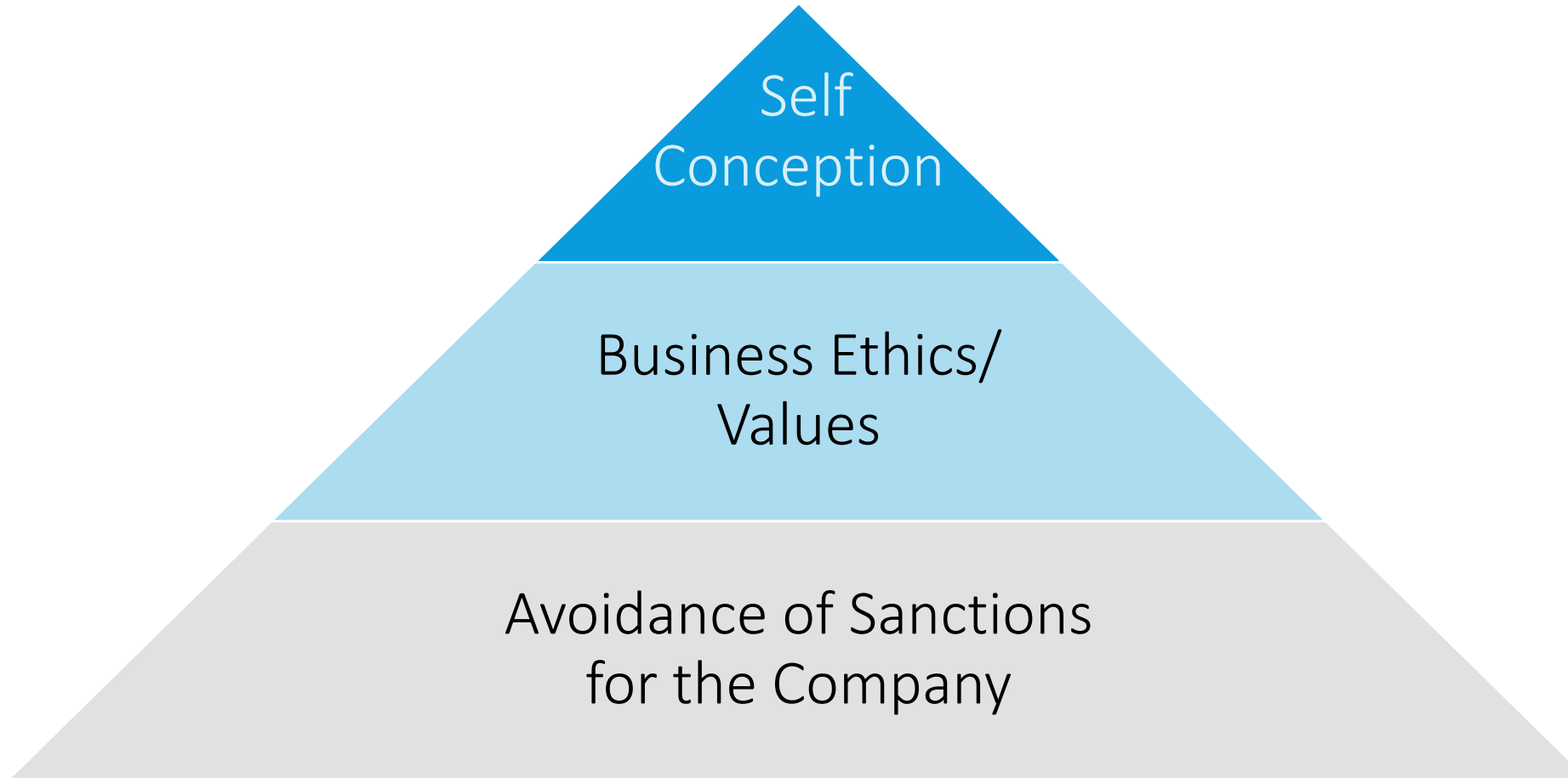
- What is Compliance
- Compliance and Objectives
- Corruption / Bribery
- Antitrust Rules
- Consequences
- Organisation Requirements
- Compliance within GKW CONSULT

WHAT IS COMPLIANCE

- Adherence to Rules
- Documentation
- Communication
- Compliance Organization



COMPLIANCE AND OBJECTIVES



MAIN EMPHASIS AT GWK

- Anti-Corruption/Anti-Bribery
- Due Diligence of Business Partners
- Protection against Money Laundering
- Conflicts of Interest
- Anti-Trust Rules
- Data Protection

COMPLIANCE

GmbHG - § 43 - Liability of MD

Managing Directors have to apply in the business activities the due diligence of a reasonable business man. (...)

