



DENTONS

Corporate restructuring and insolvency in New Zealand

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December 2023

Corporate restructuring and insolvency in New Zealand



The team regularly acts for banks, insolvency practitioners and creditors on a range of issues, including receiverships, administrations and risk management. The firm is especially respected for its work on insolvency mandates arising in the construction and property sectors, and for advising on debt recovery.

— Restructuring and Insolvency,
Chambers and Partners
Asia Pacific, 2023



3 partners

5 professionals

Specialists in:

- Receiverships
- Administrations
- Liquidations
- Restructuring solutions
- Creditors' compromises
- Debt recovery
- Securities enforcement
- Priority disputes
- Advice on director liability
- Voidable transactions

**Ranked
with:**



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; and
- Voluntary administration.



Other options available in New Zealand include formal and informal compromises. 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.



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 claims against directors and other parties.
- Acting for creditors in relation to claims and other matters.
- Acting for directors and business owners on turnaround and 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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ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

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