March 2019

Proposed International Standard on Auditing (UK) 570 (Revised)

Capital Adequacy

and

Going Concern Basis of Valuation (Accounting Policy)

colloquially collectively referred to as "Going Concern"

Exposure Draft

response from

Mira Makar MA FCA, witness

member SME Alliance Ltd

London 14 June 2019

www.inthepublicdomain.net

Extract from FRC request:

"Going concern is one of the fundamental principles in the preparation of financial statements.

In essence, a company that is a going concern is one which has the resources needed to continue operating for the foreseeable future.

The collapse of large companies such as HBOS, BHS, and Carillion has brought into question why such companies had clean auditor's opinions, which included no warnings that the companies were at risk of collapse.

Some enforcement cases conducted by the FRC also found issues related to going concern, (e.g. AssetCo Plc) raising further concerns about the effectiveness of auditors work on going concern."

Publicly accessible reference material

http://tinyurl.com/ParliamentaryCommissionBanking

https://tinyurl.com/FRC-BANKING-PN-8-3-19-MAKAR

https://tinyurl.com/ITNJ-MiraMakarFCA16April2018

https://tinyurl.com/IOSCO-AUDIT-STDS-MAKAR-8-2-18

https://tinyurl.com/BIS-INSS-Insolvency16-7-16

http://tinyurl.com/FRC-Enforcement4May2016

https://tinyurl.com/FRC-Client-Assets31-7-15-MAKAR

http://tinyurl.com/FRC-ClientAssets-FCA-31-7-15

https://tinyurl.com/Reputation-NILawCommFeb15

https://tinyurl.com/EuroCommInsolvencyFeb15

https://tinyurl.com/BIS-INSS-Insolvency-28-3-14

http://tinyurl.com/MoJ-FundamentalRights13Jan2014

http://tinyurl.com/CMA-Auditors24Aug2013

http://tinyurl.com/CompCommAuditors18Aug2013

http://tinyurl.com/BIS-ReformofFRC-Jan2012

http://tinyurl.com/FRCDisciplinaryTribunals

http://tinyurl.com/FRCreCapitalAdequacyDec2011

https://tinyurl.com/Public-Interest-BIS18May2011

https://tinyurl.com/FSA-FRC-EnhancingAudit-29-9-10

*Responses should be sent to **AAT@frc.org.uk** and marked for the attention of **Kate Dalby**.*

*Responses should be received by **5pm on Friday 14 June 2019**.*

Request for Comments

Comments are invited in writing on all aspects of the Exposure Draft of ISA (UK) 570.

In particular, comments are sought in relation to questions 1–10 below:

1. Has ISA (UK) 570 been appropriately revised to promote a more consistent and robust process in respect of the auditor's responsibilities in the audit of financial statements relating to going concern? If you do not consider this to be the case, please set out why?

1. No.

1.1. There is no *"process"* per se that is separate from duty. Duty involves independence verification before offering to take up office. This is to be contrasted with being passively "appointed". It also involves resigning with reasons when independence is lost. This is dealt with in standards on assurance reporting, both direct access (colloquially, statutory auditor duty) and assertion based. Independence includes competence; experience; resources; risk identification; risk mitigation as well as accepting that once a corporate has incorporated, say under the 1985 Companies Act, there is no subsequent "legislation" that can be brought in (or removed, leaving a void) that can operate to dilute its rigour.

1.2. A statutory auditor who is independent designs his own tests to satisfy himself on the issue on which he seeks assurance, for example account opening. These can be either customer accounts or accounts in the name of HVTs (high value targets). They can be made up by using names of deceased or those interested (eg beneficiaries who are uninformed)

2. Do you believe that the revisions appropriately address the public interest?

2. No. This is not correct.

2.1. The relevant vocabulary is duty, not interest. Duty denotes statutory obligation, contravention of which is a statutory offence, with a sufficiently founded statutory cause of action to those harmed as well as rights to invoke a mandatory injunction. This continues to apply even though the Administration Court is now using a box for claim forms and does give receipts.

2.2. The Prosecutor's Code revolves around duty. The Code compels prosecution on sight of sufficiency of evidence. There is a public interest over-ride. This means that where there is covert human intelligence still at work or at risk (meaning the evidence would be contaminated if the prosecutor jumped the gun), then at that point in time the public interest over-ride kicks in.

