

# 11th Annual Corporate Insolvency Conference

The premier conference for corporate insolvency and recovery practitioners

8 & 9 March 2012, Pullman Hotel, Auckland

## Leading international and national speakers:

- Chaired by the Honourable Justice Paul Heath
- Sean Hughes, Chief Executive, Financial Markets Authority
- Mark Bielecki, Senior Executive, Deterrence - Corporations and Corporate Governance, Australian Securities & Investments Commission and Regional Commissioner, South Australia
- Adam Feeley, Chief Executive, Serious Fraud Office
- Judge James M. Peck, Bankruptcy Court, Southern District of New York, USA
- Nick Tuffley, Chief Economist, ASB Bank
- Professor Peter Watts, Faculty of Law, University of Auckland
- Bruce Stewart, QC
- Gerald Sare, Head of Strategic Business Services, BNZ

Featuring Sir Graham Henry, former All Blacks coach as the Insol dinner guest speaker

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## Message from Brendon Gibson, Chairman of INSOL New Zealand

I have great pleasure in introducing the leading corporate insolvency conference for industry participants, Corporate Insolvency 2012. We are delighted to announce that Justice Heath is available to chair the 2012 conference and are very grateful for Justice Heath's continuing support of INSOL New Zealand.

After another turbulent year the global economy faces huge uncertainty as the world debt crisis continues and while New Zealand has to date been relatively immune from its effects, it still dominates the landscape. This year has also brought the first cases against directors of the failed finance companies. In our 2012 conference programme we have included topics and speakers that reflect current issues facing the economy and the insolvency industry. We have a variety of topical discussions, including a presentation from Sean Hughes CEO of the Financial Markets Authority on his first year in office and the role of the FMA. Adam Feeley will discuss Serious Fraud Office issues in corporate fraud and the role of the insolvency practitioner.

We also have a panel discussion on the effects of these cases on the role of directors and insolvency practitioners in potential actions when things go wrong. There is also a session on the current proposed licencing of Insolvency Practitioners which is creating a lot of discussion in the industry.

We are very pleased to welcome a strong line-up of international and national speakers this year. From the United States we welcome Federal Judge James M. Peck, a well-known bankruptcy judge with significant experience, including acting as Presiding Judge in the bankruptcy proceedings of Lehman Bros on which subject he will address the conference. We also welcome Mark Bielecki from ASIC who was instrumental in the Centro prosecution and Gerald Sare from BNZ who will talk about Banks' attitudes to distressed companies.

The conference dinner is one of the most enjoyable aspects of the conference and provides an opportunity for delegates to meet up with colleagues and enjoy some specially presented wine. This year we are fortunate to have as the dinner speaker Rugby World Cup winning All Black coach Sir Graham Henry who needs no introduction and I am sure will be a great speaker.

Please register early to secure your place at what will be a fantastic conference and dinner.

INSOL wishes to thank all the sponsors of the conference. It is great to have the support of these leading firms.

I look forward to seeing you in March 2012.

Brendon Gibson  
Chairman, INSOL New Zealand

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## Day One: 8 March 2012

8.20 Conference Registration

8.50 Opening Remarks from LexisNexis, INSOL and Platinum Sponsor

9.00 Opening Remarks from the Chair

**The Honourable Justice Paul Heath**

9.10 Preventing Crime from Paying - The Serious Fraud Office – White Collar Crime

The SFO is very serious in its battle against increasing white collar crime and seeks better collaboration from the private sector.

- SFO's priorities for 2012
- Cases of interest
- SFO's information gathering and information sharing powers as they relate to insolvency practitioners
  - Future collaboration between SFO and insolvency practitioners
  - SFO assistance with creditors' claims and recoveries
  - Insolvency practitioners' assistance with investigations

**Adam Feeley**, *Chief Executive*, **Serious Fraud Office**

9.50 Key Questions: Directors responsibilities and accountability in New Zealand and Australia

**Part One** - Circumstances in which directors may be held personally liable in New Zealand

Often, in the aftermath of an insolvency, the only persons worth pursuing are the directors of the insolvent company.

- Overview of circumstances in which directors may be held personally liable in respect of an insolvent company
- Leading cases - what have we learned?

