

# INSOLVENCY ROUND-UP

Week 27

2-Jul-18 to 6-Jul-18

Welcome to our weekly round-up of corporate insolvency news in New Zealand. This newsletter covers all winding-up applications, administrator and liquidator/receiver appointments to New Zealand companies as reported in the New Zealand Gazette in the last week. It also summarises some key legal and procedural aspects of insolvency that hopefully proves useful.

## 1. Winding-Up Applications

These notices give upcoming dates for winding-up hearings in the High Court. Note it is possible that any of the companies involved could come to a compromise with its creditor(s) with the result being the application is withdrawn prior to the hearing. The list is in Hearing date order with the soonest at the top - you may want to prioritise those with a close hearing date.

Notice Date	Company	Hearing Date	Plaintiff
5-Jul-18	Excelsior Inc. Ltd	9-Jul-18	Excelsior Group Ltd (in liquidation)
5-Jul-18	Anuti1967 Ltd	13-Jul-18	IRD
5-Jul-18	M & F Ltd	13-Jul-18	IRD
5-Jul-18	TCIL (New Lynn) Ltd	13-Jul-18	IRD
5-Jul-18	Green Pacific Group Holdings Ltd (formerly GBR International Ltd)	13-Jul-18	IRD
5-Jul-18	Kelstworural Ltd	13-Jul-18	IRD
5-Jul-18	Mainstay Consulting Ltd	13-Jul-18	IRD
5-Jul-18	Global Cover Insurances Ltd	13-Jul-18	IRD
5-Jul-18	Fungasi Enterprise Ltd	13-Jul-18	IRD
5-Jul-18	S W Matthew Holdings Ltd	13-Jul-18	IRD
6-Jul-18	International View Ltd	13-Jul-18	ANZ Bank New Zealand Ltd
5-Jul-18	Avicon Ltd	17-Jul-18	IRD
4-Jul-18	Hunter Heights Ltd	17-Jul-18	Amber Rose Duncan
5-Jul-18	Precise Digger Services Ltd	19-Jul-18	IRD
2-Jul-18	Trinitys Cleaning Services Ltd	19-Jul-18	Shenee Nicole Atkinson
3-Jul-18	Waere Developments Ltd	20-Jul-18	Stellaria NZ Ltd
5-Jul-18	Pacific Natural Gut String Co. Ltd	24-Jul-18	Taranaki Regional Council
5-Jul-18	Clutha Transport Ltd	2-Aug-18	Allied Petroleum Ltd
3-Jul-18	Ellis Fibre Ltd	2-Aug-18	Amalgamated Textiles
5-Jul-18	Ora HQ Ltd	3-Aug-18	IRD
6-Jul-18	Let It Grow Ltd	3-Aug-18	Richard Gilmer Taine

If any of the above are your customers, then careful consideration is needed. If they owe you money, then your next steps could be crucial in protecting your position. Seek professional advice.

If any of the above are your suppliers, then this could also have a detrimental impact on you if they were to be liquidated. Alternative sources of supply may need to be considered as a matter of urgency.

## WINDING UP PROCEEDINGS

Following the expiry of 15 working days from date of service of a statutory demand, the applicant creditor may issue proceedings in the High Court to wind up the company. The process for issuing these proceedings is under Section 241(2)(c).

Applications may be brought on a number of grounds, the most important being that the company is unable to pay its debts. There are several factors that the Court will consider when deciding whether or not to make a liquidation order. The Court has a discretion as to whether to make the order.

**Note:** [Excelsior Inc. Ltd](#) – although not a subsidiary of [Excelsior Group Ltd](#) (in liquidation) they share a common director [David Bruce Mundy](#).

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## 2. Appointment of Liquidators

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The claims date is set by the liquidator and must be no less than 10 days from the date of the notice advising of the claims date. A creditor not filing a claim by the claims date may find itself excluded from any distribution made after that date and before making a claim.

A liquidator is not required to set a date on appointment - hence the "No Date Set" for some appointments below. In these cases, the liquidator will set a date via public notice at a future date.

Appointment Date	Company	Liquidator	Claims Date
26-Mar-18	Boss Scaffolding Ltd	David Thomas	3-Jul-18
4-Jul-18	Chch Car Retailers Ltd (formerly Cars Under \$7990 Ltd)	Geoff Brown/Lynda Smart - Rodgers Reidy (NZ) Ltd	4-Jul-18
13-Jun-18	S.R.B. Holdings Ltd	Yunus Musa	20-Jul-18
29-Jun-18	Hats Holdings Ltd	Gareth Hoole/Clive Bish	27-Jul-18
28-Jun-18	Admirals Investments Ltd	Digby Noyce	27-Jul-18
28-Jun-18	WJ Investments Ltd	Marion Garlick/Richard Ashby	28-Jul-18
13-Jun-18	Amalgamated Metal Ltd	Keith Mawdsley/Kevyn Botes	30-Jul-18
27-Jun-18	Soul Beverages Ltd	John Gilbert	30-Jul-18
29-Jun-18	Eastridge Pharmacy Ltd	Victoria Toon	31-Jul-18

