

A BOARD GUIDE

M&A Governance & Compliance

What Boards Need to Know Before, During, and After the Deal

Compliance risk doesn't close with the transaction—it is acquired with the target, and a board's diligence and integration decide what it costs

You Acquire the Target's Risk, Too

A deal can import liabilities that surface—and cost—long after closing

- **Successor liability is real.** An acquirer can inherit the target's pre-deal misconduct—FCPA, sanctions, fraud, and more.
- **Regulators expect diligence.** DOJ guidance treats pre-acquisition compliance due diligence and prompt integration as hallmarks of a serious program.
- **Integration is where deals fail.** An un-integrated subsidiary is an oversight gap—exactly the failure that has produced recent FCPA settlements.
- **The board owns the call.** Directors approve the deal; compliance risk should inform price, terms, and timing.

IN ONE LINE

Diligence tells you what you're buying; *integration decides whether it stays a problem.*

Where Compliance Fits in the Deal

Compliance belongs in the room from the first conversation—not after signing



COMPLIANCE RUNS ACROSS EVERY STAGE

Notify compliance early · scope the risk · diligence the target · shape the terms · plan integration · monitor after close

The earlier the better. The window for compliance due diligence closes once the company is legally bound—so involve compliance before the definitive agreement.

Get Compliance In Early—and Define the Scope

Notification can't wait for signing, and "M&A" is broader than buying a company

- **Notify before you're bound.** Compliance should learn of a potential deal before a definitive agreement or government filing—so diligence can actually happen.
- **It's not just change-of-control.** Minority equity stakes, asset purchases, and even partnerships, joint ventures, and strategic alliances carry compliance risk.
- **Options to acquire control.** When the company can later increase its stake, plan to re-assess the target before exercising the option.
- **Make it a standing duty.** Business, legal, and finance partners should be reminded, in writing, to flag deals early.

DEALS THAT TRIGGER REVIEW

- Acquisitions (control)
- Minority equity interests
- Asset purchases
- Joint ventures & alliances
- Partnerships
- Option exercises to acquire control

Due Diligence: What to Look At

Risk-based, specialist-supported, and broader than the financials

Anti-corruption / FCPA	Sanctions & trade	Anti-money laundering	Antitrust / competition
Privacy & data security	Employment & labor	Environmental	Health & safety
Licensing & permits	Product safety	Litigation & investigations	Financial controls

- **Make it risk-based.** Scale the depth to the target’s geography, industry, and counterparties—deepest where corruption and sanctions exposure is highest.
- **Use specialists, then review their work.** Engage qualified legal/accounting/compliance experts; review their work plans and reports, and advise management on the risks found.

Successor Liability & the DOJ Safe Harbor

Inheriting a problem is the risk; promptly disclosing it is the protection

THE RISK: SUCCESSOR LIABILITY

- An acquirer can inherit the target's pre-acquisition violations.
- Liability can attach even to conduct you did not commit or know of.
- Weak diligence and slow integration magnify the exposure.

THE INCENTIVE: M&A SAFE HARBOR

- **Disclose within 6 months.** Voluntarily report misconduct found in diligence or integration.
- **Cooperate and remediate.** Fully remediate (with restitution/disgorgement) within one year of closing.
- **Earn a presumption of declination.** Meet the terms and DOJ will presumptively decline to prosecute the acquirer.

Put the Findings Into the Deal

Diligence is only useful if it shapes price, terms, and timing

Representations & warranties

Require the seller to warrant compliance with anti-corruption, sanctions, and other laws.

Indemnities, escrow & holdbacks

Hold back consideration to cover known and unknown compliance liabilities.

Conditions to closing

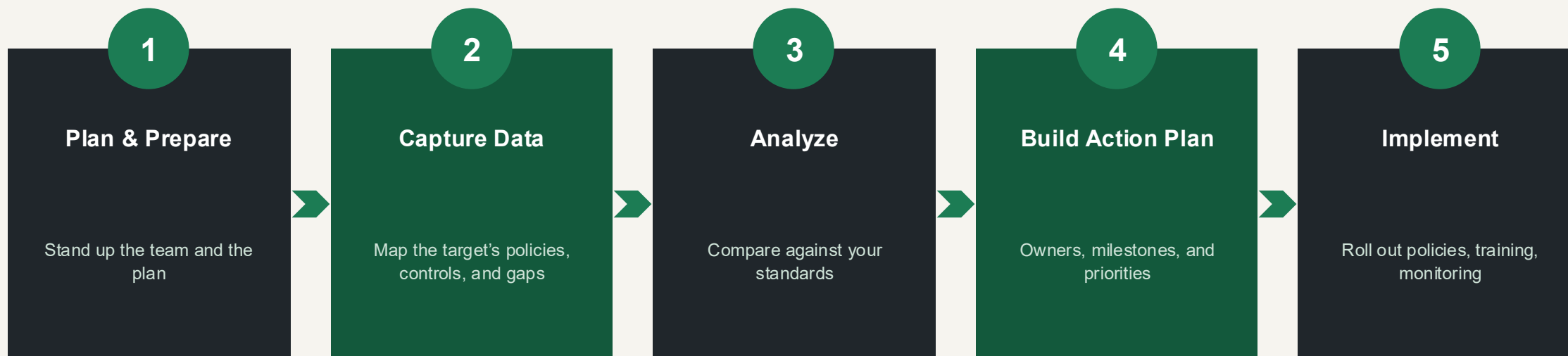
Make remediation of red flags a condition—or a reason to walk.

Price & structure

Reflect risk in valuation, in the structure, or in representation-and-warranty insurance.

Integration: Bring the Target Under Your Controls

The deal isn't done at closing—it's done when the target runs on your program



Plan for the long arc: planning runs roughly 90–180 days, full integration 18–24 months, and monitoring is ongoing—fund and track it like any other deal workflow.

When Integration Doesn't Happen

A real, recent reminder of the cost of leaving an acquisition un-integrated

- **The acquisition.** A U.S. manufacturer acquired an overseas equipment maker—and did not timely fold the new business into its compliance program and internal controls.
- **The gap.** For years, a foreign subsidiary operated outside the parent's controls; bribery to win contracts went undetected.
- **The result.** An FCPA enforcement action followed—settled in 2024 for \$9.93 million—traceable directly to the failure to integrate.

THE TAKEAWAY

Diligence finds the risk. *Integration is what actually retires it—on a clock, with owners, and with board attention.*

Five Questions to Ask on Any Deal

Your leverage is the approval—use it to demand the right diligence and plan

Was compliance in early?

Before the definitive agreement—or did diligence get skipped?

Was diligence risk-based?

Deepest where corruption, sanctions, and geography demand it.

Do the terms reflect the risk?

Reps, indemnities, escrow, or price—findings should move the deal.

Is there an integration plan?

With owners, a budget, milestones, and board reporting.

5. And after close: *if diligence or integration turns up misconduct, are we positioned to disclose and earn the DOJ safe harbor?*