



# (COP I) LEGAL COMPLIANCE

## A *Definitions and applicability*

**Compliance** is a state of being in accordance with established guidelines, specifications, or legislation.

**Legal compliance** generally refers to behaviours and practices that are conducted in accordance with supra-national and/or national and/or state and/or local laws of the country or countries in which the business operates.

**Systems** are management processes and documentation that collectively provide a systematic framework for ensuring that tasks are performed correctly, consistently and effectively to achieve the desired outcomes, and to drive continual improvement in performance.

The **Legal Compliance** section of the COP is applicable to all Members.

## B *Issue background*

Legal and regulatory compliance is a primary business concern. Managing legal risk effectively is widely seen as contributing to the good reputation and sustainability of a business. Legal compliance obligations may include:

- legislation, regulations and legally required codes or standards;
- permits, licences and other forms of authorisation;
- local by-laws; and
- decisions, directions, rulings or interpretations issued by relevant courts and tribunals.

Identifying applicable regulations, interpreting them, and determining their impacts on your operations can be a time-consuming task. Methods for obtaining information about Applicable Laws or regulations, including advice about changes of law, include:

- commercial services;
- regulatory agencies;
- government departments;
- trade groups and industry associations;
- the Internet;
- public libraries;
- seminars and courses;
- subscriptions to newsletters and magazines;
- consultants and legal professionals; and
- customers, vendors and other companies.

Most countries prescribe consequences for non-compliances, including:

- Imposition of financial penalties;
- Elimination (for many offences) of the obligation of the prosecution to prove intent (i.e. strict liability for pollution);
- Imposition of civil or criminal liability on companies for the acts of their employees;
- Imposition of civil or criminal liability on directors and managers for offences committed by their companies;
- Disqualification of directors; and
- Follow-on damages actions by affected parties.

## B Issue background (cont)

The RJC certification process does not aim to encompass a full legal compliance audit. The focus of this provision is for Members have systems in place to be aware of, and to become aware of developments in, relevant Applicable Laws. Members should therefore be able to access to current information about the Applicable Law and take steps to maintain compliance.

In addition to the general requirement in this provision, legal compliance requirements are also specified in various provisions of the COP, including:

- COP 9 Bribery and Facilitation Payments
- COP 10 Money Laundering and Finance of Terrorism
- COP 13 General Employment Terms
- COP 14 Working Hours
- COP 15 Remuneration
- COP 17 Child Labour
- COP 18 Forced Labour
- COP 19 Freedom of Association and Collective Bargaining
- COP 21 Health and Safety
- COP 24 Wastes and Emissions
- COP 26 Product Disclosure
- COP 27 Kimberley Process Certification Scheme
- COP 31 Indigenous Peoples and Free Prior Informed Consent
- COP 39 Mercury

### CHANGES FROM THE 2009 CODE OF PRACTICES

The 2013 Code of Practices contains a number of changes to improve consistent implementation of the Legal Compliance provision.

- The Guidance emphasizes that the RJC Certification process is not designed to encompass a full legal compliance audit.
- The focus of the requirement is on having an *appropriate systems in place* to maintain awareness of, and compliance with, Applicable Law.
- The definition of **Major** Non-Conformance has been revised, and does not automatically elevate all legal non-compliances to Major Non-Conformance findings. A Major Non-Conformance will apply to situations where the Member has not identified legislative or regulatory requirements relevant to the Code of Practices, or there is a known non-compliance of such legislative or regulatory requirements **and**:
  - There is *inadequate* attempt to rectify the non-complying condition, **and/or**
  - This situation has the potential to result in an imminent Risk to Workers, the Community or the Environment.
- A **Minor** Non-Conformance will apply to situations where the Member has a known non-compliance of legislative or regulatory requirements **and**:
  - There is *adequate* attempt to rectify the non-complying condition, **and**
  - The non-compliance does not result in an imminent Risk to Workers, the Community or the Environment.
- A **Minor** Non-Conformance will also apply to situations where the Member has not identified legislative or regulatory requirements relevant to the Code of Practices **and** the non-compliance does not result in an imminent significant Risk to Workers, the Community or the Environment.

## C *Key regulations*

This Guidance provides no specific advice on Applicable Law for individual Members as these laws vary based on the location of the Members' facilities and the nature of the facility.

Law typically consists of legislation made by governments and rules made by the courts. Legal obligations often extend beyond specific statutory laws and regulations. Many principles and precedents have been established based upon the decisions of previous cases heard by the courts. These principles are referred to as Common Law or case law.

It is essential that Members be familiar with local legislation and regulations in all areas of operations, and keep abreast of legal developments in legislation and associated case law. Members should seek legal advice on their obligations where they do not understand their legal compliance requirements.

## D *Suggested implementation approach*

*The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.*

### **COP 1.1: LEGAL COMPLIANCE:**

**Members shall have systems in place to maintain awareness of and ensure compliance with Applicable Law.**

#### **Points to consider:**

- Systems, processes, procedures or methods should be in place to monitor legal developments and identify key areas of legal risk.
- Members should seek legal advice from qualified professionals where there is uncertainty about legal requirements.
- A designated person, group of people or subject matter experts should be responsible for identifying, and maintaining in a register (see example Legal Compliance Register at the end of this chapter):
  - relevant applicable legislation and regulations, required licences and permits, and reporting and disclosure obligations;
  - associated developments concerning these requirements;
  - the status of compliance and future actions needed to maintain compliance.
  - measures for bringing any potentially non-complying situation into compliance.
- Processes, policies, approaches or procedures should be in place for communicating and providing training about legal requirements to employees and contractors, and ensuring an appropriate level of understanding.

