

12-step guide to understanding legal registers

Learn how technology is radically improving the accuracy and efficiency of legal registers



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01. What is a legal register and why have they been overtaken?

A legal register is a **list of legal instruments**, whether legislation, regulation or otherwise, which apply uniquely to a given operation. Legal registers are often used in the domains of environmental, health & safety, quality and dataprotection / information security and are mandated by the respective ISO management system standards for each such domain, namely ISO 14001:2015, ISO 45001:2015, ISO 9001:2015 and ISO 27001:2005

Which legal instruments apply to an operation in question, is a function of various factors, such as:

- the size and type of company or organisation
- the location of the operation in question
- the activities carried out at the operation



The location of the operation determines the legal jurisdiction or jurisdictions (in the event that a number of jurisdictions for example (union, federation, country, province, departments, municipalities) have law making authority in the same location.

The location of the operation also indicates whether **geographic** features for example, proximity to a protected area, trigger the applicability of certain legal instruments.

Similarly, the **activities** of an operation affect which legal instruments should be contained in the operation's legal register. For example, a legal register for an office environment, will be very different to a legal register for an offshore oil and gas operation.

Where the applicability of a statutory instrument is not dependent on the location or the activities of an operation, applicability may be determined on the basis of **other factors**, such as the size of the company. For example, many legal provisions apply if a company crosses size thresholds either in turnover, or in number of employees and don't apply if these thresholds are not exceeded.

02. Does the law require companies to use legal registers?

Legal registers are often used as part of management systems aligned with legal international standards such as ISO 14001 and OHSAS 18001 in the domains of environment and health and safety (EHS), but may be used for any legal domain.

Although the above international standards require applicable legal and other requirements to be identified (that is, the standards require legal registers) **there is no international or domestic law that we are aware of that requires companies to have a legal register.**

However, obviously, the first step to complying with the laws of the land is to know the laws of the land are for your company, and one could argue that identifying these laws, i.e **maintaining a legal register is an implied legal requirement.** It is not one that has been published as law in black and white though.



03. Shortcomings of legal registers

Typically legal registers are **delivered in two main ways, manually** using Excel or Word or through an **online method** by an external service provider. Such legal registers provide a list of all the regulations that apply to a specific operation, or in the case of company-wide legal registers, the list is comprised of all regulations that apply to a number of different operations of the company.

It then becomes the job of the “compliance manager” to figure out which regulations applies to which operations, and when the law changes the same “figuring out” has to take place.

To overcome the problem of regulatory complexity, a tool which allows anyone to find the answer to the question, “**what does the law require us to do in this situation?**” is needed. Of course the answer needs to be unique to the specific operation or context in question, and have the up to date, specific legal obligations for any given task or risk available on demand.



The problem with legal registers is that they meet a certain point in time requirements (to know what legal instruments apply), but are not genuinely useful in managing compliance.

The problem with most legal registers is that after looking through the legal register, the list of law, reading the general summaries, and then starting to engage with them, one inevitably ends up asking, “**so what does the law require of us here?**” The answer is in the hands of consultants, lawyers, or other advisors who must then still be consulted to obtain the information you are after.

The utility, therefore of the legal register, is not much at all, but it does “tick the box” of ISO and other management system standards.

No “list of law” legal register, no matter how well compiled and updated, and no matter how excellent its summaries of legislation, is able to provide the kind of precision that is required to be genuinely useful.

Nevertheless, having a legal register as a starting point to manage legal compliance is necessary, but in order for a legal register to be genuinely useful (and not something that is done periodically to pass an audit) legal technology needs to be put to use.

Legal technology can now be used to deliver legal registers in an automated manner, more accurately and efficiently than if done manually. We will now turn to examine the complicated regulatory environment that companies operate in and describe how and why legal technology is being used to bring freedom in this complexity.



04. Most law is not that complicated. It's simple and clear, just obscure.

Co-founder of CleanChain, Garth Watson is a lawyer by profession. He realised something when practising law. A lot of what lawyers do is “rules based thinking” and legal research. It's not 100% of the time that a lawyer is confronted with really difficult questions. Of course, difficult questions do arise and these questions require excellent legal brains. It's just that this doesnot happen in all instances.”

Most of the time the law, especially regulatory law, is as clear as day. Everyone can understand it. The problem is that the clear regulation is often hidden and obscured in many different places, such as Section 19(1)(a)(iiii)(f)(e)(e)(s) of Dusty Statute, 1985 and Section 12(4)(f)(ffff)(h)(o)(u)(r)(l)(y)(ra)(te) of New Regulation You Need to Know, 2017.

