

1 March 2024

**Distributions of crypto currencies in insolvent exchange:  
High Court confirms method of distributions in Cryptopia liquidation**

The High Court has approved a two-stage process (with "soft" and "hard" cut-off dates) for distributing assets to creditors of the failed crypto exchange, Cryptopia, following an application by the liquidators for guidance.

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8 April 2024

**High Court determines when an insurance company is insolvent for purposes of voidable transactions regime**

The High Court in *Johnston v Alpha Insurance a/s (in bankruptcy)* has held that CBL Insurance Limited's outstanding claims liability (an estimate of an insurer's total likely claims exposure for the cover that it has written) was a due debt for the purposes of determining whether a transaction was voidable under section 292 of the Companies Act 1993, significantly widening the test applied by the courts so far.

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12 April 2024

**Liquidator has power to appoint liquidators to wholly-owned subsidiaries despite receivership in limited circumstances**

The Court of Appeal in *Grant v BNZ* has held that in certain circumstances a liquidator could lawfully appoint liquidators to the company's wholly-owned subsidiaries, even if receivers are appointed over the company and its assets (including the shares) and the secured creditor had not surrendered its security over the shares of the subsidiaries.

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19 June 2024

**Effect of arbitration agreement on ability to wind up**

The Privy Council, on appeal from British Virgin Islands, delivered an important decision on winding-up proceedings where a dispute about the underlying debt is subject to an agreement to arbitrate. The judgment held that the test for whether a court should exercise its discretion to stay a winding-up application in favour of arbitration is whether the debt relied on by the applicant creditor is "disputed on genuine and substantial grounds".

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27 June 2024

**Releasing (or not) third party claims in Purdue Pharma**

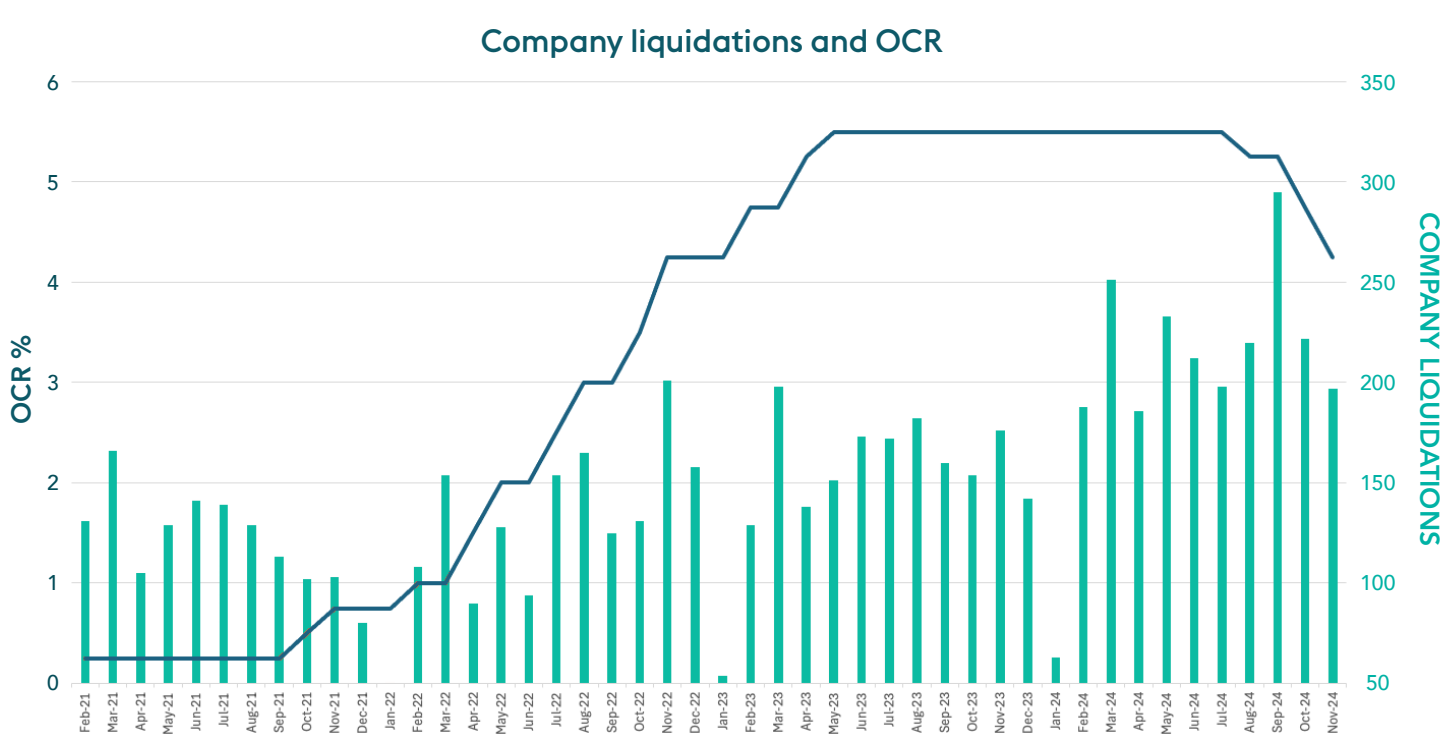
The US Supreme Court has determined that Purdue's Chapter 11 plan of reorganisation, which proposed to discharge claims owed by the Sackler family to the Purdue estate (including in negligence, fraud and wilful misconduct) in exchange for payment of US\$4.25B into the Purdue estate, was unlawful without the consent of affected claimants.

