

HOT TOPICS FOR FUND MANAGERS:

Are you ready for the next phase?

As we move into the next phase of COVID-19 and attempt to define the 'new normal', fund managers will adopt different risk approaches in dealing with the uncertainty. In this article, we pull together some hot topics for fund managers, and ask whether you are ready for the next phase.

VALUATIONS

Most fund managers are expecting uncertainty in valuations in the 30 June financial reporting cycle. Some key steps, duties, and considerations for trustees in these challenging times include the following:

- Review valuations to ensure the valuation is not highly qualified and the assumptions used by the valuer are reasonable. Courts have in the past found against trustees who have relied on independent advice because the advice received was so qualified no reasonable trustee could have relied on it.
- Ensure prices are calculated strictly in accordance with the trustee's unit pricing policy and any other relevant policies, and that this process and the trustee's decisions are fully documented.
- Determine whether it is possible to price units at all, though generally, even during market or economic turbulence, it will be.

For more information about unit pricing in volatile times click [here](#) for an article by special counsel Matt Moses.

REPORTING AND COMPLIANCE

ASIC has further extended the deadline for both listed and unlisted entities to lodge financial reports under the Corporations Act. This broadens the [earlier relief](#) announced and unlisted entities and registered schemes with financial years ending by 7 July 2020 now have five months from the financial year end to lodge their annual reports. A similar extension applies for most AFS licensees, except disclosing entity licensees who will have four months to lodge. Auditors will also have four months (up from three) to lodge compliance plan audits for registered schemes with financial years ending by 7 July 2020.

The timeframes for listed entities to lodge reports will be similar, with annual reports due within five months from the end of the financial year and half year reports within 105 days of the end its half-year. [Click here](#) for more details.

EXECUTING AND WITNESSING DOCUMENTS

COVID-19 social distancing and remote working arrangements have thrown into the spotlight the issue of e-signatures and whether documents can be witnessed, or statutory declarations sworn, remotely instead of in person. As we discuss [here](#) the position is unclear and can vary from jurisdiction to jurisdiction. But, for the period 6 May 2020 to 5 December 2020, the Federal Government has made the process more convenient by allowing company officers to execute a document on behalf of a company under section 127 Corporations Act by signing two separate counterparts of the document remotely.

MEETINGS

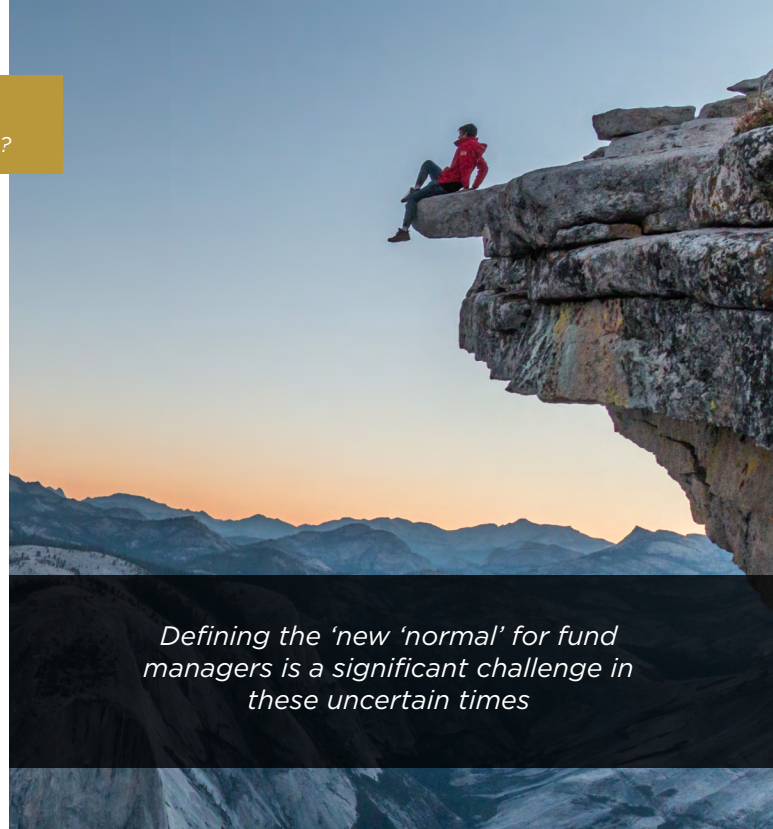
We are coming up to the time of year for meetings – board meetings, investor meetings, shareholder meetings, compliance committee meetings, and AGMs. This year, COVID-19 restrictions on public gatherings and travel will make many traditional, physical meetings impossible. The Federal Government's COVID-19 response expressly allows virtual meetings for companies and registered managed investment schemes, and work arounds for committee and board meetings include using audio and video connections to hold meetings and using circulating resolutions. See [here](#) for more information.

THE NEW FEES AND COSTS DISCLOSURE REGIME

PDSs dated on or after 30 September 2020 must comply with the revised regulations in RG 97 Disclosing fees and costs in PDSs and periodic statements (RG 97) and ASIC policy. While PDSs do not need to be reissued on 30 September 2020 solely to comply with the new RG 97 requirements, it is prudent for fund managers to update their reporting processes and PDS templates to capture and present fees and costs information in the format required by the new RG 97. For more information about RG 97 [click here](#) for an article by Jeunesse Meldrum.

THE APPLICATION OF FIRB TO LEASING TRANSACTIONS

Treasury recently issued follow up [guidance](#) explaining the significant changes to the Foreign Investment Review Board (FIRB)



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approval process in Australia under the new COVID-19 measures. The general message is you must consider whether FIRB approval is required in relation to a transaction at the earliest opportunity.

The changes have reduced the monetary thresholds to zero, so all leases in excess of five years entered by foreign persons are likely to require FIRB approval.

When considering whether FIRB approval is required for a lease, the 'look through' provisions in the legislation must also be considered. In very broad terms, this means even where the lessee is a company incorporated in Australia or a trust established in an Australian jurisdiction, the company or trust may be deemed to be a foreign person because an underlying interest in it (generally, 20 percent or more) is held by foreign interests. You can read more about this at page 8 of this Toolkit.

ARE YOU READY FOR THE NEXT COVID-19 PHASE?

Defining the 'new 'normal' for fund managers is a significant challenge in these uncertain times. Our lawyers will respond to your queries and provide practical advice to help you navigate this next phase of COVID-19.



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