

FIJI INSTITUTE OF ACCOUNTANTS
SUBMISSION ON COMPANIES BILL (BILL NO.3 OF 2015)
Mar-15

Section	Companies Bill Provision	Comments /Suggestions
Page 33	Carrying on business	<p>The current definition means a place of business in Fiji which carries on business in Fiji</p> <p>(1)Does this mean that companies registered under this Act but have not commenced business are not required to comply with provisions of this Act (in particular Part 32)?</p> <p>(2)Does this mean that a company incorporated under this Act but operates an overseas branch (carrying on a business outside Fiji) is not required comply with provisions of this Act (in particular Part 32)?</p>
19(1) 19(2)	<p>...less than \$5m...</p> <p>...less than \$20m...</p> <p>The provisions in section 19 used to determine the category that a company falls in is insufficient and may not be able to capture the real large companies which may have revenues under the threshold in each of the categories but may have significant major assets. For argument a company may have turnover of 3 million but net assets of 25 million. How can this company be termed as small company.</p>	<p>Add "or equal to" so that the amount of \$5 million is covered under this definition</p> <p>Add "or equal to" so that the amount of \$20 million is covered under this definition</p> <p>It is suggested that Provisions used by Fiji Institute of Accountants be adopted. This would not only take a much more granular approach to determine the true small, medium and large companies but will also be able to determine the real small, medium and large companies in a more substantive manner. This is very important as there are related compliance costs in each of these categories. The intention ought to be to allow the small companies to grow rather than engaging them with too much of compliance which would impact growth of our SMEs, being major contributors of our economy. We attach a copy of Provisions used by FIA to determine which entity should use international reporting standards.</p>
61(1)	<p>Part 8 Foreign Companies Financial statements</p> <p>Subject to this section, a registered foreign company must, at least once in every calendar year and at intervals of not more than 15 months, lodge a copy of its:</p> <p>a) Balance sheet made up to the end of its last financial year</p> <p>b) Cash flow statement for its last financial year and</p> <p>c) Profit and Loss statement for its last Financial Year,</p>	<p>The wording should be the same as that of financial statements defined in Section 3.</p> <p>The requirements for foreign companies should be the same as those for Fiji incorporated companies.</p> <p>For commercial sensitivity and confidentiality reasons we do not agree with the filing of financial information for private companies.</p>
101(5) (b)	<p><i>Approval of Remuneration and Other Benefits</i></p> <p>Reasonable grounds did not exist for the opinion set out in the certificate given under subsection (3), the Director or former Director or Associate of a Director or former Director to whom the payment, loan, credit, guarantee, contract or other benefit of a financial nature is made or given, as the case may be, shall be personally liable to the Company for the amount of the payment, loan, credit, guarantee, contract or other benefit of a financial nature or an amount equal to the monetary value of the benefit, except to the extent to which he or she proves that the payment loan, credit, guarantee, contract or other benefit of a financial</p>	<p>It seems an associate can be personally liable despite having no knowledge of the internal compliance of the Company</p>

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106	Duty to exercise reasonable care, skill and diligence (2) ... that would be exercised by a reasonably diligent person [our emphasis] ...	Is this a stricter test than the “reasonable person” test? And should it be?
115	Reduce schedule 7 penalty of 5 years maximum imprisonment for breach of Section 115. We suggest that the penalty be a monetary fine and not a prison term.	The penalty of 5 years prison is harsh. The effect of this penalty will likely be that persons will not be willing or become a director of a company as they may be sentenced to 5 years prison for breach of section 115.
122(2)	RESTRICTIONS ON INDEMNITIES AND INSURANCE Except as provided in this section, a Company must not Indemnify, or directly or indirectly effect insurance for, an Officer of the Company or a Related Body Corporate in respect of: (a) liability for any act or omission in his or her capacity as an Officer of the Company; or (b) costs incurred by that the Officer of the Company in defending or settling any claim or proceeding relating to any such liability. (3) An indemnity given in breach of this section is void.	Suggest that legal input (from Fiji based legal firms) be obtained in review of this section. Restriction on Indemnities and insurance - may result in person (s)/professionals not willing to take up Director(s) appointment.
125(1)	<i>Right of Access to Company Books</i> A Director of a Company may inspect the Books of the Company, other than its Financial Records at all reasonable times for the purposes of a legal proceedings.	It seems that an existing director cannot inspect financial records, but a past director can. The provision should be reviewed and updated.
174	This section requires minutes to be prepared and kept in the minute book within 28 days of a meeting. The Act must recognize that such minutes will only be draft minutes, as they will only become a formal record of that meeting once approved at the following meeting.	Draft minutes only become an approved record of a meeting once it is approved at the following meeting.
204	Reduce schedule 6 penalty of \$120,000 for breaches of section 202 and 203, which relate to redemption of redeemable preference shares.	Breaches of sections 202 and 203 would not be considered serious. We suggest that the penalty be reduced accordingly.
219	Reduce schedule 6 penalty of \$120,000 for breaches of section 216 and 217, to share capital reductions and subsequent solvency requirements.	Breaches of sections 216 and 217 would be serious but penalty seems too harsh. Reduce the penalty accordingly
234(4)(d)	Exempted Financial Assistance A discharge on ordinary commercial terms of a liability that the Company incurred as a result of a transaction entered into on ordinary commercial terms	It seems employee share schemes are not exempt. Needs review to ensure employee scheme is covered under exemptions
235	Reduce schedule 6 penalty of \$120,000 for breaches of section 232, which prohibits financial assistance by a company for acquiring shares in the company or the holding company.	Breaches of section 232 would be serious but penalty seems too harsh. Reduce the penalty accordingly

