



**Walking the tight rope –  
Directors Insolvency Checklist  
Seminar – Eric Levenstein**

**Presenters**

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## Topics to be Addressed Include

- ▶ Overview of directors liability and risk compliance in relation to King III
- ▶ Trading in insolvent circumstances - an overview of existing legislation and the relevant provisions of the new Companies Act 71 of 2008 in respect of the implications for personal liability by directors
- ▶ Recommendations as to when a company should cease trading and an application be brought for its winding up – the director’s insolvency checklist!
- ▶ A perspective on business turnarounds and considerations when filing for liquidation
- ▶ The Chapter 6 (Business Rescue) provisions of the new Companies Act 71 of 2008 and its implications for directors
- ▶ General Q & A



# Trading in Insolvent Circumstances?



## Statistics South Africa – latest figures

- ▶ 1008 – companies failed in Q1 of 2009, compared with 687 in Q1 last year – a 46,7% increase.
- ▶ 918 were voluntary liquidations – an increase of 52.5%.
- ▶ 90 were compulsory liquidations – a 5.9% rise.
- ▶ 347 liquidations took place in March, and 391 in February.
- ▶ 57,8% was the year on year increase in company liquidations in Q1 compared with a 36,8% rise in close corporation liquidations.
- ▶ 495 company liquidations for the year to date is the highest annual figure since 2003.
- ▶ 144 liquidations occurred in the finance, insurance, real estate and business services category, with 119 in wholesale and retail trade, catering and accommodation.
- ▶ 314 insolvencies of individuals and partnerships were recorded in February – 20.8% up on February last year.
- ▶ R20 000-R50 000 is the cost of a court (compulsory) liquidation. A voluntary liquidation costs approximately R5 000.
- ▶ 1 July 2010 is when new business rescue legislation gazetted in the Companies Act last month is expected to be implemented.

*Courtesy of Financial Mail, May 8 2009.*

# Director's Liability

## ► Important issues to consider

- Lack of knowledge on the part of directors in respect of their obligations flowing from relevant legislation – when should one wind up a company if it is trading in insolvent circumstances?
- How far must a director go in relying upon and verifying information put to them by management – if verification does not occur can this result in a director trading the company recklessly or with an intent to defraud creditors?
- General lack of understanding on the part of directors as to the extent of personal liability... a judgment taken against a director in terms of the relevant “director’s liability” sections can lead to substantial personal financial exposure on the part of a director



# Director's Liability

## ► Important issues to consider

- Role of a company director is onerous.... decisions taken will affect
  - Employees
  - Shareholders (working capital)
  - Lenders (interest bearing capital)
  - Suppliers of goods & services
  - Purchasers of goods & services (customers)
  - Creditors (secured, preferent and concurrent)
- Good principles of corporate governance must be implemented (follow King III)
- Focus on risk management (King III)
- Key is “corporate sustainability” as reflected in financial statements (King III)



## **Director's Liability when Trading in Insolvent circumstances Governed by...**

- ▶ Common law – legal precedent
- ▶ South African Companies Act –
  - section 424 – old Companies Act, 1973
  - New sections 76 and 77 – new Companies Act, 2008
- ▶ Philotex case 1998 (an excellent case study for directors)!

# Definitions of Director

## Old Companies Act –

“includes any person occupying the position of director or alternate director of a company, by whatever name he may be designated”

## New Companies Act –

- ▶ General definition: “a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated.
- ▶ Definition in terms of sections 76 and 77: “a director includes an alternate director and –
  - a prescribed officer; or
  - a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company’s board

# Limited Liability and Piercing the Corporate Veil

- ▶ Principle of incorporation – Company is separate and distinct from its members
- ▶ Veil of incorporation – can it be pierced and when?
- ▶ “Limited liability” – principle... neither directors nor shareholders are personally liable for the company’s debts!
- ▶ Advantages/disadvantages of limited liability
  - Encourages entrepreneurship / investment
  - Fails to discourage undercapitalized companies from trading and incurring debts when the company has no means of repaying such debts
- ▶ Creditors take on the risk of corporate insolvency!
- ▶ Worldwide Theme....  
“Public interest demands that directors and officers of companies in which the public invests should not be able to escape responsibility to creditors while trading in insolvent circumstances!!”

