

# AmCham Compliance Club

Internal Investigations – Global Best Practices

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**REDCLIFFE  
PARTNERS**

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# Agenda

1. Why conducting an internal investigation?
2. Report handling
3. How to conduct an internal investigation
  - i. Phase 1: immediate measures
  - ii. Phase 2: internal investigation
  - iii. Phase 3: shaping the future

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# 1. Why conducting an internal investigation?

# The LEGO case (2016)

## LEGO fined for vertical resale price maintenance (12.01.2016)

The Federal Cartel Office has imposed a fine of 130,000 Euros on LEGO for enforcing vertical resale price maintenance in the sale of its so-called "highlight articles". Those affected were retailers who were forced by sales representatives of LEGO to raise their retail prices. Regularly updated lists were kept of the articles concerned and the names of the selected retailers. In some cases the retailers were threatened with either a reduction in supply or even with the refusal to supply if they offered articles at retail prices below those set in the lists.

The Federal Cartel Office stated: *"After the proceeding was opened LEGO carried out **extensive inhouse investigations** and **from the onset significantly contributed** to clarifying the facts of the case. The company also drew the necessary **organizational and personnel consequences**. In setting the fine full consideration was taken of its cooperation and the fact that a settlement could be reached."*

# The Hewlett-Packard case (2014)

## Payments of \$108 million

### Facts according to SEC/DOJ

- HP Russia created excess profit margins to finance a slush fund through an elaborate buy-back deal scheme (same in Mexico and Poland);
- The payments to the intermediary were then largely transferred through multiple layers of shell companies, some of which were directly associated with government officials;
- Proceeds from the slush fund were spent on travel services, luxury automobiles, expensive jewelry, clothing, furniture and various other items;
- To keep track of and conceal these corrupt payments, the conspirators inside HP Russia kept two sets of books.

### Internal investigation and cooperation credit:

- Company did not self-report; nevertheless, 33% reduction of fines
- Because of “*HP Co.’s extensive cooperation with the department, including **conducting a robust internal investigation**, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, and organizing voluminous evidence for the department.*”