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388 (2)	Medium Private Companies should prepare Financial Statements if required by the accounting standards. The Act currently states that MPC's must prepare Proforma Financial Statements, which are not defined yet.	MPCs are likely to be required to prepare financial statements under IFRS for SMEs. It would be simpler for compliance purposes to make MPC's comply with Accounting Standards, as these may change over time. Also the Minister would not have to specify the format of Proforma Financial Statements which would need to regularly change to keep up with changes to the Accounting Standards.
388(3)	Small Private Companies should prepare Financial Statements if required by the accounting standards. The Act currently states that SPC's must prepare Proforma Financial Statements, which are not yet defined, if it is controlled by a Foreign Company; or if it is directed to prepare Financial Statements by the Registrar or shareholders (s389).	SPCs are likely to be required to prepare financial statements under IFRS for SME's. It would be simpler for compliance purposes to make SPCs comply with accounting standards, as these may change over time. Also the Minister would not have to specify the format of Proforma Financial Statements which would need to regularly change to keep up with changes to Accounting Standards.
389	The Act currently allows 10% of the votes in a Small Private Company to direct the company to prepare Financial Statements; change 10% to a majority of votes (more than 50%).	A direction for the company to prepare Financial Statements should be made on the approval of a majority of the votes, as with any major decision by the company, not by a 10% minority.
395 (b)	This section requires a Director to sign the Directors' Report within 7 days after Auditors Independence Declaration is made under section 395.	For practical reasons this may not be possible. It is suggested that this be changed from 7 days to 21 days.
395 (c)	This section requires the Audit Report to be made within 7 days after the Directors' Report is signed.	The Bill currently requires an individual (not Firm) to sign the Audit Report. This could create practical problems if the individual is not available for signing. FIA view is that the Auditor Report be signed in the Firm name and any Registered Auditor from within that Firm could sign the Audit Report.
396 (1)	Auditor's Report	to read "An auditor who audits the Financial Statements for a Financial Year must prepare a report under Part 32 of this Act to members"
398	Reporting to the Registrar	Definitions to this Act to include the following: -"Reasonable grounds" -"Material contravention"
403(1)	All private companies (Large, Medium and Small) should not be required to lodge an Annual Report or Financial Statements or Proforma Financial Statements with the Registrar. The Act currently requires all companies that are required to prepare an Annual Report or Proforma Financial Report (that is, public companies, large Private Companies and Medium Private Companies) to lodge an Annual Report with the Registrar.	Private companies' information is, by definition , private to the members and directors of the private company. Such private information should not be made available to or lodged with the Registrar. Although the Registrar is required not to make Annual reports of the Private Companies available, the fact that these private companies Annual Reports will exist in the Registrar's office may lead to inadvertent disclosure to the Public. Such public disclosure of private information will prejudice the private companies, as such private information may be commercially sensitive and contain strategic company information that may benefit competitors. This sensitive information would include names of suppliers, customers, trading terms, preferential arrangements, gross margins, net margins and a host of other sensitive Data. Alternative approach: A DISCLOSURE SIMILAR TO SPSE REQUIREMENT IS SUGGESTED. COPY ATTACHED.
403 (1) (continued)	This section also requires the lodgement of Annual Report or the Proforma Financial Statement with the registrar within 4 months after the end of the Financial year.	There may be instances due to which the Annual Report or the Proforma Financial Statement may not be ready within four months. This may be due to natural disasters, fire or other external factors. It is suggested that four months after year end be extended to six

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		months after financial year end. It is also suggested that there be provisions available in the Act for the Registrar to grant further extension of time which should not be unduly withheld.
403 (3)	The Registrar to make annual reports publicly available, except the Annual Reports of Private Companies.	To include" Proforma Financial Statements" also not being made publicly available by the Registrar.
425 (2) (b)	This section deals with Auditors consent to appointment and part 2 (b) requires that sign in his or her own name.	The engagement of an auditor is usually with the Firm and not with an individual person. Therefore , "(b) in his or her own name" should be removed. (Refer to comments under Section 395 above.)
427 (3)	This sections requires an auditor to make representations within 7 days in case of receipt of notice of removal.	It is suggested that the 7 days be changed to 14 days.
486	Remove penalty of imprisonment (1 year maximum) for breach of this section, which relates to failing to account for loss of part of a company's property. Suggestion is to replace it with a monetary fine.	The breach of this section may be a result of an accounting error or the deliberate fault of employees of the company. It is unfair to penalize the Officers of the company with a prison sentence in such a situation, when such matters may be outside their day to day control.
487	Remove penalty of imprisonment (1 year maximum) for breach of this section, which relates to not keeping proper books and records for the relates to not keeping proper books and company. Suggestion is to replace it with a monetary fine.	The breach of this section may be the fault of the employees or other persons tasked with keeping books and records (deliberate or not). It is unfair to penalize the Officers of the company with a prison sentence in such a situation, when such matters may be outside their day to day control.
No Section	Preparation and filing of Annual Return	This Bill does not require the filing of an Annual Return with the Registrar. Intent of this? (Loss of revenue generation.) FIA view is that the filing of an Annual Return assists users of this information to confirm a company's directorship, shareholding and indebtedness amount.
No Section	Penalty provisions	To include a penalty provision for CPP holders and non CPP holders that carry out audits without Auditor Registration under Part 33 of the Bill.