# South African Law Relating to Corporate Insolvent Trading

- ▶ Uncertainty.. When are you in fact trading in the “Zone of Insolvency”... “The Twilight Zone”!
- ▶ Judicial differences of opinion?

Fiduciary duties of directors change significantly when directors are trading their companies on the edge of financial insolvency.. It is at that time that directors’ conduct will be subjected to closer scrutiny by all stakeholders. What behaviour will be reasonably expected of directors once their company has crossed the “Rubicon” from trading in a solvent position to trading in an insolvent position and will this impact on their personal liability for losses incurred by the creditors of the company?



# South African Law Relating to Corporate Insolvent Trading

- ▶ Actual insolvency versus Commercial insolvency – important concepts for directors to understand and consider!
- ▶ Actual (factual) insolvency – assessment of the extent that the liabilities of a company exceed the value of the company’s assets – “the balance sheet test!”
- ▶ Commercial insolvency – evidential factors such as.. inability to pay debts as and when they fall due – “the cash flow test!”
  - Test of a company’s insolvency is often left in the court’s discretion ie a company may be factually insolvent (liabilities exceed its assets) but it can pay its debts as and when they fall due.. in this instance a company may not be trading in “insolvent circumstances”!
  - However if a company is not factually insolvent, but is commercially insolvent (cannot pay its debts when they fall due) then a company is insolvent and falls to be wound up ie commercial insolvency is strong evidence in support of factual insolvency!
  - If a company is both factually and commercially insolvent, it is insolvent and must be wound up (forthwith)!



# South African Law Relating to Corporate Insolvent Trading

In re: Carbon Developments 1993(1) SA 403, where Judge Goldstone refuted the views of Judge Stegmann:

*If the view taken by Stegmann J in this regard is correct, it would follow that for decades in SA the officers of a vast number of private companies (unbeknown to them and notwithstanding the generally accepted practice in the commercial world) have acted unlawfully and dishonestly. It is a common occurrence for a private company to embark on trading with a nominal paid-up share capital and to finance its business operations by way of members' loans. Frequently, those loans are treated as if they were part of the capital of the company. He quoted with approval the following statement by Buckley J in an unreported judgment-*



# South African Law Relating to Corporate Insolvent Trading

*“In my judgment, there is nothing wrong in the fact that directors incur credit at a time when, to their knowledge, the company is not able to meet all its liabilities as they fall due. What is manifestly wrong is if directors allow a company to incur credit at a time when the business is being carried on in such circumstances that it is clear that the company will never be able to satisfy its creditors. However, there is nothing to say that directors who genuinely believe that the clouds will roll away and the sunshine of prosperity will shine upon them again and disperse the fog of their depression are not entitled to incur credit to help them to get over the bad times.”*



# The Directors Insolvency Checklist... The Test for “Looming Insolvency”

- ▶ When does one file for liquidation:
  - As early as possible!
  - When the warning signs are self evident!
  - Directors need to make a proper and realistic assessment of all financial information available and test the veracity of such financial information
  - If in doubt take proper and sound legal and financial advice
  - Must act on advice with no delays!
  - All of these actions will be tested at insolvency enquiries and specifically when directors are examined (in great detail) as to their actions or inactions in the months preceding the insolvency/winding up!

# The Director's Insolvency Checklist

Checklist of warning signals of a “looming insolvency”.....

- ▶ Dishonesty
- ▶ Ineffectual leadership by the Board
- ▶ Neglect and incompetence on the part of management
- ▶ Inability to adapt to a changing environment/market conditions
- ▶ Loss of key personnel
- ▶ Monitoring of relationship with financiers
- ▶ General signs of pending disaster
- ▶ Directors role in the failing company scenario?