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## 2. Report handling

# Reports - Allocation into buckets

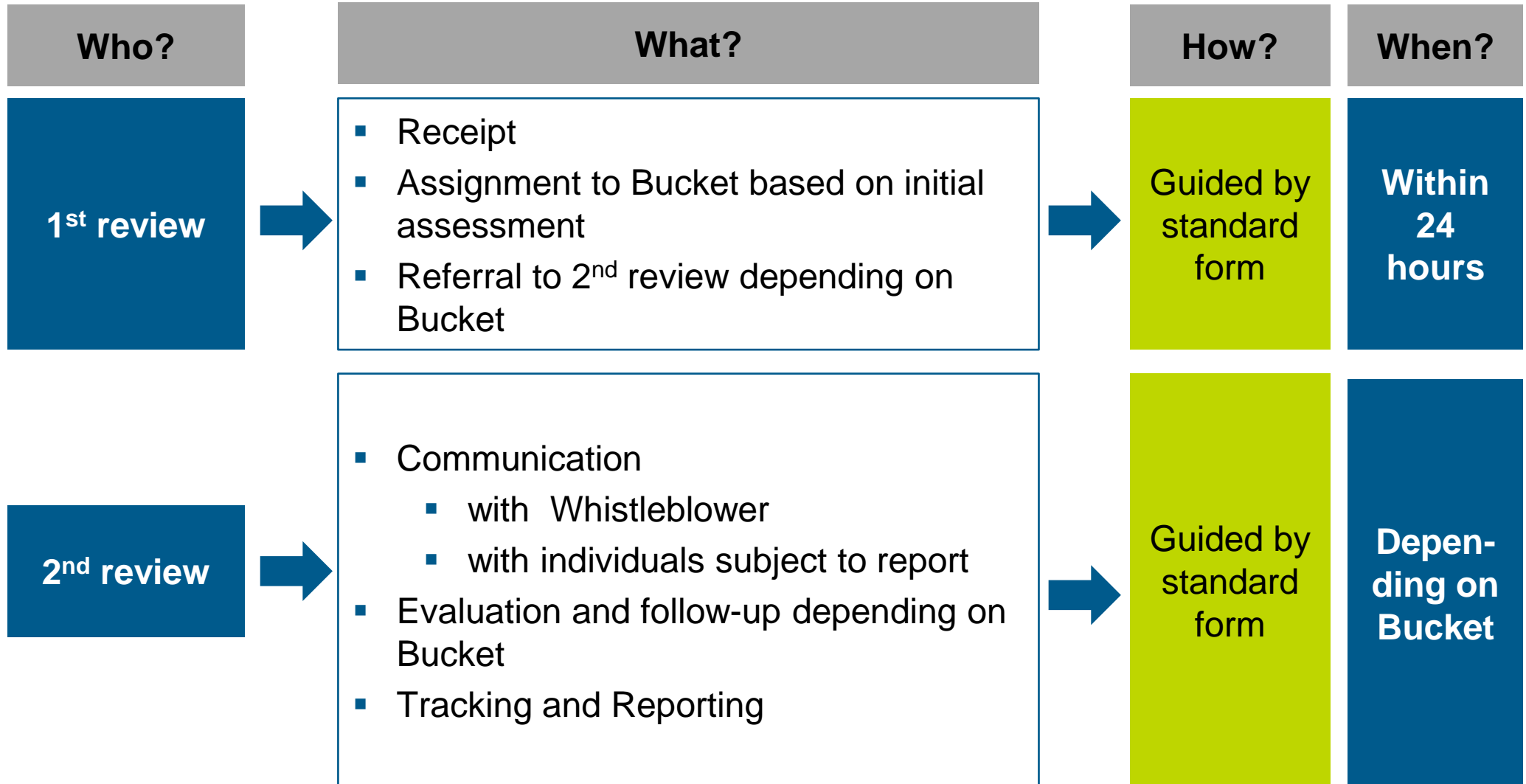
## Assignment based on initial assessment

Suggested approach: allocation into “priority buckets”

- Risk-based and defined categories
- Case-by-case assessment is required
- Assignment within 24 hours after receipt
- Assignment can change over the period

**In case of doubts choose bucket of higher criticality**

# Process based on bucket allocation





## Next steps

### Process enters investigation phase

Timing of investigation depending on local standards: For Ukraine 15 days, max. 30 days to “*take measures to investigate*” an anonymous report with regard to a bribery or corruptive actions. (see Law for the Prevention of Corruption)

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### 3. How to conduct an internal investigation?

# The 3 phases



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i. Phase 1: immediate measures

# Phase 1: immediate measures



General principle: increased obligation, when concrete indication for compliance violation



Mere obligation for management to monitor and advice change into concrete obligation to intervene and to react

- “Stop the bleeding“
- Preliminary fact-finding
- Data retention
- Communication
- Notification duties,  
e.g., stakeholders, authorities, insurance
- First project management measures



# "Stop the bleeding"

## Stop the alleged conduct

In case of knowledge about a possible violation, immediate measures to stop the compliance violation ("Stop the bleeding")

**Documentation**

Documentation of undertaken steps for (later) reporting

**Conflict**

Business needs to be able to continue smoothly

# Preliminary fact-finding

**Meeting: Collection of already known facts and allegations**

**Collection of documents as a ground for intermediate decisions**

- Evaluation of risks (criminal liability, competent authorities, possible sanctions / civil compensation claims, reputational risks, influence on business)
- Substance of allegations (e.g. motives of whistleblower)