2.3. The DPP under Alison Saunders attempted to fudge the clear obligation by moving towards an unstated discretionary evaluation requiring two hurdles to be overcome, where the second is secret and the product of the mind of some unidentified unelected person amongst a few called "legal adviser to DPP". This became clear in 2014, when applicants for the post told her she had to make the decision and not attempt to off-load it to side-kicks, operating a discretionary system.

2.4. Under this alternative world even though there was sufficiency of evidence, at risk of contamination due to passage of time, there is a presumption that there is no prosecution unless a second test is passed, that prosecution is "in the public interest". The decision is then in charge of a discretionary test and those concerned must just live with the outcome.

2.5. The key objective of the law, certainty of outcome and curtailment of wrongdoing, is thereby guaranteed not to operate. Uncertainty creates volatility in markets in contravention of the five objectives of the Banking Act 2009, that gave rise to "CASS audits"(FRC work in progress). http://www.inthepublicdomain.net/resources

Objective 1 is to protect and enhance the stability of the financial systems of the United Kingdom.
Objective 2 is to protect and enhance public confidence in the stability of the banking systems of the United Kingdom
Objective 3 is to protect depositors.
Objective 4 is to protect public funds.
Objective 5 is to avoid interfering with property rights in contravention
of a Convention right (within the meaning of the Human Rights Act 1998).
In subsection (4), the reference to the stability of the financial systems of the United Kingdom includes, in particular, a reference to the continuity of banking services.
The order in which the objectives are listed in this section is not significant;
they are to be balanced as appropriate in each case.

2.6. The DTI/BIS/BEIS Criminal Teams have the identical obligations to the DPP. In March 2012 when the Department was busily shutting down the Office of Fair Trading, which with Trading Standards was prosecuting, without either Equalities Act or Human Rights consultation, it proceeded to line up the FRC to create yet another world called "conduct". None of the responses to its Call were published, although they were plentiful, and a list of respondents was at the back of its summary of responses, so the public could tell who it was who was being ignored. MPs who had encouraged constituents to provide evidence were lifted with hope.
http://www.inthepublicdomain.net/in-the-news
Right Honorable Mark Field MP Cities of London and Westminster - Eliciting evidence from Mira Makar in her assistance to Parliament using her own circumstances 18 January 2012
Right Honorable Mark Field MP Cities of London and Westminster - Eliciting evidence from Mira Makar in her assistance to Parliament using her own circumstances 18 January 2012.pdf

Letter of encouragement and hope:
https://tinyurl.com/Mark-FieldMP-reFRC-March2012

2.7. The FRC was promoted to UK Competent Authority in summer 2016. In anticipation it asked the public how it should enforce its pivotal position going forward on behalf of the UK.

2.8. The replies from the public included this witness, who suggested that enforcing compliance with the EU Directive 1984 requiring the state to start a register for statutory orders would be a good place to start (see FRC website for replies and below link).
http://tinyurl.com/FRC-Enforcement4May2016

3. Will the revisions promote a more robust process for:
a) Obtaining an understanding of the entity and its environment, the applicable financial reporting framework and internal control relevant to going concern?
b) Obtaining sufficient appropriate audit evidence in relation to the adequacy of management's assessment

3. No.

3.1. The concept of an "entity" does not apply. The auditor is an office holder. It is for him to determine the scope of his work, including all network arrangements, counterparties, supply chain, risk elimination, underwriting. Managing supply chain risk is only just emerging in places such as HSBC. If your supplier is intent on making money by destabilizing you, there is little you can do about it because they may well control your bank accounts either directly or indirectly, eg by providing the FSA with an assurance report on internal controls, that is not justified, as 2003 start-up PricewaterhouseCoopers LLP did in July 2004 in regard HBOS, which was draining customer accounts of cash i.e. internal controls did not exist. PwC reported as statutory auditor on the customers of HBOS, blaming them for controls break down, and reporting adversely under the Companies Act. PwC should have provided a "letter to management" saying, *"did you know the bank has drained all your capital and is seeking to impose an "overdraft" on you, so you are working for the bank not your shareholders and the market?"* However they neither turned up nor looked.

3.2. An auditor shall report means to those charged with the governance of an enterprise. This is in a "letter to management", covered by statutory confidentiality. The omission to provide this is a statutory offence because there is duty. This is not new. Clerk LJ *".....the jury have found all of you guilty, not of fabricating and falsifying the balance sheets, but of uttering and publishing them, knowing them to be false."* City of Glasgow Bank 1879.

