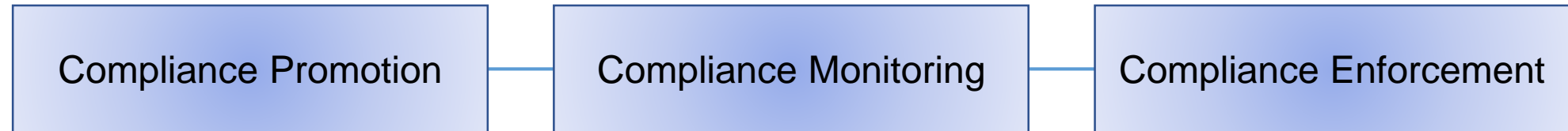


Assuring Environmental Compliance in Deep-sea Mining

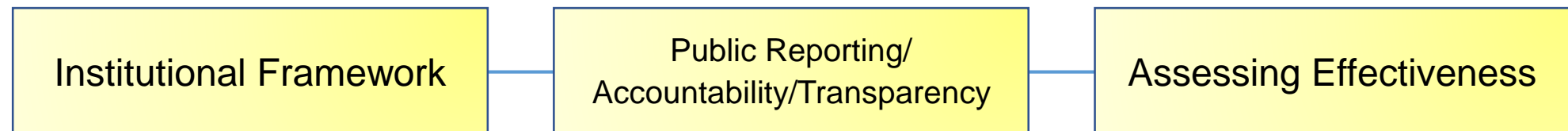
Pew Charitable Trusts Webinar 22nd July 2020

Environmental Compliance Assurance: Key Factors and Underpinnings

Usually regarded as being made up of three linked factors



These factors are underpinned by



Methodology

Case Studies:

- ❑ **National environmental and natural resource protection agencies**
 - South Africa (Department of Environmental Affairs),
 - New Zealand (Environmental Protection Authority),
 - Hong Kong (Environmental Protection Department),
 - Pacific Islands region (Parties to the Nauru Agreement) and
 - UK (Marine Management Organisation)
- ❑ **Private sector companies**
BP, Chevron, Shell and Rio Tinto
- ❑ **International finance**
European Bank for Reconstruction and Development

Roundtable :

- ❑ The Case Studies Report circulated to a group of experts
- ❑ Representatives from industry, regulators, compliance organisations, international finance,
- ❑ Discussion agenda based on six compliance themes
- ❑ Recommendations also made on
 - regulations and standards
 - EIAs, EMMPs and the approval process
 - assessing Contractor environmental management capacity
 - strategic public consultation

Components of environmental compliance assurance

Compliance Promotion

Compliance Monitoring

Compliance Enforcement

Institutional Framework

Public Reporting/
Accountability/Transparency

Assessing Effectiveness

Institutional Frameworks: Key Learnings

Good practice includes:

