

Insolvency and restructuring newsletter - July 2022

[David Perry](#), [Scott Barker](#), [Scott Abel](#), [David Broadmore](#), [Jan Etwell](#), [Kelly Paterson](#), [Willie Palmer](#), [Bridie McKinnon](#), [Myles O'Brien](#), [Peter Niven](#), [Jane Maltby](#), [Luke Sizer](#), [Matthew Triggs](#), [Alec Duncan](#), [Michael Smol](#)

8 July 2022

Kia ora tatou

Since our last newsletter, Russia's war in Ukraine rumbles on, domestic inflation hits new highs and there are signs of an increase in activity in the insolvency market.

Russians unlawful assault on Ukraine continues unabated, as we enter the European summer months, and the fourth month of the invasion. Besides the utter devastation inflicted on the people and infrastructure of Ukraine, the war is having a significant impact on both global food and oil prices. Ukraine is a large supplier of the world's wheat, and many growers had stockpiled their prior year's harvest until prices were buoyant, which now can't get to market. Oil prices have risen significantly, with West Texas crude prices starting the year at US\$76, but hitting US\$120 a barrel earlier in June.

In brighter news, many colleagues and clients have enjoyed attending INSOL's annual conference in London over the past week, where some of these global economic conditions were discussed. [Scott Barker](#), [Scott Abel](#) and [David Perry](#) from our national insolvency team attended. The highlight of the conference was, as always, the opportunity to meet with former colleagues, and our cross-border clients and networks. What we heard from those networks is that while most jurisdictions witnessed low restructuring activity across the 'Covid years', due in almost every case to domestic government support, the potential work flows from current global market correction remained an unknown quantity. We were told of a lot of surplus money in the system so despite what was occurring in the market, the general sentiment seemed to be that spare money will provide something of a buffer against the threat of wholesale insolvencies.

Another recurring theme was the desperate state of the labour market - and while we are really feeling the pinch here in New Zealand, it'll be cold comfort to hear this is by no means a uniquely NZ Inc issue. Talk around the combined effects of the war in Ukraine and the lockdowns in China on global supply chains suggest those issues show no sign of resolving themselves quickly. Regrettably New Zealand can only expect to be a secondary voice in those discussions.

More positively, those that managed to slip away from the conference hotel to The Rolling Stones 60th anniversary concert confirmed that some industries just are recession proof. By all accounts Mick and the boys put on a great show.

Turning to matters closer to home, domestic inflation has hit a 30 year high, mainly driven by the housing and household utilities sector, influenced by rising prices for construction and rentals for housing. Those costs are in part influenced by Covid induced supply constraints, and the freight and logistics issues touched upon above and in our previous newsletter.

Kelly Paterson opens our newsletter with a report on the High Court's treatment of Covid travel refunds in *STA Travel*. There, the liquidators applied for directions as to whether refunds received for particular customers were held on trust. The judgment follows on from the High Court's consideration of a similar issue in *re Arrow Construction* in 2019.

We consider the High Court's treatment of Parts 10 and 12 of the Companies Act in *Fistonich v Gibson & Jackson*. The decision usefully confirms (in declining to follow *Taylor v BNZ*) that receivers can retain and spend company funds to defend claims of failure to get the best price. The proviso is that there is an obligation to account if the receivers are subsequently determined to have breached that duty.

The newsletter also includes useful case notes on international judgments of interest, including the first Australian decision to consider the new 'creditor defeating dispositions' provisions.

We hope you enjoy our mid-year edition for 2022. Please [get in touch](#) if we can provide additional information.

READ NEWSLETTER

Auckland

**188 Quay Street
Auckland 1010**

**PO Box 1433
Auckland 1140
New Zealand**

P: +64 9 358 2555

F: +64 9 358 2055

Wellington

**Aon Centre
1 Willis Street
Wellington 6011**

**PO Box 2694
Wellington 6140
New Zealand**

P: +64 4 499 4242

F: +64 4 499 4141

Christchurch

**83 Victoria Street
Christchurch 8013**

**PO Box 322
Christchurch 8140
New Zealand**

P: +64 3 379 1747

F: +64 3 379 5659