

# Compliance - an unintended victim of Covid-19?

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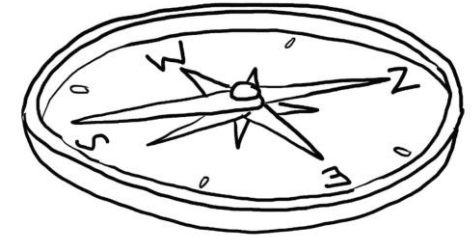
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# Leadership and Ownership

The ultimate purpose of any ethics & compliance program is to challenge and develop leadership



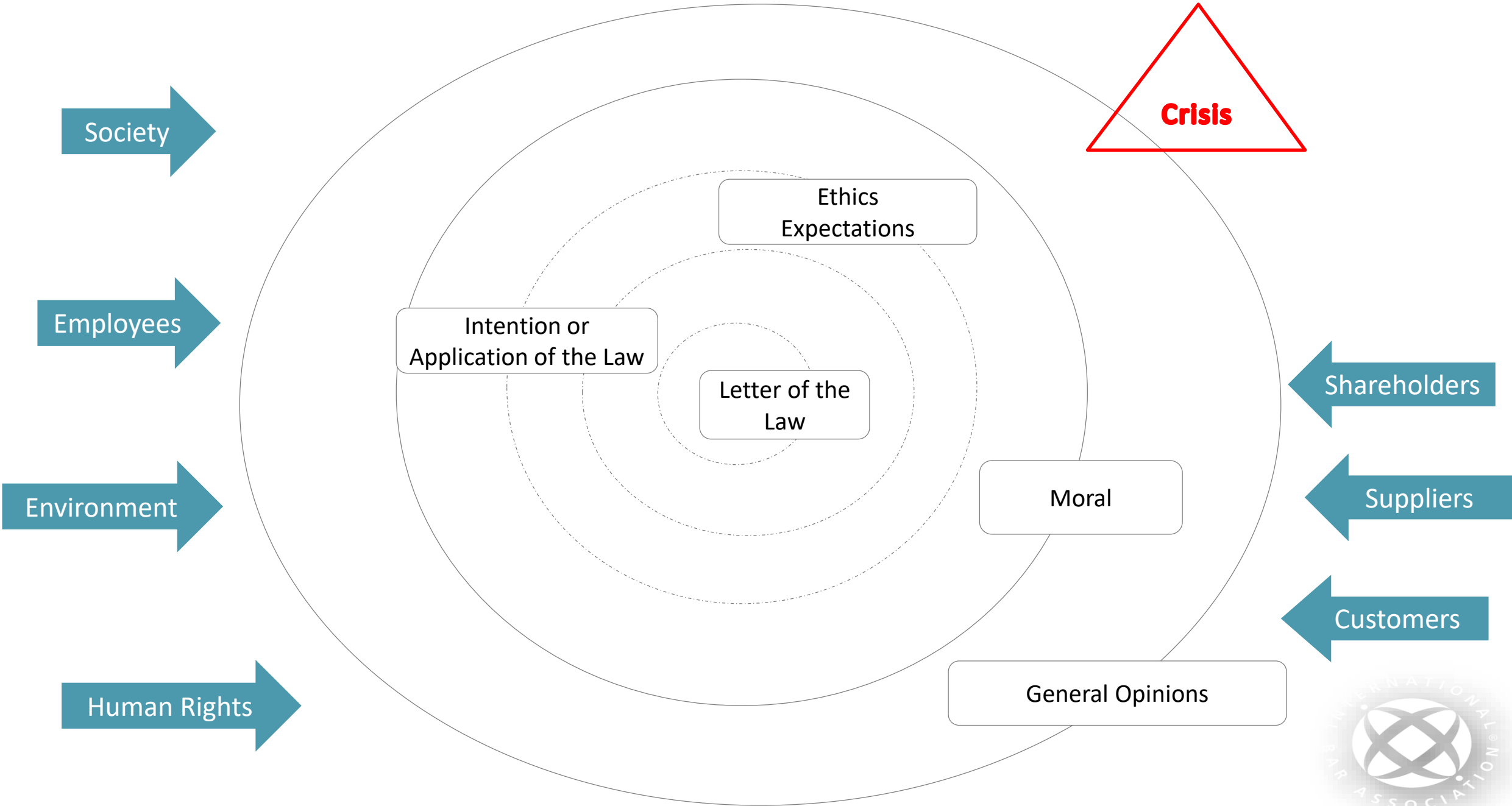
Business Ethics is the study of business situations, activities and decisions, where the issues of right and wrong are addressed.

Business ethics means being able and willing to understanding and assume responsibility for stakeholders and their (sometimes conflicting) interests, as comprised by the US Business Round Table, shareholders, employees, suppliers, society, employees, etc.

Rather than being “the second line of defense” and an internal policing system, an effective E&C program aims to bring different aspects, different interests, difficult dilemmas and unpopular frictions to light and, through transparent discussions on right and wrong, to challenge and develop leadership.



Business ethics does not mean L&C acting as the moral police and as the only one who understands ethics. It means leadership: aware, intelligent and brave leadership that is open and transparent and willing to listen to and consider different opinions, different information and different interests – even if this creates more difficult considerations and makes it much more difficult to be responsible for the ultimate decision-making. It means having to be willing to venture into and investigate “grey areas” rather than relying on the comfort of “black and white” that legislation can provide.



