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Business Owner Legal Compliance Checklist

Do you know whether your business complies with legislation?

Whether you have been operating a business for years or have just started your own business, it's always good to familiarise yourself with the laws that may affect you.

There seems to be so many legal requirements when setting up a business that it can be overwhelming; sometimes it's hard to know where to start, and whether or not you're doing everything you're legally obliged to do.

Business owners have a responsibility to ensure that their business complies with the necessary *South African legal requirements*, as non-compliance could lead to penalties and have far-reaching consequences. For this purpose we have compiled a reference guide for business owners.

In this article we discuss Business Entity regulation as well as Labour and Employment Equity laws.

Business Entity Regulation

Business entity regulations are of crucial importance to our economy and provide the legal operating framework for businesses.

One of the first decisions made when starting a business should be the legal structure of the business. You will need to consider the different types of legal entities and which one will be best suited based on specific business needs, such as the nature and size of the business.

Other aspects include the number of shareholders in the business; how the business will function from a management and control point of view; continuity of the business in times of crisis; cost of administration; security; finance; the combination of legal entities; and general income tax considerations. Make sure all agreements that you have with co-workers or investors are in writing and contain terms with which you are comfortable. Include a vesting schedule in your agreements to protect the company. You also need a plan of action in the event that you need to sell your business, bearing in mind how owners will divest their interests should you close down or part ways.

Once registered with the Companies and Intellectual Property Commission (CIPC) and depending on the type of entity you select for your business, individual legislation will apply, for example the *Companies Act*.

For more information on entity regulation speak to our *Corporate Governance specialists*. We assist with shareholder agreements, share certificates and registers, memorandum of incorporation, trust solutions, CIPC annual returns, etc.

Employment and Labour Laws

Employment and labour laws regulate the relationship between employers, employees and other stakeholders, such as trade unions. The following are some guidelines:

- **BASIC CONDITIONS OF EMPLOYMENT ACT** - Applies to all employers and workers and regulates leave, working hours, employment contracts, deductions, pay slips and termination to advance economic development and social injustice by establishing and enforcing basic conditions of employment.
- **LABOUR RELATIONS ACT** - Applies to all workers and employers and aims to advance economic development, social justice, labour peace and democratisation of the workplace by meeting the primary objectives of the Act.
- **UNEMPLOYMENT INSURANCE AND WORKMEN'S COMPENSATION LEGISLATION** - The Unemployment Insurance Fund Act (UIF Act) makes provision for claiming unemployment benefits, maternity benefits, illness benefits, etc.
- **OCCUPATIONAL HEALTH AND SAFETY ACT** - Aims to provide and regulate health and safety in the workplace for all workers.The aim of the Compensation for Occupational Injuries and Diseases Act (COIDA) is to provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases, and to provide for matters connected therewith (such as medical expenses, etc.).
- **SKILLS DEVELOPMENT ACT** - If your payroll is more than R500 000 per annum, you have to register for payment of the Skills Development Levy *(SDL*).

Employment Equity Laws

The Employment Equity Act requires businesses that employ more than 50 people or exceed certain thresholds as set for the specific industry to submit Employment Equity Reports to the Department of Labour before October of each year (or January if submitted electronically).

Businesses that fail to comply could potentially face fines of up to R2,7 million or 10% of annual turnover. The Employment Equity Act creates various criminal offences and stipulates that no points may be awarded under the Employment Equity element for *Broad-Based Black Economic Empowerment* purposes if an Employment Equity Report was not submitted.

It is quite clear that you have to pay the necessary attention to business legislation in order to mitigate risk to your business, your employees and your customers.

Do not miss the second part of business owner legal compliance where we will cover the *POPI Act*, *Consumer protection* and Tax laws.

Our legal team at *SERR Synergy* assist business owners to *make sense of South Africa's stringent employment equity laws* by ensuring that business policies and practices are aligned accordingly.