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Corporate insolvency law in New Zealand

2021

Corporate insolvency law in New Zealand

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5 professionals

Specialists in:

Receiverships

Administrations

Liquidations

Restructuring solutions

Creditors' compromises

Debt recovery

Securities enforcement

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Advice on director liability

Voidable transactions

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IFLR 1000 RECOMMENDED FIRM 30th EDITION

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"The team took the time to understand all of the complexities of the situation. They asked the "right" questions to unearth important information that wasn't initially provided. With their experience and expertise, they were able to help us come up with solutions that we wouldn't have come to on our own or with any other legal team."

"They came across as genuinely wanting to help us achieve the desired outcome and this made us feel very supported during such a difficult time. They were compassionate with us but had "teeth" when it came to executing on instructions. They were clear experts in their respective areas of the law and this was brought to bear with us achieving an overwhelmingly positive outcome."

Legal 500 Asia Pacific 2021

Key points about corporate insolvency law in New Zealand

There are three key procedures which are used in corporate restructurings and insolvencies in New Zealand:

- Liquidation
- Receivership
- Voluntary administration

Other options available in New Zealand include formal and informal compromises and business debt hibernation. In rare circumstances, statutory management may also be appropriate.

The detail

Liquidation

A liquidator is appointed to wind up the affairs of a company. The principal duty of a liquidator is to take possession of, protect, realise, and distribute the assets (or their proceeds) of the company to its creditors and to distribute any remaining surplus to the company's shareholders or whomever else is entitled to such surplus.

The process of liquidation is governed by Part 16 of the Companies Act 1993. A liquidator can be appointed by the High Court, by special resolution of shareholders, by a resolution of directors upon the occurrence of an event specified in the company's constitution, or by resolution of the creditors passed at the watershed meeting. Once a company is in liquidation, an unsecured creditor cannot, without the permission of either the court or the liquidator, start or continue any legal proceedings against the company or its property, or start or continue to enforce rights against the property of the company.

Liquidation does not prevent secured creditors from exercising their rights, although certain preferential creditors are paid before general security holders from the proceeds of inventory and accounts receivable.

A liquidator will investigate the affairs of the company (to the extent that funding allows) and may bring claims for the purpose of recovering additional funds to increase the overall dividend to creditors. The liquidator must give regular reports to every known creditor, shareholder, and to the Registrar of Companies. A liquidation is complete when the liquidator sends a final report and various other documents to all creditors, shareholders and the Registrar of Companies.

Receivership

Receivership is the appointment of a receiver under the terms of a security agreement to manage or realise secured assets for the benefit of the security holder that appointed the receiver. In some circumstances, receivers can also be appointed by the Court.

The legislation governing receiverships in New Zealand is the Receiverships Act 1993. In a private receivership, assets are realised by the receiver for the benefit of the secured creditor who made the appointment of the receiver, but certain preferential creditors are paid before general security holders from the proceeds of inventory and accounts receivable. A receiver is required to give public notice of their appointment and must provide reports during and at the end of the receivership.

