



ONE & ASSOCIATES



 David Osieli, 19 Off Waiyaki Way Westlands

 P. O Box 26391 - 00100 Nairobi

 +254 732212813 | +254 797 746 777

 info@oneattorneys.co.ke

 www.oneattorneys.co.ke

LEGAL AUDIT CHECKLIST



Hi Friend,

In case we haven't officially met, let me tell you a little about me. I'm Eddy Orinda and I'm an attorney who spends my days (and some nights) helping entrepreneurs and small business owners plan, launch, and grow their businesses.

As an entrepreneur myself, who's turned a traditional brick and mortar business into a digital law practice, I am uniquely qualified to assist you with protecting your business and your brand. Hey, I've been there and I want to share some of the "tricks of the trade" with you!

Let's keep it real.

You know that, in the long run, turning a blind eye to the legal side of your business can cost you gobs of time, stress, and money, but....

You honestly don't really know what you need, what you don't need, or where to start!

That's where I come in...

As a business and intellectual property attorney, I have worked with hundreds of entrepreneurs over the years and have helped keep them out of hot water (or get them out of trouble if they didn't come to me in the early stages).

I created this quick-n-dirty Legal Audit Checklist to help you:

- Take inventory of your current condition,
- Identify any potential risks or problems,
- Quickly address and fix missed opportunities, and
- Get direction on the action steps to avoid/prevent future issues

So let's dig in.



ENTITY FORMATION

- Have you selected the correct legal entity for your business? Has your business been registered with the country in which you operate?
- Are the Articles/Certificate of Incorporation for your corporation up to date? (Address changes, resident agent changes, and new business partners require an amendment)
- Do you have all appropriate business licenses required by your country?
- Have all corporate filings, including annual reports, been made?
- Does your business need to be registered in other counties? ("Doing business as" laws vary from country to country.) If you are conducting business in another country, you should learn whether you are exempt from the need to register to do business in that country. Most of the time, online business sales and infrequent transactions in other country do not require registration.)
- Does your business require an Operating Agreement, Entity Formation Partnership Agreement, or Bylaws? been

If so, have those documents properly drafted?



TAXES

- Do you have a KRA Personal Identification Number (PIN) for your business?
- Have you timely filed your annual tax returns?
- Have you taken care of all of your country's tax requirements?
- If you have employees, are the appropriate tax withholding forms on file?
- If you have hired freelancers or independent contractors, do you have all appropriate tax remittances on file?
- If you're required to charge sales tax, have you set up the appropriate account with your country tax office?
- Have you met with a tax preparer or accountant to prepare and file your business tax returns?



WEBSITE AND ONLINE PRESENCE

- Have you posted clear “terms of use” on your website to inform visitors what they can and can’t do on your site?
- If you offer advice or information through a blog/vlog on your website, do you post an effective website disclaimer crafted specifically to protect you?
- Does your domain name infringe on someone else’s trademarks or service marks?
- Have you posted a permissions and comment policy on your website to inform visitors what can and can’t be shared on your website, and whether they can share your content elsewhere?
- Have you secured written authorization or consent for all website content that is not your own, i.e. a license to use all images/music?
- Have you properly credited the original creator of content that is not your own?



INTELLECTUAL PROPERTY

- Have you conducted a trademark search for your business name or product/brand/service/event names to determine whether anyone else is using them?
- Have you conducted an internet search for your business name or product/brand/service/event names to determine whether anyone else is using them?
- Have you considered registering your company's product/brand/service/event names for trademark protection?
- Have you registered your company's product/ brand/ service/ event names for trademark protection?
- Do you have written documentation permitting you to use the trademarks of others?
- Have you taken inventory of other proprietary information and determined what should be protected?
- Do you have signed Non-Disclosure Agreements in place for employees and independent contractors to protect confidential information and ownership of intellectual property?
- Do you have a policy/procedure in place for maintaining the confidentiality of your company's trade secrets?



INTELLECTUAL PROPERTY

- Have you properly inserted copyright notices (© 2018 YOUR NAME) on your website, marketing materials, and other copyrighted material?
- Have you properly registered materials that provide value to your business, such as books, guides, course materials, music, logos, and instruction manuals, for copyright protection?
- Do you have a written “work for hire” agreement or other documentation for any creative work done by freelancers/independent contractors to ensure that you actually own the finished work, including photos, graphic design work, website design/development, copywriting, etc.?
- Do you have a “work for hire” clause in your employment agreement that states any creative work done on company time belongs to your company?
- Do you have a copyright assignment on file for any finished work that was not a work- made-for-hire?



