Going Concern Disclosures
Submission from Charlotte McLoughlin, solicitor

I personally have no substantive comments on the proposed change to the Accounting Standard. There are several important 'terms of art' included in there, very familiar to accountants but on which I'm just not qualified to comment, and so will not. There will be many accountants who will be doing this.

My general comments however are below. These comments reflect my thought that the changes proposed seem generally consistent (or at least not inconsistent) with the changes made recently to two of the directors' duties that predominantly concern solvency and so very much linked to the continued existence, or otherwise, of the company. There is obviously a clear benefit to directors in these duties, and the G/C assessment, being generally consistent. I realise my comments do not address the specific, fairly technical, questions asked in the consultation paper.

- As general proposition, my instinct – as a lawyer – is to encourage greater certainty as to the meaning or interpretation of key terms. In the present case, this would seem to benefit many parties: the company or business about whom the "going concern" statement is being made; the directors / managers who are making those statements; the accounting and assurance professionals who are tasked with helping the company or business prepare and audit its accounts; buyers of businesses who rely on a "going concern" assessment. I can't see a reason why any greater certainty that can be offered as to how "going concern" is described, even if only to require disclosure of matters which present uncertainty to the G/C assessment, should not be offered.

- The fact of the C-19 crisis only makes the need greater, but also in practical terms still hard to achieve – events have moved fast, and the only real certainty is that there will be more uncertainty as to when the domestic economy will get back to "normal" and indeed as to what that "normal" will look and feel like. Ultimately, only the directors / management will be able to form any sort of view as to future viability of the company / business, and so the judgment has to remain with them, albeit perhaps with some recognition of the highly unusual events that have come upon us. My swift reading of the proposed changes to the AS are that this is recognised by the new standard – and that the directors must articulate in the financial statements were there are any uncertainties about whether the G/C status is sound.

- Changes made to the Companies Act earlier in the year, for a similar reason, took a generally similar approach – but without the disclosure element. The 'problem statement' was that the Government did not want directors simply shutting businesses down because of the sheer fact of uncertainty – and so "snowballing" the likely economic effect of the C-19 crisis. Changes were sought to help directors navigate the (assumed temporarily) shifting landscape, and also have the confidence to keep the company running through the difficult period. Hence, changes were made to two key directors' duties that, if not able to be met, leave the directors no real option but to close the business. Those changes clarified to directors that if the company was "profitable" (I use that term generally) before C-19 hit, and the directors were reasonably confident that the company would be "profitable" again by a certain date in the future (a date presumed / hoped to be when the economy was back on some sort of level), then directors would not be in breach of their duties in relation to incurring obligations, and as to reckless trading. The Companies Act changes to do not required directors to formally disclose issues they are concerned about, but in making the necessary assessments directors must still to be able to identify what the issues facing the business are, know that they are related to the C-19 crisis, and form a view that the issues are likely to be solved within the stated time frame. So

the assessment is still, necessarily, in the hands of the directors who must make the necessary calls, but they have been given some leeway as to the specific C-19 matters.

- The Government made clear throughout the crisis that the Government's response (reflected in legal, regulatory and policy measures) could not save every business and every job. And ultimately also, the law (and relevant regulations) cannot hope – and nor should it – to legislate in detail for sudden shocks. Absent a decision that "government will fund every business" (which very clearly is not the case) all that can be done is to offer as much clarity as is reasonably possible on what (in this case) "going concern" means in the post-C19 world, while also recognising that commercial and business life has to go on.

- It seems to me, as a layperson, that the changes proposed to the going concern standard do what they can do, in the circumstances. First, the change retains the principle that it is for directors / managers to form the relevant views. Second, the changes seek to help directors / managers (and their advisors) form a reasonably held view that the G/C assessment being made now, in the wake of the C-19 crisis, is sound and if there are any doubts, then to explain them clearly to allow others to form their own views as appropriate. Finally, and I think importantly, this approach is generally consistent (or at least not inconsistent) with the approach taken vis a vis the legal issue of solvency in the Companies Act. A position otherwise would make things impossible / untenable for the directors from a legal perspective.

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