**Definition of preliminary scope of investigation**

**Coordination with relevant stakeholder**

**Basis for next steps and investigation project plan**

# Data Retention

**Determination of relevant data protection issues (blocking statutes)**

**Evaluation of internal email and data protection policies**

**Request any cooperation agreements with prosecutors**

**Draft data retention notice to all relevant employees / externals**

- Track circulation of data retention notice

**Protection of potentially relevant data**

- Identification of potentially relevant data and respective employees
- Copy of electronic data (obtain laptops, mobile devices, etc.), protection of hardcopy data by access restrictions and access monitoring



# Communication

## Establishment of a firm communication team (e.g. PR, Legal, relevant business unit)

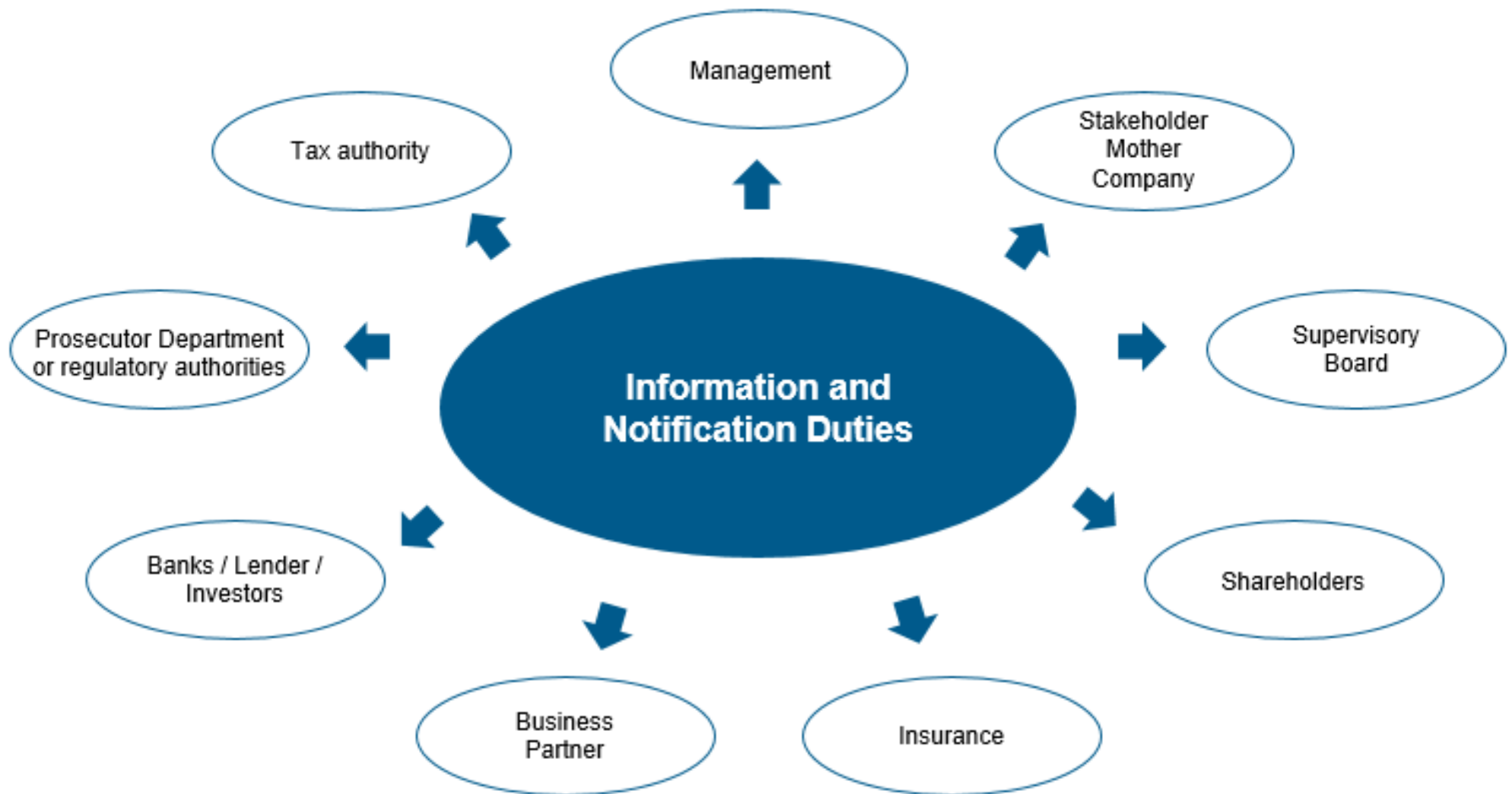
- Internal announcement of the firm communication team
- Draft internal communication note and Q and As
- Draft reactive external press statement and Q and As
- Consider drafting pro-active external press statements and Q and As

