



NZLS CLE Ltd
Continuing Legal Education
New Zealand Law Society



FORUM INSOLVENCY UPDATE

May 2021

Sound discussion of insolvent companies and the directors' duties, with practical examples and related cases.

INSOLVENCY UPDATE

FROM THE CHAIR

3.5
CPD hours



Accelerating corporate insolvencies and the associated economic fallout are unfortunately likely to be a continuing consequence of the COVID-19 pandemic for many businesses. This forum will provide assistance with making sense of the key developments in this rapidly changing landscape and also provide you with tools to identify clients who may be in financial difficulties and what options might be available to them.

Peter Watts QC

PROGRAMME

8.30-9.00

REGISTRATION

9.00-9.05

INTRODUCTION TO THE DAY: Chair – Peter Watts QC

9.05-10.15

FORUM PART 1: DISPUTE RESOLUTION

- Arbitration of insolvency-related disputes
- Farm debt mediation.

Presenters

*Dr Anna Kirk
Scott Abel*

10.15-10.55

FORUM PART 1: TWILIGHT ZONE ISSUES

- Directors' duties, particularly ss 131, 135-137
- Overview of the *Mainzeal* in the CA and implications
- Protection for directors (s 138 and safe harbour rules).

Presenter

Scott Barker

10.55-11.20

MORNING TEA

11.20-12.00

FORUM PART 1: TWILIGHT ZONE ISSUES CONT'D

- Duties of directors of insolvent companies at common law—first principles (s 131)
- Overview of *Re Debut Homes Ltd* and implications.

Presenter *Peter Watts QC*

12.00-12.35

FORUM PART 2: RESTRUCTURING - PRACTICAL PERSPECTIVES

- Overview of warning signs
- Restructuring options in a COVID-19 environment.

Presenters *Kare Johnstone*
Scott Abel

12.35-1.00

FORUM PART 2: PANEL DISCUSSION AND CONCLUSIONS

- Relief for personal liability for directors, *Virgin* case - UK
- Potential to expand on safe harbour
- The s 301 discretion
- Round up.

Presenters *Scott Abel*
Scott Barker
Dr Anna Kirk
Kare Johnstone
Peter Watts QC

LEARNING OBJECTIVES

By attending this forum you will:

- Be brought up to date with recent developments on the law of directors' duties in insolvency.
- Gain insights into the use of ADR in the solving of insolvency disputes.
- Develop expertise in knowing what experienced insolvency practitioners can do to assist the restructuring of businesses in difficulty.

WHO SHOULD ATTEND

Civil litigation, company/commercial, in-house counsel.

CHAIR

Peter Watts QC, Barrister, Bankside Chambers, Auckland

Peter Watts QC practises at Bankside Chambers in Auckland and has an advisory practice at Fountain Court Chambers, London. He taught company law at the University of Auckland for over 30 years before moving full-time to the bar in 2017. Peter is a Visiting Professor at the Law Faculty of the University of Oxford and Senior Research Fellow at Harris Manchester College, Oxford. He is an author of *Company Law in New Zealand* (2nd ed), *Heath & Whale on Insolvency* and *Bowstead & Reynolds on Agency* (22nd ed). He is regularly engaged to advise and act in complex insolvency litigation. Peter was lead counsel for the cryptocurrency coinholders in *Re Cryptopia Ltd* (in liq) [2020] NZHC 728.

PRESENTERS



Scott Abel, Partner, Buddle Findlay, Auckland

Scott specialises in insolvency and debt restructuring, corporate and secured finance, and specialist personal property security and credit recovery advice. He advises and has acted for domestic and foreign banks, financial institutions, insolvency professionals and other organisations on receiverships, liquidations, administrations and workouts. Scott is particularly recognised by the market for his leading expertise in Personal Property Securities (PPS) law, often advising banks, insolvency practitioners and other firms and barristers on complex PPS matters. He regularly writes and presents papers on a range of insolvency and credit enforcement topics, and is a contributing editor to *Heath & Whale on Insolvency*, New Zealand's leading insolvency law text. In 2015, Scott became the first New Zealander to pass the INSOL Global Insolvency Practice Course and be recognised as a Fellow of INSOL International.



Scott Barker, Partner, Buddle Findlay, Wellington

Scott specialises in litigation and insolvency law. He advises both private and public sector clients. He acts on a range of litigation assignments including contractual disputes, tort claims, insurance, property, trust and shareholder disputes, judicial reviews and investigations, as well as a wide range of insolvency related assignments. Scott has appeared in the District and High Courts, Court of Appeal, Supreme Court and Privy Council and has also been involved in mediations, expert determinations and arbitrations.



Kare Johnstone, Partner, McGrathNicol, Auckland

Kare, a restructuring and insolvency specialist, is a partner at McGrathNicol. She has been appointed to numerous high profile and complex insolvency engagements, including but not limited to Dick Smith, TopShop, Nandos, Torchlight, CBL Insurance and Huka Lodge. Kare is a member of CAANZ, a Licenced Insolvency Practitioner, and on the Boards of RITANZ (Restructuring Insolvency & Turnaround Association New Zealand) and INSOL International.



Dr Anna Kirk, Barrister, Bankside Chambers, Auckland

Anna is a commercial arbitrator, adjudicator and barrister at Bankside Chambers, with particular expertise in international arbitration and public international law. She spent a number of years working in international arbitration in London and has more recently worked closely with Sir David Williams QC. Anna is a contributing author to *Williams & Kawharu on Arbitration*, teaches international arbitration at the University of Auckland and holds a PhD in international law from the University of Cambridge. Anna is a Fellow and Council Member of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) and a Fellow of the Chartered Institute of Arbitrators (UK). She also sits on a number of arbitral panels, including AMINZ, the New Zealand Dispute Resolution Centre and the Singapore International Arbitration Centre (reserve panel).

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