Clear delineation of
accountability/responsibility

Strategic planning

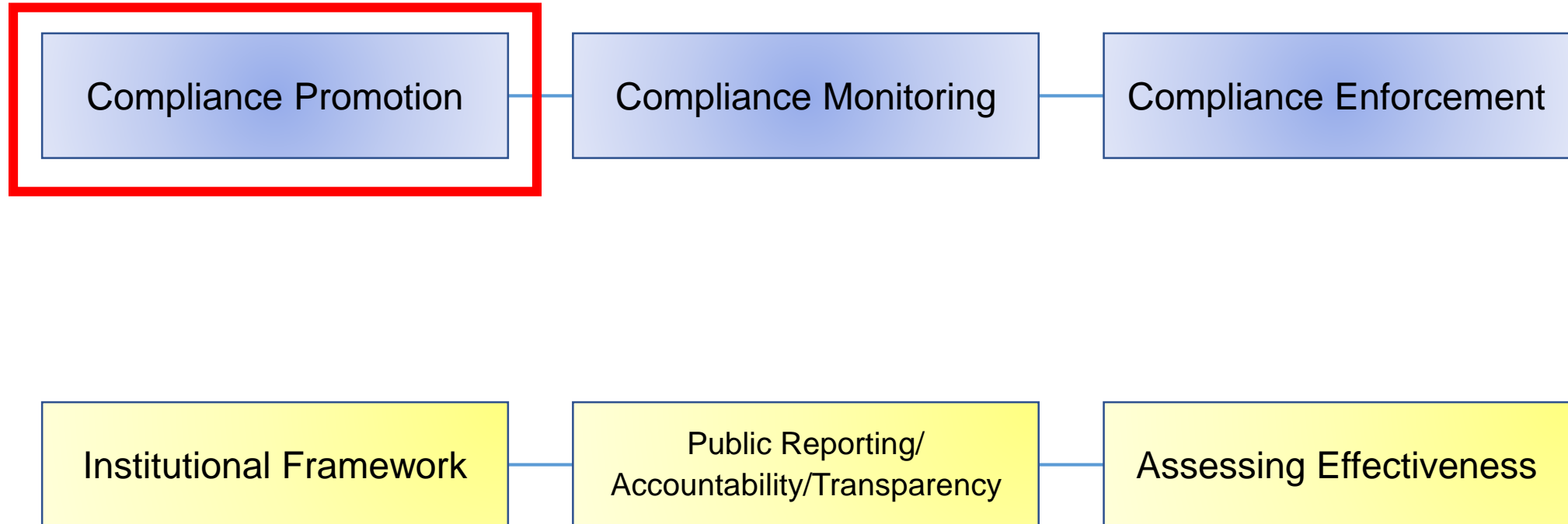
Full time compliance
assurance staff

Independence

Institutional Frameworks: Selected Recommendations

- Ring-fence environmental compliance assurance from other functions.
- Mandate more environmental specialists in the LTC or establish a separate Environment Commission
- Establish an Environment Department within the ISA Secretariat that reports via the Secretary-General to the ISA Council
- Establish an Office of Environmental Compliance staffed by suitably qualified professionals

Components of environmental compliance assurance



Compliance Promotion: Key Learnings

Good practice includes:

Multi-pronged, proactive approach (e.g., outreach, incentives, guidance)

Industry association

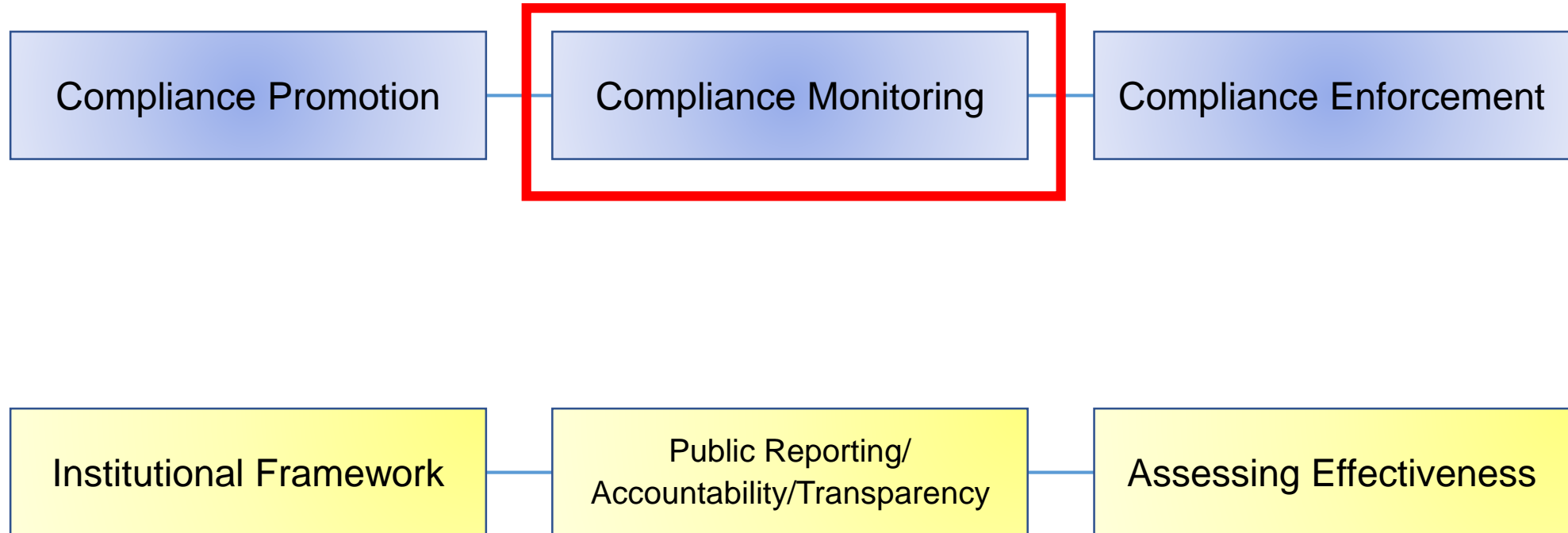
Use of web-based and interactive materials

