



HEW & BORDENAVE
A LIMITED LIABILITY LAW PARTNERSHIP LLP

DISCLAIMER: The contents of this document is general information and is not a substitute for specific legal advice. If you need legal assistance, then please contact an attorney and your situation may warrant further discussion with an attorney.

What is an Annual Business Checkup?

Your business is like a vehicle. There is a structure to it. Further, relationships are the business's fuel. Consider the supplies from vendors, your services rendered to customers, and the payments owed by them to you. So, like any vehicle, once your business is formed and running, it pays to periodically conduct an Annual Business Checkup, sometimes referred to a Contract Audit. Basically, it is a review of a business entity to see if it has complied with laws, identify potential problems, and do strategic planning for the future. Whereas a traditional audit is concerned with accounting and taxes, a contract audit looks at the rights and obligations of the business for compliance and transactional purposes.

What are some key questions a business owner should ask of their attorney for an Annual Business Checkup?

This largely depends on the business owner and attorney's relationship together. Sometimes an owner wants a thorough review done by the attorney, and they wish the attorney to go through everything. Other times, business owners are more tactical and only want select aspects of the business reviewed. Consider asking yourself some of these questions:

- 1) What are the goals, objectives, and plans for the company in the upcoming year? Financial and Marketing? Are their major transactions planned for the upcoming year?
- 2) What is the status of the company and its relationships? To its owners? To its vendors/suppliers? To its employees/independent contractors? To its customers/clients? To its competitors? To the government regulators?
- 3) Are the Company's governance, financial, accounting, and tax documents up-to-date? Are there transactions and arrangements not reduced to writing?
- 4) When was the last time your contracts and agreements were reviewed? Updated?
- 5) Where do you stand with insurance policies and understanding of overall risk?
- 6) When was the last time your policies updated? Operations? Customer Service HR? Website and Social Media?
- 7) Have you done a survey of the marketplace, Internet, and social media with regard to enforcing/protecting your IP rights?
- 8) Has your business or its industry been in the news lately?
- 9) Have you received threats/made threats against others regarding lawsuits during the year?

What does a lawyer review for an Annual Business Checkup?

Some examples of items that should be considered for review:

- 1) Annual reports and filings with various government agencies
- 2) Internal governance documents (e.g. minutes and resolutions)

- 3) Strategic relationships of the company to its sister companies, subsidiaries, and affiliates
- 4) Employment agreements/handbooks and policies
- 5) Supplier/vendor/independent contractor/customer agreements
- 6) Website and social media terms and policies
- 7) Other types of contracts and similar documents
- 8) Reports to owners, ownership changes, succession planning
- 9) Tax matters
- 10) Potential and existing claims (for and against the Company)
- 11) Intellectual property protection
- 12) Government relations

What kind of fees and costs can a business expect from conducting an Annual Business Checkup?

It largely depends on the size of your business and the scope of the Annual Business Checkup. For example, Annual Filings with Hawaii's Department of Commerce and Consumer Affairs is routine and our law firm does it for a fixed fee applicable to a small or large company. Contrast that where a technology company that generates annual revenue of \$5,000,000 and would like to review its licensing agreements and intends to offer employee incentive plans to its employees in the next year, that likely would take a fair amount of work depending on how many and length of the agreements and what type employee incentive plans the owners would like to offer.

To give you some numbers to consider, a business operations and technology consulting firm conducted a survey in 2014 and found that total legal spending by companies was 0.33% of total revenue for worldwide and 0.38% of total revenue in the U.S.¹ Therefore, on average a company with a revenue of \$250,000 likely spends around \$950 a year on legal services. If annual revenue is \$500,000, then legal fees would be around \$1,900 and if annual revenue is \$1,000,000, then such a company likely spends \$3,800 on their legal costs. Obviously, if a company has a number of disputes and on-going litigation those numbers can easily be double or more.

Our law firm, when working with small and medium-sized business clients we have a meeting to figure out the scope and purpose of an Annual Business Checkup: *Where is your business at? What are your concerns? Have you thought about X, Y, Z issues?* If it is merely maintenance and routine, then likely a fixed flat-fee will apply, but if it is for strategic planning and preparation for new projects, then likely it will be at our hourly rates. However, in that latter case we can work with a client on setting a budget.

For a business owner, it is best to understand what the health of their business is and that is not just the financial, accounting and taxes, and operational aspects of the business, but the legal ones as well that bind all of that together.

Mahalo for taking the time to read our informational one-sheet on Annual Business Checkups. If you are interested in this service or assistance for other transactional and compliance matters, then please contact us to set-up an appointment. We also provide business owners commercial litigation and personal injury representation. -Hew & Bordenave, LLLP

¹ <http://www.businesswire.com/news/home/20151008005223/en/Annual-HBR-Law-Department-Survey-Finds-Moderate>