Federal Administrative Offences Act (OWiG - § 130)

Anyone who, acting as owner of an establishment, intentionally or negligently omits to maintain supervision or control measures, which are required to avoid infringements of duties within the establishment or company, which affect the owner and which, in case of violation, will lead to a penalty or fine, will be considered to commit an administrative offence, if this infringement could have been avoided or substantially hampered by reasonable supervision. The necessary supervisory measures also include the appointment, the careful selection and control of supervisory staff.

CORRUPTION / BRIBERY

§ 299 - Passive and Active Corruption in Business Activities

- (1) Anyone who, acting as employee or representative of a business establishment, solicits, allows himself to be promised or accepts in business practices a benefit - either for himself or for third parties - with the aim to unfairly favor a third person in the purchase of goods or commercial services during a competition, shall be liable to a term of imprisonment of up to three years or to the payment of a fine.
- (2) Punishment will also be imposed on anyone who in business practice offers, promises or grants to employees or representatives of a business establishment a benefit - either for themselves or for third parties – for the purpose of unduely favoring themselves or third parties in the purchase of goods or commercial services.
- (3)The above paragraphs (1) and (2) also apply to business activities in foreign competition.

§ 334 - Bribery

- (1) Anyone who offers, promises or grants to public officials – either for themselves or for third parties – as a compensation or a return favor for having performed or willing to perform in the future an official act by which he violates or will violate his official duties, shall be liable to a term of imprisonment between three months and five years. In minor cases, he will be liable to a term of imprisonment of up to two years or to the payment of a fine.

CORRUPTION

Corruption generally means bribing of public officials.



Internationally forbidden, will
be punished in every country

Receiving a direct favor
is not required

BRIBERY

Bribery generally means offering benefits to non-public clients



Promising benefits is
already sufficient

ANTITRUST LAW

- § 1 Prohibition to limit competition (GWB)
- Agreements between companies, decisions of federations or groups of companies and coordinated activities which aim or lead to hindrance or limitation of competition are forbidden.



Agreements on prices
Agreements on conditions
Division of markets

PROHIBITED PRACTICES (WORLD BANK)

Corrupt Practice

is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

Fraudulent Practice

is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

Collusive Practices

is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

Coercive Practices

is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly

Obstructive Practice

- (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under para 1.22(e) below.

NO GO (EXAMPLES)



- Influencing Officials to win a contract
- Offering benefits in kind to Officials
- Excessive invitations and entertainment of Officials
- Offering gifts of high value
- Certify incorrect invoices of contractors
- Certify not constructed works as constructed
- Accepting any kind of payment including overtime payments from contractors
- Hire relatives of clients
- Agree with a competitor not to submit a proposal
- Offer a relative an overpaid position

CONSEQUENCES

- Personal Level
- Company Level



CONSEQUENCES – PERSONAL LEVEL

Relevant Laws

- Violation of Criminal Law – Germany
- Violation of Criminal Law – Abroad
- Application of Employment Law
- Application of Tax Laws at home and abroad

Consequences Personal Level

- Warning,
- Warning letter,
- Termination (with immediate effect)
- Fines and/or imprisonment
- Indemnity