CONTRACTS

- Are there contracts/written agreements in place for each of the following relationships:
 - a. Service agreements with clients?
 - b. Employment agreements and employee handbooks for employees?
 - c. Independent contractor agreements for virtual staff, interns, vendors, and other freelancers?
 - d. Affiliate agreements for all affiliate programs/referral partners?
- Are there lawyer-drafted contracts/form templates in place for use as needed?
- Do contracts provide for dispute resolution in the jurisdiction where the company's principal office is located?
- Do the contracts limit the way in which amendments may be made?
- Are there provisions in the company's standard form contracts regarding limitation of corporate liability?
- Does the company comply with the terms of its contracts and leases?



TALLY

Entity Formation:

Taxes:

Website and Online Presence:

Intellectual Property:

Contracts:

Total Tally:



BUSINESS LEGAL AUDIT CHECKLIST

This Checklist is intended to help businesses evaluate their legal health. By answering the following questions we can help you identify issues common to businesses so that we can assist you in preserving, protecting and growing your business.

CORPORATE/LIMITED LIABILITY COMPANY ISSUES

Have you organized your business as either a corporation or a limited liability company to protect your personal assets from your business's creditors?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you are operating as a corporation, did you initially determine whether you should be a sole proprietorship or a limited liability company?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you incorporated more than one year ago, have you annually reassessed whether you should be a sole proprietorship or a limited liability company?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you are incorporated, do you perform the following tasks in order to protect your corporate status:	
Hold shareholder and board of director meetings at least annually and prepare minutes of these meetings?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Retain corporate reports in your corporate books?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Keep your corporate and personal bank accounts separate?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Sign corporate documents in a corporate capacity?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If your business is owned by more than one individual, do you have a shareholder (buy-sell) agreement or a limited liability company operating agreement which addresses the following points:	
That shares of your company's stock or an interest in your limited liability company cannot be conveyed to a third party without first offering the other existing owner(s) the opportunity to acquire the shares or the limited liability company interest?	Yes <input type="checkbox"/> No <input type="checkbox"/>
What will occur upon the death of an owner?	Yes <input type="checkbox"/> No <input type="checkbox"/>
What will occur upon the disability of an owner?	Yes <input type="checkbox"/> No <input type="checkbox"/>
What will occur upon the bankruptcy or divorce of an owner?	Yes <input type="checkbox"/> No <input type="checkbox"/>
What will occur upon the termination of employment of an owner?	Yes <input type="checkbox"/> No <input type="checkbox"/>

BUY-SELL AGREEMENTS AND INSURANCE

If you have a buy-sell agreement, is it funded by insurance?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If so, are the premiums current, and what is the amount of insurance?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it appropriate for the size and profitability of your business?	Yes <input type="checkbox"/> No <input type="checkbox"/>

SALES DOCUMENTS

Do you ever extend credit in the sale of your products or services?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If so, do you require that your customers/clients sign a contract or credit application which includes the following provisions:	Yes <input type="checkbox"/> No <input type="checkbox"/>
If payments are not made on time, interest will accrue on the unpaid balance at a specified rate of interest (often 18% or 24% per year);	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you take your customer/client to court or arbitration and win, you will be entitled to recover your attorney's fees and court costs from your customer/client	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you sue your customer/client, you may do so in the courts of the county in which you have your office	Yes <input type="checkbox"/> No <input type="checkbox"/>
Any disputes which arise with your customer/client will be submitted to mediation and/or binding arbitration;	Yes <input type="checkbox"/> No <input type="checkbox"/>
Appropriate limitation of liability provisions limiting your company's liability to your customer/client	Yes <input type="checkbox"/> No <input type="checkbox"/>
Appropriate waiver of warranty provisions waiving certain warranties which may otherwise exist	Yes <input type="checkbox"/> No <input type="checkbox"/>
A personal guarantee by the individual owner(s) of your customer/client	Yes <input type="checkbox"/> No <input type="checkbox"/>

COLLECTING ACCOUNTS RECEIVABLE

Do you send out invoices for your goods and/or services promptly after you have delivered your goods and/or provided your services, and do you send out follow-up invoices regularly (for example, monthly)?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you regularly follow up unpaid invoices with demand letters and telephone calls?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If your follow-up demand letters and telephone calls have not prompted payment of a delinquent invoice, do you refer the matter to a lawyer or a collection agency?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are you knowledgeable about small claims court, county court, district court, mediation, and arbitration?	Yes <input type="checkbox"/> No <input type="checkbox"/>