**Brian Dickey**, *Partner*, **Meredith Connell**

**Part Two** – Directors duties in Australia

The implications of *Centro: Australian Securities and Investments Commission v Healey* (2011) FCA 717. Leading cases in Australia may have relevance in New Zealand. This Part comprises a comprehensive analysis of the *Centro* decision.

- Has the decision in *Centro* resulted in the emptying of Australia's boardrooms?
- *Centro* - director's declarations and the financial statements
- Some lessons from the *Centro* decision for directors in Australia

**Mark Bielecki**, *Senior Executive*, *Deterrence - Corporations and Corporate Governance*, **Australian Securities & Investments Commission and Regional Commissioner, South Australia**

**Part Three** - Panel Discussion

The expert Panel will canvass relevant issues with an opportunity for delegates to participate.

- Personal liability of directors
- Role of professional director – “Twilight Zone”
- Impact of recent cases on directors' responsibilities

**Justice Paul Heath**, **Michael Stiassny**, *Partner*, **KordaMentha**, **Chairman of IOD Auckland Branch and member of National Council IOD**, **Bruce Stewart**, *QC*

11.15 Refreshment Break

11.40 A Hot Potato – Regulation of Insolvency Practitioners – Panel Discussion

The Insolvency Practitioners Bill 2010 proposes a new negative licensing system to resolve the issue of substandard insolvency practitioners involving the preclusion, disqualification or suspension of delinquent practitioners. The Bill does not satisfy everybody, many thinking it should be stronger. INSOL and practitioners' submissions concerning minimum qualification standards were not accepted and there is no disputes or complaints process or rules of conduct. This interactive session will highlight the industry's concerns, comment on the key issues and give delegates an opportunity to express their views.

**Michael Harper**, *Partner*, **Chapman Tripp** – Chair

**Brendon Gibson**, *Partner*, **KordaMentha**, **INSOL Chair**

**Bronwyn Turley**, *Manager*, *Corporate Law and Governance*, **Ministry of Economic Development**

**Katherine Jones**, *Principal Advisor*, *National Collections Enforcement*, **Inland Revenue Department**

12.30 Networking Lunch

1.40 Essential Tax and GST Update for Insolvency Practitioners

Tax is frequently at the end of a long list of issues to be addressed by administrators. However, the Inland Revenue debt recovery division is increasingly active and aggressive when pursuing outstanding taxes of insolvent companies. This session considers the obligations of receivers and liquidators to address outstanding tax matters, and in particular the following topical issues:

- Personal liability and obligations when trading on

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- The priority ranking of claims for different tax types and the impact of the recent Burns case
- GST issues including :
  - The impact of the new land transaction "zero-rating" rule, almost one year on
- Obligations of receivers conducting a mortgagee sale where the mortgagee is in receivership ---the recent Simpson Downes case
- The increasing use of IRD attachment notices.

**Barney Cumberland**, *Partner*, **Simpson Grierson**

**Greg Knowles**, *Partner*, **KPMG**

2.30 **A New Ball Game – the Financial Markets Authority - Corporate governance - where to next? Lessons arising from GFC-1 and FMA's first 10 months**

Some may think the creation of the Authority in May 2011 was long overdue. Now up and running, the Authority promotes the development of fair, efficient and transparent financial markets with extensive regulatory powers, which hopefully will significantly reduce corporate delinquency.

- Lessons learnt from the Global Financial Crisis of 2008 (GFC-1) – exposure of systemic issues and behaviours ranging from incompetence to fraud
- The new legislative landscape for New Zealand's financial markets
- Making New Zealand more resilient in the face of future market volatility - Stronger regulation, better compliance, higher standards

**Sean Hughes**, *Chief Executive*, **Financial Markets Authority**

3.20 **Refreshment Break**

3.40 **A Black Hole? – Where Do Debt Recoveries go?**

- Who is entitled to the proceeds of actions:
  - To recover distributions from shareholders or directors under Companies Act section 56
  - Against directors for breach of duty under (for example) sections 131-137
  - Under the various voidable transaction sections.
- Do the proceeds flow to secured creditors, preferential creditors or unsecured creditors?
- Does it make a difference if the secured creditors themselves are the defendants in the claim?
  - When can liquidators and receivers respectively initiate proceedings for breaches of duty on behalf of the Company?

