

ESSENTIAL ELEMENTS OF A COMPANY LEGAL AUDIT IN KENYA



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A Company Legal Audit in Kenya is a comprehensive review of a company's legal standing, compliance, and risk management to ensure that it adheres to local and international legal requirements. It helps the company identify potential legal risks, non-compliance issues, and other legal concerns that could affect its operations, reputation, or financial position. The essential elements of a Company Legal Audit in Kenya include:

1. Corporate Governance Compliance

- ***Constitution/Articles of Association:*** Review the company's constitutional documents to ensure they are up-to-date, reflect the company's current operations, and comply with Kenyan law (e.g., the Companies Act, 2015).
- ***Board Composition and Meetings:*** Verify whether the company is following the legal requirements regarding board structure, meetings, resolutions, and the election/appointment of directors.
- ***Shareholder Rights and Meetings:*** Ensure that shareholder rights are being respected and that general meetings (AGMs) and extraordinary meetings are conducted in compliance with legal requirements.

2. Legal and Regulatory Compliance

- ***Companies Act (2015):*** Ensure compliance with the provisions of the Companies Act regarding registration, auditing, annual filings, and maintenance of statutory registers.
- ***Taxation:*** Verify compliance with tax regulations, including VAT, PAYE, withholding tax, ETIMS, corporate tax, and other statutory payments, ensuring that returns are filed correctly and on time with the Kenya Revenue Authority (KRA).
- ***Licensing and Permits:*** Check if the company holds all necessary licenses and permits required to operate in its particular industry, including local county government permits, sector-specific licenses e.g NCA, and environmental clearances from NEMA.
- ***Labor Laws Compliance:*** Review adherence to the Employment Act, Work Injury Benefits Act, Occupational Safety and Health Act, and other labor-related legislation.

3. Intellectual Property

- ***Trademark, Patents, and Copyrights:*** Confirm that the company has protected its intellectual property rights and is in compliance with the Industrial Property Act, Trademark Act and the Copyright Act.
- ***Use and Licensing Agreements:*** Review contracts related to intellectual property, including licensing agreements, to ensure that they are properly documented and enforceable.

4. Contractual Obligations

- ***Contracts Review:*** Examine all significant business contracts (e.g., supplier, client, and partner agreements) to ensure they are legally sound and enforceable, and that the company is fulfilling its obligations.
- ***Dispute Resolution:*** Review any ongoing or potential disputes, including the mechanisms for resolving them (e.g., arbitration, mediation or court proceedings), and assess whether the company is at risk of breaching any contract terms.

5. Financial and Accounting Compliance

- ***Financial Statements:*** Ensure that the company's financial records comply with Kenyan accounting standards and International Financial Reporting Standards (IFRS).
- ***Audit and Tax Compliance:*** Review whether the company is undergoing regular audits as required by law and if it is up-to-date with its tax filings and payments.
- ***Anti-money Laundering (AML) and Know Your Customer (KYC):*** Verify the company's adherence to anti-money laundering regulations, particularly if it deals with financial services, banking, or large international transactions.

6. Environmental, Health and Safety Compliance

- ***Environmental Impact Assessment (EIA):*** Ensure that the company complies with the Environmental Management and Coordination Act (EMCA), Sustainable Waste Management Act and other environmental laws relevant to its operations.
- ***Health and Safety:*** Review the company's adherence to the Occupational Health and Safety Act, ensuring that there are policies and procedures to protect employees' health and safety at the workplace.

7. Data Protection and Privacy

- ***Data Protection Act (2019):*** Ensure that the company is compliant with the Data Protection Act, especially regarding the collection, processing, and storage of personal data for both its customers and employees.
- ***Cybersecurity:*** Review any cybersecurity policies or protocols in place to protect sensitive data from breaches and misuse in relation to the Computer Misuse and Cybercrimes Act.

8. Litigation and Dispute Management

- ***Ongoing Litigation:*** Review any ongoing or potential litigation the company is involved in, including claims, suits, or arbitrations, and assess potential risks.
- ***Risk Mitigation:*** Evaluate the effectiveness of the company's risk management policies and strategies, including insurance coverage, indemnities, and dispute resolution mechanisms.

9. Employment and Labor Relations

- ***Employee Contracts and Benefits:*** Ensure compliance with the Employment Act and other relevant labor laws regarding employment contracts, employee rights, and benefits (e.g., retirement benefits, health insurance, etc.).
- ***Unionized Employees:*** If applicable, assess the company's relationship with trade unions and whether it is in compliance with collective bargaining agreements and dispute resolution processes.

10. Anti-Corruption and Ethical Practices

- ***Anti-Corruption Laws:*** Ensure that the company is in compliance with anti-corruption laws, including the Bribery Act, and has policies in place to prevent corrupt practices.
- ***Ethical Practices:*** Review the company's ethical guidelines and policies to ensure they adhere to good corporate governance standards.

11. Foreign Investment and Compliance

- ***Foreign Investments:*** For companies with foreign investors or operations, verify compliance with foreign exchange control regulations, investment laws, and any sector-specific restrictions.
- ***International Laws:*** Ensure the company complies with international trade regulations, sanctions, and export/import laws if it operates across borders.

12. Risk Management and Insurance

- ***Insurance Policies:*** Verify the adequacy of the company's insurance coverage, including general liability, professional liability, workers' compensation, and directors' and officers' liability insurance.
- ***Risk Identification and Mitigation:*** Evaluate how effectively the company identifies, assesses, and mitigates legal and operational risks, including through internal controls and corporate policies.

Conclusion

A Company Legal Audit in Kenya involves a thorough review of the company's operations, governance, compliance, and legal framework. It helps ensure that the company operates within the legal boundaries of Kenyan law and minimizes the risk of legal liabilities. It is advisable for companies to regularly conduct legal audits to stay compliant and safeguard against potential legal issues.



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