EMPLOYEE MATTERS

Do you comply with the applicable requirements regarding classifying individuals as employees or independent contractors?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you use independent contractors?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If so, do you comply with KRA guidelines regarding their status as independent contractors?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you understand how to prevent wrongful termination lawsuits?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are the questions that you ask job applicants in your employment application and in interviews legally permissible under the law?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you regularly document decisions made regarding employees in order to be able to support these decisions should they be challenged on the basis of discrimination?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you regularly document decisions made regarding employees in order to be able to support these decisions should they be challenged on the basis of discrimination?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have an employee handbook, and, if so, has it been reviewed by an attorney to determine whether it is appropriate?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you comply with the applicable law concerning compensating employees for overtime?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you comply with the legal requirements regarding documenting the citizenship of your employees?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you comply with the requirements of the Family and Medical Leave Act?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have your key employees sign employment agreements, legally enforceable noncompetition agreements, and/or nonsolicitation agreements relating to the solicitation of your customers and/or employees?	Yes <input type="checkbox"/> No <input type="checkbox"/>

PROTECTING BUSINESS IDEAS

Do you have your employees and sub-contractors sign non-disclosure agreements relating to the non-disclosure of your confidential information?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you take steps to maintain the confidentiality of your trade secrets?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you obtained trademarks and/or service marks to protect the names and logos of your business and your products or services under applicable law?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you obtained copyrights to protect your important written materials and software?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you obtained patents to protect your inventions, business processes, and software?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you utilize work for hire agreements and other such agreements that state that any ideas and inventions developed by employees or independent contractors working for your company are the property of your company?	Yes <input type="checkbox"/> No <input type="checkbox"/>

INTERNET ISSUES

Have you determined whether your internet domain names infringe on another company's trademarks or service marks?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you obtained all applicable consents for content on your website?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you obtained all applicable consents for website links or framing?	Yes <input type="checkbox"/> No <input type="checkbox"/>

LEASES

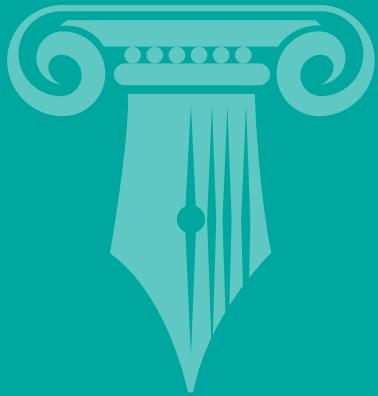
Are you planning to lease space?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If so, have you hired a lawyer to review and negotiate the terms of your lease to make it more favorable for you?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have the following provisions in your Leases:	
<input type="checkbox"/> Renewal Options <input type="checkbox"/> rights of first refusal on adjacent space <input type="checkbox"/> caps on tenant repair obligations	
Have you reviewed your lease to determine whether you and your landlord are complying with it?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does your lease have an option provision, and, if so, do you know the date by which you have to exercise this option or otherwise lose the right to do so?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you scheduled your Lease ending date with advance reminders?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>	

INSOLVENCY

Are you aware of which debts you are personally liable for, so that you can try to pay these debts off prior to paying off debts for which you are not personally liable?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If you are in financial trouble, have you determined what rights you would have under the bankruptcy statutes?	Yes <input type="checkbox"/> No <input type="checkbox"/>

FINANCING

Are you planning to obtain financing? If so, have you hired a lawyer to review and negotiate the terms of your loan documents to make them more favorable for you?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you reviewed your loan documents to determine whether you and your lender are complying with them?	Yes <input type="checkbox"/> No <input type="checkbox"/>



Be honest. How many times did you check “no” in response to the above questions? Even one “no” could mean you are putting your most valuable asset—your company or business—at risk. You work hard for your money and you worked hard to build your business. Are you really willing to throw everything away because you allowed legal matters to fall by the wayside? The bottom line is, having your legal house in order protects you and your business. I have made it easy for you to do what needs to be done, with minimal time and expense.

I am here to help you protect not only your business, but your future! Not sure about your next steps should be? Schedule a complimentary information session with me to get your questions answered and some direction on your next steps.

A handwritten signature in black ink, appearing to read "Eddy N.O. Orinda PhD".

Eddy N.O. Orinda PhD
Practice Director
One & Associates