

Financial year-end compliance: a commercial law checklist for directors and business owners

1. Annual Returns and Statutory Compliance

Every registered company and close corporation must ensure that statutory obligations are up to date.

Key legal checks:

- Confirm annual returns have been filed with Companies and Intellectual Property Commission (CIPC)
- Verify beneficial ownership disclosures are accurate and current
- Update director and officer records
- Ensure company registers (share register, director register, minute books) are properly maintained
- Confirm compliance with the Companies Act 71 of 2008

Failure to comply may result in:

- Deregistration
- Administrative penalties
- Personal liability exposure for directors

2. Directors' Duties and Solvency Review

Financial year-end is the ideal time for directors to formally assess:

- Solvency and liquidity
- Going concern status
- Trading position and contingent liabilities
- Compliance with fiduciary duties

Under the Companies Act 71 of 2008, directors must ensure the company satisfies the solvency and liquidity test before declaring dividends, approving distributions, or continuing trading where financial distress exists.

If there are signs of financial distress, directors should assess whether business rescue proceedings may be required under the Companies Act 71 of 2008.

3. Tax Compliance and SARS Obligations

Tax compliance remains one of the highest risk areas for businesses. It is important to work with a professional tax consultant to ensure that the person and business is tax compliant.

Year-end actions should include:

- Confirm income tax, VAT and PAYE submissions are up to date
- Reconcile payroll records
- Review provisional tax payments
- Assess deductible expenses and allowances
- Verify director loan accounts
- Engagement with South African Revenue Service (SARS) must be proactive. Non-compliance may result in penalties, interest, audits or asset attachment.

4. Contractual Risk Review

Year-end presents an opportunity to conduct a commercial contract audit.

Consider reviewing:

- Supplier agreements
- Customer contracts
- Lease agreements
- Loan agreements
- Shareholder agreements
- Employment contracts

Key issues to check:

- Expiry or renewal dates
- Escalation clauses
- Termination rights
- Performance obligations
- Penalty clauses
- Compliance with recent legislative amendments

This is particularly important for businesses scaling operations or renegotiating terms in the new financial year.

5. Employment Law Compliance

Employment obligations must be carefully reviewed before entering a new financial cycle.

Ensure compliance with:

- The Basic Conditions of Employment Act
- The Labour Relations Act
- The Employment Equity Act
- Practical checks include:
 - Updating employment contracts
 - Reviewing leave balances and accruals
 - Confirming disciplinary procedures are compliant
 - Ensuring workplace policies reflect current legislation
- Failure to comply can expose the company to costly CCMA disputes or labour court proceedings.

6. Data Protection and POPIA Compliance

If your business processes personal information, you must ensure continued compliance with the Protection of Personal Information Act (POPIA).

Year-end compliance review should confirm:

- Information Officer registration
- Updated privacy policies
- Data processing agreements with third parties
- Cybersecurity safeguards
- Internal data breach procedures

POPIA penalties can include administrative fines and reputational damage, particularly serious for technology-driven businesses handling customer data.

7. Shareholder and Governance Matters

This is the ideal time to:

- Hold annual general meetings (if required)
- Circulate financial statements to shareholders
- Review dividend policies
- Update shareholder agreements where necessary
- Resolve governance deadlocks before the new year begins

For businesses with external investors, strong governance discipline builds credibility and supports capital raising efforts.

8. Planning for the New Financial Year

Beyond compliance, year-end is strategic.

Consider:

- Restructuring for tax efficiency
- Revising company MOIs
- Implementing group structures
- Protecting intellectual property
- Updating risk management frameworks
- For technology and scaling businesses (particularly founder-led or investor-backed companies), aligning legal structures with growth strategy is essential.
- Why Commercial-Law-Led Compliance Matters
- Year-end compliance is not merely administrative — it is a risk management exercise.
- Directors who actively engage with legal compliance:
 - Reduce personal liability risk
 - Strengthen investor confidence
 - Protect shareholder value
 - Improve operational clarity
 - Avoid regulatory intervention

A proactive legal audit before year-end is significantly more cost-effective than defending litigation, regulatory action or internal disputes after the fact.