CHAIR



Polly Pope, Russell McVeagh, Auckland

Polly is a litigation partner and Chair of the Russell McVeagh partnership. Her areas of expertise include class actions, restructuring and insolvency, construction, and financial regulatory disputes. Polly is a Fellow of the Chartered Institute of Arbitrators (UK) and of the Arbitratots' and Mediators' Institute of New Zealand.

SPEAKERS



Nina Blomfield, Simpson Grierson, Auckland

As a commercial litigation partner Nina acts for major corporates, directors, regulators and government entities in complex disputes involving company and financial markets law, shareholder and contractual arrangements, regulatory matters, and class actions. She also advises clients in relation to regulatory investigations and enforcement action, as well as competition law issues in business acquisitions. Nina was recognised as a Rising Star in The Legal500 Asia Pacific 2021.



Jenny Cooper QC, Barrister, Auckland

Jenny is a commercial barrister specialising in financial services and insolvency, company and securities, fair trading, and competition law. She is ranked by Chambers and Partners as one of New Zealand's top QCs and is listed in Doyle's Guide as one of New Zealand's leading insolvency and restructuring barristers. Jenny is also a co-founder and inaugural President of Lawyers for Climate Action NZ Inc. a group of over 300 lawyers who have come together to advocate for legislation and policies to ensure New Zealand contributes its fair share in the global effort to limit global warming to 1.5°C.



Liz Gellert, Lowndes Jordan, Auckland

Liz is a partner at Lowndes Jordan focusing on commercial litigation and has acted for corporates, insurance companies, banks, and finance companies. In addition to having extensive experience delivering contentious and strategic legal advice, she worked in-house at ASB Bank leading the Disputes and Regulatory Change legal team for nearly four years and has hands-on practical knowledge of providing legal advice in a corporate environment.



Paul Hay, BNZ, Wellington

Paul is BNZ's General Manager of Regulatory Affairs and previously held a number of roles in the bank, including Head of Secretariat. He is a lawyer, with approximately 25 years' experience in the banking and financial sector across the UK and New Zealand. Recently, Paul helped lead BNZ's response to the FMA/RBNZ Conduct and Culture review of banking and insurance sectors. In his capacity as GM Regulatory Affairs, he monitors both New Zealand and overseas jurisdictions for emerging trends in regulatory and legislative reform, including conduct related expectations and obligations on directors and senior managers of financial institutions. Paul is based in Wellington.

SPEAKERS



Matthew Kersey, Russell McVeagh, Auckland

Matt leads Russell McVeagh's restructuring and insolvency practice area and is a Russell McVeagh Board member. He specialises in general commercial litigation and insolvency, restructuring and finance litigation, and his practice includes advising banks and trustees in relation to structuring and enforcement of security, recovery, insolvency and restructuring strategies and banker/customer disputes. Matt is a member of Insol: the International Association of Insolvency professionals, and has previously been a Board member of Restructuring, Insolvency & Turnaround Association New Zealand (RITANZ).



Dr Anna Kirk, Barrister, Auckland

Anna is a barrister and arbitrator at Bankside Chambers, with particular expertise in international arbitration and public international law. She is New Zealand's member on the ICC Court of International Arbitration and a Fellow and Council Member of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ). Anna regularly acts as arbitrator or counsel in international and domestic commercial arbitrations. She also has considerable experience in investment treaty arbitration, having worked closely with Sir David Williams QC for several years. Anna is a contributing author to Williams & Kawharu on Arbitration, co-lectures a Masters paper on international arbitration at the University of Auckland and holds a PhD in international law from the University of Cambridge.



Dione Miller, BNZ, Wellington

Dione is BNZ's Head of Legal – Dispute Resolution, Regulation and Investigations. Before moving to BNZ in 2014, she worked in private practice with a strong commercial focus on financial services, securities enforcement, and consumer protection, and advised the receivers of several finance companies which collapsed following the GFC. Dione also holds a board position for a Wellington-based not for profit organisation.



Nathaniel Walker, Russell McVeagh, Auckland

Nathaniel's practice spans all aspects of commercial litigation and dispute resolution. He returned to Russell McVeagh in late 2017, following a stint in New York practising at leading firm Cravath, Swaine & Moore LLP. Drawing on his local and international experience, Nathaniel acts on complex private and public law disputes, with particular focus on corporate/commercial matters, statutory claims, and equity and trusts. He has notable expertise in cross border disputes.

CONTENTS

GOVERNANCE IN FINANCIAL CRISIS – DIRECTORS' DUTIES IN THE TWILIGHT ZON	ΙΕ 1
Introduction	3
STATUTORY PROVISIONS AND BRIEF HISTORICAL FORAY	4
DEBUT HOMES – SUPREME COURT DECISION	6
MAINZEAL	12
LESSONS ARISING FROM DEBUT HOMES AND MAINZEAL	
POSSIBLE OPTIONS FOR REFORM	
Conclusion	
Appendix 1	
CONDUCT RISK GOVERNANCE FOR BOARDS – CULTURAL ACCOUNTABILITY FROM THE TOP DOWN	
BOARD RESPONSIBILITIES – THE MACRO	30
BOARD RESPONSIBILITIES – THE MICRO	
Conclusion	38
MANAGING REGULATORY INVESTIGATIONS	39
A PRACTICAL GUIDE TO SOME KEY ISSUES FACED BY CORPORATES IN MANAGING REGULATORY	
INVESTIGATIONS	
SUPPORTING AN INTERNAL INVESTIGATIVE AND REMEDIATION PROCESS	
APPENDIX A – SERIOUS FRAUD OFFICE V EURASIAN NATURAL RESOURCES CORP LTD [2018] EWCA C	
2006	
APPENDIX B – COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS V CITIGROUP GLOBAL MARKETS AUSTRALIA PTY LTD [2021] FCA 511	
AUSTRALIA FTY LTD [2021] FCA 311	93 61
CLIMATE RELATED RISKS FOR CORPORATES	63
SNAPSHOT OF THE CURRENT SITUATION	65
NEW ZEALAND'S EMISSION REDUCTION TARGETS	
TYPES OF CLIMATE-RELATED RISKS	
CLIMATE-RELATED FINANCIAL DISCLOSURES	
DIRECTORS' DUTIES IN RELATION TO CLIMATE-RELATED RISKS	
POTENTIAL LIABILITY AND LITIGATION RISK	
OTHER ISSUES	
CONCLUSION	
RESPECTING, PROTECTING AND PROMOTING HUMAN RIGHTS: THE ROLE OF BUSI	
Introduction	85
WHAT IS HUMAN RIGHTS LAW?	
THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS	
STATUTORY OBLIGATIONS – MODERN SLAVERY AND ESG DUE DILIGENCE	
POTENTIAL LIABILITY UNDER TORT AND COMMON LAW	
CODES OF CONDUCT	93
Degot more	0.4