## D *Suggested implementation approach (cont)*

### Q&A: LEGAL COMPLIANCE

#### **1. What if there is a difference between legal requirements and the RJC Code of Practices?**

RJC COP provisions may defer to Applicable Law as setting the standard relevant to a Member's business and/or jurisdiction. In this case, Members should follow Applicable Law.

In some jurisdictions, Applicable Law may set a higher or more specific standard than an RJC provision on that issue. In this case, Members are expected to comply with the legislative and regulatory requirements that apply to them.

On other issues, RJC may set a higher or more specific standard than Applicable Law, without deferring to Applicable Law in the provision. In this case, Members are expected to conform with the RJC requirements as If compliance with the COP would result in a violation of Applicable Law, then Applicable Law must prevail.

#### **2. What happens when there is a dispute about legal requirements?**

Sometimes the law may not be clear for a particular situation, or may be being challenged in court. For the purposes of RJC Certification, this may impact Conformance and Non-Conformance findings where it relates to a provision in the Code of Practices that defers to Applicable Law.

Auditors determining their findings in such situations should consider any guidance provided by the relevant government authority, as well as any proper legal opinions provided by the Member as part of the Self Assessment process. In situations of legal dispute where an Auditor nevertheless believes there is a Non-Conformance, and the Member can demonstrate an understanding of the legal requirements and the matters under dispute, then any Non-Conformance would normally be a Minor only. If Auditors find there is uncertainty about the correct interpretation, and implementation of a lower standard creates threats to workers, communities or environments, then Auditors may consider a Major Non-Conformance finding. If there are no such threats, then Auditors may consider a Minor Non-Conformance finding, or a Conformance finding.

#### **3. What if a permit or license has been applied for but is still in process with the relevant government authority?**

Pending approvals are common, as businesses and legislation frequently change, and it can take time for relevant authorities to process applications. Review of permits or licences may be relevant to other provisions of the COP, where compliance with Applicable Law forms part of the requirement. Where the matter is procedural and there appears no reason why the permit would not be provided, this can be accepted by Auditors as a situation of conformance.

### CHECK

- Have you nominated a person or group to be responsible for legal compliance?
- Can you show the auditor how you maintain awareness of legal requirements and changes in the law?
- Can you show the auditor the steps you take to monitor your compliance with Applicable Law?

## D *Suggested implementation approach (cont)*

### LEGAL COMPLIANCE REGISTERS – EXAMPLE TEMPLATE

*A Legal Compliance Register can be a useful tool for businesses, and usually contains the following:*

- *The name of the Act, Regulation, Standard, Code, Policy, Permit, etc. Most governments and regulatory authorities provide access to legislation via the internet, so include a link or description of its location where possible.*
- *The jurisdiction where the legal instrument applies. For instance this may cover local, regional, national or international practices.*
- *Information about the governing body or authority that enforces or manages this legal instrument can also be included. Consider listing a relevant contact name and details (where known).*
- *A description of the purpose and key requirements specified in the legal instrument. This can be in plain and simple language rather than the legal jargon. Changes (actual or proposed) can also be documented in the register.*
- *A description of how the legal requirements affect the business. This includes how these requirements relate to specific activities or processes carried out by the Member in that jurisdiction. This information can be used to communicate and train employees and contractors about their legal obligations. It is useful to relate this to any specific management system documentation such as:*
  - *procedures to manage its activities*
  - *external statutory reporting expectations*
  - *timing and framework for paying licence or permit fees.*
- *Nominate the person within the business with responsibility for ensuring compliance and for accessing information about the legal requirement.*
- *Specify how often and when compliance evaluations will be carried out. In some instances the compliance evaluation frequency may be prescribed by law. However, it mostly depends on the business and should be carried out at a frequency commensurate with the risk associated with the requirements.*
- *The register can be used to list the evidence and records used to demonstrate compliance. It can also be used to reference and track corrective actions where non-compliances have been identified.*

## D Suggested implementation approach (cont)

The following table provides an example Legal Compliance Register, which may be useful to businesses wishing to develop their own system. Note that Members are free to take their own approach to conformance with the [Legal Compliance](#) provision.

Acts, Regulations, Standards, Codes & Policies	Jurisdiction	Regulatory Body	Description of Key Regulatory or Other Requirements	Relevance to Members' Business	Responsible Person	Compliance Evaluation Date / Frequency	Records	Corrective Actions
Regulations On The Management Of The Import And Export Of Goods 1996	China	Ministry of Foreign Trade and Economic Cooperation, the General Administration of Customs, the State Environmental Protection Administration	China has two basic laws regarding waste transports:  the "Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste" ("the Solid Waste Law"), and  the "Interim Provision on the Administration of Environmental Protection in the Importation of Waste Materials"  These also describe the import licensing system and requirement for pre-shipment inspections.	This is a condition when exporting items containing certain categories of prohibited metals, minerals, animal products, laboratory waste, industrial residues, etc to China.	International Dispatch Manager	Quarterly	Logistics Office	None Required
Industrial Waste Management Policy (National Pollutant Inventory) 1998	Victoria, Australia	Environment Protection Authority  www.epa.vic.gov.au	The Policy aims include reducing the existing and potential impacts of emissions of substances and to assist government, industry and the community in achieving the desired environmental outcomes  The Policy provides the framework to report on the types and amounts of certain chemicals being emitted to the air, land, and water and for this information to be provided publicly available.	The company triggers the reporting thresholds for emission of carbon monoxide and sulphur dioxide based on the fuel consumption and electricity usage.  The company must report by 30 September each year the annual emissions for the year 1 July to 30 June.  This must be calculated in accordance with NPI Procedure No. 123.	Operations Manager	Annual by 30 September.	NPI Reports in Environment Department	None required

## E Further information

Members should seek legal advice regarding their business' compliance with Applicable Law.