

# **Companies Act 1993 Amendments**

**A liquidator's Viewpoint  
Robert B Walker**

# Recent Enactments

- Financial Markets Authority Act 2011, Auditors Regulation Act 2011, Financial Markets Conduct Act 2013
  - Financial Reporting Act 2013
  - Financial Reporting (Amendments to Other Enactments) Act 2013
  - Tax Administration (Financial Statements) Order 2014
  - Companies Amendment Act 2014
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# Record keeping change

- S194 consequentially amended
- Four elements in original s194
- Two now – correctly record and (where applicable) financial statements & audit.
- Rules for inventory removed
- Control requirement ADDED
- S22 of the TAA94 remains
- S189 amended consequentially


# Change to financial reporting

- See decision flow chart (Appendix 2)
- FRA93 repealed, replaced by FRA13
- No provision in FRA13 for non-applying companies
- Effective date

# Classes of company

- Large company – \$60 m of assets and \$30 m of revenue (for 2 years)
  - Based on group not legal entity.
  - Public entities (the Crown)
  - Companies with wide shareholding – 10+
  - Companies closely held – < 9 shareholders
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# Effect

- Large companies and public entities subject to s201 and s202
  - Therefore to FRA13 and GAAP and audit
  - Large companies can opt out of audit
  - Widely held small companies can opt OUT of s201, s202 and audit by shareholder vote
  - Closely held small companies can OPT in by shareholder vote
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# Miscellaneous

- Opting in or out rules – complex and strict (s207H)
- Registration on public record for large companies with some exemptions (s207D and s207E)
- Audit requirements – similar – set out at s207P to s207W

# TAFSO


- IR has devised a substitute Tax Administration (Financial Statements) Order 2014
- Some exemptions for very small companies
- Formats permissive
- Additional disclosure requirements – e.g. tax reconciliation, associated party disclosures
- Questions of recognition and measurement
- Effective date 2014/15 (associate disclosure +1 year)



# Impact on insolvency practice

- ▶ S 4 Solvency test
- ▶ Therefore on s56
- ▶ S 300

# S4 Solvency test

- Reference to FRA93 gone, therefore:
  - Financial statements prepared under Act (s201 or s202?)
  - Financial statements under ‘other enactment’ (TAFSO?)
  - Relationship of ‘balance sheet’ test with liquidity test
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# s300

- Text change – no reference to FRA93
- Substitute – s201 OR s202
- Therefore director not accountable for exempt or companies opting out financial statements
- Meaning of ‘correct’, ‘record’, ‘transaction’, S
- Measurement and recognition (again) – GAAP prevails
- Matter of control

# Miscellaneous

- S 258A consideration
  - Need to understand reporting provisions
  - Altered and no reference to securities law
  - S138A criminalisation of s131
  - Directorial place of residence (s10) – impact on application to liquidate
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