### General rules:

- Write in a cautious way
- Communicate things, you are allowed to disclose
- Do not communicate things that are not proven and can still turn out wrong



# Potential information and notification duties



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## ii. Phase 2: internal investigation

## Phase 2: internal investigation



- Project Management
  - Goals
  - Timeline
  - Responsibilities
  - Team
  - Organization and reporting
- Communication with whistleblower or requesting authority



- Communication with individuals involved
- Investigation
  - Fact finding methods
  - Accounting
- Cooperation with authorities
- Analysis
  - Final report

# Why project management?

Focus on objectives/goals

Efficiency

Costs

Completeness of investigations

Protection of confidential information

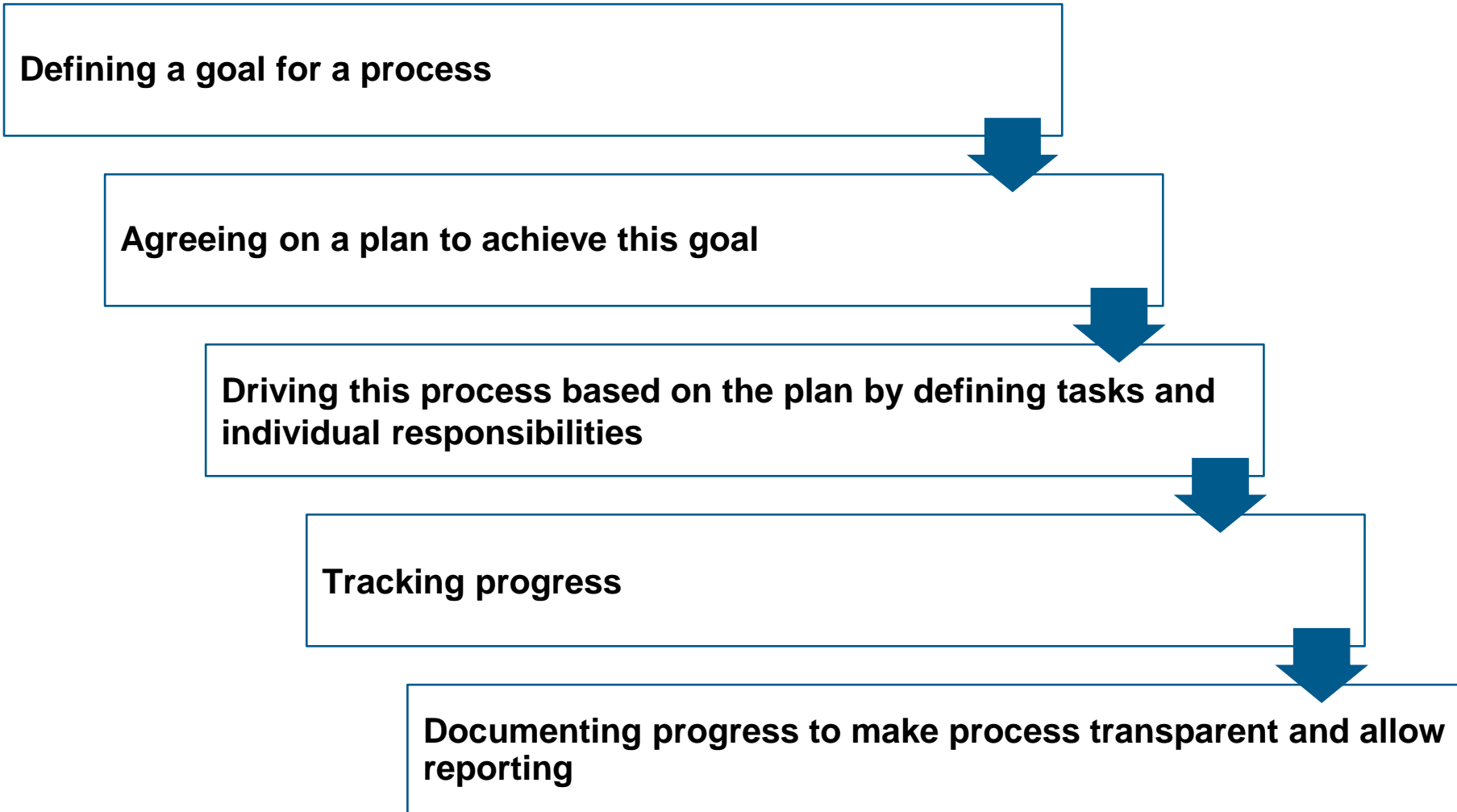
Data protection and blocking statutes

Avoidance and handling of negative  
media presence

Consistent and strategic  
communication

**Control → Reduction of risks**

# What is project management?

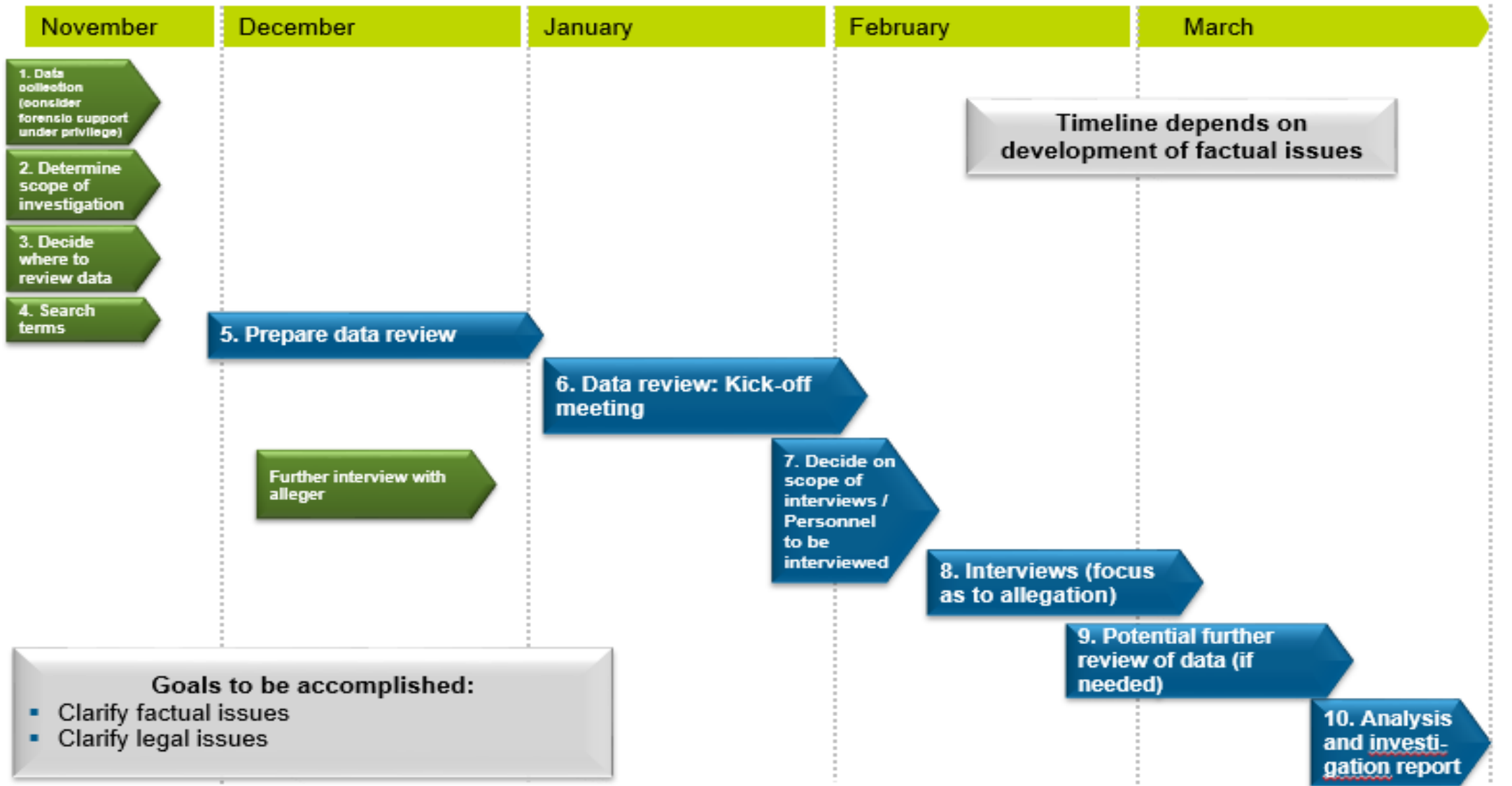


# What is project management?

**Project  
management  
consists of  
various  
aspects**

- **Work Plan Management:** Designing work plans, allocating tasks, tracking progress
- **Case Admin:** Organizing/setting up calls, circulating agendas, creating contact directories
- **Deadline management:** Providing charts and reminders
- **Reporting:** Providing and updating charts for internal reporting to senior management and finance
- **Data management:** Establishing, structuring and maintaining of databases to allow easy access 24/7 all over the world

