



Auditor oversight, auditor liability and legal enforceability of standards

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Auditor Regulation and External Reporting Bill

Licensing system for auditors of issuers

- To strengthen investor confidence
- International recognition



ARERB – The allocation of functions

NZICA

- Auditor licensing – Members only
- Investigations, discipline & appeals

FMA

- Accreditation
- Monitoring, reporting and direction
- Overseas auditor licensing
- Minimum licensing standards
- Practice review/ability to delegate
- Investigation “reach-in”
- Agree to take over other functions from accredited body



Auditor regulation goal

To reduce the risk of issuer audit failure



Auditor liability

- Audit firm incorporation
- Solidary v alternative liability system
 - Proportionate
 - Capped liability
 - Contracting



Solidary liability, and distributive and corrective justice

“The whole basis of the law of civil liability is that quantification is determined not by the degree of the defendant’s fault but by the extent of the injury to the plaintiff. Trifling negligence [such as] momentary inattention ... can cause horrific damage. Gross negligence can result in minor or no damage. As between plaintiff and defendant it is not the fault but the loss that is measured, and there is no reason why this principle should cease to apply simply because there is more than one wrongdoer” - Law Commission, *Apportionment of Civil Liability*, May 1998



Solidary liability and auditor availability

Proposition

Under solidary liability, audit firms may avoid high-risk clients or even entire industries



Legal enforceability of standards – LAC Guidelines (Chapter 12 – Criminal Offences)

- The criminal law is concerned with the punishment of offenders and the deterrence of others from wrongdoing
- It is intended to punish only that conduct which is in some way blameworthy
- Ultimately, ... the proper scope of the criminal law is a matter involving political and ethical judgments



Legislation Advisory Committee Guidelines (Ch 12.2.3 – strict liability offences)

- Does the offence involve the protection of the public from those undertaking risk-creating activities (i.e. is it a public welfare regulatory offence)?
- Does the threat of criminal liability supply a motive to adopt precautions that might otherwise not be taken?
- Is the defendant best placed to establish absence of fault?



Legal enforceability of auditing standards

“Every auditor commits an offence and is liable on summary conviction to a fine not exceeding \$30,000 if the auditor fails, without reasonable excuse, to [comply with the auditing and assurance standards that apply to the audit.]”

- Clause 87 of the ARERB



Final comments

- Auditor regulation – Commerce Select Committee deadline for submissions on ARERB is 10 November
- Auditor liability and enforceability – Difficult issues