4. In making an assessment of going concern, the directors are required to consider a period of at least 12 months. In evaluating the directors' assessment should the auditor be required to consider a longer period, and if so what should it be?

4. This is not correct. No third party can tell directors how long is sufficient. That is because the buck stops with them.

4.1. All one can say is documented forecasts must not be less than two years, in order that there is confidence for twelve months. "Going concern" is short for "going concern basis of valuation". Where the criteria are not met another basis must be selected, for example, break-up valuation. As a result, two years is used for share re-purchases. Toppling one day after one year means that break-up not going concern is the correct accounting policy.

4.2. The Listing Authority requires a statutory auditor to review that this exercise has been done under the Listing Rules. Those masquerading as "auditors" will send in a junior to watch with copy papers but keep their mouth shut. The directors proceed in the belief that (i) the person sitting in the room with the papers has in fact "ticked" them to the underlying figures from which they have (supposedly) been extracted; and (ii) there has been both a controls audit and compliance tests on the machinery for generating the forecasts.

Officers presume that, were this not the case, the person sitting watching them, would open their mouth and say something useful, such as *"I have not seen any of these before, nor do they resemble anything I have seen."* However were they to say this, they would have to concede that they had never looked to see how management reports were extracted; may not even have turned up on site; and that their "Reporting Accountant's Report" to the Sponsor was a work of fiction, intent upon *"getting it away",* earning a fee, and providing the Sponsor with an auditor's report of their own to seal the pipeline.

4.3. "*Pump and dump*" emerges. This requires an incinerator apparatus at the back-end of the product construction. This targets tangible assets churned twice, the first at under value, so all involved secure commission and recover cash outlay as well as provide extra layering, with the rest branded collateral damage or the *"inevitable consequences"* of an underlying failure.

4.4. Directors are not warned by the Authority (or anyone else) that those masquerading as "auditors" do not consider management reports and how they are prepared. Therefore the directors and officers can end up doing their work based on reports the masqueraders can neither explain nor tick to the books.

4.5. There is a bizarre notion that is sometimes aired that directors should not rely on the work of the auditors. It is a nonsense. That is because the statutory auditor investigates the books of prime record to ensure that they exist and that they reflect the activities of the enterprise as the auditor has determined them to be, with an independent mind.

4.6. By this mechanism, the "watching" exercise is a charade. It enables the masquerader to say "I watched the officers go through motions labelled "*review of going concern basis of valuation.*" It does not give directors the assurance to which they are entitled in statute or even under the Listing Rules. Indeed the masqueraders sometimes go to shareholders directly, invite them to their offices to look at papers with numbers no one can explain, and use that to *"tick the box."*

4.7. An auditor shall report means to those charged with the governance of the enterprise: there must be a "letter to management" if the controls are not established, tested and pass compliance testing. If the auditor knows directors are looking at *"a load of old huey"* (per Fiona Kelsey PwC "director" April 2005) which does not correlate to the books of prime record, the auditor shall report to officers. That way the directors can repair the situation promptly. However directors may find there is a repeat pattern and they have to sack the office holder. The office holder loses independence because his commercial interests contradict his statutory duties. Commercially he will want to keep mum to cover on the past, to avoid risk and jeopardising other customers and income as well as revealing previous wrongdoing in circumstances by then outside his control.

4.8. Parliament is considering the "disinformation" that results when office holders default. This includes the chaos because their past and its consequences is outside their control.

> *Digital, Culture, Media and Sport Sub-Committee on Disinformation Oral evidence: Disinformation, HC 2204Wednesday 5 June 2019 Ordered by the House of Commons to be published on 5 June 2019. Members present: Damian Collins (Chair); Clive Efford; Julie Elliot; Julian Knight; Ian C.Lucas; Brendan O'Hara; Jo Stevens. Questions 1-55*
> *Witness I: Aaron Greenspan, President and CEO of Think Computer Corporation.*
> *Q10 Ian C. Lucas: Are you suggesting that these fake accounts are created in any way by Facebook,*
> *or are they created by other organisations? Aaron Greenspan:* ***No, I am suggesting that they are created by other organisations but, once Facebook is aware of their existence, it has almost no incentive to eliminate them. In fact, it has an incentive to keep them active, because that helps its bottom line.***
> *Q14 Brendan O'Hara: Would it be fair to say that you believe that Facebook are unwilling rather than unable to tackle the problem, and the reason why they would not seek to tackle the problem is, as you mentioned to Mr Lucas, that they are incentivised not to do so? Aaron Greenspan: I would put it this way, again using the Chernobyl metaphor. Once your reactor blows up, there is not much you can do to fix it—it has exploded.* ***The problem is that if you make a good faith effort to remedy the situation, you may inadvertently disclose the fact that crimes were committed before the explosion. And in this case I think that is what we are looking at. I think crimes were committed that led us to where we are today.*** *I don't think it is possible to disrupt democracy in the way Facebook has without committing crimes.*