# General work streams and timeline

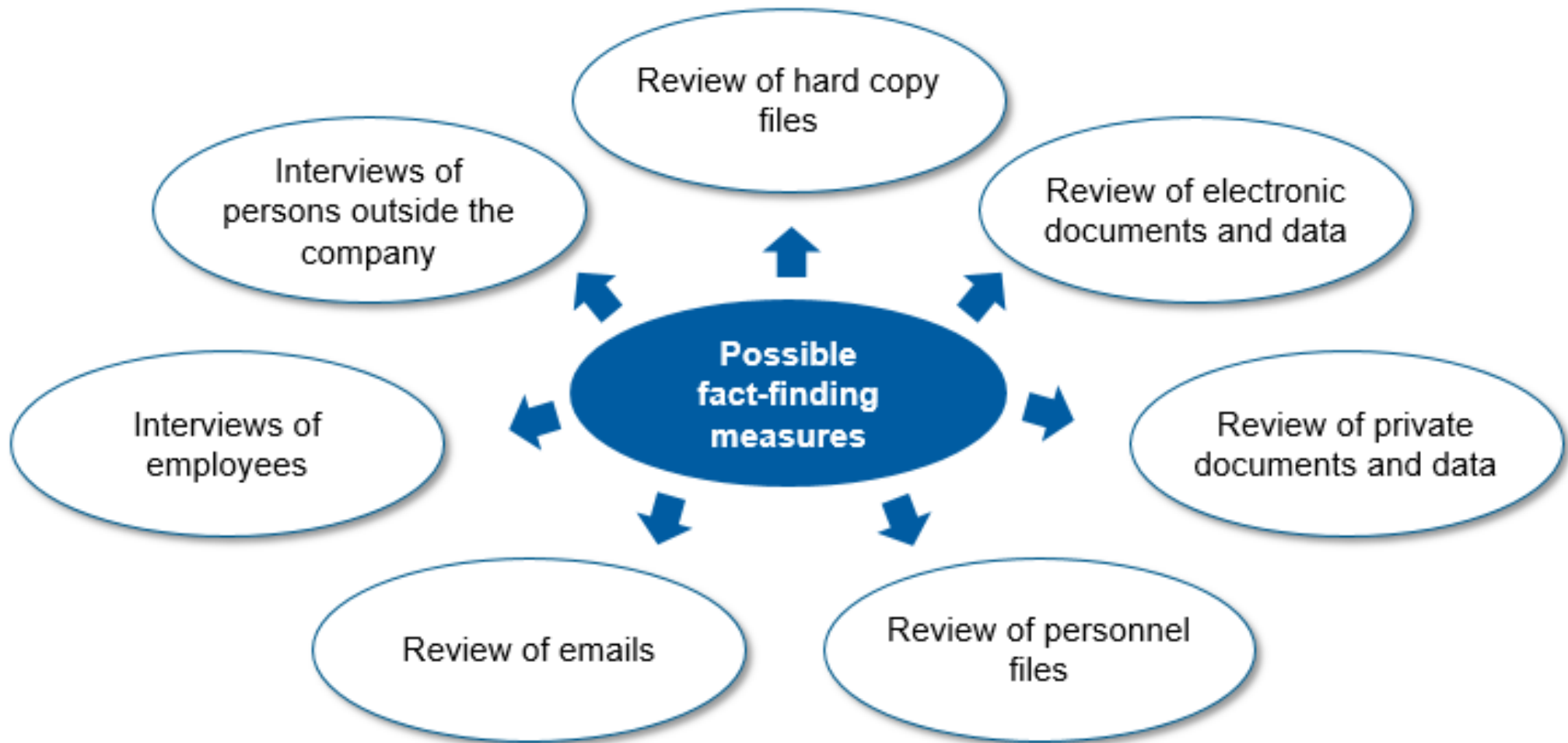




# Tracking Status

| [Project name]               |                                 |  |                        | PRIVILEGED & CONFIDENTIAL<br>Attorney Work Product |  |
|------------------------------|---------------------------------|--|------------------------|--|--|
| Collection of Custodian Data |                                 |  |                        |  |  |
|                              |                                 |  |                        | Owner: (...)                                       |  |
|                              |                                 |  |                        | STATUS   |  |
|                              |                                 | Status Today   | Status Previous Update | Change   |  |
| Total Number of Custodians:  |                                 | 15   | 13                     | +2   |  |
|                              | Collected Data from Custodians: | 7  | 4                      | +3   |  |
|                              | Not yet collected data:         | 0  | 0                      | 0  |  |
| Status of Progress:          |                                 | <div style="background-color: blue; width: 47%; display: inline-block;"></div> 47% |                        |  |  |
|                              |                                 |  |                        | EDC: n/a   |  |

# Fact finding methods - Overview



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### iii. Phase 3: shaping the future

# Phase 3: shaping the future



## Claims

- Early considerations
  - Statute of limitation
  - Risk of conflicts when introduced to investigation team
- Claim assessments
  - Obligations regarding assessment and enforcement

## Insurance

- Check insurance package
  - Report of outcome to insurance
  - Mitigation of financial risks connected to investigations and fines
  - D&O insurance

# Decision on involvement outside counsel

## Aspects to be considered

- Risk level
- Privilege aspects
  - In particular if potential involvement of authorities
- Capacity issues due to time constraints
  - In particular in competition cases
- Potential conflicts of interest of management or legal department

## Case-by-case basis

# Attorney-Client Privilege and document management

## 1. Draft sensitive documents through outside counsel

- Reduced disclosure obligations
- Can in general not be accessed directly by public prosecutor

## 2. Storage of documents on lawyer's servers

- Documents created by outside counsel can be protected against direct access by staying on lawyer's servers
- Creating extranets with access rights for project team members

# Thank you for your attention!

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