



## LS Africa Presents: Venture Voices

### Episode 5: Legal Challenges - Part 3: Corporate Housekeeping Issues for African Startups

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**Deangeor Chin:** Welcome to LS Africa presents Venture Voices. Before we jump in, if you would like to learn more about our Africa practice and some of our upcoming events, visit [lowenstein.com](https://lowenstein.com) and subscribe to our mailing list to stay in the know.

I am Deangeor Chin, and today my Lowenstein colleagues, Rossie Turman, Raquel Smith, and Tolu Adetayo and I will discuss some of the legal challenges we see in the startup space in Africa. We will provide examples of common legal issues and potential solutions. It is worth noting that we will not be focusing on how to source investments or startup operational issues, as those topics will be covered with our guest investors and founders in future episodes. Instead, we will focus our attention on legal considerations that frequently arise in the VC ecosystem.

**Tolu Adetayo:** This is the last episode in a three-episode series discussing legal challenges for Africa startups. Today, we'll discuss good corporate housekeeping. Be sure to go back and listen to part one and part two, where we talked about entity formation and ownership structure. With that said, let's jump in.

**Deangeor Chin:** As lawyers, we have to spend at least some of our time discussing corporate record keeping, so here we are. I think we touched on a few points, but are there any other ways that record keeping and bookkeeping can impact a company, whether in the starting phase or when it comes time for an investment?

**Rossie Turman:** I think the first issue is to assess the optics. That's my first issue, and then my second issue is there's a risk attached to it. The optics are, if I walk into your apartment and it's nice and pristine or I walk into a house that's a model home, since we're talking about the investing, that it's nice and pristine, it's easier for me to imagine buying it and living there.

If I walk into a house that's a hot mess, junk everywhere, all kinds of stuff, it's harder for me to imagine what it's going to look like cleaned up. I'm going to put less money into, in terms of what I'll offer for the house that's pristine looking. It may not be pristine, but pristine looking versus the one that looks like a hot mess and junky.

Then there's the risk issue. I'm going to do my diligence and take a closer look at using the house analogy at both houses. I'm going to have an inspector come

through. I think it's going to be easier for my inspector to figure out if there's anything wrong with the clean house because he can at least see the pipes. He can at least see stuff, and there's less of a chance of missing things amongst all the mess. If I'm looking at a junkie house, I'm like, first of all, I got to read through all this mess and then I might miss some stuff because I have all this mess.

That's record keeping. If I can do my diligence and I come in and everything looks pretty clean, I think you got your stuff together and just gives me the impression that this company has got it together. I still may find some things that make me adjust my risk assessment or my valuation, but at least it's there and I can see it. I feel a little comfortable.

The other thing is if I start seeing problems, I have a tendency to dig a little deeper than if I look and I don't see problems. The psychology is I don't keep looking because I don't see anything. I'm going to do my checklist, but I'm not doing a deeper dive because there's no red flag. If I come in and I start seeing problems, I feel like I need to do a deeper dive because there's probably more problems, and it just gets my psychology looking a different way.

The final piece I'll say is it's just as lawyers, we know this, it's more expensive the more things that people are looking at, and it slows down your transaction, your fundraising, so that's the third reason that I would throw in there.

**Deangeor Chin:**

I would say to that point, Rossie, the way you keep your books and records is often a signal to investors, and it might not be the best comparison of how you'll run the business or how organized you are, but I do think that it signals to those looking, the level of care and the level of attention. It can be a positive signal, or it can be negative, so our, I would say, suggestion and advice would always be to try to keep organized and detailed records just for the purposes of, like Rossie said, having visibility into exactly what's going on at your business. I think that sends a positive message and invites investors to look to spend their money.

**Raquel Smith:**

I think a lot of the issues and different topics that we touched on flow through this because for example, we were talking earlier about IP and making sure that the right entity owns- Keeping your documents cleaned up and making sure that it reflects what it should be, I think is very important for a company.

If the holding company should hold the IP, you need to make sure that you have proper documentation that shows that. If you are supposed to get an assignment from a previous founder or an inventor or a consultant, do you have proper documents that reflect that? I think oftentimes companies when they're fundraising for the first time is when they're realizing how detailed investors will be as part of their diligence process. That's something that it's a lot easier for you to be doing along the way as you're going versus having to do that and spending a ton of legal costs on cleaning everything up when you should be able to put that money into the business.

You're taking checks from various people. Do you actually have safes that are documented? Do you have any type of document that dictates what terms they got or anything else like that? Making sure that you have final executed copies of those things versus just a Word doc that you have in your email that you never got around to cleaning up. It's just a lot easier to make sure to keep that stuff tick and tide all the way through as you're doing it then to have to figure it out and find people months later, years later to clean things up.

**Deangeor Chin:**

The little details do matter in those instances, and oftentimes it's not difficult at the time to get them done versus looking a year or two in their rear-view mirror, it's a lot harder. When you do have a document, you want to make sure that it's signed by

both parties. You want to make sure that you have all those signatures, not just that it was sent out. You want to make sure that you know the date that it was signed by the parties, because there are instances where that could matter. Was the IP assigned before or after we gave this equity? The dates, the signatures, the completeness. It matters and it helps to ensure that those are taken care of at the time that you assume that they're complete. I guess, are there any key documents that a company should be tracking to be ready for a diligence process, just from a practical standpoint? I know we mentioned IP assignments and we mentioned founder agreements. Anything else come to mind?

**Tolu Adetayo:**

I think for me, the first thing I'll say is your corporate governance document, your board minutes, your board consent, anything around that line is very, very important. You want to make sure that you track all of that. Especially when you're giving equity out, you want to make sure that that is properly recorded either in a board minute or in a board consent approving any of such.

I think for me, I think that's actually one of the key things that investors definitely look out for, especially when it comes to your due diligence. That is something that investors want to see. In showing a signal that you are running a good business, this part of record keeping is key to always be very mindful of.

**Raquel Smith:**

We hope that you found today's discussion informative and that it provided you with some food for thought when considering some of the legal challenges that African startups face. This episode is intended to be a high-level overview and is by no means an exhaustive discussion. Thank you for joining us today.

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**Raquel Smith:**

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