Appointment Date	Company	Liquidator	Claims Date
3-Jul-18	RPA Creations Ltd	Damien Grant - Waterstone Insolvency	31-Jul-18
3-Jul-18	Mehar Hospitality Ltd	Damien Grant - Waterstone Insolvency	31-Jul-18
3-Jul-18	Hungry Hopes Ltd	Damien Grant - Waterstone Insolvency	31-Jul-18
2-Jul-18	Magroc (NZ) Ltd	Brenton Hunt	31-Jul-18
30-Jun-18	T42 Cafe Ltd	Brenton Hunt	31-Jul-18
29-Jun-18	Capital Works Ltd	Victoria Toon	31-Jul-18
29-Jun-18	N & G Lowrie Ltd	Victoria Toon	31-Jul-18
4-Jul-18	Shri Krishna Holdings Ltd	Robert Horton	1-Aug-18
1-Jul-18	Was UI NZ Ltd	Rachel Mason-Thomas/Karen Mason	1-Aug-18
28-Jun-18	Intercivil Ltd (in receivership)	Christopher McCullagh/Stephen Lawrence	6-Aug-18
26-Jun-18	Ben Lawrence Ltd	Colin Owens/David Vance - Deloitte	7-Aug-18
3-Jul-18	Guten Appetit Catering 2014 Ltd	Colin Owens/David Vance - Deloitte	7-Aug-18
29-Jun-18	Chok D Erawan Ltd	Iain McLennan/Peri Finnigan - McDonald Vague	7-Aug-18
2-Jul-18	Print Concepts Ltd	Pritesh Patel	10-Aug-18
29-Jun-18	Thumbprint 2 Ltd	Tony Maginness/Jared Booth - Staples Rodway	10-Aug-18
29-Jun-18	110 Symonds Street Holdings Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Baverstock Park Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Drury Heights Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Orewa Village Developments Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Parkhill Custodians Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	RB Road 391 Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Southside Securities Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Symonds 90 Custodians Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
29-Jun-18	Whitaker 35 Ltd	Boris van Delden/Peri Finnigan - McDonald Vague	10-Aug-18
28-Jun-18	Murray & Nelson Construction Ltd	Iain Shephard/Jessica Kellow - BDO Wellington	10-Aug-18
28-Jun-18	Murnel Developments Ltd	Iain Shephard/Jessica Kellow - BDO Wellington	10-Aug-18
29-Jun-18	CE Kapiti Ltd (trading as CE Trucks)	Iain Shephard/Jessica Kellow - BDO Wellington	10-Aug-18
3-Jul-18	Dasmab Ltd	Deborah Nesti	10-Aug-18
3-Jul-18	Kasuga NZ Ltd	Peri Finnigan/Iain McLennan - McDonald Vague	13-Aug-18
29-Jun-18	Orange Energy Solutions Ltd	Simon Dalton/Matthew Kemp	14-Aug-18

Appointment Date	Company	Liquidator	Claims Date
26-Jun-18	Workforce NZ Ltd (trading as Killer Prawn)	Craig Sanson/John Fisk - PwC	15-Aug-18
29-Jun-18	MIPD Ltd	Malcolm Hollis/Marcus McMillan - PwC	15-Aug-18
29-Jun-18	Ronin Ltd	Craig Sanson/Malcolm Hollis - PwC	15-Aug-18
29-Jun-18	Quality Transfer & Labels N Z Ltd	Craig Sanson/Malcolm Hollis - PwC	15-Aug-18
4-Jul-18	Daly Civil Construction Ltd	Malcolm Hollis/Marcus McMillan - PwC	17-Aug-18
4-Jul-18	Tyreworld Auto Service Centre Ltd	Malcolm Hollis/Wendy Somerville - PwC	17-Aug-18
30-Jun-18	JW Builders Ltd	Peri Finnigan/Iain McLennan - McDonald Vague	17-Aug-18
29-Jun-18	Oceania Communications 2000 Ltd	Vivian Fatupaito - KPMG	29-Aug-18
29-Jun-18	Tomtom Bar & Eatery Ltd	Vivian Fatupaito - KPMG	29-Aug-18
3-Jul-18	AZ Engineering (Tawa) Ltd	Marcus McMillan/John Fisk - PwC	31-Aug-18
27-Jun-18	Acumen Technology Ltd (trading as IT Hut)	Garry Whimp	31-Aug-18
2-Jul-18	NPC Signworx Ltd	Thomas Rodewald	2-Sep-18
3-Jul-18	Nga Taumata Consultancy Ltd	Vivian Fatupaito - KPMG	3-Sep-18
28-Jun-18	East Coast Painting Ltd	John Managh	No Date Set
2-Jul-18	A1 Expo New Zealand Ltd	Grant Reynolds	No Date Set
2-Jul-18	NZ Skills Contractor Ltd	Imran Kamal	No Date Set
27-Jun-18	AK Civil Ltd	Grant Reynolds	No Date Set
22-Jun-18	Hokitika Property Ltd	Grant Reynolds	No Date Set
18-Jun-18	Ryder Books And Stationery Ltd	Gus Jenkins/Iain Nellies - Insolvency Management Ltd	No Date Set