So the thing that makes this simple law complicated is that it is found in **incredibly obscure** places and it's often presented in impressively **complicated ways**. Further, the clear law that applies to you is **hidden** amongst a whole lot of other law that doesn't apply to you. It only adds to the **complexity**.

Legaltech will help overcome this regulatory complexity. Everyone should know, in simple terms, what the law requires them to do in any context, and companies should be able to know, simply, what the law requires of them in any situation. Isn't knowing what the law requires of one a basic human and company right? Why is it so inaccessible to many?



05. What impact will technology have on the practice of regulatory law?

There are times when lawyers or legal consultants are needed. But these should only be used when they are really required. When regulatory law is clear and simple, yet obscure, legaltech will, and already does, have this covered. When the question, “is there any other legal provision out there that applies to our operations?” is asked, lawyers will not be consulted, again legaltech will, and already does have this covered.



So let's consider the following question: **“what impact will technology have on the practice of regulatory law?”**

In light of the above argument to clear and unclear law, and given the exponential nature of technology, we believe that the first domain of law to be positively affected by legaltech will be the practice of regulatory and compliance law.

Technology is great at rules based thinking, its great at memory, its great at recall, and it's getting better and better at learning rules and principles and applying facts to rules and principles.

Most of the time legaltech will be able to answer the question “what does the law require us to do here?” The result of this is that regulatory lawyers (both “in house” and in law firms):

- Will be able to focus on using technology to cut down on legal research and the hours of identifying applicable legal provisions for legal compliance, and may well be able to move to a more sustainable subscription based billing model by the implementation of legaltech for their clients.
- Will be able to focus on doing the work that lawyers are best at, and enjoy, namely giving considered opinions, value judgments and nuanced arguments in the instances where the law is unclear.

06. How to identify applicable legal requirements - start with consolidated legislation

Most legislation takes the format of a definitions section, followed by a list of sections that may or may not apply to one's operations, followed by a provision relating to secondary or delegated legislation that may be made in terms of the primary legislation, followed by a section setting out the sections, which, if breached may lead to a criminal offense or penalty.

If you are responsible, in any way, for legal compliance, the last thing you want is to trawl through masses of legal provisions that do not apply to you, trying to find the needle in the haystack, and trying to figure out exactly what your obligations are.

Finding legal obligations is a **time consuming task**, but the task can be made almost impossibly time consuming because any given regulation may be fragmented accross **different amendments**. The law often changes. These changes happen when "amendment Acts" are published. So, you'll have Regulation X, as amended by Regulation Y, as amended by Regulation Z and so on. Often the list of amendments is quite long.

This results in a quite a job figuring out what the statute or regulation, "as amended as at today's date" is. You can't simply look at one document. You have to piece the original statute together with all the amended statutes.

In order to even begin managing legal compliance, you'll need to have a way to figure out what your law is "**as at today's date**". You will need access to consolidated legislation, which is legislation that has been curated and pieced together by legal librarians, with assistance from time to time of specialist lawyers, so that the version of legislation that you have, includes all the amendments.

If you don't have this **you will find it impossible to figure out what the law actually said**. It was a full time job for a legal librarian so don't be fooled into thinking it can be done as part of a compliance function. Trying to piece amended Acts together will leave already time poor compliance managers hopelessly frustrated and may expose your company to unnecessary legal risk.

07. Be sure to identify the sections, not just the Acts and regulations

Having **access to consolidated, as amended legislation** is a key requirement to be able to begin with the identification of the relevant legal requirements. The objective of identifying relevant legal requirements is so companies and their employees can know, in simple terms, what the law requires of them. Extracting the simple legal obligations from the large, ever changing body of regulation is much more easily said than done.

Step one is to narrow down the total number of legal instruments on the statute books to those that contain at least one legal obligation that applies to at least one of your operations. This narrowed down list is what some refer to as a legal register. This task though, is a little more complicated than it would appear at first glance. In order to be sure that you have all law, you cannot just rely on reading the titles of the statutory instruments. You will actually have to read every single section of every single Act.

Step two of achieving the objective of extracting obligations from the list of applicable statutory instruments is to extract the sections and make them available in a simply accessible format, through integration with a management system, to employees.

Of any given statutory instrument that may apply to one or more of your company's operations, (and therefore be on your legal register) only a small fraction of the sections per instrument will be directly applicable. It's not of much use to you, or your company to say Regulation x of 1995 applies to us. The question is, which sections of the regulation apply, and what do they mean, for your company's operations, and ultimately, what must you do to comply?

Your company's legal obligations are obscured in a vast amount of legalese and code that is better navigated by a legal librarian, lawyer or LegalTech platform.



