

Companies Act 1993 section 194(1) states that 'the board of a company must ensure that accounting records are kept at all times'. This essay will discuss the requirements of the Companies Act 1993 and the consequence of the failure by a board of directors of a company to comply with the requirements of this act.

Section 194 states that accounting records must be accurate (correctly recorded), ensured to comply with generally accepted accounting practice (if applicable) and fit to be readily audited. Additionally, the board of a company must establish and maintain a satisfactory system of control of its accounting records.

Companies are required to ensure that these accounting records are maintained as so they meet their purpose outlined in Section 194 of the Companies Act 1993.

If a company does not comply with Section 194 of the Companies Act 1993, not only is the board of directors liable to a criminal offence (outlined in s 194(3)), but the board of directors may be also liable for a civil offence. If the board has been determined to breach their duty to the company and the company must close in an insolvent liquidation (assuming it has been determined that failure to keep accounting record has contributed to insolvency) then the directors at fault may be required to sacrifice personal assets to meet the financial obligations of the company.

This is observed in *Central Tyres Waipukaru (in liq) v Pallesen* [2016] NZHC, where the director of Central tyre was found to have breached their duty to the company as the director knew company was failing and continued to increase financial obligation to creditors and the company was going into liquidation with inaccurate accounting records adding to insolvency. The resulting liability is that the director of the company incurred under s 300 for breaching Section 194 of the Companies Act 1993 was the total debts and liquidation cost of the company.

Another example of the consequence of breaching Section 194 of the Companies Act 1993 is *Maloc Construction v Chadwick* (1986) 3 NZCLC 99,794. In *Maloc Construction v Chadwick* (1986) 3 NZCLC 99,794, the director of the company was found to have breach their duty to the company and the company was going into liquidation with inaccurate accounting records adding to insolvency as the accounting record kept were not fit for purpose. As a result, the director was liable for the total debts and liquidation cost of Maloc Construction under s 300 for breaching Section 194 of the Companies Act 1993.

In conclusion, the requirements of the Companies Act 1993 is that companies must keep accurate accounting record fit for purpose as outlined in section 194. If they fail to meet section 194 in the event that the company liquidates under insolvency and the director has been found to have breached their duty to the company. Not only are the directors liable to a criminal offence but as found in *Waipukaru (in liq) v Pallesen* [2016] NZHC and *Maloc Construction v Chadwick* (1986) 3 NZCLC 99,794 the directors may have to sacrifice personal assets to meet the financial obligations of the company.