4.9. Second, capital adequacy verification is not the same as the accounting policies in regard going concern basis of valuation. A company can stop trading and be asset rich. Its estate has to be valued at break up value because that is what it is about to do, break-up. It automatically passes capital adequacy verification because it is asset rich.

4.10. An auditor must make an adverse report where capital adequacy is insufficient and consider a disclaimer. Where accounting standards are skewed, to enable a bust platform as RBS (2008), to "borrow" customer assets, to revalue, to improve its numbers, contingent future liabilities are inevitably created. Predators emerge to pin losses on some innocent.

5. Is it sufficiently clear from the revisions to the standard that the auditor is required to first identify whether there are events or conditions that may cast significant doubt on the entity's ability to continue as a going concern before considering whether there are factors which may mitigate those events or conditions?

5. No.

5.1. The exercise is factual. The answer is black and white. There are no factors to be "balanced". The exercise is carried out by directors severally, not the auditor. The auditor loses independence if he gets involved. What is inside his head when he is evaluating capital, is his business and his business alone (same as his working papers). It would be impertinent and dangerous to attempt to double-guess his thinking, or even to tell him what to think.

5.2. BIS ended up in court over Farepak, because it did not tackle fraudulent trading; the inflating of DMG to dump on the market (2000); the use of central accounts to control cash; or the bullying of directors by HBOS. HBOS was held to be collecting money from the public outside escrow or any safe-custod, to take for itself. There was a PwC/BDO "pre-pack" before limitation.

BEIS's policy of allowing wrongdoing, allowing catastrophe, then issuing D Notices (notified by CIB intelligence from 2005) was exposed, with no relief to the public and a bill reported as £20m. Rather than giving up "business" (meaning transactions) and focussing on law enforcement, BIS closed the OFT in 2012, ending prosecutions under the Enterprise Act 2002. This itself abolished administrators, who had operated qua company, to keep things going in an orderly way. This created chaos, with a particular crescendo from January 2013. This was when the BIS Select Committee required the department to revert, concerning its activity in pulling corporate and private estates, operating machinery to facilitate such and block curtailment or come-back.

5.3. There is an accumulated backlog in compulsory winding up in the public interest from at least 2005, which does not go away by the Crime team payroll being transferred to Sarah Albon.

6. Do the proposals sufficiently support the appropriate exercise of professional scepticism throughout the risk assessment procedures, evaluation of management's assessment and evaluation of audit evidence obtained?

6. No

6.1. There is misunderstanding about how the auditor goes about the discharge of his duties. Books and records are a black and white issue. Either they exist or they do not. Either they are sufficient to ascertain the financial trading position of the enterprise at all times or they are not. The answer is binary, either "yes" or "no". Either the auditor has looked or he has not looked. Either his eyes are shut or open when he looks. He cannot look in a way which is sceptical as opposed to one which is not. His duty is to (1) turn up; (2) look with his eyes open; (3) report on him self and what he has found. This evidence was elicited by and provided by Mark Field MP City & Westminster to Secretary of State and others on 18 May 2011.

https://tinyurl.com/Public-Interest-BIS18May2011

6.2. If the auditor's report depended on someone's frame of mind, at the time of turning up. Looking, reporting, then they must be identified and a medic's report provided to explain, together with the benchmark against which he is being assessed.

7. Do you agree with the proposals for auditors of all entities to provide an explanation of how the auditor evaluated management's assessment of going concern (including key observations) and to conclude on going concern in the auditor's report?

7. No

7.1. There is misunderstanding about how the auditor goes about the discharge of statutory duty and the nature of the relationship. First the statutory auditor is an office holder, the same as a director and a company secretary. He is therefore not separate from the company, he is part of the company. He does not evaluate management's assessments. He evaluates management, as to whether they are fit, because they are severally part of the internal controls that he has to identify and test, before deciding he can do compliance testing or is stuck with 100% substantive testing.