Do companies compromise on their compliance management goals in crisis times?

Tone from the top – leadership?

Are the compliance management efforts really backed up by the leadership?



# Current situation from an attorney's perspective | 1

## Clients' approach and perceptions

**Who can afford compliance now?**  
– “business first” rule

Some areas of business are struggling to stay afloat (airlines, travel agencies), others are experiencing severe disruption (car production and distribution industry)

**Compliance cannot tackle all risks now, but it is more important than ever before**

Some areas with significantly and rapidly growing operations and sales (medical devices distribution and production healthcare services), FMCG

“Legal short cuts” - orders for services and supplies required for counteracting COVID-19 are not subject to the Public Procurement Act – recent purchases of face masks and ventilators by the Government have transpired in a climate of alleged conflicts of interest and have involved dubious middlemen



# Current situation from an attorney's perspective | 2

## Reality and what next?

Everything is being done remotely - trips cancelled, personal meetings in local operations have been severely limited

Conducting investigations, third-party checks and training is a challenge, but these are vital elements of compliance programs

Dealing with misconduct takes more time – remote hearings of witnesses or potential suspects

Applying and strictly abiding by the "document everything rule" is essential

A great deal of evidence can be seized remotely

Maintain/develop whistleblowing platforms and make sure to protect whistleblowers

The authorities will come back with questions! See the latest DOJ update on corporate compliance programs (June 1, 2020) – emphasis on adequately resourced and empowered programs with real-time data monitoring and testing of policies and transactions, lessons learned rule, the need to update risk profiles, impact of training on employees' behavior, etc.



# The time for testing has arrived: fake vs. real compliance



**REAL  
CMS**

- Compliance by declaration only, without a clearly defined and documented process flow
- Not adapted to the business and its risks
- No responsibilities defined
- Risk assessment in theory, but not as an organic process

- Effective and well-implemented CMS
- Clearly documented process flow
- Effective rules and efficient structure
- Support for business, adapted to its needs

OR



**FAKE  
CMS**

**Properly implemented system + right people in charge**



# How can we ensure that CMS works in times of pandemic?

## The formal background must be left unchanged, but one more procedural change might help...

During times of crisis, only real and efficiently implemented CMS will greatly support business and fulfill its function.

Like other crisis situations, the pandemic is showing that proper legal/compliance management systems require a **Crew Resource Management approach**, which means clearly communicating with employees:

- 1) Note the risks,
- 2) Express your concerns and describe them clearly,
- 3) Propose solutions,
- 4) Obtain and document approvals for non-standard solutions.



**Remember: allowing non-conformities today will cause problems tomorrow!**



# Times of Pandemic: challenges for Compliance Officers and Legal Advisors, challenges for people and functions (lessons learned)



If we can get it done today, we can get it done anytime



Did the Covid-19 regulations have any impact on the enforcement of compliance behavior?

Did the governments respond to the crisis appropriately (UBO, whistleblowing, public tenders issues)?

What is the main trigger for companies to change their behavior?

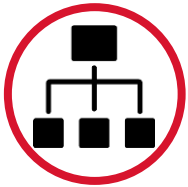


# RUSSIA



## Government procurement

The government procurement procedure has been simplified. During the COVID-19 crisis, government agencies and hospitals are entitled to choose a supplier of medical equipment and devices without public bids or other competition procedures. This has already led to higher prices, the growth of a reseller's market and a number of scandals involving shell companies that are affiliated with public servants.



## Anti-trust regulations

Roskhimzashita, a Rostech subsidiary, was initially appointed as the sole body authorised to purchase, distribute and supply personal protective equipment (face masks and protective suits) to hospitals and pharmacies. However, the appointment caused chaos on the market as it violated anti-trust legislation and existing supply chains.



## Currency regulations

Russian residents are required to repatriate their foreign currency income to Russian bank accounts. Border closures and foreign counterparties' insolvencies make it impossible to comply with this requirement or to return supplied goods. Residents were released from liability for involuntary noncompliance with currency legislation.

# UKRAINE AND KAZAKHSTAN



Government procurement in Ukraine

The Government of Ukraine has also simplified procurement procedures. Authorities can deal directly with a supplier without using the Prozorro federal procurement system. Executed contracts are to be uploaded to and disclosed via the Prozorro system. Ukrainians anticipate that the streamlining may result in abuses of procurement procedures during COVID-19.



Certification of medical treatments and access to Ukrainian market

Ukraine has made major changes to the import, certification and registration of medical treatments: seven-day fast-tracking for authorisation of pharmaceuticals licensed in the US, EU, Switzerland and some other countries, and a 30-day track for registration of other pharmaceuticals. Pharmaceutical registrations have been extended until 2022 and the state authorities can even purchase medical treatments without a registration certificate.



Government procurement in Kazakhstan

Kazakhstan has suspended the effects of clauses which set enhanced requirements for suppliers and supplied pharmaceuticals. During COVID-19, suppliers that have tax arrears, that have been declared bad-faith suppliers by a court or that are affiliated with a bidder, may participate in public procurement.



Why are internal investigations being conducted in the region?

What is the impact of foreign anti-corruption legislation (FCPA, UK Bribery Act, German Corporate Sanctions Act)?



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