

With the end of financial year (EOFY) fast approaching, now is the time to ensure you have completed all of the critical EOFY tasks for your business. In addition to your usual yearly tasks, the impact of the current COVID-19 crisis means that many businesses need to Review Accounts and ensure these have been finalised. Finalise accounts if needed.

Note that ASIC has extended the deadline for Disclosing Entities to lodge financial reports by one month for certain balance dates up to and including 7 July 2020. This extended deadline for lodgement of financials is intended to assist businesses whose reporting processes are taking longer due to COVID-19. However, where possible, businesses are encouraged to continue to lodge within the statutory deadlines.

EOFY meetings

Hold all required board and shareholder meetings to ensure whatever needs to be approved by Financial Year End is approved (note shareholder/member meetings need 21 days' notice so there is limited time left to hold shareholder meetings before Financial Year End).

Meetings can now be held virtually – but make sure your business and all attendees have software that enables all to participate (to hear and be heard).¹ Technology in Corporate Governance has become important in the COVID-19 world,²

Business Solvency

Consider whether you have reasonable grounds to believe the company is solvent, and ensure you make the directors' declaration of solvency. Businesses may need to consider issuing a qualified statement of solvency (depending on their financial circumstances) and whether that is a suitable route to take given the practical, commercial and legal implications.

Note that there has been a special extension of insolvency issues in the extended Safe Harbour Rules (applicable for the pandemic period).³

Trust and Trust Declarations

If you have a trading trust or discretionary trust which have made, or must make, distributions during the financial year, you will need to hold the appropriate meetings and make trust declarations by EOFY.

Superannuation Contributions

If you are employed and have not contributed your statutory maximum amount for the year, look to top up your contributions closer to the maximum permitted.

If you are self-employed and not subject to the contribution caps, determine and contribute any excess cash into your fund.

Insurance Renewal Season

Ensure you are on top of your insurance renewals which typically run to financial year end. Assess whether your insurance coverage is adequate for the legal and financial risks that may arise for the next financial year, including those which may be a result of COVID-19. Check what exclusions are noted in your policies. It is important that you are protected in the event of cancellations and/or business interruptions. Note that there may be a new COVID-19 exclusion!

Banking and Finance Arrangements

Do you have loans or charges (or similar) from banks or other institutions? If so, carefully check the terms to determine if they have Financial Year covenants or solvency requirements (eg certain capital or debt ratios, or solvency declarations). Review those matters to determine if reporting to your creditors are required.

Commercial Leases

Rent reviews/CPI increases typically run per financial year. Ensure you understand the timing and terms of your rent reviews (eg ratchet clause or increase due to changes in CPI). Also, it is prudent to review your lease to determine if you are eligible for the various rental relief packages available as a result of COVID-19.⁴

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Many businesses have adapted not only to survive, but to fulfil the new needs in the market during these unprecedented times. Examples of the business pivot include gin distilleries that are now producing hand sanitisers, and local pubs and restaurants selling selected grocery items. If your business is operating in a different manner than it was prior to COVID-19, you should consider the following:

Intellectual Property

As a result of doing business differently, do you need to update your branding and marketing strategy? Do the classes of registration for your trade mark need to be updated? Note, it is very simple to have a new registration with the exact same trade mark but with a different classes. ⁵

Commercial Leases

If you are currently using your leased premises for any different use, either wholly or partly, or you have re-purposed your business to any extent due to COVID-19, does the permitted use under your lease extend to your new activities (eg does your lease allow your business to trade as a take-away venue, or to sell grocery items)?

As a result of your new business activities, do you now fall under the Retail Leases legislation, noting that this may be an issue for your landlord and/or prohibited under your lease?

Query whether any of the above requires a discussion with and/or the consent of your landlord so that the 'new' use is allowed.

Regulatory Approvals

Do you have the necessary regulatory approvals for your new business activities (eg what approvals do you need if your gin distillery is now producing hand sanitiser?)

Cyber Security and Privacy

Do you have the relevant protection, policies and procedures in place to deal with data breaches and online scams? With the *business pivot*