A number of these have been identified by the appointed liquidator / appointing director(s) as solvent liquidations (see below for explanation). These are:

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|-----------------------------------|------------------------------------|
| ⊕ Admirals Investments Ltd        | ⊕ Orewa Village Developments Ltd   |
| ⊕ WJ Investments Ltd              | ⊕ Parkhill Custodians Ltd          |
| ⊕ Eastridge Pharmacy Ltd          | ⊕ RB Road 391 Ltd                  |
| ⊕ Capital Works Ltd               | ⊕ Southside Securities Ltd         |
| ⊕ N & G Lowrie Ltd                | ⊕ Symonds 90 Custodians Ltd        |
| ⊕ Shri Krishna Holdings Ltd       | ⊕ Whitaker 35 Ltd                  |
| ⊕ Was UI NZ Ltd                   | ⊕ Murray & Nelson Construction Ltd |
| ⊕ 110 Symonds Street Holdings Ltd | ⊕ Murnel Developments Ltd          |
| ⊕ Baverstock Park Ltd             | ⊕ Kasuga NZ Ltd                    |
| ⊕ Drury Heights Ltd               | ⊕ Hokitika Property Ltd            |

## LIQUIDATOR APPOINTMENTS

Section 241(2) of the Companies Act provides that a liquidator may be appointed by:

- ⊕ shareholder special resolution – s241(2)(a);
- ⊕ the board of the company upon occurrence of an event specified in the constitution – s241(2)(b);
- ⊕ the court – s241(2)(c).

An application to the court (under s 241(2)(c)) may be made by:

- ⊕ the company, director or shareholder
- ⊕ creditor
- ⊕ administrator (if company in Administration)
- ⊕ The Reserve Bank (if licensed insurer) or Financial Markets Authority (if a participant).

For appointment of liquidators a prime consideration by the court is that the liquidator is independent and seen to be independent. s280 of the Companies Act describes who is prohibited from being appointed or acting as a liquidator.

In the case of a solvent liquidation (i.e. the company has sufficient assets to fully cover its debts) a person who is not independent may be appointed as there is no need for concern over impartiality.

A liquidator is required to call a meeting of creditors of the company where, amongst other matters, replacement of the liquidator, if appointed by shareholders or directors, is discussed. Any creditor should look carefully at the liquidator appointing party and the appointed liquidator and satisfy themselves of their competence and independence.

For this week there were 43 liquidators appointed by shareholders under s241(2)(a), 0 appointed by the board under s241(2)(b) and 15 liquidators appointed by the court under s241(2)(c).

## LIQUIDATOR REPORTING OBLIGATIONS

The liquidator must send regular reports to:

- ⊕ every known creditor of the company
- ⊕ every known shareholder of the company.

Copies of these reports must also be filed with Companies Office.

### Initial report

Information gathered for the initial report usually includes:

- ⊕ a statement of the company's affairs
- ⊕ plans for conducting the liquidation
- ⊕ an estimated completion date
- ⊕ an alert to creditors and stakeholders of their statutory right to call for a creditors' meeting or shareholders' meeting, or both, and
- ⊕ a list of every known creditor of the company with each creditor's address, if known.

For court-ordered liquidations, the liquidator must deliver this initial report to Companies Office within 25 working days of their appointment as liquidator. For all other liquidations, the report must be delivered within 5 working days.

### Interim reports

The liquidator must prepare and deliver 6-monthly reports covering:

- ⊕ the activities and outcomes of the liquidation over the previous 6 months
- ⊕ receipts and payments
- ⊕ further plans for completing the liquidation.

Each report must be delivered to Companies Office within 20 working days of the end of each 6-month period from when liquidation begins.

### Final report

As soon as practicable after completing the liquidation, the liquidator must prepare and file with Companies Office, a final report on the activities and outcomes of the liquidation.

The required contents of that report are set out in Section 257 of the Companies Act.

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## 3. Appointment of Receivers/Managers

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Receivers are usually appointed by a secured creditor under the terms of a General Security Agreement. This is termed a private appointment.

Appointment Date	Company	Receiver/Manager	Appointment
4-Jul-18	SMT Holding FL Rotorua Ltd	Thomas Rodewald	4-Jul-18

It is important to note that the primary role of a privately appointed receiver (i.e. not court appointed) is to act in the interests of the creditor or creditors on whose behalf he or she was appointed (although does have a duty of care to the company and other creditors not to act in a negligent manner). It is recommended that specialist advice is sought in these situations.

A receiver appointed by the Court is an officer of the Court and must act impartially and adhere to the standards expected of a judicial officer. A Court appointed receiver is personally liable, both at common law and pursuant to s 32 of the Receiverships Act, for all contracts entered into by the debtor company during the course of the receivership. Although a privately appointed receiver can contract out of liability under s 32, a court appointed receiver cannot.<sup>1</sup>

*Although the data in this Newsletter have been produced and processed from sources believed to be reliable, no warranty, expressed or implied, is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information.*

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<sup>1</sup> Heath and Whale: Insolvency Law in New Zealand, 2<sup>nd</sup> Edition.