7.2. To do this, he himself has to be fit. Management cannot tell whether he is or is not fit because we do not as yet have a statutory register of statutory auditors as required by EU Directive 1984, so they cannot look them up. There has been a scramble to get branded an auditor, which FRC has got up in, from starting "quality reviews" of audits rather than auditors. It may have got this sorted out by mid 2016 when it became the UK Competent Authority.

8. Are the requirements and application material sufficiently scalable, including the ability to apply ISA (UK) 570 (Revised) to the audits of entities with a wide range of sizes, complexities and circumstances?

8. No.

8.1. Scaleable applies to the design of large complex IT systems, where the core design must factor the essential scaling. It has no relevance to being fit to be on a register, turning up, having your eyes open when you look, reporting what you find, and reporting adversely if it is not what you expected, independently evaluated, or you were obstructed or did not have explanations.

8.2. Persuasive audit evidence must be written. Reliance on a letter saying "I have shown you everything" is not worth a candle as a substitute for looking.

8.3. The auditor is obliged to get his evidence from the horse's mouth. This means that from the day he takes up office he must advertise that fact, otherwise those with evidence do not know where to take it. The courts are familiar with blind eye knowledge, ie knowing who has evidence and avoiding them. However BDO has set a new standard, from 10 August 2016. Those voting against their auditor's report and re-appointment get their proxy voting cards destroyed and get removed from the list of shareholders. There is danger in allowing those not on a statutory register to reporting on the main market. This is especially those who specialise in de-stabilising customer bases, as Chilterns and PKF LLP which BDO took over, and/or using the AIM market to create further AIM de-stabilisers (Arden Partners, WH Ireland) on whom they "report" as "auditor.

8.4. That is called *"having your cake and eating it."* The bereaved are prone to objecting. They might even resort to turning to the Competent Authority for guidance, where before they went to OFT, who always knew what to do, as SHELTER. There is delay at this stage because the FRC has employed foreigners on its switchboard who do not know what it does or who its staff are and put the phone down.

9. Do you agree with the proposed effective date (aligned to the effective date of ISA (UK) 540 (Revised December 2018)?

9. No.

9.1. The fundamentals have not changed since the end of the nineteenth century at least. Any publication by FRC should point to this material and pull it together, without using acronyms. Otherwise no-one will understand what they are saying and will lose interest before spending time either looking up acronyms or even investigating the body or individual who made them up.

This is too much like hard work for most people without much, if any, reward. Most decide to just leave it to a disconnected overhead person and moan about “regulation”. When they see that BIS did not publish responses to its March 2012 consultation, they cut their efforts. “Regulation” appears to mean “conduct” and an alternate world that has no relevance to private estates and no mechanism to impose it on the hapless public.

9.2. FRC should know what directors and shareholders know. This is that no-one reads or believes financial statements because they are too long and, once they have seen who the executives are and the purported reporting accountant, the credibility and authenticity determines whether one will read further. The more reports are included, the less likely one will be inclined to start. If counterparts, insurers, critical suppliers are not named in the notes, the report will be labelled “there is no balance sheet”. Based on public company approaches, that is the reaction from investors and acquirors from at least 2005. The collapse of debt ladden Logica in May 2012, to Canadian bank funded notional Canadian acquirors, marks a low point from which UK engineering, intelligence, defence, space cannot recover. This witness made a subject to contract offer to buy Logica in the latter 1980’s and has continued in those markets.

9.3. This lack of credibility in reports especially applies to those reports which record that an operation is carrying incalculable risk by having “non executives”. These are, in fact, executives because they make decisions, such as to publish accounts and issue announcements on the regulated news service of the stock exchange group plc. Either a person is a director or they are not. Non exec’s can be very destabilizing by removing or bullying out CEOs, despite objections by investors, importantly causing the CEO to depart without the underlying issue being made public. A (non exec) director who objects to CEO leadership must resign with reasons (market signal).

9.4. Directors are indemnified under the articles, so that if they go, they make a full statement of the reasons, and financially, they are remunerated just the same as if they had continued. Directors cannot be financially disadvantaged as a result of telling the truth. Where they are maliciously defamed with falsehood, they have no choice but recourse to the courts.