Development of evidence base

Compliance Promotion: Selected Recommendations

- Establish an industry association to promote model codes of conduct and practice
- Publish guidance on the full suite of environmental obligations and expected management approaches
- Maintain an environmental compliance assistance service
- Build an evidence base in collaboration with Contractors (of the impacts of mining and workable mitigation solutions)
- Conduct reviews of exploration Contractors compliance records
- Run an awards programme

Components of environmental compliance assurance



Compliance Monitoring: Key Learnings

Good practice includes

Clear monitoring
framework

Combine data and audits

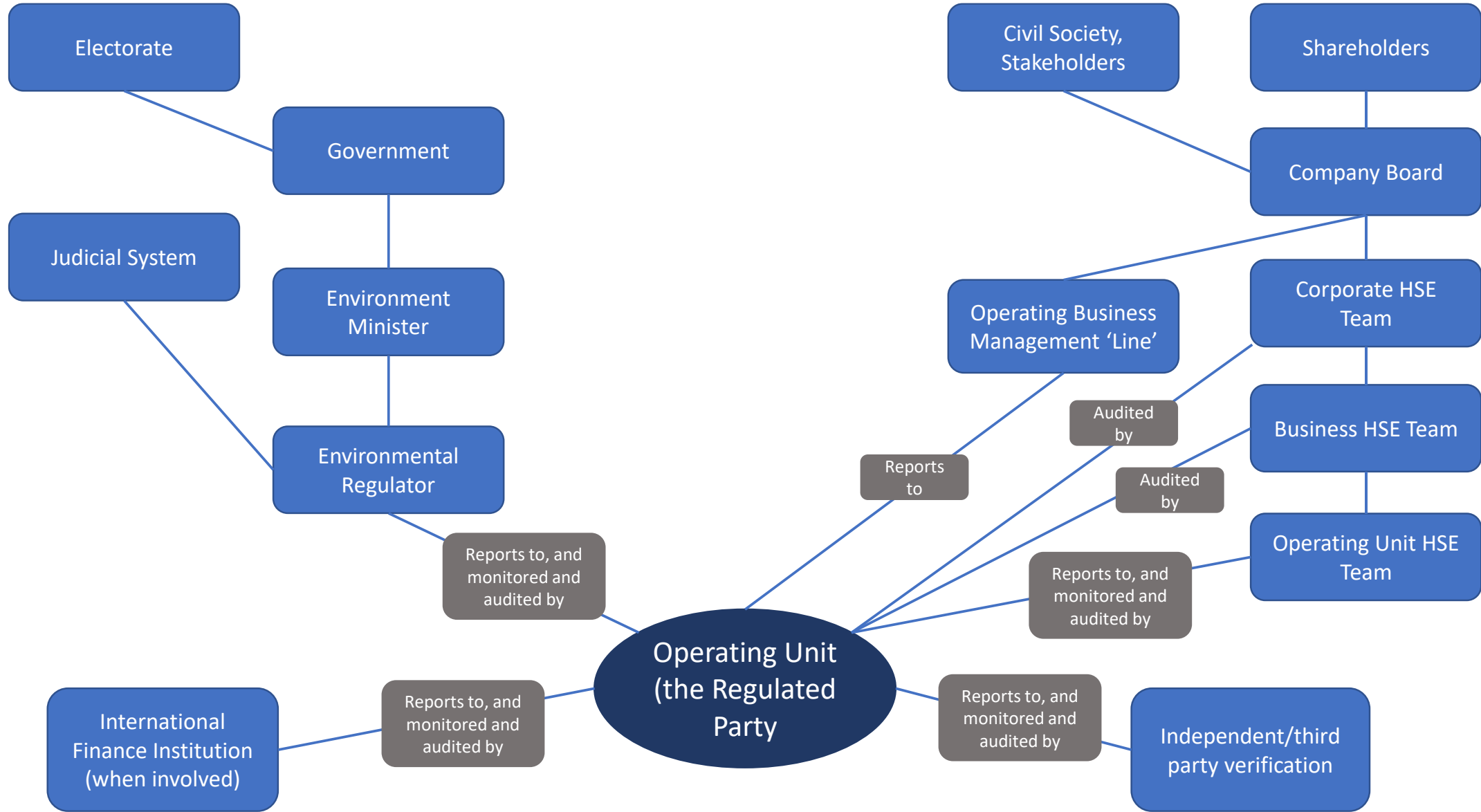
Independent verification

Self-reporting and
regulator review through
dedicated portals

Risk-based approach

Connection to evidence
base

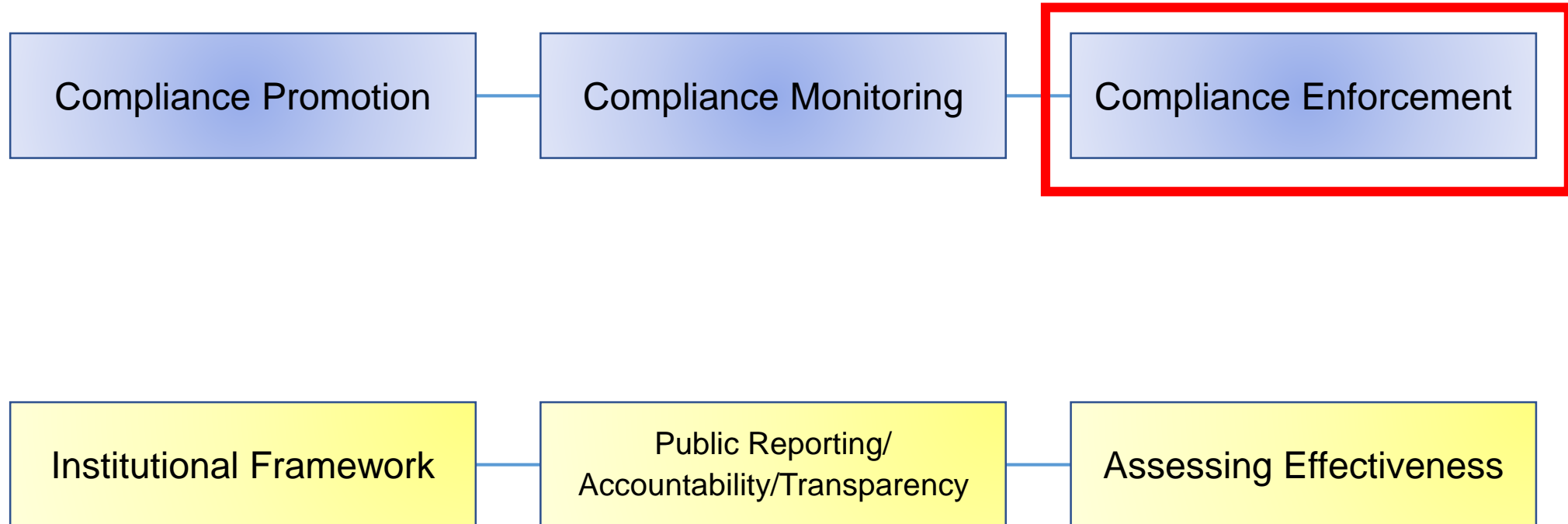
Typical Compliance Assurance Framework



Compliance Monitoring: Selected Recommendations

- Ensure fairness and consistency regardless of regulated party
- Establish and test provisional practices during a pioneer phase
- Ensure real-time data reporting, use of 'portal' and provision of access to internet from remote locations
- Establish frequency and intensity of environmental audits and inspections based on individualized risk assessments
- Include periodic reviews of long-term/cumulative effects in self-reporting
- Monitor data to feed into evidence base

Components of environmental compliance assurance



Compliance Enforcement: Key Learnings

Good practice includes

Progressive escalation

Initial emphasis on
conformance over penalties

Develop contractor
relationships to foster
understanding

Use of environmental
improvement plans

Compliance Enforcement: Selected Recommendations

- Develop Compliance Enforcement Strategy to include triggers for early dialogue and actions before formally issuing compliance notices
- If a notice is issued, ISA and Contractor to agree on an Environmental Improvement Plan
- Failure to comply with the Plan would lead to escalation of enforcement actions
- Sponsoring States and Flag States should be encouraged to operate their own Compliance Enforcement Strategies
- Publish an indicative range of monetary penalties set sufficiently high as to act as meaningful deterrents
- Criminal prosecution should be regarded as an enforcement measure of last resort, Sponsoring States to identify the sanctions appropriate within their domestic legal regimes

Accountability & Transparency: Key Learnings

Good practice includes

Public access to all relevant information in timely fashion

Sustainability reporting
(including years ahead and previous targets)