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14 August 2024

**NZ central bank begins easing of monetary policy by cutting OCR**

The RBNZ has started cutting the OCR, first by 25bp in August, then 50bp in October, followed by 50bp in November, with the OCR now sitting at 4.25%, its lowest level in 18 months. With insolvency statistics of late making ugly reading (as demonstrated below), this easing cycle has been welcomed by many – but has it come too late for some (with liquidations up 25% year on year)?



21 August 2024

**Du Val group placed into statutory management**

At 6pm on 21 August 2024, John Fisk, Stephen White and Lara Bennett of PwC New Zealand were appointed by the Crown (on the recommendation of the FMA) under section 38 of the Corporations (Investigation and Management) Act 1989 as statutory managers of 70 entities associated with the Du Val property development group. This power, unique to New Zealand, is only available in certain circumstances.

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5 September 2024

**NZICA Disciplinary Tribunal cancels licence of Licensed Insolvency Practitioner**

An NZICA disciplinary tribunal has taken the rare step of cancelling the licence of a Licensed Insolvency Practitioner on the basis of misconduct for contracting insolvency services out to a company operated by an unlicensed practitioner once convicted for tax fraud. The Tribunal found that no penalty short of cancellation was available given the extent of the LIP's failures.

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26 September 2024

**Creditors successful in direct claims for compensation against directors**

Following *Mainzeal*, it is clear that directors must consider the interests of creditors in circumstances of doubtful solvency (as underscored recently by the Court of Appeal in *Kumar v Smartpay Ltd*) and should be mindful of a creditor's direct right of recourse under section 301 of the Companies Act 1993 (as was successfully argued in *Boaden v Mahoney*).

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30 September 2024

**Increase in priority amount for employee preferential claim cap**

On 30 August 2024, the maximum amount for preferential payments to employee creditors in a liquidation scenario increased from \$25,480 to \$31,820 under the Companies (Maximum Priority Amount) Order 2024, which amends Schedule 7 of the Companies Act 1993.

3 October 2024

**NZ IPs are eligible for automatic registration in Australia**

In October, ASIC confirmed that New Zealand-registered insolvency practitioners are eligible for automatic registration in Australia under the Trans-Tasman Mutual Recognition Act 1997. New Zealand-registered practitioners can become registered in Australia by notifying ASIC of their New Zealand registration.

17 October 2024

**Court of Appeal reverses equitable lien protection for purchasers in a tiny home context**

The Court of Appeal recently clarified the rights of purchasers of partially completed tiny homes, removing the uncertainty created by equitable liens of this type in New Zealand and removing their priority on insolvency. The Court's finding that security interests under the PPSA take priority over this type of equitable lien provides liquidators and creditors alike with much needed certainty and confirms that secured creditors will retain priority in the case of insolvency in accordance with established principles.

[read more...](#)**Looking ahead to 2025****Companies Act review**

Minister Bayly has announced a two-phased review of the Companies Act to (1) modernise the "out-of-date" Act, simplify compliance requirements, and deter poor and illegal business practices (a Bill is expected early 2025) and (2) review the directors' duties provisions and related issues of director liability, sanctions and enforcement more generally (during 2025).

[read more...](#)**Geopolitical and economic uncertainty**

The impact on New Zealand's economy of the changing trade policies following the presidential election in the United States, ongoing conflict in Ukraine and the Middle East, and challenges with the Chinese economy will continue into 2025.

**Continued growth in private credit**

Whilst private credit plays a critical role in the European and American economies, it is still a developing market in New Zealand. We anticipate that New Zealand will continue to feel the benefits of the growth of private and alternative capital in Asia and Australia over the next 12 months, providing more options and flexibility for borrowers and restructuring opportunities at this stage of the current economic cycle.

**Cyber response**

Cyber-attacks and outages can have many devastating impacts, as evidenced by the global impact that the CrowdStrike outage had in July 2024, halting the operations of numerous airlines, banks, hospitals, supermarkets, emergency services, critical infrastructure providers and businesses worldwide. We're expecting further examples of event-driven distress in businesses caused by cyber incidents, similar to that which was experienced by Cryptopia in New Zealand leading to its insolvency in 2019.

[read more...](#)**Any questions? Talk to one of our experts****Matthew Kersey**

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