9.5. The Supreme Court delivered a useful clarification this week, and gave Warby J the accolade of being "cogent and consistent" at first instance, which was upheld. The link is here:

hxxps://www.supremecourt.uk/cases/docs/uksc-2017-0175-judgment.pdf

The authority is important because it recaps the consequence of malicious falsehood which is sufficient to found a cause of action. This means the right to restitution and reparation is guaranteed in law, regardless of whether there has been indictment and curtailment or not.

They cite a famous passage:

"In a frequently quoted passage of his speech in Broome v Cassell & Co Ltd [1972] AC 1027, 1071, Lord Hailsham LC acknowledged that this

"... may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge ..." "

Resignations of office-holders

9.6. A director's resignation or departure is a vital market stabilizing signal. This works by ensuring that market news flow is complete and accurate, is not omitted and does not put a false panic into the market. This is the meaning of "confidence in markets". It is de-stabilizing and undermining of markets where the CEO is ousted and has made no statement. The market needs to hear from him directly unfiltered by intermediaries.

https://www.thisismoney.co.uk/money/comment/article-6521219/BIG-SHOT-WEEK-Ousted-London-Stock-Exchange-boss-Xavier-Rolet-returns-lead-hedge-fund-CQS.html

Plainly the same applies to the Company Secretary and the statutory auditor.

9.7. The offence-type with which FRC is concerned is knowingly publishing false reports. This includes altering the members register, so that those reporting against the auditor's report and re-appointment are removed from the shareholder's list, their proxy poll votes excluded, they are omitted from major holders' lists, they do not receive further voting cards, report and accounts, dividends. In essence the "auditor" becomes shadow director making up the statutory registers.

> **Clerk LJ** *".....the jury have found all of you guilty, not of fabricating and falsifying the balance sheets, but of uttering and publishing them, knowing them to be false."*
> *City of Glasgow Bank 1879*

9.8. BIS has already dealt with this subject in February 2015, under the Coalition government. The responses to the Call for Evidence is on the government website as well as other places. It is important that the UK Competent Authority is up to speed with the position as at 1879, so that if someone asks, such as the Minister, they can be quick off the mark, not distracted by "conduct".

9.9. The principle in law and the courts is that officers go to prison where they publish an account which they know is not true. Officers are directors, company secretaries, auditors.

https://tinyurl.com/EuroCommInsolvencyFeb15

> *Extract16. Is there anything in the UK regime which supports rescue finance which is not in the Commission's Recommendation but delivers the Commission's objective?*
> 16.1. There is no such thing as "rescue finance". There is risk capital.
> *17. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime?*
> 17.1. No. The UK does not (but should) oblige agents to (i) be licensed in accounts preparation, (ii) reveal the identity of their principals, (iii) record independence verification or (iv) sign their reports in their own name. This is the basic protection of the public by the state. The state omitting to

deliver that protection is where it all goes wrong. State obligations cannot be outsourced or left to the private sector.
BIS allows Chartered Accountants (independent) to be "IPs" (agents) despite the fundamental contravention of the respective institute's by-laws. It permits disciplinary to be carried out by those being disciplined or their colleagues (the vested interests). It has created micky mouse "tribunals" which permit auditors to sign off on mixing of client monies by banks. Tribunals have allowed barristers to invent the notion of an "HONEST MISTAKE", which under FSMA 2000 or the Companies Act would be reckless or knowing conduct. 17.2. None of this has brought BIS credibility, nor has allowing "Limited Liability Partnerships" to facilitate arbitrage including globally; raising the threshold for audit; or not filing for compulsory winding-up of manufacturers and vendors of tax evasion product. There is no certainty that wrongdoers are prosecuted, or curtailed with proceeds of crime disgorged.
17.3. The signals are of a wholesale abdication of the obligation of the state to protect, regressing the country to before the **jailing of the directors of the City of Glasgow bank, 1879**. It was not necessary to prove beyond reasonable doubt that they had personally made each entry in the books for them to be found guilty. The reports of Chartered Accountants were relied on. The case gave certainty of outcome on financial statements which were false.
17.4. One hundred and thirty five years later, the "regime" is operating in reverse: instead of holding wrongdoers to account, including for false accounting by banks and insurers thereby giving confidence to all concerned, "policy" has been (i) to paper over what is there; (ii) operate illegal bail-outs without any theoretical basis for expecting them to stabilize anything; and (iii) run like fury to promote asset stripping the nation. The only conceivable purpose is to create balance sheets for banks and "insurers" that do not otherwise exist, by incentivizing those agents "skimming" through layered securitization, without audit or ownership trail.
17.5. In one fell swoop, confidence in banking systems and the public market has gone with equities trading now virtually obsolete. A central bank (BoE) that admits to the Treasury Select Committee its variance in Central Bank reserve requirement could be 1/3 trillion pounds and would take over six months to establish, is one which is saying "we do not know".
17.6. It is against this background that the dogged determination to "pull down" and exclude the voice of objectors (estate owners and those interested) must be considered.
17.7. The danger of the approach adopted by authors of this "consultation" is in ignoring this context and instead to forge ahead with promoting the government taking over the courts; turning them into gambling casinos; with "probability outcomes" underwritten by the estate of the "loser", using "lawyers" who are in fact financially interested transaction managers.
17.8. With all that has been thrown out and ex MoJ policy staff now resourcing the post of CEO of the Insolvency Service, the required independence of the judiciary has effectively all but gone. The process is unstoppable. Judiciary are resourced from barristers who themselves experienced this industry as indemnified agents and function no differently.
17.9. As a result the basic principles of access to law and findings of contempt, when access is blocked, have gone, the very principles that in 1900 were very well known and certain.
17.10.BIS must stop and re-think, if confidence is to be restored and earned by certainty.
- **13 –of 23 -** RESPONSE TO BIS CALL FOR EVIDENCE: European Commission Recommendation on a new approach to business failure and insolvency-17 March 2015 (minor updates April 2015)