# The Director's Insolvency Checklist

## Warning signals – Causes of insolvency

### ▶ Dishonesty-

- Fraud at management and employee level
- Receive board information late (failure to highlight problem areas)
- Inadequate explanations for variances from budgets (failure to meet budgets which are consistently ignored)

### ▶ Ineffectual leadership by the board

- Inability to make decisions
- Irregular / no contact with executive staff
- Absence of board meetings
- Worsening of relationships between directors and management
- Dominance of the board by one individual (unhealthy!)



# The Director's Insolvency Checklist

## Warning signals – Causes of insolvency

- ▶ Neglect and incompetence of management
  - Lack of appreciation of impact of financial information
  - High gearing / illiquidity / inability to meet terms of loan agreements
  - Negative cash flow / insolvent balance sheet
  - Failure to pay creditors as and when they fall due
  - Lack of financial controls
  - High staff turnover / poor staff morale
  - High exposure to interest and currency fluctuations
  - Auditors identify significant control problems and these are ignored
  - Disagreement with management on material issues
  - Delays in settling accounts payable
  - Major or unexpected losses
  - Overtrading with little cash
  - Accounts receivables / debtors not being collected
  - Failure to independently verify and safeguard the integrity of financial reporting



# The Director's Insolvency Checklist

Warning signals – Causes of insolvency

- ▶ Inability to adapt to changing environment / market conditions
  - Declining turnover
  - Growth rate less than inflation rate
  - Continued trend of losses
  - Inadequate review and analysis of mistakes
  - Significant loss of market share
  - Company significantly affected by exchange rate fluctuations

# The Director's Insolvency Checklist

- ▶ Loss of key personnel
  - Be careful.. Rationalization of skilled employees could result in disaster (difficult to replace)
  - Skilled staff may assist in managing financial crises
  - When upturn comes.. Will need these people!
- ▶ Monitoring of relationship with financiers
  - Be “proactive” and not “reactive”
  - Monitor levels of credit and overdraft facilities
  - As economic crises prevails, financial institutions will become more circumspect in advancing credit or restructuring loan facilities
  - “First loss is best loss”?
  - Loan portfolios will be carefully managed by all financial institutions



# The Director's Insolvency Checklist

- ▶ General signs of pending disaster
  - Ongoing trading losses
  - Continued failure to meet company commitments to SARS
  - Delayed payment to essential and non-essential creditors
  - Part payment to and installment plans with creditors
  - Dishonoured cheques
  - Artificial valuation of assets
  - Factoring of debts
  - An increase in the incidence of fraud
  - COD terms with suppliers
  - Receipt of letters of demand
  - Summons/actions/winding up notices
  - Continued injection by shareholders of working capital due to insufficient capital requirements
  - Management insisting on the reduced working week
  - Forcing employees to take unpaid leave
  - General despondency



# The Director's Insolvency Checklist

Directors role in failing company?

- ▶ Beware of personal liability
- ▶ Action plan – turnaround management – personal liability? Need for new Business Rescue provisions? (Chapter 6)
- ▶ Trade out of financial difficulties-
  - Is this realistically possible?
  - Emotionally involved?
  - Obtain professional advice
  - Draw up detailed budgets (forecasts) cash flow
  - Change management?
  - Are business objectives realistic?
  - Change company structure
  - Retrench superfluous staff
  - Gearing... additional finance?
- ▶ Board requirements
  - Proper and meaningful feedback from management (budgets)
  - Compile statement of affairs – assess when company has reached commercial insolvency
  - Communicate – employees, shareholders, suppliers, customers, financial institutions



# The Director's Insolvency Checklist

## Golden Rules –

- ▶ Liquidate early (before fingers can be pointed at directors for trading in insolvent circumstances)
- ▶ Don't play the "blame game" .... what happens when the music stops..... ?
- ▶ Be able to "let go"!

# The “Business Judgment” Rule

- ▶ Originated in USA
- ▶ Rule protects directors against being held accountable for business decisions however unwise they subsequently turn out to have been, if they were made on an informed basis, in good faith and without any conflict of interest, and if the decision was rational at the time in all the circumstances
- ▶ Not a “general shield” for director’s from personal liability
- ▶ Complimented by director’s “duty of care”
- ▶ Duty of care always necessary... for example.... if a director failed to verify a set of financial accounts (glaring errors), there could be liability under the duty of care.... in these circumstances the “business judgment” rule would not have application!