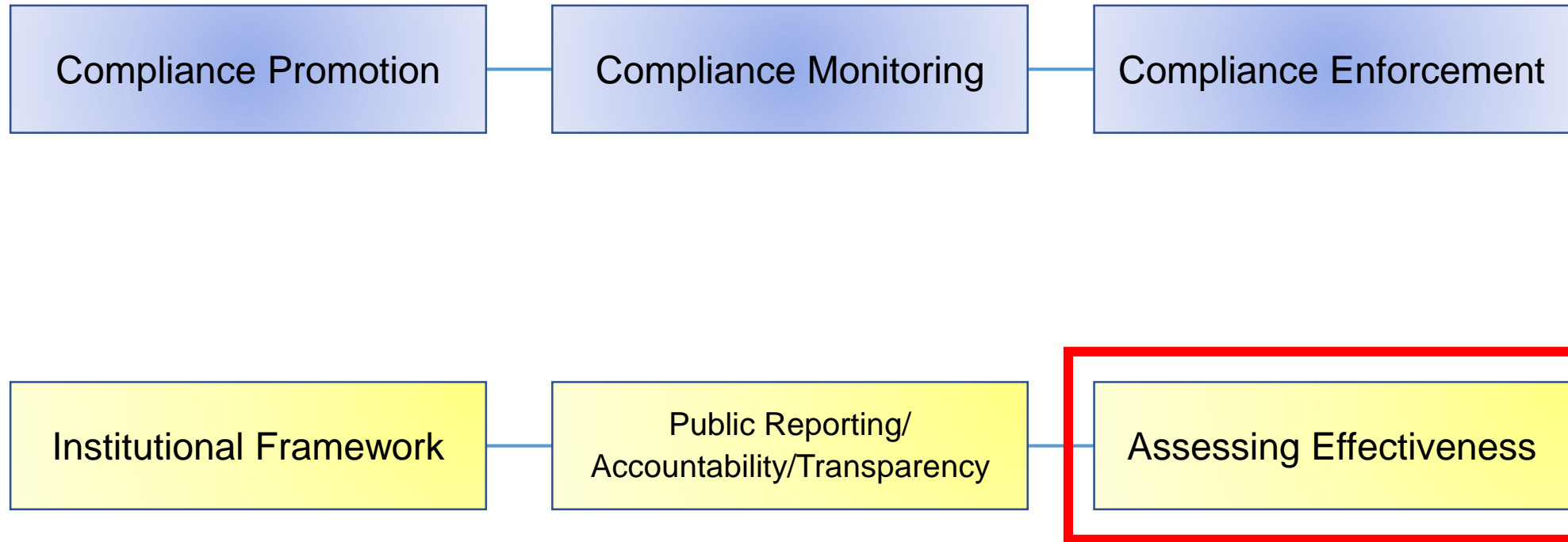
Whistle-blowing procedures

Independent verification

Accountability & Transparency: Selected Recommendations

- Full disclosure of all EIA and EMMP related documentation with adequate time and procedures for considering public views
- ‘Decision Report’ on applications to be issued showing how public input has been considered
- Publicise compliance records of all Contractors
- Public access to environmental information via DeepData
- Whistle blowing policy for ISA staff, Contractors and mechanisms for public complaint that assure confidentiality

Components of environmental compliance assurance



Assessing Effectiveness: Key Learnings

Good practice includes

Internal assessments against published targets

External scrutiny of private companies as part of annual verification

Tracking effectiveness on on-going basis

Regulators scrutinised by other agencies

Assessing Effectiveness: Selected Recommendations

- Undertake transparent and consultative annual compliance assessment against targets and a Strategic Plan, including a parallel assessment from an external source
- Solicit views on compliance performance by surveys of the general public, stakeholders, Contractors and Sponsoring States
- Present outcomes to the ISA Council and make available to the public
- Consider the adoption of a “live touch dashboard” approach for the first five years of establishing compliance assurance practices
- Establish ISA Ombudsman for independent accountability

Key Messages: What is Needed

- An organisational structure within which environment functions are ring-fenced from and uninfluenced by other ISA functions
- Timely appointment of full-time suitably qualified staff with clear Rs & Rs
- Adequate funding to support all aspects of compliance assurance (not only inspection and enforcement)
- Adoption of a strategic planning and risk-based approach to implementing compliance actions
- Planning of compliance actions and decision-making supported by a strong evidence-base
- A proactive approach with Contractors to minimise the need for enforcement actions
- Transparency with the public and mechanisms for accountability to stakeholders

Possible Structure for the ISA with an Independent Environment Department Reporting to the Secretary-General