CONSEQUENCES – COMPANY LEVEL

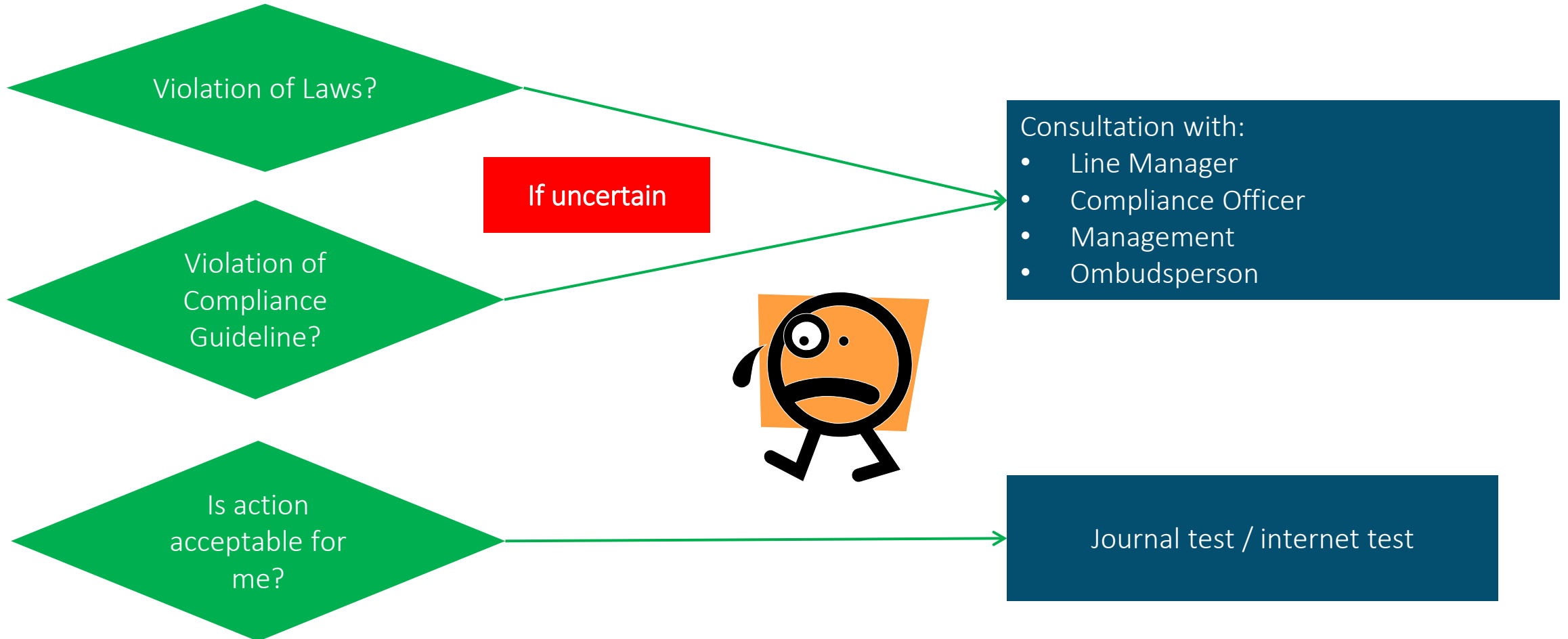
Applicable Laws

- Administrative Offences Act (Ordnungswidrigkeitengesetz)
- Criminal Law
- Tax Law
- Procurement Guidelines

Consequences Company Level

- Loss of Reputation
- Sanction lists, debarment, early warning lists
- Fines, Penalties
- Correction of Tax Statement, Interest
- Restitution Payments
- Financial Losses, Legal Costs
- Bankruptcy
- Records in Trade Central Register

WHAT SHOULD I DO?



WHAT SHOULD I DO?

- Clarification of doubts
- Documentation!!!



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GIFTS & HOSPITALITY

Permitted:

- professional goal, promote GKW's name, good relations with counterparts
- good faith & impartiality, without intention to gain or to grant an unfair advantage
- reasonable value & frequency
- compliance with law and regulations, incl. local law and counterpart's regulations
- good morals

Not Permitted:

- during a sensitive period (tender, contract negotiation, acceptance of works or supplies etc.)
 - conditionally given or requested
 - benefits or services in kind
 - cash or cash equivalents, loans, securities, discounts
 - breach of law or of employers' rules
 - inappropriate value or nature
- may constitute a bribe, undue advantage, violation of procurement rules or of contract clauses

GIFTS & HOSPITALITY

- Higher values or interaction with **public officials**: awareness, notification and approval, indicating occasion, circumstances and participants (name, position, employer/institution), by email, copied to and archived by Compliance Officer.
- Retroactive approval is denied, refusal or return is culturally not acceptable: donate gift or invitation's estimated value to charity
- Frequent or regular invitations or gifts, even if item values are low: report to management
- Gifts or other benefits in-kind that constitute taxable benefits: recommendation to abstain
- Facilitation payment: no tolerance

Public officials are

- civil servants, elected representatives and executives, judges, soldiers
- employees of government or international state and financing institutions
- employees of private companies, state-owned or providing sovereign public services
- consultants, engineers and architects who act on behalf of government or state and financing institutions

GIFTS & HOSPITALITY

Interaction	Criteria	Notification / Approval
Catering at meetings, conferences or workshops	Low value (soft drinks, snacks)	Employee's discretion
Invitations to business meals, to or from clients, partners, suppliers and other external contacts	≤€60 <u>and</u> in context of project	Line Manager, Director of Finance or Compliance Officer
	>€60	Taxable benefit, declaration by donor or donee, Managing Director's approval
	to public official	Managing Director
Gifts and other benefits in-kind, to or from clients, partners, suppliers and other external contacts	≤€10, marketing material with logo	Employee's discretion
	>€10	Line Manager, Director of Finance or Compliance Officer
	>€10 <u>and</u> to public official	Managing Director
	>€35/person/year	Taxable benefit, documentation by donor, declaration by donor or donee, Managing Director's approval
Gifts and other benefits in-kind, from GWK management to GWK employees or freelancers	≤€25	Line manager
	>€25	Taxable benefit, declaration by donor or donee, Managing Director's approval

MEASURES OF THE COMPANY (SELECTION)

- Implementation of a Compliance Management System (CMS)
- Creation of Awareness
- Training
- Guidelines for Gifts, Invitations Entertainment
- Guidelines for Anti-Trust Rules, Conflict of Interest
- Guidelines for Employment of Representatives
- Improved Recruitment Procedures
- Improved Financial Guidelines (on Payments etc.)