**Michael Arthur**, *Partner*, **Chapman Tripp**

**Expert commentary on above Paper**

**Professor Peter Watts**, *Faculty of Law*, **University of Auckland**

4.30 **Case Law Update**

Insolvency law is constantly evolving, tugged by the tide of case law coming to terms with commercial reality. This session comprises a crucial and comprehensive case law update for those who are serious about their practice in insolvency law.

**Matt Kersey**, *Partner*, **Russell McVeagh**

**Polly Pope**, *Associate*, **Russell McVeagh**

5.20 **Closing Remarks from the Chair and Day One Concludes**

5.30 **Networking Drinks**

7.00 **Gala Dinner**



## Day Two: 9 March 2012

9.00 **Opening Remarks from the Chair**

**The Honourable Justice Paul Heath**

9.10 **Annual Property Roundup**

Commercial properties are often one of the most valuable and convenient assets to sell in the course of an insolvency. This session reviews the current property scene and indicates what is hot and what is not.

- The commercial property market – winners and losers
  - The market: economic and market indicators
  - Performance, activity and sentiment
- Buyers' requirements
  - Who is buying and what do they want? What do they definitely not want?
  - What is in demand in terms of location, asset type, and property characteristics
  - What will they pay?
  - Prices currently being achieved, and required returns.
- The year ahead.
  - Economic indicators for 2012.
  - What will sell? What will still be difficult?

**Alan McMahon**, *National Director, Consulting and Research, Colliers International New Zealand Ltd*

10.00 **KEYNOTE ADDRESS – Judge James M. Peck – Presiding Judge in the bankruptcy case of Lehman Brothers Holdings Inc**

Federal Court Judge Peck is a Judge of the USA Bankruptcy Court for the Southern District of New York. He has written and lectured extensively on business bankruptcy topics. He was the presiding judge in the bankruptcy case of Lehman Brothers Holdings Inc, the fourth largest US Investment Bank, the bankruptcy of which in 2008 was the catalyst for the global financial crisis of that year. Judge Peck will talk and answer questions concerning the fall of Lehman Bros.

10.50 **Refreshment Break**

11.10 **Current Challenges for the New Zealand Economy**

In spite of our geographical isolation, we are an integral part of the global economy, financial and economic events overseas having a serious impact on this country. This session comprises a very informed analysis of the current economic situation both globally and in New Zealand.

- The legacy of the Global Financial Crisis, including the European debt crisis
- The global economic outlook
- The main influences on NZ's own economic recovery
- Where to for interest rates and exchange rates
- NZ: the opportunities and the challenges

**Nick Tuffley**, *Chief Economist, ASB Bank*

11.55 **Attitude of Banks to Distressed Companies**

When the sun is shining, banks are helpful. The real test comes when the company hits stormy waters.

- Subject to an acceptable plan, banks are generally supportive
- The importance of good governance, management and communication
- Does a viable business plan exist
- Covenants are intended for a purpose
- Debt trading is beginning to feature in NZ

**Gerald Sare**, *Head of Strategic Business Services, BNZ*

12.45 **Networking Lunch**

1.45 **Down on the Farm - Rural Sector Update - Panel Discussion**

The continuing importance of the rural sector is often overlooked, it making a major contribution to our economy but also being subject to challenges, stresses and strains. The panel discussion will concentrate on the horticulture/viticulture, sheep, beef and dairy sectors covering the following areas:

- Current status and outlook for the sectors
- Issues facing the sectors
- Working with rural clients under financial pressure
- Long term vs short term realisation strategies
- Lessons from formal insolvencies in the sectors

**John Fisk**, *Partner, PricewaterhouseCoopers*

**Rees Logan**, *Director, PricewaterhouseCoopers*

**Roger Wilson**, *Managing Partner, Hamilton, PricewaterhouseCoopers*

2.30 **South Canterbury Finance - The Bottom of the Pit**

The collapse of South Canterbury Finance is unprecedented. The receivers, both from McGrath Nicol, share insights and observations on the collapse of New Zealand's biggest finance company.

**Kerryn Downey**, *Partner, McGrathNicol*

**William Black**, *Partner, McGrathNicol*

3.20 **Understanding Insolvent Trading Trusts**

Trading trusts can present difficulties and a challenge to insolvency practitioners. This informative session unravels and explains the complexities.

**Anthony Grant**, *Barrister*

4.10 **Closing Remarks from the Chair**

4.20 **Conference Concludes**

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8 & 9th March 2012, Pullman Hotel, Auckland

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