08. Diverse operations and geographies compound the compliance program

If you manage the legal compliance for a company group or a company with diverse operations, the applicable legal instruments, and the applicable legal sections within those legal instruments will vary from operation to operation based on the nature of the operations and the locations of the different operation. **This complexity is too much to be handled in a manual, noncentralised manner.**

Having a 'favourites folder' or a separate legal register on an online platform that has access to all law, including amendment Acts or a legal register for each operation that is derived from Excel may help you to pass your management system standard audits, but this will be a very time intensive process and the the chance of having missed out on applicable legal sections, which may have legal liability attached is simply too high.

Most legal registers on the market today are "one size fits all" and rely on you to tailor them and do all of the work set out above. When it comes to legal liability, that is a major risk and one that should not be taken lightly, it should be appropriately handled through the use of the best legaltech and legally trained compliance professionals together.



09. Keeping track: the best way to keep up to date with changes in regulation

Law is not static and legal registers will go out of date from day one. When the law **changes**, a number of questions must be asked, and you should not have to figure out the answers (unless you have all the time in the world - which you don't!).

The questions are:

- Does this change in legislation affect my **company, fund or group**?
- If it does affect my company, fund or group, **how many of my assets / operational sites are affected?**
- Which of them are affected?
- **What must the affected management teams do** in response to the changes in legislation?

When the law changes, that is, when an existing regulation is amended, or a new regulation comes out, your legal register will be out of date until you go through the time consuming exercise of working through your master legal register and determining the answers to the above questions.



If you have a master legal register for your company it is really important to understand some of the risks of a DIY approach. One of the major risks is the major drain on time that it will have on you, the risk of you not being able to execute the task accurately. And keeping it accurately up to date.

10. Does a change in regulation affect the company, fund or group?

A lot of dust gets kicked up in the process of a legislative change. A lot of the notices of changes that come up into your inbox are for sections that don't apply to your companies.

Here are a few examples:

- An amendment is proposed, not final
- An amendment is final in nature, but it doesn't apply to your operation at all
- An amendment is final in nature, and the amendment is to a statutory instrument that is on your legal register, but the amendment is to a section that does not apply to any of your operations.

Trying to figure this stuff out is a complete waste of your time and your company's resources. It is difficult to do unless you have an automated legaltech compliance solution which is configured to comprehend the nature of your operations so that you are only notified when the changes in law is relevant to your company.

If the amendment does affect the company, fund or group, how many and which of my operational sites are affected?

Once you have figured out whether any of your company's actual obligations have changed, you will need to determine which of the operations in question are affected by the amendment. Again, this will be a lot harder to do if the legal updates to your compliance system have to be configured manually when the law changes.

It actually amounts to a "re-inventing of the wheel" because the same thinking that had to be done when setting up the legal register will have to be done each time the law changes. The process should be handled by centralised, automated legaltech, which is designed to have this stuff covered.

11. So now you know the legal sections, but do you know what they mean?

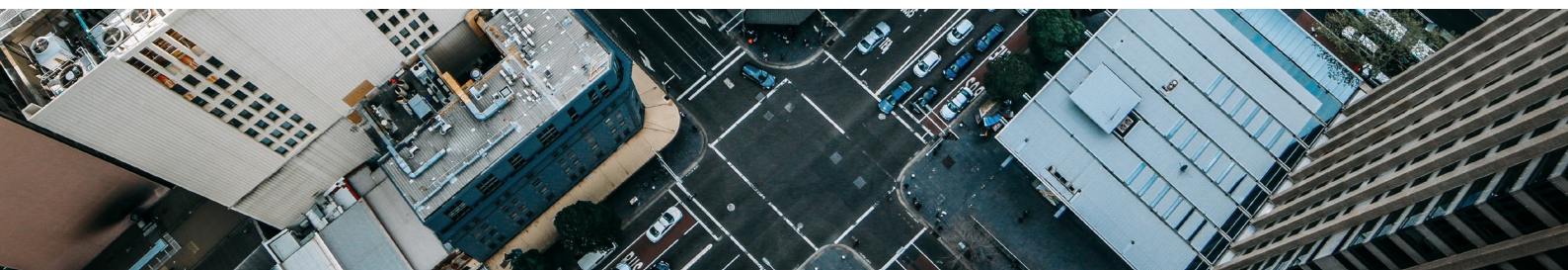
What one really needs is a way to figure out, simply, what the law requires one to do at any place, at any time. There are limits to what legal registers can do.

The type of guidance that is typically given by legal register providers (and certainly by those who advocate company wide legal registers, from which a manager must determine “which operations” are subject to “which statutory instruments”) is on a “**topic specific**” basis.

