EVERYDAY LEGAL
SOLUTIONS

FREE GUIDE · BUSINESS LEGAL HEALTH

Legal checklist for consultants and professional practices in South Africa

If you sell your expertise, such as consulting, accounting, marketing, design, engineering or coaching, your biggest legal risks are unclear scope, unpaid invoices, confidentiality, and being blamed for advice that didn't work out. The core protection is a written client agreement that sets out the scope, fees and payment terms, who owns the work, confidentiality, and a fair limit on your liability. Add a privacy notice for the client information you hold, written terms with any subcontractors, and the right registrations for your structure.

REVIEWED BY THE ELS TEAM

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AT A GLANCE

- Start every engagement with a **written client agreement**.
- Add a **liability cap** so your exposure is linked to your fee or insurance.
- Under the CPA, you **can't exclude liability for gross negligence** against consumer clients.
- Make **IP transfer conditional on payment**.

The checklist

DOCUMENT OR STEP	WHAT IT PROTECTS
Client services agreement	Scope, fees, payment, cancellation and ownership of the work
Liability cap clause	Limits what you can be asked to pay if advice goes wrong
Confidentiality agreement (NDA)	Information shared before or outside a signed client agreement
POPIA privacy notice	Tells clients and contacts how you use their personal information
Subcontractor agreement	Confidentiality, IP and quality when you bring in help
Website terms and conditions	Required if you sell services online to consumers
Professional indemnity insurance	Pays claims your liability cap doesn't stop
Business registrations	SARS, and CIPC if you trade through a company

1. A written client agreement

Most disputes in professional services come down to what was agreed and what's owed. A client services agreement should cover:

- **Scope:** what you will and won't deliver, and how changes are agreed and priced.
- **Fees and payment:** rates, deposits, invoicing, due dates and interest on late payment.
- **Timelines and dependencies:** what you need from the client, and what happens if they're late.
- **Ownership of work:** when the client gets the rights, usually after payment, and what you keep.
- **Cancellation:** notice, fees for work done, and cancellation charges.
- **Disputes:** a simple escalation process before anyone goes to court.

See what to include in a client service agreement.

2. A fair limit on your liability

If your advice is wrong, or a client says it is, the loss they claim can be far bigger than your fee. A liability cap limits the amount you can be asked to pay, often to the fees paid or your insurance cover, and excludes indirect losses such as lost profits.

If your client is a consumer under the Consumer Protection Act (CPA):

- **Draw attention to it.** Under section 49, a liability limit must be conspicuous and in plain language, and the client must have a fair chance to understand it before agreeing.
- **Some exclusions are void.** Section 51 prohibits terms that exclude liability for gross negligence, among others.

> **Who counts as a consumer.** The CPA protects individuals, and companies, close corporations and trusts only where their asset value and annual turnover are both below R2 million. Even with larger clients, a clear and reasonable cap is more likely to hold.

3. Confidentiality

You'll often see sensitive information before a contract is signed, during a pitch or scoping call. Use an NDA for that stage, and carry confidentiality terms into your client agreement.

4. Client personal information (POPIA)

You'll hold names, contact details and possibly sensitive information about clients and their staff. Tell people how you use it, keep it secure, and register your Information Officer. If you process personal information on a client's behalf, you may be their operator and need a written agreement with security obligations.

5. Subcontractors and associates

If you bring in other freelancers, use a written contractor agreement covering confidentiality, IP assignment to you (so you can pass rights to your client), quality and payment. Make sure it's genuinely independent contracting, not disguised employment.

6. Insurance and professional rules

A liability cap reduces your exposure, but it doesn't stop a client suing. Professional indemnity insurance pays covered claims and legal costs. If your profession has a regulator or professional body, check its rules on engagement letters, fees, records and insurance.

7. Getting paid

- Invoice promptly and state the due date on every invoice.
- Take a deposit for new clients or large projects.
- Follow up in writing. A letter of demand is the usual first formal step.
- Act in time: most ordinary debts prescribe after three years.

Five common mistakes

1. **Starting work on an email "go ahead".** Without agreed terms, disputes are hard to resolve.
2. **No liability cap.** Your exposure is limited only by the client's loss.
3. **Handing over IP before you're paid.**
4. **Copying a foreign template.** It won't reflect the CPA, POPIA or South African contract law.
5. **No change-request process.** Scope creep turns profitable projects into unpaid work.

Frequently asked questions

Can I limit my liability to the fees I've been paid?

You can agree a cap, and fees paid is a common measure. Against consumers it must meet the CPA's notice rules, and you can't exclude liability for gross negligence.

Do I need a new agreement for every client?

Use one standard agreement with a schedule for each client's scope and fees. That keeps your terms consistent and quick to issue.

Is an email exchange a binding contract?

It can be, if the essential terms are agreed. But emails rarely cover liability, ownership or cancellation, so disputes are common.

Do I need professional indemnity insurance?

It's not legally required for most consultants, but some professions and clients require it, and it covers claims a contract can't prevent.

Get client-ready

The ELS Client-Ready Pack combines the Client Services Agreement and the Confidentiality Agreement (NDA). Add the Liability Cap Clause (Professional Services) to limit your exposure if advice turns out to be wrong. Not sure what you need? Take the free Legal Health Check.

SEE THE CLIENT-READY PACK

ADD THE LIABILITY CAP CLAUSE

INFORMATION, NOT ADVICE

ELS provides legal information, not legal advice. Nothing in this guide creates an attorney-client relationship. For advice on your specific situation, consult a qualified attorney. The law is stated as at 4 November 2026.

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Attorney-drafted legal documents and plain-English legal information for South African businesses. Not sure what your business needs? Take the free Legal Health Check.

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