

## **PRESENTER**

### **Brendan Lyne, Chartered Accountant, Auckland, BCom, MBA (distrn), MBS (Finance), AAMINZ, CA, CMA, CSAP**

Brendan is a corporate finance partner with Grant Thornton with more than 30 years' experience. A significant portion of his time is spent on relationship property expert opinions, including business and share valuations, economic disparity, bundle of rights and evidence in respect of trusts.

Before joining Grant Thornton, Brendan was a principal and director of Frankham Lyne Ltd, a boutique valuation and litigation practice.

He has written and presented various papers on valuation and financial management, including a co-authored discussion paper for the Institute of Chartered Accountants of New Zealand. His research for his Master in Finance was the valuation of unlisted vs listed companies and businesses.

Brendan is an experienced expert witness and has been appointed by the Courts and New Zealand Institute of Chartered Accountants as such. He also prepares expert evidence in the areas of economic damages assessments, forensic accounting, valuation and other financial matters. He has regularly appeared as an expert witness in the High Court and Family Court and other tribunals.

## **LEGAL COMMENTATOR**

### **Robyn von Keisenberg, Barrister, Auckland**

Robyn is a barrister at Wyndham Chambers in Auckland. She is a family law specialist with over 25 years' experience during which time she has developed a broad practice with special interest in relationship property, Family Protection Act proceedings and related trust issues.

Robyn is senior counsel on Lawyer for Child and Lawyer for Subject Person lists and has represented children in trust disputes (including *X v X* [2009] NZCA 399). She has served on and convened a number of Law Society Committees and was Chair of the Deportation Review Tribunal for a number of years.

# CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1. DEMYSTIFYING FINANCIAL STATEMENTS.....</b>	<b>3</b>
INTRODUCTION .....	3
BASIC UNDERSTANDING OF FINANCIAL STATEMENTS .....	3
REVIEWING AND READING A SET OF FINANCIAL STATEMENTS .....	4
<i>General observations</i> .....	4
<i>Income statement</i> .....	5
<i>Balance sheet</i> .....	7
THINGS TO LOOK FOR WHEN REVIEWING A BALANCE SHEET.....	8
CONCLUSION.....	9
<b>CASE STUDY 1 – VINOVIVO LIMITED.....</b>	<b>11</b>
BACKGROUND.....	11
EXERCISE 1.....	26
<i>Questions:</i> .....	26
<b>2. VALUATION THEORY AND PRINCIPLES .....</b>	<b>27</b>
OVERVIEW .....	27
KEY QUESTIONS TO BE ANSWERED IN ANY VALUATION.....	27
VALUATION SUBJECT – THE “WHAT?” .....	28
DATE OF VALUATION – THE “WHEN?” .....	28
VALUATION PURPOSE – THE “WHY?” .....	29
<i>Hatrick v Commissioner of Inland Revenue [1963] NZLR 611</i> .....	30
<i>Z v Z (No 1) [1989] 3 NZLR 413</i> .....	30
<i>Wilkinson v Wilkinson [1991] 8 FRNZ 1</i> .....	30
<i>Newman v Newman [1999] NZFLR 839, (1999) 18 FRNZ 413</i> .....	30
<i>Gilfoyle v Gilfoyle (HC, Auckland AP 32-SW01, 3 September 2001, Laurenson J)</i> .....	31
<i>Z v Z (No 2) [1997] 2 NZLR 258</i> .....	31
STANDARDS OF VALUE.....	31
FAIR MARKET VALUE .....	31
FAIR VALUE .....	32
CONCLUSION.....	33
TIME VALUE OF MONEY.....	33
VALUATION METHODS .....	34
<i>Figure 1: Valuation methodologies:</i> .....	35
COMPONENTS OF VALUE (THE VALUATION EQUATION) .....	35
<i>Figure 2: Enterprise value and company value</i> .....	36
VALUATION METHODOLOGY – INCOME-BASED APPROACH .....	36
<i>Discounted cash flows</i> .....	36
<i>Figure 3: DCF Example:</i> .....	37
CAPITALISATION OF EARNINGS .....	37
<i>Figure 4: Example of earnings used in a capitalisation of earnings:</i> .....	39
<i>Figure 5: Capitalisation of earnings example:</i> .....	39
VALUATION METHODOLOGY – ASSET-BASED APPROACH .....	40
<i>Net assets valuation – re-valued assets</i> .....	40
<i>Notional liquidation</i> .....	40
VALUATION METHODOLOGY – COMPARATIVE VALUATIONS .....	41
<i>Market comparisons with actual transactions</i> .....	41
<i>Rules of thumb</i> .....	41
WHEN ARE DIFFERENT VALUATION METHODS USED? .....	41
<i>Figure 6: When various valuation methodologies tend to be used:</i> .....	42
<b>3. APPLYING VALUATION PRINCIPLES.....</b>	<b>43</b>
IS A COMPANY OR BUSINESS WORTH VALUING? .....	43
STEPS IN ASSESSING WHETHER A BUSINESS IS WORTH VALUING .....	43