Voluntary administration

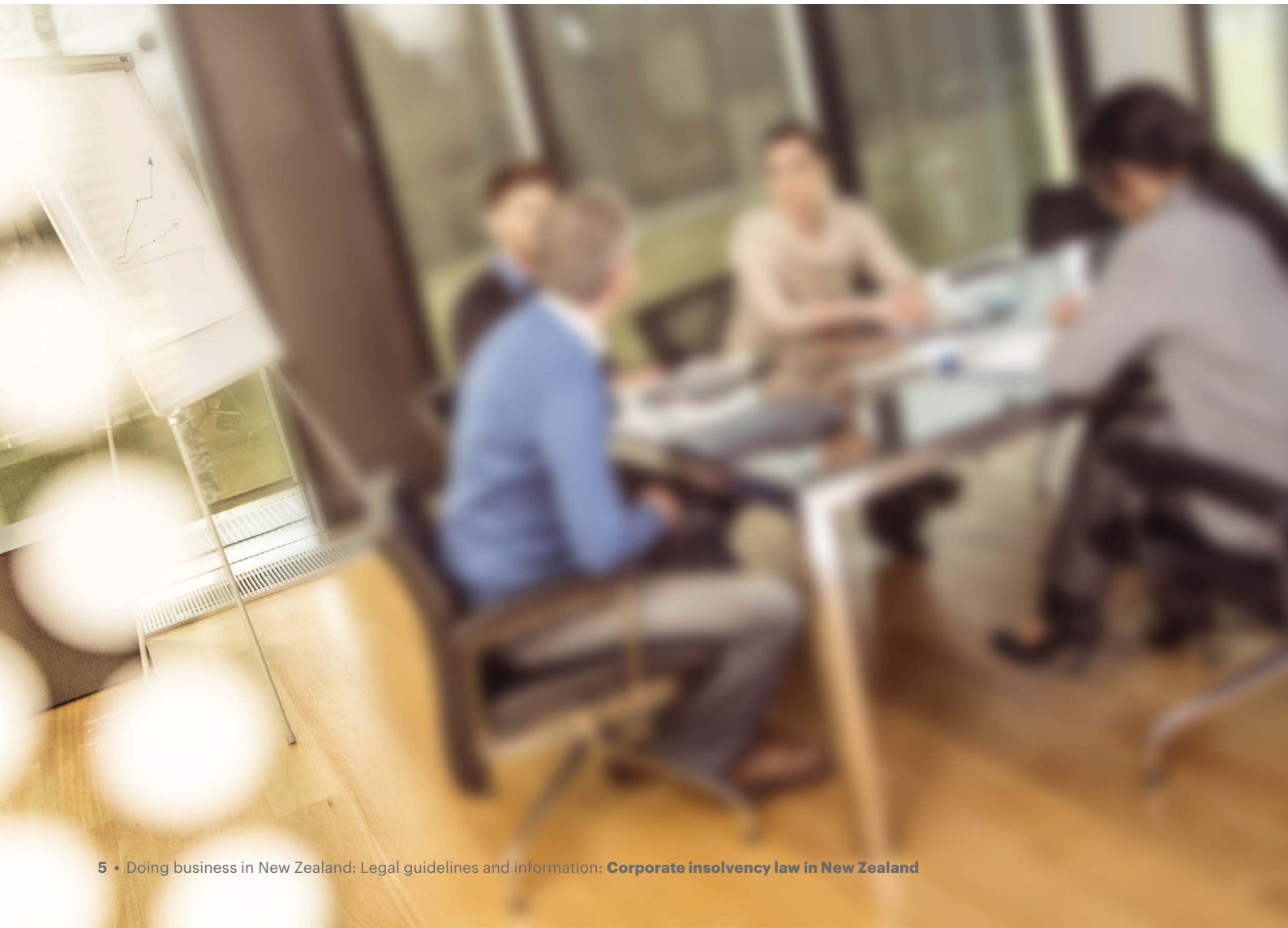
Voluntary administration involves the appointment of an administrator to assess a company's affairs and options going forward.

Voluntary administration is governed by Part 15A of the Companies Act 1993. The objective of voluntary administration is to provide for the affairs of an insolvent company, or one that may become insolvent, to be administered in a way that:

- maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- if it is not possible for the company or its business to continue in existence, would result in a better return for the company's creditors than would result from an immediate liquidation.

An administrator may be appointed by the Court, a liquidator (if the company is in liquidation), the company's directors, or a secured creditor holding a charge over the whole, or substantially the whole, of the company's property. If a company is in liquidation, the appointment of an administrator will suspend the liquidation. The appointment of an administrator does not remove a receiver from office.

Once an administrator has been appointed, a moratorium comes into force, preventing anyone from bringing or continuing proceedings against the company or enforcement processes in relation to the company's property without the administrator's consent or court permission (with some exceptions). This is to give the company breathing space to allow the administrator time to assess whether the company should enter into a deed of company arrangement (an agreement setting out how the company will be run and how it will pay creditors), be placed into liquidation, or come out of administration.



For more information contact

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How we can help you

Our team are specialists in all areas of restructuring and insolvency, including:

- Acting for insolvency practitioners in relation to all aspects of their appointments, including advising on priority disputes and PPSA issues.
- Acting for creditors in relation to claims and other matters.
- Acting for directors and business owners on liability issues.
- Advising foreign creditors and foreign insolvency practitioners on cross-border insolvency issues, and assisting them with recovery of assets in New Zealand.

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