# Director's Personal Liability

## Section 424 of the Companies Act (old)

### Section 424 states:

When it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court may, on the application of the Master, the liquidator, the judicial manager, any creditor or member or contributory of the company, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.



# Section 424 of the Companies Act

The ambit of section 424 generally

- ▶ Does it apply prior to winding-up?
- ▶ Normally applies subsequent to winding up
- ▶ “Any business” – Gordon and Rennie NNO v Standard Merchant Bank Ltd 1984(2)SA 519 pg 527



## Section 424 of the Companies Act

“Any Person”

- ▶ Ambit is wide
- ▶ Includes auditors, managers and directors
- ▶ Legal advisors?
- ▶ *Philotex (Pty) Ltd v Snyman* 1998(2)SA 138(SCA), pg 142



## Section 424 of the Companies Act

“Knowingly”

- ▶ Facts must support conclusion that business of company was/is carried on recklessly
- ▶ Knowledge of legal consequences?
- ▶ Positive steps or support/concurrence of reckless conduct
- ▶ Causal link between
  - Relevant conduct; and
  - Debts/liability?
- ▶ Not required (Philotex)

## Section 424 of the Companies Act

“Any business of the company was or is being carried on”

- ▶ Single transaction – attract liability?
- ▶ Gordon v Standard Merchant Bank Ltd (1984)2 SA, pg 519(c)
- ▶ Held –

“When one looks at the words of Section 424(1) in their context, there is... no reason to interpret them in such a way as to exclude a single reckless or fraudulent, transaction from the ambit of the section. The intention of the Act is plainly to render personally liable any person who is knowingly a party to the carrying on of any business of the company in a reckless or fraudulent manner...”



## Section 424 of the Companies Act

“Recklessly”

- ▶ Ordinary meaning
- ▶ Gross negligence (Philotex)
- ▶ Unforeseen consequences
- ▶ Lack of genuine concern for company’s prosperity (Lebowa case)
- ▶ In *Ozinsky NO v Lloyd* 1992(3)SA396, pg 414:

“If a company continues to carry on business and to incur debts when, in the opinion of reasonable businessmen, standing in the shoes of the directors, there would be no reasonable prospect of the creditors receiving payment when due, it will in general be a proper inference that the business is being carried on recklessly.”



## Section 424 of the Companies Act

“Recklessly” cont...

- ▶ Errors of conduct – Mafikeng Mail (Pty) Ltd v Centner (2) 1995(4)SA 607(W) – not result in reckless conduct
- ▶ Objective test (notional reasonable person)
- ▶ Philotex case:

“In the application of the recklessness test to the evidence before it, a court should have regard, inter alia, to the scope of operations of the company, the role, functions and powers of the directors, the amount of the debts, the extent of the company’s financial difficulties and the prospects, if any, of recovery.”



## Section 424 of the Companies Act

“With intent to defraud... Fraudulent purpose”

- ▶ Definition – intent to carry on business for any fraudulent purpose
- ▶ Disposition in terms of Insolvency Act not necessarily result in conclusion that business of company has been carried on with intent to defraud creditors or for a fraudulent purpose
- ▶ Ozinsky NO v Lloyd 1982(3)SA 396



## Section 424 of the Companies Act

“Declare as the court may direct”

- ▶ Declaration – all the debts/liabilities of the company
- ▶ Declaration can occur even if company is able to pay its debts
- ▶ Declaration can occur where there was an intent to defraud a creditor of a person other than the company
- ▶ Purpose of section;
  - Compensatory
  - Punitive

# Section 424 of the Companies Act

## Non-Executive Director

- ▶ Cronje v Stone 1985(3) SA 587(T) – Degree of Latitude
- ▶ Howard v Herringel and Another NNO 1991 (2) SA 660(A)

## Independent stranger

- ▶ Liable in terms of section 424

## Auditor

- ▶ Cannot be liable qua auditor
- ▶ Powertech Industries Ltd v Mayberry 1996(2) SA 742 (W):