EXERCISE 2.....	44
<i>Is VinoVivo Ltd worth valuing?</i> .....	44
<i>Exercises</i> .....	44
<b>CASE STUDY 2 – SCANCO LTD .....</b>	<b>47</b>
EARNINGS-BASED VALUATION .....	47
BACKGROUND.....	47
SCANCo LTD INCOME STATEMENT.....	48
SCANCo LTD BALANCE SHEET.....	49
EXERCISE 3.....	49
<i>Earnings-based valuation</i> .....	49
EXERCISE 4.....	50
<i>Earnings-based valuation</i> .....	50
<i>Normalisation adjustments</i> .....	50
<i>Required</i> .....	51
<i>Table 1</i> .....	51
EXERCISE 5.....	52
<i>Earnings-based valuation</i> .....	52
<i>Surplus assets</i> .....	52
<i>Interest-bearing debt</i> .....	52
<i>Additional information</i> .....	52
<i>Exercise</i> .....	52
<i>Table 2</i> .....	53
<i>Table 3</i> .....	53
<i>Table 4</i> .....	53
EXERCISE 6.....	54
<i>Earnings-based valuation</i> .....	54
<i>Value of ScanCo shares</i> .....	54
<i>Table 5</i> .....	55
<i>Discussion point</i> .....	55
EXERCISE 7.....	55
<i>Earnings-based valuation</i> .....	55
<i>Table 6</i> .....	56
<i>Discussion point</i> .....	56
<b>4. ECONOMIC DISPARITY .....</b>	<b>57</b>
FACTUAL BACKGROUND .....	57
<i>Comment</i> .....	58
THE LEGISLATION: S 15 .....	58
CRITICAL ISSUES .....	59
DATE OF ASSESSMENT .....	59
THE ELEMENTS OF S 15.....	59
“SIGNIFICANT” DISPARITY .....	60
“INCOME” .....	60
“LIVING STANDARDS” .....	60
ONUS OF PROOF.....	61
CAUSATION.....	61
DISCRETION .....	61
QUANTUM.....	62
<i>Figure 7:</i> .....	63
STEPS IN CALCULATING ECONOMIC DISPARITY (BASED ON THE APPROACH IN <i>X v X</i> ADOPTED BY THE COURT OF APPEAL): “BUT FOR” DISPARITY .....	64
<i>Steps</i> .....	64
COMMENTARY .....	65
ALTERNATIVE APPROACHES TO QUANTIFYING A S 15 CLAIM.....	66
<b>5. VALUATION OF TRUSTS.....</b>	<b>67</b>
INTRODUCTION .....	67
VALUATION OF TRUSTS .....	67
SECTION 44C COMPENSATION FOR PROPERTY DISPOSED OF TO TRUST .....	68
PACKAGE OF RIGHTS IN A TRUST .....	69

ADDITIONAL MECHANISMS FOR OVERCOMING THE USE OF TRUSTS .....	72
CLAIMS UNDER S 182 .....	72
<b>6. MISCELLANEOUS VALUATION ISSUES.....</b>	<b>75</b>
SECTION 9A – WHEN SEPARATE PROPERTY BECOMES RELATIONSHIP PROPERTY .....	75
SECTION 9A(1) .....	75
SECTION 9A(2) .....	76
<i>Rose v Rose [2008] NZFLR 167 (CA)</i> .....	77
SECTION 18B COMPENSATION FOR CONTRIBUTIONS MADE AFTER SEPARATION.....	78
<b>7. HOW TO TRACE ASSETS .....</b>	<b>81</b>
INTRODUCTION .....	81
CONCLUSION.....	82
<b>8. OBTAINING THE BEST OF YOUR EXPERT.....</b>	<b>83</b>
CHOOSING AN EXPERT.....	83
FEES AND COSTS .....	84
MANAGING YOUR EXPERT.....	84
CROSS EXAMINATION.....	85
<i>Preparing for cross-examination</i> .....	85
AREAS FOR CROSS-EXAMINATION .....	86
<b>9. WHY VALUERS DISAGREE AND STRATEGIES TO DEAL WITH THIS SITUATION .....</b>	<b>89</b>
WHY VALUERS MAY DISAGREE .....	89
STRATEGIES FOR DEALING WITH DISAGREEMENT BETWEEN VALUERS.....	90
<b>APPENDIX 1.....</b>	<b>91</b>
9.43 EXPERT WITNESS TO COMPLY WITH CODE OF CONDUCT .....	91
9.44 COURT MAY DIRECT CONFERENCE OF EXPERT WITNESSES.....	91
9.45 STATUS OF JOINT WITNESS STATEMENT BY EXPERT WITNESSES.....	92
SCHEDULE 4.....	92
<i>Code of conduct for expert witnesses</i> .....	92
<i>Duty to the Court</i> .....	92
<b>BIBLIOGRAPHY .....</b>	<b>95</b>
<b>REFERENCES.....</b>	<b>97</b>