

PRESENTERS



Michael Harper, Chapman Tripp, Auckland

Michael focuses solely on restructuring and insolvency and acts for banks, insolvency practitioners, distressed companies, distressed debt and special situations participants, and acquirers of distressed assets. He holds a BA, LLB (Hons) from the University of Canterbury and worked for Allen & Overy in Hong Kong, London, Bangkok and Tokyo. For more than 15 years Michael has acted for all of the major New Zealand banks.



Janko Marcetic, Chapman Tripp, Auckland

Janko advises clients on a variety of commercial disputes, with a particular focus on restructuring and insolvency. He has experience advising insolvency practitioners on complex issues arising in the course of receivership, liquidation and administration, including claims against directors and third parties by insolvency practitioners. Janko has also acted for directors of companies facing both civil claims and regulatory charges. He has appeared as counsel in the District Court, High Court and Court of Appeal.

CONTENTS

1. INTRODUCTION	1
2. LEGISLATIVE INTERVENTION IN NEW ZEALAND AND OVERSEAS IN RESPONSE TO THE COVID-19 PANDEMIC	3
NEW ZEALAND	3
NZ “Safe Harbour” Provisions	3
BUSINESS DEBT HIBERNATION (BDH)	4
Change to voidable transactions regime — clawback period reduced to six months	6
OTHER CHANGES	7
AUSTRALIA	8
Safe harbour provisions/suspension of insolvent trading liability for period of time	8
Amendments to statutory demand process	8
New Small to medium enterprises (SME) processes – formal rescue/restructure and simplified liquidation	8
UNITED KINGDOM	9
Suspension of wrongful trading	9
Protection of supply contracts	10
A new moratorium period	10
New restructuring plan	11
Suspension of winding up petitions and statutory demands	11
3. RESTRUCTURING TOOLS AVAILABLE TO COMPANIES IN DISTRESS	13
UNDERPERFORMING/TURNAROUND OPTIONS	14
Asset sales	14
Capital injection	14
Refinancing	14
External capital raising	15
Sale of all or part of the business	15
Financial restructuring options are not mutually exclusive	16
RESTRUCTURING/WORKOUTS	16
CREDITORS’ COMPROMISES	18
VOLUNTARY ADMINISTRATION (VA) (PART 15A COMPANIES ACT)	19
RECEIVERSHIP AND LIQUIDATION	19
4. CONSIDERATIONS FOR BUSINESSES IN DEALING WITH POTENTIALLY INSOLVENT COUNTERPARTIES	21
DEALING WITH POTENTIALLY INSOLVENT CUSTOMERS	21
Restructure/compromise proposals	21
Voluntary administration	21
Receivership/liquidation	22
Dealing with voidable transaction risk	22
Dealing with potentially insolvent suppliers	24
5. CONSIDERATIONS FOR COMPANY DIRECTORS IN TIMES OF UNCERTAINTY	25
DEBUT HOMES (SUPREME COURT)	25
Breach	25
Remedy	26
MAINZEAL (COURT OF APPEAL)	26
Breach	26
Remedy	28
IMPLICATIONS FOR DIRECTORS	29
IMPACT ON RESTRUCTURING PRACTICE	31
6. POTENTIAL LAW REFORM	34
DIRECTORS’ DUTIES	34
Amendments to ss 135/136/301	34
Introduction of permanent “safe harbour” for directors?	36
AMENDMENTS TO ENCOURAGE USE OF VA	37