“An auditor, while carrying out his statutory functions, is not carrying on the company's business. However negligent his acts or omissions may be, they are not the acts of the company. An auditor may well make himself a party to the company's conduct but... he cannot do so by accident. It would require conduct on his part designed to enable the company to advance his ends or, in other words, collusion. That would require intention on the part of the auditor. Mere neglect, even though it may have the same consequences, is not sufficient. While neglect may provide evidence of deliberation, it is never its equivalent.”  
(Nugent J at 750-751)



## Latest Case on Section 424 (Old Companies Act)

- ▶ SAINIC and others v Industro-Clean (Pty) Ltd and another 2009(1)SA538 (SCA)
  - Philotex Case (1998) followed by Judges of SCA
  - Held, that while it was not necessary to prove a causal link between the relevant conduct and the debts or liabilities for which there was a declaration of personal liability in terms of section 424, the absence of such a proven link was a factor to be taken into consideration by the court in the exercise of its discretion and in order to decide whether such a declaration was, in all the circumstances, just and equitable. (Paragraph [20] at 544G – H).

## **Director's liability**

### **New Companies Act 71 of 2008**

- ▶ Signed into law on 8 April 2009
- ▶ Definite impact on Director's liability in corporate South Africa
- ▶ Section 424 replaced by section 77 (essence remains the same)
- ▶ Coupled with King III, increased levels of corporate governance, the possibility of directors being held personally liable has increased significantly



# Companies Act No 71 of 2008

- ▶ Section 76(3) – a director of a company must exercise powers and perform the functions of a director –
  - in good faith and for a proper purpose
  - in the best interests of the company
  - with a degree of care, skill and diligence that may reasonably be expected of a person
    - carrying out the same functions in relation to the company as those carried out by that director
    - having the general knowledge, skill and experience of that director.

## Companies Act No 71 of 2008

- ▶ Section 76(4) – in the exercise of the powers of the performance of the functions of a director, a particular director of a company will have satisfied the obligations set out in section 76(3) -
  - (i) if the director has taken reasonably diligent steps to become informed about the matter.
  - (ii) the director made a decision, or supported the decision of a committee or the board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company.



# Companies Act No 71 of 2008

What would constitute reasonable diligent steps?

- ▶ Rely on the performance and information provided by persons who have received delegated powers or authority to perform one or more of the board's functions
- ▶ Reliance by the director on financial statements/financial data prepared by the employees of the company
- ▶ Opinions by legal counsel
- ▶ Financial information/statements and data prepared by accountants
- ▶ Any other professional persons retained by the company, the board or committee constituted by the company
- ▶ Level of skill expertise of such person providing information is important
- ▶ Level of that person's competence will be measured against the ability of the director to rely on the information provided
- ▶ The specific expertise of the particular director receiving the information is also important e.g. the marketing director would not have the same level of insight into a set of management accounts as would the financial director!



# Companies Act No 71 of 2008

Reckless trading, conducting the company's business in insolvent circumstances or with the intention of defrauding a creditor – Section 77(3)(b) (replaces old Section 424)

- Section 77 (3)(b) states that any director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having acquiesced in the carrying on of the company's business despite knowing that it was being conducted in a manner prohibited by section 22(1); or has been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of the company, or had another fraudulent purpose.



# Companies Act No 71 of 2008 and Reckless Trading

Section 22(1) states -

“that a company must not carry on its business recklessly with gross negligence, with intent to defraud any person or for any fraudulent purpose; or trade under insolvent circumstances.”



# Companies Act No 71 of 2008 and Reckless Trading

## Role of the Companies and Intellectual Property Commission

Section 22(2) states –

If the Commission has reasonable grounds to believe that a company is engaging in conduct prohibited by subsection (1), the Commission may issue a notice to the company to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.

Section 22(3) states –

If a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.



## Companies Act No 71 of 2008

“Honest or reasonable behaviour” on the part of a director would be a defence to a claim in terms of section 77(3)(b)

Section 77(9) states that in any proceedings against a director, other than for wilful misconduct or for breach of trust, the court may relieve the director, either wholly or in part, from any liability set out in this section or any terms the court considers just, if it appears to the court that the director is or may be liable, but has acted honestly and reasonably; or having regard to all of the circumstances of the case, including those connected with the appointment of the director, it would be fair to excuse the director.