10. Do you agree with the withdrawal of Bulletins 2008/1 and 2008/10 as set out in paragraph 1.20? Is there guidance in these Bulletins which has not been included in the revised standard which remains useful and should be included?

10. Yes. There needs to be re-work of the lot, separating capital adequacy verification from going concern basis of valuation. FRC needs to be very clear what the position is without debt.

10.1. These bulletins should be withdrawn, as they confuse "illiquidity" with "bust" (eg RBS by October 2008, which had its head in the sand). "Credit crunch" is a vernacular term which has no

place in guidance on law and publishing true accounts. “Going concern” is not an assumption. The concept of “obtaining finance” is not clear: does it mean borrowing (as it speaks of “lenders”)?

10.2. By 2007, platforms were a decade into their stride in making up bank accounts using customer or HVT (high value targets) identities, as though there were a loan advanced. This was immediately deposited with the platform, when in fact no money had moved. “Money” was thereby “created”. Money deposited to redeem security disappeared. Property was treated as though it belonged to the platform. They could also create ten or fifteen year notional principal amounts with a notional lock-in to swap payments as a mechanism to assume global risk and profit by off loading onto an estate whose bank accounts were under the platform’s control. This arrangement triggered commission as a “loan” and reward as a performing investment, sometimes called a “loan asset”. Loans are contracts. Loan is a noun not an adjective. This needs unbundling.

EXTRACT 2008/1
GOING CONCERN
One impact of the ‘credit crunch’ may be to limit finance available to companies and other entities, with, in extreme cases, potentially serious consequences in relation to the ‘‘going concern’’ assumption. Past experience of obtaining necessary financing cannot be relied on alone to provide sufficient evidence of an entity’s ability to obtain financing in the future. Lenders may be more risk averse when considering whether to provide or renew finance facilities and may establish new criteria and/or may increase interest rates.

11. What mechanisms should the FRC employ to ensure there is widespread awareness of the Director’s responsibilities in respect of going concern?

11.1. The UK Competent Authority has not addressed itself to directors as yet, and how to protect themselves, their supply chain, their staff, customers and market from transaction facilitators and operators on multiple platforms masquerading as “statutory auditor”.

11.2. At present the BEIS approach carries the load associated with “conduct” to which the public has not subscribed. FRC has no mechanism to jeopardize rights and reliefs by running an alternative to law enforcement and referrals to DPP, OFT (re-opened), Trading Standards, police.

11. Impact assessment

11.3. After the 1984 directive has been implemented, and there is a statutory register of auditors maintained by a reopened OFT, from which an auditor can be excluded, impact can be evaluated. Seemingly picking on individuals from ethnic minorities has not gone unnoticed.

The witness thanks the FRC for the opportunity to give evidence to assist it in its discharge of its public duty as both the UK Competent Authority, and the regulatory and policy arm of the Department of Business, Energy and Industrial Strategy, including Companies House and INSS.

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