

# Auditor oversight, auditor liability and legal enforceability of standards

Geoff Connor
Chief Advisor
Ministry of Economic Development



## 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)

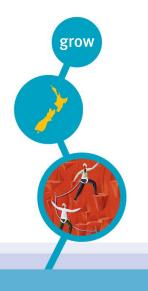
- The criminal law is concerned with the <u>punishment</u> of offenders and the <u>deterrence</u> of others from <u>wrongdoing</u>



- It is intended to punish only that conduct which is in some way <u>blameworthy</u>
- 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