For example (in the environmental legal domain) you may be able to access an excellent, three page, overview of the legal position for each of air, waste, water etc. The thing is, this is very similar to the kind of guidance that one would find in a first year university environmental law course reader. It’s good, it’s true, but it is general, and of little value in answering the question, for any operational site operating in a unique context, “**what does the law require us to do here?**” Each of air, water, and waste, as well as other topics, are broad in nature. There are a myriad of sub-topics, and also, there are a number of operational aspects to which specific legal sections apply.

The second kind of broad guidance that may be offered is “**per legal instrument**” types of guidance. The thing to be on the look out for here is that this kind of guidance often is not specific enough and it can be a bit cumbersome.

Because regulations do not apply in their entirety, it is seldom useful to have guidance issued on a regulation by regulation basis. This is useful to lawyers that have hours to figure out which laws apply, but it is of little value to compliance professionals, or managers of management systems, in figuring out what an operation’s obligations for a specific risk are. When it comes to specific operational aspects and risks, it’s almost never that one regulation applies as a whole, but it is that case that a few sections from “this regulation”, and a few from “that regulation” etc. actually apply.



12. The holy grail: Linking legal requirements to risk assessments

Typically, legal registers form part of a wider management system for a particular domain, such as environment, health & safety, information security etc. There are **management system standards** for each of these domains (ISO 14001, OHSAS 18001, and ISO 27001 respectively).

Each of these management system standards **require continual improvement** to be made and this is a hallmark of the standards. Eventually, for companies to continue to maintain their certification, it is a requirement to link operational risk to legal requirements, or legal risk.

Apart from obtaining certification against management system standards, linking operational risk to legal risk is also best practice for **risk management**. Many companies manage their risk assessments using Microsoft Excel and you may be familiar with a document, which looks something like this:

| Aspect | Impact | N,A,E | Exposure | Probability | Severity | Raw Risk | Mitigation | Residual Risk | Sig. | Control Details | Legislation Requirements |
|----------|--------------------|-------|----------|-------------|----------|----------|------------|---------------|------|-----------------|--------------------------|
| Aspect 1 | Associated Impacts | N | 10 | 3 | 2 | 60 | 5 | 12 | L | | |
| Aspect 2 | Associated Impacts | N | 10 | 6 | 2 | 120 | 1 | 120 | M | | |
| Aspect 3 | Associated Impacts | N | 2 | 6 | 3 | 36 | 6 | 6 | L | | |
| Aspect 4 | Associated Impacts | N | 6 | 6 | 3 | 108 | 5 | 21.6 | L | | |

Many companies and other organisations are moving to cloud-based governance, risk and compliance (GRC) software to manage their risk assessments. Nevertheless, the principles of linking legal risk to operational risk are the same whether one's risk assessment is Excel based or GRC software based.



Somewhere in your company's management system journey you'll need to **link your legal requirements to your risk assessments**. What this means is that for each and every line in your risk assessment, (and some companies have hundreds or thousands) you will have to **determine which legal requirements apply**.

The reality is, to do the job properly, what you need to do is a mini-legal research project on each line of the risk assessment, get out your smallest font (size 4 may do the trick) and get to work inserting the relevant legal requirements. Now, this may take you so long to do, that the law will have changed before you are finished, or before you die of boredom (whichever happens first).

The other thing, while we are at it, is that once you have completed this exercise, you may have done enough to pass a certification audit, but the exercise will have been of very little practical use. It is "tick a box" at its absolute worst. This is because of the incredible inertia that must be overcome, even with digital tools, in looking up the legal requirements. This is especially true if there are several specific sections that apply to a given aspect, impact, risk etc. (which is most often the case).

So, when you evaluating whether a proposed solution can link operational risk to the legal requirements it is important to check whether the legal register in question has the following:

- Is it based on consolidated, up to date legislation?
- Is it site specific, as opposed to "company-wide"?
- If it is updated, do you have to take the updates from the "master legal register" or the "company wide legal register" and determine which updates are relevant to which sites?
- If your legal register is updated, are the linked requirements in your risk assessment automatically updated?
- Are the legal requirements in the legal register presented in specific enough manner to allow linking of risks to aspects without going from "the specific" to "the general"?

LegalTech to the rescue

We hope that you have enjoyed this brief but comprehensive overview of some of the components of and challenges to a successful legal compliance project for your organisation. The challenges of regulatory complexity can be almost impossible to overcome unless handled in a systematic, centralised manner through the use of well designed legaltech. We do not believe that lawyers will be replaced by legaltech, but instead will be empowered by legaltech.