# Companies Act No 71 of 2008

## Application of section 77

- ▶ Does not only apply to directors
- ▶ Applies to an alternate director, prescribed officer (as designated by the Minister), person who is a member of a committee of a board of a company, or of the audit committee of a company  
*irrespective of whether or not the person is also a member of the company's board*
- ▶ Note; director will be sued (in general terms) by “the company” for losses/damage caused to the company



## Companies Act No 71 of 2008

- ▶ Knowledge of prohibited conduct?
- ▶ “Knowing” “knowingly” or “knows” – is defined as “a person either having actual knowledge of a particular matter
- ▶ person who has investigated the matter to an extent that would have provided the person with actual knowledge; or
- ▶ a person who has taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter.



# Companies Act No 71 of 2008

## Evidential investigation

- ▶ Sound business practice (King III)
- ▶ Evidence in such circumstances should speak for itself.... What is reasonably expected of a director when faced with similar circumstances will differ from case to case. Whether or not reasonable behaviour will constitute a defence will have to be looked at with the particular and peculiar circumstances of the issues facing that particular director!



# Companies Act No 71 of 2008

A test for negligence - the standard of conduct of the “notionally reasonable director”

- Look at the concept of the notional director – how would he have conducted himself in a similar situation when faced with the same knowledge and having had access to the same financial information.
- The courts will have regard to the scope of operations of the company, the role, functions and powers of the directors, the amount of the corporate debt, the extent of the company’s financial difficulties and the prospect, if any, of recovery.



# Companies Act No 71 of 2008

## Section 162

- ▶ A director may be declared delinquent if such director grossly abused the position of director or intentionally or by gross negligence inflicted harm upon the company or subsidiary of the company contrary to section 76 or acted in a manner that amounts to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company or as contemplated in section 77 of the Act.



# Companies Act No 71 of 2008

## Company Secretary

- ▶ Section 88 states that a company's secretary is accountable to the company's board
- ▶ The company secretary's duties include -
  - providing directors of the company collectively and individually with guidance as to their duties, responsibilities and powers
  - making the directors aware of any law relevant to or affecting the company
  - reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Act.
- ▶ Company secretaries will therefore also have specific duties to consider when they advise directors in terms of this section
- ▶ Failure to comply could result in company secretaries being held personally liable



# Companies Act No 71 of 2008

## ▶ Criminal liability

Section 214(1)... a person is guilty of an offence if the person...

(c) was knowingly a party to –

(i) conduct prohibited by Section 22(1) (reckless conduct); or

(ii) an act or omission by a business calculated to defraud a creditor... or with another fraudulent purpose

## ▶ Penalties

Section 216... any person convicted of an offence in terms of this Act, is liable-

(a) in the case of a contravention of... Section 214(1).. To a fine or to imprisonment for a period not exceeding 10 years, or to both such a fine and imprisonment; or

(b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment

Note: old Companies Act... limited to imprisonment for 2 years!



# Companies Act No 71 of 2008

Important catch all provision.. of great concern to directors and auditors...

Section 218(2)... Civil Actions... states-

“Any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention”

- Huge and significant consequences for directors... very wide!
- Section 76/77 – can be sued by the “company”
- Section 218(2) – can be sued by “any person!”

## Conclusion

- ▶ Directors and company secretaries must make themselves aware of current developments within the law including the provisions of the new Companies Act
- ▶ The new provisions of the Act and the new King III Code must be read together and will impact on the decision making ability of directors at board level
- ▶ Worldwide there is an expectation that directors' duties to their companies be elevated to ensure that the correct decisions are made for the financial benefit of the company at all times
- ▶ Failure to maintain a particular level of knowledge of these issues can result in directors being severely criticized or alternatively being held liable for the debts of the company for reckless and negligent behaviour.
- ▶ Lastly.... beware of Section 218(2)...!!



Thank you



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